

FOR: MR T CRAWFORD-BROWNE

RE: THE ARMS DEAL

OPINION

1. Consultant is Mr T Crawford-Browne.
2. Mr Crawford-Browne instituted proceedings in which he sought an order setting aside the refusal of the President to appoint a Commission of Inquiry to investigate state contracts for the acquisition of arms (the "*Arms Deal*") in 1999.

Handwritten signature or initials in the bottom right corner of the page.

3. The President subsequently appointed a Commission of Inquiry into various allegations of wrongdoing with regard to the Arms Deal. One of the key points of focus of Mr Crawford-Browne's complaints, and also of the subject matter of the Commission of Inquiry, is the offset agreements which formed part of the contracts.
4. I have been asked to advise on the legal validity of the Arms Deal in the light of the provisions of section 217(1) of the Constitution.

Section 217(1) of the Constitution

5. Section 217(1) of the Constitution provides as follows:

"When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective".

6. The effect of this is as follows:

- 6.1 A "system" of procurement which is "fair, equitable, transparent, competitive and cost-effective" has to be put in place by means of legislation or other regulation.



- 6.2 Once such a system is in place and the system complies with the constitutional demands of section 217(1), the question whether any procurement is legally valid must be answered with reference to that legislation or regulation.¹
7. The Public Finance Management Act 1 of 1999 (*“the PFMA”*) and the Treasury Regulations made thereunder² address further the requirements of that *“system”*:
- 7.1 Section 38(1)(a)(iii) provides that the accounting officer for a department, trading entity or constitutional institution must ensure that that department, trading entity or constitutional institution has and maintains *“an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective”*.³
- 7.2 Section 76(4)(c) of the PFMA authorises the National Treasury to make Regulations or issue instructions applicable to all institutions to which the Act applies concerning the determination of a framework for an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.

¹ Chief Executive Officer, South African Social Security Agency and Others v Cash Paymaster Services (Pty) Ltd 2012 (1) SA 216 (SCA) para [15].

² Government Notice R225 of 15 March 2005.

³ Section 51(1)(a)(iii) places a similar obligation on the accounting authority for a public entity.


Handwritten signature and initials in the bottom right corner of the page.

- 7.3 The Treasury Regulation 16A in turn requires the accounting officer to develop and implement an effective and efficient supply chain management system. That system must be "*fair, equitable, transparent, competitive and cost-effective*".⁴ Treasury Regulation 16A also prescribes other elements of the system.
8. It appears that the PFMA and Treasury regulation 16A were not in force at the time when many or all of the contracts were entered into.⁵ In any event, however, the Constitution required that the Arms Deal procurements be undertaken in accordance with a "system" which had the qualities which are stipulated in section 217(1).
9. I assume that at the time the SANDF, like other organs of state, had a "*system*" for procurement, and procured the arms in terms of that system. I assume that the system permitted the use of offsets in procurement.⁶ The question is therefore whether that system had the qualities which are required by section 217(1) of the Constitution.

⁴ Regulation 16A3.2(a)

⁵ The PFMA came into operation on 1 April 2000

⁶ If the SANDF procurement system did not permit the use of offsets, then procurement using offsets would have been unlawful. I would suggest that the Commission be requested to call for and make available for consideration the "system" which governed procurement by the SANDF at the time.



The offset contracts

10. As is well known, the Arms Deal was subject to substantial offset provisions. That is, the sellers of the equipment in question were required, as part of the procurement contract, to make investments in South Africa or in other ways facilitate economic activity in South Africa.
 11. The use of offsets as a selection criterion for the award of government procurement contracts is the subject of criticism on various grounds. At the heart of the criticism is that offsets can and do distort government acquisition processes in various ways, and can be an obstacle to transparency.
 12. This view is clearly illustrated by the World Trade Organisation Agreement on Government Procurement ("GPA"), also known as the Marrakesh Agreement. The GPA itself is not binding on South Africa, as South Africa is not a party to the GPA. However, the GPA remains relevant because it identifies international thinking on the question of the impact of offsets on good practice in state procurement.
-
13. Article XVI deals with offsets. It provides in paragraph 1 as follows:



"Entities shall not, in the qualification or selection of suppliers, products or services, or in the evaluation of tenders and award of contracts, impose, seek or consider offsets."

14. Paragraph 2 of Article XVI qualifies that prohibition to this extent: it provides that developing countries may, at the time of acceding to the agreement, negotiate conditions for the use of offsets, such as requirements for the incorporation of domestic content. However, such requirements *"shall be used only for qualification to participate in the procurement process and not as criteria for awarding contracts"*.
15. The GPA is subject to general exceptions in Article XXIII. Paragraph 1 of Article XXIII provides that the agreement shall not be construed to prevent a Party from taking any action *"which it considers necessary for the protection of its essential security interests relating to the procurements of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes"*. It is however difficult to see on what basis the use of offset agreements could be considered as necessary for procurement which is essential for national security or national defense purposes. It is presumably possible to negotiate procurement contracts which do not have offsets as part of their terms.

A handwritten signature in the bottom right corner of the page, consisting of a stylized, cursive script.

16. While the GPA is not binding on South Africa, it provides a helpful benchmark in the evaluation of whether the system of procurement which was used was *"fair, equitable, transparent, competitive and cost-effective"*.
17. As I have mentioned, a number of criticisms are directed at offset provisions in general for government procurement, on the grounds that they are inconsistent with good practice. The formulation, implementation and monitoring of the offsets in the Arms Deal have themselves been subjected to criticism, which it is beyond my brief to address. It is, however, relevant to identify the criticisms which are made of offsets as a system. They have been very usefully summarised by Paul Holden and Hennie Van Vuuren in Chapter 8 of their book on the Arms Deal.⁷ The criticisms are

17.1 that offsets can and do distort acquisition processes;

17.2 that the economic benefits of such programmes are uncertain;

17.3 that offsets lead to trade displacement rather than offering additional trade;

17.4 that offsets are economically inefficient;

⁷ Paul Holden and Hennie Van Vuuren The Devil in the Detail (2011) at pages 384-391.

Handwritten signature and initials in the bottom right corner of the page.

17.5 that the penalties payable if offset obligations are not met, are included in the cost of the purchase price, and the cost of non-delivery has therefore already been factored into the cost of the purchase;


17.6 that offset programmes are usually very complex, technical and bureaucratically heavy arrangements that require close and rigorous international auditing;

17.7 that offset agreements are usually protected by "*commercial confidentiality*" clauses that prevent the host government from publishing the full details of an offset project, thus undermining transparency; and

17.8 that the lack of disclosure and oversight may facilitate corruption.

18. It need hardly be said that these are weighty considerations. There appears to be a good deal of evidence which supports the criticisms which have been made: indeed, if there were not some substance in the criticisms, one would not expect the WTO Agreement on Government Procurement to have prohibited offsets, and particularly to have done so in such absolute terms when it comes to using them as criteria for the awarding of contracts.

19. It seems to me that at least *prima facie*, there is reason to believe that the use of offsets leads to procurement processes which are neither transparent nor cost-effective, and which may not be competitive in the full sense of that word.




20. It follows that if the criticisms of the use of offsets have any substantial validity, and the Arms Deal procurement contracts were entered into in terms of a "system" which permitted the use of offsets, they were unlawful because the procurement was not in accordance with a system which is *"fair, equitable, transparent, competitive and cost-effective"*.

Consequences

21. The next question is what the consequences are of an unlawful procurement contract.
22. In the ordinary course, a contract which is contrary to statute is unlawful and unenforceable. That much is trite.
23. There are circumstances in which an invalid tender award will nevertheless not be set aside.⁸ These considerations relate in part to the problems which may flow from a declaration that the contract is null and void. The Supreme Court of Appeal has however pointed out in this regard:

⁸ Moseme Road Construction CC and Others v King Civil Engineering Contractors (Pty) Ltd and Another 2010 (4) SA 359 (SCA).





"These problems may not be of any consequence in the case of corruption or fraud, or where the successful tenderer was complicit in the irregularity".⁹

24. That reservation identifies a further consideration which is relevant. There have been well-publicised allegations of corruption or improper purpose in the Arms Deal. Professor Quinot has pointed out that *"there is a general principle against the enforcement of such contracts ... where improper conduct can be established"*.¹⁰
25. Once fraud is involved, the general approach has been said to be that, in the words of Lord Denning, *"fraud unravels everything"*.¹¹ The principle has been more generally applied as establishing a ground of review of administrative action, even where there is a strict ouster of the jurisdiction of the Courts.
26. Ordinarily, where a contract is cancelled as invalid, the principle of restitution usually applies: each party must restore the performance it has received under the contract. This is subject to various qualifications which are not relevant here.

⁹ Para [21].

¹⁰ Geo Quinot *State Commercial Activity: A Legal Framework* (2009) page 142. He refers particularly to Plaaslike Boerdienste (Edms) Bpk v Chemfos Bpk 1986 (1) SA 819 (A) at 848 and Extel Industrial (Pty) Ltd and Another v Crown Mills (Pty) Ltd 1999 (2) SA 719 (SCA) at 728-729. Both of these cases involved bribery.

¹¹ Lazarus Estates Ltd v Beasley [1956] 1 QB 702 (CA) at 712; Gilbey Distillers & Vintners (Pty) Ltd and Others v Morris N.O. and Another 1991 (1) SA 648 (A) at 659; Kommissaris van Binnelandse Inkomste en 'n ander v Willers en andere 1994 (3) SA 283 (A) at 323.



Where, however, the cause of cancellation is bribery, the principle becomes quite different. The approach has been set out as follows in K&R Engineering Company Inc v The United States.¹²

"...once a contractor is shown to have been a participant in a corrupt arrangement, he cannot receive or retain any of the amounts payable thereunder. Permitting the contractor to retain amounts already received would create the danger that '[m]en inclined to such practices, which have been condemned generally by the courts, would risk violation of the statute knowing that, if detected, they would lose none of their original investment, while, if not discovered, they would reap a profit for their perfidy' ... To deny the government recovery of amounts paid under such tainted contracts would reward those contractors who can conceal their corruption until they have been paid."

Conclusions

27. I therefore advise as follows:

27.1 The procurement contracts in the Arms Deal were required by law to be in accordance with a system which is *"fair, equitable, transparent, competitive and cost-effective"*.

¹² 616F.2d 469 (Court of Claims 1980), quoted in Phoebe Bolton The Law of Government Procurement in South Africa (2007) 364.

Handwritten signature and initials in the bottom right corner of the page.

27.2 In the system which was used in these contracts, offsets played a very material role. There is reason to doubt whether such a system is in accordance with those requirements.


27.3 If the contracts were not in accordance with those requirements, they were unlawful and invalid. Whether such a contract will be set aside by a court depends on the facts of the case.

27.4 If the contracts were marked by bribery or other improper conduct, a participant in the corrupt arrangement cannot receive or retain any of the amounts payable under the contract.



GEOFF BUDLENDER SC

Chambers
Cape Town
3 May 2012



Loan Agreement

between

Barclays Bank PLC
as Original Lender

Barclays Bank PLC
as Multi-Currency Lender

Barclays Bank PLC
as Securitisation Lender

Barclays Bank PLC
as Agent

Barclays Bank PLC
as Syndications Agent and Arranger

Her Britannic Majesty's Secretary of State acting by the
Export Credits Guarantee Department
as ECGD

and

The Republic of South Africa acting through its
Department of Finance
as Borrower

relating to

Export Credit Facility

SIMMONS & SIMMONS

21 Wilson Street London EC2M 2TX
Tel 020 7628 2070 / 1528 9292 Fax 020 7628 2070 DX Box No 12



EXHIBIT "TCB 2"

CONTENTS

1.	Definitions	1
2	The Lenders, ECGD and the Agent	12
3.	Purpose	12
4.	Early Termination of Commitments	13
5	Conditions Precedent to Advances	13
6.	Disbursement	15
7.	Advances	16
8.	Commitments	18
9.	Optional Currencies	18
10	Interest Capitalisation Advances	19
11.	Gold Advances	19
12.	Interest	21
13.	Semi-Pure Option	22
14.	Swedish Securitised Option	23
15	Repayment	24
16	Prepayments	25
17	Payments	26
18.	Partial Payments and Redistribution of Payments	27
19.	Amounts due to be paid to the Borrower	27
20.	Indemnity	28
21	Representations	30
22	Covenants by the Borrower	31
23	Default	33
24	Option to make Advances after an Event of Default	35
25	The Funding and Benefit of the Agreement	36
26.	Taxes and Increased Costs	36
27.	Expenses	40
28	Fees	40
29.	Sums on Demand	40

[Handwritten signature]

[Handwritten signature]

EXHIBIT "TCB 2"

30.	Calculations, Remedies and Waivers	40
31.	Law and Jurisdiction	41
32.	Alteration of the Supply Contract, Designation of Additional Suppliers/Supply Contracts and Increase in Commitments	42
33.	Notices and Demands	43
	APPENDIX A	50
	APPENDIX B	52
	APPENDIX C	56
	APPENDIX D	63
	APPENDIX E	66
	APPENDIX F	71
	APPENDIX G	80
	APPENDIX H	84

EXHIBIT "TCB 2"

THIS AGREEMENT is dated 25 January 2000 and made

BETWEEN:

- (1) BARCLAYS BANK PLC (the "Original Lender"), of 54 Lombard Street, London, EC3P 3AH;
- (2) BARCLAYS BANK PLC (the "Multi-Currency Lender"), of 54 Lombard Street, London, EC3P 3AH;
- (3) BARCLAYS BANK PLC (the "Securitisation Lender"), of 54 Lombard Street, London, EC3P 3AH;
- (4) BARCLAYS BANK PLC (the "Agent"), of 54 Lombard Street, London, EC3P 3AH;
- (5) BARCLAYS BANK PLC (the "Syndications Agent and Arranger"), of 54 Lombard Street, London, EC3P 3AH;
- (6) HER BRITANNIC MAJESTY'S SECRETARY OF STATE ACTING BY THE EXPORT CREDITS GUARANTEE DEPARTMENT ("ECGD"); and
- (7) THE REPUBLIC OF SOUTH AFRICA acting through its DEPARTMENT OF FINANCE (the "Borrower").

Background:

- (A) The Buyer on behalf of the South African Department of Defence has entered into arrangements with British Aerospace (Operations) Limited for the supply of Hawk and Gripen aircraft and related equipment and detailed in Appendix C1 hereto;
- (B) The Lenders and ECGD have separately agreed to appoint Barclays Bank PLC to act on their behalf as agent hereunder and to perform and exercise such duties, rights, powers and discretions on their behalf as are specifically delegated to the Agent by the terms hereof together with all such powers as are reasonably incidental thereto;
- (C) The Lenders have agreed on the terms and conditions of this Agreement to advance to the Borrower sums to assist the financing of the arrangements referred to in Recital (A);
- (D) ECGD has agreed to ensure that certain of the Tranches as hereinafter defined shall be made available to the Borrower in the circumstances herein mentioned; and
- (E) The Lenders and ECGD have agreed on the terms and conditions of this Agreement to finance such further supply contracts as may be designated as Supply Contracts pursuant to the terms of this Agreement.

NOW THEREFORE it is agreed as follows:-

1 Definitions

- 1.1 In this Agreement and the Appendices hereto unless the context otherwise requires:

"Acceptance" means in relation to a Commercial Fixed Rate Notice a Supported Rate Notice, a Refixing Notice or as the case may be a Supported Rate Refixing Notice the



EXHIBIT "TCB 2"

endorsement appearing in the duplicate to that notice duly completed and signed on behalf of the Borrower by the Borrower's Signatory;

"Advance" means an advance (as from time to time reduced by repayment) and made available by way of loan by the Lenders to the Borrower hereunder;

"Affiliate" has the meaning set out in Clause 26.10;

"Aggregate Original Currency Amount" means an amount equal to the sum of each Original Currency Amount;

"Agreed Form" means the form to be agreed between the Agent, the Lenders, ECGD, the Borrower and, in the case of documents to be executed by the Buyer, the Buyer;

"Applicable Margin" has the meaning set out in Appendix A;

"Available Commitment" has the meaning set out in Clause 8.2;

"Available Gold Commitment" has the meaning set out in Clause 11.1;

"Available Interest Capitalisation Commitment" means in respect of each Interest Capitalisation Commitment, such commitment less the amount of each Interest Capitalisation Advance calculated in accordance with Clause 10.3;

"Availability Period" means, in respect of each of Tranches A, B, C, D and E the period from and including the date of this Agreement to and including the relevant Commitment Expiry Date or such earlier date on which the Commitments have been fully drawn or, as the case may be, terminated, reduced or cancelled pursuant to this Agreement;

"Banking Day" means a day except a Saturday or a Sunday on which (A) banks are open for general business in London and (B) in relation to any payment date for Dollars, a day on which banks are open for domestic and foreign exchange business in New York City or, in relation to any payment date for Euros, a day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET) System is open; or, in relation to any payment date for Kronor, a day on which banks are open for domestic and foreign exchange business in Stockholm, or in relation to any payment date for Gold, a day on which Gold is traded in the LBMA market;

"Borrower's Signatory" means any person who is a duly authorised officer of the Borrower whose name and specimens of whose signature have been supplied from time to time to the Agent by the Borrower as being those of a person authorised to sign documents pursuant to the terms of this Agreement provided that at the date of receipt of any such document by the Agent no written notice of the revocation of such authorisation has been received by the Agent;

"British Aerospace (Operations) Limited Supply Terms" means the supply terms detailed in Appendix C1 hereto.

"Business Day" means a day except a Saturday or a Sunday on which banks are open for general business in London and Johannesburg in the Republic of South Africa;

"Buyer" means the Armaments Corporation of South Africa Limited, acting as the official defence procurement agency of the Republic of South Africa;

"Buyer's Signatory" means any person who is a duly authorised officer of the Buyer whose name and specimens of whose signature have been supplied from time to time to the Agent by the Buyer as being those of a person authorised to sign documents pursuant to

EXHIBIT "TCB 2"

the terms of this Agreement provided that at the date of receipt of any document by the Agent no written notice of the revocation of such authorisation has been received by the Agent.

"CIRR Advance" means an Advance fixed at the CIRR Fixed Rate;

"CIRR Commitment" means the Commitment designated as such in accordance with Appendix B;

"CIRR Fixed Rate" means in respect of CIRR Advances made to assist the Borrower in making payments in accordance with the British Aerospace (Operations) Limited Supply Terms and in relation to a given currency the rate of interest specified in Clause 2 of Appendix A in respect of that currency. In respect of any other contracts which may be designated as Supply Contracts in accordance with Clause 32 (Alteration of the Supply Contract, Designation of Additional Suppliers/Supply Contracts and Increase in Commitments) such rate as ECGD may advise;

"Commercial Fixed Rate" means in relation to a Semi-Pure Advance or, as the case may be, a Swedish Securitised Advance, the fixed rate of interest at which each Lender is prepared to fix the interest payable in respect of that Advance and, as the case may be, specified in the Commercial Fixed Rate Notice or as the case may be the Refixing Notice on the basis of which the interest payable in respect of that Advance was fixed pursuant to Clause 13.1 or, as the case may be, Clause 14.1(C) or 14.2 or, as the case may be, refixed pursuant to Clause 13.3 (B) or, as the case may be, Clause 14.3. Such fixed rate to be determined on the basis of six month LIBOR plus the Applicable Margin per annum swapped into the then prevailing fixed rate

"Commercial Fixed Rate Advance" means a Semi-Pure Advance, the interest payable in respect of which has been fixed pursuant to Clause 13.1 or, as the case may be, refixed pursuant to Clause 13.3(B) respectively;

"Commercial Fixed Rate Notice" means in relation to a Semi-Pure Advance or, as the case may be, a Swedish Securitised Advance a notice from the Agent in the form set out in Appendix F specifying a rate at which interest payable in respect of all or part of the Unfixed Amount as at the relevant Interest Due Date may be fixed for a period commencing upon that Interest Due Date and expiring on the Repayment End Date or such earlier Interest Due Date as may be specified in that notice;

"Commitment" means each amount set out in Appendix B or, as the case may be, the amount designated by the Borrower in accordance with the designation procedure contained in Appendix B in each case to the extent not cancelled or reduced under this Agreement;

"Commitment Currency" has the meaning set out in Clause 10.3(B);

"Commitment Expiry Date" means in respect of each of Tranches A, B, C, D and E the date specified against that Tranche in Clause 2.3 or, in each case, such later date as may be notified to the Borrower by the Agent (with the prior consent of ECGD) in writing.

"Conversion Notice" means a notice in writing sent by the Agent to the Borrower in relation to the converting of the Gold Advance or, as the case may be, Gold Advances specified therein into Sterling pursuant to Clause 23.5.

"Currency and Interest Request" means a currency and interest request submitted by the Borrower in the Agreed Form.

EXHIBIT "TCB 2"

"Currency Transfer Guarantee" means the currency transfer guarantee of the South African Reserve Bank referred to in Clause 5.1 (A) (1);

"Default" means an Event of Default or a Potential Event of Default;

"Default Demand" means a demand in writing for the amount specified in Clause 23 (Default) sent by the Agent to the Borrower pursuant to Clause 23 (Default);

"Default Notice" means a notice in writing of the occurrence of an Event of Default sent by the Agent to the Borrower pursuant to Clause 23 (Default);

"Disbursement Claim" means a disbursement claim made in accordance with this Agreement and made by way of submission of each of the documents required pursuant thereto and specified in Clauses 6.4 or, as the case may be, 6.5;

"Disbursement Claim Notification" has the meaning set out in Clause 7.1(B);

"Drawdown Date" means the proposed date for payment in respect of a given Qualifying Certificate (in the case of a claim made pursuant to Clause 6.4(A)), or statement of amount due (in the case of claim made pursuant to Clause 6.4(B)) or arbitration award (in the case of a claim made pursuant to Clause 6.5) or, if such date is not a Banking Day, the next Banking Day and, in the case of a Gold Advance, if such date is the last day of a Gold Interest Period the next Banking Day;

"Early Repayment" means in respect of any Commercial Fixed Rate Advance, Supported Advance, CIRR Advance or Swedish Commercial Fixed Rate Advance any whole or partial prepayment of any such Advance made by the Borrower prior to its specified Repayment Date or the acceleration of such Advance pursuant to the terms of this Agreement;

"Effectiveness Date" means the date on which the Agent certifies to ECGD, the Lenders and the Borrower that the conditions specified in Clauses 5.1, 5.2 and 5.3 have been fulfilled to its satisfaction (the Agent shall give such certification as soon as practicable after such conditions have been fulfilled to its satisfaction);

"Eligible Entity" means any bank or other entity which is approved by ECGD for the purposes of acquiring rights and benefits hereunder;

"EMU Legislation" has the meaning set out in Clause 17.13;

"Encumbrance" means any mortgage, pledge, lien, charge, assignment, hypothecation, security interest, title retention or other security over existing or future assets or revenues, including any agreement to sell or otherwise dispose of any asset on terms whereby such asset will be repurchased or purchased by the Borrower.

"Event of Default" means an event specified as such in Clause 23 (Default);

"Excess" has the meaning set out in Clause 12.4

"Exercise Price" means, for any Banking Day, the morning fixing price in Dollars per ounce of Gold of the LBMA Market (rounded up or down, if necessary, to the nearest two decimal places with five being rounded up) quoted on such date as displayed on the displays designated as page SMBU or NMPB on the Reuters Monitor Money Rates Screen (or such other page or service as may replace SMBU or NMPB or such system for the purpose of displaying such fixing price) at or about 11:00 a.m. (London time) on that day

EXHIBIT "TCB 2"

or if no display rate is then available the price quoted by the Agent for the purchase of an ounce of Gold against the payment of Dollars;

"Exportable Assets" has the meaning set out in Clause 22.3(B);

"Export Financing" has the meaning set out in Clause 22.3 (B);

"External Indebtedness" means all present and future indebtedness of the Borrower in respect of monies borrowed or guarantees given for monies borrowed by others which is expressed or denominated in a currency or currencies other than Rand or which is, at the option of the person entitled thereto, payable in a currency or currencies other than Rand.

"Fee Letter" means the letter between the Agent and the Borrower setting out the amount of the various fees referred to in Clause 28 (fees);

"Finance Agreements" means each of this Agreement and any other agreements designated as such by the Agent, ECGD and the Borrower in writing (each a "Finance Agreement");

"Finance Parties" means each of the Agent, each Lender, ECGD and any other bank or other entity which becomes a party hereto pursuant to a transfer or assignment in accordance with Clause 25 (The Funding and Benefit of the Agreement);

"Fixed Period" means in relation to a Semi-Pure Advance or, as the case may be, a Swedish Securitised Advance the period for which the interest payable in respect of that Advance has been fixed as specified in the relevant Commercial Fixed Rate Notice or as the case may be Refixing Notice

"Floating Rate Commitment" means the Commitment designated as such in accordance with Clause 13 of Appendix B;

"Fixed Rate" means each of the CIRR Fixed Rate, the Commercial Fixed Rate and/or the Supported Rate;

"Floating Rate Advance" means an Advance in respect of which interest is payable in accordance with this Agreement at floating rate.

"Gold" means gold bullion measured in fine troy ounces.

"Gold Advance" means an Advance denominated in Gold made by the Multi-Currency Lender pursuant to the terms and conditions of this Agreement provided that any Gold Advance (A) in respect of which the Agent has issued a Conversion Notice pursuant to Clause 23 (Default) or (B) which has been converted by the Agent into a Sterling denominated Advance pursuant to Clause 11.10 shall not constitute a Gold Advance following such conversion.

"Gold Interest Period" has the meaning set out in Clause 12.3.

"Gold Rate" means in relation to a Gold Advance the rate determined by the Agent to be the percentage resulting from the formula $L - M$ where

"L" is LIBOR for deposits of Dollars equal to the Original Currency Amount for the required period, and

"M" is (A) the arithmetic mean rounded upwards, if necessary to the nearest five decimal places, of the offered quotations for Gold by Market Makers for the required period which appear on the display designated as page GDFOP on the Reuters Monitor Money Rates

Screen (or such other page or service as may replace GOFO/P or such system for the purpose of displaying LBMA offered rates) as at 11:00 a.m. (London time) on the relevant Quotation Date or (B) if no display rate is then available, the arithmetic mean (rounded upward, if necessary, to the nearest five decimal places) of the respective rates at which the Agent is offered deposits of Gold in the required amount and for the required period by members of LBMA at or about 11:00 a.m. (London time) on the Quotation Date for that period;

Provided that the rate shall not be less than zero;

For the purpose of this definition, "required amount" means an amount equal or comparable to the amount of such Gold Advance and "required period" means six months or for the purpose of calculating the rate pursuant to Clause 12.8 or Clause 23.6 for such periods as the Agent may determine;

"Initial Interest Due Date" has the meaning set out in Clause 7.6(F);

"Interest Capitalisation Advances" means the principal amount of any borrowing by the Borrower under any Tranche for the payment of interest due during the Interest Capitalisation Period in respect of that Tranche;

"Interest Capitalisation Currency" has the meaning set out in Clause 10.3(B);

"Interest Capitalisation Commitment" means:

- A. £ 40,000,000 the "Sterling Interest Capitalisation Commitment";
- B. \$ 60,000,000 the "Dollar Interest Capitalisation Commitment" and
- C. SKr 200,000,000 the "Kronor Interest Capitalisation Commitment";

"Interest Capitalisation Period" means, in respect of each of Tranches A, B, C, D and E, the period commencing on the date hereof and ending on the earlier of the Starting Point of Credit for that Tranche and the date on which each Interest Capitalisation Commitment has been utilised in full;

"Interest Due Date" means in respect of:

- (A) Tranche A (other than in respect of Gold Advances) 15 April and 15 October in each year;
- (B) Tranche B (other than in respect of Gold Advances) 15 April and 15 October in each year;
- (C) Tranche C (other than in respect of Gold Advances) 15 April and 15 October in each year;
- (D) Tranche D (other than in respect of Gold Advances) 15 April and 15 October in each year;
- (E) Tranche E (other than in respect of Gold Advances) 15 January and 15 July in each year; and
- (F) in respect of Gold Advances the last day of each Gold Interest Period

except that when any such day falls on a day which is not a Banking Day the relevant Interest Due Date shall be the next Banking Day (which, in the case of a Gold Advance, is

EXHIBIT "TCB 2"

a day which is not the last day of any other Gold Interest Period);

"Interest Period" means, save as otherwise provided herein, any of those successive periods mentioned in Clause 12 (Interest);

"Lender" means each of the Multi-Currency Lender, the Securitisation Lender and any other bank or other entity which becomes a party hereto pursuant to a transfer in accordance with Clause 25 (The Funding and Benefit of the Agreement) and any reference herein to "Lenders" shall, unless the context otherwise requires, be construed as a reference to the Original Lender and each other bank or entity (if any) which shall have so become a party hereto;

"Letter of Instruction" means, in relation to each Supply Contract, each of the letters of instruction substantially in the form set out in Appendix H;

"LBMA" means the London Bullion Market Association or such other organisation or service as may replace it for the purpose of establishing rates for Gold;

"LIBOR" means, in relation to any amount owed by the Borrower hereunder on which interest for a given period is to accrue, the rate per annum equal to the offered quotation which appears on the relevant page (as defined in Clause 1.7) for such period at or about 11.00 a.m. (London time) on the Quotation Date for such period;

"Margin Call Account" means the account in the name of the Borrower maintained with the Agent and designated as such by the Agent;

"Margin Release Event" means for 5 consecutive Banking Days that the ratio of (A) the aggregate of (1) Outstanding Gold Advances less (2) the aggregate amount credited to the Margin Call Account to (B) the Aggregate Original Currency Amount on each such Banking Day equals or is less than, 1.25:1 and the Borrower has given a written notice to the Agent on the fifth such Banking Day requesting a withdrawal of the monies deposited in the Margin Call Account in accordance with the provisions of Clause 11 (Gold Advances);

"Market Maker" means a person which, as principal, holds itself out as consistently willing to enter into transactions for the purchase or sale of gold in the London Gold Market at prices for spot settlement determined by it generally rather than in respect of each particular transaction;

"Non-Disbursement Notice" has the meaning set out in Clause 7.6 (B);

"Optional Currency" means in respect of each Advance to be made from each UK Multi-Currency Tranche a currency other than the currency of denomination of that Tranche and being, as the case may be, Dollars, Euro or Sterling and in the case of each Advance to be made from each Swedish Securitisation Tranche a currency other than the currency of denomination of that Tranche and being, as the case may be, Dollars, Euro, Kronor or Sterling;

"Original Currency" means, in relation to any Disbursement Claim, the denomination of the Qualifying Certificate in the case of a claim made pursuant to Clause 6.4(A)), the statement of the amount due (in the case of claim made pursuant to Clause 6.4(B)) or the copy of the arbitration award (in the case of a claim made pursuant to Clause 6.5) provided in each case that such amounts are denominated in Dollars, Sterling, Euro or Kronor;

"Original Currency Amount" means, as the case may be, the Original Dollar Amount or the Original Sterling Amount;

EXHIBIT "TCB 2"

"Original Dollar Amount" means in respect of a Gold Advance, the Dollar amount specified in a given Currency and Interest Request and then converted into Sterling at the spot rate of exchange quoted by the Agent at 11.00 a.m. (London time) for the purchase of Sterling with Dollars on the second Banking Day before the proposed Drawdown Date;

"Original Sterling Amount" means in respect of a Gold Advance, the Sterling amount specified in a given Currency and Interest Request;

"Outstanding Gold Advances" means the aggregate amount of the outstanding Gold Advances on any given date (including all Gold Advances drawn, or to be drawn, on that date but excluding all Gold Advances repaid or to be repaid on that date) and for the purpose of this calculation, the outstanding Gold Advances being converted into Dollars at the Exercise Price on the relevant date and then converted into Sterling at the spot rate of exchange quoted by the Agent at 11.00 a.m. (London time) for the purchase of Sterling with Dollars on the second Banking Day before the proposed Drawdown Date or the relevant date as the case may be;

"Overall Gold Commitment" has the meaning set out in Appendix D;

"Party" means a party to this Agreement and any bank or entity which becomes a party hereto pursuant to a transfer in accordance with Clause 25 (Funding and Benefit of the Agreement) and Appendix E;

"Potential Event of Default" means any event which may become (with the passage of time, the giving of notice, the making of any determination or any combination thereof) an Event of Default;

"Project Financing" has the meaning set out in Clause 22.3(C);

"Qualifying Certificate" means a certificate from the Supplier in the form set out in Appendix G or such other form as may be agreed between the Agent (with the prior written consent of ECGD) and the Supplier;

"Qualifying Entity" means at such time in relation to the Borrower a bank or other entity to whom payment under this Agreement at that time may be made by the Borrower without deduction or withholding whether by reason of an applicable taxation treaty between the country of the Borrower and the country in which the bank or other entity is or is treated as resident or carrying on business or otherwise.

"Quotation Date" means, in relation to any period for which an interest rate is to be determined hereunder, (A) the day on which quotations would ordinarily be given by prime banks in the London Interbank Market for deposits in the currency in relation to which such rate is to be determined for delivery on the first day of that period provided that, if, for any such period, quotations would ordinarily be given on more than one date, the Quotation Date for that period shall be the last of those dates and (B) in the case of Gold, the second Banking Day prior to the start of such period

"Recipient" has the meaning set out in Clause 13.3;

"Recipient Party" has the meaning set out in Clause 13.3

"Reference Banks" means the principal London offices of Barclays Bank PLC, Deutsche Bank AG and HSBC Bank PLC or such other bank or banks as may from time to time be agreed between the Borrower, ECGD and the Agent.

"Refixing Notice" means in relation to a Commercial Fixed Rate Advance or a Swedish Commercial Fixed Rate Advance the interest payable in respect of which has been fixed

EXHIBIT "TCB 2"

or, in the case of a Swedish Commercial Fixed Rate Advance, refixed for a Short Fixed Period, a notice in the form set out in Appendix F specifying the rate at which the Multi-Currency Lender or, as the case may be, Securitisation Lender is willing to refix the interest payable in respect of that Advance from the end of that Short Fixed Period up to the Repayment End Date (or, if applicable, such earlier date as may be specified in that notice);

"Repayment Date" means a date on which an instalment of principal becomes due pursuant to Clause 15 (Repayment);

"Repayment End Date" means for each Tranche or, as the case may be, each Gold Advance, the date on which final instalment of principal becomes due pursuant to Clause 15 (Repayment);

"Repayment Period" means in relation to each Tranche the period commencing at 11:00 a.m. (London time) on the relevant Starting Point of Credit and ending at the same time on the relevant Repayment End Date;

"Repayment Start Date" means in relation to each of Tranches A, B, C, D and E the date set out in Appendix B;

"Securitized Floating Rate Advance" means a floating rate Advance made by the Securitisation Lender pursuant to the terms and conditions of this Agreement;

"Securitisation Tranche" means each of the UK Securitisation Tranche and Swedish Securitisation Tranche (each as defined in Appendix B);

"Semi Pure Advance" means an Advance from any Semi-Pure Commitment;

"Semi Pure Commitment" means such Commitment designated as semi-pure in accordance with Appendix B;

"Short Fixed Period" means a Fixed Period which ends on an Interest Due Date occurring prior to the Repayment End Date;

"Specified Goods" means those goods more particularly described in Appendix C1;

"Specified Services" means those services more particularly described in Appendix C1;

"Starting Point of Credit" means in respect of each of Tranches A, B, C, D and E (other than in respect of Gold Advances), the date appearing as such against that Tranche in Appendix B;

"Suppliers" means British Aerospace (Operations) Limited and any other supplier which may be designated as such by the Agent in accordance with Clause 32 (Alteration of the Supply Contract, Designation of Additional Suppliers Supply Contracts and increase in Commitments), each a "Supplier";

"Supplier's Signatory" means any person who is a director or other officer of a given Supplier whose name and specimens of whose signature have been supplied from time to time to the Agent by that Supplier as being those of a person authorised to sign the documents pursuant to this Agreement provided that at the date of receipt of the relevant document by the Agent no written notice of the revocation of such authorisation has been received by the Agent;

"Supply Contract" means each of the British Aerospace (Operations) Limited Supply Contracts and any other contracts which may be designated as such by the Agent and COO

EXHIBIT "TCB 2"

together with such amendments and alterations thereto as may be made from time to time in accordance with Clause 32 (Alteration of the Supply Contract, Designation of Additional Suppliers/Supply Contracts and Increase in Commitments);

"Supported Advance" means such Semi-Pure Advance (or part thereof) which has been fixed at the Supported Rate;

"Support Agreement" means the support agreement to be entered into between ECGD, the Agent and the Lenders;

"Supported Rate" means, in relation to a Semi Pure Advance, the relevant rate of interest specified in Clause 2.2 of Appendix A, in respect of any other contracts which may be designated as Supply Contracts in accordance with Clause 32 (Alteration of the Supply Contract, Designation of Additional Suppliers/Supply Contracts and Increase in Commitments) such rate as ECGD may advise;

"Supported Rate Notice" means, in relation to a Semi Pure Advance a notice in the form set out in Appendix F specifying the rate at which the Agent (with the support of ECGD) is willing to fix the interest payable in respect of all or part of a Semi Pure Advance in accordance with Clause 13.2;

"Supported Rate Refixing Notice" means, in relation to a Commercial Fixed Rate Advance, the interest payable in respect of which has been fixed for a Short Fixed Period expiring after the Starting Point of Credit a notice in the form set out in Appendix F specifying the rate at which the Agent (with the support of ECGD) is willing to refix the interest payable in respect of all or part of that Advance from the end of that Short Fixed Period to the Repayment End Date in accordance with Clause 13.3;

"Swedish Securitisation Tranche" has the meaning set out in Clause 1.2 of Appendix B;

"Swedish Securitised Advance" means an Advance which has been made from those Tranches listed in Clause 1.2 of Appendix B designated as Swedish Securitisation Tranches;

"Swedish Commercial Fixed Rate Advance" has the meaning set out in Clause 14.1(C);

"Swedish Floating Rate Advance" has the meaning set out in Clause 14.1(A);

"Tax Payment" has the meaning set out in Clause 25.5

"Tranches" means the tranches set out in Clause 3.1 (Purpose) and as the context requires each sub-tranche designated in accordance with Appendix B (and each a "Tranche");

"Transfer Certificate" means a transfer certificate substantially in the form set out in Appendix E

"Transferee" has the meaning set out in Appendix E

"Trigger Date" means the date on which a Trigger Event occurs,

"Trigger Event" means that, on any given Banking Day the ratio of (A) the aggregate of (1) Outstanding Gold Advances less (2) the amount credited to the Margin Call Account to (B) the Aggregate Original Currency Amount exceeds 1.25;

"UK" means the United Kingdom of Great Britain and Northern Ireland and includes the Channel Islands and the Isle of Man.

EXHIBIT "TCB 2"

"UK Multi-Currency Tranche" has the meaning set out in Clause 1.1 of Appendix B;

"UK Securitisation Tranche" has the meaning set out in Clause 1.1 of Appendix B;

"Unfixed Amount" means in respect of any Semi-Pure Advance or, as the case may be, Swedish Securitised Advance the amount of that Advance in respect of which interest may be fixed in accordance with, and subject to the provisions of, Clause 13 (Semi-Pure Option) or, as the case may be, Clause 14 (Swedish Securitised Option);

"EUR" and "Euro" means the single currency of the member states of the European Union that have adopted the Euro as its currency in accordance with legislation of the European Union relating to European Economic Monetary Union; "£" and "Sterling" means the lawful currency of the UK; "\$" and "Dollars" means the lawful currency of the United States of America; and "SKr" and "Kronor" mean the lawful currency of the Kingdom of Sweden and "ounce of Gold" means a fine troy ounce of gold in a form readily tradable with members of the LBMA from time to time.

- 1.2 All references to interest shall be to interest accruing from day to day and calculated on the basis of actual days elapsed and a year of 365 days or, in the case of interest payable on an amount denominated in Dollars, Euro, Gold or Kronor 360 days.
- 1.3 Where the context of this Agreement so allows words importing the singular include the plural and vice versa
- 1.4 Unless otherwise indicated reference to a specified Clause, Recital or Appendix shall be construed as a reference to that specified Clause of, Recital to or Appendix to this Agreement
- 1.5 Clause and Appendix headings are for ease of reference only and do not form part of this Agreement.
- 1.6 Any reference to the "Agent" or any "Lender" shall be construed so as to include it and any subsequent successors, Transferees and permitted assigns in accordance with their respective interests.
- 1.7 For the purposes of the definition of "LIBOR":
 - A. "relevant page" means the page of the Reuters Monitor Money Rates Service designated for the display of London Interbank Offered Rates for the currency of the relevant amount (being currently "LIBOR01") or if such page or such service shall cease to be available, the page of the Teletype Monitor which displays an average British Bankers Association Interest Settlement Rate for the relevant currency of the relevant amount (being currently "3750") or, if such page or such service shall cease to be available, such other page or such other service (as the case may be) for the purpose of displaying London Interbank Offered Rates for such currency as the Agent, after consultation with ECGD, the Lenders and the Borrower, shall select; and
 - B. if neither service is available and the Agent has not selected an alternative service on which such quotations are displayed or if no rate appears for the relevant period "LIBOR" shall mean the arithmetic mean (rounded upwards, if not already such a multiple, to the nearest whole multiple of one-thirty-second of one per cent.) of the rates (as notified to the Agent) at which each of the Reference Banks was offering to prime banks in the London Interbank Market deposits in the relevant currency of such amount and for such period at or about 11:00 a.m. (London time) on the Quotation Date for such period

EXHIBIT "TCB 2"

2. The Lenders, ECGD and the Agent

- 2.1 Subject to the terms and conditions set out in Appendix D, each of ECGD and each Lender hereby appoint the Agent to act on their behalf as agent under this Agreement.
- 2.2 It is hereby agreed that the obligations of each Lender and ECGD hereunder are several and the failure of any Lender or ECGD to perform its obligations hereunder shall not affect the obligations of the Borrower towards any other Party.
- 2.3 Each of the Agent and each Lender hereby warrants that it has full power to enter into this Agreement and to perform all its obligations hereunder.

3. Purpose

- 3.1 To assist the Borrower in making payments to the Supplier on behalf of the Buyer in respect of Specified Goods to be supplied and Specified Services to be rendered in accordance with the Supply Contract and pursuant to the terms of this Agreement the Lenders and ECGD grant to the Borrower a loan facility divided into five tranches as follows:
- (A) Tranche A shall be utilised to finance the purchase of up to 12 Hawk aircraft and associated training devices pursuant to the relevant Supply Contract with deliveries thereof scheduled to commence April 2005.
 - (B) Tranche B shall be utilised to finance the purchase of up to 9 Gripen aircraft and associated training devices pursuant to the relevant Supply Contract with deliveries thereof scheduled to commence October 2007.
 - (C) Tranche C shall be utilised to finance the purchase of up to 12 Hawk aircraft pursuant to the relevant Supply Contract with deliveries thereof scheduled to commence October 2005.
 - (D) Tranche D shall be utilised to finance the purchase of Tranche B associated equipment pursuant to the relevant Supply Contract with deliveries thereof scheduled to commence November 2007, and
 - (E) Tranche E shall be utilised to finance the purchase of up to 19 Gripen aircraft pursuant to the relevant Supply Contract with deliveries thereof scheduled to commence November 2009.
- 3.2 No Advance shall be made before 1 April 2000
- 3.3 Subject to Clause 4 (Early Termination of Commitments) in relation to each Tranche no Advance may be made after the date shown against the relevant Tranche below:
- (A) Tranche A 31 December 2006;
 - (B) Tranche B 31 March 2010;
 - (C) Tranche C 31 December 2006;
 - (D) Tranche D 31 March 2010, and
 - (E) Tranche E 30 September 2012

unless and then only to the extent that the Agent, with the prior consent of ECGD, shall otherwise notify the Borrower in writing.

- 3.4 In relation to each Tranche, no Advance (other than Interest Capitalisation Advances and Advances made in respect of escalation (as more particularly described in the British Aerospace (Operations) Limited Supply Terms)) shall be made in respect of a Disbursement Claim if the making of such Advance, at such time, would cause the aggregate payments made to the Supplier in respect of the Specified Goods and Specified Services to be financed by that Tranche, in whatever currency, to exceed the amounts specified in Appendix C2 and set opposite the relevant date.

4. Early Termination of Commitments

4.1 If the Buyer exercises its option to cancel:

- (A) the Hawk aircraft with deliveries due to commence October 2005 by 31 March 2002 then with effect from 31 March 2002 the Commitments of each Lender in respect of Tranche C shall be reduced to zero;
- (B) the Tranche B associated equipment with deliveries thereof due to commence October 2007 by 31 March 2002 then with effect from 31 March 2002 the Commitments of each Lender in respect of Tranche D shall be reduced to zero, and
- (C) the Gripen aircraft with deliveries thereof due to commence October 2009 by 31 March 2004 then with effect from 31 March 2004 the Commitments of each Lender in respect of Tranche E shall be reduced to zero

5 Conditions Precedent to Advances

- 5.1 The first Advance under Tranche A or, if earlier, Tranche B shall not be made until the Agent has despatched to the Borrower notice in writing that the following conditions have been fulfilled to the satisfaction of the Agent (which satisfaction shall only be notified to the Borrower by the Agent with the prior consent in writing of ECGD):

5.1.1 the Borrower shall have

- 1. provided the Agent with the currency transfer guarantee of the South African Reserve Bank irrevocably and unconditionally guaranteeing that the transfer to each of the Agent, the Lenders and ECGD of all sums in the amount and in the currency required for the fulfilment of the financial obligations arising under this Agreement will be authorised in good time, under all circumstances and without any limitation notwithstanding any restrictions that may be in force at the time thereof and without any obligation of any of the Agent, any Lender or ECGD to comply with any formality;
- 2. obtained all consents, licences, permits and authorisations and fulfilled all conditions of all governmental and other authorities necessary to enable the Borrower to enter into this Agreement and to make payment of all sums in the amount and in the currency which become due from the Borrower to any of the Agent, any Lender or ECGD under this Agreement;
- 3. signed the Fee Letter and paid to the Agent any fees referred to therein which are due and payable;
- 4. provided the Agent with certified copies of the Supply Contracts;
- 5. supplied to the Agent evidence of the authority and specimens of the signature of each Borrower's Signatory.

EXHIBIT "TCB 2"

(6) provided the Agent with an irrevocable authorisation in the Agreed Form irrevocably instructing and authorising the Agent to pay certain specified payments due to the Supplier in respect of the Specified Goods being financed by Tranches A and B;

(7) provided such other documents (and in such form) in relation to the transactions constituted or contemplated by this Agreement and the Supply Contracts as the Agent may reasonably request;

(B) ECGD shall have:

(1) issued the Support Agreement; and

(2) entered into arrangements with the Suppliers and EKN Exportkreditnämnden satisfactory to it;

(C) the Buyer shall have:

(1) provided the Agent with the irrevocable Letters of Instruction;

(2) obtained all consents, licenses, permits and authorisations and fulfilled all conditions of all governmental and other authorities in South Africa in respect of the Specified Goods and/or Specified Services to be supplied and/or in accordance with the terms of the Supply Contracts and the payment therefor in Dollars, Kronor and Sterling as the case may be; and

(3) supplied to the Agent evidence of the authority and specimens of the signature of each Buyer's Signatory;

(D) the Suppliers shall have:

(1) confirmed to the Agent in writing that the Buyer has made the direct payments due under the Supply Contract as required by the Agent and ECGD;

(2) supplied to the Agent evidence of the authority and specimens of the signature of each Supplier's Signatory; and

(3) confirmed to the Agent in writing that all necessary approvals (if any) including export licences in respect of the Specified Goods and/or Specified Services to be supplied and/or rendered in accordance with the Supply Contract have been obtained in the countries of origin and have not been withdrawn;

E The Agent shall have delivered a letter to each Party confirming that all arrangements concerning the Tranches have been completed to its satisfaction.

5.2 Each of the Chief State Law Adviser of The Republic of South Africa, Simmons & Simmons and Webster Wentzel Bowens shall have given a written legal opinion addressed to the Agent and ECGD for the benefit of the Agent, the Lenders and ECGD in form and substance satisfactory to the Agent and ECGD

5.3 Each of the conditions set out in Clauses 5.1 and 5.2 must be fulfilled to the satisfaction of the Agent and ECGD by no later than 1 April 2000 or such later date as the Agent and ECGD may otherwise agree. Otherwise the Commitments will automatically be cancelled in full.

EXHIBIT "TCB 2"

5.4 The first Advance under each of Tranches C, D and E shall not be made until, in each case, the Agent has dispatched to the Borrower notice in writing that the following conditions have been fulfilled to the satisfaction of the Agent (which satisfaction shall only be notified to the Borrower by the Agent with the prior consent of ECGD):

(A) the Buyer shall have certified that, in respect of the relevant Tranche, it has not exercised its option to cancel the delivery of the underlying goods and services; and;

(B) the Borrower shall have:

(1) provided the Agent with an irrevocable authorisation in the Agreed Form irrevocably instructing and authorising the Agent to pay certain specified payments due to the Supplier in respect of Specified Goods and/or Specified Services to be financed by Tranches C, D and E; and

(2) provided such other documents (and in such form) in relation to such Tranches as the Agent may reasonably request;

(C) the Suppliers shall have:

(1) confirmed to the Agent in writing that the Buyer has made the direct payment due under the Supply Contract as required by the Agent and ECGD; and

(2) confirmed to the Agent in writing that the Suppliers have performed each of the obligations owed by them to ECGD in respect of each such Tranche.

6 Disbursement

6.1 From time to time each Supplier may present claims to the Agent in the manner hereinafter specified and the Borrower agrees that the claims so made shall constitute Disbursement Claims and shall be paid by the Lenders in accordance with this Agreement

6.2 Save in respect of Interest Capitalisation Advances, each Advance relating to a Supply Contract shall only be made available by payment to the account of the relevant Supplier on behalf of and for the account of the Borrower

6.3 Without prejudice to the provisions of Clause 7 (Advances), the obligation of a Lender to make available and disburse an Advance is subject to each of the conditions specified in Clause 5 (Conditions Precedent to Advances) in each case having been fulfilled to the satisfaction of the Agent or otherwise waived in writing by the Agent.

6.4 Subject to the terms and conditions of this Agreement, a Disbursement Claim shall be a claim made in one of the following ways:

1. in respect of sums claimed for eligible Specified Goods and eligible Specified Services under British Aerospace Operations, Limited Supply Terms or the equivalent under other Supply Contracts the claim shall be made by the submission to the Agent of a Qualifying Certificate signed by the relevant Supplier's Signatory and accompanied by the documents specified therein.

2. if in accordance with any term thereof a Supply Contract is terminated and the amount claimed by the Supplier is agreed by the Buyer the claim shall be made by submission to the Agent of a statement of the amount due to the Supplier on such termination in respect of Specified Goods and/or Specified Services in a form

EXHIBIT "TCB 2"

acceptable to the Agent signed by that Supplier's Signatory and countersigned by the Buyer's Signatory together with a written opinion by an independent firm of Chartered/Certified Accountants in the UK nominated by the Agent that the amount so agreed has been properly calculated in accordance with the Supply Contract or represents a reasonable compromise in all the circumstances.

- 6.5 If the relevant Supplier or the Buyer notifies the Agent that there has been a resort to arbitration as provided for in a given Supply Contract and the arbitration award is made in that Supplier's favour a duly authenticated copy of the arbitration award shall be a Disbursement Claim for the entire amount of the award relating to the Specified Goods and/or the Specified Services which are the subject of that Supply Contract, retention moneys retained in respect thereof and arbitration costs in connection therewith.

7. Advances

- 7.1 Subject to the provisions of this Agreement:

(A) as soon as practicable after receipt of a Disbursement Claim from the Supplier the Agent shall notify ECGD, if applicable, and each relevant Lender of the amount of that Disbursement Claim and the Tranche to which it relates and shall supply ECGD, if applicable, and each relevant Lender with a copy of the documents relating to such Disbursement Claim; and

(B) within two Business Days of receipt, the Agent shall notify the Borrower and the Buyer that it has received a Disbursement Claim (a "Disbursement Claim Notification"). Each such Disbursement Claim Notification shall specify the amount of that Disbursement Claim, summarise the details of the Qualifying Certificate (in the case of a claim made pursuant to Clause 5.4(A)), the statement of the amount due (in the case of a claim made pursuant to Clause 6.4(B)) or, the copy of the arbitration award (in the case of a claim made pursuant to Clause 6.5) and the Tranche to which it relates. If requested by the Borrower, the Agent shall supply the Borrower and the Buyer with a copy of the documents relating to such Disbursement Claim.

- 7.2 In respect of each Disbursement Claim the Borrower shall deliver to the Agent, no later than three Business Days prior to the Drawdown Date a Currency and Interest Request appropriately completed in respect of the amount claimed. If the Borrower fails to deliver a Currency and Interest Request by such date the Advance in respect of that Disbursement Claim shall be made from the designated Tranche in the Original Currency and made from such Commitment at such interest rate (being an interest rate applicable to such Commitment) as the Agent shall select. The Borrower agrees that none of the Agent, ECGD and the Lenders shall be under any liability as a result of the selection by any of them of any Commitment or interest rate pursuant to this Clause 7.2.

- 7.3 Upon receipt of a Currency and Interest Request acceptable to it, the Agent shall promptly notify each relevant Lender and ECGD, if applicable, of the details of the Tranche and the Commitment from which the Advance is to be made, the applicable currency and interest rate and whether the Advance is to be denominated in an Optional Currency pursuant to Clause 9 (Optional Currencies) or Gold pursuant to Clause 11 (Gold Advances). The Agent shall supply each Lender and, if appropriate, ECGD with a copy of the request.

- 7.4 Each relevant Lender and, as the case may be, ECGD shall, in accordance with the provisions of Clause 11 (Payments), pay to the Agent an amount equal to the amount if any required to be advanced by it pursuant to the Currency and Interest Request and, in the case of an Advance denominated in an Optional Currency, the provisions of Clause 9

EXHIBIT "TCB 2"

(Optional Currencies) or, in the case of an Advance denominated in Gold, the provisions of Clause 11 (Gold Advances) for value on the relevant Drawdown Date.

7.5 Save in respect of Interest Capitalisation Advances, the Agent shall disburse the amounts received by it pursuant to Clause 7.4 or, in the case of an Advance denominated in an Optional Currency, Clause 9 (Optional Currencies) or, in the case of an Advance denominated in Gold, Clause 11 (Gold Advances) as soon as practicable to the relevant Supplier by payment in the applicable currency to the Supplier's account as notified to the Agent from time to time.

7.6 Notwithstanding any other provision of Clause 6 (Disbursement) and this Clause 7 (Advances):-

- (A) no Advance other than the first Advance shall be made until the Banking Day next following a period of 5 Banking Days from the date of the previous Advance;
- (B) no Advance (other than an Advance made pursuant to Clause 6.4(B) or Clause 6.5) shall be made if the Agent receives a non-disbursement notice in the Agreed Form (the "Non-Disbursement Notice") in writing from either the Borrower or the Buyer instructing the Lenders and ECGD not to make an Advance in respect of a given Disbursement Claim. Such instructions must be received no later than 9.00 a.m. (London time) on the tenth Business Day following the date of the Disbursement Claim Notification. Consent to an Advance will be deemed to have been given by the Borrower and the Buyer, if by 9.00 a.m. (London time) on the tenth Business Day following the date of the Disbursement Claim Notification, the Agent has not received a Non-Disbursement Notice relating to such Advance;
- (C) if the Agent receives a Qualifying Certificate countersigned by each of the Borrower's Signatory and the Buyer's Signatory, neither the Borrower nor the Buyer shall be permitted to issue a Non-Disbursement Notice in respect of that Disbursement Claim;
- (D) no Advance shall be made if the Agent has been notified by ECGD that ECGD will no longer provide support pursuant to the Support Agreement in respect of any further Advances to be made pursuant to this Agreement. Such notice must be received no later than 9.00 a.m. (London time) on the third Banking Day prior to the proposed Drawdown Date;
- (E) if a Disbursement Claim is received which would otherwise result in a Gold Advance being made on the last day of a Gold Interest Period the making of that Gold Advance shall be postponed and made instead on the next Banking Day (being a Banking Day which is not the last day of a Gold Interest Period);
- (F) subject to the provisions of this Agreement, if a Disbursement Claim is received which would result in an Advance being made within a period of 15 Banking Days prior to an Interest Due Date (the "Initial Interest Due Date") the first Interest Period in respect of that Advance shall run from the relevant Drawdown Date until the Interest Due Date following that Initial Interest Due Date;
- (G) each Disbursement Claim must be received no later than 11:00 a.m. (London time) on the fifteenth Banking Day before the proposed Drawdown Date, and
- (H) in the event that ECGD is required to make an Advance pursuant to the terms of this Agreement, no Advance can be made prior to the date falling 10 Banking Days from the date of receipt by ECGD of notification that it will be required, subject to the terms and conditions of this Agreement, to make such Advance.

- 7.7 ECGD hereby undertakes that if the Commitment of the Multi-Currency Lender is terminated under the provisions of Clause 25.1 or, as the case may be, the obligation of the Multi-Currency Lender to make Advances in Dollars is cancelled under the provisions of Clause 25.2 ECGD will, subject to the terms and conditions of this Agreement, make each such Dollar Advance which the UK Multi-Currency Lender would otherwise have made hereunder.
- 7.8 The Agent shall open and maintain records in accordance with its usual practices into which the Agent shall promptly enter from time to time details of the aggregate amount of all Advances made and of all repayments thereof, the aggregate amount of interest falling due and of all payments thereof and the aggregate amount of all amounts of fees falling due and of all payments thereof together with details of any other amounts payable by the Borrower and of all payments thereof.
8. Commitments
- 8.1 In respect of each Tranche, the Commitment designated for that Tranche and set out in Appendix B shall be used to assist the Borrower in making payments to the Supplier on behalf of the Buyer in respect of Disbursement Claims relating to that Tranche. Each Disbursement Claim shall specify which Tranche it relates to.
- 8.2 In respect of each Tranche, no Lender is obliged to participate in the making of an Advance if such Advance exceeds that Lender's Available Commitment in respect of that Tranche. "Available Commitment" means in respect of each Tranche, the Commitment for that Tranche less the aggregate of (A) each Advance made in the currency of that Tranche and (B) in respect of each Advance denominated in an Optional Currency or Gold the sum of the amounts paid by the Agent to the Supplier in accordance with Clause 9.4 or as the case may be, Clause 11.9 of this Agreement.
9. Optional Currencies
- 9.1 In respect of each Advance to be made from each UK Multi-Currency Tranche (as defined in Appendix B), the Borrower may request in the Currency and Interest Request relating thereto that the Advance be denominated in an Optional Currency in which event such Advance shall be denominated in such Optional Currency. Otherwise such Advance shall be denominated in the Original Currency relating thereto.
- 9.2 In respect of each Advance to be made from each Swedish Securitised Tranche (as defined in Appendix B), the Borrower may request in the Currency and Interest Request relating thereto that the Advance be denominated in an Optional Currency in which event such Advance shall be denominated in such Optional Currency. Otherwise such Advance shall be denominated in the Original Currency relating thereto.
- 9.3 If the Borrower requests that an Advance be denominated in an Optional Currency the amount of that Advance shall be the amount of such Optional Currency which is required to purchase the Original Currency in an amount equal to the amount set out in the Qualifying Certificate in the case of a claim made pursuant to Clause 6.4(A)), the statement of the amount due in the case of claim made pursuant to Clause 6.4(B)) or the copy of the arbitration award in the case of a claim made pursuant to Clause 6.5) (provided in each case that such amounts are denominated in Dollars, Sterling, Euro or Kronor) at the spot rate of exchange quoted by the Agent at 11.00 a.m. (London time) on the second Banking Day preceding the Drawdown Date for the purchase of such Original Currency with the Optional Currency for delivery on the Drawdown Date.
- 9.4 If an Advance is denominated in an Optional Currency each Lender shall pay the amount to be advanced by it to the Agent in accordance with Clause 9.3, who shall apply the

amounts made available to it in or towards the purchase of the amount set out in the Qualifying Certificate, statement of amount due or, as the case may be, arbitration award and shall pay the amount so purchased to the Supplier.

10. Interest Capitalisation Advances

10.1 Other than in respect of Gold Advances, on any Interest Due Date during the Interest Capitalisation Period, the Agent shall on behalf of the Borrower and for the purpose of paying interest pursuant to Clause 12 (Interest) request the Multi-Currency Lender or, as the case may be, the Securitisation Lender to make an immediate disbursement from the Tranche in respect of which the interest is due. Such Advance to be denominated in the currency of that interest payment, to be in an amount equal to the amount of the required interest payment and to be applied in payment of such interest.

10.2 Each Interest Capitalisation Advance shall be divided between and shall reduce the Available Interest Capitalisation Commitments pro rata in the following proportions or such other proportions as the Agent shall otherwise advise the Borrower:

- (A) Sterling Interest Capitalisation Commitment 30.31 %;
- (B) Dollar Interest Capitalisation Commitment 25.39 %; and
- (C) Kronor Interest Capitalisation Commitment 44.30 %.

10.3 Proportionately (on the basis of the proportions referred to in Clause 10.2), the amount of each Interest Capitalisation Advance, shall reduce the Available Interest Capitalisation Commitments as follows:

- A) in respect of an Interest Capitalisation Commitment denominated in the currency of a given Interest Capitalisation Advance, that Commitment shall be reduced by an amount equal to the corresponding proportion of such Advance; and
- B) in respect of each Interest Capitalisation Commitment denominated in a currency the "Commitment Currency") other than the currency of denomination of that Interest Capitalisation Advance (the "Interest Capitalisation Currency"), each such Commitment will be reduced by an amount equal to the amount of such Commitment Currency which is required to purchase the Interest Capitalisation Currency in amount equal to the corresponding proportion of such Interest Capitalisation Advance at the relevant spot rate of exchange quoted by the Agent at 11.00a.m. (London time) on the Second Banking Day preceding the relevant interest Due Date.

10.4 No Interest Capitalisation Advance may be made if (A) an Event of Default has occurred and is continuing or (B) such Advance would cause the aggregate of the Interest Capitalisation Advances to exceed each of the Available Interest Capitalisation Commitments.

10.5 Any such Advance shall be deemed a disbursement made to the Borrower for all purposes and the provisions of Clause 7.5 shall apply in respect of such disbursement.

11. Gold Advances

11.1 Advances made from the Floating Rate Commitments of each UK Multi-Currency Tranche (as defined in Appendix B) may at the request of the Borrower be denominated in Gold. Each such request shall be set out in the Currency and Interest Request relating thereto provided that an Advance will not be denominated in Gold if (A) the Original Currency amount of such Advance exceeds the Available Gold Commitment or (B) an event of

Default has occurred and is continuing. No UK Multi-Currency Lender shall be under any obligation to make a Gold Advance until the Agent has confirmed that the Margin Call Account and arrangements acceptable to the Agent for its operation have been established. "Available Gold Commitment" means the Overall Gold Commitment less the Aggregate Original Currency Amounts.

- 11.2 If an Advance is to be drawn in Gold, its amount shall be expressed in fine troy ounces (including fractions of an ounce) of Gold. The UK Multi-Currency Lender shall determine the amount in fine troy ounces for each Advance by converting the Original Currency Amount specified in the relevant Currency and Interest Request into fine troy ounces of Gold on the basis of the Exercise Price and the spot rate of exchange quoted by the Agent at 11.00a.m. (London time) for the purchase of Sterling with Dollars two Banking Days before the Drawdown Date.
- 11.3 Interest in respect of each Gold Advance shall be calculated and expressed, and shall accrue, in fine troy ounces (including fractions of an ounce) of Gold, and the amount of any repayment or prepayment of a Gold Advance shall also be expressed in fine troy ounces of Gold. However, neither of these facts shall limit or affect Clause 11.8.
- 11.4 The Agent shall notify the Borrower and ECGD of the amount of each Gold Advance and the applicable Exercise Price and spot rate of exchange promptly after they are ascertained.
- 11.5 Upon becoming aware of the occurrence of a Trigger Event, the Borrower shall promptly, and in any event not later than the close of business on the first Banking Day after becoming aware of the same, credit the Margin Call Account with an amount in Sterling that is sufficient to ensure that the ratio of (A) the aggregate of (1) Outstanding Gold Advances less (2) the aggregate amount held in the Margin Call Account to (B) the Aggregate Original Currency Amount does not exceed 1.25:1. The Agent shall at any time be entitled to give the Borrower notice of the occurrence of a Trigger Event.
- 11.6 Subject to no Default having occurred which is continuing, on a Repayment Date in respect of any Gold Advance or after the occurrence of a Margin Release Event the Agent shall permit the Borrower to withdraw monies deposited in the Margin Call Account but only to the extent that after making such withdrawal the ratio in Clause 11.5 (Gold Advances) would not exceed 1.25:1.
- 11.7 Subject to the provisions of Clause 23.5, any payment to the Agent of principal of, or interest on, a Gold Advance shall be made in Dollars in an amount determined by the Agent converting into Dollars the number of fine troy ounces of Gold to be paid or repaid or the interest accrued thereon, as the case may be at the Exercise Price two Banking Days before the relevant Repayment Date or, as the case may be, the last day of the relevant Gold Interest Period.
- ~~11.8 Subject to the provisions of Clause 23.5 any payment by a Lender to the Agent or by the Borrower to the Agent in respect of the principal of or, as the case may be, interest accrued on any Gold Advance may only be made in Dollars~~
- 11.9 In respect of each Gold Advance the UK Multi-Currency Lender shall pay to the Agent an amount equal to the amount set out in the Qualifying Certificate and denominated in the currency of that Qualifying Certificate, and the Agent shall pay such amount to the Supplier.
- 11.10 The Borrower may request the Agent to convert any Gold Advance into an Advance denominated in Sterling on an interest Due Date in respect of such Gold Advance, provided the Agent receives such request not later than three Business Days before the

date of the proposed conversion, the Agent shall, with the prior consent of ECGD, instruct the UK Multi-Currency Lender to convert such Advance into Sterling at the Exercise Price and spot rate of exchange. The Agent shall notify the Borrower of the Exercise Price and spot rate of exchange promptly after they are ascertained. (The spot rate of exchange being the rate quoted by the UK Multi-Currency Lender at or about 11:00 a.m. (London time) for the purchase of Sterling with Dollars on the day falling two Business Days before the relevant date of conversion). Each converted Advance shall bear interest at the floating rate set out in Clause 1 of Appendix A.

12. Interest

- 12.1 The period for which an Advance is outstanding shall be divided into successive interest periods (each an "Interest Period") each of which (other than the first) shall start on the last day of the preceding such period (without duplication of interest).
- 12.2 Without prejudice to the provisions of Clause 12.8, other than in respect of Gold Advances, the duration of each Interest Period shall be six months ending on an Interest Due Date provided that the first Interest Period for each Advance shall be of such duration which ends on the next Interest Due Date falling due in relation to that Tranche (without duplication of interest).
- 12.3 Without prejudice to the provisions of Clause 12.8 in respect of each Gold Advance the duration of each Interest Period (each a "Gold Interest Period") shall be six months each of which (other than the first) shall start on the last day of the preceding such period (without duplication of interest).
- 12.4 If two or more Advances (other than Gold Advances) denominated in the same currency, advanced under the same Tranche and, in the case of Commercial Fixed Rate Advances, having the same rate of interest, are outstanding on any Interest Due Date such Advances shall be consolidated into and treated as a single Advance on that Interest Due Date.
- 12.5 The Borrower agrees to pay interest on each Advance at the relevant rate set out in Appendix A. Such interest shall be due and payable semi-annually on the Interest Due Dates.
- 12.6 Interest on each Gold Advance is to be received by the Agent for value on the second Banking Day prior to the relevant Interest Due Date and for the purposes of Clause 23.1(A) such Banking Day prior to the relevant Interest Due Date shall be the due date for payment of such interest. Such monies shall be placed by the Agent on deposit as soon as possible after their receipt and interest shall be payable thereon at such rate as the Agent normally pays at the time in respect of such amount and for such period.
- 12.7 If any amount of any instalment payable in accordance with Clause 15 (Repayment) is not paid on the due date for payment any interest which accrues in respect thereof after that date shall be calculated in accordance with the provisions of Clause 12.8 and shall be due and payable from day to day without further notice or demand of any kind until the amount is paid instead of on the next Interest Due Date.
- 12.8 If any amount of interest payable in accordance with this Clause is not paid on the due date for payment the Borrower shall pay interest on such amount for successive Interest Periods of such duration as the Agent may determine at the rate which is

- i) in the case of each Advance (other than a Gold Advance), the higher of
 - (a) the sum of 1% per annum and the relevant CIPR Fixed Rate for that currency; and
 - (b) the sum of 1% and the rate set out in Clause 1 of Appendix A for that currency; and

- (B) in the case of each Gold Advance the sum of 1% per annum and the rate set out in Clause 1 of Appendix A for Gold

such interest shall be due and payable from day to day without further notice or demand of any kind from the due date for payment of such amount to the date of the receipt by the Agent of such amount.

13. Semi-Pure Option

13.1 In relation to any Semi-Pure Advance or proposed Semi-Pure Advance, subject to the preconditions to fixing set out in Clause 13.5 below, at least 5 Business Days prior to each Interest Due Date occurring during the Availability Period for the relevant Tranche the Agent shall serve upon the Borrower a Commercial Fixed Rate Notice and if within the time limit specified in that notice the Agent receives an Acceptance relating to that notice the Agent shall on the Interest Due Date to which that notice relates fix the interest payable in respect of such Semi-Pure Advance (or such lesser part of it as may be specified in that Acceptance) at the rate and for the period specified in that notice being the rate at which each Lender is prepared to fix the interest payable in respect of that Advance (such rate being the Commercial Fixed Rate for that Advance).

13.2 In relation to each Semi Pure Advance in respect of which interest is calculated at such time in accordance with Clause 1 of Appendix A subject to the preconditions to fixing set out in Clause 13.5 below, the Agent shall 5 Business Days prior to the Starting Point of Credit in respect of the relevant Tranche send to the Borrower a Supported Rate Notice and if within the time limit specified in that notice the Agent receives an Acceptance relating to that notice the relevant Lender shall on the Interest Due Date to which that notice relates fix the interest payable in respect of the whole of the Semi-Pure Advance (or such lesser portion of it as may be specified in that Acceptance) at the Supported Rate for the Repayment Period.

13.3 Subject to the preconditions to fixing set out in Clause 13.5 below, in the case of each Commercial Fixed Rate Advance in respect of which interest costs have been fixed for a single Short Fixed Period pursuant to Clause 13.1 the Agent shall 5 Business Days prior to the Interest Due Date on which that Short Fixed Period ends send to the Borrower:

A: a Supported Rate Refixing Notice and if within the time limit specified in that notice the Agent receives an Acceptance relating to that notice the Agent shall on the Interest Due Date to which that notice relates fix the interest payable in respect of the whole of that Commercial Fixed Rate Advance (or such lesser portion of it as may be specified in that Acceptance) at the Supported Rate for the remainder of the Repayment Period; and

B: a Refixing Notice and if within the time limit specified in that notice the Agent receives an Acceptance relating to that notice the Agent shall on the Interest Due Date on which that Short Fixed Period ends fix the interest payable in respect of the whole of the Advance (or such lesser portion of it as may be specified in that Acceptance) at the rate specified in that Refixing Notice for the remainder of the Repayment Period being the rate at which each Lender is prepared to fix the interest payable in respect of that Advance (such rate being the Commercial Fixed Rate for that Advance)

13.4 For the avoidance of doubt if the interest payable in respect of an Advance has been fixed or refixed pursuant to Clause 13.1 above or as the case may be Clause 13.3 for a single Short Fixed Period and the interest payable in respect of all or any part of the amount of that Advance is not refixed in accordance with Clause 13.2 or Clause 13.3 then that Advance (or as the case may be the relevant part thereof) shall upon expiry of that Short

Fixed Period accrue interest at the rate set out in Clause 1 of Appendix A for that currency.

13.5 The Agent shall not be obliged to:

- (A) issue a Commercial Fixed Rate Notice pursuant to Clause 13.1, a Supported Rate Notice pursuant to Clause 13.2, a Supported Rate Refixing Notice or a Refixing Notice pursuant to Clause 13.3; or
- (B) having received an Acceptance relating to any such notice fix the interest payable as requested in that Acceptance
- if immediately prior to the time at which the Agent is obliged to issue such notice or as the case may be fix the interest payable in respect of all or part of an Advance pursuant to Clauses 13.1, 13.2 and 13.3;
- (C) a Default has occurred and is continuing; or
- (D) in the reasonable opinion of the Agent it is not practicable to enter into arrangements to fix the interest rate payable in respect of the relevant Advance.

14. Swedish Securitised Option

14.1 In relation to each Swedish Securitised Advance or proposed Swedish Securitised Advance, the Borrower shall in the relevant Currency and Interest Request specify the interest rate basis applicable to that Advance. Such rate being:

- A floating and calculated in accordance with Clause 1 of Appendix A (such Advance being a "Swedish Floating Rate Advance") or
- B CIRR Fixed Rate.

or each case such rates calculated in accordance with Appendix A), or

- C Commercial Fixed Rate (being the rate at which each Lender is prepared to fix the interest payable in respect of that Advance as previously notified to the Borrower by Agent) (such Advance being a "Swedish Commercial Fixed Rate Advance").

14.2 In relation to each Swedish Floating Rate Advance subject to the preconditions to fixing set out in Clause 14.5 below, at least 5 Business Days prior to each Interest Due Date the Agent shall serve upon the Borrower a Commercial Fixed Rate Notice and if within the time limit specified in that notice the Agent receives an Acceptance relating to that notice the Agent shall on the Interest Due Date to which that notice relates fix the interest payable in respect of all of that Swedish Floating Rate Advance (or such lesser part of it as may be specified in that Acceptance) at the rate and for the period specified in that notice being the rate at which each Lender is prepared to fix the interest payable in respect of that Advance (such rate being the Commercial Fixed Rate for that Advance)

14.3 Subject to the preconditions to fixing set out in Clause 14.5 below, in the case of each Swedish Commercial Fixed Rate Advance in respect of which interest costs have been fixed for a Short Fixed Period pursuant to Clause 14.1 or Clause 14.2 or this Clause 14.3 the Agent shall 5 Business Days prior to the Interest Due Date on which that Short Fixed Period ends send to the Borrower a Refixing Notice and if within the time limit specified in that notice the Agent receives an Acceptance relating to that notice the Agent shall on the Interest Due Date on which that Short Fixed Period ends fix the interest payable in respect of the whole of the Advance (or such lesser portion of it as may be specified in that Acceptance) at the rate and for the period specified in that Refixing Notice being the rate

at which each Lender is prepared to fix the interest payable in respect of that Advance (such rate being the Commercial Fixed Rate for that Advance).

- 14.4 For the avoidance of doubt if the interest payable in respect of an Advance has been fixed pursuant to Clause 14.1 or Clause 14.2 or refixed pursuant to Clause 14.3 for a Short Fixed Period and the interest payable in respect of all or any part of the amount of that Advance is not refixed in accordance with Clause 14.3 then that Advance (or as the case may be the relevant part thereof) shall upon expiry of that Short Fixed Period accrue interest at the floating rate specified in Clause 1 of Appendix A for that currency;

- 14.5 The Agent shall not be obliged to:

(A) issue a Commercial Fixed Rate Notice pursuant to Clause 14.2 or a Refixing Notice pursuant to Clause 14.3; or

(B) having received an Acceptance relating to any such notice fix the interest payable as requested in that Acceptance

if immediately prior to the time at which the Agent is obliged to issue such notice or as the case may be fix the interest payable in respect of all or part of Clauses 14.1, 14.2 or 14.3;

(C) a Default has occurred and is continuing; or

(D) in the reasonable opinion of the Agent it is not practicable to enter into arrangements to fix the interest rate payable in respect of the relevant Advance.

15 Repayment

- 15.1 In respect of each Tranche the Borrower agrees to repay the principal outstanding (excluding any Gold Advances) by up to twenty equal consecutive semi-annual instalments (as determined by the Agent in accordance with this Clause 15 (Repayment)) commencing on the relevant Repayment Start Date for that Tranche. In any event, no Advance shall be outstanding after the twentieth anniversary of the Effectiveness Date in respect of Tranche A.

- 15.2 The Borrower agrees to repay each Gold Advance by up to twenty equal consecutive semi-annual instalments (as determined by the Agent in accordance with this Clause 15 (Repayment)) commencing on the date falling six months after the date of drawdown of such Advance. In any event, no Gold Advance shall be outstanding after the tenth anniversary of the Effectiveness Date in respect of Tranche A. The amount of each repayment is to be received by the Agent for value on the second Banking Day prior to the relevant Repayment Date and for the purposes of Clause 23.1(A) such second Banking Day prior to the relevant Repayment Date shall be the due date for the payment of such repayment amount. Such monies shall be placed by the Agent on deposit as soon as possible after their receipt and interest shall be payable thereon at such rate as the Agent normally pays at the time in respect of such amount and for such period. When any such Repayment Date falls on a day which is not a Banking Day such Repayment Date shall instead be the next Banking Day which is neither the last day of a Gold Interest Period nor a Repayment Date for any other Gold Advance

- 15.3 Subject to the provisions of Clause 15.4 the Agent shall prepare repayment schedules for each Tranche (excluding Gold Advances) and each Gold Advance. Each repayment schedule shall be sent by facsimile transmission confirmed by registered mail to the Borrower, each Lender and ECGD whereupon such repayment schedule shall become part of this Agreement which shall be binding on the parties hereto, absent manifest error) and the Borrower shall make repayments in accordance with each such schedule

15.4 Each such repayment schedule shall be prepared by the Agent:

- (A) in respect of each Tranche (i) on the Starting Point of Credit for that Tranche; (ii) following further Advances made from that Tranche subsequent to the Starting Point of Credit for that Tranche, not less than 30 days prior to each subsequent Repayment Date up to and including the Repayment Date immediately following the making of the last Advance from that Tranche; and (iii) if applicable, promptly following any reduction of the Repayment Period and bringing forward of the Repayment End Date for that Tranche pursuant to Clause 15.5; and
- (B) in respect of each Gold Advance, promptly following the making of such Advance.

Each subsequent repayment schedule prepared in accordance with this Clause 15.4 shall supersede the previous schedules and shall be binding on the parties hereto, absent manifest error.

15.5 In relation to each Tranche, if on the date set out opposite such Tranche in Clause 3.3 (or such later date as the Agent may notify to the Borrower) the amount of that Tranche utilised by the Borrower and expressed as a percentage is less than the percentage set opposite that Tranche in the column headed "Threshold Percentage" in Appendix B the repayment period for that Tranche shall be reduced and the Repayment End Date brought forward. In respect of:

- (A) Tranches A, B, C and D, for each complete shortfall of 5% the Repayment Period and Repayment End Date shall be brought forward by six months; and
- (B) Tranche E, for each complete shortfall of 5.5% the Repayment Period and Repayment End Date shall be brought forward by six months.

16. Prepayments

16.1 The Borrower may on giving written notice to the Agent not less than 30 days prior to an Interest Due Date or, in respect of the prepayment for a Gold Advance, the last day of a Gold Interest Period (being a Gold Interest Period in respect of the relevant Gold Advance) prepay on that Interest Due Date or, as the case may be, the last day of such Gold interest Period in addition to any other sums then due the whole or any part of any Tranche or the whole of that Gold Advance in accordance with and subject to the following conditions:

- (A) no Event of Default shall have occurred and remain unremedied;
- (B) the amount of such prepayment shall be received by the Agent not less than 3 Banking Days prior to the relevant Interest Due Date and held by and applied by the Agent on that Interest Due Date in accordance with this Clause 16.1.
- (C) partial prepayments shall be applied in or towards satisfaction of the instalments remaining to be paid in accordance with this Agreement in the reverse order of the due dates for payment thereof.
- (D) once notice of prepayment under this Clause 16.1 is given to the Agent the Borrower shall be irrevocably bound to make such prepayment; and
- (E) amounts so prepaid shall not be re-advanced

16.2 If the Borrower makes any payment of moneys intended to be used in accordance with the provisions of Clause 16.1 the Agent shall hold such prepayment until the next Interest Due

Date which is 3 Banking Days or more after receipt thereof when such prepayment shall be applied in the manner described in Clause 16.1.

- 16.3 All payments made by the Borrower hereunder shall be made free and clear of and without deduction for any set-off or counter-claim.

17 Payments

- 17.1 All payments by the Borrower, a Lender or ECGD under this Agreement shall be made to the Agent to its account at such office or bank as it may notify to the Borrower, each Lender and ECGD for this purpose.
- 17.2 Payments under this Agreement to the Agent shall be made for value on the due date at such times and in such funds as the Agent may specify to the Party concerned as being customary at the time for the settlement of transactions in the relevant currency in the place for payment.
- 17.3 Each payment received by the Agent under this Agreement for another Party shall, subject to sub-clauses 17.4 and 17.5, be made available by the Agent to that Party by payment (on the date and in the currency and funds of receipt) to its account with such office or bank in the principal financial centre of the country of the relevant currency as it may notify to the Agent for this purpose by not less than 5 Business Days' prior notice.
- 17.4 The Agent may apply any amount received by it for the account of the Borrower in, or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under this Agreement or in, or towards, the purchase of any amount of any currency to be so supplied.
- 17.5 Where an amount is to be paid to the Agent under this Agreement for another Party, the Agent is not obliged to pay that amount to that Party until it has established that it has actually received that amount. The Agent may, however, assume that the amount has been paid to it in accordance with this Agreement, and, in reliance on that assumption, make available to that Party a corresponding amount. If the amount has not been made available but the Agent has paid a corresponding amount to another Party, that Party shall forthwith on demand by the Agent refund the corresponding amount together with interest on that amount from the date of payment to the date of receipt, calculated at a rate determined by the Agent to reflect its costs of funds.
- 17.6 Other than in respect of Gold Advances, a repayment or prepayment of an Advance or any part of an Advance is payable in the currency in which the Advance is denominated.
- 17.7 Other than in respect of Gold Advances, interest is payable in the currency in which the relevant amount in respect of which it is payable is denominated.
- 17.8 Amounts payable in respect of costs, expenses and taxes and the like are payable in the currency in which they are incurred.
- 17.9 If a payment under this Agreement is due on a day which is not a Banking Day, the due date for that payment shall instead be the next Banking Day.
- 17.10 During any extension of the due date for payment of any principal under this Agreement, interest is payable on that principal to the actual date of payment at the rate payable on the original due date.
- 17.11 The liability of the Borrower to pay in full any sum due under this Agreement on the due date for payment thereof is in no way conditional upon performance of any Supply

Contract by a Supplier nor shall such liability be affected in any way by reason of any claim which the Buyer may have or may consider that it has against any Supplier.

17.12 Any unpaid sum shall for the purposes of this Clause be treated as an Advance and accordingly in this Agreement the term "Advance" includes any unpaid sum and the term "Interest Period", in relation to an unpaid sum, includes each such period relating thereto.

17.13 If and to the extent that any EMU Legislation provides that an amount which is:

- (A) denominated either in Euro or in the national currency unit of a participating member state; and
- (B) payable within that participating member state by crediting an account of the creditor

can be paid by the debtor either in Euro or in that national currency unit, any Party due to make such a payment may pay any such amount either in Euro or in that national currency unit.

In this Agreement "EMU Legislation" means legislative measures of the Council of the European Union for the introduction of, changeover to or operation of the Euro.

18. Partial Payments and Redistribution of Payments

18.1 If the Agent receives a payment insufficient to discharge all the amounts then due and payable by the Borrower under this Agreement, the Agent shall apply that payment towards the obligations of the Borrower under this Agreement in such order as, in its sole discretion, it considers appropriate. If for the purpose of making such application it is necessary for the Agent to convert the amount received into another currency (the "second currency") the rate of exchange which shall be applied shall be that at which in accordance with normal banking procedures the Agent could purchase that second currency on the Banking Day following receipt of such amount.

18.2 Clause 18.1 shall override any appropriation made by the Borrower.

18.3 Whenever any Lender or ECGD (the "Recipient Party") receives a sum payable by the Borrower hereunder other than through the Agent (the "Receipt") then (A) the Recipient Party shall within 3 Business Days notify details of the Receipt to the Agent and (B) the Agent shall determine whether the Receipt is in excess of the amount which the Recipient Party would have received or recovered had the Receipt been received by the Agent and distributed in accordance with this Agreement.

18.4 The Recipient Party shall pay to the Agent an amount equal to any such excess (the "Excess").

18.5 The Agent shall treat such Excess as if it were a payment by the Borrower under Clause 17. Payments; and shall pay the Excess to the each of the other Finance Parties in accordance with this Agreement.

18.6 As between the Borrower and the Recipient Party the Excess shall be treated as not having been paid.

19. Amounts due to be paid to the Borrower

19.1 All amounts received or retained by the Agent pursuant to any Letter of Instruction or in respect of any sums held on deposit and agreed to be held for the account of the Buyer shall be applied as the Borrower may direct EXCEPT THAT if any of the circumstances

referred to in Clause 19.2 shall occur before the application by the Agent of any such amounts in accordance with such direction the Agent shall, subject to the provisions of Clauses 19.4 and 19.5, apply such amounts as ECGD may direct in writing in or towards satisfaction of any sum to be paid by the Borrower under this Agreement.

19.2 The circumstances referred to in Clause 19.1 are as follows:-

- (A) the relevant Supplier, the Buyer or the Borrower has notified the Agent that a Supply Contract has been terminated; or
- (B) the relevant Supplier, the Buyer or the Borrower has notified the Agent that arbitration has been initiated under the Supply Contract; or
- (C) an Event of Default has occurred and is continuing; or
- (D) a Trigger Event in respect of a Gold Advance has occurred and has not been cured or remedied to the satisfaction of the Agent.

19.3 Where the Agent is directed by ECGD to apply an amount referred to in Clause 19.1 in or towards repayment of the Advances and such amount is received or retained by the Agent on a date other than an Interest Due Date the Agent shall hold such amount on deposit until the next Interest Due Date and shall then apply it (together with any accrued interest) as directed.

19.4 In respect of sums held by the Agent following the occurrence of the circumstances referred to in Clause 19.2 (B), such sums shall be credited to an escrow account and shall be held by the Agent in such account for a period of six months from the date of receipt (or such shorter period as the Agent may determine) and may only be applied as the Borrower may direct at the end of such six month (or shorter) period if (A) the arbitration referred to has been settled, (B) no Event of Default has occurred and is continuing and (C) the Supply Contract, the subject of such arbitration, has not been terminated.

19.5 If the arbitration referred to in Clause 19.2(B) has not been settled at the end of such six month (or shorter) period the amount credited to such escrow account shall continue to be held by the Agent in such account until settlement of such arbitration provided that if any of the circumstances referred to in Clauses 19.2(A), (C) or (D) shall occur prior to settlement of such arbitration the Agent shall apply such amounts as ECGD may direct in writing in or towards satisfaction of any sum to be paid by the Borrower under this Agreement.

20. Indemnity

20.1 If any Lender, ECGD or the Agent on its behalf receives or recovers an amount representing repayment of all or any part of a Floating Rate Advance (including any Gold Advance) otherwise than on an Interest Due Date (including amounts received as result of the conversion of any Gold Advance into Sterling), the Borrower shall pay to the Agent on demand for account of such Lender or, as the case may be, ECGD an amount equal to the amount (if any) by which (1) the additional interest which would have been payable on the amount so received or recovered had it been received or recovered on the Interest Due Date exceeds (2) the amount of interest which in the reasonable opinion of the Agent would have been payable to such Lender or ECGD on the Interest Due Date in respect of a deposit in the currency of the amount so received or recovered equal to the amount so received or recovered placed by that Party with a prime bank in London for a period starting on the Banking Day following the date of such receipt or recovery and ending on the Interest Due Date

EXHIBIT "TCB 2"

20.2 If an Early Repayment shall occur in respect of an Advance on which interest is payable at a Fixed Rate (other than Sterling and Dollar CIRR Advances or Sterling and Dollar Supported Advances, each in respect of the UK Multi Currency Tranches and UK Securitisation Tranches set out in Clause 1.1 of Appendix B) the Borrower shall pay to the Agent on demand for the account of such Lender or, as the case may be, ECGD such amount as such Lender or ECGD may evidence as being necessary to compensate it or any sub-participant of such party or any assignee or any person who may have entered into contractual relations with such Lender in relation to the funding of such Advance for all losses and expenses which it or such person has incurred or will incur by reason of it receiving or recovering that instalment otherwise than on the relevant Repayment Date including without limitation loss and expense arising from having to terminate or re-employ any funds acquired at a fixed rate of interest in order to make or maintain that Advance at a Fixed Rate (including but not limited to any redemption penalties) or any cost, claim, loss or expense sustained or incurred under any other arrangement (including but not limited to any currency and/or interest rate exchange arrangements) which such Lender has entered into in order to fix (or hedge its exposure inherent in) that Advance at a Fixed Rate. Provided that with respect to the UK Multi-Currency Lender and only in respect of Commercial Fixed Rate Advances if the sum of such losses and expenses is a negative figure, in other words the Early Repayment has resulted in a net gain rather than a net loss by such UK Multi-Currency Lender in respect of any Commercial Fixed Rate Advances (whether by reason of the UK Multi-Currency Lender being able to redeploy funds at a higher rate of interest or otherwise) then such UK Multi-Currency Lender shall forthwith pay over to the Borrower an amount equal to such net gain. No such net gains are payable if an Event of Default has occurred and is continuing.

20.3 The Borrower acknowledges that

- A in order to make certain Advances available to the Borrower the Lenders have entered or will enter into interest support arrangements with ECGD, and
- B in connection with such arrangements it is the policy of ECGD to enter into hedging arrangements with third parties on a general portfolio basis in order to protect itself from adverse movements in interest and exchange rates; and
- C it is accordingly reasonable for ECGD to rely upon the continuance of those interest support arrangements for a period ending on the Repayment End Date for each such Advance and by reference to a principal amount equal to the amount of such Advances.

Accordingly the Borrower irrevocably agrees that in the case of any Early Repayment (other than Sterling and Dollar CIRR Advances or Sterling and Dollar Supported Advances, each in respect of the UK Multi-Currency Tranches and UK Securitisation Tranches set out in Clause 1.1 of Appendix B) it shall on demand pay to the Agent (in addition to any other amounts payable by it under this Agreement) such amounts as shall be certified by the Agent on behalf of ECGD as being necessary to compensate for all losses incurred, sustained or suffered by ECGD in relation to such Advance and in connection with such interest support arrangements as a result of such Early Repayment. And such losses may but need not be calculated by reference to the cost to ECGD of entering into arrangements to replace that part of the fixed rate interest stream in respect of that Advance which it would have received in the absence of the relevant Early Repayment.

20.4 The Borrower undertakes to indemnify

- A each of the Agent, the Lenders and ECGD against any cost, claim, loss, expense (including legal fees), or liability together with any value added tax thereon which

any of them may sustain or incur as a consequence of the occurrence of any Default or any default by the Borrower in the performance of any of the obligations expressed to be assumed by it in this Agreement or the conversion of any Gold Advance into Sterling pursuant to Clause 23.5, and

(B) each Lender and ECGD against any loss it may suffer or incur as a result of its funding or making arrangements to fund an Advance requested by the Borrower hereunder but not made by reason of the operation of any one or more of the provisions hereof.

20.5 A certificate together with supporting calculations issued by a Lender or ECGD pursuant to Clauses 20.1, 20.2 and 20.4 shall be prima facie evidence of the amount due from the Borrower to that Party pursuant to those Clauses.

21. Representations

21.1 The Borrower makes the representations and warranties set out in this Clause 21 (Representations) for the benefit of the Agent, ECGD and each Lender and acknowledges that each of the Agent, ECGD and each Lender have entered into this Agreement in reliance on such representations and warranties.

21.2 The Borrower has full power and authority to enter into each Finance Agreement and to exercise its rights and perform its obligations thereunder and all action required to authorise its execution of each Finance Agreement and its performance of its obligations thereunder has been duly taken.

21.3 The Borrower has duly executed each Finance Agreement and each Finance Agreement constitutes the legal, valid and binding obligation of the Borrower.

21.4 The obligations expressed to be assumed by the Borrower in each Finance Agreement represent the full faith and credit of the Republic of South Africa.

21.5 All consents, licences, approvals and authorisations of any governmental authority in the Republic of South Africa (A) required by the Borrower in connection with the entering into, performance, validity or enforceability of each Finance Agreement or (B) for any assignment of rights and benefits contemplated by Clause 25 (The Funding and Benefit of the Agreement) to be made during the period of this Agreement have, in each case, been obtained and are in full force and effect.

21.6 The Borrower has the right to make payments in Dollars, Sterling, Euro, SKr and Gold as contemplated by this Agreement.

21.7 The execution and performance of each Finance Agreement by the Borrower will not violate any provision of (A) any present South African law or regulation or any order or decree of any South African governmental authority or court in any respect or (B) any agreement, mortgage, bond or other undertaking or instrument of the Republic of South Africa or which is binding upon any of the Borrower's assets in any respect.

21.8 The Borrower is not in breach of, or in default under any agreement or other instrument evidencing External Indebtedness with respect to the Borrower's payment obligations thereunder or, to its knowledge, with respect to its other obligations thereunder.

21.9 To the Borrower's knowledge, no action or administrative proceeding of or before any court or agency which might have a material adverse effect on the Borrower's financial condition has been started and is pending or is threatened

- 21.10 Under the laws of the Republic of South Africa, the Borrower will not be required to make any deduction or withholding from any payment it may be required to make under any Finance Agreement.
- 21.11 Under the laws of the Republic of South Africa, it is not necessary that any Finance Agreement be filed, recorded or enrolled with any court or other authority in South Africa or that any stamp, registration or other similar tax be paid on or in relation to any Finance Agreement.
- 21.12 Under the laws of the Republic of South Africa, the claims of the Agent, ECGD and each Lender against the Borrower under each Finance Agreement will rank at least *pari passu* in priority of payment with the claims of all unsecured creditors in respect of External Indebtedness.
- 21.13 The Borrower's execution of this Agreement constitutes, and its exercise of its rights and the performance of its obligations hereunder will constitute, private and commercial acts done and performed for private and commercial purposes.
- 21.14 Under the laws of the Republic of South Africa, pursuant to Clauses 31.7 and 31.10 the Borrower has validly waived sovereign immunity and in any proceedings taken in the Republic of South Africa or in the UK in relation to any Finance Agreement it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or legal process save as set out in such clause.
- 21.15 The Borrower has validly submitted to the jurisdiction of the arbitral panel for the purposes of this Agreement as contemplated by Clause 31 (Law and Jurisdiction).
- 21.16 The Republic of South Africa is a member in good standing and eligible to use the resources of the International Monetary Fund.
- 21.17 The obligations expressed to be assumed by the South African Reserve Bank in the Currency Transfer Guarantee are legal and valid obligations binding on the South African Reserve Bank in accordance with the terms thereof.
- 21.18 The representations and warranties set out in this Clause 21 (Representations) are made on the date of this Agreement.
22. Covenants by the Borrower
- 22.1 The Borrower shall obtain, comply with the terms of and do all that is necessary to maintain in full force and effect all authorisations, approvals, licences and consents required in or by the laws and regulations of the Republic of South Africa to enable it lawfully to enter into and perform its obligations under this Agreement and to ensure the legality, validity, enforceability or admissibility in evidence in South Africa of each Finance Agreement.
- 22.2 The Borrower shall ensure that under the laws of the Republic of South Africa, the claims of the Agent, ECGD and each Lender against the Borrower under this Agreement will rank at least *pari passu* in priority of payment with the claims of all unsecured creditors in respect of External Indebtedness.
- 22.3 The Borrower undertakes, for so long as any amounts remain outstanding under this Agreement, that without the prior written consent of the Agent it shall not create any Encumbrance over any of its present or future revenues or assets to secure External Indebtedness unless at the same time all amounts which are or which may become, due and payable from the Borrower under this Agreement are secured in a manner acceptable

to the Agent; provided that the above provisions of this Clause 22.3 shall not apply to the following:

- (A) any Encumbrance securing External Indebtedness incurred for the purpose of financing the acquisition of any goods or other tangible assets which is (i) created solely over such goods or other tangible assets and (ii) securing a sum not greater than the purchase price (together with interest and other related charges) of such goods or tangible assets and any related services;
- (B) any Encumbrance securing External Indebtedness incurred solely in connection with any Export Financing; provided that (i) such Encumbrance applies only to Exportable Assets which are expected to be sold, documents evidencing title thereto, the proceeds of any insurance thereon, and the proceeds of sale of Exportable Assets which are expected to be received within 24 months after such Exportable Assets, documents or proceeds become subject to such Encumbrance, (ii) such External Indebtedness is to be repaid primarily out of the proceeds of sale of the Exportable Assets subject to such Encumbrance, (iii) at the time of such Export Financing it was reasonable to conclude that the production or exportation of such Exportable Assets would generate sufficient income to repay all of the principal and interest on all External Indebtedness incurred in connection with such Export Financing and (iv) such Encumbrance does not arise out of financing provided by the relevant lender on the condition that other External Indebtedness be repaid. For the purposes of this Clause (B), "Exportable Assets" means goods which are sold or intended to be sold for a consideration of or denominated in a currency other than Rand and any right to receive such foreign currency in connection with the sale thereof and "Export Financing" means any financing incurred solely to finance the production and exporting of Exportable Assets;
- (C) any Encumbrance securing External Indebtedness incurred in connection with any Project Financing provided that the shares, assets, revenues or rights to receive income which are subject to such Encumbrance are (i) shares in the company conducting the project the subject of the Project Financing, (ii) assets which are the subject of such Project Financing, (iii) revenues or rights which arise from the acquisition, construction, use, operation, failure to meet specifications or other contractual requirements, exploitation or sale of, or the loss of or damage to, such assets or (iv) assets in the form of funds borrowed in respect of such Project Financing for the purpose of meeting payment obligations to contractors and suppliers with respect thereto. For the purposes of this Clause (C), "Project Financing" means any financing or refinancing of the acquisition, construction or development of any asset in connection with a particular project to be owned or operated by any person where, pursuant to the terms of the agreements under which such financing is provided, the creditors involved agree to look to the asset financed or refinanced or the revenues to be generated by the operation of or loss or damage to the financed or refinanced asset as a principal source of repayment for the monies to be advanced and at the time of such financing or refinancing it was reasonable to conclude that such project would generate sufficient income to repay all of the principal and interest on all External Indebtedness incurred in connection with such project;
- (D) any Encumbrance on assets leased to the Borrower under a financial lease which are deemed under any relevant law to be assets of the Borrower or on claims arising from the use of or damage to such assets leased; provided that the Encumbrance secures only amounts payable under such lease or with respect thereto.

- (E) any Encumbrance pursuant to any order of attachment, distraint or similar legal process arising in connection with court proceedings; provided that the execution or enforcement thereof is effectively stayed and the claims secured thereby are being contested at the time in good faith by appropriate proceedings;
 - (F) any Encumbrance arising by operation of law (and not pursuant to any agreement) in connection with External Indebtedness including any right of set-off with respect to deposits maintained by the Borrower with financial institutions and banker's liens with respect to assets of the Borrower held by financial institutions provided that such Encumbrance arises in the ordinary course of the activities of the Borrower and not with a view to securing or providing for the payment of External Indebtedness; and
 - (G) any other Encumbrance to secure External Indebtedness; provided that the aggregate amount for all such Encumbrances does not exceed \$50 million (or the equivalent in other currencies).
- 22.4 The Borrower will notify the Agent in writing of any Event of Default or any event or circumstance which, with the giving of notice or the lapse of time, would constitute an Event of Default forthwith upon the Borrower becoming aware of the same. In the event there occurs a Potential Event of Default or an event of default (howsoever called) under any other agreement, guarantee or other instrument in respect of External Indebtedness, then upon request by the Agent the Borrower shall provide the Agent and/or ECGD with such information with regard to the Potential Event of Default or event of default as the Agent and/or ECGD may reasonably request. The Borrower also agrees to make available to the Agent and/or ECGD such officers of the Borrower as the Agent and/or ECGD consider reasonably necessary to discuss such event or circumstance and its ramifications for the Agent, ECGD and the Lenders in relation to this Agreement.
- 22.5 The Republic of South Africa shall remain a member in good standing, and eligible to use the resources of the International Monetary Fund or any successor thereto).

23. Default

- 23.1 For the purposes of this Agreement, each of the following events shall constitute an Event of Default:
- (A) the Borrower fails to pay in full on the due date for payment thereof and in the currency and in the manner specified herein any sum due from it under this Agreement unless such sum is paid within five Banking Days of its due date;
 - (B) the Borrower defaults in the performance or observance of any of its other obligations under this Agreement and, if such default is capable of remedy, in any such case the Borrower shall have failed to cure such default within a period of 30 days after written notice thereof has been given by the Agent to the Borrower;
 - (C) an event of default (howsoever called) shall occur under any agreement, guarantee or other instrument in respect of External Indebtedness which is of an amount of principal of \$25 million (or its equivalent in other currencies) or more and pursuant to such default the Borrower's obligations under such agreement, guarantee or other instrument shall have been accelerated;
 - (D) any representation and warranty set forth in any Finance Agreement or made by the Borrower in any notice, certificate or other document delivered by it pursuant hereto is or proves to have been, in any material respect incorrect or misleading when made

- (E) a moratorium is declared or requested by an authorised representative of the Republic of South Africa on the payment of External Indebtedness, or the Borrower is unable to meet payments in respect of External Indebtedness as they fall due, or commences negotiations with any one or more of its foreign creditors with a view to the general readjustment or rescheduling of its External Indebtedness other than as agreed in the 1994 Debt Arrangement of September 9, 1993 made between the Republic of South Africa and certain foreign banks as such arrangements are re-arranged or amended from time to time;
 - (F) the Borrower repudiates any Finance Agreement or does or causes to be done any act or thing evidencing an intention to repudiate any Finance Agreement;
 - (G) at any time it is or becomes unlawful for the Borrower to perform or comply with any or all of its obligations under any Finance Agreement or any of the obligations of the Borrower under any Finance Agreement are not or cease to be legal, valid and binding;
 - (H) the Currency Transfer Guarantee of the South African Reserve Bank ceases to be in full force and effect and legal, valid and binding in accordance with its terms or the South African Reserve Bank fails duly to perform any obligation expressed to be assumed by it therein; and
 - (I) at any time any act, condition or thing required to be done, fulfilled or performed in order (i) to enable the Borrower under the laws of South Africa to enter into, exercise its rights under and perform the obligations expressed to be assumed by it in any Finance Agreement, (ii) to ensure that the obligations expressed to be assumed by the Borrower in any Finance Agreement are legal, valid and binding or (iii) to make this Agreement admissible in evidence in South Africa is not done, fulfilled or performed.
- 23.2 If an Event of Default occurs then a Default Notice may be sent by the Agent to the Borrower.
- 23.3 If an Event of Default occurs and such default remains unremedied a Default Demand may be sent by the Agent to the Borrower:
- (A) in the case of an Event of Default specified in Clauses 23.1 (A), (B), (C), (D), (E), (F), or (H) with the Default Notice or at any time thereafter; and
 - (B) in the case of any other Event of Default, not less than 14 days after the sending of the Default Notice.
- 23.4 Upon the sending of the Default Demand there shall forthwith become due and payable by the Borrower the aggregate of the Advances and all interest accrued and unpaid in respect thereof calculated up to the date of the Default Demand together with any unpaid amount which has accrued under the provisions of Clause 23.6 up to that date and all other sums due under this Agreement.
- 23.5 Upon the occurrence of an Event of Default, the Agent may convert all or any Outstanding Gold Advances into Sterling. Following such conversion payment of principal or interest or default interest on such Advances shall be made in Sterling. The rate of exchange which shall be applied shall be the Exercise Price and Barclays spot rate of exchange at which Sterling can be purchased with Dollars at or about 11.00 a m (London time) on the date of the Conversion Notice. If the Agent elects to convert all or any Outstanding Gold Advances into Sterling a Conversion Notice will be sent by the Agent to the Borrower as

soon as practicable thereafter. Each converted Advance shall bear interest at the floating rate set out in Clause 1 of Appendix A.

- 23.6 The Borrower shall pay on any amount due and payable but not paid without further notice or demand of any kind from day to day interest for successive Interest Periods of such duration as the Agent may determine at the rate which is :

- (A) in the case of each Advance (other than a Gold Advance) the higher of :
- (i) the sum of 1% per annum and the relevant CIRR Fixed Rate for that currency; and
 - (ii) the sum of 1% per annum and the rate set out in Clause 1 of Appendix A for that currency; and
- (B) in the case of any Gold Advance, the sum of 1% per annum and the rate set out in Clause 1 of Appendix A

until such amount is paid to the Agent in accordance with the terms of this Agreement.

- 23.7 For the purpose of calculating interest pursuant to Clause 23.6 where a Conversion Notice has been issued following non-payment (Clause 23.1(A)) whilst the rates of exchange used to effect the conversion shall be the Exercise Price and Barclays spot rate of exchange at which Sterling can be purchased with Dollars at or about 11:00 a.m. (London time) on the date of the Conversion Notice the conversion shall be deemed to have occurred on the date of non-payment.

- 23.8 If late or partial payment is received of any amount payable under this Agreement the Borrower hereby waives any rights which it may have to make any appropriation thereof and the amount so received shall be applied at the written direction of ECGD by the Agent in or towards satisfaction of the amounts which are due or overdue for payment.

24. Option to make Advances after an Event of Default

- 24.1 On the occurrence of an Event of Default the obligation of the Lenders and/or ECGD to make Advances shall immediately cease but the Lenders shall continue to make Advances if and for so long as ECGD so directs and ECGD may continue to make Advances without prejudice to the right of the Lenders and/or ECGD to receive payment of any sums due to them PROVIDED THAT if no Default Demand has been sent by the Agent and if the Event of Default is such an event as is referred to in Clause 23.1(A) and such default is remedied within 10 days or in respect of any other Event of Default and such default is remedied within 30 days the Lenders and ECGD shall thereupon again be bound by their obligations.

- 24.2 If any Advance is made in accordance with the terms of this Agreement after a Default Demand has been sent then an amount equal to the amount of each such Advance subject to the provisions of Clause 23.5) shall immediately become due and payable in the manner provided under Clause 17 (Payments) without further notice or demand of any kind

- 24.3 The Borrower shall pay from day to day without further notice or demand of any kind interest at the rate specified in Clause 23.6 on any amount payable under Clause 24.2 from the date of such Advance to the date of the receipt of the said amount in accordance with Clause 17 (Payments)

- 24.4 The Borrower authorises ECGD, the Agent and each Lender to make Advances in accordance with the directions of ECGD pursuant to Clause 24.1 and authorises ECGD

and the Agent to make such Advances from such Commitments and in such currencies as they may select to the exclusion of the Borrower. The Borrower agrees that none of ECGD, the Agent and the Lenders shall be under any liability as a result of the making of any Advance or the selection by any of them of any Available Commitment, currency or interest rate pursuant to this Clause 24 by them.

25. The Funding and Benefit of the Agreement

- 25.1 The Commitment of each Lender hereunder shall terminate if the introduction of a new law or regulation or a change in any applicable law or regulation or in the interpretation thereof by a court or tribunal or by any authority charged with the administration thereof shall make it illegal for that Lender to fulfil its obligations hereunder.
- 25.2 ECGD may at any time cancel the Multi-Currency Lender's obligation (subject to the terms and conditions of this Agreement) to make Dollar Advances by giving to that Lender and copied to the Agent and the Borrower notice in writing of such cancellation specifying the date on which that Lender's Commitment shall terminate and thereafter that Lender shall have no further liability to make such Advances.
- 25.3 Each Lender may at any time with the prior written consent of ECGD and, in the case of the UK Multi-Currency Lender, the Borrower (such consent not to be unreasonably withheld or delayed) and in accordance with Appendix E (Assignments and Transfers) assign and transfer to any Eligible Entity or to ECGD all or any part of its rights and benefits hereunder. The consent of the Borrower will be deemed to have been given if, within ten Business Days of receipt by the Borrower of an application for consent, it has not been expressly refused. In respect of any assignment or transfer to ECGD or upon ECGD's instructions consent of the Borrower is not required.
- 25.4 ECGD may at any time assign and transfer all or any part of its rights and benefits hereunder to any Eligible Entity
- 25.5 The Borrower hereby authorises the Agent to accept on its behalf notice in writing of any assignment or transfer of rights and benefits made in accordance with this Clause and to act in accordance with any such notice.
- 25.6 ECGD shall be entitled to make whatever arrangements it shall deem appropriate to procure the appropriate Original Currency to enable it to fulfil its obligations but any such arrangements shall not affect the rights benefits and obligations of the Borrower.
- 25.7 If the Multi-Currency Lender's obligation to make Advances in Dollars is cancelled in accordance with Clause 25.2 or if the Commitment of a Lender shall terminate in accordance with Clause 25.1 or if there shall be any assignment or transfer of the rights or benefits of a Lender or ECGD or any assignee of any of them in accordance with Clause 25.3 or 25.4 the Agent shall inform the Borrower thereof but the Borrower shall notwithstanding having received such information continue to make payment of all sums due under this Agreement through the Agent in the manner provided hereunder and any failure by the Agent to inform the Borrower thereof shall not in any way affect the rights benefits or obligations of any person hereunder
- 25.8 The Borrower shall not assign or transfer any of its rights, benefits or obligations hereunder

26 Taxes and Increased Costs

- 26.1 All payments to be made by the Borrower hereunder shall be made without any deduction or withholding whatsoever.

26.2 The Borrower agrees to pay or cause to be paid directly to the appropriate governmental authority in South Africa or in any country through which funds flow and to reimburse the Agent, each Lender and/or ECGD for the cost of any and all present and future taxes (other than tax on the overall net income of the Agent, each Lender and/or ECGD) duties fees and other charges of any nature whatsoever (including any additional taxes duties fees or other charges due as a consequence of such reimbursement) levied or imposed by that authority on, or in respect of, any right, obligation or action granted imposed or undertaken pursuant to this Agreement.

26.3 If:

- (A) the Borrower is prohibited by operation of law from making payments without any deduction pursuant to Clause 26.1 or from paying causing to be paid or reimbursing any Party for the cost of all or any taxes duties fees or other charges pursuant to Clause 26.2; or
- (B) any Party is required by law to make any payment on or in relation to any amount received or receivable from the Borrower on account of any tax duty fee or other charge

then payment due to such Party under this Agreement shall be increased to ensure that after such deduction or payment of such taxes duties fees or other charges and after payment of any additional taxes duties fees or other charges due as a consequence of such increases that Party receives a net sum equal to the sum which it would have received and to which it would have been entitled had no such deduction or payment been required.

26.4 No additional amount will be payable to any Finance Party (other than ECGD) under Clauses 26.2 or 26.3 to the extent that the relevant tax, duty, fee or other charge would not have arisen if that Finance Party (other than ECGD) had been a Qualifying Entity at the time the relevant payment fell due unless the reason it is not a Qualifying Entity is:

- (A) the introduction of, suspension, withdrawal or cancellation of, or change in, or change in the official interpretation, administration or application of, any law or regulation having the force of law or any practice or concession of any relevant taxing or fiscal authority in any jurisdiction with which that Lender has a connection after the date of this Agreement or, in the case of any transferee or assignee, after the date on which it becomes a party to this Agreement; or
- (B) the amendment, withdrawal, suspension, cancellation or termination of any applicable tax treaty with respect to that Lender or any jurisdiction with which that Lender has a connection after the date of this Agreement or, in the case of any transferee or assignee, after the date on which it becomes a party to this Agreement.

26.5 If the Borrower has reasonable grounds to believe that it will be required to make a deduction or withholding on account of any tax, duty, fee or other charge, then the Borrower shall immediately inform the Agent of that fact and without in any way limiting, reducing or otherwise qualifying any of the obligations of the Borrower, the relevant Lender shall, in consultation with the Agent, ECGD and the Borrower, take such steps as it determines are reasonably open to it and are acceptable to ECGD and the Borrower to mitigate the effect of the circumstance giving rise to such deduction or withholding (such as changing its lending office, restructuring its participation in this facility and/or novating or assigning some or all of its rights or obligations under this Agreement to another person acceptable to ECGD and willing to take such novation or assignment). However the relevant Lender shall not be obligated to take any such steps which would, in its opinion

have an adverse effect on such Lender, its business, operations or financial condition or the management of its tax affairs or its returns in relation to its participation in this Agreement or cause it to incur any costs or expenses.

- 26.6 In the event that the Borrower is obliged to make any additional payment pursuant to Clauses 26.2 or 26.3 (a "Tax Payment") and, other than in respect of ECGD, the relevant Lender subsequently recovers from the relevant taxation or other authority any amount attributable to that Tax Payment, then it shall pay over to the Borrower such amount which that Lender determines will leave it (after that payment) in the same after-tax position as it would have been in had the Borrower not been required to make such Tax Payment. The Borrower acknowledges that the tax affairs and tax planning are the sole concern of the relevant Lender and that this Clause 26.6 shall not oblige the relevant Lender to seek to recover any such amounts from any taxation or other authority, nor shall the relevant Lender be obliged to disclose its tax affairs to the Borrower.
- 26.7 If the Borrower must make payments for tax or other charges as provided for in this Clause 26 (Taxes and Increased Costs) then the Borrower shall confirm to the Agent, each Lender and/or ECGD that all such taxes or other charges have been paid by forwarding to each Lender and/or ECGD through the Agent within thirty days after payment an official receipt or such other documentary evidence as is acceptable to the Agent each Lender and/or ECGD.
- 26.8 The Borrower shall forthwith on demand by a Lender pay to that Lender the amount of any increased cost incurred by it or any of its Affiliates as a result of:
- (A) the introduction of, or any change in, or any change in the interpretation or application of, any law, regulation or treaty, or in, or of, any official directive or official request from, or the rules of any governmental, fiscal, monetary or regulatory (including self-regulatory) authority, organisation or agency (whether or not having the force of law but, if not having the force of law, being a registration, treaty, official directive, official request or rule which it is the practice of the Lender to comply with), or
 - (B) compliance with any regulation made after the date of this Agreement, including any law or regulation relating to taxation or reserve asset, special deposit, cash ratio, liquidity or capital adequacy requirements or any other form of banking or monetary control (including any law or regulation relating to tax, or reserve asset, special deposit or cash ratio)
- 26.9 The Borrower will not be obliged to compensate any Lender in respect of any increased cost:
- (A) compensated for by operation of Clauses 26.2 or 26.3,
 - (B) attributable to a change in a rate of tax on the general net income of a Lender arising before the relevant Lender(s) gave notice to the Borrower where such notice was given more than six months after the relevant Lender(s) became aware of such increased costs,
 - (C) if the increased cost arose within twelve months of and solely as a result of the relevant Lender(s) changing its facility office for this Agreement otherwise than at the request of the Borrower and that increased cost would not have arisen but for such change,
 - (D) incurred in consequence of the implementation in whole or in part of the International Convergence Measurements Standards dated July 1988 published by

EXHIBIT "TCB 2"

the Basle Committee on Borrowing Regulations and Supervisory Practices, as amended through the date hereof; or

- (F) if the increased cost is the direct result of the relevant Lender(s) being in breach of applicable law.

26.10 In this Agreement:

"increased cost" means:

- (A) an additional cost incurred by a Lender or any of its Affiliates as a result of it having entered into, or performing, maintaining or funding its obligations under, this Agreement; or
- (B) that portion of an additional cost incurred by a Lender or any of its Affiliates in making, funding or maintaining all or any advances comprised in a class of advances formed by or including that Lender's participations in the Advances made or to be made under this Agreement as is attributable to that Lender making, funding or maintaining those participations; or
- (C) a reduction in any amount payable to a Lender or any of its Affiliates or the effective return to a Lender or any of its Affiliates under this Agreement or (to the extent that it is attributable to this Agreement) on its capital; or
- (D) the amount of any payment made by a Lender or any of its Affiliates, or the amount of any interest or other return foregone by a Lender or any of its Affiliates, calculated by reference to any amount received or receivable by that Lender or any of its Affiliates from any other Party under this Agreement;

"affiliate" means a subsidiary (being an entity of which a Lender from time to time (a) has direct or indirect control or (b) owns directly or indirectly more than 50 per cent. of the share capital, voting rights or similar right of ownership) or a holding company (being, in relation to a Lender, any other entity of which that Lender is a subsidiary) of a Lender or any subsidiary of that holding company.

26.11 Each Lender shall upon become aware of the same notify the Borrower of any cost incurred by it or any of its Affiliates as a result of any of the circumstances specified in Clause 26.8. Any demand made by a Lender under Clause 26.8 shall be accompanied by a certificate containing reasonable details of the amount and basis of the demand. No lender is, however, obliged to disclose any information of a confidential nature.

26.12 If the Borrower has reasonable grounds to believe that it will be required to make a payment under this Clause 25 (Taxes and Increased Costs) or that all or part of any Commitment will be cancelled or all or part of any Advance prepaid pursuant to Clause 25 (The Funding and Benefit of the Agreement), then the Borrower shall immediately inform the Agent of that fact and, without in any way limiting, reducing or otherwise qualifying any of the obligations of the Borrower, the relevant Lender shall, in consultation with the Agent, ECGD and the Borrower, take such steps as it determines are reasonably open to it and are acceptable to ECGD and the Borrower to mitigate the effect of the circumstance giving rise to the requirement to make payment, cancel the Commitment (as the case may be) (such as changing its lending office, restructuring its participation in the Loan and/or novating or assigning some or all of its rights or obligations under this Agreement to another person acceptable to ECGD and willing to take such novation or assignment). However the relevant Lender shall not be obligated to take any such steps which would, in its opinion, have an adverse effect on such Lender its business, operations or financial

EXHIBIT "TCB 2"

condition or the management of its tax affairs or its returns in relation to its participation in this Agreement or cause it to incur any costs or expenses.

27. Expenses

27.1 The Borrower shall pay on demand to the Agent in the currency and in the manner specified by the Agent:

(A) All amounts whatsoever which the Agent, any Lender or ECGD may expend or become liable for in demanding suing for recovering and receiving payment of any sum due to the Agent, that Lender or ECGD hereunder and under any documents executed pursuant hereto; and

(B) All out-of-pocket costs and expenses (including fees and expenses of legal advisers) reasonably and properly incurred by the Agent, each Lender or ECGD in connection with (1) the negotiation, preparation and due execution of this Agreement and all documents executed hereunder, (2) the fulfilment of the conditions specified in Clause 5 (Conditions Precedent to Advances) and (3) the establishment of each of the Securitisation Tranches. Provided that any legal costs incurred by the Agent and the Lenders in connection with the negotiation, preparation and execution of this Agreement (excluding those incurred in connection with the establishment of any securitisation vehicle including registrations, filing, trustee and ongoing administration costs) shall be subject to a cap of \$200,000 excluding value added tax.

28. Fees

28.1 The Borrower shall pay to the Agent such fees in the amounts and on the dates agreed in the Fee Letter.

28.2 Any fee referred to in the Fee Letter is exclusive of any value added tax or any other tax which might be chargeable in connection with that fee. If any value added tax or other tax is so chargeable, it shall be paid by the Borrower at the same time as it pays the relevant fee.

29. Sums on Deposit

29.1 All moneys held by the Agent under the terms of this Agreement which are not to be applied by the Agent in accordance with such terms within five Business Days of the date of their receipt shall be placed by the Agent on deposit as soon as possible after receipt and interest shall be payable thereon at such rate as the Agent normally pays at that time in respect of such amount and for such period. The interest accruing on all moneys held on deposit under this Agreement shall be applied in the manner specified in Clause 19 (Amounts due to be paid to the Borrower).

29.2 If any amounts to be held and applied by the Agent under the terms of this Agreement are received in a currency other than in currency of denomination of such Advance such amounts shall be sold for the relevant currency by the Agent in the London foreign exchange market as soon as practicable after receipt by the Agent.

30. Calculations, Remedies and Waivers

30.1 Each Lender and ECGD shall maintain in accordance with its usual practice accounts evidencing the amounts from time to time lent by and owing to it hereunder.

30.2 In any legal action or proceeding arising out of or in connection with this Agreement, the entries made in the accounts maintained pursuant to Clause 7 (Advances) and this Clause

30 (Calculations, Remedies and Waivers) shall be *prima facie* evidence of the existence and amounts of the specified obligations of the Borrower.

- 30.3 A certificate of a Lender or ECGD as to the amount by which a sum payable to it hereunder is to be increased under Clause 26 (Taxes and Increased Costs) shall, in the absence of manifest error, be conclusive evidence of the existence and amounts of the specified obligations of the Borrower.
- 30.4 No failure to exercise, nor any delay in exercising, on the part of the Agent, ECGD and the Lenders or any of them, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.
- 30.5 If the UK shall adopt the Euro as its lawful currency in substitution for Sterling the Agent may notify the Borrower that any references in this Agreement to a Banking Day, day-count fraction or other convention (whether for the calculation of interest determination of payment dates or otherwise) shall with effect from such date as shall be notified by the Agent to the Borrower be amended to comply with any generally accepted conventions and market practice from time to time applicable to Euro-denominated loans in London.
31. Law and Jurisdiction
- 31.1 This Agreement shall be governed by and construed in accordance with English law.
- 31.2 All disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce dated 01 January 1998 by three arbitrators appointed in accordance with the said Rules. The Borrower specifically agrees that all disputes relative to this Agreement shall be referred to arbitration and waives sovereign immunity with respect both to the jurisdiction of an arbitral tribunal appointed hereunder and enforcement of any award rendered by such tribunal.
- 31.3 The place of Arbitration shall be London.
- 31.4 The Parties specifically agree that obligations arising under this Agreement are separate and independent from any Supply Contract or other arrangements as may exist between the Borrower and British Aerospace (Operations) Limited and any other Supplier and that any arbitration proceeding commenced hereunder shall not be delayed or in any way affected by related arbitral or court proceedings as may be commenced by or between the parties to any Supply Contract.
- 31.5 The Parties hereby agree to exclude any appeal to the courts on a question of law under sections 45 and 69 of the English Arbitration Act 1996.
- 31.6 The language of the proceedings shall be English and subject to any order of the arbitral tribunal to the contrary documents submitted in any other language shall, insofar as they are relevant to issues in the arbitration, be accompanied by a translation into English.
- 31.7 If in any jurisdiction in which proceedings are being taken in connection with this Agreement the Borrower has the power to claim for itself or its assets immunity from suit or other legal process or if the court may of its own motion grant such immunity to the Borrower or its assets the Borrower hereby irrevocably undertakes not to claim and hereby irrevocably waives such immunity and (subject to the provisions of section 3 of the State Liability Act 1957 (Act No. 20 1957)) consents generally to the giving of any relief or the issue of any process in connection with such proceedings including without limitation the

making enforcement or execution against any property whatever of any order or judgement which may be made or given in such proceedings. In any proceedings taken in New York the foregoing waiver of immunity shall have effect under and be construed in accordance with the United States Foreign Sovereign Immunities Act of 1976. Notwithstanding the foregoing, the Borrower does not waive such immunity in respect of its property which is (A) used by a diplomatic or consular mission of the Republic of South Africa, or (B) property of a military character and under the control of a military authority or defence agency, or (C) located in the Republic of South Africa and dedicated to a public or governmental use (as distinguished from property dedicated to a commercial use).

- 31.8 If for the purpose of obtaining or enforcing judgement in any court it is necessary to convert a sum due hereunder in one currency (the "first currency") into another currency ("the second currency") the rate of exchange which shall be applied shall be that at which in accordance with normal banking procedures the Agent could purchase the first currency with the second currency on the Banking Day preceding that on which final judgement is given. The obligation of the Borrower in respect of any such sum due hereunder shall notwithstanding any judgement in the second currency and notwithstanding the rate of exchange actually applied in giving such judgement be discharged only to the extent that on the Banking Day following receipt by the Agent of any sum adjudged to be due hereunder in the second currency the Agent may in accordance with normal banking procedures purchase wherever the Agent shall deem appropriate the first currency with the amount of the second currency so received and if the first currency so purchased falls short of the sum originally due in that currency the Borrower agrees as a separate obligation and notwithstanding any such judgement to indemnify the Agent or each Lender and/or ECGD as the case may be in accordance with their respective entitlements against such deficiency.
- 31.9 If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.
- 31.10 Nothing in these dispute resolution provisions shall prevent the Parties from applying to any competent judicial authority for interim or conservatory measures as provided by Article 23 (Conservatory and Interim Measures) of the ICC Rules of Arbitration. For all purposes, the Borrower irrevocably waives sovereign immunity and hereby expressly submits to the jurisdiction of an arbitral tribunal appointed in accordance with these provisions or to the jurisdiction of any competent judicial authority before which an application is made for interim or conservatory measures. Subject to the provisions of section 3 of the State Liability Act 1957 (Act No. 20 1957), the Borrower expressly and irrevocably waives sovereign immunity in respect of the enforcement of any arbitral award or order or direction of court issued hereunder. Notwithstanding the foregoing, the Borrower does not waive such immunity in respect of its property which is (A) used by a diplomatic or consular mission of the Republic of South Africa, or (B) property of a military character and under the control of a military authority or defence agency, or (C) located in the Republic of South Africa and dedicated to a public or governmental use (as distinguished from property dedicated to a commercial use).
32. Alteration of the Supply Contract, Designation of Additional Suppliers/Supply Contracts and Increase in Commitments

- 32.1 Unless ECGD shall otherwise elect the obligation of each Lender and/or ECGD to make Advances hereunder shall cease if any alteration of or amendment to or departure from the terms of the Supply Contract is made or agreed without the consent in writing of the Agent the Borrower and ECGD.

- 32.2 For the purpose hereof the expression "alteration of or amendment to or departure from the terms of the Supply Contract" shall not include any variation of the technical specifications or scope of Specified Goods to be supplied or in the scope of Specified Services to be rendered under the Supply Contract unless such variation would increase the total amount payable under the Supply Contract or would involve a material change in the scope or objects of the Supply Contract.
- 32.3 At any time during the period ending on 31 March 2000 (or such other date as ECGD may agree) the Borrower may request that:
- (A) one or more further suppliers be designated as Suppliers;
 - (B) one or more further supply contracts be designated as Supply Contracts;
 - (C) one or more Commitments be increased to meet payments due under any further supply contracts designated as Supply Contracts.
- 32.4 A further supplier shall be designated as a Supplier, a further Supply Contract be designated as a Supply Contract and the relevant Commitments be increased on and with effect from the date of which the Agent notifies the Borrower that:
- (A) it accepts the Borrower's request;
 - (B) the Agent has received:
 - (1) in form and substance satisfactory to it all the documents and other evidence requested by it;
 - (2) confirmation from ECGD that the relevant Supplier has performed each of the obligations owed by it to ECGD in respect of such designation; and
 - (C) this Agreement has been amended in a manner satisfactory to the Agent, ECGD and the Lenders in connection with the arrangements contemplated by this Clause 32.

33. Notices and Demands

- 33.1 Notices and demands to be given or made to or of any Party hereto may be sent by telex, facsimile transmission, internationally recognised courier acceptable to the Agent or first class prepaid mail (registered airmail if overseas) and shall be addressed:

If to the Borrower as follows:

Department of Finance
Attention: Assets and Liabilities
50 Hamilton Street
Pretoria 0001

Fax: +27 12 323 1783

If to the Buyer as follows:

Armaments Corporation of South Africa Limited
Attention: General Manager Finance and Administration
PO Box 23915
Sunnyside
Pretoria 0123

EXHIBIT "TCB 2"

Republic of South Africa

Fax: +27 12 428 3771

If to the Agent as follows:

Barclays Bank PLC
Global Services Unit
5 The North Colonnade
Canary Wharf
London
E14 4PU

Fax: +44207 773 6811

Copied to:

Barclays Bank PLC
Structured Trade and Export Finance
5 The North Colonnade
Canary Wharf
London
E14 4BB

Fax: +44207 773 1830

If to ECGD as follows.

ECGD
For the Attention of Underwriting Division 5
P O Box 2200
2 Exchange Tower
Harbour Exchange Square
London
E14 9GS

Fax: +44207 512 7264

If to the Multi-Currency Lender as follows:

Barclays Bank PLC
Global Services Unit
5 The North Colonnade
Canary Wharf
London
E14 4PU

Fax: +44207 773 6811

Copied to:

Barclays Bank PLC
Structured Trade and Export Finance
5 The North Colonnade
Canary Wharf

110972951AZ5/AMN10045901

44

LN 209364_2(1)

London
E14 4BB

Fax: +44207 773 1830

If to the Securitisation Lender as follows:

Barclays Bank PLC
Global Services Unit
5 The North Colonnade
Canary Wharf
London
E14 4PU

Fax: +44207 773 6811

Copied to:

Barclays Bank PLC
Structured Trade and Export Finance
5 The North Colonnade
Canary Wharf
London
E14 4BB

Fax: +44207 773 1830

Or to such other addressee facsimile or telex number as such Party designates in writing.

- 33.2 In the case of notices and demands sent by telex or facsimile transmission a copy thereof shall be sent by first class prepaid mail (registered airmail if overseas) addressed as aforesaid not later than the first Business Day in the country of the sender following the day on which such telex or facsimile transmission was sent.
- 33.3 Notices and demands and copies thereof shall be deemed to have been received by the Borrower in the case of telex or facsimile transmission or inland mail one Business Day after they have been sent and in the case of courier or registered airmail three Business Day(s) after they have been sent.
- 33.4 Any facsimile or telex instructions received by the Agent purporting to be given by an authorised officer of the Borrower and believed by the Agent to be genuine shall have the same validity as a written instruction duly signed by an authorised officer of the Borrower.

IN WITNESS WHEREOF this Agreement has been signed on behalf of the parties hereto by persons duly authorised in that behalf the day and year first above written.

EXHIBIT "TCB 2"

1:097295/AZS/AMN(004590)

46

LN-209364_2(1)



14