

**No. 27473**

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**AUSTRALIA  
and  
THAILAND**

**Protocol concerning the financing of a railway project in  
Thailand (with schedules and appendices). Signed at  
Canberra on 31 August 1989**

*Authentic text: English.*

*Registered by Australia on 30 July 1990.*

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**AUSTRALIE  
et  
THAÏLANDE**

**Protocole relatif au financement d'un projet de chemin de fer  
en Thaïlande (avec annexes et appendices). Signé à Can-  
berra le 31 août 1989**

*Texte authentique : anglais.*

*Enregistré par l'Australie le 30 juillet 1990.*

## PROTOCOL<sup>1</sup> BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THAILAND CONCERNING THE FINANCING OF A RAILWAY PROJECT IN THAILAND

The Government of Australia and the Government of the Kingdom of Thailand in order to finance a State Railway of Thailand signalling and centralised traffic control project, have agreed as follows:

### 1. *Amount and Use of the Finance*

(1) The Government of Australia through the Australian Trade Commission (AUSTRADE) and the Australian International Development Assistance Bureau (AIDAB) shall extend to the Government of the Kingdom of Thailand funds to a maximum amount equivalent to sixty five million two hundred and four thousand Australian Dollars (A\$65,204,000) in support of a State Railway of Thailand (SRT) signalling and centralised traffic control project (the Project).

(2) The funds shall be used for the procurement of Australian goods and services and to meet local costs of the Project in accordance with this Protocol and the contract which has been entered into between the SRT and Westinghouse Brake and Signal Company (Australia) Limited (the Contractor) for the carrying out of the Project (the Contract).

(3) The funds shall be provided as follows:

#### (a) *Export Credit Loan Funds*

A loan from AUSTRADE, trading as Export Finance and Insurance Corporation, in United States Dollars equivalent to forty-six million eight hundred and thirty-three thousand Australian Dollars (A\$46,833,000).

#### (b) *Grant Funds*

A grant of Official Development Assistance (ODA) funds from AIDAB of eighteen million three hundred and seventy-one thousand Australian Dollars (A\$18,371,000) under the Development Import Finance Facility, subject to the Contractor having signed a Development Import Finance Facility (DIFF) agreement with AIDAB, and to the Contract having come into effect. These funds are in addition to ODA provided to the Government of the Kingdom of Thailand under the AIDAB Bilateral Program.

As a condition of the provision of such grant funds, AIDAB requires that the Contractor provide a guarantee to AIDAB in support of the advance payment by AIDAB of A\$6.52 million representing 10 percent of the value of the Contract (the Advance Payment Guarantee). The Advance Payment Guarantee shall provide for its value to reduce by an amount equal to 10 percent of the sum certified in each interim certificate issued pursuant to the Contract. The Guarantee shall continue in force until the full amount advanced has been performed under the Contract. The Advance Payment Guarantee shall supersede any guarantee in respect of advance payments for the foreign currency component of the Contract to which SRT may otherwise be entitled under the Contract.

<sup>1</sup> Came into force on 31 August 1989 by signature, in accordance with paragraph 5.

## 2. *Availability of the Finance*

(1) (a) Moneys due to the Contractor under the Contract shall first be met from grant funds.

(b) The grant funds shall be drawn upon by 1 December 1989.

(c) The Australian Government, shall pay grant funds directly to the Contractor.

(2) (a) After the coming into effect of an agreement (Credit Agreement) between the SRT acting for the Government of the Kingdom of Thailand (the Borrower) and AUSTRADE, trading as EFIC, acting for the Government of Australia (EFIC), relating to the export credit loan and after all grant funds have been used, moneys due to the Contractor under the Contract shall be met from export credit loan funds.

(b) The Australian Government, as and when authorised by the SRT, shall pay export credit loan funds directly to the Contractor.

(c) The export credit loan funds shall only be available for a period of four years from the coming into effect of the Credit Agreement.

## 3. *Terms and Conditions of the Export Credit Loan*

(1) The Credit Agreement shall be in the terms set out in Schedule A.

(2) In particular:

(a) The export credit loan shall be denominated in United States Dollars and shall be at a fixed interest rate of 9.10 per cent per annum.

(b) The loan shall be repaid in twenty equal semi-annual payments over ten years commencing 15 July 1994.

(c) Interest on the loan shall be computed as from the date of loan drawdown and shall be paid half-yearly.

(d) The following fees and charges shall be the responsibility of the Borrower:

- (i) *Establishment fee*. 0.3 per cent of the export credit loan amount payable at the time the Credit Agreement is executed;
- (ii) *Commitment fee*. 0.25 per cent per annum on undrawn loan balances payable six-monthly in arrears, effective from date that the Credit Agreement is executed.

(e) The repayment of principal and interest on the loan shall be net of all taxes and other public charges levied in Thailand.

(3) A guarantee of repayment of the loan in the terms set out in Schedule B shall be provided by the Ministry of Finance, acting for the Government of the Kingdom of Thailand.

(4) The parties hereto undertake and agree that both the Credit Agreement and the guarantee shall be executed by 1 December 1989.

## 4. *Eligible Goods and Services*

At least 70 per cent of the grant funds and of the export credit loan funds shall be used in payment for goods and services of Australian origin according to their eligible contract value as defined by the Government of Australia.

### 5. *Entry into Force*

This Protocol shall enter into force on the date of signature.

IN WITNESS WHEREOF the undersigned, duly authorised for this purpose by their respective Governments, have signed this Protocol.

DONE at Canberra this 31st day of August 1989 in duplicate in the English language,

For the Government  
of Australia:

[Signed — Signé]<sup>1</sup>

For the Government  
of the Kingdom of Thailand:

[Signed — Signé]<sup>2</sup>

<sup>1</sup> Signed by John N. Button — Signé par John N. Button.

<sup>2</sup> Signed by Subin Pinkayan — Signé par Subin Pinkayan.

## SCHEDULE A

THIS CREDIT AGREEMENT is made . . . . . 1989 between EXPORT FINANCE AND INSURANCE CORPORATION ("EFIC") being a trading name of Australian Trade Commission a statutory corporation of the Commonwealth of Australia of 22 Pitt Street, Sydney, New South Wales, Australia, of the one part; and STATE RAILWAY OF THAILAND ("the Borrower") of the other part.

Whereas

A. Westinghouse Brake and Signal Company (Australia) Limited ("the Supplier") has entered into or proposes to enter into a contract ("the Contract") with the Borrower to supply the Borrower with railway signalling equipment and a centralised traffic control system;

B. The Supplier and the Borrower have requested EFIC to assist in financing the Contract;

C. The Australian International Development Assistance Bureau ("AIDAB") has agreed to make available an aid grant ("the DIFF Grant") to the Kingdom of Thailand to assist the Borrower partially to finance the price payable under the Contract in an amount not exceeding A\$18,371,000 in accordance with the offer from the Australian Government dated . . . . . to . . . . .;

Therefore, in consideration of the mutual promises set out below it is agreed as follows:

*Article A. INTERPRETATION*

1. In this Credit Agreement, including the Appendices hereto, unless the contrary intention appears:

"Account No. 1" means the bank account of EFIC designated 5013204051 at the Commonwealth Bank of Australia, 299 Park Avenue, New York City, New York 10171 or such other account as EFIC may notify in writing to the Borrower.

"Account No. 2" means such bank account as EFIC may notify in writing to the Borrower from time to time.

"AIDAB" means the Australian International Development Assistance Bureau.

"Appropriate Interest Rate" means, in respect of an amount overdue under this Agreement, a rate of interest which is 2% per annum above LIBOR for the duration of each Interest Period during which the amount is overdue.

"Authorised Officer of the Borrower" means a person described in a Borrower's Authorisation received by EFIC which has not been countermanded in writing to EFIC.

"Authorised Officer of EFIC" means the General Manager, Finance Insurance and Project Group for the time being of the Australian Trade Commission or any other person for the time being authorised in writing to the Borrower by him or by EFIC.

"Authorised Officer of the Supplier" means a person described in a Supplier's Authorisation received by EFIC which has not been countermanded in writing to EFIC.

"Borrower's Authorisation" means a document completed and signed by the Borrower in or to the effect of the form in Appendix 4 and containing a specimen of the usual signature of each Authorised Officer of the Borrower.

"Business Day" means a day on which dealings in U.S. dollars are carried on in the London Interbank market and on which banks are open for domestic and foreign exchange business in London, England and New York City, United States of America and Sydney, Australia.

"Charges" means all amounts payable pursuant to Article E1 and E2.

"Contract" means the contract made or to be made by the Supplier to supply the Borrower with railway signalling equipment and a centralised traffic control system.

“Credit Facility” means the fund of the equivalent in United States dollars of \$A46,833,000 converted in accordance with this Agreement, to be made available by EFIC to the Borrower.

“DIFF Grant” means the Development Import Finance Facility aid funds of an amount not exceeding A\$18,371,000 to be made available by AIDAB to support the Contract.

“Disbursement” means a payment by EFIC to the Supplier which constitutes a loan by EFIC to the Borrower.

“Disbursement Claim” means a document completed and signed by an Authorised Officer of the Supplier and an Authorised Officer of the Borrower in or to the effect of the form in Appendix 2.

“Eligible Goods” means capital goods, not being second-hand, which are wholly or predominantly manufactured or produced in Australia or goods which EFIC in its discretion agrees to treat as Eligible Goods for the purpose of this Agreement.

“Eligible Services” means services wholly provided by or by means of persons usually resident in Australia or services which EFIC in its discretion agrees to treat as Eligible Services for the purpose of this Agreement.

“Entitlement” means the amount which in respect of a Disbursement Claim the Supplier is entitled to receive from the Borrower under the Contract as payment for Eligible Goods or Eligible Services exported or to be exported from Australia.

“Event of Default” means an occurrence described in Article H1.

“Evidence of Entitlement” means information, documents, certificates or other evidence upon which EFIC may reasonably rely as evidence of the Entitlement.

“Expiry Date” means the earliest of:

- (1) 31 st December, 1993 or such other day as the parties may agree in writing;
- (2) The day on which a Notice of Acceleration is given by EFIC;
- (3) The day on which the Facility Commitment equals zero.

“Facility Commitment” means the Credit Facility as reduced from time to time by the Principal Sum.

“Government Approvals” means, in relation to the doing of any act or the entering into of any transaction or document, all consents, approvals, authorities, licences or permits of any government or authority of the Kingdom of Thailand which are required in order that the act may lawfully be done or the transaction or document lawfully entered into.

“Guarantee” means the agreement of the Guarantor to EFIC to guarantee obligations of the Borrower and to indemnify EFIC from loss under this Agreement.

“Guarantor” means the Government of the Kingdom of Thailand represented by the Ministry of Finance.

“Instalment Amount” means an amount approximately equal to the Principal Sum Outstanding on the Expiry Date divided by the aggregate number of Principal Instalments Due Dates remaining as at the Expiry Date.

“Interest Due Date” means 15 July, 1990, and each 15 January and 15 July thereafter up to and including 15 January, 2004, except that if any such date falls on a day which is not a Business Day, the Interest Due Date shall be the next succeeding Business Day.

“Interest Period” means a period, determined in accordance with Article E4, during which the rate of interest is fixed.

“Law” means any statute, rule, regulation, by-law, ordinance or other decree having statutory force in the Kingdom of Thailand or any country or state whose law may be pertinent to this agreement.

“Legal Opinion” means a document completed and signed to the satisfaction of EFIC by the Juridical Council of the Kingdom of Thailand in or to the effect of the form in Appendix 3.

“LIBOR” means, in relation to an Interest Period, the rate per cent per annum determined by EFIC to be the average of the offered rates (rounded upwards, if necessary, to the nearest one sixteenth of one per cent) in United States currency of a period comparable to that Interest Period and in an amount comparable to the amount outstanding, quoted at or about 11.00 a.m. (London time) 2 Business Days before the commencement of that Interest Period:

- (1) On the LIBO page of Reuters electronic service; or
- (2) If EFIC cannot determine it from the LIBO page of Reuters electronic service, by the Reference Banks.

“Notice of Acceleration” means notice signed by an Authorised Officer of EFIC that an Event of Default has occurred and that EFIC elects to accelerate payment of amounts under this Agreement.

“Postal Address” means

- (1) In respect of EFIC: P.O. Box R65, Royal Exchange, Sydney, New South Wales, Australia, 2000 or such other address as EFIC may notify in writing to the Borrower;
- (2) In respect of the Borrower: Krung Kasem Road, Bangkok, 10500, Thailand or such other address as the Borrower may notify in writing to EFIC.

“Principal Instalment Due Date” means 15 July, 1994, and each 15 January and 15 July thereafter up to and including 15 January, 2004, except that if any such date falls on a day which is not a Business Day, the Principal Instalment due Date shall be the next succeeding Business Day.

“Principal Sum” means the amount equal to the sum of all Disbursements for the time being.

“Principal Sum Outstanding” means the amount equal to the Principal Sum as reduced by the sum of all instalments of principal paid to EFIC.

“Process Agent” means the person in New South Wales, Australia, from time to time appointed by the Borrower, with the prior written consent of EFIC, to receive legal process on behalf of the Borrower in connection with this Agreement.

“Rate of Exchange” means the spot rate at which EFIC in accordance with its normal practice is able to purchase United States dollars taking into account any premium and costs payable in connection with the purchase.

“Reference Banks” means Barclays Bank PLC, Bank of Tokyo International, Bankers Trust International Ltd. and National Westminster Bank.

“Reimbursable Taxes” means:

- (1) Any present or future Taxes of any nature now or hereafter imposed by the Government of the Kingdom of Thailand;
- (2) Any present or future Withholding Tax now or hereafter imposed by the Government of the Kingdom of Thailand or taxing authority thereof or therein by reason of (though not necessarily solely by reason of) the Borrower’s making or remitting a payment hereunder out of or in that country to EFIC.

“Statement of Origin of Goods and Services” means statements of origin of goods and services as specified in the “Instructions to Tenderers” given by the Borrower in relation to the Contract.

“Supplier” means Westinghouse Brake and Signal Company (Australia) Limited.

“Supplier’s Account” means in relation to a Disbursement Claim, the account notified by the Supplier to EFIC into which the proceeds of a Disbursement are payable.

“Supplier’s Agreement” means an agreement between the Supplier and EFIC, in a form approved by EFIC, in relation to the Contract.

“Supplier’s Authorisation” means a document completed and signed by the Supplier in or to the effect of Appendix 6 containing a specimen of the usual signature of each Authorised Officer of the Supplier.

“Supplier’s Declaration” means a document completed and signed to the satisfaction of EFIC by an Authorised Officer of the Supplier in or to the effect of the form in Appendix 1.

“Taxes” includes all income, stamp and other taxes and levies, imposts, deductions, charges, and withholdings whatsoever together with interest thereon and penalties with respect thereto, if any, and charges, fees or other amounts made on or in respect thereof and “Tax” and “Taxation” shall be construed accordingly.

“Telex Number” means:

- (1) In respect of EFIC: AA121224 or such other number as EFIC may notify in writing to the Borrower;
- (2) In respect of the Borrower: 72242TH or such other number as the Borrower may notify in writing to EFIC.

“Withholding Tax” means a tax imposed by the Government of the Kingdom of Thailand or taxing authority thereof on the full or gross amount (without the allowance of any deduction and without any reduction on any account whatsoever) of moneys at any time paid hereunder by the Borrower to EFIC whether or not such a tax is required to be deducted or withheld by the Borrower as the party making the payment and whether or not such tax is assessed against the Borrower as the party making the payment or EFIC as the party receiving it.

2. In this Credit Agreement, including the Appendices hereto, unless the contrary intention appears:

(1) Words denoting

- (a) The singular number shall include the plural number;
- (b) The plural number shall include the singular number;
- (c) One gender shall include the other genders;
- (d) The nominative case shall include the possessive case;
- (e) Natural persons shall include corporations and other entities.

(2) “This Agreement”, “hereto”, “herein”, “hereof”, “hereunder” and like expression refer to this Credit Agreement.

(3) “The parties” means EFIC and the Borrower.

(4) Reference to Australian dollars or Australian currency means the lawful currency of the Commonwealth of Australia.

(5) “\$A” means Australian dollars.

(6) Reference to United States dollars or United States currency means the lawful currency of the United States of America.

(7) “\$US” means United States dollars.

#### *Article B. CREDIT FACILITY*

1. Relying on the warranties made herein and subject to the terms and conditions hereof, EFIC agrees to make available the Credit Facility from which EFIC until the Expiry Date may make loans to the Borrower to assist the Borrower to finance the supply of Eligible Goods and Eligible Services under the Contract.



2. Loans made by EFIC to the Borrower from the Credit Facility shall be made in United States currency by Disbursement.

3. The Borrower directs EFIC to make payment of each Disbursement to the Supplier's Account and the Borrower agrees that each payment so made shall constitute a loan to the Borrower.

#### *Article C. CONDITIONS PRECEDENT*

1. EFIC shall not be obliged to make a Disbursement:

- (1) Unless EFIC has approved the Contract;
- (2) Unless EFIC has received
  - (a) A copy of the signed Contract,
  - (b) Payment of the Charges due,
  - (c) The Legal Opinion,
  - (d) The Supplier's Authorisation,
  - (e) The Supplier's Agreement,
  - (f) The Borrower's Authorisation,
  - (g) The Guarantee,
  - (h) A copy of all signed agreements relating to the DIFF Grant;
- (3) Unless:
  - (a) All Government Approvals have been obtained and are subsisting in relation to:
    - (i) The entry by the Borrower into this Agreement and to the performance of its obligations hereunder, and
    - (ii) The entry by the Supplier and the Borrower into the Contract and to the performance of obligations thereunder,
    - (iii) The entry by the Guarantor into the Guarantee and the performance of its obligations thereunder,
    - (iv) The DIFF Grant;
  - (b) There has not occurred an Event of Default or an event which with the giving of notice or with the lapse of time or both would be an Event of Default;
- (4) The Borrower has irrevocably appointed the Process Agent;
- (5) After the Expiry Date.

2. EFIC shall not be obliged to make a Disbursement unless EFIC has received a Disbursement Claim and in relation to that Disbursement Claim has received and has approved:

- (1) The Supplier's Declaration;
- (2) Evidence of Entitlement;
- (3) Notification of the Supplier's Account.

#### *Article D. DISBURSEMENTS*

1. Notwithstanding anything else in this Agreement, EFIC shall not be obliged to make a Disbursement of an amount:

- (1) Which exceeds the Facility Commitment;
- (2) Which exceeds the amount claimed in a Disbursement Claim;
- (3) Which exceeds the Entitlement;

(4) Which together with all other Disbursements would exceed the amount stated in the relevant item of Appendix 5 as at the date specified in such item.

2. The amount claimed in a Disbursement Claim shall be expressed in Australian dollars and shall be converted into United States dollars for the purpose of making a Disbursement at the rate of \$A1 = \$US.7987 being the agreed rate of exchange at the date on which the Contract was signed.

3. The making of a payment by EFIC pursuant to a Disbursement Claim shall be *prima facie* evidence that the circumstances justified the making of that payment, that the payment was properly made under this Agreement and that the payment was a Disbursement.

#### Article E. PAYMENTS

1. The Borrower shall pay to EFIC in United States currency by deposit in the Account No. 1 within 15 Business Days of the execution of this Agreement, the establishment fee of ..... (not exceeding \$A140,499 being 0.3 per cent of the Credit Facility).

2. The Borrower shall pay to EFIC in United States currency by deposit in the Account No. 2:

- (1) On each Interest Due Date the accumulated commitment fee which shall accrue on the daily balance of the Facility Commitment at the end of each day from and including the date of the Contract or the date of this Agreement (whichever is later) until and including the Expiry Date at the rate of 0.25% per annum, using for the purpose of calculation a year of 360 days, less the aggregate of amounts previously paid on account of the commitment fee;
- (2) On demand by EFIC an amount equal to all charges, expenses, costs and fees properly incurred by EFIC in connection with the negotiation, preparation, execution, administration and enforcement of this Agreement and the Guarantee;
- (3) On each Interest Due Date the accumulated interest which shall accrue on the daily balance of each Disbursement outstanding at the end of each day from and including the date of that Disbursement at the rate of 9.10% per annum for the then current Interest Period using for the purpose of calculation a year of 360 days, less the aggregate of amounts previously paid on account of interest other than interest on arrears;
- (4) The Principal Sum which, subject to the terms and conditions hereof, EFIC shall accept in 20 instalments on account of principal of each Disbursement of payment of the Instalment Amount on each Principal Instalment Due Date and any deficiency on the final Principal Instalment Due Date;
- (5) On demand by EFIC the accumulated interest on arrears which shall accrue on the daily balance of each amount, whether charges, commitment fee, interest, instalment of principal or otherwise due hereunder but unpaid at the end of each day from and including the day after the day on which it falls due for payment until and including the day on which it is paid at the Appropriate Interest Rate per annum, using for the purpose of calculation a year of 360 days;
- (6) On demand by EFIC the deficiency arising from a variation between the Rate of Exchange at which EFIC is able to purchase United States dollars with the amount of Judgment Currency actually received by EFIC and the rate of exchange at which United States dollars are converted into Judgment Currency for the purpose of a judgment or order made by a court or tribunal for the payment of moneys owing to EFIC under this Agreement or for the payment of damages in respect of any breach of this Agreement or in respect of a judgment or order of another court or tribunal for the payments of such moneys or damages;
- (7) On demand by EFIC an amount equal to all losses, interest, fees and charges incurred by EFIC in funding the Credit Facility following the giving of a Notice of Acceleration.

3. EFIC shall endeavour to give the Borrower notice of not less than 5 Business Days of the amounts which EFIC estimates will be due on the next occurring Interest Due Date and Principal Instalment Due Date.

4. Interest on a Disbursement shall be fixed for the duration of an Interest Period at the commencement of that Interest Period. The first Interest Period for a Disbursement will commence on the date of that Disbursement and will end on the next succeeding Interest Due Date and each successive Interest Period for that Disbursement thereafter will commence on the Interest Due Date on which the preceding Interest Period expires and will end on the next Interest Due Date. For the purpose of determining the Appropriate Interest Rate, the Interest Period shall be such period as EFIC determines.

5. This Agreement is legally independent of the Contract. In the performance of its obligations under this Agreement, the Borrower may not raise any objections based upon the Contract.

6. Each payment due hereunder is to be made by the Borrower in full without deduction or withholding and is to be received by EFIC free and clear of set-offs, claims and counterclaims and free and clear of Reimbursable Taxes and accordingly the Borrower shall pay such additional amounts as necessary to ensure that EFIC receives payment in full in the event that a deduction or withholding is made by compulsion of any Law or otherwise.

7. Any amount received by EFIC under or in relation to this Agreement may be appropriated and apportioned by EFIC in such manner and in such proportions as EFIC in its discretion may determine.

#### *Article F. WARRANTIES*

1. The Borrower warrants to EFIC at the date hereof that this Agreement has been validly executed by the Borrower and constitutes valid, binding and enforceable obligations of the Borrower under Law in accordance with their terms.

2. The Borrower warrants to EFIC at the date of each Disbursement that:

- (1) The execution and performance of this Agreement
  - (i) Have been duly authorised by the Borrower,
  - (ii) Are not contrary to any Law or to any order of a court or competent authority, and
  - (iii) Do not contravene any other agreement or obligation of the Borrower;
- (2) All Government Approvals in relation to the execution and performance by the Borrower of this Agreement and the Contract have been obtained and are subsisting;
- (3) Until written notice by the Borrower countermanning the authority is received by EFIC, each Authorised Officer of the borrower has authority to sign a document on behalf of the Borrower and his signature is conclusive evidence that the Borrower is bound as though the Borrower itself had executed the document;
- (4) No Event of Default or event which with notice or lapse of time or both would become an Event of Default has occurred;
- (5) The Borrower is not in breach of any Law or any order of a court or competent authority the consequence of which would substantially affect the Borrower's ability to comply with any of its obligations under this Agreement.

#### *Article G. COVENANTS*

1. The Borrower covenants with EFIC that at all times it shall:

- (1) Promptly comply with all its obligations under this Agreement;
- (2) Promptly comply with all requirements of Law binding on it;

- (3) Promptly obtain and comply with all (if any) Governmental Approvals necessary in relation to the performance by the Borrower of any of its obligations under this Agreement;
- (4) Not assign or dispose of all or any of its rights or benefits under this Agreement;
- (5) Promptly give written details to EFIC of:
  - (a) Any substantial dispute between the Supplier and the Borrower in respect of the Contract,
  - (b) Any Event of Default or event which with notice or lapse of time or both would become an Event of Default;
- (6) Give to EFIC such reports and information concerning the Borrower and the Contract as EFIC may from time to time reasonably require.

#### Article H. REMEDIES

##### 1. Unless an Event of Default occurs when:

- (1) The Borrower fails to pay in full an amount due under this Agreement within 7 Business Days after the due date of payment;
- (2) (i) Any of the following circumstances occur:
  - (a) The breach by the Borrower of a covenant herein,
  - (b) A warranty made herein at any time proving to have been incorrect in any material respect,
  - (c) The Borrower becoming bound prematurely, by reason of any default on the part of the Borrower, any of its indebtedness for moneys borrowed or the time for payment of any indebtedness in respect of moneys borrowed which is guaranteed by the Borrower being accelerated by reason of any default on the part of the Borrower, or the Borrower failing to discharge any such indebtedness or guarantee when due or within a permitted grace period;
- (ii) EFIC shall have given at least 20 Business Days notice to the Borrower specifying the circumstance that it claims has occurred; and
- (iii) The circumstance shall remain unrectified at the end of the period of notice.

2. Upon or at any time after the occurrence of an Event of Default, EFIC may give Notice of Acceleration to the Borrower whereupon the Principal Sum Outstanding shall immediately become due and payable together with interest and all other amounts payable under this Agreement. The giving of Notice of Acceleration, however, does not mean that EFIC is unable to pursue its rights by friendly negotiation or by any other remedy available to it.

#### Article I. ACKNOWLEDGEMENTS

##### 1. The Borrower agrees that:

- (1) A written notice signed by an Authorised Officer of EFIC stating the Appropriate Interest Rate on a particular day shall be conclusive evidence of the Appropriate Interest Rate applicable to that day;
- (2) A written notice signed by an Authorised Officer of EFIC stating an amount due under this Agreement on a particular day shall be *prima facie* evidence that the amount is due and payable by the Borrower on that day;
- (3) No waiver or indulgence in respect of the Borrower's obligations under this Agreement shall be effective unless granted by EFIC in writing;

- (4) The right of EFIC to give Notice of Acceleration may be exercised at any time after the occurrence of an Event of Default notwithstanding the lapse of time or occurrence of any event supervening;
- (5) The invalidity of one provision of the Agreement shall not affect the validity of the other provisions. Any gap resulting in consequence shall be filled by a provision consistent with the purpose of this Agreement;
- (6) Any communication, notice or document to be given by EFIC to the Borrower pursuant to this Agreement shall be signed by an Authorised Officer of EFIC and shall be deemed to have been given when posted to the Borrower at the Postal Address 14 days after posting or when transmitted by telex to the Telex Number after acknowledgement by answerback code;
- (7) Any communication, notice or document to be given by the Borrower to EFIC pursuant to this Agreement shall be signed by an Authorised Officer of the Borrower and shall be deemed to have been given when posted to EFIC at the Postal Address 14 days after posting or when transmitted by telex to the Telex Number after acknowledgement by answerback code;
- (8) This Agreement shall be governed by and construed according to the laws of New South Wales, Australia and the Borrower hereby agrees that the courts in Australia shall have jurisdiction to hear and determine any dispute or difference in respect of this Agreement and the Borrower hereby waives any claim of sovereign immunity in relation to any such dispute or difference.

Signed for and on behalf of  
Export Finance and Insurance Corporation:

.....

Signed for and on behalf of  
The State Railway of Thailand:

.....

## APPENDIX 1. SUPPLIER'S DECLARATION

TO: Export Finance and Insurance Corporation  
Export House, 22 Pitt Street  
Sydney, New South Wales, 2000

DATE:

Dear Sirs,

1. This Declaration relates to a Disbursement Claim from the Supplier for ..... pursuant to the Credit Agreement dated ..... between you and .....

2. (1) Goods for which payment is claimed therein are wholly produced or manufactured in Australia with the exception of the following:

(2) The value of goods for which payment is claimed therein and which are not wholly produced or manufactured in Australia does not exceed the value disclosed in the Statement of Origin of Goods and Services dated ..... signed by the Supplier.

3. (1) Services for which payment is claimed therein have been wholly performed by persons usually resident in Australia with the exception of the following:

(2) The value of services for which payment is claimed therein and which were not fully performed by persons usually resident in Australia does not exceed the value disclosed in the Statement of Origin of Goods and Services dated ..... signed by the Supplier.

4. Except to the extent of the details attached, to the best of our knowledge:

- (1) Neither the Supplier, nor the Borrower alleges that a breach of the Contract has occurred;
- (2) Neither the Supplier nor the Borrower alleges a right not to perform the Contract;
- (3) The Contract has not been terminated other than by substantial performance and has not been rescinded;
- (4) No matter arising out of the Contract is the subject of pending or proposed proceedings in a court or of pending or proposed arbitration.

For and on behalf of:

.....  
(Supplier)

.....  
Authorised Officer

## APPENDIX 2. DISBURSEMENT CLAIM

TO: Export Finance and Insurance Corporation  
Export House, 22 Pitt Street  
Sydney, New South Wales, 2000

DATE:

Dear Sirs,

1. Pursuant to the Contract with ..... ("the Borrower") dated ..... the Supplier has to date received payment of ..... due under the Contract.

2. The Supplier is entitled to receive a further payment of ..... due on ..... under the Contract for the supply of Eligible Goods or Eligible Services.

3. In accordance with the Credit Agreement between you and the Borrower the Supplier claims the sum of .....

4. No part of the amount claimed has been the subject of a previous Disbursement Claim.

5. As evidence of the Supplier's entitlement to claim under this Disbursement Claim, we attach (*documents required under the Contract*):

6. Please credit the proceeds of this Disbursement Claim to the Supplier's Account in New York, U.S.A. or alternatively convert the proceeds of this Disbursement Claim into Australian dollars and credit the proceeds to the following account in Australia:

7. Any expression defined in the Credit Agreement shall have the same meaning when used in this Disbursement Claim as is given to it in the Credit Agreement.

For and on behalf of:

.....  
(Supplier)

.....  
Authorised Officer

I/we being Authorised Officer/s of the Borrower hereby approve payment of the sum of ..... claimed by the Supplier pursuant to this Disbursement Claim.

For and on behalf of:

.....  
(Borrower)

.....  
Authorised Officer/s

## APPENDIX 3. LEGAL OPINION

In connection with the Credit Agreement dated . . . . . (hereinafter called "the Agreement") made between State Railway of Thailand as borrower (hereinafter called "the Borrower") and Export Finance and Insurance Corporation as lender (hereinafter called "the Lender"), and in connection with the guarantee dated . . . . . (hereinafter called "the Guarantee") given by the Government of the Kingdom of Thailand (hereinafter called "the Guarantor") to the Lender in relation to the obligations of the Borrower under the Agreement relating to the Credit Facility to be made available to the Borrower by the Lender, I have examined:

- (i) An executed original of the Agreement and the Guarantee;
- (ii) A copy of the resolution of the Board of Directors of the Borrower passed on authorising the execution, delivery and performance by the Borrower of the Agreement; and
- (iii) Such other documents, records, agreements, certificates and laws as I have considered relevant for the purposes of giving the opinions below.

I am of the opinion that under the law of the Kingdom of Thailand ("Thailand") as in force at the date hereof:

1. The execution, delivery and performance of the Agreement and the Guarantee by each of the Borrower and Guarantor have been duly and validly authorised in accordance with the laws and regulations of Thailand and the Agreement and the Guarantee constitutes respective legal, valid and binding obligations of the Borrower and the Guarantor enforceable in accordance with their respective terms. The respective signatories to the Agreement and the Guarantee on behalf of the Borrower and the Guarantor were duly authorised so to sign the Agreement and the Guarantee.

2. The Borrower is a juristic person duly organised and existing under the State Railway of Thailand Act and the obligations of the Borrower under the Agreement constitute its legal, valid and binding obligations enforceable against it in Thailand.

3. The Agreement and the Guarantee are in acceptable legal form under the laws of Thailand for the enforcement thereof in Thailand.

4. The execution, delivery or performance of the Agreement and the Guarantee do not and did not violate any provision of any existing law or regulation of Thailand or of any mortgage, indenture, contract or other undertaking to which the Borrower or (as the case may be) the Guarantor is a party or which is binding upon the Borrower or (as the case may be) the Guarantor or any of their respective assets.

5. All consents, licences, approvals or authorisations of, exemptions by, or registrations, or declarations with, any regulatory or governmental authority of or in Thailand required with respect to the Agreement and the Guarantee and the respective obligations expressed to be assumed therein by the Borrower and the Guarantor have been obtained or made and are valid and subsisting.

6. No material litigation, arbitration or administrative proceeding is presently pending or threatened against the Borrower or the Guarantor or any of their respective assets which relate to the transactions contemplated by the Agreement or the Guarantee or which would have a material adverse affect on the Borrower or the Guarantor.

7. Neither the Borrower nor the Guarantor is in default in the payment or performance of any of its obligations for borrowed money or for the deferred purchase price of property or services purchased or under any guarantee, and no event has occurred which is or may become (with the giving of notice or the lapse of time or both) one of those events mentioned in Article H1 of the Agreement and is continuing.

8. There are no borrowings or guarantees by the Borrower in existence to which any Disbursements made under the Agreement will be subordinated and the said Disbursements



rank and will rank at least *pari passu* with any further unsecured borrowings or guarantees to be made by the Borrower.

9. It is not necessary or advisable under the laws of Thailand in order to ensure the validity, effectiveness or enforceability of the Agreement or the Guarantee as against all persons, that the Agreement or the Guarantee be filed, registered or recorded in any public office or elsewhere or that any other instrument relating thereto be executed, delivered, filed, registered or recorded other than the necessary registration of the Credit Agreement with the Bank of Thailand.

10. The execution and delivery of the Agreement and the Guarantee by the Borrower and the Guarantor respectively and the performance of their respective obligations thereunder constitute private and commercial acts.

11. Neither the Borrower nor the Guarantor is required under the laws of Thailand to make any deductions or withholdings on account of tax or otherwise from any payment of principal, interest (under the Royal Decree issued under the Revenue Code Governing Exemption from Revenue Taxes (No. 158) B.E. 2528 (1985)) or any other sum to be made by it under this Agreement.

12. The waiver by the Guarantor of any right of immunity on the grounds of sovereignty or otherwise under Article I 1(8) of the Agreement is valid and the choices by the parties of the laws of New South Wales under Article I 1(8) of the Agreement is valid under the Conflict of Law Rules of Thailand and such laws of New South Wales will accordingly be applied by the Courts of Thailand if the Agreement or any claim under it comes under their jurisdiction upon proof of the relevant provisions of New South Wales law, and provided that such provisions are not contrary to public order and morals of Thailand.

No provisions of the Agreement conflict with any public order and morals of Thailand. Any judgment for a definite sum given by the New South Wales courts against the Borrower or the Guarantor will be admissible in evidence in any legal action or proceedings in the Courts of Thailand to enforce any obligation or claim in respect of such sum.

Terms defined in the Agreement have same meanings when used in this opinion.

Although this opinion is dated today, the Lender may continue to rely on the opinions expressed herein up to the date on which the first Disbursement is made unless I shall have notified Lender in writing of any change in such opinions.

APPENDIX 4. BORROWER’S AUTHORISATION

TO: Export Finance and Insurance Corporation  
Export House, 22 Pitt Street  
Sydney, New South Wales, 2000

DATE :

Dear Sirs,

For the purposes of the Credit Agreement between us we have appointed each of the following, whose usual signature appears below, as an Authorised Officer of the Borrower.

<i>Name</i>	<i>Title</i>	<i>Signature</i>
.....	.....	.....
.....	.....	.....
.....	.....	.....
		..... (Borrower)



APPENDIX 6. SUPPLIER'S AUTHORIZATION

TO: Export Finance and Insurance Corporation  
Export House, 22 Pitt Street  
Sydney, New South Wales, 2000

DATE:

Dear Sirs,

For the purposes of the Credit Agreement between you and the State Railway of Thailand, we have appointed each of the following, whose usual signature appears below, as an Authorised Officer of the Supplier each of whom is authorised by the Supplier to execute a document on behalf of the Supplier and to bind the Supplier as if the Supplier had executed the document itself.

Name	Title	Signature
.....	.....	.....
.....	.....	.....
.....	.....	.....

## SCHEDULE B

GUARANTEE AND INDEMNITY dated ..... 1989 made by the KINGDOM OF THAILAND represented by the Ministry of Finance of Thanon Rama VI, Bangkok 10400 Thailand, Telex Number ..... (the "Guarantor") with and for AUSTRALIAN TRADE COMMISSION trading as EXPORT FINANCE AND INSURANCE CORPORATION of 22 Pitt Street, Sydney, New South Wales, Australia (hereinafter called "EFIC").

## Whereas

The execution and delivery of this Guarantee and Indemnity (this "Guarantee") is a condition precedent to the provision, at the request of the Guarantor, by EFIC of financial accommodation under a credit facility of the equivalent in United States dollars of \$46,833,000 (the "Credit Facility") for the State Railway of Thailand (the "Borrower") pursuant to an agreement between EFIC and the Borrower (the "Credit Agreement"), made at the request of the Guarantor and dated ..... 19 .....

NOW THIS DEED WITNESSES THAT in consideration of EFIC, at the request of the Guarantor, providing financial accommodation to the Borrower from the Credit Facility pursuant to the Credit Agreement, the Guarantor (jointly and severally, if more than one) covenants and agrees with EFIC as follows:

1. *Construction*

(1) This Guarantee is intended by the parties to document two separate and independent legal obligations, one being a guarantee and the other being an indemnity, and this Guarantee should be read as though all terms, where the context permits, apply to the guarantee, on the one hand, and the indemnity, on the other.

(2) In this Guarantee words which are not defined herein but are defined in the Credit Agreement shall have the meaning defined in the Credit Agreement and, unless the context otherwise requires:

"EFIC" means Australian Trade Commission and its successors.

"Process Agent" means the person or firm presently in New South Wales, Australia whose name and address has been supplied by or on behalf of the Guarantor to EFIC.

(3) In this Guarantee:

- (a) Reference to a document (including this Guarantee) includes the document as supplemented, amended, novated, replaced or renewed;
- (b) Reference to rights or obligations includes those merged in any judgment;
- (c) Reference to any law, code, statute or regulation includes consolidations, substitutions and amendments thereof;
- (d) Words importing the singular include the plural, importing the plural include the singular, importing one gender include the other genders;
- (e) Reference to a person includes an individual, firm, company, corporation, unincorporated body or persons, or any sovereign state or agency thereof;
- (f) The headings herein are for convenience of reference only and do not affect the construction of this Guarantee;
- (g) Reference to a receiver includes a receiver and manager;
- (h) Reference to the Borrower includes a reference to any one or more of the persons named in the Credit Agreement as the Borrower.

2. *Money Secured*

For the purpose of this Guarantee the Moneys Secured are each of the following in the currency in which the amount is or becomes due, owing, payable, sustained or incurred:

- (1) The amount of all moneys from time to time due, owing or payable but remaining unpaid by the Borrower to EFIC under, or by reason of any transaction pursuant to, the Credit Agreement;
- (2) The amount of all moneys from time to time advanced or paid by EFIC to, for the accommodation of or on account of the Borrower under, or by reason of any transaction pursuant to, the Credit Agreement;
- (3) The amount of all liabilities, whether actual, contingent or prospective and whether direct or indirect, from time to time incurred by the Borrower to EFIC under, or by reason of any transaction pursuant to, the Credit Agreement;
- (4) The amount of all losses from time to time sustained and liabilities from time to time incurred, whether actual, contingent or prospective and whether direct or indirect, by EFIC under, or by reason of any transaction pursuant to, the Credit Agreement or by reason of the enforcement or attempted enforcement of the Credit Agreement;
- (5) The amount of all fees, expenses, charges, costs, duties and taxes from time to time incurred by EFIC under, or by reason of any transaction pursuant to, the Credit Agreement or by reason of the enforcement or attempted enforcement of the Credit Agreement;
- (6) The amount which would have, from time to time, become due, owing or payable but remaining unpaid by the Borrower to EFIC under, or by reason of any transaction pursuant to, the Credit Agreement if it had not become irrecoverable or if any obligation of the Borrower had not been invalid, voidable or unenforceable;
- (7) The amount which, though paid to EFIC under or pursuant to the Credit Agreement is or is to be recovered from EFIC as a result of the insolvency, winding-up or bankruptcy of the Borrower;
- (8) The amount of interest on the daily balance of so much of each of the foregoing as is not paid to EFIC from the time it is due, owing, payable, sustained or incurred until the time of payment at the rate or rates determined by EFIC under, or by reason of any transaction pursuant to, the Credit Agreement.

### 3. *Obligations*

(1) The Guarantor irrevocably and unconditionally guarantees to EFIC payment to EFIC of the Moneys Secured and agrees promptly to pay to EFIC on demand each of the Moneys Secured.

(2) As a separate and additional obligation, the Guarantor, as principal debtor agrees promptly to pay to EFIC on demand each of the Moneys Secured and irrevocably and unconditionally indemnifies EFIC against any loss sustained by EFIC as a result of:

- (a) EFIC not having received due payment of the Moneys Secured;
- (b) The Guarantor having failed to fulfil its obligations under this Guarantee; or
- (c) Any representation or warranty made by the Guarantor under this Guarantee having been untrue or misleading.

(3) The Guarantor shall promptly pay to EFIC on demand the amount, and in the currency of the amount, of all losses sustained, and all fees, expenses, charges, costs, duties and taxes incurred, by EFIC from time to time in the preparation, execution, management and enforcement of this Guarantee and as a result of the failure by the Guarantor to make due payment of any amount payable to EFIC hereunder, including any loss in Australian currency sustained as a result of the delay in exchanging different currencies.

(4) The Guarantor shall promptly pay to EFIC on demand the amount by which an amount paid or payable (whether pursuant to a judgment or otherwise) in one currency is less than the amount of Moneys Secured payable hereunder when converted at prevailing exchange rates into that currency.

(5) The Guarantor shall promptly pay to EFIC on demand interest, in the currency of the amount, on the daily balance of any amount payable to EFIC hereunder, including interest, but unpaid from the time payment is due until the time payment is made in full at the rate per cent per annum stipulated as the rate of interest payable by the Borrower under the Credit Agreement for amounts denominated in the currency of the amount or, if not such rate is stipulated or can be determined, at the rate per cent per annum decided by EFIC in its absolute discretion.

#### 4. *Payment*

(1) A written demand made by EFIC on the Guarantor for a stated amount in a stated currency shall, in the absence of manifest error, be conclusive evidence binding on the Guarantor that the Guarantor is liable hereunder to pay to EFIC the stated amount in the stated currency.

(2) All amounts payable by the Guarantor hereunder to EFIC shall be paid immediately on written demand being made by EFIC on the Guarantor at the place, before the time, and in the manner directed by EFIC in the demand.

(3) All amounts payable by the Guarantor hereunder to EFIC shall be made in full without set off or counterclaim and free and clear of and without deduction or withholding whatsoever unless required by law in which event the Guarantor shall forthwith pay to EFIC such additional amounts as will result in the receipt by EFIC of the full amount which would otherwise have been receivable and the Guarantor shall promptly furnish EFIC with evidence satisfactory to EFIC that the Guarantor has accounted to the relevant authority for the sum deducted or withheld.

(4) The Guarantor irrevocably authorises EFIC to set-off and apply against indebtedness of the Borrower of indebtedness or the Guarantor (whether actual, contingent or prospective) to EFIC any amount owing by EFIC to the Guarantor or to the Borrower on any account whatever and authorises EFIC to exercise its right of set-off against any receiver, liquidator or any person claiming through the Borrower or Guarantor.

(5) EFIC may apply and apportion towards obligations of the Guarantor moneys received pursuant to this Guarantee in such manner as EFIC sees fit.

(6) EFIC may convert any moneys received pursuant to this Guarantee into another currency at the prevailing rate of exchange.

#### 5. *Conditions*

(1) This Guarantee is a continuing guarantee and indemnity and shall remain in full force and effect until all Moneys Secured have been fully paid to EFIC, until the Credit Agreement has been fully discharged, until all obligations of the Guarantor hereunder have been fully discharged by performance and until EFIC, at the expense of the Guarantor, releases the Guarantor from all liability hereunder in writing.

(2) This Guarantee applies to present and future obligations.

(3) The obligations of the Guarantor hereunder are absolute and unconditional and do not depend upon, but if EFIC elects to do so will survive, EFIC taking proceedings, obtaining judgment, enforcing judgment or exercising any rights against any person or EFIC exercising any rights under or enforcing any securities or the Credit Agreement and the Guarantor hereby waives any rights the Guarantor may have of first requiring EFIC to do so.

(4) The Guarantor is not absolved or relieved from any obligations under this Guarantee by:

(a) Any extension of time, indulgence, forbearance, concession, waiver, compromise or compounding or release being given by EFIC to the Borrower in respect of obligation is under the Credit Agreement or to the Guarantor in respect of obligations under this Guarantee;

(b) The exercise by EFIC or the refusal, neglect or delay by EFIC to exercise any right, discretion, option or election under the Credit Agreement or this Guarantee;

- (c) The enforcement by EFIC or the refusal, neglect or delay by EFIC to enforce any right under the Credit Agreement or this Guarantee;
- (d) The extension, renewal or compromise of any rights or obligations under the Credit Agreement or this Guarantee;
- (e) The variation, amendment or novation of the Credit Agreement or this Guarantee, to the extent that it does not materially increase the maximum liability of the Guarantor hereunder in monetary terms;
- (f) The invalidity, voidability, irregularity, unenforceability or discharge of the Credit Agreement;
- (g) Any condition of the Credit Agreement or this Guarantee, not being fulfilled;
- (h) The breach by EFIC of or the failure by EFIC to comply with any provision of the Credit Agreement or this Guarantee;
- (i) The failure by the Borrower or any Guarantor to comply with any requirement of law, regulation, decree, judgment, order or obligation;
- (j) Any Disbursement under the Credit Agreement being made when the Borrower is in default under the Credit Agreement;
- (k) The refusal, neglect or delay by EFIC to give notice, make demand, pursue remedies or take proceedings against the Borrower or the Guarantor;
- (l) Any regulation, rescheduling or moratorium of any nature imposed by law, by a government or by a central bank in respect of payment of any amount to EFIC;
- (m) Any immunity from, exemption from or limitation upon the liability of the Borrower under the Credit Agreement the Guarantor under this Guarantee;
- (n) Anything done or omitted to be done which, but for this provision, might operate to absolve or relieve the Guarantor from obligations herein.

(5) The Guarantor is not absolved or relieved from any obligations under this Guarantee by:

- (a) Any death, legal limitation, disability or incapacity of,
  - (b) Any bankruptcy, winding-up, liquidation or dissolution of,
  - (c) Any appointment of a receiver or manager of or to any property, business or undertaking of,
  - (d) Any composition, arrangement or assignment of assets for creditors generally or a class of creditors of,
  - (e) Any amalgamation, reconstruction or reconstitution of,
- EFIC, the Borrower or the Guarantor.

(6) The Guarantor hereby waives any rights the Guarantor may have:

- (a) To have EFIC marshal any security, fund, asset or claim in favour of the Guarantor;
- (b) Of subrogation, indemnity or contribution against the Borrower, any Guarantor, or any person;
- (c) Of subrogation against EFIC in respect of moneys received by EFIC pursuant to this Guarantee;
- (d) To set-off or counterclaim any amount against the Borrower, any Guarantor, or any person;
- (e) To claim or prove in competition with EFIC in the bankruptcy, winding-up or liquidation of the Borrower, any Guarantor, or any person;



- (f) Which would in any way reduce the prospect or opportunity of EFIC to recover payment of any Moneys Secured in priority to any other person;
- (g) To have EFIC give notice, make demand, take proceedings, pursue remedies, sign judgment or execute judgment against the Borrower, or any other person or against any property before making demand on the Guarantor or enforcing obligations under this Guarantee;
- (h) To object to the jurisdiction of a court, the service of its process or the enforcement of its orders or judgments including any objection founded on sovereign or statutory immunity;
- (i) To assert a defence based on the existence of another guarantor or surety or on any exchange or currency control law or regulation.

(7) In the event of the bankruptcy, winding-up, liquidation or dissolution of the Borrower, the Guarantor authorises EFIC in respect of moneys received by EFIC pursuant to this Guarantee:

- (a) To retain and to carry the moneys to a suspense account,
- (b) To prove in the bankruptcy, winding-up, liquidation or dissolution for all such moneys, until EFIC has received full payment of the indebtedness of the Borrower or the Guarantor.

(8) The Guarantor agrees that:

- (a) It is liable to EFIC hereunder notwithstanding that any of the Securities or an obligation of the Borrower may not have matured;
- (b) EFIC is not accountable for any amount which it has not actually received and before the time it was actually received;
- (c) Liability for any amount paid to EFIC and any security therefor revives in the event that the payment is void, voidable or set-aside or constitutes a preference or the claim by EFIC to any other indebtedness by any person is thereby reduced;
- (d) Any power, remedy, right or privilege of EFIC hereunder may be exercised or declined to be exercised in the absolute and unfettered discretion of EFIC and EFIC shall bear no liability whatever therefor,
- (e) The rights, powers and remedies of EFIC hereunder are cumulative and are not exclusive of any rights, powers and remedies of EFIC provided by law,
- (f) The failure by EFIC to exercise, or delay the exercise of, rights, powers or remedies shall not operate as a waiver thereof and shall not preclude the exercise of any rights, powers or remedies hereunder,
- (g) Any waiver or consent by EFIC hereunder is effective only if in writing signed by EFIC,
- (h) No rights of EFIC under the Credit Agreement shall be merged in this Guarantee,
- (i) Nothing herein merges, discharges or postpones any security (including the Securities) now or hereafter available to EFIC.

(9) EFIC may combine any more than one account of the Guarantor held alone or jointly with EFIC and set-off an amount standing to the credit of an account against an amount in debt in another account notwithstanding any agreement to the contrary.

#### 6. *Representations and Warranties*

The Guarantor for itself hereby and continuously represents and warrants to EFIC that by reference to the facts existing at the time of the representation and warranty:

- (1) It has the legal capacity to undertake the obligations herein and to carry on its business as it is being conducted and to own its assets.
- (2) It has power to execute, deliver and perform its obligations under this Guarantee, and all necessary other action has been taken to authorise the execution, delivery and per-

formance of the Guarantee and no limitation on its powers to give guarantees will be exceeded as a result of this Guarantee.

(3) This Guarantee constitutes valid and legally binding obligations enforceable in accordance with its terms.

(4) Its execution and delivery of, its performance of obligations under, and its compliance with the provisions of, this Guarantee will not:

- (a) Contravene any existing applicable law, statute, rule or regulation or any judgment, decree or permit to which it is subject;
- (b) Conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which it is a party or is subject or by which it or any of its property is bound;
- (c) Result in the creation or imposition of, or oblige it to create, any encumbrance on any of its assets, rights or revenues.

(5) No litigation, arbitration or administrative proceeding is taking place, pending or, to its knowledge threatened which could have a materially adverse effect on the business, assets or financial condition of the Guarantor or its ability to satisfy its obligations hereunder.

(6) Every consent, authorisation, licence or approval of or registration with or declaration to governmental or public bodies or authorities or courts required in connection with, the execution, delivery, validity, enforceability or admissibility in evidence of this Guarantee or its performance of its obligations under this Guarantee has been obtained or made and is in full force and effect.

(7) Its obligations under this Guarantee are direct, general and unconditional obligations and rank at least *pari passu* with all its other present and future unsecured and unsubordinated obligations (including contingent obligations).

(8) It is not (nor would with the giving of notice or lapse of time or both be) in breach of or in default under any agreement of indebtedness to which it is a party or by which it may be bound.

(9) The information, exhibits and reports it furnished to EFIC in connection with the negotiation and preparation of this Guarantee are true and accurate in all material respects and not misleading.

(10) The appointment of the Process Agent is irrevocable.

### 7. Undertakings

The Guarantor undertakes with EFIC that it will:

(1) Promptly inform EFIC of any occurrence of which it becomes aware which might adversely affect its ability to perform its obligations under this Guarantee or the ability of the Borrower to perform its obligations under the Credit Agreement;

(2) Obtain or cause to be obtained, maintain in full force and effect and comply in all material respects with the conditions and restrictions (if any) imposed in, or in connection with, every consent, authorisation, licence or approval of governmental or public bodies or authorities or courts and do, or cause to be done, all other acts and things which may from time to time be necessary or desirable under applicable law for the continued due performance of all of its obligations under this Guarantee;

(3) Ensure that its obligations under this Guarantee shall at all times rank at least *pari passu* with all its other present and future unsecured and unsubordinated obligations (including contingent obligations);

(4) At its own expense, execute and deliver all such guarantees, indemnities and other documents and shall do such things as EFIC considers necessary or desirable to further or more satisfactorily assure or secure to EFIC its rights under this Guarantee.

### 8. *Assignment*

(1) This Guarantee shall be binding upon the Guarantor and their respective successors and ensure for the benefit of EFIC and its successors.

(2) The Guarantor may not assign or transfer any of its rights or obligations under this Guarantee.

(3) EFIC may assign all or any of its rights hereunder and give notice thereof to the Guarantor.

### 9. *General*

(1) Any notice or certificate to be given or demand to be made upon the Guarantor hereunder shall, without prejudice to another mode of service permitted or required by law, be deemed to be duly given or made if made in written form under the name of EFIC or a Manager of EFIC and either:

(a) Left at or sent through the post in a prepaid letter addressed to the Guarantor at its address described herein or its last known address or, if a corporation at its registered office, or delivered personally to the Guarantor; or

(b) Sent by telex transmission to the telex number described herein.

(2) A notice, certificate or demand shall be deemed to have been received by the Guarantor:

(a) If sent through the post, at the expiration of forty-eight hours after it is posted;

(b) If sent by telex, immediately upon acknowledgement of the answerback code, and

(c) If there is more than one Guarantor, when it is received or deemed to be received by any one person comprising the Guarantor.

(3) A notice, certificate or demand signed by a Manager of EFIC shall be deemed to have been signed by EFIC.

(4) For the obligations and liabilities of the Guarantor time is of the essence of this Guarantee.

(5) Any provision hereof prohibited by or unlawful or unenforceable under any applicable law actually applied by any court of competent jurisdiction shall, to the extent required by such law, be severed from this Guarantee and rendered ineffective so far as is possible without modifying the remaining provisions of this Guarantee. However, where the provisions of any such applicable law may be waived, they are hereby waived by the parties hereto to the fullest extent permitted by such law, to the end that this Guarantee shall be a valid, binding and enforceable guarantee.

(6) Unless its application is mandatory by law, no statute, proclamation, order, regulation or moratorium (present or future) shall apply to this Guarantee so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers or remedies hereby conferred on EFIC.

### 10. *Law and jurisdiction*

(1) This Guarantee shall be governed by and construed in accordance with the laws of New South Wales, Australia.

(2) The Guarantor hereby agrees that any legal action or proceedings in connection with this Guarantee against the Guarantor or its assets may be brought in the courts of New South Wales or any other jurisdiction in Australia, and hereby irrevocably and unconditionally submits to the jurisdiction of such courts.

(3) The Process Agent is irrevocably appointed by the Guarantor to accept service of any document or process pertaining to litigation in courts of Australia.

EXECUTED AS A DEED at

SIGNED SEALED and DELIVERED by  
on behalf of the Ministry of Finance  
in the presence of:

.....

.....

Name:

Address:

\_\_\_\_\_