

Annex G

NOVEMBER 1987
(Revised **March**

~~1999)~~September 2004)

**PREMIUM AGREEMENT (DOLLAR FACILITY)
COMPLEX
INDEX OF CLAUSES**

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PREMIUM AGREEMENT NO:

THIS AGREEMENT is made the _____ day of _____ BETWEEN the SECRETARY OF STATE acting by the EXPORT CREDITS GUARANTEE DEPARTMENT ("ECGD") of the [one] [first] part and
[full name of the Supplier] ("the Supplier") of
[address] (company registration no. []) of the [other] [second] part [and
[full name of recourse backer] of
[address] (company registration no. [])
(hereinafter together with the Supplier called "the Companies") of the third part]

WHEREAS

1 the Supplier has entered into a contract with [full name of the Buyer] of _____ dated the _____ day of _____ and

2 [full name of the Banker] ("the Banker") of [full name of the Lenders]¹ and ECGD have agreed to enter into an agreement ("the Loan Agreement" reference to which herein shall be construed as reference to the Loan Agreement as from time to time amended by agreement between the parties thereto) with [full name of the Borrower] ("the Borrower") of [Borrower's full address] [and [full name of [Co-Obligor]]] for the purpose of assisting the financing of that contract and

3 the [Supplier has] [Companies have] requested ECGD and ECGD has agreed to enter into an agreement ("the Support Agreement") in the terms set out in the Appendix hereto with the Banker ²[and the Lenders] in respect of the Loan Agreement

NOW THEREFORE it is agreed as follows -

¹ Delete for Sole Lender cases

² Delete for Sole Lender cases

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1 ECGD will enter into the Support Agreement with the Banker ³[and the Lenders]

2 INTERPRETATION

In this Agreement

2.1 ~~“Affiliate~~Application Form” means ~~in relation to the Supplier any company which is a member of the same group of companies or any other~~the application form submitted by the Supplier to ECGD requesting ECGD to support the financing of the Supply Contract, a copy of which application form is annexed to this Agreement

~~2.2 “Affiliate” means in relation to the Supplier any company which is a member of the same group of companies or any person or other legal entity which is~~“Associate” means any company (other than the Supplier or a Controlled Company), person or other legal entity which is a party to any joint venture ~~or~~, consortium or other similar arrangement ~~with the Supplier in connection with the Supply Contract~~(1) which is, or will be, involved in the performance or financing of all or any part of the Supply Contract or any related agreement and (2) to which the Supplier is also a party

2.~~23~~34 “CIRR Rate” means the 2-5 year Sterling contract Commercial Interest Reference Rate specified under the OECD Consensus and displayed from time to time on the ECGD website @ www.ecgd.gov.uk

2.~~34~~35 “Consensus” means the OECD arrangements on guidelines for officially supported export credits

~~2.45 “control” and “controlled” means, in relation to a company, control of that company by virtue of (1) contractual arrangements~~

³ Delete for Sole Lender cases

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~~(including, without limitation, provisions in that, or any other, company's memorandum and articles of association or the equivalent documents in the case of a company incorporated in a jurisdiction other than that of England and Wales) and/or (2) ownership (whether directly or by nominees or trustees) of the majority of the voting share capital of that company~~

~~2.6 "Controlled Company" means any company (in any jurisdiction) which is controlled by the Supplier~~

2.7 "Corrupt Activity" means any activity (including without limitation, the offering of any payment reward or other advantage to any public official or other person ~~and the concealment use or facilitation of the concealment or use by another person of assets of any sort resulting from criminal conduct~~) which

2.47.1 is subsequently found by a court in a competent jurisdiction (after all available rights of appeal have been exhausted) to have rendered the Supply Contract illegal, void, voidable or unenforceable under its governing law, or

2.47.2 the Supplier (including any employees), or any of its Affiliates of its Affiliates Controlled Company or anyone (including any of the Suppliers' or any of its Affiliates' employees) acting on employee) acting (with due authority) on the Supplier's, or any Controlled Company's or any Affiliates' behalf of, ~~or~~ with the prior consent Supplier's, or its, subsequent acquiescence or as a result of Negligence on the part of the Supplier ~~of the Supplier or any of its Affiliates has freely~~ has, other than under duress, admitted engaging in, or

2.47.3 is subsequently found by a court in any competent jurisdiction outside the United Kingdom (after all available rights of appeal

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have been exhausted) to constitute an offence under any applicable law; or

2.47.4 is subsequently found by a court in the United Kingdom (after all available rights of appeal have been exhausted) to constitute an offence under the ~~Prevention of Corruption Acts 1889 to 1916 (as from time to time amended or re-enacted) or the Proceeds of Crime Act 2002 (as from time to time amended or re-enacted)~~Relevant Acts (except by virtue of an amendment to the Relevant Acts having retrospective effect)

and which activity, in respect of paragraphs 2.47.1, 2.47.2 and 2.47.3 above corresponds to an offence under the ~~Prevention of Corruption Acts 1889 to 1916 (as from time to time amended or re-enacted) or the Proceeds of Crime Act 2002 (as from time to time amended or re-enacted)~~Relevant Acts (except by virtue of an amendment to the Relevant Acts having retrospective effect)

2.8 "Negligence" means the failure to take all reasonable steps to prevent corrupt activity occurring.

2.58 "Eligible Bank Support Agreement" means an agreement between an Eligible Bank which has taken an assignment of all or any part of the rights and benefits under the Loan Agreement ³[either of a Lender in accordance with Clause 11.3 thereof or] of ECGD ³[thereunder] in accordance with Clause 11.4 thereof of the one part and ECGD of the other part whereby ECGD guarantees on the terms (mutatis mutandis) set out in Clause 4.1 of the Support Agreement to pay to that Eligible Bank that proportion of the unpaid amounts referred to in that Clause to which that Eligible Bank shall have become entitled by virtue of such assignment as aforesaid

2.69 "Immaterial Default" means any default by the Supplier in the observance or performance of its obligations under the Supply Contract

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which in the opinion of ECGD is neither material nor substantial or which in the opinion of ECGD has been caused by

2.69.1 an act or omission by the Buyer not induced or provoked by the Supplier or

2.69.2 the prevention of or delay in the transfer of funds in respect of the Supply Contract resulting from the occurrence outside the UK of political events economic difficulties legislative or administrative measures or a general moratorium or

2.69.3 any measure or decision (including the non-renewal or cancellation of an export licence) of any government other than that of the UK which in whole or in part prevents performance of the Supply Contract or

2.69.4 the occurrence outside the UK of hostilities civil disturbance or natural disaster which in whole or in part prevents performance of the Supply Contract or

2.69.5 the cancellation or non-renewal of a UK export licence or

2.69.6 any restrictions introduced in the UK after the date of the Supply Contract which prevent performance of the Supply Contract other than the refusal to grant a UK export licence or other authorisation necessary for performance of the Supply Contract if such authorisation was required on the date of the Supply Contract

2.710 “OECD” means the Organisation for Economic Co-operation and Development

2.11 “Relevant Acts” means the Prevention of Corruption Acts 1889 to 1916 (as from time to time amended or re-enacted including in the Anti-Terrorism Crime and Security Act 2001)

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⁴[2.812 "Sterling Equivalent" means in relation to any amount of administrative charge and/or premium expressed in dollars under the terms of this Agreement such amount converted into sterling at a rate being the closing mid-point of the spot buying and selling rates of exchange of dollars for sterling as quoted in the "Financial Times" which prevailed on a date four Banking Days prior to the due date for payment by the [Supplier] [Companies] to ECGD of any such amount. If it is not possible to arrive at such a rate in this manner ECGD will advise the [Supplier] [Companies] on the rate to be used]

2.913 Any expression defined in the Loan Agreement or the Support Agreement shall have the same meaning when used in this Agreement

2.104 Where the context of this Agreement so allows words importing the singular include the plural and vice versa

2.145 Unless otherwise indicated reference to a specified Clause or Appendix shall be construed as reference to that specified Clause of or Appendix to this Agreement

2.126 Clause headings are for ease of reference only

⁵3 PAYMENT OF ADMINISTRATIVE CHARGE AND PREMIUM

The [Supplier agrees] [Companies agree] to pay to ECGD on signature of this Agreement premium amounting to \$ _____ of which \$8,000 shall constitute an administrative charge and shall not be refundable in any event. Payment of premium shall be made in dollars to :

⁴ This Clause should be inserted if the Supplier/Companies have opted to pay premium in sterling rather than dollars

⁵ The Supplier/Companies have the option to elect to pay premium either in dollars or the Sterling Equivalent thereof. If it has been agreed that premium will not be paid in full on signature of this Agreement this Clause 3 should be deleted and the appropriate Clause from either Amendment Sheet A or Amendment Sheets B1 or B2 substituted.

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Citibank NA, New York
CHIPS Number :008
ABA: 021000089
SWIFT Address: CITIUS33

for the account of: Bank of England, London
Account number: 36148269
for credit to ECGD
quoting reference "ECGD - Premium BD ⁶[]"

or such other account as ECGD may from time to time notify the [Supplier]
[Companies]

⁷[The [Supplier agrees] [Companies agree] to pay to ECGD on signature of this Agreement the Sterling Equivalent of premium amounting to \$ of which the Sterling Equivalent of \$ shall constitute an administrative charge and shall not be refundable in any event]

4 INFORMATION REQUIRED FROM THE SUPPLIER

4.1 The Supplier shall promptly upon becoming aware of the same notify ECGD in writing of

4.1.1 any amounts which have fallen due for payment and any amounts paid by the Supplier to the Banker in pursuance of the letter written to the Supplier by the Buyer in the terms set out in Appendix C ⁸[B] to the Loan Agreement

⁶ ECGD Guarantee Reference

⁷ This wording should be used in this Clause in place of the standard wording if the Supplier/Companies have opted to pay premium in sterling

⁸ Appropriate reference in Sole Lender cases

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4.1.2 particulars of circumstances which have arisen and which give have given or may give rise to claims by the Buyer against

[name of any party providing a guarantee or bond pursuant to the Supply Contract] under [the performance bond] [the guarantee] given by [that party] and referred to in the letter in the form of Appendix D ⁸[C] to the Loan Agreement and the amount if known to the Supplier of any such claim

4.1.3 any payment not made on the due date therefor under the Supply Contract

4.1.4 the occurrence of any act or event which in the opinion of the Supplier will or may render the Supplier unable to fulfil or which will or may prevent or delay the fulfilment of its obligations under the Supply Contract or which will or may lead to the termination of the Supply Contract or to arbitration thereunder or in connection therewith

4.1.5 the commencement of any arbitration or termination proceedings under the Supply Contract

4.2 The Supplier agrees to provide at its own expense such further information as ECGD may from time to time require

5 THE OBLIGATIONS OF THE SUPPLIER

The Supplier agrees with ECGD

5.1 to exercise or to refrain from exercising its rights to suspend performance of or to terminate the Supply Contract under any of the provisions thereof only in accordance with the written requirements of ECGD

5.2 not to amend or acquiesce in any departure from the terms of the Supply Contract except in accordance with the prior written approval of

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ECGD PROVIDED THAT any variation to the technical specifications or in the scope of goods to be supplied or in the scope of the services to be rendered under the Supply Contract may be made without such prior written approval 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

⁹[5.3 to pay to the Banker all sums which the Buyer authorises the Supplier to pay the Banker]

5.4 to carry out such acts specified in Clauses 5.3.1, 5.3.2, 5.3.3, 5.3.4, 6.2.1, 6.2.2, 6.2.3, 8.2.1 and 8.2.2 of the Loan Agreement as are expected to be performed by the Supplier

5.5 not to assign or otherwise transfer either the benefit or the burden of the Supply Contract to any person whatsoever without the prior approval in writing of ECGD

⁹[5.6 to pay all legal and other expenses incurred by ECGD arising from amendments to the Supply Contract and from consequential amendments to the Loan Agreement and to any related documents]

5.7 that if the Borrower makes late payment of all or any part of any amount payable under the Loan Agreement the amount so paid shall be applied in accordance with the provisions of Clause 9.6 of the Loan Agreement and any claim the Supplier may have in relation thereto is hereby waived until ECGD has ceased to have any liability under the Support Agreement

⁹ Where recourse obligations are on a joint and several basis Clauses 5.3 and 5.6 should be transferred to a new Clause 6 and renumbered "6.1" and "6.2" respectively. The new Clause 6 should commence as follows:

"6 THE OBLIGATIONS OF THE COMPANIES
The Companies agree with ECGD"

Clauses 5.4, 5.5, 5.7, to 5.8, 5.9, 5.10 and 5.11~~14~~ and Clauses 6-11 should be re-numbered accordingly

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¹⁰[5.8 not to submit to the Banker any Disbursement Claim pursuant to Clause 6 of the Loan Agreement before the related premium and any applicable interest thereon has been paid to ECGD in accordance with Clause 3]

5.9 that the Supplier shall

~~5.9.1 permit~~ any person authorised by ECGD ~~may and, if other than ECGD personnel, approved by the Supplier (such approval not to be unreasonably withheld or delayed by the Supplier) to~~ may visit any of its ~~UK~~ premises where records relating to the ~~administration of this Agreement and administration of this Agreement and performance of of~~ the Supply Contract and the making of Disbursement Claims under the Loan Agreement are kept during business hours for the sole purpose of inspecting, auditing and taking copies of any records, other than those covered by legal privilege, preserved in any medium or form including records stored electronically which ~~relate specifically to the performance of the Supply Contract and the making of Disbursement Claims under the Loan Agreement (the "Administration Records")~~

~~5.9.1 relate to any measures it has taken to prevent and deal with any Corrupt Activity in relation to it obtaining the Supply Contract or its subsequent financing under the Loan Agreement.~~

~~5.9.1 relate to any measures it has taken to prevent detect and deal with any Corrupt Activity in relation to it obtaining the Supply Contract or its subsequent financing² if ECGD confirms in writing to the Supplier that it has reasonable grounds for suspecting that an employee, [partner]¹⁴, agent or intermediary of the Supplier has been engaged in any Corrupt Activity (or any~~

¹⁰ Delete Clause 5.8 if all premium is paid in full on signature of this Agreement

¹¹ Include if supplier is a partnership

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~~activity which, subject to the occurrence of the subsequent events referred to in Clauses 2.7.1, 2.7.3 or 2.7.4, would amount to Corrupt Activity) in connection with the Supply Contract, permit an independent third party acceptable to the Supplier and ECGD to visit any of its UK premises where records relating to the obtaining and performance of the Supply Contract and the making of Disbursement Claims under the Loan Agreement~~
~~5.9.2 relate to it obtaining the Supply Contract~~

~~5.9.2 relate to it obtaining the Supply Contract~~

~~5~~

~~5.9.3 relate to the performance of the Supply Contract and the making of Disbursement Claims under the Loan Agreement and~~

~~5.9.3 relate to the performance of the Supply Contract and the making of Disbursement Claims under the Loan Agreement and 5.9.4 relate to the employment of are kept during business hours for the sole purpose of inspecting and auditing any records, other than those covered by legal privilege, preserved in any medium or form including records stored electronically which relate (a) specifically to the Supplier's obtaining of the Supply Contract or the employment of,~~

~~5.9.4 relate to the employment of and payments to or for the benefit of any agents or other intermediaries involved directly or indirectly at any time with the Supply Contract and (b) only to the period up to the date of award of the Supply Contract (the "Contract Records" and, together with the Administration Records, the "Records"), provided that ECGD may only inspect and audit Contract Records for the sole purpose of verifying statements made, and information given, to ECGD by the Supplier in the Application Form and~~

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~~5.10 that it will~~9.3 in relation to Clauses 5.9.1 and 5.9.2 furnish such oral or written explanations thereof within its knowledge as ECGD's authorised ~~representatives~~representative or ECGD's personnel (as the case may be) may reasonably require and permit them to take any copies of any of the Administration Records they may reasonably require upon condition that ECGD will

5.~~10~~9.3.1 ~~give not less than five Business Days notice of such visit~~

~~5.10.2 observe any legal privilege that may exist in respect of records held by the Supplier~~5.10 visits referred to in Clauses 5.9.1 and 5.9.2

5.9.3 ~~21~~ on request pay to the Supplier the cost of supplying any copies of records supplied ~~records supplied and the Administration Records~~

~~5.10.4 hold in confidence~~9.3.32 hold in confidence, and not disclose to any third party without the Supplier's prior written consent, the Records, the contents thereof and all written or oral explanations provided in respect thereof (the "Confidential Information"), subject to ECGD's obligations at law or under the Code of Practice on Access to Government Information (the "Code") or its obligations to Parliament as a Government Department and ECGD's right to disclose ~~such information~~any of the Confidential Information in confidence to its reinsurers or professional advisers in connection with its portfolio management ~~any information or copy record obtained from the Supplier and destroy such records or if~~activities, provided, in the case of such reinsurers or professional advisers, that ECGD shall (a) ensure that all persons to whom any of the Confidential Information is disclosed in accordance with this clause shall hold the same in confidence and ECGD

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shall be responsible for any breach of confidence by any reinsurer or professional adviser to whom it discloses any of the Confidential Information; and (b) to the extent permitted by law, give the Supplier reasonable notice of its intention to disclose any Confidential Information under the Code and consult with the Supplier in deciding whether to disclose any Confidential Information under the Code and

5.9.3.4 destroy the Confidential Information or, if so requested, return ~~them~~it to the Supplier when ECGD considers ~~they have~~that it has served the purpose for which ~~they were~~it was obtained

~~5.11.1~~ 0 that nothing in Clause 5.9 shall

~~5.11.1 if the Supplier or anyone (including any of its employees) acting on its behalf with due authority or with its prior consent or subsequent acquiescence engages in any Corrupt Activity in connection with the Supply Contract or any related agreement, undertaking, consent, authorisation or arrangement of any kind, or~~

5.10.1 oblige the Supplier or ECGD to act unlawfully or in breach of any regulation or requirement of any regulatory or investigatory body or any duty of confidentiality or

~~5.11.2~~ if, with 0.2 be construed as consent by the Supplier to ECGD to disclose any Confidential Information in accordance with the Code

5.11 that if the Supplier or any of its employees or anyone acting on its behalf (including agents, intermediaries, consultants and subcontractors) or any Affiliate 's prior consent or subsequent acquiescence, an Affiliate or, any Controlled Company or anyone ~~(including any of the Affiliate's~~

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~~employees) acting on an Affiliate's behalf~~~~the Supplier's, or that Controlled Company's,~~ ~~behalf of the Affiliate~~ with due authority, ~~or~~ with the ~~Supplier's Affiliate~~~~Supplier's, or that Controlled Company's~~ prior consent or ~~subsequent~~ acquiescence ~~or as a result of Negligence on the Supplier's part, has engaged, or~~ engages, in any Corrupt Activity in connection with the Supply Contract ~~or any related agreement, undertaking, consent, authorisation or arrangement of any kind,~~ the Supplier will on demand pay to ECGD

5.11.~~31~~ any amounts that ECGD certifies it has paid to the Banker in respect of any loss or expense the Banker has incurred in respect of amounts advanced under the Loan Agreement, ~~and]~~

~~44~~¹²[5.11.~~42~~ any amounts that ECGD certifies as being the net cost to ECGD of making payments to the Banker in respect of advances under the Loan Agreement by way of interest equalisation or make up, ~~and]~~

5.11.~~53~~ any amounts that ECGD certifies it has incurred by way of interest, costs, expenses and legal fees, under or in connection with the Loan Agreement, the Support Agreement or this Agreement

following the earlier of the date on which the relevant Corrupt Activity occurred or the date with effect from which the Supply Contract, or any related agreement, undertaking, consent, authorisation or arrangement of any kind became illegal, void or unenforceable under its governing law as a result of that activity

~~5.12 that if the Supplier becomes aware of any corrupt activity or has any reason to suspect corrupt activity by any person including any of its Affiliates that any Associate or anyone (including any of its employees) acting on its behalf (with due authority) or with its~~

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~~subsequent acquiescence has engaged in Corrupt Activity in connection with the Supply Contract or any related agreement undertaking consent, authorisation or arrangement of any kind the Supplier shall promptly notify ECGD accordingly and supply ECGD will full details of the Corrupt Activity or alleged Corrupt Activity in question save where such notification would, or might reasonably be argued to, constitute the offence of “tipping off” under section 333 of the Proceeds of Crime Act 2002~~

5.13 that (1) the Supplier shall have required or shall require anyone (including any of its employees, agents, intermediaries, consultants and subcontractors) acting on its behalf with due authority and any Affiliate and involved in obtaining or performing the Supply Contract not to engage in any Corrupt Activity (or any activity which, subject to the occurrence of the subsequent events referred to in paragraphs 2.7.1, 2.7.3 and 2.7.4 would amount to Corrupt Activity) in connection with the Supply Contract (2) will monitor compliance with that requirement and (3) will take appropriate action against anyone found to have engaged in Corrupt Activity

~~5.14 that if the Supplier gives a false or untrue representation at 9.2.1 of the Application form, or fails to comply with the representations at 9.2.2 and 9.2.3 of the Application form, the ECGD will impose a fine commensurate with the circumstances and level of misrepresentation made.~~

5.14 the Supplier will not unreasonably delay or withhold consent to disclosure by ECGD of any matters which are otherwise confidential by virtue of the provisions of the ECGD Application Form

6 UNDERTAKING BY ECGD

Provided that

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6.1 [the Supplier is not] [¹²³[neither] of the Companies is] in breach of any of [its] [their] obligations to ECGD under this Agreement and the Supplier is not in breach of any of its obligations to the Buyer under the Supply Contract and

6.2 circumstances have arisen in which in accordance with the provisions of Clause 10 of the Loan Agreement the ¹³⁴[Lenders] ¹⁴⁵[Banker] and/or ECGD cease to be under any obligation to make further Advances and

¹⁵⁶6.3 the Supplier is (and remains) entitled to terminate the Supply Contract by reason of those circumstances having arisen

ECGD hereby undertakes that it will direct the ¹²⁴[Lenders] ¹³⁵[Banker] to exercise ¹²⁴[their] ¹³⁵[its] option to make or continue to make Advances and to pay the same to the Supplier (and will itself where appropriate do likewise) subject always to the provisions of the Loan Agreement and provided always that if the Buyer has exercised its right to terminate the Supply Contract under any provision thereof or if ECGD requires the Supplier to exercise its right to terminate the Supply Contract the amount to be paid to the Supplier shall be limited to the amount due to it in respect of UK Goods and UK Services under the Supply Contract in the event of such termination

7 REOURSE

7.1 The premium hereby payable is not intended to and does not cover payments made by ECGD to the Banker under Clauses 4 and/or 7 of the Support Agreement or under the equivalent clauses in any Eligible Bank Support Agreement by reason of any default by the Borrower at any time when

¹²³ If more than two Companies are to sign this Agreement replace "neither" with "none"

¹³⁴ Delete for Sole Lender cases

¹⁴⁵ Insert for Sole Lender cases

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7.1.1 the Supply Contract has been terminated by the Buyer under the terms thereof owing to the default of the Supplier or

7.1.2 a default by the Supplier under the terms of the Supply Contract has occurred and remains unremedied

7.2 Whenever ECGD makes payment to the Banker of any sum under Clauses 4 and/or 7 of the Support Agreement or under the equivalent clauses in any Eligible Bank Support Agreement in either of the circumstances described in Clauses 7.1.1 and 7.1.2 the [Supplier] [Companies] shall pay to ECGD in dollars within 90 days of ECGD's demand in writing an amount equal to the sum so paid by ECGD to the Banker unless within such period ECGD confirms in writing to the Supplier that the default of the Supplier is an Immaterial Default. Payment shall be made to the account specified in Clause 3 quoting reference "ECGD – Recourse ¹⁶ H" ¹⁷ L"

¹⁸*[7.2 Whenever ECGD makes payment to the Banker of any sum under Clauses 4 and/or 7 of the Support Agreement or under the equivalent clauses in any Eligible Bank Support Agreement in either of the circumstances described in Clauses 7.1.1 and 7.1.2 the [Supplier] [Companies] shall pay to ECGD in sterling within 90 days of ECGD's demand in writing an amount equal to the sum so paid by ECGD to the Banker converted at a rate being the closing mid-point of the spot buying and selling rates of exchange of dollars for sterling as quoted in the "Financial Times" which prevailed at the close of business on the date on which such sum was paid by ECGD to the Banker unless within such period ECGD confirms in writing to the Supplier that the default of the Supplier is an Immaterial Default]*

¹⁶ **It is essential that the Supplier's attention is drawn to this important proviso as early as possible**

⁴⁶ **-ECGD Guarantee Reference**

¹⁷ **ECGD Guarantee Reference**

¹⁷⁸ This wording should be used for Clause 7.2 in place of the standard wording if the Supplier/Companies have opted to pay premium in sterling

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7.3 Whenever the Borrower fails to repay to ECGD through the Banker any amount due to ECGD under the provisions of the Loan Agreement at a time when the Supply Contract has been terminated by the Buyer under the terms thereof owing to the default of the Supplier or any default by the Supplier under the terms of the Supply Contract has occurred and remains unremedied the [Supplier] [Companies] shall pay to ECGD in dollars within 90 days of ECGD's demand in writing an amount equal to the amount so due to ECGD unless within such period ECGD confirms in writing to the Supplier that the default of the Supplier is an Immaterial Default. Payment shall be made to the account specified in Clause 3 quoting reference "ECGD – Recourse ⁴⁸[~~—~~]"¹⁹[]"

²⁰*[7.3 Whenever the Borrower fails to repay to ECGD through the Banker any amount due to ECGD under the provisions of the Loan Agreement at a time when the Supply Contract has been terminated by the Buyer under the terms thereof owing to the default of the Supplier or any default by the Supplier under the terms of the Supply Contract has occurred and remains unremedied the [Supplier] [Companies] shall pay to ECGD in sterling within 90 days of ECGD's demand in writing an amount equal to the amount so due to ECGD converted at a rate being the closing mid-point of the spot buying and selling rates of exchange of dollars for sterling as quoted in the "Financial Times" which prevailed at the close of business on the due date for payment of such amount unless within such period ECGD confirms in writing to the Supplier that the default of the Supplier is an Immaterial Default]*

7.4 If any amount is not paid by the [Supplier] [Companies] in accordance with Clause 7.2 or 7.3 the [Supplier] [Companies] shall pay to ECGD from the date 90 days after the date of ECGD's written demand until the payment of such amount interest on such amount calculated from day to day at the

⁴⁸ ~~ECGD Guarantee Reference~~

¹⁹ ECGD Guarantee Reference

~~49~~²⁰ This wording should be used for Clause 7.3 in place of the standard wording if the Supplier/Companies have opted to pay premium in sterling

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rate of 1.5% above the CIRR Rate applicable to the period during which such amount remains unpaid or at 5% per annum whichever is the higher

7.5 If ECGD has exercised the option contained in Clause 7.1 of the Support Agreement or under the equivalent clause(s) in any Eligible Bank Support Agreement then for the purpose of Clause 7.2 ECGD shall be deemed to have made such payments at the time it would have made them under Clause 4 of the Support Agreement or under the equivalent clause(s) in any Eligible Bank Support Agreement had it not exercised the said option

7.6 Notwithstanding the above provisions the liability of the [Supplier] [Companies] under this Clause 7 shall not exceed \$

²⁰¹~~7.6~~ *Notwithstanding the above provisions the liability of the [Supplier] [Companies] under this Clause 7 shall not exceed ²⁴²£*]

8 CONDITIONS FOR RELEASE FROM RECOURSE

8.1 The [Supplier] [Companies] will be released completely from [its] [their] obligations under Clauses 7.2 and 7.3 if ECGD is satisfied (and so states in writing) that

8.1.1 the Buyer has given an unconditional acknowledgement in writing to the Supplier that all the Supplier's obligations under the Supply Contract have been performed and

8.1.2 the Supplier has given an unconditional certificate in writing to ECGD that all its said obligations have been performed; accompanied by a copy of the Buyer's said acknowledgement and any other documentation which ECGD may require in writing

²⁰¹ This wording should be used in this Clause 7.6 in place of the standard wording if the Supplier/Companies have opted to pay premium in sterling

²⁴² This sterling limit should be calculated by converting the dollar recourse amount required into sterling at a rate being the closing mid-point of the spot buying and selling rates of exchange of dollars for sterling as

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8.2 The [Supplier] [Companies] may be released from [its] [their] obligations under Clauses 7.2 and 7.3 if the Supplier

8.2.1 can satisfy ECGD that a period of twelve months has elapsed following the expiry of any guarantee/warranty/maintenance period under the Supply Contract or under any bond or guarantee given in connection therewith and the Supplier gives an unconditional certificate in writing to ECGD that all its obligations under the Supply Contract have been performed together with any other documentation which ECGD may require in writing or

8.2.2 gives a conditional certificate in a form approved by ECGD

PROVIDED THAT

8.2.3 the [Supplier] [Companies] will not be released from [its] [their] obligations under Clauses 7.2 and 7.3 at any time when

8.2.3.1 an event of default has occurred and subsists under the Loan Agreement unless ECGD is satisfied that such default is due to or arises from an Immaterial Default or is unconnected with performance under the Supply Contract or arose solely from circumstances outside the knowledge or control of the Supplier or

8.2.3.2 the [Supplier] [Companies] [is] [are] in breach of any of [its] [their] obligations to ECGD hereunder

8.2.4 Notwithstanding the provisions of Clauses 8.2.1 and 8.2.2 if the certification given by the Supplier in accordance with those Clauses proves to the satisfaction of ECGD to have been untrue or incorrect in any respect (whether that fact was known to the [Supplier]

quoted in the "Financial Times" which prevailed at the close of business on a date four Banking Days prior to

Annex G

[Companies or ²³~~23~~[either] of them] when the certification was given or not) the [Supplier] [Companies] shall be bound by the provisions of Clauses 7.2 and 7.3 as if no release had been given by ECGD

[9 JOINT AND SEVERAL OBLIGATIONS

The obligations of the Companies under this Agreement shall be joint and several]

10 NO WAIVER OF RIGHTS

No failure to exercise nor any delay in exercising on the part of any party hereto any right power or remedy hereunder shall impair or operate as a waiver thereof nor shall any single or partial exercise of any right power or remedy prevent any further or other exercise thereof or the exercise of any other right power or remedy. The rights powers and remedies herein provided are cumulative and not exclusive of any rights powers or remedies provided by law

²³~~23~~ **[11 LAW**

This Agreement shall be governed by and construed in accordance with English Law]

²⁴~~24~~ **12 RIGHTS OF THIRD PARTIES**

the date of this Agreement

²³~~23~~ If more than two Companies are to sign this Agreement replace "either" with "any".

²³~~23~~ Clause 11 should be included if the recourse backer is neither registered nor incorporated in the UK

Annex G

For the avoidance of doubt the parties to this Agreement do not intend that any of the terms of this Agreement should be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement

245 On no account should this clause be deleted or amended without the prior agreement of GCO and BD4/PSDB

Annex G

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

Signed
on behalf of ECGD

Signed
on behalf of [name of the Supplier]

Witness to the signature of
[full name of person signing
on behalf of ECGD]

Witness to the signature of
[full name of person signing
on behalf of the Supplier]

Signed

Signed

[Signed
on behalf of [name of recourse backer]

Witness to the signature of
[full name of person signing
on behalf of the recourse backer]

Signed

Examined

Date

