

Australian National Airlines Commission Equipment

No. 49 of 1967

An Act relating to the provision of Finance for the Purchase
of certain Aircraft and Equipment by the Australian
National Airlines Commission.

[Assented to 26 May 1967]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and
the House of Representatives of the Commonwealth of Australia,
as follows:—

1. This Act may be cited as the *Australian National Airlines Commission* Short title.
Equipment Act 1967.

2. This Act shall come into operation on the day on which it receives Commence-
the Royal Assent. ment.

3. In this Act— Definitions.

“the Agreement” means the agreement the execution of which is
authorized by the next succeeding section, and includes the
promissory notes delivered by the Commonwealth under that
agreement;

“the Commission” means the Australian National Airlines
Commission.

Approval of execution of agreement.

4. The execution by or on behalf of the Commonwealth of an agreement between the Commonwealth, McDonnell Douglas Corporation and Export-Import Bank of Washington, in accordance with the form in the Schedule to this Act, is approved.

Approval of borrowing.

5. The borrowing by the Treasurer, on behalf of the Commonwealth, in accordance with the Agreement, of moneys in the currency of the United States of America not exceeding in the whole Thirteen million dollars is approved.

Approval of notes.

6. The execution by or on behalf of the Commonwealth, and the delivery to Export-Import Bank of Washington, of promissory notes referred to in the Agreement is approved.

Application of moneys.

7.—(1.) For the purpose of making available to the Commission moneys required by the Commission in connexion with the purchase by the Commission of three DC-9 jet aircraft and related spare parts, equipment and services, the Commonwealth may lend to the Commission amounts equivalent to the moneys borrowed under the Agreement, and the Commission may borrow those amounts accordingly.

(2.) Moneys required for the purpose of a loan under the last preceding sub-section are payable out of the Loan Fund, which is to the necessary extent appropriated accordingly.

Terms and conditions of loans to Commission

8. An amount lent to the Commission by the Commonwealth under this Act is repayable by the Commission to the Commonwealth in accordance with such terms and conditions as are determined by the Treasurer.

Application of section 31 (5.) of Australian National Airlines Act.

9. Amounts lent to the Commission by the Commonwealth under this Act shall not be taken into account for the purposes of sub-section (5.) of section 31 of the *Australian National Airlines Act* 1945–1966.

Expenses and charges.

10. The expenses of borrowing under the Agreement, and any commitment fee, interest or other charge payable under the Agreement, shall be paid out of the Consolidated Revenue Fund.

Repayment of loan moneys.

11. Moneys borrowed under the Agreement shall be repaid out of the Consolidated Revenue Fund in accordance with the provisions of the Agreement.

Appropriation of Consolidated Revenue Fund.

12. The Consolidated Revenue Fund is appropriated to the extent necessary for the purposes of the last two preceding sections.

National Debt Sinking Fund Act not to apply.

13. The *National Debt Sinking Fund Act* 1966–1967 does not apply in relation to moneys borrowed under the Agreement.

Application of Act to disbursements under Agreement not paid to the Commonwealth.

14. Where the doing of any act or thing is, for the purposes of the Agreement, a disbursement by the Export-Import Bank of Washington or by McDonnell Douglas Corporation but the act or thing is not, and

does not entail, the payment of moneys by the Export-Import Bank of Washington or by McDonnell Douglas Corporation to the Commonwealth, the doing of that act or thing shall, for the purposes of this Act, be deemed to constitute the borrowing by the Treasurer, on behalf of the Commonwealth, in accordance with the Agreement, of the amount of the disbursement and the lending by the Commonwealth to the Commission, for the purpose referred to in sub-section (1.) of section 7 of this Act, of an amount equivalent to that amount.

15. If, under Article VII of the Agreement, the Commonwealth is required to cause the Commission to do an act or thing, the Treasurer may require the Commission to do that act or thing and the Commission shall comply with that requirement. **Insurance.**

16. The Treasurer may, from time to time, require the Commission to furnish to him such reports and information as are necessary to enable the Commonwealth to carry out the obligations of the Commonwealth under Article VIII of the Agreement and the Commission shall comply with any such requirement. **Reports.**

THE SCHEDULE

Section 4.

CREDIT AGREEMENT

THIS AGREEMENT, made and entered into as of the _____ day of _____, 1967, by and between the Commonwealth of Australia (hereinafter called the "Borrower"), McDonnell Douglas Corporation (hereinafter called "Douglas"), and Export-Import Bank of Washington (hereinafter called "Eximbank");

WITNESSETH:

WHEREAS, Douglas is a corporation organized and existing under the laws of Maryland, United States of America, and is engaged in the manufacture of aircraft and Eximbank is an agency of the United States of America; and

WHEREAS, the Australian National Airlines Commission, trading as Trans-Australia Airlines (hereinafter called the "Commission"), a statutory corporation established by the Australian National Airlines Act 1945-1966, by an agreement with Douglas dated December 28, 1965, and designated Purchase Agreement DAC 65-64-E agreed to purchase from Douglas certain DC-9 jet aircraft; and

WHEREAS, the Commission has on September 20, 1966, entered into a further agreement with Douglas designated Amendment No. 1 to Purchase Agreement DAC 65-64-E relating to the purchase by the Commission from Douglas of three (3) additional Douglas DC-9 jet aircraft (said aircraft hereinafter collectively called the "Aircraft" and individually by number, DC-9 No. 4, DC-9 No. 5 and DC-9 No. 6 in the order of scheduled delivery of each beginning with DC-9 No. 4) and related spare parts, equipment, and services, and the Commission has made or may make arrangements for the purchase from other United States suppliers of additional related spare parts, equipment, and services (the Aircraft and all of said parts, equipment, and services are hereinafter called the "Equipment"); and

WHEREAS, the aggregate purchase price of the Equipment is anticipated to be approximately Sixteen Million Three Hundred Twenty-Seven Thousand United States Dollars (US\$16,327,000), and the Commission is prepared to make cash payments with respect to each item of the Equipment, not later than the delivery thereof, of not less than twenty percent (20%) of the purchase price of such item, leaving the balance of the aggregate purchase price, that is to say, up to eighty percent (80%) of the purchase price or approximately Thirteen Million United States Dollars (US\$13,000,000) as the portion of the purchase price to be financed (hereinafter called the "financed portion"); and

WHEREAS, Douglas is prepared to participate in the financed portion to the extent of ten percent (10%) thereof or One Million Three Hundred Thousand United States Dollars (US\$1,300,000), whichever is the lesser; and

WHEREAS, the Borrower and Douglas have requested Eximbank to assist in financing the financed portion to the extent of ninety percent (90%) thereof or Eleven Million Seven Hundred Thousand United States Dollars (US\$11,700,000), whichever is the lesser; and

WHEREAS, the extension of credit for the aforesaid purpose will facilitate exports and imports and the exchange of commodities between the United States of America and Australia;

NOW, THEREFORE, In consideration of the premises and the mutual covenants contained herein, the parties hereto agree as follows:

ARTICLE I

Establishment of Credit

Eximbank and Douglas hereby establish in favor of the Borrower a line of credit (hereinafter called the "Credit") upon the terms and conditions contained herein, in the amount of Thirteen Million United States Dollars (US\$13,000,000) for the purpose of assisting the Borrower in financing the purchase by the Commission in the United States and exportation therefrom of the Equipment. Each disbursement under the Credit shall be made in the manner hereinafter set forth by Eximbank to the extent of ninety percent (90%) of such disbursement and by Douglas to the extent of ten percent (10%) thereof. Disbursements by Eximbank under the Credit shall not exceed Eleven Million Seven Hundred Thousand United States Dollars (US\$11,700,000) and disbursements by Douglas under the Credit shall not exceed One Million Three Hundred Thousand United States Dollars (US\$1,300,000).

THE SCHEDULE—*continued*

ARTICLE II

Terms of Repayment—Promissory Notes

A. *Repayment.* The Borrower covenants and agrees to repay the aggregate of disbursements under the Credit in the manner set forth below and to pay interest at the rate of five and one-half percent (5½%) per annum computed on the basis of actual number of days using a 365-day factor on the unpaid principal balance thereof from time to time outstanding, such interest to be due and payable semiannually as described herein.

1. *Schedule No. 1.* Disbursements made at any time with respect to DC-9 No. 4, plus disbursements made not later than March 31, 1968, with respect to any item of the Equipment other than an Aircraft, shall be repaid in fourteen (14) approximately equal semiannual installments beginning May 15, 1968. Interest on such disbursements shall be payable on May 15 and November 15 of each year, beginning on the first of such dates next succeeding the first such disbursement.
2. *Schedule No. 2.* Disbursements made at any time with respect to DC-9 No. 5, plus disbursements made after March 31, 1968, and not later than March 31, 1969, with respect to any item of the Equipment other than an Aircraft, shall be repaid in fourteen (14) approximately equal semiannual installments beginning May 15, 1969. Interest on such disbursements shall be payable on May 15 and November 15 of each year, beginning on the first of such dates next succeeding the first such disbursement.
3. *Schedule No. 3.* Disbursements made at any time with respect to DC-9 No. 6, plus disbursements made after March 31, 1969, and not later than the final date for disbursements as set forth in Article VI hereof or as extended in the manner provided therein, with respect to any item of the Equipment other than an Aircraft, shall be repaid in fourteen (14) approximately equal semiannual installments beginning February 15, 1970. Interest on such disbursements shall be payable on February 15 and August 15 of each year, beginning on the first of such dates next succeeding the first such disbursement.

B. *Promissory Notes.* The Borrower's obligation to Eximbank and to Douglas resulting from disbursements under the Credit shall be further evidenced by the Borrower's promissory notes (hereinafter called "Note" or "Notes" as the context requires) payable to the order of Eximbank. Prior to the first disbursement under the Credit, the Borrower shall estimate, with the concurrence of Eximbank and Douglas, the aggregate amount of disbursements to be drawn with respect to each of the three (3) payment schedules described in paragraph A of this Article, and shall issue and deliver to Eximbank, as a condition precedent to the first disbursement under the Credit, three (3) Notes, each payable according to a different one of said payment schedules and each with a principal amount equal to the estimated amount of disbursements relating thereto. It is understood and agreed that each Note shall be valid and enforceable only to the extent of disbursements made against such Note and interest on such disbursements. Although each Note shall be dated as of its date of issue and shall provide for interest from its date, appropriate adjustments will be made so that interest accrued and computed only from the dates of the respective disbursements made against such Note shall be payable. Each Note shall be payable in lawful money of the United States at a commercial bank in the United States satisfactory to Eximbank and shall be printed or lithographed in the English language on one side of a single sheet of safety paper. The text of each Note shall be substantially that of Exhibit "A" attached hereto.

C. *Exchange of Notes.* In the event that the Borrower wishes to request disbursements with respect to any one of the three (3) payment schedules described in paragraph A of this Article in excess of the Note relating thereto, an appropriate exchange of Notes shall, if Eximbank and Douglas so agree, be made so as to increase the principal amount of one schedule and decrease another schedule by the same amount. It is understood and agreed that the aggregate amount of all outstanding Notes shall at no time exceed the amount of the Credit. If, after all disbursements with respect to any one of the three (3) payment schedules described in paragraph A of this Article have been completed, the aggregate of such disbursements is less than the principal amount of the Note issued in respect of that payment schedule, an exchange of Notes will be made at the request of the Borrower communicated to Eximbank not less than thirty (30) days prior to the first principal maturity date of such schedule. Upon such request, the Borrower shall issue and deliver to Eximbank a new Note in a principal amount equal to the aggregate of disbursements made against the Note surrendered by Eximbank in exchange for

THE SCHEDULE—*continued*

such new Note. Such new Note shall be dated as of the date to which interest shall have been paid on the Note surrendered by Eximbank and shall otherwise conform to the requirements of paragraph B of this Article. If a timely request for an exchange of Notes is not made, the excess principal amount of the relevant Note shall be credited to the payment of installments thereon in the inverse order of their maturity.

D. *Further Exchange of Notes.* Upon the request of Eximbank made at any time or from time to time more than thirty (30) days after the final date for making disbursements under the Credit as provided in Article VI hereof, the Borrower shall issue and deliver to Eximbank, in exchange for any Note or Notes theretofore issued to Eximbank pursuant to this Article, its new Note or Notes, in such denominations as Eximbank may specify and dated the date or respective dates to which interest shall have been paid on the Note or Notes surrendered. The aggregate principal amount of the new Note or Notes shall be equal to the aggregate of disbursements made against, less the aggregate of any repayments of principal made upon, the Note or Notes surrendered in exchange therefor. Each new Note issued pursuant hereto shall be substantially in the form of Exhibit "A" attached hereto, except for such modifications as may be necessary or appropriate to give effect to any of the provisions of this paragraph D.

E. *Prepayments.* Prepayments on the indebtedness of the Borrower under the Credit and on any Note or Notes evidencing such indebtedness may be made at the Borrower's option at any time but must be accompanied by payment of interest on the amount of the prepayment to the date of prepayment and will be credited to the payment of installments in the inverse order of their maturities. Prepayments made under Article VII relating to hull insurance on the Aircraft shall be credited to the payment of installments of the Note relating to the respective Aircraft, in the inverse order of their maturities.

ARTICLE III

Commitment Fee

The Borrower shall pay to Eximbank in United States dollars a commitment fee computed on ninety percent (90%) of that portion of the Credit which from time to time remains undisbursed, uncancelled, or unexpired, at the rate of one-half of one percent (1/2 of 1%) per annum accruing from September 1, 1966. The accrued fee shall be payable on July 15, 1967, and semiannually thereafter.

ARTICLE IV

Conditions Precedent to Utilization of Credit

Prior and as a condition precedent to the first utilization of the Credit:

1. The Borrower shall submit or cause to be submitted to Eximbank and Douglas, in form and substance satisfactory to both, the following:
 - (a) Evidence of the authority, together with a certified specimen signature of each of the persons:
 - (1) who has signed this Agreement on behalf of the Borrower;
 - (2) who, on behalf of the Borrower, has signed the Notes delivered to Eximbank; and
 - (3) who will, until replaced by other persons duly authorized for the purpose, act as the representative of the Borrower for the purpose of signing documents and otherwise operating the Credit.
 - (b) An opinion or opinions of counsel satisfactory to Eximbank and Douglas which shall refer to all pertinent laws, decrees and documents and shall demonstrate to the satisfaction of both that:
 - (1) this Agreement as signed on behalf of the Borrower is legally binding upon the Borrower in accordance with its terms; and
 - (2) the Notes delivered to Eximbank have been validly executed and will, to the extent of disbursements made under the Credit and the interest thereon, constitute the valid and binding obligations of the Borrower in accordance with their terms.

THE SCHEDULE—*continued*

2. The Borrower shall submit or cause to be submitted to Eximbank:
 - (a) A summary, or list broken down by principal categories, of the items of the Equipment which the Commission intends to purchase. Such summary or list, upon approval by Eximbank, shall constitute the Commission's purchase program for items to be financed under the Credit and no substantial changes shall be made therein without the consent of Eximbank and Douglas; and
 - (b) The Notes required under paragraph B of Article II hereof.
3. Douglas shall submit to Eximbank, in form and substance satisfactory to Eximbank, the following:
 - (a) Evidence of the authority, together with a certified specimen signature of each of the persons:
 - (1) who has signed this Agreement on behalf of Douglas; and
 - (2) who will, until replaced by other persons duly authorized for the purpose, act as the representative of Douglas for the purpose of signing documents and otherwise operating the Credit.
 - (b) An opinion of counsel demonstrating to the satisfaction of Eximbank that this Agreement, as signed on behalf of Douglas, is legally binding on Douglas in accordance with its terms.

ARTICLE V

Disbursement Procedures

A. *Conditions Precedent.* When all conditions precedent to the first utilization of the Credit, as provided in Article IV hereof, have been fulfilled, the Credit may be utilized in accordance with any of the procedures set forth in this Article. These procedures, and the documents required in connection therewith, shall be more fully described in a procedure letter or letters (hereinafter collectively called "Procedure Letter") to be sent to the Borrower by Eximbank.

B. *Reimbursement.* Subject to the provisions of paragraph A of this Article, disbursements will, upon the request of the Borrower, be made under the Credit from time to time to the account of the Borrower at a commercial bank in the United States designated by the Borrower and acceptable to Eximbank and Douglas of amounts up to eighty percent (80%) of the expenditures made by the Commission for the purchase of the items of Equipment. Disbursements to the extent of ninety percent (90%) of the financed portion of the purchase price of the items of Equipment covered by each request of the Borrower for an advance to enable it to reimburse the Commission shall be made by Eximbank, and disbursements to the extent of ten percent (10%) of the financed portion of the purchase price shall be made or deemed to have been made by Douglas as provided below. Eximbank shall make disbursements as aforesaid upon the receipt in form and substance satisfactory to it (in addition to the documents required by the Procedure Letter) of evidence that Douglas has issued its irrevocable instructions to said commercial bank to debit Douglas' account and credit the Borrower's account at such bank in the amount of ten percent (10%) of the requested disbursement, or evidence of the extension of credit by Douglas to the Borrower of an amount equivalent to ten percent (10%) of the requested disbursement. Each such extension of credit shall constitute a disbursement under the Credit and shall bear interest from the date thereof.

C. *Letters of Credit.* The Borrower may use the Credit from time to time by requesting a commercial bank in the United States designated by the Borrower and acceptable to Eximbank and Douglas to open or confirm letters of credit for the purpose of financing not more than eighty percent (80%) of the expenditures to be made by the Commission for the purchase of items of Equipment furnished or to be furnished by suppliers other than Douglas, and seventy-two percent (72%) of the expenditures to be made by the Commission for the purchase of items of Equipment furnished or to be furnished by Douglas. Eximbank will issue its undertaking to reimburse each such commercial bank to the extent of ninety percent (90%) of disbursements made by the latter to the beneficiary of each such letter of credit if the beneficiary is other than Douglas, and to the extent of one hundred percent (100%) of said disbursements if the beneficiary is Douglas. If the beneficiary is other than Douglas, Douglas will issue its undertaking with respect to any such letter of credit to reimburse each such commercial bank to the

THE SCHEDULE—*continued*

extent of ten percent (10%) of disbursements made by the latter to the beneficiary of each such letter of credit or Douglas will issue its irrevocable instructions to the commercial bank to debit Douglas' account at such bank, to reimburse such bank in amounts to equal ten percent (10%) of said disbursements made by such bank in accordance with the terms of the letter of credit. If the beneficiary of the letter of credit is Douglas, Douglas and the Borrower agree that simultaneously with each disbursement under said letter of credit a disbursement equal to one ninth (1/9th) of the amount of the disbursement under said letter of credit shall be deemed to have been made under the Credit by Douglas and Douglas agrees that an amount equal to the amount of the disbursement deemed to have been made under the Credit shall be credited as a payment received by it from the Commission. Each such letter of credit shall expire by its terms not later than thirty (30) days prior to the final date for making disbursements under the Credit as provided in Article VI. In cases where an obligation rests upon Douglas to issue its undertaking or irrevocable instructions as aforesaid, the obligation of Eximbank to issue its undertaking as aforesaid shall be deferred until it receives, in form and substance satisfactory to it (in addition to the documents required by the Procedure Letter), evidence that Douglas has issued its undertaking or irrevocable instructions as aforesaid. It is agreed that so long as any undertaking by Eximbank and Douglas as aforesaid remains in force it shall constitute a pre-emptive commitment of funds under the Credit in an amount equal to the principal amount of the letter of credit or the financed portion of the purchase price of the items of Equipment covered by the letter of credit, whichever amount is the greater; that payments made by Eximbank and Douglas to commercial banks to reimburse such banks for disbursements made under letters of credit as aforesaid shall constitute disbursements under the Credit and shall bear interest from the dates on which such banks make disbursements to each beneficiary of a letter of credit; and, that Eximbank and Douglas shall assume no liability for the acts or omissions of the commercial banks in opening or confirming such letters of credit or in making disbursements or payments thereunder or with respect thereto.

D. *Payments to Douglas.* With respect to items of Equipment supplied or to be supplied by Douglas, or by another supplier through Douglas, the Borrower may use the credit from time to time by requesting disbursements under the Credit to be made by Eximbank and Douglas in an amount not exceeding eighty percent (80%) of the purchase price of each such item of Equipment. Ninety percent (90%) of each such disbursement shall be made by Eximbank by a deposit on behalf of the Borrower to an account of Douglas at a commercial bank in the United States satisfactory to the Borrower, Eximbank and Douglas, and upon each such deposit by Eximbank, Douglas shall extend credit to the Borrower to the extent of ten percent (10%) of such disbursement. Each such extension of credit shall constitute a disbursement under the Credit and shall bear interest from the date thereof. The total amount of each such disbursement shall be applied by Douglas in payment of amounts due by the Commission in relation to items of Equipment supplied by Douglas or by another supplier through Douglas.

E. *Pre-Delivery Payments.* If pre-delivery payments to be made to Douglas with respect to any item of Equipment exceed twenty percent (20%) of the purchase price thereof, the Borrower may use the Credit, to the extent that the pre-delivery payments exceed twenty percent (20%) of the purchase price or to the extent of five percent (5%) of the purchase price, whichever is the lesser, either to obtain funds to reimburse the Commission for part of the pre-delivery payments made by the Commission to Douglas or to require disbursement to the account of Douglas in the manner described in paragraph D of this Article V. The sum of such pre-delivery payments under the Credit and all other payments under the Credit shall not, in the aggregate, exceed eighty percent (80%) of the purchase price of the items of Equipment.

F. *General.* Under any procedure for making disbursements under this Article, evidence shall be submitted that the Commission has made, prior to each disbursement by Eximbank and Douglas under this Article or by a commercial bank under a letter of credit as described in paragraph C of this Article, a cash payment of not less than twenty percent (20%) of the amount then due with respect to the purchase of the item or items of Equipment in question. In addition to the documents required by the Procedure Letter and the foregoing provisions of this Article, the Borrower shall submit or cause to be submitted under any procedure for making disbursements under this Article such other documents and information as Eximbank may from time to time reasonably request. All documents and information submitted under this Article shall be satisfactory in form and substance to Eximbank.

THE SCHEDULE—*continued*

ARTICLE VI

Availability, Cancellation and Suspension

A. *Availability.* Except to the extent that Eximbank and Douglas may otherwise consent in writing, disbursements under the Credit shall not be made subsequent to December 31, 1969, and any part of the Credit which shall not have been disbursed on or before said date may be cancelled by Eximbank without the requirement of notice to the Borrower.

B. *Cancellation by Borrower.* The Borrower may at any time by written notice to Eximbank and Douglas cancel all or any part of the Credit which shall not have been disbursed.

C. *Suspension by Eximbank.* If an Event of Default, as defined in Article X hereof, shall occur and be continuing, then and in each and every such case, Eximbank and Douglas shall consult with respect thereto and the obligations of Eximbank and Douglas to make disbursements or extend credit hereunder shall be suspended upon written notice from Eximbank to the Borrower. Thereafter, Eximbank and Douglas shall not be obligated to make further disbursements until they shall have received evidence that the cause or causes of the suspension have been eliminated or corrected in a manner satisfactory to Eximbank, and Eximbank shall have notified the Borrower in writing that the suspension has been removed.

D. *Continuation of Rights and Obligations.* Notwithstanding any cancellation or suspension pursuant to this Article, all the provisions of this Agreement and the Notes and the rights and obligations of any party with respect to disbursements made prior to such cancellation or suspension, shall continue in full force and effect. The Borrower shall continue to have the right, subject to the terms and conditions of this Agreement, to receive disbursements under the Credit with respect to payments falling due at any time prior to the final date for making disbursements as provided in paragraph A of this Article under purchase orders that were binding on the Commission before receipt by the Borrower of written notice of intention to suspend the unused portion of the Credit and such suspension shall be without prejudice to the validity of outstanding undertakings issued pursuant to the provisions of paragraph C of Article V hereof with respect to bank letters of credit.

ARTICLE VII

Aircraft Hull Insurance

The Borrower covenants and agrees that so long as the Borrower's indebtedness under the Credit or any Note evidencing such indebtedness remains outstanding and unpaid, and except to the extent that Eximbank and Douglas may otherwise jointly agree in writing:

1. *All-Risk Aircraft Hull Insurance.* The Borrower shall cause the Commission to maintain insurance upon the Aircraft under a contract of All-Risk Aircraft Hull Insurance, satisfactory to Eximbank and Douglas. Such insurance shall be payable in United States currency in the United States and the amount of insurance and the terms and conditions of the insurance contract, including deductible clauses, shall be in accordance with normal practices in the airline industry, but in no event shall the amount of insurance be less than the lesser of the insurable value of the Aircraft or the outstanding indebtedness of the Borrower hereunder to Eximbank and Douglas.
2. *Damage of Aircraft.* In the event of damage to the Aircraft, except total loss or constructive total loss, which damage is compensable under the insurance referred to in subparagraph 1 of this Article, the Borrower shall promptly cause the Commission, upon receipt of the proceeds of such insurance, to apply such proceeds to the repair of the Aircraft.
3. *Loss of Aircraft.* In the event of total loss or constructive total loss of the Aircraft, which total loss or constructive total loss is compensable under the insurance referred to in subparagraph 1 of this Article, the Borrower shall promptly cause the Commission, upon receipt of the proceeds of the insurance, at the Commission's option either (a) to apply the proceeds to the replacement of the Aircraft with a new aircraft of similar type manufactured in the United States by Douglas, or (b) to apply the proceeds, or so much of the proceeds as may be necessary, to prepay, as provided in paragraph E of Article II hereof, the outstanding amount of the Borrower's indebtedness under the Credit. Within sixty (60) days after such loss or constructive total loss, the Borrower shall advise Eximbank and Douglas in writing which of the foregoing options the Commission has elected.

THE SCHEDULE—*continued*

ARTICLE VIII

Reports

Within one hundred fifty (150) days following the close of each fiscal year of the Commission until the indebtedness of the Borrower under the Credit shall have been paid in full, the Borrower shall submit or cause to be submitted, to Eximbank and Douglas copies of the Commission's annual financial report, in form satisfactory to Eximbank, relating to the preceding fiscal year, including balance sheets, income statements, and a description of operations during the year. Such annual report shall be certified by an independent auditor. Within sixty (60) days following the mid-point of each fiscal year, the Borrower shall submit or cause to be submitted, to Eximbank and Douglas a summary of the monthly reports with respect to the preceding six (6) months of the Commission's fiscal year, which shall be signed by a responsible officer of the Commission but need not be certified by an independent auditor. The Borrower shall also cause to be furnished to Eximbank or Douglas such additional reports and information as Eximbank or Douglas may reasonably request.

ARTICLE IX

Representations, Warranties and Covenants

A. *Authority.* The Borrower represents and warrants that it has full power, authority and legal right to incur the indebtedness and other obligations provided for in this Agreement and the Notes, to execute and deliver this Agreement and the Notes, and this Agreement does, and the Notes when issued hereunder will, constitute valid and binding obligations of the Borrower in accordance with the respective terms hereof and thereof.

B. *Legal Action.* The Borrower represents and warrants that it has taken all action required under the laws and regulations of the Borrower, or of any political subdivision, department or agency thereof, to authorize the execution and delivery of this Agreement and the Notes.

C. *Full Faith and Credit.* The Borrower represents and warrants that all covenants of the Borrower contained in this Agreement constitute, and the Notes when issued hereunder will constitute, unconditional direct obligations of the Borrower for the payment and performance of which the Borrower pledges its full faith and credit.

D. *Past Employment.* The Borrower represents and warrants that no director, officer, employee, agent, attorney or consultant of the Borrower or the Commission who performed services in connection with the establishment by Eximbank of its credit hereunder was a director, officer or employee of Eximbank at any time during the period of one (1) year prior to September 1, 1966, the date on which the establishment of its credit was authorized by Eximbank.

E. *Future Employment.* The Borrower covenants that during the period of two (2) years after September 1, 1966, it will not employ or enter into any understanding to employ any person: (1) who was a director, officer or employee of Eximbank at any time during the period of one year prior to said date; or (2) who is a director, officer or employee of Eximbank at the time of such employment or understanding to employ, unless in either case such employment is approved in writing by Eximbank after full disclosure to it of all facts in connection therewith which it deems to be relevant.

F. *Payments.* The Borrower represents and warrants that it has not paid, agreed to pay or caused to be paid, and covenants that it will not pay, agree to pay or cause to be paid to any person or other entity, except the Borrower's regular full-time officers and employees to the extent of their regular remuneration, any commission, fee or other payment in connection with the establishment or operation of Eximbank's credit hereunder, except reasonable compensation satisfactory to Eximbank for bona fide professional, technical or other comparable services incident to presenting the merits of the Borrower's application for Eximbank's credit hereunder or to the operation of such credit.

ARTICLE X

Events of Default

If one or more of the following events (hereinafter called "Events of Default") shall have occurred and be continuing, that is to say:

1. A default shall have occurred in the payment of any amounts required under this Agreement, the Notes, or any other agreement between Eximbank and the Borrower; or

THE SCHEDULE—*continued*

2. A default shall have occurred in the performance of any other covenant or agreement on the part of the Borrower under this Agreement, the Notes, or any other agreement between Eximbank and the Borrower, and such default remains unremedied for a period of thirty (30) days after written notice thereof shall have been given to the Borrower by Eximbank; or
3. Any representation or warranty made by the Borrower under this Agreement, the Notes, or any other agreement between Eximbank and the Borrower proves to be incorrect in any material respect and has not been corrected within thirty (30) days after written notice thereof shall have been given to the Borrower by Eximbank;

then, and in each and every such case, Eximbank may, upon written notice to the Borrower, make immediately due and payable the entire principal amount of the Credit at the time outstanding, or any Notes evidencing such amount, together in each case with accrued interest thereon to the date of payment and any security which may exist with respect to such Credit or Notes shall then become enforceable.

ARTICLE XI

Eximbank and Douglas Participations

It is understood and agreed that Eximbank and Douglas shall participate in the Borrower's aggregate indebtedness resulting from disbursements by Eximbank and Douglas under the Credit and in any Note or Notes evidencing such indebtedness in the proportion of their respective disbursements. All payments of principal or interest on the Borrower's indebtedness to Eximbank and Douglas under the Credit shall be made to the order of Eximbank, whereupon Eximbank will promptly pay over to Douglas its proportionate share of such payments. After the final date for making disbursements under the Credit as provided in Article VI hereof, Eximbank shall issue to Douglas, if Douglas so requests, a certificate to evidence Douglas' participation in the Borrower's indebtedness under the Credit and in the Note or Notes held by Eximbank pursuant to paragraphs B, C, and D of Article II hereof. It is further understood and agreed that the participations of Eximbank and Douglas shall be *pari passu* in all respects and that neither, without the consent of the other, shall enter into nor accept any arrangement: (1) varying the terms of the Borrower's indebtedness or any Note evidencing such indebtedness; (2) resulting in payments to either Eximbank or Douglas without ratable payment or transfer to the other; or (3) securing either Eximbank or Douglas without ratably securing the other. Any expenses incurred by Eximbank or Douglas in the enforcement of the Borrower's indebtedness under the Credit shall, if not reimbursed by the Borrower be borne by Eximbank and Douglas in the proportion of their respective participations.

ARTICLE XII

Marine Transportation and Insurance

A. *Marine Transportation.* All items of Equipment, the purchase of which is to be financed in whole or in part under the Credit and which have been or shall be exported from the United States by ocean vessel, must have been or shall be transported from the United States in vessels of United States registry, as required by Public Resolution No. 17 of the 73rd Congress of the United States, except to the extent that a waiver of such requirement is obtained from the United States Maritime Administration. In the event that a waiver is obtained, the cost of ocean freight for shipments on vessels of other than United States registry shall not be eligible for financing hereunder.

B. *Insurance Premiums.* Premiums for insurance against marine and transit hazards on any items of Equipment financed under the Credit will be eligible to be financed under this Credit only with respect to those policies of insurance which are payable in United States dollars and are placed in the United States market.

ARTICLE XIII

Disposition of Indebtedness

It is understood and agreed that at any time Eximbank or Douglas may sell, transfer, negotiate, grant participations in or otherwise dispose of all or any portion of their respective interests in either the indebtedness of the Borrower resulting from disbursements under the Credit or in any Note evidencing such indebtedness; provided that prior to any such disposition

THE SCHEDULE—*continued*

by either Eximbank or Douglas the party intending to make such disposition will give written notice to the other and to the Borrower, except that notice by Eximbank shall not be required with respect to the sale of participations in the interest of Eximbank either in such indebtedness or in any Note evidencing such indebtedness if such participations constitute interests in a pool of Eximbank loans, which pool includes the interest of Eximbank in such indebtedness or any such Note and such participations are guaranteed by Eximbank; and provided, further, that the rights of the Borrower to adjustment of interest and the limitation of its liability under Article II hereof are not prejudiced in any way.

ARTICLE XIV

Taxes

The Borrower covenants and agrees that the execution, issuance and delivery of this Agreement and the Notes, and, except to the extent that the right to receive payment of the principal amount of or interest on any outstanding disbursements under the Credit or any Notes is or comes to be beneficially owned by any person residing in or ordinarily a resident of Australia or the Territory of Papua or the Territory of New Guinea, the payment of principal and interest under this Agreement and the Notes, shall be exempt from all present and future taxes, duties, fees, restrictions, and other charges of whatsoever nature now or hereafter levied or imposed under the laws of the Borrower or laws in effect in its territories or by the Borrower or by any political subdivision, taxing authority, department, or agency thereof.

ARTICLE XV

Expenses

All statements, reports, certificates, opinions and other documents or information furnished to Eximbank under this Agreement shall be supplied by the Borrower or the Commission without cost to Eximbank. Further, the Borrower hereby agrees to reimburse Eximbank and Douglas on demand for all out-of-pocket costs and expenses incurred by Eximbank or Douglas in connection with the enforcement, protection or preservation of any right or claim of Eximbank or Douglas in connection with this Agreement or the Notes.

ARTICLE XVI

Waiver

No failure or delay on the part of Eximbank or Douglas to exercise any right, power, or privilege under this Agreement or the Notes shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement or the Notes preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

ARTICLE XVII

Notices

All notices and other communications hereunder shall be given in writing and shall be addressed to the appropriate party at the address set forth below, or at such other place as may be designated in writing by the respective parties hereto:

Commonwealth of Australia
The Secretary
Department of the Treasury
Canberra, Australia

McDonnell Douglas Corporation
3855 Lakewood Boulevard
Long Beach, California 90801
Attention: Customer Financing
Service Department

Export-Import Bank of Washington
811 Vermont Avenue, N.W.
Washington, D.C. 20571

THE SCHEDULE—continued

EXHIBIT "A"

PROMISSORY NOTE

COMMONWEALTH OF AUSTRALIA

No.....

Washington, D.C.

US \$....., 19.....

FOR VALUE RECEIVED, the Commonwealth of Australia, by this promissory note, hereby unconditionally promises to pay to the order of the Export-Import Bank of Washington, an agency of the United States of America, the principal sum of United States Dollars (US \$.....), in installments as hereinafter provided and to pay interest in like currency on the unpaid principal balance hereof from time to time outstanding on and of each year commencing on the first of such dates next succeeding the date hereof, at the rate of five and one-half percent (5½%) per annum from date until the principal of this note is paid in full.

The principal of this note shall be payable in fourteen (14) installments, the first of which shall be in the sum of United States Dollars (US \$.....) and the remaining thirteen (13) of which shall each be in the sum of United States Dollars (US \$.....). The first such installment shall be due and payable on, and the remaining installments shall be due and payable successively semiannually thereafter.

Payment of the principal of and interest on this note shall be made at the principal office of (Name of United States commercial bank)..... in the City of, State of, United States of America.

Both principal of and interest on this note shall be paid without deduction for or on account of, and shall be exempt from, all present and future taxes, duties, fees, restrictions or other charges of whatsoever nature now or any time hereafter levied or imposed under the laws of the Commonwealth of Australia or laws in effect in its territories or by the Commonwealth of Australia or by any political subdivision, taxing authority, department or agency thereof, except to the extent that this note is or comes to be beneficially owned by any person residing in or ordinarily a resident of Australia or the Territory of Papua or the Territory of New Guinea.

The Commonwealth of Australia hereby reserves the right to prepay at any time and from time to time, without penalty or premium, all or any part of the principal of this note by payment of the principal amount so prepaid with interest thereon to the date of prepayment. Each such prepayment shall be applied to the remaining installments of principal on this note in the inverse order of their maturity.

This note is issued pursuant to the provisions of the Credit Agreement, dated, 1967, between the Commonwealth of Australia, McDonnell Douglas Corporation, and Export-Import Bank of Washington. Upon default in the prompt and full payment of any installment of principal or interest on this note or upon the occurrence of any of the other Events of Default set forth in said Credit Agreement, the entire principal of this note and interest thereon to the date of payment shall immediately become due and payable at the option and upon the demand of the holder hereof.

Except as provided in the immediately preceding paragraph hereof, the Commonwealth of Australia hereby waives diligence, presentment, demand, protest, notice of non-payment or dishonor, and/or any notice of any kind whatsoever with respect to this note.

This note and the covenants herein contained constitute unconditional direct obligations of the Commonwealth of Australia for the payment and performance of which the Commonwealth of Australia pledges its full faith and credit.

The non-exercise by the holder hereof of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in that or any subsequent instance.

COMMONWEALTH OF AUSTRALIA

By.....

Title.....