

STATE OF THE NETHERLANDS EXPORT CREDIT GUARANTEE RECOURSE AGREEMENT – TRANSFER OF RIGHTS

THIS AGREEMENT is dated [DATE] and is made **BETWEEN**:

- (1) **THE STATE OF THE NETHERLANDS, REPRESENTED BY ATRADIUS DUTCH STATE BUSINESS N.V.** (the **State**); and
- (2) [NAME OF BANK] (the **Bank**).

BACKGROUND

- (A) Reference is made to the loan agreement dated [DATE] between[, amongst others,]¹ the Bank and [NAME BORROWER(S)] as borrower (the **Borrower**) (the **Loan Agreement**). The Bank has transferred or will transfer its rights or part of its rights (the **Rights**) under the Loan Agreement to [NAME BENEFICIARY] (the **Beneficiary**).
- (B) The credit risk of the Bank under the Loan Agreement is insured by the State under an export credit insurance policy with policy number: [NUMBER] (the **ECI**). [[NAME FACILITY AGENT] is acting as insured party under the ECI in its capacity of facility agent under the Loan Agreement.]²
- (C) The State, at the request of the Bank, has issued or will issue a Dutch State export credit guarantee in favour of the Beneficiary in the form attached as Annex I (Form of ECG) to this Agreement (the **ECG**).

IT IS AGREED as follows:

1. PAYMENT TO BENEFICIARY

- (a) Notwithstanding any payment failure of the Borrower in respect of principal, interest or default interest under the terms of the Loan Agreement, the Bank must ensure the full and timely payment of any amount guaranteed under the ECG to the Beneficiary in order to avoid a claim by the Beneficiary under the ECG against the State.
- (b) If and to the extent the Borrower fails to make any payment when due and payable under the terms of the Loan Agreement, the obligation of the Bank under paragraph (a) above to pay the Beneficiary a corresponding amount is an independent obligation and any such payment made by the Bank to the Beneficiary pursuant to paragraph (a) above will not constitute discharge of the Borrower's payment obligations under the Loan Agreement.
- (c) The obligations of the Bank under paragraph (a) above are independent from and not affected by:

¹ To be deleted or included as applicable.

² To be deleted or included as applicable.

- (i) the unenforceability, illegality, invalidity or non-provability of any obligation of the Borrower under or in connection with the Loan Agreement;
- (ii) any defences raised by the Borrower under the Loan Agreement with respect to its obligations under or in connection with the Loan Agreement;
- (iii) any non-performance by the Borrower of its obligations under or in connection with the Loan Agreement;
- (iv) any acceleration of any loan made available under the Loan Agreement;
- (v) any amendment of the terms of the Loan Agreement (including in relation to the repayment schedule of the loans made available under the Loan Agreement);
- (vi) any transfer under the ECG to any subsequent beneficiary that has obtained any rights under the ECG pursuant to a transfer in accordance with clause 5 (Transfers) of the ECG; or
- (vii) any other circumstance or event which but for this paragraph (c) might permit the Bank not to comply with its obligations under this Clause 1 or otherwise affect the obligations of the Bank under this Clause 1.

2. INDEMNITY TO THE STATE

- (a) If the State makes a payment under the ECG to the Beneficiary under the ECG, the Bank must on demand pay an amount equal to that amount to the State together with any costs and expenses incurred by the State in connection with that claim.
- (b) Notwithstanding any other rights the State has under this Agreement in relation to a failure to pay by the Bank, if the Bank fails to pay any amount payable by it under paragraph (a) above within five Dutch business days after receipt of a notice of demand from the State, it must immediately on demand by the State pay interest on the overdue amount from its due date up to the date of actual payment.
- (c) Interest on an overdue amount is payable at a rate of 1 per cent. per annum above the applicable funding costs of the State (as determined by the State) during the period of non-payment. Any determination by the State of its funding costs will, in the absence of manifest error, be conclusive and binding on the Bank.
- (d) The obligations of the Bank under this Clause 2 are independent from and not affected by:
 - (i) the unenforceability, illegality, invalidity or non-provability of any obligation of the Borrower under or in connection with the Loan Agreement;

- (ii) any defences raised by the Borrower under the Loan Agreement with respect to its obligations under or in connection with the Loan Agreement;
 - (iii) any non-performance by the Borrower of its obligations under or in connection with the Loan Agreement;
 - (iv) any acceleration of any loan made available under the Loan Agreement;
 - (v) any amendment of the terms of the Loan Agreement (including in relation to the repayment schedule of the loans made available under the Loan Agreement);
 - (vi) any transfer under the ECG to any subsequent beneficiary that has obtained any rights under the ECG pursuant to a transfer in accordance with clause 5 (Transfers) of the ECG; or
 - (vii) any other circumstance or event which but for this paragraph (d) might permit the Bank not to comply with its obligations under this Clause 2 or otherwise affect the obligations of the Bank under this Clause 2.
- (e) The Bank must not dispute, and waives any right it may have with respect to, the validity of any payment made by the State under the ECG to the Beneficiary.

3. PAYMENTS UNDER THE ECI

- (a) In case of a conflict between the provisions of the ECI (including the applicable general terms and conditions) and this Clause 3, this Clause 3 prevails.
- (b) Subject to the terms of this Agreement, the obligations of the Bank under Clauses 1 (Payment to Beneficiary) and 2 (Indemnity to the State) will not affect the rights and obligations of the Bank under the ECI.³
- (c) No payment under the ECI will be made by the State with respect to any principal amount, interest (including delay interest (*achterstalligheidsrente*)) during the period when a valid claim under the ECG may be made by the Beneficiary in relation to that principal amount or interest.⁴
- (d) The amount of any claim of the Bank or, as applicable, the facility agent under the Loan Agreement under the ECI against the State is decreased by any due but unpaid amount under paragraph (a) of Clause 2 (Indemnity to the State).⁵
- (e) No payment will be made by the State under the ECI unless and until the relevant Rights in respect of which the payment is envisaged to be made, together with any related security interest

³ To be repeated in the ECI in case of a syndicated facilities agreement where a facility agent acts as insured party.

⁴ To be repeated in the ECI in case of a syndicated facilities agreement where a facility agent acts as insured party.

⁵ To be repeated in the ECI in case of a syndicated facilities agreement where a facility agent acts as insured party.

(including guarantees) (the **Security Interests**) securing the obligations under the Loan Agreement, have been transferred by the Beneficiary or the Bank to the State on or prior to the date of payment under the ECI. No transfer of the Security Interests is required if the State:

- (i) waives the obligation to transfer the Security Interests;
 - (ii) is satisfied that the Security Interests will automatically be transferred by operation of law to the State together with the transfer of the Rights; or
 - (iii) is satisfied that the Security Interests are held by a security agent or security trustee (other than the Bank) for the benefit of the creditors under the Loan Agreement including the State after the transfer of the Rights to the State.⁶
- (f) Subject to paragraph (e) above, the rights of the Bank under the ECI are not affected as a consequence of the relevant Rights in respect of which the payment is envisaged to be made, together with any Security Interests, being held by the Beneficiary or the State.

4. REPRESENTATIONS AND WARRANTIES

4.1 Representations and warranties

The representations and warranties set out in this Clause 4 are made by the Bank to the State.

4.2 Eligible Beneficiary

Unless [NAME BENEFICIARY] is a person which is approved in writing as an eligible beneficiary by the State, [NAME BENEFICIARY] is:

- (i) a regulated bank, insurance company, pension fund or asset investment manager which is supervised by a government authority in the European Economic Area, the United States of America, Canada, Australia, New Zealand or Japan; or
- (ii) a person which is, in the context of a securitisation transaction or a transaction similar to a securitisation transaction, owned, indirectly controlled, incorporated or established by or at the initiative of any regulated bank, insurance company, pension fund or asset investment manager which is supervised by a government authority in the European Economic Area, the United States of America, Canada, Australia, New Zealand or Japan.

4.3 Valid transfer

- (a) The transfer by it of the Rights to the Beneficiary is a legally valid, binding and enforceable transfer or, as applicable, will be recognised as a legally valid, binding and enforceable transfer, under:

⁶ To be repeated in the ECI in case of a syndicated facilities agreement where a facility agent acts as insured party.

- (i) the terms of the Loan Agreement;
 - (ii) the applicable laws under which the transfer is effected;
 - (iii) the laws of the jurisdiction of incorporation of the Bank; and
 - (iv) the laws of the jurisdiction of the Borrower.
- (b) The Rights are freely transferable to the State without consent of the Borrower.

4.4 Legal compliance

- (a) It has not, and no other group company has, breached, in any material respect, any law or regulation applicable to it including any law or regulation relating to:
- (i) the timely and adequate disclosure of information to shareholders, the financial markets, stock exchanges and supervisory authorities;
 - (ii) solvency requirements under the Dutch Financial Markets Supervision Act (Wet op het financieel toezicht) or any similar requirements imposed by any non-Dutch supervisory authority; and
 - (iii) "know your customer" and anti money laundering requirements.
- (b) It has not, and no other group company has, breached, in any material respect, any directive, order or guideline of the Dutch Central Bank (*De Nederlandsche Bank N.V.*), the Netherlands Authority for the Financial Markets (*Stichting Autoriteit Financiële Markten*) or any non-Dutch supervisory authority (except as disclosed to the Dutch Central Bank, the Netherlands Authority for the Financial Markets or any non-Dutch supervisory authority, as applicable).

4.5 No proceedings

- (a) No litigation, arbitration, administrative proceedings or investigations of, or before, any authority, court, or arbitral, governmental or regulatory body which are reasonably likely to have a material adverse effect upon the business, financial situation or prospects of it or the group to which it belongs taken as a whole have, to the best of its knowledge, been started or threatened.
- (b) The Dutch Central Bank has not made any adverse determination in relation to it pursuant to Section 3:18a of the Dutch Financial Markets Supervision Act.

4.6 Funding

The margin payable under the Loan Agreement has been lowered for the benefit of the Borrower, with a percentage equal to the Funding Spread. The **Funding Spread** for the purposes of this

Clause 4.6, Clause 5 (Information Undertakings) and Clause 6 (Remuneration and Funding Spread Claw Back) means the difference between:

- (i) the funding costs increased with the opportunity costs of capital that the Bank would incur (as calculated by the internal treasury desk of the Bank) in relation to the funding by it of the loans made available by it under the Loan Agreement without the issuance of the ECG; and
- (ii) the funding costs increased with the opportunity costs of capital incurred by the Bank in relation to the funding by it of the loans made available by it under the Loan Agreement, taking into account the issuance of the ECG.

4.7 Repetition

- (a) Each representation under Clauses 4.4 (Legal compliance) and 4.5 (No proceedings) is deemed to be repeated by the Bank on each date during the period when a valid claim under the ECG may be made by the Beneficiary.
- (b) When a representation is deemed to be repeated, it is applied to the circumstances existing at the time of repetition.

5. INFORMATION UNDERTAKINGS

- a) The Bank must, at the request of the State, to the extent permitted under applicable law, supply such information regarding its business, financial condition and prospects of it or any other group company as the State may reasonably request, including:
 - (i) its and any other group company's annual and semi-annual (if any) financial statements for any financial year or half year;
 - (ii) all documents dispatched by it to its shareholders (or any class of them) or its creditors generally; and
 - (iii) all documents supplied by it to the Dutch Central Bank, the Netherlands Authority for the Financial Markets or any non-Dutch supervisory authority, as applicable).
- b) The Bank must, no later than 15 Dutch business days after the date of this Agreement, inform the State of the Funding Spread (including the exact height of the percentage which constitutes the Funding Spread and calculations pursuant to which the Funding Spread has been established).

6. REMUNERATION AND FUNDING SPREAD CLAW BACK

- (a) The Bank must pay the State a fee in an amount equal to €[●] within 14 Dutch business days after the date of this Agreement.

- (b) If the State (on the basis of the information received by the State pursuant to Clause 5 (Information Undertakings) determines that the margin payable under the Loan Agreement has not been lowered for the benefit of the Borrower with a percentage equal to the Funding Spread in accordance with the representation under Clause 4.6 (Funding), the Bank must pay the State an amount equal to the Funding Spread Retained Amount within:
- (i) 15 Dutch business days of demand by the State, in relation to any Funding Spread Retained Amount received by the Bank before the date of such demand; and
 - (ii) 5 Dutch business days after each interest payment date under the Loan Agreement on which the Bank receives the relevant interest amount, in relation to any Funding Spread Retained Amount to be received by the Bank after the date of such demand.

The **Funding Spread Retained Amount** for the purposes of this paragraph (b) means an amount equal to the difference between:

- (A) the actual amount of interest (calculated on the basis of the margin payable under the Loan Agreement) paid or payable by the Borrower to the Bank under the Loan Agreement; and
- (B) the amount of interest that the Borrower would have paid to the Bank under the Loan Agreement if the margin payable under the Loan Agreement would have been lowered for the benefit of the Borrower with a percentage equal to the Funding Spread.

7. PAYMENTS

7.1 Place

All payments by the Bank to the State under this Agreement must be made to Atradius Dutch State Business N.V. to its account held with ABN AMRO Bank N.V., Amsterdam, the Netherlands with:

- (i) account number: 469801050;
- (ii) IBAN code: NL43 ABNA 0469801050; and
- (iii) SWIFT code: ABNANL2A,

or such other account at such office or bank as the State may notify to the Bank for this purpose by not less than one Dutch business day prior notice.

7.2 No set-off or counterclaim

The Bank must make all payments under this Agreement without (and free and clear of any deduction for) set-off or counterclaim.

7.3 No deduction or withholding

- (a) The Bank must make all payments under this Agreement without any deduction or withholding for or on account of tax, unless a deduction or withholding is required by law (a **Tax Deduction**).
- (b) If the Bank is required by law to make a Tax Deduction, the amount of the payment due from the Bank will be increased to an amount which (after making the Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

7.4 Currency

Except as otherwise provided under Clause 6 (Remuneration), the Bank must make all payments under this Agreement in the currency of the amount paid by the State under the ECG.

7.5 Timing

Except as otherwise provided under Clause 6 (Remuneration), the Bank must make the payments required to be made by it to the State under this Agreement within five Dutch business days after receipt of a notice of demand from the State.

8. TRANSFERS

- (a) No party to this Agreement may assign or transfer any of its rights and obligations under this Agreement without the prior consent of the other party to this Agreement.
- (b) Any reference to the "Beneficiary" in this Agreement includes any subsequent beneficiary that has obtained any rights under the ECG pursuant to a transfer in accordance with clause 5 (Transfers) of the ECG.

9. WAIVER

The Bank irrevocably waives any right it may have at any time to:

- (i) suspend (opschorten) any obligation under this Agreement under Sections 6:52, 6:262 and 6:263 of the Dutch Civil Code or any other applicable law; or
- (ii) rescind (ontbinden) this Agreement in whole or in part under Section 6:265 of the Dutch Civil Code or any other applicable law.

10. GOVERNING LAW

This Agreement is governed by Dutch law.

11. ENFORCEMENT

11.1 Jurisdiction

- (a) The courts of Amsterdam, the Netherlands, have exclusive jurisdiction to settle any dispute in connection with this Agreement.
- (b) References in this Clause 11 to a dispute in connection with this Agreement include any dispute as to the existence, validity or termination of this Agreement.

11.2 Election of domicile⁷

- (a) The Bank irrevocably elects domicile (*woonplaats*) under this Agreement at the offices of [NAME], [ADDRESS], the Netherlands for service of process in any proceedings before the Amsterdam courts.
- (b) This Clause 11.2 does not affect any other method of service allowed by law.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

⁷ To be included only in case of non-Dutch bank.

SIGNATORIES

The State of the Netherlands, represented by Atradius Dutch State Business N.V.

Name:

Title:

[NAME BANK]

Name:

Title:

Name:

Title:

SPECIMEN

ANNEX I

FORM OF ECG

SPECIMEN