

## STATE OF THE NETHERLANDS EXPORT CREDIT GUARANTEE RECOURSE AGREEMENT – BONDS

**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,]<sup>1</sup> the Bank and [NAME BORROWER(S)] as borrower (the **Borrower**) (the **Loan Agreement**).
- (B) [The Bank has transferred or will transfer its rights or part of its rights under the Loan Agreement (the **Loan Agreement Rights**) to [NAME SPV] (the **SPV**).]<sup>2</sup>
- (C) The Issuer (as defined below) has issued or will issue one or more privately held bonds (each individually or collectively the **Bond**) to [NAME BENEFICIARY OR BENEFICIARIES] (each individually or collectively the **Beneficiary**) in relation to the refinancing of its rights or part of its rights under the Loan Agreement.
- (D) 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.]<sup>3</sup>
- (E) The Issuer has granted or will grant a security interest on [its rights or part of its rights under the Loan Agreement (the **Loan Agreement Rights**)] [the Loan Agreement Rights]<sup>4</sup> in favour of the State as security for the obligations of the Bank towards the State under or in connection with this Agreement.
- (F) The State, at the request of the Bank, has issued or will issue one or more Dutch State export credit guarantees in favour of the Beneficiary in the form attached as Annex I (Form of ECG) to this Agreement (each individually or collectively the **ECG**).

**IT IS AGREED** as follows:

### 1. CONSTRUCTION

- (a) Any reference in this Agreement to the **Issuer** is a reference to, as applicable:

<sup>1</sup> To be deleted or included as applicable.

<sup>2</sup> To be included only in structure with a SPV.

<sup>3</sup> To be deleted or included as applicable.

<sup>4</sup> Part with definition included to be deleted if paragraph (B) is used.

- (i) the Bank, if the Bank has issued or will issue the Bond to the Beneficiary in relation to the refinancing of its rights or part of its rights under the Loan Agreement; or
  - (ii) the SPV, if the Bank has transferred or will transfer its rights or part of its rights under the Loan Agreement to the SPV and the SPV has issued or will issue the Bond to the Beneficiary in relation to the refinancing of the SPV's rights or part of the SPV's rights under the Loan Agreement.
- (b) Any reference in this Agreement to "the SPV" may be ignored unless defined in this Agreement.

## **2. 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 or procure 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. 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 this paragraph (a) is an independent obligation and any such payment or procurement of such payment pursuant to this paragraph (a) above will not constitute discharge of the Borrower's payment obligations under the Loan Agreement.
- (b) The obligations of the Bank under paragraph (a) above 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) the unenforceability, illegality, invalidity or non-provability of any obligation of the Issuer under or in connection with the Bond;
  - (vii) any defences raised by the Issuer under the Bond with respect to its obligations under or in connection with the Bond;
  - (viii) any non-performance by the Issuer of its obligations under or in connection with the Bond;

- (ix) any acceleration of the Bond;
- (x) any amendment of the terms of the Bond (including in relation to the redemption schedule of the Bond);
- (xi) 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
- (xii) any other circumstance or event which but for this paragraph (b) 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.

### **3. 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 cost of capital of the State (as determined by the State) during the period of non-payment. Any determination by the State of its cost of capital will, in the absence of manifest error, be conclusive and binding on the Bank.
- (d) The obligations of the Bank under this Clause 3 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) the unenforceability, illegality, invalidity or non-provability of any obligation of the Issuer under or in connection with the Bond;
  - (vii) any defences raised by the Issuer under the Bond with respect to its obligations under or in connection with the Bond;
  - (viii) any non-performance by the Issuer of its obligations under or in connection with the Bond;
  - (ix) any acceleration of the Bond;
  - (x) any amendment of the terms of the Bond (including in relation to the redemption schedule of the Bond);
  - (xi) 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
  - (xii) any other circumstance or event which but for this paragraph (d) might permit the Bank not to comply with its obligations under this Clause 3 or otherwise affect the obligations of the Bank under this Clause 3.
- (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.

#### **4. BOND**

The representations, warranties and undertakings set out in this Clause 4 are made or incurred by the Bank in relation to the Loan Agreement Rights to and for the benefit of the State.

##### **4.1 Alignment of Bond and Loan Agreement**

- (a) The terms of the Bond as specified in annex I (Guaranteed Payments) to the ECG are, in relation to the:
- (i) maximum principal amount;
  - (ii) redemption terms (including in relation to the amounts and timing of redemption and the final redemption date);
  - (iii) the due dates of coupon payments; and
  - (iv) currency,

correct and complete and are the same as the terms that (on an aggregate basis) apply or will apply under the corresponding terms of the Loan Agreement.

- (b) Notwithstanding the actual interest rate and default interest rate under the Bond, the coupon rate and default interest rate as specified in annex I (Guaranteed Payments) to the ECG are equal to or lower than the applicable interest rate and default interest rate that apply or will apply under the Loan Agreement.

#### **4.2 Utilisation of Bond**

It may (and will procure that the SPV will) at any time, only utilise the proceeds of the Bond to refinance the Loan Agreement in an amount not exceeding the amounts outstanding under the Loan Agreement.

#### **4.3 Prepayment or repayment of Bond**

- (a) Subject to Clause 2 (Payment to Beneficiary), it must at all times ensure or procure that the aggregate principal amount outstanding under the Bond does not exceed the aggregate principal amount outstanding under the Loan Agreement.
- (b) It must repay or prepay (or procure the repayment or prepayment of) any Bond if required under paragraph (a) above.

#### **4.4 Amendments to Bond**

It must not (and will procure that the SPV will not) agree to any amendment to the Bond unless:

- (a) the prior written consent of the State is obtained; or
- (b) a corresponding amendment is made to the Loan Agreement and no consent is required from the State under the ECI for that amendment to the Loan Agreement.

### **5. 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 5, this Clause 5 prevails.
- (b) Subject to the terms of this Agreement, the obligations of the Bank under Clauses 2 (Payment to Beneficiary) and 3 (Indemnity to the State) will not affect the rights and obligations of the Bank under the ECI.
- (c) No payment under the ECI will be made by the State with respect to any principal amount, coupon, interest (including default interest (*boeterente*) and delay interest (*achterstalligheidsrente*)) during the period when a valid claim under the ECG may be made by the Beneficiary in relation to the corresponding principal amount, coupon or interest.

- (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 3 (Indemnity to the State).
- (e) No payment will be made by the State under the ECI unless and until the relevant Loan Agreement Rights in respect of which the payment is envisaged to be made, together with any related security interest (including guarantees) (the **Security Interests**) securing the obligations under the Loan Agreement, have been transferred by the Issuer 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 Loan Agreement 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 Loan Agreement Rights to the State.

## 6. REPRESENTATIONS AND WARRANTIES

The representations and warranties set out in this Clause 6 are made by the Bank to the State.

### 6.1 Eligible Beneficiary

Unless the Beneficiary is a person which is approved in writing as an eligible beneficiary by the State, the Beneficiary is:

- (a) 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
- (b) 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.

### 6.2 Valid security interest

The creation of a security interest by the Issuer on the Loan Agreement Rights in favour of the State as security for its obligations towards the State under or in connection with this Agreement is legally valid, binding and enforceable or, as applicable, will be recognised as a legally valid, binding and enforceable security interest, under:

- (a) the terms of the Loan Agreement and the terms of the instrument under which the security interest is created;
- (b) the applicable laws under which the security interest is created;
- (c) the laws of the jurisdiction of incorporation of the Bank; and
- (d) the laws of the jurisdiction of the Borrower.

### 6.3 Legal compliance

- (a) It has not, and no other group company nor the SPV 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 nor the SPV 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*), the European Central Bank or any other non-Dutch supervisory authority (except as disclosed to the Dutch Central Bank, the Netherlands Authority for the Financial Markets or any such non-Dutch supervisory authority, as applicable).

### 6.4 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, or the SPV, 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.

### 6.5 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 6.5,

Clause 7 (Information Undertakings) and Clause 8 (Remuneration and Funding Spread Claw Back) means the difference between:

- (i) the funding costs that the Bank would have incurred (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 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;

provided that (a) the margin as agreed with the Borrower (excluding funding costs) will never be lower than the (opportunity) cost of capital incurred by the Bank in relation to the loans made available by it under the Loan Agreement, taking into account the issuance of the ECG; and (b) the Funding Spread can never be negative.

**[Note: representation will be included in the ECG-application form as well]**

## 6.6 SPV

To the extent applicable, the SPV is managed and serviced by the Bank and the Bank will procure compliance by the SPV with the terms of this Agreement.

## 6.7 Repetition

- (a) Each representation under Clauses 6.3 (Legal compliance) and 6.4 (No proceedings) is deemed to be repeated by the Bank on the date on which the Bond is issued and 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.

## 7. INFORMATION UNDERTAKINGS

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, or the SPV as the State may reasonably request, including:

- (i) its and any other group company's and the SPV 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; and
- (iv) the level 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).

## 8. 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 7 (Information Undertakings or otherwise) 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 6.6 (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) five 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.

## 9. PAYMENTS

### 9.1 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:

- (a) account number: 469801050;

(b) IBAN code: NL43 ABNA 0469801050; and

(c) 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.

## **9.2 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.

## **9.3 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.

## **9.4 Currency**

Except as otherwise provided under Clause 8 (Remuneration), the Bank must make all payments under this Agreement in the currency of the amount paid by the State under the ECG.

## **9.5 Timing**

Except as otherwise provided under Clause 8 (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.

## **10. 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 (and no transfer is effective without such consent (*heeft geen goederenrechtelijke werking zonder toestemming*)).

(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.

## **11. WAIVER**

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

- (a) 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
- (b) rescind (*ontbinden*) this Agreement in whole or in part under Section 6:265 of the Dutch Civil Code or any other applicable law.

## 12. GOVERNING LAW

This Agreement is governed by Dutch law.

## 13. ENFORCEMENT

### 13.1 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 13 to a dispute in connection with this Agreement include any dispute as to the existence, validity or termination of this Agreement.

### 13.2 Election of domicile<sup>5</sup>

- (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 13.2 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.

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<sup>5</sup> To be included only in case of non-Dutch bank.

## SIGNATORIES

For the State of the Netherlands,

Atradius Dutch State Business NV

Name:

Title:

**[NAME BANK]**

Name:

Title:

Name:

Title:

**ANNEX I**  
**FORM OF ECG**