

## STATE OF THE NETHERLANDS EXPORT CREDIT GUARANTEE – TRANSFER OF RIGHTS

From: **THE STATE OF THE NETHERLANDS, REPRESENTED BY ATRADIUS DUTCH STATE BUSINESS N.V.** (the **Guarantor**).

To: *[NAME OF INITIAL BENEFICIARY]* (the **Beneficiary**).

Date: *[DATE]*

### BACKGROUND

- (A) Reference is made to the loan agreement dated *[DATE]* between[, amongst others,]<sup>1</sup> *[NAME BANK]* as lender (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 the Beneficiary.
- (B) The credit risk of the Bank under the Loan Agreement is insured by the Guarantor 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>2</sup>

### 1. GUARANTEE

- (a) Subject to the terms of this guarantee (**Guarantee**), the Guarantor irrevocably and unconditionally guarantees, as an independent obligation and not as a surety (*borg*) or a joint debtor (*hoofdelijke schuldenaar*), to the Beneficiary payment of any principal amount, interest and default interest under or in connection with the Rights when due and payable under the terms of the Loan Agreement to the extent specified and at the times specified in Annex I (Guaranteed Payments) of this Guarantee.
- (b) This Guarantee is 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) a failure by the Bank or a facility agent under the Loan Agreement to transfer any relevant amount paid by the Borrower under the Loan Agreement to the Beneficiary; or
  - (v) any defect in the transfer of the Rights under the Loan Agreement:

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

<sup>2</sup> To be deleted or included as applicable.

- (A) by the Bank to the Beneficiary; or
  - (B) or any subsequent transfer made in accordance with Clause 5 (Transfers).
- (c) The liability of the Guarantor under this Guarantee is limited to a maximum amount of [*CURRENCY + MAXIMUM AMOUNT*].

## 2. TERM

- (a) This Guarantee will come into force on the later of the date of:
- (i) this Guarantee; and
  - (ii) the disclosed or undisclosed transfer of the Rights by the Bank to the Beneficiary.
- (b) Except as otherwise agreed in writing by the Guarantor, this Guarantee will, in relation to any principal amount (and related interest) the subject of this Guarantee, expire 30 days after the original repayment date of that principal amount as specified in Annex I (Guaranteed Payments) of this Guarantee, unless a duly completed and executed demand for payment under this Guarantee is received by the Guarantor from the Beneficiary prior to that time.

## 3. DEMAND FOR PAYMENT

- (a) The Beneficiary may demand payment from the Guarantor under this Guarantee by delivery to the Guarantor of a duly completed and executed written notice of demand (a **Notice of Demand**).
- (b) A Notice of Demand will not be regarded as duly completed unless it:
- (i) is made in the form as attached to this Guarantee as Annex II (Form of Notice of Demand);
  - (ii) includes a copy or copies of the relevant instruments or documents necessary in connection with the transfer of the Rights under the Loan Agreement to the Beneficiary; and
  - (iii) is duly signed on behalf of the Beneficiary.
- (c) A Notice of Demand will not be regarded as duly delivered unless it is delivered to:
- Atradius Dutch State Business N.V.  
Claims & Recoveries Team  
P.O. Box 8982  
1006 JD Amsterdam  
The Netherlands
- (d) The delivery of a Notice of Demand under this Guarantee constitutes the unconditional acceptance of the terms of this Guarantee by the Beneficiary.

- (e) Subject to paragraph (c) of Clause 1 (Guarantee), the Beneficiary may make multiple demands under this Guarantee.

#### **4. PAYMENTS**

##### **4.1 No set-off or counterclaim**

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

##### **4.2 No deduction or withholding**

The Guarantor must make all payments under this Guarantee without any deduction or withholding for or on account of tax.

##### **4.3 Currency**

The Guarantor must make all payments under this Guarantee in the currency of the indebtedness under the Loan Agreement in respect of which a claim is made under this Guarantee.

##### **4.4 Timing**

The Guarantor must make the payments required to be made by it under this Guarantee within five Dutch business days after receipt of a Notice of Demand in accordance with Clause 3 (Demand for Payment).

##### **4.5 Transfer of guaranteed claims and related security interests and recovery**

- (a) Subject to paragraph (b)(v) of Clause 1 (Guarantee), no payment will be made by the Guarantor under this Guarantee unless and until the Beneficiary has executed and delivered all relevant instruments or documents necessary in connection with the transfer of the relevant Rights in respect of which the payment is envisaged to be made to the Guarantor.
- (b) Subject to paragraph (b)(v) of Clause 1 (Guarantee), after a Notice of Demand is delivered in accordance with Clause 3 (Demand for Payment), the Beneficiary must promptly transfer any security interest (including guarantees) (the **Security Interests**) securing the obligations under the Loan Agreement to the Guarantor. No transfer of the Security Interests is required if the Guarantor:
- (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 Guarantor together with the transfer of the Rights; or
  - (iii) is satisfied that the Security Interests are held by a security agent or security trustee for the benefit of the creditors under the Loan Agreement including the Guarantor after the transfer of the Rights to the Guarantor.

- (c) After a payment has been made by the Guarantor under this Guarantee, the Beneficiary must immediately remit to the Guarantor all payments received by it from the Borrower, the Bank or a facility agent under the Loan Agreement in relation to the amount paid.

#### **4.6 Acceleration or amendment of repayment terms**

Notwithstanding:

- (a) any acceleration of any loan made available under the Loan Agreement; or
- (b) any amendment or waiver of the repayment terms under the Loan Agreement (including in relation to the repayment schedule of the loans made available under the Loan Agreement),

all payments under this Guarantee will be made by the Guarantor in accordance with the repayment schedule of the loans made available under the Loan Agreement specified in Annex I (Guaranteed Payments) of this Guarantee, except as otherwise agreed in writing by the Guarantor.

#### **5. TRANSFERS**

- (a) Subject to paragraphs (b), (d) and (e) below, the Beneficiary may transfer its legal relationship (but not part of its legal relationship) under this Guarantee by way of transfer of contract (*contractsovername*) to:
- (i) 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; or
- (ii) any person which is, in the context of a securitisation transaction, a covered bond transaction or a transaction similar to a securitisation transaction or covered bond 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.
- (b) The Guarantor co-operates (within the meaning of Section 6:159 of the Dutch Civil Code) in advance with any transfer made in accordance with this Clause 5.
- (c) The Beneficiary must notify any transfer by the Beneficiary of its legal relationship under this Guarantee to the Guarantor and the Bank.
- (d) Any transfer by the Beneficiary of its legal relationship under this Guarantee to a person must be made together with the transfer of the Rights under the Loan Agreement to that person.
- (e) The transfer by the Beneficiary of its legal relationship under this Guarantee to any person other than specified under paragraph (a) above requires the Guarantor's prior written consent.

- (f) Any reference to the "Beneficiary" in this Guarantee includes any subsequent beneficiary that has obtained any rights under this Guarantee pursuant to a transfer in accordance with this Clause 5.

## 6. AMENDMENTS TO LOAN AGREEMENT

The Beneficiary must not agree to any amendment to or waiver under the Loan Agreement unless:

- (a) the prior written consent of the Guarantor is obtained; or
- (b) no consent is required from the Guarantor in relation to the amendment or waiver under the ECI.

## 7. ACCELERATION

The Beneficiary must not agree to any acceleration of any loan made available under the Loan Agreement unless:

- (a) the prior written consent of the Guarantor is obtained; or
- (b) the Guarantor confirms to the Beneficiary that it has consented to the acceleration under the ECI.

## 8. PFANDBRIEF BANK AS BENEFICIARY

- (a) If:
- (i) the Beneficiary is a Pfandbrief bank within the meaning of the German Pfandbrief Act (*Pfandbriefgesetz*); and
  - (ii) this Guarantee together with the Rights has been registered in the respective cover register (*Deckungsregister*) of the Beneficiary,

the Guarantor expressly acknowledges that its obligations under this Guarantee are owed towards the respective cover pool (*Deckungsstock*) of such Beneficiary for the benefit of the beneficiaries of such cover pool (*Deckungsstock*) and the rights of the Beneficiary under this Guarantee are not affected by any defences of the Borrower that it has made a payment under the Loan Agreement where the Rights in respect of that payment have been:

- (A) seized or attached by a senior unsecured creditor of the Beneficiary with the approval of a court in the jurisdiction of incorporation of the Borrower; and
  - (B) the payment has been made to that senior unsecured creditor.
- (b) Any waiver made under this Clause 8 is in addition to any other waiver made under this Guarantee including any waiver made under in paragraph (b) of Clause 1 (Guarantee).

**9. GOVERNING LAW**

This Guarantee is governed by Dutch law.

**10. JURISDICTION**

- (a) The courts of Amsterdam, the Netherlands, have exclusive jurisdiction to settle any dispute in connection with this Guarantee.
- (b) References in this Clause 10 to a dispute in connection with this Guarantee include any dispute as to the existence, validity or termination of this Guarantee.

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

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

Name:

Title:

SPECIMEN

## ANNEX I

### GUARANTEED PAYMENTS

- (1) Maximum principal amount of the loans made available under the Loan Agreement: *[AGGREGATE AMOUNT OF THE FACILITIES]*
- (2) Repayment schedule of the loans made available under the Loan Agreement and final maturity date: *[E.G. IN INSTALMENTS I TO, AND INCLUDING [NUMBER OF LAST INSTALMENT], EACH COMPRISING OF ...% OF THE LOAN AMOUNT.]*
- or
- [E.G. INSTALMENT I TO BE PAID ON [DATE] AT THE LATEST AND EACH SUBSEQUENT INSTALMENT EACH TIME SIX MONTHS THEREAFTER. NUMBER OF LAST INSTALMENT] TO BE PAID ULTIMATELY ON [DATE].]*
- (3) Currency of the loans made available under the Loan Agreement: *[CURRENCY]*
- (4) Applicable interest rate: *[Floating, on the basis of [INTEREST BASIS], plus a margin of [MARGIN] per cent. per annum.]*
- or
- [Fixed, on the basis of [INTEREST BASIS] per cent. per annum.]*
- (5) Interest payment conditions: *[E.G. INTEREST IS DUE ON THE DUE DATE OF EACH INSTALMENT, TO BE CALCULATED ON THE RESPECTIVE DUE DATE WITH REFERENCE THE THEN OUTSTANDING PRINCIPAL AMOUNT UNDER THE LOAN AGREEMENT.]*
- (6) Default interest: *[PERCENTAGE]* per cent. higher than the interest rate that would otherwise be payable under the terms of the Loan Agreement.

**ANNEX II**

**FORM OF NOTICE OF DEMAND**

From: *[NAME OF BENEFICIARY]* (the **Beneficiary**).

To: **THE STATE OF THE NETHERLANDS, REPRESENTED BY ATRADIUS DUTCH SATE BUSINESS N.V. (the Guarantor)**.

Date: *[DATE]*

Dear Sirs,

Reference is made to the guarantee issued by the Guarantor on *[DATE]* (the **Guarantee**). A copy of the Guarantee is attached as Schedule A to this Notice of Demand.

This is a Notice of Demand under the Guarantee.

Capitalised terms defined in the Guarantee have, unless expressly defined in this Notice of Demand, the same meaning in this Notice of Demand.

A copy or copies of the instruments or documents necessary in connection with the transfer of the Rights under the Loan Agreement to the Beneficiary is attached as Schedule B to this Notice of Demand.

We expressly and unconditionally agree to the terms of the Guarantee.

We confirm that we have not received the following amounts due for payment as specified in annex I (Guaranteed Payments) of the Guarantee:

Due date	Principal amount	Interest +default interest	Total amount
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We demand payment of an amount equal to: *[CURRENCY + AMOUNT]* (the **Guaranteed Amount**).

We kindly request you to transfer the Guaranteed Amount to us using the following bank account details:

SWIFT: *[INSERT SWIFT CODE]*.

IBAN: *[INSERT IBAN CODE]*.

Bank account number: *[INSERT BANK ACCOUNT DETAILS]*.

Name of account holder: *[INSERT NAME BENEFICIARY]*.

Name of account bank : *[INSERT NAME ACCOUNT BANK]*.

Duly signed on behalf of *[NAME OF BENEFICIARY]*

By: