

STATE OF THE NETHERLANDS EXPORT CREDIT GUARANTEE – REFINANCING

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,]¹ [NAME BANK] as lender (the **Bank**) and [NAME BORROWER(S)] as borrower (the **Borrower**) (the **Loan Agreement**). The Bank has entered into or will enter into a refinancing arrangement (the **Refinancing Arrangement**) with the Beneficiary in relation to its rights or part of its rights under the Loan Agreement.
- (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.]²

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 by the Bank of any principal amount, interest and default interest under or in connection with its rights (the **Rights**) under the Refinancing Arrangement when due and payable under the terms of the Refinancing Arrangement.
- (b) This Guarantee is not affected by:
- (i) the unenforceability, illegality, invalidity or non-provability of any obligation of the Bank under or in connection with the Refinancing Arrangement as a result of any circumstance or event arising after the date of this Guarantee;
 - (ii) any defences raised by the Bank under the Refinancing Arrangement with respect to its obligations under or in connection with the Refinancing Arrangement; or
 - (iii) any non-performance by the Bank of its obligations under or in connection with the Refinancing Arrangement.
- (c) The liability of the Guarantor under this Guarantee is limited to the Rights to the extent these are specified in Annex I (Guaranteed Payments) of this Guarantee.

¹ To be deleted or included as applicable.

² To be deleted or included as applicable.

- (d) 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 Refinancing Arrangement.
- (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 of the Refinancing Arrangement; 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 paragraphs (c) and (d) 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 Refinancing Arrangement 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 Recovery

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 or on behalf of the Bank 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 Refinancing Arrangement; or
- (b) any amendment or waiver of the repayment terms under the Refinancing Arrangement (including in relation to the repayment schedule of the loans made available under the Refinancing Arrangement),

all payments under this Guarantee will be made by the Guarantor in accordance with the repayment schedule of the loans made available under the Refinancing Arrangement 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 Refinancing Arrangement 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 REFINANCING ARRANGEMENT

The Beneficiary must not agree to any amendment to or waiver under the Refinancing Arrangement unless:

- (a) the prior written consent of the Guarantor is obtained; or
- (b) no consent is required from the Guarantor under the ECI for a substantially similar amendment to or waiver under the Loan Agreement.

7. ACCELERATION AND ASSURANCE

- (a) The Beneficiary must not accelerate any loan made available under the Refinancing Arrangement unless the prior written consent of the Guarantor is obtained.
- (b) After a payment has been made by the Guarantor under this Guarantee, the Beneficiary must:
- (i) do all such acts (including the acceleration of any loan made available under the Refinancing Arrangement); or
 - (ii) execute all such documents (including assignments, transfers, notices and instructions)

as the State may reasonably specify and in such form as the State may reasonably require in favour of the State to enforce the relevant Rights against the Bank in respect of which the payment has been made.

The State will pay to the Beneficiary all pre-agreed costs and expenses reasonably incurred by it pursuant to this paragraph (b).

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 Bank that it has made a payment under the Refinancing Arrangement 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 Bank; 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:

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ANNEX I

GUARANTEED PAYMENTS

- (1) Maximum principal amount of the loans made available under the Refinancing Arrangement: *[AGGREGATE AMOUNT OF THE FACILITIES]*
- (2) Repayment schedule of the loans made available under the Refinancing Arrangement 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 Refinancing Arrangement: *[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.]³*
- (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*

³ Equal to or lower than the applicable interest rate that applies against the Borrower under the Loan Agreement.

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.⁴

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⁴ Equal to or lower than the applicable interest rate that applies against the Borrower under 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 STATE 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 of the Refinancing Arrangement 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 under the Refinancing Arrangement 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: