



# Annex 19

## FORM OF FIRST DEMAND BANK GUARANTEE

### REVISION HISTORY

Revision Level	Change Summary	Elaborated by	Approved by	Date

**EXHIBIT S-3**  
**FORM OF PERFORMANCE SECURITY**

DATED [ ] [ ]

[ ] BANK [ ]

AND

[ ] BENEFICIARY [ ]

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**ON DEMAND PERFORMANCE BOND**  
RELATING TO AN ENGINEERING, PROCUREMENT  
AND CONSTRUCTION  
CONTRACT DATED [ ] [ ]  
FOR THE EXECUTION OF CERTAIN WORKS AT  
[ ] [ ]

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**THIS BOND** is dated [ ] [ ]

## **PARTIES**

- (1) [ ] **BANK** [ ] whose principal office is at [ ] (the "**Bank**");
- (2) [ ] **BENEFICIARY** [ ] Company Number [ ] [ ] whose registered office is at [ ] (the "**Beneficiary**") which expression shall include its successors in title, transferees and assigns.

## **RECITALS**

- (A) By an engineering, procurement and construction contract (as such contract may be altered, amended or varied from time to time) entered into or to be entered into between (1) the Beneficiary and (2) [ ] (the "**Contractor**"), particulars of which are set out in Annexure 1 (the "**Contract**"), the Contractor has agreed with the Beneficiary to carry out and complete certain works in connection with the [ ] Beneficiary's development [ ] in [ ] *specify country* [ ] (the "**Works**") upon and subject to the terms and conditions in the Contract.
- (B) The Contractor has agreed, under the Contract, to procure for the benefit of the Beneficiary an on-demand bond in the form of this Bond.
- (C) The Bank has agreed, at the request of the Contractor, to enter into this on-demand Bond in favour of the Beneficiary.

## **OPERATIVE PROVISIONS**

1. In this Bond words and expressions, if not otherwise defined, shall have the meanings (if any) given to them in the Contract and:

**"Bond Amount"** means the amount specified in Annexure 1.

**"Business Day"** means a day other than Saturday or Sunday on which banks generally are open for inter-bank business in [ ] *specify city or town* [ ] or a public holiday in [ ] *specify country* [ ].

**"Expiry Date"** means the expiry date specified in Annexure 1.

2. The Bank hereby irrevocably and unconditionally undertakes to pay to the Beneficiary upon the Business Day immediately following the Business Day on which it receives a written demand from the Beneficiary in accordance with clause 4 below an amount equal to the lesser of:
  - (a) the amount specified in such demand; and
  - (b) the Bond Amount less the aggregate of all previous payments made under this Bond.
3. The Bank's obligation to make payments under this Bond shall arise on receipt of a demand made in accordance with provisions of this Bond without any further proof or



condition and without any right of deduction, set-off or counterclaim, and the Bank shall not be required or permitted to make any other investigation or enquiry.

4. The Beneficiary may make one or more demands hereunder. Each demand shall be:
  - (a) substantially in the form set out in Annexure 2; and
  - (b) delivered to the Bank on a Business Day and during normal banking hours at its offices specified in clause 9 below (or such other office of the Bank in [specify city or town] as the Bank may from time to time notify to the Beneficiary).
5. The maximum aggregate liability of the Bank under this Bond shall not exceed the Bond Amount.
6. This Bond is irrevocable. It will take effect on the date hereof and (unless previously cancelled by the written agreement of the Bank and the Beneficiary) will expire on the earliest of:
  - (a) the Expiry Date; and
  - (b) the date on which all payments made under this Bond shall equal the Bond Amount.

The expiry of the Bond under clause 6(a) above shall not affect or discharge the liability of the Bank to make payment of any demand made or any potential demand notified in accordance with the provisions of clauses 2 and 4 on or before the Expiry Date.

7. All payments to be made by the Bank under this Bond shall be made to the account specified in the relevant demand and within one Business Day immediately following the date of each demand becoming effective in accordance with clause 4, failing which interest shall accrue daily on the unpaid balance at a rate of [•] % above the base lending rate from time to time of [insert reference] until payment is made in full by the Bank.<sup>1</sup>
8. The Beneficiary may assign, charge or transfer its rights and benefits under this Bond, without the consent of the Bank:
  - (a) to any party to whom the Beneficiary's rights or benefits under the Contract have been assigned, charged or otherwise transferred (including by way of security and/or by way of re-assignment on redemption by or to the Beneficiary); and/or
  - (b) to any company which is a member of the same group of companies as the Beneficiary; and/or
  - (c) (where the Beneficiary is a trustee or agent for any person or person providing finance in relation to the Works) to any successor or replacement trustee or agent.

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<sup>1</sup> **Note to draft:** the interest rate for late payments will need to be inserted here.



The Bank shall be notified of any such assignment or transfer in writing. Until any such notice has been delivered to the Bank, the Bank shall not be required to recognise any such assignee as entitled to issue a demand under this Bond.

The Bank may not assign, charge or transfer its rights or benefits under this Bond.

9. Subject to this Bond, a notice under or in connection with this Bond (a "**Notice**") (other than demands made under clauses 2 and 4):

- (a) shall be in writing;
- (b) shall be in the English language; and
- (c) shall be delivered personally or sent by first class post (and air mail if overseas) or by facsimile transmission to the party due to receive the notice to the address specified in clause 10 or to another address specified by that party by not less than seven (7) days' written notice to the other party received before the Notice was despatched.

10. The address referred to in clause 9 is:

(a) In the case of the Bank:

Address:

[Fax:]

Marked for the attention of [insert person's name/title]

[and a copy to

Address:

[Fax:]

Marked for the attention of [insert person's name/title]

(b) In the case of the Beneficiary:

Address:

[Fax:]

Marked for the attention of [insert person's name/title].

11. All payments under this Bond shall be made free and clear of any withholding or deduction on account of tax or otherwise.

12. All payments under this Bond shall be made in [insert currency].<sup>2</sup>

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<sup>2</sup> **Note to draft:** for confirmation as to the currency of payments under the Bond.



13. Any waiver by the Beneficiary of the terms of this Bond or any consent or approval given by the Beneficiary shall only be effective if given in writing and then only for the purpose and upon the terms and conditions (if any) on which it is given.
14. This Bond is binding on the successors of the Bank.
15. This Bond and all non-contractual obligations arising from or connected with it are governed by the laws of **insert**.<sup>3</sup>
16. [The courts of **insert** have exclusive jurisdiction to settle any dispute arising from or connected with this Bond (a "**Dispute**") (including a dispute regarding the existence, validity or termination of this Bond or the consequences of its nullity).
17. The parties agree that the courts of **insert** are the most appropriate and convenient courts to settle any Dispute and that they will not argue to the contrary.
18. This clause is for the benefit of the Beneficiary only. Notwithstanding clause 16, the Beneficiary is not prevented from taking proceedings relating to a Dispute in any other court with jurisdiction. To the extent allowed by law, the Beneficiary may take concurrent proceedings in any number of jurisdictions.]<sup>4</sup>



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<sup>3</sup> **Note to draft:** to be updated to reflect the governing law of the Bond (which will typically be the local law for each Project).

<sup>4</sup> **Note to draft:** the dispute resolution provisions are subject to review and change depending on the identity and location of issuing bank.

This Bond is delivered as a deed on the date written at the start of this Bond.<sup>5</sup>

Executed as a deed by )  
[insert name of company] )

\_\_\_\_\_

Signature of director

\_\_\_\_\_

Name of director

\_\_\_\_\_

Signature of director/secretary

\_\_\_\_\_

Name of director/secretary

Executed as a deed by )  
[insert name of company] )

\_\_\_\_\_

Signature of director

\_\_\_\_\_

Name of director

\_\_\_\_\_

Signature of director/secretary

\_\_\_\_\_

Name of director/secretary



<sup>5</sup> **Note to draft:** execution blocks are to be confirmed prior to signing.

## ANNEXURE 1

### Contract Particulars

Date:

Between:

Subject:

Contract Price:

### Bond Particulars

**Expiry Date** Upon completion of the Works to be performed under the Contract.

**Bond Amount** 11.1% of the Contract Price





**ANNEXURE 2  
FORM OF DEMAND**

To: [insert details of the Bank]

Dear Sirs

**Re: the Performance Bond dated [ ] issued by [ ] Bank in favour of  
[the Beneficiary] ("the Bond")**

[ ] [ ] We [ ] hereby demand the amount of [insert currency]

[ ] under the Bond.

Payment should be made to Account Number [ ] Sort Code [ ], designated  
or named [ ] at [ ] Bank [address].

Yours faithfully

for and on behalf of

[the Beneficiary]

