

GUARANTEE AGREEMENT

DATED [•]

**CREDIT GUARANTEE AND INVESTMENT FACILITY,
a trust fund of the Asian Development Bank**

and

**ASIA PLUS SECURITIES COMPANY LIMITED
as bondholders’ representative for and on behalf of all Bondholders**

relating to

**The Guaranteed Bonds of North East Rubber Public Company Limited
No. 1/2567 (2024) Due B.E. [2572] ([2029])**

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THIS GUARANTEE (this Agreement) is dated _____ 2024 and is made **BETWEEN:**

- (1) **CREDIT GUARANTEE AND INVESTMENT FACILITY**, a trust fund of the Asian Development Bank with its principal office in Manila, the Philippines, in its capacity as guarantor (**CGIF**); and
- (2) **ASIA PLUS SECURITIES COMPANY LIMITED** in its capacity as the representative for and on behalf of the Bondholders (as defined below) or any successor appointed as the bondholders' representative in respect of the Bonds from time to time in accordance with the Bond Conditions and the Bondholders' Representative Appointment Agreement (the **Guaranteed Party** or **Bondholders' Representative**),

(each a **Party** and collectively the **Parties**).

BACKGROUND:

- (A) At the request of the Issuer, CGIF has agreed, subject to the terms and conditions of this Agreement, to issue a guarantee in favour of the Guaranteed Party in respect of the Public Bonds (as defined below).
- (B) It is intended that this Agreement takes effect as a deed notwithstanding the fact that a Party may only execute this Agreement under hand.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement:

Acceleration Due Date has the meaning given to it in Clause 5.4 (*CGIF Acceleration*).

Acceleration Step has the meaning given to it in Clause 5.1 (*Acceleration Step*).

Additional Accrued Interest means the amount of interest in respect of any outstanding Public Bonds for the Additional Accrual Period at the Bond Interest Rate.

Additional Accrual Period means:

- (a) in the case of a CGIF Acceleration or a Guaranteed Party Acceleration, the period from (and including) the Bond Interest Payment Date immediately preceding the CGIF Acceleration or Guaranteed Party Acceleration (as the case may be) to (but excluding) the Guarantor Payment Date; or
- (b) where a Demand has been made in respect of principal due on the Bond Maturity Date, the period from (and including) the Bond Maturity Date to (but excluding) the Guarantor Payment Date.

Affiliate means, in relation to a person, a Subsidiary or Holding Company of that person or a Subsidiary of that Holding Company.

Articles of Agreement means the articles of agreement of CGIF originally dated 11 May 2010 as amended on 27 November 2013, 31 May 2016, 23 May 2017, 31 May 2018, 16 May 2019, 1 August 2019, and 28 May 2024 (as may be further amended or supplemented from time to time).

Baht or THB means the lawful currency of Thailand in circulation from time to time.

Bond Certificate(s) has the meaning given to it in the Bond Conditions.

Bond Conditions has the meaning given to the term **Conditions** in the Bondholders' Representative Appointment Agreement.

Bond Documents means the Bondholders' Representative Appointment Agreement, the Bond Conditions, the Bond Certificates, and all other documentation (excluding the Guarantee Documents) entered into by the Guaranteed Party in connection with the aforesaid documents and mutually designated as such by CGIF and the Guaranteed Party.

Bond Interest Payment Date has the meaning given to the term **Interest Payment Date** under the Bond Conditions.

Bond Interest Rate has the meaning given to the term **Interest Rate** under the Bond Conditions.

Bond Maturity Date has the meaning given to the term **Maturity Date** under the Bond Conditions.

Bondholder(s) has the meaning given to it in the Bond Conditions.

Bondholders' Representative Appointment Agreement means the Thai law governed bondholders' representative appointment agreement between the Bondholders' Representative and the Issuer dated on or about [•] 2024 or any agreement appointing a new Bondholders' Representative to replace the existing Bondholders' Representative (if any) from time to time.

Bondholders' Representative Expenses means:

- (a) all costs, expenses and liabilities properly incurred by the Bondholders' Representative in making a Demand on CGIF in accordance with this Agreement; and
- (b) the remuneration due and payable to the Bondholders' Representative in accordance with clause 9 (*Fees and Expenses*) of the Bondholders' Representative Appointment Agreement.

Bonds means the Guaranteed Bonds of North East Rubber Public Company Limited No. 1/2567 (2024) Due B.E. [2572] ([2029]) issued by the Issuer.

Business Day means a day (other than a Saturday or Sunday) on which banks are open for general business in New York, Manila and Bangkok.

CGIF Acceleration has the meaning given to it in Clause 5.4 (*CGIF Acceleration*).

CGIF Acceleration Notice means a written notice delivered by CGIF to the Issuer and the Bondholders' Representative, substantially in the form set out in Schedule 3 (*Form of CGIF Acceleration Notice*).

CGIF Assets means all property and assets of CGIF held in trust in accordance with the Articles of Agreement of CGIF and available from time to time to meet the liabilities of CGIF. For the avoidance of doubt, a CGIF Asset does not include any assets of the Asian Development Bank or any other contributors to CGIF.

CGIF Certificate means the certificate to be issued by CGIF to the Guaranteed Party certifying it has received (or waived receipt of) the documents and evidence set out in Schedule 1 (*Conditions Precedent*) to the Indemnity Agreement in form and substance satisfactory to CGIF, substantially in the form set out in Schedule 1 (Form of CGIF Certificate).

CGIF Non-Payment Event has the meaning given to it in Clause 5.2(a) (*Guaranteed Party Acceleration*).

Demand means a demand for payment under this Agreement which complies with the terms of this Agreement, substantially in the form set out in Schedule 2 (*Form of Demand*).

Demand Period means a period of fifteen (15) Business Days starting on the date of a Non-Payment Event.

Guarantee means the guarantee provided by CGIF pursuant to, and subject to, the terms and conditions of this Agreement.

Guarantee Documents means this Agreement, the Indemnity Agreement and any other document or agreement entered into between any of CGIF, the Issuer and the Guaranteed Party in connection with any of those documents.

Guarantee Term has the meaning given to it in Clause 2.2 (*Term of the Guarantee*).

Guaranteed Amount has the meaning given to it in Clause 2.1 (*Guarantee*).

Guaranteed Bondholders means the Bondholders other than the Issuer or the Issuer's Affiliates.

Guaranteed Party Acceleration has the meaning given to it in Clause 5.2 (*Guaranteed Party Acceleration*).

Guarantor Default Interest Amount means any amount payable by CGIF pursuant to Clause 3.4 (*Guarantor Default Interest*).

Guarantor Default Rate means the Bond Interest Rate plus 2 per cent. per annum.

Guarantor Payment Date means the date of actual payment by CGIF of a Guaranteed Amount, provided that this date shall not be more than ten (10) Business Days (i) after the receipt by CGIF of the relevant Demand or (ii) from the date the CGIF Acceleration Notice is delivered by CGIF to the Issuer and the Guaranteed Party (as the case may be).

Holding Company means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

Indemnity Agreement means the reimbursement and indemnity agreement dated on or about the date of this Agreement between CGIF and the Issuer in connection with this Agreement.

Issue Date has the meaning given to the term **Issue Date** in the Bond Conditions.

Issuer means North East Rubber Public Company Limited, a company incorporated under the laws of Thailand with company registration number 0107561000242.

Issuer Event of Default means the occurrence of any of the events described in Condition 13.1 (*Events of Default*) of the Bond Conditions.

Non-Payment Event means the non-payment (after giving effect to any applicable grace period) of any Guaranteed Amount by the Issuer in accordance with the Bond Conditions and the Bondholders' Representative Appointment Agreement.

Original Due Date has the meaning given to it in Clause 3.3 (*Payment of a Demand*).

Paid Guaranteed Amount has the meaning given to it in Clause 4.1 (*Subrogation*).

Payment Date has the meaning given to it in Clause 8.2(b) (*Currency*).

Principal Amount means at any time the outstanding principal amount in respect of the Public Bonds due on the Bond Maturity Date, or on an accelerated basis following a Guaranteed Party Acceleration pursuant to Clause 5.2(a) (*Guaranteed Party Acceleration*) or a CGIF Acceleration pursuant to Clause 5.4 (*CGIF Acceleration*).

Public Bonds means the Bonds excluding those owned by the Issuer or the Issuer's Affiliates.

Scheduled Interest means scheduled interest on the outstanding Public Bonds payable at the Bond Interest Rate on each Bond Interest Payment Date (excluding, for the avoidance of doubt, default interest (if any)).

Security means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

Spot Rate means the Baht/Substitute Currency rate as of two (2) Thailand Business Days before the Payment Date as published by the Bank of Thailand or if no such rate exists on that date, the Baht/Substitute Currency rate at which the Guaranteed Party is offered by an authorised financial institution operating in Thailand (acceptable to CGIF, such acceptance not to be unreasonably withheld) on the day falling two (2) Thailand Business Days before the Payment Date.

Subsidiary means, in relation to any company or corporation, a company or corporation:

- (a) which is controlled, directly or indirectly, by the first mentioned company or corporation;
- (b) all entities whose financial statements are required to be fully consolidated with the first mentioned company or corporation in accordance with the accounting standards adopted for the consolidated financial statements of such company or corporation; or
- (c) which is a Subsidiary of another Subsidiary of the first mentioned company or corporation,

and for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

Substitute Currency means US Dollars or such other currency as CGIF may determine and notify to the Guaranteed Party before the Payment Date.

Tax means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest).

Tax Deduction means a deduction or withholding for or on account of Tax from a payment under this Agreement.

Thailand Business Day means a day (other than a Saturday or Sunday) on which banks are open for general business in Bangkok.

1.2 Construction

- (a) In this Agreement, terms not defined herein have the meaning as set out in the Bond Conditions and unless the contrary intention appears, a reference to:
- (i) an **amendment** includes a supplement, novation, extension (whether of maturity or otherwise), restatement, re-enactment or replacement (however fundamental and whether or not more onerous) and **amended** will be construed accordingly;
 - (ii) **assets** includes present and future properties, revenues and rights of every description;
 - (iii) a **Clause**, a **Subclause**, a **Paragraph** or a **Schedule** is a reference to a clause, subclause of, or paragraph of, or a schedule to, this Agreement;
 - (iv) a currency is a reference to the lawful currency for the time being of the relevant country;
 - (v) the **Bonds** means the Bonds as their respective reference name may be amended from time to time in accordance with Condition 17.2 of the Conditions, and **Bond** or **Bonds** shall be construed accordingly;
 - (vi) a **Bond Document**, **Guarantee Document** or other document or Security includes (without prejudice to any prohibition on or consent required for any amendments) any amendment to that Bond Document, Guarantee Document, or other document or Security;
 - (vii) **including** means including without limitation, and **includes** and **included** shall be construed accordingly;
 - (viii) a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;
 - (ix) a **Party** or any other person includes its successors in title, permitted assigns and permitted transferees;
 - (x) a **person** includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, fund, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality;
 - (xi) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (xii) a **successor** shall be construed so as to include an assignee or successor in title of such party and any person who under the laws of its jurisdiction of establishment, incorporation or domicile has assumed the rights and obligations of such party under this Agreement or to which, under such laws, such rights and obligations have been transferred;

- (xiii) words importing the singular include the plural and *vice versa*;
 - (xiv) a time of day is a reference to Manila time; and
 - (xv) the **winding-up, dissolution or administration** of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is established or incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, administration, arrangement, adjustment, protection or relief of debtors.
- (b) Unless the contrary intention appears, a reference to a **month** or **months** is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month or the calendar month in which it is to end, except that:
- (i) if the numerically corresponding day is not a Business Day, the period will end on the next Business Day in that month (if there is one) or the preceding Business Day (if there is not);
 - (ii) if there is no numerically corresponding day in that month, that period will end on the last Business Day in that month; and
 - (iii) notwithstanding subparagraph (i) above, a period which commences on the last Business Day of a month will end on the last Business Day in the next month or the calendar month in which it is to end, as appropriate.
- (c) The headings in this Agreement are provided for convenience only and do not affect the construction or interpretation of any provision of this Agreement.

2. GUARANTEE

2.1 Guarantee

- (a) Subject to the provisions of this Agreement, CGIF irrevocably and unconditionally guarantees to the Guaranteed Party the full and punctual payment of each Guaranteed Amount.

In this Agreement, a **Guaranteed Amount** means:

- (i) any Principal Amount and any Scheduled Interest which is overdue and unpaid (whether in whole or in part) (after the expiry of any applicable grace periods) by the Issuer under the Bond Conditions;
 - (ii) any Additional Accrued Interest; and
 - (iii) any Bondholders' Representative Expenses.
- (b) For the avoidance of doubt, a Guaranteed Amount does not include any increased costs, tax-related indemnity (but includes any additional amounts required to be paid to the Bondholders due to a tax deduction and the operation of Condition 11 (*Taxation*) of the Bond Conditions, provided that the Guaranteed Amount will not exceed the original amount which would have been due from the Issuer if no tax deduction were required), default interest, fees, or any other amounts other than any Principal Amount, any Scheduled Interest, any Additional Accrued Interest and any Bondholders' Representative Expenses payable by the Issuer to the Guaranteed Party or any Guaranteed Bondholders.

2.2 Term of the Guarantee

- (a) The Guarantee shall be effective as of the first date on which both:
 - (i) the Issue Date has taken place; and
 - (ii) CGIF has issued the CGIF Certificate.
- (b) Subject to paragraph (c) below and clauses 2.7 (*Reinstatement*) and 12 (*Termination*), the Guarantee will expire on the earlier of:
 - (i) the date on which all Guaranteed Amounts have been paid, repaid or prepaid in full, or the payment obligations of the Issuer in respect of all Guaranteed Amounts have been otherwise discharged or released pursuant to the Bond Documents or any other arrangement between the Issuer and the Guaranteed Party;
 - (ii) the date of full redemption, prescription or cancellation of the Bonds;
 - (iii) in the event of an occurrence of a Non-Payment Event which is continuing and no Demand having been made within an applicable Demand Period in accordance with this Agreement, the last day of the Demand Period;
 - (iv) the date on which the Guaranteed Party takes an Acceleration Step other than in respect of a CGIF Non-Payment Event;
 - (v) the date on which the Bonds become payable under the Bond Conditions on an accelerated basis at the instigation of the Issuer in accordance with the Bond Conditions; and
 - (vi) the effective date of any termination of the Guarantee pursuant to Clause 12 (*Termination*),

(such period of effectiveness of the Guarantee being the **Guarantee Term**).
- (c) The Guarantee will remain effective where a Demand has been made in accordance with this Agreement and payment by CGIF has not yet been made to the Guaranteed Party.

2.3 Continuing guarantee

- (a) The Guarantee is a continuing guarantee and will extend to the ultimate balance of all Guaranteed Amounts payable by the Issuer under the Bond Documents and this Agreement, regardless of any intermediate payment or discharge in whole or in part or where the payment of a Guaranteed Amount has been made but further Guaranteed Amounts are still due and payable or where any Public Bonds are outstanding. For the avoidance of doubt, to the extent that any Public Bonds have been redeemed or cancelled, any principal amount and interest in respect of such Bonds redeemed or cancelled shall no longer constitute Guaranteed Amounts.
- (b) CGIF's obligations under the Guarantee are secondary obligations under English law, being the governing law of the Guarantee. In the event that the Issuer's payment obligations in respect of any Guaranteed Amount under the Bond Documents (being the primary obligation to which the Guarantee is secondary) cease to exist for any reason, the Bondholders' Representative shall not be entitled to make a claim in respect of such Guaranteed Amount under the Guarantee and CGIF will be under no obligation to pay any such Guaranteed Amount under the Guarantee.

2.4 Limited recourse

Notwithstanding any other provisions of this Agreement or any Bond Document, the recourse of the Guaranteed Party against CGIF under this Agreement and any Bond Document is limited solely to the CGIF Assets. The Guaranteed Party acknowledges and accepts that it only has recourse to the CGIF Assets and it has no recourse to any assets of the Asian Development Bank or any other contributors to CGIF. Any obligation under this Agreement of CGIF shall not constitute an obligation of the Asian Development Bank or any other contributors to CGIF.

2.5 No personal liability of the Asian Development Bank or any other contributors to CGIF

Notwithstanding any other provisions of this Agreement or any Bond Document, neither the Asian Development Bank nor any other contributors to CGIF or the officers, employees or agents of the Asian Development Bank or any contributor to CGIF shall be subject to any personal liability whatsoever to any third party including the Guaranteed Party in connection with the operation of CGIF or under this Agreement, any Bond Document or any Guarantee Document. No action may be brought against the Asian Development Bank as the trustee of CGIF or as contributor to CGIF or against any other contributors to CGIF or any of their respective officers, employees or agents by any third party including the Guaranteed Party in connection with this Agreement.

2.6 Waiver of defences

Subject to Clause 2.3 (*Continuing guarantee*), the obligations of CGIF under this Agreement will not be affected by and shall remain in force notwithstanding any act, omission, event or thing of any kind which, but for this provision, would reduce, release or prejudice any of its obligations under this Agreement. This includes:

- (a) any time, waiver or any other concession or consent granted to, or composition with, any person;
- (b) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of, any person;
- (c) any failure to realise the full value of any Security;
- (d) any incapacity, or lack of power, authority or legal personality of any person;
- (e) any termination, amendment, modification, variation, novation, replacement, supplement, or superseding of or to a Bond Document or any other document or Security relating thereto which requires CGIF's consent, but only if the prior written consent of CGIF has been obtained;
- (f) any unenforceability, illegality or, invalidity of any obligation of any person under any Bond Document or any other document or Security relating thereto, connected solely to any issues relating to foreign currency transferability and convertibility affecting the payment obligations of the Issuer under the Bond Documents;
- (g) any insolvency or similar proceedings affecting CGIF or the Issuer; or
- (h) the replacement of the Guaranteed Party as representative for and on behalf of the Bondholders, but only if the prior written consent of CGIF has been obtained.

2.7 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of the Issuer and/or CGIF or any Security for those obligations or otherwise) is made by the Guaranteed Party in whole or in part in respect of a Guaranteed Amount on the basis of any payment, Security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, then the liability of CGIF under this Clause 2 (Guarantee) and Clause 3 (Payment under the Guarantee) will continue or be reinstated as if the discharge, release or arrangement had not occurred.

2.8 Additional Security

This Agreement is in addition to and is not in any way prejudiced by any Security in respect of the Issuer's obligations under the Bond Documents now or subsequently held by the Guaranteed Party (or any trustee or agent on its behalf).

2.9 Pari Passu Ranking

Without limiting any other provision contained in this Agreement or any other Bond Documents, CGIF's payment obligations under this Agreement rank *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law (if any).

3. PAYMENT UNDER THE GUARANTEE

3.1 General

- (a) CGIF is only liable to pay a Guaranteed Amount under the Guarantee (and only in accordance with the terms and subject to the conditions of this Agreement) if and to the extent that the Guaranteed Party delivers to CGIF a Demand in respect of that Guaranteed Amount within the Demand Period (if any) and such Demand complies with the requirements set out in this Clause 3.
- (b) The Guaranteed Party may make a Demand for payment of a Guaranteed Amount within the Demand Period following the occurrence of a Non-Payment Event which is continuing, provided that, for the avoidance of doubt, there will be no Demand Period in the case of a Demand pursuant to Clause 5.3 (*Demand upon a Guaranteed Party Acceleration*) in respect of a CGIF Non-Payment Event. A Demand may be revoked by the Guaranteed Party giving written notice to CGIF at any time prior to the date on which a Guaranteed Amount is due for payment to the extent that moneys are actually received in respect of such Guaranteed Amount prior to such date from a source other than CGIF.
- (c) Notwithstanding any other provisions of this Agreement, a Demand may only be made for payment of a Guaranteed Amount and/or a Guarantor Default Interest Amount. Furthermore, if a Non-Payment Event occurs as a result of the Bonds becoming payable on an accelerated basis:
 - (i) a Demand may only be made in respect of a CGIF Non-Payment Event in accordance with Clause 5.3(a) (*Demand upon a Guaranteed Party Acceleration*); and
 - (ii) no Demand may be made in respect of a Non-Payment Event where the relevant amount of principal or accrued interest became payable under the Bond Conditions on an accelerated basis at the instigation of the Issuer in accordance with the Bond Conditions, including, without limitation, as a result of the Issuer's voluntary redemption of the Bonds (whether in full or in part) prior to the Bond Maturity Date.

- (d) CGIF agrees that the Guaranteed Party is not required to proceed against, enforce any other rights or Security against, or claim payment from, any person before claiming from CGIF under this Agreement, irrespective of any law or any provision of any Bond Document to the contrary, provided that CGIF shall only be required to make payments to the Guaranteed Party in accordance with the terms of this Agreement and the Bond Conditions.

3.2 Form of Demand

- (a) Each Demand must be in the form set out in Schedule 2 (*Form of Demand*) and must clearly set out:
 - (i) the basis of the Demand including the calculation of the Guaranteed Amount;
 - (ii) the Guarantor Default Interest Amount (if any), and
 - (iii) all relevant evidence, information and documentation in support of the Demand as is reasonably necessary to evidence in reasonable detail the occurrence of the Non-Payment Event, the amounts unpaid and the payment due from CGIF in respect of the relevant Guaranteed Amount.
- (b) No Demand (other than a Demand under Clause 5.3(a) (*Demand upon a Guaranteed Party Acceleration*)) may include any portion of a Guaranteed Amount or a Guarantor Default Interest Amount that is or was the subject of another Demand.
- (c) If a Demand is not:
 - (i) in the proper form (as set out in Schedule 2 (*Form of Demand*));
 - (ii) on its face properly completed, executed or delivered; or
 - (iii) supported by the necessary evidence or other information or documentation referred to in paragraph (a) above,

it will be deemed not to have been received by CGIF. CGIF shall, as soon as reasonably practicable, notify the Guaranteed Party if it considers this to be the case, and advise the Guaranteed Party of its requirements, so that the Guaranteed Party is able to prepare and submit a revised Demand to CGIF within the Demand Period (if applicable).

3.3 Payment of a Demand

- (a) CGIF shall, within ten (10) Business Days after the receipt by CGIF of a Demand (the tenth Business Day after the receipt by CGIF of a Demand, the **Original Due Date**), pay to the Guaranteed Party the Guaranteed Amount which is the subject of that Demand.
- (b) Following receipt of any Guaranteed Amount paid by CGIF pursuant to a Demand, the Guaranteed Party shall promptly notify the Issuer and CGIF that such payment has been received.

3.4 Guarantor Default Interest

- (a) If CGIF fails to make a payment in accordance with Clause 3.3 (*Payment of a Demand*), CGIF will pay interest on the overdue Guaranteed Amount for the period from (and including) the Original Due Date of such Guaranteed Amount to (but excluding) the date of actual payment at the Guarantor Default Rate.

- (b) If CGIF fails to make a payment in accordance with Clause 5.4 (*CGIF Acceleration*) in respect of the scenario set out in Clause 5.4(a), CGIF will pay interest on the overdue Guaranteed Amount for the period from (and including) the Acceleration Due Date of such Guaranteed Amount to (but excluding) the date of actual payment at the Guarantor Default Rate.

4. SUBROGATION AND TRANSFERS

4.1 Subrogation

- (a) Immediately upon the payment by CGIF under this Agreement of all or any part of a Guaranteed Amount in accordance with this Agreement (a **Paid Guaranteed Amount**), CGIF shall be subrogated to:
 - (i) all of the rights, powers and remedies of the Guaranteed Party, on behalf of the Guaranteed Bondholders, and of the Guaranteed Bondholders themselves, in respect of the Public Bonds and each Bond Document (in each case, to the extent relating and proportionate to that Paid Guaranteed Amount), against any relevant person, including (and to the extent relating and proportionate to that Paid Guaranteed Amount) any rights or claims, whether accrued, contingent or otherwise; and
 - (ii) all of the Guaranteed Party's privileges, rights and Security (if any) against the Issuer or with respect to the Public Bonds, in each case insofar as they extend to an amount equal to that Paid Guaranteed Amount.
- (b) The Guaranteed Party must, at its own expense, execute such instruments or documents and take such other actions as CGIF may require to give effect to, facilitate or evidence the subrogation referred to in this Clause 4 (Subrogation and transfers) (except with respect to costs and expenses relating to the transfer of any Security held against the Issuer with respect to the Public Bonds which, for the avoidance of doubt, shall not be borne by the Guaranteed Party) and to perfect the rights of CGIF to receive such amounts equal to the Paid Guaranteed Amount under the Bond Documents.
- (c) For the avoidance of doubt, no Guaranteed Bondholder shall be obliged to transfer or assign any rights or any legal title in the Public Bonds, except to the extent that it has received payment of any amounts from CGIF in respect thereof.

4.2 Transfer

- (a) Upon payment by CGIF of a Paid Guaranteed Amount, the Guaranteed Party shall, at the written request of CGIF and in consideration of such payment:
 - (i) transfer and assign, free from any Security, to CGIF all its rights:
 - (A) under the Bond Documents; and
 - (B) in respect of any Security securing the Bonds or any other amounts payable under the Bond Documents (including any right, title and interest to any asset which has arisen as a result of enforcement of such Security),

insofar as those rights relate and are proportionate to that Paid Guaranteed Amount; and
 - (ii) execute such instruments or documents and take such other actions as necessary for CGIF to give effect to, facilitate or evidence the transfer and assignment referred to

in this Clause 4 (Subrogation and transfers) and to perfect the rights of CGIF to receive such amounts equal to the Paid Guaranteed Amount under the Bond Documents.

- (b) The Guaranteed Party shall not, and shall take reasonable steps to ensure that the Issuer does not do anything that could lessen or impair any of the rights referred to in subparagraph (a)(i) above, CGIF's rights of subrogation or any other right of CGIF to recover any amount equal to the Paid Guaranteed Amount.

5. ACCELERATION OF THE BONDS

5.1 Acceleration Step

The Guaranteed Party agrees with, and undertakes in favour of, CGIF that it shall not:

- (a) take any step to declare any Bond to be or become immediately due and payable, or payable on an accelerated basis under the Bond Documents; or
- (b) take any enforcement or similar action in relation to any Security in respect of the Bonds,

(each an **Acceleration Step**), other than in accordance with Clause 5.2 (*Guaranteed Party Acceleration*).

5.2 Guaranteed Party Acceleration

The Guaranteed Party may, on behalf of the Bondholders and subject to the terms of the Bond Documents, take an Acceleration Step if:

- (a) a Non-Payment Event has occurred and is continuing and a Demand has been properly delivered to CGIF (within the Demand Period) in accordance with this Agreement in respect of the relevant Guaranteed Amount and is not paid by CGIF in accordance with the terms of this Agreement (a **CGIF Non-Payment Event**); or
- (b) an Issuer Event of Default occurs (other than pursuant to Condition 13.1(a) of the Bond Conditions) and the requirements of Condition 13.4 of the Bond Conditions have been fulfilled,

in each case, a **Guaranteed Party Acceleration**.

5.3 Demand upon a Guaranteed Party Acceleration

- (a) Upon the occurrence of a Guaranteed Party Acceleration pursuant to Clause 5.2(a) (*Guaranteed Party Acceleration*), the Guaranteed Party may deliver in accordance with this Agreement a Demand (where no Demand Period is applicable) in respect of the aggregate of the Guaranteed Amounts and the Guarantor Default Interest Amount (if any) to be paid by CGIF in accordance with this Agreement.
- (b) Upon the occurrence of a Guaranteed Party Acceleration pursuant to Clause 5.2(b) (*Guaranteed Party Acceleration*), the Guaranteed Party shall have no further right to deliver a Demand in respect of the Guaranteed Amounts to be paid by CGIF in accordance with this Agreement and CGIF shall have no further obligation to pay any Guaranteed Amount.

5.4 CGIF Acceleration

- (a) At any time after the occurrence of an Issuer Event of Default; or

- (b) no later than ten (10) Business Days from the receipt by CGIF of a Demand under this Agreement (other than a Demand which is solely in respect of the Bondholders' Representative Expenses),

CGIF may, in its sole and absolute discretion, deliver a CGIF Acceleration Notice to the Issuer and the Guaranteed Party declaring the Bonds to be immediately due and payable under the Bond Documents on a specified date (which must be in respect of either (a) or (b), no later than ten (10) Business Days from the date the CGIF Acceleration Notice is delivered by CGIF to the Issuer and the Guaranteed Party pursuant to this Clause 5.4) (such date the **Acceleration Due Date**), and confirming that it will pay all Guaranteed Amounts on or before the Acceleration Due Date (a **CGIF Acceleration**). The Parties agree that any such notice shall take effect in accordance with its terms. In the event of a CGIF Acceleration, no further Demand will be required and the Demand Period is not applicable.

6. APPLICATION OF FUNDS AND RECOVERIES

6.1 Application of funds

Following payment by CGIF of any Paid Guaranteed Amount or payment by CGIF under this Agreement of all or any part of the Guarantor Default Interest Amount to the Guaranteed Party pursuant to the terms of this Agreement, the Guaranteed Party must hold such amounts on trust for the Guaranteed Bondholders on the terms set out in the Bondholders' Representative Appointment Agreement and must (as soon as practicable after receipt) apply them in or towards payment of the Guaranteed Amount(s) relating to such Paid Guaranteed Amount in accordance with the terms of the Bond Conditions.

6.2 Recoveries

- (a) After the delivery by the Guaranteed Party of a Demand in respect of any Guaranteed Amount and to the extent that CGIF has not recovered any Paid Guaranteed Amount, if the Guaranteed Party recovers any money or asset from the Issuer or any other person in respect of that Guaranteed Amount (a **Recovered Amount**), the Guaranteed Party must as soon as reasonably practicable (and in any case within ten (10) calendar days from the date of its receipt of such Recovered Amount) supply details of the recovery to CGIF and pay to CGIF (or any other person at the instruction of CGIF) an amount equal to such Recovered Amount and not exceeding the Paid Guaranteed Amount.
- (b) Following payment by CGIF of any Paid Guaranteed Amount, if CGIF discovers that the Guaranteed Party had no right to receive a payment of the relevant Guaranteed Amount (or any portion thereof) to which such Paid Guaranteed Amount relates, CGIF shall be entitled, upon notice to the Guaranteed Party, to recover from the Guaranteed Party the relevant payment (or the relevant portion thereof) together with all expenses, charges, Tax and fees incurred by CGIF in relation to the return of the relevant payment to the extent that the Guaranteed Party still holds such amounts itself or to its order (and provided only that it has the ability to direct the payment of such amounts).
- (c) To the extent any part of a Guaranteed Amount has been recovered from any source, the Guaranteed Party may not seek to recover such amounts from CGIF under this Agreement.

7. TAXES

- 7.1 If CGIF is required by law to make a Tax Deduction in respect of a payment to be made by it under this Agreement (the Relevant Payment), CGIF may make the Relevant Payment with such Tax Deduction and is not required to make any increased payment in respect of the Relevant Payment.

- 7.2 If CGIF is aware that it must make a Tax Deduction (or that there is a change in the rate or the basis of a Tax Deduction), it must promptly notify the Guaranteed Party.
- 7.3 If CGIF is required to make a Tax Deduction, it must make the minimum Tax Deduction allowed by law and must make any payment required in connection with that Tax Deduction within the time allowed by law.
- 7.4 Nothing in this Clause 7 shall be considered to constitute a waiver of the privileges, immunities and exemptions applicable to CGIF pursuant to the Articles of Agreement.

8. PAYMENTS

8.1 Payment by CGIF and other Parties

- (a) A payment by CGIF of a Paid Guaranteed Amount or a payment by CGIF under this Agreement of all or any part of the Guarantor Default Interest Amount to the Guaranteed Party pursuant to a Demand in accordance with this Agreement will discharge the payment obligations of CGIF under this Agreement to the extent of such payment, whether or not such payment is properly applied by or on behalf of the Guaranteed Party.
- (b) All payments to be made by a Party under this Agreement must be made on the due date for payment in immediately available funds to such account as the receiving Party may direct such account to be notified by the receiving Party to the other Party at least five (5) Business Days prior to the relevant due date for payment.

8.2 Currency

- (a) Subject to paragraph (b) below, all payments to be made by a Party under this Agreement must be made, unless otherwise specified in this Agreement, in the currency in which the amounts are incurred in relation to costs, fees, expenses, liabilities and other indemnities.
- (b) If, in respect of a payment by CGIF under this Agreement (the **subject payment**) which, but for this paragraph, would be made in a certain currency (the **Payment Currency**), CGIF determines that it is impossible or impracticable or it is unable on commercially reasonable terms and in accordance with its policy, for CGIF to obtain the Payment Currency to fund payment of any amount which CGIF is required to pay under this Agreement, CGIF may give notice to the Guaranteed Party to that effect as soon as practicable before the date on which the subject payment is due under this Agreement (the **Payment Date**). In this event, CGIF may make the subject payment with an equivalent amount in the Substitute Currency converted at the Spot Rate. The Guaranteed Party agrees and acknowledges that CGIF, by making such payment in the Substitute Currency, shall have satisfied its payment obligations in respect of the subject payment.

8.3 Certificates and determinations

Any certification, determination or notification by a Party of a rate or amount made pursuant to the terms of this Agreement will be, in the absence of manifest error, conclusive evidence of the matters to which it relates.

8.4 Business Days

If a payment under this Agreement is due on a day which is not a Business Day, the due date for that payment will instead be the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not) or whatever day CGIF reasonably determines is market

practice.

9. UNDERTAKINGS

9.1 No amendment to Bond Documents

Except with the prior written consent of CGIF, the Guaranteed Party shall not:

- (a) terminate, amend, modify, vary, novate, replace, supplement, supersede, waive any breach or proposed breach of, or give any consent in relation to, any term of a Bond Document, provided that this provision shall not apply to the replacement, cancellation or transfer of any Bond Certificate in accordance with the Bond Conditions, any amendment made in accordance with Condition 17.2 of the Bond Conditions and in relation to a replacement of the Bondholders' Representative, in accordance with Clause 12(c) (*Termination*); or
- (b) take, or omit to take, any action that would lessen or impair any right of the Guaranteed Party under any Bond Document.

9.2 Compliance with Bond Documents

The Guaranteed Party shall comply in all respects with the terms of, and perform all of its obligations under, each Bond Document.

9.3 Notification of default

The Guaranteed Party shall notify CGIF of any Issuer Event of Default promptly upon becoming aware of its occurrence or being notified by the Issuer or any other related party.

9.4 Information: miscellaneous

The Guaranteed Party must supply to CGIF:

- (a) promptly upon receipt, all documents dispatched or information disclosed by the Issuer to it or the Bondholders generally under the Bond Documents; and
- (b) all documents (including, without limitation, any notice, request or certificate) despatched or issued by the Guaranteed Party to the Issuer in accordance with the Bond Documents or otherwise in connection with the Bonds at the same time as they are despatched or issued.

10. AMENDMENTS AND WAIVERS

10.1 Amendments

Any term of this Agreement may be amended or waived with the written agreement of the Parties and the Issuer.

10.2 Waivers and remedies cumulative

- (a) The rights and remedies of each Party under this Agreement:
 - (i) may be exercised as often as necessary;
 - (ii) are cumulative and not exclusive of its rights and remedies under the general law; and

- (iii) may be waived only in writing and specifically.
- (b) No delay in exercising or non-exercise by a Party of any right or remedy under this Agreement shall operate as a waiver of that right or remedy, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy other than where any rights (including, without limitation, the right to require payment of any Guaranteed Amount) are to be exercised in accordance with specified requirements under this Agreement.

11. ASSIGNMENT OR TRANSFER

No Party may assign or transfer any of its rights and obligations under this Agreement without the prior consent of the other Party except that:

- (a) CGIF may assign or transfer any of its rights and benefits under this Agreement (including its right of subrogation) to any person (such person, the **Transferee**) without the prior written consent of the Guaranteed Party or any other person provided that, notwithstanding any such assignment or transfer by CGIF:
 - (i) any Demand for payment of a Guaranteed Amount and the Guarantor Default Interest Amount (if any) shall be delivered to CGIF (and not the Transferee);
 - (ii) in respect of an assignment or transfer of partial rights and benefits by CGIF under paragraph (a) above, any consent to any termination, amendment, modification, variation, novation, replacement, supplement, waiver of any breach or proposed breach of, or superseding of, a Bond Document or any other document or Security relating thereto shall be requested from CGIF only (and not the Transferee); and
- (b) the Guaranteed Party may assign or transfer any of its rights and obligations under the Guarantee and this Agreement to any replacement bondholders' representative duly appointed in accordance with the Bondholders' Representative Appointment Agreement.

12. TERMINATION

- (a) Except in relation to Clause 2.4 (*Limited recourse*), Clause 2.5 (*No personal liability of the Asian Development Bank or any other contributors to CGIF*), Clause 4 (*Subrogation and transfers*), Clause 18 (*Governing law*), Clause 19 (*Dispute resolution*) and Clause 21 (*ADB and CGIF Immunities*), all rights and obligations of each Party will cease and expire on the last day of the Guarantee Term.
- (b) Termination or expiry of the Guarantee pursuant to the terms of this Agreement is without prejudice to the rights of any Party which have accrued prior to such termination or expiry, whether arising under this Agreement, at law or otherwise.
- (c) CGIF may terminate the Guarantee with immediate effect if any term of a Bond Document has been terminated, amended, modified, varied, novated, replaced, supplemented, superseded, or the breach or proposed breach of which is or has been waived without the prior written consent of CGIF; provided that:
 - (i) this provision shall not apply to any replacement, cancellation or transfer of any Bond Certificate in accordance with the Bond Conditions or any amendment made in accordance with Condition 17.2 of the Bond Conditions; and

- (ii) in relation to a replacement of the Bondholders' Representative in accordance with the Bondholders' Representative Appointment Agreement and the Bond Conditions, the consent of CGIF shall not be unreasonably withheld or delayed, provided that any replacement bondholders' representative (A) is a financial institution or licensed securities company; (B) has a credit rating which is at least equivalent to that of the current Bondholders' Representative immediately prior to such replacement; and (C) is qualified under applicable Thai regulations to act as the bondholders' representative.

13. SET-OFF

No Party may set off any obligation owed to it by the other Party under this Agreement against any obligation owed by it to that other Party.

14. SEVERABILITY

If a term of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any jurisdiction, it shall not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of this Agreement; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other term of this Agreement.

15. COUNTERPARTS

This Agreement may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

16. NOTICES

16.1 In writing

- (a) Any communication in connection with this Agreement must be in writing, with a copy sent to the Issuer, and, unless otherwise stated, may be given:
 - (i) in person or by post; or
 - (ii) to the extent agreed by the Parties making and receiving communication, by email or other electronic communication.
- (b) For the purpose of this Agreement, an electronic communication will be treated as being in writing.
- (c) Unless it is agreed to the contrary, any consent or agreement required under this Agreement must be given in writing.

16.2 Contact details

- (a) The contact details of CGIF for all notices in connection with this Agreement are:

Address: Asian Development Bank Building,
6 ADB Avenue, Mandaluyong City,

1550 Metro Manila, Philippines
Fax number: +632-5322-7661
Email: ner.thb@cgif-abmi.org
Attention: CEO and Vice President, Operations

- (b) The contact details of the Guaranteed Party for all notices in connection with this Agreement are:

Address: 3/1 Floor, Sathorn City Tower,
175 South Sathorn Road, Sathorn,
Bangkok 10120, Thailand
Telephone: +66 2-680-1219, 1246, 1206, 1362
Fax number: +66 2-285-1905
Email: br@asiaplus.co.th
Attention: Mr. Chainarong Chuchuen

- (c) The contact details of the Issuer for all notices in connection with this Agreement are:

Address: 398 Moo. 4 Kokma Subdistrict,
Prakhonchai District, Buriram 31140
Telephone: +66 4466 6928
Fax number: +66 4466 6212
Email: sakchai@nerubber.com
Attention: Sakchai Jongstapongpun

- (d) Any Party may change its contact details by giving five (5) Business Days' notice to the other Party.
- (e) Where a Party nominates a particular department or officer to receive a communication, a communication will not be effective if it fails to specify that department or officer.

16.3 Effectiveness

- (a) Except as provided below, any communication in connection with this Agreement will be deemed to be given as follows:
- (i) if delivered in person, at the time of delivery;
 - (ii) if posted, when received; and
 - (iii) if by e-mail or any other electronic communication, when received in legible form.
- (b) A communication given under paragraph (a) above but received on a non-working day or after 5:00 p.m. in the place of receipt will only be deemed to be given on the next working day in that place.
- (c) A communication to CGIF will only be effective on actual receipt by it.

16.4 English language

- (a) Any notice given in connection with this Agreement must be in English.
- (b) Any other document provided in connection with this Agreement must be:

- (i) in English; or
- (ii) in the language of the jurisdiction in which the Bonds are issued, accompanied by a certified English translation. In this case, the English translation prevails unless the document is a statutory or other publicly available official document.

17. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Unless expressly provided to the contrary in a Guarantee Document, a person who is not a party to a Guarantee Document may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 and, notwithstanding any term of any Guarantee Document, no consent of any third party is required for any amendment (including any release or compromise of any liability) or termination of any Guarantee Document. Notwithstanding the foregoing, the Asian Development Bank and other contributors to CGIF, and any of their respective officers, employees or agents may enforce Clauses 2.4 (*Limited recourse*), 2.5 (*No personal liability of the Asian Development Bank or any other contributors to CGIF*), 19.2 (Arbitration) and 21 (*ADB and CGIF Immunities*) of this Agreement.

18. **GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by English law.

19. **DISPUTE RESOLUTION**

19.1 **Governing law**

This Clause 19 and any non-contractual obligations arising out of or in connection with it shall be governed by English law.

19.2 **Arbitration**

- (a) Any dispute, claim, difference or controversy arising out of, relating to, or having any connection with this Agreement (which includes this Clause 19) and any other Guarantee Document, including any dispute as to their existence, validity, interpretation, performance, breach or termination, or the consequences of their nullity and any dispute relating to any non-contractual obligations arising out of or in connection with them (for the purpose of this Clause 19, a **Dispute**), shall be referred to and be finally resolved by arbitration administered by the Singapore International Arbitration Centre (**SIAC**) under the Arbitration Rules of the SIAC in force when the Notice of Arbitration is submitted (for the purpose of this Clause 19, the **Rules**), except as they are modified by the provisions of this Agreement.
- (b) The Parties further agree that following the commencement of arbitration, they will initially attempt in good faith to resolve the Dispute through mediation at the Singapore International Mediation Centre (**SIMC**), in accordance with the SIAC-SIMC Arb-Med-Arb Protocol (the **Protocol**) for the time being in force which shall last for a period not exceeding sixty-five (65) Business Days from the commencement of the mediation proceedings (the **Mediation Period**). Where a settlement has been reached between the Parties within the Mediation Period, such terms of settlement shall be referred to the arbitral tribunal and the arbitral tribunal may make a consent award on such agreed terms. In the absence of a settlement by the Parties within the Mediation Period, the Dispute shall revert to arbitration pursuant to the Protocol. Unless otherwise agreed by the Parties, the arbitration shall resume by arbitrators who were not involved in the mediation process above.

- (c) The Rules and the Protocol are incorporated by reference into this Clause 19 and capitalised terms used in this Clause 19 (which are not otherwise defined in this Agreement) shall have the meaning given to them in the Rules and the Protocol.
- (d) The number of arbitrators shall be three. The arbitrators nominated by the parties in accordance with the Rules shall jointly nominate the third arbitrator who, subject to confirmation by the President of the Court of Arbitration of SIAC (the **President**), will act as president of the arbitral tribunal. If the third arbitrator is not chosen by the two arbitrators nominated by the parties within thirty (30) days of the date of appointment of the later of the two party-appointed arbitrators to be appointed, the third arbitrator shall be appointed by the President.
- (e) The seat of arbitration shall be Singapore and all hearings shall take place in Singapore unless the arbitral tribunal in its absolute discretion decides that a different location will be appropriate.
- (f) Except as modified by the provisions of this Clause 19 and the Rules, Part II of the International Arbitration Act 1994 of Singapore shall apply to any arbitration proceedings commenced under this Clause 19. Neither party shall be required to give general discovery of documents, but may be required only to produce specific, identified documents which are relevant to the Dispute.
- (g) The language used in the arbitral proceedings shall be English. All documents submitted in connection with the proceedings shall be in the English language, or, if in another language, accompanied by an English translation and in which case, the English translation shall prevail.
- (h) Service of any Notice of Arbitration made pursuant to this Clause 19 shall be made in accordance with the Rules and at the addresses given for the sending of notices under this Agreement at Clause 16 (Notices).
- (i) The arbitration award(s) rendered by the arbitral tribunal shall be final and binding on the parties. To the fullest extent permitted under any applicable law, the parties irrevocably exclude and agree not to exercise any right to refer points of law or to appeal to any court or other judicial authority.
- (j) The arbitral tribunal and any emergency arbitrator appointed in accordance with the Rules shall not be authorised to order, and each of the Bondholders and the Bondholders' Representative agrees that it shall not seek from the arbitral tribunal or any judicial authority:
 - (i) any order of whatsoever nature against the Asian Development Bank and other contributors to CGIF, and any of their respective officers, employees or agents; or
 - (ii) any interim order to sell, attach, freeze or otherwise enforce against the CGIF Assets.
- (k) The Rules shall not prohibit CGIF from disclosing any information relating to any arbitral proceedings and/or arbitral award arising out of this Clause 19 to the board of directors of CGIF (the **CGIF Board**) as part of its approval process and portfolio administration, or to the Asian Development Bank or any other contributors to CGIF or any of their respective officers, employees, advisers, agents or representatives. The members of the CGIF Board may seek instructions from their constituents for the purpose of CGIF Board approval and portfolio administration and the CGIF Board documents and other relevant information may be distributed to any representatives of the relevant member countries of CGIF for the said purpose only, provided that such information and documents distributed by the CGIF Board

insofar as they relate to any arbitral proceedings and/or arbitral award shall be clearly marked "CONFIDENTIAL".

20. DISCLOSURE OF INFORMATION

20.1 Confidential information

Except as disclosed in the prospectus dated on or about the date of this Agreement relating to the Bonds or as permitted or required under this Agreement, the Bond Documents, this Agreement and the terms thereof as well as any information relating to any dispute arising therefrom are confidential and each Party agrees that it will not, without the prior written consent of the other Party, disclose the contents of this Agreement or any Bond Document or its existence to any other person, except where such information is:

- (a) publicly available (including, without limitation, through disclosure made in a Bond Document), other than as a result of a breach of this Clause 20;
- (b) required to be disclosed by law, regulation or any government department or any governmental agency, semi-governmental or judicial entity or authority (including, without limitation, any stock exchange or any self-regulatory organisation established under statute);
- (c) required in connection with any legal or arbitration proceedings;
- (d) disclosed to its auditors and any rating agency provided that such auditor and rating agency shall be informed of its confidential nature and that some or all of such information may be price-sensitive information;
- (e) disclosed to any Bondholder, its officers, employees, advisers, agents and representatives by the Bondholders' Representative, provided and on the condition that the Bondholders' Representative procures that the person receiving such information is also bound by the provisions of this Clause 20; or
- (f) disclosed to its Affiliates, its and its Affiliates' respective officers, employees, advisers, agents and representatives who, in any such case, are reasonably required to receive such information, provided that such person shall be made aware of and agree to be bound by the confidentiality obligations under this Clause 20 prior to such information being disclosed to it.

20.2 Disclosure by CGIF

This Clause 20 does not prohibit the disclosure by CGIF of any information deemed confidential under this Clause 20 which is circulated to the CGIF Board as part of CGIF's approval process and portfolio administration, or to the Asian Development Bank or any other contributors to CGIF or any of their respective officers, employees, advisers, agents and representatives. The members of CGIF Board may seek instructions from their constituents and the Bond Documents, Guarantee Documents and other relevant information may be distributed to representatives of the contributors to CGIF.

21. ADB AND CGIF IMMUNITIES

Nothing in this Agreement, or any agreement, understanding or communication relating to this Agreement or any Bond Document (whether before or after the date of this Agreement or any Bond Document), shall constitute or be construed as an express or implied waiver, renunciation, exclusion or limitation of any of the immunities, privileges or exemptions accorded to the Asian Development

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Bank under the Agreement Establishing the Asian Development Bank, any other international convention or any applicable law, or accorded to CGIF under the Articles of Agreement.

THIS AGREEMENT has been executed as a deed by the Parties hereto and is intended to be and is hereby delivered on the date first above written.

DRAFT

SCHEDULE 1

FORM OF CGIF CERTIFICATE

To: Asia Plus Securities Company Limited, in its capacity as the representative for and on behalf of the holders of the Bonds (as defined below) (in this capacity the **Guaranteed Party**).

From: Credit Guarantee and Investment Facility, a trust fund of the Asian Development Bank (**CGIF**)

Copy: North East Rubber Public Company Limited (the **Issuer**)

Date: _____

Dear Sirs,

North East Rubber Public Company Limited (the Issuer) – Reimbursement and Indemnity Agreement dated [●] (the Indemnity Agreement) between the Issuer and CGIF in connection with the Guaranteed Bonds of North East Rubber Public Company Limited No. 1/2567 (2024) Due B.E. [2572] ([2029]) (the Bonds)

I refer to the Indemnity Agreement and the guarantee agreement dated [insert date] between CGIF and the Guaranteed Party (the **Guarantee Agreement**).

I am a duly authorised officer of CGIF. I am authorised to give this certificate and certify that CGIF has received (or waived receipt of) all of the documents and evidence set out in Schedule 1 (*Conditions Precedent*) to the Indemnity Agreement in form and substance satisfactory to CGIF.

This also serves as notification to the Guaranteed Party in accordance with Clause 2.2 (*Term of the Guarantee*) of the Guarantee Agreement that the guarantee pursuant to the Guarantee Agreement is in effect, subject to the issuance of the Bonds, and to the Issuer that CGIF has no objection to the issuance of the Bonds.

Unless we notify you to the contrary in writing, you may assume that this certificate remains true and correct.

This certificate, and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in accordance with English law.

For

**CREDIT GUARANTEE AND INVESTMENT FACILITY,
a trust fund of the Asian Development Bank**

Name:

Title:

SCHEDULE 2

FORM OF DEMAND

To: Credit Guarantee and Investment Facility, a trust fund of the Asian Development Bank (CGIF)

From: Asia Plus Securities Company Limited, in its capacity as the representative for and on behalf of the holders of the Bonds (as defined below) (in this capacity the **Guaranteed Party**).

Copy: North East Rubber Public Company Limited (the **Issuer**)

Date: _____

Dear Sirs,

North East Rubber Public Company Limited (the Issuer) – Guarantee Agreement dated [●] (the Guarantee Agreement) between the Guaranteed Party and CGIF in connection with the Guaranteed Bonds of North East Rubber Public Company Limited No. 1/2567 (2024) Due B.E. [2527] ([2029]) (the Bonds)

We refer to the Guarantee Agreement. Terms defined in the Guarantee Agreement have, unless otherwise defined in this demand, the same meaning when used in this demand.

We, as the Guaranteed Party, hereby certify as follows:

1. A Non-Payment Event occurred on *[insert date]*.
2. An amount of *[insert aggregate amount]* was due on *[insert due date]* under the Bond Conditions and remains unpaid as of the date hereof. The unpaid amount(s) comprise(s):
 - (a) Principal Amount of *[insert the amount of principal overdue]*; and / or
 - (b) Scheduled Interest of *[insert the amount of interest overdue]*, which is calculated as follows:
[Specify calculations].

In addition, CGIF will be obliged to pay:

- (a) Additional Accrued Interest of *[insert the amount of interest overdue]*, which is calculated as follows:
[Specify calculations]; and
 - (b) Bondholders' Representative Expenses of *[insert the amount of Bondholders' Representative Expenses]*, incurred in relation to (with attached documentary evidence):
[Specify]
3. We therefore demand payment of the Guaranteed Amount, calculated as follows:
 - (a) *[Specify unpaid Principal Amount and Scheduled Interest and Bondholders' Representative Expenses]*; and

(b) up to a maximum amount of *[insert maximum amount]* of Additional Accrued Interest.

4. [CGIF failed to make a payment in accordance with Clause 3.3 of the Guarantee Agreement, and we therefore demand payment of the Guarantor Default Interest Amount:

(a) *[insert amount]*, for the period from (and including) the original due date for the Guaranteed Amount to (but excluding) the date of this Demand:

[Specify calculations];

plus

(b) the Guarantor Default Interest Amount for the period from (and including) the date of this Demand to (but excluding) the date of actual payment by CGIF.]

OR

[CGIF did not fail to make a payment in accordance with Clause 3.3 of the Guarantee Agreement, and we therefore do not demand payment of the Guarantor Default Interest Amount.]

5. In addition to the Guaranteed Amount and Guarantor Default Interest Amount referred to above, the following amount(s) is/are also due and unpaid as of the date hereto in respect of the Bonds, however, such amount(s) do(es) not constitute the Guaranteed Amount or the Guarantor Default Interest Amount and is/are not payable by CGIF:

[Specify]

6. We enclose the following evidence, information and documentation in support of the information contained in this Demand:

[Specify evidence, information and documentation]

Please make payment to the following account:

Bank Name : [•]

Bank Swift : [•]

Beneficiary Name : [•]

Account Number : [•]

A Demand may be revoked by the Guaranteed Party giving written notice to CGIF at any time prior to the date on which a Guaranteed Amount is due for payment to the extent that moneys are actually received in respect of a Guaranteed Amount prior to such date from a source other than CGIF.

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ASIA PLUS SECURITIES COMPANY LIMITED

acting for and on behalf of all Bondholders

Name:

Title:

DRAFT

SCHEDULE 3

FORM OF CGIF ACCELERATION NOTICE

To: Asia Plus Securities Company Limited, in its capacity as the representative for and on behalf of the holders of the Bonds (as defined below) (in this capacity the **Guaranteed Party**).

From: Credit Guarantee and Investment Facility, a trust fund of the Asian Development Bank (**CGIF**)

Copy: North East Rubber Public Company Limited (the **Issuer**)

Dear Sirs,

North East Rubber Public Company Limited (the Issuer) – Guarantee Agreement dated _____ 2024 (the Guarantee) between the Guaranteed Party and CGIF in connection with the Guaranteed Bonds of North East Rubber Public Company Limited No. 1/2567 (2024) Due B.E. [2572] ([2029]) (the Bonds)

We refer to the Guarantee. Terms defined in the Guarantee have, unless otherwise defined in this notice, the same meaning when used in this notice.

We hereby confirm as follows:

1. [An Issuer Event of Default has occurred.] [A Non-Payment Event has occurred and is continuing in accordance with the Bond Conditions on *[insert date]* / [•]. As a result, we hereby exercise our rights pursuant to clause 5.4 (*CGIF Acceleration*) of the Guarantee to carry out a CGIF Acceleration. We hereby declare the Bonds to be immediately due and payable under the Bond Documents on *[insert date]* (the **Acceleration Due Date**).
2. We therefore agree to pay the aggregate unpaid Guaranteed Amounts, being *[insert amount]* on or before the Acceleration Due Date.
3. We enclose the following evidence, information and documentation in support of the information contained in this CGIF Acceleration Notice:

[Specify evidence, information and documentation]

For and on behalf of

**CREDIT GUARANTEE AND INVESTMENT FACILITY,
a trust fund of the Asian Development Bank**

Name:

Title:

SIGNATORIES

CGIF
EXECUTED as a **DEED** by)
CREDIT GUARANTEE AND)
INVESTMENT FACILITY,)
a trust fund of the Asian Development Bank)
and SIGNED and DELIVERED as a **DEED**)
on its behalf by)

In the presence of:

Witness' signature:

.....

Witness' name:

.....

Witness' address:

.....

.....

.....

THE GUARANTEED PARTY
SEALED with the **COMMON SEAL** of /)
EXECUTED as a **DEED** by)
ASIA PLUS SECURITIES COMPANY LIMITED)
and signed by / in the presence of / acting by)

[affix seal]

Pithayain Assavanig

Chainarong Chuchuen

In the presence of:

Witness' signature:

.....

Witness' name:

Anan Phanjailue
.....

Witness' address:

.....
.....
.....