**ANNEXE 1 to the ARIV 2018**

(Date: May 2018)

**Bank guarantee as referred to in article 4.5 of the ARIV 2018**

The undersigned,

 ................................................................... [*name of bank*],

which has its registered office in … [*location of bank’s registered office*],

hereinafter referred to as ‘the Bank’,

WHEREAS:

the State of the Netherlands, which has its seat in The Hague, represented in this matter by the Minister of ...,

hereinafter referred to as ‘the Purchaser’,

signed a purchase contract on ... [*date of contract*] for the purchase and delivery of [*description of Products*] ………..,

hereinafter referred to as ‘the Contract’,

with ...

(name of Supplier)

 ........................................................,

which has its registered office in … [*location of Supplier’s registered office*],

hereinafter referred to as ‘the Supplier’;

HEREBY DECLARES vis-à-vis the Purchaser:

1. The Bank acts as guarantor vis-à-vis the Purchaser, by way of an independent obligation and not on the basis of a suretyship, as security for the discharge of the Supplier’s obligations under the Contract, having regard to the maximum amount of this guarantee referred to in point 3.

2. The Bank undertakes to pay the Purchaser under this guarantee, having regard to the maximum amount referred to in point 3, upon first receipt of a written request to do so that is simultaneously accompanied by:

(a) an immediately enforceable decision by the competent court of first instance showing that the Supplier is obliged to pay the Purchaser under the Contract; or

(b) an amicable settlement between the Purchaser and the Supplier showing that the Supplier is obliged to pay the Purchaser under the Contract.

3. This guarantee will be subject to a maximum of €.... .

4. This guarantee expires on [*date, e.g. two years after the entry into force of the Contract*] unless, by that date at the latest, (a) the Purchaser has submitted a claim for the discharge of obligations under the Contract or (b) a claim has been lodged with the competent court by the Purchaser against the Supplier, or by the Bank (or the liquidator or the receiver) against the Purchaser as provided below under point 7. If by [*enter above date*] the Purchaser has submitted a claim against the Supplier for discharge of the obligations under the Contract, the Purchaser must lodge a claim with the competent court within four weeks of [*enter above date*], failing which the guarantee will expire. After [*enter above date*] this guarantee will be set at an amount equal to 100% of the amount of the claim submitted by the Purchaser against the Supplier, having regard to the maximum amount referred to in point 3.

5. This guarantee also expires within two weeks of any proceedings initiated before the courts in accordance with point 4 which have resulted in a final and unappealable declaration of lack of competence, a final and unappealable declaration of inadmissibility or a final and unappealable rejection of the claim, or have been removed from the court’s case list by a final and unappealable judgment or definitively withdrawn in the absence of an amicable settlement.

6. In so far as articles 7:851 to 7:856, 7:858 to 7:861, 7:866 and 6:139 of the Civil Code are applicable or are deemed to be applicable, notwithstanding the provisions in this guarantee, the Bank hereby irrevocably and unconditionally waives its rights under these provisions, which waiver is hereby accepted by the Purchaser.

7. If the Supplier is declared bankrupt or subject to a statutory debt management scheme, the Bank will pay the Purchaser, having regard to the maximum amount referred to in point 3, the amount that the Purchaser declares in writing is payable and owed by the Supplier to the Purchaser under the Contract unless:

 (a) within four weeks of such a written declaration, the Bank has served a writ of summons on the Purchaser in legal proceedings to have the merits and the level of the claim established, in which case the Bank will pay the Purchaser upon submission of a copy of an immediately enforceable decision by a Dutch court given in proceedings between the Bank and the Purchaser showing that the claim and the level thereof are merited; or

 (b) within the aforementioned four-week time limit, the liquidator or the receiver has served a writ of summons on the Purchaser in legal proceedings to have the merits and the level of the claim established, and the liquidator or the receiver has notified the Bank hereof within the aforementioned time limit, in which case the Bank will pay the Purchaser upon submission of (i) a copy of an immediately enforceable decision by a Dutch court given in proceedings between the liquidator or the receiver and the Purchaser showing that the claim and the level thereof are merited, or (ii) an amicable settlement as referred to in point 2 (b).

This guarantee is governed by Dutch law. Any disputes will be submitted only to the competent court in the Hague District.

Signed in ... [*town/city*] on ...[*date*],

[*signature of behalf of the Bank*]