

# **Rules**

## **of the 2008 Credit Guarantee Scheme of the State of the Netherlands**

as originally promulgated on 21 October 2008  
and most recently amended and restated on 18 February 2009

*Dated 18 February 2009*

**RULES**  
**OF THE 2008 CREDIT GUARANTEE SCHEME**  
**OF THE STATE OF THE NETHERLANDS**

**BACKGROUND:**

- (A) On 13 October 2008 the Minister of Finance has announced the Scheme and on 21 October 2008 the Minister of Finance has promulgated the Original Rules.
- (B) These Rules were amended and restated on 11 November 2008 and further amended and restated on 21 November 2008, on 27 November 2008 and on 18 February 2009.
- (C) These Rules (including the Original Rules and each amendment and restatement of these Rules) can be inspected on the Guarantor Website [www.dutchstate.nl](http://www.dutchstate.nl).

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In these Rules:

**"Application"** means an application substantially in the form set out in Schedule 3 (*Form of Application*).

**"Bank Eligibility Criteria"** means the criteria set out in Schedule 1 (*Bank Eligibility Criteria*).

**"Beneficiary"** means, in relation to a Guaranteed Debt Instrument, the person or persons to whom any amount in principal or Qualifying Interest in respect of that Guaranteed Debt Instrument is expressed to be due according to the terms of that Guaranteed Debt Instrument (including, for the avoidance of doubt, any successor (whether by singular or universal succession of title) to the original Beneficiary of that Guaranteed Debt Instrument).

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in Amsterdam, the Netherlands, and:

- (a) in relation to any date for payment or purchase of euro, on which the Trans-European Automated Real-Time Gross Settlement Express Transfer System TARGET 2 (or any successor thereto) is open for the settlement of payments in euro; and
- (b) in relation to any date for payment or purchase of Sterling and US Dollar, a day on which banks are open for general business in the principal financial centre of the country of that currency.

"**CC**" means Dutch Civil Code (*Burgerlijk Wetboek*).

"**CDS Spread**" is defined in paragraph 1 of Schedule 9 (*Fee and Non-utilisation Fee*).

"**Cut-off Date**" means, in relation to a Guarantee Certificate, the later of the Final Application Date and:

- (a) subject to paragraph (b) below, the date falling thirty calendar days after the date of that Guarantee Certificate; or
- (b) in the case of a Guarantee Certificate expressed to be applicable to Guaranteed Debt Instruments issued under a programme for the issue of commercial paper or certificates of deposit, the date falling three months after the date of that Guarantee Certificate.

"**Debt Instrument Eligibility Criteria**" means the criteria set out in Schedule 2 (*Debt Instrument Eligibility Criteria*).

"**Dutch Central Bank**" means the Dutch Central Bank (*De Nederlandsche Bank N.V.*).

"**Dutch State Treasury Agency**" means the Treasury Agency of the State of the Netherlands (*Agentschap van het ministerie van Financiën*).

"**Eligible Bank**" means, subject to Subrule 3.1.2 of Rule 3.1 (*Eligible Banks*), any bank which satisfies the Bank Eligibility Criteria.

"**Eligible Debt Instrument**" means, subject to Rule 3.5 (*Waiver of designation conditions*), any debt instrument of an Eligible Bank which satisfies the Debt Instrument Eligibility Criteria.

"**Fee**" means each fee referred to in Subrule 9.1.1 of Rule 9.1 (*Fees*).

"**Final Application Date**" means 31 December 2009.

"**FMSA**" means the Dutch Financial Markets Supervision Act (*Wet op het financieel toezicht*).

"**Guarantee**" means, in relation to a Guaranteed Debt Instrument, the guarantee from the Guarantor in respect of that Guaranteed Debt Instrument as set out in Rule 5.1 (*Guarantee*) and the relevant Guarantee Certificate.

"**Guarantee Certificate**" means a certificate substantially in the form of Schedule 4 (*Form of Guarantee Certificate*).

"**Guaranteed Debt Instrument**" means any Eligible Debt Instrument of an Eligible Bank which the Guarantor has designated as a Guaranteed Debt Instrument by issuing a Guarantee Certificate in respect of that Eligible Debt Instrument.

"**Guarantor**" means the State of the Netherlands (*Staat der Nederlanden*).

"**Guarantor Website**" means [www.dutchstate.nl](http://www.dutchstate.nl) or such successor website as the Guarantor may designate from time to time.

"**Indemnification Provider**" means, in relation to an Eligible Bank, any person who

has provided an indemnity as referred to in Subrule 3.4.3(c) of Rule 3.4 (*Designation of Guaranteed Debt Instruments*) in respect of that Eligible Bank.

**"Netherlands Authority for the Financial Markets"** means the Netherlands Authority for the Financial Markets (*Stichting Autoriteit Financiële Markten*).

**"Non-utilisation Fee"** means each fee referred to in Subrule 9.2.1 of Rule 9.2 (*Non-utilisation Fee*).

**"Notice of Demand"** means a notice substantially in the form set out in Schedule 6 (*Form of Notice of Demand*).

**"Original Rules"** means these Rules as originally promulgated on 21 October 2008.

**"Participating Member States"** means the member states of the European Union which have adopted the euro as their lawful currency in accordance with legislation of the European Community relating to Economic and Monetary Union.

**"Qualifying Interest"** means, in relation to any Guaranteed Debt Instrument, any interest which, according to the terms of that Guaranteed Debt Instrument, accrues in respect of any amount in principal of that Guaranteed Debt Instrument, other than any such interest accruing in respect of any amount in principal which has not been paid when expressed to be due according to the terms of that Guaranteed Debt Instrument.

**"Rules"** means these Rules, as most recently amended and restated on 18 February 2009.

**"Scheme"** means the 2008 Credit Guarantee Scheme of the State of the Netherlands originally constituted by the Original Rules and as of the date referred to in Subrule 16.1.2 of Rule 16.1 (*Effective date*) constituted by these Rules.

## 1.2 Construction

1.2.1 In these Rules, unless a contrary indication appears:

- (a) any reference to an **"Eligible Debt Instrument"**, a **"Guaranteed Debt Instrument"** or any other debt instrument refers to all debt instruments of the same issue or tranche;
- (b) an **"authorisation"** includes any licence, exemption, authorisation or other consent from, and any filing or registration with, any court or governmental or regulatory body;
- (c) a **"debt instrument"** includes any bond, note, debenture, loan stock or similar instrument (in each case whether or not having a fixed tenor, being interest bearing or being tradeable);
- (d) a **"group"** means a group (*groep*), and a **"group company"** means a group company (*groepsmaatschappij*), each as defined in Section 2:24b CC;
- (e) **"issue documentation"** includes, in relation to an issue of debt

instruments, the terms of that debt instrument and any offer document, trust deed, programme or dealer agreement, purchase or underwriting agreement, agency agreement and any other agreement or instrument relating to that issue or the programme (if any) under which that issue is made;

- (f) an **"offer document"** includes any prospectus, offering circular, listing particulars, information memorandum or other offer document;
- (g) a **"person"** includes any natural person, legal entity, partnership, firm, trust, association, state, government or governmental or regulatory agency (in each case whether or not having separate legal personality) and any combination of two or more of the aforementioned;
- (h) a **"subsidiary"** means a subsidiary (*dochtermaatschappij*) as defined in Section 2:24a CC; and
- (i) a **"winding-up"** includes, in relation to a person:
  - (i) any bankruptcy, suspension of payments, moratorium of indebtedness or other insolvency proceedings in relation to that person;
  - (ii) the appointment of any liquidator, trustee, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of that person or any of its assets;
  - (iii) any composition, compromise, assignment or arrangement with that person's creditors or any class of them;
  - (iv) that person's dissolution or liquidation; and
  - (v) any amalgamation, merger, demerger, transformation or corporate reconstruction of that person;

and any analogous procedure or step taken, or event occurring, in any jurisdiction.

#### 1.2.2 In these Rules:

- (a) **"euro"** and **"EUR"** means the lawful currency of the Participating Member States;
- (b) **"Sterling"** means the lawful currency of the United Kingdom of Great Britain and Northern Ireland; and
- (c) **"US Dollar"** means the lawful currency of the United States of America.

#### 1.2.3 Headings are for convenience only.

### 1.3 Third-party rights

Except where these Rules expressly provide otherwise, no person other than an Eligible Bank or a Beneficiary (but only in respect of the Guaranteed Debt Instrument of which it is the Beneficiary) has any right under Section 6:253 CC to exercise or enforce any term or condition of these Rules.

## **2 ESTABLISHMENT AND OPERATION OF THE SCHEME**

### **2.1 Establishment of the Scheme**

- 2.1.1 By promulgating the Original Rules, the Minister of Finance has established the Scheme.
- 2.1.2 The Scheme is governed by these Rules.
- 2.1.3 On the basis of the Scheme and these Rules, the Guarantor shall unconditionally and irrevocably guarantee the due payment by Eligible Banks of all amounts in principal and Qualifying Interest due in respect of Guaranteed Debt Instruments.

### **2.2 Operation of the Scheme**

- 2.2.1 The Minister of Finance has designated the Dutch State Treasury Agency to operate the Scheme.
- 2.2.2 In these Rules, unless a contrary indication appears, any reference to the Guarantor also refers to the Dutch State Treasury Agency.

### **2.3 Limitations**

- 2.3.1 The Guarantor expects that the aggregate principal amount of the Guaranteed Debt Instruments outstanding from time to time will not exceed EUR 200,000,000,000 at any time.
- 2.3.2 Notwithstanding any provision to the contrary in these Rules, the Guarantor may, at any time and at its discretion:
  - (a) change the amount referred to in Subrule 2.3.1; and
  - (b) refuse to designate any one or more Eligible Debt Instruments as Guaranteed Debt Instruments.

## **3 DESIGNATION OF GUARANTEED DEBT INSTRUMENTS**

### **3.1 Eligible Banks**

- 3.1.1 Subject to Subrule 3.1.2, any Eligible Bank may participate in the Scheme.
- 3.1.2 Subject to Subrule 3.1.3, no more than one Eligible Bank in each group may participate in the Scheme and if in any group one Eligible Bank participates in the Scheme any other bank in the same group which would otherwise qualify as an Eligible Bank will not qualify as an Eligible Bank.
- 3.1.3 The Guarantor may, at its discretion, determine that a bank qualifies as an Eligible Bank notwithstanding that another bank in the same group is an Eligible Bank.

### **3.2 Applications**

- 3.2.1 Any Eligible Bank may request that any Eligible Debt Instrument to be issued by it be designated as a Guaranteed Debt Instrument by the due delivery to

the Guarantor of a duly completed Application.

3.2.2 An application shall apply to all Eligible Debt Instruments the particulars of which conform to the particulars set out in the Application.

3.2.3 No Application may be delivered after the Final Application Date.

3.2.4 An Application will not be regarded as having been duly completed unless:

- (a) it includes all information required by the terms of the form of Application set out in Schedule 3 (*Form of Application*) to be included in the Application or (where any information required to be included is not applicable) it states that the relevant information is "Not Applicable"; and
- (b) the Application has been duly signed on behalf of the relevant Eligible Bank.

3.2.5 An Application will not be regarded as having been duly delivered unless it is delivered by hand to:

Dutch State Treasury Agency  
Korte Voorhout 7  
2511 CW The Hague

or in such other manner or to such other address as the Guarantor may agree at its discretion.

### 3.3 Changes

Each Eligible Bank shall, upon becoming aware thereof, promptly notify the Guarantor of all relevant details, if any representation or statement made or deemed to be made by it or any relevant Indemnification Provider in any Application or any other document delivered by it or on its behalf under or in connection with such Application is or proves to have been incorrect or incomplete.

### 3.4 Designation of Guaranteed Debt Instruments

3.4.1 The Guarantor shall designate each Eligible Debt Instrument to which an Application applies as a Guaranteed Debt Instrument if in the opinion of the Guarantor:

- (a) the Application complies with Rule 3.2 (*Applications*);
- (b) the applicant qualifies as an Eligible Bank;
- (c) the debt instrument qualifies as an Eligible Debt Instrument;
- (d) the Guarantor has received any documents or other proof required to be supplied to it under Subrule 3.4.3; and
- (e) the applicant and any relevant Indemnification Provider has agreed to any additional representations and undertakings as referred to in Rule 7.3 (*Additional representations and undertakings*).

3.4.2 The Guarantor shall not designate an Eligible Debt Instrument as a Guaranteed Debt Instrument if, in its opinion:

- (a) any representation or statement made or deemed to be made by the relevant Eligible Bank or any relevant Indemnification Provider in any Application or any other document delivered by it or on its behalf under or in connection with these Rules is or proves to have been incorrect or incomplete; or
  - (b) the relevant Eligible Bank or any relevant Indemnification Provider does not, will not or is likely not to comply with any undertaking referred to in Rule 7.2 (*General Undertakings*) or any other undertaking or obligation applicable to it under these Rules.
- 3.4.3 The Guarantor may require that an Eligible Bank which has made an Application supplies to it any or all of the following documents or other proof in form and substance satisfactory to it:
  - (a) proof that the bank qualifies as an Eligible Bank;
  - (b) proof that each debt instrument to which the Application applies qualifies as an Eligible Debt Instrument;
  - (c) an indemnity in the form of Schedule 5 (*Form of Indemnity*) of any group company of the Eligible Bank designated by the Guarantor in respect of each relevant Eligible Debt Instrument; and
  - (d) any authorisation or other document, opinion or assurance which the Guarantor considers to be necessary or desirable in connection with each relevant Eligible Debt Instrument or its designation as a Guaranteed Debt Instrument.
- 3.4.4 The Guarantor shall determine whether the conditions set out in Subrules 3.4.1 and 3.4.2 have or have not been satisfied and any determination by the Guarantor in this regard shall be final and binding.
- 3.4.5 If the Guarantor determines that the conditions set out in Subrule 3.4.1 have been satisfied, it shall, subject to Subrule 3.4.2, designate each relevant Eligible Debt Instrument as a Guaranteed Debt Instrument by issuing a Guarantee Certificate.

### **3.5 Waiver of designation conditions**

- 3.5.1 The Guarantor may, at its discretion, determine that any debt instrument or borrowing of an Eligible Bank which does not qualify as certificates of deposit, commercial paper or medium term notes but which otherwise meets the criteria set out in Schedule 2 (*Debt Instrument Eligibility Criteria*), applied *mutatis mutandis* (including, for the avoidance of doubt, the criterion set out in paragraph 1(a)(iii) of Schedule 2 (*Debt Instrument Eligibility Criteria*), shall qualify as an Eligible Debt Instrument.
- 3.5.2 The Rules shall apply *mutatis mutandis* to any debt instrument or borrowing which qualifies as an Eligible Debt Instrument pursuant to Subrule 3.5.1, subject to such variations as the Guarantor may determine.
- 3.5.3 The Guarantor may, at its discretion, designate an Eligible Debt Instrument as

a Guaranteed Debt Instrument notwithstanding that one or more of the conditions set out in Subrule 3.4.1 of Rule 3.4 (*Designation of Guaranteed Debt Instruments*) have not been satisfied.

## **4 ISSUE OF GUARANTEED DEBT INSTRUMENTS**

### **4.1 Issue of Guaranteed Debt Instruments**

If the Guarantor has issued a Guarantee Certificate, the relevant Eligible Bank may issue one or more Guaranteed Debt Instruments (including further tranches of such Guaranteed Debt Instruments) to which that Guarantee Certificate will apply, provided that:

- 4.1.1 the particulars of each such Guaranteed Debt Instrument conform to the particulars of specified in the relevant Guarantee Certificate;
- 4.1.2 each such Guaranteed Debt Instrument is issued before the relevant Cut-off Date; and
- 4.1.3 the aggregate outstanding principal amount of all such Guaranteed Debt Instruments does not exceed the maximum outstanding principal amount set out in that Guarantee Certificate at any time.

### **4.2 Information**

Each Eligible Bank which issues any Guaranteed Debt Instrument shall, within three Business Days of such issue, notify the Guarantor of the following details in respect of that Guaranteed Debt Instrument:

- 4.2.1 the issue date;
- 4.2.2 the settlement date;
- 4.2.3 the maturity date;
- 4.2.4 the principal amount;
- 4.2.5 (except if the Guaranteed Debt Instrument carries no interest) the interest rate (in the case of a Guaranteed Debt Instrument carrying interest at a fixed rate) or the reference rate and spread (in the case of a Guaranteed Debt Instrument carrying interest at a floating rate) and the interest payment dates;
- 4.2.6 the issue discount (expressed as a percentage of the principal amount) and the gross proceeds of the issue; and
- 4.2.7 the ISIN code (if any);

and shall at the same time deliver to the Guarantor a copy of the issue documentation for that Guaranteed Debt Instrument.

## **5 GUARANTEE**

### **5.1 Guarantee**

- 5.1.1 Subject to these Rules, the Guarantor unconditionally and irrevocably:

- (a) guarantees to each relevant Beneficiary the payment by the relevant Eligible Bank of all amounts in principal or Qualifying Interest expressed to be due in respect of any Guaranteed Debt Instrument according to the terms of that Guaranteed Debt Instrument; and
  - (b) agrees for the benefit of each relevant Beneficiary that, whenever the relevant Eligible Bank fails to pay (in whole or in part) any amount in principal or Qualifying Interest expressed to be due in respect of any Guaranteed Debt Instrument according to the terms of that Guaranteed Debt Instrument, the Guarantor shall, on demand by that Beneficiary (or any relevant trustee on its behalf), pay that amount to that Beneficiary.
- 5.1.2 The Guarantor shall not be required to make any payment under Subrule 5.1.1:
  - (a) to the extent that the relevant Eligible Bank (or any other person on its behalf) has paid the relevant amount in respect of the relevant Guaranteed Debt Instrument;
  - (b) to the extent that any guarantor of the Guaranteed Debt Instrument (or any other person on its behalf) has made any payments in respect of that amount required from it under its guarantee; and
  - (c) for as long as any applicable grace period has not expired.
- 5.1.3 Without prejudice to the other provisions of these Rules, the Guarantor waives any defences which, absent this Subrule 5.1.3, it might invoke against any Beneficiary as a surety (*borg*).
- 5.1.4 Without prejudice to Rule 5.4 (*Excluded debt instruments*), the Guarantor's guarantee under Subrule 5.1.1 in respect of any Guaranteed Debt Instrument shall not be affected by:
  - (a) any representation made or deemed to be made by the relevant Eligible Bank or any relevant Indemnification Provider under Rule 7.1 (*Representations*) or otherwise under these Rules being or proving to have been incorrect or misleading; or
  - (b) the relevant Eligible Bank or any relevant Indemnification Provider failing to comply with any undertaking referred to in Rule 7.2 (*General Undertakings*) or any other undertaking or obligation applicable to it under these Rules.

## 5.2 Notice of Demand

- 5.2.1 A Beneficiary (or any relevant trustee on its behalf) may demand payment by the Guarantor under Rule 5.1 (*Guarantee*) only by delivery to the Guarantor of a duly completed Notice of Demand.
- 5.2.2 A Notice of Demand will not be regarded as having been duly completed unless:
  - (a) it includes all information required by the terms of the form of Notice of

Demand set out in Schedule 6 (*Form of Notice of Demand*) to be included in the Notice of Demand or (where any information required to be included is not applicable) it states that the relevant information is "Not Applicable"; and

- (b) it has been duly signed on behalf of the relevant Beneficiary (or any relevant trustee on its behalf).

5.2.3 A Notice of Demand will not be regarded as having been duly delivered unless it is delivered by hand to:

Dutch State Treasury Agency  
Korte Voorhout 7  
2511 CW The Hague

or in such other manner or to such other address as the Guarantor may agree at its discretion.

5.2.4 The Guarantor may require that any Beneficiary (or any relevant trustee on its behalf) which has delivered a Notice of Demand supplies to it any or all of the following documents or other proof in form and substance satisfactory to it:

- (a) proof that the relevant person qualifies as a Beneficiary (or a trustee for a Beneficiary) in respect of the relevant Guaranteed Debt Instrument; and
- (b) proof that the amount or amounts to which the Notice of Demand relates are due according to the terms of that Guaranteed Debt Instrument and remain outstanding.

5.2.5 A Notice of Demand may not relate to more than one Guaranteed Debt Instrument.

### **5.3 Payment of Guaranteed Debt Instruments**

5.3.1 If the conditions set out in these Rules have been satisfied, the Guarantor shall, in its own name, make the payment required under Rule 5.1 (*Guarantee*) in respect of the relevant Guaranteed Debt Instrument.

5.3.2 The Guarantor shall make any payment as referred to in Subrule 5.3.1 to the person to whom, and in the manner in which, that payment should have been made under the terms of the relevant Guaranteed Debt Instrument if that payment had been made by the relevant Eligible Bank itself.

### **5.4 Interest**

5.4.1 If the Guarantor makes any payment as referred to in Subrule 5.3.1, it shall, at the same time and in the same manner, pay interest on the amount so paid:

- (a) for the period:
  - (i) from the day on which the amount(s) in principal or Qualifying Interest to which the payment relates fell due according to the terms of the relevant Guaranteed Debt Instrument;

- (ii) until the day of the payment; and
- (b) at a rate *per annum* equal to the Euro OverNight Index Average as of 7:00 p.m. on each relevant day as calculated by the European Central Bank from time to time.

5.4.2 Interest as referred to in Subrule 5.4.1 shall accrue from day to day and shall be calculated on the basis of the actual number of days elapsed and a year of 360 days.

## 5.5 Excluded debt instruments

5.5.1 Notwithstanding any provision to the contrary in these Rules, a debt instrument shall not be a Guaranteed Debt Instrument if that debt instrument:

- (a) is issued after the Cut-off Date applicable to the relevant Guarantee Certificate;
- (b) is denominated in a currency other than euro, Sterling or US Dollar, as set out in the relevant Guarantee Certificate;
- (c) has a principal amount which does not comply with Subrule 4.1.3 of Rule 4.1 (*Issue of Guaranteed Debt Instruments*);
- (d) has a tenor of less than three months or of more than five years;
- (e) (if that debt instrument carries interest) carries interest at a rate other than:
  - (i) a fixed interest rate; or
  - (ii) a floating interest rate calculated as the aggregate of a market reference rate plus a fixed spread;
- (f) by its terms is expressed to be subject to:
  - (i) any cross-default or cross-acceleration event of default (howsoever described); or
  - (ii) any right of prepayment of principal by the issuer;
- (g) differs in any other respect from the particulars set out in the relevant Guarantee Certificate.

5.5.2 A debt instrument shall cease to be a Guaranteed Debt Instrument if any term or condition of that debt instrument is amended, supplemented or restated or waived.

## 6 PUBLICITY

### 6.1 Guarantor Website

The Guarantor shall maintain the Guarantor Website.

### 6.2 Information on Guarantor Website

6.2.1 The Guarantor shall publish on the Guarantor Website:

- (a) a list of all Guaranteed Debt Instruments from time to time (by reference to or including their ISIN Code (if any)) and each relevant Guarantee Certificate;
- (b) in respect of each Guarantee Certificate, the aggregate outstanding principal amount of all Guaranteed Debt Instruments to which the Guarantee Certificate applies; and
- (c) any restatement or amendment of, or supplement to, these Rules (including, for the avoidance of doubt, any change to the Bank Eligibility Criteria or the Debt Instrument Eligibility Criteria and any change to the Final Application Date).

6.2.2 The Guarantor may, at its discretion, publish on the Guarantor Website:

- (a) the names of the Eligible Banks from time to time;
- (b) the CDS Spread for any Eligible Bank; and
- (c) any change in the expected aggregate amount of the Guaranteed Debt Instruments as referred to in Rule 2.3 (*Limitations*).

### **6.3 Limitations**

6.3.1 Any relevant Beneficiary may rely on the accuracy and completeness of the information published on the Guarantor Website and referred to in Subrule 6.2.1 (other than paragraph (c) of Subrule 6.2.1) of Rule 6.2 (*Information on Guarantor Website*).

6.3.2 Subject to Subrule 6.3.1:

- (a) the Guarantor Website is for information purposes only and no person may rely on any information published on the Guarantor Website; and
- (b) the Guarantor shall not be liable for any damage suffered by any person as a result of the unavailability or inaccessibility of the Guarantor Website or the inaccuracy or incompleteness of any information on the Guarantor Website.

### **6.4 Disclosure of Guarantee by Eligible Banks**

6.4.1 Each Eligible Bank at whose request an Eligible Debt Instrument has been designated as a Guaranteed Debt Instrument shall ensure that the description of the Guarantor and the Guarantee in any offer document or other document or announcement relating to that Guaranteed Debt Instrument shall be as set out in Schedule 10 (*Form of Disclosure*).

6.4.2 No Eligible Bank may promote itself or its business, or that of any other person, by reference to the Scheme, these Rules, the Guarantee or any Guarantee Certificate other than in accordance with Subrule 6.4.1.

## **7 REPRESENTATIONS AND UNDERTAKINGS**

### **7.1 Representations**

- 7.1.1 By delivering an Application to the Guarantor, an Eligible Bank shall be deemed to make the representations set out in Schedule 7 (*Representations*):
- (a) on the date of the Application; and
  - (b) if any relevant Eligible Debt Instrument becomes a Guaranteed Debt Instrument, on the issue date of each such Guaranteed Debt Instrument.
- 7.1.2 By entering into an indemnity in the form of Schedule 5 (*Form of Indemnity*), the relevant Indemnification Provider shall be deemed to make the representations set out in Schedule 7 (*Representations*):
- (a) on the date of the indemnity; and
  - (b) if any relevant Eligible Debt Instrument becomes a Guaranteed Debt Instrument, on the issue date of each such Guaranteed Debt Instrument.

## **7.2 General undertakings**

- 7.2.1 By delivering an Application to the Guarantor, an Eligible Bank shall be deemed to agree to:
- (a) the undertakings set out in Schedule 8 (*Undertakings*); and
  - (b) all other undertakings and obligations of an Eligible Bank set out in these Rules.
- 7.2.2 By entering into an indemnity in the form of Schedule 5 (*Form of Indemnity*), the relevant Indemnification Provider shall be deemed to agree to:
- (a) the undertakings set out in Schedule 8 (*Undertakings*); and
  - (b) all other undertakings and obligations of an Indemnification Provider set out in these Rules.

## **7.3 Additional representations and undertakings; waiver**

- 7.3.1 The Guarantor may require any Eligible Bank and any Indemnification Provider to make any representations and agree to any undertakings in addition to those set out in Rules 7.1 (*Representations*) and 7.2 (*General undertakings*).
- 7.3.2 The Guarantor may, in relation to an Eligible Bank or an Indemnification Provider and at its discretion, vary or waive any one or more representations or undertakings referred to in Rules 7.1 (*Representations*), 7.2 (*General undertakings*) and Subrule 7.3.1.

## **7.4 Duration of undertakings**

Once agreed to, the undertakings referred to in this Rule 7 shall remain in force until the day when the Guarantor has confirmed to the relevant Eligible Bank or Indemnification Provider, as the case may be, that all obligations of the Eligible Bank or Indemnification Provider under these Rules have been satisfied in full and that no new such obligations can arise.

## **8 RECOURSE**

## 8.1 Recourse

8.1.1 If the Guarantor has made any payment:

- (a) required to be made by it under Rule 5.1 (*Guarantee*); or
- (b) which it reasonably believed was required to be made under Rule 5.1 (*Guarantee*);

the relevant Eligible Bank shall, on demand by the Guarantor, pay to the Guarantor the amount so paid by the Guarantor.

8.1.2 As between the Guarantor and each Eligible Bank, the Guarantor shall not have any obligation to contribute (*draagplicht*) in respect of any Guaranteed Debt Instrument.

8.1.3 By making any payment required to be made by it under Rule 5.1 (*Guarantee*), the Guarantor will subrogate to the rights of the relevant Beneficiary against the relevant Eligible Bank in respect of the obligation of the Eligible Bank to which the payment relates.

8.1.4 Each Eligible Bank waives any rights it may have under Sections 6:139, 6:154, 7:867 and 7:868 CC.

## 8.2 Subordination

8.2.1 In this Rule 8.2:

**"Junior Claim"** means, in relation to an Eligible Bank, any claim or right which that Eligible Bank has or may have against any of its group companies in respect of (whether directly or indirectly) any Guaranteed Debt Instrument issued by the Eligible Bank.

**"Senior Claim"** means, in relation to an Eligible Bank, any claim or right which the Guarantor has or may (on whatever ground) have against any person who owes any Junior Claim to that Eligible Bank.

8.2.2 In this Rule 8.2, a **"payment"** includes any payment, repayment, prepayment, distribution, set-off or recovery (whether in cash or in kind).

8.2.3 All Junior Claims of any Eligible Bank shall be subordinated in right of payment to all Senior Claims relating to that Eligible Bank and, for that purpose and unless the Guarantor directs otherwise:

- (a) the Eligible Bank shall ensure that no payment is made on any such Junior Claim;
- (b) if notwithstanding paragraph (a) above the Eligible Bank receives any payment on any such Junior Claim, it shall promptly pay the amount received to the Guarantor for application towards those Senior Claims; and
- (c) if (for the purpose of a winding-up or otherwise) the amount of any payment to be made to the creditors of the debtor of any such Junior Claim must be calculated:

- (i) the amount to be paid towards that Junior Claim and those Senior Claims on the basis of their statutory ranking shall be calculated;
- (ii) each amount to be paid towards that Junior Claim on the basis of its statutory ranking shall instead be paid towards those Senior Claims; and
- (iii) generally, all the other creditors of the debtor of that Junior Claim and those Senior Claims shall be paid in accordance with their ranking.

8.2.4 The Guarantor shall exercise all rights which the Eligible Bank may have as the creditor of any Junior Claim (whether by law, contract or otherwise), including (without limitation) any right to:

- (a) collect the Junior Claim (whether in or out of court);
- (b) discharge, settle or waive any claim or dispute with respect to, and refer to arbitration and initiate, defend or abandon any proceedings (including arbitration proceedings) in relation to, the Junior Claim;
- (c) attend meetings, make objections (*verzet*) or vote as a creditor of the Junior Claim; and
- (d) exercise any ancillary rights attaching to the Junior Claim.

The Guarantor shall exercise such rights in its own name and to the exclusion of the relevant Eligible Bank (so that Section 7:423 CC applies) and always at its discretion, provided that the Guarantor grants the Eligible Bank permission to exercise such rights, which permission the Guarantor may revoke at its discretion

## **9 FEES**

### **9.1 Fees**

9.1.1 Each Eligible Bank which has issued a Guaranteed Debt Instrument shall pay to the Guarantor a fee in respect of that Guaranteed Debt Instrument.

9.1.2 The amount of each Fee shall be as determined in accordance with Schedule 9 (*Fee and Non-utilisation Fee*).

### **9.2 Non-utilisation Fee**

9.2.1 If on the Cut-off Date applicable to a Guarantee Certificate the aggregate outstanding principal amount of the Guaranteed Debt Instruments to which that Guarantee Certificate applies is less than 75% of the maximum outstanding principal amount set out in that Guarantee Certificate, the relevant Eligible Bank shall, in addition to the Fee payable in respect of those Guaranteed Debt Instruments (if any), pay to the Guarantor a Non-utilisation fee.

9.2.2 The amount of each Non-utilisation Fee shall be as determined in accordance

with Schedule 9 (*Fee and Non-utilisation Fee*).

### **9.3 Payment**

9.3.1 The relevant Eligible Bank shall pay any accrued Fee:

- (a) on each date on which, under the terms of the relevant Guaranteed Debt Instrument, interest on that Guaranteed Debt Instrument falls due; and
- (b) (if that is not a date on which interest falls due on the relevant Guaranteed Debt Instrument) on the maturity date of that Guaranteed Debt Instrument.

9.3.2 The relevant Eligible Bank shall pay any accrued Non-utilisation Fee on the date falling fourteen days after the relevant Cut-off Date.

## **10 COSTS**

10.1.1 Each Eligible Bank shall pay and, promptly on demand, indemnify the Guarantor against all costs, expenses and losses (including, for the avoidance of doubt, currency exchange costs and legal fees) reasonably incurred by the Guarantor in connection with:

- (a) investigating any demand for payment under the Guarantee in respect of a Guaranteed Debt Instrument issued by the relevant Eligible Bank;
- (b) making any payment under the Guarantee in respect of a Guaranteed Debt Instrument issued by the relevant Eligible Bank;
- (c) enforcing or preserving its rights against the relevant Eligible Bank or any relevant Indemnification Provider under or in connection with these Rules.

10.1.2 The costs referred to in Subrule 10.1.1 shall include the cost of utilising the Guarantor's time and other resources, which will be calculated on the basis of such daily or hourly rates as the Guarantor may reasonably determine.

## **11 LIABILITY AND INDEMNITY**

### **11.1 Liability**

11.1.1 The Guarantor shall not be liable for any damage suffered by any Eligible Bank or any Indemnification Provider in connection with these Rules or the Guarantee, other than any damage suffered as a result of the Guarantor's gross negligence or wilful misconduct.

11.1.2 No Eligible Bank and no Indemnification Provider shall have, and no Eligible Bank and no Indemnification Provider may make, any claim or initiate any litigation or other proceedings or procedure against any official, civil servant, employee or agent of the Guarantor in connection with these Rules or the Guarantee.

11.1.3 Each official, civil servant, employee or agent of the Guarantor may exercise

and enforce Subrule 11.1.2.

## **11.2 Indemnity**

Each Eligible Bank shall, promptly on demand, indemnify the Guarantor against all costs, expenses, losses and liabilities incurred by the Guarantor, or any of its officials, civil servants, employees or agents, as a result of any claim or alleged claim made by any person in connection with these Rules or the Guarantee, other than a valid demand under Rule 5.1 (*Guarantee*).

## **12 PAYMENTS AND SET-OFF**

### **12.1 Payments**

12.1.1 Each Eligible Bank shall make each payment to be made by it under these Rules on, and for value on, the due date to such account with such bank in the European Union as the Guarantor specifies.

12.1.2 If a payment is due on a day that is not a Business Day, the payment will be due on the preceding Business Day.

### **12.2 Currency**

12.2.1 Each payment by an Eligible Bank under these Rules relating to principal, interest, costs or any other amount paid by the Guarantor to another person shall be made, at the option of the Guarantor, in the currency in which the principal, interest, costs or other amount was incurred or in euro.

12.2.2 Each other payment by an Eligible Bank under these Rules shall be made in euro.

### **12.3 Partial payments**

If an Eligible Bank makes a payment to the Guarantor that is insufficient to discharge all matured payments then due under these Rules by that Eligible Bank to the Guarantor, that payment shall be applied:

12.3.1 first, *pro rata* towards any fees and costs unpaid under these Rules;

12.3.2 second, *pro rata* towards any interest unpaid in respect of the Eligible Bank's obligations under these Rules;

12.3.3 third, towards any amount in principal unpaid under these Rules; and

12.3.4 fourth, towards any other amount unpaid under these Rules;

or in such other order as the Guarantor may determine.

### **12.4 Set-off and deductions**

12.4.1 The Guarantor may set off any matured obligation owed by an Eligible Bank under these Rules against any matured obligation owed by the Guarantor to that Eligible Bank, regardless of the place of payment or currency of either obligation. If the obligations are in different currencies, the Guarantor may require that the Eligible Bank's obligation be paid (in whole or in part) in the

currency of the Guarantor's obligation, converted at the rate of exchange available to the Guarantor at the time of set-off.

12.4.2 All payments to be made by an Eligible Bank under these Rules will be calculated and be made:

- (a) without, and clear of any deduction for, any suspension or set-off; and
- (b) clear of any deduction or withholding for, or on account of, any tax, levy, impost, duty or other charge of a similar nature, other than any such deduction or withholding required by law.

12.4.3 If an Eligible Bank is required to make a deduction or withholding as referred to in Subrule 12.4.2(b), the amount of the payment due from it will be increased to an amount which, after making the deduction or withholding, leaves an amount equal to the payment which would have been due if no deduction or withholding had been required.

## **13 ENTIRE ARRANGEMENT; CHANGES**

### **13.1 Entire arrangement**

These Rules sets out the entire arrangement in relation to the Scheme.

### **13.2 Changes to Rules**

13.2.1 These Rules may be restated, amended, supplemented or waived by the Guarantor at its discretion.

13.2.2 Any restatement, amendment or supplement to these Rules will take effect as from the date set out in it, which date may not be earlier than the date on which the amendment or supplement is made generally available by publication on the Guarantor Website or in any other manner determined by the Guarantor.

13.2.3 No restatement, amendment or supplement will adversely affect the rights of any Beneficiary under these Rules in respect of any Guaranteed Debt Instrument in respect of which a Guarantee Certificate has been issued prior to the date on which the restatement, amendment or supplement takes effect.

### **13.3 Changes to Eligible Banks**

13.3.1 No Eligible Bank may assign, transfer or encumber any of its rights or obligations under these Rules to or for the benefit of any person.

## **14 EVIDENCE**

In relation to any Eligible Bank:

14.1.1 the entries made in the accounts maintained by the Guarantor; and

14.1.2 any certification or determination by the Guarantor of an amount or rate under these Rules;

are conclusive evidence of the matters to which they relate.

## **15 NOTICES**

Any communication to be made under or in connection with these Rules to the Guarantor shall be made in writing and, unless otherwise stated, may be made by fax or letter to:

Dutch State Treasury Agency

Korte Voorhout 7

2511 CW The Hague

Fax: +31 70 342 79 81

or any substitute address or fax number as the Guarantor may publish on the Guarantor Website.

## **16 EFFECTIVE DATE**

### **16.1 Effective date**

16.1.1 The Original Rules took effect as of (and including) 23 October 2008.

16.1.2 These Rules take effect as of (and including) 18 February 2009.

### **16.2 Existing Guaranteed Debt Instruments**

These Rules do not affect the Guarantee in respect of any Guaranteed Debt Instrument in respect of which a Guarantee Certificate has been issued prior to the date referred to in Subrule 16.1.2 of Rule 16.1 (*Effective date*).

## **17 GOVERNING LAW AND JURISDICTION**

### **17.1 Governing law**

These Rules (including Rule 17.3 (*Jurisdiction*)) are governed by Dutch law.

### **17.2 Disputes**

As between the Guarantor and any other person other than a Beneficiary (but only in relation to the Guarantee in respect of the Guaranteed Debt Instrument of which it is the Beneficiary), any determination by the Guarantor as to the interpretation of these Rules shall be final and binding.

### **17.3 Jurisdiction**

The Courts of Amsterdam, the Netherlands, have exclusive jurisdiction to settle any dispute arising out of or in connection with these Rules (including a dispute regarding the existence, validity or termination of the Guarantee in respect of any Guaranteed Debt Instrument).

## **Schedule 1** Bank Eligibility Criteria

The following criteria must be satisfied for a bank to qualify as an Eligible Bank:

- 1** The bank must:
  - (a)* be a bank as defined in Section 1:1 FMSA;
  - (b)* have its seat in the Netherlands;
  - (c)* be authorised to perform its banking activities pursuant to Section 2:12(1), 2:13(1) or 3:111(1) FMSA; and
  - (d)* be registered in the register as referred to in Section 1:107(2)(a) FMSA.
- 2** The bank must have, in the opinion of the Guarantor, a substantial business in the Netherlands.
- 3** The bank has a solvency ratio to the satisfaction of the Guarantor, taking into account the requirements of the FMSA and any agreement of the bank with, or any directive or request to the bank from, the Dutch Central Bank.

## **Schedule 2** Debt Instrument Eligibility Criteria

The following criteria must be satisfied for a debt instrument to qualify as an Eligible Debt Instrument:

- 1** The debt instrument must:
  - (a)* be a senior unsecured debt instrument on standard market terms and falling within one of the following categories:
    - (i)* certificates of deposit or commercial paper which carry (A) no interest (zero coupon), or (B) interest at a fixed interest rate; or
    - (ii)* medium term notes which by their terms are expressed to be redeemed in one single payment (bullet) and which carry (A) no interest (zero coupon), or (B) interest at a fixed interest rate or a floating interest rate calculated as the aggregate of a market reference rate and a fixed spread;
  - (b)* have an issue date falling on or after 23 October 2008 and before the Final Application Date;
  - (c)* have a tenor of no less than three months and no more than five years;
  - (d)* be denominated in euro, Sterling or US Dollar.
- 2** The debt instrument must fit, in the opinion of the Guarantor, taking into account the refinancing profile and the structure of the balance sheet of the relevant Eligible Bank, within the liquidity requirements of that Eligible Bank.
- 3** The debt instrument may not be, in the opinion of the Guarantor, a complex financial instrument.
- 4** The terms of the debt instrument may not provide for:
  - (a)* any cross-default or cross-acceleration event of default (howsoever described); or
  - (b)* any right of prepayment of principal by the issuer.
- 5** The proceeds of the issue of the debt instrument must be (and must be expressed to be) applied towards refinancing of any debt instruments or other borrowings of the relevant Eligible Bank with a schedule maturity date falling on or after 23 October 2008.

### Schedule 3 Form of Application

From: [•] as Eligible Bank  
To: The State of the Netherlands as Guarantor  
Dated: [Date]

Dear Sirs/Madams,

**2008 Credit Guarantee Scheme of the State of the Netherlands  
(the "Scheme")**

- 1 We refer to the Rules of the Scheme. Terms defined in the Rules have the same meaning in this Application. References to Schedules are to the Schedules to the Rules.
- 2 This is an Application.
- 3 We request that you designate each Eligible Debt Instrument the particulars of which conform to the particulars set out below (each a "**Relevant Eligible Debt Instrument**") as a Guaranteed Debt Instrument:

**General information**

|   |                     |  |
|---|---------------------|--|
| 1 | Date of application |  |
|---|---------------------|--|

**Applicant information**

|   |                                     |  |
|---|-------------------------------------|--|
| 2 | Legal name of applicant             |  |
| 3 | Seat                                |  |
| 4 | Address                             |  |
| 5 | Contact person for this Application |  |
| 6 | Contact details of contact person   |  |

**Relevant Eligible Debt Instrument information**

|   |                                       |  |
|---|---------------------------------------|--|
| 7 | Description of Relevant Eligible Debt |  |
|---|---------------------------------------|--|

|           | <b>Instruments</b>                                |  |
|-----------|---|--|
| <b>8</b>  | <b>Type of Relevant Eligible Debt Instruments</b> | [certificate of deposit] [or] [commercial paper] [or] [medium term note] [or] [other] <sup>1</sup> |
| <b>9</b>  | <b>Currency</b>                                   | [euro] [and/or] [Sterling] [and/or] [US Dollar]  |
| <b>10</b> | <b>Maximum outstanding principal amount</b>       |  |
| <b>11</b> | <b>Legal name of any guarantors</b>               |  |
| <b>12</b> | <b>Legal name of Trustee (if any)</b>             |  |
| <b>13</b> | <b>Legal name of Paying Agent (if any)</b>        |  |
| <b>14</b> | <b>Other relevant details</b>                     |  |

**4** We confirm that we have not made any Application in respect of any Eligible Debt Instrument other than:

(a) Applications in respect of Eligible Debt Instruments than have, prior to the date of this Application, been designated as Guaranteed Debt Instruments; and

(b) Applications which are no longer outstanding;

except in relation to each following Eligible Debt Instrument:

| <b>Description of Eligible Debt Instrument</b> | <b>Date of Application</b> |
|--|----------------------------|
|  |                            |

**5** We make or shall be deemed to make, as the case may be, the representations set out in Schedule 7 (*Representations*):

(a) on the date this Application; and

(b) if any Relevant Eligible Debt Instrument becomes a Guaranteed Debt Instrument, on the issue date of each such Guaranteed Debt Instrument.

**6** We agree to:

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<sup>1</sup> "Other" only to be used for Applications on the basis of Subrule 3.5.1 of Rule 3.5 (*Waiver of designation*)

- (a) the undertakings set out in Schedule 8 (*Undertakings*); and
- (b) all other undertakings and obligations of an Eligible Bank set out in the Rules.

**7** We have taken note of, and agree to be bound by, the Rules.

Yours faithfully,

[*Name of Eligible Bank*]

*Name:*

*Title:*

*Name:*

*Title:*

---

*conditions*).

## Schedule 4 Form of Guarantee Certificate

From: The State of the Netherlands as Guarantor

To: [•] as Eligible Bank

Dated: [Date]

Dear Sirs/Madams,

### 2008 Credit Guarantee Scheme of the State of the Netherlands (the "Scheme")

- 1 We refer to the Rules of the Scheme. Terms defined in the Rules have the same meaning in this Guarantee Certificate.
- 2 We designate each debt instrument to be issued by following issuer (the "**Relevant Issuer**") and the particulars of which conform to the particulars set out below (each a "**Relevant Guaranteed Debt Instrument**") as a Guaranteed Debt Instrument:

#### Relevant Issuer information

|   |                               |  |
|---|-------------------------------|--|
| 1 | Legal name of Relevant Issuer |  |
| 2 | Seat                          |  |
| 3 | Address                       |  |

#### Relevant Guaranteed Debt Instrument information

|   |   |  |
|---|---|--|
| 4 | Description of Relevant Guaranteed Debt Instruments |  |
| 5 | Type of Relevant Guaranteed Debt Instruments        | [certificate of deposit] [or] [commercial paper] [or] [medium term note] [or] [other] <sup>2</sup> |
| 6 | Currency  | [euro] [and/or] [Sterling] [and/or] [US Dollar]  |
| 7 | Maximum outstanding principal amount                |  |

---

<sup>2</sup> "Other" only to be used in case Subrule 3.5.1 of Rule 3.5 (*Waiver of designation conditions*) is applied.

|           |  |  |
|-----------|--|--|
| <b>8</b>  | <b>Legal name of any guarantors</b>        |  |
| <b>9</b>  | <b>Legal name of Trustee (if any)</b>      |  |
| <b>10</b> | <b>Legal name of Paying Agent (if any)</b> |  |
| <b>11</b> | <b>Other relevant details</b>              |  |

- 3** Subject to the Rules, in relation to each Relevant Guaranteed Debt Instrument, we unconditionally and irrevocably:
- (a) guarantee to each relevant Beneficiary the payment by the Relevant Issuer of all amounts in principal or Qualifying Interest expressed to be due in respect of the Relevant Guaranteed Debt Instrument according to the terms of the Relevant Guaranteed Debt Instrument; and
  - (b) agree for the benefit of each relevant Beneficiary that, whenever the Relevant Issuer fails to pay (in whole or in part) any amount in principal or Qualifying Interest expressed to be due in respect of the Relevant Guaranteed Debt Instrument according to the terms of the Relevant Guaranteed Debt Instrument, we shall, on demand by that Beneficiary (or any relevant trustee on its behalf), pay that amount to that Beneficiary.
- 4** This Guarantee Certificate and our guarantee set out in paragraph 3 above are subject to the Rules.
- 5** Each Beneficiary of the Relevant Guaranteed Debt Instrument may rely on this Guarantee Certificate.

Yours faithfully,

The State of the Netherlands  
The Minister of Finance  
On his behalf,

*Name:*  
*Title:*

## Schedule 5 Form of Indemnity

From: [●] as Indemnification Provider  
To: The State of the Netherlands as Guarantor  
Dated: [Date]

Dear Sirs/Madams,

### 2008 Credit Guarantee Scheme of the State of the Netherlands (the "Scheme")

- 1 We refer to the Rules of the Scheme. Terms defined in the Rules have the same meaning in this indemnity. References to Schedules in this indemnity are to Schedules to the Rules.
- 2 We also refer to the Application (the "**Relevant Application**") dated [●] made by [●] as Eligible Bank (the "**Relevant Eligible Bank**") in respect of each Eligible Debt Instrument the particulars of which conform to the particulars set out below (each a "**Relevant Eligible Debt Instrument**"):

#### Relevant Eligible Bank information

|   |                                      |  |
|---|--------------------------------------|--|
| 1 | Legal name of Relevant Eligible Bank |  |
| 2 | Seat                                 |  |
| 3 | Address                              |  |

#### Relevant Eligible Debt Instrument information

|   |   |  |
|---|---|--|
| 4 | Description of Relevant Eligible Debt Instruments |  |
| 5 | Type of Relevant Eligible Debt Instruments        | [certificate of deposit] [or] [commercial paper] [or] [medium term note] [or] [other] <sup>3</sup> |
| 6 | Currency  | [euro] [and/or] [Sterling] [and/or] [US Dollar]  |

---

<sup>3</sup> "Other" only to be used if the Relevant Application is made on the basis of Subrule 3.5.1 of Rule 3.5 (*Waiver of designation conditions*).

|           |   |  |
|-----------|---|--|
| <b>7</b>  | <b>Maximum outstanding principal amount</b> |  |
| <b>8</b>  | <b>Legal name of any guarantors</b>         |  |
| <b>9</b>  | <b>Legal name of Trustee (if any)</b>       |  |
| <b>10</b> | <b>Legal name of Paying Agent (if any)</b>  |  |
| <b>11</b> | <b>Other relevant details</b>               |  |

- 3** We unconditionally and irrevocably agree that, whenever the Relevant Eligible Bank fails to satisfy (in whole or in part) any obligation to pay on its due date any amount owing by it to the Guarantor under the Rules in connection with the Relevant Application or the Guarantee Certificate (if any) issued on the basis of the Relevant Application, we shall, as a joint and several debtor, satisfy that obligation by paying that amount to the Guarantor.
- 4** We waive any rights we may have under Sections 6:139, 6:154, 7:867 and 7:868 CC.
- 5** We make the representations set out in Schedule 7 (*Representations*):
- (a) on the date of this indemnity; and
  - (b) if any Relevant Eligible Debt Instrument becomes a Guaranteed Debt Instrument, on the issue date of each such Guaranteed Debt Instrument.
- 6** We agree to:
- (a) the undertakings set out in Schedule 8 (*Undertakings*); and
  - (b) all other undertakings and obligations of an Indemnification Provider set out in the Rules.
- 7** We agree that Rule 8.2 (*Subordination*) applies in relation to us *mutatis mutandis* (with, unless the context requires otherwise, all references to an "Eligible Bank" being deemed to refer to us).
- 8** We agree that Rules 12 (*Payments and set-off*), 13.3 (*Changes to Eligible Banks*), 14 (*Evidence*), 15 (*Notices*) and 17 (*Governing law and jurisdiction*) apply to this indemnity *mutatis mutandis* (with, unless the context requires otherwise, all references to an "Eligible Bank" being deemed to refer to us).
- 9** Our contact details for this indemnity are:

|                        |  |
|------------------------|--|
| <b>Address</b>         |  |
| <b>Contact person</b>  |  |
| <b>Contact details</b> |  |

**10** We have taken note of, and agree to be bound by, the Rules.

Yours faithfully,

*[Name of Indemnification Provider]*

*Name:*

*Title:*

*Name:*

*Title:*

## Schedule 6 Form of Notice of Demand

From: [•] as [trustee for each relevant] Beneficiary  
To: The State of the Netherlands as Guarantor  
Dated: [Date]

Dear Sirs/Madams,

### 2008 Credit Guarantee Scheme of the State of the Netherlands (the "Scheme")

- 1 We refer to the Rules of the Scheme. Terms defined in the Rules have the same meaning in this Notice of Demand. References to Schedules are to the Schedules to the Rules.
- 2 This is a Notice of Demand.
- 3 This Notice of Demand is made in respect of the following Guaranteed Debt Instrument (the "**Defaulted Debt Instrument**") issued by the following issuer (the "**Defaulting Issuer**"):

#### Defaulting Issuer information

|   |                                 |  |
|---|---------------------------------|--|
| 1 | Legal name of Defaulting Issuer |  |
| 2 | Seat                            |  |

#### Defaulted Debt Instrument information

|    |   |                               |
|----|---|-------------------------------|
| 3  | Description of Defaulted Debt Instrument                    |                               |
| 4  | Currency  | [euro] [Sterling] [US Dollar] |
| 5  | Principal amount  |                               |
| 6  | Tenor   |                               |
| 7  | Fixed interest rate   |                               |
| 8  | Reference rate and maximum spread of floating interest rate |                               |
| 9  | Legal name of Trustee (if any)                              |                               |
| 10 | Legal name of Paying Agent (if any)                         |                               |

- 4 [We act as Trustee for all Beneficiaries in respect of the Defaulted Debt

Instrument.]

- 5 We notify you that the Defaulting Issuer has not paid the following amount(s) (the "**Defaulted Amount(s)**") in principal or Qualifying Interest in respect of the Defaulted Debt Instrument on the date on which the Defaulted Amount(s) fell due according to the terms of the Defaulted Debt Instrument:

| Type of amount                          | Currency                               | Amount | Due date |
|---|--|--------|----------|
| [Principal]<br>[Qualifying<br>Interest] | [euro]<br>[Sterling]<br>[US<br>Dollar] |        |          |
| [Principal]<br>[Qualifying<br>Interest] | [euro]<br>[Sterling]<br>[US<br>Dollar] |        |          |

- 6 We represent that:
- (a) the Defaulting Issuer has not (and no other person on its behalf has) paid the Defaulted Amount(s); and
  - (b) no guarantor of the Defaulted Debt Instrument has (and no other person on its behalf has) made any payments in respect of the Defaulted Amount(s) required from it under its guarantee.
- 7 We demand that you, under your Guarantee in respect of the Defaulted Debt Instrument, pay to us the Defaulted Amount(s).
- 8 We agree that your obligations under your Guarantee in respect of the Defaulted Debt Instrument are governed by the Rules.

Yours faithfully,

*[Name of [trustee for each relevant] Beneficiary]*

*Name:*

*Title:*

## **Schedule 7** Representations

Each Eligible Bank and each Indemnification Provider shall be deemed to make the following representations in respect of itself and (if expressed to be applicable to the group or each group company) in respect of each of its group companies.

### **1 Status**

- (a) It is a legal entity, duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- (b) Each other group company is a legal entity, duly incorporated and validly existing under the law of its jurisdiction of incorporation, or a partnership, duly formed and existing under the law of its jurisdiction of formation.
- (c) It and each group company has the power to own its assets and carry on its business as it is being conducted.
- (d) Neither it nor any (other) material group company is subject to any winding-up and to the best of its knowledge no corporate action, legal proceeding or other procedure or step in relation to any winding-up of it nor any other material group company has been taken.

### **2 Binding obligations**

- (a) It has the power to enter into, and has taken all necessary action to authorise its entry into and performance of, its obligations under the Rules.
- (b) All authorisations required to enable it lawfully to enter into and perform, its obligations under the Rules and to make the Rules admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect and all stamp, registration and other taxes or duties required to be paid in relation to the Rules or to make the Rules admissible in evidence in its jurisdiction of incorporation have been paid.
- (c) Its entry into and performance of its obligations under the Rules do not and will not conflict with any law or regulation applicable to it, its constitutional documents or any material agreement or instrument binding upon it or any other group company.
- (d) The choice of Dutch law as the governing law of the Rules will be recognised and enforced in its jurisdiction of incorporation and any judgment obtained in relation to the Rules will be recognised and enforced in its jurisdiction of incorporation.
- (e) The obligations expressed to be assumed by it under the Rules are legal, valid, binding and enforceable obligations.
- (f) Its obligations under the Rules rank at least *pari passu* with all its other

unsubordinated obligations except those which are mandatorily preferred by law of general application.

### **3 Eligible Bank and Eligible Debt Instruments**

- (a) In the case of an Eligible Bank only, it satisfies the criteria set out in paragraph 1 of Schedule 1 (*Bank Eligibility Criteria*).
- (b) All debt instruments in respect of which it has made, or the Eligible Bank in respect of which it is an Indemnification Provider has made, an Application qualify as Eligible Debt Instruments.

### **4 Financial information**

- (a) Its annual and semi-annual financial statements made publicly available were prepared on the basis of the general accepted accounting principles referred to in them consistently applied (except as disclosed in them) and fairly represent its financial condition and results of operations (consolidated if applicable) during the relevant period.
- (b) If its financial information is consolidated in the consolidated financial statements of any other group company, the annual and semi-annual financial statements of that other group company made publicly available were prepared on the basis of the general accepted accounting principles referred to in them consistently applied (except as disclosed in them) and fairly represent that other group company's financial condition and results of operations (consolidated if applicable) during the relevant period.
- (c) There has been no material adverse change in its business or financial condition (or the business and financial condition of the group taken as a whole) since the date to which its most recent annual or semi-annual, as the case may be, financial statements were prepared (except as disclosed to the Guarantor).

### **5 Other information**

- (a) All information provided to the Guarantor or made publicly available by or on behalf of it or any other group company was true and accurate in all material respects and was not misleading in any material respect as at the date it was provided or as at the date it was stated.
- (b) All expressions of opinion or intention provided by or on behalf of it or any other group company to the Guarantor were made after careful consideration and were fair and based on reasonable assumptions.

### **6 Legal compliance**

- (a) It has not, and no other group company has, breached, in any material respect, any law or regulation including, for the avoidance of doubt, any law or regulation relating to:

- (i) the timely and adequate disclosure of information to shareholders, the financial markets, stock exchanges and supervisory authorities;
  - (ii) solvency requirements under the FMSA (if applicable); and
  - (iii) "know your customer" and anti money laundering requirements.
- (b) It has not, and no other group company has, breached, in any material respect, any directive, order or guideline of the Dutch Central Bank, the Netherlands Authority for the Financial Markets or any non-Dutch supervisory authority (except as disclosed to the Dutch Central Bank, the Netherlands Authority for the Financial Markets or the relevant non-Dutch supervisory authority, as applicable).
- (c) It is not, and no other group company is, materially overdue in the filing of any tax returns or in the payment of any tax.

## **7 No proceedings**

- (a) No litigation, arbitration, administrative proceedings or investigations of, or before, any authority, court, or arbitral, governmental or regulatory body which are reasonably likely to have a material adverse effect upon the business, financial situation or prospects of it or the group taken as a whole have, to the best of its knowledge, been started or threatened.
- (b) The Dutch Central Bank has not made any adverse determination in relation to it pursuant to Section 3:18a FMSA.

## **8 Assets and liabilities**

- (a) It and each other group company has a good, valid and marketable title to, or valid leases or licences of, and all appropriate authorisations to use, the assets necessary to carry on its business as presently conducted.
- (b) Its shares are not, and no shares of any other material group company (other than any shares that are publicly listed) are, subject to any limited right or other encumbrance (except as disclosed to the Guarantor).
- (c) It and each other group company is the sole legal and beneficial owner of, or has licensed to it, all material intellectual property rights necessary to carry on its business as presently conducted, and to the best of its knowledge no person infringes any of its material intellectual property rights.
- (d) All pension schemes applied within the group are fully funded and comply with all provisions of applicable law and employ reasonable actuarial assumptions and it does not have, and no other group company has, any material unsatisfied liability in respect of any pension scheme and to the best of its knowledge there are no circumstances which may give rise to any such liability.

- (e) No event or circumstance is outstanding which constitutes a default under any agreement or instrument which is binding on it or any other group company in a manner or to an extent which could reasonably be expected to have a material adverse effect upon the business, financial situation or prospects of it or the group taken as a whole.

## **Schedule 8** Undertakings

Each Eligible Bank and each Indemnification Provider shall be deemed to agree to comply with the following undertakings and (if it is expressed to be applicable to the group or each group company) to ensure that that undertaking is complied with by each of its group companies.

### **1 Maintenance of representations**

It shall ensure that all representations set out in Schedule 7 (*Representations*), other than the representations set out in subparagraph (c) of paragraph 4 (*Financial information*), paragraph 7 (*No proceedings*), those elements of the representations set out in subparagraphs (c) and (d) of paragraph 8 (*Assets and Liabilities*) that are qualified by best knowledge and the representation set out in subparagraph (e) of paragraph 8 (*Assets and Liabilities*) of Schedule 7 (*Representations*), remain correct and not misleading at all times.

### **2 Guaranteed Debt Instruments**

In the case of an Eligible Bank, it shall supply to the Guarantor, promptly upon becoming aware of them, the details of:

- (a) any failure by it to pay (in whole or in part) any amount in principal or Qualifying Interest in respect of any Guaranteed Debt Instrument issued by it on the date on which that amount fell due according to the terms of that Guaranteed Debt Instrument, and any other failure by it to otherwise comply with the terms of that Guaranteed Debt Instrument; and
- (b) any claim, allegation or notice by any person:
  - (i) that it has failed to comply with the terms of any Guaranteed Debt Instrument issued by it; or
  - (ii) invoking or threatening to invoke an event of default or an acceleration event (howsoever described) in relation to any Guaranteed Debt Instrument issued by it.

### **3 Information**

- (a) It shall supply to the Guarantor, promptly on demand, such information regarding the business, financial condition and prospects of it or any other group company as the Guarantor may reasonably request, including (without limitation):
  - (i) its and any other group company's annual and semi-annual (if any) financial statements for any financial years or half year;
  - (ii) all documents dispatched by it to its shareholders (or any class of them) or its creditors generally;
  - (iii) all documents supplied by it to the Dutch Central Bank or the Netherlands Authority for the Financial Markets or any non-Dutch supervisory authority.

- (b) It shall supply to the Guarantor, promptly upon becoming aware of them, all relevant details if:
  - (i) any representation or statement made or deemed to be made by or on behalf of it or any other group company to the Guarantor is or proves to have been incorrect or incomplete; or
  - (ii) it or any other group company is in breach of any undertaking applicable to it under this Schedule 8 or otherwise under the Rules.
- (c) It shall use its best efforts to ensure that, to the extent necessary for the operation of the Scheme, the Guarantor, the Dutch Central Bank, the Netherlands Authority for the Financial Markets and any non-Dutch supervisory authority can freely exchange information relating to it or any other group company and it agrees that the Guarantor, the Dutch Central Bank, the Netherlands Authority for the Financial Markets and any non-Dutch supervisory authority may freely exchange such information.

#### **4 Conduct of business**

- (a) It shall, and each other group company shall, continue to conduct its business as a going concern in the ordinary course.
- (b) In the case of an Eligible Bank only, it shall use its best efforts:
  - (i) to maintain a solvency ratio in line with the solvency ratio adequate for it for the purpose of qualifying as an Eligible Bank as referred to in paragraph 3 of Schedule 1 (*Bank Eligibility Criteria*) (on the basis of the requirements of the FMSA and any agreement of it with, or any directive or request to it from, the Dutch Central Bank);
  - (ii) to comply with the liquidity requirements under the FMSA (if applicable).
- (c) It shall not, without the prior consent of the Guarantor, engage in, or take any action with a view to engaging in, any winding-up, other than a solvent merger or demerger with another group company or a solvent liquidation.

#### **5 Remuneration and severance arrangements**

- (a) It shall or, if it is a subsidiary, it shall ensure that its parent company will, implement and maintain a sustainable remuneration policy for its (or its parent company's, as the case may be) managing and executive directors and senior management in line with international standards and that its (or its parent company's) incentive schemes will be linked to long term value creation taking account of risk and restricting the potential for "rewards for failure".

- (b) It shall or, if it is a subsidiary, it shall ensure that its parent company will, ensure that the exit schemes or statutory compensation for its (or its parent company's, as the case may be) executive board shall be limited to one year's fixed salary and that remuneration shall be consistent with its (or its parent company's) long term objectives.
- (c) It shall or, if it is a subsidiary, it shall ensure that its parent company will, comply with all other remuneration related provisions set out in paragraph II.2 of the Dutch Corporate Governance Code.

## **6 Compliance with EC requirements**

It shall, and each other group company shall, comply with any requirements which the State of the Netherlands from time to time is required to impose on it under any rule or regulation in relation to State guarantee schemes such as, or comparable to, these Rules promulgated by the European Commission, or any other competent body of the European Union.

## Schedule 9 Fee and Non-utilisation Fee

### 1 Definition

In this Schedule 9:

**"Accepted Rating Agency"** means each of Moody's and S&P.

**"CDS Spread"** means, in relation to an Eligible Bank:

- (a) in the case of an Eligible Bank for which credit default swap data are publicly available which, in the opinion of the Guarantor, are sufficiently representative, the lower of:
  - (i) the median five-year credit default swap spread for the Sample Period for the Eligible Bank; and
  - (ii) the median five-year credit default swap spread for the Sample Period for Sample Banks with a Rating comparable to the Rating (if any) of the Eligible Bank;
- (b) in the case of an Eligible Bank for which no sufficiently representative credit default swap data are publicly available and which has a Rating, the median five-year credit default swap spread for the Sample Period for Sample Banks with a Rating comparable to the Rating of the Eligible Bank; and
- (c) in the case of any other Eligible Bank, the median five-year credit default swap spread for the Sample Period for Sample Banks with a Rating of no less than A (in the case of Moody's) or A- (in the case of S&P) or such other CDS Spread as the Guarantor may determine taking into account the creditworthiness of the relevant Eligible Bank;

in each case as determined by the Guarantor. The Guarantor shall publish on the Guarantor Website the CDS Spread for each Eligible Bank for which it has determined a CDS Spread.

**"Moody's"** means Moody's Investor Services Limited.

**"Rating"** means, in relation to a person, a credit rating in respect of that person issued by an Accepted Rating Agency. If more than one Accepted Rating Agency has issued a credit rating in respect of a person, the Rating for that person shall be the lower of those credit ratings.

**"Sample Bank"** means each bank included in a representative sample of large banks in the Participating Member States selected by the Eurosystem comprised of the European Central Bank and the central banks of the Participating Member States.

**"Sample Period"** means the period from (and including) 1 January 2007 to (and including) 31 August 2008.

**"S&P"** means Standard & Poor's Rating Services, a Division of The McGraw-Hill Companies, Inc.

## **2 Fee**

- 2.1** The amount of each Fee shall be calculated on the basis of a percentage rate *per annum* applied to the gross proceeds of the issue of the relevant Guaranteed Debt Instrument.
- 2.2** The percentage rate *per annum* shall be:
- (a) in the case of a Guaranteed Debt Instrument with a tenor of no more than one year, 50 basis points; and
  - (b) in any other case, equal to the aggregate of:
    - (i) the relevant Eligible Bank's CDS Spread; and
    - (ii) 50 basis points.
- 2.3** The percentage rate *per annum* shall accrue from day to day on the basis of:
- (a) the actual number of days elapsed between the issue date and the scheduled maturity date of the relevant Guaranteed Debt Instrument; and
  - (b) the actual number of days in the year or years during which the relevant Guaranteed Debt Instrument will remain outstanding (assuming it reaches its full maturity).

## **3 Non-utilisation Fee**

- 3.1** The amount of each Non-utilisation Fee shall be calculated on the basis of a percentage rate *per annum* applied to an amount equal to:
- (a) the maximum outstanding principal amount of the Guaranteed Debt Instruments set out in the relevant Guarantee Certificate;
  - (b) less the aggregate outstanding principal amount on relevant the Cut-off Date of the Guaranteed Debt Instruments to which the relevant Guarantee Certificate applies.
- 3.2** The percentage rate *per annum* shall be 50 basis points.
- 3.3** The percentage rate *per annum* shall accrue from day to day on the basis of the actual number of days elapsed between the date of the relevant Guarantee Certificate and the relevant Cut-off Date and the actual number of days in the relevant year.

## **4 Currency**

- 4.1** The amount of each Fee and each Non-utilisation Fee shall be expressed in euro.
- 4.2** For this purpose, the amount of each Fee or Non-utilisation Fee calculated as set out in paragraph 2 (*Fee*) or 3 (*Non-utilisation Fee*) above shall, where required, be converted into euro at the rate of exchange available to the Guarantor on the date of the Guarantee Certificate relating to the Guaranteed Debt Instrument in respect of which the Fee or Non-utilisation Fee is payable.

## Schedule 10 Form of Disclosure

1 This Schedule 10 applies to any offer document or other document or announcement relating to a Guaranteed Debt Instrument (a "**Document**").

2 The description, if any, of the Guarantor and the Guarantee in any Document shall be substantially in the following form:

The State of the Netherlands has unconditionally and irrevocably guaranteed the due payment of all amounts in principal and interest due by [*the issuer*] under the [*debt instruments*] according and subject to (i) the Rules governing the 2008 Credit Guarantee Scheme of the State of the Netherlands, and (ii) the Guarantee Certificate issued under those Rules in respect of the [*debt instruments*]. Those Rules and that Guarantee Certificate are available at [www.dutchstate.nl](http://www.dutchstate.nl)

3 If a description as set out in paragraph 2 above is included in a Document, that Document may, in addition:

(a) incorporate the Rules and the relevant Guarantee Certificate by reference; and

(b) include a factual description or summary of the Rules or the Guarantee in respect of the relevant Guaranteed Debt Instrument provided that:

(i) such description or summary is true and accurate and not misleading; and

(ii) the Document includes a disclaimer substantially in the following form:

The State of the Netherlands has neither reviewed this [*offer or other document*] nor verified the information contained in it, and the State of the Netherlands makes no representation with respect to, and does not accept any responsibility for, the contents of this [*offer or other document*] or any other statement made or purported to be made on its behalf in connection with [*the issuer*] or the [*issue and offering*] of the [*debt instruments*]. The State of the Netherlands accordingly disclaims all and any liability, whether arising in tort or contract or otherwise, which it might otherwise have in respect of this [*offer or other document*] or any such statement.