

Schedule 1. pertaining to article 6 of the Subsidy Scheme Credit Guarantee SME Aruba, Curaçao, and St. Maarten

Model for a corporate guarantee credit agreement with a credit provider

Agreement between:

- 1. The State of the Netherlands, hereinafter referred to as: the State, represented by the Minister of the Interior and Kingdom Relations;
- 2., hereinafter referred to as: the credit provider,

The parties have agreed on the following:

Article 1. Definitions

- 1. The terms defined in the Framework Decree BZK Subsidies and the Credit Guarantee SME Scheme Aruba, Curaçao, and St. Maarten have the meaning given to them in the said regulations.
- 2. For the purposes of this agreement, the following is moreover understood as:
 - a. *financing facility*: credit or part of a credit for which the State does not act as guarantor or surety under the Credit Guarantee SME Scheme Aruba, Curaçao, and St. Maarten;
 - b. *credit provider-affiliate*: a legal entity to which the credit provider provides, either directly or indirectly, more than half of the issued capital or for the acts of which the credit provider is fully liable, and which is listed as a credit provider-affiliate in article 24 of this agreement;
 - c. *corporate guarantee credit*: credit or part of a credit that was assessed and notified in accordance with article 5;
 - d. *one enterprise*: one enterprise or all enterprises having at least one of the following links with each other, in the course of which enterprises having one of the links referred to under 1° up to and including 4° through one or more other enterprises are also considered as one enterprise:
 - 1°. one enterprise holds a majority of the voting rights of the shareholders or partners of another enterprise;
 - 2°. one enterprise is entitled to appoint or dismiss the majority of the members of the administrative, management or supervisory body of another enterprise;
 - 3°. one enterprise is entitled to exercise a controlling influence over another enterprise by virtue of an

agreement concluded with that enterprise or a provision in the articles of association of the latter enterprise;

- **4°.** one enterprise that is a shareholder or partner of another enterprise has sole control over the majority of the voting rights of the shareholders or partners of the latter enterprise by virtue of an agreement entered into with other shareholders or partners of that other enterprise;
- **e. *credit*:** amount that the credit provider provides or shall provide in pursuance of a credit agreement;
- **f. *credit agreement*:** agreement on account of which:
 - **1°.** the credit provider provides or shall provide money on loan to an SME entrepreneur, or
 - **2°.** the SME entrepreneur draws or shall be able to draw up to a certain amount on the credit provider, or
 - **3°.** the credit provider entered into an irrevocable obligation towards a third party, other than a legal entity with which the credit provider is affiliated in a group or a credit provider-affiliate, to make one or more payments to the third party at the expense of the credit provider-entrepreneur, which obligation is not subject to conditions of which the fulfilment is affected by the acts of the credit provider;
- **g. *Minister*:** the Minister of the Interior and Kingdom Relations;
- **h. *start-up*:**
 - **1°.** an SME entrepreneur, who is a natural person and who has not maintained a business for more than three years;
 - **2°.** an enterprise with a capital divided into shares, also an SME entrepreneur, the director of which is a natural person who holds, either directly or indirectly, the majority of the issued and paid-up capital at the time the credit agreement is concluded and has held this majority for no more than three years;
- **i. *start-up guarantee credit*:** corporate guarantee credit that is exclusively provider to a start-up;
- **j. *enforcement*:**

- 1°. recovery by the credit provider of the collateral provided by the SME entrepreneur to the credit provider, as a reasonably acting and competent credit provider would have done in the context of an active and profit-oriented policy without a guarantee;
 - 2°. private sale with the consent of the credit provider by the SME entrepreneur of the assets of the SME entrepreneur, including collection of receivables;
 - 3°. foreclosure sale of the assets of the SME entrepreneur; and
 - 4°. if the insolvency of the SME entrepreneur has been declared or the SME entrepreneur has been granted suspension of payments, the private or forced sale of the assets of the SME entrepreneur by or with the cooperation of the receiver or the administrator;
- k. *liquidity mark-up*: a percentage of the loan charged by a credit provider to an entrepreneur of which the amount is identical for all loans made or to be made by the relevant credit provider on the same day with the same maturity. If the said rate is not available then another reasonable, transparent, and verifiable rate shall be determined in consultation with the credit provider.

Article 2. Guarantee

The State shall act as guarantor on behalf of the credit provider for the repayment of corporate guarantee credits provided by the credit provider in compliance with the Framework Decree BZK Subsidies and the Credit Guarantee SME Scheme Aruba, Curaçao, and St. Maarten and this agreement, on the understanding that this guarantee is entered into on the basis of the following provisions.

Article 3. Conditions corporate guarantee agreement

- 1. The applicability of this guarantee agreement to a credit or part of a credit can only be invoked:
 - a. if the credit was notified as referred to in article 5;
 - b. if the one-off commission set out in Section 3.11.4. Subsection 1 of the National BZK and LNV Subsidies Scheme has been paid to the State by the credit provider within 35 days of the conclusion of the credit agreement;
 - c. if and to the extent that, as a result of the notification referred to under a, the sum of the credits or parts thereof notified in a calendar year has not exceeded the notification limit set by the Minister pursuant to Section 5 of the Credit

Guarantee SME Scheme Aruba, Curaçao, and St. Maarten with regard to that calendar year;

- **d.** if the natural person who provides, either directly or indirectly, more than half of the issued capital to the SME entrepreneur, other than a natural person, has guaranteed the fulfilment by the SME entrepreneur of the obligations resulting from the credit agreement under which the corporate guarantee credit is provided, up to an amount equal to at least 25 per cent of the corporate guarantee credit with a minimum of €5,000;
- **e.** if the corporate guarantee credit does not exceed the collateral gap that exists with the credit provider at the time of the conclusion of the credit agreement;
- **f.** if the credit agreement was concluded in written form;
- **g.** if the credit agreement in pursuance of which the corporate guarantee credit is provided includes an obligation on the SME entrepreneur to lend full cooperation to the exercise by the State of the authorities referred to in article 19 paragraph 1;
- **h.** if the credit provider included a provision for the benefit of the State in the guarantee agreement concluded by it with regard to the performance by the SME entrepreneur of the obligations on account of the corporate guarantee credit under which it was granted, to the effect that the rules on apportionment of liability laid down in [Section 869 of Book 7 of the Civil Code](#) are not applicable to the State, and the credit provider did not include any provisions to the effect that:
 - **1°.** a guarantor could rely on the fact that the State would have to be addressed first,
 - **2°.** a guarantor could evade application by the State of [Section 869 of Book 7 of the Civil Code](#);
- **i.** if, simultaneously with the conclusion of the credit agreement on account of which a corporate guarantee credit is provided to the SME entrepreneur, the credit provider concluded a credit agreement with the SME entrepreneur on account of which the SME entrepreneur disposes of a financing facility, which is not intended and not used for the repayment of financing facilities available to the SME entrepreneur with the credit provider or a credit provider-affiliate or to a legal entity with which the credit provider is affiliated in a group;

- **j.** if the financing facility referred to in paragraph 1 under i is at least 100 per cent of the corporate guarantee credit, or,
 - **1°.** amounts to at least 33.3 per cent of the corporate guarantee credit, if the corporate guarantee credit is provided to an SME entrepreneur who was a start-up at the time of the provision;
 - **2°.** amounts to at least 33.3 per cent of the corporate guarantee credit, in the case of a corporate guarantee credit, which does not exceed the amount of €250,000 per calendar year, if the credit provider has indicated in the notification referred to in article 5 that it wants to make use of it;
 - **k.** if the term of the financing facility referred to under j is at least as long as the term of the corporate guarantee credit;
 - **l.** the credit provider included a provision in the credit agreement on account of which the SME entrepreneur disposes of the financing facility referred to under i, ensuring that the financing facility remains at least the percentage of the corporate guarantee credit applicable under j during the entire term referred to under k.
- **2.** For the purpose of paragraph 1 under j and l, the amounts provided to the SME entrepreneur by a credit provider-affiliate at the same time as the credit agreement concluded shall also be taken into account if the collateral of the credit provider-affiliate in respect of those amounts also serves as collateral for the credit provider.

Article 4. Criteria for SME entrepreneur upon provision of corporate guarantee credit

At the time of the conclusion of a credit agreement under which a corporate guarantee credit is provided to an SME entrepreneur, the following criteria must be met:

- **1.** the SME entrepreneur:
 - **a.** has insufficient financial resources to run its business in an economically sound manner;
 - **b.** is established in Aruba, Curaçao or St. Maarten and uses the credit for activities in Aruba, Curaçao or St. Maarten;
 - **c.** does not maintain a business from which 50 per cent or more of the last annual turnover was derived or, if the business has not yet been carried on for a full year, from which 50 per cent or more of the turnover is expected to be derived from:

- 1° carrying on a banking, insurance or investment business, or financing one or more other enterprises, or
- 2° acquiring, alienating, managing or operating immovable property or developing immovable property projects;
- d. does not maintain a business:
 - – against which collective insolvency proceedings are pending or
 - – that meets the criteria to be subject to collective insolvency proceedings at the request of its creditors;
- e. does not have a credit facility provided by another credit provider, which is guaranteed by the State under this scheme.
- 2. There is a lack of collateral on the part of the SME entrepreneur, which prevents the credit provider, as a reasonably acting and competent credit provider in the context of an active and profit-oriented policy would have done without a guarantee, from providing the credit entirely at its own expense and risk;
- 3. The profitability and continuity prospects of the enterprise are satisfactory.

Article 5. Assessment and notification

- 1. The credit provider notifies the State of a proposed provision of credit at the same time as providing the information determined by the Minister.
- 2. If, in the opinion of the State, the proposed provision of the credit meets the conditions referred to in article 3 paragraph 1 under d up to and including l and paragraph 2 then the guarantee for this credit is provided on the basis of this agreement. The State notifies the credit provider within three weeks after receipt of the notification referred to in paragraph 1, stating the scope and duration of the guarantee.
- 3. The guarantee is granted on the condition that the credit provider makes a notification in accordance with paragraph 5, has paid the commission referred to in article 3 paragraph 1 under b, and the sum of the credits or parts thereof notified in a calendar year does not exceed the subsidy ceiling set by the Minister pursuant to Section 4 of the Credit Guarantee SME Scheme Aruba, Curaçao, and St. Maarten with regard to that calendar year.

- **4.** If, in the opinion of the State, it is not deemed necessary for the credit provider to notify the State of any intended credit transactions in accordance with paragraph 1 then the procedure set out in paragraph 5 is applicable. The State notifies the credit provider accordingly.
- **5.** The bank notifies the credit or the part of the credit covered by this corporate guarantee agreement to the State within 35 days of the conclusion of the credit agreement under the simultaneous submission of the information determined by the Minister. The State acknowledges receipt of a notification within 35 days of receipt.
- **6.** The order of receipt by the State of the notifications referred to in paragraph 5 shall be decisive for the application of article 3 paragraph 1 preamble and under c.

Article 6. Commission

- **1.** The rate of commission for a credit agreement with an SME entrepreneur is one-off:
 - **a.** the percentage in conformity with that for the SME entrepreneur in Section 3.11.4 Subsection 1 under a of the National EZK and LNV Subsidies Scheme if the guarantee agreement involves a corporate guarantee credit with a term not exceeding two years;
 - **b.** the percentage in conformity with that for the SME entrepreneur in Section 3.11.4 Subsection 1 under b of the EZK and LNV Subsidies Scheme if the guarantee agreement involves a corporate guarantee credit with a term of more than two years but not more than six years, and
 - **c.** the percentage in conformity with that for the SME entrepreneur in Section 3.11.4 Subsection 1 under c of the EZK and LNV Subsidies Scheme if the guarantee agreement involves a corporate guarantee credit with a term of more than six years, but not for more than 12 years.
- **2.** On the method of invoicing and payment of the commission referred to in paragraph 1, the credit provider shall agree on process arrangements with the Minister.
- **3.** Where a commission has been paid in accordance with article 3 paragraph 1 under b in respect of a credit agreement and if the credit in question has not been drawn down due to circumstances not attributable to the borrower or the credit provider, the commission shall be repaid by the State to the credit provider provided that the credit provider has made a request to the State to this effect within one year of the conclusion of the credit agreement.

Article 7. Maximum scope of the guarantee

- **1.** For the calculation of the scope of the guarantee, a corporate guarantee credit is only taken into account to the extent that, due to the provision of the corporate guarantee credit, the total of the corporate guarantee credits calculated per SME entrepreneur does not exceed an amount of €1,500,000.
- **2.** For the calculation of the scope of the guarantee, a start-up guarantee credit is only taken into account to the extent that, due to the provision of this credit, the total of the start-up guarantee credits calculated per SME entrepreneur does not exceed an amount of €250,000.
- **3.** For the purpose of paragraph 1, a corporate guarantee credit provided to another SME entrepreneur for the benefit of an enterprise for the running of which the SME entrepreneur is fully liable shall be deemed to have been provided to the SME entrepreneur.
- **4.** For the purpose of paragraph 1, the situation at the time immediately after the conclusion of the credit agreement on account of which the corporate guarantee credit was provided shall be decisive.
- **5.** For the purposes of paragraph 1, corporate guarantee credits notified at an earlier time in accordance with article 5 are only taken into account for the part of those corporate guarantee credits calculated with the corresponding application of articles 8 and 9;
- **6.** In deviation from the first paragraph, the total amount of the corporate guarantee credits per calendar year shall not exceed €250,000, if the credit provider indicated to make use of the option referred to in article 3 paragraph 1 under j item 2°.

Article 8. Calculation of the scope and term of the guarantee

- **1.** For the purpose of the calculation of the scope of the guarantee, the corporate guarantee credit to be taken into account after the application of article 7 is reduced after the expiry of each calendar quarter by such a fixed amount that the corporate guarantee credit is zero on the last date by which it must be repaid, but at the latest after the expiry of six years.
- **2.** For the purpose of paragraph 1, instead of a period not exceeding six years, a period not exceeding 12 years is applicable if:
 - **a.** the corporate guarantee credit is exclusively for the payment of the costs for the foundation, purchase or conversion of a property,
 - **b.** at least half of the said property is intended to be used for the business of the SME entrepreneur, and

- **c.** in respect of the costs referred to under a, the credit provider provides financing facilities amounting to at least 100 per cent of the costs referred to under a, or, in the case of a start-up guarantee credit or a corporate guarantee credit not exceeding the amount of €250,000 per calendar year, if the credit provider indicated in the notification referred to in article 5 that it makes use of this, 33.3 per cent of the said corporate guarantee credit.
- **3.** For the purpose of paragraph 1, the first calendar quarter commences no later than on the first day of the fourth calendar quarter following the calendar quarter in which the credit agreement was concluded.
- **4.** For the purpose of paragraph 1, if the corporate guarantee credit is provided to pay the costs for the foundation or refurbishment of a property, the first calendar quarter in which reduction takes place commences no later than on the first day of the eighth calendar quarter following the calendar quarter in which the credit agreement was concluded.
- **5.** The credit provider can suspend the reduction referred to in the first paragraph, for a period of at least one calendar quarter if:
 - **a.** the credit provider extends the obligation to repay the corporate guarantee credit for at least the duration of the suspension,
 - **b.** the credit provider grants a deferral of the obligation to repay all financing facilities for the duration of the suspension, or grants a deferral of the obligation to repay a part of the financing facilities, where the sum of the repayment amounts at least equals the sum of the repayment amounts for which the credit provider grants a deferral as referred to under a, or, if the corporate guarantee credit is granted to:
 - **1°.** an SME entrepreneur who was a start-up at the time of the provision, at least 33.3 per cent of the sum of the repayment amounts for which the credit provider grants a deferral as referred to under a; or
 - **2°.** an SME entrepreneur and there is a corporate guarantee credit, which does not exceed the amount of €250,000 per calendar year, if the credit provider indicated in the notification referred to in article 5 that it wants to make use of this, at least 33.3 per cent of the sum of the repayment amounts for which the credit provider grants a deferral as referred to under a.

- **c.** the credit provider notifies the deferral within 35 days of commencement of the deferral with simultaneous submission of the information determined by the Minister. The Minister confirms the notification within 35 days of receipt.
- **8.** The deferral of the reduction referred to in paragraph 7 takes place for a maximum total of eight calendar quarters. The deferral of the reduction takes place for a maximum total of 12 calendar quarters if the corporate guarantee credit is provided to a start-up.
- **9.** If a corporate guarantee credit is used to refinance a corporate guarantee credit that was previously used for the purposes referred to in paragraph 2 under a and b, and paragraphs 2 under b and c are also met then the new period is at most equal to the period for which the corporate guarantee credit would still have run without refinancing, if and to the extent that this residual period exceeds six years.
- **10.** For the purpose of paragraph 6, property also includes business premises, ships and aircraft, as well as any property right that includes the exclusive use of property, including the aforementioned ships and aircraft.

Article 9. Deferral reduction guarantee

- **1.** The reduction in the guarantee referred to in article 8 is suspended from the day on which the corporate guarantee credit is claimed.
- **2.** In derogation from paragraph 1, the reduction of the guarantee is only deferred by the commencement of the enforcement, if the enforcement has not commenced within two months from the day against which the corporate guarantee credit has been claimed by the credit provider.
- **3.** The reduction of the guarantee is also deferred while the SME entrepreneur is insolvent or was granted suspension of payments.

Article 10. Request for payment on account of the corporate guarantee agreement

- **1.** As soon as there is a default under a credit agreement under which a corporate guarantee credit has been provided, the credit provider can request payment from the State under this guarantee agreement. This request is, in any case, submitted within nine months from the date against which the credit is claimed or from the date of insolvency, whichever is earlier.
- **2.** For the purpose of paragraph 1, a default occurs when an SME entrepreneur is more than 90 calendar days in arrears in the payment of an obligation under a credit agreement on account of which a corporate guarantee credit has been provided.
- **3.** The request is submitted with simultaneous submission of the information determined by the Minister.

- **4.** The Minister acknowledges receipt of the request for payment within 35 days of receipt and responds to the request within nine months of the acknowledgement.

Article 11. Calculation scope guarantee upon payment

- **1.** The scope of the guarantee for each SME entrepreneur amounts to 90 per cent of what the SME entrepreneur is liable to pay under the corporate guarantee credit or the corporate guarantee credits on a residual basis at the time of the application submitted under article 10, however
 - **a.** not more than 90 per cent of the amount of the corporate guarantee credit or the corporate guarantee credits calculated upon application of articles 7, 8, and 9, and
 - **b.** not more than the sum of the existing and provided financing facilities of the credit provider for the SME entrepreneurs at the time of the termination of the credit agreement.
- **2.** In derogation from paragraph 1 under b, the scope of the guarantee amounts to:
 - **a.** in the event of a start-up guarantee credit: no more than three times the sum of the existing and provided financing facilities of the credit provider for the SME entrepreneur at the time of the termination of the credit agreement;
 - **b.** no more than three times the sum of the existing and provided financing facilities of the credit provider for the SME entrepreneur at the time of the termination of the credit agreement in the event of a corporate guarantee credit as referred to in article 3 paragraph 1 under j item 2°;
- **3.** For the purpose of paragraphs 1 and 2, the following are also considered as financing facilities:
 - **a.** the amounts that a credit provider-affiliate lends or shall lend to the SME entrepreneur on account of an agreement, and
 - **b.** the obligations irrevocably assumed by a credit provider-affiliate towards a third party, not being another credit provider-affiliate or a legal entity with which the credit provider is affiliated in a group, to make one or more payments at the expense of the SME entrepreneur to the third party as referred to in article 1 paragraph 2 under f item 3°, if the collateral of the credit provider-affiliate in respect of the amounts and obligations referred to in this paragraph also serves as security for the credit provider.

Article 12. Payment by the State

- **1.** The Minister pays what the State is due under this agreement in consideration of the corporate guarantee credit referred to by the credit provider in its request.
- **2.** To the extent that the credit provider, in its request for payment, makes a plausible case that there were special circumstances that, judging as a reasonably acting and competent credit provider in the context of an active and profit-oriented policy would have done without a guarantee, made it necessary to reduce the scope of the other financing facilities to a greater extent than the corporate guarantee credits, article 11 paragraph 1 preamble and under b and paragraph 2 are not applicable.
- **3.** The State is not required to pay at the request of the credit provider:
 - **a.** if the credit provider or the credit provider-affiliate failed to comply with a request referred to in article 19 paragraph 1;
 - **b.** if the credit provider provided information in connection with the request, which it knew or should have known was incorrect or incomplete and the provision of the said information would have led to an incorrect decision on the request;
 - **c.** if article 20 paragraph 1 is not met.
- **4.** Payments by the State to the credit provider and by the credit provider to the State shall be made by debiting and crediting, respectively, by the credit provider an account to be held by the credit provider in the name of the Ministry of the Interior and Kingdom Relations, marked 'loss declarations'.

Article 13. Best effort obligation to enforce corporate guarantee credit

- **1.** For five years after the credit provider has been paid by the State on account of the corporate guarantee credit, the credit provider is required to make the efforts to recover, on behalf of the State, the amount paid by the State, which the credit provider would have made if the credit had been provided by the credit provider at its own risk and expense. To this end, the State authorises the credit provider to collect from the borrower the amounts owed by the latter to the State.
- **2.** Within three months after expiry of the period referred to in paragraph 1, the credit provider sends an overview to the Minister of the activities undertaken by it, including the information determined by the Minister.

Article 14. Enforcement progress report in case of request payment guarantee

- **1.** If a request for payment as referred to in article 10 was submitted at a time, when the enforcement has not yet been completed nor has it

become plausible that no more proceeds can be expected to be deducted from the corporate guarantee credit, the credit provider reports at least annually to the Minister on the progress of the enforcement.

- **2.** The Minister can require further information from the credit provider on the course of the enforcement within a period set by the same.

Article 15. Repayment

- **1.** The credit provider pays the proceeds received from the moment of submission of a request for payment referred to in article 10 that are deducted from the corporate guarantee credit to the State within two months of receipt.
- **2.** To the extent that the proceeds have been received after the start of the period referred to in article 13 paragraph 1, the payment obligation referred to in paragraph 1 is reduced to 80 per cent of the proceeds received, unless proceeds were received by virtue of enforcement of collateral.
- **3.** The credit provider shall debit the account referred to in article 12 paragraph 4 with effect from the date of despatch of the request referred to in article 10 and within two months from that date for the amount for which payment is requested, plus interest for the period elapsed since the day on which the reduction referred to in article 8 was deferred pursuant to article 9.
- **4.** The credit provider shall credit or debit the account on the date of the response of the Minister referred to in article 10 paragraph 4 and within two months from that date for, respectively, the positive or negative difference for the State between the amount for which the account has been debited pursuant to paragraph 3 and the amount owed by the State according to the response referred to in article 10, plus interest to be calculated on that difference for the period elapsed since the credit or debit referred to in paragraph 3 and the date on which the response was received.
- **5.** The interest rate referred to in paragraphs 3 and 4 equals the six-month Euribor at the time of the submission of a request as referred to in article 10.

Article 16. Conditions debt arrangement corporate guarantee credit

- **1.** The credit provider does not enter into a debt arrangement that involves or includes either a full or partial waiver of obligations arising from a credit agreement, on account of which a corporate guarantee credit has been provided, without the prior consent of the Minister. The Minister can impose conditions on the said consent regarding the content of this kind of arrangement.
- **2.** The Minister decides as soon as possible on a request for consent as referred to in paragraph 1.

Article 17. Expiry obligations of the State under this agreement

- **1.** The obligations of the State under this agreement with respect to a corporate guarantee credit expire by novation, by assumption of debt and - for the part in which subrogation takes place - by subrogation of third parties to the rights of the credit provider with respect to the corporate guarantee credit, whether or not preceded by a pledge of the corporate guarantee credit.
- **2.** In derogation from paragraph 1, the obligations of the State in respect of a corporate guarantee credit remain in full force and effect if:
 - **a.** the SME entrepreneur to whom the corporate guarantee credit is provided contributes or transfers the enterprise and all assets and liabilities intended for the running of the enterprise to a legal entity incorporated by the SME entrepreneur for the running of that enterprise,
 - **b.** the credit provider enters into an agreement with the legal entity referred to under a as a result of which the said legal entity surrogates the SME entrepreneur in the credit agreement on account of which the corporate guarantee credit is provided, and
 - **c.** the SME entrepreneur assumes joint and several liability alongside the legal entity referred to under a for the performance by the said legal entity of the obligations that derive from the credit agreement.
- **3.** For the purpose of paragraph 2, a legal entity is also understood to include two or more legal entities, if those legal entities jointly fulfil the conditions referred to in paragraph 2 and each of those legal entities assumes joint and several liability for the compliance with the obligations that derive from the credit agreement on account of which the corporate guarantee credit was provided.

Article 18. Procedure in case of submission incorrect data by credit provider

Amounts already disbursed are immediately due and payable, without any notice of default being required, as soon as it becomes apparent to the Minister that the credit provider submitted incorrect or incomplete information to such an extent that the Minister would have made a different decision on a request for payment if the correct information had been provided to them in full, or that the credit provider failed to comply with the payment obligation referred to in article 15 paragraph 1.

Article 19. Audit corporate guarantee credit

- **1.** The credit provider, and if article 3 paragraph 2 and article 11 paragraph 3 were applied the credit provider-affiliate, and the SME entrepreneur comply with what is requested by persons designated by the Minister who work at their Ministry, insofar as this is reasonably

necessary for a proper implementation of the Framework Decree BZK Subsidies, the Credit Guarantee SME Scheme Aruba, Curaçao, and St. Maarten, and this agreement, and with a view to the fulfilment by the State of obligations under international law, and to the extent that it relates to the independent obligations of the credit provider or the credit provider-affiliate to the SME entrepreneur to whom the corporate guarantee credit has been provided or to the credit agreements concluded with the said SME entrepreneur, resulting from the Decree or this agreement, regarding:

- **a.** the granting of access to places used by them;
 - **b.** the granting of perusal of business records and documents;
 - **c.** the making of copies of the data and records referred to under b;
 - **d.** the lending of cooperation to the provision of data by others, and
 - **e.** the provision of information.
- **2.** Only in appropriate cases shall the credit provider, or if article 3 paragraph 2 and article 11 paragraph 3 were applied the credit provider-affiliate, or the SME entrepreneur, be requested to also have the information referred to in paragraph 1 provided by their accountant.
- **3.** The possibility mentioned in the preamble and under a of paragraph 1, shall only be used if there is a serious suspicion that the credit provider, the credit provider affiliate or the SME entrepreneur submitted incorrect or incomplete information.
- **4.** The credit provider shall notify the Minister within 35 days of becoming aware of the following facts, submitting the information determined by the Minister:
 - **a.** early full repayment of the corporate guarantee credit;
 - **b.** the granting of suspension of payments to or the insolvency of the SME entrepreneur;
 - **c.** the claiming of the corporate guarantee credit.
- **5.** The credit provider notifies the State of the filing of a petition for suspension of payments to the credit provider, or a winding-up petition regarding the credit provider.

Article 20. Administration

- 1. During the term of the credit agreement on account of which a corporate guarantee credit is provided and during enforcement, the credit provider shall watch over the interests of the State as guarantor.
- 2. The credit provider shall ensure that the corporate guarantee credit is not used for compliance with obligations of the SME entrepreneur to the credit provider providing the corporate guarantee credit, to a credit provider-affiliate or to a legal entity with which the credit provider is affiliated in a group.
- 3. During the term of the credit agreement on account of which a corporate guarantee credit has been provided, the credit provider shall, in the agreements to be concluded by it with all those, other than the State, who want to act as guarantor for the performance by the SME entrepreneur of the obligations deriving from the credit agreement on account of which the corporate guarantee credit has been provided include a provision for the benefit of the State, to the effect that the apportionment rules of [Section 869 of Book 7 of the Civil Code](#) are not applicable in relation to the State, and the credit provider shall not include any provisions, to the effect that:
 - a. a guarantor could rely on the fact that the State would have to be addressed first;
 - b. a guarantor could evade application by the State of the apportionment rules of [Section 869 of Book 7 of the Civil Code](#).
- 4. The credit provider ensures that the relationships between its enterprise and the stakeholders in its enterprise, on the one hand, and the entrepreneur to whom a corporate guarantee credit has been provided, on the other hand, are transparent.

Article 21. Hardship clause

If, in the opinion of the Minister, the likelihood of the applicability of this agreement to a corporate guarantee credit or part of a corporate guarantee credit being invoked is significantly reduced or if, in the opinion of the Minister, it is plausible that this would significantly reduce the amount for which the applicability of this agreement is invoked, the Minister may agree to a substantiated request by the credit provider for derogation from this agreement for the purposes of this agreement in respect of that credit.

Article 22. Communication

Where this agreement refers to a form of communication, this shall take place electronically. The submission by the credit provider can, by derogation and alternatively and at the discretion of the credit provider, also be made in written form and through delivery of a physical data carrier.

Article 23. Other provisions

- **1.** The entry into force of an amendment to the Framework Decree on BZK Subsidies or the Credit Guarantee SME Scheme Aruba, Curaçao, and St. Maarten shall at the same time result in an equal amendment to this agreement.
- **2.** This agreement can be amended by a written communication of the Minister to the credit provider.
- **3.** This agreement is concluded for an open-ended term and can be terminated by the Minister and the credit provider in writing with due observance of a notice period of three full calendar months.
- **4.** In derogation from paragraph 3, this agreement can be terminated by the Minister with immediate effect if the credit provider acted in violation of the provisions of this agreement.
- **5.** In derogation from paragraph three, the credit provider can terminate this agreement with immediate effect within a period of one month after publication in the Bulletin of Acts and Decrees of an amendment to the Framework Decree BZK Subsidies, publication in the Official Gazette of an amendment to the Credit Guarantee SME Scheme Aruba, Curaçao, and St. Maarten or a written communication from the Minister, containing an amendment to this agreement.
- **6.** This agreement shall come to an end by operation of law following the repeal of the Framework Decree BZK Subsidies or by the repeal of Section 2 Subsection 1 of Credit Guarantee SME Scheme Aruba, Curaçao, and St. Maarten.
- **7.** Amendment, cancellation, rescission or termination of this agreement shall not have any effect with respect to corporate guarantee credits, which at the time of the entry into force of the amendment, cancellation, rescission or termination were notified in accordance with article 3 and with respect to corporate guarantee credits that were or shall be provided under a credit agreement entered into before the entry into force of the amendment, cancellation, rescission or termination.
- **8.** If the Framework Decree BZK Subsidies and Section 2 Subsection 1 of the Credit Guarantee SME Scheme Aruba, Curaçao, and St. Maarten are simultaneously repealed and replaced by materially identical statutory regulations in another general order in council or ministerial decree then paragraph 6 is not applicable.
- **9.** Dutch law is applicable to this agreement.

Article 24. Credit provider-affiliate

Credit provider-affiliate(s) within the meaning of article 1 paragraph 2 under b of this agreement is (are):

- **a.** (...)
- **b.** (... etc.)

Signed in The Hague on

The State Secretary for the Interior and Kingdom Relations, Digitalisation and Kingdom Relations

(name and position representatives credit provider)