

MASTER FINANCIAL ASSISTANCE FACILITY AGREEMENT

between

EUROPEAN FINANCIAL STABILITY FACILITY

KINGDOM OF SPAIN

as Beneficiary Member State

FONDO DE REESTRUCTURACIÓN ORDENADA BANCARIA

as Guarantor

and

THE BANK OF SPAIN

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This **Master Financial Assistance Facility Agreement** is made by and between:

- (A) **European Financial Stability Facility ("EFSF")**, a *société anonyme* incorporated in Luxembourg with its registered office at 43, avenue John F. Kennedy, L-1855 Luxembourg (R.C.S. Luxembourg B153.414), represented by Mr. Klaus Regling, Chief Executive Officer or Mr. Christophe Frankel, Deputy Chief Executive Officer, ("EFSF");
- (B) **Kingdom of Spain** (hereinafter referred to as "**Spain**"), represented by the Minister of Finance,

as the beneficiary member state (the "**Beneficiary Member State**");
- (C) **Fondo de Reestructuración Ordenada Bancaria**, created pursuant to the FROB Laws (as defined below),

as Guarantor and agent to Spain in the context of this Facility ("**FROB**"); and
- (D) **The Bank of Spain**, represented by the Governor of the Bank of Spain,

(the "**Bank of Spain**"),

Herein jointly referred to as the "**Parties**" and each of them a "**Party**".

PREAMBLE

Whereas:

- (1) EFSF was incorporated on 7 June 2010 for the purpose of making stability support to member states of the European Union whose currency is the euro ("**euro-area Member States**"). EFSF may grant financial assistance under financial assistance facility agreements by way of loan disbursements under a programme, precautionary facilities, facilities to finance the recapitalisation of financial institutions in a euro-area Member State (through loans to the governments of such Member States including in non-programme countries), facilities for the purchase of bonds in the secondary market on the basis of an ECB analysis recognising the existence of exceptional financial market circumstances and risks to financial stability or facilities for the purchase of bonds in the primary market (under a macroeconomic adjustment programme or under a precautionary programme). EFSF may also grant financial assistance by providing credit enhancement in conjunction with new debt issued by euro-area Member States, thus reducing the funding cost for euro-area Member States and the funding arrangements of EFSF may be maximised with a combination of resources from private and public financial institutions which can be arranged through special purpose vehicles which will enlarge the amount of resources available to extend loans for bank re-capitalisation and for buying bonds in the primary and secondary markets (each individual utilisation under a financial assistance facility agreement being a "**Financial Assistance**" and, where the context requires, the term "**Financial Assistance**" shall also mean all or any of such forms of financial assistance collectively).

- (2) EFSF shall finance (including by way of pre-funding) the making of Financial Assistance by issuing or entering into bonds, notes, bills, commercial paper, debt securities or other financing arrangements (including treasury operations, DMO Lines, committed and un-committed credit lines, sale and repurchase agreements and reverse sale and repurchase agreements) (in the case of sale and repurchase agreements and reverse sale and repurchase agreements for a term exceeding twelve (12) months, to the extent they have been approved, where necessary, by the board of directors of EFSF and the Guarantors/EWG) ("**Funding Instruments**") which are backed by irrevocable and unconditional guarantees (each a "**Guarantee**") of the euro-area Member States which shall act as guarantors in respect of such Funding Instruments as contemplated by the terms of this Agreement. The guarantors (the "**Guarantors**") of Funding Instruments issued or entered into by EFSF shall be comprised of each euro-area Member State (excluding any euro-area Member State which is or has become a Stepping-Out Guarantor (as defined below) prior to the issue of or entry into such Funding Instruments). The Funding Instruments shall be issued or entered into either on a stand-alone basis or pursuant to a debt issuance programme (the "**EFSF Debt Issuance Programme**") in accordance with the EFSF Funding Guidelines (as defined below). Certain of the proceeds of Funding Instruments may be credited from time to time to the Liquidity Buffer (as defined below).
- (3) On 25 June 2012, Spain made a request to the Chairman of the Eurogroup for a bank recapitalisation facility to finance the recapitalisation of financial institutions in Spain. The facility will be in accordance with the EFSF Guideline on Recapitalisation of Financial Institutions ("**FIs**") via loans to non-programme countries (the "**Guideline**").
- (4) On 29 June 2012, the Heads of State or Government of the euro area stated, in the Statement of the Heads of State or Government (as defined below), that this Financial Assistance will be provided by the EFSF until the ESM becomes available, and that this Financial Assistance will then be transferred to the ESM, without the ESM gaining seniority status in relation to this Financial Assistance. Upon such transfer the parties shall make such amendments to this Agreement as are necessary to take into account the institutional and procedural differences between EFSF and ESM.
- (5) The Statement of the Heads of State or Government said that, when an effective single supervisory mechanism is established, involving the ECB, for banks in the euro area the ESM could, following a regular decision, have the possibility to recapitalise banks directly. Following such regular decision and approval that direct bank recapitalisation be used for financial institutions in Spain, either amendments shall be made to this Agreement to give effect to such an agreement or this Agreement shall be replaced by new agreements providing for the direct recapitalisation of financial institutions.
- (6) In accordance with the Guideline, a Memorandum of Understanding ("**MoU**") was entered into between the Commission, Spain and the Bank of Spain setting out the institution and country-specific horizontal elements of the conditions attached to the provision of the Financial Assistance.
- (7) From entering into this Agreement until all Financial Assistance made available under this Agreement has been repaid in full, the Beneficiary Member State shall adhere to the conditions set out in the MoU and this Agreement and shall be subject to continuous monitoring by the Commission in liaison with ECB, the relevant ESA(s)

(EBA, ESMA and/or EIOPA) and, if applicable, the IMF. The IMF has recently completed an IMF assessment of the quality of national supervisory practices in Spain by way of an FSAP procedure.

- (8) It is acknowledged and agreed that the Bank of Spain is a party to this Agreement for the purpose of receiving disbursements on behalf of the Beneficiary Member State.
- (9) Appropriate measures related to the prevention of, and the fight against, fraud, corruption and other irregularities affecting any Financial Assistance shall be provided for and implemented by the authorities of the Beneficiary Member State.
- (10) It is anticipated that a first Tranche of the Bank Recapitalisation Facility (as defined below) of up to EUR 30 billion (the "**Pre-Funded Tranche**") will be pre-funded and retained in reserve by EFSF in order to create a credible backstop which could be mobilised in any contingency to cover the cost of unexpected interventions required to restore confidence in the Spanish banking sector. Included in the EUR 30 billion is a longer term prudential cushion of around EUR 10 billion. The disbursement of any part of the EUR 30 billion pre-funded Tranche prior to the adoption of restructuring decisions by the Commission will require a reasoned and quantified request from the Bank of Spain which subsequently may be approved by the Commission and the EWG, both acting in liaison with the ECB.

Now, therefore, the Parties hereto have agreed as follows:

MASTER FINANCIAL ASSISTANCE FACILITY

1. DEFINITIONS

Capitalised terms shall, unless otherwise specified in relation to a Facility in the relevant Facility Specific Terms, have the meanings set out below:

"Acceptance Notice" means, in relation to a Facility, EFSF's written notice to the Beneficiary Member State in the form of the applicable Annex setting out the amount and the detailed provisional financial terms of the Financial Assistance under the relevant Facility, Instalment or Tranche that EFSF is willing to extend to the Beneficiary Member State under this Agreement and the Facility Specific Terms.

"Aggregate Financial Assistance Amount" has the meaning given to such term in Clause 2(1).

"Agreement" means this Master Financial Assistance Facility Agreement, including the Annexes and Schedules hereto (including any Facility Specific Terms entered into between the Parties and the Annexes thereto).

"Allocated Portion" means, in relation to Funding Instruments which cannot be rolled over or re-financed by virtue of a Market Disruption Event, the portion of such Funding Instruments allocated to the Beneficiary Member State by reference to the proportion the aggregate of the outstanding Financial Assistance Amounts provided by EFSF to the Beneficiary Member State bears to the aggregate principal amount of financial assistance provided by EFSF to all beneficiary member states which is outstanding (or by reference to such other matters as may be determined from time to time by the board of directors of EFSF, in particular, in the event of a dedicated issue of EFSF Debt Securities).

"AMC" means an asset management company, transitional credit institution, transitional financial institution or other transitional entity which is created for the purpose of acquiring assets from a viable or non-viable financial institution under a national regulatory framework for financial institutions in distress or experiencing financial difficulties.

"Annex" means an Annex to this Agreement and, for any Facility, any Annex to the Facility Specific Terms which are applicable to that Facility.

"Availability Period" for any Facility means the period specified as such in the applicable Facility Specific Terms. The Availability Period for the Bank Recapitalisation Facility shall expire on 31 December 2013.

"Average Maturity" means, in relation to any Facility, the weighted average maturity of all the Tranches made available under such Facility where the maturity of each Tranche is determined by reference to its final scheduled repayment date (for Tranches where the principal is repaid in full in one single payment at its maturity) or the scheduled amortisations of Financial Assistance (or Tranches thereof) (for any Tranche the principal of which is repayable in scheduled instalments).

"Bank Capital Instruments" means the common shares, contingent convertibles or such other instruments which qualify as bank regulatory capital or comparable

instruments issued by AMCs, in each case as EFSF may in its absolute discretion approve and, in each case issued and subscribed or otherwise acquired by FROB from certain financial institutions or AMCs in Spain in consideration for payments made out of the proceeds of Financial Assistance provided under this Agreement.

"Business Day" means a day on which the TARGET2 payment system is open for business.

"Commission" means the European Commission.

"Commitment Fee" means the fee allocated to the Beneficiary Member State in accordance with the Diversified Funding Strategy and related to (i) the Negative Carry resulting from the issuance or roll-over of Funding Instruments by EFSF (including to fund the Liquidity Buffer) (ii) Issuance Costs related to funding raised by EFSF that are not otherwise recoverable from the Beneficiary Member State or any other beneficiary member state and (iii) any commitment commissions arising under DMO Lines or committed or un-committed credit lines as may be made available to EFSF, in each case according to the EFSF Funding Guidelines. In accordance with Clause 6(2), the payment of the annual allocation to the Beneficiary Member State of a portion of EFSF's aggregate Commitment Fee shall be made either (a) following the receipt of an invoice or (b) on the first Payment Date under any Tranche, Instalment or Financial Assistance following the determination of the amount to be paid as annual Commitment Fee, expressed as a number of basis points per annum that shall be applied over the relevant Tranche, Instalment or Financial Assistance to result in the amount of the Commitment Fee that would otherwise have been payable upon receipt of an invoice. The allocation of the Commitment Fee to a Beneficiary Member State and the level and/or the payment structure of the Commitment Fee applicable to this Agreement may be changed from time to time by the board of directors of EFSF and approved by the Guarantors.

"Confirmation Notice" means, in relation to a Facility, EFSF's written notice to the Beneficiary Member State substantially in the form of the applicable Annex to the relevant Facility Specific Terms setting out the definitive financial terms of the Financial Assistance under the relevant Facility, Instalment or Tranche that EFSF is willing to extend to the Beneficiary Member State under this Agreement and the Facility Specific Terms.

"Cost of Carry" means, in relation to Funding Instruments, the difference between (i) the interest accrued under the relevant Funding Instruments (a) in the case of a Pre-Funding Operation, during the period from the date EFSF commences incurring liability for interest under the relevant Funding Instruments under the Pre-Funding Operation until the relevant Disbursement Date (or the date on which the proceeds of the relevant Funding Instruments are used to refinance any other Funding Instruments) or, if the proceeds of the Pre-Funding Operation are not partly or entirely disbursed, until the maturity of the relevant Funding Instruments for the undisbursed proceeds, (b) in the case of amounts raised to fund the Liquidity Buffer, during the period when EFSF incurs liability for interest under the relevant Funding Instruments but is not able to recover any amount from the Beneficiary Member State or any other beneficiary member state in respect of such amount as part of the EFSF Cost of Funding under any financial assistance facility agreement, (c) in the case of any financing of any Financing, during the period from the date EFSF commences

incurring liability for interest under the new Financing until the new Financing is disbursed (or the date on which the proceeds of the relevant Funding Instruments are used to refinance any other Funding Instruments) and (ii) any return on the proceeds of those Funding Instruments actually received by EFSF, if EFSF at its sole discretion invested the amount pre-funded, the residual amount under a Financing or the amount raised to fund the Liquidity Buffer. The Cost of Carry referred to in paragraph (a) above shall be allocated solely to the Beneficiary Member State but the Cost of Carry referred to in paragraphs (b) and (c) above shall be determined on a pooled basis in relation to the pool of short term Funding Instruments and the pool of long term Funding Instruments and allocated to the Beneficiary Member State in accordance with the Diversified Funding Strategy and the methodology for allocation of Funding Instruments agreed by the EWG and the board of directors of EFSF at the time the Cost of Carry is calculated.

"Debt Agency" means Tesoro Público, known administratively as the General Secretariat of the Treasury and Financial Policy which is an organ attached to the Secretary of State of Economy and Support of Entrepreneurship of the Ministry of Economy and Competitiveness.

"Decision" means the agreement of the representatives of the euro-area Member States in the Eurogroup of [●] 2012 granting financial assistance to Spain and Council Decision of [●] 2012 (as may be amended from time to time).

"Deed(s) of Guarantee" means any deed(s) of guarantee entered into by, amongst others, the Guarantors and EFSF in accordance with the terms of the Framework Agreement.

"Disbursement" means a disbursement of funds to, or at the direction of, the Beneficiary Member State under a Facility (including, where permitted by the EFSF Funding Guidelines and the relevant Facility Specific Terms, by way of the payment of the subscription price or purchase price of purchased bonds or subordinated notes or the delivery of Funding Instruments issued by EFSF).

"Disbursement Date" means, in relation to any Financial Assistance made under any Facility by way of a Disbursement, the date on which funds or Funding Instruments issued by EFSF in respect of the relevant Financial Assistance are paid, advanced or delivered to the Beneficiary Member State (or its nominee or to any third party) in accordance with the relevant Facility Specific Terms. Each such Disbursement Date must be a date selected by EFSF which is (i) a Business Day, (ii) a day (other than a Saturday or Sunday) when banks are open for general business in Luxembourg and in the Beneficiary Member State, (iii) a day which falls during the Availability Period, and (iv) which otherwise complies with the relevant Facility Specific Terms.

"Disincentive Payment" means 200 basis points per annum applied to the most recently provided Financial Assistance Amount to have been disbursed at the time when the Eurogroup or the EWG communicates, following the assessment by the Commission, in liaison with the ECB, that there has been non-compliance by the Beneficiary Member State with the measures set out in the MoU which results in or would (as may be determined in writing by EFSF) have resulted in the non-provision of a subsequent Financial Assistance which was scheduled to be made under a Facility or any subsequent financial assistance facility agreement between EFSF and

the Beneficiary Member State. The period of time on which the Disincentive Payment is based will run from the date of the provision of the most recently provided Financial Assistance Amount to the date of the communication to the Beneficiary Member State by the Eurogroup or the EWG of the decision regarding non-compliance which stops or would (as may be determined in writing by EFSF) have stopped a new disbursement of financial assistance. In accordance with Clause 6(10), the Disincentive Payment will be refunded in full by EFSF, together with any interest (if any) earned by EFSF from the investment of such Disincentive Payment when the provision of Financial Assistance by EFSF to the Beneficiary Member State recommence(s).

"Diversified Funding Strategy" has the meaning given to that term in the Framework Agreement. The Diversified Funding Strategy as adopted by EFSF contemplates the use of the Liquidity Buffer, a pool of short term Funding Instruments and a pool of long term Funding Instruments and that the methodology for allocation of Funding Instruments, funding and other costs and expenses between the Beneficiary Member State and each other beneficiary member state shall be made in accordance with the EFSF Funding Guidelines.

"DMO Lines" means treasury, money market or cash management operations between EFSF and the debt management agencies of euro-area Member States entered into in accordance with Article (5)(5) of the Framework Agreement.

"ECB" means the European Central Bank.

"EFSF Cost of Funding" means, in relation to any Financial Assistance under a Facility, the effective (after hedging) average cost of funding incurred by EFSF in funding such Financial Assistance as determined by EFSF and allocated to the relevant Financial Assistance pursuant to the Diversified Funding Strategy. The EFSF Cost of Funding shall be calculated by EFSF by adding (i) EFSF's (after hedging) average cost of funding the relevant Financial Assistance, expressed as a rate per annum; for the avoidance of doubt, in the case of discount Funding Instruments (e.g. zero-coupon notes), cost of funding shall be calculated with reference to the nominal value of the relevant discount Funding Instrument, (ii) the annual Service Fee (with effect from the first anniversary of the Disbursement Date of the relevant Financial Assistance), (iii) the Commitment Fee (iv) any Guarantee Commission Fee accrued during the relevant period and (v) any other financing costs, margin, negative carry, losses, hedging costs or other costs, fees or expenses. Such EFSF Cost of Funding shall be adjusted to eliminate the effect of rounding in the calculation of interest on Funding Instruments in the form of bonds or notes with a fixed denomination and to take into account any difference in the periods by reference to which interest is calculated under this Agreement and under the related Funding Instruments and the proceeds of any temporary re-investment of interest receipts by EFSF when such interest periods differ. During the period of any Financing(s) which finance a particular Financial Assistance, EFSF Cost of Funding shall be calculated by reference to the cost of funds incurred by EFSF under the Financing(s) which finance the relevant Financial Assistance, adjusted as may be necessary to cover the period between the Payment Dates under the relevant Facility and interest and principal payment dates under the relevant Funding Instruments and any potential residual cost (including any continuing interest to maturity) incurred by EFSF under the Financing(s) EFSF entered into to finance the relevant Financial Assistance.

"EFSF Debt Securities" means Funding Instruments issued by EFSF in the form of long term notes with maturity of up to the maturity of this Facility, issued under the EFSF Debt Issuance Programme on or around the time of the corresponding Disbursement under this Agreement and which pay interest at a rate comparable to the market rate which would be payable by EFSF for instruments with the same maturity as such EFSF Debt Securities and which comprise notes issued under Series [●].

"EFSF Funding Guidelines" means the funding strategy and guidelines of EFSF from time to time adopted by the board of directors of EFSF and approved by the Guarantors.

"EFSF Investment Guidelines" means the investment strategy and guidelines of EFSF from time to time adopted by the board of directors of EFSF and approved by the Guarantors.

"ESM" means the European Stability Mechanism to be constituted by treaty entered into between the euro-area Member States.

"EU" means the European Union.

"EUR", "euro" and "€" denote the single currency unit of the Participating Member States.

"EURIBOR" means, in relation to a period:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for the interest period applicable to an unpaid amount in accordance with Clause 6(3)) the average of the rates quoted by Deutsche Bank AG, BNP Paribas and Rabobank to leading banks in the European interbank market,

as of 11:00 a.m. (Luxembourg time) on the date falling two TARGET Days before the first day of that period for the offering of deposits in euro for a comparable period.

"Eurogroup" means the finance ministers from the euro-area Member States.

"Event of Default" means an event defined in Clause 9(1) as modified in respect of any specific Financial Assistance by the Facility Specific Terms applying to the Facility under which such Financial Assistance is made available.

"EWG" means the Eurogroup Working Group.

"External Indebtedness" means all indebtedness which constitutes General Government Debt (including all indebtedness of the Beneficiary Member State and the Debt Agency) (i) which is denominated or payable in a currency other than the lawful currency of the Beneficiary Member State; or (ii) which was not originally incurred or assumed under an agreement or instrument made with or issued to creditors substantially all of whom are residents of the Beneficiary Member State or entities having their head office or principal place of business within the territory of the Beneficiary Member State.

"Facility" means each facility provided under this Agreement as more particularly referred to in Clause 2(2).

"Facility Specific Terms" means, from time to time, the terms specific to each Facility as set out in a Schedule to this Agreement which have been executed by the Parties to this Agreement (as such Schedule may be amended or supplemented from time to time).

"Financial Assistance Amount" means the aggregate principal amount of any Financial Assistance made available under a Facility, as more particularly determined in accordance with the relevant Facility Specific Terms.

"Financial Support Provider" means any other sovereign State or other creditor (other than the IMF or the European Union) granting a bilateral loan to the Beneficiary Member State in conjunction with EFSF.

"Financing" means any financing longer than or equal to one year by way of issuing or entering into Funding Instruments comprising part of the pool of long term Funding Instruments.

"First Interest Period" means, with regard to any Financial Assistance provided under a Facility, the period commencing on (and including) its Disbursement Date and ending on (but excluding) the first Payment Date as specified in the relevant Confirmation Notice for that Facility.

"Framework Agreement" means the framework agreement entered into between the euro-area Member States and EFSF, as may be amended from time to time, which sets out, *inter alia*, the terms and conditions upon which EFSF may provide Financial Assistance to euro-area Member States and finance such Financial Assistance by issuing or entering into Funding Instruments backed by Guarantees issued by the Guarantors.

"FROB Laws" means Royal Decree-law 9/2009 of 26 June, on bank restructuring and credit institution equity reinforcement (as the same may be amended, supplemented or replaced from time to time).

"Funding Instruments" has the meaning given to that term in the Preamble to this Agreement.

"General Government Debt" means indebtedness comprising general government debt as determined in accordance with the European System of Accounts 1995 ("ESA 95") as laid down by Council Regulation No (EC) 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community as amended from time to time.

"Guarantee Commission Fee" means ten (10) basis points per annum (or such other level of Guarantee Commission Fee as may be determined by the board of directors of EFSF and approved by the Guarantors as applicable to the Facilities from time to time) applied to the relevant Financial Assistance Amount.

"IMF" means the International Monetary Fund.

"Instalment" means for any Facility, the sums under that Facility which have been the subject of a Request for Funds and a related Acceptance Notice; an Instalment may be disbursed in one or more Tranches.

"Interest Period" means, in relation to any Financial Assistance provided under a Facility, the First Interest Period and each consecutive twelve (12) months period thereafter, commencing on (and including) the date of the preceding Payment Date for such Financial Assistance and ending on (but excluding) each Payment Date in each case, as determined in accordance with the relevant Facility Specific Terms for that Facility.

"Interest Rate" for any Instalment or Tranche means the rate at which interest will accrue on that Instalment or Tranche during each Interest Period as determined by EFSF, which is equal to the sum of (a) the EFSF Cost of Funding and (b) the Margin (if any) applicable to such Financial Assistance Amount.

"Issuance Costs" means any costs, fees or expenses incurred in relation to EFSF issuing or entering into Funding Instruments to finance a Financial Assistance under any Facility (including a portion of the Funding Instruments issued or entered into to fund the Liquidity Buffer) and which are due and payable on or about the date of issue of such Funding Instruments or, as applicable, the date such Funding Instruments are entered into, and any adjustment corresponding to the difference in the net proceeds of Funding Instruments due to such Funding Instruments not being issued at par value.

"Liquidity Buffer" means the proceeds of issuance of, or entry into, the pool of short term Funding Instruments (including, without limitation, the proceeds of issuance of, or entry into, short term notes, bills, commercial paper, treasury operations, DMO Lines, committed and un-committed credit lines and sale and repurchase operations) issued by EFSF in accordance with the EFSF Funding Guidelines and which, from time to time, have not been used to finance a Disbursement (or a disbursement to any other beneficiary member states) or to refinance an existing Pre-Funding Operation or Financing (or similar operations or financings in respect of any other beneficiary member states).

"Loss of Interest" means the difference (if it is a positive amount) between the amount of interest EFSF would receive at the Interest Rate (excluding for these purposes only the Margin component, if any, of the Interest Rate) on the relevant principal amount of Financial Assistance and the interest EFSF would receive (as determined by EFSF) from the reinvestment of the amounts pre-paid or repaid early in each case for the period commencing on (and including) the date of the prepayment or early repayment and ending on (but excluding) the date on which the relevant Financial Assistance was scheduled to be repaid.

"Margin" means, in relation to a Facility, the margin specified in the relevant Facility Specific Terms. The level of the Margin applicable to any Facility may be changed from time to time by the board of directors of EFSF and approved by the Guarantors. For the avoidance of doubt, no reimbursement or reduction in the Margin or the EFSF Cost of Funding shall apply resulting from payments of advance Margin.

"Market Disruption Event" means, at the time of a proposed issuance or roll-over of Funding Instruments, the occurrence of events or circumstances affecting the national

or international financial, political or economic conditions or international capital markets or currency exchange rates or exchange controls which in the reasonable view of EFSF (as approved by the unanimous agreement of the Guarantors, as would be the case for the issuance of new Funding Instruments) are likely to prejudice materially the ability of EFSF to achieve a successful issue, offering or distribution of Funding Instruments or dealings in such Funding Instruments in the secondary market.

"Master Facility" has the meaning given to that term in Clause 2(1) of this Agreement.

"Master Facility Agreement" means this Agreement (but excluding the Facility Specific Terms).

"MoU" has the meaning given to that term in the Preamble to this Agreement.

"Negative Carry" means in relation to any Financial Assistance the negative Cost of Carry (if any) incurred by EFSF and allocated by EFSF to the funding of that Financial Assistance.

"Net Disbursement Amount" means, in relation to any Financial Assistance under a Facility, the Financial Assistance Amount thereof less the sum of (without double counting):

- (a) any Issuance Costs;
- (b) any portion of the Service Fee which is to be deducted up-front; and
- (c) any costs, fees, expenses, interest (including pre-paid interest or discount) or costs of Negative Carry,

incurred under or in connection with that Financial Assistance, any other Financial Assistance provided by EFSF to the Beneficiary Member State or any Pre-Funding Operation.

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

"Payment Date" means, in relation to any Financial Assistance, Instalment or Tranche made available under a Facility, each scheduled date for payment of principal, interest or fees due to EFSF, as specified in the Confirmation Notice related to such Financial Assistance, Instalment or Tranche.

"Pre-Funding Agreement" means an agreement substantially in the form of Annex 1 executed by the Beneficiary Member State and EFSF to authorise EFSF to enter into Pre-Funding Operations (i) prior to the receipt of a Request for Funds or (ii) following a receipt of a Request for Funds but in the absence of the approval of the EWG referred to in Clause 4(4) (or prior to the satisfaction of any of the other conditions to disbursement) and the issuance of an Acceptance Notice.

"Pre-Funding Operation" means an advanced borrowing transaction as described in Clause 4(7) pursuant to which EFSF, if it deems necessary and with the agreement of

the Beneficiary Member State, issues or enters into Funding Instruments to pre-finance a specific Financial Assistance on the basis of a Pre-Funding Agreement, which Pre-Funding Operation may occur prior to the time when the conditions precedent to the disbursement of such Financial Assistance are satisfied.

"Pre-Subscription or Subscription Agreement" means a contract for the pre-subscription or the subscription of Bank Capital Instruments in a credit institution, financial institution or AMC by FROB in the form agreed between EFSF, the Beneficiary Member State and FROB.

"Public Internal Indebtedness" means all General Government Debt (including all indebtedness of the Beneficiary Member State (and the Debt Agency)) and which: (i) is denominated in the lawful currency of the Beneficiary Member State, but is not External Indebtedness; (ii) is in the form of or represented by bonds, notes or other securities or any guarantee thereof; and (iii) is or may be quoted or listed or ordinarily purchased and sold on any stock exchange, automated trading system, over-the-counter or other securities market.

"Relevant Indebtedness" means External Indebtedness and Public Internal Indebtedness.

"Request for Funds" means the Beneficiary Member State's request for a disbursement of funds under a Facility to be made in the form specified in the Facility Specific Terms applying to the Facility under which such request is to be made.

"Schedule" means a Schedule to this Agreement.

"Screen Rate" means the percentage rate per annum determined by the Banking Federation of the European Union for the relevant period, displayed on the appropriate page of the Reuters screen. If the agreed page is replaced or service ceases to be available, EFSF may specify another page or service displaying the appropriate rate after consultation with the Beneficiary Member State.

"Service Fee" represents the source of general revenues and resources to cover operational costs of EFSF, comprising (i) the upfront service fee of fifty (50) basis points calculated (without double counting) on the Financial Assistance Amount under an Instalment or Tranche and (ii) the annual service fee of 0.5 basis points per annum, which will accrue day to day on the Aggregate Financial Assistance Amount under each Facility in each Interest Period with effect from the first anniversary of the Disbursement Date of such Financial Assistance (or such other fee level or date as may be agreed between the Parties following a decision by the EWG). The upfront service fee shall be paid in arrear by the Beneficiary Member State upon receipt of an invoice from EFSF or shall be deducted from the amount to be disbursed to the Beneficiary Member State under any Facility provided on the terms of this Agreement. The inclusion of the annual service fee as a component of the EFSF Cost of Funding is without prejudice to any faculty of a Beneficiary Member State to treat this fee as an operating cost in its national accounts. The level of the Service Fee applicable to the Facilities may be changed from time to time by the board of directors of EFSF and approved by the Guarantors. For the avoidance of doubt, the Service Fee covers and replaces any advance Margin EFSF would otherwise be entitled to charge.

"Statement of the Heads of State or Government" means a statement given by the Euro Summit on 28 June 2012 and the European Council on 28 to 29 June 2012.

"Stepping-Out Guarantor" means a Guarantor whose request to suspend its obligation to issue Guarantees under the Framework Agreement has been accepted by the other Guarantors.

"TARGET Day" means any day on which TARGET2 is open for the settlement of payments in euro.

"TARGET2" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

"Term" means the tenor of any Financial Assistance provided under a Facility which may not exceed the period from the Disbursement Date of the relevant Financial Assistance to the final Payment Date specified in the relevant Confirmation Notice.

"Tranche" means a part or the whole of an Instalment, as the case may be, and may be financed until its final maturity from the Liquidity Buffer or by one or more Financings.

2. **THE MASTER FINANCIAL ASSISTANCE FACILITY AND SPECIFIC FACILITIES**

- (1) EFSF makes available to the Beneficiary Member State under this Agreement a master financial assistance facility (the "**Master Facility**"), subject to the terms and conditions of the Decision (where applicable), the MoU and the Facility Specific Terms. The Master Facility may be made available by EFSF to the Beneficiary Member State by way of Financial Assistance. The aggregate principal amounts of the Financial Assistance Amounts shall not exceed EUR 100,000,000,000 (the "**Aggregate Financial Assistance Amount**").
- (2) The Master Facility may be provided in the form of such of the following specific facilities (the "**Facilities**" and each a "**Facility**") as are the subject of Facility Specific Terms which have been entered into between the Parties, provided that at the time of signing this Master Facility Agreement at least one (1) of the Facility Specific Terms are entered into:
 - (a) a Facility for the provision of loans (the "**Loan Facility**") on the terms and subject to the conditions specified in the Facility Specific Terms entitled "Loan Facility: Facility Specific Terms";
 - (b) a Facility for the provision of a loan facility providing for sovereign partial risk protection (a "**Sovereign Partial Protection Facility**") on the terms and subject to the conditions specified in the Facility Specific Terms entitled "Sovereign Partial Protection: Facility Specific Terms";
 - (c) one or more Facilities for the provision of precautionary facilities (each a "**Precautionary Facility**"). A Precautionary Facility may take the form of (a) a precautionary conditioned credit line (a "**Precautionary Credit Line**" or "**PCCL Facility**") on the terms and subject to the conditions more particularly

specified in Facility Specific Terms titled "Precautionary Conditioned Credit Line: Facility Specific Terms", (b) an enhanced conditioned credit line (an "**Enhanced Conditioned Credit Line**" or "**ECCL Facility**") on the terms and subject to the conditions specified in the Facility Specific Terms entitled "Enhanced Conditioned Credit Line: Facility Specific Terms" or (c) an enhanced conditioned credit line with sovereign partial risk protection (an "**Enhanced Conditioned Credit Line with Sovereign Partial Protection**" or "**ECCL+ Facility**") on the terms and subject to the conditions specified in the Facility Specific Terms entitled "Enhanced Conditioned Credit Line with Sovereign Partial Protection: Facility Specific Terms";

- (d) a Facility for the provision of loans to recapitalise financial institutions (the "**Bank Recapitalisation Facility**") on the terms and subject to the conditions specified in the Facility Specific Terms entitled "Bank Recapitalisation Facility: Facility Specific Terms";
- (e) a Facility for EFSF to make primary market bond purchases (the "**PMP Facility**") on the terms and subject to the conditions specified in the Facility Specific Terms entitled "Primary Market Bond Purchase Facility: Facility Specific Terms";
- (f) a Facility for EFSF to make secondary market bond purchases (the "**SMP Facility**") on the terms and subject to the conditions specified in the Facility Specific Terms entitled "Secondary Market Bond Purchase Facility: Facility Specific Terms"; and
- (g) a Facility for EFSF to finance a subordinated issue of notes by a compartment of a co-investment fund (the "**CIF Facility**") on the terms and conditions specified in the Facility Specific Terms entitled "Co-Investment Fund Facility: Facility Specific Terms".

The Parties acknowledge and agree that the Facility Specific Terms for each Facility may include different terms in respect of policy conditionality, fees, fee levels and other terms and conditions.

Within the limits of the MoU and this Master Facility Agreement and subject to the express prior agreement of the Parties and the approval of the EWG, the unused amount of a Facility may be used for utilisations under another Facility (if any) made available by EFSF to the Beneficiary Member State.

- (3) EFSF shall not be under any obligation to provide any Financial Assistance under a Facility other than in accordance with and upon the terms of this Agreement, including the further terms and conditions set out in the relevant Facility Specific Terms. This Agreement and all Facility Specific Terms form a single agreement between the Parties.
- (4) On the date of this Agreement, the Parties have entered into Facility Specific Terms relating to a Bank Recapitalisation Facility having a maximum Financial Assistance Amount of up to the Aggregate Financial Assistance Amount of EUR 100,000,000,000.

- (5)
- (a) In the event that the Beneficiary Member State wishes to obtain financial assistance in the form of an additional or alternative form of Facility, it shall request such other Facility in writing by a letter addressed to the Eurogroup provided that the amount of such other Facility when aggregated with all other Financial Assistance that EFSF has made or is to make available to the Beneficiary Member State under this Agreement shall not exceed the Aggregate Financial Assistance Amount.
 - (b) Following any such written request:
 - (i) the Commission (in liaison with the ECB and (if applicable) the IMF) shall negotiate any necessary modification or supplement to the MoU;
 - (ii) following the approval of any modification or supplement to the MoU, the Commission (in liaison with the ECB and EFSF), shall make a proposal to the EWG of the main terms of the Facility Specific Terms for the relevant Facility based on its assessment of market conditions and provided that the Facility Specific Terms contain financial terms which are consistent with the MoU and the compatibility of maturities with debt sustainability;
 - (iii) following a decision of the EWG, EFSF (in conjunction with the EWG) shall negotiate the detailed technical terms of the Facility Specific Terms of the relevant Facility provided that the financial parameters of such Facility Specific Terms shall take into consideration the financial terms proposed by the Commission (in liaison with the ECB and approved by the EWG); and
 - (iv) EFSF, the Beneficiary Member State and the Bank of Spain shall enter into the relevant Facility Specific Terms and enter into such amendments and/or supplements to this Agreement (including Clause 2(4) and the list of the Schedules in Clause 18) as are necessary to provide the relevant Facility.
- (6) EFSF shall not be under any obligation to provide any Financial Assistance at any time if the aggregate principal amount of such Financial Assistance when added to (i) other Financial Assistance provided by EFSF to the Beneficiary Member State or to other beneficiary member states which are euro-area Member States, (ii) any other Financial Assistance which EFSF has committed to provide to the Beneficiary Member State or such other beneficiary member states and (iii) any amounts which have been raised subject to a Pre-Funding Operation based on a Pre-Funding Agreement with the Beneficiary Member State (or similar amounts raised in respect of other beneficiary member states) would cause EFSF to exceed its capacity at such time to raise funds which are fully guaranteed by the Guarantees issued under the Framework Agreement.
- (7) The Beneficiary Member State shall apply all amounts and/or EFSF Debt Securities made available to it under this Agreement, including the Facilities, in conformity with

its obligations under the MoU, the Decision, this Agreement and otherwise as specified in the relevant Facility Specific Terms.

- (8) All Financial Assistance will be denominated solely in euro, which shall be the currency of account and payment.
- (9) The Preamble, the Annexes and the Schedules to this Agreement (including the Annexes to such Schedules) do and shall hereafter form an integral part of this Agreement. Unless stated to the contrary in this Agreement, the terms of this Agreement shall apply to all Facilities and Facility Specific Terms but without prejudice to the further terms and conditions set out in such Facility Specific Terms which may, in relation to the relevant Facility, supplement, dis-apply, amend or modify any of the terms set out in this Agreement. In the event of any conflict between any provision of this Agreement and of any Facility Specific Terms, the provisions of the Facility Specific Terms shall prevail in relation to the relevant Facility.

3. **ENTRY INTO FORCE AND CONDITIONS PRECEDENT**

- (1) Following its signature by all Parties, this Agreement shall enter into force on the date on which each of the following conditions have been satisfied:
 - (a) EFSF has received legal opinions satisfactory to it given by the [●] of the Beneficiary Member State and the special counsel to FROB in respect of this Agreement and in the form set out in Annex 2 (*Forms of Legal Opinions*). Such legal opinions shall be dated not later than the date of the first Request for Funds made under any Facility;
 - (b) EFSF has received from the Minister for Economy and Competitiveness of the Beneficiary Member State (or any other person acceptable to EFSF in its sole discretion) an official document indicating the persons authorised to sign this Agreement, any Request for Funds and any other documents to be delivered under any Facility Specific Terms (and thus validly commit the Beneficiary Member State) and containing the specimen signatures of these persons;
 - (c) the signature of the MoU (and any amendment or supplement thereto) by all parties thereto;
 - (d) the Guarantors (acting unanimously) have approved the terms of this Agreement (including the relevant Facility Specific Terms signed on the date of this Agreement).
- (2) The Facility Specific Terms relating to a Facility shall enter into force on the date determined in accordance with the terms of such Facility Specific Terms.
- (3) The Beneficiary Member State's right to request Financial Assistance under any Facility expires at the end of the Availability Period applicable to such Facility following which any undisbursed amount of the Aggregate Financial Assistance Amount under that Facility shall be considered as immediately cancelled, unless otherwise agreed by the Parties.

4. **REQUESTS, CONDITIONS TO DISBURSEMENTS, FINANCING AND DISBURSEMENTS**

- (1) Subject to the terms and conditions of this Agreement, the relevant Facility Specific Terms, the MoU and the Decision, the Beneficiary Member State may, after consultation with EFSF, request a Disbursement under the relevant Facility by delivering to EFSF a duly completed and valid Request for Funds. A Request for Funds is irrevocable and shall be binding on the Beneficiary Member State unless EFSF has served on the Beneficiary Member State a written notice indicating that EFSF has not obtained funds in the international capital or loan markets or from the Liquidity Buffer on terms and conditions that are acceptable to it and which are consistent with the terms set out in that Request for Funds, in which case the Beneficiary Member State shall cease to be bound by the Request for Funds as from the date the written notice is served on the Beneficiary Member State.
- (2) A Request for Funds will only be considered as duly completed and valid if:
 - (a) it specifies the aggregate of the Financial Assistance Amounts to be made available under the relevant Facility in respect of the relevant Request for Funds;
 - (b) it specifies the latest Disbursement Date by which all Financial Assistance requested in the Request for Funds under the relevant Facility is to have been disbursed or made available;
 - (c) it specifies such other matters required by the Facility Specific Terms applicable to the Request for Funds;
 - (d) the Average Maturity of the Financial Assistance under the relevant Facility (or Facilities) (including the Financial Assistance requested under the relevant Instalment) does not exceed twelve point five (12.5) years; and
 - (e) the maximum maturity of any individual disbursement of Financial Assistance is fifteen (15) years.
- (3) Following receipt of a duly completed and valid Request for Funds, EFSF's obligation to make any Financial Assistance under a Facility available to the Beneficiary Member State shall be subject to:
 - (a) the conditions precedent referred to in Clause 3(1)(a) to (d) being satisfied;
 - (b) the signature of a supplement to the MoU, if applicable;
 - (c) the Beneficiary Member State confirming in writing that no event has occurred that would render incorrect any statement made in the legal opinions received by EFSF under Clause 3(1)(a);
 - (d) the Guarantors (acting unanimously), after considering the most recent periodic assessment of the Beneficiary Member State by the Commission, being satisfied with the compliance by the Beneficiary Member State with the terms of the MoU, including prior actions (if any), and the conditions laid down in the Decision (where applicable);

- (e) EFSF being satisfied that the conditions to drawdown under this Agreement and the relevant Facility Specific Terms (including in the case of the Bank Recapitalisation Facility the conditions set out in Clause 4 of Schedule 1) are satisfied;
 - (f) EWG and EFSF (in their absolute discretion (and after taking into account all factors they consider relevant including these referred to in Clause 4 of Schedule 1)) having approved the disbursement under the relevant Facility Specific Terms;
 - (g) EFSF being satisfied that no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which may prejudice the Beneficiary Member State's performance of the MoU, this Agreement or the transactions contemplated herein (including the Facility Specific Terms or any Pre-Funding Agreement) or which, if adversely determined, would be reasonably likely to have a material adverse effect on the Beneficiary Member State's ability to perform its obligations under the MoU, this Agreement, or the transactions contemplated herein (including the Facility Specific Terms or any Pre-Funding Agreement) have been started or threatened in writing against the Beneficiary Member State;
 - (h) (unless otherwise specified in the relevant Facility Specific Terms) EFSF having received, on or before the Disbursement Date the net proceeds of Funding Instruments in an amount sufficient to finance the relevant Instalment or being satisfied that sufficient funds are available to it from the Liquidity Buffer;
 - (i) (unless otherwise specified in the relevant Facility Specific Terms) no material adverse change having occurred since the date of this Agreement such as would, in the opinion of EFSF, after consultation with the Beneficiary Member State, be likely to prejudice materially the ability of the Beneficiary Member State to fulfil its payment obligations under this Agreement, *i.e.* to service the Financial Assistance and to repay it; and
 - (j) (unless otherwise specified in the relevant Facility Specific Terms) no Event of Default having occurred which has not been cured to the satisfaction of EFSF.
- (4) If the conditions in Clause 4(3) are satisfied (except for the condition referred to in Clause 4(3)(h) that needs to be satisfied on the relevant Disbursement Date), EFSF shall, provided that the EWG accepts EFSF's proposal for the detailed terms of the Financial Assistance, send the Beneficiary Member State an Acceptance Notice setting out the provisional terms on which EFSF is willing to make available the Instalment, Tranche or other disbursement of Financial Assistance to the Beneficiary Member State. Following the acknowledgement of an Acceptance Notice by the Beneficiary Member State, the Beneficiary Member State and EFSF shall irrevocably be bound by the terms of the Acceptance Notice, subject to however in all cases EFSF being able to obtain funds in the international capital or loan markets or from the Liquidity Buffer on terms and conditions that are acceptable to it and which are consistent with the terms set out in the Acceptance Notice and the non-occurrence of a Market Disruption Event or an Event of Default.

- (5) After serving the Acceptance Notice and receiving the Beneficiary Member State's acknowledgement of the terms set out therein, EFSF shall :
- (a) disburse the relevant funds or make the relevant Financial Assistance available to the Beneficiary Member State by use of any proceeds previously obtained from Pre-Funding Operations or from the Liquidity Buffer; or
 - (b) for any amount not raised through Pre-Funding Operations or from the Liquidity Buffer, at its discretion, launch the issue or enter into Funding Instruments to permit the funding of the relevant Instalment; or
 - (c) for any disbursement to be made *in specie*, deliver EFSF Debt Securities to the Beneficiary Member State, to FROB or to the legal person designated for this purpose by the Beneficiary Member State.
- (6) If no acknowledgement is received within one (1) Business Day of delivery of an Acceptance Notice, such notice shall be cancelled and shall be of no further effect and the Beneficiary Member State shall be required to submit a new Request for Funds if it wishes to benefit from the Instalment, Tranche or disbursement of Financial Assistance.
- (7) If EFSF considers that a Pre-Funding Operation is necessary in respect of any Instalment and the Beneficiary Member State and EFSF (acting with the approval of its board of directors) agree to and enter into a Pre-Funding Agreement (i) prior to the receipt of a Request for Funds or (ii) following a receipt of a Request for Funds but in the absence of the approval of the EWG referred to in Clause 4(4) (or prior to the satisfaction of any of the other conditions to disbursement) and the issuance of an Acceptance Notice, in each case in respect of that Instalment, the Beneficiary Member State further expressly authorises EFSF to enter into Pre-Funding Operations to pre-finance all such Financial Assistance up to the maximum aggregate amount of principal set out in the Pre-Funding Agreement. EFSF shall inform the Beneficiary Member State in writing of the financial terms of all such Pre-Funding Operations. The Beneficiary Member State shall bear all costs incurred by EFSF in relation to Pre-Funding Operations (including any financing costs, margin, Negative Carry, losses, costs, hedging costs or other fees or expenses) regardless of whether any Financial Assistance is in fact made available and such amounts shall be paid to EFSF on the Disbursement Date specified in the relevant Acceptance Notice (if any) or within five (5) Business Days of demand by EFSF. It is acknowledged and agreed that the Pre-Funded Tranche shall be financed by way of one or more Pre-Funding Operations. Disbursements, in respect of the Pre-Funded Tranche will be subject to compliance with the conditions set out in this Agreement including the additional conditions set out in the Facility Specific Term for the Bank Recapitalisation Facility.
- (8) In the event that EFSF, subject to compliance with the then applicable EFSF Funding Guidelines, can only raise funds to finance or refinance the relevant Instalment or Tranche by issuing Funding Instruments denominated in a currency other than euros and by entering into related currency hedging arrangements, EFSF shall inform the Beneficiary Member State that it needs to raise financing on such a basis. Any additional costs incurred by EFSF in connection with currency hedging arrangements shall be borne by the Beneficiary Member State.

- (9) After serving an Acceptance Notice in respect of an Instalment and receiving the Beneficiary Member State's written acknowledgement of the terms set out therein, subject to any conditions applicable to the provision of Financial Assistance under the relevant Facility as set out in the applicable Facility Specific Terms, EFSF shall issue to the Beneficiary Member State a Confirmation Notice setting out the financial terms applicable to each Instalment or Tranche, as the case may be. In the case of an Instalment made up of a series of Tranches, a separate Confirmation Notice shall be issued for each Tranche. By acknowledging the terms of an Acceptance Notice, the Beneficiary Member State shall be deemed to have accepted in advance the terms of the Financial Assistance set out in each Confirmation Notice. The Beneficiary Member State shall bear its share of the allocation of all costs incurred by EFSF in relation to the Financing (including any financing costs, margin, Negative Carry, losses, costs, hedging costs or other fees or expenses). Any Issuance Costs shall be paid by EFSF out of the sums retained in respect of the Issuance Costs, and any additional cost incurred may be recovered under Clause 6(6).
- (10) If EFSF, due to prevailing market conditions at the time of launching an issue of or seeking to enter into Funding Instruments to fund or to re-finance Financial Assistance (including in relation to the issue of Funding Instruments which themselves re-finance Funding Instruments which finance or re-finance all or part of the relevant Financial Assistance) is not able to obtain funding, then EFSF shall not be under any obligation to make further disbursements of Financial Assistance in respect of such Instalment.
- (11) If EFSF considers that a Market Disruption Event may occur, EFSF shall consult with the Beneficiary Member State no later than five (5) calendar weeks prior to the scheduled maturity or roll-over of the Funding Instrument(s) in respect of which that Market Disruption Event may occur.
- (12) The disbursement of any Financial Assistance shall under no circumstances commit any of the Parties to proceed with the provision and acceptance of any further Financial Assistance whether under this Agreement or any other agreement between the Parties. For the avoidance of doubt, EFSF is under no obligation to consider favourably any request by the Beneficiary Member State at any time to amend or reschedule the financial terms of any Financial Assistance.
- (13) Subject to any Facility Specific Terms which apply to a Facility, on each Disbursement Date, EFSF shall make the relevant Financial Assistance (or the relevant portion thereof) available to the Beneficiary Member State by instructing the ECB no later than 11:00 a.m. (Frankfurt time) on the Disbursement Date to transfer the Net Disbursement Amount on the Disbursement Date to such euro and/or securities account(s) as the Beneficiary Member State shall advise in writing to the Bank of Spain, EFSF and the ECB at the latest two (2) Business Days prior to the Disbursement Date and as agreed by EFSF.

5. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

(1) Representations

Each of the Beneficiary Member State and FROB represents and warrants to EFSF on the date of this Agreement, on the date of execution of any Facility Specific Terms or Pre-Funding Agreement and on each Disbursement Date that:

- (a) all Financial Assistance made available to the Beneficiary Member State shall constitute an unsecured (save to the extent of any security provided in accordance with Clause 5(2)(a)(i)), direct, unconditional, unsubordinated and general obligation of the Beneficiary Member State and will rank *pari passu* with all other present and future unsecured and unsubordinated loans and obligations of the Beneficiary Member State arising from its present or future indebtedness;
- (b) in relation to FROB, the obligations of FROB under this Agreement shall constitute the unsecured, direct, unconditional, unsubordinated and general obligations of FROB and will rank *pari passu* with all other present and future unsecured and unsubordinated loans and obligations of FROB arising from its present or future indebtedness;
- (c) the Financial Assistance to be provided under this Agreement will be transferred to ESM, once it is available, without gaining seniority status as specified in the Statement of Heads of State or Government;
- (d) the legal opinions of the [●] of the Beneficiary Member State and the counsel to FROB provided in accordance with Clause 3(1)(a) are accurate and correct;
- (e) the law of the Beneficiary Member State does not require EFSF to be authorised as a credit institution or to obtain any licence, consent, or regulatory or administrative authorisation as a condition to providing any Financial Assistance or to be able to enforce the (i) Beneficiary Member State's obligations in relation to such Financial Assistance against the Beneficiary Member State or (ii) FROB's obligations in relation to such Financial Assistance against FROB, or if applicable, that an exemption to such requirement exists for EFSF under the law of the Beneficiary Member State;
- (f) the entry into and performance by it of, and the transactions contemplated by, this Agreement (including the Facility Specific Terms or any Pre-Funding Agreement) and the MoU (and the transactions contemplated therein) does not and will not (i) violate any applicable law, regulation or ruling of any competent authority or any agreement, contract or treaty binding on it or any of its agencies; (ii) constitute a default or termination event (howsoever described) under any of the matters listed in sub-paragraph (i); or (iii) result in the creation of security or give rise to an obligation to grant security or transfer assets (by way of collateral or economically similar arrangements) in favour of any other person, other than security to be created by FROB over the Bank Capital Instruments in favour of EFSF as expressly contemplated in this Agreement; and

- (g) to the best of its knowledge and belief (having made due and careful enquiry), no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which may prejudice its execution or performance of the MoU, this Agreement or the transactions contemplated herein (including the Facility Specific Terms or any Pre-Funding Agreement) or which, if adversely determined, are reasonably likely to have a material adverse effect on its ability to perform its obligations under the MoU, this Agreement, or the transactions contemplated herein (including the Facility Specific Terms or any Pre-Funding Agreement) have been started or threatened in writing against it.

(2) **Undertakings**

The Beneficiary Member State undertakes, in relation to General Government Debt, until such time as all Financial Assistance has been fully reimbursed and all interest and additional amounts, if any, due under this Agreement (including the Facility Specific Terms) have been fully paid:

- (a) with the exception of those encumbrances enumerated in Sub-paragraphs (a)(ii)(1) to (a)(ii)10 below:
 - (i) not to secure by mortgage, pledge or any other encumbrance upon its own assets or revenues any present or future Relevant Indebtedness and any guarantee or indemnity given in respect thereof, unless the Financial Assistance shall, at the same time, share *pari passu* and *pro rata* in such security; and
 - (ii) not to grant to any other creditor or holder of its sovereign debt any priority over its obligations under this Agreement.

The grant of the following encumbrances shall not constitute a breach of this Clause:

- (1) encumbrances upon any property incurred to secure the purchase price of such property and any renewal or extension of any such encumbrance which is limited to the original property covered thereby and which secures any renewal or extension of the original secured financing; and
- (2) encumbrances on commercial goods arising in the course of ordinary commercial transactions (and expiring at the latest within one year thereafter) to finance the import or export of such goods into or from the country of the Beneficiary Member State; and
- (3) encumbrances securing or providing for the payment of Relevant Indebtedness incurred exclusively in order to provide financing for a specific investment project, provided that the properties to which any such encumbrances apply are properties which are the subject of such project financing, or which are revenues or claims which arise from the project; and

- (4) any other encumbrances in existence on the date of the signing of this Agreement, provided that such encumbrances remain confined to the properties presently affected thereby and properties which become affected by such encumbrances under contracts in effect on the date of the signing of this Agreement (including for the avoidance of doubt the crystallisation of any floating charge which had been entered into at the date of this Agreement) and provided further that such encumbrances secure or provide for the payment of only those obligations so secured or provided for on the date hereof or any refinancing of such obligations; and
- (5) all other statutory encumbrances and privileges which operate solely by virtue of law and which cannot be reasonably avoided by the Beneficiary Member State; and
- (6) any encumbrance granted or consented to under a securitisation transaction which has been consented to in advance by EFSF provided that such transaction is consistent with the policy conditions of the MoU and is accounted for in national accounts in accordance with ESA 95 principles and Eurostat guidance on securitisation operations conducted by Member States' governments; and
- (7) any encumbrance securing the Beneficiary Member State's obligations to any central securities depository, such as Euroclear or Clearstream, given in the normal course of the Beneficiary Member State's business; and
- (8) any encumbrance securing an indebtedness of less than EUR 3 million provided that the maximum aggregate of all indebtedness secured by such encumbrances shall not exceed EUR 50 million; and
- (9) any encumbrance granted by an agency of the Beneficiary Member State (other than the Debt Agency) to secure indebtedness incurred by it in the ordinary course of its business to finance the ordinary and customary activities of such agency and provided that the proceeds of such financing are not on-lent or otherwise made available to the central government; and
- (10) any encumbrance (if any) granted under or resulting from any collateralised credit line or repo facility entered into by the Debt Agency for precautionary or liquidity management purposes.

As used in this Clause, "**financing for a specific investment project**" means any financing of the acquisition, construction or development of any properties in connection with a project if the providing entity for such financing expressly agrees to look to the properties financed and

the revenues to be generated by the operation of, or loss or damage to, such properties as the principal source of repayment for the moneys advanced;

- (b)
 - (i) to utilise all Financial Assistance consistently with the Decision as in force at the relevant time and in accordance with the MoU as the same has been modified or supplemented as at the date of the Request for Funds applicable to such Financial Assistance;
 - (ii) to utilise the EFSF Debt Securities received under the Bank Recapitalisation Facility only for the purpose of financing the recapitalisation of financial institutions in Spain by providing financing to FROB to subscribe Bank Capital Instruments issued by the financial institutions specified in the MoU in accordance with this Agreement and the MoU and not to sell, transfer, grant security over or otherwise deal with these EFSF Debt Securities other than in accordance with this Agreement and the MoU provided that prior to funds being disbursed to FROB or contributed to FROB by the Beneficiary Member State, EFSF shall have confirmed that it is satisfied in relation to the legal instruments and documentation between the Beneficiary Member State and FROB setting out the legal basis of such contribution of funds to FROB by the Beneficiary Member State;
 - (iii) to procure that FROB shall not use EFSF Debt Securities delivered to FROB under the Bank Recapitalisation Facility to subscribe for Bank Capital Instruments in a financial institution without the prior written approval of EFSF including confirmation by EFSF that it is satisfied in relation to the legal mechanism, instruments and documentation between FROB and the relevant financial institution setting out the terms on which FROB subscribes or pre-subscribes for Bank Capital Instruments in such financial institution;
 - (iv) to procure that FROB shall not subscribe for Bank Capital Instruments in a financial institution using EFSF Debt Securities as consideration unless FROB and the financial institution have entered into a Pre-Subscription or Subscription Agreement substantially in the form agreed between EFSF, the Beneficiary Member State and FROB; and
 - (v) to comply with the additional undertakings set out in Schedule 1 (*Bank Recapitalisation Facility: Facility Specific Terms*);
- (c) to obtain and maintain in full force and effect all authorisations necessary for it and FROB to comply with their respective obligations under this Agreement (including the Facility Specific Terms) and each Pre-Funding Agreement;
- (d) to ensure that at all times all Financial Assistance made available to the Beneficiary Member State under the Facilities shall constitute an unsecured (save to the extent of any security provided in accordance with Clause 5(2)(a)(i)), direct, unconditional, unsubordinated and general

obligation of the Beneficiary Member State and will rank *pari passu* with all other present and future unsecured and unsubordinated loans and obligations of the Beneficiary Member State arising from its present or future Relevant Indebtedness;

- (e) to comply in all respects with applicable laws which might affect its ability to perform this Agreement (including the Facility Specific Terms) and each Pre-Funding Agreement;
 - (f) to pay the amount allocated by EFSF to the Beneficiary Member State of any fees, costs and expenses, including in particular Issuance Costs, breakage or termination costs, and Cost of Carry incurred in respect of any Funding Instruments or hedging contract which EFSF may have undertaken (including in relation to the amounts raised to fund the Liquidity Buffer, Financings and/or Pre-Funding Operations) regardless of whether the provision of any Financial Assistance or any utilisation under a Facility takes place;
 - (g) more generally, to indemnify and hold harmless EFSF on first demand from and against any additional interest, costs, claims, losses, damages, liabilities and expenses (including legal fees, costs of investigation and any value added tax or equivalent thereof) incurred or suffered by EFSF and which result from (i) any information which is received from the Beneficiary Member State in connection with this Agreement or any Pre-Funding Agreement, the transactions contemplated herein or with the MoU being incorrect, inaccurate or misleading; (ii) any breach of the representations, warranties and/or undertakings in this Agreement, any Pre-Funding Agreement or any Facility Specific Terms; and/or (iii) any action, claim, demand, proceeding, investigation, arbitration or judgment brought against EFSF in connection with EFSF entering into and the performance of this Agreement, any Pre-Funding Agreement or any Facility Specific Terms or in connection with the transactions contemplated therein or in the MoU.
- (3) FROB undertakes until such time as all principal under this Agreement has been fully reimbursed and all interest and additional amounts, if any, due under this Agreement have been fully paid:
- (a) not to secure by mortgage, pledge or any other encumbrance upon the Bank Capital Instruments or assets or revenues of FROB in relation thereto, any present or future indebtedness of the Beneficiary Member State, FROB or any other entity or person or any guarantee or indemnity given in respect thereof, unless the Financial Assistance shall, at the same time, share *pari passu* and *pro rata* in such security provided that this Clause 5(3)(a) shall not apply to any security granted over the EFSF Debt Securities which secures any arrangement which has been approved in advance by EFSF;
 - (b) not to grant to any other creditor (other than IMF and if appropriate, in relation to any future facilities which may be provided, ESM) any priority over EFSF;
 - (c) to obtain and maintain in full force and effect all authorisations necessary for it to comply with its obligations under this Agreement;

- (d) to comply with the terms of Clause 5(2)(b) above; and
 - (e) to comply in all respects with applicable laws which might affect its ability to perform this Agreement.
- (4) FROB undertakes, that, until such time as all principal under this Agreement has been fully reimbursed and all interest and additional amounts, if any, due under this Agreement have been fully paid, it will, upon the request of EFSF, following consultation with the Beneficiary Member State, grant valid first ranking security over all of its rights and interest in and in relation to the Bank Capital Instruments as security for the performance of its obligations under this Agreement provided and to the extent that the grant of such security would not contravene applicable laws or undertakings.
- (5) The Beneficiary Member State shall ensure that, until all principal under this Agreement has been fully repaid, all Bank Capital Instruments acquired pursuant to recapitalisations or financial support of financial institutions in Spain using the proceeds of Financial Assistance provided under this Agreement shall be acquired by FROB.
- (6) Each of the Beneficiary Member State and, if applicable, the Bank of Spain undertakes that, following a request by EFSF pursuant to Clause 5(4) above, it will do all things necessary (including in relation to the registration of such security interest and the payment of any fees, costs, expenses or taxes in relation thereto) in order to procure that such a security interest is validly and properly granted in favour of EFSF and is legally binding on each of FROB, the Beneficiary Member State and the Bank of Spain.
- (7) Each of the Beneficiary Member State and FROB shall indemnify EFSF in relation to any amounts paid by EFSF in connection with the establishment, perfection, registration or enforcement of any security granted pursuant to Clause 5(4) and any such amounts shall be payable to EFSF on demand from either or each of the Beneficiary Member State and FROB.
- (8) In accordance with Clause 2(9), the above representations, warranties and undertakings may be expressly supplemented, dis-applied, amended or modified in relation to a Facility and/or additional representations and warranties may apply in relation to a Facility all as specified in the relevant Facility Specific Terms.

6. **INTEREST, COSTS, FEES AND EXPENSES**

- (1) In respect of each Financial Assistance under a Facility, interest shall accrue on the Financial Assistance Amounts at a rate equal to the applicable Interest Rate during each Interest Period.
- (2)
- (a) On each Payment Date under a Facility, the Beneficiary Member State shall pay in cleared funds to the account designated to it in writing by EFSF for this purpose (or to such other account as the Parties may agree from time to time

for the purpose of this Agreement) an amount equal to the interest due and payable under the relevant Facility on such Payment Date.

- (b) For the purpose of calculating the Commitment Fee component of the interest due and payable by the Beneficiary Member State, the payment of the annual allocation to the Beneficiary Member State of a portion of EFSF's aggregate Commitment Fee shall be made either (i) following the receipt of an invoice or (ii) on the first Payment Date under any Tranche, Instalment or Financial Assistance following the determination of the amount to be paid as annual Commitment Fee, expressed as a number of basis points per annum that shall be applied over the relevant Tranche, Instalment or Financial Assistance to result in the amount of the Commitment Fee that would otherwise have been payable upon receipt of an invoice. The allocation of the Commitment Fee to a Beneficiary Member State and the level and/or the payment structure of the Commitment Fee applicable to this Agreement may be changed from time to time by the board of directors of EFSF and approved by the Guarantors.
- (3) Without prejudice to the terms of Clause 9, if the Beneficiary Member State fails to pay any sum payable under a Facility on its due date, the Beneficiary Member State shall pay in addition default interest on such sum (or, as the case may be, the amount thereof for the time being due and unpaid) to EFSF from the due date to the date of actual payment in full, calculated by reference to successive interest periods (each of such length as EFSF may from time to time select, the first period beginning on the relevant due date and, wherever possible, the length of such period shall be that of one week) at a rate per annum on such overdue amount which is equal to the rate which is 200 basis points per annum over the higher of (a) the EURIBOR rate applicable to the relevant period selected by EFSF and (b) the Interest Rate which would have been payable if the overdue amount had, during the period of non-payment, constituted Financial Assistance under the relevant Facility (if any). So long as the failure to pay continues, such rate shall be refixed in accordance with the provisions of this Clause 6(3) on the last day of each such interest period and unpaid interest under this Clause concerning previous interest periods shall be added to the amount of interest due at the end of each such interest period. The default interest is immediately due and payable.
- (4) On each Payment Date the Beneficiary Member State shall pay to EFSF any Commitment Fees (except as otherwise paid), Service Fees, Guarantee Commission Fees and such other fees as may be specified in the relevant Facility Specific Terms accrued on the relevant Facility during the Interest Period ending on such Payment Date.
- (5) EFSF shall, during each Interest Period, provide to the Beneficiary Member State on a regular basis details of the Interest Rate and any other amounts accrued under the Facilities during the relevant Interest Period.
- (6) Except to the extent deducted pursuant to Clause 6(7), the Negative Carry, Loss of Interest, Issuance Costs and all other commissions, fees and costs incurred by EFSF in respect of Pre-Funding Operations or Financings shall be promptly paid by the Beneficiary Member State within five (5) Business Days following the receipt of invoices which EFSF will periodically provide (such periodicity being no longer than

quarterly), such payment to be made to the account designated in writing by EFSF for this purpose.

- (7) EFSF shall be entitled to deduct the Negative Carry together with all other commissions, fees and costs related to any Pre-Funding Operations and all other amounts that may be deducted in determining the Net Disbursement Amount in relation to any Financial Assistance (whether under this Agreement or any other facility provided by EFSF to the Beneficiary Member State) when calculating the Net Disbursement Amount to be made available in relation to a disbursement of funds settled in cash (whether or not the amounts deducted relate to that disbursement of funds).
- (8) In the event that any hedging instrument in relation to a Funding Instrument which is financing any Financial Assistance is terminated early for any reason (including early termination by EFSF in accordance with the hedging instrument documentation) then the Beneficiary Member State shall indemnify EFSF in respect of the cost (if any) of servicing the relevant Funding Instrument on a non-hedged basis and any costs incurred as a consequence of such early termination (to the extent such costs are not already included in the EFSF Cost of Funding). There shall not be any double counting between amounts due to EFSF under Clause 5(2)(f) and this Clause 6(8).
- (9) The Beneficiary Member State undertakes to pay within five (5) Business Days of demand by EFSF all costs, charges and expenses, including legal, professional, banking or exchange charges incurred in connection with the preparation, execution, implementation and termination of this Agreement (and the Facility Specific Terms), each Pre-Funding Agreement and any related document, any amendment, supplement or waiver in respect of this Agreement (and the Facility Specific Terms), each Pre-Funding Agreement and any related document including the costs and expenses payable by EFSF in relation to the preparation and issuance of Funding Instruments to finance the Financial Assistance provided hereunder. These costs and expenses to be borne by the Beneficiary Member State include legal costs (such as costs incurred to obtain legal opinions and drafting documentation), rating agency costs, listing costs, travel costs (if applicable), commissions related to the Funding Instruments, fees of service providers and clearance systems, taxes, registration fees and publication costs.
- (10) If the circumstances set out in the definition of Disincentive Payment apply, such Disincentive Payment shall accrue and shall be paid by the Beneficiary Member State to EFSF on the last day of the calendar quarter in respect of which the Disincentive Payment is applicable. The Disincentive Payment will be refunded in full by EFSF, together with any interest (if any) earned by EFSF from the investment of such Disincentive Payment when the provision of Financial Assistance by EFSF to the Beneficiary Member State recommence(s).
- (11) The Beneficiary Member State shall in addition bear all such other costs, charges, fees and expenses in connection with the Facilities at such times and in such manner as is set out in any Facility Specific Terms.
- (12) Any amount payable by the Beneficiary Member State in respect of costs, charges, fees and expenses or otherwise in accordance with this Clause 6 for which no due date for payment is specified in this Clause 6 shall be payable within five (5) Business Days of demand by EFSF.

7. REPAYMENT, EARLY REPAYMENT, MANDATORY REPAYMENT AND CANCELLATION

- (1) Subject to the specific terms applying to a Facility as set out in this Agreement or in any Facility Specific Terms the Beneficiary Member State shall repay the principal amount of each Financial Assistance Amount in cleared funds or EFSF Debt Securities to the account designated to it in writing by EFSF for this purpose (or to such other account as the Parties may agree from time to time for the purpose of this Agreement) on the date(s) (each of which must be a Payment Date) and under the conditions notified to it by EFSF in the relevant Confirmation Notice. The repayment obligation set out in Clause 7(b) of Schedule 1 is in addition to and without prejudice to the repayment obligations set out in this Clause 7.
- (2) If financing granted to the Beneficiary Member State under any of the facilities provided by any Financial Support Providers or any facility provided by the European Union (or any body or institution thereof) or any facility which may at any time be provided by the IMF, is repaid by the Beneficiary Member State in advance in whole or in part on a voluntary or mandatory basis, a proportional amount of the Financial Assistance Amounts of the Financial Assistance provided under this Agreement together with accrued interest and all other amounts due in respect thereof shall become immediately due and repayable in a proportionate amount established by reference to the proportion which the principal sum repaid in advance in respect of the relevant facility represents to the aggregate principal amount outstanding in respect of such facility immediately prior to such repayment in advance.
- (3) The Beneficiary Member State shall pay on the date of such early repayment all accrued interest and all other amounts due in respect of the amount repaid and shall reimburse all costs, expenses, fees and Loss of Interest incurred and/or payable by EFSF as a consequence of an early repayment in respect of any Financial Assistance under this Clause 7.
- (4) The Beneficiary Member State may cancel, on not less than ten (10) Business Days' prior written notice, the whole or any part (being a minimum amount of euro one hundred million) of the undisbursed amount of a Facility, provided that no Request for Funds for that amount has been made under the relevant Facility.
- (5) EFSF may cancel the whole or any part of the undisbursed amount of a Facility if (i) the MoU is amended in a way that reduces the amount of the Financial Assistance available for the Beneficiary Member State, or (ii) the Beneficiary Member State notifies its intention not to draw any more under this Agreement or under such Facility.
- (6) EFSF may also cancel as it deems appropriate the whole or any part of the undisbursed amount of any or all Facilities to the Beneficiary Member State in case the IMF (if applicable) cancels any facility IMF may in the future provide to Spain, any other Financial Support Provider cancels in whole or in part any support facility entered into with, or in respect of, the Beneficiary Member State. In this case the cancellation of a Facility shall be proportionate to (a) in the case of cancellation by the IMF, the proportion which the sum cancelled represents to the aggregate initial amount of any such IMF facility and (b) in the case of cancellation of any of the other facilities, the proportion which the cancelled amount represents to the aggregate of the

initial amounts of this Agreement and each of the facilities provided by EFSF and each of the other Financial Support Providers.

- (7) If EFSF certifies in writing to the Beneficiary Member State that a Market Disruption Event has occurred and that EFSF cannot re-finance Funding Instruments which finance any Financial Assistance made available (whether to the Beneficiary Member State or to any other beneficiary member state) at their maturity, then, EFSF will, based on an assessment in coordination with the IMF, the Commission and the ECB of the liquidity position of the Beneficiary Member State, evaluate the Beneficiary Member State's capacity to repay a portion of the outstanding amount of the Financial Assistance corresponding to the Beneficiary Member State's Allocated Portion of the Funding Instruments which cannot be rolled over or re-financed by virtue of the Market Disruption Event. If the result of the evaluation is that the Beneficiary Member State has sufficient cash resources available, then, unless otherwise notified by EFSF, an amount of the Financial Assistance outstanding in an amount equal to the Allocated Portion shall become due and payable to EFSF at the date of maturity of such Funding Instruments. Such repayment shall constitute a scheduled repayment and not a voluntary or mandatory pre-payment. This Clause 7(7) shall not apply to any Financial Assistance or disbursement which has been made available in full by a delivery *in specie* of EFSF Debt Securities which have a scheduled maturity which is the same as the scheduled maturity of the relevant Financial Assistance or disbursement.
- (8) If the proceeds of any Disbursement are used by the Beneficiary Member State to finance the recapitalisation of a financial institution under the Bank Recapitalisation Facility (or as confirmed by the terms of the relevant Request for Funds and Acceptance Notice):
- (a) the Beneficiary Member State shall provide the proceeds of such disbursement to FROB for it to recapitalise the relevant financial institutions by way of subscribing Bank Capital Instruments;
 - (b) the Beneficiary Member State shall notify EFSF in writing in the event that it receives a payment from FROB or it or FROB receives a payment from a recapitalised financial institution or if FROB or the Beneficiary Member State sells to a third party any loan, bond, debt security, shares or capital or other instrument (including, *inter alia*, Bank Capital Instruments) which it holds in relation to that financial institution (or any of its affiliates) in connection with the recapitalisation of that financial institution. The Beneficiary Member State shall, upon written notice from EFSF, having given reasonable consideration to losses under the portfolio of the Beneficiary Member State and FROB related to the recapitalisation of financial institutions, repay a portion of any Facility demanded by EFSF (together with accrued interest on such portion), such portion not to exceed the amount received by the Beneficiary Member State from FROB or by the Beneficiary Member State or by FROB from the relevant financial institution by way of reimbursement or the proceeds of sale of the relevant loan, bond, debt security, shares or capital or other instrument realised by the Beneficiary Member State or FROB. FROB shall not unnecessarily delay the payment to the Beneficiary Member State of undistributed profit resulting from its operations;

- (c) in the event that a repayment under this Clause gives rise to an obligation to repay or pre-pay financing which may be granted to the Beneficiary Member State by the IMF (if any), under any of the facilities provided by the Financial Support Providers, the European Union (or any institution thereof) or under any bond or loan owed to any other creditor EFSF acknowledges and agrees that the amount to be repaid to EFSF under this Clause shall be reduced proportionately such that the aggregate amount to be repaid by the Beneficiary Member State in accordance with this Clause 7(8) together with the consequent amounts to be repaid by the Beneficiary Member State in accordance with any facility which may be granted to the Beneficiary Member State by any IMF facility or under any of the facilities provided by the Financial Support Providers, the European Union (or any institution thereof) or any bond or loan owed to other creditors shall be the amount determined in accordance with Clause 7(8)(b). A repayment under this Clause 7(8) shall constitute a scheduled repayment and not a voluntary or mandatory repayment.
- (9)
- (a) All repayments shall be made in euro except in the circumstances set out in Paragraph 7(b) of the Acceptance Notice in which event reimbursement may be made by re-delivery of EFSF Debt Securities of the same series and in the same nominal amount as the EFSF Debt Securities which were delivered in satisfaction of the relevant disbursement provided that if different series of EFSF Debt Securities were used to make a disbursement, the reimbursement shall be made by redelivering equal amounts of each such series.
 - (b) If the Beneficiary Member State intends to discharge a Financial Assistance (or disbursement) by redelivery of EFSF Debt Securities which have a maturity date which is the same as the date for repayment of such Financial Assistance (or disbursement) or with a maturity date which is fourteen (14) Business Days or less prior to such repayment date, then the Beneficiary Member State shall transfer such EFSF Debt Securities into a dedicated securities account no less than fourteen (14) Business Days prior to the date for repayment and shall only withdraw such EFSF Securities from such dedicated securities account for the purpose of making the relevant redelivery of EFSF Debt Securities to EFSF under this Agreement.
- (10) If the Agreement is transferred to ESM and at that time there have been disbursements effected under this Agreement by an *in specie* delivery of EFSF Debt Securities which remain outstanding, then the Beneficiary Member State and FROB shall procure that the financial institutions holding such EFSF Debt Securities shall redeliver such EFSF Debt Securities to FROB and/or the Beneficiary Member State for redelivery to EFSF provided that such EFSF Debt Securities are replaced by bonds issued by ESM on market terms of the same aggregate notional principal amount and maturity.

8. PAYMENTS

- (1) All payments to be made by the Beneficiary Member State under this Agreement and all the Facility Specific Terms shall be paid without set-off or counterclaim, free and

clear of, and without deduction for and on account of, any taxes, commissions and any other charges for the entire term of this Agreement.

- (2) The Beneficiary Member State declares that all payments and transfers under this Agreement (including all the Facility Specific Terms) and each Pre-Funding Agreement are not subject to any tax or any other impost in the country of the Beneficiary Member State and shall not be so subject for the entire term of this Agreement. If nevertheless the Beneficiary Member State or the Bank of Spain is required by law to make any such deductions, the Beneficiary Member State shall pay the requisite additional amounts so that, after making any deduction as is required by law, EFSF receives in full the amounts specified by this Agreement, the relevant Facility Specific Terms or the relevant Pre-Funding Agreement (as the case may be).
- (3) All payments by the Beneficiary Member State to EFSF shall be made via SWIFT message [] in TARGET2 on the due date before 11:00 a.m. (Frankfurt time) to the TARGET2 participant SWIFT-BIC: [] in favour of the account designated to it in writing by EFSF for this purpose (or to such other account as the Parties may agree from time to time for the purpose of this Agreement).
- (4) The ECB or EFSF shall advise the Beneficiary Member State and the Bank of Spain at least ten (10) calendar days prior to each due date of the amount of principal and interest due and payable on such date and of the details (Interest Rate, Interest Period) on which the interest calculation is based.
- (5) The Beneficiary Member State shall send to EFSF and to the ECB a copy of the payment instructions sent by the Beneficiary Member State and relating to a payment due to EFSF under this Agreement at least two (2) Business Days prior to the relevant due date.
- (6) If the Beneficiary Member State shall pay, on a given date, an amount in relation to any Financial Assistance which is less than the total amount due and payable on such date under the relevant Facility Specific Terms, the Beneficiary Member State hereby waives any rights it may have to make any appropriation of the amount so paid as to the amounts due.

The amount so paid in respect of such Financial Assistance shall be applied in or towards satisfaction of payments due in relation to such Financial Assistance in the following sequence:

- (a) *first* against any fees, costs, expenses and indemnities (including any Disincentive Payment, Issuance Costs and Commitment Fees);
- (b) *second* against any interest for late payments as determined under Clause 6(3);
- (c) *third* against other interest; and
- (d) *fourth* against principal,

provided that these amounts are due or overdue for payment on that date.

- (7) Any calculation or determination under this Agreement and under any Facility Specific Terms:
- (a) by EFSF shall be made in a commercially reasonable manner; and
 - (b) by the ECB or EFSF shall, absent manifest error, be binding on EFSF and the Beneficiary Member State.

9. EVENTS OF DEFAULT

- (1) EFSF may, by written notice to the Beneficiary Member State, cancel all or any part of the Facilities (or any of them) and/or declare the aggregate principal amount of any or all Financial Assistance made and outstanding under the Facilities to be immediately due and payable, together with accrued interest and all other amounts due in respect thereof, if:
- (a) the Beneficiary Member State or FROB shall fail to pay to EFSF any amount of principal or interest in relation to any Financial Assistance or any other amounts due under this Agreement, any Facility Specific Terms or a Pre-Funding Agreement on its due date, whether in whole or in part, in the manner and currency as agreed in this Agreement, the Facility Specific Terms or the Pre-Funding Agreement; or
 - (b) the Beneficiary Member State, FROB or the Bank of Spain shall default in the performance of any obligation under this Agreement (including the obligation set out in Clause 2(7) to apply any Financial Assistance in accordance with the terms of the MoU but excluding any other obligations under the MoU) or a Pre-Funding Agreement other than the obligations referred to in Clause 9(1)(a), and such default shall continue for a period of one month after written notice thereof shall have been given to the Beneficiary Member State by EFSF; or
 - (c) EFSF sends the Beneficiary Member State a declaration of default in circumstances where the Beneficiary Member State's, FROB's or the Bank of Spain's obligations under this Agreement (including the Facility Specific Terms) or a Pre-Funding Agreement are declared by a court of competent jurisdiction not to be binding on or enforceable against the Beneficiary Member State, FROB or the Bank of Spain or are declared by a court of competent jurisdiction to be illegal; or
 - (d) EFSF sends the Beneficiary Member State a declaration of default in circumstances where (i) it has been established that in relation to this Agreement (including the Facility Specific Terms), any Pre-Funding Agreement or the MoU, the Beneficiary Member State, FROB or the Bank of Spain has engaged in any act of fraud or corruption or any other illegal activity, or any other actions detrimental to EFSF or (ii) any representation or warranty made by the Beneficiary Member State or FROB under this Agreement (including the Facility Specific Terms) or any Pre-Funding Agreement (including in relation to the legal opinions provided under Clause 3(1)(a)) is inaccurate, untrue or misleading and which in the opinion of EFSF could have a negative impact on the capacity of the Beneficiary Member State or FROB to fulfil its obligations under this Agreement (including under the Facility

Specific Terms), any Pre-Funding Agreement or the rights of EFSF under this Agreement (including under the Facility Specific Terms) or any Pre-Funding Agreement; or

- (e) any agreement for the provision of a loan or any other financial assistance between the Beneficiary Member State and EFSF or any EU institution or body, regardless of amount, is the subject of a declaration of default or there is a default on any payment obligation of any kind towards EFSF or any EU institution or body by the Beneficiary Member State or the Bank of Spain and such payment default gives rise to a declaration of default; or
- (f) Relevant Indebtedness of the Beneficiary Member State or FROB having a principal amount (in aggregate) in excess of EUR 250 million (EUR 250,000,000) is the subject of a declaration of default as defined in any instrument governing or evidencing such indebtedness and as a result of such a declaration of default there is an acceleration of such indebtedness or a *de facto* moratorium on payments; or
- (g) If applicable, the Beneficiary Member State does not make timely repurchases from the IMF, in relation to any facility which may be granted to the Beneficiary Member State by the IMF, of any outstanding purchases in accordance with the applicable repurchase obligation schedule or has overdue charges on outstanding purchases and the Managing Director of the IMF has notified the Executive Board of IMF that such repurchases or such payment of charges have become overdue; or
- (h) any loan agreement or agreement for the provision of financial assistance between the Beneficiary Member State or FROB and any institution or body of the EU, in relation to any facility which may be granted to the Beneficiary Member State by the IMF, the IMF or any other Financial Support Provider, regardless of amount, is the subject of a declaration of default; or
- (i) the Beneficiary Member State does not pay a substantial portion of its Relevant Indebtedness as it falls due or declares or imposes a moratorium on the payment of its Relevant Indebtedness or of Relevant Indebtedness assumed or guaranteed by it.

In accordance with Clause 2(9), any of the above Events of Default may be expressly supplemented, dis-applied, amended or modified or additional Events of Default may be stipulated for any specific Financial Assistance if so specified in the Facility Specific Terms applying to the Facility under which such Financial Assistance is to be made available.

In deciding whether to send a declaration of default and/or whether to cancel or to accelerate, in whole or in part, any or all the Financial Assistance made available and outstanding under the Facilities, EFSF shall take into consideration the aggregate amount of Relevant Indebtedness of the Beneficiary Member State and, in particular, in the case of the Events of Default in Clauses 9(e) to (i), the aggregate amount of such Relevant Indebtedness that is in default or is accelerated.

- (2) EFSF may, but is not obliged to, exercise its rights under this Clause and may also exercise them only in part without prejudice to the future exercise of such rights.
- (3) The Beneficiary Member State shall reimburse all costs, expenses, fees and Loss of Interest incurred and payable by EFSF as a consequence of an early repayment of any Financial Assistance under this Clause at the times and in the manner set out in this Agreement or the applicable Facility Specific Terms. In addition, the Beneficiary Member State shall pay default interest, as provided in Clause 6(3) above, which shall accrue as from the date when the outstanding principal amount in respect of such Financial Assistance has been declared immediately due and payable, until the date of actual payment in full.

10. INFORMATION UNDERTAKINGS

- (1) With effect from the date of this Agreement, the Beneficiary Member State shall supply to EFSF:
 - (a) all documents dispatched by the Beneficiary Member State to its creditors generally at the same time as they are dispatched and shall supply to EFSF as soon as reasonably practicable following receipt, all documents issued generally to creditors of any other entities which incur indebtedness which constitutes General Government Debt;
 - (b) a regular quarterly report on the progress made in fulfilment of the terms of the MoU;
 - (c) any information pertaining to any event which could reasonably be expected to cause an Event of Default to occur (and the steps, if any, being taken to remedy it);
 - (d) a declaration that the Beneficiary Member State no longer intends to request any more Financial Assistance under this Agreement, as soon as that is the case; and
 - (e) any other information reasonably needed by EFSF or which is required to be delivered to EFSF by the terms of the MoU.
- (2) The Beneficiary Member State undertakes to inform EFSF immediately if any event occurs that would render incorrect any statement made in the legal opinions referred to in Clause 3(1)(a) above.
- (3) The Beneficiary Member State undertakes to promptly notify EFSF in the event that it becomes aware that litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which may prejudice its execution or performance of the MoU, this Agreement or the transactions contemplated herein (including the Facility Specific Terms or any Pre-Funding Agreement) or which, if adversely determined, would be reasonably likely to have a material adverse effect on its ability to perform its obligations under the MoU, this Agreement, or the transactions contemplated herein (including the Facility Specific Terms or any Pre-Funding Agreement) are started or threatened in writing against it.

- (4) FROB undertakes to provide to EFSF promptly further information regarding the Bank Capital Instruments, the recapitalised financial institutions or the use of disbursements as EFSF may reasonably request.

11. **UNDERTAKINGS RELATING TO INSPECTIONS, FRAUD PREVENTION AND AUDITS**

- (1) The Beneficiary Member State shall permit EFSF to send its own agents or duly authorised representatives to carry out any technical or financial assessments, controls or audits that it considers necessary in relation to the management of this Agreement, (including the Facility Specific Terms) and any Financial Assistance provided thereunder.
- (2) The Beneficiary Member State directly or through FROB and/or the Bank of Spain shall supply relevant information and documents which may be requested for the purpose of such assessments, controls or audits, including as to the financial situation of the financial institutions concerned, and take all suitable measures to facilitate the work of persons instructed to carry them out. The Beneficiary Member State, FROB and the Bank of Spain undertake to give to the persons referred to in Clause 11(1) (or to procure the giving to such persons of) access to sites and premises where the relevant information and documents are kept.
- (3) The Beneficiary Member State, FROB and the Bank of Spain shall ensure investigation and satisfactory treatment of any suspected and actual cases of fraud, corruption or any other illegal activity in relation to the management of this Agreement (including all the Facility Specific Terms) and any Financial Assistance provided thereunder. All such cases as well as measures related thereto taken by national competent authorities shall be reported to EFSF and the Commission without delay.

12. **NOTICES**

- (1) All notices in relation to this Agreement and the Facility Specific Terms shall be validly given if in writing and sent to the addressees listed Annex 3 (*List of Contacts*). Each Party will update addressees and notify it to the other Party hereto upon the same being amended from time to time.
- (2) All notices shall be given by registered mail. In case of urgency, they can be given by fax, SWIFT message or by hand-delivered letter to the addressees above mentioned and confirmed by registered mail without undue delay. Notices become effective with the actual receipt of the fax, the SWIFT message or the hand-delivered letter.
- (3) All documents, information and materials to be furnished under this Agreement and the Facility Specific Terms shall be in the English language.
- (4) Each Party to this Agreement will notify to the other Parties the list and specimen signatures of the persons authorised to act on its behalf under this Agreement and under the Facility Specific Terms, promptly upon its signature of this Agreement. Likewise, each Party will update such list and notify the other Parties hereto upon the same being amended from time to time.

13. **GUARANTEE AND INDEMNITY**

- (1) FROB irrevocably and unconditionally:
 - (a) guarantees to EFSF punctual performance by the Beneficiary Member State of the Beneficiary Member State's obligations under this Agreement in connection with Financial Assistance used to finance the recapitalisation of financial institutions in Spain (including the Bank Recapitalisation Facility);
 - (b) undertakes with EFSF that whenever the Beneficiary Member State does not pay any amount when due under or in connection with this Agreement, FROB shall immediately on demand pay that amount as if it was the principal obligor provided that such amount is due in connection with Financial Assistance used to finance the recapitalisation of financial institutions in Spain (including the Bank Recapitalisation Facility); and
 - (c) agrees with EFSF that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal it will, as an independent and primary obligation, indemnify EFSF immediately on demand against any cost, loss or liability it incurs as a result of the Beneficiary Member State not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under this Agreement in connection with Financial Assistance used to finance the recapitalisation of financial institutions (including the Bank Recapitalisation Facility) in Spain on the date when it would have been due. The amount payable by FROB under this indemnity will not exceed the amount it would have had to pay under this Clause 13 if the amount claimed had been recoverable on the basis of a guarantee.
- (2) The guarantee set out in Clause 13(1) is a continuing guarantee and will extend to the ultimate balance of sums payable by the Beneficiary Member State under this Agreement, regardless of any intermediate payment or discharge in whole or in part.
- (3) If any discharge, release or arrangement (whether in respect of the obligations of the Beneficiary Member State or any security for those obligations or otherwise) is made by EFSF in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Guarantor under this Clause 13 will continue or be reinstated as if the discharge, release or arrangement had not occurred.
- (4) The obligations of FROB under this Clause 13 will not be affected by any act, omission, matter or thing which, but for this Clause 13(4), would reduce, release or prejudice any of its obligations under this Clause 13 (without limitation and whether or not known to it or to EFSF) including:
 - (a) any time, waiver or consent granted to, or composition with, the Beneficiary Member State or other person;
 - (b) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Beneficiary Member State or other person or any non-

- presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (c) any incapacity or lack of power or authority of the Beneficiary Member State or any other person;
 - (d) any amendment, novation, supplement, extension or restatement (however fundamental and whether or not more onerous) or replacement of this Agreement or any other document or security including without limitation any change in the purpose of, any extension of, or any increase in, any facility or the addition of any new facility under this Agreement or other document;
 - (e) any unenforceability, illegality or invalidity of any obligation of any person under this Agreement or any other document or security; or
 - (f) any moratorium in relation to the Beneficiary Member State or any insolvency or similar proceedings in relation to any other person.
- (5) FROB waives any right it may have of first requiring EFSF to proceed against or enforce any other rights or security or claim payment from any person before claiming from FROB under this Clause 13. This waiver applies irrespective of any law or any provision of any document to the contrary.
- (6) Until all amounts which may be or become payable by the Beneficiary Member State under or in connection with this Agreement have been irrevocably paid in full, EFSF may:
- (a) refrain from applying or enforcing any other moneys, security or rights held or received by it in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and FROB shall not be entitled to the benefit of the same; and
 - (b) hold in an interest-bearing suspense account any moneys received from FROB or on account of any of FROB's liability under this Clause 13.
- (7) Until all amounts which may be or become payable by the Beneficiary Member State under or in connection with this Agreement have been irrevocably paid in full, FROB will not exercise any rights which it may have by reason of performance by it of its obligations under this Agreement or by reason of any amount being payable, or liability arising, under this Clause 13:
- (a) to be indemnified by the Beneficiary Member State;
 - (b) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary Member State under this Agreement or of any other guarantee or security taken pursuant to, or in connection with, this Agreement;
 - (c) to bring legal or other proceedings for an order requiring the Beneficiary Member State to make any payment, or perform any obligation, in respect of which FROB has given a guarantee, undertaking or indemnity under Clause 13(1);

- (d) to exercise any right of set-off against the Beneficiary Member State; and/or
- (e) to claim or prove as a creditor of the Beneficiary Member State in competition with EFSF.

If FROB receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to EFSF by the Beneficiary Member State under or in connection with this Agreement to be repaid in full on trust for EFSF and shall promptly pay or transfer the same to EFSF.

- (8) This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by EFSF.

14. MISCELLANEOUS

- (1) If any one or more of the provisions contained in this Agreement or in any of the Facility Specific Terms should be or become fully or in part invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained in this Agreement or any Facility Specific Terms shall not in any way be affected or impaired thereby. Provisions which are fully or in part invalid, illegal or unenforceable shall be interpreted and thus implemented according to the spirit and purpose of this Agreement and the Facility Specific Terms.
- (2) The Parties to this Agreement acknowledge and accept the existence and terms of the MoU, the EFSF Funding Guidelines and the EFSF Investment Guidelines as the same may be amended, supplemented or updated from time to time.
- (3) A person which is not Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or benefit from any term of this Agreement save as expressly provided in any relevant Facility Specific Terms. Unless otherwise specified in this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (4) Neither the Beneficiary Member State nor FROB shall have any right to assign or transfer any of its rights or obligations under this Agreement (including the Facility Specific Terms) without the prior written consent of EFSF.
- (5) Subject to any provision to the contrary in any Facility Specific Terms, EFSF shall have the right (without any requirement of consent from the Beneficiary Member State or FROB) to freely assign and/or otherwise transfer its rights or claims against the Beneficiary Member State to all or any of the Guarantors in the circumstances described in Article 6(8) of the Framework Agreement subject to the terms of the Deed(s) of Guarantee. In addition, subject to any provision to the contrary in any Facility Specific Terms, the Parties agree that the rights and obligations of EFSF will be freely transferred to ESM, but without gaining seniority status as specified in the Statement of Heads of State or Government. The Parties agree that the rights and obligations of EFSF under this Agreement may be freely transferred to an independent, bankruptcy remote, special purpose company. EFSF or the transferee

shall be entitled to notify the Parties to this Agreement of any such assignment or transfer.

- (6) In the event that the rights and/or obligations of EFSF under this Agreement are assigned or otherwise transferred to ESM:
 - (a) the payment obligations of the Beneficiary Member State shall not obtain any more senior ranking or status by virtue of such assignment or transfer;
 - (b) the financial and commercial terms of this Agreement shall continue but the ESM Pricing Policy shall apply; and
 - (c) the parties shall make such amendments to this Agreement as are necessary to take into account the institutional and procedural differences between EFSF and ESM.

15. **GOVERNING LAW AND JURISDICTION**

- (1) This Agreement and the Facility Specific Terms (including any Annexes and Schedules thereto) and any non-contractual obligations arising out of or in connection with each of them shall be governed by and shall be construed in accordance with English law.
- (2) The Parties undertake to submit any dispute which may arise relating to the legality, validity, interpretation or performance of this Agreement and each of its Facility Specific Terms (including the Annexes and Schedules thereto) to the exclusive jurisdiction of the courts of the Grand Duchy of Luxemburg.
- (3) Clause 15(2) is for the benefit of EFSF only. As a result, nothing in Clause 15(2) prevents EFSF from taking proceedings relating to a dispute ("**Proceedings**") in the courts of the domicile of the Beneficiary Member State or of the governing law of this Agreement and the Beneficiary Member State hereby irrevocably submits to the jurisdiction of such courts. To the extent allowed by law, EFSF may take concurrent Proceedings in any number of such jurisdictions.
- (4) The Beneficiary Member State, FROB and the Bank of Spain hereby irrevocably and unconditionally waive all immunity to which each of them is or may become entitled, in respect of itself or its assets, from legal proceedings in relation to this Agreement and each of its Annexes and Schedules (including the Annexes to such Schedules) and each Pre-Funding Agreement, including, without limitation, immunity from suit, judgment or other order, from attachment, arrest or injunction prior to judgment, and from execution and enforcement against its assets to the extent not prohibited by mandatory law.

16. **ENTRY INTO FORCE**

Following its signature by all Parties, this Agreement shall enter into force on the date on which EFSF has received the official notification (in the form of the legal opinions in Annex 2 to this Agreement) by the Beneficiary Member State that all constitutional and legal requirements for the entry into force of this Agreement and the valid and irrevocable commitment of the Beneficiary Member State and FROB to all obligations under this Agreement have been fulfilled.

17. EXECUTION OF THE AGREEMENT

This Agreement and its relevant Schedules (if applicable) shall be executed by each Party in four originals in the English language, each of which shall constitute an original instrument.

18. ANNEXES AND SCHEDULES

The Annexes and Schedules of this Agreement shall constitute an integral part hereof and as of the date of this Agreement comprise:

Annex 1: Form of Pre-Funding Agreement

Annex 2: Forms of Legal Opinions

Annex 3: List of Contacts

Schedule 1: Bank Recapitalisation Facility: Facility Specific Terms

Annex 1: Form of Request for Funds

Annex 2: Form of Acceptance Notice

Annex 3: Form of Confirmation Notice

Executed in Madrid on _____ and in Luxembourg on
_____.

EUROPEAN FINANCIAL STABILITY FACILITY

Represented by

Klaus Regling, Chief Executive Officer

The Beneficiary Member State

KINGDOM OF SPAIN

Represented by

[•]

BANK OF SPAIN

Represented by

[•], Governor of the Bank of Spain

The Guarantor

FONDO DE REESTRUCTURACIÓN ORDENADA BANCARIA

Represented by

[•]

ANNEX 1
FORM OF PRE-FUNDING AGREEMENT

AUTHORISATION FOR PRE-FUNDING AND INDEMNITY AGREEMENT (THE "PRE-FUNDING AGREEMENT")

This **Authorisation for Pre-funding and Indemnity Agreement** is made by and between:

- (A) **European Financial Stability Facility ("EFSF")**, a *société anonyme* incorporated in Luxembourg with its registered office at 43, avenue John F. Kennedy, L-1855 Luxembourg (R.C.S. Luxembourg B153.414), represented by Mr. Klaus Regling, Chief Executive Officer or Mr. Christophe Frankel, Deputy Chief Executive Officer / Chief Financial Officer; and
- (B) **Kingdom of Spain** (hereinafter referred to as "**Spain**"), represented by the Minister of Finance,

as the Beneficiary Member State (the "**Beneficiary Member State**"),

Herein jointly referred to as the "Parties" and each of them a "**Party**".

1. The Parties, the Fondo de Reestructuración Ordenada Bancaria and the Bank of Spain are parties to a Master Financial Assistance Facility Agreement dated [●] under which EFSF has agreed to make available to the Beneficiary Member State a Master Facility in an Aggregate Financial Assistance Amount of up to EUR [●] billion, as amended and supplemented by the Facility Specific Terms dated [●] in respect of the EUR [●] Facility (together, the "**FFA**"). Terms defined in the FFA shall have the same meaning in this Pre-Funding Agreement.
2. The Financial Assistance will be made available in one or more Instalments each of which may be disbursed in one or more Tranches. EFSF and the Beneficiary Member State hereby acknowledge and agree that advance borrowings in the form of Pre-Funding Operations may be effected by EFSF for the purpose of pre-funding a future Instalment whether or not a written Request for Funds from the Beneficiary Member State has been delivered to EFSF and prior to the issuance of an Acceptance Notice by EFSF. The Beneficiary Member State hereby authorises EFSF to enter into such Pre-Funding Operations in respect of the Instalment due following the [●] periodic review in a maximum aggregate amount of principal of EUR [●].
3. The Beneficiary Member State hereby undertakes to pay to EFSF all costs (including the Negative Carry, as defined in the FFA, and all commissions, fees and costs) resulting from such Pre-Funding Operations, even if for whatever reason, in particular due to time needed for decision-making relating to the provision of the Financial Assistance based on the compliance with Clauses 3 and 4 of the FFA, the disbursement to the Beneficiary Member State of the net proceeds of the relevant Pre-Funding Operations is delayed or it does not take place.
4. For a pre-funded Instalment that is subsequently disbursed (becoming thereafter treated as a Financing), the Cost of Carry accrues from the date EFSF commences incurring liability for interest under the relevant Funding Instruments until the relevant Disbursement Date (or the date on which the proceeds of the relevant

Funding Instruments are used to refinance any other Funding Instruments) or, if the proceeds of the Pre-Funding Operation are not partly or entirely disbursed, until the maturity of the relevant Funding Instrument for the undisbursed proceeds. For a pre-funded Instalment where the disbursement is delayed, for whichever reason, the Cost of Carry accrues from the date EFSF commences incurring liability for interest under the relevant Funding Instruments and until the date that a final decision on the use of the funds has been taken by EFSF, after consultation with the Beneficiary Member State. For a pre-funded Instalment that is not subsequently disbursed, the Member State remains liable for all the costs incurred by EFSF in relation to the Pre-Funding Operations, in accordance with Clause 4(7) of the FFA.

5. The Beneficiary Member State shall, on the Disbursement Date specified in the relevant Acceptance Notice (if any) or within five (5) Business Days of demand by EFSF, pay all costs incurred by EFSF in relation to Pre-Funding Operations (including financing costs, margin, Negative Carry, losses, costs, hedging costs or other fees or expenses) regardless of whether any Financial Assistance is in fact made available provided that the maximum aggregate amount of principal for Pre-Funding Operations is the amount specified in paragraph 2 above.
6. If the Beneficiary Member State fails to pay any amount under this Pre-Funding Agreement on the date it is due for payment, this shall constitute an Event of Default under Clause 9(1) of the FFA.
7. The fact that EFSF is prepared to carry out and enter into a Pre-Funding Operation will not condition in any respect its decision regarding the compliance by the Beneficiary Member State with the economic policy conditions of the MoU and the Decision or on whether the conditions precedent to the provision of any Financial Assistance under any Instalment have been satisfied.
8. Once the conditions foreseen in Clause 3 and 4 of the FFA are fulfilled and an Acceptance Notice has been issued and acknowledged, EFSF will issue a Confirmation Notice for the Financial Assistance prefunded.
9. Clauses 12, 14, 15 and 17 of the FFA shall also apply to this Pre-Funding Agreement as if references to "this Agreement" were to this Pre-Funding Agreement.
10. This Pre-Funding Agreement enters into force upon signature by the Parties.

This Pre-Funding Agreement is provided to the Bank of Spain for information.

EUROPEAN FINANCIAL STABILITY FACILITY

Represented by

[•]

The Beneficiary Member State

KINGDOM OF SPAIN

Represented by

[•]

ANNEX 2
FORMS OF LEGAL OPINIONS

PART I FORM OF LEGAL OPINION FOR BENEFICIARY MEMBER STATE

(to be issued on official letterhead of [●])

[place, date]

To: European Financial Stability Facility
43, avenue John F. Kennedy
L-1855 Luxembourg
Attention: Chief Financial Officer

Re: EUR [●] Master Financial Assistance Facility Agreement between European Financial Stability Facility (as EFSF), Kingdom of Spain (as Beneficiary Member State), Fondo de Reestructuración Ordenada Bancaria as guarantor and the Bank of Spain signed on [●]

Dear Sirs,

In my capacity as [●], I refer to the above referenced Master Financial Assistance Facility Agreement and all its Annexes and Schedules which constitute an integral part thereof (hereinafter together referred to as the "**Agreement**") entered into between the European Financial Stability Facility (hereinafter referred to as "**EFSF**"), Kingdom of Spain (hereinafter referred to as the "**Beneficiary Member State**"), the Fondo de Reestructuración Ordenada Bancaria as guarantor and the Bank of Spain on [insert date]. I also refer to the Memorandum of Understanding signed on [insert date] (hereinafter referred to as the "**MoU**").

I warrant that I am fully competent to issue this legal opinion in connection with the Agreement on behalf of the Beneficiary Member State.

I have examined originals or copies of the execution versions of the Agreement and of the MoU. I have also examined the relevant provisions of national and international law applicable to the Beneficiary Member State and the Bank of Spain, the powers of signatories and such other documents as I have deemed necessary or appropriate. Furthermore, I have made such other investigations and reviewed such matters of law as I have considered relevant to the opinion expressed herein.

I have assumed (i) the genuineness of all signatures (except those on behalf of the Beneficiary Member State and the Bank of Spain) and the conformity of all copies to originals, (ii) the capacity and power to enter into the Agreement of, and their valid

authorisation and signing by, each Party other than the Beneficiary Member State and the Bank of Spain and (iii) the validity, binding effect and enforceability of the Agreement on each Party under the laws of England.

Terms used and not defined in this opinion shall have the meaning set out in the Agreement and in the MoU.

This opinion is limited to Spanish law as it stands at the date of this opinion.

Subject to the foregoing, I am of the opinion that:

1. With respect to the laws, regulations and legally binding decisions currently in force in Spain, the Beneficiary Member State is by the execution of the Agreement by [●], validly and irrevocably committed to fulfil all of its obligations under it. In particular, the provisions of the Agreement relating to the provision of Financial Assistance are fully valid.
2. The Beneficiary Member State's execution, delivery and performance of the Agreement and signature of the MoU: (i) have been duly authorised by all necessary consents, actions, approvals and authorisations; and (ii) have not and will not violate any applicable law, regulation or ruling of any competent authority or any agreement or treaty binding on it or any of its agencies.
3. The representations and warranties given by the Beneficiary Member State in the Agreement are true and accurate.
4. Nothing in this Agreement contravenes or limits the rights of the Beneficiary Member State to make punctual and effective payment of any sum due for the principal, interest or other charges under the Agreement.
5. The Agreement is in proper legal form under Spanish law for enforcement against the Beneficiary Member State and the Bank of Spain. The enforcement of the Agreement would not be contrary to mandatory provisions of Spanish law, to the *ordre public* of Spain, to international treaties or to generally accepted principles of international law binding on the Beneficiary Member State and the Bank of Spain.
6. It is not necessary in order to ensure the legality, validity or enforceability of the Agreement that it be filed, recorded, or enrolled with any court or authority in Spain.
7. No taxes, duties, fees or other charges imposed by Spain or any taxing authority thereof or therein are payable in connection with the execution and delivery of the Agreement and with any payment or transfer of principal, interest, commissions and other sums due under the Agreement.
8. No exchange control authorisations are required and no fees or other commission are to be paid on the transfer of any sum due under the Agreement.
9. The signature of the Agreement by [●], the Governor of the Bank of Spain legally and validly binds the Bank of Spain.

10. The choice of English law as governing law for the Agreement is a valid choice of law binding the Beneficiary Member State and the Bank of Spain in accordance with Spanish law.
11. The Beneficiary Member State has legally, effectively and irrevocably submitted to the exclusive jurisdiction of the Courts of the Grand Duchy of Luxembourg and the jurisdiction of the other courts referred to in Clause 15(3) of the Agreement in connection with the Agreement and any judgement of this court would be conclusive and enforceable in Spain.
12. Neither the Beneficiary Member State nor the Bank of Spain nor any of their respective property is immune on the grounds of sovereignty or otherwise from jurisdiction, attachment – whether before or after judgement – or execution in respect of any action or proceeding relating to the Agreement.
13. The execution of the Agreement has been made upon the provisions of [*insert appropriate reference to Spanish law*].
14. The Agreement has been validly ratified in accordance with the provisions of [*insert appropriate reference to Spanish law*].
15. In conclusion, the Agreement has been duly executed on behalf of the Beneficiary Member State and the Bank of Spain and all the obligations of the Beneficiary Member State and the Bank of Spain in relation to the Agreement are valid, binding and enforceable in accordance with their terms and nothing further is required to give effect to the same.

[*Signatory*]

[•]

PART II FORM OF LEGAL OPINION FOR GUARANTOR

(to be issued on official letterhead of the counsel to FROB)

[*place, date*]

To: European Financial Stability Facility
43, avenue John F. Kennedy
L-1855 Luxembourg
Attention: Chief Financial Officer

Re: EUR [●] Master Financial Assistance Facility Agreement between European Financial Stability Facility (as EFSF), Kingdom of Spain (as Beneficiary Member State), the Fondo de Reestructuración Ordenada Bancaria as guarantor and the Bank of Spain signed on [●]

Dear Sirs,

In my capacity as special counsel to the Fondo de Reestructuración Ordenada Bancaria specifically in connection with its entry into the Agreement (as defined below) as Guarantor (as defined below), I refer to the above referenced Master Financial Assistance Facility Agreement and all its Annexes and Schedules which constitute an integral part thereof (hereinafter together referred to as the "**Agreement**") entered into between the European Financial Stability Facility (hereinafter referred to as "**EFSF**"), Kingdom of Spain (hereinafter referred to as the "**Beneficiary Member State**"), the Fondo de Reestructuración Ordenada Bancaria as guarantor (hereinafter referred to as the "**Guarantor**") and the Bank of Spain on [*insert date*]. I also refer to the Memorandum of Understanding signed on [*insert date*] [and its subsequent updates the most recent of which was signed on [●]] between the Commission, the Beneficiary Member State and the Bank of Spain (hereinafter referred to as the "**MoU**").

I warrant that I am fully competent to issue this legal opinion in connection with the Agreement on behalf of the Guarantor.

I have examined originals or copies of the execution versions of the Agreement and of the MoU. I have also examined the relevant provisions of national and international law applicable to the Guarantor, the powers of signatories and such other documents as I have deemed necessary or appropriate. Furthermore, I have reviewed such matters of law as I have considered relevant to the opinion expressed herein.

I have assumed (i) the genuineness of all signatures (except those on behalf of the Guarantor) and the conformity of all copies to originals, (ii) the capacity and power to enter into the Agreement of, and their valid authorisation and signing by, each Party other than the Guarantor and (iii) the validity, binding effect and enforceability of the Agreement on each Party under the laws of England.

Terms used and not defined in this opinion shall have the meaning set out in the Agreement and in the MoU.

This opinion is limited to Spanish law as it stands at the date of this opinion and no opinion is expressed as to the laws of any other jurisdiction.

Subject to the foregoing, I am of the opinion that:

1. With respect to the laws, regulations and legally binding decisions currently in force in Spain, the Guarantor is by the execution of the Agreement by [●], validly and irrevocably committed to fulfil all of its obligations under it.
2. The Guarantor's execution, delivery and performance of the Agreement: (i) has been duly authorised by all necessary consents, actions, approvals and authorisations; and (ii) has not and will not violate any applicable law, regulation or ruling of any competent authority or any agreement or treaty binding on it or any of its agencies.
3. The Agreement is in proper legal form under Spanish law for enforcement against the Guarantor. The enforcement of the Agreement would not be contrary to mandatory provisions of Spanish law, to the *ordre public* of Kingdom of Spain, to international treaties or to generally accepted principles of international law binding on the Guarantor.
4. The signature of the Agreement by [name], [signatory on behalf of FROB] legally and validly binds the Guarantor.
5. The choice of English law as governing law for the Agreement is a valid choice of law binding the Guarantor in accordance with Spanish law.
6. The Guarantor has legally, effectively and irrevocably submitted to the exclusive jurisdiction of the Courts of the Grand Duchy of Luxembourg and the jurisdiction of the other courts referred to in Clause 15(3) of the Agreement in connection with the Agreement and any judgement of this court would be conclusive and enforceable in Kingdom of Spain.
7. Neither the Guarantor nor any of its property is immune on the grounds of sovereignty or otherwise from jurisdiction, attachment – whether before or after judgement – or execution in respect of any action or proceeding relating to the Agreement.
8. The execution of the Agreement has been made upon the provisions of law [●] of Spain, as currently in effect.
9. An enforceable and valid judgment for a sum of money entered against the Guarantor by a court of the Grand Duchy of Luxembourg or any of the other courts referred to in Clause 15(3) of the Agreement in connection with the Agreement will be recognised and enforced by Spanish courts in accordance with the provisions of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [and/or with Articles [●] of the Spanish Code of Civil Procedure].

10. In conclusion, the Agreement has been duly executed on behalf of the Guarantor and all the obligations of the Guarantor in relation to the Agreement are valid, binding and enforceable in accordance with their terms and nothing further is required to give effect to the same.

The opinions set out above are subject to the following reservations and qualifications:

- (a) this opinion is subject to all insolvency, bankruptcy, liquidation, reorganisation, moratorium, resolution of credit institutions and other laws affecting the rights of creditors or secured creditors generally;
- (b) a Spanish Court if seized to hear a case based on the Agreement may not treat as conclusive those certificates and determinations which the Agreement states are to be so treated; and
- (c) no opinion is expressed on matters of fact.

[*Signatory*]

Fondo de Reestructuración Ordenada Bancaria

**ANNEX 3
LIST OF CONTACTS**

For EFSF:

European Financial Stability Facility

[]

Attention: []

Tel: []

Fax: []

SWIFT address: []

With copies to:

European Commission

[]

Attention: []

Tel.: []

Fax: []

SWIFT address: []

European Central Bank

[]

Attention: []

Tel.: []

Fax: []

SWIFT BIC: []

For the Beneficiary Member State:

[•]

[•]

[•]

[•]

[•]

Fax: [•]

With copies to:

Bank of Spain

[•]

[•]

Attention: [•]

Fax: [•]

SWIFT BIC: [•]

For FROB:

Fondo de Reestructuración Ordenada Bancaria

[•]

[•]
Attention: [•]

Tel: [•]
Fax: [•]

SCHEDULE 1
BANK RECAPITALISATION FACILITY: FACILITY SPECIFIC TERMS

WHEREAS:

Pursuant to a Master Financial Assistance Facility Agreement between the European Financial Stability Facility ("**EFSF**") as EFSF, Kingdom of Spain (hereinafter referred to as "**Spain**") as Beneficiary Member State, the Fondo de Reestructuración Ordenada Bancaria ("**FROB**") as guarantor and the Bank of Spain signed on or around [•] 2012 (the "**Master Facility Agreement**"), EFSF has agreed to make available to the Beneficiary Member State a Master Facility in an Aggregate Financial Assistance Amount of up to EUR 100,000,000,000. All or part of the Master Facility will be made available by way of a bank recapitalisation facility (the "**Bank Recapitalisation Facility**") on the terms and subject to the conditions of the Master Facility Agreement as varied or supplemented by these Facility Specific Terms.

1. DEFINITIONS

(a) Capitalised terms shall (unless defined in these Facility Specific Terms) have the meanings set out in Clause 1 (*Definitions*) of the Master Facility Agreement.

(b) For the purpose of these Facility Specific Terms the following capitalised terms shall have the meanings set out below:

"**Margin**" means zero. The level of the Margin applicable to this Facility may be changed from time to time by the board of directors of EFSF and approved by the Guarantors. For the avoidance of doubt, no reimbursement or reduction in the Margin or the EFSF Cost of Funding shall apply resulting from payments of advance Margin.

2. THE BANK RECAPITALISATION FACILITY

(a) The purpose of this Bank Recapitalisation Facility is to increase the long term resilience of the Spanish banking sector as a whole, thus restoring its market access. This Facility permits the Beneficiary Member State to finance the recapitalisation of certain financial institutions in Spain in accordance with the MoU, and provides, in particular, that the proceeds of this Bank Recapitalisation Facility shall be used by the Beneficiary Member State solely to provide finance to FROB to permit FROB (i) to subscribe or pre-subscribe for Bank Capital Instruments issued by existing financial institutions in Spain and/or (ii) to subscribe or pre-subscribe for Bank Capital Instruments issued by AMCs which acquire the assets of viable or non-viable institutions under a bank resolution programme (each of these operations being a "recapitalisation" for the purposes of the Master Facility Agreement and in this Schedule 1). The Beneficiary Member State and FROB shall not use such proceeds for any other purpose.

(b) This Bank Recapitalisation Facility is subject to the terms and conditions of the Master Facility Agreement as varied or supplemented by these Facility Specific Terms and any additional terms set out in an Acceptance Notice.

- (c) The aggregate principal amount of the Financial Assistance Amounts available under this Bank Recapitalisation Facility shall not exceed the Aggregate Financial Assistance Amount (the "**Aggregate Bank Recapitalisation Facility Amount**").
- (d)
- (i) EFSF may discharge its obligation to make the Financial Assistance Amount available by delivery of EFSF Debt Securities which have an aggregate nominal principal amount which (subject to adjustment for rounding) is equal to the relevant Financial Assistance Amount. Thereafter, and for all purposes of this Agreement, including calculation and payment of interest and any repayment, the amount outstanding shall be determined by reference to the Financial Assistance Amount and shall not be affected by any change in the market value of EFSF Debt Securities.
- (ii) It is acknowledged and agreed between the Parties that the EFSF Debt Securities (the "**EFSF First Tranche Securities**") which will be delivered in discharge of disbursements of the first Tranche shall be pre-issued and retained in reserve by EFSF as described in Recital (10) to the Master Facility Agreement on or prior to 31 July 2012. The Parties further acknowledge and agree that delivery by EFSF of EFSF First Tranche Securities which have an aggregate nominal principal amount which (subject to adjustment for rounding) is equal to the relevant Financial Assistance Amount shall fully discharge EFSF's obligation to make the relevant Financial Assistance Amount available regardless of any change in the market value of the EFSF First Tranche Securities between the date of issuance of such EFSF First Tranche Securities and the date all or any of them are delivered in discharge of the relevant disbursement. Furthermore, for all purposes of this Agreement, including calculation and payment of interest including calculation and payment of interest and any repayment, the amount outstanding shall be determined by reference to the Financial Assistance Amount and shall not be affected by any change in the market value of the EFSF First Tranche Securities.
- (e) The Availability Period in respect of this Bank Recapitalisation Facility shall commence on (and include) the date on which these Facility Specific Terms enter into force in accordance with Clause 3 and shall expire on (and include) 31 December 2013. Any amounts not disbursed under these Facility Specific Terms on or prior to the last day of the Availability Period shall be immediately cancelled.
- (f) The Average Maturity of the Financial Assistance made under this Bank Recapitalisation Facility shall not exceed twelve point five (12.5) years and the maximum maturity of any individual disbursement of Financial Assistance is fifteen (15) years.
- (g) The Beneficiary Member State shall apply all amounts and/or EFSF Debt Securities provided to it under this Bank Recapitalisation Facility in

conformity with the Decision and its obligations under the MoU and this Agreement, in order to finance the acquisition by FROB of Bank Capital Instruments in the financial institutions or AMCs specified in the MoU or, if applicable, in the periodic reports on individual financial institutions or AMCs prepared by the Commission.

3. **ENTRY INTO FORCE AND CONDITIONS PRECEDENT**

This Bank Recapitalisation Facility shall enter into force when the conditions in Clause 3(1) of the Master Facility Agreement are satisfied and when the following additional conditions are satisfied:

- (a) EFSF has received legal opinions satisfactory to it given by [•] of the Beneficiary Member State and counsel to the FROB in respect of these Facility Specific Terms and in the forms set out in Annex 2 (*Forms of Legal Opinions*) of the Master Facility Agreement. Such legal opinions shall be dated not later than the date of the first Request for Funds made under this Bank Recapitalisation Facility; and
- (b) the Guarantors (acting unanimously) have approved these Facility Specific Terms.

4. **REQUESTS, DISBURSEMENTS AND CONDITIONS TO DISBURSEMENTS**

- (a) Subject to the terms of Clause 4(b) of this Schedule 1, Clause 4 of the Master Facility Agreement shall apply to each Request for Funds and each Disbursement under this Loan Facility provided that:
 - (i) in exercising their discretion under Clause 4(3) EWG and EFSF shall take into account all factors they consider relevant including fulfilment of prior actions (if any) they deem appropriate and consideration of a report to be provided by the Commission, in liaison with the ECB and, if appropriate, the relevant European Supervisory Authorities ("**ESAs**"), as the case may be, that:
 - (1) no, or no sufficient private sector solution is feasible in relation to the relevant financial institutions and the Beneficiary Member State does not have adequate financial resources to itself recapitalise such financial institution(s);
 - (2) a recapitalisation financed in part or in whole by EFSF is necessary in the light of the degree of distress of the financial institutions concerned and urgency in providing the support; and
 - (3) the funds available to FROB have been fully utilised by FROB by the time of each disbursement under this Agreement;
 - (ii) the Beneficiary Member State has confirmed that the proposed recapitalisation complies with applicable national state aid rules and legal restrictions;

- (iii) the Commission has assessed and confirmed that the proposed recapitalisation complies with applicable EU State aid rules, it is satisfied with the bank stress tests for the financial institution(s) indicated in the relevant Request for Funds being recapitalised and it has approved the relevant restructuring or resolution plan;
 - (iv) each relevant financial institution which will benefit from a recapitalisation having undertaken to the Beneficiary Member State, FROB, EFSF and the Commission in a legally binding manner to implement the recapitalisation plan applicable to it; and
 - (v) on each Disbursement Date EFSF may make the Financial Assistance available to the Beneficiary Member State by delivering cash or EFSF Debt Securities in an aggregate nominal principal amount which (after any adjustment for rounding) is equal to the Financial Assistance Amount to the securities account of the Beneficiary Member State or its agent, FROB, maintained at the financial institution the details of which shall be advised in writing by Spain or FROB to EFSF at least two (2) Business Days prior to the Disbursement Date. The Issuance Costs shall be paid by EFSF out of the sums retained, where possible, for this purpose, or invoiced separately; any additional costs incurred may be recovered under Clause 6(6) of the Master Facility Agreement.
- (b) In relation to urgent disbursements of Financial Assistance under the Pre-Funded Tranche of EUR 30 billion, a disbursement may be made by EFSF, notwithstanding the fact that the Commission has not provided the confirmations and approvals referred to in Clause 4(a)(iii) of this Schedule 1, provided that:
- (i) on the date when the Beneficiary Member State submits a Request for Funds, the Bank of Spain sends a reasoned opinion to the Commission, with copies to the Chairman of EWG, the President of ECB, the Chief Executive Officer of EFSF. The reasoned opinion will include:
 - (1) a description and explanation of the exact reason, nature and urgency of the need;
 - (2) a reasoned estimate of the volume of this need, including, if applicable, a detailed breakdown bank by bank of the aggregate need;
 - (3) a reasoned opinion of whether, or to what extent, these needs advance recapitalisation measures contained in the MoU (i.e. related to the four banks currently under FROB) or whether, and/or to what extent, they constitute unexpected additional recapitalisation needs;
 - (4) any additional available information and data that is useful to further substantiate, explain or assess this request;

- (5) information about the current and expected cash situation and needs of FROB that justify the volume of the disbursement.
- (ii) upon receipt of the opinion, the Commission will examine the reasoned opinion of the Bank of Spain, obtain the views of ECB regarding the request by the Spanish authorities and shall present a report to the EWG addressing the reason, nature and urgency of the need; and
- (iii) the EWG approves the disbursement of the Financial Assistance requested in the Request for Funds, provided that the other conditions to disbursement set out in the Master Facility Agreement and these Facility Specific Terms are satisfied.

5. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

Clause 5 of the Master Facility Agreement shall apply to this Bank Recapitalisation Facility provided that:

- (a) in the event that a disbursement of Financial Assistance is disbursed directly to FROB (as agent of the Beneficiary Member State) or the Beneficiary Member State uses a disbursement of Financial Assistance to provide financing to FROB, then, during the period when Financial Assistance under this Bank Recapitalisation Facility is outstanding and has not been reimbursed, the Beneficiary Member State shall procure and FROB shall permit EFSF to appoint an observer (nominated with the consent of the Beneficiary Member State and FROB; provided that, in case of any dispute regarding the nomination of an observer, the nomination shall be decided by the Commission) to observe the discussions of the FROB board of directors on agenda items which relate to the financial institutions or AMCs recapitalised or financed with proceeds of Financial Assistance made available under this Bank Recapitalisation Facility; provided that, such observer shall enter into a confidentiality undertaking with FROB in the customary form (if any) required by FROB; and
- (b) the Beneficiary Member State and FROB shall comply with any specific covenants and undertakings set out in each Acceptance Notice issued in relation to the Master Facility Agreement and these Facility Specific Terms.

6. INTEREST, COSTS, FEES AND EXPENSES

Clause 6 of the Master Facility Agreement shall apply to this Bank Recapitalisation Facility.

7. REPAYMENT, EARLY REPAYMENT, MANDATORY REPAYMENT AND CANCELLATION

- (a) Clause 7 of the Master Facility Agreement shall apply to this Bank Recapitalisation Facility
- (b) In addition to the repayment obligations set out in Clause 7 of the Master Facility Agreement, if on 15 July 2014 the Beneficiary Member State or FROB has received an amount in euros or received delivery of EFSF Debt

Securities as Financial Assistance under the Master Facility Agreement and these Facility Specific Terms and such amounts or such EFSF Debt Securities have not at that time been used to subscribe or to pre-subscribe for Bank Capital Instruments in financial institutions or AMCs as contemplated by the MoU then, upon written notice by EFSF, the Beneficiary Member State shall repay the Financial Assistance in a principal amount equal to the sum of (i) such euro amounts and (ii) the aggregate nominal principal face amount of such EFSF Debt Securities (being of the same series as the EFSF Debt Securities used for the relevant disbursement and in case of a partial reimbursement of this Bank Recapitalisation Facility in equal amounts of each series of EFSF Debt Securities used for the disbursement), together with all accrued interest on the reimbursed amount within ten (10) Business Days of such notice. Such reimbursement shall constitute a scheduled repayment and not a voluntary or mandatory pre-payment.

8. PAYMENTS

Clause 8 of the Master Facility Agreement shall apply to this Bank Recapitalisation Facility.

9. EVENTS OF DEFAULT

Clause 9 of the Master Facility Agreement shall apply to this Bank Recapitalisation Facility.

10. OTHER PROVISIONS

Clauses 10 (*Information Undertakings*), 11 (*Undertakings relating to Inspections, Fraud Prevention and Audits*), 12 (*Notices*), 13 (*Guarantee and Indemnity*), 14 (*Miscellaneous*), 15 (*Governing Law and Jurisdiction*) and 17 (*Execution of the Agreement*) of the Master Facility Agreement shall apply to this Bank Recapitalisation Facility.

11. ANNEXES

The Annexes to this Bank Recapitalisation Facility shall constitute an integral part thereof and comprise:

Annex 1: Form of Request for Funds

Annex 2: Form of Acceptance Notice

Annex 3: Form of Confirmation Notice

Executed in Madrid on _____ and in Luxembourg on _____.

EUROPEAN FINANCIAL STABILITY FACILITY

Represented by

Klaus Regling, Chief Executive Officer

The Beneficiary Member State

KINGDOM OF SPAIN

Represented by

[•]

THE BANK OF SPAIN

Represented by

[•], Governor of the Bank of Spain

FONDO DE REESTRUCTURACIÓN ORDENADA BANCARIA

Represented by

[•]

Annex 1
FORM OF REQUEST FOR FUNDS

[on letterhead of the Beneficiary Member State]

By fax followed by registered mail:

European Financial Stability Facility

[]

Attention: []

Tel: []

Fax: []

SWIFT address: []

Copies to:

European Commission

[Insert address]

Fax: [•]

European Central Bank

[Insert address]

Fax: [•]

Bank of Spain

[Insert address]

Fax: [•]

FROB

[Insert address]

Fax: [•]

**Subject: EUR [•] Bank Recapitalisation Facility (the "Bank Recapitalisation Facility")
Request for Funds for the Instalment of EUR [•]**

Dear Sirs,

We refer to the Master Financial Assistance Facility Agreement made between the European Financial Stability Facility ("EFSF") as EFSF, Kingdom of Spain as Beneficiary Member State, the Fondo de Reestructuración Ordenada Bancaria as guarantor and the Bank of Spain signed on [•] as amended and supplemented by the Facility Specific Terms in respect of the EUR [•] Bank Recapitalisation Facility signed on [•] (together, the "**Agreement**"). Terms defined in the Agreement shall have the same meaning herein.

1. We hereby irrevocably request that [an Instalment / a Tranche / a disbursement of Financial Assistance] of the Bank Recapitalisation Facility be disbursed under and in accordance with the Agreement upon the following terms:

- (a) the aggregate of the Financial Assistance Amounts of the Financial Assistance to be made in respect of this Request for Funds is EUR [●][, which may be disbursed in Tranches within the Availability Period];
- (b) the latest of the Disbursement Date(s) of [any Tranche / the Financial Assistance Amount] to be provided under this Request for Funds shall be [_____];
- (c) we acknowledge that the Financial Assistance Amounts [will/may] be made available by delivery of EFSF Debt Securities; and
- (d) [the proceeds of the Financial Assistance shall be used by FROB to subscribe Bank Capital Instruments in the following credit institutions / financial institutions / AMCs in accordance with the terms of the MoU and the Decision as set out in the table below:

Institution	Category of Bank Capital Instruments	Amount (EUR)	Date of Subscription

]¹

- (e) [we confirm that the Commission has authorised the subscription of the above mentioned Bank Capital Instruments by FROB in compliance with the State-Aid regime.]/[in the case of an urgent disbursement under the Pre-Funded Tranche] [we confirm that the Commission and the EWG, both acting in liaison with the ECB, have approved the reasoned and quantified request from the Bank of Spain regarding the disbursement of the Financial Assistance Amounts requested under this Request for Funds prior to the adoption of restructuring decisions by the Commission.]

2. We acknowledge and agree that EFSF may make use of the Diversified Funding Strategy.

3. We acknowledge and agree that the provision of any Financial Assistance made available shall be in accordance with and subject to:

- (a) the issue by EFSF of an Acceptance Notice, our acknowledgement of the terms set out therein and, in due course, the issue by EFSF of a Confirmation Notice;

¹ Sub-paragraph (d) would not be included in a Request for Funds in respect of the Pre-Funded Tranche.

- (b) EFSF being satisfied at all times that it has obtained funds in the international capital or loan markets or from the Liquidity Buffer on terms and conditions that are acceptable to it and which are consistent with the terms set out in this Request for Funds and in the Acceptance Notice, if the funds are to be made available by delivery of cash;
 - (c) the non-occurrence of a Market Disruption Event, if the funds are to be made available by delivery of cash, or an Event of Default; and
 - (d) the conditions precedent to the Bank Recapitalisation Facility being satisfied.
4. We irrevocably undertake to pay any fees, costs or expenses including in particular any Issuance Costs, breakage or termination costs and Cost of Carry incurred in respect of any Funding Instruments or hedging contract which EFSF may have undertaken (including in relation to amounts raised to fund the Liquidity Buffer, Financings and/or Pre-Funding Operations) regardless of whether the provision of the relevant Financial Assistance or any disbursement under the Loan Facility takes place.
5. We confirm that:
- (a) The list of authorised signatories sent on behalf of the Beneficiary Member State by the Minister of Finance on [____] remains valid and applicable;
 - (b) No event has occurred that would render incorrect any statement made in the legal opinions dated [____] issued by the Legal Advisor to the State at the Ministry of Finance of the Beneficiary Member State and counsel to FROB; and
 - (c) No event or circumstance has occurred which would permit EFSF to declare that an Event of Default has occurred.
6. The Financial Assistance comprising EFSF Debt Services shall be made available by delivering such EFSF Securities to the securities account of FROB designated for the purposes of the Bank Recapitalisation Facility.

Yours faithfully,

KINGDOM OF SPAIN

Represented by: [●]

Annex 2
FORM OF ACCEPTANCE NOTICE

EUROPEAN FINANCIAL STABILITY FACILITY

By fax followed by registered mail:

[Insert Beneficiary Member State's contact details]

Copies to:

European Commission

[Insert address]

Fax: [●]

European Central Bank

[Insert address]

Fax: [●]

Bank of Spain

[Insert address]

Fax: [●]

FROB

[Insert address]

Fax: [●]

**Subject: EUR [●] Bank Recapitalisation Facility (the "Bank Recapitalisation Facility")
Acceptance Notice in relation to the Request for Funds for EUR [●] for the [●] Instalment / Tranche / Disbursement dated [●]**

Dear Sirs,

We refer to: (i) the Bank Recapitalisation Facility forming part of the Master Financial Assistance Facility Agreement between the European Financial Stability Facility ("EFSF") as EFSF, Kingdom of Spain as Beneficiary Member State, the Fondo de Reestructuración Ordenada Bancaria as guarantor and the Bank of Spain signed on *[date]* as amended and supplemented by the Facility Specific Terms in respect of the EUR [●] Bank Recapitalisation Facility signed on [●] (together, the "**Agreement**"); and (ii) the Request for Funds notified to EFSF by the Beneficiary Member State on *[date]* (the "**Request for Funds**"). Terms defined in the Agreement shall have the same meaning herein.

1. We hereby confirm the provisional financial terms applicable to the *[Instalment]/[Tranche]/[Financial Assistance]* requested by the Beneficiary Member State in the above Request for Funds:

- (a) The principal amount of Financial Assistance to be provided under the Request for Funds is up to EUR [____]; and
 - (b) The latest of the Disbursement Date(s) of all Financial Assistance to be made under this Request for Funds shall be on or prior to [_____].
- 2. We acknowledge that the proceeds of the [Instalment]/[Tranche]/[Financial Assistance] will be used to finance the recapitalisation of the institutions specified in the Request for Funds under the conditions set out in this Acceptance Notice.
- 3. EFSF intends to launch or enter into one or several Funding Instruments in order to fund this [Instalment]/[Tranche]/[Financial Assistance] by issuing EFSF Debt Securities (as defined below), which shall not be part of EFSF pools of Funding Instruments under its Diversified Funding Strategy. Unless the EFSF Debt Securities are re-delivered to EFSF before the maturity of such EFSF Notes in accordance with the Agreement and this Acceptance Notice, EFSF may re-finance the EFSF Debt Securities at maturity by replacing the existing EFSF Debt Securities with new EFSF Debt Securities or by way of Pre-Funding Operations, or will seek to re-finance such EFSF Debt Securities on a pooled basis in relation to the pool or short term Funding Instruments and a pool of long term Funding Instruments, and in the latter case the EFSF Cost of Funding, costs and fees will be allocated to the Beneficiary Member State in accordance with the Diversified Funding Strategy and the methodology for calculation of the EFSF Cost of Funding and the allocation of Funding Instruments agreed by the EWG and the board of directors of EFSF.
- 4. By signing the acknowledgement of this Acceptance Notice, the Beneficiary Member State expressly acknowledges and agrees that EFSF may, at its discretion, enter into any Funding Instrument that it considers appropriate in accordance with the Diversified Funding Strategy. This authorisation to enter into Funding Instruments and the acceptance by the Beneficiary Member State of EFSF's right, at its discretion, to enter into any Funding Instrument that it considers appropriate in accordance with the Diversified Funding Strategy is irrevocable until the final maturity of the latest Tranche under this Instalment.
- 5. This Acceptance Notice is subject to EFSF having obtained funds in the international capital or loan markets or from the Liquidity Buffer on terms and conditions that are acceptable to it and which are consistent with the terms indicated in this Acceptance Notice and the non-occurrence of a Market Disruption Event or an Event of Default. If EFSF cannot obtain these terms or is subject to a Market Disruption Event then EFSF shall not be under any obligation to deliver the funds by way of provision of Financial Assistance in relation to the Instalment and shall notify the Beneficiary Member State of such circumstances in writing and as from the date of receipt of such notice the Beneficiary Member State is no longer bound by the Request for Funds for the provision of any further Financial Assistance in respect of such Instalment.
- 6. The disbursement of the Financial Assistance is subject to the conditions precedent under the Agreement being satisfied.
- 7. In consideration of EFSF agreeing to issue this Acceptance Notice and to provide the [Instalment]/[Tranche]/[Financial Assistance] requested in the Request for Funds it is agreed and accepted as follows:

- (a) EFSF shall discharge its obligation to provide the Financial Assistance requested in the Request for Funds by delivering to FROB (on behalf of the Kingdom of Spain) EUR [●] of EFSF Debt Securities [Series [●]] in an aggregate nominal principal amount which (subject to any adjustment for rounding) is equal to the aggregate principal amount requested in the Request for Funds and for all the purposes of the Agreement, including calculation of interest and repayment, the amount outstanding in respect of the Financial Assistance requested in the Request for Funds shall be determined by reference to the aggregate principal amount of such Financial Assistance and shall not be affected by any change in the market value of the EFSF Debt Securities;
- (b) any principal amount outstanding in respect of the Financial Assistance which is due for repayment in accordance with the Agreement (as supplemented by this Acceptance Notice), including all repayments due under Clause 7(8) of the Master Agreement and clause 7 of Schedule 1 thereto, may be discharged by redelivery by (or on behalf of) the Kingdom of Spain to EFSF of EFSF Debt Securities of the Series referred to in paragraph 7(a)(above) in an aggregate principal nominal amount equal to the principal amount due to be repaid (and if partial repayment, EFSF Debt Securities shall be redelivered in equal amounts of each Series). The parties acknowledge, accept and agree that, due to the disbursement of the [Instalment]/[Tranche]/[Financial Assistance] by delivery of EFSF Debt Securities, repayments by the Beneficiary Member State to EFSF by redelivery of EFSF Debt Securities should not give rise to obligations to repay or pre-pay under other financing arrangements, including financing which may in the future be granted to the Beneficiary Member State by the IMF or other facilities provided by the Financial Support Providers, as envisaged under Clause 7(6) of the Master Agreement; for the avoidance of doubt, the provision of this paragraph if for the benefit of EFSF and any repayments that may be due by the Beneficiary Member State to other creditors, shall not be discharged by delivery or disposal or otherwise of EFSF Debt Securities and the amount of EFSF Debt Securities to be re-delivered to EFSF pursuant to this paragraph shall not be reduced by the amount of other repayment or pre-payment obligations of the Beneficiary Member State to other creditors. Notwithstanding the above and the reasonable efforts of FROB to enforce its respective rights, in the event that FROB is unable to acquire all EFSF Debt Securities subject to a call option or other similar arrangements, then FROB shall assign to EFSF the right to exercise such call option or other similar arrangements to the extent it itself is unable to do so and thereupon as to the aggregate notional amount of the EFSF Debt Securities underlying the assigned rights the Beneficiary Member State shall not be required to make repayment according to the Agreement and this Acceptance Notice by redelivery of EFSF Debt Securities) provided that such assignment shall not release the Beneficiary Member State to reimburse the Financial Assistance in cash if the financial institution or AMC fails to redeliver the EFSF Debt Securities under the call option within [thirty (30)] Business Days. For the avoidance of doubt, the Beneficiary Member State shall remain liable for the amount of the Bank Recapitalisation Facility corresponding to the aggregate principal nominal amount of the EFSF Debt Securities underlying the assigned rights following an assignment to EFSF in accordance with this sub-paragraph, to the extent EFSF does not

receive EFSF Debt Securities upon the exercise of call options or other similar arrangements duly assigned by FROB to EFSF. The Beneficiary Member State shall reimburse EFSF any costs EFSF would incur to enforce the call options or the other arrangements duly assigned by FROB or to otherwise buyback the EFSF Debt Securities;

- (c) the Beneficiary Member State shall use the EFSF Debt Securities or cash disbursements to provide financing to FROB for the purpose of the re-capitalisation, resolution, and/or the participation in liability management exercises of credit institutions and FROB shall use such EFSF Debt Securities exclusively as the consideration for the subscription of or pre-subscription of Bank Capital Instruments in such credit institutions in accordance with the MoU or as security for such other arrangements as are approved in advance by EFSF;
- (d) at the written request of the Beneficiary Member State EFSF may discharge its obligations to make disbursements by the payment of Financial Assistance Amounts or delivery of the requisite amount of EFSF Debt Securities to FROB as agent of the Beneficiary Member State;
- (e) FROB shall retain all amounts or EFSF Debt Securities distributed directly or indirectly to FROB under the Bank Recapitalisation Facility and not transfer such amounts or EFSF Debt Securities to a financial institution until EFSF and the Commission (in liaison with the ECB) consent and approve such transfer on the basis of a report by the Commission on the recapitalisation programme for the relevant financial institution and on the nature and terms of the Bank Recapitalisation Instruments of such financial institution which will be acquired;
- (f) the Kingdom of Spain and FROB shall procure that the credit institutions which are re-capitalised shall enter into legally binding legal undertakings (i) with a view to complying with the requirements with respect to the bank recapitalisation scheme identified by the Commission in coordination with the ECB, to use such EFSF Debt Securities solely for the purpose of obtaining liquidity through repurchase transactions with market counterparties (ensuring the right of repurchasing the same securities or securities of the same series and nominal amount at the term of the repurchase transaction) and/or for the purpose of obtaining liquidity from the ECB or Bank of Spain as part of the Eurosystem or as security for such other arrangements as are approved in advance by EFSF, (ii) to return or sell such EFSF Debt Securities to FROB or the Kingdom of Spain pursuant to call options or other similar arrangements upon any sale by FROB of all or part of the Bank Capital Instruments which FROB holds in the relevant credit institutions (unless the credit institution no longer holds or cannot obtain re-delivery of such EFSF as a consequence of transactions entered into which comply with the terms of sub-paragraph 7(c) of this Acceptance Notice) and (iii) such undertakings shall be in terms such that they are directly enforceable by EFSF as a third party beneficiary of such undertakings;
- (g) the Kingdom of Spain shall ensure that (i) the consent of the Commission in consultation with the ECB is obtained before EFSF Debt Securities are used to

capitalise a AMC or to cover bank resolution costs; (ii) prior to using EFSF Debt Securities to capitalise each AMC, the Kingdom of Spain, FROB and the relevant AMC shall enter into legally binding legal undertakings on terms approved by the ECB, the Bank of Spain and EFSF (1) with a view to complying with the requirements with respect to the bank recapitalisation scheme identified by the Commission in coordination with the ECB, to use such EFSF Debt Securities for the purpose of obtaining liquidity only through repurchase transactions with market counterparties (ensuring the right of repurchasing the same securities) and/or for the purpose of obtaining liquidity from the ECB or Bank of Spain as part of the Eurosystem, (2) to return or sell such EFSF Debt Securities to FROB or the Kingdom of Spain pursuant to call options or other similar arrangements upon any sale by FROB of all or part of all the capital instruments which FROB holds in the relevant credit institutions or AMCs unless the credit institution no longer holds or cannot obtain re-delivery of such EFSF as a third party beneficiary of such undertakings; and (iii) the consent of EFSF is obtained prior to using any EFSF Debt Securities to cover bank resolution costs and such consent may include conditions including as to the reporting and audit of such bank resolution costs;

- (h) FROB shall, upon request of EFSF and, in accordance with Clause 5(4) of the Agreement, grant valid first ranking security over all their rights under the undertakings they receive from the credit institutions as described in subparagraph 7(f) and (g) above as well as in any Bank Capital Instruments which FROB acquires in the relevant Spanish credit institutions or AMCs;
 - (i) any EFSF Debt Securities which are not used by FROB to subscribe for capital instruments in credit institutions in accordance with the MoU on or by [●] shall be re-delivered to EFSF and this shall result in a reduction in the outstanding principal amount of the Financial Assistance Amount by an amount equal to the nominal principal amount of such EFSF Debt Securities. For the avoidance of doubt, the Financial Assistance Amount corresponding to the reduction of the outstanding principal nominal amount of the Financial Assistance Amount may not be re-borrowed, unless otherwise agreed with EFSF (with the approval of the EWG);
 - (j) in the event of any early repayment under the Agreement and this Acceptance Notice in cash, the Beneficiary Member State shall pay on the date of such early repayment all accrued interest and all other amounts due in respect of the amount repaid and shall reimburse all costs, expenses, fees and Loss of Interest incurred and/or payable by EFSF as a consequence of the early repayment;
 - (k) the Guarantee set out in clause 13 of the Agreement shall apply to the obligations of the Kingdom of Spain under and in connection with the Financial Assistance provided as described in the Acceptance Notice (including the terms of this Acceptance Notice).
8. Clause 15 of the Agreement shall apply to this Acceptance Notice as if set out expressly herein.

Please acknowledge your acceptance and agreement to the terms of this Acceptance Notice by signing where indicated below.

Yours faithfully,

EUROPEAN FINANCIAL STABILITY FACILITY

The terms of this Acceptance Notice are hereby acknowledged, agreed and accepted by:

KINGDOM OF SPAIN

Represented by: [●]

FONDO DE REESTRUCTURACIÓN BANCARIA ORDENADA

Represented by: [●]

BANK OF SPAIN

Represented by: [●]

Annex 3
FORM OF CONFIRMATION NOTICE
EUROPEAN FINANCIAL STABILITY FACILITY

By fax followed by registered mail:

Ministry of Finance
[*Street address*]
[*City*]
[*Country*]

Attn: Mr/Ms [●]

Copies to:

European Commission
[*Insert address*]
Fax: [●]

European Central Bank
[*Insert address*]
Fax: [●]

Bank of Spain
[*Insert address*]
Fax: [●]

FROB
[*Insert address*]
Fax: [●]

Subject: EUR [●] Bank Recapitalisation Facility (the " Bank Recapitalisation Facility")
Disbursement of the Financial Assistance of EUR [●] under the Instalment of EUR [●]

Dear Sirs,

We refer to: (i) the Master Financial Assistance Facility Agreement between the European Financial Stability Facility ("**EFSF**") as EFSF, Kingdom of Spain as Beneficiary Member State, Fondo de Reestructuración Ordenada Bancaria as guarantor and the Bank of Spain signed on [*date*] as amended and supplemented by the Facility Specific Terms in respect of the EUR [●] Loan Facility signed on [●] (together, the "**Agreement**"); and (ii) the Request for Funds notified to EFSF by the Beneficiary Member State on [*date*]. Terms defined in the Agreement shall have the same meaning herein.

1. We hereby confirm the definitive financial terms applicable to the Financial Assistance requested by the Beneficiary Member State in the Request for Funds for the above Instalment:

- (a) The Financial Assistance Amount shall be EUR [____].
- (b) The [principal amount of the Tranche/Financial Assistance Amount] is equal to EUR [____].
- (c) The Net Disbursement Amount of the Financial Assistance to be EUR [____].
- (d) The Disbursement Date in relation to the [Tranche/Financial Assistance Amount] shall be: [____].
- (e) The up-front portion of the Service Fee is EUR [____] which is to be deducted up-front.

2. We hereby confirm the definitive financial terms applicable to [the portion no. [●]of] the Tranche:

- (a) The Interest Rate on such portion shall be the EFSF Cost of Funding (which shall include 0.5 basis points per annum in respect of the annual Service Fee from (and including) the first (1st) anniversary of the Disbursement Date of such Financial Assistance.
- (b) The Term of the Financial Assistance shall be [●] years.
- (c) The scheduled interest and principal repayments in relation to the Financial Assistance shall be as set out in the following amortisation table:

Payment Date	Principal Repayment²	Interest	Total	Outstanding Financial Assistance Amount

- (d) Negative Carry as at the date of this Confirmation Notice is equal to EUR [●];³ and
- (e) Other costs, commissions, fees and expenses incurred are equal to EUR [●].⁴

3. The disbursement of the Financial Assistance is subject to the conditions precedent under the Agreement being satisfied.

² Principal repayment in bullet loans will only apply to the last portion of a Tranche, unless a Market Disruption Event occurs and Clause 7(7) applies.

³ In the event of a Pre-Funding Operation.

⁴ In the event that Financial Assistance is provided in the form of cash.

Please note that EFSF and/or the ECB may deem it necessary to contact directly the Bank of Spain on the further modalities in relation to the disbursement transfer.

Yours faithfully,

EUROPEAN FINANCIAL STABILITY FACILITY