

FINANCIAL ASSISTANCE FACILITY AGREEMENT

between

EUROPEAN STABILITY MECHANISM

KINGDOM OF SPAIN

as the Beneficiary Member State

THE BANK OF SPAIN

as Central Bank

and

FONDO DE REESTRUCTURACIÓN ORDENADA BANCARIA

as Guarantor

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THIS FINANCIAL ASSISTANCE FACILITY AGREEMENT is made by and between:

- (1) **EUROPEAN STABILITY MECHANISM**, an intergovernmental organisation established by the Treaty Establishing the European Stability Mechanism entered into between the euro area Member States, having offices at 43, avenue John F. Kennedy, L-1855 Luxembourg, represented by Mr. Klaus Regling, Managing Director ("**ESM**");
- (2) **KINGDOM OF SPAIN**, represented by the Minister of Economy and Competitiveness as the beneficiary member state (the "**Beneficiary Member State or Spain**");
- (3) **THE BANK OF SPAIN**, represented by the Governor of the Bank of Spain (the "**Central Bank**"); and
- (4) **FONDO DE REESTRUCTURACIÓN ORDENADA BANCARIA**, created pursuant to the Fund Laws, represented by the President of the Fondo de Reestructuración Ordenada Bancaria, as Guarantor and agent to the Beneficiary Member State in the context of this Facility (the "**Fund**")

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

PREAMBLE

WHEREAS

- (A) ESM was established by the Treaty Establishing the European Stability Mechanism entered into between the euro area Member States (the "**ESM Treaty**") for the purpose of mobilising funding and providing stability support for the benefit of ESM members which are experiencing, or are threatened by, severe financial problems, if indispensable to safeguard the financial stability of the euro area as a whole and of its member states.
- (B) ESM may grant financial assistance under financial assistance facility agreements by way of loan disbursements under precautionary conditioned credit lines or enhanced conditions credit lines, loans to ESM members under macro-economic adjustment programmes, facilities to finance the recapitalisation of financial institutions in an ESM member state, facilities for the purchases of bonds in the primary or secondary markets, all subject to strict conditionality appropriate to the financial instrument(s) chosen (each such loan or disbursement under such a financial assistance facility agreement being a "**Financial Assistance**").
- (C) ESM shall finance the making of Financial Assistance by issuing or entering into bonds, notes, commercial paper, debt securities or other financing arrangements ("**Funding Instruments**") in order to fund Financial Assistance on a pooled basis or on a dedicated matched-funding basis or out of the Liquidity Buffer (as defined in the General Terms), as appropriate. The Funding Instruments shall be issued or entered into either on a stand-alone basis or pursuant to one or more debt issuance programmes (each an "**ESM Debt Issuance Programme**") in accordance with the ESM Borrowing Guidelines (as defined in the General Terms).
- (D) 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 would be granted in accordance with the EFSF Guideline on Recapitalisation of Financial Institutions via loans to non-programme countries.

- (E) 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 (the "**Statement of the Heads of State or Government**"), 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 would make such amendments as are necessary to take into account the institutional and procedural differences between EFSF and ESM.
- (F) The Statement of the Heads of State or Government further 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.
- (G) On 23 July 2012, a Memorandum of Understanding 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.
- (H) On 24 July 2012, EFSF, Spain, the Fund and the Central Bank entered into a Master Financial Assistance Facility Agreement and a Bank Recapitalisation Facility: Facility Specific Terms (together the "**EFSF FFA**").
- (I) On 28 November 2012, the Board of Governors decided, pursuant to Article 40 of the ESM Treaty that the EFSF commitment to provide financial assistance to Spain in the form of a bank re-capitalisation facility shall be assumed by ESM in so far as such commitments relate to undisbursed and unfounded portions thereof and the Board of Governors adopted the terms of this ESM financial assistance facility agreement, including its financial terms and conditions and the choice of instruments, which sets out the terms and conditions on which ESM will provide financial assistance to Spain upon and with effect from such assumption of obligations and acquisition of rights. Upon such assumption by ESM of the EFSF commitment, the acquisition by ESM of EFSF's rights and the assumption by ESM of EFSF's other obligations under the EFSF FFA and the entry into force of this Agreement the EFSF and Spain, the Fund and the Central Bank shall be released from any future commitments or obligations under the EFSF FFA with effect from the time when the replacement commitments and obligations are assumed by ESM and the other parties to the ESM FFA. The Board of Directors of ESM has approved the modalities of the acquisition and assumption of rights and obligations and this Agreement and the board of directors of EFSF has approved the modalities for the transfer.
- (J) The financial assistance to be provided to the Beneficiary Member State under this Agreement, including the Facility Specific Terms (as defined below) shall be

dependent upon compliance by the Beneficiary Member State with the measures set out in the Memorandum of Understanding.

- (K) The release of Financial Assistance under this Agreement, including the Facilities (as defined below), shall, unless otherwise specified, be conditional upon the Board of Directors deciding, on the basis of reports from the European Commission (in liaison with the ECB) in accordance with Article 13(7) of the ESM Treaty, that the Beneficiary Member State has complied with the conditionality attached to this Agreement, including compliance with the measures set out in the MoU.
- (L) It is acknowledged and agreed that the Central Bank is a party to this Agreement for the purpose of receiving disbursements on behalf of the Beneficiary Member State.
- (M) 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.

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

1. DEFINITIONS AND INTERPRETATION

1.1 Subject to Clauses 1.2 to 1.5 (below), Clause 2 (*Definitions and Interpretation*) of the General Terms shall apply to this Financial Assistance Facility Agreement.

1.2 In this Financial Assistance Facility Agreement the following capitalised terms shall have the following meanings:

"Aggregate Financial Institution Recapitalisation Facility Amount" means EUR 100,000,000,000.

"Aggregate Financial Assistance Amount" means EUR 100,000,000,000.

"Applicable Facilities" means the Facility or Facilities specified in Clause 2.2 of this Financial Assistance Facility Agreement.

"Availability Period" means in relation to each Facility the period commencing on and including the date when that Facility enters into force and ending on (and including) the relevant Availability Period Termination Date.

"Availability Period Termination Date" means in relation to each Facility the date specified in relation to that Facility below:

<i>Facility</i>	<i>Availability Period Termination Date</i>
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"Financial Institution Recapitalisation Facility"	31 December 2013
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"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.

"Designated Euro Account" means for any Disbursement Date the euro account of the Beneficiary Member State with the Central Bank having initially the following account details: BIC ESPBESMMFFA – Payments module account in TARGET2 – Banco de España (in the case of Financial Assistance made available in cash) and BIC ESPBESM1AMF – Banco de España. FROB. FFA Account number 9032 in Iberclear (in the case of Financial Assistance made available in ESM Debt Securities); provided that the Designated Euro Account may be temporarily or permanently changed by written notice by the Central Bank to ESM and the ECB advising of such change (with a copy addressed to the Beneficiary Member State) at the latest two (2) Business Days prior to the Disbursement Date.

"Facility Specific Terms" means the standard facility terms which apply to a particular category of facility as set out in the Standard ESM Facility Specific Terms signed by the Parties for the purpose of authentication on the date hereof.

"Fund 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).

"General Terms" means the General Terms for ESM Financial Assistance Facility Agreements signed by the Parties for the purpose of authentication on the date hereof.

"Legal Officer" means the Attorney General of the Beneficiary Member State.

"Maximum Average Maturity" means in relation to each Facility the Maximum Average Maturity specified for such Facility below:

<i>Facility</i>	<i>Maximum Average Maturity</i>
Financial Institution Recapitalisation Facility	Twelve point five (12.5) years

"Maximum Maturity" means in relation to each Facility the Maximum Maturity specified for such Facility below:

<i>Facility</i>	<i>Maximum Maturity</i>
Financial Institution Recapitalisation Facility	Fifteen (15) years

"Minimum Cancellation Amount" means EUR 100,000,000.

"Minimum Voluntary Prepayment Amount" means EUR 100,000,000.

"MoU" means the Memorandum of Understanding (as the same may be amended or supplemented from time to time) entered into between the Commission, the Beneficiary Member State and The Bank of Spain on 23 July 2012.

- 1.3 The General Terms and, in respect of each Facility referred to in Clause 2.2 of this Financial Assistance Facility Agreement, the relevant Facility Specific Terms shall be incorporated into this Financial Assistance Facility Agreement subject to any

variation, supplement or replacement of (a) the General Terms set out in Clause 3.1 of this Financial Assistance Facility Agreement or (b) the relevant Facility Specific Terms set out in Clause 3.2 of this Financial Assistance Facility Agreement.

- 1.4 Clause 1.2 of the General Terms and Clause 4 of the Introductory Provisions to the Facility Specific Terms shall apply in the event of any inconsistency or conflict between this Financial Assistance Facility Agreement, the General Terms and the Facility Specific Terms.
- 1.5 If the Board of Directors of ESM adopts new General Terms or Facility Specific Terms or adopts any amendments to the General Terms or Facility Specific Terms, these shall not be incorporated automatically into this Financial Assistance Facility Agreement. If ESM and each of the Parties to this Financial Assistance Facility Agreement intend to incorporate into this Financial Assistance Facility Agreement the new or amended General Terms or Facility Specific Terms, this shall be effected by an amendment in writing to this Financial Assistance Facility Agreement entered into pursuant to Clause 4 of this Financial Assistance Facility Agreement (following the receipt of all approvals required under the ESM Treaty to authorise such amendment).

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

- 2.1 ESM makes available to the Beneficiary Member State under this Financial Assistance Facility Agreement a financial assistance facility (the "**Financial Assistance Facility**") in the Aggregate Financial Assistance Amount subject to the terms and conditions of the MoU, the General Terms and the relevant Facility Specific Terms. The Financial Assistance Facility may be made available by ESM to the Beneficiary Member State by way of Financial Assistance. The aggregate principal amounts outstanding of the Financial Assistance under all Facilities shall not at any time exceed the Aggregate Financial Assistance Amount.
- 2.2 The Financial Assistance Facility may be provided in the form of the following specific facility (the "**Facility**") namely, the financial institution recapitalisation facility (the "**Financial Institution Recapitalisation Facility**") having an Aggregate Financial Institution Recapitalisation Facility Amount of EUR 100,000,000,000 such facility being on the terms and subject to the conditions specified in the Facility Specific Terms entitled "**Financial Institution Recapitalisation Facility: Facility Specific Terms**".
- 2.3 ESM shall not be authorised to provide any Financial Assistance under a Facility other than in accordance with and upon the terms of the Agreement. The Beneficiary Member State shall not be under any obligation to make a Request for Funds under a Facility or to acknowledge any Acceptance Notice.
- 2.4 The Preamble and the Schedules to each document which comprise part of the Agreement do and shall hereafter form an integral part of the Agreement.

3. **VARIATIONS, SUPPLEMENTS OR REPLACEMENTS TO THE GENERAL TERMS AND/OR TO FACILITY SPECIFIC TERMS**

- 3.1 The following variations, supplements or replacements shall apply in relation to the General Terms:

In relation to the General Terms:

- (a) In relation to the definition of "Permitted Encumbrances" one additional subparagraph shall be added:
 - "(xi) 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."
- (b) In Clauses 6.2.13 and 6.4 the words "provided and to the extent that the grant of such security would not contravene applicable laws or undertakings" shall be added at the end of such Clauses.
- (c) In Clause 6.2.13 the phrase "the national financial institution recapitalisation fund (if any)" shall be deleted and replaced by the words "the Fund".
- (d) In Clause 6.6, the words "provided and to the extent that the grant of such security would not contravene applicable laws or undertakings" shall be added at the end of the first sentence.
- (e) Clause 8.8.3 of the General Terms shall not be applicable.
- (f) In Clause 8.8.4, the phrase "or under any bond or loan owed to any other creditor" shall be added prior to the words "ESM acknowledges and agrees".
- (g) In Clause 8.8.4 the phrase "such that the aggregate amount to be repaid by the Beneficiary Member State together with the consequent amounts to be repaid by the Beneficiary to the IMF 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 under Clause 8.8.2 (and provided that in using the methodology in Clause 8.7 any loans or bonds owed to other creditors in respect of which a mandatory prepayment is triggered shall be taken into account)" shall be added at the end of the penultimate sentence.
- (h) In Clause 10 (Events of Default):
 - (i) the phrase "if applicable", shall be added at the beginning of Clause 10.1.7; and
 - (ii) A new Clause 10.4 shall be added:
 - "10.4 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, ESM 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 10.1.5 to 10.1.9, the aggregate amount of such Relevant Indebtedness that is in default or is accelerated."

3.2 The following variations, supplements or replacements shall apply in relation to the Facility Specific Terms specified below:

In relation to the Financial Institution Recapitalisation Facility: Facility Specific Terms:

- (a) Clause 3.2 of the Facility Specific Terms shall not apply and shall be replaced by the following:

"following completion of the procedures in Article 40 of the ESM Treaty the Board of Governors has approved the assumption of the obligations under the Agreement by ESM and the Board of Directors has approved the terms of the Agreement;"

- (b) In relation to Clause 5 of the Facility Specific Terms the following shall be added:

"5.3 the obligations of the Beneficiary Member State in respect of the Financial Institution Recapitalisation Facility 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";

In addition, the Beneficiary Member State and the Fund undertake and represent that the obligations of the Fund in respect of the Financial Institution Recapitalisation Facility will rank *pari passu* with all other present and future unsecured and unsubordinated loans and obligations of the Fund arising from its present or future Relevant Indebtedness".

- (c) In Clause 5.1 of the Facility Specific Terms the words "(nominated with the consent of the Beneficiary Member State and the Fund; provided that, in the case of any dispute regarding the nomination of an observer, the nomination shall be decided by the Commission) shall be added after the words "to appoint an observer".

- (d) In Clause 7.2 of the Facility Specific Terms the words "at the end of the Availability Period or such earlier date specified in the Financial Assistance Facility Agreement" shall be deleted and replaced by the words" on 15 July 2014."

4. ENTRY INTO FORCE OF AMENDMENTS

Any term of this Financial Assistance Facility Agreement may be amended or waived only by an agreement in writing signed by ESM (following the receipt of all approvals required under the ESM Treaty to authorise such amendment), the Beneficiary Member State and each of the other Parties hereto. Following its signature by all Parties, the entry into force of any amendment to this Financial Agreement which adds a new Facility and makes additional or replacement Facility Specific Terms applicable shall be subject to the receipt by ESM of the legal opinion described in Clause 4.1 of the General Terms in relation to the amendment of this Financial

Assistance Facility Agreement and incorporation of such additional or replacement Facility Specific Terms.

5. EXECUTION OF THE AGREEMENT

This Agreement and its relevant Schedules (if applicable) shall be executed by each Party in four (4) originals in the English language, each of which shall constitute an original instrument.

6. SCHEDULES

The Schedule(s) to this Agreement shall constitute an integral part hereof and as of the date of this Agreement comprise:

Schedule 1: List of Contacts

Executed in Madrid on ____ November 2012 and in Luxembourg on ____ November 2012

EUROPEAN STABILITY MECHANISM

REPRESENTED BY KLAUS REGLING, MANAGING DIRECTOR

KINGDOM OF SPAIN

REPRESENTED BY LUIS DE GUINDOS, THE MINISTER OF ECONOMY AND COMPETITIVENESS

THE BANK OF SPAIN

REPRESENTED BY LUIS MARIA LINDE, THE GOVERNOR OF THE BANK OF SPAIN

FONDO DE REESTRUCTURACIÓN ORDENADA BANCARIA

REPRESENTED BY FERNANDO RESTOY, THE PRESIDENT OF THE FONDO DE REESTRUCTURACIÓN ORDENADA BANCARIA

Schedule 1
List of Contacts¹

¹ This page is left intentionally blank for publication purposes