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INTRODUCTORY PROVISIONS

1. Each Financial Assistance Facility Agreement entered into by ESM shall specify which of the Facility Specific Terms shall be applicable to such Financial Assistance Facility Agreement and shall form an integral part of the Agreement.
2. The applicable Facility Specific Terms shall vary, supplement or replace the terms and conditions set out in the General Terms.
3. The applicable Facility Specific Terms may be varied, supplemented or replaced by specific terms and conditions which are set out in the Financial Assistance Facility Agreement.
4. In case of any inconsistency or conflict:
 - (a) the terms and conditions set out in a Financial Assistance Facility Agreement shall prevail over the terms and conditions set out in the General Terms and any applicable Facility Specific Terms; and
 - (b) the terms and conditions set out in any applicable Facility Specific Terms shall prevail over the terms and conditions set out in the General Terms.
5. From time to time each Financial Assistance Facility Agreement may be amended to add additional Facilities or to cancel or to vary existing Facilities and accordingly to up-date which Facility Specific Terms and other terms and conditions apply to such Financial Assistance Facility Agreement and each Facility.
6. If the Board of Directors of ESM adopts new Facility Specific Terms or adopts any amendments to these terms these shall not be incorporated automatically into existing Financial Assistance Facility Agreements. If ESM and each of the Parties to the Financial Assistance Facility Agreement intend to incorporate into an existing Financial Assistance Facility Agreement the new or amended Facility Specific Terms this shall be effected by an amendment in writing to the relevant Financial Assistance Facility Agreement entered into pursuant to Clause 4 of the Financial Assistance Facility Agreement (following the receipt of all approvals required under the ESM Treaty to authorise such amendment).

Section 1

Loan Facility: Facility Specific Terms

1. Definitions and Interpretation

Clause 2 (*Definitions and Interpretation*) of the General Terms shall apply to this Loan Facility.

2. The Loan Facility

- 2.1 This Loan Facility is subject to the terms and conditions of the General Terms as varied, supplemented or replaced by these Facility Specific Terms.
- 2.2 The aggregate principal amount of the Financial Assistance Amounts available under this Loan Facility shall not exceed the Aggregate Loan Facility Amount.
- 2.3 The Availability Period in respect of this Loan Facility shall commence on (and include) the date on which these Facility Specific Terms enter into force in accordance with Clause 3 (Entry into force and Conditions Precedent) of these Facility Specific Terms and shall expire on (and include) the date specified for that purpose in the Financial Assistance Facility Agreement.
- 2.4 The Average Maturity of the Financial Assistance made under this Loan Facility shall not exceed the Maximum Average Maturity specified for this Loan Facility.

3. Entry into force and Conditions Precedent

This Loan Facility shall enter into force when the conditions in Clause 4.1 of the General Terms are satisfied and when the following additional conditions are satisfied:

- 3.1 ESM has received a legal opinion satisfactory to it given by the Legal Officer of the Beneficiary Member State in respect of these Facility Specific Terms and in the form set out in Part 1 of Schedule 2 (*Form of Legal Opinion*) of the General Terms. Such legal opinion shall be dated not later than the date of the first Request for Funds made under this Loan Facility;
- 3.2 following completion of the procedures in Articles 13(1) to (4) of the ESM Treaty, the Board of Directors has approved these Facility Specific Terms and any provisions relating thereto in the Financial Assistance Facility Agreement; and
- 3.3 the Financial Assistance Facility Agreement states that these Facility Specific Terms are applicable.

4. Requests, Disbursements and Conditions to Disbursements

Clause 5 (*Requests, Disbursements and Conditions to Disbursements*) of the General Terms shall apply to this Loan Facility.

5. Representations, Warranties and Undertakings

Clause 6 (*Representations, Warranties and Undertakings*) of the General Terms shall apply to this Loan Facility.

6. Interest, Costs, Fees and Expenses

Clause 7 (*Interest, Costs, Fees and Expenses*) of the General Terms shall apply to this Loan Facility.

7. Repayment, Early Repayment, Mandatory Repayment and Cancellation

Clause 8 (*Repayment, Early Repayment, Mandatory Repayment and Cancellation*) of the General Terms shall apply to this Loan Facility.

8. Payments

Clause 9 (*Payments*) of the General Terms shall apply to this Loan Facility.

9. Events of Default

Clause 10 (*Events of Default*) of the General Terms shall apply to this Loan Facility.

10. Other Provisions

Clauses 11 (*Information Undertakings*), 12 (*Undertakings relating to Inspections, Fraud Prevention and Audits*), 13 (*Notices*), 15 (*Miscellaneous*) and 16 (*Governing Law and Jurisdiction*) of the General Terms shall apply to this Loan Facility.

Section 2

**Precautionary Conditioned Credit Line:
Facility Specific Terms**

1. Definitions and Interpretation

Clause 2 (*Definitions and Interpretation*) of the General Terms shall apply to this PCCL Facility.

2. The PCCL Facility

2.1 This PCCL Facility is subject to the terms and conditions of the General Terms as varied, supplemented or replaced by these Facility Specific Terms.

2.2 The aggregate principal amount of the Financial Assistance Amounts available under this PCCL Facility shall not exceed the Aggregate PCCL Facility Amount.

2.3 The Availability Period in respect of this PCCL Facility shall commence on (and include) the date on which these Facility Specific Terms enter into force in accordance with Clause 3 (*Entry into force and Conditions Precedent*) of these Facility Specific Terms and shall expire on the first anniversary of the PCCL Facility coming into force, provided that the Availability Period may be renewed with the agreement of ESM and the Beneficiary Member State for up to two (2) periods of six (6) months each.

2.4 The Maturity of the Financial Assistance made under this PCCL Facility shall not exceed the Maximum Maturity specified for this PCCL Facility.

2.5 The maximum amount which may be demanded in a Request for Funds under this PCCL Facility shall not exceed the Maximum PCCL Disbursement Amount. Any limits on the number of Requests for Funds per month or three-month period shall be specified in the Financial Assistance Facility Agreement.

3. Entry into force and Conditions Precedent

The PCCL Facility shall enter into force when the conditions in Clause 4.1 of the General Terms are satisfied provided that the Beneficiary Member State satisfies at such time the eligibility criteria for a PCCL Facility set out in the ESM Guideline on Precautionary Financial Assistance and when the following additional conditions are satisfied:

3.1 ESM has received a legal opinion satisfactory to it given by the Legal Officer of the Beneficiary Member State in respect of these Facility Specific Terms and in the form set out in Part 1 of Schedule 2 (*Form of Legal Opinion*) of the General Terms. Such legal opinion shall be dated not later than the date of the first Request for Funds made under this PCCL Facility;

3.2 following completion of the procedures in Articles 13(1) to (4) of the ESM Treaty, the Board of Directors has approved these Facility Specific Terms and any provisions relating thereto in the Financial Assistance Facility Agreement; and

3.3 the Financial Assistance Facility Agreement states that these Facility Specific Terms are applicable.

4. Requests, Disbursements and Conditions to Disbursements

4.1 Clauses 5.1 and 5.2 of the General Terms shall apply to Requests and Disbursements under this PCCL Facility but provided that:

- (a) each Request for Funds shall be in respect of an individual Disbursement;
- (b) unless the Financial Assistance Facility Agreement otherwise provides, if the amount of Financial Assistance demanded in a Request for Funds is equal to or below EUR 3,000,000,000 (three billion euros), the relevant Request for Funds shall be sent to ESM at least five (5) Business Days prior to the relevant Disbursement Date and, if the amount of Financial Assistance demanded in a Request for Funds exceeds EUR 3,000,000,000 (three billion euros), the relevant Request for Funds shall be sent to ESM at least ten (10) Business Days prior to the relevant Disbursement Date;

4.2 Clause 5.3 of the General Terms shall not apply but the following conditions to Disbursement are applicable:

- (a) ESM shall not make a Disbursement under this PCCL Facility if, on or before the Disbursement Date, it receives from the Commission (i) a report under the enhanced surveillance procedure or (ii) any other notice in writing, which concludes or states that there is non-compliance by the Beneficiary Member State with the terms of the MoU; or
- (b) ESM shall not make a Disbursement under this PCCL Facility if the Board of Governors has decided to suspend or to close the PCCL Facility by reason of (i) non-compliance by the Beneficiary Member State with the terms of the MoU or (ii) the commitments under the MoU having become clearly inadequate to resolve the threat of financial disturbance; or
- (c) if a PCCL Facility has been granted but not drawn, ESM shall not make a Disbursement if, on or prior to the Disbursement Date, the Board of Directors has, following receipt of a proposal by the Managing Director and on the basis of the results of the regular EU multilateral surveillance procedure, decided that this PCCL Facility should not be maintained due to the inadequacy of the PCCL Facility to respond to the

needs of the Beneficiary Member State; and

- (d) if a PCCL Facility has been granted and drawn for the first time, ESM shall not make a subsequent Disbursement if, on or prior to the relevant Disbursement Date, the Board of Directors has, following receipt of a proposal by the Managing Director and based on an assessment by the Commission in liaison with the ECB and the ESAs as needed (and where applicable, the IMF) decided that the PCCL Facility should not be continued due to the inadequacy of the PCCL Facility to respond to the needs of the Beneficiary Member State or because another form of financial assistance is needed.

4.3 Clauses 5.4, 5.5 and 5.6 of the General Terms shall not apply to this PCCL Facility, provided that the Financial Assistance Facility Agreement shall stipulate whether and in what circumstances an Acceptance Notice shall be issued in relation to Requests for Funds under this PCCL Facility.

4.4 Clause 5.7 to 5.12 of the General Terms shall apply to this PCCL Facility, provided for the avoidance of doubt that a Confirmation Notice shall be issued in respect of all Disbursements under this PCCL Facility whether or not an Acceptance Notice is issued.

4.5 This PCCL Facility may only give rise to a Disbursement by way of a PMP Operation if this is expressly stated in the Financial Assistance Facility Agreement.

5. Representations, Warranties and Undertakings

The Representations, Warranties and Undertakings in Clause 6 (*Representations, Warranties and Undertakings*) of the General Terms shall apply to this PCCL Facility.

6. Interest, Costs, Fees and Expenses

Clause 7 (*Interest, Costs, Fees and Expenses*) of the General Terms shall apply to this PCCL Facility.

7. Repayment, Early Repayment, Mandatory Repayment and Cancellation

Clause 8 (*Repayment, Early Repayment, Mandatory Repayment and Cancellation*) of the General Terms shall apply to this PCCL Facility.

8. Payments

Clause 9 (*Payments*) of the General Terms shall apply to this PCCL Facility.

9. Events of Default

Clause 10 (*Events of Default*) of the General Terms shall apply to this PCCL Facility.

10. Information undertakings

- (a) Clause 11 (*Information Undertakings*) of the General Terms shall apply to this PCCL Facility.
- (b) In addition the Beneficiary Member State shall, on request of the Commission, provide the information requested by the Commission as described in the ESM Guideline on Precautionary Financial Assistance.

11. Other Provisions

Clauses 12 (*Undertakings relating to Inspections, Fraud Prevention and Audits*), 13 (*Notices*), 15 (*Miscellaneous*) and 16 (*Governing Law and Jurisdiction*) of the General Terms shall apply to this PCCL Facility.

Section 3

Enhanced Conditioned Credit Line: Facility Specific Terms

1. Definitions and Interpretation

Clause 2 (*Definitions and Interpretation*) of the General Terms shall apply to this ECCL Facility.

2. The ECCL Facility

- 2.1 This ECCL Facility is subject to the terms and conditions of the General Terms varied, supplemented or replaced by these Facility Specific Terms.
- 2.2 The aggregate principal amount of the Financial Assistance Amounts available under this ECCL Facility shall not exceed the Aggregate ECCL Facility Amount.
- 2.3 The Availability Period in respect of this ECCL Facility shall commence on (and include) the date on which these Facility Specific Terms enter into force in accordance with Clause 3 (*Entry into force and Conditions Precedent*) of these Facility Specific Terms and shall expire on the first anniversary of the ECCL Facility coming into force, provided that the Availability Period may be renewed with the agreement of ESM and the Beneficiary Member State for up to two (2) periods of six (6) months each.
- 2.4 The Maturity of the Financial Assistance made under this ECCL Facility shall not exceed the Maximum Maturity specified for this ECCL Facility.

- 2.5 The maximum amount which may be demanded in a Request for Funds under this ECCL Facility shall not exceed the Maximum ECCL Disbursement Amount. Any limits on the number of Requests for Funds per month or three-month period shall be specified in the Financial Assistance Facility Agreement.

3. Entry into force and Conditions Precedent

This ECCL Facility shall enter into force when the conditions in Clause 4.1 of the General Terms are satisfied provided that the Beneficiary Member State satisfies at such time the eligibility criteria for an ECCL Facility set out in the ESM Guideline on Precautionary Financial Assistance and that the additional conditions set out in Clause 3 of these Facility Specific Terms are satisfied:

- 3.1 ESM has received a legal opinion satisfactory to it given by the Legal Officer of the Beneficiary Member State in respect of these Facility Specific Terms and in the form set out in Part 1 of Schedule 2 (*Form of Legal Opinion*) of the General Terms. Such legal opinion shall be dated not later than the date of the first Request for Funds made under this ECCL Facility;
 - 3.2 following completion of the procedures in Articles 13(1) to (4) of the ESM Treaty, the Board of Directors has approved these Facility Specific Terms and any provisions relating thereto in the Financial Assistance Facility Agreement; and
 - 3.3 the Financial Assistance Facility Agreement states that these Facility Specific Terms are applicable.
- ### 4. Requests, Disbursements and Conditions to Disbursements
- 4.1 Clauses 5.1 and 5.2 of the General Terms shall apply to Requests and Disbursements under this ECCL Facility but provided that:
 - (a) each Request for Funds shall be in respect of an individual Disbursement, and
 - (b) unless the Financial Assistance Facility Agreement otherwise provides, if the amount of Financial Assistance demanded in a Request for Funds is equal to or below EUR 3,000,000,000 (three billion euros), the relevant Request for Funds shall be sent to ESM at least five (5) Business Days prior to the relevant Disbursement Date and, if the amount of Financial Assistance demanded in a Request for Funds exceeds EUR 3,000,000,000 (three

billion euros), the relevant Request for Funds shall be sent to ESM at least ten (10) Business Days prior to the relevant Disbursement Date;

4.2 Clause 5.3 of the General Terms shall not apply but the following conditions to Disbursement are applicable:

- (a) ESM shall not make a Disbursement under this ECCL Facility if on or before the Disbursement Date it receives from the Commission (i) a report under the enhanced surveillance procedure or (ii) any other notice in writing, which concludes or states that there is non-compliance by the Beneficiary Member State with the terms of the MoU; or
- (b) ESM shall not make a Disbursement under this ECCL Facility if the Board of Governors has decided to suspend or to close the ECCL Facility by reason of (i) non-compliance by the Beneficiary Member State with the terms of the MoU or (ii) the commitments under the MoU having become clearly inadequate to resolve the threat of financial disturbance; or
- (c) ESM shall not make a Disbursement if, on or prior to the Disbursement Date, the Board of Directors has, following receipt of a proposal by the Managing Director and on the basis of the findings of the Commission following the regular review mission of the Beneficiary Member State which is subject to surveillance, decided that this ECCL Facility should not be maintained due to the inadequacy of the ECCL Facility to respond to the needs of the Beneficiary Member State; and
- (d) If an ECCL Facility has been granted and drawn for the first time, ESM shall not make a subsequent Disbursement if, on or prior to the relevant Disbursement Date, the Board of Directors has, on the basis of a proposal by the Managing Director and based on an assessment conducted by the Commission in liaison with the ECB and the ESAs as needed (and where applicable, the IMF) decided that this ECCL Facility should not be maintained due to the inadequacy of the ECCL Facility to respond to the needs of the Beneficiary Member State or because another form of financial assistance is needed.

4.3 Clauses 5.4, 5.5 and 5.6 of the General Terms shall not apply to this ECCL Facility,

provided that the Financial Assistance Facility Agreement shall stipulate whether and in what circumstances an Acceptance Notice shall be issued in relation to Requests for Funds under this ECCL Facility.

4.4 Clauses 5.7 to 5.12 of the General Terms shall apply to this ECCL Facility, provided for the avoidance of doubt that a Confirmation Notice shall be issued in respect of all Disbursements under this ECCL Facility whether or not an Acceptance Notice is issued.

4.5 This ECCL Facility may only give rise to a Disbursement by way of a PMP Operation if this is expressly stated in the Financial Assistance Facility Agreement.

5. Representations, Warranties and Undertakings

The Representations, Warranties and Undertakings in Clause 6 (*Representations, Warranties and Undertakings*) of the General Terms shall apply to this ECCL Facility.

6. Interest, Costs, Fees and Expenses

Clause 7 (*Interest, Costs, Fees and Expenses*) of the General Terms shall apply to this ECCL Facility.

7. Repayment, Early Repayment, Mandatory Repayment and Cancellation

Clause 8 (*Repayment, Early Repayment, Mandatory Repayment and Cancellation*) of the General Terms shall apply to this ECCL Facility.

8. Payments

Clause 9 (*Payments*) of the General Terms shall apply to this ECCL Facility.

9. Events of Default

Clause 10 (*Events of Default*) of the General Terms shall apply to this ECCL Facility.

10. Information Undertakings

10.1 Clause 11 (*Information Undertakings*) of the General Terms shall apply to this ECCL Facility.

10.2 In addition, the Beneficiary Member State shall, on request of the Commission, provide the information requested by the Commission as described in the ESM Guideline on Precautionary Financial Assistance.

11. Other Provisions

Clauses 12 (*Undertakings relating to Inspections, Fraud Prevention and Audits*), 13 (*Notices*), 15 (*Miscellaneous*) and 16 (*Governing Law and Jurisdiction*) of the

General Terms shall apply to this ECCL Facility.

Section 4

Financial Institution Recapitalisation Facility: Facility Specific Terms

1. Definitions and Interpretation

Clause 2 (*Definitions and Interpretation*) of the General Terms shall apply to this Financial Institution Recapitalisation Facility.

2. The Financial Institution Recapitalisation Facility

- 2.1 This Facility permits the Beneficiary Member State to finance the recapitalisation of certain financial institutions and/or the capitalisation of AMCs or to cover bank resolution costs, subject to and in accordance with the terms of the MoU and the Financial Assistance Facility Agreement, and provides, in particular, that the proceeds of this Financial Institution Recapitalisation Facility shall be used by the Beneficiary Member State to provide finance to the Fund to permit the Fund (i) to subscribe or pre-subscribe for Bank Capital Instruments issued by existing financial institutions 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 and/or (iii) to cover the resolution costs of financial institutions, subject to and in accordance with the terms of the MoU and the Financial Assistance Facility Agreement, (each of these operations being a "**Recapitalisation**" for the purposes of the Financial Assistance Facility Agreement and this Financial Institution Recapitalisation Facility). The Beneficiary Member State and the Fund shall not use such proceeds for any other purpose.
- 2.2 This Financial Institution Recapitalisation Facility is subject to any additional terms set out in an Acceptance Notice.
- 2.3 The aggregate principal amount of the Financial Assistance Amounts available under this Financial Institution Recapitalisation Facility shall not exceed the Aggregate Financial Institution Recapitalisation Facility Amount. ESM may discharge its obligation to make the Financial Assistance Amount available by delivery of ESM 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 such ESM Debt Securities.

- 2.4 The Availability Period in respect of this Financial Institution Recapitalisation Facility shall commence on (and include) the date on which these Facility Specific Terms enter into force in accordance with Clause 3 (*Entry into Force and Conditions Precedent*) and shall expire on (and include) the date specified in the Financial Assistance Facility Agreement. Any amounts not disbursed under this Financial Institution Recapitalisation Facility on or prior to the last day of the Availability Period shall be immediately cancelled.
- 2.5 The Average Maturity of the Financial Assistance made under this Financial Institution Recapitalisation Facility shall not exceed the Maximum Average Maturity specified for this Financial Institution Recapitalisation Facility and the maximum maturity of any individual disbursement of Financial Assistance shall not exceed the Maximum Maturity specified for this Financial Institution Recapitalisation Facility.
- 2.6 The Beneficiary Member State shall apply all amounts and/or ESM Debt Securities provided to it under this Financial Institution Recapitalisation Facility in conformity with the MoU and its obligations under this Agreement, in order to finance Recapitalisations.
- ##### **3. Entry into force and Conditions Precedent**
- This Financial Institution Recapitalisation Facility shall enter into force when the conditions in Clause 4.1 of the General Terms are satisfied and when the following additional conditions are satisfied:
- 3.1 ESM has received legal opinions satisfactory to it given by the Legal Officer of the Beneficiary Member State and special legal counsel to the Fund in respect of these Facility Specific Terms substantially in the forms set out in Schedule 2 of the General Terms. Such legal opinions shall be dated not later than the date of the first Request for Funds made under this Financial Institution Recapitalisation Facility;
- 3.2 following completion of the procedures in Articles 13(1) to (4) of the ESM Treaty, the Board of Directors has approved these Facility Specific Terms and any provisions relating thereto in the Financial Assistance Facility Agreement; and

3.3 the Financial Assistance Facility Agreement states that these Facility Specific Terms are applicable.

4. Requests, Disbursements And Conditions To Disbursements

Clause 5 (*Requests, Disbursements and Conditions to Disbursement*) of the General Terms shall apply to each Request for Funds and each Tranche or Disbursement under this Financial Institution Recapitalisation Loan Facility, **provided that:**

4.1 in considering whether to approve Tranches or Disbursements, the Board of Directors and ESM 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 single supervisory authority or the relevant ESAs (as the case may be) which confirms that:

- (a) 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 by itself to recapitalise such financial institution(s);
- (b) the financial institution(s) concerned are of systemic relevance or pose a serious threat to the financial stability of the euro area as a whole and of its Member States;
- (c) a recapitalisation financed in part or in whole by ESM is necessary in the light of the degree of distress of the financial institutions concerned and urgency in providing the support; and
- (d) the funds available to the Fund have been fully utilised by the Fund by the time of each disbursement under this Agreement;

4.2 the Beneficiary Member State has confirmed that the proposed recapitalisation complies with any applicable national state aid rules and legal restrictions;

4.3 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;

4.4 each relevant financial institution which will benefit from a recapitalisation has undertaken

to the Beneficiary Member State, the Fund, ESM and the Commission in a legally binding manner to implement the recapitalisation plan applicable to it; and

4.5 on each Disbursement Date ESM may make the Financial Assistance available to the Beneficiary Member State by delivering cash or ESM 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, the Fund, the details of which securities account have been advised in writing by the Beneficiary Member State or the Fund to ESM at least two (2) Business Days prior to the Disbursement Date. The Issuance Costs shall be paid by ESM out of the sums retained, where possible, for this purpose, or invoiced separately; any additional costs incurred may be recovered under Clause 7.6 of the General Terms.

5. Representations, Warranties and Undertakings

Clause 6 (*Representations, Warranties and Undertakings*) of the General Terms shall apply to this Financial Institution Recapitalisation Facility provided that, in addition, the Beneficiary Member State undertakes that:

5.1 in the event that a disbursement of Financial Assistance is disbursed directly to the Fund (at the request of the Beneficiary Member State) or the Beneficiary Member State uses a disbursement of Financial Assistance to provide financing to the Fund, then, during the period when Financial Assistance under this Financial Institution Recapitalisation Facility is outstanding and has not been reimbursed, the Beneficiary Member State shall procure and the Fund shall permit ESM to appoint an observer to observe the discussions of the board of directors of the Fund on agenda items which relate to the financial institutions or AMCs which are the subject of a Recapitalisation financed with proceeds of Financial Assistance made available under this Financial Institution Recapitalisation Facility; provided that, such observer shall enter into a confidentiality undertaking with the Fund in the customary form (if any) required by the Fund; and

5.2 the Beneficiary Member State and the Fund shall comply with any specific covenants and undertakings set out in each Acceptance Notice issued in relation to this Financial Institution Recapitalisation Facility.

6. Interest, Costs, Fees and Expenses

Clause 7 (*Interests, Costs, Fees and Expenses*) of the General Terms shall apply to this Financial Institution Recapitalisation Facility.

7. Repayment, Early Repayment, Mandatory Repayment and Cancellation

7.1 Clause 8 (*Repayment, Early Repayment, Mandatory Repayment and Cancellation*) of the General Terms shall apply to this Financial Institution Recapitalisation Facility, in particular Clause 8.8 and Clauses 8.8.1, 8.8.2, 8.8.3 and 8.8.4.

7.2 In addition to the repayment obligations set out in Clause 8 (*Repayment, Early Repayment, Mandatory Repayment and Cancellation*) of the General Terms, if at the end of the Availability Period or such earlier date specified in the Financial Assistance Facility Agreement the Beneficiary Member State or the Fund has received an amount in euros or received delivery of ESM Debt Securities as Financial Assistance under the Financial Assistance Facility Agreement and these Facility Specific Terms and such amounts or such ESM Debt Securities have not at that time been used to subscribe or to pre-subscribe for Bank Capital Instruments in financial institutions or AMCs or to cover resolution costs of financial institutions as contemplated by the Financial Assistance Facility Agreement and the MoU then, upon written notice by ESM, the Beneficiary Member State shall repay such Financial Assistance together with all accrued interest on the reimbursed amount within ten (10) Business Days of such notice on the terms specified in such notice and in accordance with the provisions of Clause 9.3.1 of the General Terms. Such reimbursement shall constitute a scheduled repayment and not a voluntary or mandatory pre-payment.

8. Payments

Clause 9 (*Payments*) of the General Terms shall apply to this Financial Institution Recapitalisation Facility.

9. Events of Default

Clause 10 (*Events of Default*) of the General Terms shall apply to this Financial Institution Recapitalisation Facility.

10. Other Provisions

Clauses 11 (*Information Undertakings*), 12 (*Undertakings relating to Inspections, Fraud Prevention and Audits*), 13 (*Notices*), 15 (*Miscellaneous*) and 16 (*Governing Law and Jurisdiction*) of the General Terms shall apply

to this Financial Institution Recapitalisation Facility.

Section 5

Primary Market Bond Purchase Facility: Facility Specific Terms

1. Definitions and Interpretation

Clause 2 (*Definitions and Interpretation*) of the General Terms shall apply to this PMP Facility.

2. The Primary Market Bond Purchase Facility

2.1 This PMP Facility is subject to the terms and conditions of the General Terms as varied or supplemented by these Facility Specific Terms and any additional terms set out in an Acceptance Notice.

2.2 The maximum aggregate principal amount which at any time is outstanding under this PMP Facility shall not exceed the Maximum PMP Amount.

2.3 The Availability Period for this PMP Facility shall commence on (and include) the date on which these Facility Specific Terms enter into force in accordance with Clause 3 (*Entry into Force and Conditions Precedent*) and shall expire on (and include) the date specified in the Financial Assistance Facility Agreement. Any amounts not disbursed under this PMP Facility on or prior to the last day of the Availability Period shall be immediately cancelled.

2.4 The Maturity of any Purchased Bonds acquired under this PMP Facility shall not exceed the Maximum Maturity.

2.5 Under this PMP Facility, ESM may provide Financial Assistance to the Beneficiary Member State by subscribing for Series of Bonds issued by the Beneficiary Member State in the primary market subject to compliance with the ESM Guideline on the Primary Market Support Facility.

2.6 In respect of each PMP Operation the Beneficiary Member State shall be liable to reimburse ESM in relation to each PMP Operation a principal amount (if it is a positive amount) equal to:

- (a) the aggregate purchase price paid by ESM in respect of the Purchased Bonds; less
- (b) the principal amount received or realised by ESM in respect of the Purchased Bonds at maturity or on re-sale of the Purchased Bonds.

Such amount shall be treated as if it were a loan and the principal amount due by the Beneficiary Member State to ESM in respect thereof shall be determined in accordance with Clause 8 and shall be due and payable on the date determined under Clause 8.3(e) of the Facility Specific Term, except to the extent that it can be repaid out of the PMP Reserve Buffer.

- 2.7 ESM shall manage the Purchased Bonds in accordance with the ESM Guideline on the Primary Market Support Facility. ESM shall inform the Beneficiary Member State regarding the management of the Purchased Bonds and the Beneficiary Member State shall have the right to approve the conduct of sales of the Purchased Bonds if these would create any liability for the Beneficiary Member State except in circumstances where ESM would face a significant risk of realising a loss in relation to its holdings of Purchased Bonds of the relevant Beneficiary Member State irrespective of a possible decision to sell them.

3. Entry into force and Conditions Precedent

- 3.1 This PMP Facility shall enter into force when the conditions in Clause 4.1 of the General Terms are satisfied and when the following additional conditions are satisfied:

- (a) ESM has received legal opinions satisfactory to it given by the Legal Officer of the Beneficiary Member State in respect of this PMP Facility and substantially in the form set out in Part 1 of Schedule 2 (*Form of Legal Opinion*) of the General Terms. Such legal opinion shall be dated not later than the date of the first Request for Funds made under this PMP Facility;
- (b) following completion of the procedures in Articles 13(1) to (4) of the ESM Treaty, the Board of Directors has approved these Facility Specific Terms and any provisions relating thereto in the Financial Assistance Facility Agreement; and
- (c) the Financial Assistance Facility Agreement states that these Facility Specific Terms are applicable.

- 3.2 If this PMP Facility is provided in conjunction with a Precautionary Facility, it is an additional condition of the entry into force of this PMP Facility that the Beneficiary Member State satisfies the eligibility criteria for a PCCL Facility or, as the case may be, an ECCL Facility as set out in the ESM Guideline on Precautionary Financial Assistance.

4. PMP Operations and Conditions to Disbursement

4.1 *In the case of a Beneficiary Member State which has a Loan Facility with ESM:*

- (a) Clauses 5 (*Requests, Disbursements and Conditions of Disbursement*) of the General Terms shall not apply to this PMP Facility.
- (b) Subject to the terms and conditions of these Facility Specific Terms, the Financial Assistance Facility Agreement and the MoU, the Beneficiary Member State may, after consultation with ESM, request a PMP Operation or Tranche of PMP Operations under the PMP Facility to be made by delivery to ESM of a duly completed Request for Funds.
- (c) A Request for Funds under this PMP Facility will not be regarded as having been duly completed unless it at least specifies:
 - (i) the PMP Amount to be made available under the relevant PMP Operation or Tranche of PMP Operations;
 - (ii) the proposed last Disbursement Date of the relevant PMP Operation or Tranche of PMP Operations; and
 - (iii) the ratio of (i) the PMP Principal Amount over (ii) the aggregate principal amount of each of the underlying Series of Bonds to be issued.

In addition, the Request for Funds is only valid if it complies with the detailed modalities for PMP Operations agreed between ESM and the Beneficiary Member State.

- (d) following a Request for Funds in respect of a PMP Operation or a Tranche of PMP Operations under this PMP Facility from a Beneficiary Member State which has a Loan Facility with ESM, ESM's obligation to enter into any PMP Operation or a Tranche of PMP Operations shall be subject to:
 - (i) 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 ESM;
 - (ii) the Board of Directors, after considering the most recent periodic assessment of the

- Beneficiary Member State by the Commission (in liaison with the ECB), being satisfied with the compliance by the Beneficiary Member State with the terms of the MoU, including prior actions (if any);
- (iii) The Board of Directors of ESM being satisfied that all other conditions to utilisation of this PMP Facility are satisfied;
 - (iv) The Board of Directors of ESM (after taking into account all factors they consider relevant including those referred to in this Clause 4) have approved the disbursement under these relevant Facility Specific Terms;
 - (v) no material adverse change having occurred since the date of the Financial Assistance Facility Agreement such as would, in the opinion of the Board of Directors of ESM, 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 the Financial Assistance Facility Agreement and this PMP Facility, including its ability to pay interest and principal under the Series of Bonds and under any amount outstanding under these Facility Specific Terms;
 - (vi) no event of default having occurred under Clause 10 (*Events of Default*) of the General Terms or under these Facility Specific Terms which has not been cured to the satisfaction of ESM;
 - (vii) the PMP Amount in respect of such PMP Operation (when added to the PMP Amount of any other PMP Operation which remains outstanding) does not cause the Maximum PMP Amount to be exceeded;
 - (viii) on the date of the auction or date of pricing of a syndicated issue of a Series of Bonds, the percentage of the final issued amount of such Series of Bonds to be purchased by ESM complies with the limitations set out in the ESM Guideline on Primary Support Facilities;
 - (ix) ESM being satisfied with the conclusions of the market analysis conducted by the Beneficiary Member State and ESM on the effect of an intervention by ESM by way of a PMP Operation and on the implications (in particular, on the secondary market for the securities issued by the Beneficiary Member State) of an intervention by ESM by way of a PMP Operation;
 - (x) on the date of the auction or the date of pricing in the case of a syndicated issue of a Series of Bonds, ESM (after consultation with the Beneficiary Member State) is satisfied with (i) the level of participation of private investors in the primary market for such Series of Bonds, and (ii) the interest rate of the Series of Bonds, when compared to the ESM Cost of Funding;
- (e)
- (i) if the relevant conditions in Clause 4.1(d) of these Facility Specific Terms are satisfied (except for the conditions referred to subparagraphs (vi) to (x) of Clause 4.1(d) that need to be satisfied on the date of the auction or the date of pricing of a syndicated issue of the relevant Series of Bonds), ESM shall send the Beneficiary Member State an Acceptance Notice setting out the provisional terms on which ESM is willing to enter into the PMP Operation.
 - (ii) Following the acknowledgement of an Acceptance Notice by the Beneficiary Member State, the Beneficiary Member State and ESM shall irrevocably be bound by the terms of the Acceptance Notice, subject to however in all cases the non-occurrence of an Event of Default and satisfaction of the conditions set out in subparagraphs (vi) to (x) of Clause 4.1(d) of these Facility Specific Terms on the date of the auction or the date of pricing of a syndicated issue of the relevant Series of Bonds.
 - (iii) In the event that ESM, subject to compliance with the then applicable ESM Borrowing

Guidelines, can only raise funds for the relevant PMP Operation (whether by issuing specific Funding Instruments, obtaining funds in the international capital or loan markets or by making use of the Liquidity Buffer) denominated in a currency other than euros and by entering into related currency hedging arrangements then any additional costs incurred by ESM in connection with currency hedging arrangements shall be borne by the Beneficiary Member State.

(f)

- (i) Where ESM has elected to launch a specific issue of Funding Instruments and, due to prevailing market conditions at the time of launching such an issue of or seeking to enter into such specific Funding Instruments to fund a PMP Operation, ESM is not able to obtain funding for the PMP Operation and cannot finance such PMP Operation from the Liquidity Buffer, then ESM shall not be under any obligation to enter into or complete such PMP Operation.
- (ii) The entry into of any PMP Operation under this PMP Facility shall under no circumstances commit any of the parties to proceed with the making and receiving of any further Financial Assistance or PMP Operation.
- (iii) In connection with any PMP Operation, ESM shall send a Confirmation Notice in respect of such PMP Operation to the Beneficiary Member State.

4.2 In the case of a Beneficiary Member State which has a Precautionary Facility with ESM:

- (a) Clauses 4.1(a), 4.1(b) and 4.1(c) of these Facility Specific Terms shall be applicable.
- (b) Following a Request for Funds in respect of a PMP Operation or a Tranche of PMP Operations under this PMP Facility from a Beneficiary Member State which has a Precautionary Facility with ESM, ESM's obligation to enter into any PMP Operation or a Tranche of PMP Operations shall be subject to:
 - (i) the conditions set out in Clauses 4.1 and 4.2 of the Facility Specific Terms applicable to PCCL Facilities or, as the case may be, ECCL Facilities are satisfied;
 - (ii) the conditions set out in Clauses 4.1(d)(vi) to 4.1(d)(x) of these Facility Specific Terms being satisfied;
- (c)
 - (i) If the conditions in Clause 4.2(b) are satisfied (with the exception of the conditions referred to in Clause 4.2(b)(ii) which need to be satisfied on the date of the auction or the date of pricing of a syndicated issue of the relevant Series of Bonds), ESM shall send the Beneficiary Member State an Acceptance Notice setting out the provisional terms on which ESM is willing to enter into the PMP Operation (x) in connection with the first PMP Operation and (y) in connection with subsequent PMP Operations only if the Financial Assistance Facility Agreement so provides.
 - (ii) Following (x) the acknowledgement of an Acceptance Notice by the Beneficiary Member State (in cases where an Acceptance Notice is provided in accordance with Clause 4.2(c)(i) above) the Beneficiary Member State and ESM shall irrevocably be bound by the terms of the Acceptance Notice and/or (y) satisfaction of the conditions set out in Clause 4.2(b)(i) above if, under the relevant Financial Assistance Facility Agreement, no Acceptance Notice is required to be issued, the Beneficiary Member State and ESM shall be required to enter into the PMP Operation specified in the Request for Funds, subject in all

cases to the non-occurrence of an Event of Default and satisfaction of the conditions set out in 4.2(b)(ii) above on the date of the auction or the date of pricing of a syndicated issue of the relevant Series of Bonds.

(iii) Clause 4.1(e)(iii) shall be applicable.

(d) Clause 4.1(f) shall be applicable.

5. Representations, Warranties and Undertakings

5.1 Clause 6 (*Representations, Warranties and Undertakings*) of the Financial Assistance Facility Agreement shall apply to this PMP Facility.

5.2 In addition the Beneficiary Member State represents and warrants to ESM on the date of the Request for Funds and on the Disbursement Date that:

- (a) the Beneficiary Member State has full power and capacity to create, issue and sell the Series of Bonds and enter into and perform the Note Issuance Documents and the creation, issue and sale of the Series of Bonds will on or prior to the date of issue of such Series of Bonds, be duly approved and authorised by all necessary action;
- (b) each Series of Bonds will, on the date of issue of such Series of Bonds, constitute legal, valid, binding and enforceable obligations of the Beneficiary Member State;
- (c) each Note Issuance Document constitutes legal, valid, binding and enforceable obligations of the Beneficiary Member State;
- (d) the information contained in any Prospectus is true, accurate and not misleading in any material respect; and
- (e) the exemption established by Article 7 of Directive 2003/6 of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) and implemented in the implementing legislation and regulations of the Beneficiary Member State applies to ESM, in particular, in relation to any transactions carried out or entered into by ESM under or in connection with this PMP Facility.

5.3 In addition, the Beneficiary Member State undertakes, until such time as all principal under this PMP Facility has been fully reimbursed and all interest and additional amounts, if any, due under this PMP Facility have been fully paid, that:

- (a) during the Availability Period of this PMP Facility the Commission (in liaison with the ECB) and the IMF shall be permitted to monitor compliance by the Beneficiary Member State with the policy conditionality set out in the MoU and thereafter, the Beneficiary Member State shall permit post-programme surveillance as contemplated by Recital (17) of the ESM Treaty;
- (b) it shall promptly obtain and maintain the admission to listing, trading and quotation of any Purchased Bonds on the Relevant Stock Exchange;
- (c) it shall ensure that each issue of Purchased Bonds is and remains eligible for clearance and settlement through the clearing and settlement system applicable to such series of Purchased Bonds until all amounts in respect of such Purchased Bonds have been paid in full; and
- (d) it shall comply with all applicable laws, regulations, rulings, policies and guidelines (as amended from time to time) of any governmental or regulatory authority or central bank relevant to the issue of Purchased Notes and shall make all filings, disclosures or registrations necessary from time to time to ensure compliance with such laws, regulations, rulings, policies and guidelines.

6. Interest, Costs and Expenses

6.1 In respect of each PMP Outstanding Amount interest shall accrue at a rate equal to the applicable Interest Rate during each Bond Interest Period. Subject to Clause 7 (*Funding Excess, Funding Shortfall and suspension of payment of funding excess*) of these Facility Specific Terms, Clause 7 (*Interest, Costs, Fees and Expenses of the General Terms*) of the General Terms shall apply to this PMP Facility.

6.2 The Beneficiary Member State shall pay ESM interest on Purchased Bonds in accordance with the terms and conditions of such Purchased Bonds.

6.3 The Beneficiary Member State shall bear all costs, charges and expenses, including legal, professional, banking, hedging and/or

exchange charges incurred in connection with the preparation, execution, implementation and termination of a PMP Operation. 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.

7. Funding Excess, Funding Shortfall and suspension of payment of funding excess

- 7.1 On each Calculation Date when there are PMP Operations outstanding ESM shall calculate in relation to each Bond Interest Payment Date and each PMP Operation (i) the amount of the ESM Interest Amount for the relevant PMP Operation in respect of such Bond Interest Payment Date and (ii) the amount, if any, by which the Bond Interest Amount exceeds such ESM Interest Amount (the "**Funding Excess**") or, as the case may be, the amount, if any, by which the ESM Interest Amount exceeds the Bond Interest Amount (the "**Funding Shortfall**") and shall notify the Beneficiary Member States of these amounts.
- 7.2 In respect of any Funding Excess, ESM agrees that, following calculation and notification of such Funding Excess and receipt by ESM of all interest due to it in respect of the Purchased Bonds on the relevant Bond Interest Payment Date, ESM will credit such amounts to the PMP Reserve Buffer in accordance with the ESM Pricing Policy.
- 7.3 In respect of any Funding Shortfall, the Beneficiary Member State agrees that, following calculation and notification of such Funding Shortfall, (i) ESM may cover such Funding Shortfall by debiting the PMP Reserve Buffer and (ii) if the PMP Reserve Buffer does not then contain sufficient funds to cover the full amount of such Funding Shortfall, any remaining balance shall be paid by the Beneficiary Member State to ESM promptly and in any event within five (5) Business Days of a demand in writing by ESM on or after the relevant Interest Payment Date.

8. Redemption, early redemption, mandatory redemption and cancellation

- 8.1 Clause 8 (*Repayment, Early Repayment, Mandatory Repayment and Cancellation*) of the General Terms shall apply to this PMP Facility.

- 8.2 The terms as to redemption and early redemption of Purchased Bonds are set out in the Conditions of the Purchased Bonds and are not varied by the terms of this PMP Facility.

- 8.3 In addition to the repayment obligations set out in the Financial Assistance Facility Agreement, the following provisions apply:

- (a) on each date on which the Beneficiary Member State makes a repayment of principal or redeems in full Purchased Bonds, the PMP Outstanding Amount in respect of the relevant PMP Operation shall be automatically reduced by an amount equal to the principal amount received by ESM in respect of the relevant Purchased Bonds;
- (b) ESM may re-sell any Purchased Bonds prior to their scheduled maturity date in accordance with the ESM Guideline on the Primary Market Support Facility and subject to complying with Clause 2.7 of these Facility Specific Terms;
- (c) if ESM re-sells any Purchased Bonds prior to their scheduled maturity date then the PMP Outstanding Amount in respect of the relevant PMP Operation shall be automatically reduced by an amount equal to the net sales proceeds received by ESM in respect of such Purchased Bonds (excluding any portion of the sales proceeds which relate to accrued interest and net of any commission, fees or costs incurred by ESM in respect of the sale of such Purchased Bonds);
- (d) if the net sales proceeds of Purchased Bonds exceed the PMP Outstanding Amount the excess shall be retained by ESM in accordance with the ESM Pricing Policy;
- (e) if the net sales proceeds of Purchased Bonds or the amount received in respect of Purchased Bonds at maturity are less than the PMP Outstanding Amount in respect of the relevant PMP Operation then the Beneficiary Member State shall repay to ESM the principal amount due resulting from the loan referred to in Clause 2.6 of these Facility Specific Terms together with all interest accrued thereon and all fees, costs, charges and other amounts relating thereto on the relevant PMP Operation Maturity Date, provided that ESM shall first cover such amounts by debiting the PMP Reserve Buffer.

- 8.4 Upon expiry of the PMP Facility, and provided that (A) no amount remains outstanding in respect of the Purchased Bonds or the PMP Facility and (B) no event of default exists in respect of any Facility provided by ESM to the Beneficiary Member State, ESM shall release to the Beneficiary Member State a portion of any remaining balance of the PMP Reserve Buffer in accordance with the ESM Pricing Policy. If these conditions are not satisfied ESM shall retain the PMP Reserve Buffer until all amounts owed to it by the Beneficiary Member State have been paid in full.

9. Payments

- 9.1 Clause 9 (*Payments*) of the General Terms shall apply to this PMP Facility.
- 9.2 The payment terms applicable to any Purchased Bonds shall be as set out in the Conditions of the Purchased Bonds.

10. Events of Default

- 10.1 Clause 10 (*Events of Default*) of the General Terms shall apply to this PMP Facility.
- 10.2 In addition to paragraph 10.1 above, ESM may, by written notice to the Beneficiary Member State, cancel all or any part of this PMP Facility and/or declare the aggregate principal amount of any or all Financial Assistance made and outstanding hereunder to be immediately due and payable, together with accrued interest and all other amounts due in respect thereof, following the occurrence of an event of default under the Conditions of the Purchased Bonds.
- 10.3 The Beneficiary Member State shall reimburse all costs, expenses, fees and loss of interest incurred and payable by ESM as a consequence of an early redemption of any Purchased Bonds as a consequence of the occurrence of an event of default under the Conditions of the Purchased Bonds. The loss of interest is the difference (if it is a positive amount) between the amount of interest ESM would receive at the Interest Rate of the relevant Purchased Bonds and the interest ESM would receive from the reinvestment of the amounts repaid early (as determined by ESM), in each case for the period between the date of the early redemption and the date on which the Financial Assistance was scheduled to be repaid.

11. Other Provisions

Clauses 11 (*Information Undertakings*), 12 (*Undertakings relating to Inspections, Fraud Prevention and Audits*), 13 (*Notices*), 15

(*Miscellaneous*) and 16 (*Governing Law and Jurisdiction*) of the General Terms shall apply to this Financial Institution Recapitalisation Facility.

Section 6

Secondary Market Bond Purchase Facility: Facility Specific Terms

1. Definitions and Interpretation

Clause 2 (*Definitions and Interpretation*) of the General Terms shall apply to this SMP Facility.

2. The Secondary Market Bond Purchase Facility

- 2.1 This SMP Facility is subject to the terms and conditions of the General Terms as varied or supplemented by these Facility Specific Terms and any additional terms set out in an Acceptance Notice.
- 2.2 The maximum aggregate principal amount which may be made available by way of SMP Operations under this SMP Facility is such amount as is decided by the Board of Governors, which amount shall not exceed the unused lending capacity from time to time of ESM and shall be further subject to any *pro tempore* limits established from time to time by the Board of Directors.
- 2.3 The Availability Period for this SMP Facility shall commence on (and include) the date on which these Facility Specific Terms enter into force in accordance with Clause 3 (*Entry into Force and Conditions Precedent*) to these Facility Specific Terms and shall expire on (and include) the earlier of (i) the date on which the Beneficiary Member State requests the Managing Director to stop implementing SMP Operations and (ii) the date on which the Board of Governors decides not to continue an SMP Facility following a monthly report by the Technical Sub-Committee which concludes that the SMP Facility is inadequate to contain the financial disturbance or following an assessment by the European Commission concludes that the Beneficiary Member State has deviated from policy conditionality. Any amounts not disbursed under these Facility Specific Terms on or prior to the last day of the Availability Period shall be immediately cancelled.
- 2.4 The Maturity of any Purchased Bonds acquired under this SMP Facility shall not exceed the Maximum Maturity.
- 2.5 Under this SMP Facility, ESM may provide Financial Assistance to the Beneficiary Member State by acquiring Series of Bonds

issued by the Beneficiary Member State in the secondary market subject to compliance with the ESM Guideline on the Secondary Market Support Facility.

- 2.6 In respect of each SMP Operation the Beneficiary Member State shall be liable to reimburse ESM in relation to each SMP Operation in a principal amount (if it is a positive amount) equal to:

- (a) the aggregate purchase price paid by ESM in respect of the Purchased Bonds; less
- (b) the principal amount received or realised by ESM in respect of the Purchased Bonds at maturity or on re-sale of the Purchased Bonds.

Such amount shall be treated as if it were a loan and the principal amount due by the Beneficiary Member State to ESM in respect thereof shall be determined in accordance with Clause 8 and shall be due and payable on the date determined under Clause 8.3(e) of these Facility Specific Terms.

- 2.7 ESM shall manage the Purchased Bonds acquired under this SMP Facility in accordance with the ESM Guideline on the Secondary Market Support Facility. ESM shall inform the Beneficiary Member State regarding the management of the Purchased Bonds and the Beneficiary Member State shall have the right to approve the conduct of sales of the Purchased Bonds if these would create any liability for the Beneficiary Member State except in circumstances where ESM would face a significant risk of realising a loss in relation to its holdings of Purchased Bonds of the relevant Beneficiary Member State irrespective of a possible decision to sell them.

3. Entry into Force and Conditions Precedent

- 3.1 This SMP Facility shall enter into force when the conditions in Clause 4.1 of the General Terms are satisfied and when the following additional conditions are satisfied:

- (a) ESM has received a legal opinion satisfactory to it given by the Legal Officer of the Beneficiary Member State substantially in the form of Part 1 of Schedule 2 (*Form of Legal Opinion*) of the General Terms. Such legal opinion shall be dated not later than the date of the first Request for Funds made under this SMP Facility;
- (b) following completion of the procedures in Articles 13(1) to (4) of the ESM Treaty, the Board of Directors has

approved the Financial Assistance Facility Agreement incorporating these Facility Specific Terms and the signature thereof by the Managing Director;

- (c) the ECB has conducted an analysis recognising exceptional market circumstances and a risk to the financial stability of the euro area as a whole or of its Member States;
- (d) the Beneficiary Member State satisfies the *ex ante* eligibility criteria set out in the ESM Guideline on the Secondary Market Support Facility;
- (e) if the Beneficiary Member State is then under stability support, the Commission (in liaison with the ECB) has confirmed its compliance with the policy conditions in the MoU or, if the Beneficiary Member State is not then under stability support, the Commission, with the approval of the Board of Governors, has signed the MoU with the Beneficiary Member State on behalf of ESM; and
- (f) the Financial Assistance Facility Agreement states that these Facility Specific Terms are applicable.

4. SMP Operations and Conditions to disbursement

- 4.1 Clauses 5 (*Requests for Funds, Disbursements and Conditions to Disbursement*) of the General Terms shall not apply to this SMP Facility.

- 4.2 Subject to the terms and conditions of these Facility Specific Terms, the Financial Assistance Facility Agreement and the MoU, the Beneficiary Member State may, after consultation with ESM, request SMP Operations under the SMP Facility to be made by delivery to ESM of a duly completed written Request for Funds.

- 4.3 Following a Request for Funds requesting SMP Operations under this SMP Facility, ESM may enter into SMP Operations under this SMP but subject to:

- (a) 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 ESM;
- (b) the Board of Directors, after considering the most recent periodic assessment of the Beneficiary Member State by the Commission in liaison with the ECB, being satisfied with the compliance by the Beneficiary Member State with the

terms of the MoU (as the same may be revised from time to time), including any prior actions (if any) and the eligibility criteria for an SMP Facility set out in the ESM Guideline on the Secondary Market Support Facility;

- (c) ESM being satisfied that all other conditions to utilisation of this SMP Facility are satisfied;
 - (d) the Board of Directors having established *pro-tempore* intervention limits for the implementation of this SMP Facility and the Technical Sub-Committee having approved an intervention strategy within the limits of such intervention limits;
 - (e) no material adverse change having occurred since the date of the Financial Assistance Facility such as would, in the opinion of ESM, 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 the Financial Assistance Facility and this SMP Facility, including its ability to pay interest and principal under the Series of Bonds and under any amount outstanding under these Facility Specific Terms;
 - (f) no event of default having occurred under Clause 10 (*Events of Default*) of the General Terms or under these Facility Specific Terms which has not been cured to the satisfaction of ESM;
 - (g) on each Disbursement Date, the SMP Operation complies with the limits set by the Board of Directors and the Technical Sub-Committee.
 - (h) the Beneficiary Member State has not requested the Managing Director to stop implementing SMP Operations; and
 - (i) the Availability Period of this SMP Facility has not been terminated at the request of the Beneficiary Member State or by the Board of Governors or the Board of Directors pursuant to Clause 2(c) of these Facility Specific Terms.
- 4.4 The entry into of any SMP Operation under this SMP Facility shall under no circumstances commit any of the parties to proceed with the making and receiving of any further Financial Assistance or SMP Operation.

5. Representations, Warranties and Undertakings

- 5.1 Clause 6 (*Representations, Warranties and Undertakings*) of the General Terms shall apply to this SMP Facility.
- 5.2 In addition the Beneficiary Member State represents and warrants to ESM on the date of the Request for Funds and on the Disbursement Date that:
- (a) the Beneficiary Member State had full power and capacity to create, issue and sell each series of Purchased Bonds and enter into and perform the relevant Note Issuance Documents and the creation, issue and sale of each series of Purchased Bonds was, on or prior to the date of issue of each such series of Purchased Bonds, duly approved and authorised by all necessary action;
 - (b) each series of Purchased Bonds constitute legal, valid, binding and enforceable obligations of the Beneficiary Member State;
 - (c) each Note Issuance Document in relation to Purchased Bonds constitutes legal, valid, binding and enforceable obligations of the Beneficiary Member State;
 - (d) the information contained in any Prospectus relating to Purchased Bonds is true, accurate and not misleading in any material respect;
 - (e) it acknowledges that the portfolio of Purchased Bonds may be managed as provided in the ESM Guideline on the Secondary Market Support Facility; and
 - (f) the exemption established by Article 7 of Directive 2003/6 of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) and implemented in the implementing legislation and regulations of the Beneficiary Member State applies to ESM, in particular, in relation to any transactions carried out or entered into by ESM under or in connection with this SMP Facility.
- 5.3 In addition, the Beneficiary Member State undertakes, until such time as all principal under this SMP Facility has been fully reimbursed and all interest and additional amounts, if any, due under this SMP Facility have been fully paid, that:

- (a) ESM, the Commission and the ECB shall be permitted to monitor compliance by the Beneficiary Member State with the terms of the MoU during the Availability Period and, thereafter, the Beneficiary Member State shall permit post-Programme surveillance as contemplated by Recital (17) of the ESM Treaty;
 - (b) it shall maintain the admission to listing, trading and quotation of any Purchased Bonds on the Relevant Stock Exchange;
 - (c) it shall ensure that each issue of Purchased Bonds remains eligible for clearance and settlement through the clearing and settlement system applicable to such series of Purchased Bonds until all amounts in respect of such Purchased Bonds have been paid in full; and
 - (d) it shall comply with all applicable laws, regulations, rulings, policies and guidelines (as amended from time to time) of any governmental or regulatory authority or central bank relevant to the issue of Purchased Notes and shall make all filings, disclosures or registrations necessary from time to time to ensure compliance with such laws, regulations, rulings, policies and guidelines.
- 6. Interest, Costs and Expenses**
- 6.1 In respect of each SMP Outstanding Amount interest shall accrue at a rate equal to the applicable Interest Rate during each Bond Interest Period. Subject to Clause 7 (*Funding Shortfall*) of these Facility Specific Terms, Clause 7 (*Interest, Costs, Fees and Expenses*) of the General Terms shall apply to this SMP Facility.
 - 6.2 The Beneficiary Member State shall pay ESM interest on Purchased Bonds in accordance with the terms and conditions of such Purchased Bonds.
 - 6.3 The Beneficiary Member State shall bear all costs, charges and expenses, including legal, professional, banking, hedging and/or exchange charges incurred in connection with the preparation, execution, implementation and termination of an SMP Operation. 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.
- 7. Funding Shortfall**
- 7.1 On each Calculation Date when there are SMP Operations outstanding, ESM shall calculate in relation to each Bond Interest Payment Date and each SMP Operation (i) the amount of the ESM Interest Amount for the relevant SMP Operation in respect of such Interest Payment Date and (ii) the amount, if any, by which the ESM Interest Amount exceeds the Bond Interest Amount (the "**Funding Shortfall**") and shall notify the Beneficiary Member States of these amounts.
 - 7.2 In respect of any Funding Shortfall, the Beneficiary Member State agrees that, following calculation and notification of such Funding Shortfall, it will pay to ESM an amount equal to such Funding Shortfall promptly, and in any event within five (5) Business Days of a written demand.
 - 7.3 If on any Calculation Date when there are SMP Operations outstanding the Bond Interest Amount exceeds the ESM Interest Amount, such excess will be retained by ESM in accordance with the ESM Pricing Policy.
- 8. Redemption, early redemption, mandatory redemption and cancellation**
- 8.1 Clause 8 (Repayment, Early Repayment, Mandatory Repayment and Cancellation) of the General Terms apply to this SMP Facility.
 - 8.2 The terms as to redemption and early redemption of Purchased Bonds are set out in the Conditions of the Purchased Bonds and are not varied by the terms of this SMP Facility.
 - 8.3 In addition to the repayment obligations set out in the Financial Assistance Facility Agreement, the following provisions apply:
 - (a) on each date on which the Beneficiary Member State makes a repayment of principal or redeems in full Purchased Bonds, the SMP Outstanding Amount in respect of the relevant SMP Operation shall be automatically reduced by an amount equal to the principal amount received by ESM in respect of the relevant Purchased Bonds;
 - (b) ESM may re-sell any Purchased Bonds prior to their scheduled maturity date in accordance with the ESM Guideline on the Secondary Market Support Facility and subject to complying with Clause 2.7 of these Facility Specific Terms;

- (c) if ESM re-sells any Purchased Bonds prior to their scheduled maturity date then the SMP Outstanding Amount in respect of the relevant SMP Operation shall be automatically reduced by an amount equal to the net sales proceeds received by ESM in respect of such Purchased Bonds (excluding any portion of the sales proceeds which relate to accrued interest and net of any commission, fees or costs incurred by ESM in respect of the sale of such Purchased Bonds);
- (d) if the net sales proceeds of Purchased Bonds exceed the SMP Outstanding Amount the excess shall be retained by ESM in accordance with the ESM Pricing Policy;
- (e) if the net sales proceeds of Purchased Bonds or the amount received in respect of Purchased Bonds at maturity are less than the SMP Outstanding Amount in respect of the relevant SMP Operation then the Beneficiary Member State shall repay to ESM the principal amount resulting from the loan referred to in Clause 2.6 of these Facility Specific Terms together with all interest accrued thereon and all fees, costs, charges and other amounts relating thereto on the relevant SMP Operation Maturity Date.

9. Payments

- 9.1 Clause 9 (*Payments*) of the General Terms shall apply to this SMP Facility.
- 9.2 The payment terms applicable to any Purchased Bonds shall be as set out in the Conditions of the Purchased Bonds.

10. Events of Default

- 10.1 Clause 10 (*Events of Default*) of the General Terms shall apply to this SMP Facility.
- 10.2 In addition to Clause 10.1 of these Facility Specific Terms above, ESM may, by written notice to the Beneficiary Member State, cancel all or any part of this SMP Facility and/or declare the aggregate principal amount of any or all Financial Assistance made and outstanding hereunder to be immediately due and payable, together with accrued interest and all other amounts due in respect thereof, following the occurrence of an event of default under the Conditions of the Purchased Bonds.
- 10.3 The Beneficiary Member State shall reimburse all costs, expenses, fees and loss of interest incurred and payable by ESM as a

consequence of an early redemption of any Purchased Bonds as a consequence of the occurrence of an event of default under the Conditions of the Purchased Bonds. The loss of interest is the difference (if it is a positive amount) between the amount of interest ESM would receive at the Interest Rate of the relevant Purchased Bonds and the interest ESM would receive from the reinvestment of the amounts repaid early (as determined by ESM), in each case for the period between the date of the early redemption and the date on which the Financial Assistance was scheduled to be repaid.

11. Other Provisions

Clauses 11 (*Information Undertakings*), 12 (*Undertakings relating to Inspections, Fraud Prevention and Audits*), 13 (*Notices*), 15 (*Miscellaneous*) and 16 (*Governing Law and Jurisdiction*) of the General Terms shall apply to this SMP Facility.

Signed for the purpose of authentication on 29 April 2013 in Luxembourg and on 29 April 2013 in Nicosia.

EUROPEAN STABILITY MECHANISM

Represented by Klaus Regling,
Managing Director

REPUBLIC OF CYPRUS

Represented by Harris Georgiades,
Minister of Finance

CENTRAL BANK OF CYPRUS

Represented by Panicos O. Demetriades,
Governor of Central Bank of Cyprus