

Acceptance and Amendment Agreement

relating to a Loan Agreement dated 5 June 2009

between

The Depositors' and Investors' Guarantee Fund of Iceland

and

Iceland

and

The State of The Netherlands

Dated 19 October 2009

Acceptance and Amendment Agreement

THIS ACCEPTANCE AND AMENDMENT AGREEMENT IS DATED 19 OCTOBER 2009 AND MADE BETWEEN:

- (1) **THE DEPOSITORS' AND INVESTORS' GUARANTEE FUND OF ICELAND** (*Tryggingarsjóður Innstæðueigenda og Fjárfesta*), a private foundation incorporated under Icelandic law (the "**Guarantee Fund**");
- (2) **ICELAND** ("**Iceland**"); and
- (3) **THE STATE OF THE NETHERLANDS** ("**The Netherlands**").

BACKGROUND:

- (A) The Parties are party to the Original Loan Agreement.
- (B) It is a condition precedent to the coming into force of the Original Loan Agreement that the Icelandic parliament (*Alþingi*) has authorised the guarantee given by Iceland under the Original Loan Agreement and has adopted any other legislative act or authorisation necessary to ensure that the obligations of the Guarantee Fund and Iceland under the Original Loan Agreement are legal, valid, binding and enforceable.
- (C) The Icelandic parliament has, by the Authorising Act, authorised the guarantee given by Iceland under the Original Loan Agreement subject, however, to certain conditions and limitations. An English translation of the Authorising Act, including these conditions and limitations, has been presented to The Netherlands.
- (D) The Netherlands wishes to accept and clarify certain of the conditions and limitations set out in the Authorising Act on the basis of, and subject to, the express terms of this Agreement, and for that purpose the Parties wish to amend the Original Loan Agreement as set out in this Agreement.

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"**Authorising Act**" means the Icelandic Act 96/2009 regarding authorisation to issue a state guarantee as adopted by the Icelandic parliament on 28 August 2009.

"**Effective Date**" means the date referred to in paragraph 2.1 (*Effective Date*).

"**Amended Loan Agreement**" means the Original Loan Agreement as amended by this Agreement.

"**Original Loan Agreement**" means the Loan Agreement dated 5 June 2009 between the parties to this Agreement.

1.2 Incorporation of defined terms

1.2.1 Unless a contrary indication appears, terms defined in the Original Loan Agreement have the same meaning in this Agreement.

1.2.2 Paragraph 1.3 (*Construction*) of the Original Loan Agreement applies in this Agreement as if set out in it.

1.3 Designation

The Parties designate this Agreement as a Finance Document.

2 EFFECTIVE DATE

2.1 Effective Date

2.1.1 The Effective Date will occur when:

- (a) the actions referred to in subparagraph 3.1.1 of paragraph 3 (*Coming into force*) of the Original Loan Agreement, other than the actions referred to in subparagraph 3.1.1(b) of paragraph 3 (*Coming into force*) of the Original Loan Agreement, have been completed;
- (b) the Guarantee Fund and Iceland have delivered to The Netherlands, in form and substance satisfactory to it, the following documents (which will be in English or, if not in English, accompanied by a certified translation into English):
 - (i) an original copy of this Agreement, dated and duly signed on behalf of the Guarantee Fund and Iceland;
 - (ii) a board resolution or other corporate authorisation of the Guarantee Fund authorising the execution by it of this Agreement and the performance of its obligations under this Agreement; and
 - (iii) the copy of the act referred to in subparagraph 2.1.2.

2.1.2 Iceland will:

- (a) as soon as reasonably practicable after the date of this Agreement, submit to the Icelandic parliament a bill providing for the unconditional and unreserved authorisation of the guarantee given by Iceland under the Amended Loan Agreement and for any other authorisation necessary to ensure that the obligations of the Guarantee Fund and Iceland under the Finance Documents are legal, valid, binding and enforceable; and
- (b) promptly upon the act in accordance with that bill coming into force deliver to The Netherlands a copy of that act accompanied by a certified translation into English.

2.2 Coming into force of Amended Loan Agreement

When the Effective Date occurs:

2.2.1 the amendments to the Original Loan Agreement specified in paragraph 3 (*Acceptance and amendment*) will take effect; and

2.2.2 the Amended Loan Agreement will come into force.

2.3 Long stop date

If the actions referred to in paragraph 2.1 (*Effective Date*) have not been completed by 30 November 2009, The Netherlands may, by notice to the Guarantee Fund with a copy to Iceland, terminate this Agreement.

3 ACCEPTANCE AND AMENDMENT

3.1 References

In this paragraph 3, unless a contrary indication appears:

- 3.1.1 references to paragraphs and subparagraphs are to the relevant paragraphs and subparagraphs of the Original Loan Agreement; and
- 3.1.2 references to Articles are to the Articles of the Authorising Act.

3.2 Article 1

- 3.2.1 The Netherlands accepts the conditions and limitations set out in the various Articles of the Authorising Act to the extent expressly stated in the confirmations and amendments set out in this paragraph 3 and Iceland and the Guarantee Fund agree to that acceptance and those confirmations and amendments.
- 3.2.2 Save as expressly amended by this Agreement, the Original Loan Agreement and the other Finance Documents and the interpretation of them will be unchanged.

3.3 Article 2

- 3.3.1 The Parties confirm that the Amended Loan Agreement has been negotiated in accordance with the "Agreed Guidelines" of 14 November 2008 as agreed between Iceland, the European Union and the respective Member States as intended to apply to the negotiation of the Amended Loan Agreement.
- 3.3.2 The Parties confirm that the Amended Loan Agreement may be revised as set out in paragraph 15 (*Change of circumstances*) of the Amended Loan Agreement.
- 3.3.3 The Parties confirm that the waiver of sovereign immunity in paragraph 16.3 (*Waiver of sovereign immunity*) of the Amended Loan Agreement does not extend to any assets of Iceland which enjoy immunity under the Vienna Convention, any assets of Iceland located in Iceland which are necessary for the proper functioning of Iceland as a sovereign power, or any assets of the Central Bank of Iceland.
- 3.3.4 The Parties confirm that nothing in the Original Loan Agreement or the Amended Loan Agreement is intended to remove or shall have the effect of removing from Iceland its control of its natural resources and its right to decide on the utilisation and form of ownership thereof.

3.4 Article 3

- 3.4.1 Paragraph 1.1 (*Definitions*) will be amended as follows:

- (a) A new definition will be inserted after the definition of "Parties", the text of which will be:

"Repayment Date" means:

- (a) each date falling three, six or nine months after the seventh Anniversary Date or any subsequent Anniversary Date; and
(b) each Anniversary Date falling after the seventh Anniversary Date;

(so that the first Repayment Date will be the date falling three months after the seventh Anniversary Date).

- (b) In the definition of "Repayment Instalment":
(i) the words "subject to subparagraph 4.3.3. of paragraph 4.3 (*Voluntary prepayment*)" will be replaced by "subject to any adjustments required by paragraph 4 (*Repayment*)"; and
(ii) the number "32" will be replaced by the words "thirty two".

3.4.2 Paragraph 4 (*Repayment*) will be amended as follows:

- (a) Paragraph 4.2 (*Scheduled repayment*) will be deleted and replaced by the following text:

4.2 Scheduled repayment

4.2.1 Subject to the other provisions of this paragraph 4, following the seventh Anniversary Date, the Guarantee Fund will repay the then outstanding principal amount of the Loan in thirty two quarterly Repayment Instalments.

4.2.2 Subject to paragraph 4.2a (*Cap on principal payments by reference to cumulative GDP growth*), the Guarantee Fund will pay a Repayment Instalment on each Repayment Date.

- (b) Four new paragraphs will be inserted after paragraph 4.2 (*Scheduled repayment*), the text of which will be:

4.2a Cap on principal payments by reference to cumulative GDP growth

4.2a.1 In this paragraph 4.2a:

"Aggregate Debt Service" means, in relation to any calendar year, the aggregate of:

- (a) the Repayment Instalments paid or payable pursuant to paragraph 4.2 (*Scheduled repayment*); and
(b) the interest paid or payable pursuant to subparagraph 5.2.2 of paragraph 5.2 (*Payment of interest*);

in each case during that calendar year.

"Cap Calculation Date" means each day falling ten Business Days before a Repayment Date.

"Cap" means, in relation to any calendar year after 2015, an amount equal to 2 per cent (or, in respect of 2016, 1 per cent) of the amount by which Icelandic GDP Equivalent for that calendar year is greater than the equivalent in euro of the Icelandic gross domestic product for 2008, which the Parties determine to be EUR 11,495,000,000.

"Icelandic GDP" means, on any Cap Calculation Date, the then most recent estimate of the gross domestic product of Iceland for that calendar year, as published by the International Monetary Fund in its most recent World Economic Outlook.

"Icelandic GDP Equivalent" means, on any Cap Calculation Date and in relation to any Icelandic GDP, the amount of that Icelandic GDP (expressed in Icelandic Krona) converted into euro at the average of the daily rates of exchange as published by the Central Bank of Iceland (*Seðlabanki Íslands*) (or, to the extent that no such rates of exchange are published by the Central Bank of Iceland, the daily rates of exchange derived from a source reasonably agreed between Iceland and The Netherlands) for the period ending on the day immediately preceding that Cap Calculation Date and starting on the immediately preceding Cap Calculation Date.

- 4.2a.2 This paragraph 4.2a applies if, on any Cap Calculation Date, in respect of any Repayment Instalment (including, for the avoidance of doubt, any Repayment Instalment the amount of which has been increased pursuant to subparagraph 4.2a.4) the Aggregate Debt Service paid or payable during the then current calendar year has exceeded or will exceed the Cap for that calendar year.
- 4.2a.3 If this paragraph 4.2a applies in respect of any Repayment Instalment, the Guarantee Fund may no later than on the fifth Business Day following the relevant Cap Calculation Date so notify The Netherlands and, following such notification, that Repayment Instalment will be reduced by an amount such that, after such reduction, subparagraph 4.2a.2 does not apply to that Repayment Instalment or, if to that effect the Repayment Instalment would need to be reduced to a negative amount, to zero.
- 4.2a.4 Any amount by which a Repayment Instalment is reduced pursuant to subparagraph 4.2a.3 will be added to the next following Repayment Instalment.

4.2a.5 Nothing in this paragraph 4.2a shall affect, or be affected by, any payment made or required to be made under paragraph 4.1 (*Repayment out of amounts received from Landsbanki*).

4.2b Extension option for Iceland

4.2b.1 In this paragraph 4.2b:

"Extension Effective Date" means the date falling three months after the date on which an Extension Notice has been given or such other date as the Parties may agree in writing.

"Extension Notice" means a notice as referred to in subparagraph 4.2b.2.

4.2b.2 The Guarantee Fund may, at any time, by written notice to The Netherlands, elect to extend the repayment schedule set out in subparagraph 4.2.1 of paragraph 4.2 (*Scheduled repayment*).

4.2b.3 If the Guarantee Fund gives an Extension Notice, then:

(a) if the Extension Effective Date occurs before the first Repayment Date, the references to "thirty two" in the definition of "Repayment Instalment" in paragraph 1.1 (*Definitions*) and in subparagraph 4.2.1 of paragraph 4.2 (*Scheduled repayment*) will be read as if they referred to "fifty six"; and

(b) if the Extension Effective Date occurs on or after the first Repayment Date:

(i) the reference to "thirty two" in subparagraph 4.2.1 of paragraph 4.2 (*Scheduled repayment*) will be read as if it referred to "fifty six"; and

(ii) the definition of Repayment Instalment will be read such that Repayment Instalments falling due after the Extension Effective Date will be an amount equal to the principal amount of the Loan immediately after the Extension Effective Date divided by the number of Repayment Dates remaining after the Extension Effective Date, assuming a total of fifty six Repayment Dates in all.

4.2b.4 If after 5 June 2024 any amount of principal of the Loan remains outstanding as a result of the operation of paragraph 4.2a (*Cap on principal payments by reference to cumulative GDP growth*), then, unless the

Guarantee Fund has given an Extension Notice before that date, the Guarantee Fund will be deemed to have given an Extension Notice with the Extension Effective Date being 5 June 2024.

4.2c Repayment of any remaining principal after 5 June 2030

4.2c.1 In this paragraph 4.2c "**Unpaid Principal**" means any amount of principal of the Loan which has not been repaid on or before 5 June 2030 as a result of the operation of paragraph 4.2a (*Cap on principal payments by reference to cumulative GDP growth*).

4.2c.2 If after 5 June 2030 any Unpaid Principal remains outstanding, then, unless the Parties otherwise agree in writing, the Unpaid Principal will be repaid in twenty further equal quarterly instalments over a further five year period, during which paragraph 4.2a (*Cap on principal payments by reference to cumulative GDP growth*) will continue to apply so as to limit, potentially, the size of any such instalment.

4.2c.3 If at the end of the five year period referred to in subparagraph 4.2c.2 any Unpaid Principal remains unpaid then the provisions of this paragraph 4.2c will apply *mutatis mutandis* to its repayment.

4.2d Notices

Any notice which the Guarantee Fund may give under this paragraph 4 may also be given by Iceland on its behalf.

3.5 Article 4

3.5.1 The Netherlands confirms that it is aware that the Guarantee Fund may seek a ruling by competent adjudicators on the priority of its claims against the Landsbanki estate over other claims originating from the same deposits.

3.5.2 Subparagraph 3.1.2 of paragraph 3 (*Coming into force*) will be amended as follows:

(a) After the words "as soon as practicable" in subparagraph (b)(ii) there will be added ", unless subparagraph (iii) below applies".

(b) At the end of subparagraph (b)(ii) the word "and" will be deleted.

(c) A new subparagraph (b)(iii) will be inserted after subparagraph (b)(ii), the text of which will be:

(iii) if:

(A) an Icelandic court gives a final and non-appealable judgement which (1) determines that all or part of any claim assigned to the Guarantee Fund, or the rights retained by DNB, as the case may be, will be entitled to receive distributions in the Landsbanki estate on a preferential basis relative to other claims originating

from the same deposits, and (2) is not in conflict with an advisory opinion obtained from the Court of the European Free Trade Area on that preferential status; or

- (B) the Winding-up Board of Landsbanki determines that all or part of any claim assigned to the Guarantee Fund, or the rights retained by DNB, as the case may be, will be entitled to receive distributions in the Landsbanki estate on a preferential basis relative to the other claims originating from the same deposits but such ruling is not challenged in an Icelandic court by any depositor or creditor and such failure to challenge is not the result of a Change of Icelandic Law made after 5 June 2009 which renders such a challenge more difficult or impossible;

then, unless that preferential status results from any Change of Icelandic Law made after 5 June 2009, the obligation described in subparagraph (ii) above for the Guarantee Fund or DNB, as the case may be, to make balancing payments will not apply; and

3.6 Articles 5, 6, 7 and 8

The Parties confirm that Articles 5, 6, 7 and 8 are internal to Iceland and are not intended to impact on the Original Loan Agreement or the Amended Loan Agreement.

4 INCORPORATION OF TERMS

Paragraphs 1.2 (*Third-party benefits*), 12 (*Changes*), 13 (*Notices*), 14 (*Miscellaneous*) and 16 (*Governing law and jurisdiction*) apply to this Agreement as if set out in it and for this purpose all references in those paragraphs to "this Agreement" will be deemed to refer to this Agreement.

THIS ACCEPTANCE AND AMENDMENT AGREEMENT HAS BEEN MADE ON THE DATE STATED AT THE BEGINNING OF THIS ACCEPTANCE AND AMENDMENT AGREEMENT BY:

The Depositors' and Investors'
Guarantee Fund of Iceland
(*Tryggingarsjóður Innstæðueigenda og Fjárfesta*)

Name: Áslaug Árnadóttir

Title: Chairman of the Board

EXECUTION COPY

Iceland

Name: Guðmundur Árnason
Title: Permanent Secretary, Ministry of Finance

The State of the Netherlands
The Minister of Finance
on his behalf

Name: Johan Barnard