

**AMENDED AND RESTATED GUARANTEE AGREEMENT**

between

**ING Groep N.V.**

and

**Staat der Nederlanden**

Dated 13 November 2012

---

● **NautaDutilh**

Strawinskylaan 1999  
1077 XV Amsterdam

---

## **TABLE OF CONTENTS**

1.	DEFINITIONS .....	3
2.	INDEMNITY .....	9
3.	SECURITY LOSS DETERMINATION .....	9
4.	ANNUAL CALCULATIONS .....	12
5.	ANNUAL PAYMENTS.....	13
6.	MUTUALLY AGREED VOLUNTARY TERMINATION OF THE IABF AGREEMENT .....	14
7.	CONTINUING GUARANTEE AND OTHER MATTERS .....	14
8.	REPRESENTATIONS AND WARRANTIES AND COVENANTS ..	14
9.	NO SET-OFF AND SUSPENSION RIGHTS .....	16
10.	NOTICES .....	16
11.	TRANSFER .....	16
12.	NO NULLIFICATION/DISSOLUTION .....	16
13.	AMENDMENT AND WAIVER .....	16
14.	PARTIAL INVALIDITY .....	16
15.	TERMINATION .....	17
16.	GOVERNING LAW .....	17
17.	JURISDICTION .....	17

**THIS AMENDED AND RESTATED GUARANTEE AGREEMENT** originally entered into on 17 February 2012, is dated 13 November 2012 and is made between:

1. **ING Groep N.V.**, a company organised under the laws of the Netherlands, whose corporate seat is at Amsterdam, the Netherlands (the "**Guarantor**");

and

2. **Staat der Nederlanden** (the "**State**"),

all parties hereinafter are collectively referred to as the "**Parties**".

#### **WHEREAS**

- A. in relation to the divestment by the Guarantor of its directly or indirectly owned shares in ING Bank, fsb, the State indicated that, among other things, the Guarantor must continue to have economic exposure to 20% of the portfolio of ING Bank, fsb upon transfer of the shares in the capital of ING Bank, fsb by the Guarantor, which has been agreed between the Guarantor and the State in the Original Financial Guarantee;
- B. similarly, in relation to the Delinking the State has indicated that, among other things, the Guarantor must continue to have economic exposure to 20% of the portfolios of the US Companies (other than ING Bank, fsb); and
- C. by way of this Agreement, the State and the Guarantor wish to arrange for the continuation of such economic exposure for the event that any or all US Co Securities are directly or indirectly sold to a Third Party, unless such sale is not prohibited under the IABF Agreement, and to amend the Original Financial Guarantee in accordance therewith;

#### **IT IS HEREBY AGREED AS FOLLOWS**

##### **1. Definitions**

- 1.1. Unless otherwise defined in this Agreement, words and expressions defined in the IABF Agreement shall have the same meaning when used

in this Agreement (including its recitals).

1.2. In this Agreement:

<b>"Agreement"</b>	means this Amended and Restated Guarantee Agreement.
<b>"Annual Calculation Date"</b>	means with respect to a year, 31 December of that year, except that the last (and, as the case may be, an additional) Annual Calculation Date shall fall on the date two Months before the Termination Date.
<b>"Annual Payment Date"</b>	means with respect to an Annual Calculation Date, the ING Payment Date in February immediately following that Annual Calculation Date, except that the last (and, as the case may be, an additional) Annual Payment Date shall fall on the ING Payment Date immediately preceding the Termination Date.
<b>"Delinking"</b>	means the transaction whereby each of the US Companies (other than ING Bank, fsb) transfers all of its rights relating to the Facility Agreement with respect to it, as well as its State Securities to ING Bank N.V., and terminates any other agreements relating to the Facility Agreement with respect to it.
<b>"Facility Agreement"</b>	means an illiquid asset back-up facility agreement between, amongst others, ING Support Holding B.V. and the State with respect to a US Company, dated 31 March 2009, as amended on 26 November 2010, and, in the case of the illiquid assets back-up facility agreement with respect to ING Bank, fsb, as transferred by a transfer of contractual relationship from ING Support Holding to ING Bank N.V. on 17 February 2012, after which it was further amended and restated on that same date (but, for the avoidance of doubt, not as amended on or about the date of this Agreement), and the <b>"Facility Agreements"</b> means collectively all the Facility Agreements.

<b>"First Loss Date"</b>	has the meaning attributed thereto in Clause 5.1.
<b>"GA Calculation Date"</b>	means 17 February 2012.
<b>"GA Securities"</b>	means (i) the Transferred Securities as defined in the transfer procedures agreement, between ING Bank, fsb, ING Bank, ING Support Holding, the Guarantor and the State, dated 16 February 2012, and (ii) the State Securities that have become a GA Security pursuant to Clause 1.5; the securities that are Securities as defined in the Facility Agreement with respect to ING Bank, fsb, as per at the date of this Agreement, are all the GA Securities at the date of this Agreement.
<b>"GA Security Entry Date"</b>	means with respect to a Security, the date that such Security becomes a GA Security; the GA Security Entry Date of the securities that are Securities as defined in the Facility Agreement with respect to ING Bank, fsb, as per at the date of this Agreement is the GA Calculation Date.
<b>"IABF Agreement"</b>	means the Facility Agreements, as amended and restated in one agreement, on or about the date of this Agreement, and as further amended from time to time.
<b>"ING Groep Share"</b>	means as per an Annual Calculation Date, 25% of the excess, if any, of the Portfolio Loss as per such Annual Calculation Date <i>over</i> 35.50% of the Portfolio Value.
<b>"Maximum Guaranteed Amount"</b>	means an amount equal to 25% x 64.50% of the Portfolio Value, minus USD 1 million.
<b>"Month"</b>	means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; and
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month.

**"Original Financial Guarantee"** means the Financial Guarantee between the Guarantor and the State dated 17 February 2012.

**"Portfolio Loss"** means as per an Annual Calculation Date, (i) the sum of the Security Losses of all GA Securities as per that date, excluding any Security Losses (including those incurred as a consequence of a sale of Securities and/or otherwise incurred from (and including) the Voluntary Termination Starting Date) incurred in relation to a mutually agreed, voluntary termination of the IABF Agreement, as referred to in Clause 4.2 (d) thereof. minus (ii) the sum over all GA Securities of the Security Loss of each GA Security from but excluding the GA Calculation Date up to and including the GA Security Entry Date, provided that the outcome of this calculation is positive.

**"Portfolio Value"** means an amount equal to the sum of the Security OPA's of all GA Securities.

**"Security Loss"** has the meaning attributed thereto in Clause 3 (*Security Loss Determination*).

**"Security OPA"** means with respect to a Security, the outstanding principal amount of such Security at the close of business on its GA Security Entry Date.

<b>"State Securities"</b>	means all the Transferred Securities as defined in the Transfer Procedures Agreements.
<b>"Termination Date"</b>	means <ul style="list-style-type: none"> <li>(a) in case of a mutually agreed, voluntary termination of the IABF Agreement, the date that falls three Months after the Voluntary Termination Starting Date; and</li> <li>(b) in any other case, the date that falls three Months after the earlier of (i) the date that all payments to be made under the IABF Agreement have been made, and (ii) the date that each Security has been divested or appropriated, as the case may be, pursuant to (a) paragraph 3.3, or (b) paragraph 3.5, if pursuant to that paragraph such Security is treated as divested, or (c) paragraph 3.6, of Clause 3 (<i>Security Loss Determination</i>).</li> </ul>
<b>"Transfer Procedures Agreement"</b>	means a transfer procedures agreement, between a US Company (other than ING Bank, fsb), ING Bank, ING Support Holding, the Guarantor and the State, dated on or about the date hereof, and the <b>"Transfer Procedures Agreements"</b> means collectively all the Transfer Procedures Agreements.
<b>"Universal Effective Date"</b>	means the date on which the Universal Effective Time occurs.
<b>"Universal Effective Time"</b>	has the meaning attributed thereto in clause 3 of the 2012 universal amendment and contract transfer agreement between, amongst others, the Guarantor and the State, dated on or about the date hereof.
<b>"Voluntary Termination Starting Date"</b>	means the date that a voluntary termination of the IABF Agreement, as referred to in Clause 4.2 (d) thereof, has been mutually agreed.

- 1.3. In this Agreement, the following interpretations apply.
- a. Words denoting the singular include the plural and vice versa. Words denoting one gender include the other gender.
  - b. The words "include", "included" or "including" are used to indicate that the matters listed are not a complete enumeration of all matters covered.
  - c. The words "the date of divestment" in relation to the Securities refer to the date that legal title to the Securities is transferred.
  - d. No provision of this Agreement is to be interpreted adversely against a Party solely because that Party was responsible for drafting that particular provision.
  - e. English language words used in this Agreement intend to describe Netherlands legal concepts only and the consequences of the use of those words in English law or any other foreign law are to be disregarded.
  - f. The headings in this Agreement are for construction purposes as well as for reference.
  - g. References in this Agreement to any Transaction Document will be deemed to include references to those agreements as they may be varied, amended, modified, novated or restated from time to time (including by way of increase of the facilities made available under them or accession or retirement of the parties to these agreements).
- 1.4. This Agreement will become effective as from the Universal Effective Time, except for Clause 1 (*Definitions*), and Clause (9) (*Notices*) up to and including Clause 16 (*Jurisdiction*), which will have immediate effect.
- 1.5. If and when a US Co Security is directly or indirectly sold to a Third Party, four State Securities having the same CUSIP number as that US Co Security shall become a GA Security, unless such sale is not prohibited under the IABF Agreement.



## 2. Indemnity

The Guarantor irrevocably and unconditionally indemnifies the State against a part of the State's Portfolio Losses under the terms and conditions of this Agreement provided that the maximum amount payable by the Guarantor under this Agreement shall not exceed the Maximum Guaranteed Amount.

## 3. Security Loss Determination

3.1. For each GA Security, the Security Loss as per an Annual Calculation Date shall be determined as described in this Clause 3.

3.2. If such Security has not been divested on or before such Annual Calculation Date, the Security Loss shall be equal to:

- the aggregate amount of losses allocated to such Security (based on information as referred to in Clause 7.1 (*Investor Reports etc.*) of the IABF Agreement) in the period from (but excluding) the GA Calculation Date up to and including such Annual Calculation Date.

3.3. If such Security has been divested on or before such Annual Calculation Date, (i) pursuant to Clause 3.3 (a) of the IABF Agreement or (ii) with the consent of the Guarantor, the Security Loss shall be equal to:

- the difference, which may be a positive or negative number, of the outstanding principal amount of such Security as of the GA Calculation Date *over* the sum of the Cumulative Principal Payments and the Divestment Proceeds;

where

- the "Cumulative Principal Payments" are equal to the aggregate amount of principal payments distributed with respect to such Security to ING Bank N.V. in the period from (but excluding) the GA Calculation Date up to and including the date of divestment (but excluding principal payments to which the buyer of the divested Securities is entitled as against ING Bank N.V.); and
- the "Divestment Proceeds" are equal to the aggregate amount of net proceeds (excluding accrued interest) from the divestment of such

Security.

3.4. If (i) such Security has been divested on or before such Annual Calculation Date other than (a) pursuant to Clause 3.3 (a) of the IABF Agreement or (b) with the consent of the Guarantor, and (ii) the Security is not treated as a Security that was divested by the State pursuant to paragraph 3.5 of this Clause 3, then the "Security Loss" shall be equal to:

- the aggregate amount of losses that would have been allocated to such Security in the period from (but excluding) the GA Calculation Date up to and including such Annual Calculation Date, if such Security had not been divested (the "Cumulative Loss Amount"), and

if the State requests the Guarantor for the appointment of an independent expert of good reputation to track the losses made on such divested Securities, the Guarantor and the State shall jointly appoint such expert at the costs of the Guarantor. The determinations of the expert shall be binding on the parties, save in the case of manifest errors.

3.5. If (i) such Security has been divested on or before such Annual Calculation Date other than (a) pursuant to Clause 3.3 (a) of the IABF Agreement or (b) with the consent of the Guarantor, and (ii) after the date of divestment of such Security, the Guarantor has notified the State in writing that it would have divested the Security at the date of the notification,

- (i) stating the price quoted for that Security on that date for which it would have divested the Security;
- (ii) which is evidenced by one tradable quote given to the Guarantor, or any wholly owned affiliate of it, by one independent third party potential buyer for the same number of Securities of this type (e.g. with the same CUSIP number) that have been divested by the State at one moment; and
- (iii) stating (a) the name and such other details relating to the third party potential buyer as the State may reasonably request, and (b) the corresponding Divestment Proceeds;

then the following procedure applies.

3.5.1. Within 10 Business Days after receipt of such notification, the State shall notify the Guarantor in writing that

- (i) it accepts the tradable quote, in which case such Security will be treated as a Security that was divested on the date of such notification at such price and with such Divestment Proceeds in accordance with paragraph 3.3 of this Clause 3; or
- (ii) it does not accept the tradable quote and
  - (a) if Securities of the same type as the Securities that have been divested, are still available for divestment, then the State may request the Guarantor in its notification to offer at least one of these Securities of the same type for sale to the third party buyer, provided that the number of Securities offered is not higher than the number to which the tradable quote referred, and if the third party buyer does not for any reason accept the trade on the basis of the terms of its tradable quote, then paragraph 3.4 of this Clause 3 shall apply to such Security; or, at the option of the State
  - (b) in its notification inform the Guarantor that it intends to appoint an independent expert of good reputation, at the costs of the Guarantor, after which the Guarantor shall notify the State in writing within 5 Business Days either (x) that it does not agree thereto, in which case paragraph 3.4 of this Clause 3 shall apply to such Security, or (y) that it agrees thereto, in which case within 10 Business Days of such notification, at the costs of the Guarantor, the State shall appoint an independent expert of good reputation, who shall within 15 Business Days, confirm in writing that
    - (x) the tradable quote is acceptable, in which case such Security will be treated as a Security that was divested by the State on the date of such notification at such price and with such Divestment Proceeds in accordance with paragraph 3.3 of this Clause 3; or
    - (y) the tradable quote should be rejected, and who shall summarise in his written confirmation why on

reasonable grounds he considers the tradable quote not to be acceptable, and paragraph 3.4 of this Clause 3 shall apply to such Security.

3.5.2 If, in case of this paragraph 3.5 of this Clause 3, the State requests the Guarantor for the appointment of an independent expert of good reputation to track the losses made on such Securities that are treated as Securities that were divested by the State, the Guarantor and the State shall jointly appoint such expert at the costs of the Guarantor. The determinations of the expert shall be binding on the parties, save in the case of manifest errors.

3.6. If such Security has been divested as a consequence of a sale under the Security Documents, or in case of a sale otherwise realised in circumstances where a sale under the Security Documents was allowed, or if such Security has been appropriated by the State under the Security Documents, none of the paragraphs 3.2 up to and including 3.5 of this Clause 3, shall apply with respect to such Security, and the Security Loss shall be equal to:

- the aggregate amount of losses allocated to such Security (based on information as referred to in Clause 7.1 (*Investor Reports etc.*) of the IABF Agreement) in the period from (but excluding) the GA Calculation Date up to and excluding the date of divestment (for the avoidance of doubt, the Security Loss shall not include any divestment losses).

3.7 The State and the Guarantor hereby agree that they will negotiate in good faith with each other, (i) if payments are received under the Securities with respect to losses that were allocated to the Securities before the GA Calculation Date, or (ii) if losses are allocated to the Securities that relate to events before the GA Calculation Date.

#### **4. Annual calculations**

4.1. Annually, within 15 Business Days after each Annual Calculation Date, based on the most recent distribution report received with respect to each GA Security and the cash proceeds of any divestment of any GA Security, the Guarantor shall

- (i) calculate

- (a) the Security Loss for each GA Security;
  - (b) the Portfolio Loss;
  - (c) the ING Groep Share; and
  - (d) as from the Annual Calculation Date succeeding the First Loss Date, the amount of any increase or decrease, as the case may be, of the ING Groep Share, since the immediately preceding Annual Calculation Date; and
- (ii) provide the State with a calculation of each of the foregoing amounts in reasonable detail.
- 4.2. If the State does not agree with any calculation made by the Guarantor, it shall so notify the Guarantor within 10 Business Days and both parties shall jointly as soon as practically appoint an independent third party expert, that will verify the calculation. The Guarantor shall provide the expert with the data underlying the calculations and any other data that the expert may reasonably deem necessary for verification and calculation purposes. The verification of the expert and its calculation shall be final and binding absent manifest error. The reasonable fees and costs of such third party expert shall be borne by the Guarantor.

## 5. Annual Payments

- 5.1. If, for the first time, on any Annual Calculation Date, the ING Groep Share is greater than zero (such Annual Calculation Date also being referred to as the "**First Loss Date**"), the Guarantor shall pay an amount equal to the ING Groep Share on that Annual Calculation Date to the State on the corresponding Annual Payment Date.
- 5.2. On each subsequent Annual Payment Date after the Annual Payment Date referred to in paragraph 5.1,
- (i) the Guarantor shall pay to the State the amount of any increase in the ING Groep Share since the previous Annual Calculation Date; and
  - (ii) the State shall pay to the Guarantor the amount of any decrease in

the ING Groep Share since the previous Annual Calculation Date.

- 5.3. For the avoidance of doubt, and notwithstanding any other provision of this Agreement, in no event and at no point in time, shall the State be obliged to pay an amount to the Guarantor, if, and to the extent that, the result of such payment would be that the aggregate of amounts paid by the State to the Guarantor hereunder exceeds the aggregate of amounts paid by the Guarantor to the State hereunder.

## **6. Mutually agreed voluntary termination of the IABF Agreement**

- 6.1. In case of a mutually agreed voluntary termination of the IABF Agreement pursuant to Clause 4.2 (d) thereof,

- (i) the Security Loss shall be determined in accordance with the procedure provided for in Clause 3 (*Security Loss Determination*), Clause 4 (*Annual Calculations*) and Clause 5 (*Annual Payments*) except that in that clause, the "Annual Calculation Date" is deemed to refer to the Voluntary Termination Starting Date;

and, for the avoidance of doubt,

- (ii) no Security Losses will be taken into account, as from (and including) the Voluntary Termination Starting Date.

## **7. Continuing guarantee and other matters**

- 7.1. The liability of the Guarantor hereunder is independent of any security or other guarantee in favour of the State under the Transaction Documents.
- 7.2. This Agreement does not intend to prejudice, limit or affect any right of the State under any of the Transaction Documents and the other Transaction Documents do not intend to limit or affect any right of the State under this Agreement.

## **8. Representations and warranties and covenants**

- 8.1. The Guarantor represents and warrants to the State that at the date hereof:
- a. it is duly incorporated and validly existing as a *naamloze*

*vennootschap* (company with limited liability);

- b. it has the corporate power to enter into this Agreement and to perform its obligations thereunder;
  - c. it has not omitted to take any corporate action required by its Articles of Association and Netherlands law in connection with entering into this Agreement and the performance of its obligations thereunder, which, if not taken, can be invoked against parties acting in good faith;
  - d. this Agreement constitutes the legal, valid and binding obligations against it in the Netherlands in accordance with their terms;
  - e. the entry into and performance by it of this Agreement does not and will not conflict with any agreement or instrument binding upon it;
  - f. the entry into and performance by it of this Agreement does not and will not in itself result in a violation of its articles of association or Netherlands law, that would affect the enforceability of this Agreement against it in the Netherlands;
  - g. no default under this Agreement has occurred and is continuing;
  - h. in respect of or in connection with the signing of this Agreement or the performance by the Guarantor of its obligations thereunder no Netherlands registration tax or stamp duty will be payable in the Netherlands by the Guarantor; and
  - i. its payment obligations under this Agreement rank *pari passu* with all its other unsecured and unsubordinated payment obligations (save for those preferred by mandatory provisions of law).
- 8.2. The Guarantor shall ensure that its payment obligations under this Agreement rank at all times at least *pari passu* with all its other unsecured and unsubordinated payment obligations (save for those preferred by mandatory provisions of law).

**9. No set-off and suspension rights**

Neither party shall be entitled (i) to set off any amounts payable hereunder against any amounts payable under the IABF Agreement, including the Registered Bonds issued thereunder, or (ii) to use its suspension rights, if it does not receive any amounts payable under the IABF Agreement, including the Registered Bonds issued thereunder, timely and/or in full when due and payable.

**10. Notices**

- 10.1. Any notice or other communication under or in connection with this Agreement must be made in accordance with the provisions of the IABF, Agreement applied *mutatis mutandis*.
- 10.2. The provisions of this Clause 9 (*Notices*) shall not apply in relation to the service of documents for the purpose of litigation.

**11. Transfer**

Neither Party may transfer or encumber its rights and/or obligations under this Agreement without the other Party's consent.

**12. No nullification/dissolution**

Each Party hereby, to the extent legally possible, waives its right to nullify or have nullified or dissolve or have dissolved the legal acts represented by this Agreement pursuant to the Articles 6:228 and/or 6:265 Dutch Civil Code or on any other ground, which waivers are hereby accepted by the other Party.

**13. Amendment and waiver**

Any term of this Agreement may only be amended or waived by means of a written agreement between all parties hereto.

**14. Partial invalidity**

In the event that a provision of this Agreement is invalid, illegal, not binding, or unenforceable (either in whole or in part), the remainder of



this Agreement shall continue to be effective to the extent that, in view of the Agreement's substance and purpose, such remainder is not inextricably related to and therefore inseverable from the invalid, illegal, not binding or unenforceable provision. The Parties to this Agreement shall make every effort to reach agreement on a new clause which differs as little as possible from the invalid, illegal, not binding or unenforceable provision, taking into account the substance and purpose of this Agreement.

**15. Termination**

This Agreement shall terminate on the Termination Date.

**16. Governing law**

This Agreement shall be governed by and construed in accordance with the laws of the Netherlands.

**17. Jurisdiction**

Any disputes arising out of or in connection with this Agreement shall be submitted in first instance to the competent court at Amsterdam, the Netherlands. If proceedings are initiated by a party to this Agreement in conformity with this Clause 16, the State hereby waives any immunity from jurisdiction it may enjoy.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the day and year first above written.

**[Signature page to follow]**

**ING GROEP N.V.**

---

by: [ ]

title: [ ]

---

by: [ ]

title: [ ]

**STAAT DER NEDERLANDEN**

---

by: [ ]

title: [ ]