

DATED

3 SEPTEMBER 2009

KAUPTHING BANK H.F.

- and -

KAUPSKIL E.H.F.

- and -

THE GOVERNMENT OF ICELAND

- and -

NEW KAUPTHING BANK H.F.

KAUPTHING CAPITALISATION AGREEMENT

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THIS AGREEMENT is made on

3 September 2009

BETWEEN:

- (1) KAUPSKIL EHF. (registered id. 580609-0150), whose registered office is at Borgartún 19, 105 Reykjavik, Iceland (hereinafter referred to as ("KAUPTHING HOLDCO");
- (2) KAUPTHING BANK H.F. (registered ID. 560882-0419), whose registered office is at Borgartun 19, 105 Reykjavik, Iceland ("KAUPTHING");
- (3) THE ICELANDIC GOVERNMENT, acting through the Ministry of Finance, (registered ID. 550169-2829), whose registered office is at Arnarhváll, Reykjavik; (the "GOVERNMENT"); and
- (4) NEW KAUPTHING BANK H.F (registered ID. 581008-0150), whose registered office is at Borgartun 19, 105 Reykjavik, Iceland ("NEW KAUPTHING")

WHEREAS:

- (A) On 9 October 2008 the FME appointed the Resolution Committee in accordance with article 5 of legislative Act No. 125/2008 on the Authority for Treasury Disbursements due to Unusual Financial Market Circumstances etc., amending Act No. 161/2002 on Financial Undertakings (the "Act on Financial Undertakings");
- (B) On 18 October 2008 the Government established New Kaupthing;
- (C) On 21 October 2008 the FME decided on the basis of the Act on Financial Undertakings to transfer certain assets and liabilities from Kaupthing to New Kaupthing;
- (D) On 24 November 2008 the District Court of Reykjavik granted Kaupthing a moratorium on payments to creditors which is still in force;
- (E) The Resolution Committee has the legal obligation and aim to maximise the value of Kaupthing's assets and to safeguard the interests of Kaupthing's creditors;
- (F) The Government is working towards ensuring a stable and functioning banking system in Iceland;
- (G) On 17 July 2009 certain of the Parties signed a heads of terms agreement (the "Heads of Terms");
- (H) The Parties have agreed to carry out and implement certain transactions, with reference to the abovementioned, and in that regard certain of the Parties have entered and/or agreed to enter into:
 - (a) the Government Capitalisation Agreement dated on or around the Signing Date pursuant to which the Government shall capitalise New Kaupthing by way of a subscription for the Government Subscription Shares in consideration for the issue by the Government of the Government Bond to New Kaupthing (the "Government Capitalisation"); and
 - (b) the Shareholders' Agreement, the Tier II Capital Instrument Agreement, the Escrow and Contingent Value Rights Agreement and the Equity Option Arrangement to be dated on or around the Signing Date,
 along with this Kaupthing Capitalisation Agreement (the "Agreement");
- (I) As at the Signing Date, the Government owns 100% of the issued shares in the share capital of New Kaupthing being 775,000,000 ordinary shares which it subscribed for on or

around 18 October 2008 for an aggregate subscription price of ISK 775,000,000 together with the Government Subscription Shares;

- (J) All pre-conditions to the entering into of this Agreement and the other Transaction Documents have been fulfilled;
- (K) It is the intention of the Parties, if the Capitalisation Conditions are fulfilled, that Kaupthing Holdco will acquire the Subscription Shares in consideration for the Subscription Assets; and;
- (L) It is the intention of the Parties, if the Kaupthing Capitalisation is not completed on or before the Withdrawal Date, that the Kaupthing Capitalisation Agreement and the Kaupthing Capitalisation shall terminate and cease to have any effect, and the Escrow and Contingent Value Rights Agreement and the Equity Option Arrangement shall take effect, each in accordance with their respective terms.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

"**Accrued Interest**" means the aggregate amount of interest accrued on the Government Bond for the period between 22 October 2008 and the Kaupthing Capitalisation Date, in accordance with the terms of the Government Bond;

"**Agreed Form**" means a form agreed between or identified by the Parties for the purposes of this Agreement and signed or initialled for identification purposes by them or on their behalf;

"**Appointment Letters**" means the letters, in the Agreed Form, dated on or about the Signing Date, relating to the appointment of directors to the board of New Kaupthing as set out in Clause 3.1 (f);

"**Business Day**" means a day except a Saturday or Sunday, on which banks in Reykjavik are open for business generally;

"**Capitalisation Conditions**" shall have the meaning given to the term in Clause 5.1;

"**Competition Authority**" means the Icelandic Competition Authority (*Samkeppniseftirlitið*);

"**Creditors**" means the creditors of Kaupthing;

"**Creditors' Due Diligence Review**" means the due diligence review which shall provide the Creditors with information with respect to the Kaupthing Capitalisation as set out in Clause 5.1;

"**Creditors' Feedback**" means the informational feedback and reaction from Creditors with respect to the Kaupthing Capitalisation;

"**Due Diligence Review**" means the due diligence review conducted in accordance with Clause 5.1 of this Agreement;

"**Emergency Powers Legislation**" means the Icelandic Act on the Authority for Treasury Disbursements due to Unusual Financial Market Circumstances, No 125/2008;

"**Encumbrance**" means all security interests, options, equities, claims, or other third party rights including rights of pre-emption of any nature whatsoever;

"**Equity Option Arrangement**" means the Agreed Form equity option instrument issued by the Government to Kaupthing in respect of 90% of the Government's shareholding in New Kaupthing, dated on or around the Signing Date;

"**Escrow and Contingent Value Rights Agreement**" means the Agreed Form escrow and contingent value rights agreement dated on or about the Signing Date;

"**FME**" means The Financial Supervisory Authority of Iceland (*Fjármálaeftirlitið*);

"**Government Bond**" has the meaning given to it in the Government Capitalisation Agreement;

"**Government Capitalisation Agreement**" means the agreement between the Government and New Kaupthing relating to the Government Capitalisation;

"**Government Subscription Shares**" means the 11,870,833,333 ordinary shares in the capital of New Kaupthing issued to the Government pursuant to the Government Capitalisation;

"**Group**" means New Kaupthing and its subsidiaries from time to time;

"**Interim Period**" has the meaning given in Clause 3.1 (f);

"**Kaupthing Capitalisation Date**" means the date that the Kaupthing Capitalisation takes place, on or before the Long Stop Date;

"**Liquidity Facility Letter**" means the letter from the Ministry of Finance (together with the appended term sheet) substantially in the form as set out in Schedule 4;

"**Long Stop Date**" means 31 October 2009 (or such other date as the Parties may agree in writing);

"**Material Subsidiary**" means any subsidiary of New Kaupthing that contributes or is responsible for more than 10% of the Group's operating profits in the three months period to 31 July 2009 (or if such subsidiary is after the date of this Agreement acquired by the Group it would have contributed or been responsible of more than 10% of the Group's operating profits in the three month period to 31 July 2009 if its profit were taken into account in determining the Net Income of the Group in such three month period.

"**Net Income**" means the amount (which may be negative) of net income of New Kaupthing for the period commencing on 22 October 2008 and ending on 30 September 2009 (inclusive) as agreed or determined in accordance with Schedule 3 and which, for the avoidance of doubt, shall:

- i) include Accrued Interest;
- ii) be calculated on a consistent basis with New Kaupthing's audited financial statement for the year 2008, and
- iii) to the extent not inconsistent with paragraph (ii) above, be calculated on a consistent basis with New Kaupthing's financial statements dated 30 June 2009, 31 August 2009 and 30 September 2009, each of which have been reviewed (although not formally approved) by New Kaupthing's auditors.
- iv) notwithstanding items (ii) and (iii) above, account for all items that have negatively affected New Kaupthing's equity up until the 30 September 2009 and which have not been accounted for in New Kaupthing's profit and loss statement, including, without limitation, possible changes in the equity related to changes in value of foreign currencies;

"**Parties**" means the parties to this Agreement and "**Party**" means each of them;

"**Resolution Committee**" means the resolution committee of Kaupthing from time to time;

"Returned Capital" is defined in Clause 7.2;

"Set-off Agreement" means the agreement relating to certain aspects of the financial settlement between Kaupthing and New Kaupthing dated on or about the Signing Date;

"Shareholders Agreement" means the Agreed Form shareholders' agreement dated on or about the Signing Date setting out the rights and obligations of certain of the Parties with respect to their shareholdings in New Kaupthing and taking effect on the Kaupthing Capitalisation Date;

"Signing Date" means the date of this Agreement;

"Sparisjóðabankinn" means Sparisjóðabanki Íslands hf. (registered ID. 681086-1379), whose registered office is at Rauðarárstígur 27, 105 Reykjavík, Iceland;

"SPM" means Sparisjóður Mýrasýslu, (registered ID. 610269-5409), whose registered office is at Digranesgötu 2, 310 Borgarnes, Iceland;

"SPRON Bond" means the bond issued to New Kaupthing by Sparisjóður Reykjavíkur og nágrennis hf., (registered ID. 540502-2770) whose registered office is at Lágmúli 6, Reykjavík, Iceland ("SPRON") as payment for deposits taken over by New Kaupthing;

"Subscription Assets" means the assets paid to New Kaupthing in consideration for the Subscription Shares as approved by the FME and which are set out in the independent auditors report on assets to be paid in consideration for the Subscription Shares;

"Subscription Shares" has the meaning given in Clause 2.1;

"Tier II Capital Instrument" means the Tier II capital instrument pursuant to the Tier II Capital Instrument Agreement which shall remain in place after the Kaupthing Capitalisation;

"Transaction Documents" means this Agreement together with the Government Capitalisation Agreement, the Escrow and the Contingent Value Rights Agreement, the Tier II Capital Instrument, the Shareholders Agreement, Set-off Agreement and the Equity Option Arrangement;

"Transferred Assets" means the assets transferred to New Kaupthing from Kaupthing, pursuant to a decision of the FME dated 21 October 2008;

"Transferred Liabilities" means the liabilities transferred to New Kaupthing from Kaupthing, pursuant to a decision of the FME dated 21 October 2008;

"Withdrawal Date" means the earlier of (i) the date that Kaupthing declares that the Capitalisation Conditions are not fulfilled and that the Kaupthing Capitalisation shall not be undertaken, or (ii) the Long Stop Date, if the Kaupthing Capitalisation has not occurred on or before the Long Stop Date;

"Written Resolutions" means the resolutions in writing proposed to be signed by the Government on the Kaupthing Capitalisation Date in the Agreed Form, *inter alia*, to increase the share capital of New Kaupthing and to issue and allot the Subscription Shares to Kaupthing Holdco on the Kaupthing Capitalisation Date and to subsequently decrease the authorised share capital of New Kaupthing .

2. SUBSCRIPTION AND PURCHASE PRICE

- 2.1 Kaupthing Holdco undertakes to subscribe to ordinary shares in the capital of New Kaupthing as will be required to fulfil Kaupthing Holdco's obligations under clause 6 (the "Subscription Shares") and New Kaupthing agrees to issue such Subscription Shares,

subject to the terms and conditions of this Agreement, in consideration for the Subscription Assets.

- 2.2 New Kaupthing warrants that as at the Completion Date, the Subscription Shares are issued fully paid up and free from any Encumbrances.
- 2.3 Kaupthing Holdco warrants that as at the Completion Date, it is the sole legal and beneficial owner of the Subscription Assets and that the Subscription Assets are free from any Encumbrances.
- 2.4 Kaupthing Holdco shall have the right but not the obligation (and in place of its obligation to acquire the Subscription Shares under clause 2.1 herein) to subscribe to a sufficient number of ordinary shares such that it shall become the holder of 90% of the issued ordinary shares in the capital of New Kaupthing. The price per share payable shall be the same price per share that it would have paid for the Subscription Shares under clause 2.1. In the event that Kaupthing Holdco exercises this right, the clauses of this agreement relating to the exercise of the rights set out in clause 2.1 shall be adjusted accordingly.

3. SIGNING DATE

- 3.1 On the Signing Date (if not already done), the following items will occur in the following:
 - (a) The Government shall enter into the Government Capitalisation Agreement, issue the Government Bond to New Kaupthing and subscribe for the Government Subscription Shares in accordance with the terms of the Government Capitalisation Agreement;
 - (b) New Kaupthing and the Government shall have prepared in Agreed Form the Written Resolutions;
 - (c) Kaupthing and New Kaupthing shall enter into the Escrow and Contingent Value Rights Agreement which shall take effect in accordance with its terms on the Withdrawal Date, or which shall be terminated on the Kaupthing Capitalisation Date, as applicable;
 - (d) The Government shall execute the Equity Option Arrangement, which shall be held by the Government and released to Kaupthing on the Withdrawal Date in accordance with its terms, or which shall be terminated on the Kaupthing Capitalisation Date, as applicable;
 - (e) The Parties shall enter into the Shareholders Agreement, which shall take effect on the Kaupthing Capitalisation Date in accordance with its terms, or which shall be terminated on the Withdrawal Date, as applicable;
 - (f) The Parties shall enter into the Set-off Agreement, which shall take effect in accordance with its terms; and
 - (g) At the nomination of the Resolution Committee, the Government will ensure that five new directors shall be appointed to the board of New Kaupthing in accordance with the Appointment Letters (the "Kaupthing Board Members") for a fixed term beginning on the Signing Date and ending on the earlier of the Kaupthing Capitalisation Date or the Withdrawal Date, as applicable (the "Interim Period"). Kaupthing may decide to appoint fewer directors that will in that case hold five board votes in total. The Government will further ensure that the board will elect a chairman from the board of directors who will not carry a casting vote in the case of a deadlock during the Interim Period. The Government and New Kaupthing undertake to amend New Kaupthing's articles of association as needed for the purposes of this Clause 3.1 (f).

4. INTERIM PERIOD

4.1 At all times during the Interim Period, New Kaupthing shall procure that:

- (a) its business shall be conducted in a manner consistent with its ordinary practice in the 6-month period prior to the Signing Date, and in particular, none of the matters or transactions contemplated by Schedule 1 in relation to New Kaupthing or any Material Subsidiaries shall be approved or consummated without the prior written consent of both the Government and Kaupthing (not to be unreasonably withheld or delayed); and
- (b) Kaupthing and Kaupthing Holdco and their professional advisers and creditors are provided with such access for the purposes of conducting due diligence as is set out in Schedule 2.

5. CONDITIONS

5.1 The subscription obligations of Kaupthing and Kaupthing Holdco are in all respects conditional upon the satisfaction (or waiver, as the case may be) of those matters set out below (the "Capitalisation Conditions").

- (a) satisfactory completion of the Due Diligence Review and the Creditors' Due Diligence Review as set out in Schedule 2, as reasonably determined by Kaupthing; and
- (b) Creditors' feedback satisfactory to Kaupthing and the subsequent decision by the Resolution Committee to undertake the Kaupthing Capitalisation.

5.2 Kaupthing, Kaupthing Holdco and the Resolution Committee will use their respective reasonable endeavours, (including, without limitation the provision of information) to procure the fulfilment of the Capitalisation Conditions, subject always to Kaupthing's discretionary decision as contemplated in 5.1 (b) above, as soon as possible and in any event prior to the Long Stop Date.

5.3 Kaupthing may, on behalf of itself and Kaupthing Holdco, waive in whole or in part the Capitalisation Conditions.

5.4 Each Party undertakes to notify the other Parties in writing of anything which will or may prevent any of the Capitalisation Conditions from being satisfied on or before the Long Stop Date promptly upon it coming to its attention.

5.5 If any of the Capitalisation Conditions are not duly fulfilled or not waived (as the case may be), on or before the Long Stop Date, this Agreement and the Shareholders Agreement shall immediately terminate and cease to have any effect, and the Escrow and Contingent Value Rights Agreement and the Equity Option Arrangement shall become effective, each in accordance with their respective terms.

5.6 If this Agreement is terminated in accordance with Clause 5.5 the rights and obligations of the Parties under this Agreement shall cease save as otherwise specified in this Agreement.

5.7 The Government, Kaupthing and New Kaupthing shall endeavour to reach a satisfactory solution with respect to the acquisition by New Kaupthing of SPM. Following the Kaupthing Capitalisation, in the event that the creditors of SPM shall be granted share options in New Kaupthing as a result of a composition of creditors of SPM, the Government's and Kaupthing Holdco's respective shareholdings in New Kaupthing shall be diluted on a pro rata basis.

5.8 The Government shall provide New Kaupthing with a hold harmless letter similar to the hold harmless letter provided for the value of the SPRON Bond for the value at which the assets were transferred from Sparisjóðabankinn.

6. POSITION FOLLOWING KAUPTHING CAPITALISATION

6.1 The Parties agree that following the Kaupthing Capitalisation in accordance with this Agreement, the capitalisation and capital ownership structure of New Kaupthing shall be as follows:

- (a) the Government shall have contributed, in aggregate since October 2008, 35% of the New Kaupthing Capitalisation; and
- (b) Kaupthing Holdco shall have contributed, in aggregate, 65% of the New Kaupthing Capitalisation;
- (c) For the purpose of this Clause 6, 'New Kaupthing Capitalisation' means the aggregate capitalization needed in order to raise the CAD ratio of New Kaupthing to 16% ("CAD Ratio Percentage") based on the risk-weighted asset value and consequent regulatory capital requirements of New Kaupthing prevailing as at the Business Day prior to the Kaupthing Capitalisation Date .
- (d) Thereof 4% ("Tier II CAD Ratio Percentage") shall be in the form of the Tier II Capital Instrument (unless otherwise required by the FME) based on the risk-weighted asset value and consequent regulatory capital requirements of New Kaupthing prevailing as at the Kaupthing Capitalisation Date
- (e) The Government's holding in New Kaupthing shall consist of the entire Tier II Capital Instrument (subscribed for at par) with the remainder of the Government's 35% capital contribution being by way of subscription for share capital.
- (f) Kaupthing Holdco's holding in New Kaupthing shall consist entirely of share capital and shall in aggregate equate to a percentage of 100% minus the percentage of the fully diluted share capital represented by the shares held by the Government.

7. KAUPTHING CAPITALISATION

7.1 Following the Government Capitalisation and if the Capitalisation Conditions are fulfilled the Kaupthing Capitalisation shall take place on the Kaupthing Capitalisation Date at Borgartun 19, 105 Reykjavik, or at such other place as is agreed in writing by the Parties.

7.2 On the Kaupthing Capitalisation Date (if not already done), the following items will occur (unless the Parties agree another mechanism for achieving the position described in Clause 6) :

- (a) New Kaupthing shall hold a shareholders' meeting to decide on the increase of the share capital of New Kaupthing and to issue and allot the Subscription Shares to Kaupthing Holdco;
- (b) At the shareholders meeting referred to in (a) above, Kaupthing Holdco shall subscribe for the Subscription Shares and for consideration transfer the Subscription Assets to New Kaupthing;
- (c) At the shareholders' meeting referred to in (a) above the shareholders of New Kaupthing shall decide on the decrease of the share capital of New Kaupthing (all of which shall be shares then held by the Government) in consideration of the transfer to the Government of a principal amount of the Government Bond equal to the sum of a) the principal amount of the Government Bond; minus b) the amount to remain invested (calculated on the basis of the CAD Ratio Percentage and the

Tier II CAD Ratio Percentage) by way of share capital; plus or minus c.) the percentage of Net Income (as calculated at 31 August 2009) equivalent to Kaupthing's shareholding (currently 87%) as agreed or determined in accordance with Schedule 4) ("Returned Capital");

- (d) To the extent possible, the Returned Capital shall be transferable to the Government on the Kaupthing Capitalisation Date, less the amount required for the Government to subscribe for the Tier II Capital Instrument (calculated on the basis of the Tier II CAD Ratio Percentage) which shall be retained by New Kaupthing in full consideration of the issue to the Government of the Tier II Capital Instrument. The remainder of the Returned Capital shall be paid in accordance with paragraph (i) below;
- (e) New Kaupthing shall procure the entry of Kaupthing Holdco in the register of members of New Kaupthing as the holders of the Subscription Shares and the entry of the Government in the register of debentures of New Kaupthing as holder of the Tier II Capital Instrument;
- (f) New Kaupthing shall hold a meeting of its board of directors at which the business referred to in paragraphs (a) to (e) above shall be transacted and all ancillary documents and forms thereto shall be executed and signed;
- (g) New Kaupthing shall deliver to the Resolution Committee, Borgartun 19, 105 Reykjavik, certified copies of the share register of New Kaupthing;
- (h) The Escrow and Contingent Value Rights Agreement and Equity Option Arrangement shall terminate and be cancelled (as the case may be) and the Shareholders Agreement shall become effective, each in accordance with their respective terms; and
- (i) The Parties shall begin the process of agreeing or determining the Net Income. Within 5 Business Days of the Net Income having been so agreed or determined New Kaupthing shall transfer to the Government a principal amount of the Government Bond equal to the Returned Capital less any amounts already released pursuant to paragraph (d) above ;

(together, the "Kaupthing Capitalisation").

7.3 Following the Kaupthing Capitalisation Date and when the reviewed financial statements for 30 September 2009 have been finalised, the Parties shall calculate Net Income as at 30 September 2009. Once the parties are in agreement on such Net Income calculation the amount of Returned Capital shall be adjusted accordingly to accommodate for any changes from 31 August 2009 by payments between the relevant parties.

7.4 If the provisions of Clause 7.2 are not complied with on or before the Long Stop Date, the Parties shall not be obliged to undertake the Kaupthing Capitalisation and may, with unanimous agreement:

- (a) defer Kaupthing Capitalisation (with the provisions of this Clause 7 applying to Kaupthing Capitalisation as so deferred); or
- (b) proceed with the Kaupthing Capitalisation as far as practicable (without limiting their respective rights and remedies under this Agreement);

or, failing such unanimous agreement, the Parties shall treat this Agreement as terminated for breach of condition (without limiting their respective rights and remedies under this Agreement).

7.5 Kaupthing may, at any time until the Long Stop Date, declare that it shall not undertake the Kaupthing Capitalisation by giving notice in writing to that effect to the Government.

7.6 If Kaupthing gives notice to the Government pursuant to clause 7.5 or if the provisions of Clause 7.2 are not complied with on or before the Long Stop Date, this Kaupthing Capitalisation Agreement and the Shareholders Agreement shall terminate and cease to have any effect and the Escrow and Contingent Value Rights Agreement and the Equity Option Arrangement shall become effective, each in accordance with their respective terms.

8. KAUPTHING GUARANTEE

8.1 In consideration of the Government and New Kaupthing entering into this Agreement, Kaupthing hereby irrevocably and unconditionally:

- (a) guarantees to the Government and New Kaupthing the full, prompt and complete performance by Kaupthing Holdco of all its obligations under this Agreement; and
- (b) undertakes to the Government and New Kaupthing that whenever Kaupthing Holdco does not perform any obligation when due under or in connection with this Agreement, that it shall immediately on written demand perform that obligation as if it were the principal obligor.

8.2 The guarantee contained in this clause 8 is a continuing guarantee and shall remain in force until all the obligations of Kaupthing Holdco under this Agreement have been fully performed. It is independent of every other security which the Government and New Kaupthing may at any time hold for the obligations of Kaupthing Holdco under this Agreement.

8.3 This guarantee may be enforced by the Government and New Kaupthing without the Government and New Kaupthing first taking any steps or proceedings against Kaupthing Holdco.

9.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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10. CONFIDENTIALITY

10.1 Except as provided in Clause 10.2, each Party shall treat as confidential the provisions of the Transaction Documents, all information it possesses relating to New Kaupthing and the other Parties and all information it has received or obtained relating to the other Parties as a result of negotiating or entering into the Transaction Documents.

10.2 A Party may disclose, or permit the disclosure of, information which would otherwise be confidential if and to the extent:

- (a) required by law or any securities exchange, regulatory or governmental body;
- (b) disclosed to its professional advisers and/or, in connection with the negotiations and approval of the arrangements contained in the Transaction Documents, to its Creditors (provided that such persons are required to treat such information as confidential); or

- (c) it comes into the public domain other than as a result of a breach by a Party or its affiliates or advisers of this Clause 10 (including as the result of an announcement in compliance with clause 10),

provided that, to the extent reasonably practicable, prior written notice of any confidential information to be disclosed pursuant to this Clause 10 shall be given to the other Parties.

- 10.3 The confidentiality restrictions in this Clause 10 shall continue to apply after the termination of this Agreement pursuant to Clause 5.5 or Clause 7.3 without limit in time.

11. ANNOUNCEMENTS

- 11.1 Except as provided in Clause 11.2, no announcement shall be made by any Party relating to the Transaction Documents without the prior written approval of the other Parties, such approval not to be unreasonably withheld or delayed.

- 11.2 A Party may make an announcement relating to the Transaction Documents if (and only to the extent) required by the law of any relevant jurisdiction or any securities exchange, regulatory or governmental body in which case such Party shall take all steps as may be reasonable in the circumstances to agree the contents of such announcement with the other Parties prior to making such announcement.

- 11.3 The restrictions on announcements in this Clause 11 shall continue to apply after the termination of this Agreement pursuant to Clause 5.5 or Clause 7.3 without limit in time.

12. ENTIRE AGREEMENT

This Agreement, together with each other Transaction Document and any other documents referred to in this Agreement or any Transaction Document, constitutes the whole agreement between the Parties and supersedes any previous arrangements or agreements between them relating to the sale and purchase of the Subscription Shares.

13. SEVERANCE AND VALIDITY

If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, such provision shall be deemed to be severed from this Agreement and the Parties shall replace such provision with one having an effect as close as possible to the deficient provision. The remaining provisions will remain in full force in that jurisdiction and all provisions will continue in full force in any other jurisdiction.

14. VARIATIONS

No variation of this Agreement shall be effective unless in writing and signed by or on behalf of the Parties.

15. REMEDIES AND WAIVERS

- 15.1 No waiver of any right under this Agreement or any other Transaction Document shall be effective unless in writing. Unless expressly stated otherwise a waiver shall be effective only in the circumstances for which it is given.

- 15.2 No delay or omission by any Party in exercising any right or remedy provided by law or under this Agreement shall constitute a waiver of such right or remedy.

- 15.3 The single or partial exercise of a right or remedy under this Agreement shall not preclude any other nor restrict any further exercise of any such right or remedy.

- 15.4 The rights and remedies provided in this Agreement are cumulative and do not exclude any rights or remedies provided by law.

16. EFFECT OF KAUPTHING CAPITALISATION

The provisions of this Agreement and of the other Transaction Documents which remain to be performed following Kaupthing Capitalisation shall continue in full force and effect notwithstanding the Kaupthing Capitalisation, save to the extent that such Transaction Documents terminate as a result of the consummation of the Kaupthing Capitalisation.

17. COSTS AND EXPENSES

Except as expressly provided otherwise, each Party shall pay its own costs and expenses in connection with the negotiation, preparation and performance of this Agreement and the other Transaction Documents.

18. NOTICES

- 18.1 Any notice or other communication to be given under or in connection with this Agreement ("**Notice**") shall be in the English language in writing and signed by or on behalf of the Party giving it and marked for the attention of the other Party. A Notice may be delivered personally or sent by fax, pre-paid recorded delivery or international courier to the address or fax number provided in Clause 18.3.

- 18.2 A Notice shall be deemed to have been received:

- (a) at the time of delivery if delivered personally;
- (b) at the time of transmission if sent by fax;
- (c) 2 (two) Business Days after the time and date of posting if sent by pre-paid recorded delivery; or
- (d) 3 (three) Business Days after the time and date of posting if sent by international courier,

provided that if deemed receipt of any Notice occurs after 6.00 p.m. or is not on a Business Day, deemed receipt of the Notice shall be 9.00 a.m. on the next Business Day. References to time in this Clause 18 are to local time in the country of the addressee.

- 18.3 The addresses and fax numbers for service of Notice are:

(a)

Name: Kaupthing Bank hf.

Address: Borgartúni 19, 105 Reykjavík, Iceland

For the attention of: Steinar Þór Guðgeirsson

Fax number: +354 444-6129

with a copy to: Kaupskil ehf.

(b)

Name: Kaupskil ehf.

Address: Borgartúni 19, 105 Reykjavík. Iceland
 For the attention of: Steinar Þór Guðgeirsson
 Fax number: +354- 444-6129

(c)

Name: Ministry of Finance
 Address: Arnarhvoll, 150 Reykjavík
 For the attention of: Permanent Secretary
 Fax number: +354 562 8280

(d)

Name: New Kaupthing Bank hf.
 Address: Borgartún 19, 105 Reykjavík
 For the attention of: Finnur Sveinbjörnsson
 Fax number: +354 444 6119

with a copy to: Björk Þórarinsdóttir

18.4 A Party shall notify the other Parties of any change to its address in accordance with the provisions of this Clause 18 provided that such notification shall only be effective on the later of the date specified in the notification and 5 (five) Business Days after deemed receipt.

19. COUNTERPARTS

This Agreement may be executed in counterparts and shall be effective when each Party has executed a counterpart. Each counterpart shall constitute an original of this Agreement.

20. GOVERNING LAW AND JURISDICTION

20.1 This Agreement shall be governed by and construed in accordance with Icelandic law.

20.2 The Parties irrevocably agree that the courts of Iceland are to have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement and proceedings in respect of any dispute may be brought in such courts.

IN WITNESS WHEREOF each Party has executed this Agreement, or caused this Agreement to be executed by its duly authorised representatives.

Signed by
for and on behalf of Kaupthing Bank hf.

) *Guðmundur Ólafur*
) *Knutur Þórh.*
)

Signed by
for and on behalf of Kaupthing Holdco

) *Guðmundur*
)
)

Signed by
for and on behalf of the Government

) *[Signature]*
)
)

Signed by
for and on behalf of New Kaupthing Bank hf.

) *[Signature]*
) *[Signature]*
) *[Signature]*

SCHEDULE 1**RESERVED MATTERS**

1. Transferring, disposing of or granting any option in respect of any material part of its assets;
2. Making any material change in the nature or organisation of its business;
3. Discontinuing or ceasing to operate all or a material part of its business;
4. Otherwise than in the ordinary and usual course of banking business, borrowing money or incurring any other indebtedness or liability;
5. Declaring, making or paying any dividend or other distribution or the redemption or repayment of shares or any subordinated debt;
6. Creating, allotting or issuing any shares or other securities;
7. Creating, issuing, or granting any option or right to subscribe in respect of any share capital; or
8. Creating Encumbrances over any Material Assets other than in the ordinary course of business or in connection with liquidity purposes with the Icelandic Central Bank and for purposes of this paragraph 8, "Material Assets" means any asset or group of assets of the Group which in the aggregate represents, in consolidated financial books of the Group, more than 10% of the Group's gross assets,

save for where any such matter or transaction is specifically contemplated by this Agreement or any other Transaction Document.

SCHEDULE 2

DUE DILIGENCE ACCESS

The Due Diligence Review shall be subject to the following terms:

1. New Kaupthing and the Government agree that throughout the time period from the date of this agreement until the Withdrawal Date, New Kaupthing and the Government shall continue to allow Kaupthing and its advisors to conduct such financial, commercial, legal and technical due diligence review of New Kaupthing as they may, acting reasonably, require in connection with the Kaupthing Capitalization. This includes reasonable access to any such key employees, advisers, records, agreements, licenses, etc. of New Kaupthing or the Government which Kaupthing considers necessary in order to duly complete the Due Diligence Review.
2. The Parties shall take all reasonable measures to ensure that Kaupthing and its advisers shall have continued access to the Deloitte LLP Net Asset Valuation Report Part 1, the Deloitte LLP Net Asset Valuation Report Part 2, the Oliver Wyman Net Asset Valuation Report and the business plan and the detailed model from the management of New Kaupthing, provided those parties sign the agreed respective confidentiality and hold harmless agreements.

The Creditors' Due Diligence Review shall be subject to the following terms:

3. Independent financial advisers appointed by the Creditors and advisers of Kaupthing that have received permission from the FME and Kaupthing to conduct a financial, commercial, legal and technical due diligence review of New Kaupthing (such independent advisers appointed by the Creditors and advisers the "**Financial Advisers**") shall continue to have the following access to information regarding New Kaupthing:
 - a. Full access to the Intralinks Data room.
 - b. Full access to the Deloitte LLP Net Asset Valuation Report Part 1, the Deloitte LLP Net Asset Valuation Report Part 2 and the Oliver Wyman Net Asset Valuation Report. The Financial Advisers must have signed the standard hold harmless letters and confidentiality agreements to be allowed access to the relevant reports.
 - c. Full reasonable access to the management personnel of New Kaupthing. Whenever possible, the Financial Advisers shall endeavour to submit their questions and discussion points to management personnel at least 2 days prior to a meeting.
4. Creditors and their advisers that have signed confidentiality agreements with Kaupthing, but have not received permission from the FME (such Creditors and their advisers the "**Private Creditors**") as contemplated above, shall continue to have the right to conduct a financial, commercial, legal and technical due diligence review of New Kaupthing through:
 - a. Restricted access to the Intralinks Data room as mutually decided between the Parties.

- b. Full access to the Deloitte LLP Net Asset Valuation Report Part 1, subject to the Creditors and their advisors signing the standard hold harmless letters and confidentiality agreements for access to the report.
 - c. Restricted access to New Kaupthing management as mutually decided between the Parties. New Kaupthing shall in any event offer a meeting for the Private Creditors with the management of New Kaupthing where the Private Creditors can put forward questions to be answered by management of New Kaupthing. Any such questions need to be submitted 3 days prior to a meeting.
- 5 The Creditors, who have neither received permission from the FME as contemplated above, nor signed confidentiality agreements with Kaupthing as Private Creditors, shall be the "**Public Creditors**". The Public Creditors who so request shall receive an information package regarding New Kaupthing from Kaupthing, its contents to be agreed between the Parties.

Kaupthing may decide to provide restricted access for the Public Creditors to the Intralinks Dataroom.

- 6 New Kaupthing will make financial, commercial, legal and technical information available in a physical and electronic data room (the electronic data room being the "**Intralinks Data room**"). Creditors shall direct their requests for access to the data rooms to Kaupthing which shall arrange for the necessary access to the physical data room and the Intralinks Data room.

SCHEDULE 3

NET INCOME CALCULATION

1. **CALCULATION OF NET INCOME**
 - 1.1 New Kaupthing shall deliver to Kaupthing a profit and loss statement (the "P&L") setting out New Kaupthing's Net Income for the period commencing on 22 October 2008 and ending on 30 September 2009 (inclusive) within 20 Business Days of the 30 September 2009.
 - 1.2 Kaupthing will have 20 Business Days (starting on the first Business Day after delivery of the draft P&L ("Objection Period")), to agree or dispute the Net Income calculation. If Kaupthing disputes the Net Income figure calculated by New Kaupthing it must, within the Objection Period, serve on New Kaupthing a notice to that effect setting out in reasonable detail grounds for its dispute ("Dispute Notice").
 - 1.3 New Kaupthing shall procure that Kaupthing and/or its accountants are given such assistance and access to information as may be reasonably requested by Kaupthing and/or its accountants for the purposes of determining, within the Objection Period, whether the draft P&L has been properly prepared and the Net Income properly calculated.
 - 1.4 If Kaupthing has not delivered a Dispute Notice to New Kaupthing during the Objection Period or if, before expiry of the Objection Period, Kaupthing serves written notice on New Kaupthing that it agrees with the Net Income calculation as set out in the draft P&L (an "Acceptance Notice"), the draft P&L will be final and binding on Kaupthing and New Kaupthing.
 - 1.5 The costs of preparing the P&L will be paid by New Kaupthing, and Kaupthing will pay its costs of its review of it. Unless otherwise directed by the Expert under paragraph 2, each party will bear all other costs incurred by them in connection with this Schedule 3.
 - 1.6 If Kaupthing serves a Dispute Notice, Kaupthing and New Kaupthing shall use their respective reasonable endeavours to reach agreement as to the matter or matters in dispute within 10 Business Days of the date of delivery of such Dispute Notice ("Resolution Period").
 - 1.7 If, before the expiry of the Resolution Period, agreement is reached between Kaupthing and New Kaupthing as to all matters in dispute, New Kaupthing shall, within 5 Business Days of such agreement being reached, deliver or procure the delivery to Kaupthing of a revised P&L incorporating such adjustments as have been agreed. The revised P&L and Net Income calculation therein shall be final and binding on Kaupthing and New Kaupthing from the date of its delivery to Kaupthing.
2. **REFERENCE TO EXPERT**
 - 2.1 The Expert is a person appointed in accordance with this paragraph 2 to resolve a dispute arising under paragraph 1. In respect of any matters in dispute on which no agreement is reached within the Resolution Period, such matters will be referred, on the application of either Kaupthing or New Kaupthing to the Expert for determination.
 - 2.2 Kaupthing and New Kaupthing will agree on the appointment of an independent expert to act as the Expert. If no agreement is reached, either Party may apply to a District Court of Reykjavik to nominate the Expert.

- 2.3 Kaupthing and New Kaupthing must co-operate and take all reasonable action as is necessary to ensure that the terms of appointment of the Expert will enable the Expert to give effect to and act in accordance with the provisions of this paragraph 2.
- 2.4 The Expert will prepare a written decision and give notice (including a copy) of the decision to Kaupthing and New Kaupthing within a maximum of 20 Business Days of the matter being referred to him (or such longer period as Kaupthing and New Kaupthing may agree with the Expert).
- 2.5 Within 5 Business Days of the Expert's decision, New Kaupthing must deliver to Kaupthing a revised P&L incorporating such adjustments as have been determined by the Expert. The revised P&L and Net Income calculation therein will be final and binding on Kaupthing and New Kaupthing, in the absence of manifest error, from the date of its delivery to Kaupthing.
- 2.6 If the Expert is unable for whatever reason to act, or does not deliver the decision within the time required by paragraph 2.5, Kaupthing and New Kaupthing will ensure that a replacement expert is appointed in accordance with the provisions of paragraph 2.3.
- 2.7 Kaupthing and New Kaupthing are each entitled to make one written submission to the Expert and must provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
- 2.8 To the extent not provided for by this paragraph 2, the Expert may, in his reasonable discretion, determine such other procedures to assist with the conduct of the determination as he considers just or appropriate.
- 2.9 Kaupthing and New Kaupthing must, with reasonable promptness, supply all information and provide access to all documentation and personnel as each other may reasonably require to make a submission under this paragraph 2.
- 2.10 The Expert will act as an expert and not as an arbitrator. The Expert will determine any dispute arising in connection the provisions of paragraph 1. The Expert's written decision on the matters referred to him will be final and binding in the absence of manifest error.
- 2.11 Kaupthing and New Kaupthing will bear their own costs in relation to the Expert. The Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) will be borne by New Kaupthing or in such other proportions as the Expert directs.

SCHEDULE 4

LIQUIDITY FACILITY LETTER