



For discussion purposes only

DRAFT 01.12.2021



BETWEEN

THE EUROPEAN INVESTMENT FUND
AS COUNTER-GUARANTOR

AND

VENETO SVILUPPO S.P.A.
AS INTERMEDIARY

COUNTER-GUARANTEE AGREEMENT
UNDER THE PAN-EUROPEAN GUARANTEE FUND
IN RESPONSE TO COVID-19

DATED _____¹

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¹ All Counter-Guarantee Agreements under EGF have to be signed before 31 December 2021.



This document does not constitute an offer of any nature whatsoever and does not create any binding obligations on EIF to enter into a contract with any third party on the terms set out in this document or otherwise.]

[EIF and Intermediaries may enter into counter-guarantee agreements until 31 December 2021.]



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THIS AGREEMENT is dated as stated on the cover page and made

BETWEEN:

- (1) the **European Investment Fund**, 37B avenue J.F. Kennedy, L-2968 Luxembourg, Grand Duchy of Luxembourg (the "**EIF**" or the "**Counter-Guarantor**"), acting through and in the context of EGF (as defined below); and
- (2) the intermediary named in section 1 of the Specific Terms (the "**Intermediary**").

BACKGROUND

- (A) This operation benefits from the support of the Pan-European Guarantee Fund, established by certain Member States of the European Union to respond to the economic impact of the COVID-19 pandemic outbreak (the "**Fund**" or "**EGF**"). The Fund is designed to support Final Recipients that are considered (i) viable in the long term and (ii) able to meet a lender's or other financial intermediaries' requirements for commercial financing, were it not for the economic impact of the COVID-19 pandemic.
- (B) The EIF launched the Call (as defined below), following which the Intermediary expressed its interest to enter into a counter-guarantee agreement with the EIF. The EIF has selected the proposal made by the Intermediary and agrees to provide a Counter-Guarantee (as defined below) to the Intermediary to partly cover the credit risk of the Intermediary relating to the Portfolio subject to, and in accordance with, the terms of this Agreement.
- (C) The Counter-Guarantee takes the form of an uncapped or a capped counter-guarantee in accordance with the terms of this Agreement and is provided with the ultimate purpose of enhancing access to finance for Final Recipients. As such, the Intermediary shall ensure that the benefit of the Counter-Guarantee is passed on to the Final Recipients via Sub-Intermediaries through the Transfer of Benefit (as defined below).
- (D) The Counter-Guarantor supports the implementation of international and EU standards in the field of anti-money laundering and countering the financing of terrorism and promotes tax good governance standards. It has established policies and procedures to avoid the risk of misuse of its funds for purposes which are illegal or abusive in relation to applicable laws. The EIB Group statement on tax fraud, tax evasion, tax avoidance, aggressive tax planning, money laundering and financing of terrorism is available on the Counter-Guarantor's website and offers further guidance to the Counter-Guarantor's contracting counterparties.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

"**4th and 5th AML Directives**" means Directive 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial



system for the purposes of money laundering or terrorist financing, as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849, and as further amended, supplemented or restated.

"Actual Cumulative Default Rate" means, the ratio between (i) the aggregate Defaulted Amounts incurred during the period from the Inclusion Period Start Date until (and including) the Cumulative Default Rate Trigger Event Determination Date (provided that for such purpose, the Sub-Operation which has the highest Defaulted Amount will be disregarded) and (ii) the Actual Portfolio Volume.

"Actual Portfolio Volume" means, at any relevant time and subject to the provisions of Clause 6.1 (Adjustment of the Actual Portfolio Volume) and Clause 4.4(b) (Revolving Final Recipient Transactions), the aggregate principal amount (expressed in the Base Currency) guaranteed under Covered Sub-Operations as at the date of execution of the documents evidencing each relevant Covered Sub-Operation, provided that, for the avoidance of doubt:

- (a) the Actual Portfolio Volume may in no circumstances exceed the Agreed Portfolio Volume;
- (b) if amounts outstanding under Final Recipient Transactions covered by Sub-Operations are prepaid and/or repaid, then this shall not reduce the Actual Portfolio Volume; and
- (c) if a Sub-Operation is an Excluded Sub-Operation, then such Sub-Operation shall not be taken into account in the calculation of the Actual Portfolio Volume from (and including) the Exclusion Date applicable to the relevant Excluded Sub-Operation.

"Additional Currency" has the meaning given to it in Schedule 1 (Specific Terms).

"Additional Eligibility Criteria" means any additional Eligibility Criteria specified in Schedule 1 (Specific Terms).

"Adjustment Date" has the meaning given to it in Clause 6.1 (Adjustment of the Actual Portfolio Volume).

"Affected Party" has the meaning given to it in Clause 17.1 (Suspension).

"Agreed Portfolio Volume" means the maximum aggregate principal amount guaranteed under (expressed in the Base Currency, regardless of the denomination of the Sub-Operations included in the Portfolio) Eligible Sub-Operations to be included in the Portfolio in accordance with the terms of this Agreement, which amount shall be the product of the APV Percentage and the Maximum Portfolio Volume.

"Agreement" means this agreement (including its Schedules), as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerously) or replaced from time to time.



"**AML Criminal Law Directive**" means Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law, as amended, supplemented or restated.

"**AML Directives**" means the 4th and 5th AML Directives and the AML Criminal Law Directive.

"**Anti-Fraud Policy**" means the policy of EIF for preventing and deterring corruption, fraud, collusion, coercion, obstruction, money laundering and terrorist financing, as published on EIF's website on the Effective Date.

"**APV Percentage**" means:

- (a) on or before an adjustment to the APV Percentage pursuant to Clause 6.3 (Adjustment to the Maximum Portfolio Volume and/or the APV Percentage and reset of the Agreed Portfolio Volume), the percentage rate specified in Schedule 1 (Specific Terms); and
- (b) at any time after an adjustment to the APV Percentage pursuant to Clause 6.3 (Adjustment to the Maximum Portfolio Volume and/or the APV Percentage and reset of the Agreed Portfolio Volume), the percentage rate specified in the relevant MPV and APV Percentage Adjustment Notice, however not exceeding one hundred per cent (100%).

"**Authorised Person**" has the meaning given to it in paragraph (c) (Authorised Persons) of Schedule 13 (Information Undertakings).

"**Bank Guarantee**" means an irrevocable obligation by the Sub-Intermediary to pay a specified amount to a third party as the beneficiary of the Bank Guarantee, where such Bank Guarantee is guaranteeing an amount owed by, or an obligation of, the Final Recipient to such third party if such third party declares non-fulfilment of the relevant contractual obligations in accordance with the terms of such Bank Guarantee.

"**Base Currency**" has the meaning given to it in Schedule 1 (Specific Terms).

"**Clawback Amounts**" has the meaning given to it in Clause 10 (Right of Clawback). "**Beneficial Ownership**" means, unless otherwise specified in the Specific Terms, the ultimate ownership or control of a person according to the definition of "beneficial owner" set out in article 3(6) of the 4th and 5th AML Directives, it being specified that, for the purposes of this Agreement, (i) in relation to the Intermediary, the threshold of beneficial ownership is set at 10%; and (ii) in relation to the Sub-Intermediaries and Final Recipients, the threshold of beneficial ownership is the threshold set under the applicable laws or regulations implementing the 4th and 5th AML Directives.

"**Business Day**" means a working day for each of the Counter-Guarantor and the Intermediary and a day (other than a Saturday or Sunday) on which banks are open for general business in Luxembourg and in the country of incorporation of the Intermediary.

"**Call**" means the call for expression of interest published on the Counter-Guarantor's website on 31 August 2020 as may be updated from time to time thereafter, under



which the Counter-Guarantor has sought expressions of interest to select intermediaries that will benefit from a portfolio guarantee in context of an EGF Guarantee Instrument.

"Capped Counter-Guarantee Provisions" means the provisions set out in Schedule 2 (Capped Counter-Guarantee Provisions).

"Commission" means the Commission of the European Union.

"Commission Recommendation" means the Commission Recommendation 2003/361/EC concerning the definition of "micro, small and medium-sized enterprises" (OJ L124, 20.05.2003, p.36) notified under document number C(2003/1422), as amended, restated, supplemented and/or substituted from time to time.

"Compliance Trigger Event" means that, on a Compliance Trigger Event Determination Date, the Intermediary has failed to:

- (i) take, within a reasonable timeframe, appropriate measures in respect of any member of its management and decision making bodies who has been convicted by a final and irrevocable court ruling of an Illegal Activity perpetrated in the course of the exercise of his/her professional duties, in order to ensure that such member is excluded from any of the Intermediary's activity in relation to the Counter-Guarantee or the Agreement; or
- (ii) inform the Counter-Guarantor, within a reasonable timeframe, of
 - (a) to the extent not prohibited by law, any material litigation, arbitration, administrative proceedings or investigation, and respective development, carried out by a court, administration or similar public authority, which, to the best of its knowledge and belief, is current, imminent or pending against the Intermediary or its controlling entities or any member of the Intermediary's management and decision making bodies in connection with any Illegal Activity perpetrated in the course of the exercise of his/her professional duties;
 - (b) any member of its management and decision making bodies being convicted by a final and irrevocable court ruling of an Illegal Activity perpetrated in the course of the exercise of his/her professional duties; and
 - (c) any measures it has taken in respect of any member of its management and decision making bodies who has been convicted by a final and irrevocable court ruling of an Illegal Activity perpetrated in the course of the exercise of his/her professional duties in order to ensure that such member is excluded from any of the Intermediary's activity in relation to the Counter-Guarantee or the Agreement.

"Compliance Trigger Event Determination Date" means any date falling during the Inclusion Period and on which a Compliance Trigger Event occurs.

"Confidential Information" means any information relating to the Counter-Guarantor, the Intermediary, a Sub-Intermediary, a Final Recipient or the Counter-



Guarantee, provided to a Party by the other Party or any of its affiliates or advisers, in whatever form, and includes any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (a) is or becomes public knowledge, other than as a result of any breach by a Party of Clause 26 (Disclosure of Information);
- (b) in relation to information regarding the Intermediary only, is not marked as confidential by such Intermediary at the time of delivery;
- (c) in relation to information regarding the Intermediary only, is known by the Counter-Guarantor before the date the information is disclosed to it by such Intermediary or any of its affiliates or advisers; and
- (d) in relation to information regarding the Intermediary only, is lawfully obtained by the Counter-Guarantor, other than from a source which is connected with such Intermediary and which, in either case, as far as the Counter-Guarantor is aware, has not been obtained in violation of, and is not otherwise subject to, any obligation of confidentiality.

"**Contributors' Committee**" means the committee established by the representatives of the Participating Member States overseeing the activities of the Fund.

"**Counter-Guarantee**" has the meaning given to it in Clause 3 (Counter-Guarantee).

"**Counter-Guarantee Amount**" has the meaning given to it in Clause 3 (Counter-Guarantee).

"**Counter-Guarantee Coverage Period**" means:

- (a) for each Final Recipient Transaction subject to the EGF Regime by analogy to Section 3.1 TF (as defined in Schedule 4 (State Aid)), the period starting on the Final Recipient Transaction Effective Date and ending on the date that is the earlier of (i) the Final Recipient Transaction maturity date (as may be extended in accordance with Paragraph 6(h) (Maturity extensions and commitment increases) of Schedule 4 (State Aid), (ii) fifteen (15) years from the Final Recipient Transaction Effective Date, (iii) the Termination Date; and (iv) Sub-Operation maturity date;
- (b) for each Final Recipient Transaction subject to the EGF Regime by analogy to Section 3.2 TF (as defined in Schedule 4 (State Aid)) the period starting on the Final Recipient Transaction Effective Date and ending on the date that is the earlier of (i) the Final Recipient Transaction maturity date (as may be extended in accordance with Paragraph 6(h) (Maturity extensions and commitment increases) of Schedule 4 (State Aid), (ii) six (6) years from the Final Recipient Transaction Effective Date, (iii) the Termination Date; and (iv) Sub-Operation maturity date; and
- (c) for each Final Recipient Transaction subject to De Minimis Regime (as defined in Schedule 4 (State Aid)) the period starting on the Final Recipient Transaction Effective Date and ending on the date that is the earlier of (i) the



Final Recipient Transaction maturity date (as may be extended subject to compliance with Eligibility Criteria 1 of Paragraph 4(b) of Schedule 4 (State Aid)) where the GGE needs to be re-calculated), (ii) the Termination Date, (iii) for Final Recipient Transactions the GGE of which have been calculated by the Intermediary using the Simplified GGE Calculation Methodology, ten (10) years; and (iv) Sub-Operation maturity date.

"Counter-Guarantee Fee Amount" means, on each Counter-Guarantee Fee Payment Date:

- (a) if **"Up-Front Counter-Guarantee Fee Calculation"** is specified in the Specific Terms, the sum of amounts calculated (as at the time a Final Recipient Transaction is entered into) in accordance with the formula set out below for each Final Recipient Transaction which has been included in the Portfolio during the immediately preceding Counter-Guarantee Fee Calculation Period:

$$\text{UpfrontFeeAmount} = \sum_{n=1}^N \frac{\text{CG} * g * \sum_{t=1}^{t_n} K_t * \frac{F}{360}}{(1 + R)^{\frac{t_n}{360}}}$$

N – number of times interest is payable under the Final Recipient Transaction according to the Final Recipient Transaction contractual repayment schedule

n – each of the dates interest is payable under the Final Recipient Transaction according to the Final Recipient Transaction contractual repayment schedule

t_n - actual days from the date a Final Recipient Transaction was entered into to time n

K_t - outstanding principal amount of a Final Recipient Transaction at time t, according to the Final Recipient Transaction contractual repayment schedule

F - the Counter-Guarantee Fee Percentage

CG – Counter-Guarantee Rate

R - discount rate (p.a.), as specified in the Specific Terms;

g – a guarantee rate applicable to the Sub-Operation; and

- (b) if **"Periodic Counter-Guarantee Fee Calculation"** is specified in the Specific Terms, the sum of the product for each Sub-Operation of:
- (i) the Counter-Guarantee Fee Percentage;
 - (ii) the sum of the outstanding principal amounts on each day that the Final Recipient Transaction covered by such Sub-Operation is a Performing Final Recipient Transaction;



- (iii) the guarantee rate applicable to the Sub-Operation;
- (iv) the Counter-Guarantee Rate; and
- (v) 1/360 or as specified in the Specific Terms.

"Counter-Guarantee Fee Calculation Period" means the period from (and including) the first day of a calendar quarter to (but excluding) the first day of the succeeding calendar quarter, provided that (i) the first Counter-Guarantee Fee Calculation Period shall be the period from (and including) the Effective Date to (but excluding) the first day of the immediately succeeding calendar quarter, (ii) the last Counter-Guarantee Fee Calculation Period shall be the period from (and including) the first day of the calendar quarter during which the Termination Date occurs and ending on (but excluding) the Termination Date. If (i) a Final Recipient Transaction Default is cured, or (ii) the Sub-Intermediary classifies a Final Recipient Transaction in respect of which a Final Recipient Transaction Restructuring has occurred as a good debt, as set out in the definition of Performing Final Recipient Transaction, then the Counter-Guarantee Fee Calculation Period shall include each day since the occurrence of the Final Recipient Transaction Default or the Final Recipient Transaction Restructuring as if the Final Recipient Transaction has always been a Performing Final Recipient Transaction.

"Counter-Guarantee Fee Payment Date" means the Report Date following the relevant Counter-Guarantee Fee Calculation Period.

"Counter-Guarantee Fee Percentage" means the percentage rate specified in Schedule 1 (Specific Terms).

"Counter-Guarantee Rate" means the percentage rate set out in Schedule 1 (Specific Terms).

"Covered Sub-Operations" means an Eligible Sub-Operation that is included in the Portfolio in accordance with the terms of this Agreement and that has not been subsequently excluded from the Portfolio by becoming an Excluded Sub-Operation.

"Credit and Collection Policies" means the origination, risk, credit, collections, loan servicing and accounting policies and procedures (howsoever described) of the Intermediary or the Sub-Intermediary as the case may be from time to time as applied on a consistent basis without regard to this Counter-Guarantee across the Intermediary's or the Sub-Intermediary's (as the case may be) loan book to exposures of a substantially similar type to the Sub-Operations or Final Recipient Transactions (as applicable).

"Credit Event" means a Final Recipient Transaction Default, a Final Recipient Transaction Acceleration or a Final Recipient Transaction Restructuring.

"Credit Limit Amount" means the maximum principal amount committed by the Sub-Intermediary under a Revolving Final Recipient Transaction.

"Cumulative Default Rate Trigger" has the meaning given to it in Schedule 1 (Specific Terms).



"**Cumulative Default Rate Trigger Event**" means that, on the Cumulative Default Rate Trigger Event Determination Date, the Actual Cumulative Default Rate exceeds the Cumulative Default Rate Trigger.

"**Cumulative Default Rate Trigger Event Determination Date**" means the last day of the calendar quarter immediately preceding the Report Date falling on or after the earlier of (i) the 5th (fifth) Report Date and (ii) the Report Date on which the Actual Portfolio Volume is at least equal to fifty per cent (50%) of the Agreed Portfolio Volume.

"**Defaulted Amount**" means, at any time, in respect of a Covered Sub-Operation:

- (a) Any amount due by the Intermediary to the Sub-Intermediary under the terms of such Covered Sub-Operation with respect to any principal and/or interest amounts, due, payable and outstanding under the terms of, a relevant underlying Final Recipient Transaction covered by such Sub-Operation following the occurrence of either a Final Recipient Transaction Default or a Final Recipient Transaction Acceleration, excluding any amount due under a Covered Sub-Operation with regard to:
 - (i) Late payment or default interest, capitalised interest, fees and any other costs and expenses (whether in respect of such Covered Sub-Operation or the relevant underlying Final Recipient Transaction);
 - (ii) In the case of Revolving Final Recipient Transactions, principal amounts exceeding the relevant Credit Limit Amount and any interest amounts which accrued thereon; and
 - (iii) Any interest amounts which accrued after the earlier of (i) a period of ninety (90) calendar days, and (ii) the date of the Final Recipient Transaction Default or Final Recipient Transaction Acceleration, as applicable.
- (b) Any amount due by the Intermediary to the Sub-Intermediary under the terms of such Covered Sub-Operation with respect to any reduction in principal and/or interest amounts written off in respect of a Final Recipient Transaction covered by such Sub-Operation as a result of a Final Recipient Transaction Restructuring, excluding:
 - (i) Late payment or default interest, capitalised interest, fees and any other costs and expenses (whether in respect of such Covered Sub-Operation or the relevant underlying Final Recipient Transaction); and
 - (ii) Any interest amounts which accrued after the earlier of (i) a period of ninety (90) calendar days, and (ii) the date of the Final Recipient Transaction Restructuring.

"**Default Interest Rate**" means on any date, unless a compulsory interest rate is provided for under any applicable law, the percentage rate per annum equal to the aggregate of:

- (a) the Interest Rate; and



(b) two per cent (2%).

"**Early Termination Date**" has the meaning given to it in Clause 17.2 (Early Termination).

"**Effective Date**" means the date on which the Parties sign this Agreement, provided that, if the Parties do not sign the Agreement on the same date, the Effective Date shall be the last date on which a Party signs this Agreement.

"**EGF Guarantee Instrument**" means the Capped or Uncapped (Counter-) Guarantee Instrument under the Pan-European Guarantee Fund in response to COVID-19.

"**EIB**" means the European Investment Bank.

"**EIB Group**" means, collectively, the EIF and the EIB.

"**EIB Group Excluded Sector**" means any sector listed in Schedule 11 (EIB Group Excluded Sectors).

"**Eligibility Criteria**" has the meaning given to it in Clause 4 (Eligibility Criteria) (as amended, supplemented or restated in Schedule 1 (Specific Terms)).

"**Eligible Sub-Operation**" has the meaning given to it in Clause 4 (Eligibility Criteria).

"**ECA**" means the European Court of Auditors.

"**EPPO**" means European Public Prosecutor's Office in respect of those member states of the European Union participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (OJ L 283, 31.10.2017, p.1-71).

"**EU**" means the European Union.

"**EU Restrictive Measures**" means any restrictive measures adopted pursuant to the Treaty on European Union or to the Treaty on the Functioning of the European Union².

"**Event of Default**" means any event or circumstance related to the Intermediary and/or the Counter-Guarantor as specified in Clause 16 (Events of Default).

"**Excluded Sub-Operation**" means any Sub-Operation excluded from the Portfolio in accordance with Clause 5.2 (Exclusion Process).

"**Exclusion Date**" has the meaning given to it in Clause 5.2 (Exclusion Process).

² The lists of EU sanctioned persons are included in the EU Sanctions Map available at www.sanctionsmap.eu. The list of EU sanctioned persons is also included in the Financial Sanctions Database (FSD) available at <https://webgate.ec.europa.eu/fsd/fsf#!/files>. Note that the EU restrictive measures as published in the L series of the Official Journal of the EU are authentic, and prevail over the content of EU Sanctions Map and of FSD in case of conflict.



"**Exclusion Notice**" means a notice in writing in respect of the exclusion of a Sub-Operation from the Portfolio to be sent by the Counter-Guarantor to the Intermediary pursuant to the terms of this Agreement and in the form of (or substantially in the form of Schedule 8 (Form of Exclusion Notice).

"**Exclusion Situation**" means that the Intermediary, a Sub-Intermediary or a Final Recipient, as the case may be, is in any of the following situations:

- (i) it is bankrupt, is subject to insolvency or is being wound up, is having its affairs administered by a liquidator or by the courts, in this context, is in an arrangement with creditors, is having its business activities suspended or a standstill (or equivalent) agreement has been signed with creditors and validated by the competent court when required by the applicable law, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (ii) in the past five (5) years, it has been the subject of a final judgment or final administrative decision for being in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law and where such obligations remain unpaid unless a binding arrangement has been established for payment thereof;
- (iii) in the past five (5) years, it or any of the persons having powers of representation, decision-making or control over it has been convicted by a final judgment or a final administrative decision for grave professional misconduct, where such conduct denotes wrongful intent or gross negligence, which would affect its ability to implement the Counter-Guarantee and which is for one of the following reasons:
 - (a) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract or an agreement;
 - (b) entering into agreements with other persons aimed at distorting competition;
 - (c) attempting to unduly influence the decision-making process of the contracting authority during the relevant "award procedure" as such term is defined in Article 2 of the Financial Regulation;
 - (d) attempting to obtain confidential information that may confer upon it undue advantages in the relevant "award procedure" as such term is defined in Article 2 of the Financial Regulation;
- (iv) in the past five (5) years, it or persons having powers of representation, decision-making or control over it has been the subject of a final judgment for:
 - (a) fraud;
 - (b) corruption;



- (c) participation in a criminal organisation;
 - (d) money laundering or terrorist financing;
 - (e) terrorist offences or offences linked to terrorist activities, or inciting, aiding, abetting or attempting to commit such offences;
 - (f) child labour and other forms of trafficking in human beings;
- (v) if it is the Intermediary, it is subject to a decision on exclusion, or if it is a Sub-Intermediary or a Final Recipient, it is under the published list of economic operators excluded or subject to financial penalty, in each case contained in the early detection and exclusion system database (the EDES database available at the official website of the EU) set up and operated by the Commission.

provided that the Counter-Guarantor may decide not to apply any of the items above if it is satisfied that the Intermediary or the relevant Sub-Intermediary or Final Recipient has adopted remedial measures to demonstrate its reliability, or that an exclusion would be disproportionate taking into account the circumstances.

"Factoring Transaction" means a transaction entered into between the Sub-Intermediary and a Final Recipient, where the Sub-Intermediary purchases or is assigned an individual trade receivable or a pool of trade receivables from the Final Recipient, typically at a discount, and the Sub-Intermediary should receive, as a result, payment from a third party debtor while maintaining recourse against the Final Recipient for any amount unpaid by the third party debtor.

"Final Payment Demand Date" means the date falling 4 (four) Months after the Termination Date.

"Final Recipient" means a natural or legal person, which enters into a Final Recipient Transaction with the Sub-Intermediary.

"Final Recipient Eligibility Criteria" has the meaning given to it in Schedule 3 (Eligibility Criteria) and Schedule 4 (State Aid).

"Final Recipient Transaction" means a debt financing transaction (including, senior loan transactions (including refinancing of existing debt and revolving credit lines (including overdrafts)) and, if so specified in the Specific Terms, (a) financing transactions in the form of Finance Leases (as defined in Schedule 16 (Finance Leases)), Bonds (as defined in Schedule 18 (Bonds)) Subordinated Debt Transactions (as defined in Schedule 17 (Subordinated Debt Transactions)), Quasi-Equity Transactions (as defined in Schedule 17 (Subordinated Debt Transactions)) and Factoring Transactions or (b) financing transactions providing recourse against the Final Recipient under Bank Guarantees or Letters of Credit, in each case entered into between a Sub-Intermediary and a Final Recipient and which is covered by a Sub-Operation.

"Final Recipient Transaction Acceleration" means, in respect of a Final Recipient Transaction, the occurrence of an event of default (howsoever defined) under such Final Recipient Transaction which has entitled the Sub-Intermediary to accelerate



payment of any amounts owed to it and the Sub-Intermediary has exercised such right of acceleration (or is prevented from exercising such rights of acceleration solely by application of mandatory laws and regulations preventing or staying the exercise of such right).

"Final Recipient Transaction Default" means, in respect of a Final Recipient Transaction, the earlier of the moment when:

- (a) the Sub-Intermediary considers (acting reasonably in accordance with its own Credit and Collection Policies) that the Final Recipient is unlikely to meet its payment obligations under the Final Recipient Transaction (without recourse by the Sub-Intermediary to actions such as realisation of Security); or
- (b) a Final Recipient fails to meet any payment obligation under the relevant Final Recipient Transaction and such failure has continued for at least ninety (90) consecutive calendar days.

"Final Recipient Transaction Effective Date" means the date on which the Final Recipient Transaction is entered into.

"Final Recipient Transaction Eligibility Criteria" has the meaning given to it in Schedule 3 (Eligibility Criteria) and Schedule 4 (State Aid).

"Final Recipient Transaction Restructuring" means, in respect of a Final Recipient Transaction, that the Sub-Intermediary, acting in a commercially reasonable manner and in accordance with its Credit and Collection Policies, agrees to the restructuring of such Final Recipient Transaction such that the financial obligations of the Final Recipient under the Final Recipient Transaction (i.e. the amount of principal scheduled to be paid and/or any interest amount due by the relevant Final Recipient) are totally or partially written-off in order to improve the collectability of the claims arising from the relevant Final Recipient Transaction.

"Financial Regulation" means Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, as it may be amended, supplemented or modified from time to time.

"Guarantee Institution" means an institution which (i) specialises in the provision of guarantees to the benefit of SMEs or Small Mid-Caps and (ii) is duly authorised to provide guarantees in the relevant jurisdiction.

"HPTR" means any preferential tax measure regarded as harmful under the EU list of non-cooperative jurisdictions for tax purposes, as set forth in Annex I and Annex II of the European Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes, initially adopted by the European Council on 5 December 2017 (under criterion 2.1)³, and as further detailed in the overview of the

³ For information only: <https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/#>



preferential tax regimes examined by the Code of Conduct Group (Business Taxation)⁴, as may be amended from time to time.

"**Illegal Activity**" means any of the following illegal activities or activities carried out for illegal purposes according to applicable laws in any of the following areas: (i) fraud, corruption, coercion, collusion or obstruction, (ii) money laundering, financing of terrorism or tax crimes each as defined in the AML Directives, and (iii) fraud and other illegal activity against the financial interests of the EIB, EIF and EU as defined in the PIF Directive.

"**Inclusion Notice**" means a quarterly notice in writing in respect of the inclusion of a Sub-Operation in the Portfolio, submitted by the Intermediary to the Counter-Guarantor in the form of (or substantially in the form of) Schedule 7 (Form of Inclusion Notice).

"**Inclusion Period**" means the period from the Inclusion Period Start Date to (including) the Inclusion Period End Date and subject, in any case, to earlier termination on an Early Termination Date or on the date specified in the Trigger Event Notice in accordance with Clause 5.1 (Inclusion Process).

"**Inclusion Period End Date**" means as specified in Schedule 1 (Specific Terms).

"**Inclusion Period Start Date**" has the meaning given to it in Schedule 1 (Specific Terms).

"**Interest Rate**" means the percentage rate per annum equal to:

- (a) if the Base Currency is euro, the relevant EURIBOR, i.e. the euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate), for a designated period of one (1) month on the relevant date; or
- (b) if the Base Currency is not euro, the reference rate set out in the Specific Terms.

provided that:

- (i) if such rate is below zero, the Interest Rate shall be deemed zero; and
- (ii) if such rate is not or no longer available at the relevant time, any replacement of such rate as agreed by the Parties (acting reasonably).

"**Letter of Credit**" means an irrevocable undertaking of the Sub-Intermediary, issued upon request of the Final Recipient, to effect payment in favour of a third party as the beneficiary of the Letter of Credit, where such Letter of Credit is covering an amount owed by the Final Recipient, against presentation of complying documents required

⁴ Such Code of Conduct Group (business taxation) was set up within the framework of the Council by the ECOFIN council on 9 march 1998 to assess tax measures that may fall within the scope of the Code of Conduct which is a political commitment by member states to re-examine, amend or abolish their existing tax measures that constitute harmful tax competition (rollback process) and refrain from introducing new ones in the future (standstill process).



by the Letter of Credit within the specified time limits in accordance with the terms of such Letter of Credit.

"Maintenance of Record Period" has the meaning given to it in paragraph 4 (Maintenance of Records – Authorisations) of Schedule 14 (General Undertakings).

"Material Adverse Effect" means a material adverse effect on or a material adverse change in:

- (a) the financial condition, assets, prospects, business, operations, property or condition (financial or otherwise) of a Party; or
- (b) the ability of a Party to perform or comply with any of its obligations under this Agreement; or
- (c) the validity, legality or enforceability of this Agreement or the rights and remedies of a Party thereunder.

"Maximum Portfolio Volume" has the meaning given to it in Schedule 1 (Specific Terms).

"Micro-Enterprise" means a micro-enterprise, including a self-employed person, that employs fewer than 10 persons and whose annual turnover or annual balance sheet total does not exceed EUR 2,000,000 in respect of the Reference Year, in accordance with the Commission Recommendation, as amended, restated, supplemented and/or substituted from time to time.

"Month" 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.

The rules in (a) and (b) above will only apply to the last Month of any period.

"MPV and APV Percentage Adjustment Notice" means a notice in the form of Schedule 6 (Form of Notice for MPV and APV Percentage Adjustment Notice) that is sent by the Counter-Guarantor to the Intermediary at any time after receipt by the Counter-Guarantor of a MPV and APV Percentage Adjustment Request either to approve or to reject such MPV and APV Percentage Adjustment Request.

"MPV and APV Percentage Adjustment Request" means a notice in the form of Schedule 5 (Form of Request for MPV and APV Percentage Adjustment Request) , duly completed and signed by an Authorised Person and that may be sent by the Intermediary to the Counter-Guarantor to request that the Maximum Portfolio Volume and/or the APV Percentage be adjusted.



"NCJ Implementation" means that the Final Recipient and the Sub-Intermediary are established and operating in the country of establishment of the Intermediary and that there is no indication that the relevant Final Recipient Transaction and Sub-Operation supports actions that contribute to (i) criminal activities such as money laundering, financing of terrorism, tax crimes (i.e. tax fraud and tax evasion) and (ii) wholly artificial arrangements aimed at tax avoidance.

"Non-Affected Party" has the meaning given to it in Clause 17.1 (Suspension).

"Non-Compliant Jurisdiction" means a jurisdiction:

- (a) listed in the Annex I of the Council of the European Union conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes;
- (b) included in the OECD/G20 list of jurisdictions that have not satisfactorily implemented the tax transparency standards;
- (c) listed in the Annex of the Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies;
- (d) rated as “partially compliant” or “non-compliant”, including corresponding provisional ratings, by the Organisation for Economic Cooperation and Development and its Global Forum on Transparency and Exchange of Information for Tax Purposes against the international standard on exchange of information on request;
- (e) included in the Financial Action Task Force statement “High risk Jurisdictions subject to a Call for Action”; or
- (f) included in the Financial Action Task Force statement “Jurisdictions under Increased Monitoring”,

in each case as such statement, list, directive or annex may be amended and/or supplemented from time to time.

"Non-Eligible Sub-Operation" means, at a given time, a Sub-Operation which (a) is not an Eligible Sub-Operation at that time; (b) would not be an Eligible Sub-Operation at that time, were it not for the fact that it is deemed to be an Eligible Sub-Operation by virtue of Clause 4.3 (Included Sub-Operations deemed Eligible); or (c) does not comply with any requirement or undertaking under this Agreement relating to Sub-Operations or Sub-Intermediaries or covers a Final Recipient Transaction that does not comply with any requirement or undertaking under this Agreement relating to Final Recipients Transactions or Final Recipients, including as a result of it being verified or declared by the Counter-Guarantor to be a Non-Eligible Sub-Operation pursuant to Clause 5.2(b)(ii).

"OLAF" means the European Anti-Fraud Office, set up in accordance with the provisions of the Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of



the European Parliament and of the Council and Council Regulation *(Euratom) No 1074/1999.

"Participating Member States" means the countries contributing to the EGF which are included in the list reported in Annex X to the Call, as updated from time to time. For the avoidance of doubt, Sub-Operations originated in countries that became Participating Member States only after the submission of the application for the Counter-Guarantee by the Intermediary are considered to be originated in a Participating Member State.

"Party" means a party to this Agreement.

"Payment Demand" means a request for payment under the Counter-Guarantee issued by the Intermediary to the Counter-Guarantor pursuant to the terms of this Agreement.

"Payment Demand Date" means any Report Date provided that the last Payment Demand Date shall be the Final Payment Demand Date.

"Payment Demand Period" means the period from (but excluding) the last day of a calendar quarter to (and including) the immediately following Payment Demand Date.

"Payment Demand Schedule" means a schedule in the form of Schedule 9 (Form of Payment Demand Schedule) detailing the Final Recipient Transaction(s) covered by the Sub-Operation(s) in respect of which a Defaulted Amount has been incurred and providing details of the calculation of such Defaulted Amount.

"Performing Final Recipient Transaction" means, on any date during a Counter-Guarantee Fee Calculation Period, a Final Recipient Transaction covered by a Sub-Operation included in the Portfolio in respect of which no (i) Final Recipient Transaction Default, (ii) Final Recipient Transaction Acceleration, or (iii) Final Recipient Transaction Restructuring has occurred and been reported by the Intermediary on the relevant Report Date, provided that:

- (a) A Final Recipient Transaction in respect of which a Final Recipient Transaction Default has been reported on the relevant Report Date shall be treated as a Performing Final Recipient Transaction if such Final Recipient Transaction Default has been cured in accordance with the Sub-Intermediary's Credit and Collection Policies before the Intermediary submits a Payment Demand in respect of such Final Recipient Transaction;
- (b) A Final Recipient Transaction in respect of which a Final Recipient Transaction Restructuring has occurred and which subsequently, in accordance with the Sub-Intermediary's Credit and Collection Policies, the Sub-Intermediary classifies as a good debt and continues to service in accordance with its Credit and Collection Policies, shall be treated as a Performing Final Recipient Transaction.

"Permitted Communication" means any communication under this Agreement which is made by letter or by e-mail.



"**PIF Directive**" means Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law as amended, supplemented or restated.

"**Portfolio**" means the portfolio comprised of all the Sub-Operations subject to the terms of the Counter-Guarantee.

"**Portfolio Eligibility Criteria**" means the Additional Eligibility Criteria that are specified as "Portfolio Eligibility Criteria" in the Schedule 1 (Specific Terms), if any.

"**Portfolio Trigger Amount**" means the amount calculated as specified in Schedule 1 (Specific Terms).

"**Portfolio Trigger Event**" means that on the Portfolio Trigger Event Determination Date, the Actual Portfolio Volume is lower than the Portfolio Trigger Amount.

"**Portfolio Trigger Event Determination Date**" means the last day of the calendar quarter immediately following the date which is halfway through the Inclusion Period.

"**Potential Event of Default**" means any event which, with the giving of notice or the lapse of remedy time or both (in each case, to the extent specified in this Agreement), would constitute an Event of Default.

"**Recovery**" means, unless otherwise specified in the Specific Terms, each and every amount, net of recovery and foreclosure costs (if any), recovered or received by or on behalf of the Intermediary, including by way of set-off, in respect of a Covered Sub-Operation or the underlying Final Recipient Transaction that has resulted in a Defaulted Amount, provided that (i) a payment in respect of such Defaulted Amount made to the Intermediary under a guarantee given by a Guarantee Institution shall not be treated as a "Recovery" unless otherwise specified in the Specific Terms, and (ii) in respect of a Final Recipient Transaction which was subject to a Final Recipient Transaction Restructuring, only amounts received, net of recovery and foreclosure costs (if any), in relation to the Defaulted Amounts shall be treated as a "Recovery".

Without prejudice to paragraphs 6 (Title and Security) and 9 (Credit and Collection Policies) of Schedule 14 (General Undertakings), the term "Recovery" shall include any amount recovered or received by or on behalf of the Intermediary in respect of a Covered Sub-Operation or the underlying Final Recipient Transaction that has resulted in a Defaulted Amount (or the right to recover or receive such amount) and which is transferred to a third party (other than a Guarantee Institution) under an obligation of the Intermediary or the Sub-Intermediary under a Security or other contractual obligation in respect of the relevant Covered Sub-Operation or the underlying Final Recipient Transaction granted by the Intermediary or the Sub-Intermediary (as applicable) to such third party.

"**Reference Year**" means, with respect to an entity, the full fiscal year for such entity immediately preceding the fiscal year in which a Final Recipient Transaction is to be entered into.



"Relevant EIF Address" means the email address specified in Clause 21 (Notices) below or such other email address notified from time to time by EIF to the Intermediary in writing.

"Relevant FX Rate" means the relevant foreign exchange reference rate displayed by the European Central Bank from time to time on its website (www.ecb.int for the time being) and which is based on the daily consultation procedure between central banks within and outside the European System of Central Banks or, if such rate is not or is no longer available at the relevant time, the relevant foreign exchange rate displayed by the national central bank of the country where the Intermediary is established and operating.

"Relevant Jurisdiction" has the meaning given to it in Schedule 1 (Specific Terms).

"Relevant Parties" means the representatives of the relevant national authorities, ECA or other competent national court of auditors, the representatives and advisors of the Participating Member States, the European Anti-Fraud Office ("OLAF"), the Counter-Guarantor, the EIB, the agents of the Counter-Guarantor or any other person designated by the Counter-Guarantor or the EIB, the Commission, the agents of the Commission (including OLAF), EPPO, any other European Union institution or European Union body which is entitled to verify the use of the Counter-Guarantee in the context of the EGF Guarantee Instrument and any other duly authorised body under applicable law to carry out audit or control activities.

"Report" means the quarterly report to be delivered by the Intermediary to the Counter-Guarantor in the form of Schedule 7A (FORM OF REPORT).

"Report Date" means the date falling 30 (thirty) calendar days following the last day of the relevant calendar quarter and provided that, if the Report Date falls on a calendar day that is not a Business Day, the Report Date shall be on the next calendar day which is a Business Day.

"Restrictive Measures" means:

- (1) EU Restrictive Measures; and/or
- (2) any economic or financial sanctions adopted from time to time by the United Nations and any agency or person which is duly appointed, empowered or authorised by the United Nations to enact, administer, implement and/or enforce such measures; and/or
- (3) any economic or financial sanctions adopted from time to time by the United States Government and any department, division, agency, or office thereof, including the United States Department of the Treasury Office of Foreign Asset Control (OFAC), the United States Department of State and/or the United States Department of Commerce.

"Restrictive Measures Clawback Amount" means any amounts paid by the Counter-Guarantor directly or indirectly to, or for the benefit of, the Intermediary at any time when the Intermediary was a Sanctioned Person.

"Revolving Final Recipient Transaction" means a Final Recipient Transaction (which shall include revolving working capital facilities embedded in or linked to a current account, and exclude any credit or loan resulting from utilisation of credit card limits)) pursuant to which a Final Recipient can use, on a revolving basis, the



commitment made available to it by the Sub-Intermediary for a specified period through one or more drawdowns and repayments up to the Credit Limit Amount, including for requesting issuances of Bank Guarantees and Letters of Credit and in the form of Factoring Transactions.

"Sanctioned Person" means any person, entity, individual or group of individuals who is a designated target of or otherwise a subject of Restrictive Measures.

"Security" means a mortgage, charge, pledge, lien, assignment or security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"SME" means a micro, small or medium-sized enterprise as defined in the Commission Recommendation.

"Small-Enterprise" means a small-enterprise, including a self-employed person, that employs fewer than 50 persons and whose annual turnover or annual balance sheet total does not exceed EUR 10,000,000 in respect of the Reference Year, in accordance with the Commission Recommendation, as amended, restated, supplemented and/or substituted from time to time.

"Small Mid-Cap" means an enterprise, as defined in Article 1 of Title I of the Annex of the Commission Recommendation where the following cumulative conditions need to be fulfilled:

- the enterprise has a number of employees up to 499 where the staff headcount is calculated in accordance with Articles 3, 4, 5 and 6 of Title I of the Annex of the Commission Recommendation;
- the enterprise is not an SME.

"Specific Terms" means the terms set out in Schedule 1 (Specific Terms).

"State Aid" means aid granted by a member state of the European Union or through such state, as further set out in Articles 107 and 108 of the Treaty.

"Sub-Intermediary" means in respect of a Sub-Operation, the beneficiary of the guarantee issued by the Intermediary under such Sub-Operation.

"Sub-Intermediary Eligibility Criteria" has the meaning given to it in Schedule 3 (Eligibility Criteria).

"Sub-Operation" means any guarantee instrument issued by the Intermediary to a Sub-Intermediary covering directly or indirectly one or more Final Recipient Transactions. For the avoidance of doubt, in cases where the guarantee instrument is issued by the Intermediary under a framework agreement or a guarantee agreement in relation to a portfolio of debt financing transactions, "Sub-Operation" shall be construed so as to refer to a Sub-Operation guaranteeing one single Final Recipient Transaction only (i.e. on a per-transaction basis) (including but not limited to, for the purposes of including or excluding Sub-Operations in the Portfolio, which, in accordance with the provisions of this Agreement, shall result in increases or



decreases pro tanto of the Actual Portfolio Volume corresponding to the Sub-Operation amount with respect to the relevant Final Recipient Transaction only).

"**Sub-Operation Effective Date**" means the date on which the Sub-Operation is entered into.

"**Sub-Operation Eligibility Criteria**" has the meaning given to it in Schedule 3 (Eligibility Criteria).

"**Termination Date**" means the earlier of:

- (a) the Early Termination Date;
- (b) the date (if any) on which the Counter-Guarantor is no longer liable to effect further payments to the Intermediary and the Counter-Guarantor has no further claims against the Intermediary under this Agreement; and
- (c) 30 December 2037.

"**Transfer of Benefit**" means the principles and undertakings of transfer of the benefit of the Counter-Guarantee by the Intermediary and ultimately by the Sub-Intermediary to the Final Recipients as further specified in Schedule 1 (Specific Terms).

"**Treaty**" means the Treaty on European Union and the Treaty on the Functioning of the European Union (OJ 7 June 2016, C 202).

"**Trigger Event**" means:

- (a) a Portfolio Trigger Event;
- (b) a Cumulative Default Rate Trigger Event;
- (c) a Compliance Trigger Event; and
- (d) any Additional Trigger Event specified in Schedule 1 (Specific Terms)

"**Trigger Event Notice**" has the meaning given to it in Clause 5.1(b) (Inclusion Process).

1.2 Interpretation

- (a) Other than where otherwise stated, any reference in this Agreement to:
 - a "**clause**" or a "**schedule**" is, unless the context otherwise requires, a reference to a Clause of or a Schedule to this Agreement;
 - a "**party**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
 - "**assets**" includes present and future properties, revenues and rights of every description (including any right to receive such revenues);



- "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - a "**person**" includes any person, firm, company, corporation, government, state or agency of a state or any association, group, organisation (including, without limitation, terrorist organisation), trust or partnership (whether or not having separate legal personality) or two or more of the foregoing, or any other entity or body of any description;
 - a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law, then being a type with which persons to which it applies customarily comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - a provision of law is a reference to a provision, of any treaty, legislation, regulation, decree, order or by-law and any secondary legislation enacted under a power given by that provision, as amended, applied or re-enacted or replaced (whether with or without modification) whether before or after the date of this Agreement;
 - a time of day is a reference to Luxembourg time;
 - a Potential Event of Default or an Event of Default is "continuing" if it has not been remedied or waived;
 - "**euro**", "**Euro**", "**EUR**" and "**€**" shall be construed as a reference to the single currency of the member states of the European Union that adopt or have adopted the euro as their lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union at any relevant time; and
 - terms defined in the GDPR, including the terms "controller", "personal data" and "processing", have the same meanings when used in Clause 10 (Data protection) of Schedule 14 (General Undertakings) of this Agreement.
- (b) Words denoting the singular shall include the plural and vice versa, words denoting one gender shall include the other gender and words denoting persons shall include firms and corporations and vice versa.
- (c) Any reference in this Agreement to any statutory provisions or regulations shall be construed as a reference to the statutory provisions or regulations as the same may from time to time be changed by any statutory modification or re-enactment thereof or any statutory instrument, order or regulation made thereunder or under any such re-enactment.
- (d) The Clause headings used in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.



- (e) The Schedules (including, without limitation, the Specific Terms) form an integral part of this Agreement.
- (f) In the event of any inconsistency between the main body of this Agreement and the Schedules (including, without limitation, the Specific Terms), the Schedules shall prevail and in the event of any inconsistency between the Specific Terms and any other Schedule, the Specific Terms shall prevail.

1.3 Specific Terms

The Parties hereby acknowledge and agree that the specific provisions contained in the Specific Terms supplement, modify or replace (as the case may be) other terms of the main body of this Agreement (including its Schedules).

2. PURPOSE

The purpose of this Agreement is the provision of the Counter-Guarantee by the Counter-Guarantor to the Intermediary in order to cover partially the credit risk of the Intermediary relating to the Portfolio.

3. COUNTER-GUARANTEE

3.1 The Counter-Guarantor hereby grants an irrevocable professional payment guarantee in favour of the Intermediary subject to, and in accordance with, the terms of this Agreement (the "**Counter-Guarantee**").

3.2 Subject to the terms of this Agreement (including any specific provisions contained in the Specific Terms which may supplement, modify and/or replace other terms of the main body of this Agreement), the Counter-Guarantor will pay to the Intermediary an amount in respect of each Covered Sub-Operation (the "**Counter-Guarantee Amount**") equal to:

- (a) the Defaulted Amount incurred in respect of Credit Events which occurred during the applicable Counter-Guarantee Coverage Period;
- (b) multiplied by the Counter-Guarantee Rate.

3.3 The Parties hereby agree to expressly submit the Counter-Guarantee to the professional payment guarantee regime governed by the Luxembourg law of 10 July 2020 on professional payment guarantees.

4. ELIGIBILITY CRITERIA

4.1 Eligibility Criteria

Subject to Clauses 4.2 (Time of Compliance) and 4.3 (Included Sub-Operations deemed Eligible), the Portfolio shall only contain Sub-Operations (i) covering Final Recipient Transactions which comply with the Final Recipient Transaction Eligibility Criteria and Final Recipient Eligibility Criteria and (ii) which comply with the criteria set out below (such transactions, "**Eligible Sub-Operations**" and such criteria, the "**Eligibility Criteria**");



- (a) each of the Sub-Intermediary Eligibility Criteria;
- (b) each of the Sub-Operation Eligibility Criteria;
- (c) each of the Portfolio Eligibility Criteria (if any); and
- (d) each of the Additional Eligibility Criteria (if any).

4.2 Time of Compliance

Any Eligibility Criteria specified in Schedule 1 (Specific Terms), Schedule 3 (Eligibility Criteria) and Schedule 4 (State Aid) to be "Continuing" (such Eligibility Criteria, the "**Continuing Eligibility Criteria**") shall be complied with at all times whereas (i) any Eligibility Criteria specified in Schedule 1 (Specific Terms), Schedule 3 (Eligibility Criteria) and Schedule 4 (State Aid) to be "Sub-Operation Signing Date" shall be complied with on the relevant Sub-Operation Effective Date, (ii) any Eligibility Criteria specified in Schedule 1 (Specific Terms), Schedule 3 (Eligibility Criteria) and Schedule 4 (State Aid) to be "Final Recipient Transaction Signing Date" shall be complied with on the relevant Final Recipient Transaction Effective Date, and, if applicable, on the date when the principal amount under the relevant Final Recipient Transaction is increased in accordance with Clause 5.1(g).

4.3 Included Sub-Operations deemed Eligible

Any Sub-Operation that has been included in the Portfolio by the Intermediary pursuant to Clause 5.1 (Inclusion Process) shall automatically be deemed to be an Eligible Sub-Operation from the Sub-Operation Effective Date unless and until it has been excluded from the Portfolio pursuant to Clause 5.2 (Exclusion Process) (without prejudice to the continued application of Clause 4.2 (Time of Compliance)).

4.4 Waivers and amendments

- (a) General

Without prejudice to Paragraph 6(h) (Maturity extensions and commitment increases) of Schedule 4 (State Aid) or Eligibility Criteria 1 of Paragraph 4(b) of Schedule 4 (State Aid), as applicable, the Intermediary acknowledges that the Sub-Intermediary shall be entitled to amend or supplement, grant any waiver or make any other declaration of intent in relation to a Final Recipient Transaction, in line with its Credit and Collection Policies (which the Intermediary procures to be the case), provided that if such action is related to or modifying aspects governed by the Eligibility Criteria, the relevant Eligibility Criteria (irrespective of whether the Time of Compliance of the relevant Eligibility Criteria is Signing Date or Continuing) are still complied with at the effective date of the relevant action which the Intermediary procures to be the case.

Subject to Paragraph 6(h) (Maturity extensions and commitment increases) of Schedule 4 (State Aid), or Eligibility Criteria 1 of Paragraph 4(b) of Schedule 4 (State Aid), as applicable, the Intermediary acknowledges that the Sub-Intermediary shall also be entitled to amend or supplement, grant any waiver or make any other declaration of intent in relation to a Final Recipient



Transaction (except for increases of committed amounts under such Final Recipient Transaction), in line with its Credit and Collection Policies and/or as required by mandatory law, to improve the collectability of any claims under and/or to avoid any default in respect of the relevant Final Recipient Transaction, provided that as a result of such amendment no Continuing Eligibility Criteria are breached (which the Intermediary procures to be the case).

(b) Revolving Final Recipient Transactions

(i) Rollover

Without prejudice to Paragraph 6(h) (Maturity extensions and commitment increases) of Schedule 4 (State Aid) or Eligibility Criteria 1 of Paragraph 4(b) of Schedule 4 (State Aid), as applicable, any entry into a new agreement or the execution of a contractual amendment with a new maturity and the same Final Recipient as a replacement or renewal of an existing Revolving Final Recipient Transaction included in the Portfolio but irrespective of any repayment by the Final Recipient of amounts outstanding under the existing Revolving Final Recipient Transaction, shall be treated as an extension of the maturity of the existing Revolving Final Recipient Transaction (and not as the entry into a separate Revolving Final Recipient Transaction).

The maturity of such Revolving Final Recipient Transaction shall be calculated starting from the day on which the existing Revolving Final Recipient Transaction was initially entered into, and shall not cause the aggregate term of the Revolving Final Recipient Transaction to exceed thirty six (36) months starting from the day the existing Revolving Final Recipient Transaction was entered into, except in the case of amendments to improve the collectability of any claims under and/or to avoid any default in respect of the relevant Final Recipient Transactions.

(ii) Conversion

Without prejudice to Paragraph 6(h) (Maturity extensions and commitment increases) of Schedule 4 (State Aid) or Eligibility Criteria 1 of Paragraph 4(b) of Schedule 4 (State Aid), as applicable, if, without repayment in full by the Final Recipient of amounts outstanding under a Revolving Final Recipient Transaction included in the Portfolio, (a) the terms of such Revolving Final Recipient Transaction are modified to the effect that the relevant Final Recipient Transaction no longer takes the form of a Revolving Final Recipient Transaction, including by way of entry into a new contractual agreement or the execution of a contractual amendment, subject to the other provisions of this Agreement, and (b) the Sub-Operation continues to cover the Final Recipient Transaction in accordance with the other provisions of this Agreement, the Sub-Operation shall continue to be included in the Portfolio as a Covered Sub-Operation (and shall not be treated as a separate Sub-Operation).

(iii) Actual Portfolio Volume



Any amendments of the terms of Revolving Final Recipient Transactions as described in this Clause 4.4(b) shall not affect the calculation of the Actual Portfolio Volume.

(iv) Outstanding principal amount

Unless otherwise specified, the outstanding principal amount in respect of a Revolving Final Recipient Transaction refers to the amounts disbursed and outstanding under such Revolving Final Recipient Transaction.

(c) Maturity extensions and commitment increases

Any amendment or supplement, waiver or any other declaration of intent in relation to a Final Recipient Transaction resulting in:

(i) an increase of the amount committed under the Final Recipient Transaction; or

(ii) the extension of maturity of the Final Recipient Transaction,

shall be subject to the provisions of the Relevant State Aid Regime applicable to such Final Recipient Transaction as set out in Schedule 4 (State Aid).

5. PORTFOLIO INCLUSION AND EXCLUSION PROCESSES

5.1 Inclusion Process

(a) Subject to the other provisions of this Clause 5.1, and provided that the EIF has received the documents requested in accordance with paragraph (c) (Authorised Persons) of Schedule 13 (Information Undertakings), the Intermediary may include in the Portfolio (for their full original principal amount guaranteed, and not partially) Sub-Operations that:

(i) comply with the Eligibility Criteria and all other provisions of this Agreement; and

(ii) are entered into with the Sub-Intermediaries during the Inclusion Period and that cover Final Recipient Transactions complying with the Final Recipient Transaction Eligibility Criteria and the Final Recipient Eligibility Criteria requirements that are entered into with Final Recipients during the Inclusion Period.

(b) Upon the occurrence of a Trigger Event, the Intermediary shall without any undue delay inform the Counter-Guarantor thereof and provide to the Counter-Guarantor any information relating to the Trigger Event that the Counter-Guarantor may require.

The Counter-Guarantor may, but shall not be obliged to, send to the Intermediary a notice (the "**Trigger Event Notice**"):

(i) within two (2) Months after receipt by the Counter-Guarantor of the notification from the Intermediary, and



- (ii) within two (2) Months after the Counter-Guarantor otherwise becoming aware of the occurrence of a Trigger Event (except if it has already been notified thereof by the Intermediary in accordance with the provision above).

In such case, the Inclusion Period End Date shall be deemed to be the date specified by the Counter-Guarantor in the Trigger Event Notice (such date shall not be later than the date falling one (1) Month after sending of the Trigger Event Notice) and the other provisions of this Agreement shall be construed accordingly.

- (c) In the case of a Portfolio Trigger Event, the Counter-Guarantor may, at its discretion, decide not to set the Inclusion Period End Date in the Trigger Event Notice in accordance with the previous paragraph but instead set a new Portfolio Trigger Event Determination Date in the Trigger Event Notice.
- (d) The Intermediary shall submit an Inclusion Notice, together with the Report, no later than on each Report Date in respect of Sub-Operations entered into at any time during the 2 (two) calendar quarters preceding the date of the relevant Inclusion Notice, provided that (i) the last Inclusion Notice shall not be sent later than on the Report Date immediately following the period ending six (6) Months after the Inclusion Period End Date, (ii) only one Inclusion Notice shall be sent per calendar quarter, and (iii) each Sub-Operation shall be included in the Portfolio only once.

In case no Sub-Operations are entered into during the two (2) calendar quarters preceding the date of the relevant Inclusion Notice, an email stating that no Sub-Operations are to be included shall be sent by the Intermediary to the Counter-Guarantor no later than on the relevant Report Date.

- (e) Upon receipt by the Counter-Guarantor of the signed Inclusion Notice, the Sub-Operations referred to therein shall be included in the Portfolio, provided that no Sub-Operations shall be so included if an Event of Default or Potential Event of Default related to the Intermediary has occurred and is continuing. For the avoidance of doubt, Sub-Operations so included shall be Covered Sub-Operations from the Sub-Operation Effective Date.
- (f) If the original principal amounts guaranteed by the Intermediary under the Sub-Operations referred to in an Inclusion Notice are such that, as a result of their inclusion in the Portfolio, the Actual Portfolio Volume would exceed the Agreed Portfolio Volume, the Sub-Operations will be included in the Portfolio only to the extent that the Actual Portfolio Volume resulting from any such inclusion does not exceed the Agreed Portfolio Volume. The Counter-Guarantor shall have sole and absolute discretion as to which of such Sub-Operations shall be included and which shall not be included.
- (g) The principal amount guaranteed by the Intermediary under a Sub-Operation included in the Portfolio may only be increased during the Inclusion Period if such increase is made in compliance with all the provisions of this Agreement and does not result in the Actual Portfolio Volume exceeding the Agreed Portfolio Volume. The principal amount guaranteed by the Intermediary



under a Sub-Operation included in the Portfolio may not be increased after the Inclusion Period End Date.

- (h) Each Inclusion Notice shall be communicated by the Intermediary to the Counter-Guarantor together with the Report by email at the Relevant EIF Address and no later than on the relevant Report Date.

5.2 Exclusion Process

- (a) At any time the Counter-Guarantor may (but shall not be obliged to) verify whether a Sub-Operation included in the Portfolio is an Eligible Sub-Operation or a Non-Eligible Sub-Operation and whether its inclusion in the Portfolio is in compliance with the terms of this Agreement.
- (b) Subject to Clause 5.2(c) below, if a Sub-Operation included in the Portfolio is or becomes a Non-Eligible Sub-Operation:
 - (i) the Intermediary shall upon becoming aware of the same (including by way of the Exclusion Notice sent by the Counter-Guarantor), include such information in the immediately following Report delivered to the Counter-Guarantor; and
 - (ii) the Counter-Guarantor may at any time upon becoming aware of the same (except if it has already been notified thereof by the Intermediary in accordance with paragraph (i) above) notify the Intermediary of the same by sending an Exclusion Notice identifying such Non-Eligible Sub-Operation,

whereupon that Sub-Operation shall be excluded from the Portfolio (such Sub-Operation being an "**Excluded Sub-Operation**") as of the date on which it became a Non-Eligible Sub-Operation (or, with respect to Eligibility Criteria which were not complied with on the date of inclusion in the Portfolio, on the date on which the relevant Sub-Operation was included in the Portfolio, such Excluded Sub-Operation being deemed never to have qualified as a Covered Sub-Operation) (any such dates, an "**Exclusion Date**"). As from the Exclusion Date, the Actual Portfolio Volume will be reduced pro tanto (i.e. by deducting from the Actual Portfolio Volume the aggregate committed principal amount guaranteed by the Intermediary under the Excluded Sub-Operation).

- (c) Notwithstanding Clause 5.2(b) above, if a Sub-Operation included in the Portfolio is or becomes a Non-Eligible Sub-Operation as a result only of events or circumstances beyond the control of the Intermediary and the Intermediary becomes aware of any such event or circumstance at any time after the date on which it was included in the Portfolio (and could not, acting diligently, have become aware thereof prior to such date) and
 - (i) if the Intermediary became aware thereof prior to any payment demand relating to a Final Recipient Transaction being served by the Sub-Intermediary to the Intermediary or could, acting diligently, have



become aware thereof prior to such date, then the Intermediary may either:

- (A) procure that all amounts owed to the relevant Sub-Intermediary by the relevant Final Recipient under such Final Recipient Transaction are accelerated or that such Final Recipient Transaction is otherwise terminated, no later than the Report Date immediately following the date on which it became aware of the same or could, acting diligently, have become aware thereof (an "**Acceleration Event**"), and the relevant Sub-Operation will remain a Covered Sub-Operation from the date on which it was included in the Portfolio (but, for the avoidance of doubt, without prejudice to the requirements of Clause 3 (Counter-Guarantee) for Covered Sub-Operation unless it is for any other reason excluded from the Portfolio and ceases to be a Covered Sub-Operation pursuant to this Clause 5.2 (Exclusion Process)); or
 - (B) not proceed to an Acceleration Event, in which case Clause 5.2(b) will apply;
- (ii) if the Intermediary became aware thereof at any time after a payment demand relating to a Final Recipient Transaction covered by such Sub-Operation being served by the Sub-Intermediary to the Intermediary and the Intermediary could not, acting diligently, have become aware thereof prior to such date, then such Sub-Operation shall be deemed to be a Covered Sub-Operation for the purpose of the Payment Demand relating to such Final Recipient Transaction (and, for the avoidance of doubt, clawback under Clause 10 (Right of Clawback) will not apply with respect to payments already made with respect to such Sub-Operation) unless it is for any other reason excluded from the Portfolio and ceases to be a Covered Sub-Operation pursuant to this Clause 5.2.
- (d) If one or more Portfolio Eligibility Criteria (specified in the Specific Terms, if any) are not (or no longer) complied with:
- (i) the Intermediary shall, in the immediately following Report delivered to the Counter-Guarantor; and
 - (ii) the Counter-Guarantor may at any time, by notice to the Intermediary, exclude any Sub-Operation(s) which caused the breach of the relevant Portfolio Eligibility Criteria from the Portfolio such that, as a result of such exclusion, the Portfolio Eligibility Criteria shall be satisfied. Such Sub-Operations shall be deemed to be Non-Eligible Sub-Operations for the purpose of Clause 5.2(b) (provided that Clause 5.2(c)(i) shall not apply for the purposes of this Clause 5.2(d)) and such Sub-Operations shall become Excluded Sub-Operations on the Exclusion Date.



- (e) If the Intermediary becomes aware:
- (i) that a Sub-Operation is or becomes a Non-Eligible Sub-Operation or any other undertakings or requirements of this Agreement are not complied with or satisfied in connection with such Sub-Operation, or
 - (ii) that any guarantee made available under a Covered Sub-Operation is cancelled,

then such information shall be included in the immediately following Report delivered to the Counter-Guarantor.

6. ADJUSTMENTS

6.1 Adjustment of the Actual Portfolio Volume

In respect of each Final Recipient Transaction included in the Portfolio, if on the date which is the earlier of (such date, the "**Adjustment Date**"):

- (a) the end of a disbursement period when amounts are available for utilisation by the Final Recipient under such Final Recipient Transaction; and
- (b) the date on which a commitment made available for utilisation under such Final Recipient Transaction is cancelled;

the committed amount of principal has not been fully drawn by a Final Recipient under the relevant Final Recipient Transaction (or, in case of a Revolving Final Recipient Transaction, the aggregate principal amounts drawn by a Final Recipient under the relevant Revolving Final Recipient Transaction is less than the Credit Limit Amount), then the Actual Portfolio Volume shall be reduced (taking into account the guarantee rate applicable to the relevant Sub-Operation) to reflect the guaranteed aggregate principal amounts drawn by the relevant Final Recipient under that Final Recipient Transaction (or, in case of a Revolving Final Recipient Transaction, the relevant Credit Limit Amount shall be reduced to an amount equal to the aggregate principal amounts drawn by the relevant Final Recipient under such Revolving Final Recipient Transaction prior to such date). The Intermediary shall reflect any such adjustment in the Report immediately following such Adjustment Date.

6.2 Replacement

If the Actual Portfolio Volume is reduced in accordance with the provisions of Clause 5.2 (Exclusion Process) and Clause 6.1 (Adjustment of the Actual Portfolio Volume), the Intermediary may include one or more further Sub-Operation(s) in the Portfolio provided that:

- (a) such Sub-Operations comply in all respects with all the Eligibility Criteria and other relevant provisions of this Agreement;
- (b) such Sub-Operations and the Final Recipient Transactions covered by such Sub-Operations have been entered into at any time during the Inclusion Period;



- (c) any inclusion of such Sub-Operations shall be made in accordance with the provisions of Clause 5.1 (Inclusion Process); and
- (d) the Actual Portfolio Volume shall not, as a result of any such inclusion(s) of such Sub-Operations, exceed the Agreed Portfolio Volume.

6.3 **Adjustment to the Maximum Portfolio Volume and/or the APV Percentage and reset of the Agreed Portfolio Volume**

- (a) At any time during the Inclusion Period the Intermediary may, by way of a MPV and APV Percentage Adjustment Request, propose (a) that the Maximum Portfolio Volume be increased (to an amount up to and including the amount specified for that purpose in the Specific Terms) or decreased (as applicable), and/or (b) that the APV Percentage be increased or decreased and therefore the Agreed Portfolio Volume is reset accordingly.
- (b) At any time following the receipt of a MPV and APV Percentage Adjustment Request the Counter-Guarantor may, in its sole discretion and by way of a MPV and APV Percentage Adjustment Notice, accept or reject (a) the requested increase or decrease (as applicable) of the Maximum Portfolio Volume, and/or (b) the increase or decrease (as applicable) of the APV Percentage and consequent reset of the Agreed Portfolio Volume. If such MPV and APV Percentage Adjustment Request is accepted, (a) the Maximum Portfolio Volume shall be increased or decreased (as applicable), and/or (b) the APV Percentage shall be increased or decreased and the Agreed Portfolio Volume shall be reset as of the date and to the amount and rate specified in the relevant MPV and APV Percentage Adjustment Request.

7. **PAYMENT DEMANDS**

7.1 **A Payment Demand shall only be valid if:**

- (a) it is in the form of Schedule 9 (Form of Payment Demand), duly completed and signed by an Authorised Person;
- (b) it is accompanied by a schedule in the form of Schedule 9 A Part C (Payment Demand Schedule);
- (c) it is sent by email to the Relevant EIF Address in accordance with Clause 21 (Notices);
- (d) it relates to one or more Covered Sub-Operations;
- (e) it is sent during a Payment Demand Period, on or before the Final Payment Demand Date and provided further that not more than one Payment Demand may be made during any Payment Demand Period;
- (f) it relates to Defaulted Amounts that have been included in the Report sent by not later than the third Report Date following the calendar quarter in which the relevant Credit Event has occurred;



- (g) the Intermediary is in compliance with its representation under paragraph 6 (Title and Security) of Schedule 14 (General Undertakings) and, other than for the purposes of a Payment Demand submitted in accordance with Clause 17.2(b) (Early Termination), no Event of Default or Potential Event of Default has occurred and is continuing in respect of the Intermediary; and
 - (h) the relevant Defaulted Amounts have been paid by the Intermediary.
- 7.2 The Counter-Guarantor may, at any time and in its sole discretion, request information regarding any Payment Demand. The Intermediary undertakes to provide the Counter-Guarantor as soon as possible with any such further information.
- 7.3 For the avoidance of doubt, Payment Demands may be sent at any time before, during or after the workout/recovery procedures in respect of a Final Recipient Transaction.

8. PAYMENTS

- 8.1 All payments to be made by the Intermediary to the Counter-Guarantor under this Agreement shall be in euro. Notwithstanding the foregoing, amounts to be paid by the Intermediary to the Counter-Guarantor pursuant to Clause 11 (Recoveries) shall be paid in the currency in which such Recoveries have been recovered or received by the Intermediary under the relevant Sub-Operation if such Recoveries are denominated in the Base Currency or the Additional Currency, as the case may be. If the Recoveries are recovered or received by the Intermediary in a currency other than the Base Currency or the Additional Currency, such Recoveries shall be paid by the Intermediary to the Counter-Guarantor in the Base Currency, the Additional Currency or in euro. Further, amounts to be paid by the Intermediary to the Counter-Guarantor pursuant to Clause 10 (Right of Clawback) shall be made in the currency in which the payment from the Counter-Guarantor to the Intermediary that has resulted in a Clawback Amount has been made.
- 8.2 All payments to be made by the Counter-Guarantor to the Intermediary under this Agreement shall be in the Base Currency or the Additional Currency provided that any payment owed by the Counter-Guarantor to the Intermediary in respect of a Defaulted Amount claimed in accordance with Clause 7 (Payment Demands) shall be made in the currency in which such Defaulted Amount has been incurred (as specified in the relevant Payment Demand) or, at the discretion of the Counter-Guarantor, in the Base Currency or the Additional Currency or in euro.
- 8.3 Subject to the Counter-Guarantor receiving signed Payment Demands and subject to the terms of this Agreement, the Counter-Guarantor shall pay any amounts claimed thereunder within sixty (60) calendar days of the relevant Payment Demand Date.
- 8.4 Any payment by a Party under this Agreement which is due to be made on a day that is not a Business Day shall be due on the next Business Day.
- 8.5 Interest on any amount due but unpaid under this Agreement as a result of an Event of Default shall accrue on such amount at the Default Interest Rate from the date of the relevant default to the date on which such amount is effectively paid by the defaulting party.



- 8.6 Without prejudice to Clause 11.2(b) and 17.4 (Set-off), the Counter-Guarantor may (but shall not be obliged to) set off any payment due from the Intermediary under this Agreement against any payment due by it to the Intermediary, regardless of the place of payment.
- 8.7 All payments to be made by the Intermediary to the Counter-Guarantor under this Agreement shall be made (i) using bank account(s) of the Intermediary acceptable to the Counter-Guarantor, and (ii) to the bank account of the Counter-Guarantor set out in the Specific Terms.
- 8.8 All payments to be made by the Counter-Guarantor to the Intermediary shall be made to the bank account of the Intermediary set out in the Specific Terms.
- 8.9 For the avoidance of doubt, any account in the name of the Intermediary held with a duly authorised financial institution in the Relevant Jurisdiction of the Intermediary is deemed acceptable.

9. EXCHANGE RATE

If a Sub-Operation is denominated in a currency other than the Base Currency or a Defaulted Amount has been incurred in a currency other than the Base Currency or a Recovery is in a currency other than the Base Currency, the following exchange rate mechanism shall apply, subject to the provisions contained in the Specific Terms (if any):

- (a) For the purpose of including a Sub-Operation in the Portfolio or excluding a Sub-Operation from the Portfolio in accordance with Clause 5.2 (Exclusion Process)), the equivalent in the Base Currency of an amount denominated in a currency other than the Base Currency shall be determined using the Relevant FX Rate, in each case on the Effective Date.
- (b) For the purpose of paying an amount claimed by the Intermediary under the Counter-Guarantee if the Counter-Guarantor elects to pay in the Base Currency or the Additional Currency or euro (as applicable), the equivalent in the Base Currency or the Additional Currency or euro (as applicable) of an amount denominated in another currency in the Payment Demand shall be determined using the Relevant FX Rate on the date that is not earlier than four (4) Business Days prior to the date of payment by the Counter-Guarantor to the Intermediary.
- (c) For the purpose of paying Recoveries to the Counter-Guarantor (if applicable), the equivalent in the Base Currency or the Additional Currency or euro (as applicable) of Recoveries payable to the Counter-Guarantor denominated in a currency other than the Base Currency or the Additional Currency or euro (as applicable) shall be determined using the Relevant FX Rate on the date that is not earlier than four (4) Business Days prior to the date of payment by the Intermediary to the Counter-Guarantor.
- (d) For the purpose of paying the Counter-Guarantee Fee Amount to the Counter-Guarantor (if applicable), the equivalent in euro of the Counter-Guarantee Fee Amount payable to the Counter-Guarantor in respect of a Sub-Operation



denominated in a currency other than euro shall be determined using the Relevant FX Rate on the date that is not earlier than four (4) Business Days prior to the date of payment by the Intermediary to the Counter-Guarantor.

10. RIGHT OF CLAWBACK

No later than on the Report Date immediately following the date on which the Counter-Guarantor gives notice to the Intermediary or the Intermediary becomes otherwise aware of amounts owed to the Counter-Guarantor, the Intermediary shall repay to the Counter-Guarantor the following amounts (together the “**Clawback Amounts**”):

- (a) any amount paid under the Counter-Guarantee in excess of the Counter-Guarantee Amount;
- (b) any amount paid under the Counter-Guarantee in relation to one or more Excluded Sub-Operation(s), and
- (c) any Restrictive Measures Clawback Amount,

in each of the cases above, together with interest to be calculated at the Interest Rate, which shall accrue from the date of payment of the relevant amount by the Counter-Guarantor until the date of the repayment of that amount to the Counter-Guarantor.

11. RECOVERIES

11.1 Subject to the provisions of Clauses 11.2 and 11.3, the Counter-Guarantor shall be entitled to receive a percentage of each Recovery (if any) equal to the Counter-Guarantee Rate and up to the date on which the Sub-Intermediary, acting in good faith and in a commercially reasonable manner, determines in accordance with its Credit and Collection Policies, that the recovery period for the relevant Final Recipient Transaction in respect of which a Defaulted Amount had occurred shall be terminated.

11.2

- (a) If Recoveries are recovered or received by the Intermediary in connection with a Defaulted Amount for which a Payment Demand has already been sent by the Intermediary, the Intermediary shall send to the Counter-Guarantor a recovery notice with accompanying recoveries schedule substantially in the form of Schedule 10 (Form of Recoveries Notice) at any relevant time but not later than thirty (30) calendar days after the end of each calendar quarter in which such Recoveries are recovered or received by the Intermediary. The Intermediary shall pay any relevant amount to the Counter-Guarantor into the bank account specified in the Specific Terms within three (3) Months after the end of each calendar quarter in which such Recoveries are recovered or received by the Intermediary, provided that the Intermediary shall not be required to make such payment earlier than at the time the Counter-Guarantor makes the payment in respect of such Payment Demand.
- (b) If Recoveries are recovered or received by the Intermediary in connection with a Defaulted Amount for which no Payment Demand has been sent by the Intermediary, the Intermediary shall include such Recoveries in the Payment



Demand in the form of Schedule 9 (Form of Payment Demand) at the time it sends such Payment Demand in accordance with Clause 7 (Payment Demands). Any payment due from the Intermediary to the Counter-Guarantor regarding such Recoveries shall be set-off against any payment due by the Counter-Guarantor to the Intermediary regarding such Payment Demand.

- 11.3 The Counter-Guarantor shall not be entitled to receive any part of a Recovery if all amounts paid by the Counter-Guarantor under the Counter-Guarantee in respect of the Defaulted Amount relating to such Recovery have been repaid by the Intermediary pursuant to Clause 10 (Right of Clawback).
- 11.4 The Counter-Guarantor shall not be entitled to receive any part of a Recovery if it would result in all payments by the Intermediary to the Counter-Guarantor pursuant to Clause 10 (Right of Clawback) or this Clause 11 (Recoveries) to exceed all amounts paid by the Counter-Guarantor under the Counter-Guarantee in respect of Defaulted Amounts.
- 11.5 The Counter-Guarantor's claims to Recoveries will rank at least pari passu with the Intermediary's claims with regard to any Recoveries. The Intermediary undertakes to ensure that the Guarantee Institution's claims (if any) with regard to any Recoveries do not rank senior to the Counter-Guarantor's rights to such Recoveries.
- 11.6 The Intermediary undertakes and it shall procure that each Sub-Intermediary undertakes that it shall at any relevant time take appropriate steps (including the enforcement of any Security/ the calling of any guarantee) to maximise Recoveries in accordance with the Intermediary's and the Sub-Intermediary's Credit and Collection Policies (as applicable).
- 11.7 The Counter-Guarantor hereby appoints the Intermediary (with full power of sub-delegation to the Sub-Intermediary), who accepts, to exercise on behalf of the Counter-Guarantor the Counter-Guarantor's rights for the recovery of amounts paid by the Counter-Guarantor following a Payment Demand (either by way of subrogation or otherwise), including, without limitation:
- (a) to be indemnified by a Sub-Intermediary, a Final Recipient or any other party;
 - (b) to claim any contribution from any other guarantor of any obligations of the Final Recipient or the Sub-Intermediary; and
 - (c) to take the direct or indirect benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Sub-Operation, the relevant underlying Final Recipient Transactions or of any other guarantee or Security taken pursuant to, or in connection with, the Sub-Operations or the relevant underlying Final Recipient Transactions.
- 11.8 If the Intermediary receives any benefit, payment or distribution in relation to amounts paid by the Counter-Guarantor under the Counter-Guarantee, it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts (including, without limitation, any Recovery) which may be or become payable to the Counter-Guarantor by the Intermediary in connection with this Agreement to be



repaid in full, and shall promptly pay or transfer the same to the Counter-Guarantor or as the Counter-Guarantor may otherwise direct.

- 11.9 This Clause 11 (Recoveries) applies to any payments recovered from, or otherwise paid, returned or repaid by, the Sub-Intermediary to the Intermediary under a Sub-Operation after a Defaulted Amount has been incurred.
- 11.10 If any amount received by a third party (other than a Guarantee Institution) in satisfaction of a Defaulted Amount under a Covered Sub-Operation or the underlying Final Recipient Transaction reduces the amount of Recoveries available to be shared with the Counter-Guarantor, then the Intermediary shall increase the Recoveries by an amount equal to the amount received by the third party.
- 11.11 Nothing in this Clause 11 (Recoveries) shall prevent the Counter-Guarantor from exercising in its own name any rights and remedies available to it under this Agreement or applicable law.

12. COUNTER-GUARANTEE FEE

- 12.1 The Intermediary shall pay to the Counter-Guarantor on any Counter-Guarantee Fee Payment Date an amount equal to the Counter-Guarantee Fee Amount.
- 12.2 The Intermediary shall calculate the Counter-Guarantee Fee Amount and include such amount in the Report following the relevant Counter-Guarantee Fee Calculation Period. This calculation shall not constitute conclusive evidence of the matters to which it relates.
- 12.3 If the Intermediary becomes aware that one or more Sub-Operations are Non-Eligible Sub-Operations and, by not later than the second Report Date following the calendar quarter in which such Sub-Operations were included in the Portfolio, causes such Non-Eligible Sub-Operation(s) to be removed from the Portfolio in accordance with Clause 5.2 (Exclusion Process), then the Counter-Guarantor shall, on the next day on which amounts are due to be paid by the Counter-Guarantor in accordance with Clause 8 (Payments), pay to the Intermediary (including by way of set-off in accordance with Clause 8 (Payments)) the difference between the Counter-Guarantee Fee Amount paid on the previous Counter-Guarantee Fee Payment Date and the Counter-Guarantee Fee Amount which would have been payable by the Intermediary to the Counter-Guarantor had that Non-Eligible Sub-Operation(s) not been included in the Portfolio on the previous Report Date.

13. REPRESENTATIONS

13.1 Representations of the Intermediary

The Intermediary makes the representations and warranties included in Part I of Schedule 12 (Representations) hereto. Such representations and warranties shall be deemed to be repeated at all times except with respect to the representations in paragraph (b) (Exclusion Situations), paragraph (h) (No filing or stamp taxes), paragraph (i) (No default), paragraph (l) (Proceedings), paragraph (o) (EIB Group Excluded Sectors) (q) (Geography of incorporation) and (r) (HPTR) of Part I of



Schedule 12 (Representations), which shall be deemed to be made on the Effective Date only.

13.2 Representations of the Counter-Guarantor

The Counter-Guarantor makes the representations and warranties included in Part II of Schedule 12 (Representations) hereto. Such representations and warranties shall be deemed to be repeated at all times except with respect to the representation in paragraph (f) (No default) and (i) (Proceedings) of Part II of Schedule 12 (Representations), which shall be deemed to be made on the Effective Date only.

14. INFORMATION UNDERTAKINGS

The Intermediary undertakes to carry out (or refrain from carrying out, as the case may be) all actions specified in Schedule 13 (Information Undertakings) hereto at all the relevant times specified therein.

15. GENERAL UNDERTAKINGS

The Intermediary (and the EIF, in respect of Clause 10 (Data protection)) undertakes to carry out (or refrain from carrying out, as the case may be) all actions specified in Schedule 14 (General Undertakings) hereto at all the relevant times specified therein.

16. EVENTS OF DEFAULT

Each of the events or circumstances set out in Schedule 15 (Events of Default) is an "**Event of Default**".

The Affected Party shall notify, in writing, the Non-Affected Party of any Potential Event of Default or Event of Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

17. CONSEQUENCES OF AN EVENT OF DEFAULT

17.1 Suspension

On, and at any time after, the occurrence of an Event of Default or Potential Event of Default, any Party not subject to such Event of Default or Potential Event of Default (as the case may be) (the "**Non-Affected Party**") (provided that, in the case of an Event of Default or Potential Event of Default pursuant to paragraph 5 (Unlawfulness) of Schedule 15 (Events of Default), the Non-Affected Party shall be deemed to mean the Party for whom it is or becomes unlawful to perform its obligations under this Agreement) may, by notice to the other Party (the "**Affected Party**"), while such Event of Default or Potential Event of Default (as the case may be) is continuing, suspend performance of its obligations under this Agreement ("**Suspension Notice**").

If such Event of Default or Potential Event of Default is remedied within the relevant grace period (if any) or waived, after delivery of this Suspension Notice but prior to the exercise of rights under Clause 17.2 (Early Termination), the notice served under this Clause 17.1 (Suspension) shall be deemed to be revoked automatically. Any amounts which were due but have been unpaid while any Potential Event of Default or Event of Default was continuing shall be paid no later than fifteen (15) Business



Days following the date on which such Potential Event of Default or Event of Default is cured or waived (as the case may be) to the satisfaction of the Non-Affected Party.

For the avoidance of doubt, if after delivery of the Suspension Notice by the Counter-Guarantor the relevant Event of Default or Potential Event of Default is not remedied within the applicable grace period (if any) or waived, and the Counter-Guarantor exercises its rights under Clause 17.2 (Early Termination), the Payment Demand to which Clause 17.2(b) (Early Termination) refers to shall not include any Defaulted Amounts incurred after the Suspension Notice became effective.

17.2 Early Termination

- (a) On, and at any time after, the occurrence of an Event of Default under Clause 16 (Events of Default), that has not been remedied within the relevant grace period (if any) or explicitly waived by the Non-Affected Party, the Non-Affected Party may (but shall not be obliged to), without obligation to submit a request to a court, with immediate effect and without prior formal notice by written notice to the Affected Party (such notice to be sent by email and by letter) immediately terminate this Agreement (such date, the "**Early Termination Date**").
- (b) The Intermediary shall, promptly following the occurrence of any Early Termination Date (but in no event after the Final Payment Demand Date), send a Report to the Counter-Guarantor together with a Payment Demand (as the case may be). For the purposes of such Report and such Payment Demand all amounts due by the Counter-Guarantor shall be calculated in accordance with this Agreement by reference to the Early Termination Date. The Counter-Guarantee Fee Amount payable by the Intermediary to the Counter-Guarantor following the Early Termination Date shall be calculated in accordance with Clause 12 (Counter-Guarantee Fee) as if the last day of the Counter-Guarantee Fee Calculation Period were the Early Termination Date. The amount, if any, payable in respect of an Early Termination Date will be determined pursuant to Clause 17.3 (Payments on Early Termination) and will be subject to Clause 17.4 (Set-off) below.
- (c) For the avoidance of doubt, following the occurrence of an Early Termination Date, the Intermediary shall not make any Payment Demands other than, if applicable, the Payment Demand specified in Clause 17.2 (Early Termination) above.
- (d) For the purpose of the Payment Demand to be sent pursuant to Clause 17.2 (Early Termination), the Parties acknowledge and agree that no Payment Demand may be sent if an Event of Default pursuant to Clause 5 (Unlawfulness), or Clause 7 (Restrictive Measures) or Clause 8 (Illegal Activities) of Schedule 15 (Events of Default) has occurred and is continuing at the time when such Payment Demand would have to be submitted.
- (e) This Clause applies without prejudice to any other rights and remedies available to either Party under this Agreement or under applicable law.



17.3 Payments on Early Termination

- (a) If an Early Termination Date occurs, the amount, if any, payable by the relevant Party on that Early Termination Date (the "**Early Termination Amount**") will be equal to:
- (i) all amounts due and payable by the Counter-Guarantor to the Intermediary in respect of Defaulted Amounts pursuant to the Report and the Payment Demand prepared in accordance with Clause 17.2(b), plus any other accrued amount due by the Counter-Guarantor to the Intermediary under this Agreement, less
 - (ii) the Counter-Guarantee Fee Amount due and payable by the Intermediary to the Counter-Guarantor calculated in accordance with Clause 17.2(b), plus any Recovery due to the Counter-Guarantor pursuant to Clause 11 (Recoveries), plus any amount due under Clause 10 (Right of Clawback), plus any other accrued amount due by the Intermediary to the Counter-Guarantor under this Agreement.
- (b) If the Early Termination Amount is a positive number, the Counter-Guarantor will pay it to the Intermediary; if the Early Termination Amount is a negative number, the Intermediary will pay the absolute value of it to the Counter-Guarantor.
- (c) The Early Termination Amount shall be paid no later than the Final Payment Demand Date.
- (d) For the avoidance of doubt, following the payment of the Early Termination Amount, the Intermediary shall promptly pay to the Counter-Guarantor any other amount which may be due under this Agreement.

17.4 Set-off

- (a) Any Early Termination Amount payable to the Intermediary by the EIF will, at the option of the EIF, be reduced by its set-off against any (or part of the) other amounts ("**Other Amounts**") payable by the Intermediary to the EIF (whether or not arising under this Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation). To the extent that any Other Amounts are so offset, those Other Amounts will be discharged promptly and in all respects.
- (b) The right to set-off the Early Termination Amount and the Other Amounts pursuant to this Clause 17.4 can be exercised only by the EIF in its sole discretion in accordance with its own internal rules, policies and procedures, subject to applicable laws and also taking into account the nature of the financial instrument and the terms and conditions of the mandate documentation from which the Other Amounts arise. All payments to be made by the Intermediary in respect of the Early Termination Amount (where applicable) shall be made without (and free and clear of any deduction for) set-off or counterclaim against the EIF.



- (c) For the purpose of this Clause 17.4, either the Early Termination Amount or the Other Amounts (or the relevant portion of such amounts) may be converted into the Base Currency or the Additional Currency (as applicable) by using the Relevant FX Rate on the date that is not earlier than four (4) Business Days prior to the relevant date of payment or set-off.
- (d) If an obligation is unascertained, the EIF may in good faith estimate that obligation and set-off in an amount equal to the estimated amount, subject to accounting (and restitution of any excess amount, where applicable) to the Intermediary when the obligation is ascertained.
- (e) Nothing in this Clause 17.4 will be effective to create a charge or other security interest. This Clause 17.4 will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which the EIF is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise).

18. **TERM**

Without prejudice to Clause 19 (Survival of Rights), this Agreement will become effective on the Effective Date and will terminate on the Termination Date.

19. **SURVIVAL OF RIGHTS**

The provisions of Clauses 5.2 (Exclusion Process), 10 (Right of Clawback), 11 (Recoveries), 21 (Notices), 22 (Calculations and Certificates), 25 (Changes to the Parties), 26 (Disclosure of Information) and 29 (Governing Law and Jurisdiction), and paragraphs 1 (Visibility and promotion), 3 (Monitoring and Audit), 4 (Maintenance of Records – Authorisations) and 10 (Data protection) of Schedule 14 (General Undertakings), shall survive termination of this Agreement. In addition, any right accrued at the Termination Date (including, without limitation, any rights of the Counter-Guarantor under Clause 11 (Recoveries) and any rights of the Parties under Clause 17.2 (Early Termination), Clause 17.3 (Payments on Early Termination) and Clause 17.4 (Set-off), as well as all other provisions the survival of which is necessary for the interpretation or enforcement of this Agreement, shall survive such termination.



20. WAIVER OF DEFENCES

20.1 Subject to the provisions of this Agreement, the liabilities, obligations, powers, rights or remedies of a Party under this Agreement shall not be discharged, impaired, prejudiced or otherwise affected by any act, event, omission, matter or thing which, but for this Clause 20, would discharge, impair, prejudice or otherwise affect any such liabilities, obligations, powers, rights or remedies, including (without limitation and whether or not known to it or the other Party):

- (a) any failure or delay in exercising any power, right or remedy under this Agreement;
- (b) any single or partial exercise of any power, right or remedy;
- (c) any other time, waiver or consent granted to the other Party; or
- (d) any other amendment, novation, supplement, extension, restatement of this Agreement.

20.2 If the conditions of the Counter-Guarantee are fulfilled, the Counter-Guarantor shall not be entitled to refuse or withhold payment of any amounts due in accordance the provisions of this Agreement by requiring the Intermediary prior to making a payment under this Counter-Guarantee to (i) enforce any other rights or security, claim payment from or proceed against the debtor, any guarantors or any security provider (if applicable) or (ii) take separate actions against other guarantors, joint and several obligors or security providers (if applicable).

20.3 For the avoidance of doubt, the Counter-Guarantor shall have no personal right of recourse against the Intermediary under article 4 paragraph (5) of the Luxembourg law dated 10 July 2020 on professional payment guarantees. Nothing in the preceding sentence shall affect the Counter-Guarantor's other rights set out in and arising under this Agreement (including in particular the right to receive Recoveries), or under applicable law.

Nothing in this Agreement (or any other document, instrument or agreement) will be construed in any way to limit or otherwise affect the Counter-Guarantor's rights to pursue recovery or claims for damage, reimbursement or indemnification against any person for any liabilities, losses, damages, costs and expenses incurred by the Counter-Guarantor hereunder on or before the relevant payment date hereunder.



21. NOTICES

21.1 Communications in writing and Addresses

Any communication to be made under or in connection with this Agreement shall be made in writing in the form of a Permitted Communication. Any communication made by letter or email shall be sent to the following addresses and contact details:

(a) in respect of the Counter-Guarantor:

European Investment Fund
37B, avenue J.F. Kennedy
L-2968 Luxembourg
Grand Duchy of Luxembourg
Attention: Operations and Information Management
Email:

- For the purpose of any Payment Demands: mibo-ds-payments@eif.org
- For reporting or any other purpose: dh-reporting@eif.org

or to such other addresses and contact details as may be notified by the EIF to the Intermediary from time to time,

(b) in respect of the Intermediary, as set out in the Specific Terms.

In addition to the above, should the Counter-Guarantor set-up an electronic portal system for communication purposes following the Effective Date, the Parties agree that such electronic portal system will be deemed to be a form of Permitted Communication immediately following the Counter-Guarantor's notification of such form of communication to the Intermediary by an email instruction.

21.2 Delivery

(a) Any communication or document made or delivered by the Counter-Guarantor to the Intermediary or by the Intermediary to the Counter-Guarantor under or in connection with this Agreement shall be made in accordance with Clause 21.1 (Communications in writing and Addresses) and will only be effective:

- (i) if by way of letter, when it has been delivered by hand at the relevant address or five (5) Business Days after being sent by registered letter with acknowledgement of receipt to that address; or
- (ii) if by way of email, when actually received in readable form,

and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer. If a communication or document is required to be sent by email and letter, the effective date shall be deemed to be the earlier date on which such communication or document is deemed to be effective under this Clause 21.2 (Delivery).



- (b) In each case where this Agreement specifies that the Intermediary may deliver to the Counter-Guarantor by way of email a readable pdf-scan of the signed original of a specific document, the Intermediary shall also send to the Counter-Guarantor without delay the original of such document via mail (in accordance with this Clause 21). For the avoidance of doubt, in the case of an Exclusion Notice, which shall be in the form of (or substantially in the form of) Schedule 8 (Form of Exclusion Notice) the Counter-Guarantor may deliver to the Intermediary by way of email a readable pdf-scan of the signed Exclusion Notice.

21.3 Language

Any notice given under or in connection with this Agreement must be in English.

22. CALCULATIONS AND CERTIFICATES

22.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with this Agreement, the entries made in the accounts maintained by the Counter-Guarantor are prima facie evidence of the matters to which they relate.

22.2 Certificates and Determinations

Any certification or determination by the Counter-Guarantor of a rate or amount under this Agreement is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

22.3 Rounding

Any sums payable hereunder shall be rounded to the nearest 0.01 (with 0.005 being rounded up).

23. TAX PROVISIONS

If any sums payable by a Party under this Agreement shall be or become subject to any requisite deductions or withholding on account of tax, the amount of such payments shall not be increased by the relevant Party. Any shortfall in the amount received by any Party as a result of such deduction or withholding on account of tax shall thus not constitute an Event of Default.

24. PARTIAL INVALIDITY

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.



25. CHANGES TO THE PARTIES**25.1 Changes to the Intermediary**

The Intermediary shall not assign any of its rights or transfer any of its rights or obligations under this Agreement without the prior written consent of the Counter-Guarantor. This prohibition applies to any assignment or transfer (whether by way of Security or otherwise) including, without limitation, voluntary, automatic and/or general assignments resulting from a transfer of a Sub-Operation or, subject to applicable law, any assignment or transfer pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all of a party's assets to, another entity.

25.2 Changes to the Counter-Guarantor

- (a) Subject to Clause 25.2(b), the Counter-Guarantor shall not assign any of its rights or transfer any of its rights or obligations under this Agreement without the prior written consent of the Intermediary.
- (b) Notwithstanding anything to the contrary in this Agreement or otherwise, the Counter-Guarantor may (and the Intermediary hereby agrees that the Counter-Guarantor may) assign any or all of its rights, or transfer any or all of its rights and obligations under the Agreement to the EIB.

26. DISCLOSURE OF INFORMATION

26.1 Subject to the provisions of paragraph 1 (Visibility and promotion) of Schedule 14 (General Undertakings), each Party shall keep confidential all Confidential Information supplied to it in connection with this Agreement.

26.2 Notwithstanding the foregoing, each Party is entitled to disclose Confidential Information:

- (a) to its affiliates, officers, directors, employees, professional advisers and (with respect to disclosure by the Counter-Guarantor) service providers (including, rating agencies and calculation agents) to the extent necessary for, or in connection with, the Counter-Guarantee and to its auditors, provided that the disclosing Party ensures that any such person acknowledges and complies with the confidentiality provisions of this clause;
- (b) with respect to disclosure by the Counter-Guarantor, to the remaining Relevant Parties, and to any committees established in the context of the EGF and any other entity the Counter-Guarantor is subject to, and to their respective affiliates, officers, directors, representatives, employees and professional advisers to the extent necessary for, or in connection with, the Counter-Guarantee and to their respective auditors;
- (c) with respect to disclosure by the Counter-Guarantor, to the EIB and to its respective affiliates, officers, directors, employees and professional advisers;
- (d) where requested or required by any court of competent jurisdiction or any competent judicial, governmental, supervisory or regulatory body or



administrative order, provided that where it is reasonably practicable and it is not legally prohibited from doing so, the disclosing Party shall consult with the other Party in good faith as to the manner and timing of such disclosures and shall in all circumstances, unless legally prohibited from doing so, notify the other Party of such disclosure;

- (e) with respect to disclosure by the Counter-Guarantor, where required by the Counter-Guarantor's statutory documents or in accordance with the relevant EU treaties or where required by the laws or regulations of any country with jurisdiction over the Counter-Guarantor's affairs;
- (f) with the other Party's prior written consent, not to be unreasonably withheld;
- (g) in accordance with the provisions of this Agreement, including, without limitation, the visibility and promotion, reporting and monitoring obligations to be complied with by the Intermediary;
- (h) with respect to disclosure by the EIF, within the framework of the "EIF Transparency Policy" (as published from time to time on the website of the EIF at http://www.eif.org/news_centre/publications/EIF_Transparency_policy.htm?lang=-en) pursuant to which EIF may publish information relating to the approval of the relevant operation by the EIF (including a summary indicating the project name, the nature of the operation, the geographical focus and the relevant EIF-managed resources of the Counter-Guarantee), unless the Intermediary has specifically objected to such disclosure at the time of the expression of its interest under the Call; and
- (i) to any rating agency (including its professional advisors) such information as may be required to be disclosed to permit such rating agency to carry out rating activities in relation to this Counter-Guarantee.

The Party disclosing any information shall have the onus to prove that the disclosure of such information is permitted under this Clause 26.

- 26.3 The Intermediary acknowledges and agrees that the Counter-Guarantor is authorised to provide the Contributors' Committee of the EGF a copy of this Agreement.
- 26.4 For the avoidance of doubt, the Intermediary undertakes to maintain and be able to produce all documentation related to this Clause 26 for the Maintenance of Record Period.
- 26.5 This Clause 26 supersedes any previous confidentiality undertaking given by either Party prior to the Effective Date in the context of this Counter-Guarantee.

27. EXECUTION

27.1 Counterparts

This Agreement, including the Schedules, may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.



28. AMENDMENTS

No term of this Agreement may be amended or waived without the agreement in writing of a duly authorised representative of each of the Parties.

Notwithstanding the paragraph above of this Clause 28 (Amendments), any Schedule to this Agreement (except for Schedule 1 (Specific Terms), Schedule 3 (Eligibility Criteria) and Schedule 12 (Representations) to Schedule 15 (Events of Default)) may be amended by the agreement of the Parties by email.

29. GOVERNING LAW AND JURISDICTION**29.1 Governing Law**

This Agreement, and any non-contractual obligations arising out of or in connection with it, are governed by, and construed in accordance with, Luxembourg law.

29.2 Jurisdiction

The courts of Luxembourg-City have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement) (a "**Dispute**").



**SCHEDULE 1
SPECIFIC TERMS****1. Intermediary**

1.1 Legal name in country of incorporation

Veneto Sviluppo S.p.A., acting on behalf of Regione del Veneto

Registration number or business identity code in country of incorporation

00854750270

Country of incorporation Italy

1.2 Legal status in country of incorporation

Joint stock company Address and contact details for notices

Address: P.S.T. VEGA Edificio Lybra Via delle Industrie 19/D –
30175 Marghera-Venezia (Italy)

Email: segreteria@venetosviluppo.it

Contact person: Mr. Gianmarco Russo

or such other address and contact details as may be notified by the Intermediary to the EIF from time to time.

2. Relevant Jurisdiction

"**Relevant Jurisdiction**" means Italy.

3. Currency

"**Base Currency**" means euro ("EUR").

"**Additional Currency**" is not applicable.

"**Interest Rate**" has the meaning given to it in Clause 1 (Definitions and Interpretation)

4. Relevant State Aid Regime

Schedule 4 (State Aid) Paragraph 2 (Additional Eligibility Criteria only for EGF Regime by analogy to Section 3.1 TF), Paragraph 5 (General Undertakings applicable to all State Aid Regimes) and Paragraph 6 (General Undertakings applicable to EGF Regime by analogy to Section 3.1 TF and EGF Regime by analogy to Section 3.2 TF) will apply.

Schedule 4 (State Aid) Paragraph 3 (Additional Eligibility Criteria only for EGF Regime by analogy to Section 3.2 TF), Paragraph 5 (General Undertakings applicable to all State Aid Regimes) and Paragraph 6 (General Undertakings applicable to EGF



Regime by analogy to Section 3.1 TF and EGF Regime by analogy to Section 3.2 TF) will not apply..

Schedule 4 (State Aid) Paragraph 4 (Additional Eligibility Criteria only for De Minimis Regime), Paragraph 5 (General Undertakings applicable to all State Aid Regimes) and Paragraph 7 (General undertakings applicable to the De Minimis Regime) will apply.

(a)

5. Maximum Portfolio Volume and APV Percentage

"**Maximum Portfolio Volume**" means EUR 80,000,000, as such amount may be increased or decreased from time to time in accordance, respectively, with Clause 6.3 (Adjustment to the Maximum Portfolio Volume and/or the APV Percentage and reset of the Agreed Portfolio Volume) of this Agreement, provided that the Maximum Portfolio Volume shall, at all times, not exceed EUR 80,000,000.

For the purposes of item (a) under the definition of APV Percentage, the percentage shall be 50%.

6. Counter-Guarantee Rate

"**Counter-Guarantee Rate**" means 70%.

7. Counter-Guarantee Cap

7.1 "**Capped Counter-Guarantee Provisions**" shall apply.

7.2 "**Counter-Guarantee Cap Rate**" means 15%.

Schedule 2 (Capped Counter-Guarantee Provisions) will apply.

8. Inclusion Period

"**Inclusion Period Start Date**" means 01/09/2021 provided that, for the avoidance of doubt, Sub-Operations and Final Recipient Transactions covered by such Sub-Operations entered into prior to the Effective Date shall have been entered into in compliance with the terms of this Agreement and the necessary checks shall have been carried out and confirmations shall have been obtained in order for the relevant verifications to be completed as of the timing foreseen under this Agreement. In particular, in performing the checks relating to State Aid, the Intermediary shall or shall procure that the Sub-Intermediary shall take into account any additional Aid Amounts received after the Final Recipient Transaction Effective Date, in order to ensure compliance with the maximum aid thresholds for the purpose of including such Final Recipient Transaction in the Portfolio.

"**Inclusion Period End Date**" means 31 December 2022.

9. Counter-Guarantee Fee

"**Counter-Guarantee Fee Percentage**" means 0.2% per annum.



For the purposes of Clause 12 (Counter-Counter-Guarantee fee): "**Periodic Counter-Guarantee Fee Calculation**" applies.

If Periodic Counter-Guarantee Fee Calculation applies and paragraph (iv) of the definition of Periodic Counter-Guarantee Fee Calculation shall be amended include as follows: Paragraph (iv) of the definition of "Periodic Counter-Guarantee Fee Calculation": means 1/360 as set out in the Agreement.

10. Transfer of Benefit

The Intermediary acknowledges that the Counter-Guarantee is provided with the ultimate purpose to enhance access to finance for Final Recipients via Sub-Intermediaries and the Intermediary shall ensure that the benefit of the Counter-Guarantee is passed on to the Final Recipients.

For the purposes of the definition of "Transfer of Benefit", the Intermediary:

- (i) undertakes to launch a new funding product to the Sub-Intermediaries, without imposing any additional charge, resulting in increased SMEs' risk taking by the Intermediary vis-a-vis its standard and comparable operations (as per its Credit and Collection Policies); and
- (ii) represents that it would not have been able to offer or agree to enter into Sub-Operations covering Final Recipient Transactions in the absence of the support provided in this Agreement.

In no case shall the overall financing cost of the Final Recipient Transaction covered by the Counter-Guarantee after taking into account the Counter-Guarantee Fee be higher than the overall financing cost of such Final Recipient Transaction if it was not covered by a Sub-Operation included in the Portfolio.

11. Final Recipient Transactions

For the purpose of the definition of "**Final Recipient Transaction**":

Sub-Operations covering Bank Guarantees, Letters of Credit, Factoring Transactions and Quasi-Equity Transactions shall not be included in the Portfolio.

- Sub-Operations covering "**Finance Leases**" shall not be included in the Portfolio.
- Sub-Operations covering "**Subordinated Debt Transactions**" shall not be included in the Portfolio.
- Sub-Operations covering "**Bonds**" shall not be included in the Portfolio.



12. Bank Account (to be used for any payment to the Counter-Guarantor)

Bank account name: EGF - EIF Guarantee Facility Account EUR Collection Capped Product

Bank: BGL BNP Paribas SA

BIC: BGLLLULL

IBAN: LU08 0030 2328 1751 0000

Reference:

For Recoveries: GS02711 FI_REC

For Counter-Guarantee Fee Amounts: GS02711
FI_FEES_QXYX

For Clawback Amounts: GS02711 FI_CLAWB

or to such other bank account as the Counter-Guarantor may have notified to the Intermediary with at least five (5) Business Days' notice.

13. Bank Account (to be used for any payment to the Intermediary)

Bank account name: Fondo anticrisi attività produttive DGR 1240 c/o Veneto Sviluppo Spa

Bank: BANCA ADRIA COLLI EUGANEI CREDITO
COOPERATIVO ITALIANO

BIC: CCRTIT2T97A

IBAN: IT13F0898212100036000000218

Intermediary Bank ==

BIC:

MT: 103

or to such other bank account as the Intermediary may have notified to the Counter-Guarantor in any documentation under which the Intermediary requests a payment



under the Agreement (e.g. any Payment Demand under Clause 7 (Payment Demands)) provided that each such bank account is acceptable to the Counter-Guarantor.

14. Clause 4 (Eligibility Criteria)

For the purposes of the definition of "**Additional Eligibility Criteria**", references to the initial principal amount guaranteed by the Intermediary under a Sub-Operation shall refer to such amount as increased from time to time in accordance with (and subject to) the terms of this Agreement.

For the purposes of the definition of "**Additional Eligibility Criteria**", the following criteria apply:

No.	Type of Eligibility Criteria	Additional Eligibility Criteria	Time of compliance
1.	Final Recipient	The Final Recipient is not a Small Mid Cap.	Final Recipient Transaction Signing Date
2.	Final Recipient	No Final Recipient Transaction entered into with Final Recipients to which the Intermediary has assigned a rating (referring to the rating system adopted by the Italian National Guarantee Fund for SMEs) worse than "10" in accordance with the Credit and Collection Policies shall be eligible for inclusion.	Final Recipient Transaction Signing Date
3.	Final Recipient Transaction	Final Recipient Transactions with either (i) a "bullet repayment profile" (defined as a repayment profile whereby the entire principal amount of the Final Recipient Transaction is to be repaid at maturity) or (ii) a "balloon repayment profile" (defined as a repayment profile whereby 30% or more of the initial principal amount of the Final Recipient Transaction is to be repaid at maturity) shall not be eligible for	Final Recipient Transaction Signing Date



inclusion.

- | | | | | | |
|----|----------------------|-----------|--|-----------|--------------------------------------|
| 4. | Final
Transaction | Recipient | Final
Transactions with an initial
maturity longer than ten
(10) years shall not be
eligible for inclusion. | Recipient | Final
Transaction
Signing Date |
| 5. | Portfolio | | The sum of the initial
principal amount of all
Final Recipient
Transactions entered into
with Final Recipients to
which the Intermediary has
assigned a rating equal or
worse than "8" (referring to
the rating system adopted
by the Italian National
Guarantee Fund for SMEs),
in accordance with the
Credit and Collection
Policies, shall not exceed
40% of the Maximum
Portfolio Volume. | | Final
Transaction
Signing Date |

15. Clause 5 (Portfolio Inclusion and Exclusion Processes)

For the purpose of Clause 5.1 (Inclusion Process):

"**Cumulative Default Rate Trigger**" is not applicable.

"**Cumulative Default Rate Trigger Event Determination Date**" is not applicable.

"**Portfolio Trigger Amount**" is not applicable.

16. Paragraph (c) (Authorised Persons) of Schedule 13 (Information Undertakings)

For the purpose of letter (i) of paragraph (c) (Authorised Persons) of Schedule 13 (Information Undertakings), the Intermediary shall provide the EIF with an incumbency certificate in a form satisfactory to the EIF.

The Intermediary represents that any information contained in an evidence of authority received for the purpose of paragraph (c) (Authorised Persons) of Schedule 13 (Information Undertakings) is true and accurate as at the Effective Date of this Agreement.

17. Paragraph 1(b) (Visibility and promotion) of Schedule 14 (General Undertakings)

For the purpose of paragraph 1(b) (Visibility and promotion) of Schedule 14 (General Undertakings), the translation shall be:



"La presente operazione usufruisce del sostegno del Fondo di Garanzia Pan-Europeo (EGF), implementato dal Fondo Europeo per gli Investimenti con il supporto finanziario degli Stati Membri che contribuiscono all'EGF"

18. Paragraph 3 (Monitoring and Audit) of Schedule 14 (General Undertakings)

For the purpose of paragraph 3 (Monitoring and Audit) of Schedule 14 (General Undertakings), the translation shall be:

"La controparte riconosce e concorda che la Corte dei Conti Europea ("ECA"), i rappresentanti e i consulenti degli Stati Membri Partecipanti, l'Ufficio europeo per la lotta antifrode ("OLAF"), il Fondo europeo per gli investimenti ("FEI"), la Banca europea per gli investimenti ("BEI"), gli agenti del FEI o qualsiasi altra persona designata dal FEI o dalla BEI, la Commissione, gli agenti della Commissione (compreso l'OLAF), la Procura europea ("EPPO"), qualsiasi altra istituzione o organismo dell'Unione Europea che abbia il diritto di verificare l'uso della garanzia nel contesto dello strumento di garanzia EGF e qualsiasi altra autorità nazionale pertinente e i loro rappresentanti, o altra corte dei conti nazionale competente o istituzione o ente debitamente autorizzato ai sensi della legge applicabile che è titolato a svolgere attività di revisione o controllo (collettivamente, le "Parti Rilevanti") ha il diritto di effettuare audit e controlli e di richiedere informazioni in merito al presente contratto e alla sua esecuzione. Fatte salve le leggi applicabili, limitatamente a quanto strettamente necessario in relazione alla garanzia EGF, la controparte dovrà:

- a. consentire il monitoraggio da remoto, le visite di monitoraggio e le ispezioni delle sue attività, dei libri e dei registri aziendali da parte di ciascuna delle Parti Rilevanti;
- b. consentire le interviste dei suoi rappresentanti condotte da ciascuna delle Parti Rilevanti e non ostacolare i contatti con i propri rappresentanti o qualsiasi altra persona coinvolta nello strumento di garanzia EGF;
- c. consentire alle Parti Rilevanti di effettuare verifiche di audit e controlli in loco e a tal fine consentire loro l'accesso ai propri locali durante il normale orario lavorativo;
- d. consentire la revisione dei propri libri e registri in relazione al presente contratto e di ottenere copie di questi e dei relativi documenti nella misura consentita dalla legge applicabile e come richiesto"

19. Other Provisions

19.1 The definition of "Restricted Asset" shall be added to Clause 1.1 (Definitions):

"**Restricted Asset**" means any of the below listed mobile assets for transport vehicles:

Passenger cars primarily used for commercial purposes	for which the corresponding CO2 emission thresholds exceed 115g CO2/km according to the Worldwide Light duty vehicle Test Procedure (WLTP) on a per vehicle basis.
Vans/ Light Commercial Vehicles	for which the corresponding CO2 emission thresholds exceed 182g CO2/km according to the Worldwide Light duty vehicle Test Procedure (WLTP) on a per vehicle basis



Trucks/ Heavy duty vehicles (HDVs)	Axle and chassis configuration ⁵	Vehicle subgroup ⁶	Reference value above gCO ₂ / t-km
	Rigid, 4x2, GVW > 16t	4-UD	307.23
		4-RD	197.16
		4-LH	105.96
	Tractor, 4x2, GVW > 16t	5-RD	84
		5-LH	56.6
	Rigid, 6x2	9-RD	110.98
		9-LH	65.16
	Tractor, 6x2	10-RD	83.26
		10-LH	58.26
	<p>trucks (including, without limitation, trucks that are part of a heavy duty vehicle sub-group), other than those that meet (i) “EURO VI” standards or higher and are not covered by any of the 4 axle chassis configuration groups outlined in the table directly above or (ii) in case of waste collection trucks, “EURO V” standards or higher.</p> <p>for an Intermediary located outside the EU: all trucks/HDV meeting EURO VI standard are not considered as restricted assets. Waste collection trucks, meeting EURO V standards or higher are not considered as restricted assets.</p> <p>vehicles dedicated to transport fossil fuels or fossil fuels blended with alternative fuels</p>		
L-category vehicles (2- and 3-wheel vehicles and quadricycles)	Any such vehicle other than zero direct emissions vehicles.		

⁵ GVW = Gross Vehicle Weight

⁶ UD = Urban delivery, RD = Regional delivery and LH = Long Haul



Public transport: Trams, metros & buses (urban and interurban)	for which direct emissions exceed 50g CO ₂ equivalent per passenger-km (gCO ₂ e/pkm)
Trains	passenger trains for which direct emissions exceed 50 gCO ₂ equivalent per passenger-km (gCO ₂ e/pkm).
	freight trains for which direct emissions exceed 28.3 gCO ₂ equivalent per tonne-km (gCO ₂ e/tkm)
	vehicles dedicated to transport of fossil fuels or fossil fuels blended with alternative fuels
Inland water way vessels	passenger vessels for which direct emissions exceed 50 gCO ₂ equivalent per passenger-km (gCO ₂ e/pkm)
	freight vessels for which direct emissions exceed 28.3 gCO ₂ equivalent per tonne-km (gCO ₂ e/tkm)
	vessels dedicated to transport fossil fuels or fossil fuels blended with alternative fuels
Maritime vessels	Maritime vessels dedicated to transport fossil fuels or fossil fuels blended with alternative fuels

19.2 The following Final Recipient Transaction Eligibility Criteria shall be added to Paragraph D in Schedule 3 (Eligibility Criteria):

No.	Final Recipient Transaction Eligibility Criteria	Time of Compliance
12.	If the Final Recipient Transaction is granted/issued to a Final Recipient and with the specific purpose to finance ⁷ the acquisition of a vehicle for the purpose of transport ⁸ , the Final Recipient Transaction shall not finance any Restricted Asset.	Continuing
13.	For Final Recipient Transactions granted/issued with the specific purpose to finance the construction of new buildings and major	Continuing

⁷ For the avoidance of doubts, in the case of Finance Leases, the acquisition by a lessor of an existing Restricted Asset owned by the Final Recipient is allowed, provided that the relevant acquisition price paid by the lessor shall not be used by the Final Recipient to finance any Restricted Asset

⁸ For the avoidance of doubt, mobile assets not acquired for the purpose of transport are not covered by these restrictions. These are, for instance, machinery for construction works, agriculture/forestry mobile assets, etc.



	<p>rehabilitation of existing buildings (i.e exceeding 25% of the surface area or 25% of the building value excluding land) any such construction of new buildings and major rehabilitation of existing buildings shall comply with national energy standards defined by the Energy Performance of Buildings Directive (EPBD, 2018/844/EU).</p> <p>For an Intermediary located outside the EU: for Final Recipient Transactions granted/issued with the specific purpose to finance the construction of new buildings and major rehabilitation of existing buildings (i.e exceeding 25% of the surface area or 25% of the building value excluding land), any such construction of new buildings and major rehabilitation of existing buildings shall comply with the applicable national energy standards. Buildings with an indoor floor surface exceeding 1,000 square meters require a green building certification (e.g. EDGE, LEED, BREEAM or equivalent).</p>	
<p>14.</p>	<p>Final Recipient Transactions granted/issued with the specific purpose of financing the heating and/or cooling (including Combined Cooling/Heat and Power production (CCHP, CHP)) of buildings⁹ shall finance any of the following:</p> <ul style="list-style-type: none"> (i) Investments involving heat production using renewable fuels or “eligible cogeneration”, where “eligible cogeneration” is defined as: <ul style="list-style-type: none"> a. based on 100% renewable energy, waste heat or a combination thereof; or b. if based on <100% renewable energy and the remaining part is gas-fired (no other fossil fuel is eligible): overall efficiency shall exceed 85% where efficiency is calculated as: (Heat + Electricity production) divided by Gas fuel consumption; (ii) investments involving small and medium-sized natural gas boilers with a capacity of up to 20 MWth meeting the minimum energy efficiency criteria, defined as A-rated boilers in the EU (applicable to <400kWth) or boilers with efficiencies of >90%; (iii) investments involving the rehabilitation or extension of existing district heating networks if there is no increase in CO2 emissions as a result of the combustion of coal, peat, oil, gas or non-organic waste on an annual basis; and/or (iv) investments involving new district heating networks or substantial extensions of existing district heating networks if the network uses at least 50% renewable energy or 50% 	<p>Continuing</p>

⁹ Buildings are defined as roofed constructions having walls, for which energy is used to condition the indoor climate. This definition of buildings encompasses greenhouses and industrial buildings.



	waste heat or 75% cogenerated heat, or 50% of a combination of such energy and heat.	
15.	For Final Recipient Transactions granted/issued with the specific purpose of financing investments in power and/or heat production, using biomass, the following biomass sustainability conditions shall be met: (i) feedstock shall be from non-contaminated biomass or biogenic waste inside the EU, or certified for sustainability when sourced from outside the EU, and shall not consist of food and feed crops; (ii) forest feedstock certified according to international sustainable forest certification standards; (iii) no palm oil products or raw material from tropical forest and/or protected sites ¹⁰ shall be used.	Continuing
16.	Final Recipient Transactions shall not have the purpose to finance desalination projects.	Continuing
17.	Final Recipient Transactions shall not have the purpose to finance the activities corresponding to the sectors set out in paragraphs 19 and 20 of Schedule 11 (EIB Group Excluded Sectors). For Final Recipient Transactions not having been granted/issued for a specific purpose (e.g. working capital facilities), the Final Recipient entering into such Final Recipient Transaction shall not be active in the sectors set out in paragraphs 19 and 20 of Schedule 11 (EIB Group Excluded Sectors).	Continuing

19.3 Paragraphs 19 and 20 shall be added to Schedule 11 (EIB Group Excluded Sectors) as follows:

“19. Fossil fuel-based energy production and related activities

- (i) Coal mining, processing, transport and storage;
- (ii) Oil exploration & production, refining, transport, distribution and storage;
- (iii) Natural gas exploration & production, liquefaction, regasification, transport, distribution and storage; or
- (iv) Electric power generation exceeding the Emissions Performance Standard (i.e. 250 grams of CO₂e per kWh of electricity), applicable to fossil fuel-fired power and cogeneration plants, geothermal and hydropower plants with large reservoirs.

¹⁰ Protected sites include “Natura 2000” sites designated under relevant EU legislation, sites recognized under the Ramsar, Bern (Emerald network) and Bonn conventions and areas designated or identified for designation as protected areas by national governments.



20. **Energy-intensive and/or high CO2-emitting industries and sectors (NACE nomenclature, 4 digits)**
- (i) Manufacture of other organic basic chemicals (NACE 20.14);
 - (ii) Manufacture of other inorganic basic chemicals (NACE 20.13);
 - (iii) Manufacture of fertilisers and nitrogen compounds (NACE 20.15);
 - (iv) Manufacture of plastics in primary forms (NACE 20.16);
 - (v) Manufacture of cement (NACE 23.51);
 - (vi) Manufacture of basic iron and steel and ferro-alloys (NACE 24.10);
 - (vii) Manufacture of tubes, pipes, hollow profiles and related fittings, of steel (NACE 24.20);
 - (viii) Cold drawing of bars (NACE 24.31);
 - (ix) Cold rolling of narrow strip (NACE 24.32);
 - (x) Cold forming or folding (NACE 24.33);
 - (xi) Cold drawing of wire (NACE 24.34);
 - (xii) Aluminium production (NACE 24.42);
 - (xiii) Manufacture of conventionally-fuelled aircraft and related machinery (sub-activities contained within NACE 30.30 activity “Manufacture of air- and spacecraft and related machinery”);
 - (xiv) Conventionally-fuelled passenger air transport (sub-activities of NACE 51.10);
 - (xv) Conventionally-fuelled freight air transport (sub-activities of NACE 51.21);
 - (xvi) Service activities incidental to conventionally-fuelled air transportation. (sub-activities of NACE 52.23);”



**SCHEDULE 2
CAPPED COUNTER-GUARANTEE PROVISIONS**

1. Clause 1.1 (Definitions) shall be amended as follows:
- (a) The definition of "**Counter-Guarantee Amount**" shall be deleted in its entirety.
 - (b) The following new definitions shall be added:
 - ""**Counter-Guarantee Cap Amount**" means the maximum aggregate net amount which the Counter-Guarantor may be liable to pay under the Counter-Guarantee and calculated at any relevant time, as the product of:
 - (i) the Actual Portfolio Volume (as evidenced in the last Report received by the Counter-Guarantor prior to any such calculation);
 - (ii) the Counter-Guarantee Rate; and
 - (iii) the Counter-Guarantee Cap Rate."
 - ""**Counter-Guarantee Cap Rate**" means the percentage rate set out in Schedule 1 (Specific Terms)."
 - ""**Outstanding Amounts**" has the meaning given to such terms in Clause 8.10."
2. Clause 3 (Counter-Guarantee) shall be deleted in its entirety and replaced as follows:
- "3.1 The Counter-Guarantor hereby grants an irrevocable professional payment counter-guarantee in favour of the Intermediary subject to, and in accordance with, the terms of this Agreement (the "**Counter-Guarantee**").
 - 3.2 Subject to the terms of this Agreement (including any specific provisions contained in the Specific Terms which may supplement, modify and/or replace other terms of the main body of this Agreement), the Counter-Guarantor will pay to the Intermediary an amount in respect of each Covered Sub-Operation equal to:
 - (a) the Defaulted Amount incurred in respect of Credit Events which occurred during the applicable Counter-Guarantee Coverage Period;
 - (b) multiplied by the Counter-Guarantee Rate;
 - (c) up to the Counter-Guarantee Cap Amount.
 - 3.3 The Intermediary agrees that it cannot claim any amount exceeding the Counter-Guarantee Cap Amount.
 - 3.4 The Parties hereby agree to expressly submit the Counter-Guarantee to the professional payment guarantee regime governed by the Luxembourg law of 10 July 2020 on professional payment guarantees."



3. New Clauses 8.10, 8.11, and 8.12 (Payments) shall be added as follows:

"8.10 If payment of all amounts requested under a Payment Demand would result in the Counter-Guarantee Cap Amount being exceeded (based on the last Report available to the Counter-Guarantor), then payments will be made up to the Counter-Guarantee Cap Amount, only. In case the Counter-Guarantee Cap Amount would be exceeded, the Counter-Guarantor shall have discretion as to which of such amounts shall be paid, subject always to the Counter-Guarantee Cap Amount.

8.11 Any amounts claimed under Payment Demands which are not paid in accordance with Clause 8.10 (the payment of which would have resulted in the Counter-Guarantee Cap Amount being exceeded) shall be referred to as "**Outstanding Amounts**".

8.12 Upon the increase, if any, of the Actual Portfolio Volume, the Counter-Guarantor shall pay Outstanding Amounts up to the revised Counter-Guarantee Cap Amount within sixty (60) calendar days of the date of the Report evidencing such revised Counter-Guarantee Cap Amount."

4. Clause 10 (Right of Clawback) shall be deleted in its entirety and replaced with the following:

"10. RIGHT OF CLAWBACK

No later than on the Report Date immediately following the date on which the Counter-Guarantor gives notice to the Intermediary or the Intermediary becomes otherwise aware of amounts owed to the Counter-Guarantor, the Intermediary shall repay to the Counter-Guarantor the following amounts:

- (a) any amount paid under the Counter-Guarantee in excess of the relevant Defaulted Amount;
- (b) any amount paid under the Counter-Guarantee in excess of the Counter-Guarantee Cap Amount, including as a result of the subsequent exclusion of a Final Recipient Transaction from the Portfolio;
- (c) any amount paid under the Counter-Guarantee in relation to one or more Excluded Sub-Operation(s), and
- (d) any Restrictive Measures Clawback Amount,

in each of the cases above, together with interest to be calculated at the Interest Rate, which shall accrue from the date of payment of the relevant amount by the Counter-Guarantor until the date of the repayment of that amount to the Counter-Guarantor."

5. A new Clause 11.12 (Recoveries) shall be added as follows:

"11.12 If any Recoveries are paid to the Counter-Guarantor, the Counter-Guarantee Cap Amount shall be replenished, so that the Counter-Guarantor may be liable to pay under the Counter-Guarantee an additional amount (including any Outstanding Amounts) equal to such Recoveries (up to the Counter-Guarantee Cap Amount)."



**SCHEDULE 3
ELIGIBILITY CRITERIA**

A. Sub-Operation Eligibility Criteria

“Sub-Operation Eligibility Criteria” means the following criteria:

No.	Sub-Operation Eligibility Criteria	Time of Compliance
1.	<p>The Sub-Operation shall be provided in compliance with the Relevant State Aid Regime in accordance with:</p> <p>1. either;</p> <p style="padding-left: 20px;">a. paragraph 2 (Additional Eligibility Criteria only for EGF Regime by analogy to Section 3.1 TF) and paragraph 6 (General Undertakings applicable to EGF Regime by analogy to Section 3.1 TF and EGF Regime by analogy to Section 3.2 TF) of Schedule 4 (State Aid); or</p> <p style="padding-left: 20px;">b. paragraph 3 (Additional Eligibility Criteria only for EGF Regime by analogy to Section 3.2 TF) and paragraph 6 (General Undertakings applicable to EGF Regime by analogy to Section 3.1 TF and EGF Regime by analogy to Section 3.2 TF) of Schedule 4 (State Aid); or</p> <p style="padding-left: 20px;">c. paragraph 4 (Additional Eligibility Criteria only for De Minimis Regime) and paragraph 7 (General undertakings applicable to the De Minimis Regime) of Schedule 4 (State Aid);</p> <p>and</p> <p>2. paragraph 5 (General Undertakings applicable to all State Aid Regimes) of Schedule 4 (State Aid).</p>	Continuing
2.	The Sub-Operation shall be entered into by the Intermediary during the Inclusion Period.	Continuing
3.	The Sub-Operation shall be denominated in the Base Currency or an Additional Currency.	Continuing
4.	The Sub-Operation must comply with the terms of this Agreement relating to the Transfer of Benefit.	Continuing
5.	The Sub-Operation shall not finance Illegal Activities or artificial arrangements aimed at tax avoidance.	Continuing



6.	The documents governing the Sub-Operation are legal, valid, binding and enforceable under applicable law.	Continuing
7.	The final maturity date of a Sub-Operation shall not fall after 30 December 2037.	Continuing
8.	The guarantee rate of the Sub-Operation shall not be higher than 90%.	Continuing
9.	The Sub-Operation shall cover directly or indirectly the full principal amount of the relevant underlying Final Recipient Transaction.	Continuing
10.	The Sub-Operation shall cover (directly or indirectly): (i) Final Recipients which comply with each of the Final Recipient Eligibility Criteria; and (ii) Final Recipient Transactions which comply with each of the Final Recipient Transaction Criteria.	Continuing
11.	The Sub-Operations should be made available in the Participating Member States.	Sub-Operation Signing Date
12.	The Additional Eligibility Criteria that are specified as "Sub-Operation Eligibility Criteria" in the Specific Terms, if any.	As indicated in the Specific Terms, if applicable

B. Sub-Intermediary Eligibility Criteria

"Sub-Intermediary Eligibility Criteria" means the following criteria:

No.	Sub-Intermediary Eligibility Criteria	Time of Compliance
1.	The Sub-Intermediary shall not have a substantial focus on one or more EIB Group Excluded Sectors (which determination shall be made by the Intermediary in its discretion based, without limitation, on the proportionate importance of such sector on revenues, turnover or client base of the relevant Sub-Intermediary).	Sub-Operation Signing Date
2.	The Sub-Intermediary must be incorporated or established in a European Union Member State.	Sub-Operation Signing Date
3.	The Sub-Intermediary must be operating in a Participating Member State.	Sub-Operation Signing Date
4.	The Sub-Intermediary shall not be incorporated or established in a Non-Compliant Jurisdiction, unless in the case of NCJ Implementation.	Sub-Operation Signing Date



No.	Sub-Intermediary Eligibility Criteria	Time of Compliance
5.	The Sub-Intermediary shall not be engaged in any Illegal Activities.	Continuing
6.	The Sub-Intermediary is not a Sanctioned Person and is not in breach of Restrictive Measures.	Continuing
7.	The Sub-Intermediary is not, to the best of its knowledge, in an Exclusion Situation.	Sub-Operation Signing Date
8.	If the Sub-Intermediary is established or incorporated in a country listed for HPTR in Annex I and/or Annex II of the European Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes, the Sub-Intermediary does not benefit from any HPTR as evidenced by a self-declaration of the Sub-Intermediary provided in a written form to the Intermediary.	Sub-Operation Signing Date

C. Final Recipient Eligibility Criteria

"Final Recipient Eligibility Criteria" means the following criteria:

No.	Final Recipient Eligibility Criteria	Time of Compliance
1.	The Final Recipient shall not have a substantial focus on one or more EIB Group Excluded Sectors (which determination shall be made by the Intermediary or the Sub-Intermediary, as applicable, in its discretion based, without limitation, on the proportionate importance of such sector on revenues, turnover or client base of the relevant Final Recipient).	Final Recipient Transaction Signing Date
2.	The Final Recipient must be established and operating in a Participating Member State ¹¹ .	Final Recipient Transaction Signing Date
3.	The Final Recipient shall not be incorporated or established in a Non-Compliant Jurisdiction, unless in the case of NCJ Implementation.	Final Recipient Transaction Signing Date
4.	The Final Recipient shall not be engaged in any Illegal Activities.	Continuing

¹¹ For the avoidance of doubt, the Overseas Territories (OCTs) and Overseas Countries are not eligible.



No.	Final Recipient Eligibility Criteria	Time of Compliance
5.	The Final Recipient is not a Sanctioned Person and is not in breach of Restrictive Measures.	Continuing
6.	The Final Recipient is not, to the best of its knowledge, in an Exclusion Situation.	Final Recipient Transaction Signing Date
7.	If the Final Recipient is established or incorporated in a country listed for HPTR in Annex I and/or Annex II of the European Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes, the Final Recipient does not benefit from any HPTR as evidenced by a self-declaration of the Final Recipient provided in a written form to the Sub-Intermediary.	Final Recipient Transaction Signing Date
8.	The Final Recipient is not delinquent (for more than 20 days) or in default in respect of any transaction (in the case of refinancing, including the transaction that is being refinanced) granted by the Sub-Intermediary or by another financial institution pursuant to checks made in accordance with the Sub-Intermediary's internal guidelines and Credit and Collection Policies.	Final Recipient Transaction Signing Date

D. Final Recipient Transaction Eligibility Criteria

"Final Recipient Transaction Eligibility Criteria" means the following criteria:

No.	Final Recipient Transaction Eligibility Criteria	Time of Compliance
1.	<p>The Final Recipient Transaction shall be provided in compliance with the Relevant State Aid Regime in accordance with:</p> <ol style="list-style-type: none"> 1. either; <ol style="list-style-type: none"> a. paragraph 2 (Additional Eligibility Criteria only for EGF Regime by analogy to Section 3.1 TF) and paragraph 6 (General Undertakings applicable to EGF Regime by analogy to Section 3.1 TF and EGF Regime by analogy to Section 3.2 TF) of Schedule 4 (State Aid); or b. paragraph 3 (Additional Eligibility Criteria only for EGF Regime by analogy to Section 3.2 TF) and paragraph 6 (General Undertakings applicable to EGF Regime by analogy to Section 	Continuing



No.	Final Recipient Transaction Eligibility Criteria	Time of Compliance
	<p>3.1 TF and EGF Regime by analogy to Section 3.2 TF) of Schedule 4 (State Aid); or</p> <p>c. paragraph 4 (Additional Eligibility Criteria only for De Minimis Regime) and paragraph 7 (General undertakings applicable to the De Minimis Regime) of Schedule 4 (State Aid);</p> <p>and</p> <p>2. paragraph 5 (General Undertakings applicable to all State Aid Regimes) of Schedule 4 (State Aid).</p>	
2.	<p>The Final Recipient Transaction must be made available in a Participating Member State, which means that:</p> <p>(a) for Final Recipient Transactions the purpose of which shall be:</p> <ol style="list-style-type: none"> 1. the financing of working capital/liquidity needs or refinancing of existing obligations, pursuant to paragraph 4 of Section D of this Schedule 3, or 2. the financing of an investment in tangible or intangible assets, pursuant to paragraph 4 of Section D of this Schedule 3 and a clear geographical allocation of such investment is not possible; <p>the registered office of the relevant Final Recipient shall be located in a Participating Member State;</p> <p>(b) for Final Recipient Transactions the purpose of which shall be the financing of an investment in tangible or intangible assets, pursuant to paragraph 4 of Section B of this Schedule 3 and a clear geographical allocation of such investment is possible the relevant investment shall be carried out in a Participating Member State.</p>	Final Recipient Transaction Signing Date
3.	The Final Recipient Transaction shall be entered into by the Sub-Intermediary during the Inclusion Period.	Final Recipient Transaction Signing Date
4.	The Final Recipient Transaction shall be granted for one or more of the following permitted purposes: (1) investment in tangible and/or intangible assets and/or (2) working capital/liquidity needs and/or (3) refinancing of existing	Continuing



No.	Final Recipient Transaction Eligibility Criteria	Time of Compliance
	obligations as defined by the Sub-Intermediary's Credit and Collection Policies. For the avoidance of doubt, business transfers shall also be allowed.	
5.	The Final Recipient Transaction shall be denominated in the Base Currency or an Additional Currency.	Continuing
6.	The Final Recipient Transaction shall have a minimum maturity of 3 (three) Months.	Continuing
7.	The Final Recipient Transaction must comply with the terms of this Agreement relating to the Transfer of Benefit.	Continuing
8.	The Final Recipient Transaction shall not finance Illegal Activities or artificial arrangements aimed at tax avoidance.	Continuing
9.	The documents governing the Final Recipient Transaction are legal, valid, binding and enforceable under applicable law.	Continuing
10.	The final maturity date of a Final Recipient Transaction shall not fall after 30 December 2037.	Continuing
11	The Final Recipient Transaction shall not finance transactions with a Sanctioned Person.	Continuing



**SCHEDULE 4
STATE AID****1. Definitions**

For the purposes of this Schedule, the following terms shall have the following meanings:

“**Agricultural Block Exemption Regulation**” means the Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 193 of 1.7.2014, p.1), as amended or replaced from time to time.

“**Aid Amount**” means the amount the Final Recipient shall consider as the State Aid it receives under EGF, and;

a. in relation to Final Recipient Transactions subject to the EGF Regime by analogy to Section 3.1 TF, such amount shall be the EGF Guaranteed Amount of the Final Recipient Transaction;

b. in relation to Final Recipient Transactions subject to the EGF Regime by analogy to Section 3.2 TF, such amount shall be the principal amount committed by the Sub-Intermediary under the Final Recipient Transaction;

c. in relation to Final Recipient Transactions subject to the De Minimis Regime, Participating Member State Share of GGE of the Final Recipient Transaction.

“**Communication 2014/C 249/01**” means Communication from the Commission “Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty” (2014/C 249/01) (OJ C 249, 31.7.2014, p. 1–28), as amended, restated, supplemented and/or substituted from time to time.

“**Commission Decision**” means the Commission decision C (2020) 9237 dated 14 December 2020 approving the Participating Member States’ notifications of the EGF under a bespoke regime in line with Article 107(3) TFEU regarding the Pan-European Guarantee Fund in response to COVID-19.

“**De Minimis Regime**” means the conditions set out in this Agreement in accordance with the relevant De Minimis Regulation applicable to Final Recipient Transactions subject to the De Minimis Regime under this EGF Counter-Guarantee Agreement.

“**De Minimis Regulation**” means, as applicable:

Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p.1), or



Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9), or

Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45)

as amended from time to time.

“De Minimis Regulation relating to Services of General Economic Interest” means Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114 of 26.4.2012, p. 8), as amended from time to time.

“EGF Regime by analogy to Section 3.1 TF” means the conditions set out in the Commission Decision which is based on the relevant terms and conditions from Section 3.1 of the Temporary Framework, as amended from time to time.

“EGF Regime by analogy to Section 3.2 TF” means the conditions set out in the Commission Decision which is based on the relevant terms and conditions from Section 3.2 of the Temporary Framework, as amended from time to time.

“Fisheries Block Exemption Regulation” means the Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 369 of 24 December 2014, p. 37), as amended or replaced from time to time.

“General Block Exemption Regulation” means Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p. 1.

“GGE” means gross grant equivalent as calculated in accordance with paragraph 7(b) of Schedule 4 (State Aid).

“Participating Member State Share of GGE” means the portion of the GGE the Final Recipient receives under EGF pro rata to such Participating Member State’s contribution to the EGF. The Participating Member State Share of GGE shall be calculated by applying the following percentage of contribution of each Participating Member State to the GGE of the Final Recipient Transaction:

Participating Member State	%
France	19.28
Germany	19.28
Italy	19.28
Spain	11.57



Belgium	5.34
Netherlands	5.34
Poland	4.69
Sweden	3.54
Denmark	2.71
Austria	2.65
Finland	1.52
Greece	1.45
Portugal	0.93
Ireland	0.68
Croatia	0.44
Slovakia	0.31
Slovenia	0.29
Bulgaria	0.21
Lithuania	0.18
Luxembourg	0.14
Cyprus	0.13
Malta	0.05

"**Relevant State Aid Regime**" means

- (a) EGF Regime by analogy to Section 3.1 TF; or
- (b) EGF Regime by analogy to Section 3.2 TF; or
- (c) De Minimis Regime.

"**State Aid**" means aid granted by a member state of the European Union or through such state's resources, as further set out in Articles 107 and 108 of the Treaty.

"**Temporary Framework**" means the Temporary Framework for State aid Measures to Support the Economy in the Current COVID-19 Outbreak, Communication from the Commission of 19 March 2020, C(2020)1863 (OJ C 91I, 20.3.2020, p. 1) as amended from time to time .

"**Temporary Framework Availability Period End Date**" means 31 December 2021 or, where extended by a Temporary Framework Extension Notice, the Temporary Framework Availability Period End Date specified in the Temporary Framework Extension Notice.

"**Temporary Framework Extension Notice**" means a notice substantially in the form of Annex A (Form of Temporary Framework Extension Notice) of this Schedule 4 (State Aid) that is sent by the Counter-Guarantor to the Intermediary to confirm that the Temporary Framework Availability Period End Date has been



amended and that the conditions under Paragraph 6(h) (Maturity extensions and commitment increases) of Schedule 4 (State Aid) and the Eligibility Criteria 1 under Sub-paragraph (b) of Paragraph 2 (Additional Eligibility Criteria only for EGF Regime by analogy to Section 3.1 TF) of Schedule 4 (State Aid) are effective.

"Undertaking in Difficulty" means an undertaking in difficulty within the meaning of the General Block Exemption Regulation, Agricultural Block Exemption Regulation or Fisheries Block Exemption Regulation¹².

2. Additional Eligibility Criteria only for EGF Regime by analogy to Section 3.1 TF

- (a) Final Recipient subject to the EGF Regime by analogy to Section 3.1 TF shall comply with the following additional Eligibility Criteria:

No.	Final Recipient Eligibility Criteria	Time of Compliance
1.	The Final Recipient is (i) an SME, or (ii) unless otherwise provided in section 14 (Clause 4 (Eligibility Criteria)) of the Specific Terms, a Small Mid-cap, that are not active in the financial sector.	Final Recipient Transaction Signing Date
2.	<p>If the Final Recipient is an Undertaking in Difficulty as at the Final Recipient Transaction Effective Date, it will be deemed to comply with this Eligibility Criterion provided that it was not an Undertaking in Difficulty as of 31 December 2019.</p> <p>As an exception to the above, if the Final Recipient is a Micro-enterprise or a Small-Enterprise that was an Undertaking in Difficulty on 31 December 2019, it shall be eligible, provided that on the Final Recipient Transaction Effective Date:</p> <p>(a) it is not subject to collective insolvency procedure under the relevant national laws; and</p> <p>(b) it has not received¹³:</p> <p>(i) rescue aid, which has not been reimbursed (if the aid is in the form of a loan) or terminated (if the aid is in the form of a guarantee); or</p> <p>(ii) restructuring aid to which it is subject to¹⁴</p>	Final Recipient Transaction Signing Date

¹² EGF Final Recipient Transactions relating to activities in primary agricultural production sector or fishery and aquaculture sector, remain subject to General Block Exemption Regulation as per Article 1(3)(a) and (b) of General Block Exemption Regulation.

¹³ As defined under the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, p.1.



No.	Final Recipient Eligibility Criteria	Time of Compliance
	as at the Final Recipient Transaction Effective Date.	
3.	The Final Recipient has not benefitted from State Aid which has been declared illegal or noncompliant by the Commission which has not yet been returned.	Final Recipient Transaction Signing Date

- (b) Final Recipient Transactions subject to the EGF Regime by analogy to Section 3.1 TF shall comply with the following Eligibility Criteria:

No.	Final Recipient Transaction Eligibility Criteria	Time of Compliance
1.	<p>The amount committed under the Final Recipient Transaction shall not result in the EGF Guaranteed Amount of the Final Recipient Transaction, together with any other 3.1 Relevant Aid Amounts, to exceed the 3.1 Maximum Aid Threshold.</p> <p>For the purposes of this Eligibility Criterion;</p> <p>"3.1 Relevant Aid Amounts" means any Aid Amounts provided to the Final Recipient (together with any other linked enterprises as per the Commission Recommendation), that are subject to the EGF Regime by analogy to Section 3.1 TF (not, for the avoidance of doubt, with any other aid granted under the Temporary Framework) whether through the Intermediary, the Sub-Intermediary or otherwise.</p> <p>"EGF Guaranteed Amount of the Final Recipient Transaction" means, in respect of a Final Recipient Transaction, the product of (i) the Counter-Guarantee Rate, (ii) the Sub-operation guarantee rate and (iii) the amount of principal committed by the Sub-Intermediary to a Final Recipient under such Final Recipient Transaction.</p> <p>"3.1 Maximum Aid Threshold" means;</p> <p>(a) for Final Recipients active in the primary production of agricultural products EUR 100,000, unless increased to EUR 225,000 by a Temporary Framework Extension Notice sent by the Counter-Guarantor to the Intermediary;</p> <p>(b) for Final Recipients active in the fishery and aquaculture sector EUR 120,000, unless increased to EUR 270,000 by</p>	Final Recipient Transaction Signing Date

¹⁴ E.g. on the Final Recipient Transaction Effective Date, the Final Recipient will no longer be subject to a restructuring plan.



No.	Final Recipient Transaction Eligibility Criteria	Time of Compliance
	<p>a Temporary Framework Extension Notice sent by the Counter-Guarantor to the Intermediary;</p> <p>(c) for Final Recipients active in other sectors EUR 800,000, unless increased to EUR 1,800,000 by a Temporary Framework Extension Notice sent by the Counter-Guarantor to the Intermediary.</p> <p>In the event that a Final Recipient (or any other linked enterprises as per the Commission Recommendation) is active in several of the sectors set out above, the Sub-Intermediary (or the Intermediary, as the case may be) shall be able to reflect a separation of activities and accounts¹⁵, in order to verify that the correct maximum thresholds for each sector listed through (a) to (c) above are complied with and the Intermediary shall procure that such Sub-Intermediary, for the purpose of identifying the relevant threshold, considers the activity being financed under EGF.</p> <p>With respect to Final Recipient Transactions denominated in a currency other than EUR, for the purposes of checking compliance with the 3.1 Maximum Aid Threshold above, the Relevant FX Rate used by the Sub-Intermediary (or the Intermediary, as the case may be) shall be the exchange rate applicable on the Final Recipient Transaction Effective Date.</p>	
2.	The amount of the Final Recipient Transactions benefitting a Final Recipient active in the primary production of agricultural products shall not be fixed on the basis of the price or quantity of products put on the market.	Continuing
3.	<p>In relation to Final Recipient Transactions entered into with Final Recipients active in the fishery and aquaculture sector:</p> <p>(a) the amount of the Final Recipient Transaction shall not be fixed on the basis of price or quantity of products purchased or put on the market;</p> <p>(b) Final Recipient Transaction shall not be contingent upon the use of domestic over imported goods;</p> <p>(c) Final Recipient Transaction shall not related to purchase of fishing vessels;</p> <p>(d) Final Recipient Transaction shall not finance modernisation or replacement of main or ancillary</p>	Continuing

¹⁵ For example, through the acquisition in the business plan as provided by the Final Recipients when applying for a Final Recipient Transaction, as well as the pro-forma invoices or any equivalent justifying document.



No.	Final Recipient Transaction Eligibility Criteria	Time of Compliance
	<p>engines of fishing vessels;</p> <p>(e) Final Recipient Transaction shall not finance operations increasing the fishing capacity of a vessel or equipment increasing the ability of a vessel to find fish;</p> <p>(f) Final Recipient Transaction shall not finance construction of new fishing vessels or importation of fishing vessels;</p> <p>(g) Final Recipient Transaction shall not finance temporary or permanent cessation of fishing activities unless specifically provided for in the Regulation (EU) No 508/2014;</p> <p>(h) Final Recipient Transaction shall not finance exploratory fishing;</p> <p>(i) Final Recipient Transaction shall not finance transfer of ownership of a business;</p> <p>(j) Final Recipient Transaction shall not finance direct restocking, unless explicitly provided for as a conservation measure by a Union legal act or in the case of experimental restocking.</p>	
4.	<p>Final Recipients Transactions entered into with Final Recipients active in the processing and marketing of agricultural products:</p> <p>(a) the Final Recipient Transaction shall not be conditional on being partly or entirely passed on to primary producers; and</p> <p>(b) the amount of Final Recipient Transaction shall not be fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned.</p>	Continuing
5.	<p>Final Recipient Transaction shall not be conditional on export-related activities towards third countries or Member States, namely financing directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity. For the avoidance of doubt, regarding the latter, companies that export their goods or services can benefit from the EGF counter-guarantee, provided that the financing is not conditional on being used to cover costs specifically linked to the act of exporting (such as shipping costs).</p>	Continuing



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No.	Final Recipient Transaction Eligibility Criteria	Time of Compliance
6.	The Final Recipient Transaction shall have been entered into by no later than the Temporary Framework Availability Period End Date.	Final Recipient Transaction Signing Date
7.	The Final Recipient Transaction shall be (a) financing transactions and take the form of a senior loan, Finance Leasing, revolving credit lines (including overdrafts), Factoring Transaction; Subordinated Debt Transaction; Quasi-Equity Transaction, Bond or (b) financing transactions providing recourse against the Final Recipient under Bank Guarantees or Letters of Credit.	Continuing

- (c) Sub-Operations covering Final Recipient Transactions subject to the EGF Regime by analogy to Section 3.1 TF shall comply with the following Eligibility Criteria:

1.	The Sub-Operation covering a Final Recipient Transaction subject to the EGF Regime by analogy to Section 3.1 TF shall have been entered into by no later than the Temporary Framework Availability Period End Date.	Sub-Operation Signing Date
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3. Additional Eligibility Criteria only for EGF Regime by analogy to Section 3.2 TF

- (a) Final Recipient subject to the EGF Regime by analogy to Section 3.2 TF shall comply with the following Eligibility Criteria:

No.	Final Recipient Eligibility Criteria	Time of Compliance
1.	The Final Recipient is an SME that is not active in the financial sector.	Final Recipient Transaction Signing Date
2.	<p>If the Final Recipient is an Undertaking in Difficulty as at the Final Recipient Transaction Effective Date, it will be deemed to comply with this Eligibility Criterion provided that it was not an Undertaking in Difficulty as at 31 December 2019.</p> <p>As an exception to the above, if the Final Recipient is a Micro-enterprise or a Small-Enterprise that was an Undertaking in Difficulty on 31 December 2019, it shall be eligible, provided that on the Final Recipient Transaction Effective Date:</p> <p>(a) it is not subject to collective insolvency procedure under the relevant national laws; and</p>	Final Recipient Transaction Signing Date



No.	Final Recipient Eligibility Criteria	Time of Compliance
	(b) it has not received ¹⁶ : <ul style="list-style-type: none"> (i) rescue aid which has not been reimbursed (if the aid is in the form of a loan) or terminated (if the aid is in the form of a guarantee); or (ii) restructuring aid , to which it is subject to¹⁷ as at the Final Recipient Transaction Effective Date.	
3.	The Final Recipient has not benefitted from State Aid which has been declared illegal or noncompliant by the Commission which has not yet been returned.	Final Recipient Transaction Signing Date

- (b) Final Recipient Transactions subject to the EGF Regime by analogy to Section 3.2 TF shall comply with the following Eligibility Criteria:

No.	Final Recipient Transaction Eligibility Criteria	Time of Compliance
1.	The principal amount committed under the Final Recipient Transaction, together with any other 3.2 Relevant Aid Amounts shall not exceed the 3.2 Maximum Aid Threshold. For the purposes of this Eligibility Criterion; "3.2 Relevant Aid Amounts means any other amounts provided to the Final Recipient that: <ul style="list-style-type: none"> (a) has also been guaranteed under the EGF Regime by analogy to Section 3.2 TF, or under any national guarantee scheme operated under Section 3.2 of the Temporary Framework, (b) benefits from an interest rate subsidy under Section 3.3 of the Temporary Framework, and whether through the Intermediary, Sub-Intermediary or otherwise. "3.2 Maximum Aid Threshold" means any of the below thresholds, at the discretion of the Sub-Intermediary or the	Final Recipient Transaction Signing Date

¹⁶ As defined under the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, p.1.

¹⁷ E.g. on the Final Recipient Transaction Effective Date, the Final Recipient will no longer be subject to a restructuring plan.



	<p>Intermediary (as applicable):</p> <p>(a) Double the annual wage bill of the Final Recipient (including social charges as well as the cost of personnel working on the undertaking's site but formally in the payroll of subcontractors) for 2019, or for the last year available. In the case of undertakings created on or after 1 January 2019, the 3.2 Maximum Aid Threshold must not exceed the estimated annual wage bill for the first two years in operation; or</p> <p>(b) 25% of the Final Recipient's total turnover in 2019 or for the last year available; or</p> <p>(c) up to the Final Recipient's foreseen financing needs for a period of 18 months for SMEs, based on a self-declaration by the Final Recipient (but in any case to be finally determined in line with the Sub-Intermediary's or the Intermediary's (as applicable) applicable Credit and Collection Policies).</p> <p>With respect to Final Recipient Transactions denominated in a currency other than EUR, for the purposes of checking compliance with the 3.2 Maximum Aid Threshold (where such thresholds are set out in EUR) above, the Relevant FX Rate used by the Sub-Intermediary shall be the exchange rate applicable on the Final Recipient Transaction Effective Date.</p>	
2.	The amount of the Final Recipient Transactions benefitting a Final Recipient active in the primary production of agricultural products shall not be fixed on the basis of the price or quantity of products put on the market.	Continuing
3.	<p>In relation to Final Recipient Transactions entered into with Final Recipients active in the fishery and aquaculture sector:</p> <p>(a) the amount of the Final Recipient Transaction shall not be fixed on the basis of price or quantity of products purchased or put on the market;</p> <p>(b) Final Recipient Transaction shall not be contingent upon the use of domestic over imported goods;</p> <p>(c) Final Recipient Transaction shall not related to purchase of fishing vessels;</p> <p>(d) Final Recipient Transaction shall not finance modernisation or replacement of main or ancillary engines of fishing vessels;</p> <p>(e) Final Recipient Transaction shall not finance operations</p>	Continuing



	<p>increasing the fishing capacity of a vessel or equipment increasing the ability of a vessel to find fish;</p> <p>(f) Final Recipient Transaction shall not finance construction of new fishing vessels or importation of fishing vessels;</p> <p>(g) Final Recipient Transaction shall not finance temporary or permanent cessation of fishing activities unless specifically provided for in the Regulation (EU) No 508/2014;</p> <p>(h) Final Recipient Transaction shall not finance exploratory fishing;</p> <p>(i) Final Recipient Transaction shall not finance transfer of ownership of a business;</p> <p>(j) Final Recipient Transaction shall not finance direct restocking, unless explicitly provided for as a conservation measure by a Union legal act or in the case of experimental restocking.</p>	
4.	<p>Final Recipients Transactions entered into with Final Recipients active in the processing and marketing of agricultural products:</p> <p>(a) the Final Recipient Transaction shall not be conditional on being partly or entirely passed on to primary producers; and</p> <p>(b) the amount of Final Recipient Transaction shall not be fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned.</p>	Continuing
5.	<p>Final Recipient Transaction shall not be conditional on export-related activities towards third countries or Member States, namely financing directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity. For the avoidance of doubt, regarding the latter, companies that export their goods or services can benefit from the EGF guarantee, provided that the financing is not conditional on being used to cover costs specifically linked to the act of exporting (such as shipping costs).</p>	Continuing
6.	<p>The Final Recipient Transaction shall have been entered into by no later than the Temporary Framework Availability Period End Date.</p>	Final Recipient Transaction Signing Date
7.	<p>The Final Recipient Transaction may be (a) financing transactions and take the form of a senior loan, Finance Leasing,</p>	Continuing



	revolving credit lines (including overdrafts), Factoring Transaction, Bond or (b) financing transactions providing recourse against the Final Recipient under Bank Guarantees or Letters of Credit.	
8.	The Final Recipient Transaction subject to the EGF Regime by analogy to Section 3.2 shall not benefit from State Aid under section 3.3 of the Temporary Framework.	Continuing

- (c) Sub-Operations covering Final Recipient Transactions subject to the EGF Regime by analogy to Section 3.2 TF shall comply with the following Eligibility Criteria:

1.	The Sub-Operation covering a Final Recipient Transaction subject to the EGF Regime by analogy to Section 3.2 TF shall have been entered into by no later than the Temporary Framework Availability Period End Date.	Sub-Operation Signing Date
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4. Additional Eligibility Criteria only for De Minimis Regime

- (a) Final Recipient subject to the De Minimis Regime shall comply with the following Eligibility Criteria:

No.	Final Recipient Eligibility Criteria	Time of Compliance
1.	The Final Recipient is (i) an SME, or (ii) unless otherwise provided in section 14 (Clause 4 (Eligibility Criteria)) of the Specific Terms, a Small Mid-cap.	Final Recipient Transaction Signing Date
2.	The Final Recipients that are Small Mid-Caps shall have a creditworthiness at least equivalent to a B- rating.	Final Recipient Transaction Signing Date
3.	The Final Recipient shall not be subject to collective insolvency proceedings nor fulfil the criteria under their domestic law for being placed in collective insolvency proceedings at the request of their creditors, as set out in art. 4.3 (a) of the De Minimis Regulations.	Final Recipient Transaction Signing Date
4.	The Final Recipient has not benefitted from State Aid which has been declared illegal or noncompliant by the Commission which has not yet been returned.	Final Recipient Transaction Signing Date



- (b) Final Recipient Transactions subject to the De Minimis Regime shall comply with the following Eligibility Criteria:

No.	Final Recipient Transaction Eligibility Criteria	Time of Compliance
1.	The Final Recipient Transaction shall be provided in compliance with the relevant De Minimis Regulation, as set out in Paragraph 7 below.	Final Recipient Transaction Signing Date and on each date on which an amendment of the Final Recipient Transaction resulting in the increase of the principal amount or extension of maturity, changing the parameters used for the calculation of the GGE, is executed
2.	Final Recipient Transactions financing the following activities shall not be eligible for inclusion: (a) Vehicle purchase by companies active in the road freight transport sector for hire or reward; (b) Final Recipient Transaction shall not be conditional on export-related activities towards third countries or Member States, namely financing directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity. For the avoidance of doubt, regarding the latter, companies that export their goods or services can benefit from the EGF guarantee, provided that the financing is not conditional on being used to cover costs specifically linked to the act of exporting (such as shipping costs).	Continuing
3.	Final Recipients Transactions entered into with Final Recipients active in the processing and marketing of	Continuing



	<p>agricultural products:</p> <p>(a) the Final Recipient Transaction shall not be conditional on being partly or entirely passed on to primary producers; and</p> <p>(b) the amount of Final Recipient Transaction shall not be fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned.</p>	
4.	<p>In relation to Final Recipient Transactions entered into with Final Recipients active in the fishery and aquaculture sector;</p> <p>(a) the amount of the Final Recipient Transaction shall not be fixed on the basis of price or quantity of products purchased or put on the market;</p> <p>(c) Final Recipient Transaction shall not be contingent upon the use of domestic over imported goods;</p> <p>(d) Final Recipient Transaction shall not related to purchase of fishing vessels;</p> <p>(e) Final Recipient Transaction shall not finance modernisation or replacement of main or ancillary engines of fishing vessels;</p> <p>(f) Final Recipient Transaction shall not finance operations increasing the fishing capacity of a vessel or equipment increasing the ability of a vessel to find fish;</p> <p>(g) Final Recipient Transaction shall not finance construction of new fishing vessels or importation of fishing vessels;</p> <p>(h) Final Recipient Transaction shall not finance temporary or permanent cessation of fishing activities unless specifically provided for in the Regulation (EU) No 508/2014;</p> <p>(i) Final Recipient Transaction shall not finance exploratory fishing;</p> <p>(j) Final Recipient Transaction shall not finance transfer of ownership of a business;</p> <p>(k) Final Recipient Transaction shall not finance direct restocking, unless explicitly provided for as a conservation measure by a Union legal act or in the case of experimental restocking.</p>	Continuing



5.	The Final Recipient Transaction shall have been entered into by no later than 31 December 2022.	Final Recipient Transaction Signing Date
6.	The Final Recipient Transaction shall be in the form of a senior loan, Finance Leasing, revolving credit lines (including overdrafts), Subordinated Debt Transaction and subject to the GGE calculation methodology set out in Paragraph 7(b)(1) being applied; Bank Guarantee, Letter of Credit, Factoring Transaction; Bonds; Quasi-Equity Transaction.	Continuing

- (c) Sub-Operations covering Final Recipient Transactions subject to the De Minimis Regime shall comply with the following Eligibility Criteria:

1.	The Sub-Operation covering a Final Recipient Transaction subject to the De Minimis Regime shall have been entered into by no later than the Inclusion Period End Date.	Sub-Operation Signing Date
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5. General Undertakings applicable to all State Aid Regimes

- (a) The Intermediary acknowledges that the financial support granted under the terms of the Counter-Guarantee constitutes State Aid.
- (b) The Intermediary undertakes, and shall procure that the Sub-Intermediary undertakes, to ensure at all times compliance with all relevant State Aid obligations arising out of the Relevant State Aid Regime. In the event that the Intermediary also enters into a contractual arrangement directly with the Final Recipient in relation to the relevant Final Recipient Transaction entered into between the Final Recipient and the Sub-Intermediary, the Intermediary may ensure compliance with all relevant State Aid obligations arising out of the Relevant State Aid Regime in place of the Sub-Intermediary and the references to the Sub-Intermediary shall be construed to be made to the Intermediary in sub-paragraphs (c) and (d) and paragraphs 6 and 7 below for the purposes of the obligations thereunder.
- (c) The Intermediary shall elect or shall procure that the Sub-Intermediary elects which Relevant State Aid Regime shall apply to each Final Recipient Transaction and shall notify the Counter-Guarantor in the Report of such election.
- (d) The Intermediary shall procure that the Sub-Intermediary make the statements issued by the Final Recipient in the self-declaration referred to in paragraphs 6(b) and 7(d) below binding on the Final Recipient, notably by including in the relevant Final Recipient Transaction documentation:
- (i) an acknowledgment by the Final Recipient of which Relevant State Aid Regime the Final Recipient Transaction was provided under; and



- (ii) a representation that the Final Recipient would not be in breach of the applicable limits under the Relevant State Aid Regime by receiving the financing supported by the EGF.

6. General Undertakings applicable to EGF Regime by analogy to Section 3.1 TF and EGF Regime by analogy to Section 3.2 TF

- (a) The Intermediary undertakes and shall procure that the Sub-Intermediary undertakes to ensure at all times compliance with all relevant State Aid obligations arising out of the Commission Decision.
- (b) Prior to the signing of a Final Recipient Transaction, in order to verify the relevant Eligibility Criteria and compliance with the Relevant State Aid Regime, the Intermediary shall procure that the Sub-Intermediary obtains a self-declaration signed by the Final Recipient containing at least the following information:
 - (i) confirmation that the Final Recipient has not benefitted from State Aid which has been declared illegal or noncompliant by the Commission which has not yet been returned;
 - (ii) confirmation whether, for the same costs financed by the Final Recipient Transaction, the Final Recipient has benefitted from State Aid under sections 3.6, 3.7, 3.8, 3.10 and 3.12 of the Temporary Framework, under which section and for what amount;
 - (iii) in case of Final Recipient Transactions subject to the EGF Regime by analogy to Section 3.1; (a) confirmation of whether the Final Recipient (or any “linked enterprise” within the meaning of the Commission Recommendation) has received other State Aid that benefits from support under EGF subject to the EGF Regime by analogy to Section 3.1; and (b) the amounts of such aid received;
 - (iv) in case of Final Recipient Transactions subject to the EGF Regime by analogy to Section 3.2; (a) confirmation of whether the Final Recipient has received other State Aid that benefits from (x) support under EGF subject to the EGF Regime by analogy to Section 3.2 or (y) under any national guarantee scheme operated under Section 3.2 of the Temporary Framework or (z) from an interest rate subsidy under Section 3.3 of the Temporary Framework; and (b) the amounts of such aid received by the Final Recipient;
 - (v) in case the Final Recipient would use the financing under EGF to finance an investment in tangible or intangible assets, confirmation as to whether the Final Recipient has received or intends to receive for the same investment:
 - (A) other State Aid under the De Minimis Regulations, the General Block Exemption Regulation, the Agricultural Block Exemption Regulation, the Fisheries Block Exemption Regulation, other State Aid guideline or regulation (but



excluding aid received under the Temporary Framework, and aid received under the EGF Regime by analogy to Section 3.1 TF or the EGF Regime by analogy to Section 3.2 TF), or

- (B) support in the form of European Union or financial support;
- (c) the Intermediary shall procure that the Sub-Intermediary verifies, on the basis of the self-declaration obtained from the Final Recipient, that the Final Recipient is entitled to receive additional State Aid through the EGF under the Relevant State Aid Regime, by and ensuring that the Aid Amount received by the Final Recipient through the EGF does not cause the 3.1 Maximum Aid Threshold or 3.2 Maximum Aid Threshold set out in paragraphs 2 or 3 of this Schedule 4, respectively, to be exceeded;
- (d) if, in the context of paragraph 6(b)(ii) above the Final Recipient confirms that it has received such aid, the Intermediary shall procure that the Sub-Intermediary verifies compliance with paragraph (77) of the Commission Decision which states that aid granted under EGF may be cumulated with aid under other sections of the Temporary Framework, provided that the provisions in those specific sections are respected. In particular, in no case shall the same costs be financed under EGF and any of the sections 3.6, 3.7, 3.8, 3.10 and 3.12 of the Temporary Framework;
- (e) if, in the context of paragraph 6(b)(v)(A) above, the Final Recipient confirms that it has received or intends to receive such aid for the same investment, the Intermediary shall procure that the Sub-Intermediary verifies (1) compliance with paragraph (75) of the Commission Decision, which states that aid granted under EGF may be cumulated with State Aid under the De Minimis Regulations, the General Block Exemption Regulation, the Agricultural Block Exemption Regulation, the Fisheries Block Exemption Regulation, other State Aid guideline or regulation, and (2) the provisions and cumulation rules of such regulations;
- (f) if, in the context of paragraph 6(b)(v)(B) above, the Final Recipient confirms that it has received or intends to receive such aid for the same investment, the Intermediary shall procure that the Sub-Intermediary verifies compliance with (1) paragraph (76) of the Commission Decision, which states that aid granted under EGF may be cumulated with other Union financing and (2) the maximum aid intensities indicated in the relevant Guidelines or Regulations governing such Union financing;
- (g) The Intermediary shall procure that the Sub-Intermediary informs the Final Recipient in writing of the following:
- (i) the financing supported by EGF constitutes State Aid;
 - (ii) the relevant Aid Amount for such Final Recipient Transaction;
 - (iii) the fact that the aid is granted under the Commission Decision numbered C (2020) 9237 and dated 14 December 2020; and
 - (iv) the Relevant State Aid Regime.



(h) **Maturity extensions and commitment increases**

- (i) The Intermediary shall procure that the Sub-Intermediary undertakes not to amend or supplement, waive or make any other declaration of intent in relation to a Final Recipient Transaction, after the Temporary Framework Availability Period End Date, which results in an increase of the amount committed under the Final Recipient Transaction.
- (ii)
- (A) In addition to Clause 4.4(a), the Counter-Guarantor and the Intermediary acknowledge and agree that before the earlier of the delivery of a Temporary Framework Extension Notice by the Counter-Guarantor to the Intermediary or 31 December 2021, the Sub-Intermediary shall be entitled to amend or supplement, waive or make any other declaration of intent in relation to a Final Recipient Transaction which results in a maturity extension of such Final Recipient Transaction, in accordance with the terms of this Agreement, without having to satisfy the conditions set out in Paragraph 6(h)(ii)(B) to (D) below.
- (B) In addition to Clause 4.4(a), after a Temporary Framework Extension Notice has been sent by the Counter-Guarantor to the Intermediary, the Intermediary acknowledges and agrees that the Sub-Intermediary shall only be entitled to amend or supplement, waive or make any other declaration of intent in relation to a Final Recipient Transaction, which results in a maturity extension of such Final Recipient Transaction, provided that:
- (1) the option to request such an extension by the Final Recipient is included in the legal documentation concerning the relevant Final Recipient Transaction (or other documentation or notice in relation to the Final Recipient Transaction provided directly by Intermediary to the Final Recipient or contractual arrangement between the Intermediary and the Final Recipient), as set out in Paragraph 6(h)(ii)(C) below, without prejudice to the Sub-Intermediary's or the Intermediary's right to refuse such a request;
- (2) the Final Recipient shall not be prevented from prepaying the commitment under the relevant Final Recipient Transaction, in the event that the Sub-Intermediary refuses a request from the Final Recipient made as per (B) above; and
- (3) such maturity extension shall not cause or be conditional on an increase to the level of the interest rate, rate of charges or rate of fees applicable to the



relevant Final Recipient Transaction. For the avoidance of doubt, an increase in the nominal amount of interest, charges or fees charged in relation to an extended maturity is allowed;

which the Intermediary shall procure to be the case.

- (C) The Intermediary shall procure that the Sub-Intermediary includes in the legal documentation concerning the relevant Final Recipient Transaction (or include in any other documentation or notice in relation to the Final Recipient Transaction provided directly by Intermediary to the Final Recipient or contractual arrangement between the Intermediary and the Final Recipient) the appropriate contractual provisions enabling the Final Recipient to request an extension of maturity in accordance with Paragraph 6(h)(ii)(B)(1) above, should the Sub-Intermediary choose to provide for an extension of maturity under the relevant Final Recipient Transaction.
- (D) The Intermediary shall obtain in the legal documentation concerning the Sub-Operation an undertaking from the Sub-Intermediary that any maturity extensions to the Final Recipient Transactions covered by such Sub-Operation shall not cause or be conditional on an increase to the level of the interest rate, rate of charges or rate of fees applicable to the relevant Final Recipient Transaction as per Paragraph 6(h)(ii)(B)(3).
- (E) The Intermediary acknowledges and agrees that, after 31 December 2021 and for so long as no Temporary Framework Extension Notice has been delivered to the Intermediary, the Sub-Intermediary shall not be entitled to amend or supplement, waive or make any other declaration of intent in relation to a Final Recipient Transaction which results in a maturity extension of such Final Recipient Transaction.

7. General undertakings applicable to the De Minimis Regime

- (a) In respect of Final Recipient Transactions subject to the De Minimis Regime, the Intermediary shall procure that the Sub-Intermediary:
 - (i) undertakes to follow the applicable procedure set out in Paragraph 7(b) below, for the purposes of the Final Recipient Transaction Eligibility Criterion (1) in Paragraph 4(b) of this Schedule 4 prior to entering into the Final Recipient Transaction;
 - (ii) acknowledges it will be responsible for (A) determining which De Minimis Regulation is applicable to the Final Recipient considering the sector such Final Recipient is active in and (B) the calculation of the GGE applicable to each Final Recipient Transaction;
- (b) The Intermediary shall procure that the Sub-Intermediary calculates the GGE



of the Final Recipient Transaction, by applying:

1. the **Safe Harbour GGE Calculation Methodology**, in relation to Final Recipient Transactions for which the Final Recipient is an SME; or
2. in the event that the Safe Harbour GGE Calculation Methodology cannot be applied; the **Simplified GGE Calculation Methodology**, in relation to Final Recipient Transactions for which the Final Recipient is (1) a Small Mid-cap, or (2) an entity to whom the Safe Harbour GGE Calculation Methodology cannot be applied (e.g. if the Final Recipient is an SME that has a rating too low to satisfy the conditions of the Safe Harbour GGE Calculation Methodology), provided that the Simplified GGE Calculation Methodology can only be applied to Final Recipient Transactions in the form of loans (which includes revolving credit lines (including overdrafts)).

For the purpose of this clause,

“**Safe Harbour GGE Calculation Methodology**” means the calculation methodology described in Article 3.2 of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (2008/C 155/02) and the Corrigendum to Commission notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (2008/C 244/11).

“**Simplified GGE Calculation Methodology**” means calculation methodology described in Article 4.6(b) of the relevant De Minimis Regulation according to the following formula:

$(A * B * C)$

where:

A= is the amount of the Final Recipient Transaction multiplied by (a) the guarantee rate applicable to the relevant Sub-Operation covering such Final Recipient Transaction and (b) the Counter-Guarantee Rate;

B= is the lower of: (i) maturity (in years) of the Sub-Operation, (ii) maturity (in years) of the Final Recipient Transaction and (iii) ten (10) years; and

C= 2.67%.

For the purpose of this calculation, the amount of the Final Recipient Transaction shall mean (i) for the purpose of Revolving Final Recipient Transactions, an amount that shall be equal to the Credit Limit Amount, and (ii) for the purpose of Final Recipient Transactions which are not Revolving Final Recipient Transactions, such amount shall be the full initial committed principal amount of the Final Recipient Transaction.

In the event that the GGE is calculated by applying the Simplified GGE Calculation Methodology, the EGF Guaranteed Amount of the Final Recipient Transaction shall not exceed:



- (i) EUR 750,000 if the Final Recipient is active in road freight transport;
- (ii) EUR 225,000 if the Final Recipient is active in fisheries and aquaculture (within the meaning of Commission Regulation (EU) No 717/2014 of 27 June 2014),
- (iii) EUR 187,500 or EUR 150,000 (depending on detailed conditions set out in the relevant De Minimis Regulation) if the Final Recipient is active in the primary production of agricultural products (within the meaning of Commission Regulation (EU) No 1408/2013 of 18 December 2013),
- (iv) EUR 1,500,000 if the Final Recipient is active in any other sector;

as per Article 4.6(b) of the relevant De Minimis Regulation. For the purpose of this Clause, "**EGF Guaranteed Amount of the Final Recipient Transaction**" means, in respect of a Final Recipient Transaction, the product of (i) the Counter-Guarantee Rate, (ii) the Sub-operation guarantee rate and (iii) the amount of principal committed by the Sub-Intermediary to a Final Recipient under such Final Recipient Transaction.

With respect to Final Recipient Transactions denominated in a currency other than EUR, for the purposes of checking compliance with this provision, the Relevant FX Rate used by the Sub-Intermediary shall be (i) the exchange rate applicable on the Final Recipient Transaction Effective Date and (ii) the exchange rate applicable on the effective date of any amendment of the Final Recipient Transaction resulting in the increase of the principal amount or extension of maturity, that requires the calculation of additional GGE.

- (c) The Intermediary acknowledges and shall procure that the Sub-Intermediary agrees and acknowledges that the GGE calculated as per Paragraph 7(b) above is to be considered granted to the Final Recipient by all Participating Member States in the proportions set out in the definition of the Participating Member State Share of GGE. The Intermediary shall procure that the Sub-Intermediary calculates each Participating Member State Share of GGE for the Final Recipient Transaction.
- (d) Prior to the signing of a Final Recipient Transaction, in order to verify the relevant Eligibility Criteria, this Paragraph 7 of Schedule 4 (State Aid) and compliance with the De Minimis Regime, the Intermediary shall procure that the Sub-Intermediary obtains a self-declaration signed by the Final Recipient containing at least the following information:
 - (i) confirmation that the Final Recipient has not benefitted, from State Aid which has been declared illegal or noncompliant by the Commission which has not yet been returned;
 - (ii) (a) confirmation of whether the Final Recipient (or any "linked enterprise" within the meaning of the Commission Recommendation) has received other State Aid subject to the De Minimis Regulations or De Minimis Regulation relating to Services of General Economic



Interest during the current fiscal year and the previous two fiscal years from any Participating Member State and the amounts of such aid received; and (b) whether any of such State Aid is provided under EGF and the amounts thereof (by the Sub-Intermediary or otherwise);

(e)

- (i) Final Recipients may receive State Aid through the EGF under the De Minimis Regime up to certain thresholds, to be verified in accordance with paragraph **Errore. L'origine riferimento non è stata trovata.****Errore. L'origine riferimento non è stata trovata.**(ii) below. The Intermediary shall procure that the Sub-Intermediary determines the applicable threshold (the “**De Minimis Maximum Aid Threshold**”):
- (A) EUR 100,000 if the Final Recipient is active in road freight transport,
 - (B) EUR 30,000 if the Final Recipient is active in fisheries and aquaculture (within the meaning of Commission Regulation (EU) No 717/2014 of 27 June 2014),
 - (C) EUR 20,000/25,000 (depending on detailed conditions set out in the relevant De Minimis Regulation) if the Final Recipient is active in the primary production of agricultural products (within the meaning of Commission Regulation (EU) No 1408/2013 of 18 December 2013), or
 - (D) EUR 200,000 if the Final Recipient is active in any other sector.

In the event that a Final Recipient (or any other linked enterprises as per the Commission Recommendation) is active in several of the sectors set out above, the Intermediary shall procure that the Sub-Intermediary considers the activity being financed under EGF and be able to reflect a separation of activities and accounts¹⁸, in order to verify that, the correct De Minimis Maximum Aid Threshold for each sector listed through (i) to (iv) above are complied with.

For the avoidance of doubt, Final Recipient Transactions under EGF may not be subject to the De Minimis Regulation relating to Services of General Economic Interest, however, the Intermediary shall procure that the Sub-Intermediary takes into consideration any previous De Minimis aid received by the Final Recipient under such Regulation in the context of the verification it shall conduct as per Paragraph **Errore. L'origine riferimento non è stata trovata.**(ii) below.

For the avoidance of doubt, in the event that any amendment or supplement, waiver or any other declaration of intent in relation to a Final Recipient

¹⁸ For example, through the acquisition in the business plan as provided by the Final Recipients when applying for a Final Recipient Transaction, as well as the pro-forma invoices or any equivalent justifying document.



Transaction results in (a) an increase of the amount committed under the Final Recipient Transaction; or (b) the extension of maturity of the Final Recipient Transaction (which results in a maturity extension of the Sub-Operation), the Intermediary shall procure that the Sub-Intermediary recalculates the GGE of the Final Recipient Transaction, taking into account such amendment.

- (ii) the Intermediary shall procure that the Sub-Intermediary verifies, on the basis of the self-declaration obtained from the Final Recipient, that the Final Recipient is entitled to receive additional State Aid through the EGF under the De Minimis Regime, by ensuring;
- (A) that the GGE of the Final Recipient Transaction, together with the GGE of any other previous aid provided under EGF subject to De Minimis Regime granted (by the Sub-Intermediary or otherwise) to the Final Recipient (or any other linked enterprises as per the Commission Recommendation) do not cause the relevant De Minimis Maximum Aid Threshold determined in accordance with Paragraph **Errore. L'origine riferimento non è stata trovata.**(i) above to be exceeded;
- (B) with respect to each of the Participating Member States where the Final Recipient (or any other linked enterprises as per the Commission Recommendation) has previously received De Minimis Relevant Aid Amounts, that the sum of (a) the Participating Member State Share of GGE of such Participating Member State and (b) any other De Minimis Relevant Aid Amounts in such Participating Member State, do not cause the relevant De Minimis Maximum Aid Threshold determined in accordance with Paragraph **Errore. L'origine riferimento non è stata trovata.**(i) above to be exceeded.

For the purposes of this Paragraph, “**De Minimis Relevant Aid Amounts**” means any other State Aid provided to the Final Recipient (or any other linked enterprises as per the Commission Recommendation), which was granted under any of the De Minimis Regulations and/or the De Minimis Regulation relating to Services of General Economic Interest in the relevant Participating Member State.

- (f) The Intermediary shall procure that the Sub-Intermediary informs the Final Recipient in writing of the following:
- (i) the financing supported by EGF constitutes State Aid subject to the De Minimis Regime (including the relevant De Minimis Regulation applicable);
- (ii) the Participating Member State Share of GGE of each Participating Member State for such Final Recipient Transaction;
- (iii) the total GGE of the Final Recipient Transaction.



- (g) in case the purpose of the Final Recipient Transaction is financing an investment in a tangible or intangible assets, the Intermediary shall procure that the Sub-Intermediary obtains confirmation of whether the Final Recipient has received or intends to receive other State Aid for the same investment. If, the Final Recipient confirms that it has received or intends to receive such aid for the same investment, the Intermediary shall procure that the Sub-Intermediary verifies compliance with the relevant provisions of the relevant De Minimis Regulation (in particular Article 5).



ANNEX A

Form of Temporary Framework Extension Notice

To: [Intermediary]
[Address]

From: The European Investment Fund

Date: [Date]

Dear Madam, Sir,

Re: EGF Counter-Guarantee Agreement with [•] (the "Intermediary") dated [•] (the "Counter-Guarantee Agreement") – Temporary Framework Extension Notice ("Notice")

Save as otherwise provided in this Temporary Framework Extension Notice, terms defined in the Counter-Guarantee Agreement shall have the same meaning when used in this Temporary Framework Extension Notice.

Following the amendment of the Commission Decision, we confirm the effectiveness of the changes to the terms of the Counter-Guarantee Agreement as stated in this Notice.

We confirm that the definition of Temporary Framework Availability Period End Date in the Counter-Guarantee Agreement shall be amended to [•]¹⁹.

[We confirm that the condition to effectiveness of Paragraphs 6(h)(ii)(B) and (D) Schedule 4 (State Aid) of the Counter-Guarantee Agreement has been fulfilled and the terms relating to maturity extensions in respect of Final Recipient Transactions under Paragraphs 6(h)(ii)(B) and (D) Schedule 4 (State Aid) of the Counter-Guarantee Agreement shall be effective as of the date of this Notice. For the avoidance of doubt, the condition under (1) Paragraph 6(h)(ii)(C) Schedule 4 (State Aid) relating to the inclusion of appropriate provisions in the legal documentation concerning the Final Recipient Transactions; and (2) Paragraph 6(h)(ii)(D) Schedule 4 (State Aid) relating to the inclusion of an undertaking in the legal documentation concerning the Sub-Operations, that have already been signed on the date of this Notice may be complied with by way of an amendment to such legal documentation.

We further confirm that the amounts for the purpose of the definition of "3.1 Maximum Aid Threshold" in Eligibility Criteria 1 of paragraph 2(b) of Schedule 4 (State Aid) shall be increased as follows;

- (a) for Final Recipients active in the primary production of agricultural products EUR 225,000;
- (b) for Final Recipients active in the fishery and aquaculture sector EUR 270,000;

¹⁹ Temporary Framework Availability Period End Date may not extend beyond 30 June 2022, unless there are subsequent extensions to the availability period of the EGF Decision issued by the Commission.



(c) for Final Recipients active in other sectors EUR 1,800,000.]

Yours faithfully,

The European Investment Fund



SCHEDULE 5
FORM OF REQUEST FOR MPV AND APV PERCENTAGE ADJUSTMENT
REQUEST

To: The European Investment Fund
37B, avenue J.F. Kennedy
L-2968 Luxembourg

From: [Intermediary]

Date: [Date]

Dear Madam, Sir,

Re: EGF Counter-Guarantee Agreement dated [•] with [•] (the "Intermediary") dated [•] (the "Counter-Guarantee Agreement") – MPV and APV Percentage Adjustment Request

Save as otherwise provided in this MPV and APV Percentage Adjustment Request, terms defined in the Counter-Guarantee Agreement shall have the same meanings when used in this MPV and APV Percentage Adjustment Request.

In accordance with Clause 6.3 (Adjustment to the Maximum Portfolio Volume and/or the APV Percentage and reset of the Agreed Portfolio Volume) of the Counter-Guarantee Agreement, by way of this MPV and APV Percentage Adjustment Request and with the effect from [insert date – such date may not in any case be before the date of this notice] or another date specified by the Counter-Guarantor in the MPV and APV Percentage Adjustment Notice, we hereby agree and request you to agree that:

- (a) [the Maximum Portfolio Volume be [increased/decreased] to the amount of [insert amount], as allowed under the Specific Terms; and that]
- (b) / [the APV Percentage is set at [•]% and that the Agreed Portfolio Volume is therefore re-calculated accordingly].

The Intermediary confirms to the EIF that all representations made by it pursuant Clause 13.1 (Representations of the Intermediary) of the Counter-Guarantee Agreement are true and accurate on the date of this MPV and APV Percentage Adjustment Request.

This MPV and APV Percentage Adjustment Request is irrevocable.

The provisions of Clause 29 (Governing Law and Jurisdiction) of the Counter-Guarantee Agreement apply mutatis mutandis to this MPV and APV Percentage Adjustment Request.

Yours faithfully

.....
for and on behalf of
[Intermediary]



SCHEDULE 6
FORM OF NOTICE FOR MPV AND APV PERCENTAGE ADJUSTMENT NOTICE

To: [Intermediary]
[Address]

From: The European Investment Fund

Date: [Date]

Dear Madam, Sir,

Re: EGF Counter-Guarantee Agreement with [•] (the "Intermediary") dated [•] (the "Counter-Guarantee Agreement") – MPV and APV Percentage Adjustment Notice

Save as otherwise provided in this MPV and APV Percentage Adjustment Notice, terms defined in the Counter-Guarantee Agreement shall have the same meaning when used in this MPV and APV Percentage Adjustment Notice.

We acknowledge receipt of the MPV and APV Percentage Adjustment Request dated [date].

[We confirm that the Maximum Portfolio Volume will be [increased/decreased] to [•] and the APV Percentage is set at [•]% and the Agreed Portfolio Volume is therefore re-calculated accordingly, both with effect from (and including) [•], in accordance with the provisions of Clause 6.3 (Adjustment to the Maximum Portfolio Volume and/or the APV Percentage and reset of the Agreed Portfolio Volume) of the Counter-Guarantee Agreement].

[We further note that, henceforth, for the purpose of the Portfolio Eligibility Criteria set out in Paragraph 1 of the definition of "Additional Eligibility Criteria" in section 14 (Clause 4 (Eligibility Criteria)) of the Specific Terms, the aggregate initial principal amount guaranteed under all Covered Sub-Operations covering Final Recipient Transactions entered into with Final Recipients that are Small Mid-Caps shall not exceed [specify amount].]²⁰

OR:

[Your proposal to [increase/decrease] the Maximum Portfolio Volume has been rejected.]

Yours faithfully,

.....
The European Investment Fund

²⁰ Applicable if Final Recipient Transactions entered into with Small Mid-Caps are eligible for inclusion in the Portfolio.



**SCHEDULE 7
FORM OF INCLUSION NOTICE**

To: **The European Investment Fund**
37B avenue J.F. Kennedy
L-2968 Luxembourg

Attention: [EGF Counter-Guarantee Agreement]

From: **[Intermediary]**

[Date]

Dear Sir, Madam,

Re: EGF Counter-Guarantee Agreement dated [•] (the "Counter-Guarantee Agreement") – Inclusion Notice

Save as otherwise provided in this Inclusion Notice, terms defined in the Counter-Guarantee Agreement shall have the same meanings when used in this Inclusion Notice.

We herewith notify you that [we have entered into the Sub-Operation(s) set out in the Report sent to you on the same date as this Inclusion Notice which comply with all Eligibility Criteria and, in accordance with [Clause 5.1 (Inclusion Process)] OR [Clause 6.2 (Replacement)] of the Counter-Guarantee Agreement, we request you to include such Sub-Operation(s) in the Portfolio.]

The aggregate original principal amount of the Sub-Operation(s) we request you to include is [•]. Following inclusion in the Portfolio of these Sub-Operations, the Actual Portfolio Volume will be [•], and the number of Sub-Operations included within the Portfolio will be [•].

We represent that all the conditions listed in the Counter-Guarantee Agreement (including the Specific Terms or other Schedules) are fulfilled on the date of this Inclusion Notice.

Yours faithfully

.....
for and on behalf of
[Intermediary]

Cc.1:

Report



**SCHEDULE 7A
FORM OF REPORT**

Table A1 - Final Recipients

A.1.1. Fiscal number <i>Mandatory</i>	A.1.2. Final Recipient name <i>Mandatory</i>	A.1.3. Final Recipient National ID Type <i>Mandatory</i>	A.1.4. Postal Code <i>Mandatory</i>	A.1.5. Region (NUTS code) <i>Mandatory</i>	A.1.6. Country <i>Mandatory</i>	A.1.7. Date of establishment <i>Mandatory</i>	A.1.8. Sector (NACE code) <i>Mandatory</i>	A.1.9. Number of employees <i>Mandatory</i>	A.1.10. Total turnover (EUR) <i>Mandatory</i>	A.1.11. Total assets (EUR) <i>Mandatory</i>	A.1.12. Is the Final Recipient part of a group? <i>Mandatory</i>
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A.1.13 Type of enterprise (SME / SMC) <i>Mandatory</i>	A.1.14 Natural person (Y/N) <i>Mandatory</i>	A.1.15 Publication (Y/N) <i>Mandatory, if natural person</i>	Comments <i>Optional</i>
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Table A2 - New Final Recipient Transactions

A.1.1. Fiscal number <i>Mandatory</i>	A.2.1. Transaction reference <i>Mandatory</i>	A.2.2. Transaction type <i>Mandatory</i>	A.2.3. Transaction currency <i>Mandatory</i>	A.2.4. Transaction purpose <i>Mandatory</i>	A.2.5. Transaction principal amount <i>Mandatory</i>	A.2.5.1 Purchase price <i>Mandatory if Lease</i>	A.2.5.2. Down payment <i>Mandatory if Lease</i>	A.2.6. Transaction maturity (months) <i>Mandatory</i>	A.2.6.1. Grace period (months) <i>Mandatory</i>	A.2.7. Transaction signature date <i>Mandatory</i>	A.2.8. Amortisation profile <i>Mandatory</i>
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A.2.9.	A.2.10	A.2.10.1.	A.2.11	A.2.12.	A.2.12.1.	A.2.13.	A.2.14.	A.2.14.1.	A.2.15.	A.2.15.1.	A.2.16.
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Repayment frequency <i>Mandatory</i>	Reference rate <i>Mandatory, if available</i>	Interest rate / margin over Reference rate <i>Mandatory, if available</i>	Investment location (Country) <i>Mandatory</i>	Fee <i>Mandatory, if applicable and available</i>	Period for fee calculation <i>Mandatory, if applicable and available</i>	Loss Given Default <i>Mandatory, if available</i>	Value of Collateral <i>Mandatory, if available</i>	Main type of collateral <i>Mandatory, if applicable and available</i>	State aid Framework <i>Mandatory</i>	Gross Grant Equivalent amount <i>Mandatory, if applicable</i>	Green policy relevance <i>Mandatory, if applicable</i>	Comments <i>Optional</i>
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Table A3 – Financial Intermediary Guarantee

A.1.1. Fiscal number <i>Mandatory</i>	A.2.1. Transaction reference <i>Mandatory</i>	A.3.1. Sub-operation guarantee amount <i>Mandatory</i>	A.3.2. Sub-operation guarantee rate <i>Mandatory</i>	A.3.3. Sub-operation signature date <i>Mandatory</i>	A.3.4. Guarantee Fee <i>Mandatory, if available</i>	A.3.5. Period for guarantee fee calculation <i>Mandatory, if available</i>	A.3.6. Sub-operation maturity date <i>Mandatory</i>	A.3.7. Sub-Intermediary name <i>Mandatory</i>	A.3.8. Sub-Intermediary address <i>Mandatory</i>	A.3.9. Sub-Intermediary Postal Code <i>Mandatory</i>	A.3.10. Sub-Intermediary Place <i>Mandatory</i>	Comments <i>Optional</i>
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Table B - Included transactions

A.1.1. Fiscal number <i>Mandatory</i>	A.2.1. Transaction reference <i>Mandatory</i>	B.1. Final Recipient rating / scoring <i>Mandatory, if applicable and available</i>	B.2. Final Recipient rating / scoring model used <i>Mandatory, if applicable and available</i>	B.3. Final Recipient rating / scoring date <i>Mandatory, if applicable and available</i>	B.4. Cumulated disbursed principal amount <i>Mandatory</i>	B.5. Transaction outstanding principal amount <i>Mandatory</i>	B.6. End of disbursement period <i>Mandatory</i>	B.7. Sum of daily outstanding principal amount (performing) <i>Mandatory</i>	B.8. Delinquent Final Recipient Transaction <i>Mandatory, if available</i>	B.9. Delinquent period (nbr days) <i>Mandatory, if applicable and available</i>	B.10. Defaulted Final Recipient Transaction (Y/N) <i>Mandatory</i>
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B.11.	B.12.1	B.12.2	B.13.
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Event date / Date of Defaulted Final Recipient Transaction <i>Mandatory, if applicable</i>	Upside (amount) <i>Mandatory for subordinated debt</i>	Upside realised (Y/N) <i>Mandatory for subordinated debt</i>	Moratorium (Y/N) <i>Mandatory</i>
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Table D - Expired/repaid transactions

A.1.1. Fiscal number <i>Mandatory</i>	A.2.1. Transaction reference <i>Mandatory</i>	D.1. Repayment /expiry date <i>Mandatory</i>
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Table E - EXCLUDED FINAL RECIPIENT TRANSACTIONS

A.1.1. Fiscal number <i>Mandatory</i>	A.2.1. Transaction reference <i>Mandatory</i>	E.1. Exclusion date <i>Mandatory</i>	E.2. Event type <i>Mandatory</i>
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Table F - MODIFICATIONS A1

1. Final Recipient ID modification

A.1.1. Fiscal number <i>Mandatory</i>	A.1.6. Country <i>Mandatory</i>	F.1.1 New fiscal number <i>Mandatory</i>
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2. Modification of other fields from A1

A.1.1. Fiscal number <i>Mandatory</i>	A.1.6. Country <i>Mandatory</i>	F.1 Reference field name with OLD value <i>Mandatory</i>	F.2 Reference field name with NEW value <i>Mandatory</i>
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PART F - MODIFICATIONS A2

1. Final Recipient Transaction ID modification

A.1.1. Fiscal number <i>Mandatory</i>	A.2.1. Transaction reference <i>Mandatory</i>	F.2.1 New transaction reference <i>Mandatory</i>
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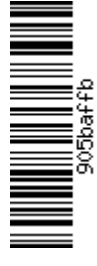
2. Modification of other fields from A2

A.1.1 Fiscal number <i>Mandatory</i>	A.2.1 Transaction reference <i>Mandatory</i>	F.1 Reference field name with OLD value <i>Mandatory</i>	F.2 Reference field name with NEW value <i>Mandatory</i>
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F.1 is any value previously reported in any field of a given quarterly report i.e. values of fields in Part A1, A2, B, C, D, E

F.2 is the new value to be used to replace the previous reported data i.e. F.1





**SCHEDULE 8
FORM OF EXCLUSION NOTICE**

To: **Intermediary**

From: **The European Investment Fund**
37B avenue J.F. Kennedy
L-2968 Luxembourg

[Date]

Dear Sir, Madam,

Re: EGF Counter-Guarantee Agreement dated [•] (the "Counter-Guarantee Agreement") – Exclusion Notice

Save as otherwise provided in this Exclusion Notice, terms defined in the Counter-Guarantee Agreement shall have the same meanings when used in this Exclusion Notice.

We herewith notify you that the following Sub-Operation(s) are excluded from the Portfolio:

[description of the Sub-Operation] (the "**Excluded Sub-Operation(s)**")

and, in accordance with Clause 5.2 (Exclusion Process) of the Counter-Guarantee Agreement, we hereby inform you that the Excluded Sub-Operation(s) [is] [are] excluded from the benefit of the Counter-Guarantee.

The aggregate original principal amount of Excluded Sub-Operations is [•].

[additional instructions to be inserted]

[[Pursuant to Clause 10 (Right of Clawback) of the Counter-Guarantee Agreement, we hereby require you to repay to us within ten (10) Business Days of the date of this Exclusion Notice any payment made under the Payment Demand dated [•] and made by the EIF on [•] in relation to the Excluded Sub-Operation(s)].

[OR]

Pursuant to Clause 10 (Right of Clawback) of the Counter-Guarantee Agreement, the Counter-Guarantor is entitled to request the repayment of any amounts paid by it in relation to the Excluded Sub-Operations (as defined in this Exclusion Notice), together with any interest. The Counter-Guarantor will communicate any clawback amount to be paid by the Intermediary in a separate notice. The payment of the clawback amount shall be made by the Intermediary in accordance with the provisions of Clause 10 (Right of Clawback) of the Counter-Guarantee Agreement.].]

Yours faithfully

.....
for and on behalf of
the European Investment Fund



**SCHEDULE 9
FORM OF PAYMENT DEMAND**

To: **The European Investment Fund**
37B avenue J.F. Kennedy
L-2968 Luxembourg

Attention: [EGF Counter-Guarantee Agreement]

From: **[Intermediary]**

[Date]

Dear Sir, Madam,

Re: EGF Counter-Guarantee Agreement dated [•] (the "Counter-Guarantee Agreement") – Payment Demand

Save as otherwise provided in this Payment Demand, terms defined in the Counter-Guarantee Agreement shall have the same meanings when used in this Payment Demand.

We herewith notify you that we have suffered a [Defaulted Amount] [and have recovered or received Recoveries] related to the Covered Sub-Operation(s) detailed in the Payment Demand Schedule [[we attach hereto] / [we have sent to you via email] and that, in accordance with Clause 7 (Payment Demands) of the Counter-Guarantee Agreement, we request you to pay an amount of [•] (the "**Amount**") to the credit of the following bank account [IBAN format and SWIFT Code to be inserted].

We hereby certify that each Covered Sub-Operations to which this Payment Demand relates complies with the Eligibility Criteria and all other applicable terms of the Counter-Guarantee Agreement.

[[We attach hereto] / [we have sent to you via email] the Payment Demand Schedule.

We hereby certify compliance of this Payment Demand with all requirements of Clause 7 (Payment Demands) of the Counter-Guarantee Agreement. We hereby represent that we have good title to each of the Covered Sub-Operations to which this Payment Demand relates and that each such Covered Sub-Operation is free and clear of any Security on such date. We hereby represent that no Event of Default or Potential Event of Default has occurred and is continuing.

Yours faithfully

.....
for and on behalf of
[Intermediary]



**SCHEDULE 9A
FORM OF PAYMENT DEMAND SCHEDULE**

PART C - PAYMENT DEMAND

A.1.1	A.2.1	A.2.3	C.1	C.2	C.3	C.4
Fiscal number	Transaction reference	Transaction currency	Event date	Event type	Defaulted principal amount	Defaulted interest covered
Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory

C.6	C.7	C.8.	C.9
Recovery date	Recovery amount	Payment Date	Financial Intermediary covered amount
Mandatory, if applicable	Mandatory, if applicable	Mandatory	Mandatory



**SCHEDULE 10
FORM OF RECOVERIES NOTICE**

To: **The European Investment Fund**
37B avenue J.F. Kennedy
L-2968 Luxembourg

Attention: [EGF Counter-Guarantee Agreement]

From: **[Intermediary]**

[Date]

Dear Sir, Madam,

Re: EGF Counter-Guarantee Agreement dated [•] (the "Counter-Guarantee Agreement") – Recoveries Notice

Save as otherwise provided in this notice, terms defined in the Counter-Guarantee Agreement shall have the same meanings when used in this notice.

Under Clause 11 (Recoveries) of the Counter-Guarantee Agreement the Counter-Guarantor is entitled to a percentage of each Recovery equal to the Counter-Guarantee Rate on a pari passu basis with the Intermediary.

The Intermediary has recovered up to [specify amount] with respect to the attached defaulted Sub-Operations (Schedule 10A).

EIF is entitled to receive an amount of [specify amount in Base Currency or Additional Currency] which is equal to [specify the applicable Counter-Guarantee Rate]% of the aggregate Recoveries.

Payment to EIF will be made in the Base Currency or the Additional Currency to the following EIF account [specify account number] in accordance with the Counter-Guarantee Agreement.

This payment is made under Clause 11 (Recoveries) of the Counter-Guarantee Agreement.

Yours faithfully

.....
for and on behalf of
[Intermediary]



**SCHEDULE 10A
FORM OF RECOVERIES SCHEDULE**

PART R - LOSS RECOVERIES

A.1.1	A.2.1	C.5	C.6	C.7
Fiscal number	Transaction reference	Recovery payment currency	Recovery date	Recovery amount
Mandatory	Mandatory	Mandatory	Mandatory	Mandatory



SCHEDULE 11
EIB GROUP EXCLUDED SECTORS

1. Production or activities involving harmful or exploitative forms of forced labour²¹ /harmful child labour²².
2. Production or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and agreements.
3. Any business relating to pornography or prostitution.
4. Production or trade in wildlife or wildlife products regulated under the Convention on International Trade in Endangered Species or Wild Fauna and Flora (CITES).
5. Production or use of or trade in hazardous materials such as radioactive materials (except for medical isotopes and materials for diagnostics and treatment in healthcare provision), unbounded asbestos fibres and products containing PCBs²³.
6. Cross-border trade in waste and waste products unless compliant with the Basel Convention and the underlying national and EU regulations but for the avoidance of doubt, use of waste as a fuel in district heating is not excluded.
7. Unsustainable fishing methods (i.e. drift net fishing in the marine environment using nets in excess of 2.5 km in length and blast fishing).
8. Production or trade in pharmaceuticals, pesticides/herbicides, chemicals, ozone depleting substances²⁴ and other hazardous substances subject to international phase-outs or bans.
9. Destruction of Critical Habitats²⁵.

²¹ Forced labour means all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty

²² Harmful child labour means the employment of children that is economically exploitive, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health, or physical, mental, moral or social development. In addition any labour that is performed by a person which has not yet reached the age of 15 is considered to be harmful, unless the local legislation specifies compulsory school attendance or the minimum age for working to be higher; in such cases, the higher age will be applied for defining harmful child labour.

²³ Polychlorinated biphenyls

²⁴ Ozone Depleting Substances: Chemical compounds, which react with and delete stratospheric ozone, resulting in "holes in the ozone layer". The Montreal Protocol lists ODS and their target reduction and phase-out dates.

²⁵ Critical habitat is a subset of both natural and modified habitat that deserves particular attention. Critical habitat includes areas with high biodiversity value that meet the criteria of the World Conservation Union ("IUCN") classification, including habitat required for the survival of critically endangered or endangered species as defined by the IUCN Red List of Threatened Species or as defined in any national legislation; areas having special significance for endemic or restricted-range species; sites that are critical for the survival of migratory species; areas supporting globally significant concentrations or numbers of individuals of congregatory species; areas with unique assemblages of species or which are associated with key evolutionary processes or provide key ecosystem services; and areas having biodiversity of significant social, economic or cultural importance to local communities. Primary Forest or forests of High Conservation Value shall be considered Critical Habitats. For the purpose of this Agreement, the environment and social requirements attached hereto are understood and agreed to provide reasonable and satisfactory assurance of the avoidance of destruction of critical habitat.



10. Production and distribution of racist, anti-democratic and/or neo-Nazi media.
11. Tobacco, if it forms a substantial part of the Final Recipient's primary financed business activities²⁶ or a substantial part of the EGF Final Recipient Transaction.
12. Live animals for scientific and experimental purposes, including the breeding of these animals, unless in compliance with the EU Directive 2010/63/EU as amended by Regulation (EU) 2019/1010 of the European Parliament and of the Council on the protection of animals used for scientific purposes.
13. Ammunition and weapons, military/police equipment, infrastructure or correctional facilities, prisons²⁷.
14. Gambling, casinos and equivalent enterprises or hotels hosting such facilities.
15. Commercial concessions over, and logging on, tropical natural forest; conversion of natural forest into a plantation.
16. Purchase of logging equipment for use in tropical natural forests or high nature value forest in all regions; and activities that lead to clear cutting and/or degradation of tropical natural forests or high nature value forest.
17. New palm oil plantations.
18. Any business with a political or religious content.

²⁶ A benchmark for substantial is 5-10% of the balance sheet or the financed volume or sales revenues of the promoter.

²⁷ Such activities are fully excluded from EIB support in all countries other than EU member states. In the EU, excluded activities relating to defence, public order and safety are limited to production (or construction) of, distribution (or processing) of, and trade in weapons, ammunition, explosives, equipment or infrastructures specifically designed for military use, and equipment or infrastructure which result in limiting people's individual rights and freedom (i.e. prisons, detention centres of any form) or in violation of human rights.



**SCHEDULE 12
REPRESENTATIONS****PART I
REPRESENTATIONS OF THE INTERMEDIARY****(a) Status**

- (i) It is duly incorporated and validly existing under the law of its jurisdiction of incorporation (which is set out in the Specific Terms).
- (ii) It has the power to own its assets and carry on its business as it is being conducted.
- (iii) It is a financial institution or credit institution or special purpose vehicle or debt fund duly authorised, if applicable, to issue guarantees and/or counter-guarantees according to the applicable legislation.

(b) Exclusion Situations

It is not, to the best of its knowledge, in an Exclusion Situation.

(c) Non-Compliant Jurisdictions

It is not incorporated or established in a Non-Compliant Jurisdiction, unless in case of NCJ Implementation. In case the status of a jurisdiction changes after the Effective Date, such change in status shall not be applicable to this representation.

(d) Binding obligations

The obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations in accordance with their terms.

(e) Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, this Agreement do not and will not conflict with:

- (i) any law or regulation (including any of its licenses or permits issued by any of the regulatory authorities of its place(s) of business), or judicial or official order, applicable to it;
- (ii) its constitutional documents; or
- (iii) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.



(f) **Power and authority**

It has the power to enter into and perform and has taken all necessary action to authorise its entry into and performance of, this Agreement and the transactions contemplated by this Agreement.

(g) **Authorisations**

(i) All authorisations required or desirable:

- (1) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Agreement; and
- (2) to make this Agreement admissible in evidence in its jurisdiction of incorporation or, as the case may be, of establishment,

have been obtained or effected and are in full force and effect.

(ii) All authorisations necessary for the conduct of the business, trade and ordinary activities of the Intermediary under any applicable law, including, as the case may be, for issuing guarantees and/or counter-guarantees, guaranteeing, lending, factoring or leasing activities, have been obtained or effected and are in full force and effect.

(h) **No filing or stamp taxes**

Under the law of its jurisdiction of incorporation or, as the case may be, of establishment, it is not necessary that the Agreement be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Agreement or the transactions contemplated by the Agreement.

(i) **No default**

(i) No Event of Default or Potential Event of Default with respect to it is continuing or might reasonably be expected to result from the entering into this Agreement.

(ii) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or to which its assets are subject which might have a Material Adverse Effect.

(j) **No misleading information**

(i) All information (including any factual information) provided by it for the purposes of or pursuant to this Agreement (including any information provided before the Effective Date) was true and accurate as at the date it was provided or as at the date (if any) at which it is stated.

(ii) Nothing has occurred or been omitted from the information referred to in paragraph (i) above and no information has been given or knowingly withheld that results in that information being untrue or misleading.



(k) **Governing law and enforcement**

- (i) The choice of Luxembourg law as the governing law of this Agreement will be recognised and enforced in its jurisdiction of incorporation or, as the case may be, of establishment.
- (ii) Any judgment given by the courts of Luxembourg in relation to this Agreement will be recognised and enforced in its jurisdiction of incorporation or, as the case may be, of establishment.

(l) **Proceedings**

No litigation, arbitration or administrative proceedings or investigations of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have, to its knowledge, been started or threatened against it.

(m) **Good faith**

It has entered into this Agreement in good faith.

(n) **Illegal Activities**

It is not engaged in any Illegal Activities according to the applicable legislation, and to the best of its knowledge, no Illegal Activities have occurred in connection with the Counter-Guarantee.

(o) **EIB Group Excluded Sectors**

Its business does not focus on one or more of the EIB Group Excluded Sectors.

(p) **Geography of operation**

It operates in one or more Participating Member States.

(q) **Geography of incorporation**

It is incorporated or established in an EU Member State.

(r) **HPTR**

It does not benefit from any HPTR.

(s) **Sub-Operations**

The documents governing the Covered Sub-Operations are legal, valid and binding and enforceable under applicable law.



PART II
REPRESENTATIONS OF THE COUNTER-GUARANTOR

(a) **Status**

- (i) It enjoys legal personality and is governed by its own statutes; and
- (ii) It has the power to own its assets and carry on its business as it is being conducted.

(b) **Binding obligations**

The obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations.

(c) **Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, this Agreement do not and will not conflict:

- (i) with any law or regulation applicable to it;
- (ii) with its constitutional documents; or
- (iii) in any material respect, with any agreement or instrument binding upon it or any of its assets.

(d) **Power and authority**

It has the power to enter into and perform the Agreement and has taken all necessary action to authorise its entry into and performance of this Agreement to which it is a party and the transactions contemplated by this Agreement.

(e) **Authorisations**

All authorisations required or desirable to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Agreement have been obtained or effected and are in full force and effect.

(f) **No default**

- (i) No Event of Default or Potential Event of Default with respect to it is continuing or might reasonably be expected to result from the entering into this Agreement.
- (ii) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or to which its assets are subject which might have a Material Adverse Effect.



(g) **No misleading information**

- (i) Any factual information provided by it for the purposes of this Agreement was true and accurate as at the date it was provided or as at the date (if any) at which it is stated.
- (ii) Nothing has occurred or been omitted from the factual information referred to in paragraph (i) above and no information has been given or knowingly withheld that results in that information being untrue or misleading.

(h) **Good faith**

It has entered into this Agreement in good faith.

(i) **Proceedings**

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened against it.



SCHEDULE 13
INFORMATION UNDERTAKINGS

(a) **General**

Without prejudice to the other provisions of this Agreement, the Intermediary shall promptly supply to the Counter-Guarantor any information that the Counter-Guarantor may reasonably require:

- (i) in order to verify compliance with this Agreement (including the due diligence steps taken by the Intermediary pursuant to Clause 5.1 (Inclusion Process)) or any other requirement under the laws and regulations governing the EGF Guarantee Instrument or the lack of fraud; or
- (ii) in order to verify the origination and performance of the Portfolio and any Covered Sub-Operations from time to time; or
- (iii) in the context of customer due diligence matters, including, without limitation, to comply with "know your customer" or similar identification procedures under applicable laws.

(b) **Evaluation**

- (i) Subject to applicable laws, the Intermediary shall produce all relevant documentation related to the implementation of the Counter-Guarantee Agreement reasonably requested by the Counter-Guarantor.
- (ii) The Intermediary undertakes to include in the legal documentation concerning each Sub-Operation an undertaking by the relevant Sub-Intermediary (A) to cooperate in any evaluation mentioned in paragraph (b)(i) above and (B) include in the legal documentation concerning each relevant Final Recipient Transaction an undertaking by the relevant Final Recipient to cooperate in any evaluation mentioned in paragraph (b)(i) above.

(c) **Authorised Persons**

Notwithstanding anything in Clause 5.1 (Inclusion Process) the Intermediary shall not be allowed to include any Sub-Operation in the Portfolio until the Counter-Guarantor has received:

- (i) evidence of the authority of each person who, on behalf of the Intermediary, signed this Agreement, together with specimen signatures, as further specified in Schedule 1 (Specific Terms); and
- (ii) a list of persons with authority to sign Payment Demands and other notices and requests under this Agreement and otherwise to act as the Intermediary's representative in the performance of this Agreement (each, an "**Authorised Person**"), together with evidence of such authority and specimen signatures.

In the event of any change in the identity of the Authorised Persons, the Intermediary shall promptly send the Counter-Guarantor an updated list, together with evidence of authority and specimen signatures.



(d) **"Know Your Customer" Checks**

- (i) The Intermediary shall, prior to the Effective Date, disclose to the EIF information on its Beneficial Ownership and at any time thereafter, promptly inform the Counter-Guarantor of any change in its Beneficial Ownership. The Intermediary shall not be allowed to include any Sub-Operations in the Portfolio until EIF has received any documentation and other evidence (including an English translation of such documentation and other evidence if deemed necessary by the EIF) reasonably requested by the EIF on or prior to the Effective Date, in order for the EIF to carry out all necessary "know your customer" or similar identification procedures.
- (ii) If:
- (A) the implementation or introduction of or any change in (or in the interpretation, administration or application of) any law or regulation after the date of this Agreement;
 - (B) any change in the status of the Intermediary or any change in its Beneficial Ownership or the composition of the shareholders of the Intermediary after the date of this Agreement; or
 - (C) a proposed assignment or transfer by the Counter-Guarantor of any of its rights or obligations under this Agreement prior to such assignment or transfer,

obliges the Counter-Guarantor (or any potential transferee) to comply with "know your customer" or similar identification procedures (whether those procedures are applied voluntarily by the Counter-Guarantor or pursuant to any applicable law or regulation) in circumstances where the necessary information is not already available to the Counter-Guarantor, the Intermediary shall promptly upon the request of the Counter-Guarantor supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Counter-Guarantor (for itself or on behalf of any prospective new Counter-Guarantor) in order for the Counter-Guarantor or any prospective new Counter-Guarantor to carry out and be satisfied with the results of all necessary "Know Your Customer" or other checks in relation to any relevant person pursuant to the transaction contemplated in this Agreement.

(iii) The Intermediary shall

- (A) comply with "know your customer" and general compliance procedures pursuant to any applicable law or regulation and in accordance with the 4th and 5th AML Directives (as transposed and applicable to the Intermediary in the jurisdiction of the Intermediary) in respect of each Sub-Intermediary, and
- (B) procure that the Sub-Intermediaries comply with "know your customer" and general compliance procedures pursuant to any applicable law or regulation and in accordance with the 4th and 5th



AML Directives (as transposed and applicable to the Sub-Intermediary in the jurisdiction of the Sub-Intermediary) in respect of each Final Recipient

- (iv) The Intermediary shall
 - (A) ensure that in the legal documentation relating to a Sub-Operation, the Sub-Intermediary undertakes to inform the Intermediary immediately of any change in the Beneficial Ownership of the Sub-Intermediary after the date of the Sub-Operation, and
 - (B) procure that the Sub-Intermediary ensures that in the legal documentation relating to a Final Recipient Transaction, the Final Recipient undertakes to inform the Sub-Intermediary immediately of any change in the Beneficial Ownership of the Final Recipient after the date of the Final Recipient Transaction.
- (v) The Intermediary shall deliver to the Counter-Guarantor, within a reasonable time, any such information or further document concerning customer due diligence matters of the Sub-Intermediary and/or the Final Recipients as the Counter-Guarantor may reasonably require.

(e) **Illegal Activities**

To the extent permitted by applicable law, the Intermediary shall:

- (i) inform the Counter-Guarantor promptly upon becoming aware of a genuine allegation, complaint or information with regard to Illegal Activities related to the Counter-Guarantee or any Sub-Operation or Final Recipient Transaction and consult with the Counter-Guarantor in good faith regarding appropriate actions in relation to such genuine allegation, complaint or information; and
- (ii) procure that the Sub-Intermediaries undertake to inform the Intermediary promptly upon becoming aware of a genuine allegation, complaint or information with regard to Illegal Activities related to any Sub-Operation or Final Recipient Transaction and consult with the Intermediary in good faith regarding appropriate actions in relation to such genuine allegation, complaint or information.



**SCHEDULE 14
GENERAL UNDERTAKINGS**

1. Visibility and promotion

- (a) The Intermediary shall use all reasonable efforts to carry out marketing and publicity campaigns, including through its website or alternative ways of communication, aimed at making EGF and the EGF Guarantee Instrument known to Final Recipients in the Relevant Jurisdiction.
- (b) The Intermediary shall ensure, and shall procure that the relevant Sub-Intermediaries undertake, that any transaction application, document evidencing a Sub-Operation and the underlying Final Recipient Transaction such as the agreement governing such Sub-Operation and the underlying Final Recipient Transaction, and any press release or publication the Intermediary or the Sub-Intermediary may choose to make on its website and any alternative means of communication with regard to the Counter-Guarantee or a Sub-Operation will contain appropriate acknowledgement of the financial support provided by the Counter-Guarantor through the EGF and include the following wording (or the relevant translation set out in the Specific Terms):

"[Sub-Operation/Final Recipient Transaction] benefits from support by the EGF Guarantee Instrument, implemented by the European Investment Fund with the financial backing of the Member States contributing to the EGF".

- (c) The Intermediary agrees that, (i) the Counter-Guarantor (ii) the EIB or (iii) the Commission shall be entitled to publish on their website information on Intermediaries, Sub-Intermediaries and Final Recipients supported under the Counter-Guarantee including (i) the name, nature and purpose of the Sub-Operation and the underlying Final Recipient Transaction; (ii) the name and address of the Intermediary, and the type and amount of financial support received; (iii) the name and address of the Sub-Intermediary, and the type and amount of financial support received; (iv) the name, country of establishment of each Final Recipient and the region at NUTS 2 level, and the type of financial support received; except if:
- (i) with respect to the Intermediary, (1) it would be illegal under the applicable laws and regulations, or (2) prior to receiving financial support under the Counter-Guarantee, the Intermediary informs the Counter-Guarantor in writing that:
- (a) the publication requirement risks harming its commercial interests; or
- (b) it risks threatening the rights and freedoms of individuals concerned as protected by the Charter of Fundamental Rights of the European Union;



- (ii) with respect to Sub-Intermediaries, (1) if it would be illegal under the applicable laws and regulations, or (2) prior to receiving financial support under the Sub-Operation, the Sub-Intermediary informs the Intermediary in writing that:
 - (a) the publication requirement risks harming its commercial interests, or
 - (b) it risks threatening the rights and freedoms of individuals concerned as protected by the Charter of Fundamental Rights of the European Union; and
- (iii) with respect to Final Recipients,
 - (a) the Aid Amount of the Final Recipient Transaction (in relation to Final Recipient Transactions subject to the EGF Regime by analogy to Section 3.1 or Final Recipient Transactions subject to the EGF Regime by analogy to Section 3.2) is lower than EUR 100,000 (EUR 10,000 in the case of Final Recipients active in agricultural and fisheries sector) (in which case the information published shall be limited to statistical data, aggregated in accordance with relevant criteria, such as geographical situation, economic typology of Final Recipient, type of support received and the EU policy area under which such support was provided),
 - (b) prior to receiving financial support under the Final Recipient Transaction, the Final Recipient informs the Sub-Intermediary in writing that the Final Recipient is a natural person who objects to publication.
- (d) The Intermediary undertakes to procure that the legal documentation concerning each Sub-Operation and the underlying Final Recipient Transaction include an acknowledgment from each Sub-Intermediary and Final Recipient that the information set out in paragraph (c) above may be published and released.

2. Reporting

(a) Quarterly Report

Subject to Clause 17.2 (Early Termination), from the Effective Date until the expiry or termination of this Agreement, the Intermediary shall send a Report, including among others, information on the Covered Sub-Operations, the underlying Final Recipient Transactions, Sub-Intermediaries and Final Recipients covered by the Counter-Guarantee, and relevant amounts outstanding and all data necessary for State Aid reporting and transparency purposes to the Counter-Guarantor by not later than each Report Date. The Intermediary shall send each Report to the Counter-Guarantor via email at the Relevant EIF Address.



(b) Other Reporting Obligations

The Intermediary shall promptly supply any other document or report which is reasonably requested by the Counter-Guarantor to enable the Counter-Guarantor to comply with its reporting obligations and other legal or regulatory requirements vis-à-vis the Commission, the EIB, the Participating Member States and the Contributors' Committee or otherwise.

3. Monitoring and Audit

- (a) The Counter-Guarantor is not bound to monitor or verify, and shall not be responsible for monitoring or verifying, the use of any amounts guaranteed or granted by the Intermediary or Sub-Intermediary to the Final Recipients or utilised from time to time by the Final Recipients, in each case, under Final Recipient Transactions covered by Sub-Operations. Notwithstanding this, the Counter-Guarantor may, at any time, request information and documentation (including all the documents required to assess the Eligibility Criteria) from the Intermediary to enable the Counter-Guarantor to verify whether a Sub-Operation is an Eligible Sub-Operation, its inclusion in the Portfolio is in compliance with the terms of this Agreement and the Intermediary's compliance with the Relevant State Aid Regime. Subject to applicable laws, the Intermediary shall supply to the Counter-Guarantor (including by requesting the relevant information from the relevant Sub-Intermediary) any such information and documentation requested by the Counter-Guarantor (also in electronic form if so requested by the Counter-Guarantor). The Intermediary undertakes to ensure that each Sub-Intermediary agrees to be bound by similar provisions in the documents relating to the Covered Sub-Operation.
- (b) To enable the monitoring, control and auditing of the correct use of the Counter-Guarantee and compliance with the provisions of this Agreement, subject to applicable laws, the Intermediary acknowledges and agrees and shall procure that each Sub-Intermediary acknowledges and agrees that each of the Relevant Parties shall have the right to carry out audits and controls and to request information in respect of this Agreement and its execution and implementation. Subject to applicable laws, the Intermediary shall and undertakes to procure that each Sub-Intermediary will undertake to:
- i. permit remote monitoring and monitoring visits and inspections by each of the Relevant Parties of their business operations, books and records which are in connection with this Agreement or its execution and implementation;
 - ii. allow interviews conducted by each of the Relevant Parties of their representatives and not obstruct contacts with representatives or any other person involved in the Counter-Guarantee;
 - iii. permit the Relevant Parties to conduct on the spot audits and checks and for this purpose the Intermediary shall permit and shall procure that each Sub-Intermediary permits access to its premises during normal business hours;
 - iv. permit and shall procure that each Sub-Intermediary permits review of the



Intermediary's or the Sub-Intermediary's, respectively, books and records in relation to the Agreement and to take copies of these and related documents to the extent permitted by applicable law and as may be required.

- (c) The Intermediary further undertakes to include in the legal documentation concerning each Covered Sub-Operation and undertakes to procure that any Sub-Intermediary includes, in the legal documentation concerning each Final Recipient Transaction included in the Portfolio:
- i. the exact wording as follows or the relevant translation set out in Schedule 1:
- “The [counterparty] acknowledges and agrees that the European Court of Auditors (“ECA”), the representatives and advisors of the Participating Member States, the European Anti-Fraud Office (“OLAF”), European Investment Fund (the “EIF”), the European Investment Bank (“EIB”), the agents of the EIF or any other person designated by the EIF or the EIB, the Commission, the agents of the Commission (including OLAF), the European Public Prosecutor’s Office (“EPPO”), any other European Union institution or European Union body which is entitled to verify the use of the Counter-Guarantee in the context of the EGF Guarantee Instrument and any other relevant national authorities and their representatives, or other competent national court of auditors or duly authorised body or institution under applicable law which is entitled to carry out audit or control activities (collectively, the “Relevant Parties”) shall have the right to carry out audits and controls and to request information in respect of this agreement and its execution. Subject to applicable laws, the [counterparty] shall:
- a. permit remote monitoring and monitoring visits and inspections by each of the Relevant Parties of its business operations, books and records;
- b. allow interviews conducted by each of the Relevant Parties of its representatives and not obstruct contacts with representatives or any other person involved in the EGF Guarantee Instrument;
- c. permit the Relevant Parties to conduct on the spot audits and checks and for this purpose shall permit access to its premises during normal business hours;
- d. permit review of its books and records in relation to this agreement and to take copies of these and related documents to the extent permitted by applicable law and as may be required” and
- ii. an undertaking by the relevant Sub-Intermediary or the Final Recipient (as applicable) to promptly provide, upon request, any document or information related to itself, the relevant Covered Sub-Operation or the Final Recipient Transaction covered by such Covered Sub-Operation (as applicable) and required to be included in any report by the Intermediary, or any Relevant Party.



4. Maintenance of Records – Authorisations

- (a) The Intermediary undertakes, and shall procure that each Sub-Intermediary and Final Recipient undertakes (except, with respect to the Final Recipients, for items (iii) and (iv) below), to prepare, update and at all times maintain available for the Relevant Parties, the following documentation:
- (i) information necessary to verify that the use of the Counter-Guarantee is in compliance with the relevant requirements set by any applicable European or national law (including regarding the Relevant State Aid Regime) and by this Agreement, including, without limitation, the compliance of (X) any and all Sub-Operations included in the Portfolio with the Eligibility Criteria and (Y) any and all Final Recipient Transactions covered by Sub-Operations included in the Portfolio with the relevant Eligibility Criteria;
 - (ii) information necessary to verify the proper implementation of the terms of this Agreement into the contracts evidencing Covered Sub-Operations and the underlying Final Recipient Transactions;
 - (iii) information regarding the payment and recovery processes of the Intermediary and any Sub-Intermediary;
 - (iv) evidence of the compliance of each Covered Sub-Operation and each relevant underlying Final Recipient Transaction with the Transfer of Benefit;
 - (v) evidence of compliance with applicable rules and regulations relating to the granting and monitoring of the Relevant State Aid Regime; and
 - (vi) any other information and documentation reasonably required by any Relevant Party.
- (b) Without prejudice to any longer retention period that may be applicable as a standard policy of the Intermediary as regards Sub-Operations or Sub-Intermediary as regards loan agreements with Final Recipients:
- (i) the Intermediary undertakes to maintain and be able to produce all relevant documentation for the implementation of this Agreement, including the inspection by the Relevant Parties, for a period from the Effective Date until five (5) years from the Termination Date of this Agreement, and
 - (ii) the Intermediary undertakes and shall ensure that each Sub-Intermediary (as applicable) and Final Recipient undertakes to maintain and be able to produce all relevant documentation for the implementation of, respectively this Agreement, the Sub-Operation or the Final Recipient Transaction, including the inspection by the Relevant Parties, for a period from the relevant Final Recipient Transaction Effective Date until 10 (ten) years thereafter.
- (any such period, a “**Maintenance of Record Period**”).
- (c) If any deficiency in the maintenance of records is identified by any of the Relevant Parties and the Intermediary is informed of such deficiency, the Intermediary hereby undertakes to (and shall use its reasonable efforts to



ensure that each Sub-Intermediary and Final Recipient shall) promptly, and in any event no later than three (3) Months after being informed of such deficiency (or such shorter period communicated to it by the Relevant Party), comply with the instructions given by the Relevant Party and provide any additional information reasonably requested by the Relevant Party.

- (d) The Intermediary shall promptly bring to the attention of the Counter-Guarantor any issue identified by the Intermediary or Sub-Intermediary that it reasonably considers to be material (including, without limitation, any systemic issue and any breach of the agreed Eligibility Criteria that may require action by the Counter-Guarantor and any issue that has an adverse impact on the ability of the Intermediary to perform its obligations under this Agreement).
- (e) The Intermediary shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect and, on request supply certified copies to the Counter-Guarantor of, any authorisation required under applicable law or regulations to enable the Intermediary to perform its obligations under this Agreement, to ensure this Agreement's legality, validity, enforceability and admissibility in evidence in the Intermediary's jurisdiction of incorporation and to carry out its business.

5. EIF Anti-Fraud Policy

The Intermediary acknowledges the Anti-Fraud Policy which sets out the policy of the EIF for preventing and deterring corruption, fraud, collusion, coercion, obstruction, money laundering and terrorist financing and undertakes to take appropriate measures to (i) facilitate the implementation of such policy and (ii) support investigations performed by the EIF or the EIB, acting on behalf of the EIF, the OLAF, the European Public Prosecutor's Office (EPPO), the ECA, or any other relevant EU institution or body in connection with actual or suspected prohibited conduct. The Intermediary further acknowledges that the Counter-Guarantor may notify it of any amendments thereof and in such case(s), following such notification(s), the Parties will consult with each other in order to investigate whether the Intermediary is in the position to undertake the same obligation as above in respect of the amended Anti-Fraud Policy.

6. Title and Security

- (a) The Intermediary represents on the date on which it sends a Payment Demand that it has good title to the Covered Sub-Operation to which such Payment Demand relates and that such Covered Sub-Operation is free and clear of any Security on such date.
- (b) The Intermediary undertakes on any date on which it sends a Payment Demand and at all times thereafter until the expiry of the Counter-Guarantee that, unless otherwise permitted in writing by the Counter-Guarantor, it shall not create nor permit to subsist any Security over any Covered Sub-Operation to which a Payment Demand relates.



7. Sub-Operations and Final Recipient Transactions

The Intermediary shall use all reasonable efforts to ensure that the Sub-Operations included in the Portfolio and the Final Recipient Transactions covered by such Sub-Operations comply with the Eligibility Criteria at any relevant time.

Subject to Clause 4.4 (Waivers and amendments) and Paragraph 6(h) (Maturity extensions and commitment increases) of Schedule 4 (State Aid), if applicable, the Intermediary shall procure that the Sub-Intermediary ensures or procures (as applicable) at the date of entry into any amendment to any Final Recipient Transaction, which

- (i) increases the financing amount of the Final Recipient Transaction by more than 20% of the initial amount of the Final Recipient Transaction; or
- (ii) extends the scheduled maturity by more than 20% of the initially agreed maturity of the Final Recipient Transaction (unless such extension of scheduled maturity is to improve the collectability of claims and is in accordance with the Sub-Intermediary's Credit and Collection Policies),

the Final Recipient is not incorporated or established in a Non-Compliant Jurisdiction, unless in case of NCJ Implementation.

8. Intermediary exposure to Sub-Operations

The Intermediary undertakes at all times until the expiration of the Counter-Guarantee that:

- (i) it shall maintain an economic exposure of at least 10% of the outstanding principal amount of each Sub-Operation included in the Portfolio (the "**Relevant Portion**"); and
- (ii) it shall not enter into any credit support, guarantee or other transfer of risk arrangements with respect to the Relevant Portion, provided that any collateral, security or guarantee payable to the Intermediary or the Sub-Intermediary that qualify as Recoveries shall not be taken into account for this purpose.

9. Credit and Collection Policies

The Intermediary acknowledges, and procures that each Sub-Intermediary acknowledges, that the Counter-Guarantor delegates all activities and tasks in relation to the granting of financing to Sub-Intermediaries and Final Recipients (as applicable); for that purpose:

- (i) The Intermediary shall comply with its own Credit and Collection Policies and shall inter alia (i) originate and monitor any Covered Sub-Operation, (ii) perform the servicing of the Portfolio including any recovery procedure (including the enforcement of any Security) and (iii) consent to amendments and waivers sought with respect to any Covered Sub-Operation or a Final Recipient Transaction, in each case in accordance with its own Credit and Collection Policies and subject to Clause 4.4.



- (ii) The Intermediary shall not make any amendments to its own Credit and Collection Policies that may materially adversely affect the operation, performance or monitoring of this Agreement or the potential recovery of the Covered Sub-Operations, without prior written consent of the Counter-Guarantor.
- (iii) The Intermediary shall procure that each Sub-Intermediary complies with its own Credit and Collection Policies and inter alia (i) originates and monitors any Final Recipient Transaction, (ii) performs the servicing of the Portfolio including any recovery procedure (including the enforcement of any Security) and (iii) consents to amendments and waivers sought with respect to a Final Recipient Transaction, in each case in accordance with its own Credit and Collection Policies and subject to Clause 4.4 (Waivers and amendments) and Paragraph 6(h) (Maturity extensions and commitment increases) of Schedule 4 (State Aid)), if applicable.

10. Data protection

- (i) For the purposes of this Clause 10, the following definitions apply:

"Data Protection Regulation" means:

- (a) Regulation (EU) N° 2018/1725 of the European Parliament and of the Council, dated 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data (OJ L 295, 21.11.2018, p.39-98);
- (b) Regulation (EU) N° 2016/679 of the European Parliament and of the Council dated 27 April 2016 relating to the protection of natural persons with regard to the processing of personal data and on the free movement of such data ("GDPR"); and/or
- (c) all applicable laws and regulations relating to the processing of Personal Data, including national legislation implementing the Data Protection Directive (Directive 95/46/EC) and the Directive on Privacy and Electronic Communications (Directive 2002/58/EC), and any other laws and regulations implementing, derogating from or made under them, and any orders and codes of practice, guidelines and recommendations issued by the applicable Regulatory Authorities,

in each case as amended, restated, supplemented or substituted from time to time.

"EIB Privacy Statement" means EIB guidelines on the handling of personal data available at: <https://www.eib.org/en/privacy/lending.htm>, as such document may be updated and/or replaced from time to time in line with the applicable Data Protection Regulation.

"EIF Final Recipient Data Protection Statement" means EIF guidelines on the handling of personal data of Final Recipients available at:



<http://www.eif.org/attachments/processing-of-final-recipients-personal-data.pdf>, as such document may be updated and/or replaced from time to time in line with the applicable Data Protection Regulation.

"EIF Financial Intermediary Data Protection Statement" means EIF guidelines on the handling of personal data of financial intermediaries available at: http://www.eif.org/attachments/eif_data_protection_statement_financial_intermediaries_due_diligence_en.pdf, as such document may be updated and/or replaced from time to time in line with the applicable Data Protection Regulation and together with the EIF Final Recipient Data Protection Statement, the "EIF Data Protection Statements".

"Personal Data" means personal data within the meaning of the applicable Data Protection Regulation.

"Regulatory Authorities" means all governmental, statutory or regulatory bodies and any other competent authorities in any jurisdiction having responsibility for the regulation or governance of the applicable Data Protection Regulation, and "Regulatory Authority" means any of them.

- (ii) Each Party shall comply with each Data Protection Regulation applicable to it from time to time when processing Personal Data.
- (iii) The Intermediary acknowledges and agrees that (i) EIF shall process Personal Data relating to the Intermediary, any Sub-Intermediary and any Final Recipient in accordance with the applicable EIF Data Protection Statements and (ii) EIB shall process Personal Data relating to the Intermediary, any Sub-Intermediary and any Final Recipient in accordance with the applicable EIB Privacy Statement.
- (iv) The Parties agree that Personal Data of Final Recipients and Sub-Intermediaries will be collected by the relevant Sub-Intermediary or the Intermediary, as the case may be, and may be communicated to the EIF, the EIB and/or any mandators/funding providers for the purpose of the Counter-Guarantee. The Intermediary undertakes to (and shall procure that the relevant Sub-Intermediary will) ensure that Final Recipients under Final Recipient Transactions are informed in writing, before disclosing any personal data, that (i) the name, address and other Personal Data of the Final Recipients in connection with the relevant Final Recipient Transaction may be communicated to the EIF, the EIB and/or any other Relevant Party, all acting as independent data controllers and that (ii) as specified in and subject to Clause 1(c) of this Schedule 14, such Personal Data may be made public. The Intermediary shall (and shall procure that the relevant Sub-Intermediary will) ensure that each Final Recipient has been advised on the information contained in or has been provided with an appropriate link to the EIF Final Recipient Data Protection Statement and EIB Privacy Statement.



11. Transfer of Benefit

- (i) The Intermediary undertakes to ensure, directly or indirectly, that the Transfer of Benefit applies to each Eligible Sub-Operation and/or the underlying Final Recipient Transaction, as applicable, as per paragraph 10 of Schedule 1 (Specific Terms).
- (ii) The Intermediary undertakes that amendments or changes to its Credit and Collection Policies shall in no circumstances adversely affect the mechanism of Transfer of Benefit to a Final Recipient under the relevant Eligible Sub-Operation and/or the underlying Final Recipient Transaction, as applicable.
- (iii) The Intermediary undertakes to make visible the Transfer of Benefit to the relevant Final Recipient under the contractual documentation governing the relevant Eligible Sub-Operation and/or the underlying Final Recipient Transaction, as applicable.
- (iv) The Intermediary undertakes to maintain records evidencing the fact that the Final Recipients actually benefited from a Transfer of Benefit by receiving improved conditions of financing in comparison with the Intermediaries' and/or Sub-Intermediaries' Credit and Collection Policies as applicable to borrowers in a comparable situation but not benefiting from the Counter-Guarantee.

12. Bank Accounts

The Intermediary undertakes, and shall ensure that the Sub-Intermediaries and the Final Recipients undertake, to hold and maintain amounts received in the context of the EGF Guarantee Instrument in a bank account held with a credit institution situated within the territory of a Member State of the EU.

13. Restrictive Measures

- (a) The Intermediary undertakes not to enter into, and undertakes to procure that each Sub-Intermediary undertakes not to enter into a business relationship with and/or not to use the funds or economic resources made available by the Counter-Guarantor, or respectively, the Intermediary, in any manner that would result in such funds or economic resources being made available directly or indirectly to, or for the benefit of, a Sanctioned Person.
- (b) The Intermediary shall ensure and shall procure that each Sub-Intermediary ensures, that no person that is a Sanctioned Person will have any legal or beneficial interest in any funds paid by the Intermediary to the Counter-Guarantor or by the Sub-Intermediary to the Intermediary in connection with the Counter-Guarantee.
- (c) Upon becoming aware that a breach of Clause 13 (a) or (b) of this Schedule 14 has occurred, the Intermediary shall:
 - i. promptly inform the Counter-Guarantor in writing of any such event,



- ii. provide the Counter-Guarantor as soon as reasonably practicable with details of any claim, action, suit, proceedings or investigation with respect to Restrictive Measures relating to the Intermediary, a Sub-Intermediary or a Final Recipient under a Covered Sub-Operation or a Final Recipient Transaction; and
 - iii. procure that the Sub-Intermediary informs the Intermediary of any events listed under (i) and (ii) above;
- (d) It is acknowledged and agreed that the undertakings set out in Clause 13(a) or (b) of this Schedule 14 are only sought by and given to the Counter-Guarantor to the extent that to do so would be permissible pursuant to any applicable anti-boycott rule of the EU such as Regulation (EC) 2271/96.
- (e) Following any of the events specified in Clause 13(a) or 13 (b) of this Schedule 14, the Counter-Guarantor shall take remedial measures which may include:
- i. in relation to events within the control of the Intermediary (which for the avoidance of doubt shall include, without limitation, events where monies are disbursed under a Sub-Operation (a) to, or for the benefit of, a Sanctioned Person at the time of such disbursement or (b) to finance transactions with a Sanctioned Person at the time of such disbursement), the termination by the Counter-Guarantor of the Counter-Guarantee in accordance with Clause 17.2 (Early Termination) and the recovery by the Counter-Guarantor of any Restrictive Measures Clawback Amounts in accordance with Clause 10 (Right of Clawback); and
 - ii. in relation to events relating to the Sub-Intermediary not within the control of the Intermediary (which for the avoidance of doubt shall include, without limitation, events where monies are disbursed under a Sub-Operation (a) to, or for the benefit of, a person that was not a Sanctioned Person at the time of such disbursement or (b) to finance transactions with a person that was not a Sanctioned Person at the time of such disbursement):
 - (x) the exclusion of the relevant Sub-Operation from the Portfolio in accordance with Clause 5.2(b)(i) (Exclusion Process) and the payment of Restrictive Measures Clawback Amounts in accordance with Clause 10 (Right of Clawback); and
 - (y) the acceleration of the relevant Sub-Operation in accordance with Clause 5.2(c)(i) (Exclusion Process) and the payment of Recoveries in accordance with Clause 11 (Recoveries).

14. Compliance with Laws and Conduct of Business

- (a) The Intermediary shall comply:
 - (i) in all material respects with all the laws and regulations to which it is subject including, but not limited, to State Aid and procurement rules to which it may be subject; and
 - (ii) in all respects with any laws to which it may be subject and the breach of



which would constitute an Illegal Activity.

- (b) The Intermediary shall:
- (i) include in the documentation applicable to each Sub-Operation included in the Portfolio, and shall ensure that each Final Recipient Transaction covered by such Sub-Operation, includes:
 - (i) undertakings from the relevant Sub-Intermediary and Final Recipient (as applicable) equivalent to those contained in paragraphs (a)(i) and (a)(ii) above; and
 - (ii) representations, warranties and undertakings from the relevant Sub-Intermediary and Final Recipient (as applicable) for the purpose of ensuring that each Sub-Operation forming part of the Portfolio and each Final Recipient Transaction covered by such Sub-Operation shall comply at any relevant time with the Eligibility Criteria in accordance with this Agreement, and
 - (ii) inform the Counter-Guarantor in writing promptly upon becoming aware of any breach of any such representations, warranties and undertakings, as the case may be, by the relevant Sub-Intermediary and/or Final Recipient.
 - (c) Without prejudice to Clauses 14(a) and 14(b) of this Schedule 14 (General Undertakings), the Intermediary undertakes and shall procure that each Sub-Intermediary undertakes to disclose data within the meaning of Article 89(1) of Directive 2013/36/EU (OJ L 176, 27.6.2013, p. 338) that is not commercially sensitive where such Directive (or applicable national laws or regulations implementing such Directive) requires a disclosure by an Intermediary or a Sub-Intermediary, as applicable.
 - (d) The Intermediary undertakes to make the economic resources available to each Sub-Intermediary contingent upon disclosure to the Intermediary of information on the Beneficial Ownership of such Sub-Intermediary, in accordance with (a) the principles and standards of 4th and 5th AML Directives or (b) the principles and standards of Financial Action Task Force recommendations and standards (as amended, supplemented or restated), if the Intermediary is established outside of the EU.
 - (e) The Intermediary shall procure that each Sub-Intermediary undertakes to make funds or economic resources available to each Final Recipient under the Final Recipient Transactions contingent upon disclosure to the Sub-Intermediary of information on the Beneficial Ownership of such Final Recipient, in accordance with (a) the principles and standards of 4th and 5th AML Directives or (b) the principles and standards of Financial Action Task Force recommendations and standards (as amended, supplemented or restated), if the Sub-Intermediary is established outside of the EU.
 - (f) In carrying out its responsibilities arising under or in connection with this Agreement the Intermediary shall act with the degree of professional care, efficiency, transparency and diligence expected from a professional body



experienced in providing debt financing to Sub-Intermediaries and ultimately, Final Recipients.

15. Illegal Activities

- (a) The Intermediary undertakes, and shall procure that each Sub-Intermediary and Final Recipient undertakes, that a Sub-Operation or a Final Recipient Transaction shall not finance Illegal Activities or artificial arrangements aimed at tax avoidance.
- (b) The Intermediary undertakes, and shall procure that each Sub-Intermediary and Final Recipient undertakes, (i) at all times to comply with relevant standards and applicable legislation on the prevention of tax evasion, money laundering, the fight against terrorism and tax fraud, and (ii) not (other than as a result only of events or circumstances beyond the control of the Intermediary or Sub-Intermediary) to be established in a Non-Compliant Jurisdiction, unless in case of NCJ Implementation. In case the status of a jurisdiction changes after the Effective Date, this change in status shall only be applicable to Sub-Operations and Final Recipient Transactions that have been entered into on or after the date of such change.

16. Rating Agencies

In connection with the execution and implementation of this Agreement, the Intermediary undertakes to (i) fully cooperate with the Counter-Guarantor or any rating agency, as the case may be, and (ii) provide, to the extent permitted by law, the Counter-Guarantor or a rating agency, as the case may be, with all necessary information, including but not limited to, the Portfolio and any Sub-Operation and Final Recipient Transaction, in order to facilitate the process of obtaining an external rating. The Intermediary shall use reasonable efforts to obtain from the Sub-Intermediary all necessary information in order to cooperate with the Counter-Guarantor or any rating agency in order to facilitate the process of obtaining an external rating. To the extent required, this shall include giving access to its premises during normal business hours (in the case the rating agency so requires for the purpose of conducting its own on-site review), books and records which are in connection with this Agreement and the assignment and maintenance of such external rating.



**SCHEDULE 15
EVENTS OF DEFAULT****1. Non-payment**

A Party does not pay on the due date any amount payable pursuant to this Agreement at the place and in the currency in which it is expressed to be payable unless its failure to pay is caused by:

- (i) an administrative or technical error; and
- (ii) payment is made within five (5) Business Days of its due date.

2. Other Obligations

- (a) A Party does not comply in any material respect with any provision of this Agreement (other than under Clause 1 (Non-payment), Clause 6 (Misrepresentation), Clause 7 (Restrictive Measures) or Clause 8 (Illegal Activities) of this Schedule 15 (Events of Default)).
- (b) No Event of Default under Clause 2(a) (Other Obligations) will occur if the failure to comply is capable of remedy and is remedied within fourteen (14) calendar days of the Non-Affected Party giving notice to the Affected Party or the Affected Party becoming aware of the failure to comply.

3. Insolvency

- (a) A Party is unable, or admits its inability, to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts under applicable law, or, by reason of actual or anticipated financial difficulties, suspends or threatens to suspend making payments on any of its debts or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of a Party is less than its liabilities (taking into account contingent and, if applicable under relevant law, prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of a Party. If a moratorium occurs, the end of the moratorium will not remedy any Event of Default caused by such moratorium.

4. Insolvency Proceedings

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (i) a suspension of payments, moratorium of any indebtedness, bankruptcy, controlled management, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of a Party;
- (ii) a composition, assignment or arrangement with any creditor of a Party;



- (iii) an appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of a Party or any of its assets;
- (iv) an enforcement of any Security over any asset of a Party; or
- (v) any analogous procedure or step is taken in any jurisdiction;

provided that this Clause 4 shall not apply to a winding-up petition that is frivolous or vexatious and is discharged, stayed or dismissed within fourteen (14) calendar days of the earlier of (i) its commencement and (ii) the date on which it is advertised.

5. Unlawfulness

It is or becomes unlawful for a Party to perform any of its obligations under this Agreement. (including, without limitation, as a result of the Intermediary being a Sanctioned Person).

6. Misrepresentation

Any representation or statement made or deemed to be made by one Party to the other Party in the Agreement or any other document delivered by or on behalf of one Party to the other under or in connection with the Agreement is or proves to have been incorrect or misleading when made or deemed to be made.

7. Restrictive Measures

- (a) The Intermediary does not comply with the provisions of paragraphs (a), (b) or (c) of Clause 13 (Restrictive Measures) of Schedule 14 (General Undertakings).
- (b) The Intermediary becomes a Sanctioned Person for reasons within its direct control.

8. Illegal Activities

The Intermediary does not comply with the provisions of limb (ii) of paragraph of Clause 14 (Compliance with Laws and Conduct of Business) of Schedule 14 (General Undertakings) of this Agreement.



**SCHEDULE 16
FINANCE LEASES**

If the Portfolio is comprised of Sub-Operations covering Final Recipient Transactions which are or include Finance Leases, the following provisions shall apply.

1. The following definitions should be added to Clause 1 (Definitions and Interpretation):

"**Finance Lease**" means any hire-purchase or a lease contract where substantially all risks and rewards from the leased asset(s) accrue to the Final Recipient, except if otherwise stated in this Agreement.

2. When used in relation to Final Recipient Transactions which are Finance Leases covered by a Sub-Operation, references in the Agreement to:

- (A) "principal amount" will be deemed to be references to "Capital Amount",

where "**Capital Amount**" means at any time the amount financed by the relevant Sub-Intermediary to the Final Recipient under a Finance Lease covered by a Sub-Operation, which is the purchase price of an asset leased by the relevant Sub-Intermediary to a Final Recipient under a Final Recipient Transaction reduced by any down-payment amount paid by the Final Recipient and further reduced by the cumulative repayment amounts of such financed amount paid by the Final Recipient to the relevant Sub-Intermediary until such time;

- (B) "interest" will be deemed to be references to "Lease Interest Amount",

where "**Lease Interest Amount**" means the contractual interest amount charged by the relevant Sub-Intermediary to the Final Recipient in respect of a Finance Lease covered by a Sub-Operation by the application of the relevant Lease Interest Rate to the Capital Amount of that Final Recipient Transaction, and

where "**Lease Interest Rate**" means the contractual interest rate charged by the relevant Sub-Intermediary to the Final Recipient in respect of a Final Recipient Transaction covered by a Sub-Operation as set out in the documents applicable to that Final Recipient Transaction;

- (C) "**rights of acceleration**" under Final Recipient Transactions will be deemed to be references to "enforcement rights" under such Finance Leases;

and the provisions of the Agreement will be construed accordingly.

3. When used in relation to Final Recipient Transactions which are Finance Leases covered by a Sub-Operation, "**Defaulted Amount**" means, at any time, subject to the further specifications (if any) set out in the Specific Terms:

- (i) Any Capital Amount and/or Lease Interest Amounts due, payable and outstanding (or, in the case of an underlying Final Recipient Transaction subject to a Final Recipient Transaction Default, which would be due if that



underlying Final Recipient Transaction was accelerated at such time on the assumption that an event of default had occurred at such time) under the terms of an underlying Final Recipient Transaction following the occurrence of either a Final Recipient Transaction Default or a Final Recipient Transaction Acceleration, excluding:

- (a) Late payment or default interest, capitalised interest, fees, penalties, fines, insurance premiums and any other costs and expenses; and
 - (b) Any Lease Interest Amounts which accrued after the earlier of (i) a period of ninety (90) calendar days, and (ii) the date of the Final Recipient Transaction Default or Final Recipient Transaction Acceleration, as applicable.
- (ii) Any reduction in Capital Amount and/or Lease Interest Amounts written off as a result of a Final Recipient Transaction Restructuring, excluding:
- (a) Late payment or default interest, capitalised interest, fees, penalties, fines, insurance premiums and any other costs and expenses; and
 - (b) Any Lease Interest Amounts which accrued after the earlier of (i) a period of ninety (90) calendar days, and (ii) the date of the Final Recipient Transaction Restructuring.
4. When used in relation to Final Recipient Transactions which are Finance Leases covered by a Sub-Operation, "**Recovery**" means each and every amount (including, if assets leased to a Final Recipient are repossessed by the Sub-Intermediary (i) any amount recovered or received by or on behalf of the Intermediary as a result of the sale of such assets or the enforcement of any relevant Security, guarantee or other credit support, and/or (ii) if such assets are re-leased, the purchase price of such assets agreed with the new lessee), net of recovery and foreclosure costs (if any), recovered or received by or on behalf of the Sub-Intermediary, including by way of set-off, in respect of a Defaulted Amount, or amounts which could have been recovered or received by the Sub-Intermediary in respect of a Defaulted Amount, but for the application of any Security on the relevant Final Recipient Transaction granted by the Sub-Intermediary to third parties where the Counter-Guarantor has paid amounts under the Counter-Guarantee in respect of such Defaulted Amount, provided that a payment in respect of Defaulted Amounts made to the Intermediary under a guarantee given by a Guarantee Institution shall not be treated as a "Recovery" unless otherwise specified in Schedule 1 (Specific Terms).

Without prejudice to Clause 6 (Title and Security) and Clause 9 (Credit and Collection Policies), the term "Recovery" shall include any amount recovered or received by the Sub-Intermediary in respect of a Defaulted Amount (or the right to recover or receive such amount) and which is transferred to a third party under an obligation of the Intermediary under a Security or other contractual obligation in respect of the relevant Covered Final Recipient Transaction granted by the Sub-Intermediary to a third party. To the extent that any amount paid to a third party reduces the amount of Recoveries available to be shared with the Counter-Guarantor, the Intermediary shall increase the Recoveries by an amount equal to the amount paid to the third party.



"Lease Period Start Date" means the later of:

- (a) the date that is the earlier of:
 - (i) the date that any initial payment is made to the Sub-Intermediary by a Final Recipient in respect of a Finance Lease; or
 - (ii) the date that the Final Recipient Transaction in respect of a Finance Lease has been entered into by the Sub-Intermediary; and
 - (b) the date upon which the asset being the subject of the Finance Lease has been made available to the Final Recipient for use.
5. Where this Schedule 16 (Finance Leases) applies, the Intermediary undertakes to send the Report identifying Sub-Operations covering Final Recipient Transactions that are Finance Leases on each date on which a Report is required to be sent in accordance with this Agreement.
6. Where used in relation to Final Recipient Transactions which are Finance Leases, Clause 6.1 (Adjustment of the Actual Portfolio Volume) shall be replaced by the following:

In respect of a Final Recipient Transaction covered by a Sub-Operation included in the Portfolio, if on any date, (such date being the "**Adjustment Date**") the initial Capital Amount of such Final Recipient Transaction is reduced for any reasons other than a Final Recipient Transaction Default, a Final Recipient Transaction Acceleration or a Final Recipient Transaction Restructuring, the Actual Portfolio Volume shall be reduced to reflect the Capital Amount provided to the Final Recipient under such Final Recipient Transaction. The Intermediary shall reflect any such adjustment in the Report immediately following such Adjustment Date.



SCHEDULE 17
SUBORDINATED DEBT TRANSACTIONS

If the Portfolio is comprised of Sub-Operations covering Final Recipient Transactions which are or include Subordinated Debt Transactions, the following provisions shall apply.

1. The following definitions shall be added to Clause 1 (Definitions and Interpretation):

"Quasi-Equity Transaction" means:

- (a) a debt agreement which provides that any amount of debt may be converted into equity at a pre-determined price either at the option of the borrower or lessee or by operation of law;
- (b) a debt agreement which provides that any amount of debt will be cancelled or forgiven following a restructuring or write-down event;
- (c) a profit and loss participation instrument or other agreement that exposes the investor to the profit and loss of the counterparty; or
- (d) a debt agreement in which the rights of the investor are subordinated (rank junior) to the rights of any holder of subordinated debt of the borrower or lessee (for the avoidance of doubt, a holder of debt shall not be considered subordinated solely because its rights rank junior to the rights of creditors, such as tax authorities, that are given statutory priority over ordinary senior debt).

"Subordinated Debt Transactions" means a transaction in the form of a Final Recipient Transaction:

- (a)
 - (i) in which the rights of the Sub-Intermediary are subordinated (rank junior) to the rights of senior secured or unsecured creditors of the Final Recipient; and
 - (ii) in which the rights of the Sub-Intermediary rank: (A) at least pari passu with the rights of other holders of subordinated debt of the Final Recipient and (B) senior to the rights of any holder of equity in the Final Recipient; and
 - (iii) which is not a Quasi-Equity Transaction, or
- (b)
 - (i) in which financing is provided through the Final Recipient to a partner or linked enterprise of the Final Recipient in which the rights of the Final Recipient are subordinated (rank junior) to the rights of senior secured or unsecured creditors of the partner or linked enterprise; and



- (ii) in which the rights of the Final Recipient rank:
 - (A) at least pari passu with the rights of other holders of subordinated debt of the partner or linked enterprise; and
 - (B) senior to the rights of any holder of equity in the partner or linked enterprise; and
- (iii) which is not a Quasi-Equity Transaction.

For the avoidance of doubt, a holder of debt shall not be considered subordinated solely because its rights rank junior to the rights of creditors, such as tax authorities, that are given statutory priority over ordinary senior debt.

2. When used in relation to Final Recipient Transactions which are Subordinated Debt Transactions, "Final Recipient Transaction Acceleration" has the following meaning, subject to the further specifications (if any) set out in the Specific Terms:

"Final Recipient Transaction Acceleration" means, in respect of a Final Recipient Transaction, and unless otherwise specified in the Specific Terms, the occurrence of an event of default (howsoever defined) under such Final Recipient Transaction which has entitled the Sub-Intermediary to accelerate payment of any amounts owed to it and the Sub-Intermediary has exercised such right of acceleration.

3. When used in relation to Final Recipient Transactions which are Subordinated Debt Transactions, "Final Recipient Transaction Default" has the following meaning, subject to the further specifications (if any) set out in the Specific Terms:

"Final Recipient Transaction Default" means, in respect of a Final Recipient Transaction and unless otherwise specified in the Specific Terms, that:

- (i) a Final Recipient is subject to formal bankruptcy or insolvency proceedings; or
- (ii) a Final Recipient has failed to meet any payment obligation under the relevant Final Recipient Transaction as at the date of the contractual maturity of the Final Recipient Transaction (including as a result of any amendment to the terms of such Final Recipient Transaction).

4. Clause 1.1 (Definitions) shall be amended by the addition of the following defined terms:

"Upside Sharing Cap Amount" means the product of (i) the portion of the Actual Portfolio Volume consisting of Subordinated Debt Transactions, (ii) the Upside Sharing Rate, and (iii) the Upside Sharing Cap Rate.

"Upside Sharing Cap Rate" means the percentage rate specified in the Specific Terms.

"Upside Sharing Rate" means the product of the Counter-Guarantee Rate and the guarantee rate applicable to the Sub-Operation, unless otherwise specified in the Specific Terms.



5. When used in relation to Final Recipient Transactions which are Subordinated Debt Transactions, paragraph 5.2(c) of Clause 5.2 (Exclusion Process) shall read as follows:

"(c) Notwithstanding Clause 5.2(b) above, if a Sub-Operation included in the Portfolio is or becomes a Non-Eligible Sub-Operation (X) as a result only of events or circumstances beyond the control of the Intermediary and (Y) the Intermediary becomes aware of any such event or circumstance at any time after the date on which it was included in the Portfolio (and could not, acting diligently, have become aware thereof prior to such date) and

(i) if the Intermediary became aware thereof prior to any payment demand relating to a Final Recipient Transaction being served by the Sub-Intermediary to the Intermediary or could, acting diligently, have become aware thereof prior to such date, then the Intermediary may either:

(A) procure that all amounts owed to the relevant Sub-Intermediary by the relevant Final Recipient under such Final Recipient Transaction are accelerated or that such Final Recipient Transaction is otherwise terminated, no later than the Report Date immediately following

(i) the date on which it became aware of the same or could, acting diligently, have become aware thereof, or

(ii) if applicable, in the case of Subordinated Debt Transactions where the Intermediary was prevented by the applicable contractual terms on intercreditor arrangements or laws and regulations from accelerating or otherwise terminating the Subordinated Debt Transaction on the date on which it became aware of the same, the date when acceleration or early termination became allowed under such contractual terms or applicable laws and regulations (such acceleration or termination being, in the case of each of item (i) above or this item (ii), an "**Acceleration Event**"),

and such Sub-Operation will remain a Covered Sub-Operation from the date on which it was included in the Portfolio (but, for the avoidance of doubt, without prejudice to the requirements of Clause 3 (Counter-Counter-Guarantee) for Covered Sub-Operations unless it is for any other reason excluded from the Portfolio and ceases to be a Covered Sub-Operations pursuant to this Clause 5.2 (Exclusion Process)); or

(B) not proceed to an Acceleration Event, in which case Clause 5.2(b) will apply; or

(i) if the Intermediary became aware thereof at any time after a payment demand relating to such Final Recipient Transaction being served by the Sub-Intermediary to Intermediary and the Intermediary could not, acting diligently, have become aware thereof prior to such date, then such Sub-Operation shall be deemed to be a Covered Sub-Operation for the purpose of the



payment demand relating to such Final Recipient Transaction (and, for the avoidance of doubt, clawback under Clause 10 (Right of Clawback) will not apply with respect to payments already made with respect to such Sub-Operation) unless it is for any other reason excluded from the Portfolio and ceases to be a Covered Sub-Operation pursuant to this Clause 5.2."

6. If any financial gains (including without limitation the proceeds from options, warrants, other equity instruments, and performance fees) other than principal, any interest, capitalised interest, default interest, fees, penalties, any other costs and expense, are realised by either the Intermediary or the Sub-Intermediary in connection with a Subordinated Debt Transaction covered by a Sub-Operation (the "**Upside**"), the Intermediary shall pay to the Counter-Guarantor, or shall procure that the Sub-Intermediary pays to the Counter-Guarantor (as applicable) at the next Report Date (or, if the Termination Date has occurred, within six (6) Months) a part of such Upside, equal to the product of such Upside and the Upside Sharing Rate, up to the Upside Sharing Cap Amount. The provisions of this Clause shall survive termination of this Agreement.
7. With respect to any Subordinated Debt Transaction covered by a Sub-Operation, the Intermediary undertakes to procure that each Sub-Intermediary acts (a) with the due care and skill that would be exercised by a reasonable and prudent international lending institution of good credit standing in respect of debt similar to such Subordinated Debt Transaction and (b) without regard to the Sub-Intermediary's interests under any debt obligation that is senior to such Subordinated Debt Transaction.



**SCHEDULE 18
BONDS**

If the Portfolio is comprised of Sub-Operations covering Final Recipient Transactions which are or include Bonds, the following provisions shall apply.

1. The following definition(s) shall be added to Clause 1 (Definitions and Interpretations):

“**Bond**” means a debt instrument in the form of bond(s) issued (or committed to be issued for an agreed amount) by a Final Recipient by way of a single bond or several bonds issued with identical fungible features whether in series or tranches and subscribed or purchased (or committed to be subscribed or purchased for an agreed amount) on or before the relevant issue dates by the Sub-Intermediary directly (or indirectly) from the Final Recipient, provided that the Sub-Intermediary holds and will hold the majority of such bonds until maturity.

2. When used in relation to any Final Recipient Transactions which is a Bond, “**Defaulted Amount**” means, at any time, in respect of a Covered Sub-Operation:

- (a) Any amount due by the Intermediary to the Sub-Intermediary under the terms of such Covered Sub-Operation with respect to any principal and/or interest amounts due, payable and outstanding under the terms of a relevant underlying Final Recipient Transaction covered by such Sub-Operation following the occurrence of either a Final Recipient Transaction Default or a Final Recipient Transaction Acceleration, excluding any amount due under a Covered Sub-Operation with regard to:
- (i) Late payment or default interest, capitalised interest (in particular in the context of Bonds providing for payment-in-kind of interest), fees and any other costs and expenses (whether in respect of such Covered Sub-Operation or the relevant underlying Final Recipient Transaction);
 - (ii) Any interest amounts which accrued after the earlier of (i) a period of ninety (90) calendar days, and (ii) the date of the Final Recipient Transaction Default or Final Recipient Transaction Acceleration, as applicable;
 - (iii) Amounts of principal in excess of the amounts paid by the Sub-Intermediary to the Final Recipient for subscribing or purchasing the Bond on or before the issue date of the relevant Bond (in particular in the context of zero-coupon bonds or accrual bonds); and
 - (iv) Any other amount paid by the Sub-Intermediary to the Final Recipient in respect of the Final Recipient Transaction or any other amount due by the Final Recipient to the Sub-Intermediary in connection with the Final Recipient Transaction.
- (b) Any amount due by the Intermediary to the Sub-Intermediary under the terms of such Covered Sub-Operation with respect to any reduction in principal and/or interest amounts written off in respect of a Final Recipient Transaction



covered by such Sub-Operation as a result of a Final Recipient Transaction Restructuring, excluding:

- (i) Late payment or default interest, capitalised interest (in particular in the context of Bonds providing for payment-in-kind of interest), fees and any other costs and expenses (whether in respect of such Covered Sub-Operation or the relevant underlying Final Recipient Transaction);
 - (ii) Any interest amounts which accrued after the earlier of (i) a period of ninety (90) calendar days, and (ii) the date of the Final Recipient Transaction Restructuring; and
 - (iii) Amounts of principal in excess of the amounts paid by the Sub-Intermediary to the Final Recipient for subscribing or purchasing the Bond on or before the issue date of the relevant Bond (in particular in the context of zero-coupon bonds or accrual bonds); and
 - (iv) Any other amount paid by the Sub-Intermediary to the Final Recipient in respect of the Final Recipient Transaction or any other amount due by the Final Recipient to the Sub-Intermediary in connection with the Final Recipient Transaction.
3. The Intermediary undertakes to send the Report identifying the Final Recipient Transactions that are Bonds on each date on which a Report is required to be sent in accordance with this Agreement. For the avoidance of doubt, in each Report, each Bond shall be identified and listed as a separate Final Recipient Transaction.
4. When used in relation to any Final Recipient Transaction which is a Bond other than where otherwise stated, any reference in this Agreement to:
- (a) an **“agreement governing the Final Recipient Transaction”**, **“legal documentation concerning each Final Recipient Transaction”** and **“the documentation applicable to each Final Recipient Transaction”** shall be construed as reference to the agreement(s) or (legal) documentation under which the Sub-Intermediary subscribes or purchases the Bond from the Final Recipient (or commits to do so) setting out the repayment obligation of the Final Recipient in respect of such Final Recipient Transaction (in particular the terms and conditions and the subscription or purchase agreement relating to the relevant Bond);
 - (b) **“amounts prepaid”** and/or **“amounts repaid”** shall be construed so as to include a “redemption” of the relevant Bond (if applicable); and
 - (c) **“interest”** and **“interest rate”** shall be construed so as to refer to any “coupon” and, as the case may be, “coupon rate” payable by the Final Recipient under the relevant Final Recipient Transaction,

and the provisions of the Agreement will be construed accordingly.



SIGNATURES

SIGNED on behalf of the **EUROPEAN INVESTMENT FUND**

.....
By:	By:
Title:	Title:
Date:	Date:

SIGNED on behalf of **VENETO SVILUPPO S.P.A.**

.....
By:	By:
Title:	Title:
Date:	Date:

