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BETWEEN

THE EUROPEAN INVESTMENT FUND
AS COUNTER--GUARANTOR

AND

COMPAÑÍA ESPAÑOLA DE REAFIANZAMIENTO, SOCIEDAD MERCANTIL
ESTATAL, S.A.
AS INTERMEDIARY

COUNTER-GUARANTEE AGREEMENT
UNDER THE INVESTEU FUND

DATED 22-12-2022

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CONTENTS

Clause	Page
1. Counter-Guarantee	2
2. Definitions and Interpretation	2
3. Purpose	2
4. Specific Terms.....	3
5. Term	22
6. Execution.....	22
7. Amendments.....	23
8. Governing Law and Jurisdiction	23
Schedule 1 Standard Terms	24
Schedule 2 Capped counter-Guarantee Provisions	97
Schedule 3 Eligibility Criteria	100
Schedule 4 SME Competitiveness – Higher Risk Categories 1 and 2 Product	110
Schedule 5 SME Competitiveness – Higher Risk Category 3 Product	111
Schedule 6 Cultural and Creative Sector Product.....	112
Schedule 7 Innovation and Digitalisation Product.....	122
Schedule 8 Sustainability – Natural Persons – Mobility Product	127
Schedule 9 Sustainability Natural Persons or Housing Associations – RE/EE Product.....	128
Schedule 10 Sustainability SMEs and Small Mid-Caps Product.....	129
Schedule 11 Microfinance Product.....	136
Schedule 12 Social Entrepreneurship Product	137
Schedule 13 Skills and Education Product	138
Schedule 14 Form of Notice for Volume Adjustment Notice	139
Schedule 15 Form of Inclusion Notice	141
Schedule 16 Form of Exclusion Notice	148
Schedule 17 Form of Payment Demand	149
Schedule 17A Form of Payment Demand Schedule.....	150
Schedule 18 Form of Recoveries Notice	151
Schedule 18A Form of Recoveries Schedule.....	152
Schedule 19	153
Part A Restricted Assets.....	153
Part B Restricted Sectors	155
Part C InvestEU Excluded Activities.....	157
Schedule 20 Factoring Transactions	159
Schedule 21 Bonds.....	160

Execution Version

Schedule 22 Finance Leases	161
Schedule 23 Subordinated Debt Transactions	163
Schedule 24 Income Sharing Agreements	164
Schedule 25 Deferred Payment Schemes	165

Execution Version

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**"); and
- (2) the intermediary named in Clause 4.1(a) (*Intermediary*) of the Agreement (the "**Intermediary**").

BACKGROUND

- (A) This operation benefits from the support of the InvestEU Fund (as defined in the Standard Terms (as defined below)). The InvestEU Fund is designed to support policy objectives of the European Union by means of operations that contribute to (i) the competitiveness of the European Union; (ii) growth and employment in the European Union economy, the sustainability of the European Union economy and its environmental and climate dimension; (iii) social resilience; (iv) the promotion of scientific and technological advances, of culture, education and training; (v) the integration of the European Union capital markets and the strengthening of the internal market; (vi) the promotion of economic, social and territorial cohesion; or (vii) the sustainable and inclusive recovery of the European Union economy after the crisis caused by the Covid-19 pandemic.
- (B) The EIF launched the Call (as defined in the Standard Terms), following which the Intermediary expressed its interest to enter into a counter-guarantee agreement with the EIF. The EIF has selected the proposal(s) 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(s) (as defined in the Standard Terms) subject to, and in accordance with, the terms of this Agreement.
- (C) The InvestEU Guarantee Instrument (as defined in the Standard Terms) is intended to combine EIF's portfolio guarantee offering in respect of the InvestEU Fund under a single counter-guarantee agreement. Accordingly, the Counter-Guarantee will cover one or more Thematic Products (as defined in the Standard Terms) in accordance with the terms of this Agreement. The Counter-Guarantee takes the form of an uncapped or a capped counter-guarantee.
- (D) The Counter-Guarantee is provided with the ultimate purpose of enhancing access to finance for specific Final Recipients (as defined in the Standard Terms) in line with defined policy objectives. As such, the Intermediary shall improve the conditions of financing provided to the Final Recipients through the Enhanced Access to Finance Measures (as defined in the Standard Terms).
- (E) The Counter-Guarantee shall enable the Intermediary to originate Portfolio(s) in accordance with the provisions set out in this Agreement governing the respective Portfolio.
- (F) The Counter-Guarantor supports the implementation of international and European Union 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

Execution Version

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 (as defined in the Standard Terms) 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. COUNTER-GUARANTEE

- 1.1 The Counter-Guarantor and the Intermediary agree that by entering into this agreement (including its schedules (each, a "**Schedule**") and any annex to a Schedule (each, an "**Annex**"), as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerously) or replaced from time to time, the "**Agreement**"), the Counter-Guarantor hereby grants an irrevocable professional payment guarantee (the "**Counter-Guarantee**") in favour of the Intermediary subject to, and in accordance with, the standard terms set out in Schedule 1 (*Standard Terms*) (the "**Standard Terms**") of this Agreement and the other schedules hereto, as amended by the specific terms set out in Clause 4 (*Specific Terms*) (the "**Specific Terms**") of this Agreement.
- 1.2 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.

2. DEFINITIONS AND INTERPRETATION

- 2.1 Unless the context otherwise requires, paragraph 1 (*Definitions and Interpretation*) of Schedule 1 (*Standard Terms*) of the Standard Terms will apply to defined terms herein (including in the recitals and other Schedules to this Agreement).
- 2.2 The Schedules (including, without limitation, the Standard Terms, each Thematic Schedule and any Annex to a Schedule) form an integral part of this Agreement.
- 2.3 In the event of any inconsistency between the Specific Terms and any other part of this Agreement, the Specific Terms shall prevail and in the event of any inconsistency between the Standard Terms, the Thematic Schedules and any other Schedule, the order of prevalence shall be as follows, in order of priority:

First: the Thematic Schedules;

Second: any other Schedule (as applicable), other than the Standard Terms; and

Third: the Standard Terms.

3. 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(s).

Execution Version

4. SPECIFIC TERMS

Intermediary

- (a) Legal name in country of incorporation
Compañía Española de Reafianzamiento, Sociedad Mercantil Estatal, S.A.
- (b) Registration number or business identity code in country of incorporation
A28721314
- (c) Country of incorporation
Spain
- (d) Legal status in country of incorporation
Joint Stock Company
- (e) Address and contact details for notices

Underlying Products

Schedule 20 (*Factoring Transactions*) shall not apply.

Schedule 21 (*Bonds*) shall not apply.

Schedule 22 (*Finance Leases*) shall apply.

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Schedule 23 (*Subordinated Debt Transactions*) shall not apply.

Counter-Guarantee Fee Amount

Method of calculation of Counter-Guarantee Fee Amount: "Periodic Counter-Guarantee Fee Calculation".

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

the sum of the product for each Final Recipient Transaction of:

- (i) the relevant 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 relevant Counter-Guarantee Rate; and
- (v) 1/360.

Thematic Product

The Thematic Products that are applicable to this Counter-Guarantee are as follows:

(i) **the SME Competitiveness – Higher Risk Categories 1 and 2 Product**

The SME Competitiveness - Higher Risk Categories 1 and 2 Product applies and Schedule 4 (*SME Competitiveness – Higher Risk Categories 1 and 2 Product*) shall apply.

The definition of Higher Risk Category 1 shall not apply.

The definition of Higher Risk Category 2 shall apply.

The following terms will apply in the context of the SME Competitiveness - Higher Risk Categories 1 and 2 Product only:

(a) Definitions

When used in relation to the SME Competitiveness – Higher Risk Categories 1 and 2 Product, the following terms shall have the meaning set out below:

"Counter-Guarantee Cap Rate" means

With respect to Higher Risk Category 2, at any relevant time when the Counter-Guarantee Cap Amount is calculated:

- (i) prior to the Inclusion Period End Date

Execution Version

- (ii) on and after the Inclusion Period End Date;
 - if the Thematic APV is equal to or greater than the Minimum Portfolio Volume;
 - if the Thematic APV (as evidenced in the last Report sent to the EIF prior to such calculation) has exceeded the Reference Portfolio Volume but not reached the Minimum Portfolio Volume, the percentage rate calculated in accordance with the following formula:

if the Thematic APV (as evidenced in the last Report sent to the EIF prior to such calculation) does not exceed the Reference Portfolio Volume, the Counter-Guarantee Cap Rate will be adjusted to 0%, and Sub-Operations under this Portfolio shall be deemed as Excluded Sub-Operations.

“Counter-Guarantee Fee Percentage” means: 0.2% per annum.

“Counter-Guarantee Rate” means the counter-guarantee rate specified in the first Report delivered with respect to each Sub-Operation covering Final Recipient Transactions, provided that such counter-guarantee rate:

- (i) shall not be modified subsequently by the Intermediary;
- (ii) shall not exceed ; and
- (iii) shall not be below .

“Maximum Final Recipient Transaction Principal Amount” means

- (i) EUR 7,500,000 with respect to Final Recipients Transactions entered into with Sub-Intermediaries who are not National Promotional Banks or Institutions, or

Execution Version

- (ii) EUR 2,000,000 with respect to Final Recipients Transactions entered into with Sub-Intermediaries who are National Promotional Banks or Institutions, or

or, in each case, if the Final Recipient Transaction is not denominated in EUR, an equivalent amount in the currency of denomination of the Final Recipient Transaction determined using the Relevant FX Rate on the Effective Date.

“Minimum Final Recipient Transaction Maturity” means twelve (12) months; unless a longer period is otherwise specified in the Additional Eligibility Criteria.

“Minimum Portfolio Volume” EUR

“Reference Portfolio Volume” EUR

“Thematic APV” means, at any relevant time and subject to the provisions of Clause 5.1 (*Adjustment of the Actual Counter-Guarantee Volume*) of the Standard Terms and Clause 3.4(c) (*Revolving Final Recipient Transactions*) of the Standard Terms, the aggregate Committed Guaranteed Amounts (expressed in the Base Currency) for all Sub-Operations covering Final Recipient Transactions under the Higher Risk Category 2 or the combination of Higher Risk Category 1 and Higher Risk Category 2, provided that, for the avoidance of doubt:

- (i) if amounts outstanding under Final Recipient Transactions covered by Sub-Operations are prepaid and/or repaid or if a default of payment has occurred under a relevant Final Recipient Transaction covered by a Sub-Operation, then this shall not reduce the Thematic APV; and
- (ii) if a Sub-Operation is excluded from this Portfolio in accordance with Clause 4.2 (*Exclusion Process*) of the Standard Terms, then such Sub-Operation shall not be taken into account for the calculation of the Thematic APV from the date of its exclusion.

(b) **Enhanced Access to Finance Measures**

The following shall constitute the **“Enhanced Access to Finance Measures”** in respect of the SME Competitiveness – Higher Risk Categories 1 and 2 Portfolio for the purposes of that definition in the Agreement:

For Higher Risk Category 1: as per the Product Eligibility Criteria for Higher Risk Category 1 set out in paragraph (c) (1) below; and

For Higher Risk Category 2: as per the Product Eligibility Criteria for Higher Risk Category 2 set out in paragraph (c) (2) below.

(c) **Eligibility Criteria**

No	Product Eligibility Criteria	Time of Compliance
1	Higher Risk Category 1: NOT APPLICABLE	NOT APPLICABLE
2	Higher Risk Category 2:	
	1. To be eligible for inclusion:	1 (i) Continuing
	(i) Sub-Operations and Underlying Sub-Operations shall be entered into with Sub-Intermediaries other than	1 (ii) Signing Date
	(ii) Sub-Operations shall indirectly (i.e. by means of a counter-guarantee scheme) cover Final Recipient Transactions in respect of	
	2. In no case shall the overall interest rate of the Final Recipient Transaction covered by the Counter-Guarantee, after taking into account the Counter-Guarantee Fee, be higher than the overall interest rate of such Final Recipient Transaction if it were not covered by a Sub-Operation included in the Portfolio.	2 Continuing

- 7 -

Execution Version

In respect of Sub-Operations covering Final Recipient Transaction under Higher Risk Category 2 (or a combination of Higher Risk Category 1 and Higher Risk Category 2, if applicable), the Counter-Guarantee Fee shall become payable by the Intermediary as soon as the Thematic APV equals the Reference Portfolio Volume and shall be calculated with respect to the relevant Sub-Operation counting as from the Final Recipient Transactions Signing Date pertaining to the Final Recipient Transaction covered by such Sub-Operations.

(ii) the SME Competitiveness – Higher Risk Category 3 Product

The SME Competitiveness - Higher Risk Category 3 Product does not apply.

(iii) the Cultural and Creative Sector Product

The Cultural and Creative Sector Product applies and Schedule 6 (*Cultural and Creative Sector Product*) shall apply.

The following terms will apply in the context of the Cultural and Creative Sector Product only:

(a) Definitions

When used in relation to the Cultural and Creative Sector Product, the following terms shall have the meaning set out below:

“Counter-Guarantee Cap Rate” means.

“Counter-Guarantee Fee Percentage” means: 0.2% per annum.

“Counter-Guarantee Rate” means the counter-guarantee rate specified in the first Report delivered with respect to each Sub-Operation covering Final Recipient Transactions, provided that such counter-guarantee rate:

- (i) shall not be modified subsequently by the Intermediary;
- (ii) shall not exceed %; and
- (iii) shall not be below %.

“Maximum Final Recipient Transaction Principal Amount” means

- (i) EUR 7,500,000 with respect to Final Recipients Transactions entered into with Sub-Intermediaries who are not National Promotional Banks or Institutions; or
- (ii) EUR 2,000,000 with respect to Final Recipients Transactions entered into with Sub-Intermediaries who are National Promotional Banks or Institutions,

or, in each case, if the Final Recipient Transaction is not denominated in EUR, an equivalent amount in the currency of denomination of the Final

Execution Version

Recipient Transaction determined using the Relevant FX Rate on the Effective Date.

“Minimum Final Recipient Transaction Maturity” means twelve (12) months, unless a longer period is otherwise specified in the Additional Eligibility Criteria.

(b) Enhanced Access to Finance Measures

(c) CCS prizes, CCS financiers and Tax Incentive schemes

“CCS Scheme” means the CCS prizes, CCS financiers and Tax Incentive schemes applicable for the purposes of implementing the Product Eligibility Criteria set out in Schedule 6 (*Cultural and Creative Sector Product*) to be made available and notified by the Counter-Guarantor to the Intermediary on the webpage designated by the Counter-Guarantor and/or as a separate document, as updated from time to time subject to the Intermediary receiving a notice from the Counter-Guarantor to the Intermediary in accordance with Clause 20 (*Notices*) of the Standard Terms.

The Intermediary undertakes:

Execution Version

- (i) to provide the CCS Scheme to the Sub-Intermediary; and
- (ii) to use and procure that the Sub-Intermediary shall use the CCS Scheme.

For the avoidance of doubt, any update of the CCS Scheme notified by the Counter-Guarantor to the Intermediary shall only apply to the extent that the updated version adds CCS prizes, CCS financiers and Tax Incentive schemes to the CCS Scheme.

(iv) the Innovation and Digitalisation Product

The Innovation and Digitalisation Product applies and Schedule 7 (*Innovation and Digitalisation Product*) shall apply.

The following terms will apply in the context of the Innovation and Digitalisation Product only:

(a) Definitions

- (i) shall not be modified subsequently by the
- (ii) Intermediary; shall not exceed %: an
- (iii) shall not be below %.

“Maximum Final Recipient Transaction Principal Amount” means

- (i) EUR 7,500,000 with respect to Final Recipients Transactions entered into with Sub-Intermediaries who are not National Promotional Banks or Institutions, or
- (ii) EUR 2,000,000 with respect to Final Recipients Transactions entered into with Sub-Intermediaries who are National Promotional Banks or Institutions,

or, in each case, if the Final Recipient Transaction is not denominated in EUR, an equivalent amount in the currency of denomination of the Final Recipient Transaction determined using the Relevant FX Rate on the Effective Date.

Execution Version

“Minimum Final Recipient Transaction Maturity” means twelve (12) months, unless a longer period is otherwise specified in the Additional Eligibility Criteria.

(v) the Sustainability Natural Persons – Mobility Product

The Sustainability Natural Persons – Mobility Product does not apply.

(vi) The Sustainability Natural Persons or Housing Associations – RE/EE Product

The Sustainability Natural Persons or Housing Associations – RE/EE Product does not apply.

(vii) The Sustainability SMEs and Small Mid-Caps Product

The Sustainability SMEs and Small Mid-Caps Product applies and Schedule 10 (*Sustainability SMEs and Small Mid-Caps Product*) shall apply.

Execution Version

The following terms will apply in the context of the Sustainability SMEs and Small Mid-Caps Product only:

(a) Definitions

When used in relation to the Sustainability SMEs and Small Mid-Caps Product, the following terms shall have the meaning set out below:

“Counter-Guarantee Fee Percentage” means 0.2% per annum.

“Counter-Guarantee Cap Rate” means %.

“Counter-Guarantee Rate” means the counter-guarantee rate specified in the first Report delivered with respect to each Sub-Operation covering Final Recipient Transactions, provided that such counter-guarantee rate:

- (i) shall not be modified subsequently by the Intermediary;
- (ii) shall not exceed %
- (iii) shall not be below %.

“Maximum Final Recipient Transaction Principal Amount” means

- (i) EUR 7,500,000 with respect to Final Recipients Transactions entered into with Sub-Intermediaries who are not National Promotional Banks or Institutions, or
- (ii) EUR 2,000,000 with respect to Final Recipients Transactions entered into with Sub-Intermediaries who are National Promotional Banks or Institutions,

or, in each case, if the Final Recipient Transaction is not denominated in EUR, an equivalent amount in the currency of denomination of the Final Recipient Transaction determined using the Relevant FX Rate on the Effective Date.

“Minimum Final Recipient Transaction Maturity” means twelve (12) months, unless a longer period is otherwise specified in the Additional Eligibility Criteria.

(b) Enhanced Access to Finance Measures

The following shall constitute the **“Enhanced Access to Finance Measures”** in respect of the Sustainability SMEs and Small Mid-Caps Product for the purposes of that definition in the

The Intermediary undertakes to reduce the level of the guarantee fee rate that is charged directly or indirectly to the Final Recipients. The Financial Benefit shall be equivalent to the higher of:

Execution Version

(c) Additional Requirements

Portfolio Eligibility Criterion	Time of Compliance
	Signing Date

(viii) the Microfinance Product

The Microfinance Product does not apply.

(ix) the Social Entrepreneurship Product

The Social Entrepreneurship Product does not apply.

Execution Version

(x) the Skills and Education Product

The Skills and Education Product does not apply.

Use Case Document

The Parties hereby agree and the Intermediary shall procure that the Sub-Intermediaries agree, where applicable, that the version of the Use Case Document applicable for the purposes of implementing the Product Eligibility Criteria set out in Schedule 10 (*Sustainability SMEs and Small Mid-Caps Product*) under this Agreement shall be the Version 1.1 published on 28 November 2022.

The EIF may update the Use Case Document from time to time. In such case, the EIF and the Intermediary shall, acting in good faith, agree as to whether the updated Use Case Document will be applicable to future Sub-Operations covering Final Recipient Transactions to be entered into between the Sub-Intermediary and the Final Recipients following the date of the new applicable version of the Use Case Document. The Parties hereby acknowledge and agree that, the new applicable version of the Use Case Document may be decided through the agreement of the Parties by way of exchange of notice and acknowledgement. As from the date of such agreement between the EIF and the Intermediary, the version of the Use Case Document applicable to future Sub-Operations covering Final Recipient Transactions to be entered into between the Sub-Intermediary and the Final Recipients shall be the version referred to under such notice and acknowledgement. Furthermore, the Intermediary shall procure that the Sub-Intermediaries agree, where applicable, that the version of the Use Case Document applicable to future Final Recipient Transactions to be entered into between the Sub-Intermediary and the Final Recipients shall be the version referred to under such notice and acknowledgement.

Portfolio

The following Portfolio(s) shall be applicable:

- (i) the SME Competitiveness – Higher Risk Categories 1 and 2 Portfolio;
- (ii) the Innovation and Digitalisation Portfolio;
- (iii) the Cultural and Creative Sector Portfolio; and
- (iv) the Sustainability SMEs and Small Mid-Caps Portfolio

Execution Version

Portfolio specifics

"**Interest Rate**" has the meaning given to it in Clause 1.1 (*Definitions*) of the Standard Terms.

Execution Version

Counter-Guarantee Cap

"Capped Counter-Guarantee Provisions" shall apply.

Clause 1.1 (*Definitions*) of the Standard Terms shall be amended as follows:

The definition of **"Counter-Guarantee Amount"** shall be deleted in its entirety.

The following new definitions shall be added:

"Aggregate Counter-Guarantee Cap Amount" means the SMEW Aggregate Counter-Guarantee Cap Amount.

"Counter-Guarantee Cap Amount" means, in relation to a Portfolio, 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:

the Actual Counter-Guarantee Volume (as evidenced in the last Report received by the Counter-Guarantor prior to any such calculation); and

the Counter-Guarantee Cap Rate.

"Counter-Guarantee Cap Rate" means, in relation to a Portfolio, the percentage rate set out in the relevant sub-clause pertaining to a Thematic Product, as set out in the Specific Terms, for that Portfolio.

"Outstanding Amounts" has the meaning given to such term in Clause 7.11 of the Standard Terms, as further specified in Schedule 2 – Capped Counter-Guarantee Provisions.

"Policy Portfolio" means the SMEW Portfolio.

"SMEW Aggregate Counter-Guarantee Cap Amount" means the aggregate of the Counter-Guarantee Cap Amounts for each SMEW Portfolio.

"SMEW Portfolio" means the SME Competitiveness Portfolio – Higher Risk Categories 1 and 2, the Sustainability SMEs and Small Mid-Caps Portfolio, the Innovation and Digitalisation Portfolio or the Cultural and Creative Sector Portfolio, as applicable.

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

For the purposes of payment of the Counter-Guarantee Fee Amounts:

Bank account name:

Bank:

BIC:

Execution Version

IBAN:

Reference:

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

For the purposes of Recoveries and Clawback Amounts:

Bank account name:

Bank:

BIC:

IBAN:

Reference:

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

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

Bank account name:

Bank:

BIC:

IBAN:

Intermediary Bank BIC:

MT:

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 6 (*Payment Demands*) of the Standard Terms) provided that each such bank account is acceptable to the Counter-Guarantor.

Additional Trigger Event

No further requirements.

Execution Version

Clause 4 (Eligibility Criteria)

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)	The Portfolio Eligibility Criterion set out in sub-clause (c) (<i>Additional Requirements</i>) of Clause 4.4(vii) (<i>Sustainability – SMEs and Small Mid-Caps</i>) of the Agreement.		

Clause 13.2 (Authorised Persons)**Clause 14.19 (Additional Undertakings)**

Execution Version

Other Provisions

(ii)

(iii)

Execution Version

Execution Version

5. TERM

The term of this Agreement will be as set out in Clause 17 (*Term*) of the Standard Terms.

6. EXECUTION

6.1 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.

Execution Version

7. **AMENDMENTS**

- (a) 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.
- (b) Notwithstanding Clause 7 (a) any Schedule to this Agreement (except for the Standard Terms, any Thematic Schedule and Schedule 3 (*Eligibility Criteria*)) may be amended by the agreement of the Parties by email.

8. **GOVERNING LAW AND JURISDICTION**

8.1 **Governing Law**

8.2 **Jurisdiction**

Execution Version

SCHEDULE 1 STANDARD TERMS

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 Counter-Guarantee Volume" means, in respect of a Portfolio, at any relevant time and subject to the provisions of Clause 5 (*Adjustment of the Actual Counter-Guarantee Volume*) and Clause 3.4(c) (*Revolving Final Recipient Transactions*), the aggregate Committed Counter-Guaranteed Amounts (expressed in the Base Currency) of all Eligible Sub-Operations included in that Portfolio in accordance with the terms of this Agreement, provided that, for the avoidance of doubt:

- (a) the Actual Counter-Guarantee Volume may in no circumstances exceed the Committed Counter-Guarantee 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 Counter-Guarantee 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 Counter-Guarantee Volume from (and including) the Exclusion Date applicable to the relevant Excluded Sub-Operation.

"Additional Currency" has the meaning given to it in the Specific Terms.

"Additional Eligibility Criteria" means any additional Eligibility Criteria set out in the Specific Terms.

"Additional Trigger Event", if applicable, has the meaning given to it in the Specific Terms.

"Adjustment Date" has the meaning given to it in Clause 5 (*Adjustment of the Actual Counter-Guarantee Volume*).

"Affected Party" has the meaning given to it in Clause 16.1 (*Suspension*).

"Aggregate Committed Counter-Guarantee Volume" means the aggregate of the Committed Counter-Guarantee Volume across all Portfolios.

Execution Version

"Aggregate Maximum Counter-Guarantee Volume" means the aggregate of the Maximum Counter-Guarantee Volume across all Portfolios.

"Agreement" has the meaning given to it in Clause 1 (*EIF Counter-Guarantee*) of this Agreement.

"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.

"Annex" has the meaning given to it in Clause 1 (*EIF Counter-Guarantee*) of this Agreement.

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

"Authorised Person" has the meaning given to it Clause 13.2 (*Authorised Persons*).

"Base Currency" has the meaning given to it in the Specific Terms.

"Beneficial Ownership" means 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.

"Bonds", if applicable, has the meaning set out in Schedule 21 (*Bonds*).

"Call" means the call for expression of interest published on the Counter-Guarantor's website on 13 April 2022 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 under the InvestEU Fund.

"Capped Counter-Guarantee Provisions" means the provisions set out in Schedule 2 (*Capped Counter-Guarantee Provisions*) as supplemented in the Specific Terms.

"Clawback Amounts" has the meaning given to it in Clause 9 (*Right of Clawback*).

"Cohesion Regions" means, any regions below the European Union economic development average as defined in the European Union Cohesion Policy 2021-2027.

"Commission" means the Commission of the European Union.

Execution Version

"Commission Recommendation" means the Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of "micro, small and medium-sized enterprises" (OJ L124, 20.5.2003, p.36).

"Committed Counter-Guaranteed Amount" means, in respect of a Sub-Operation, the portion of such Sub-Operation counter-guaranteed by the Counter-Guarantor and such amount shall be determined, subject to Clause 5 (*Adjustments*), as being equal to the product of (i) the Committed Guarantee Amount of that Sub-Operation and (ii) the applicable Counter-Guarantee Rate.

"Committed Counter-Guarantee Volume" means, in respect of a Portfolio an amount equal to the lower of (i) the amount specified in Clause [4.7] (*Portfolio specifics*) of the Agreement, as this may be amended pursuant to Clause [5.3] (*Adjustment to the Committed Counter-Guarantee Volume and/or the Maximum Counter-Guarantee Volume*) and (ii) the Maximum Counter-Guarantee Volume for that Portfolio.

"Committed Guarantee Amount" means, in respect of a Final Recipient Transaction covered by a Sub-Operation, the portion of such Final Recipient Transaction guaranteed by the Intermediary and such amount shall be determined as being equal to the product of (i) the Committed Principal Amount of such Final Recipient Transaction covered by such Sub-Operation and (ii) the applicable guarantee rate applied by the Intermediary to that Sub-Operation under the terms of such Sub-Operation.

"Committed Principal Amount" means the principal amount committed from time to time under a Final Recipient Transaction. In case of Revolving Final Recipient Transactions, the Committed Principal Amount shall represent the maximum principal amount committed under such Final Recipient Transaction. For the avoidance of doubt (i) capitalised interest or (ii) fees and any other similar costs not financed through the principal amount, are not included in the principal amount committed under a Final Recipient Transaction.

"Compliance Trigger Event" means that, on any date falling during an Inclusion Period, the Intermediary has failed to:

- (a) 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
- (b) inform the Counter-Guarantor, within a reasonable timeframe, of
 - (i) 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;
 - (ii) any member of its management and decision making bodies being

Execution Version

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/or

- (iii) 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.

"Confidential Information" means any information relating to the Counter-Guarantor, the Intermediary, a Sub-Intermediary, a Final Recipient, a Final Recipient Transaction 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 24 (*Disclosure of Information*);
- (b) in relation to information regarding or provided by the Intermediary only, is not marked as confidential by such Intermediary at the time of delivery;
- (c) in relation to information regarding or provided by 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;
- (d) in relation to information regarding or provided by 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; and
- (e) is permitted to be disclosed under the terms of this Agreement.

"Counter-Guarantee" has the meaning set out in Clause 1 (*Counter-Guarantee*) of this Agreement.

"Counter-Guarantee Amount" has the meaning given to it in Clause 2 (*Counter-Guarantee Amount*).

"Counter-Guarantee Cap Rate" means, in respect of each Final Recipient Transaction covered by a Sub-Operation included in a Portfolio and the related Thematic Product, the percentage rate specified in the relevant sub-clause pertaining to such Thematic Product, as set out in the Specific Terms.

"Counter-Guarantee Coverage Period" means, in relation to a Portfolio, the period starting on the first Sub-Operation Signing Date in respect of that Portfolio and ending on the date that is the earlier of (i) the latest specified termination date in respect of a Sub-Operation included in that Portfolio (ii) twelve years after the relevant Inclusion Period End Date for that Portfolio and (iii) the Termination Date.

Execution Version

"Counter-Guarantee Fee Amount" means the amount specified as the Counter-Guarantee Fee Amount in accordance with the calculation set out 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. The first Counter-Guarantee Fee Calculation Period shall be the period from (and including) the relevant Inclusion Period Start Date to (but excluding) the first day of the succeeding calendar quarter. 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 date falling on the second Report Date following the relevant Counter-Guarantee Fee Calculation Period.

"Counter-Guarantee Fee Percentage" means, in respect of a Portfolio, the percentage rate specified in the relevant sub-clause pertaining to such Thematic Product, as set out in the Specific Terms.

"Counter-Guarantee Rate" means, in respect of each Sub-Operation in a Portfolio and the related Thematic Product, the percentage rate specified with respect to such Sub-Operation in the relevant Report, complying with the provisions set out in the sub-clause pertaining to such Thematic Product, as set out in the Specific Terms.

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

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

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

Execution Version

“Cultural and Creative Sector Portfolio”, if applicable, means the portfolio of Sub-Operations covering Final Recipient Transactions originated with respect to the Cultural and Creative Sector Product.

“Cultural and Creative Sector Product”, if applicable, means the product set out in Schedule 6 (*Cultural and Creative Sector Product*).

“Debt Financing” means, in respect of a Portfolio and the related Thematic Product,:

- (a) with respect to all Thematic Products and Portfolios other than the SME Competitiveness – Higher Risk Category 3 Product and SME Competitiveness – Higher Risk Category 3 Portfolio, loans, Bonds, Finance Leases, Subordinated Debt Transactions, Factoring Transactions, if applicable in accordance with Clause 4.2 (*Underlying Products*) of the Agreement;
- (b) with respect to SME Competitiveness – Higher Risk Category 3 Product and the SME Competitiveness – Higher Risk Category 3 Portfolio, Subordinated Debt Transactions; and
- (c) if the Skills and Education Product is applicable, with respect to the Skills and Education Portfolio, loans, Income Sharing Agreements and/or Deferred Payment Schemes, if applicable in accordance with sub-Clause (b) (*Additional Underlying Products*) of Clause 4.4(x) (*Skills and Education*) of the Agreement,

in any case, other than an equity transaction or Quasi-Equity Transaction.

“Defaulted Amount” means, unless otherwise further specified in the Specific Terms, Schedule 2 (*Capped Counter-Guarantee Provisions*), or Schedule 23 (*Subordinated Debt Transactions*), as applicable, any amounts due to be paid by the Intermediary to the Sub-Intermediary under the terms of a Sub-Operation in respect of a Final Recipient Transaction covered by such Sub-Operation following the occurrence of a Credit Event and excluding any amounts (other than the principal amount of the relevant Final Recipient Transaction) in excess of 10% of the outstanding principal amount of the Final Recipient Transaction covered by such Sub-Operation at the moment falling on the earlier of:

- (a) a Final Recipient Transaction Default,
- (b) a Final Recipient Transaction Acceleration; and
- (c) a 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%).

“Deferred Payment Schemes”, if applicable, has the meaning set out in Schedule 25 (*Deferred Payment Schemes*).

Execution Version

"Disruption Event" means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with this Agreement; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payment operations of a Party preventing that Party, or the other Party:
 - (i) from performing its payment obligations under this Agreement; or
 - (ii) from communicating with the other Party in accordance with the terms of this Agreement,

(in each case), which is not caused by, and is beyond the control of, the Party whose operations are disrupted.

"Early Termination Date" has the meaning given to it in Clause 16.2 (*Early Termination*) of the Standard Terms.

"ECA" means the European Court of Auditors.

"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.

"EIB" means the European Investment Bank.

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

"Eligible Country" means any Member State and OCT.

"Eligibility Criteria" has the meaning given to it in Clause 3 (*Eligibility Criteria*) (as amended, supplemented or restated in the Specific Terms and any Thematic Schedule).

"Eligible Final Recipient Transaction" means, a Final Recipient Transaction (i) which complies with all relevant undertakings, requirements or conditions of this Agreement relating to Final Recipient Transactions and/or Final Recipients and (ii) subject to Clause 3.2 (*Time of Compliance*), in respect of which the Final Recipients and Final Recipient Transactions comply with (a) the Final Recipient Eligibility Criteria and the Final Recipient Transaction Eligibility Criteria, respectively, (b) the Thematic Eligibility Criteria (if any) and (c) the Additional Eligibility Criteria (if any).

"Eligible Sub-Operation" means, subject to Clause 3.3 (*Included Sub-Operations deemed Eligible*), a Sub-Operation which complies (i) with all relevant undertakings, requirements or conditions of this Agreement relating to Sub-Operations and/or Sub-Intermediaries and (ii) subject to Clause 3.2 (*Time of Compliance*), with the Eligibility Criteria.

"Enhanced Access to Finance" means, in relation to a Portfolio and the related Thematic Product, the implementation of one or more Enhanced Access to Finance Measures as further specified in the relevant sub-clause pertaining to such Thematic Product in the Specific Terms.

Execution Version

“Enhanced Access to Finance Measures” means, in relation to a Portfolio and the related Thematic Product, one or more of the measures described in the relevant sub-clause pertaining to such Thematic Product in the Specific Terms.

“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 Treaty¹.

“EURIBOR” means:

- (a) the applicable Screen Rate on the Quotation Day for euro and for a period of one (1) month; or
- (b) if no Screen Rate is available for euro for a period of one (1) month, the Counter-Guarantor and the Intermediary shall enter into negotiations (for a period of not more than thirty (30) days) with a view to agreeing a substitute basis for determining the rate applying instead of EURIBOR and if no agreement is reached, such rate shall be the rate determined by the Counter-Guarantor (acting reasonably) and be binding on all Parties,

provided that, if such rate is below zero, EURIBOR shall be deemed to be zero.

For the purpose of the definition of EURIBOR, the following definitions shall apply:

“Screen Rate” means 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 the relevant period, as determined by the Counter-Guarantor.

“Quotation Day” means, in relation to any period for which an interest rate is to be determined two TARGET Days before the first day of that period.

“TARGET2” means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007, or any successor or replacement for that system.

“TARGET Day” means any day on which TARGET2 is open for the settlement of payments in euro.

¹ The lists of EU sanctioned persons are included in the EU Sanctions Map available at www.sanctionsmap.eu. Consolidated list (the “EU sanctions list”) presently available at <https://data.europa.eu/euodp/en/data/dataset/consolidated-list-of-persons-groups-and-entities-subject-to-eu-financial-sanctions>. Note that the EU Official Journal is the official source of EU law and, in case of conflict, its content prevails.

Execution Version

"Event of Default" means any event or circumstance related to the Intermediary and/or the Counter-Guarantor as specified in Clause 15 (*Events of Default*).

"Excluded Sub-Operation" means any Sub-Operation excluded from a Portfolio in accordance with Clause 4.2 (*Exclusion Process*).

"Exclusion Date" has the meaning given to it in Clause 4.2 (*Exclusion Process*).

"Exclusion Notice" means a notice in writing in respect of the exclusion of a Sub-Operation from the relevant 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 16 (*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:

- (a) 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;
- (b) 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;
- (c) 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, the Sub-Operation or the Final Recipient Transaction, as applicable and which is for one of the following reasons:
 - (i) negligently providing misleading information that may have a material influence or fraudulently 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;
 - (ii) entering into agreements with other persons aimed at distorting competition;
 - (iii) 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;
 - (iv) attempting to obtain confidential information that may confer upon it undue advantages in the relevant "award procedure" as such term is

Execution Version

defined in Article 2 of the Financial Regulation;

- (d) 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:
 - (i) fraud;
 - (ii) corruption;
 - (iii) participation in a criminal organisation;
 - (iv) money laundering or terrorist financing;
 - (v) terrorist offences or offences linked to terrorist activities, or inciting, aiding, abetting or attempting to commit such offences;
 - (vi) child labour and other forms of trafficking in human beings;
- (e) 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, the relevant Sub-Intermediary or the relevant Final Recipient, as applicable, has adopted remedial measures to demonstrate its reliability, or that an exclusion would be disproportionate taking into account the circumstances.

"Factoring Transaction" if applicable, has the meaning set out in Schedule 20 (*Factoring Transactions*).

"Factoring Transaction Amount" if applicable, has the meaning set out in Schedule 20 (*Factoring Transactions*).

"Final Payment Demand Date" means the date falling one Month after the Termination Date.

"Final Recipient" means an entity or a natural 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*).

"Final Recipient Transaction" means a Debt Financing transaction entered into between the Sub-Intermediary and a Final Recipient.

"Final Recipient Transaction Acceleration" means, in respect of a Final Recipient Transaction covered by a Sub-Operation, 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

Execution Version

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 covered by a Sub-Operation, 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 (in accordance with the Credit and Collection Policies) and such failure has continued for at least ninety (90) consecutive calendar days.

"Final Recipient Transaction Signing 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*), as supplemented in the Specific Terms.

"Final Recipient Transaction Restructuring" means, in respect of a Final Recipient Transaction covered by a Sub-Operation, 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.

"Finance Lease", if applicable, has the meaning set out in Schedule 22 (*Finance Leases*).

"Financial Benefit" means the level of the reduction of the customary guarantee risk premium, (before taking into account the coverage by this Counter-Guarantee) that (i) the Intermediary charges to the Final Recipients or (ii) the Intermediary charges to the Sub-Intermediary and is ultimately transferred to Final Recipients in the form of a reduced risk spread, in either case, for the part covered by this Counter-Guarantee and net of the Counter-Guarantee Fees, as further detailed in the Agreement.

"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 European Union, as it may be amended, supplemented or modified from time to time.

"Global Eligibility Criteria", if applicable, means with respect to all Portfolios and all Thematic Products the Additional Eligibility Criteria that are specified as "Global Eligibility Criteria" in the Specific Terms.

"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.

Execution Version

“HPTR” means any preferential tax measure regarded as harmful under the European Union 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 European Union list of non-cooperative jurisdictions for tax purposes, initially adopted by the European Council on 5 December 2017 (under criterion 2.1)², and as further detailed in the overview of the preferential tax regimes examined by the Code of Conduct Group (Business Taxation)³, 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 (including tax fraud and tax evasion) each as defined in the AML Directives, and (iii) fraud and other illegal activity against the financial interests of the EIB, EIF and European Union 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 relevant Portfolio, submitted by the Intermediary to the Counter-Guarantor in the form of (or substantially in the form of) Schedule 15 (*Form of Inclusion Notice*).

“Inclusion Period” means, with respect to a Portfolio, the period from the Inclusion Period Start Date to (including) the Inclusion Period End Date.

“Inclusion Period End Date” means, in respect of a Portfolio, the Inclusion Period End Date specified with respect to that Portfolio in Clause 4.7 (*Portfolio specifics*) of the Agreement 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 4 (*Inclusion Process*).

“Inclusion Period Start Date” means, in respect of a Portfolio, the Inclusion Period Start Date specified with respect to that Portfolio in Clause 4.7 (*Portfolio specifics*) of the Agreement.

“Income Sharing Agreements”, if applicable, has the meaning set out in Schedule 24 (*Income Sharing Agreements*).

“Innovation and Digitalisation Portfolio”, if applicable, means the portfolio of Sub-Operations covering Final Recipient Transactions originated with respect to the Innovation and Digitalisation Product.

² For information only: <https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/#>

³ 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).

Execution Version

"Innovation and Digitalisation Product", if applicable, means the product set out in Schedule 7 (*Innovation and Digitalisation Product*).

"Interest Rate" means, unless otherwise specified in the Specific Terms, 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, for the purpose of paragraphs (a) and (b) above:

- (x) if such rate is below zero, the Interest Rate shall be deemed zero; and
- (y) if such rate is not or no longer available at the relevant time, the Interest Rate shall be any replacement of such rate as indicated by the Counter-Guarantor (acting reasonably).

"InvestEU Excluded Activities" means the excluded activities set out in Part C of Schedule 19 (*InvestEU Excluded Activities*).

"InvestEU Fund" means the InvestEU Fund established pursuant to the InvestEU Regulation.

"InvestEU Guarantee Instrument" means the Capped or Uncapped (Counter-) Guarantee Instrument under the InvestEU Fund.

"InvestEU Regulation" means Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017 (OJ L 107, 26.3.2021, p. 30).

"Just Transition Regions" means territories identified in the Territorial Just Transition Plans as defined in article 7 of Regulation (EU) 2021/1056 of the European Parliament and of the Council of 24 June 2021 establishing the Just Transition Fund.

"Maintenance of Record Period" has the meaning given to it in Clause 14.14(b) (*Maintenance of Records – Authorisations*).

"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.

Execution Version

"Maximum Counter-Guarantee Volume" means, in respect of a Portfolio, the amount specified with respect to that Portfolio in Clause 4.7 (*Portfolio specifics*) of the Agreement.

"Maximum Final Recipient Transaction Principal Amount" has the meaning set out in the relevant sub-clause pertaining to a Thematic Product, as set out in the Specific Terms.

"Member State" means any member state of the European Union.

"Microfinance Portfolio", if applicable, means, the portfolio of Sub-Operations covering Final Recipient Transactions originated with respect to the Microfinance Product.

"Microfinance Product", if applicable, means the product set out in Schedule 11 (*Microfinance Product*).

"Minimum Final Recipient Transaction Maturity" means, with respect to a Final Recipient Transaction, as defined in each Thematic Schedule.

"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 paragraph (a) and (b) above will only apply to the last Month of any period.

"NACE Codes" means the statistical classification of economic activities in the European Community (*Nomenclature statistique des activités économiques dans la Communauté européenne*) which imposes the use of the classification uniformly within all the Member States published by Eurostat, as revised under the regulation (EC) no 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE revision 2 and amending Council Regulation (EEC) no 3037/90 as well as certain EC regulations on specific statistical domains, and as further amended from time to time.

"National Promotional Bank or Institution" means a legal entity that carries out financial activities on a professional basis which has been given mandate by a Member State or a Member State's entity at central, regional or local level to carry out development or promotional activities.

"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 or Sub-Operation supports actions that contribute to (i) criminal activities such as money laundering,

Execution Version

financing of terrorism, tax crimes (i.e. tax fraud and tax evasion) and/or (ii) wholly artificial arrangements aimed at tax avoidance.

"Non-Affected Party" has the meaning given to it in Clause 16.1 (*Suspension*).

"Non-Compliant Jurisdiction" means a jurisdiction:

- (a) listed in 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 3.3 (*Included Sub-Operations deemed Eligible*), including as a result of it being verified or declared by the Counter-Guarantor to be a Non-Eligible Sub-Operation pursuant to Clause 4.2(b)(ii).

"Obligor Limit" has the meaning provided in the eligibility criterion set out in paragraph (5) of Section D (*Final Recipient Transaction Eligibility Criteria*) of Schedule 3 (*Eligibility Criteria*).

"Obligor Limit Self-Declaration" means a self-declaration to be provided to the Intermediary or the Sub-Intermediary by every Final Recipient who is a Small Mid-Cap, prior to the date of signature of the Final Recipient Transaction, stating, to the best of the Final Recipient's knowledge, whether or not it benefits, at the date of such self-declaration, from an InvestEU supported debt financing instrument (provided by any financial institution, including the Sub-Intermediary and the Intermediary), as well as the outstanding amount of such instrument, if any.

Execution Version

"OCT" means an overseas country and territory linked to a Member State, as set out in Annex II to the Treaty.

"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.

"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 17 (*Form of Payment Demand Schedule*) detailing the Covered 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 a 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; and
- (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.

"Personal Guarantee" means a commitment from, or an agreement between, an individual and the Financial Intermediary, which sets out the liability of such individual in respect of a Final Recipient Transaction.

Execution Version

"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 European Union's financial interests by means of criminal law as amended, supplemented or restated.

"Portfolio" means each of:

- (a) the SME Competitiveness – Higher Risk Categories 1 and 2 Portfolio;
- (b) the SME Competitiveness – Higher Risk Category 3 Portfolio;
- (c) the Innovation and Digitalisation Portfolio;
- (d) the Cultural and Creative Sector Portfolio;
- (e) the Sustainability Natural Persons – Mobility Portfolio;
- (f) the Sustainability Natural Persons or Housing Associations – RE/EE Portfolio;
- (g) the Sustainability SMEs and Small Mid-Caps Portfolio;
- (h) the Microfinance Portfolio;
- (i) the Social Entrepreneurship Portfolio; and
- (j) the Skills and Education Portfolio,

as applicable pursuant to Clause 4.6 (*Portfolio*) of the Agreement.

"Portfolio Eligibility Criteria", if applicable, means, with respect to a Portfolio and the relevant Thematic Product, any Additional Eligibility Criteria that are specified as "Portfolio Eligibility Criteria" in the Specific Terms.

"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.

"Product Eligibility Criteria" means, in respect of a Portfolio and the relevant Thematic Product, any Eligibility Criteria that are specified as "Product Eligibility Criteria" in a Thematic Schedule, as may be supplemented in the Specific Terms for that Thematic Product.

"Quasi-Equity Transaction" means any of the following financing agreements:

- (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; or
- (b) a profit and loss participation instrument or other agreement that exposes the investor to the profit and loss of the counterparty; or
- (c) a debt agreement in which the rights of the investor are subordinate (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

Execution Version

solely because its rights rank junior to the rights of creditors, such as tax authorities, that are given statutory priority over ordinary senior debt.

"Recovery" means, unless otherwise specified in any Underlying Product Schedule, 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:

- (a) 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"; and
- (b) 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 Clauses 14.3 (*Title and Security*) and 14.5 (*Credit and Collection Policies*), 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.

"Relevant EIF Address" means the email address specified in Clause 20 (*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 Member State where the Intermediary is established and/or operating.

"Relevant Parties" means, ECA, the European Anti-Fraud Office ("OLAF"), the Counter-Guarantor, the EIB, the agents of the Counter-Guarantor or of the EIB 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 InvestEU 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 15A (*Form of Report*).

Execution Version

"Report Date" means the date falling thirty (30) calendar days after the last day of a 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.

"Restricted Asset" means any asset listed in Part A (*Restricted Assets*) of Schedule 19.

"Restricted Sector" means any sector listed in Part B (*Restricted Sectors*) of Schedule 19.

"Restrictive Measures" means:

- (a) EU Restrictive Measures; and/or
- (b) 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
- (c) 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; and/or
- (d) any economic or financial sanctions adopted from time to time by the United Kingdom, and any UK government department or authority, including, inter alia, The Office of Financial Sanctions Implementation of His Majesty's Treasury and the Department for International Trade.

"Restrictive Measures Clawback Amount" means (i) any amounts paid by the Counter-Guarantor directly or indirectly to the Intermediary, or for the benefit of, the Intermediary, the Sub-Intermediary or a Final Recipient at any time when the Intermediary, the Sub-Intermediary or the Final Recipient, as applicable, was a Sanctioned Person and (ii) any amounts paid by the Counter-Guarantor to the Intermediary in breach of Clause 14.7 (*Restrictive Measures*).

"Retained Portion" means 20% of the outstanding amount guaranteed by the Intermediary under each Sub-Operation.

"Revolving Final Recipient Transaction" means a Final Recipient Transaction 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 Committed Principal Amount including by settling obligations arising from Factoring Transactions (as applicable). For the avoidance of doubt, Revolving Final Recipient Transactions 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.

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

Execution Version

"Schedule" has the meaning given to it in Clause 1 (*EIF Counter-Guarantee*) of this Agreement.

"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.

"Skills and Education Portfolio", if applicable, means the portfolio of Sub-Operations covering Final Recipient Transactions originated with respect to the Skills and Education Product.

"Skills and Education Product", if applicable, means the product set out in Schedule 13 (*Skills and Education Product*).

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

"SME Competitiveness – Higher Risk Categories 1 and 2 Portfolio", if applicable, means the portfolio of Sub-Operations covering Final Recipient Transactions originated with respect to the SME Competitiveness - Higher Risk Categories 1 and 2 Product.

"SME Competitiveness – Higher Risk Categories 1 and 2 Product", if applicable, means the product set out in Schedule 4 (*SME Competitiveness – Higher Risk Categories 1 and 2 Product*).

"SME Competitiveness – Higher Risk Category 3 Portfolio", if applicable, means the portfolio of Sub-Operations covering Final Recipient Transactions originated with respect to the SME Competitiveness - Higher Risk Category 3 Product.

"SME Competitiveness – Higher Risk Category 3 Product", if applicable, means the product set out in Schedule 5 (*SME Competitiveness – Higher Risk Category 3 Product*).

"Small Mid-Cap" means an entity with fewer than 500 full-time equivalent employees that is not an SME.

"Small Public Enterprise" means (i) a Small Mid-Cap with 25% or more of its issued share capital directly held by public bodies; or (ii) an entity that would qualify as an SME, other than for the fact that 25% or more of its issued share capital is held by one or more public bodies.

"Social Entrepreneurship Portfolio", if applicable, means the portfolio of Sub-Operations covering Final Recipient Transactions originated with respect to the Social Entrepreneurship Product.

"Social Entrepreneurship Product", if applicable, means the product set out in Schedule 12 (*Social Entrepreneurship Product*).

"Specific Terms" has the meaning given to it in Clause 1 (*EIF Counter-Guarantee*) of this Agreement.

Execution Version

"Standard Terms" has the meaning given to it in Clause 1 (*EIF Counter-Guarantee*) of this Agreement.

"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 paragraph (A) (*Sub-Intermediary Eligibility Criteria*) of Schedule 3 (*Eligibility Criteria*).

"Sub-Operation" means any guarantee instrument issued by the Intermediary to a Sub-Intermediary, which covers 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 Counter-Guarantee Volume corresponding to the amount covered by the Sub-Operation with respect to the relevant Final Recipient Transaction only).

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

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

"Subordinated Debt Transaction" means a Debt Financing in which the rights of the Sub-Intermediary:

- (a) rank junior (are subordinated) to the rights of senior secured or unsecured creditors of the Final Recipient; and
- (b) rank:
 - (i) at least *pari passu* with the rights of other holders of subordinated debt of the Final Recipient and
 - (ii) senior to the rights of any holder of equity in the Final Recipient.

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.

"Sustainability Natural Persons – Mobility Portfolio", if applicable, means the portfolio of Sub-Operations covering Final Recipient Transactions originated with respect to the Sustainability Natural Persons – Mobility Product.

"Sustainability Natural Persons – Mobility Product", if applicable, means the product set out in Schedule 8 (*Sustainability – Natural Persons – Mobility Product*).

Execution Version

“Sustainability Natural Persons or Housing Associations – RE/EE Portfolio”, if applicable means the portfolio of Sub-Operations covering Final Recipient Transactions originated with respect to the Sustainability Natural Persons or Housing Associations – RE/EE Product.

“Sustainability Natural Persons or Housing Associations – RE/EE Product”, if applicable, means the product set out in Schedule 9 (*Sustainability Natural Persons or Housing Associations – RE/EE Product*).

“Sustainability SMEs and Small Mid-Caps Portfolio”, if applicable, means the portfolio of Sub-Operations covering Final Recipient Transactions originated with respect to the Sustainability SMEs and Small Mid-Caps Product.

“Sustainability SMEs and Small Mid-Caps Product”, if applicable, means the product set out in Schedule 10 (*Sustainability SMEs and Small Mid-Caps Product*).

“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;
- (c) six months following the last date on which a Sub-Operation is terminated (across all Portfolios); and
- (d) the date falling 12 years after the Inclusion Period End Date and, where this Agreement governs more than one Portfolio, the latest Inclusion Period End Date.

“Thematic Eligibility Criteria” means, in respect of a Portfolio and related Thematic Product, any Eligibility Criteria specified in a Thematic Schedule, as may be supplemented in the Specific Terms in respect of that Thematic Product.

“Thematic Product” means each of the SME Competitiveness – Higher Risk Categories 1 and 2 Product, SME Competitiveness – Higher Risk Category 3 Product, Innovation and Digitalisation Product, Cultural and Creative Sector Product, Sustainability Natural Persons – Mobility Product, Sustainability Natural Persons or Housing Associations – RE/EE Product, Sustainability SMEs and Small Mid-Caps Product, Microfinance Product, Social Entrepreneurship Product and Skills and Education Product, as specified as applicable in the Specific Terms.

“Thematic Schedule” means:

- (a) if the SME Competitiveness – Higher Risk Categories 1 and 2 Product is applicable, Schedule 4 (*SME Competitiveness – Higher Risk Categories 1 and 2 Product*);
- (b) if the SME Competitiveness – Higher Risk Category 3 Product is applicable, Schedule 5 (*SME Competitiveness – Higher Risk Category 3 Product*);

Execution Version

- (c) if the Cultural and Creative Sector Product is applicable, Schedule 6 (*Cultural and Creative Sector Product*);
- (d) if the Innovation and Digitalisation Product is applicable, Schedule 7 (*Innovation and Digitalisation Product*);
- (e) if the Sustainability Natural Persons – Mobility Product is applicable, Schedule 8 (*Sustainability – Natural Persons – Mobility Product*);
- (f) if the Sustainability Natural Persons or Housing Associations – RE/EE Product is applicable, Schedule 9 (*Sustainability Natural Persons or Housing Associations – RE/EE Product*);
- (g) if the Sustainability SMEs and Small Mid-Caps Product is applicable, Schedule 10 (*Sustainability SMEs and Small Mid-Caps Product*);
- (h) if the Microfinance Product is applicable, Schedule 11 (*Microfinance Product*);
- (i) if the Social Entrepreneurship Product is applicable, Schedule 12 (*Social Entrepreneurship Product*); or
- (j) if the Skills and Education Product is applicable, Schedule 13 (*Skills and Education Product*).

“Transfer of Financial Benefit” means the reduction by the Financial Benefit, if any, in (i) the interest rate applicable to the relevant eligible Final Recipient Transaction covered by the Sub-Operation included in the relevant Portfolio, as set out for each Portfolio in the relevant Thematic Product section of the Specific Terms, if applicable, or (ii) in the customary guarantee premium applicable to the Covered Sub-Operation, if applicable.

“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 Compliance Trigger Event; and
- (b) any Additional Trigger Event.

“Trigger Event Notice” has the meaning given to it in Clause 8.2(b).

“Underlying Product Schedule” means

- (a) if Factoring Transactions is applicable, Schedule 20 (*Factoring Transactions*);
- (b) if Bonds is applicable, Schedule 21 (*Bonds*);
- (c) if Finance Leases is applicable, Schedule 22 (*Finance Leases*);
- (d) if Subordinated Debt Transactions is applicable, Schedule 23 (*Subordinated Debt Transactions*);

Execution Version

- (e) if Income Sharing Arrangements is applicable, Schedule 24 (*Income Sharing Agreements*); or
- (f) if Deferred Payment Schemes is applicable Schedule 25 (*Deferred Payment Schemes*).

“Use Case Document” means the document published by EIF, which provides further details regarding the Product Eligibility Criteria set out in Schedule 8 (*Sustainability – Natural Persons – Mobility Product*) and/or Schedule 9 (*Sustainability Natural Persons or Housing Associations – RE/EE Product*) and/or Schedule 10 (*Sustainability SMEs and Small Mid-Caps Product*), as applicable and outlines the relevant conditions, thresholds, minimum reduction levels, benchmarks, certificates and pre-defined lists.

“Volume Adjustment Notice” means a notice in the form of Schedule 14 (*Form of Notice for Volume Adjustment Notice*), setting out the adjustment of:

- (a) the Committed Counter-Guarantee Volume, and/or
- (b) the Maximum Counter-Guarantee Volume.

1.2 Interpretation

- (a) Other than where otherwise stated, any reference in this Agreement to:
 - a **“Clause”** is, unless the context otherwise requires, a reference to a Clause of the relevant Schedule or Annex in which it is referenced or, otherwise, to the body of the Agreement;
 - a **“Schedule”** is, unless the context otherwise requires, a reference to a Schedule to this Agreement;
 - an **“Annex”** is, unless the context otherwise requires, a reference to an annex to 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

Execution Version

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 14.16 (*Data protection*).
- (b) To be *established and operating* in a specified place means, in respect of a natural person, that such natural person is a resident in that specified place and to be established in a specified place means in respect of a legal person, that such legal person is established or incorporated in that specified place.
- (c) 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.
- (d) Any reference in this Agreement to a Sub-Operation shall be read as referring to that Sub-Operation linked to the relevant Portfolio and to the rules applicable to that Sub-Operation in accordance with the provisions of this Agreement by reference to that Portfolio.
- (e) Any reference in this Agreement to a Final Recipient Transaction shall be read as referring to that Final Recipient Transaction covered by a Sub-Operation linked to the relevant Portfolio and to the rules applicable to that Final Recipient Transaction covered by such Sub-Operation in accordance with the provisions of this Agreement by reference to that Portfolio.
- (f) 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

Execution Version

or any statutory instrument, order or regulation made thereunder or under any such re-enactment.

- (g) The Clause headings used in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

2. Counter-Guarantee Amount

- 2.1 Subject to the terms of this Agreement, the Counter-Guarantor will pay to the Intermediary an amount in respect of each Covered Sub-Operation (the aggregate of such amounts, the "**Counter-Guarantee Amount**") equal to:

the aggregate amount of Defaulted Amounts incurred in respect of Credit Events which occurred during the applicable Counter-Guarantee Coverage Period;

multiplied by the relevant Counter-Guarantee Rate.

3. Eligibility Criteria

3.1 Eligibility Criteria

Subject to Clauses 3.2 (*Time of Compliance*) and 3.3 (*Included Sub-Operations deemed Eligible*), the Intermediary shall ensure that each Portfolio shall only contain Sub-Operations which:

- (a) cover Eligible Final Recipient Transactions; and
- (b) comply with the criteria set out below:
 - (i) each of the Sub-Intermediary Eligibility Criteria;
 - (ii) each of the Sub-Operation Eligibility Criteria; and
 - (iii) each of the Additional Eligibility Criteria (if any),
 (such criteria, the "Eligibility Criteria")

3.2 Time of Compliance

Any Eligibility Criteria specified as:

- (a) "Continuing" shall be complied with at all times; and
- (b) "Signing Date" shall be complied with on the relevant Final Recipient Transaction Signing Date and, if applicable, on the date when the Committed Principal Amount under the relevant Final Recipient Transaction is increased in accordance with Clause [3.4(b)];
- (c) "Sub-Operation Signing Date" shall be complied with on the relevant Sub-Operation Signing Date and, if applicable, on the date when the Committed Guarantee Amount under the relevant Sub-Operation is increased in accordance with Clause [3.4(b)]. For the avoidance of doubt, in case of Portfolio Eligibility

Execution Version

Criteria or Global Eligibility Criteria, "Sub-Operation Signing Date" shall be complied with at each relevant Sub-Operation Signing Date and, if applicable, on the date when the Committed Guarantee Amount under each relevant Sub-Operation is increased in accordance with Clause [3.4(b)]; and

- (d) "Application Date" shall be complied with at the date of the document evidencing the application made to the Sub-Intermediary by the Final Recipient for the relevant Final Recipient Transaction only and, if applicable, on the date when the Committed Principal Amount under the relevant Final Recipient Transaction is increased in accordance with Clause [3.4(b)].

3.3 Included Sub-Operations deemed Eligible

Any Sub-Operation that has been included in a Portfolio by the Intermediary pursuant to Clause 4.1 (*Inclusion Process*) of the Standard Terms shall automatically be deemed to be an Eligible Sub-Operation from the Sub-Operation Signing Date unless and until it has been excluded from a Portfolio pursuant to Clause 4.2 (*Exclusion Process*) of the Standard Terms (without prejudice to the continued application of Clause 3.2 (*Time of Compliance*) of the Standard Terms).

3.4 Waivers and amendments

(a) General

Subject to Clause 3.4(c), the Intermediary shall be entitled to amend or supplement, grant any waiver or make any other declaration of intent in relation to a Sub-Operation (except for increases of committed amounts or the relevant Counter-Guarantee Rate under such Sub-Operation) as follows:

- (i) in line with its Credit and Collection Policies; and/or
- (ii) as required by mandatory law; and/or
- (iii) to improve the collectability of any claims under the relevant Sub-Operation;

provided that, as a result of such amendment, no Eligibility Criteria which are specified to be "Continuing" or obligations undertaken by the Sub-Intermediary in accordance with this Agreement are breached.

- (b) The Intermediary shall include in the documentation applicable to each Sub-Operation included in the Portfolio a provision equivalent to that contained in Clause 3.4 (a), except that the references to "Intermediary", "Sub-Intermediary" and "Sub-Operation" will be replaced with references to "Sub-Intermediary", "Final Recipient" and "Final Recipient Transactions".

(c) Commitment increases

- (i) Any amendment or supplement, waiver or any other declaration of intent in relation to a Sub-Operation resulting in an increase of the amount committed under the Sub-Operation shall be subject to satisfaction of the following conditions:

Execution Version

- (A) it shall be made during the relevant Inclusion Period;
- (B) it shall be made in compliance with all the provisions of this Agreement;
- (C) it shall not result in the Actual Counter-Guarantee Volume exceeding the Committed Counter-Guarantee Volume in respect of the relevant Portfolio; and
- (D) the Eligibility Criteria (irrespective of whether the Time of Compliance of the relevant Eligibility Criteria is Signing Date, Continuing, Application Date or Sub-Operation Signing Date) are still complied with at the effective date of the relevant action.

The Intermediary shall include in the documentation applicable to each Sub-Operation included in the Portfolio a provision equivalent to that contained in Clause 3.4 (c)(i)(B) to (D), except that the references to "Sub-Operation" in the lead-in paragraph will be replaced with references to "Final Recipient Transaction" and the reference to "Sub-Operation Signing Date" will in Clause 3.4 (c)(i)(D) will be deleted.

Any amendment described in Clause 3.4 (c) (i) and (ii) shall be reported to the Counter-Guarantor in a Report to be submitted in accordance with Clause 4.1(c), no later than the Report Date immediately following the relevant amendment.

(d) Revolving Final Recipient Transactions

(i) Rollover

Conversion

Execution Version

Transaction included in the relevant Portfolio 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 relevant Portfolio as a Covered Sub-Operation (and shall not be treated as a separate Sub-Operation).

Actual Counter-Guarantee Volume

Any amendments of the terms of Revolving Final Recipient Transactions covered by a Sub-Operation included in a Portfolio as described in this Clause 3.4(c) shall not affect the calculation of the Actual Counter-Guarantee Volume.

Outstanding principal amount

Unless otherwise specified, the outstanding principal amount in respect of a Revolving Final Recipient Transaction covered by a Sub-Operation included in a Portfolio refers to the amounts disbursed and outstanding under such Revolving Final Recipient Transaction.

4. Portfolio Inclusion and Exclusion Processes

4.1 Inclusion Process

Subject to the other provisions of this Clause, and provided that the EIF has received the documents requested in accordance with Clause 13.2 (*Authorised Persons*), the Intermediary may only include in a Portfolio Eligible Sub-Operations that are entered into during the Inclusion Period and that cover Eligible Final Recipient Transactions (for their full Committed Principal Amount, and not partially).

Upon the occurrence of a Trigger Event, the Intermediary shall without 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 for the relevant Portfolio shall be deemed to be the date specified by the Counter-Guarantor in the Trigger Event Notice and the other provisions of this Agreement shall be construed accordingly.

Execution Version

(c) The Intermediary shall submit an Inclusion Notice for a Portfolio, together with the Report, no later than on each Report Date in respect of Sub-Operations covering Final Recipient Transactions to be included in the relevant Portfolio with a Sub-Operation Signing Date during the three (3) calendar quarters preceding the date of the relevant Inclusion Notice, provided that (i) the last Inclusion Notice for the relevant Portfolio shall not be sent later than on the Report Date immediately following the period ending nine (9) Months after the Inclusion Period End Date for that Portfolio, (ii) only one Inclusion Notice per Portfolio shall be sent per calendar quarter, (iii) each Sub-Operation shall be included in a Portfolio only once, (iv) no Sub-Operation may be included in more than one Portfolio and (v) each Final Recipient Transaction shall be covered by only one Sub-Operation.

In case no Sub-Operations have a Sub-Operation Signing Date during the three (3) 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 Report Date immediately following the date of the relevant Inclusion Notice.

(d) Upon receipt by the Counter-Guarantor of a signed Inclusion Notice, the Eligible Sub-Operations referred to therein shall be included in the relevant 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, Eligible Sub-Operations so included shall be Covered Sub-Operations from the Sub-Operation Signing Date.

(e) If the Committed Counter-Guaranteed Amounts referred to in an Inclusion Notice are such that, as a result of their inclusion in the relevant Portfolio, the Actual Counter-Guarantee Volume would exceed the Committed Counter-Guarantee Volume, the Sub-Operations will be included in the relevant Portfolio only to the extent that the Actual Counter-Guarantee Volume resulting from any such inclusion does not exceed the Committed Counter-Guarantee 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.

(f) 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.

4.2 Exclusion Process

- (a) At any time the Counter-Guarantor may (but shall not be obliged to) verify whether a Sub-Operation included in a Portfolio is an Eligible Sub-Operation or a Non-Eligible Sub-Operation and whether its inclusion in that Portfolio is in compliance with the terms of this Agreement.
- (b) Subject to Clause 4.2(c) below, if a Sub-Operation included in a 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

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- (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 Clause 4.2(b) (i) 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 relevant 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 relevant 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 Counter-Guarantee Volume will be reduced *pro tanto* (i.e. by deducting from the Actual Counter-Guarantee Volume the Committed Counter-Guaranteed Amount of the Excluded Sub-Operation).

- (c) Notwithstanding Clause 4.2(b) above, if a Sub-Operation included in a 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 relevant 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 covered by such Non-Eligible Sub-Operation being served by the Sub-Intermediary to the Intermediary or could, acting diligently, have become aware thereof prior to such date, then:

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

- (1) the date on which the Sub-Intermediary became aware of the same or could, acting diligently, have become aware thereof, or

- (2) if the Sub-Intermediary had the right to proceed to an acceleration or otherwise terminate the Final Recipient Transaction pursuant to the Final Recipient Transaction legal documentation but was prevented by applicable law from accelerating or otherwise terminating the Final Recipient Transaction on the date on which it became aware of the same, the date when acceleration or early termination became allowed under such applicable laws (such acceleration or early termination being, in the case of item (1) above and this item (2), an "**Acceleration Event**"),

then the relevant Sub-Operation will remain a Covered Sub-Operation from the date on which it was included in the relevant Portfolio (but, for the avoidance of doubt, without prejudice to the requirements of Clause 2 (*EIF Counter-Guarantee Amount*)) unless it is for any other reason excluded from the Portfolio and

Execution Version

ceases to be a Covered Sub-Operation pursuant to this Clause 4.2 (); or

- (b) if the Sub-Intermediary does not proceed to an Acceleration Event, Clause 4.2(b) will apply, or
- (ii) if the Intermediary became aware thereof at any time after a payment demand relating to a Final Recipient Transaction covered by such Non-Eligible 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 9 (*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 4.2.
- (d) Notwithstanding anything to the contrary set out in the above paragraphs, if one or more Portfolio Eligibility Criteria are not (or are 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 relevant 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 this Clause 4.2(b) (provided that Clause 4.2(c)(i) shall not apply for the purposes of this Clause 4.2(b))) and such Sub-Operations shall become Excluded Sub-Operations on the Exclusion Date.
- (e) Notwithstanding anything to the contrary set out in the above paragraphs, if one or more Global Eligibility Criteria 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 Global Eligibility Criteria from its respective Portfolio such that, as a result of such exclusion, the Global Eligibility Criteria shall be satisfied. Such Sub-Operation shall be deemed to be Non-Eligible Sub-Operation for the purpose of this Clause 4.2(b) (provided that Clause 4.2(c)(i) shall not apply for the purposes of this

Execution Version

Clause 4.2(b))) and such Sub-Operation shall become Excluded Sub-Operation on the Exclusion Date.

- (f) If the Intermediary becomes aware:
 - (i) that a Sub-Operation is or becomes a Non-Eligible Sub-Operation, or
 - (ii) that any guarantee made available for utilisation under a Covered Sub-Operation is terminated,
- then such information shall be included in the immediately following Report delivered to the Counter-Guarantor.

5. Adjustments

5.1 Adjustment of the Actual Counter-Guarantee Volume

In respect of each Covered Sub-Operation 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 the Final Recipient Transaction covered by such Sub-Operation; and
- (b) the date on which a commitment made available for utilisation under a Final Recipient Transaction covered by such Sub-Operation is cancelled in full or partially,

the Committed Principal Amount 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 Committed Principal Amount), then the Actual Counter-Guarantee 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 such Final Recipient Transaction (or, in case of a Revolving Final Recipient Transaction, the relevant Committed Principal 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.

5.2 Replacement

If the Actual Counter-Guarantee Volume is reduced in accordance with the provisions of Clause 4.2 (*Exclusion Process*) and Clause 5.1 (*Adjustment of the Actual Counter-Guarantee Volume*), the Intermediary may include one or more further Sub-Operation(s) in a Portfolio provided that:

- (a) such Sub-Operation(s) are Eligible Sub-Operation(s);
- (b) the Sub-Operation has a Sub-Operation Signing Date that occurred during the Inclusion Period;

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- (c) any inclusion of such Sub-Operation shall be made in accordance with the provisions of Clause 4.1 (*Inclusion Process*); and
- (d) the Actual Counter-Guarantee Volume shall not, as a result of any such inclusion(s) of such Sub-Operations, exceed the Committed Counter-Guarantee Volume.

5.3 Adjustment to the Committed Counter-Guarantee Volume and/or the Maximum Counter-Guarantee Volume

- (a) At any time during the Inclusion Period, the Counter-Guarantor may, by way of a Volume Adjustment Notice, propose:
 - (i) that the Committed Counter-Guarantee Volume be increased or decreased (as applicable), and/or
 - (ii) that the Maximum Counter-Guarantee Volume be increased (to an amount up to and including the amount specified for that purpose in the Specific Terms) or decreased (as applicable).
- (b) Following the receipt of a Volume Adjustment Notice the Intermediary may accept:
 - (i) the increase or decrease (as applicable) of the Committed Counter-Guarantee Volume and apply the signature of an Authorised Person on behalf of the Intermediary on such Volume Adjustment Notice within the deadline set out therein. If such Volume Adjustment Notice is countersigned by the Counter-Guarantor, the Committed Counter-Guarantee Volume shall be increased or decreased (as applicable) as set out in the Volume Adjustment Notice, and/or
 - (ii) the increase or decrease (as applicable) of the Maximum Counter-Guarantee Volume and apply the signature of an Authorised Person on behalf of the Intermediary on such Volume Adjustment Notice prior to the deadline set out therein. If such Volume Adjustment Notice is countersigned by the Counter-Guarantor, the Maximum Counter-Guarantee Volume shall be increased or decreased (as applicable) as set out in the Volume Adjustment Notice.

6. Payment Demands

6.1 A Payment Demand shall only be valid if:

- (a) it is in the form of Schedule 17 (*Form of Payment Demand*), duly completed and signed by an Authorised Person;
- (b) it is accompanied by a schedule in the form of the Payment Demand Schedule A Part C (*Payment Demand Schedule*);
- (c) it is sent by email to the Relevant EIF Address in accordance with Clause 20 (*Notices*);
- (d) it relates to one or more Covered Sub-Operations;

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- (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 Credit Events that occurred with respect to the relevant Final Recipient Transactions during the applicable Counter-Guarantee Coverage Period;
- (g) it relates to Credit Events, with respect to the relevant Final Recipient Transactions, that have been identified in the latest Report sent by the Intermediary;
- (h) the Intermediary is in compliance with its representation under Clause 14.3 (*Title and Security*) and, other than for the purposes of a Payment Demand submitted in accordance with Clause 16.2(b) (*Early Termination*), no Event of Default or Potential Event of Default has occurred and is continuing in respect of the Intermediary; and
- (i) the relevant Defaulted Amounts have been paid by the Intermediary.

6.2 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.

6.3 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 covered by a Covered Sub-Operation.

7. Payments

7.1 All payments to be made by the Intermediary to the Counter-Guarantor under this Agreement shall be in the Base Currency or in euro except that, amounts to be paid by the Intermediary to the Counter-Guarantor pursuant to Clause 10 (*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 9 (*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.

7.2 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 6 (*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.

7.3 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.

Execution Version

- 7.4 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.
- 7.5 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.
- 7.6 Without prejudice to Clause 10.2(b) and Clause 16.4 (*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.
- 7.7 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(s) of the Counter-Guarantor set out in the Specific Terms
- 7.8 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.
- 7.9 For the avoidance of doubt, any account in the name of the Intermediary held with a duly authorised financial institution in the jurisdiction of incorporation of the Intermediary is deemed acceptable.
8. **Exchange rate**
- 8.1 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:
- (a) For the purpose of including a Sub-Operation in a Portfolio or excluding a Sub-Operation from a Portfolio in accordance with Clause 4.2 (*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 last day of the relevant Counter-Guarantee Fee Calculation Period for which the relevant amount was claimed.
 - (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

Execution Version

determined using the Relevant FX Rate on the last day of the Counter-Guarantee Fee Calculation Period for which the Intermediary sent the Recoveries schedule.

- (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 last day of the Counter-Guarantee Fee Calculation Period.

9. 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 relevant Counter-Guarantee Amount;
- (b) any amount paid under the Counter-Guarantee in relation to one or more Excluded Sub-Operation(s);
- (c) any Restrictive Measures Clawback Amount, and
- (d) any other amount paid to the Intermediary by the Counter Guarantor which was not due;

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.

10. Recoveries

- 10.1 Subject to the provisions of Clauses 10.2 and 10.3, the Counter-Guarantor shall be entitled to receive a percentage of each Recovery (if any) equal to the relevant Counter-Guarantee Rate and up to the date on which the Intermediary, acting in good faith and in a commercially reasonable manner, determines in accordance with its Credit and Collection Policies (including by reference to the Credit and Collection Policies of the Sub-Intermediary in case of delegation), that the recovery period for the relevant Sub-Operation covering a Final Recipient Transaction in respect of which a Defaulted Amount has occurred shall be terminated.

10.2

- (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 18 (*Form of Recoveries Notice*) by the Report Date falling 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-

Execution Version

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 17 (*Form of Payment Demand*) at the time it sends such Payment Demand in accordance with Clause 6 (*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.

- 10.3 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 9 (*Right of Clawback*).
- 10.4 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 9 (*Right of Clawback*) or this Clause 10 (*Recoveries*) to exceed all amounts paid by the Counter-Guarantor under the Counter-Guarantee in respect of Defaulted Amounts.
- 10.5 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 shall 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.
- 10.6 The Intermediary undertakes and it shall procure that each Sub-Intermediary will undertake 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 or the Sub-Intermediary's Credit and Collection Policies (as applicable).
- 10.7 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

Execution Version

- (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.
- 10.8 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.
- 10.9 This Clause 10 (*Recoveries*) applies to any payments recovered by, or otherwise paid to the Intermediary, and any payments returned or repaid by the Sub-Intermediary to the Intermediary under a Sub-Operation after a Defaulted Amount has been incurred (including, without limitation, as a result of a Final Recipient Transaction Default following which the Sub-Intermediary has not (for any reason) exercised any acceleration rights).
- 10.10 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 (the "**Reduction Amount**") reduces the amount of Recoveries available to be shared with the Counter-Guarantor, then the Intermediary shall increase the Recoveries by an amount which leaves an amount which shall be paid to the Counter-Guarantor equal to the amount which would have been payable if the Reduction Amount had not been received by the third party.
- 10.11 Nothing in this Clause 10 (*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.
11. **Counter-Guarantee fee**
- 11.1 The Counter-Guarantor shall invoice the Counter-Guarantee Fee Amount to the Intermediary at least fifteen (15) Business Days prior to the Counter-Guarantee Fee Payment Date. The Intermediary shall pay to the Counter-Guarantor on each Counter-Guarantee Fee Payment Date an amount equal to the Counter-Guarantee Fee Amount.
- 11.2 If at any time the Actual Counter-Guarantee Volume is adjusted in accordance with this Agreement, the Counter-Guarantee Fee Amount shall not be recalculated or otherwise adjusted. Notwithstanding the foregoing, 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 relevant Portfolio, causes such Non-Eligible Sub-Operation(s) to be removed from that Portfolio in accordance with Clause 4.2 (*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 7 (*Payments*), pay to the Intermediary (including by way of set-off in accordance with Clause 7 (*Payments*)) the difference between the Counter-Guarantee Fee Amount paid on the previous Counter Guarantee Fee Payment

Execution Version

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 that Portfolio on the previous Report Date.

12. Representations

A Representations of the Intermediary

The Intermediary makes the following representations and warranties on the dates and times specified pursuant to Clause 12.19 (*Repetition of representations and warranties by the Intermediary*):

12.1 Status

- (a) It is duly incorporated and validly existing under the law of its jurisdiction of incorporation (which is set out in the Specific Terms).
- (b) It has the power to own its assets and carry on its business as it is being conducted.
- (c) It is duly authorised, if applicable, to issue guarantees and/or counter-guarantees according to the applicable legislation.

12.2 Exclusion Situations

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

12.3 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.

12.4 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.

12.5 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:

- (a) 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;
- (b) its constitutional documents; or
- (c) 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.

Execution Version

12.6 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.

12.7 Authorisations

- (a) All authorisations required or desirable:
 - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Agreement; and
 - (ii) 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.
- (b) 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, guaranteeing, counter-guaranteeing, lending, factoring or leasing activities, have been obtained or effected and are in full force and effect.

12.8 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.

12.9 No default

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

12.10 No misleading information

- (a) 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.
- (b) Nothing has occurred or been omitted from the information referred to in Clause 12.10(a) above and no information has been given or knowingly withheld that results in that information being untrue or misleading.

12.11 Governing law and enforcement

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- (a) 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.
- (b) 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.

12.12 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.

12.13 Good faith

It has entered into this Agreement in good faith.

12.14 Illegal Activities

It is not engaged in any illegal activities (including, for the avoidance of doubt, 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.

12.15 Restricted Sectors

Its business does not focus on one or more of the Restricted Sectors.

12.16 Geography of incorporation

It is incorporated or established in an Eligible Country.

12.17 HPTR

It does not benefit from any HPTR.

12.18 Sub-Operations

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

12.19 Repetition of representations and warranties by the Intermediary

Such representations and warranties of the Intermediary shall be deemed to be repeated at all times except with respect to the representations in Clause 12.2 (*Exclusion Situations*), Clause 12.8 (*No filing or stamp taxes*), Clause 12.9 (*No default*), Clause 12.12 (*Proceedings*), Clause 12.15 (*Restricted Sectors*), Clause 12.16 (*Geography of*

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incorporation) and Clause 12.17 (*HPTR*) which shall be deemed to be made on the Effective Date only.

B Representations of the Counter-Guarantor

The Counter-Guarantor makes the following representations and warranties:

12.20 Status

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

12.21 Binding obligations

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

12.22 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:

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

12.23 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.

12.24 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.

12.25 No default

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

12.26 No misleading information

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- (a) 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.
- (b) Nothing has occurred or been omitted from the factual information referred to in Clause 12.26(a) above and no information has been given or knowingly withheld that results in that information being untrue or misleading.

12.27 Good faith

It has entered into this Agreement in good faith.

12.28 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.

12.29 Repetition of representations and warranties by the Counter-Guarantor

Such representations and warranties of the Counter-Guarantor shall be deemed to be repeated at all times except with respect to the representation in Clause 12.25 (*No default*) and Clause 12.28 (*Proceedings*) above, which shall be deemed to be made on the Effective Date only.

13. Information Undertakings

The Intermediary undertakes to carry out (or refrain from carrying out, as the case may be) all actions specified below at all the relevant times specified below:

Part A: Intermediary information undertakings

13.1 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:

- (a) in order to verify compliance with this Agreement (including the due diligence steps taken by the Intermediary pursuant to Clause 4.1 (*Inclusion Process*)) or any other requirement under the laws and regulations governing the InvestEU Guarantee Instrument or the lack of fraud; or
- (b) in order to verify the origination and performance of a Portfolio, any Covered Sub-Operation as well as the compliance of any Covered Sub-Operation and Final Recipient Transaction covered by a Sub-Operation with the applicable Eligibility Criteria or any other provision of this Agreement, from time to time;

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- (c) in the context of customer due diligence matters, including, without limitation, to comply with "know your customer" or similar identification procedures under applicable laws; or
- (d) any other information as set out in any Thematic Schedule.

13.2 Authorised Persons

- (a) Notwithstanding anything in Clause 4.1 (*Inclusion Process*) the Intermediary shall not be allowed to include any Sub-Operation in a 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 below; 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.
- (b) 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.

13.3 Illegal Activities

The Intermediary shall:

- (a) to the extent permitted by applicable law, 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
- (b) procure that the Sub-Intermediaries undertake, to the extent permitted by applicable law, 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.

Part B: Intermediary, Sub-Intermediary and Final Recipient information undertakings

13.4 Evaluation

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- (a) 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.
- (b) The Intermediary undertakes to:
 - (i) include in the legal documentation concerning each Sub-Operation an undertaking by the relevant Sub-Intermediary to cooperate in any evaluation mentioned in Clause 13.4 (a) above; and
 - (ii) include in the legal documentation concerning each relevant Final Recipient Transaction (or procure that the Sub-Intermediary includes in such legal documentation, as applicable) an undertaking by the relevant Final Recipient to cooperate in any request for documentation referred to in Clause 13.4(a) above.

13.5 "Know Your Customer" Checks

- (a) 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-Operation in a 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.
- (b) If:
 - (i) 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;
 - (ii) 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
 - (iii) 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-

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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.

(c) The Intermediary shall

- (i) 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
- (ii) 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.

(d) The Intermediary shall

- (i) 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
- (ii) 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.

- (e) 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.

14. General Undertakings

The Intermediary (and the Counter-Guarantor, in respect of Clause 14.16 (*Data protection*)) undertakes to carry out (or refrain from carrying out, as the case may be) all actions specified below at all the relevant times specified below:

Part A: Intermediary general undertakings

14.1 Reporting

(a) Quarterly Report

Subject to Clause 16.2 (*Early Termination*), from the Effective Date until the Termination Date, 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

Execution Version

Counter-Guarantee, and relevant amounts outstanding and all data necessary for 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) Case Studies

Upon request by the Counter-Guarantor, the Intermediary shall supply (or shall procure that the relevant Sub-Intermediary supplies to it) to the Counter-Guarantor show cases in respect of a Final Recipient which has been successfully created or whose business has grown (in terms of jobs created, product range, turnover, international development, including through transfer of business) since it entered into a Final Recipient Transaction covered by this Guarantee through a Sub-Operation.

The Intermediary undertakes to inform the Final Recipient (or to procure that the relevant Sub-Intermediary undertakes to inform the Final Recipient) in respect of which the Intermediary or Sub-Intermediary prepares a show case that: (a) the information contained in the show case may be passed to the Counter-Guarantor, the Commission and/or contractors of the Commission, and/or published; and (b) the Commission and/or contractors of the Commission may contact the Final Recipient so that its business case can be used to produce audio visual or print publications for the promotion of the InvestEU Fund.

(c) 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 or otherwise.

14.2 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 (A) facilitate the implementation of such policy and (B) 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.

14.3 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.

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- (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 (excluding, for the avoidance of doubt, any Security granted to the Intermediary to secure the repayment obligations of the relevant Final Recipient under the relevant Final Recipient Transaction).

14.4 Intermediary exposure to Sub-Operations

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

- (a) it shall maintain, in respect of each Portfolio, an economic exposure of at least the Retained Portion, ranking *pari passu* with the claims of the Counter-Guarantor under the Counter-Guarantee; and
- (b) it shall not enter into any credit support, guarantee or other transfer of risk arrangements with respect to the Retained Portion, provided that any collateral, security or guarantee in favour of the Intermediary or the Sub-Intermediary resulting in (or being capable of resulting in) Recoveries shall not be taken into account for this purpose.

14.5 Credit and Collection Policies

The Intermediary acknowledges, and will procure 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:

- (a) The Intermediary shall comply with its own Credit and Collection Policies and shall inter alia (i) originate and monitor any Covered Sub-Operation and (ii) perform the servicing of each 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 and corresponding Final Recipient Transactions, in each case in accordance with its Credit and Collection Policies. In case of conflict between the provisions of the Credit and Collection Policies and the provisions of this Agreement, the Intermediary shall comply with the provisions of this Agreement.
- (b) 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 any Covered Sub-Operations, without prior written consent of the Counter-Guarantor.
- (c) 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 Final Recipient Transactions, including any recovery procedure (including the enforcement of any Security) and (iii) consents to amendments and waivers sought with respect

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to a Final Recipient Transaction, in each case in accordance with its own Credit and Collection Policies and subject to Clause 3.4 (Waivers and amendments).

14.6 Enhanced Access to Finance

- (a) The Intermediary acknowledges that the Counter-Guarantee is provided with the ultimate purpose of enhancing access to finance for Final Recipients and shall ensure that the Enhanced Access to Finance is passed on to Final Recipient Transactions covered by a Sub-Operation.
- (b) The Intermediary undertakes that amendments or changes to the Intermediary's Credit and Collection Policies shall in no circumstances adversely affect the mechanism of Enhanced Access to Finance to a Final Recipient under the relevant Eligible Final Recipient Transaction covered by a Sub-Operation.
- (c) The Intermediary undertakes (including, if applicable, by ensuring that the Sub-Intermediaries undertake), to maintain records evidencing the fact that the Final Recipients actually benefited from the applicable Enhanced Access to Finance by receiving improved conditions of or access to financing in comparison with the Intermediary's Credit and Collection Policies as applicable to counterparties in a comparable situation but not benefiting from the Counter-Guarantee.

14.7 Restrictive Measures

- (a) The Intermediary undertakes not to enter, and undertakes to procure that each Sub-Intermediary undertakes not to enter into a business relationship with or use the funds or economic resources made available by the Counter-Guarantor, or respectively, the Intermediary, in any manner that would result in (i) such funds or economic resources being made available directly or indirectly to, or for the benefit of, a Sanctioned Person or (ii) a breach by the Intermediary, the Sub-Intermediary and/or the Counter-Guarantor of any Restrictive Measures.
- (b) The Intermediary shall ensure and shall procure that each Sub-Intermediary ensures, that (i) 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 or the Final Recipient to the Intermediary, in connection with the Counter-Guarantee and (ii) no payment made by the Sub-Intermediary or the Final Recipient to the Intermediary, or by the Intermediary to the Counter-Guarantor in connection with the Counter-Guarantee shall result in a breach by the Intermediary, the Sub-Intermediary and/or the Counter-Guarantor of any Restrictive Measures.
- (c) Upon becoming aware that a breach of Clause 14.7 (a) or (b) has occurred, the Intermediary shall:
 - (i) promptly inform the Counter-Guarantor in writing of any such event; and
 - (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-

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Intermediary or a Final Recipient under a Covered Sub-Operation or a Final Recipient Transaction, as applicable; and

- (iii) procure that the Sub-Intermediary informs the Intermediary of any events listed under Clauses 14.7(c)(i) and (ii).
- (d) It is acknowledged and agreed that the undertakings set out in Clause 14.7(a) or (b) 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 14.7(a) or (b), 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 or (c) in breach of any Restrictive Measures at the time of such disbursement), the termination by the Counter-Guarantor of the Counter-Guarantee in accordance with Clause 16.2 (*Early Termination*) and the recovery by the Counter-Guarantor of any Restrictive Measures Clawback Amounts in accordance with Clause 9 (*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):
 - (A) the exclusion of the relevant Sub-Operation from the relevant Portfolio in accordance with Clause 4.2(b)(i) (*Exclusion Process*) and the payment of Restrictive Measures Clawback Amounts in accordance with Clause 9 (*Right of Clawback*); and
 - (B) the acceleration of the relevant Final Recipient Transaction in accordance with Clause 4.2(b)(i) (*Exclusion Process*) and the payment of Recoveries in accordance with Clause 10 (*Recoveries*).

14.8 Monitoring and Control of Sub-Intermediaries and Sub-Operations

The Intermediary undertakes to:

- (a) only include Eligible Sub-Operations in a Portfolio;
- (b) monitor the compliance of Sub-Intermediaries with the obligations set out in the

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agreements governing the Sub-Operations;

- (c) assess and monitor the eligibility of Sub-Intermediaries and Sub-Operations for inclusion in a Portfolio at the relevant time;
- (d) monitor the proper execution by the Sub-Intermediaries of their contractual obligations under the Sub-Operations; and
- (e) set up and maintain appropriate internal processes in order to comply with the obligations set forth in this Agreement.

14.9 Monitoring and Control of Final Recipients and Final Recipient Transactions

The Intermediary undertakes to (or shall procure that each Sub-Intermediary undertakes to):

- (a) only cover Eligible Final Recipient Transactions under a Sub-Operation;
- (b) monitor the compliance of Final Recipients with the obligations set out in the agreements governing the Final Recipient Transactions;
- (c) assess and monitor the eligibility of Final Recipients and Final Recipient Transactions covered by a Sub-Operation at the relevant time;
- (d) monitor the proper execution by the Final Recipients of their contractual obligations under the Final Recipient Transactions, and
- (e) set up and maintain appropriate internal processes in order to comply with the obligations set forth in this Agreement, where applicable.

Part B: Intermediary, Sub-Intermediary and Final Recipient general undertakings

14.10 Transaction Documents with Sub-Intermediaries and Final Recipients

The Intermediary undertakes to include in the legal documentation concerning each Final Recipient Transaction (by (a) procuring that the Sub-Intermediary includes the relevant Clauses in the documentation applicable to each Final Recipient Transaction or (b) by including the relevant Clauses in the documentation entered into directly with the Final Recipient in the context of each Sub-Operation) an undertaking by the relevant Final Recipient:

- (a) not to use a grant from an EU programme to reimburse the relevant Final Recipient Transaction;
- (b) not to use the Final Recipient Transaction to pre-finance a grant from an EU programme;
- (c) that the combination of support from the InvestEU Fund and from other Union programmes does not exceed the total project cost of the project financed by the Final Recipient Transaction, where applicable; and
- (d) that it will use the financing provided under the Final Recipient Transaction

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only for the express purpose for which it is granted.

The Intermediary undertakes to:

- (i) procure that the Sub-Intermediary represents that it is, to the best of its knowledge, not in an Exclusion Situation, and
- (ii) include in the legal documentation (by (a) procuring that the Sub-Intermediary include the relevant Clauses in the documentation applicable to each Final Recipient Transaction or (b) by including the relevant Clauses in the documentation entered into directly with the Final Recipient in the context of each Sub-Operation) concerning each Final Recipient Transaction a representation by the relevant Final Recipient that it is, to the best of its knowledge, not in an Exclusion Situation.

14.11 Visibility and promotion

- (a) The Intermediary shall use reasonable efforts to carry out marketing and publicity campaign(s), including through its website or alternative ways of communication, aimed at making InvestEU and the InvestEU Guarantee Instrument known to potential Final Recipients.

The Intermediary shall ensure, (by (a) procuring that the Sub-Intermediary include the relevant Clauses in the documentation applicable to each Final Recipient Transaction or (b) by including the relevant Clauses in the documentation entered into directly with the final Recipient in the context of each Sub-Operation), and shall contractually require Final Recipients to ensure, 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, promotional material, or publication the Intermediary, Sub-Intermediary or the Final Recipient may choose to make on its website and any alternative means of communication with regard to the Counter-Guarantee (including on social media) or the Sub-Operation and Final Recipient Transaction will use the emblem of the EU⁴ and EIF or a reference to the EU and EIF, as appropriate, in a visible way (and with similar prominence).

- (b) The Intermediary shall ensure (by (a) procuring that the Sub-Intermediary include the relevant Clauses in the documentation applicable to each Final Recipient Transaction or (b) by including the relevant Clauses in the documentation entered into directly with the final Recipient in the context of each Sub-Operation) that any transaction document evidencing the Sub-Operation or the Final Recipient Transaction such as the agreement governing the Final Recipient Transaction, includes the following wording:

"[Sub-Operation/Final Recipient Transaction] benefits from support from the European Union under the InvestEU Fund."

⁴ When doing so, the emblem of the Union from the following website can be used https://ec.europa.eu/info/sites/default/files/eu-emblem-rules_en.pdf.

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- (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:

- (i) the name of the financial product, the financing form and the policy areas supported by the Counter-Guarantee;
- (ii) the Intermediary and Sub-Intermediaries, including their names, addresses, the financing forms, the Thematic Product names and the InvestEU guarantee amount; and
- (iii) Final Recipients (where the principal amount of the respective individual Final Recipient Transaction exceeds EUR 500,000), its name, the financing form and the location of the Final Recipient (meaning its address, when the Final Recipient is a legal person, or the region at NUTS 2 level, when the Final Recipient is a natural person).

except if

with respect to the Intermediary, the Sub-Intermediary or the Final Recipient, (1) it would be illegal under the applicable laws and regulations, or (2) prior to receiving financial support under the Counter-Guarantee or Sub-Operation, the Intermediary or the Sub-Intermediary informs the Counter-Guarantor in writing that:

- (W) the publication requirement risks harming the commercial interests of the Intermediary, the Sub-Intermediary and/or a Final Recipient; or
- (X) it risks threatening the rights and freedoms of the persons or entities concerned as protected by the Charter of Fundamental Rights of the European Union.

- (d) Where the Final Recipient is a natural person, prior consent to such publication may not be made a condition for receiving financial support under a Thematic Product.
- (e) The Intermediary undertakes to include in the legal documentation concerning each Sub-Operation and underlying Final Recipient Transaction (with respect to the latter, either by (a) procuring that the Sub-Intermediary include the relevant Clauses in the documentation applicable to each Final Recipient Transaction or (b) by including the relevant Clauses in the documentation entered into directly with the final Recipient in the context of each Sub-Operation) an acknowledgment from each Sub-Intermediary and, respectively, Final Recipient that the information set out in 14.11(c) may be published and released. In either case, the legal documentation concerning each Final Recipient Transaction shall include an obligation for the Final Recipient to inform the Sub-Intermediary or the Intermediary in writing in case the publication requirement leads to the risks described in Clause 14.11 (c)(W) and

Execution Version

(X) above. The Intermediary shall procure that the Sub-Intermediary informs the Intermediary about such notifications from Final Recipients.

14.12 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-Operation(s). 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 and/or whether its inclusion in the relevant Portfolio is in compliance with the terms of this Agreement. 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) within 20 Business Days from such request, or a longer period agreed with 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, 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. 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) permit Relevant Parties to visit the sites, installations and works financed by the Counter-Guarantee;
 - (iii) allow interviews conducted by each of the Relevant Parties of its representatives and not obstruct contacts with representatives or any other person involved in or affected by this Counter-Guarantee;
 - (iv) permit the Relevant Parties to conduct on the spot audits, checks and inspections and for this purpose the Intermediary shall permit and shall procure that each Sub-Intermediary permits access to its premises during normal business hours;

Execution Version

- (v) 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, and
- (vi) upon request, provide the Relevant Parties with all documents or information related to the Counter-Guarantee, Sub-Operations or the Final Recipient Transactions.

The Intermediary acknowledges and agrees and shall procure that each Sub-Intermediary acknowledges and agrees that the results of such investigations may be transmitted by OLAF to the institutions, bodies, offices and agencies concerned and to competent authorities of the Member States concerned.

- (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 covered by a Covered Sub-Operation included in the Portfolio (or by including the relevant Clauses in the documentation entered into directly with the Final Recipient in the context of each Sub-Operation):

- (i) the following wording:

"The undersigned hereby acknowledges and agrees that the results of such investigations may be transmitted by OLAF to the institutions, bodies, offices and agencies concerned and to competent authorities of the Member States concerned."

"The undersigned hereby 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 covered by a Covered Sub-Operation included in the Portfolio (or by including the relevant Clauses in the documentation entered into directly with the Final Recipient in the context of each Sub-Operation):"

"the following wording:"

"The undersigned hereby acknowledges and agrees that the results of such investigations may be transmitted by OLAF to the institutions, bodies, offices and agencies concerned and to competent authorities of the Member States concerned."

Execution Version

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- (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.

14.13 The Intermediary undertakes to procure that the Sub-Intermediary acknowledges that the Commission may directly request further explanations from it or a Final Recipient as part of its controlling and monitoring activities, and shall procure that the Sub-Intermediary includes such acknowledgement in the legal documentation relating to a Final Recipient Transaction (or shall include such acknowledgement in the documentation entered into directly by the Intermediary with the Final Recipient in the context of each Sub-Operation).

14.14 Maintenance of Records – Authorisations

- (a)

diary;

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(any such period, a “**Maintenance of Record Period**”).

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(c)

(d)

of
:
h**14.15 Restricted Acceleration**

The Intermediary shall procure that the Sub-Intermediary represents that the inability of the Sub-Intermediary to proceed to an Acceleration Event is exclusively due to applicable law and such representation shall be deemed to be repeated at all times during the period starting on the date on which the Intermediary became aware, or could, acting diligently, have become aware that the Sub-Operation is or becomes a Non-Eligible Sub-Operation and ending on the date when the Sub-Intermediary is permitted to proceed to an Acceleration Event under such applicable laws.

14.16 Sub-Operations and Final Recipient Transactions

(a) 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 applicable Eligibility Criteria at any relevant time and shall demonstrate such compliance to the satisfaction of the Counter-Guarantor.

(b) The Intermediary shall promptly bring to the attention of the Counter-Guarantor any issue identified by the 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).

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(c) The Intermediary shall ensure or procure (as appropriate, by (a) procuring that the Sub-Intermediary includes the relevant Clauses in the documentation applicable to each Final Recipient Transaction or (b) by including the relevant Clauses in the documentation entered into directly with the Final Recipient in the context of each Sub-Operation) that at the date of entry into any amendment to any Sub-Operation or, as applicable, Final Recipient Transaction, which extends the scheduled maturity by more than 20% of the initially agreed maturity of the Sub-Operation or, as applicable, Final Recipient Transaction (unless such extension of scheduled maturity is to improve the collectability of claims and is in accordance with the Intermediary's or respectively Sub-Intermediary's Credit and Collection Policies) the Sub-Intermediary or, as applicable, Final Recipient is not incorporated or established in a Non-Compliant Jurisdiction, unless in case of NCJ Implementation.

14.17 Data protection

(a) For the purposes of this Clause 14.16, the following definitions apply:

"Data Protection Regulation" means:

- (i) 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 European Union institutions, bodies, offices and agencies and on the free movement of such data (OJ L 295, 21.11.2018, p.39-98);
- (ii) 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
- (iii) 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 Data Protection Statement Processing of Final Recipients' Personal Data for monitoring purposes" means EIF notice on the handling of personal data of Final Recipients available at <https://www.eif.org/attachments/final-recipients-monitoring-dataprotection.pdf> as such document may be updated

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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 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.

- (b) Each Party shall comply with each Data Protection Regulation applicable to it from time to time when processing Personal Data.
- (c) 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.
- (d) 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, email 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 14.16 (a) (*Sub-Operations and Final Recipient Transactions*), 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, the EIF

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Data Protection Statement Processing of Final Recipients' Personal Data for monitoring purposes and EIB Privacy Statement.

14.18 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 this Agreement in a bank account held with a credit institution situated within the territory of a Member State of the EU.

14.19 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, 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:
 - (1) undertakings from the relevant Sub-Intermediary and Final Recipient (as applicable) equivalent to those contained in Clause 14.19 (a)(i) and (ii) ; and
 - (2) 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 Clause 14.19 (a) or (b) (*Illegal Activities*), where Article 89(1) of Directive 2013/36/EU (OJ L 176, 27.6.2013, p. 338) requires the Intermediary, or a Sub-Intermediary as applicable, to disclose data within the meaning of such Directive (or applicable national laws or regulations implementing such Directive), the Intermediary undertakes, and shall procure that each Sub-Intermediary undertakes, that it will disclose the data that is not commercially sensitive.
- (d) The Intermediary undertakes to make the funds or economic resources available to each Sub-Intermediary contingent upon disclosure to the Intermediary of

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information on the Beneficial Ownership of such Sub-Intermediary, in accordance with the principles and standards of 4th and 5th AML Directives.

- (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 the principles and standards of 4th and 5th AML Directives.
- (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 guarantee instruments to Sub-Intermediaries and ultimately to the benefit of Final Recipients.

14.20 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.

14.21 Tax

The Intermediary shall pay and, within five (5) Business Days of demand, indemnify the Counter-Guarantor against any cost, loss or liability the Counter-Guarantor incurs in relation to all stamp duty, registration and other similar taxes payable in respect of this Agreement or the transactions contemplated by the Agreement.

14.22 Additional Undertakings

If applicable, the Intermediary shall comply with any additional undertakings set out in the Specific Terms.

15. Events of Default

Each of the events or circumstances set out in this Clause 15 (save for Clause 15.10 (*Notification of an Event of Default*)) is an "**Event of Default**":

15.1 Non-payment

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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:

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

15.2 Other Obligations

- (a) A Party does not comply in any material respect with any provision of this Agreement (other than under Clause 14 (*General Undertakings*), Clause 15.1 (*Non-payment*), Clause 15.7 (*Misrepresentation*), Clause 15.8 (*Restrictive Measures*), or Clause 15.9 (*Illegal Activities*).
- (b) No Event of Default under Clause 15.2(a) 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.

15.3 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.

15.4 Insolvency Proceedings

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

- (a) 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;
- (b) a composition, assignment or arrangement with any creditor of a Party;
- (c) 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;
- (d) an enforcement of any Security over any asset of a Party; or

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- (e) any analogous procedure or step is taken in any jurisdiction,

provided that this Clause 15.4 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.

15.5 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).

15.6 Undertakings

A Party does not comply with any of its undertakings set out in this Agreement. No Event of Default under this Clause will occur if the failure to comply is capable of remedy and is remedied within fourteen (14) Business Days of the Non-Affected Party giving notice to the Affected Party or the Affected Party becoming aware of the failure to comply.

15.7 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.

15.8 Restrictive Measures

- (a) The Intermediary does not comply with the provisions of Clause 14.7(a), (b) or (c) (*Restrictive Measures*).
- (b) The Intermediary becomes a Sanctioned Person for reasons within its direct control.

15.9 Illegal Activities

The Intermediary does not comply with the provisions of Clause 14.18(a)(ii) (*Compliance with Laws and Conduct of Business*).

15.10 Notification of 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.

16. Consequences of an Event of Default

16.1 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

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(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 Clause 15.5 (*Unlawfulness*), 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 16.2 (*Early Termination*), the notice served under this Clause 16.1 (*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 16.2 (*Early Termination*), the Payment Demand to which Clause 8.2(b) (*Early Termination*) refers to shall not include any Defaulted Amounts incurred after the Suspension Notice became effective.

16.2 Early Termination

- (a) On, and at any time after the occurrence of an Event of Default under Clause 15 (*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 11 (*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 16.3 (*Payments on Early Termination*) and will be subject to Clause 16.4 (*Set-off*).
- (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 this Clause 16.2.

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- (d) For the purpose of the Payment Demand to be sent pursuant to this Clause 16.2, the Parties acknowledge and agree that no Payment Demand may be sent if an Event of Default pursuant to Clause 15.5 (*Unlawfulness*), Clause 15.8 (*Restrictive Measures*) or Clause 15.9 (*Illegal Activities*) 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.

16.3 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 16.2(b) (*Early Termination*), *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 16.2(b) (*Early Termination*), *plus* any Recovery due to the Counter-Guarantor pursuant to Clause 10 (*Recoveries*), *plus* any amount due under Clause 9 (*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.

16.4 Set-off

- (a) Any Early Termination Amount payable to the Intermediary by the Counter-Guarantor will, at the option of the Counter-Guarantor, be reduced by its set-off against any (or part of the) other amounts ("**Other Amounts**") payable by the Intermediary to the Counter-Guarantor (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 against the Other Amounts pursuant to this Clause 16.4 can be exercised only by the Counter-Guarantor in its sole

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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 shall be made without (and free and clear of any deduction for) set-off or counterclaim against the Counter-Guarantor.

(c) For the purpose of this Clause 16.4, 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 Counter-Guarantor 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 16.4 will be effective to create a charge or other security interest. This Clause 16.4 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 Counter-Guarantor is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise).

17. Term

Without prejudice to Clause 18 (*Survival of Rights*), this Agreement will become effective on the Effective Date and will terminate on the Termination Date.

18. Survival of Rights

The provisions of Clauses 4.2 (*Exclusion Process*), 8 (*Governing Law and Jurisdiction*), 9 (*Right of Clawback*), 10 (*Recoveries*), 14.12 (*Visibility and promotion*), 14.13 (*Monitoring and Audit*), 14.14 (*Maintenance of Records – Authorisations*), 14.16 (*Data protection*), 20 (*Notices*), 21 (*Calculations and Certificates*), 23 (*Changes to the Parties*), 24 (*Disclosure of Information*) and 25 (*Disruption to Payment Systems*) 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 10 (*Recoveries*) and any rights of the Parties under Clause 16.2 (*Early Termination*), Clause 16.3 (*Payments on Early Termination*) and Clause 16.4 (*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.

19. Waiver of Defences

- 19.1 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 19, 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):

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- (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.

19.2 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).

19.3 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.

20. Notices

20.1 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:

Attent
Email:

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- (b) in respect of the Intermediary

20.2 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 20.1 (*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 20.2 (*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 Counter-Guarantor may also request, and in such cases the Intermediary shall ensure that, without delay, the original of such document is sent via mail (in accordance with this Clause 20.2). 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 16 (*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.

20.3 Language

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

21. Calculations and Certificates

21.1 Accounts

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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.

21.2 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.

21.3 Rounding

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

22. 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.

23. Changes to the Parties

23.1 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 de-merger, consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all of a party's assets to, another entity.

23.2 Changes to the Counter-Guarantor

- (a) Subject to Clause 23.2 (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.

24. Disclosure of Information

- 24.1 Subject to the provisions of Clause 14.12 (*Visibility and promotion*) each Party shall keep confidential all Confidential Information supplied to it in connection with this Agreement.

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24.2 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 InvestEU 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

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- (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 24.

- 24.3 For the avoidance of doubt, the Intermediary undertakes to maintain and be able to produce all documentation related to this Clause 24 for the Maintenance of Record Period.
- 24.4 This Clause 24 supersedes any previous confidentiality undertaking given by either Party prior to the Effective Date in the context of this Counter-Guarantee.

25. **Disruption to Payment Systems**

If the Counter-Guarantor determines (in its discretion) that a Disruption Event has occurred:

- (a) the Counter-Guarantor may, and shall if requested to do so by the Intermediary, consult with the Intermediary with a view to agreeing with the Intermediary such changes to the operation or administration of this Agreement as the Intermediary may deem necessary in the circumstances; and
- (b) the Counter-Guarantor shall not be obliged to consult with the Intermediary in relation to any changes mentioned in Clause 25(a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes.

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SIGNATURES

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

Date: 22-12-2022

Date: 20-12-2022

SIGNED on behalf of **COMPAÑÍA ESPAÑOLA DE REAFIANZAMIENTO, SOCIEDAD MERCANTIL ESTATAL, S.A.**

DocuSigned by:
 Ana Maria Vizcaino Ochoa
8F30353423844EC

By: Ana Maria Vizcaino Ochoa

Title: CEO

Date: 20-12-2022

DocuSigned by:
 Fernandez de Navarrete González-Valerio
BC434B7...

By: Alvaro Fernandez de Navarrete González-Valerio

Title: CFO

Date: 20-12-2022