

FUNDING AGREEMENT

between

**The Government of Romania represented by the Ministry of European Investments
and Projects**

and

European Investment Fund

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This Agreement (the “**Funding Agreement**”) is entered into on the Effective Date by and between:

- (1) The **Government of Romania** represented by the **Ministry of European Investments and Projects**, having its registered office at Strada Menuetului 7, Bucharest 013713, Romania (hereinafter “**MIPE**”), and
- (2) the **European Investment Fund**, having its registered office at 37 B, avenue J.F. Kennedy, L-2968 Luxembourg, Luxembourg (“**EIF**”),

collectively the “**Parties**” and individually, the “**Party**” as the context may require.

WHEREAS:

- (A) The Recovery and Resilience Facility (hereinafter “**RRF**”) was established by Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 (hereinafter the “**RRF Regulation**”) in order to support the European Union’s recovery in the aftermath of the COVID-19 crisis.
- (B) The EIF’s main objective is to support the access to finance for small and medium enterprises and midcaps by means of risk capital and guarantee instruments, using either its own funds or those available within the framework of mandates entrusted to it by third parties. According to Article 2 of its Statutes, the EIF contributes to the pursuit of European Union objectives; in particular it is committed to the development of a knowledge-based society, centred on innovation, growth and employment, the promotion of entrepreneurial spirit, regional development and the cohesion of the European Union.
- (C) Pursuant to Articles 18-20 of the RRF Regulation, further to the endorsement by the European Commission, the Council of the European Union approved a recovery and resilience plan for Romania pursuant to the Council Implementing Decision dated 29 October 2021¹ (hereinafter “**the CID**”), on the approval of the assessment of the Recovery and Resilience Plan for Romania included as Annex to the CID² (hereinafter “**RRP**”). Under the RRP, the European Commission shall make available to the GoR a financial contribution in the form of a non-repayable support and a loan, both payable by the European Commission to the GoR in instalments as stipulated in the CID.
- (D) According to paragraph 8 of the preamble of the RRF Regulation, “[...] a recovery and resilience facility should be established to provide effective and significant financial support to step up the implementation of sustainable reforms and related public

¹ [EUR-Lex - ST_12319_2021_INIT - EN - EUR-Lex \(europa.eu\)](#).

² [EUR-Lex - ST_12319_2021_ADD_1 - EN - EUR-Lex \(europa.eu\)](#).

investments in the Member States. [...] Private investment could also be incentivised through public investment schemes, including financial instruments, subsidies and other instruments, provided State aid rules are complied with”.

- (E) Under the RRP, the GoR has committed to (i) set up an equity financial instrument as described in Component 9, section “Investment 2 – Financial instruments for the private sector”, sub-investment 2.3 of the Annex to the CID, and (ii) fulfil certain milestones listed in the Annex to the CID under sequential numbers 253-255.
- (F) The Parties agree herein to designate such equity financial instrument as the Recovery Equity Fund of Funds (hereinafter “**REF**”) and the GoR hereby directly entrusts the EIF with the implementation of the REF in accordance with the terms of this Agreement. The objective of REF is to address the market failure related to the access to finance resulting from the COVID-19 crisis by, ultimately, facilitating access to finance to Final Recipients (as defined below) and improving funding conditions for Final Recipients active in Romania through the implementation of an equity instrument.
- (G) The GoR and the EIF are entering into this Funding Agreement for the purpose, inter alia, of:
 - (a) setting up the REF, as a separate block of finance (non-incorporated vehicle) within the EIF, for and on behalf of, and at the risk of, the GoR.
 - (b) appointing the EIF to operate and manage the amounts made available to the REF, pursuant to this Agreement, whereby the EIF shall act in its own name but for and on behalf of, and at the risk of, the GoR, aiming to support the GoR in fulfilment of its obligations undertaken through the RRP in relation to the REF (e.g. relevant milestones as defined by the CID);
 - (c) defining the rules governing the management of the REF and the functions and the duties of the GoR and the EIF with respect to the REF implementation;
 - (d) defining the rules in relation to the monitoring, evaluation, reporting and auditing of the REF; and
 - (e) determining the amounts and the terms of payment of (A) the contributions of the GoR to the REF and (B) the remuneration of the EIF for the implementation and management of the REF.
- (H) The Parties agree that the EIF shall not be required to match the REF commitment from other EIF Mandate (as defined below). The Parties further agree that a combination of the REF commitment and an EIF commitment to Final Recipients is however possible subject to the conditions set out in this Agreement, as may be further specified in CEoI(s) (as defined below).

NOW THEREFORE it is agreed as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 Any terms and expressions used in this Agreement (including its Recitals) shall bear the following meaning, unless the context requires otherwise:

“**Active Commitments**” has the meaning given to such term in Clause 8.4 of this Agreement;

“**Agreement**” means this Funding Agreement (and its Appendices) as amended, supplemented or modified from time to time;

“**Appendix**” means an appendix to this Agreement which shall form an integral part of this Agreement;

“**Business Day**” means a day, other than a Saturday or Sunday, during which EIF Luxembourg office is open, and banks are open for general business in Luxembourg and Romania;

“**CEoI(s)**” has the meaning given to such term in Clause 2.2(d) of this Agreement;

“**Commitment Agreement**” means the agreement(s) to be entered into by the EIF with the Underlying Funds and/or the Financial Intermediaries, as applicable, in order to provide them funding under the REF and to determine the terms and conditions of such investments;

“**Commitment Period**” means the period during which the IC may, upon proposal by the EIF, approve (either expressly or as a result of a non-objection) the entry into Commitment Agreement(s) by the EIF with Underlying Funds and/or Financial Intermediaries, as applicable, financed from the Contribution Committed, which shall start on the Effective Date and end on 30 June 2026 (or such later date as agreed by the IC and the EIF, upon formal proposal by the EIF and/or the IC, for instance, upon modification of the CID); for the avoidance of doubt, the EIF may enter into Commitment Agreement(s) with respect to investments approved (either expressly or as a result of a non-objection) by the IC during the Commitment Period, over the entire duration of the Agreement;

“**Contribution Committed**” means EUR 400,000,000, being the amount of the GoR’s contribution committed to the REF under Clause 3 and which, for the avoidance of doubt, excludes any interest accrued on the REF Bank Account, any Proceeds of Operations or any other gains or receipts generated for the REF;

“Contribution Paid” means the aggregate amount of the Contribution Committed which has been paid by the GoR into the REF Bank Account, and which, for the avoidance of doubt, excludes any interest accrued on the REF Bank Account, any Proceeds of Operations or any other gains or receipts generated for the REF which are attributable to the Contribution Committed;

“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 the EIB and/or the EIF;

“EIF” means the European Investment Fund;

“EIF Deal Allocation Methodology” means the internal process pursuant to which EIF makes allocation decisions among the EIF Mandates and EIF own resources and which takes into account the Investment Strategy, as such process may be amended or restated from time to time by the EIF unilaterally and in its discretion. A description of the EIF Deal Allocation Methodology is published on EIF’s website;

“EIF Legal, Compliance and Operational Framework” means the procedural framework, policies and guidelines that apply to the EIB Group and/or the EIF, as may be amended from time to time (such as the EIB Group AML-CFT Framework, the EIB Group Sanctions Policy, the EIB Group transparency policy, the EIB Group Anti-Fraud Policy, and the EIB Group NCJ Policy, as published, if applicable, on EIB’s or EIF’s website on the date of this Agreement and thereafter, as updated from time to time);

“EIF Mandate” means any operational programme, mandate, managed account or external vehicle (including a fund) that EIF manages or advises for EU institutions, EU Member States or national or local governmental institutions or similar organisations, sovereign wealth funds, private organisations, mandators or other persons;

“EIF Restricted Sectors” has the meaning given to such term in Appendix A (Investment Strategy);

“EURIBOR” means, in relation to an unpaid or overdue amount, 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 displayed on page EURIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the EIF may select in good faith

another page or service displaying the relevant rate after consultation with the IC. If such rate is less than zero, EURIBOR shall be deemed to be zero;

Financial Intermediary means a financial institution, fund management company or other legal entity managing or advising an Underlying Fund responsible for providing the resources made available from the REF to Final Recipients in accordance with this Agreement.

“Final Recipient” means a legal person receiving financial support from an Underlying Fund under a Final Recipient Transaction;

“Final Recipient Transaction” means an equity or quasi-equity transaction to be entered into between a Financial Intermediary and/or an Underlying Fund and a Final Recipient;

“First Tranche” means an amount of EUR 50,000,000 of the Contribution Committed payable to the EIF pursuant to Clause 3.2;

“Indemnified Amounts” has the meaning given to such term in Clause 11.5 of this Agreement;

“Investment Committee” of **“IC”** has the meaning given to such term in Clause 7.1 of this Agreement;

“Investment Committee Rules of Procedure” has the meaning given to it in Clause 7.4 of this Agreement;

“Investment Strategy” means the investment strategy for the REF, attached to this Agreement as Appendix A, as amended from time to time, including by IC decision;

“Legacy Funds” means the aggregate of any funds continued to be managed by the EIF pursuant to this Agreement during the Legacy Period, whether in the form of commitments to the Underlying Funds, amounts available in the REF Bank Account or otherwise and including (without double counting) the Contribution Paid, interest or revenue received together with the Proceeds of Operations (following application of Clause 4.2 of this Agreement) less any amounts repaid to the GoR pursuant to Clause 5 of this Agreement;

“Legacy Period” means the period commencing on 1 July 2026 (or such later date as agreed by the IC and the EIF, upon formal proposal by the EIF and/or the IC, for instance upon modification of the CID) and expiring on the Scheduled Termination Date;

“Management Fees” means the amounts payable to the EIF for fulfilment of the tasks entrusted under this Agreement in accordance with Clause 8;

“Non-Compliant Jurisdiction” means any jurisdiction which is considered non-compliant in accordance with the EIB Group policy towards Weakly Regulated, Non-transparent and Non-cooperative Jurisdictions and Tax Good Governance (the “EIB Group NCJ Policy”), as published on EIB’s or EIF’s website on the date of this Agreement and thereafter, as updated from time to time;

“Performance Fees” means the amounts payable to the EIF in accordance with Clause 8;

“Proceeds of Operations” means the aggregate of all the returns which relate to (a) the repayment to EIF into the REF Bank Account of the Contribution Committed paid to the Underlying Funds under Commitment Agreement(s), (b) the amounts received by the EIF from the Underlying Funds and paid into the REF Bank Account in accordance with Commitment Agreement(s) or (c) the amounts otherwise received in the REF Bank Account under REF, and which are attributable to the support provided by the REF to Underlying Funds and, indirectly, Final Recipients (including, for the avoidance of doubt, proceeds from secondary sales in accordance with Clause 2.2(g)); for the avoidance of doubt, recallable repayments received by Financial Intermediaries or Underlying Funds should not be included in the Proceeds of Operations.

“REF” has the meaning given to it in the preamble;

“REF Bank Account” means the bank account or accounts to be opened and managed by the EIF on behalf of the GoR in accordance with Clause 5;

“Reporting Period” means, in relation to the first reporting period, the period commencing on the Effective Date and ending on 30 June 2022, and thereafter each six-month period starting on 1 January and 1 July of each year;

“Risk Policy” means the risk factors and risk control mechanisms as set out in Appendix C (REF Ref Risk Policy), as amended and/or restated from time to time;

“RRF” has the meaning given to it in the preamble;

“RRF Regulation” has the meaning given to it in the preamble;

“Scheduled Termination Date” means the date falling six (6) months after the expiration of the period applicable for the recovery of outstanding claims under the last Commitment Agreement in force;

“State Aid” means state aid as described in Articles 107 and 108 of the Treaty on the Functioning of the European Union together with all other rules or regulations relating to the provision of state aid as adopted from time to time by the European Union and, as the case may be, communicated to the EIF by the GoR;

“Subsequent Tranche(s)” means any tranche following the First Tranche, equal to an amount of EUR 50,000,000 of the Contribution Committed payable to EIF pursuant to Clause 3.2;

“Target Recipient(s)” has the meaning given to it in Appendix A; for the avoidance of doubt, references to Final Recipient(s) in this Agreement and its Appendixes are deemed to include Target Recipient(s), unless otherwise specified or the context requires otherwise;

“Tax” means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest);

“Tax Advantage” means a saving of tax on distributions made by EIF to the GoR which arise from the GoR’s relationship with EIF and that the GoR would not have obtained from an identical contractual relationship with another party;

“Tail-end Period” means the period during which the Underlying Fund is treated as a tail-end fund due to ceasing substantial investment activities, approaching the end of its term (with or without extensions) and/or exceeding such term as further detailed in the EIF’s internal procedures;

“Underlying Funds” means the investment funds and investment vehicles (including dedicated vehicles) that are set up by the Financial Intermediaries to provide financing to Financial Recipients pursuant to the Commitment Agreements;

“Unforeseen Additional Expenses” has the meaning given to such term in Clause 9.1;

“Written Request” means a request in writing for payment of the First Tranche and, the Subsequent Tranche(s) of the Contribution Committed, substantially in the form of Appendix F (Form Of Written Requests).

1.2 Interpretation

Save where the context otherwise requires:

- (a) any reference to legislation, a statute or statutory provision shall include:
 - (i) such legislation, statute or provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enaction or

consolidation applies or is capable of applying to any transactions entered into hereunder; and

- (ii) any subordinate legislation made from time to time under that statute or provision;
- (b) capitalised terms and expressions defined in the Preamble and the Recitals have the same meaning throughout this Agreement unless herein otherwise defined;
- (c) words denoting:
 - (i) the singular number only shall include the plural number also and vice versa;
 - (ii) one gender only shall include the other gender; and
 - (iii) persons only shall include firms and corporations and vice versa;
- (d) headings shall be ignored in construing this Agreement;
- (e) if the last day of any term or deadline falls on a day which is not a Business Day, the relevant term or deadline shall end on the immediately following Business Day; and
- (f) the Appendices form an integral part of this Agreement and shall have effect accordingly.

2. MANDATE AND FUNCTIONS OF THE EIF

- 2.1 The GoR hereby appoints the EIF to act in the name of the EIF, but for and on behalf of, and at the risk of, the GoR, to implement and manage the funds and resources made available by the GoR for the purpose of the REF and to carry out the other functions and duties in relation to the REF, as set out in this Agreement.
- 2.2 In performance of the scope of the appointment set out in Clause 2.1 above, the GoR authorises the EIF to:
 - (a) set up the REF, as a separate block of finance (non-incorporated vehicle) within the EIF, for and on behalf of, and at the risk of, the GoR;
 - (b) implement the REF by pursuing the Investment Strategy while taking into account the Risk Policy;

- (c) open and maintain the REF Bank Account, in the name of the EIF but for the account and at the risk of the GoR, and perform treasury management activities in relation to the REF Bank Account;
- (d) launch one (1) or more open or closed call(s) for expression of interest (“**CEoI(s)**”) and select Financial Intermediaries and Underlying Funds in accordance with the Investment Strategy and the EIF Legal, Compliance and Operational Framework, as well as other relevant internal EIF procedures and policies in order to provide them with funding under the REF;
- (e) perform due diligence on Financial Intermediaries and Underlying Funds;
- (f) use the Contribution Committed or a part thereof pursuant to this Agreement in order to make commitments to Underlying Funds in its own name but acting on behalf of GoR pursuant to the terms of this Agreement;
- (g) hold and manage investments in Underlying Funds in its own name but acting on behalf of GoR pursuant to the terms of this Agreement. For the avoidance of doubt, EIF may engage in secondary sales with respect to an investment in an Underlying Fund (including for the avoidance of doubt the part of the investment funded under REF) and for any sale of such investment the prior approval of the IC will not be required if: (i) such transaction is executed during the Tail-end Period of the Underlying Fund or (ii) the transfer is done pursuant to Clause 4.3(d);
- (h) prepare and/or review and sign Commitment Agreements and such other relevant agreements with Financial Intermediaries and their Underlying Funds, as applicable;
- (i) enforce, defend and if necessary adapt or waive any rights of the REF under or in connection with Commitment Agreements, including, where it is commercially reasonable, by means of litigation, arbitration, mediation or other dispute resolution methods or procedures;
- (j) monitor and report on the implementation of the Commitment Agreements in accordance with Clause 15;
- (k) manage the funds credited to the REF Bank Account, including, but without limitation, through outsourcing and/or subcontracting all or part of the relevant activities to third parties, in accordance with the Treasury Guidelines;
- (l) ensure the visibility of European Union funding, by requesting Financial Intermediaries and/or Underlying Funds to inform Final Recipients and the public of the support received from the RRF by displaying in Commitment

Agreements and relevant publicity materials (brochures, website, banners etc.) the European Union flag and the statement ‘funded by the European Union – NextGenerationEU’, in accordance with a text to be agreed between the Parties in the terms of the CEoI(s);

- (m) to the extent strictly necessary for the implementation of the REF activity under applicable law, coordinate the external translation of any documents; and
- (n) take any other action and to enter into any deeds or other documents that EIF considers to be necessary or desirable for the proper implementation of the REF, subject however to the rights of the IC under Clause 7.6.

2.3 The GoR acknowledges that it is solely responsible for the fulfilment of any obligations undertaken under the RRP towards the European Union, including (but not limited to) the fulfilment of milestones in relation to the REF with the support of the EIF. For the avoidance of doubt, the EIF does not undertake any obligation concerning the fulfilment of these milestones other than implementing the REF in accordance with the Investment Strategy.

2.4 The EIF shall be entitled to retain the services of professional advisers and external consultants, such as tax and legal advisers, accountants, brokers and/or investment banks, translators and rating agencies for specific tasks in connection with the implementation of the REF and this Agreement which, in the reasonable opinion of the EIF, require such expert or professional advice. When retaining such services, the EIF shall ensure that (a) the fees payable for such services are established in accordance with the EIF’s internal procedures and (b) the services rendered by the external consultants are reasonably evidenced and duly documented. For the avoidance of doubt, any costs arising from the services retained by the EIF described in this Clause 2.4 are covered by the respective Management Fees except if they constitute Unforeseen Additional Expenses or other expenses and charges set out in Clause 9, in which case they shall be covered in accordance with the provisions set out therein.

2.5 The GoR acknowledges and agrees that the EIF shall not enter into any Commitment Agreement with a Financial Intermediary and/or the Underlying Fund (as the case may be) unless and until the First Tranche has been credited by the GoR in cleared funds to the REF Bank Account in accordance with Clause 3.

3. **GOR CONTRIBUTION**

3.1 The GoR hereby undertakes to make available to the REF an aggregate amount equal to the Contribution Committed that shall amount to EUR 400,000,000 (including, for the avoidance of doubt, the Management Fees, the Performance Fees and any Unforeseen Additional Expenses). For the avoidance of doubt, the Contribution

Committed shall cover commitments in Underlying Funds which in turn cover costs and fees at Financial Intermediary/Underlying Fund level.

3.2 The GoR shall pay the Contribution Committed into the REF Bank Account as follows:

- (a) the First Tranche of the Contribution Committed, by no later than fifty (50) Business Days from the date of the receipt of the Written Request sent by the EIF to the GoR; and
- (b) the Subsequent Tranches of the Contribution Committed, by no later than fifty (50) Business Days from the date of the receipt of the Written Request sent by the EIF to the GoR, whenever at least 50% of the previous tranche (including the First Tranche) has been committed to Underlying Funds, and/or paid to the EIF with respect to the payment of the Management Fees, Performance Fees and any Unforeseen Additional Expenses.

3.3 The GoR undertakes not to withdraw or cancel any portion of the respective Contribution Committed (whether or not such amount has been effectively paid to the EIF) unless the GoR and the EIF agree to the withdrawal or cancellation in writing.

4. **DEFAULT BY THE GOR**

4.1 If the GoR fails for whatever reason to pay into the REF Bank Account any amount which is the subject of a Written Request in accordance with Clause 3, within ten (10) Business Days of the issue of a default notice (the “**Default Notice**”) from EIF (the date following the expiry of the ten (10) Business Day period, the “**Default Date**”), the GoR may be considered in default by the EIF with effect as from the Default Date.

4.2 The GoR may remedy its default by paying the following amounts to the REF Bank Account on or before the Default Date:

- (a) the amount requested and outstanding under any Written Request;
- (b) an amount sufficient to reimburse the EIF (including with respect to fees and costs of the REF Bank Account) with respect to any related reasonable expenses incurred by the EIF, in its capacity as manager of the REF hereunder, arising from, or in connection with, a default by the GoR (including any default interest payable or default expenses or other penalties payable to any Underlying Fund as a result of the GoR’s default (the “**Default Expenses**”) (and any such payment is not a Contribution Committed)), such Default Expenses as informed by the EIF to the GoR and being duly documented. For the avoidance of doubt, Default Expenses shall not be paid out of Unforeseen Additional Expenses and shall be in addition to the Contribution Committed.

4.3 If the GoR does not remedy its default in accordance with Clause 4.2 on or before the Default Date, the EIF may pursue any pre-litigation remedies appropriate under the circumstances but will also have the right to exercise in its sole discretion one or more of the following legal remedies:

- (a) terminate this Agreement in accordance with Clause 19.2;
- (b) offset any unpaid amount and all other amounts payable by GoR, including the relevant Default Expenses against, or withhold, distributions of Proceeds of Operations, unpaid or otherwise payable to the GoR;
- (c) retain (all or part of the) investments under Commitment Agreements for the EIF's own benefit and transfer such investments out of the REF Bank Account to an account held by the EIF in its own name and own behalf or on behalf of any EIF Mandate and cease to act as a manager of the REF in respect of the relevant investments;
- (d) offer all or part of the investments under Commitment Agreements to one or more third parties identified by the EIF on such terms as are reasonably determined by the EIF and the EIF is hereby authorised and empowered to offer and transfer all or part of the relevant investments as per this Clause 4 provided that in the event the EIF exercises such right and transfers all or part of the relevant investments in accordance with this Clause 4, the proceeds of sale will, following receipt by the EIF and subject to the deduction of any amounts outstanding to be paid by the GoR under the Agreement, be paid to the GoR;
- (e) pursue any available legal remedies against the GoR to collect any and all of the amounts due from the GoR under this Agreement and any other damages resulting from such default (including consequential damages);
- (f) give effect to any default remedies (including forfeiture remedies) that apply by virtue of the documentation of the Underlying Funds.

5. **USE OF PROCEEDS OF OPERATION**

5.1 The Parties agree as follows:

- (a) the EIF shall procure that any Proceeds of Operations will be paid by the Underlying Funds into the REF Bank Account; and
- (b) in the case of amounts retained in the REF Bank Account as provisions against liabilities with respect to any Underlying Fund, such amounts shall be released from such commitment or provisions (and be available for the general purposes of the REF) without delay after the date on which the liability expires and/or no

further liability can be incurred, and in any event no later than the final date for repayment to the GoR of any balance in the REF Bank Account provided for in Clause 19.6.

5.2 The Proceeds of Operations generated in the course of a calendar year shall be used in the following order of priority, save as provided for in Clause 4.2 above:

- (a) for the payment and/or reimbursement of Management Fees and Performance Fees that are then due but remain unpaid;
- (b) for the payment and/or reimbursement of any Unforeseen Additional Expenses remaining unpaid in accordance with Clause 9.1;
- (c) for the payment of shortfalls, if any, due to negative interest in accordance with Clause 9.2; and
- (d) for entering into Commitment Agreements with Underlying Funds, in accordance with the Investment Strategy;

provided that in case of (a), (b) and (d) above, this shall not discharge the GoR's obligation to pay any such amounts.

5.3 The Parties further agree that any gains, interest or revenues of the REF, including with respect to the Contribution Paid, the treasury activities and other gains generated from the REF Bank Account ("**Interest Generated**") shall be used in accordance with the requirements set out in Clause 4.1 and Clause 4.2 above and in the same order of priority.

6. **REF BANK ACCOUNT**

6.1 The REF Bank Account shall be opened by the EIF in its own name, acting on behalf of, and at the risk of, the GoR, with a financial institution selected by the EIF in accordance with the EIF Legal, Compliance and Operational Framework and maintained by the EIF in compliance with applicable law and such framework. The details of the REF Bank Account shall be communicated to the GoR in the Written Request.

6.2 The REF Bank Account shall be denominated in Euros and/or any additional currency as necessary, in the EIF's discretion, for the implementation of the REF.

6.3 The REF Bank Account and funds credited thereto shall at all times and in all respects be used, committed or otherwise disposed of or managed in accounting terms separately from other EIF resources or managed accounts (including, for the avoidance of doubt, other funds or accounts belonging to the EIF), and shall be used exclusively in the context of the implementation of the REF.

- 6.4 The GoR shall not create or permit to subsist any security, lien or other charge or encumbrance over the REF Bank Account, the Contribution Paid or any other funds managed by the EIF in connection with the REF whether in favour of the GoR or any third party creditor. The GoR shall not be entitled to operate, close or otherwise restrict the use by the EIF of the REF Bank Account (including by withdrawing any funds deposited in the REF Account).
- 6.5 Upon the occurrence (other than as a result of wilful misconduct, fraud or gross negligence of the EIF) of any of the following events:
- (a) the GoR breaches any of its material obligations under this Agreement;
 - (b) the EIF's rights to manage the REF Bank Account are revoked, cancelled or otherwise adversely affected pursuant to this Agreement; or
 - (c) the GoR or any third party takes any legal action or proceeding or any other procedure or step aiming at (or having the effect of) (i) gaining access to, or control over, or seizing or attaching the REF Bank Account or any funds deposited on such account or (ii) limiting the EIF's control over or rights to the REF Bank Account, provided that this shall not apply to any such legal action or proceeding or any other procedure or step undertaken which, in the opinion of the EIF, appears *prima facie* to be frivolous or vexatious,

the EIF shall be authorised to transfer the REF Bank Account to any bank of its choice and to open a bank account in its own name and belonging to the EIF to serve as the REF Bank Account.

- 6.6 The GoR acknowledges and agrees that the EIF shall be entitled to operate the REF Bank Account as follows:

The REF Bank Account shall be:

- (a) credited with, *inter alia*, the following items:
 - (i) the Contribution Paid;
 - (ii) revenue generated from the investment of Treasury Funds in accordance with the Treasury Guidelines;
 - (iii) Interest Generated;
 - (iv) any Proceeds of Operation;
 - (v) amounts for the payment of Management Fees and Performance Fees;

- (vi) amounts for the payment of the Unforeseen Additional Expenses; and
 - (vii) any other payments due to be made in accordance with this Agreement;
- (b) debited by the EIF, with, *inter alia*, the following items:
- (i) amounts to be paid directly or indirectly to Financial Intermediaries and Underlying Funds;
 - (ii) the respective Management Fees and Performance Fees as provided under Clause 8 and Unforeseen Additional Expenses and other amounts due to the EIF under Clause 9 and any other amounts due to the EIF under this Agreement or otherwise;
 - (iii) the amount of the respective Treasury Funds to be withdrawn to make investments in accordance with the Treasury Guidelines;
 - (iv) amounts to be transferred to the GoR under this Agreement, including, without limitation, amounts to be transferred to the GoR from time to time after the expiration or termination of this Agreement;
 - (v) any other amount expressly authorised to be debited by the EIF in writing by the GoR and the EIF jointly provided that the Parties hereby agree that the EIF may debit any such amounts for payments that are due but not yet satisfied by the GoR; and
 - (vi) negative interest on cash/current accounts.

The EIF shall continue to be entitled to debit these sums from the REF Bank Account after the termination of this Agreement in order to satisfy its remaining rights and obligations under and in connection with this Agreement.

6.7 Any costs incurred for the maintenance and administration of the REF Bank Account or any other bank accounts necessary for the implementation of the REF related activity including, but not limited to bank charges, excluding, however, the expenses set out in Clause 6.8 of this Agreement, shall be borne by the EIF as part of the Management Fee and shall not constitute Unforeseen Additional Expenses for the purpose of Clause 9.1.

6.8 The GoR and the EIF agree that any costs linked to the application of negative interest rates to the REF Bank Account, any overdraft costs or any other costs relating to bank accounts necessary for the implementation of the REF, including as regards the Treasury Funds, as well as any treasury losses will be covered in accordance with Clause 9.2 of this Agreement. Such amounts, if the case, shall be determined by the EIF on a yearly basis based on the latest available Progress Report.

7. INVESTMENT COMMITTEE

- 7.1 An Investment Committee shall be established with the main purposes of approving, monitoring and supervising the implementation of the Investment Strategy and approving the entry into Commitment Agreements pursuant to this Agreement.
- 7.2 The Investment Committee shall be established by the GoR, which shall communicate the contact details of the IC members to the EIF in writing within ten (10) Business Days from their appointment.
- 7.3 The members of the IC shall act at all times in good faith, with professionalism and in the interest of the best implementation of the REF in accordance with the terms of this Agreement.
- 7.4 The IC shall be governed by the rules of procedure (the “**Investment Committee Rules of Procedure**”) attached in Appendix H (Investment Committee Rules of Procedure).
- 7.5 For the avoidance of doubt, the Parties acknowledge that the above appointments shall have effect exclusively for the purposes of this Agreement and further acknowledge that all costs in relation to establishing and operating the IC shall be borne by the GoR and that members of the IC (or any observers) shall not be entitled to receive any fees or remuneration nor any reimbursement of costs or expenses incurred by them in this capacity or otherwise from the resources committed under the REF. The GoR will operate the IC and its internal organisation under its exclusive responsibility and at its own cost. The costs relating to participation in the meetings of the IC of any observers designated by the EIF shall be borne by the EIF.
- 7.6 The IC shall liaise internally with the GoR and other competent authorities, as it deems appropriate, to perform its tasks in relation to the implementation of the REF and the IC shall be responsible for the following matters with respect to the GoR:
- (a) acting as the coordination and communication point among the GoR on all matters relating to the REF; in particular, the IC (by written communication signed by its Chairperson or all its members) shall immediately inform the GoR as soon as the amounts approved by the IC as commitments to Underlying Funds, as per paragraph (f) below, have led, in the IC’s opinion, based among others on the information provided by the EIF (e.g. through regular reporting pursuant to Clause 15.2, IC meeting minutes or written decisions as detailed under Appendix H), to the fulfilment of milestones as defined under the CID;
 - (b) communicating and providing its position on national rules and requirements relating to the REF, including, but without limitation to, State Aid rules;

- (c) providing interpretations on which the EIF can rely on for the purpose of the implementation of this Agreement on matters relating to the applicable national laws and regulations of Romania, and compliance with State Aid rules, in connection with the eligibility of the Financial Intermediaries, the Underlying Funds, the Final Recipients and the Final Recipient Transactions and the implementation of the REF;
- (d) upon joint formal proposal by the Parties, approving any amendments to the Investment Strategy, as well as, upon proposal by the EIF, any material amendments to the terms of operations with Financial Intermediaries and/or Underlying Funds in relation to previously approved REF commitments in Underlying Funds, in accordance with paragraph (f) below;
- (e) upon proposal by the EIF, for the entire duration of the Agreement, approval (or non-objection) of CEoI(s) for selection of Financial Intermediaries and Underlying Funds;
- (f) upon proposal by the EIF, approval (or non-objection) of commitment of REF resources to the Underlying Funds, in accordance with paras. 12 et seq. of the Investment Committee Rules of Procedure in Appendix H;
- (g) granting or refusing within ten (10) Business Days of receipt of a proposal by the EIF the right to deviate from the Risk Policy and related risk parameters identified in this Agreement in connection with higher risks implied by such deviations (ineligibility risk, counterparty risks, etc.);
- (h) carry out any tasks mentioned elsewhere in this Agreement; and
- (i) receiving the Progress Reports by EIF and proposing further implementation measures, as the case may be.

7.7 The Parties acknowledge that any decisions taken or communicated by the IC shall always be taken after appropriate assessment by the IC of the position of the GoR, and that the EIF shall be entitled to rely, without further enquiry, on any decisions taken or communicated by the IC and to assume that such decisions fully reflect the position of the GoR.

7.8 The GoR specifically agrees that, for all matters relating to the implementation of the REF and falling within the scope of this Agreement, the decisions validly taken by the IC shall constitute decisions of the GoR and shall be binding on the GoR.

7.9 Where the IC has decision-making powers upon formal proposal of the EIF, the IC shall have the power only to approve or reject proposals or recommendations in their entirety

(and not in part) and shall not have the power to amend such proposals or recommendations, unless the EIF has consented to any such amendment.

- 7.10 The IC can take decisions via written procedure or via IC meetings as further set out in Appendix H (Investment Committee Rules of Procedure), it being agreed, however, that if a decision with respect to a duly submitted formal proposal by the EIF is not taken at the IC meeting immediately following such submission of a formal proposal or via written procedure due to interruption/termination of such written procedure, such decision shall be taken by written procedure instituted shortly thereafter, in which case the termination/interruption mechanism set out in paragraph 13 of Appendix H (Investment Committee Rules of Procedure) shall not apply.
- 7.11 For the avoidance of doubt, the Parties acknowledge and agree that EIF shall have the right to take any decisions, in accordance with this Agreement, necessary in order to implement the REF and to make proposals to the IC on the matters set out in this Agreement.
- 7.12 The EIF shall provide the secretariat of the IC in accordance with this Agreement (the “**Secretariat**”). The tasks and functions of the Secretariat shall include the following:
- (a) organising IC meetings, including drawing up and distributing IC documents, agendas and minutes;
 - (b) any other tasks as conferred on the Secretariat in this Agreement or by the IC; and
 - (c) communications between the GoR and the EIF related to the activities of the IC shall be channelled through the Secretariat.
- 7.13 Any communications to and from the IC shall be validly effected if addressed in writing in accordance with Clause 24.

8. REMUNERATION OF THE EIF

- 8.1 The GoR agrees that, in consideration for the implementation and management by the EIF of the REF, it will pay to the EIF the Management Fees as of the Effective Date (irrespective of whether any part of the REF resources has been effectively committed or not on that date) and the Performance Fees until the Scheduled Termination Date.
- 8.2 The Management Fees and Performance Fees shall be mainly withheld from the funds available in the REF Account on a semi-annual basis provided that for any shorter period their amount shall be calculated pro rata tempore.

- 8.3 A fixed Management Fee of 0.45% p.a. of the Contribution Committed shall be paid by the GoR to the EIF semi-annually in arrears as of the Effective Date.
- 8.4 A variable Performance Fee of 0.1% p.a. of the Active Commitments into Underlying Funds as at 31 December of each calendar year shall be paid annually in arrears as of the Effective Date, where “**Active Commitments**” means commitments into Underlying Funds that have not been terminated, liquidated, written-off or sold.
- 8.5 The GoR agrees that if the Management Fees due pursuant to Clause 8.3 or the Performance Fee due pursuant to Clause 8.4 exceed the available balance of the REF Bank Account (including, for the purpose of such calculation, any Proceeds of Operation credited thereto but excluding amounts already committed by the EIF towards the Underlying Funds), such excess amount shall be invoiced by the EIF to the GoR in the form of a separate written request, and shall be payable within thirty (30) Business Days from the date of issuance into the REF Bank Account.

9. **UNFORESEEN ADDITIONAL EXPENSES, NEGATIVE INTEREST AND TREASURY LOSSES**

9.1 Unforeseen Additional Expenses

The GoR acknowledges and agrees that the EIF may have to incur or suffer unforeseen additional costs, expenses and liabilities in connection with the implementation and management of the REF (such as, without limitation, recovery actions or litigation, overdraft costs and bank fees in the case of delayed payments, , costs of early termination) (“**Unforeseen Additional Expenses**”). The GoR agrees that, subject to prior approval of any such Unforeseen Additional Expenses by the IC, such approval not to be unreasonably withheld, the relevant amounts shall be payable first in accordance with Clauses 5.2 and 5.3, and in the event that these amounts are insufficient, the relevant amounts shall be paid by the GoR to the EIF within one hundred and twenty (120) Business Days of the EIF’s written request, as an additional amount payable in excess of the Contribution Committed. In the event that the IC does not approve such Unforeseen Additional Expenses, which shall be justified by the IC in writing, the EIF shall be fully released from any obligation it may have to pursue further actions which may lead to Unforeseen Additional Expenses and shall incur no liability for doing so. Unless otherwise approved by the IC, the Unforeseen Additional Expenses shall not exceed, as of the Effective Date and until the Scheduled Termination Date, 0.3% of the Contribution Committed on an yearly average.

9.2 Negative Interest and Treasury Losses

The Parties agree that any costs linked to the application of negative interest to the REF Bank Account or any other bank accounts necessary for the implementation of the REF,

including as regards the Treasury Funds, as well as treasury losses, will be covered, first, by the current account balance, then by the positive Interest Generated on the REF Account, then by the Proceeds of Operations available in the REF Account in accordance with Clause 5.2 and, in the event that these amounts are insufficient (as determined by the EIF on a yearly basis), by the GoR, as a separate payment to the EIF within one hundred and twenty (120) Business Days from the EIF's written request. For avoidance of doubt, until Proceeds of Operations become available, negative interest shall be borne directly from the REF Account from the Contribution Committed. At such time when Proceeds of Operations become available, they may be utilised for negative interest costs in accordance with clause 5.2(c).

- 9.3 If the GoR does not pay any amounts set out in this Clause 9 within the time period set out above, such amount shall accrue interest from the due date until the date of payment at a rate equal to EURIBOR plus one (1) per cent.

10. EIF Mandates – EIF Deal Allocation Methodology

The GoR acknowledges and agrees that:

- (a) the EIF operates, or may operate, a number of mandates (including the EIF Mandates) agreed, or to be agreed, between the EIF and third parties. The investment policies of such mandates may entail the offering of financial instruments or opportunities of a similar nature to the REF in a number of jurisdictions, including Romania;
- (b) the EIF may, on its own account or on behalf of third parties, invest in financial instruments or opportunities of a similar nature to the REF in a number of jurisdictions, including Romania, and may be entitled with respect to such opportunities to (i) co-investment rights in Final Recipient alongside investment funds or Underlying Funds, or (ii) pre-emption rights on secondary transactions in funds where investments are made, and may allocate such opportunities and rights to any EIF Mandate;
- (c) the EIF may (i) interact in other capacities (including as a lender, guarantor or investor) with the Financial Intermediaries, the Underlying Funds and/or the Financial Recipients as well as (ii) provide financing (including in the form of loans, debt instruments, guarantees or equity) to the same entities as the REF contemplated herein, including in a manner where the REF is subordinated to, or serve as a credit enhancement for, such EIF support;
- (d) in the context of the REF, the EIF will be participating in accordance with the provisions of this Agreement as an equity or quasi-equity provider in the implementation of the REF and, if applicable, acting on its own behalf and

acting on behalf of third party investors. The GoR acknowledges and agrees that it will not have exclusive rights to any particular investment opportunity presented to or within the EIF.

Accordingly, the EIF may, without prior reference to the IC or the GoR, effect transactions in which the EIF has, directly or indirectly, a material interest or a relationship of any description with another party which involves or may involve a potential conflict with the EIF's duty to the GoR or its obligations under the REF. The EIF shall manage and, where possible, address any such potential conflicts of interest in accordance with the provisions set out in this Agreement and its internal rules and procedures in good faith, taking into consideration the Investment Strategy. Without prejudice to the above, the EIF will:

- (i) ensure that its obligations under this Agreement are properly and duly performed with adequate resources dedicated to the performance of its obligations hereunder;
- (ii) apply its EIF Deal Allocation Methodology in allocating potential investments among this mandate and other EIF Mandates, taking into account the Investment Strategy provided that the EIF reserves the right to derogate from the EIF Deal Allocation Methodology allocation, in its reasonable discretion. In doing so, the EIF will seek to always ensure a fair treatment among the EIF Mandates.

11. RESPONSIBILITIES OF THE PARTIES AND LIABILITY

- 11.1 The EIF agrees, without prejudice to Clause 11.3 below, to act with diligence and in good faith in implementing this Agreement.
- 11.2 Subject to Clause 11.3 below, the EIF shall under no circumstances be held responsible or liable to the GoR or any other person in connection with the financial performance and financial results of the REF, the Financial Intermediaries and the Underlying Funds or its implementation pursuant to this Agreement, the investment of the respective Treasury Funds (including as a result of negative interest/charges), or the failure by the GoR or any Financial Intermediary, Underlying Fund or Final Recipient benefiting from the financing under the REF to comply with any applicable laws or regulations.
- 11.3 The EIF and its employees enjoy certain privileges and immunities as per the Protocol on Privileges and Immunity of the European Communities of 8 April 1965, which shall apply to EIF and its employees and as a result the GoR waives any right to bring any action or file any claim for breach of contract against EIF deriving from this Agreement and the implementation and management by the EIF of the REF except to the extent that such costs, claims, damages, losses, liabilities or expenses of the GoR directly result from the fraud, wilful misconduct or gross negligence of the EIF in the

performance of this Agreement. For the avoidance of doubt, the EIF shall under no circumstances whatsoever be liable to the GoR or to any other person for consequential damages, loss of profit or exemplary or punitive damages. The GoR acknowledges that no provision of this Agreement in any way constitutes or implies a waiver, termination or modification by EIF of any privilege, immunity or exemptions accorded to the EIF under the Statutes of the EIF, in the Treaty on European Union and the Treaty on the Functioning of the European Union as well as from Protocols 7 and 28 annexed to these Treaties (as such may be amended and supplemented from time to time), international convention or any applicable laws.

- 11.4 Subject to Clause 11.3 above, any liability of the EIF in connection with this Agreement shall be excluded to the extent any action by the EIF is based on information obtained from the GoR or any other person mandated by them or from a decision or approval from the IC. The EIF assumes no obligation to independently verify the accuracy, relevance or completeness of any such information received from the GoR or any other person mandated by it or to examine or challenge any decision or approval by the IC.
- 11.5 The GoR hereby agrees to indemnify and hold harmless the EIF and each of its officers, directors, employees, agents, delegates and sub-delegates upon first written demand in respect of any cost, claim, damage, loss, liability, judgments, settlements or expenses (including legal fees and other costs incurred in investigating or defending any claim) incurred or suffered by the EIF (the "**Indemnified Amounts**") in connection with:
- (a) the appointment of the EIF under this Agreement or in connection with the REF or its role under the REF and this Agreement;
 - (b) failure by the EIF to satisfy its obligations under Commitment Agreements to the extent such failure has been caused or contributed to by a failure by the GoR or any of its delegates (including members of the IC appointed by the GoR) to fulfil their obligations under or in relation to this Agreement or any other act or omission of the GoR or its delegates (including members of the IC appointed by the GoR), that could not be remedied in period of time deemed reasonable by EIF following a written notice from the EIF to the GoR, but without prejudice to the provisions of Clause 4;
 - (c) any information supplied by any of the GoR or the IC to the EIF in relation to this Agreement being false, misleading, inaccurate or incomplete;
 - (d) any instruction made by or on behalf of the GoR to the EIF in relation to this Agreement or the implementation of the REF ; and/or
 - (e) any claim by any person to be entitled to any assets which form part of the REF;

- (f) any claim from or made on behalf of a Financial Intermediary, an Underlying Fund or a Final Recipient,

except in so far as such Indemnified Amounts directly result from the fraud, wilful misconduct or gross negligence of the EIF in the performance of this Agreement. For the avoidance of doubt, Indemnified Amounts shall not be paid out of the Unforeseen Additional Expenses and shall be in addition to the Contribution Committed.

11.6 The GoR hereby agrees that:

- (a) any Indemnified Amount (together with any interest accrued thereon for late payment under Clause 11.6(b)) due to the EIF shall be paid by the GoR to the EIF within twenty five (25) Business Days of the EIF's written request, as an additional amount payable in excess of the Contribution Committed; and
- (b) if the GoR does not pay any Indemnified Amount within the time period set out in Clause 11.6(a), such amount shall accrue interest from the due date until the date of payment at a rate equal to EURIBOR plus one (1) per cent.

11.7 The obligations of the GoR to indemnify the EIF under this Agreement are continuing and shall, survive, remain in full force and effect notwithstanding the occurrence of the Scheduled Termination Date or an early termination event pursuant to Clause 19, or any termination of the other terms of this Agreement with respect to the GoR, but such obligations shall cease to continue and to remain in full force and effect on the tenth (10th) anniversary of the Scheduled Termination Date.

11.8 To the extent that the amounts available in the REF are insufficient (including, but not limited to, cases where such shortfall is due to treasury losses or the unavailability of funds deposited with the Treasury Bank) to pay the respective Management Fees and Performance Fees due in accordance with this Agreement, any other amounts due under this Agreement as well as amounts necessary to cover commitments under the Contribution Committed, the GoR shall be liable to pay such amounts to the EIF. If the GoR fails to pay the requested amount on the due date, interest shall accrue on the unpaid or overdue amount from the due date up to the date of actual payment at a rate equal to EURIBOR plus one (1) per cent. The obligations of the GoR to pay the amounts specified in this Clause 11.8 of this Agreement to the EIF are continuing and shall remain in full force and effect notwithstanding the occurrence of the Scheduled Termination Date or any termination of the other terms of this Agreement with respect to the GoR; however, such obligations shall cease to continue and to remain in full force and effect on the second anniversary of the Scheduled Termination Date.

12. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS BY THE GoR

12.1 The GoR hereby represents and warrants at all material times until the termination of this Agreement that:

- (a) it has full power and capacity (including with respect to its domestic laws and constitutional requirements) (i) to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of this Agreement, (ii) to appoint the EIF on the terms of this Agreement and (iii) to enter into transactions within the scope of this Agreement and has obtained all necessary authorisations and approvals to permit the EIF to do so on its behalf;
- (b) the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations;
- (c) neither its entry into or performance of this Agreement nor its entry into any such transaction will breach any law, rule or regulation applicable to it or any material contract to which it is a party;
- (d) any information or documentation provided by it to the EIF (including any information as to the financial position of the GoR itself) is true, complete, accurate and not misleading in any material respect;
- (e) it will provide any further information properly required by the EIF or any competent authority; and
- (f) it understands and acknowledges the risks entailed in the REF in particular as set out in the Risk Policy.

12.2 The GoR acknowledges that EIF enters into this Agreement in consideration of the representations and warranties granted by GoR and their confirmation by a satisfactory legal opinion issued by a reputable law firm shortly after entering into this Agreement.

12.3 The GoR will notify the EIF promptly if there is any material change to any of the information provided by it for the purposes of this Agreement or to its circumstances generally, and will provide such other relevant information as the EIF may from time to time reasonably require. The GoR acknowledges that a failure to provide such information may adversely affect the ability of the EIF to provide services under the Agreement and the quality of the services that the EIF may provide.

12.4 The GoR undertakes not to deal, or dispose of, any of its assets attributable, in accordance with the terms of this Agreement, to the REF nor to authorise any person other than the EIF to deal or dispose of any of them.

- 12.5 The GoR further represents and warrants that there are no additional national, local or other requirements or mandatory provisions, other than those set out in this Agreement, that would apply to the REF, the implementation of the REF or the use of the Contribution Committed. The Parties agree that if any such requirements come into force following the Effective Date, the GoR shall notify the EIF as soon as possible and, following such notification, the EIF shall have the right, in its absolute discretion, to apply or not to apply such requirements with respect to the financing of the Financial Intermediaries.

In relation to this, the GoR acknowledges that the EIF's sole obligation shall be to transpose the relevant requirements from this Agreement into the Commitment Agreements.

13. **STATE AID**

- 13.1 The GoR represents and agrees that State Aid rules may apply to the implementation of the REF and that is responsible for ensuring compliance with all applicable State Aid rules in all matters involved in the scope of this Agreement and undertakes, if need be, to ensure the adoption of the relevant State Aid schemes for such purposes.
- 13.2 The GoR shall provide to the EIF in writing all information necessary to enable the REF and the Commitment Agreements to be compliant with rules on State Aid. The EIF's responsibility with respect to State Aid shall be limited to requiring the Financial Intermediaries to ensure compliance with State Aid requirements notified by the GoR to the EIF according to the provisions set out in this Agreement (including its Appendices) and insert the relevant clauses in the Commitment Agreements.
- 13.3 Information referred to in Clause 13.2 above shall be communicated by the EIF to the Financial Intermediaries, which shall be required under the Commitment Agreements to undertake to comply with the applicable State Aid rules and to obtain an undertaking from the Financial Intermediaries that they will comply with, and contractually require Final Recipients to comply with, applicable State Aid requirements.
- 13.4 The GoR will indemnify and hold harmless the EIF against any losses arising out of any breach of State Aid rules or any costs, expenses or losses arising out of any investigations or proceedings under the State Aid rules applicable to the GoR involving the EIF in its capacity as manager of the REF.

14. **TAXATION**

- 14.1 Upon the request from the EIF, the GoR will provide to the EIF any information or documents requested for the determination of its taxation status (including, for the avoidance of doubt, any information or documents in relation to any other investment

restrictions it may have with respect to their tax status). Upon the request from the Final Recipients, the Underlying Funds, or the Financial Intermediaries, the EIF will convey such information or documents, so as to enable the Final Recipients, the Underlying Funds, or the Financial Intermediaries to assess the tax treatment of the all proceeds allocable or payable under the Commitment Agreements (under any form whatsoever including, without limitation, dividend, interests, capital gains, income, etc.) or amounts constituting such proceeds. The GoR acknowledges and agrees that the EIF does however not engage in tax monitoring and administration in respect of aforementioned proceeds or amounts constituting such proceeds and will not engage in any tax analysis on behalf of the GoR. If the GoR benefits directly or indirectly from the tax status of EIF as provided by the Protocol (No. 7) on the Privileges and Immunities of the European Union, together with the Statutes of EIF, then the GoR undertakes on the request of EIF or the relevant tax authority, within the time allowed by such laws and to the extent required under applicable laws and/or tax treaties, to pay to EIF or the relevant tax authority an amount corresponding to that Tax Advantage.

- 14.2 The GoR agrees to provide to the EIF any tax information or documentation that may be requested by the EIF and which the EIF reasonably believes will enable it to comply with tax reporting, tax withholding, tax payment and/or tax compliance obligations (if applicable), including under (i) sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (commonly referred to “**FATCA**”), any U.S. Treasury regulations or other guidance issued or agreements entered into thereunder, or any information exchange agreement or intergovernmental agreement entered into between taxing jurisdictions, to improve tax compliance or which may arise as a result of a change in law or in the interpretation thereof and (ii) the OECD’s standard for the automatic exchange of financial account information (commonly referred to as the “**Common Reporting Standard**”) as implemented in any relevant jurisdiction, including pursuant to Council Directive 2011/16/EU on Administrative Cooperation in the field of Taxation (as amended by Council Directive 2014/107/EU). The GoR agrees to notify the EIF promptly of any change to the information provided under this Clause 14.

15. **MONITORING AND REPORTING**

- 15.1 The EIF shall monitor the implementation of the REF and Commitment Agreements in accordance with the criteria set out in Appendix D (Monitoring).
- 15.2 On the basis of data provided by Financial Intermediaries, the EIF shall prepare in respect of the REF, a semi-annual progress report (the “**Progress Report**”) in English, based on a half year period, submitted by the EIF to the IC not later than three (3) months following the last day of the Reporting Period, which shall include a summary

of the monitoring activities carried out, as set out in Appendix E (Progress Report) of this Agreement.

16. AUDITING

- 16.1 The EIF agrees to maintain an adequate audit trail in relation to the REF for reporting and auditing purposes.
- 16.2 The Parties agree that the competent bodies within GoR (such as the MIPE or the Romanian Court of Auditors) shall be allowed to carry out monitoring visits, verifications or audits at the level of the Financial Intermediaries, according to the rules and procedures of the respective bodies and entities, in which case they shall agree upfront with the EIF on a common approach and methodology. The GoR shall inform the EIF of such a monitoring visit, verification or audit with at least six (6) weeks' prior written notice and provide the EIF with the scope of such monitoring visit, verification or audit, and EIF may, in its discretion, inform the Financial Intermediary of such forthcoming monitoring visit, verification or audit.

17. OFFSHORE POLICY

- 17.1 The EIF agrees:
- (a) not to enter into the Commitment Agreement with entities incorporated in a jurisdiction which, at the time of the envisaged signing of the Commitment Agreement, would be a Non-Compliant Jurisdiction; and
 - (b) to ensure that the Commitment Agreement contains an undertaking similar to that contained in Clause 17.1(a) above whereby the Financial Intermediaries agree not to invest in entities incorporated in a Non-Compliant Jurisdiction at the time of the relevant investment.
- 17.2 The Parties hereby agree that a change in the status of a jurisdiction to a Non-Compliant Jurisdiction shall have no effect on the Commitment Agreement already entered into at the time of such change.

18. AMENDMENTS

Amendments to this Agreement shall be made by an instrument in writing signed by a duly authorised representative of each of the Parties.

19. EFFECTIVE DATE AND TERMINATION

- 19.1 This Agreement shall become effective as of the Effective Date and shall, unless terminated earlier in accordance with this Clause 19, remain in force until the Scheduled

Termination Date (provided that the indemnification obligations of the GoR under Clause 11 shall continue in full force and effect notwithstanding any termination of this Agreement).

- 19.2 The EIF shall have the right to terminate this Agreement with immediate effect if any of the following events occur:
- (a) The GoR commits a material breach of its obligations under this Agreement and such breach is not remedied or cured in full within twenty (20) Business Days from delivery by the EIF of a written notice to this effect.
 - (b) The GoR fails to make payment of the First Tranche or any of the Subsequent Tranches, as applicable, in each case, within forty (40) Business Days of the last date on which it is due to be paid in accordance with the respective payment deadlines set out in Clause 3.2.
 - (c) There is any failure to pay by the GoR of any other amount due and payable by the GoR under this Agreement and such failure to pay is not remedied or cured in full within twenty (20) Business Days of the date of the EIF giving the GoR written notice to that effect.
 - (d) The GoR or any other public authority duly empowered within the GoR amends or changes any laws, regulations or administrative acts, which the GoR shall notify promptly to the EIF, and such amendments or changes may, in the reasonable opinion of the EIF, after consulting with the IC, have an adverse impact on the activities entrusted to the EIF under this Agreement and such adverse impact has not been cured or ceased to the satisfaction of the EIF within fifty (50) Business Days of the date of the EIF giving the GoR written notice to that effect.
- 19.3 The GoR shall have the right to terminate this Agreement if the EIF commits a material breach of its obligations under this Agreement resulting from an action or omission that constitutes fraud, gross negligence or wilful conduct and such breach is not remedied or cured in full within fifty (50) Business Days from delivery by the GoR to EIF of a written notice to this effect.
- 19.4 The Parties further agree that in an event of termination, EIF may give a written notice to the GoR from the date of receipt of which a three (3) month period may be initiated, during which the Parties hereby agree that the REF, all outstanding assets and liabilities relating to the REF and all Commitment Agreements entered into, if any, shall be transferred to (whether by assignment, novation or otherwise) or assumed by the GoR (the “**Transfer Period**”) and that GoR shall perform all relevant formalities to enable such transfer.

In particular, in such cases:

- (a) the GoR shall accept and assume all rights, obligations and liabilities arising out of the Commitment Agreements, if any, and agrees to enter into any transfer agreement or equivalent documentation with the EIF, the relevant Financial Intermediaries and/or the relevant Underlying Funds, as necessary for the formalisation of the transfer thereof to the GoR; and
- (b) the balance of the funds paid into the REF Bank Account, as well as any assets resulting from the implementation of the Commitment Agreements, if any, shall be transferred to the GoR and, as relevant, shall be credited to such bank account as the GoR shall communicate to the EIF and the REF Bank Account shall be closed; and
- (c) at the end of the Transfer Period, the EIF shall be automatically released from any liability under this Agreement and the Commitment Agreements and this Agreement shall terminate in accordance with the terms of this Clause 19.4.

19.5 The GoR acknowledges and agrees that, following termination of this Agreement, the EIF will not transfer the balance of the REF Bank Account to the GoR until all amounts due to the EIF have been paid in full and the EIF no longer has any actual or contingent liability (including, without limitation, any Unforeseen Additional Expenses) or exposure under the Commitment Agreement(s), provided that at the latest on the second (2nd) anniversary of the Scheduled Termination Date such balance and assets will be transferred to the GoR less any amount which the EIF can then demonstrate to the GoR is necessary to cover a liability or exposure which then exists or is likely to occur.

19.6 Notwithstanding the provisions of Clause 19.4 above, following termination of this Agreement pursuant to Clause 19.3, the EIF shall transfer the balance of the REF Account to the GoR within 10 (ten) Business Days of the date on which all amounts due to the EIF in accordance with this Agreement have been paid in full.

19.7 Termination or expiration of this Agreement shall not affect the EIF's or the GoR's rights and obligations accrued or existing at the date of such termination or expiration, including, without limitation, the EIF and the relevant GoR accrued rights and obligations relating to payment obligations. Upon termination or expiration of this Agreement, this Agreement shall remain in force in respect of any actual or contingent liability (including, without limitation, any Unforeseen Additional Expenses and Indemnified Amounts) or exposure under any Commitment Agreement, until any such liability or exposure has been written off or determined to be unrecoverable and any applicable statute of limitation has expired and, in particular, the EIF shall be entitled to retain such amounts as may be required under this Agreement for the payment of any

amount owed thereto or the satisfaction of any accrued or contingent obligations under or in connection with any Commitment Agreement.

19.8 All expenses incurred by the non-breaching Party in connection with such termination shall be borne by the other Party and shall:

- (a) be withheld from the available funds on the REF Bank Account in the case of a termination pursuant to Clause 19.2; or
- (b) be recoverable from the EIF in the case of a termination pursuant to Clause 19.3.

20. **CONFIDENTIALITY AND DISCLOSURE**

20.1 The EIF is not obliged to disclose to the GoR or to take into consideration information:

- (a) the disclosure of which by it to the GoR would or might be a breach of duty or confidentiality to any other person; or
- (b) which comes to the notice of an employee, officer or agent of the EIF but does not come to the actual notice of an EIF individual managing the REF or a Commitment Agreement.

20.2 The Parties will at all times keep confidential all information of a confidential nature acquired in consequence of their involvement in the implementation of this Agreement, except that they may disclose such information in any of the following circumstances:

- (a) where the disclosure is made by the EIF, to its employees, agents, internal or external auditors, the European Commission, the European Court of Auditors, the European Investment Bank, mandators, shareholders and any other entity it is subject to (including any supervisory or other authority to which it is subject);
- (b) where disclosure is made to members of the IC;
- (c) where they may be bound to disclose it by law or regulation or by their own policies on public access to information, or where requested by regulatory or fiscal authorities or any court of competent jurisdiction, including disclosing such information to the European Commission, the European Anti-Fraud Office, the European Court of Auditors, and/or competent Romanian authorities and bodies, including (but not limited to) the MIPE and the Romanian Court of Auditors;
- (d) to their professional advisers where reasonably necessary for the performance of their professional services to the extent they are bound by an equivalent obligation of confidentiality as in this Clause 20 and the relevant Party warrants

to the other Party that its professional advisers will continue to comply with those obligations;

- (e) in the case of the EIF when disclosing information relating to the GoR, to any of its delegates and other agents under this Agreement, to any market counterparty or any broker (in accordance with market practice) in relation to transactions undertaken for the REF, in all cases only to assist or enable the proper performance of its services under this Agreement, or the Commitment Agreement; or
- (f) to counterparties where disclosure is reasonable for the purpose of effecting transactions in connection with this Agreement or of establishing a dealing relationship with a view to such transactions.

20.3 The GoR authorises the EIF to supply to the EIF's auditors any information about the REF requested by them.

21. **ASSIGNMENT**

21.1 This Agreement may not be assigned by the GoR or transferred by it (whether by assignment, novation or otherwise).

21.2 Without prejudice to any transfer of Commitment Agreements to the GoR, or any entity designated by them, in accordance with the provisions of this Agreement, the EIF may transfer or delegate all or any part of its functions, including all or any part of its rights and duties under this Agreement, to an entity within the EIB Group.

22. **GOVERNING LAW AND DISPUTE RESOLUTION**

22.1 This Agreement and any non-contractual obligations arising out of or in connection with it are governed by the laws of Luxembourg.

22.2 The Parties shall endeavour to settle amicably any dispute or complaint relating to the interpretation, application or performance of this Agreement, including their existence, validity or termination.

22.3 In default of amicable settlement, the Parties agree that the courts of the City of Luxembourg shall have exclusive jurisdiction to settle any dispute in connection with this Agreement.

23. WAIVER OF IMMUNITY

23.1 For the purposes of this Agreement, the GoR waives, for the benefit of the EIF, all immunity, whether from suit, against execution of any judgment or otherwise, that it or its property may have in any jurisdiction. In particular, but without limitation, the GoR:

- (a) submits to the jurisdiction of the Luxembourg courts in accordance with Clause 22.3 above; and
- (b) consents to the issue of any process against its property for the enforcement of a judgment or, in an action *in rem*, for the arrest, detention or sale of any of its property.

23.2 These waivers extend to all the property of the GoR allocated to the REF.

24. NOTICES

24.1 Communications in writing and Addresses

Unless otherwise provided for in this Agreement, any notice or communication by one (1) Party to any other Parties shall be made in writing and shall be delivered by registered mail or email, with transmission confirmation clearly stating in the subject “RRF”,

If to the GoR:

To: Minister of European Investments and Projects, Mr. Dan Vilceanu

Address: Ministry of European Investments and Projects, Strada Menuetului 7,
Bucharest 013713, Romania

E-mail: cabinet.ministru@mfe.gov.ro;

@mfe.gov.ro

If to the EIF:

To: Romania Recovery Equity FoF Mandate Manager

Address: 37b, av. J.F. Kennedy, L-2968, Luxembourg

E-mail: ref@eif.org

A Party shall inform the respective other Parties in writing without undue delay of any change to the above address details. Until receipt of the notification of such changes, each Party may validly serve notice to the last address duly notified to it.

24.2 Delivery

- (a) Any communication or document made or delivered by one (1) person to another under or in connection with this Agreement will only be effective:
 - (i) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post in a prepaid envelope addressed to it at that address; or
 - (ii) if by way of email, when actually received (or made available) in readable form,and, if a particular department or officer is specified as part of a Party's address details provided under Clause 24.1 (*Communications in writing and Addresses*) above, if addressed to that department or officer.
- (b) Any communication or document which becomes effective, in accordance with paragraphs (i) and (ii) in Clause 24.2(a) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

25. MISCELLANEOUS

- 25.1 This Agreement, including its Appendices (as amended from time to time), constitutes the entire agreement of the EIF and the GoR with respect to the management of the REF and supersedes and extinguishes all prior understandings, arrangements, agreements, representations, proposals or communications between the respective Parties, whether written or oral.
- 25.2 EIF may, but shall not be obliged to, set off any amount owed to it by the GoR against any amount payable by the EIF to the GoR under this Agreement.
- 25.3 The illegality, invalidity or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of this Agreement nor the legality, validity or enforceability of any other provision.
- 25.4 For the avoidance of doubt, the execution and delivery of this Agreement by electronic signature in the meaning of Regulation (EU) 910/2014 on electronic identification and trust services for electronic transactions in the internal market (the eIDAS Regulation) and electronic transmission (jointly, an Electronic Signature), including via facsimile, Docusign or other similar method, shall constitute the execution and delivery of a counterpart of this Agreement by the Parties, and shall have the same force and effect as an original and bind each Party to the terms of this Agreement. Each Party further agrees to take any and all reasonable additional actions, if any, evidencing its intent to be bound by the terms of this Agreement. The Parties hereto agree that this Agreement

and any additional information incidental hereto may be maintained as electronic records.

- 25.5 To the extent not signed electronically in accordance with the foregoing, this Agreement may be executed in any number of counterparts, and this has the same effect as if signatures on the counterparts were on a single copy of this Agreement.
- 25.6 In the case of discrepancies between the English version of this Agreement and any translation of this Agreement in Romanian, the English version of this Agreement shall prevail.

SIGNATORIES

The Government of Romania represented by the Ministry of European Investments and Projects

By: Mr. Dan VÎLCEANU

Title: Minister of European Investments and Projects

Date:

EIF

European Investment Fund

By: Head of Division
Title: Equity / Structural Funds & FoF
Mandate Management

Date:

By: Head of Division
Title: Equity Investments, Legal

Date:

APPENDIX A

INVESTMENT STRATEGY

Unless otherwise defined in this Appendix A, words and expressions defined in the main body of the Agreement shall have the same meaning when used in this Appendix A.

The investment strategy presented below is indicative and may be modified from time to time by decision of the Investment Committee upon formal proposal of the EIF. The Parties agree to amend the Agreement accordingly.

Specific eligibility criteria for Financial Intermediaries and Final Recipients shall be stipulated in the CEOI(s) pursuant to this Agreement and in line with the State Aid Framework as defined below, and transposed in the Commitment Agreements signed with Financial Intermediaries and Underlying Funds, .

1. Market considerations

The supply of risk capital on the Romanian market remains behind EU averages. Statistics published by the equity industry's European association InvestEurope for 2019³ show an EU average of 0.5 per cent. in terms of private equity investments as a percentage of GDP, whereas Romania remains at half of that figure (0.25 per cent.). Considering its 2019 GDP of EUR 223,000,000,000⁴, Romanian companies should have received an extra EUR 550,000,000 of equity investments only during 2019 to reach the EU average for that year.

A further market assessment is provided by the European Commission and in the EIB paper "Gap analysis for small and medium-sized enterprises financing in the European Union"⁵ published on the FI-Compass platform just before the pandemic. The report states: "Romania presents an 'equity financing gap to GDP ratio' of 4.8%, a percentage of unsuccessful SMEs of 2.7%, and an equity financing gap of EUR 10bn. (..) This situation seems to indicate that the Romanian equity market remains limited and that public support may be needed on both the supply and the demand sides in order to help structure it"."

3 2019 CEE private equity statistics, [Annual activity statistics | Invest Europe](#)

4 https://ec.europa.eu/eurostat/databrowser/view/nama_10_gdp/default/table?lang=en

5 [Gap analysis for small and medium-sized enterprises financing in the European Union.pdf \(fi-compass.eu\)](#)

According to the H1 2020 InvestEurope report⁶, the onset of the pandemic led throughout the EU to a decrease in the number of new funds raised and a reorientation of investments away from new companies to the strengthening of their existing portfolios. Not surprisingly in the new way of living and working, early stage investments in ICT increased.

This crisis, however, is also “an opportunity, which needs appropriate policy measures”, according to a survey published by the EIF’s market research department in February 2021, based on responses from 1,100 equity firms and business angels. Even in a more developed equity market than Romania’s, public support programmes are needed to address the main challenge of access to finance for companies. In the Romanian equity ecosystem, the RRF and ESIF resources, managed in a complementary manner, can catalyse the creation of a comprehensive set of investment funds, covering all market stages from ideas to turnaround and addressing the priority sectors for the medium and long term.

2. Policy objective

To provide access to finance in the form of equity and quasi-equity for SMEs, mid-caps (companies with up to 3,000 employees), including start-ups, companies in early, advanced growth and expansion stages, and infrastructure projects focused, among others, on renewable energy and energy efficiency.

3. Amount of investment targeted (net investment amount available) for the Commitment Period

Out of the Contribution Committed, the Parties agree to set aside a reserve for Management Fees and Performance Fees of 5% (five percent), which can be modified from time to time by agreement between the Parties upon EIF proposal, particularly considering the availability of Proceeds from Operations. . The reserve shall be deducted for the purpose of the resources to be allocated to Financial Intermediaries and/or Underlying Funds through the CEOs.

4. Timetable for deployment

- (a) Approvals in view of entering into Commitment Agreements financed from the Contribution Committed shall be granted by the Investment Committee up to the end of the Commitment Period.

⁶ H1 2020 European Private Equity Activity, <https://www.investeurope.eu/research/activity-data/>

- (b) Commitment Agreements financed from the Legacy Funds may be entered into during the Legacy Period.
- (c) Investments into Final Recipients may be undertaken by the Financial Intermediaries and Underlying Funds for the entire duration of the Agreement.

5. Investment policy

Financial Intermediaries shall undertake in the Commitment Agreements that an amount equal to at least the total amount committed from the REF to Underlying Funds under the Commitment Agreement shall be invested by the Underlying Fund into Target Recipients. Subject to the specific eligibility criteria to be defined in CEOI(s) for selection of Financial Intermediaries, as required also under the State Aid framework as defined below and, as the case may be, communicated to the EIF by the GoR, in order for a Final Recipient to qualify as a “**Target Recipient**” it is expected that it should comply with the following eligibility criteria:

- (a) it shall be located in Romania (i.e. the place of registration of its headquarters and/or branch where the financed activity is undertaken); and
- (b) it shall qualify as:
 - (i) an “SME” according to the EU definition (i.e. micro, small or medium-sized companies as defined in accordance with the Recommendation of the European Commission of 6 of May 2003 (EC/2003/361) as amended from time to time); or
 - (ii) a midcap, being enterprises which, together with the enterprises they control and the enterprises (if any) which have direct or indirect control over them, have up to 3,000 employees on a full time equivalent basis and are not SMEs (“Midcap”); or
 - (iii) an Infrastructure Project i.e. requiring long term capital relating to the construction or development of physical assets in numerous sectors including, among others, energy, transport, communications, industrial and service facilities, housing, social developments and climate change technologies.

Investments may be made by Underlying Funds through “Intermediary Holding Vehicles”, being special purpose vehicles and holding vehicles controlled directly or indirectly by the Underlying Fund. An investment into an Intermediary Holding Vehicle should be disregarded for the purpose of the investment limits, guidelines and restrictions and the underlying investments of the Intermediary Holding Vehicle should be treated as if they were direct investments made by the Underlying Fund.

According to Article 9 of the RRF Regulation, “investment projects may receive support from other Union programmes and instruments provided that such support does not cover the same cost”. Thus, REF resources can be invested in an Underlying Fund in a complementary manner alongside other European Union funding, such as ESIF or InvestEU resources.

The estimated number of Target Recipients (including SMEs, midcaps and infrastructure projects) is 100. An illustrative estimate of the amounts invested in Target Recipients could be as follows (exact amounts are invested in each case based on the specific valuation):

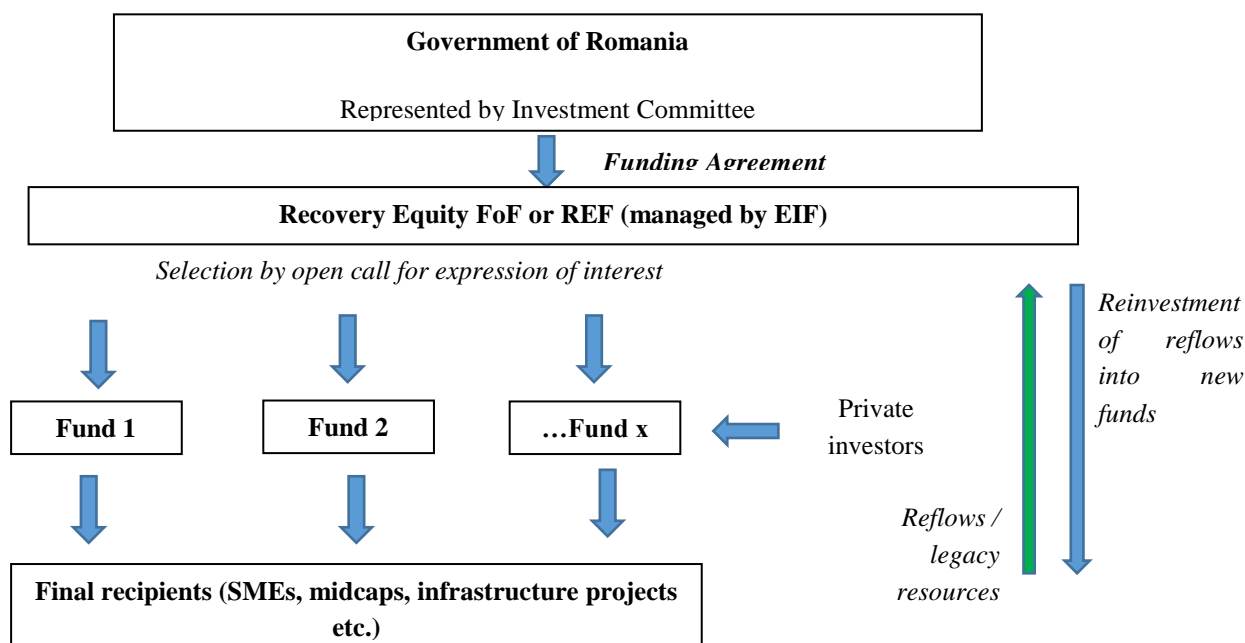
- (iv) 50,000-200,000 EUR for start-ups
- (v) 200,000-3,000,000 EUR for early growth
- (vi) 3,000,000-5,000,000 EUR for growth
- (vii) over 5,000,000 EUR for midcaps
- (viii) 5,000,000-20,000,000 EUR for renewable energy

Final Recipient Transactions shall be in the form of equity or quasi-equity investments, as defined below:

- Equity is the provision of capital, invested directly or indirectly in return for total or partial ownership and where the equity investor may assume some management control of the firm and may share the firm's profits.
- Quasi-equity, independent of its legal form, is the type of financing that, ranks between equity and debt, having a higher risk than senior debt and a lower risk than common equity. Quasi-equity investments can be structured as debt, typically unsecured and subordinated and in some cases convertible into equity, or as preferred equity.

Investments shall be made in compliance with the “Do No Significant Harm” principle, as described in Appendix G.

6. Implementation modality



- (a) Subject to the terms of this Agreement, the risk capital instruments will be created on the basis of the fund of funds (FoF) model managed by the EIF as a designated entity, along the lines of the model successfully employed for ESIF financial instruments,.
- (b) The FoF is an umbrella structure managed by the EIF as a separate block of finance within itself (no legal entity is created), in a similar manner to structural funds financial instruments. The FoF does not invest directly into Final Recipients, but into a group of Underlying Funds managed by financial intermediaries selected according to the EIF's policies and procedures through CEoI(s). It is the Underlying Funds that select, participate in, add value, and exit from, Final Recipients such as SMEs and midcaps. The revenues from exits are repaid to investors, including the FoF.
- (c) Based on the approval of the Investment Committee, the EIF launches open or closed CEoI(s) to select Financial Intermediaries (in this case, fund managers and Underlying Funds).
- (d) Following a comprehensive selection process comprising first and second screening, in-depth due diligence and contractual negotiations, EIF selects, in accordance with its own internal procedures, Financial Intermediaries, with whom it signs Commitment Agreements to Underlying Funds (new or existing).

- (e) It is estimated that initially (during the Commitment Period) around twenty (20) intermediaries could be selected. Underlying Funds could be national or regional, new or existing, and will commit to invest the REF contribution into Romania. It will not be a requirement that the Underlying Funds or Financial Intermediaries be established in Romania.
- (f) The types of Underlying Funds and Final Recipients may include, among others:
 - (i) entrepreneurship accelerators, crowdfunding platforms or business angel funds;
 - (ii) venture capital, private equity, mezzanine or co-investment funds, and may be new or existing, and national or regional (with the obligation to invest the RRF contribution in Romania);
 - (iii) pre-IPO funds;
 - (iv) infrastructure funds targeting, for instance, energy efficiency or renewable energy projects; and
 - (v) technology transfer funds.
- (g) Fund managers also raise private participation in the funds, considering the minimum level required by their strategy and the agreed State Aid framework. Normally, fund managers also invest themselves into the funds, for alignment of interests.
- (h) The portfolio build up normally lasts for five (5) years. The second half of the fund's existence is dedicated to follow-on investments, value creation into the portfolio companies and exit (sale of the portfolio companies) with the purpose of ensuring profit for the funds' investors.
- (i) Risk distribution – in general, public and private investors share the same risk and reward and hold the same level of subordination within the same risk class in the case of a layered financing structure. Exceptions are possible in accordance with State Aid rules.
- (j) The leverage effect of the amount allocated will be determined by the types of Underlying Funds and Final Recipients. In some high-risk investments, it is possible that no private investors will join (e.g. technology transfer, energy efficiency). Thus, the indicative leverage effect is 1.5x the allocated amount.
- (k) The remuneration of Financial Intermediaries is established in a competitive manner and according to market standards.

- (l) The EIF as a fund of funds manager conducts:
 - (i) the due diligence and selection of Financial Intermediaries and/or Underlying Funds;
 - (ii) the negotiation and signature of Commitment Agreements;
 - (iii) the reporting of KPIs in line with RRF;
 - (iv) the cash management of investments;
 - (v) the monitoring of investment activities; and
 - (vi) portfolio management.
- (m) Financial Intermediaries are in charge of:
 - (i) the due diligence of Final Recipients;
 - (ii) investments according to defined eligibility and State Aid criteria;
 - (iii) hands-on support to entrepreneurs;
 - (iv) adding value to the portfolio companies, e.g. through corporate governance, networking, participation in decision making (e.g. through boards of directors); and
 - (v) cooperation with stakeholders (including if applicable universities, associations, accelerators, etc.).

7. State Aid framework

The precise State Aid rules governing the instrument shall be set out by the GoR or directly by MIPE, in consultation with the Romanian Competition Authority, through State Aid and/or de minimis aid schemes, according to national rules. In the case of State Aid-free instruments, the national State Aid office (the Romanian Competition Authority) shall confirm, prior to implementation, the compliance of the proposed sub-measure with the relevant conditions. Financial intermediaries will commit contractually to provide to the EIF and/or the GoR such information as may be necessary for the GoR to comply with its reporting obligations on State Aid.

8. Restricted Sectors

The EIF Restricted Sectors are published on the EIF's website and/or may be amended from time to time by the EIF. The list of Restricted Sectors in force as at the date of this Agreement are the following:

Financial Intermediaries and Underlying Funds shall not invest, guarantee or otherwise provide financial or other support, directly or indirectly, to companies or other entities:

- (a) whose business activity consists of an illegal economic activity (i.e. any production, trade or other activity which is illegal under the laws or regulations applicable to the Underlying Funds or the relevant company or entity, including, without limitation, human cloning for reproduction purposes);
- (b) which substantially focus on:
 - (i) the production of and trade in tobacco and distilled alcoholic beverages and related products;
 - (ii) the financing of the production of and trade in weapons and ammunition of any kind, it being understood that this restriction does not apply to the extent such activities are part of or accessory to explicit European Union policies;
 - (iii) casinos and equivalent enterprises;
 - (iv) the research, development or technical applications relating to electronic data programmes or solutions, which:
 - (A) aim specifically at:
 - (1) supporting any activity included in the EIF Restricted Sectors referred to above;
 - (2) internet gambling and online casinos; or
 - (3) pornography,
 - or which:
 - (B) are intended to enable anyone to illegally:
 - (1) enter into electronic data networks; or
 - (2) download electronic data;
- (v) fossil fuel-based energy production and related activities, as follows:

- (A) Coal mining, processing, transport and storage;
- (B) Oil exploration & production, refining, transport, distribution and storage;
- (C) Natural gas exploration & production, liquefaction, regasification, transport, distribution and storage;
- (D) Electric power generation exceeding the Emissions Performance Standard (i.e. 250 grams of CO₂e per kWh of electricity) applicable to fossil fuel-fired power and cogeneration plants, and geothermal and hydropower plants with large reservoirs;
- (vi) energy-intensive and/or high CO₂-emitting industries, as follows:
 - (A) the manufacture of other inorganic basic chemicals (NACE 20.13)
 - (B) the manufacture of other organic basic chemicals (NACE 20.14)
 - (C) the manufacture of fertilisers and nitrogen compounds (NACE 20.15)
 - (D) the manufacture of plastics in primary forms (NACE 20.16)
 - (E) the manufacture of cement (NACE 23.51)
 - (F) the manufacture of basic iron and steel and of ferro-alloys (NACE 24.10)
 - (G) the manufacture of tubes, pipes, hollow profiles and related fittings, with steel (NACE 24.20)
 - (H) the manufacture of other products of first processing of steel (NACE 24.30, incl. 24.31-24.34)
 - (I) the production of aluminium (NACE 24.42)
 - (J) the manufacture of conventionally-fuelled aircraft and related machinery (sub-activity of NACE 30.30)
 - (K) conventionally-fuelled air transport and airports and service activities incidental to conventionally-fuelled air transportation (sub-activities of NACE 51.10, 51.21 and 52.23).

Notwithstanding the above, investments in sectors mentioned under limb vi. items a) – k) shall be allowed if the Financial Intermediary confirms that the specific Final

Recipient Transactions either (i) qualifies as environmentally sustainable investments as defined in the “EU taxonomy for sustainable activities” (Regulation (EU) 2020/852, as amended from time to time, and as supplemented by the technical criteria established under the “EU Taxonomy Delegated Acts” (Commission delegated Regulations (EU) supplementing Regulation (EU) 2020/852 or upcoming Taxonomy Delegated Acts, as amended from time to time, respectively), or (ii) are eligible under the EIF’s Climate Action & Environmental Sustainability (CA&ES) criteria for green financing.

As per its internal policy, the EIF applies additional restrictions to Underlying Funds with debt/loan strategies which envisage the issuing of loans to finance specifically identified assets.

When providing support to the financing of the research, development or technical applications relating to:

- (i) human cloning for research or therapeutic purposes; and
- (ii) Genetically Modified Organisms (“**GMOs**”),

The EIF will require from Financial Intermediaries appropriate, specific assurance on the control of legal, regulatory and ethical issues linked to such human cloning for research or therapeutic purposes and/or GMOs.

APPENDIX B

TREASURY GUIDELINES

1. The GoR and the EIF acknowledge that, in implementing the REF under this Agreement, the EIF has the right to manage the funds paid from time to time into the respective REF Account, in accordance with the EIF's internal rules and procedures. The term “**Treasury Funds**” shall mean all the funds from time to time deposited into the REF Account less (a) any amounts that have been disbursed for the purpose of the REF or for any other purpose in accordance with this Agreement, and (b) any amounts which should be maintained in the REF Account for liquidity purposes, in each case as estimated by the EIF.
2. The EIF shall, as soon as reasonably feasible, take the necessary actions to enable the Treasury Funds to be managed through the Treasury Bank.
3. For this purpose, and in accordance with its internal rules and procedures, the EIF will use one (1) or multiple Treasury Banks duly authorised to operate within the European Union having at least the Treasury Required Rating.
4. For the avoidance of doubt, Treasury Funds may be only invested in term and call deposits in line with the EIF's internal rules and procedures and sound financial management.
5. The Treasury Bank must have one (1) minimum required rating (the “**Treasury Required Rating**”) for long-term/short-term ratings of Baa1/P-2 by Moody's (or any equivalent rating released by Standard & Poor's and/or Fitch Ratings).

APPENDIX C

REF RISK POLICY

PART I

INTRODUCTION

The present Appendix is an outline of the principal risk factors and risk control mechanisms for equity transactions with Financial Intermediaries under this Agreement. It is intended to provide the framework for managing the Agreement from a risk perspective, in light of the REF's objectives and the investment strategy set out in Appendix A (*Investment Strategy*). For the avoidance of doubt, changes to REF may require a complement, update and/or amendment of this Appendix.

Before deciding to enter into this Agreement, or updating, complementing and/or amending the Investment Strategy, if any, the GoR should carefully consider all of the information available to them, including, but not limited to, the information set out in this Appendix, as updated, complemented and/or amended. The risk factors set out herein are not exhaustive. There may be other risks that the GoR should consider that are relevant to its own particular circumstances or generally.

In line with its objective of addressing market gaps where commercial operators alone do not fully meet the needs of Final Recipients, it is expected that the REF will be taking a significant level of risk. As a consequence, REF may incur a certain level of losses and hence not achieve full financial sustainability.

The actual losses incurred by REF will depend on many variables, including (but not limited to) the REF's objectives, the macroeconomic environment, the product parameters and the Financial Intermediaries selected for the implementation.

The focus of the EIF in the context of the selection and due diligence process will be driven primarily, in the case of equity instruments, by the following elements:

- (a) Evaluation of the Financial Intermediary's focus and proposed investment strategy in the context of the objectives of the REF, as well as considering the macroeconomic environment and availability of investment opportunities in the targeted market segment.
- (b) Evaluation of the Financial Intermediary's manager team profile, stability and ability to implement the proposed investment strategy. Ability of the team to source transactions in the targeted geography of the Financial Intermediaries as well as attracting private financing for the Financial Intermediary (where required). Assessment of the alignment of interest of the Financial Intermediary's manager team with investors in the Financial Intermediary.

- (c) Track record and other experience of the Financial Intermediary's team relevant for the proposed investment strategy.

Notwithstanding the above, the risk of REF can be controlled to some extent both at counterparty and at portfolio level by setting minimum criteria for an acceptable counterparty, as well as criteria limiting the riskiness of the underlying portfolio.

In this respect, the implementation of risk mitigating mechanisms introduces an implicit trade-off between the ability to disburse the funds to Final Recipients in a rapid manner and the level of counterparty and portfolio risk taken by the REF. Moreover, there is an implicit trade-off between the criteria limiting the riskiness of the underlying portfolio and the overall REF objective of improving funding availability and conditions for Final Recipients through the implementation of REF.

EIF will publish CEoI(s) for the evaluation and selection of suitable Financial Intermediaries (counterparties) according to its internal rules and procedures and within the risk framework of the REF, as stated in Part II of this Appendix F.

REF will be implemented by EIF applying its own professional judgement and due care. The implementation of REF will take into consideration a number of relevant factors, including inter alia, the overall economic and market conditions and any specific focus that certain transactions may have. Considering the current context, more precisely the SARS-CoV-2 pandemic, the implementation of the REF may be impacted with regard to the amount of funds disbursed to Financial Intermediaries and/or the speed of disbursement of the Underlying Funds.

The GoR acknowledges and agrees with the product descriptions presented in Appendix A (*Investment Strategy*), their terms and the risks associated with them for the REF. In particular, the GoR acknowledges the risk factors set out below and agrees that any such risks shall be entirely borne by the REF.

PART II

RISK FACTORS AND FRAMEWORK FOR EQUITY INSTRUMENTS

1. REF specific risk factors

It is expected that the REF will be taking a significant level of risk, commensurate with its role to address perceived market gaps where commercial operators alone do not fully cover the needs of the underlying Final Recipients. The instrument carries the potential for significant losses to be incurred.

The equity (including quasi-equity) transactions with Financial Intermediaries under the REF will be implemented by EIF applying its own professional judgment and due care. This notwithstanding, in order to achieve the objectives of the REF, as set out in

the "*Investment Strategy*", EIF may need to divert from its standard commercial investment criteria and accept conditions such as:

- (a) More risky fund managers (e.g. managers, including first-time teams, with shorter or less relevant track-record than typically accepted);
- (b) Transactions on terms typically not accepted by independent private investors (e.g. taking majority position in funds, potentially providing incentives to other investors, operating in a very narrow geographical focus, etc.);
- (c) Fund managers with commercially sub-optimal investment strategy (e.g. reduced fund sizes, lack of diversity due to very narrow geographical focus, short investment periods).

The actual losses, if any, incurred by REF will depend on many variables, including (but not limited to) the fund manager's performance, the level of development of relevant private equity markets, the macroeconomic environment, the product parameters and embedded incentives for private investors, if any. These losses cannot be foreseen with any degree of accuracy but the theoretical ceiling for losses is assumed to be up to the full amount of the investment in REF.

2. Eligibility risk

Equity transactions entered into by an Underlying Fund with Final Recipients shall meet a number of eligibility criteria which shall be set out notably in the relevant Commitment Agreement. These eligibility criteria are determined on the basis of the REF and commercial considerations. Non-compliance with such eligibility criteria has different consequences depending on circumstances.

The Commitment Agreements will include certain provisions, the objective of which will be to provide appropriate remedies for protecting EIF's and REF's interest in Underlying Funds in case a Final Recipient Transaction does not comply or no longer complies with the agreed eligibility criteria, as applicable. Nevertheless, the inherent characteristics of equity transactions mean that it is not guaranteed that amounts allocated to Final Recipient in breach of the agreed eligibility criteria can be recovered as such recovery remains subject notably to the application of clauses negotiated with the Financial Intermediary and applicable law. Furthermore, the exercise by the EIF of its rights with regard to the Financial Intermediary is limited by the rights that any investor may exercise towards the Financial Intermediary and/or any other shareholders towards the Final Recipient, respectively, under the law, notably company law.

The GoR acknowledges and agrees that such risks shall be borne entirely by the REF and that the EIF shall not be responsible in any way whatsoever for any consequence of any expense being considered ineligible in such circumstances.

3. Non-absorption risk

Notwithstanding all reasonable efforts to promote the instrument, the Financial Intermediaries may not be able, due to market reasons and conditions (i.e. demonstrated substantial decrease of the requests for eligible investments from Final Recipients), to complete the build-up of the portfolio of eligible investments.

4. Risk related to the REF Bank Account

The GoR acknowledges and agrees that any loss incurred by the REF arising from (1) the default, insolvency or fraud of any agent, bank (the REF Treasury Bank) or other third party involved in the treasury management or (2) the application of negative interests on the REF's assets, shall be borne entirely by the REF and that the EIF shall not be responsible in any way whatsoever for any consequence.

5. General equity risk factors

General equity risk factors for equity (including quasi-equity) financial instruments include or relate to equity markets, foreign exchange rates, interest rates, credit risk, counterparty risk, market volatility, political risks, among others. The list of risk factors set out below is not exhaustive. Other risks may arise with a specific investment.

- (a) No assurance can be given that a Financial Intermediary will be successful in obtaining suitable investments or, if such investments are made, that the objectives of the Financial Intermediary will be achieved. Investors must rely entirely on the judgment of the board, the investment committee and the adviser, as the case may be, of the Financial Intermediary with respect to the selection and acquisition of investments.
- (b) Investment in an Underlying Fund managed by a Financial Intermediary requires a long-term commitment, with no certainty of return. Many of the investments made by Underlying Funds will be highly illiquid, and there can be no assurance that an Underlying Fund will be able to dispose of such investments in a timely manner. Although investments by an Underlying Fund may generate some income, the return of capital and the realisation of gains, if any, from an investment will generally occur only upon the partial or complete disposition or refinancing of such investment. While an investment may be sold at any time, it is not generally expected that this will occur before a number of years after the investment is made.

- (c) Each investor must be prepared to bear the economic risk of an investment for at least the duration of the life of an Underlying Fund.
- (d) Generally, an investor in an Underlying Fund may not withdraw any amount from such Underlying Fund or reduce the amount of his/her/its commitments. Depending on the applicable law, the transfer of shares and/or commitments in an Underlying Fund may be subject to the prior written consent of the fund manager or even the other investors.
- (e) Investors subscribing for shares and/or commitments at subsequent closings will participate in existing investments, diluting the shares of existing investors therein.
- (f) A Financial Intermediary will make investments based on estimates or projections of internal rates of return and current returns, which in turn will be based on, among other considerations, assumptions regarding the performance of the portfolio, the amount and terms of available financing and the manner and timing of dispositions, including possible asset recovery and remediation strategies, all of which are subject to significant uncertainty. In addition, events or conditions which have not been anticipated may occur and may have a significant effect on the actual rate of return received on the relevant investments. Investors have no assurance that any capital will be returned to them.
- (g) There can be no assurance that the operations of an Underlying Fund will be profitable, that a Financial Intermediary or an Underlying Fund will be able to avoid losses or that cash from the Underlying Fund's operations will be available for distribution to the investors.
- (h) The success of a Financial Intermediary's and the Underlying Fund's activities may be affected by general economic and market conditions, such as interest rates, availability of credit, inflation rates, economic uncertainty, changes in laws and national and international political circumstances. These factors may affect the level and volatility of security prices and liquidity of the securities held by the Underlying Fund.
- (i) Unexpected volatility or liquidity could impair a Underlying Fund's profitability or result in it suffering losses.
- (j) There is no assurance that an Underlying Fund will be able to fully invest the commitments made to it, or that suitable investment opportunities will be identified that satisfy the its investment strategy. If an Underlying Fund is

unable to invest the commitments of investors, the potential return to the investors could be significantly reduced.

- (k) The operation of an Underlying Fund and the tax consequences of an investment in the Underlying Fund are substantially affected by a wide range of legal requirements and regulations, and the performance of one or a small number of investments or by the laws, including tax laws of any jurisdiction in which an Underlying Fund may be organized, formed or incorporated.
- (l) A Financial Intermediary may fall within the scope of the Alternative Investment Fund Managers Directive 2011/61/EU ("**AIFMD**"). Under the AIFMD, the Financial Intermediary would have to comply with requirements such as *inter alia* relating to the duties of the depositary and the valuation of the assets of the Financial Intermediary. The Financial Intermediary would also be subject to additional reporting requirements. Additional operating costs may be incurred by the Underlying Fund as a result of these requirements, which may affect the actual returns of the Underlying Fund or REF.

Therefore, the GoR's readiness to accept these risks is a prerequisite for implementing Financial Instruments in the area of equity and quasi-equity. The acceptance of the risks is effectively an acceptance of a potential trade-off between the returns and the policy impact, enabling the pursuit of the policy objectives set out in the Appendix A ("*Investment Strategy*").

The GoR hereby acknowledges and confirms its understanding and acceptance that the implementation of the REF under this Agreement will entail a significant level of risk, may not achieve full financial sustainability and may incur a level of losses, as laid out above.

APPENDIX D MONITORING

1. GENERAL

- 1.1 Monitoring checks shall be performed in line with EIF rules and procedures.
- 1.2 One (1) monitoring visit or one (1) desk review at the EIF's headquarters shall be undertaken throughout the term of each Commitment Agreement.
- 1.3 In the context of point 6 of the Progress Report, as set out in Appendix E, the EIF will provide information on:
 - (a) the date of monitoring activities performed;
 - (b) the types of findings identified; and
 - (c) the status of the findings identified.

The form of such information will be included in the Progress Report template (Appendix E).

2. MONITORING OF FINAL RECIPIENTS

- 2.1 The EIF may, in line with its internal rules and procedures and particularly in cases where fraudulent behaviour is suspected, be required to perform monitoring checks at the level of the Final Recipients.
- 2.2 Monitoring by the EIF shall address the following:
 - (a) during the implementation of the REF, monitor compliance of the Final Recipients with the Commitment Agreement; and
 - (b) to the extent required by State Aid rules or national authorities, verify that supporting documents are retained for 10 (ten) years from the date on which the aid was granted (unless another period is indicated in the final State Aid rules issued by the GoR, pursuant to Clause 13.2) with respect to financing made available to Final Recipients in order to provide evidence on the use of the funds for the purposes intended, including the eligibility of expenditure in accordance with the provisions of this Agreement.

APPENDIX E

PROGRESS REPORT

The Progress Report shall contain:

1. a summary of the Final Recipients since inception (name, location of HQ(city, county), location of investment/relevant point of presence, turnover, number of employees, NACE code of investment, main NACE code of investee, whether the Final Recipient is an SME, Midcap or Infrastructure Project;
2. the total amounts approved by the IC for commitment to the Financial Intermediaries since inception;
3. the total amount paid to the REF and the total amount transferred from the REF to the Final Recipients and the EIF;
4. the total amount of support invested into the Final Recipients, in addition to the Management Fees and Performance Fees incurred or Management Fees and Performance Fees paid;
5. a summary of the performance of the REF, including the progress of its set-up;
6. the total amount of interest and any other financial gains generated through the support from the Contribution Committed and details of the programme resources paid back to the REF from investments made;
7. a financial report containing a balance sheet and profit and loss statement for the REF;
8. a summary of the monitoring activities carried out;
9. a report on the compliance with the “Do No Significant Harm” principle (Appendix G);
and
10. a treasury report in respect of the Treasury Funds.

APPENDIX F
FORM OF WRITTEN REQUESTS

FORM OF INITIAL WRITTEN REQUEST

From: European Investment Fund

To: The Minister for European Investments and Projects

Dated: [●]

Dear Sirs

**Funding Agreement between the Government of Romania and the European
Investment Fund
dated [●] (the “Agreement”)**

1. We refer to Clause 3.2 of the Agreement. This is the Written Request. Terms defined in the Agreement shall have the same meaning in this Written Request unless otherwise defined herein.
2. We hereby request you to pay an amount of EUR [●] (the “**Tranche**”) into the REF Bank Account (*IBAN, BIC*) within fifty (50) Business Days from the date of the receipt of the Written Request.
3. We remind you that failure to comply with this Written Request on a timely basis would permit the Agreement to be terminated for Termination for Cause under Clause 19.2 of the Agreement.

Yours faithfully

.....

authorised signatory for

The European Investment Fund

FORM OF WRITTEN REQUEST AFTER THE INITIAL WRITTEN REQUEST

From: European Investment Fund

To: The Ministry for European Investments and Projects of Romania

Dated: [●]

Dear Sirs

**Funding Agreement between the Government of Romania and the European
Investment Fund
dated [●] (the “Agreement”)**

1. We refer to Clause 3.2 of the Agreement. This is the Written Request. Terms defined in the Agreement shall have the same meaning in this Written Request unless otherwise defined herein.
2. According to Clause 3.3 [and based on the notice we received on []] we hereby request you to pay an amount of EUR [●] (the “**Tranche**”) into the REF Bank Account within fifty (50) Business Days from the date of the receipt of the Written.
3. We remind you that failure to comply with this Written Request on a timely basis would permit the Agreement to be terminated for Termination for Cause under Clause 17.2 of the Agreement.

Yours faithfully

.....

authorised signatory for

The European Investment Fund

APPENDIX G

APPLICATION OF ‘DO NO SIGNIFICANT HARM’

1. In accordance with Article 19(3), point (d), of and Annex V, criterion 2.4, to Regulation (EU) 2021/241, the RRP is expected to ensure that no measure for the implementation of reforms and investments projects included in the RRP does significant harm to environmental objectives within the meaning of Article 17 of Regulation (EU) 2020/852 of the European Parliament and of the Council (“the **Taxonomy Regulation**”) (the principle of ‘do no significant harm’).

2. In accordance with the technical guidance provided in the Commission Notice titled ‘Technical guidance on the application of “do no significant harm” under the Recovery and Resilience Facility Regulation’, the GoR has provided evidence and assurances that the measures for the implementation of reforms and investment projects included in the RRP, including REF, are expected not lead to significant harm to any of the six environmental objectives within the meaning of Article 17 of the Taxonomy Regulation, namely climate change mitigation, climate change adaptation, sustainable use and protection of water and marine resources, circular economy, pollution prevention and control, and protection and restoration of biodiversity and ecosystems.

3. The application of the “Do no significant harm” principle shall be fulfilled in accordance with the CID by applying indicatively the following eligibility criteria, as will be detailed in the terms of reference within the CEoI:

- application of the “Commission Notice on Technical guidance on sustainability proofing for the InvestEU Fund” of 14/04/2021, in particular Chapter 3 on Intermediated Finance;
- screening of intermediated financed operations against the Excluded activities list provided in the annex V point B of the 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;
- screening of operations against the EIF restricted sectors list in line with the Paris alignment criteria, in accordance with para. 8 “Restricted Sectors” of Appendix A of this Agreement;
- other relevant criteria agreed by the Parties.

APPENDIX H

INVESTMENT COMMITTEE RULES OF PROCEDURE

1. This document sets out the Rules of Procedure for the functioning of the IC pursuant to Clause 7.4 of this Agreement. Any term used in capitalised letters in this Appendix H shall have the same meaning attributed to it under the Agreement.
2. The IC shall consist of five (5) members with voting rights who shall, in the assessment of the GoR, have relevant experience of at least three (3) years, to be appointed by joint Order of the Minister of European Investments and Projects and the Minister of Public Finance. The IC, at its first meeting, shall appoint its Chairperson among the members. Should the Chairperson not be able to attend a meeting, s/he shall indicate who, of the other members (including the alternates nominated in accordance with section 6 below), shall be the Chairperson in respect of such meeting, or the members attending shall designate an ad hoc Chairperson for such meeting.
3. The EIF shall be entitled to designate up to two (2) of its officials or representatives to participate in the sessions of the IC as observers without voting rights. The GoR may also designate two (2) officials to participate in meetings of the IC as observers without voting rights.
4. The quorum necessary in order to have a validly constituted IC meeting is at least a majority of the voting members and one (1) observer from the EIF. Once a quorum is achieved, decisions of the IC shall be taken by a majority of votes of the members with voting rights of the IC that are present. In case of a tie of votes, the proposal in question shall be deemed to have been rejected.
5. The GoR shall be able, at any time, to remove the member(s) and/or alternates nominated by it and to appoint substitute members, according to its internal rules and procedures. The GoR shall promptly notify in writing, to the EIF the name(s) and contact details of the substituting member.
6. Each Party shall be able, but shall not be obliged, to also nominate an alternate in respect of each of the members or, respectively, observers nominated by it.
7. If the position of a member vacates for any reason whatsoever (e.g. resignation, removal, death, etc.), the Party which appointed such member shall (but shall not be obliged to in respect of alternates), without unreasonable delay, appoint a new member (with voting rights, should the vacancy be that of a member with voting rights) for the remainder of the term of office of the substituted member, by communicating the name(s) and contact details of the substituting member to the other Party. The IC shall continue to function and be able to carry out its tasks even in the absence of such

substitution (in which case, for the avoidance of doubt, the IC may operate with a reduced number of members subject to the quorum requirements).

8. If the Chairperson position vacates, the IC, at its immediately following meeting, shall appoint a new Chairperson among the voting members nominated by the GoR, for the remainder of the term of office of the substituted Chairperson.
9. The observers will not have any voting rights. However, subject to the terms further set out in these Rules of Procedure, they shall receive the same written information on matters discussed and/or decided upon by the IC, as well as minutes of each meeting, as the voting members and their alternates.
10. The IC shall convene at the request of EIF or any of its members. The IC shall meet at least once a year during the term of the Agreement.
11. The Secretariat (acting at the request of the EIF or any member of the IC) shall convene each meeting of the IC by sending a written notice to all members (including the alternates) and observers by e-mail, at the address specified in the notice of appointment of each member, and by communicating to the EIF. Such notice of call, together with the relevant agenda, shall be sent at least ten (10) Business Days before the scheduled date of the meeting. Meetings can be held on shorter notice if all voting members and the observer(s) appointed by the EIF so agree in writing. Any relevant documentation shall be sent to the voting members (and alternates) and observers ten (10) Business Days ahead of the relevant meeting. However, if the meeting is held on a notice shorter than ten (10) Business Days, any documentation shall be sent/delivered, at the latest, three (3) Business Days before the meeting. Agenda points can be added directly at the meeting if all voting members and the observer(s) appointed by the EIF so agree. The provisions of Clause 24 of this Agreement shall apply mutatis mutandis to the communication and delivery of written notices by the Secretariat. Meetings shall be held in Bucharest or anywhere else agreed by the Chairperson with the EIF, at the address, date and time indicated from time to time by the Chairperson. Members, alternates and observers shall be entitled to attend via conference or video call, and they shall be considered to be present as long as the Chairperson is satisfied with the identity of the relevant person.
12. For the purpose of approving any operation with Financial Intermediaries (for entering into a Commitment Agreement with a Financial Intermediary and/or an Underlying Fund), the Secretariat shall include in the meeting documentation, in accordance with para. 11 above, an investment memorandum, covering indicatively the following elements:
 - (a) General information on the proposed Financial Intermediary (notably team experience and expertise);

- (b) Investment strategy of the Underlying Fund;
 - (c) Rationale for proposing a REF commitment into the Underlying Fund;
 - (d) Size of the operation (proposed allocation from REF to the Underlying Fund);
 - (e) Main terms and conditions (e.g. fund duration, investment period, estimate management costs and fees); and
 - (f) Estimate timing for entering into the Commitment Agreement.
13. The IC may approve proposed operations with Financial Intermediaries at the relevant meeting(s), in accordance with para. 16 below. The IC shall be also entitled to take decisions by written procedure. The text of the relevant resolution shall be proposed by the Secretariat. The Chairperson or the Secretariat, as applicable, will distribute the proposed resolution and any relevant documentation, (which, in the case of proposals for operations with Financial Intermediaries, shall include investment memos in accordance with para. 12 above) to the voting members and observers of the IC and the deadline for voting on any such proposed resolution shall be ten (10) Business Days as of the date of receipt of the proposed resolutions and any relevant documentation. A resolution shall be deemed as positively voted if, at the expiry of the above mentioned ten (10) Business Days, a majority of voting members have either voted in favour or not cast a vote (i.e. non-objection will be deemed as a positive vote and, as approval of the relevant proposed operation with Financial Intermediaries(s)). The Chairperson or the Secretariat, as applicable, will then confirm, in writing (including, for avoidance of doubt, by email), any relevant decision to all members, alternates and observers. A written procedure process can be terminated/interrupted if, before the expiration of the ten (10) Business Days period, any voting member has provided comments such that the resolution would be substantially different or, in any case, at the discretion of the Secretariat. In such a case, the Chairperson may organise a physical IC meeting (which, for the avoidance of doubt, Members, alternates and observers shall be entitled to attend via conference or video call), in which case the notice of call and the relevant documentation shall be sent within five (5) Business Days from the date of interruption of the written procedure.
14. The IC's discussions shall be kept confidential, subject to the terms of Clause 20 of this Agreement.
15. It is acknowledged that the delegation given to the IC under this Agreement shall in no way limit the powers and responsibilities attributed to the GoR.
16. All decisions and relevant discussions of the IC meetings shall be recorded in minutes, to be drafted by the Secretariat, in accordance with Clause 7.12(a) of this Agreement.

Within ten (10) Business Days from the date of the relevant meeting the Secretariat will circulate the draft minutes to all members of the IC for comment. Following receipt, members shall have ten (10) Business Days to provide comments, after the lapse of which the minutes shall be final upon their approval by way of signature of the Secretariat, save that with respect to approved operations in accordance with para. 13 above.

17. Members of the IC and their alternates shall respect defined standards of integrity and shall abstain from any action that could induce a conflict of interest in the discharge of their duties. In particular, members of the IC shall be obliged to notify the Chairperson and the Secretariat promptly upon becoming aware of circumstances that constitute a conflict of interest or potential conflict of interest.
18. Representatives of the EIF other than the observers to the IC, and other third parties may be invited to meetings of the IC, if so deemed appropriate by the Chairperson. They shall not be entitled to any voting right, remuneration or reimbursement, nor to receive accompanying materials or minutes of the meeting.
19. With respect to amendments to this Agreement to be made in accordance with Clause 7.6(d) of this Agreement, the EIF may require the voting members of the IC to provide proof of authority in a form satisfactory to the EIF.