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THE SOUTH MUNTENIA REGIONAL DEVELOPMENT AGENCY

AND

THE NORTH-WEST REGIONAL DEVELOPMENT AGENCY

AND

THE NORTH-EAST REGIONAL DEVELOPMENT AGENCY

AND

THE EUROPEAN INVESTMENT BANK

FUNDING AGREEMENT



CONTENTS

| Clause | Page |
|---|------|
| 1. Definitions and Interpretation | 6 |
| 2. Mandate and Functions of EIB | 11 |
| 3. Funding of the HF | 13 |
| 4. Use of Interest Generated and Proceeds of Operations | 14 |
| 5. The HF and the HF Account(s) | 15 |
| 6. The Investment Board | 17 |
| 7. Management Fees | 19 |
| 8. Additional Expenses, Negative interest and Treasury Losses | 20 |
| 9. Material Interests and Disclosures | 22 |
| 10. Operational Agreements | 22 |
| 11. Responsibilities of the Parties and Liability | 23 |
| 12. Representations, Warranties and Undertakings by the MAs | 25 |
| 13. State Aid | 26 |
| 14. Monitoring and reporting | 27 |
| 15. Auditing | 28 |
| 16. Document Retention | 28 |
| 17. Offshore Policy | 29 |
| 18. Amendments | 29 |
| 19. Effective Date, Termination and Force Majeure | 29 |
| 20. Confidentiality and Disclosure | 32 |
| 21. Assignment | 33 |
| 22. Governing Law and Dispute Resolution | 33 |
| 23. Notices | 33 |
| 24. Miscellaneous | 34 |

This Agreement is entered into by and between:

- (1) The **South Muntenia Regional Development Agency**, as the designated Managing Authority of the *South Muntenia Regional Programme 2021-2027* (the "**Programme**", "**SMRP 2021-27**"), duly represented by:
 - (a) Liviu Gabriel Muşat – General Director; and
- (2) The **North-West Regional Development Agency**, as the designated Managing Authority of the *North-West Regional Programme 2021-2027* (the "**Programme**", "**NWRP 2021-27**"), duly represented by:
 - (a) Csilla Hegedüs – Interim General Director, and
 - (b) Petru Alboi Sandru – Head of Managing Authority, and
 - (c) Tudor Piciu - Head of Department, and
 - (d) Cătălin Gorgan – Executive Director, and
 - (e) Ciprian Barna – Executive Director, and
 - (f) Simona Bolboacă – Expert, and
 - (g) Luminița Vasile – Expert; and
- (3) The **North-East Regional Development Agency**, as the designated Managing Authority of the *North-East Regional Programme 2021-2027* (the "**Programme**", "**NERP 2021-27**"), duly represented by:
 - (a) Vasile Asandei – General Director, and
 - (b) Monica Harja-Zlavog – Director of Directorate, and
 - (c) Bogdan-Andrei Budurea – Legal Counsel;

in accordance with the Government Emergency Ordinance no. 122/2020 of 29 July 2020;

(indistinctively, "**MA**", "**Managing Authority**" and collectively, "**MAs**", "**Managing Authorities**"); and
- (4) The **European Investment Bank**, having its registered seat at 100 boulevard, Konrad Adenauer, L-2950 , Luxembourg, Luxembourg ("**EIB**"), duly represented by:
 - (a) Carolina Vento Sánchez – Head of Division, and
 - (b) Goetz von Thadden – Head of Unit,

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

WHEREAS:

- (A) According to the conclusions of the ex-ante assessments, within the meaning of Article 58(3) of the CPR, carried out by the respective MAs (the "**Ex-ante Assessments**"), the MAs confirm that there exists a market failure in the provision of finance in the following areas corresponding to the relevant Priorities and Specific Objectives of the respective Programmes:

(a) SMRP 2021-27:

- (i) Business infrastructure (Priority 1 *A competitive region through innovation, digitalisation and dynamic businesses*, RSO1.3 *Enhancing sustainable growth and competitiveness of SMEs and job creation in SMEs, including by productive investments*);
- (ii) Energy efficiency measures in single family houses (Priority 2 *A region with environmentally-friendly cities*, RSO2.1 *Promoting energy efficiency measures and reducing greenhouse gas emissions*);
- (iii) Tourism infrastructure (Priority 6 *An attractive region*, RSO5.1 *Fostering the integrated and inclusive social, economic and environmental development, culture, natural heritage, sustainable tourism, and security in urban areas* and RSO5.2 *Promoting integrated and inclusive social, economic and environmental local development, culture, natural heritage, sustainable tourism and security in areas other than urban areas*);

(b) NWRP 2021-27:

- (i) Energy efficiency measures in single family houses (Priority 3 *A region with environmentally-friendly localities*, RSO2.1 *Promoting energy efficiency measures and reducing greenhouse gas emissions*); and

(c) NERP 2021-27:

- (i) Energy efficiency measures in public buildings (Priority 3 *A sustainable region, more friendly to the environment*, RSO2.1 *Promoting energy efficiency measures and reducing greenhouse gas emissions*).

(B) As an instrument to address the market failure evidenced in the respective Ex-ante Assessments, the MAs entrust EIB under this Agreement with the creation of a holding fund (indistinctively, the "Holding Fund" or "HF") within the meaning of Article 2(20) of the CPR (as defined below) with the object of addressing the above market failure by facilitating access to finance to Final Recipients identified by selected Financial Intermediaries active in or relevant to the pursuit of the respective Programme objectives through the implementation of one or more Financial Instruments (each capitalized term as defined below). The HF is financed by the Union Funds implemented under shared management ("Funds") from the respective Programmes and is co-financed by the MA out of national budget resources as the Public Contribution Committed in the following amounts:

- (a) SMRP 2021-27 funded from the Funds in the amount of EUR 219,851,827.57 (RON equivalent of 1,094,070,634.72)¹ and the Public Contribution Committed in the amount of EUR 38,797,381.33 (RON equivalent of 193,071,288.45), of which:
 - (i) Priority 1 *A competitive region through innovation, digitalisation and dynamic businesses*, RSO1.3 *Enhancing sustainable growth and competitiveness of SMEs and job creation in SMEs, including by productive investments* funded from the Funds in the amount of EUR 39,851,827.57 (RON equivalent of 198,318,634.72) and the Public Contribution Committed in the amount of EUR 7,032,675.45 (RON equivalent of 34,997,406.11);
 - (ii) Priority 2 *A region with environmentally-friendly cities*, RSO2.1 *Promoting energy efficiency measures and reducing greenhouse gas emissions* funded from the Funds in the amount of EUR 120,000,000.00 (RON equivalent of 597,168,000.00) and the Public Contribution Committed in the amount of EUR 21,176,470.59 (RON equivalent of 105,382,588.24);

¹ The equivalent in RON is calculated based on the exchange rate of the European Central Bank on the day preceding the last working day of the month preceding the month of signing the Agreement.

- (iii) Priority 6 *An attractive region*, RSO5.1 *Fostering the integrated and inclusive social, economic and environmental development, culture, natural heritage, sustainable tourism, and security in urban areas* and RSO5.2 *Promoting integrated and inclusive social, economic and environmental local development, culture, natural heritage, sustainable tourism and security in areas other than urban areas* funded from the Funds in the amount of EUR 60,000,000.00 (RON equivalent of 298,584,000.00) and the Public Contribution Committed in the amount of EUR 10,588,235.29 (RON equivalent of 52,691,294.10);
 - (b) NWRP 2021-27, Priority 3 *A region with environmentally-friendly localities*, RSO2.1 *Promoting energy efficiency measures and reducing greenhouse gas emissions*, funded from the Funds in the amount of EUR 15,000,000.00 (RON equivalent of 74,646,000.00) and the Public Contribution Committed in the amount of EUR 2,647,058.82 (RON equivalent of 13,172,823.51); and
 - (c) NERP 2021-27, Priority 3 *A sustainable region, more friendly to the environment*, RSO2.1 *Promoting energy efficiency measures and reducing greenhouse gas emissions*, funded from the Funds in the amount of EUR 30,000,000.00 (RON equivalent of 149,292,000.00) and the Public Contribution Committed in the amount of EUR 5,200,000.00 (RON equivalent of 25,877,280.00).
- (C) In order to ensure a greater attractiveness of the product and its absorption by the market, and as foreseen in the Ex-ante Assessments, a Capital Rebate ("**CR**") component product (as defined below) was envisaged for Financial Instruments. The CR Component shall be combined with the envisaged Financial Instrument(s) forming a single FI Operation (as defined below), and subject to the same set of rules, in line with Article 58(5) of the CPR.
- (D) Under this Agreement, the MAs: (i) appoint EIB as their agent to manage the amounts made available under this Agreement in the form of the HF pursuant to Article 59(3)(a) of the CPR, and (ii) entrust EIB with channelling the CR Component to Financial Intermediaries, to be combined with the Financial Instrument(s) in a single financial package in accordance with Article 58(5) of the CPR. EIB will select Financial Intermediaries for the purpose of the HF and enter into Operational Agreements (as defined below) with each selected Financial Intermediary, attaching the appropriate conditions for the management of the CR Component, including but not limited to monitoring, reporting, State Aid compliance, and the modalities of the CR being passed to the Final Recipients.
- (E) The Parties are entering into this Agreement for the purpose of:
- (a) mandating EIB with the operation and the management of the amounts made available to EIB under this Agreement in the form of a HF in its own name, but for and on behalf of, and at the risk of, the MAs;
 - (b) defining and implementing the Investment Strategy and Business Plan for the HF;
 - (c) defining the rules governing the operation of the HF, the functions and the duties of the Parties with respect to the HF Activity;
 - (d) defining the role of the Investment Board;
 - (e) defining the rules in relation to the monitoring, evaluation and auditing of the HF;
 - (f) defining the exit strategy; and
 - (g) determining the amount and the terms of payment of the Management Fees and Additional Expenses by the MAs to EIB.

- (F) EIB shall develop an appropriate CEOI (as defined below) in accordance with its internal policies and procedures, taking into account market needs in the MAs. EIB shall use the CEOI to identify, evaluate and select up to two suitable Financial Intermediaries to implement the Financial Instruments of the HF (including the management of the CR Component enshrined in the Financial Instrument(s)).
- (G) Any processing of personal data shall be carried out by EIB in accordance with the applicable European Union legislation on the protection of individuals with regard to the processing of personal data by the European Union institutions and bodies and on the free movement of such data.
- (H) The entry into this Agreement by the MAs and the performance of any obligations thereunder by the MAs have been validly authorised by the Memorandum of the Romanian Government no. 20/20515/M.A. of 14 June 2023.
- (I) For the purposes of implementing the similar Financial Instrument(s) by several Romanian Regional Development Agencies, a Multiregional Investment Platform for Romania (the "**Platform**") has been set up. This will serve for streamlining the actions and cooperation among the Regional Development Agencies.

NOW THEREFORE it is agreed as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following defined terms and expressions shall bear the following meaning, unless the context requires otherwise:

"4th and 5th AML Directives" means Directive 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018, and as further amended, supplemented or restated;

"Additional Expenses" means the costs, expenses and liabilities incurred or suffered by EIB in connection with the HF as further described in Clause 8 (*Additional Expenses, Negative Interest and Treasury Losses*);

"Additional Expenses Request" means a request in writing for payment of Additional Expenses substantially in the form of Appendix F (*Additional Expenses Request*);

"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;

"Audit Authority" means an audit authority designated by the Member State carrying out the functions in accordance with Article 77 of the CPR;

"Audit Report" means the annual audit report drawn by an independent external audit company selected by EIB, in line with Article 81(5) of the CPR as relevant, as per Clause 14.2(b);

"Business Day" means a day (other than a Saturday or Sunday), during which EIB and commercial banks are open for general business in Luxembourg and Romania;

"Cap" means a threshold of up to 5% of the total amount of the Programme Contribution disbursed to Final Recipients in line with Article 68(4) of the CPR as referred to in Clause 7.3 of this Agreement;



"**CEOI**" means a call for expressions of interest which complies in all material respects with the requirements set out in Clause 2.3 of this Agreement;

"**Clause**" means a clause of this Agreement;

"**Commission**" means the European Commission;

"**Control Report**" means the control reports supporting the payment applications to the Managing Authority, in line with Article 81(2) of the CPR;

"**CR**" means a type of grant allowing the Final Recipient to repay only a fraction of the principal of a loan, being the remaining fraction of the principal covered by the CR Component;

"**CR Component**" means a Capital Rebate component that will be attached to a loan provided to Final Recipients under the FI Operation(s) until the use of the maximum budget allocated for these purposes and pursuant to Article 58(5) of the CPR. Such CR Component will be channelled by EIB and deployed by Financial Intermediaries in accordance with this Agreement for the benefit of those Final Recipients;

"**CPR**" means the Common Provisions Regulation (EU) No 1060/2021 of 24 June 2021 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument as amended from time to time;

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

"**Effective Date**" the date on which the last Party signs this Agreement;

"**EIB's Credit Risk Guidelines**" means EIB's credit risk guidelines and EIB's equity risk guidelines, as amended, restated, supplemented or substituted by EIB from time to time;

"**EIB Group**" means the European Investment Bank, the European Investment Fund or any subsidiary of the European Investment Bank;

"**Eligibility Period**" means, save as otherwise expressly provided, the period from the Effective Date until (and including) 31 December 2029;

"**ERDF**" means the European Regional Development Fund;

"**EU**" means the European Union;

"**EURIBOR**" shall have the meaning set out in Appendix I (*Definition of Euribor*);

"**Ex-ante Assessment**" means the Ex-ante Assessments prepared by the respective MAs in line with Article 58(3) of the CPR and referred to in Recital A of this Agreement;

"**Final Recipient**" means a legal or natural person receiving support from Financial Instruments in accordance with Article 2(18) of the CPR;

"**Financial Instrument**" means, in accordance with Article 2(16) of the CPR, a form of support delivered via a structure through which financial products (as defined in Article 2(17) of the CPR) are provided to Final Recipients; and that for the purposes of this Agreement, includes the CR Component forming a single FI Operation;

"**Financial Intermediary**" means a credit institution, financial institution or other financial intermediary, whether public or private, selected by EIB in accordance with this Agreement for the implementation of a Financial Instrument;

"FI Operation" means a Programme Contribution to a Financial Instrument and the subsequent financial support provided to Final Recipients by that Financial Instrument including the possibility of combining with the CR Component under a single operation where the CR is directly linked to the Financial Instrument, and it is funded by the Programme Contributions Committed in Accordance with Clause 3 (*Funding of the HF*);

"First Tranche" means an amount which is equal to *thirty per cent* (30%) of the Programme Contribution Committed in line with Article 92(2)(a) of the CPR;

"Force Majeure Event" has the meaning given to such term in Clause 19.12 of this Agreement;

"Force Majeure Notice" has the meaning given to such term in Clause 19.12 of this Agreement;

"Funds" means Union Funds implemented under shared management, consisting of the European Regional Development Fund ('ERDF'), the European Social Fund Plus ('ESF+'), the Cohesion Fund, the Just Transition Fund ('JTF'), the European Maritime, Fisheries and Aquaculture Fund ('EMFAF'), the Asylum and Migration Fund ('AMIF'), the Internal Security Fund ('ISF') and the Border Management and Visa Instrument ('BMVI');

"HF" or **"Holding Fund"** means the fund set up by EIB under the responsibility of the MAs to implement one or more Specific Funds pursuant to Article 2(20) of the CPR;

"HF Account(s)" means the account(s) opened by EIB in its books for the purposes of collecting and administering the Holding Fund funds on behalf of each MA in accordance with Clause 5 (*The Holding Fund and the Holding Fund Account*);

"HF Activity" means the activities of the HF as described in this Agreement, including the functions and duties of EIB in connection with the operation and management of the HF in accordance with Clause 2 (*Mandate and Functions of EIB*);

"HF Risk Policy" means the risk framework and policy to be applied by EIB when implementing Financial Instruments and entering into Operational Agreements as set out in Appendix B (*HF Risk Policy*);

"Indemnified Amounts" has the meaning given to such term in Clause 11.5;

"Interest Generated" has the meaning given to such term in Clause 4.3;

"Investment Board" means a management board of the Platform consisting of members duly appointed and empowered by the MAs in accordance with the terms set out in Clause 6 (*The Investment Board*);

"Investment Board Rules of Procedure" means the internal rules of procedure adopted by the Investment Board in accordance with Clause 6.5, the terms of which are set out in Appendix D (*Investment Board Rules of Procedure Template*);

"Investment Strategy and Business Plan" means the investment strategy and business plan for the activities of the HF in relation to the HF Activity, attached to this Agreement as Appendix A (*Investment Strategy and Business Plan*), which shall include a separate section on the Exit Strategy;

"Irregularity" means, in accordance with Article 2(31) of the CPR, any breach of applicable law, resulting from an act or omission by an economic operator involved in the implementation of the Funds, which has, or would have, the effect of prejudicing the budget of the EU by charging unjustified expenditure to that budget;

"Legacy Funds" means the aggregate of any funds continued to be managed by EIB pursuant to this Agreement during the Legacy Period, whether in the form of commitments to Financial Instruments, amounts available in the HF Account or otherwise and including (without double counting) the Programme Contributions Paid, interest or revenue received together with the Proceeds of Operations less any amount repaid to the MAs pursuant to Clauses 3.6 and 3.7 of this Agreement;

"Legacy Period" means the period of eight (8) years commencing on 1 January 2030 and ending on 31 December 2037;

"Management Fees" means all the amounts payable to EIB as management fees for the services provided under this Agreement in accordance with Clause 7 (*Management Fees*);

"Managing Authority" or **"MA"** means the Regional Development Agency on behalf of which acts the Investment Board;

"MF" means the Ministry of Finance of Romania;

"MIEP" means the Ministry of Investment and European Projects of Romania;

"Non-Compliant Jurisdiction" means a jurisdiction:

- (i) listed in the annex I of the European Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes, adopted by the European Council at its meeting held on 12 March 2019;
- (ii) included in the OECD/G20 list of jurisdictions that have not satisfactorily implemented the tax transparency standards;
- (iii) listed in the annex of the Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing the 4th and 5th AML Directives by identifying high-risk third countries with strategic deficiencies ;
- (iv) rated as "partially compliant", "provisionally partially compliant" or "non-compliant" by the Organisation for Economic Cooperation and Development and its Global Forum on Transparency and Exchange of Information for Tax Purposes against the international standard on exchange of information on request;
- (v) included in the Financial Action Task Force statement "High risk Jurisdictions subject to a Call for Action"; or
- (vi) included in the Financial Action Task Force statement "Jurisdictions under Increased Monitoring",

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

"Operational Agreement" means an agreement (or set of agreements) entered into between EIB and a Financial Intermediary for the purpose of entry into, subscription or provision of one or more Financial Instruments as part of the HF Activity;

"Performance Milestones" has the meaning given to such term in Clause 7.4;

"Platform" means the Multiregional Investment Platform for Romania set up by EIB to implement the Financial Instrument(s) across all acceding Romanian Regional Development Agencies which will serve as a Platform for streamlining of actions and cooperation among those acceding;

"Proceeds of Operations" means in respect of a Financial Instrument, the aggregate of all the returns (whether repayment of principal, interest, recovered amounts and other distributions without limitation which are paid and available for use to the HF Account by the relevant Financial Intermediary in accordance with the relevant Operational Agreement or otherwise received in the HF Account in respect of the relevant Financial Instrument, and which are attributable to support by the HF to Final Recipients

"Programme" means, as the context may require, the programme: *South Muntenia Regional Programme 2021-2027* adopted by the European Commission by implementing decision No. C(2022)/7253 of 7 October 2022, *North-West Regional Programme 2021-2027* adopted by the European Commission by implementing decision No. C(2022)/7386 of 11 October 2022, *North-East Regional Programme 2021-2027* adopted by the European Commission by implementing decision No. C(2022)/7637 of 21, October 2022, as amended, and/or supplemented from time to time, and collectively, **"Programmes"**;

"Programme Contributions Committed" means of EUR 311,496,267.72 (RON equivalent of 1,550,130,026.68), being the Funds committed together with the Public Contribution Committed to be invested in the HF by the MAs under Clause 3 (*Funding of the HF*) plus any amount by which the Programme Contributions Committed is increased pursuant to Clause 3.8 of this Agreement. The Funds allocated to a specific MA and the reflows ensuing therefrom, and the Public Contribution Committed and the reflows ensuing therefrom can only be invested in the territory of the respective MAs;

"Programme Contributions Paid" means the aggregate amount of the Programme Contributions Committed which the MAs have paid into the HF Account and which, for the avoidance of doubt, excludes any interest accrued on the HF Account, any Proceeds of Operations or any other gains or receipts generated for the HF;

"Progress Report" means, as relevant, the annual progress report covering the period 1 January – 31 December of the previous year, or the period from the signing of the Agreement until the end of that year, to be prepared by EIB in accordance with Clause 14.2(a) and to be sent to the Investment Board;

"Public Contribution Committed" means the contributions made from the respective MAs which will be managed by EIB as a "separate block of finance", with no capital impact for EIB and with a separated accounting for each MA. The Public Contribution Committed constitutes the national public cofinancing.

"Reminder Notice" means a reminder notice for payment of a Subsequent Tranche issued by EIB under Clause 3.8 of this Agreement;

"Return Request" has the meaning given to such term in Clause 3.6 of this Agreement;

"Scheduled Termination Date" means the date falling twelve (12) months after the end of the Eligibility Period;

"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 or, as the case may be, the MA or the Member State;

"Subsequent Tranche" means each tranche of the Programme Contribution Committed requested to be paid into the HF Account pursuant to a Written Request;

"Termination due to Regulatory Developments" has the meaning given to such term in Clause 19.6;

"Termination for Cause" has the meaning given to such term in Clause 19.4;

"Termination Without Cause" means a form of termination of this Agreement which is not a Termination for Cause nor a Termination due to Regulatory Developments, as described in Clause 19.5;

"Transfer Period" has the meaning given to such term in Clause 19.7;

"Treasury Guidelines" means the set of guidelines agreed by the parties, which govern the management of the Treasury Funds and which are set out in Appendix C (*Treasury Guidelines*);

"Written Request" means a payment claim for a First Tranche or any Subsequent Tranche of the Programme Contribution Committed substantially in the form of Appendix E (*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-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
 - (ii) any subordinate legislation made from time to time under that statute or provision;
- (b) capitalised terms and expressions defined in the Preamble 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;
 - (iii) persons only shall include firms and corporations and vice versa;
- (d) headings in this Agreement shall be used solely for reference;
- (e) unless otherwise specified, 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;
- (f) the Appendices form an integral part of this Agreement and shall have effect accordingly; and
- (g) this Agreement (including its Appendices) is made in the English language. The English version of this Agreement shall prevail over any translation of this Agreement.

2. MANDATE AND FUNCTIONS OF EIB

- 2.1 The MAs hereby appoint EIB as their agent pursuant to Article 59(3)(a) of the CPR, to act in the name of EIB, but for and on behalf of, and at the risk of, the MAs as principals, to manage and operate the HF, including the funds and resources of the HF and the HF Account and to carry out the other functions and duties in relation to the HF set out in this Agreement.
- 2.2 The MAs authorise EIB, in connection with the management and operation of the HF (**"HF Activity"**):

- (a) to execute banking and financial transactions relating to the operation of the HF in compliance with the terms of this Agreement;
 - (b) to open and maintain the HF Account in the name of EIB but for the account and at the risk of the MAs;
 - (c) to channel the CR Component to Financial Intermediaries combined as a single FI Operation in accordance with Article 58(5) of the CPR;
 - (d) to pursue the strategy set out in the Investment Strategy and Business Plan;
 - (e) to identify, evaluate and select appropriate Financial Intermediaries (by issuing and publishing CEOIs and assessing other relevant criteria including in accordance with the criteria laid down by Articles 33 (1) and 209 (2) of Regulation (EU, Euratom) 2018/1046 of the European and of the Council and taking account of market needs) which shall enter into Operational Agreements for Financial Instruments for the purpose of the HF, provided that EIB assesses, at least, each of the elements referred to in Appendix G (*Requirements for Financial Intermediaries*) when selecting the Financial Intermediaries;
 - (f) to perform due diligence on the Financial Intermediaries;
 - (g) to negotiate, enter into, execute, implement and, if needed, amend Operational Agreements in the name of EIB acting in its capacity as agent for and on behalf of the MAs and for the ultimate benefit and risk of the MAs in accordance with the CPR, taking into account the relevant Appendix B (*HF Risk Policy*), including with the assistance or advice of external legal advisers retained by EIB in its discretion. EIB shall not have any obligation to enter into an Operational Agreement unless and until each or, as the case may be, the relevant tranche of the funds necessary for such Operational Agreement has been credited by the respective MA in cleared funds to the HF Account in accordance with Clause 3 (*Funding of the Holding Fund*);
 - (h) to enforce, defend and if necessary adapt or waive any rights of the HF under or in connection with Operational Agreements, including, where it is commercially reasonable, by means of litigation, arbitration, mediation or other dispute resolution methods or procedures, subject to the recovery processes of the Financial Intermediary or limited to the rights vis-à-vis the Financial Intermediary. Without prejudice to the foregoing, any waiver of key terms of Operational Agreements shall require the authorisation of the Investment Board;
 - (i) to monitor the implementation of the respective Operational Agreements in accordance with Clause 14 (*Monitoring and Reporting*) and Appendix H (*Monitoring and Reporting*);
 - (j) to manage the funds credited to the HF Account, in accordance with the Treasury Guidelines;
 - (k) to take any other action and to enter into any deeds or other documents that EIB considers to be necessary or desirable for the proper implementation of the HF.
- 2.3 The CEOIs which EIB shall develop and issue for the purposes of selecting the Financial Intermediaries in connection with the HF shall comply with the following requirements in all material respects:
- (a) the CEOIs shall allow EIB to evaluate the Financial Intermediaries with respect to the methodology and criteria applicable to Financial Intermediaries referred to in Appendix B (*HF Risk Policy*) and Appendix G (*Requirements for Financial Intermediaries*);
 - (b) the CEOIs shall be transparent, allow for justified decision-making on objective grounds and shall not give rise to a conflict of interest;

- (c) the CEOs shall use the criteria for the selection of Financial Intermediaries following EIB internal procedures. As at the time hereof the applicable criteria to be used during the selection of Financial Intermediaries are, and shall include, without limitation, the following:
- (i) a robust and credible methodology for identifying and appraising Final Recipients;
 - (ii) to the extent applicable, the level of costs and fees for the implementation of the Financial Instrument and the methodology proposed for the calculation of such costs and fees;
 - (iii) the terms and conditions applied in relation to support to be provided to Final Recipients, including, where relevant, pricing;
 - (iv) the ability to raise resources for investments in Final Recipients additional to contributions from the HF;
 - (v) where a particular Financial Intermediary already manages a similar Financial Instrument, the ability to demonstrate additional activity in comparison to present activity; and
 - (vi) in cases of risk sharing, the proposed measures to align interests and mitigate potential conflicts of interest.
- 2.4 In performing the HF Activity, EIB 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 for specific tasks in connection with the HF Activity and the implementation of Financial Instruments which, in the reasonable opinion of EIB, require such expert or professional advice. When retaining such services, EIB shall ensure that (i) the scope of such services is connected to the scope of this Agreement or is agreed between the Parties, (ii) the fees payable for such services are established in accordance with EIB's internal procedure, and (iii) the services rendered by the external consultants are reasonably evidenced and duly documented.
- 3. FUNDING OF THE HF**
- 3.1 The MAs hereby undertake to make available to the HF an aggregate amount equal to the Programme Contribution Committed, net of any charges or fees (including but not limited to any bank transfer charges), which shall be paid by the respective MA with applications for interim payments being phased throughout the Eligibility Period, on the terms laid down in Article 92 of the CPR.
- 3.2 The MAs shall pay the First Tranche of the Programme Contribution Committed into the HF Account no later than thirty (30) Business Days from the date of the initial Written Request by EIB. This initial Written Request will be submitted by EIB only after two (2) months from the Effective Date have elapsed.
- 3.3 The Parties agree that:
- (a) each Subsequent Tranche of the Programme Contribution Committed shall be paid in the HF Account no later than forty-five (45) Business Days from the date of the submission of the relevant Written Request by EIB.;
 - (b) each Written Request shall be substantially in the form set out in Appendix E (*Form of Written Requests*) and shall confirm the amount required to be paid to the HF Account as a Subsequent Tranche, as specified in such Written Request.
- 3.4 The MAs shall not withdraw or cancel any portion of the Programme Contribution Committed (whether or not such amount has been effectively paid to the HF) unless the Parties agree to the withdrawal or cancellation in writing.

- 3.5 The Programme Contribution Committed shall be used by EIB for the purpose of the HF Activity and in accordance with this Agreement, until the termination of this Agreement and the closing and liquidation of the HF Account.
- 3.6 Not earlier than three (3) months and no later than six (6) months following the end of the Scheduled Termination Date, the MAs shall be entitled to request in writing ("**Return Request**") to EIB that an amount equal to the difference between:
- (a) the Programme Contributions Paid, potentially increased by the net interest and net gains generated (on the HF Account, if any) from the Programme Contributions Paid accrued up until the date of return; and
 - (b) the aggregate amount equal to the Programme Contributions Paid which has been applied or remains committed to be applied for the purpose of (a) the financing of Final Recipients by Financial Intermediaries through Financial Instruments, (b) the payment of any fees owed to Financial Intermediaries, (c) the payment of any fees owed to EIB, (d) potential negative interest accrued of the HF Account; and/or (e) any other amount owed by the MAs to EIB under this Agreement,
- shall be returned to the respective MAs.
- 3.7 The amount requested under Clause 3.6 shall be paid from the funds available in the HF Account to the respective MAs no later than forty-five (45) Business Days after the date of the Return Request.
- 3.8 If a MA does not pay the First Tranche or any Subsequent Tranche into the HF Account within the time limit set in Clause 3.2 and 3.3, then:
- (a) EIB shall send a reminder notice (a "**Reminder Notice**") to the respective MA; and
 - (b) the unpaid amount in respect of the First Tranche or the relevant Subsequent Tranche shall bear interest from the date falling twenty (20) Business Days after the Reminder Notice until the date of payment at a rate equal to EURIBOR plus one (1) per cent.
- 3.9 Any amount payable pursuant to Clause 3.8(a) shall accrue to and be retained by EIB. If a MA fail to pay an amount due in respect of the First Tranche or a Subsequent Tranche within twenty (20) Business Days of EIB sending a Reminder Notice to the respective MA, then this shall permit EIB to terminate this Agreement by reason of the occurrence of a Termination for Cause within the meaning of Clause 19.4.

4. USE OF INTEREST GENERATED AND PROCEEDS OF OPERATIONS

- 4.1 The Parties agree as follows:

- (a) Under the terms of Operational Agreements, EIB may expressly permit Financial Intermediaries to re-use and re-invest in Financial Instruments returns (including for the avoidance of doubt, any amount to be used to pay the Financial Intermediary management fees concerning such re-use) in respect of existing Financial Instruments which returns would otherwise constitute Proceeds of Operations. The terms and conditions of any such permission for Financial Intermediaries to re-use or re-invest Proceeds of Operations shall be submitted to the Investment Board pursuant to Clause 6.8;
- (b) Save as provided in Clause 4.1(a), all Proceeds of Operations, shall be paid into the HF Account without unreasonable delay; and
- (c) During the period from the Effective Date until the Scheduled Termination Date, the Proceeds of Operations which are available in the HF Account may be re-used and re-invested under Financial Instruments. The proposed terms and conditions, including the additional applicable management fees which, for the avoidance of doubt, are not subject

to the Cap foreseen in Clause 7 (*Management Fees*), of any such re-use or re-invest of Proceeds of Operations shall be approved by the Investment Board.

4.2 The Proceeds of Operation generated in the course of a financial year shall be used in the following order of priority:

- (a) during the Eligibility Period, in the following order of priority: (i) for the payment and/or reimbursement of the Management Fees to be paid to EIB relating to further investments, if any (ii) for the payment of shortfalls, if any, due to negative interest in accordance with Clause 8.4; (iii) to cover commitments or exposures in relation to existing Financial Instruments (including management fees payable to Financial Intermediaries), including in circumstances in which a Written Request under Clause 3.3 is not honoured by the MA; (iv) for the conduction of an assessment of the market conditions demonstrating a continuing need for continued investment of the Legacy Funds during the Legacy Period; and (v) for further investments through the same or other Financial Instruments (without prejudice to the provisions of Clause 4.1(a) above), if applicable; provided that this does not discharge in whole or in part the MA from its obligation to make payment in respect of such Written Request under Clause 3.3, if relevant, in each case to the extent they are not used for the purpose of Clause 4.1(a) and in each case after EIB informs the Investment Board; and
- (b) following the expiry of the Eligibility Period, in the following order of priority: (i) for the payment and/or reimbursement of the respective Management Fees that remain unpaid, (ii) for the payment and/or reimbursement of any respective Additional Expenses that remain unpaid, (iii) for the payment of shortfalls, if any, due to negative interest in accordance with Clause 8.7; (iv) if relevant, to cover commitments or exposures in relation to existing Financial Instruments; and (v) for further investments through the same or other Financial Instruments (without prejudice to the provisions of Clause 4.1(a) above), if applicable.

4.3 The Parties also agree that any net interest or other net gains earned by the HF, including in respect of the Programme Contributions Paid, the treasury management activities and other gains generated from the HF Account ("**Interest Generated**"), shall be used for the purposes set out in Clause 4.2 above and in the way it has been agreed by the Parties.

4.4 Subject to the agreement of the Parties, EIB may enter into further Operational Agreements and incur expenditure (including Management Fees and management fees payable to Financial Intermediaries under the relevant Operational Agreements) during the Legacy Period, in accordance with Article 62(2) of the CPR and subject to Clause 4.5 below.

4.5 Notwithstanding Clause 4.4 above, the use of Legacy Funds for Financial Instruments to be implemented in the Legacy Period is subject to an assessment of the market conditions demonstrating a continuing need for such investments and the Parties successfully renegotiating fees and other elements as required. No later than six (6) months prior to the end of the Eligibility Period, EIB and the MAs shall conduct such an assessment, in accordance with Clause 4.2(a)(iv) above, at the cost of the MAs and, if appropriate, agree a revised Investment Strategy and Business Plan based on such assessment relating to the investment of Legacy Funds during the Legacy Period.

4.6 EIB shall be entitled to set-off any amount owed to EIB pursuant to Clause 8 (*Additional Expenses, Negative Interest and Treasury Losses*) of this Agreement against the Interest Generated being returned, save that such set-off shall be without prejudice to the obligations of the MA under Article 60(2) of the CPR with respect to the entire amount of Interest Generated.

5. THE HF AND THE HF ACCOUNT(S)

5.1 The Parties agree that the HF shall be established as a "separate block of finance" within EIB, as provided for under Article 59(2)(b) of the CPR, and EIB shall implement appropriate solutions to separate the amounts committed to the HF and paid to EIB from other resources managed by it.

- 5.2. The HF Account shall be opened by EIB in its books for the purposes of administering the Holding Fund funds on behalf of the MA.
- 5.3. Payments related to the HF Account shall be settled through the following account, or any such other account communicated by EIB to the MAs from time to time:

| | |
|----------------------|--------------------------|
| Currency: | EUR |
| Beneficiary bank: | European Investment Bank |
| BIC CODE: | BEILLULLXXX |
| Beneficiary account: | Direct via T2 (/RT) |
| IBAN: | LU929980000000000001 |
| Communication: | MRIP Romania |

Each transfer of the funds shall be made by the respective MA to EIB direct via T2. Before each transfer of funds to the HF, the MAs shall systematically inform EIB at least five (5) Business Days prior to the payment date, by e-mail (to FI_PRO_BOT_LPC_CM@eib.org and FI_PRO/BOT/LPC/RECONCILIATION@eib.org and dfi-treasury@eib.org or to such other mail address as may be indicated by EIB from time to time). The MAs shall ensure that the SWIFT message instructing such payment shall include, in field 70 (remittance information) and in another appropriate available field, a clear indication of the relevant operation name and the source and use of such funds in the following format: "MRIP Romania [Programme/Priority]".

- 5.4 The HF Account shall be denominated in EUR.
- 5.5 The HF 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 EIB resources (including, for the avoidance of doubt, other funds or accounts belonging to EIB), and shall be used exclusively for the performance of the HF Activity in accordance with this Agreement.
- 5.6 The MAs shall not create or permit to subsist any security, lien or other charge or encumbrance over the HF Account, the Holding Fund funds, the Programme Contributions Paid or any other funds managed by EIB in connection with the HF whether in favour of the MAs or any third party creditor of the MAs and whether under any financial assistance agreement entered into by the MAs or otherwise. The MAs shall not be entitled to operate, close or otherwise restrict the use of the HF Account (including by withdrawing any funds deposited in the HF Account).
- 5.7 The Parties acknowledge and agree that EIB shall be entitled to operate the HF Accounts as follows:

The HF Account shall be:

- (a) credited with, inter alia, the following items:
- (i) the Programme Contributions Paid;
 - (ii) revenue generated from the investment of HF funds in accordance with the Treasury Guidelines;
 - (iii) Interest Generated;
 - (iv) amounts clawed-back from the Financial Intermediaries, or returned by Financial Intermediaries, where such amounts do not correspond to any eligible expenditure within the meaning of the CPR;
 - (v) Proceeds of Operations;
 - (vi) amounts for the payment of Management Fees;
 - (vii) amounts for the payment of Additional Expenses; and

- (viii) any funds not already provided for in this Clause,
- (b) debited by EIB, with the following items:
 - (i) amounts to be paid directly or indirectly to Financial Intermediaries under Operational Agreements, including financing for loan products and also as regards the CR Component;
 - (ii) Management Fees as provided under Clause 7 (*Management Fees*) and Additional Expenses under Clause 8 (*Additional Expenses, Negative Interest and Treasury Losses*), and any other amounts due to EIB under this Agreement;
 - (iii) the amount of HF funds invested in accordance with the Treasury Guidelines;
 - (iv) any negative interest on the amounts standing on the credit of the HF Account subject to investment by EIB of the assets of the HF Account, plus any fees, losses and costs arising from the management of the assets on the HF Account in accordance with the Treasury Guidelines;
 - (v) amounts transferred to the MAs under this Agreement, including, without limitation, amounts to be transferred to the MAs from time to time after the expiration or termination of this Agreement; and
 - (vi) any other amount expressly authorised in writing by the MAs and EIB jointly.

EIB shall continue to be entitled to debit these sums to the HF Account after a termination of this Agreement for Termination due to Regulatory Developments, Termination for Cause or a Termination Without Cause, in order to satisfy its rights and obligations under this Agreement until the end of the Transfer Period.

- 5.8 Any costs incurred for the maintenance and administration of the HF Account or any other bank accounts necessary for the implementation of the HF Activity including, but not limited to bank charges, shall be borne by EIB and deemed included as a part of the Management Fees, other than as regards any negative interest or bank charges assimilated to negative interest which shall be covered in accordance with Clause 8 (*Additional Expenses, Negative interest and Treasury Losses*).
- 5.9 It is acknowledged and agreed by the Parties that any funds managed by EIB for the HF in accordance with this Agreement are the exclusive property of the MAs whether or not such funds were financed in whole or in part by a loan or other financing made available to the MAs by EIB.

6. THE INVESTMENT BOARD

- 6.1 The MAs shall establish or designate the Investment Board with a view to monitoring and supervising the implementation of the Investment Strategy and Business Plan in accordance with the provisions of this Agreement and the CPR. In order to enhance the efficiency of the HF, the MAs specifically agree that, for all matters relating to the implementation of the HF and falling into the scope of this Agreement, the MAs shall express its positions through the Investment Board only on the matters involving the Financial Instrument that is under implementation in its region. The MAs do not have the right to vote on matters belonging to Financial Instruments that are not implemented in their region.
- 6.2 The Investment Board shall consist of 1 (one) representative appointed by each of the MAs after consultation with EIB. Additionally, each of the MAs may nominate up to 1 (one) alternate, who may substitute the appointed member if he/she is not present.
- 6.3 The Members of the Investment Board shall appoint the Chairperson of the Investment Board at the first meeting of the Investment Board. The members representing the MAs shall act solely in the interests of the HF.

- 6.4 EIB shall be entitled to designate up to two (2) of its officials to participate in meetings of the Investment Board, as observers. Additionally, MIEP and MF shall be entitled to designate one (1) observer each. The observers shall not be entitled to vote in decisions made by the Investment Board.
- 6.5 The Investment Board shall, at its first meeting and subject to EIB not objecting, adopt internal rules of procedure for its routine functioning and the management of the HF in the form attached in Appendix D (*Investment Board Rules of Procedure Template*).
- 6.6 The Parties acknowledge that any decisions taken or communicated by the Investment Board shall always be taken after appropriate assessment of the position of the MAs as appropriate and solely in the interests of the HF. EIB shall be entitled to rely, without further enquiry, on any decisions taken or communicated by the Investment Board and to assume that such decisions fully reflect the position of the MAs.
- 6.7 For the avoidance of doubt, the Parties acknowledge that the above appointments shall have effect exclusively for the purposes of this Agreement and for the governance of the HF and further acknowledge that all costs in relation to establishing and operating the Investment Board shall be borne by the MAs in relation to matters of the Investment Board which are of exclusive concern of each MA, and jointly in relation to matters of common concern for all the MAs, and that members of the Investment Board shall not be entitled to receive any fees, costs or expenses from the HF or EIB. The MAs will operate the Investment Board under their exclusive responsibility and cost.
- 6.8 The Investment Board shall liaise internally with competent bodies and other authorities, as it deems appropriate, to perform its tasks in relation to the implementation of the HF and the Investment Board shall be responsible, among others, for the following matters:
- (a) acting as the coordination and communication point between EIB and the MAs on all matters relating to the Platform and the HF as the case may be;
 - (b) communicating, setting and amending (or proposing to the competent authorities the amendment), if deemed necessary, national rules and requirements relating to the HF Activity, in consultation with EIB;
 - (c) providing advice and conclusive rulings on matters relating to applicable national laws and regulations, the Programmes, and on compliance with State Aid rules including confirmation of gross grant equivalent, in connection with the eligibility of financing to Final Recipients, the operation of the HF, Financial Instruments and Operational Agreements;
 - (d) approving any amendments to Appendix A (*Investment Strategy and Business Plan*), if any;
 - (e) approving any amendments to Appendix D (*Investment Board Rules of Procedure Template*), if any;
 - (f) approving the terms of the CEOI submitted to the Investment Board by EIB (approval entailing confirmation that the CEOI satisfies the requirements foreseen in this Agreement and in the CPR, as applicable);
 - (g) receiving and endorsing the list of selected Financial Intermediaries following a CEOI;
 - (h) approving each proposed investment into a Financial Intermediary and be informed of the key terms and conditions of each proposed Operational Agreement, including the compliance with the provisions of Annex X of the CPR;
 - (i) approving any waiver of the key terms of the Operational Agreements;

- (j) granting or refusing within ten (10) Business Days of receipt of a proposal by EIB to deviate from the Risk Policy and related risk parameters identified in this Agreement and its amendments in connection with higher risks implied by such deviations (ineligibility risk, counterparty risks, etc), in respect of both entering into Operational Agreements and in the course of implementing the Operational Agreements;
 - (k) receiving the annual Progress Report;
 - (l) approving any proposal by EIB for the re-use and re-invest in Financial Instruments returns or Proceeds from Operations as per Clause 4.1(a) and Clause 4.1(c);
 - (m) upon formal proposal by EIB (it being understood that EIB will consult the Investment Board in good faith regarding content and scope of such proposal prior to submission of the formal proposal), carry out any other tasks under or in connection with this Agreement and each Funding Agreement, without prejudice or limitation to the EIB's rights under this Agreement and its amendments.
- 6.9 Where the Investment Board has decision-making powers upon proposal of EIB, the Investment Board 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 EIB has consented to any such amendment.
- 6.10 For the avoidance of doubt, the Parties acknowledge and agree that EIB shall have the exclusive right to take any decisions necessary in order to perform the HF Activity and to make proposals to the Investment Board on the matters set out in this Agreement.
- 6.11 EIB shall provide the secretariat of the Investment Board in accordance with this Agreement (the "**Secretariat**"). The tasks and functions of the Secretariat shall include the following:
- (a) organisation of Investment Board meetings, including distribution of Investment Board documents, agenda and minutes;
 - (b) any other tasks as defined in this Funding Agreement or by the Investment Board; and
 - (c) communications related to the activities of the Investment Board shall be channelled through the Secretariat.
- 6.12 Any communications to and from the Investment Board shall be validly effected if addressed in writing in accordance with Clause 23 (*Notices*).

7. MANAGEMENT FEES

- 7.1 The MAs acknowledge that, in consideration for the operation of the HF, the management of the HF, the Programme Contributions Committed and any other funds of the HF and the performance of the HF Activity by EIB, from the Effective Date (irrespective of whether the funds have actually already been disbursed on that date) until the earlier of (i) the termination of this Agreement, and (ii) the Scheduled Termination Date, EIB shall be entitled to the Management Fees, which the MAs hereby agree to assume and pay to EIB.
- 7.2 Upon receipt of the First Tranche, EIB reserves the right to set aside and identify separately on the HF Account the estimated necessary amount to cover its Management Fees relating to the Performance Milestones 1 and 2 (as defined below in Clause 7.4) which, for the avoidance of doubt, shall be settled under the Cap (as defined below in Clause 7.3) until the end of the Eligibility Period.
- 7.3 EIB shall be entitled to withdraw the Management Fees from the HF Account on a semi-annual basis (for the performance of Milestone 3 as defined below in Clause 7.4) or after the achievement of the Performance Milestone (for the Performance Milestones 1 and 2 as defined below in Clause 7.4). The Parties agree that if the Management Fees due exceed:

- (i) the available balance of the HF Account (including for the purpose of such calculation, any Proceeds of Operation credited thereto but excluding, amounts already committed by EIB towards one or more Financial Instrument(s)), such excess amount shall, at the election of EIB, (i) either be carried over for payment together with the amounts referred to in the next Written Request, or (ii) shall be invoiced by EIB to the MA, in the form of a separate Written Request, and shall be payable within twenty (20) Business Days into the HF Account. Any such payment received by EIB during the Eligibility Period shall be deemed to be part of the Programme Contributions Paid.
 - (ii) at the end of the Eligibility Period, the Cap consisting in 5% of the Programme Contribution Paid disbursed to Final Recipients set out under Article 68(4) of the CPR (the "**Cap**"), such excess amount shall be, at the election of EIB after consulting the MA, and in compliance with relevant regulations: (i) either paid from the Proceeds of Operations, or (ii) invoiced by EIB to the MAs, in the form of a separate Written Request, and shall be payable within twenty (20) Business Days of EIB's Written Request into the HF Account.
- 7.4 The Management Fees shall be payable (or debited from the HF Account) in arrears (except for the second semester 2029 which shall be paid or debited upfront within the second semester of 2029 as regards the Performance Milestone 3 as defined below) and shall consist of the following fees, triggered by respective performance milestone ("**Performance Milestones**"):
- (i) **Performance Milestone 1** – On the Effective Date: 1.00% of the Programme Contribution Committed (one-off fee);
 - (ii) **Performance Milestone 2** – Upon:
 - a) signature of the first Operational Agreement with a selected Financial Intermediary : 1.00% of the Programme Contribution Committed (one-off fee);
 - b) signature of the last Operational Agreement with a selected Financial Intermediary: 0.60% of the Programme Contribution Committed (one-off fee);
 - (iii) **Performance Milestone 3** – On investments into Final Recipients: 0.9% *per annum* of the amount of the Programme Contribution Paid disbursed to Final Recipients (calculated on the aggregated amounts disbursed by the Financial Intermediaries to the Final Recipients as of 30th June and 31st December of each calendar year and communicated to EIB).
- 7.5 The Parties agree that the Cap does not apply to Management Fees incurred after the Eligibility Period and/or to the management fees relating to further investments as referred to in Clause 4.1(c) above.
- 7.6 No later than six (6) months before the end of the Eligibility Period, EIB and the MAs will agree the management fees during the Legacy Period and the fees relating to the termination of this Agreement, including the transfer of any HF funds to the MA or any entity newly appointed by the MAs for such purpose, as referred to in Clause 21 (*Assignment*).

8. ADDITIONAL EXPENSES, NEGATIVE INTEREST AND TREASURY LOSSES

8.1 Additional Expenses

The Parties agree that any Additional Expenses incurred or to be incurred by EIB in connection with the HF and the HF Activity (together with any interest accrued thereon for late payment under Clause 8.8), including in particular those expenses which according to the applicable law, are not eligible expenditure pursuant to the CPR and any related rules of the MAs, shall be considered to be additional amounts payable by the MAs in excess of the Programme Contributions Committed and from MA resources which are not subject to EU rules on the Funds as further set out below in this Clause.

8.2 The Additional Expenses shall include:

- (a) costs arising in connection with the termination of this Agreement, and with the transfer of any HF funds to the MAs or any entity newly appointed by the MAs for such purpose;
 - (b) costs connected to recovery actions or any litigation arising in relation with Financial Instruments entered into under signed Operational Agreements; and
 - (c) other costs to be defined as Additional Expenses, including among others reasonable costs incurred in relation with or as a consequence of the withdrawal or cancelation of part of the Programme Contributions Committed, and mutually agreed by EIB and the MAs from time to time and until the Scheduled Termination Date.
- 8.3 Any Additional Expenses incurred in accordance with Clause 8.1 above, shall be paid first from the Proceeds of Operation available in the HF Account (excluding amounts already committed by EIB towards one or more Financial Instrument(s)) and EIB shall be entitled to withdraw the relevant amounts from the HF Account following the Eligibility Period, failing which, they shall be paid by the MAs as a separate payment to EIB, into the HF Account, within the deadline specified by EIB in the Additional Expenses Request.
- 8.4 EIB shall to the extent possible, and as soon as practicable, inform the MAs in writing of the likelihood of incurring any recovery and litigation costs and where such costs may be forecasted, EIB will also provide a forecast to allow the MAs to comply with their budgetary rules.
- 8.5 Should EIB succeed in recovering any costs connected to litigation referred to in Clause 8.2(b) above, which have been effectively paid by the MAs, in respect of the same litigation process, to EIB, it shall return to the MAs such costs recovered, provided that EIB shall first be entitled to set these amounts off against any other amounts due to it by the MAs.
- 8.6 The Parties agree that Management Fees exceeding the Cap shall be considered to be additional amounts payable by the MAs in excess of the Programme Contribution Committed and from resources which are not subject to the Cap and payable following Clause 7.3(ii) above.
- 8.7 *Negative Interest and Treasury Losses*
- The Parties agree that any costs linked to the application of negative interest rates to the HF Account or any other bank accounts necessary for the implementation of the HF Activity, including as regards the Treasury Guidelines, as well as any treasury losses will be covered:
- (a) during the Eligibility Period, by the Proceeds of Operations or the Interest Generated in accordance with Clauses 4.3 and 4.6 above and, if such amounts are insufficient at a certain time as determined by EIB, by the MAs as a separate payment to EIB within twenty (20) Business Days from EIB's written request; and
 - (b) during the Legacy Period, first by the Interest Generated, then by the Proceeds of Operations available in the HF Account in accordance with Clause 4.2(b) and in the event these amounts are insufficient, by the MAs as a separate payment to EIB within twenty (20) Business Days from EIB's Written Request.
- 8.8 If the MAs do not pay any amounts set out in this Clause 8 within the applicable term, 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.
- 8.9 To the extent any Additional Expenses are incurred in EUR, the MA shall pay EIB in EUR.

10. MATERIAL INTERESTS AND DISCLOSURES

The MAs acknowledge and agree that:

- (a) EIB operates, or may operate, a number of mandates agreed, or to be agreed, between EIB and third parties. The investment policies of such mandates may entail the offering of Financial Instruments of a similar nature to the Financial Instruments in a number of jurisdictions, including Romania;
- (b) EIB may on its own account or on behalf of third parties invest in Financial Instruments of a similar nature to the Financial Instruments in a number of jurisdictions, including Romania; and
- (c) EIB may (i) interact in other capacities (including as a lender, guarantor or investor) with the Financial Intermediaries as well as (ii) provide financing (including in the form of guarantees) to the same final recipients/investments as the Financial Instruments contemplated herein, including in a manner where the Financial Instruments contemplated herein are subordinated to, or serve as a credit enhancement for, such EIB support.

Accordingly, EIB may, without prior reference to the Investment Board or to the MAs, effect transactions in which EIB 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 EIB's duty to the MAs and the HF. EIB shall manage and where possible, address any such potential conflicts of interest, in accordance with its internal rules and procedures which may include, where appropriate, the implementation of confidentiality rules and organisational arrangements relating to the dissemination of confidential information within EIB and taking into consideration the Investment Strategy and Business Plan for the HF.

11. OPERATIONAL AGREEMENTS

11.1 EIB shall ensure that the Operational Agreements include undertakings or representations from the Financial Intermediaries that:

- (a) with respect to the relevant Financial Instrument, they will act in accordance with all applicable laws and with a degree of professional care, efficiency, transparency and diligence expected from a professional body experienced in implementing Financial Instruments;
- (b) the Final Recipients benefiting from the support of the Financial Instruments are selected with due account of the nature of the Financial Instrument and their potential economic viability, or as relevant, the potential economic viability of the investment projects of the Final Recipients which are to be financed;
- (c) the selection of the Final Recipients is transparent and can be justified by the Financial Intermediaries on objective grounds and that such selection does not give rise to any conflict of interest;
- (d) the Financial Intermediaries inform the Final Recipients, in accordance with Article 50 and Annex IX of the CPR, as well as relevant laws and regulations, that the funding is provided under co-financed Programmes from the Funds;
- (e) the Financial Intermediaries undertake to provide support to the Final Recipients in a manner which is proportionate and least distortive to competition;
- (f) the Operational Agreements reflect the provisions set out in Annex X of the CPR;
- (g) the contribution to be made to the HF is set out and appropriate co-financing is provided by the Financial Intermediaries in line with the terms and conditions of the CEOI;

- (h) the Financial Intermediaries agree that the Financial Instruments may be audited by or on behalf of the MA, the Audit Authority, the Commission and the European Court of Auditors or other properly appointed body;
 - (i) the Financial Intermediaries agree that they cannot make a claim for any amount beyond the amount committed to them under the relevant Operational Agreement;
 - (j) the Financial Intermediaries and the Final Recipients must hold and maintain amounts received from the HF in a bank account with a credit institution situated within the territory of a Member State of the EU;
 - (k) direct payments made to the Final Recipients must be made in a bank account with a credit institution situated within the territory of a Member State of the EU; and
 - (l) the Financial Intermediaries shall ensure that the Final Recipients undertake to comply with applicable State Aid rules and the Financial Intermediaries shall repay any support received through the HF which constitutes unlawful State Aid.
- 11.2 EIB shall ensure that the Operational Agreements reflect certain additional requirements, including *inter alia*:
- (a) requirements on the eligibility of the Final Recipients to be financed (which reflect the terms agreed between EIB and the Investment Board in the CEOs);
 - (b) requirements on data protection and document retention by EIB, the Financial Intermediaries and/or the Final Recipients;
 - (c) requirements as to the visibility of the involvement of the Financial Instrument;
 - (d) requirements regarding the display of plaques and billboards (as per Annex IX, Article 1(n) of the CPR).

Such requirements shall be agreed between EIB and the Investment Board in respect of the CEOs.

12. RESPONSIBILITIES OF THE PARTIES AND LIABILITY

- 12.1 EIB agrees, without prejudice to Clause 11.2 below, to act with the diligence of a professional body and in good faith in implementing this Agreement.
- 12.2 Subject to Clause 11.3 below, EIB shall under no circumstances be held responsible or liable to the MAs or any other person in connection with the financial performance of the HF, the financial results of any of the Operational Agreements or Financial Instruments, the investment made in accordance with Treasury Guidelines (including as a result of negative interest/charges), the failure by the MAs, any Financial Intermediary or any Final Recipient benefitting from HF financing to comply with any applicable laws or regulations.
- 12.3 EIB shall not be liable to the MAs, or any other person, for any acts or omissions under or in connection with its appointment under this Agreement and its own performance of the HF Activity except to the extent of such costs, claims, damages, losses, liabilities or expenses of the MAs which directly result from fraud, wilful misconduct or gross negligence of EIB in the performance of this Agreement. For the avoidance of doubt, EIB shall under no circumstances whatsoever be liable to the MAs for consequential damages, loss of profit or exemplary or punitive damages.
- 12.4 Subject to Clause 11.3 above, any liability of EIB in connection with this Agreement shall be excluded to the extent any action by EIB is based on information obtained from the MAs or a decision or approval from the Investment Board. EIB assumes no obligation to independently verify the accuracy, relevance or completeness of any such information received from the MAs or to examine or challenge any decision or approval by the Investment Board.

12.5 The MAs hereby agree to indemnify and hold harmless EIB 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 EIB (the "**Indemnified Amounts**") in connection with:

- (a) the appointment of EIB under this Agreement or in connection with the HF Activity;
- (b) any information supplied by the MAs or the Investment Board to EIB in relation to this Agreement being false, misleading, inaccurate or incomplete;
- (c) any instruction made by or on behalf of the MAs to EIB in relation to this Agreement or the HF Activity;
- (d) any breach (including failure to pay) or misrepresentation, whether arising directly or indirectly, by the MAs or the Investment Board under this Agreement; and/or
- (e) any claim by any person to be entitled to any assets which form part of the HF,

except in so far as such Indemnified Amounts directly result from the fraud, wilful misconduct or gross negligence of EIB in the performance of this Agreement.

For the avoidance of doubt, the obligation of the MAs under this Clause 11.5 extends also to the obligation to hold EIB harmless for any payments that EIB would have been obliged to make to Financial Intermediaries (including any penalties) under Operational Agreements, including where EIB has made such payment on the basis of resources other than HF resources.

12.6 The MAs hereby agree that:

- (a) Any Indemnified Amount (together with any interest accrued thereon for late payment under Clause 11.6(b) due to EIB shall be paid by the MAs to EIB within sixty (60) Business Days of EIB's written request, as an additional amount payable by the MAs in excess of the Programme Contributions Committed and shall be paid from MA resources which are not subject to EU rules on the Funds.
- (b) If the MAs do not pay any Indemnified Amount within the delay 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.

12.7 The obligations of the MAs to indemnify EIB under this Agreement 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.

11.8 Specifically as regards the treatment of Irregularities that have led to a financial correction being imposed:

- (a) EIB shall be liable in respect of Irregularities occurring at the level of the Holding Fund in accordance with this Agreement;
- (b) EIB shall not be liable in respect of Irregularities occurring at the level of Financial Intermediary (i) where it has included the requirements for Financial Intermediaries detailed in Appendix G (*Requirements for Financial Intermediaries*), and (ii) where it has exercised due diligence in selecting the Financial Intermediary and in selecting and pursuing appropriate contractual and legal measures against the Financial Intermediary to recover the amounts affected by the Irregularity, it being understood that the decisions in relation to these contractual and legal measures are exercised at the sole discretion of EIB, acting with due diligence. For the avoidance of doubt no liability shall apply to EIB where these conditions are met;

- (c) EIB shall not be liable in respect of Irregularities occurring at the level of Final Recipients where it has (i) included an obligation in the Operational Agreement on the Financial Intermediary to exercise due diligence in selecting and pursuing appropriate contractual and legal measures against the Final Recipients to recover the amounts affected by the Irregularity and, (ii) where the Financial Intermediary is in breach of the obligation described under 11.8(c)(i), EIB has itself exercised due diligence in selecting and pursuing appropriate contractual and legal measures against the Financial Intermediary within the framework of the Operational Agreements for the recovery of the affected amounts by the Irregularity, it being understood that the decisions in relation to these contractual and legal measures are exercised at the sole discretion of EIB, acting with due diligence. For the avoidance of doubt no liability shall apply to EIB where the Financial Intermediary has exercised due diligence in selecting and pursuing appropriate contractual and legal measures against the Final Recipient to recover the amounts affected by the Irregularity.

No liability in respect of the circumstances described in Clauses 11.8(b) and 11.8(c) shall apply, where the MAs fail to reimburse EIB for litigation expenses incurred or to be incurred in line with Clause 8.

13. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS BY THE MAS

13.1 The MAs hereby represent and warrant and in respect of the matters in Clause 12.1(b), (c), (d), (g) and (f) (below), represent and warrant at all material times until the termination of this Agreement that:

- (a) they have full power and capacity (including with respect to its domestic laws and constitutional requirements) to appoint EIB on the terms of this Agreement and to enter into transactions within the scope of this Agreement and have obtained all necessary authorisations and approvals to permit EIB to do so on its behalf;
- (b) neither their entry into or performance of this Agreement nor into any such transaction will breach any law, rule or regulation applicable to them or any material contract to which they are a party;
- (c) the HF is free from all liens, charges and encumbrances and the MAs undertake that no liens, charges or encumbrances over the HF will arise from the acts or omissions of the MAs;
- (d) any information or documentation provided by the MAs to EIB (including any information as to the financial position of the MAs or the HF) is true, complete, accurate and not misleading in any material respect;
- (e) the Investment Board, as the case may be, shall provide any further information properly required by EIB or any competent authority, including in relation to performing EIB's obligations under this Agreement;
- (f) they have understood and acknowledged the risks entailed in the Financial Instruments including as set out in Appendix B (*HF Risk Policy*) and the Investment Strategy and Business Plan. The MAs acknowledge and accept (i) the risk of full loss both at the Final Recipient and at the Financial Intermediary's levels and (ii) a lack of a risk-commensurate return;
- (g) as regards the CR Component that:
 - (i) the provision of grants (in the form of CR, within the meaning of Article 58(5) of the CPR) combined within a single FI Operation was foreseen in the respective Ex-ante Assessments;
 - (ii) the CR is directly linked to the Financial Instrument, it is deemed necessary and targets the same Final Recipients; and

- (iii) the CR is included in the Financial Instrument forming a single FI Operation, which is to be entrusted to the same Financial Intermediaries as the rest of the FI Operation, which is compliant with EU and national law and, in particular with Articles 58(4) to 58(7) of the CPR.
- (iv) the CR Component shall not exceed the value of investments supported by the financial product and shall comply with the relevant State Aid provisions.

For the avoidance of doubt, VAT rules under article 64(1)(c)(iii) of the CPR shall apply to the CR Component.

EIB warrants that it is to require in the Operational Agreements signed with Financial Intermediaries, that the Financial Intermediaries are obliged to keep separate accounting, treasury and reporting records for each form of support under the FI Operations, as mandated by Article 58(6) of the CPR.

- (h) they acknowledge and agree that EIB will not apply EIB's rules, policies and procedures applied to operations it carries out at its own risk, as further detailed in Appendix B (*HF Risk Policy*); and
 - (i) the obligations expressed to be assumed by them in this Agreement are legal, valid, binding and enforceable obligations and they comply with the representation indicated in indent (b) above.
- 13.2 The MAs will notify EIB promptly if there is any material change to any of the information provided by them for the purposes of this Agreement or to its circumstances generally, and will provide such other relevant information as EIB may from time to time reasonably require. The MAs acknowledge that a failure to provide such information may adversely affect the ability of EIB to provide services under the Agreement and the quality of the services that EIB may provide.
- 13.3 The MAs undertake not to deal, or dispose of any of the assets of the HF nor to authorise any person other than EIB to deal or dispose of any of them.
- 13.4 The MAs represent and warrant that the Investment Strategy and Business Plan (i) fully and accurately incorporates all the conditions and requirements (including eligibility criteria) of the respective Programmes that are applicable to the Financial Instrument implemented and (ii) complies with the policy objectives of its respective Programmes.
- 13.5 The MAs further represent and warrant that as of the Effective Date there are no additional national requirements that would apply to the Financial Instrument implemented in the context of the HF.

14. STATE AID

- 14.1 The MAs shall be responsible for ensuring compliance with all applicable State Aid rules, including the cumulation rules concerning the CR combined in the Financial Instrument as a single FI Operation. The MAs further confirm that references to State Aid Rules in Appendix A (*Investment Strategy and Business Plan*) are accurate and comply with all applicable State Aid rules.
- 14.2 The MAs shall provide to EIB all information necessary to enable the HF, each Financial Instrument, the CEOs and each Operational Agreement to be compliant with rules on State Aid. The EIB's responsibility with respect to State Aid shall be limited to requiring each Financial Intermediary to ensure compliance with State Aid requirements in the CEOI published in accordance with Clause 2.3 and, subsequently, in each respective Operational Agreement.
- 14.3 Information referred to in Clause 13.2 above shall be communicated by EIB to the Financial Intermediaries which shall be contractually responsible for satisfying the applicable State Aid rules.

- 14.4 Each Operational Agreement shall include an undertaking by the Financial Intermediary to comply with the State Aid rules in accordance with Clause 13.3, including an obligation for the Financial Intermediaries to obtain an undertaking from the Final Recipients in the name of the respective MAs to repay any support received through the HF which constitutes unlawful State Aid.

15. MONITORING AND REPORTING

- 15.1 EIB shall monitor the implementation of the Financial Instruments and Operational Agreements in accordance with the CPR provisions and the relevant internal rules and procedures and the criteria set out in Appendix H (*Monitoring and Reporting*).

- 15.2 On the basis of data provided by the Financial Intermediaries, EIB shall prepare the following reports:

- (a) an annual progress report (the "**Progress Report**") drawn up in English, submitted by EIB to the Investment Board 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 H (*Monitoring and Reporting*) of this Agreement, with the exception of data related to the State aid provided to Final Recipients which will be submitted to the MAs not later than two (2) months following the last day of the reporting period;
- (b) an annual audit report (the "**Audit Report**") drawn up in English by external auditors appointed by EIB and which shall cover the elements indicated in Annex XXI of the CPR. The last Audit Report for the period 1 July 2029 – 30 June 2030 will be provided by 31 December 2030;
- (c) a Control Report (the "**Control Report**") upon request of the MA;
- (d) to the extent that the relevant data is provided by the Financial Intermediaries, semi-annual reports submitted by EIB substantially in the form set out in Appendix G (*Monitoring and Reporting*) by the 20th calendar day following the last day of the reporting period. The data contained in these semi-annual reports related to Final Recipients will be provided by the Financial Intermediaries and shall not be verified for accuracy, correctness and completeness by EIB. For the avoidance of doubt, information provided in the Progress Reports shall prevail. Such semi-annual reports shall be provided until the end of the Eligibility Period or otherwise as agreed between the Parties.

- 15.3 EIB agrees that any monitoring it conducts with respect to the Financial Instruments (including, where relevant, on a sample basis) will cover the following issues:

- (a) whether Financial Intermediaries operate procedures with the aim of complying with EU laws and rules and procedures relating to the HF and the Operational Agreement;
- (b) whether the agreements by which financing is made available to Final Recipients contain provisions relating to audit requirements and audit trails in accordance with paragraph 1(e) of Annex X to the CPR and include any agreed visibility requirements;
- (c) whether an adequate audit trail is established for reporting and auditing purposes, in accordance with the relevant provisions of the CPR;
- (d) whether the Financial Intermediaries retain supporting documents which relate to the financing made available to Final Recipients until the latter of (i) five (5) years from the date of expiry of the Operational Agreement; or (ii) ten (10) years after the effective date of the transaction between the Financial Intermediary and the Final Recipients; and
- (e) whether the Financial Intermediaries operate procedures with the aim of (i) keeping supporting documents available to allow the verification of the legality and regularity of expenditure by the Financial Intermediaries and (ii) ensuring that the Financial Intermediaries can produce evidence that the support provided is to be used for the

intended purposes pursuant to Article 69(6) and point II.10 of Annex XIII of the CPR, that the Financial Intermediaries are complying with the applicable EU and national laws and are complying with the criteria and conditionality attached to the funding they receive.

- 15.4 Upon reception of MA's specific request, EIB shall provide all the necessary documents in its possession to enable it to fulfil their obligations under the CPR regarding the HF Activity. Where the required documentation is not available to EIB, EIB will request the relevant Financial Intermediary to submit the documentation requested by the MAs. The MAs expressly acknowledge and represent that, in those cases where EIB does not have the documents requested, the EIB's obligation shall be limited to request such documentation from the relevant Financial Intermediary, as applicable.

16. AUDITING

- 16.1 EIB agrees to maintain an adequate audit trail in relation to the HF for reporting and auditing purposes (including to provide to the MAs an Audit Report drawn up by its external auditors), in accordance with the relevant provisions of the CPR, taking into account any amendment, extension, re-enactment or replacing legislation. The MAs or any other national authorities shall not carry out any on-the-spot verifications at the level of EIB.

In particular and pursuant to Article 58(6) of the CPR, separate records shall be maintained as regards (a) the Financial Instruments (excluding, for the avoidance of doubt, the CR Component) and (b) the CR Component within the Financial Instrument forming a single FI Operation.

- 16.2 The Operational Agreements shall provide that the Financial Intermediaries consent (a) to be audited by or on behalf of the MAs, the Audit Authority, the Commission and the European Court of Auditors or any other EU body or institution which is entitled to verify the use of funds made available under the relevant Operational Agreement and (b) to provide all information necessary for the MAs, EIB, the HF and the Commission to comply with any applicable information or audit requirements of the relevant national audit authorities and/or of the European Court of Auditors.
- 16.3 The MAs shall satisfy, at its own cost, its obligations to conduct verifications (including on-the-spot) in accordance with the EU guidelines, rules or regulations relating to Financial Instruments, as applicable for the Funds' resources, as updated from time to time and taking into account any amendment, extension, re-enactment or replacing legislation.
- 16.4 The Parties agree that the verifications as per Clause 15.3 may take place during the entire duration of this Agreement and that such verifications may consume considerable time and resources. The MAs shall ensure that EIB is informed with at least two (2) weeks in advance of such audits and shall share with EIB the audit plan, if applicable, notice of visits and final audit report and conclusions (once available). The Parties shall ensure that such verifications are carried out in the least intrusive manner.

17. DOCUMENT RETENTION

- 17.1 EIB agrees to retain all supporting documents for its actions pursuant to this Agreement for a five (5) year period from 31 December of the year in which the payment of the last Subsequent Tranche is made; or for documents relevant to State Aid rules, for a ten (10) year period from the date on which the last aid was granted to Final Recipients including for financing during the Legacy Period, if applicable.
- 17.2 EIB agrees to make all supporting documents available as evidence in order to allow for its expenditure to be audited.
- 17.3 EIB shall ensure that the Operational Agreements contain undertakings similar to Clauses 16.1 and 16.2 above in order that the Financial Intermediaries comply with the requirements set out in Article 76 and Article 82 of the CPR and in Point II.6 of Annex XIII of the CPR.

18. OFFSHORE POLICY

18.1 Pursuant to this Agreement:

- (a) EIB agrees to not enter into Operational Agreements with Financial Intermediaries incorporated in a jurisdiction which, at the time of envisaged signature of the Operational Agreement, would be a Non-Compliant Jurisdiction; and
- (b) EIB shall ensure that the Operational Agreements contain an undertaking similar to that contained in Clause 17.1(a) above, whereby the Financial Intermediaries agree for the purpose of the relevant Financial Instrument, not to enter into business relations with any entities incorporated in a Non-Compliant Jurisdiction.

18.2 The Parties hereby agree that a change in the status of a jurisdiction to a Non-Compliant Jurisdiction shall have no effect on Operational Agreements already entered into at the time of such change.

19. AMENDMENTS

19.1 Amendments to this Agreement shall be made in writing with the written consent of the Parties, with each Party representing that all prior authorisations and publications necessary for such amendments have been obtained or performed at the time of the written consent. Amendments shall become effective upon execution by both Parties hereto.

19.2 The Parties shall negotiate in good faith and execute any amendments to the terms of this Agreement, which may become necessary or desirable in case of an amendment to any laws, regulations or administrative acts of the MAs or the EU (including, where relevant, any compensation or adjustment to the remuneration of EIB as a result of any such amendments).

19.3 Notwithstanding Clause 18.1 above, any amendments, updates and/or additions to:

- (a) Appendix A (*Investment Strategy and Business Plan*) made by the Parties following the procedure of approval by the Investment Board set out in Clause 6.8(d), properly documented in the relevant minutes and duly communicated to MAs by the Investment Board;
- (b) Appendix D (*Investment Board Rules of Procedure Template*), made by the Parties following the procedure of approval by the Investment Board set out in Clause 6.8(e), properly documented in the relevant minutes and duly communicated to MAs by the Investment Board; and
- (c) Appendix H (*Monitoring and Reporting*), made by the Parties,

shall not require a formal amendment to this Agreement.

20. EFFECTIVE DATE, TERMINATION AND FORCE MAJEURE

20.1 This Agreement shall become effective as of the Effective Date and shall, unless terminated earlier in accordance with this Clause, remain in force until the Scheduled Termination Date (provided that the indemnification obligations of the MAs under Clause 11.7 shall continue in full force and effect notwithstanding any termination of this Agreement).

20.2 No later than six (6) months prior to the Scheduled Termination Date of this Agreement, EIB shall return the balance of the HF Account outstanding at that time (after deducting any Management Fees payable to EIB until the Scheduled Termination Date) by crediting the relevant amount to such bank account as the MAs communicate to EIB. Any residual liabilities under the Operational Agreements shall be transferred to and assumed by the MAs or to an entity expressly appointed by the MAs for this purpose.

20.3 Upon termination of this Agreement, all expenses incurred by EIB in connection with such termination and transfer of the balance of the HF Account outstanding at that time (after deducting any Management Fees and Additional Expenses payable to EIB until termination) and any residual liabilities under the Operational Agreements to the MAs or to an entity expressly appointed by the MAs for this purpose, must be borne by the MAs. Notwithstanding the foregoing, should the termination of this Agreement occur as a result of a Force Majeure Event, the relevant expenses shall be borne equally by both Parties.

20.4 The occurrence of any of the following events will permit a termination for cause (a "**Termination for Cause**"):

- (a) either Party commits a material breach of its obligations under this Agreement, if capable of being remedied, has not been remedied by the defaulting Party within three (3) months from the other Party giving written notice of such breach to the defaulting Party;
- (b) the MA fails to make payment of the First Tranche within thirty (30) Business Days from the date of the initial Written Request by EIB;
- (c) the MA fails to make payment in respect of a Subsequent Tranche within twenty (20) Business Days of a Reminder Notice being sent by EIB;
- (d) there is any failure to pay by the MAs any other amount due and payable under this Agreement and such failure to pay is not remedied or cured in full within twenty (20) Business Days of the date upon which it is due;
- (e) the MAs fail to comply with its obligations under Clause 15.3; or
- (f) the Parties do not agree a revised Investment Strategy and Business Plan as described in Clause 4.5 prior to the commencement of the Legacy Period.

The Party which did not commit the relevant material breach of this Agreement may by written notice to the other Party terminate this Agreement if the event in Clause 19.4(a) occurs.

EIB may by written notice to the MAs terminate this Agreement if an event in any of Clauses 19.4(b) to (e) occurs.

Either Party may by written notice to the other Party terminate this Agreement if the event in Clause 19.4(f) occurs.

20.5 Provided that this Agreement has not been terminated for a Termination for Cause, this Agreement may be terminated without any cause (i) on the last day of the Eligibility Period by either Party giving written notice to the other Party no later than six (6) months prior to the end of the Eligibility Period, or (ii) at any time during the Eligibility Period by giving written notice to the other Party no later than six (6) months prior to the effective termination of this Agreement (the "**Termination Without Cause**").

20.6 Without prejudice to a Termination for Cause, this Agreement may be terminated by EIB, at any time in case the MAs or any public authority within the MAs amends or changes any laws, regulations or administrative acts, and such amendment, in the reasonable opinion of EIB may have an adverse impact on the activities entrusted to EIB under this Agreement, or on the performance of the HF, materially deviates from the Investment Strategy and Business Plan (*Appendix A*) or are not suitable for implementing it (the "**Termination due to Regulatory Developments**").

20.7 The Parties agree that:

- (a) if a material breach under Clause 19.4(a) is not capable of being remedied, or if a material breach under Clause 19.4(a) which is capable of being remedied has not been remedied within three (3) months of either Party giving written notice of the Termination for Cause;

- (b) a failure to pay under Clauses 19.4(b), (c) or (d) or a breach under Clause 19.4(e) is not remedied within twenty (20) Business Days of EIB giving the MAs notice of the Termination for Cause,
- (c) either Party gives written notice of a Termination Without Cause or Termination With Cause under Clause 19.4(f), or
- (d) EIB gives written notice of a Termination due to Regulatory Developments under Clause 19.6,

then, unless EIB gives a written notice to the MAs pursuant to Clause 19.8, a three (3) month period shall be immediately initiated during which the Parties agree that the HF, all assets and liabilities relating to the HF (including where held or incurred in the name of EIB as part of the HF Activity) and all Operational Agreements entered into, are transferred to (whether by assignment, novation or otherwise) or assumed by the MA(the "**Transfer Period**"). In particular, in such case,

- (i) the MAs shall accept and assume all rights, obligations and liabilities arising out of Operational Agreements and agree to enter into any transfer agreement or equivalent documentation necessary for the formalisation of the transfer thereof to the MA; and
- (ii) notwithstanding Clause 24.3, the balance of the funds paid in the HF Account, as well as any assets resulting from the implementation of the Operational Agreements, shall be transferred to the MAs and, as relevant, shall be credited with such bank account as the MAs shall communicate to EIB and the HF Account shall be closed,

and at the end of the Transfer Period, EIB shall be automatically released of any liability under this Agreement and the Operational Agreements and this Agreement shall terminate.

20.8 If any of the events in sub-paragraphs (a), (b), (c) or (d) of Clause 19.7 occur, EIB may, at its discretion, given written notice to the MAs within thirty (30) days of the existence of such circumstances, that:

- (a) EIB shall not transfer the balance of the HF Account (or any assets resulting from the Operational Agreements) to the MAs; and
- (b) EIB shall not assign, transfer or novate the then existing Operational Agreements and/or Financial Instruments to the MAs,

but shall continue to manage the HF Account and the then existing Operational Agreements on the terms of this Agreement, including the right to be paid Management Fees and Additional Expenses, to be reimbursed in respect of costs and expenses and to be indemnified under the terms of this Agreement provided that:

- (i) it shall not enter any new Operational Agreements; and
- (ii) it shall not re-invest or re-use Proceeds of Operations save for such re-investment or re-use which is made by the relevant Financial Intermediary in accordance with the express terms of an existing Operational Agreement.

In such circumstances, this Agreement shall continue in full force effect until such time as the Scheduled Termination Date occurs in relation to such Operational Agreements as were in effect on the date on which this Agreement would otherwise have ended by reason of the Termination for Cause.

20.9 Without prejudice to any of the provisions of this Clause relating to the Parties' obligations on termination of this Agreement, in the event of termination of this Agreement, EIB shall be released from any obligation to perform the HF Activity, as of the effective date of such termination.

- 20.10 EIB shall procure that, subject to applicable law, all Operational Agreements provide for assignment, novation, substitution and/or nomination rights of the MAs in order to ensure the transfer of such Operational Agreements thereunder to the MAs or to an entity newly appointed by the MAs, as applicable, in case of termination of this Agreement.
- 20.11 Termination of this Agreement shall be without prejudice to accrued rights and obligations under this Agreement.
- 20.12 Notwithstanding any other provision of this Clause 19, in the event that an unforeseeable exceptional situation or event beyond any of the Parties' control occurs (other than labour disputes, strikes or financial difficulties and the kind), including (without limitation) the cancellation or suspension of the HF pursuant to an act of the European Union or of the MAs or otherwise, which prevents either of them from fulfilling any of their obligations under this Agreement, was not attributable to error or negligence on their part, and proves insurmountable in spite of all due diligence (each a "**Force Majeure Event**"), the Party facing such Force Majeure Event shall inform the other Party without delay through a written notice ("**Force Majeure Notice**") stating the nature, probable duration and foreseeable effects. Upon receipt of a Force Majeure Notice, the Parties shall immediately enter into consultation and make every effort to minimise any damage due to the occurrence of the relevant Force Majeure Event, it being understood that neither Party shall be held in breach of its obligations under this Agreement if it is prevented from fulfilling them due to a Force Majeure Event. If the Parties, acting in good faith, ascertained that the continuation of the performance of the HF Activity is impossible or extremely onerous as a result of the occurrence of a Force Majeure Event, this Agreement shall be terminated in accordance with this Clause 19.

21. CONFIDENTIALITY AND DISCLOSURE

- 21.1 EIB is not obliged to disclose to the Investment Board or to take into consideration information:
- (a) the disclosure of which by it to the Investment Board 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 EIB but does not come to the actual notice of an EIB individual managing the HF or any Operational Agreements.
- 21.2 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 within the EIB Group;
 - (b) where they may be entitled or 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 Commission, the European Anti-Fraud Office, and/ or the European Court of Auditors;
 - (c) to their professional advisers where reasonably necessary for the performance of their professional services;
 - (d) (in the case of EIB when disclosing information relating to the MAs and/or the HF) 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 HF, in all cases only to assist or enable the proper performance of its services under this Agreement, or any Operational Agreements; or
 - (e) 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.

- 21.3 The MAs authorise EIB to supply to the HF and EIB's auditors any information about the HF requested by them.

22. ASSIGNMENT

- 22.1 This Agreement is personal to the MAs and may not be assigned by the MAs or transferred by it (whether by assignment, novation or otherwise).
- 22.2 Without prejudice to Clause 2.4, EIB 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 which it reasonably considers can properly perform those functions, subject to obtaining the prior written consent of the MAs, which consent shall not be unreasonably withheld.

23. GOVERNING LAW AND DISPUTE RESOLUTION

- 23.1 The Parties hereby submit to the jurisdiction of the Court of Justice of the European Union.
- 23.2 This Agreement is subject to the general principles of law common to the Member States as interpreted or to be interpreted by the Court of Justice of the European Union.

24. NOTICES

- 24.1 Communications in writing and Addresses

Unless otherwise provided for in this Agreement, any notice or communication by one Party to the other Party shall be made in writing and shall be delivered either by registered mail or email with transmission confirmation clearly stating in the subject "MRIP Romania [Programme/Priority]", to the following addresses:

If to the MAs:

The South Muntenia Regional Development Agency:

Address: Str. Munteniei 7A,
Călărași, județ Călărași, cod poștal 910164,
România

Attention: Head of Managing Authority for South-Muntenia Regional Programme 2021-2027

Email: amsudmuntenia@adrmuntenia.ro

The North-West Regional Development Agency:

Address: Str. Donath nr. 53,
Cluj – Napoca, județ Cluj, cod poștal 400293,
România

Attention: Interim General Director – North West Regional Development Agency

Email: secretariat@nord-vest.ro

The North-East Regional Development Agency:

Address: Str. Lt.Drăghescu nr. 9,
Piatra Neamț, județ Neamț, cod poștal 610125,
România
Attention: Management Authority for North-East Regional Program 2021-2027
Email: am@adnrdest.ro

If to EIB:

Address: European Investment Bank
98-100 bld Konrad Adenauer
L-2950, Luxembourg
Attention: Financial Instruments, Baltic Sea and Northern Europe Department
Email: OPS_BSNE-3-FinInstr@eib.org

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

24.2 Delivery

- (1) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:
 - (a) 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
 - (b) 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 23.1 (*Communications in writing and Addresses*) above, if addressed to that department or officer.
- (2) Any communication or document which becomes effective, in accordance with paragraphs (a) to (b) in Clause 23.2.1 above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following Business Day.

25. MISCELLANEOUS

- 25.1 This Agreement, including its Appendices (as amended from time to time) constitutes the entire agreement of the Parties with respect to the management of the HF and supersedes and extinguishes all prior understandings, arrangements, agreements, representations, proposals or communications between the Parties, whether written or oral.
- 25.2 The EIB's authority under this Agreement is given by the MAs on behalf of their successors in title as well as of itself.
- 25.3 EIB may, but shall not be obliged to set-off any amount owed to it against any amount payable by EIB to the MAs under this Agreement.
- 25.4 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.
- 25.5 This Agreement has been executed in three (3) counterparts in the English language, (each of which represents an authentic original of this document), unless signed electronically.



**THE SOUTH MUNTENIA REGIONAL
DEVELOPMENT AGENCY**

.....

By: Liviu Gabriel Mușat

Title: General Director

**THE NORTH-WEST REGIONAL
DEVELOPMENT AGENCY**

.....

By: Csilla Hegedüs

Title: Interim General Director

.....

By: Petru Alboi Sandru

Title: Head of the Managing Authority

.....

By: Tudor Piciu

Title: Head of Department

.....

By: Cătălin Gorgan

Title: Executive Director

.....

By: Ciprian Barna

Title: Executive Director

.....

By: Simona Bolboacă

Title: Expert

.....

By: Luminița Vasile

Title: Expert



THE NORTH-EAST DEVELOPMENT AGENCY

.....

By: Vasile Asandei

Title: General Director

.....

By: Monica Harja-Zlavog

Title: Director of Directorate

.....

By: Bogdan-Andrei Budurea

Title: Legal Counsel

THE EUROPEAN INVESTMENT BANK

.....

By: Carolina Vento Sánchez

Title: Head of Division

.....

By: Goetz von Thadden

Title: Head of Unit

APPENDIX A

INVESTMENT STRATEGY AND BUSINESS PLAN

A. INVESTMENT STRATEGY

Unless otherwise indicated, the phrases and expressions defined in the Funding Agreement have the same meaning when used herein.

1.1 Introduction

This Investment Strategy and Business Plan is a document setting out common directions, objectives and principles for the implementation of Financial Instruments ("FIs") under the Multiregional Investment Platform in Romania ("Platform") which has been established with a view to coordinating and streamlining actions across the participating Romanian Regional Development Agencies ("Managing Authorities", "MAs") in line with their Regional Programmes ("Programmes").

In accordance with the provisions of Article 1(a) of Annex X to Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 ("Common Provisions Regulation", "CPR"), the Investment Strategy and the Business Plan constitutes an appendix to the Funding Agreement.

This Investment Strategy and Business Plan sets out:

- the investment strategy including the arrangements for the implementation of the financial instruments, the main parameters of the financial instruments offered, the final recipients targeted and the planned combination with grant support;
- the business plan for the implementation of the financial instruments, including the estimated leverage effects; and
- the expected final results to be achieved by the financial instrument in order to contribute to the achievement of the specific objectives and results of the relevant priority of the Programmes.

The MAs and the EIB are ready to establish their cooperation in the 2021-2027 programming period for the benefit of the participating regions. The purpose of such cooperation shall be the establishment of a Holding Fund ("HF") within the meaning of Article 2(20) of the CPR as a separate financial block within the EIB.

The HF will be financed from public funds constituting the Funds (i.e. the European Regional Development Fund ("ERDF")) and the national Public Contribution provided by the MAs.

In addition, it is expected that measures will be taken to mobilise the Private Contribution, mainly at the level of Financial Intermediaries or Final Recipients and, to the extent possible, to maximise the leverage effect by attracting private co-financing from third sources to support the same type of projects.

As set out in Article 59(1) of the CPR, the activities of the HF will be governed by this Investment Strategy and Business Plan, which may be amended in accordance with the terms of the Funding Agreement.

The Investment Strategy and Business Plan may also be further detailed to the extent necessary for the effective, efficient and correct implementation of the Financial Instruments covered by the Funding Agreement.

1.2 Ex-ante Assessments

This Investment Strategy has been prepared on the basis of the ex-ante assessments drawn up by the MAs in accordance with the requirements of Article 58(3) of the CPR ("Ex-ante Assessments").

The Ex-ante Assessments are based to a large extent on the conclusions of the feasibility studies carried out with the support of *fi-compass* – the horizontal technical assistance platform for financial instruments provided by the European Commission in partnership with the EIB, namely, the *Feasibility*

study for regional financial instruments under ERDF 2021-2027 in Romania finalised in August 2023, and more specific for the South Muntenia Region – the *Feasibility Study for Financial Instruments under ERDF 2021-2027 in South Muntenia, Romania* finalised in December 2021. The main objective of these studies was on one hand to carry out the market analysis, including an overview of the regional context and sectors to be supported, the market demand illustrating the main challenges in access to finance in each of the targeted sectors, and the market supply based on the past and currently available financial support in these areas. The studies also focused on the possible implementation options as regards the governance structure, proposed financial products and their combination with grants, targeted final recipients, State aid considerations, as well as initial financial allocations and potential for private co-financing.

The Ex-ante Assessments identified market failures and sub-optimal investment levels for the following areas of support related to the following priorities and specific objectives of the European Union's Cohesion policy:

| Programme | Priority | Specific objective | Programme Contribution (EUR million) |
|---|---|---|--------------------------------------|
| South Muntenia Regional Programme 2021-27 | Priority 1 - A competitive region through innovation, digitalisation and dynamic businesses | RSO 1.3. - Enhancing sustainable growth and enhancing the competitiveness of SMEs and job creation in SMEs, including through productive investments | 46.88 |
| | Priority 2 - A region with environmentally-friendly cities | RSO 2.1. - Promoting energy efficiency and reducing greenhouse gas emissions | 141.18 |
| | Priority 6 - An attractive region | RSO 5.1. – Promoting integrated and inclusive social, economic and environmental development as well as culture, natural heritage, sustainable tourism and security in urban areas | 23.53 |
| | | RSO 5.2. - Promoting integrated and inclusive social, economic and environmental local development, culture, natural heritage, sustainable tourism and security in areas other than urban areas | 47.06 |
| North-West Regional Programme 2021-27 | Priority 3 - A region with environmentally-friendly localities | RSO 2.1. - Promoting energy efficiency and reducing greenhouse gas emissions | 17.65 |
| North-East Regional Programme 2021-27 | Priority 3 - A sustainable region, more friendly to the environment | RSO 2.1. - Promoting energy efficiency and reducing greenhouse gas emissions | 35.20 |

1.3 Combination of financial instruments and grants in one operation

Article 58(5) of the CPR extends the possibilities for combining financial instruments and grants, including in the form of a Capital Rebate ("CR"), in a single operation in the 2021-2027 programming period and allows for the disbursement of the combined support directly to the Final Recipients.

Unless otherwise provided in the Funding Agreement, in accordance with Article 58(5) and (6) of the CPR, the CR Component included in the Financial Instruments is subject to the same set of rules for financial instruments as set out in the CPR and is addressed to the same Final Recipients.

The Financial Instruments with the CR Component shall be subject to a number of the following conditions:

- the Programmes' support in the form of CR will be directly linked and necessary for the Financial Instrument operation;
- the Ex-ante Assessment showed that the grant is necessary for the Financial Instrument to incentivise maximising of the cohesion policy impact, in particular in the area of green investments, to attract additional private funding and to address market failures;
- the Programmes' support in the form of grants shall not exceed the value of the investments supported by the financial product at the loan portfolio level (this condition has been taken into account in the Programmes where the level of grant support is lower than 50% of the value of support from the Funds);
- the rules applicable to Financial Instruments shall apply to the grants;
- the grant component will be part of a Financial Instrument operation;
- the justification of eligible expenditure will be in line with the rules for Financial Instruments; eligibility will be determined at the time of disbursement of the combined support;
- payments, reporting and auditing will follow Financial Instruments rules (separate records will be maintained);
- the Financial Instruments and grants will be covered by a single agreement (it concerns the Funding Agreement, the Operational Agreement(s) and the loan agreement(s));
- both forms of support will be provided by the Financial Intermediary implementing and managing the Financial Instrument, awarding the grant and providing a combined funding,
- the Financial Intermediary ensures separate accounting and reporting for each form of support; reporting on grants is part of the Financial Instrument requirements;
- the applicable State aid rules should be respected at each level of implementation of the Financial Instrument.

The CR does not apply to the Private Contribution provided by the Financial Intermediaries from their own resources due to their inclination not to write off their funds as part of the Financial Instruments when operating on market terms with a view of to maximising their profit.

In addition, allowing for the market remuneration of the Private Contribution should incentivise the Financial Intermediaries to involve their own resources in the Operational Agreements, thus enabling the implementation of the Financial Instruments.

The parameters of the financial products offered under the Programmes (including the level of grant support) are set out below in section 1.6.

1.4 Compliance with strategic documents

Despite efforts made to increase the energy efficiency of public and residential building stock in Romania, a considerable segment of the existing building stock will still need to be renovated by 2050 to meet the energy efficiency targets set in the European directives. According to the National Long-Term Renovation Strategy ("NLTRS")², there are almost 5.6 million buildings in Romania,

² *Strategia Națională de Renovare pe Termen Lung pentru sprijinirea renovării parcului național de clădiri rezidențiale și nerezidențiale, atât publice, cât și private, și transformarea sa treptată într-un parc imobiliar cu un nivel ridicat de eficiență energetică și decarbonat până în 2050* dated 27 November 2020.

corresponding to about 644 million m² of heated area. Most of the building stock in Romania is made of single-family houses ("SFHs"), as these account for 93% (ca. 5.2 million), out of which almost 70% are located in rural areas. SFHs have the largest portion of the total heated space in all types of buildings (58%). At the national level, the final energy consumption in buildings represents 42% of the total final energy consumption, of which 34% represents residential buildings. The residential sector has the largest share of energy consumption (about 81%), while all other buildings together (offices, schools, hospitals, and other non-residential buildings) account for the remaining 19% of total consumption of final energy. The final energy consumption in the residential sector decreased by 8.4% from 8.10 Mtoe to 7.42 Mtoe, and this downward trend is maintained due to the implementation of interventions to increase energy efficiency in buildings and decrease GHG emissions.

According to the latest available data provided for in the 2011 Romanian census ("RPL2011"), most of the building stock in Romania was built before 2000 (around 84% of the total heated area). In addition, the portion of buildings renovated until 2020 is estimated to be just a few percentage points of the total, i.e. 5% for residential buildings and 9% for public and commercial buildings, respectively. For these reasons, by far the biggest part of the residential building stock needs renovation, with a higher proportion for rural SFHs (85%) than urban SFHs (75%) and MABs (76%), while the respective share for public buildings stays at 79%. Energy poverty is a critical issue in Romania, as one in ten households reported not being able to keep its home adequately warm and the proportion of households with arrears on utility bills (14%) was over twice the EU figure in 2018³.

Despite certain progress in the state of a local infrastructure due to fast development of the Romanian economy in the recent years, still some infrastructures remain undeveloped, in particular as regards local business and tourism facilities. According to the New Urban Policy of Romania⁴, depopulation of urban centres causes challenges related to infrastructure maintenance, degradation and abandonment of historic buildings, loss of sense of community and reduction in quality of life. The discrepancies between large urban centres and small towns have deepened to the point where part of the latter are facing the multiple challenges of an aging population, low economic performance, low level of skilled human resources, lower access to certain markets or services and higher rates of poverty. The poor leisure infrastructure results in a small number of tourists visiting the regions which has negative impact on the local development, diversification of the regional economy, stimulating entrepreneurship, especially within SMEs, and creating sustainable jobs.

The analysis carried out within the Romania Country Report 2020⁵ illustrates that one of the vulnerable points of the Romanian economy derives from a slower pace of transformations to overcome the status of a less developed country, having an economy structure dominated by SMEs concentrated in fields with little added value and specialised in labour-intensive activities. The analysis of the indicators of the 2019 Scoreboard indicate a very low score of innovating companies. Also in terms of digitalization of businesses, a very low number of companies make electronic exchanges of information, work with large volumes of data, use cloud technology or sell online. The business clusters should play a bigger role in catalysing and dissemination of information and knowledge across companies, in particular for the benefit of SMEs who register the lowest survival rates in the first five years of activity establishment. Entrepreneurship should be promoted through the establishment, development and operationalization of business incubators and industrial parks. At the same time, the interventions should be accompanied by investments in intangible assets, such as: management and production methodologies and procedures, adapting new technologies to production flows, acquisition and use of intellectual property rights, use of information technology, as well as support circular economy with a view of optimizing energy consumption and preventing, reducing and reusing waste in companies.

1.5 Implementation arrangements

Referring to the market failures and sub-optimal investment situations identified in the Ex-ante Assessments, the MAs entrust the EIB with the creation of the HF to facilitate access to finance for the Final Recipients in cooperation with the selected Financial Intermediaries. To this end, the MAs

³ EU Energy Poverty Observatory (2020), Member State Report – Romania.

⁴ *Strategia Națională de Dezvoltare Urbană Integrată pentru orașe reziliente, verzi, incluzive și competitive 2022-2035* dated 28 December 2022.

⁵ *Raportul de țară din 2020 privind România* dated 26 February 2020.

appointed the EIB as their agent to manage the funds made available under the Funding Agreement in accordance with Article 59(3)(a) of the CPR.

The EIB will select the Financial Intermediaries through a Call for Expression of Interest ("CEOI"). The Financial Intermediaries will be selected on the basis of open, transparent, proportionate and non-discriminatory procedures, avoiding conflicts of interest. The criteria for the selection of Financial Intermediaries will be set out in detail in the CEOI, subject to approval by the Investment Board which confirms their compliance with the requirements set out in the Funding Agreement. When selecting Financial Intermediaries, the EIB, as the HF manager, is required to ensure that the requirements and criteria are met in relation to each selected Financial Intermediary.

Subject to the above requirements, the functions of Financial Intermediaries may be entrusted in particular to the following types of entities:

- credit institutions;
- financial institutions;
- investment funds or managers of such funds;
- other institutions authorised to carry out lending activities in the areas covered by the support.

The involvement of other institutions not mentioned above is not excluded provided that they fulfil the selection criteria.

1.6 Financial Products offered, Final Recipients targeted under the Programmes

All projects supported by the Financial Instruments should comply with the following general requirements:

- compliance with the general principles and regulations of the Funds;
- credibility of the business model, financial flows, partners, etc.;
- ability to repay; and
- the provision by projects of adequate economic and/or social benefits.

In addition, projects must comply with the financial and economic criteria as set out below:

- the financial criteria depend on the type of projects and the financial product chosen and may include: internal rate of return, net present value, repayment term, cash flow profile, availability and forms of collateral (if required), other financial indicators normally used in credit analysis, etc.
- the assessment of projects in terms of their economic sustainability and impact may cover the following aspects of the projects: contribution to the achievement of relevant results, in particular, the Programme, the potential to leverage additional funding from other public and private sources to achieve a high level of leverage effect, the potential to attract investors for other projects of a complementary nature or likely to generate economic or social synergies, the duration of the implementation of the projects.

Furthermore, each project should comply with specific eligibility criteria and requirements set out in the respective Programmes. These criteria will be set out in detail in the CEOI to select Financial Intermediaries which will be presented by the HF Manager to the Investment Board for approval.

I. *South Muntenia Regional Programme 2021-27:*

Priority: 2. A region with environmentally friendly cities

Specific objective: RSO2.1 Promoting energy efficiency measures and reducing greenhouse gas emissions

North-West Regional Programme 2021-27:

Priority: 3. A region with environmentally friendly localities

Specific objective: RSO2.1 Promoting energy efficiency measures and reducing greenhouse gas emissions

1. Financial products:

The financial product offered under these Priorities will be a loan with preferential interest rate combined with a Capital Rebate in accordance with the provisions of Article 58(5) of the CPR in order to increase the attractiveness of the product.

The use of the Capital Rebate will be based on an ex-ante energy audit and a subsequent proof of achieving the required level of energy savings above the required minimum of 30% of energy savings (i.e. based on an ex-post energy audit or any other equivalent document, for example in the form of a new energy performance certificate (EPC)).

Investment loans:

The loans included in the portfolio:

- should be newly generated, excluding refinancing of existing loans;
- should have a repayment schedule, including regular amortization and/or bullet payments;
- should be intended only for investments in fixed assets and intangible assets (i.e. should not finance purely financial activities or real estate development when undertaken as a financial investment activity, and should not finance consumer credit provision);
- should have maturity not exceeding the economic life of the financed asset or the amortization period, in accordance with generally accepted accounting standards, but in any case not exceed maximum loan terms of up to 15 years;
- may not exceed the maximum amount of EUR 150.000;
- may have a grace period of up to 12 months after the completion of the investment being financed;
- should be secured in line with market practices;
- should have preferential interest rate of 0% *per annum*.

Capital Rebates:

The percentage of the Capital Rebate at the loan level (granted from the Funds and the Public Contribution) will depend on the energy efficiency level achieved, as follows:

| Energy efficiency achieved | ≥ 30% < 40% | ≥ 40% < 50% | ≥ 50% |
|---|-------------|-------------|-------|
| Capital Rebate intensity (% of loan amount) | 30% | 40% | 50% |

The amount of the Capital Rebate may not exceed the aid intensity limits and maximum aid amount specified in the State aid regulations (if applicable).

It is expected that the grant component will not exceed 40% of total allocation for North-West Regional Programme, while for South-Muntenia Regional Programme will not exceed 50% of total allocation, at the loan portfolio level.

2. Final Recipients:

The targeted Final Recipients are:

- owners of the single-family houses.

3. State aid:

State Aid under the Financial Instruments is not foreseen at the level of EIB as the HF Manager and selected Financial Intermediaries, provided that the following requirements are met:

- the remuneration of the Financial Intermediary and the EIB corresponds to the market remuneration in similar situations, which is the case when the Financial Intermediaries are selected in an open, transparent, non-discriminatory and objective procedure or when the remuneration is in accordance with the provisions of the CPR;
- the risks and benefits are split on a *pari passu* basis; and
- the financial benefits of the Programmes are fully transferred to the Final Recipients in the form of preferential interest rates and grants.

At the level of Final Recipients, State aid will be granted on the basis of the relevant provisions of EU and national law regarding the rules for granting this aid, applicable at the time of granting the support, in particular the Commission Regulation (EU) No. 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid.

State aid can be excluded at the Final Recipients' level when it is granted to individuals not engaged in economic activities and, therefore, not falling within the scope of State aid. Individuals engaged in commercial activities are generally considered undertakings for the purpose of State aid.

4. Indicators:

The supported investments should be reported under the following categories of intervention:

- 041 *Energy efficiency renovation of existing housing stock, demonstration projects and supporting measures.*

The output and result indicators to be achieved by end-2029 are as follows:

| <u>Regional Programme</u> | <u>Type of indicator</u> | <u>Name of indicator</u> | <u>Unit</u> | <u>Value</u> | |
|---|--------------------------|---|--------------------------|-----------------|---------------|
| | | | | <u>Baseline</u> | <u>Target</u> |
| South Muntenia Regional Programme 2021-27 | Output | Dwellings with improved energy performance (RCO18) | Item | n/a | 6,353 |
| | Result | Annual primary energy consumption (of which: dwellings, public buildings, enterprises, other) (RCR26) | MWh/year | 221,469.88 | 155,028.92 |
| | Result | Estimated greenhouse gas emissions (RCR29) | Tons of CO2 eq. per year | 75,225.93 | 32,318.40 |
| North-West Regional Programme 2021-27 | Product | Dwellings with improved energy performance (RCO18) | Item | n/a | 500 |
| | Result | Annual primary energy consumption (of which: dwellings, public buildings, enterprises, other) (RCR26) | MWh/year | 11,530.650 | 5,823.813 |

| | | | | | |
|--|--------|--|--------------------------|-----------|-----------|
| | Result | Estimated greenhouse gas emissions (RCR29) | Tons of CO2 eq. per year | 2,321.500 | 1,199.565 |
|--|--------|--|--------------------------|-----------|-----------|

II. **North-East Regional Programme 2021-27:**

Priority: 2. A sustainable region, more friendly to the environment

Specific objective: RSO2.1 Promoting energy efficiency measures and reducing greenhouse gas emissions

1. Financial products:

The financial product offered under this Priority will be a loan with preferential interest rate combined with a Capital Rebate in accordance with the provisions of Article 58(5) of the CPR in order to increase the attractiveness of the product.

The use of the Capital Rebate will be based on an ex-ante energy audit and a subsequent proof of achieving the required level of energy savings above the required minimum of 40% of energy savings (i.e. based on an ex-post energy audit or any other equivalent document, for example in the form of a new energy performance certificate (EPC)).

Investment loans:

The loans included in the portfolio:

- should be newly generated, excluding refinancing of existing loans;
- should have a repayment schedule, including regular amortization and/or bullet payments;
- should be intended only for investments in fixed assets and intangible assets (i.e. should not finance purely financial activities or real estate development when undertaken as a financial investment activity, and should not finance consumer credit provision);
- should have a maximum term of 16 years, including any relevant grace period (if applicable);
- may not exceed the maximum amount of EUR 1.5 million;
- may have a grace period of up to 12 months after the after the completion of the investment being financed;
- should be secured in line with market practices;
- should have preferential interest rate of 0% *per annum*.

Capital Rebates:

The percentage of the Capital Rebate at the loan level (granted from the Funds and the Public Contribution) will depend on the energy efficiency level achieved, as follows:

| | | |
|---|-------------|-------|
| Energy efficiency achieved | ≥ 40% < 60% | ≥ 60% |
| Capital Rebate intensity (% of loan amount) | 40% | 50% |

The amount of the Capital Rebate may not exceed the aid intensity limits and maximum aid amount specified in the State aid regulations (if applicable).

2. Final Recipients:

The targeted Final Recipients are:

- local public administration,

- central public administration,
- public universities.

3. State aid:

State Aid under the Financial Instruments is not foreseen at the level of EIB as the HF Manager and selected Financial Intermediaries, provided that the following requirements are met:

- the remuneration of the Financial Intermediary and the EIB corresponds to the market remuneration in similar situations, which is the case when the Financial Intermediaries are selected in an open, transparent, non-discriminatory and objective procedure or when the remuneration is in accordance with the provisions of the CPR;
- the risks and benefits are split on a *pari passu* basis; and
- the financial benefits of the Programmes are fully transferred to the Final Recipients in the form of preferential interest rates and grants.

At the level of Final Recipients, State aid will be granted on the basis of the relevant provisions of EU and national law regarding the rules for granting this aid, applicable at the time of granting the support, in particular:

- Commission Regulation (EU) No. 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid;
- Commission Regulation (EU) 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, as amended (Articles 38a and 39).

4. Indicators:

The supported investments should be reported under the following categories of intervention:

- 041 *Energy efficiency renovation of existing housing stock, demonstration projects and supporting measures.*

The output and result indicators to be achieved by end-2029 are as follows:

| <u>Regional Programme</u> | <u>Type of indicator</u> | <u>Name of indicator</u> | <u>Unit</u> | <u>Value</u> | |
|---------------------------------------|--------------------------|---|--------------------------|-----------------|---------------|
| | | | | <u>Baseline</u> | <u>Target</u> |
| North-East Regional Programme 2021-27 | Output | Public buildings with improved energy performance (RCO19) | Square meters | n/a | 20,000.00 |
| | Result | Annual primary energy consumption (of which: dwellings, public buildings, enterprises, other) (RCR26) | MWh/year | 2,029.00 | 6,000.00 |
| | Result | Estimated greenhouse gas emissions (RCR29) | Tons of CO2 eq. per year | 2,029.00 | 1,500.00 |

III. South Muntenia Regional Programme 2021-27:

Priority: 1 - A competitive region through innovation, digitalisation and dynamic businesses

Specific objective: RSO 1.3. - Enhancing sustainable growth and enhancing the competitiveness of SMEs and job creation in SMEs, including through productive investments

1. Financial products:

The financial product offered under this Priority will be a loan with preferential interest rate combined with a Capital Rebate in accordance with the provisions of Article 58(5) of the CPR in order to increase the attractiveness of the product.

The use of the Capital Rebate will be based on a proof of achieving the objectives included in the business plan or feasibility study submitted by a Final Recipient (e.g. technical acceptance protocol of the investment).

Investment loans:

The loans included in the portfolio:

- should be newly generated, excluding refinancing of existing loans;
- should have a repayment schedule, including regular amortization and/or bullet payments;
- should be intended only for investments in fixed assets and intangible assets (i.e. should not finance purely financial activities or real estate development when undertaken as a financial investment activity, and should not finance consumer credit provision);
- should have a maximum maturity of up to 20 years;
- may not exceed the maximum amount of EUR 6 million;
- may have a grace period of up to 24 months after the completion of the investment being financed;
- should be secured in line with market practices;
- should have preferential interest rate of 0% *per annum*.

Capital Rebates:

At the loan level, the percentage of the Capital Rebate will be up to 50% of the loan value (granted from the Funds (ERDF) and Public Contribution) provided that the amount of the Capital Rebate does not exceed the aid intensity limits and maximum aid amount specified in the State aid regulations.

In accordance with Article 58(5) of the CPR, the total value of support in the form of grants cannot exceed the value of investments supported by the loans. This rule should be verified at the loan portfolio level and not related to each supported investment.

2. Final Recipients:

The targeted Final Recipients are enterprises and local and central public authorities.

3. State aid:

State Aid under the Financial Instruments is not foreseen at the level of EIB as the HF Manager and selected Financial Intermediaries, provided that the following requirements are met:

- the remuneration of the Financial Intermediary and the EIB corresponds to the market remuneration in similar situations, which is the case when the Financial Intermediaries are selected in an open, transparent, non-discriminatory and objective procedure or when the remuneration is in accordance with the provisions of the CPR;
- the risks and benefits are split on a *pari passu* basis; and
- the financial benefits of the Programmes are fully transferred to the Final Recipients in the form of preferential interest rates and grants.

At the level of Final Recipients, State aid will be granted on the basis of the relevant provisions of EU and national law regarding the rules for granting this aid, applicable at the time of granting the support, in particular:

- Commission Regulation (EU) No. 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid;
- Commission Regulation (EU) 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, as amended (Articles 14 and 56).

4. Indicators:

The supported investments should be reported under the following categories of intervention:

- 020 *Business infrastructure for SMEs (including industrial parks and sites)*.

The output and result indicators to be achieved by end-2029 are as follows:

| Regional Programme | Type of indicator | Name of indicator | Unit | Value |
|---|-------------------|--|------------------|---------------|
| South Muntenia Regional Programme 2021-27 | Output | Enterprises supported (of which: micro, small, medium, large) (RCO01) | enterprises | 4 |
| | Output | Enterprises supported by grants (RCO02) | enterprises | 4 |
| | Output | Enterprises supported by financial instruments (RCO03) | enterprises | 4 |
| | Output | Capacity of incubation created (RCO15) | enterprises | 88 |
| | Output | Capacity of industrial parks created (9SO4) | enterprises | 72 |
| | Result | Private investments matching public support (of which: grants, financial instruments (RCR02) | euro | 31,157,959,00 |
| | Result | SMEs using incubator services after incubator creation (RCR18) | enterprises/year | 62 |
| | Result | SMEs using industrial park services after industrial park creation (9SR4) | enterprises/year | 50 |

IV. South Muntenia Regional Programme 2021-27:

Priority 6 - An attractive region

Specific objectives: RSO 5.1. – Promoting integrated and inclusive social, economic and environmental development as well as culture, natural heritage, sustainable tourism and security in urban areas

and

RSO 5.2. - Promoting integrated and inclusive social, economic and environmental local development, culture, natural heritage, sustainable tourism and security in areas other than urban areas

1. Financial products:

The financial product offered under this Priority will be a loan with preferential interest rate combined with combined with grant and a Capital Rebate in accordance with the provisions of Article 58(5) of the CPR in order to increase the attractiveness of the product.

The use of the Capital Rebate will be based on a proof of achieving the objectives included in the business plan or feasibility study submitted by a Final Recipient (e.g. technical acceptance protocol of the investment).

Investment loans:

The loans included in the portfolio:

- should be newly generated, excluding refinancing of existing loans;
- should have a repayment schedule, including regular amortization and/or bullet payments;
- should be intended only for investments in fixed assets and intangible assets (i.e. should not finance purely financial activities or real estate development when undertaken as a financial investment activity, and should not finance consumer credit provision);
- should have a maximum maturity of up to 20 years;
- may not exceed the maximum amount of EUR 7 million for RSO 5.1 and 10 million for RSO 5.2;
- may have a grace period of up to 24 months after the completion of the investment being financed;
- should be secured in line with market practices;
- should have preferential interest rate of 0% *per annum*.

Capital Rebates:

At the loan level, the percentage of the Capital Rebate will be up to 50% of the loan value (granted from the Funds (ERDF) and Public Contribution) provided that the amount of the Capital Rebate does not exceed the aid intensity limits and maximum aid amount specified in the State aid regulations.

2. Final Recipients:

The targeted Final Recipients are local and central public authorities.

3. State aid:

State Aid under the Financial Instruments is not foreseen at the level of EIB as the HF Manager and selected Financial Intermediaries, provided that the following requirements are met:

- the remuneration of the Financial Intermediary and the EIB corresponds to the market remuneration in similar situations, which is the case when the Financial Intermediaries are selected in an open, transparent, non-discriminatory and objective procedure or when the remuneration is in accordance with the provisions of the CPR;
- the risks and benefits are split on a *pari passu* basis; and
- the financial benefits of the Programmes are fully transferred to the Final Recipients in the form of preferential interest rates and grants.

At the level of Final Recipients, State aid will be granted on the basis of the relevant provisions of EU and national law regarding the rules for granting this aid, applicable at the time of granting the support, in particular:

- Commission Regulation (EU) No. 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid;
- Commission Regulation (EU) 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, as amended (Articles 14, 55 and 56).

4. Indicators:

The supported investments should be reported under the following categories of intervention:

- 165 *Protection, development and promotion of public tourism assets and tourism services;* (RSO 5.1)
- 167 *Protection, development and promotion of natural heritage and eco-tourism other than Natura 2000 sites* (RSO 5.2)

The output and result indicators to be achieved by end-2029 are as follows:

| <u>Regional Programme</u> | <u>Type of indicator</u> | <u>Name of indicator</u> | <u>Unit</u> | <u>Value</u> | |
|---|--------------------------|--|-----------------------------|---------------|---------------|
| | | | | <u>RSO5.1</u> | <u>RSO5.2</u> |
| South Muntenia Regional Programme 2021-27 | Output | Population covered by projects in the framework of strategies for integrated territorial development (RCO74) | persons | 188,138 | 140,624 |
| | Output | Strategies for integrated territorial development supported (RCO75) | contributions to strategies | 3 | 7 |
| | Output | Number of cultural and tourism sites supported (RCO77) | cultural and tourism sites | 2 | 6 |
| | Result | Visitors of cultural and tourism sites supported (RCR77) | visitors/year | 52,082 | 315,312 |

B. EXIT POLICY

During the term of the Funding Agreement, the EIB, in its capacity as HF Manager, may authorise Financial Intermediaries to re-use the funds returned to the Financial Instrument for further investments in favour of Final Recipients in the areas supported, as well as to cover management fees related to such further investments in favour of Financial Intermediaries until the end of the Eligibility Period, i.e. until 31 December 2029 or another date to be specified in the Operational Agreements.

The funds paid by the EIB as the HF Manager to the Financial Intermediaries, as well as returns on investments, will be repaid to the HF (less losses including recoveries) at the latest by the date specified in the relevant Operational Agreements. The date of such repayment may extend beyond the end date of the Eligibility Period, i.e. 31 December 2029. Procedures for the repayment of such funds will be included in the relevant provisions of the Operational Agreements.

Subject to specific provisions of the exit policy for the HF to be defined by the MAs and the EIB at the latest six months before the Scheduled Termination Date, the following exit scenarios are envisaged at the date of conclusion of the Funding Agreement:

- 1) Use of funds returned to the EIB, as the HF Manager, in accordance with Article 62 of the CPR

At the latest six months before the end of the Eligibility Period, the EIB and the MAs will carry out an assessment to determine whether the market situation justifies further needs for investments supported by the Financial Instruments. On the basis of such an assessment, the Investment Strategy with the Business Plan will be updated accordingly. On this basis, the EIB will be able to conclude further Operational Agreements with Financial Intermediaries and incur relevant expenses (including, but not limited to: the EIB's Management Fees as well as management fees due to Financial Intermediaries under the relevant Operational Agreements).

2) Reimbursement of available funds to the MAs or other designated entity(-ies).

The balance of the HF Account (net of any Management Fees payable to the EIB up to the Scheduled Termination Date) will be repaid on the terms of the exit policy documents agreed six months before the Scheduled Termination Date. Repayment will be made by crediting the corresponding amount to the bank account which the MAs will communicate to the EIB. Any remaining obligations under the Operational Agreements, if any, will be transferred to and taken over by the MA or an entity(-ies) specifically designated for this purpose, also taking into account the assignment of rights arising from the concluded loan agreements, in relation to the Final Recipients.

C. BUSINESS PLAN FOR THE IMPLEMENTATION OF FINANCIAL INSTRUMENTS

In line with the provisions of the CPR, the Business Plan should set out the expected leverage effect, i.e. the estimated amount of additional public and private funds to be contributed to the Financial Instruments.

It is estimated that the leverage effect on the Funds contributed by the MAs from the Programmes will be in the following amounts (in EUR)⁶:

| Programme | Priority | Specific Objective | Total Programme Contribution (excluding estimated MF) | Funds | Leverage effect at Final Recipient level |
|---|---|--|---|----------------|--|
| South Muntenia Regional Programme 2021-27 | Priority 1 - A competitive region through innovation, digitalisation and dynamic businesses | RSO 1.3. - Enhancing sustainable growth and enhancing the competitiveness of SMEs and job creation in SMEs, including through productive investments | 41,258,362.66 | 39,851,827.57 | 1.04 |
| | Priority 2 - A region with environmentally-friendly cities | RSO 2.1. - Promoting energy efficiency and reducing greenhouse gas emissions | 124,235,294.12 | 120,000,000.00 | 1.04 |
| | Priority 6 - An attractive region | RSO 5.1. – Promoting integrated and inclusive social, economic and environmental development as well as culture, natural heritage, sustainable tourism and security in urban areas | 20,705,882.35 | 20,000,000.00 | 1.04 |

⁶ The MAs and the EIB confirm that the above values are estimates, depending on market conditions. The leverage effect is the total repayable amount of funding provided to eligible Final Recipients divided by the amount of the contribution from the Funds committed to financial instrument.

| | | | | | |
|---------------------------------------|---|---|---------------|---------------|------|
| | | RSO 5.2. - Promoting integrated and inclusive social, economic and environmental local development, culture, natural heritage, sustainable tourism and security in areas other than urban areas | 41,411,764.71 | 40,000,000.00 | 1.04 |
| North-West Regional Programme 2021-27 | Priority 3 - A region with environmentally friendly localities | RSO 2.1. - Promoting energy efficiency and reducing greenhouse gas emissions | 17,647,058.82 | 15,000,000.00 | 1.04 |
| North-East Regional Programme 2021-27 | Priority 3 - A sustainable region, more friendly to the environment | RSO 2.1. - Promoting energy efficiency and reducing greenhouse gas emissions | 30,976,000.00 | 30,000,000.00 | 1.03 |

The leverage effect as shown in the table above does not include the Private Contribution to be made by the Financial Intermediaries which will result from an open and competitive selection process to be carried out by the EIB as the HF manager. When selecting the Financial Intermediaries, the EIB will seek to maximise the contribution that the Financial Intermediaries will be required to make on the basis of the provisions of the Operational Agreements, therefore, further increasing the leverage effect.

An additional leverage effect can be achieved at the level of Final Recipients through co-financing in the form of market-based debt financing, but the value of this indicator is difficult to estimate at this stage.

APPENDIX B

HF RISK POLICY

(Risk, Pricing and valuation policy)

1. Acknowledgements

The MAs acknowledge and accept that EIB's rules, policies and procedures applied to operations it carries out at its own risk will not be applicable to this HF.

This includes, without limitation, that EIB will not apply the provisions of the credit and equity risk guidelines, the pricing, and the valuation methodology, as well as the ceilings for financing, applicable to operations EIB carries out at its own risk.

a. Risk policies and procedures

EIB will apply instead the provisions of the general mandate risk principles for impact finance mandates, included in the relevant section of the EIB Credit Risk Guidelines.

In accordance with these provisions, EIB will make a qualitative assessment of the suitability of a financial intermediary's risk management framework, systems, policies and procedures to implement the underlying Financial Instruments.

More specifically, EIB will evaluate and select Financial Intermediaries in line with the provisions of the CEOs, taking into account the agreed Investment Strategy and Business Plan. The selection of Financial Intermediaries will be finalised by EIB applying its own professional judgment and applicable internal rules, policies and procedures, and will be subject to the endorsement of the Investment Board.

b. Pricing and Returns

The MAs acknowledge and accept that the Bank will not be responsible for ensuring consistency with State aid rules. Consistent with the mandate's objectives, EIB will not set any pricing or return expectations for the HF, and the Financial Intermediary may be required to pass on the advantage to the Final Recipients, as reflected in the Operational Agreement and it would be considered as a mere neutral pass through mechanism. In addition, the pricing or return of the Financial Instruments will be fully delegated to the Financial Intermediary to apply its rules, policies and procedures and may be adjusted as required by the HF if applicable.

c. Financial monitoring and valuation

An adjusted financial monitoring, restructuring and recovery management from that applicable to operations EIB carries out at its own risk or under impact finance mandates will be applied in accordance with Appendix H (*Monitoring and Reporting*). This includes monitoring whether any event of default or any other event leading to the termination of the Operational Agreement is triggered, and acting as appropriate in case of any such event, as well as a regular verification of the external credit rating of the Financial Intermediary (if applicable according to the relevant Operational Agreement).

Furthermore, the financial monitoring, restructuring and recovery management of the Financial Instruments will be fully delegated to the Financial Intermediary to apply its rules, policies and procedures.

No fair value assessment of the portfolio will be done by EIB. EIB will transmit, on an aggregate basis, information about the valuation from the Financial Intermediary in accordance with the latter's standard rules, policies and procedures. Such information about the Financial Intermediary's valuation shall not be part of audited report from EIB.

APPENDIX C TREASURY GUIDELINES

The Managing Authorities instruct and authorise EIB to apply to the daily Cash Balance (as defined below) an interest rate (which may be negative), without any floor or ceiling, that is equal to

- a) EURIBOR 3M (the euro wholesale funding rate known as the Euro Interbank Offered Rate provided by the European Money Market Institute, as the administrator of the benchmark (or any successor administrator) for a period of three (3) months which appears on Reuters screen page EURIBOR01 (or any successor screen page) as of 11:00 a.m. Brussels time, on the day that is two (2) T2 Business Days (being any days on which the Trans-European Automated Real-time Gross Settlement Express Transfer System (T2) is open) prior to the start of each calculation period of three (3) months (save that the first and last calculation periods may be shorter);
- b) minus 12.5 basis points (0.125%) (together the “Interest Rate”).

With respect to a calculation period, EIB shall multiply the daily Cash Balance by the Interest Rate for each day in that period and divide the result by 360. The amount of interest (the “Interest Amount”) with respect to a calculation period shall be equal to the sum of the amounts of interest so determined and calculated by the Bank for each day in that period. If the Interest Amount for a calculation period is a positive number, the resources of the Cash Balance shall be increased by the Interest Amount. If the Interest Amount for a calculation period is a negative number, the resources of the Cash Balance shall be decreased by the absolute value of the Interest Amount.

The MAs acknowledge that while there is not currently an expectation that the Euro Interbank Offered Rate will be discontinued, there is no guarantee that it will continue to be produced and published. If EURIBOR 3M is not published in respect of a day for which it is required (but its determination and publication is not permanently discontinued), the Bank shall replace it with another benchmark rate and any appropriate adjustment of the spread, day-count fraction and/or calculation period, which it will determine in a good faith and in a commercially reasonable manner. If the determination and publication of EURIBOR 3M is permanently discontinued (or its permanent discontinuation is announced), EIB shall enter into discussions with the MAs with a view to its replacement with another benchmark rate and any appropriate adjustment to the spread, day-count fraction and/or calculation period.

For the purposes of this Appendix C (“*Treasury Guidelines*”), “Cash Balance” means the amount outstanding on the Holding Fund Accounts.

APPENDIX D

INVESTMENT BOARD RULES OF PROCEDURE TEMPLATE

1. This document sets out the Rules of Procedure pursuant to Clause 6.5 of the Funding Agreement. Any term used with a capitalised letter herein shall have the same meaning attributed to it under the Funding Agreement.
2. The Investment Board, at its first meeting, shall appoint its Chairperson among the members nominated by the MAs. Such appointment shall be valid for a term of twelve (12) months and shall rotate among the MAs. After appointing the Chairperson during the first meeting, the MAs shall agree on the rotation by which they shall have the right to propose the respective Chairpersons to be appointed by the Investment Board for the subsequent twelve-month periods. Should the Chairperson not be able to attend a meeting, s/he shall indicate if the alternate nominated by the relevant MA shall be the Chairperson in respect of such meeting (or the members attending shall designate an *ad hoc* Chairperson for such meeting).
3. The term of office of each duly empowered member of the Investment Board shall be until the Scheduled Termination Date of the Funding Agreement.
4. The MAs shall be able, at any time, to remove the member nominated by them (including the alternate). Any such removal shall become effective only upon appointment of a replacement member and effective communication, in writing, to EIB of the name(s) and contact details of the substituting member.
5. If the position of a member (including alternate) vacates for any reason whatsoever (e.g. resignation, removal, death, etc.), the MA which appointed such member shall (but shall not be obliged to in respect of an alternate), without unreasonable delay, appoint a new member 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 EIB. The Investment Board 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 Investment Board may operate with a reduced number of members subject to paragraph 6 below).
6. In case the Chairperson position vacates, and unless the relevant MA does not propose a new member to be appointed as a substituting Chairperson within thirty (30) calendar days after this position is vacated, the right of this MA to propose the substituting Chairperson shall end and, pursuant to the rotating system contemplated in paragraph 2 above, the subsequent MA shall propose a member to be appointed as a Chairperson for next twelve (12) months starting from the expiry of the deadline referred to in above.
7. The quorum necessary in order to have a validly constituted Investment Board meeting is:
 - (i) for general decisions concerning the Holding Fund: at least representatives from the majority of the MAs, as well as one observer appointed by EIB;
 - (ii) for decisions concerning exclusively a given Financial Instrument or Financial Instruments: representatives of the MA(s) concerned, as well as one observer appointed by EIB.
8. Once a quorum is achieved, decisions of the Investment Board shall be taken by a majority of votes of the members with voting rights that are present during the meeting subject to the following:
 - (i) the votes of representative(s) of the MA(s) which contributed to HF the amount exceeding EUR 250 million each, shall be multiplied by 5;
 - (ii) the votes of representative(s) of the MA(s) which contributed to HF the amount exceeding EUR 200 million but less than EUR 250 million each, shall be multiplied by 4;
 - (iii) the votes of representative(s) of the MA(s) which contributed to HF the amount exceeding EUR 100 million but less than EUR 200 million each, shall be multiplied by 3;

- (iv) the votes of representative(s) of the MA(s) which contributed to HF the amount exceeding EUR 50 million but less than EUR 100 million each, shall be multiplied by 2;
- (v) the votes of representative(s) of the MA(s) which contributed to HF the amount less than EUR 50 million each, shall be multiplied by 1.

In this context, it is agreed that the acknowledgement of a proposal without express objection by the members with voting rights shall be deemed to be approved. In case of a tie of votes, the Chairperson's vote is favourable and the decision shall be deemed approved.

9. At the request of the Chairperson and/or EIB, the Secretariat shall convene each meeting by sending a written notice to all members (including the alternates) and observers by email, at the address specified in the notice of appointment of each member, and by communicating to EIB. Such a notice of convening, 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 members and observers so agree. Any relevant documentation shall be sent to the members (voting and alternates) and observers five (5) Business Days ahead of the relevant meeting. However, if the meeting is held on a notice shorter than five (5) calendar days, any documentation shall be sent/delivered, at the latest, at the beginning of the meeting. Points can be added to the agenda directly at the meeting if all voting members and observers so agree. The provisions of Clause 23 (*Notices*) of the Funding Agreement shall apply accordingly to the communication and delivery of written notices by the Secretariat.
10. Meetings shall be held via conference or video call or in the city agreed between the Chairperson and EIB, at the address, date and time indicated from time to time by the Secretariat. Members and observers are 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.
11. The Investment Board shall be entitled to take decisions by written procedure. The text of the relevant resolution shall be proposed by the Secretariat and agreed with EIB and the Chairperson. The Secretariat shall distribute the proposed text of the resolution and any relevant materials to the members and observers of the Investment Board and the deadline for voting on any such proposed resolution shall be ten (10) Business Days from the date of dispatch. A resolution shall be deemed as positively voted if, at the expiry of the above mentioned ten (10) Business Days, all the members have either voted in favour or not cast a vote (i.e. silence shall be deemed as a positive vote). The Chairperson shall then confirm, in writing, any relevant decision to all members and observers. A written procedure can be terminated if so requested by any of the voting members or observers, or if 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 this case, the Chairperson may organise an Investment Board meeting, in which case the notice of convening and the relevant documentation shall be sent within five (5) Business Days from the date of interruption of the written procedure. For the avoidance of doubt, the provisions of paragraph 9 above shall apply to the decisions taken by written procedure.
12. The Investment Board's discussions, as well as the documentation shared, must be kept confidential.
13. It is acknowledged that the delegation given to the Investment Board under the Funding Agreement shall in no way limit the powers and responsibilities attributed to each MA under the relevant EU Regulations.
14. All decisions and relevant discussions of the Investment Board (including non-objection to proposals) shall be recorded in minutes. Such minutes shall be drafted by the Secretariat, in accordance with Clause 6.11 of the Funding Agreement and circulated to all members and observers who attended the relevant Investment Board meeting for comments no later than twenty (20) Business Days before the next Investment Board meeting. After the expiry of this term, the minutes shall be final upon their approval with the signature of the Chairperson and EIB.
15. Members of the Investment Board shall respect defined standards of integrity and shall abstain from action that could induce a conflict of interest in the discharge of their duties.

16. Representatives of EIB, other than the observers to the Investment Board, of the MAs, and of other parties (e.g. Financial Intermediaries, independent experts in relevant fields), may be invited to meetings of the Investment Board, if deemed appropriate by the Chairperson or EIB. They shall not be entitled to any voting right, remuneration or reimbursement, nor to receive accompanying materials and minutes of the meeting. They shall be obliged to acknowledge and adhere to these Rules of Procedure, in particular, to the confidentiality requirement referred to in paragraph 13 above.



APPENDIX E FORMS OF WRITTEN REQUEST

FORM OF INITIAL WRITTEN REQUEST

From: European Investment Bank

To: MA

Dated: [•]

Dear Sirs

Funding Agreement between [•] and the European Investment Bank 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 "**First Tranche**") into the HF Account within thirty (30) Business Days from the date of this 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 19.4 of the Agreement.

Yours faithfully

.....

authorised signatory for

The European Investment Bank



FORM OF WRITTEN REQUEST FOR SUBSEQUENT TRANCHES

From: European Investment Bank

To: MA

Dated: [●]

Dear Sirs

Funding Agreement between [●] and the European Investment Bank dated [●] (the "Agreement")

1. We refer to Clause 3.3 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 confirm that EUR [●] (a "**Subsequent Tranche**") should be paid into the HF Account no later than forty-five (45) Business Days from the date of this Written Request.
3. We hereby confirm that an aggregate amount of EUR [●] comprising [●]% of the Programme Contributions Paid so far has been disbursed or used as set out under Clause 3.3 of the Agreement.
4. 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 19.4 of the Agreement.

Yours faithfully

.....

authorised signatory for

The European Investment Bank



APPENDIX F ADDITIONAL EXPENSES REQUEST

From: European Investment Bank

To: MA

Dated: [●]

Dear Sirs

Funding Agreement between [●] and the European Investment Bank

dated [●] (the "**Agreement**")

1. We refer to Clause 8.3 of the Agreement. This is the Additional Expenses Request. Terms defined in the Agreement shall have the same meaning in this Additional Expenses Request unless otherwise defined herein.
2. We hereby confirm that EUR [●] should be paid into the HF Fund Account within [●] Business Days of this Additional Expenses Request. The payment is necessary to cover the following Additional Expenses:

- [●]
3. We remind you that failure to comply with this Additional Request on a timely basis, permit the Agreement to be terminated for Termination for Cause under Clause 19.4(d) of the Agreement.

Yours faithfully

.....

authorised signatory for

The European Investment Bank

APPENDIX G

REQUIREMENTS FOR FINANCIAL INTERMEDIARIES

ASSESSMENT OF FINANCIAL INTERMEDIARIES

In selecting Financial Intermediaries, EIB shall perform its assessment by reference to the following criteria:

- (a) the legal capacity and authorisation of the Financial Intermediaries to carry out the relevant implementation tasks under EU and national law;
- (b) that the Financial Intermediaries are adequately economically and financially viable;
- (c) that the Financial Intermediaries have effective and efficient internal systems and controls;
- (d) that the Financial Intermediaries use an accounting system which provides accurate, complete and reliable information in a timely manner; and
- (e) the willingness of the Financial Intermediaries to be audited by EIB, the audit bodies of the Member State, the Commission and the European Court of Auditors.

APPENDIX H MONITORING AND REPORTING

1. GENERAL

- 1.1 Monitoring checks shall be performed in line with EIB rules and procedures.
- 1.2 At least one monitoring visit or one desk review at EIB's headquarter per Operational Agreement shall be undertaken throughout the term of each Operational Agreement.
- 1.3 In the context of the Progress Report, EIB 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.

2. MONITORING OF FINANCIAL INTERMEDIARIES

- 2.1 Financial Intermediaries shall, in line with their internal rules and procedures, be required to perform monitoring checks at the level of the Final Recipients.
- 2.2 Monitoring by EIB of Financial Intermediaries shall address the following:
 - (a) both during the appraisal, selection and implementation of the Financial Instrument, monitor compliance of Financial Intermediaries with applicable EU law and the relevant Operational Agreement;
 - (b) Operational Agreements contain provisions concerning audit requirements and audit trail in accordance with point 1(e) of Annex X to the CPR;
 - (c) an adequate audit trail is established for reporting and audit purposes in accordance with the relevant provisions of the CPR;
 - (d) supporting documents:
 - (i) are retained by Financial Intermediaries 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 applicable EU and national law;
 - (ii) are kept for the duration of five (5) years from 31 December of the year in which the payment of the last Subsequent Tranche to EIB is made; or for documents relevant to State Aid rules, for a ten (10) year period from the date on which the last aid was granted to Final Recipients;
 - (iii) are available to allow verification of the legality and regularity of the expenditure.

3. PROGRESS REPORT

The Progress Report shall contain:

1. a description of each Financial Instrument and an overview of the arrangements for implementing such Financial Instrument;
2. the identity of the Financial Intermediaries;

3. the total amount paid to the HF and the total amount transferred from the HF to the Financial Intermediaries and EIB;
4. the total amount of support (including, where relevant, the CR Component) provided to Final Recipients, in addition to the Management Fees incurred or Management Fees paid, by Programme and priority or measure;
5. the amount, by type of financial product, of private and public resources mobilised in addition to the Funds (for the avoidance of doubt, during the period of validity of the Funding Agreement, the share of the Funds in the amount of the Programme Contributions Committed will remain constant, and the initial proportion of Funds in the amount of Programme Contributions Committed will be applied in all reports (including quarterly reports) submitted to the MA until the final settlement of the Programme Contributions Committed at the end of Eligibility Period, with amounts rounded to two decimal places);
6. a summary of the performance of the Financial Instrument, including the progress of its set-up and selection of the Financial Intermediaries;
7. the total amount of interest and any other financial gains generated through the support from the funds to HF and details of the programme resources paid back to the Financial Instruments from investments made;
8. a report on the progress of HF in reaching the expected leverage effect of investments made by the Financial Instruments and the value of the investments and participations;
9. a report on the contribution of the Financial Instruments in achieving the indicators of the priority or measure concerned; and
10. a summary of the monitoring activities carried out.

Form of semi-annual reports per Clause 14.2(d)

| Characteristics of expenditure | | | | Eligible expenditure by product | | Amount of private and public resources mobilised in addition to the contribution from the Funds | | Amount of management costs and fees declared as eligible expenditure | Interest and other gains generated by support from the Funds to financial instruments referred to in Article 60 | Resources returned attributable to support from the Funds as referred to in Article 62 |
|--------------------------------|------|--------------------|--------------------|---------------------------------|--|---|--------------------------------------|--|---|--|
| Priority | Fund | Specific objective | Category of region | Loans | Grants within a financial instrument operation | Loans | Grants within a financial instrument | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
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APPENDIX I DEFINITION OF "EURIBOR"

"EURIBOR" means:

- (a) in respect of a relevant period of less than one (1) month, the Screen Rate (as defined below) for a term of one (1) month;
- (b) in respect of a relevant period of one (1) or more months for which a Screen Rate is available, the applicable Screen Rate for a term for the corresponding number of months; and
- (c) in respect of a relevant period of more than one (1) month for which a Screen Rate is not available, the rate resulting from a linear interpolation by reference to two (2) Screen Rates, one of which is applicable for a period next shorter and the other for a period next longer than the length of the relevant period,

(the period for which the rate is taken or from which the rates are interpolated being the **"Representative Period"**).

For the purposes of paragraphs (a) to (c) above:

- (i) **"available"** means the rates, for given maturities, that are calculated and published by Global Rate Set Systems Ltd (GRSS), or such other service provider selected by the European Money Markets Institute (EMMI), or any successor to that function of EMMI, as determined by EIB; and
- (ii) **"Screen Rate"** means the rate of interest for deposits in EUR for the relevant period as published at 11h00, Brussels time, or at a later time acceptable to EIB on the day (the **"Reset Date"**) which falls 2 (two) relevant Business Days prior to the first day of the relevant period, on Reuters page EURIBOR 01 or its successor page or, failing which, by any other means of publication chosen for this purpose by EIB.

If such Screen Rate is not so published, EIB shall request the principal offices of four major banks in the euro-zone, selected by EIB, to quote the rate at which EUR deposits in a comparable amount are offered by each of them, as at approximately 11:00 a.m. Brussels time on the Reset Date to prime banks in the euro-zone interbank market for a period equal to the Representative Period. If at least 2 (two) quotations are provided, the rate for that Reset Date will be the arithmetic mean of the quotations. If no sufficient quotations are provided as requested, the rate for that Reset Date will be the arithmetic mean of the rates quoted by major banks in the euro-zone, selected by EIB, at approximately 11:00 a.m., Brussels time, on the day which falls 2 (two) relevant Business Days after the Reset Date, for loans in EUR in a comparable amount to leading European banks for a period equal to the Representative Period. EIB shall inform the MAs without delay of the quotations received by EIB.

All percentages resulting from any calculations referred to in this Appendix **Error! Reference source not found.** will be rounded, if necessary, to the nearest one thousandth of a percentage point, with halves being rounded up.

If any of the foregoing provisions becomes inconsistent with provisions adopted under the aegis of EMMI (or any successor to that function of EMMI as determined by EIB) in respect of EURIBOR, EIB may by notice to the MAs amend the provision to bring it into line with such other provisions.

If the Screen Rate becomes permanently unavailable, the EURIBOR replacement rate will be the rate (inclusive of any spreads or adjustments) formally recommended by (i) the working group on euro risk-free rates established by the European Central Bank (ECB), the Financial Services and Markets Authority (FSMA), the European Securities and Markets Authority (ESMA) and the European Commission, or (ii) the European Money Market Institute, as the administrator of EURIBOR, or (iii) the competent authority responsible under Regulation (EU) 2016/1011 for supervising the European Money Market Institute, as the administrator of the EURIBOR, (iv) the national competent authorities designated under Regulation (EU) 2016/1011, or (v) the European Central Bank.



If no Screen Rate and/or the EURIBOR replacement rate is available as provided above, EURIBOR shall be the rate (expressed as a percentage rate per annum) which is determined by EIB to be the all-inclusive cost to EIB for the funding of the relevant Tranche based upon the then applicable internally generated EIB reference rate or an alternative rate determination method reasonably determined by EIB.