



**REGIONE SICILIANA**

**AND**

**EUROPEAN INVESTMENT BANK**

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**FUNDING AGREEMENT**

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This Agreement is entered into on \_\_\_\_\_, by and between:

**Regione Siciliana**

represented by Mr. Benedetto Mineo,  
Dirigente generale del Dipartimento regionale delle finanze e del credito  
("Regione Siciliana" or "Managing Authority")

and

**The European Investment Bank**

100 boulevard, Konrad Adenauer,  
L-2950, Luxembourg  
("EIB")

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

**WHEREAS:**

- (A) According to the conclusions of the ex-ante assessment, carried out by the Nucleo di Valutazione e Verifica degli Investimenti Pubblici of the Regione Siciliana, dated 15 November 2020 (the "**Ex-ante Assessment**") and presented to the monitoring committee on 27 November 2020, there exists an investment gap estimated of approx. Euro 3 billion and additional need of liquidity was determined for an amount of approx. Euro 1.3 billion in connection to the COVID-19 pandemic.
- (B) As an instrument to address the market failure, Regione Siciliana entrusts EIB under this Agreement with the creation of a fund-of-funds (the "**FoF**") within the meaning of Article 2 (27) of the CPR (as defined below) with the objective 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 Operational Programme "PO FESR Sicilia 2014-2020" (the "**OP**") objectives through the implementation of one or more Financial Instruments (as defined below). The FoF is financed by the European Regional Development Fund ("**ERDF**") from the OP in up to EUR 25,000,000.00 and by co-financing by Regione Siciliana for the remaining amount up to the total amount of the Regione Siciliana Contributions Committed, equal to EUR 50,000,000.00.
- (C) Under this Agreement, Regione Siciliana appoints the EIB as its agent to manage the amounts made available under this Agreement in the form of the FoF pursuant to Article 38(4)(b)(i) of the CPR. EIB will select Financial Intermediaries for the purpose of the FoF and enter into Operational Agreements with each selected Financial Intermediary.



- (D) 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 FoF in its own name, but for and on behalf of, and at the risk of, Regione Siciliana;
  - (b) defining and implementing the Investment Strategy and Business Plan for the FoF;
  - (c) defining the rules governing the operation of the FoF, the functions and the duties of the Parties with respect to the FoF Activities;
  - (d) defining the role of the Investment Board;
  - (e) defining the rules in relation to the monitoring, evaluation and auditing of the FoF, as set out under Annex A (*Investment Strategy and Business Plan*);
  - (f) defining the exit strategy; and
  - (g) determining the amount and the terms of payment of the Management Fees and additional expenses by Regione Siciliana to EIB.
- (E) An appropriate CEOI (as defined below) has been developed by the EIB in accordance with its internal policies and procedures, taking into account market needs in Regione Siciliana. The EIB uses the CEOI to identify, evaluate and select suitable Financial Intermediaries to implement the Financial Instruments of the FoF.
- (F) The entry into this Agreement by Regione Siciliana and the performance of any obligations thereunder by Regione Siciliana has been validly authorised under resolution of the Giunta Regionale no. 474 of 29 October 2020, resolution of the Giunta Regionale no. 524 of 12 November 2020, resolution of the Giunta Regionale no. 11 of 14 January 2021 and note of the regional assessor of the economy no. 1302 of 25 February 2021.
- (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.

**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:

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



"**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 Firm**" means an independent external audit company selected, as the case may be, by EIB in the context of the annual audit report as per Clause 14.2(b);

"**Business Day**" means a day, other than a Saturday or Sunday, during which EIB Luxembourg office is open, and banks are open for general business in Luxembourg and Palermo;

"**Cap**" has the meaning given to such term in Clause 7.5 of this Agreement;

"**CEOI**" means a call for expressions of interest in compliance 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;

"**CPR**" means the Common Provisions Regulation (EU) No 1303/2013 of 17 December 2013 of the European Parliament and of the Council laying down common provisions on the ESI Funds, as amended from time to time;

"**Delegated Act**" means the Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing the CPR, as amended from time to time;

"**Effective Date**" means the date in which both the conditions under Clause 3.1 will be satisfied;

"**Eligibility Period**" means, save as otherwise expressly provided, the period from the date of this Agreement until 31 December 2023;

"**ERDF**" has the meaning given to such term in Recital (B);

"**ESIF**" means the European Structural and Investment Funds;

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

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

"**Ex-ante Assessment**" has the meaning given to such term in Recital (A) of this Agreement;

"**Final Recipient**" means a legal or natural person receiving financial support from a Financial Instrument;



**"Financial Instrument"** means, in accordance with Article 38 of the CPR, any financial instrument, including, without limitation, loans, leases, guarantees and counter-guarantees, equity, quasi-equity or mezzanine investments for the benefit of Final Recipients;

**"Financial Intermediary"** means a bank, financial institution, investment fund (including special purpose entities), fund managers or other financial intermediary, whether public or private, selected by EIB in accordance with this Agreement for the implementation of a Financial Instrument;

**"First Tranche"** equals to twenty five per cent (25%) of the Regione Siciliana Contribution Committed;

**"FoF"** has the meaning given to such term in Recital (B);

**"FoF Account"** means the account opened by EIB in its books for the purposes of collecting and administering the FoF funds on behalf of Regione Siciliana in accordance with Clause 5 (*The FoF and the FoF Account*);

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

**"Force Majeure Event"** has the meaning given to such term in Clause 19.11 of this Agreement;

**"Force Majeure Notice"** has the meaning given to such term in Clause 19.11 of this Agreement;

**"Investment Board"** means a management board of the FoF which shall operate 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 H (*FoF Investment Board Rules of Procedure Template*);

**"Indemnified Amounts"** has the meaning given to such term in Clause 11.6 of this Agreement;

**"Investment Strategy and Business Plan"** means the investment strategy and business plan for the activities of the FoF in relation to the FoF 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 any breach of EU law, or of national law relating to its application, resulting from an act or omission by an economic operator involved in the implementation of the European Structural and Investment Funds, which has, or is likely to have, the effect of prejudicing the budget of the EU by charging an unjustified item of expenditure to the budget of the EU;



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

**"Legacy Period"** means the period of up to eight (8) years commencing on 1 January 2024;

**"Regione Siciliana Contribution Committed"** means EUR 50,000,000.00 (fifty million), being the funds committed to be invested in the FoF by Regione Siciliana under Clause 3 (*Funding of the FoF*) plus any amount by which the Regione Siciliana Contributions Committed is increased pursuant to this Agreement;

**"Regione Siciliana Contributions Paid"** means the aggregate amount of Regione Siciliana Contributions Committed which Regione Siciliana has paid into the FoF Account and which, for the avoidance of doubt, excludes any interest accrued on the FoF Account, any Proceeds of Operations or any other gains or receipts generated for the FoF;

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

**"Managing Authority"** means the national public authority designated by Regione Siciliana to manage the OP;

**"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) listed in the annex of the Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies;
- (iii) 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;
- (iv) included in the Financial Action Task Force "Public Statement" (i.e. countries or jurisdictions with such serious strategic deficiencies that the Financial Action Task Force calls on its members and non-members to apply counter-measures or for which the Financial Action Task Force calls on its members to apply enhanced due diligence measures); or
- (v) included in the Financial Action Task Force statement "Improving Global AML/CFT Compliance: On-Going process" (i.e. countries or jurisdictions with strategic weaknesses in their AML/CFT measures but that have provided a high-



level commitment to an action plan developed with the Financial Action Task Force),

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 the EIB and a Financial Intermediary for the purpose of entry into, subscription or provision of one or more Financial Instruments as part of the FoF Activity;

**"Proceeds of Operations"** means in respect of a Financial Instrument, the aggregate of all the returns (whether repayment of principal, interest, recovered amounts, guarantee fees, dividends and other distributions without limitation) which are paid to the FoF by the relevant Financial Intermediary in accordance with the relevant Operational Agreement or otherwise received in the FoF in respect of the relevant Financial Instrument, and which are attributable to support by the FoF to Final Recipients;

**"Progress Report"** means, as relevant, the annual progress report to be prepared by EIB in accordance with Clause 14.2(a) and to be sent to the Investment Board;

**"Reminder Notice"** means (i) a reminder notice for payment of a Subsequent Tranche issued by EIB under Clause 19.4(c) of this Agreement or (ii) a reminder notice for payment of Additional Expenses under Clause 8.4 of this Agreement;

**"Return Request"** has the meaning given to such term in Clause 3.6;

**"Scheduled Termination Date"** means 31 December 2023;

**"State Aid"** means state aid as described in Articles 107 and 108 of the Treaty on the Functioning of the European Union including 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 Member State;

**"Subsequent Tranche"** means each tranche of the MA Contributions Committed following the First Tranche, in an amount not lower than twenty five per cent (25%) of the MA Contributions Committed, to be paid into the FoF Account when an amount from the previous tranche(s) corresponding to the relevant percentage specified in Article 41(1)(c) of the CPR has been disbursed to Final Recipients via Financial Intermediaries and/or paid as Management Fees. For the purposes of calculating the achievement of the relevant percentage of Article 41(1)(c) of the CPR, the above-mentioned disbursed amount shall include amounts which have been disbursed by Financial Intermediaries as MA Contribution Committed and as Co-financing;

**"Termination for Cause"** has the meaning given to such term in Clause 19.4 of this Agreement;

**"Transfer Period"** has the meaning given to such term in Clause 19.6 of this Agreement;





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

"**Unitary Fund**" has the meaning given in Appendix C (*Treasury Guidelines*); and

"**Written Request**" means a request in writing for payment of a First Tranche or any Subsequent Tranche of the Regione Siciliana 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-enaction 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) 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 Regione Siciliana hereby appoints EIB as its agent pursuant to Article 38(4)(b)(i) of the CPR, to act in the name of EIB, but for and on behalf of, and at the risk of, Regione Siciliana as principal, to manage and operate the FoF, including the funds and resources of the FoF and to carry out the other functions and duties in relation to the FoF set out in this Agreement.
- 2.2 Regione Siciliana authorises EIB, as its agent in connection with the management and operation of the FoF:
- (a) to execute banking and financial transactions relating to the operation of the FoF in compliance with the terms of this Agreement;
  - (b) to open and maintain the FoF Account in the name of EIB but for the account and at the risk of the Regione Siciliana;
  - (c) to pursue the strategy set out in the Investment Strategy and Business Plan;
  - (d) to identify, evaluate and select appropriate Financial Intermediaries (by issuing and publishing CEOIs and other relevant criteria including in accordance with the criteria laid down by Article 209 of Regulation 1046/2018 of the European Parliament and of the Council and taking account of market needs) with a view to entering into Operational Agreements for Financial Instruments for the purpose of the FoF, provided that EIB assesses, at least, each of the elements referred to in Appendix D (*Requirements for Financial Intermediaries*) when selecting the Financial Intermediaries;
  - (e) to perform due diligence on the Financial Intermediaries;
  - (f) 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 Regione Siciliana and for the ultimate benefit and risk of Regione Siciliana in accordance with the CPR and the Delegated Act. 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 Regione Siciliana in cleared funds to the FoF in accordance with Clause 3 (*Funding of the FoF*);
  - (g) to enforce, defend and if necessary adapt or waive any rights of the FoF 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. In any case, any waiver of key terms of Operational Agreements shall require the authorisation of the Investment Board;



- (h) to monitor the implementation of the respective Operational Agreements in accordance with Clause 14 (*Monitoring and Reporting*) and Appendix F (*Monitoring*);
- (i) to manage the funds credited to the FoF, in accordance with the Treasury Guidelines, including those required with respect to the Unitary Fund; and
- (j) 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 FoF.

2.3 The CEOIs which EIB shall develop and issue for the purposes of selecting the Financial Intermediaries for the FoF 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 (*Risk Policy*), Appendix D (*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 CEOIs shall use the criteria for the selection of Financial Intermediaries from time to time set out in the CPR and the Delegated Act. As at the time hereof the applicable criteria to be used during the selection of Financial Intermediaries shall include, without limitation, the following:
  - (i) a robust and credible methodology for identifying and appraising Final Recipients;
  - (ii) 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 FoF;
  - (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 FoF 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, for specific tasks in connection with the FoF 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 FOF

- 3.1 Regione Siciliana hereby undertakes to make available to the FoF, an aggregate amount equal to the Regione Siciliana Contribution Committed, with applications for interim payments being phased throughout the Eligibility Period, on the terms laid down in Article 41 of the CPR. The Parties may agree however to anticipate the amounts paid throughout the Eligibility Period.

However, the availability of the Regione Siciliana Contribution Committed is conditional upon the approval by the Assemblea Regionale Siciliana, within 30 days from the execution of the Agreement, of an amendment to article 5, paragraph 1, of the Regional Law 8/2018, that allows to use, for the purposes of this Agreement (including coverage of Additional Expenses capped as per Article 8.6 below), the amounts currently allocated to the financial instrument “Tranched Cover Sicilia” and/or other regional resources, and it is also subject to the satisfaction, within the same term of 30 days from the execution of this Agreement, of the condition relating to the allocation to the relevant budget headings of the financial resources relating to the Regione Siciliana Contribution Committed and their availability.

Accordingly, the effectiveness of the Agreement is conditional to the satisfaction of both aforesaid conditions within the aforementioned timeframe. The Sicilian Region will give to the EIB immediate communication of the satisfaction of both aforesaid conditions, in any case no later than 15 (fifteen) days after the expiry of the relevant term, for avoidance of doubt, the Agreement will not be effective until the EIB is informed of the fulfilment of both aforesaid conditions.

- 3.2 Regione Siciliana shall pay the First Tranche of the Regione Siciliana Contribution Committed into the FoF Account no later than thirty (30) calendar days from the date of the initial Written Request by EIB.
- 3.3 The Parties agree that:
- (a) each Subsequent Tranche of the Regione Siciliana Contribution Committed shall be paid in the FoF no later than thirty (30) calendar days from the date 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 FoF.
- 3.4 Without prejudice to Clause 19 of this Agreement the Regione Siciliana shall not withdraw or cancel any portion of the Regione Siciliana Contribution Committed



(whether or not such amount has been effectively paid to the FoF) unless the Parties agree to the withdrawal or cancellation in writing.

3.5 The Regione Siciliana Contribution Committed shall be used by EIB for the purpose of the FoF Activity and in accordance with this Agreement, until the termination of this Agreement and the closing and liquidation of the FoF.

3.6 Not earlier than three (3) months and no later than six (6) months following the end of the Eligibility Period, Regione Siciliana shall be entitled to request in writing ("**Return Request**") to the EIB that an amount equal to the difference between:

(a) the Regione Siciliana Contributions Paid, potentially increased by the net interest and net gains generated (on the FoF Account) from Regione Siciliana Contributions Paid accrued up until the date of return of the amount of Regione Siciliana; and

(b) the aggregate amount equal to the Regione Siciliana 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) potential negative interest accrued of the FoF Account , (d) the payment of fees owed to EIB, and/or (e) any other amount owed by Regione Siciliana to EIB under this Agreement.

shall be returned to Regione Siciliana.

3.7 The amount requested under Clause 3.6 shall be paid from the funds available in the FoF to Regione Siciliana no later than sixty (60) calendar days after the date of issuance of the annual audit report or other relevant document, as provided under the applicable legal framework from time to time prepared in accordance with Clause 14.2 to follow the Return Request.

3.8 If Regione Siciliana does not pay the First Tranche or any Subsequent Tranche into the FoF within thirty (30) calendar days of a Written Request by EIB, the EIB will have the right to terminate the Agreement in accordance with Articles 19.4(b) and 19.4(c).

#### 4. USE OF PROCEEDS

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 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(f);



- (b) Save as provided in Clause 4.1(a), all Proceeds of Operations shall be paid into the FoF without unreasonable delay; and
  - (c) During the period until the Scheduled Termination Date, the Proceeds of Operations which are available in the FoF Account may be re-used and re-invested under Financial Instruments in accordance with this Agreement and the purposes and targets of the OP on a case by case basis. The proposed terms and conditions of any such re-use or re-invest of Proceeds of Operations shall be submitted to the Investment Board pursuant to Clause 6.8(f);
- 4.2 The Proceeds of Operations generated in the course of a financial year shall be used in the following order of priority:
- (a) the payment and/or reimbursement of Management Fees that remain unpaid; or at the discretion of EIB to be used to invest in or 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 Regione Siciliana; provided that this does not discharge in whole or in part Regione Siciliana from its obligation to make payment in respect of such Written Request under Clause 3.3; and following the Eligibility Period any Additional Expenses that remain unpaid, in accordance with Clause 8 (*Additional Expenses*);
  - (b) where applicable, for the purpose set out in Article 44 of the CPR; and
  - (c) further investments through the same or other Financial Instruments (without prejudice to the provisions of Clause 4.1(a) above) and/or for the payment of management fees and costs payable to Financial Intermediaries under the relevant Operational Agreements.
- 4.3 The Parties also agree that any net interest or other net gains earned by the FoF, through treasury management and any other gains generated from the FoF, shall be used for the purposes set out in Clause 4.2 above and in the same order of priority.
- 4.4 Subject to the agreement of the Parties, the EIB may enter into further Operational Agreements and incur expenditure (including Management Fees and management fees and costs payable to Financial Intermediaries under the relevant Operational Agreements) during the Legacy Period, in accordance with Article 45 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 the Parties renegotiating fees and other elements as required. No later than six (6) months prior to the end of the Eligibility Period the EIB and Regione Siciliana shall conduct such an assessment, at the cost of the MA 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.



## 5. THE FOF AND THE FOF ACCOUNT

- 5.1 The Parties agree that the FoF shall be established as a "separate block of finance" within EIB, as provided for under Article 38(6) of the CPR and that amounts committed to the FoF and paid to EIB shall be held by EIB as off-balance sheet items and EIB shall implement appropriate solutions (including an accounting distinction) separating such resources from other resources managed by it.
- 5.2 The FoF Account shall be opened by EIB in its books for the purposes of administering the FoF funds on behalf of Regione Siciliana.
- 5.3 Payments related to the FoF Account shall be settled through the following account, or any such other account communicated by the EIB to Regione Siciliana from time to time:

Currency: EUR

Beneficiary bank: European Investment Bank

BIC CODE: BEILLULLXXX

Beneficiary account: Direct via TARGET2 (/RT)

IBAN: LU92 9980 0000 0000 0001

Communication: Contribution to DFI FoF Fondo Emergenza Imprese Sicilia

Before each transfer of funds to the FoF, Regione Siciliana shall systematically inform the EIB at least five (5) Business Days prior to the payment date, by e-mail (to [FI\\_PRO\\_BOT\\_LPC\\_CM@eib.org](mailto:FI_PRO_BOT_LPC_CM@eib.org) and [FI-PRO/BOT/LPC/RECONCILIATION@eib.org](mailto:FI-PRO/BOT/LPC/RECONCILIATION@eib.org) or to such other mail address as may be indicated by EIB from time to time). Regione Siciliana 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: "Contribution Fondo Emergenza Imprese Sicilia".

- 5.4 The FoF Account shall be denominated in Euros.
- 5.5 The FoF 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 FoF Activity in accordance with this Agreement. All transactions with the FoF Account shall bear value date in the books of EIB.
- 5.6 Regione Siciliana shall not create or permit to subsist any security, lien or other charge or encumbrance over the FoF Account, the FoF funds, the Regione Siciliana Contributions Paid or any other funds managed by the EIB in connection with the FoF whether in favour of Regione Siciliana or any third party creditor of Regione Siciliana



and whether under any financial assistance agreement entered into by Regione Siciliana or otherwise.

5.7 The Parties acknowledge and agree that EIB shall be entitled to operate the FoF Account as follows:

The FoF Account shall be:

- (a) credited with, *inter alia*, the following items:
  - (i) the Regione Siciliana Contributions Paid;
  - (ii) the amounts redeemed from investments made for purposes of management of the assets on the FoF Account in accordance with the Treasury Guidelines;
  - (iii) interest generated from amounts credited to the FoF Account;
  - (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 Article 42 of the CPR;
  - (v) Proceeds of Operations; and
  - (vi) 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;
  - (ii) Management Fees as provided under Clause 7 (*Management Fees*) and Additional Expenses under Clause 8 (*Additional Expenses*);
  - (iii) the amount of FoF funds invested in accordance with the Treasury Guidelines;
  - (iv) any negative interest on the amounts standing on the credit of the FoF Account subject to investment by the EIB of the assets of the FoF Account, plus any fees, losses and costs arising from the management of the assets on the FoF Account, in accordance with the Treasury Guidelines;
  - (v) amounts transferred to Regione Siciliana under this Agreement, including, without limitation, amounts to be transferred to Regione Siciliana from time to time after the expiration or termination of this Agreement; and
  - (vi) any other amount expressly authorised in writing by Regione Siciliana and EIB jointly.

The EIB shall continue to be entitled to debit these sums to the FoF Account after a termination of this Agreement for Termination for Cause, until full and irrevocable payment of such sums.





5.8 It is acknowledged and agreed by the Parties that any funds managed by EIB for the FoF in accordance with this Agreement are the exclusive property of Regione Siciliana whether or not such funds were financed in whole or in part by a loan or other financing made available to Regione Siciliana by the EIB.

## 6. THE INVESTMENT BOARD

6.1 The Regione Siciliana 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. In order to enhance the efficiency of the FoF, Regione Siciliana specifically agrees that, for all matters relating to the implementation of the FoF and falling into the scope of this Agreement, Regione Siciliana shall express its positions through the Investment Board.

6.2 The Investment Board shall consist of 3 members appointed by Regione Siciliana after consultation with EIB.

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 shall act solely in the interests of the FoF.

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.

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 FoF in the form attached in Appendix H (the "*FoF 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 Regione Siciliana as appropriate, and solely in the interests of the FoF. The EIB observers on the Investment Board designated pursuant to Clause 6.4 shall not be entitled to vote in decisions made by the Investment Board. 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 Regione Siciliana.

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 FoF and further acknowledge that all costs in relation to establishing and operating the Investment Board shall be borne by Regione Siciliana, and that members of the Investment Board shall not be entitled to any fees, costs or expenses from the FoF or EIB.

6.8 The Investment Board shall liaise internally with competent counselling bodies and other authorities, as it deems appropriate, to perform its tasks in relation to the implementation of the FoF and the Investment Board shall be responsible for the following matters:

- (a) acting as the coordination and communication point between EIB and Regione Siciliana on all matters relating to the FoF in accordance with this Agreement;



- (b) communicating, and proposing to the competent national authorities amendments, if deemed necessary, national rules and requirements relating to the FoF Activity, in consultation with EIB;
  - (c) providing advice and conclusive rulings (where applicable) on matters relating to applicable national laws and regulations and on compliance with State Aid rules, in connection with the eligibility of financing to Final Recipients under the Operational Agreements, the operation of the FoF, Financial Instruments and Operational Agreements;
  - (d) upon proposal by EIB, approving any amendments to the Investment Strategy and Business Plan';
  - (e) approving the selection of Financial Intermediaries following a CEOI containing the requirements of Article 7 of the Delegated Act;
  - (f) approving each proposed investment into a Financial Intermediary and be informed and approve the key terms and conditions of each proposed Operational Agreement;
  - (g) receiving the annual Progress Report; and
  - (h) approving the instrument's communication strategy and communication programme.
- 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 FoF Activity and to make proposals to the Investment Board on the matters set out in this Agreement.
- 6.11 Regione Siciliana shall, at its cost, 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 drawing up and 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 Regione Siciliana acknowledges that, in consideration for the operation of the FoF, the management of the FoF, the Regione Siciliana Contributions Committed and any other funds of the FoF and the performance of the FoF 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 Regione Siciliana hereby agrees to assume and pay to the EIB, in accordance with this Agreement. During the Eligibility Period, the Management Fees shall not exceed the Cap set out in Clause 7.5.

Upon receipt of the First Tranche and Subsequent Tranches the EIB reserves the right to set aside and identify separately on the FoF Account the estimated necessary amount to cover its Management Fees due and those receivable for a period of three (3) years or for the period up until the end of the Eligibility Period if such a period is shorter than 3 years. However, if the period from receipt of the last Subsequent Tranche to the end of the Eligibility Period is longer than three (3) years, then the EIB reserves the right to set aside the estimated amount for the period until the end of the Eligibility Period.

7.2 EIB shall be entitled to withdraw the Management Fees from the FoF Account on a semi-annual basis. The Parties agree that if the Management Fees due exceed the available balance of the FoF Account (excluding, for the purpose of such calculation, amounts already committed by EIB towards one or more Financial Instrument(s)), such excess amount shall, at the election of EIB, either be carried over for payment together with the amounts referred to in the next Written Request or shall be invoiced by EIB to Regione Siciliana and shall be payable within thirty (30) calendar days. Any such payment received by EIB during the Eligibility Period shall be deemed to be part of the Regione Siciliana Contributions Paid.

7.3 The Management Fees shall be payable (or debited from the FoF Account) in arrears and, during the Eligibility Period, shall consist of the sum of:

(i) in respect of the first year from the Effective Date, three per cent (3%) of the Regione Siciliana Contributions Paid (which, for the purposes of this definition, shall be calculated *pro tempore* from the date of the payment of the First Tranche); and

(ii) in respect of the second year from the Effective Date, one per cent (1%) of the Regione Siciliana Contributions Paid (which, for the purposes of this definition, shall be calculated *pro tempore* based on the number of calendar days during such period); and

(iii) thereafter and until the earliest of (i) the end of the Eligibility Period or (ii) the Termination Date, half a per cent (0.5%) *per annum* of the Regione Siciliana



Contributions Paid (which, for the purposes of this definition, shall be calculated *pro tempore* based on the number of calendar days during such period);

PLUS

a performance element equal to:

(iv) half a per cent (0.5%) *per annum* of the amount of funds paid by the EIB for the FoF to the Financial Intermediaries implementing the Financial Instruments (which, for the purposes of this definition, shall be calculated *pro tempore* based on the number of calendar days during such period).

7.4 Notwithstanding Article 7.3 above, the Parties agree, upon request of the Managing Authority, to defer the payment of the Management Fees to the date falling 24 months after the Effective Date. For avoidance of doubt, Management Fees will be accrued from the date of entry into force of the Agreement.

7.5 Notwithstanding the other terms of this Clause 7 (*Management Fees*), the total amount of the Management Fees shall be subject to a cap during the Eligibility Period equal at any relevant time to the then applicable aggregate of seven per cent (7%) of the Regione Siciliana Contributions Paid (the "**Cap**").

7.6 The Parties agree that the Cap does not apply to Management Fees incurred after the Eligibility Period. Notwithstanding Clause 4.5 above, no later than six (6) months prior to the end of the Eligibility Period, EIB and Regione Siciliana shall reach an agreement on the Management Fees payable to EIB during the Legacy Period.

## 8. **ADDITIONAL EXPENSES**

8.1 The Parties agree that any Additional Expenses incurred or to be incurred by EIB in connection with the FoF and the FoF Activity (together with any interest accrued thereon for late payment under Clause 8.4) including in particular those expenses which according to the applicable law, are not eligible expenditure for the purpose of Article 42 of the CPR and any related rules of Regione Siciliana, shall be considered to be additional amounts payable by Regione Siciliana in excess of the Regione Siciliana Contributions Committed and from Regione Siciliana resources which are not subject to EU rules on ESIF funds.

8.2 The Additional Expenses shall include, *inter alia*:

(a) costs incurred for external translation of any documents necessary for the implementation of the FoF Activity under this Agreement or as otherwise agreed between the Parties;

(b) costs arising in connection with the termination of this Agreement, and with the transfer of any FoF funds to Regione Siciliana or any entity newly appointed by Regione Siciliana for such purpose;

(c) costs connected to the external audit of the FoF and other audit engagements;



- (d) costs connected to litigation arising in relation with Financial Instruments entered into under signed Operational Agreements; and
  - (e) other costs to be defined as Additional Expenses and mutually agreed by EIB and Regione Siciliana from time to time.
- 8.3 Regione Siciliana shall pay any Additional Expenses incurred in accordance with Clause 8.1 above as a separate payment to EIB within thirty(30) calendar days from EIB's written invoice. Where there are amounts available in any reserve account of a Financial Intermediary these may be used to pay Additional Expenses, to the extent that the EIB may receive these funds under the terms of the relevant Operational Agreement.
- 8.4 If Regione Siciliana does not pay any Additional Expenses within the delay set out in Clause 8.3, EIB shall send a Reminder Notice to Regione Siciliana. Regione Siciliana shall pay to EIB the Additional Expenses within thirty (30) calendar days after the Reminder Notice, otherwise, such amount shall accrue interest from the due date until the date of payment at a rate equal to EURIBOR plus two (2) per cent.
- 8.5 Should EIB succeed in recovering any costs connected to litigation referred to in Clause 8.2(d) above, which have been effectively paid by Regione Siciliana, in respect of the same litigation process, to EIB, it shall return to Regione Siciliana such costs recovered, provided that EIB shall first be entitled to set these amounts off against any other amounts due to it by Regione Siciliana.
- 8.6 The Additional Expenses shall not exceed 1% per annum of the Regione Siciliana Contribution Committed. Costs related to Article 8.2(d) above shall be excluded from this limit.

## 9. MATERIAL INTERESTS AND DISCLOSURES

Regione Siciliana acknowledges and agrees 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 Italy; and
- (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 Italy; 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, guarantees or equity 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 Regione Siciliana, 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 Regione Siciliana and the FoF. EIB shall manage 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 the EIB.

## 10. OPERATIONAL AGREEMENTS

10.1 In accordance with Articles 6 and 7 of the Delegated Act, 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 115 and Annex XII of the CPR as well as relevant laws and regulations, that the funding is provided under co-financed programmes from ESI 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 IV of the CPR and, where necessary, the ex-ante assessment as valid from time to time;
- (g) the contribution to be made to the FoF 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 Regione Siciliana 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 (including in relation to penalties, sanctions, delay or default interests);
- (j) the Financial Intermediaries and the Final Recipients must hold and maintain amounts received from the FoF in a bank account with a credit institution situated within the territory of a Member State of the EU;
- (k) 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 FoF which constitutes unlawful State Aid.

10.2 EIB shall ensure that the Operational Agreements reflect certain additional requirements, including *inter alia*:

- (a) requirements on the eligibility of the enterprises to be financed (which reflect the terms contained in the CEOIs);
- (b) requirements on data protection and document retention by EIB, the Financial Intermediaries and/ or the Final Recipients; and
- (c) requirements as to the visibility of the involvement of the Financial Instrument.

Such requirements shall be agreed between the EIB and the Investment Board and reflect the contents of the CEOIs.

## 11. RESPONSIBILITIES OF THE PARTIES AND LIABILITY

11.1 EIB agrees, without prejudice to Clause 11.2 below, to act with the diligence of a professional manager and in good faith in implementing this Agreement.

11.2 Subject to Clause 11.3 below, EIB shall under no circumstances be held responsible or liable to Regione Siciliana or any other person in connection with the financial performance of the FoF, the financial results of any of the Operational Agreements or Financial Instruments, the investment made of Treasury Funds, the failure by Regione Siciliana, any Financial Intermediary or any Final Recipient benefitting from FoF financing to comply with any applicable laws or regulations.

11.3 EIB shall not be liable to Regione Siciliana, 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 FoF Activity except to the extent of such costs, claims, damages, losses, liabilities or expenses of Regione Siciliana 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 Regione Siciliana for consequential damages, loss of profit or exemplary or penal damages.

11.4 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 Regione Siciliana 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 Regione Siciliana or to examine or challenge any decision or approval by the Investment Board.

- 11.5 Specifically as regards the treatment of Irregularities that have led to a financial correction being imposed:
- 11.5.1 EIB shall be liable in respect of Irregularities occurring at the level of the Fund of Funds in accordance with this Agreement;
  - 11.5.2 EIB shall not be liable in respect of Irregularities occurring at the level of Financial Intermediary (i) where it has included the requirements of Article 6(1) Delegated Act in the relevant Operational Agreements 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 the EIB, acting with due diligence. For the avoidance of doubt no liability shall apply to EIB where these conditions are met.
  - 11.5.3 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 Clause 11.5.3(i), the 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 the 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.
  - 11.5.4 No liability in respect of the circumstances described in Clauses 11.5.2 and 11.5.3 shall apply to EIB, where Regione Siciliana fails to reimburse EIB for litigation expenses incurred or to be incurred in line with Clause 8.
- 11.6 Regione Siciliana hereby agrees 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 FoF Activity;
- (b) any information supplied by Regione Siciliana 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 Regione Siciliana to EIB in relation to this Agreement or the FoF Activity;
- (d) any breach (including failure to pay) or misrepresentation, whether arising directly or indirectly, by Regione Siciliana 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 FoF, 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 Regione Siciliana under this Clause 11.6 extends also to the obligation to hold the 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 FoF resources.

11.7 The Parties agree that:

- (a) any Indemnified Amount (together with any interest accrued thereon for late payment under Clause 11.7(b)) due to EIB shall be paid by Regione Siciliana to the EIB within ten (10) calendar days of EIB's written request, as an additional amount payable by Regione Siciliana in excess of the Regione Siciliana Contributions Committed and shall be paid from Regione Siciliana resources which are not subject to EU rules on ESIF funds;
- (b) if Regione Siciliana does not pay any Indemnified Amount within the delay set out in Clause 11.7(a), such amount shall accrue interest from the due date until the date of payment at a rate equal to EURIBOR plus two (2) per cent.

11.8 The obligations of Regione Siciliana to indemnify the 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.

11.9 The EIB undertakes to maintain an administrative structure in support of the management of the FoF at least during the period of validity of the Operational Programme and/or at least until December 31, 2023.



## 12. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS BY REGIONE SICILIANA

12.1 Regione Siciliana hereby represents and warrants and in respect of the matters in Clause 12.1(c), (d) and (f) (below), represents and warrants at all material times until the termination of this Agreement that:

- (a) it has full power and capacity (including with respect to its domestic laws and constitutional requirements) to appoint EIB on the terms of this Agreement and to enter into transactions within the scope of this Agreement and has obtained all necessary authorisations and approvals to permit EIB to do so on its behalf;
- (b) neither its entry into this Agreement nor into any such transaction will breach any law, rule or regulation applicable to it or any material contract to which it is a party;
- (c) the FoF is free from all liens, charges and encumbrances and Regione Siciliana undertakes that no liens, charges or encumbrances over the FoF will arise from the acts or omissions of Regione Siciliana;
- (d) any information or documentation provided by Regione Siciliana to EIB (including any information as to the financial position of Regione Siciliana or the FoF) 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 in relation to performing EIB's obligations under this Agreement;
- (f) it has understood and acknowledged the risks entailed in the Financial Instruments in particular as set out in Appendix B (*Risk Policy*) and the Investment Strategy and Business Plan. Regione Siciliana acknowledges and accepts (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; and
- (g) it acknowledges and agrees that the 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.

12.2 Regione Siciliana will notify EIB promptly if there is any material change to any of the information provided by it for the purposes of this Agreement or to its circumstances generally, and will provide such other relevant information as EIB may from time to time reasonably require. Regione Siciliana acknowledges 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.

12.3 Regione Siciliana undertakes not to deal, or dispose of any of the assets of the FoF nor to authorise any person other than EIB to deal or dispose of any of them.



### 13. STATE AID

- 13.1 Regione Siciliana shall be responsible for ensuring compliance with all applicable State Aid rules.
- 13.2 Regione Siciliana shall provide to EIB all information necessary to enable the FoF, each Financial Instrument and each Operational Agreement to be compliant with rules on State Aid. EIB's responsibility with respect to State Aid shall be limited to requiring each Financial Intermediary to ensure compliance with applicable State Aid requirements in the CEOI published in accordance with Clause 2.3 and, subsequently, in each respective Operational Agreement.
- 13.3 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.
- 13.4 Each Operational Agreement shall include an undertaking by the Financial Intermediary to comply with the State Aid rules in accordance with Clause 13.3.

### 14. MONITORING AND REPORTING

- 14.1 EIB shall monitor the implementation of the Financial Instruments and Operational Agreements in accordance with the criteria set out in Appendix F (*Monitoring*).
- 14.2 On the basis of data provided by the Financial Intermediaries, EIB shall prepare the following reports and statements:
- (a) An annual progress report (the "**Progress Report**") 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 G (*Progress Report*) of this Agreement;
  - (b) annual audit report following the model annual audit report contained in Annex II of Commission Implementing Regulation (EU) 2019/1140 of 3 July 2019, as referred to in Article 40(1) of CPR, drawn up by an independent Audit Firm appointed by EIB, as applicable, and submitted to the Regione Siciliana. The annual audit report for the FoF shall be submitted not later than six (6) months following the last day of the reporting period;
  - (c) On request, EIB will provide Regione Siciliana with a control report in English (with an unofficial translation in Italian for information purposes only) that shall be submitted within sixty (60) calendar days following the date of receipt of such request. The control report shall be needed for the purposes of accompanying the Regione Siciliana's applications for payment to the Commission and shall be substantially in the form of the model control report set out in Annex I of Commission Implementing Regulation (EU) 2019/1140 of 3 July 2019 referred to in Article 40(1) of CPR.



- 14.3 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 FoF 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 IV 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 and applicable Delegated and Implementing Acts;
  - (d) whether the Financial Intermediaries retain any supporting documents which relate to the financing made available to Final Recipients for three (3) years from 31 December following the termination of the relevant Operational Agreement; 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 funds have been used for the intended purposes, 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. AUDITING

- 15.1 EIB agrees to maintain an adequate audit trail in relation to the FoF for reporting and auditing purposes and agrees to comply with the relevant provisions of the CPR and applicable Delegated and Implementing Acts.
- 15.2 In accordance with Article 40(3) of the CPR, Regione Siciliana shall ensure that no audits are conducted at the level of the Final Recipients, unless:
- (a) there are no supporting documents available at the level of Regione Siciliana, EIB or at the level of the Financial Intermediaries which provide evidence of the support from the Financial Instruments to the Final Recipients; and/or
  - (b) there is evidence that the documents available at the level of Regione Siciliana, EIB or the Financial Intermediaries do not represent a true and accurate record of the support provided,

in which case, the relevant authorities of Regione Siciliana are permitted to audit or appoint persons to audit the Final Recipients.

- 15.3 The Operational Agreements shall provide that the Financial Intermediaries consent (a) to be audited by or on behalf of Regione Siciliana, the Commission and the European



Court of Auditors and (b) to provide all information necessary for Regione Siciliana, the EIB, the FoF 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.

- 15.4 In order for the Managing Authority to satisfy its obligations under Article 40 and Article 46 of the CPR, EIB shall provide to the Commission and to the Regione Siciliana/ an annual audit report drawn up by the Audit Firm as referred under Clause 14.2(b) (Monitoring and Reporting).
- 15.5 Subject to the agreement of the EIB, Regione Siciliana may request additional audit agreed upon procedures on the expenditure of the contribution of regional non-ESIF funds. For the avoidance of doubts, such activities will be charged by the EIB to Regione Siciliana as additional expenses and, at the EIB discretion, may be carried out by external consultants.

## 16. **DOCUMENT RETENTION**

- 16.1 EIB agrees to retain all supporting documents for its actions pursuant to this Agreement for a three (3) year period from 31 December following the termination of the Legacy Period 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.
- 16.2 EIB agrees to make all supporting documents available as evidence in order to allow for its expenditure to be audited.
- 16.3 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 9.1(e) of the Delegated Act.

## 17. **OFFSHORE POLICY**

- 17.1 Pursuant to Article 38(4) of the CPR:
- (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.
- 17.2 The Parties hereby agree that a change in the status of a jurisdiction to a Non-Compliant Jurisdiction shall have no effect on Operational Agreements already entered into at the time of such change.



## 18. AMENDMENTS

- 18.1 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.
- 18.2 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 Regione Siciliana or the EU (including, where relevant, any compensation or adjustment to the remuneration of EIB as a result of any such amendments).

## 19. EFFECTIVE DATE, TERMINATION AND FORCE MAJEURE

- 19.1 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 Regione Siciliana under Clause 11 shall continue in full force and effect notwithstanding any termination of this Agreement).
- 19.2 No later than six (6) months prior to the Scheduled Termination Date of this Agreement, EIB shall return the balance of the FoF 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 Regione Siciliana communicates to EIB. Any residual liabilities under the Operational Agreements shall be transferred to and assumed by Regione Siciliana or to an entity expressly appointed by Regione Siciliana for this purpose.
- 19.3 All expenses incurred by EIB in connection with such transfer shall be borne by Regione Siciliana and shall be withheld from the available funds on the FoF Account to be returned.
- 19.4 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; or
  - (b) Regione Siciliana fails to make payment of the First Tranche within thirty (30) calendar days from the date of the initial Written Request by EIB; or
  - (c) Regione Siciliana fails to make payment in respect of a Subsequent Tranche within ten (10) calendar days of a Reminder Notice being sent by EIB; or
  - (d) there is any failure to pay by Regione Siciliana of any other amount due and payable under this Agreement and such failure to pay is not remedied or cured in full within ten (10) Business Days of the date upon which it is due; or



- (e) Regione Siciliana fails to comply with its obligations under Clause 15.4; 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 Regione Siciliana 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.

19.5 Provided that this Agreement has not been terminated for a Termination for Cause, this Agreement may be terminated without any cause 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 (the "**Termination Without Cause**").

19.6 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; or
- (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 ten (10) Business Days of the EIB giving Regione Siciliana notice of the Termination for Cause, or
- (c) either Party gives written notice of a Termination Without Cause or Termination With Cause under Clause 19.4(f),

then, unless EIB gives a written notice to Regione Siciliana pursuant to Clause 19.7 a three (3) month period shall be immediately initiated during which the Parties agree that the FoF, all assets and liabilities relating to the FoF (including where held or incurred in the name of EIB as part of the FoF Activity) and all Operational Agreements entered into, are transferred to (whether by assignment, novation or otherwise) or assumed by Regione Siciliana (the "**Transfer Period**"). In particular:

- (i) Regione Siciliana shall accept and assume all rights, obligations and liabilities arising out of Operational Agreements and agrees to enter into any transfer agreement or equivalent documentation necessary for the formalisation of the transfer thereof to Regione Siciliana; and
- (ii) notwithstanding Clause 24.3, the balance of the funds paid in the FoF Account, as well as any assets resulting from the implementation of the Operational Agreements, shall be transferred to Regione Siciliana and, as



relevant, shall be credited with such bank account as Regione Siciliana shall communicate to EIB and the FoF 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.

19.7 If any of the events in sub-paragraphs (a), (b) or (c) of Clause 19.6 occur, EIB may, at its discretion, give written notice to Regione Siciliana within thirty (30) days of the existence of such circumstances, that:

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

but shall continue to manage the FoF Account and the then existing Operational Agreements on the terms of this Agreement, including the right to be paid Management Fees, 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 in new Financial 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.

19.8 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 FoF Activity, as of the effective date of such termination.

19.9 EIB shall procure that, subject to applicable law, all Operational Agreements provide for assignment, novation, substitution and/or nomination rights of Regione Siciliana in order to ensure the transfer of such Operational Agreements thereunder to Regione Siciliana or to an entity newly appointed by Regione Siciliana, as applicable, in case of termination of this Agreement.

19.10 Termination of this Agreement shall be without prejudice to accrued rights and obligations under this Agreement.





19.11 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 FoF pursuant to an act of the European Union or of Regione Siciliana 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 FoF 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.

## 20. CONFIDENTIALITY AND DISCLOSURE

20.1 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 FoF or any Operational Agreements.

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

- (a) where the disclosure is made 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 European 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 Regione Siciliana and/or the FoF) 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 FoF, 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.

20.3 Regione Siciliana authorises EIB to supply to the FoF and EIB's auditors any information about the FoF Fund requested by them.

## 21. ASSIGNMENT

This Agreement is personal to Regione Siciliana and may not be assigned by Regione Siciliana or transferred by it (whether by assignment, novation or otherwise). 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 Regione Siciliana, which consent shall not be unreasonably withheld.

## 22. GOVERNING LAW AND DISPUTE RESOLUTION

22.1 The parties hereby submit to the jurisdiction of the Court of Justice of the European Union.

22.2 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.

## 23. NOTICES

23.1 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, email or telefax, with transmission confirmation clearly stating in the subject "Fondo Emergenza Imprese Sicilia", to the following addresses:

### **If to Regione Siciliana:**

Address: Regione Siciliana, Assessorato regionale all'Economia,  
Dipartimento delle Finanze e del credito,  
via Emanuele Notarbartolo, n. 17 - 90141 Palermo

Tel.: 091/7076799

Fax: 091/7076517

Attention: Dirigente Area credito

Email: [credito.finanze@regione.sicilia.it](mailto:credito.finanze@regione.sicilia.it)

Certified email: [dipartimento.finanze@certmail.regione.sicilia.it](mailto:dipartimento.finanze@certmail.regione.sicilia.it)



**If to the Investment Board:**

Address: Regione Siciliana, Assessorato regionale all'Economia,  
Dipartimento delle Finanze e del credito,  
via Emanuele Notarbartolo, n. 17 - 90141 Palermo  
Tel.: 091/7076799  
Fax: 091/7076517  
Attention: Dirigente Area credito  
Email: [credito.finanze@regione.sicilia.it](mailto:credito.finanze@regione.sicilia.it)  
Certified email: [dipartimento.finanze@certmail.regione.sicilia.it](mailto:dipartimento.finanze@certmail.regione.sicilia.it)

**If to EIB:**

Address: European Investment Bank  
98-100 bld Konrad Adenauer  
L-2950 Luxembourg  
Attention: Mr. Andrea Bua, Head of Financial Instruments Adriatic Sea  
Email: [a.bua@eib.org](mailto:a.bua@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.

**23.2 Delivery**

23.2.1 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) calendar days after being deposited in the post in a prepaid envelope addressed to it at that address;
- (b) if by way of email, when actually received (or made available) in readable form; or
- (c) if by way of fax, when received in legible 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.

23.2.2 Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

**24. MISCELLANEOUS**

24.1 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 FoF and



supersedes and extinguishes all prior understandings, arrangements, agreements, representations, proposals or communications between the parties, whether written or oral.

- 24.2 EIB's authority under this Agreement is given by Regione Siciliana on behalf of its successors in title as well as of itself.
- 24.3 EIB may, but shall not be obliged to, set-off any amount owed to it against any amount payable by the EIB to Regione Siciliana under this Agreement.
- 24.4 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.

### THE EUROPEAN INVESTMENT BANK

Signed for and on behalf of:

**EUROPEAN INVESTMENT BANK**

Signed for and on behalf of:

**REGIONE SICILIANA**

.....

Name: Miguel Morgado  
Title: Director  
Date:

.....

Name: Benedetto Mineo  
Title: Dirigente Generale, Dipartimento  
delle Finanze e del Credito

Date:

.....

Name: Ruth Niland  
Title: Head of Division  
Date:



## APPENDIX A

### INVESTMENT STRATEGY AND BUSINESS PLAN

#### **I. Introduction and objective of the FoF**

Italy belongs to the EU countries which have been hit hardest by the COVID-19 pandemic. Besides the health crisis, the pandemic is strongly affecting the economy, with a serious threat to business continuity and employment. In the long-term, the fallout of the crisis will particularly be felt in Italian regions which presented an already very fragile economic situation before the start of the pandemic.

Suboptimal funding and investment conditions for companies have already been present in Regione Siciliana prior to the COVID-19 crisis, as evidenced by the ex-ante assessments dated 31 August 2017. With the pandemic, the gap described in this study has widened even further, this consequence of the COVID-19 crisis has had effects in all EU member states, as represented in the communication EC “Coordinated economic response to the COVID-19 Outbreak’ COM(2020) 112 final”.

Regione Siciliana considers that the COVID-19 outbreak is deeply affecting the real economy in the Region. The containment and contrast initiatives introduced to limit the spread of the disease have led to a double negative shock: on the demand side, with the cancellation or postponement of spending decisions, and the elimination of tourist flows; on the supply side, with the closure of most commercial activities and the mandatory stop of most production activities. The main economic sectors that drive the local economy are in a standstill.

In order to swiftly respond to the COVID-19 crisis and to mitigate its impact on the regional economy, Regione Siciliana and the EIB have decided to cooperate and to set up a Fund of Fund (“FoF”), which will be managed by the EIB. The operation aims to preserve the continuity of economic activity during and after the outbreak. It is designed to provide enterprises with the necessary funding to overcome the current economic difficulties.

Regione Siciliana intends to contribute up to EUR 50,000,000.00 of European Structural and Investment Funds (“ESIF”) from the Regional Operational Programme PO FESR Sicilia 2014-2020, Priority Axis 3 , investment priority 3d, and of Regional fund.

If deemed appropriate, Regione Siciliana may, with the agreement of the EIB, contribute additional resources to the FoF.

The purpose of the Investment Strategy and Business Plan is to set out the principles of a coordinated approach and efficient cooperation between the Regione Siciliana and the FoF Manager in the preparation, programming and implementation of the FoF. It also lists the principles according to which the resources of the FoF will be invested. The Parties acknowledge the uncertainties related to the COVID-19 crisis and the limited visibility with respect to its impact on the regional economy; therefore, these principles shall allow for sufficient flexibility for the implementing parties, which will enable them to swiftly direct the funds to where they are most needed. Furthermore, the Parties acknowledge that the Investment



Strategy and Business Plan can evolve over time through a continuing and organised exchange of information between the Parties.

## **II. Final recipients**

**Nature:** The FoF supports eligible public and private companies that are (i) of particular relevance in the context of the COVID-19 pandemic (e.g. in the biomedical and health sectors), or (ii) particularly hurt by the crisis.

Eligibility criteria established in the ESIF regulatory framework, including economic, social and technical viability, will need to be respected.

**Dimension:** Final recipients can be of the following dimensions:

- (a) Small and medium enterprises;
- (b) Mid-caps.

**Geographic location:** The Final recipients need to be located or need to operate in the Target Area.

**Targeted sectors and activity supported:** The FoF will target all sectors and activities of the economy eligible under the ROP, and/or which are in compliance with the criteria pertinent to the additional budgetary resources contributed to the FoF.

However, particular focus should be put to the following sectors:

- Healthcare;
- Biomedicine;
- Agri-food;
- Tourism services (excluding construction)
- Constructions

Indicatively 50% of the resources available are allocated to the tourism services.

The investment board may provide indications on the possible maximum and minimum levels to be allocated by sector and type of company.

Regione Siciliana has the right, subject to agreement with EIB, to provide EIB with further indications on sectorial coverage during the implementation phase.

The FoF will support both working capital and investment activities.

## **III. Financial products**

The resources of the FoF shall be provided to the Final Recipients in the form of long, medium and short-term loans to support investments and working capital needs.

There are no maximum or minimum limits for the number of projects that can be financed.

The maximum tenure of the loans is, indicatively, for up to 20 years.

The selected Financial Intermediaries shall assure compliance with State Aid legislation.

Subject to due notification and communication to be delivered by Regione Siciliana (or by the Republic of Italy) to the EC, the FoF may operate under the EC's "Temporary Framework for



State aid measures to support the economy in the current COVID-19 outbreak” (and in particular under Art. 3.1 and 3.3), or any other State Aid regime activated by Regione Siciliana, which will communicate to EIB any relevant information in this respect.

The loans may only be used for new loans. The support may not be granted to undertakings that were already in difficulty (within the meaning of the General Block Exemption Regulation) on 31 December 2019, save for micro or small enterprises (within the meaning of Annex I of the General Block Exemption Regulation) provided that they are not subject to collective insolvency procedure under national law, and that they have not received rescue aid or restructuring aid.

#### **IV. Investment Horizon**

Indicatively, 15% of the FoF resources should be invested prior to 30 June 2021, and approximately 60% of FoF resources should be invested by 31 December 2021 (deadline of the “Temporary framework for state aid measures to support the economy in the current covid-19 outbreak” as provided at the date of signature of this Agreement). Failure to achieve these objectives could lead to an event of default by the Financial Intermediaries. The investment horizon may be further modified by the EIB, in agreement with Regione Siciliana, to reflect the actual implementation calendar of the FoF.

#### **V. Synergies with other regional FoFs**

In parallel to the FoF, the EIB may set-up and manage similar FoFs on behalf of other Italian regions. Given the urgency of the COVID-19 crisis, the EIB may seek organisational and procedural synergies between these FoFs by organising one single call of expression of interest covering two or more regional FoFs. In this case, a Financial Intermediary may apply at the same time in order to be selected for more than one FoF, if it fulfils the appropriate prerequisites.

#### **VI. Selection of the Financial Intermediaries, legal form and investments products**

##### ***Selection***

In consideration of the need of making the funds available to Final Recipients as soon as possible the EIB will, at least initially, target the selection of one or more Financial Intermediaries, which will on-lend the FoF resources to the Final Recipients. The selection will be carried out by the EIB through an appropriate CEOI in accordance with its internal policies and procedures, taking into account market needs. The EIB shall use the CEOI to identify, evaluate and select suitable Financial Intermediaries to implement the Financial Instruments of the FoF.

The selection process shall follow the *DFI Selection Guidelines*. Given the urgency of the operation, the EIB plans measures directed at accelerating the tender procedure. These may include (i) the shortening of the publication period from 37 to 15 business days as well as other measures foreseen by the EIB procurement guidelines in cases of urgency, and the publication of the tender prior to the signing of the Funding Agreement and based on a preliminary



commitment by Regione Siciliana (in any case, the final selection will be confirmed after the signing of the Funding Agreement by the Investment Board or any relevant function of the Regione Siciliana).

The Financial Intermediaries will be selected based, *inter alia*, on the criteria set out in Article 7 of the CDR as well as:

- a) relevant experience with the implementation of DFIs and in managing, selecting and financing the targeted Final Recipients in the Target Area;
- b) the establishment of a team of professionals who will have direct operational responsibilities regarding the implementation of the initiative, also in order to allow the monitoring of the progress and the implementation through a dedicated (specific) channel;
- c) a concise investment strategy presented by the Financial Intermediaries, which shall give details of how to achieve the objectives set out in the Investment Strategy and Business Plan of the FoF, including the Investment Horizon;
- d) the processes for the selection, approval and disbursement, taking into account the criteria set in the Investment Strategy and Business Plan of the FoF and the nature of the instrument. They could be based on existing procedures of the Financial Intermediaries, including those used in similar initiatives and/or promotional/subsidised finance and/or impact investing;
- e) evidence of additionality of the FoF resources by increasing volumes and increasing risk spectrum as compared to ordinary lending operations and offering better conditions to Final Recipients even under own resources lending;
- f) procedures and fees: management, administration, and accounting procedures; details of the relevant management fees; the governance structure of the Financial Intermediaries which includes internal control procedures and the risk management procedures. Following the signature of the Operational Agreement, the FoF resources will be provided by the EIB as FoF Manager to the Financial Intermediaries in the form of a contingent loan. The Financial Intermediaries will have to undertake full management and responsibility in respect of the financing agreement with Final Recipients and shall carry out appropriate due diligence, including risk appraisal.

### ***Legal form***

In order to manage the resources received from the FoF, the Financial Intermediary shall be established as a separate block of finance within financial institutions or as independent legal entities, in accordance with national and EU rules.

### ***Co-financing***

Subject to prior confirmation by the Investment Board, the selected Financial Intermediary will be requested to provide additional funding in the form of loans to companies in the Target





Area with characteristics as described above in Section II “Final recipients”; this additional funding shall be in an amount equal or higher to the resources allocated by the FoF to the Financial Intermediary, and it shall be invested within the period ending on 31 December 2023. The additional funding will be provided both (i) on a best effort basis, by co-financing loans of the Financial Instrument to the Final Recipients, and (ii) by creating an additional portfolio of loans to companies in the Target Area; this additional portfolio shall be created using, to the extent possible, the criteria set out in the Investment Strategy of the Business Plan of the FoF.

In consideration of the market shock caused by COVID-19, it is expected that projects that are particularly risky and which are particularly worthy in view of the Investment Strategy and Business Plan, may be financed by up to 100% with FoF resources, in particular in the early stage of the investment period of the FoF.

The EIB, subject to a request of the selected Financial Intermediary and subject to the decision of its own governing bodies may extend under EU PL RESPONSE TO COVID19 CRISIS FOR SME&MIDCAPS (Reference: 20200225) to the Financial Intermediary a credit line to provide funds that can be used to provide the additional funding, as described in this Section.

### ***Risk procedures***

In order to be in a position to provide lending to companies that are in temporary financing difficulties due to the COVID-19 crisis (leading the FoFs to potentially assume non-investment grade or higher risks), the Financial Intermediaries may need to adapt their risk policies to the FoF Investment Strategy and Business Plan with respect to aspects such as security, counterparty rating, etc., and to apply procedures used in similar initiatives and/or promotional/subsidised finance and/or impact investing.

## **VII. Modifications of the Investment Strategy and Business Plan**

Modifications to the Investment Strategy and Business Plan may be elaborated by the EIB and submitted for approval by the EIB to the Investment Board as outlined in this Agreement.

## **VIII. Additional contributions to the FoF**

If deemed appropriate, Regione Siciliana may, with the agreement of the EIB, contribute additional resources to the FoF.

## **IX. FoF Risk Guidelines**

The risk profiles of the Final Recipients will be assessed independently by the selected Financial Intermediaries in line with the parameters set out in this Agreement. The parties agree that the Financial Intermediaries will be authorised to provide funding to Final Recipients



falling into all the risk categories including comparable to non-investment grade (Moody's equivalent rating from Ba1 to B3) or higher risk. Regione Siciliana acknowledges that in consideration of the deterioration of the economic and financial situation due to COVID-19, the Financial Intermediaries are authorised to take the highest level of risk possible with the only exclusion being undertakings that have already been in on-going difficulty<sup>2</sup> before 31 December 2019.

In carrying out its responsibilities, the Financial Intermediary shall act as diligent business entity applying at least the standard of professional care applicable to regulated banks in the EU and its internal procedures as well as banking practices applicable for similar instruments, including promotional/subsidised finance and/or impact investing. In particular, the Financial Intermediaries shall use all reasonable efforts to assess the Final Recipients in line with market practice for similar instruments, and referring to the practice used by the Financial Intermediaries for promotional/subsidised finance and/or impact investing instruments. It shall implement reasonable procedures related to the recovery of resources disbursed by the FoF, and write off the amounts due only if the collection of such amounts can no longer be reasonably expected. The Financial Intermediary should perform the origination, underwriting and servicing towards Final Recipients, including the recovery of defaulted loans in accordance with the Operational Agreements.

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<sup>2</sup> Definition of Undertaking in difficulty contained in the General Block Exemption Regulation



EXIT POLICY FOR THE FOF  
and  
WINDING UP PROVISIONS OF THE FOF

**1. Exit policy**

The exit policy of the FoF will be systematically included in the Operational Agreements and should be discussed with and approved with the Investment Board.

At least 6 months before the termination of this Agreement, the Parties shall meet in order to discuss and agree upon the possibility to extend the terms of this Agreement for a further period to be determined, or to wind-up operations.

Given the special circumstances of the COVID-19 crisis, it is not possible to establish at this stage specific and detailed exit policy guidelines. They will be decided at a later stage by Regione Siciliana and other stakeholders involved.

Potential exit scenarios could be:

- (i) The reinstall a new FoF with a similar scope or serving similar final beneficiaries, with the EIB or another entity as the manager; or
- (ii) The transfer of funds returned to the FoF to Regione Siciliana, or another public body or institution designated by Regione Siciliana.

The list shall not be regarded as exhaustive, but only as an example of potential options.

**2. Revolving character**

During the term of this agreement, resources returned to the FoF from investments undertaken by it, reimbursement of loans, or left over after all guarantees have been honoured as well as any interest generated by the cash balance held in the FoF could be reused under the FoF for the benefit of the targeted projects and Final Recipients.



## **APPENDIX B**

### **RISK POLICY**

(Acknowledgments, pricing and returns and financial monitoring and valuation)

#### 1. Acknowledgements

The MA acknowledges and accepts that EIB's rules, policies and procedures applied to operations it carries out at its own risk will not be applicable to this FoF.

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

#### 2. 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<sup>3</sup>. In accordance with these provisions, the 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, the EIB evaluates and selects 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 decision of the Investment Board.

#### 3. Pricing and returns

The MA acknowledges and accepts that the Bank will not be responsible for ensuring consistency with State Aid rules. Consistent with the mandate's objectives, the EIB will not set any pricing or return expectations for the FoF, 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 FoF if applicable.

#### 4. Financial monitoring and valuation

An adjusted financial monitoring, restructuring and recovery management from that applicable to operations the EIB carries out at its own risk will be applied in accordance with Appendix F (Monitoring). This includes monitoring whether any event of default or

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<sup>3</sup> 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



any other event leading to the termination of the Operational Agreement is triggered, and acting as appropriate in case of any such event.

Furthermore, the financial monitoring and 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 the EIB.



## **APPENDIX C TREASURY GUIDELINES**

The FoF funds shall be invested by EIB, at the risk of the FoF and following execution of a subscription agreement in a form acceptable to EIB, in the pooled investment portfolio known as the “EIB Unitary Fund” (the “**Unitary Fund**”). The Unitary Fund is a fund which EIB manages on behalf of certain third parties, that may include the European Commission, member states of the Union and their regional and municipal authorities. The Unitary Fund shall be managed as a money market fund providing daily liquidity. An Information Memorandum providing up-to-date detailed description of the Unitary Fund will be provided upon request to Regione Siciliana.



## **APPENDIX D REQUIREMENTS FOR FINANCIAL INTERMEDIARIES**

### **ASSESSMENT OF FINANCIAL INTERMEDIARIES**

1. In selecting Financial Intermediaries, EIB shall perform its assessment by reference to the criteria from time to time set out for this purpose in the CPR and the Delegated Act. As at the time of this Agreement, the relevant criteria are as follows:
  - (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 adequate capacity to implement the Financial Instrument, including organizational structure and governance framework providing the necessary assurance to the MA;
  - (d) that the Financial Intermediaries have effective and efficient internal systems and controls;
  - (e) that the Financial Intermediaries use an accounting system which provides accurate, complete and reliable information in a timely manner; and
  - (f) the willingness of the Financial Intermediaries to be audited by the EIB, the audit bodies of Regione Siciliana, the Commission and the European Court of Auditors.



**APPENDIX E  
FORM OF WRITTEN REQUESTS**

FORM OF INITIAL WRITTEN REQUEST

From: European Investment Bank

To: The Member State

Dated: [●]

Dear Sirs

**Funding Agreement between Regione Siciliana 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 FoF Account within thirty (30) calendar days.
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 AFTER THE INITIAL WRITTEN REQUEST

From: European Investment Bank

To: The Member State

Dated: [●]

Dear Sirs

**Funding Agreement between Regione Siciliana 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 FoF Account no later than thirty (30) calendar 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



## APPENDIX F MONITORING

### 1. GENERAL

- 1.1 Monitoring checks shall be performed in line with EIB rules and procedures.
- 1.2 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 may, in line with their internal rules and procedures and particularly in the cases where fraudulent behaviour is suspected, 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 financial instrument, monitor compliance of Financial Intermediaries with applicable EU law and the relevant Operational Agreement;
  - (b) funding agreements contain provisions concerning audit requirements and audit trail in accordance with point 1(e) of Annex IV to the CPR;
  - (c) an adequate audit trail is established for reporting and audit purposes in accordance with the relevant provisions of the CPR and applicable Delegated and Implementing Acts;
  - (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 three (3) years from 31 December following termination of the relevant Operational Agreement;
    - (iii) are available to allow verification of the legality and regularity of the expenditure.



## **APPENDIX G 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 FoF and the total amount transferred from the FoF to the Financial Intermediaries and EIB (including, where relevant, amounts allocated for potential payments under subsidies and grants);
4. the total amount of support paid to the Final Recipients, paid for the benefit of the Final Recipients, in addition to the Management Fees incurred or Management Fees paid, by programme and priority or measure;
5. a summary of the performance of the Financial Instrument, including the progress of its set-up and selection of the Financial Intermediaries;
6. the total amount of interest and any other financial gains generated through the support from the ESI funds to FoF and details of the programme resources paid back to the Financial Instruments from investments made;
7. a report on the progress of FoF in reaching the expected leverage effect of investments made by the Financial Instruments and the value of the investments and participations;
8. a report on the contribution of the Financial Instruments in achieving the indicators of the priority or measure concerned; and
9. a summary of the monitoring activities carried out.



## APPENDIX H

### FOF INVESTMENT BOARD RULES OF PROCEDURE TEMPLATE

1. This document sets out the Rules of Procedure pursuant to Clause 6 of the funding agreement entered into by Regione Siciliana and the European Investment Bank ("**Funding Agreement**"). Any term used in 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 Regione Siciliana. Such appointment shall be valid for a term of four (4) years. Should the Chairperson not be able to attend a meeting, s/he shall indicate who, of the other members nominated by Regione Siciliana (including the alternates), 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 of four (4) years, and re-appointment for additional terms shall be permitted.
4. The EIB shall be entitled to designate its officials or representatives to participate in the sessions of the Investment Board as observers.
5. Regione Siciliana shall be able, at any time, to remove the member(s) nominated by it, whether voting and/or alternates. Any such removal shall become effective only upon appointment of a replacement member and effective communication, in writing, to the EIB of the name(s) and contact details of the substituting member.
6. Each Party shall be able, but shall not be obliged to, nominate also an alternate in respect of each of the, respectively, members or observers nominated by it.
7. If the position of a member (whether voting and/or alternate) vacates for any reason whatsoever (e.g. resignation, removal, death, etc.), the Party which appointed such member shall (but shall not be obliged to in respect of alternates), without unreasonable delay, appoint a new member for the remainder of the term of office of the substituted member, by communicating the name(s) and contact details of the substituting member to the other Party. The 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 12 below).
8. In case the Chairperson position vacates, the Investment Board, at its immediately following meeting, shall appoint a new Chairperson among the members nominated by Regione Siciliana, for the remainder of the term of office of the substituted Chairperson.
9. The observers will not have any voting rights. However, subject to the terms further set out in these Rules of Procedure, they shall receive the same written information on matters discussed and/or decided upon by the Investment Board, as well as minutes of each meeting, as the voting members and their alternates.



10. Within thirty (30) calendar days ahead of the expiry of a term of office, each Party shall communicate to the other Party the new appointed member (and his/her contact details) or the reappointment of the existing member for an additional term.
11. The quorum necessary in order to have a validly constituted Investment Board meeting is of at least three duly empowered voting members and one observer appointed by the EIB.
12. Upon 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 e-mail, at the address specified in the notice of appointment of each member, and by communicating to the EIB. Such notice of call, together with the relevant agenda, shall be sent at least five (5) calendar 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 two (2) calendar 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. Agenda points can be added directly at the meeting if all voting members and observers so agree. The provisions of Clause 23 (*Notices*) of the Funding Agreement shall apply *mutatis mutandis* to the communication and delivery of written notices by the Secretariat.
13. Meetings shall be held in Palermo or at such other city within the MA region as agreed between the Chairperson and the EIB, at the address, date and time indicated from time to time by Regione Siciliana. Members and observers shall be entitled to attend via conference or video call, and they shall be considered to be present as long as the Chairperson is satisfied with the identity of the relevant person.
14. The Investment Board shall be entitled to take decisions by written procedure. The text of the relevant resolution shall be proposed by the voting member asking for the relevant written procedure decision, and agreed with the EIB and the Chairperson. The Chairperson will distribute the proposed 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 of five (5) Business Days as of the date of dispatch. A resolution shall be deemed as positively voted if, at the expiry of the above mentioned five (5) Business Days, all members have either voted in favour or not cast a vote (i.e. silence will be deemed as a positive vote). The Chairperson will then confirm, in writing, any relevant decision to all members and observers. A written procedure process can be terminated if so requested by any of the voting members 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 such a case, the Chairperson may organise a physical Investment Board meeting, in which case the notice of call and the relevant documentation shall be sent within two (2) calendar days from the date of interruption of the written procedure.
15. The Investment Board's discussions shall be kept confidential.



16. 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 Regione Siciliana, as Managing Authority, under the relevant EU Regulations.
17. All decisions of the Investment Board (including non-objection to proposals) shall be recorded in minutes, to be drafted by the EIB. Minutes shall be short and concise and shall include the resolutions of the Investment Board while any part of the discussion shall be recorded upon the request of a voting member and/or EIB. The minutes shall be final upon their approval by way of signature of the Chairperson and EIB.
18. 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.
19. Representatives of the EIB other than the observers to the Investment Board, and of other parties (e.g. Financial Intermediaries) may be invited to meetings of the IB, if so deemed appropriate by the Chairperson. They shall not be entitled to any voting right, remuneration or reimbursement, nor to receive accompanying materials and minutes of the meeting.



## APPENDIX I

### DEFINITION OF “EURIBOR”

A. **“EURIBOR”** means:

- (a) in respect of a relevant period of less than one month, the Screen Rate (as defined below) for a term of one month;
- (b) in respect of a relevant period of one 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 month for which a Screen Rate is not available, the rate resulting from a linear interpolation by reference to two 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 (b) and (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), under the sponsorship of EMMI and EURIBOR ACI, or any successor to that function of EMMI and EURIBOR ACI as determined by the 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 the 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 the EIB.

If such Screen Rate is not so published, the EIB shall request the principal euro-zone offices of four major banks in the euro-zone, selected by the EIB, to quote the rate at which EUR deposits in a comparable amount are offered by each of them as at approximately 11h00, 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 the 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. The EIB shall inform the Managing Authority without delay of the quotations received by the EIB.

All percentages resulting from any calculations referred to in this Schedule 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 the EIB) in respect of EURIBOR, the EIB may by notice to the Managing Authority 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 the EIB to be the all-inclusive cost to the 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 the EIB.

## **B. GENERAL**

For the purposes of the foregoing definitions:

- (a) All percentages resulting from any calculations referred to in this Schedule will be rounded, if necessary, to the nearest one thousandth of a percentage point, with halves being rounded up.
- (b) The EIB shall inform Regione Siciliana without delay of the quotations received by the EIB.
- (c) If any of the foregoing provisions becomes inconsistent with provisions adopted under the aegis of EMMI and EURIBOR ACI (or any successor to that function of EMMI and EURIBOR ACI as determined by the EIB) in respect of EURIBOR, the EIB may by notice to Regione Siciliana amend the provision to bring it into line with such other provisions.