



## DISCLAIMER

In any phase of the negotiations prior to entering into a Guarantee Agreement or amendment thereof with an Implementing Partner, the Commission reserves full discretion as to whether to conclude a Guarantee Agreement or amendment thereof with an applicant or Implementing Partner, as applicable, and no applicant or Implementing Partner, as applicable, shall have any claim or other right or may expect to ultimately sign a Guarantee Agreement or an amendment thereof as an Implementing Partner. Any negotiation of terms and conditions of the Guarantee Agreement or amendment thereof (including those included in this draft) by no means entails any obligation for the Commission to enter into such Guarantee Agreement or amendment thereof with the relevant applicant or Implementing Partner.

This draft Guarantee Agreement has not been adopted or endorsed by the Commission. Any views expressed are the preliminary views of certain Commission services and may not in any circumstances be regarded as stating an official position of the Commission. The terms and conditions reflected in this draft provide a basis for negotiations, and thus may be subject to modifications and may be non-exhaustive.

## AGREEMENT

between the

EUROPEAN UNION

and the

NRW.BANK

ON THE EU GUARANTEE UNDER THE INVESTEU REGULATION

Dated on \_\_\_\_\_

## Table of Contents

Part A – Definitions, Purpose, Tasks and Financial Contribution .....	7
<b>Article 1 Definitions and Interpretation</b> .....	7
<b>Article 2 Purpose of the Agreement</b> .....	25
<b>Article 3 Tasks of the Implementing Partner</b> .....	25
<b>Article 4 Financial Contribution</b> .....	28
Part B – Approval process .....	28
<b>Article 5 Policy check</b> .....	28
<b>Article 6 Eligibility Checklist Procedure</b> .....	29
<b>Article 7 Investment Committee</b> .....	29
<b>Article 8 Submission of guarantee requests to the Investment Committee</b> .....	29
<b>Article 9 Framework Operations</b> .....	31
<b>Article 10 Commission non-objection</b> .....	32
<b>Article 11 [Intentionally omitted]</b> .....	32
Part C – EU Guarantee .....	33
<b>Article 12 General principles of the EU Guarantee</b> .....	33
<b>Article 13 Scope and amount of the EU Guarantee</b> .....	33
<b>Article 14 InvestEU Blending Arrangements involving repayable support from one or more EU Sectorial Programme</b> .....	34
<b>Article 15 Calls of the EU Guarantee</b> .....	34
<b>Article 16 Terms of payments under the Agreement</b> .....	34
<b>Article 17 Restructuring and other actions</b> .....	36
<b>Article 18 Subrogation and recoveries</b> .....	36
<b>Article 19 Transitional Operations and certain other InvestEU Operations</b> .....	37
Part D – Policy Windows, Financial Products, Eligibility, Additionality .....	37
<b>Article 20 Policy Windows</b> .....	37
<b>Article 21 Financial Products</b> .....	37
<b>Article 22 Policy Targets</b> .....	38
<b>Article 23 General principles regarding eligibility criteria</b> .....	38
<b>Article 24 Additionality, leverage and multiplier requirement and eligibility criteria</b> .....	39
<b>Article 25 Undertakings of the Implementing Partner and Final Recipients</b> .....	41
<b>Article 26 Policy Review Dialogue</b> .....	42
Part E – Final Recipients .....	42
<b>Article 27 Selection of Financial Intermediaries</b> .....	42
<b>Article 28 Exclusion of Final Recipients</b> .....	42
<b>Article 29 Agreements with Financial Intermediaries</b> .....	44
Part F – Reporting .....	44
<b>Article 30 Operational, financial, risk and complementary reporting</b> .....	44
Part G – Controls, Audit and Evaluations .....	46
<b>Article 31 Controls and monitoring</b> .....	46
<b>Article 32 Audit</b> .....	47
<b>Article 33 Evaluations</b> .....	48
Part H – General Provisions .....	48
<b>Article 34 Conflict of interests</b> .....	48
<b>Article 35 Protection of personal data</b> .....	48
<b>Article 36 Confidentiality</b> .....	49
<b>Article 37 Information to be provided to the Technical Assessment Unit</b> .....	49
<b>Article 38 Provision of Processed Data</b> .....	50
<b>Article 39 Early detection and exclusion system</b> .....	52
<b>Article 40 Communication, visibility and transparency</b> .....	52
<b>Article 41 Visibility and publication of information on Final Recipients</b> .....	54
<b>Article 42 Liability</b> .....	55
<b>Article 43 Assignment</b> .....	55
<b>Article 44 Notices and communications</b> .....	55

Article 45 Effectiveness – Term .....	57
Article 46 Stop Commitment Events.....	57
Article 47 Revisions .....	58
Article 48 Amendments and miscellaneous .....	58
Article 49 Governing law and jurisdiction .....	59
Article 50 Annexes .....	59
Annex I – Financial Product and Portfolio .....	61
Article 1 Interpretation .....	61
Article 2 Use of currencies and management of currency risk .....	61
Article 3 State aid compliance .....	61
Article 4 General principles of the Financial Product and Portfolio .....	61
Article 5 Administrative Fees .....	62
Article 6 Characteristics of Equity Operations.....	63
Article 7 Investment criteria.....	63
Article 8 Non-eligible Operations and non-compliance with the exclusion and investment criteria .....	63
Article 9 Coverage of Equity Operations.....	64
Article 10 Allocation of Equity Reflows and callable amounts .....	64
Article 11 Allocation of an Equity Operation Shortfall Amount.....	65
Article 12 Release of the EU Guarantee .....	65
Article 13 Secondary Sales.....	65
Article 14 Equity Portfolio Termination.....	66
Product Schedule.....	67
Annex II – Operational reporting.....	76
Article 1 General Provisions .....	76
Article 2 Operational Reports .....	76
Article 3 Progress Reports .....	85
Annex III – Financial reporting .....	86
Annex IV – Risk reporting .....	92
Annex V – Claims Form.....	101
<b>Appendix 1 – Claims Form .....</b>	<b>103</b>
<b>Appendix 2 – Cash flow forecast .....</b>	<b>107</b>
Annex VI – Monitoring, controls and audit modalities .....	108
Annex VII – Business partner form.....	111
Annex VIII – [intentionally omitted].....	112
Annex IX – [intentionally omitted] .....	113
Annex X – [intentionally omitted].....	114
Annex XI – [intentionally omitted] .....	115
Annex XII – IP Funding Cost Interest calculation methodology.....	116

This Agreement is entered into between:

The **European Union**,

represented by the European Commission, Rue de la Loi 200, B-1049 Brussels, Belgium (the "**Commission**"), which is represented for the purposes of the signature of this Agreement by [*insert first name, LAST NAME, function*],

the "**EU**" or "**Union**",

of the one part, and

the NRW.Bank, Anstalt des öffentlichen Rechts, Kavalleriestraße 22, 40213 Düsseldorf, Germany, which is represented for the purposes of the signature of this Agreement by [*insert first name, LAST NAME, function*],

the "**Implementing Partner**",

of the other part,

each a "**Party**" and jointly referred to as the "**Parties**",

WHEREAS:

- 1) The InvestEU Regulation (as defined in Article 1) establishes, *inter alia*, the InvestEU Fund (as defined in Article 1) and provides for a guarantee granted by the EU to the implementing partners for financing and investment operations to support the policy objectives of the Union laid down in the InvestEU Regulation.

- 2) The InvestEU Fund should support policy objectives of the Union by means of Operations (as defined in Article 1) that contribute to (i) the competitiveness of the Union; (ii) growth and employment in the Union economy, the sustainability of the Union economy and its environmental and climate dimension; (iii) the social resilience; (iv) the promotion of scientific and technological advances, of culture, education and training; (v) the integration of the Union capital markets and the strengthening of the internal market; (vi) the promotion of economic, social and territorial cohesion; or (vii) the sustainable and inclusive recovery of the Union economy after the crisis caused by the Covid-19 pandemic, as further specified in particular in recitals 5 to 31 and Articles 3 and 8 of the InvestEU Regulation and in the Investment Guidelines (as defined in Article 1).
- 3) The Operations should provide additionality and address market failures or sub-optimal investment situations as defined in Annex V to the InvestEU Regulation and comply with the requirements laid down in the InvestEU Regulation as regards eligibility and complementarity to other Union programmes, as further set out in this Agreement. In particular, they should contribute to fulfilling the Union's commitments to implement the Paris Agreement on Climate Change and the sustainable development goals set in the United Nations 2030 Agenda for Sustainable Development as well as the objective of EU climate neutrality by 2050 and the Union's 2030 climate targets in line with the Sustainability Proofing Guidance, the Climate and Environmental Tracking Guidance (each as defined in Article 1) and the Investment Guidelines.
- 4) The Operations may also contribute to the Just Transition Scheme (as defined in Article 1) established under the InvestEU Fund in order to address social, economic and environmental consequences of reaching EU climate neutrality by 2050 and achieving the Union's 2030 climate target. The Just Transition Scheme focuses on economically viable investments aligned with just transition objectives outlined in the Territorial Just Transition Plans (as defined in Article 1). These investments should be located in or benefiting in a key manner territories identified in the Territorial Just Transition Plans.
- 5) Strategic investments, particularly in view of the green and digital transitions and the need to enhance competitiveness and resilience, promote entrepreneurship and job creation and strengthen strategic value chains, may be implemented under any of the Policy Windows (as defined in Article 1).
- 6) Transparent communication towards the public on the Operations should be put in place.
- 7) The Implementing Partner is the promotional bank for North Rhine-Westphalia and proposes to implement a Financial Product (as defined in Article 1), aiming at supporting investments into innovative start-ups and SMEs (as defined in Article 1) with a potential of a transformative impact in the areas of innovation and digitisation in key technology sectors.
- 8) The Implementing Partner should ensure that the Financial Product comply with the applicable EU State aid rules and follow all the relevant State aid procedures as set out in Article 3 of Annex I on State aid compliance.
- 9) The Commission selects its implementing partners other than the European Investment Bank Group in line with Article 15 of the InvestEU Regulation. On 25 October 2023, the Commission launched the second call for expression of interest to select implementing partners under the InvestEU Fund to implement the EU Compartment (as defined in Article 1). This call for expression of interest was initially published for an amount of up to EUR 1 370 000 000 of the EU guarantee within the meaning of Article 2(2) of the InvestEU Regulation.

- 10) The Implementing Partner submitted its application on 26 November 2024 and was informed on the result of the selection process on 12 February 2025. Consequently, this Agreement has been negotiated to implement the EU Guarantee (as defined in Article 1) by the Implementing Partner. In accordance with Article 13(5) of the InvestEU Regulation, the guarantee under the EU Compartment to be granted to the implementing partners other than the European Investment Bank Group amounts to EUR 6 538 077 519, out of which the amount mentioned in recital 9) was object of the second call for expression of interest. Of this latter amount, EUR 119 000 000 is granted to the Implementing Partner, as further specified in this Agreement.
- 11) Additional amount(s) of the EU guarantee within the meaning of Article 2(2) of the InvestEU Regulation may be available to the Implementing Partner through Member State Compartment(s) (as defined in Article 1), through participation of Third Countries, through a possible further selection following the second call for expression of interest or through selection following a possible further call for expression of interest. Such increase of the EU Guarantee may be addressed via an amendment of this Agreement or a separate agreement. In such case certain Articles of this Agreement may need to be amended.
- 12) Intentionally omitted.
- 13) In accordance with Article 13(5) of the InvestEU Regulation, the Implementing Partner should provide a Financial Contribution (as defined in Article 1) as further specified in Article 4.
- 14) The IP Relevant Governing Body approved on [18 November 2025] a Financial Contribution of EUR 100 000 000 and the signature of this Agreement.
- 15) The Implementing Partner will contribute through its Operations to the mobilization of EUR 372 000 000 000 of additional investment by all implementing partners as per recital 40 of the InvestEU Regulation.
- 16) Achievement of the objectives of the InvestEU Fund will be measured by reference to the Key Performance Indicators and Key Monitoring Indicators (each as defined in Article 1) set out in this Agreement.
- 17) Regular policy dialogue should be put in place between the Commission and the Implementing Partner in order to provide policy steer and to ensure flexibility and responsiveness to potentially changing market and policy needs.
- 18) The Implementing Partner should regularly monitor and report on activities supported by the InvestEU Fund in accordance with this Agreement.
- 19) [Intentionally omitted]
- 20) This Agreement is the agreement foreseen in Article 17 of the InvestEU Regulation and provides the EU Guarantee under the EU Compartment.
- 21) [Intentionally omitted]
- 22) In the field of AML-CFT Policy and NCJ Policy (each as defined in Article 1), the Implementing Partner has adopted the AML-CFT Policy on 22 February 2018 (last updated on 07 November 2023) in its documented policies and procedures (*Handbuch 301 Sec. 7; Geschäfts- und kundenbezogene Sicherungsmaßnahmen gegen Geldwäsche und Terrorismusfinanzierung*) and the NCJ Policy on 01 September 2016 (last updated on 18 February 2020) in its documented policies and procedures (*Handbuch 201 Kap. 4.26 „Tax Compliance“ i.V.m. Handbuch 219 „Steuern“*).

- 23) The pillar assessment of the Implementing Partner's systems, rules and procedures referred to in Article 157 of the Financial Regulation (as defined in Article 1) has been successfully concluded on 10 November 2021.
- 24) Should any substantive change be made to the systems, rules or procedures of the Implementing Partner which may impact the reliability of the Commission's assessment, the Implementing Partner should inform the Commission without undue delay so that the need for any new assessment can be discussed between the Commission and the Implementing Partner.

NOW THEREFORE, the Parties have agreed as follows:

## **Part A – Definitions, Purpose, Tasks and Financial Contribution**

### **Article 1 Definitions and Interpretation**

- 1.1 Wherever used in this Agreement, the following terms shall have the meanings opposite them:

<b>“Accounting Officer”</b>	means the person appointed by the Commission for the purpose of Article 77 of the Financial Regulation.
<b>“Administrative Fee”</b>	means the portion of the administrative costs or fees incurred or applied by the Implementing Partner related to the implementation of the Operations under this Agreement and not covered by the revenues received by the Implementing Partner from the Operations concerned, as further set out in Article 5 of Annex I.
<b>“Agreement”</b>	means this agreement on the EU Guarantee under the InvestEU Regulation, being a guarantee agreement within the meaning of Article 2(12) of the InvestEU Regulation, as amended, restated, supplemented or substituted from time to time.
<b>“AML-CFT Policy”</b>	means the Implementing Partner's policy to prevent money laundering, terrorism financing, tax fraud and tax evasion, as amended, restated, supplemented or substituted from time to time.
<b>“Approval Period”</b>	means the period starting on the Effective Date and ending on 31 December 2027, without prejudice to Article 46.

<b>“Available Global Cap”</b>	<p>at any time, the Global Cap, less:</p> <ul style="list-style-type: none"> <li>(i) the aggregate Guaranteed Sums claimed from the Commission in accordance with Article 13.4, and</li> <li>(ii) the relevant amount released in accordance with Article 13.7 (for the avoidance of doubt, including the relevant amount of the Buffer), and</li> <li>(iii) the aggregate amounts notified by the Implementing Partner in accordance with Article 12.112.1 of Annex I, and</li> <li>(iv) any De-committed or Cancelled Amounts of an Equity Operation after the end of the Signature Period increased with the corresponding amount of the Buffer in accordance with Article 4.6 of Annex I.</li> </ul>
<b>“Buffer”</b>	means a portion of the EU Guarantee as defined in Article 13.2.
<b>“Business Day”</b>	means any working day on which the Commission is open for business in Brussels and Luxembourg, and the Implementing Partner is open for business in Düsseldorf.
<b>“C&amp;E Contribution”</b>	has the meaning attributed to it in Article 22.
<b>“Claims Form”</b>	means the claims form, as set out in Article 16 and substantially in the form as set out in Appendix 1 of Annex V.
<b>“Climate and Environmental Tracking Guidance”</b>	means the <i>“Guidance on the InvestEU Programme climate and environmental tracking for implementing partners”</i> issued in Commission Notice on the InvestEU climate and environmental tracking guidance of 6 May 2021 (C(2021/3316 final)) in accordance with Article 8(7) of the InvestEU Regulation, as may be amended, supplemented or substituted from time to time.
<b>“Climate Contribution”</b>	has the meaning attributed to it in Article 22.
<b>“Common Provisioning Fund”</b>	means the fund established in accordance with Article 215 of the Financial Regulation.
<b>“Cross-border Project”</b>	means any project or operation financed by a Final Recipient Transaction which:

- a) involves entities located or established in one or more Member State(s); and
- b) extends to one or more Third Countries, including acceding States, candidate countries and potential candidates, countries falling within the scope of the European Neighbourhood Policy, the European Economic Area or the European Free Trade Area, to an OCT, regardless whether there is a partner in those Third Countries or OCT.

**“De-committed or Cancelled Amounts”**

means any amount of an Operation no longer committed for disbursement based on the terms of the financing agreement between the Implementing Partner and the Final Recipient. For the avoidance of doubt, any amount of an Operation excluded from the Portfolio in accordance with Article 8 of Annex I, shall be treated as De-committed or Cancelled Amount.

**“Direct Operation”**

means a Final Recipient Transaction entered into between the Implementing Partner and the Final Recipient.

**“Disbursement Leverage Effect”**

means the Operations Leverage Effect calculated in respect of Direct Operations under which an investment has been made into a Final Recipient.

**“Disbursement Multiplier Effect”**

means the Operations Multiplier Effect calculated in respect of Direct Operations under which an investment has been made into a Final Recipient.

**“ECB”**

means the European Central Bank.

**“ECB Exchange Rate”**

means the ECB exchange rate that is disseminated on the official website of ECB (euro foreign exchange reference rates on [www.ecb.europa.eu](http://www.ecb.europa.eu)). If on the determination date, an exchange rate was not available, the exchange rate from the last date preceding the determination date shall apply.

**“Effective Date”**

means the last date on which a Party signed this Agreement.

**“Eligible Equity Final Recipient”**

has the meaning attributed to it in the Product Schedule.

**“EPPO”**

means European Public Prosecutor’s Office in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939 of

12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office<sup>1</sup>.

**“Equity Co-investor”**

means a co-investor, investing into the same Equity Final Recipient *pari passu* with the Equity Operation as further set out in Article 7 of Annex I.

**“Equity Final Recipient”**

means a Final Recipient which is, with respect to Equity Operations, an enterprise, a special purpose vehicle or another Final Recipient of the funding provided directly by the Implementing Partner, including joint ventures, spin-offs or spin-outs.

**“Equity Final Recipient Transaction”**

means an investment into an Equity Final Recipient carried out by the Implementing Partner under an Equity Operation. For the purpose of this Agreement, the Equity Final Recipient Transaction means the Equity Operation.

**“Equity Operation”**

means a Direct Operation under an Equity Product consisting of an aggregate amount committed by the Implementing Partner into an Equity Final Recipient, increased by any applicable fees and costs payable under the terms of the Operation, comprising on *pari passu* terms:

- (i) an EU Investment; and
- (ii) an IP Investment.

**“Equity Operation Shortfall Amount”**

means, with respect to an Equity Operation that has been sold, liquidated or otherwise disposed of by the Implementing Partner, an amount, floored at zero, resulting from:

- (a) the aggregate of amounts paid by the Implementing Partner under such Equity Operation; minus
- (b) the sum of the Equity Reflows and any recallable amounts collected under the Equity Operation.

For the avoidance of doubt, in case of a partial sale, liquidation or disposal the relevant proportional amount shall be taken into account.

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<sup>1</sup> OJ L 283, 31.10.2017, p. 1.

<b>“Equity Operation Termination Date”</b>	means the earliest date of (i) the date on which an Equity Operation has been finally and irrevocably sold, liquidated, or otherwise disposed of by the Implementing Partner or (ii) 30 September 2046.
<b>“Equity Portfolio”</b>	means a Portfolio of Equity Operations signed by the Implementing Partner under the Equity Product as set out in Article 4.2 of Annex I.
<b>“Equity Portfolio Final Call Amount”</b>	means the EU Investments Outstanding Amount with respect to the Equity Portfolio as at 30 September 2046.
<b>“Equity Portfolio Revenues”</b>	means the amounts specified in Article 10.2(c) of Annex I.
<b>“Equity Portfolio Termination Date”</b>	means with respect to the Equity Portfolio, the earliest date of (i) the date falling twelve (12) months after the Equity Operation Termination Date of the last outstanding Equity Operation in the Equity Portfolio or (ii) 30 September 2047.
<b>“Equity Reflows”</b>	means any non-recallable amounts received by the Implementing Partner from Equity Final Recipients (including any Recoveries) and any net proceeds received by the Implementing Partner from the Secondary Sales of the Equity Operations.
<b>“EU Compartment”</b>	means a compartment of the InvestEU Fund as further described in Article 9(1)(a) of the InvestEU Regulation.
<b>“EU Guarantee”</b>	means the guarantee coverage provided to the Implementing Partner pursuant to Article 13.
<b>“EU Investment”</b>	means the portion of the amount committed by the Implementing Partner under an Equity Operation that is covered by the EU Guarantee.
<b>“EU Investments Outstanding Amount”</b>	means, at any date, the aggregate amounts, including, for the avoidance of doubt, recalled amounts, disbursed by the Implementing Partner under the EU Investments in the Equity Portfolio until such date, less:

- (a) the aggregate of the Equity Reflows and any recallable amounts allocated to EU Investments in accordance with Article 10.2(a) of Annex I until such date; and
- (b) the aggregate EU Investment Shortfall Amount paid by the Commission to the Implementing Partner.

**“EU Investment Shortfall Amount”**

means, with respect to each Equity Operation, the portion of an Equity Operation Shortfall Amount allocated to the EU Investment pursuant to Article 11.1 of Annex I.

**“EU Restrictive Measures”**

means restrictive measures adopted pursuant to the Treaty on European Union or to the Treaty on the Functioning of the European Union.

**“EU Taxonomy Regulation”**

means Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088<sup>2</sup>.

**“Excluded Equity Final Recipient”**

means an Equity Final Recipient that is (i) engaged in activities referred to in Section B of Annex V of the InvestEU Regulation and/or (ii) falling under any of the exclusion situations as set out under Article 28.1 and/or (iii) a Restricted Person, as at the date of the signature of the relevant Equity Operation.

**“Executive Management”**

means a body of a legal entity appointed in accordance with national law, and, where applicable, reporting to the chief executive officer, or any other person having comparable decisional power, which is empowered to establish the legal entity's strategy, objectives and overall direction, and which oversees and monitors management decision-making.

**“Final Recipient”**

means an entity or a natural person that receives direct financial support under a Final Recipient Transaction.

**“Final Recipient Transaction”**

means, for the purpose of this Agreement, an operation to provide investment in a Final Recipient carried out by the Implementing Partner.

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<sup>2</sup> OJ L 198, 22.6.2020, p. 13.

<b>“Financial Contribution”</b>	means the Implementing Partner’s aggregate contribution from its own resources to the Pari Passu Protection as calculated in accordance with the methodology that is published on Key Risk Management Documents - InvestEU Wiki - EC Extranet Wiki (europa.eu) <sup>3</sup> and may be amended in agreement with the Steering Board, being the financial contribution within the meaning of Article 2(7) of the InvestEU Regulation.
<b>“Financial Product”</b>	means a financial product within the meaning of Article 2(9) of the InvestEU Regulation, as further specified in Annex I.
<b>“Financial Regulation”</b>	means Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast) <sup>4</sup> .
<b>“Force Majeure”</b>	means any unforeseeable exceptional situation or event beyond the Parties’ control, which prevents either of them from fulfilling any of their obligations under this Agreement, which was not attributable to error or negligence on their part or on the part of their subcontractors and which could not have been avoided by the exercise of due diligence. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of <i>force majeure</i> , as well as labour disputes or strikes or financial difficulties cannot be invoked as <i>force majeure</i> .
<b>“Framework Operation”</b>	means a facility, programme or structure which has underlying sub-projects within the meaning of Article 24(6) of the InvestEU Regulation, as further set out in Article 9.
<b>“Funding Cost”</b>	means for each semester from the Effective Date, the aggregate amount of the accrued IP Funding Cost Interest arising on the EU Investments Outstanding Amount determined in accordance with the methodology set out in Annex XII of this Agreement.
<b>“Global Cap”</b>	has the meaning attributed to it in Article 13.5.

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<sup>3</sup> Available via the link: <https://webgate.ec.europa.eu/pfis/wikis/display/InvestEUProg/3.+InvestEU+Financial+Contribution>

<sup>4</sup> OJ L, 2024/2509, 26.9.2024, ELI: <http://data.europa.eu/eli/reg/2024/2509/oj>.

<b>“Guarantee Request Form”</b>	means the request form within the meaning of Article 24(4) of the InvestEU Regulation.
<b>“Guaranteed Sums”</b>	has the meaning attributed to it in Article 13.4.
<b>“IC Secretariat”</b>	means the secretariat to the Investment Committee set up in accordance with Article 24(4) of the InvestEU Regulation.
<b>“IC Secretariat Rules of Procedure”</b>	means the Rules of Procedure of the IC Secretariat as adopted by the Steering Board on 25 October 2021, as may be amended, supplemented or substituted from time to time.
<b>“Indirect Operation”</b>	means an operation entered into between the Implementing Partner and a financial intermediary covering directly a Final Recipient Transaction. For the avoidance of doubt, there are no Indirect Operations foreseen under this Agreement.
<b>“Independent Management Team”</b>	<p>means a team that exercises a significant degree of autonomy with respect to investment and divestment decisions of the transactions forming part of the individual portfolio of the Implementing Partner which may include:</p> <ul style="list-style-type: none"> <li>(a) privately owned teams, whereby the investment team owns majority of the voting shares of the entity that is entrusted in investment management or investment advisory of the individual portfolio of the Implementing Partner, or</li> <li>(b) teams operating within (or with) a corporate or university structure, a foundation, or any financial institution established under any other form, including crowdfunding platform, provided that the management team makes the final investment and divestment decisions independently.</li> </ul>
<b>“Internal Control”</b>	<p>means a process, implemented in accordance with the Implementing Partner’s rules, policies and procedures, applicable at all levels of management and designed to provide reasonable assurance of achieving the following objectives:</p> <ul style="list-style-type: none"> <li>a) effectiveness, efficiency and economy of Operations;</li> <li>b) reliability of reporting;</li> <li>c) safeguarding of assets and information;</li> </ul>

- d) prevention, detection, correction and follow-up of fraud and Irregularities; and
- e) adequate management of the risks relating to the legality and regularity of the Operations, taking into account the multiannual character of the InvestEU Fund as well as the nature of the payments concerned.

**“InvestEU Advisory Hub”** means an advisory support mechanism established by Article 1 of the InvestEU Regulation.

**“InvestEU Common Rating Scale”** means the common reference scale based on the one-year probabilities of default for the purpose of categorizing credit risk consistently throughout the entire InvestEU Fund portfolio the EU has through its guarantee agreements with the implementing partners and shared by the Commission with the Implementing Partner in accordance with Article 38.

**“InvestEU Fund”** means the fund established by Article 1 of the InvestEU Regulation.

**“InvestEU Leverage Effect”** means, relating to the InvestEU Operations, the ratio between:

- a) the aggregate amount of financing expected to be provided by the Implementing Partner mobilised due to the InvestEU support, and by co-investors in case their financing is directly linked to the financing by the Implementing Partner supported by the EU Guarantee under InvestEU Operations, and
- b) the aggregate amount of EU Guarantee expected to be allocated to InvestEU Operations;

whereby, in case the InvestEU Operation is a Framework Operation, the Sub-Projects approved by the IP Relevant Governing Body are included (instead of the Framework Operation).

**“InvestEU MIS”** means the *“InvestEU Management Information System”*, being the IT system of the Commission used for the implementation of the InvestEU Fund.

**“InvestEU MIS Designated Users”** means the InvestEU MIS users communicated by the Implementing Partner to the Commission in accordance with Article 44.5.

<b>"InvestEU MIS Terms and Conditions"</b>	means the document setting out the terms and conditions subject to which InvestEU MIS Designated Users may access and make use of, as well as contribute to, the InvestEU MIS.
<b>"InvestEU Multiplier Effect"</b>	means, relating to the InvestEU Operations, the ratio between: <ul style="list-style-type: none"> <li>a) aggregate projected investments by the potential Final Recipients, and</li> <li>b) aggregate amount of EU Guarantee expected to be allocated to InvestEU Operations, whereby, in case the InvestEU Operation is a Framework Operation, the Sub-Projects approved by the IP Relevant Governing Body are included (instead of the Framework Operation).</li> </ul>
<b>"InvestEU Operation"</b>	means a financing or investment operation of the Implementing Partner within the meaning of Article 2(10) of the InvestEU Regulation approved by the Investment Committee; for the avoidance of doubt, it also includes Framework Operations.
<b>"InvestEU Portal"</b>	means the portal established by the Commission in accordance with Article 26 of the InvestEU Regulation.
<b>"InvestEU Programme"</b>	means the programme established by the InvestEU Regulation.
<b>"InvestEU Regulation"</b>	means Regulation (EU) No 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017 <sup>5</sup> .
<b>"Investment Committee"</b>	means the committee referred to in Article 24 of the InvestEU Regulation.
<b>"Investment Guidelines"</b>	means Commission Delegated Regulation (EU) 2021/1078 of 14 April 2021 supplementing Regulation (EU) 2021/523 of the European Parliament and of the Council by setting out the investment guidelines for the InvestEU Fund <sup>6</sup> , as may be supplemented or modified from time to time by means of delegated act or supplemented by the Steering Board.

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<sup>5</sup> OJ L 107, 26.3.2021, p. 30.

<sup>6</sup> OJ L 234, 2.7.2021, p.18.

<b>“IP Funding Cost Interest”</b>	means the interest determined in accordance with Annex XII.
<b>“IP Investment”</b>	means an amount committed by the Implementing Partner under an Equity Operation, that is not covered by the EU Guarantee and that shall rank <i>pari passu</i> with the EU Investment.
<b>“IP Relevant Governing Body”</b>	means the Board of Directors of the Implementing Partner and/or any other person or body to which the Board of Directors of the Implementing Partner has delegated final approval authority in relation to specific categories of Operations, in accordance with the Implementing Partner’s internal rules and procedures.
<b>“Irregularity”</b>	means as set out in Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities’ financial interests <sup>7</sup> .
<b>“JTM Area”</b>	means a geographical area of a Territorial Just Transition Plan.
<b>“Just Transition Fund Regulation”</b>	means Regulation (EU) 2021/1056 of the European Parliament and of the Council of 24 June 2021 establishing the Just Transition Fund <sup>8</sup> .
<b>“Just Transition Scheme”</b>	means the scheme set out in Article 8(2) of the InvestEU Regulation as further specified in Section 3.3 of the Investment Guidelines.
<b>“Key Monitoring Indicators” or “KMIs”</b>	means the monitoring indicators set out in Annex II.
<b>“Key Performance Indicators” or “KPIs”</b>	means the performance indicators measuring success in delivering the InvestEU Fund and set out in Annex II.
<b>“Licensed Data”</b>	means any data licensed to the European Investment Bank by <i>Moody’s Analytics UK Limited</i> or available to it pursuant to its membership in the <i>Global Emerging Markets Risk Database</i> , a cross-border pooling of anonymous data for credit risk set up in 2009 by the

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<sup>7</sup> OJ L 312, 23.12.1995, p. 1.

<sup>8</sup> OJ L 231, 30.6.2021, p. 1.

European Investment Bank and the *International Finance Corporation*.

<b>“Member State”</b>	means any Member State of the Union.
<b>“National Promotional Bank or Institution”</b>	means a legal entity that carries out financial activities on a professional basis which has been given mandate by a Member State or a Member State's entity at central, regional or local level to carry out development or promotional activities.
<b>“NCJ Policy”</b>	means the Implementing Partner's rules and procedures related to tax avoidance and non-cooperative jurisdictions, as amended, restated, supplemented or substituted from time to time.
<b>“Non-eligible Operation”</b>	means any Operation that was not eligible at the time of compliance required for a relevant eligibility criterion agreed under this Agreement.
<b>“NRW.BANK RIDW Direct Equity Financial Product” or “Equity Product”</b>	means the Financial Product as set out in the Product Schedule.
<b>“NRW.BANK RIDW Direct Equity Portfolio” or “Equity Portfolio”</b>	means the Portfolio of Equity Operations signed by the Implementing Partner under the Equity Product as set out in Article 4.2 of Annex I
<b>“OCT”</b>	means an overseas country or territory linked to a Member State as set out in Annex II to the Treaty.
<b>“OLAF”</b>	means the European Anti-Fraud Office.
<b>“Operation”</b>	means a Direct Operation pertaining to an InvestEU Operation. For the avoidance of doubt, in case of an InvestEU Operation that is a Framework Operation, a reference to an Operation is a reference to the relevant underlying Sub-Project.
<b>“Operational Report”</b>	means the operational report to be provided by the Implementing Partner under Article 30 and Annex II.

<b>“Operations Leverage Effect”</b>	means the ratio between: <ul style="list-style-type: none"> <li>a) the aggregate amount of financing committed by the Implementing Partner mobilised due to the InvestEU support, and by co-investors in case their financing is directly linked to the financing by the Implementing Partner supported by the EU Guarantee under Operations, and</li> <li>b) the aggregate amount of EU Guarantee allocated to Operations.</li> </ul>
<b>“Operations Multiplier Effect”</b>	means relating to the Operations, the ratio between the aggregate projected investments by the Final Recipients and the aggregate amount of EU Guarantee allocated to Operations.
<b>“Pari Passu Protection”</b>	means a vertical tranche risk protection in an Equity Operation, as further specified in Annex I.
<b>“Policy Check Request Form”</b>	means the request form to be submitted to the Commission to launch the policy check procedure within the meaning of Article 23(1) of the InvestEU Regulation.
<b>“Policy Review Dialogue”</b>	has the meaning attributed to it in Article 26.
<b>“Policy Window(s)”</b>	has the meaning attributed to it in Article 2(3) of the InvestEU Regulation.
<b>“Portfolio”</b>	means the aggregate amount of Operations signed under a Financial Product, as further set out in Annex I.
<b>“Primary Investment”</b>	means an investment (including in the form of debt) in an Equity Final Recipient resulting in financing flowing directly into the Equity Final Recipient during the duration of the Equity Operation. For the avoidance of doubt, it includes buy outs or replacement capital not intended for asset stripping made in connection with a flow of financing by the Implementing Partner to the Equity Final Recipient.
<b>“Processed Data”</b>	means certain metrics, products and/or deliverables that are derived by processing the Licensed Data (wholly or in part), including by aggregating or combining such Licensed Data with other data or information or by adapting the Licensed Data (wholly or in part), to such a degree that the Licensed Data cannot be reverse-engineered or otherwise identified

from analysis or further processing of such derived data.

For the purposes of this Agreement, the Processed Data shall refer to (a) the InvestEU Common Rating Scale and (b) the associated probabilities of default and mapping guidance.

**“Product Schedule”** means the terms and conditions including the specific policy objectives for a Financial Product as set out in Annex I.

**“Progress Report”** means the report to be submitted by the Implementing Partner in accordance with Article 30.4 and Annex II.

**“Recovery”** means any amount net of recovery costs recovered in relation to an Operation for which a Guaranteed Sum has been called, including, without limitation, an amount for which the Guaranteed Sum has been called and that is paid by a Final Recipient to the Implementing Partner under an Operation as a result of, *inter alia*, the realisation of security, Irregularities or fraudulent actions of Final Recipients, or the exclusion of a Final Recipient Transaction from coverage by the EU Guarantee following the process set out in Article 8 of Annex I;

provided that, in case the Implementing Partner directs simultaneous recovery efforts against the same obligor in respect of both an outstanding amount under an Operation and an outstanding *pari passu* amount under its own risk operation not covered by the EU Guarantee, the proceeds from a successful recovery will be shared *pro rata* in relation to the outstanding amount under the Operation (whereby it will be treated as the “Recoveries”) and the outstanding amount due to the Implementing Partner under its own risk operation not covered by the EU Guarantee.

**“Research, Innovation and Digitisation Window” or “RIDW”** means the policy window within the meaning of Article 8(1)(b) of the InvestEU Regulation.

**“Restricted Person”** means any entities, individuals or groups of individuals designated by the EU as subject to the EU Restrictive Measures.<sup>9</sup>

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<sup>9</sup> Consolidated list (the “EU sanctions list”) presently available at [EU Sanctions Map](http://www.sanctionsmap.eu) (www.sanctionsmap.eu). Note that the EU Official Journal is the official source of EU law and, in case of conflict, its content prevails.

<b>“Restructuring”</b>	means any agreement, arrangement, standstill, revision, amendment or composition with creditors in relation to a transaction that consists of or is covered directly or indirectly by an Operation, entered into with a view to reducing potential losses or increasing potential recoveries for the Union budget regardless of whether or not an event of default has occurred (including, without limitation, by way of (w) a change in principal or interest, (x) a waiver or extension of time, (y) a debt to equity conversion and (z) triggering an existing clause in a financing agreement where the Implementing Partner takes a subordinated position allowing to defer a payment or to change the amount of principal or interest payable).
<b>“Risk Report”</b>	means the risk report to be provided by the Implementing Partner under Article 30.7 and Annex IV.
<b>“RRF”</b>	means the instrument established by Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility <sup>10</sup> .
<b>“Scoreboard”</b>	means the scoreboard set out in Commission Delegated Regulation EU 2021/1702 of 12 July 2021 supplementing Regulation (EU) 2021/523 of the European Parliament and of the Council by setting out additional elements and detailed rules for the InvestEU Scoreboard <sup>11</sup> , as may be amended, supplemented or substituted from time to time.
<b>“Secondary Sale”</b>	means the sale, liquidation or otherwise disposal by the Implementing Partner of an existing EU Investment into an Equity Final Recipient or of a portfolio of EU Investments into Equity Final Recipients pursuant to Article 13 Article 13 of Annex I.
<b>“Separate Implementing Arrangement”</b>	means any arrangement detailing technical aspects in relation to the implementation of the Agreement. Such arrangement will be agreed in writing (including in the form of exchange of letters) between the Commission services and the Implementing Partner.

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<sup>10</sup> OJ L 57, 18.2.2021, p. 17.

<sup>11</sup> OJ L 339, 24.9.2021, p. 4.

<b>“Signature Period”</b>	means the period starting on the Effective Date and ending on 31 December 2028, without prejudice to Article 46.
<b>“Small Mid-Cap”</b>	means an enterprise within the meaning of Article 1 of the Title I of the Annex of the Commission SME Recommendation which: <ul style="list-style-type: none"> <li>(a) has up to 499 employees calculated in accordance with Articles 3, 4, 5 and 6 of the Title I of the Annex of the Commission SME Recommendation; and</li> <li>(b) is not a micro, small or medium-sized enterprise as defined in the Commission SME Recommendation.</li> </ul>
<b>“SME”</b>	means a micro, small or medium-sized enterprise as defined in the Commission SME Recommendation.
<b>“SME Window” or “SMEW”</b>	means the policy window within the meaning of Article 8(1)(c) of the InvestEU Regulation.
<b>“Social Investment and Skills Window” or “SISW”</b>	means the policy window within the meaning of Article 8(1)(d) of the InvestEU Regulation.
<b>“Steering Board”</b>	means the steering board within the meaning of Article 21 of the InvestEU Regulation.
<b>“Stop Commitment Event”</b>	has the meaning attributed to it in Article 46.
<b>“Sub-Project”</b>	means a sub-project within the meaning of Article 24(6) of the InvestEU Regulation, which corresponds to an Operation under a Framework Operation.
<b>“Sustainability Proofing Guidance”</b>	means “ <i>InvestEU Fund – Sustainability Proofing Guidance</i> ” issued in Commission Notice on Technical guidance on sustainability proofing for the InvestEU Fund of 14 April 2021 (C(2021)2632 final) <sup>12</sup> in accordance with Article 8(6) of the InvestEU Regulation, as may be amended, supplemented or substituted from time to time.

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<sup>12</sup> OJ C 280, 13.7.2021, p. 1.

<b>“Sustainability Proofing Summary”</b>	means the summary in accordance with the Sustainability Proofing Guidance, as further specified in Article 8.2.
<b>“Sustainable Infrastructure Window” or “SIW”</b>	means the policy window within the meaning of Article 8(1)(a) of the InvestEU Regulation.
<b>“Technical Assessment Unit” or “TAU”</b>	means the independent unit composed of risk management experts and established by the European Investment Bank Group for the tasks set out in Article 11(1), first subparagraph, points (b)(ii) to (b)(vi) of the InvestEU Regulation.
<b>“Territorial Just Transition Plans”</b>	has the meaning attributed to it in Article 11 of the Just Transition Fund Regulation.
<b>“Third Country”</b>	means any country that is not a Member State of the Union.
<b>“Third Country Entity”</b>	means a legal entity established in a Third Country or, where it is established in the Union, having its Executive Management in a Third Country. The location of establishment of the legal entity is determined by the location of its registered office.
<b>“Third Party Benchmark Investor”</b>	means an Equity Co-investor, which is for the purpose of the assessment set out in Article 7.37.3 of Annex I one of the following entities: <ul style="list-style-type: none"> <li>(a) majority privately owned financial institutions (investing at own risk and from own resources);</li> <li>(b) investment funds that: <ul style="list-style-type: none"> <li>(i) are classified as alternative investment funds (AIFs) according to the AIFMD Directive<sup>13</sup>,</li> <li>(ii) are managed or advised by Independent Management Teams, and</li> </ul> </li> </ul>

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<sup>13</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 Text with EEA relevance (OJ L 174, 1.7.2011, p. 1).

- (iii) whose majority sponsors are not Member States or National Promotional Banks or Institutions or the European Investment Fund or the European Investment Bank or an international financial institution that is majority controlled by Member State(s);
- (c) private endowments and foundations;
- (d) family offices and business angels (including joint investment vehicles set-up by or with business angels);
- (e) majority privately owned corporate investors;
- (f) majority privately owned insurance companies;
- (g) majority privately owned pension funds;
- (h) private individuals; or
- (i) academic institutions (including private research institutions and universities) investing out of their own resources stemming from their commercial activities;

in as much as the above entities:

- (a) do not receive any public incentive for the purpose of the considered investment; and
- (b) are not already a shareholder of the Equity Final Recipient into which they directly co-invest with the Implementing Partner.

**“Treaty”** means the Treaty on the Functioning of the European Union.

1.2 In this Agreement,

- (a) headings are for convenience only and do not affect the construction or the interpretation of any provisions of this Agreement;
- (b) words importing the singular include the plural and *vice versa*;
- (c) a reference to an “Article”, “Recital”, “Section”, “Part”, “Annex”, “Appendix” or “Product Schedule” is a reference to such article, recital, section or part of, or annex, appendix or product schedule to this Agreement, except if otherwise specified or the context requires otherwise;
- (d) the recitals, all of the Annexes, Appendices and Product Schedules form an integral part of the Agreement and, except if otherwise specified or the context requires otherwise, a reference to this Agreement includes the Annexes, Appendices and Product Schedules attached hereto; and
- (e) a reference to a “semester” means a period on and from 1 January to and including 30 June or on and from 1 July to and including 31 December and to a “quarter” means a

period on and from 1 January to and including 31 March, on and from 1 April to and including 30 June, on and from 1 July to and including 30 September or on and from 1 October to and including 31 December.

- 1.3 In the event of a conflict between:
- (a) the terms and conditions in a Product Schedule and the terms and conditions of any of the Agreement, Annexes or Appendices, the terms and conditions in the Product Schedule shall prevail;
  - (b) the terms and conditions in an Appendix and the terms and conditions of any of the Agreement or Annexes, the terms and conditions in the Appendix shall prevail; and
  - (c) the terms and conditions in an Annex and the terms and conditions of any of the Agreement, the terms and conditions in the Annex shall prevail.

## **Article 2 Purpose of the Agreement**

- 2.1 The purpose of this Agreement is to set out the provisions in relation to the EU Guarantee and the implementation thereof by the Implementing Partner, in line with the InvestEU Regulation.
- 2.2 [Intentionally omitted].
- 2.3 This Agreement sets out the descriptions of the Financial Product as well as the terms under which the Operations are to be provided by the Implementing Partner. The agreements documenting the Operations shall be approved, negotiated and concluded by the Implementing Partner in its own name, following its own decisions applying its own relevant rules, policies and procedures and notwithstanding the fact that the Operations benefit from the EU Guarantee.
- 2.4 The Implementing Partner represents and warrants to the Commission that the Implementing Partner:
- (a) has the right, power and authority to enter into and perform its obligations under this Agreement and that this Agreement constitutes valid and binding obligations on the Implementing Partner enforceable in accordance with its terms; and
  - (b) has taken all actions according to its Statutes<sup>14</sup> dated 11 March 2024, as amended from time to time, and its other applicable constituting documents necessary to the execution of this Agreement.
- 2.5 The signatories of this Agreement declare that they are duly authorised to sign the Agreement on behalf of the Parties that they represent.

## **Article 3 Tasks of the Implementing Partner**

- 3.1 The Implementing Partner shall implement the EU Guarantee in accordance with the InvestEU Regulation and the Investment Guidelines, as specified in this Agreement. In so doing, the Implementing Partner shall apply its rules, policies and procedures as applied to

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<sup>14</sup> <https://www.nrwbank.de/export/galleries/downloads/Rechtliche-Grundlagen/statutes-of-nrwbank.pdf>

its own risk operations, as amended, restated, supplemented or substituted from time to time and best banking practices or best market practices, as applicable, and the appropriate monitoring, control and audit measures set out in this Agreement.

- 3.2 The Implementing Partner shall perform its obligations relating to the EU Guarantee and specifically set forth in this Agreement with the same degree of professional care, efficiency, transparency and diligence, as it applies in relation to the administration of its own risk operations.
- 3.3 [Intentionally omitted]
- 3.4 The Implementing Partner shall implement the EU Guarantee through Operations that conform to the Financial Product.
- 3.5 The Implementing Partner shall apply its rules, policies and procedures, including its NCJ Policy and its AML-CFT Policy to address the requirements in respect of money laundering, terrorism financing, tax avoidance, tax fraud and tax evasion contained in Article 158(2), first sub-paragraph, point (a) of the Financial Regulation and to reflect the prohibition to enter into new or renewed operations with entities incorporated or established in jurisdictions listed under the relevant Union policy on non-cooperative jurisdictions or that are identified as high-risk third countries pursuant to Article 9(2) of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC<sup>15</sup>, as may be amended, as well as the possibility to derogate from this requirement when the action is physically implemented in one of those jurisdictions, contained in Article 158(2), first sub-paragraph, point (b) of the Financial Regulation.
- 3.6 The Implementing Partner shall apply its AML-CFT Policy to address the principles and standards set out in Union law on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. In particular, to address the issue of beneficial ownership information mentioned in Article 158(3) of the Financial Regulation, the Implementing Partner shall make direct funding contingent upon the disclosure to the Implementing Partner of beneficial ownership information in accordance with Directive (EU) 2015/849, or in case of a Final Recipient that is not established in a Member State, in accordance with the principles and standards of Directive (EU) 2015/849.
- 3.7 [Intentionally omitted].
- 3.8 Notwithstanding anything above, the Implementing Partner shall not in any event apply under this Agreement rules and procedures relating to tax standards that are less stringent than the ones it uses for its own risk operations.
- 3.9 The Implementing Partner shall ensure in accordance with its rules, policies and procedures that no funds or economic resources are made available directly or indirectly to, or for the benefit of Restricted Persons.

The Implementing Partner shall implement this obligation through the following measures:

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<sup>15</sup> OJ L 141, 5.6.2015, p. 73.

- (a) in the case of Direct Operations, the Implementing Partner shall screen each Final Recipient before entering into such Operation, in order to assess whether the Final Recipient is a Restricted Person; and
- (b) [intentionally omitted].

In the event the Implementing Partner assesses that a Final Recipient is a Restricted Person, the Implementing Partner shall promptly inform the Commission and the Implementing Partner and the Commission shall consult each other with a view to jointly determining remedial measures in accordance with the applicable legal and contractual frameworks. Without prejudice to Article 42 and Article 46, where remedial measures cannot be agreed, the EU Guarantee shall not cover the Operations with the Final Recipient that is a Restricted Person.

For the avoidance of doubt, the Parties acknowledge that if a Final Recipient becomes a Restricted Person after the date of signature of the relevant Final Recipient Transaction the provisions of the previous subparagraph shall not apply to the EU Guarantee made available to, or for the benefit of, the Restricted Person before its listing.

This Article 3.9 is without prejudice to the exceptions contained in the EU Restrictive Measures.

- 3.10 A Policy Review Dialogue shall take place as further specified in Article 26.
- 3.11 [Intentionally omitted].
- 3.12 The Implementing Partner shall aim to achieve the climate and environment objectives as set out in Article 22.
- 3.13 The Implementing Partner shall perform the sustainability proofing in line with the Sustainability Proofing Guidance. In case of InvestEU Operations that are Framework Operations, the sustainability proofing (if applicable) shall be at the level of the Operation. The summary of such sustainability proofing for Direct Operations shall be published by the Implementing Partner after the Implementing Partner has approved the relevant Operation.
- 3.14 The Implementing Partner shall pursue recoveries, or provide that recoveries are pursued, in accordance with Article 18.
- 3.15 The Implementing Partner shall report on the implementation of the EU Guarantee in accordance with Article 30 and Annexes II, III and IV.
- 3.16 The Implementing Partner shall, as appropriate, propose to project promoters applying for financing, including in particular small-sized projects, that they request the InvestEU Advisory Hub support for their projects, where appropriate, in order to enhance the preparation of their projects and to allow for the assessment of the possibility of bundling projects. Where relevant, the Implementing Partner shall also inform the project promoters of the possibility of listing their projects on the InvestEU Portal.
- 3.17 The Implementing Partner shall inform the Commission without undue delay should any substantive change, which may impact the reliability of the Commission's assessment, be made to the systems, rules or procedures of the Implementing Partner which have been positively assessed in the ex-ante pillar assessment conducted by the Commission in accordance with Article 157(4) of the Financial Regulation.
- 3.18 The Implementing Partner shall address complaints from private investors in relation to Operations falling under the scope of this Agreement in accordance with its own rules, policies and procedures.

#### **Article 4 Financial Contribution**

- 4.1 The Implementing Partner shall progressively provide a Financial Contribution via its Operations such that at the end of the Signature Period it amounts to EUR 100 000 000 This amount is based on the full amount of the EU Guarantee, without the Buffer, provided to the Implementing Partner in accordance with Article 13.2 and has been estimated on the Effective Date in accordance with the methodology that is published on Key Risk Management Documents - InvestEU Wiki - EC Extranet Wiki (europa.eu).
- 4.2 The Financial Contribution, as measured on the basis of the total amount of the Operations reported at the date of their signature minus De-committed or Cancelled Amounts, shall be adjusted as follows:
- (a) if the amount of the EU Guarantee allocated for Operations by the end of the Signature Period is below EUR 100 000 000 the Financial Contribution shall be reduced accordingly; and
  - (b) if the required inputs for the calculation of the Financial Contribution change, the Financial Contribution shall be adjusted accordingly at the end of the Signature Period.

### **Part B – Approval process**

#### **Article 5 Policy check**

- 5.1 The Implementing Partner shall submit a Policy Check Request Form to the Commission for each proposed InvestEU Operation, including Framework Operations, through the InvestEU MIS in order for the Commission to be able to confirm in accordance with Article 23(1) of the InvestEU Regulation whether the proposed InvestEU Operation complies with Union law and policies.
- 5.2 The policy check by the Commission is, as a rule, expected to be concluded within two (2) months from the date of submission of the Policy Check Request Form. The Commission aims at issuing the decisions in a shorter timeframe on a best effort basis.
- 5.3 The Commission may ask additional information or clarification, or require confirmation from the Implementing Partner that certain conditions will be fulfilled or that certain issues related to compliance with EU law or EU policies will be verified before it can issue its decision. The Commission will strive to request such additional information, clarification or confirmation within fifteen (15) Business Days from the date of the submission of the Policy Check Request Form.
- 5.4 Upon completion of the policy check, the Commission issues a favourable or an unfavourable decision, which shall be notified to the Implementing Partner through the InvestEU MIS within one (1) Business Day from the date of such decision.
- 5.5 The Implementing Partner shall submit a request for confirmation of the favourable policy check decision to the Commission in the following cases:
- (a) in case of submission of a Guarantee Request Form more than twelve (12) months after the date of the favourable policy check decision, or

- (b) where, prior to the signature of an Operation, material changes within the meaning of Article 8.5 occur affecting the information previously submitted for policy check, or
- (c) in the case of an increase of a Framework Operation in accordance with Articles 9.8 and 9.9, and, as the case may be, any amendment thereto.

Such request shall be submitted by the Implementing Partner by updating the initially submitted Policy Check Request Form indicating the reason for the update and all the changes compared to the initially submitted information.

Notwithstanding the provisions of Article 5.2, with respect to any submission by the Implementing Partner in accordance with points (a), (b) and (c), the Commission aims at providing its decision within twenty (20) Business Days on a best efforts basis, with due consideration to the need for an expedited response.

- 5.6 All the communications in relation to the policy check shall be made in electronic form using the InvestEU MIS.

### **Article 6 Eligibility Checklist Procedure**

- 6.1 Not applicable.

### **Article 7 Investment Committee**

- 7.1 The Investment Committee established in accordance with Article 24 of the InvestEU Regulation is responsible for examining the use of the EU Guarantee coverage for potential InvestEU Operations proposed to it in line with the InvestEU Regulation, the Investment Guidelines, the Scoreboard, the Sustainability Proofing Guidance, the rules of procedure of the Investment Committee and the IC Secretariat Rules of Procedure and the relevant provisions of this Agreement and approving the support of the EU Guarantee for such InvestEU Operations as the sole decision making body for that purpose.
- 7.2 The decision of the Investment Committee on potential InvestEU Operations is taken on the basis of proposals made by the Implementing Partner providing all the information necessary for the Investment Committee to perform its tasks defined in Article 24(1) of the InvestEU Regulation, consisting of the information set out in Article 8.2 and, as requested, any other document and clarifications referred to in Article 24(4), second subparagraph, of the InvestEU Regulation.

### **Article 8 Submission of guarantee requests to the Investment Committee**

- 8.1 The Investment Committee may only approve the coverage of the EU Guarantee for a potential InvestEU Operation submitted by the Implementing Partner if that potential InvestEU Operation has received a favourable decision by the Commission in the policy check procedure as further specified in Article 5.  
  
For the avoidance of doubt, the approval of the InvestEU Operations by the IP Relevant Governing Body shall occur after the approval by the Investment Committee.
- 8.2 The Implementing Partner shall submit the following information to the Investment Committee in respect of proposed InvestEU Operations:

- (a) a Guarantee Request Form,
- (b) a Scoreboard,
- (c) the Sustainability Proofing Summary, except if a justification is provided why no sustainability proofing is to be carried out or in case of Framework Operations (where for the avoidance of doubt Article 3.13 applies), and
- (d) other information the Implementing Partner considers relevant, if any.

The templates of the Guarantee Request Form, the Scoreboard and the Sustainability Proofing Summary are published on <https://webgate.ec.europa.eu/fpfis/wikis/display/InvestEUProg/Approval+Process>, and may be amended in agreement with the Steering Board.

All information shall be provided in English.

The detailed procedure for submission of potential InvestEU Operations to the Investment Committee is further specified in the rules of procedure of the Investment Committee and the IC Secretariat Rules of Procedure. The Implementing Partner shall submit the information, including the documents and clarifications referred to in Article 7.2, to the IC Secretariat through the InvestEU MIS. In case of an incomplete submission, the IC Secretariat shall notify the Implementing Partner without delay, in accordance with Article 6(3) of the IC Secretariat Rules of Procedure.

- 8.3 Potential InvestEU Operations proposed to the Investment Committee shall have undergone due diligence in accordance with the rules, policies and procedures of the Implementing Partner. Notwithstanding the previous sentence, in case of an InvestEU Operation pertaining to a Framework Operation, the Sub-Projects shall undergo due diligence at the relevant time, but in any case before the approval of the Sub-Project by the IP Relevant Governing Body.
- 8.4 The Investment Committee is entitled to rely on the assessment by the Implementing Partner that the potential InvestEU Operations proposed to it are deemed economically and technically viable, are structured in line with best banking practices or best market practices, as applicable, and comply with the risk management, AML-CFT Policy and NCJ Policy as set by the Implementing Partner in its rules, policies and procedures as amended, restated, supplemented or substituted from time to time. However, it shall not be bound by assessments by the Implementing Partner for the purposes of approving the coverage of the EU Guarantee for potential InvestEU Operations. For the avoidance of doubt, in the case of a potential InvestEU Operation that is a Framework Operation, the assessment referred to in this paragraph shall be made on the Framework Operation on the basis of the information available to the Implementing Partner at that time and by taking into consideration the characteristics of the Financial Product to which the Framework Operation is allocated.
- 8.5 Subject to the provisions of the Investment Guidelines and this Agreement, the benefit of the support of the EU Guarantee shall be determined by reference to the circumstances existing at the date of the Investment Committee's approval and shall not be affected by changes to such circumstances occurring after this date. In the event that, due to a material change in circumstances prior to signature, the Implementing Partner resubmits to the IP Relevant Governing Body which initially approved the InvestEU Operation, a proposal for which the Investment Committee had already approved the EU Guarantee coverage, it shall also resubmit the proposal to the Investment Committee for approval of the EU Guarantee coverage, unless the change relates to any area outside the competence of the Investment Committee. An increase in the requested amount of the EU Guarantee coverage is considered in any case as a material change regardless of whether the InvestEU Operation is re-submitted to the IP Relevant Governing Body.

- 8.6 The Implementing Partner shall accept the decisions by the Commission in the context of the policy check provided for in Article 23(1) of the InvestEU Regulation (as further set out in Article 5) and the Investment Committee in the context of the examination laid down in Article 24 of the InvestEU Regulation as regards the use of the EU Guarantee coverage for the benefit of the proposed InvestEU Operation, without prejudice to the ability of the IP Relevant Governing Body to approve the proposed InvestEU Operation without the EU Guarantee (both in case of a negative or positive decision). The Implementing Partner may enter into discussion with the Commission or the Investment Committee to understand the rationale for a negative decision.
- 8.7 In case of potential Sub-Projects submitted to the Investment Committee in accordance with Article 9.6, Articles 8.2, 8.3, 8.4 and 8.5 and the provisions related to the Investment Committee in Article 8.6 apply to them in addition to the Framework Operations under which they belong.
- 8.8 At the latest ten (10) Business Days after the date of the signature of an Operation, and in case of a Framework Operation after the date of signature of the first Sub-Project, the Implementing Partner shall submit a public version of the Scoreboard to the IC Secretariat for publication. Such version shall not contain any commercially sensitive or confidential information.
- 8.9 The members of the Investment Committee shall receive a copy of this Agreement, and any amendments thereof, save that commercially sensitive information shall be redacted unless otherwise agreed between the Parties, for the purposes of performing their functions.

#### **Article 9 Framework Operations**

- 9.1 The Implementing Partner may submit Framework Operations both to the Commission for the purpose of the policy check and to the Investment Committee for approval where such option is set out in the relevant Product Schedule.
- 9.2 Subject to Article 9.6, in the case of Framework Operations, the granting of the EU Guarantee coverage comprises all underlying Sub-Projects.
- 9.3 At the stage of the policy check under Article 5, the Commission shall verify that the Framework Operation respects the following requirements:
- (a) a Framework Operation shall satisfy all of the following criteria:
    - (i) it shall cover Sub-Projects that fall under a single Financial Product;
    - (ii) [intentionally omitted];
    - (iii) [intentionally omitted]
  - (b) the amounts requested under a single Framework Operation and underlying Sub-Projects shall not exceed EUR 120 000 000 for the Framework Operation and EUR 30 000 000 for each underlying Sub-Project included in such Framework Operation.
- 9.4 Potential InvestEU Operations that do not comply with the requirements set out in Article 9.3 cannot be considered as Sub-Projects of a Framework Operation and shall be submitted for the policy check and to the Investment Committee separately.

- 9.5 When submitting a Framework Operation for approval by the Investment Committee, the Implementing Partner shall identify to the extent possible its potential Sub-Projects, including via pipeline expectations or examples of the envisaged financing forms.
- 9.6 In case the Investment Committee decides to examine separately one or more potential Sub-Project(s) with a principal amount equal to or above EUR 3 000 000, in accordance with Article 24(6) of the InvestEU Regulation, the Implementing Partner shall separately submit the relevant Sub-Project(s) for Investment Committee approval in order to request coverage of the EU Guarantee for such Sub-Project(s) under that Framework Operation. The favourable policy check decision regarding the Framework Operation in question remains applicable to the separately submitted Sub-Projects, unless Article 5.5 applies.
- 9.7 Without taking into account any increases in accordance with Article 17.2, the aggregate amount of Sub-Projects signed under a Framework Operation shall not exceed the amount of such Framework Operation as approved by the Investment Committee. If a Sub-Project is cancelled, whether in full or in part, after its approval by the Implementing Partner, it can be replaced by one or more Sub-Projects up to the total amount of the relevant Framework Operation approved by the Investment Committee.
- 9.8 The Implementing Partner may request the Investment Committee to increase the amount of an approved Framework Operation provided that (i) this increase is requested within one (1) calendar year following the approval date of such Framework Operation, (ii) the amount of the increase requested does not exceed 50 % of the amount initially approved by the Investment Committee and the amounts set out in Article 9.3(b) and (iii) all the conditions of the submission remain unchanged. Such request can be presented one time for an approved Framework Operation.
- 9.9 The approval process of an increase of a Framework Operation and, as the case may be, any amendment thereto, shall be based on a policy check in accordance with Article 5.5(c) before the submission of such request to the Investment Committee for approval following the provisions of Article 8. For the avoidance of doubt, the increased amount of a Framework Operation shall not be included in the limits set out in Article 9.3(b).
- 9.10 For the avoidance of doubt, Operations corresponding to Sub-Projects under an approved Framework Operation will be subject to the IP Relevant Governing Body's approval as provided in Article 2.3.
- 9.11 All relevant reporting and visibility requirements as defined in Article 30, Article 40 and Article 41 shall apply at the Sub-Project level irrespective of their approval as part of a Framework Operation.

**Article 10**  
**Commission non-objection**

- 10.1 Not applicable.

**Article 11**  
**[Intentionally omitted]**

## Part C – EU Guarantee

### Article 12

#### General principles of the EU Guarantee

- 12.1 The EU Guarantee shall be used in accordance with the principles of sound financial management, transparency, proportionality, non-discrimination, equal treatment and subsidiarity and in accordance with its objectives and duration, as specified in this Agreement. The EU Guarantee shall not be aimed at replacing potential support and investment from other public and private sources through satisfying the additionality criteria referred to in Article 24.1.
- 12.2 In the implementation of the Financial Product, the EU Guarantee shall not generate undue advantages to third parties, in particular in the form of undue dividends or profits to third parties. In particular, any preferential treatment of investors providing co-investment or risk-sharing shall be justified, taking into account the riskiness of the Operation and limited to the minimum necessary to ensure their investment or risk-sharing, as set out in Annex I.
- 12.3 Financial support under the EU Guarantee shall not be granted to any Final Recipient that is in one of the situations referred to in Article 28.1.
- 12.4 [Intentionally omitted]

### Article 13

#### Scope and amount of the EU Guarantee

- 13.1 In accordance with the terms of this Agreement, the EU irrevocably, unconditionally and on demand guarantees as a primary obligor and not merely as a surety to the Implementing Partner the full and punctual performance of the Guaranteed Sums.
- 13.2 The amount of the EU Guarantee provided to the Implementing Partner consists of EUR 119 000 000 provided in accordance with Article 13(5) of the InvestEU Regulation out of which an amount of EUR 19 000 000 shall be used only for the purposes of calls related to items under Article 13.4(b) and Article 13.4(d) (the “**Buffer**”).
- The Buffer shall be established progressively up to EUR 19 000 000, whereby with the inclusion of each Operation into the Portfolio by the Implementing Partner an amount equal to 19% of the EU Investment in that Operation shall be allocated to the Buffer.
- 13.3 The EU shall pay to the Implementing Partner any and all Guaranteed Sums, subject to Article 13.5.
- 13.4 The EU Guarantee may be called with respect to any and all of the following amounts (“**Guaranteed Sums**”):
- (a) any EU Investment Shortfall Amount (up to the EU Investments Outstanding Amount as at the Equity Operation Termination Date);
  - (b) the Funding Costs;
  - (c) the Equity Portfolio Final Call Amounts;
  - (d) the Administrative Fees referred to in Article 5 of Annex I.

- 13.5 The aggregate amount up to which the EU Guarantee may be called with respect to the Guaranteed Sums shall not exceed, at any point of time, the amount of the EU Guarantee set out in Article 13.2 (“**Global Cap**”). The called amount of the EU Guarantee in each Claims Form shall not exceed the Available Global Cap at the time of its submission.
- 13.6 The EU shall have no further exposure or liability to the Implementing Partner beyond the Global Cap.
- 13.7 After the end of the Signature Period, any amount of the EU Guarantee that is not allocated to Operations shall be released and the Global Cap and the Available Global Cap shall be reduced accordingly.

**Article 14**  
**InvestEU Blending Arrangements involving repayable support from one or more EU Sectorial Programme**

- 14.1 Not applicable.

**Article 15**  
**Calls of the EU Guarantee**

- 15.1 The EU Guarantee may be called in respect of a Guaranteed Sum.
- 15.2 The Implementing Partner may decide not to call the EU Guarantee immediately or at all, in accordance with its rules, policies and procedures, provided that calls on the EU Guarantee may only be made until twelve (12) months after the relevant Equity Operation Termination Date. For the avoidance of doubt, no calls on the EU Guarantee can be made after 30 September 2047.
- 15.3 The Parties agree that neither the obligations of the EU under the EU Guarantee, nor the rights, powers and remedies of the Implementing Partner with respect to the EU Guarantee or conferred upon it by law shall be discharged, impaired or otherwise affected by the winding-up, dissolution, administration or reorganisation of the underlying obligor or any other person under any applicable law or any change in the status, function, control or ownership of the underlying obligor or by any obligations of the underlying obligor becoming illegal or unenforceable or ineffective in any respect or by any amendment or variation to any document to which the underlying obligor is a party or by any other act, omission, matter or event which would, but for this Article, reduce, release or prejudice any of the EU’s obligations under the Agreement, except as set out in this Agreement.

**Article 16**  
**Terms of payments under the Agreement**

- 16.1 The Implementing Partner shall request the payment from the Commission on a semi-annual basis, by submitting the Claims Form through the InvestEU MIS partially in an unstructured form (i.e. the cover letter) and partially in a structured form (i.e. Appendix 1 of Annex V – Claims Form). The Claims Form shall be submitted (i) within the period commencing on the 60<sup>th</sup> calendar day and ending on the 70<sup>th</sup> calendar day following the end of the first semester of each year, and (ii) within the period commencing on the 40<sup>th</sup> calendar day and ending on the 50<sup>th</sup> calendar day following the end of the second semester of each year, in each case with respect to such reporting period.

- 16.2 Payment by the Commission shall be made no later than thirty (30) calendar days of the date of the receipt of the Claims Form. Amounts to be paid to the Implementing Partner under this Agreement shall be transferred to the bank account of the Implementing Partner indicated in the business partner form in Annex VII.
- 16.3 The Implementing Partner shall notify the Commission of an amount payable to the Commission on a semi-annual basis, by submitting the Claims Form through the InvestEU MIS in the form set out in Article 16.1. The notification shall be submitted (i) within the period commencing on the 60<sup>th</sup> calendar day and ending on the 70<sup>th</sup> calendar day following the end of the first semester of each year, and (ii) within the period commencing on the 40<sup>th</sup> calendar day and ending on the 50<sup>th</sup> calendar day following the end of the second semester of each year, in each case with respect to such reporting period.
- 16.4 Payment to the Commission shall be made no later than thirty (30) calendar days following receipt of the debit note addressed to the Implementing Partner issued by the Commission after receipt of the Claims Form. Amounts to be paid to the Commission under this Agreement shall be transferred to the bank account of the Commission indicated in Article 16.7.
- 16.5 The payments under this Article 16 shall be requested or notified in euro in each Claims Form. In accordance with Article 99(2)(b) and 116(5) of the Financial Regulation, the interest rate for amounts not paid within thirty (30) calendar days following the receipt of the Claims Form or the debit note, as applicable, shall be the rate applied by the ECB to its principal refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first calendar day of the month in which the deadline falls, increased by 3.5 percentage points.
- 16.6 Where the Implementing Partner makes a Recovery in whole or in part after the Implementing Partner has called the EU Guarantee, but before the EU has made the corresponding payment to the Implementing Partner, the Implementing Partner shall take into account the Recovery in the following Claims Form in accordance with this Agreement (including Article 10 of Annex I).
- 16.7 The bank accounts of the Commission and the Implementing Partner shall be the following, subject to changes notified in accordance with Article 44:
- (a) for the Commission:
- Account holder: EUROPEAN COMMISSION, Rue de la Loi 200, 1049 Brussels, Belgium
- Account name: EUROPEAN COMMISSION
- IBAN: BE30 3751 1375 4811
- SWIFT: BBRUBEBB
- Bank: ING BELGIQUE
- (b) for the Implementing Partner:
- as indicated in the business partner form in Annex VII.
- 16.8 [Intentionally omitted]

**Article 17**  
**Restructuring and other actions**

- 17.1 In its management of Operations, the Implementing Partner shall, subject to its obligations under this Agreement and in the best interest of the Union, including its obligation to follow its rules, policies and procedures, have the right to do any of the following:
- (a) to grant to any Final Recipient a waiver of any obligation or an extension of time to perform that obligation;
  - (b) to enter into a Restructuring, including to agree any amendment to any legal documentation (including to sell or assign any exposure to a third party, to reduce or write off any amount outstanding or, subject to Article 17.2, to increase the amount of any loan or other investment) as part of a Restructuring; and
  - (c) [intentionally omitted]
  - (d) to appoint external consultants and advisors in the context of a Restructuring (both before and after a call under the EU Guarantee).
- 17.2 In line with the Implementing Partner's rules, policies and procedures and subject to required approvals, the Restructuring of an Operation may require an increase in the amount of the Operation as a means to reduce potential losses or increase potential recoveries for the Union budget. In such case, the Implementing Partner shall notify the increase and its rationale in the Operational Report or separately.
- 17.3 Where the Implementing Partner takes any action under Article 17.1:
- (a) the EU Guarantee shall continue in full force and effect and shall not be reduced or adversely affected in any way as a result of such actions;
  - (b) the Implementing Partner shall not be liable to the EU for any losses, damage or injury sustained by the EU in respect of such actions unless as a result of the wilful misconduct or gross negligence of the Implementing Partner.

**Article 18**  
**Subrogation and recoveries**

- 18.1 Where the EU makes a payment to the Implementing Partner upon a call on the EU Guarantee, either (i) the Union shall be subrogated into the relevant rights (including in respect of any security), to the extent they continue to exist and to the extent permitted by applicable law, of the Implementing Partner relating to any of its Operations or (ii) the Implementing Partner shall be obliged to allocate the Recoveries received from the Final Recipients in a waterfall as further set out in Article 10 of Annex I.
- 18.2 The Implementing Partner shall, in the interests of the Union, pursue the recovery of claims for the amounts referred to in Article 18.1 (including entering into Restructurings) in accordance with the Implementing Partner's rules, policies and procedures as applied to its own risk operations, as amended, restated, supplemented or substituted from time to time, with the same degree of professional care, efficiency, transparency and diligence, as it applies in relation to the administration of its own risk operations.
- 18.3 Recovery proceedings shall be undertaken by the Implementing Partner for as long as possible recovery proceedings are likely to result in recovery of sums in excess of the costs of such recovery and with the same degree of professional care, efficiency, transparency and diligence applied in recovery proceedings initiated in respect of any sums to be recovered in relation to operations financed by the Implementing Partner without an EU

Guarantee. The Implementing Partner shall reimburse the EU from the sums recovered in accordance with Article 10 Article 10 of Annex I. Any recovery costs shall initially be borne by the Implementing Partner and shall be subsequently deducted from the related gross recoveries received by the Implementing Partner, prior to any allocation of the Recoveries being made in accordance with Article 10 Article 10 of Annex I. In addition, when the amount of the gross recoveries received by the Implementing Partner is insufficient to finance all recovery costs in relation to an Operation, the Implementing Partner shall have the right to offset the amount of the shortfall in recovery costs attributable to the EU against any Recoveries that are payable to the Commission pursuant to Article 10.3(b) of Annex I.

18.4 [intentionally omitted]

#### **Article 19**

#### **Transitional Operations and certain other InvestEU Operations**

19.1 Not applicable.

### **Part D – Policy Windows, Financial Products, Eligibility, Additionality**

#### **Article 20**

#### **Policy Windows**

20.1 The applicable Policy Windows and the per Policy Window split of the EU Guarantee is as set out below:

<b>Policy Window</b>	<b>EU Guarantee (EUR)</b>
Research, Innovation and Digitisation Window (RIDW)	100 000 000
Buffer (RIDW)	19 000 000
<b>Total</b>	<b>119 000 000</b>

#### **Article 21**

#### **Financial Products**

21.1 The Financial Product under which Operations are originated by the Implementing Partner is described in the Product Schedule.

21.2 The Financial Product shall be allocated to one or more Policy Window(s) as set out in the Product Schedule.

21.3 The allocation of the EU Guarantee, without the Buffer, to Financial Product is as set out below.

<b>Financial Product</b>	<b>EU Guarantee (EUR)</b>
NRW Bank RIDW Direct Equity Financial Product	100 000 000
<b>Total</b>	<b>100 000 000</b>

- 21.4 A potential InvestEU Operation shall be allocated to the Financial Product to which it conforms. In case of a potential InvestEU Operation meeting the criteria of more than one Financial Product, it shall be allocated to the Financial Product under which its main objective falls. The Implementing Partner shall propose the Financial Product to which the potential InvestEU Operation shall be allocated.
- 21.5 Any Financial Product shall be implemented through more than one InvestEU Operation.
- 21.6 The Implementing Partner shall suspend the signature of or inclusion into a Portfolio of an Operation if, as a result of such additional signature or inclusion, the aggregate amount of the EU Guarantee allocated for Operations would exceed the respective EU Guarantee amount allocated per Financial Product, for the avoidance of doubt, (each) calculated without the Buffer.

## **Article 22 Policy Targets**

- 22.1 In the implementation of the EU Guarantee, the Implementing Partner shall pursue the policy objectives set out in the Product Schedule.
- 22.2 The Implementing Partner shall aim to achieve that at least:
- (a) 30% of the aggregate signed amount of Operations under all Policy Windows supports climate objectives (“**Climate Contribution**”)
  - (b) [intentionally omitted].

The amount of the Climate Contribution and the C&E Contribution will be determined using InvestEU markers as described in the Climate and Environmental Tracking Guidance.

## **Article 23 General principles regarding eligibility criteria**

- 23.1 The main part of this Agreement, Annex I and the relevant Product Schedule shall be read together for determining the applicable eligibility criteria for InvestEU Operations, Operations, Final Recipient Transactions, and Final Recipients, as applicable. The eligibility criteria of both the Operation and the Final Recipient Transaction shall be applicable to Direct Operations.
- 23.2 The Implementing Partner shall only present potential InvestEU Operations to the Investment Committee which it, in good faith and following appropriate due diligence or assessment, believes satisfy the eligibility criteria set out in Article 24, Annex I and the relevant Product Schedule. However, and without prejudice to Articles 8.4 and 8.5, the final determination of whether a proposed InvestEU Operation satisfies these eligibility criteria for the purposes of benefitting from the coverage under the EU Guarantee shall be made by the Investment Committee at the date of its approval.
- 23.3 The eligibility criteria referred to in Article 23.2 shall be met at the date of submission of the document(s) relating to the InvestEU Operation to the Investment Committee and also at the

date of approval of the Operation by the Implementing Partner. These eligibility criteria shall not be continuing.

23.4 [intentionally omitted]

23.5 The process regarding Non-eligible Operations and Operations non-compliant with the exclusion and investment criteria is set out in Article 8 of Annex I.

#### **Article 24**

##### **Additionality, leverage and multiplier requirement and eligibility criteria**

24.1 InvestEU Operations shall satisfy the criteria of market failures, suboptimal investment situations and additionality as further defined in Section A of Annex V to the InvestEU Regulation.

24.2 In accordance with Article 14(1)(a) of the InvestEU Regulation and Article 212(2)(d) of the Financial Regulation, the Implementing Partner will contribute to the mobilization of EUR 372 000 000 000 of additional investment by all implementing partners as per recital 40 of the InvestEU Regulation, through its Operations. For the purposes of reporting the contribution to the above mobilization, the Implementing Partner shall report on the InvestEU Multiplier Effect, Operations Multiplier Effect, InvestEU Leverage Effect and Operations Leverage Effect. In addition, the Implementing Partner shall report on the Disbursement Multiplier Effect and the Disbursement Leverage Effect.

24.3 An Operation shall comply with each of the following eligibility criteria:

- (a) it shall be attributable to an InvestEU Operation having received a favourable decision in the policy check procedure from the Commission and approved by the Investment Committee during the Approval Period;
- (b) it shall be signed during the Signature Period;
- (c) in case of Direct Operations, the signed principal amount of such Operation, or the sum of the signed principal amount of such Operation and the signed principal amount of any other direct operation that is supported by the InvestEU Fund and entered into by any other implementing partner under the InvestEU Fund for the same project shall not exceed 50% of the total project investment cost, whereby regarding the Final Recipients' operations with other implementing partners the Implementing Partner may rely on a representation by the Final Recipient;
- (d) [intentionally omitted];
- (e) it shall not support activities referred to in Section B of Annex V of the InvestEU Regulation;
- (f) it shall not be in the form of a refinancing (such as replacing existing loan agreements or other forms of financial support for projects which have already partially or fully materialised), except in specific exceptional and well justified circumstances, only if and as further set out in Annex I.

24.4 [In addition to the eligibility criteria set out in Article 24.3, an Operation concerning:

- (a) for defence: investments in defence technologies and products identified in the annual work programme for the European Defence Fund;

- (b) for space: investments in atomic clocks, strategic launchers and space products defined in a list decided by the Commission on an annual basis and communicated to the Steering Board;
- (c) for cybersecurity: investments focusing solely on developing and deploying cybersecurity tools and solutions, including when these are part of deploying or upgrading digital networks and data infrastructure;
- (d) except:
  - (i) in case of a Direct Operation with a signed principal amount below EUR 10 000 000; or
  - (ii) [intentionally omitted]
  - (iii) if the Final Recipient demonstrates (which may be in the form of a representation in the relevant agreement) that it is a legal entity for which the Member State in which it is established has approved a guarantee in line with the principles concerning eligible entities set out in the relevant provisions of the European Defence Fund Regulation<sup>16</sup> or the Commission waiver granted in accordance with principles concerning eligible entities set out in the relevant provisions of the Space Regulation<sup>17</sup>;

shall comply with the following eligibility criteria:

- (x) Final Recipients of Operations falling under Articles 24.4(a) to 24.4(c) shall not be controlled by a Third Country or a Third Country Entity and shall have their Executive Management in the Union;
- (y) suppliers and subcontractors of Final Recipients of Operations falling under Article 24.4(a) shall not be controlled by a Third Country or a Third Country Entity and shall have their Executive Management in the Union;
- (z) in case of Operations concerning the field of 5G connectivity falling under Articles 24.4(a) to 24.4(c), the Final Recipients as well as their suppliers shall comply with the measures and risk mitigation plans pursuant to the 5G Cybersecurity Toolbox. For this purpose, suppliers of Final Recipients notably include vendors of telecom equipment and manufactures and other third-party suppliers, such as cloud infrastructure providers, managed service providers, systems integrators, security and maintenance contractors and transmission equipment manufacturers;

whereby control means the ability to exercise a decisive influence on a legal entity directly or indirectly through one or more intermediate legal entities.]

24.5 A Final Recipient Transaction shall comply with the following eligibility criteria:

- (a) it shall be denominated in euro;
- (b) the signed principal amount of such Final Recipient Transaction or the sum of the signed principal amount of the Final Recipient Transaction and the signed principal

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<sup>16</sup> Regulation (EU) 2021/697 of the European Parliament and of the Council of 29 April 2021 establishing the European Defence Fund and repealing Regulation (EU) 2018/1092 (OJ L 170, 12.5.2021, p. 149).

<sup>17</sup> Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 2021 establishing the Union Space Programme and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013 and (EU) No 377/2014 and Decision No 541/2014/EU (OJ L 170, 12.5.2021, p. 69).

amount of another operation that is supported by the InvestEU Fund or other Union programmes for the same project shall not exceed the total project investment cost, whereby regarding the Final Recipients' operations with other implementing partners the Implementing Partner may rely on a representation or undertaking by the Final Recipient;

- (c) it shall finance a project or operation that is situated in a Member State, in an OCT or that constitutes a Cross-border Project, whereby the application of this criterion may be further specified in Annex I.

24.6 A Final Recipient shall comply with the following eligibility criteria:

- (a) it shall be deemed economically viable according to internationally accepted standards; whereby (i) the applicable standards may differ in light of the typology or features of the Final Recipient, and (ii) in case non-grant financing is provided to the Final Recipient by another entity than the Implementing Partner for the same purpose, the criterion shall be deemed to be met; and

- (b) it shall not be in one of the situations referred to in Article 28.1.

24.7 The Implementing Partner undertakes not to include the same operation it signs under the RRF or under another Union programme as an Operation in a Portfolio.

## **Article 25**

### **Undertakings of the Implementing Partner and Final Recipients**

25.1 The Implementing Partner shall ensure:

- (a) not to include the same Final Recipient Transaction in more than one portfolio supported by the InvestEU Fund or by any other Union programme.

- (b) [intentionally omitted]

25.2 The Implementing Partner shall ensure that the Final Recipient shall undertake:

- (a) not to use a grant from a Union programme to reimburse the relevant Final Recipient Transaction;

- (b) not to use the Final Recipient Transaction to pre-finance a grant from a Union programme;

- (c) for Operations falling under Article 24.4(a) to 24.4(c), within five (5) years after the date of the final disbursement under the relevant Operation, not to exclusively license or transfer intellectual property rights to related critical technologies and technologies instrumental to safeguarding the essential security interest of the Union and its Member States directly resulting from such Operations to Third Countries or Third-Country Entities, unless approved by the Member State in which the Final Recipient is established; and

- (d) to maintain and be able to produce all the documentation related to the implementation of the EU Guarantee for a period of five (5) years following the expiry or termination of the agreement concluded between the Implementing Partner or the Financial (Sub-)Intermediary, as applicable, and the Final Recipient. By derogation from the previous sentence, the retention period shall be three (3) years where the amount of the Final Recipient Transaction was lower than or equal to EUR 60 000.

**Article 26**  
**Policy Review Dialogue**

- 26.1 The Commission and the Implementing Partner shall organise regular meetings (the “**Policy Review Dialogues**”) to discuss the implementation of the Financial Product.
- 26.2 The Policy Review Dialogue is a consultative forum aimed to: (i) discuss the pipeline of operations under a specific Financial Product, where a list of applicants at the due diligence stage will be provided based on the Implementing Partner’s assessment at earlier stages, subject to confidentiality requirements; (ii) review the performance of the Financial Product and their implementation status (including geographical coverage); (iii) provide guidance on the interpretation of eligibility criteria. Further topics may be discussed at the request of the Commission or the Implementing Partner.
- 26.3 The Implementing Partner shall use reasonable efforts to take into account the views of the Commission expressed in the Policy Review Dialogue.
- 26.4 Starting from the year 2026 and until the end of 2027, a Policy Review Dialogue shall take place once per year, on the date agreed by the Commission and the Implementing Partner, unless the Commission considers such a Policy Review Dialogue not necessary. It may consist of one or more meetings covering all Policy Windows. The meetings can take place in physical or hybrid form or remotely, as agreed by the Commission and the Implementing Partner. If during a Policy Review Dialogue any substantial issues arise, the Commission may request additional ad hoc meetings with the Implementing Partner to discuss those issues.
- 26.5 The Commission and the Implementing Partner shall agree on the agenda of the meeting. The agreed agenda as well as any documents to be discussed during the Policy Review Dialogue meetings shall be distributed to the Commission and the Implementing Partner at least ten (10) Business Days in advance.
- 26.6 The minutes from each of the Policy Review Dialogue meeting shall be prepared by the Implementing Partner and shared with the Commission, within one (1) month following the meeting concerned. The minutes will be adopted swiftly by consensus of the Commission and the Implementing Partner by exchange of emails or other means agreed in the meeting concerned.

**Part E – Final Recipients**

**Article 27**  
**Selection of Financial Intermediaries**

- 27.1 Not applicable.

**Article 28**  
**Exclusion of Final Recipients**

- 28.1 Final Recipients that are in one of the situations below shall not be selected:
- (a) they are bankrupt, are subject to insolvency, are being wound up, are having their affairs administered by a liquidator or by the courts, in this context are in an arrangement with creditors, are having their business activities suspended or a

standstill (or equivalent) agreement has been signed with creditors and validated by the competent court when required by the applicable law, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

- (b) in the past five (5) years, they have been the subject of a final judgment or final administrative decision for being in breach of their obligations relating to the payment of taxes or social security contributions in accordance with the applicable law and where such obligations remain unpaid unless a binding arrangement has been established for payment thereof;
- (c) in the past five (5) years, they or persons having powers of representation, decision-making or control over them have been convicted by a final judgement or a final administrative decision for grave professional misconduct, where such conduct denotes wrongful intent or gross negligence, which would affect their ability to implement the Operation or Final Recipient Transaction, as applicable, and which is for one of the following reasons:
  - (i) negligently providing misleading information that may have a material influence or fraudulently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of eligibility or selection criteria or in the performance of a contract or an agreement;
  - (ii) entering into agreements with other persons or entities aimed at distorting competition;
  - (iii) attempting to unduly influence the decision-making process of the contracting authority during the relevant award procedure (as this term is defined in the Financial Regulation);
  - (iv) attempting to obtain confidential information that may confer upon it undue advantages in the relevant award procedure (as this term is defined in the Financial Regulation);
- (d) in the past five (5) years, they or persons having powers of representation, decision-making or control over them have been the subject of a final judgment for:
  - (i) fraud;
  - (ii) corruption;
  - (iii) participation in a criminal organisation;
  - (iv) money laundering or terrorist financing;
  - (v) terrorist offences or offences linked to terrorist activities, or inciting, aiding, abetting or attempting to commit such offences;
  - (vi) child labour and other forms of trafficking in human beings;
- (e) they or persons having powers of representation, decision-making or control over them are subject to a decision on exclusion contained in the published early detection and exclusion system database referred to in Article 39;

provided that notwithstanding the above and without prejudice to Article 39.1, the Implementing Partner may decide not to exclude a Final Recipient where the Final Recipient can provide evidence that remedial measures have been adopted to demonstrate its reliability despite the existence of a ground for exclusion, or where it is indispensable to ensure the continuity of the service, for a limited duration and pending the adoption of

remedial measures, or where an exclusion would be disproportionate taking into account the circumstances.

- 28.2 If the Implementing Partner identifies that a Final Recipient it is considering for selection to implement part of the EU Guarantee or a person having powers of representation, decision-making or control over them has been, in the past five (5) years, subject to a final judgment or administrative decision by a national court or authority that it was created with the intent to illegally circumvent fiscal, social or any other legal obligations in the jurisdiction of its registered office, central administration or principal place of business, the Implementing Partner shall assess whether the entity has the resources, capability, creditworthiness and integrity to carry out the tasks and perform the obligations foreseen under the relevant agreements.
- 28.3 In case of suspected or reported misrepresentation by a Final Recipient, of its situation or qualifications and to the extent that such suspected or reported misrepresentation falls within the scope of OLAF competences referred to in Article 31.9, the Implementing Partner shall inform OLAF in accordance with the relevant provisions of Article 31.6.
- 28.4 To protect against any Operations being misused for illegal purposes, including money laundering, terrorism financing, tax fraud, and tax evasion, the Implementing Partner shall require appropriate contractual arrangements with their Final Recipients and/or other appropriate means.

#### **Article 29** **Agreements with Financial Intermediaries**

- 29.1 Not applicable.

### **Part F – Reporting**

#### **Article 30** **Operational, financial, risk and complementary reporting**

- 30.1 The Implementing Partner shall keep records related to InvestEU Operations in its database in accordance with its rules, policies and procedures that clearly and transparently identify them.
- 30.2 The Implementing Partner shall submit an annual Operational Report to the Commission on InvestEU Operations in accordance with Annex II.
- 30.3 The Implementing Partner shall report on the Key Performance Indicators and Key Monitoring Indicators in accordance with Annex II.
- 30.4 The Implementing Partner shall submit a Progress Report to the Commission, as further specified in Annex II.
- 30.5 The Operational Report and Progress Report shall be submitted based on data and information received from Final Recipients, Financial Sub-intermediaries, Financial Intermediaries and others, as appropriate. The Implementing Partner shall perform their customary verifications of any operational data and information received in line with their rules, policies and procedures.
- 30.6 The Implementing Partner shall provide the Commission with financial reporting on InvestEU Operations in accordance with Annex III.

- 30.7 The Implementing Partner shall provide the Commission with Risk Report in accordance with Annex IV.
- 30.8 [intentionally omitted]
- 30.9 The Implementing Partner shall include semi-annually in the Claims Form a forecast of cash flows in relation to the EU Guarantee at the level of each Portfolio for the next twelve (12) months, substantially in the form of Appendix 2 to Annex V. The cash flow forecast may be based on information included in the Operational Report and Risk Report from the previous reporting period. The Commission acknowledges and accepts that (i) cash flow forecast is based on projections, forecasts, estimates, beliefs and similar information, which are subjective and forward looking statements, not historical facts, (ii) cash flow forecasts are indicative and provided for illustrative purposes only, and are not intended to serve as, and must not be relied upon by the Commission as an assurance, a prediction or a definitive statement of fact or probability, and (iii) the actual claims on the EU Guarantee may be materially different from the cash flow forecast.
- 30.10 The Implementing Partner shall support the Commission in the preparation of the annual accounts and reports to the European Parliament, the Council and the Court of Auditors, that are required by the InvestEU Regulation or the Financial Regulation and, upon request, provide to the Commission additional information in its possession or reasonably available to it that is necessary to fulfil the Commission's obligations in relation to the InvestEU Regulation or the Financial Regulation, including obligations regarding the management of the Common Provisioning Fund and in relation to the EU annual accounts.
- Reports to be submitted to the Commission shall be expressed in euro and in addition, to the extent required, in the relevant currencies as set out in Annexes II, III and IV. These reports may be drawn from financial statements or reports denominated in other currencies. Unless otherwise set out in the relevant Annex, the amounts denominated in a currency other than euro, shall be converted into euro at the ECB Exchange Rate as of the last day of the relevant reporting period (for stock or outstanding amounts) or at the applicable ECB Exchange Rate as of the date of the relevant event (for example approvals, signatures, disbursements).
- The reports shall be submitted to the Commission in English.
- 30.11 In addition, once a year from 2026 until 2028, the Implementing Partner may provide the Commission information on barriers to investment encountered when carrying out Operations.
- 30.12 The Parties shall endeavour to agree appropriate and reasonable modifications to the reporting provisions under this Agreement during the implementation of the InvestEU Fund should the Parties, the European Parliament, the European Court of Auditors or other controlling body so require and to promote close collaboration and exchange of information between their officials.

## Part G – Controls, Audit and Evaluations

### Article 31 Controls and monitoring

- 31.1 The Implementing Partner shall ensure the functioning of an effective and efficient Internal Control system throughout the duration of this Agreement with regard to the implementation of this Agreement.
- 31.2 The Implementing Partner shall monitor the implementation of Operations by means of the reporting and/or financial statements provided by the Final Recipients. Annex VI sets out specific monitoring and controls to be carried out by the Implementing Partner.
- 31.3 The Implementing Partner shall carry out *ex ante* and *ex post* controls on the Operations in accordance with its rules, policies and procedures and this Agreement, including where appropriate, on-the-spot checks on representative and/or risk-based samples of transactions, to ensure that an Operation is effectively and correctly implemented, and in order, *inter alia*, to prevent and correct Irregularities and fraud. When negotiating contractual documentation in relation to the above, the Implementing Partner shall take into account the nature of the Financial Product under which the Operations are implemented. The Commission may accompany the Implementing Partner to on-the-spot checks upon the Commission's request or at the Implementing Partner's request.
- 31.4 The Implementing Partner shall include in its reporting, as of the end of each year, a summary of the final audit reports and controls carried out as specified in Annex III.
- 31.5 Agreements entered into by the Implementing Partner which pertain to Operations shall expressly entitle the European Court of Auditors, the Commission, including OLAF and EPPO, as applicable: (i) to receive access to all relevant documentation and information relating to Operations and/or to visit the sites, installations or works financed by the Operations; and (ii) to conduct such on-the-spot audits and checks as they may wish.
- 31.6 The Implementing Partner shall without delay notify OLAF and provide it with the necessary information when, at any stage of preparation, implementation or closure of InvestEU Operations and Operations, it has grounds to suspect that there is a potential case of fraud, corruption or other illegal activity that may affect the financial interests of the EU. The Implementing Partner, in close cooperation with OLAF, shall take appropriate precautionary measures, including measures for the safeguarding of evidence. In the event of Irregularities in relation to any InvestEU Operations and Operations, the Implementing Partner shall inform the Commission, without delay and undertake all necessary actions including legal proceedings, to recover any amounts due.
- 31.7 The monitoring of the implementation by the Commission shall be intended to enable the Commission to assess (i) whether the Internal Control system set up by the Implementing Partner for the implementation of this Agreement is efficient and effective; (ii) whether the InvestEU Fund support has been used in compliance with this Agreement; and (iii) the progress towards the achievement of policy objectives reflected in the relevant output and result indicators.
- 31.8 The Commission may carry out controls and monitoring on the implementation of the EU Guarantee by means of financial statements provided by the Implementing Partner, and may, where appropriate, perform on-the-spot checks on the Final Recipients on representative and/or risk-based samples of transactions. The Implementing Partner shall contribute to any such controls and monitoring by the Commission by providing all relevant

information and documentation related to the implementation of this Agreement reasonably requested by the Commission.

- 31.9 OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council<sup>18</sup>, Council Regulation (Euratom, EC) No 2185/96<sup>19</sup> and Council Regulation (EC, Euratom) No 2988/95<sup>20</sup>, as may be amended, supplemented or substituted from time to time, in order to protect the financial interests of the EU, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the EU in connection with any InvestEU Operation or Operation.
- 31.10 Where such illegal activities are proven, the Implementing Partner shall take appropriate recovery or other action (taking into account the nature of the Financial Product under which the Operation in question is implemented) in relation to the relevant Operation in accordance with its rules, policies and procedures.
- 31.11 OLAF shall as soon as possible notify the Implementing Partner of the opening of such investigations, unless it considers that this information is such as to prejudice the legitimate interests of the person concerned and the effectiveness of the investigation and of the action to be taken subsequent thereto, or any confidentiality requirements.
- 31.12 In addition, in case of criminal conduct in a Member State participating in the enhanced cooperation, in which EPPO could exercise its competence, the Implementing Partner shall without undue delay report to EPPO, in accordance with the applicable provisions of Regulation (EU) 2017/1939.
- 31.13 EPPO may carry out investigations and prosecutions pursuant to Regulation (EU) 2017/1939, as may be amended, supplemented or substituted from time to time, in order to protect the financial interests of the Union. The Implementing Partner shall assist and support the investigations and prosecutions of EPPO, in accordance with the principle of sincere cooperation in respect of those Member States participating in the enhanced cooperation.
- 31.14 Agreements entered into by the Implementing Partner which are pertaining to Operations shall include appropriate contractual remedies (taking into account the nature of the Financial Product) in case of fraud, corruption or other illegal activity in accordance with this Agreement, Implementing Partner's policies and applicable regulatory requirements.

### **Article 32** **Audit**

- 32.1 In line with the relevant Union law, the European Court of Auditors shall have the power to audit the implementation of the EU Guarantee.
- 32.2 The Commission may carry out any audit on the implementation of the EU Guarantee by the Implementing Partner or have such audit carried out on its behalf. The rules under which the Commission shall carry out such audits shall follow the principles laid down in Annex VI.

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<sup>18</sup> OJ L 248, 18.9.2013, p. 1.

<sup>19</sup> OJ L 292, 15.11.1996, p. 2.

<sup>20</sup> OJ L 312, 23.12.1995, p. 1.

- 32.3 Agreements entered into by the Implementing Partner for Operations shall contain provisions allowing the European Court of Auditors full access to the Operations.
- 32.4 The Implementing Partner shall contribute to any audit carried out by the Commission or on its behalf on the implementation of the EU Guarantee by providing all relevant information and documentation related to the implementation of the EU Guarantee.

### **Article 33 Evaluations**

- 33.1 The Implementing Partner shall contribute to and provide the necessary information for the evaluations, reports and reviews referred to in Article 29 of the InvestEU Regulation.

## **Part H – General Provisions**

### **Article 34 Conflict of interests**

- 34.1 The Parties shall take all necessary precautions to avoid conflicts of interests of individuals acting on behalf of the Parties and shall inform the other Party without delay of any situation constituting or likely to lead to any such conflict. In the event of a conflict of interest, the Party concerned shall take appropriate measures.
- 34.2 There is a conflict of interests where the impartial and objective exercise of the functions of any natural person under this Agreement is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest.

### **Article 35 Protection of personal data**

- 35.1 The Commission, in the implementation of this Agreement, shall protect personal data according to Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC<sup>21</sup>.
- 35.2 With respect to the Operations, the Implementing Partner shall comply with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data<sup>22</sup> or with other applicable rules that ensure an adequate level of protection of personal data in the sense of Article 45 of Regulation (EU) 2016/679.

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<sup>21</sup> OJ L 295, 21.11.2018, p. 39.

<sup>22</sup> OJ L 119, 4.5.2016, p. 1.

## **Article 36 Confidentiality**

- 36.1 The Parties shall apply their transparency and disclosure policies, unless otherwise provided in this Agreement.
- 36.2 Having regard to the fact that some of the information exchanged in the context of this Agreement may be of a confidential character or commercially sensitive, the Parties undertake to abstain from divulging without the prior written consent of the other, any confidential information received by them in this context. This undertaking, however, shall not affect any communication of information which is required by law, regulation, treaty, by an order of a court having jurisdiction in the matter, or in particular, to the European Court of Auditors. The Implementing Partner may also disclose such information as necessary to its governing bodies, auditors and advisers. The Commission may also disclose such information as necessary to its auditors and advisers, or to the Technical Assessment Unit for the purposes set out in Article 37.2.
- 36.3 In the event that disclosure to third parties of any confidential information received by them in this context appears necessary pursuant to a Party's respective rules on access to documents, the Commission and the Implementing Partner shall consult with each other with a view to agreeing on a suitable solution prior to disclosure of such information. The Implementing Partner acknowledges that the Agreement shall be made available to the European Parliament and to the Council at their request. If the Commission is required to disclose confidential information to the European Parliament or the Council following such request or in the discharge procedure, it shall ensure the secure transmission of such confidential information and apply the arrangements regarding sensitive documents agreed between these institutions for these purposes.
- 36.4 For the purposes of this Article confidential information means any information in written or other permanent (including electronic) form which is clearly identified as confidential by a Party. For the avoidance of doubt, information contained in a Risk Report under Annex IV and any information or data exchanged in accordance with Article 37 and Article 38 is confidential and can only be used and disclosed in accordance with this Agreement.

## **Article 37 Information to be provided to the Technical Assessment Unit**

- 37.1 The Implementing Partner acknowledges that the Technical Assessment Unit will provide to the Commission technical expertise on banking related aspects for the purposes defined in Article 11(1), first subparagraph, points (b)(ii) to (b)(vi) of the InvestEU Regulation.
- 37.2 The following information is considered as strictly necessary for the Technical Assessment Unit to fulfil its tasks specified in Article 11(1), first subparagraph, points (b)(iv) to (b)(vi) of the InvestEU Regulation and the Implementing Partner agrees to disclose it to the Technical Assessment Unit notwithstanding Article 36.2:
- (a) the relevant Articles of this Agreement, in particular of Annex I, in relation to the Financial Product(s), including the type of assets to be supported, region and country of exposure, EU Guarantee amount per Operation and/or Portfolio, probability of default rating mapped to the InvestEU Common Rating Scale, recovery rate, maturity and grace period for the Financial Product(s) covered, where applicable, and the deployment plan / schedule of the EU Guarantee ; and
  - (b) the relevant data provided by the Implementing Partner through reporting in accordance with Annexes II and IV, in an anonymised form to the extent necessary; and

(c) any other information requested by the Technical Assessment Unit and agreed by the Parties.

37.3 Any communication to the Technical Assessment Unit shall be done through the Commission. For the purposes of transmitting the information to the Technical Assessment Unit, the Implementing Partner shall provide to the Commission all relevant information not available to the latter.

### **Article 38** **Provision of Processed Data**

38.1 For the purposes of implementing this Agreement, until the end of the Signature Period, the Commission shall give the Implementing Partner access to the InvestEU Common Rating Scale and the associated one-year probabilities of default and mapping guidance, forming part of the Processed Data. The Implementing Partner shall use the one-year probabilities of default and the mapping guidance to map their internal rating system against the InvestEU Common Rating Scale.

38.2 The Implementing Partner may store and archive the Processed Data, as an integral component of the Commission's database or application which incorporates the Processed Data and through which access to such data was granted or as otherwise required by the Commission. The Implementing Partner shall have no rights in or to the Processed Data other than the right to use them in accordance with the express terms of this Agreement. The Implementing Partner shall be bound by legends, disclaimers and notices appearing from time to time in connection with the Processed Data.

38.3 For the purpose of Article 38.1, the Implementing Partner represents and warrants to the Commission that it is not: (i) subject to asset freeze sanctions, such as by inclusion on the list of Specially Designated Nationals and Blocked Persons maintained by the United States of America's Office of Foreign Assets Control, or the consolidated lists of asset freeze targets published by the United Nations, European Union, or United Kingdom, nor is it owned or controlled by any such person(s) whether individually or collectively; (ii) organized or headquartered in a country or territory subject to comprehensive geographic sanctions imposed by the United States of America's Government<sup>23</sup> or owned or controlled by any such person; or (iii) subject to restrictions regarding the receipt of items originating from the United States of America by virtue of being on the *Denied Persons List* or the *Entity List* maintained by the United States of America's Commerce Department. For the purposes of this provision, "person" means any natural or legal person; "owned" and "controlled" shall be interpreted as per the relevant applicable sanctions law or regulation. The Parties acknowledge and agree that the representations and warranties under this Article 38.3 are only sought and given to the extent that to do so is permissible pursuant to any applicable anti-boycott rule of the European Union, such as Regulation (EC) 2271/96 as amended from time to time. The Implementing Partner shall notify the Commission if it learns that any representation made herein is no longer accurate. The prohibitions set forth in this Article 38.3 shall apply notwithstanding any terms in any other applicable contractual document, addendum or other writing, whether express or implied.

38.4 The Implementing Partner undertakes not to:

(a) remove any trademarks or identifiers associated with the Processed Data;

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<sup>23</sup> [OFAC country website](#)

- (b) make any Processed Data accessible (including through a database or other application populated with the Processed Data), re-sell, sub-license, transfer or disclose the Processed Data by any means, including any electronic means, to any third party;
  - (c) use the Processed Data for any purpose contrary to any law or regulation or any regulatory code, guidance or request; and/or
  - (d) redistribute, extract, reuse, use, exploit, copy, store or archive the Processed Data for any purpose not explicitly allowed under this Agreement.
- 38.5 The access to the Processed Data may be suspended or terminated, if (a) any misuse, security breach or unauthorised access to or disclosure of the Processed Data is reasonably suspected, until such misuse, security breach or unauthorised access or disclosure is remedied, or (b) if the Implementing Partner is in breach of Article 38.3, or (c) if the licence rights of the Commission related to the Processed Data are suspended or terminated, in which case the Commission notifies accordingly the Implementing Partner on the actions to be taken. In case the access to the Processed Data is terminated, the Implementing Partner shall cease any further use of the Processed Data upon such notification by the Commission.
- 38.6 Neither the Commission, nor the European Investment Bank (neither its licensors nor licensors of the licensors) shall have any liability to the Implementing Partner or to any third party receiving and/or benefitting from the Processed Data, for any error, inadequacy, or inaccuracy in the Processed Data that is caused, directly or indirectly, by an error, incompleteness or inadequacy of the Licensed Data that is used for obtaining the Processed Data. The Implementing Partner acknowledges that Licensed Data is provided to the European Investment Bank without warranty of any kind, and that its licensors expressly disclaim all representations and warranties with respect to Licensed Data, express or implied, and whether oral or written, including without limitation (a) any warranty as to the accuracy, timeliness, completeness, adequacy or the results to be obtained from the use of the Licensed Data, (b) the implied warranties of non-infringement, merchantability and fitness for a particular purpose even if they have been informed of such purpose, and (c) any warranties arising by implication or from course of performance, course of dealing, or usage of trade, and neither the licensors of the European Investment Bank, nor their licensors accept any liability towards the European Investment Bank, or to any third party with respect to any of the foregoing.
- 38.7 To the extent permitted by law, under no circumstance shall the Commission, the European Investment Bank (or its licensors) have any liability to the Implementing Partner for:
- (a) any loss, damage or other injury in whole or in part caused by, resulting from or relating to, any error (negligent or otherwise), or any other circumstance or contingency within or outside the control of the Commission, the European Investment Bank or any of their directors, officers, employees or
  - (b) agents, or licensors, in connection with the procurement, collection, compilation, analysis, interpretation, communication, publication or delivery of the Processed Data, or
  - (c) any indirect, special, consequential, incidental or compensatory damages whatsoever (including, without limitation, lost profits), even if the Commission, or the European Investment Bank shall have been advised in advance of the possibility of such damages, in either case caused by, resulting from or relating to the use of, or inability to use, any Processed Data.
- 38.8 The Implementing Partner shall indemnify the Commission and the European Investment Bank against any claims, losses, damages, costs (including all reasonable legal fees) and

expenses incurred by or awarded against the Commission, the European Investment Bank or its licensors arising out of or in connection with the access to or use of the Processed Data by the Implementing Partner other than in accordance with this Article 38.

### **Article 39** **Early detection and exclusion system**

- 39.1 The Implementing Partner shall have access to the information on decisions on exclusion contained in the early detection and exclusion system database set up and operated by the Commission in order to verify whether there is an exclusion and to exclude a person or entity subject to a decision on exclusion contained in the early detection and exclusion system database, when acting within the scope of this Agreement.
- 39.2 The Implementing Partner shall transmit to the Commission information related to cases of detected fraud or Irregularity and their follow up pursuant to Article 144(2)(e) of the Financial Regulation, containing all the elements specified in Article 144(3) of the Financial Regulation, as regards, *inter alia*, applicants and tenderers for financing under a Financial Product and Final Recipients.

### **Article 40** **Communication, visibility and transparency**

- 40.1 The InvestEU Fund communication strategy has as its objectives to:
- (a) create support for the initiative by aiming at making the InvestEU Fund's objectives known, understood and shared by the largest possible number of stakeholders and by the general public;
  - (b) underpin the operational objectives by ensuring that stakeholders, including potential and actual clients and partners of the Implementing Partner, have all necessary information on the functioning of the InvestEU Fund and on how to engage with them to apply for potential Operations; and
  - (c) ensure broad public access to information about the InvestEU Fund's performance and results, contributing to its accountability and the understanding of its impact.

The Implementing Partner shall contribute to these objectives by carrying out its communication activities in accordance with its own rules, policies and procedures. In order to ensure a consistent branding and communication approach, the Commission and the Implementing Partner shall engage in regular consultations to plan, implement, review and adapt communication activities, at national, EU-wide, and global level, as appropriate.

- 40.2 In order to promote the InvestEU Fund:
- (a) the Implementing Partner shall inform the Final Recipients of Operations that these Operations benefit from EU support under the InvestEU Fund by including a statement in all financing agreements pertaining to Operations in the following form:
    - “This operation benefits from support from the European Union under the InvestEU Fund”;
  - (b) the Commission or the Implementing Partner may hold workshops, conferences or press events relating to the InvestEU Fund. The Commission and the Implementing Partner shall seek to inform the other about such events in good time and invite the other to them and shall provide the other with reasonable assistance in connection with

such events, if so requested in writing, whereby each Party shall cover its own travel expenses;

- (c) the Implementing Partner, in coordination with the Commission, shall identify show cases, taking into account, amongst other features, their geographical coverage. Subject to the consent of the Final Recipient, for such identified show cases, a document indicating the name of the Final Recipient, its address, the financing form, the sector of activity and a short summary why the respective Operation should be considered a show case shall be prepared by the Implementing Partner. Visibility will be sought for the show cases, whilst ensuring that operational considerations and the need to safeguard client relations are taken into account. The visibility on the show case may include audio visual material or print publications for the promotion of the InvestEU Fund produced by the Commission;
- (d) subject to confidentiality requirements, the Progress Report may be used by the Commission for providing content for communication material, including for the regular updating of the [access2finance.eu](https://access2finance.eu) website, where applicable. The Commission shall provide information to the Implementing Partner for the purpose of updating its relevant website on the InvestEU Fund, where applicable; and
- (e) the Implementing Partner shall, in line with its communication strategy, actively promote the #InvestEU hashtag in its social media communication.

40.3 In addition to the regular bilateral consultations between the Commission and the Implementing Partner as set out in the second subparagraph of Article 40.1, the Implementing Partner and the Commission shall participate in the regular coordination of the InvestEU Fund communication strategy in the InvestEU Fund communication network, where all of its implementing partners are represented, in order to cooperate with the other implementing partners in the coordination and implementation of the InvestEU Fund's communication activities. The coordination revolves around the following elements: visibility of the InvestEU Fund on the websites of the Commission and of the implementing partners, joint communications on signed Operations, press releases, social media promotion and events. The communication network primarily takes the form of regular remote meetings and email exchanges. Physical events may be organised in exceptional cases.

40.4 The Implementing Partner shall use and shall contractually require Final Recipients, to use the emblem of the Union or a reference to the EU, as appropriate, in a visible way (and with similar prominence as the Implementing Partner's logo, if applicable) in all its press releases, communications material, the social media, as well as in all contractual documentation directly related to an Operation. When doing so, the emblem of the Union from the following website can be used: [https://commission.europa.eu/document/download/3192a0ef-6bda-4e1a-81ca-65ade2ffad73\\_en?filename=eu-emblem-rules\\_en.pdf](https://commission.europa.eu/document/download/3192a0ef-6bda-4e1a-81ca-65ade2ffad73_en?filename=eu-emblem-rules_en.pdf) .

The Commission shall use the Implementing Partner's logo in a visible way and with similar prominence as the Commission's logo in all the Commission's communications material directly related to the InvestEU Fund activities involving the Implementing Partner.

40.5 Regarding press releases concerning the InvestEU Fund, the following rules shall apply:

- (a) the Commission and the Implementing Partner may issue joint communications or press releases where appropriate, for example upon the signature of the first Operation under the InvestEU Fund in a Member State. A joint press release shall be published by the Commission and the Implementing Partner on the same day on their respective websites;

- (b) the Implementing Partner shall share the content of its press releases regarding the InvestEU Fund prior to the publication with the Commission who may decide to publish the press releases also on its website. In duly justified cases, the Commission may request the Implementing Partner to modify the content of a press release. The Commission shall share the content of its press releases regarding the InvestEU Fund activities involving the Implementing Partner prior to the publication with the Implementing Partner who may decide to publish the press releases also on its website. In duly justified cases, the Implementing Partner may request the Commission to modify the content of a press release;
  - (c) the Implementing Partner shall consult with the relevant Final Recipient before publishing a press release which concerns the Direct Operation. The Commission shall consult with the Implementing Partner before publishing a press release on the Implementing Partner's Operation.
- 40.6 The Implementing Partner shall create on its website a section dedicated to the InvestEU Fund which shall contain visibly the emblem of the Union and the logo of the Commission. Such website section dedicated to the InvestEU Fund shall provide the following information:
- (a) the Financial Product proposed under the InvestEU Fund, the financing forms available, a description of the key eligibility criteria and the policy objectives supported under the Financial Product;
  - (b) information on the application and selection process for Final Recipients, where applicable;
  - (c) relevant publications and press releases on signed Operations; and
  - (d) a link to the InvestEU Fund website.
- Similarly, the InvestEU Fund website of the Commission shall have a link to the Implementing Partner's website section dedicated to the InvestEU Fund. The InvestEU Fund website may also display the name, contact information and corporate logo of the Implementing Partner.
- 40.7 The Parties shall ensure that the communication respects any applicable copyrights.
- 40.8 The application of this Article 40 to Operations in defence and space sectors and in cybersecurity shall be subject to respect for any confidentiality or secrecy obligations.

#### **Article 41**

##### **Visibility and publication of information on Final Recipients**

- 41.1 Subject to Article 41.3, the Implementing Partner shall publish annually on its website no later than 30 June of each year the information on Final Recipients supported under the InvestEU Fund since the Effective Date until the end of the previous calendar year. Information on Final Recipients which are no longer supported under the InvestEU Fund in the beginning of the previous calendar year may be removed. For natural persons, the published information shall be removed two (2) years after the end of the financial year when the financial support was provided.
- 41.2 Subject to Article 41.3, the publication in accordance with Article 41.1 shall include the following information:
- (a) the name of the Financial Product, the financing form and the policy objectives supported by the Operation;

(b) for Direct Operations:

- (i) a list of Final Recipients of Final Recipient Transactions with a principal amount of at least EUR 500 000 or equivalent, containing for each Final Recipient its name, financing form and the location of the Final Recipient (meaning the address when the Final Recipient is a legal person and the region on NUTS 2 level when the Final Recipient is a natural person).

(c) [intentionally omitted]

41.3 In accordance with Article 38(3)(d) of the Financial Regulation, the publication shall not be required if any Final Recipient, prior to receiving financial support under any Financial Product, declares in writing to the Implementing Partner (including by a representation in the relevant agreement) that the publication requirements set out in this Article 41 risk harming its commercial interests or risk threatening the rights and freedoms of the persons or entities concerned as protected by the Charter of Fundamental Rights of the European Union.

In addition, such publication shall not be required if it would be illegal under the applicable laws and regulations.

As far as natural persons are concerned, the publication shall comply with the requirements set out in Articles 4 and 5 of Regulation (EU) 2018/1725 in line with Article 35. Where the Final Recipient is a natural person, prior consent to such publication may not be made a condition for receiving financial support under a Financial Product.

#### **Article 42 Liability**

42.1 Without prejudice to Article 17.3 and Articles 38.6 to 38.8, the Parties shall be liable for the performance of their duties and obligations under this Agreement with a professional degree of care and diligence.

42.2 A Party faced with Force Majeure shall not be held to be in breach of its obligations under this Agreement if it has been prevented from fulfilling them by Force Majeure. A Party faced with Force Majeure shall notify the other Party without delay, stating the nature, likely duration and foreseeable effects. The Parties shall take the necessary measures to limit or minimise costs and possible damages due to Force Majeure.

#### **Article 43 Assignment**

43.1 The Parties shall not assign or novate in whole or in part, any of their rights or obligations under this Agreement to any third parties without the prior written consent of the other Party.

#### **Article 44 Notices and communications**

44.1 Notices relating to this Agreement from one Party to the other shall be made in writing and sent by courier or registered letter. They shall be sent exclusively to the following addresses:

For the EU: European Commission  
Directorate-General for Internal Market,  
Industry, Entrepreneurship and SMEs  
Directorate C  
L-2920 Luxembourg  
EC-INVESTEU-GUARANTEE-  
AGREEMENT@ec.europa.eu

For the Implementing  
Partner: NRW.BANK  
Kavalleriestraße 22  
40213 Düsseldorf  
Germany  
[*Fabian.momburg@nrwbank.de;*  
*claas.heise@nrwbank.de*]

- 44.2 Any change made to the above addresses, or changes to the bank account details specified in Article 16.7, shall have effect only after it has been notified to the other Party in accordance with Article 44.1.
- 44.3 Other communications shall be made in electronic form using the InvestEU MIS or other communication details agreed between the Parties. It remains understood that in the event that the InvestEU MIS is not operational or not technically functioning, any communications or documents that under this Agreement must be submitted through the InvestEU MIS shall be submitted by email for communications addressed to the Commission to the email address mentioned in Article 44.1, and for communications addressed to the IC Secretariat to the email address EC-INVESTEU-IC-SECRETARIAT@ec.europa.eu, or by other means agreed between the Commission and the Implementing Partner. Communications or documents shall be submitted in structured or unstructured format, as set out in this Agreement. If the structured format is not operational at the time of submission, the communications or documents shall be submitted in unstructured format (i.e. in Excel format, unless it is not feasible).
- 44.4 Notices and communications are deemed to have been made when they are received by the receiving Party.
- 44.5 Within twenty (20) Business Days from the Effective Date, the Implementing Partner shall communicate in electronic form the list of its InvestEU MIS Designated Users and the requested access rights. Thereafter, the Implementing Partner shall promptly communicate to the Commission any changes to the list of its InvestEU MIS Designated Users and the requested access rights, in accordance with the InvestEU MIS Terms and Conditions.

The InvestEU MIS Designated Users of the Implementing Partner shall have access to the InvestEU MIS in order to receive from or to send to the Commission notices, communications and reporting in relation to this Agreement. The InvestEU MIS shall be accessible to the InvestEU MIS Designated Users in accordance with the InvestEU MIS Terms and Conditions.

**Article 45**  
**Effectiveness – Term**

- 45.1 This Agreement shall enter into force on the Effective Date.
- 45.2 This Agreement shall be in force until all relevant exposures or liabilities in connection with InvestEU Operations and under this Agreement have been fully discharged. The Commission and the Implementing Partner shall agree in writing on such termination.

**Article 46**  
**Stop Commitment Events**

- 46.1 The Commission may notify the Implementing Partner that signature of and inclusion of Operations in a Portfolio shall be suspended with immediate effect (such notification, a “**Stop Commitment Event**”) without prejudice to Article 42, where the Implementing Partner:
- (a) fails to comply with its material obligations under this Agreement, including any material obligations under Articles 3.1 to 3.9, or
  - (b) commits fraud or Irregularities, or
  - (c) becomes bankrupt, is subject to the appointment of an administrator, or to an order that is made or an effective resolution that is passed for its winding-up, liquidation or administration (except for the purposes of a reconstruction or merger the terms of which have previously been approved by the Commission in accordance with Article 43); or
  - (d) compromises with its creditors generally or is subject to such measures that are officially decreed; or
  - (e) ceases to carry on the whole or a substantial part of its business (except for the purposes of a reconstruction or merger the terms of which have previously been approved by the Commission in accordance with Article 43).

In cases referred to in points (a) and (b), such notification by the Commission may be made after prior consultation with the Implementing Partner for a period of forty-five (45) calendar days after the Commission has given written notice of the material non-compliance or fraud or Irregularities, as applicable, to the Implementing Partner, at the end of which time the material non-compliance, fraud or Irregularities, as applicable, is unremedied or the Implementing Partner has not provided a satisfactory explanation.

In cases referred to in points (c) to (e), the Commission may make such notification immediately upon occurrence of the relevant event.

- 46.2 Upon the occurrence of a Stop Commitment Event under this Agreement and until the date of the notification referred to in Article 46.5(c), if applicable, the Implementing Partner shall suspend the signature and inclusion of an Operation in a Portfolio. The future approvals of InvestEU Operations by the Investment Committee and submissions for approvals to the Investment Committee shall also be suspended, unless the Commission specifies otherwise in such notification.
- 46.3 The Implementing Partner may suspend the performance of its obligations under this Agreement, if the Commission fails to perform any of its payment obligations under the terms of this Agreement, after prior consultation with the Commission for a period of forty-five (45) calendar days after the Implementing Partner has given written notice of the non-compliance to the Commission, at the end of which time the non-compliance is unremedied or the Commission has not provided a satisfactory explanation. This shall continue until the date

of any notification by the Implementing Partner to the Commission revoking such suspension.

- 46.4 Upon a Stop Commitment Event or an event occurring pursuant to Article 46.3, the Party at fault shall take the necessary measures to limit or minimise costs and possible damages.
- 46.5 A Stop Commitment Event under this Agreement:
- (a) shall not affect the duty of each Party to continue to perform its obligations under this Agreement in respect of an Operation already signed and included in the Portfolio at the time of such Stop Commitment Event;
  - (b) shall be without prejudice to the rights acquired by each Party pursuant to this Agreement prior to such Stop Commitment Event; and
  - (c) shall continue until the date of any Commission notification to the Implementing Partner revoking the Stop Commitment Event notification referred to in Article 46.1.
- 46.6 The Commission may, after at least twenty (20) calendar days of suspension from the occurrence of a Stop Commitment Event under Article 46.1, by written notice to the Implementing Partner, terminate the available EU Guarantee not yet committed by the Implementing Partner for Operations with effect from the day falling ten (10) calendar days after the receipt of such notice by the Implementing Partner, save that such termination shall have no effect on the duty of each Party to continue to perform its obligations under this Agreement in respect of the Operations already signed and included in the Portfolio at the time of such termination.

#### **Article 47 Revisions**

- 47.1 The Parties undertake to examine together any revisions that may need to be made to this Agreement, in particular should the InvestEU Regulation be amended and in relation to implementation of new Financial Products, if any.

#### **Article 48 Amendments and miscellaneous**

- 48.1 Any amendment, variation or modification of this Agreement shall require an instrument in writing duly signed by each of the Commission and the Implementing Partner and it shall specify the date when it takes effect. In cases expressly mentioned in this Agreement, such amendment, variation or modification may be done through a Separate Implementing Arrangement.
- 48.2 The waiver or forbearance of a Party in insisting in any one or more instances upon the performance of any provision of this Agreement shall not be construed as a waiver of that Party's rights to future performance of such provision and the other Party's obligation in respect of such future performance shall continue in full force and effect.
- 48.3 Each Party may assume that the other Party will ensure that the matters under this Agreement falling within its competences are complied with.
- 48.4 If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

- 48.5 An amendment to this Agreement shall be reported by the Commission to the European Parliament and the Council, in case the Agreement has been communicated to them.
- 48.6 This Agreement constitutes the entire agreement and supersedes all prior agreements, commitments and understandings, both written and oral, between the Parties with respect to the subject matter hereof. All such prior agreements, commitments and understandings are hereby terminated and deemed of no further force or effect.

**Article 49**  
**Governing law and jurisdiction**

- 49.1 This Agreement is governed by EU law.
- 49.2 The Parties shall endeavour to settle amicably any dispute or complaint relating to the interpretation, application or performance of this Agreement, including its existence, validity or termination.
- 49.3 In default of an amicable settlement, the Parties agree that the General Court or, on appeal the Court of Justice of the European Union, shall have exclusive jurisdiction to settle any dispute in connection with this Agreement.

**Article 50**  
**Annexes**

- 50.1 The following Annexes form an integral part of this Agreement:

Annex I	Financial Product and Portfolio
Annex II	Operational reporting
Annex III	Financial reporting
Annex IV	Risk reporting
Annex V	Claims Form
Annex VI	Monitoring, controls and audit modalities
Annex VII	Business partner form
Annex VIII	[intentionally omitted]
Annex IX	[intentionally omitted]
Annex X	[intentionally omitted]
Annex XI	[intentionally omitted]
Annex XII	IP Funding Cost Interest calculation methodology

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed in four (4) originals in the English language, each taking two (2) copies, as of the date specified on the cover page of this Agreement.

*[insert place], [insert date]*

For and on behalf of the  
EUROPEAN UNION

*[insert first name, LAST NAME]*  
*[insert function]*

*[insert place], [insert date]*

For and on behalf of the  
NRW.Bank

*[insert name, LAST NAME, function]*

## **Annex I – Financial Product and Portfolio**

### **Article 1 Interpretation**

- 1.1 In this Annex I, a reference to an “Article”, “Section”, “Part”, “Appendix” or “Product Schedule”, is a reference to such article, section or part of, or appendix or product schedule to this Annex I, except if otherwise specified or the context requires otherwise.
- 1.2 In this Annex I, a reference to an “Article of the Agreement” is a reference to such Article in the main part of the Agreement.

### **Article 2 Use of currencies and management of currency risk**

- 2.1. Each Equity Operation under this Agreement shall be denominated in euro.
- 2.2. Without prejudice to Article 2.1, for the purpose of applying the waterfalls regarding Equity Reflows, any cash flows received in a currency other than euro shall be converted into euro using the prevailing market exchange rate as transacted by the Implementing Partner in a timely manner.

### **Article 3 State aid compliance**

- 3.1 The conclusion of this Agreement is without prejudice to the competence of the Commission in the field of State aid under Article 107 and 108 of the Treaty, where relevant. The Implementing Partner, on behalf of the Member State, shall ensure that the Financial Product complies with the relevant EU State aid rules and follow all the relevant State aid procedures, including notification to the Commission in accordance with Article 108(3) of the Treaty.
- 3.2 The Implementing Partner, by signing this Agreement, declares that the implementation of the Financial Product as enshrined in this Agreement will comply with the relevant EU State aid rules and that all the relevant State aid procedures will be followed. This includes, in relation to the Financial Product covered by this Agreement, having reached a common understanding with the relevant Commission services on whether Equity Operations under the Financial Product may or may not be generally interpreted as constituting State aid, in accordance with the Commission Notice on the notion of State aid, before the signature of this Agreement.
- 3.3 More specifically, the Implementing Partner declares that the Equity Operations under the Financial Product comply with the provisions set out in Article 7.

### **Article 4 General principles of the Financial Product and Portfolio**

- 4.1 The Implementing Partner shall implement one (1) Financial Product: the NRW.BANK RIDW Direct Equity Financial Product.
- 4.2 The Implementing Partner shall set up the Equity Portfolio corresponding to its Financial

Product: the NRW.BANK RIDW Direct Equity Portfolio.

- 4.3 Equity Operations shall be included in the Equity Portfolio on the date of signature of the relevant Operation.
- 4.4 The amount of each Equity Operation in the Equity Portfolio shall correspond to the outstanding (after deduction of, amongst others, De-committed or Cancelled Amounts reducing an Operation's book value) committed (including both disbursed and not yet disbursed amounts) principal amount of such Equity Operation at the relevant time.
- 4.5 De-committed or Cancelled Amounts under Equity Operations prior to the end of the Signature Period shall also reduce the Buffer by a corresponding amount. Any De-committed or Cancelled Amounts may be used during the Signature Period by the Implementing Partner to enter into new Equity Operations or to increase the amount of existing Equity Operations, provided that such new Equity Operations or increases of existing Equity Operations are approved and entered into in accordance with the provisions of this Agreement.
- 4.6 Any De-committed or Cancelled Amounts under Equity Operations after the end of the Signature Period and the corresponding amount of the Buffer shall reduce the Available Global Cap.
- 4.7 Payments to the Commission and to the Implementing Partner shall be made in accordance with Article 16 of the Agreement.

#### **Article 5 Administrative Fees**

- 5.1 The Implementing Partner will be entitled to Administrative Fees.
- 5.2 For the entire life of the EU Guarantee, the aggregate of the Administrative Fees, which can be paid to the Implementing Partner pursuant to Article 5.3, shall not exceed at any point of time 3% of the aggregate amount of the EU Investments, and in any case cannot be higher than the amount of EUR 3 000 000.
- 5.3 The Administrative Fee for a given year of implementation shall consist of the following parts:
  - (a) first part of the Administrative Fee shall be equal to the aggregate amount of the EU Investments of Equity Operations included in the Equity Portfolio during that given year (after deduction of any De-committed or Cancelled Amounts) multiplied by 2.25%, and in any case, the cumulative amount for all years of implementation of such part of the Administrative Fees shall not exceed EUR 2 250 000; and
  - (b) second part of the Administrative Fee shall be equal to the aggregate disbursed amounts<sup>24</sup> of Equity Operations for that given year multiplied by 0.75%. The cumulative amount for all years of implementation of such part of the Administrative Fees shall not exceed EUR 750 000.
- 5.4 The Administrative Fees are determined once a year on 30 June of each calendar year with respect to the previous calendar year (such date the "**Administrative Fee Determination Date**"). They shall be claimed in the Claims Form succeeding the relevant Administrative

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<sup>24</sup> The disbursed amounts of Equity Operations means the total gross amount (without any divestments) that has been invested under Equity Operations.

Fee Determination Date and shall be paid annually in accordance with Article 16 of the Agreement.

## Article 6

### Characteristics of Equity Operations

- 6.1 The NRW.BANK RIDW Direct Equity Financial Product is a Financial Product under the Research, Innovation and Digitisation Window, the objective of which is to provide investments into Equity Final Recipients, in accordance with the respective policy objectives set out in the Product Schedule.

## Article 7

### Investment criteria

- 7.1 The Implementing Partner shall invest exclusively in Eligible Equity Final Recipients in compliance with the criteria set out in the relevant Product Schedule.

When implementing Equity Operations, the Implementing Partner shall apply the provisions of this Agreement, in particular Articles 3.2 and 12.1 of the Agreement, as well as relevant rules, policies and procedures, avoid conflict of interests and take due account of the financial interests of the Union.

- 7.2 Equity Operations shall rank *pari passu* with Equity Co-investors investing in the same risk class (*i.e.* reference to *pari passu* principle shall mean "like-risk-like-reward"). For the avoidance of doubt, the fact that the Implementing Partner accepts more favourable terms than applicable for other Equity Co-investors when implementing any Equity Operation shall not constitute a breach of the *pari passu* principle, as long as the other Equity Co-investors do not receive any advantage. The Equity Operation shall not be subordinated to other Equity Co-investors in any risk class issued by the Equity Final Recipient.
- 7.3 At least 30% of total commitments by the Implementing Partner together with the Equity Co-investors to each Equity Final Recipient shall be made by Third Party Benchmark Investors investing directly into the Equity Final Recipient.
- 7.4 The investment of Third Party Benchmark Investors, shall be made in the same risk class in which the Equity Operation is made and on a *pari passu* basis with each other as set out in Article 7.2.
- 7.5 The starting position of the Implementing Partner and the Third Party Benchmark Investors shall be comparable with regard to the Equity Operation, taking into account, for instance, where relevant, the prior economic exposures to the relevant Equity Final Recipient, the possible synergies which can be achieved with the investment, or, without prejudice to Article 7.2, the extent to which the different investors bear similar transaction costs.
- 7.6 The Equity Operation and the investment by Third Party Benchmark Investors must intervene at the same time
- 7.7 Investments in Eligible Equity Final Recipients shall take the form of Primary Investments.

## Article 8

### Non-eligible Operations and non-compliance with the exclusion and investment criteria

- 8.1 The Implementing Partner shall notify the Commission without delay, but in any event within twenty (20) Business Days, if after the signature of an Equity Operation, the Implementing

Partner becomes aware that such Equity Operation is a Non-eligible Operation or that the Equity Operation does not comply with the investment criteria set out in Article 7.

- 8.2 Unless the Commission considers the breach of the eligibility criteria or investment criteria immaterial by sending to the Implementing Partner a notice in this sense, the Implementing Partner shall remove the Equity Operation from the Equity Portfolio within ten (10) Business Days from the notification sent to the Commission in accordance with Article 8.1 8.1and inform the Commission accordingly without undue delay.
- 8.3 If at any time, through controls and monitoring set out in Article 31 of the Agreement, the Commission becomes aware that an Equity Operation included in the Equity Portfolio is a Non-eligible Operation or does not comply with the investment criteria set out in Article 7, the Commission may send an exclusion notice to the Implementing Partner relating to such Equity Operation, which shall be excluded from the Equity Portfolio upon reception of such notice by the Implementing Partner.

### **Article 9 Coverage of Equity Operations**

- 9.1 Each Equity Operation included in the Equity Portfolio shall be covered by a *Pari Passu* Protection that comprises 50% EU Investment and 50% IP Investment ranking *pari passu*.
- 9.2 Each Equity Operation included in an Equity Portfolio shall be covered individually by the EU Guarantee up to the amount of EU Investment of that Equity Operation, in accordance with this Agreement.
- 9.3 The Implementing Partner shall ensure the funding required to finance the EU Investment under Equity Operations included in the Equity Portfolio.

### **Article 10 Allocation of Equity Reflows and callable amounts**

- 10.1 Equity Reflows and any callable amounts<sup>25</sup>, other than Recoveries in cases referred to in Article 10.3, received by the Implementing Partner with respect to Equity Operations under the Equity Portfolio, with the exception of the situation described in the last subparagraph of this Article 10.1, shall be allocated (after application of any net negative or positive interest and the deduction of any bank charges) *pari passu* and *pro rata* between:
- (a) the EU Investment, and the amount so allocated shall be treated pursuant to Article 10.2; and
  - (b) the IP Investment.

In case of a Secondary Sale whereby the IP Investment was not subject to it due to the circumstances set out in Article 13.6, the resulting Equity Reflow shall be allocated to the relevant EU Investment only.

- 10.2 The aggregate amounts allocated to the EU Investment pursuant to Article 10.1(a) shall be further allocated in the following manner:

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<sup>25</sup> Callable amounts shall be allocated only as set out in Article 10.2(a).

- (a) *first*, to reduce the EU Investments Outstanding Amount in the Equity Portfolio, whereby, for the avoidance of doubt, any such amounts shall not reduce the Available Global Cap;
  - (b) *second*, after the EU Investments Outstanding Amount in the Equity Portfolio has been reduced to zero, to the EU up to the aggregate amounts paid by the Commission with respect to the EU Investment Shortfall Amount under the Equity Portfolio, or with respect to the Equity Portfolio Final Call Amount, which shall be paid to the Commission in accordance with Article 16 of the Agreement;
  - (c) *third*, any remaining amounts, to the EU and shall constitute Equity Portfolio Revenues, which shall be paid to the Commission in accordance with Article 16 of the Agreement.
- 10.3 Recoveries paid by any Equity Final Recipient to the Implementing Partner under an Equity Operation as a result of Irregularities or fraudulent actions of an Equity Final Recipient, or as a result of the exclusion of an Equity Operation from coverage by the EU Guarantee following the process set out in Article 8, shall be allocated *pari passu* and *pro rata* to the size of the EU Investment and IP Investment relative to the Pari Passu Protection:
- (a) to the Implementing Partner; and
  - (b) to the EU, and the amount so allocated shall be paid to the Commission in accordance with Article 16 of the Agreement.

#### **Article 11**

##### **Allocation of an Equity Operation Shortfall Amount**

- 11.1 The Equity Operation Shortfall Amount shall be allocated *pari passu* and *pro rata* between the EU Investment and the IP Investment of the relevant Equity Operation. Notwithstanding the preceding sentence, if the IP Investment was not subject to a Secondary Sale due to the circumstances set out in Article 13.6, the resulting shortfall amount shall be allocated to the relevant EU Investment only as EU Investment Shortfall Amount.

#### **Article 12**

##### **Release of the EU Guarantee**

- 12.1 As from the end of the Signature Period and on an annual basis thereafter, the Implementing Partner shall notify the Commission any amounts of the EU Guarantee that are not necessary anymore for the coverage of the Guaranteed Sums. Such notified amounts of the EU Guarantee and the corresponding amounts of the Buffer shall be released and the Available Global Cap shall be reduced accordingly.

#### **Article 13**

##### **Secondary Sales**

- 13.1 The Implementing Partner shall have the right to execute Secondary Sales in accordance with and pursuant to the terms of the Implementing Partner's internal rules and procedures.
- 13.2 Upon the sale of an EU Investment, the Implementing Partner shall be entitled to retain such amounts as may be required for the satisfaction of any accrued or contingent obligations, costs or liabilities relating to such divestment in accordance with the applicable documentation. Any Equity Reflows resulting from the Secondary Sales of Equity Operations shall be allocated as set out in Article 10Article 10.

- 13.3 If, on or after 1 January 2040, any Equity Operations are outstanding, the Implementing Partner shall attempt to sell or liquidate all outstanding Equity Operations, in accordance with and pursuant to the terms of its internal rules and procedures.
- 13.4 If, by 30 September 2046, the Implementing Partner has not sold or otherwise liquidated all of the Equity Operations, the Commission and the Implementing Partner acknowledge that in respect of Equity Operations, which remain outstanding at that date, their market value shall be deemed zero as at that date and the Implementing Partner shall be entitled to call on the EU Guarantee for the Equity Portfolio Final Call Amount.
- 13.5 Should the Implementing Partner eventually liquidate or divest remaining Equity Operations after 30 September 2046 or receive any Equity Reflows in respect of divested Equity Operations, the amounts so collected by the Implementing Partner shall be treated in accordance with Article 13.2. Furthermore, the Implementing Partner shall provide the Commission by 15 February each year following the date specified in this Article with a simplified annual report on the items referred to in this paragraph. The template of such report shall be agreed between the Parties.
- 13.6 The sale of an EU Investment shall also include the sale of the IP Investment, unless this is prevented by a co-investment obligation of the Implementing Partner required with regards to other resources invested in or alongside the same Equity Operation. The sale of an IP Investment shall also include the sale of the EU Investment.

**Article 14**  
**Equity Portfolio Termination**

- 14.1 The Equity Portfolio shall be terminated at the Equity Portfolio Termination Date.

### Product Schedule

<b>Name of the Financial Product</b>	NRW.BANK RIDW Direct Equity Financial Product
<b>Use of Policy Windows and EU Guarantee amount per Policy Window</b>	The allocated amount of the EU Guarantee under the Research, Innovation and Digitisation Window is up to EUR 100 000 000
<b>Type of investment provided by the Implementing Partner</b>	Direct equity/ quasi-equity into Equity Final Recipients.
<b>Indicative size of the Portfolio</b>	EUR 200 000 000
<b>Policy objectives</b>	<p>Equity Final Recipients shall be active in one or more of the following areas within the targeted geography:</p> <p><b>A. Digitisation</b></p> <p>The development, deployment and scaling-up of digital technologies and services, especially digital technologies and services, including media, online service platforms and secure digital communication, that contribute to the objectives of the Digital Europe Programme<sup>26</sup>, in particular through:</p> <ol style="list-style-type: none"> <li>a. artificial intelligence;</li> <li>b. quantum technology;</li> <li>c. cybersecurity and network protection infrastructures;</li> <li>d. the internet of things;</li> <li>e. advanced digital skills;</li> <li>f. robotics and automation;</li> <li>g. photonics;</li> <li>i. other advanced digital technologies and services contributing to the digitisation of the Union industry and the integration of digital technologies, services and skills in the transport sector of the Union; and</li> <li>j. recycling and manufacturing facilities for the production of more sustainable information and communication technologies components and devices in the Union.</li> </ol> <p><b>B. Sustainable Energy Transition / Climate Tech</b></p> <p>The targeted activities include the research, development, demonstration, upscaling and commercialisation and deployment of</p>

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<sup>26</sup> OJ L 166, 11.5.2021, p. 1.

	<p>technologies or solutions that contribute to the EU Green Industrial Deal<sup>27</sup> (including through manufacturing final products, key components, and machinery primarily used for their production) and in particular the energy and ecological transitions pursued in the areas of climate mitigation and resilience (adaptation).</p> <p>This policy objective entails activities leading to decarbonisation of the energy generation, storage, transmission, distribution and consumption as well decarbonising built environment, including, but not limited to:</p> <ol style="list-style-type: none"> <li>a) clean energy generation, supply, storage, distribution, systems and/or energy efficiency, (including solar photovoltaic and solar thermal technologies, onshore wind and offshore renewable technologies);</li> <li>b) high efficiency heating and cooling, heat capture/conversion/storage, including but not limited to heat pumps and geothermal energy technologies;</li> <li>c) alternative fuels (including sustainable biogas/biomethane), electrolysers, fuel cells;</li> <li>d) sustainable ICT: technologies that either demonstrate the potential to achieve a significant reduction or avoidance of GHG emissions as compared to currently used ICT technologies especially in data centres /electronics/monitoring and management systems;</li> <li>e) solutions for grid development and management, including smart grid technologies (including HVDC cables, converters and substations), new business models and social innovations;</li> <li>f) low GHG construction methods, materials and technologies;</li> <li>g) improvements in energy efficiency solutions, fixtures, fittings and lighting;</li> <li>h) smart sensor building management systems, including data, app control;</li> <li>i) resource-efficient equipment, circular and nature-based solutions in renovation of buildings.</li> </ol> <p><b>C. Innovative Agriculture</b></p> <p>Activities leading to a transition to a sustainable, healthy, climate-neutral, and inclusive food system as well as in the development of bio-based sectors across the economy, including, but not limited to:</p> <ol style="list-style-type: none"> <li>a) agri-tech food tech and sustainable agricultural practices and production, low GHG farming solutions, precision agriculture and robotics (including drone surveillance and monitoring systems);</li> </ol>
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<sup>27</sup> COM/2023/62 final

	<p>b) alternative crops and food products including replacing high carbon intensive animal-based products (such as synthetic proteins or insect proteins), as well as alternative systems comprising new business models and social innovations;</p> <p>c) agricultural biotech/genomics, green chemistry and industrial biotech including bio-based chemicals (including low GHG fertilisers) bio-based plastics, biomaterials);</p> <p>d) food tech and sustainable food production, as well as social innovations and business models supporting sustainable food distribution and consumption;</p> <p>e) preserving, protecting and restoring ecosystems and biodiversity, including through nature-based solutions, supporting innovative approaches to conservation, restoration, enhancement and sustainable management of natural capital and ecosystems, either terrestrial, freshwater or marine.</p> <p><b>D. Activities enhancing the technological sovereignty of the EU</b></p> <p>Activities including, but not limited to, the following areas:</p> <p>a) <i>Cybersecurity</i></p> <p>Activities and services that cover the security of services and the security of connected objects in homes, offices and factories, building collective capabilities to respond to major cyberattacks notably against critical infrastructure. Such activities include, amongst others, anti-malware, application security, business continuity, cyber consultancy, encryption, cyber insurance, identity &amp; access, infrastructure, mobile security, outsourced/managed services, pro-active and reactive defence, situational awareness and system recovery &amp; data cleansing training &amp; education.</p> <p>b) <i>Quantum technologies</i></p> <p>Technologies and solutions that make use of the properties of the underlying quantum mechanics across industrial and societal fields, including, but not limited to:</p> <p>(i) quantum communication systems (systems that use quantum principles to transmit and store data in a highly secure way),</p> <p>(ii) quantum computers (with applications such as development of medicines, logistics, cryptography) and</p> <p>(iii) quantum sensing devices (with applications <i>inter alia</i> in medicine, autonomous driving, earth observation).</p> <p>c) <i>Semiconductor technologies</i></p> <p>Semiconductor technologies and solutions for development and production of microelectronics and photonics components and systems. Activities will contribute to the development of a semiconductor ecosystem across the EU, so as to boost the EU's</p>
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	<p>technological capabilities, ensure security of supply, production and reduce strategic dependencies.</p> <p>Such activities include, but are not limited to:</p> <ul style="list-style-type: none"> <li>(i) analogue, digital and mixed-signal modules (e.g. chiplets), intellectual property, components and systems for applications such as sensing, data processing, communication, actuation and power management;</li> <li>(ii) semiconductor solutions contributing to increasing energy efficiency and/or reducing greenhouse gas emissions;</li> <li>(iii) semiconductor materials, wafers, intellectual property, process design kits, design tools, handling and processing tools and equipment, for front-end or back-end manufacturing.</li> </ul> <p>d) <i>Semiconductor chips</i></p> <p>Development, production and commercialization of new semiconductor chips for digital applications.</p> <p>These activities comprise, but are not limited to, design and deployment of electronic and photonic integrated circuits (chips) and integrated systems for applications such as AI, edge computing, Blockchain/DLT, Cybersecurity, IoT, 5G/6G, HPC, Quantum Computing and Other Digital Technologies.</p> <p><b>E. Critical and strategic raw materials</b></p> <p>Activities that support the development of the critical and strategic raw materials<sup>28</sup> value chain, including, but not limited to:</p> <ul style="list-style-type: none"> <li>a) research, development and innovation, including testing and demonstration of innovative solutions related to critical raw materials, including permanent magnet development;</li> <li>b) production and recovery of critical raw materials, including rare earth refining and recovery of rare earths from used permanent magnets;</li> <li>c) increasing critical raw materials' efficiency; and</li> <li>d) recycling/reuse of critical raw materials, including supply of secondary critical raw materials</li> <li>e) for diverse uses, such as low and zero emissions mobility, batteries, renewable energies and digital applications.</li> </ul>
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<sup>28</sup> As defined in Annex I of Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) 168/2013, (EU) 2018/858, 2018/1724 and (EU) 2019/1020 (OJ L, 2024/1252, 3.5.2024).

	<p><b>F. Life science &amp; health</b></p> <p>Solutions and developments that contribute to improving the health systems, disease prevention, diagnostic and treatment, promoting healthy lifestyle and making the EU capable to respond effectively to health crises. Such activities include, but are not limited to, the sub-sectors below at any stage of development:</p> <ul style="list-style-type: none"> <li>a) therapeutics and vaccines (drug discovery and development), notably through biotech or pharmaceutical solutions;</li> <li>b) medtech (e.g. medical devices, implants, prosthetics);</li> <li>c) diagnostics (e.g. imaging, biomarkers);</li> <li>d) digital health (e.g. wearables, telehealthcare);</li> <li>e) health services, including new business models and social innovations;</li> <li>f) manufacturing products for the life sciences sector;</li> <li>g) AI applied to life sciences (i.e. to any of a)-e) above).</li> </ul> <p><b>G. Space</b></p> <p>Upstream and downstream space activities that contribute to the development and competitiveness of the European space industry and other industries using space data for digital applications. Activities include, but are not limited to, research, development, manufacturing, distribution or operation of components, products, systems or technologies for:</p> <ul style="list-style-type: none"> <li>a) space, ground or launch systems segments;</li> <li>b) data processing, analytical tools and artificial intelligence for use with space data and other data sources;</li> <li>c) digital applications and services based on or using space data in combination with other data sources;</li> <li>d) integration of space data and services into innovative products in other sectors;</li> <li>e) adaptation of space technologies, products, applications and services to non-space economic sectors;</li> <li>f) space exploration and autonomous exploration vehicles.</li> </ul> <p><b>H. Industrial Technologies</b></p> <p>Activities that enable process, goods and service innovation and that cut across industries, promote inclusive and sustainable industrialization, raise industry's share of employment, increase the access of small-scale industrial and other enterprises to financial services and their integration into value chains and markets. Such activities include, but are not limited to:</p>
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	<ul style="list-style-type: none"> <li>a) robotics and automation;</li> <li>b) nanotechnology;</li> <li>c) industrial biotechnology;</li> <li>d) photonics technologies;</li> <li>e) advanced materials<sup>29</sup>;</li> <li>f) advanced manufacturing technologies (both B2B software and hardware are included).</li> </ul> <p><b>I. Mobility and transport solutions</b></p> <p>Activities accelerating the shift to sustainable, resilient and smart mobility and all modes of transport, both for people and goods, with an emphasis on zero or low carbon emissions together with seamless, safe and efficient connectivity, including, but not limited to:</p> <ul style="list-style-type: none"> <li>a) improved vehicle or vessel performance technologies;</li> <li>b) battery technologies, thereof, and associated charging solutions and infrastructure;</li> <li>c) electric vehicles, vessels, planes and micro mobility vehicles and infrastructure to propagate these technologies;</li> <li>d) use of sensor technologies and transport systems.</li> </ul> <p><b>J. Industrial decarbonization &amp; environmental sustainability</b></p> <p>Comprise low carbon technologies and processes, and low carbon products substituting existing carbon intensive alternatives, as well as enabling technologies and services in sectors listed in Annex I of the Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC<sup>30</sup> (the “Emissions Trading System Directive”), activities minimising impacts and risks to natural capital or pollution (air, water, land and biodiversity) and making the most efficient and optimal use of natural capital resources. Such activities include, but are not limited to:</p> <ul style="list-style-type: none"> <li>a) transformative circularity: technological, business, or social innovations, processes, products, technologies and services</li> </ul>
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<sup>29</sup> This includes, *inter alia*, the development and uptake of innovative advanced materials with enhanced functionalities to accelerate the green transition of different industrial sectors, for instance energy, mobility, construction or electronics, including the development of chemicals and materials that are Safe and Sustainable by Design (following the Commission Recommendation EU/2022/2510), or address material efficiency strategies to reduce dependencies on critical raw materials or substitute them.

<sup>30</sup> OJ L 275, 25.10.2003, p. 32, ELI: <http://data.europa.eu/eli/dir/2003/87/oj>

	<p>accelerating the transition to circular use of materials and efficiency solutions both in industrial process as well as value chains, including in the value chain of critical raw materials;</p> <ul style="list-style-type: none"> <li>b) new business, sharing or service models that trigger changes in consumer, distribution and/or production behaviour, waste prevention, recovery, re-use, treatment and recycling;</li> <li>c) low GHG or bio-based material design, increased material efficiency (e.g, steel, cement, plastic and plastic alternatives, packaging materials, textiles);</li> <li>d) low GHG or resources efficient production/ manufacturing processes and technologies;</li> <li>e) optimised after-use treatment and management systems, including but not limited to Carbon Capture and storage (CCS) technologies;</li> <li>f) industrial solutions contributing to the protection and restoration of nature and biodiversity whilst reducing overall impacts and dependencies on natural capital.</li> </ul> <p><b>K. Blue economy</b></p> <p>Sustainable <sup>31</sup> economic activities that take place in the marine environment or that use sea resources (other than oil or gas) as an input, as well as economic activities outside the marine environment that are involved in the production of goods or the provision of services that will contribute to those activities, including but not limited to:</p> <ul style="list-style-type: none"> <li>a) water and seabed pollution prevention and remediation;</li> <li>b) management, conservation, restoration and monitoring of marine biodiversity and nature-based solutions, including social innovations;</li> <li>c) clean technologies, renewable marine energy, reducing the climate change impact of marine activities;</li> <li>d) sustainable aquaculture or less invasive fishing techniques and gears;</li> <li>e) land-based activities such as, micro-algae production and processing, land-based aquaculture, or similar;</li> <li>f) ocean observation;</li> <li>g) eco-friendly tourism.</li> </ul> <p><b>L. Other adaptation solutions</b></p> <p>Other areas enhancing directly or indirectly the adaptive capacity, strengthening resilience and reducing vulnerability of key systems</p>
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<sup>31</sup> Sustainable Blue Economy Finance Principles: <https://www.unepfi.org/blue-finance/the-principles/>

	<p>affected by climate change (health, food security, natural environment, water, infrastructure and others) and developing innovative solutions for environmental and climate monitoring services.</p> <p><b>M. Defence</b></p> <p>Activities linked to solutions and technologies for the defence sector that accelerate the evolution of the European defence technological and industrial base. Such activities include, but are not limited to, research and development of defence products and critical future and emerging defence technologies with a dual-use potential, such as:</p> <ul style="list-style-type: none"> <li>a) cyber, space, air, ground (including force protection and mobility), naval and underwater systems;</li> <li>b) defence medical response, chemical biological radiological nuclear (CBRN), biotech and human factors;</li> <li>c) information superiority (C4ISR);</li> <li>d) advanced passive and active sensors;</li> <li>e) digital transformation;</li> <li>f) energy resilience and environmental transition;</li> <li>g) materials and components;</li> <li>h) simulation and Training;</li> <li>i) strategic technology foresight.</li> </ul>
<b>Targeted geography</b>	Germany and other Member States.
<b>Eligible Equity Final Recipients</b>	<p>Eligible Equity Final Recipient means an Equity Final Recipient, which:</p> <ul style="list-style-type: none"> <li>a) is established and operating in a Member State; and</li> <li>b) comply with the eligibility criterion set out in Article 24(6)(a) of the Agreement; and</li> <li>c) is not an Excluded Final Recipient; and</li> <li>d) is a start-up, an SME or a Small Mid-Cap.</li> </ul> <p>An Eligible Equity Final Recipient, which is an enterprise, shall be considered to be established and operating in a Member State, if at the time of the first investment by the Implementing Partner, it is:</p> <ul style="list-style-type: none"> <li>a) incorporated in a Member State or has legal presence in a Member State through a subsidiary or other form of legal entity; and</li> <li>b) is exercising its main activities in one or more Member States.</li> </ul> <p>For Eligible Equity Final Recipients in early stage with insignificant operations, the assessment of their main activities shall be based on the Eligible Equity Final Recipient's business plan at the time of the first investment by the Implementing Partner.</p>

**Annex I**

	In addition, in case of an investment by the Implementing Partner into a specific project, such projects shall be situated in a Member State or they shall constitute Cross-border Projects.
<b>The invested amount into Equity Final Recipients</b>	The aggregate amount of investments via one or more Equity Operation(s) into an Equity Final Recipient shall not exceed EUR 30 000 000.
<b>Term of investments</b>	The term of Equity Operations shall not be less than 1 year and not more than 20 years.
<b>Framework Operations</b>	Framework Operations are allowed.

## Annex II – Operational reporting

### Article 1 General Provisions

1. The reports under this Annex II shall be submitted through the InvestEU MIS using a structured format and an xml template agreed between the Implementing Partner and the Commission.
2. Amounts denominated in a currency other than euro, unless reported in that currency, shall be converted into euro at the ECB Exchange Rate prevailing at the last day of the relevant reporting period (for stock or outstanding amounts), or at the applicable ECB Exchange Rate as of the date of the relevant event (for example approvals, signatures, disbursements), as set out in the xml template referred to in Article 1.1.
3. For the avoidance of doubt, in case of an Operation attributable to a Framework Operation, the reporting defined in this Annex II shall apply to the Sub-Projects.
4. This Annex can be amended by Separate Implementing Arrangement.

### Article 2 Operational Reports

1. The Implementing Partner shall prepare annual Operational Reports based on statistical data on an aggregated basis as of 31 December and provide them to the Commission by 15 of February of the following year as from the Effective Date.

Operational Reports shall include information related to the assessment of the Key Performance Indicators (“KPI”) and Key Monitoring Indicators (“KMI”), in particular the indicators laid down in Annex III of the InvestEU Regulation. The Implementing Partner shall use in its reporting the methodology regarding KPI and KMI adopted by the Steering Board. The KPI and KMI reporting shall be based on the information available to the Implementing Partner at the time of approval by the Implementing Partner. Where relevant, their final value shall be based on amounts as calculated in the project completion report in accordance with the Implementing Partner’s rules, policies and procedures for Operations that have been completed and for which a completion report has been finalized.

2. The Commission and the Implementing Partner agree to explore options for streamlining of the Operational Reports which would apply from the end of the Signature Period.
3. The content of the Operational Report is defined as follows:

For the NRW.BANK RIDW Direct Equity Financial Product, the Implementing Partner shall provide the following items referred to in Article 2.3 of this Annex as part of Operational Reports referred to Article 2.1 of this Annex:

- All items of Sections A1 and A3
- All items of Section B2
- All items of Section B3, except B3.9 and B3.10
- All items of Section B4, except B4.7
- All items of Section B5
- All items of section B6, and

-All items of section B7

## A. Key Performance and Monitoring Indicators

1. Unless otherwise specified, references (including to investment, volume and number) in Sections A2 until A5 below shall be on the basis of the aggregate signed principal amount of the Operations.

### A1. Indicators for all Operations

1. Volume of financing supported by the InvestEU Fund (at the aggregate level, broken down by Policy Window):
  - (a) Volume of Operations signed (i.e. aggregate signed principal amount of Operations)
  - (b) Investment mobilised (i.e. aggregate projected investments by the Final Recipients, with regard to approved Operations<sup>32</sup> and signed Operations)
  - (c) Amount of private finance mobilised (i.e. aggregate projected investments by the Final Recipients that is supported by private finance, with regard to approved Operations<sup>33</sup> and signed Operations)
  - (d) Leverage and multiplier effect achieved (i.e. InvestEU Leverage Effect, Operations Leverage Effect, Disbursement Leverage Effect, InvestEU Multiplier Effect, Operations Multiplier Effect, Disbursement Multiplier Effect)
2. Geographical coverage of the aggregate level of Operations and of InvestEU Operations, broken down by Policy Window:
  - (a) Number of countries (Member States and Third Countries)
  - (b) Number of regions at the common classification of territorial units for statistics (NUTS) at NUTS 2 level, unless not available at NUTS 2 level
  - (c) Volume of Operations (i.e. aggregate signed principal amount of Operations) per country (Member State and Third Country) or “multi-country” and per region or “multi-region”
3. Impact of financing supported by the InvestEU Fund (whereby investment and volume refers to the aggregate signed principal amount of Operations)
  - (a) Number of jobs created or supported (by the aggregate of the Operations)
  - (b) Investment supporting climate objectives (as defined in Article 22.2(a) of the Agreement, broken down by Policy Window)
  - (c) Investment supporting climate or environmental objectives (as defined in Article 22.2(b) of the Agreement) under the SIW, broken down per climate or environmental objective
  - (d) Investment supporting climate change mitigation
  - (e) Investment supporting climate change adaptation

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<sup>32</sup> Operations after approval by both the IP Relevant Governing Body and by the Investment Committee.

<sup>33</sup> Operations after approval by both the IP Relevant Governing Body and by the Investment Committee.

- (f) Investment supporting water resources
- (g) Investment supporting circular economy
- (h) Investment supporting pollution, prevention & control
- (i) Investment supporting biodiversity & ecosystems
- (j) Investment supporting digitisation
- (k) Investment supporting industrial transition
- (l) Investment supporting just transition
- (m) Strategic investment:
  - Number and volume of Operations contributing to the provision of critical infrastructure
  - Number and volume of Operations contributing to investment in cybersecurity, space and defence
- (n) Investments supporting gender equality
- (o) Financial Intermediaries: Number of Financial Intermediaries with an environmental and social management system or similar procedures (i.e. procedures to manage environmental, climate and social risk management) in place:
  - Financial Products in the form of debt
  - Financial Products in the form of equity, out of which infrastructure funds

## **A2. Indicators for Operations in the Sustainable Infrastructure Window (SIW)**

- (a) Energy: Additional renewable and other safe and sustainable zero and low-emission energy generation capacity installed (in megawatts-hours (MWh))
- (b) Energy: Number of households, number of public and commercial premises with improved energy consumption classification
- (c) Energy: Estimated energy savings generated by the projects (in kilowatt-hours (kWh))
- (d) Energy: Annual green-house gas emissions reduced/avoided in tonnes of CO<sub>2</sub> equivalent
- (e) Energy: Volume of investment in the development, smartening and modernisation of sustainable energy infrastructure
- (f) Digital: Additional households, enterprises or public buildings with broadband access of at least 100 Mbps upgradable to gigabit speed, or number of WIFI-hotspots created
- (g) Transport: Investment mobilised, in particular in TEN-T:
  - Number of cross-border and missing links projects (including projects relating to urban nodes, regional cross-border rail connections, multimodal platforms, maritime ports, inland ports, connections to airports and railroad terminals of the TEN-T core and comprehensive network)
  - Number of projects contributing to the digitisation of transport, in particular through the deployment of European Rail Traffic Management System (ERTMS), River Information System (RIS), Intelligent Transportation System (ITS), vessel traffic monitoring and information system (VTMIS)/e-maritime services and Single European Sky ATM Research (SESAR)

- Number of alternative fuel supply points built or upgraded
- Number of projects contributing to the safety of transport
- (h) Environment: Investment contributing to the implementation of plans and programmes required by the Union environmental acquis relating to air quality, water, waste and nature

**A3. Indicators for Operations in the Research, Innovation and Digitisation Window (RIDW)**

- (a) Contribution of the investment mobilised to the objective of 3 % of the Union's gross domestic product (GDP) invested in research, development and innovation
- (b) Number of enterprises supported by size carrying out research and innovation projects (regarding size e.g. SME, Small Mid-Cap)

**A4. Indicators for Operations in the SME Window (SMEW)**

- (a) Number of enterprises supported by size (micro, small, medium-sized and small mid-cap companies)
- (b) Number of enterprises supported by stage (early, growth/expansion)
- (c) Number of enterprises supported by Member State and region at NUTS 2 level
- (d) Number of enterprises supported by sectors by statistical classification of economic activities in the European Union (NACE) code
- (e) Percentage of investment volume directed towards SMEs

The indicators A4 shall be reported as per Section C of this Annex II.

**A5. Indicators for Operations in the Social Investment and Skills Window (SISW)**

- (a) Social infrastructure: Capacity and access to supported social infrastructure by sector: housing, education, health, other
- (b) Microfinance and social enterprise finance: Number of microfinance recipients and social enterprises supported
- (c) Skills: Number of individuals acquiring new skills or having their skills validated and certified: formal, education and training qualification

**B. Operation identification for all Operations<sup>34</sup>**

**B1. Operation identification**

1. Implementing Partner and Investment Committee Operation IDs
2. Operation name
3. Financial Product

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<sup>34</sup> Operations after approval by both the IP Relevant Governing Body and by the Investment Committee.

4. Operation status (including cancellations)
5. Direct or Indirect
6. Type of finance provided by the Implementing Partner
7. Type of finance provided to the Final Recipient (only for Indirect Operations)
8. With Financial Sub-Intermediaries (Y/N)
9. Framework Operation ID
10. Reference to the relevant Top-Up Annex
11. Operation description/objective (for the InvestEU Fund website publication)
12. Operation contributing to the Just Transition Scheme (i.e. Operations where the project or Final Recipient is located in a JTM Area or, if not, the project is key to the transition of a JTM Area, and aligned with the just transition objectives outlined in the relevant Territorial Just Transition Plan) (Y/N)
13. Indication whether the same Financial Intermediary (for Indirect Operations) or the same Final Recipient (for Direct Operations) is receiving support under the InvestEU Fund by another implementing partner (Y/N)
14. Name(s) of the other implementing partner(s), if applicable

## **B2. Operation counterparty**

1. Counterparty (i.e. Final Recipient in case of Direct Operation and Financial Intermediary in case of Indirect Operation) name
2. Counterparty establishment location (NUTS) (at NUTS 2 level, unless not available at NUTS 2 level)
3. Counterparty sector
4. Counterparty set-up (type)

## **B3. Operation amounts**

1. Approved EU Guarantee amount
2. Signed EU Guarantee amount
3. Currency of the Operation
4. Operation approved amount in local currency and euro equivalent
5. Operation signed amount in local currency and euro equivalent
6. Top-Up Contribution applied to Operations
  - EU Sectorial Programme
  - Amount in euro
7. Target fund size (equity only) in local currency
8. Actual fund size (equity only) in local currency
9. Operation Agreed Portfolio Volume (guarantee only) in local currency

10. Operation Actual Portfolio Volume (guarantee only) in local currency
11. Investment mobilised (with regard to InvestEU Operations and Operations, whereby in respect of Framework Operations, the relevant approved Sub-Projects shall be considered)

**B4. Operation dates**

1. Implementing Partner's governing body (first) approval date
2. Implementing Partner's governing body re-approval date
3. Investment Committee approval date
4. First signature date
5. First closing date (equity only)
6. Planned end of investment period (equity only)
7. End of Inclusion Period (guarantees only)

**B5. Operation focus**

1. Operation NACE focus and related percentages
2. Operation location focus (NUTS) (at NUTS 2 level, unless not available at NUTS 2 level) and related percentages
3. Stage focus (equity only)
4. Policy objectives (eligible areas as per Annex II of the InvestEU Regulation)
5. Policy Window(s) used and Policy Window usage in %

**B6. Investors**

1. Type of investor
2. % of aggregate total commitments by type of investor

**B7. Framework Operations**

1. Investment Committee Framework Operation ID
2. Implementing Partner Framework Operation ID
3. Framework Operation name
4. Financial Product
5. Policy Window(s) and Policy Window(s) allocation in %
6. Framework Operation status (including cancellations)
7. Currency of the Framework Operation
8. Approved EU Guarantee amount in euro
9. Framework Operation approved amount in euro

10. Framework Operation approved amount in currency of the Operation
11. Investment Committee approval date
12. IP Relevant Governing Body (first) approval date
13. IP Relevant Governing Body re-approval date
14. Operation NACE focus and NACE focus allocation in %
15. Operation location focus (NUTS) (at NUTS 2 level, unless not available at NUTS 2 level) and location focus allocation in %
16. Eligible areas (as per Annex II of the InvestEU Regulation) and eligible areas allocation in %
17. Non-disclosure (yes/no)

**C. Final Recipients – only for Indirect Operations**

**C1. Guarantee Final Recipients - enterprises**

**C1.1. Items to be reported at Operation level**

1. Number of Guarantee Final Recipient Transactions
2. Number of Guarantee Final Recipients
3. Actual Volume of Guarantee Final Recipient Transactions

**C1.2. Items to be reported on aggregated data per Guarantee Product**

1. Actual Volume and number of Guarantee Final Recipient Transactions and number of Guarantee Final Recipients
  - (a) per Guarantee Final Recipient size (number of employees)
    - <10
    - 10-50
    - 50-250
    - >250
  - (b) per region (NUTS level 2)
  - (c) per sector (NACE Level 4)
  - (d) per Guarantee Final Recipient Transaction size
    - 0-25k
    - 25k-100k
    - 100k-1m
    - 1m-7.5m
  - (e) per purpose of financing
    - working capital
    - investment
    - business transfer

- mixed
- 2. Actual Volume and number of Guarantee Final Recipients per Guarantee Final Recipient age (since Final Recipient's incorporation)
  - <1 Y
  - 1-3Y
  - 3-5Y
  - 5Y+
- 3. Actual Volume and number of Guarantee Final Recipient Transactions per status
  - performing
  - expired
  - defaulted

## **C2. Guarantee Final Recipients - private individuals**

### **C2.1. Guarantee Final Recipients - private individuals (all Guarantee Products)**

1. Number of Guarantee Final Recipient Transactions
2. Number of Guarantee Final Recipients
3. Actual Volume of Guarantee Final Recipient Transactions

### **C2.2. Guarantee Final Recipients - private individuals - on an annual basis - to be included only in the year-end Operational Report**

1. Actual Volume / number of Guarantee Final Recipients **per Employment status**
  - (a) Full-time employed
  - (b) Part-time employed
  - (c) Self-employed/entrepreneur
  - (d) Unemployed/inactive
  - (e) Studying
2. Actual Volume / number of Guarantee Final Recipients per **Educational background**: split per ISCED level of education (0-8)
3. Actual Volume / number of Guarantee Final Recipients **per Disadvantaged and vulnerable person status**
  - (a) Gender (M/F)
  - (b) Youth: participants below 30 years of age
  - (c) Elderly: participants above 54 years of age
  - (d) Migrant background / Minorities (distinguish between Third Country nationals, participants with a foreign background, minorities including marginalised communities such as Roma)
  - (e) Participants with disabilities (Y/N)

- (f) Unemployed incl. long-term unemployed (people having lost their job during the last 1 year, people having lost their job for more than 1 year)
- 4. Actual Volume / number of Guarantee Final Recipients that enrolled in Training/mentoring: (Y/N)
- 5. Actual Volume / number of Guarantee Final Recipients per **client type**:
  - (a) Never applied for a loan
  - (b) Previously applied for a loan and rejected
  - (c) Previously applied and received a loan

### **C2.3. Guarantee Final Recipients - private individuals**

- 1. Number of Guarantee Final Recipients:
  - by country of residence
  - by country of studies
  - by nationality
  - by level of study undertaken (using ISCED classification)

### **C3. Eligible Equity Final Recipients**

#### **C3.1. Items to be reported at Operation level**

- 1. Operation ID
- 2. Amount invested in Eligible Equity Final Recipients
- 3. Number of Eligible Equity Final Recipients
- 4. Number of employees at first investment

#### **C3.2. Items to be reported at Final Recipient level<sup>35</sup> – on an annual basis - to be included only in the year-end Operational Report**

- 1. Operation ID
- 2. Date of first investment
- 3. Name of Eligible Equity Final Recipient
- 4. Amount invested in the Eligible Equity Final Recipient
- 5. Number of employees at first investment
- 6. Eligible Equity Final Recipient stage
- 7. Eligible Equity Final Recipient country
- 8. Eligible Equity Final Recipient NACE4

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<sup>35</sup> For the avoidance of doubt, data at Final Recipient level will not be reported for Fund of Funds investments.

9. Eligible Equity Final Recipient policy objective
10. Eligible Equity Final Recipient is listed (Y/N)

### **C3.3. Items to be reported on an aggregated basis per Financial Product**

1. Amount invested and number of Eligible Equity Final Recipients per country
2. Amount invested and number of Eligible Equity Final Recipients per NUTS2
3. Amount invested and number of Eligible Equity Final Recipients per sector (NACE 4)
4. Amount invested and number of Eligible Equity Final Recipients per Eligible Equity Final Recipients age (since Final Recipient incorporation)
  - <1 Y
  - 1-3Y
  - 3-5Y
  - 5Y+
5. Amount invested/number of Eligible Equity Final Recipients per policy objective
6. Amount and number of Eligible Equity Recipient Transactions per status
  - active
  - totally sold
  - written off

### **Article 3 Progress Reports**

1. The Progress Report shall be prepared as of 31 March, 30 June and 30 September and provided to the Commission by 30 April, 31 July and 31 October, respectively, as from the Effective Date until end of the Signature Period, through the InvestEU MIS in a structured form.
2. With reference to Article 40.2(d) of the Agreement, the Implementing Partner shall indicate which items are subject to confidentiality requirements.
3. The content of the Progress Report is for each Operation approved by both the IP Relevant Governing Body and by the Investment Committee the following items indicated in Article 2.3 of the Operational Report:
  - (a) all items of Section B1 (*Operation identification*);
  - (b) items 1, 2 and 3 of Section B2 (*Operation counterparty*);
  - (c) items 1,2, 3, 4 and 5 of Section B3 (*Operation amounts*);
  - (d) items 1, 2, 3, 4, 5 and 6 of Section B4 (*Operation dates*),
  - (e) all items of Section B5 (*Operation focus*); and
  - (f) all items of Section B7 (Framework Operations).

## Annex III – Financial reporting

### Part A. Financial reporting requirements

- a) By 15 February of each year following the Effective Date, the Implementing Partner shall provide the Commission with a complete set of unaudited financial statements of the previous calendar year. The Implementing Partner shall prepare those financial statements made from the perspective of the EU Guarantee and on the basis of the latest data available to the Implementing Partner. The Implementing Partner shall prepare those financial statements in accordance with the accounting rules as adopted by the Accounting Officer of the Commission, which are based on the International Public Sector Accounting Standards (IPSAS). The Commission communicates these accounting rules and any amendments thereof in advance to the Implementing Partner. The financial statements shall comprise the following information:
- (i) statement of financial performance;
  - (ii) balance sheet;
  - (iii) statement of changes in net assets;
  - (iv) cash-flow statement, as appropriate;
  - (v) notes to the financial statements, including disclosures on financial risk management.
- b) The unaudited financial statements shall be accompanied by a standardised reporting template ('reporting package') to be delivered in a form that will be provided by the Commission to the Implementing Partner by no later than 1 November of each year. This template is based on the accounting rules referred to in point (a) of Part A of this Annex III.
- c) The Implementing Partner shall ensure that the unaudited financial statements referred to in point (a) of Part A of this Annex III are audited by an independent external auditor in accordance with internationally accepted audit standards. The audit opinion shall state whether the financial statements are prepared in accordance with the accounting rules referred to in point (a) of Part A of this Annex III.
- d) By 15 March of each year following the Effective Date, the Implementing Partner shall provide the Commission with the complete set of audited financial statements for the previous calendar year (along with the audit opinion itself), prepared in accordance with point (a) of Part A of this Annex III. They shall be audited in accordance with point (c) of Part A of this Annex III. To the extent the Implementing Partner receives the same, it shall provide to the Commission a copy of the external auditors' management letter in relation to the EU Guarantee, which may include observations on the main internal controls, if applicable, and the corrective measures, if any.
- e) The financial statements and the 'reporting package' shall be expressed in euro. They may be drawn from financial statements denominated in other currencies. Where necessary, amounts denominated in a currency other than euro shall be converted into euro at the ECB Exchange Rate prevailing at the relevant reporting date.
- f) The financial statements shall be provided in electronic format (PDF). The 'reporting package' shall be submitted through the InvestEU MIS in a structured format by using an xml template provided by the Commission. In case the submission in a structured format is not technically feasible, the 'reporting package' shall be submitted in Excel format or in another electronic format provided by the Commission, in each case through the InvestEU MIS.

- g) Upon receipt of the financial statements and 'reporting package', the Commission may request clarifications on the information provided in these documents. The Implementing Partner shall use its reasonable endeavours to reply to the Commission.
- h) In addition to its regular reporting under this Annex III, upon request in writing by the Commission and provided that the relevant information is available to the Implementing Partner, the Implementing Partner shall provide reasonable assistance in connection with the answering by the Commission to queries from the European Court of Auditors, the European Parliament, the Council and other European Union institutions.
- i) The Implementing Partner shall keep and make available all relevant financial information (originals or copies) related to the EU Guarantee and to each Operation for a period of five (5) years after the date on which any liability under this Agreement ends and in any case until any on-going audit, verification, appeal, litigation or pursuit of claim or investigation by the OLAF, if notified to the Implementing Partner, has been closed.
- j) The Implementing Partner shall transpose the obligation in point (i) of Part A of this Annex III to its contracts with each Final Recipient.
- k) The accounting procedures applied by the Implementing Partner shall ensure that separate records are kept regarding the EU Guarantee in case the Agreement provides for support not only from the EU guarantee, as set out in Article 13(5) of the InvestEU Regulation, but also from other sources.

In respect of the Portfolios, the notes to the financial statements referred to in point (a)(v) of Part A of this Annex III shall include sufficient details to allow the EU for the proper follow-up of the net available EU Guarantee and the associated risk exposure, as well as the related revenues and expenses at the level of those Portfolios.

- l) All reports under this Annex III (Parts A, B and C) shall be submitted through the InvestEU MIS in an unstructured form, except the reporting package that shall be submitted in accordance with point (f) above.

**Part B. Annual Management Reporting requirements**

- a) By 15 February of each year, following the Effective Date, the Implementing Partner shall provide the Commission with:
- (i) a Management Declaration of Assurance substantially in the form set out below (Form of Management Declaration of Assurance);  
  
If this Management Declaration of Assurance is qualified, it shall be updated by 15 March of each year.
  - (ii) to the extent relevant for implementation of the EU Guarantee, a summary of the final audits and of controls carried out and, where errors and/or weaknesses in systems are identified, an analysis of their nature and extent, as well as information on corrective measures taken or planned.
- b) If the Commission considers necessary for its assurance, it shall require, in writing by 30 June of each year, the Implementing Partner to submit no later than 15 March of the following year audit conclusions from an independent audit body resulting from an agreed upon procedure drawn up in accordance with internationally accepted audit standards. These audit conclusions shall establish whether the control systems put in place function properly and, where relevant, are cost-effective, and whether the underlying transactions are legal and regular and managed in accordance with the provisions of this Agreement. These audit conclusions shall also state whether the audit work puts in doubt the assertions made in the Management Declaration of Assurance.
- c) Without prejudice to existing possibilities for carrying out further audits, where an audit based on internationally accepted audit standards providing reasonable assurance has been conducted by an independent auditor on the financial statements and reports setting out the use of a Union contribution, that audit shall form the basis of the overall assurance, provided that there is sufficient evidence of the independence and competence of the auditor. To that end, the report of the independent auditor and the related audit documentation shall be made available on request to the European Parliament, the Commission and the Court of Auditors.

### Form of Management Declaration of Assurance

The *{Implementing Partner}* declares that, in its opinion, in relation

- to the guarantee agreement dated *{insert date}* (the “**Guarantee Agreement**”) between the European Union, represented by the European Commission, and *{the Implementing Partner}*, and
- to Article 158(1)(c) of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast)<sup>36</sup> (the “**Financial Regulation**”),

the *{Implementing Partner}* can give reasonable assurance that in all material respects:

1. the report on the implementation of budgetary guarantees by the *{Implementing Partner}* pursuant to Annex II and the unaudited financial statements submitted pursuant to point (a) of Part A of Annex III of the Guarantee Agreement for the period ended on 31 December *{insert year}* are properly presented in the agreed form, complete and accurate.
2. the amounts made available to the *{Implementing Partner}* under the Guarantee Agreement were used for their intended purpose as set out in the Guarantee Agreement.
3. a professional standard of care and diligence in its implementation of the Guarantee Agreement was applied by the *{Implementing Partner}*.
4. the activities were performed in compliance with the obligations of the *{Implementing Partner}* laid down in the Guarantee Agreement and in compliance with Article 157(3) and (4) of the Financial Regulation.
5. the control systems and procedures put in place provide reasonable assurance as to the legality and regularity of the Operations signed by the *{Implementing Partner}*.

This reasonable assurance is based on the *{Implementing Partner}*'s judgement and on the information at the *{Implementing Partner}*'s disposal, including, from control and audit work carried out in line with international professional standards and practices, including sample based controls.

*{This assurance is however subject to the following reservations:*

*... [short description of the reservation to be included, if applicable]}*

Furthermore, the *{Implementing Partner}* confirms that it is not aware of any undisclosed matter during the period in question which could be damaging to the financial interests of the European Union other than any matters brought to the attention of the Commission by the *{Implementing Partner}* in accordance with the Agreement.

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<sup>36</sup> OJ L 2024/2509, 26.9.2024, ELI: <http://data.europa.eu/eli/reg/2024/2509/oj>.

Signed by

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Part C. Summary of the final audit reports and controls carried out**

By 15 February of each year, following the Effective Date, the Implementing Partner shall provide the Commission with a summary of the final audit reports and controls carried out by the Implementing Partner in accordance with points 1 to 3 of Section I of Annex VI which shall include:

- an overview of the monitoring approach by the Implementing Partner and the description of checks performed through desk monitoring and monitoring visits
- a summary of the findings at the level of the Final Recipient
- an analysis of the nature and extent of errors and weaknesses identified
- the progress in Restructuring and losses linked to Restructuring and
- the steps undertaken for and progress on the recovery actions on Direct Operations.

The summary shall also include the following information:

- a) error rates detected by controls carried out (annual/cumulative)
- b) coverage of sample of controls carried out (annual/cumulative)
- c) correction of errors/irregularities (% / EUR) (annual/cumulative)
- d) results of the selection procedure of Financial Intermediaries (in case of Indirect Operations), number of applicants, number of selected applicants, number of redress procedures, time to select
- e) cases of fraud or other illegal activity reported to OLAF in accordance with Article 31.6 of the Agreement
- f) cases of criminal conduct reported to EPPO in accordance with Article 31.12 of the Agreement
- g) actions taken under Articles 31.6 and 31.10 of the Agreement.

## Annex IV – Risk reporting

### Article 1

1. In accordance with Article 30.7 of the Agreement, the Implementing Partner shall submit one Risk Report per year, as set out in this Annex IV.

The report shall be submitted through the InvestEU MIS in a structured form and an xml template agreed between the Implementing Partner and the Commission.

The year-end report (the “Year-end Risk Report”) shall refer to 31 December of the previous year and shall be submitted by 15 February of each year. If such report is provisional or if the Commission requests the resubmission, a final and updated version of the year-end report shall be provided without undue delay and no later than 28 February of the same year.

2. [intentionally omitted]
3. The reporting on Direct Operations and Large Indirect Guarantee Final Recipient Transactions<sup>37</sup> shall be done in accordance with Articles 2 and 3. The reporting on all Indirect Operations (including Large Indirect Guarantee Final Recipient Transactions) shall be done in accordance with Article 4.<sup>38</sup>

The Implementing Partner shall report on the items of Articles 2 and 3 applicable to Equity Operations. For the avoidance of doubt, all the other items are not applicable.

4. In Article 2, item 1.5 (Operation), and in Article 3, item 1.2 (Portfolio), any fields marked with ‘o’ shall be filled in optionally, in case (any of) these data can be produced by the Implementing Partner.
5. For all at least partially disbursed Operations, information on cash flows shall be reported only for principal amounts, as per item 1.6 (Cash-flow) of Article 2. All undisbursed Operations shall be reported as per item 1.7 (Undisbursed) of Article 2.
6. Before the submission of the first Risk Report under this Annex, the Implementing Partner shall submit to the Commission information on the mapping of its internal rating system to the InvestEU Common Rating Scale in accordance with the mapping guidance as set out in Article 38.1 of this Agreement. In each Year-end Risk Report, the Implementing Partner shall certify in writing that its mapping and any subsequent changes in its mapping methodology is in line with the mapping guidance referred to in Article 38.1 of this Agreement and inform the Commission of any such change.
7. This Annex can be amended by Separate Implementing Arrangement.

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<sup>37</sup> Not applicable.

<sup>38</sup> Only items applicable for the relevant Financial Product shall be filled out based on the xml template referred to in Article 1.1.

## Article 2

The Year-end Risk Report for Direct Operations shall contain the following data. The Year-end Risk Report for Large Indirect Guarantee Final Recipient Transactions shall contain the data required in items 1.4, 1.5, 1.6 and 1.7.

### 1.1 NRW.BANK

1	Reporting date
2	Reporting status

### 1.2 Portfolio<sup>(1)</sup>

		Debt	Equity
1	Portfolio ID	X	X
2	Total amount of the Operations signed under the Portfolio	X	X
3	Total amount of the Operations signed under the Portfolio, in CCY (if applicable)	X	X
4	Total amount of the EU Guarantee used for the Operations under the Portfolio	X	X
5	Correlation	X	
6	Expected Loss (EL) % (lifetime, cumulative)	X	
7	Weighted Average Life (WAL)	X	X
8	Minimum underwriting requirement	X	X
9	Loss Given Default (LGD)	X	
10	Called Guaranteed Sums	X	X
11	Called Guaranteed Sums, in CCY (if applicable)	X	X
12	N/A		
13	N/A		
14	Recoveries reinstating the EU Guarantee, under Operations (aggregate)	X	X
15	Recoveries reinstating the EU Guarantee, under Operations (aggregate), in CCY (if applicable)	X	X
16	Financial Contribution amount	X	X
17	Investment phase (ramp up (i.e. until end of the Signature Date) or amortization (afterwards))	X	X

<sup>(1)</sup> Fields related to FX risk management are not part of this template. They are to be added only if relevant.

### 1.3 EU Guarantee structure

		Debt	Equity
1	Portfolio ID	X	X
2	Attachment point	X	X
3	Detachment point	X	X

4	Implementing Partner share in the FLP or Pari Passu Protection	X	X
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## 1.4 Final Recipient

		Debt	Equity
1	Portfolio ID	X	X
2	Final Recipient ID	X	X
3	Operation ID	X	X
4	Status-Non-Performing Exposure (NPE)	X	
5	Class (corporates; financial institutions; sovereign; public sector enterprise; regional, government and local authorities (RGLA), multilateral development bank)	X	X
6	Country	X	X
7	Sector	X	X
8	Internal rating notch /scoring of Final Recipient, at signature date	X	X
9	Common rating notch mapped of Final Recipient, at signature date	X	
10	Internal rating notch / scoring of Final Recipient, at reporting date	X	X
11	Common rating notch of Final Recipient, at reporting date	X	
12	Internal rating notch (guarantor, at reporting date)	X	
13	Common rating notch (guarantor, at reporting date)	X	
14	Last internal rating validation date	X	

1.5 Operation<sup>(2)</sup>

		Debt	Equity <sup>(3)</sup> (Mandatory: X, Optional: O)
1	Direct Operation/ Large Indirect Guarantee Final Recipient Transaction	X	X
2	Financial Intermediary name (in case of Large Indirect Guarantee Final Recipient Transactions)	X	
3	Originator name (Financial (Sub-)Intermediary, as applicable, in case of Large Indirect Guarantee Final Recipient Transactions)	X	X
4	Portfolio ID	X	X
5	Final Recipient ID	X	X
6	Operation ID	X	X
7	Operation name	X	X
8	Type of finance provided to the Final Recipient (in case of Large Indirect Guarantee Final Recipient Transactions)	X	
9	Amount/equity commitment size approved by the Investment Committee	X	X
10	Amount in CCY/equity commitment size in CCY approved by the Investment Committee (if applicable)	X	X
11	Signed amount/Equity commitment size (net of cancellations/decommitments)	X	X
12	Signed amount in CCY / Equity commitment size in CCY (net of cancellations/decommitments) (if applicable)	X	X
13	Disbursed amount / Invested amount	X	X
14	Disbursed amount / Invested amount, in CCY (if applicable)	X	X

15	Outstanding amount / Net Invested amount	X	X
16	Outstanding amount / Net Invested amount, in CCY (if applicable)	X	X
17	Amount of the EU Guarantee approved by the Investment Committee	X	X
18	Amount of the EU Guarantee signed under the Operation by the Implementing Partner	X	X
19	Reimbursed principal amounts/Cumulative repayments	X	X
20	Reimbursed principal amounts/Cumulative repayments, in CCY (if applicable)	X	X
21	Currency	X	X
22	FX rate at signature date	X	X
23	FX rate at reporting date	X	X
24	Signature date	X	X
25	Loss Given Default (LGD)	X	
26	Expected Loss	X	
27	Unexpected Loss (at 95% confidence level)	X	
28	Total risk pricing	X	
28.1	EU FLP Fee/EU Pari Passu Fee	X	
29	Maturity date	X	X
30	Net Asset Value (NAV)		X
31	Net Asset Value (NAV), in CCY (if applicable)		X
32	Paid-in Capital		X
33	Paid-in Capital, in CCY (if applicable)		X
34	Total Value to Paid in (TVPI)		X
35	Internal Rate of Return (IRR)		X
36	Financial Asset at fair value through Profit or Loss		O
37	Financial Asset at fair value through Profit or Loss, in CCY (if applicable)		O
38	Vintage year		O
39	Stage of investment		O
40	Fund type		O
41	Number of funds (for Fund of Funds)		O
42	Nature of the investment		O
43	Size of fund		O
44	PICC (Paid-In to Committed Capital ratio)		O
45	DPI (Distributed to Paid-In ratio)		O
46	Functional currency of the Final Recipient		O
47	EBITDA		O
48	EBITDA, in CCY (if applicable)		O
49	Total net debt		O
50	Total net debt, in CCY (if applicable)		O
51	Total equity		O
52	Total equity, in CCY (if applicable)		O
53	Ownership percentage in the Final Recipient		O
54	Reporting date of the items 46-53		O

- (2) In accordance with Article 9.11 of the Agreement, the data shall be provided at Sub-Project level in case of Framework Operations.
- (3) Equity (Mandatory) indicates all the fields that are mandatory to be reported for all Equity Operations, while filling out any of the Equity (Optional) fields remain optional. The Commission however may consider the reporting of all the Equity (Optional) fields to become mandatory at a later stage, in agreement with the Implementing Partner.

## 1.6 Cash-flow

		Debt	Equity
1	Portfolio ID	X	X
2	Operation ID	X	X
2.1	Final Recipient ID	X	X
3	Disbursement ID	X	X
4	Payment frequency	X	
5	Bullet/amortizing flag	X	
6	Currency	X	X
7	Amount in EUR	X	X
8	Amount in CCY (if applicable)	X	X
9	Date	X	X

## 1.7 Undisbursed

		Debt	Equity
1	Portfolio ID	X	X
2	Operation ID	X	X
2.1	Final Recipient ID	X	X
3	Grace period (in years)	X	
4	Undisbursed exposure	X	X
5	Undisbursed exposure, in CCY (if applicable)	X	X
6	Drawdown request limit (loans and equity) / final availability date (guarantees)	X	X
7	Maximum tenor, in years	X	

1.8 Rating scale<sup>(4)</sup>

		Debt	Equity
1	Portfolio ID	X	X
2	Scale name	X	X
3	Rating / scoring scale code	X	X
4	Internal rating / scoring	X	X
5	Mapped rating	X	

- (4) In form of one table per Portfolio.

1.9 Discount rates<sup>(5)</sup>

		Debt	Equity
1	Discount Rates ID	X	
2	Value date	X	
3	Currency	X	
4	Forward date	X	
5	Discount rate	X	

<sup>(5)</sup> For all currencies part of the Portfolio

**Article 3**

[intentionally omitted]

**Article 4**

The Year-end Risk Report for all Indirect Operations (including Large Indirect Guarantee Final Recipient Transactions) shall contain the following data:

## 1.1 NRW.BANK

1	Reporting date
2	Reporting status

1.2 Portfolio<sup>(6)</sup>

		Debt <sup>(7)</sup>	Capped Guarantees	Uncapped Guarantees	Equity
1	Portfolio ID	X	X	X	X
2	Correlation	X	X	X	
3	Expected Loss (EL) % (lifetime, cumulative)	X	X	X	
4	Weighted Average Life (WAL)	X	X	X	
5	Loss Given Default (LGD)	X	X	X	
6	Unexpected loss (at 95% confidence level)	X		X	
7	Initial Rating	X		X	
8	Total amount of Operations signed	X	X	X	X
9	Total amount of Operations signed in CCY (if applicable)	X	X	X	X
10	Disbursed amount of Operations	X	X	X	X
11	Disbursed amount of Operations in CCY (if applicable)	X	X	X	X
12	Outstanding amount of Operations	X	X	X	X
13	Outstanding amount of Operations in CCY (if applicable)	X	X	X	X

14	Number of Final Recipient Transactions per status	X	X	X	
15	Cumulative drawdowns (for funded Financial Products)				X
16	Cumulative drawdowns (for funded Financial Products), in CCY (if applicable)				X
17	Cumulative non-recallable distributions (for funded Financial Products)				X
18	Cumulative non-recallable distributions (for funded Financial Products), in CCY (if applicable)				X
19	Net Paid-in				X
20	Net Paid-in, in CCY (if applicable)				X
21	Total Value to Paid in (TVPI)				X
22	Net Asset Value (NAV)				X
23	Net Asset Value (NAV), in CCY (if applicable)				X
24	Internal Rate of Return (IRR)				X
25	Investment phase (ramp up (i.e. until end of the Signature Date) or amortization (afterwards))	X	X	X	X

(6) Fields related to FX risk management are not part of this template. They are to be added, if relevant.

(7) Debt means a funded Operation in the form of debt between the Implementing Partner and the Financial Intermediary.

### 1.3 Portfolio structure

		Debt	Capped Guarantees	Uncapped Guarantees	Equity
1	Portfolio ID	X	X	X	X
2	Attachment Point	X	X	X	X
3	Detachment Point	X	X	X	X
4	EU FLP amount	X	X	X	
5	EU Investment				X
6	Outstanding amount of EU Investment				X
7	Aggregate amount of Guarantee Call Claims from EU FLP	X	X	X	
8	Aggregate amount of Guarantee Call Claims from EU FLP, in CCY (if applicable)	X	X	X	
9	Aggregate amount of Recoveries reinstating the EU Guarantee	X	X	X	
10	Aggregate amount of Recoveries reinstating the EU Guarantee, in CCY (if applicable)	X	X	X	
11	Outstanding amount of EU FLP	X	X	X	
12	Implementing Partner's Pari Passu Protection amount	X			X
13	Implementing Partner's RRT amount			X	X
14	Implementing Partner Financial Contribution amount	X	X	X	X
15	EU FLP Fee / EU Pari Passu Fee / Guarantee Fee	X	X	X	

## 1.4 Financial Intermediary Contract Risk Indicators

		Debt	Capped Guarantees	Uncapped Guarantees	Equity <sup>(8)</sup> (Mandatory: X, Optional: O)
1	Financial Product ID	X	X	X	X
1.1	Portfolio ID	X	X	X	X
2	Operation ID	X	X	X	X
3	Financial Intermediary name	X	X	X	X
3.1	Agreed maximum Guarantee Rate		X	X	
3.2	Cap Rate		X		
4	Originator name (Financial (Sub-)Intermediary, as applicable)	X	X	X	X
5	Type of finance provided by the Implementing Partner	X	X	X	X
6	Type of finance provided to the Final Recipient	X	X	X	X
7	Individual guarantee Termination Date	X	X	X	
8	Weighted Average Life (WAL)	X	X	X	
9	Estimated PD, at signature	X	X	X	
10	Estimated PD, at reporting date	X	X	X	
11	Internal rating of the Individual Portfolio, at signature date	X	X	X	
12	Internal rating of the Individual Portfolio, at reporting date	X	X	X	
13	Common InvestEU rating / equity score equivalent of the Implementing Partner's internal rating of the Individual Portfolio at Financial Intermediary level, at signature date	X	X	X	X
14	Common InvestEU rating / equity score equivalent of the Implementing Partner's internal rating of the Individual Portfolio at Financial Intermediary level, at reporting date	X	X	X	X
15	Estimated Loss Given Default (LGD)	X	X	X	
16	Estimated Expected Loss (EL) % (lifetime, cumulative)	X	X	X	
17	Number of Guarantee Final Recipient Transactions	X	X	X	
18	Total amount of Guarantee Final Recipient Transactions	X	X	X	
19	Total amount of Guarantee Final Recipient Transactions, in CCY (if applicable)	X	X	X	
20	Cumulative Repayments of Guarantee Final Recipient Transactions	X	X	X	
21	Cumulative Repayments of Guarantee Final Recipient Transactions, in CCY (if applicable)	X	X	X	
22	Outstanding amount of Guarantee Final Recipient Transactions (net of calls on the EU Guarantee with respect to principal amounts)		X	X	
23	Outstanding amount of Guarantee Final Recipient Transactions, in CCY (net of calls on the EU Guarantee with respect to principal amounts) (if applicable)		X	X	
24	Amount committed under Operations				X
25	Amount committed under Operations, in CCY (if applicable)				X

## Annex IV

26	Cumulative drawdowns under Operations					X
27	Cumulative drawdowns under Operations, in CCY (if applicable)					X
28	Cumulative distributions under Operations					X
29	Cumulative distributions under Operations, in CCY (if applicable)					X
30	Vintage year					X
31	Net Paid-in					X
32	Net Paid-in, in CCY (if applicable)					X
33	Distributed to Paid-in ratio (DPI)					X
34	Total Value to Paid in (TVPI)					X
35	Net Asset Value (NAV)					X
36	Net Asset Value (NAV), in CCY (if applicable)					X
37	Internal Rate of Return (IRR)					X
38	Fund Type					X
39	Strategy of the portfolio fund					X
40	Financial Asset at fair value through Profit or Loss					O
41	Financial Asset at fair value through Profit or Loss, in CCY (if applicable)					O
42	Stage of investment					O
43	Number of funds (for Fund of Funds)					O
44	Nature of the investment					O
45	Size of fund					O
46	PICC (Paid-In to Committed Capital ratio)					O
47	Class (corporates; financial institutions; sovereign; public sector enterprise; RGLA; multilateral development bank)	X	X	X		X
48	Country	X	X	X		X
49	Sector	X	X	X		X

<sup>(8)</sup> Equity (Mandatory) indicates all the fields that are mandatory to be reported for all equity transactions, while filling out any of the Equity (Optional) fields remain optional. The Commission, however, may consider the reporting of all the Equity (Optional) fields to become mandatory at a later stage, in agreement with the Implementing Partner.

### 1.5 Rating scale<sup>(9)</sup>

		Debt	Equity
1	Portfolio ID	X	X
2	Scale name	X	X
3	Rating / scoring scale code	X	X
4	Internal rating/ scoring	X	X
5	Mapped rating	X	X

<sup>(9)</sup> In form of one table per Portfolio

## Annex V – Claims Form

### Template - Claims Form - on semi-annual basis

European Commission

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Directorate C

L-2920 Luxembourg

[insert place], [insert date]

**[insert name and address of the Implementing Partner]**

**Subject: Semi-annual payment under the Agreement**

**Ref:** Agreement between the EU and the [insert name of the Implementing Partner] on the EU Guarantee under the InvestEU Regulation dated [insert date] as amended, restated, supplemented or substituted from time to time (the “**Agreement**”).

Dear Sir, Madam,

We refer to the Agreement, including Articles Article 16 and 30.9. Terms defined in the Agreement have the same meaning when used in this letter.

With this letter the [insert name of the Implementing Partner] is [requesting payment from]/[notifying an amount payable to] the Commission:

<b>TOTAL AMOUNT [TO/FROM] COMMISSION</b>	<b>EUR [insert amount]</b>
--	----------------------------

Details of this amount are set out in the Appendix 1 to this letter.

The cash flow forecast referred to in Article 30.9 of the Agreement is set out in Appendix 2 to this letter.

Yours faithfully,

***[insert name of the Implementing Partner]***

---

[Name]

[Name]

[Name]

Appendix 1 – Claims Form<sup>39</sup>

Number	Reference to the Agreement	Description	Operation ID	NRW.BANK RIDW Direct Equity Portfolio
1	Article 10.1 of Annex I	Gross Equity Reflows pertaining to the EU Investment		
2	Article 10.1 of Annex I	Net negative or positive interests and bank charges pertaining to the EU Investment		
3	Article 10.1(a) of Annex I	Total amount of Equity Reflows allocated to the EU Investment		
4	Article 10.2(a) of Annex I	Equity Reflows allocated to reduce the EU Investments Outstanding		
		<b>A. Amount to be paid by the Implementing Partner to the Commission</b>		
5	Articles 10.2(b) and 10.3(b) of Annex I	Total amount of Equity Reflows payable to the Commission		
6	Article 10.2(b) of Annex I	- out of which, amounts allocated as per Article 10.2(b) of Annex I		
7	Article 10.3(b) of Annex I	- out of which, amounts referred to under Article 10.3(b) of Annex I		
8	Article 10.2(c) of Annex I	Equity Reflows allocated as Equity Portfolio Revenues		
9 = 5 + 8	Articles 10.2(b), 10.2(c) and 10.3(b)	Total amount to be paid to the Commission		
10		<i>Subtotal A</i>		

<sup>39</sup> All items should be filled in with respect to the relevant semester except where expressly provided otherwise.

		<b>B. Amount to be paid by the Commission to the Implementing Partner</b>		
11 = 12 + 13 + 14 + 15 + 16	Article 13.4 of the Agreement	Calls on Equity Operations covered by the EU Guarantee		
12	Article 13.4(a) of the Agreement	- out of which any EU Investment Shortfall Amount		
13	Article 13.4(b) of the Agreement	- out of which Funding Costs related to Equity Operations covered from the Buffer until full usage of the Buffer		
14	Article 13.4(b) of the Agreement	- out of which Funding Costs related to Equity Operations covered from the Available Global Cap if the Buffer is fully used		
15	Article 13.4(c) of the Agreement	- out of which Equity Portfolio Final Call Amounts		
16	Article 13.4(d) of the Agreement	- out of which: Administrative Fees referred to in Article 5 of Annex I covered from the Buffer until full usage of the Buffer		
17	Article 13.4(d) of the Agreement	- out of which: Administrative Fees referred to in Article 5 of Annex I covered from the Available Global Cap if the Buffer is fully used		
18		<i>Subtotal B</i>		
19		<b>Total (B-A)</b>		
20	Article 13.2 of the Agreement	EU Guarantee allocated to the Equity Product and maximum amount of the Buffer		
21	Article 13.4 of the Agreement	Cumulative called Guaranteed Sums at the end of the relevant semester		
22	Article 12 of Annex I	Cumulative releases of the EU Guarantee notified after the Signature Period, including the corresponding amount of the Buffer		

**Annex V**

23	Article 4.6 of Annex I	Cumulative Decommited and Cancelled Amounts after the Signature Period, including the corresponding amount of the Buffer		
24	Article 13.7 of the Agreement	Release of the amount of EU Guarantee that is not allocated to Equity Operations after the end of the Signature Period, including the corresponding amount of the Buffer		
25 = 20 – 21 – 22-23-24	Article 1 of the Agreement – definition of Available Global Cap	Available Global Cap at the end of the relevant semester		
26	Article 1 of the Agreement – definition of EU Investments Outstanding Amount	EU Investments Outstanding Amount at the end of the relevant semester		
27	Article 13.2 of the Agreement	<b>Information on Buffer</b>		
28	Article 1.1 Definition of EU Investment	Cumulative EU Investment in the Equity Portfolio at the end of the relevant semester (excluding any De-committed or Cancelled Amount until the end of the Signature Period)		
29	Article 13.2 of the Agreement	Allocated Buffer at the end of the relevant semester		
30	Articles 13.4(b) and 13.4(d) of the Agreement	Cumulative amount of the portion of the EU Guarantee calls related to items under Articles 13.4(b) and 13.4(d) of the Agreement that is covered by the Buffer at the end of the relevant semester		

**Annex V**

31	Article 4.5 of Annex I and Article 4.6 of Annex I	Cumulative amount of Buffer released following the end of the Signature Period due to De-committed or Cancelled Amounts under Equity Operations at the end of the relevant semester		
32	Article 12 of Annex I	Cumulative amount of Buffer notified in accordance with Article 12 of Annex I at the end of the relevant semester		
33 = 29 - 30 -31 - 32		Remaining allocated Buffer		

**Appendix 2 – Cash flow forecast**

Reference to the Agreement	Description	NRW.BANK RIDW Direct Equity Portfolio
From the Implementing Partner to the Commission		
Article 10.2(c) of Annex I	Equity Portfolio Revenues	
From the Commission to the Implementing Partner		
Article 13.4 of the Agreement	Guaranteed Sums (to be split to the extent applicable)	
Article 13.4(d) of the Agreement	Administrative Fees referred to in Article 5 of Annex I	
Total		

## Annex VI – Monitoring, controls and audit modalities

### I. Monitoring and controls

#### 1. General provisions

The provisions in this Annex shall cover Final Recipients.

The monitoring by the Implementing Partner shall encompass its own controls.

#### 2. The Implementing Partner's own controls and monitoring

In line with its rules, policies and procedures, the Implementing Partner shall:

- a) monitor the compliance of the Operations with this Agreement
- b) assess the eligibility of Final Recipients in accordance with the provisions of this Agreement
- c) monitor the proper execution by the Final Recipients of their contractual obligations, including their reporting obligations and their recovery actions in accordance with Article 18 of this Agreement; and
- d) monitor the payment demands by and payments due to Final Recipients.

#### 3. [intentionally omitted]

#### 4. Commission's controls and monitoring

For the purposes of Article 31.3 of this Agreement, as regards the control and monitoring activities by the Commission the following applies:

- When an on-site monitoring is planned, the Implementing Partner shall inform the Commission on the plan for the monitoring visits (i.e. on the spot checks) of Final Recipients, for the next calendar year. If the Implementing Partner requests to be accompanied by the Commission to a monitoring visit, it shall inform the Commission at least twenty (20) Business Days in advance to the date of the planned visit.
- The Commission may decide to accompany the Implementing Partner, at the Commission's own cost, to any monitoring visit that is organised by the Implementing Partner. The Commission shall inform the Implementing Partner of its decision to participate to a visit at least twenty (20) Business Days in advance to the date of the planned visit.
- With reference to the last sentence of the Article 31.3 of the Agreement, the Implementing Partner shall have at least twenty (20) Business Days (unless otherwise agreed between the Commission and the Implementing Partner) to organise on-the-spot check.

#### 5. Additional information

To the extent such information is available to the Implementing Partner, the Implementing Partner shall provide any additional information that the Commission may reasonably request, including additional control indicators needed by the authorising officer, for management, reporting and discharge purposes in terms of assurance building on the achievement of the internal control objectives.

The Commission may reasonably request the Implementing Partner to provide a description of the rules, policies and procedures for the monitoring and controls by the Implementing Partner in connection with the InvestEU Fund.

## 6. Verification of claims

When the EU Guarantee is called and the payment has been made, should the Commission request it, the Implementing Partner shall within a reasonable time provide the Commission a copy of the relevant agreement together with any related documents in the possession of the Implementing Partner concerning the sums paid under the EU Guarantee together with an explanation and details of any measures taken (if any).

## II. Audit modalities

The Commission and the Implementing Partner acknowledge that any audits carried out in accordance with this Annex must be conducted diligently and in good faith, with due regard for the legitimate concerns of each of them.

### 1. Documentary audits

- 1.1 The Implementing Partner shall take all appropriate measures to allow effective documentary audits of the Operations, in order to allow the Commission to discharge its obligations under the Financial Regulation.
- 1.2 To this end, the Commission and the Implementing Partner agree to allow an appropriate flow of documentation and related information between them on Operations in order to allow conducting as complete a documentary audit as possible.
- 1.3 The Operations which such audits will cover shall be selected by the Commission according to its own criteria and the Commission shall inform the Implementing Partner of the outcome of such selection.

The Commission shall notify the launch and the scope of documentary audits to the Implementing Partner and send the main questions in writing and sufficiently in advance to the Implementing Partner.

- 1.4 The procedure whereby the Implementing Partner provides the necessary information for documentary checks to the Commission, in relation to Operations, shall be as follows:
  - (a) The Implementing Partner shall make available to the Commission the documentation and related information requested and in its possession within ten (10) Business Days from the date of receipt of the request by the Implementing Partner. Where the information is not in the possession of the Implementing Partner but such information is reasonably obtainable, or in other duly justified cases, longer periods shall be agreed between the Commission and the Implementing Partner, if necessary.
  - (b) The Commission may address to the Implementing Partner reasonable requests for additional documentation and related information, to the extent pertinent to the scope of the audit. The Implementing Partner shall make the documentation and related information requested available to the Commission as soon as practicable.
  - (c) In the event of exceptional and duly substantiated urgency due to an imminent audit visit requiring documents to be made available virtually immediately, the deadline for making them available shall be agreed between the Commission and the Implementing Partner.

## 2. On the spot audits

- 2.1 The Commission shall inform the Implementing Partner at regular intervals, on the basis of its annual work programme, of the Operations for which it considers that an on-the-spot audit at the level of the Implementing Partner, or, if necessary, of a Final Recipient (provided that necessary information is not available at the level of the Implementing Partner), and of the proposed timetable for carrying this out. The Operations to be audited shall be selected by the Commission according to its own criteria. Access to the Implementing Partner's premises for on-the-spot audits shall only take place through mutually agreed pre-arranged meetings.
- 2.2. Any on-the-spot audits at the level of Final Recipients (provided that necessary information is not available at the level of the Implementing Partner) shall be scheduled by the Commission and the Implementing Partner, so that the audits can generally be conducted jointly and to the satisfaction of both of them. If it is found that the availability of the Implementing Partner is not compatible with the requirements of the Commission's timetable, the Implementing Partner may decline to take part in a scheduled visit. In that event, the Implementing Partner shall inform the Commission accordingly within no more than two (2) weeks from the date of receipt of the proposed dates for any particular visit.
- 2.3. Preparation for the audits shall be undertaken by the Commission and the Implementing Partner in preparatory meetings.
- 2.4. The logistical organisation of audits, as far as arrangements for on the spot visits are concerned (dates, itinerary, timetable, transport, accommodation) shall be the responsibility of the Commission, in consultation with the Implementing Partner. The practical constraints of the Commission and the Implementing Partner shall be taken into consideration.
3. Both the Commission and the Implementing Partner carry their own costs in relation to an audit.
4. The representatives of the Commission and the Implementing Partner shall have the right to request the documentation relating to the Operations and ask such questions as they consider useful for their audits.
- 5 All the participants of the Commission and the Implementing Partner in the on-the-spot audits shall be bound to respect professional secrecy.
6. The conclusions of the Commission's audit may be communicated to the Implementing Partner's clients only by the Implementing Partner. The Commission shall send the Implementing Partner its draft observations sufficiently before of the finalisation of its audit report. The Implementing Partner may express its point of view on the observations.
7. All the information obtained during the audits on Operations shall be treated with the utmost discretion.

**Annex VII – Business partner form**

*[The completed business partner form will be inserted at a later stage]*

**Annex VIII – [intentionally omitted]**

**Annex IX – [intentionally omitted]**

**Annex X – [intentionally omitted]**

**Annex XI – [intentionally omitted]**

## Annex XII – IP Funding Cost Interest calculation methodology

**IP Funding Cost Interest:** means the aggregate amount of the products of (i) the daily balance of the EU Investments Outstanding Amount and (ii) the IP Funding Cost Interest Rate for each day in the Relevant Quarter.

**Relevant Quarter** means each calendar quarter period ending on 31 March, 30 June, 30 September and 31 December to which the determination of the EURIBOR 3 month relates.

**IP Funding Cost Interest Rate:** means, with respect to each day in the Relevant Quarter, the rate per annum determined as per the following formula:

- (i) EURIBOR 3 month for Operations in euro, plus
- (ii) a Fixed IP Spread initially set at 10 basis points, floored at zero

with (i) and (ii) in aggregate floored at zero.

Where the EURIBOR 3 month is understood as follows:

- x) EURIBOR 3 month (the euro wholesale funding rate known as the Euro Interbank Offered Rate provided by the European Money Market Institute, as the administrator of the benchmark (or any successor administrator)) for a period of three (3) months which appears on Bloomberg screen page (or any successor page that will be agreed in writing (including in the form of exchange of letters) between the Commission and the Implementing Partner) as of 11:00 a.m. Brussels time, on the day that is two (2) TARGET2 business days (being any day on which the Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2) is open) prior to the start of each Relevant Quarter of three (3) months (save that the first and last calculation periods may be shorter);
- y) If EURIBOR 3 month is not published in respect of a day for which it is required (but its determination and publication is not permanently discontinued) the Parties shall use the rate from the last available TARGET2 rate. If EURIBOR 3 month rate is permanently discontinued, the Implementing Partner and the Commission shall replace it with another benchmark rate and any appropriate adjustment to the spread, day-count fraction and/or calculation period, which the Parties shall agree and determine in good faith and in a commercially reasonable manner; and

the Fixed IP Spread shall remain unchanged until a revision in line with this Annex takes place.

The IP Funding Cost Interest shall accrue from and including the last day of the quarter preceding the Relevant Quarter to but excluding the last day of such Relevant Quarter and shall be calculated on the basis of actual number of days elapsed and a 360-day year.

**IP Spread:** the difference between the following rates, on a daily basis

- a) the GC (General Collateral) Pooling overnight closing rate (Bloomberg ticker SGCPON Index)
- b) the deposit facility of the ECB (Bloomberg ticker EUORDEPO Index).

**Revision of the Fixed IP Spread:** If (X) defined as average IP Spread in the last calendar year is higher or lower than such average in the previous calendar year by more than 5 basis points, X becomes the Fixed IP spread.

If any of the rates for the determination of the IP Spread in points a) and b) above are permanently discontinued, the Implementing Partner and the Commission shall agree and determine in good faith and in a commercially reasonable manner other reference(s) through an exchange of letters.

The Implementing Partner shall provide on an annual basis the above calculation of the IP Spread evidenced by relevant data, sourced from Bloomberg (or any successor page as agreed between the Implementing Partner and the Commission) to the Commission together with the submission of the Claims Form for each period ending on 31 December.

The Implementing Partner shall provide any additional information that the Commission may reasonably request in relation to the calculation of the IP Funding Cost Interest, to the extent such information is available to the Implementing Partner.

Any potential changes to the Fixed IP Spread calculated as set out in this Annex, shall be communicated by the Implementing Partner to the Commission via email. The revised Fixed IP Spread shall be effective from and after 1 January of the current calendar year.

Under no circumstances should any revision of the Fixed IP Spread apply retroactively. The said revision may not be more frequent than once a year.