



Európska únia
Európsky fond regionálneho rozvoja

Investícia do Vašej budúcnosti



PORTFOLIO RISK SHARING FACILITY AGREEMENT

Dated _____ **2015**

between

SLOVENSKÝ ZÁRUČNÝ A ROZVOJOVÝ FOND, S.R.O.

and

SLOVENSKÁ ZÁRUČNÁ A ROZVOJOVÁ BANKA, A.S.

This Agreement is dated _____ 2015 and made between

- (1) the **European Investment Fund**, 37B, avenue J.F. Kennedy, L-2968 Luxembourg, Grand Duchy of Luxembourg (the **EIF**) acting in the name and on behalf of **Slovenský záručný a rozvojový fond, s.r.o.**, a special purpose vehicle incorporated under the laws of the Slovak Republic, having its seat at Dvořákovo nábrežie 4, 811 02 Bratislava, Slovak Republic, company identification number 44 690 487, registered with the Commercial Registry of the District Court Bratislava 1, section Sro, insert No. 57505/B, (**SZRF** or the **Lender**), acting through and on the account of the JEREMIE Holding Fund (as defined below),

and
- (2) the **borrower** named in schedule 1 (**Specific Terms**) (the **Borrower**)

Whereas

- (A) By Council Regulation (EC) No. 1083/2006 (the **Council Regulation**) general provisions regarding, *inter alia*, the scope, funding and use of the European Regional Development Fund (**ERDF**), the European Social Fund (**ESF**) and of the Cohesion Fund (**CF**) (ERDF, ESF and CF being collectively the **Funds**) have been adopted.
- (B) As one of the instruments for the application of monies disbursed under the Funds, the initiative “Joint European Resources for Micro to Medium Enterprises” (**JEREMIE**) has been jointly developed by the Commission and the EIF, for the purpose of financing expenditure in respect of operations comprising contributions to support financial engineering instruments for enterprises, primarily small and medium-sized ones, such as venture capital funds, guarantee funds and loan funds, whereby all funds to be disbursed and applied in the course of JEREMIE shall be made available and used in accordance with article 44 of Council Regulation and the Commission Regulation (EC) No. 1828/2006 (the **Commission Regulation**).
- (C) As part of the Operational Programme, the competent authorities of the JEREMIE Jurisdiction have agreed to dedicate resources to the implementation of the JEREMIE initiative in the JEREMIE Jurisdiction by the EIF.
- (D) Pursuant to a framework agreement entered into on 23 December 2008 (as amended from time to time) between the Slovak Republic represented by the Government Office of the Slovak Republic and the Ministry of Finance of the Slovak Republic and the EIF (the **Framework Agreement**) and a funding agreement entered into on 28 October 2009 (as amended from time to time) between the Slovak Republic represented by the Ministry of Economy of the Slovak Republic and the EIF (the **Funding Agreement**), EIF was appointed as the entity, which in its name but for the ultimate benefit of the government of the JEREMIE Jurisdiction, contributes funds made available from the Funds for the utilisation under the JEREMIE initiative in the JEREMIE Jurisdiction (the **JEREMIE Funds**) to SZRF for the purpose of establishing the holding fund (the **JEREMIE Holding Fund** or the **JHF**). The JEREMIE Holding Fund is administered and operated by EIF acting in the name and on behalf of SZRF in accordance with a holding fund agreement entered into on 22 December 2010, as amended from time to time, between SZRF and the EIF (the **Holding Fund Agreement**).
- (E) The EIF has launched the Call following which the Borrower has expressed its interest to enter into a facility agreement with the Lender under such programme.
- (F) The Lender agrees to make a loan facility available to the Borrower for the purpose of on-lending to SMEs satisfying certain eligibility criteria.
- (G) The Facility shall provide liquidity to the Borrower for the development of the Portfolio and cover part of the risk of the Borrower relating to the Portfolio.
- (H) For all purposes of this Agreement the Lender is duly represented by the EIF acting in the name and for the account of the Lender pursuant to a power of attorney (the **Power of Attorney**) dated

1 June 2011 until the earlier of (i) the date on which the appointment of EIF as administrator and operator of the JEREMIE Holding Fund (as set out in Recital (D)) is terminated, (ii) the date on which a transfer has occurred pursuant to Clause 26 of this Agreement, (iii) the date on which the Power of Attorney has been revoked by SZRF and (iv) any of the Framework Agreement, the Funding Agreement or the Holding Fund Agreement is terminated.

It is agreed

1 Definitions, Interpretation and Specific Terms

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

Acceleration Event has the meaning given to it in clause 5.2(c) (Exclusion process)

Acceptable SME Risk Categories means the internal rating categories assigned by the Borrower to SMEs in accordance with the Credit and Collection Policy, as set out in schedule 1 (Specific Terms)

Accounting Principles means generally accepted accounting principles in the jurisdiction of incorporation of the Borrower

Actual Recovery means any amount paid to or received by the Borrower in respect of any Covered Losses, including, but not limited to, any proceeds of realisation of any Security held by the Borrower in respect of a Defaulted SME Loan or any recovery under any guarantee or indemnity or insurance policy, less any enforcement costs payable to a third party which are incurred by the Borrower in recovering that amount

Actual Recovery Report means the report containing the information, and made in the form, prescribed by schedule 10 (Actual Recovery Report)

Additional Eligibility Criteria means any additional Eligibility Criteria specified in schedule 1 (Specific Terms)

Additional Ineligible Expenditure has the meaning given to it in schedule 1 (Specific Terms)

Affected Portion has the meaning given to it in clause 5.2(b) (Exclusion process)

Agreement means this agreement (including its schedules), as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerously) or replaced from time to time

Annual Financial Statements means the consolidated audited financial statements for each Financial Year

Assignment Agreement means an agreement substantially in the form set out in section (b) of schedule 5 (Form of Assignment Agreement) or any other form agreed between the relevant assignor and assignee

Auditors means one of PricewaterhouseCoopers, Ernst & Young, KPMG, Deloitte & Touche Tohmatsu or any other firm of international standing

Authorisation means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration, or any other similar permission including any banking authorisation or licence, as applicable

Availability Period means the period from and including the date of this Agreement (unless otherwise specified in schedule 1 (Specific Terms)) to and including the earlier of:

- (a) the Scheduled Availability Period End Date and
- (b) the Extraordinary Inclusion Period End Date

Available Commitment means the Commitment minus:

- (a) the initial aggregate principal amount of all Loans
- (b) all amounts paid to the Borrower by way of Management Fee pursuant to the terms of schedule 12 (Management Fee Schedule) and
- (c) in relation to any duly requested Loan, the principal amount of any other Loan that is due to be made on or before the proposed Utilisation Date

For the purposes of calculating the Available Commitment the principal amount of any Loans that are due to be repaid or prepaid on or before the proposed Utilisation Date shall not be deducted

Base Currency means euro, unless otherwise specified in schedule 1 (Specific Terms)

Base Rate has the meaning given in schedule 1 (Specific Terms)

Business Day means a day (other than a Saturday or a Sunday) on which EIF and the Lender are open for business and on which banks are open for general business in Luxembourg and in the JEREMIE Jurisdiction *provided that* as of 1 January 2016 the reference to Business Day means a day (other than a Saturday or a Sunday) on which the Lender is open for business and on which banks are open for general business in the JEREMIE Jurisdiction.

Calculation Period means a Calendar Quarter, provided that the first Calculation Period shall commence on the date of this Agreement and end on the last day of the Calendar Quarter during which this Agreement is entered into

Calendar Quarter means each of the periods:

- (a) starting on 1 January and ending on 31 March of each year,
- (b) starting on 1 April and ending on 30 June of each year,
- (c) starting on 1 July and ending on 30 September of each year,
- (d) starting on 1 October and ending on 31 December of each year

Call means the call as specified in the Specific Terms under which the EIF has sought expressions of interest to selected financial intermediaries that will benefit from a loan facility instrument

Capital Adequacy Ratio means the consolidated capital adequacy ratio of the Borrower (as defined in and calculated in accordance with the regulations of the Borrower's Relevant Jurisdictions (including EC Regulation 1606/2002) implementing the international accounting standards to the extent applicable to the Borrower)

CF has the meaning given in Recital (A)

Change of Control means any person or group of persons acting in concert gains direct or indirect control of the Borrower. For the purposes of this definition:

- (a) **control** of the Borrower means:
 - (i) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (A) cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of shareholders of the Borrower or
 - (B) appoint or remove all, or the majority, of the directors or other equivalent officers of the Borrower or

- (C) give directions with respect to the operating and financial policies of the Borrower with which the directors or other equivalent officers of the Borrower are obliged to comply or
 - (ii) the holding beneficially of more than 50% of the issued share capital of the Borrower (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital)
- (b) **acting in concert** means a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of shares in the Borrower by any of them, either directly or indirectly, to obtain or consolidate control of the Borrower

Clawback Amount means any Loss Amounts in relation to one or more Defaulted SME Loans that have become Excluded SME Loans, and in respect of such Defaulted SME Loans the Outstanding Principal Amount has been reduced under this Agreement, together with interest at the Deposit Interest Rate on those Loss Amounts on and from the Payment Date on which the relevant Loss Amounts are taken into account in determining the Outstanding Principal Amount to the Payment Date when the Clawback Amount is paid

Co-Financing Rate means the proportion of each SME Loan to be financed by the Borrower using funds made available by the Lender under the Facility, being the proportion stated in schedule 1 (Specific Terms)

Commission means the Commission of the European Union

Commission Regulation has the meaning given to it in Recital (B)

Commitment means the amount stated in schedule 1 (Specific Terms), to the extent not cancelled or reduced under this Agreement, which represents the aggregate amount which may be borrowed by the Borrower under this Agreement or paid to the Borrower by way of Management Fee pursuant to the terms of schedule 12 (Management Fee Schedule)

Covered Losses means, as at the end of a particular Calculation Period, the amount equal to X, where X is the higher of:

- (a) zero and
- (b) an amount calculated by the formula $A \times (1 - B) \times C$, where:

A is all Loss Amounts in respect of SME Loans included in the Portfolio (as reported by the Borrower to the Lender on the Quarterly Report Date immediately succeeding such Calculation Period in accordance with clause 10.2)

B is the Expected Recovery Rate and

C is the Risk Sharing Rate

Council Regulation has the meaning given to it in Recital (A)

Conversion Rate means the fixed exchange rate set out in schedule 1 (Specific Terms)

Credit and Collection Policy means the Borrower's credit and collection policy

Credit Limit Amount means in respect of each Revolving SME Loan, the maximum principal amount which the Borrower has committed to lend to the SME in respect of that Revolving SME Loan, in the absence of any repayment by the SME

Data Protection Regulation means Regulation (EC) No 45/2001 of the European Parliament and of the Council, dated 18 December 2000, as amended, relating to the protection of individuals with regard to the processing of personal data by the European Union institutions and

bodies and of the free movement of such personal data (OJ L008, 12.01.2001, p.1), as amended from time to time

Default means an Event of Default or any event or circumstance specified in clause 25 (Events of Default) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default

Default Interest Rate has the meaning given in schedule 1 (Specific Terms)

Default Ratio means, as at each Default Trigger Determination Date, the ratio of:

- (i) the principal amount of all SME Loans which became Defaulted SME Loans during the period from the first day of the Availability Period up to the relevant Default Trigger Determination Date to
- (ii) the aggregate initial principal committed amount (to the extent not cancelled or reduced) of SME Loans included in the Portfolio on such date (such amount being, for a Revolving SME Loan, the Credit Limit Amount applicable to that Revolving SME Loan)

Default Ratio Trigger Level has the meaning given to it in schedule 1 (Specific Terms)

Default Trigger Determination Date means each of the First Default Trigger Determination Date and the Second Default Trigger Determination Date

Default Trigger Event means the event that occurs if:

- (i) (A) on the First Default Trigger Determination Date and (B) on the Quarterly Report Date immediately following the First Default Trigger Determination Date, the Default Ratio exceeds the applicable Default Ratio Trigger Level; or
- (ii) (A) on the Second Default Trigger Determination Date and (B) on the Quarterly Report Date immediately following the Second Default Trigger Determination Date, the Default Ratio exceeds the applicable Default Ratio Trigger Level,

save that no Default Trigger Event will be deemed to have occurred in connection with (i) or (ii) if, for each such instance, the Parties have reached an agreement in writing as a result of negotiations referred to in clause 24.17 (*Default Trigger*) prior to the Quarterly Report Date immediately following the relevant Default Trigger Determination Date

Defaulted SME Loan means an SME Loan in the Portfolio in respect of which the Borrower has suffered a loss as a consequence of an SME Loan Default, SME Loan Acceleration and/or SME Loan Restructuring, provided that if an SME Loan becomes a Defaulted SME Loan by reason of SME Loan Restructuring, only the principal amount by which the SME Loan has been reduced will be treated as a Defaulted SME Loan, with the remaining portion of that SME Loan continuing as a Performing SME Loan for the purposes of this Agreement

Deposit Interest means, in respect of any Interest Period, an amount equal to the product of:

- (a) the Deposit Interest Rate,
- (b) the ratio of the number of days in the Interest Period, divided by 360, and
- (c) Net Exposure,

provided that if the rate produced by that calculation is less than zero, the Deposit Interest for that Interest Period shall be zero

Deposit Interest Rate means the rate stated as such in schedule 1 (Specific Terms)

Designated Loan(s) has the meaning given to it in clause 5.2(e) (Exclusion Process)

De Minimis Regulation means the Commission Regulation (EC) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L352, 24.12.2013, p.1)

Disruption Event means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility which disruption is not caused by, and is beyond the control of, the Parties or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or the other Party:
 - (i) from performing its payment obligations under the Finance Documents or
 - (ii) from communicating with the other Party in accordance with the terms of the Finance Documents

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

Drawdown Period means the period from and including the date of this Agreement to and including the earlier of:

- (a) the Scheduled Drawdown Period End Date
- (b) the Inclusion Period End Date and
- (c) the date on which the Available Commitment has been reduced to zero

EC Regulation No. 1080/2006 means Regulation (EC) No. 1080/2006 of the European Parliament and the Council of 5 July 2006 on the European Regional Development Fund, as amended from time to time

ECA means the European Court of Auditors

Effective Date means a date falling after the date on which the Parties sign this Agreement, which is the day immediately following the day on which this Agreement has been published pursuant to Section 5a of the Slovak Act No. 211/2000 on free access to information (as amended) in the central registry of contracts maintained by the Government Office of the Slovak Republic (Úrad vlády Slovenskej republiky) provided that the Effective Date shall be deemed not to have occurred unless (i) the Borrower has notified the Lender, within 10 Business Days following such publication of the occurrence of the publication and has provided to the Lender an original of the confirmation issued by the Government Office of the Slovak Republic (Úrad vlády Slovenskej republiky) pursuant to section 5a(11) and 5a(12) of the Slovak Act No. 211/2000 Coll. on Free Access to Information, as amended confirming that this Agreement has been published and (ii) this publication has occurred not later than 3 months after the date on which the Parties signed this Agreement.

EIF has the meaning given to it in Recital (D)

Eligibility Criteria has the meaning given to it in clause 4.1 (Eligibility Criteria), as amended, supplemented or restated in schedule 1 (Specific Terms)

Eligible SME means, unless otherwise provided in schedule 1 (Specific Terms), a micro, small or medium-sized enterprise as defined in the SME Recommendation

ERDF has the meaning given in Recital (A)

ESF has the meaning given in Recital (A)

Excluded Sectors has the meaning given to it in the Specific Terms

Excluded SME Loan means any SME Loan excluded from the Portfolio in accordance with clause 5.2(a) (Exclusion Process)

Exclusion Date has the meaning given in clause 5.2(a) (Exclusion Process)

Expected Recoveries means:

- (a) for SME Loans in respect of which the Borrower has suffered a Loss as a consequence of an SME Loan Default and/or an SME Loan Acceleration, the amount obtained by multiplying the Expected Recovery Rate by the relevant Loss Amounts; and
- (b) with respect to SME Loans in respect of which the Borrower has suffered a Loss as a consequence of an SME Loan Restructuring, an amount equal to zero

Expected Recovery Rate means:

- (a) if Expected Recoveries are applicable to this Agreement, the rate stated in schedule 1 (Specific Terms), being the anticipated recovery rate from Defaulted SME Loans; and
- (b) if Actual Recoveries are applicable to this Agreement, zero

External Databases means databases that are held by third parties and which are accessed by the Borrower for the determination of a person's solvency, including as further defined in schedule 1 (Specific Terms)

Extraordinary Inclusion Period End Date means the date which is the earlier of:

- (a) the date upon which the Borrower notifies the Lender that the Borrower wishes to terminate the Inclusion Period
- (b) the first date upon which a Default occurs and
- (c) the first date upon which a Trigger Event occurs, unless otherwise agreed by Parties.

Event of Default means any event or circumstance specified as such in clause 25 (Events of Default)

Facility means the term loan facility made available under this Agreement as described in clause 2 (The Facility)

Final Maturity Date means the date specified as such in schedule 1 (Specific Terms)

Finance Document means any of this Agreement, any Utilisation Request, any Security Document and any other document designated as a Finance Document by the Lender and the Borrower

Financial Benefit means the basis point reduction in the interest rate payable by each Eligible SME in respect of their SME Loan, as compared to the interest rate the relevant SME would have been required to pay, in accordance with the Credit and Collection Policy, to the Borrower for a loan of a principal amount equal to the principal amount of the relevant SME Loan in the absence of the financial support provided to the Borrower under this Agreement, such reduction being specified in schedule 1 (Specific Terms)

Financial Covenants Report means the report containing the information, and made in the form, prescribed by appendix 1 to schedule 11 (Financial Covenants Report)

Financial Indebtedness means any indebtedness for or in respect of:

- (a) monies borrowed by, and debit balances at, banks or other financial institutions;
- (b) any amount raised under any guarantee, letter of credit, acceptance credit facility or bill discounting facility (or dematerialised equivalent);

- (c) any amount raised under any note purchase facility or by the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) any lease or hire purchase contract which would, in accordance with the Accounting Principles, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);
- (g) any counter-indemnity obligation or recourse claim in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of an underlying liability of an entity which is not a member of the Group which liability would fall within one of the other paragraphs of this definition;
- (h) any amount raised by the issue of redeemable shares which are redeemable (other than at the option of the issuer) before the Final Maturity Date;
- (i) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 90 days after the date of supply;
- (j) any amount raised under any other transaction (including any forward sale or purchase sale and sale back or sale and leaseback agreement) having the commercial or economic effect of a borrowing; and/or
- (k) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (j) (but, without double counting)

Financial Quarter means each period of 3 months ending on the last day of the third, sixth and ninth month of, and the last day of, each Financial Year

Financial Year means each period of 12 months ending on the date stated in schedule 1 (Specific Terms)

First Default Trigger Determination Date means the date falling on the earlier of: (i) the Quarterly Report Date immediately following the date specified in schedule 1 (Specific Terms) and (ii) the Quarterly Report Date immediately following the date on which the aggregate initial principal committed amount (to the extent not cancelled or reduced) of SME Loans (such amount being for a Revolving SME Loan, the Credit Limit Amount applicable to that Revolving SME Loan) included in the Portfolio is equal to, or greater than, 40% of the Reference Portfolio Amount

Fixed Repayment Schedule means the fixed repayment schedule applicable to the Loans, as described in schedule 9 (Fixed Repayment Schedule)

Framework Agreement has the meaning given in Recital (D)

Funding Agreement has the meaning given in Recital (D)

Funds has the meaning given in Recital (A)

Group means the Borrower and each of its Subsidiaries for the time being

Holding Fund Agreement has the meaning given in Recital (D)

Inclusion Notice means a notice in writing in respect of the inclusion of an SME Loan in the Portfolio, submitted by the Borrower to the Lender in the form of (or substantially in the form of) Appendix 1 (Form of Inclusion Notice) of schedule 4 (Form of Notices)

Inclusion Period means the period commencing on the date of this Agreement and ending on the Inclusion Period End Date

Inclusion Period End Date means the earlier of:

- (i) the Extraordinary Inclusion Period End Date and
- (ii) the Scheduled Inclusion Period End Date

Ineligible Expenditure means the expenditure deemed to be ineligible pursuant to article 7 of EC Regulation No. 1080/2006 and the Additional Ineligible Expenditure set-out in schedule 1 (Specific Terms)

Initial Principal Payment Date means the first Payment Date to occur after the Inclusion Period End Date

Interest Period means each period starting on the first day of a Calendar Quarter and ending on the last day of that Calendar Quarter, except that the first Interest Period shall commence on the date on which the first Loan is advanced to the Borrower and end on the last day of the Calendar Quarter in which such date falls

Irregularity means, in accordance with Article 2(7) of Council Regulation (EC) No. 1083/2006 and Section 4 of the Commission Regulation (EC) No. 1828/2006 as amended from time to time, any infringement of a provision of Union law resulting from an act or omission by the Borrower and/or a SME which is the borrower of an SME Loan which has, or would have, the effect of prejudicing the general budget of the European Union by charging an unjustified item of expenditure to the general budget

JEREMIE has the meaning given in Recital (B)

JEREMIE Funds has the meaning given in Recital (D)

JEREMIE Holding Fund has the meaning given in Recital (D)

JEREMIE Jurisdiction has the meaning given in schedule 1 (Specific Terms)

JEREMIE Jurisdiction Currency means the lawful currency of the JEREMIE Jurisdiction (other than Euro)

JHF has the meaning given in Recital (D)

Joint Venture means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity

Lending Criteria means the lending criteria applicable to SME Loans to be made by the Borrower, which are set out in the Credit and Collection Policy

Loan means a term loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan, as the case may be

Long Stop Date has the meaning given in schedule 1 (Specific Terms)

Loss Amount means, at any time, subject to the further specifications (if any) set out in the Specific Terms:

- (a) any principal amounts (excluding interest, late payment or default interest, step-up interest, capitalised interest, fees and any other costs and expenses and, in respect of a Revolving SME Loan, excluding any portion of principal owed by the SME which would be in excess of the Credit Limit Amount applicable to that Revolving SME Loan) due, payable and

outstanding at such time under the terms of an SME Loan (or, in the case of an SME Loan subject to an SME Loan Default, which would be due if that SME Loan were accelerated at such time on the assumption that an event of default had occurred at such time) following the occurrence of either:

(X) an SME Loan Default; or

(Y) an SME Loan Acceleration,

whichever is specified in the Specific Terms; and

- (b) any reduction in principal amounts (excluding any interest, late payment or default interest, capitalised interest, fees and any other costs and expenses) payable as a result of an SME Loan Restructuring

Management Fee means, only if schedule 1 (Specific terms) indicates such term as applicable, the fee paid by the Lender to the Borrower by way of consideration for the origination and servicing of the Portfolio (including the Borrower undertaking the obligations to monitor, report and promote the Facility as provided under this Agreement) to be calculated and paid in accordance with the provisions set out in schedule 12 (Management Fee Schedule)

Managing Authority has the meaning given in the Funding Agreement

Material Adverse Effect means in the reasonable opinion of the Lender a material adverse effect on or a material adverse change in:

- (a) the financial condition, assets, prospects, business, operations, property or condition (financial or otherwise) of the Borrower or on the consolidated financial condition, assets, prospects or business of the Group
- (b) the ability of the Borrower to perform or comply with any of its obligations under any of the Finance Documents or
- (c) the validity, legality or enforceability of any Finance Document or the rights and remedies of the Lender thereunder or the validity or enforceability of, or the effectiveness of any Security granted or purported to be granted under, any Security Document

Maximum Industry Concentration means the product of the Reference Portfolio Amount and the percentage specified in schedule 1 (Specific Terms)

Maximum Permitted Amendment Period means the period specified in schedule 1 (Specific Terms)

Maximum Revolving SME Loan Maturity means a period commencing on the date on which the documentation applicable to a Revolving SME Loan is entered into and ending on the date falling 36 months thereafter.

Maximum SME Concentration means the amount stated in schedule 1 (Specific Terms)

Maximum SME Loan Amount means the amount specified in schedule 1 (Specific Terms)

Maximum SME Loan Maturity means the maximum maturity of an SME Loan (which is not a Revolving SME Loan) specified in schedule 1 (Specific Terms)

Minimum Amount has the meaning given in schedule 1 (Specific Terms)

Minimum SME Loan Maturity means the maturity specified in schedule 1 (Specific Terms)

National Authorities means all competent authorities of the JEREMIE Jurisdiction (and their duly authorised representatives)

Net Exposure means, in respect of any Interest Period, the difference between:

- (a) the average of the Outstanding Principal Amount on each day during that Interest Period and
- (b) the average of the outstanding principal amount of all SME Loans in the Portfolio on each day during the Interest Period, multiplied by the Co-Financing Rate

Non-Conforming SME Loan means, at a given time, a loan which is not an SME Loan

Operation Account means an account held by, and controlled by, the Lender which is designated the Operation Account, details of which are set out in schedule 1 (Specific Terms) or any other account held by, and controlled by, the Lender which the Lender has notified to the Borrower by not less than 5 Business Days' notice in writing

Operational Programme has the meaning given to it in schedule 1 (Specific Terms)

Outstanding Principal Amount means, at any time, the aggregate principal amount of all Loans advanced to the Borrower under this Agreement less:

- (a) all amounts repaid or prepaid by the Borrower under clause 9 (Repayment) or clause 13.3 (Prepayment) and
- (b) the aggregate Covered Losses which have been reported to the Lender by the Borrower by way of a Quarterly Report in accordance with clause 21.3

Participating Member State means any member state of the European Union that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union

Party means the Borrower or the Lender and **Parties** means collectively both of them

Pass-Through Repayment means that repayment of the Loans shall be made by the Borrower in the manner described in schedule 8 (Pass-Through Repayment)

Payment Date means each Quarterly Report Date

Performing SME Loan means an SME Loan which is not a Defaulted SME Loan

Permitted Acquisition, Permitted Disposal, Permitted Financial Indebtedness, Permitted Merger and Permitted Security each have the meaning given in schedule 1 (Specific Terms)

Permitted Amendment means any amendment of the legal documentation applicable to an SME Loan, made in accordance with the Credit and Collection Policy and extending the maturity of an SME Loan beyond the relevant Maximum SME Loan Maturity, the purpose of which is to improve the collectability of sums payable in respect of that SME Loan, provided that the aggregate maturity of the relevant SME Loan as extended cannot be longer than a period consisting of the Maximum SME Loan Maturity extended by the Maximum Permitted Amendment Period

Permitted Purpose Activities means, unless otherwise specified in schedule 1 (Specific Terms), financing for:

- (a) investment in tangible and/or intangible assets,
- (b) working capital related to development or expansion activities that are ancillary (and linked) to activities referred to in paragraph (a) above (which ancillary nature shall be evidenced, inter alia, by the business plan of the SME and the amount of the financing), and/or
- (c) working capital (such as purchase of raw materials, stocks and other manufacturing inputs, labour, inventories and overheads, funding to finance trade receivables, non-consumer sales receivables) related to the establishment, strengthening or expansion of new or

existing business activity of an SME on the basis of one of the two following options, whichever is applicable to each case:

- i) a plan for the creation or expansion of an enterprise, or
- ii) a loan application and/or credit documentation, in each case including a description of the SME's working capital needs,

but in each case excluding pure financial activities or real estate development when undertaken as a financial investment activity or the provision of consumer finance

Portfolio means the portfolio of loans made or to be made by the Borrower and subject to the terms of this Agreement

Portfolio Eligibility Criteria has the meaning given to it in clause 4 (Eligibility Criteria)

Portfolio Interest means with respect to each SME Loan included in the Portfolio, and for each Interest Period, an amount equal to the sum of the product of:

- (a) the Portfolio Interest Rate divided by 360
- (b) the sum of the outstanding principal amount of each SME Loan on each day on which each SME Loan is a Performing SME Loan during the relevant Interest Period and
- (c) the Co-Financing Rate

provided that if the sum produced by that calculation is less than zero, the Portfolio Interest for that Interest Period shall be zero

Portfolio Interest Rate means the rate stated in schedule 1 (Specific Terms)

Quarterly Financial Statements means the unaudited consolidated financial statements of the Borrower for each Financial Quarter

Quarterly Report has the meaning given to that term in clause 21.3 (Provision of information in respect of SME Loans)

Quarterly Report Date means the date falling 30 days after the end of each Calculation Period

Quasi-Security has the meaning given to that term in appendix 1 of schedule 1 (Specific Terms)

Reference Portfolio Amount has the meaning given in schedule 1 (Specific Terms)

Relevant Interbank Market means the European interbank market

Relevant Jurisdiction means, in relation to the Borrower or a SME:

- (a) its jurisdiction of incorporation
- (b) any jurisdiction where it conducts its business (including the JEREMIE Jurisdiction)
- (c) any jurisdiction where any asset subject to (or intended to be subject to) any Security Document is situated or
- (d) any jurisdiction whose laws govern the perfection of any Security Document entered into by it

Relevant Portion means for each loan included in the Portfolio the percentage set out in schedule 1 (Specific Terms) of the outstanding amount of such loan

Restricted Sector means any sector set out in schedule 7 (Restricted Sectors)

Revolving SME Loan means an SME Loan taking the form of a loan instrument (including, for the avoidance of doubt, an overdraft line of credit) pursuant to which an SME is entitled to utilise, on a revolving basis, financing made available to it by the Borrower (including by settling obligations arising from letters of credit) as a line of credit during a specified term, including

through multiple drawdowns and repayments up to the Credit Limit Amount applicable to that Revolving SME Loan.

Risk Sharing Rate has the meaning given in schedule 1 (Specific Terms)

Scheduled Availability Period End Date has the meaning given in schedule 1 (Specific Terms)

Scheduled Drawdown Period End Date has the meaning given in schedule 1 (Specific Terms)

Scheduled Inclusion Period End Date means the earlier of:

- (a) the date falling 6 months after the Scheduled Availability Period End Date and
- (b) the Long Stop Date

Security means a mortgage, charge, pledge, lien, assignment or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect

Security Documents means the documents listed in schedule 1 (Specific Terms) and any documents entered into between the Borrower and the Lender which confer Security on the Lender

Second Default Trigger Determination Date means the date falling on the earlier of: (i) the Quarterly Report Date falling immediately following the date specified in schedule 1 (Specific Terms) and (ii) the Quarterly Report Date immediately following the date on which the aggregate initial principal committed amount (to the extent not cancelled or reduced) of SME Loans (such amount being for a Revolving SME Loan, the Credit Limit Amount applicable to that Revolving SME Loan) included in the Portfolio equal to, or greater than, 70% of the Reference Portfolio Amount

SME means a micro, small or medium-sized enterprise which enters into a loan instrument with the Borrower for the purpose of obtaining on or more SME Loan(s)

SME Eligibility Criteria has the meaning given to it in clause 4 (Eligibility Criteria)

SME Loan has the meaning given in clause 4.1 (Eligibility Criteria).

SME Loan Acceleration means, in respect of an SME Loan, and unless otherwise specified in the Specific Terms, the occurrence of an event of default (howsoever defined) under such SME Loan which has entitled the Borrower to accelerate payment of any amounts owed to it and the Borrower has exercised such right of acceleration (or is prevented from exercising such rights of acceleration solely by application of mandatory laws and regulations preventing or staying the exercise of such right)

SME Loan Currency means the Base Currency or the JEREMIE Jurisdiction Currency

SME Loan Default means, in respect of an SME Loan, and unless otherwise specified in the Specific Terms, that either:

- (a) the Borrower considers at any time (acting reasonably in accordance with its Credit and Collection Policies) that the relevant SME is unlikely to meet its payment obligations under such SME Loan (without recourse by the Borrower to action such as realisation of Security) or
- (b) the relevant SME has failed to meet any payment obligation under the relevant SME Loan which failure has continued for at least 90 consecutive calendar days

SME Loan Eligibility Criteria has the meaning given to it in clause 4 (Eligibility Criteria)

SME Loan Restructuring means, in respect of an SME Loan, and unless otherwise specified in the Specific Terms, that the Borrower, acting in a commercially reasonable manner and in accordance with its Credit and Collection Policies, agrees (such agreement to be made in writing

with the relevant SME) to the restructuring of such SME Loan such that the amount of principal scheduled to be paid by the relevant SME, is reduced

SME Recommendation means Commission Recommendation 2003/361/EC (OJ L124, 20.05.2003, p. 36), as amended, supplemented and/or restated from time to time

State Aid means aid granted by a member state of the Union or through such state, as further set out in Article 107 of the Treaty

Structural Funds Regulations means any legislation concerning the Funds and any requirements under the Operational Programme

Subsidiary means, in relation to an entity, (the **first entity**) either:

- (a) another entity (the second entity) holds or controls a majority of the equity share capital of the first entity which carries a right to vote; or
- (b) which the second entity is required, under the Accounting Principles, to consolidate in its audited annual financial statements

Tax means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same)

Tax Deduction means a deduction or withholding for or on account of Tax from a payment under a Finance Document

Threshold Amount has the meaning given in schedule 1 (Specific Terms)

Transfer Certificate means a certificate substantially in the form set out in section (a) of schedule 5 (Form of Transfer Certificate) or any other form agreed between the Borrower and the Lender

Transfer Date means, in relation to a transfer, the later of:

- (a) the proposed transfer date specified in the Transfer Certificate and
- (b) the date on which the Lender executes the Transfer Certificate

Treasury Transaction means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price

Treaty means the Treaty on European Union and the Treaty on the Functioning of the European Union (Official Journal C 83 of 30.3.2010)

Trigger Event means:

- (a) on or before the date stated in schedule 1 (Specific Terms), the sum of the initial principal committed amount of all SME Loans in the Portfolio (such amount being for a Revolving SME Loan, the Credit Limit Amount applicable to that Revolving SME Loan) is not greater than the Minimum Amount or
- (b) a Default Trigger Event occurs or
- (c) any additional trigger event identified in schedule 1 (Specific Terms) occurs

Union means the European Union

Unpaid Sum means any sum due and payable but unpaid by the Borrower under the Finance Documents

Utilisation Account means an account held by, and controlled by, the Borrower which is designated the Utilisation Account, details of which shall be communicated by the Borrower in accordance with clause 22.4 (Account details)

Utilisation Date means the date on which a Loan is disbursed by the Lender to the Borrower, being not later than 15 Business Days after the date on which the Utilisation Request was received by the Lender

Utilisation Request means a notice substantially in the form set out in schedule 3 (Utilisation Request)

1.2 Interpretation

- (a) Unless a contrary indication appears, a reference in this Agreement to:
- (i) any **party** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
 - (ii) **assets** includes present and future properties, revenues and rights of every description (including any right to receive such revenues);
 - (iii) a **Finance Document** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented or restated (however fundamentally);
 - (iv) **guarantee** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
 - (v) a reference to a **month** is to a calendar month;
 - (vi) a reference to a **week** is to a calendar week, commencing on Monday in each week;
 - (vii) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (viii) a **person** includes any individual person, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality) or two or more of the foregoing, or any other entity or body of any description;
 - (ix) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law, then being a type with which persons to which it applies customarily comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (x) a **provision of law** is a reference to a provision, of any treaty, legislation, regulation, decree, order or by-law and any secondary legislation enacted under a power given by that provision, as amended, applied or re-enacted or replaced (whether with or without modification) whether before or after the date of this Agreement;
 - (xi) a time of day is a reference to Luxembourg time;
 - (xii) **euro** and € shall be construed as a reference to the single currency of Participating Member States; and
 - (xiii) any reference in this Agreement to “the date of this Agreement” shall be deemed to be a reference to the Effective Date.
- (b) Any reference in this Agreement to any statutory provisions or regulations shall be construed as a reference to the statutory provisions or regulations as the same may

from time to time be changed by any statutory modification or re-enactment thereof or any statutory instrument, order or regulation made thereunder or under any such re-enactment.

- (c) The clause headings used in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.
- (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (e) Words denoting the singular shall include the plural and vice versa, words denoting one gender shall include the other gender and words denoting persons shall include firms and corporations and vice versa.
- (f) A Default (other than an Event of Default) is continuing if it has not been remedied, to the satisfaction of the Lender, or waived and an Event of Default is continuing if it has not been waived.
- (g) The schedules, including, for the avoidance of doubt, schedule 1 (Specific Terms) form an integral part of this Agreement.

1.3 Specific Terms

The Parties hereby acknowledge and agree that the specific provisions contained in the schedule 1 (Specific Terms) supplement, modify and/or replace (as the case may be) other terms of the main body of this Agreement.

2 The Facility

- 2.1 Subject to the terms of this Agreement, the Lender makes available to the Borrower a term loan facility (denominated in the Base Currency) in an amount equal to the Commitment, subject always to any reduction of the Commitment in respect of amounts paid as Management Fee in accordance with the provisions of this Agreement.
- 2.2 The Borrower acknowledges that the Facility has been made available by the Lender in its capacity acting through the JEREMIE Holding Fund in support of the JEREMIE initiative of the European Union in the JEREMIE Jurisdiction.
- 2.3 The Borrower undertakes, agrees and acknowledges that, notwithstanding that the Borrower may originate SME Loans in the JEREMIE Jurisdiction Currency, all calculations, determinations (including reporting) and payments under this Agreement shall be calculated and made in the Base Currency and any conversion into the Base Currency of an amount expressed in the JEREMIE Jurisdiction Currency necessary for any of these purposes shall be made at the Conversion Rate.

3 Purpose

- 3.1 The Borrower shall apply all amounts borrowed by it under the Facility towards financing, in part and at the Co-Financing Rate, new SME Loans to be made by the Borrower to SMEs during the Inclusion Period, in each case in accordance with the Credit and Collection Policy.
- 3.2 The Borrower may only apply amounts borrowed under the Facility towards funding, in part and at the Co-Financing Rate, SME Loans to be included in the Portfolio and disbursed before the Long Stop Date, and shall not apply amounts borrowed under the Facility towards any other purpose.
- 3.3 The Lender acknowledges and agrees that
 - (a) principal repayments received during the Availability Period in respect of SME Loans included in the Portfolio which are not Revolving SME Loans and

- (b) any amount corresponding to a reduction of the Credit Limit Amount with respect to a Revolving SME Loan included in the Portfolio (other than by reason of an SME Loan Restructuring),

may be applied by the Borrower in financing new SME Loans which satisfy the Eligibility Criteria and which may be included in the Portfolio in accordance with the terms of this Agreement. For the avoidance of doubt, after the end of the Availability Period, principal repayments received in respect of SME Loans included in the Portfolio may not be applied by the Borrower in originating new SME Loans for inclusion in the Portfolio.

4 Eligibility Criteria

4.1 Eligibility Criteria

Subject to clause 4.3, the Portfolio shall only contain loans entered into by the Borrower and a borrowing enterprise which comply with all criteria set out below (such loans, **SME Loans** and such criteria, the **Eligibility Criteria**):

- (a) the SME Eligibility Criteria;
- (b) the SME Loan Eligibility Criteria;
- (c) the Portfolio Eligibility Criteria; and
- (d) the Additional Eligibility Criteria (if any).

4.2 Definitions

For the purposes of the Agreement:

SME Eligibility Criteria means that the SME borrowing under the relevant SME Loan:

- (a) is an Eligible SME;
- (b) is not "in difficulty" (within the meaning of Article 45 of Regulation 1828/2006 of the European Parliament and within the meaning of Article 2.1 of the European Union guidelines on State Aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p.2) or falling in the case of article 4 (3) (a) of the De Minimis Regulation);
- (c) does not have a substantial focus on one or more Restricted Sectors (which determination shall be made by the Borrower in its discretion based, without limitation, on the proportionate importance of such sector on revenues, turnover or client base of the relevant SME);
- (d) is not active in any of the Excluded Sectors;
- (e) is established and operating in the JEREMIE Jurisdiction;
- (f) is rated by the Borrower within the Acceptable SME Risk Categories; and
- (g) is not delinquent or in default in respect of any other loan either lent by the Borrower or by another financial institution according to the Borrower's Credit and Collection Policy (which include checks carried out by the Borrower in External Databases).

SME Loan Eligibility Criteria means that the SME Loan:

- (a) is approved by the Borrower during the Availability Period and is entered into as a new SME Loan with the Borrower during the Inclusion Period (which shall, for the avoidance of doubt, exclude any SME Loan resulting from the restructuring or novation of an SME Loan created before the commencement of the Availability Period);
- (b) provides funding:
 - (i) for Permitted Purpose Activities only;

- (ii) in the SME Loan Currency only;
 - (iii) for activities which would not be excluded from the scope of the De Minimis Regulation pursuant to articles 1 and 3(2) of the De Minimis Regulation; and
 - (iv) for a purpose which shall exclude refinancing or restructuring or, for the avoidance of doubt, expenses already incurred by an SME;
- (c) if the SME Loan finances an investment in an asset in accordance with paragraph (a) of the definition of Permitted Purpose Activities or any related working capital pursuant to paragraph (b) of that definition, the relevant asset is located in the JEREMIE Jurisdiction;
- (d) if the SME Loan provides financing for a purpose described in paragraph (c) of the definition of Permitted Purpose Activities, the location of the relevant SME's permanent place of business or establishment which benefits from the SME Loan is located in the JEREMIE Jurisdiction;
- (e) is not a mezzanine or subordinated loan, or a loan which represents a form of equity investment in an SME, and excludes any loan which is subordinate by any legal agreement to any other loan or debt instrument incurred by the relevant SME;
- (f) if Revolving SME Loans are eligible for inclusion in the Portfolio under this Agreement as set out in schedule 1 (Specific Terms), is a Revolving SME Loan or a loan with a fixed, amortizing repayment schedule (which, for the avoidance of doubt, excludes any loan facility provided by way of utilisation of a credit limit by way of a credit card limit or the purchase by the Borrower of receivables due to the relevant SME, whether on a recourse or a non-recourse basis);
- (g) provides financing with:
 - (i) a minimum term not less than the Minimum SME Loan Maturity;
 - (ii) for SME Loans that are not Revolving SME Loans, a maximum term not greater than the Maximum SME Loan Maturity, unless the term of that SME Loan has been extended beyond the Maximum SME Loan Maturity by a Permitted Amendment;
 - (iii) for SME Loans that are Revolving SME Loans, a maximum term not greater than the Maximum Revolving SME Loan Maturity;
- (h) does not finance Ineligible Expenditure;
- (i) does not finance expenditure which has received assistance from another European Union instrument
- (j) does not support an operation which has received assistance under any operational programme (as defined in the Council Regulation (EC) 1083/2006) other than the Operational Programme;
- (k) is entered into in accordance with the Borrower's Credit and Collection Policy;
- (l) for SME Loans that are not Revolving SME Loans, the legal documentation for the SME Loan provides for the availability of funds to the relevant SME to cease on or before the Long Stop Date;
- (m) the interest rate applicable to the SME Loan has been reduced by the Financial Benefit; and
- (n) the principal amount of the SME Loan (or, in the case of a Revolving SME Loan, the Credit Limit Amount for that Revolving SME Loan) is not greater than the lower of:
 - (i) the Maximum SME Loan Amount; and

- (ii) the amount that would not cause aid to the SME to exceed the relevant State Aid maximum aid amount.

Portfolio Eligibility Criteria means that:

- (a) the aggregate of:
 - (i) for SME Loans which are not Revolving SME Loans, the outstanding principal amount of SME Loans in the Portfolio; and
 - (ii) for SME Loans which are Revolving SME Loans, the Credit Limit Amounts applicable to the Revolving SME Loans in the Portfolio

made available to a single SME does not at any time exceed the Maximum SME Concentration; and

- (b) the aggregate of:
 - (i) for SME Loans which are not Revolving SME Loans, the outstanding principal amount of SME Loans in the Portfolio; and
 - (ii) for SME Loans which are Revolving SME Loans, the Credit Limit Amounts applicable to the Revolving SME Loans in the Portfolio

forming part of the same industry sector (expressed by NACE Code – Rev.2 Division Level) shall not account for more than the relevant Maximum Industry Concentration.

4.3 Timing of compliance

- (a) SME Loans must comply with the Eligibility Criteria at all times while included in the Portfolio, except that the SME Eligibility Criteria must only be satisfied at the date of the document evidencing the relevant SME Loan, unless otherwise specified in schedule 1 (Specific Terms).
- (b) Any Additional Eligibility Criteria specified in schedule 1 (Specific Terms) to be **Continuing** shall be complied with at all times. Any Additional Eligibility Criteria specified in the Specific Terms to be **Signing Date** shall only be complied with at the date of the document evidencing the relevant SME Loan.

4.4 Revolving SME Loans

The Borrower and the Lender agree that:

- (a) in respect of each Revolving SME Loan included in the Portfolio which has a maturity extending beyond the Long Stop Date, the relevant Credit Limit Amount shall be reduced on the Long Stop Date to an amount equal to the aggregate principal amounts disbursed to SMEs under such Revolving SME Loan prior to such date;
- (b) in the case of a Revolving SME Loan already included in the Portfolio, the entry into a new agreement with a new maturity for a Revolving SME Loan with the same SME as the existing Revolving SME Loan (but without repayment in full by the SME of amounts outstanding under the existing Revolving SME Loan) shall be treated as an extension of the maturity of the existing Revolving SME Loan and not as the creation of a new or separate Revolving SME Loan with the relevant SME. For the avoidance of doubt, the extended maturity applicable to a Revolving SME Loan must not exceed Maximum Revolving SME Loan Maturity, and for the purposes of determining compliance with this requirement, the relevant term shall be treated as commencing on the date upon which the Revolving SME Loan was initially entered into; and
- (c) if, without repayment in full by the relevant SME of amounts outstanding under a Revolving SME Loan, the terms of a Revolving SME Loan included in the Portfolio are modified or converted (including by way of entry into a new contractual agreement or the execution

of a contractual amendment) with the effect that the relevant loan to the SME no longer takes the form of a Revolving SME Loan, then provided that such conversion has been made for the purpose of improving the collectability of sums payable in respect of that SME Loan, the resulting SME Loan shall continue to be included in the Portfolio (and shall not be treated as a separate or new SME Loan entered into with the relevant SME).

5 Inclusion and Exclusion process

5.1 Inclusion process

- (a) Subject to the other provisions of this clause 5.1, the Borrower may include in the Portfolio (for their full principal amount, and not partially) loans that:
 - (i) are SME Loans and comply with other relevant provisions of this Agreement; and
 - (ii) are entered into during the Inclusion Period.
- (b) The Borrower shall submit an Inclusion Notice by each Quarterly Report Date in respect of SME Loans entered into in the Calculation Period preceding the date of delivery of the relevant Inclusion Notice provided that the last Inclusion Notice shall not be sent later than on the date falling one month after the Inclusion Period End Date.
- (c) If no SME Loan(s) are to be included in the Portfolio during a particular Calculation Period, an Inclusion Notice stating that no SME Loans are to be included shall be sent to the Lender within one month of the end of that Calculation Period.
- (d) The Borrower shall promptly after the end of the Availability Period deliver to the Lender a notice in the form of appendix 2 (Form of Approval at the end of the Availability Period) of schedule 4 (Form of Notices) including the required information on any SME Loans approved before the end of the Availability Period that may be included in the Portfolio after such date.
- (e) Upon receipt by the Lender of the signed Inclusion Notice, the SME Loan(s) referred to therein shall be included in the Portfolio. For the avoidance of doubt, SME Loans so included in the Portfolio shall be included in the Portfolio from the date on which such SME Loans shall have been entered into.
- (f) Each Inclusion Notice shall be sent by the Borrower to the Lender together with the Quarterly Report (in excel format) via email and no later than on the relevant Quarterly Report Date.
- (g) No SME Loan(s) shall be included in the Portfolio if an Event of Default related to the Borrower has occurred and is continuing.

5.2 Exclusion process

- (a) Subject to clause 5.2(c) and 5.2(d) below, if a loan to an SME included in the Portfolio is, or an SME Loan becomes, a Non-Conforming SME Loan:
 - (i) the Borrower shall upon becoming aware of the same, include such information in the next Quarterly Report to be delivered to the Lender, and
 - (ii) the Lender may at any time upon becoming aware of the same (except if it has already been notified thereof by the Borrower, in accordance with clause 5.2(a)(i) above) notify the Borrower of the same by sending an Exclusion Notice identifying such Non-Conforming SME Loan,

whereupon that loan shall be excluded from the Portfolio (such loan being an “**Excluded SME Loan**”) as of the date on which it became a Non-Conforming SME Loan (or, with respect to Eligibility Criteria which were not complied with on the date of inclusion in the

Portfolio, on the date on which the relevant loan to an SME was included in the Portfolio) (any such dates, an “**Exclusion Date**”).

- (b) Without prejudice to clause 5.2(a) above, any SME Loan affected by an Irregularity shall be deemed to be a Non-Conforming SME Loan as of the date on which the event constituting the Irregularity occurred (such date being the relevant “Exclusion Date” for any such Non-Conforming SME Loan). If the Irregularity affects part of an SME Loan (the “**Affected Portion**”), such Affected Portion shall be deemed to be a Non-Conforming SME Loan. If the Irregularity consists of a fraudulent or illegal lending or leasing (or any other activity) in relation to the SME Loan (or relevant part thereof) or the fraudulent or illegal use of the proceeds of that SME Loan by the relevant SME, then notwithstanding the first part of this clause 5.2(b), the entire amount of that SME Loan shall be deemed to be a Non-Conforming SME Loan in accordance with clause 5.2(a). If an SME Loan (or a portion thereof) is deemed to be a Non-Conforming SME Loan pursuant to this clause 5.2(b) then, without prejudice to any other rights and remedies available to the Lender under this Agreement or at law, clause 5.2(a), clause 5.2(c)(ii), clause 5.2(d)(ii) and clause 5.2(g) as the case may be shall apply.

The Borrower undertakes to inform the Lender and the Managing Authority immediately upon becoming aware of an Irregularity.

- (c) Notwithstanding clause 5.2(a) (Exclusion Process) above,
- (i) if a loan included in the Portfolio is, or an SME Loan proves to be, a Non-Conforming SME Loan (X) as a result of any event or circumstance beyond the control of the Borrower and (Y) the Borrower became aware of any such event or circumstance at any time after the date on which the Non-Conforming SME Loan was included in the Portfolio (and could not have become aware thereof prior to such date, acting diligently) but prior to any Loss Amount relating to such Non-Conforming SME Loan having been reported by the Borrower, then the Borrower may either:
- (A) accelerate payment of all amounts owed to it by the relevant SME under such Non-Conforming SME Loan no later than the Quarterly Report Date immediately following the date on which the Borrower became aware that the loan was a Non-Conforming SME Loan (an “**Acceleration Event**”) and, *provided that* the other Eligibility Criteria, undertakings or requirements of this Agreement are otherwise complied with, such Non-Conforming SME Loan will remain included in the Portfolio for the purpose of the application of the provisions set out in clause 9 (Repayment) of this Agreement and the provisions of clause 5.2(a) will not apply in respect of such SME Loan; or
- (B) not proceed to an Acceleration Event, in which case clause 5.2(a) will apply; and
- (ii) if an SME Loan included in the Portfolio (or an Affected Portion thereof) (X) is a Non-Conforming SME Loan pursuant to clause 5.2(b), and (Y) the Borrower became aware of the relevant Irregularity after the date on which such relevant Non-Conforming SME Loan was included in the Portfolio (and could not have become aware thereof prior to such date acting diligently) but prior to any Loss Amount relating to such SME Loan having been reported by the Borrower and (Z) the existence of an Irregularity was beyond the control of the Borrower, then the Borrower may either:
- (A) accelerate payment of all amounts owed to it by the relevant SME under such Non-Conforming SME Loan no later than the Quarterly Report Date immediately following the date on which the Borrower became aware that the

Loan was a Non-Confirming SME Loan (an “**Irregularity Acceleration Event**”), provided that should the date for the delivery of such Quarterly Report fall less than 10 Business Days before the date on which the Borrower becomes aware of such Irregularity, then such acceleration shall be made before the next following Quarterly Report Date and, provided that the other Eligibility Criteria, undertakings or requirements of this Agreement are otherwise complied with, such SME Loan will remain included in the Portfolio for the purpose of the application of the provisions set out in clause 9 (Repayment) of this Agreement and the provisions of clause 5.2(a) (Exclusions Process) will not apply in respect of such SME Loan; or

- (B) not proceed to an Irregularity Acceleration Event, in which case clause 5.2(a) will apply.

(d) Notwithstanding clause 5.2(a) above,

- (i) if a loan included in the Portfolio is, or an SME Loan proves to be, a Non-Confirming SME Loan (X) as a result of any event or circumstance beyond the control of the Borrower and (Y) the Borrower became aware thereof at any time after the date on which any Loss Amount relating to such Non-Confirming SME Loan has been reported by the Borrower (and could not have become aware thereof prior to such date, acting diligently), then provided that the other Eligibility Criteria, undertakings or requirements of this Agreement are otherwise complied with, such Non-Confirming SME Loan shall be deemed to be included in the Portfolio and, for the avoidance of doubt, such Non-Confirming SME Loan shall not be deemed to be an Excluded SME Loan; and
- (ii) if an SME Loan included in the Portfolio (or an Affected Portion thereof) (X) is a Non-Confirming SME Loan pursuant to clause 5.2(b), and (Y) the Borrower became aware of the relevant Irregularity after the date on which such relevant Non-Confirming SME Loan was included in the Portfolio (and could not have become aware thereof prior to such date acting diligently) and after the date on which any Loss Amount relating to such SME Loan has been reported to the Lender, and (Z) the existence of the relevant Irregularity was beyond the control of the Borrower, then provided that the Eligibility Criteria, undertakings or requirements of this Agreement are otherwise complied with, such SME Loan (or Affected Portion) shall be deemed to be included in the Portfolio and, for the avoidance of doubt, such SME Loan shall not be deemed to be an Excluded SME Loan.

(e) If one or more Portfolio Eligibility Criteria are not (or no longer) complied with:

- (i) the Borrower shall, in the immediately following Quarterly Report delivered to the Lender; and
- (ii) the Lender may at any time, by notice to the Borrower,

exclude at its discretion all or part of any SME Loan(s) included in the Portfolio (such SME Loan(s) being the “**Designated Loan(s)**”) from the Portfolio such that, as a result of such exclusion, the Portfolio Eligibility Criteria shall be satisfied. Each Designated Loan shall be deemed to be a Non-Confirming SME Loan for the purpose of clause 5.2 (a) (provided that clause 5.2(c) shall not apply for the purposes of this clause 5.2(e)) and shall become an Excluded SME Loan on the Exclusion Date.

(f) If the Borrower becomes aware:

- (i) that an SME Loan is or becomes an Excluded SME Loan or any other undertakings or requirements of this Agreement are not complied with or satisfied in connection with such SME Loan, or

- (ii) that any commitments made available for utilisation under an SME Loan are cancelled,

then such information shall be included in the immediately following Quarterly Report to be delivered to the Lender.

- (g) Any portion of a Loan drawn by the Borrower under this Agreement and applied towards a Non-Conforming SME Loan which was excluded from the Portfolio in accordance with the provisions set out in this clause 5 (Exclusion) before the Inclusion Period End Date, can be applied by the Borrower for the inclusion of Eligible SME Loans in the Portfolio provided that all the other provisions of this Agreement are satisfied.

6 Conditions of utilisation

6.1 Initial conditions precedent

The Borrower may not deliver a Utilisation Request unless the Lender has received all of the documents and other evidence listed in schedule 2 (Conditions precedent) in form and substance satisfactory to it.

6.2 Further conditions precedent

The Lender will only be obliged to comply with clause 7.3 (Lender's obligation) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) no Default is continuing or would result from the proposed Loan; and
- (b) each of the repeated representations in accordance with the provisions of clause 20.1 (Times when representations made) is true.

6.3 Restrictions in respect of Loans

- (a) No Loan (other than the first Loan) may be made to the Borrower unless the Borrower has
 - (i) disbursed to SMEs under SME Loans (the relevant amount for a Revolving SME Loan being the Credit Limit Amount) not less than X% of the aggregate amount of all outstanding Loans in accordance with this Agreement, where X is the value set out in schedule 1 (Specific Terms); and
 - (ii) evidenced compliance with the requirement in clause 6.3(a)(i) in the most recent Quarterly Report available to the Lender or any other proof or evidence satisfactory to the Lender and annexed to the Utilisation Request.
- (b) The minimum and maximum amount of each Loan is set out in schedule 1 (Specific Terms).
- (c) Not more than one Loan may be requested in any month by the Borrower.
- (d) No Loan may cause the aggregate amount of all Loans to be greater than the Commitment.
- (e) On the last day of each month during the Drawdown Period, all Loans shall be consolidated into and shall form a single Loan.
- (f) No Loan may be made after the end of the Drawdown Period.

7 Utilisation

7.1 Delivery of a Utilisation Request

Subject to clause 6.1 (Initial conditions precedent), the Borrower may request a Loan by delivery to the Lender of a duly completed Utilisation Request not later than the time described in schedule 1 (Specific Terms).

7.2 Completion of a Utilisation Request

Each Utilisation Request for a Loan is irrevocable and will not be regarded as having been duly completed unless the proposed Utilisation Date is a Business Day within the Drawdown Period.

7.3 Lender's obligation

If the conditions set out in this Agreement have been met, the Lender shall make each Loan available by the Utilisation Date by crediting the amount of the Loan to the Utilisation Account.

7.4 End of Drawdown Period

Immediately following the end of the Drawdown Period the Commitment which, at that time, is unutilised shall be immediately cancelled.

8 Currency of SME Loans

The Borrower may make SME Loans in any of the SME Loan Currencies only.

9 Repayment

9.1 Scheduled repayments

- (a) The Borrower shall repay the Loans by either Pass-Through Repayment or a Fixed Repayment Schedule, as indicated in schedule 1 (Specific Terms).
- (b) If Pass-Through Repayment applies, the Borrower shall comply with the provisions of schedule 8 (Pass-Through Repayment).
- (c) If a Fixed Repayment Schedule applies, the Borrower shall comply with the provisions of schedule 9 (Fixed Repayment Schedule).

9.2 Final repayment

Subject to provisions of clause 10 (Risk Sharing), the Borrower shall in any event repay all Loans by not later than the Final Maturity Date.

9.3 No re-borrowing

The Borrower may not re-borrow any part of the Facility which is repaid.

10 Risk Sharing

10.1 Loss Amounts shall be included in the calculation of Covered Losses if the corresponding Loss Amounts were

- (a) incurred by the Borrower after the date of this Agreement; and
- (b) reported in the Quarterly Report sent to the Lender not later than the second Quarterly Report Date to occur after such Loss Amounts are incurred by the Borrower.

Any other Loss Amount shall not be considered Covered Losses.

10.2 Recoveries will be shared between the Lender and the Borrower either on the basis of Actual Recoveries or Expected Recoveries. Schedule 1 (Specific terms) provides whether the Actual Recoveries or Expected Recoveries are applicable to this Agreement.

10.3 No Loss Amounts shall be borne by the Lender if the Outstanding Principal Amount is or has been reduced to zero.

11 Actual Recoveries

11.1 This clause 11 applies only if schedule 1 (Specific terms) indicates that Actual Recoveries apply.

11.2 All Actual Recoveries shall be shared between the Lender and the Borrower. The Borrower shall pay a proportion of all Actual Recoveries to the Lender equal to Y, where:

Y = the amount of any Actual Recovery multiplied by the Risk Sharing Rate.

11.3 All Actual Recoveries payable to the Lender pursuant to clause 11.2 shall be paid by the Borrower to the Lender:

- (a) on the Payment Date immediately following the date on which the amount corresponding to the Actual Recovery has been paid to or received by the Borrower; and
- (b) by crediting the relevant amount to the Operation Account.

11.4 The Borrower undertakes that it shall:

- (a) at any relevant time, use its best efforts to maximise Actual Recoveries in accordance with the Credit and Collection Policy;
- (b) determine, acting in good faith and in a commercially reasonable manner, in accordance with the Credit and Collection Policy, when the recovery period for a relevant SME Loan shall be terminated; and
- (c) not later than the Payment Date on which any Actual Recoveries are to be paid to the Lender, supply an Actual Recovery Report to the Lender in respect of those Actual Recoveries. For the avoidance of doubt, if on any Payment Date no Actual Recoveries are to be paid to the Lender, no Actual Recovery Report is to be provided by the Borrower.

12 Clawback

12.1 Not later than the Payment Date immediately following the date on which the Lender gives notice to the Borrower (or the Borrower itself becoming aware) that a Clawback Amount is owed to the Lender, the Borrower shall pay to the Lender each Clawback Amount.

12.2 If Actual Recoveries apply to this Agreement, each Clawback Amount which the Borrower may be required to pay to the Lender under clause 12.1 shall be reduced by the amount of Actual Recoveries which the Borrower has paid to the Lender in accordance with clause 11 (Actual Recoveries) in respect of any Defaulted SME Loans that have become Excluded SME Loans.

12.3 If Expected Recoveries apply to this Agreement, each Clawback Amount which the Borrower may be required to pay to the Lender under clause 12.1 shall be reduced by the amount of Expected Recoveries to which the Lender is entitled in accordance with this Agreement for any Excluded SME Loans in respect of which an SME Loan Default and/or an SME Loan Acceleration has occurred.

13 Illegality, prepayment and cancellation

13.1 Illegality

If it becomes unlawful in any applicable jurisdiction for the Lender to perform any of its obligations as contemplated by this Agreement, to fund or maintain any Loan:

- (a) the Lender shall promptly notify the Borrower upon becoming aware of that event;
- (b) upon the Lender notifying the Borrower, the Commitment will be immediately cancelled; and
- (c) the Borrower shall repay all Loans on the date specified by the Lender in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law).

13.2 Voluntary cancellation

The Borrower may, if it gives the Lender not less than 30 days' (or such shorter period as the Lender may agree in writing) prior notice, cancel the whole or any part of the Available Commitment.

13.3 Voluntary prepayment

At any time after the Long Stop Date, the Borrower may, if it gives the Lender prior notice of at least the number of Business Days' set out in schedule 1 (Specific Terms) (or such shorter period as the Lender may agree), prepay all (but not part) of the Loans.

13.4 Additional right of voluntary prepayment – Loans subject to a Fixed Repayment Schedule only

- (a) This clause 13.4 only applies if the Facility is, in accordance with clause 9.1 (Scheduled repayments) subject to a Fixed Repayment Schedule.
- (b) The Borrower may, on any Payment Date after the Long Stop Date, apply an amount in prepayment of the Loans such that the aggregate amount of Loans outstanding after that prepayment is not less than:
 - (i) the aggregate principal amount of all Performing SME Loans (and in calculating this amount, the Credit Limit Amount applicable to all Performing SME Loans that are Revolving SME Loans shall be used), multiplied by
 - (ii) the Co-Financing Rate.

13.5 Mandatory prepayments

In respect of all Performing SME Loans that become Excluded SME Loans by the operation of clause 5.2 (Exclusion process) after the Inclusion Period End Date, the Borrower shall, on each Payment Date, pay to the Lender (to the Operation Account) an amount equal to:

- (a) the outstanding principal amount of all Performing SME Loans that became Excluded SME Loans during the Calculation Period ending immediately prior to the relevant Payment Date, multiplied by
- (b) the Co-Financing Rate.

13.6 Right of cancellation and repayment

- (a) If any sum payable to the Lender is required to be increased under clause 15.1(c) (Tax gross-up) the Borrower may, whilst the circumstance giving rise to the requirement for indemnification continues, give the Lender notice of cancellation of the Commitment and its intention to procure the repayment of all Loans.
- (b) On receipt of a notice referred to in clause 13.6(a), the Commitment shall immediately be reduced to zero.
- (c) On the date specified by the Borrower in that notice delivered under clause 13.6(a) the Borrower shall repay all Loans together with all interest and other amounts accrued under the Finance Documents.

13.7 Notices of cancellation and prepayment

Any notice of cancellation or other election given by the Borrower under clause 13 shall (subject to the terms of that clause) be irrevocable and, unless a contrary indication appears in this Agreement, any such notice shall specify the date or dates upon which the relevant cancellation is to be made and the amount of that cancellation.

13.8 Prepayment in accordance with Agreement

The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitment except at the times and in the manner expressly provided for in this Agreement.

13.9 No reinstatement of Commitment

No amount of the Commitment cancelled under this Agreement may be subsequently reinstated.

14 Interest**14.1 Payment**

The Borrower shall pay interest in arrears on each Payment Date in respect of the Interest Period which ends immediately before that Payment Date. Interest shall be paid to the Operation Account.

14.2 Rate of interest

The interest which the Borrower is required to pay shall be the aggregate of the Portfolio Interest and the Deposit Interest which has accrued during the latest Interest Period.

14.3 Portfolio Interest limit

Portfolio Interest due and payable to the Lender with respect to any Interest Period shall in no circumstances be greater than an amount equal to the product of:

- (a) the Portfolio Interest Rate,
- (b) the ratio of the number of days in the Interest Period, divided by 360, and
- (c) the average of the Outstanding Principal Amount on each day during the relevant Interest Period.

14.4 Interest Period

No Interest Period shall extend beyond the Final Maturity Date.

14.5 Default interest

- (a) If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which is the higher of (i) the applicable legal interest rate set by the law of the JEREMIE Jurisdiction (if any), and (ii) the Default Interest Rate, subject always to the maximum interest rate applicable pursuant to the law of the JEREMIE Jurisdiction (if any). Any interest accruing under this clause 14.5 shall be immediately payable by the Borrower on demand by the Lender.
- (b) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each month but will remain immediately due and payable.

15 Tax**15.1 Tax gross-up**

- (a) The Borrower shall make all payments to the Lender under the Finance Document without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Lender accordingly.

- (c) If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from the Borrower shall be increased to an amount which (after making any Tax Deduction) leaves an amount which shall be paid to the Lender equal to the payment which would have been due if no Tax Deduction had been required.
- (d) If the Borrower pays to the Lender any increased amount under clause 15.1 (a "**Tax Payment**") and the Lender receives and retains a refund of, or a credit against, the tax paid or payable by it or for its account and that the refund or credit is in respect of, or calculated with reference to, the deduction or withholding giving rise to the Tax Payment (such refund or credit is hereinafter referred as a "**Tax Credit**"), then the Lender shall promptly reimburse to the Borrower the corresponding amount.

15.2 Stamp and other taxes

- (a) The Borrower shall pay and, within 3 Business Days of demand, indemnify the Lender against any cost, loss or liability which the Lender incurs in relation to all stamp duty, notarial fees, registration and other similar Taxes payable in respect of any Finance Document.
- (b) The account of the Lender to which each such payment is to be made shall be stipulated in each demand made by the Lender.

16 Other indemnities

16.1 Currency indemnity

- (a) If any sum due from the Borrower under the Finance Documents (**Sum**), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (**First Currency**) in which that Sum is payable into another currency (**Second Currency**) for the purpose of:
 - (i) making or filing a claim or proof against the Borrower; or
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall as an independent obligation, within 5 Business Days of demand by the Lender, indemnify the Lender against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.
- (b) The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable (or in which it is otherwise determined to be payable pursuant to clause 33 (Change of currency)).

16.2 Other indemnities

- (a) The Borrower shall, within 5 Business Days of demand, indemnify the Lender against any cost, loss or liability incurred by it as a result of:
 - (i) the occurrence of any Event of Default;
 - (ii) a failure by the Borrower to pay any amount due under a Finance Document on its due date; or
 - (iii) funding, or making arrangements to fund, a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of gross negligence or wilful default by the Lender alone).

- (b) The Borrower shall promptly indemnify the Lender and each officer or employee of the Lender against any cost, loss or liability incurred by the Lender (or officer or employee of the Lender) in connection with or arising out of this Agreement, the Facility or the funding of any Loan (including but not limited to those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning the Facility), unless such loss or liability is caused by the gross negligence or wilful misconduct of the Lender (or employee or officer of the Lender). Any officer or employee of the Lender may rely on this clause 16.2(b) and subject to clause 47 (Contracts Rights of Third parties Act) and the provisions of the Third Parties Act.

17 Costs and expenses

17.1 Amendment costs

If:

- (a) the Borrower requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to clause 33 (Change of currency),

the Borrower shall, within 3 Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) reasonably incurred by it in responding to, evaluating, negotiating or complying with that request or requirement.

17.2 Enforcement and preservation costs

The Borrower shall, promptly upon demand, pay to the Lender the amount of all documented costs and expenses (including legal fees) incurred by it in connection with the enforcement of, or the preservation of, any rights under any Finance Document.

18 Representations

18.1 General

The Borrower makes the representations and warranties set out in this clause 18 to the Lender.

18.2 Status and business focus

- (a) The Borrower is duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- (b) The Borrower has the power to own its assets and carry on its business as it is being conducted.

18.3 Binding obligations

- (a) The obligations expressed to be assumed by it in each Finance Document are legal, valid, binding and enforceable obligations.
- (b) Each Security Document creates the Security which that Security Document purports to create, and that Security is valid and effective.

18.4 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:

- (a) any law or regulation, or judicial or official order, applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument; or

- (d) any of its licenses or permits issued by any of the regulatory authorities of the Relevant Jurisdictions and the JEREMIE Jurisdiction.

18.5 Power and authority

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents and the transactions contemplated by those Finance Documents.
- (b) No limit on its powers will be exceeded as a result of the borrowing contemplated by the Finance Documents or the creation of Security contemplated by the Security Documents.

18.6 Authorisations and regulatory standards

- (a) All Authorisations required or desirable:
 - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents; and
 - (ii) to make the Finance Documents admissible in evidence in its Relevant Jurisdictions, have been obtained or effected and are in full force and effect.
- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of the Borrower have been obtained or effected and are in full force and effect.

18.7 Governing law and enforcement

- (a) The choice of governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions.
- (b) Any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions.

18.8 No filing or stamp taxes

Under the laws of its Relevant Jurisdiction it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except as described in the relevant part of schedule 1 (Specific Terms).

18.9 No misleading information

- (a) Any factual information provided by it for the purposes of this Agreement (including any information provided before the date of this Agreement) was true and accurate as at the date it was provided or as at the date (if any) at which it is stated.
- (b) Nothing has occurred or been omitted from the factual information referred to in paragraph (a) above and no information has been given or knowingly withheld that results in that information being untrue or misleading.
- (c) All projections contained in the Credit and Collection Policy have been prepared in good faith on the basis of assumptions which were reasonable at the time at which they were prepared and supplied.

18.10 Representation as to the Financial Statements

- (a) Its Annual Financial Statements were prepared in accordance with the Accounting Principles consistently applied.
- (b) Its Annual Financial Statements give a true and fair view of its financial condition and results of operations during the relevant Financial Year and were not qualified by the Auditors in any respect.
- (c) No material adverse change in the Borrower's business or financial condition (or in the consolidated business or financial condition of the Group) has occurred since the date of the latest Annual Financial Statements or Quarterly Financial Statements.

18.11 Good faith

The Borrower has entered into this Agreement in good faith.

18.12 No proceedings pending or threatened

- (a) The Borrower is not or has not been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the European Union's financial interest.
- (b) No litigation, arbitration or administrative proceedings or investigations of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened against the Borrower.

18.13 Ranking

Subject to items mandatorily preferred by law, the Security created by the Security Documents has or will have first ranking priority and is not subject to any prior ranking or *pari passu* ranking Security.

18.14 Restricted Sector

At the date of this Agreement its business does not focus on one or more of the Restricted Sectors.

19 Additional Representations – SME Loans

The Borrower makes the representations and warranties set out in this clause 19 to the Lender.

19.1 Original Lender

Each SME Loan was originally made by the Borrower and each SME Loan constitutes the valid, legal, binding and enforceable obligation of the SME to whom it was made. The documentation under which each SME Loan is provided is governed by the laws of a jurisdiction consistent with the Lending Criteria.

19.2 Conditions precedent

All conditions precedent to availability of each SME Loan were satisfied in full and were not waived (except as disclosed in writing to the Lender by the Borrower).

19.3 Lending Criteria, Credit and Collections Policy and Eligibility Criteria

Each SME Loan, and the documentation relating to each SME Loan, complies in all respects with the Lending Criteria, the Credit and Collections Policy, the Eligibility Criteria and each other requirement of this Agreement.

19.4 Absolute benefit

The Borrower is the undisputed, unconditional sole legal and beneficial owner of the SME Loans, and no Security exists or will exist over the Borrower's rights in respect of the SME Loans other than in favour of the Lender.

19.5 Bilateral loans

The Borrower is the only provider of funding in respect of the SME Loan to each SME.

20 Times when representations made

- 20.1 All the representations and warranties in clauses 18.2 (Status and business focus) to 18.6 (Authorisations and regulatory standards), 18.8 (No filing or stamp taxes) and 18.12 (No proceedings pending or threatened) are made by the Borrower (without any requirement for any separate written confirmation from the Borrower) on the date of this Agreement and on the date of each Utilisation Request, on each Utilisation Date, on each Payment Date and on each date on which a payment is made by the Borrower to the Lender under clauses 9.1 (scheduled repayments), 14 (Interest).
- 20.2 All the representations and warranties in clause 19 (Additional Representations – SME Loans) are made by the Borrower (without any requirement for any separate written confirmation from the Borrower) on the last day of each Calendar Quarter and each Financial Quarter.
- 20.3 Each representation or warranty made or deemed to be made after the date of this Agreement shall be made by reference to the facts and circumstances existing at the date the representation or warranty is made or deemed to be made.

21 Information undertakings

The undertakings in this clause 21 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force or the Lender has a liability to the Borrower under the Facility.

21.1 Financial statements

The Borrower shall supply to the Lender:

- (a) as soon as they are available, but in any event not later than 10 Business Days after the earlier of (i) the date they are available and (ii) the latest date on which they have to be provided under applicable law, its Annual Financial Statements; and
- (b) as soon as they are available, but in any event within 30 days after the end of each Financial Quarter, its Quarterly Financial Statements for that Financial Quarter and for the Financial Year to date.

21.2 Requirements as to financial statements

The Borrower shall procure that each set of Annual Financial Statements shall be audited by the Auditors and shall include the audited profit and loss accounts, balance sheets and cashflow statements of the Borrower and each set of Quarterly Financial Statements shall include the unaudited profit and loss accounts, balance sheets and cashflow statements of the Borrower.

21.3 Provision of information in respect of SME Loans

- (a) The Borrower shall supply a Quarterly Report to the Lender not later than each Quarterly Report Date.
- (b) Each Quarterly Report shall be sent to the Lender (in excel format) via email at the following address: jeremie_reporting@eif.org, or such other address notified by the Lender to the Borrower in writing.
- (c) Each Quarterly Report shall be signed by an authorised signatory of the Borrower.
- (d) Each Quarterly Report provided by the Borrower in excel file shall:

- (i) contain the information described in schedule 6 (Contents of Quarterly Report) relating to the immediately preceding Calculation Period and be in the form prescribed by schedule 6 (Contents of Quarterly Report);
 - (ii) contain such other information as is required by schedule 1 (Specific Terms) and/or which is required by National Authorities and which the Lender notifies to the Borrower (in writing) from time to time is required.
- (e) The Borrower shall promptly supply to the Lender any document or report which is reasonably requested by the Lender (whether for itself or on behalf of JEREMIE Holding Fund) to enable the Lender to comply with its reporting obligations vis-à-vis the National Authorities or otherwise.

21.4 Amendments to Credit and Collection Policy

- (a) The Borrower shall comply with its Credit and Collection Policy and shall:
- (i) originate and monitor any SME Loan, and
 - (ii) consent to amendments and waivers,
- in each case in accordance with its Credit and Collection Policy.
- (b) The Borrower shall not make any amendments to its Credit and Collection Policy that would materially adversely affect the operation, performance or monitoring of this Agreement, without prior written consent of the Lender.
- (c) For the purpose of clause 21.4(b), any change the internal rating or scoring with respect to the SME Loans shall be regarded as an amendment that would materially adversely affect the operation, performance or monitoring of this Agreement.

21.5 Information: miscellaneous

- (a) Without prejudice to the other provisions of the Agreement, the Borrower shall promptly supply to the Lender:
- (i) any information that the Lender may reasonably require in order to verify:
 - (A) compliance with this Agreement and/or any other requirement imposed by the Structural Funds Regulations, including, but not limited to, information relating to compliance with the Eligibility Criteria, and the Borrower's financial condition, legal, tax and accounting situation, assets and operations (including information regarding its capital adequacy); and/or
 - (B) the performance of the Portfolio and any included SME Loan from time to time (including information on interest calculations, applicable margins, exchange rates, etc); and
 - (ii) any other information reasonably requested by the Lender relating to the financial standing of the Borrower and/or performance of the Portfolio.
- (b) The Borrower shall supply to the Lender:
- (i) not later than 7 Business Days after the end of each month, copies (in electronic format) of statements for the Utilisation Account;
 - (ii) not later than 15 Business Days following the last day of each Financial Quarter, confirmation, together with evidence reasonably satisfactory to the Lender, that the Borrower's Capital Adequacy Ratio is not less than the percentage set out in schedule 11 (Financial Covenants); and

- (iii) immediately, and in any case no later than 30 Business Days before the date on which any Change of Control is scheduled to take place, any information which is available to the Borrower with respect to any such Change of Control.
- (c) In the event of any change in the identity of the persons with authority to sign Utilisation Requests and otherwise to act as the Borrower's representative in the performance of this Agreement ("**Authorised Persons**"), the Borrower shall promptly send the Lender an updated list, together with evidence of authority and specimen signatures.
- (d) The Borrower shall immediately inform the Lender upon becoming aware of the occurrence of any circumstance constituting a Default or a Trigger Event under this Agreement.

21.6 "Know your customer" checks

If:

- (a) the implementation or introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement; or
- (b) any change in the status of the Borrower or the composition of the shareholders of the Borrower after the date of this Agreement; or
- (c) a proposed assignment or transfer by the Lender of any of its rights and/or obligations under this Agreement prior to such assignment or transfer,

obliges the Lender (or, in the case of clause 21.6(c), any prospective new Lender) to comply with "know your customer" or similar identification procedures (whether those procedures are applied voluntarily by the Lender or pursuant to any applicable law or regulation) in circumstances where the necessary information is not already available to the Lender, the Borrower shall promptly upon the request of the Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Lender (for itself or on behalf of any prospective new Lender) in order for the Lender or any prospective new Lender to carry out and be satisfied with the results of all necessary "know your customer" or other checks in relation to any relevant person pursuant to the transactions contemplated in the Finance Documents.

21.7 Monitoring and control

- (a) The Lender is not bound to monitor or verify, and shall not be responsible for monitoring or verifying, the use of any amounts:

- (i) lent by the Lender to the Borrower; and/or
- (ii) lent by the Borrower to SMEs or utilised from time to time by the SMEs

in each case, under SME Loans. Notwithstanding this, the Lender may, at any time, request information from the Borrower to enable the Lender to verify whether an SME Loan satisfies the Eligibility Criteria and whether its inclusion in the Portfolio is in compliance with the terms of this Agreement. The Borrower shall supply to the Lender any such information requested by the Lender.

- (b)
 - (i) To enable the monitoring, control and auditing of the correct use of the JEREMIE Funds and compliance with the provisions of this Agreement with a view, inter alia, to the Lender satisfying its obligations to the National Authorities, the Borrower acknowledges and agrees that the Lender, agents of the Lender, the EIF, the agents of the EIF, the ECA, the Commission and/or the agents of the Commission (including OLAF) (together being the Agents), all other Union institutions or Union bodies which are entitled to verify the use of the JEREMIE Funds and the National

Authorities shall have the right to carry out audits and controls and to request information in respect of this Agreement and its execution.

- (ii) The Borrower shall permit monitoring visits and inspections by the Lender, agents of the Lender, the EIF, the agents of the EIF, the ECA, the Commission, the Agents and/or National Authorities of its business operations, books and records which are maintained in connection with this Agreement. As these controls may include on the spot controls of the Borrower, the Borrower shall permit access to any of its premises to the Lender, agents of the Lender, the EIF, the agents of the EIF, the ECA, the Commission, the Agents and/or National Authorities during the Borrower's normal business hours.
- (c) The Borrower further undertakes to include in the legal documentation concerning each SME Loan:
- (i) the exact wording as follows (or the relevant translation set out in the Specific Terms):

“The counterparty acknowledges that the European Investment Fund (the **EIF**), Slovenský záručný a rozvojový fond, s.r.o. (**SZRF**), the agents of the EIF and/or SZRF, the Court of Auditors of the European Union (the **ECA**), the Commission and/or the agents of the Commission including OLAF (the **Agents**) and all other Union institutions or Union bodies, which are entitled to verify the use of EU Structural Funds and any competent national or regional authority of (“National Authorities”), including their duly authorised representatives, shall have the right to carry out audits and controls and to request information in respect of this agreement and its execution. The counter party shall permit monitoring visits and inspections by the EIF, SZRF, the agents of the EIF and/or SZRF, the ECA, the Commission, the Agents and National Authorities of its business operations, books and records. As these controls may include on the spot controls of the counter party, the counter party shall permit access to its premises to SZRF, the EIF, the agents of the EIF, the ECA, the Commission, the Agents and National Authorities during normal business hours.”; and
 - (ii) an undertaking of the relevant SME to promptly provide, upon request, any document or information related to itself and/or the relevant SME Loan and required to be included in any report by the Lender, the EIF, the ECA, the Commission, the Agents and/or the National Authorities.
- (d) The Borrower shall at all times and for the period set out in clause 41.2 (Maintenance of Records; Authorisations) maintain adequate evidence of the compliance with the Eligibility Criteria in respect of all SME Loans.
- (e) The Borrower shall:
- (i) identify the Financial Benefit applicable to each SME Loan on or before the date upon which legal documentation is signed in respect of that SME Loan; and
 - (ii) maintain records evidencing the Financial Benefit applicable to each SME Loan in the Portfolio.

22 The Accounts

22.1 Opening

- (a) The Borrower shall open and at all times after the date of this Agreement maintain the Utilisation Account.
- (b) The Borrower shall not create or permit to subsist any Security in respect of the Utilisation Account.
- (c) The Lender shall maintain the Operation Account with the institution set out in schedule 1 (Specific Terms).

22.2 Mandate

- (a) The Borrower shall have sole signing rights in relation to the Utilisation Account.
- (b) No withdrawals from, or credits to, the Utilisation Account shall be made other than in accordance with this Agreement.
- (c) The Lender shall have sole signing rights in relation to the Operation Account.

22.3 Operation Account

- (a) The Lender may at any time transfer the Operation Account to another bank or financial institution.
- (b) The Lender may at any time make any withdrawal from the Operation Account.

22.4 Account details

The Borrower shall, by not later than 15 Business Days from the date of this Agreement, deliver a notice in writing to the Lender identifying (together with details of fee account name, account number and name and address of the bank where each account is held) the Utilisation Account.

23 Financial covenants and Financial Covenants Report

23.1 Financial covenants

The Borrower shall at all times comply with the financial covenants set out in schedule 11 (Financial Covenants).

23.2 Financial Covenants Report

The Borrower shall supply to the Lender, by email at jeremie_reporting@eif.org, its Financial Covenants Report relating to each Financial Quarter, as soon as such report becomes available, but in any event within 30 days after the end of each Financial Quarter.

24 General undertakings

The undertakings in this clause 24 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or the Commitment is in force.

24.1 Authorisations

The Borrower shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) on request, supply certified copies to the Lender of, any Authorisation required under any law or regulation of a Relevant Jurisdiction to:
 - (i) enable it to perform its obligations under the Finance Documents;
 - (ii) ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document; and

- (iii) carry on its business.

24.2 Compliance with laws

- (a) The Borrower shall comply in all respects with all laws (whether national laws or laws of the Union) to which it may be subject, including but not limited to:
 - (i) competition;
 - (ii) the protection and improvement the environment and promotion of sustainable development;
 - (iii) gender equality, non-discrimination and equal opportunities; and
 - (iv) legislation concerning the Funds and any requirements under the Operational Programme.
- (b) The Borrower shall not commit any Irregularity.
- (c) The Borrower shall include in the documentation applicable to each SME Loan included in the Portfolio:
 - (i) an undertaking from the SME equivalent to that contained in clauses 24.2(a) and 24.2(b); and
 - (ii) representations, warranties and undertakings from the SME for the purpose of ensuring that each SME Loan forming part of the Portfolio shall comply with the relevant Eligibility Criteria in accordance with this Agreement,

provided that the Borrower shall inform the Lender promptly upon becoming aware of any breach of any such representations, warranties and undertakings, as the case may be, by the relevant SME.

24.3 Additional undertakings

The Borrower shall be bound by the additional undertakings marked as “applicable” in appendix 1 of schedule 1 (specific terms).

24.4 Change of business

The Borrower shall procure that no substantial change is made to the general nature or scope of its business from that carried on by it at the date of this Agreement.

24.5 *Pari passu* ranking

The Borrower shall ensure that at all times any unsecured and unsubordinated claims of the Lender against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors of the Borrower except those creditors whose claims are mandatorily preferred by laws of a Relevant Jurisdiction.

24.6 Access

Without prejudice to, and independent from, the rights of the Lender under clause 21.7(b), not more than once in every Financial Year unless the Lender reasonably suspects a Default is continuing or may occur, the Borrower shall permit the Lender and/or accountants or other professional advisers and contractors of the Lender free access at all reasonable times and on reasonable notice at the risk and cost of the Borrower to the premises, assets, books, accounts and records of the Borrower which are related to the Portfolio, this Agreement and the transaction contemplated hereunder

24.7 Expenditure financing restrictions

- (a) The Borrower undertakes to include in the legal documentation relating to each SME Loan:

- (i) a representation by the relevant SME that
 - (A) the expenditure financed by the SME Loan has not received assistance from another Community instrument and
 - (B) the operation supported by the SME Loan has not received any assistance under any operational programme (as defined in the Council Regulation (EC) 1083/2006) other than the Operational Programme; and
- (ii) an undertaking by the relevant SME
 - (A) not to seek assistance from another European Union instrument for the expenditure financed by the SME Loan, and
 - (B) not to seek assistance under any operational programme (as defined in the Council Regulation (EC) 1083/2006) other than the Operational Programme for the operation supported by the SME Loan.
- (b) The Borrower undertakes to include in the legal documentation relating to each SME Loan an undertaking by the relevant SME that the expenditure received by the SME in respect of its SME Loan is to be used exclusively for Permitted Purpose Activities.

24.8 Accounting

The Borrower undertakes to keep detailed and dedicated accounts (for audit and monitoring purposes) of any movements of funds linked to the Facility and the Portfolio and to ensure full traceability of those funds by way of an independent audit trail (as defined in Article 15 of Commission Regulation (EC) 1828/2006).

24.9 Visibility and Promotion

- (a) The Borrower undertakes to carry out information, marketing and publicity campaigns, focussed in its territory in which SME Loans will be offered (the **Relevant Territory**), aimed at making the JEREMIE initiative known to the SMEs in the Relevant Territory, in line with the relevant provisions of EU Structural Funds Regulations, including, but not limited to, the publicity-related requirements of the Commission Regulation and the requirements of the Operational Programme.
- (b) The Borrower undertakes to comply with the provisions of Article 8.4 of Commission Regulation (EC) 1828/2006.
- (c) The Borrower undertakes to ensure that the documentation for any SME Loan financed (in part) by the Facility includes the following wording (or the relevant translation set out in schedule 1) (Specific Terms):

“The financing provided hereunder benefits from support from an operational programme co-financed by the European Union Structural Funds pursuant to the “Joint European Resources for Micro to Medium Enterprises” initiative (JEREMIE).”
- (d) The Borrower undertakes to comply with any other visibility and promotion requirements set out in schedule 1 (Specific Terms).

24.10 State Aid

- (a) The Borrower acknowledges that the Facility provided under this Agreement is to be taken account of by the Borrower and the SMEs in the context of their compliance with all applicable rules relating to State Aid.
- (b) The Borrower undertakes:
 - (i) to comply with all applicable rules relating to State Aid (including all additional State Aid related requirements set out in schedule 1 (Specific terms)) in performing its

obligations under this Agreement, and in particular to take account of the Facility in the context of its compliance with all applicable State Aid rules and to ensure that the inclusion of each SME Loan in the Portfolio shall comply with State Aid rules;

- (ii) to ensure that each SME which is the borrower of a loan in the Portfolio is notified in writing of the requirement to take into account the support provided by the Facility when considering compliance with all applicable State Aid rules; and
 - (iii) to promptly provide to the Lender any information requested by the Lender in order to verify compliance by the Borrower (or any SME which is the borrower of a loan in the Portfolio) with all applicable rules relating to State Aid.
- (c) The Borrower represents, warrants and undertakes that (i) in order to fund SME Loans, in addition to the Facility, it will use funding obtained at applicable commercial market terms, and (ii) the interest (to which the Financial Benefit is applied) that it will charge to each SME in respect of each SME Loan will be calculated and based on commercial market terms.

24.11 SME Loan Security

The Lender may at any time by notice in writing to the Borrower require the Borrower to create Security in respect of all the Borrower's right, title and interest in all SME Loans. Any Security requested shall be in such form as the Lender may require and all costs and expenses (including all legal expenses) incurred by the Lender in connection with creation of any Security and incurred by the Lender or the Borrower in administration of any arrangements required by such Security shall, in each case, be borne by the Borrower.

24.12 Data protection

- (a) In entering into this Agreement, the Borrower acknowledges and agrees that its details (and certain information applicable to the Facility (such as the amount of the Commitment)) will be contained in a list to be published in accordance with item (d) in Article 7(2) of the Commission Regulation.
- (b) With reference to the Data Protection Regulation, the Borrower undertakes to ensure that SMEs to whom SME Loans are granted are informed in writing, without limitation, of the following:
 - (i) that pursuant to Article 5(a) of the Data Protection Regulation, the name, address and purpose of the SME and other personal data or other information in connection with the relevant SME Loan will be communicated to the Lender, the National Authorities and/or the Commission;
 - (ii) that by accepting an SME Loan, the relevant SMEs expressly accept inclusion in the list to be published pursuant to Article 7(2) of the Commission Regulation;
 - (iii) that any personal data communicated to the Lender, the National Authorities and/or the Commission may be stored until 31 December 2026 at the earliest;
 - (iv) that requests by a SME to verify, correct, delete or otherwise modify personal data communicated to the Lender, an EU Member State and/or the Commission should be addressed to the Lender, an EU Member State and/or the Commission at the following address:
 - (A) in respect of the Lender: the address set out in clause 36.2 (Delivery) (Addresses) and to the EIF Data Protection Officer;
 - (B) in respect of National Authorities, as provided for in schedule 1 (Specific Terms); and

- (C) in respect of the Commission, the European Data Protection Supervisor, Rue Wiertz 60, B-1047 Brussels, Belgium.

Such requests shall be treated as described in Articles 13 to 19 of the Data Protection Regulation in its Section 5: "Rights of the Data Subject"; and

- (v) that pursuant to Article 32, paragraph (2) of the Data Protection Regulation a SME may lodge a complaint with the European Data Protection Supervisor if he or she considers that his or her rights under Article 16 of the Treaty have been infringed as a result of the processing of personal data by the Lender and/or the Commission.
- (c) For the avoidance of doubt, any reference to personal data in this clause 24.12 shall mean personal data as defined in the Data Protection Regulation.

24.13 Additional Security

If the Borrower should provide, or arrange for the provision of, Permitted Security over any land or other asset to a third party in respect of any loan or credit granted to it or guarantee granted by it, the Borrower shall, if so required by the Lender, provide to the Lender, or arrange for the provision of, equivalent Security over land or other assets for the performance of the financial obligations of the Borrower under the Finance Documents.

24.14 Additional Protection

If, at any time the Borrower concludes, with any other medium or long term financial creditor, any financing agreement that includes (i) a loss-of-rating clause or (ii) a covenant or other provision regarding its financial ratios which are comparable to the loss of rating clauses and/or the covenants or provisions regarding financial ratios included in this Agreement but are more protective to the respective creditor, the Borrower shall immediately inform the Lender thereof and shall, at the request of the Lender, execute an agreement to amend this Agreement so as to provide for an equivalent provision in favour of the Lender.

24.15 Portfolio undertakings

- (a) The Borrower shall at all times ensure that, for each Revolving SME Loan included in the Portfolio, an amount equal to the Credit Limit Amount of such Revolving SME Loan, multiplied by the Risk Sharing Rate, has been borrowed by the Borrower as a Loan (or as part of a Loan).
- (b) The Borrower shall at all times ensure that, for each SME Loan which is not a Revolving SME Loan and which is included in the Portfolio, an amount equal to the aggregate principal amount disbursed to the relevant SME under an SME Loan, multiplied by the Risk Sharing Rate, has been borrowed by the Borrower as a Loan (or as part of a Loan).

24.16 Borrower's exposure to SME Loans

Without prejudice of any other provisions of this Agreement, the Borrower undertakes at all times that, unless otherwise permitted in writing by the Lender:

- (a) it shall maintain an economic exposure in respect of each SME Loan included in the Portfolio at least equal to the Relevant Portion; and
- (b) it shall not enter into any credit support, guarantee or other transfer of risk arrangements with respect to the Relevant Portion.

24.17 Default Trigger

If, on any Default Trigger Determination Date, the Default Ratio exceeds the applicable Default Ratio Trigger Level, the Parties shall enter into negotiations and seek to agree on any

amendments of the Eligibility Criteria with a view to reducing the probability of further Loss Amounts.

25 Events of Default

Each of the events or circumstances set out in this clause 25.1 to 25.15 is an Event of Default.

25.1 Non-payment

The Borrower does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:

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

25.2 Other obligations

- (a) The Borrower does not comply with any provision of the Finance Documents (other than any non-compliance referred to in clause 25.1).
- (b) No Event of Default under clause 25.2(a) will occur if the failure to comply is capable of remedy and is remedied within 14 days of the earlier of:
 - (i) the Lender giving notice to the Borrower; and
 - (ii) the Borrower becoming aware of the failure to comply.

25.3 Misrepresentation

Any representation or statement made or deemed to be made by the Borrower in the Finance Documents or any other document delivered by or on behalf of the Borrower under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made.

25.4 Cross default

- (a) Any Financial Indebtedness of the Borrower is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of the Borrower is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of the Borrower is cancelled or suspended by a creditor of the Borrower as a result of an event of default (however described).
- (d) Any creditor of the Borrower becomes entitled to declare any Financial Indebtedness of the Borrower due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this clause 25.4 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within clause 25.4(a) to 25.4(d) (inclusive) is less than the Threshold Amount.

25.5 Insolvency

- (a) The Borrower is unable or admits inability to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts under applicable law, suspends or threatens to suspend making payments on any of its debts or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.

- (b) The value of the assets of the Borrower is less than its liabilities (taking into account contingent and, if applicable under relevant law, prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of the Borrower. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

25.6 Insolvency proceedings

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - (i) the suspension of payments, a moratorium of any indebtedness, bankruptcy, controlled management, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Borrower;
 - (ii) a composition, compromise, assignment or arrangement with any creditor of the Borrower;
 - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or any of its assets; or
 - (iv) enforcement of any Security over any assets of the Borrower,
 or any analogous procedure or step is taken in any jurisdiction.
- (b) Clause 25.6(a) shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement or, if earlier, the date on which it is advertised.

25.7 Creditors' process

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of the Borrower which may impact on the ability of the Borrower to repay the Loan and is not discharged within 14 days of the commencement of such process.

25.8 Unlawfulness and invalidity

- (a) It is or becomes unlawful for the Borrower to perform any of its obligations under the Finance Documents.
- (b) Any obligation or obligations of the Borrower under any Finance Documents are not or cease to be legal, valid, binding or enforceable.
- (c) Any Finance Document ceases to be in full force and effect.
- (d) Any Security created or expressed or purported to be created under the Security Documents ceases to be effective.

25.9 Cessation of business

The Borrower suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

25.10 Expropriation

The authority or ability of the Borrower to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to the Borrower or any of its assets.

25.11 Repudiation and rescission of agreements

The Borrower rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or evidences an intention to rescind or repudiate a Finance Document.

25.12 Illegality

The Borrower is determined by any competent authority in any Relevant Jurisdiction to be guilty of any criminal offence or any other illegal activity which the Lender believes may be adverse to its interests.

25.13 Material adverse change

Any event or circumstance occurs which has or is reasonably likely to have a Material Adverse Effect.

25.14 Change of Control

A Change of Control, which is not satisfactory to the Lender, occurs in respect of the Borrower.

25.15 Additional Events of Default

Any of the events or circumstances set out in schedule 1 (Specific Terms) occurs.

25.16 Acceleration

- (a) On and at any time after the occurrence of an Event of Default the Lender may, by notice to the Borrower:
 - (i) cancel the Commitment at which time it shall immediately be cancelled;
 - (ii) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable; and
 - (iii) declare that all or part of the Loans be payable on demand, at which time they shall immediately become payable on demand by the Lender.
- (b) The Lender may, in its discretion, elect to issue a notice under clause 25.16(a)(i) to cancel the Commitment.

26 Changes to the Lenders

26.1 Assignments and transfers by the Lender

- (a) Subject to this clause 26, the Lender (the **Existing Lender**) may:
 - (i) assign any of its rights; or
 - (ii) transfer by novation any of its rights and obligations,under any Finance Document to the Managing Authority, any person designated by the Managing Authority or the JEREMIE Jurisdiction.
- (b) The Borrower acknowledges that the Lender is acting under a mandate from the National Authorities under the Funding Agreement. In the event of termination of the Funding Agreement, the Lender may (or may be required to) assign any or all of its rights, or transfer by novation, any or all of its rights and obligations under any Finance Document to the Managing Authority, any person designated by the Managing Authority or the JEREMIE Jurisdiction.

26.2 Limitation of responsibility of Existing Lender

- (a) Unless expressly agreed to the contrary, the Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
 - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;

- (ii) the financial condition of the Borrower;
 - (iii) the performance and observance by the Borrower of its obligations under the Finance Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,
- and any representations or warranties implied by law are excluded.
- (b) The New Lender confirms to the Existing Lender that it:
- (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Borrower and its related entities in connection with its participation in this Agreement and has not relied on any information provided to it by the Existing Lender in connection with any Finance Document; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of the Borrower and of the risks arising under or in connection with the Finance Documents whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges the Existing Lender to:
- (i) accept a re-transfer or re-assignment from the New Lender of any of the rights and obligations assigned or transferred under this clause 26; or
 - (ii) guarantee, indemnify or otherwise hold harmless the New Lender in respect of any cost, loss or liability directly or indirectly incurred by the New Lender as a reason of the non-performance by the Borrower of its obligations under the Finance Documents or otherwise.

26.3 Procedure for transfer

- (a) A transfer is effected in accordance with clause 26.3(b) when the Existing Lender and the New Lender execute an otherwise duly completed Transfer Certificate. The Borrower acknowledges that it will be bound by any transfer documented by a Transfer Certificate executed by the Existing Lender and the New Lender.
- (b) On the Transfer Date:
- (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents the Borrower and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (the **Discharged Rights and Obligations**);
 - (ii) the Borrower and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as the Borrower and the New Lender have assumed and/or acquired the same in place of the Borrower and the Existing Lender; and
 - (iii) the New Lender shall become a Party as the Lender.

26.4 Procedure for assignment

- (a) An assignment may be effected in accordance with clause 26.4(b) when the New Lender and the Existing Lender execute an otherwise duly completed Assignment Agreement. The Borrower acknowledges that it will be bound by any assignment documented by an Assignment Agreement executed by the Existing Lender and the New Lender.

(b) On the Transfer Date:

- (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
- (ii) the Existing Lender will be released by the Borrower from its obligations (the **Relevant Obligations**) expressed to be the subject of the release in the Assignment Agreement; and
- (iii) the New Lender shall become a party to the Finance Documents as the Lender and will be bound by obligations equivalent to the Relevant Obligations.

26.5 Lender's rights

The Lender may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.

- (a) The Lender may act in relation to the Finance Documents through its personnel and agents.
- (b) Notwithstanding any other provision of any Finance Document to the contrary, the Lender is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (c) Without limiting clause 26.5(a) the Lender will not be liable (including, without limitation, for negligence or any other category of liability whatsoever) for any action taken by it (or any omission by it to act) under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct.
- (d) The Borrower may not take any proceedings against any officer, employee or agent of the Lender in respect of any claim it might have against the Lender or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Lender may rely on this clause subject to clause 47 (Contracts (Right of Third Parties Act 1999) and the provisions of the Third Parties Act.

27 Changes to the Borrower

The Borrower may not assign any of its rights or transfer (or enter into any transaction or purported transaction the effect of which is to give rise to a trust in respect of) any of its rights or obligations under the Finance Documents.

28 Conduct of business by the Lender

No provision of this Agreement will:

- (a) interfere with the right of the Lender to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige the Lender to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige the Lender to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

29 Partial payments

If the Lender receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by the Borrower

under those Finance Documents, the Lender shall apply that payment towards the obligations of the Borrower under the Finance Documents in the following order:

- (a) first, in or towards payment pro rata of any unpaid fees, costs and expenses (including, for the avoidance of doubt, external enforcement costs) of Lender under the Finance Documents;
- (b) secondly, in or towards payment of any accrued interest, fee or commission due but unpaid under the Finance Documents;
- (c) thirdly, in or towards payment of any principal due but unpaid under the Finance Documents; and
- (d) fourthly, in or towards payment of any other sum due but unpaid under the Finance Documents.

The Lender may vary the order set out in paragraphs (a) to (d) above. The terms of this clause will override any appropriation made by the Borrower.

30 No set-off

All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

31 Business Days

- 31.1 Subject to clause 31.2, any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- 31.2 If a payment under the Finance Documents is due to be paid on the Final Maturity Date but that day is not a Business Day, that payment shall be made on the preceding Business Day.
- 31.3 During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the date on which, but for this clause 31, such principal or Unpaid Sum would otherwise have been due.

32 Currency of account

- 32.1 Unless otherwise provided in this Agreement, the Base Currency is the currency of account and payment for any sum due from the Borrower under any Finance Document.
- 32.2 Without limiting clause 32.1, each payment in respect of costs, expenses or Taxes shall be made in the Base Currency.

33 Change of currency

- 33.1 Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (a) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Lender (after consultation with the Borrower); and
 - (b) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Lender (acting reasonably).
- 33.2 If a change in any currency of a country occurs, this Agreement will, to the extent the Lender (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

34 Disruption to Payment Systems etc

If either the Lender determines (in its discretion) that a Disruption Event has occurred or the Lender is notified by the Borrower that a Disruption Event has occurred:

- (a) the Lender may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Lender may deem necessary in the circumstances; and
- (b) the Lender shall not be obliged to consult with the Borrower in relation to any changes mentioned in clause 34(a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes.

35 Set-off

The Lender may set off any matured obligation due from the Borrower under the Finance Documents against any matured obligation owed by the Lender to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

36 Notices**36.1 Communications in writing and address**

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, shall be made by letter or (but only to the extent expressly specified in the Agreement) email, to the following addresses and contact details:

- (a) in respect of the Lender:
 - (i) to EIF at the following addresses and contact details
 European Investment Fund
 37B, avenue J.F. Kennedy
 L-2968 Luxembourg
 Grand Duchy of Luxembourg
 Attention: JEREMIE – Funded Risk Sharing Agreement – Risk Management and Monitoring Team
 Email: jeremie_reporting@eif.org
 - (ii) if EIF ceases to act in the name and for the account of the Lender, to Slovenský Záručný a Rozvojový Fond, S.R.O., Dvořákovo nábrežie 4, 811 02 Bratislava, Slovak Republic; to the kind attention of the Executive Director.
- (b) in respect of the Borrower, as set out in the schedule 1 (Specific Terms).

36.2 Delivery

Any communication or document made or delivered by the Lender to the Borrower or by the Borrower to the Lender under or in connection with this Agreement shall be made in accordance with clause 36.1 and will only be effective:

- (a) if by way of letter, when it has been delivered by hand at the relevant address or five (5) Business Days after being sent by registered letter with acknowledgement of receipt to that address; and
- (b) if by way of email, when actually received in readable form,

and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer. If a communication or document is required to be sent by email and

letter, the effective date shall be deemed to be the earlier date on which such communication or document is deemed to be effective under this clause 36.2.

36.3 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

37 Calculations and certificates

37.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by the Lender are prima facie evidence of the matters to which they relate.

37.2 Certificates and determinations

Any certification or determination by the Lender of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

37.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

38 Partial invalidity

If, at any time, any provision of the Finance Documents 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.

39 Remedies and waivers

Subject to the provisions of the Finance Documents, the liabilities, obligations, powers, rights or remedies of the Lender under the Finance Documents shall not be discharged, impaired, prejudiced or otherwise affected by any act, event, omission, matter or thing which, but for this clause, would discharge, impair, prejudice or otherwise affect any such liabilities, obligations, powers, rights or remedies, including (without limitation and whether or not known to it or the Borrower):

- (a) any failure or delay in exercising any power, right or remedy under the Finance Documents;
- (b) any single or partial exercise of any power, right or remedy;
- (c) any other time, waiver or consent granted to the Borrower; or
- (d) any other amendment, novation, supplement, extension, restatement of any Finance Document.

Nothing in this Agreement (or any other document, instrument or agreement) will be construed in any way to limit or otherwise affect the Lender's rights to pursue recovery or claims for damage,

reimbursement or indemnification against any person for any liabilities, losses, damages, costs and expenses incurred by the Lender hereunder.

40 Confidentiality

40.1 Subject to the provisions of clause 24.9 (Visibility and Promotion), each Party shall keep confidential all Confidential Information supplied to it in connection with this Agreement and agree not to disclose any Confidential Information unless that disclosure is permitted by this Agreement.

40.2 Notwithstanding clause 40.1, each Party is entitled to disclose Confidential Information:

- (a) with the prior written consent of the other Party;
- (b) if required to do so by a governmental, banking, taxation or other regulatory authority or required under any law or regulation or in order to comply with a valid order of a court of competent jurisdiction, provided that where it is reasonably practicable and it is not legally prohibited from doing so, the disclosing Party shall consult with the other Party in good faith as to the manner and timing of such disclosures and shall in all circumstances, unless legally prohibited from doing so, notify the other Party of such disclosure;
- (c) to its auditors and other professional advisers, provided that the disclosing Party ensures that its auditors and other professional advisers acknowledge and comply with the confidentiality provisions of this clause;
- (d) to the National Authorities, the EIF, the Commission and its Agents, the ECA, the European Investment Bank, and any other entity the Lender is subject to;
- (e) to any New Lender in accordance with clause 26 (Changes to the Lenders); and
- (f) in accordance with the provisions of this Agreement, including, without limitation, the reporting and monitoring obligations to be complied with by the Borrower; and
- (g) consisting of the publication of this Agreement in full in order to comply with the requirements set out in section 5a et seq. of the Slovak Act No. 211/2000 Coll. on Free Access to Information, as amended and section 47a of the Slovak Act No. 40/1964 Coll. the Civil Code, as amended (jointly as the " Publication Legislation"), without prejudice to the Borrower's obligation to independently assess the applicability of the Publication Legislation to the provisions of this Agreement.
- (h)

40.3 If the Borrower discloses any Confidential Information, the Borrower shall have the onus of proving that the disclosure of such information is permitted by clause 40.2.

40.4 This clause 40 supersedes any previous confidentiality undertaking given by either Party prior to the Effective Date .

40.5 For the purpose of this clause 40, **Confidential Information** means all information relating to the Lender, the Borrower, any SME and/or the Facility which is received by a Party in relation to the Facility from the other Party or any of its advisers in whatever form and includes all information disclosed in respect of the Facility, the JEREMIE Holding Fund or the JEREMIE Funds, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (a) is or becomes public information other than as a direct or indirect result of any breach by the Lender or, as applicable, the Borrower of clause 40.1; or

- (b) in relation to information regarding the Borrower only, is not identified in writing at the time of delivery as confidential by the Borrower or any of its advisers;
- (c) in relation to information regarding the Borrower only, is known by the Lender before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by the Lender after that date, from a source which is, as far as the Lender is aware, unconnected with the Borrower and which, in either case, as far as the Lender is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

40.6 Continuing obligations

The obligations of this clause 40 (Confidentiality) are continuing, and in particular, shall survive and remain binding on the Lender for a period of 12 months from the later of:

- (a) the Final Maturity Date; and
- (b) the date on which the Lender otherwise ceases to be a Party.

41 Maintenance of Records; Authorisations

41.1 The Borrower undertakes to prepare, update and at all times maintain available for the Lender, agents of the Lender, the EIF, the agents of the EIF, the ECA, the Commission, the Agents and/or National Authorities the following documentation:

- (a) information necessary to verify that the use of JEREMIE Funds is in compliance with the relevant requirements set by this Agreement, including, without limitation, the compliance of the Portfolio with the Eligibility Criteria;
- (b) information necessary to verify the proper implementation of the terms of this Agreement into the contracts evidencing SME Loans;
- (c) information regarding the payment and recovery processes; and
- (d) any other information reasonably required by the Lender, the agents of the Lender, the EIF, the agents of the EIF, the ECA, the Commission, the Agents and/or National Authorities,

including, but not limited to, the following items:

- (a) application forms (and any relevant supporting documents, such as, business plans, annual accounts and/or other reports that are requested by the Borrower in its normal course of business to approve such loans);
- (b) checklists or other internal documents used to assess and approve the applications including checks for compliance with the criteria set out in this Agreement;
- (c) a form as prescribed to in the Commission Recommendation 2003/C118/03 completed in respect of each SME to which an SME Loan is made;
- (d) signed loan agreement evidencing each SME Loan;
- (e) reports by the SME that confirm compliance with the SME Loan conditions such as annual accounts, invoices where the SME Loan was granted to cover specific expenditure on particular goods and services or any other reports that would be requested by the Borrower in its normal course of business to monitor such SME Loans;
- (f) documents evidencing fund transfers between the Borrower and the SMEs;
- (g) if an SME Loan defaults (or in the circumstances identified as SME Loan Acceleration, SME Loan Default and SME Loan Restructuring), in addition to the documents proving initial payment and repayments, documentation must be kept verifying the event of

default and the steps that led to it, including the notifications/recovery procedure followed by the Borrower;

- (h) evidence of compliance with applicable rules and regulations relating to the granting and monitoring of the De Minimis aid provided.

41.2 The Borrower shall maintain all relevant documentation for inspection by the Lender, the agents of the Lender, the EIF, the agents of the EIF, the ECA, the Commission, the Agents and/or National Authorities for the period specified below, unless otherwise specified in schedule 1 (Specific Terms) (any such period, a “**Maintenance of Record Period**”):

- (a) for a period of three years following the closure of the Operational Programme in accordance with article 89(3) of Council Regulation (EC) No. 1083/2006;
- (b) for a period of three years following the termination of this Agreement in the framework of a partial closure of the Operational Programme in accordance with article 88 of Council Regulation (EC) No. 1083/2006;
- (c) in case of instruments operating under De Minimis Regulation, for a period of 10 fiscal years from the date on which de minimis aid was granted with respect to documents demonstrating that the conditions of this regulation have been complied with.

41.3 The Borrower undertakes to include in the legal documentation concerning each SME Loan an obligations corresponding to those contained in clause 41.2.

41.4 If any deficiencies in the maintenance of records are identified by the Lender, agents of the Lender, the EIF, the agents of the EIF, the ECA, the Commission, the Agents and/or National Authorities and the Borrower is informed of such deficiencies, the Borrower hereby undertakes to (and shall ensure that each SME shall) promptly, and in any event no later than three months after being informed of such deficiencies (or such shorter period communicated to it by the Lender, agents of the Lender, the EIF, the agents of the EIF, the ECA, the Commission, the Agents and/or National Authorities), comply with the instructions given by the Lender, agents of the Lender, the EIF, the agents of the EIF, the ECA, the Commission, the Agents and/or National Authorities) and provide any additional information reasonably requested by the Lender, agents of the Lender, the EIF, the agents of the EIF, the ECA, the Commission, the Agents and/or National Authorities.

41.5 The Borrower shall promptly bring to the attention of the Lender any issue identified by the Borrower that it reasonably considers to be material, including, without limitation, any systemic issue and any breach of the agreed Eligibility Criteria, that may require action by the Lender, including, but not limited to, those having a financial impact on the ability of the Borrower to perform its obligations under this Agreement.

42 Counterparts

42.1 Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of that Finance Document.

42.2 Without prejudice to clause 42.1, the Parties agree that should any Finance Document be regulated by a law which does not allow such Finance Document to be executed pursuant to the provision set out under clause 42.1, the execution of any such Finance Document shall take place in accordance with its relevant governing law.

43 Service of process

Without prejudice to any other mode of service allowed under any relevant law, each of the Lender and the Borrower:

- (a) irrevocably appoints the entity or the entities specified in the Specific Terms as its agent for service of process in relation to any proceedings before English courts in connection with this Agreement; and
- (b) agrees that failure by a process agent to notify the relevant Party will not invalidate the proceedings concerned.

44 Governing law

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

45 Enforcement

45.1 Jurisdiction of English courts

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a **Dispute**).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This clause 45 is for the benefit of the Lender. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

46 Amendments

No term of this Agreement may be amended or waived without the agreement in writing of a duly authorised representative of each of the Parties.

47 Contracts (Right of Third Parties Act 1999)

Without prejudice to any rights given to the JEREMIE Holding Fund, the EIF, the Commission, the European Investment Bank, the Agents, the ECA, and the National Authorities under this Agreement, a person who is not a party to this Agreement shall have no rights under the Contracts (Right of Third Parties) Act 1999 to enforce any term of, or enjoy any benefit under, this Agreement.

This Agreement has been entered into on the date stated at the beginning of this Agreement and shall become effective on the Effective Date.

Schedule 1

Specific Terms

1 Acceptable SME Risk Categories

All rating classes except for (i) any rating classes assigned by the Borrower to SMEs to which the Borrower cannot extend loans pursuant to its Credit and Collection Policy (as applicable from time to time) and (ii) any rating classes corresponding to firms “in difficulty” (within the meaning of Article 45 of Regulation 1828/2006 of the European Parliament and within the meaning of Article 2.1 of the European Union guidelines on State Aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p.2) or falling in the case of article 4 (3) (a) of the De Minimis Regulation)).

2 Additional Eligibility Criteria

2.1 The following Additional Eligibility Criteria shall be deemed to be “SME Eligibility Criteria” and shall be complied with at the “Signing Date”:

- (a) The relevant SME has not, during the five years period before entering into the relevant SME Loan, been the subject of a final and binding decision imposing on such SME a sanction for breach of any Slovak law prohibiting illegal employment of foreigners;

2.2 The following Additional Eligibility Criteria shall be deemed to be “SME Loan Eligibility Criteria” and shall be complied with at the “Signing Date”:

- (a) if the relevant SME Loan finances an investment in an asset in accordance with paragraph (a) of the definition of Permitted Purpose Activities or any related working capital pursuant to paragraph (b) of the definition of Permitted Purpose Activities, the relevant asset is located within any of the following regions: Trnava Region, Trenčín Region, Nitra Region, Žilina Region, Banská Bystrica Region, Prešov Region, Košice Region (the **Relevant Regions**) (for the avoidance of doubt, excluding the Bratislava Region); and
- (b) if the relevant SME Loan provides financing for a purpose pursuant to paragraph (c) of the definition of Permitted Purpose Activities, the location of the relevant SME’s permanent establishment which benefits from the SME Loan is in one of the Relevant Regions (for the avoidance of doubt, excluding the Bratislava Region).

2.3 The following Additional Eligibility Criteria shall be deemed to be “SME Loan Eligibility Criteria” and shall be “Continuing”:

- (a) the legal documentation applicable to each SME Loan shall provide for a grace period not exceeding 24 months; and
- (b) any commitment fee (as defined in the Credit and Collection Policy) charged by the Borrower in respect of the 70% of an SME Loan funded by the Facility shall not exceed at any time the Deposit Interest Rate (as applicable from time to time); and

any fee for early repayment (as defined in the Credit and Collection Policy) applicable to an SME Loan shall only be charged by the Borrower in respect of the 30% of such SME Loan funded by the Borrower (as opposed to the 70% funded by the Facility).

2.4 The following Additional Eligibility Criteria shall be deemed to be “Portfolio Eligibility Criteria” and shall be “Continuing”:

the sum of the initial principal amount of all SME Loans with maturities in excess of two years in the Portfolio which have a bullet repayment profile shall not account for more than 40% of the Reference Portfolio Amount.

2.5 The following wording shall be added to clause 4 (*Eligibility Criteria*)

“SME Loans benefiting from the guarantee cover under the first loss portfolio guarantee agreement entered into between the Borrower, the Lender and EIF on 27 March 2013, as amended from time to time, shall not be eligible for inclusion in the Portfolio “

3 Additional Ineligible Expenditure

Expenditure which is not eligible for financing under the applicable State aid rules as further set out in the state aid scheme no. DM-8/2015 implementing the De Minimis Regulation in Slovakia and published in the Commercial Gazette (“Obchodný vestník”) no. 234/2015 on 7 December 2015, as amended, supplemented or substituted from time to time (the “**State Aid Scheme**”).

4 Availability Period

Availability Period means the period starting from (and including) the date of this Agreement to and including the earlier of:

- (a) the Scheduled Availability Period End Date and
- (b) the Extraordinary Inclusion Period End Date

5 Base Currency

Euro

6 Base Rate

The offered quotation to leading banks in the Euro-zone interbank market (**EURIBOR EUR**) for 3 months deposits (rounded to five decimal places with the mid-point rounded up) which appears 2 Business Days before the beginning of each relevant Interest Period (**EURIBOR Determination Date**) on the display designated as 3 months EURIBOR as quoted on Reuters (or any successor thereof or, if the agreed page is replaced or service ceases to be available, another page or service displaying the appropriate rate which the Lender may specify). The Base Rate shall be determined on each EURIBOR Determination Date, provided that with respect to the first Interest Period, the Base Rate shall be determined 3 Business Days before the date in which the first Loan is paid to the Borrower under this Agreement.

7 Borrower

Borrower:

Full legal name: Slovenská záručná a rozvojová banka, a.s.

Registered office: Štefánikova 27

814 99 Bratislava

Slovak Republic

Companies register number (IČO): 00 682 420

8 Call

The call for expression of interest to select Financial Intermediaries that will receive resources from the European Investment Fund acting through the JEREMIE Holding Fund to implement the Funded Risk Sharing Financial Instrument N°JER-005/4 published on EIF’s website on 28 July 2015.

9 Co-Financing Rate

70% (seventy per cent) of each SME Loan included in the Portfolio

10 Commitment

The Commitment shall be an amount equal to:

1. before the delivery by the Lender of the Increase Notice to the Borrower, EUR 18,375,000 (the “**Initial Commitment**”); and
2. following the delivery by the Lender of an Increase Notice to the Borrower, the Initial Commitment shall be increased by the Released Amount stated in such Increase Notice, provided that in any case the Commitment shall never exceed EUR 21,000,000.

The Parties acknowledge and agree that following the occurrence of a Portfolio Trigger Event under the FLPG Agreement (as defined therein), the Lender shall have the right (in its full discretion), but shall not be obliged, to send an Increase Notice to the Borrower by no later than 10 March 2016. The Borrower undertakes to promptly provide the Lender with all information and data reasonably requested by the Lender to calculate and determine the Released Amount.

11 Conversion Rate

Not applicable

12 Default Ratio Trigger Level

As at the First Default Trigger Determination Date and the immediately following Quarterly Report Date	not applicable
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As at the Second Default Trigger Determination Date and the immediately following Quarterly Report Date	not applicable
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13 Default Interest Rate

For each Interest Period for which an amount is outstanding, or part thereof, the rate equal to the aggregate of (1) the Deposit Interest Rate and Portfolio Interest Rate applied to the outstanding amount and (2) 2% per annum.

14 Deposit Interest Rate

Equal to the sum of the Base Rate and a margin (percentage per annum), which shall be determined by reference to the lowest long term, unsecured and unsubordinated indebtedness rating of the Slovak Republic for so long as it is wholly owned by the Slovak Ministry of Finance as follows:

- (a) 0.25% p.a. if above Baa1 (in the case of Moody's) and above BBB+ (in the case of Fitch and Standard & Poor's),
- (b) 0.55% p.a. if above Ba1 and below A3 (in the case of Moody's) and above BB+ and below A- (in the case of Fitch and Standard & Poor's),
- (c) 1% p.a. if above B1 and below Baa3 (in the case of Moody's) and above B+ and below BBB- (in the case of Fitch and Standard & Poor's),
- (d) 1.63% p.a. if above Caa1 and below Ba3 (in the case of Moody's) and above CCC and below BB- (in the case of Fitch and Standard & Poor's).

In case the Borrower ceases to be wholly owned by the Slovak Ministry of Finance and further provided that in such a case the Borrower will not have a rating, the margin of 1.63% p.a. shall apply. In case the Borrower ceases to be wholly owned by the Slovak Ministry of Finance but will have rating the above grid would apply.

Notwithstanding the above, in case the Borrower will have its own rating then such rating shall apply to the Borrower and the above grid shall apply accordingly.

15 Excluded Sectors

Any of the excluded sectors presented in Article 1 of the De Minimis Regulation and in the State Aid Scheme.

16 Expected Recovery Rate

Not applicable

17 External Database

RBUZ "Register bankových úverov a záruk" (Register of Bank Loans and Guarantees), a registry administered by National Bank of Slovakia

18 Final Maturity Date

If Pass-Through Repayment applies to the Loans, the date falling on the earlier of: (i) the Payment Date immediately succeeding the date on which the Outstanding Principal Amount is reduced to zero and (ii) 31 October 2026.

If a Fixed Repayment Schedule applies to the Loans, the date falling on the earlier of: (i) the Payment Date immediately succeeding the date on which the Outstanding Principal Amount is reduced to zero and (ii) the final Payment Date indicated in the schedule of repayments set out in schedule 9 (Fixed Repayment Schedule).

19 Financial Benefit

The interest rate charged by the Borrower in respect of each SME Loan (p.a.) shall (A) provide for a 0% funding and risk related components in respect of 70% of such interest rate and (B) provide for a reduction by 20 bps p.a. on the interest relating to the 30% part of the interest rate financed by the Borrower. Without prejudice to the immediately preceding sentence, other parts of the interest rate shall be applied in accordance with the Credit and Collection Policy of the Borrower.

20 Financial Year

The 12 month period ending on 31 December of each year

21 First Default Trigger Determination Date

Not applicable

22 JEREMIE Jurisdiction

Slovak Republic

23 Long Stop Date

31 October 2016

24 Loss Amount

For the purposes of the definition of Loss Amount:

- (a) SME Loan Default: Applicable
- (b) SME Loan Acceleration: Applicable

(c) SME Loan Restructuring: Applicable

25 Management Fee

Applicable in accordance with the provisions set out in schedule 12 (Management Fee Schedule)

26 Management Fee Rate

With regard to the First Management Fee Amount: 1%

With regard to the Second Management Fee Amount: 1%

With regard to the Marketing Management Fee Amount: 1%

27 Maximum Industry Concentration

30%

28 Maximum Permitted Amendment Period

2 years

29 Maximum SME Concentration

EUR 1,000,000

30 Maximum SME Loan Amount

EUR 1,000,000

31 Maximum SME Loan Maturity

10 years (including any grace period for capital repayment).

32 Minimum Amount

30% of the Reference Portfolio Amount

33 Minimum SME Loan Maturity

12 months (including any grace period for capital repayment)

34 Operational Programme

Operational Programme Competitiveness and Economic Growth approved by the European Commission Decision C/2007/5940 on 28 November 2007

35 Operation Account

IBAN code: SK30 8180 0000 0070 0044 8122

SWIFT code: SPSRSKBA

Bank: Štátna pokladnica, Radlinskeho 32, P.O.BOX 13, 810 05 Bratislava 15, Slovak Republic

36 Portfolio Interest Rate

0 %

37 Reference Portfolio Amount

The Reference Portfolio Amount shall be an amount equal to:

1. before the delivery by the Lender of the Increase Notice to the Borrower, EUR 26,250,000 and
2. following the delivery by the Lender of an Increase Notice to the Borrower, the ratio of (i) the Commitment as increased by the Increase Notice and (ii) the Co-Financing Rate,

provided that in any case the Reference Portfolio Amount shall never exceed EUR 30,000,000.

38 Relevant Portion

20%

39 Revolving SME Loan

Eligible for inclusion in the Portfolio

40 Risk Sharing Rate

70%

41 Scheduled Availability Period End Date

31 October 2016

42 Scheduled Drawdown Period End Date

31 October 2016

43 Security Documents

Any Security Documents which may be entered into from time to time pursuant to the terms of this Agreement.

44 Threshold Amount

EUR 1,500,000

45 Trigger Event (item (a) of the definition of Trigger Event) – Long stop date

31 May 2016

46 Clause 6.3(a)(i): condition precedent to any Loans (other than the first Loan)

X = 60%

47 Clause 6.3(b): minimum amount of each Loan

The lower of (i) EUR 300,000 and (ii) any amount under the Facility that has not been utilised or cancelled

48 Clause 6.3(b): maximum amount of each Loan

The lower of (i) EUR 2,000,000 and (ii) the Available Commitment

49 Clause 7.1 (Delivery of a Utilisation Request): latest time for delivery of a Utilisation Request

15 Business Days before the proposed Utilisation Date

50 Clause 9 (Repayment)

Pass-Through Repayment: Applicable

Fixed Repayment: Not applicable

51 Clause 10 (Risk Sharing)

Actual Recoveries: Applicable

Expected Recoveries: Not applicable

52 Clause 13.3 (Voluntary prepayment): prior notice for voluntary prepayment

30 Business Days

53 Clause 18.8 (No filing or stamp taxes): filing or stamp taxes payable

No filing or stamp taxes as per clause 18.8 (No filing or stamp taxes)

54 Clause 21.7(c): translation of the wording

[Zmluvná strana] berie na vedomie, že Európsky investičný fond (EIF), Slovenský záručný a rozvojový fond, s.r.o. (SZRF), osoby a organizácie splnomocnené EIF a/alebo SZRF, Európsky dvor audítorov (EDA), Európska komisia a/alebo osoby a organizácie ňou splnomocnené vrátane OLAF (poverené osoby) a všetky ostatné inštitúcie alebo orgány Európskej únie (EÚ), ktoré sú oprávnené kontrolovať použitie štrukturálnych fondov EÚ, ako aj všetky oprávnené orgány Slovenskej republiky (SR) vrátane ich poverených zástupcov sú oprávnení uskutočňovať audít a kontrolu a požadovať informácie na základe predmetu tejto dohody a jej vykonávania.

[Zmluvná strana] umožní monitorovacie návštevy a kontroly zo strany EIF, SZRF a osôb a organizácií splnomocnených EIF a/alebo SZRF, EDA, Európskej komisie a orgánov SR vrátane ich poverených zástupcov vo veci preverenia obchodných operácií, účtovných kníh a záznamov. Všetky tieto kontroly môžu zahŕňať kontroly na mieste, preto [zmluvná strana] umožní vstup do svojich priestorov pre EIF, SZRF a osoby a organizácie splnomocnené EIF a/alebo SZRF, EDA, Európsku komisiu a orgány SR vrátane ich poverených zástupcov počas riadnej pracovnej doby.

55 Clause 24.9 (Visibility and promotion)

For the purpose of Clause 24.9 (Visibility and Promotion),

(a) paragraph (b) shall be amended as follows:

“The Borrower undertakes to (i) comply with the provisions of Article 8.4 and Article 9 of Commission Regulation (EC) 1828/2006 and (ii) require that each SME having entered into an SME Loan complies with such provisions.”

(b) paragraph (c) shall be amended as follows:

“The Intermediary undertakes to ensure:

- (i) that all documents concerning the Facility and the documentation applicable to each SME Loan, including, without limitation, SME loan agreements, promotional material to the SMEs, etc., contains the following wording “*Projekt [or] Program [the Borrower inserts as applicable] je podporený z Operačného programu Konkurencieschopnosť a hospodársky rast, spolufinancovaného z Európskeho fondu regionálneho rozvoja a štátneho rozpočtu SR prostredníctvom Iniciatívy JEREMIE.*” and
- (ii) that any promotional material contains the following logos or such different logos provided by the Lender to the Intermediary from time to time:



(c) the publicity-related requirements under paragraph (a) of Clause 24.9 shall include:

- (i) the name of the product offered by the Borrower and each individual SME Loan thereunder should clearly point to JEREMIE (e.g. "JEREMIE funded financial instrument for SMEs");
 - (ii) promoting JEREMIE and the Facility through Borrower's website; and
 - (iii) making available promotional leaflets in all the Borrower's branches promoting the Facility.
- (d) in addition to the requirements under paragraph (c) of Clause 24.9, any publication concerning the Facility, in whatever form and by whatever media, including the internet, should include the following disclaimer: „*Táto publikácia vznikla v súvislosti s podporou Operačného programu Konkurencieschopnosť a hospodársky rast, spolufinancovaného z Európskeho fondu regionálneho rozvoja a štátneho rozpočtu Slovenskej republiky v rámci iniciatívy JEREMIE. Obsah tejto publikácie je výhradnou zodpovednosťou <meno finančného sprostredkovateľa> a nemôže byť v žiadnom prípade považovaný ako reflektujúci postoj Európskej únie.*”

56 Clause 24.9(c): Translation of wording

Not applicable

57 Clause 24.10 (State Aid)

- 57.1 The Borrower undertakes to comply with all applicable State aid requirements stipulated in the State Aid Scheme.
- 57.2 Without prejudice to the application of the other provisions of clause 24.10 (State Aid), and to the extent satisfaction of applicable rules relating to State Aid is sought pursuant to the provisions of Articles 6(1), 6(2) or 6(3) of the De Minimis Regulation, the Borrower undertakes to ensure that prior to the inclusion in the Portfolio of an SME Loan, the provisions of Article 6(1), 6(2) and 6(3) of the De Minimis Regulation are complied with including, but not limited to, the requirement to check that the proposed inclusion in the Portfolio will not raise the total amount of de minimis aid received by the relevant SME above the limits set out in the De Minimis Regulation.
- 57.3 The Borrower – on the basis of the information, data and document provided to it by the SMEs, also by means a “self-declaration” - must:
- (a) comply with the applicable requirements relating to State Aid; and
 - (b) for the purpose of the requirements of paragraph (a) above, apply the methodology and other requirements set out in the Communication of the European Commission 2008/C 14/02 as amended from time to time.
- 57.4 The Borrower undertakes to send to the relevant National Authorities the information referred to in Articles 6(4) and 6(5) of the De Minimis Regulation regarding the application of the De Minimis Regulation.
- 57.5 The Borrower undertakes to send to the relevant National Authorities the information referred to in Sections 22 and 28 of Slovak Act No 231/1999 Coll. on State Aid, as amended. The Borrower shall procure that the legal documentation for the SME Loans provides that the SMEs shall comply with the obligations under Sections 22 and 28 of Slovak Act No 231/1999 Coll. on State Aid, as amended.

58 Clause 24.12(b)(iv): address of the National Authority in charge of data protection

Úrad na ochranu osobných údajov Slovenskej republiky, Hraničná 12, 820 07 Bratislava 27, Slovakia

59 Clause 36.2 (Delivery): notice details for the Borrower

To the attention of :

Slovenská záručná a rozvojová banka, a.s.

Štefánikova 27

814 99 Bratislava

Slovak Republic

Attention: Juraj Topolčány

e-mail: juraj.topolcany@szrb.sk

60 Clause 43 (Service of process)

For the purpose of clause 43 (Service of process):

- (a) the Lender irrevocably appoints Securities Management Trust Limited, 19 Old Jewry, London EC2R 8HA, England as its agent under this Agreement for any service of process in any proceedings before the English courts; and
- (b) the Borrower irrevocably appoints Veľvyslanectvo Slovenskej republiky v Londýne, 25, Kensington Palace Gardens, W8 4QY London, Spojené kráľovstvo, as its agent under this Agreement for any service of process in any proceedings before the English courts.

61 OTHER

61.1 The following definitions shall be added to paragraph 1.1 of clause 1 (Definitions, Interpretations and Specific Terms):

Fitch means Fitch Ratings Inc.

Moody's means Moody's Investors Services Inc.

Rating Agencies means each of Fitch, Moody's and S&P

S&P means Standard & Poor's Rating Services LLC.

"Increase Notice" means, a written notice sent by the Lender to the Borrower following the occurrence of a Portfolio Trigger Event (as defined in the FLPG Agreement) which increases the Initial Commitment by the Released Amount and the Reference Portfolio Amount accordingly.

"FLPG Agreement" means the first loss portfolio guarantee agreement entered into between the Borrower, the Lender and Slovenský záručný a rozvojový fond, s.r.o. dated 27 March 2013, as amended from time to time.

"Released Amount" means an amount calculated as the difference between:

- (A) the product of (i) the Agreed Portfolio Volume, (ii) the Guarantee Rate and (iii) the Guarantee Cap Rate; and
- (B) the product of (i) the Actual Portfolio Volume as of the Availability Period End Date, (ii) the Guarantee Rate and (iii) the Guarantee Cap Rate,

where each of the capitalised terms used in (A) and (B) above shall have the meaning ascribed to them in the FLPG Agreement.

61.2 SME Report

- (a) The Borrower shall (i) supply to each SME (together with the contractual documentation related to the relevant SME Loan) a report relating to certain indicators of the relevant SME and SME Loans (the SME Report) and (ii) request in writing that each SME shall provide, within the deadline set out in the SME Report, its relevant SME Report.

(b) Each SME Report shall be (a) in the form (and contain all the information) set out in Schedule 13 (SME Report) of the Agreement or in such different form (and including the information) which may be provided by the Lender to the Borrower from time to time and (b) delivered by the relevant SME to the address set out therein.

61.3 In addition to the fee reduction referred to in paragraphs 2.3(c) and 2.3(d) above, the Borrower undertakes that all other fees applied to each SME Loan included in the Portfolio shall not be higher than the fees applied by the Borrower in accordance with the Credit and Collection Policy and its pricing policy to any other loan instrument entered into by the Borrower in the absence of this Agreement.

61.4 The following undertaking shall be included in clause 24 as a new undertaking 24.18

“The Borrower acknowledges the Anti-Fraud Policy which sets out the policy of EIF for preventing and deterring corruption, fraud, collusion, coercion, obstruction, money laundering and terrorist financing and undertakes to support investigations performed by the EIF or the European Investment Bank in connection with actual or suspected prohibited conduct. The Borrower further acknowledges that the EIF may notify it of any amendments thereof and in such case(s), following such notification(s), the parties hereto will consult with each other in order to investigate whether the Borrower is in the position to undertake the same obligation as above in respect of the amended Anti-Fraud Policy.

*For the purpose of this clause: **Anti-Fraud Policy**” means the policy of EIF for preventing and deterring corruption, fraud, collusion, coercion, obstruction, money laundering and terrorist financing, as published on EIF’s website on the date of this Agreement.”*

61.5 The following undertaking shall be included in clause 24 as a new undertaking 24.19

*“The Borrower acknowledges and agrees that without any further notice being necessary or any other action required as of 31 December 2015 (the “**Relevant Date**”) the EIF ceases to act in the name and for the account of the Lender and EIF shall no longer be involved whatsoever under or in connection with this Agreement (the “**Exit**”). As of the Relevant Date, the Borrower is requested to send any notices, reports and the like to the address(es) notified by SZRF. As of the Relevant Date the SZRF and Borrower are further requested to make necessary or desirable amendments to this Agreement in respect of the Exit. The Borrower and SZRF further acknowledge and agree that EIF is irrevocably released from any and all liabilities and obligations under this Agreement as of the Relevant Date.”*

61.6 The following undertaking shall be included in clause 24 as a new undertaking 24.20

“The Borrower undertakes to reduce to 50% (or lower) the minimum collateral requirement applied to the SME Transactions in accordance with the Intermediary’s credit and collection policy. The Borrower undertakes to keep records duly evidencing the above minimum collateral requirement reduction.”

Appendix 1

Additional undertakings

Undertaking		Related definition	Applicable	Not applicable
Merger	The Borrower shall not enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction other than any Permitted Merger.	Permitted Merger shall mean [♦]		X
Acquisitions	<p>The Borrower shall not:</p> <p>(i) acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them); or</p> <p>(ii) incorporate a company.</p> <p>The above restriction does not apply to an acquisition of a company, of shares, securities or a business or undertaking (or, in each case, any interest in any of them) or the incorporation of a company which is a Permitted Acquisition.</p>	Permitted Acquisition shall mean [♦]		X
Joint ventures	<p>The Borrower shall not:</p> <p>(i) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or</p> <p>(ii) transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).</p>			X

Undertaking		Related definition	Applicable	Not applicable
Negative Pledge	<p>In this Agreement, Quasi-Security means a transaction described in paragraph (b) below.</p> <p>(a) The Borrower shall not create nor permit to subsist any Security over any of its assets (including, but not limited to, the Utilisation Account and any amount standing to the credit of this account from time to time).</p> <p>(b) The Borrower shall not:</p> <p>(i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by any member of the Group;</p> <p>(ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;</p> <p>(iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or</p> <p>(iv) enter into any other preferential arrangement having a similar effect,</p> <p>in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.</p> <p>Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, which is Permitted Security.</p>	<p>Permitted Security shall mean any Security or Quasi-Security over the assets of the Borrower other than:</p> <p>(i) any Security and Quasi Security in respect of the Utilisation Account which is not to the sole benefit of the Lender; and</p> <p>(ii) any Security and Quasi Security over the Borrower's rights in respect of the SME Loans which is not to the sole benefit of the Lender,</p> <p>which, for the avoidance of doubt, remain subject to the negative pledge clause.</p>	X	
Disposals	<p>(a) The Borrower will not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.</p> <p>(b) Paragraph (a) above does not apply to any sale, lease,</p>	<p>Permitted Disposal shall mean any sale, lease, transfer or other disposal of the Borrower's assets, other than any sale, lease, transfer or other disposal which would cause the Borrower not to be the undisputed, unconditional and sole legal and beneficial owner of the SME Loans</p>	X	

Undertaking		Related definition	Applicable	Not applicable
	transfer or other disposal which is a Permitted Disposal.	(such sales, leases, transfers or other disposals remaining subject to the disposal clause) or the Utilisation Account.		
Financial Indebtedness	The Borrower will not incur or allow to remain outstanding any Financial Indebtedness other than any Permitted Financial Indebtedness.	Permitted Financial Indebtedness shall mean		X

Schedule 2
Conditions precedent

1 Borrower

- (a) A specimen of the signature of each person authorised by the Borrower to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Requests) to be signed and/or despatched by it under or in connection with the Finance Documents and related documents.
- (b) Evidence of satisfaction of all requirements for the perfection of the security created pursuant to the Security Documents (such as registration or notification).

2 Legal opinion

A legal opinion from legal counsel to the Lender covering:

- (a) the capacity of the Borrower to execute the Finance Documents; and
- (b) the enforceability of the Finance Documents under local laws against the Borrower.

3 Other documents and evidence

- (a) A certificate from the Borrower in the form as attached hereto as appendix 1 to this schedule 2 certifying, inter alia, that the Borrower's constitutional documents and the Borrower's Credit and Collection Policy in each case provided to the Lender in connection with the Call are correct, complete and in full force and effect and have not been amended, varied, novated, supplemented, superseded or terminated other than as attached to such certificate.
- (b) A copy of the Borrower's Credit and Collection Policy.

Appendix 1

Certificate pursuant to item 3 of Schedule 2

From: [Borrower]

To: Lender

Dated:

Dear Sirs

[Borrower] – facility agreement dated ♦ (Facility Agreement)

- 1 We refer to the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this certificate unless given a different meaning in this certificate.
- 2 We certify that the enclosed are updated copies of our constitutional documents (including a notarised English translation) in force as at the date hereof.
- 3 Each document relating to us provided to you pursuant to the Facility Agreement and listed in schedule 2 is correct, complete and in full force and effect and has not been amended, varied, novated, supplemented, superseded or terminated as at a date no earlier than the date of this Agreement

Yours faithfully

.....

authorised signatory for

[the Borrower]

Schedule 3
Utilisation Request

From: [Borrower]

To: Lender

Dated:

Dear Sirs

[Borrower] – facility agreement dated [♦] (Facility Agreement)

- 1 We refer to the Facility Agreement. This is a Utilisation Request. Terms defined in the Facility Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
- 2 We wish to borrow a Loan on the following terms:
 - (a) Proposed Utilisation Date: ♦ (or, if that is not a Business Day, the next Business Day)
 - (b) Amount: ♦ or, if less, the Available Commitment
- 3 We confirm that as of the date hereof :
 - (a) No material change of the Credit and Collection Policy which have an impact on the SME Loans originated or to be originated in accordance with the terms of the Facility Agreement has occurred which has not been agreed with the EIF;
 - (b) No Trigger Event has occurred;
 - (c) Each condition specified in clause 6.2 (Further conditions precedent) and 6.3 (Restrictions in respect of Loans) is satisfied on the date of this Utilisation Request.

- 4 This Utilisation Request is irrevocable.

Yours faithfully

.....

authorised signatory for

[the Borrower]

Schedule 4

Form of Notices

APPENDIX 1

Form of Inclusion Notice

From: [Borrower]

To: Lender

Dated:

Dear Sirs

[Borrower] – facility agreement dated [•] (Facility Agreement) – Inclusion Notice

Save as otherwise provided in this Inclusion Notice, terms defined in the Facility Agreement shall have the same meanings when used in this Inclusion Notice.

We herewith notify you that [we have entered into the SME Loan(s) set out in the Quarterly Report sent to you on the same date as this Inclusion Notice which comply with all Eligibility Criteria and, in accordance with clause 5.1 (Inclusion Process) of the Facility Agreement, [we request you to include such SME Loan(s) in the Portfolio] or [we have identified no SME Loan(s) for inclusion in the Portfolio].

The aggregate principal amount of the SME Loan(s) we request you to include is [♦]. Following inclusion in the Portfolio of [this/these] SME Loan(s), the outstanding principal amount of the Portfolio will be [♦], and the number of SME Loans included within the Portfolio will be [♦].

We herewith notify you that during the Calendar Quarter to which the Quarterly Report sent to you on the same date as this Inclusion Notice relates: (i) [the Loss Amount suffered by us under all SME Loans included in the Portfolio is [♦]] OR [or have not suffered any Losses in respect of SME Loans included in the Portfolio], and (ii) [the aggregate amount we have recovered or received in respect of Losses suffered by us under SME Loans included in the Portfolio is [♦]] OR [we have not recovered or received any amounts in respect of Losses (if any) suffered by us under SME Loans included in the Portfolio].

We represent that all conditions listed in the Facility Agreement (including the Specific Terms) are fulfilled on the date of this Inclusion Notice.

Yours faithfully

for and on behalf of

[the Borrower]

Cc.1: Report

APPENDIX 2

Form of Approval at the end of the Availability Period

From: [Borrower]

To: Lender

Dated:

Dear Sirs

[Borrower] – facility agreement dated • (Facility Agreement) – Form of Approval at the end of the Availability Period

We herewith notify you that at the end of the Availability Period [we have no SME Loans approved and not yet included in the Portfolio] or [we have approved and not yet included in the Portfolio the following SME Loans:

- Number of SME Loans approved: [♦]
- SME Loans amount approved: [♦]

Yours faithfully

for and on behalf of

[the Borrower]

Schedule 5
Section (a)
Form of Transfer Certificate

Between:

- (1) [The Existing Lender] (**Existing Lender**); and
- (2) [The New Lender] (**New Lender**)

Dated:

[Borrower] –facility agreement dated [♦] (Facility Agreement)

- 1 We refer to the Facility Agreement. This is a Transfer Certificate. Terms defined in the Facility Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
- 2 We refer to clause 26.3 (Procedure for transfer):
 - (d) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all or part of the Commitment, rights and obligations referred to in the schedule in accordance with clause 26.3 (Procedure for transfer).
 - (e) The proposed Transfer Date is [♦].
 - (f) The address, fax number and attention details for notices of the New Lender for the purposes of clause 36.2 (Delivery) are set out in the schedule.
- 3 The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in clause 26.2(c) (Limitation of responsibility of Existing Lender).
- 4 This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
- 5 This Transfer Certificate (and any non-contractual obligations arising out of or in connection with it) is governed by English law.
- 6 The Existing Lender and the New Lender irrevocably agree that the courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Transfer Certificate (including a dispute relating to its existence, validity or termination or relating to any non-contractual obligations arising out of or in connection with it).
- 7 This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

SCHEDULE

COMMITMENT/RIGHTS AND OBLIGATIONS TO BE TRANSFERRED

[insert relevant details]

[address, fax number and attention details for notices and account details for payments,]

[Existing Lender]

[New Lender]

By:

By:

Section (b)**Form of Assignment Agreement**

To: [The Existing Lender] (**Existing Lender**)

From: [The New Lender] (**New Lender**)

Dated:

[Borrower] - facility agreement dated [♦] (Facility Agreement)

- 1 We refer to the Facility Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
- 2 We refer to clause 26.4 (Procedure for assignment):
 - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Finance Documents which relate to the Commitment and the Loans under the Facility Agreement as specified in the schedule hereto.
 - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to the Commitment and the Loans under the Finance Documents specified in the schedule.
 - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph 1(b) above.
- 3 The proposed Transfer Date is [♦].
- 4 On the Transfer Date the New Lender becomes Party to the Finance Documents as the Lender.
- 5 The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in clause 26.2(a) and clause 26.2(c) (Limitation of responsibility of Existing Lender) of the Facility Agreement.
- 6 This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
- 7 This Assignment Agreement is governed by English law.
- 8 This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

THE SCHEDULE

Rights to be assigned and obligations to be released and undertaken

[insert relevant details]

[Existing Lender]

[New Lender]

By:

By:

Schedule 6
Form of the Report

Portfolio Level

SME Loans

Number of SME Loans signed
Number of SME Loans disbursed (at least partially)
Number of SMEs

Principal amount committed to SME Loans
Principal amount disbursed to SME Loans
Principal amount repaid from SME Loans
Outstanding principal amount of SME Loans

Principal amount of Defaulted SME Loans
Outstanding principal amount of eligible Performing SME Loans
Number of Defaulted SME Loans
Reduction of the Outstanding Principal Amount

Number of Excluded SME Loans
Aggregate principal amount of Excluded SME Loans

Limits

Reference Portfolio Amount (limit as identified in the specific schedule of the Agreement)

SME Loan Eligibility Criteria

[As applicable on a case by case basis]

Portfolio Eligibility Criteria

QQ/YY **Portfolio
Cumulated**

[As applicable on a case by case basis]

Other Portfolio Limits

[As applicable on a case by case basis]

Covenants

[As applicable on case by case basis]

PART A - NEW OPERATIONS

A1_1_SMEs

A.1.1. Fiscal number	A.1.2. SME name	A.1.3. Address	A.1.4. Postal Code	A.1.5. Place	A.1.6. Region	A.1.7. Country	A.1.8. Date of establishment	A.1.9. Sector (NACE)	A.1.10. Number of employees at date of SME Loan agreement	A1.11. Turnover EUR	A.1.12. SME Total assets EUR	A.1.13. SME Scoring	Comments
<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Optional</i>

A2_NEW SME Loans

A.1.1. Fiscal number	A.2.1. SME Loan reference	A.2.1.1. SME Loan type	A.2.2. SME Loan Currency	A.2.3. Purpose (nature) of financing	A.2.4. Investment amount	A.2.5. SME Loan amount committed	A.2.5.0. of which: working capital	A.2.5.1. Standard SME Loan Interest Rate	A.2.5.2. Standard SME Loan Interest Rate Reference Date	A.2.5.3. SME Loan Interest Rate under PRSL	A.2.6. SME Loan signature date	A.2.7. SME Loan maturity (months)	A.2.7.1. Grace period (months)
<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>

A.2.7.2. Final maturity date	A.2.8. Repayment frequency	A.2.9. Investment location (NUTS)	A.2.10. Territory type	A.2.11. GGE amount	Comments
<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Optional</i>

PART B - LIST OF INCLUDED SME LOANS

A.1.1.	A.2.1.	B.1.	B.1.3	B.2.	B.3.	B.3.1.	B.3.2
Fiscal number	SME Loan reference	Cumulative disbursed principal amount	End of disbursement period	cumulative repayment of principal amount	SME Loan principal amount outstanding	SME Loan average daily principal amount outstanding	Total SME Loan outstanding principal amount (performing)
<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory if Portfolio Interest Rate > 0</i>

PART C - DEFAULTED SME LOANS

A.1.1.	A.2.1.	A.2.2.	C.1.	C.2.	C.3.
Fiscal number	SME Loan reference	SME Loan Currency	Credit event date	Credit event	Loss amount of principal
<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>

PART E - EXPIRED LOANS

A.1.1.	A.2.1.	E.1.
Fiscal number	SME Loan reference	Repayment Date
<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>

PART F - MODIFICATIONS

A.1.1. Fiscal number	A.2.1. SME Loan reference	Old value	New value
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PART G – NON CONFORMING SME LOANS

A.1.1. Fiscal number	A.2.1. SME Loan reference	G.1. Event Date	G.2. Type	G.3. Acceleration flag (Y/N)	G.4. Exclusion flag (Y/N)	G.5. Excluded SME Loan amount
<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>

PART H – CONVERTED REVOLVING SME LOANS

H.1. Converted SME Loan reference	A.1.1. Fiscal number	A.2.1. SME Loan reference	A.2.2. SME Loan Currency	A.2.5. SME Loan amount committed	A.2.7. SME Loan maturity (months)	A.2.7.1. Grace period (months)	H.2. SME Loan conversion date	A.2.8. Repayment frequency	Comments
<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Optional</i>

Schedule 7

Restricted Sectors

1 Illegal Economic Activities

Any production, trade or other activity, which is illegal under the laws or regulations of the home jurisdiction for such production, trade or activity.

Human cloning for reproduction purposes is considered an Illegal Economic Activity.

2 Tobacco and Distilled Alcoholic Beverages

The production of and trade in tobacco and distilled alcoholic beverages and related products.

3 Production of and Trade in Weapons and Ammunition

The production of (and trade in or finance of) weapons and ammunition of any kind.

4 Casinos

Casinos and equivalent enterprises.

5 IT Sector Restrictions

Research, development or technical applications relating to electronic data programs or solutions, which

(a) aim specifically at:

- (i) supporting any activity included in the Restricted Sectors referred to under 1 to 4 above;
- (ii) internet gambling and online casinos; or
- (iii) pornography,

or which

(b) are intended to enable any person illegally to:

- (i) enter into electronic data networks; or
- (ii) download electronic data.

6 Life Science Sector Restrictions

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

(a) human cloning for research or therapeutic purposes; or

(b) Genetically Modified Organisms (“**GMOs**”),

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

Schedule 8

Pass-Through Repayment

On each Payment Date (from and including the Initial Principal Payment Date), the Borrower shall repay a portion of the Loans by paying to the Lender on the Operation Account an amount, in the Base Currency, equal to X where:

$X = A - (B \times C)$ and where:

A = the Outstanding Principal Amount as at the last day of the Calculation Period immediately preceding such Payment Date

B = the sum of:

- (i) the outstanding aggregate principal amount of all SME Loans in the Portfolio which are not Defaulted SME Loans; and
- (ii) the aggregate undrawn commitments of all SME Loans in the Portfolio which remain undrawn by the relevant SME (and in the case of a Revolving SME Loan, this shall be the unused Credit Limit Amount applicable to that Revolving SME Loan)

in each case determined as at the last day of the Calculation Period immediately preceding such Payment Date (and paragraph (ii) above shall be disregarded if the Payment Date for which the calculation of X is being made is at any time after the Long Stop Date)

C = the Co-Financing Rate.

Schedule 9
Fixed Repayment Schedule

- 1 On the Initial Principal Payment Date, the Borrower shall make a repayment of the Loans, in the Base Currency, calculated by applying the methodology set out in schedule 8 (Pass-Through Repayment).
- 2 On each Payment Date after the Initial Principal Payment Date, the Borrower shall repay the Loans, in the Base Currency, by repaying on the following Payment Dates an amount which reduces the Outstanding Principal Amount by the relevant repayment percentage of the Outstanding Principal Amount determined as at the last day of the Calculation Period immediately preceding such Payment Date:

Payment Date	Repayment percentage

Schedule 10
Actual Recovery Report

Form of Actual Recoveries Report

A.1.1.	A.2.1.	C.5.	C.6.	C.7
Fiscal number	SME Loan reference	Actual Recovery payment currency	Actual Recovery Date	Actual Recovery amount
<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>

Schedule 11

Financial Covenants

The Borrower shall comply with, and shall procure that the Group complies with, those financial covenants in this schedule 11 which it is indicated are applicable to the Borrower and/or to the Group (on a consolidated basis).

1 Capital, Liquidity and Leverage

1.1	Capital Adequacy Ratio shall not fall below the regulatory minimum level set by the Borrower's supervisory authority (as applicable from time to time)	Yes
1.2	Liquidity Ratio shall not fall below the regulatory minimum level set by the Borrower's supervisory authority (as applicable from time to time)	Yes
1.3	Maturity Mismatch Ratio shall not fall below [●]%	No
1.4	Leverage Ratio shall not exceed [●]%	No
1.5	Large Exposure Ratio shall not exceed the regulatory maximum level set by the Borrower's supervisory authority (as applicable from time to time)	Yes

2 Profitability

2.1	Cost-to-Income Ratio shall not exceed [●]%	No
2.2	Loan Loss Provision Charge Ratio shall not exceed [●]%	No

3 Asset Quality

3.1	Non-Performing Loan Ratio shall not exceed [..]% at any time	No
3.2	Provision Coverage Ratio shall not fall below [..]% at any time	No

4 Basel III ratios

The Borrower undertakes to comply with certain additional financial covenants covering, inter alia, the Borrower's:

Yes

- (a) level of Tier 1 equity capital
- (b) leverage
- (c) liquidity (e.g. liquidity coverage ratio)
- (d) funding (e.g. net stable funding ratio)

in each case, as a result of the implementation into the laws of the Relevant Jurisdictions of the Basel III framework, as applied by the relevant regulator and at the minimum/maximum (as applicable) levels set by such authority.

5 Basis of testing

The financial covenants which are, in this schedule 11, expressed to be applicable to the Borrower and/or the Group, shall be tested by reference to each set of financial statements delivered to the Lender in accordance with clause 21.1 (Financial statements).

6 Financial definitions

In this schedule 11, the following expressions shall have the following meanings:

Accounting Provision means the aggregate amount of all balance sheet risk provisions with regards to the Group's total loan book reported by the Group.

Capital Adequacy Ratio means the consolidated capital adequacy ratio of the Borrower (as defined in and calculated in accordance with the regulations of the Borrower's Relevant Jurisdictions (including EC Regulation 1606/2002) implementing the international accounting standards to the extent applicable to the Borrower).

Cost-to-Income Ratio means the ratio of the Operating Expenses and to Operating Income

Equity Funds means the consolidated shareholders' equity of the Group, including for avoidance of doubt, subordinated loans, subordinated notes or other subordinated debt instruments of the Group (the term subordinated means that in the event of Borrower's and/or Group's insolvency, the relevant instruments may only be repaid after all ordinary unsecured and unsubordinated indebtedness has been repaid in full).

Gross Loan Portfolio means the outstanding balance of gross loans extended by the Borrower (and by the Group) as measured and reported under the Accounting Principles of the latest financial statements.

Large Exposure has the meaning given to such definition applied by the Borrower's supervisory authority ("Národná banka Slovenska" (National Bank of Slovakia)) as required by applicable law.

Large Exposure Ratio means the ratio of (i) Large Exposure to (ii) the Own Funds.

Leverage Ratio means the ratio of Total Debt to Equity Funds of the Group.

Liquidity Ratio has the meaning given to such definition applied by the Borrower's supervisory authority ("Národná banka Slovenska" (National Bank of Slovakia)), save that in the absence of any definition by the Borrower's supervisory authority, shall mean the liquidity coverage ratio measured as total liquid assets of the Group divided by attracted funds from institutions other than credit institutions, private individuals and households.

Loan Loss Provision Charge Ratio means the ratio of the annualized loan loss provision charge as at the latest Income Statement of the Borrower divided by the average Gross Loan Portfolio

Maturity Mismatch Ratio means the ratio of A to B where

A is the balance of the difference between the Borrower's total assets and liabilities maturing in up to 30 days, and

B is the Borrower's short-term liabilities (defined as liabilities maturing within 12 months, including 80% of the total balance of sight deposits, current accounts and savings accounts)

Non-Performing Loan Ratio means the ratio of Non-Performing Loans to the Gross Loan Portfolio

Non-Performing Loans means the aggregate outstanding principal balance of all loans made by the Borrower (and by the Group) (whether financed by a Loan or otherwise) that the Borrower has classified as non-performing or loss pursuant to its Credit and Collection Policy, including but not limited to the aggregate loan amounts for which a payment is more than 90 days overdue.

Operating Expenses means, in respect of any period, the aggregate of all non-financial operating expenses (such as staff compensation; sales, general and administrative expenses; depreciation and amortisation) incurred by the Group.

Operating Income means, in respect of any period, the aggregate of all operating income reported by the Group, including net interest income, net fee and commission income, net trading result and other operating income.

Own Funds has the meaning given to such term by the Borrower's supervisory authority ("Národná banka Slovenska" (National Bank of Slovakia)).

Provision Coverage Ratio means the ratio of the Accounting Provision to the Non-Performing Loans.

Total Debt means total consolidated indebtedness of the Group.

Appendix 1

Financial Covenants Report

Reporting Date

(dd/mm/yyyy):

Financial Covenant	Limit	Current Value	Breach (Y/N)	Comments
Capital Adequacy Ratio	not lower than regulatory minimum level, being [●]%			
Liquidity Ratio	not lower than the regulatory minimum level, being [●]%			
Large Exposure Ratio	not higher than regulatory maximum level, being [●]%			
Basel III Ratios (a) level of Tier 1 equity capital (b) leverage (c) liquidity (d) funding	as applicable			

Schedule 12

Management Fee Schedule

Definitions

If the Management Fee applies to this Agreement as set out in schedule 1 (Specific Terms), the following definitions shall apply:

First Management Fee Amount an amount equal to the product of:

- a) the Management Fee Rate; and
- b) the Commitment.

First Management Fee Payment Date means the first Payment Date after the relevant Calendar Quarter in which the aggregate principal amount disbursed to SMEs under all SME Loans included in the Portfolio (provided that for Revolving SME Loans, this amount shall be equal to the aggregate principal amounts disbursed to SMEs under such Revolving SME Loan, subject however to a maximum amount equal to the Credit Limit Amount) is higher than the product of: (i) 50% and (ii) the Reference Portfolio Amount, subject to such date occurring before the Long Stop Date (for the avoidance of doubt, if the First Management Fee Payment Date does not occur before the Long Stop Date, no First Management Fee Amount shall be payable).

Management Fee Amount means each of the First Management Fee Amount, the Second Management Fee Amount and the Marketing Management Fee Amount.

Management Fee Rate has the meaning set out in schedule 1 (Specific Terms)

Management Fee Payment Date means (i) in respect of the First Management Fee Amount, the First Management Fee Payment Date, (ii) in respect of the Second Management Fee Amount, the Second Management Fee Payment Date and (iii) in respect of the Marketing Management Fee Amount, the Marketing Management Fee Payment Date.

Marketing Management Fee Amount means the amount payable to the Borrower, at each Marketing Management Fee Payment Date, following the presentation by the Borrower of relevant invoices and documented expenses incurred for the purpose of marketing the product to the SMEs. The aggregate Marketing Management Fee Amount payable to the Borrower shall not exceed the product of (i) the Marketing Management Fee Rate, (ii) the Reference Portfolio Amount and (iii) the Co-Financing Rate.

Marketing Management Fee Payment Date means each Payment Date up to 30 September 2016 *provided that* the payment of the Marketing Management Fee Amount for the period from 30 June to 30 September 2016 shall be made on the next Payment Date immediately following 30 September 2016.

Second Management Fee Amount, an amount equal to the product of:

- a) the Management Fee Rate;
- b) $(A - B) / B$; and
- c) the Commitment

where:

A is the sum of the disbursed principal amount of the relevant SME Loan included in the Portfolio as at the Long Stop Date (provided that for Revolving SME Loans, this amount shall be equal to the aggregate principal amounts disbursed to SMEs under such Revolving SME Loan, subject however to a maximum amount equal to the Credit Limit Amount); and

B is the product of (i) 50% and (ii) Reference Portfolio Amount.

Second Management Fee Payment Date means the first Payment Date after the occurrence of the later of (A) the Long Stop Date and (B) the date of which the aggregate principal amount disbursed to SMEs under all SME Loans included in the Portfolio is higher than the product of: (i) 50% and (ii) the Reference Portfolio Amount.

Calculation and limit

- (a) The Borrower shall calculate the Management Fee Amount payable, provided that:
 - (i) for as long as the Available Commitment is greater than 0:
 - (A) the amount of Management Fee Amount paid to the Borrower on each Management Fee Payment Date shall not exceed the Available Commitment as at that date; and
 - (B) any Management Fee Amount paid to the Borrower shall reduce the Available Commitment by an equivalent amount.
 - (ii) on or after the date on which the Available Commitment is equal to 0, the aggregate Management Fee Amount paid to the Borrower, shall not exceed the lower of:
 - (A) the aggregate amount of all the amounts received by the Lender as repayments of the Loans drawn by the Borrower under this Agreement until the Payment Date immediately preceding any such relevant Management Fee Payment Date (for the avoidance of doubt, any reduction of the Outstanding Principal Amount by any Covered Losses in accordance with this Agreement shall not be deemed a repayment of a Loan for the purpose of this calculation); and
 - (B) the aggregate amount of principal repayments received by the Borrower in respect of SME Loans included in the Portfolio as evidenced by the Report available to the Lender on the Report Date immediately preceding the relevant Management Fee Payment Date multiplied by the Co-Financing Rate.
- (b) Any Management Fee Amount payable on each Management Fee Payment Date and being unpaid by application of the limitation set out in section 2(a)(ii) above shall be automatically cancelled.

Payment and set off

- (c) The Borrower shall deliver, not later than 10 Business Days prior to each Management Fee Payment Date, an invoice to the Lender in respect of the Management Fee Amount payable by the Lender on each Management Fee Payment Date, together with a detailed calculation of the Management Fee Amount then payable.
- (d) The Management Fee Amount (invoiced pursuant to the provision set out above) shall be payable by the Lender on the relevant Management Fee Payment Date but in any event not earlier than 10 Business Days from receipt by the Lender of the corresponding invoice.
- (e) No Management Fee shall be paid by the Lender to the Borrower unless invoiced pursuant to the provision set out in this schedule 12.
- (f) The Lender shall be entitled to set off any Management Fee Amount payable pursuant to this schedule 12 against any amount payable from time to time by the Borrower to the Lender under this Agreement.

Default

At any time after a Default has occurred which is continuing, the Lender's obligation to pay any Management Fee shall be suspended. The obligation of the Lender to pay the Management Fee shall be reinstated only from the date on which the relevant Default is remedied (where the relevant event and/or circumstance is remediable in accordance with the provisions of this Agreement) or waived.

Schedule 13

SME Report



Investícia do Vašej budúcnosti

MONITOROVACIA SPRÁVA PROJEKTU

Účelom monitorovacej správy projektu je kvantifikovať efekt zo zrealizovaných investično-rozvojových aktivít projektu v nadväznosti na ciele Operačného programu Konkurencieschopnosť a hospodársky rast. Poskytnutie úverových zdrojov umožnil mechanizmus zdieľaného rizika holdingového fondu Jeremie (Slovenský záručný a rozvojový fond) za pomoci manažmentu Európskeho investičného fondu a finančných prostriedkov z Operačného programu Konkurencieschopnosť a hospodársky rast, ktorého riadiacim orgánom je Ministerstvo hospodárstva SR a ktorého vnútorné zdroje sú tvorené z Európskeho fondu pre regionálny rozvoj a štátneho rozpočtu SR. Mechanizmus zdieľaného rizika holdingového fondu Jeremie vďaka týmto finančným prostriedkom umožňuje oprávneným malým a stredným podnikom vo zvýšenej miere prístup k úverovým zdrojom a taktiež ich umožňuje získať za zvýhodnených podmienok. Kvantifikácia merateľných ukazovateľov je dôležitá pri meraní prínosu zo zrealizovaných projektov v oblasti tvorby nových pracovných miest a rastu konkurencieschopnosti podporených podnikov. Tieto oblasti patria k základným cieľom Operačného programu Konkurencieschopnosť a hospodársky rast v rámci podpory inovačných aktivít a transferu technológií v podnikoch za účelom odstraňovania regionálnych disparít a predstavujú kvalitatívnu stránku zrealizovaných projektov.

Termín doručenia: najneskôr do 31. januára nasledujúceho roku po skončení bežného účtovného obdobia. Monitorovacia správa projektu sa **predkladá za tri bežné účtovné obdobia nasledujúce po podpise úverovej zmluvy**, t.j. monitorovacia správa projektu sa celkovo **predkladá trikrát**, a to vždy po skončení bežného účtovného obdobia (do 31. januára).¹

Adresa doručenia: e-mailom na adresu: info@szrf.sk alebo poštou na adresu: Slovenský záručný a rozvojový fond, s.r.o., Dvořákovo nábrežie 4, 811 02 Bratislava.

A. IDENTIFIKAČNÉ ÚDAJE PRIJÍMATEĽA NÁVRATNEJ FINANČNEJ POMOCI A PROJEKTU

A.1 Prijímateľ

1. Identifikácia prijímateľa			
Názov / meno / obchodné meno			
Sídlo			
PSC	Obec	Ulica	Číslo

¹ Príklad: podpis úverovej zmluvy je 1. 9. 2012. Monitorovaciu správu zašle prijímateľ trikrát, a to prvýkrát do 31.1. 2013 za rok 2012, druhýkrát do 31.1.2014 za rok 2013 a tretíkrát do 31.1.2015 za rok 2014.

Štát	IČO	Právna forma	Kontakt
Klasifikácia ekonomických činností (SK NACE)			

A.2 Projekt (Investičný zámer)

2. Identifikácia projektu a rozpočet
Názov a popis aktivít projektu v členení podľa skupín a podskupín Súvahy Úč POD 1
Hospodárska činnosť

B. MERATEĽNÉ UKAZOVATELE PROJEKTU

Merateľný ukazovateľ	Definícia	Zdroj	Východisko	Stav k 31. 12.
Počet novovytvorených pracovných miest	Novovytvorené pracovné miesta predstavujú čistý prírastok obsadených pracovných miest v subjekte prijímateľa pomoci za sledované obdobie. Náležitosti novovytvoreného pracovného miesta:	Evidencia o zamestnancoch prijímateľa pomoci.	Začiatok realizácie projektu ³ = 0	
Počet novovytvorených pracovných miest obsadených mužmi	- neexistovalo pre začatím realizácie projektu a vzniklo iba v jeho dôsledku (t.j. bez jeho realizácie by nevzniklo), - môže mať charakter plného, sezónneho alebo čiastkového pracovného úväzku v zmysle osobitných právnych predpisov. <u>Za účelom vykazovania počtov novovytvorených pracovných miest sa pracovné miesta prepočítavajú na plné pracovné úväzky a počet dní odpracovaných za bežné/prvé monitorovacie obdobie,</u> ²			
Počet novovytvorených				

² Plný pracovný úväzok = Pracovný čas zamestnanca v zmysle § 85 ods. 5, Z. z. 311/2001 v znení neskorších predpisov

Príklad: Podnik v súvislosti s realizovaným projektom fyzicky eviduje 5 zamestnancov na novovytvorených pracovných pozíciách, zamestnaných v rôznych pracovných úväzkoch a s rôznym počtom odpracovaných dní v kalendárnom roku:

3 osoby zamestnané 365 dní v kalendárnom roku na plný pracovný úväzok (40 h.): novovytvorené pracovné miesto = $3 \times 365 \times 40 / 365 \times 40 = 3$

1 osoba zamestnaná 365 dní v kalendárnom roku na polovičný pracovný úväzok (20 h.): novovytvorené pracovné miesto = $1 \times 365 \times 20 / 365 \times 40 = 0,5$

1 osoba zamestnaná 100 dní v kalendárnom roku na plný pracovný úväzok (40 h.): novovytvorené pracovné miesto = $1 \times 100 \times 40 / 365 \times 40 = 0,2739$

Počet novovytvorených pracovných miest = $3 + 0,5 + 0,2739 = 3,8$ (zokrúhlené na jedno desatinné miesto) / monitorovacie obdobie

Bežné monitorovacie obdobie je kalendárny rok.

Prvé monitorovacie obdobie, relevantné pre výpočet prepočtu novovytvorených/udržaných pracovných miest na plný pracovný úväzok za monitorovacie obdobie, je iba časť kalendárneho roka od začiatku realizácie projektu.

pracovných miest obsadených ženami	- je obsadené na základe pracovného pomeru s prijímateľom pomoci. Za trvalý pracovný pomer sa nepovažuje zastupovanie na materskej dovolenke, vykonávanie práce na dohodu alebo iné pracovnoprávne vzťahy mimo pracovného pomeru.			
Počet udržaných pracovných miest	Definícia sa zhoduje s definíciou počtu novovytvorených pracovných miest s rozdielom, že ide o pracovné miesta existujúce pred začiatkom realizácie projektu, ktoré boli v dôsledku jeho realizácie v podniku prijímateľa pomoci udržané (t. j. bez jeho realizácie by zanikli).	Evidencia o zamestnancoch prijímateľa pomoci.	Začiatok realizácie projektu ³ = 0	
Nárast pridanej hodnoty (Eur)	Stav pridanej hodnoty z výkazu ziskov a strát (výsledovky v prípade jednoduchého vedenia účtovníctva). Podnik, ktorý v roku 2007 nevykonával podnikateľskú činnosť uvedie ako východisko "0".	Účtovné jednotky účtujúce v sústave podvojného účtovníctva Výkaz ziskov a strát: Pridaná hodnota Účtovné jednotky účtujúce v sústave jednoduchého účtovníctva Výkaz o príjmoch a výdavkoch: Pridaná hodnota = Príjmy z predaja tovaru + Príjmy z predaja výrobkov a služieb - Výdavky na nákup materiálu + Výdavky na nákup tovaru	Stav za bežné účtovné obdobie v roku 2007	

VYSVETLENIE POJMOV:

1. Projekt - investičný zámer, ktorý je garantovaný v rámci iniciatívy JEREMIE z prostriedkov Európskeho fondu pre regionálny rozvoj a štátneho rozpočtu Operačným programom Konkurencieschopnosť a hospodársky rast.
2. Prijímateľ pomoci - malý alebo stredný podnik, ktorému bol poskytnutý úver v rámci iniciatívy JEREMIE.
3. Monitorovacie obdobie - časť kalendárneho roka od podpisu úverovej zmluvy v prípade prvého monitorovacieho obdobia a následne kalendárny rok.

³ Začiatok realizácie projektu je deň podpisu úverovej zmluvy.

4. V prípade prvého monitorovacieho obdobia prijímateľ pomoci vyplní iba údaje týkajúce sa počtov novovytvorených/udržaných pracovných miest. V následných monitorovacích obdobiach prijímateľ pomoci vyplní všetky údaje podľa tabuľky v časti B. Merateľné ukazovatele projektu.

5. Začiatok realizácie projektu - deň podpisu úverovej zmluvy.

SIGNATURES

THE BORROWER

SLOVENSKÁ ZÁRUČNÁ A ROZVOJOVÁ BANKA, , A.S.

By:

Title:

Date:

By:

Title:

Date:

THE LENDER

SLOVENSKÝ ZÁRUČNÝ A ROZVOJOVÝ FOND, S.R.O.

represented by the **European Investment Fund** pursuant to a power of attorney dated 1 June 2011

By:

Title:

Date: