



Európska únia
Európsky fond regionálneho rozvoja
Investícia do Vašej budúcnosti



FIRST LOSS PORTFOLIO GUARANTEE AGREEMENT

dated March 27, 2013

between

EUROPEAN INVESTMENT FUND

and

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

as Guarantors

and

SLOVENSKÁ ZÁRUČNÁ A ROZVOJOVÁ BANKA, A.S.

as Intermediary

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This Agreement is dated March 27, 2013 and made between:

- A) the **European Investment Fund**, 96 boulevard Konrad Adenauer, L-2968 Luxembourg, Grand Duchy of Luxembourg (the “**EIF**”) acting in the context of the JEREMIE Holding Fund (as defined below);
 - B) **Slovenský záručný a rozvojový fond, s.r.o.**, a special purpose vehicle incorporated under the laws of the Slovak Republic, having its seat at Panenská 21, 811 03 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**”), acting through and on the account of the JEREMIE Holding Fund (as defined below);
- and
- C) the intermediary named in section 1 of the Specific Terms (the “**Intermediary**”).

The EIF and SZRF are hereinafter collectively referred to as the “Guarantors” and each of them a “Guarantor”.

The EIF, SZRF and the Intermediary are hereinafter collectively referred to as the “Parties” and each of them, a “Party”.

1. BACKGROUND

- 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 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 the 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 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 (“**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 (“**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 (“**JEREMIE Funds**”) to SZRF for the purpose of establishing the holding fund (“**JEREMIE Holding Fund**” or “**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 (“**Holding Fund Agreement**”).

- E) The EIF has launched the Call, following which the Intermediary has expressed its interest to enter into a first loss portfolio guarantee instrument.
- F) The Guarantors jointly and severally agree to provide a Guarantee to the Intermediary to cover a portion of the credit risk of the Intermediary relating to the Portfolio subject to, and in accordance with, the terms of this Agreement.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

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 6.2(d)(i).

“**Acceptable SME Risk Categories**” means the internal rating categories that if assigned to a loan product, in accordance with its credit and collection policy, entitle the Intermediary to enter into a loan agreement with an SME.

“**Actual Collateralisation Rate**” means, on any Collateralisation Trigger Event Determination Date, the ratio of: (i) the aggregate value of the Collateral (as determined by the Intermediary at the time of granting the SME Transactions in accordance with its standard procedures) securing the SME Transactions included in the Portfolio on such date and (ii) the Actual Portfolio Volume on such date.

“**Actual Defaulted Amounts Rate**” means, as at the Defaulted Amounts Rate Trigger Event Determination Date, the ratio of: (i) the aggregate Defaulted Amounts occurred during the period from the first day of the Availability Period up to such date and (ii) the Actual Portfolio Volume on such date.

“**Actual Portfolio Volume**” means, at any relevant time and subject to the provisions of Clause 7.1 (*Adjustment of the Actual Portfolio Volume*), the aggregate amount of principal committed to be made available under Covered SME Transactions, provided that, for the avoidance of doubt:

- (i) the Actual Portfolio Volume may in no circumstances exceed the Agreed Portfolio Volume;
- (ii) if amounts outstanding under SME Transactions are prepaid and/or repaid, then this shall not reduce the Actual Portfolio Volume; and
- (iii) if an SME Transaction is an Excluded SME Transaction, then such SME Transaction shall not be taken into account in the calculation of the Actual Portfolio Volume from (and including) the date on which it becomes an Excluded SME Transaction.

“Additional Eligibility Criteria” means any additional Eligibility Criteria specified in the Specific Terms.

“Additional Ineligible Expenditure” has the meaning given to it in the Specific Terms.

“Adjusted Portion” has the meaning given to it in Clause 7.2 (*Replacement*).

“Adjustment Date” has the meaning given to it in Clause 7.1 (*Adjustment of the Actual Portfolio Volume*).

“Affected Party” has the meaning given to it in Clause 19.1 (Suspension),

“Affected Portion” has the meaning given to it in Clause 6.2(c).

“Agreed Portfolio Volume” means the amount set out in the Specific Terms.

“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.

“Authorised Person” has the meaning given to it in Clause 15.2 (*Authorised Persons*).

“Availability Period” means, the period of 24 months from the Effective Date, unless specified otherwise in the Specific Terms and subject, in any case, to the occurrence of a Trigger Event in accordance with Clause 6.1(b) (*Inclusion Process*).

“Availability Period End Date” has the meaning given to it in Clause 6.1(a)(ii)(x).

“Business Day” means a working day for each of the EIF, SZRF and the Intermediary and a day (other than a Saturday or Sunday) on which banks are open for general business in Luxembourg and in the JEREMIE Jurisdiction.

“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 first loss portfolio guarantee instrument.

“Clawback Amount” has the meaning given to it in Clause 11 (*Right of Clawback*).

“Collateral” means any Security and any third party’s guarantee.

“Collateralisation Rate Trigger” has the meaning given to it in the Specific Terms.

“Collateralisation Trigger Event” means that on any Collateralisation Trigger Event Determination Date, the Actual Collateralisation Rate on such date is higher than the Collateralisation Rate Trigger.

“Collateralisation Trigger Event Determination Date” has the meaning given to it in the Specific Terms.

“Commission” means the Commission of the European Union.

“Commission Recommendation” means the Commission Recommendation 2003/361/EC concerning the definition of micro, small and medium-sized enterprises (OJ L124, 20.05.2003, p.36), as amended, restated, supplemented and/or substituted from time to time.

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

“Confidential Information” means all information relating to the Guarantors, the Intermediary, any SME, the JHF, the JEREMIE Funds or the Guarantee, provided to a Party by the other Party or any of its affiliates or advisers, in whatever form, and includes 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:

- (i) is or becomes public knowledge, other than as a result of any breach by a Party of Clause 28 (*Disclosure of Information*); or
- (ii) in relation to information regarding the Intermediary only, is not marked as confidential by such Intermediary at the time of delivery;
- (iii) in relation to information regarding the Intermediary only, is known by the Guarantor before the date the information is disclosed to it by such Intermediary or any of its affiliates or advisers; and
- (iv) in relation to information regarding the Intermediary only, is lawfully obtained by the Guarantor, other than from a source which is connected with such Intermediary and which, in either case, as far as the Guarantor is aware, has not been obtained in violation of, and is not otherwise subject to, any obligation of confidentiality.

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

“Counterparty” means

- (i) to the extent the EIF is the entity administering and operating the JEREMIE Holding Fund as set out in Recital (D), the EIF acting (x) as Guarantor in its own name through and on the account of the JEREMIE Holding Fund and (y) in the name and on behalf of the other Guarantor (being SZRF) as its agent in accordance with the Framework Agreement, the Funding Agreement and the Holding Fund Agreement; and
- (ii) starting from the earlier of (x) 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 and (y) the date on which a transfer has occurred pursuant to Clause 27.2 of this Agreement, SZRF as Guarantor.

“Covered SME Transaction” has the meaning given to it in Clause 4 (*Guarantee*).

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 Interest Rate” means, unless a compulsory interest rate is provided for under any applicable law, the percentage rate per annum equal to the aggregate of:

- (i) the Interest Rate; and
- (ii) 2 per cent.

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

- (i) any principal and/or interest amounts (excluding late payment or default interest, capitalised interest, fees and any other costs and expenses and excluding any interest amounts which accrued after a period of 90 days) due, payable and outstanding at such time (or, in the case of a Covered SME Transaction subject to an SME Transaction Default, which would be due if that Covered SME Transaction were accelerated at such time on the assumption that an event of default had occurred at such time) under the terms of a Covered SME Transaction following the occurrence of either:

(X) an SME Transaction Default; or

(Y) an SME Transaction Acceleration,

whichever is specified in the Specific Terms and provided that, if the relevant Covered SME Transaction has not been accelerated in the period of 90 days following the relevant SME Transaction Default, any interest which accrues in respect of such Covered SME Transaction after that date will not be taken into account for the purpose of this paragraph (i); and

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

“Defaulted Amounts Rate Trigger” has the meaning given to it in the Specific Terms.

“Defaulted Amounts Rate Trigger Event” means that on the Defaulted Amounts Trigger Event Determination Date, the Actual Defaulted Amounts Rate exceeds the Defaulted Amounts Rate Trigger.

“Defaulted Amounts Rate Trigger Event Determination Date” has the meaning given to it in the Specific Terms.

“De Minimis Regulation” means the Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty Establishing the European Economic Community (now Article 107 and 108 of the Treaty) to *de minimis* aid (OJ L379, 28.12.2006, p.5).

“Designated Transactions” has the meaning given to it in Clause 6.2(f).

“Designated Transferee” has the meaning given to it in Clause 27.2(b).

“Disbursement Longstop Date” means 31 December 2015.

“Disbursement Ratio” means at any relevant time, the ratio, expressed as a percentage, equal to the quotient of:

- (i) the sum of any principal amounts disbursed by the Intermediary to SMEs under Covered SME Transactions at such time; and
- (ii) the Actual Portfolio Volume at such time.

“Early Termination Date” has the meaning given to it in Clause 19.2 (*Early Termination*).

“**ECA**” means the European Court of Auditors.

“**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.

“**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 (i) the Effective Date shall be deemed not to have occurred unless the Intermediary has notified the Guarantor, within 10 Business Days following such publication, of the occurrence of the publication and has provided to the Guarantor 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 sign this Agreement.

“**Eligibility Criteria**” means the eligibility criteria specified in Clause 5 (*Eligibility Criteria*) (as amended, supplemented or restated in the Specific Terms).

“**Eligible SME**” means, unless otherwise provided in the Specific Terms, a micro, small or medium-sized enterprise as defined in the Commission Recommendation.

“**Eligible SME Transaction**” has the meaning given to it in Clause 5 (*Eligibility Criteria*).

“**EU Funds Act**” means Slovak Act No. 528/2008 Coll. on Assistance and Support from EU Funds, as amended and supplemented from time to time.

“**European Data Protection Supervisor**” means the independent supervisory authority established by the Data Protection Regulation.

“**Event of Default**” means any event or circumstance related to the Intermediary and/or any of the Guarantors as specified in Clause 18 (*Events of Default*).

“**Excluded Sectors**” has the meaning given to it in the Specific Terms.

“**Excluded SME Transaction**” means any SME Transaction excluded from the Portfolio in accordance with Clause 6.2 (*Exclusion Process*).

“**Exclusion Date**” has the meaning given to it in Clause 6.2(b).

“**Exclusion Notice**” means a notice in writing in respect of the exclusion of an SME Transaction from the Portfolio to be sent by the Counterparty to the Intermediary pursuant to the terms of this Agreement and in the form of (or substantially in the form of) Schedule 4 (*Form of Exclusion Notice*).

“**Final Payment Demand Date**” means the earlier of (X) the Termination Date (except that, in the case of an Early Termination Date, the Final Payment Demand Date shall be one month following the Early Termination Date) and (Y) six months following the Latest SME Transaction Maturity Date.

“Funding Agreement” has the meaning given to it in the Specific Terms.

“Funds” has the meaning given to it in Recital (A).

“Guarantee” has the meaning given to it in Clause 4 (*Guarantee*).

“Guarantee Cap” means the maximum aggregate net amount which the Guarantors may be liable to pay under the Guarantee and calculated, at any relevant time, as the product of:

- (i) the Actual Portfolio Volume (as evidenced in the last Report received by the Counterparty prior to any such calculation);
- (ii) the Guarantee Rate;
- (iii) the Guarantee Cap Rate; and
- (iv) the Disbursement Ratio.

“Guarantee Cap Rate” means the percentage rate set out in the Specific Terms.

“Guarantee Fee Amount” means:

(X) if “Up-Front Fee Calculation” is specified in the Specific Terms, the product of:

- (a) the Guarantee Fee Percentage;
- (b) the sum of the committed principal amount at signing of each SME Transaction included in the Portfolio during the relevant Guarantee Fee Calculation Period; and
- (c) the Guarantee Rate; and

(Y) if “Periodic Fee Calculation” is specified in the Specific Terms, the product of:

- (a) the Quarterly Guarantee Fee Percentage; and
- (b) the daily average outstanding principal amount of all SME Transactions included in the Portfolio, on each day during the relevant Guarantee Fee Calculation Period; and
- (c) the Guarantee Rate.

“Guarantee Fee Calculation Period” means the period from (and including) the first day of a calendar quarter to (but excluding) the first day of the succeeding calendar quarter.

“Guarantee Fee Payment Date” means the Business Day which is fifteen (15) calendar days following the last day of the relevant Guarantee Fee Calculation Period.

“Guarantee Fee Percentage” has the meaning given to it in the Specific Terms.

“Guarantee Rate” means the percentage of each Defaulted Amount under Covered SME Transactions, as set out in the Specific Terms.

“Inclusion Notice” means a quarterly notice in writing in respect of the inclusion of an SME Transaction in the Portfolio, submitted by the Intermediary to the Counterparty in the form of (or substantially in the form of) Schedule 3 (*Form of Inclusion Notice*).

“Inclusion Period” has the meaning given to it in Clause 6.1 (*Inclusion Process*).

“Inclusion Period End Date” has the meaning given to it in Clause 6.1 (*Inclusion Process*).

"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 the Specific Terms.

"Interest Rate" means, on any date as from which it shall accrue and then on each subsequent day which follows in monthly intervals after such date, the relevant EURIBOR interest rate for a designated maturity of one (1) month which appears on page EBF04 of the Bloomberg screen on such date or if such rate is not or no longer available at the relevant time, any replacement of such rate as agreed by the Parties (acting reasonably).

"Irregularity" means, in accordance with Article 2(7) of Council Regulation and Section 4 of the Commission Regulation, any infringement of a provision of European Union law resulting from an act or omission by the Intermediary and/or an SME 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.

"Irregularity Acceleration Event" has the meaning given to it in Clause 6.2(d)(ii).

"JEREMIE" has the meaning given to it in Recital (B).

"JEREMIE Funds" has the meaning given to it in Recital (D).

"JEREMIE Holding Fund" or **"JHF"** has the meaning given to it in Recital (D).

"JEREMIE Jurisdiction" has the meaning given to it in the Specific Terms.

"Latest SME Transaction Maturity Date" means the earlier of (X) the latest day on which an SME Transaction included in the Portfolio is scheduled to be repaid by the relevant SME in accordance with the scheduled repayment provisions of the documentation governing such SME Transaction (including as a result of any amendment to the terms of such SME Transaction) and (Y) the date which is the Maximum SME Transaction Maturity following the Availability Period End Date.

"Local Currency" means the official currency in the JEREMIE Jurisdiction.

"Lowest Rating Class Transaction" means, unless otherwise specified in the Specific Terms, an SME Transaction included in the Portfolio which at the time the SME Transaction is approved by the Intermediary is assigned an internal rating specified in the Specific Terms.

"Maintenance of Record Period" has the meaning given to it in Clause 16.4 (*Maintenance of Records - Authorisations*).

"Material Adverse Effect" means a material adverse effect on or a material adverse change in:

- (i) the financial condition, assets, prospects, business, operations, property or condition (financial or otherwise) of a Party; or
- (ii) the ability of a Party to perform or comply with any of its obligations under this Agreement; or
- (iii) the validity, legality or enforceability of this Agreement or the rights and remedies of any of the Guarantors thereunder.

“Maximum SME Exposure” means, the product of the Agreed Portfolio Volume and the percentage specified in the Specific Terms.

“Maximum SME Transaction Maturity” means the maturity specified in the Specific Terms.

“Maximum Industry Concentration” means the product of the Agreed Portfolio Volume and the percentage specified in the Specific Terms.

“Maximum Lowest Rating Class Transaction Concentration” means the product of the Agreed Portfolio Volume and the percentage specified in the Specific Terms.

“Minimum SME Transaction Maturity” means the maturity specified in the Specific Terms.

“National Authority” means all competent authorities of the JEREMIE Jurisdiction (and their duly authorised representatives).

“New SME Transactions” has the meaning given to it in Clause 7.2 (*Replacement*).

“Non-Affected Party” has the meaning given to it in Clause 19.1 (Suspension),

“Non Covered Amounts” has the meaning given to it in Clause 7.3 (*Non Covered Amounts*).

“Non Eligible SME Transaction” means, at a given time, an SME Transaction which either (a) is not an Eligible SME Transaction at that time, (b) would not be an Eligible SME Transaction at that time, were it not for the fact that it is deemed to be an Eligible SME Transaction by virtue of Clause 5.4, including as a result of it being verified or declared by the Guarantor or the Intermediary to be a Non Eligible SME Transaction pursuant to Clause 6.2(a).

“OLAF” means the *European Anti-Fraud Office*, set up in accordance with the provisions of the Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF).

“Operational Programme” has the meaning given to it in the Specific Terms.

“Outstanding Amount” has the meaning given to it in Clause 9 (*Payment*).

“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 at any relevant time.

“Party” means a party to this Agreement.

“Payment Demand” means a request for payment under the Guarantee issued by the Intermediary to the Counterparty pursuant to the terms of this Agreement.

“Payment Demand Date” means any Report Date provided that the last Payment Demand Date shall be the Final Payment Demand Date.

“Payment Demand Period” means the period from (but excluding) the last day of a calendar quarter to (and including) the immediately following Payment Demand Date.

“Payment Demand Schedule” means a schedule in the form of Schedule 5A detailing the Covered SME Transaction(s) in respect of which a Defaulted Amount has been incurred and providing details of the calculation of such Defaulted Amount.

“Permitted Purpose Activities” means,

- i. unless otherwise specified in the Specific Terms, financing for (A) investment in tangible and in intangible assets and (B) working capital related to development or expansion activities that are ancillary (and linked) to activities referred to in (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 related to development or expansion activities (such as purchase of raw materials and stocks), which should be evidenced, inter alia, by a plan for the creation or expansion of an enterprise
- ii. 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.

“Permitted SME Transaction Amendment” means any amendment which purpose is to improve the collectability of any claims under the relevant SME Transactions and which is made in accordance with the Intermediary’s credit and collection policy.

“Portfolio” means the portfolio comprised of all the SME Transactions subject to the terms of the Guarantee.

“Portfolio Eligibility Criteria” has the meaning given to it in Clause 5 (*Eligibility Criteria*).

“Portfolio Trigger Amount” means unless otherwise specified in the Specific Terms, 30% of the Agreed Portfolio Volume.

“Portfolio Trigger Event” means that on the Portfolio Trigger Event Determination Date, the Actual Portfolio Volume is lower than the Portfolio Trigger Amount.

“Portfolio Trigger Event Determination Date” means the Report Date immediately following the date which is halfway through the Availability Period.

“Potential Event of Default” means any event which, with the giving of notice or the lapse of remedy time or both (in each case, to the extent specified in this Agreement), would constitute an Event of Default.

“Quarterly Guarantee Fee Percentage” means a quarter of the Guarantee Fee Percentage.

“Recovery” means each and every amount, net of recovery and foreclosure costs (if any), recovered or received by the Intermediary in respect of a Defaulted Amount where a Guarantor has paid amounts under the Guarantee in respect of such Defaulted Amount. Recoveries shall include any amounts recovered or received by the Intermediary in respect of a Defaulted Amount and which are paid to third parties under any obligation of the Intermediary under any Security in respect of the relevant Covered SME Transaction granted by the Intermediary to any third party or third parties. To the extent that any amounts paid to any third party reduce the amount of Recoveries available to be shared with the Guarantors, the Intermediary shall increase the Recoveries by an amount equal to the amount paid to any third party.

“Relevant Counterparty Address” means the email address specified in Clause 23 (*Notices*) below or such other email address notified from time to time by the Counterparty to the Intermediary in writing.

“Relevant FX Rate” means the relevant foreign exchange reference rate displayed by the European Central Bank from time to time on its website (www.ecb.int for the time being) and which is based on the daily concertation procedure between central banks within and outside the European System of Central Banks or, if such rate is not or is no longer available at the relevant time, any replacement to such rate as agreed by the Parties (acting reasonably).

“Relevant Parties” means the Counterparty, agents of the Counterparty, the ECA, the Commission and/or the agents of the Commission (including OLAF), all other European Union institutions or European Union bodies which are entitled to verify the use of the JEREMIE Funds and the National Authorities.

“Relevant Portion” has the meaning given to it in Clause 16.9 (*Intermediary Exposure to SME Transactions*).

“Replacement Inclusion Period” means the period from (and including) the Adjustment Date (with respect to adjustments pursuant to Clause 7.1) or the date on which a Party is effectively notified that an SME Transaction shall be an Excluded SME Transaction (with respect to adjustments pursuant to Clause 6.2) to (but excluding) the earlier of (i) the Termination Date and (ii) the Disbursement Longstop Date.

“Report” means the quarterly report to be delivered by the Intermediary to the Counterparty in the form of Schedule 3A.

“Report Date” means, with respect to a calendar quarter, the Business Day which is one month following the last day of such calendar quarter.

“Restricted Sector” means, subject to the Specific Terms, any sector set out in Schedule 9 (*Restricted Sectors*).

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

“SME” means a micro, small or medium-sized enterprise which enters into an SME Transaction with the Intermediary.

“SME Eligibility Criteria” has the meaning given to it in Clause 5 (*Eligibility Criteria*).

“SME Transaction” means a loan instrument entered into between the Intermediary and an SME.

“SME Transaction Acceleration” means, in respect of an SME Transaction, and unless otherwise specified in the Specific Terms, the occurrence of an event of default (howsoever defined) under such SME Transaction which has entitled the Intermediary to accelerate payment of any amounts owed to it and the Intermediary 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 Transaction Currency” means the currency/ies set out in Schedule 1 (*Specific Terms*).

“SME Transaction Default” means, in respect of an SME Transaction and unless otherwise specified in the Specific Terms, that (i) the Intermediary considers at any time (acting reasonably in accordance with its internal procedures) that the relevant SME is unlikely to meet its payment

obligations under such SME Transaction (without recourse by the Intermediary to action such as realisation of security); or (ii) an SME has failed to meet any payment obligation under the relevant SME Transaction which has continued for at least 90 consecutive calendar days.

“SME Transaction Eligibility Criteria” has the meaning given to it in Clause 5 (*Eligibility Criteria*).

“SME Transaction Restructuring” means, in respect of an SME Transaction and unless otherwise specified in the Specific Terms, that the Intermediary, acting in a commercially reasonable manner and in accordance with its standard internal procedures, agrees (such agreement to be made in writing with the relevant SME) to the restructuring of such SME Transaction such that the amount of principal scheduled to be paid, and/or any interest amount due, by the relevant SME is reduced, in order to improve the collectability of the claims arising from the relevant SME Transaction.

“Specific Terms” means the terms set out in Schedule 1 (*Specific Terms*).

“State Aid” means aid granted by a member state of the European 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.

“Termination Date” means the earlier of

- (i) nine months following the Latest SME Transaction Maturity Date;
- (ii) the Early Termination Date; and
- (iii) the date (if any) on which none of the Guarantors is any longer liable to effect further payments to the Intermediary and none of the Guarantors has any further claims against the Intermediary under this Agreement.

“Total Disbursement” means the full amount disbursed under a Covered SME Transaction.

“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 any of the Collateralisation Trigger Event, the Defaulted Amounts Rate Trigger Event and the Portfolio Trigger Event.

“Trigger Event Determination Date” means, unless otherwise provided in the Specific Terms:

- (i) with respect to a Portfolio Trigger Event, the Portfolio Trigger Event Determination Date;
- (ii) with respect to a Collateralisation Trigger Event, any Collateralisation Trigger Event Determination Date; and
- (iii) with respect to a Defaulted Amounts Rate Trigger Event, the Defaulted Amounts Rate Trigger Event Determination Date.

2.2 Interpretation

- (a) Other than where otherwise stated, any reference in this Agreement to:

- (i) a "**clause**" or a "**schedule**" is, unless the context otherwise requires, a reference to a Clause of or a Schedule to this Agreement;
 - (ii) a "**party**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
 - (iii) "**assets**" includes present and future properties, revenues and rights of every description (including any right to receive such revenues);
 - (iv) "**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;
 - (v) a "**person**" includes any person, firm, company, corporation, government, state or agency of a state or any association, trust 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;
 - (vi) 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;
 - (vii) 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;
 - (viii) a time of day is a reference to Luxembourg time;
 - (ix) a Potential Event of Default or an Event of Default is "**continuing**" if it has not been remedied or waived; and
 - (x) "**euro**", "Euro" and "€" shall be construed as a reference to the single currency of Participating Member States.
- (b) 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.
- (c) 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.
- The Clause headings used in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.
- (d) The Schedules (including, without limitation, the Specific Terms) form an integral part of this Agreement.
- (e) In the event of any inconsistency between the main body of this Agreement and the Schedules (including, without limitation, the Specific Terms), the Schedules shall govern.

2.3 **Specific Terms**

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

3. **PURPOSE**

The purpose of this Agreement is the provision of the Guarantee by the Guarantors to the Intermediary in order to cover partially the credit risk of the Intermediary relating to the Portfolio. The Guarantee is provided by the Guarantors acting through the JHF in the context of the JEREMIE initiative of the European Union in the JEREMIE Jurisdiction.

4. **GUARANTEE**

The Guarantors hereby jointly and severally issue an irrevocable and unconditional financial guarantee in favour of the Intermediary subject to, and in accordance with, the terms of this Agreement.

Subject to the terms of this Agreement, the Guarantee covers SME Transactions:

- (i) which are Eligible SME Transactions;
- (ii) which are included in the Portfolio in accordance with the terms of this Agreement during the Inclusion Period;
- (iii) in respect of Defaulted Amounts;
- (iv) at the Guarantee Rate;
- (v) up to the Guarantee Cap; and
- (vi) in respect of which a Defaulted Amount has occurred no later than 90 days after the Latest SME Transaction Maturity Date in connection with amounts that were unpaid not later than on the Latest SME Transaction Maturity Date.

SME Transactions which satisfy the conditions listed above are “**Covered SME Transactions**”.

5. **ELIGIBILITY CRITERIA**

5.1 **Eligibility Criteria**

Subject to Clauses 5.3 and 5.4, the Portfolio shall only contain SME Transactions which comply with any and all the criteria set out below (such transactions, “**Eligible SME Transactions**”) and such criteria, the “**Eligibility Criteria**”):

- (i) the SME Eligibility Criteria;
- (ii) the SME Transaction Eligibility Criteria;
- (iii) the Portfolio Eligibility Criteria; and
- (iv) the Additional Eligibility Criteria (if any).

5.2 Definitions

For the purposes of the Agreement:

“SME Eligibility Criteria” means that the SME under the relevant SME Transaction:

- (i) is an Eligible SME;
- (ii) is not "a firm in difficulty" (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));
- (iii) does not have a substantial focus on one or more Restricted Sectors (which determination shall be made by the Intermediary in its discretion based, without limitation, on the proportionate importance of such sector on revenues, turnover or client base of the relevant Eligible SME);
- (iv) is rated by the Intermediary within the Acceptable SME Risk Categories;
- (v) is established and operating in the JEREMIE Jurisdiction;
- (vi) is not active (based on NACE Codes) in any of the Excluded Sectors; and
- (vii) is not delinquent or in default in respect of any other loan or lease either granted by the Intermediary or by another financial institution pursuant to checks made in accordance with the Intermediary's internal guidelines and standard credit policy.

“SME Transaction Eligibility Criteria” means that the SME Transaction:

- (i) is entered into as a new SME Transaction with the Intermediary during the Inclusion Period (which shall exclude any SME Transaction which has been restructured or novated prior to such date);
- (ii) provides funding:
 - (a) for Permitted Purpose Activities only;
 - (b) in Euro and/or in the Local Currency;
 - (c) for activities which would not be excluded from the scope of the De Minimis Regulation pursuant to article 1 (a) to (g) of the De Minimis Regulation;
 - (d) which shall be utilised within the JEREMIE Jurisdiction; and
 - (e) for a purpose which shall exclude the refinancing and/or restructuring of an existing loan or lease or, for the avoidance of doubt, expenses already incurred by an SME;
- (iii) has a fixed amortising repayment schedule (which, for the avoidance of doubt, shall exclude any credit lines or any revolving facility)
- (iv) shall not be in the form of mezzanine loans, subordinated debt or quasi-equity;
- (v) provides medium and long term financing with:
 - (a) a minimum term not less than the Minimum SME Transaction Maturity, and

- (b) other than as a result of a Permitted SME Transaction Amendment, a maximum term not greater than the Maximum SME Transaction Maturity; and
- (vi) (X) does not receive any assistance under any operational programme (as defined in the Council Regulation) other than the Operational Programme and (Y) is the only assistance received from a financial instrument financed by the European Union;
- (vii) does not finance Ineligible Expenditure; and
- (viii) is entered into in accordance with the Intermediary's internal guidelines and standard credit policy.

"Portfolio Eligibility Criteria" means that:

- (i) the sum of the initial principal amount of SME Transactions entered into with a single Eligible SME shall not account for more than the Maximum SME Exposure, provided that SMEs which, at the time of inclusion of the relevant SME Transaction in the Portfolio, are part of the same group (as determined in a commercially reasonable manner by the Intermediary in accordance with the Intermediary's standard procedures) will be deemed to be a single SME for the purposes of this provision;
- (ii) the sum of the initial principal amount of all SME Transactions 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 Maximum Industry Concentration; and
- (iii) the sum of the initial principal amount of all SME Transactions in the Portfolio being Lowest Rating Class Transactions in the Portfolio shall not exceed the Maximum Lowest Rating Class Transaction Concentration provided that the internal rating to be taken into account for an SME Transaction shall be the internal rating assigned at the time when the relevant SME Transaction is approved by the Intermediary.

5.3 Time of Compliance

- (a) SME Transactions shall comply with the Eligibility Criteria at all times while included in the Portfolio, except that the Eligibility Criteria set out in (i), (ii), (iii), (iv), (vi) and (vii) of the definition of "SME Eligibility Criteria" shall only be met on the date of the document(s) evidencing the relevant SME Transaction.
- (b) Any Additional Eligibility Criteria specified in the Specific Terms to be "Continuing" shall be complied with at all times whereas any Additional Eligibility Criteria specified in the Specific Terms to be "Signing Date" shall be complied with at the date of the document evidencing the relevant SME Transaction only.

5.4 Included SME Transactions deemed Eligible

Any SME Transaction that has been included in the Portfolio by the Intermediary pursuant to Clause 6.1 shall automatically be deemed to be an Eligible SME Transaction unless and until it has been excluded from the Portfolio pursuant to Clause 6.2 (without prejudice to the continued application of Clause 5.3(b)).

6. PORTFOLIO INCLUSION AND EXCLUSION PROCESSES

6.1 Inclusion Process

- (a) Subject to the other provisions of this Clause 6.1, the Intermediary may include in the Portfolio (for their full original principal amount, and not partially) SME Transactions that:
- (i) comply with the Eligibility Criteria and all other relevant provisions of this Agreement; and
 - (ii) are entered into during a period (the “**Inclusion Period**”) commencing on (and including) the first day of the Availability Period and ending on:
 - (X) the last day of the Availability Period (the “**Availability Period End Date**”), or
 - (Y) the date which is six months following the Availability Period End Date, with respect to SME Transactions which have not been entered into (i.e. in respect of which signing of the relevant loan documentation between the Intermediary and the SMEs has not taken place) before the Availability Period End Date but (i) have been approved by the Intermediary during the Availability Period and (ii) have been drawn down for the first time by the relevant SMEs within six months following the Availability Period End Date
- (the later of such dates being the “**Inclusion Period End Date**”).
- (b) If a Trigger Event has occurred on the relevant Trigger Event Determination Date then, unless otherwise notified by the Counterparty to the Intermediary in writing, the last day of the Availability Period shall be deemed to be such Trigger Event Determination Date and the other provisions of this Agreement shall be construed accordingly. The Intermediary hereby undertakes to notify promptly the Counterparty upon the occurrence of one or more Trigger Event(s) by sending to the Counterparty a notice in the form of Schedule 10 (*Form of Trigger Event Notice*) and to provide the Counterparty on each Trigger Event Determination Date with information relating to (as applicable) (a) the aggregate value of the Collateral on such date, (b) the aggregate Losses incurred on such date and (c) the Actual Portfolio Volume on such date.
- (c) The Intermediary shall submit an Inclusion Notice by each Report Date in respect of SME Transactions entered into in the calendar quarter preceding the date 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.

In case no SME Transactions are to be included in the Portfolio during a particular calendar quarter, an Inclusion Notice stating that no SME Transactions are to be included shall be sent to the Counterparty by the relevant Report Date.

The Intermediary shall promptly after the Availability Period End Date deliver to the Counterparty a notice in the form of Schedule 2 (*Form of Approval at the end of the Availability Period*) including the required information on any SME Transactions approved by the Intermediary before the end of the Availability Period and that may be included in the Portfolio after such date, as applicable.

- (d) Upon receipt by the Counterparty of the signed original of each Inclusion Notice, the SME Transaction referred to therein shall be included in the Portfolio, provided that no SME

Transaction shall be so included if an Event of Default or a Potential Event of Default related to the Intermediary has occurred and is continuing. For the avoidance of doubt, SME Transactions so included shall be Covered SME Transactions from the date on which such SME Transactions shall have been entered into.

- (e) If the original principal amounts of SME Transactions referred to in an Inclusion Notice is such that, as a result of their inclusion in the Portfolio, the Actual Portfolio Volume would exceed the Agreed Portfolio Volume, the SME Transactions will be included in the Portfolio only up to and to the extent that the Actual Portfolio Volume resulting from any such inclusion does not exceed the Agreed Portfolio Volume. The Counterparty shall have sole and absolute discretion as to which of such SME Transactions shall be included and which shall not be included. Notwithstanding the provisions of Clause 6.1(a) (*Inclusion Process*), in such circumstances and in order to reach the Agreed Portfolio Volume, the Counterparty may (with the prior written consent of the Intermediary) elect to include only part of the original principal amount of an SME Transaction.
- (f) Each Inclusion Notice shall be sent by the Intermediary to the Counterparty together with the Report via email at the Relevant Counterparty Address and no later than on the relevant Report Date.

6.2 Exclusion Process

- (a) At any time, the Counterparty may (but shall not be obliged to) verify whether an SME Transaction included in the Portfolio is an Eligible SME Transaction or a Non Eligible SME Transaction and whether its inclusion in the Portfolio is in compliance with the terms of this Agreement.
- (b) Subject to Clause 6.2(d) and 6.2(e) below, if an SME Transaction included in the Portfolio is or becomes a Non Eligible SME Transaction:
 - (i) the Intermediary shall upon becoming aware of the same (also by way of the Exclusion Notice sent by the Counterparty), include such information in the immediately following Report delivered to the Counterparty, and
 - (ii) the Counterparty may at any time upon becoming aware of the same (except if it has already been notified thereof by the Intermediary in accordance with Clause 6.2(b)(i) above) notify the Intermediary of the same by sending an Exclusion Notice identifying such Non Eligible SME Transaction,

whereupon that SME Transaction shall be excluded from the Portfolio (such SME Transaction being an “**Excluded SME Transaction**”) as of the date on which it became a Non Eligible SME Transaction (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 SME Transaction was included in the Portfolio) (any such dates, an “**Exclusion Date**”). On the Exclusion Date, the Actual Portfolio Volume will be reduced *pro tanto*.

- (c) Without prejudice to Clause 6.2(b) above, any SME Transaction affected by an Irregularity shall be deemed to be a Non Eligible SME Transaction. If the Irregularity affects part of such SME Transaction (the “**Affected Portion**”), such Affected Portion shall be deemed to be a Non

Eligible SME Transaction. If the Irregularity consists of a fraudulent activity in relation to the SME Transaction (or relevant part thereof) or the fraudulent or illegal use of the proceeds of that SME Transaction by the relevant SME, then the entire amount of that SME Transaction shall be deemed to be a Non Eligible SME Transaction. If an SME Transaction (or a portion thereof) becomes a Non Eligible SME Transaction pursuant to this Clause 6.2(c) then, without prejudice to any other rights and remedies available to the Counterparty under this Agreement or at law, Clause 6.2(b), Clause 6.2(d)(ii) and Clause 6.2(e)(ii), as the case may be, shall apply.

(d) Notwithstanding Clause 6.2(b) above:

- (i) if an SME Transaction included in the Portfolio is or becomes a Non Eligible SME Transaction (X) as a result only of events or circumstances beyond the control of the Intermediary and (Y) the Intermediary becomes aware of any such events or circumstances at any time after the date on which it was included in the Portfolio (and could not, acting diligently, have become aware thereof prior to such date) but prior to any Payment Demand relating to such Eligible SME Transaction, then the Intermediary may either:
 - (a) accelerate payment of all amounts owed to it by the relevant SME under such SME Transaction or otherwise terminate such SME Transaction, no later than the Report Date immediately following the date on which it became aware of the same (an “**Acceleration Event**”) and such SME Transaction will remain a Covered SME Transaction from the date on which it was included in the Portfolio (but, for the avoidance of doubt, without prejudice to the requirements of subclauses (ii) to (vi) inclusive of Clause 4 (Guarantee) for Covered SME Transactions) unless it is for any other reason excluded from the Portfolio and ceases to be a Covered SME Transaction pursuant to this Clause 6.2; or
 - (b) not proceed to an Acceleration Event, in which case Clause 6.2(b) will apply; and
- (ii) if an SME Transaction included in the Portfolio (or an Affected Portion thereof) (X) is a Non Eligible Transaction in application of Clause 6.2(c), and (Y) the Intermediary became aware of the relevant Irregularity after the date on which it was included in the Portfolio (and acting diligently, could not have become aware thereof prior to such date) but prior to any Payment Demand relating to such Eligible SME Transaction, and (Z) the Irregularity was in all respects beyond the control of the Intermediary, then the Intermediary may either:
 - (a) accelerate payment of all amounts owed to it by the relevant SME under such Non Eligible SME Transaction or otherwise terminate such SME Transaction, no later than the Report Date immediately following the date on which it became aware of the Irregularity (an “**Irregularity Acceleration Event**”) and such Non Eligible SME Transaction will remain a Covered SME Transaction from the date on which it was included in the Portfolio (but, for the avoidance of doubt, without prejudice to the requirements of subclauses (ii) to (vi) inclusive of Clause 4 (Guarantee) for Covered SME Transactions) unless it is for any other reason

excluded from the Portfolio and ceases to be a Covered SME Transaction pursuant to this Clause 6.2; or

- (b) not proceed to an Irregularity Acceleration Event, in which case Clause 6.2(b) will apply.

(e) Notwithstanding Clause 6.2(b) above:

- (i) if an SME Transaction included in the Portfolio is or becomes a Non Eligible SME Transaction (X) as a result only of events or circumstances beyond the control of the Intermediary and (Y) the Intermediary became aware thereof at any time after a Payment Demand relating to such SME Transaction was served by the Intermediary to the Counterparty in accordance with Clause 23 (*Notices*) (and could not, acting diligently, have become aware thereof prior to such date), then such SME Transaction shall be deemed to be a Covered SME Transaction for the purpose of such Payment Demand (and, for the avoidance of doubt (i) clawback under Clause 11 (*Right of Clawback*) will not apply with respect to payments already made with respect to such SME Transaction but (ii) without prejudice to the requirements of subclauses (ii) to (vi) inclusive of Clause 4 (Guarantee) for Covered SME Transactions) unless it is for any other reason excluded from the Portfolio and ceases to be a Covered SME Transaction pursuant to this Clause 6.2); and
- (ii) if an SME Transaction included in the Portfolio (or an Affected Portion thereof) (X) is a Non Eligible Transaction in application of Clause 6.2(c), and (Y) the Intermediary became aware of the relevant Irregularity after the date on which it was included in the Portfolio (and acting diligently, could not have become aware thereof prior to such date) and after any Payment Demand relating to such Eligible SME Transaction was served by the Intermediary to the Counterparty in accordance with Clause 23 (*Notices*), and (Z) the relevant Irregularity was in all respects beyond the control of the Intermediary, then such SME Transaction (or Affected Portion) shall be deemed to be a Covered SME Transaction for the purpose of such Payment Demand (and, for the avoidance of doubt (i) clawback under Clause 11 (*Right of Clawback*) will not apply with respect to payments already made with respect to such SME Transaction (or Affected Portion) but (ii) without prejudice to the requirements of subclauses (ii) to (vi) inclusive of Clause 4 (Guarantee) for Covered SME Transactions) unless it is for any other reason excluded from the Portfolio and ceases to be a Covered SME Transaction pursuant to this Clause 6.2).

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

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

exclude all or part of any of the SME Transaction(s) which caused the breach of the relevant Portfolio Eligibility Criteria (such SME Transactions, the “**Designated Transactions**”) such that, as a result of such exclusion, the Portfolio Eligibility Criteria shall be satisfied. Designated Transactions shall be deemed to be Non Eligible SME Transactions for the purpose of Clause 6.2(b) (provided that Clause 6.2(d) shall not apply for the purposes of this Clause 6.2(f)) and shall become Excluded SME Transactions on the Exclusion Date.

- (g) If the Intermediary becomes aware:
- (i) that an SME Transaction is or becomes an Excluded SME Transaction or any other undertakings or requirements of this Agreement are not complied with or satisfied in connection with such SME Transaction, or
 - (ii) that any commitments made available for utilisation under a Covered SME Transaction are cancelled,
- then such information shall be included in the immediately following Report delivered to the Counterparty.
- (h) The Intermediary undertakes, in connection with the protection of its rights under the SME documentation, to diligently, whether by negotiation or legal action, enforce its claims against SMEs.

7. ADJUSTMENT OF THE ACTUAL PORTFOLIO VOLUME AND NON COVERED AMOUNTS

7.1 Adjustment of the Actual Portfolio Volume

In respect of each Covered SME Transaction, if on the date which is (such date, the “**Adjustment Date**”):

- (i) the end of a disbursement period when amounts are available for utilisation by the SME under the Covered SME Transaction; or
- (ii) the date on which a commitment made available for utilisation under a Covered SME Transaction is cancelled,

but in any case no later than on the Disbursement Longstop Date, the committed amount of principal has not been fully drawn by an SME under the relevant SME Transaction, then the Actual Portfolio Volume shall be reduced to reflect the aggregate principal amounts drawn by the relevant SME under that Covered SME Transaction. The Intermediary shall reflect any such adjustment in the Report immediately following such Adjustment Date.

7.2 Replacement

If the Actual Portfolio Volume is reduced in accordance with the provisions of Clause 6.2 or Clause 7.1 (in each case, the amount of such reduction, the “**Adjusted Portion**”), the Intermediary may include one or more further SME Transaction(s) (“**New SME Transactions**”) in the Portfolio provided that:

- (i) such New SME Transactions are Eligible SME Transactions and comply in all respects with other relevant provisions of this Agreement;
- (ii) such New SME Transactions have been entered into at any time during the Replacement Inclusion Period and are included (at the latest) in the Report due on the Report Date immediately following the Replacement Inclusion Period;
- (iii) any inclusion of such New SME Transactions shall be made in accordance with the provisions of Clause 6.1(c) to (f) (*Inclusion Process*) provided that the reference to “Inclusion Period End Date” in Clause 6.1(f) shall be deemed to be a reference to “the last day of the Replacement Inclusion Period”; and

- (iv) the sum of all committed principal amount(s) of New SME Transaction(s) shall not exceed the aggregate Adjusted Portions at such time provided that, for the avoidance of doubt, the Actual Portfolio Volume shall not, as a result of any such inclusion(s) of New SME Transactions, exceed the Agreed Portfolio Volume.

7.3 **Non Covered Amounts**

If (X) amounts are drawn under a Covered SME Transaction after the Disbursement Longstop Date or (Y) part (but not all) of an SME Transaction becomes an Excluded SME Transaction under Clause 6.2(c) or Clause 6.2(f) (any such amounts that are so drawn or so excluded, the “**Non Covered Amounts**”), Defaulted Amounts in respect of that Covered SME Transaction will be calculated without regard to such Non Covered Amounts.

8. **CONDITIONS FOR PAYMENT DEMANDS**

- (a) A Payment Demand shall only be valid if:
 - (i) it is in the form of Schedule 5 (*Form of Payment Demand*), duly completed and signed by an Authorised Person and is accompanied by a schedule in the form of the Payment Demand Schedule.
 - (ii) it is sent by email to the Relevant Counterparty Address (provided that any original signed document shall also be sent by letter) in accordance with Clause 23 (*Notices*);
 - (iii) it relates to one or more Covered SME Transactions;
 - (iv) it is sent during a Payment Demand Period before the Final Payment Demand Date and provided further that not more than one Payment Demand may be made during any Payment Demand Period;
 - (v) it relates to Defaulted Amounts that have been included in the Report sent by not later than the third Report Date immediately following the calendar quarter on which such Defaulted Amounts have been incurred; and
 - (vi) the Intermediary is in compliance with its representation under Clause 16.8(a) and no Event of Default or Potential Event of Default has occurred and is continuing in respect thereof.
- (b) The Counterparty may, at any time and in its sole discretion, request information on any inconsistency between the data in the possession of the Counterparty at the time of the Payment Demand and the information contained in the Payment Demand. The Intermediary undertakes to promptly provide the Counterparty with any such further information provided that the Counterparty may not suspend any payment under the Guarantee on the sole basis that it has not received such information.

9. **PAYMENT**

- (a) All payments to be made to the Intermediary or by the Intermediary to any of the Guarantors under this Agreement shall be in Euro.

- (b) Subject to it receiving signed original Payment Demands and subject to the terms of this Agreement, the Counterparty shall pay any amounts claimed thereunder within 60 calendar days of the relevant Payment Demand Date.
- (c) Any payment by a Party under this Agreement which is due to be made on a day that is not a Business Day shall be due on the next Business Day.
- (d) Interest on any amount due but unpaid under this Agreement as a result of an Event of Default shall accrue on such amount at the Default Interest Rate from the date of the relevant default to the date on which such amount is effectively paid by the defaulting party.
- (e) If payment of all amounts requested under a Payment Demand would result in the Guarantee Cap being exceeded (based on the last Report available to the Counterparty), then payments will be made up to the Guarantee Cap only. The Counterparty shall have discretion as to which of such amounts shall be paid, subject always to the Guarantee Cap.

Any amounts claimed under Payment Demands which are not paid in accordance with this Clause 9(e) (the payment of which would have resulted in the Guarantee Cap being exceeded) shall be referred to as “**Outstanding Amounts**”.

Upon the increase, if any, of the Actual Portfolio Volume, the Counterparty shall pay Outstanding Amounts up to the revised Guarantee Cap within two months of the date of the Report evidencing such revised Guarantee Cap.

- (f) The Guarantors may (but shall not be obliged to) set off any payment due from the Intermediary under this Agreement against any payment due by it to the Intermediary, regardless of the place of payment.
- (g) All payments to be made by the Intermediary, other than payments under clause 11 (*Right of Clawback*), to the Guarantor, shall be made to the bank account set out in Schedule 1 (*Specific Terms*).
- (h) All payments to be made by the Guarantor to the Intermediary, shall be made to the bank account as set out in Schedule 1 (*Specific Terms*).

10. EXCHANGE RATE

If an SME Transaction is denominated in a currency other than Euro or a Defaulted Amount occurs in a currency other than Euro or a Recovery is in a currency other than Euro, the following exchange rate mechanism shall apply, subject to the provisions contained in the Specific Terms (if any):

- (a) For the purpose of including an SME Transaction in the Portfolio, the Euro equivalent of any amounts denominated in a currency other than Euro shall be determined using the Relevant FX Rate on the last Business Day of the calendar quarter to which the relevant Inclusion Notice refers.
- (b) For the purpose of paying amounts claimed by the Intermediary under the Guarantee, the Euro equivalent of any amounts denominated in a currency other than Euro referred to in any Payment Demand shall be determined using the Relevant FX Rate not earlier than four

Business Days prior to the date of payment by the Counterparty to the Intermediary. The rate of exchange (and the date used for determining the same) shall be notified by the Counterparty to the Intermediary upon payment by the Counterparty.

- (c) For the purpose of paying Recoveries to the Guarantors (if applicable), the Euro equivalent of Recoveries payable to the Guarantors denominated in a currency other than Euro shall be determined using the Relevant FX Rate not earlier than four Business Days prior to the date of payment by the Intermediary. The rate of exchange (and the date used for determining the same) shall be notified by the Intermediary to the Counterparty upon payment by the Intermediary.
- (d) For the purpose of paying the Guarantee Fee Amount (if applicable), the Euro equivalent of the Guarantee Fee Amount payable in respect of an SME Transaction denominated in a currency other than Euro shall be determined using the Relevant FX Rate not earlier than four Business Days prior to the date of payment by the Intermediary. The rate of exchange (and the date used for determining the same) shall be notified by the Intermediary to the Counterparty upon payment by the Intermediary.

11. **RIGHT OF CLAWBACK**

No later than on the Report Date immediately following the date on which the Counterparty gives notice to the Intermediary or the Intermediary becomes otherwise aware of amounts owed to the Guarantors, the Intermediary shall repay the following amounts (any such amounts, the **"Clawback Amounts"**):

- (i) any amount paid under the Guarantee in excess of the Guarantee Cap; and
- (ii) any amount paid under the Guarantee in relation to one or more Excluded SME Transaction(s),

in each of the cases (i) and (ii) above, together with interest to be calculated at the Interest Rate which shall accrue from the date of payment of the relevant amount by the Counterparty until the date of the repayment of that amount by the Intermediary.

All payments to be made by the Intermediary under this Agreement shall be (i) calculated on a daily basis and be made without (and free and clear of any deduction for) set-off or counterclaim and shall be in Euro and (ii) made into the bank account specified in the Specific Terms.

12. **RECOVERIES**

- (a) Subject to the provisions of Clauses 12(b) and (c), the Guarantors shall be entitled to receive a percentage of each Recovery (if any) equal to the Guarantee Rate from each Recovery acquired by the Intermediary.
- (b) The Intermediary shall send to the Counterparty a recovery notice substantially in the form of Schedule 6 (Form of Recoveries Notice) at any relevant time but not later than 30 days of the end of each calendar quarter in which Recoveries are recovered or received by the Intermediary. The Intermediary shall pay any relevant amount to the Guarantors into the bank

account specified in the Specific Terms within three months of the end of each calendar quarter in which Recoveries are recovered or received by the Intermediary.

- (c) If a Defaulted Amount relates to an SME Transaction where amounts have been drawn after the Disbursement Longstop Date or if part (but not all) of an SME Transaction becomes an Excluded SME Transaction, the percentage of each Recovery the Guarantors shall be entitled to receive in connection with such SME Transaction shall be calculated in accordance with the following formula:

$$\text{Guarantee Rate} \times \left(1 - \frac{\text{NonCoveredAmounts}}{\text{TotalDisbursements}} \right)$$

- (d) The Guarantors shall not be entitled to receive any part of a Recovery if all amounts paid under the Guarantee in respect of the Defaulted Amount relating to such Recovery have been repaid by the Intermediary pursuant to Clause 11(ii) (*Right of Clawback*).
- (e) The Guarantors shall not be entitled to receive any part of a Recovery if it would result in all payments by the Intermediary pursuant to Clause 11 (*Right of Clawback*) or this Clause 12 (*Recoveries*) exceeding all amounts paid by the Counterparty under the Guarantee in respect of Defaulted Amount.
- (f) The Guarantors' claims will rank *pari passu* with the Intermediary's claims with regard to any Recoveries.
- (g) The Intermediary undertakes that it shall at any relevant time use its best efforts to maximise Recoveries in accordance with its internal guidelines and procedures.
- (h) In the event that any Recoveries are paid to the Guarantors, the aggregate net payments deemed to be made by the Guarantors under the Guarantee shall be reduced accordingly, and the Guarantors may be liable to pay under the Guarantee an additional amount equal to such Recoveries up to the Guarantee Cap.
- (i) Each of the Guarantors hereby appoints the Intermediary, who accepts, to exercise the Guarantors' rights for the recovery of amounts paid to the Intermediary following a Payment Demand (either by way of subrogation or otherwise) at the same time and in the same manner as the Intermediary's rights against the relevant SME, including, without limitation:
- (i) to receive any payment due under the relevant Covered SME Transaction from or on behalf of the SME;
 - (ii) to be indemnified by an SME or any other party;
 - (iii) to claim any contribution from any other guarantor of any SME's obligations; and
 - (iv) to take the direct or indirect benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the SME Transactions and of any other guarantee or Security taken pursuant to, or in connection with, the SME Transactions.

On reasonable request of the Intermediary, the Guarantors shall issue a special and notarized power of attorney for the Intermediary in order to exercise said rights on its behalf towards third parties, including courts and other public authorities.

- (j) If the Intermediary receives any benefit, payment or distribution in relation to amounts paid to it under the Guarantee, it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts (including, without limitation, any Recovery) which may be or become payable by the Intermediary under or in connection with this Agreement to be repaid in full, and shall promptly pay or transfer the same to the Guarantors or as the Counterparty may otherwise direct.
- (k) This Clause 12 (*Recoveries*) applies to any payments recovered from, or otherwise paid, returned or repaid by, or on behalf of, the SME to the Intermediary under an SME Transaction after a Defaulted Amount (including, without limitation, as a result of an SME Transaction Default following which the Intermediary has not (for any reason) exercised any acceleration rights) has been incurred.
- (l) Nothing in this Clause 12 (*Recoveries*) shall prevent any of the Guarantors from exercising in its own name any rights and remedies available to any of them under this Agreement or applicable law.
- (m) Should any of the Guarantors decide to exercise in its own name any rights and remedies available to any of them under Clause 12(i) with respect to one, or more, SME Transaction(s), the Counterparty shall provide a notice to this extent to the Intermediary identifying the SME Transaction(s) (the “**Selected SME Transaction(s)**”) in respect of which the Guarantors intend to exercise such rights and remedies (the “**Recovery Termination Notice**”).
- (n) On the date specified in the Recovery Termination Notice, the Intermediary undertakes (i) to cease exercising any of the rights and remedies set out in Clause 12(i) with respect to the Selected SME Transaction(s) and (ii) to inform the relevant SMEs, any relevant guarantors and security providers and public authorities (including courts, court executors and insolvency administrators in the relevant proceedings) under the Selected SME Transaction(s), that all the rights available under the law under the relevant SME Transaction will not be exercised by the Intermediary anymore as a result of the Recovery Termination Notice and that they will be exercised by any of the Guarantors.

13. **GUARANTEE FEE**

- (a) The Intermediary shall pay to the Counterparty (for the account of the Guarantors) on any Guarantee Fee Payment Date an amount equal to the Guarantee Fee Amount.

The Intermediary shall calculate the Guarantee Fee Amount and notify the Counterparty of such amount no later than on the Guarantee Fee Payment Date. This calculation shall not constitute conclusive evidence of the matters to which it relates.

- (b) If at any time the Actual Portfolio Volume is adjusted in accordance with this Agreement the Guarantee Fee Amount shall not be recalculated or otherwise adjusted. Notwithstanding the foregoing, if the Intermediary becomes aware that one or more SME Transactions are Non Eligible SME Transactions and, by not later than the Report Date immediately following the date on which such SME Transactions were included in the Portfolio, causes such Non Eligible SME Transaction(s) to be removed from the Portfolio in accordance with Clause 6.2 (*Exclusion*

Process), then the Counterparty shall, on the next day on which amounts are due to be paid by the Counterparty in accordance with Clause 9 (Payment), pay to the Intermediary (including by way of set-off in accordance with Clause 9(f)) the difference between the Guarantee Fee Amount paid on the previous Guarantee Fee Payment Date and the Guarantee Fee Amount which would have been payable by the Intermediary to the Counterparty had that Non Eligible SME Transaction(s) not been included in the Portfolio on the previous Report Date.

14. REPRESENTATIONS

The Intermediary and each of the Guarantors make the representations and warranties set out in Schedule 7 (*Representations*). Such representations and warranties shall be deemed to be repeated at all times except with respect to representation 6 (No Default) and 9 (Proceedings) of the Intermediary, with respect to representation 6 (No Default) and 8 (Proceedings) of EIF and with respect to representation 6 (No Default) and 8 (Proceedings) of SZRF which shall be deemed to be made on the Effective Date only.

15. INFORMATION UNDERTAKINGS

15.1 General

Without prejudice to the other provisions of the Agreement, the Intermediary shall promptly supply to the Counterparty any information that the Counterparty may reasonably require in order to monitor:

- (i) 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 due diligence steps taken by the Intermediary pursuant to Clause 6.1(a); and/or
- (ii) the origination and performance of the Portfolio and any Covered SME Transactions from time to time.

15.2 Authorised Persons

Within ten Business Days of the Effective Date, the Intermediary shall send to the Counterparty:

- (i) evidence of the authority of each person who, on behalf of the Intermediary, signed this Agreement, together with specimen signatures; and
- (ii) a list of persons with authority to sign Payment Demands and otherwise to act as the Intermediary's representative in the performance of this Agreement (each, an "**Authorised Person**"), together with evidence of such authority and specimen signatures.

In the event of any change in the identity of the Authorised Persons, the Intermediary shall promptly send the Counterparty an updated list, together with evidence of authority and specimen signatures.

15.3 Origination projections

The Intermediary undertakes to provide to the Counterparty, on a yearly basis, by no later than each anniversary of the Effective Date, updated projections of the volume of potential eligible SME loans for the upcoming year.

16. GENERAL UNDERTAKINGS

16.1 Visibility and Promotion

- (a) The Intermediary undertakes to ensure that the documentation applicable to each Covered SME Transaction (or in a separate cover letter accompanying such documentation) include the following wording (or the relevant translation set out in the 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).”*.
- (b) The Intermediary undertakes to carry out information, marketing and publicity campaigns, focussed in the JEREMIE Jurisdiction, aimed at making the JEREMIE initiative known to SMEs in the JEREMIE Jurisdiction, in accordance with the relevant provisions of Structural Funds Regulations as referred to in the Specific Terms.
- (c) The Intermediary undertakes to comply with the provisions of Article 8.4 and Article 9 of Commission Regulation and to require that each SME having entered into an SME Transaction complies with such provisions.
- (d) The Intermediary undertakes to comply with any other visibility and promotion requirements set out in the Specific Terms.

16.2 Reporting

- (a) Quarterly Report

Subject to Clause 19.2(a) (*Early Termination*), from the Effective Date until the expiry or termination of this Agreement, the Intermediary shall send a Report to the Counterparty by not later than each Report Date. The Intermediary shall send each Report to the Counterparty via email at the Relevant Counterparty Address.

- (b) Other Reporting Obligations

The Intermediary shall promptly supply to the Counterparty any document or report which is reasonably requested by the Counterparty (whether for itself or on behalf of JHF) to enable the Counterparty to comply with its reporting obligations vis-à-vis the National Authorities or otherwise.

16.3 Monitoring and Audit

- (a) The Guarantors are not bound to monitor or verify, and shall not be responsible for monitoring or verifying, the use of any amounts granted by the Intermediary to SMEs or utilised from time to time by the SME, in each case, under Covered SME Transactions. Notwithstanding this, the Counterparty may, at any time, request information from the Intermediary to enable the Guarantors to verify whether an SME Transaction is an Eligible SME Transaction and whether its inclusion in the Portfolio is in compliance with the terms of this Agreement. The Intermediary shall supply to the Counterparty any such information requested by the Counterparty.
- (b) 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 Guarantors satisfying their obligations to the National Authorities, the Intermediary acknowledges and

agrees that each of the Relevant Parties shall have the right to carry out audits and controls and to request information in respect of this Agreement and its execution. The Intermediary shall permit monitoring visits and inspections by each of the Relevant Parties of its business operations, books and records which are in connection with this Agreement or its execution. As these controls may include on the spot controls of the Intermediary, the Intermediary shall permit access to its premises to each of the Relevant Parties during normal business hours.

(c) The Intermediary further undertakes to include in the legal documentation concerning each SME Transaction :

(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 of 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 European Union institutions or European Union bodies, which are entitled to verify the use of EU Structural Funds and any competent national or regional authority of [country] (“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 [counterparty] shall permit monitoring visits and inspections by the EIF, SZRF, the agents of the EIF and/or of 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 [counterparty] shall permit access to its premises to the EIF, SZRF, the agents of the EIF and/or of SZRF, the ECA, the Commission, the Agents and National Authorities during normal business hours.”

(ii) an undertaking of the relevant SME to promptly provide, upon request, any document or information related to itself and/or the relevant SME Transaction and required to be included in any report by the Intermediary, the ECA, the Commission, the agents of the Commission (including OLAF) and/or the National Authorities and the Guarantors and a consent by the relevant SME to any such information being shared between the Intermediary, the ECA, the Commission, the agents of the Commission (including OLAF) and/or the National Authorities and the Guarantors.

16.4 Maintenance of Records – Authorisations

(a) The Intermediary undertakes to prepare, update and at all times maintain available for the Relevant Parties, the following documentation:

- (i) 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 any and all SME Transactions included in the Portfolio with the Eligibility Criteria;
- (ii) information necessary to verify the proper implementation of the terms of this Agreement into the contracts evidencing Covered SME Transactions;
- (iii) information regarding the payment and recovery records of the Intermediary; and

- (iv) any other information reasonably required by the Counterparty, agents of the Counterparty, the ECA, the Commission, the agents of the Commission (including OLAF) and/or National Authorities,

including, as appropriate:

- application forms (and any relevant supporting documents, including business plans, annual accounts and other reports that are requested by the Intermediary in its normal course of business to approve such loans);
 - checklists or other internal documents used to assess and approve the applications including checks for compliance with the criteria set out in this Agreement;
 - signed legal documentation evidencing each SME Transaction;
 - evidence that confirm compliance with the SME Transaction conditions and achievement of the intended purpose of the loan, such as annual accounts, invoices or any other documents that would be requested by the Intermediary in its normal course of business to monitor such SME Transactions;
 - documents evidencing fund transfers under the relevant SME Loan;
 - if a SME Transaction defaults (or in the circumstances identified as SME Transaction Acceleration, SME Transaction Default and SME Transaction 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 Intermediary; and
 - evidence of compliance with applicable rules and regulations relating to the granting and monitoring of the De Minimis aid provided.
- (b) the Intermediary shall maintain all relevant documentation for inspection by the Relevant Parties for the period specified below, unless otherwise specified in the Specific Terms (any such period, a **"Maintenance of Record Period"**):
- (i) for a period of three years following the closure of the Operational Programme in accordance with article 89(5) of Council Regulation;
 - (ii) 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;
 - (iii) in case of instruments operating under De Minimis Regulation, for a period of 10 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.
- (c) Unless otherwise specified in the Specific Terms, the Intermediary undertakes to include obligations corresponding to those contained in Clause 16.4(b) in the legal documentation concerning each Covered SME Transaction.
- (d) The Intermediary shall keep separate records of the SME Transactions included in the Portfolio from time to time such that such SME Transactions may be easily identified.

- (e) If any deficiencies in the maintenance of records are identified by any of the Relevant Parties and the Intermediary is informed of such deficiencies, the Intermediary 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 any of the Relevant Parties), comply with the instructions given by each of the Relevant Parties) and provide any additional information reasonably requested by each of the Relevant Parties.
- (f) The Intermediary shall promptly bring to the attention of the Counterparty any issue identified by the Intermediary 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 Counterparty and any issue having an adverse impact on the ability of the Intermediary to perform its obligations under this Agreement).
- (g) The Intermediary shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect and, on request supply certified copies to the Counterparty of, any authorisation required under applicable law or regulations to enable the Intermediary to perform its obligations under this Agreement, to ensure the legality, validity, enforceability or admissibility in evidence of this Agreement in the Intermediary's jurisdiction of incorporation and to carry out its business.

16.5 State Aid

- (a) The Intermediary acknowledges that the Guarantee provided under this Agreement is to be taken account of by the Intermediary and SMEs in the context of their compliance with State Aid rules.
- (b) The Intermediary undertakes:
 - (i) to comply with any applicable State aid rules (including all additional State Aid related requirements set out in the Specific Terms), in particular to take account of the Guarantee in the context of their compliance with State Aid rules and to ensure that the inclusion of each SME Transaction in the Portfolio shall comply with State Aid rules;
 - (ii) to ensure that each SME under Covered SME Transactions is notified in writing of the requirement to take into account the Guarantee when considering compliance with State Aid rules; and
 - (iii) to promptly provide to the Counterparty any information requested by the Counterparty in order to verify compliance by the Intermediary (or any SME under an SME Transaction included in the Portfolio) with State Aid rules.

16.6 Compliance with Laws

- (a) The Intermediary shall comply in all respects with all laws and regulations (whether national laws and regulations or laws and regulations of the European Union) to which it may be subject (including, but not limited to, the Structural Funds Regulations, EU Funds Act and any requirements under the Operational Programme(s)) and, the breach of which may (i) adversely impact the performance of this Agreement or (ii) adversely prejudice the interests of the Guarantors, the Commission and/or the National Authorities under the Agreement.
- (b) The Intermediary shall not commit any Irregularity or fraud.

- (c) The Intermediary shall include in the documentation applicable to each SME Transaction included in the Portfolio:
- (i) undertakings from the SME equivalent to those contained in Clauses 16.6(a), (b) and (d); and
 - (ii) representations, warranties and undertakings from the SME for the purpose of ensuring that each SME Transaction forming part of the Portfolio shall comply at any relevant time with the Eligibility Criteria in accordance with this Agreement,

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

- (d) The Intermediary shall, upon becoming aware of any Irregularity committed by itself or any of the relevant SMEs, inform in writing the relevant authorities of the JEREMIE Jurisdiction to each of the following addresses:

- I. RIADIACI ORGÁN PRE OPERAČNÝ PROGRAM KONKURENCIESCHOPNOSŤ A HOSPODÁRSKY RAST
SEKCIA PODPORNÝCH PROGRAMOV
MINISTERSTVO HOSPODÁRSTVA SLOVENSKEJ REPUBLIKY
MIEROVÁ 19
827 15 BRATISLAVA 212

and

- II. CERTIFIKAČNÝ ORGÁN
SEKCIA EURÓPSKYCH A MEDZINÁRODNÝCH ZÁLEŽITOSTÍ
MINISTERSTVO FINANCIÍ SLOVENSKEJ REPUBLIKY
ŠTEFANOVIČOVA 5
P. O. BOX 82
817 82 BRATISLAVA

- (e) The Intermediary shall include in the documentation applicable to each SME Transaction included in the Portfolio that the relevant SME shall engage in no action or decision contrary to the EU rules and legislation of the Slovak Republic, particularly rules concerning competition.

16.7 Internal Rating

For the purpose of ensuring compliance with sub-paragraph (iii) of the definition of "Portfolio Eligibility Criteria" and any relevant Additional Eligibility Criteria set out in the Specific Terms, the Intermediary shall at all times during the Inclusion Period assign and maintain internal rating(s) or scorings with respect to any SME Transaction included in the Portfolio.

If, for any reason, any of the internal rating or scoring methodology of the Intermediary or any client segment is revised in any material way, then the Intermediary shall inform the

Counterparty at the latest 2 months before such revision becomes effective and provide any information about such revision as requested by the Counterparty.

The Counterparty will have the right to object to the proposed revision within 3 months starting from the date when the Intermediary has informed the Counterparty as described above, provided that:

- if the Counterparty decides to object to the revision, it must notify such objection to the Intermediary in accordance with Clause 23 (*Notices*) and the Availability Period will be deemed to terminate on the date to be specified by the Counterparty (which cannot be earlier than the date on which such notification is done); or
- if the Counterparty does not object within the 3 months period as described above, the Counterparty will be considered to have tacitly approved the revision.

16.8 **Title and Security**

- (a) The Intermediary represents on the date on which it sends a Payment Demand that it has good title to the Covered SME Transaction to which such Payment Demand relates and that such Covered SME Transaction is free and clear of any Security on such date.
- (b) The Intermediary undertakes on any date on which it sends a Payment Demand and at all times thereafter until the expiry of the Guarantee that, unless otherwise permitted in writing by the Guarantor, it shall not create nor permit to subsist any Security over any Covered SME Transaction to which a Payment Demand relates.

16.9 **Intermediary Exposure to SME Transactions**

The Intermediary undertakes at all times until the expiration of the Guarantee that, unless otherwise prior permitted in writing by the Counterparty:

- (i) it shall maintain an economic exposure of at least 20% of the outstanding principal amount of each SME Transaction (the “**Relevant Portion**”) included in the Portfolio; and
- (ii) it shall not enter into any credit support, guarantee or other transfer of risk arrangements with respect to the Relevant Portion.

17. **DATA PROTECTION AND KNOW YOUR CUSTOMER**

17.1 **Data Protection**

- (a) In entering into this Agreement, the Intermediary acknowledges and agrees that its details (and certain information applicable to the Guarantee) 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 Intermediary undertakes to ensure that SMEs under SME Transactions included in the Portfolio are informed in writing 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 information in connection with the relevant SME Transaction will be communicated to the Counterparty, the National Authorities and/or the Commission;

- (ii) that by accepting an SME Transaction, the relevant SME 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 Counterparty, the National Authorities and/or the Commission shall be stored until 31 December 2026 at the earliest;
- (iv) that requests by an SME to verify, correct, delete or otherwise modify personal data communicated to the Counterparty, the National Authorities and/or the Commission, as the case may be, should be addressed to the EIF, SZRF, the National Authorities and/or the Commission, as applicable, at the following address:
 - (x) in respect of the Counterparty: the address set out in Clause 23 (*Notices*) (for the attention of the EIF Data Protection Officer);
 - (y) in respect of National Authorities, as provided for in the Specific Terms; and
 - (z) in respect of the Commission, to the attention of the European Data Protection Supervisor.

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 an SME may lodge a complaint with the European Data Protection Supervisor if it considers that its rights under Article 16 of the Treaty have been infringed as a result of the processing of personal data by the Counterparty and/or the Commission.
- (c) For the avoidance of doubt, any reference to personal data in this Clause 17 shall mean personal data as defined in the Data Protection Regulation.

17.2 **Know your customer**

The following will apply.

If:

- (i) the implementation or introduction of or any change in (or in the interpretation, administration or application of) any law or regulation after the date of this Agreement;
- (ii) any change in the status of the Intermediary or the composition of the shareholders of the Intermediary after the date of this Agreement; or
- (iii) a proposed assignment or transfer by the Guarantor of any of its rights or obligations under this Agreement prior to such assignment or transfer,

obliges the Guarantor (or any potential transferee) to comply with "know your customer" or similar identification procedures (whether those procedures are applied voluntarily by the Guarantor or pursuant to any applicable law or regulation) in circumstances where the necessary information is not already available to the Guarantor, the Intermediary shall promptly upon the request of the Guarantor supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Guarantor (for itself or on behalf of any prospective new Guarantor) in order for the Guarantor or any prospective new Guarantor 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 transaction contemplated in this Agreement.

18. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 18 is an "**Event of Default**".

The Affected Party shall notify, in writing, the Non-Affected Party of any Potential Event of Default or Event of Default relating to itself (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

18.1 Non-payment

A Party does not pay on the due date any amount payable pursuant to this Agreement at the place and in the currency in which it is expressed to be payable unless its failure to pay is caused by:

- (i) an administrative or technical error; and
- (ii) payment is made within two (2) Business Days of its due date.

18.2 Other obligations

- (a) A Party does not comply in any material respect with any provision of this Agreement (other than under Clause 18.1 (*Non-Payment*)).
- (b) No Event of Default under Clause 18.2(a) (*Other Obligation*) will occur if the failure to comply is capable of remedy and is remedied within 14 days of the Non-Affected Party giving notice to the Affected Party or the Affected Party becoming aware of the failure to comply.

18.3 Insolvency

- (a) A Party is unable, or admits its 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, or, by reason of actual or anticipated financial difficulties, 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 a Party 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 a Party. If a moratorium occurs, the end of the moratorium will not remedy any Event of Default caused by such moratorium.

18.4 Insolvency proceedings

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (i) a suspension of payments, moratorium of any indebtedness, bankruptcy, controlled management, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of a Party;
- (ii) a composition, assignment or arrangement with any creditor of a Party;
- (iii) an appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of a Party or any of its assets;

- (iv) an enforcement of any Security over any assets of a Party; or
- (v) any analogous procedure or step is taken in any jurisdiction;

provided that Clause 18.4 shall not apply to a winding-up petition that is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of the earlier of (i) its commencement and (ii) the date on which it is advertised.

18.5 Repudiation and rescission of agreements

A Party rescinds or purports to rescind or repudiates or purports to repudiate this Agreement or evidences an intention to rescind or repudiate this Agreement.

18.6 Unlawfulness

It is or becomes unlawful for a Party to perform any of its obligations under this Agreement.

18.7 Misrepresentation

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

19. CONSEQUENCES OF AN EVENT OF DEFAULT

19.1 Suspension

On, and at any time after, the occurrence of an Event of Default or Potential Event of Default, any Party not subject to such Event of Default or Potential Event of Default (as the case may be) (the “**Non-Affected Party**”) (provided that, in the case of an Unlawfulness Event of Default or Potential Event of Default pursuant to Clause 18.6, the Non-Affected Party shall be deemed to mean the Party for whom it is or becomes unlawful to perform its obligations under this Agreement), may, by notice to the other Party (the “**Affected Party**”), while such Event of Default or Potential Event of Default (as the case may be) subsists, suspend performance of its obligations under this Agreement. If such Event of Default or Potential Event of Default is remedied within the relevant grace period (if any) or waived, after delivery of such notice but prior to the exercise of rights under Clause 19.2 (*Early Termination*), the notice served under this Clause 19.1 (*Suspension*) shall be deemed to be revoked automatically. Any amounts which were due but have been unpaid while any Potential Event of Default or Event of Default was continuing shall be paid no later than 2 (two) Business Days following the date on which such Potential Event of Default or Event of Default is cured or waived (as the case may be).

19.2 Early Termination

- (a) On, and at any time after, the occurrence of an Event of Default under Clause 18 (*Events of Default*) that has not been remedied within the relevant grace period (if any), the Non-Affected Party may (but shall not be obliged to), by written notice to the Affected Party (such notice to be sent by email and by letter) immediately terminate this Agreement (such date, the “**Early Termination Date**”).
- (b) The Intermediary shall, promptly following the occurrence of any Early Termination Date (but in no event after the Final Payment Demand Date), send a Report to the Counterparty together

with a Payment Demand (as the case may be). For the purposes of such Report and such Payment Demand all amounts due by the Counterparty shall be calculated in accordance with this Agreement as if the Report Date were the Early Termination Date. The Guarantee Fee Amount payable by the Intermediary following the Early Termination Date shall be calculated in accordance with Clause 13 (*Guarantee Fee*) as if the last day of the Calculation Period were the Early Termination Date. The Party owing the net amount to the other shall pay it within 5 Business Days of such notification.

- (c) This Clause applies without prejudice to any other rights and remedies available to either Party under this Agreement or under applicable law.

20. **TERM**

Without prejudice to Clause 21 (*Survival of Rights*), this Agreement will become effective on the Effective Date and will terminate on the Termination Date.

21. **SURVIVAL OF RIGHTS**

The provisions of Clauses 6.2 (Exclusion Process), 11 (Right of Clawback), 12 (Recoveries), 16.1 (Visibility and Promotion), 16.3 (Monitoring and Audit), 16.4 (Maintenance of Records - Authorisations), 23 (Notices), 24 (Calculations and Certificates), 27 (Transfer), 28 (Disclosure of Information), 31 (Contracts (Rights of Third Parties Act 1999)) and 32 (Governing Law and Jurisdiction) shall survive termination of this Agreement. In addition, any other right accrued at the date of termination of this Agreement (including, without limitation, any rights of the Guarantors under Clause 12 (Recoveries) and any rights of the Parties under Clause 19.2 (Early Termination)) shall survive such termination.

22. **WAIVER OF DEFENCES**

Subject to the provisions of this Agreement, the liabilities, obligations, powers, rights or remedies of a Party under this Agreement shall not be discharged, impaired, prejudiced or otherwise affected by any act, event, omission or matter 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 other Party):

- (i) any failure or delay in exercising any power, right or remedy under this Agreement;
- (ii) any single or partial exercise of any power, right or remedy;
- (iii) any other time, waiver or consent granted to the other Party; or
- (iv) any other amendment, novation, supplement, extension, restatement of this Agreement.

Nothing in this Agreement (or any other document, instrument or agreement) will be construed in any way to limit or otherwise affect any of the Guarantors' rights to pursue recovery or claims for damage, reimbursement or indemnification against any person for any liabilities, losses, damages, costs and expenses incurred by any of the Guarantors hereunder on or before the relevant payment date hereunder.

23. NOTICES

23.1 Communications in writing

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 addresses and contact details set out in Clause 23.2 (Addresses for communications).

23.2 Addresses for communications

Any communication to be made under or in connection with this Agreement to the Counterparty shall be made:

- (a) to EIF at the following address and contact details:

European Investment Fund

96 boulevard Konrad Adenauer

L-2968 Luxembourg

Grand Duchy of Luxembourg

Attention: JEREMIE – First Loss Portfolio Guarantee Agreement – Risk Management and Monitoring Team

Email:

- For the purpose of any Payment Demands: jeremie_flpg_paymentdemands@eif.org;

- For the purpose of any reporting information: jeremie_flpg_reporting@eif.org; or

- (b) in the situation foreseen by clause 27.2(b), to the Designated Transferee (contact details of which will be notified to the Intermediary by SZRF); or

- (c) in the situation foreseen by clause 27.2(c), to SZRF at the following address and contact details:

Slovenský Záručný a Rozvojový Fond, S.R.O., Panenská 21, 811 03 Bratislava, Slovak Republic; to the kind attention of the Executive Director.

Any communication to be made under or in connection with this Agreement to the Intermediary shall be made to the addresses and contact details set out in the Specific Terms.

23.3 Delivery

Any communication or document made or delivered by the Counterparty to the Intermediary or by the Intermediary to the Counterparty under or in connection with this Agreement shall be made in accordance with Clause 23.1 (*Communications in writing*) and will only be effective:

- (i) 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
- (ii) 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 23.2 (*Delivery*).

23.4 Language

Any notice given under or in connection with this Agreement must be in English.

24. CALCULATIONS AND CERTIFICATES

24.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with this Agreement, the entries made in the accounts maintained by the Counterparty are *prima facie* evidence of the matters to which they relate.

24.2 Certificates and Determinations

Any certification or determination by the Counterparty of a rate or amount under this Agreement is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

25. TAX PROVISIONS

If any sums payable hereunder shall be or become subject to any requisite deductions or withholding on account of tax, the amount of such payments shall not be increased so that the net amount received by the relevant Party shall equal the amount which, but for such deduction or withholding, would have been received by such Party hereunder.

26. PARTIAL INVALIDITY

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

27. TRANSFER

27.1 Transfer by the Intermediary

The Intermediary shall not assign any of its rights or transfer any of its rights or obligations under this Agreement without the prior written consent of the Counterparty.

27.2 Transfer by the Counterparty

- (a) Subject to Clause 27.2(b), the Guarantors shall not assign or transfer all or any part of its rights or obligations under this Agreement without the prior written consent of the Intermediary.
- (b) Notwithstanding anything to the contrary in this Agreement or otherwise, in the event of termination of any of the Framework Agreement and/or the Funding Agreement and /or the Holding Fund Agreement (for any reason and either in whole or in part), the EIF may (and the Intermediary and SZRF hereby agree that the EIF may) assign any or all of its rights, or transfer by novation, any or all of its rights and obligations under the Agreement, to any other person nominated by the National Authorities in accordance with the terms of the Framework

Agreement and/or the Funding Agreement and /or the Holding Fund Agreement (such person, the “**Designated Transferee**”).

- (c) The Parties undertake and acknowledge that if any of the Framework Agreement and/or the Funding Agreement and /or the Holding Fund Agreement is terminated (for any reason and either in whole or in part) without a Designated Transferee being appointed or the Designated Transferee is SZRF, then, notwithstanding any provision to the contrary, the obligations of the EIF as Guarantor and Counterparty shall immediately cease and EIF shall have no liability under this Agreement towards the Intermediary for any Defaulted Amount arising on or after the date of such termination and, as of such date, any reference in this Agreement to a right, power, faculty, action, obligation or liability of the “Counterparty” shall be a reference to SZRF.
- (d) For the purpose of clause 27.2(b) and 27.2(c), upon termination of any of the Framework Agreement, the Funding Agreement and/or the Holding Fund Agreement, the EIF undertakes to provide written notice to the Intermediary (with copy to SZRF) of such termination.
- (e) Within (20) business days from the date of the written notice set out in clause 27.2(d), SZRF undertakes to the Intermediary to create a valid and enforceable security interest in favour of the Intermediary in the form of a cash collateral created in the books of the Intermediary (or other form of security interest reasonably satisfactory to the Intermediary) for the purpose of securing the obligations of SZRF to the Intermediary under this Agreement.
- (f) Any cost and expenses incurred or to be incurred in connection with the activities set out in clause 27.2(b), 27.2(c) and/or 27.2(e) above shall be exclusively borne by SZRF.

27.3 Interpretation

For the purposes of this Clause 27 (*Transfer*), “assignment” or “transfer”, means any assignment or transfer (whether by way of Security or otherwise) including, without limitation, voluntary assignments, automatic assignments and general assignments resulting from a transfer of SME Transactions or, subject to applicable law, any transfer pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all a party’s assets to, another entity.

28. DISCLOSURE OF INFORMATION

28.1 Subject to the provisions of Clause 16.1 (*Visibility and Promotion*), each Party shall keep confidential all Confidential Information supplied to it in connection with this Agreement.

Notwithstanding the foregoing, each Party is entitled to disclose Confidential Information:

- (i) with the prior written consent of the other Party;
- (ii) 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;

- (iii) 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;
- (iv) to the National Authorities, the Commission, the agents of the Commission (including OLAF), the ECA, the European Investment Bank, and any other entity the Guarantors are subject to;
- (v) to any Designated Transferee in accordance with Clause 27.2 (*Transfer*);
- (vi) in accordance with the provisions of this Agreement, including, without limitation, the reporting and monitoring obligations to be complied with by the Intermediary; and
- (vii) 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 Intermediary's obligation to independently assess the applicability of the Publication Legislation to the provisions of this Agreement.

The Intermediary disclosing any information shall have the onus to prove that the disclosure of such information is permitted under this Clause.

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

- 28.2 For as long as the EIF is the Counterparty, the EIF shall make available to SZRF the original or a copy of any document which is delivered to the Counterparty for SZRF by any other Party.

29. **COUNTERPARTS**

This Agreement, including the Specific Terms, 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 Agreement.

30. **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.

31. **CONTRACTS (RIGHT OF THIRD PARTIES ACT 1999)**

Without prejudice to any rights given to the JHF, the Commission, the agents of the Commission (including OLAF), the European Investment Bank, 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.

32. GOVERNING LAW AND JURISDICTION

32.1 Governing law

This Agreement, and any non-contractual obligations arising out of or in connection with it, shall be governed by, and construed in accordance with, English law.

32.2 Jurisdiction

The parties hereby irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement and the documents entered into pursuant to it and that accordingly any proceedings arising out of or in connection with this Agreement and such documents shall be brought in such courts. The parties irrevocably submit to the jurisdiction of such courts and waive any objection to proceedings in any such court on the ground or venue or on the ground that the proceedings have been brought in an inconvenient forum.

This provision is drafted for the benefit of the Guarantors and shall not limit their right to take proceedings in any other court with jurisdiction.

Notwithstanding any other provision of this Agreement to the contrary, any dispute between the Guarantors which may arise out of or in connection with this Agreement and the documents entered into pursuant to it and that accordingly any proceedings arising out of or in connection with this Agreement and such documents shall be settled in accordance with the dispute resolution provision of the Holding Fund Agreement.

32.3 Service of process

Without prejudice to any other mode of service allowed under any relevant law, the Counterparty and the Intermediary:

- (i) 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
- (ii) agrees that failure by a process agent to notify the relevant Party will not invalidate the proceedings concerned.

SCHEDULE 1

SPECIFIC TERMS

1. Intermediary

1.1 Legal name in Country of Incorporation

Slovenská záručná a rozvojová banka, a.s.

1.2 Country of Incorporation

Slovak Republic

1.3 Legal status in relevant jurisdiction

Joint Stock Company

1.4 Address and contact details for notices

Address: Štefánikova 27, 814 99 Bratislava, Slovakia

Telephone: +421 2 57 29 21 34

Fax: +421 2 57 29 21 35

Email: juraj.topolcany@szrb.sk

Contact person: Juraj Topolčány, Director of Controlling and Credit Lines Department

2. JEREMIE Jurisdiction

“JEREMIE Jurisdiction” means: the Slovak Republic

3. Call

The call for expression of interest to select Intermediaries that will receive resources from the JEREMIE Holding Fund for Slovakia to implement the First Loss Portfolio Guarantee Instrument published on 18 August 2011 with the reference number “JER-005/1” in the JEREMIE Jurisdiction.

4. Funding Agreement

Has the meaning set out in recital D.

5. Operational Programme

The operational programme (as defined in Article 2 of Regulation 1083) “Competitiveness and Economic Growth” included in the National Strategic Reference Framework of Slovakia for the period 2007-2013, approved by the European Commission Decision C (2007) 5940 of 28 November 2007.

6. Agreed Portfolio Volume

“Agreed Portfolio Volume” means: EUR 40,000,000

7. Guarantee Rate

"Guarantee Rate" means: 70%

8. **Guarantee Cap Rate**

"Guarantee Cap Rate" means: 25%

9. **Availability Period**

"Availability Period" means the period

- (i) starting from (and including) the date to be identified by the Intermediary as the starting date of the Availability Period (the "**Availability Period Start Date**") and communicated to the Counterparty in accordance with Clause 23 (*Notices*), and
- (ii) ending on (and including) the date falling 24 months after the Availability Period Start Date.

The Parties agree that (a) the Availability Period Start Date shall be a day falling within 3 months after the Effective Date and (b) the notification set out in paragraph (i) above shall be made within 5 Business Days from the Availability Period Start Date.

10. **Bank Account (to be used for any payment of the Guarantee Fee to the JEREMIE Holding Fund under clause 13 (Guarantee Fee))**

Bank account name: Additional Funds Bank Account OP Free, SZaRF sro

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

BIC (SWIFT): SPSRSKBA

IBAN: SK30 8180 0000 0070 0044 8122

or to such other bank account as the Counterparty may have notified to the Intermediary with at least five Business Days' notice.

11. **Bank Account (to be used for any payment to the JEREMIE Holding Fund other than payments under clause 13 (Guarantee Fee))**

Bank account name: JER005 SZRF Pledge bank account

Bank: Exportno-importná banka Slovenskej republiky, Grösslingová 1, 813 50 Bratislava, Slovak Republic

BIC (SWIFT): EXSKSKBX

IBAN: SK36 8160 0000 0001 8043 9394

or to such other bank account as the Counterparty may have notified to the Intermediary with at least five Business Days' notice.

12. **Bank Account (to be used for any payment to the Intermediary)**

Bank: Slovenská záručná a rozvojová banka, a.s.

BIC: SLZBSKBA

IBAN: SK92 3000 0000 0000 0004 4978

or to such other bank account as the Intermediary may have notified to the Counterparty in any documentation under which the Intermediary requests a payment under the Agreement (e.g. any Payment Demand under Clause 8).

13. Defaulted Amounts

For the purposes of the definition of “Defaulted Amounts”:

- “SME Transaction Default”: Applicable
- “SME Transaction Acceleration”: Applicable
- “SME Transaction Restructuring”: Applicable

14. Clause 5 (Eligibility Criteria)

For the purposes of the definition of “**SME Eligibility Criteria**”:

“Eligible SME” means as set out in the Agreement

“Excluded Sectors” means

- (a) Fishery and aquaculture sectors, as covered by Council Regulation (EC) No 104/2000;
- (b) Primary production of agricultural products, as listed in Annex I to the Treaty on the functioning of the European Community; and
- (c) Additional excluded sectors presented in Article 1 (c-g) of the De Minimis Regulation;

For the purposes of the definition of “**SME Transaction Eligibility Criteria**”:

- “Permitted Purpose Activities” means as set out in the Agreement
- “Minimum SME Transaction Maturity” means 12 months (including any grace period or non-amortisation period)
- “Maximum SME Transaction Maturity” means 10 years (including any grace period or non-amortisation period)
- “SME Transaction Currency” means Euro
- “Additional Ineligible Expenditure” means: Not applicable.

For the purposes of the definition of “**Portfolio Eligibility Criteria**”:

- “Maximum Industry Concentration” means 20% of the Agreed Portfolio Volume.
- “Maximum SME Exposure” means the lower of (i) 2% of the Agreed Portfolio Volume and (ii) the quotient of EUR 1,500,000 and the Guarantee Rate or the quotient of EUR 750,000 and the Guarantee Rate as regards undertakings active in the road transport sector.
- “Maximum Lowest Rating Class Transaction Concentration”:
 - (i) as regards SME Transaction having been assigned, at the time when the relevant SME Transactions is approved by the Intermediary, an internal rating (as per the Intermediary's credit and collection policies) equal to “B-”, 35% and

- (ii) as regards SME Transaction having been assigned, at the time when the relevant SME Transactions is approved by the Intermediary, an internal rating (as per the Intermediary's credit and collection policies) equal to "C", 15%.
- "Lowest Rating Class Transaction": means any SME Transaction having been assigned, at the time when the relevant SME Transactions is approved by the Intermediary, an internal rating (as per the Intermediary's credit and collection policies) equal to "B-" or "C", as the case may be.

"Additional Eligibility Criteria":

1. The following Additional Eligibility Criteria shall be deemed to be "SME Eligibility Criteria" and shall be complied with at the "Signing Date":
 - (i) has not breached during the five years period before entering into the relevant SME Transaction, any Slovak law prohibiting illegal employment of foreigners;
2. The following Additional Eligibility Criteria shall be deemed to be "SME Transaction Eligibility Criteria" and shall be complied with at the "Signing Date":
 - (i) if the relevant SME Transaction finances an investment in an asset pursuant to letter (A) of the definition of Permitted Purpose Activities and any related working capital pursuant to letter (B) of the definition of Permitted Purpose Activities, the relevant asset must be located within the following regions: Trnava Region, Trenčín Region, Nitra Region, Žilina Region, Banská Bystrica Region, Prešov Region, Košice Region (the "**Relevant Regions**") (with the exclusion of Bratislava Region);
 - (ii) if the relevant SME Transaction provides financing pursuant to letter (C) of the definition of Permitted Purpose Activities, the location of the relevant SME's permanent establishment which benefits from the SME Transaction shall be in one of the Relevant Regions (with the exclusion of Bratislava Region).
3. The following Additional Eligibility Criteria shall be deemed to be "SME Transaction Eligibility Criteria" and shall be "Continuing":
 - (i) the risk margin (as defined in the Intermediary's credit and collection policies) applied by the Intermediary in respect of each SME Transaction included in the Portfolio shall be reduced by 70bps p.a. compared to the risk margin which the Intermediary would have applied in respect of the SME Transaction included in the Portfolio in the absence of this Agreement in accordance with the Intermediary's standard credit and collection policy;
 - (ii) the Loan Granting Fee charged by the Intermediary for the relevant SME Transaction in accordance with its credit and collection policies shall not exceed 1,5% of the committed principal amount of the relevant SME Transaction (to be charged in form of a single payment). For the purpose of the SME Transaction Eligibility Criteria, "Loan Granting Fee" shall have the meaning set out in the Intermediary's credit and collection policies provided that with respect to each SME Transaction, such fee shall include the up-front JEREMIE guarantee fee;

- (iii) the up-front JEREMIE guarantee fee charged (as a portion of the Loan Granting Fee) by the Intermediary for the relevant SME Transaction shall not exceed 0.7% of the committed principal amount of the relevant SME Transaction;
 - (iv) the fee for the loan maturity extension and/or change of collateral charged by the Intermediary for the relevant SME Transaction in accordance with its credit and collection policies shall not exceed 1% of the outstanding principal amount of the relevant SME Transaction (to be charged in form of a single payment);
 - (v) no fees, other than the fees set out in items (iv), (v) and (vi) above, shall be applied by the Intermediary with respect to each SME Transaction.
4. The following Additional Eligibility Criteria shall be deemed to be “Portfolio Eligibility Criteria” and shall be “Continuing”:
- (i) the sum of the initial principal amount of all SME Transactions with maturities in excess of one year in the Portfolio which have a bullet repayment profile shall not account for more than 10% of the Agreed Portfolio Volume;
 - (ii) the sum of the initial principal amount of all SME Transactions in the Portfolio granted to Eligible SMEs which are start-ups (as defined in the Intermediary’s credit and collection policies) shall not account for more than 10% of the Agreed Portfolio Volume;
 - (iii) the sum of the initial principal amount of all SME Transactions in the Portfolio granted to SMEs active in the NACE Rev. 2 Code F sectors shall not exceed 15% of the Agreed Portfolio Volume.

15. **Clause 6 (*Portfolio Inclusion and Exclusion Processes*)**

For the purpose of Clause 6.1 (*Inclusion Process*):

- “Portfolio Trigger Amount” means as set out in the Agreement.
- “Trigger Event Determination Date” means as set out in the Agreement.
- “Collateralisation Rate Trigger” means 75%.
- “Collateralisation Trigger Event Determination Date” means the Report Date which falls on the earlier of: (i) 12 months following the first day of the Availability Period and (ii) the date on which the Actual Portfolio Volume is equal to or higher than 50% of the Agreed Portfolio Volume.
- “Defaulted Amounts Rate Trigger” means 16%.
- “Defaulted Amounts Rate Trigger Event Determination Date” means the Report Date immediately following the date which is 15 months following the first day of the Availability Period.

16. **Clause 13 (*Guarantee Fee*)**

For the purposes of Clause 13:

- “Up-front Guarantee Fee Calculation” applies.
- “Guarantee Fee Percentage” means 1%.

17. **Clause 16.1 (Visibility and Promotion)**

For the purpose of Clause 16.1 (*Visibility and Promotion*),

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

“The Intermediary undertakes to ensure:

- i. that all documents concerning the Guarantee and the documentation applicable to each Covered SME Transaction, including, without limitation, SME loan agreements, promotional material to the SMEs, etc., contain the following wording “*Projekt 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 Counterparty to the Intermediary from time to time:



(b) the publicity-related requirements under paragraph (b) of Clause 16.1 shall include:

- (i) the name of the product offered by the Intermediary and each individual SME Transaction thereunder should clearly point to JEREMIE (e.g. “JEREMIE First Loss Portfolio Guarantee”);
- (ii) promoting JEREMIE and the Guarantee through the Intermediary’s website; and
- (iii) making available promotional leaflets in all the Intermediary’s branches promoting the Guarantee.

(c) in addition to the requirements under paragraph (a) of Clause 16.1, any publication concerning the Guarantee, in whatever form and by whatever media, including the internet, should include the following disclaimer: „*Táto publikácia vznikla 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.*”

18. **Clause 16.3(c) (Monitoring and Audit) – Translation**

[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 audit 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.

19. **Clause 16.4(b) (Maintenance of Records – Authorisations)**

For the purposes of Clause 16.4(b), the “Maintenance of Record Period” shall be as specified in the Agreement.

20. **Clause 16.5 (State Aid)**

Clause 16.5 shall apply and the Intermediary shall be responsible for ensuring that Eligible SME transactions originated respect the provisions of the De Minimis Regulation, implemented in the JEREMIE Jurisdiction through the State aid scheme no. DM-1/2011 published in the Commercial Gazette (“Obchodný vestník”) no. 154/2011 on 10 August 2011 (the “State Aid Scheme”). In this context, the Intermediary undertakes (i) to provide to the relevant authorities of the Slovak Republic the information required under the State Aid Scheme (within the timeframe set out therein) and (ii) to require that the SMEs with whom it has entered into SME Transactions undertake to provide to the relevant authorities of the Slovak Republic the information required under the State Aid Scheme (within the timeframe set out therein).

21. **Clause 17 (Data Protection)**

For the purpose of Clause 17(b)(iv)(y), the address of the National Authority is: Úrad na ochranu osobných údajov Slovenskej republiky, Odborárske námestie č. 3, 817 60 Bratislava 15 (Slovakia)

22. **Clause 32.3 (Service of process)**

For the purpose of Clause 32.3 (*Service of process*):

- (i) the Counterparty irrevocably appoints Securities Management Trust Limited of 19 OldJewry, London EC2R 8HA, England, as their agent under this Agreement for any service of process in any proceedings before the English courts; and
- (ii) the Intermediary has appointed 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.

23. Other Provisions

23.1 The following Clause 16.10 (*Minimum collateral requirement*) shall be added after Clause 16.9 (*Intermediary Exposure to SME Transactions*) and before Clause 17 (*Data protection*) and shall read as follows:

“16.10 Minimum collateral requirement

The Intermediary 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”.

23.2 The following Clause 16.2(c) (*SME Report*) shall be added after Clause 16.2(b) (*Other Reporting Obligations*) and before Clause 16.3 (*Monitoring and audit*) and shall read as follows:

“(c) SME Report

The Intermediary shall (i) supply to each SME (together with the contractual documentation related to the relevant SME Transaction) a report relating to certain indicators of the relevant SME and SME Transaction (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.

Each SME Report shall be (a) in the form (and contain all the information) set out in Schedule 8 (SME Report) of the Agreement or in such different form (and including the information) which may be provided by the Counterparty to the Intermediary from time to time and (b) delivered by the relevant SME to the address set out therein.”.

SCHEDULE 2

FORM OF NOTICE OF APPROVAL AT THE END OF THE AVAILABILITY PERIOD

To: the European Investment Fund

96 boulevard Konrad Adenauer

L-2968 Luxembourg

Attention: [JEREMIE – First Loss Portfolio Guarantee]

From: [Intermediary]

[Date]

Dear Sir, Madam,

Re: JEREMIE First Loss Portfolio Guarantee – Guarantee Agreement dated [●] (the “Guarantee Agreement”) – Approbations at the end of the availability period

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

- Number of SME Transactions approved: [●]

- SME Transactions amount approved: [●]]

Yours faithfully

for and on behalf of

[the Intermediary]

SCHEDULE 3
FORM OF INCLUSION NOTICE

To: the European Investment Fund

96 boulevard Konrad Adenauer

L-2968 Luxembourg

Attention: [JEREMIE – First Loss Portfolio Guarantee]

From: [Intermediary]

[Date]

Dear Sir, Madam,

Re: JEREMIE First Loss Portfolio Guarantee – Guarantee Agreement dated [●] (the “Guarantee Agreement”) – Inclusion Notice

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

We herewith notify you that [we have entered into the SME Transaction(s) set out in the Report sent to you on the same date as this Inclusion Notice which comply with all Eligibility Criteria and, in accordance with [Clause 6.1 (*Inclusion Process*)]OR [Clause 7.2 (*Replacement*)] of the Guarantee Agreement, we request you to include such SME Transaction(s) in the Portfolio.] or [we have identified no SME Transaction(s) for inclusion in the Portfolio].

The aggregate original principal amount of the SME Transaction(s) we request you to include is [●]. Following inclusion in the Portfolio of these SME Transactions, the Actual Portfolio Volume will be [●], and the number of SME Transactions included within the Portfolio will be [●].

We herewith notify you that during the calendar quarter to which the Report sent to you on the same date as this Inclusion Notice relates: (i) [the aggregate amount of Defaulted Amounts in respect of any SME Transactions included in the Portfolio is [●]] OR [we have not suffered any Defaulted Amounts in respect of SME Transactions included in the Portfolio], and (ii) [the aggregate amount we have recovered or received in respect of Defaulted Amounts suffered by us under SME Transactions included in the Portfolio is [●]] OR [we have not recovered or received any amounts in respect of Defaulted Amounts (if any) suffered by us under SME Transactions included in the Portfolio].

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

Yours faithfully

for and on behalf of

[the Intermediary]

Cc.1: Report

SCHEDULE 3A
FORM OF REPORT

Portfolio Level	Amount	
	Q Q/YY	Cumulated
Covered SME Transactions		
Number of SME Transactions signed		
Number of SME Transactions disbursed (at least partially)		
Number of SMEs		
SME Transactions amount committed		
SME Transactions amount disbursed		
SME Transactions Reduction amount		
SME Transactions outstanding principal amount		
Defaulted SME Transactions amount (principal + interest)		
Number of Defaulted SME Transactions		
Loss Recovery		
Payment Demand amount		
Number of Excluded SME transactions		
Total amount of Excluded SME Transactions		

Limits	Q Q/YY	Portfolio cumulated	Limit
SME Transaction Eligibility Criteria			
Minimum SME Transaction Maturity in month (limit as identified in Schedule 1)			
Maximum SME Transaction Maturity in month (limit as identified in Schedule 1)			
Portfolio Eligibility Criteria			
Maximum SME Exposure (limit as identified in Schedule 1)			
Maximum Industry Concentration (in EUR) <i>(limit as identified in Schedule 1)</i>			
Maximum Lowest Rating Class Transaction Concentration (limit as identified in Schedule 1)			
Lowest Rating Class Transaction (limit as identified in Schedule 1)			
[any additional Portfolio Eligibility Criteria as identified in Schedule 1]			
....			
...			
Portfolio Volume			
Agreed Volume			
Actual Volume			
Guarantee Rate			
Guarantee Cap Rate			
Guarantee Cap			
Disbursement Ratio			

PART A - NEW OPERATIONS

A1_1_SME's

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 code Division Level)	A.1.10. Number of employees at date of SME Transactions	A.1.11. SME internal scoring/rating (Rating Class)	A.1.12 Total turnover	A.1.13 Total Assets	Comments
Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory (dd/mm/yyyy)	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Optional

A2_SME Transactions

A.1.1. Fiscal number	A.2.1. SME Transaction reference (loan/lease)	A.2.2. SME Transaction currency	A.2.3. Permitted Purpose Activities	A.2.4. Investment Amount	A.2.4.1 Working capital amount	A.2.5. SME transaction principal amount	A.2.6. SME transaction Maturity (months)	A.2.6.1. Grace period (months)	A.2.7. SME Transaction signature date	A.2.8. First disbursement date	A.2.8.1. Repayment frequency	A.2.9. Investment location (NUTS)	A.2.10 Territory type	A.2.11 Gross Grant Equivalent amount	A.2.10 Comments
Mandatory	Mandatory	Mandatory	Mandatory (list of purposes to be filled in with codes of either: - Intangible Investment (code 1) - Tangible Investment (code 2) - Working Capital for expansion (code 3) - Working Capital ancillary to	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory (dd/mm/yyyy)	Mandatory (dd/mm/yyyy)	Mandatory	Mandatory	Mandatory	Mandatory	Optional

PART B - LIST OF INCLUDED OPERATIONS

A.1.1. Fiscal number	A.2.1. SME Transaction reference	A.2.2. SME Transaction currency	A.2.2.1 Relevant FX Rate	B.0 Cumulated disbursement	B.1 Cumulated repayments	B.2 SME Transaction outstanding principal amount	B.3 End of disbursement	B.4 SME Transaction daily average outstanding principal amount
Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory n/a for lease	Mandatory (Applicable only when a periodic guarantee fee is due, if not n/a)

PART D - EXPIRED SME TRANSACTIONS

A.1.1. Fiscal number	A.2.1. SME Transaction reference	D.1. Repayment date
Mandatory	Mandatory	Mandatory (dd/mm/yyyy)

PART E - EXCLUDED SME TRANSACTIONS

A.1.1. Fiscal number	A.2.1. SME Transaction reference (loan/lease)	E.1. Exclusion date	E.2. Excluded SME Transaction amount	E.3. Type
Mandatory	Mandatory	Mandatory	Mandatory	Mandatory

PART F - MODIFICATIONS

Examples

1. Change SME Transaction maturity

A.1.1. Fiscal number	A.2.1. SME Transaction reference	A.2.7.Old Loan/Lease Maturity	A.2.7.New Loan/Lease Maturity
-------------------------	-------------------------------------	-------------------------------------	-------------------------------------

2. Change of SME name and address

A.1.1. Fiscal number	A.1.2.Old SME Name	A.1.2.New SME Name	A.1.3.Old Address	A.1.3.New Address
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3. Change of SME Transaction Fiscal Number

A.1.1. Fiscal number	A.2.1. SME Transaction reference	A.1.1. New Fiscal number
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4. Change of SME Transaction ID

A.1.1. Fiscal number	A.2.1. Old SME Transaction reference	A.2.1. New SME Transaction reference (loan/lease)
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5. Change of Commitment amount

A.1.1. Fiscal number	A.2.1. SME Transaction reference	A.2.5. SME Transaction old principal amount	A.2.5. SME Transaction new principal amount
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SCHEDULE 4
FORM OF EXCLUSION NOTICE

To: Intermediary

From: European Investment Fund

96 boulevard Konrad Adenauer
L-2968 Luxembourg]

[Date]

Dear Sir, Madam,

Re: JEREMIE – First Loss Portfolio Guarantee Agreement dated [●] (the “Guarantee Agreement”) – Exclusion Notice

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

With reference to your Inclusion Notice dated [●], we herewith notify you that, unless clauses 6.2(d)(i)(a), 6.2(d)(ii)(a) or 6.2(e) apply, the following SME Transaction(s) are to be excluded from the Portfolio:

[*description of the SME Transaction*] (the “**Excluded SME Transaction(s)**”)

and, in accordance with Clause 6.2 of the Guarantee Agreement (*Exclusion Process*), we hereby inform you that the Excluded SME Transaction(s) [is] [are] excluded from the benefit of the Guarantee,.

The aggregate original principal amount of Excluded SME Transactions is [●].

[*additional instructions to be inserted*]

[Pursuant to Clause 11 (*Right of Clawback*) of the Guarantee Agreement, we hereby require you to repay to us within ten Business Days of the date of this Exclusion Notice any payment made under the Payment Demand dated [●] and made by the Counterparty on [●] in relation to the Excluded SME Transaction(s).]

Yours faithfully

for and on behalf of

the European Investment Fund

SCHEDULE 5
FORM OF PAYMENT DEMAND

To: the European Investment Fund

96 boulevard Konrad Adenauer

L-2968 Luxembourg

Attention: [JEREMIE – First Loss Portfolio Guarantee Agreement]

From: [Intermediary]

[Date]

Dear Sir, Madam,

**Re: JEREMIE - First Loss Portfolio Guarantee Agreement dated [●] (the “Guarantee Agreement”)
– Payment Demand**

Save as otherwise provided in this Payment Demand, terms defined in the Guarantee Agreement shall have the same meanings when used in this Payment Demand.

We herewith notify you that we have suffered a Defaulted Amount related to the Covered SME Transaction(s) detailed in the Payment Demand Schedule [[we attach hereto] / [we have sent to you via email] and that, in accordance with Clause 8 of the Guarantee Agreement (Payment Demands), we request you to pay an amount of [●] (the “**Amount**”) to the credit of the following bank account *IBAN format and SWIFT Code*.

We hereby certify that each Covered SME Transaction to which this Payment Demand relates complies with the Eligibility Criteria and all other applicable terms of the Guarantee Agreement.

[[We attach hereto] / [we have sent to you via email] the Payment Demand Schedule.

We hereby certify compliance of this Payment Demand with all requirements of Clause 8 of the Guarantee Agreement (*Payment Demands*). We hereby represent that we have good title to each of the Covered SME Transactions to which this Payment Demand relates and that each such Covered SME Transactions is free and clear of any Security on such date. We hereby represent that no Event of Default or Potential Event of Default has occurred and is continuing in respect thereof.

Yours faithfully

for and on behalf of

[the Intermediary]

SCHEDULE 5A
FORM OF PAYMENT DEMAND SCHEDULE

4.A PART I

A.1.1. Fiscal number	A.2.1. SME Transaction reference	C.1. SME Transaction Defaulted, Accelerated or restructured	C.1.1 Date of default, acceleration or restructuring	C.2. SME Transaction currency	C.2.1 Relevant FX Rate	C.3. Loss amount in principal	C.4 Unpaid Interest	C.5 Loss amount in principal + unpaid interest	C.6 Loss Recovery amount	C.7. Amount due under the Guarantee
<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i> (dd/mm/yyyy)	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i> (C5 - C6)* Guarantee Rate

4.A PART II. CUMULATIVE PAYMENT DEMANDS (if applicable)

Payment Demand sent on(dd/mm/yyyy)	Currency	Total amount to be paid under the Guarantee	Total Loss Recoveries to be deducted	Cumulative amount paid under the Guarantee
<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>

SCHEDULE 6
FORM OF RECOVERIES NOTICE

To: the European Investment Fund

96 boulevard Konrad Adenauer

L-2968 Luxembourg

Attention: [JEREMIE – First Loss Portfolio Guarantee Agreement]

From: [Intermediary]

[Date]

Dear Sir, Madam,

**Re: JEREMIE - First Loss Portfolio Guarantee Agreement dated [●] (the “Guarantee Agreement”)
– Recoveries Notice**

Save as otherwise provided in this notice, terms defined in the Guarantee Agreement shall have the same meanings when used in this notice.

Under Clause 12 (*Recovery*) the Guarantors are entitled to a percentage of each Recovery equal to the Guarantee Rate on a *pari passu* basis with the Intermediary.

The Intermediary has recovered up to [*specify amount*] with respect to the attached defaulted SME Transactions (Annex A).

The Guarantors are entitled to receive an amount of EUR [*specify amount*] which is equal to [*specify Guarantee Rate*]% of the aggregate Recoveries.

Payment by the Intermediary will be made in Euros to the following account [*specify account number*] in accordance with the Guarantee Agreement.

For the purpose of the calculations, the Relevant FX Rate (if applicable) applied is the rate applicable on [*indicate day*] at [*specify time*].

This payment is made under Clause 12 (*Recovery*).

Yours faithfully

Name

[Intermediary]

Annex A

Loss Recoveries

A.1.1.	A.2.1.	C.2.	C.2.1	C.8.	C.8.1
Fiscal number	SME Transaction reference	SME Transaction currency	Relevant FX Rate	Loss Recovery Date	Loss Recovery amount
<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory</i>	<i>Mandatory (dd/mm/yyyy)</i>	<i>Mandatory</i>

SCHEDULE 7

REPRESENTATIONS

Representations of the Intermediary

1. Status

- a) It is duly incorporated and validly existing under the law of its jurisdiction of incorporation (which is set out in the Specific Terms);
- b) It has the power to own its assets and carry on its business as it is being conducted.

2. Binding obligations

The obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations in accordance with their terms.

3. Non-conflict with other obligations

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

- a) any law or regulation (including any of its licenses or permits issued by any of the regulatory authorities of its places of business and the Relevant Jurisdiction), 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.

4. Power and authority

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, this Agreement to which it is a party and the transactions contemplated by this Agreement.

5. 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 this Agreement; and
 - (ii) to make this Agreement to which it is a party admissible in evidence in its jurisdiction of incorporation,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 Intermediary, including, as the case may be, lending or leasing activities, have been obtained or effected and are in full force and effect.

6. No default

- a) No Event of Default or Potential Event of Default with respect to it is continuing or might reasonably be expected to result from the entering into this Agreement.
 - b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or to which its assets are subject which might have a Material Adverse Effect.
- 7. No misleading information
 - a) Any factual information provided by it for the purposes of this Agreement (including any information provided before the Effective Date) 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.
- 8. Governing law and enforcement
 - a) The choice of English law as the governing law of this Agreement will be recognised and enforced in its jurisdiction of incorporation or, as the case may be, of establishment.
 - b) Any judgment given by the courts of England in relation to this Agreement will be recognised and enforced in its jurisdiction of incorporation or, as the case may be, of establishment.
- 9. Proceedings

It 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.

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 it.
- 10. SME Transactions

The documents governing the SME Transactions are legal, valid, binding and enforceable under applicable law.
- 11. Good faith

It has entered into this Agreement in good faith.
- 12. Restricted Sectors

At the date of this Agreement its business does not focus on one or more of the Restricted Sectors.
- 13. Compliance with Eligibility Criteria

At any time, subject to Clause 6 (Portfolio Inclusion and Exclusion Processes), each SME Transaction included in the Portfolio complies with the Eligibility Criteria.

Representations of the EIF

1. Status

- (i) It enjoys legal personality, is governed by its own Statutes; and
- (ii) It has the power to own its assets and carry on its business as it is being conducted.

2. Binding obligations

The obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations.

3. Non-conflict with other obligations

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

- (i) any law or regulation applicable to it;
- (ii) its constitutional documents; or
- (iii) any agreement or instrument binding upon it or any of its assets.

4. Power and authority

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, this Agreement to which it is a party and the transactions contemplated by this Agreement.

5. Validity and admissibility in evidence

All authorisations required or desirable to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Agreement have been obtained or effected and are in full force and effect.

6. No default

- (i) No Event of Default or Potential Event of Default with respect to it is continuing or might reasonably be expected to result from the entering into this Agreement.
- (ii) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or to which its assets are subject which might have a Material Adverse Effect.

7. No misleading information

- (i) Any factual information provided by it for the purposes 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.
- (ii) 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.

8. Proceedings

It 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.

No litigation, arbitration or administrative proceedings 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 it.

9. Good faith

It has entered into this Agreement in good faith.

Representations of SZRF

1. Status

It has the power to own its assets and carry on its business as it is being conducted.

2. Binding obligations

The obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations.

3. Non-conflict with other obligations

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

- (i) any law or regulation applicable to it;
- (ii) its constitutional documents; or
- (iii) any agreement or instrument binding upon it or any of its assets.

4. Power and authority

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, this Agreement to which it is a party and the transactions contemplated by this Agreement.

5. Validity and admissibility in evidence

All authorisations required or desirable to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Agreement have been obtained or effected and are in full force and effect.

6. No default

- (i) No Event of Default or Potential Event of Default with respect to it is continuing or might reasonably be expected to result from the entering into this Agreement.
- (ii) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or to which its assets are subject which might have a Material Adverse Effect.

7. No misleading information

- (i) Any factual information provided by it for the purposes 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.
- (ii) 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.

8. Proceedings

It 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.

No litigation, arbitration or administrative proceedings 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 it.

9. Good faith

It has entered into this Agreement in good faith.

SCHEDULE 8

SME REPORT



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 garančný mechanizmus 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. Garančný mechanizmus 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., Panenská 21, 811 03 Bratislava.

A. IDENTIFIKAČNÉ ÚDAJE PRIJÍMATEĽA NÁVRATNEJ FINANČNEJ POMOCI A PROJEKTU

A.1 Prijímateľ

1. Identifikácia prijímateľa

¹ Príklad: podpis úverovej zmluvy je 1. 9. 2012. Monitorovaciu správu zašle prijímateľ tri krát, 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.

Názov / meno / obchodné meno			
Sídlo			
PSC	Obec	Ulica	Číslo
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	Evidencia o zamestnancoch prijímateľa pomoci.	Začiatok realizácie projektu ² = 0	

² Začiatok realizácie projektu je deň podpisu úverovej zmluvy.

Počet novovytvorených pracovných miest obsadených mužmi	miesta: - neexistovalo pre začiatím 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,¹</u> - 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 novovytvorených pracovných miest obsadených ženami				
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	Účtovné jednotky účtujúce v sústave podvojného účtovníctva	Stav za bežné	

¹ 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.

	vedenia účtovníctva). Podnik, ktorý v roku 2007 nevykonával podnikateľskú činnosť uvedie ako východisko "0".	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	účtovné obdobie v roku 2007	
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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.

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.

SCHEDULE 9

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 financing of the production of and trade in weapons and ammunition of any kind. This restriction does not apply to the extent such activities are part of or accessory to explicit European Union policies

4. Casinos

Casinos and equivalent enterprises.

5. IT Sector Restrictions

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

aim specifically at:

(i) supporting any activity included in the Restricted Sectors referred to under 1. to 4. (inclusive) above;

(ii) internet gambling and online casinos; or

(iii) pornography,

or which are intended to enable to illegally:

(iv) enter into electronic data networks; or

(v) download electronic data.

6. Life Science Sector Restrictions

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

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

(ii) Genetically Modified Organisms ("**GMOs**"),

the Counterparty will require from the Intermediary 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 10
FORM OF TRIGGER EVENT NOTICE

To: the European Investment Fund

96 boulevard Konrad Adenauer

L-2968 Luxembourg

Attention: [JEREMIE – First Loss Portfolio Guarantee]

From: [Intermediary]

[Date]

Dear Sir, Madam,

Re: JEREMIE First Loss Portfolio Guarantee – Guarantee Agreement dated [●] (the “Guarantee Agreement”) – Trigger Event Notice

We herewith notify you that [a Trigger Event has occurred] [no Trigger Event has occurred] on [●]
[specify relevant Trigger Event Determination Date]

[as at [●] the Actual Portfolio Volume is equal to [●] and represents [●]% of the Agreed Portfolio Volume]
and/or

[as at [●] the Actual Defaulted Amounts Rate is equal to [●]% and the aggregate Defaulted Amounts
incurred are equal to EUR [●]]

and/or

[as at [●] the Collateralisation Rate Trigger of the Portfolio is equal to [●]% and the aggregate value of
the Collateral is equal to [●]]

Yours faithfully

for and on behalf of

[the Intermediary]

SIGNATURES

SIGNED on behalf of the **EUROPEAN INVESTMENT FUND**

By:

Title: Richard PELLY

Date: Chief Executive

SIGNED on behalf of **SLOVENSKÝ ZÁRUČNÝ A ROZVOJOVÝ FOND, S.R.O.**

By: Richard PELLY (Chief executive of the European investment fund)

Title: authorised attorney under the power of attorney dated 01.06.2011

Date:

SIGNED on behalf of **SLOVENSKÁ ZÁRUČNÁ A ROZVOJOVÁ BANKA, A.S.**

By: Dušan Tomašec

Title: Chairman of the Board of Directors

Date:

By: Peter Ševčovic

Title: Deputy Chairman of the Board of Directors

Date: