



Ref: The Guarantee and Counter-Guarantee Facility under Horizon 2020 Framework Programme with respect to Research and Innovation driven SMEs and Small Mid-caps – Open Call for Expression of Interest to select Financial Intermediaries published on 4 August 2014 (updated on 15 June 2016)

EIF hereby offers to any Financial Intermediary that has already entered into a (Counter-)Guarantee Agreement with EIF before 31 March 2016 to amend the (Counter-)Guarantee Agreement with the purpose to reflect the updated eligibility criteria set out in the [Termsheet](#) (updated on 15 June 2016) (the “Offer”). The update consists mainly of adding new Innovation Eligibility Criteria (iv) (j) and (k), in addition to some wording changes in the Innovation Eligibility Criteria (i), (iii) and (iv) and the Final Recipient Transaction Eligibility Criterion (vi).

The proposed amended clauses 5.2 (Eligibility Criteria - Definitions) and 5.3 (Eligibility Criteria – Time of Compliance) of the (Counter-)Guarantee Agreement are set out in the [form of amendment of Guarantee Agreement](#) or [form of amendment of Guarantee Agreement / On-Lending Structure](#) or [the form of amendment of Counter-Guarantee Agreement](#) you find here.

In the event of any inconsistency between the terms of the (Counter-)Guarantee Agreement and this Offer, the (Counter-)Guarantee Agreement shall be construed so as to give effect to the substance of the amendments set out in this Offer.

Any Financial Intermediary that wishes to accept this Offer shall send to EIF a duly signed letter substantially in the [form of acceptance of Guarantee Agreement](#) or the [form of acceptance of Guarantee Agreement/ On-Lending Structure](#) or the [form of acceptance of Counter-Guarantee Agreement](#) you find here (the “Acceptance”). Detailed [execution instructions](#) you find here.

The amendment to the (Counter-)Guarantee Agreement made pursuant to the agreement reached by the Offer and the Acceptance will take effect as of the first day of the Reporting Period following receipt of the Acceptance by EIF.

This Offer is final and no additional conditions or counter-proposals can be accepted. This Offer remains valid until the date EIF removes it from its website. No Acceptance can be made after such date.

In case of an umbrella Guarantee Agreement entered into between EIF, a Financial Intermediary and a Coordination Entity, the Acceptance shall be returned by the Coordination Entity and signed by both the Coordination Entity and the Financial Intermediary.

Capitalised terms used in this Offer shall, unless otherwise defined herein, have the meanings attributed to them in the Open Call for Expression of Interest. This does not apply to capitalised terms used in the form of amendment and form of acceptance.

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

Authorised for and on behalf of the EIF:

Pier Luigi GILIBERT
Chief Executive of the European Investment Fund

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Clauses 5.2 (*Eligibility Criteria - Definitions*) and 5.3 (*Eligibility Criteria - Time of Compliance*) of the Guarantee Agreement are amended as follows:

“5.2 Definitions

For the purposes of the Agreement:

“Innovation Eligibility Criteria” means the following criteria:

- (i) the Final Recipient is an SME or a Small Mid-cap that intends to use the Final Recipient Transaction to invest in producing, developing or implementing new or substantially improved (i) products, processes or services, or (ii) production or delivery methods, or (iii) organisational or process innovation including business models that are innovative (as defined in the paragraphs 15(y) and 15 (bb) of 1.3 Definitions of the Communication from the Commission C(2014) 3282 of 21 May 2014 on the Framework for state aid for research and development and innovation) and where there is a risk of technological, industrial or business failure as evidenced by an evaluation carried out by an external expert;
- (ii) the Final Recipient is a "fast-growing enterprise" which is a Final Recipient operating in a market for less than 12 years following its first commercial sale and with an average annualised endogenous growth in employees or in turnover greater than 20% a year, over a three-year period, and with ten or more employees at the beginning of the observation period;
- (iii) the Final Recipient has been operating in a market for less than 7 years following its first commercial sale and its R&I Costs represent at least 5% of its total operating costs in at least one of the three years preceding the Final Recipient's application for the Final Recipient Transaction, or in the case of an enterprise (and particularly a start-up) without any financial history, according to its current financial statements;
- (iv) the Final Recipient is an SME or Small Mid-cap that shall have a significant innovation potential or be an "R&I-intensive enterprise", by satisfying at least one of the following conditions:
 - (a) the Final Recipient's R&I annual expenses are equal or exceed 20% of the Final Recipient Transaction amount as per the Final Recipient's latest statutory financial statements, under the condition that the Final Recipient's business plan indicates an increase of its R&I expenses at least equal to the Final Recipient Transaction amount;
 - (b) the Final Recipient undertakes to spend an amount at least equal to 80% of the Final Recipient Transaction amount on R&I activities as indicated in its business plan and the remainder on costs necessary to enable such activities;
 - (c) the Final Recipient has been formally awarded grants, loans or guarantees from European R&I support schemes (e.g. Horizon 2020 or FP7) or through

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their funding instruments (e.g. Joint Technology Initiatives or “Eurostars”) or regional, national research or innovation support schemes over the last thirty-six (36) months, under the condition that the Final Recipient Transaction is not covering the same expense;

- (d) the Final Recipient has been awarded over the last twenty-four (24) months an R&D prize or Innovation prize provided by an EU institution or an EU body;
- (e) the Final Recipient has registered at least one technology right (such as patent, utility model, design right, topography of semiconductor products, supplementary protection certificate for medicinal products or other products for which such supplementary protection certificates may be obtained, plant breeder’s certificate or software copyright) in the last twenty-four (24) months, and the Final Recipient Transaction purpose is to enable, directly or indirectly, the use of this technology right;
- (f) the Final Recipient is an early stage SME and has received an investment over the last twenty-four (24) months from a venture capital investor or from a business angel being a member of a business angels network; or such venture capital investor or business angel is a shareholder of the Final Recipient at the time of the Final Recipient’s application for the Final Recipient Transaction;
- (g) the Final Recipient requires a risk finance investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50% of its average annual turnover in the preceding 5 years;
- (h) the Final Recipient’s R&I Costs represent at least 10% of its total operating costs in at least one of the three years preceding the Final Recipient’s application for the Final Recipient Transaction, or in the case of an enterprise without any financial history, as per its current financial statements;
- (i) the Final Recipient is a Small Mid-cap and its R&I Costs represent:
 - (A) either, at least 15% of its total operating costs in at least one of the three years preceding the Final Recipient’s application for the Final Recipient Transaction;
 - (B) or, at least 10% per year of its total operating costs in the three years preceding the Final Recipient’s application for the Final Recipient Transaction;
- (j) The Final Recipient has incurred R&I expenses qualified in the past 36 months by competent national or regional bodies or institutions as part of general support measures approved by the European Commission and designed to incentivize companies to invest in R&I, provided that i) such body or institution

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is independent of the Financial Intermediary and the Final Recipient and ii) the Final Recipient Transaction covers incremental expenditure as indicated in the Final Recipient's business plan and iii) the Final Recipient Transaction is not covering the same eligible costs already supported by aforementioned measures; or

(k) The Final Recipient has been designated in the past 36 months as an innovative company by an EU or national or regional institution or body, provided that in each case

(A) the designation is based on the publicly available criteria where such criteria:

- shall not be limited to or otherwise favour any particular industry or sector, and
- shall reflect at least one of the Innovation Eligibility Criteria except the Innovation Eligibility Criterion referred to in item (iv) (d), or shall reflect the substance of at least one of these criteria but shall not be less stringent; and

(B) the body or institution is independent of the Financial Intermediary and the Final Recipient; and

(C) the Final Recipient Transaction covers incremental expenditure as indicated in the Final Recipient's business plan.

“Final Recipient Eligibility Criteria” means the following criteria:

(i) the Final Recipient shall not perform R&I activities which are related to:

(a) illegal activities according to the applicable legislation in the country of the Intermediary or the Final Recipient (including national, Union and international legislation, including the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights and its Supplementary Protocols); or

(b) any R&I Excluded Activities;

(ii) the Final Recipient shall not, to its knowledge, be in an Exclusion Situation;

(iii) the Final Recipient shall not be established in a Non-Cooperating Jurisdiction;

(iv) the Final Recipient shall be an unlisted Final Recipient, without prejudice to the possibility for such companies to be quoted on an alternative trading platform, as defined in Article 4(1)(15) of Directive 2004/39/EC, where the majority of the financial instruments admitted to trading are issued by Final Recipients;

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- (v) the Final Recipient shall not be an “undertaking in difficulty” within the meaning of the Block Exemption Regulation;
- (vi) the Final Recipient shall 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 Final Recipient);
- (vii) the Final Recipient shall be established and operating in at least one Participating Country;
- (viii) where the purpose of a Final Recipient Transaction is a business transfer:
 - (a) the Final Recipient Transaction must be combined with new capital representing at least 50% of the nominal amount of the Final Recipient Transaction; and
 - (b) the Final Recipient shall qualify as a Final Recipient as a result of such transfer and the Final Recipient shall either:
 - (i) comply with at least one of the Innovation Eligibility Criteria; or
 - (ii) undertake to use the Final Recipient Transaction for the acquisition of an enterprise, which shall comply with at least one of the Innovation Eligibility Criteria; and
- (ix) the Final Recipient enters into a Final Recipient Transaction (i) on its own behalf or (ii) on behalf of one or more of its partner or linked enterprises in the meaning of the Commission Recommendation, where at least one of such enterprises complies with one or more of the Innovation Eligibility Criteria, provided that the Innovation Eligibility Criteria listed in items (ii), (iv)(a) and (iv)(b) shall be assessed at the group level; and
- (x) the Additional Eligibility Criteria that are specified as “Final Recipient Eligibility Criteria” in the Specific Terms, if any.

“Final Recipient Transaction Eligibility Criteria” means the following criteria:

- (i) the Final Recipient Transaction shall be newly originated;
- (ii) the Final Recipient Transaction shall be entered into by the Intermediary by the Inclusion Period End Date;
- (iii) the purpose of the Final Recipient Transaction shall be (1) an investment in tangible or intangible assets, (2) working capital or (3) business transfers;
- (iv) the Final Recipient Transaction shall not be in the form of a mezzanine loan or mezzanine bond, a subordinated debt or a quasi-equity transaction;

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- (v) if the Final Recipient Transaction is a lease, it shall be in the form of a Finance Lease;
- (vi) if the Final Recipient Transaction is a bond, it shall be in the form of a Mini Bond;
- (vii) the amount committed by the Intermediary under the Final Recipient Transaction shall not be lower, other than as a result of a Permitted Final Recipient Transaction Amendment, than the Minimum Final Recipient Transaction Committed Amount;
- (viii) the amount committed by the Intermediary under the Final Recipient Transaction shall not exceed the Maximum Final Recipient Transaction Committed Amount;
- (ix) the Final Recipient Transaction shall have a fixed repayment schedule or be a Revolving Final Recipient Transaction, provided that this clause (viii) shall not affect the Intermediary's right to receive prepayments (either voluntarily or mandatorily) pursuant to the terms of a Mini Bond;
- (x) the Final Recipient Transaction's maturity shall:
 - (a) not be lower than the Minimum Final Recipient Transaction Maturity, and
 - (b)
 - (i) in respect of any Final Recipient Transaction other than a Revolving Final Recipient Transaction, other than as a result of a Permitted Final Recipient Transaction Amendment, not exceed the Maximum Final Recipient Transaction Maturity, or
 - (ii) in respect of any Revolving Final Recipient Transaction, not exceed the Maximum Revolving Final Recipient Transaction Maturity;
- (xi) the customary risk spread applicable to the relevant Final Recipient Transaction included in the Portfolio shall be reduced by the level of the Financial Benefit;
- (xii) the Final Recipient Transaction shall not be affected by an Irregularity or fraud;
- (xiii) the Final Recipient Transaction shall be denominated in the Base Currency or Additional Currency; and
- (xiv) the Additional Eligibility Criteria that are specified as "Final Recipient Transaction Eligibility Criteria" in the Specific Terms, if any;

whereby "**Mini Bond**" means a bond either issued by a Final Recipient and subscribed to by the Intermediary or purchased on issuance by the Intermediary from the Final Recipient.

"**Portfolio Eligibility Criteria**" means the Additional Eligibility Criteria that are specified as "Portfolio Eligibility Criteria" in the Specific Terms, if any.

5.3 Time of Compliance

- (a) Final Recipient Transactions shall comply with the Eligibility Criteria at all times while included in the Portfolio, except for the following Eligibility Criteria which shall be met as follows:

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- (i) On the signing date of the document(s) evidencing the relevant Final Recipient Transaction:
 - (a) the Final Recipient Eligibility Criteria set out in items (ii) to (ix); and
 - (b) the Innovation Eligibility Criteria, except for those set out in items (iv)(c) to (iv)(k).
 - (ii) On the date of the document(s) evidencing the application for the relevant Final Recipient Transaction: the Innovation Eligibility Criteria set out in items (iv)(c) to (iv)(k).
- (b) Notwithstanding Clause 5.3(a) above, 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 Final Recipient Transaction only.”

Clauses 5.2 (*Eligibility Criteria - Definitions*) and 5.3 (*Eligibility Criteria - Time of Compliance*) of the Guarantee Agreement / On-Lending Structure are amended as follows:

“5.2 Definitions

For the purposes of the Agreement:

“Innovation Eligibility Criteria” means the following criteria:

- (i) the Final Recipient is an SME or a Small Mid-cap that intends to use the Final Recipient Transaction to invest in producing, developing or implementing new or substantially improved (i) products, processes or services, or (ii) production or delivery methods, or (iii) organisational or process innovation including business models that are innovative (as defined in the paragraphs 15(y) and 15 (bb) of 1.3 Definitions of the Communication from the Commission C(2014) 3282 of 21 May 2014 on the Framework for state aid for research and development and innovation) and where there is a risk of technological, industrial or business failure as evidenced by an evaluation carried out by an external expert;
- (ii) the Final Recipient is a "fast-growing enterprise" which is a Final Recipient operating in a market for less than 12 years following its first commercial sale and with an average annualised endogenous growth in employees or in turnover greater than 20% a year, over a three-year period, and with ten or more employees at the beginning of the observation period;
- (iii) the Final Recipient has been operating in a market for less than 7 years following its first commercial sale and its R&I Costs represent at least 5% of its total operating costs in at least one of the three years preceding the Final Recipient's application for the Final Recipient Transaction, or in the case of an enterprise (and particularly a start-up) without any financial history, according to its current financial statements;
- (iv) the Final Recipient is an SME or Small Mid-cap that shall have a significant innovation potential or be an "R&I-intensive enterprise", by satisfying at least one of the following conditions:
 - (a) the Final Recipient's R&I annual expenses are equal or exceed 20% of the Final Recipient Transaction amount as per the Final Recipient's latest statutory financial statements, under the condition that the Final Recipient's business plan indicates an increase of its R&I expenses at least equal to the Final Recipient Transaction amount;
 - (b) the Final Recipient undertakes to spend an amount at least equal to 80% of the Final Recipient Transaction amount on R&I activities as indicated in its business plan and the remainder on costs necessary to enable such activities;
 - (c) the Final Recipient has been formally awarded grants, loans or guarantees from European R&I support schemes (e.g. Horizon 2020 or FP7) or through

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- their funding instruments (e.g. Joint Technology Initiatives or “Eurostars”) or regional, national research or innovation support schemes over the last thirty-six (36) months, under the condition that the Final Recipient Transaction is not covering the same expense;
- (d) the Final Recipient has been awarded over the last twenty-four (24) months an R&D prize or Innovation prize provided by an EU institution or an EU body;
 - (e) the Final Recipient has registered at least one technology right (such as patent, utility model, design right, topography of semiconductor products, supplementary protection certificate for medicinal products or other products for which such supplementary protection certificates may be obtained, plant breeder’s certificate or software copyright) in the last twenty-four (24) months, and the Final Recipient Transaction purpose is to enable, directly or indirectly, the use of this technology right;
 - (f) the Final Recipient is an early stage SME and has received an investment over the last twenty-four (24) months from a venture capital investor or from a business angel being a member of a business angels network; or such venture capital investor or business angel is a shareholder of the Final Recipient at the time of the Final Recipient’s application for the Final Recipient Transaction;
 - (g) the Final Recipient requires a risk finance investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50% of its average annual turnover in the preceding 5 years;
 - (h) the Final Recipient’s R&I Costs represent at least 10% of its total operating costs in at least one of the three years preceding the Final Recipient’s application for the Final Recipient Transaction, or in the case of an enterprise without any financial history, as per its current financial statements;
 - (i) the Final Recipient is a Small Mid-cap and its R&I Costs represent:
 - (A) either, at least 15% of its total operating costs in at least one of the three years preceding the Final Recipient’s application for the Final Recipient Transaction;
 - (B) or, at least 10% per year of its total operating costs in the three years preceding the Final Recipient’s application for the Final Recipient Transaction;
 - (j) The Final Recipient has incurred R&I expenses qualified in the past 36 months by competent national or regional bodies or institutions as part of general support measures approved by the European Commission and designed to incentivize companies to invest in R&I, provided that i) such body or institution

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is independent of the Financial Intermediary, the On-Lending Bank and the Final Recipient and ii) the Final Recipient Transaction covers incremental expenditure as indicated in the Final Recipient's business plan and iii) the Final Recipient Transaction is not covering the same eligible costs already supported by aforementioned measures; or

(k) The Final Recipient has been designated in the past 36 months as an innovative company by an EU or national or regional institution or body, provided that in each case

(A) the designation is based on the publicly available criteria where such criteria:

- shall not be limited to or otherwise favour any particular industry or sector, and
- shall reflect at least one of the Innovation Eligibility Criteria except the Innovation Eligibility Criterion referred to in item (iv) (d), or shall reflect the substance of at least one of these criteria but shall not be less stringent; and

(B) the body or institution is independent of the Financial Intermediary, the On-Lending Bank and the Final Recipient; and

(C) the Final Recipient Transaction covers incremental expenditure as indicated in the Final Recipient's business plan.

“Final Recipient Eligibility Criteria” means the following criteria:

(i) the Final Recipient shall not perform R&I activities which are related to:

(a) illegal activities according to the applicable legislation in the country of the Intermediary or the Final Recipient (including national, Union and international legislation, including the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights and its Supplementary Protocols); or

(b) any R&I Excluded Activities;

(ii) the Final Recipient shall not, to its knowledge, be in an Exclusion Situation;

(iii) the Final Recipient shall not be established in a Non-Cooperating Jurisdiction;

(iv) the Final Recipient shall be an unlisted Final Recipient, without prejudice to the possibility for such companies to be quoted on an alternative trading platform, as defined in Article 4(1)(15) of Directive 2004/39/EC, where the majority of the financial instruments admitted to trading are issued by Final Recipients;

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- (v) the Final Recipient shall not be an “undertaking in difficulty” within the meaning of the Block Exemption Regulation;
- (vi) the Final Recipient shall not have a substantial focus on one or more Restricted Sectors (which determination shall be made by the On-Lending Bank in its discretion based, without limitation, on the proportionate importance of such sector on revenues, turnover or client base of the relevant Final Recipient);
- (vii) the Final Recipient shall be established and operating in at least one Participating Country;
- (viii) where the purpose of a Final Recipient Transaction is a business transfer:
 - (a) the Final Recipient Transaction must be combined with new capital representing at least 50% of the nominal amount of the Final Recipient Transaction; and
 - (b) the Final Recipient shall qualify as a Final Recipient as a result of such transfer and the Final Recipient shall either:
 - (i) comply with at least one of the Innovation Eligibility Criteria; or
 - (ii) undertake to use the Final Recipient Transaction for the acquisition of an enterprise, which shall comply with at least one of the Innovation Eligibility Criteria; and
- (ix) the Final Recipient enters into a Final Recipient Transaction (i) on its own behalf or (ii) on behalf of one or more of its partner or linked enterprises in the meaning of the Commission Recommendation, where at least one of such enterprises complies with one or more of the Innovation Eligibility Criteria, provided that the Innovation Eligibility Criteria listed in items (ii), (i) and (iv)(b) shall be assessed at the group level; and
- (x) the Additional Eligibility Criteria that are specified as “Final Recipient Eligibility Criteria” in the Specific Terms, if any.

“Final Recipient Transaction Eligibility Criteria” means the following criteria:

- (i) the Final Recipient Transaction shall be newly originated;
- (ii) the Final Recipient Transaction shall be entered into by the On-Lending Bank by the Inclusion Period End Date;
- (iii) the purpose of the Final Recipient Transaction shall be (1) an investment in tangible or intangible assets, (2) working capital or (3) business transfers;
- (iv) the Final Recipient Transaction shall not be in the form of a mezzanine loan or mezzanine bond, a subordinated debt or a quasi-equity transaction;

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- (v) if the Final Recipient Transaction is a lease, it shall be in the form of a Finance Lease;
- (vi) if the Final Recipient Transaction is a bond, it shall be in the form of a Mini Bond;
- (vii) the amount committed by the On-Lending Bank under the Final Recipient Transaction shall not be lower, other than as a result of a Permitted Final Recipient Transaction Amendment, than the Minimum Final Recipient Transaction Committed Amount;
- (viii) the amount committed by the On-Lending Bank under the Final Recipient Transaction shall not exceed the Maximum Final Recipient Transaction Committed Amount;
- (ix) the Final Recipient Transaction shall have a fixed repayment schedule or be a Revolving Final Recipient Transaction, provided that this clause (ix) shall not affect the Intermediary's right to receive prepayments (either voluntarily or mandatorily) pursuant to the terms of a Mini Bond;
- (x) the Final Recipient Transaction's maturity shall:
 - (a) not be lower than the Minimum Final Recipient Transaction Maturity, and
 - (b)
 - (i) in respect of any Final Recipient Transaction other than a Revolving Final Recipient Transaction, other than as a result of a Permitted Final Recipient Transaction Amendment, not exceed the Maximum Final Recipient Transaction Maturity, or
 - (ii) in respect of any Revolving Final Recipient Transaction, not exceed the Maximum Revolving Final Recipient Transaction Maturity;
- (xi) the customary risk spread applicable to the relevant Final Recipient Transaction included in the Portfolio shall be reduced by the level of the Financial Benefit;
- (xii) the Final Recipient Transaction shall not be affected by an Irregularity or fraud;
- (xiii) the Final Recipient Transaction shall be denominated in the Base Currency or Additional Currency;
- (xiv) the On-Lending Bank under the Final Recipient Transaction:
 - (a) the On-Lending Bank shall not perform R&I activities which are related to:
 - i) illegal activities according to the applicable legislation in the country of the Intermediary or the Final Recipient (including national, Union and international legislation, including the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights and its Supplementary Protocols); or
 - ii) any R&I Excluded Activities;

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- (b) the On-Lending Bank shall not, to its knowledge, be in an Exclusion Situation;
 - (c) the On-Lending Bank shall not be established in a Non-Cooperating Jurisdiction;
 - (d) the Pass-Through Institution (if applicable) shall be established in the same jurisdiction as the relevant On-Lending Bank that entered into the underlying Final Recipient Transaction;
 - (e) the Intermediary shall rank at least pari passu with the On-lending Bank with regard to any Recoveries relating to the Final Recipient Transaction and the Intermediary shall undertake that at least pari passu ranking between the Intermediary and the On-Lending Bank and, if applicable, between any subsequent On-Lending Banks shall be reflected in the relevant subsequent agreements between such entities; and
 - (f) the On-Lending Bank (except if it is a Pass-Through Institution) shall maintain an economic exposure of at least 20% of the outstanding principal amount of the Final Recipient Transaction (the "Portion"), and shall not enter into any credit support, guarantee or other transfer of risk arrangements with respect to this Portion, provided that any collateral, security or guarantee payable to the On-Lending Bank that qualify as Recoveries shall not be taken into account for this purpose; and
- (xv) the Additional Eligibility Criteria that are specified as "Final Recipient Transaction Eligibility Criteria" in the Specific Terms.

whereby "**Mini Bond**" means a bond either issued by a Final Recipient and subscribed to by the On-Lending Bank or purchased on issuance by the On-Lending Bank from the Final Recipient.

"**Portfolio Eligibility Criteria**" means the Additional Eligibility Criteria that are specified as "Portfolio Eligibility Criteria" in the Specific Terms, if any.

5.3 Time of Compliance

- (a) Final Recipient Transactions shall comply with the Eligibility Criteria at all times while included in the Portfolio, except for the following Eligibility Criteria which shall be met as follows:
 - (i) On the signing date of the document(s) evidencing the relevant Final Recipient Transaction:
 - (a) the Final Recipient Eligibility Criteria set out in items (ii) to (ix);
 - (b) the Innovation Eligibility Criteria, except for those set out in items (iv)(c) to (iv)(i); and
 - (c) the Final Recipient Transaction Eligibility Criteria set out in items (xiii)(a) to (d).

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- (ii) On the date of the document(s) evidencing the application for the relevant Final Recipient Transaction: the Innovation Eligibility Criteria set out in items (iv)(c) to (iv)(i).
- (b) Notwithstanding Clause 5.3(a) above, 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 Final Recipient Transaction only.”

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Clauses 5.2 (*Eligibility Criteria - Definitions*) and 5.3 (*Eligibility Criteria - Time of Compliance*) of the Counter-Guarantee Agreement are amended as follows:

“5.2 Definitions

For the purposes of the Agreement:

“Sub-Operation Eligibility Criteria” means the following criteria:

- (i) the guarantee rate of the Sub-Operation shall not be higher than 80%;
- (ii) the Intermediary shall at least rank *pari passu* with the Sub-Intermediary with respect to any recoveries relating to the Final Recipient Transaction(s) covered (directly or indirectly) by the Sub-Operation and, if applicable, the Intermediary shall undertake that at least *pari passu* ranking between the Intermediary and the Sub-Intermediary and between any subsequent Sub-Intermediaries shall be reflected in the relevant subsequent agreements between such entities;
- (iii) the customary guarantee-fee rate charged by the Intermediary to the Final Recipient or the Sub-Intermediary, shall be reduced by the level of the Financial Benefit;
- (iv) the Sub-Operation shall be entered into and included in the Portfolio by the Inclusion Period End Date;
- (v) the Sub-Operation shall cover, directly or indirectly, the full principal amount of the relevant underlying Final Recipient Transaction;
- (vi) the Sub-Operation currency shall be the relevant underlying Final Recipient Transaction currency;
- (vii) the Sub-Operation shall cover (directly or indirectly) Final Recipients and Final Recipient Transactions which comply with the following criteria:
 - (a) at least one of the Innovation Eligibility Criteria;
 - (b) each of the Final Recipient Eligibility Criteria;
 - (c) each of the Final Recipient Transaction Eligibility Criteria; and
- (viii) the Additional Eligibility Criteria that are specified as “Sub-Operation Eligibility Criteria” in the Specific Terms, if any.

“Sub-Intermediary Eligibility Criteria” means the following criteria:

- (i) the Sub-Intermediary shall not perform R&I activities which are related to:
 - (a) illegal activities according to the applicable legislation in the country of the Intermediary, Sub-Intermediary or the Final Recipient (including national, Union and international legislation, including the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights and its Supplementary Protocols); or

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- (b) any R&I Excluded Activities;
- (ii) the Sub-Intermediary shall not, to its knowledge, be in an Exclusion Situation;
- (iii) the Sub-Intermediary shall not be established in a Non-Cooperating Jurisdiction; and
- (iv) the Sub-Intermediary shall 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 Sub-Intermediary).

“Innovation Eligibility Criteria” means the following criteria:

- (i) the Final Recipient is an SME or a Small Mid-cap that intends to use the Final Recipient Transaction to invest in producing, developing or implementing new or substantially improved (i) products, processes or services, or (ii) production or delivery methods, or (iii) organisational or process innovation including business models that are innovative (as defined in the paragraphs 15(y) and 15 (bb) of 1.3 Definitions of the Communication from the Commission C(2014) 3282 of 21 May 2014 on the Framework for state aid for research and development and innovation) and where there is a risk of technological, industrial or business failure as evidenced by an evaluation carried out by an external expert;
- (ii) the Final Recipient is a "fast-growing enterprise" which is a Final Recipient operating in a market for less than 12 years following its first commercial sale and with an average annualised endogenous growth in employees or in turnover greater than 20% a year, over a three-year period, and with ten or more employees at the beginning of the observation period;
- (iii) the Final Recipient has been operating in a market for less than 7 years following its first commercial sale and its R&I Costs represent at least 5% of its total operating costs in at least one of the three years preceding the Final Recipient's application for the Final Recipient Transaction, or in the case of an enterprise (and particularly a start-up) without any financial history, according to its current financial statements;
- (iv) the Final Recipient is an SME or Small Mid-cap that shall have a significant innovation potential or be an "R&I-intensive enterprise", by satisfying at least one of the following conditions:
 - (a) the Final Recipient's R&I annual expenses are equal or exceed 20% of the Final Recipient Transaction amount as per the Final Recipient's latest statutory financial statements, under the condition that the Final Recipient's business plan indicates an increase of its R&I expenses at least equal to the Final Recipient Transaction amount;

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- (b) the Final Recipient undertakes to spend an amount at least equal to 80% of the Final Recipient Transaction amount on R&I activities as indicated in its business plan and the remainder on costs necessary to enable such activities;
- (c) the Final Recipient has been formally awarded grants, loans or guarantees from European R&I support schemes (e.g. Horizon 2020 or FP7) or through their funding instruments (e.g. Joint Technology Initiatives or “Eurostars”) or regional, national research or innovation support schemes over the last thirty-six (36) months, under the condition that the Final Recipient Transaction is not covering the same expense;
- (d) the Final Recipient has been awarded over the last twenty-four (24) months an R&D prize or Innovation prize provided by an EU institution or an EU body;
- (e) the Final Recipient has registered at least one technology right (such as patent, utility model, design right, topography of semiconductor products, supplementary protection certificate for medicinal products or other products for which such supplementary protection certificates may be obtained, plant breeder’s certificate or software copyright) in the last twenty-four (24) months, and the Final Recipient Transaction purpose is to enable, directly or indirectly, the use of this technology right;
- (f) the Final Recipient is an early stage SME and has received an investment over the last twenty-four (24) months from a venture capital investor or from a business angel being a member of a business angels network; or such venture capital investor or business angel is a shareholder of the Final Recipient at the time of the Final Recipient’s application for the Final Recipient Transaction;
- (g) the Final Recipient requires a risk finance investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50% of its average annual turnover in the preceding 5 years;
- (h) the Final Recipient’s R&I Costs represent at least 10% of its total operating costs in at least one of the three years preceding the Final Recipient’s application for the Final Recipient Transaction, or in the case of an enterprise without any financial history, as per its current financial statements;
- (i) the Final Recipient is a Small Mid-cap and its R&I Costs represent:
 - (A) either, at least 15% of its total operating costs in at least one of the three years preceding the Final Recipient’s application for the Final Recipient Transaction;

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- (B) or, at least 10% per year of its total operating costs in the three years preceding the Final Recipient's application for the Final Recipient Transaction.
- (j) The Final Recipient has incurred R&I expenses qualified in the past 36 months by competent national or regional bodies or institutions as part of general support measures approved by the European Commission and designed to incentivize companies to invest in R&I, provided that i) such body or institution is independent of the Financial Intermediary, the Sub-Intermediary and the Final Recipient and ii) the Final Recipient Transaction covers incremental expenditure as indicated in the Final Recipient's business plan and iii) the Final Recipient Transaction is not covering the same eligible costs already supported by aforementioned measures; or
- (k) The Final Recipient has been designated in the past 36 months as an innovative company by an EU or national or regional institution or body, provided that in each case
- (A) the designation is based on the publicly available criteria where such criteria:
- shall not be limited to or otherwise favour any particular industry or sector, and
 - shall reflect at least one of the Innovation Eligibility Criteria except the Innovation Eligibility Criterion referred to in item (iv) (d), or shall reflect the substance of at least one of these criteria but shall not be less stringent; and
- (B) the body or institution is independent of the Financial Intermediary, the Sub-Intermediary and the Final Recipient; and
- (C) the Final Recipient Transaction covers incremental expenditure as indicated in the Final Recipient's business plan.

“Final Recipient Eligibility Criteria” means the following criteria:

- (i) the Final Recipient shall not perform R&I activities which are related to:
- (a) illegal activities according to the applicable legislation in the country of the Intermediary or the Final Recipient (including national, Union and international legislation, including the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights and its Supplementary Protocols); or
- (b) any R&I Excluded Activities;

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- (ii) the Final Recipient shall not, to its knowledge, be in an Exclusion Situation;
- (iii) the Final Recipient shall not be established in a Non-Cooperating Jurisdiction;
- (iv) the Final Recipient shall be an unlisted Final Recipient, without prejudice to the possibility for such companies to be quoted on an alternative trading platform, as defined in Article 4(1)(15) of Directive 2004/39/EC, where the majority of the financial instruments admitted to trading are issued by Final Recipients;
- (v) the Final Recipient shall not be an “undertaking in difficulty” within the meaning of the Block Exemption Regulation;
- (vi) the Final Recipient shall 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 Final Recipient);
- (vii) the Final Recipient shall be established and operating in at least one Participating Country;
- (viii) where the purpose of a Final Recipient Transaction is a business transfer:
 - (a) the Final Recipient Transaction must be combined with new capital representing at least 50% of the nominal amount of the Final Recipient Transaction; and
 - (b) the Final Recipient shall qualify as a Final Recipient as a result of such transfer and the Final Recipient shall either:
 - (i) comply with at least one of the Innovation Eligibility Criteria; or
 - (ii) undertake to use the Final Recipient Transaction for the acquisition of an enterprise, which shall comply with at least one of the Innovation Eligibility Criteria; and
- (ix) the Final Recipient enters into a Final Recipient Transaction (i) on its own behalf or (ii) on behalf of one or more of its partner or linked enterprises in the meaning of the Commission Recommendation, where at least one of such enterprises complies with one or more of the Innovation Eligibility Criteria, provided that the Innovation Eligibility Criteria listed in items (ii), (i) and (iv)(b) shall be assessed at the group level; and
- (x) the Additional Eligibility Criteria that are specified as “Final Recipient Eligibility Criteria” in the Specific Terms, if any.

“Final Recipient Transaction Eligibility Criteria” means the following criteria:

- (i) the Final Recipient Transaction shall be newly originated;

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- (ii) the Final Recipient Transaction shall be entered into by the Sub-Intermediary by the Inclusion Period End Date;
- (iii) the purpose of the Final Recipient Transaction shall be (1) an investment in tangible or intangible assets, (2) working capital or (3) business transfers;
- (iv) the Final Recipient Transaction shall not be in the form of a mezzanine loan or mezzanine bond, a subordinated debt or a quasi-equity transaction;
- (v) if the Final Recipient Transaction is a lease, it shall be in the form of a Finance Lease;
- (vi) if the Final Recipient Transaction is a bond, it shall be in the form of a Mini Bond;
- (vii) the amount committed by the Sub-Intermediary under the Final Recipient Transaction shall not be lower, other than as a result of a Permitted Final Recipient Transaction Amendment, than the Minimum Final Recipient Transaction Committed Amount;
- (viii) the amount committed by the Sub-Intermediary under the Final Recipient Transaction shall not exceed the Maximum Final Recipient Transaction Committed Amount;
- (ix) the Final Recipient Transaction shall have a fixed repayment schedule or be a Revolving Final Recipient Transaction, provided that this clause (ix) shall not affect the Intermediary's right to receive prepayments (either voluntarily or mandatorily) pursuant to the terms of a Mini Bond;
- (x) the Final Recipient Transaction's maturity shall:
 - (a) not be lower than the Minimum Final Recipient Transaction Maturity, and
 - (b)
 - (i) in respect of any Final Recipient Transaction other than a Revolving Final Recipient Transaction, other than as a result of a Permitted Final Recipient Transaction Amendment, not exceed the Maximum Final Recipient Transaction Maturity, or
 - (ii) in respect of any Revolving Final Recipient Transaction, not exceed the Maximum Revolving Final Recipient Transaction Maturity;
- (xi) In case where the Financial Benefit has not been passed directly by the Intermediary or Sub-Intermediary to the Final Recipient, the customary risk spread applicable to the relevant underlying Final Recipient Transaction covered by a Sub-Operation included in the Portfolio shall be reduced by the Sub-Intermediary taking into account the level of the Financial Benefit;
- (xii) the Final Recipient Transaction shall not be affected by an Irregularity or fraud;
- (xiii) the Final Recipient Transaction shall be denominated in the Base Currency or Additional Currency; and

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(xiv) the Additional Eligibility Criteria that are specified as “Final Recipient Transaction Eligibility Criteria” in the Specific Terms, if any.

whereby “**Mini Bond**” means a bond either issued by a Final Recipient and subscribed to by Sub-Intermediary or purchased on issuance by a Sub-Intermediary from the Final Recipient.

“**Portfolio Eligibility Criteria**” means the Additional Eligibility Criteria that are specified as “Portfolio Eligibility Criteria” in the Specific Terms, if any.

5.3 Time of Compliance

- (a) Sub-Operations shall comply with the Eligibility Criteria at all times while included in the Portfolio, except for the following Eligibility Criteria which shall be met as follows:
- (i) On the signing date of the document(s) evidencing the relevant Sub-Operation: the Sub-Intermediary Eligibility Criteria set out in items (ii), (iii) and (iv);
 - (ii) On the signing date of the document(s) evidencing the relevant underlying Final Recipient Transaction:
 - (X) the Final Recipient Eligibility Criteria set out in items (ii) to (ix); and
 - (Y) the Innovation Eligibility Criteria, except for those set out in items (iv)(c) to (iv)(i).
 - (iii) On the date of the document(s) evidencing the application for the relevant Final Recipient Transaction: the Innovation Eligibility Criteria set out in items (iv)(c) to (iv)(i).
- (b) Notwithstanding Clause 5.3(a) above, 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 Sub-Operation or Final Recipient Transaction (as applicable) only.”

FORM OF ACCEPTANCE FOR GUARANTEE AGREEMENT

To: The European Investment Fund

37B avenue J.F. Kennedy

L-2968 Luxembourg

Attention: Legal Department – LS Debt Assistants

Email: LS-Debt-Assistants@eif.org

From: Name of Intermediary: _____

(the “**Intermediary**”)

Date: _____

Dear Madam, Sir,

Re: InnovFin SME Guarantee Facility Guarantee Agreement dated _____
(the “Agreement”) – Acceptance of proposal to amend Eligibility Criteria

Save as otherwise provided in this letter of acceptance (the “**Acceptance**”), terms defined in the Agreement shall have the same meanings when used herein.

We herewith notify you that we accept your offer published on your website on June 15 2016 to amend clauses 5.2 (*Eligibility Criteria - Definitions*) and 5.3 (*Eligibility Criteria – Time of Compliance*) of the Agreement in the form of amendment published on your website (the “**Eligibility Criteria Amendment**”).

We accept your offer that the Eligibility Criteria Amendment will take effect as of the first day of the Reporting Period following receipt of this Acceptance by EIF. This Acceptance and any non-contractual obligations arising out of or in connection with it are governed by English law.

Yours faithfully

Name:

Title:

for and on behalf of the Intermediary

To: The European Investment Fund

37B avenue J.F. Kennedy

L-2968 Luxembourg

Attention: Legal Department – LS Debt Assistants

Email: LS-Debt-Assistants@eif.org

From: Name of Intermediary: _____

(the “**Intermediary**”)

Date: _____

Dear Madam, Sir,

Re: InnovFin SME Guarantee Facility Guarantee Agreement/ On-lending structure dated _____ (the “Agreement”) – Acceptance of proposal to amend Eligibility Criteria

Save as otherwise provided in this letter of acceptance (the “**Acceptance**”), terms defined in the Agreement shall have the same meanings when used herein.

We herewith notify you that we accept your offer published on your website on June 15 2016 to amend clauses 5.2 (*Eligibility Criteria - Definitions*) and 5.3 (*Eligibility Criteria – Time of Compliance*) of the Agreement in the form of amendment published on your website (the “**Eligibility Criteria Amendment**”).

We accept your offer that the Eligibility Criteria Amendment will take effect as of the first day of the Reporting Period following receipt of this Acceptance by EIF. This Acceptance and any non-contractual obligations arising out of or in connection with it are governed by English law.

Yours faithfully

Name:

Title:

for and on behalf of the Intermediary

FORM OF ACCEPTANCE FOR COUNTER-GUARANTEE AGREEMENT

To: The European Investment Fund

37B avenue J.F. Kennedy

L-2968 Luxembourg

Attention: Legal Department – LS Debt Assistants

Email: LS-Debt-Assistants@eif.org

From: Name of Intermediary: _____

(the “**Intermediary**”)

Date: _____

Dear Madam, Sir,

**Re: InnovFin SME Guarantee Facility Counter-Guarantee Agreement dated _____
(the “Agreement”) – Acceptance of proposal to amendment Eligibility Criteria**

Save as otherwise provided in this letter of acceptance (the “**Acceptance**”), terms defined in the Agreement shall have the same meanings when used herein.

We herewith notify you that we accept your offer published on your website on June 15 2016 to amend clauses 5.2 (*Eligibility Criteria - Definitions*) and 5.3 (*Eligibility Criteria – Time of Compliance*) of the Agreement in the form of amendment published on your website (the “**Eligibility Criteria Amendment**”).

We accept your offer that the Eligibility Criteria Amendment will take effect as of the first day of the Reporting Period following receipt of this Acceptance by EIF. This Acceptance and any non-contractual obligations arising out of or in connection with it are governed by English law.

Yours faithfully

Name:

Title:

for and on behalf of the Intermediary

EXECUTION INSTRUCTIONS REGARDING THE ACCEPTANCE

For the Acceptance of the Offer, please follow the execution procedure below:

- (i) print out one copy of the [form of acceptance of Guarantee Agreement](#) or the [form of acceptance of Guarantee Agreement/ on-lending structure](#) or the [form of acceptance of Counter-Guarantee Agreement](#) (as applicable);
- (ii) fill in the missing information by hand:
 - name of the Intermediary
 - date of the Intermediary's signature
 - date of the (Counter-)Guarantee Agreement
 - name of the relevant signatory/ies
 - title of the relevant signatory/ies
- (iii) sign the document;
- (iv) for umbrella agreements only: please do not forget to include the Coordination Entity as a signatory (in addition to the Intermediary)
- (v) send a pdf-scan thereof via email to LS-Debt-Assistants@eif.org; and
- (vi) send the original via DHL at the following address:
 - The European Investment Fund
 - 37B avenue J.F. Kennedy
 - L-2968 Luxembourg
 - Attention: Legal Department – LS Debt Assistants

Please do not insert any additional conditions or counter-proposals in the document.

Please keep a copy of your acceptance together with a print out of the [Offer](#) and the [form of amendment of Guarantee Agreement](#) or the [form of amendment of Guarantee Agreement/ On-lending structure](#) or the [form of amendment of Counter-Guarantee Agreement](#) for your records.