Template guarantee agreement for the InvestEU Programme

Indicative specific terms and conditions for

intermediated equity products with pari passu coverage

DISCLAIMER

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

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

**Defined terms to be added in Article 1 of the Agreement [[1]](#footnote-2)**

“**Available [Equity Guarantee/**

**Global] Cap**” means, at any time, the amount of the EU Guarantee allocated to the [*insert the name(s) of the relevant Financial Product(s)*], as set out in Article 21.3 [of the Agreement] increased with the Buffer as set out in Article 13.2 [of the Agreement], less:

(i) the aggregate Guaranteed Sums claimed from the Commission in accordance with Article 13.4 [of the Agreement], and

(ii) the aggregate amounts notified by the Implementing Partner in accordance with Article 12.1 of Annex I, and

(iii) any De-committed or Cancelled Amounts of an Equity Operation after the end of the Signature Period and the corresponding amount of the Buffer in accordance with Article 5.2 of Annex I.

“**Buffer**”means a portion of the EU Guarantee as defined in Article13.2 [of the Agreement].

“**Eligible Equity Final Recipient**”has the meaning attributed to it in the [relevant] Product Schedule.

“**Equity Final Recipient**” means, with respect to Equity Operations, an enterprise, a special purpose vehicle or another Final Recipient of the funding provided directly by an Equity Intermediary, including joint ventures, spin-offs, spin-outs, technology transfer projects or technology rights.

“**Equity Final Recipient**

**Transaction**”means an investment into a Final Recipient carried outby an Equity Intermediary under an Equity Operation.

“**Equity Intermediary**” means a Financial Intermediary that is an investment fund, a (co-)investment scheme in any form (including managed accounts and other types of contractual arrangements), or a special purpose vehicle, in any form, established or to be established, that undertakes long term risk capital investments in the form of equity, preferred equity, hybrid debt-equity instruments, but excluding entities targeting buy-out (or replacement capital) intended for asset stripping. For the avoidance of doubt, it includes its manager.

“**Equity Operation**” means an Indirect Operation under an Equity Product consisting of an aggregate amount committed by the Implementing Partner into, or through an Equity Intermediary, increased by any applicable fees and costs payable under the terms of such Indirect Operation, comprising:

(i) an EU Investment; and

(ii) an IP Investment.

“**Equity Operation Shortfall**

**Amount**”means, with respect to an Equity Operation that has been sold or liquidated, an amount (if negative) resulting from:

* + - * 1. the sum of the amounts of Equity Reflows collected under the Equity Operation; minus
				2. the aggregate of amounts paid by the Implementing Partner under such Equity Operation.

“**Equity Operation Termination**

**Date**” means the date on which an Equity Operation has been finally and irrevocably liquidated, sold or otherwise disposed of by the Implementing Partner.

“**Equity Portfolio**” means the Portfolio of Equity Operations signed by the Implementing Partner under the same Equity Product as set out in Article 4.2 of Annex I.

“**Equity Portfolio**

**Final Call Amount**” means the EU Investments Outstanding Amount with respect to the Equity Portfolio as at 30 September 2046.

“**Equity** **Portfolio**

**Revenues**” means the amounts specified in Article 10.2(c) of Annex I.

**“Equity Portfolio Termination**

**Date**  means with respect to the Equity Portfolio, the date falling twelve (12) months after the Equity Operation Termination Date of the last outstanding Equity Operation in the relevant Portfolio.

“**Equity Product(s)**” means [*insert the name of the Financial Product*] set out in Product Schedule [*insert number*] and the [*insert the name of the Financial Product*] set out in Product Schedule [*insert number*].

“**Equity Reflows**” means any non-recallable amounts received by the Implementing Partner from Equity Intermediaries (including any Recoveries) and any net proceeds from the Secondary Sales of the Equity Operations.

“**EU Investment**” means the amount committed by the Implementing Partner under an Equity Operation and covered by the EU Guarantee.

“**EU Investment**

**Shortfall Amount**” means, with respect to each Equity Operation, the portion of an Equity Operation Shortfall Amount allocated to the EU Investment pursuant to Article 11 of Annex I.

“**EU Investments**

**Outstanding Amount**”means, at any date, the aggregate amounts disbursed by the Implementing Partner under the EU Investments in the relevant Equity Portfolio until such date, less:

(a) the aggregate of the Equity Reflows allocated to EU Investments in that Equity Portfolio until such date; and

(b) the aggregate EU Investment Shortfall Amount paid by the Commission to the Implementing Partner.

“**EU Recoveries**” means the amounts allocated to the Commission pursuant to Article 10.2(b) and 10.3(b) of Annex I.

"**Excluded Equity Final**

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

“**Funding Cost**”means for each quarter from the Effective Date, the aggregate amount of the accrued IP Funding Cost Interest arising on the EU Investments Outstanding Amount, calculated on a daily basis *pro rata* over the relevant quarter (*i.e.* applying the actual/actual day-count convention).

“**Independent Management Team**” means a team that exercises a significant degree of autonomy with respect to investment and divestment decisions of the transactions forming part of the individual portfolio of the Equity Intermediary which may include:

privately owned teams, whereby the investment team owns majority of the voting shares of the entity that is entrusted in investment management or investment advisory of the individual portfolio of the Equity Intermediary, or

teams operating within (or with) a corporate or university structure, a foundation, or any financial institution established under any other form, including crowdfunding platform, provided that the management team makes the final investment and divestment decisions independently.

“**IP Funding Cost Interest**” means the interest determined in accordance with [the agreed methodology[[2]](#footnote-3)] set out in Annex XII.

“**IP Investment”** means an amount committed by the Implementing Partner under an Equity Operation, that is not covered by the EU Guarantee and that shall rank *pari passu* with the EU Investment.

**Minimum Eligible Allocation** means an aggregate amount to be invested in Eligible Equity Final Recipients by the Equity Intermediary and equals to at least the higher of:

1. 50% of the Equity Intermediary’s aggregate invested amounts; and
2. two (2) times the aggregate amount drawn down by the same Equity Intermediary under
3. the Equity Operation and
4. any other operation supported by the InvestEU Fund and entered into by another implementing partner under the InvestEU Fund

for investment purposes, capped at 80% of the Equity Intermediary’s aggregate invested amounts.

“**Minimum Target Allocation**”means with respect to one or more policy objectives set out in the Product Schedule, an amount to be invested by the Equity Intermediary, such amount being equal to at least 2 times the aggregate amount drawn down by the Equity Intermediary under (i) the Equity Operation and (ii) any other operation supported by the InvestEU Fund and entered into by another implementing partner under the InvestEU Fund for the purpose of investments in the Target Equity Final Recipients, capped at 80% of the Equity Intermediary’s aggregate invested amounts.

“**Pari Passu Protection**” means a vertical tranche risk protection in an Equity Operation, as further set out in Annex I.

“**Primary Investment**”means an investment (including in the form of debt) in an Equity Final Recipient resulting in financing flowing directly or indirectly into the Equity Final Recipient during the duration of the Equity Final Recipient Transaction. For the avoidance of doubt, it includes buy outs or replacement capital not intended for asset stripping made in connection with a flow of financing by the Equity Intermediary to the Equity Final Recipient.

“**Secondary Sale**” means the sale by the Implementing Partner of an existing EU Investment into an Equity Intermediary or of a portfolio of EU Investments into Equity Intermediaries pursuant to Article 13 of Annex I.

“**Target Equity Final Recipients**” means Eligible Equity Final Recipients with respect to an Equity Product that are active in any of the policy objectives under that Financial Product, as listed in accordance with the relevant Product Schedule**.**

“**Third Party Benchmark**

**Investors**”means for the purpose of the assessment set out in Article 7.4 of Annex I, the following entities:

1. majority privately owned financial institutions (investing at own risk and from own resources);
2. fund-of-funds that:
	1. are classified as Alternative Investment Funds (AIFs) according to the AIFMD Directive[[3]](#footnote-4),
	2. are managed or advised by Independent Management Teams, and
	3. whose majority sponsors are not Member States or National Promotional Banks or Institutions or the European Investment Fund or the European Investment Bank or an international financial institution that is majority controlled by Member State(s);
3. private endowments & foundations;
4. family offices & business angels (including joint investment vehicles set-up by/with business angels);
5. majority privately owned corporate investors;
6. majority privately owned insurance companies;
7. majority privately owned pension funds;
8. private individuals; or,
9. academic institutions (including private research institutions and universities) investing out of their own resources stemming from their commercial activities,

in as much as they:

1. do not receive any public incentive for the purpose of the considered investment; and,
2. are not already a shareholder of the Equity Final Recipient into which they directly co-invest with or alongside the Equity Intermediary. For the avoidance of doubt, this criterion shall not apply if the considered investment is made into an Equity Intermediary.

**Articles from the main part of the agreement adapted to the intermediated equity products with *pari passu* coverage**

**Article 13****Scope and amount of the EU Guarantee**

* 1. In accordance with the terms of this Agreement, the EU irrevocably, unconditionally and on demand guarantees as a primary obligor and not merely as a surety to the Implementing Partner the full and punctual performance of the Guaranteed Sums.
	2. The amount of the EU Guarantee provided to the Implementing Partner consists of EUR [*insert amount*] provided in accordance with Article 13(5) of the InvestEU Regulation out of which an amount of EUR [*insert amount*] shall be used only for the purposes of calls related to items under Article 13.4(b) (the **“Buffer**”).

The Buffer shall be established progressively up to EUR [*insert amount*], whereby with the inclusion of each Operation into the Portfolio by the Implementing Partner an amount equal to [*insert percentage*] % of the EU Investment in that Operation shall be allocated to the Buffer.

* 1. The EU shall pay to the Implementing Partner any and all Guaranteed Sums, subject to Article 13.5.
	2. The EU Guarantee may be called with respect to any and all of the following amounts (“**Guaranteed Sums**”):
		1. any EU Investment Shortfall Amount (up to the EU Investments Outstanding Amount as at the Equity Operation Termination Date);
		2. the Funding Costs;
		3. the Equity Portfolio Final Call Amounts;
		4. [*if applicable*: *specify* *other amounts covered by the EU Guarantee*].
	3. The aggregate amount up to which the EU Guarantee may be called with respect to the Guaranteed Sums shall not exceed, at any point of time, the amount of the EU Guarantee set out in Article 13.2 (“**Global Cap**”). The called amount of the EU Guarantee in each Claims Form shall not exceed the Available [Equity Guarantee/Global] Cap at the time of its submission.
	4. The EU shall have no further exposure or liability to the Implementing Partner beyond the Global Cap.

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

* 1. The EU Guarantee may be called in respect of a Guaranteed Sum.
	2. The Implementing Partner may decide not to call the EU Guarantee immediately or at all, in accordance with its rules, policies and procedures, provided that calls on the EU Guarantee may only be made until the earlier date of (i) twelve (12) months after the relevant Equity Operation Termination Date, or (ii) the Portfolio Termination Date or 30 September 2047 with respect to the Equity Portfolio Final Call Amount.
	3. The Parties agree that neither the obligations of the EU under the EU Guarantee, nor the rights, powers and remedies of the Implementing Partner with respect to the EU Guarantee or conferred upon it by law shall be discharged, impaired or otherwise affected by the winding-up, dissolution, administration or reorganisation of the underlying obligor or any other person under any applicable law or any change in the status, function, control or ownership of the underlying obligor or by any obligations of the underlying obligor becoming illegal or unenforceable or ineffective in any respect or by any amendment or variation to any document to which the underlying obligor is a party or by any other act, omission, matter or event which would, but for this Article, reduce, release or prejudice any of the EU’s obligations under the Agreement, except as set out in this Agreement.

# Annex I – Financial Products and Portfolios

# I. General provisions for Financial Products and Portfolios

1. **Interpretation**
	1. In this Annex I, a reference to an “Article”, or “Product Schedule” is a reference to such article, or product schedule to this Annex I, except if otherwise specified or the context requires otherwise.
	2. In this Annex I, a reference to an “Article of the Agreement” is a reference to such article in the main part of the Agreement.
2. **Use of currencies and management of currency risk**
	1. [*insert either the mention* “Each Operation under this Agreement shall be denominated in euro.” or *specific rules concerning currency exposures*]
3. **State aid** [to insert: **compliance** or **consistency[[4]](#footnote-5)**, as applicable]
	1. *[Insert specific rules for State aid consistency or compliance, as applicable.[[5]](#footnote-6)]*
4. **General principles of the Financial Product(s) and Portfolio(s)**
	1. The Implementing Partner shall implement the following [*insert number of Financial Products*] Financial Product(s):
		1. the [*insert the name* *of Financial Product 1*];
		2. the [*insert the name of Financial Product 2, if any*];
		3. […];

as each set out in the (relevant) Product Schedule(s).

* 1. The Implementing Partner shall set up the following [separate] Portfolio(s) corresponding to [each of its] Financial Product(s):
		1. the [*insert the name of Portfolio 1, corresponding to the name of Financial Product 1*];
		2. the [*insert the name of Portfolio 2, corresponding to the name of Financial Product 2*];
		3. […].
	2. Operations shall be included in the [relevant] Portfolio, corresponding to the Financial Product under which the Operation falls, on the date of signature of the relevant Operation [or as Transitional Operations in accordance with Article 19.5 of the Agreement].
	3. The amount of each Operation in the Portfolio shall correspond to the outstanding (after deduction of, amongst others, De-committed or Cancelled Amounts reducing an Operation’s principal or book value, as applicable) committed (including both disbursed and not yet disbursed amounts) principal amount of such Operation at the relevant time.
	4. Any De-committed or Cancelled Amounts under Operations may be used during the Signature Period by the Implementing Partner to enter into new Operations [under the same Financial Product] or to increase the amount of existing Operations [under the same Financial Product], provided that such new Operations or increases of existing Operations are approved and entered into in accordance with the provisions of this Agreement.
	5. [*In case of Financial Products falling under more than one Policy Windows: insert allocation rules between Policy Windows*.]
	6. Payments to the Commission and to the Implementing Partner shall be made in accordance with Article 16 of the Agreement.

# II. Specific provisions for the Intermediated Equity Financial Product(s)

1. **Characteristics of Equity Operations**
	1. The [*insert name of the relevant Financial Product(s)*] is a Financial Product under the [*insert the name of the relevant Policy Window(s)*], the objective of which is to provide investments into Equity Intermediaries, in accordance with the respective policy objectives set out in the [relevant] Product Schedule(s).
	2. Any De-committed or Cancelled Amounts under Equity Operations after the end of the Signature Period and the corresponding amount of the Buffer shall reduce the Available [Equity Guarantee/Global[[6]](#footnote-7)] Cap.
2. **Size of Equity Operations**
	1. The commitment under an Equity Operation shall represent:
		1. at least 7,5 % of the total commitments of the Equity Intermediary raised in the closing at which the Equity Operation is admitted (excluding, for the avoidance of doubt, any amount raised in the previous closings); and
		2. no more than 25 % of the total commitments of the Equity Intermediary, provided that passive increases of the share of the Equity Operation in the Equity Intermediary due to circumstances beyond the control of the Implementing Partner, for instance as a result of default of another investor, do not violate this principle.
	2. [*If applicable, in cases of high policy value added:* Notwithstanding Article 6.1(b) above, an Equity Operation may represent, at the date of the Equity Operation, up to 50% of the total commitments of the Equity Intermediary, where:
		1. [*insert the relevant high policy value added area 1*]; or
		2. [*insert the relevant high policy value added area 2*]; or
		3. […].]
	3. [*If applicable:* Notwithstanding Article 6.1(b) [and Article 6.2 above], an Equity Operation may represent, at the date of the Equity Operation, up to 75% of the total commitments of the Equity Intermediary, if the Equity Intermediary’s investment strategy targets:
		1. investments in technology transfer, or
		2. investments in Equity Final Recipients falling under the SISW.]
	4. The maximum amount of an Equity Operation shall not exceed EUR [*insert amount*].
	5. The Implementing Partner shall request that potential Equity Intermediaries inform the Implementing Partner about their intention to seek investment from another implementing partner benefiting from the EU guarantee under the InvestEU Fund, subject to confidentiality requirements binding on the potential Equity Intermediaries.
3. **Investment criteria**
	1. The Implementing Partner shall require each Equity Intermediary to undertake, as part of its investment strategy, to exclusively invest into Equity Final Recipients that are not Excluded Equity Final Recipients and to commit to invest in Eligible Equity Final Recipients an amount equal to at least the Minimum Eligible Allocation. For the avoidance of doubt, Equity Intermediaries shall be allowed to make investments to Equity Final Recipients, which do not qualify as Eligible Equity Final Recipients, provided that they are not Excluded Equity Final Recipients.
	2. The Implementing Partner shall require the Equity Intermediary to undertake, as part of its investment strategy, to commit to invest in Target Equity Final Recipients an amount equal to at least the Minimum Target Allocation.
	3. Equity Operations shall rank *pari passu* with other investors investing in the same risk class (*i.e.* reference to *pari passu* principle shall mean "like-risk-like-reward"). For the avoidance of doubt, the fact that the Implementing Partner accepts more favourable terms than applicable for other investors when implementing any Equity Operation shall not constitute a breach of the *pari passu* principle, as long as the other investors do not receive any advantage. The Equity Operation shall not be subordinated to other investors in any risk class issued by the Equity Intermediary.
	4. The Commission and the Implementing Partner acknowledge that certain investors may benefit of certain excuse rights not related to risk considerations and that these excuse rights do not constitute a breach of the *pari passu* principle, provided that such excuse rights are contained in the legal documentation of the Equity Intermediary.
	5. At least 30% of total commitments to each Equity Intermediary shall be made by:
		1. Third Party Benchmark Investors, which could be complemented by
		2. the European Investment Fund and/or the European Investment Bank on their own risk and out of their own resources.

The relevant aggregate commitments from Third Party Benchmark Investors shall not account for less than 15% of the total commitments to an Equity Intermediary in the risk class in which the Equity Operation is made.

* 1. In each case, the investment of investors referred to in points (a) and (b) of Article 7.5, shall be made in the same risk class in which the Equity Operation is made and on a *pari passu* basis with each other as set out in Article 7.3.
	2. The starting position of the Implementing Partner and the Third Party Benchmark Investors shall be comparable with regard to the relevant investment vehicle of the Equity Intermediary, taking into account, for instance, where relevant, the prior economic exposures to the relevant investment vehicle of the Equity Intermediary, the possible synergies which can be achieved with the investment, or, without prejudice to Article 7.3, the extent to which the different investors bear similar transaction costs.
	3. The Equity Operation and the investment by Third Party Benchmark Investors must intervene at the same time.
	4. Investments in Eligible Equity Final Recipients shall take the form of Primary Investments.
	5. Investment vehicles of Equity Intermediaries shall be established in a Member State or in an OCT.
1. **Non-compliance with the exclusion and investment criteria**
	1. The Implementing Partner shall request, by means of appropriate contractual arrangements that an Equity Intermediary shall not be entitled to issue any drawdown notice relating to an investment in any Excluded Equity Final Recipient.
	2. Subject to Article 8.3, should the Implementing Partner, during the investment period of any Equity Intermediary based on the following elements set forth in a drawdown notice or reporting received from that Equity Intermediary:
		1. the confirmation made therein by the Equity Intermediary of whether the contemplated investment is in line with the investment policy of the Equity Intermediary (as set forth in its underlying documentation),
		2. the information provided on the country of establishment of the contemplated Equity Final Recipient, and/or
		3. information provided on the sector of activity of the contemplated Equity Final Recipient,

become certain that the contemplated investment in the Equity Final Recipient would result in an irremediable breach of the criteria set out in the [relevant] Product Schedule, the Implementing Partner shall not be required to participate (subject to applicable law), fully or partially, through the Equity Intermediary in such investment and shall inform the Equity Intermediary accordingly.

* 1. Without prejudice to Articles 7.1 and 8.2, should the Implementing Partner become aware that:
		1. an Equity Intermediary has invested in an entity that, at the time of the first investment, was an Excluded Equity Final Recipient; or
		2. an investment made by an Equity Intermediary has caused the Equity Intermediary to be in breach of the criteria set out in the [relevant] Product Schedule, and

where these abovementioned situations under Article 8.3(a) and (b) could not be reasonably remedied, then the Implementing Partner shall promptly raise that matter with the Commission. The Commission and the Implementing Partner shall agree on the relevant course of action including, without limitation, to exclude such specific investments from the coverage of the EU Guarantee.

1. **Coverage of Equity Operations**
	1. Each Equity Operation included in the [relevant] Equity Portfolio shall be covered by a Pari Passu Protection that comprises 50% EU Investment and 50% IP Investment ranking *pari passu*.
	2. Equity Operations included in an Equity Portfolio shall be covered by the EU Guarantee up to the aggregate amount of EU Investment, in accordance with this Agreement.
	3. The Implementing Partner shall ensure the funding required to finance the EU Investment under Equity Operations included in the [relevant] Equity Portfolio.
2. **Allocation of Equity Reflows**
	1. Any Equity Reflows, other than Recoveries in cases referred to in Article 10.3, received by the Implementing Partner with respect to Equity Operations under the [relevant] Equity Portfolio shall be allocated (after application of any net negative or positive interest and the deduction of any bank charges) *pari passu* and *pro rata* between:
		1. the EU Investment, and the amount so allocated shall be treated pursuant to Article 10.2; and
		2. the IP Investment.
	2. The aggregate amounts allocated to the EU Investment pursuant to Article 10.1(a)10.1(a) shall be further allocated in the following manner:
		1. *first*, to reduce the EU Investments Outstanding Amount [in the relevant Equity Portfolio], whereby, for the avoidance of doubt, any such amounts shall not reduce the Available [Equity Guarantee/Global] Cap;
		2. *second*, after EU Investments Outstanding Amount has been reduced to zero [in the relevant Equity Portfolio], to the EU up to the aggregate amounts paid by the Commission with respect to the EU Investment Shortfall Amount [under the relevant Equity Portfolio], or with respect to the Equity Portfolio Final Call Amount, which shall be paid to the Commission in accordance with Article 16 of the Agreement, as EU Recoveries;
		3. *third*, any remaining amounts, to the EU and shall constitute Equity Portfolio Revenues, which shall be paid to the Commission in accordance with Article 16 of the Agreement.
	3. Recoveries paid by any Equity Intermediary to the Implementing Partner under an Equity Operation as a result of Irregularities or fraudulent actions of an Equity Final Recipient or the relevant Equity Intermediary, or as a result of the exclusion of an Equity Operation or of a Equity Final Recipient Transaction from coverage by the EU Guarantee following the process set out in Article 8.3, shall be allocated *pari passu* and *pro rata* to the size of the EU Investment and IP Investment relative to the Pari Passu Protection:
		1. to the Implementing Partner; and
		2. to the EU, and the amount so allocated shall be paid to the Commission in accordance with Article 16 of the Agreement, as EU Recoveries.
3. **Allocation of an Equity Operation Shortfall Amount**
	1. The Equity Operation Shortfall Amount shall be allocated *pari passu* and *pro rata* between the EU Investment and the IP Investment. Notwithstanding the preceding sentence, if the IP Investment was not subject to a Secondary Sale due to the circumstances set out in Article 13.6, the resulting Equity Operation Shortfall Amount shall be allocated to the relevant EU Investment only.
4. **Release of the EU Guarantee**
	1. As from the end of the Signature Period and on an annual basis thereafter, the Implementing Partner shall notify the Commission any amounts of the EU Guarantee that are not necessary anymore for the coverage of the Guaranteed Sums. Such notified amounts of the EU Guarantee and the corresponding amounts of the Buffer shall be released and the Available [Equity Guarantee/Global] Cap shall be reduced accordingly.

1. **Secondary Sales**
	1. The Implementing Partner shall have the right to execute Secondary Sales in accordance with and pursuant to the terms of the Implementing Partner’s internal rules and procedures.
	2. Upon the sale of an EU Investment, the Implementing Partner shall be entitled to retain such amounts as may be required for the satisfaction of any accrued or contingent obligations, costs or liabilities relating to such divestment in accordance with the applicable documentation. Any Equity Reflows resulting from the Secondary Sales of Equity Operations shall be allocated as set out in Article 10.
	3. If, on or after [1 January 2040], any Equity Operations are outstanding, the Implementing Partner shall attempt to sell or liquidate all outstanding Equity Operations, in accordance with and pursuant to the terms of its internal rules and procedures. If certain Equity Operations are not eligible for sale according to the Implementing Partner’s internal rules and procedures, the Parties shall agree in good faith as to whether or not to proceed with the sale of such Equity Operations.
	4. If, by 30 September 2046, the Implementing Partner has not sold or otherwise liquidated all of the Equity Operations, the Commission and the Implementing Partner acknowledge that in respect of Equity Operations, which remain outstanding at that date, their market value shall be deemed zero as at that date and the Implementing Partner shall be entitled to call on the EU Guarantee for the Equity Portfolio Final Call Amount.
	5. Should the Implementing Partner eventually liquidate or divest remaining Equity Operations after 30 September 2046 or receive any Equity Reflows in respect of divested Equity Operations, the amounts so collected by the Implementing Partner shall be treated in accordance with Article 13.2. Furthermore, the Implementing Partner shall provide the Commission by 15 February each year following the date specified in this Article with a simplified annual report on the items referred to in this paragraph. The template of such report shall be agreed between the Parties.
	6. The sale of an EU Investment shall also include the sale of the IP Investment, unless this is prevented by a co-investment obligation of the Implementing Partner required with regards to other resources invested in or alongside the same Equity Operation. The sale of an IP Investment shall also include the sale of the EU Investment.
2. **Portfolio Termination**
	1. [The/Each] Equity Portfolio shall be terminated at the [relevant] Equity Portfolio Termination Date. The Implementing Partner shall have no further obligations with respect to the terminated Equity Portfolio, except as provided under Articles 13.5 and 14.2.
	2. As regards the Equity Operation Termination Date, the Implementing Partner may wait until the end of the liquidation of the Equity Intermediary or proceed with a Secondary Sale of the EU Investment in accordance with Article 13.

**Product Schedule(s)[[7]](#footnote-8)**

|  |  |
| --- | --- |
| **Name of the Financial Product**  | [*insert the name of the Financial Product*] |
| **Type of financing provided by the Implementing Partner** | Equity investments into Equity Intermediaries. |
| **Use of Policy Window(s) and EU Guarantee amount per Policy Window** | The allocated amount of the EU Guarantee under the [*insert the* *name of the Policy Window*] is up to EUR [*insert amount of the EU Guarantee*]. |
| **Indicative Size of the Equity Portfolio**  | EUR [*insert the aggregate amount of the foreseen Equity Operations*]] |
| **Policy objective(s)** | Equity Operations shall be used for the following purposes:[*insert the detailed description of the policy objectives of the Financial Product*] |
| **Eligible Equity Final Recipients**  | Eligible Equity Final Recipients shall:(a) be established and operating in a Member State or in an OCT, and (b) be active in any of the areas listed under Annex II of the InvestEU Regulation, and (c) not be Excluded Equity Final Recipients, and(d) [*insert any other applicable requirements depending on specific circumstances of the Financial Product*].An Equity Final Recipient, which is an enterprise, shall be considered to be established and operating in a Member State or in an OCT, if at the time of the first investment by the Equity Intermediary, it is:(i) incorporated in a Member State or in an OCT, or, if not incorporated in a Member State or in an OCT, has legal presence in a Member State or an OCT through a subsidiary or other form of legal entity and (ii) is exercising its main activities in one or more Member States or OCTs. For Equity Final Recipients in early stage with insignificant operations, the assessment of their main activities shall be based on the Equity Final Recipient’s business plan at the time of the first investment by the Equity Intermediary.In addition, in case of an investment by the Equity Intermediary into a specific project, such projects shall be situated in a Member State or in an OCT, or they shall constitute Cross-border Projects. |
| **Targeted geography** | [*insert the targeted geographical scope of the Financial Product*] |
| **Term of investment**  | The term of Equity Operations shall fall between [*insert the minimum term in years*] and [*insert the maximum term in years*] years. |
| **Framework Operations** | [*insert:* “Framework Operations are allowed.” *or* “Framework Operations are not allowed.”] |
| **Eligibility Checklist Procedure** | [*applicable/not applicable*] |
| **Other relevant elements** |  |

1. *N.B.* Terms in brackets are to be adapted to the type and the number of the Financial Products included in the Agreement. [↑](#footnote-ref-2)
2. *N.B.* The relevant methodology shall be proposed by the Implementing Partner based on its specific circumstances that is reviewed and confirmed by the Commission. [↑](#footnote-ref-3)
3. Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1). [↑](#footnote-ref-4)
4. *N.B.* In the case of supranational Implementing Partners, State aid consistency rules apply based on their specific circumstances. [↑](#footnote-ref-5)
5. *N.B.* The general clauses on State aid compliance can be found in the template of the main part of the Agreement, which shall be adapted to each specific Financial Product as necessary. [↑](#footnote-ref-6)
6. *N.B.* In case the Implementing Partner has only Equity Products, the Available Equity Guarantee Cap equals the Available Global Cap. [↑](#footnote-ref-7)
7. *N.B.* A separate Product Schedule will be included for each Financial Product. [↑](#footnote-ref-8)