



Европейска инвестиционна банка  
 Evropská investiční banka  
 Den Europæiske Investeringsbank  
 Europäische Investitionsbank  
 Euroopa Investeerimispank  
 Ευρωπαϊκή Τράπεζα Επενδύσεων  
 European Investment Bank  
 Banco Europeo de Inversiones  
 Banque européenne d'investissement  
 An Banc Eorpach Infheistíochta  
 Europska investicijska banka  
 Banca europea per gli investimenti

Eiropas Investīciju banka  
 Europos investicijų bankas  
 Európai Beruházási Bank  
 Bank Ewropew tal-Investment  
 Europese Investeringsbank  
 Europejski Bank Inwestycyjny  
 Banco Europeu de Investimento  
 Banca Europeană de Investiții  
 Európska investičná banka  
 Evropska investicijska banka  
 Euroopan investointipankki  
 Europeiska investeringsbanken

EXP BEI-EIB  
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**Commissario Delegato per l'Emergenza Frana and Commissario Straordinario per Sisma Ischia 2017**

City of Naples  
 Palazzo Armieri, via Nuova Marina, 19/c  
 Italy

**For the attention of: Mr. Giovanni Legnini, Special Commissioner**

**By DHL**

Luxembourg, 1<sup>st</sup> June 2023

JU/OPS-POL/DMTA/2023-07472/LM/mb

**Subject:** InvestEU Advisory Hub – ASApp no. AA-011582 – Advisory Support to the Island of Ischia on Post-Disaster Reconstruction and Climate Change Resilience

Advisory services to be provided by the European Investment Bank (the “**Bank**”) to *Commissario Delegato per gli eccezionali eventi meteorologici verificatisi nei territori dell'Isola di Ischia il 26 novembre 2022* (“*Commissario Delegato per l'Emergenza Frana*”) and *Commissario straordinario per gli interventi di riparazione, di assistenza alla popolazione e di ripresa economica nei territori dei Comuni di Casamicciola Terme, Forio, Lacco Ameno dell'Isola di Ischia interessati dagli eventi sismici verificatisi il giorno 21 agosto 2017* (“*Commissario Straordinario per Sisma Ischia 2017*”) pursuant to the InvestEU Advisory Hub (the “**InvestEU Advisory Hub**”)

Dear Mr. Legnini,

In accordance with Article 11(1)(d) and Article 25 of Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021, establishing the InvestEU Programme and amending Regulation (EU) 2015/1017 (the “**InvestEU Regulation**”), the objective of the InvestEU Advisory Hub is to provide advisory support to public and private project promoters within the European Union for the identification, preparation, development, structuring, procuring and implementation of investment projects, and for enhancing the capacity of project promoters and financial intermediaries to implement financing and investment operations. The advice provided within the framework the InvestEU Advisory Hub can be delivered by the Bank or the Bank and the European Investment Fund (the “**EIF**”) (together, the “**EIB Group**”) experts, external providers or in collaboration with other advisory partners.

On 27 March 2023, you requested advisory support in order to strengthen the resilience of the island of Ischia with respect to the project's specific objectives (the “**Project's Specific Objectives**”) as the latter are described in Section I of Annex 1 to the Agreement.

We are pleased to confirm below the terms and conditions pursuant to which the Bank shall provide the requested services to you:





1. The advisory services (the “**Services**”), including any related deliverables to be delivered by the Bank to the entity you represent (the “**Beneficiary**”) in the framework of the InvestEU Advisory Hub, are described in Annex 1 hereto.
2. Without prejudice to the provisions included in the present letter (the “**Letter**”), the mutual rights and obligations of the Bank and the Beneficiary shall be as set forth in the General Terms and Conditions (the “**GTC**”) for Advisory Services provided by the European Investment Bank set out in Annex 2 hereto.
3. The Commencement Date for the provision of the services shall be the one indicated in point 2.2 of the GTC; the performance period shall be of 2 years starting from the Commencement Date.
4. The Bank shall provide the Services to the Beneficiary free of charge. Article 4 of the GTC is not applicable.
5. For the purposes of Article 5 of the GTC, “Confidential Information” means information which is delivered to the attention of Ms. Tanja Tanayama, Mr. Alexander Linke, Mr. Massimo Marra or such other person as the Bank shall have most recently notified for this purpose. Information on the personal data processing operation(s) performed by the Bank referred to in Article 15 of the GTC can be accessed here: <https://www.eib.org/en/privacy/lending.htm>.
6. For the purposes of Article 10.2 of the GTC, all notices and correspondence in relation to the Services shall be sent to the following addresses:

For the Bank:

European Investment Bank  
 98-100, Boulevard Konrad Adenauer  
 L-2950 Luxembourg  
 Attention: Head of Division, Advisory Services Department  
 e-mail: [AdvisoryHub@eib.org](mailto:AdvisoryHub@eib.org)

For the Beneficiary:

Commissario Delegato per l’Emergenza Frana and Commissario Straordinario per Sisma Ischia 2017, City of Naples  
 Palazzo Armieri, via Nuova Marina, 19/c, Italy  
 Attention: Giovanni Legnini, Special Commissioner  
 Tel: +39 081 2519802 819  
 e-mail: [G.Legnini@governo.it](mailto:G.Legnini@governo.it)

7. This Letter, including its Annexes, shall be read and construed as one document and shall constitute a binding agreement between the Bank and the Beneficiary (the “**Agreement**”). In the event of any ambiguities, conflicts or inconsistencies between or among any of the provisions of the Letter, including its Annexes, the following order of priority shall apply:
  - Paragraphs 1 to 8 of this Letter;
  - Annex 2; and
  - Annex 1.
8. If any provision or part of a provision of this Letter is found by a court to be void or unenforceable, that provision or part of a provision is to be deemed deleted from this Letter and the remaining provisions to continue in full force and effect. The Bank and the Beneficiary shall in this event seek to agree upon a valid and enforceable provision or part of a provision to replace the provision or part of the provision found to be void and unenforceable.





We kindly ask you to indicate your acceptance of the present Letter and its Annexes **by initialling each page, including the Annexes, and signing this Letter and inserting the date of signature.** Please also return **two** original sets to the Bank to the following address:

Luca Miglionico  
Legal Department  
**European Investment Bank**  
98-100, Bd Konrad Adenauer  
L-2950 Luxembourg

Yours faithfully,

**EUROPEAN INVESTMENT BANK**

Tanja Tanayama  
Head of Division  
Advisory Services Department

Martin Vatter  
Managerial Adviser and Head of Unit  
Legal Department

Agreed and accepted for and on behalf of  
**Commissario Delegato per l'Emergenza Frana and Commissario Straordinario  
per Sisma Ischia 2017**

Giovanni Legnini  
Special Commissioner

Date: 12.06.2023

**Enclosures:**

- Annex 1: Description of Services
- Annex 2: General Terms and Conditions for Advisory Services provided by the European Investment Bank





## Annex 1

### Section I

#### **1. Project background and General Objectives**

In November 2022 the Italian island of Ischia was hit by extreme rainfall, leading to landslides and flooding. This extreme weather event not only caused casualties, but also severe damage to the local infrastructure. A state of emergency was declared for the affected area and government funds for the most immediate recovery and rescue operations were approved. The damages caused by 2022 landslides and flooding are additional to those caused by the earthquake events that hit the island in 2017.

In order to coordinate the post-disaster recovery and reconstruction efforts in Ischia, the Italian government nominated a Special Commissioner (“Commissario Straordinario”). The Special Commissioner is a legal entity which acts as a Project Implementation Unit for the post-disaster recovery and reconstruction efforts on behalf of the municipalities in Ischia, including the approval of reconstruction projects and the procurement of works.

A rapid response package to support the reconstruction efforts in Ischia was discussed with the EIB. In terms of lending, a framework loan to the Ministry of Finance is being discussed. It is envisaged that the proceeds of the framework loan be used to finance the most urgent recovery and reconstruction measures in Ischia. It is planned that the Special Commissioner would act as the implementing body for the EIB funded investments.

As a short-term response, EIB has already mobilised advisory support to perform a climate risk and vulnerability assessment (CRVA) and to provide design recommendations for the recovery plan. Based on this initial advisory support, the purpose of this advisory assignment is to provide medium-term project preparation and project implementation support to the recovery and reconstruction efforts in Ischia.

#### **2. Project’s Specific Objectives supported by the Services**

The objectives of the advisory services are to strengthen the resilience of the island of Ischia and the institutional capacities of the Beneficiary and other relevant public authorities to plan and implement recovery measures in response to both earthquake events of 2017 and landslides and flooding of November 2022. This includes technical project preparation and implementation support to the recovery and reconstruction investments in Ischia which may be co-financed by an EIB operation.

### Section II

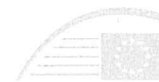
#### **3. General Description of the Services/background**

At the EIB, a team of experts will be responsible for the technical management and oversight of the advisory services- The EIB will retain external consultants (also referred as service providers) who will work directly with the Beneficiary, under the supervision of EIB experts.

#### **4. Description of advisory tasks to be performed under the Services provided to the Beneficiary by the Bank**

Provision of Services involves execution of the following tasks:

- **Task 1:** Support in the development and finalisation of a post-disaster recovery investment and financing plan for the island of Ischia, in line with relevant plans and strategies as well as recommendations resulting from the above-mentioned Climate Risk and Vulnerability Assessment (CRVA). This will include technical and methodological advice about project pipeline preparation, project implementation programming, monitoring and institutional arrangements. In addition, expert advice on urban planning in relation to climate change projections, hydrogeological & seismic risks will be provided.



- **Task 2:** Project preparation support, including advice and guidance on project design ("Progetto di Fattibilità Tecnico-Economica"). In particular, this may involve the provision of technical recommendations on a variety of themes such as the integration of climate risks and vulnerabilities in planning and project design, seismic analyses, best-practice for climate action and environmental sustainability (including EIB's standards), environmental permitting, technical, financial and economic sustainability, relocation planning and tender documents.
- **Task 3:** Project implementation and management support to the Special Commissioner structure, including advice and trainings on carrying out procurement procedures, project management (including IT-based project management tools), supervision of construction works, performance monitoring, reporting (including periodic reports on EIB funded investments), handling deviations, budgeting and communication and outreach.

**5. Description of Deliverables as a result of the tasks listed above, indicative Timetable/Approval Process**

<b>Deliverable</b>	<b>Delivery Schedule for submission</b>	<b>Deadline to provide comments by Beneficiary*</b>	<b>Deadline for final submission by EIB</b>
Task 1: Post-disaster recovery plan for the island of Ischia.	Within 3 months from the start date of the services provided by the service provider.	10 working days from the submission	10 working days from receiving the comments
Task 2: Project preparation support.	Throughout the term of the assignment.	N.A	N.A
Task 3: Project implementation and management support.	Throughout the term of the assignment.	N.A	N.A

It is envisaged that a service provider will be mobilised by EIB in September 2023.

*\*Note: the Bank will take into account the Beneficiary's comments provided that they are justified (i.e. content is incorrect, inaccurate, incomplete, misleading, inappropriate or irrelevant). The Bank shall provide the Services under this Agreement only in accordance with its standards and based on the relevant data available. If the Beneficiary expresses no position on the deliverables within ten (10) calendar days from the submission, the deliverables are considered tacitly approved.*





## Annex 2

### General Terms and Conditions for Advisory Services provided by the Bank

#### Article 1 – Subject

- 1.1 This Agreement sets out the terms upon which the Bank shall provide the Services to the Beneficiary. “**Services**” means the advisory services, including any related deliverables, to be delivered by the Bank to the Beneficiary in the framework of the InvestEU Advisory Hub, as further described in Annex 1, Section II supporting the Project’s Specific Objectives.
- 1.2 The Bank and the Beneficiary (each a “**Party**” and together, the “**Parties**”) acknowledge and agree that the Services are rendered to the Beneficiary independently from any assessment for potential financing to be made available to the Beneficiary by the EIB Group, and do not represent a commitment by the EIB Group, to provide such financing to the Beneficiary.

#### Article 2 – Entry into Force and Duration

- 2.1 This Agreement shall enter into force on the date of its signature by the last Party (the “**Effective Date**”) and shall remain valid for as long as any rights, obligations or liabilities arising out of its provisions remain outstanding, unless it is otherwise terminated in accordance with the provisions of Article 9 (*Amendments, Assignment, Suspension and Termination*).
- 2.2 The Commencement Date shall be the first business day (i.e. any working day on which the Bank is open for business in Luxembourg) following the Effective Date (the “**Commencement Date**”).

#### Article 3 – Performance of the Services

- 3.1 The Bank undertakes to use its reasonable endeavours to carry out the Services in a timely manner. The Bank shall provide the Services with the requisite professional degree of care, skill and ability it applies to the discharge of its own affairs. Without prejudice to the preceding, the Beneficiary acknowledges and accepts that the work programme and timetable set out in Annex 1 have been prepared in good faith based on information available to the Bank at the time of signature of this Agreement and that compliance with such work programme and timetable is subject to, *inter alia*:
- a) the Beneficiary fulfilling its obligations under this Agreement in a satisfactory and timely manner, in particular by making any decisions in a timely manner and by providing, without undue delay, any information or support as specified in this Agreement or as may be reasonably requested by the Bank during the provision of the Services;

b) other authorities, entities or bodies in the country of establishment of the Beneficiary and/or in the country(ies) where the project is located, whose cooperation is essential for the timely delivery of the Services, in particular those benefitting from the Services, acting in a satisfactory and timely manner when their input is required for the performance of the Services.

3.2 The Parties agree that the Beneficiary shall act as the main counterpart to the Bank for the purposes of this Agreement and that the Bank may, unless expressly stated otherwise, assume that any notice, approval or other communication provided by the Beneficiary to the Bank in relation to this Agreement represents the views of the Beneficiary and of any and all other entities benefitting from the Services, as these are identified in Annex 1.

3.3 The Bank, at its sole discretion, may commission one or more third parties including the EIF, to perform part of the Services. The Beneficiary acknowledges and accepts that the Bank shall apply its own internal procurement rules when engaging the services of such third parties. The Bank shall inform the Beneficiary on the engagement of such parties, it being understood that such commissioning by the Bank of third parties shall not create, nor be construed to create, any contractual relationship between such third party and the Beneficiary.

The Bank procures that if it commissions a third party in accordance with this Article 3, such third party shall perform the Services with reasonable skill and care.

3.4 The Beneficiary shall provide all reasonably necessary information and assistance, at no cost to the Bank, in order to enable the Bank (including any third party commissioned by the Bank pursuant to this Article 3), to perform the Services in accordance with the terms of this Agreement. The Beneficiary warrants and undertakes that any information provided to the Bank pursuant to this Agreement is and will be accurate and that the Bank shall be entitled to rely on such information and assistance without enquiry as to the accuracy or origin of the same.

3.5 Subject to the provisions of Article 5 (*Confidentiality*), any documents or information of which the Bank becomes aware pursuant to the performance of the Services may be shared for the purpose of performing the Services within the EIB Group and with third parties involved in the performance of the Services.



- 3.6 The Beneficiary undertakes to comply with all the laws and regulations applicable to it.
- 3.7 The Beneficiary undertakes to provide the Bank with information on the evolution of the Project's General and Specific Objectives (referred to in Annex 1 Section I), following completion of the Services. The scope of information may also relate to the nature of any funding sources that the Project either benefitted, or will benefit, from. Such request may be addressed to the Beneficiary after at least a period of twelve months starting from the date of submission of the Services' final deliverable to the Beneficiary. Following completion of the Services, the Beneficiary undertakes to complete a satisfaction survey within the deadline specified by the Bank.
- 3.8 The Beneficiary may be selected as a success story within the framework of the InvestEU Advisory Hub, and authorises the Bank and/or the European Commission to publish a summary of the project, including the name and the locality of the Beneficiary, on their respective websites or social media, subject to the provisions of Article 5 (*Confidentiality*) and Article 15 (*Personal Data*). The Beneficiary may provide adequate written justification to request that the publication be waived, for example if the publication risks harming its commercial interests or risks threatening the rights and freedoms of persons or entities as protected by the Charter of Fundamental Rights of the European Union. The Bank shall not unreasonably withhold its acceptance of such request.

#### Article 4 – Cost of Services

- 4.1 Any payments to the Bank under this Agreement shall be made using accounts acceptable to the Bank. Any account in the name of the Beneficiary held with a duly authorised financial institution in the jurisdiction where the Beneficiary has its place of residence or is incorporated is deemed acceptable to the Bank. The Beneficiary shall not fund all or part of the contribution costs under the Agreement out of proceeds derived from activities or businesses with entities or persons being the target of (a) Sanction(s), or otherwise subject of any Sanction, entities or persons in breach of (a) Sanction(s) or in any manner that would directly result in a breach by the Bank of the Sanction(s).
- 4.2 In accordance with Article 21 of the Protocol on the Privileges and Immunities of the European Union, the activities of the Bank and of its organs carried out in accordance with its Statute are not subject to any turnover tax. Pursuant to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (VAT), as subsequently amended, the Beneficiary understands that the contribution costs may be subject to VAT in the country of establishment of the Beneficiary and/or in the country(ies) where the project is located, and shall be fully responsible for, and shall indemnify

the Bank for, and in respect of, payment of any amount made in connection with either the performance of the Services or any payment or benefit received by the Beneficiary in respect of the Services.

- 4.3 The Beneficiary shall be responsible for the payment of any taxes, social security contributions, duties, fees and other impositions of whatsoever nature, including VAT, which are due or it may incur in accordance with the laws of the country of establishment of the Beneficiary and/or the country(ies) where the project is located in connection with either the performance of the Services or any payment or benefit received by the Beneficiary in respect of the Services.

#### Article 5 – Confidentiality

- 5.1 For the purpose of this Agreement, "**Confidential Information**" means information which:
- a) is furnished by the Beneficiary to the Bank for the purpose of enabling the Bank to provide Services to the Beneficiary;
  - b) is in written or other permanent (including electronic) form;
  - c) the Beneficiary has clearly and conspicuously identified as "Confidential Information";
- but excludes information which:
- d) was, at the time of its disclosure to the Bank by the Beneficiary, public knowledge or generally available to the public in written or other permanent form;
  - e) the Bank already had knowledge of at the time of receipt from the Beneficiary or which is or becomes available to the Bank, without a duty of confidentiality, from sources which, to the Bank's knowledge and belief, are under no duty of confidentiality towards the Beneficiary; or
  - f) becomes part of the public domain through no fault of the Bank.

- 5.2 The Beneficiary undertakes to designate information as "Confidential Information" only if, and to the extent that, the Beneficiary believes in good faith that such information is confidential.

- 5.3 The Bank undertakes to keep all Confidential Information confidential and not to divulge, disclose or make available any part thereof to anyone outside the Bank; for the purposes of this paragraph the term "Bank" shall include (i) the EIB Group employees, agents, directors, governing bodies, and (ii) the EIB Group professional advisers, auditors, consultants, or other service providers and parties having an analogous contractual relationship with the Bank that have undertaken



towards the Bank specific confidentiality obligations or are bound by a general professional duty of confidentiality.

- 5.4 Without prejudice to the provisions of Article 5.5 below, the Bank undertakes to use any Confidential Information solely for the purposes necessary for the provision of the Services.
- 5.5 The Bank may use and/or disclose such Confidential Information as the Bank considers appropriate in each case, and shall not be in breach of its duty of confidentiality by making such use or disclosure thereof:
- a) if required by law or regulation, in accordance with any treaty, or document of similar nature binding on the Bank, obligation pursuant to any agreement to which the Bank is a party which implements such law, regulation, treaty or binding document of a similar nature or pursuant to the rules of any relevant stock exchange;
  - b) to the European Commission, the European Court of Auditors, the European Anti-Fraud Office (OLAF) and/or the European Public Prosecutor's Office (EPPO);
  - c) to Member States of the European Union (including their representatives) or committees set up by the European Commission and/or Member States under any mandate under which the Bank operates, in order to obtain any opinion, consent, or waiver required in connection with the Services;
  - d) if information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, or by any equivalent body of the European Union or of any of its Member States;
  - e) if information is required to be disclosed in connection with and for the purposes of any litigation, arbitration, administrative or other investigations, proceedings or disputes;
  - f) in order to protect its interests in the course of any legal or arbitration proceedings to which both the Beneficiary and the Bank are a party;
  - g) in accordance with the Bank's Transparency Policy and Anti-fraud Policy (as published on the Bank's website); or
  - h) with the consent of the Beneficiary.
- 5.6 The obligations undertaken by the Bank in this Article 5 shall expire on the second anniversary following the day of signature of this Agreement by the last contracting Party.

## Article 6 – Ownership of Results and Intellectual Property Rights

- 6.1 For the purposes of this Agreement, intellectual property rights shall be understood to mean any copyright and related rights, rights in designs, database rights, rights in computer software, domain names, trademarks, service marks, patents, trade names or any applications for any of the foregoing, rights in confidential information (including know-how and trade secrets) or similar rights or obligations, whether registerable or not, moral rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world (the "**Intellectual Property Rights**").
- 6.2 Any pre-existing Intellectual Property Rights of any of the Parties in any reports, studies, analyses or other documents used by the Parties in connection with this Agreement will remain with that Party.
- 6.3 Subject to any pre-existing Intellectual Property Rights of any natural or legal person, including any of the Parties, the Intellectual Property Rights in new materials delivered by the Bank to the Beneficiary in the performance of this Agreement, as described in Annex 1, shall belong to and be the absolute property of the Bank.
- 6.4 Without prejudice to the provisions of Article 6.3, the Bank hereby grants to the Beneficiary a non-exclusive, royalty-free licence, for an indefinite duration, to use any new materials delivered by the Bank to the Beneficiary in the performance of this Agreement. The licence may be terminated by the Bank at any time, subject to a notice period of three (3) months.
- 6.5 The Bank shall inform the Beneficiary of the scope of Intellectual Property Rights vested with the deliverables (and any limitations in that respect) granted by a third party to the Bank pursuant to the provisions of this Article.
- 6.6 Subject to prior consent of the Bank, which consent shall not be unreasonably withheld, the Beneficiary may disclose the materials delivered in performance of this Agreement to a third party. The Beneficiary agrees, acknowledges and accepts that should a third party wish to use or rely on such materials for its own purposes, it shall ensure that such third party is informed on the Bank's proprietary rights and shall commit the third party to enter into a licence letter with the Bank. No prior licence letter shall be required if the third party is a contractor of the Beneficiary and performs services related to the present assignment on behalf and upon request of the latter.



**Article 7 – Non-Exclusivity, Conflicts of Interests, Applicable Policies and Representations**

- 7.1 The Parties acknowledge and agree that the Services are not rendered on an exclusive basis to the Beneficiary and that nothing in this Agreement shall prevent the Bank or the EIB Group from delivering similar services to other parties in any other business sector, trade, profession or occupation during the validity of this Agreement.
- 7.2 Nothing in this Agreement shall prevent the Bank or the EIB Group from continuing any existing engagements with the Beneficiary, or from acting in the future in multiple capacities in relation to the Beneficiary, including as financier, lender, equity or guarantee provider, shareholder, fund manager, agent or adviser.
- 7.3 The Bank shall manage any potential conflicts of interest issues in accordance with the Bank's internal rules and procedures regarding the management of conflicts of interest.
- 7.4 The Beneficiary shall take all necessary precautions to avoid, eliminate or address any facts or circumstances which could give rise to a conflict of interest (that is, a situation where the impartial and objective exercise of the functions of any person implementing the Services is compromised) in the execution of this Agreement.
- 7.5 The Beneficiary acknowledges that the Bank is bound by its [Code of Conduct for EIB Group Staff](#), its [Anti-Fraud Policy](#), its [Policy towards weakly-regulated, non-transparent and uncooperative jurisdictions](#), and its [Anti-Money Laundering and Combating Financing of Terrorism Policy](#) as amended and supplemented from time to time and

published on the Bank's website, aiming at preventing prohibited conducts, targeted activities and other criminal activities, each as defined in the aforementioned EIB policies (the "Offences"). It is the common understanding of the Parties that they shall endeavour to ensure that all activities and/or operations relating to this Agreement are free from any Offences.

- 7.6 The Beneficiary represents and warrants that neither the Beneficiary, nor any other person acting on its behalf or under its control, has committed any Offences in connection with this Agreement and that to the best of its knowledge, no funds (if any) provided or used by the Beneficiary under this Agreement are of illicit origin, including products of money laundering or linked to the financing of terrorism. The Beneficiary shall promptly inform the Bank if at any time it becomes aware of the illicit origin of any such funds or of any fact or information confirming or reasonably suggesting that an Offence has occurred in connection with the Agreement.
- 7.7 The Beneficiary represents and warrants that it is not the target or otherwise subject of or in breach of any Sanction<sup>1</sup>; the Beneficiary warrants and represents that, to the best of its knowledge and belief, no Relevant Person<sup>2</sup> is the target or otherwise subject of or in breach of any Sanction. Both Parties acknowledge that the Beneficiary's representations and undertakings set out in any part of this Agreement are only sought and given to the extent that to do so is permissible pursuant to any applicable anti-boycott rule of the European Union, such as Regulation (EC) 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by

<sup>1</sup> For the purposes of the Agreement, the term "Sanction" refers to the economic or financial sanctions laws, regulations, trade embargoes or other restrictive measures (including, in particular, but not limited to, measures related to the financing of terrorism) enacted, administered, implemented or enforced from time to time by any of the following: the United Nations, including, *inter alia*, the United Nations Security Council; the European Union including, *inter alia*, the Council of the European Union and the European Commission, and any competent bodies/institutions or agencies of the European Union; the government of the United States of America, and any department, division, agency, or office thereof, including, *inter alia*, the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury, the United States Department of State and/or the United States Department of Commerce; and the government of the United Kingdom, and any department, division, agency, office or authority, including, *inter alia*, the Office of Financial Sanctions Implementation of His Majesty's Treasury and the Department for International Trade of the United Kingdom.

<sup>2</sup> For the purposes of this Agreement, the term "Relevant Person" shall mean: i) For Beneficiaries with status of private entity: any member of its management bodies; or any of its employees or any other person acting on behalf of the Beneficiary or under the Beneficiary's control, having the power to give directions and exercise control with respect to the Agreement ii) For Beneficiaries with status of public entity: any official or representative, or any other person acting on its behalf or under its control, having the power to give directions and exercise control with respect to the Agreement.



a third country and actions based thereon or resulting therefrom, as amended from time to time.

- 7.8 The Beneficiary undertakes not to breach, nor cause the Bank to breach, any Sanctions and shall inform the Bank in writing as soon as possible if any sanction event occurs, that is where the Beneficiary or any Relevant Person breaches or becomes the subject of a Sanction (the "Sanction Event"). The Beneficiary undertakes to exclude any Relevant Person affected by a Sanction Event from any activities related to the Agreement within a reasonable timeframe and keep the Bank informed. The Beneficiary undertakes not to maintain or enter into a business relationship in relation to the Services or make all or part of the proceeds of the Services under this Agreement available to or for the benefit of (directly or indirectly) any person or entity that is the target or otherwise subject to any Sanction. The Beneficiary undertakes to inform the Bank promptly about any changes affecting its ownership, control or holding interest situation that may result in a Sanction Event or cause the Bank to breach a Sanction. For the purposes of a Sanction(s), the words "control", "interest" and "ownership" shall be interpreted as defined by the relevant sanctions authority in relation with the relevant Sanctions. The Beneficiary shall ensure that it maintains appropriate internal controls and safeguards designed to prevent the violation of any Sanction.
- 7.9 The Beneficiary represents that, on the date of its signature of this Agreement, it is not in any of the following circumstances: been bankrupt or subject to insolvency or winding-up procedures, having its affairs administered by a liquidator or by a court, entered into arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations, or been found in breach (by a final judgment or final administrative decision) of its obligations relating to the payment of taxes or social security contributions in accordance with applicable law.
- 7.10 The Beneficiary shall keep the Bank informed of any kind of advisory support or grant that the Beneficiary has benefitted, is benefitting or benefits from prior to or during the validity of this Agreement that contributes to the Project's Specific Objectives, partially or exclusively financed by EU-financed programmes (including EU-financed programmes implemented and available also at national level). The Beneficiary represents and warrants that any such contributions do not cover the same costs as incurred in the provision of Project's Specific Objectives.

#### Article 8 – Use of Results, Liability, Force Majeure

- 8.1 The Beneficiary is solely responsible for deciding whether to pursue or implement any proposals,

studies, presentations or recommendations made by the Bank or by third parties commissioned by the Bank as part of the Services, as well as for making its own assessment on the appropriateness of the Services for the use it intends to make thereof. The Bank makes no representation and provides no warranty as to such fitness for purpose, and shall not bear any liability in that respect.

- 8.2 The Bank makes no representation or warranty as to the outcome of the advisory activities or as to the accuracy or completeness of any reports, documents or analyses prepared or delivered in connection with the performance of the Services. The Beneficiary accepts and agrees that any course of action taken or to be taken, or not taken or not to be taken by the Beneficiary will be decided upon solely by the Beneficiary based upon its own evaluation of the relevant circumstances, and that the Bank is not responsible and shall bear no liability related to any such decision of the Beneficiary. No advice provided or views expressed by the Bank shall constitute, or be construed as constituting, legal advice, including with respect to compliance with any applicable laws or regulations.
- 8.3 To the maximum extent permitted by the applicable law, the Bank shall bear no contractual liability towards the Beneficiary, its employees, agents or officers upon any claim for any special direct, indirect or incidental damage of any kind suffered or incurred by the Beneficiary, including, without limitation, economic damage or any damages resulting from loss of use, loss of business, loss of revenue, loss of profits arising in connection with this Agreement, the Bank's performance of Services or of any other obligations relating to this Agreement, unless such loss, damage or expense shall be proven to result directly from fraud, gross negligence or wilful misconduct by the Bank.
- 8.4 The Beneficiary shall indemnify and hold harmless the European Union, the Bank, their respective employees, officers, Governors, delegates, servants or agents from and against any and all losses, claims, demands, damages, liabilities of any kind or fines relating to or arising under, out of or in connection with the activities performed or Services provided pursuant to this Agreement, unless such losses, claims, demands, damages or liabilities have resulted solely from the Bank's gross negligence or wilful misconduct in the performance of the Services.
- 8.5 Force majeure shall mean any unforeseeable exceptional situation or event beyond each of the Parties' control which is not attributable to error or negligence on their part, proves insurmountable in spite of all due diligence and prevents them from fulfilling any of their obligations under the Agreement. Delays in making information, necessary for the provision of the Services, available to the Bank or financial difficulties affecting the Beneficiary may not be invoked as force majeure. A Party faced with force majeure



shall inform the other Party in writing without delay stating the nature, probable duration and foreseeable effects. The Party faced with force majeure shall not be held in breach of its obligations under the Agreement if it is prevented from fulfilling them by force majeure. The Parties shall make every effort to minimize any damage due to force majeure.

#### Article 9 – Amendments, Assignment, Suspension and Termination

- 9.1 Any amendments to this Agreement must be set out in writing in a contractual amendment signed by the Parties, to become effective on the terms set out therein.
- 9.2 Changes of address or of contact details may be notified to the other Party in writing, in accordance with Article 10 (*Notices and Other Communications*).
- 9.3 A Party may not assign or transfer to a third party, or otherwise dispose of, any of its rights or obligations under this Agreement without the prior written notification to and consent of the other Party. Any change on the Beneficiary's legal form shall be communicated to the Bank within thirty (30) days after it occurs.
- 9.4 Without prejudice to the Bank's right to terminate the Agreement, the Bank may suspend the Agreement, or any part thereof, at any time, if it becomes aware of allegations suggesting the committal of (an) Offence(s) or a Sanction Event that is likely to affect the Beneficiary or the Bank. Suspension shall take effect on the day that the Beneficiary receives written notice from the Bank and shall last until the Bank notifies the Beneficiary of termination of the suspension period or termination of the Agreement.
- 9.5 Either Party may terminate this Agreement upon serving a thirty (30) calendar days' written notice to the other Party, if such Party believes that the purposes of this Agreement can no longer be effectively or appropriately carried out.
- 9.6 The Bank may terminate this Agreement with immediate effect, and without incurring any liability, by serving a written notice to the Beneficiary, if at any time:
- a) the Beneficiary is found guilty of any Offence, as defined in Article 7.5 (*Non-Exclusivity, Conflicts of Interests, Applicable Policies and Representations*);
- b) the Beneficiary or any entity or person which directly or indirectly owns or controls or directs the Beneficiary or of which the Beneficiary acts on behalf of, or any Relevant Person is affected by the Sanction Event referred to in Article 7 (*Non-Exclusivity, Conflicts of Interests, Applicable Policies and Representations*);
  - c) the Beneficiary commits a material breach of any of its obligations undertaken through the Agreement;
  - d) the Beneficiary makes a resolution for its winding up, commences negotiations or makes an arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors or an administration or a winding-up order is made or an administrator or receiver is appointed in relation to the Beneficiary;
  - e) the Beneficiary acts in any manner which in the opinion of the Bank brings, or is likely to bring, the Bank into disrepute or is materially adverse to the interests of the Bank and the Beneficiary fails to comply with the Bank's request to cure;
  - f) the *force majeure* situation mentioned under Article 8.5. lasts for more than ninety (90) calendar days;
  - g) it becomes illegal for the Bank to continue the provision of services or fulfilment of any other obligation under this Agreement.
- 9.7 The Bank may also terminate this Agreement without incurring any liability, by serving a thirty (30) calendar days' written notice to the Beneficiary, if at any time:
- a) the Beneficiary knowingly and intentionally provides any information or document to the Bank in connection with the Services which is, or proves to have been, incorrect in any material respect; or
  - b) where the cost of the Services is expected to be covered, wholly or partially, by a third party, including the European Union, and such financing is cancelled or withdrawn by the third party or if for any reason whatsoever the InvestEU Regulation and/or the Advisory Agreement between the Bank and the European Union represented by the European Commission in respect of the InvestEU Advisory Hub are terminated or cease to be valid and in full force and effect.
- 9.8 Immediately after the notice to terminate is received, the Parties will take all appropriate steps to close in an orderly manner the on-going activities under this Agreement. Orderly manner



encompasses the obligation of the Beneficiary to pay the Bank for the Services actually provided and any costs and expenses arising from such early termination, among other obligations.

- 9.9 The rights of either Party under Articles 9.4 to 9.7 are without prejudice to any other rights that the Parties may have at law to terminate this Agreement.
- 9.10 Any delay by a Party in exercising its rights to terminate the Agreement shall not constitute a waiver thereof.

#### **Article 10 – Notices and Other Communications**

- 10.1 Any notice given under, or in connection with, this Agreement must be in English. All other documents provided under, or in connection with, this Agreement must be in English or, if not in English, and if so required by the Bank, accompanied by its translation into English and, in this case, the English translation shall prevail unless the document is a constitutional, statutory or other similar official document.
- 10.2 Except for notices relating to litigation whether pending or threatened, which shall be served at the addresses specified in the Letter according to the applicable procedural rules, all notices and correspondence in relation to this Agreement and the Services shall be sent by post, or, to the extent agreed by the Parties in writing, by e-mail or other means of electronic communication, to the addresses indicated in the Letter.
- 10.3 Any change made to the communication details shall have effect only after it has been notified in writing, in paper or electronic form, to the other Party at the above addresses.
- 10.4 Notices and other communications are deemed to have been made when they are received by the receiving Party.

#### **Article 11 – Status**

- 11.1 Nothing in this Agreement will create, or be construed as creating, a partnership or joint venture, agency, lawyer-client or similar relationship between the Parties nor authorise any Party to make any statements or enter into any agreement on behalf of any other Party, except as expressly set out in this Agreement.
- 11.2 The Bank does not owe the Beneficiary any fiduciary duty.

#### **Article 12 – Governing Law and Dispute Settlement**

- 12.1 This Agreement and its formation, construction and validity will be governed by the general principles of European Union law common to the Member States, as interpreted by the Court of Justice of the European Union.

- 12.2 The Parties shall endeavour to settle amicably any dispute arising between them out of, or in connection with, this Agreement or its subject matter or formation (including non-contractual disputes or claims). If no amicable agreement is reached within sixty (60) calendar days from the notification of such dispute or complaint from one Party to the other, in accordance with Article 10 (*Notices and other Communications*), all disputes concerning this Agreement shall be submitted to the exclusive jurisdiction of the Court of Justice of the European Union.

#### **Article 13 – Evaluations**

Without prejudice to confidentiality obligations assumed by the Bank, in case the Bank or the European Commission carries out an evaluation or a monitoring mission related to the Services provided under this Agreement, the Beneficiary undertakes to provide to the Bank or the European Commission or third parties authorised by them, any document or information, or grant the necessary access rights, which will assist them in performing the evaluation or monitoring mission.

#### **Article 14 – Visibility**

The Beneficiary undertakes to acknowledge, in any information given to the press or to any third parties, related publicity material, official notices, reports or publications, the fact that the Services were provided benefiting from the support of the European Union, and if applicable of the Bank, in the framework of the InvestEU Advisory Hub. To this effect, the Bank shall make available to the Beneficiary any logos or other visibility tools to be applied in respect of the InvestEU Advisory Hub.

#### **Article 15 – Personal Data**

The Parties mutually agree that each of them acts as independent controller with regard to any personal data processing operation it performs in implementation or in relation to the Agreement. As such, the Parties have to comply with the obligations set forth by the data protection legislation applicable to their operation. Specifically, if the provision of the Services under this Agreement involves processing of personal data by the Beneficiary, the Beneficiary shall do so in accordance with the provisions of Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC. If the provision of Services under this Agreement involves processing of personal data by the Bank, the Bank shall do so in accordance with the provisions of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC. For the Bank, the terms "controller" and "personal data" have the meaning defined in Article 3 of the above-mentioned Regulation. The privacy statement informing about the



Bank's personal data processing operations can be accessed via the following link which is published on the Bank's website: <https://www.eib.org/en/privacy/lending.htm>. The Beneficiary undertakes to pass this information on to data subjects whose personal data can be processed by the Bank in implementation of the Services.

#### **Article 16 – Audits**

1. The Beneficiary acknowledges and agrees that, given the status of the Bank as a body of the European Union, national audit authorities do not enjoy any auditing rights and the Bank is only subject to audit verification (including on-the-spot-visits) performed directly by the European Court of Auditors in accordance with Article 287(3) of the TFEU and the Tripartite Agreement entered into between the European Court of Auditors, the European Commission and the Bank, mentioned in Article 287(3) of the TFEU.
2. The Beneficiary shall allow the Bank, the European Court of Auditors, the European Commission, the European Anti-Fraud Office (OLAF), the European Public Prosecutor's Office (EPPO), and any third party authorised by any of the preceding, to carry out audits and controls, including on-the-spot checks and inspections, in relation to the Beneficiary and to request information from the Beneficiary in respect of this Agreement and its execution. These verifications may take place up to five (5) years after the finalisation of the Services, and the Beneficiary shall keep records of this Agreement and its execution during this period.