

Volume 4 Appendix 1 Draft LP agreement

Dated

2010

- (1) NORTH WEST BUSINESS FINANCE LIMITED
- (2) [CARRIED INTEREST PARTNER]
- (3) [GENERAL PARTNER LIMITED]

Limited Partnership Agreement

[Note: this draft Limited Partnership Agreement is subject to amendments to comply with the requirements of any funder, the requirement of the European Commission or the UK Government and any further legal or regulatory requirements applicable to a specific fund]

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DRAFT

THIS LIMITED PARTNERSHIP AGREEMENT is made as a Deed the _____ day of
2010

BETWEEN:

- (1) **NORTH WEST BUSINESS FINANCE LIMITED**, a company registered in England and Wales under registration number 07028838 whose registered office is at Eversheds House, 70 Great Bridgewater Street, Manchester M1 5ES (the "**Holding Fund**"); [*please note the registered office is in the process of being updated at Companies House*] and
- (2) **[CARRIED INTEREST PARTNER]** [INSERT DETAILS] (the "**Carried Interest Partner**")¹; and
- (3) **[GENERAL PARTNER LIMITED]**, a company registered in England and Wales under registration number [NUMBER] whose registered office is at [ADDRESS] (the "**General Partner**").²

BACKGROUND:

- (A) The General Partner and the Carried Interest Partner have established the Partnership under the Act.³
- (B) The Partnership has been established for the purposes of carrying on the business of an [investor][lender] and in particular, of identifying, evaluating, negotiating, making, maintaining and realising [investments in unquoted securities in] [and] [loans to] companies and other entities.
- (C) The parties have agreed to execute this Agreement to regulate the respective responsibilities and dealings between them and the conduct of the business, management and affairs of the Partnership.
- (D) The Holding Fund has agreed to subscribe £[] of Capital Contribution to the Partnership. The Carried Interest Partner has subscribed £[] of Capital Contribution to the Partnership.
- (E) A manager has been selected and appointed by the Partnership to manage and operate the Partnership and to act as investment manager of the Partnership. The first manager is [NAME].

1. _____

¹ Note to bidders: It is the responsibility of the successful bidder to form a carried interest vehicle satisfactory to the Holding Fund. It is envisaged that this vehicle will be a Scottish Limited Partnership or an English company acting as nominee

² Note to bidders: It is the responsibility of the successful bidder to provide a General Partner satisfactory to the Holding Fund

³ Note to bidders: It is the responsibility of the successful bidder to arrange for the registration of this limited partnership to the satisfaction of the Holding Fund before the Holding Fund becomes a Limited Partner

IT IS HEREBY AGREED as follows:

1. **DEFINITIONS**

1.1 In this Agreement (including the Background), the following words and phrases have the following meanings:

- "Accounts"** the accounts of the Partnership made up for each Accounting Period as prepared by the Manager and audited by the Auditors, and the notes thereto;
- "Accounting Date"** 31 March 2011 and 31 March in each year thereafter or such other date as the General Partner may determine with the agreement of the Holding Fund by Consent or (in the case of the final Accounting Period of the Partnership) the date when the Partnership is terminated;
- "Accounting Period"** each period of 12 months ending on the Accounting Date in each calendar year provided that the first Accounting Period of the Partnership shall commence on the date of this Agreement and shall end on the Accounting Date in 2011;
- "Acquisition Cost"** the acquisition cost of an Investment together with any expenses related to such acquisition which are borne by the Partnership;
- "Act"** the Limited Partnerships Act 1907;
- "Additional Investment Amount"** any sum other than the Investment Loan Commitment which the Holding Fund may decide to make available to the Partnership by Consent and on the terms of such Consent for the purpose of the Partnership making Investments;
- "Advance"** the amount of each loan (whether by way of Investment Loan or Management Project Loan and whether or not such amount has been advanced in whole or in part) made by the Holding Fund under this Agreement or (as the context requires) the amount thereof for the time

being outstanding;

“Annual Budgets and Marketing Plan”

the budget for the Partnership and marketing plan for the Partnership for each calendar year setting out, inter alia, a forecast of the income and expenditure of the Partnership (including, without limitation, marketing expenditure) and targets to be met during that year and including those matters set out in this Agreement and such other matters as the Manager in consultation with the General Partner may include and/or as the General Partner may require to be included in such budget and marketing plan from time to time and such marketing plan to be consistent with the marketing plan of the Holding Fund from time to time;

“Assisted Areas”

any area within the North West Regional Aid Map 2007-2013 as amended and/or updated from time to time and which can be found at:

- (a) <http://www.nwda.co.uk/extranet/docs/Regional%20Aid%20Map%20North%20West2.xls> ; and
- (b) <http://www.nwda.co.uk/extranet/images/Aid%20ceilings%20map.png> ;

“Associate”

any corporation which in relation to the person concerned (being a corporation) is a holding company or a subsidiary of such holding company or a fellow subsidiary or a subsidiary of a corporation at least one fifth of the issued equity share capital of which is beneficially owned by the person concerned or an Associate of such person under the preceding part of this definition and where the person concerned is an individual or a firm or other unincorporated body the expression “Associate” means and includes any such corporation directly or indirectly controlled by such person and means and includes any trust, fund or partnership (whether limited or otherwise) managed or advised by any of the foregoing;

"Auditors"	such auditors as may be appointed by the Holding Fund from time to time by Consent and in compliance with all applicable legislation;
"Authorised Person"	a person who is an "authorised person" for the purposes of FSMA;
"Block Exemption"	Commission Regulation (EC) No. 800/2008 declaring certain categories of aid compatible with the Common Market in application of Articles 87 and 88 of the Treaty of Rome;
"Business Day"	any day other than a Saturday or Sunday or a public or bank holiday in England;
"Business Time"	the whole of each working day for the relevant executive (excluding for the avoidance of doubt normal holidays and normal internal management and compliance duties and training consistent with being a full-time fund manager of the Partnership's Investments);
"Capital Contribution"	the amount set out in the books of the Partnership as being contributed by either of the Limited Partners to the capital of the Partnership pursuant to this Agreement;
"Capital Gain"	the amount (if any) by which the proceeds of sale of an Investment after the deduction of the expenses of the Partnership associated with such sale exceed the Acquisition Cost;
"Capital Loss"	the amount (if any) by which the Acquisition Cost exceeds the proceeds of sale of an Investment after the deduction of the expenses of the Partnership associated with such sale;
"Cash Deposits"	cash deposits with a bank with a credit rating given by Standard and Poor's or Moody's of A or better;
"Closing Date"	the date of this Agreement;
"Collective Investment Scheme"	as defined in FSMA and including for the avoidance of doubt the exemptions set out in the Financial Services and Markets Act 2000

(Collective Investment Schemes) Order 2001;

“Commitment”	the amount committed by the Holding Fund to the Partnership equal to the aggregate of the amount of capital subscribed by it as Capital Contribution and the aggregate amount of the Loans to be advanced by it in accordance with this Agreement;
“Consent”	the consent in writing of the Holding Fund;
“disabled workers”	shall be construed in accordance with Article 2.20 of the Block Exemption;
“disadvantaged workers”	shall be construed in accordance with Article 2.18 of the Block Exemption;
“Distribution”	distributions in cash or in specie to the Partners pursuant to clause 11 and Schedule 3 (and “Distributions” and “Distributed” shall be construed accordingly);
“EC Reference Rate”	the applicable reference and discount rates calculated in accordance with the requirements of the European Commission communication on the revision of the method for setting the reference and discount rate (OJ C 14, 19.1.2008, P6-9) or as otherwise required by the European Commission from time to time in any successor or amending communication;
“EIB”	the European Investment Bank, such expression to include statutory successors;
“EIB Facility Agreement”	the facility agreement dated [] and entered into between the Holding Fund and EIB;
“EIB Loan”	all amounts owing from the Holding Fund to EIB pursuant to the EIB Facility Agreement;
“EIB Loan Repayment Point”	the point at which the Holding Fund has repaid the EIB Loan;
“EIB Restricted Sectors”	any of the following sectors: (a) production of weapons and ammunition,

arms, military or police equipment or infrastructures, and equipment or infrastructure limiting people's individual rights and freedom (i.e. prisons, detention centres of any form);

- (b) gambling and related equipment;
- (c) tobacco manufacturing, processing, or distribution;
- (d) activities involving live animals for experimental and scientific purposes in so far as compliance with the "Council of Europe's Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes" cannot be guaranteed;
- (e) activities which give rise to environmental impacts that are not largely mitigated and/or compensated;
- (f) sectors considered ethically or morally controversial, e.g. research on human cloning;
- (g) pure real estate development activity; and
- (h) financial holding companies of industrial groups and leasing companies associated with a specific producer,

or as those sectors may be amended from time to time by EIB;

EIF"

the European Investment Fund, such expression to include statutory successors;

"enterprises newly created by female entrepreneurs"

shall be construed in accordance with Article 2.28 of the Block Exemption;

"Environment"

any air (including air within natural or man-made structures above or below ground); water (including territorial, coastal and inland waters

and ground water and water in drains and sewers); and land (including surface land, sub-surface land, seabed and river bed under any water);

“Equality Legislation”

the Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000, the Disability Discrimination Act 1995 as amended by the Disability Discrimination Act 2005, and the Equality Act 2006;

“equity”

as defined in Article 28 of the Block Exemption;

“ERDF”

the European Regional Development Fund;

“ERDF Amounts”

the amounts to be made available to the Holding Fund pursuant to the Offer Letter from NWDA in its capacity as managing authority of ERDF;

“ERDF Sensitive Sectors”⁴

any of the following sectors:

- (a) dismantling of nuclear power stations;
 - (b) housing construction and renovation other than specialist renewable energy in social housing;
 - (c) owning, operating or development of retail;
 - (d) synthetic fibres;
 - (e) shipbuilding;
 - (f) coal;
 - (g) steel;
-
- (h) primary production, processing and marketing of agricultural products;
 - (i) the production (including the relevant means of production in the fisheries and aquaculture sectors), processing or

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⁴ These ERDF Sensitive Sectors are subject to change and may change before the award of any contract.

marketing of products listed in Article 1(3) of Regulation 800/2008 (OJL 214 of 9.8.2008 pages 3-47);

- (j) banks and insurance companies;
- (k) large scale transport companies;
- (l) provision of generalised (school age) education;
- (m) provision of local social welfare facilities where these are not directly linked to activities of an economic nature relating to the objectives of the Operational Programme,

or as those sectors may be amended from time to time by the European Commission;

"exit strategy"

as defined in Article 28.7 of the Block Exemption;

"expansion capital"

as defined in Article 28.6 of the Block Exemption;

"FSA"

the Financial Services Authority or any successor regulator;

"FSA Handbook"

the FSA Handbook of Rules and Guidance as amended from time to time;

"FSMA"

the Financial Services and Markets Act 2000;

"Funders"

funders and/or programmes which have provided the Holding Fund with funding out of which the Loans are made available to the Partnership;

"General Partner's Share"

the amounts referred to in paragraph **6** of **Schedule 3**;

"HF Loan Repayment Point"

the point(s) when sufficient Distributions to the Holding Fund have been made to repay the Loans and to pay the Preferred Return and no amount in respect thereof remains outstanding;

"Holding Account"

the account set up and operated by the Manager on behalf of the Partnership in order to receive returns from Investments and any interest from

	idle funds;
"IAB"	the investment advisory board of the Holding Fund;
"Idle Funds Investment Policy"	as set out in the IOGs;
"ICTA"	the Income and Corporation Taxes Act 1988;
"Increased Sales"	new sales from the North West Region of England generated by Investee Companies and companies in the same group as a consequence of Investment by the Partnership and the Matched Funding as measured for the purposes of the Performance Measures Guidance;
"Investee Company"	any body corporate or other entity in respect of which the Partnership (through its general partner) holds Investments;
"Investment"	any investments acquired or subscribed for by the Partnership pursuant to this Agreement for the account of the Partnership including but not limited to shares, debentures, loans, mezzanine facilities, convertible loan stock, options, warrants or other securities of any body corporate but excluding cash on deposit, each investment or combination of investments in any body corporate being a separate project from each investment or combination of investments in any other body corporate for the purposes of the applicable rules and regulations of ERDF;
"Investment and Operational Guidelines" or "IOGs"	the investment and operational guidelines of the Fund as set out in the Invitation to Tender or as the case may be any additional or substitute investment and operational guidelines agreed in writing between the General Partner and the Holding Fund;
"Investment Area"	the North West Region of England including for the avoidance of doubt the Merseyside Area;
"Investment Conditions"	the investment conditions of the Partnership as set out in Schedule 1 or as the case may be any

additional or substitute investment conditions agreed in writing between the General Partner and the Holding Fund;

“Investment Loan”

that part of the Investment Loan Commitment made available to the Partnership by the Holding Fund on the terms of this Agreement for the purposes of making Investments in accordance with the Investment Policy as notified by the Holding Fund to the Partnership from time to time and subject to adjustment as described in **Schedule 8**;

“Investment Loan Commitment”

the amount committed by the Holding Fund to the Partnership being the maximum amount agreed to be advanced by it as Investment Loan for the purposes of making individual Investments in accordance with the Investment Policy;

“Investment Loan Commitment Period”

in respect of:

- (a) the Investment Loan Commitment, the period commencing on the Closing Date and ending on 31 December 2015 or such later date as may be notified to the Partnership by the Holding Fund having regard to any applicable guidance or rules issued by the European Commission;
- (b) any Additional Investment Amount, such later date as may be notified to the Partnership by the Holding Fund by Consent;

“Investment Loan Drawdown Notice”

a notice served by the Manager on the Holding Fund pursuant to **clause 5.2** for the purposes of making investments in the form set out in **Schedule 2** or otherwise as determined by the Holding Fund;

“Investment Policy”

the investment policy of the Partnership as set out in this Agreement including, in particular, **clause 7** and **Schedule 1** and as amended from time to time in accordance with the terms of this

	Agreement;
“Investment Profile”	the investment profile for the Partnership, as set out in the Investment Policy;
“Investment Project Approval Request”	the investment project approval request in the form attached at Schedule 5 ;
“Invitation to Tender” or “ITT”	the invitation to tender for fund management services for the Holding Fund issued on [].
“Jeremie Programme”	the Jeremie programme undertaken by the Holding Fund using Joint European Resources for Micro to Medium Enterprises Initiative derived from EU Structural Funds;
“Jobs Safeguarded”	jobs in the North West Region of England that would have been lost had an Investment not taken place together with Matched Funding as measured for the purposes of the Performance Measures Guidance;
“Key Investment Executive”	[NAME(S)] and at least [] other appropriately qualified persons appointed by the Manager to be Key Investment Executives by the date 4 months from the date of this Agreement, such appointment to be approved by Consent; ⁵
“Liquidation Agent”	the Manager or such other person as may be appointed by the Partnership to be the person responsible for the liquidation of the Partnership pursuant to clause 16 ;
“Limited Partners”	the Holding Fund and the Carried Interest Partner and “Limited Partner” shall be construed accordingly;
“Listing”	the admission of any Investment to the Official List of the UK Listing Authority or the admission of any part of an Investee Company’s share capital to listing, trading or dealing on any of AIM, PLUSMarkets or any recognised investment exchange in the UK and “Listed” shall be

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⁵ Bidders to specify Key Executives and also how many additional appropriately qualified persons will be appointed within 4 months.

construed accordingly;

“Loans”	either or both of the Investment Loan and the Management Project Loan as the context so requires;
“Loan Participations”	the Loans (if any) advanced or agreed to be advanced by the Holding Fund pursuant to Clause 5 (whether or not such Loans have been repaid to the Holding Fund in whole or in part);
“Management Agreement”	the management agreement to be entered into contemporaneously between (1) the Partnership (acting by the General Partner) and (2) the Manager;
“Management Project Loan”	that part of the Management Project Loan Commitment made available to the Partnership by the Holding Fund on the terms of this Agreement for the purposes of making payments pursuant to Schedule 3 ;
“Management Project Loan Commitment”	the aggregate amount committed by the Holding Fund to the Partnership from time to time and agreed to be advanced by it as Management Project Loan as notified by the Holding Fund to the Partnership from time to time;
“Management Project Loan Drawdown Notice”	a notice served by the Manager on the Holding Fund pursuant to clause 5.3.3 in the form set out in Schedule 6 or otherwise as determined by the Holding Fund;
“Manager”	[NAME] or any other person appointed from time to time by the Partnership in accordance with this Agreement;
“Market Failure Report”	the Green Book appraisal carried out by EKOS for the NWDA and completed in March 2009;
“Matched Funding”	any amounts invested in an Investee Company at the same time and alongside amounts invested by the Partnership including, without limitation, any loans, equity or other debt instruments, hire purchase, finance leasing, credit finance or invoice discounting provided or grants made by

third parties;

“medium-sized enterprise”	as defined in Articles 2.1 to 2.2 of Annex 1 to the Block Exemption;
“Merseyside Area”	the Merseyside phasing-in area as shown coloured green on the plan shown at Schedule 4 ;
“Net Additional Jobs”	jobs created in the North West Region of England primarily as a result of Investment by the Partnership together with Matched Funding as measured in accordance with the Outputs and Results and with due regard to the number of New Jobs Created;
“Net Additional Growth Value Added”	new value added resulting from Investment by the Partnership together with Matched Funding as measured for the purposes of the Performance Measures Guidance;
“Net Income”	the gross income of the Partnership, being the amount determined by the General Partner to be in the nature of income (excluding Capital Gains) less expenses and losses of the Partnership including expenses of paying interest (excluding Capital Losses and expenses which are part of the Acquisition Cost of Investments and/or associated with the disposal of Investments);
“Net Income Loss”	the amount determined where the calculation of Net Income produces an amount less than zero;
“Net Jobs Safeguarded”	jobs in the North West Region of England which would have been lost had the Partnership not made the Investment together with Matched Funding as measured in accordance with the Outputs and Results and with due regard to the New Jobs Created;
“New Jobs Created”	additional jobs in the North West Region of England at an Investee Company or a company in the same group which would not have existed but for Investment by the Partnership together with Matched Funding as measured for the

	purposes of the Performance Measures Guidance;
“Non Assisted Areas”	all areas within the North West Region of England which are not Assisted Areas;
“North West Region of England”	the following districts, cities, towns and counties of England: Cumbria, Lancashire, Blackpool, Blackburn, Sefton, Wirral, Liverpool, Knowsley, St. Helens, Wigan, Bolton, Bury, Rochdale, Oldham, Salford, Trafford, Manchester, Stockport, Tameside, Halton, Warrington and Cheshire shown coloured green and yellow on the plan shown at Schedule 4 ;
“NWDA”	the North West Development Agency;
“Offer Letter”	the ERDF offer letter from NWDA to the Holding Fund dated [●] 2010;
“Original Agreement”	the initial partnership agreement executed by the General Partner and the Carried Interest Partner for the purpose of establishing the Partnership;
“Other Restricted Sector”	any restrictions placed on Investments in accordance with the requirements of any funder of the Holding Fund (including NWDA and EIB), the UK government or any other regulatory authority, as notified by the Holding Fund to the General Partner from time to time;
“Outputs and Results”	those outputs, results and targets described in the Volume 1 Schedule D (Fund Structures) of the ITT, the IOGs and the Investment Conditions upon which the Manager is required to report pursuant to clause 8 and with respect to which the Manager is required to have regard in marketing the opportunity to apply for Investment by the Partnership, dealing with those applications for Investment, assisting applicants and making Investments on behalf of the Partnership;
“Outstanding Loan”	the amount of the Investment Loan and Management Project Loan which, at the relevant time, has been drawn down and has not been

repaid in accordance with **clause 11**

“pari passu”

where Investments to be made by the Partnership and Investments to be made by private investors (who are independent from the Investee Companies in which they invest) in Investee Companies share exactly the same upside and downside risks and rewards proportionately and hold the same level of subordination;

“Participating Member State”

any member state which has adopted the euro as its lawful currency at the relevant time;

“Partner”

the General Partner and/or all or any of the Limited Partners as the case may require (and “Partners” shall be construed accordingly);

“Partnership”

[] Limited Partnership, a limited Partnership registered at Companies House under registration number [LP];

“Partnership Assets”

all of the assets of the Partnership including, for the avoidance of doubt, any loan available to be drawn down in accordance with the terms of this Agreement;

“Performance Measures Guidance”

the Combined Tasking Note as published on www.mcisproject.co.uk and/or, if applicable, any replacement of or supplement to that guidance;

“Preferred Return”

such amount, determined at the HF Loan Repayment Point, as is equal to [**to be confirmed**] per cent per annum compounded annually on the amount of all Loans (and any such amount already compounded) outstanding from time to time;

“Priority Clusters”

NWDA’s cluster development programme as notified to the Partnership from time to time including the following sectors (so far as such sectors are not inconsistent with the State-Aid Restricted Sectors, the EIB Restricted Sectors and the ERDF Sensitive Sectors):

(a) biomedical, biotechnology,

pharmaceuticals and medical devices;

- (b) energy and environmental technologies;
- (c) advanced engineering and materials covering:
 - (i) chemicals;
 - (ii) aerospace;
 - (iii) automotive; and
 - (iv) advanced flexible materials;
- (d) food and drink;
- (e) digital and creative industries;
- (f) business and professional services; and
- (g) maritime (applicable to the Merseyside Area only).

"Proceeds"

amounts determined by the Holding Fund to be proceeds of Investments and available for Distribution or the payment of expenses in accordance with this Agreement;

"Product Funds"

the funds to which the Holding Fund provides funding pursuant to the Jeremie Programme;

"Quarter"

each quarterly period from 1 January until 31 March, from 1 April until 30 June, from 1 July until 30 September and from 1 October until 31 December;

"quasi equity"

as defined in Article 28.2 of the Block Exemption;

"Realisation"

the occurrence of any of the following events:

- (a) the distribution in specie of any securities; or
- (b) the unconditional completion of an agreement for the sale of the whole or any part of an Investment (save where the consideration for such sale is wholly

comprised of securities of a company or, where the consideration for such sale is comprised partly of securities of a company and partly of cash, in relation to that part of the consideration comprised of securities, there shall be no Realisation for the purposes of this subparagraph (b)); or

- (c) the receipt of any deferred consideration (other than that of an income nature) or the release of a provision made by the General Partner in either case arising from a previous Realisation of the whole or any part of an Investment; or
- (d) at the discretion of the General Partner, the redemption of any securities of a company which is the subject of an Investment (other than any redemption of such securities which is made solely in connection with any other event constituting a Realisation); or
- (e) the winding up or dissolution of any company in which an Investment is held;
- (f) the receipt of a repayment of the whole or any part of any amount lent by the Partnership by way of an Investment or the receipt of any premium payable on the repayment or redemption of the whole or any part of any amount lent by the Partnership by way of an Investment;

"RPI"

the Government Index of Retail Prices (all items) published by the Office for National Statistics on behalf of HM Government or any successor to such index from time to time;

"seed capital"

as defined in Article 28.4 of the Block Exemption;

"severely disadvantaged worker"

shall be construed in accordance with Article 2.19 of the Block Exemption;

"Share"	(a) the Holding Fund's share of the profits, including Capital Gains and Capital Losses and Net Income and Net Income Loss, of the Partnership and the right to repayment of its Outstanding Loan (if any); and (b) the Holding Fund's share of the Partnership Assets upon the dissolution of the Partnership;
"Single Programme Offer Letter"	the single programme offer letter from NWDA to the Holding Fund dated [●] 2010;
"Small Business Services"	any services offered to support and assist small business by the Department for Business, Innovation and Skills and NWDA from time to time, including (without limitation) Business Link North West, High Growth Business support programme and North West Business Angels;
"small enterprise"	as defined in Article 2.2 of Annex 1 of the Block Exemption;
"Loan Fund"	loan amounts to be made to SMEs of between £50,000 and £250,000;
"SME" or "small and medium sized enterprise"	as defined in Article 2.1 of Annex 1 of the Block Exemption (provided that if the European Commission shall bring into force any other definition of small and medium sized enterprise such definition shall whilst it remains in force apply in substitution for the definition set out above;
"SMEs Assisted"	an SME in respect of which an action plan has been drawn up and agreed with that SME comprising a written plan or agreement and statement of objectives (which have been drawn up in consultation with that SME for a particular Investment or as courses of action to improve the business performance of that SME or the likelihood of that SME raising finance in the future) as measured for the purposes of the business assets indicator set out in the

	Performance Measures Guidance;
“Specified Amount”	the amount to be utilised by the Partnership in making Investments in the Merseyside Area as calculated by the Holding Fund on or around the date upon which it draws down funding from the ERDF in accordance with the Offer Letter;
“start-up capital”	as defined in Article 28.5 of the Block Exemption;
“State Aid Restricted Sectors”	those sectors listed in Article 1(3) of the Block Exemption as are applicable to risk capital measures granted under the Block Exemption;
“Tax”	any form of taxation together with interest or penalties (if any) thereon;
“Transitional Fund Transfer Documentation”	[] ⁶ ;
“transfer”	any sale, assignment, transfer, exchange, pledge, encumbrance, declaration of trust or other disposition of any legal, beneficial or other interest whatsoever;
“undertaking in difficulty”	shall be construed in accordance with Article 1.7 of the Block Exemption;
“Undrawn Investment Loan Commitment”	the amount of the Investment Loan which, at the relevant time, remains available for drawdown, as notified to the Partnership by the Holding Fund from time to time;
“Undrawn Management Project Loan”	the amount of the Management Project Loan which, at the relevant time, remains available for drawdown, as notified to the Partnership by the Holding Fund from time to time;
“Valuation Procedures”	the basis of valuation of Investments set out in Schedule 7 as amended by the General Partner with Consent;

1. _____

⁶ Note to bidders: Details of the Transitional Fund Transfer Documentation to be supplied in due course in relation to any applicable transfer of Transitional Funds, as described in Volume 1, clauses 2.1 and 2.2, of the ITT.

“Value” such valuation as shall be determined by the General Partner acting in good faith in accordance with the Valuation Procedures;

- 1.2 In this Agreement the terms “subsidiary”, “holding company”, “director” and “equity share capital” shall have the meanings respectively attributed to them by the Companies Act 2006 (as amended), and “subsidiaries” and “holding companies” are to be construed accordingly and “group” shall mean all subsidiaries and holding companies of a company and all subsidiaries of any holding company; the term “recognised investment exchange” shall have the meaning attributed to it by Part XVIII of FSMA; the term “connected person” shall have the meaning attributed to it by section 839 ICTA and the words “connected with” shall be construed accordingly.
- 1.3 In this Agreement, unless the context otherwise requires, words in the singular include the plural and vice versa and words in one gender include any other gender.
- 1.4 A reference to any statutory provision in this Agreement:
- 1.4.1 includes any order, instrument, plan, regulation, permission or direction made or issued under such statutory provision or deriving validity from it;
- 1.4.2 shall be construed as a reference to such statutory provisions as are in force at the date of this Agreement (including, for the avoidance of doubt, any amendments made to such statutory provisions that are in force at the date of this Agreement) and any modification, amendment, extension, replacement or re-enactment of such provision after the date of this Agreement; and
- 1.4.3 shall also be construed as a reference to any statutory provision of which such statutory provision is a re-enactment, replacement or consolidation.
- 1.5 The headings in this Agreement are for convenience only and shall not affect its meaning.
- 1.6 References to a clause, Schedule or paragraph or Appendix are (unless otherwise stated) to a clause of or Schedule to this Agreement or to a paragraph of the relevant Schedule or to an Appendix to this Agreement.
- 1.7 Any reference to a “person” includes any individual, firm, body corporate, association or partnership, government, trust or state (whether or not having a separate legal personality).

1.8 In the event of any inconsistency between the Investment Conditions and the IOGs the Investment Conditions shall prevail.

1.9 Any reference to NWDA shall be deemed to include a reference to any statutory successor of NWDA.

2. CONSTITUTION OF PARTNERSHIP

2.1 Nature

2.1.1 The Partnership is a limited partnership and has been registered by the General Partner pursuant to the Act. The General Partner shall at all times comply (or shall procure compliance) with the requirements of the Act in accordance with the time limits set out in the Act in relation to any change which may occur in any of the particulars which are required to be notified to the Registrar of Companies.

2.1.2 The General Partner will be liable for the debts and obligations of the Partnership and the liability of the Holding Fund and the Carried Interest Partner respectively will be limited to the amounts of their respective Capital Contributions.

2.1.3 In addition, the Holding Fund may be required to advance such portion of the Investment Loan and/or the Management Project Loan which has not yet been advanced to the Partnership and remains capable of being advanced to the Partnership in accordance with the terms of this Agreement and the Holding Fund may also advance or otherwise make available to the Partnership in accordance with the terms of this Agreement such amounts for the purposes of the Partnership as the Holding Fund (in its sole discretion) sees fit.

2.1.4 Except as provided in this Agreement and in the Act, no Limited Partner shall have any personal obligation for the debts or liabilities of the Partnership. In the event that the Partnership is unable to pay its debts, liabilities or obligations, the liability of a Limited Partner shall be limited to the amount of its Capital Contribution.

2.1.5 Subject to the Act and as otherwise provided in this Agreement, neither the Holding Fund nor the Carried Interest Partner shall be required to repay to the Partnership or any creditor of the Partnership any sums distributed to it.

2.2 Purpose

2.2.1 The Partnership will utilise funds from ERDF and such other funds as are made available to it from time to time (including any interest

accrued thereon) within the North West Region of England, with not less than the Specified Amount (or such other amount as determined from time to time by Consent) of the Partnership to be utilised in the Merseyside Area, with the objective of using all reasonable endeavours subject to the other provisions of this Agreement:

2.2.1.1 in respect of the Partnership, to achieve the specific objectives set out in the IOGs, Volume 1 Schedule E of the ITT and the Investment Conditions; and

2.2.1.2 in respect of the Partnership, to inter alia, increase the level of new and established SMEs assisted by the provision of Investments to meet a demonstrable market failure as demonstrated by the Market Failure Report and thereby to raise the productivity and competitive performance of SMEs in the North West Region of England.

2.2.2 The purpose of the Partnership is to carry on the business of investing on a commercial basis and, in particular, to invest moneys available to it for the purposes of the Partnership in accordance with the Investment Policy as set out in this Agreement and for that purpose to make Investments (and to monitor the same) in accordance with the Investment Policy with the principal objectives of:

2.2.2.1 creating capital growth and realising Capital Gains;

2.2.2.2 increasing the supply of finance to SMEs based in the North West Region of England;

2.2.2.3 to support the acceleration of new business development (by investing in entrepreneurship and innovation) and to support the development of Priority Clusters for further economic development, including the promotion of business efficiency, investment, competitiveness, employment and support for under-represented groups, thereby contributing to the achievement of sustainable development.

2.2.3 The Partnership (acting through the General Partner or other persons authorised on behalf of the Partnership pursuant to this Agreement) may execute, deliver and perform all deeds, documents and contracts and other undertakings and engage in all activities and transactions as may in the opinion of the General Partner be necessary or advisable in order to carry out the above purpose and objectives, subject to and in accordance with the provisions of this Agreement and the Investment Policy.

2.3 **Principal place of business**

The principal place of business of the Partnership shall be such place located within the North West Region of England as the General Partner shall determine with Consent. Any change in the principal place of business of the Partnership shall forthwith be notified to each Limited Partner.

2.4 **Name**

The affairs, activities and business of the Partnership shall be carried on under the name **[to be confirmed]** or such other name as shall be determined by the General Partner with Consent.⁷

2.5 **Commencement and Duration**

2.5.1 The General Partner and the Carried Interest Partner were admitted, as, respectively, the general partner and the initial Limited Partner of the Partnership on the date of its formation. The Holding Fund shall be a Limited Partner in the Partnership as from the date of this Agreement.

2.5.2 The Partnership shall continue until 31 December 2022 unless terminated in accordance with the provisions of this Agreement or extended by the General Partner with Consent for such period and on such conditions as are specified by Consent.

2.5.3 The Original Agreement is hereby amended and restated so that the terms and conditions of this Agreement shall govern the Partnership from the date stated at the head of this Agreement.

2.6 **Number of Partners**

At no time may the number of Partners in the Partnership exceed any maximum number permitted or fall below any minimum number required by the Act.

2.7 **Admission of additional Partners**

No person shall be admitted as a Partner after the date of this Agreement save as provided in this Agreement or agreed in writing between the General Partner and the Holding Fund.

2.8 **Parallel Funds**

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⁷ Note to bidders: The name of the Partnership will be notified to the successful bidder by the Holding Fund

In certain circumstances and on terms agreed by the Holding Fund by Consent, a limited partnership or limited partnerships or other fund or funds (each a "Parallel Fund") having the same general partner and/or manager and/or substantially the same investment and operational guidelines and/or structure and/or terms as the Partnership may be established as agreed by the General Partner and the Holding Fund by Consent.

3. **CAPITAL CONTRIBUTIONS**

3.1 The Holding Fund shall contribute its Capital Contribution to the capital of the Partnership and such amount shall be credited to the Holding Fund's capital account on the Closing Date.

3.2 The Carried Interest Partner (to the extent that it has not already done so) shall contribute its Capital Contribution to the capital of the Partnership and such amount shall be credited to the Carried Interest Partner's capital account on the Closing Date.

3.3 No interest shall be paid to or payable by the Partnership upon any Capital Contribution or upon any amount whether of income or capital allocated to any Partner but not yet distributed to it.

3.4 In the event that Investment Loan Commitment shall be increased in accordance with **Schedule 8** or any other provision of this Agreement the Capital Contribution required from the Holding Fund and the Carried Interest Partner shall be increased by such amounts as the Holding Fund (acting reasonably) shall specify by Consent. Save as aforesaid, neither the Holding Fund nor the Carried Interest Partner shall be required to make any further Capital Contribution to the Partnership beyond that referred to in **clause 3.1** or **clause 3.2** (as the case may be).

3.5 Capital Contributions shall not be repaid until the liquidation of the Partnership. If the assets of the Partnership, after payment of or provision for all the liabilities of the Partnership, are insufficient to repay the Capital Contributions in full, the Partnership shall not be liable for the repayment thereof from its own resources.

4. **INCREASE IN CAPITAL CONTRIBUTION OR COMMITMENTS**

4.1 The capital of the Partnership and/or the Investment Loan Commitment of the Holding Fund may only be increased from time to time by such amounts (if any) as may be agreed from time to time by Consent. The Carried Interest Partner has no obligation to increase its Capital Contribution or provide any other funding to the Partnership save as agreed by it in writing from time to time. Save as agreed as aforesaid, the Holding Fund has no obligation to increase its Capital Contribution and/or Investment Loan Commitment.

4.2 Notwithstanding the provisions of **Clause 4.1**, the Holding Fund may contribute assets in specie to the Partnership in accordance with the Transitional Fund Transfer Documentation.⁸

5. **LOAN COMMITMENT**

5.1 The Holding Fund shall be required:

5.1.1 subject to the provisions of this Agreement (including without limitation, **clause 5** and **Schedule 8**) to advance to the Partnership on the terms and subject to the conditions set out in this Agreement, loans at such rate of interest and on such other terms as the Holding Fund shall specify up to:

5.1.1.1 the Investment Loan Commitment, such Advances to be credited to the Holding Fund's Investment Loan account;

5.1.1.2 the Management Project Loan Commitment, such Advances to be credited to the Holding Fund's Management Project Loan account; and/or

5.1.2 to readvance on the terms and subject to the conditions set out in this Agreement, that part of any amount Distributed to it by way of repayment of the Investment Loan made pursuant to this Agreement where and to the extent that such Distribution is or is attributable to the repayment in accordance with **clause 5.2** of amounts drawn down for a proposed Investment which does not proceed to completion.

5.2 Investment Loan shall be advanced in weekly instalments on the first Business Day of each week subject as otherwise provided in this **clause 5**, comprising such amount as shall be determined by the Manager to be required for the purposes of making Investments pursuant to this Agreement in the following week. Such amount shall, subject to the other provisions of this **clause 5**, be specified in an Investment Loan Drawdown Notice given by the Manager to the Holding Fund by close of business on the penultimate Business Day in the previous week. Every Investment Loan Drawdown Notice shall be accompanied by an Investment Project Approval Request and such supporting detail and information as the Holding Fund shall require.

5.3 The Management Project Loan shall be advanced quarterly on the last Business Day of March, June, September and December in each year, the first such payment to be made on the Closing Date in respect of the period from the

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Closing Date to **[to be confirmed]**⁹ and comprising such amount as specified in a Management Project Loan Drawdown Notice given by the Manager to the Holding Fund provided that:

- 5.3.1 no Management Project Loan shall be drawn down until the form of quarterly report to be made under **clause 8.2.2** has been completed and sent to the Holding Fund as required under **clause 8.2.2** save in respect of any quarterly report where the period of 10 Business Days for the preparation and sending of the report under **clause 8.2.2** has not yet expired;
- 5.3.2 unless otherwise agreed by Consent, no further Management Project Loan shall be required to be advanced after the earlier of 31 December 2015 and the date on which the Partnership terminates in accordance with this Agreement; and
- 5.3.3 The Partnership shall make no further drawdowns of any Undrawn Management Loan Commitment at any time:
 - 5.3.3.1 when there is no Undrawn Management Loan Commitment;
 - 5.3.3.2 after the date on which the Holding Fund notifies the Partnership that it is no longer empowered by its funders to make payments of the Management Loan; or
 - 5.3.3.3 at any time at which the Holding Fund notifies the Partnership, and such notification has not been withdrawn, that an Event of Default (as defined in the Offer Letter and/or the EIB Facility Agreement) or a Consultation Event (as defined in the EIB Facility Agreement) has occurred.

The Management Project Loan shall be applied only as set out in **clause 6.2.1.11** and in **paragraph 6.3 of Schedule 3**.

- 5.4 The Partnership shall make no further drawdowns of any Undrawn Investment Loan Commitment at any time either after the end of the Investment Loan Commitment Period or, if earlier:
 - 5.4.1 when there is no Undrawn Investment Loan Commitment; or
 - 5.4.2 after the date on which the Holding Fund notifies the Partnership that no further ERDF funds under the terms of the Offer Letter and/or no further funds provided by EIB are available for investment into and

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⁹ Note to bidders: Date to be determined once Closing Date known

through the Partnership; or

- 5.4.3 after the date on which the Holding Fund notifies the Partnership that it is no longer empowered by its funders to make payments of the Investment Loan; or
- 5.4.4 at any time at which the Holding Fund has notified the Partnership, and such notification has not been withdrawn, that an Event of Default (as defined in the Offer Letter and/or the EIB Facility Agreement) or a Consultation Event (as defined in the EIB Facility Agreement) has occurred.
- 5.5 Loans shall, subject to **clause 29**, only be drawn down in pounds sterling.
- 5.6 Except as otherwise expressly provided in this Agreement, the Partners shall not be required to advance any loan to the Partnership. Any Undrawn Investment Loan Commitment and/or Undrawn Management Project Loan which remains undrawn at the expiry of the Investment Loan Commitment Period shall be cancelled and the Investment Loan Commitment and/or the Management Project Loan Commitment (as the case may be) shall consequently be reduced to an amount equal to the Outstanding Loan.
- 5.7 The Investment Loan and the Management Project Loan shall be repaid in accordance with **clauses 10** and **11**. The Holding Fund shall be a creditor in respect of the Investment Loan and the Management Project Loan advanced by it on and subject to the terms of this Agreement.
- 5.8 Save as provided in **clause 5.1.2**, any amount of Investment Loan which has been repaid shall not be available for further drawdown.
- 5.9 Following consultation with the Carried Interest Partner, the Holding Fund may by Consent make available to the Partnership such Additional Investment Amounts as it (in its sole discretion) sees fit. For the avoidance of doubt, nothing in this **clause 5.9** shall require the Holding Fund to advance any Additional Investment Amounts to the Partnership.

6. **OPERATION AND MANAGEMENT OF THE PARTNERSHIP**

6.1 **Appointment of Manager**

- 6.1.1 For so long as the Partnership constitutes a Collective Investment Scheme, the General Partner shall be responsible for ensuring that the Partnership is always managed or operated, and that its investment portfolio is always managed (whether on a discretionary or a non-discretionary basis) by a person appropriately authorised under FSMA and having all necessary consents, licenses, authorisations and

approvals required by it to carry out the management and operation of the Partnership as contemplated in this Agreement. The Manager shall be required to manage or operate the Partnership, and shall manage its investment portfolio, to the exclusion of the General Partner save where otherwise provided in this **clause 6**. The first Manager shall be [NAME], regulated by the FSA¹⁰, and contemporaneously with the execution of this Agreement the Partnership (acting through the General Partner) shall enter into the Management Agreement.

- 6.1.2 The cost of the appointment of the Manager shall be borne by the General Partner and the Partnership shall have no liability to the Manager. Accordingly the Manager shall have no rights against the Partnership in respect of any such fees which shall accordingly not be an expense or liability of the Partnership.
- 6.1.3 The terms of the Management Agreement shall not be amended without Consent.
- 6.1.4 For so long as the Partnership constitutes a Collective Investment Scheme, the Partnership shall not carry on any business until a Manager is validly appointed under the provisions of this **clause 6.1** or at any time when no such regulated Manager is in office.¹¹
- 6.1.5 The Manager shall be required at all times throughout the term of its appointment to ensure that it has all necessary personnel, equipment, materials, resources and premises to carry out its duties pursuant to the terms of appointment agreed with the Partnership and shall take all necessary steps to ensure the proper management of the Partnership.
- 6.1.6 The Manager shall be required at all times throughout the term of its appointment to take out and maintain in force with a reputable insurer of good financial standing professional indemnity insurance with a minimum level of indemnity of £2,000,000 per occurrence and £10,000,000 in aggregate ("**Required Insurance**"). The Manager shall be required to provide to the Holding Fund on request:

- 6.1.6.1 copies of the policy relating to the Required Insurance or such other information as the Holding Fund may request to enable it to verify that the Required Insurance is in place;

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¹⁰ Note to bidders: This applies only to Lots 1, 2 and 4

¹¹ Note to bidders: There may be an alternative structure for Lot 3, as described in Appendix E, clause 4, of the IOGs and Volume 1, clause 2.1, of the ITT

- 6.1.6.2 evidence that the premiums payable under the Required Insurance have been paid and that the Required Insurance is in full force and effect; and
- 6.1.6.3 evidence that the interest of the Partnership and the Holding Fund have been noted on such policy and such security as the Partnership and the Holding Fund may require to protect the interest of the Partnership and the Holding Fund under such policy.

6.2 Authority and Powers

- 6.2.1 Subject to **clause 6.3** the General Partner shall be empowered to vest the following powers in the Manager and the Manager shall have full power and authority on behalf of the Partnership and with the power to bind the Partnership thereby (at all times subject to the supervision of the General Partner):
 - 6.2.1.1 to carry out the Investment Policy of the Partnership in accordance with the terms of this Agreement and in doing so to evaluate and to negotiate investment opportunities, to require the Partnership to (or to agree to) subscribe for, purchase, acquire in a syndicate with other investors, sell, exchange or otherwise make or dispose of Investments for the account of the Partnership and enter into investment agreements;
 - 6.2.1.2 to develop the Investment Policy of the Partnership in compliance with this Agreement and the Annual Budgets and Marketing Plan and to consult with the Holding Fund as appropriate (including, without limitation in order to coordinate the Marketing Plan with the marketing plan of the Holding Fund from time to time) provided that nothing in this clause shall permit the Manager to effect any change in the Investment Policy or nature, business or objectives of the Partnership without prior Consent;
 - 6.2.1.3 to appoint a custodian or custodians to hold Partnership Assets;
 - 6.2.1.4 to register and publish all such notices, statements or other instruments as may be required pursuant to the Act to be registered and published in relation to the establishment of the Partnership or in connection with any changes occurring in relation to the Partnership;

- 6.2.1.5 pending the application of moneys available for distribution to Partners, to place amounts realised in such deposit accounts in the name of the Partnership or a duly appointed custodian or to invest such amounts in such short term instruments as the Holding Fund may determine (for the avoidance of doubt any interest accruing on such amounts shall be for the benefit of and shall be paid to the Partnership);
- 6.2.1.6 to issue Investment Loan Drawdown Notices and/or Management Project Loan Drawdown Notices, to receive Capital Contributions and Advances made by the Holding Fund and to receive investment income and other funds arising from Investments;
- 6.2.1.7 to open, maintain and close bank accounts and custodian accounts for the Partnership and to draw cheques and other orders for payment of moneys (following Consent);
- 6.2.1.8 to manage and account for Investments made including, where necessary, taking action (at the expense of the Manager) for recovery of sums due to the Partnership from Investee Companies;
- 6.2.1.9 to provide or procure the provision of office facilities, office equipment and office and executive staff (at its own expense) to facilitate the carrying on of the activities of the Partnership;
- 6.2.1.10 to require the Partnership to enter into, make and perform such contracts, agreements and other undertakings and to do all such other acts as it may deem necessary or advisable for or as may be incidental to the carrying on of the activities of the Partnership PROVIDED THAT notwithstanding any other provision of this Agreement the Manager shall have no power to give warranties and indemnities on behalf of the Partnership save for warranties as to title and related matters customarily given in the ordinary course of business by a venture capital fund disposing of investments;
- 6.2.1.11 to disburse out of the assets of the Partnership:
 - (a) stamp duty payable by the Partnership on making any Investment;

- (b) professional fees, commissions and expenses payable by the Partnership in connection with the realisation of Investments to the extent not recoverable from Investee Companies; and
 - (c) such other fees and expenses as the Holding Fund shall agree in writing are payable by the Partnership.
- 6.2.1.12 to engage such attorneys, agents, lawyers, accountants or other advisers and custodians as it may deem necessary or advisable in relation to the affairs of the Partnership (including making the initial appointment of the Auditors) PROVIDED THAT the remuneration and expenses of any such persons shall be paid by the Manager unless payable by the Partnership under **clause 6.2.1.11(c)**;
- 6.2.1.13 to take such actions as may be necessary or desirable for the purpose of implementing the provisions of this Agreement and performing the duties of the Manager pursuant to the terms of this Agreement;
- 6.2.1.14 to repay Loans and make distributions to Partners out of Partnership Assets pursuant to the terms of this Agreement;
- 6.2.1.15 to commence or defend litigation as pertains to the Partnership or to any of the Partnership Assets provided that the Manager shall obtain Consent before commencing or immediately upon defending any litigation pertaining to the Partnership or to any of the Partnership Assets;
- 6.2.1.16 to maintain the Partnership's records, books and accounts and to allow the Partners and their respective representatives and such other persons as are contemplated elsewhere in this Agreement or as are notified by the Partners to the Manager from time to time access thereto at any time for the purpose of inspecting the same;
- 6.2.1.17 to carry out Valuations in each Quarter of the Partnership Assets and to furnish such Valuations to the Partners and to report and provide information to the Partners in accordance with the provisions of this Agreement and the Annual Budgets and Marketing Plan;
- 6.2.1.18 generally to communicate with the Partners and to report

to the Partners in accordance with the provisions of this Agreement and when reasonably requested by the Partners so to do and to represent the Partnership in all things;

- 6.2.1.19 to pay out of the Partnership Assets or income of the Partnership all taxation for which it is liable to account to the relevant fiscal authority on behalf of the Partners; and
- 6.2.1.20 generally to do all or any other things on behalf of the Partnership as are reasonably required of it by the provisions of this Agreement and the purposes or objectives of the Partnership as described in this Agreement

PROVIDED THAT:

- (a) the removal of the General Partner as general partner of the Partnership shall cause the Manager to cease to be manager of the Partnership; and
- (b) the resignation of the General Partner as general partner of the Partnership shall, unless otherwise agreed by Consent, cause the Manager to cease to be manager of the Partnership.

6.2.2 The Manager shall be required to comply with:

6.2.2.1 all registration and other requirements of the Act so as to ensure, so far as it is able, that the liability of the Limited Partners is and remains limited as provided for under the provisions of the Act;

6.2.2.2 all requirements of or in relation to ERDF, NWDA and EIB (including, without limitation, the requirements set out in the Single Programme Offer Letter, the Transitional Fund Transfer Documentation, the Offer Letter and the EIB Facility Agreement) and the use of funds disbursed by ERDF, NWDA and EIB to the Holding Fund as notified to the Partnership by the Holding Fund from time to time so as to ensure (insofar as the Manager can ensure) that the Holding Fund is able to continue to comply with its obligations pursuant to the Single Programme Offer Letter, the Transitional Fund Transfer Documentation, the Offer Letter and the EIB Facility Agreement and the Manager shall do in a timely fashion everything reasonably within

its power to assist such compliance; and

6.2.2.3 all requirements of NWDA, any lender to the Holding Fund or the Partnership (including without limitation EIB) and/or EIF in relation to the operation of the Partnership as notified to the Partnership by the Holding Fund from time to time.

6.2.2.4 the requirement to notify the Holding Fund of (a) any dispute arising under or in connection with the Management Agreement and/or (b) any actual or potential inability on the part of it to meet its (or the Holding Fund's) obligations pursuant to the Offer Letter, the EIB Facility Agreement, the Transitional Fund Transfer Documentation and the Single Programme Offer Letter;

6.2.2.5 the obligations on the Holding Fund regarding the nature of the ERDF Amounts (including but not limited to the notification to any relevant bank regarding the trust mechanisms on the ERDF Amounts);

6.2.2.6 all requirements placed on NWDA or the Holding Fund in respect of the Freedom of Information Act 2000 ("**FOI**") (as amended from time to time), including (but not limited to) (a) transferring to the Holding Fund any Requests for Information (as defined in the Offer Letter) received as soon as practicable and within two working days of receipt, (b) providing the Holding Fund with copies of all information in their possession in relation to the relevant Request for Information within 5 Business Days and (c) provide all necessary assistance as requested in any Request for Information in order to ensure the Holding Fund and/or the NWDA can comply with their obligations pursuant to the FOI; and

6.2.2.7 ~~all information required to be supplied to comply with **clauses 6.2.2.2, 6.2.2.3 and 8.2.2** shall be supplied to the Holding Fund by the Manager in a timely fashion for transmission to the body requesting or requiring it.~~

6.2.3 The General Partner warrants (and will procure that the Manager warrants in respect of itself) to the Holding Fund that:

6.2.3.1 it is a company limited by shares, duly incorporated and validly existing under the laws of England and it has power and authority and all necessary governmental and other

consents, approvals and licences to carry on its business as it is now being conducted and to own its property and other assets;

- 6.2.3.2 it has the power to execute, deliver and perform its obligations under this Agreement and the Management Agreement and all necessary corporate action has been taken to authorise the execution, delivery and performance of the same by it;
- 6.2.3.3 no limit on the powers of the General Partner or the Manager will be exceeded as a result of the borrowings pursuant to this Agreement;
- 6.2.3.4 the execution and delivery of, the performance of its obligations under, and compliance with the provisions of, this Agreement and the Management Agreement do not:
- (a) contravene any existing applicable law or statute; or
 - (b) conflict with, or result in any breach of any of the terms of, or constitute a default under, any other judgment, order, agreement or other instrument to which the General Partner and/or the Manager is a party or is subject (including any of their respective constitutional documents) or by which any of them or their respective property is bound;
- 6.2.3.5 every consent, authorisation, licence or approval of, or registration with, or declaration to, governmental or public bodies or authorities or courts required by the General Partner and the Manager to authorise, or required by the General Partner and/or the Manager in connection with the execution, delivery, validity, enforceability or admissibility in evidence of this Agreement and the Management Agreement to which it is a party or the performance by the General Partner and the Manager of its respective material obligations under the Management Agreement and this Agreement has been obtained or made (or insofar as appropriate, will be obtained and made when necessary) and is (or, as the case may be, will be) in full force and effect, and, so far as the General Partner and the Manager are aware there has been no default in the observance of the conditions or restrictions (if any) imposed in, or in connection with, any of the same;

- 6.2.3.6 the General Partner and/or the Manager has not taken any action, and no steps have been taken or legal proceedings been instigated or threatened, for winding-up, dissolution or re-organisation, the enforcement of any security interest over the assets of the General Partner and/or the Manager or for the appointment of a receiver, administrative receiver, administrator, trustee or similar officer of the General Partner and/or the Manager or of any of its respective assets and no steps have been taken which could lead to the General Partner and/or the Manager being subject to a directors' moratorium under section 1A of the Insolvency Act 1986 (in the case of all of the above in excess of £100,000);
- 6.2.3.7 no litigation, arbitration or other legal proceedings of a litigious nature have been commenced or threatened against the General Partner and/or the Manager, which involves, or may involve, an amount in excess of £100,000 and neither the General Partner nor the Manager are aware of any circumstances likely to give rise to such litigation, arbitration or proceedings;
- 6.2.3.8 so far as the General Partner and/or the Manager is aware no event or situation has occurred which constitutes a Potential Event of Default or an Event of Default (as defined in both the EIB Facility Agreement and the Offer Letter) and would have a material adverse effect on the Holding Fund being able to comply with the terms of this agreement;
- 6.2.3.9 no other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or to which any of its assets are subject which has caused or is reasonably likely to cause a Material Adverse Change (being, any event or condition which would materially impair the business, operations or assets of the Holding Fund to perform its obligations to its funders);

- 6.2.4 The representations and warranties set out above are made on the date of this Agreement [on each date on which the Management Project Loan and/or Investment Loan are drawn].

- 6.2.5 The General Partner makes (and shall procure the Manager makes) the following undertakings for the duration of the Partnership:
- 6.2.5.1 to use best endeavours to ensure that all Investments made by it and/or the Partnership will be in compliance at all times with the IOGs and the Investment Conditions and promptly advise the Holding Fund in writing upon becoming aware that this is not the case. If at any time the General Partner or the Manager becomes aware of any failure to comply with any IOG the General Partner or the Manager shall, if such non-compliance is capable of remedy, require the relevant Investee Company to remedy any such non-compliance within 30 days of becoming aware of the same; and
- 6.2.5.2 such other undertakings as are required by the Funders and the Manager shall also provide, and the General Partner shall procure that the Manager shall provide, such warranties and representations to the Holding Fund in respect of the Partnership and the Partnership Assets and the activities of the Manager in relation to the Partnership and the Partnership Assets as the Holding Fund shall require having regard to the warranties and representations which the Holding Fund is required to provide to Funders from time to time.
- 6.2.6 Should the Manager fail to comply with the requirements set out in **clause 6.2.2**, the Holding Fund shall be entitled to appoint an accountant and/or other appropriate professional(s) to investigate the books, accounts and other information of the Partnership and to undertake the requirements set out in **clause 6.2.2** and the Manager shall allow full and unrestricted access to such books, accounts and other information and indemnify the Holding Fund for the costs incurred by the Holding Fund in appointing such accountant and/or other professional(s).
- 6.2.7 The General Partner shall have the power and authority to represent the Partnership in its dealings with the Manager (or in relation to the protection of the Partnership Assets) and to execute agreements on behalf of the Partnership and in this connection to undertake investment transactions recommended by the Manager, to appoint custodians of the Partnership Assets and to give them directions and generally to do all or any other things as may reasonably be required of them to the extent that such activities do not require authorisation under FSMA. An assignment, novation or transfer of the Manager's

obligations to the Partnership shall not be accepted by the Partnership except with Consent.

6.2.8 Subject to **clause 18**, none of the Manager or any Associate of the Manager shall be required to account to the Partnership for any directors', management or other fees received by it or any of its Associates arising from an Investment or proposed Investment or paid by any Investee Company or proposed Investee Company provided that such fees shall not be paid directly to any director or employee of the Manager.

6.2.9 The Manager shall report immediately to the Partners any event or events which may reasonably be expected to materially affect the Partnership or the Partnership Assets.

6.2.10 Subject always to **clause 6.3**, the Manager shall consult with the Partners in connection with any matter which may materially affect the Holding Fund.

6.3 **Management and Operation of the Partnership**

The Limited Partners shall take no part in the operation of the Partnership or the management or control of its business and affairs, and shall have no right or authority to act for the Partnership or to take part in or in any way interfere in the conduct or management of the Partnership or to vote on matters relating to the Partnership other than as provided in the Act or as set forth in this Agreement but they shall at all reasonable times, subject to having given reasonable notice, have access to and the right to inspect during normal business hours all the books and accounts of the Partnership.

6.4 **Manager's Tender Obligations**

The Manager shall be required to comply with the provisions of its tender documentation on the basis of which it has been appointed as Manager, as annexed to this Agreement at **Appendix 2**.

6.5 **Bank Accounts**

6.5.1 The Partnership shall have the following bank accounts which will be operated as follows and such other bank accounts as shall be required by the IOGs:

6.5.1.1 the Investment Loan shall be deposited in or credited to the Investment Loan bank accounts [there will be two accounts one for EIB monies and one for ERDF];

- 6.5.1.2 no funds other than the Investment Loan or any other funding advanced to the Partnership by the Holding Fund may be deposited in (or credited to) the Investment Loan bank accounts apart from payments of interest due to be credited to the account;
- 6.5.1.3 unless otherwise agreed in writing by the Holding Fund, no sum may be withdrawn from the Investment Loan bank account except for the following purposes:
- (a) pending the use of the Investment Loan in accordance with this Agreement and the Investment Policy, making short-term money market deposits or longer term discretionary investments (subject to Consent) in pursuance of the Idle Funds Investment Policy;
 - (b) making Investments in accordance with this Agreement and the Investment Policy;
 - (c) meeting a requirement to repay the Investment Loan in accordance with the terms of the Agreement;
- 6.5.1.4 in the event that an amount withdrawn from the Investment Loan bank account for the purpose mentioned in **clauses 6.5.1.3 (a) to (c)** exceeds the amount that is needed or may be withdrawn for that purpose, the General Partner shall immediately, or as soon as practicable after becoming aware that too much has been withdrawn, pay or procure the payment of the surplus back into the Investment Loan bank account;
- 6.5.1.5 the Management Project Loan shall be deposited in or credited to the Management Project Loan bank account;
- 6.5.1.6 no other funds other than the Management Project Loan may be deposited in or credited to the Management Project Loan bank account apart from payments of interest due to be credited to the account, funds available on the realisation, disposal or maturity of deposits or investments made in pursuance of the Idle Funds Investment Policy pro rata to the proportion of the amount of such deposit which was made from the Management Project Loan bank account;
- 6.5.1.7 funds deposited in or credited to the Management Project Loan bank account may be withdrawn from the

Management Project Loan bank account for any purpose for which the Management Project Loan may be used under this Agreement;

- 6.5.1.8 the Realisations shall be deposited in or credited to the Realisations bank account;
- 6.5.1.9 no other funds other than the Realisations may be deposited in or credited to the Realisations bank account apart from payments of interest due to be credited to the Realisations account, account and funds available on the realisation, disposal or maturity of deposits or investments made in pursuance of the Idle Funds Investment Policy pro rata to the proportion of the amount of such deposit which was made from the Realisations bank account;
- 6.5.1.10 the Realisations bank account shall be established and operated by the General Partner on behalf of the Partnership and in accordance with directions issued by the Holding Fund from time to time.

7. INVESTMENT POLICY

- 7.1 In respect of Partnership, the Manager shall be required to adhere and will procure that any agents or delegates appointed by it shall adhere to the investment objectives and policies of the Partnership set out in this Agreement (including, without limitation, as set out in this **clause 7**, the Investment Conditions and in the IOGs). Notwithstanding any other provision of this **clause 7**, the Investment Conditions and/or the IOGs, the Manager shall be required to ensure that Investments of the Partnership shall only be made where such Investments satisfy the requirements of the Block Exemption, save in respect of loans made out of the Loan Fund, and that all loans made by the Partnership, whether out of the Loan Fund or otherwise, are made in accordance with the Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008 p6-9) or any replacement thereof by the European Commission.
- 7.2 The Investments shall be sub-divided between Merseyside and other areas within the North West Region of England as the Holding Fund shall specify by Consent from time to time after consultation with the Manager:

- 7.3 At least 70% of the Product Funds invested in by the Holding Fund (across the Jeremie Programme) shall be invested in equity or quasi equity¹² **Block Exemption Article 29.5.**
- 7.4 Investment by the Partnership shall be restricted to providing:
- 7.4.1 seed capital, start-up capital and/or expansion capital for SMEs located in assisted areas and for small enterprises located in non-assisted areas; **Block Exemption Article 29.4**
 - 7.4.2 seed capital and/or start-up capital for medium-sized enterprises located in non-assisted areas **Block Exemption Article 29.4**; and
 - 7.4.3 loans from the Loan Fund.
- 7.5 The Manager shall be liable for any loss suffered or costs incurred by the Partnership arising out of making an Investment from the Partnership in breach of the Investment Policy including, for the avoidance of doubt, the making of an Investment in a State-Aid Restricted Sector, an ERDF Sensitive Sector or an EIB Restricted Sector and the Manager will not in respect of such loss or costs benefit from any indemnity given to it pursuant to the terms upon which the Manager is appointed.
- 7.6 In the event of any doubt whether an investment opportunity meets all of the requirements of this **clause 7**, the Investment Conditions and the IOGs, the Manager may, on a case by case basis, refer such matters as it deems necessary to the Holding Fund for consultation and the Manager may proceed with the investment opportunity under consideration on the basis agreed with the Holding Fund (on the basis that the Manager remains strictly liable).
- 7.7 In the event that any change to applicable law or regulation renders any provision or restriction contained in this **clause 7**, the Investment Conditions and the IOGs inapplicable or unnecessary the Holding Fund and the General Partner or the Manager shall discuss making appropriate amendments to this Agreement but no such amendment shall take effect until agreed by the General Partner and the Holding Fund in writing.

8. ACCOUNTS AND REPORTS

8.1 Partnership Accounts

- 8.1.1 The Manager shall be required to keep proper accounting records for the Partnership and make regular true and correct entries in such

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¹² Note to bidders: The provision of clauses 7.3 and 7.4 will be updated for each fund to reflect the specific requirements applicable to that Fund.

records. Such accounting records shall include all such entries as are required to give effect to **clause 8.1.2**. Without prejudice to generality of the foregoing, the accounting records of the Partnership shall comprise, inter alia, a capital account, an Investment Loan account and a Management Project Loan account which shall be operated as follows:

- 8.1.1.1 the Capital Contribution of each of the Holding Fund and the Carried Interest Partner shall be credited to its capital account;
 - 8.1.1.2 the Investment Loan Commitment and/or the Management Project Loan Commitment when drawn down shall be credited to the Investment Loan account or the Management Project Loan account (as applicable) and repayment of any Outstanding Loan shall be debited to those respective accounts in accordance with **clause 11.1**; and
 - 8.1.1.3 the Net Income, Net Income Losses (if applicable), Capital Gains and Capital Losses (if applicable) allocated to each Partner shall be credited or debited as the case may be to that Partner's capital account.
- 8.1.2 The Manager shall be required to prepare or procure to be prepared and audited by the Auditors, accounts of the Partnership in respect of each Accounting Period in accordance with generally accepted accounting practice in the United Kingdom, comprising a profit and loss account, a balance sheet, a cash flow statement, a statement of the Investments and other property and assets in which the Partnership has an interest, details of the Investments purchased, sold and otherwise disposed of during the relevant period and the cost or value (as reduced by any impairment) of each Investment forming part of the Partnership Assets at the end of such period, and a statement of the accounting policies used in the preparation of the Accounts. A copy of such Accounts shall be sent to the Partners as soon as they are available following the end of each Accounting Period but in any event within three months of the last day of each Accounting Period.
- 8.1.3 The Partnership shall, with Consent, if required by the Manager, with the approval of the Auditors and after consultation with the General Partner, vary the accounting structure of the Partnership and may determine or vary the allocation of any item to reflect properly the intention of the Partnership as stated in this Agreement provided that no such variation shall affect the distributions payable to Partners

pursuant to **clause 11**.

8.2 Reports

8.2.1 As soon as practicable after and in any event within 20 Business Days of the end of March in each year the Manager shall prepare and send to each Partner a report comprising:

8.2.1.1 a statement of the Investments and other property and assets of the Partnership together with a brief commentary on the progress of the Investments as known to the Manager at the end of the relevant period and as allocated between the sub-divisions referred to in **clause 7.2**;

8.2.1.2 the Manager's unaudited Valuation of each Investment and a portfolio Valuation as at the end of the relevant period; and

8.2.1.3 a statement of all other venture capital funds able to invest in any area located in the Investment Area in respect of which the Manager is acting as general partner, manager or investment adviser to include details for resolving investment conflicts having regard to the requirements of **clause 17**.

8.2.2 As soon as practicable after and in any event within 10 Business Days of the end of each quarter ending on the last Business Day of March, June, September and December in each year the Manager shall prepare and send to the Partners a report comprising details of the following matters known to the Manager, including, where appropriate, the relevant split as between the areas (including for the avoidance of doubt between the Assisted Areas and the Non Assisted Areas) comprised in the Investment Area:

8.2.2.1 the Investments made, purchased, sold, repaid and otherwise disposed of during the relevant period;

8.2.2.2 a review of all Investments including details of progress during the relevant period;

8.2.2.3 all sources of Matched Funding during the relevant period;

8.2.2.4 all sources and nature of enquiries from potential Investee Companies during the relevant period;

8.2.2.5 New Jobs Created, Jobs Safeguarded and Increased Sales

in respect of each Investee Company during the relevant period including a comparison of the Outputs and Results achieved by each Investee Company with those detailed in the project application form relating to such Investee Company submitted at the time of making the relevant Investment as part of the Investment Loan drawdown procedure;

- 8.2.2.6 Net Additional Jobs, Net Jobs Safeguarded and Net Additional Growth Value Added during the relevant period and as compared cumulatively against the annual Outputs and Results;
- 8.2.2.7 litigation pertaining to the Partnership or to any of the Partnership Assets;
- 8.2.2.8 referrals to any business support agencies established to promote SMEs (including any business support agencies provided by the private sector, the Small Business Services, NWDA or other public sector organisations);
- 8.2.2.9 the geographical and sectoral allocation of Investments and the geographical and sectoral allocation of any sources of enquiries from potential Investee Companies during the relevant period;
- 8.2.2.10 the proportions in which Investments have been made both in terms of monetary value and the number of Investments as between seed capital, start-up capital, expansion capital and loans, allocation between assisted and non assisted areas and allocation between Merseyside and the rest of the North West **[Note: Block Exemption Article 29.4.]**;
- 8.2.2.11 the proportions in which Investments have been made both in terms of monetary value and the number of Investments in disadvantaged workers, severely disadvantaged workers, disabled workers and enterprises newly created by female entrepreneurs;
- 8.2.2.12 a statement of cash flow in respect of the Investment Loan and the Management Project Loan, during the relevant period and details of any variation from the previous such statement and from the Annual Budgets and Marketing Plan together with an updated cash flow forecast for the Investment Loan and the Management

Project Loan for the preceding three year period;

- 8.2.2.13 the marketing activity undertaken by the Manager on behalf of the Partnership during the relevant period and a comparison with the activities proposed in the Annual Budgets and Marketing Plan;
- 8.2.2.14 all SMEs Assisted during the relevant period including a summary of any action proposed and business support organisations and investment readiness services to which such SMEs have been referred (having regard to the Outputs and Results);
- 8.2.2.15 a summary of any directors', management or other fees received by the Manager or any Associate of the Manager arising from an Investment or proposed Investment or paid by any Investee Company or proposed Investee Company during the relevant period;
- 8.2.2.16 from 31 March 2014 a projected returns forecast showing the Manager's best estimate of income and Proceeds of the Partnership over the remainder of the life of the Partnership;

and the Manager shall be required to prepare and send to the Partners in a timely fashion all such other information and details as shall be required to satisfy any requirement of ERDF, NWDA, the European Commission, EIB, EIF, the Department for Business, Innovation and Skills, the National Audit Office, the European Court of Auditors or such other body exercising similar functions as shall be notified to the Manager by the Partners from time to time.

- 8.2.3 The Manager shall be required to retain all records, data, reports and advice given to proposed Investee Companies in connection with carrying out its duties under this Agreement for such periods as may be stipulated by the appropriate rules, regulations and requirements of ERDF, the European Commission, EIB, EIF, the European Court of Auditors, the Department for Business, Innovation and Skills, the National Audit Office, NWDA or such other body as shall be notified to the Manager by the Partners from time to time and that the Manager makes the same available for inspection at any reasonable time by those persons or their representatives (subject to those persons agreeing to comply with all applicable provisions of the Data Protection Act 1998 and giving confidentiality undertakings which are appropriate in all the circumstances including the requirements of the rules,

regulations and requirements referred to above).

- 8.2.4 The Manager shall be required upon the request of the Partners and/or NWDA to promptly furnish to the Partners and/or NWDA (as the case may be) any information in its possession that is reasonably necessary in order for the Partners and/or NWDA to withhold tax or to file tax returns and reports.
- 8.2.5 The Manager shall be required to allow the Partners, NWDA, EIB and their respective representatives (subject to such persons agreeing to comply with all applicable provisions of the Data Protection Act 1998 and giving confidentiality undertakings which are appropriate in all the circumstances including the requirements of the rules, regulations and requirements referred to in **clause 8.2.3**) access to all records, data, reports and accounts relating to Investee Companies and SMEs Assisted for the purposes of complying with NWDA's obligations to review the business activities of the Partnership under any applicable rules and regulations and in particular to allow the Partners, NWDA and EIB and their respective representatives access to the Manager's premises (and those of any Investee Company) for the purposes of:
- 8.2.5.1 a project implementation visit to take place within 6 months of the date of this Agreement to ensure the Manager has appropriate systems in place, in particular in relation to the accounts of the Partnership;
- 8.2.5.2 a systems monitoring visit to take place at least once in each calendar year to ensure the Manager is retaining adequate evidence of both financial expenditure and the information set out in the Offer Letter and the Outputs and Results;
- 8.2.5.3 a performance monitoring visit to take place at least once in each calendar year to monitor performance of the Partnership against the Offer Letter and Outputs and Results and to consider whether any remedial action is required to improve performance or to make appropriate adjustments to the Offer Letter or the Outputs and Results;
- 8.2.5.4 any visit requested by EIB to any Investee Company.
- 8.2.6 As soon as practicable following the completion of an Investment (and in any event within 5 days of such Investment being made), the Manager shall be required to submit a confirmation (the "**Confirmation**") that the Investment in question has been duly

completed in accordance with the Investment Project Approval Request referred to in **clause 5.2** submitted with the Investment Loan Drawdown Notice relating to that Investment on the terms set out in those documents subject to any amendments set out in the Confirmation (provided that such amendments comply fully with the Investment Policy and the other provisions of this Agreement). The Confirmation shall be in such form as shall be agreed between NWDA and the Manager for the purposes of satisfying the requirements of ERDF.

8.3 Annual Budgets and Marketing Plan

- 8.3.1 The Manager shall be required to produce to the Partners at least 90 Business Days before the end of the current Accounting Period draft Annual Budgets for the Partnership and Marketing Plan for the Partnership for the forthcoming Accounting Period. The Manager shall ensure that the Marketing Plan is consistent with the marketing plan of the Holding Fund from time to time.
- 8.3.2 The Partners shall be entitled to review any such Annual Budgets and Marketing Plan quarterly and on such other dates as it determines and for this purpose the Manager shall provide to the Partners a quarterly report of actual expenditure as compared against the Annual Budgets and Marketing Plan and against any revised forecast in respect of any remainder of the relevant Accounting Period.
- 8.3.3 In the event that either General Partner or the Manager becomes aware, having regard to investments made or to be made by the Partnership in the relevant period, that the expenditure of the Partnership will exceed or fail to meet the Annual Budgets and Marketing Plan in any material respect then the Manager shall notify the Limited Partners and provide such details as may reasonably be requested by the Limited Partners in connection therewith.

8.4 FSA

The Manager shall be required to notify each Partner if any matter arises in connection with the exercise of its duties as such Manager which in the opinion of the Manager ought to be notified to the FSA and which materially and adversely affects the Partnership or the Manager's ability to act as Manager of the Partnership on the terms set out in this Agreement.

8.5 Manager

The General Partner shall immediately inform the Holding Fund of:

- 8.5.1 any breach of, or any material dispute arising under or in connection with the Management Agreement; or
- 8.5.2 any actual or potential inability on the part of it or the Managers to meet its obligations under this Agreement or the Management Agreements.

9. **ALLOCATION OF DEBTS, LIABILITIES AND OBLIGATIONS OF THE PARTNERSHIP**

- 9.1 No Limited Partner shall have any personal obligation for the debts or liabilities of the Partnership, except as provided in this Agreement and in the Act.
- 9.2 If at any time the liabilities of the Partnership other than the Loans cannot be satisfied out of the Partnership's cash funds, the General Partner will be liable to contribute an amount which, when added to the Partnership's cash funds (including any amount of Loans that are available for drawdown to satisfy such liabilities in accordance with this Agreement), will be sufficient to meet such liabilities, provided that any such contribution shall subsequently be repayable to the General Partner (together with interest on the amount of any such contribution outstanding from the date of payment by the General Partner up to the date of repayment at the base rate of Barclays Bank Plc from time to time) if and when cash funds become available for the purpose.

10. **ALLOCATION OF NET INCOME, NET INCOME LOSSES AND CAPITAL GAINS AND CAPITAL LOSSES**

All Net Income, Net Income Losses, Capital Gains and Capital Losses of the Partnership in respect of the Partnership shall be allocated as set out in **Schedule 3**.

11. **DISTRIBUTIONS**

11.1 **Order of Distribution**

Subject to **clause 11.3** and after payment of the fees, costs, expenses and liabilities of the Partnership:

- 11.1.1 all cash proceeds of or of disposals of Investments held for the Partnership which do not represent Net Income or Capital Gains (less Capital Losses) shall be applied in repayment of any amount of the Investment Loan or the Management Project Loan which has been drawn down and has not been repaid and thereafter as provided in Schedule 3;
- 11.1.2 such Net Income and Capital Gains (less Capital Losses) shall be distributed in cash as set out in **Schedule 3**.

11.2 Time of Distributions

11.2.1 Subject to the provisions of **clause 11.3** and **Schedule 3**, amounts Distributed under **clause 11.1** shall be paid to the Partners entitled to them in accordance with this **clause 11** in pounds sterling or by way of distributions in specie on the last Business Day of each Quarter in each year providing that no distribution shall be made under this **clause 11.2.1** where the total amount of the distribution to be made for that Quarter in question does not exceed £50,000 and further provided that any interest accruing on such Net Income and Proceeds to be Distributed to any Partner shall accrue to the benefit of and shall be paid to that Partner at the time such amounts are Distributed.

11.2.2 Where the amount to be Distributed under **clause 11.2.1** exceeds £100,000 in respect of any of the Partners entitled to it, such amounts shall be Distributed as soon as practicable after the relevant amount becomes available for Distribution.

11.3 Restrictions on Distributions

The Partnership shall not make a Distribution pursuant to this **clause 11**:

11.3.1 if there is insufficient cash available to make the Distribution; or

11.3.2 which would render the Partnership insolvent.

12. ASSIGNMENT OF INTERESTS

12.1 The Carried Interest Partner shall not make any transfer of all or any part of its legal, beneficial or other rights as a Partner of the Partnership without Consent.

12.2 The Holding Fund shall be entitled to make a transfer of all or any part of its Share by giving notice to the Partnership (a "**Transfer Notice**") and further provided that:

12.2.1 any proposed transfer is not unlawful or contrary to any term or condition of this Agreement;

12.2.2 any proposed transfer does not cause the Partnership to be disqualified as or terminated as a Partnership; or

12.2.3 any proposed transfer does not result in the number of partners in the Partnership exceeding such other number as may be permitted by applicable law from time to time.

12.3 On receipt of a valid Transfer Notice the Partnership shall, subject to being satisfied that the conditions set out in **clauses 12.2.1** to **12.2.3** are met, be

obliged to register such transfer to which the Transfer Notice relates in the books of the Partnership and to make all necessary filings and registrations pursuant to the Act.

- 12.4 The transfer of any interest in the Partnership by any party shall not result in the dissolution of the Partnership.
- 12.5 For the avoidance of doubt the Holding Fund may grant any such rights over its interest in the Partnership as is required by EIB, NWDA or ERDF pursuant to the EIB Facility Agreement, the Offer Letter, the Transitional Fund Transfer Documentation and the Single Programme Offer Letter.

13. **REMOVAL OF THE GENERAL PARTNER**

13.1 **Removal of the General Partner without cause**

13.1.1 The General Partner may be removed from office by Consent without cause and the remaining provisions of this **clause 13.1** shall apply.

13.1.2 The General Partner shall be entitled to retain a fraction of the General Partner's Share calculated as follows:

13.1.2.1 ***[Note: Bidders to specify appropriate arrangements in their bids]***

13.2 **Removal of the General Partner for Cause**

13.2.1 The General Partner and/or the Manager (as the case may be) may be removed by Consent at any time without any payment of compensation for Cause. Such Consent may also terminate the Partnership and if it does not the removal of the General Partner pursuant to such Consent shall be effective upon the appointment of a replacement general partner under **clause 14** or an earlier termination of the Partnership. For the purpose of this clause, "**Cause**" shall mean:

13.2.1.1 conduct on the part of the General Partner and/or the Manager (as the case may be) constituting fraud, negligence or wilful default in relation to the Partnership;

13.2.1.2 any breach by the General Partner and/or the Manager (as the case may be) of any term or provision of this Agreement which is not remedied within thirty (30) days after written notice of such breach by the Holding Fund;

13.2.1.3 unless agreed by Consent, over a period of four (4) consecutive months a Key Investment Executive fails to devote substantially the whole of that Key Investment

Executive's Business Time to the management and affairs of the Partnership, and such Key Investment Executive is not replaced by another person nominated by the Manager to be a Key Investment Executive which nomination is approved by Consent;

- 13.2.1.4 unless agreed by Consent or in accordance with the provisions of **clause 24**, any assignment, transfer, novation or release of the obligations of the Manager to the Partnership;
- 13.2.1.5 the bankruptcy, insolvency, dissolution or liquidation of the Manager or the Manager making any arrangements or composition with its creditors generally;
- 13.2.1.6 any event or circumstance in which the terms of the Offer Letter, the Single Programme Offer Letter or the EIB Facility Agreement requires the reduction, suspension, withholding or recovery of the Investment Loan and/or the Management Project Loan;
- 13.2.1.7 the Manager's failure to comply in any material respect with any of the terms and conditions of grant set out in the Offer Letter, the Single Programme Offer Letter, the Transitional Fund Transfer Documentation and the EIB Facility Agreement as notified to the Partnership by the Holding Fund and the Manager fails to remedy it within a reasonable time of being requested to do so by the Holding Fund or NWDA;
- 13.2.1.8 subject to the other provisions of this Agreement, the Manager's material and sustained failure to achieve the Outputs and Results and other targets set out in this Agreement;
- 13.2.1.9 evidence of any irregularity or impropriety with respect to the Manager's use of the Investment Loan Commitment;
- 13.2.1.10 the Manager's failure to provide when requested under the terms of this Agreement information regarding the Partnership that is critical for assessing the strategic effectiveness of the Holding Fund providing support to the Partnership by way of ERDF funds or the EIB Loan; or
- 13.2.1.11 the Manager's failure to comply with **clause 19.1.4.2**.

13.3 **Consequences of removal of the General Partner**

Where Consent is given to remove the General Partner and/or the Manager (as the case may be) in accordance with the provisions of **clause 13.1** or **13.2**:

- 13.3.1 the Manager shall cease to be entitled to draw down any Investment Loan Commitment for the purposes of Partnership making Investments (other than Investments in respect of which a binding commitment has been entered into by the Partnership before the date of such Consent which the Partnership cannot unilaterally terminate without damages being payable or material adverse financial or commercial damage arising to the Partnership);
- 13.3.2 during any period during which the Manager is not entitled to draw down any Investment Loan Commitment under **clause 13.3.1** (a "**Suspension Period**"), save as provided in **clause 13.3.3** the General Partner and/or the Manager shall cease to be entitled to any payments pursuant to this Agreement;
- 13.3.3 with effect from the date of service of such Consent on the General Partner no allocation or distribution of Net Income, Net Income Losses, Capital Gains and Capital Losses shall be made to the General Partner in relation to Investments made by or on behalf of the Partnership at any time after such Consent is served on the General Partner SAVE THAT such allocations and distributions shall be made to the General Partner under **Schedule 3** in any case where Consent has been given under **clause 13.1** and the corresponding Net Income, Net Income Losses, Capital Gains and Capital Losses are derived from Investments made by the Partnership (including Investments in respect of which a binding commitment has been entered into by the Partnership before the date of such Consent which the Partnership cannot unilaterally terminate without damages being payable) at any time before such Consent was served on the General Partner.

14. **APPOINTMENT OF A REPLACEMENT GENERAL PARTNER**

- 14.1 The Holding Fund may by Consent at any time during a Suspension Period, appoint a replacement general partner in accordance with this **clause 14.1** or terminate the Partnership. Upon the appointment of a replacement general partner under this **clause 14.1** the Suspension Period will end. Such replacement general partner may be appointed either as a permanent replacement general partner or as a temporary replacement general partner and if appointed as a temporary replacement general partner may be replaced at any time thereafter by a permanent replacement general partner appointed under **clause 14.2**.

14.2 Any replacement of the General Partner shall be such person of suitable quality and experience as shall be nominated by Consent following (save in the case of temporary replacement general partner appointed as described in **clause 14.1**) a rigorous and competitive selection process in accordance with the applicable UK public procurement procedure (including if applicable under any existing applicable framework agreement) and the appointment of any replacement of the General Partner shall not take effect until it has executed a deed of adherence or other document undertaking to fulfil the obligations of the General Partner under this Agreement in such form as shall be determined by the Holding Fund.

15. TERMINATION OF THE PARTNERSHIP

15.1 The Partnership shall automatically terminate on the date specified in **clause 2.5.2** (subject to any extension in accordance with **clause 15.3**) but such termination shall not operate to terminate the Partnership, or any other operations of the Partnership.

15.2 The Partnership shall automatically terminate forthwith upon the occurrence of any of the following events:

15.2.1 Consent being served on the General Partner to terminate the Partnership;

15.2.2 the determination by the Partners in good faith and after consultation with the Manager that termination of the Partnership is necessary to avoid a violation or continuing violation of FSMA;

15.2.3 the determination by the Partners in good faith and after consultation with the Manager that termination of the Partnership is necessary to avoid a violation or continuing violation of any other applicable law or regulation of the European Union or the United Kingdom.

15.3 At any time prior to the date specified in **clause 2.5.2** the term of the Partnership may be extended with Consent for a period of up to two years or for such other period and for such purpose(s) as may be specified in such Consent providing always that the Holding Fund shall be entitled to undertake such benchmarking or other process as it deems necessary to undertake prior to determining whether such Consent shall be given.

15.4 The insolvency, dissolution, liquidation, receivership or administration of the Holding Fund or the Carried Interest Partner shall not operate to terminate the Partnership and any duly appointed receiver, administrator or liquidator of the Holding Fund or the Carried Interest Partner shall not have the right to withdraw the Capital Commitment of the Holding Fund or the Carried Interest Partner or to require repayment otherwise than as provided elsewhere in this Agreement of

the Holding Fund's Loan prior to the liquidation of the Partnership.

16. LIQUIDATION OF THE PARTNERSHIP

- 16.1 None of the Partners shall be entitled to the return of its Capital Contribution except upon the liquidation of the Partnership.
- 16.2 Upon termination of the Partnership in accordance with this clause, no further business shall be conducted, except for such business as shall be necessary for the winding-up of the affairs of the Partnership and the distribution of Partnership Assets to the Holding Fund which shall be effected by the Liquidation Agent, which shall use its best endeavours to ensure an orderly liquidation and in so doing maximise the returns to the Partners.
- 16.3 Upon termination of the Partnership, the Liquidation Agent may sell any or all of the assets of the Partnership on the best terms available.
- 16.4 The Liquidation Agent shall cause the Partnership to pay all debts, obligations and liabilities of the Partnership and all costs of liquidation. The Partnership Assets remaining after such payment shall be distributed amongst the Partners in accordance with **clause 11**. The Liquidation Agent may make interim distributions to Partners providing it has retained sufficient Partnership Assets against any existing or potential debt, obligation or liability of the Partnership and the costs of its liquidation. The Liquidation Agent shall not (in its capacity as such) be a Partner.
- 16.5 The Liquidation Agent and its officers, directors, shareholders, agents and employees shall be entitled to be indemnified out of the assets of the Partnership against any liabilities, costs or expenses (including reasonable legal fees) incurred by reason of it or him having been the Liquidation Agent or an officer, director, shareholder, agent or employee of the Liquidation Agent PROVIDED THAT no such person shall be so indemnified with respect to any matter resulting from its or his fraud, wilful default or negligence or any material breach of this Agreement, FSMA or the FSA Handbook in the performance by it or him of its or his obligations and duties in relation to the Partnership and/or the Partnership Assets.

17. INVESTMENT OPPORTUNITIES

- 17.1 The functions and duties which the Manager undertakes on behalf of the Partnership shall not be exclusive and the Manager may perform similar functions and duties for themselves and for others and, without limitation, may act as a general partner, manager or investment adviser in or of other sources of venture capital or engage in any other activity without obtaining Consent.
- 17.2 The Manager shall be required, so far as is consistent with the investment

restrictions and applicable fiscal, legal or regulatory requirements of the Partnership and of such other sources of venture capital in respect of which the Manager is acting as general partner, manager or investment adviser, allocate investment opportunities fairly between those sources of finance and the Partnership but shall not prefer any other sources of venture capital over the Partnership in terms of investment opportunities.

17.3 The Manager shall comply with the Holding Fund's Conflict of Interest Policy for Product Funds (the "**Conflicts Policy**") as notified by the Holding Fund to the General Partner from time to time and subject to compliance with the Conflicts Policy shall be required to have regard to the following matters when allocating investment opportunities between the Partnership and other sources of venture capital for the purposes of **clause 17.2**:

17.3.1 the geographic area in which they are able to invest;

17.3.2 their investment policies;

17.3.3 the size of the proposed investment opportunity and their respective sizes;

17.3.4 the objectives of the proposed Investee Company included those of its shareholders;

17.3.5 the financial instruments most appropriate to investment in the investment opportunity under consideration; and

17.3.6 [the applicable allocation rules of the Manager as annexed to this Agreement at **Appendix 1** or as otherwise varied by Consent detailing how any potential conflicts of interest regarding sources of finance managed or advised by the Manager are regulated.]¹³

17.4 The Manager shall be required to undertake that neither the Manager nor any of its Associates nor any of its investment executives shall, during the Investment Loan Commitment Period, invest in any investment opportunity which falls within the investment parameters of the Partnership either for themselves or for a pooled investment fund or other third party for which they act as general partner, manager, advisor, or primary source of transactions, without first obtaining Consent, unless participation in such investment opportunity be made available to the Partnership on a fair and reasonable basis.

17.5 The Manager shall be required to notify the Holding Fund of any material and relevant change in any rule, policy or requirement of any other venture capital funds in respect of which the Manager is acting as general partner, manager or

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¹³ Note to bidders: To be supplied by the successful bidder if required.

investment adviser with an explanation of how such change may affect the allocation of investment opportunities under **clause 17.2**.

18. FEES AND EXPENSES

- 18.1 Save as otherwise provided in this Agreement, each of the Partners shall pay their own expenses incurred relating to the establishment of the Partnership, the preparation, negotiation and completion of this Agreement and any related documents (including, without limitation, any commissions all reasonable legal, printing, publicity, postage and other out-of-pocket expenses and costs including Value Added Tax).
- 18.2 The Manager shall be responsible for all expenses incurred in connection with any audit, custodial arrangements and valuations of Partnership Assets as required in accordance with the provisions of this Agreement.
- 18.3 The Manager shall be required to procure that it and its Associates shall procure that:
- 18.3.1 any costs and expenses charged or otherwise incurred by Investee Companies in connection with any investment by the Partnership are undertaken cost effectively having regard to the best interests of such Investee Companies; and
 - 18.3.2 any costs, expenses, commissions or fees of any description incurred or received by the Partnership when making an Investment alongside any provider of Matched Funding shall be allocated equitably between those parties making the investment.
- 18.4 The General Partner, Manager and their Associates shall be entitled to accept and retain for their own account:
- 18.4.1 (subject to any requirements of any Funder) all arrangement fees, syndication fees and any other transaction fees received by them and/or the Partnership, agreed upon at the time of and directly referable to the making of an Investment including, for the avoidance of doubt, any corporate finance fees charged in the ordinary course of its business by the Manager; and
 - 18.4.2 all agency, directors' fees and benefits, legal fees (incurred by the Manager in connection with a proposed Investment) and monitoring fees (up to a maximum of £15,000 per annum in respect of each Investee Company or such higher figure as shall be approved by Consent) charged to any Investee Company and received by them and/or the Partnership directly in connection with the holding of an Investment by the Partnership;

18.4.3 any fees or commissions of any description recoverable in connection with proposed transactions by the Partnership which do not proceed to completion.

Subject to Consent, the Manager may charge in excess of those maximum amounts set out in **clauses 18.4.1** and **18.4.2** in exceptional circumstances and with the prior Consent of the Holding Fund where the basis for charging such amounts is detailed in the documentation relating to the Investment. The maximum amount set out in **clause 18.4.2** may be increased by the percentage (if any) by which the RPI as at the start of the current Accounting Period has increased over the RPI as at the date of Partnership made the Investment to which the monitoring fees relate.

18.5 The Manager shall be required to bear and be responsible for all costs, fees and expenses in relation to any proposed investments by the Partnership which are not completed.

19. **MARKETING**

19.1 **Publicity**

19.1.1 The Manager shall be required to undertake to devote an appropriate amount of its resources for the purposes of promoting and marketing the Partnership across the North West Region of England and seeking enquiries from potential Investee Companies based in the Investment Area, including companies supported by business support organisations and investment readiness services.

19.1.2 Pursuant to the obligations of the Offer Letter the Manager shall be required to comply with the publicity requirements of Articles 8 and 9 of Regulation 1828 and the the publicity requirements and the branding guidelines for ERDF which are available from time to time on the NWDA's website.

19.1.3 Where the Partnership fails to meet any of the Outputs and Results or other targets set out in this Agreement and including, without limitation, those targets referred to in **clause 7**, the Investment Conditions and the IOGs, the Manager shall be required to review and, if appropriate, (following discussion with the Holding Fund) adjust its promotional and marketing activities as shall in its reasonable opinion be necessary to meet such Outputs and Results and targets.

19.1.4 The Manager shall be required in promoting and marketing the Partnership under **clause 19.1.1**:

19.1.4.1 liaise and consult with the Holding Fund, its marketing

team and consultants;

19.1.4.2 comply in all respects with all applicable provisions of FSMA and any requirements set out in the Manager's Part IV Scope of Permission Notice granted by the FSA from time to time;

19.1.4.3 market potential investment by the Partnership equally to both men and women;

19.1.4.4 market potential investment by the Partnership to Investee Companies using information and computer technology;

19.1.4.5 market potential investment opportunities to the Small Business Services (as applicable) and other services and funds supported by NWDA and the Holding Fund to potentially secure investment proposals from such sources; and

19.1.4.6 use all appropriate cost effective marketing and promotional mechanisms available to it.

19.1.5 The Manager shall be required to:

19.1.5.1 incorporate the EU's logo in the manner and style and together with the accompanying graphic design as the same appear on the EU's letterhead with the words "[NAME] and the costs of its management are part-financed by the European Union European Regional Development Fund through the North West Development Agency" into any publicity material (including, without limitation, any press releases) and use all reasonable endeavours to comply with the branding guidelines published by NWDA from time to time;

19.1.5.2 where requested to do so by any the Holding Fund or funder of the Partnership incorporate the logo of the Holding Fund or such funder in the manner and style and together with the accompanying graphic design as the same appear on the letterhead of the relevant funder with such accompanying words as such funder may require into any publicity material (including, without limitation, any press releases) and shall inform the Holding Fund or such funder (as the case maybe) at least 10 Business Days prior to any promotional event relating to the Partnership;

19.1.5.3 provide such assistance as NWDA may reasonably request from time to time (having regard to the time commitment sought and the cost implications if any, for the Manager) in assisting and enabling NWDA to promote best practice in relation to the promotion of schemes similar to the Partnership; and

19.1.5.4 incorporate NWDA's logo in the manner and style and together with the accompanying graphic design as the same appear on NWDA's letterhead into any publicity material regarding the Partnership (including, without limitation, any press releases) and shall inform NWDA at least 10 Business Days prior to any promotional event relating to the Partnership.

19.1.6 To the extent not already required by this **clause 19.1**, the Manger shall be required to comply with the all relevant provisions of the Offer Letter in relation to marketing and publicity and the branding guidelines published by the Holding Fund from time to time.

19.2 **Holding Fund's Logo**

19.2.1 The parties acknowledge that the Holding Fund has granted the Partnership during the term of this Agreement a non-exclusive licence to use the Holding Fund's logo for the purpose set out in **clause 19.1.5.2**. The Partnership shall not assign or grant sub-licences of this licence or any part of it to any person other than the Manager.

19.2.2 The Partnership acknowledges that the Holding Fund's logo is owned by and shall remain the property of the Holding Fund. The Partnership shall not acquire any rights in respect of such logo by reason of exercise of the rights granted by this Agreement.

19.3 **NWDA's Logo [this may be in a separate document]**

19.3.1 The parties acknowledge that NWDA has granted the Partnership during the term of this Agreement a non-exclusive licence to use NWDA's logo for the purpose set out in **clause 19.1.5.4**. The Partnership shall not assign or grant sub-licences of this licence or any part of it to any person other than the Manager.

19.3.2 The Partnership acknowledges that NWDA's logo is owned by and shall remain the property of NWDA. The Partnership shall not acquire any rights in respect of such logo by reason of exercise of the rights granted by this Agreement.

20. **REPUTATION**

All parties to this Agreement acknowledge, and the Manager shall be required to accept, a duty of care to the others and to Associates of the Partners and NWDA not to do or omit to do, anything in relation to this Agreement, the Partnership or in the course of their other activities, that may bring the standing of any of those persons into disrepute or attract adverse publicity for any such persons. Where the Partnership, the General Partner, the Manager, the Holding Fund or the Carried Interest Partner becomes aware of any matter which may bring the standing of any of those persons into disrepute or attract adverse publicity, the Partnership, the General Partner, the Manager, the Holding Fund or the Carried Interest Partner (as appropriate) shall notify the relevant person affected of that matter immediately upon it becoming so aware.

21. **PUBLIC PROCUREMENT**

21.1 The Manager shall be required at all times to comply fully with all applicable European Union procurement legislation including, without limitation, those applicable rules and regulations on procurement described in the Offer Letter, and any implementing measures and any other legislation specifically in connection with the procurement of the Partnership or any services in respect of which funding is to be provided by the Holding Fund or the Partnership and shall promptly provide to Holding Fund any information which the Holding Fund may request in order to satisfy itself that the Partnership and/or the Manager has done so.

21.2 All procurement of works, equipment, goods and services used specifically in connection with the Partnership business shall be based on value for money. In determining how this requirement should be met, the Partnership and/or the Manager shall take account of public sector accountability and probity, and shall document the decision making process.

22. **ENVIRONMENTAL LAW**

The Manager shall be required to comply fully with all or any applicable law (whether civil, criminal or administrative), common law, statute, statutory instrument, treaty, regulation, directive, decision, bye-law, circular, code, guidance notice, order, notice, demand, decree, injunction, resolution or judgment of any government, quasi-government, supranational, federal, state or local government, statutory or regulatory body, court, agency or association, or any other person or body in any jurisdiction (including without limitation the European Union) with regard to the pollution or protection of the Environment or harm to, or the protection of, human health and safety or the health of animals and plants ("**Environmental Law**"). Each Partner undertakes to notify the

other Partners if it becomes aware of any breach of Environmental Law committed by the Manager.

23. ASSIGNMENT OF MANAGER'S INTEREST

Save as permitted by Consent the Manager shall not, and the General Partner shall not permit the Manager to, assign, novate or otherwise transfer any right or obligation under the Management Agreement (whether or not accrued).

24. EQUAL OPPORTUNITIES

24.1 The Partnership warrants and confirms that the Manager has in place at the Closing Date and shall continue to have in place a policy covering equal opportunities so that there is no unfair discrimination on the grounds of colour, race, creed, nationality or any other unjustifiable basis directly or indirectly in relation to the carrying on of the business of the Partnership and that the Manager shall have regard to the gender equal opportunities targets set out in the IOGs and the Investment Conditions.

24.2 The Manager shall not in carrying on the business of the Partnership unlawfully discriminate within the meaning and scope of the Equality Legislation and shall take all reasonable steps to ensure that all servants, employees or agents of the Manager and all sub-contractors (and consortia members) employed in the execution of the business of the Partnership do not unlawfully discriminate.

24.3 The Manager shall be required to ensure that all contractors and sub-contractors procured by the Manager to carry out any activities and/or deliver outputs on behalf of the Manager and/or the Partnership are fully aware of the particular barrier experienced by black and minority ethnic groups, women and disabled owned businesses and shall take all reasonable steps to ensure these barriers are addressed.

25. SUSTAINABILITY

The Partnership warrants and confirms that the Manager has in place and shall continue to have in place a policy setting out its sustainable procurement plan and green travel plan to minimise its environmental impacts. The Manager will be required to report to the Partners on compliance with these plans in the final quarter of each Accounting Period. ¹⁴

26. PERSONNEL OF MANAGER

The Manager shall be required at all times to procure that the personnel carrying on the business of the Partnership shall include, in the case of the Key

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¹⁴ Note to bidders: Bidders to provide details of the Manager's sustainable procurement plan and green travel plan.

Investment Executives, person having experience of investing public sector funds (including at least one person having experience of investing ERDF moneys) and that the Manager shall maintain a sufficient number of adequately qualified and experienced persons to meet its obligations under this Agreement. In complying with this **clause 26**, the Manager shall be required to procure that:

- 26.1 it has in place appropriate formal and informal training and development programmes;
- 26.2 in recruiting its staff the Manager shall:
 - 26.2.1 introduce a wide variety of applicants to the venture capital industry with a view to achieving a greater variety of skill sets and experience within the venture capital industry;
 - 26.2.2 carry out such investigations as it deems reasonably necessary to verify the qualifications and good standing of such staff and shall provide evidence of having done so on the reasonable request of the Holding Fund;
- 26.3 it takes appropriate consideration of feedback from the Holding Fund on the performance of the Manager's staff.

27. **AMENDMENT**

This Agreement may be amended in whole or in part by written agreement of the General Partner and the Holding Fund.

28. **ENTIRE AGREEMENT**

Each party confirms that this Agreement together with agreements and other documents annexed to or referred to in it set out the entire agreement and understanding between the parties in relation to the subject matter of this Agreement and supersede all previous agreements, arrangements and understandings between them or any of them with regard thereto.

29. **ECONOMIC AND MONETARY UNION**

- 29.1 If the United Kingdom becomes a Participating Member State and as a result the Bank of England recognises more than one currency or currency unit as the lawful currency of the United Kingdom, unless prohibited by law:
 - 29.1.1 the Holding Fund may designate (after consulting with the Manager) which currency or currency unit the obligations arising under this Agreement are to be denominated or payable in; and
 - 29.1.2 any translation from one currency or currency unit to another shall be

at the official rate of exchange recognised by the Bank of England for conversion, rounded up or down by the Manager (acting reasonably).

- 29.2 This Agreement shall be subject to such reasonable changes of construction as the Manager may specify from time to time to be appropriate to reflect the adoption of the euro in the United Kingdom and any relevant market conventions or practices relating to the euro.

30. **DATA PROTECTION**

The Manager shall be required to procure that it and its Associates or any of its investment executives shall, in providing information to the Partners under this Agreement, comply fully with the applicable requirements of the Data Protection Act 1998.

31. **CONFIDENTIAL INFORMATION**

- 31.1 All parties shall use their best endeavours, and the Manager shall be required to use its best endeavours, to procure that neither they nor any person connected with or associated with them shall, disclose to any person, firm or corporation or use to the detriment of the Partnership or any of the Partners other than for the purposes of enforcing a Partner's rights in connection with the Partnership any confidential information which may have come to their knowledge as a result of being involved in the Partnership PROVIDED THAT the prohibition set out in this **clause 31** shall not apply to the disclosure to any of their Associates or to disclosure required by law or by the regulations of any relevant stock exchange or other regulatory or governmental or parliamentary or European Union authority the rules and regulations of which they are subject or any request from any tax authority.
- 31.2 The Partnership and the Manager acknowledge that NWDA is subject to the FOI and the Environmental Information Regulations 2004 ("**the FOI Legislation**") and the Partnership agrees to assist and co-operate, and to procure that the Manager assists and co-operates, with the Holding Fund to enable NWDA to comply with its obligations under the FOI Legislation. The Partnership and the Manager acknowledge that the Holding Fund and/or NWDA may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Manager.
- 31.3 The Holding Fund acknowledges that the Manager may have entered into contractual obligations with third parties in relation to Information unauthorised disclosure of which may give rise to an actionable liability on the Manager for breach of contract. Such contractual obligations may also include restrictions on the disclosure that negotiations or discussions have taken place between the third party and the Manager.

- 31.4 It is acknowledged by all of the parties to this agreement that:
- 31.4.1 where the Information is of a nature whereby it may be exempt from the general disclosure obligations under the FOI Legislation and that the Holding Fund (where reasonably practical) shall consult with the Manager, in the event that a request for information in accordance with the FOI Legislation ("**Request for Information**") is received by the Holding Fund and/or NWDA, prior to any decision being reached by the Holding Fund as to whether or not any information which forms part of the Information is to be disclosed under the FOI Legislation;
 - 31.4.2 notwithstanding the provisions of **clauses 31.3** and **31.4.1** above, the Holding Fund shall be responsible for determining, at its absolute discretion, whether any of the Information is:
 - 31.4.2.1 exempt from disclosure in accordance with the FOI Legislation; or
 - 31.4.2.2 to be disclosed in response to a Request for Information.
- 31.5 For the purposes of this clause "**Information**" means any information identified by the Manager as being confidential information relating to the finances, performance, projections, future plans, technology or know how of any Investee Company and any other information relating to or belonging to any Investee Company which is of a nature whereby in the opinion of the Manager it is potentially exempt from the general disclosure obligations under the FOI Legislation and "Information" shall include commercially confidential information regarding the Manager and its interest in managing the Partnership (including methodology, marketing and financial information in which it has a proprietary interest), confidential information concerning actual or prospective co-investors in Investee Companies, confidential information received by the Manager from prospective Investee Companies, disclosure of the existence of discussions or negotiations between the Manager of prospective Investee Companies, confidential information received by the Manager from actual or prospective purchasers of Investee Companies and disclosure of the existence of discussions or negotiations between the Manager and prospective purchasers of Investee Companies.

32. **FORCE MAJEURE**

None of the Manager, the General Partner, the Holding Fund or the Carried Interest Partner shall be liable to any other of those persons nor to any of their respective Associates for any failure or delay or for the consequences of any failure or delay in performance of any part of this Agreement if it is due to any event beyond their control including, without limitation, any decision, ruling, notification or other action of ERDF, the European Commission or any other body affecting the performance of any of the obligations under this Agreement.

33. **NOTICES**

33.1 Any notice or other communication given or made under this Agreement shall be in writing and may be delivered to the relevant party or sent by first class pre-paid letter or facsimile transmission to the address of that party specified in this Agreement or to that party's facsimile transmission number or such other address or number as may be notified hereunder by that party from time to time for this purpose and shall be effective notwithstanding any change of address not so notified.

33.2 Each such notice or communication shall be deemed to have been given or made upon acknowledgement of receipt by the relevant party.

34. **SUCCESSORS AND ASSIGNS**

Except as otherwise specified in this Agreement, the provisions of this Agreement shall be binding on and enure to the benefit of the heirs, personal representatives, successors and assigns of the respective parties hereto.

35. **COUNTERPARTS**

This Agreement may be executed in counterparts each of which shall be deemed to be an original.

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

Save for the rights of NWDA under the terms of this Agreement, the parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

37. **DISPUTE RESOLUTION**

37.1 The Manager shall be required to:

37.1.1 notify and consult with the Holding Fund in the event that a material dispute (as defined by the Holding Fund by Consent) arises between an

Investee Company and the Manager and/or the Partnership ("**Investee Company Dispute**");

- 37.1.2 deal with and address any such Investee Company Disputes effectively and efficiently and in accordance with the reasonable directions of the Holding Fund.
- 37.2 The parties to this Agreement shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement. If the dispute cannot be resolved by those parties pursuant to this **clause 37.2**, the dispute may, by agreement between the relevant parties, be referred to mediation pursuant to **clause 37.4**.
- 37.3 The business of the Partnership shall not cease or be delayed by the reference of a dispute to mediation pursuant to **clause 37.4**.
- 37.4 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 37.4.1 a neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement between the relevant parties or, if they are unable to agree upon the identity of the Mediator within 14 days after a request by one party (provided that there remains agreement for mediation), or if the Mediator agreed upon is unable or unwilling to act, the relevant parties shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to those parties that he is unable or unwilling to act, apply to the Centre for Dispute Resolution ("**CEDR**") to appoint a Mediator;
- 37.4.2 the relevant parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the relevant parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;
- 37.4.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the relevant parties in any future proceedings;
- 37.4.4 if the relevant parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by the relevant parties;
- 37.4.5 failing agreement, the relevant parties may invite the Mediator to

provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Agreement without the prior written consent of the relevant parties;

37.4.6 if the relevant parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

38. GENERAL

38.1 The rights and remedies in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

38.2 If any one or more of the provisions of this Agreement shall be invalid, illegal, or unenforceable in any respect the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.

38.3 No failure to exercise and no delay in exercising on the part of any party any right, power or privilege under this Agreement will operate as a waiver of it, nor will any single or partial exercise by any of them of any right, power or remedy preclude any other or further exercise of it, or the exercise of any other right, power or remedy. The rights and remedies of the parties are cumulative and not exclusive of any rights or remedies which the parties would otherwise have.

38.4 Nothing contained in or done under this Agreement and no Consents given by the Holding Fund shall prejudice the Holding Fund's rights, powers or duties and/or obligations in the exercise of its functions or under any statutes, bye-laws, instruments, orders or regulations or otherwise.

39. GOVERNING LAW

This Agreement shall be governed by and construed in all respects in accordance with English law. The parties agree to submit to the exclusive jurisdiction of the English Courts as regards any claim or matter arising in relation to this Agreement.

IN WITNESS whereof this Deed has been executed and delivered as a deed on the date of this Deed

EXECUTED AS A DEED by)
[General Partner])
acting by:)

Director

Director

EXECUTED AS A DEED by)
[Carried Interest Partner])
acting by:)

[INSERT SIGNATURE BLOCK]

EXECUTED AS A DEED by)
North West Business Finance)
Limited acting by:)

Director

Director

DRAFT

Investment Conditions

1. The Partnership shall not invest in any investment opportunity:
 - 1.1 subject to **paragraph 2** below and save in respect of loans made out of the Loan Fund, where the aggregate Investment of the Partnership in an Investee Company where such Investment is made exceeds €1,500,000 over a period of twelve months from the date of the first Investment **[Note: Block Exemption Article 29.3.]** subject to any reduction required under Article 7.5 of the Block Exemption where an Investee Company applies for equity or quasi equity funding from the Partnership within three years after receiving another equity or quasi equity investment from the Partnership (or such other limit as may be notified by the Holding Fund to the Manager from time to time);
 - 1.2 where the aggregate Investment of the Partnership in an Investee Company and any investment made or agreed at the same time by any State Aid Scheme as at the date upon which such investment is made exceeds €1,500,000 subject to any reduction required under Article 7.5 of the Block Exemption as described in **paragraph 1.1** above (or such other limit as may be notified by the Holding Fund to the Manager from time to time);
 - 1.3 unless otherwise agreed between by the Holding Fund by Consent, in any equity or quasi equity investment where the Investment by the Partnership in such class of equity or quasi equity does not rank either (a) in all respects pari passu with or (b) in priority to the interests of any other co-investors investing in equity or quasi equity of that class at that time;
 - 1.4 where the Investment involves the Partnership giving warranties and/or indemnities (save, for the avoidance of doubt, for warranties given on disposal of such Investment as described in **clause 6.2.1.10** of this Agreement);
 - 1.5 where the Investment by the Partnership does not contain a subscription for, purchase of, or the granting of an option to acquire equity in the Investee Company;¹⁵
 - 1.6 where the Investment directly involves the assumption by the Partnership of unlimited liability for the debts and obligations of any Investee Company or any other person;
 - 1.7 where the proposed or actual business activities of a potential Investee Company may have the potential for significant negative impacts on the environment save that the Partnership may invest in such companies where the Manager has

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¹⁵ Note to bidders: this clause will not apply to the loan fund

commissioned an independent technical appraisal of those impacts and the results of such appraisal are satisfactory to the Holding Fund; and

- 1.8 in respect of loans made out of the Loan Fund where alternative funding sources are available and are willing to provide that investment to that company (except in any case where the Partnership has previously invested in that Investee Company and a follow-on investment is being made so as to avoid the equity interest in the Partnership being diluted); or
- 1.9 notwithstanding anything to the contrary contained in this Agreement, operating in an EIB Restricted Sector, a State-Aid Restricted Sector, an ERDF Sensitive Sector or Other Restricted Sector. The Manager shall decide in consultation with the Holding Fund and the relevant government authority whether a company or group's projected sales are derived from a State-Aid Restricted Sector, an EIB Restricted Sector or an ERDF Sensitive Sector or Other Restricted Sector.
- 1.10 whereby the Partnership will make any Investment:
 - 1.10.1 directly or indirectly in a business or company which is not a SME or in a company which is Listed at the time at which the Investment is made **[Note: Block Exemption Article 28.3.]**;
 - 1.10.2 directly or indirectly in a business or company which amounts to an undertaking in difficulty as specified in Block Exemption Article 1.6 (c) and 7;
 - 1.10.3 in any company which does not have its principal place of business or a material part of its operations, people or trading in the Investment Area. Where Investment is made by the Partnership under this **paragraph 1.11.3** the Manager shall be required to comply fully with the provisions of the applicable ERDF, EIB and state aid rules and regulations from time to time;
 - 1.10.4 in an entity which is subject to an outstanding recovery order following a decision by the EC Commission declaring an aid to it as illegal and incompatible with the common market;
 - 1.10.5 unless any loan made to an Investee Company by the Partnership shall bear interest at a margin over the EC Reference Rate prevailing at the time, such loan is made and otherwise calculated in accordance with the Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008 p6-9) or any replacement thereof by the European Commission. Furthermore, overall loans must be made at interest rates and subject to fees which are sufficient to compensate the Fund for all accumulated losses in respect of loans made by it;

1.10.6 other than in SMEs for which a business plan exists, containing details of products, sales and profitability development and which establishes the ex ante viability of the project and for which a clear and realistic exit strategy exists [**Note: Block Exemption Article 29.7.**];

1.10.7 where such Investment would contravene the guidelines issued from time to time by the Holding Fund by Consent, after consultation with the Auditors and the Manager, for purpose of ensuring that no Investee Company or Investment by the Partnership is consolidated into the accounts of the Holding Fund;

but for the avoidance of doubt and notwithstanding the restrictions placed on Investments by the Partnership in **paragraph 1** of this Schedule, subsequent Investments may be made by the Partnership to avoid any equity interests of the Partnership arising from Investments by the Partnership made in accordance with **paragraph 1** of this Schedule being diluted, provided that in such circumstances the aggregate of such subsequent Investments made by the Partnership shall not exceed the levels permitted by Article 7.5 of the Block Exemption.

2. The Manager shall be required to use its best endeavours to procure that:
 - 2.1 the Investment Commitment has been allocated on the expiry of the period ending on 31 December 2015 so that Investments made (across the Jeremie Programme) in the Merseyside Area amount in aggregate to not less than the Specified Amount (or such other amount as determined from time to time by Consent);
 - 2.2 (without prejudice to **paragraph 1.3** of this Schedule) all investments made by the Partnership shall be made by way of co-investment with other persons providing Matched Funding¹⁶ (save where the Holding Fund agrees otherwise by Consent) and the Manager shall use its reasonable endeavours to maximise private sector Matched Funding and to maximise the amount of private sector Matched Funding which is invested pari passu or on subordinated terms compared with the Investments.
 - 2.3 both existing and proposed Investee Companies and SMEs Assisted maximise the use of business support organisations and investment readiness services including, without limitation, the Small Business Services.
3. The Partners acknowledge that they are aware of and fully sensitive to the involvement of public funds and organisations (such as ERDF and NWDA) with the Partnership and the Manager shall be required to undertake:

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¹⁶ Note to bidders: This does not apply to Lot 3

- 3.1 not to make Investments which would be likely to cause offence or a public scandal, or which might be against the strategic or security interests of the UK;
- 3.2 to notify and consult with the Holding Fund regarding any pending Investments, or any developments within any of the existing Investments, which might fall into such "sensitive" categories as soon as it becomes aware of any such developments; and
- 3.3 to use its best endeavours to procure that the business activities of Investee Companies are legal, moral and ethical.
4. No Investment shall be sold to or acquired from any fund for which the Manager or any its Associates acts as a general partner, manager, adviser or investor except in compliance with the compliance procedures from time to time of the Manager for ensuring fair treatment of the Partnership and that such other funds are approved by the Holding Fund for the purposes of this clause from time to time.
5. In carrying on the business of investing on behalf of the Partnership the Manager shall be required to use all reasonable endeavours (save for **paragraph 5.7**, where the Manager shall be required to use all best endeavours) to have particular regard to:
 - 5.1.1 the need to encourage, through an ongoing marketing strategy and activity programme, applications from companies located in the Investment Area operating in the innovative, energy efficiency and environmental business sectors as well as those in the Priority Clusters, black and minority ethnic groups, women and disabled owned businesses (so far as such applications are consistent with **Paragraph 2.2**);
 - 5.1.2 the Outputs and Results of the Partnership;
 - 5.1.3 the Annual Budgets and Marketing Plan;
 - 5.1.4 the availability of business support organisations and investment readiness services including, without limitation, the Small Business Services service and the opportunity to obtain Matched Funding from other appropriate venture capital funds and business angels able to invest in SMEs in the Investment Area including other funds supported by NWDA (provided that in referring persons seeking investment by the Partnership or existing or proposed Investee Companies to such venture capital funds or business angels the Manager shall not make referrals on an exclusive basis and shall not give any warranties and indemnities);

- 5.1.5 the need to provide continuing investment and monitoring support to Investee Companies which shall include, without limitation, the appointment of a mentor or a non-executive director to the board of such company and such mentor or non-executive director may be encouraged, where appropriate, to personally make an investment in that Investee Company. Other support may include referring Investee Companies to other public or private sector support agencies¹⁷;
- 5.1.6 the requirement that each proposed Investee Company should have in place an equal opportunities policy or action plan incorporating gender equality or shall have committed to put in place such a policy or plan (and companies without such policies or plans shall be referred to appropriate support agencies including the Small Business Services);
- 5.1.7 the requirement that each proposed Investee Company shall provide those details set out in **Schedule 5**;
- 5.1.8 the need to seek out potential Investments and the appropriate level of Matched Funding (which shall include equity investment from other sources in accordance with the other provisions of this Agreement); and
- 5.1.9 the target of sustainable economic performance (measured by any growth of GDP per capita) or such other relevant targets as may be notified by the Holding Fund to the Partnership from time to time.

1. _____

¹⁷ Note to bidders: This paragraph relates to Funds 1, 2 and 4 only

CCHEDULE 2

Form of Investment Loan Drawdown Notice

[Letterhead of Partnership]

To: North West Business Finance Limited
[Address]

Project No:

Advance No: ● ●

● ● 200 ●

Dear Sirs

1. We refer to the Limited Partnership Agreement dated the ● day of ● 200[10] relating to the Partnership and made between (1) [GENERAL PARTNER] (2) [Carried Interest Partner] and (3) North West Business Finance Limited constituting [INSERT NAME OF LIMITED PARTNERSHIP]. Terms defined in the Limited Partnership Agreement will have the same meaning in this letter.
2. In accordance with **clause [5.2]** of the Limited Partnership Agreement we wish to make a drawdown of the Investment Loan with the following payment instruction and on and subject to the terms and conditions of the Limited Partnership Agreement:

Amount: £

To: [Bank] for final credit to the respective [INSERT NAME OF LIMITED PARTNERSHIP]'s Investment Loan Bank Account:

Value date: ●

The following wiring instruction has to be given to and followed by your remitting bank, to ensure that funds are available in the account on value date.

Please send £ ● via SWIFT/MT 100/direct to [Bank] for the final credit to: [INSERT NAME OF LIMITED PARTNERSHIP]'s Investment Loan Account ●

3. The following documents are attached to satisfy [NWDA and ERDF] requirements
[Details to follow]:

3.1 Investment Project Approval Request [see **[Schedule 5]**].

If you have any questions regarding the above, please contact [] [] telephone []
].

On behalf of [MANAGER]

[], **Authorised Signatory**

[], **Authorised Signatory**

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CCHEDULE 3

Allocation of Net Income, Net Losses, Capital Gains and Capital Losses

1. Allocations

Net Income, Net Income Losses, Capital Gains and Capital Losses shall be allocated amongst the Partners on the following basis:

- 1.1 The General Partner's Share shall be a first charge on the Net Income and Capital Gains but for the avoidance of doubt cash payments of or on account of the General Partner's Share shall only be made in the manner and to the extent permitted by **Paragraph 6**.
- 1.2 In the period prior to the latest of the EIB Loan Repayment Point, the HF Loan Repayment Point and the date of Liquidation of the Partnership in accordance with **Clause 16** any Net Income or Capital Gains remaining after the allocation of the General Partner's Share shall be allocated to the Holding Fund.
- 1.3 At the latest to occur of the EIB Loan Repayment Point, the HF Loan Repayment Point and the date of Liquidation of the Partnership in accordance with **Clause 16**, there shall be transferred from the income account of the Holding Fund to the income account of the Carried Interest Partner:
 - 1.3.1 all of the credit balances on such accounts up to a maximum of **[to be specified]** of the Preferred Return (being the amount necessary to give the Carried Interest Partner an amount equal to 25% of the total Preferred Return); and
 - 1.3.2 20% of the aggregate of the amounts credited to the credit balances on such accounts remaining after the transfer referred to in **Paragraph 1.3.1**;
- 1.4 Following the latest to occur of the EIB Loan Repayment Point, the HF Loan Repayment Point and the date of Liquidation of the Partnership in accordance with **Clause 16**, any further Net Income, Net Income Losses, Capital Gains and Capital Losses of the Partnership shall be allocated first to the General Partner's Share (subject to **Paragraph 1.1**) and in satisfaction of any loan under **Paragraph 1.3.1** for the time being outstanding and thereafter shall be allocated amongst the Partners as follows:
 - 1.4.1 if the amount transferred pursuant to **Paragraph 1.3.1** was less than 25% of the Preferred Return, then (subject to **Paragraph 1.3.2**) entirely to the Carried Interest Partner until the aggregate of the

amount transferred pursuant to **Paragraph 1.3.1** and allocated pursuant to this **Paragraph 1.4.1** equals the lesser of 25% of the Preferred Return and 20% of the aggregate of the Net Income, Net Income Losses, Capital Gains and Capital Losses allocated to the Holding Fund since the immediately prior HF Loan Repayment Point;

1.4.2 if the aggregate of the Net Income, Net Income Losses, Capital Gains and Capital Losses allocated to the Holding Fund since the immediately prior HF Loan Repayment Point is negative then entirely to the Holding Fund until the aggregate of the amount allocated pursuant to this **Paragraph 1.4.2** is equal to the negative balance referred to above; and

1.4.3 subject to **Paragraphs 1.3.1** and **1.3.2** (following which, for the avoidance of doubt, the credit balances on the income accounts of the Holding Fund and of the Carried Interest Partner should be in proportion to their respective Capital Contributions) there shall be transferred from the income account of the Holding Fund to the income account of the Carried Interest Partner or paid by the Holding Fund to the Carried Interest Partner such amounts as shall be necessary to ensure that the aggregate Net Income, Net Income Losses, Capital Gains and Capital Losses of the Partnership down to the termination of the Fund after deducting:

- (a) the full amount of the General Partner's Share;
- (b) the full amount required to repay the Loans;
- (c) the full amount of the Preferred Return; and
- (d) the amount transferred under **Paragraph 1.3.2**;

are allocated to the Holding Fund and the Carried Interest Partner in proportion to their respective Capital Contributions,

PROVIDED THAT the aggregate amount of any Net Income Losses or Capital Losses allocated to the Carried Interest Partner pursuant to this Paragraph shall not exceed the aggregate amount of any Net Income and Capital Gains allocated or transferred to the Carried Interest Partner;

1.5 If any Net Income Losses or Capital Losses are allocated to the Holding Fund pursuant to **Paragraph 1.4** and those losses (being "A") are greater than "B" (where B equals four times the Net Income Losses and Capital Losses allocated to the Carried Interest Partner pursuant to **Paragraph 1.4**) then subsequent Net

Income and Capital Gains shall be allocated entirely to the Holding Fund until the amount allocated to the Holding Fund under this **Paragraph 1.5** equals the amount by which A exceeds B and thereafter pro rata to the Holding Fund and the Carried Interest Partner in proportion to their respective Capital Contributions **PROVIDED THAT** where there is an HF Loan Repayment Point and a further tranche of the Loan Participation is then drawn down, **Paragraphs 1.3.1, 1.3.2 and 1.3.3** shall apply without regard to the previous HF Loan Repayment Point and the occurrence of any HF Loan Repayment Point shall be determined by reference to the total Loan Participations drawn down. If on the date that a further tranche of the Loan Participations is drawn down any allocation falls to be made or has been made to the Carried Interest Partner under this **Paragraph 1.5**, such allocation shall be taken into account in determining the position on any subsequent HF Loan Repayment Point but no allocation shall be reallocated or any Distribution to the Carried Interest Partner be repayable subsequently.

- 1.6 For the avoidance of doubt, where, on the receipt of income or the Realisation of any Investment at any time after the EIB Loan Repayment Point, there is received or realised and distributed to the Holding Fund more than the amount required to repay the amount of the Loans then outstanding and to pay the Preferred Return, such part of the proceeds of such Realisation as is in excess of the amount required to repay the Loans and to pay the Preferred Return shall be treated as having been realised after the HF Loan Repayment Point and the underlying profit shall be allocated accordingly.
- 1.7 If a decision is made to distribute any Partnership Assets in specie in accordance with **Paragraph 4**, those assets shall be deemed to be realised for the purposes of computing Net Income, Net Income Losses, Capital Gains and Capital Losses at their Value arrived at for the purpose of that Paragraph.
- 1.8 When the share of any company which is the subject of an Investment obtains a Listing, such Listing shall not amount to a realisation or partial realisation of the relevant Investment.

2. **Application of Cash**

Subject to the provisions of **clause 11**, all cash representing Net Income (less Net Income Losses) of the Partnership and Realisations of Capital in respect of each Investment shall be applied in the following order of priority:

- 2.1 in the payment of the General Partner's Share, any interest-free loan referred to in **Paragraph 6.3** and any repayment of contributions referred to in **Clause 9.2**;
- 2.2 in repaying the Loans (or tranche(s) thereof) to the Holding Fund;

- 2.3 in paying the Preferred Return to the Holding Fund;
- 2.4 prior to the later of the EIB Loan Repayment Point, the HF Loan Repayment Point and the date of the Liquidation of the Partnership in accordance with **clause 16**, all such amounts shall be paid to the Holding Fund;
- 2.5 following the later of the EIB Repayment Point, the HF Loan Repayment Point and the date of the Liquidation of the Partnership in accordance with **clause 16**, in paying to the Carried Interest Partner an amount equal to **[to be specified]**% of the Preferred Return (including, for the avoidance of doubt, all amounts transferred to the Carried Interest Partner pursuant to **Paragraph 1.3.2.1** and allocated to the Carried Interest Partner pursuant to **Paragraph 1.3.3.1** and not previously distributed to the Carried Interest Partner);
- 2.6 in paying any further sums to the Holding Fund and the Carried Interest Partner such that the balance on their respective income accounts after such payments are pro rata to their respective Capital Contributions, in other words 80% to the Holding Fund and 20% to the Carried Interest Partner, in accordance with this Schedule but subject to **Clause 16.1**; and
- 2.7 finally in repayment of the capital contribution accounts of the Holding Fund and the Carried Interest Partner in accordance with **Clause 16.1**.

3. **Cash and Distributions**

3.1 **Loan Repayment**

Notwithstanding any other provision of this Agreement until later of the EIB Loan Repayment Point and the HF Loan Repayment Point all amounts then standing to the credit of Holding Account on the last Business Day of each month shall forthwith be paid to the Holding Fund by way of partial repayment of the Loans.

3.2 **Distribution of Net Income and Capital**

Subject to **Paragraph 2**, all of the Net Income of the Partners and capital distributions shall be Distributed to the Partner or Partners entitled to them weekly as soon as practicable after the end of each week or more frequently if at the reasonable discretion of the General Partner and corresponding debits shall be made to the income accounts of the Partners.

3.3 **Available Cash**

The General Partner shall not be obliged to cause the Partnership to make any payment pursuant to **Paragraph 3.2** unless the Partnership has sufficient cash to make such payment.

4. **Distributions in Specie**

- 4.1 The General Partner shall use all reasonable endeavours to make capital Distributions in cash. Subject thereto the General Partner shall be entitled with Consent to determine that the Partnership should make a Distribution of assets in specie on the basis set out in this **Paragraph 4** and to determine on such basis as shall be specified in such Consent the Value attributable to such assets.
- 4.2 Distributions in specie of securities of any class shall be made on the same basis as Distributions of cash such that any Partner in receipt of the Distributions shall receive the relevant proportionate amount of the total securities of such class available for Distribution or (if such method of Distribution is for any reason impracticable) such that each such Partner shall receive as nearly as possible the relevant proportionate amount of the total securities of such class available for Distribution together with a balancing payment in cash in the case of any Partner who shall not receive the full proportionate amount of securities to which he would otherwise be entitled under this Agreement. Any such Distribution in specie shall be applied in the order set out in **Paragraph 2** at the Value of the assets concerned.

5. Tax Credits

For the purposes of this Schedule, the amount of Net Income allocated or distributed to Partners shall be deemed to be the aggregate of such income and United Kingdom income tax withheld and foreign tax withheld (in the case of interest income) and any foreign tax withheld or imputed (in the case of dividend income) ("Tax Credits").

6. General Partner's Share and Drawings by the General Partner

- 6.1 The General Partner shall be entitled to be allocated the General Partner's Share quarterly in advance in accordance with the provisions of this Schedule.
- 6.2 For each Accounting Year the General Partner's Share shall be at the rate set out for that Accounting Year in the table below:

Accounting Year ending on the Accounting Date in	Rate per annum of General Partner's Share
2010 to 2015	•% per annum of the aggregate Investment Loan Commitment as at the date of this Agreement less the aggregate of all amounts by which the Acquisition Cost of any Investments have been written down or written off in accordance with the Valuation Procedures;

thereafter

(1) if the Investment Loan Commitment Period is extended beyond 31 December 2015, the General Partner's Share in respect of each further year will be (*pro rated if appropriate*): ●% per annum of the total amount of Investment Loan Commitment available as at the date of this Agreement less the aggregate of all amounts by which the Acquisition Cost of any Investments which have been written down or written off in accordance with the Valuation Procedures;

(2) once the Investment Loan Commitment Period has ended:

●% per annum of the Acquisition Cost of the Investments after deduction of (a) the Acquisition Cost of any Investments which have been sold or otherwise disposed of and (b) all amounts by which the Acquisition Cost of any Investments which have not been sold or otherwise disposed of have been written down or written off in accordance with the Valuation Procedures.

6.3 The General Partner shall be entitled to make drawings quarterly in advance on account of the General Partner's Share only out of the Management Project Loan advanced to the Partnership in accordance with this Agreement or at any time at which there is no further Management Project Loan available for drawdown out of the Partnership's cash funds insofar as represented by Net Income or Capital Gains allocated to the General Partner. Any drawings on account of the General Partner's Share which are paid otherwise than out of cash funds represented by Net Income or Capital Gains allocated to the General Partner shall be an interest free loan to the General Partner to which **paragraph 6.4** shall apply. For the avoidance of doubt, so long as there is Management Project Loan available for drawdown no other cash funds of the Partnership shall be used to pay the General Partner's Share or drawings on account of the General Partner's Share and once the Management Project Loan has been drawn down in full the General Partner shall not be entitled to any further loan in respect of the General Partner's Share which may only be paid out of the profits of the Partnership available for that purpose. For the further avoidance of doubt the General Partner's Share is an allocation of profit and not a liability of the Partnership and the General Partner shall not be entitled to make or retain any drawing, provisions or resource out of the profits or assets in respect of the General

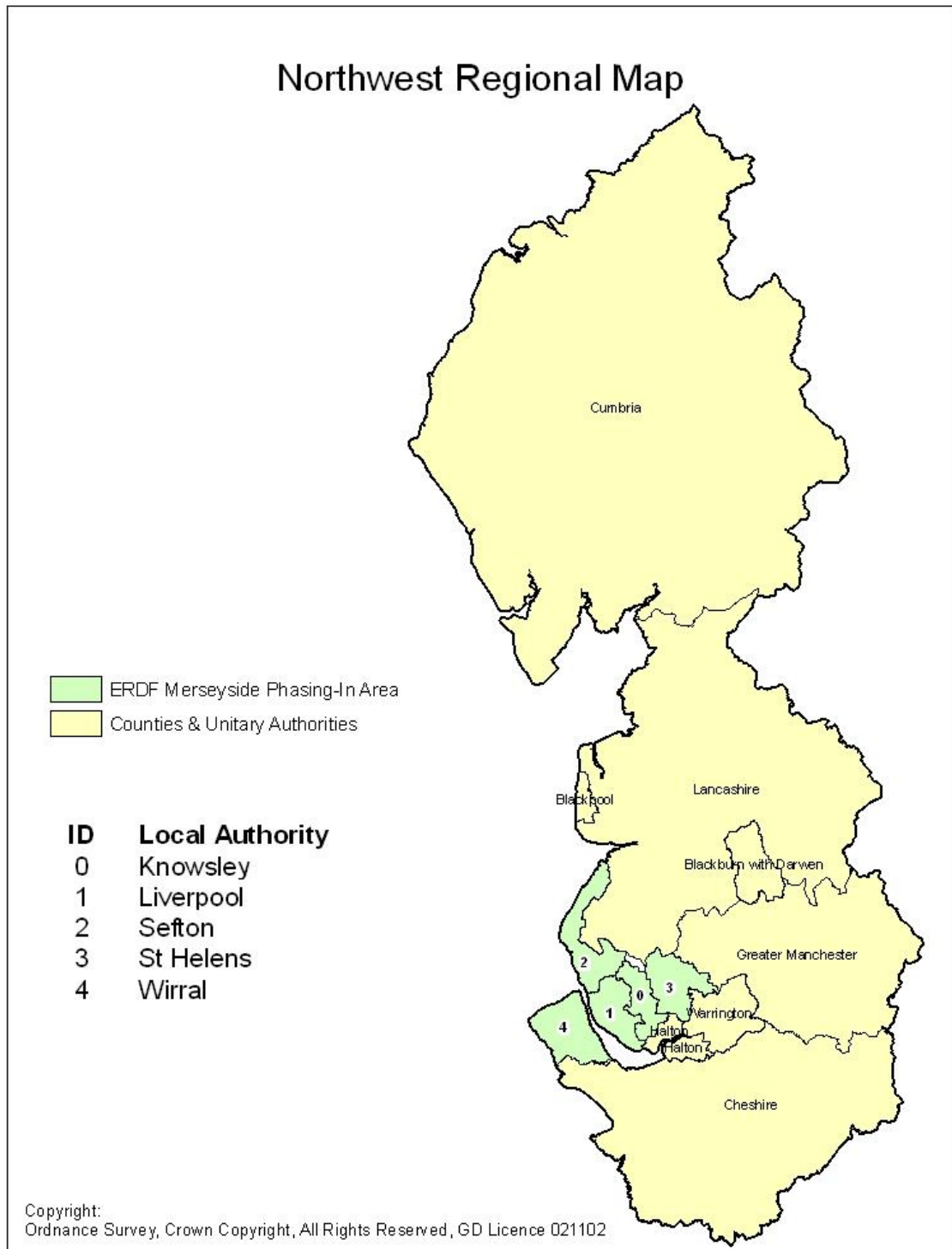
Partner's Share or any payment due to the Manager except as expressly authorised by this Agreement.

- 6.4 In no circumstances shall any drawings properly made pursuant to this **Paragraph 6** be recoverable from the General Partner other than by a set-off against allocations of Net Income and Capital Gains.

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CCHEDULE 4

North West Regional Map



CHEDULE 5

Investment Project Approval Request

1. Company Details

Company Name					
Address			Located inside/outside Merseyside Area	Yes/No	
Postcode					
Email Address			Website		
Telephone Number			Fax Number		
Company Contact			Position		
Owner / Manager			Gender	M / F	
Co. Registration no.					
Nature of Business			SIC CODE		
Annual Turnover					
No. of Employees			Male		Female
Length of Business	< 12mths			> 12mths	
Amount of investment by the Partnership (£)			Description of nature of Partnership's investment		
Amount of Matched Funding (£)			Source and description of nature of Matched Funding		

2. Declaration

We, the undersigned, hereby declare that the company details set out above are true and accurate.

Signed by

Print Name

Director/Partner/Sole Trader* of [*NAME OF ORGANISATION*]

Date

Signed by

Print Name

Accountant for (Organisation)

Date

3. Business Plan

Upon application to the Partnership for investment, the Manager shall require each proposed Investee Company to submit a business plan (complying with **paragraph 1.10.6** of **Schedule 1** and) including the following details:

1. Summary Information	Name of company, nature of business (including details of how the business operates), details of market "gap" which the company's services or products are designed to fill, financial forecasts, detailed accounts (including balance sheet, profit and loss account and statement of cash flow).
2. Description of Business	Description of history of the company, including details of shareholders and any previous sources of finance used.
3. Market Analysis	The specific target market at which the company's products and services are aimed. Details of significant customers, size of market, proposed pricing of products or services, quality of service to be provided and any major competitors.
4. Product Advantages	Details of any competitive advantage of the company's products or services when compared to the company's competitors.
5. Marketing Strategy	Details of market share, sales forecasts (to cover the period up to two years from the date of the proposed investment by the Partnership), pricing, promotion and distribution of product, agreed customer orders or distribution agreements

	relating to product or service.
6. Operational Aspects	Details of manufacturing methods or methods of delivering the company's service, job descriptions of financial, managerial and quality control staff of the company and proposed forecasts of staff levels.
7. Financial Information	Details of forecasts for monthly cash flows, profit and loss accounts and balance sheets covering a period of two years (including the previous two full sets of audited accounts and management accounts (in the case of companies with an existing trading history only)). The forecasts should be comprehensive and comprehensible and should be based upon the assumption that the company will receive the full amount of funding applied for from the Partnership. Assistance will be available from the company's local Enterprise Agency, Business Link or financial adviser. The forecasts should be based on the company's objectives and should involve full participation of the company in their preparation.
8. Management	Details of the organisational structure of the company, skills and background of senior staff (enclosing CVs.), proposed salary structure and any schemes to incentivise staff. Where a company lacks staff with particular required skills it will be required to state the manner in which it intends to deal with this problem.
9. Risk Evaluation	Details of perceived risks and threats to the company's business and proposed methods of dealing with them.
10. Funding	Details of amount of funding required for the project under consideration, how such funding will be spent, proposed sources of funding and expected terms upon which funding will be obtained.

CHEDULE 6

Form of Management Project Loan Drawdown Notice

[Letterhead of Partnership]

To: North West Business Finance Limited
[Address]

Project No:

Advance No: ● ● ● ● ● ● 200 ●

Dear Sirs

4. We refer to the Limited Partnership Agreement dated the ● day of ● 200[10] relating to the Partnership and made between (1) [GENERAL PARTNER] (2) [Carried Interest Partner] and (3) North West Business Finance Limited constituting [INSERT NAME OF LIMITED PARTNERSHIP]. Terms defined in the Limited Partnership Agreement will have the same meaning in this letter.

5. In accordance with **clause [5.3]** of the Limited Partnership Agreement we wish to make a drawdown of the Management Project Loan with the following payment instruction and on and subject to the terms and conditions of the Limited Partnership Agreement:

Amount: £ **TOTAL**

To: [Bank] for final credit to the [INSERT NAME OF LIMITED PARTNERSHIP]'s Management Project Loan Account as stated below:

Value date: ●

The following wiring instruction has to be given to and followed by your remitting bank, to ensure that funds are available in the account on value date.

Please send £ ● via SWIFT/MT 100/direct to [Bank] for the final credit to: [INSERT NAME OF LIMITED PARTNERSHIP]'s Management Project Loan Account ●

6. The following documents are attached to satisfy [NWDA and ERDF] requirements
[Details to follow]:

The quarterly reports including future forecasts and form of Confirmation are attached / have been sent / will be sent under separate cover.

If you have any questions regarding the above, please contact [] [] telephone [].

On behalf of [MANAGER].

[], **Authorised Signatory**

[], **Authorised Signatory**

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SCHEDULE 7

Valuation Procedures

The Investments shall be valued by the Manager according to the following procedures or such other procedures as are agreed with Consent:

7. Valuation of Investments

7.1 Investments are to be valued by reference to the International Private Equity and Venture Capital Valuation Guidelines.

8. Basis of Valuation

8.1 Various methods of valuation are used for unquoted Investments including price earning valuations, recent transactions, net asset valuation, yield basis and impending exit. The appropriateness of the methodology used is judged on a case by case basis.

8.2 Where an Investment is quoted on a recognised stock exchange, then there is some basis for judging its value on independent assessable measures. A mid-market price is normally used, but sometimes the size of the Investment and restrictions on sale will result in the necessity to discount.

8.3 A complete valuation of every Investment in the Portfolio will be carried out as at 31 March in each financial year. This process will be reviewed by the Auditors.

8.4 All valuations will be monitored and reviewed in each Quarter and, when material changes are clearly required, appropriate adjustments will be made.

SCHEDULE 8

Investment Loan Adjustment

1. Increases in the Investment Loan Commitment

- 1.1 The Holding Fund may increase the Investment Loan Commitment as it (in its sole discretion) sees fit after consultation with the General Partner and the Manager subject to the provisions of this paragraph. This may happen, for example (and without limitation), in the event that the level of demand for investment from the Partnership is significantly higher than was anticipated.
- 1.2 Before any increase in the Investment Loan Commitment under this Schedule takes effect the Holding Fund, the General Partner and the Manager shall agree in writing a revised Investment Profile to take effect when the increase in the Investment Loan takes effect or on such other date as the Holding Fund, the General Partner and the Manager shall agree in writing.
- 1.3 An increase to the Investment Loan Commitment under this Schedule shall become effective upon the Holding Fund notifying the General Partner and the Manager in writing of the variation.
- 1.4 The General Partner's Share shall be increased *pro-rata* to such increase in the Investment Loan Commitment with effect from the date when such increase takes effect, or at such later date and/or in such other manner as agreed in writing between the Holding Fund, the General Partner and the Manager. The Holding Fund's certificate confirming the size of increase shall be final and binding on all parties for this purpose in the event of dispute.

2. Voluntary Decreases in the Investment Loan

- 2.1 The Holding Fund may decrease or cancel the Undrawn Investment Loan Commitment by agreement with the General Partner and the Manager subject to the provisions of this paragraph 2. This may happen, for example (and without limitation), in the event that the level of demand for investment from the Partnership is significantly lower than was anticipated, despite the Manager undertaking appropriate marketing activities to promote the Partnership.
- 2.2 Before any decrease in the Undrawn Investment Loan Commitment under this paragraph takes effect the Holding Fund, the General Partner and the Manager shall agree in writing a revised Investment Profile to take effect when the decrease in the Investment Loan takes effect or on such other date as the Holding Fund, the General Partner and the Manager shall agree in writing.

- 2.3 A decrease to the Undrawn Investment Loan Commitment under this paragraph 2 shall become effective on the date upon which the Holding Fund notifies the General Partner and the Manager in writing thereof.
- 2.4 The General Partner's Share shall be decreased *pro-rata* to such decrease in the Investment Loan Commitment with effect from the date which is six months after the date when such decrease takes effect in accordance with paragraph 2.3, or on such other date and/or in such other manner as is agreed in writing between the Holding Fund, the General Partner and the Manager. The Holding Fund's certificate confirming the size of decrease shall be final and binding for all parties for this purpose in the event of dispute.

3. **Imposed Decreases**

- 3.1 The Holding Fund may at any time on or after the first anniversary of the Closing Date but not later than the end of the Investment Loan Commitment Period decrease or cancel the Undrawn Investment Loan Commitment without the agreement of the General Partner and the Manager as provided in this **paragraph 3** where in the opinion of the Holding Fund the Partnership is unlikely to be able to invest the whole of the Undrawn Investment Loan Commitment without prejudicing the overall financial return to the Partnership or the Manager or the General Partner is in material breach of any provision of this Agreement or the Management Agreement.
- 3.2 Before the Holding Fund decreases or cancels the Undrawn Investment Loan Commitment under this **paragraph 3** the Holding Fund shall give written notice to the General Partner and the Manager proposing a reduction in the Undrawn Investment Loan Commitment and requiring the Manager to prepare a revised Investment Profile and business plan for the Partnership within one month of written notice being received for consideration by the Holding Fund Manager and the IAB setting out:
- 3.2.1 proposed remedial actions;
 - 3.2.2 revised anticipated investment rate and number of Investments each Accounting Period for the remainder of the Investment Period;
 - 3.2.3 the Manager's proposal (if any) for the reduction in or cancellation of the Undrawn Investment Loan Commitment and the General Partner's Share;
 - 3.2.4 the Manager's proposal if (if any) for changes in the Investment Policy or investment restrictions applicable to the Partnership;
 - 3.2.5 such additional information or proposals as are reasonably requested by the Holding Fund.

- 3.3 If the Manager fails to deliver to the Holding Fund for consideration by the Holding Fund a revised Investment Profile and business plan for the Partnership complying with paragraph 3.2 within the period of one month referred to in paragraph 3.2 or the Holding Fund, the General Partner and the Manager do not agree a revised Investment Profile and business plan for the Partnership and/or any proposed changes to the Investment Policy within a further period of one month the Holding Fund may at any time thereafter but not later than the end of the Investment Loan Commitment Period by notice in writing to the General Partner and the Manager decrease by such amount as the Holding Fund shall specify the Undrawn Investment Loan Commitment with immediate effect.
- 3.4 In the event that the Holding Fund, the General Partner and the Manager agree in writing a revised Investment Profile and business plan for the Partnership and/or any proposed changes in the Investment Policy or investment restrictions applicable to the Partnership, the Manager will be given five months from the date on which the Holding Fund notifies the Manager in writing that the revised Investment Profile and business plan for the Partnership has been agreed to satisfy the Holding Fund that appropriate and sufficient action has been taken.
- 3.5 If the Holding Fund is not satisfied at the end of the period of five months referred to in **paragraph 3.4** that appropriate and sufficient action has been taken the Holding Fund may at any time thereafter but not later than the end of the Investment Loan Commitment Period by notice in writing to the General Partner and the Manager decrease by such amount as the Holding Fund shall specify or cancel the Undrawn Investment Loan Commitment with immediate effect or on such date as shall be specified in the notice and specifying a revised Investment Profile and Outputs and Results for the Partnership to take effect immediately or on such date as shall be specified in the notice.
- 3.6 The General Partner's Share shall be decreased *pro-rata* to such decrease in the Undrawn Investment Loan Commitment with effect from the date which is six months after the date when such decrease in the Investment Loan takes effect in accordance with **paragraph 3.5**, or on such other date as is specified by the Holding Fund in the notice given under **paragraph 3.5**. The Holding Fund's certificate confirming the size of decrease shall be final and binding on all parties for this purpose in the event of dispute.

PPENDIX 1

Allocation Rules

[DRAFTING NOTE: Allocation rules of the selected bidder may be included here if required.]

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PPENDIX 2

Manager's Tender Obligations

[DRAFTING NOTE: Extracts or all of the successful tender will be annexed to this Agreement as required by Holding Fund.]

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