

Dated

2013

(1) NORTH WEST BUSINESS FINANCE LIMITED

(2) []

(3) []

[] L.P.
Limited Partnership Agreement

THIS LIMITED PARTNERSHIP AGREEMENT is made as a Deed the _____ day of _____ 2013

BETWEEN:

- (1) **NORTH WEST BUSINESS FINANCE LIMITED**, a company registered in England and Wales under registration number 07028838 whose registered office is Drury House, Water Street, Liverpool, Merseyside, L2 0RP (the "**Holding Fund**"); and
- (2) [_____] (**company number** [_____]) [_____] (the "**Carried Interest Partner**"); and
- (3) [_____], a company registered in England and Wales under registration number [_____] whose registered office is at [_____] (the "**General Partner**").

BACKGROUND:

- (A) The General Partner and the Carried Interest Partner have established the Partnership under the Act.
- (B) The Partnership has been established for the purposes of carrying on the business of a lender and in particular of evaluating, negotiating, making, maintaining and realising loans, quasi equity and equity 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 [_____].

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:

“Accounting Date”	31 December 2013 and 31 December 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 [];
“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;
“Acquisition Cost”	the cost of making or acquiring an Investment together with any expenses related thereto 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 make available to the Partnership pursuant to clause 5.9 , 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 from time to time outstanding;
“Allocation Rules”	the applicable allocation rules of the Manager as annexed to this Agreement at Appendix 1 as may be amended by Consent and with the agreement of the Manager from time to time detailing how any potential conflicts of interest

regarding sources of finance managed or advised by the Manager are regulated;

“Annual Budgets and Marketing Plan”

the budget for the Partnership and marketing plan for the Partnership for each Accounting Period 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”

Those areas as set out in **Schedule 0** as such areas may be amended or updated from time to time by notice of the Holding Fund to the Partnership;

“Associate”

any body corporate which in relation to the person concerned (being a body corporate) 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 body corporate 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 General Partner from time to time by Consent and in compliance with all applicable legislation;

“Block Exemption”	Commission Regulation (EC) No. 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the Common Market in application of Articles 87 and 88 of the Treaty of Rome as may be updated, modified or replaced from time to time;
“Business Day”	any day other than a Saturday or Sunday or a public or bank holiday in England;
“Business Time”	the percentage time of usual working hours which is set out in Schedule 0 against the name of the relevant Key Investment Executive (excluding for the avoidance of doubt normal holidays and normal internal management and compliance duties and training consistent with being a fund manager of the Partnership’s Investments);
“Capital 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;
“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 but, for the avoidance of doubt, excluding Income Receipts;
“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 but, for the avoidance of doubt, excluding Income Receipts;
“Capital Receipts”	means all payments or distributions to (or to be made to) or other amounts received or to be received by the Partnership representing the

	repayment or return of all or part of the principal or capital element of any Investment;
“Capital Receipts Account”	means the account in the name of the Holding Fund into which all Capital Receipts shall be paid from the Product Fund Realisation Account;
“Carried Interest”	as defined in paragraph 1.3.2 of Schedule 0 ;
“Carried Interest Numerator”	[];
“C FOR E”	Capital For Enterprise Limited (Co. No 06179047); (in its capacity as successor to the Northwest Development Agency and as a member of the Holding Fund, as the context requires);
“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”	means in relation to the Holding Fund the amount committed by it to the Partnership equal to the aggregate of the amount of capital subscribed by it as Capital Contribution (being 0.01% of its Commitment) and the aggregate amount of the Loans agreed to be advanced by it as Loan Commitment (being 99.99% of its Commitment) in accordance with this Agreement and in relation to the Carried Interest Partner, the Capital Contribution;
“Consent”	the consent in writing of the Holding Fund and as applied in accordance with clause 2.9 ;
“Control”	in relation to a body corporate, the power of a person or entity to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person (or persons or entity): <ul style="list-style-type: none"> (a) by means of the holding of shares, or the possession of voting power, in or

in relation to, that or any other body corporate; or

- (b) by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating that or any other body corporate,

and a **"Change of Control"** occurs if a person who controls any body corporate ceases to do so or if another person acquires control of it;

"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 0** (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 25 October 2010 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 date on which all the liabilities of the Holding Fund to EIB have been irrevocably discharged in full in cash and no further liabilities are capable

of arising;

**“EIB Product Fund
Investment Account”**

the account into which the EIB element of the Investment Loan will be transferred in the name of the Partnership pending Investment and which is charged to EIB;

“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) or any components therefore, in each case for sale (directly or indirectly) to or use by military, defence, police or prison or detention authorities or operations;
- (b) production of items intended exclusively for sale (directly or indirectly) to or use by military, prison, defence, police or prison or detention authorities or operations;
- (c) gambling and related equipment;
- (d) tobacco manufacturing, processing, or distribution;
- (e) activities involving live animals for experimental and scientific purposes in so far as they do not comply with the “Council of Europe’s Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes”;
- (f) activities which give rise to environmental impacts that are not largely mitigated and/or compensated;
- (g) sectors considered ethically or morally

	controversial, e.g. research on human cloning;
	(h) pure real estate development activity; and
	(i) 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;
“enterprises newly created by female entrepreneurs”	shall be construed in accordance with Article 2.28 of the Block Exemption;
“Environment”	means the following, insofar as they affect human well-being:
	(a) fauna and flora;
	(b) soil, water, air, climate and the landscape; and
	(c) cultural heritage and the built environment;
“Equality Legislation”	the Race Relations Act 1976, the Disability Discrimination Act 1995, the Equality Act 2006 and the Equality Act 2010 (as the case may be);
“equity”	as defined in Article 28 of the Block Exemption;
“ERDF”	the European Regional Development Fund (acting by the Secretary of State)
“ERDF Amounts”	the amounts to be made available to the Holding Fund pursuant to the Offer Letters from ERDF;
“ERDF Product Fund Investment Account”	the account into which the ERDF element of the Investment Loan will be transferred in the name of the Partnership pending Investment;
“ERDF Sensitive Sectors”	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 marketing of products listed in Article 1(3) of the Block Exemption;
- (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;

“FCA”

the Financial Conduct Authority or any successor regulator to the Financial Conduct Authority, or any regulator which regulates firms such as the

Partnership the powers of which are substantially similar to those of the Financial Services Authority;

“FCA Handbook”

the FCA Handbook of Rules and Guidance as amended from time to time and any successor of rules and guidance published by the FCA;

“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 (including the EIB and ERDF);

“General Partner’s Share”

the amounts referred to in **paragraph 6 of Schedule 0**;

“IAP”

the investment advisory panel of the Holding Fund;

“Income Account”

means the interest bearing account in the name of the Holding Fund into which all Income Receipts are to be paid;

“Income Receipts”

means payments to, distributions to or other receipts by the Partnership representing the payment of income to, or the earning of revenue by, the Partnership in respect of its Investments other than Capital Receipts, including without limitation:

- (a) interest (including any capitalised interest);
- (b) capital gains; and/or
- (c) arrangement fees, management fees and all other fees (if any) received by the Partnership in connection with Investments;

and for the avoidance of doubt, excluding any amounts paid to the Manager in its own capacity pursuant to **clause 6.2.9**;

“Increased Sales”	new sales 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 undertaking in respect of which the Partnership (through its General Partner) holds Investments;
“Investment”	any micro loans, equity and quasi equity investments made by the Partnership pursuant to this Agreement and in accordance with the IOGs for the account of the Partnership including but not limited to senior loans and mezzanine facilities, equity and quasi equity investments made to any body corporate or undertaking but excluding cash on deposit, each loan or combination of investment in any body corporate or undertaking being a separate project from each loan or combination of loans in any other body corporate or undertaking for the purposes of the applicable rules and regulations of ERDF;
“Investment and Operational Guidelines” or “IOGs”	the investment and operational guidelines of the Partnership as attached at Schedule 0 or as the case may be any additional or substitute investment and operational guidelines agreed in writing by Consent and by the General Partner, the Holding Fund, C FOR E and ERDF;
“Investment Area”	the North West Region of England including for the avoidance of doubt the Merseyside Area;
“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 0 ;
“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 as may be increased or decreased in accordance with **Schedule 0**;

**“Investment Loan
Commitment Period”**

in respect of:

- (d) 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;
- (e) any Additional Investment Amount, such later date as may be agreed pursuant to **clause 5.9**;

**“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 0** or otherwise as determined by the Holding Fund;

“Investment Policy”

the investment policy of the Partnership as set out in **clause 7** of this Agreement and as amended from time to time in accordance with the terms of this Agreement with Consent;

“Investment Profile”

the investment profile for the Partnership, as set out in the Investment Policy;

**“Investment Project
Notification Factsheet”**

the investment project notification factsheet approval request in the form attached at **Schedule 0**;

“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”

[] and [] and any replacement Key Investment Executives appointed pursuant to **clause 26.9**;

“Liquidation Agent”

the Manager or such other person as may be appointed by the Partnership (with Consent) 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 any successor authority or the admission of any part of an Investee Company’s share capital to listing, trading or dealing on any of AIM, IFDX Growth Market or any recognised investment exchange in the UK and “Listed” shall be construed accordingly;

“Loans”

either or both of the Investment Loan and the Management Project Loan as the context so requires;

“Loan Commitment”

means, in relation to the Holding Fund, the Loans agreed to be advanced by it to the Partnership pursuant to **clause 4** (whether or not such loan has been advanced to the Partnership or repaid to the Holding Fund, in whole or in part) being equal to the Holding Fund's Commitment less its Capital Contribution. The Holding Fund's Loan Commitment is sub-divided into the Investment Loan and the Management Project Loan;

“Management Agreement”

the management agreement to be entered into contemporaneously with this Agreement between

(1) the Partnership (acting by the General Partner) and (2) the Manager as manager of the Partnership;

“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 0 ;
“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 0 or otherwise as determined by the Holding Fund;
“Manager”	[] 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 for the same purposes as the investment made by the Partnership and conditional upon or otherwise related to the 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 area as defined by the Wards and Districts in Schedule 0 and as may be updated from time to time by the Holding Fund;

“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 Gross 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 with Darwen, Sefton, Wirral, Liverpool,

Knowsley, St. Helens, Wigan, Bolton, Bury, Rochdale, Oldham, Salford, Trafford, Manchester, Stockport, Tameside, Halton, Warrington and Cheshire and as identified by the Wards and Districts set out in **Schedule 0** and as may be updated from time to time by the Holding Fund;

“NWDA”

The North West Development Agency, which was formally abolished in March 2012

“Offer Letters”

the ERDF offer letter entered into the NWDA acting in its capacity as the ‘Intermediate Body’ for the North West Operational Programme in pursuance of powers designated to it under the European Regional Development Fund (North West Operational Programme) (Implementation) Regulations 2007 (SI No 2007/3622), and the Holding Fund dated 30 November 2009 (“Offer Letter”) and the variation to such Offer Letters dated 28 October 2010 which have assigned from NWDA to the Secretary of State as set out at clause 2.2.5;

“Other Restricted Sector”

any restrictions placed on Investments in accordance with the requirements of any Funders, 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 ITT and those outputs, results and targets set out in **Appendix 2** of this agreement and the IOGs 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 ;
“Parallel Funds”	as defined in clause 2.8 ;
“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”	[], a limited partnership registered at Companies House under registration number [] ;
“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;
“Partnership Interest”	means all the interests of a partner in the Partnership;
“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;
“PF Loan Repayment Point”	the point(s) when sufficient Distributions to the Holding Fund have been made to repay the Loans and no amount in respect of the Loans remains outstanding;
“Preferred Return”	such amount, determined at the PF Loan Repayment Point, as is equal to one 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”

those priority business clusters contained in the North West Operational 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).

“Procedural Advice”

means the process of the Manager requesting the Holding Fund and the Holding Fund obtaining advice in accordance with the procedure detailed in **Schedule 0**;

“Proceeds”

amounts determined by the Manager 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

(including the Partnership);

“Product Fund Realisation Account”

means the account in the name of the Partnership into which all Realisations will be paid less the costs and expenses of such Realisations insofar as they are to be borne by the Partnership;

“Prohibited Investments”

means any Investment which is ineligible whether on or after the date when the Investment was made pursuant to the IOGs;

“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 Investment; 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 sub-paragraph (b) (provided that, in each case, the securities are held as an Investment)); 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 invested 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 invested by the Partnership by way of an Investment;

“Related Fund”

means any other fund operated under the JEREMIE Programme;

“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;

“Secretary of State”

means the Secretary of State for Communities And Local Government whose principal address is Eland House, Bressenden Place, London SW1E 5DU (as managing authority for ERDF)

“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 between the NWDA acting pursuant to powers designated to it under the Regional Development Agency Act 1998 and the Holding Fund dated 31 March 2010 which has transferred from NWDA to C FOR E as set out at clause 2.2.6

"Small Business Services"

any services offered to support and assist small business by the Department for Business, Innovation and Skills and Secretary of State from time to time, including (without limitation) Business Link North West, High Growth Business support programme and North West Business Angels (or as directed by the Holding Fund);

"small enterprise"

as defined in Article 2.2 of Annex 1 of the Block Exemption (provided that if the European Commission shall bring into force any other definition of small enterprise such definition shall whilst it remains in force apply in substitution for the definition set out above);

"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”

40 % of the Investment Loan Commitment, or such other amount as the Holding Fund will notify the Manager and the General Partner from time to time;

“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;

“Successor Fund”

any pooled investment fund established by the Manager or any of its Associates after the date of this Agreement with investment objectives substantially similar to those of the Partnership and whose geographical scope covers the same territory as all or part of the geographical scope of the Partnership’s activities;

“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 0** as amended by the General Partner with Consent;

“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 1176 of the Corporation Tax Act 2010 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 Any reference to C FOR E or the Secretary of State shall be deemed to include a reference to any statutory successor of C FOR E or the Secretary of State or any similar body the powers and duties of which are substantially similar to those of the C FOR E/the Secretary of State.

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 Limited Partnerships.
- 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 and by Consent) 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 **Background and Purpose**

- 2.2.1 The Partnership will utilise funds from ERDF and any other Funders 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 in respect of the Partnership:

2.2.1.1 to achieve the specific objectives set out in the IOGs and ITT and

2.2.1.2 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 lending on a commercial basis and, in particular, to lend 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 loans (and to monitor the same) in accordance with the Investment Policy with the principal objectives of:

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

2.2.2.2 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 or the Manager 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.

2.2.4 The NWDA entered into the Offer Letters in pursuance of powers designated to it under the European Regional Development Fund

(North West Operational Programme) (Implementation) Regulations 2007 (SI No 2007/3622). Following the entry into force of the European Regional Development Fund (Operational Programmes) Regulations 2011 (SI No 1398/2011) the NWDA's designated powers in relation to the North West Operational Programme have been revoked, and all property, rights and liabilities to which the NWDA is entitled or subject in connection with the Offer Letters and ERDF funding have transferred to the Secretary of State.

- 2.2.5 C FOR E is the successor to the NWDA Access to Finance team and has taken over the NWDA's property, rights and liabilities to which the NWDA is entitled or subject in connection with the Single Programme Offer Letter.

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 [] LP or such other name as shall be determined by the General Partner with Consent.

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.

2.6 **Number of Partners and Commitments**

- 2.6.1 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.

2.6.2 Subject to the clauses 5.3 and 5.4, the Holding fund hereby makes a Commitment of £[], comprising a Capital Contribution of £[] and a Loan Commitment of £[], to the Partnership on the terms set out herein applying to the Holding Fund. The Holding Fund's Loan Commitment is comprised of Investment Loan Commitment and Management Project Loan Commitment.

2.6.3 Neither the General Partner nor the Carried Interest Partner makes any Loan Commitment to the Partnership.

2.7 **Admission of additional Partners**

No person shall be admitted as a Partner after the date of this Agreement save as agreed in writing by the General Partner and by Consent.

2.8 **Parallel Funds**

Subject to any exceptions set out in the Allocation Rules limited partnerships, limited liability partnerships or other funds (each a "Parallel Fund") having the same general partner and/or manager and substantially the same investment and operational guidelines as the IOGs (including but not limited to substantially the same geographical restrictions) as the Partnership may be established on such terms as agreed by the General Partner and the Holding Fund by Consent.

2.9 **Consent**

Each of the General Partner and the Manager acknowledge that the Funders will impose certain restrictions or obligations on the Partnership and the Manager through 'Consent'. The Holding Fund agrees that at all times, where any condition is imposed on the Manager or the Partnership or where Consent is unreasonably withheld or delayed the Holding Fund shall notify the Manager and General Partner whether the condition or withholding of Consent is a requirement of a Funder. Where the condition or withholding of Consent is not a restriction or requirement of a Funder, NWBF agrees to act reasonably; in good faith; and shall not unreasonably withhold or delay Consent. Where the condition or withholding of Consent is a restriction or requirement of a Funder, the Holding Fund will use all reasonable endeavours to negotiate with the Funders to ensure that the condition or withholding of Consent is reasonable and does not materially prejudice the Manager or the General Partner. However, the decision of the Funder shall bind the Holding Fund, the General Partner, the Partnership and the Manager.

3. **CAPITAL CONTRIBUTIONS**

- 3.1 The Holding Fund shall contribute its Capital Contribution of £[] 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 of £[] 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 the Investment Loan Commitment shall be increased or decreased in accordance with **Schedule 0** and **clause 5.9** 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 such that the Capital Contribution of the Holding Fund shall be []% of its Commitment after such increase and such that the Capital Contribution of the Carried Interest Partner shall be []% of the total Capital Contributions after such increase. 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 or decreased from time to time in accordance with **Schedule 0** 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 pursuant to **clause 3.4** or 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.

5. **LOAN COMMITMENT**

- 5.1 The Holding Fund shall be required:

- 5.1.1 subject to the provisions of this Agreement (including without limitation, this **clause 5** and **Schedule 0**) 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 EIB Product Fund Investment Account and the ERDF Product Fund Investment Account as prescribed in this Agreement;
 - 5.1.1.2 the Management Project Loan Commitment, such Advances to be credited to the 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 monthly instalments on the first Business Day of each month into the EIB Product Fund Investment Account and the ERDF Product Fund Investment Account (as appropriate) 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 month. 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 Business Day falling ten Business Days prior to the first Business Day of the month. Every Investment Loan Drawdown Notice shall be accompanied by an Investment Project Notification Factsheet and such supporting detail and information as the Holding Fund shall require. In requiring additional information the Holding Fund shall act reasonably however, the Manager and the General Partner acknowledge that the Holding Fund may be obliged to provide additional information to its Funders and in such case the Manager and General Partner agree to provide that information without delay.
- 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 Closing Date to 31 March 2013 (the "Initial Period") 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 save in respect of the Initial Period, no Management Project Loan shall be drawn down where the form of quarterly report to be made under **clause 8.2.2** has not been completed (or, if required by the Funders, a monthly report has not been completed) and sent to the Holding Fund in accordance with **clause 8.2.2**;
- 5.3.2 unless otherwise agreed by Consent, no further Management Project Loan shall be required to be advanced after 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 during any period when the Holding Fund notifies the Partnership that it is no longer empowered by its Funders to make payments of the Management Project Loan; or
 - 5.3.3.2 the point at which the Holding Fund notifies the Partnership, and such notification has not been withdrawn, that a Product Fund Event of Default (in respect of this Product Fund and as defined in the EIB Facility Agreement), an Event of Default (as defined in the Offer Letters and/or the EIB Facility Agreement) or a Consultation Event (as defined in the EIB Facility Agreement) has occurred, has not been waived and as a result of which the relevant Funder has notified the Holding Fund that payment of the Undrawn Management Loan Commitment is to be suspended or withdrawn.

The Management Project Loan shall be applied only as set out in **paragraph 6.3** of **Schedule 0**.

- 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 Letters and/or no further funds provided by EIB are available for investment into and through the Partnership; or
 - 5.4.3 during any period when 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 the point at which the Holding Fund has notified the Partnership, and such notification has not been withdrawn, that a Product Fund Event of Default (in respect of this Product Fund and as defined in the EIB Facility Agreement), an Event of Default (as defined in the Offer Letters and/or the EIB Facility Agreement) or a Consultation Event (as defined in the EIB Facility Agreement) has occurred (and has not been waived and as a result of which the relevant Funder has notified the Holding Fund that payment of the Undrawn Investment Loan Commitment is to be suspended or withdrawn).
- 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 which remains undrawn at the expiry of the Investment Loan Commitment Period shall be cancelled and the Investment Loan Commitment 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 The Holding Fund may make available to the Partnership such Additional Investment Amounts in accordance with the provisions of **Schedule 0**. 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 (a) the Partnership constitutes a Collective Investment Scheme, the General Partner shall be responsible for ensuring that the Partnership is always operated by a person appropriately authorised under FSMA and having all necessary consents, licenses, authorisations and approvals required by it to carry out the operation of the Partnership as contemplated in this Agreement and (b) the Investments constitute "investments" for the purposes of FSMA, the General Partner shall be responsible for ensuring that the Partnership's Investment Portfolio is managed (whether on a discretionary or non-

discretionary basis) by a person appropriately authorised under FSMA and having all necessary consents, licences, authorisations and approvals required therefore. 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 [], regulated by the FCA, 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.
- 6.1.5 The Manager (or for such time as there is no Manager, subject always to **clause 6.1.1**, the General Partner) 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 (or for such time as there is no Manager, subject always to **clause 6.1.1**, the General Partner) shall be required within 30 days of this Agreement (and in any event before any Investments are made) to take out and maintain in force with a reputable insurer of good financial standing professional indemnity insurance ("**Required Insurance**"). The minimum level of indemnity under the Required Insurance shall be £250,000 per occurrence and £1,000,000 in aggregate or such lesser amounts as may be agreed by Consent after a review of the Required Insurance has taken place (if required by the Manager) PROVIDED THAT there shall be no more than one review per annum of the Required Insurance unless required by the Funders. The Manager shall be required to provide to the Holding Fund on request 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.

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) make, purchase, acquire, 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 6.2.1.2** 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 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;

6.2.1.4 pending the application of moneys available for distribution to Partners, to place amounts realised in such deposit accounts in the name of the Partnership 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);

6.2.1.5 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 (to be applied in accordance with this Agreement);

- 6.2.1.6 to open, maintain and close bank accounts in accordance with this Agreement for the Partnership (following Consent and charged as required by EIB pursuant to the EIB Facility Agreement, provided that, at all times the Excluded Assets (as defined in the Debenture dated 25 October 2010 between the Holding Fund (as Chargor) and EIB (as Chargee) shall not be charged to EIB) and to draw cheques and other orders for payment of moneys;
- 6.2.1.7 to manage and account for Investments made including, where necessary, taking action for recovery of sums due to the Partnership from Investee Companies;
- 6.2.1.8 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;
- 6.2.1.9 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 and warranties provided to the Funders of the Holding Fund;
- 6.2.1.10 to disburse out of the assets of the Partnership (on the terms of this Agreement):
 - (a) audit and accountancy fees, bank charges and valuation fees (in respect of the Partnership only and not in respect of individual Investments);
 - (b) professional fees, commissions and expenses payable by the Partnership in connection with the making and the

realisation of Investments to the extent not recoverable from Investee Companies; and

- (c) such other fees and expenses as the Manager is obliged to incur on behalf of the Partnership pursuant to the Agreement and which the Holding Fund has agreed in writing (pursuant to this Agreement or otherwise) are payable by the Partnership.

- 6.2.1.11 to engage such attorneys, agents, lawyers, accountants or other advisers 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 Manager shall obtain Consent before engaging such advisers;
- 6.2.1.12 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;
- 6.2.1.13 to repay Loans and make distributions to Partners out of Partnership Assets pursuant to the terms of this Agreement;
- 6.2.1.14 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 defending any litigation pertaining to the Partnership or to any of the Partnership Assets and **PROVIDED THAT** the Manager shall be indemnified by the Partnership in respect of all documented costs and expenses which have been notified to the Holding Fund (but for the avoidance of doubt excluding any consequential loss of the Manager, any costs recovered through a costs award in favour of the Manager or the Partnership and any costs incurred as result of the Manager's negligence) incurred as a result of such litigation it commences or defends as pertains to the Partnership or to any of the Partnership Assets;
- 6.2.1.15 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;

- 6.2.1.16 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;
- 6.2.1.17 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;
- 6.2.1.18 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
- 6.2.1.19 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.

For the avoidance of doubt fees payable in respect of individual Investments shall be charged to the Investee Company. Fees payable by the Partnership pursuant to **clause 6.2.1.10** shall be payable by the Holding Fund. The Manager shall notify the Holding Fund of such fees and the Holding Fund shall pay (to the Manager) the fee within 15 Business Days following receipt by the Holding Fund of the relevant invoice.

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;
- (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; and

- (c) neither the General Partner nor the Partnership (where applicable) shall be permitted to:
- (1) make acquisitions (other than the Investments);
 - (2) create subsidiaries;
 - (3) make loans or give credit other than in accordance with the Investment Policy and the IOGs;
 - (4) incur borrowings (other than the Loans);
 - (5) enter into any amalgamation, merger, demerger or reconstruction or any joint venture or partnership agreement;
 - (6) enter into any transaction with any person except on arm's length terms and for full market value;
 - (7) enter into a transaction or a series of transactions (whether related or not) to sell, lease, transfer, licence or otherwise dispose of any asset other than disposals of Investments in accordance with the IOGs;
 - (8) carry on any business other than the making and management of Investments pursuant to the terms of this Agreement;

6.2.2 Provided that at all times the General Partner shall not be required to do anything which it is not authorised to do, the Manager and the General Partner shall be required to comply with:

- 6.2.2.1 all registration and other requirements of the Act and the FCA Handbook 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, C FOR E and EIB (including, without limitation, the requirements set out in the Single Programme Offer Letter, the Offer Letters and the EIB Facility Agreement) and the use of funds disbursed by ERDF, C FOR E and EIB to the Holding Fund as (in each case) 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 Offer Letters 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 C FOR E, ERDF, any lender to the Holding Fund or the Partnership (including without limitation EIB) 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 Letters, the EIB Facility Agreement 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 C FOR E, ERDF 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 Letters) 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 ERDF/C FOR E can comply with their obligations pursuant to the FOI (for the avoidance of doubt the Holding Fund will consider the views of the Manager and the General Partner in responding to any Request for Information and shall, to the extent permitted in law or by any statutory FOI guidance, endeavour to withhold any information which the Manager or the General Partner or both wish to withhold including, but not limited to, the exemption under Section 43 of the FOI in connection with information the release of which is likely to prejudice their respective commercial interests although ultimately the Manager and the General Partner acknowledge that the Holding Fund will have final discretion, acting in good faith, as to the information provided); 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 Partnership has no other borrowings other than the Investment Loan and Project Management Loan;
- 6.2.3.5 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;
- 6.2.3.6 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;

- 6.2.3.7 the General Partner and/or the Manager has not taken any action, and to their respective knowledge (after due and careful enquiry) 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 to their respective knowledge (after due and careful enquiry) 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 £25,000);
- 6.2.3.8 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 £25,000 and neither the General Partner nor the Manager are aware of any circumstances likely to give rise to such litigation, arbitration or proceedings;
- 6.2.3.9 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 Letters) and would have a material adverse effect on the Holding Fund being able to comply with the terms of this agreement;
- 6.2.3.10 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 and each Interest Payment Date (as defined in the EIB Finance Contract).

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 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 or, if required by the Holding Fund exercise the rights of claw back contained in the agreements with the SMEs; and

6.2.5.2 to do all things necessary to maintain a valid constitution; and

6.2.5.3 to comply with all laws, authorisations and regulations applicable to it as are necessary for the conduct of its business.

6.2.6 The General Partner makes (and shall procure the Manager makes) such other undertakings as are required by the Funders pursuant to any Funding Agreement offer letter and the Manager shall also provide, and the General Partner shall procure that the Manager shall provide, such warranties 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 which the Holding Fund is required to provide to Funders from time to time.

- 6.2.7 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).
- 6.2.8 Subject always to the terms of this Agreement, 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 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.
- 6.2.9 Subject to **clause 18.3**, none of the Manager or any Associate of the Manager shall be required to account to the Partnership for any directors', management, monitoring 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.
- 6.2.10 The Manager and the General Partner shall report immediately to the Partners any event or events which may reasonably be expected to materially affect the Partnership or the Partnership Assets.
- 6.2.11 Subject always to **clause 6.3**, the Manager and the General Partner 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 General Partner warrants that all information supplied pursuant to its the Manager's tender documentation in relation to the ITT was true and accurate when supplied and there have been no material changes to the Manager since the date of the ITT documentation. The General Partner acknowledges on behalf of itself and the Manager that the tender documentation in relation to the ITT is the basis of which the Manager is appointed as Manager, as annexed to this Agreement at **Appendix 2**. For the avoidance of doubt if there is any conflict between the provisions and obligations contained in the tender regarding the ITT and this agreement the provisions of this agreement will prevail.

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 Consent:

6.5.1.1 the part of the Investment Loan which is notified as sourced by EIB shall be deposited in or credited to the EIB Product Fund Investment Account;

6.5.1.2 the part of the Investment Loan which is notified as sourced by ERDF shall be deposited in or credited to the ERDF Product Fund Investment Account;

6.5.1.3 no funds other than the Investment Loans or any other funding advanced to the Partnership by the Holding Fund may be deposited in (or credited to) either the EIB Product Fund Investment Account or the ERDF Product Fund Investment Account apart from payments of interest due to be credited to the accounts;

6.5.1.4 unless otherwise agreed in writing by the Holding Fund, no sum may be withdrawn from either the EIB Product Fund Investment Account or the ERDF Product Fund Investment Account except for the following purposes:

(a) making Investments in accordance with this Agreement and the Investment Policy;

- (b) meeting a requirement to repay the Investment Loan in accordance with the terms of the Agreement;

For the avoidance of doubt each Partner acknowledges that ERDF hold a proprietary interest in all monies in the ERDF Product Fund Investment Account up until the point at which the Investment is made.

- 6.5.1.5 in the event that an amount withdrawn from the EIB Product Fund Investment Account or the ERDF Product Fund Investment Account for the purpose mentioned in **clauses 6.5.1.1 to 6.5.1.3** (inclusive) 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 relevant account;
- 6.5.1.6 the Management Project Loan shall be deposited in or credited to the Management Project Loan bank account;
- 6.5.1.7 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;
- 6.5.1.8 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;
- 6.5.1.9 the Realisations shall be deposited in or credited to the Product Fund Realisation Account;
- 6.5.1.10 no other funds other than the Realisations may be deposited in or credited to the Product Fund Realisation Account apart from payments of interest due to be credited to the Product Fund Realisation Account;
- 6.5.1.11 the Manager shall within 3 Business Days distribute from the Product Fund Realisation Account all Income Receipts to the Income Account and all Capital Receipts to the Capital Receipts Account.

7. INVESTMENT POLICY

- 7.1 In respect of the Partnership, the Manager and the General Partner shall be required to adhere to 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 and the IOGs). Notwithstanding any other provision of this clause 7 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 and that all loans made by the Partnership 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 so as to comply with all applicable regulatory requirements.
- 7.3 Investment by the Partnership shall be restricted to providing mezzanine and other loans, equity and quasi equity for SMEs located in assisted areas and for small enterprises located in non-assisted areas
- 7.4 Subject to **clause 7.5, clause 7.7, clause 7.9 and clause 7.13**, the Manager and the General Partner shall be liable for any loss suffered or costs incurred by the Partnership arising out of any Prohibited Investments 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 and General Partner will not in respect of such loss or costs benefit from any indemnity given to it pursuant to the terms upon which the Manager and General Partner are appointed.
- 7.5 The Manager and the General Partner shall not be liable under **clause 7.4** for any loss suffered or costs incurred by the Partnership to the extent those losses or costs are (i) recovered from the relevant Investee Company and/or (ii) taken off the Investment Loan Commitment pursuant to **clause.7.4**
- 7.6 It is agreed between the Manager, the Holding Fund and the General Partner that the Holding Fund will contact ERDF in order to attempt to obtain a commitment from ERDF that they (either directly or through Communities for Local Government) will give advice in respect of clarification of the Block Exemption or any of the IOGs that are relevant to ERDF ("Appropriate Advice"). Where the response from ERDF confirms that the Appropriate Advice mechanism contains sufficient assurances to the Holding Fund that, should Appropriate Advice on a deal by deal basis be sought, given and acted upon, ERDF will not seek redress to the Holding Fund in respect of any action taken by the Holding Fund, the Manager, the General Partner or the Partnership as a result of reliance on that Appropriate Advice then the Holding Fund, the General Partner and the Manager will agree in writing by way of a side agreement ("Side Agreement") to this Agreement that they agree the scope and procedure for obtaining

'Appropriate Advice'. Prior to entering into any Side Agreement, the Holding Fund shall obtain (and the Manager and General Partner hereby acknowledge that the Holding Fund must obtain) a legal opinion (addressed to EIB and in form and content satisfactory to EIB, acting reasonably) confirming that the Holding Fund's obligations pursuant to such Side Agreement do not affect the limited liability status of the Holding Fund within the Partnership.

- 7.7 Following completion of the Side Agreement, notwithstanding **clause 7.4**, the Manager shall not be liable for any loss suffered by the Partnership which results from any Prohibited Investment where the Manager took Appropriate Advice prior to making the Investment to confirm the Investment complied with the IOGs (or the particular IOG that has resulted in the Investment becoming a Prohibited Investment) and has complied with (to the satisfaction of the Holding Fund (acting reasonably)) the Appropriate Advice.
- 7.8 Prior to completion of the Side Agreement, the Manager and the General Partner shall be permitted to take Procedural Advice in respect of potential Investments in which they are unsure as to whether it is eligible or ineligible. The Manager and the General Partner acknowledge that obtaining Procedural Advice is only to be used in exceptional circumstances.
- 7.9 PROVIDED THAT (i) the Manager took Procedural Advice prior to making an Investment or a series of Investments to confirm such potential Investment or series of Investments complied with the IOGs and (ii) the Manager demonstrates to the satisfaction of the Holding Fund (acting reasonably) that it complied with the Procedural Advice in making such Investment or series of Investments then the Manager's aggregate liability pursuant to **clause 7.4** in respect of any such Investment or series of Investments made following such Procedural Advice shall be limited to the greater of (1) £25,000 and (2) that element of the General Partner's Share received to date by the General Partner (and paid to the Manager under the Management Agreement) for that Investment, or the average of all those elements of the General Partner's Share received to date by the General Partner (and paid to the Manager under the Management Agreement) for a series of Investments based on the same Procedural Advice. Provided that, at all times, a 'series of Investments' may only include a maximum of four Investments which followed the Procedural Advice and each individual investment in the 'series' must not exceed £50,000. In order to rely on the limitation of liability contained in this clause the Manager must notify the Holding Fund of each Investment which it makes pursuant to a piece of Procedural Advice.
- 7.10 Notwithstanding **clause 7.4** and **clause 7.9**, the Manager shall not be liable for any loss suffered or costs incurred by the Partnership arising out of making any Prohibited Investment where:
- 7.10.1 the Holding Fund is satisfied that either (a) the Manager took (and followed) Procedural Advice prior to making the Investment to confirm the Investment complied with the IOGs (or the particular IOG that has resulted in the Investment becoming a Prohibited Investment) or (b)

the Manager would not have required Procedural or Appropriate Advice at the time of Investment, as any prudent fund manager dealing with public monies would have concluded the Investment was not, at the time of making the Investment, a Prohibited Investment; and

- 7.10.2 there has been any change to any applicable law, regulations, guidelines, declarations, opinions (issued by the European Union and related bodies) or generally accepted practice since the date of the Investment which (in the opinion of the Holding Fund, acting reasonably) has resulted in the Investment becoming a Prohibited Investment.
- 7.11 In all cases, the General Partner and the Manager shall cooperate and provide all information and assistance to the Holding Fund as requested by the Holding Fund (at the Holding Fund's cost) to defend any claim or action taken against, or loss incurred by, the Holding Fund as a result of any Investment.
- 7.12 The General Partner and the Manager shall ensure that all documentation entered into with Investee Companies includes adequate rights of claw back in the event that an Investment is deemed to be ineligible at any time.
- 7.13 It is the General Partner and Manager's responsibility at all times to ensure that the Investment remains an eligible investment and does not become a Prohibited Investment. Provided that the Manager can demonstrate (to the satisfaction of the Holding Fund acting reasonably) that it has both (1) throughout the period in which the Partnership has retained an interest in the Investment used all means available to the Manager and the Partnership to ensure that the Investment remains eligible (including but not limited to monitoring the Investee Company and enforcing any relevant provision contained in the documentation relating to the Investment) and (2) it has exercised and exhausted all methods of claw back (including if appropriate but not limited to litigation) pursuant to the documentation entered into between the Partnership and the Investee Company then the Manager shall not be liable pursuant to **clause 7.4** for any loss suffered or costs incurred by the Partnership arising out of any Investment becoming ineligible and therefore a Prohibited Investment.
- 7.14 In the event of any doubt whether an investment opportunity meets all of the requirements of this **clause 7** or the IOGs, the Manager may, on a case by case basis, refer such matters as it deems necessary to the IAP for consultation and the Manager may proceed with the investment opportunity under consideration on the basis agreed with the IAP (on the basis that, subject to the other provisions of this **clause 7**, the Manager remains strictly liable).
- 7.15 In the event that any change to applicable law or regulation renders any provision or restriction contained in this **clause 7**, the IOGs inapplicable or unnecessary the Holding Fund, the IAP 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, the IAP and the Holding Fund in writing.

- 7.16 Provided that (i) there is a sufficient sum of undrawn Investment Loan Commitment (ii) the remedy is being sought in the Investment Period only and (iii) provided at all times that the Funders agree, the Holding Fund shall remedy a Prohibited Investment by reducing the Investment Loan Commitment by an equal amount to the loss suffered or costs incurred by the Partnership arising out of the relevant Prohibited Investment.
- 7.17 Notwithstanding any clause in this Agreement, the liability of the Manager and the General Partner pursuant to the terms of this Agreement shall not be limited (in accordance with this **clause 7**) where either (1) Appropriate Advice or Procedural Advice was provided to the Manager or the General Partner and it was not followed, or (2) the Holding Fund or any Funder is not satisfied (acting reasonably) that the Manager or the General Partner provided all relevant facts to the Holding Fund or any Funder when requesting Appropriate Advice or Procedural Advice.

8. **ACCOUNTS AND REPORTS**

8.1 **Partnership Accounts**

8.1.1 The Manager and the General Partner shall be required to keep proper accounting records for the Partnership and make regular true and correct entries in such 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 and the General Partner 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 made, 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 30 Business Days of the end of December 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 known to the Manager (after due and careful enquiry) 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 20 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 confirmation that all Investments satisfy the IOGs (together with details of all decisions in respect of investments considered by the Manager and not Invested by the Partnership as a result of the provisions of the Allocation Rules or clause 17) ;

8.2.2.5 a précis of all sources and nature of enquiries from potential Investee Companies during the relevant period;

8.2.2.6 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;

8.2.2.7 Net Additional Jobs, Net Jobs Safeguarded and Net Additional Gross Value Added during the relevant period and as compared cumulatively against the annual Outputs and Results;

8.2.2.8 litigation pertaining to the Partnership or to any of the Partnership Assets;

- 8.2.2.9 referrals to any business support agencies established to promote SMEs (including any business support agencies provided by the private sector, the Small Business Services, C FOR E or other public sector organisations);
- 8.2.2.10 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;
- 8.2.2.11 the proportions in which Investments have been made both in terms of monetary value and the number of Investments allocated, between assisted and non assisted areas and between Merseyside and the rest of the North West;
- 8.2.2.12 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;
- 8.2.2.13 a statement of cash flow in respect of the Investment Loan and the Management Project Loan during the relevant period including details of any variation from the previous 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 following three year period;
- 8.2.2.14 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;
- 8.2.2.15 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);
- 8.2.2.16 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 during the relevant period;

8.2.2.17 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, C FOR E, the European Commission, EIB, 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 (including, should the Holding Fund require, a monthly report in a form requested by the Holding Fund).

- 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, the European Court of Auditors, the Department for Business, Innovation and Skills, the National Audit Office, C FOR E 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 C FOR E/the Funders to promptly furnish to the Partners and/or C FOR E/the Funders (as the case may be) any information in its possession that is reasonably necessary in order for the Partners and/or C FOR E/the Funders to withhold tax or to file tax returns and reports.
- 8.2.5 The Manager shall be required to allow the Partners, C FOR E, EIB the Funders 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 the Funders and C FOR E's obligations to review the business activities of the Partnership under any applicable rules and regulations and in particular

to allow the Partners, C FOR E and EIB the Funders 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 Letters 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 Letters and Outputs and Results and to consider whether any remedial action is required to improve performance or to make appropriate adjustments to the Offer Letters or the Outputs and Results or to the Agreement (or other documents in connection with the Partnership) to take into account any amendments to, or re-enactment of, the Block Exemption or the amendment to, re-enactment of, or introduction of any other statutory provisions or guidance (whether from the European Union, HM Government or otherwise);
 - 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 Business 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 Notification Factsheet referred to in **clause 5.2** submitted with the Investment Loan Drawdown Notice relating to that Investment is unchanged in all material respects from the terms set out in those documents subject to any amendments set out in the Confirmation (provided that such amendments comply fully with the IOGs and the other provisions of this Agreement). The Confirmation shall be in such form as shall be agreed between the Holding Fund, C FOR E, ERDF 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 no earlier than 60 Business Days and no later than 30 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 **FCA**

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 FCA 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 this Agreement; or
- 8.5.2 any actual or potential inability on the part of it or the Manager 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 by the Manager as set out in **Schedule 0**.

11. **DISTRIBUTIONS**

11.1 **Order of Distribution**

Subject to **clause 11.3** and Schedule **0** and after payment of the fees, costs, expenses and liabilities of the Partnership:

11.1.1 all cash proceeds of repayments or 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 (following the EIB Loan Repayment Point) 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 0**.

11.2 **Time of Distributions**

11.2.1 Subject to the provisions of **clause 11.3** and **Schedule 0**, 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 of March,

June, September and December 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 £250,000 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 Neither the Carried Interest Partner nor the General Partner shall make any transfer of all or any part of its legal, beneficial or other rights as a Partner of the Partnership without Consent. For the avoidance of doubt, nothing in this **clause 12.1** prevents the Carried Interest Partner allocating or assigning its portion of Carried Interest to the Manager and/or the Manager's personnel, members or shareholders in accordance with market practice.

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, C FOR E or ERDF pursuant to the EIB Facility Agreement, the Offer Letters 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 (and the Manager) may be removed from office by Consent without cause and the remaining provisions of this **clause 13.3** shall apply.

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;

13.2.1.2 where the Holding Fund, EIB or the IAP refuse to approve a first alternative replacement as a Key Investment Executive pursuant to **clause 26.7.3**;

13.2.1.3 a Key Investment Executive fails to devote the relevant Key Investment Executive's Business Time as set out in Schedule 9;

13.2.1.4 unless agreed by Consent where more than one Key Investment Executive resigns and any one such Key Investment Executive is not replaced within 4 months;
or

13.2.1.5 unless agreed by Consent or in accordance with the

- provisions of **clause 23**, any assignment, transfer, novation or release of the obligations of the Manager and/or the General Partner to the Partnership;
- 13.2.1.6 the bankruptcy, insolvency, dissolution or liquidation of the Manager and/or the General Partner, or the Manager and/or the General Partner making any arrangements or composition with its creditors generally;
- 13.2.1.7 any event or circumstance in which the terms of the Offer Letters, 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;
- 13.2.1.8 the Manager's failure to comply in any material respect with any of the terms and conditions of grant set out in the Offer Letters, the Single Programme Offer Letter, 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;
- 13.2.1.9 subject to the other provisions of this Agreement, the Manager's failure to achieve the Outputs and Results and other targets set out in this Agreement;
- 13.2.1.10 a Change of Control of the Manager or the General Partner without Consent and the approval of the ERDF;
- 13.2.1.11 evidence of any irregularity or impropriety with respect to the Manager's use of the Investment Loan Commitment;
- 13.2.1.12 the Manager's failure to provide under and in accordance with the terms of this Agreement information regarding the Partnership that is in the reasonable opinion of the Holding Fund 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
- 13.2.1.13 the Manager's failure to comply with **clause 19.1.4.2**;
as notified to the Partnership by the Holding Fund in writing; or

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

provided that, without prejudice to the right to remove the General Partner immediately and without compensation (where required by any Funder) where the cause of removal is in respect of circumstances set out in **clause 13.2.1.9** and the Holding Fund is satisfied that the Manager and the General Partner have used best endeavours to achieve the Outputs and Results, then it is the intention of the Holding Fund (by Consent only) to either (1) give the General Partner and the Manager 90 days to rectify the failure; or if incapable of remedy (2) a notice period of 90 days to the General Partner and the Manager.

The Manager and the Holding Fund acknowledge the terms of the EIB Facility Agreement and the ERDF Grant Agreement and further acknowledge that the Holding Fund may not be permitted to allow the notice periods set out above. In such circumstances the Holding Fund will notify the Manager and General Partner as soon as practicable.

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 0** 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.

13.3.4 In the event of the removal of the General Partner pursuant to **clause 13.1.1** the General Partner shall be entitled to retain a fraction of the General Partner's Share calculated as to be the equivalent of the aggregate of two quarterly payments of the General Partner's Share (calculated using the average amount of the quarterly payments previously made) which shall be payable on the dates on which the General Partner's Share would have been payable had the removal not occurred (or such earlier date as the Funders approve) and the Carried Interest Partner shall be entitled to a fraction of the Carried Interest calculated in accordance with **paragraph 8 of Schedule 0**.

13.3.5 For the avoidance of doubt the Carried Interest Partner shall be entitled to Carried Interest calculated and payable in accordance with Schedule 3 unless the General Partner has been removed for Cause, in which case no Carried Interest will be payable, PROVIDED THAT In the event of the removal of the General Partner pursuant to **clause 13.2.1.9** and where the Outputs and Results achieved by the Partnership are within 2% of those set out in **Schedule 0**, the Carried Interest Partner shall be entitled to a fraction of the Carried Interest calculated in accordance with **paragraph 7 of Schedule 0**.

13.3.6 For the avoidance of doubt the Carried Interest Partner shall not be entitled to any Carried Interest where the General Partner is removed for any other Cause (as set out in **clause 13.2.1**) other than **clause 13.2.1.9**.

13.4 **Manager and General Partner Resignation**

13.4.1 Where there is a material amendment to the terms of this Agreement or the obligations of the Manager or General Partner (including where such material amendment has been made by Consent or any change to the Specified Amount of more than 2%) and the Manager and the General Partner notify the Holding Fund in writing of the issues, the

Holding Fund will use reasonable endeavours to resolve the issues with the Manager and the General Partner. This may include additional remuneration for the Manager where the obligations of the Manager have increased significantly as a result of such material amendment. Where the matter is not resolved to the satisfaction of all parties then the Holding Fund agrees to use an open, effective and transparent process and use its best endeavours to seek a replacement General Partner or Manager.

13.4.2 The General Partner and the Manager shall not be entitled to resign without Consent PROVIDED THAT where:

13.4.2.1 the Holding Fund is withholding payment of the General Partner's Share or the Management Project Loan and such non payment is not as a result of either:

- (a) a Funder requiring the Holding Fund to withhold payment;
- (b) the General Partner or the Manager being in breach of any material condition or obligation pursuant to this Agreement or the Fund Management Agreement; or
- (c) the Holding Fund being entitled to remove the Manager or General Partner for cause pursuant to **clause 13.2**;

then the Manager shall be entitled to resign without Consent, provided always that the Manager shall provide the Holding Fund with five Business Days notice of its intention to resign.

13.4.3 Where the Manager resigns in accordance with **clause 13.4.2** the Carried Interest Partner shall be entitled to a fraction of the Carried Interest calculated in accordance with **Schedule 0**

13.4.4 For the avoidance of doubt, the General Partner and the Manager shall not be entitled to any indemnification from the Partnership or the Holding Fund for any loss suffered as a result of (a) the Managers resignation or (b) removal for cause pursuant to **clause 13.2**.

13.5 **Potential or Threatened Breach**

As soon as reasonably practicable after the Holding Fund shall become aware of any event or circumstance which is likely to result in a breach of any term or provision of this Agreement and/or the Management Agreement (other than a

breach by the Manager or the General Partner), the Holding Fund shall use all reasonable endeavours to liaise with the General Partner and the Manager to determine the nature of the potential or threatened breach and, where appropriate, to discuss potential ways to avoid or mitigate such breach.

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 later of the EIB Repayment Point and the date specified in **clause 2.5.2** (subject to any extension in accordance with **clause 15.3**).

15.2 The Partnership shall automatically terminate forthwith upon the occurrence of any of the following events (but on each occasion with Consent):

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.

Provided that, in the event of such termination pursuant to this **clause 15** (and only in circumstances where the termination is without Cause pursuant to **clause 13.1**) the General Partner shall still be entitled to retain a fraction of the General Partner's Share calculated as to be the equivalent of the aggregate of two quarterly payments of the General Partner's Share (calculated using the average amount of all of the quarterly payments previously made) pursuant to **clause 13.3.4**

- 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 and Carried Interest Partner 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 FCA 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 (as set out in any Allocation Rules) may perform similar functions and duties for itself 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 Subject to **clause 17.5** and **clause 17.11** the General Partner and the Manager shall ensure that where an Investment in an undertaking is to be made by way of a transaction:

17.2.1 with a Related Fund

17.2.1.1 the Investment is made on an arm's length basis;

17.2.1.2 the prior consent of the IAP to such Investment being made by way of a transaction with a Related Fund is received; and

17.2.1.3 a third party investor is separately investing at least 50% of the total fund investment amount in the proposed Investee Company; or

17.2.2 with an Associate of the General Partner or the Manager:

17.2.2.1 the Investment is made on an arm's length basis; and

17.2.2.2 the prior consent of the IAP to such Investment being made by way of a transaction with an Associate of the General Partner or the Manager is received.

17.3 Subject to **clauses 17.2** and 17.5 and any applicable Allocation Rules, 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, to 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 other than in accordance with the IOGs and any applicable Allocation Rules.

17.4 Without prejudice to the other provisions of this **clause 17**, 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 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 17.3**:

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

17.4.2 their investment policies;

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

17.4.4 the objectives of the proposed Investee Company including those of its shareholders;

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

17.4.6 the Allocation Rules,

and in the event of any conflict between the terms of the Conflicts Policy and this **clause 17**, the terms of this **clause 17** shall prevail.

17.5 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:

17.5.1 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, adviser 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, subject to any applicable Allocation Rules,;

- 17.5.2 permit or effect the acquisition by the Partnership of an Investment from, or the disposal by the Partnership of an Investment to, themselves or for a pooled investment fund or other third party for which they act as general partner, manager, adviser or primary source of transactions (other than a Related Fund), without first obtaining the consent of the IAP as to the manner in which any actual or potential conflict arising from the acquisition being made from or the disposal being made to such fund or third party is managed, resolved, accepted or avoided; or
- 17.5.3 permit or effect the acquisition by a pooled investment fund or other third party for which they act as general partner, manager, adviser or primary source of transactions (other than a Related Fund) of an interest in any Investee Company, without first obtaining the consent of the IAP as to the manner in which any actual or potential conflict arising from the acquisition being made from or the disposal being made to such fund or third party is managed, resolved, accepted or avoided.

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 investment adviser with an explanation of how such change may affect the allocation of investment opportunities under **clause 17.3**.

- 17.6 The Manager shall from time to time consult the IAP on general investment strategy and policies and guidelines, prospective investment sectors and conflicts of interest issues in respect of the Partnership. Prior to entering into any transaction when it is aware that such transaction by the Partnership presents an actual or potential conflict of interests between the interests of the Manager and/or the General Partner, any of their members or employees, any of their Associates and the interest of the Partnership, the Manager shall seek the consent of the IAP as to the manner in which any actual or potential conflict arising from such transaction is managed, resolved, accepted or avoided. The Manager shall provide details of the proposed transaction and of such actual or potential conflict of interest at the time of seeking the consent of the IAP.
- 17.7 Notwithstanding any other provision of this Agreement, the members of the IAP shall not take part in the management of the Partnership's business, nor shall they in their capacity as members of the IAP carry on any regulated activity as such term is defined for the purposes of FSMA.

- 17.8 All recommendations or determinations of the IAP shall be made by vote of a majority of its members for the time being. The Manager may require the IAP to poll its members, and may disregard in all respects the voting rights and votes of members who decline to exercise their votes within 10 Business Days of written notification from the Manager requiring a poll, for purposes of determining the decision of the majority.
- 17.9 Where any member of the IAP has a conflict of interest in relation to any matter proposed for discussion at a meeting of the IAP, such member shall disclose the nature of the applicable conflict of interest to the IAP and, if so requested by a majority of the remaining members of the IAP, shall abstain from further discussions as to the matter being discussed.
- 17.10 Where the recommendation of the IAP is required for the manner in which any transaction involving a conflict of interest is managed, accepted, resolved or avoided, the Manager shall not be permitted to take any action which is inconsistent with the recommendation of the IAP as regards the manner in which that particular transaction and its associated conflict of interest is managed accepted, resolved or avoided.
- 17.11 The General Partner and the Manager shall ensure that where an Investment is to be made by way of a transaction with an entity in which a Successor Fund or a Related Fund or an Associate of the General Partner or the Manager has, at the date of the proposed Investment, an interest in such entity, the Investment is made on an arm's length basis.
- 17.11.1 the Investment is made on an arm's length basis; and
- 17.11.2 either:
- 17.11.2.1 an independent third party investor is separately investing either (i) at least 30% of the total investment amount or (ii) at least GBP 50,000 in the proposed Investee Company and, in each case, such transaction is notified to the IAP (and for the avoidance of doubt, no consent of the IAP to such transaction shall be required); or
- 17.11.2.2 an independent third party valuation has been provided to the IAP in respect of the proposed Investee Company; and
- (a) either:
- (i) the fund which provided such initial funding is providing additional funding in respect of the proposed Investee Company and the Manager has notified the IAP of the terms of such funding or, if

such fund is not providing such funding, the Manager has notified the IAP of the reasons for such fund's failure to provide additional funding or

- (ii) either (a) a third party investor is separately investing less than 30%, of the total investment amount and less than GBP 50,000 in the proposed Investee Company and the Manager has notified the IAP of the terms of such funding or (b) the proposed Investee Company is unable to obtain such finance through mainstream commercial investors or lenders (as required by the IOGs) and the Manager has notified the IAP of such inability to obtain such funding; and

(b) the prior consent of the IAP is received to such Investment being made by way of a transaction with an entity in which a Successor Fund or a Related Fund or an Associate of the General Partner or the Manager has, at the date of the proposed transaction, an interest.

The parties acknowledge that the IAP may, at their absolute discretion, waive any of the requirements set out in this clause 17.

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 required to procure that it and, so far as it is reasonably able to do so, that its Associates shall procure that:

18.2.1 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

18.2.2 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.

18.3 The General Partner, Manager and their Associates shall be entitled to accept and retain for their own account:

18.3.1 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;

18.3.2 all agency, directors' fees and benefits, legal fees (incurred by the Manager in connection with a proposed Investment) and monitoring fees (in the case of such monitoring fees up to a maximum of (i) £3,000 per annum in respect of each Investee Company; or (ii) such higher figure as may be charged by an independent third party investor ('independent' shall mean independent in the opinion of the Holding Fund, acting reasonably) in such Investee Company; or (iii) such higher figure as shall be approved by Consent (in giving such approval the Holding Fund will act reasonably and will take into account the level of monitoring fees reflected by the Manager in the ITT); 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; and

18.3.3 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 18.3.1** and **18.3.2** 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 18.3.2** 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.

18.4 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 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 Letters the Manager shall be required to comply with the publicity requirements of Articles 8 and 9 of Regulation 1828 and the publicity requirements and the branding guidelines for ERDF which are available from time to time on the Secretary of State'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 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** to:
- 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 FCA 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 C FOR E, ERDF 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 "North West Micro Fund LP" (or such other name as required by the Holding Fund and the costs of its management are part-financed by the European Union European Regional Development Fund into any publicity material (including, without limitation, any press releases) and use all reasonable endeavours to comply with the branding guidelines published by ERDF from time to time and shall inform ERDF at least 10 Business Days prior to any promotional event relating to the Partnership;

19.1.5.2 where requested to do so by any of the Holding Fund or Funder 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) relating to the Partnership 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 C FOR E/ERDF 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 C FOR E/ERDF to promote best practice in relation to the promotion of schemes similar to the Partnership; and

19.1.5.4 in addition to the obligations set out in the IOGs, incorporate EIB's logo in the manner and style and together with the accompanying graphic design as the same appear on EIB's letterhead into any publicity material regarding the Partnership;.

19.1.6 To the extent not already required by this **clause 19.1**, the Manager shall be required to comply with the all relevant provisions of the Offer

Letters 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 **ERDF'S Logo**

19.3.1 The parties acknowledge that ERDF has each granted the Partnership during the term of this Agreement a non-exclusive licence to use ERDF's logo for the purpose set out in **clause** Error! Reference source not found.. 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 ERDF's logo is owned by and shall remain the property of ERDF. 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 (including the Funders of the Holding Fund) 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 Letters, 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

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.

26. **PERSONNEL OF MANAGER**

26.1 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 Investment Executives, persons having experience of investing public sector funds 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:

26.2 it has in place appropriate formal and informal training and development programmes;

26.3 in recruiting its staff the Manager shall:

26.3.1 subject to its overriding obligation to recruit adequately qualified and experienced staff pursuant to this **clause 26** wherever practical 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;

26.3.2 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;

- 26.4 it takes appropriate consideration of feedback from the Holding Fund on the performance of the Manager's staff.
- 26.5 The Manager shall ensure that the Key Investment Executives and the other personnel of the Manager devote the relevant Business Time specified in **Schedule 0** which has been agreed between the Manager and the Holding Fund to the activities to be undertaken pursuant to this Agreement.
- 26.6 If any Key Investment Executive ceases or is to cease to devote their relevant Business Time to the performance of the Manager's obligations under this Agreement then the Manager shall:
- 26.6.1 inform the Holding Fund and the IAP as soon as possible (and the Holding Fund shall notify the Funders); and
- 26.6.2 within 4 months of the notification under **clause 26.6.1** (or (i) if the relevant Key Investment Executive gives more than 4 months notice, that Key Investment Executive's notice period or (ii) such other longer period as may be approved by Consent and consented to by the IAP and the Funders), provide details to the Holding Fund and the IAP of another individual who will take on the role or functions of the outgoing Key Investment Executive.
- 26.7 The Holding Fund, the Funders and the IAP shall consider the details of any individual proposed under **clause 26.6.2** (including the amount of Business Time it is proposed such individual should devote to the performance of the Manager's obligations) and shall have the following powers in connection with such individual and the personnel of the Manager generally:
- 26.7.1 agree, in the case of the Holding Fund by Consent, to the replacement of the Key Investment Executive by the individual on the terms proposed under **clause 26.6.2**;
- 26.7.2 agree, in the case of the Holding Fund by Consent, that the Key Investment Executive not be replaced in which case the number of Key Investment Executives shall be varied accordingly; and
- 26.7.3 refuse to approve the replacement as a Key Investment Executive in which case the Holding Fund by Consent, may request the Manager to provide an alternative replacement.
- 26.8 If the Holding Fund, the Funders or the IAP request that the Manager provide an alternative replacement under **clause 26.7.3**, the Manager shall within 3

months of such request (or such other longer period as may be agreed by the Holding Fund and the IAP by Consent) provide details to the Holding Fund, EIB and the IAP of another individual who will take on the role or functions of the outgoing Key Investment Executive, **clause 26.7** to apply mutatis mutandis.

- 26.9 If the Holding Fund, the Funders and the IAP Consent to the individual or changes referred to in **clause 26.7**, that individual shall be deemed to be a Key Investment Executive and any changes shall be deemed to be effective under this Agreement from the date of such Consent.

27. **AMENDMENT**

This Agreement may be amended in whole or in part by written agreement of the General Partner with Consent.

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 (including any recognised investment 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 or disclosure to the Funders of the Holding Fund.
- 31.2 The Partnership and the Manager acknowledge that Secretary for State and C FOR E 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 the Secretary for State and C FOR E to comply with its obligations under the FOI Legislation. The Partnership and the Manager acknowledge that the Holding Fund and/or C FOR E 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 C FOR E and or the Secretary of State, 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; **and**

31.4.2 notwithstanding the provisions of **clauses 31.3** and **31.4.1** above but subject to **clause 6.2.2.6**, the Holding Fund shall be responsible for determining, at its absolute discretion, acting in good faith, 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 proprietorial 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, facsimile transmission or e-mail to the address of that party specified in this Agreement or to that party's facsimile transmission number or to that party's e-mail address 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 C FOR E 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 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 consultation with 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; and
- 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)
[])
)
LIMITED acting by:)

Director

In the presence of
Witness

EXECUTED AS A DEED by)
[] **LIMITED**)
acting by:)

Director

In the presence of
Witness

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

Director

In the presence of
Witness

SCHEDULE 0

Investment Operational Guidelines

[As set out in the ITT]

SCHEDULE 0

Form of Investment Loan Drawdown Notice

[Letterhead of Partnership]

To: North West Business Finance Limited
[Address]

Project No:

Advance No: ● ●

● ● 200 ●

Dear Sirs

We refer to the Limited Partnership Agreement dated the ● day of ● 20[13] relating to the Partnership and made between (1) [] Limited (2) [] Limited and (3) North West Business Finance Limited constituting []. Terms defined in the Limited Partnership Agreement will have the same meaning in this letter.

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 [] 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: North West Development Loans LP's Investment Loan Account ●

The following documents are attached to satisfy [C FOR E and ERDF] requirements
[Details to follow]:

Investment Project Notification Factsheet[see **[Schedule 0]**].

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

On behalf of [MANAGER]

[], **Authorised Signatory**

[], **Authorised Signatory**

SCHEDULE 3

Allocation of Net Income, Net Income Losses, Capital Gains and Capital Losses of the Partnership, together referred to as "the Partnership Profit"

1. Allocations

The Partnership profit shall be allocated amongst the Partners on the following basis:

1.1 The General Partner's Share shall be a first call on any positive balance of the Partnership Profit 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 PF Loan Repayment Point and the point at which the Partnership has fully invested all funds committed to it (or such amounts have been cancelled) ("the Trigger Point") any positive balance of the Partnership Profit remaining after the allocation of the General Partner's Share shall be allocated to the income account of the Holding Fund ("the HF Income Account").

1.3 At the Trigger Point, there shall, to the extent that that the balance on the HF Income Account exceeds the Preferred Return ("the Excess"), be reallocated from the HF Income Account to the income account of the Carried Interest Partner ("the CIP Income Account"):

1.3.1 An amount equivalent to the lesser of (i) the Excess; and (ii) $C/(100-C)\%$ of the Preferred Return (where C is the Carried Interest Numerator) ("the Catch Up"); plus

1.3.2 C% of the Excess after deducting the Catch Up.

The amounts calculated in accordance with **paragraphs 1.3.1** and **1.3.2** are together described as the "Carried Interest".

1.4 Following the Trigger Point, any further positive balance of the Partnership Profit shall be allocated first to the General Partner's Share for the time being outstanding and subject to that any further Partnership Profit shall to the extent not previously allocated under **paragraphs 1.2** and **1.3** above be allocated amongst the Partners in the following order of priority:

1.4.1 to the Holding Fund in respect of any amount of the Preferred Return;

1.4.2 to the Carried Interest Partner in respect of the Catch Up; and

- 1.4.3 In respect of any further Partnership Profit as between the Holding Fund and the Carried Interest Partner in proportion to their respective Capital Contributions

If the Trigger Point has not been reached by 31 December 2022 then the calculation of Carried Interest described in **paragraph 1.3** above shall be undertaken as at 31 December 2022.

- 1.5 For the avoidance of doubt there shall be reallocated from the HF Income Account to the CIP Income Account such amounts as shall be necessary to ensure, having repaid the Loans, that the aggregate Partnership Profit up to the termination of the Fund after deducting:

1.5.1 the full amount of the General Partner's Share;

1.5.2 the full amount of the Preferred Return; and

1.5.3 the full amount of the Catch Up ;

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 or reallocated to the Carried Interest Partner pursuant to this paragraph shall not exceed the aggregate amount of any Net Income and Capital Gains allocated or reallocated to the Carried Interest Partner;

- 1.6 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 the Partnership Profit at their Value arrived at for the purpose of that Paragraph.

- 1.7 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 provided that the Partnership does not dispose of such Investment as part of such Listing process.

- 1.8 Notwithstanding any other provision in this agreement any calculation of Net Income and Capital Gains should not include any element of consideration which is either:

1.8.1 an estimate of a future return;

1.8.2 a conditional return; or

1.8.3 (in respect of calculation of Carried Interest) is capable of any form of claw back.

2. **Application of Cash**

Subject to the provisions of **clause 11**, all cash representing Net Income of the Partnership and realisations of capital in respect of each Investment shall be applied in the following order of priority:

2.1 prior to the Trigger Point:

2.1.1 to the Holding Fund to be applied in accordance with the EIB Facility Agreement (it being understood and agreed that all amounts paid to the Holding Fund pursuant to this **Paragraph 2.1** shall be paid to the Holding Fund in its capacity as a Limited Partner of the Partnership and not as a repayment of all or any of the Management Project Loan until the EIB Loan Repayment Point) ;

2.2 following the Trigger Point:

2.2.1 in the payment of the General Partner's Share in accordance with **Paragraph 6** below and any repayment of contributions referred to in **Clause 9.2**

2.2.2 in paying to the Holding Fund any unpaid Preferred Return;

2.2.3 in paying to the Carried Interest Partner any unpaid Catch Up;

2.2.4 in paying any further sums allocated to the Holding Fund and the Carried Interest Partner such that the balance on their respective income accounts after payment of the Preferred Return and the Catch Up are pro rata to their respective Capital Contributions;

2.3 finally in repayment of the capital contribution accounts of the Holding Fund and the Carried Interest Partner in accordance with **Clause 16.1**.

2.4 For the avoidance of doubt, the General partner, the Partnership and the Manager shall have no rights of set off and shall not be permitted to exercise any rights of set off in respect of payment of the Management Project Loan.

3. **Cash and Distributions**

3.1 **Loan Repayment**

Notwithstanding any other provision of this Agreement until the Trigger Point, all amounts then standing to the credit of Product Fund Realisation Account shall be paid within 3 Business Days to the Holding Fund in accordance with this Agreement.

3.2 **Distribution of Net Income and Capital**

Subject to **Paragraph 2**, all of the Partnership Profit shall be distributed to the Partner or Partners as entitled on a monthly basis, as soon as practicable after the end of each month or more frequently, at the reasonable discretion of the General Partner. Corresponding debits shall be made to the HF and CIP Income Accounts as necessary.

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.

3.4 **Cash Adjustment**

If, following the application of **Paragraph 1** and **Paragraph 2** above, the Holding Fund is in receipt of cash representing Partnership Profit allocated or reallocated to the Carried Interest Partner or the Carried Interest Partner is in receipt of cash representing Partnership Profit allocated or reallocated to the Holding Fund, then the Holding Fund or Carried Interest Partner shall make an adjusting payment to the Carried Interest Partner or Holding Fund, as the case may be, within 10 business days of being made so aware by the other party but the party making any such adjusting payment may deduct any net tax paid or payable by that party (or any partner, assignee or other beneficial owner of that party) in respect of the amount otherwise payable as aforesaid (including without limitation under **paragraph 5** below) after taking into account any tax benefits received or receivable by that party (or any partner, assignee or other beneficial owner of that party) in respect of any such amount if such amount is paid by that party pursuant to this clause. In the event of any dispute as to the amount of net tax which the Holding Fund or the Carried Interest Partner (as the case may be) may deduct as aforesaid the certificate of that party's auditors for the time being shall be final and binding on all parties to this Agreement.

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 Partnership Profit 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
2013 to 2015	<p>[] % per annum of the aggregate Investment Loan Commitment for the Accounting Period in question (as may be adjusted pursuant to Schedule 0) as at the date of this Agreement. Where there is a Prohibited Investment and the Investment Loan Commitment is reduced in accordance with clause 7.16 the General Partners Share shall be [] % of the reduced Investment Loan Commitment. Where there is a Prohibited Investment and the Investment Loan Commitment is not reduced in accordance with clause 7.16 the fee shall be the [] % per annum of the aggregate Investment Loan Commitment for the Accounting Period in question (as may be adjusted pursuant to Schedule 0) as at the date of this Agreement minus the General Partner's Share which is applicable to the Prohibited</p>

Investment;

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 for the Accounting Period in question (as may be adjusted pursuant to **Schedule 0**) Where there is a Prohibited Investment and the Investment Loan Commitment is reduced in accordance with **clause 7.16** the General Partners Share shall be []% of the reduced Investment Loan Commitment. Where there is a Prohibited Investment and the Investment Loan Commitment is not reduced in accordance with **clause 7.16** the fee shall be the []% per annum of the aggregate Investment Loan Commitment for the Accounting Period in question (as may be adjusted pursuant to **Schedule 0**) as at the date of this Agreement minus the General Partner's Share which is applicable to the Prohibited Investment;

(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, (b) that part of the Acquisition Cost of any Prohibited Investment to the extent that it was included in the calculation of the Acquisition Costs of the Investments (c) all amounts by which the Acquisition Cost of any Investments which have not been sold or otherwise disposed of have been 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 where there is any positive balance of the Partnership Profit allocated by the Holding Fund 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 any positive balance of the Partnership Profit allocated to the General Partner shall be an interest free loan to the General Partner to which **paragraph 6.4** shall apply. The General Partner's Share may only be paid out of the profits of the Partnership available for that purpose. Where there are insufficient profits of the Partnership to allocate the General Partner's Share, the Management Project Loan shall be available for drawdown. 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, provision 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 The General Partner's Share shall not be payable (from either Partnership Profits or by way of Management Project Loan) where (1) the General Partner or the Manager have breached any material term in this Agreement (unless a Funder has notified the Holding Fund that the payment is to be made) or (2) the Funders require the payment not to be made pursuant to the EIB Facility Agreement or the Offer Letters. Any such accrued unpaid General Partner's share shall be paid to the General Partner at the point such breach is waived or remedied, provided that, where a Funder has required such payment not to be made pursuant to the EIB Facility Agreement or the Offer Letters, such Funder consents to such payment.

6.5 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 any positive balance of the Partnership Profit.

7. **Transfer of Carried Interest on Termination for Cause pursuant to clause 13.3.5**

7.1 If the Manager's appointment under the Management Agreement is terminated with cause as a result only of the circumstances set out in **clause 13.3.5**, the Carried Interest Partner shall assign and transfer a proportion of its Partnership Interest to such party or parties as may be nominated by its successor on the following basis:

7.1.1 the proportion of Carried Interest Partner's Partnership Interest to be transferred, will be based on the following formula:

$$\frac{A}{120}$$

Where "A" is the number of complete months in the Life of the Partnership (as such term is defined below) which have still to elapse after the date on which the Management Agreement terminates;

7.1.2 the consideration payable in respect of the transfer of the Founder Partner's Partnership Interest, will equate to the Capital Contribution equivalent to the Partnership Interest being transferred and the transfer of the Founder Partner's Partnership Interest will only relate to profits accruing after the date of the Transfer and does not include profits accrued but not yet distributed; and

7.1.3 for the purposes of this paragraph, the "Life of the Partnership" shall be the period of [].

8. **Transfer of Carried Interest on Termination without Cause pursuant to clause 13.1.1**

8.1 If the Manager's appointment under the Management Agreement is terminated without cause as a result only of the circumstances set out in **clause 13.1.1** of this Agreement, the carried Interest partner shall assign and transfer a proportion of its Partnership Interest to such party or parties as may be nominated by its successor on the following basis:

8.1.1 the proportion of Founder Partner's Partnership Interest to be transferred, will be based on the following formula:

$$\frac{A}{267}$$

Where "A" is the aggregate number produced by allocating figures of "3" (for the first 61 months) and "1" (for the remaining 84 months) for each complete month in the Life of the Partnership (as such term is defined below) which has still to elapse after the date on which the Management Agreement terminates;

8.1.2 the consideration payable in respect of the transfer of the Founder Partner's Partnership Interest, will equate to the Capital Contribution equivalent to the Partnership Interest being transferred and the transfer of the Founder Partner's Partnership Interest will only relate to profits accruing after the date of the Transfer and does not include profits accrued but not yet distributed; and

8.1.3 for the purposes of this Clause, the Life of the Partnership shall be the period of 12 years and 1 month commencing on 1 December 2010.

SCHEDULE 4

North West Wards and Districts for Merseyside

North West Wards and Districts for the Rest of the Region

SCHEDULE 5

Investment Project Notification Factsheet

1. Company Details

Company Name				
Address		Located in Merseyside or RONW		
Postcode		County (that the investment relates to)		
Website		Priority 1 or 2		
Applicant Name		Position		
Owner / Manager		Gender		
Nature of Business including short description of Investment				
No. of Employees	Current Jobs			Total
	Jobs Safeguarded		Male	Female
	Jobs to be Created			Total
Length of Business	< 12mths	Early-Stage	> 12mths	
Amount of investment by the Partnership in this round (£)	£			
Amount of Matched Funding in this round (£)	£	Source and description of nature of Matched Funding		
Date Investment completed				

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

SCHEDULE 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

1. We refer to the Limited Partnership Agreement dated the ● day of ● 200[10] relating to the Partnership and made between (1) [] Limited (2) [] [] Limited and (3) North West Business Finance Limited constituting []. Terms defined in the Limited Partnership Agreement will have the same meaning in this letter.
2. 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 [] LP'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 ●

3. The following documents are attached to satisfy [C FOR E 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**

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:

1. **Valuation of Investments**

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

2. **Basis of Valuation**

2.1 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.

2.2 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.

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

2.4 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 and with Consent) 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 An increase to the Investment Loan Commitment under this Schedule shall result in an increase in the General Partner's Share *pro-rata* to such increase in the Investment Loan Commitment. Such increase shall take effect from the date the Investment Loan Commitment is increased, 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, and the General Partner's Share payable from that point onwards pursuant to **paragraph 6.2** of **Schedule 0** shall be adjusted accordingly. 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. For the avoidance of doubt all amounts payable pursuant to this clause shall be payable in accordance with the table set out in **paragraph 6.2** of Schedule 3.

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 A decrease to the Investment Loan Commitment under this Schedule shall result in a decrease in the General Partner's Share *pro-rata* to such decrease in the Investment Loan Commitment. Such decrease shall take effect from the date the Investment Loan is decreased 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, and the General Partner's Share payable from that point onwards pursuant to **paragraph 6.2** of **Schedule 0** shall be adjusted accordingly. 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 A decrease in the Undrawn Investment Loan Commitment under this Schedule shall result in a decrease in the General Partner's Share *pro-rata* to such decrease in the Undrawn Investment Loan Commitment. Such decrease shall take effect from the date the Undrawn Investment Loan Commitment is decreased or on such other date as is specified by the Holding Fund in the notice given under **paragraph 3.5** and the General Partner's Share payable from that point onwards pursuant to **paragraph 6.2** of **Schedule 0** shall be adjusted accordingly. 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.

SCHEDULE 10

Procedural Advice

Allocation

[]

Annex 1

Allocation of development capital investments between the Partnership and other Associated Funds

[]

APPENDIX 1

Manager's Tender Obligations

	2014	2015	Total
Investment Profile 3			
Number of Investments			
Follow on Investments			
Follow on investments £			