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BRITISH BUSINESS FINANCIAL SERVICES LIMITED

FRAMEWORK AGREEMENTS FOR FUND MANAGEMENT INCORPORATING THE NORTHERN
POWERHOUSE INVESTMENT FUND

INVITATION TO TENDER – OPEN PROCEDURE

INSTRUCTIONS TO TENDERERS

SUMMARY I NSTRUCTIONS AND DETAI LS OF FRAMEWORK AGREEMENT

ITEM	DETAILS
OJEU reference:	
Framework Agreement Description:	FRAMEWORK AGREEMENTS FOR FUND MANAGEMENT INCORPORATING THE NORTHERN POWERHOUSE INVESTMENT FUND
Duration of Framework Agreement:	4 years
Tender instructions:	<p>All documents must be completed and uploaded to the Delta e-sourcing portal prior to the closing date for responses.</p> <p>If you encounter any issues submitting your response via the Delta e-sourcing portal, please contact the helpdesk on 0845 270 7050</p> <p>FAILURE to return your Tender in the correct manner may result in the exclusion from consideration for the relevant Framework Agreement</p>
Date and time for tender return:	13:00 10th June 2016
Date and time for last receipt of a clarification questions from a Tenderer	1st June 2016

CHECKLIST FOR TENDERERS

Failure to provide all of the items in the checklist per Lot that you are tendering for may cause your Tender to be non-compliant and not be considered.

No	Item	Included in Tender?
1.	All information requested in the Qualification Response (Schedule 1)	
2.	All information requested in the Technical Assessment (Schedule 2)	
3.	Pricing Schedule Submission (Schedule 3)	
4.	Form of Tender (Schedule 7)	
5.	Certificate of non-canvassing and non-collusion (Schedule 8)	
6.	Confidential Information Form (Schedule 9)	
7.	Track Record Proforma (Schedule 10)	
8.	Appendix regarding conflict of interest if applicable (section 1.13 Important Notice and Schedule 1)	

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- 1.
2. IMPORTANT NOTICE
 - 2.1 This ITT sets out the Instructions to Tenderers for preparing and submitting their tender responses which will be evaluated by the Authority in order to assess the most economically advantageous Tenders for each Framework Agreement per Lot in accordance with the evaluation criteria set out herein.
 - 2.2 This ITT and all documents associated with this procurement process are made available in good faith. No warranty is given as to the accuracy, reasonableness or completeness of such information and any liability for any inaccuracy or incompleteness is therefore expressly disclaimed by the Authority and its advisers provided that nothing in this document seeks to exclude or limit the liability of any person for fraudulent misrepresentation. Any persons considering submitting a response to this ITT should make their own investigations and their own independent assessment of the Framework Agreement requirements and should seek their own professional, technical, financial and legal advice.
 - 2.3 The Authority reserves the right to cancel, amend or vary the procurement at any point prior to the award of the Framework Agreements and with no liability on its part.
 - 2.4 The Authority will not reimburse any costs incurred by Tenderers in connection with preparation and submission of their responses to this ITT including if the Authority cancels this procurement nor in relation to any mini competition conducted under the Framework Agreements. For the avoidance of doubt, no such costs may be included within the Establishment Costs (as defined in the LPA) of any Fund established under this Framework.
 - 2.5 The contents of this ITT and that of any other documentation sent or provided to you in respect of this tender process are provided on the basis that they remain the property of the Authority and must be treated as confidential.
 - 2.6 If any Tenderer is unable or unwilling to comply with this requirement you are required to destroy this ITT and all associated documents immediately and not to retain any electronic or paper copies.
 - 2.7 No Tenderer will undertake any publicity activities with any part of the media in relation to the procurement process or this ITT without the prior written agreement of the Authority, including agreement on the format and content of any publicity.
 - 2.8 The Authority reserves the right to reject Tenders which are not submitted in accordance with the instructions given including but not limited to where a Tenderer:
 - 2.8.1 submits their Tender after the tender submission deadline; or
 - 2.8.2 provides a submission that is incomplete; or
 - 2.8.3 fails to provide any of the required information or not in the specified format; or
 - 2.8.4 is guilty of a serious misrepresentation in supplying any information required in this ITT.
 - 2.9 Nothing in this process is intended to form any express or implied contractual relationship between the parties unless and until the Framework Agreements have been awarded.
 - 2.10 The Authority reserves the right to issue supplementary documentation at any time during the Procurement Process to clarify any issue or amend any aspect of the ITT. All such further documentation that may be issued shall be deemed to form part of the ITT and shall supplement and/or supersede any part of the ITT to the extent indicated.

- 2.11 The Authority may, at its absolute discretion, extend the tendering period and postpone or change the submission date, for any reason.
- 2.12 Tenderers are advised to satisfy themselves that they understand all of the requirements of the Framework Agreement before submitting their Tender.
- 2.13 The Authority may exclude a Tenderer if there is a conflict of interest which cannot be effectively remedied. The concept of a conflict of interest includes without limit:
- 2.13.1 any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure; and
- 2.13.2 any situation where a Tenderer submits more than one tender, for example , by submitting a tender in its own right and as part of a consortium or supply chain. Note a Tenderer cannot submit more than one tender per Lot in its own right.

Where there is any indication that a conflict of interest exists or may arise then it is the responsibility of the Tenderer to inform the Authority in writing and detailing the actual or potential conflict in a separate Appendix and their proposed action to address this. Please note that participation in routine pre-market engagement carried out by the Authority should not represent a conflict of interest for a Tenderer.

- 2.14 Please note that throughout the procurement (including but not limited to prior to Framework Agreements award and prior to award of any Call-Off Contracts), the Authority reserves the right to review its previous ITT assessment of the successful Tenderer to take into account any change of circumstances relating to the Tenderer and reserves the right not to award the Framework Agreement or a Call-Off Contract as the case may be to a Tenderer in the event of any material change of circumstances affecting the previous ITT assessment of the Tenderer. For the avoidance of doubt this may be as a result of a notification by a Tenderer of a change in their standing or otherwise.
- 2.15 Subject to paragraph 6 below (Freedom of Information), the Authority will respect the confidentiality of each Tender and will not disclose any aspect of their submission to another Tenderer, except to the extent that the Authority reserves the right to inform all Tenderers in identical terms if an issue of general application to the Procurement Process emerges by way of clarification or otherwise.
- 2.16 Tenderers are deemed to understand fully the processes that the Authority is required to follow under relevant European and UK legislation, particularly in relation to the Regulations.
- 2.17 The procurement process will be structured according to the Open Procedure as defined by Regulation 27 of the Regulations.

3. GLOSSARY

- 3.1 The following definitions apply to each part of this ITT:

"Authority"	means the British Business Financial Services Limited (BBFSL)
"BIS"	Department for Business, Innovation and Skills
"BBB"	means the British Business Bank Plc
"Brandenburg Methodology"	Brandenburg State Aid decision (N 55/2008) and as further described in the IOGs

"Call Off Contract"	means a contract being a LPA and IMA awarded pursuant to the Framework Agreement for the relevant Lot and in accordance with the rules of the Mini Competition
"Confidential Information Form"	means the form at Schedule 9
"DCLG"	Department for Communities and Local Government
"De Minimis Regulation"	de minimis aid block exemption regulation (EU Regulation 1407/2013)
"Form of Tender"	means the form at Schedule 7
"Framework" or "Framework Agreement"	means the framework agreement at Schedule 6 for the relevant Lot
"EIB"	means the European Investment Bank
"EIR"	means the Environmental Information Regulations 2004 (as amended from time to time)
"ERDF"	means the European Regional Development Fund
"Exclusion Tests"	means the tests set out at sections 2, 3 and 4 of Part 2 of the Qualification Response in Schedule 1
"FOIA"	means the Freedom of Information Act 2000 (as amended from time to time)
"Fund"	a fund established by the Authority or Other Contracting Authority in relation to which such authority wishes to procure (and enter into a Call-Off Contract with) a fund manager under a Framework Agreement. For the avoidance of doubt a Fund may include a Fund of Funds (as reflected in the case with NPIF)
"Funders"	any investor in a Fund including ERDF, DCLG, EIB, and BBFL (as lender)
"Fund Manager"	a fund manager who is awarded a Call Off Contract
"GPS"	the General Partner's Share as defined in the LPA
"GBER"	General Block Exemption Regulation 651/2014
"IMA/FMA"	Fund Management Agreement in the form of the draft document of that title attached at Schedule 6
"Interview"	a clarification and validation interview as set out in paragraphs 9.9 to 9.12 of this ITT
"IOGs"	the Investment Operational Guidelines as defined in the LPA
"ITT"	means this Invitation to Tender as amended from time to time

"Legacy Funding"	means the legacy returns generated from single programme or ERDF investments into previous financial instruments
"LEPs"	means Local Enterprise Partnerships
"LPA"	the Limited Partnership Agreement in the form of the draft document attached of that title at Schedule 6
"Evaluation Criteria"	means the evaluation criteria at Schedules 2,3 and 4 used to evaluate Tenders for each and any of Lot 1 Lot 2 and Lot 3
"Lot 1 - Equity"	means the Equity Fund described in Schedule 4
"Lot 2 – Debt"	means the Debt Fund described in Schedule 4
"Lot 3 – Microfinance"	means the Microfinance Fund described in Schedule 4
"MEOP"	means the Market Economy Operator Principle
"Mini Competition"	means the procedure to be followed by the Authority to award a Call Off Contract as set out in the Framework Agreement
"Minimum Requirements"	mean the minimum requirements set out at sections 5, 6 and 7 of Part 2 of the Qualification Response in Schedule 1
"NPIF Area"	means the "Region" as defined in the LPA
"NPIF"	means the Northern Powerhouse Investment Fund
"Other Contracting Authority"	means any of British Business Bank plc, any members of its group (within the meaning of the Companies Act 2006) NPIL, BIS and any entity owned or controlled by BIS
"Procurement Process"	means the procedure followed by the Authority to award the Framework Agreement in accordance with Regulation 27 of the Regulations
"Qualification Response"	means a Tenderer's response to the grounds for exclusion and minimum thresholds set out at Schedule 1
"Qualitative Response"	means a Tenderer's response to the questions set out at Schedule 2
"Quantitative Response"	means a Tenderer's response to the pricing schedule set out at Schedule 3
"RAO"	Financial Services and Markets Act 2000 (Regulated Activities) Order 2001
"Reference Rate Communication"	Commission Communication on Reference Rates (OJ C 14, 19.1.2008, p. 6–9)
"Regulations"	means the Public Contracts Regulations 2015 (as

	amended from time to time)
"Relevant Contracting Authority"	means the Authority and/or Other Contracting Authority as the case may be
"Return Date"	means the deadline for Tenders specified by the Authority
"Services"	means the services to be provided by a Fund Manager pursuant to a Call Off Contract
"SME"	as described in Article 2(2) and Annex 1 of GBER ¹
"Target"	any target output which is set out in a Call-Off Contract which the relevant fund manager appointed to that Call-Off Contract will be required to meet;
"Tender"	means a tender submitted by a Tenderer in accordance with terms of this ITT
"Tenderer" "You" or "Your"	means the relevant legal person (and for the avoidance of doubt includes consortium Tenderers) completing these questions i.e. the legal entity seeking to be awarded a Framework Agreement. The "Tenderer" is intended to cover any economic operator (as defined by the Regulations) and could be a registered company; limited liability partnership; special purpose vehicle; or other form of legal entity
"Tenderer's Clarification Questions"	means a question asked by a Tenderer in accordance with paragraph 11 of this ITT
"Working Day"	means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London

3.2 In this ITT unless the context otherwise requires:

- 3.2.1 the masculine includes the feminine and the neuter;
- 3.2.2 the singular includes the plural and vice versa;
- 3.2.3 the words "other", "include", "includes", "including" "for example", "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation"; and
- 3.2.4 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended from time to time.

3.3 The headings and contents table in this ITT are for convenience only and do not affect their interpretation.

¹Where the State aid rationale for an investment is other than under the GBER, the definition of SME set out in Annex I to the GBER still applies (but none of the other provisions of the GBER would apply) . See paragraph 4.25 for a description of the different types of State aid rationale.

3.4 If there is a conflict or inconsistency between any clause of this ITT and any schedule to this ITT, the clause prevails. For this purpose an omission (whether deliberate or inadvertent) is not, by itself, to be construed as giving rise to a conflict or inconsistency.

4. BACKGROUND

4.1 **BBB is the United Kingdom's** government-owned economic development bank that makes finance markets for smaller businesses work more effectively, allowing those businesses to prosper, grow and build UK economic activity. The BBB group manages and invests in access to finance programmes for smaller businesses within a single commercially-minded institution. The Authority is a wholly owned subsidiary of BBB and its purpose is to manage certain schemes for BIS, including NPIF.

4.2 BBB uses economic evidence to design programmes that address market failures affecting smaller businesses across the economy, working to improve awareness of the finance options available. The funds in connection with which this procurement is being undertaken will build on **BBB's** current interventions in debt and equity markets, where it currently works in partnership with over 80 commercial intermediaries, lenders and investors to provide finance and offer guarantees. At the end of **BBB's** first year of operation it has delivered over £2.5 billion of support to over 44,000 SMEs. Additionally, more than 75% of **BBB's** finance is distributed through smaller lending and investment providers, increasing diversity in the market.

4.3 Neither BBB nor the Authority is a bank in a conventional sense and neither is authorised by the FCA or the PRA. BBB and its group companies do not finance businesses directly, but instead provide funds and guarantees to private sector partners, enabling them to finance smaller businesses (either through debt or equity).

Scope of Framework

4.4 The Authority is conducting this procurement to establish frameworks of fund managers for: -

4.4.1 Lot 1 – equity funds within the framework range value of £100m (one hundred million pounds) to £400m (four hundred million pounds) where an equity fund satisfies the Specification in Schedule 5 Part 1;

4.4.2 Lot 2 – debt funds within the framework range value of £100m (one hundred million pounds) to £400m (four hundred million pounds) where a debt fund satisfies the Specification in Schedule 5 Part 1; and

4.4.3 Lot 3 – microfinance funds within the framework range value of £20m (twenty million pounds) to £80m (eighty million pounds) where a microfinance fund satisfies the Specification in Schedule 5 Part 1.

4.5 As explained below at paragraph 3.18 onwards, it is anticipated that the first fund which will call off under the Framework Agreement by way of Mini-Competitions will be NPIF. However the scope of the Framework extends to other funds which may be identified during the period of the Framework in the NPIF Area (including funds currently or previously operating as well as any new funds that become available). The Authority is procuring the Framework for each Lot for its own benefit and for the benefit of the Other Contracting Authorities. Accordingly any of the Authority or the Other Contracting Authorities will be permitted to award contracts under each Lot in accordance with the terms of each Framework.

4.6 Whilst the core fund management services will be consistent between Funds falling within a particular Lot, there are likely to be different IOGs, Targets and monitoring/reporting requirements applicable to each Fund depending on the objectives of those Fund and the obligations imposed by the investors of those Funds. Those will be developed and set out in detail in any Mini Competition under the framework to enable Tenderers to bid more detailed and refined proposals for that particular Mini Competition. The Relevant Contracting Authority will require any person awarded a Call-Off Contract to comply with

all obligations imposed by the investors of the Fund to be managed and not to do anything which would put the Relevant Contracting Authority in breach of its obligations under any funding agreement (including but not limited to any grant agreement entered into with DCLG). To assist Tenderers the current template DCLG grant agreement in respect of which DCLG is consulting on with several applicants, including for NPIF and the FI working group, is attached at Schedule 11. The final version will be made available in due course and in any event ahead of a Mini Competition and may vary from the form at Schedule 11.

- 4.7 It is the intention of the Authority that Fund Managers should be incentivised under each Call-Off Contract to ensure alignment of interests and to achieve the Targets which are set for that Call-Off Contract. Alignment of interests will be achieved by means of, among other things, the proposed management fee structure. Tenderers' commitment to co-invest their own funds and to secure third party investor co-investment in the Funds they propose to manage and carried interest structures appropriate to the size and type of individual Fund being called off will be tested at Mini Competition. Note that the **Tenderer's methodology to achieve co-investment** of their own funds and third party investors will be tested as part of this ITT to procure frameworks. The Authority will view positively the Tenderer committing its own funds at Mini Competition and due weight will be given in the evaluation at that stage.
- 4.8 The Authority will ensure Fund Managers are incentivised to achieve the Targets, which are non-financial in nature, by means of retaining a portion of the management fee in escrow to be released on satisfaction of those Targets. Tenderers should note that a percentage GPS Retention against Targets (each as defined under the LPA) will be bid at Mini Competition but will be a minimum of 5%. The total amount of the GPS Retention will be broken down and allocated to each category of Target at Mini Competition, such as number of SMEs supported or number of jobs created. Where a category of Target is achieved, the amount of GPS Retention allocated to that Target category will be released.
- 4.9 When Tenderers are considering the opportunity under this procurement and providing their tender responses they must recognise and reflect that;
- 4.9.1 the exact composition and focus of individual Funds will only be ascertained at the time of Mini-Competitions being commenced under the Framework;
- 4.9.2 the Call-Off Contracts to be made under this Framework will not be limited to the NPIF;
- 4.9.3 **funders'** requirements for different Funds may vary (for example, in relation to reporting requirements) which may be reflected in some necessary deviations in the terms of the Call-Off Contracts in addition to difference in the IOGs, Targets and monitoring/reporting requirements depending on the objectives of those Funds and the specific requirements of the investors into those Funds (see further paragraph 3.10 below);
- 4.9.4 the Services required in respect of some Funds may inter alia be limited or include:
- 4.9.4.1 the provision of services relating to realisation (e.g. where the Funds have already been invested and are being transferred to a fund manager under this Framework); or
- 4.9.4.2 the investment of surplus funds of a Fund which have not, due to retention, holding back or otherwise, been invested by previous fund managers. In that case it is expected that the services would also include realisation in respect of those and previously invested elements of the Fund;
- 4.9.5 the prospective values of individual Call-Off Contracts at their outset will depend on the value of the Fund (or any sub-fund thereof) for which the services are being required at that time and the requirements of relevant funders;

- 4.9.6 the retention of a portion of fees against satisfaction of Targets as explained above;
- 4.9.7 **the value of any Funds (and the Fund Manager’s consequential remuneration)** being managed under a Call-Off Contract may increase or decrease during the term of the Call-Off Contract as determined by the Relevant Contracting Authority as a result of:
- 4.9.7.1 the actions of the European Commission or the UK Government;
 - 4.9.7.2 the terms of the Call-Off Contracts in particular the conditions relating to the availability of financial support, the timing of drawdowns and duration of appointments, the performance of the Fund Manager and/or other Funds in connection with targets and relevant performance indicators, availability of funds and changes to level of demand for investment;
 - 4.9.7.3 any breach of the obligations of the Fund Manager under the documents constituting the Fund and appointing the Fund Manager to manage the Fund;
 - 4.9.7.4 the availability or otherwise of additional Funds;
 - 4.9.7.5 the availability or otherwise of financial support from the UK Government and other funders including but without limit (EIB, DCLG/ERDF and BBFL) that are or may be committed to the Fund;
- 4.10 **It is the Authority’s expectation that** in relation to any Services procured from time to time pursuant to a Framework, the terms of the Call-Off Contracts to be entered into will:
- 4.10.1 in relation to NPIF, be on the terms set out in this ITT (but see paragraph 3.23 as to further development of IOGs, Targets and monitoring/reporting requirements);
 - 4.10.2 in relation to other Funds be substantially on the same terms as those set out in this ITT (with adjustments being those required to accommodate specific funder requirements including IOGs, Targets and monitoring/reporting requirements).
- 4.11 Other Funds may, as and when they become available:
- 4.11.1 be the subject of one or more separate Mini-Competitions under the Framework through the Authority or Other Contracting Authority undertaking a mini-competition in respect of the services required; or
 - 4.11.2 be placed by the relevant Authority or Other Contracting Authority directly with a fund manager pursuant to a Call-Off Contract existing at that time, if the services required could be accommodated within the scope of and in accordance with the terms of that Call-Off Contract.
- 4.12 The Authority or Other Contracting Authorities when allocating funds between Lots and between Call-Off Contracts may hold-back a proportion of the funding available for investment under the Funds for later allocation to be distributed to one or more of the Call-Off Contracts then existing depending on performance and demand and to reflect changes in circumstances (such as changes in the economy).
- 4.13 Accordingly, the value of funds to be managed under a Call-Off Contract will not be limited to the initial value committed but may include additional funds which the Authority or Other Contracting Authority may allocate to the fund manager in accordance with the terms of that Call-Off Contract.

- 4.14 Nevertheless, Tenderers will need to make their own assessment of the prospects for the various scenarios outlined throughout paragraph 3 and elsewhere in this ITT and the impact that this may have on the fee rates they would want to recover. Tenderers must take account of the inability in any Mini-Competition or Call-Off Contract to increase their fee rates above those submitted for appointment to the Framework when bidding. For the avoidance of doubt a Tenderer must not include assumptions or otherwise qualify its tender to reflect any assessments or otherwise which it makes. If it does submit a tender in breach of this paragraph 3.14 then the tender may not be considered.
- 4.15 Tenderers should take particular note of the information provided in Schedule 5 when responding to this ITT.
- 4.16 The duration of Call-Off Contracts pursuant to the Framework will generally be:
- 4.16.1 5 years for the investment phase but with the option for the Authority or Other Contracting Authority (whose Mini-Competition it is) to extend the phase by period up to 2 years in overall length; and
- 4.16.2 5 years for the (Lot 1- Equity) and 3 years (Lot 2 Debt and Lot 3 Microfinance) realisation phase but with the option for the Authority or Other Contracting Authority (whose Mini-Competition it is) to extend the phase by period up to 2 years in overall length.
- 4.17 The option to extend the period of either phase may be exercised at any time during a Call-Off Contract to reflect the scope of the Call-Off Contract and give effect to the principles set out in this paragraph 3 and this ITT.

NPIF

- 4.18 At the time of issuing the contract notice the Authority is in discussion with relevant funders to establish the NPIF of over £400m which was announced by the Chancellor in November 2015:

“the government has agreed with the British Business Bank (BBB) and LEPs in the North West, Yorkshire and the Humber and Tees Valley to create a NPIF of over £400 million to invest in smaller businesses, subject to European funding arrangements”

- 4.19 NPIF is therefore expected to be a first fund within the scope of the Framework. NPIL is in discussions with the following funders who are looking to provide the following amount of funding subject to finalising legal agreements:

- 4.19.1 DCLG - ERDF of £140m;
- 4.19.2 DCLG and BIS - Legacy Funding of £26m
- 4.19.3 EIB - loan of £184million
- 4.19.4 British Business Finance loan of £50m

Together with Legacy Funding (the amount of which is dependent on factors outside of **the Authority’s control**) **this will** create an NPIF of over £400m to invest in SMEs across the NPIF Area.

- 4.20 NPIL, which is advised by the Authority, will be the investor in individual Funds. NPIL will invest in Funds managed by Fund Managers to deliver micro-finance, debt and equity funding to SMEs in the North West, Yorkshire and the Humber and the Tees Valley areas of Northern England.
- 4.21 NPIF has established a Strategic Oversight Board with the LEPs to create the appropriate governance framework. The Strategic Oversight Board includes representatives from five LEPs as well as representatives from BIS, DCLG, HM Treasury, the EIB as well as BBB. NPIF will also have two Regional Advisory Boards for the North West and Yorkshire and

the Humber and Tees Valley. The Regional Advisory Boards will review fund manager performance at a local level and will make recommendations to the Authority and the Strategic Oversight Board.

4.22 Policy Objectives

4.22.1 The policy objectives of the Authority in establishing NPIF are:

4.22.1.1 To create a NPIF of over £400m bringing ERDF / EIB / Legacy Funding into a single Fund of Funds structure.

4.22.1.2 To deliver investment strategies through NPIF with underlying funds procured to provide equity, debt and microfinance funds.

4.22.1.3 Create sustainable economic activity across the NPIF Area through supporting sustainable new and growing SMEs

4.22.1.4 Build a substantial legacy from a successful investment and lending programme

4.22.1.5 Have a demonstrable presence across the NPIF Area linking up the wider finance community to increase reach and create an impact beyond the NPIF

4.22.2 NPIF will be delivered across the 10 LEP areas within the NPIF Area these being Tees Valley Unlimited, Liverpool City region, Lancashire, Greater Manchester, Cumbria, Cheshire and Warrington, York, North Yorkshire and East Riding, Sheffield City Region, Leeds City Region and the Humber. NPIF will via sub funds established through Mini Competitions invest in eligible SMEs across those LEP areas in amounts ranging from £25,000 to £2m (or higher in accordance with the IOGs).

4.22.3 It is proposed that NPIF will begin making investment commitments to product sub-funds from September 2016. The product sub-funds will have an overall fund life of 10 years extendable by the Relevant Contracting Authority by up to 4 years. This will comprise an initial investment period of 5 years and a 5 year (Lot1 Equity) and 3 year (Lot 2 Debt and Lot 3 Microfinance) portfolio realisation period (each period being extendable by up to 2 years).

4.23 Funder Requirements and Targets

4.23.1 Notwithstanding that the establishment of NPIF is well advanced, whilst the Framework is being procured the funders will continue to develop and refine their requirements including IOGs and Targets relating to each Lot and which will need to be reflected in any Call-Of Contract made in respect of NPIF under that Lot. For other Funds these may change as explained in clauses 3.6 and 3.9.3.

4.23.2 Initial indications have been set out in Schedule 5 Part 3 but Tenderers must recognise in their submissions for this Framework that the information provided is a guide to the developing requirements and only represents a high level view at this stage.

4.23.3 Bidders will have the opportunity to take into account the specific details of the requirements at the stage of any Mini-Competition but they are reminded of the inability (already mentioned in paragraph 3.14) to increase fee rates above those submitted for appointment to the Framework in respect of any such Mini-Competition.

4.24 Fund Types Already Identified

- 4.24.1 An ex ante assessment for the NPIF Area has identified three common key themes:
- 4.24.1.1 Micro-finance: provision of small business loans (from £25,000 - £100,000)
 - 4.24.1.2 Debt: provision of business loans (from £100,000 - £750,000)
 - 4.24.1.3 Equity: Early stage and later stage provision of equity and quasi-equity funding (from £50,000 - £2,000,000)

The upper and lower limits of investments may be exceeded in exceptional circumstances as set out in the IOGs.

4.25 State aid compliance

All investments and loans made under a Call Off Contract into SMEs must be state aid compliant on the following basis. In each case the Tenderer is required to review the full provisions for State aid compliance set out in the IOGs for the relevant lot before submitting its Tender.

4.25.1 Lot 1 – Equity

It is the responsibility of the Fund Manager to ensure that each equity and quasi –equity investment and instrument applied under Lot 1 - Equity is fully compliant with the requirements of Article 21 (and related provisions) of the GBER

4.25.2 Lot 2 – Debt

It is the responsibility of the Fund Manager to ensure that each debt loan made under Lot 2 - Debt is State aid compliant – either by (1) operating under the MEOP by lending pari passu with the private lender, or by applying as a minimum the Reference Rate Communication for senior debt or the Brandenburg Methodology for subordinated debt; or (2) under Article 21 (and related provisions) of the GBER. If the Fund Manager does not have robust evidence to lend under MEOP or the Reference Rate Communication or Brandenburg Methodology then it must apply the GBER.

4.25.3 Lot 3 – Microfinance

It is the responsibility of the Fund Manager to ensure that each microfinance loan under Lot 3 – Microfinance is State aid compliant – either by (1) operating under MEOP by lending pari passu with the private lender, or by applying as a minimum the Reference Rate Communication for senior debt or the Brandenburg Methodology for subordinated debt; or (2) under Article 21 (and related provisions) the GBER; or under the De Minimis Regulation. If the Fund Manager does not have robust evidence to lend under MEOP or the Reference Rate Communication or Brandenburg Methodology then it must apply either the GBER or the De Minimis Regulation.

4.26 Scope of Market Engagement

Market Engagement with LEPs and market providers prior to this procurement has helped to identify what is deliverable and shaped the proposed procurement process and scope and terms of the Framework Agreement.

5. PROCUREMENT TIMETABLE

- 5.1 The Authority intends to establish the Framework Agreements by August 2016 to enable the first Mini-Competition for NPIF to be made swiftly with the first money capable of being invested in September 2016. Whilst the procurement relates to 3 Lots it is

recognised that the initial Mini-Competitions will be for NPIF and may not be for all the 3 Lots nor cover the full geographical area.

5.2 The proposed timetable below is provided by way of guidance only. The Authority reserves the right to amend this timetable at its absolute discretion at any time during the tendering process.

5.3 The Authority will hold two bidder days on 12 May 2016 in Manchester at Manchester Conference Centre, Sackville Street, Manchester, M1 3BB and 13 May 2016 in Leeds at Eversheds LLP, Bridgewater Place, Water Lane, Leeds, LS11 5DR between [] and [] for the purposes of presenting the opportunity under this ITT to Tenderers. The presentation will be made available to all Tenderers after the first bidder day via the Delta e-sourcing portal. If Tenderers ask questions then these and any answers given will also be made available after each bidder day via the Delta e-sourcing portal. Tenderers are permitted to send up to two representatives to attend a bidder day and may attend only one bidder day.

5.4 A link for registering for the bidders days is below:

<http://www.eventbrite.co.uk/o/british-business-bank-7774278659>

KEY EVENT	DATE
Issue of ITT	29 April 2016
Bidder Day Manchester	12 May 2016
Bidder Day Leeds	13 May 2016
Closing Date and time for Clarification Questions	1st June 2016
Final date for issue of Clarification responses	3 rd June 2016
Closing Date and time for Tenders	13:00 10 th June 2016
Evaluation of Tenders	10 th June to 28 th July
Clarification and Verification Interviews	w/c 4 th July
Notification of Results of Evaluation	28 July 2016
Standstill Period	28 July 2016 – 8 August 2016
Expected date of award of the Framework Agreements	9 August 2016
Expected date of mini competitions	15 August 2016
Expected date funds will be made available	16 September 2016

6. CONDITIONS OF TENDER

6.1 Tenders must be completed in the English language or a full English translation provided at no cost to the Authority.

6.2 Each Tender shall be clearly marked to identify for which Lot(s) the Tender is being submitted.

- 6.3 Tenderers must comply with the instructions in Schedule 1 Part 1 in respect of submitting Tenders in respect of more than one Lot.
- 6.4 Only one Tender is permitted from each Tenderer per Lot. In the event that more than one is submitted by a Tenderer then save as provided in paragraph 5.5 the one with the latest time of submission will be evaluated and the other(s) disregarded.
- 6.5 Paragraph 5.4 shall not prevent nor apply to the occurrence of a Tenderer submitting a Tender on its own and being part of a consortium or part of a supply chain in relation to the submission of a separate Tender. However, in such circumstances the Tenderer must comply with the requirements of paragraph 3 of Schedule 1 Part 2 (relating to the potential for conflicts of interest, provision of information to BBFSL and the mitigation of the risks of such conflicts).
- 6.6 Each Tenderer may submit a Tender for all or any Lots.
- 6.7 Each Tender (including prices) should remain valid for a minimum period of 6 months.
- 6.8 Each Tender should not be qualified in any way.
- 6.9 Any signatures must be made by a person who is authorised to commit the Tenderer to the Framework Agreement.
- 6.10 Your full registered business/name and main office address must also be provided on all documents.
- 6.11 All prices are in Pounds Sterling only.
7. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION STATEMENT
- 7.1 The Authority is subject to the FOIA and the EIR.
- 7.2 **As part of the Authority's duties under the** FOIA or EIR, it may be required to disclose information concerning the procurement process or the Framework Agreement to anyone who makes a request.
- 7.3 If the Tenderer considers that any of the information provided in their Tender is commercially sensitive (meaning it could reasonably cause prejudice to the Tenderer if disclosed to a third party) then it should be clearly marked as "Not for disclosure to third parties" together with valid reasons in support of the information as being exempt from disclosure under the FOIA or EIR. This must be done by completion of the Confidential Information Form at Schedule 9.
- 7.4 The Authority will endeavour to consult with the Tenderer and have regard to comments and any objections before it releases any information to a third party under the FOIA or EIR. However the Authority shall be entitled to determine in its absolute discretion whether any information is exempt from the FOIA or EIR, or is to be disclosed in response to a request of information. The Authority must make its decision on disclosure in accordance with the provisions of the FOIA or EIR and can only withhold information if it is covered by an exemption from disclosure under the FOIA or EIR.
8. FRAMEWORK AGREEMENT
- 8.1 Any resulting Framework Agreement will consist of the documents (as set out in Schedule 6) and completed with the information bid by successful Tenderers at Schedules 1, 2 and 3 and will be subject to English law.
- 8.2 This procurement complies with the open procedure under EU procurement rules and the Authority cannot enter into any negotiations on the Tender or the Framework Agreement.
- 8.3 Any award will be conditional on the Framework Agreements being approved in accordance with the Authority's internal procedures and the Authority being generally able

to proceed. The Authority will allow the statutory standstill period of a minimum of 10 calendar days to elapse before (subject to there being no challenges) sending confirmation of the award to the successful Tenderers.

9. INFORMATION ABOUT TENDER SUBMISSIONS

9.1 The Authority does not undertake to accept the lowest or any Tender and reserves the right to accept the whole or any part of any Tender submitted on a per Lot basis.

9.2 It is the sole responsibility of each Tenderer to ensure its ITT response is fully complete, complies with the requirements of this ITT and is received by the Authority in accordance with the submission requirements. The Authority reserves the right to reject any ITT responses that are incomplete, do not comply with the requirements of this ITT and/or are not submitted in accordance with the instructions in this ITT, and, for the avoidance of doubt, reserves the right to exclude late submissions of the ITT response.

9.3 Please ensure that all questions are completed in full, and in the format requested. Failure to do so may result in your submission being disqualified. If the question does not apply to you please state clearly 'N/A'.

9.4 Each Tender will be checked for compliance with all requirements of the ITT. Tenders which are not complete or which are non-compliant with the ITT may be rejected and accordingly not evaluated.

9.5 Please note that given the nature of the Framework Agreements including the make-up of NPIF and other funds that may utilise the Framework and the stringent requirements regarding European Structural Funds and State aid, Suppliers will be required to meet minimum financial and technical selection criteria as required in the Qualification Response. Any Tenderer which fails the Exclusion Tests or does not meet the Minimum Requirements will not be evaluated and will be rejected.

9.6 All Tenders which pass the assessments at paragraphs 8.4 and 8.5 will then be evaluated in accordance with the relevant Evaluation Criteria.

9.7 Where the pricing of a Tender is abnormally low the Authority reserve the right to reject the Tender in accordance with the requirements for further investigation under Regulation 69 of the Regulations.

9.8 During the evaluation period, the Authority reserves the right to seek clarification in writing from the Tenderers, to assist it in its consideration of their Tenders.

10. TENDER SUBMISSION CONTENTS, TENDER EVALUATION, AWARD CRITERIA

10.1 Tenders must contain a full response to all of the questions in Schedules 1, 2 and 3 of this ITT for each Lot which they are applying for. Any part of a Tender response that exceeds any specified pages or word limits will be disregarded when evaluating submissions.

10.2 Once all the questions have been appropriately answered and referenced the Tenderer must then complete the Form of Tender per Lot. Please note the instructions below in relation to completion of the Form of Tender by Tenderers relying on sub-contractors and consortia members in order to complete this ITT. The Form of Tender must be signed by a Director or authorised officer of the relevant Tenderer. Where the use of additional appendices in response to the questions is expressly permitted under the provisions of this ITT, these should be numbered clearly. A template for providing additional information is provided at Appendix A. Please ensure all supporting information is clearly marked with the specific question it relates to.

10.3 Please do not include general marketing or promotional material, either as answers to any of the questions or for any other reason. Such material will not be used in the assessment of the ITT.

- 10.4 The evaluation criteria set out in Schedules 2, 3 and 4 will be used to determine the most economically advantageous tenders per Lot in accordance with the evaluation methodology (also set out in Schedule 3 and 4).
- 10.5 For each Lot, Tenderers will be ranked in numerical order by calculating the total score using the weighted total for Qualitative Assessment and the weighted total for Quantitative Assessment to give a score out of 100%.
- 10.6 Tenderers will be invited to attend an Interview and adjustments may be made to the score obtained at paragraph 9.5. See paragraphs 9.9 and 9.12 below for further information.
- 10.7 The Authority will select five scoring Tenderers in each Lot for an award of a Framework Agreement, subject to there being sufficient numbers of Tenderers that pass the minimum requirements of this ITT.

Clarification Questions

- 10.8 The Authority may raise clarification questions at any stage in evaluation and up to award of the Framework Agreements, via Message Centre on the Delta e-sourcing portal. This is not an opportunity for Tenderers to expand on their submissions but to provide clarification to **the Authority's** queries. Clarification responses will be used for review purposes.

Clarification and Validation Interview

- 10.9 Each Tenderer whose Tender is fully evaluated in accordance with the above process and whose score is consolidated under paragraph 9.5 will be invited to an Interview with the Authority.
- 10.10 The Authority will issue an agenda before **the Tenderer's Interview**.
- 10.11 The Interview will be documented by way of note taking.
- 10.12 The Interview will be used to clarify points that are relevant to the Tender and to verify information contained in the written Tender. Scores may be adjusted downwards only by applying the evaluation criteria and weighting as explained in Schedule 4. A written record will be kept of the reasons for any such adjustment

11. CALL OFF PROCESS

- 11.1 Contracts may be called-off from the Framework Agreement at any point during the term of the Framework Agreement. The Authority will use Mini Competitions in order to determine the Tenderer to whom the Call Off Contract will be awarded.

12. **TENDERERS' CLARIFICATION QUESTIONS**

- 12.1 If, at any point during this Procurement Process, a Tenderer has a query about any aspect of the Procurement Process or documentation and/or require any further information or assistance, Tenderers should contact the Authority through Message Centre on the Delta e-sourcing portal **only. It is the Tenderer's responsibility to ask for clarification on any point that it does not understand or considers is unclear in the Procurement Process.** The deadline for last receipt of a tender clarification is set out in paragraph 4 above.
- 12.2 Tenderers should note that during the Procurement Process they, or their advisors, should not contact the Authority or any of its employees or advisors or any third parties connected to the Authority (but not so as to prevent or restrict any business as usual communications unconnected with NPIF) other than through Message Centre on the Delta e-sourcing portal as instructed above. Any information provided in response

where it is not confidential will also be provided to the other Tenderers as set out above. The Authority will respond via the Message Centre on the Delta e-sourcing portal unless an alternative response is considered to be appropriate by the Authority in the circumstances. Tenderers are reminded that it is their sole responsibility to ensure that their contact details Delta are kept up to date Delta e-sourcing portal.

- 12.3 If a Tenderer considers that its request for clarification contains information that is confidential to the Tenderer and that the request or the answer should not be disclosed to other Tenderers, this must be made clear at the time of asking the clarification request. The Authority will determine if it accepts the confidential nature and if it does not it will ask the Tenderer if it wishes to withdraw the request or if it agrees to the request being treated as non-confidential and accordingly the request and response being shared with all Tenderers.

SCHEDULE 1

Qualification Response

Part 1: Instructions

1. ESPD AND VERIFICATION OF INFORMATION PROVIDED

- 1.1 The Authority has permitted Tenderers to self-certify certain information, including that there are no mandatory and discretionary grounds for excluding their organisation.
- 1.2 However, the Authority reserves the right to request information at any time throughout the procurement process from any Tenderer in order to verify any of the information provided in this ITT response (or as subsequently updated by the Tenderer) and will at the least require evidence to be provided before award of any Framework Agreement where indicated in this ITT.
- 1.3 Tenderers are permitted to respond to this ITT by submitting their European Single Procurement Document (ESPD). Tenderers should ensure that the information contained in Schedule 1 and to the extent that qualification questions in this Schedule 1 require additional information to that contained within their ESPD, must provide the additional information as instructed and comprised in this Schedule 1.
- 1.4 If Tenderers are responding to the qualification questions set out in this Schedule 1 with an ESPD it is similarly permitted to include an ESPD for each entity in respect of which the Tenderer is required to submit responses for that entity in accordance with this Schedule 1 (see provisions in paragraphs 2 and 3 below and in the introductions to the relevant question tables).

LOTS

- 1.5 In submitting their responses to this ITT, Tenderers must clearly identify in relation to which Lot the response is being provided.
- 1.6 **The Tenderer's responses to** Schedule 2 Part 2 (Technical Assessment Questions) (the Qualitative Response) and Schedule 3 Part 3 (Pricing Schedule Submission) (the Quantitative Response) shall each be set out and identified as distinct sections of the Tender.
- 1.7 Where a Tenderer intends to submit a Tender for more than one Lot, the Tender shall:
- 1.7.1 complete all of its responses to Schedule 1 Part 2 sections 1-5 inclusive and section 7 (which shall be applicable for all Lots bid);
- 1.7.2 **complete all of its responses to Schedule 1 Part 1 section 6 (the "Section 6 Response") separately in respect of each Lot bid, marking the Section 6 Response as to which Lot the Section 6 Response applies for the purpose of the Tender;**
- 1.7.3 the Qualitative Response and the Quantitative Response shall be completed separately in respect of each Lot being bid, clearly identifying and marking each Qualitative Response and Quantitative Response as to which Lot it applies for the purpose of the Tender.

2. SUB-CONTRACTING ARRANGEMENTS

2.1 Where the Tenderer proposes to use one or more sub-contractors to deliver some or all of the contract requirements, a separate Appendix should be used to provide details of the proposed bidding model that includes members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for.

2.2 If a Tenderer is seeking to rely on the capacity of a proposed sub-contractor in order to complete this ITT, then that sub-contractor must also complete the Form of Tender (see Schedule 7) and successfully pass the following sections of the Qualification Response at part 2 of this Schedule per Lot:

- Section 2;
- Section 3;
- Section 4;
- Section 5;
- Section 6 (to the extent the Tenderer is relying upon that sub-contractor to provide the relevant service); and
- Section 7.

2.3 The Authority will rely on the information provided by Tenderers including the information concerning the members and the structure of the proposed supply chain. If, at any time during the process or the Framework Agreement, there are any changes or proposed changes to the membership or structure of the supply chain as previously set out in the ITT response, the Tenderer must immediately advise the Authority in writing providing full details of the relevant change. Upon receipt of such information, the Authority shall be entitled to revisit the selection of the Tenderer and may de-select the Tenderer, based on an assessment of the new information and/or change of circumstances and/or may terminate or suspend the Framework Agreement in accordance with the terms set out in the Framework Agreement.

2.4 If a Tenderer is including a subcontractor but not seeking to rely on the capacity of the subcontractor in completing this ITT then details of the subcontractor should be provided in section 1 and the subcontractor should complete sections 2,3 and 4.

3. CONSORTIA ARRANGEMENTS

3.1 If the Tenderer completing this ITT is doing so as part of a proposed consortium, the following information must be provided;

3.1.1 names of all consortium members and an organisation chart clearly showing the proposed structure of the consortium as an Appendix, the relationship between the members and the individual role of each consortium member; and

3.1.2 the lead member of the consortium who will be contractually responsible for delivery of the contract (if a separate legal entity is not being created); and

3.1.3 if the consortium is not proposing to form a legal entity, full details of proposed contracting and delivery arrangements must be provided within a separate Appendix; or

3.1.4 if the consortium is proposing to create a special purpose vehicle (SPV) in order to contract with the Authority, the details of the proposed legal form of the SPV, the actual or proposed percentage shareholding of the constituent members within the proposed SPV must be set out.

3.2 Please note that the Authority reserves the right to require the consortium to assume a specific legal form if it is successful in this Procurement Process as a condition of, and prior to, contract award.

3.3 Each member of the consortium must complete section 1 of the Qualification Response at part 2 of this Schedule per Lot and the Form of Tender (Schedule 7) and also successfully pass the following sections of the Qualification Response at part 2 of this Schedule per Lot:

- Section 2;
- Section 3;
- Section 4;
- Section 5;
- Section 6 (to the extent the Tenderer is relying upon that consortium member to provide the relevant service); and
- Section 7.

3.4 A single response should be provided in response to Section 6 on behalf of the entire consortium.

3.5 The Authority will rely on the information provided by the Tenderers including the information concerning consortium members and the structure of the consortium. If, at any time during the Procurement Process or the Framework Agreement, there are any changes or proposed changes to the membership or structure of the consortium as previously set out in the ITT response, the lead organisation for the consortium must immediately advise the Authority in writing providing full details of the relevant change. Upon receipt of such information, the Authority shall be entitled to revisit the selection of the consortium and may de-select the consortium based on an assessment of the new information and/or change of circumstances and/or may terminate or suspend the Framework Agreement in accordance with the terms set out in the Framework Agreement.

4. CONFIDENTIALITY

4.1 When providing details of contracts in answering section 6.1 of the Qualification Response at part 2 of this Schedule (Technical and Professional Ability), Tenderers agree to waive any contractual or other confidentiality rights and obligations associated with these contracts.

4.2 The Authority reserves the right to contact the named customer contact in section 6.1 of the Qualification Response at part 2 of this Schedule regarding the contracts referred to in **the Tenderer's response. The named customer contact does not** owe the Authority any duty of care or have any legal liability, except for any deceitful or maliciously false statements of fact. The Authority confirms that (subject to the provisions of FOIA and the EIR) it will keep confidential and will not disclose to any third parties any information obtained from a named customer contact, other than to the Crown Commercial Service and/or contracting authorities as defined by the Regulations.

5. QUALIFICATION RESPONSE

5.1 The assessment criteria for the grounds for exclusion and minimum threshold responses are:

Criteria	Section	Marks
Organisation Information	1(1.1 – 1.4)	Information Only

Grounds for mandatory exclusion	2(2.1 - 2.2)	Pass or Fail
Grounds for discretionary exclusion - Part 1	3 (3.1)	Pass or Fail
Grounds for discretionary exclusion - Part 2	4 (4.1 - 4.2)	Pass or Fail
Economic & Financial Standing	5 (5.1 - 5.4)	Pass or Fail
Technical & Professional Ability	6 (6.1-6.4)	Pass or Fail
Insurance	7.1	Pass or Fail
Form of Tender	Schedule 6	Pass or Fail

5.2 All Tenderers who successfully pass an initial compliance check, pass all Pass/Fail elements and meet the Minimum Thresholds will have their Qualitative and Quantitative Responses as Schedules 2 and 3 evaluated.

Part 2: Qualification Response Submission

1. TENDERER INFORMATION

<p><i>Information to Tenderers:</i></p> <p>Assessment: This section is for information purposes only. However, Tenderers may be excluded from the Procurement Process if they do not fully complete this section in accordance with its requirements or in the event that a Tenderer provides insufficient or false information.</p>
--

1.1 Tenderer details

	Answer		
Full name of the Tenderer completing the ITT			
Registered company address			
Registered company number			
Registered charity number			
Registered VAT number			
Name of immediate parent company			
Name of ultimate parent company			
Please mark "X" in the relevant box to indicate your trading status	<table border="1"> <tr> <td>i) a public limited company</td> <td><input type="checkbox"/> Yes</td> </tr> </table>	i) a public limited company	<input type="checkbox"/> Yes
i) a public limited company	<input type="checkbox"/> Yes		

	ii) a limited company	<input type="checkbox"/> Yes
	iii) a limited liability partnership	<input type="checkbox"/> Yes
	iv) other partnership	<input type="checkbox"/> Yes
	v) sole trader	<input type="checkbox"/> Yes
	vi) other (please specify)	<input type="checkbox"/> Yes
Please mark "X" in the relevant boxes to indicate whether any of the following classifications apply to you	i) Voluntary, Community and Social Enterprise (VCSE)	<input type="checkbox"/> Yes
	ii) Small or Medium Enterprise (SME) ²	<input type="checkbox"/> Yes
	iii) Sheltered workshop	<input type="checkbox"/> Yes
	iv) Public service mutual	<input type="checkbox"/> Yes

1.2 Bidding model

Please mark "X" in the relevant box to indicate whether you are:		
1.2.1	Bidding as a Prime Contractor and will deliver 100% of the key contract deliverables yourself	<input type="checkbox"/> Yes
1.2.2	Bidding as a Prime Contractor and will use third parties to deliver some of the services If yes, please provide details of your proposed bidding model that includes members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for.	<input type="checkbox"/> Yes
1.2.3	Bidding as Prime Contractor but will operate as a Managing Agent and will use third parties to deliver all of the services If yes, please provide details of your proposed bidding model that includes members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-	<input type="checkbox"/> Yes

² See EU definition of SME: <http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/>

contractor will be responsible for.	
<p>1.2.4 Bidding as a consortium but not proposing to create a new legal entity.</p> <p>If yes, please include details of your consortium in the next column and use a separate Appendix to explain the alternative arrangements i.e. why a new legal entity is not being created.</p> <p>Please note that the Authority may require the consortium to assume a specific legal form if awarded the contract, to the extent that it is necessary for the satisfactory performance of the contract.</p>	<input type="checkbox"/> Yes Consortium members Lead member
<p>1.2.5 Bidding as a consortium and intend to create a Special Purpose Vehicle (SPV).</p> <p>If yes, please include details of your consortium, current lead member and intended SPV in the next column and provide full details of the bidding model using a separate Appendix.</p>	<input type="checkbox"/> Yes Consortium members Current lead member Name of Special Purpose Vehicle

1.3 Contact details

Information to Tenderers:

This section (1.3) is to be completed by the Tenderer or lead member of a Consortium only.

The Authority will not be responsible for contacting the Tenderer through any other route than the nominated contact. The Tenderer must therefore notify the Authority of any changes relating to their nominated contact promptly.

Tenderer contact details for enquiries about this ITT	
Name	
Postal address	
Country	
Phone	
Mobile	
E-mail	

1.4 **Licensing and registration (please mark "X" in the relevant box)**

Information to Tenderers:

This section (1.4) is to be completed by the Tenderer including every member of a Consortium and any relevant sub-contractor that a Tenderer seeks to rely upon in its ITT response in respect

of any part of the Services to which licensing and/or registration requirements referred to below would apply.

1.4.1	<p>Registration with a professional body</p> <p>If applicable, is your business registered with the appropriate trade or professional register(s) in the EU member state where it is established (as set out in Annex XI of directive 2014/24/EU) under the conditions laid down by that member state).</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>If Yes, please provide the registration number in this box.</p>
1.4.2	<p>Is it a legal requirement in the state where you are established for you to be licensed or a member of a relevant organisation in order to provide the requirement in this procurement?</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>If Yes, please provide additional details within this box of what is required and confirmation that you have complied with this.</p>

2. GROUNDS FOR MANDATORY EXCLUSION

Information to Tenderers:

For consortium Tenderers, Section 2 must be completed by every member of the consortium.

If the Tenderer is relying on the capacity of a proposed sub-contractor in order to complete this ITT then Section 2 must be completed by the Tenderer and that relevant sub-contractor.

If the Tenderer otherwise is including a subcontractor in its supply chain then the subcontractor must also complete this Section 2.

You will be excluded from the procurement process if there is evidence of convictions relating to specific criminal offences including, but not limited to, bribery, corruption, conspiracy, terrorism, fraud and money laundering, or if you have been the subject of a binding legal decision which found a breach of legal obligations to pay tax or social security obligations (except where this is disproportionate for example, only minor amounts were involved or on an exceptional basis, for overriding reasons relating to the public interest).

If you have answered "yes" to question 2.2 on the non-payment of taxes or social security contributions, and have not paid or entered into a binding arrangement to pay the full amount, you may still avoid exclusion if only minor tax or social security contributions are unpaid or if you have not yet had time to fulfil your obligations since learning of the exact amount due. If your organisation is in that position please provide details using a separate form of Appendix A. You may contact the Authority for advice before completing this form.

'Self-cleaning'

Any Tenderer **that answers "Yes" to questions 2.1.1 to 2.1.14 or 2.2 should provide sufficient evidence, in a separate form of Appendix A, that provides a summary of the circumstances and any remedial action that has taken place subsequently and effectively "self-cleans" the situation referred to in that question. The Tenderer must demonstrate it has taken such remedial action, to the satisfaction of the Authority, in each case.**

If such evidence is considered by the Authority (whose decision will be final) as sufficient, the economic operator concerned (i.e. the Tenderer) shall be allowed to continue in the procurement process.

In order for the evidence referred to above to be sufficient, the Tenderer shall, as a minimum, prove that it has:

- paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct; and
- clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities; and
- taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

The measures taken by the Tenderer shall be considered taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the measures are considered by the Authority to be insufficient, the Tenderer shall be given a statement of the reasons for that decision.

Assessment of questions 2.1.1 – 2.1.14

These questions will be assessed on a pass or fail basis.

A Tenderer will pass this section if you:

- answer **"No"** to questions 2.1.1 to 2.1.14;
- answer **"Yes"** to any part of questions 2.1.1 to 2.1.14 but have provided a summary of the circumstances and remedial action taken which the Authority, in its absolute discretion, **considers as sufficient to "self-clean" the situation (see above).**

The Authority also reserves its right to apply the provisions of Regulations 57(6) and (7) of the Regulations when considering a response for this Section 2.

2.1 Within the past five years, has your organisation (or any member of your proposed consortium, if applicable) Directors or partner or any other person who has powers of representation, decision or control been convicted of any of the following offences?	Please indicate your answer by marking "X" in the relevant box.	
	Yes	No
2.1.1 An offence under sections 2 or 4 of the Modern Slavery Act 2015		
2.1.2 Conspiracy within the meaning of section 1 or 1A of the Criminal Law Act 1977 or article 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA on the fight against organised crime.		
2.1.3 Corruption within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906.		
2.1.4 The common law offence of bribery.		
2.1.5 Bribery within the meaning of sections 1, 2 or 6 of the Bribery Act 2010; or section 113 of the		

	Representation of the People Act 1983.		
2.1.6	Any of the following offences, where the offence relates to fraud affecting the European Communities' financial interests as defined by Article 1 of the Convention on the protection of the financial interests of the European Communities:		
2.1.6.1	the offence of cheating the Revenue;		
2.1.6.2	the offence of conspiracy to defraud;		
2.1.6.3	fraud or theft within the meaning of the Theft Act 1968, the Theft Act (Northern Ireland) 1969, the Theft Act 1978 or the Theft (Northern Ireland) Order 1978;		
2.1.6.4	fraudulent trading within the meaning of section 458 of the Companies Act 1985, article 451 of the Companies (Northern Ireland) Order 1986 or section 993 of the Companies Act 2006;		
2.1.6.5	fraudulent evasion within the meaning of section 170 of the Customs and Excise Management Act 1979 or section 72 of the Value Added Tax Act 1994;		
2.1.6.6	an offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993;		
2.1.6.7	destroying, defacing or concealing of documents or procuring the execution of a valuable security within the meaning of section 20 of the Theft Act 1968 or section 19 of the Theft Act (Northern Ireland) 1969;		
2.1.6.8	fraud within the meaning of section 2, 3 or 4 of the Fraud Act 2006; or		
2.1.6.9	the possession of articles for use in frauds within the meaning of section 6 of the Fraud Act 2006, or the making, adapting, supplying or offering to supply articles for use in frauds within the meaning of section 7 of that Act.		
2.1.7	Any offence listed:		
2.1.7.1	in section 41 of the Counter Terrorism Act 2008; or		

2.1.7.2	in Schedule 2 to that Act where the court has determined that there is a terrorist connection.		
2.1.8	Any offence under sections 44 to 46 of the Serious Crime Act 2007 which relates to an offence covered by subparagraph (f).		
2.1.9	Money laundering within the meaning of sections 340(11) and 415 of the Proceeds of Crime Act 2002.		
2.1.10	An offence in connection with the proceeds of criminal conduct within the meaning of section 93A, 93B or 93C of the Criminal Justice Act 1988 or article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996.		
2.1.11	An offence under section 4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004.		
2.1.12	An offence under section 59A of the Sexual Offences Act 2003.		
2.1.13	An offence under section 71 of the Coroners and Justice Act 2009.		
2.1.14	An offence in connection with the proceeds of drug trafficking within the meaning of section 49, 50 or 51 of the Drug Trafficking Act 1994.		
2.1.15	Any other offence within the meaning of Article 57(1) of the Public Contracts Directive:		
2.1.15.1	as defined by the law of any jurisdiction outside England and Wales and Northern Ireland; or		
2.1.15.2	created, after the day on which these Regulations were made, in the law of England and Wales or Northern Ireland.		

2.2 Non-payment of taxes

<p>Has it been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of any part of the United Kingdom or the legal provisions of the country in which your organisation is established (if outside the UK), that your organisation is in breach of obligations related to the payment of tax or social security contributions?</p> <p>If you have answered Yes to this question, please use a separate Appendix to provide further details. Please also use this Appendix to confirm whether you have paid, or have entered into a binding arrangement with a view to paying, including, where applicable, any accrued interest and/or fines?</p>	Yes	No

3. GROUNDS FOR DISCRETIONARY EXCLUSION – PART 1

Information to Tenderers:

For consortium Tenderers, Section 3 must be completed by every member of the consortium.

If the Tenderer is relying on the capacity of a proposed sub-contractor in order to complete this ITT then Section 3 must be completed by the Tenderer and the relevant sub-contractor.

If the Tenderer otherwise is including a subcontractor in its supply chain then the subcontractor must also complete this Section 2.

Responses to this question will be assessed as follows:

Conflicts of interest

In accordance with question 3.1.5, the Authority may exclude the Tenderer if there is a conflict of interest which cannot be effectively remedied. The concept of a conflict of interest includes without limit any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

Bidders are also referred to section 1.13 (Important Information) for additional grounds of conflict of interest that need to be disclosed and information provided in an Appendix.

Where there is any indication that a conflict of interest exists or may arise then it is the responsibility of the Tenderer to inform the Authority, detailing the actual or potential conflict in a separate Appendix and their proposed action to address this. Please note that participation in routine pre-market engagement carried out by the Authority should not represent a conflict of interest for the Tenderer.

Taking account of Tenderers' Past Performance

In accordance with question 3.1.7, the Authority may exclude the Tenderer based on its past performance.

'Self-cleaning'

Any Tenderer **that answers "Yes" to questions 3.1.1 to 3.1.10 should provide sufficient evidence, in a separate form of Appendix A, that provides a summary of the circumstances and any remedial action that has taken place subsequently and effectively "self-cleans" the situation referred to in that question.** The Tenderer must demonstrate it has taken such remedial action, to the satisfaction of the Authority, in each case.

If such evidence is considered by the Authority (whose decision will be final) as sufficient, the economic operator concerned shall be allowed to continue in the procurement process.

In order for the evidence referred to above to be sufficient, the Authority shall, as a minimum, prove that it has:

- paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct; and
- clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities; and
- taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

The measures taken by the Tenderer shall be considered taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the measures are considered by the Authority to be insufficient, the Tenderer shall be given a statement of the reasons for that

decision.

Assessment of questions 3.1.1 to 3.1.10

These questions will be assessed on a pass or fail basis.

A Tenderer will pass this section if you answer:

- "No" to questions 3.1.1 to 3.1.10;
- "Yes" to any part of questions 3.1.1 to 3.1.10 but has provided a summary of the circumstances and remedial action taken which the Authority, in its absolute discretion, considers as sufficient to "self-clean" the situation (see above).

3.1	Within the past three years, please indicate if any of the following situations have applied, or currently apply, to your organisation.	Please indicate your answer by marking "X" in the relevant box.	
		Yes	No
3.1.1	Your organisation has violated applicable obligations referred to in regulation 56 (2) of the Public Contracts Regulations 2015 in the fields of environmental, social and labour law established by EU law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to the Public Contracts Directive as amended from time to time.		
3.1.2	Your organisation is bankrupt or is the subject of insolvency or winding-up proceedings, where your assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State.		
3.1.3	Your organisation is guilty of grave professional misconduct, which renders its integrity questionable.		
3.1.4	Your organisation has entered into agreements with other economic operators aimed at distorting competition.		
3.1.5	Your organisation has a conflict of interest within the meaning of regulation 24 of the Public Contracts Regulations 2015 that cannot be effectively remedied by other, less intrusive, measures.		
3.1.6	The prior involvement of your organisation in the preparation of the procurement procedure has resulted in a distortion of competition, as referred to in regulation 41, that cannot be remedied by other, less intrusive, measures.		
3.1.7	Your organisation has shown significant or persistent deficiencies in the performance of a		

<p>substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions.</p>		
<p>3.1.8 Your organisation:</p> <p>3.1.8.1 has been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria; or</p> <p>3.1.8.2 has withheld such information or is not able to submit supporting documents required under regulation 59 of the Public Contracts Regulations 2015.</p>		
<p>3.1.9 Your organisation has undertaken to:</p>		
<p>3.1.9.1 unduly influence the decision-making process of the contracting authority; or</p>		
<p>3.1.9.2 obtain confidential information that may confer upon your organisation undue advantages in the procurement procedure.</p>		
<p>3.1.10 Your organisation has negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.</p>		

4. GROUNDS FOR DISCRETIONARY EXCLUSION – PART 2

Information to Tenderers:

For consortium Tenderers, Section 3 must be completed by every member of the consortium.

If the Tenderer wishes to rely on the capacity of a proposed sub-contractor in order to complete this ITT then Section 4 must also be completed by the Tenderer and the relevant sub-contractor.

If the Tenderer otherwise is including a subcontractor in its supply chain then the subcontractor must also complete this Section 2.

The Authority reserves the right to use its discretion to exclude a Tenderer where it can demonstrate the Tenderer's non-payment of taxes/social security contributions where no binding legal decision has been taken.

"Occasion of Tax Non-Compliance" means:

a) any tax return of the Tenderer submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:

1. a Relevant Tax Authority successfully challenging the Tenderer under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
2. the failure of an avoidance scheme which the Tenderer was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the Disclosure of Tax Avoidance Scheme (DOTAS) or any equivalent or similar regime; and/or

b) the Tenderer's tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a penalty for civil fraud or evasion

This question will be assessed on a pass or fail basis.

A Tenderer will pass this section if you answered "No" to questions 4.1 and 4.2 or answered "Yes" to either 4.1 or 4.2 and has provided mitigating factors which the Authority considers to be sufficient and as a consequence there are no concerns arising.

4.1	given rise to a criminal conviction for tax related offences which is unspent, or to a civil penalty for fraud or evasion;	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2	been found to be incorrect as a result of:	<input type="checkbox"/> Yes <input type="checkbox"/> No
	4.2.1 HMRC successfully challenging it under the General Anti-Abuse Rule (GAAR) or the "Halifax" abuse principle; or	<input type="checkbox"/> No
	4.2.2 A Tax Authority in a jurisdiction in which the legal entity is established successfully challenging it under any tax rules or legislation that have an effect equivalent or similar to the GAAR or the "Halifax" abuse principle; or	
	4.2.3 the failure of an avoidance scheme which the Tenderer was involved in and which was, or should have been, notified under the Disclosure of Tax Avoidance Scheme (DOTAS) or any equivalent or similar regime	

	in a jurisdiction in which the Tenderer is established.	
<p>If answering "Yes" to either 4.1 or 4.2 above, the Tenderer may provide details of any mitigating factors that it considers relevant and that it wishes the Authority to take into consideration. This could include, for example:</p> <ul style="list-style-type: none"> • Corrective action undertaken by the Tenderer to date; • Planned corrective action to be taken; • Changes in personnel or ownership since the Occasion of Non-Compliance (OONC); or • Changes in financial, accounting, audit or management procedures since the OONC. <p>In order that the Authority can consider any factors raised by the Tenderer, the following information should be provided:</p> <ul style="list-style-type: none"> • A brief description of the occasion, the tax to which it applied, and the type of "non-compliance" e.g. whether HMRC or the foreign tax authority has challenged pursuant to the GAAR, the "Halifax" abuse principle etc. • Where the OONC relates to a DOTAS, the number of the relevant scheme. • The date of the original "non-compliance" and the date of any judgement against the Tenderer, or date when the return was amended. • The level of any penalty or criminal conviction applied. 		
Response:		

5. ECONOMIC AND FINANCIAL STANDING

Information to Tenderers

The Authority wishes to test the economic and financial standing of all Tenderers. The minimum standard will be a test of solvency. Accordingly the minimum level of financial standing referred to in paragraph 5.2 below is as follows:

- 1 The Tenderer has positive net assets; and
- 2 The Tenderer's current assets must be at least equal to its current liabilities**

Where a Tenderer is relying on the capacity of another entity(ies) to pass the financial standing test (eg consortium members, subcontractors or group company) then the Tenderer must confirm that if required by the Authority those other entity(ies) will be jointly liable with the Tenderer.

FINANCIAL INFORMATION		
5.1	Please provide one of the following to demonstrate your economic/financial standing: (Please indicate your answer with an "X" in the relevant box and include the relevant information in your ITT submission.)	
	5.1.1 a copy of the annual accounts for the most recent two years; audited unless a valid audit exemption applies.	
	5.1.2 a statement of the turnover, profit & loss account, current liabilities and assets, and cash flow for the most recent year of trading for this organisation;	
	5.1.3 a statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position;	
	5.1.4 alternative means of demonstrating financial status if any of the above are not available (e.g. forecast of turnover for the current year and a statement of funding provided by the owners and/or the bank, charity accruals accounts or an alternative means of demonstrating financial status).	
5.2	Where the Authority has specified a minimum level of economic and financial standing and/or a minimum financial threshold within the evaluation criteria for this ITT, please self-certify by answering "Yes" or "No" that you meet the requirements set out here.	<input type="checkbox"/> Yes <input type="checkbox"/> No

6. TECHNICAL AND PROFESSIONAL ABILITY

Information to Tenderers:

Relevant experience and contract examples

Tenderers are required to provide a response to all of the questions 6.1 to 6.4.

Questions

Included with the response to each of the questions 6.1 the following information must also be provided for each project/contract relied on:

- a) Name of the customer organisation(s) for the relevant contract;
- b) The named contact in the customer organisation for the relevant contract, their position in the customer organisation and their email address;
- c) The contract start date, duration and completion date (or expected completion date if ongoing); and
- d) The estimated total contract value (including any variations)

The named customer contacts provided in the responses to Section 6.1 should be prepared to provide written evidence to the Authority upon request to confirm the accuracy of the information provided in your response. See further question 6.1 below.

When responding to the questions in this section 6 :

In the case of consortia submissions, a single response should be provided on behalf of the consortium to each question. Where relevant the consortium should provide examples of where the consortium has delivered a project similar to the Authority's requirements below. If this is not possible (e.g. the consortium is newly formed or a Special Purpose Vehicle will be created for this proposed contract) then examples should be provided between the principal member(s) of the proposed consortium or Special Purpose Vehicle.

Where the Tenderer is a managing agent not intending to be the main provider of the services, or a Tenderer is otherwise relying on the capacity of a subcontractor the information requested should be provided in respect of the proposed principal provider(s) or sub-contractor(s) who will deliver the services.

Note where a Tenderer is relying on the capacity of others as set out above then it shall explain in its tender how it will comply with the provisions of Regulation 63 of the Regulations and the Authority reserves the right to accept or reject this in its assessment of the Tender. Please note that where a Tenderer is relying on a Hosting Organisation as defined in section 6.2 below, the Tenderer must confirm that it will provide a copy of its operator agreement with the Hosting Organisation when requested by the Relevant Contracting Authority.

Please note the same project/example can be relied on for multiple questions as long as the relevant criteria for each question can be clearly demonstrated in each case.

Assessment:

Sections 6.3 will be assessed based on:

Score	Acceptability	Criteria for awarding scores
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0	Unacceptable	The Tenderer has not submitted a response or the response provided is fundamentally unacceptable as it is not relevant to the question posed and does not evidence that the Tenderer has the relevant technical capability and experience for the Framework Agreement.
1	Poor	The response submitted is poor in relation to the evidence provided and/or as it demonstrates that the Tenderer has limited relevant technical capability and experience for the Framework Agreement.
2	Satisfactory	The response provides sufficient evidence which demonstrates that the Tenderer has the satisfactory technical capability and experience to meet the Authority's requirements for the Framework Agreement.
3	Good	The response provides sufficient evidence which demonstrates that the Tenderer has a good standard of technical capability and a good level of experience to meet the Authority's requirements for the Framework Agreement.
4	Excellent	The response provides evidence which demonstrates that the Tenderer has an excellent standard of technical capability and an exceptional level of experience to meet the Authority's requirements for the Framework Agreement.

Please note the Authority reserves the right to exclude from this process any Tenderer who achieves a score of 1 or below on any of Question 6.3.

Question 6.1 will be assessed on a pass/fail where a pass is if the Authority is satisfied that the Past Experience Requirement (as defined below) is satisfied and a fail will be if the Authority is not so satisfied.

Question 6.2 will be assessed on the basis that a yes to question 6.2.1 or 6.2.2 will be a pass but if the answer no is given to both question 6.2.1 and 6.2.2 will be a fail.

Question 6.4 will be assessed on a pass/fail basis as explained in the table at question 6.4

Tenderers should also note that the Authority may re-assess past performance and compliance with this section 6 at any time during this procurement process (including prior to Framework award and prior to any award of a Call-Off Contract). Tenderers may be required to update the information and evidence provided in response to Question 6.1 to 6.4 to reflect any changes or to confirm that nothing has changed.

6.1 Relevant experience and contract examples

Please provide details of contracts, in any combination from either the public or private sector, that confirms:

- if bidding for Lot 1 you have managed equity funds for SMEs of a minimum £10million third party assets under management
- if bidding for Lot 2 you have managed debt funds for SMEs of a minimum £10 million third party assets under management
- if bidding for Lot 3 you have managed microfinance funds for SMEs of a minimum £5 million third party assets under management

(" the Past Experience Requirement")

In that context:

- Contracts for funds management services relied upon should have been performed during the past 10 years. Note the Authority has selected 10 years to ensure an adequate level of competition taking into account that such fund management contracts are typically awarded for such periods.
- You must rely on contracts held by your organisation or contracts in which members of your organisation who have been proposed as **"Key Person" for the purpose of Schedule 2 Part 2 question 1** were responsible for management and delivery of a similar service. Where relying on any contract which was not held by your organisation the name of the member of the organisation and the organisation in which he/she worked must also be set out.
- Where a consortium or a subcontractor or principal provider for a managing agent is being relied upon is responding as provided for the Information to Tenderers set out at the start of this section 6 then the Key Person referred to above shall be Key Persons of the consortium members or subcontractor or principal provider. Note, however, if the Tenderer is relying on a Hosting Authority as defined in 6.2 below solely for the purposes of authorisation under 6.2 then you must not include Key Persons of the Hosting Authority in your Tender as you are **not relying on the Hosting Authority's capacity in a relevant way** for the roles of the Key Persons.

In each case please provide the information set out below.

Please note that the Authority reserves the right to contact the person identified as the point of contact in the customer organisation to verify and validate the facts submitted to demonstrate compliance with the Past Experience Requirement and if not satisfied as to such verification and validation to exclude you from further participation in the tender/Framework ie assess this requirement as a fail. Tenderers should also refer to Schedule 1 paragraph 3.1.7.

Name of customer organisation (being a provider of funding)	
Point of contact in customer organisation	
Position in the organisation	
E-mail address	
Contract start date	
Contract completion date	
Estimated	

	Contract Value	
	Value of third party assets under management	
	In no more than 500 words, please provide a brief description of the contracts delivered including evidence as to your technical capability in this market.	
6.2	<p>Please confirm that you have the following authorisations or equivalent</p> <p>Note: if you are relying on a regulatory hosting or umbrella organisation for authorisation for this section 6.2 (“a Hosting Organisation”), then you must treat that Hosting Organisation as a consortium member for the purposes of this ITT as you are relying on its capacity for such authorisation. In answering Yes to 6.2.1 or 6.2.2 you are confirming also that you will provide a copy of your operator agreement with the Hosting Organisation when requested by the Relevant Contracting Authority.</p>	
6.2.1	<p>You must:</p> <ul style="list-style-type: none"> • be authorised by the Financial Conduct Authority as a full-scope UK AIFM or a small authorised UK AIFM; or • be a full scope EEA AIFM <p>(as each of those terms is defined in the Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773))</p>	Yes/No

6.2.2	If no please confirm that you will have the relevant authorisations before bidding under a Mini Competition	Yes/No
6.3	<p>Tenderers must provide a description of their end to end investment and monitoring policies and practices. This must include information to demonstrate:</p> <p>what management and monitoring systems are implemented to ensure each investment is managed and monitored to meet the above requirements;</p> <p>risk management strategy and methodology;</p> <p>what data is collected and how and how is it stored/retained in an easily accessible manner for fund managers;</p> <p>what analysis and notification mechanisms and systems are available to provide assurance that trends are identified early to enable prompt actions to avoid the need for more significant interventions in order to protect funds;</p> <p>what document and information management system do they utilise and how does this provide support for the above including assurance of file integrity and ease of access to comprehensive data records (and in what format) in relation to each investment, appropriate retention policies and mechanisms as well as ease of identification of key data;</p> <p>approach to testing eligibility including systems in place;</p> <p>how are the strategies, policies, methodologies and systems tested for reliability, consistency and effectiveness and what other evidence is available to support the level of assurance that the systems provide that the fund manager will comply with all monitoring and reporting requirements and are consistent with and fully support the</p>	Scored assessment with a fail being a score of 1 or below

	<p>delivery of the fund managers proposals to meet the requirements of the Services;</p> <p>methodology for collaboratively working with and supporting funders and auditors to provide assurances to stakeholders throughout life of funds and address any issues raised; and</p> <p>how has the above reflected lessons learned from previous experience?</p> <p><u>Assessment</u></p> <p>The capacity criteria will be assessed on the basis of the extent to which the Tenderer demonstrates that:</p> <p>its accounting system provides accurate complete and reliable information in a timely manner including;</p> <p>assurance of full auditability and accountability;</p> <p>meeting all requirements for management information imposed by any funder including any relating to performance of the funds under management, and targets;</p> <p>that it also has effective and efficient control systems (including information collation, analysis, governance controls, monitoring and reporting) in place to ensure;</p> <p>that funds are managed in full compliance with the requirements of the funders;</p> <p>that risks are properly identified and mitigated;</p> <p>that the funds are only invested and utilised for the specific intended purposes;</p> <p>planning, setting-up communication and monitoring against objectives, risk management and business controls are delivered; and</p> <p>that the funds are managed,</p>	
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	<p>invested and investments realised efficiently and effectively.</p>	
6.4	<p>Tenderers must provide:</p> <p>a full explanation and diagram to show the organisational structure for the Tenderer including roles and responsibilities of the management team.</p> <p>details of the resources that the Tenderer has that will be made available for the Services including full details of the project team to include:</p> <p>the number of Key Persons with the expertise and experience to manage funds of similar size and complexity of the Fund;</p> <p>the number of other investment portfolio managers;</p> <p>support arrangements, including number of support staff and other resources available for support;</p> <p>Note in providing this information numbers must be stated to be FTE or prorata thereof.</p> <p>a detailed description and explanation of the governance arrangements which are applied by the Tenderer in furtherance of good corporate governance standards, in the context of a business managing other investors' investments including strategies, plans, processes, decision-making processes, audit mechanisms and means to hold management to account.</p> <p><u>Assessment criteria</u></p> <p>Tenderers must provide the information requested which must demonstrate that they have a suitable organisational structure (including management arrangements), suitable level of resources and suitable governance arrangements to be appointed to manage sub-funds which are</p>	<p>Pass – if supplied all the required information to demonstrate that the organisational structure, level of resource and governance arrangements are suitable</p> <p>Fail – if the Authority is not reasonably satisfied as to the suitability of the organisational structure level of resource and governance arrangements</p>

<p>envisaged to be let under the respective Lot for which the Tenderer is bidding and making investments in the ranges as set out in Schedule 5 Specification. For this purpose of assessing whether each element of governance mentioned above is "suitable" regard shall be had (where relevant) to guidance on good corporate governance issued by UK Government or equivalent in another Member State, recent reports of external auditors and normal market practice for investment management practices managing those sizes and types of funds.</p>	
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7. INSURANCE

Tenderers who self-certify that they meet the requirements for these additional modules will be required to provide evidence of this if they are successful at Framework Agreement award stage. Please **indicate your answer by marking "X"** in the relevant boxes.

Assessment Methodology:

Section 7 must be filled out by all Tenderers (including Tenderers where the Tenderer is a Consortium) and sub-contractors which the Tenderer is relying on in order to complete this Qualification Response.

Section 7 will be assessed on a pass/fail basis.

A Tenderer **will "Pass" this Section 7** where it answers:

- **"yes"** to 7.1

A Tenderer will **"fail" this Section 7** where it answers:

- **"no" to 7.1**

7.1 Insurance

Please self-certify whether you already have, or can commit to obtain, prior to the commencement of a Call Off Contract the levels of insurance cover indicated below:		<input type="checkbox"/> Yes <input type="checkbox"/> No
7.1.1	Professional Indemnity Insurance : a minimum of £2million *	
7.1.2	Employer's (Compulsory) Liability Insurance **	
<p>* Tenderers should note that a higher level may be required at Mini Competition where a higher level of insurance is justified given the value of the Fund which will be the subject of the Call Off Contract.</p> <p>** It is a legal requirement that all employers hold Employer's (Compulsory) Liability Insurance of £5 million as a minimum. Please note this requirement is not applicable to Sole Traders or Tenderers who do not have employees.</p>		

Appendix

Template for Appendices

Appendix Number -
ITT section -
Question number -

SCHEDULE 2

Technical Assessment

Part 1: General Instructions and Guidance

1. Tenderers must submit a full response to the sections of Part 2 of this Schedule 2 ("**Technical Assessment**") applicable to the Lot(s) that the Tenderer is applying for.
2. Unless instructed otherwise when answering the questions, please give details which specifically relate to the Tenderer.
3. Please answer the questions in the order provided. Documents which have been requested should be inserted at the end of the appropriate section rather than at the end of the document. Tenderers are advised not to provide any information additional to that specifically requested.
4. Please note that failure to provide a completed response to this Technical Assessment, in the correct format, or failure to provide any additional information that may be requested, may result in failure of your Tender.
5. Tenderers must be explicit and comprehensive in their responses to this Technical Assessment. Tenderers are advised neither to make any assumptions about their past or current supplier relationships with the Authority nor to assume that such prior business relationships will be taken into account in the evaluation procedure.
6. Documents to include
- 6.1 Tenderers must enclose with their tender responses any appropriate documentation in support each of their responses to the questions in Part 2 of this Schedule 2 (such as strategies, policies and methodologies) which underpin or otherwise support their approach and which is capable of demonstrating greater assurance/robustness of the proposals contained in the response. Tenderers will note from the table at paragraph 9 (which will be used to assess questions 2 to 6 and question 8 in Part 2 of this Schedule 2,) the importance of such supporting evidence to the scores that will be awarded. The documentation must at least include the following:
 - 6.1.1 investment methodology including:
 - 6.1.1.1 approach to deal flow generation
 - 6.1.1.2 "**marketing**" strategy
 - 6.1.1.3 targeting approach
 - 6.1.1.4 action plans
 - 6.1.2 resource and recruitment strategy, policy and plan;
 - 6.1.3 methodology for attracting additional capital into supported companies including:
 - 6.1.3.1 networks utilised by Tenderer
 - 6.1.3.2 attraction of sources of investment
 - 6.1.3.3 targeting approach
 - 6.1.3.4 action plans

- 6.1.4 investments approval process,
- 6.1.5 proposals for monitoring and management of investments made;
- 6.1.6 conflicts policy
- 6.1.7 allocation policy (i.e. where the Tenderer manages or will manage funds for other clients).

7. Lessons Learned

- 7.1 In many of the questions set out in this Part 2, and for schedule 3 part 3 the question on co-investment, there is a reference to a requirement for each Tenderer to demonstrate how the submitted proposals or information in relation to that question reflect lessons **learned from that Tenderer’s previous experience**.
- 7.2 Where this requirement arises in question 6 of Schedule 2 part 2 Tenderers are required to support its explanation of the lessons learned by reference to the entries in the Table completed by them headed Track Record Proforma at Schedule 10 for Financial Returns and provide other evidence as referred to in section 7.3 for Deal Flow and Non-Financial Returns.
- 7.3 For the other questions in Schedule 2 part 2 and Schedule 3 part 3 Tenderers may provide other evidence to demonstrate how the submitted proposals or information in **relation to that question reflect lessons learned from that Tenderer’s previous experience** and the Tenderer may provide such evidence by reference to investments/funds identified in its Track Record Proforma. The evidence provided should be consistent with and **supplement the Tenderer’s response** so that the Authority can understand how each of **the examples of the Tenderer’s experience (both positive and negative) have influenced** their approach, policies, processes, methodologies etc being submitted in response to the questions.
- 8. The Track Record Proforma at Schedule 10 and other evidence provided as referred to in sections 7.2 and 7.3 will not be separately scored. Instead the information is required to enable assurance to the Authority that the proposals are properly tested and will be effective to deliver successful Services in accordance with the table at section 9 Schedule 2 part 1 and section 2 Schedule 3 part 4.

The following tables will be used to assess the Tenderer’s responses as explained below:

- 9. Each of the questions 2 to 6 and question 8 in Part 2 of this Schedule 2 will be evaluated in accordance with the following table:

Authority Requirements

Score = 0	Nil Response / Very Poor	Failed to address the Authority’s requirements or no evidence provided to suggest that the proposals are capable of meeting the Authority’s requirements .
Score = 2	Poor	Response does not demonstrate that the Tenderer has satisfactory understanding of the Authority’s requirements . There are numerous and/or significant gaps in proposals and/or there is very little evidence or little credible evidence or other forms of assurance that the proposals would be capable of delivering the Authority’s requirements or the evidence has major gaps, or is otherwise unconvincing .
Score = 4	Below Satisfactory	Response demonstrates that the Tenderer has a limited understanding of the Authority’s requirements . There are a number of gaps, or a few gaps some of which may not be insignificant, in the proposals to meet the Authority’s requirements and/or there are a number of gaps or some significant gaps in evidence and limited other forms of assurance meaning that there remain more than a little doubt as to

reliability of the evidence as to whether the proposals would be **capable of meeting the Authority's requirements and/or would be likely to be delivered.**

Score = 6	Satisfactory	Response demonstrates that the Tenderer understands most of the Authority's requirements. There are a few or more gaps, though none major, in the proposals to meet the Authority's requirements and/or there are a few gaps in evidence and/or other forms of assurance, such that there remain some doubts as to whether the proposals would be likely to meet the majority of the Authority's requirements or there is some risk that they would not all be delivered or with some reservation as to the reliability of the evidence that has been provided as to whether the proposals would be likely to be delivered .
Score = 8	Good	Response demonstrates that the Tenderer understands almost all of the Authority's requirements with only very limited gaps in the proposals to meet all the Authority's requirements and has provided proposals which are detailed and coherent and are supported by credible evidence and/or other forms of assurance that is at least persuasive that the proposals are reasonably capable of meeting the Authorities requirements and are reasonably likely to be delivered,
Score = 10	Excellent	Response demonstrates that the Tenderer fully understands the Authority's requirements, has comprehensive, coherent and detailed proposals for delivering all of the Authority's requirements which are supported by compelling evidence and/ other forms of assurance that such proposals will be delivered and will meet the Authority's requirements.

10. The following table will be used to assess Question 1 (Competent Named Team) in Part 2 Schedule 2:

Score	
10	The CV provided for the Key Person demonstrates: <ul style="list-style-type: none"> extensive experience and specialism in delivering fund management services; the experience extends over more than 8 years the experience is very relevant to the delivery of the Services; the experience shows consistent successful delivery of those services when measured across investment and realisation.
8	The CV provided for the Key Person demonstrates: <ul style="list-style-type: none"> reasonably extensive experience and specialism in delivering fund management services; the experience extends over 6 years or more the experience is relevant to the delivery of the Services; the experience shows in the main reliability in successful delivery of those services when measured across investment and realisation.
6	The CV provided for the Key Person demonstrates: <ul style="list-style-type: none"> substantial experience and specialism in delivering fund management services; the experience extends over 5 years or more the experience is relevant to the delivery of the Services; the experience shows fairly consistent success in delivery of those services when measured across investment and realisation.
4	The CV provided for the Key Person demonstrate: <ul style="list-style-type: none"> some experience and specialism in delivering fund management services; the experience extends over 4 years or more the experience is relevant to the delivery of the Services; the experience shows fairly consistent success in delivery of those services when measured across investment and realisation.
2	The CV provided for the Key Person demonstrates: <ul style="list-style-type: none"> very limited experience of delivering fund management services; the experience extends over 3 years or more the experience is not directly relevant to the delivery of the Services but not

	irrelevant; • the experience shows some success in delivery of those services when measured across investment and realisation.
0	No response submitted or experience is less than 3 years

11. The following table will be used to assess Question 7 (Support to Investees) in Part 2 Schedule 2:

Score	
10	The response indicates that the Tenderer will offer a wide range set of services/advantages suitable to the Portfolio Companies which are affordable and will contribute strongly to the objective of the Fund
7	The response indicates that the Tenderer will offer an acceptable set of services/advantages suitable to the Portfolio Companies which are affordable and will contribute to the objective of the Fund.
4	The response indicates that the Tenderer will offer few services/advantages suitable to the Portfolio Companies which are affordable or offer an acceptable or wide set of services suitable to the Portfolio Companies which are expensive such that in both cases the contribution to the objective of the Fund is considered to be limited.
1	The response indicates that the Tenderer will offer few services/advantages suitable to the Portfolio Companies which are expensive such that the contribution to the objective of the Fund is considered to be weak.
0	The response does not include any services/advantages suitable to the Portfolio Companies.

Part 2: Technical Assessment Questions

Each question will be scored out of 10 in accordance with the table(s) below and then weighted in accordance with Schedule 4 to arrive at an overall score for each Technical Assessment

<u>Headline Criterion Team</u>	<u>Ou. No</u>	<u>Question</u>
	1	<p><u><i>Is there a competent named team with sufficient expertise and resources committed to deliver the Services?</i></u></p> <p>Tenderers to provide structure of Key Persons, CVs for each Key Person (outlining that person's experience and track record in delivering services similar to the Services, that person's understanding of the market, their relevant key skills and abilities) and an explanation of the percentage time which will be committed by each Key Person to Call-Off Contracts.</p> <p>The submission would be evaluated in respect of each Key Person by:</p> <ul style="list-style-type: none">• scoring the CV of each Key Person in respect of the level to which the CV demonstrates the experience and expertise of the Key Person to manage investments and provide services of the kind involved in the Services;• multiplying the score given to each relevant Key Person by the percentage time which the Key Person will dedicate to the provision of the Services;• averaging the total score over the number of Key Persons proposed. <p><u>This sub criteria will be assessed using the table set out in section 10 of Part 1 of this Schedule 2.</u></p>
	2	<p><u><i>How will the team work together?</i></u></p> <p>Tenderers must submit:</p> <ul style="list-style-type: none">• their methodology for managing the team,• their approach to team building to ensure that the team can deliver the Services effectively and efficiently,• detail on which team members have worked together before and in what context,• the methodology for:<ul style="list-style-type: none">○ ensuring that roles are fully understood, that targets are set for the team and individuals which support the Targets set for the Fund,○ monitoring and measuring achievement of the team/individual targets and actions identified and then implemented to ensure there is no adverse impact on achieving the Fund Targets;○ ensuring that the team works collaboratively using effective and efficient processes and systems to maximise the impact of each of their inputs. <p>Tenderers must explain the extent to which they have applied lessons learned/ experience from working together and/or applying similar methodologies in relation to delivery of similar services and/or any other information which provides increased assurance that the team will be able to manage and be managed to deliver the Services.</p>

The Authority's Requirements

The Authority requires that the Tenderer demonstrates that:

- it is able to manage the team which it has proposed for the delivery of the Services in an effective and efficient way;
- the resources proposed will act as a co-ordinated and fully integrated team with clear roles and responsibilities allocated and understood by team members;
- the method of organisation and performance management of the team will assist in achievement of the Targets set for the Fund;
- the proposals will either already be in place or the proposals include intended implementation programme which demonstrates that there would be no excessive delay in mobilisation of the team and the performance of the respective roles and responsibilities within the team to ensure an effective service upon appointment to a Call-Off Contract;
- the proposals have been demonstrably influenced by lessons learned from past experience.

This sub criteria will be assessed using the table set out in section 9 of Part 1 of this Schedule 2.

3 *Demonstrate sufficient resources to execute both the investment strategy and portfolio realisation stage?*

Instructions to Tenderers

Tenderers have supplied their organisation and management structure in response to question 6.4 of the Qualification questions.

Tenderers are asked to consider the requirements for delivery of the services and set out:

- their resourcing plans which shall be drawn up to ensure that any gaps in their resources are recognised and promptly rectified to avoid any delays in the delivery of the Services through lack of resource (assuming that the Tenderer was immediately appointed to a Call-Off Contract following establishment of the Framework Agreement);
- their retention policy for existing staff and their recruitment methodology (and policies) for engagement of additional resources including how any requirement for additional staff would be identified and positions filled, the approval process and checks that would be undertaken to ensure that staff have appropriate levels of experience and qualifications to undertake the roles for which they are being considered and how the time for that process would be accommodated in their proposals to ensure they are adequately resourced to meet requirements at all times.

Authority Requirements

The Authority's requirements are that the resource plans and recruitment methodology should:

- provide a comprehensive and detailed process and methodology for ensuring that staffing requirements to ensure effective and compliant delivery of the Services are satisfied at all times and that full service delivery is not being and will not be prejudiced by any gaps in resources;
- ensure that each appointee to a role in delivery of the Services is appropriately qualified and experienced to

- professionally undertake that role;
- be consistent with the investment strategy and methodology;
- facilitate the Tenderers support for the Authority's achievement of the Targets in accordance with the Tenderer's risk management strategies,

and be supported by evidence of how the plans and methodology have been influenced by lessons learned from past experience.

This sub criteria will be assessed using the table set out in section 9 of Part 1 of this Schedule 2.

4 *How are the team's interests aligned with the Fund and NPIF as a whole?*

Instruction to Tenderers

Tenderers must set out the policies and systems they have in place to identify and manage conflicts (including allocation of potential investment opportunities to different funds under management) and provide their comprehensive and detailed methodology for applying them to avoid and, if necessary, manage conflicts in the provision of the Services.

Tenderers must set out the enquiries and tests already undertaken to ensure that there would be no conflicts of interest if appointed to this Framework and if any potential conflicts have been identified set out what steps you have taken to manage them in accordance with the aforesaid policies and methodology.

Tenderers must demonstrate how lessons learned in relation to management of such issues have been applied in the development of the systems, policy and methodology being proposed in order to assure the Authority that the Tenderer will be able to spot and avoid potential for misalignment of objectives/conflicts of interest which might prejudice the success and propriety of the fund management

Authority's Requirements

The Authority requires each Tenderer to:

- have fully reviewed any potential conflicts which might exist or occur identified the steps needed to be taken to avoid such conflicts occurring and/or to manage the risk of conflicts arising;
- have systems in place to identify risks of conflicts and clear policies and procedures in place which enables action to be implemented to mitigate such risks and avoid actual conflicts arising;
- have demonstrated that the systems are effective and will provide full assurances to the Authority that conflicts which might prejudice the success of the Funds (including but not limited to causing any default in any Fund Agreement) or result in any risk of perception of impropriety in the management of the Funds;
- have demonstrated that its policies (including but not limited to its allocations policy and its conflicts policy) and procedures comply with FSA or equivalent requirements.

This sub criteria will be assessed using the table set out in section 9 of Part 1 of this Schedule 2.

Track Record 5 *How will the team ensure compliance with all relevant laws and funders requirements in the provision of micro-*

finance/debt/equity?

Instructions to Tenderers

For all three Lots

Tenderers must set out their proposals for managing the investments which must demonstrate they understand and are able to comply with **complexities of public funds having regard to relevant Funders' requirements** (including EIB, BBB, BIS, DCLG and ERDF), state aid and relevant guidelines.

Tenderers must also fully explain how lessons learned in relation to management of such issues have been applied in the development of **their proposals to ensure that there is full compliance with Funder's requirements**, state aid and relevant guidance particularly having regard to the complexities of mixed fund sources of the type mentioned above.

The Authority's Requirements

The Authority requires the Tenderer to demonstrate that:

- it will deliver and manage the investments in full compliance with the complexities of public funds including **Funders' requirements**, laws and relevant guidelines including any special requirements relating to the particular Lot as set out below;
- it will comply fully with State aid law and in particular the State aid parameters set out in the IOGs;
- that its proposals to achieve all of the above are supported by evidence of application of lessons learned from previous experience/examples.

Add for Equity

In particular in the response to the above questions the Tenderers must demonstrate in their proposals that they understand and can meet GBER requirements including demonstrating that they understand the characteristics of SMEs and how the GBER requirements will be assessed and complied with.

Add for Debt

In particular in the response to the above questions the Tenderers must demonstrate ability to make loans under MEOP as explained in the State aid parameters in the IOGs including compliance with reference rates communication and/or Brandenburg Methodology (which will include their processes and systems for analysing credit worthiness and likely risks/deficits).

In particular in the response to the above questions the Tenderers must demonstrate ability to meet GBER requirements and their proposals must demonstrate that they understand the characteristics of SMEs and how the GBER requirements will be assessed and complied with.

Add for Microfinance

In particular in the response to the above questions the Tenderer must demonstrate ability to make loans under MEOP as explained in the State aid parameters in the IOGs including complying with

reference rates communication and/or Brandenburg Methodology (which will include their processes and systems for analysing credit worthiness and likely risks/deficits).

In particular in the response to the above questions demonstrating meeting GBER requirements and their proposals demonstrating that they understand the characteristics of SMEs and how the GBER requirements will be assessed and complied with.

In particular in response to the above questions demonstrating meeting De Minimis Regulation requirements in making loans as explained in the State aid parameters in the IOGs.

This sub criteria will be assessed using the table set out in section 9 of Part 1 of this Schedule 2.

6 *How does the team propose to generate a suitable deal flow of successful investments that deliver returns and achievement of non-financial targets?*

Instruction to Tenderers

Whilst overall targets will be identified at Framework level, specific Targets will only be ascertained for each fund at the Mini-competition stage.

Bidders will be required in response to this question to have proposed their strategy and methodology for identifying and generating suitable successful investment leads and delivering the investment objectives of the Fund including the non-financial targets.

The methodology submitted should include the systems processes the Tenderer will engage for the purpose of identifying, implementing, monitoring investments to deliver returns and non-financial targets along with adjusting actions for the purpose of delivering returns and meeting targets if they are unlikely to be met on current actions.

Bidders must identify how they have developed and refined their methodology and processes having regard to the lessons learned from their experience of performance of similar obligations under previous fund manager appointments (including how they will use their experience, both in terms of success and failures, to maximise the ability of the fund to meet and exceed returns and non-financial targets).

Bidders must note that at Mini Competition Stage they will be required to bid a target performance retention of a minimum of 5% which is the GPS Retention as defined in the LPA. This will be a scored assessment at Mini Competition as set out in the Framework Agreement.

Authority's Requirements:

The Authority's requirements are:

(1) that Tenderer's proposals give assurance that they will :

- originate and realise investments via multiple sources;
- implement deal flow by:
 - throughout the Investment Period, generating investment opportunities of a type appropriate to the Lot in question and which would appropriately

contribute to investment of all monies allocated to the Fund and investments being made to the numbers of investees required to be assisted through that Fund and to make the returns targeted by the Fund;

- o identifying and securing the involvement of investees in the programme in respect of which the investments made by the Fund will generate the non-financial targets relevant to the Fund (including securing proportionate ratios of new and sustainable jobs)

(2) that the Tenderer recognises the importance of and fully supports the role of fund managers in ensuring that the Fund is to achieve the objectives of the Fund and that those investments made by each Fund should properly contribute to the overall targets and has provided comprehensive and detailed information which demonstrates a consistent and reliable approach to maintaining focus on achievement of the desired outcomes throughout the life of the Fund including that it will:

- successfully analyse and assess the reliability and achievability of:
 - o **financial projections of an investee's business** to minimise the risks that investments are lost and/or levels of return are diminished by imprudent investments;
 - o **proposed "non-financial" targets of the Fund as part of investment proposals**
- successfully manage risks associated with:
 - o individual investees (whether as a result of financial hardship or other causes) being unable to make repayments or distributions as projected at the time of the investment and so as to minimise the risks of adverse impact on achievement of overall investment programme rate of return;
 - o individual investments failing to deliver proposed non-financial targets of the Fund

and has provided assurance as to the comprehensiveness and reliability of the proposals to achieve all of the above by:

- evidencing its involvement with networks and business communities to minimise the delay in establishing avenues and sources of leads;
- evidencing how the proposals have been influenced and developed having regard to lessons learned (both in terms of success and failures) from previous experience;
- demonstrating how the proposals are supported by reliable systems and tools to demonstrate that identifying achievement of targets will be planned and managed effectively and efficiently.

This sub criteria will be assessed using the table set out in section 9 of Part 1 of this Schedule 2.

7 *Tenderers provision of support to investees*

Tenderers should note that all fees charged for services tendered **below will be deducted from the General Partner Share's and not be** retained for its benefit as explained in the LPA.

Tenderers are required to explain the following in relation to support that they will offer to Portfolio Companies as defined in the LPA.

1 The services and/or advantages that they will offer (e.g. pricing of equity/debt product including for example any advantages (if any) over standard commercial transactions terms, such as reduction of collateral compared to standard, facilities in reimbursement in case of repayment difficulties; provision of guidance to potential investees on how to present their requests for investments; additional services offered to investees post-investment, including provision of non-executive directors, provision of strategic advice;

2 The terms and conditions on which they will provide such services/advantages, this may take the form of a simple step-by-step guide helping investees through the investment process;

3 The prices or methodology for calculating the price for each service/advantage; and

4 Any additional advantages that the Tenderer considers any of its services/advantage offers to a standard commercial transaction (the Tenderer should note the State aid requirements set out in the IOGs when responding to this).

Tenderers will be scored on the basis of the Table at section 11 in Part 1 of this Schedule 2

Infrastructure, 8
Systems and
Physical
Presence

How does the organisation intend to serve part or all of the NPIF Area

Instructions to Tenderers

The Authority want to promote the best opportunity for the Fund to successfully operate across the NPIF Area and accordingly it has a preference to secure panels of fund managers for each Lot which would be able to deliver the Services across the NPIF area.

Accordingly the aim of this procurement is to attract Tenderers who are able to cover the whole/substantially the whole of the NPIF Area or will otherwise encourage Tenderers which currently operate across a smaller geographical area to commit to expanding their services across the whole or substantially the whole of the NPIF Area.

The evaluation and scoring is therefore designed to incentivise those outcomes but a Tenderer who only covers a part of the NPIF Area but who has plans to expand its area of operation to cover a majority of the area may still score well.

Tenderers are required to set out:

- the geographical areas within the NPIF Area in relation to which they would be able (and committed) to offer a credible and effective service in full satisfaction of the requirements of the Services if appointed to do so on the date that the Framework Agreement is expected to be concluded having regard to:
 - its current resources;

- necessary networks and business community links;
- knowledge and appreciation of the market opportunities across the relevant areas;
- the extent to which its credentials in sourcing and management of investments are well established within the relevant local business community;
- their comprehensive, credible and detailed proposals for how they would extend the geographical area they are able to cover for the whole of the NPIF Area including:
 - the actions (including marketing and communication) which would be necessary to be able demonstrate convincingly that it would have:
 - the necessary resources;
 - established the necessary networks and business community links;
 - obtained knowledge of and appreciation of the relevant market opportunities; and
 - established its credentials in the area
 - the timescales over which those actions would be undertaken and completed; and
 - the level to which they can commit to pursuit and implementation of such extension.

The Authority's Requirements

The Authority's requirements are that each Tenderer should

- (a) be able to provide a full and reliable service in respect of the Lot or Lots for which it bids across the whole of the NPIF Area on commencement of the Framework; or
- (b) (if not) be able to provide a full service in respect of the Lot or Lots for which it bids across a material part of the NPIF Area on commencement of the Framework with well-developed and credible plans to extend the service delivery across the whole of the NPIF Area which the Tenderer is committed to implement in the early stages of the Investment Period for an area that is subject to a Call Off Contract; or
- (c) (if not) be able to provide a full and reliable service in respect of the Lot or Lots for which it bids across one or more LEP areas within the NPIF Area with plans which are already being implemented and are very credible to extend the service delivery across the whole of the NPIF Area and the Tenderer has already evidenced its commitment to implement the plan commencing forthwith.

Please note that each of the above is an independent manifestation of the Authority Requirement. Accordingly this means that proposals which meet one of those specified alternative, as evaluated in accordance with the tests in the evaluation table, will be able to score full marks. Proposals from Tenderers which fall short of the

alternative which most closely resembles their current situation will drop marks to the extent indicated through the use of the evaluation table

Additionality

9

This sub criteria will be assessed using the table set out in section 9 of Part 1 of this Schedule 2.

Please confirm that appointment to the Framework or a Call-Off Contract would not prejudice or undermine your other investment activities in SMEs.

A Yes answer will be a pass

A No answer will be a fail and accordingly your Tender will be rejected

Please note that this criterion will be assessed as a scored assessment at Mini Competition.

SCHEDULE 3

Pricing Schedule

Part 1: Instructions

Tenderers are required to complete the Pricing Schedule Submission at Schedule 3 part 3, without amendment to the structure or cell content.

Tenderers must provide a figure in each of the cells. Tenderers must not make any of the items subject to any assumptions or qualification. If any figures or rates are expressed to be subject to any assumptions (or any other factors) or if the Pricing Schedule Submission has not been fully completed reserve the right to disqualify them from the process.

If a cell is left blank or a non-number entry is made e.g. a "-" then it shall be assumed that the figure is zero.

Whilst completing the Pricing Schedule Tenderers must refer to the information provided in this ITT including without limit the information at clause 3 Background.

The figures tendered will be inserted into the Framework Agreement and will be the maximum (or, if applicable, minimum) figures that can be tendered by the tenderer on any Mini Competition. Further details of the Mini Competitions can be found in the Framework Agreement at Schedule 5.

Within the Pricing Schedule Submission certain explanatory text is included to help the Tenderer understand the purpose of the information requested. The Tenderer should note, however, that it must be aware of the full terms of this ITT including all schedules. In particular the Tenderer is referred to the Call Off Contracts for a full understanding of how the pricing that they bid will operate under the LPA and FMA.

Tenderers are asked to assume a Fund value size of:

- £30million to £50million for Lot 1 – Equity and Lot 2 – Debt; and

- £5million to £20million for Lot 3 – Microfinance

when submitting the details requested in the Pricing Schedule Submission as Schedule 3 Part 3.

Part 2 – Not Used

Part 3: Pricing Schedule Submission

Important Note: Before completing this Schedule Tenderers are advised to read the LPA and IMA to understand how the rates they bid operate under these agreements

GENERAL PARTNER'S SHARE

Tenderers are required to provide the following information in relation to pricing for each Lot that they are tendering. The scores that will be applied to the figures bid are set out in Schedule 3 Part 4. For the avoidance of doubt the Tenderer must provide the information separately per Lot that they are tendering for and specify at the top of each set of rates which Lot the information applies to. Note that Rate B is required for Lot 1 – Equity only:

Lot 1 – Equity
Lot 2 - Debt
Lot 3 - Microfinance

A - **General Partner's Share (as defined in the LPA) ("GPS") percentage applied to Undrawn Commitments (as defined in the LPA) during the Investment Period (as defined in the LPA) for Lot 2 – Debt and Lot 3 – Microfinance and for the first 24 months of the Investment Period for Lot 1 - Equity.**

Percentage rate:

B - GPS percentage applied to Undrawn Commitments during the period after the first 24 months of the Investment Period for Lot 1 – Equity

Percentage rate:

C – GPS percentage applied to Drawdown Commitments (as defined in the LPA) during the Investment Period.

Percentage rate:

D = The percentage step down that will be deducted from each of rates A, B and C to form new rates that will be the relevant GPS percentage applied to Undrawn Commitments or Drawdown Commitments for the relevant periods for the amounts committed to the Fund at any time (ie allocated to the Fund) in excess of £50million (ie on the marginal amount) for Lot 1 – Equity and Lot 2 – Debt or £20million (ie on the marginal amount) for Lot 3 – Microfinance.

Percentage rate:

E - Percentage step down applied each year to calculate GPS during the Realisation Period (as defined in the LPA).

Percentage rate :

When submitting the data above Tenderers should note this guidance and are reminded of the provisions in Part 1 of this Schedule 3 for further documentation to read for a full understanding.

Guidance on the interaction of Rates (A) (B) (for Lot 1-Equity only) and (C)

Rate (A) and rate (B) for the Lot 1 –Equity is/ are to be used for calculating GPS on funds which have been committed to the Fund Partnership by the Relevant Authority and any co-investors but not yet been drawn down. Rate (C) is for funds which have been drawn down into the Fund in accordance with the LPA. Rate (C) must be higher than the rate (A) and rate (B) must be lower than rate (A) to reflect that costs increase as investments are made.

Guidance on the application of rates to the marginal amount over £50 million Lot 1 – Equity and Lot 2 – Debt and £20 million Lot 3 – Microfinance

The explanation below assumes Lot 2 – Debt

The step down percentage bid as rate (D) will be applied first to the percentage rate applied to Undrawn Commitments (ie if the excess is £2.5m and there is £1m Undrawn Commitment in the Investment Period and the bidder bid 1.5 % (Rate A) on Undrawn Commitment and 2% rate (C) on Drawdown Commitment) then bid a step down rate of 0.4% at Rate (D) it would be 1.1% on the £1m and 1.6% on £1.5m of Drawdown Commitment plus the full 2% on £50m Drawdown Commitment) and will be allocated to the Authority pari passu with in any co-investors.

Guidance for the Realisation Period

During the Realisation Period the GPS will be reduced by applying the percentage step down (E) that the Tenderer bids. The amount of GPS payable for the first year of the Realisation Period will be calculated by applying the percentage step down (E) to the amount of GPS payable for the last year of the Investment Period. The amount of GPS payable for each subsequent year of the Realisation Period will be calculated by applying the percentage step down (E) to the amount of GPS payable for the previous year.

CARRIED INTEREST

Tenderers should note that at Mini Competition they will be required to bid the percentage of **profits of the Fund to be allocated to Carried Interest (“Carried Interest Percentage”) after the Authority and any co-investors have received repayment of their loans together with a preferred return (“Preferred Return”) and to bid the Preferred Return. The rules of the Mini Competition will say that the Carried Interest Percentage must not exceed 20% and the Preferred Return must not be less than an amount equal to 5% compounded annually on the daily amount of all loans (and any amount already compounded) outstanding from time to time.**

CO-INVESTMENT FROM THE FUND MANAGER AND THIRD PARTY INVESTORS

Tenderers must submit their methodology for raising co-investment as set out below. Tenderers must note that at Mini Competition stage they will be required to bid the actual amount of co-investment that they will provide and that they will secure from third parties in accordance with evaluation and scoring set out in the Framework Agreement.

At the Mini-competition stage this will include separate limbs in respect of which the Tenderer will be expected to bid a percentage of the sub-Fund being allocated to the Call-Off Contract being procured by that Mini-competition which will be introduced as additional funds (1) by the Fund Manager and (2) by other third party investors.

However it is accepted that at the Framework Agreement level it is not possible to propose precise percentages in the absence of the detail of the sub-Fund.

Instead Tenderers must provide separate comprehensive and detailed methodologies setting out their approach, processes and methods for:

A sourcing and securing additional funds; and

B investing their own funds.

Each approach and methodology must include (in each case setting out all steps and actions they would take and the timeframes for doing so):

- a full explanation of the factors which will determine the level of funds in each case which the Fund Manager would expect to secure from third party investors/invest itself;
- an explanation of how they would seek to address/influence such factors to maximise the level of third party investors/their own investment that they would commit to securing/providing respectively at Mini-competition stage;
- in respect of third party investment, an explanation of how (including any networks, systems and processes which will be engaged) the Tenderer would identify potential third party investors for relevant sub-Funds for the Lot in question, their mechanisms for choosing third parties to approach and making those approaches in connection with securing such investment;
- in respect of their own funding, what would be the source of that funding and if not corporate funds then how would that be secured for the benefit of the sub-Fund when bidding at mini-competition;
- an explanation of how they would ensure such funds from third party investment/their own funding are secured early in the investment period for the relevant sub-Fund;
- an explanation of the level of assurance which the Tenderer considers the methodology provides that it will be able to successfully secure material additional investment from third party investment/their own funding for the sub-Funds and bid realistic and reliable percentages at Mini-competition. This should include evidence that:
 - such methodology has been developed to reflect lessons learned from their previous investments into similar projects and successfully generating third party investments/providing their own funding for such projects;
 - any proposals for enforcement in the event that they fail to meet the percentages bid at Mini-competition; and
 - any other matters which they consider should give the Authority assurance that the percentages bid at Mini-competition will be material and reliable.

Tenderers should note that at Mini-competition:

- Tenderers will be required to submit bids for the percentages for its own investment and additional third party investment and demonstrate how they have made such proposals in accordance with the methodology submitted in response to this question; and
- Tenderers submissions will be marked down if Tenderers are not able to fully explain how the percentage figures bid are fully consistent with and drawn up by adoption of their methodology submitted in response to this question.

The Authority's Requirement (in respect of co-investment from the fund manager and third party investors)

The Authority's requirement is that the Tenderer shall have demonstrated:

- that it appreciates and is committed to achieve the benefits (as well as the potential ramifications) of securing additional third party investment/investing its own monies with the aim of maximising the desired outcomes of the programme and providing assurance through sharing risk;
- it has a comprehensive and detailed methodology for sourcing additional third party investments backed up by developed networks/arrangements through which such investments are identified, secured and delivered;
- that it has a fully developed risk and investment strategy which supports co-investment of its own capital in similar projects;

- that the methodology will support the ability and likelihood of material additional third party investment/own investment proposals at Mini-Competition;
- that there is a real likelihood that material levels of third party additional investment and/or investment of its own funds will be delivered early on in the investment period under any Call-Off Contract entered into;
- the methodology has been tested and developed through lessons learned to provide greater assurance of its credibility and successful implementation

Part 4 Evaluation Methodology for Pricing Schedule Submission

The information submitted in the Pricing Schedule Submission will be evaluated as follows:

Lot 1 – Equity, Lot 2 – Debt and Lot 3 – Microfinance

Rate A – percentage applied to Undrawn Commitments for Lot 2 – Debt and Lot 3- Microfinance and during the first 24 months of the Investment Period for Lot 1 - Equity

For each Lot the Tenderer offering the lowest bid percentage (Lowest Bid Percentage) will receive the maximum 10 marks available for Rate A and all other Tenderers will be awarded a percentage of the marks which is proportional to the difference between the Lowest Bid Percentage and their bid percentage using the calculation:

Lowest Bid Percentage divided by the Tenderer's bid percentage x 10 = Score

For example, on Lot 1 Tenderer A bid 2% being the Lowest Bid Percentage and scored 10 marks. Tenderer B bid 4% and was awarded 5 marks calculated by 2 divided by 4 x 10

Lot 1 - Equity

Rate B - GPS percentage applied to Undrawn Commitments during the period after the first 24 months of the Investment Period for Lot 1 – Equity

For each Lot the Tenderer offering the lowest bid percentage (Lowest Bid Percentage) will receive the maximum 10 marks available for Rate B and all other Tenderers will be awarded a percentage of the marks which is proportional to the difference between the Lowest Bid Percentage and their bid percentage using the calculation:

Lowest Bid Percentage divided by the Tenderer's bid percentage x 10 = Score

For example, on Lot 1 Tenderer A bid 1% being the Lowest Bid Percentage and scored 10 marks. Tenderer B bid 2% and was awarded 5 marks calculated by 1 divided by 2 x 10

IMPORTANT NOTE: if Rate B is not lower than Rate A this will be scored fail and accordingly your Tender will be rejected

Each of the following are for each of Lot 1 – Equity, Lot 2 – Debt, Lot 3 – Microfinance

Rate C – GPS percentage applied to Drawdown Commitments (as defined in the LPA) during the Investment Period.

For each Lot the Tenderer offering the lowest bid percentage (Lowest Bid Percentage) will receive the maximum 10 marks available for Rate C and all other Tenderers will be awarded a percentage of the marks which is proportional to the difference between the Lowest Bid Percentage and their bid percentage using the calculation:

Lowest Bid Percentage divided by the Tenderer's bid percentage x 10 = Score

For example, on Lot 1 Tenderer A bid 3% being the Lowest Bid Percentage and scored 10 marks. Tenderer B bid 5% and was awarded 6 marks calculated by 3 divided by 5 x 10

IMPORTANT NOTE: if Rate C is not higher than Rate A this will be scored fail and accordingly your Tender will be rejected

Rate D – Percentage step down deducted from each of rates (A), (B) and (C) to be applied to the marginal amount over £50 million for Lot 1 – Equity and Lot 2 Debt and over £20million Lot 3 – Microfinance

Score	Percentage rate
10	0.5% or over
8	0.4%
6	0.3%
4	0.2%
2	0.1%
0	0%

Rate E – percentage applied as Step Down during the Realisation Period

Score	Percentage rate
10	24 or over
8	22 to 23.999
6	20 to 21.999
4	18 to 19.999
2	16 to 17.999
0	Under 16

The Tenderer’s submissions in respect of Co-investment from the fund manager and third party investors will each be evaluated in accordance with the following table.

Score = 0	Nil Response / Very Poor	Failed to address the Authority’s requirements or no evidence provided to suggest that the proposals are capable of meeting the Authority’s requirements.
Score = 2	Poor	Response does not demonstrate that the Tenderer has satisfactory understanding of the Authority’s requirements. There are numerous and/or significant gaps in proposals and/or there is very little evidence or little credible evidence or other forms of assurance that the proposals would be capable of delivering the Authority’s requirements or the evidence has major gaps, or is otherwise unconvincing .
Score = 4	Below Satisfactory	Response demonstrates that the Tenderer has a limited understanding of the Authority’s requirements. There are a number of gaps, or a few gaps some of which may not be insignificant, in the proposals to meet the Authority’s requirements and/or there are a number of gaps or some significant gaps in evidence and limited other forms of assurance meaning that there remain more than a little doubt as to reliability of the evidence as to whether the proposals would be capable of meeting the Authority’s requirements and/or would be likely to be delivered.
Score = 6	Satisfactory	Response demonstrates that the Tenderer understands most of the Authority’s requirements. There are a few or more gaps, though none major, in the proposals to meet the Authority’s requirements and/or there are a few gaps in evidence and/or other forms of assurance, such that there remain some doubts as to whether the proposals would be likely to meet the majority of the Authority’s requirements or there is some risk that they would not all be delivered or with some reservation as to the reliability of the evidence that has been provided as to whether the proposals would be likely to be delivered .
Score = 8	Good	Response demonstrates that the Tenderer understands all of the Authority’s requirements with no gaps in the proposals to meet all the Authority’s requirements and has provided proposals which are detailed and coherent and are supported by credible evidence and/or other forms of assurance that is at least persuasive that the proposals are reasonably capable of meeting the Authorities requirements and are reasonably likely to be delivered.
Score = 10	Excellent	Response demonstrates that the Tenderer fully understands the Authority’s requirements, has comprehensive, coherent and detailed proposals for delivering all of the Authority’s requirements which are supported by compelling evidence and/ other forms of assurance that such proposals will be delivered and will meet the Authority’s requirements.

SCHEDULE 4

Evaluation Scoring

Head Criteria	Sub criteria	Marks	Weightings
Financial Structure (see Schedule 3 for submission requirements and the methodology for scoring submission)	General Partners Share: Percentage on Undrawn Commitments (Rate A)	10	8% Lot 2 Debt and Lot 3 Microfinance 6% Lot 1 - Equity
	Percentage on Undrawn Commitments during the period after the first 24 months of the Investment Period for Lot 1 - Equity (Rate B)	10	2% Lot 1 - Equity
	Percentage applied to Drawdown Commitments (Rate C)	10	8% all Lots
	Percentage step down for marginal amounts over £50million Lot 1 Equity and Lot 2 Debt and £20 million Lot 3 Microfinance (Rate D)	10	2 % all Lots
	General Partners Share : Percentage Step Down during Realisation Period (Rate E)	10	9%
	<i>Co-investment by the Fund Manager and third party investors</i>		
	The proposals for Co-investment by the Fund Manager submitted in accordance with the Pricing Schedule will be evaluated in accordance with that Schedule	10	3%
	The proposals for Co-investment by third party investors submitted in accordance with the Pricing Schedule will be evaluated in accordance with that Schedule	10	2%
Team	<i>Is there a competent named team with sufficient expertise and resources committed to deliver the Services?</i>	10	10%
	<i>How will the team work together?</i>	10	6%
	<i>Demonstrate sufficient resources to execute both the investment strategy and portfolio realisation stage?</i>	10	8%
	<i>How are the team's interests aligned with the Fund and NPIF as a whole?</i>	10	4%
Track Record	<i>How will the team ensure compliance with all relevant laws and funders requirements in the provision of micro-finance/debt/equity?</i>	10	8%

	<i>How does the team propose to generate a suitable deal flow of successful investments that deliver financial returns and achievement of non-financial targets?</i>	10	12%
	<u><i>Tenderers provision of support to investees</i></u>	10	8%
Infrastructure, Systems and Physical Presence	<i>How does the organisation intend to serve part or all of the NPIF Geography covering the 10 LEP areas?</i>	10	12%

SCHEDULE 5

Specification

Part 1 - Fund Specifications

Specification for Framework Equity Fund

Each equity investment must satisfy the following conditions:

- 1) Be an investment in an SME in the NPIF Area
- 2) Be an investment in a range size of £50,000 to £2,000,000 subject to permitted changes in accordance with the IOGs of the relevant Fund
- 3) All conditions in the IOGs, LPA and IMA of the relevant Fund

Specification for Framework Debt Fund

Each loan must satisfy the following conditions:

- 1) Be a loan to an SME in the NPIF Area
- 2) Be a loan in a range size of £100,000 to £750,000 subject to permitted changes in accordance with the IOGs of the relevant Fund
- 3) All conditions in the IOGs, LPA and IMA of the relevant Fund

Specification for Framework Microfinance Fund

Each microfinance loan must satisfy the following conditions:

- 1) Be a loan to an SME in the NPIF Area
- 2) Be a loan in a range size of £25,000 to £100,000 subject to permitted changes in accordance with the IOGs of the relevant Fund
- 3) All conditions in the IOGs, LPA and IMA of the relevant Fund

Note: In all cases for Lot 2 Debt and Lot 3 Microfinance, loans shall not be made where such loans, or the making of such loans would constitute:

- (1) regulated credit agreements (as defined in Article 60B of the RAO);
- (2) regulated consumer hire agreement (as defined in Article 60N of the RAO); or
- (3) credit Broking for the purposes of Article 36A of the RAO Manager

General Requirements applicable to all Lots (including without limit the following):

1. Operating one or more funds in accordance with the terms of the relevant fund management agreement;
2. Identifying SMEs which are eligible for investment in accordance with the rules of the particular fund, conducting appropriate commercial and technical due diligence and structuring deals;
3. Generating deal flow and working with investee companies in the NPIF Area before and after concluding investments;

4. Concluding equity, debt and micro-finance investments (as appropriate to the **Fund's** investment type), in eligible SMEs in the NPIF Area and in accordance with EC State aid law and all other laws;
5. Maximising, where appropriate, the additional investment made by private sector co-investors into investee companies;
6. Managing the investment portfolio to add value to investee companies and achieve profitable exits for the fund;
7. Managing the investment fund so as to maximise the returns to the investors/legacy fund while minimising the operational costs and the costs to investee companies and whilst delivering the Targets;
8. Monitoring the investment portfolio and providing regular reports on investment activity, fund performance and related outputs to the Authority (and where applicable the relevant Other Contracting Authority); and

Marketing the investment fund to the appropriate market sectors and professional services intermediaries and developing, maintaining and exploiting networks in relevant communities and markets relevant to the investment funds.

Part 2 - NPIF Specification

The specification for NPIF (including the reporting requirements) for the fund management services to be provided by the fund manager under a Call-Off Contract will include all those matters set out in the draft LPA set out in Schedule 6.

The IOGs for each fund for which services will be subject to a Call-Off Contract will be set out in the Call-Off Request (as defined in the Framework Agreement). Targets will be developed as explained in paragraph 3 of this ITT and will form part of the Call-Off Request. The draft IOGs on which NPIF Call Off Requests will be based are set out in Schedule 6.

Part 3 - Targets

The table below gives the high level Targets from which the detailed ones will be developed for NPIF at Mini Competition stage. Tenderers are referred to clause 3 of this ITT regarding Targets for other Funds.

The table includes NPIF high level output themes and required priority axis areas. It should be considered in conjunction with the DCLG 2014-2020 European Growth Programme, Output Indicator Definitions Guidance for the European Regional Development Fund September 2015

No.	Output Name	Priority 1	Priority 3	Priority 4
C1	Number of enterprises receiving support	X	X	X
C3	Number of enterprises receiving financial support other than grants	X	X	X
C4	Number of enterprises receiving non-financial support <ul style="list-style-type: none"> • 3 + hrs support • 12 + hrs support 	X	X	
C5	Number of new Enterprises supported	X	X	X
C7	Private investment matching public support to enterprises (non-grants)	X	X	X
C8	Employment increase in supported enterprises	X	X	
C28	Number of enterprises supported to introduce new to the market products	X	X	
C29	Number of enterprises supported to introduce new to the firm products	X	X	X
P13	Number of enterprises receiving Information, Diagnostic and Brokerage support		X	

SCHEDULE 6

Part 1: Framework Agreement

Part 2: LPA Agreement

Part 3: Fund Management Agreement

SCHEDULE 7

Form Of Tender

Note a Form of Tender per Lot must be submitted

British Business Financial Services Limited

Framework Agreement for Fund Management Services (**the "Framework"**)

FORM OF TENDER

To: British Business Financial Services Limited

For the Attention of:

NAME]

Date:

Dear Sir/Madam,

TENDER FOR THE FRAMEWORK AGREEMENT

I/We the undersigned, hereby tender and offer to provide the Framework Agreement as listed below which is more particularly referred to in the Invitation to Tender supplied to me/us for the purpose of tendering for the provision of the Framework Agreement and upon the terms thereof.

Attached to this Form of Tender are the following:

- 1 The completed Qualification Response in Schedule 1 of the ITT.
- 2 The response to the questions detailed in Schedule 2 of the ITT.
- 3 The completed Pricing Schedule Submission contained in Schedule 3 to the ITT.
- 4 A signed Certificate of Non-Collusive Tendering and Non-Canvassing contained in Schedule 8 to the ITT.
- 5 A completed Confidential Information Form contained in Schedule 9 to the ITT.
- [6 Conflict of Interest Appendix referred to in section 1.13 Important Information and Schedule 1][Note: only needed if applicable to the Tenderer]

I/We confirm that the I/we can supply the services under the Framework as specified in the Invitation to Tender at the rates specified within the Pricing Schedule.

I/We confirm that we accept the Framework and all schedules attached to it as issued within the Invitation to Tender.

I/We undertake in the event of acceptance of our Tender to execute the Framework within 15 business days of such acceptance (or otherwise as agreed with the Authority).

I/We understand that the Authority reserves the right to accept or refuse this Tender whether it is lower, the same, or higher than any other Tender.

I/We confirm that the information supplied to you and forming part of this Tender including (for the avoidance of doubt) any information supplied to you as part of my/our initial expression of interest in tendering, was true when made and remains true and accurate in all respects.

I/We confirm that this Tender will remain valid for 6 months from the date of this Form of Tender.

I/We confirm and undertake that if any of such information becomes untrue or misleading that I/we shall notify you immediately and update such information as required.

I/We confirm that the undersigned are authorised to commit the Tenderer to the contractual obligations contained in the Invitation to Tender and the Framework.

Signed by

Name(s).....

Position.....

for and on behalf of [*Tenderer*]

SCHEDULE 8

Certificate Of Non-Collusion And Non-Canvassing

British Business Financial Services Limited

Framework Agreement for Fund Management Services **(the "Framework")**

To: British Business Financial **Services Limited ("the Authority")**

Date:

For the Attention of: [NAME]

Statement of non-canvassing

I/we hereby certify that I/we have not canvassed any member, Director, employee, representative or adviser of the Authority, British Business Bank, Department for Business, Innovation and Skills and the Secretary of State for Business, Innovation and Skills (together referred to as the **"Authorities"**) in connection with the proposed award of the Framework by the Authority, and that no person employed by me/us or acting on my/our behalf, or advising me/us, has done any such act.

I/we further hereby undertake that I/we will not canvass any member, Director, employee, representative or adviser of the Authorities in connection with the award of the Framework and that no person employed by me/us or acting on my/our behalf, or advising me/us, will do any such act.

Statement of non-collusion

The essence of selective tendering for the Framework is that the Authority shall receive bona fide competitive Tenders from all Tenderers.

In recognition of this principle, I/we certify that this is a bona fide offer, intended to be competitive and that I/we have not fixed or adjusted the amount of the offer in accordance with any agreement or arrangement with any other person (except any sub-contractor identified in this offer).

I/we also certify that I/we have not done, and undertake that I/we will not do, at any time any of the following acts:

- (a) communicate to a person other than the Authority, the amount or approximate amount of my/our proposed offer except where the disclosure in confidence of the approximate value of the Tender was essential to obtain insurance premium quotations required for the preparation of the Tender; or
- (b) enter into any agreement or agreements with any other person that they shall refrain from tendering or as to the amount of any offer submitted by them; or
- (c) offer or agree to pay or give or actually pay or give any sum of money, inducement or valuable consideration, directly or indirectly, to any person for doing or having done or having caused to be done in relation to any other offer or proposed offer, any act or omission (including without limit any matter that would constitute a breach of the Bribery Act 2010 (as amended)).

I/we agree that the Authority may, in its consideration of the offer and in any subsequent actions, rely upon the statements made in this Certificate.

Signed:

Name:

Position:

For and on behalf of [*Tenderer*]

.....

SCHEDULE 9

Confidential Information Form

Further to paragraph 1.15 of the ITT, if a Tenderer considers that any information included in the Qualification Response, Qualitative Response, Quantitative Response or contained in or related to a request for further information or interview should not be disclosed to a third party (whether or not this is another Tenderer) because of its commercial sensitivity, then it should highlight the information that it considers should not be disclosed together with reasons for considering it to be commercially sensitive.

Information highlighted in this way should be limited to information which is genuinely confidential and which may be exempt from disclosure under the FOIA and the EIR.

In circumstances where the Authority considers that a response to an information request containing commercially sensitive information should be disclosed to a third party, the Authority will exercise its discretion as to whether in its view the highlighted information should be treated as commercially sensitive.

This process shall in no way prejudice the Authority's **obligation to consider and potentially disclose** all information which it holds in respect of information requests made under the FOIA and the EIR.

Document	Section	Reasons for marking as confidential

SCHEDULE 11

Draft DCLG Grant Agreement

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Department for
Communities and
Local Government



European Union
European Regional
Development Fund

DRAFT
**European Regional Development Fund
Financial Instruments Funding Agreement**

**ERDF Deed
Funding Agreement**

between

The Secretary of State for Communities and Local Government

and

[insert ERDF Recipient]

Project Name: [Insert Project Name]

Project Number: [insert Project Number]

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THIS AGREEMENT is dated

20[]

PARTIES

1. **THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT** whose principal address is 2 Marsham Street, London SW1P 4DF (**Secretary of State**); and
2. **[INSERT ERDF RECIPIENT DETAILS] [(INSERT REGISTERED NUMBER IF APPLICABLE)]of [INSERT ADDRESS] (ERDF Recipient).**

BACKGROUND

- A The Commission of the European Union ('European Commission') has adopted the Operational Programme for England, setting out its contribution to the Union strategy for smart, sustainable and inclusive growth and the achievement of economic, social and territorial cohesion;
- B Having concluded the Ex Ante Assessment, the Secretary of State as the managing authority for the Operational Programme pursuant to Article 123(1) of Regulation 1303 wishes to offer the ERDF Contribution and the ERDF Recipient agrees to accept the ERDF Contribution on the terms and conditions of this Funding Agreement;
- C This Funding Agreement serves as the document described in Article 125(3)(c) of Regulation 1303 (as defined) and includes the provisions set out in Annex IV, as prescribed by Article 38(7) of Regulation 1303 and sets out the conditions for support for the operation concerned and the specific requirements concerning the products or services to be delivered under the operation, the financing plan and the time-limit for execution.

IT IS AGREED THAT:

1 DEFINITIONS

In this Funding Agreement the following words and phrases shall have the following meanings:

"Agreed Eligible Fund Size" means the overall amount of £[FIGURES] [WORDS]

"Agreed Financial Completion Date" means the date specified as such in the Project Specific Conditions and being the date that all of the expenditure eligible for ERDF funding will have been defrayed.

"Agreed Project Practical Completion Date" means the date specified as such in the Project Specific Conditions and being the date by which the Targets shall be achieved.

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“Anticipated Fund Completion Date” means the date specified as such in the Project Specific Conditions and being the date by which it is anticipated that the Fund will be wound up and any monies remaining on the Returns Account will be exited in accordance with the Exit Policy

“Appendix” means an appendix to the Application

“Application” means the application for ERDF Contribution and all supporting papers submitted to the Secretary of State in relation thereto, including, without limitation, the Business Plan, the application form including full details of the Project Activities, the Targets, the Investment Policy and the activities of the ERDF Recipient establishing the Fund a copy/copies of which is contained in Schedule 5 including the Appendices containing the Core Documents.

“Audit” means an audit/monitoring verification carried out pursuant to Articles 125 and 127 of Regulation 1303 by the Secretary of State in its role as ‘managing authority’ or in its role as ‘audit authority’, or any audit by the European Commission, European Court of Auditors or, where relevant, the National Audit Office.

“Capital Maximum Sum” means the maximum amount of ERDF Contribution payable in respect of Eligible Capital Expenditure and is specified in the Project Specific Conditions.

“Capital Receipts” means all payments distributions to (or to be made to), sums realised from investments or other amounts received or to be received by the Fund representing the repayment or return of all or part of the principal or capital element of any Relevant Investment.

“Change” means in relation to the Project as defined in the Application any of the following changes (in accordance with clause 14):-

- (a) a change in the constitutional arrangements of the ERDF Recipient or in the Ownership, Control and Nature of Business of the ERDF Recipient;
- (c) a change in the nature or purpose of the Project or in the delivery of the Project as set out in the Business Plan and Investment Policy which are underpinned by the Ex Ante Assessment;
- (d) any change to the Eligible Expenditure;
- (e) any change to the Expenditure Profile;
- (f) any change to any of the Key Milestone Dates;
- (g) any change to any of the Targets or affecting the achievement of the Targets or the timescales in relation thereto including any significant change affecting the agreed investment profile for the making of Relevant Investments as set out in the Business Plan.

“Co-Investment” means any co-investment finance invested as part of a Relevant Investment and which constitutes Match Funding;

“Committed” means, funding which:-

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- (a) has been legally committed to the ERDF Recipient in writing by a third party and the amount is not subject to any unsatisfied conditions precedent or conditions subsequent or any other conditions which in the opinion of the Secretary of State acting reasonably are unacceptable on the basis that they would significantly delay or prevent the payment of the sum; or
- (b) funding which shall be provided from the ERDF Recipient's own resources the availability of which shall be evidenced to the Secretary of State; or
- (c) funding sourced by the Product Fund Managers and provided as Co-Investment alongside Relevant Investments and which the ERDF Recipient intends to use as all or part of the Match Funding requirement for the purposes of this Funding Agreement.

"Community Rules" means the rules set out in relevant legislation and supporting guidance covering the European Structural and Investment Funds, State Aid, public procurement, financial instruments (including but not limited to 'Guidance on European Structural and Investment Funds 2014-2020' published by the European Commission on its website from time to time) and other relevant standards and applicable legislation on the prevention of money laundering, the fight against terrorism and tax fraud.

"Completed Project" means a Project that has been Completed and in respect of which all related payments have been made by the ERDF Recipient and the corresponding public contribution has been paid to the ERDF Recipient constituting Eligible Expenditure (notwithstanding that the Parties acknowledge that the obligations of the ERDF Recipient as set out in the Conditions may extend beyond the Agreed Project Practical Completion Date and cover the whole Investment Period of the Fund)

"Completion" and "Completed" means final completion and full implementation of the Project Activities to the satisfaction of the Secretary of State

"Conditions" means the terms and conditions upon which the ERDF funding is payable as contained in clauses 1 to 37 of the main body of this Funding Agreement and the Project Specific Conditions at Schedule 1.

"Confidential Information" means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the owner of the Confidential Information, including all intellectual property rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential.

"Contracting Authority" means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 or regulation 2 of the Public Contracts Regulations 2015 (as amended) other than the Secretary of State.

"Contribution Rate" means the overall percentage rate of Eligible Expenditure at which ERDF Contribution is paid as contained in the Project Specific Conditions [and may be the Costs Capital Contribution Rate and/or Investment and Fees Capital Contribution Rate].

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“Core Documents” means the contracts and other documents, whether legally binding or otherwise entered into or agreed, or to be agreed, between any of the Parties for the purposes of or in connection with the Fund, and copies of each of the items listed below are attached at Appendix 1 to Schedule 5 of these Funding Conditions):

- a) The Business Plan;
- b) The Ex Ante Assessment;
- c) The Investment Policy;
- d) The Idle Funds Investment Policy; and
- e) The Exit Policy
- f) Fund Management Agreement(s)

“Correction” means an amount to be repaid or withheld from the ERDF Contribution or any Returns payable as determined following the finding of an Irregularity and calculated by reference to the Guidelines for Determining Financial Corrections for Financial Instruments.

“Costs” means the costs payable in respect of the operation and management of the Fund of Funds during the Investment Period which may be reimbursed utilising the ERDF Contribution, subject always to the Conditions

“Costs Capital Contribution Rate” means the percentage rate in respect of Eligible Capital Expenditure at which the ERDF Contribution may be paid towards the costs of operating the Fund of Funds and is specified in the Project Specific Conditions.

“Crown Body” means any Secretary of State, office or agency of the Crown.

“Data” means:-

- (b) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the ERDF Recipient by or on behalf of the Secretary of State; or (ii) which the ERDF Recipient is required to generate, process, store or transmit pursuant to this Funding Agreement; or
- (c) any Personal Data for which the Secretary of State is the Data Controller.

“Data Controller” shall have the same meaning as set out in the Data Protection Act 1998, as amended.

“Data Processor” shall have the same meaning as set out in the Data Protection Act 1998, as amended.

“Data Protection Legislation” means the Data Protection Act 1998, as amended, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of

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Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, as updated from time to time, including where applicable the guidance and codes of practice issued by the Information Commissioner.

“Data Subject” shall have the same meaning as set out in the Data Protection Act 1998, as amended.

“Delivery Partner” means a third party that (in collaboration with the ERDF Recipient) has been permitted to deliver part of the Project, itself defray expenditure to be claimed and carry out the Project Activities in accordance with clause 4 and which is not intended by either party to be providing services or works under a contract for services or works.

“Eligibility Rules” means the rules governing eligibility of expenditure for payment of European Regional Development Fund contained in:

- (a) Regulation 1301;
- (b) Regulation 1303;
- (c) The National European Regional Development Fund Eligibility Rules; and
- (d) The rules specific to Financial Instruments in Regulation 480.

“Eligible Capital Expenditure” means the expenditure set out in the profile at Schedule 2.

“Eligible Expenditure” means Expenditure in relation to this Project that complies in all respects with the Eligibility Rules.

“Equity Investment” means a risk capital investment made by acquiring an equity or quasi-equity stake in an undertaking as further defined in Regulation 966.

“ERDF” or “ERDF Contribution” means the amount of European Regional Development Fund payable pursuant to this Funding Agreement up to the Maximum Sum as set out in the Project Specific Conditions.

“ERDF Capital Bank Account” means any fiduciary bank account into which all or any element of the ERDF Contribution is required to be deposited in accordance with the provisions of this Funding Agreement

“ERDF Claim” means a claim for ERDF Contribution using the Secretary of State’s System on line facility.

“ERDF Recipient Equipment” means the hardware, computer and telecoms devices and equipment made available by the ERDF Recipient or its sub-contractors (but not hired, leased or loaned from the Secretary of State) for the provision of the Project Activities.

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“ERDF Recipient Personnel” means all employees, agents, consultants and contractors of the ERDF Recipient and/or of any sub-contractor.

“ERDF Recipient Software” means software which is owned by or licensed to the ERDF Recipient, including software which is or will be used by the ERDF Recipient for the purposes of complying with its obligations pursuant to this Funding Agreement.

“ERDF Recipient System” means the information and communications technology system used by the ERDF Recipient in performing its obligations under this Funding Agreement including the ERDF Recipient Software, ERDF Recipient Equipment and related cabling (but excluding the Secretary of State System).

“European Union Procurement Requirements” includes, but is not restricted to EC Directives 2004/18/EC, 2004/17/EC and 2007/66/EC as implemented by the Public Contracts Regulations 2006 (SI No 5/2006), as amended, Directive 2014/24/EU as implemented by the Public Contracts Regulations 2015 and the Utilities Contracts Regulations 2006 (SI No 6/2006), as amended, and includes the EU Commission Interpretative Communication (2006/C 179/02), any current guidance on procurements in European Structural and Investment Funds issued by the European Commission..

“Event of Default” means an event or circumstance as defined by clause 17.

“Ex Ante Assessment” means the assessment undertaken in accordance with Article 37 of Regulation 1303 and which has been concluded and approved by the Secretary of State.

Excluded Sector(s) means any of the sectors specified in the Project Specific Conditions in Schedule 1 and including, but not limited, to any further sectors which are excluded on the basis of the State Aid Law exemption used.

“Exit Policy” means the written policy detailing the winding up of the Fund and the exit of any Returns attached at Appendix [].

“Expenditure Profile” means the information provided by the ERDF Recipient detailing the spend forecast for the carrying out of the Project Activities and defrayal of expenditure including the Start Date and the Agreed Financial Completion Date and which is contained in Schedule 2.

“Financial Facility Agreement” means any agreement with a lender or other funder providing Match Funding in connection with the Fund

‘Financial Intermediary’ means any financial institution regardless of its form and ownership, such as entities established as Limited Partnerships pursuant to the Limited Partnerships Act 1907 or any other entities which may be established to act as the vehicles to make Relevant Investments for the purposes of the Product Funds.

“Financial Year” means the calendar year.

“Fund” means the fund established by the ERDF Recipient to undertake Relevant Investments in line with the Application;

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“Fund of Funds” means the umbrella fund operated by the ERDF Recipient which invests in the Product Funds

“Funding Agreement” means this agreement including the Schedules and its appendices/annexures.

“GBER” means the General Block Exemption Regulation, Commission Regulation (EU) 651/2014

“Guarantee” means a written commitment to assume responsibility for all or part of a third party's debt/obligations as further defined in Regulation 966

“Guidelines for Determining Financial Corrections for Financial Instruments” means the Guidelines for determining financial corrections to be made to expenditure co-financed by the EU under the Structural Funds and the European Fisheries Fund for non-compliance with the rules applicable to financial instruments from time to time in force and notified to the ERDF Recipient by the Secretary of State and which (those subsisting on the date of this Funding Agreement) are EGESIF_14_0015 (provided that these refer to the 2007-2013 programming period and further guidelines are awaited):-

“Idle Funds Investment Policy” means the written policy agreed by the Secretary of State for the use of uninvested ERDF Contribution before it is deployed by the Fund in accordance with the Conditions attached at Appendix 1 to Schedule 5.

“Idle Funds Returns” means any interest or returns available on the realisation, disposal or maturity of deposits or temporary investments made in pursuance of the Idle Funds Investment Policy (i.e. the amount by which funds available on the realisation, disposal or maturity of deposits or investments made in pursuance of that policy exceed the amount deposited or invested under the Idle Funds Investment Policy);

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

(i) interest (including any capitalised interest); and/or

(ii) dividends;

“Information Communications and Technology Environment” means the Secretary of State System and the ERDF Recipient System.

“Information” has the meaning given in the Freedom of Information Act 2000.

“Information Commissioner” has the meaning given in the Freedom of Information Act 2000.

“Initial Investment Period” means the period between the Start Date and the Agreed Financial Completion Date during which the Fund makes Relevant Investments and reutilises Returns in accordance with clause 45 Regulation 1303

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"Intellectual Property Rights" means all patents, know-how, registered trade marks, registered designs, utility models, applications and rights to apply for any of the foregoing unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention discovery or process in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions.

"Investment Advisory Committee/Board" means the independent investment advisory committee or management committee to the Fund consisting of appropriately qualified and experienced individuals which provides strategic advice and direction to the Fund but does not take part itself in the running of the Fund and to which the ERDF Recipient shall ensure that the Secretary of State shall have a standing invitation to attend as an observer;

"Investment and Fees Capital Contribution Rate" means the overall percentage rate in respect of Eligible Capital Expenditure which the ERDF Recipient may defray in relation to the Financial Intermediaries for Relevant Investments and Product Fund Management Fees and is specified in the Project Specific Conditions.

"Investment Period" means together the overall investment period for the Fund including the Initial Investment Period and the Legacy Period

"Investment Policy" means the policy and guidelines for investment contained in the documentation attached at Appendix 1 to Schedule 5 setting out the investment strategy for the Fund to be adopted by the ERDF Recipient as such Policy may be reviewed in accordance with the terms and conditions.

"Irregular" means constituting an Irregularity.

"Irregularity" means any breach of Union law, or of national law relating to its application (including, but not limited to, the Structural and Investment Funds Regulations, State Aid Law and European Union Procurement Law) resulting from an act or omission by a ERDF Recipient or a Delivery Partner (and/or its agents and subcontractors), or by a financial intermediary or final recipient which has, or would have, the effect of prejudicing the budget of the Union by charging an unjustified item of expenditure to the budget of the Union as determined following an Audit.

"Key Milestone Dates" means those milestones to achieve the Project which are contained in the Project Specific Conditions.

["Key Personnel" means those individuals identified in Appendix 1 to Schedule 5, possessing the necessary capability to manage the Fund of Funds / Product Fund(s) in accordance with the requirements as set out in Regulation 1303 and Article 7 of Regulation 480.]

"Law" means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body.

"Legacy" refers to all monies attributable to the Fund of Funds / Product Fund(s) after the Agreed Financial Completion Date attributable to the investment of the

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ERDF Contribution, deposited in a Legacy Account following realisation of the Relevant Investments and payment of all Permitted Payments in respect of the same.

"Legacy Account" means as defined at clause 18 (7)(c).

"Legacy Period" means the period following the Agreed Financial Completion Date in which Returns are re-utilised in accordance with Article 45 of Regulation 1303, or otherwise deposited in a Legacy Account following payment of all Permitted Payments in respect of the Relevant Investments.

"Loan" means an agreement which obliges the lender to make available to the borrower an agreed amount of money for an agreed period of time and under which the borrower is obliged to repay the amount within the agreed period, as further defined in Regulation 966.

"Losses" means all costs, charges, fees, expenses, fines and losses (including loss of profit and loss of reputation) and all interest penalties and legal and other professional costs and expenses.

"Malicious Software" means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

"Management Verification" means Managing Authority verifications pursuant to Article 125(4)(a) and Article 125(5) CPR which requires the MA to verify that the co-financed products and services have been delivered [to the extent required by the Conditions] and that expenditure declared has been paid and that it complies with applicable law, the operational programme and the conditions for support of the operation, in particular the requirement to ensure sound financial management, the safeguarding of the capital and the reliable financial monitoring and reporting by the bodies that implement the funds of funds or the financial instrument, as appropriate.

"Match Funding" means the contribution to the Project to meet the balance of Eligible Expenditure not supported by the ERDF Contribution and the Match Funding details are contained in the Project Specific Conditions.

Match Funding Longstop Date" means the date listed in the Project Specific Conditions as the last date by which the ERDF Recipient is to provide evidence to the Secretary of State that any Match Funding listed as Committed has been invested.]

"Material Breach" means a breach of this Funding Agreement (including an anticipatory breach) which is not minimal or trivial in its consequences as further set out in clause 17.

"Maximum Sum" means the maximum amount of ERDF to be provided by the Secretary of State for the support of the Project.

"National European Regional Development Fund Document Retention Guidance" means the guidance published from time to time by the Secretary of State and contained on the Website, the version subsisting at the date of this Funding

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Agreement being [*Document Retention Including Electronic Data Exchange for 2014-20 European Regional Development Fund Projects*].

“National European Regional Development Fund Eligibility Rules” means the National Eligibility Rules published from time to time by the Secretary of State and contained on the Website, the version subsisting at the date of this Funding Agreement being [*European Regional Development Fund Operational Programme for England 2014-20, National Eligibility Rules, March 2015*]

“National European Regional Development Fund Publicity Guidance” means the guidance on publicity and the branding guidelines for European Regional Development Fund published from time to time by the Secretary of State on the Website, the version subsisting at the date of this Funding Agreement being [*England 2014 to 2020 European Structural and Investment Funds Growth Programme, Branding and Publicity Requirements, March 2015*].

“National European Regional Development Fund State Aid Law Guidance” means the guidance published from time to time by the Secretary of State and contained on the Website, the version subsisting at the date of this Funding Agreement being [*State Aid Law, European Regional Development Fund Guidance Note for ERDF Recipients, March 2015*].

“National European Regional Development Fund Guidance on Procurement” means the guidance published from time to time by the Secretary of State and contained on the Website, the version subsisting at the date of this Funding Agreement being [*Procurement Law, ESIF Compliance Guidance Note (ESIF-GN-1-001 version 2 (2 December 2015))*].

“Not Eligible” means expenditure that is not Eligible Expenditure.

“Ownership, Control and Nature of Business” shall be construed in accordance with section 840 of the Income and Corporation Taxes Act 1988 and section 1162 of the Companies Act 2006 and for the avoidance of doubt shall include an evaluation of dominant influence and shadow directorships in the ERDF Recipient from time to time.

“Parties” means the Secretary of State and the ERDF Recipient.

“Permitted Payments” means payments of amounts for the purposes of the Project which represent the allowable:

- (i) Product Fund Management Fees payable in accordance with the Fund Management Agreements; and
- (ii) Costs.
- (iii) sums payable in respect of Fund debt used to capitalise the Fund (including preferential remuneration of organisations providing Match Funding on the basis of Article 44(b) of Regulation 1303) provided that the payment of such has been approved by the Secretary of State in writing

provided always that where arrangement fees or monitoring fees are charged direct to Qualifying Final Recipients they shall not form part of the Eligible Expenditure and

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they may not be deducted as Permitted Payments and provided further that all arrangement fees and monitoring fees charged direct to Qualifying Recipients shall nevertheless be taken into account by the Secretary of State as part of its overall analysis of the performance of the Fund

"Personal Data" shall have the same meaning as set out in the Data Protection Act 1998, as amended.

"Process" has the meaning given to it under the Data Protection Act 1998, as amended but, for the purposes of this Funding Agreement, it shall include both manual and automatic processing.

"Product Fund(s)" means the individual product/ fund(s) established or to be established as part of the Project to invest in Qualifying Final Recipients all as further described in the Business Plan and Investment Policy and Fund Management Agreements.

"Product Fund Manager(s)" means the Financial Intermediary(ies) acting as fund managers, and to be appointed in accordance with the Conditions to manage the Product Funds or any one of the Product Funds in accordance with the Investment Policy;

"Product Fund Management Fees" means the annual fees payable in respect of the operation and management of the Product Funds by the Product Fund Managers as calculated in accordance with the requirements of Article 13 of Regulation 480 and in compliance with all applicable European Union Procurement Requirements and as set out in the Fund Management Agreement(s)

"Project" means the project fully described in the Application.

"Project Activities" means all the activities to be carried out and implemented as part of the Project and described in the Application or required under this Funding Agreement .

"Project Area" means []

"Project Inception Visit" means visit(s) by the Managing Authority to the ERDF Recipient and any Delivery Partner(s) to review the appropriateness of systems, staffing and financial arrangements in place for the Project.

"Project Specific Conditions" means those conditions which are specific to the Project and are contained in Schedule 1.

"Project Change Request Form" means the prescribed form determined from time to time by the Secretary of State for the purpose of requesting consent to a Change .

"Public Sector Financial Assistance" includes all funding received or receivable by the ERDF Recipient from public sector bodies including for this purpose funding from the European Commission, government bodies (whether national or local) or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Acts 1993 and 1998.

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"Qualifying Final Recipients" means final recipients of Relevant Investments selected on the basis of transparent and objective grounds which do not give rise to a conflict of interest which meet the qualifying requirements for support as detailed in the Business Plan and which are not otherwise precluded, whether by operation of any Community Rules or otherwise from being a beneficiary of a Relevant Investment [and which in the case of Access to Finance Measures in all cases fall within the definition of an SME].

"Quasi-equity investment" means any investment ranking between equity and debt as further defined in Regulation 966 and State Aid Law.

"Regulation 480" (aka **"Delegated Regulation"**) means Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation 1303.

"Regulation 821/" (aka **"Implementing Act – transfer and management"**) means Commission Implementing Regulation (EU) No 821/2014 of 28 July 2014 supplementing Regulation 1303.

"Regulation 966" (aka **"Financial Regulation"**) means Regulation (EU) No. 966/2012

"Regulation 1301"(aka **"ERDF Regulation"**) means Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013, on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal, as amended.

"Regulation 1303"(aka **"Common Provisions Regulation/CPR"**) means Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 which sets out common provisions on the Structural and Investment Funds, as amended.

"Regulatory Bodies" means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Funding Agreement or any other affairs of the Secretary of State and "Regulatory Body" shall be construed accordingly.

"Relevant Investment" means an Equity Investment, Loan, Quasi-Equity Investment or Guarantee made by the Fund in accordance with:-

- the Community Rules; and
- the Core Documents.

"Returns" mean returns from Relevant Investments, including Income Receipts and Capital Receipts and accrued paid interest attributable to the ERDF Contribution provided

"Returns Account" means the separate fiduciary bank account into which all or any element of the Returns are required to be deposited in accordance with the provisions of this Funding Agreement, and as specified in clause 18.1;

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“Risk Capital Guidelines” means the Communication from the Commission: Guidelines on State aid to promote risk finance investments (2014/C 19/04)]

“Secretary of State System” means the Secretary of State’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Secretary of State or the ERDF Recipient in connection with this Funding Agreement which is owned by or licensed to the Secretary of State by a third party and which interfaces with the ERDF Recipient System or which is necessary for the Secretary of State to comply with the terms of this Funding Agreement.

“Security” means any mortgage, charge, guarantee or other security interest securing an obligation of the ERDF Recipient (or a relevant guarantor) required by the Secretary of State as specified (if required) in the Project Specific Conditions.

“SME” means a small to medium sized enterprise as set out in Article 2 (definitions) and Annex 1 of GBER.

“Start Date” is the date specified as such in the Project Specific Conditions being the earliest date that the expenditure incurred by the ERDF Recipient in relation to the Project can be Eligible Expenditure.

“State Aid Law” means the law embodied in Articles 107 -109 of Section 2, Title VII, of the Common Rules on Competition, Taxation and Approximation of Laws-Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union including any compatible exemptions to the prohibition to Article 107(1).

“Structural and Investment Funds” means together the European Regional Development Fund (ERDF), Cohesion Funds and the European Social Fund (ESF).

“Structural and Investment Funds Regulations” means Regulation 1301, and Regulation 1303 and any delegated or implementing regulations adopted under those Regulations.

“Targets” means the outputs and results identified and detailed in the milestone table contained in the Project Specific Conditions and Schedule 3.

“Third Party Software” means software which is owned or licensed by any third party which is or will be used by the ERDF Recipient for the purposes of this Funding Agreement.

“Transaction List” means the transaction checklist relevant to a particular ERDF Claim as determined by the Secretary of State.

“Undertaking In Difficulty” means an undertaking in difficulty within the meaning of Article 2(18) (definitions),of GBER subject, where appropriate, to any temporary measures or legislation approved or enacted by the European Commission in relation thereto;

“Website” means the national website for European Regional Development Fund Programme in England: <https://www.gov.uk/european-growth-funding>.

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“Working Day” means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday in England.

2 INTERPRETATION

In this Funding Agreement:

- 2.1 reference to any statute or legislation shall include any statutory extension or modification, amendment or re-enactment of such statutes and include all instruments, orders, bye-laws and regulations for the time being made, issued or given thereunder or deriving validity therefrom, and all other legislation of the European Union that is directly applicable to the United Kingdom;
- 2.2 reference to any clause, sub-clause, paragraph, sub-paragraph or schedule without further designation shall be construed as a reference to the clause, sub-clause, paragraph, sub-paragraph or schedule to this Funding Agreement so numbered;
- 2.3 reference to 'this Funding Agreement' includes any variations made from time to time pursuant to these terms;
- 2.4 reference to "Published" by the Secretary of State shall include an electronic version contained on the Website.
- 2.5 reference to "including" shall be construed so as not to limit the generality of any words or expressions in connection with which it is used;
- 2.6 reference to "determined" or "determine" means, unless the contrary is indicated a determination made at the discretion of the person making it;
- 2.7 where the consent approval or agreement of the Secretary of State is required pursuant to the terms of this Funding Agreement, it shall not be construed as having been given unless provided in writing;
- 2.8 words importing one gender shall include both genders and the singular shall include the plural and vice versa;
- 2.9 the Guidelines for Determining Financial Corrections for Financial Instruments and the National European Regional Development Fund Eligibility Rules shall have the same force and effect as if expressly set out in the body of this Funding Agreement;
- 2.10 the headings in this Funding Agreement shall not affect its interpretation; and
- 2.11 In the event of a conflict between the following elements comprising this Funding Agreement the priority shall prevail in the following descending order;
 - (a) The conditions set out at Schedule 1 ("Project Specific Conditions")
 - (b) The conditions set out in the main body of this Funding Agreement
 - (c) The Application.

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3 ERDF CONTRIBUTION

- 3.1 In consideration of the respective obligations in this Funding Agreement and taking account of the representations made by the ERDF Recipient in the Application, the Secretary of State offers the ERDF Contribution and the ERDF Recipient accepts the ERDF Contribution, up to the Maximum Sum, subject to the terms and conditions of this Funding Agreement.
- 3.2 ERDF Contribution will only be paid in respect of Eligible Expenditure and declared through a valid ERDF Claim.
- 3.3 Eligible Expenditure excludes payments for costs incurred:-
- (a) by the ERDF Recipient (or Delivery Partners) that are Not Eligible;
 - (b) that are Irregular or where the Secretary of State believes such expenditure to be Irregular.
- 3.4 Subject to the terms of this Funding Agreement, Eligible Expenditure defrayed on or after the Start Date may be the subject of an ERDF Claim. For the avoidance of doubt, the reference to ERDF Contribution and the provisions of this Funding Agreement shall apply to all claims and Expenditure beginning on the Start Date. If the Funding Agreement is not executed (for any reason) no ERDF Contribution shall be payable and any expenditure incurred shall be entirely for the account and at the risk of the applicant.
- 3.5 [The ERDF Recipient] has reviewed Article 38(1)(b) and Article 38(4)(b)(iii) of Regulation 1303 and related guidance published by the European Commission at the date of this Funding Agreement ("**Selection Rules**"). The ERDF Recipient warrants to the Secretary of State that the entrustment of the [ERDF Recipient] and the role of any Delivery Partner(s) in the Project is compliant with the Selection Rules. Based on these representations, the Secretary of State entrusts the [ERDF Recipient] to deliver the Project on the terms set out in this Funding Agreement.

4 THE APPLICATION AND ACCEPTANCE OF ERDF FUNDING TERMS

- 4.1 the ERDF Recipient warrants to the Secretary of State that the Application is accurate in all respects. The Secretary of State has based its decision to offer and pay the ERDF Contribution (and has relied) upon the representations made by the ERDF Recipient in the Application and in the documents and information provided as part of the appraisal process. No disclaimer or other statement that precludes the right of any person to rely upon the Application or any other document that forms part of the Application, or has a similar effect, shall apply with respect to the Secretary of State or affect the Secretary of State's right to enforce any provision of the Funding Agreement.
- 4.2 For the avoidance of doubt, clause 4.1 is intended to ensure that:-
- (a) no disclaimer of liability for the contents of the Application affects the Secretary of State's right to recover any sum under this Funding Agreement; and

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- (b) there is reserved to the Secretary of State (subject to clause 37.12) any rights of action or remedies for any mistake, negligent misstatement, misrepresentation or error of judgment made in the Application upon which the Secretary of State has relied in agreeing to provide ERDF Contribution to the ERDF Recipient.
- 4.3 The ERDF Recipient accepts and agrees to all of the terms having made full and proper enquiry before giving the warranties contained in this Funding Agreement.
- 4.4 The ERDF Recipient acknowledges that the ERDF Contribution has been offered to it to carry out the Project Activities specified within the Application and achieve the Targets within the time limits set out in this Funding Agreement and the Key Milestone Dates set out in the table contained in the Project Specific Conditions.
- 4.5 The ERDF Recipient may task one or more Delivery Partners to carry out specified Project Activities. Consent for Delivery Partner(s) shall be effective if each Delivery Partner and the relevant delegated Project Activities is specified in the Project Specific Conditions.
- 4.6 For the avoidance of doubt the ERDF Recipient shall be liable for the acts or omissions of any Delivery Partner including any Corrections resulting therefrom.
- 5 OBLIGATIONS ON ERDF RECIPIENT**
- 5.1 In accordance with Article 6 of Regulation 480 the ERDF Recipient shall, in the delivery of its obligations under this Funding Agreement, act with the degree of professional care, efficiency, transparency and diligence expected from a professional body experienced in implementing financial instruments and shall ensure that such requirement is included in the agreements with its Financial Intermediaries and with the Product Fund Managers.
- 5.2 Further to clause 5.1 above the ERDF Recipient shall:
- (a) direct the appropriate resources, expertise and skills to the Project, including the Key Personnel (although it is acknowledged the Key Personnel may change from time to time, it is expected that they would be replaced by staff with similar professional skills and suitable experience);
 - (b) act and require the Financial Intermediaries to act in accordance with best practice in the financial services industry in the United Kingdom;
 - (c) utilise the ERDF Contribution solely and exclusively for the purposes of the Project and the achievement of the Targets pursuant to the terms of the Funding Agreement;
 - (d) diligently comply with its obligations contained in this Funding Agreement and the Core Documents and enforce the terms of any of the Core Documents to the extent the ERDF Recipient is lawfully or contractually permitted;
 - (e) implement an open, transparent, proportionate and non-discriminatory process to select and appoint Product Fund Managers, which is compliant

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- with Article 7 of Regulation 480 and European Union Procurement Requirements;
- (f) comply with Community Rules and procure that the selected Financial Intermediaries comply with Community Rules;
 - (g) ensure, and oblige the selected Financial Intermediaries to ensure, that no entity involved in the Fund (including the Product Funds) is established in, or knowingly maintains business relations with, entities which are incorporated in territories whose jurisdictions do not co-operate with the European Union in relation to the application of the internationally agreed tax standards;
 - (h) enter into agreements with the Financial Intermediaries relating to draw down of the ERDF Contribution for the purposes of the operation of the Product Funds on terms which ensure compliance by the Financial Intermediaries with the terms of the Funding Agreement and secure adequate third party rights (including the ability to directly enforce such rights) to enable the Secretary of State, or an Auditor to access and inspect the records held by the Financial Intermediaries (which term includes the Product Fund Managers) in connection with the Fund of Funds/ Product Funds;
 - (i) (having selected the Financial Intermediaries) procure that true copies of all documents relating to the establishment or selection and governance of the Financial Intermediaries and all relevant documentation in respect of the Product Fund Managers are delivered to the Secretary of State as soon as reasonably practicable following their completion, PROVIDED THAT the Parties acknowledge that the Secretary of State is not approving the actual selection of the Financial Intermediaries or the Product Fund Managers themselves;
 - (j) monitor compliance by the Fund with the Investment Policy and the Business Plan for the full duration of the Investment Period;
 - (k) ensure that Returns are managed in accordance with clause 18 below;
 - (l) adopt and shall ensure that all Financial Intermediaries and Product Fund Managers adopt a formal policy obliging all individuals involved in running the Fund or the Product Funds to declare any personal or financial interest in any matter concerning the Fund or the Product Funds and such individuals shall be managed in accordance with a conflicts of interest strategy approved by the Secretary of State (if no such strategy is approved then Financial Intermediaries and Product Fund Managers need to be excluded from any discussion or decision-making relating to the matter concerned). For the avoidance of doubt, where such a policy is effectively contained in the constitutional documents relating to the ERDF Recipient, the Financial Intermediaries or the Product Fund Managers a further separate policy shall not be required; and
 - (m) promptly notify the Secretary of State of any matters which could or could reasonably be expected to affect the operation of the Fund, as further set out in clause 24.

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6 PAYMENT OF ERDF CONTRIBUTION TO THE ERDF RECIPIENT

PART A – CONDITIONS PRECEDENT TO PAYMENT

Conditions to be verified prior to payment

6.1 No payment of any part of any ERDF Contribution by the Secretary of State, in accordance with this clause 6 shall be made until such time as the ERDF Recipient has submitted :-

- (a) the Core Documents;
- (b) a plan setting out the governance, investment processes and procedures (including risk management procedures) in line with relevant professional standards of the financial services industry and evidence of implementation;
- (c) evidence that the Investment Advisory Committee/Board has been set up;
- (d) the most recent versions of the documentation relating to the selection and appointment of the Financial Intermediaries and the Product Fund Managers;
- (e) evidence that the ERDF Recipient has sufficient Match Funding Committed (or if the Project works on a co-investment model has a reasonable expectation of sufficient Match Funding) and has sufficient resources to operate the Fund and complete the Project by the Agreed Financial Completion Date and thereafter throughout the Legacy Period;
- (f) representations from the ERDF Recipient, that no regulatory investigation has been commenced by any UK or EU authorities or is pending in respect of the Project or the ERDF Recipient or if there has been a regulatory investigation, it has been concluded to the satisfaction of the Secretary of State;
- (g) an original or certified copy of a letter from the ERDF Recipient's insurance broker confirming that the ERDF Recipient has placed insurance cover in compliance with clause 34, and that such insurance is in full force and effect has been received;
- (h) evidence addressed to the Secretary of State demonstrating that the ERDF Recipient has notified the Bank in which the ERDF Capital Bank Account is held of the trust arrangements relating to the ERDF Contribution pursuant to clause 8 of these Funding Conditions;
- (i) evidence that the ERDF Recipient has sufficient funding committed to pay for expenditure in relation to the Project which is not Eligible Expenditure;
- (j) any information requested by the Secretary of State to establish that the ERDF Recipient has complied with its obligations in these Funding Conditions (as appropriate at the relevant time of the ERDF Claim) including, without limitation, Conditions in relation to the calculation and payment of Costs and Product Fund Management Fees; and

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- (k) any information requested by the Secretary of State to establish that the ERDF Recipient is not otherwise in Material Breach of these Funding Conditions

and the Secretary of State has confirmed in writing that these are satisfactory.

The payment of any ERDF Claim shall not operate as a waiver of any of the ERDF Recipient's obligations in this Funding Agreement or in any way limit or prevent the Secretary of State's exercise and/or enforcement of any of its rights under this Funding Agreement.

PART B – ERDF CLAIMS PROCEDURE

- 6.2 The ERDF Recipient is entitled to make phased ERDF Claims in accordance with Article 41 of Regulation 1303 and in accordance with the agreed Expenditure Profile agreed at Schedule 2.
- 6.3 Following submission of the first ERDF Claim, the ERDF Recipient shall on a quarterly basis submit forecasts of the amount of the ERDF Contribution invested in Qualifying Final Recipients, and further ERDF Contribution to be claimed for a subsequent phase to the Secretary of State as part of the Quarterly Reporting in accordance with clause 22.
- 6.4 The Secretary of State shall be entitled to carry out Management Verifications on each ERDF Claim submitted by the ERDF Recipient and the ERDF Recipient shall supply the evidence set out at Annex [] with each ERDF Claim
- 6.5 The first ERDF Claim must be made within [20] Working Days following the execution of the Funding Agreement and Project Inception Visit. Should the ERDF Recipient fail to present a valid ERDF Claim in accordance within [20] Working Days the Secretary of State shall not be under any obligation to the ERDF Recipient to pay any ERDF Contribution whatsoever pursuant to the terms of this Funding Agreement.
- 6.6 The first ERDF Claim to constitute the Fund may be for an amount of up to 25% of the Agreed Eligible Fund Size PROVIDED THAT the the amount included in such ERDF Claim for payment of Permitted Payments is not Irregular and meets the conditions set out in Schedule 1 - Project Specific Conditions. The Parties agree that the Product Fund Management Fees may only include an element of profit where this has been determined as part of the process used to select the relevant works, supplies or services and this has process has complied with the relevant requirements of the National European Regional Development Fund Guidance on procurement.
- 6.7 The second Capital ERDF Claim may not be presented until at least 60% of the amount included in the first ERDF Claim and paid to the ERDF Recipient has been defrayed as Eligible Expenditure, and in accordance with the Conditions, as evidenced through a satisfactory Management Verification and the ERDF Recipient shall supply evidence such as evidence of bank transfers in such format and detail as may be acceptable to the Secretary of State to support the amount claimed in such ERDF Claim.

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- 6.8 The third and subsequent Capital ERDF Claims may not be presented until at least 85% of the amounts included in the prior ERDF Claim(s) and paid to the ERDF Recipient has been defrayed as Eligible Expenditure, and in accordance with the Conditions, as evidenced through a satisfactory Management Verification and the ERDF Recipient shall supply evidence such as evidence of bank transfers in such format and detail as may be acceptable to the Secretary of State to support the amount claimed in such ERDF Claim.
- 6.9 The latest date that the ERDF Recipient may submit a Capital ERDF Claim for the balance of the Eligible Capital Expenditure forming part of the Agreed Eligible Fund Size is [30 June 2023].
- 6.10 Each ERDF Claim is to be submitted using the Secretary of State System on line facility. Each ERDF Claim shall include accounting documents of verifiable value (which shall include the Transaction List) in such format and detail as may be acceptable to the Secretary of State relating to the amount claimed in such ERDF Claim.
- 6.11 The Secretary of State will normally meet a ERDF Claim within 40 Working Days of receipt, but this is subject to:
- (a) The ERDF Recipient having submitted a forecast in accordance with 6.3 above; and
 - (b) the ERDF Recipient satisfactorily meeting any request for further particulars about the Eligible Expenditure specified in the ERDF Claim or any other details provided for in the ERDF Claim.
- 6.12 The time for payment of the ERDF Claim shall not be of the essence. The Secretary of State shall have no liability to the ERDF Recipient for any Losses caused by a delay in the payment of a ERDF Claim howsoever arising.
- 6.13 The ERDF Recipient must notify the Secretary of State promptly if at any time it becomes aware that it is unable to make a ERDF Claim in accordance with the Expenditure Profile.
- 6.14 A progress report in respect of the Project must be submitted with each ERDF Claim, and at such other times as the Secretary of State may notify to the ERDF Recipient.
- 6.15 By submitting a ERDF Claim the ERDF Recipient warrants to the Secretary of State that there is no Event of Default or Material Breach subsisting by reference to the facts and circumstances existing on each such date.

7 DECOMMITMENT OF EUROPEAN REGIONAL DEVELOPMENT FUND RESOURCES

- 7.1 The ERDF Recipient acknowledges that the financial consequences that flow from a departure from the Expenditure Profile in any financial year could include the loss of European Regional Development Fund resources allocated for the Operational Programme (if in that year there is under-spending for the Operational Programme as a whole).

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- 7.2 If during any Financial Year of the Operational Programme the Secretary of State (acting reasonably) reaches a decision based on the information available that it is probable that there will be a shortfall in Eligible Expenditure and that the ERDF Recipient will be unable to make up that shortfall then, the Secretary of State may decide to reduce the ERDF allocated for the Project and use the amount of the reduction for any other purpose of the Operational Programme. The amount to be re-allocated under these circumstances is determinable by the Secretary of State, but may not exceed the amount of the anticipated shortfall in Eligible Expenditure.
- 7.3 Where the right reserved in clause 7.2 arises under circumstances that also entitle the Secretary of State to exercise the rights reserved in clause 12, the right reserved to the Secretary of State in clause 7.2 is exercisable in addition and without prejudice to the exercise of the rights reserved to the Secretary of State in clause 12.

8 THE ERDF CAPITAL BANK ACCOUNT

8.1 The ERDF Recipient shall set up an ERDF Capital Bank Account and shall deposit any ERDF Contribution paid to it in the ERDF Capital Bank Account.

8.2 The following terms and conditions apply to the holding and operation, by the ERDF Recipient, of the ERDF Capital Bank Account:

(a) no funds other than the ERDF Contribution, or any other capital funding received by the ERDF Recipient from the European Regional Development Fund, may be deposited in (or credited to) the ERDF Capital Bank Account apart from payments of interest due to be credited to the account;

(b) unless otherwise agreed in writing by the Secretary of State, no sum may be withdrawn from the ERDF Capital Bank Account except for the following purposes:

1) making payments to Financial Intermediaries for the purpose of financing the Product Funds to make Relevant Investments in Qualifying Final Recipients in accordance with the Investment Policy and the Conditions, and as detailed in the Business Plan;

2) making Permitted Payments;

3) pending the use of the ERDF Contribution in accordance with the Investment Policy, making short-term money market deposits or longer term discretionary investments in pursuance of the Idle Funds Investment Policy; or

4) transferring ERDF Contribution into an escrow account for the purpose of making follow on investments in Final Recipients following the Agreed Financial Completion Date

and the ERDF Recipient shall use all reasonable endeavours to ensure such sums are used in a timely manner for the relevant purpose and in line with Article 42(3) of Regulation 1303.

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- 8.3 In the event that an amount withdrawn from the ERDF Capital Bank Account for the purpose mentioned in clauses 8.2(b) (i) exceeds the amount that is needed or may be or ought to have been withdrawn for that purpose (for example, because the amount drawn down for an investment or series of investments is more than the amount agreed for the investment or investments concerned), the ERDF Recipient 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 ERDF Capital Bank Account, recover the surplus for repayment into the account or set it off against an amount due subsequently to be drawn down for that purpose.

9 ACCRUAL OF INTEREST AND IDLE FUNDS POLICY

- 9.1 The ERDF Recipient is required to account separately for

- (a) interest credited to the ERDF Capital Bank Account; and
- (b) Idle Fund returns by pursuing an Idle Funds Investment Policy

For the avoidance of doubt, separate bank accounts must be operated for each ERDF priority axis.

- 9.2 The ERDF Recipient may use any sums referred to in clause 9.1 above to make Relevant Investments and cover the associated Costs or Product Fund Management Fees in direct proportion to the Relevant Investments made using such sums until the end of the Eligibility Period.

- 9.3 The ERDF Recipient shall, on a quarterly basis, provide the Secretary of State with a statement summarising the interest generated on the ERDF Capital Bank Account and provide details of any amounts paid out as Relevant Investments. The ERDF Recipient shall supply such statements to the Secretary of State in accordance with the periods and timescales referred to in clauses 21 and 22.

10 PROPRIETARY INTEREST OF THE SECRETARY OF STATE IN THE ERDF CAPITAL BANK ACCOUNT

- 10.1 The ERDF Contribution paid to the ERDF Recipient in advance under the terms of the Funding Agreement will be held in the ERDF Capital Bank Account on a primary trust on behalf of the Secretary of State to be used for the term of this Funding Agreement exclusively for the purposes set out at Clause 8.2 (b) above. If such primary trust should fail for any reason or the ERDF Recipient has reasonable grounds to believe the trust is not enforceable, the ERDF Recipient agrees to promptly repay a sum equal to the ERDF Contribution at the date of the failure of the trust was identified, to the Secretary of State.

- 10.2 The provisions of clause 10.1 above are subject to the provision for making withdrawals from the ERDF Capital Bank Account in accordance with clauses 8.2.(b) (ii) to (iv) above.

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10.3 The Secretary of State is entitled to recover any amount from the ERDF Capital Bank Account (subject to the balance permitting) under this Funding Agreement on the basis that it has a proprietary interest in:

- (a) the balance of the ERDF Capital Bank Account (including sums credited to or deposited in the account as mentioned in clause 8.2(a) and amounts credited to or deposited in the account as mentioned in clause 8.1;
- (b) the principal sum of any money deposited or invested under the Idle Funds Investment Policy, pending repayment into the ERDF Capital Bank Account,
- (c) any funds generated as mentioned in clause 9.1 which have not been paid into the ERDF Capital Bank Account; and
- (d) any funds lost or otherwise transferred on the grounds of breach of trust, failure of trust purpose or such other grounds the Secretary of State may be entitled to rely upon;

after requiring the ERDF Recipient to pay into the ERDF Capital Bank Account the sums mentioned in clause 10.3(b) and 10.3(c)

10.4 The ERDF Recipient must give notice in writing to the bank with which the ERDF Capital Bank Account is opened indicating:

- (a) that the ERDF Contribution is required to be held on the terms of this clause 10;
- (b) in particular, that by virtue of the terms of this clause 10 the Secretary of State has a proprietary interest in all funds standing from time to time to the credit of the ERDF Capital Bank Account (and in such rights as the ERDF Recipient enjoys with respect to such accounts); and
- (c) that if such primary trust should fail for any reason (including without limitation the use of the ERDF Contribution for any other purpose outside this Agreement) or the ERDF Recipient has reasonable grounds to believe the trust is not enforceable, the ERDF Recipient agrees to promptly repay a sum equal to the ERDF Contribution at the date of the failure of the trust was identified, to the Secretary of State

and a copy of this notice shall be sent to the Secretary of State by the ERDF Recipient within 20 Working Days of such notice being given.

10.5 Further to clause 10.4 above, the ERDF Recipient shall procure that the Financial Intermediaries (including subsidiaries and sub-funds) keep any ERDF Contribution paid to them deposited in a separate bank account and agree to provide information to the Secretary of State about the account upon request.

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- 10.6 The provisions of this clause 10 shall apply to the Returns Account or Legacy Account as appropriate.

11 FINANCIAL COMPLETION

In order to be eligible for ERDF support, any Investment made by the Fund of Funds or Product Fund(s) into a Qualifying Final Recipient must be paid, (including any eligible Costs and Product Fund Management Fees) or transferred into an escrow account specifically for follow on investments by the Agreed Financial Completion Date.

12 REPAYMENT OF ERDF CONTRIBUTION AND INTEREST NOT INVESTED BY THE AGREED FINANCIAL COMPLETION DATE

- 12.1 The ERDF Recipient agrees that upon receipt of notice by the Secretary of State it shall promptly repay or procure the repayment to the Secretary of State any part of the ERDF Contribution that is not used to make Relevant Investments or pay Costs/Product Fund Management Fees or transferred into escrow for follow on investments in accordance with the Project Specific Conditions on or before the expiry of the Initial Investment Period.

- 12.2 The amount repayable includes the balance of the ERDF Capital Bank Account (meaning the balance of the ERDF Recipient's ERDF Capital Bank Account and any Financial Intermediary account which has received funds from the ERDF Capital Bank Account and is holding such sums, but not the Returns Account) on **31 December 2023** which includes all interest credited or due to be credited to the account.

13 RELEVANT PRODUCT FUND CONDITIONS

- 13.1 The ERDF Recipient shall ensure that the Fund is managed in accordance with the terms of the Business Plan and the Investment Policy throughout the Investment Period and shall ensure that the process of selecting Qualifying Final Recipients shall be transparent and justified on objective grounds and shall not give rise to a conflict of interest.

- 13.2 Without prejudice to the conditions set out in clause 15.2 below the ERDF Recipient shall ensure that Relevant Investments provide support in a way which is proportionate and has the least distortive effect on competition.

- 13.3 Further to clause 13.1 above, the ERDF Recipient shall ensure that no Relevant Investments is made directly or indirectly by the Fund:

- (a) to an investment project, business or company which is not a Qualifying Final Recipient;

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- (b) which is not in compliance with State Aid Law;
- (c) to any business or company which does not have its principal place of business or a material part of its operations, people or trading in the Project Area, unless as a condition of the Relevant Investment that business or company is required to re-locate its business or its trading activities to within the Project Area;
- (d) to any business or company which taking due account of the nature of the financial instrument, the potential economic viability of the investment project to be financed and prospects of the business or company, does not have a viable economic business plan based on the utilisation of a Relevant Investment provided through the Fund;
- (e) to any investment project which is fully implemented or physically completed at the date when the decision to invest is made by the Fund;
- (f) which would be against the strategic or security interest of the UK; or
- (g) which are inconsistent with the requirements of the Business Plan or the Investment Policy.

and such conditions shall apply to investments made utilising the Returns and thereafter for as long as the Fund continues to operate during the Legacy Period subject always to clause 18 below.

- 13.4 The ERDF Recipient shall use all reasonable endeavours to procure that the ERDF Contribution has been fully allocated through the completion of Relevant Investments under the Fund prior to the Agreed Financial Completion Date and shall ensure the return of any unallocated ERDF Contribution in accordance with the provisions of clause 12 above.
- 13.5 The ERDF Recipient shall ensure that adequate and appropriate contingency arrangements are developed and, if necessary, implemented (insofar as it is possible to implement them in advance to effect the continued operations of the Fund) in the event that the Fund ceases to be authorised, or is otherwise unable, to carry out the duties required under the terms of this Funding Agreement.

14 CHANGES TO THE PROJECT

- 14.1 All Changes must be approved in writing by the Secretary of State prior to the relevant Change being deemed to be effective. The ERDF Recipient shall submit a Project Change Request Form to the Secretary of State. The Secretary of State shall review the Project Change Request Form and either agree to the change request or reject the change request within 60 days of receipt of the Project Change Request Form.

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14.2 Until such time as a Change is made in accordance with this clause, the parties shall, unless otherwise agreed in writing, continue to perform this Funding Agreement in compliance with its terms before such Change.

15 LEGISLATION, PROCUREMENT, TENDERING AND STATE AID LAW

15.1 General

- (a) The ERDF Recipient must comply and secure compliance with the Structural and Investment Funds Regulations and the ERDF Recipient hereby warrants that it shall not act or omit to act in any way that may cause the ERDF Recipient, a Delivery Partner, Financial Intermediary or the Secretary of State to breach the Structural and Investment Funds Regulations.
- (b) The ERDF Recipient acknowledges that in accordance with Article 6 of Regulation 1303, the Project must comply with applicable Union law and the national law relating to its application.

15.2 State Aid Law

- (a) The ERDF Recipient has undertaken its own independent assessment of the compatibility of the Project with State Aid Law and confirms to the Secretary of State that the Project is structured and shall be implemented so it is compliant with State Aid Law. In respect of the National European Regional Development Fund State Aid Law Guidance and in situations where the Secretary of State has provided its views on any aspect of State Aid Law, the ERDF Recipient confirms that it has considered this information alongside all other sources of State Aid Law available at the time of entering into this Funding Agreement (including regulations and decisions published on the European Commission website) in undertaking its own assessment of the Project's compliance. The Secretary of State has taken into account the ERDF Recipient's representations on State Aid Law compliance in deciding to offer the ERDF Contribution.
- (b) The ERDF Recipient shall procure and maintain the necessary expertise and resources to deliver the Project in accordance with State Aid Law for the full term of the Project. The ERDF Recipient agrees to maintain appropriate records of compliance with the State Aid Law and agrees to take all reasonable steps to assist the Secretary of State to comply with State Aid Law requirements including responding to any investigation(s) instigated by the European Commission into the Project.
- (c) A finding of State Aid non-compliance in respect of the Project by the European Commission or a Court of competent jurisdiction may lead to ERDF Recipient being ordered to repay the ERDF Contribution with interest in accordance with the European Commission's reference rates.

15.3 European Union Procurement Requirements

- (a) The ERDF Recipient warrants that it and any Delivery Partner(s) have complied with European Union Procurement Requirements to date in relation to the Project. Organisations outside the scope of the European

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Procurement Requirements must demonstrate that selection processes comply with the relevant rules published in the National European Regional Development Fund Guidance on Procurement as published on the Website at the date the procurement processes commences.

- (b) The ERDF Recipient commits that it and any Delivery Partner(s) shall comply with current European Union Procurement Requirements at all times in relation to the Project. Organisations outside the scope of the European Procurement Requirements must demonstrate that selection processes comply with the relevant rules published in the National European Regional Development Fund Guidance on Procurement as published on the Website at the date the procurement processes commences.
- (c) The ERDF Recipient acknowledges that procurement has been a major source of clawback in previous European Regional Development Fund projects and therefore shall take all reasonable steps to ensure that an appropriately qualified person checks each stage of the procurement process for the purposes of compliance.

Tendering

Where the ERDF Recipient is not subject to current European Union Procurement Law in relation to the Project it shall comply as a condition of this Agreement with the relevant parts of the National European Regional Development Fund Guidance on Procurement

16 PUBLICITY

16.1 The ERDF Recipient shall and shall procure that its Delivery Partners and Financial Intermediaries at all times comply with:-

- (a) Articles 115 and Annex XII of Regulation 1303, as further referred to in Article 6(1) (b) of Regulation 480; and
- (b) Chapter II and Annex II of Regulation 821.

and shall ensure that on receiving a Relevant Investment the Qualifying Final Recipient is informed that the funding is provided under the Operational Programme and is co-financed by the European Regional Development Fund.

16.2 The Secretary of State has published the National European Regional Development Fund Publicity Guidance to assist the ERDF Recipient to comply with the Regulations referred to in the paragraph above. This guidance is not compulsory and does not have to be followed as a condition of this Funding Agreement. It is the ERDF Recipient's sole responsibility to ensure compliance with the Regulations.

16.3 The obligations in this clause shall continue after this Funding Agreement is terminated.

16.4 The ERDF Recipient hereby gives consent to the Secretary of State to publicise in the press or any other medium the ERDF Contribution and the details of the Project using any information gathered from the Application or the monitoring of the Project Activities.

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17 EVENTS OF DEFAULT, MATERIAL BREACH AND RIGHTS RESERVED FOR BREACH OF THE FUNDING AGREEMENT

17.1 Events of Default

An Event of Default is the occurrence of any of the following:-

- (a) the ERDF Recipient fails to comply with one or more material conditions of this Funding Agreement;
- (b) the Project Activities are not commenced by the date which is 66 Working Days after the Start Date;
- (c) the expenditure is not claimed in line with the agreed Expenditure Profile;
- (d) there is a significant departure from the projected rate and timing of investments set out in the Business Plan, or significant lack of progress towards achieving the Targets
- (e) Completion of the Project Activities has not been achieved by the Agreed Project Practical Completion Date;
- (f) a Change is made to the Project without the prior written approval of the Secretary of State, as required by clause 14;
- (g) the ERDF Contribution is used to pay Costs/Product Fund Management Fees which do not fall within the definition of Permitted Payments or are otherwise in breach of, or not compatible with, the terms of the Business Plan or the Funding Agreement
- (h) the ERDF Contribution is used to make any investment that falls outside the criteria set out in the Investment Policy, or is used otherwise in a manner that is in breach of, or not compatible with, the terms of that policy or the Funding Agreement;
- (i) the Returns are used to make any investment that falls outside the criteria set out in the Investment Policy, or otherwise in a manner that is in breach of, or not compatible with, the terms of that policy or the Funding Agreement
- (j) the European Commission or a European Court requires any ERDF Contribution paid to be recovered by reason of a breach of State Aid Law;
- (k) the ERDF Recipient or any Product Fund Manager fails to comply with the provisions of the exemption or scheme (referred to in the Project Specific Conditions) under State Aid Law that applies to the Project and the ERDF Contribution;
- (l) any report or certificate made by the ERDF Recipient's auditor or reporting accountant is unsatisfactory (where, for example, the report or certificate refers to a fundamental uncertainty or disagreement, or contains a material qualification, or states that the auditor or accountant is unable to form an

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- opinion about any item, or reports that any amount is not correctly stated in the accounts or records examined);
- (m) the ERDF Recipient fails to provide information about the Fund that is critical for assessing the strategic effectiveness of providing support for it by way of the ERDF Contribution; and
 - (n) the ERDF Recipient fails to take or ensure that necessary steps are taken to comply with any corrective measures identified within an audit or compliance report as required by clause 17;
 - (o) the ERDF Recipient owes any sum to the Secretary of State under an agreement for the financial support of any other Project or activities;
 - (p) an encumbrancer takes possession or a receiver or administrative receiver or manager or sequestrator is appointed of the whole or any part of the undertaking assets rights or revenues of the ERDF Recipient or a distress or other process is levied or enforced upon any of the assets rights or revenues of the ERDF Recipient and any such action is not lifted or discharged within 10 Working Days;
 - (q) a petition is presented (other than a petition which, in the opinion of the Secretary of State, is frivolous or vexatious and which is withdrawn or stayed within 10 Working Days) to, or any order is made by, any competent court for the appointment of an administrator in relation to the ERDF Recipient;
 - (r) the ERDF Recipient stops or suspends payment of its debts or is (or is deemed to be) unable to or admits inability to pay its debts as they fall due or proposes or enters into any composition or other arrangement for the benefit of its creditors generally or proceedings are commenced in relation to the ERDF Recipient under any law regulation or procedure relating to reconstruction or adjustment of debts, or is adjudicated or found to be, insolvent;
 - (s) any petition is presented by any person (other than a petition which, in the opinion of the Secretary of State, is frivolous or vexatious and which is withdrawn or stayed within 10 Working Days) or any order is made by any competent court or any resolution is passed by the ERDF Recipient for its winding-up or dissolution or for the appointment of a liquidator of the ERDF Recipient;

17.2 Material Breach

A Material Breach is a breach of this Funding Agreement as defined in clause 1 above including but not limited to the occurrence of any of the following:-

- (a) any information given or representation made in the Application or in any correspondence, report or other document submitted to the Secretary of State relating to this Project or under this Funding Agreement is found to be incorrect or incomplete to an extent which the Secretary of State considers to be material;

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- (b) any fraud has been committed by the ERDF Recipient and/or its employees and or the Financial Intermediaries/Product Funds in connection with the Project;
- (c) a breach of the warranties by the ERDF Recipient contained in and given pursuant to this Funding Agreement.
- (d) the ERDF Recipient fails to comply with the Conditions.
- (e) the activities carried out by the ERDF Recipient are distinct or different from the description set out in the Application having regard also to the intended function of the Project Activities and the end beneficiaries of the Project.

17.3 Rights reserved for the Secretary of State in relation to an Event of Default

Where, the Secretary of State determines that an Event of Default or a Material Breach has or may have occurred, the Secretary of State may by written notice to the ERDF Recipient take any one or more of the following actions:

- (a) suspend the payment of ERDF Contribution for such period as the Secretary of State shall determine; and/or
- (b) reduce the Maximum Sum in which case the payment of ERDF Contribution shall thereafter be made in accordance with the reduction and notified to the ERDF Recipient; and/or
- (c) cease to make payments of the ERDF Contribution to the ERDF Recipient under this Funding Agreement and (in addition) require the ERDF Recipient to repay to the Secretary of State the whole or any part of the amount of the ERDF Contribution previously paid to the ERDF Recipient; and/or
- (d) terminate this Funding Agreement.

17.4 Opportunity for the ERDF Recipient to remedy an Event of Default

- (a) If the Secretary of State gives written notice to the ERDF Recipient pursuant to clause 17.3(a) to suspend payment of the ERDF Contribution, such notice shall specify the relevant Event of Default and give the ERDF Recipient an opportunity to rectify the relevant Event of Default within such period as the Secretary of State shall determine to be reasonable and as shall be set out in such written notice (or such extended period as the Secretary of State shall thereafter determine).
- (b) The written notice referred to in clause 17.4(a) above may include a requirement for the ERDF Recipient to provide specified information to the Secretary of State to assist him to determine whether the default has been rectified to his satisfaction.
- (c) Where the rectification of the default requires a Change the procedure under clause 14 shall be followed
- (d) The Secretary of State shall not by reason of the occurrence of an Event of Default which is, in the opinion of the Secretary of State, capable of remedy,

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exercise its rights under either clause 17.3(c) or clause 17.3(d) unless the ERDF Recipient has failed to rectify the default pursuant to clause 17.4(a) within such period referred to in clause 17.4(a) to the satisfaction of the Secretary of State.

17.5 Continued rights of actions or remedies of the Secretary of State

The exercise by the Secretary of State of its rights under clause 17.3 shall be without prejudice to any other right of action or remedy of the Secretary of State in respect of any breach by the ERDF Recipient of the provisions of this Funding Agreement.

17.6 Cessation of entitlement to the ERDF Contribution

If the Secretary of State exercises its right under clause 17.3(c) the Secretary of State shall give written notice to the ERDF Recipient that the Secretary of State is ceasing to make payment of the ERDF Contribution and from the date of such notice the Secretary of State shall cease to be under any obligation to pay any amount of the ERDF Contribution to the ERDF Recipient under the Funding Agreement.

17.7 Liability to meet demand for repayment of the ERDF Contribution and Covenant to Pay

- (a) Where the Secretary of State requires the ERDF Recipient to repay any amount of the ERDF Contribution, the ERDF Recipient shall repay the amount concerned within 20 Working Days of receiving the demand for repayment. The liability to meet such a demand shall be enforceable as a contractual debt.
- (b) Where the Secretary of State makes a determination to recover any amount of the ERDF Contribution, it may recover the amount concerned by withholding or deducting the amount from any sum due from the Secretary of State to the ERDF Recipient under this Funding Agreement or under any funding agreement for the support of any other project or activities by the European Regional Development Fund, or under any other agreement with the Secretary of State.
- (c) The Secretary of State may require interest to be paid on any amount repayable by the ERDF Recipient in accordance with the rates published in the Official Journal of the European Union from time to time for the period beginning on its due date (the date of demand) and ending on the date the Secretary of State receives it, both before and after judgment.

17.8 Reduction in the ERDF Contribution for underperformance

- (a) This clause applies where the Secretary of State acting reasonably determines that the ERDF Recipient has underperformed against the Targets specified in Schedule 3 to such a degree that a reduction in the ERDF Contribution may be made in accordance with the underperformance weightings and methodology set out in Schedule [4].
- (b) Where this clause applies, the Secretary of State shall give written notice to the ERDF Recipient specifying the Targets it has underperformed against and giving the ERDF Recipient an opportunity to rectify that

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underperformance within such period as the Secretary of State shall determine to be reasonable and as shall be set out in such written notice (or such extended period as the Secretary of State shall thereafter determine).

- (c) The written notice referred to in the paragraph above may include a requirement for the ERDF Recipient to provide specified information to the Secretary of State to assist him to determine whether that underperformance has been rectified to his satisfaction.
- (d) Where the rectification of the underperformance against the outputs and results requires a Change the procedure under clause 14 shall be followed.
- (e) Where the ERDF Recipient fails to rectify the underperformance to the Secretary of State's satisfaction within the specified time period, the Secretary State may by written notice to the ERDF Recipient, reduce the amount of ERDF Contribution allocated to the Project by an amount calculated in accordance with the underperformance weightings and methodology set out in Schedule .
- (f) Where the amount of ERDF Contribution is reduced under this clause, the Secretary of State shall either require the ERDF Recipient to repay to the Secretary of State the whole or any part of the amount of the ERDF Contribution previously paid to the ERDF Recipient and/or shall offset it from a future ERDF Claim, as appropriate.

17.9 Corrections

- (a) Notwithstanding any other provision in this Funding Agreement the Secretary of State may impose a Correction. If a Correction is imposed a notice will be sent to the ERDF Recipient setting out the Irregularity that the Secretary of State considers has occurred together with the level of Correction imposed having regard to the Guidelines for Determining Financial Corrections and/or the value of the ERDF Claim to the extent that the Irregularity applies to it.
- (b) If a Correction is imposed the ERDF Recipient shall either:
 - (i) pay the amount from its own sources;

or with the prior agreement of the Secretary of State

- (ii) offset the Correction from a future ERDF Claim; or
- (iii) pay the Correction from monies held in the Returns Account and/or Legacy Account on trust for the Secretary of State, as the case may be, and at the Secretary of State's discretion.

The Secretary of State shall be at liberty to offset an amount of the ERDF Contribution, or require Returns or Legacy to be set aside, in anticipation of a Correction pending the final outcome of any discussions or representations made by the Secretary of State and/or the ERDF Recipient in respect of the Correction.

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- (c) The ERDF Recipient may make representations in writing to the Secretary of State setting out the reasons it considers that the Correction should be adjusted together with evidence in sufficient detail to enable the Secretary of State to reconsider the requirement for the Correction provided always that the Secretary of State's decision shall be final and binding.
- (d) For the avoidance of doubt the ERDF Recipient shall not be liable for reimbursement of the amounts referred to in the Correction Notice where it is able to demonstrate, for a given Irregularity, that the following cumulative conditions are fulfilled:
 - the Irregularity occurred at the level of the Financial Intermediaries or Qualifying Final Recipients; and
 - the ERDF Recipient complied in full with the relevant Condition; and
 - the ERDF Recipient pursued all applicable contractual and legal measures with all due diligence to recover the amounts affected by the Irregularity but was unable to make recovery.

17.10 Exclusion of liability

- (a) Neither party shall be liable to the other party (so far as permitted by Law) for indirect, special or consequential loss or damage in connection with this Funding Agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- (b) Notwithstanding this clause 17, each party shall at all times take all reasonable steps to promptly minimise and mitigate any loss or damage for which the relevant party would be entitled to bring a claim against the other party, pursuant to this Funding Agreement.
- (c) With respect to other claims so far as permitted by Law the Secretary of State shall under no circumstances whatever be liable to the ERDF Recipient whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any Losses arising under or in connection with this Funding Agreement that would exceed the amount of the Maximum Sum less any amount of ERDF Contribution Paid.
- (d) Any clause limiting the ERDF Recipient's liability does not apply in relation to a correction applied in accordance with this Funding Agreement, except with regard to fraud.

18 RETURNS

- 18.1 The ERDF Recipient shall ensure that the Returns are held on a separate trust account (Returns Account) on the same basis as the ERDF Capital Bank Account so that the Returns are readily distinguishable from the initial ERDF Capital and the Secretary of State's proprietary interest in all funds standing from time to time to the credit of the Returns Account is noted and taking appropriate steps to ensure the Returns can be

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identified by the Category of Region and Priority Axis from which the Relevant Investments were made.

- 18.2** During the Initial Investment Period Returns must be used exclusively for
- (a) the purpose of making further rounds of Relevant Investments within the Project Area in accordance with the Investment Policy and the Business Plan, in accordance with the relevant Product Fund Conditions set out in clause 13 above; and

- (b) Permitted Payments

- 18.3** In the event of

- (a) the ERDF Recipient or any Financial Intermediary taking steps to wind up their company (without the prior written consent of the Secretary of State) or otherwise suffering an event of insolvency;
- (b) the ERDF Recipient or any Financial Intermediary otherwise ceasing, for whatever reason, to undertake the activity of a financial institution/fund manager/fund operator; or
- (c) the ERDF Recipient or Financial Intermediaries, being unable to satisfy the Secretary of State (acting reasonably) that the conditions of clause 18.1 are being fully complied with; or
- (d) the ERDF Recipient being in Material Breach of the terms and conditions of this Funding Agreement

the ERDF Recipient shall promptly notify the Secretary of State in writing and the Secretary of State may in its absolute discretion and at any time withdraw the operation of the Returns Account from the ERDF Recipient and may identify an organisation other than the ERDF Recipient to undertake the management and operation of the Returns. In such circumstances, the Secretary of State shall provide the ERDF Recipient with reasonable notice of the identity of the alternative organisation and the date or dates on which the transfer of all or part of the Returns (together with any rights to recover future repayments of Relevant Investments) and to which bank account these are to be transferred by the ERDF Recipient. In these circumstances the ERDF Recipient shall comply promptly with such determination and in any event within two calendar months of such notice. The Parties acknowledge and agree that the Returns are held on trust for the Secretary of State.

- 18.4** The management and operation of the Returns Account by or on behalf of the ERDF Recipient shall remain subject to the terms of this Funding Agreement and where further Relevant Investments are made utilising the Returns the ERDF Recipient shall be entitled to deduct Permitted Payments from the Returns Account to cover the associated Costs or Product Fund Management Fees in direct proportion to the Relevant Investments.

- 18.5** Upon the Agreed Financial Completion Date, the ERDF Recipient shall write to the Secretary of State giving notice that the Agreed Completion Date has occurred. The ERDF Recipient agrees to provide an updated business plan and investment policy to the Secretary of State detailing its strategy for the use of the Returns in the Legacy

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Period, no later than 30 September [2023?]. and the Secretary of State shall undertake a further assessment of market conditions based upon the Ex Ante Assessment and shall reach a decision based upon this information and wider considerations.

- 18.6** The business plan referred to in clause 18.5 above will be reviewed by the Secretary of State who will determine in his absolute discretion, how the Returns are to be used including considering whether
- (a) the Fund will continue to offer value for money in the Legacy Period and/or the Fund will remain financially viable; and
 - (b) there is a continued market failure in the Project Area such that the Fund should continue making Relevant Investments in Qualifying Final Recipients.
- 18.7** If the Secretary of State;
- (a) determines pursuant to the conditions in clause 18.6 (a) or 18.6 (b) to continue the Fund, the ERDF Recipient shall propose terms for the use of Returns, having regard for applicable Law, for approval by the Secretary of State. Further Relevant Investments made in the Legacy Period remain subject to the terms of this Funding Agreement unless otherwise agreed by the Secretary of State;
 - (b) determines pursuant to the conditions in clause 18.6 (a) or 18.6 (b) not to continue the Fund, the Secretary of State in his absolute discretion may:
 - (i) direct that all Returns (net of any Permitted Payments relating to unrealised investments) shall become repayable to the Secretary of State on demand and the Fund of Funds/Product Fund(s) shall be wound up by the ERDF Recipient; or
 - (ii) direct that a Legacy Account is created (or that the Returns Account becomes designated a Legacy Account) which is held on trust for the Secretary of State and operated until such time as the Fund of Funds/Product Fund(s) is realised, pursuant to clause 19 below;
- 18.8** in exercising the powers under 18.7 the Secretary of State shall provide the ERDF Recipient with reasonable notice of the date or dates on which the transfer of all or part of the Returns (together with any rights to recover future repayments of Relevant Investments) and to which bank account such Returns, as specified in the determination, are to be transferred by the ERDF Recipient. In these circumstances the ERDF Recipient shall comply with such determination PROVIDED THAT the Secretary of State will agree with the ERDF Recipient the procedure and timescales for complying with such a determination so that the transfer may be made in cleared cash and/or by transfer of the shares or other equity securities acquired in the Qualifying Final Recipients (where relevant), with the value attributed to such shares and other securities being calculated pro rata in accordance with the proportion of Relevant Investment made with the ERDF Contribution and Match Funding.

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- 18.9 In order to comply with a determination to transfer the operation of the Returns Account or to wind up the Fund pursuant to clause [18.3, 18.7 or 18.8] above, where the Relevant Investments include Equity or Quasi-Equity the ERDF Recipient shall use all reasonable endeavours to ensure:
- (a) no encumbrance is created over the Relevant Investments (including but not limited to the disposal of the whole or any part of its interest in or grant any option over any shares or other equity securities to another person) except where permitted by the written instruction of, the Financial Intermediary in accordance with the terms of this ERDF Funding Agreement (and as supervised by the ERDF Recipient); and
 - (b) that the Articles of Association of each Qualifying Final Recipient permit the disposal of the whole or any part of the interest in or the grant of any option over any shares or other equity securities acquired with a Relevant Investment to the Secretary of State without any restriction.

19 LEGACY

- 19.1 The ERDF Recipient shall ensure that the Legacy is held on a separate trust account (Legacy Account) on the same basis as the ERDF Capital Bank Account and Returns Account so that the Legacy is readily distinguishable from the initial ERDF Capital and Returns and the Secretary of State's proprietary interest in all funds standing from time to time to the credit of the Legacy Account is noted and taking appropriate steps to ensure the Legacy can be identified by the Category of Region and Priority Axis from which the Relevant Investments were made.
- 19.2 Legacy deposited in a Legacy Account must not be used for Permitted Payments relating to the Relevant Investments from which the Legacy has been generated, except for any necessary Costs approved in advance in writing by the Secretary of State. The making of further rounds of Relevant Investments is not permitted.
- 19.3 The management and operation of the Legacy Account by or on behalf of the ERDF Recipient shall remain subject to the terms of this Funding Agreement and the ERDF Recipient agrees to provide a six-monthly update until such time as all Relevant Investments are realised.
- 19.4 The ERDF Recipient shall write to the Secretary of State with all requests to redeploy Legacy, having regard for prevailing market conditions based upon an Ex Ante Assessment and the Secretary of State shall reach a decision on all such requests based upon this information and wider considerations.
- 19.5 In the event of
- (a) the ERDF Recipient or any Financial Intermediary taking steps to wind up their company (without the prior written consent of the Secretary of State) or otherwise suffering an event of insolvency;

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- (b) the ERDF Recipient or any Financial Intermediary otherwise ceasing, for whatever reason, to undertake the activity of a financial institution/fund manager/fund operator; or
- (c) the ERDF Recipient Financial Intermediaries, being unable to satisfy the Secretary of State (acting reasonably) that the conditions of clause 19.1 are being fully complied with; or
- (d) the ERDF Recipient being in Material Breach of the terms and conditions of this Funding Agreement

the ERDF Recipient shall promptly notify the Secretary of State in writing and the Secretary of State may in its absolute discretion and at any time withdraw the operation of the Legacy Account from the ERDF Recipient and identify an organisation other than the ERDF Recipient to undertake the management and operation of the Legacy. In such circumstances, the Secretary of State shall provide the ERDF Recipient with reasonable notice of the identity of the alternative organisation and the date or dates on which the transfer of all or part of the Legacy and to which bank account these are to be transferred by the ERDF Recipient. In these circumstances the ERDF Recipient shall comply promptly with such determination and in any event within two calendar months of such notice. The Parties acknowledge and agree that the Legacy are held on trust for the Secretary of State.

- 19.6** The Secretary of State shall provide the ERDF Recipient with reasonable notice of the date or dates on which the transfer of all or part of the Legacy (together with any rights to recover future repayments of Relevant Investments) and to which bank account such Legacy, as specified in the determination, are to be transferred by the ERDF Recipient. In these circumstances the ERDF Recipient shall comply with such determination PROVIDED THAT the Secretary of State will agree with the ERDF Recipient the procedure and timescales for complying with such a determination so that the transfer may be made in cleared cash and/or by transfer of the shares or other equity securities acquired in the Qualifying Final Recipients (where relevant), with the value attributed to such shares and other securities being calculated pro rata in accordance with the proportion of Relevant Investment made with the ERDF Contribution and Match Funding.
- 19.7** In order to comply with a determination to transfer the operation of the Legacy Account or to wind up the Fund pursuant to clause [19.5 or 19.6] above, where the Relevant Investments include Equity or Quasi-Equity the ERDF Recipient shall use all reasonable endeavours to ensure:
- (a) no encumbrance is created over the Relevant Investments (including but not limited to the disposal of the whole or any part of its interest in or grant any option over any shares or other equity securities to another person) except where permitted by the written instruction of, the Financial Intermediary in accordance with the terms of this ERDF Funding Agreement (and as supervised by the ERDF Recipient); and

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- (b) that the Articles of Association of each Qualifying Final Recipient permit the disposal of the whole or any part of the interest in or the grant of any option over any shares or other equity securities acquired with a Relevant Investment to the Secretary of State without any restriction.

20 COSTS AND PRODUCT FUND MANAGEMENT FEES

- 20.1 The Product Fund Management Fees shall be established by a competitive process.
- 20.2 The Product Fund Management Fees may be paid by the Fund of Funds as a Permitted Payment from the ERDF Capital Bank Account on submission of a [drawdown notice/invoice] by the Financial Intermediaries, subject to compliance with Regulation 480 and with prior approval by the Secretary of State.
- 20.3 Provided the Costs have been approved by the Secretary of State they may be deducted as a Permitted Payment by the ERDF Recipient from the ERDF Capital Bank Account in accordance with the projected drawdown schedule at Schedule 2 provided that the Costs shall not under any circumstances exceed the annual caps and cumulative cap at the Agreed Financial Completion Date as set out in the Project Specific Conditions at Schedule 1 and as provided for under Article 13 of Regulation 480.
- 20.4 The ERDF Recipient shall report quarterly on amounts paid as Permitted Payments and if required by the Secretary of State, evidence of defrayal. In the event that the ERDF Recipient does not demonstrate to the Secretary of State's satisfaction that an amount withdrawn from the ERDF Capital Bank Account for the purpose of paying Costs or Product Fund Management Fees has been validly incurred or exceeds the amount that is needed or may be or ought to have been withdrawn for that purpose, the ERDF Recipient 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 ERDF Capital Bank Account, recover the surplus for repayment into such account or set it off against an amount subsequently due to be drawn down for that purpose.

21 AUDIT AND MONITORING

- 21.1 The ERDF Recipient shall, and shall procure that any Delivery Partner shall, maintain full and accurate accounts and documentary evidence for the Project on an open book basis and the ERDF Recipient will and shall procure that a Delivery Partner will

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permit the Secretary of State and persons authorised by the Secretary of State to inspect audit and take copies of all reports books accounting records and vouchers which the Secretary of State properly considers relevant to the Project.

- 21.2** The ERDF Recipient shall and shall procure that a Delivery Partner shall maintain either a separate accounting system or an adequate accounting code for all transactions relating to the operation without prejudice to national accounting rules.
- 21.3** The ERDF Recipient shall and shall procure that a Delivery Partner shall comply with the Secretary of State's audit monitoring and reporting requirements for ERDF Recipients.
- 21.4** The ERDF Recipient shall and shall procure that a Delivery Partner shall provide the Secretary of State with such other information as the Secretary of State may require in connection with the Project and the Project Activities.
- 21.5** The ERDF Recipient shall and shall procure that a Delivery Partner shall cooperate fully and promptly with an Audit.
- 21.6** Without prejudice to any other provision of this Funding Agreement, where the ERDF Recipient has been notified that the Project has been selected for Audit and
- (a) the ERDF Recipient has previously failed to comply fully and promptly with an Audit; or
 - (b) an Irregularity has previously been found in relation to the Project,
- the Secretary of State may, at his discretion, withhold payment of ERDF Contribution until a subsequent Audit has been completed to the Secretary of State's satisfaction.
- 21.7** Further to clauses 21.1. to 21.6 above, and the obligations in clause 5.3 above, the ERDF Recipient shall and shall ensure Financial Intermediaries complete Relevant Investments on such terms which reserve appropriate rights to the Secretary of State, the European Court of Auditors, the European Commission Auditors, the National Audit Office (and also their respective auditors) enabling such organisations to audit the completion and application of Relevant Investments for the purpose of verifying that such Relevant Investments are compliant with the Community Rules and the Investment Policy and to audit the management and operation of the Fund, at the level of the Fund, or, where deemed necessary, at the level of the Product Fund or Qualifying Final Recipient, in accordance with the terms of this Funding Agreement.

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- 21.8 The ERDF Recipient agrees to a mid-fund review encompassing performance, audit and compliance, and shall provide such information to the Secretary of State as may be required to enable the completion of such a mid-fund review by the Secretary of State no later than 31st December 20[]

22 FUND REPORTS

- 22.1 The ERDF Recipient shall report to the Secretary of State quarterly and annually in respect of the Fund of Funds / Product Fund(s);

Quarterly Reports

Quarterly reporting is based on the periods:

January - March;

April - June;

July - September; and

October - December.

save for the first period which shall be from the date of Start Date to the end of the quarter following the quarter in which the Start Date falls.

- 22.2 The ERDF Recipient shall ensure that Quarterly Reports are received by the Secretary of State within 30 Working Days of the end of the period to which they relate and that such reports include the following information:

- (a) Number, amount and recipients of Relevant Investment highlighting any Relevant Investments made pursuant to Condition 13.3(d) hereof;
- (b) Number of applications for Relevant Investment received during the period and of that figure, a breakdown covering: (i) number of applications approved but not yet processed, (ii) number of applications rejected (iii) number of applications still to be processed and (iv) number of applications for new investment and number of applications for follow-on investment ;
- (c) Failure rate of Relevant Investment including any where, having received a Relevant Investment pursuant to Condition 13.3(d) above, the investee has failed to move into the Project Area or where the investee has failed to be use the Relevant Investment for its intended purpose;
- (d) Level of value impairments relating to any Relevant Investment;

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- (e) Income and expenditure accounts for the Fund including investment levels, management Costs and Product Fund Management Fees and interest and other gains;
- (f) Progress towards achievement of the Targets, including any relating to the Operational Programme Cross Cutting Themes of Sustainability and Equality;
- (g) Report on progress in relation to the Relevant Investments being delivered on a Co-Invest Basis;
- (h) Private sector leverage in respect of the Fund of Funds / Product Funds(s);
- (i) Variation from baseline projections contained in the Business Plan in respect of the Fund of Funds / Product Fund(s);
- (j) A report on the supporting measures undertaken both before and after an investment decision to maximise the impact of Relevant Investments;
- (k) A report on the realisation strategy in respect of the Fund of Funds / Product Fund's investments and progress towards achieving such realisations, including a report on Returns from Relevant Investments;
- (l) A report on the State Aid treatment of Relevant Investments, including number of De Minimis declarations;
- (m) A general report on the key actions and events in relation to the Fund over the period;
- (n) Any further information considered necessary by the Secretary of State in order to properly assess the progress of the Fund of Fund / Product Fund(s);

Annual Reports

22.3 The ERDF Recipient shall ensure that annual reports are received by the Secretary of State within 60 Working Days of the end of the period to which they relate and that such reports include the following information:

- (a) Number, amount and recipients of Relevant Investments;
- (b) Failure rate of Relevant Investments as for the quarterly reporting;
- (c) Level of value impairments relating to any Relevant Investments;

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- (d) Income and expenditure accounts for the Fund of Fund / Product Fund(s) including investment levels, management Costs and Product Fund Management Fees and interest and other gains ;
 - (e) Report on progress in relation to the Relevant Investments being delivered on a Co-Invest Basis;
 - (f) Private sector leverage in respect of the Fund of Fund / Product Fund(s);
 - (g) A report on the supporting measures undertaken both before and after an investment decision to maximise the impact of a Relevant Investment;
 - (h) A report on the realisation strategy in respect of the Fund's investments and progress towards achieving such realisations, including a report on Returns from Relevant Investments;
 - (i) Variation from baseline projections contained in the Business Plan in respect of the Fund;
 - (j) A report on the State Aid treatment of Relevant Investments, including number of De Minimis declarations;
 - (k) A general report on the key actions and events in relation to the Fund of Fund / Product Fund(s) over the period;
 - (l) Any further information considered necessary by the Secretary of State in order to properly assess the progress of the Fund of Fund / Product Fund(s) or deliver the 'Annual Implementation Report' required by the Commission ;
- 22.4 The ERDF Recipient shall prepare and submit such other reports as the Secretary of State may from time to time reasonably request within the deadline set out in the request.
- 22.5 Further to clauses 22.1 to 22.4 above, the ERDF Recipient shall take reasonable steps to ensure that its Chief Executive/directors are available to attend Managing Authority meetings as reasonably required by the Secretary of State (such attendance at least to take place annually).

23 ASSIGNMENT OR CHARGING OF THE FUNDING AGREEMENT

- 23.1 The ERDF Recipient shall not (and shall procure that the Product Funds and the Product Fund Managers shall not) without the prior written consent of the Secretary of State, assign its rights under the Funding Agreement or any funding agreement between it/them or charge the benefit of the Funding Agreement or any funding agreement between it/them or novate the rights and liabilities of the Funding Agreement or any funding agreement between it/them to a third party.
- 23.2 If the ERDF Recipient wishes to assign, charge or novate its rights and liabilities under the Funding Agreement, it will give as much notice as possible of its

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proposals to the Secretary of State and will provide a full account of relevant circumstances and such further particulars as the Secretary of State shall request concerning the party to which the Funding Agreement is proposed to be assigned, novated or charged.

23.3 The Secretary of State shall determine as to whether or not to give consent to an assignment or novation or charging of the Funding Agreement or as to any conditions to be imposed.

23.4 If the Secretary of State consents to an assignment, charge or novation, then the Secretary of State may notify the ERDF Recipient that the documentation giving effect to the assignment, charge or novation is to be approved by the Secretary of State and copies of all completed documents supplied to the Secretary of State upon completion of the same.

24 NOTIFICATIONS, RECORD KEEPING, AND DOCUMENT RETENTION

24.1 The ERDF Recipient shall notify the Secretary of State in writing:-

- (a) as soon as practicable thereafter firstly in the event of any Change in the information on costs (whether actual or estimated) of carrying out the Project Activities contained in the Application and secondly of any event which materially affects the continued accuracy of such information;
- (b) as soon as practicable thereafter, in the event of the receipt of any other Public Sector Financial Assistance or guarantees of other Public Sector Financial Assistance or other funding obtained by the ERDF Recipient in relation to the Project, or an offer of the same, in respect of any aspect of the Project or the Project Activities (or any part of it or them);
- (c) as soon as practicable thereafter any event which might adversely affect the carrying out and/or Completion of the Project Activities or any part of them or of any event which might adversely affect the delivery of the Project by the Agreed Project Practical Completion Date or Anticipated Fund Completion Date;
- (d) immediately upon it becoming aware of:
 - (i) any breach of, or any material dispute arising under or in connection with any of the Core Documents;
 - (ii) any actual or potential inability of any party to meet its obligations under any of the Core Documents;
 - (iii) any breach of, or any material dispute arising under or in connection with a Financial Facility Agreement or any actual or potential inability of the ERDF Recipient to meet its obligations under a Financial Facility Agreement; any breach of, or any material dispute arising under or in connection with the Fund Management Agreements or in

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connection with any agreements between it and the Financial Intermediaries;

- (iv) any actual or potential inability on the part of any party to meet its obligations under any funding agreement between the ERDF Recipient and any Financial Intermediaries, or in connection with the Fund Management Agreements; and
- (v) forthwith, on the occurrence of an Event of Default

24.2 The ERDF Recipient shall ensure that the Financial Intermediaries are required by way of the Fund Management Agreements to immediately inform the ERDF Recipient of:

- (i) any breach of, or any material dispute arising under or in connection with the Fund Management Agreements; or
- (ii) any actual or potential inability on the part of the ERDF Recipient, themselves or the Product Fund Managers to meet their obligations under the Fund Management Agreements.

24.3 Records

- (a) The ERDF Recipient shall provide the Secretary of State with such information and documentation as the Secretary of State may require in connection with the Project from the date of the Funding Agreement to the date on which the ERDF Recipient has fulfilled all its obligations under this Funding Agreement.
- (b) The ERDF Recipient shall comply with and assist the Secretary of State to comply with the requirements for an audit trail under the Structural and Investment Funds Regulations including (but not limited to) the detailed minimum requirements under Article 25 of Regulation 480.
- (c) The ERDF Recipient must keep a record of, or where relevant ensure that the Financial Intermediaries keep a record of, the evidence required by Article 9 of Regulation 480 including (without limitation) the Core Documents and all documentation relating to the establishment of the Fund, all documents evidencing Eligible Expenditure (including, without limitation, Match Funding on a co-investment basis) all State Aid paperwork such as De Minimis declarations and all due diligence related to Relevant Investments (including where applications were not progressed) and all agreements signed by Qualifying Final Recipients for the purpose of receiving Relevant Investments, all quotes, tenders and procurement practices, all financial contributions made towards the Project and a record of all interest and Returns generated by the Project.
- (d) The ERDF Recipient will provide to the Secretary of State such information as is available as to the number of persons employed in connection with the Project and such other information as may be requested by the Secretary of State as to the benefits derived from the provision of funding for the Project.

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- (e) The ERDF Recipient must comply with the requirements of the Secretary of State regarding the keeping of records available on the Secretary of State Website.

24.4 Retention of documents

- (a) Without prejudice to any other provision of this Funding Agreement and the ERDF Recipient's obligations pursuant to State Aid Law , the ERDF Recipient will ensure that all documents relating to the Project and its implementation and financing are retained for a two year period (except for investment records (including all records relating to the operation of the Returns or Legacy Accounts) which should be retained until such time as the funds are reutilised) from 31 December following the submission of the accounts in which the final expenditure of the Completed Project is included, in order that these may be made available to the European Commission and European Court of Auditors upon request in accordance with Article 140 of Regulation 1303.
- (b) The Secretary of State shall notify the ERDF Recipient of the start date of the two year period referred to in the paragraph above.
- (c) In addition to the obligation under paragraph (a) above, the ERDF Recipient shall ensure that all documents relating to the Project and its implementation and financing are retained as necessary in order to demonstrate compliance with any applicable State Aid law, the Structural and Investment Funds Regulations and the obligations under this Funding Agreement. The Secretary of State has published the National European Development Fund Document Retention Guidance in order to assist the ERDF Recipient to determine how long documents should be retained for in order to demonstrate compliance
- (d) The ERDF Recipient will make available the documents relating to the Project and its implementation and financing if and when required to do so by the Secretary of State, the European Court of Auditors, the European Commission auditors, the National Audit Office (and also their respective auditors).
- (e) The documents referred to in this clause shall be kept and made available either in the form of the originals or certified true copies of the originals or on commonly accepted data carriers including electronic versions of original documents or documents existing in electronic version only. The National European Development Fund Document Retention Guidance provides guidance on commonly accepted data carriers and the procedure for certifying conformity with original documents.
- (f) Where documents exist in electronic form only, the computer systems used shall meet accepted security standards which ensure that the documents held meet with national legal requirements and can be relied upon for audit purposes. Where documents exist in electronic form only, the equipment and software used to store the documents shall be retained and kept functional for a period of two years after the end of the programme.

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25 CONFLICTS OF INTEREST AND FINANCIAL IRREGULARITIES

- 25.1 The ERDF Recipient, any Delivery Partner, any Financial Intermediary and all officers, employees and other persons engaged or consulted by the ERDF Recipient in connection with the Project shall not be in a position where there is a conflict of interest. The ERDF Recipient is required to have formal procedures obliging all such persons to declare any actual or potential personal or financial interest in any matter concerning the Project, and to be excluded from any discussion or decision-making relating to the matter concerned.
- 25.2 If the ERDF Recipient has any grounds for suspecting any financial impropriety in the use of any amount paid under the Funding Agreement, it must notify the Secretary of State immediately, explain what steps are being taken to investigate the suspicion, and keep the Secretary of State informed about the progress of the investigation. For these purposes "financial impropriety" includes fraud or other impropriety; mismanagement; use of ERDF for improper purposes; and failure to comply with requirements in the Structural and Investment Funds Regulations relating to the control and propriety of Project expenditure. For the avoidance of doubt, in cases where financial impropriety can be demonstrated, the Secretary of State expects the ERDF Recipient to take all reasonable endeavours to recover sums from those responsible.
- 25.3 The Secretary of State shall be entitled to interview employees of the ERDF Recipient if fraud or other financial irregularity is suspected by the Secretary of State on the part of the ERDF Recipient, its employees or agents in connection with the Project.

26 CONFIDENTIALITY

- 26.1 Except to the extent set out in this clause 26 or where disclosure is expressly permitted elsewhere in this Funding Agreement, each party shall:-
- (a) treat the other party's Confidential Information as confidential and safeguard it accordingly; and
 - (b) not disclose the other party's Confidential Information to any other person without the owner's prior written consent, other than in respect of professional advisors and organisations providing Match Funding, and who are bound by the same standards of confidentiality to the Secretary of State.
- 26.2 Clause 26.1 shall not apply to the extent that:
- (a) such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000, 'Code of Practice on Access to Government Information' or the Environmental Information Regulations 2004;

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- (b) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - (c) such information was obtained from a third party without obligation of confidentiality;
 - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Funding Agreement; or
 - (e) it is independently developed without access to the other party's Confidential Information.
- 26.3** The ERDF Recipient may only disclose the Secretary of State's Confidential Information to the ERDF Recipient Personnel who are directly involved in the Project, professional advisors and organisations providing Match Funding and who need to know the information, and shall ensure that such ERDF Recipient Personnel are aware of and shall comply with these obligations as to confidentiality.
- 26.4** The ERDF Recipient shall not, and shall procure that the ERDF Recipient Personnel do not, use any of the Secretary of State's Confidential Information received otherwise than for the purposes of this Funding Agreement.
- 26.5** Nothing in this Funding Agreement shall prevent the Secretary of State from disclosing the ERDF Recipient's Confidential Information:
- (a) to any Crown body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Contracting Authority;
 - (b) to any consultant, contractor or other person engaged by the Secretary of State;
 - (c) (where such Confidential Information is contained in the Application, any ERDF Claim or any progress report submitted in respect of the Project), to any member of a Local Enterprise Partnership European Structural and Investment Fund Committee for the purpose of monitoring and evaluating the Project, subject to clause 26.7.
 - (d) to a person receiving technical assistance in accordance with Regulation 1303 for the purpose of monitoring and evaluating the Project.
 - (e) to enable the Secretary of State to meet its reporting obligations and other obligations under State Aid Law and the Structural and Investment Funds Regulations for the purpose of clause 25.3(b) of this Funding Agreement;
 - (f) for the purpose of any audit pursuant to clause 22 of this Funding Agreement;

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- (g) for the purpose of the examination and certification of the Secretary of State's accounts; or
 - (h) for any examination pursuant to Section 6(1) or Section 7ZA of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Secretary of State has used its resources.
- 26.6** The Secretary of State shall use all reasonable endeavours to ensure that any Crown Body, government department, Contracting Authority, external auditor, employee, third party or Sub-contractor to whom the ERDF Recipient's Confidential Information is disclosed pursuant to clause 26.5 is made aware of the Secretary of State's obligations of confidentiality.
- 26.7** The Secretary of State may agree not to disclose specified Confidential Information contained in the Application any ERDF Claim or progress report to a member of the Local Enterprise Partnership European and Structural Investment Committee where the ERDF Recipient has requested in writing that such information be withheld, including where it is considered to be commercially sensitive.
- 26.8** Notwithstanding the foregoing the ERDF Recipient hereby consents to the Secretary of State using and disclosing (including to the press) any techniques, ideas or know-how gained during the performance of the Project Activities and/or Funding Agreement. The ERDF Recipient warrants to the Secretary of State that neither the Intellectual Property Rights nor any publication by the Secretary of State of the project related know-how will infringe, in whole or in part, any Intellectual Property Right of any other person and agrees to indemnify and hold the Secretary of State harmless against any and all claims, demands and proceedings arising directly or indirectly out of the Secretary of State's publication or use of the Project Related Know-how where this gives rise to or is alleged to give rise to an infringement of third party Intellectual Property Rights.
- 27 THE SECRETARY OF STATE DATA**
- 27.1** The ERDF Recipient shall not delete or remove any proprietary notices contained within or relating to the Secretary of State Data.
- 27.2** The ERDF Recipient shall not store, copy, disclose, or use the Secretary of State Data except as necessary for the performance by the ERDF Recipient of its obligations under this Funding Agreement or as otherwise expressly authorised in writing by the Secretary of State.
- 27.3** The ERDF Recipient shall take responsibility for preserving the integrity of the Secretary of State Data and preventing the corruption or loss of the Secretary of State Data.
- 27.4** If at any time the ERDF Recipient suspects or has reason to believe that the Secretary of State Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the ERDF Recipient shall notify the Secretary of State immediately and inform the Secretary of State of the remedial action the ERDF Recipient proposes to take.

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28 DATA PROTECTION

28.1 With respect to the parties' rights and obligations under this Funding Agreement, the parties agree that the Secretary of State is the Data Controller and that the ERDF Recipient is the Data Processor.

28.2 The ERDF Recipient shall:-

- (a) process the Personal Data only in accordance with instructions from the Secretary of State (which may be specific instructions or instructions of a general nature as set out in this Funding Agreement or as otherwise notified by the Secretary of State to the ERDF Recipient during the term of this Funding Agreement);
- (b) process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Project Activities or as is required by Law or any Regulatory Body;
- (c) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- (d) take reasonable steps to ensure the reliability of any ERDF Recipient Personnel who have access to the Personal Data;
- (e) obtain prior written consent from the Secretary of State in order to transfer the Personal Data to any contractors or affiliates for the provision of the Project Activities;
- (f) ensure that all ERDF Recipient Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 20;
- (g) ensure that none of ERDF Recipient Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Secretary of State;
- (h) notify the Secretary of State (within five Working Days) if it receives:-
 - (i) a request from a Data Subject to have access to that person's Personal Data; or
 - (ii) a complaint or request relating to the Secretary of State's obligations under the Data Protection Legislation;
- (i) provide the Secretary of State with full cooperation and assistance in relation to any complaint or request made, including by:-

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- (i) providing the Secretary of State with full details of the complaint or request;
 - (ii) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Secretary of State's instructions;
 - (iii) providing the Secretary of State with any personal data it holds in relation to a Data Subject (within the timescales required by the Secretary of State); and
 - (iv) providing the Secretary of State with any information requested by the Secretary of State;
- (j) permit the Secretary of State or a representative of the Secretary of State (including, but not limited to, the Audit Commission), to inspect and audit (subject to reasonable and appropriate confidentiality undertakings), the ERDF Recipient's Data Processing activities (and/or those of its agents, subsidiaries and contractors) and comply with all reasonable requests or directions by the Secretary of State to enable the Secretary of State to verify and/or procure that the ERDF Recipient is in full compliance with its Data Processing obligations under this Funding Agreement;
 - (k) provide a written description of the technical and organisational methods employed by the ERDF Recipient for processing Personal Data (within the timescales required by the Secretary of State); and
 - (l) not Process Personal Data outside the European Economic Area without the prior written consent of the Secretary of State and, where the Secretary of State consents to a transfer, to comply with:
 - (i) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - (ii) any reasonable instructions notified to it by the Secretary of State.
- 28.3** The ERDF Recipient shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Funding Agreement in such a way as to cause the Secretary of State to breach any of its applicable obligations under the Data Protection Legislation.

29 SECURITY REQUIREMENTS

- 29.1** The ERDF Recipient shall, as an enduring obligation throughout the term of this Funding Agreement, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the Information and Communications Technology Environment.
- 29.2** Notwithstanding clause 29.1, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of the Secretary

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of State Data, assist each other to mitigate any losses and to restore the Project Activities to their desired operating efficiency.

29.3 Any cost arising out of the actions of the parties taken in compliance with the provisions of clause 29.2 shall be borne by the parties as follows:

- (a) by the ERDF Recipient where the Malicious Software originates from the ERDF Recipient Software, the Third Party Software or the Secretary of State Data (whilst the Secretary of State Data was under the control of the ERDF Recipient); and
- (b) by the Secretary of State if the Malicious Software originates from the Secretary of State Software or the Secretary of State Data (whilst the Secretary of State Data was under the control of the Secretary of State).

30 ERDF RECIPIENT WARRANTIES

The ERDF Recipient warrants, represents and undertakes for the duration of the term of this Funding Agreement that:-

- (a) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the ERDF Recipient's obligations under this Funding Agreement;
- (b) it has and will continue to have all necessary rights in and to the ERDF Recipient Software or any Third Party Software and/or the intellectual property rights, or any other materials made available by the ERDF Recipient and/or the sub-contractors to the Secretary of State necessary to perform the ERDF Recipient's obligations under this Funding Agreement;
- (c) it has undertaken a suitability assessment of the Software used by or on behalf of the ERDF Recipient and that it is :
 - (i) currently supported version(s) of that Software; and
 - (ii) is reasonably expected to perform in all material respects in accordance with its specification,
- (d) as at the Start Date all statements and representations in the ERDF Recipient's Application are to the best of its knowledge, information and belief, true and accurate and that it will advise the Secretary of State of any fact, matter or circumstance of which it may become aware which would render any such statement, representation to be false or misleading; and
- (e) it shall at all times comply with the relevant Law in carrying out its obligations under this Funding Agreement.
- (f) it has the power and authority to execute, deliver and perform its obligations under this Funding Agreement and no limit on its powers will be exceeded as a result of the acceptance of the Funding or any of the terms pursuant to this Funding Agreement.

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- (g) there has been no adverse change in the ERDF Recipient's business, assets or financial condition since the submission of the Application to the Secretary of State and that the Application is true in all respects on the date of this Funding Agreement.
- (h) no regulatory investigation by any United Kingdom or European Union authorities has been commenced or is pending in respect of the Project or the ERDF Recipient, or if there has been a regulatory investigation, it has been concluded to the satisfaction of the Secretary of State

31 NOTICES

- 31.1 Any notice demand or communication to be given or served under this Funding Agreement shall be in writing.
- 31.2 Subject to any other term of this Funding Agreement, any notice demand or communication to be given or served under this Funding Agreement upon the Secretary of State shall be given or served:
 - 31.3 by personal delivery or by sending it by pre-paid recorded postal delivery to the address specified in the Funding Agreement for the attention of the [insert region] Programme or to such other address as may from time to time be notified by the Secretary of State;
 - 31.4 by email to the email address specified in the Project Specific Conditions or such other address as may from time to time be notified by the Secretary of State; or
 - 31.5 where directed to do so by the Secretary of State, using the Secretary of State's on line facility, in accordance with the terms of use of that facility.
- 31.6 Any notice, demand or communication to be served upon the ERDF Recipient, shall be given or served:
 - 31.7 by personal delivery or by sending it by pre-paid recorded postal delivery to the address specified in this Funding Agreement or such other address as may from time to time be notified by the ERDF Recipient to the Secretary of State;
 - 31.8 by email to the email address specified in the Project Specific Conditions or to such other address as may from time to time be notified by the Secretary of State; or
 - 31.9 using the Secretary of State's System on line facility.
- 31.10 Any such notice shall (where sent by post) be deemed to have been served and received on the second working day following the day of posting and where delivered personally be deemed to have been given when delivery is made. An email or notice given using the Secretary of State's on line facility shall be deemed delivered when sent unless an error message is received.

32 VALUE ADDED TAX

- 32.1 The payment of the ERDF by the Secretary of State under the Funding Agreement is believed to be outside the scope of Value Added Tax but if any Value Added Tax shall become chargeable all payments shall be deemed to be inclusive of all Value

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Added Tax and the Secretary of State shall not be obliged to pay any additional amount by way of Value Added Tax.

- 32.2** All sums or other consideration payable to or provided by the ERDF Recipient to the Secretary of State at any time shall be deemed to be exclusive of all Value Added Tax payable. Where any such sums become payable or due or other consideration is provided the ERDF Recipient shall pay to the Secretary of State all the Value Added Tax so payable upon the receipt of a valid Value Added Tax invoice at the same time or as the case may be on demand by the Secretary of State in addition to such sums or other consideration..

33 GOOD FAITH AND COOPERATION

The ERDF Recipient covenants with the Secretary of State that:-

- (a) it shall at all times act with the utmost good faith towards the Secretary of State and will at all times co-operate fully with the Secretary of State;
- (b) it will comply with all the Secretary of State's reasonable requirements in relation to the Project from time to time; and
- (c) it will not do anything which will put the Secretary of State in breach of any of its obligations in relation to the Operational Programme.

34 INSURANCE

The ERDF Recipient covenants with the Secretary of State that it will ensure that it maintains at all times adequate insurance cover with an insurer of good repute to cover all claims and liabilities under this Funding Agreement or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with the Project.

35 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not party to this Funding Agreement shall not have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Funding Agreement.

36 JURISDICTION

This Funding Agreement shall be governed by and construed in accordance with the law of England and each party submits to the exclusive jurisdiction of the English Courts.

37 MISCELLANEOUS

- 37.1** Nothing in this Funding Agreement shall constitute a partnership or joint venture between the parties to this Funding Agreement or constitute the ERDF Recipient as the agent of the Secretary of State for any purpose whatsoever, and the ERDF Recipient shall ensure that any Delivery Partner is made aware of this.

- 37.2** A certificate by the Secretary of State as to any sum payable under this Funding Agreement to the ERDF Recipient shall be (save in the case of manifest error)

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conclusive evidence of the matter to which it relates and shall contain reasonable details of the basis of determination.

- 37.3 If at any time any of the provisions of this Funding Agreement become illegal, invalid or unenforceable in any respect under any law or regulation of any jurisdiction, neither the legality validity nor enforceability of the remaining provisions of this Funding Agreement shall be in any way affected or impaired as a result.
- 37.4 No failure or delay on the part of the Secretary of State in exercising any right or power and no course of dealing between the parties to this Funding Agreement shall operate as a waiver nor shall any single or partial exercise of any right power or remedy of the Secretary of State prevent any other or further or other exercise of it or the exercise of any other right power or remedy of the Secretary of State. The rights and remedies available to the Secretary of State under this Funding Agreement are cumulative and are in addition to and not in substitution for any other rights or remedies which the Secretary of State would otherwise have, however arising.
- 37.5 Nothing contained in or done under this Funding Agreement and no consents given by the Secretary of State shall prejudice the Secretary of State's rights, powers or duties and/or obligations in the exercise of its functions or under any statutes, by-laws, instruments orders or regulations.
- 37.6 Nothing in this Funding Agreement nor any other document shall impose any obligation or liability on the Secretary of State with respect to any actions of or obligations or liabilities assumed or incurred by the ERDF Recipient or its agents, contractors or employees whether under contract, statute or otherwise.
- 37.7 Any approval by the Secretary of State or any person on behalf of the Secretary of State pursuant to this Funding Agreement of any matter submitted by the ERDF Recipient for approval shall not be deemed to be an Acknowledgment by the Secretary of State of the correctness or suitability of the contents of the subject of the approval or consent.
- 37.8 The fact that the Secretary of State or their representatives have supplied or received any documents or information or attended any meeting shall not in itself imply approval of any matters raised in any such document, information or meeting or relieve the ERDF Recipient of any obligation or liability in respect of the Project Activities or otherwise.
- 37.9 Nothing in this Funding Agreement shall affect the coming into force or the continuance in force of any provision of this Funding Agreement which is expressly or by implication to come into force or continue in force upon termination or expiry of this Funding Agreement.
- 37.10 This Funding Agreement contains all the terms which the Secretary of State has agreed in relation to the subject matter of this Funding Agreement and supersedes any prior written or oral agreements representations or understandings between the Secretary of State and the ERDF Recipient.
- 37.11 No term of this Funding Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Funding Agreement

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37.12 Notwithstanding any other provisions of this Funding Agreement, the Secretary of State shall not be entitled to be reimbursed or to recover any monies that it has paid under this Funding Agreement to the extent that it has already been compensated or reimbursed in respect of that same amount pursuant to this Funding Agreement.

ACCEPTANCE

This Funding Agreement has been entered into as a Deed on the date stated at the beginning of it.

EXECUTED AS A DEED by affixing)

THE COMMON SEAL of the)

SECRETARY OF STATE FOR)

COMMUNITIES AND LOCAL)

GOVERNMENT in the presence of :)

Authorised Signatory: _____

Print Name: _____

[n.b ERDF RECIPIENT TO CONFIRM CORRECT EXECUTION CLAUSE WHERE SIGNING AS A DEED]

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SCHEDULE 1 THE PROJECT SPECIFIC CONDITIONS

Agreed Financial Completion Date	
Agreed Project Practical Completion Date	
Anticipated Fund Completion Date	
Capital Maximum Sum	
Contribution Rate	
Costs Capital Contribution Rate	
Excluded Sector(s)	
Investment and Fees Capital Contribution Rate	
Key Milestone Dates	
Match Funding	
Match Funding Longstop Date	
Maximum Sum	
Security	
Start Date	
Targets (in milestone table)	

Where appropriate, Project Specific Conditions to include the notional allocations (expenditure and targets) and specific measures to manage investment in accordance with these.

[SCHEDULE 1A APPORTIONMENT METHODOLOGIES]

SCHEDULE 2 EXPENDITURE PROFILES

SCHEDULE 3 TARGETS

SCHEDULE 4 UNDERPERFORMANCE METHODOLOGY

SCHEDULE 5 APPLICATION (INCLUDING APPENDIX 1 – CORE DOCUMENTS)