

Dated [ ] 2019

(1) [North East Finance]

(2) [ ]

## DRAFT AGREEMENT PUBLISHED WITH OJEU NOTICE

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Investment Advisory Agreement

relating to [ ]

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**THIS AGREEMENT** is made on [ ] 2019

**BETWEEN**

- (1) **[TBC]**, a limited company (incorporated in England and Wales with company number [Number]) whose registered office is at [ADDRESS]("[NEF][\* **identity of NEF Co TBC**]"); and
- (2) **[COMPANY NAME]** (company number [ ] ) whose registered office is at [ADDRESS] (the "**Advisor**").

**BACKGROUND:**

- (A) NEF is the holding fund manager for the Finance for Business North East Fund ('FBNE Fund'), which was delivered between 2010 to 2016 via seven sub-funds.
- (B) NEF requires the Advisor to assist with ongoing management of a portfolio of equity assets. The assets are currently held as limited partnerships, but NEF intend to dissolve the Partnerships and bring the assets onto the balance sheet of one or more NEF subsidiary entities.
- (C) The Advisor has been appointed by NEF to deliver an independent investment and corporate finance advisory service in relation to the assets, assisting with the oversight and future realisation of the equity participations and some element of debt/mezzanine funding. The Advisor will work with NEF to manage the portfolio and will maximise the value of and realise investments by providing the Services under the terms of this Agreement. The Advisor, if requested to do so by NEF, will also advise on other assets which are managed and/or held indirectly by NEF.
- (D) The Advisor is regulated by the FCA (as defined below) in the conduct of investment business.

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement, unless the context otherwise requires, the following words and expressions have the meanings shown below:

<b>"Advisory Board"</b>	the advisory board of NEF;
<b>"Associate"</b>	in respect of any company ("Company A"), any subsidiary of Company A, any holding company of Company A, any subsidiary of such a holding company and any other person whose business or domestic relationship with Company A may reasonably be expected to give rise to a community of interest between them which may involve a conflict of interest in dealings with third parties. (For the purposes of this definition, the terms "subsidiary" and "holding company" shall be as defined in Section 1159 Companies Act 2006);

<b>"Board"</b>	the board of directors of NEF;
<b>"Business Day"</b>	any day other than Saturday, Sunday or any other day which is a public or bank holiday in England;
<b>"Change in Control"</b>	shall occur in respect of the Advisor where (other than with the prior written consent of NEF): <ul style="list-style-type: none"> <li>(a) Control of the Advisor is obtained (whether directly or as a result of obtaining Control of one or more other persons) by any person who did not at the date of this Agreement hold Control (whether directly or as a result of having Control of one or more other persons) of the Advisor; or</li> <li>(b) a person who has Control (whether directly or as a result of having Control of one or more other persons) of the Advisor at any time during the term of this Agreement ceases to have Control (whether directly or as a result of having Control of one or more other persons) of the Advisor;</li> </ul>
<b>"Conflict of Interest Policy"</b>	as detailed in Schedule 3;
<b>"Contract Notice"</b>	the advertisement published by NEF in the Official Journal of the European Union on [DATE] 2019 in respect of the contract for Investment Fund Management;
<b>"Control"</b>	in relation to the Advisor, the power (whether by means of holding shares, possessing voting power, exercising contractual powers in or over the Advisor or any other person or otherwise) to ensure that its affairs are conducted in accordance with the wishes of the person holding the power;
<b>"Controller"</b>	as defined in the Data Protection Legislation;

<b>“Processor”</b>	as defined in the Data Protection Legislation;
<b>“Data Protection Legislation”</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679) ("GDPR"); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;
<b>“Effective Date”</b>	the date of this Agreement;
<b>“EI Regulations”</b>	the Environmental Information Regulations 2004;
<b>"Fees"</b>	as detailed in Schedule 2;
<b>“FOIA”</b>	the Freedom of Information Act 2000;
<b>“FCA”</b>	the Financial Conduct Authority or any successor regulator;
<b>“FCA Rules”</b>	the FCA Handbook of Rules and Guidance as amended or replaced from time to time;
<b>“FSMA”</b>	the Financial Services and Market Act 2000;
<b>“Funds”</b>	The North East Technology Fund; the North East Angel Fund; and the North East Growth Plus Fund and such other funds as NEF may make subject to this Agreement from time to time;
<b>"Group Company"</b>	in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a member of the Group.
<b>“Investments”</b>	investments made or acquired by NEF in relation to the Funds including but not limited to shares, debt securities, convertible loan stock, or other securities and loans;
<b>“Key Person”</b>	[NAME], or (as applicable) their replacement

approved in accordance with **Clauses 3.6** and **3.7** of this Agreement;

**“MHCLG”**

the Ministry for Housing, Communities and Local Government and its successors;

**“Money Laundering Regulations”**

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017;

**“Personal Data”**

as defined in the DPA;

**“Portfolio Companies”**

companies in which the Funds have made an Investment;

**"Portfolio Realisation Review Report"**

as detailed in Clause 12;

**“Special Category Personal Data”**

as defined in the Data Protection Legislation;

**"Services"**

as detailed in Schedule 1;

**"Stakeholders"**

Ministry for Housing, Communities and Local Government (MHCLG), acting as Managing Authority for the ESIF programme; British Business Bank (BBB), acting on behalf of the Secretary of State for Business, Education, Innovation & Skills; and North East Local Enterprise Partnership and North East Access to Finance as funders; and

**“Supervisory Authority”**

as defined in the Data Protection Legislation;

1.2 In this Agreement the headings are for ease of reference only and shall not affect construction or interpretation.

1.3 In this Agreement, unless the context otherwise requires, references to Clauses, the Schedules and the Appendix are references to the Clauses, the Schedules and the Appendix to this Agreement.

1.4 The Appendixes shall be deemed to be incorporated in and form part of this Agreement.

1.5 In this Agreement references to any statute include subordinate legislation made pursuant to it and references to any statutes, statutory instruments, rules or regulations should mean those statutes, statutory instruments, rules or regulations as from time to time modified, amended, substituted or replaced.

**2. APPOINTMENT AND TERM**

2.1 NEF hereby appoints the Advisor to be the investment advisor for the assets of the Funds with effect from the Effective Date to provide the Services.

- 2.2 The Advisor shall provide the Services to NEF hereunder on the basis that NEF is a per se professional client for the purposes of the FCA Rules. It is acknowledged that NEF has a right to request a different categorisation, but it is further acknowledged that such categorisation would not necessarily make it an eligible complainant for the purposes of the Financial Ombudsman Service or an eligible claimant under the Financial Services Compensation Scheme.
- 2.3 The appointment of the Advisor pursuant to this Agreement shall take effect from the Effective Date and shall continue for a period of 24 months (after which it shall automatically terminate), unless:
- 2.3.1 the appointment is extended on the same terms for an initial additional period not exceeding 12 months by notice in writing by NEF and after the initial extension by a further period not exceeding 24 months by agreement in writing between the Advisor and NEF; or
- 2.3.2 the appointment is terminated in accordance with the provisions of **Clause 18**.
3. **COMPLIANCE WITH LAWS, TENDER COMMITMENTS ETC.**
- 3.1 In carrying out its duties under this Agreement, the Advisor shall, and shall procure that its representatives, employees and delegates shall, observe and comply with:
- 3.1.1 all reasonable requirements of the Stakeholders which may be notified to the Advisor by NEF from time to time;
- 3.1.2 all obligations of and restrictions on the Advisor as set out or referred to in this Agreement;
- 3.1.3 the FCA Rules and the Money Laundering Regulations, as applicable;
- 3.1.4 all other relevant primary and subordinate legislation applicable to NEF or the Advisor and any other relevant law or regulation (including, without limitation laws and regulations relating to state aid) which may from time to time apply to NEF or the Advisor;
- 3.1.5 the commitments made in the Advisor's Tender; and
- 3.1.6 all proper directions and requirements of NEF.
- 3.2 In the event of any breach of **Clause 3.1** the Advisor shall take such steps as are necessary to ensure a restoration of full compliance as soon as is reasonably practicable.
- 3.3 The Advisor shall, in order to fulfil the obligations set out in this Agreement, devote such time and have all necessary competent personnel (including, without limitation, the Key Person or such replacement for the Key Person as are approved under **Clause 3.6** and **Clause 3.7**) facilities and equipment as may be required to enable it to carry out such obligations properly and efficiently.

- 3.4 The Advisor shall discharge its duties faithfully, diligently and to the best of its ability, in a manner conducive to the best interests of NEF, the Funds and the Stakeholders with a view to maximising the returns from the Funds and maximising the value of the assets held in the Funds.
- 3.5 The Advisor shall not knowingly or recklessly do, or, actively or by omission, permit to be done or occur, anything that may attract adverse publicity to or damage the reputation of, NEF, the Funds and/or the Stakeholders.
- 3.6 If a Key Person is to cease to devote time to the provision of services by the Advisor under this Agreement then the Advisor shall:
- 3.6.1 inform NEF and the Stakeholders as soon as possible; and
- 3.6.2 provide details to NEF and the Stakeholders of another individual who will take on the role or functions of the Key Person within 3 months of the notifications under **Clause 3.6.1**.
- 3.7 The Fund shall consider the details of any individual proposed under **Clause 3.6.2**, shall obtain the prior consent of NEF on such proposal and shall inform the Advisor within 10 Business Days of the notification whether it approves the proposed individual being a Key Person. If NEF consents in writing to the individual, that individual shall be deemed to be a Key Person under this Agreement from the date of its consent.

#### 4. **BASIS OF DEALING**

- 4.1 The Advisor shall not initiate the marketing for disposal of Investments without the prior written consent of NEF.
- 4.2 The Advisor shall not commit NEF to any obligation to underwrite any issue or offer for sale any Investments without the prior written consent of NEF.
- 4.3 The Advisor will act in good faith and with due diligence in its selection, monitoring and use of counterparties.

#### 5. **RECORDS AND DATA PROTECTION**

- 5.1 The Advisor shall keep such records as are reasonably necessary to provide an accurate summary of the exercise of its powers and discretions under this Agreement for the purposes of the FCA Rules.
- 5.2 Notwithstanding the provisions of **Clause 5.1**, the Advisor shall maintain such other records and comply with any document retention policy as required by NEF or the Stakeholders from time to time.
- 5.3 If the Advisor is, pursuant to the provisions of this **Clause 5**, required to retain original documentation relating to the Funds or otherwise, then unless otherwise agreed by NEF, the Advisor shall securely retain all such documents until [DATE] 2024.



- 5.4 The Advisor acknowledges the Funds were constituted in part through the use of public funds and accordingly the Advisor shall maintain full and accurate accounts and documentary evidence on an open book basis in relation to the Services and shall permit NEF and/or the Stakeholders and persons authorised by the NEF and/or the Stakeholders to inspect, audit and takes copies of all reports, books, accounting records which they properly consider to be relevant to the Services and shall provide such assistance and information as is reasonably requested by any such inspectors or auditors.
- 5.5 Where the Advisor is a Controller of Personal Data, it shall at all times comply with its obligations under Data Protection Legislation.
- 5.6 If the Advisor is a Processor of Personal Data on behalf of NEF under this Agreement, the Advisor shall:
- 5.6.1 process the Personal Data only in accordance with this Agreement and the documented instructions of NEF (unless the Advisor is required to do so by any applicable law to which the Advisor is subject; in such a case, the Advisor shall inform NEF of that legal requirement before processing any Personal Data, except where that law prohibits such information on the grounds of public interest);
  - 5.6.2 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 and risk 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 (and shall include, without limitation, and as appropriate, complying with any security measures described in this Agreement);
  - 5.6.3 not transfer personal data outside of the European Economic Area without the prior written consent of NEF. Where NEF consents to such transfer, the Advisor shall ensure that the transfer is only made in a manner which is compliant with Data Protection Legislation and be made in such a way which ensures that the level of protection offered to natural persons by Data Protection Legislation is not undermined, which may, at NEF's election, involve the parties entering into in a separate contract using the approved EU model as approved pursuant to 'Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries' (or any applicable superseding clauses);
  - 5.6.4 ensure that the Personal Data is only processed by persons on behalf of the Advisor who are bound by enforceable confidentiality obligations and the Advisor shall take steps to ensure such persons act only on the Advisors instructions in relation to such processing;
  - 5.6.5 provide all reasonable assistance to NEF in responding to requests from data subjects who are exercising their rights under Data Protection Legislation;

- 5.6.6 notify NEF without undue delay (and in any event within 24 hours) after becoming aware of a personal data breach (as defined in the GDPR) or a potential personal data breach. The Advisor shall:
- 5.6.6.1 provide all necessary information and documentation relating to the personal data breach to enable NEF to notify the personal data breach to the relevant Supervisory Authority;
  - 5.6.6.2 describe the nature of the personal data breach including where possible, the cause of the breach, the categories and approximate number of data subjects concerned, and the categories and approximate number of personal data records concerned;
  - 5.6.6.3 communicate the name and contact details of the relevant data protection officer or other contact point where more information can be obtained by NEF;
  - 5.6.6.4 describe the likely consequences of the personal data breach;
  - 5.6.6.5 describe the measures taken or proposed to be taken by the Advisor to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects, and
- insofar as it is not possible to provide any of the information in this clause 5.6.6 at the same time to NEF, the information may be provided in phases without undue delay and as soon as the relevant information becomes available to the Advisor;
- 5.6.7 where instructed to do so by NEF, liaise and co-operate with NEF to enable NEF to make any public statements regarding any personal data breach;
- 5.6.8 maintain written records of all processing activities carried out on behalf of NEF pursuant to this Agreement, including, but not limited to:
- 5.6.8.1 the name and contact details of the Advisor, any sub-processors and where applicable, the Advisors data protection officer;
  - 5.6.8.2 a description of the processing carried out by the Advisor; and
  - 5.6.8.3 where applicable, identification of any third country or international organisation that the Advisor transfers Personal Data to and details of the appropriate safeguards in place for any such transfers;
- 5.6.9 assist NEF in carrying out data protection impact assessments and upon request, promptly provide any necessary information to NEF;
- 5.6.10 shall not appoint any sub-processors to process any Personal Data unless it has prior written consent from NEF to the appointment of any sub-processor;

- 5.6.11 where any sub-processor is appointed with NEF's prior written consent, the Advisor shall:
  - 5.6.11.1 ensure that the sub-processor is contractually bound by at least the same obligations as the Advisor in clauses 5.6 to 5.7 of this Agreement; and
  - 5.6.11.2 remain fully liable to NEF for all acts, omissions and negligence of the sub-processor;
- 5.6.12 permit NEF to inspect and audit the Advisor's processing activities at the Advisor's sole cost and expense to enable NEF to verify and/or procure that the Advisor is complying with its obligations under this clause 5.6;
- 5.6.13 on NEF's reasonable request, assist NEF in complying with its obligations pursuant to Articles 32-36 of the GDPR (or such corresponding provisions of Data Protection Legislation), comprising (if applicable);
- 5.6.14 unless any applicable law requires otherwise, upon termination of this Agreement, the Advisor shall cease processing any Personal Data on behalf of NEF and, at the option of NEF:
  - 5.6.14.1 securely and safely delete all Personal Data provided by NEF to the Advisor, and provide a certificate of destruction to NEF; or
  - 5.6.14.2 safely and securely return all Personal Data and other information provided by NEF to the Advisor or to such other third party as may be designated by NEF.

5.7 The Advisor shall indemnify NEF and each of the Stakeholders against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against NEF or a Stakeholder by any person in respect of information subject to the Data Protection Legislation which claims would not have arisen but for some act, omission, misrepresentation or negligence on the part of the Advisor or any person to whom any of its rights, authorities, powers, duties or obligations vested in the Advisor are delegated in accordance with this Agreement.

## 6. **LENDING AND BORROWING**

- 6.1 The Advisor shall not, without the prior approval in writing of NEF make arrangements:
  - 6.1.1 to borrow on NEF's behalf whether secured against Investments or other property of NEF or otherwise; or
  - 6.1.2 to lend to a third party Investments or documents of title or certificates evidencing title to Investments or other property belonging to NEF.

7. **REMUNERATION**

7.1 NEF shall be solely responsible for the payment of the Fees of the Advisor and the Advisor shall not be entitled to any additional fee from NEF or any company in which NEF holds an investment for services other than the Services and shall have no rights against NEF or any of the Stakeholders in respect of any such fees.

7.2 On the last working day of each month during the term of this Agreement, the Advisor shall submit to NEF a valid invoice which gives details of the amount payable (plus VAT, if applicable) for the Services during that month.

7.3 In consideration of the provision of the Services, NEF shall pay the Fees, provided that no payment shall be paid in advance and that each valid invoice is submitted by the Advisor in accordance with 7.2. Such invoices will be paid by NEF within 30 (thirty) days of receipt.

8. **EXCLUSIVITY**

8.1 NEF will not engage other persons to provide it with the Services.

8.2 Subject to the prior written approval of NEF, the Advisor shall be free to provide the same or similar services to (or engage in other activities with) others on such terms as the Advisor may arrange.

8.3 The Advisor is however expected to devote appropriate and reasonably necessary time and resources, to the satisfaction of NEF, to providing the Services.

9. **POWER TO DELEGATE**

9.1 The Advisor may in the execution and exercise of all or any of its rights, authorities, powers, duties and obligations under this Agreement act by a member, responsible officer or employee for the time being of the Advisor and may also delegate by power of attorney or otherwise to any person or persons or fluctuating body of persons all or any of the rights, authorities, powers, duties and obligations vested in the Advisor by this Agreement and such delegation may be made upon such terms and conditions and subject to such regulations including power to sub-delegate as the Advisor may think fit, PROVIDED THAT it notifies NEF in writing in advance.

9.2 The Advisor shall remain liable for the performance of its obligations by any such delegate appointed pursuant to clause 9.1.

10. **INSTRUCTIONS**

Any specific instructions, directions or other communications by or on behalf of NEF to the Advisor or to NEF by the Advisor are to be given to or by any member or employee of the Advisor and shall be in writing under the hand of a person from time to time authorised by NEF or the Advisor, as the case may be. The Advisor shall accept and comply with any instructions or other communications from NEF which are within the terms of this Agreement, but shall not be required to acknowledge the same. NEF is willing for and expressly

requests real time communications initiated by any member or employee of the Advisor or any delegate or agent of the Advisor.

## 11. **CONFLICTS OF INTEREST**

11.1 The Advisor shall, in each case of which it is aware that a proposed transaction by NEF presents a material conflict of interest between the interests of the Advisor, its Associates or their other clients and the interests of NEF and/or the Stakeholders, disclose the same to NEF and the Stakeholders. To the extent that the NEF confirms that such conflict is not prejudicial to its interests, having regard amongst other things to the obligations of the NEF to the Stakeholders, the Advisor or an Associate or their clients may act as principal in any transaction with NEF which relates to that conflict of interest.

11.2 Subject to **Clause 11.3**, the Advisor may provide similar services or any other services whatsoever (including without limitation investment management services) to any other customer, which may include an Associate with a similar investment objective and Investment Profile to those of NEF or the Funds.

11.3 The Advisor shall disclose to NEF any prior or future direct relationship between them and an investee prior to any commitment to them being made.

11.4 The Advisor shall comply with the NEF's Conflict of Interest Policy for the Funds as set out in Schedule 3 or as otherwise notified by NEF to the Advisor from time to time.

11.5 The Advisor shall:

11.5.1 at all times act in the best interests of NEF and the Stakeholders, while having regard to its obligations to other clients; and

11.5.2 use its best endeavours to ensure fair treatment as between NEF and other customers whose funds are managed or advised by the Advisor.

11.6 To the extent that any organisational and administrative arrangements of the Advisor maintained and operated to prevent conflicts of interest from constituting or giving rise to a material risk of damage to the interests of its customers, are not able or sufficient to ensure, with reasonable confidence, that such risks will be prevented, the Advisor shall disclose to NEF the general nature and/or sources of such conflicts of interests.

## 12. **REPORTING**

12.1 Every quarter the Advisor will send to NEF, within 10 Business Days after the end of the relevant quarter, a Portfolio Realisation Review Report in such form and with such content as NEF shall reasonably require to report the status of the assets to the Board and the Stakeholders which will include (but will not be limited to) the following:

12.1.1 an overview of the performance of the assets;

12.1.2 an overview of any issues with the assets and/or their performance;

- 12.1.3 details as to the future prospects of the assets;
  - 12.1.4 details of investment rounds that have or are expected to take place; and
  - 12.1.5 details of exit options and potential timing for such exits in relation to the assets.
- 12.2 Every month the Advisor will send to NEF and the Stakeholders within 10 Business Days of the end of the relevant month a statement in such form and with such content as NEF may reasonably require, to be notified to the Advisor in advance.
- 12.3 NEF confirms that in its capacity as per se professional client it does not want the Advisor to send it periodic statements containing detailed information otherwise required by the FCA Rules or confirmations of transactions as otherwise required by the FCA Rules.
- 12.4 The Advisor shall prepare from time to time (and in any event within 90 days of 31 March and 30 September in each year) reports for NEF including a statement of and valuation of the Investments and assets; an assessment of individual assets; and details of any Investments acquired in accordance with the provisions of this Agreement.

### 13. **MEETINGS**

- 13.1 The Advisor shall attend quarterly Board and/or Advisory Board meetings and such other meetings with the Board and/or Advisory Board, as instructed to do so by NEF from time to time.
- 13.2 The Advisor shall attend monthly update meetings with NEF, at such dates and times to be agreed between the parties.

### 14. **REPRESENTATIONS AND WARRANTIES**

- 14.1 By signing this Agreement, the Advisor represents and warrants to NEF that at the Effective Date:
- 14.1.1 it is duly incorporated, established or constituted (as the case may be) and validly existing under the laws of England and Wales;
  - 14.1.2 it has legal capacity and authority to enter into this Agreement, that this Agreement is duly executed, and that the terms of this Agreement are legal, valid and binding obligations on it which are enforceable against it and do not constitute a breach of any obligation by which it is bound whether by contract, operation of law or otherwise;
  - 14.1.3 it has obtained and will obtain all regulatory consents and approvals which are necessary for it in relation to this Agreement and shall maintain all such necessary regulatory consents and approvals as are necessary for the duration of this Agreement;

14.1.4 it will not knowingly do or omit to do anything that would cause either of the parties to be in breach of any legislation or regulation applicable to NEF and/or the Stakeholders; and

14.1.5 it will in carrying out its duties under this Agreement, act in good faith, exercise all the due skill, care and diligence that would be expected of a professional investment manager and operate in accordance with best market practice.

## 15. **LIABILITY AND INDEMNITIES**

15.1 To the extent permitted by the FCA Rules:

15.1.1 the Advisor shall not be liable to NEF for:

15.1.1.1 the investment performance or profitability of the Funds and/or the Investments;

15.1.1.2 the taxation consequences of the retention, purchase or sale of any of the Funds and/or the Investments or part of; or

15.1.1.3 any error of fact, law or judgement or any action lawfully taken or omitted to be taken by the Advisor;

except to the extent that NEF suffers loss as a result of fraud, gross negligence, wilful default or bad faith on the part of the Advisor in the performance of its duties and obligations under this Agreement. For the avoidance of doubt, and without prejudice to any other right of NEF in respect of any other breach of this Agreement arising out of the fraud, gross negligence, wilful default or bad faith on the part of NEF or their Associates and NEF hereby undertakes to hold harmless and indemnify or procure that the Advisor be held harmless and indemnified against all actions, claims, costs, expenses (including all reasonable legal, professional and other expenses properly incurred by the Advisor in this connection), charges, losses, damages and liabilities incurred or suffered by the Advisor in each case as against any third party in or about the execution or exercise (or in the purported execution or exercise in good faith) of its powers or duties or authorities or discretions as Advisor. This does not apply to actions, claims, costs, expenses, charges, losses, damages and liabilities that arise as a result of the fraud, gross negligence, wilful default, or bad faith of the Advisor or to the extent that it is a liability which has actually been recovered from another person other than the Advisor's insurers PROVIDED THAT the Advisor shall take all reasonable steps to mitigate any loss or liability suffered by it in consequence of any of the events or circumstances which give rise to a claim under this **Clause 15** or otherwise.

15.2 Subject as provided in **Clause 15.1** the Advisor hereby agrees to indemnify NEF against all loss, damage, costs, legal costs and professional and other expenses of any nature whatsoever incurred or suffered by NEF whether direct or consequential (including but without limitation any economic loss or other loss of turnover profits, business or goodwill) as a result of fraud, gross negligence, wilful default or bad faith on the part of the Advisor in the performance of its duties and obligations under this Agreement (in the absence of any fraud,

wilful misconduct, bad faith or reckless disregard for its obligations under this Agreement on the part of the Advisor or their Associates in connection with such shortfall).

## 16. **INSURANCE**

16.1 The Advisor shall effect and maintain insurance necessary to cover the Advisor and any person to whom any of its rights, authorities, powers, duties or obligations vested in the Advisor are delegated in accordance with this Agreement for risk under this Agreement and for the avoidance of doubt all the risks for which the Advisor may be liable to indemnify the Fund under **Clause 15** or otherwise liable to NEF.

16.2 Where, in compliance with **Clause 16.1** above the Advisor takes out and maintains professional indemnity insurance, the Advisor shall:

16.2.1 take out and maintain appropriate professional indemnity insurance in respect of its businesses generally throughout the period from the date of commencement of its service under this Agreement and for a period of two years from the date of expiry or termination of this Agreement; and

16.2.2 ensure that any person to whom any rights, authorities, powers, duties or obligations vested in the Advisor are delegated in accordance with this Agreement takes out and maintains appropriate professional indemnity insurance in respect of their businesses generally throughout the period from the date of commencement of their services or commission and in addition for a period of two years from the date of completion of the services delegated to such person.

16.3 The Advisor shall, whenever required by NEF, produce to NEF certificates signed on behalf of the Advisor's and such delegate's insurers stating that insurance complying with the requirements set out in **Clauses 16.1** and **16.2** above (where applicable) is in force and the period for which it has been taken out.

16.4 If, for whatever reason, the Advisor fails to maintain the insurance described in this Clause or without the approval of NEF obtains a different policy of insurance from that which it notified to NEF, NEF may make alternative arrangements necessary to protect its interests and recover the cost from the Advisor.

## 17. **COMPLAINTS**

Any complaint about the performance of the Advisor under this Agreement should be directed, in the first instance, to the Compliance Officer for the time being of the Advisor or such other person as the Advisor may nominate from time to time for this purpose. A copy of the Advisor's complaint handling procedures shall be available on request. NEF, being a per se professional client, will not have a right of complaint to the Financial Ombudsman Service.

## 18. **RELATIONSHIP AND DISPUTE RESOLUTION**

18.1 Representatives of NEF and the Advisor may hold review meetings from time to time on reasonable notice, to assess issues including the Advisor's performance in accordance with this Agreement.



- 18.2 It is the intention of the parties to settle amicably by negotiation or agreement any differences of opinion on matters of performance, procedure and management arising out of this Agreement.
- 18.3 In the event of a disagreement or dispute arising out of this Agreement, the matter will be dealt with in the first instance by each individual of the NEF and the Advisor designated as a relationship manager for this Agreement, with a view to discussing and resolving any issues in good faith. For the purpose of this Agreement the relationship Advisors shall be Chief Executive for NEF and Chief Executive for the Advisor (as substituted by written notice from time to time).
- 18.4 If such good faith discussions fail to resolve the matter within 20 Business Days, then the matter shall be escalated to such person as NEF shall nominate on its own behalf and to such person as the Advisor shall nominate on its own behalf, who shall meet as soon as reasonably practicable thereafter to resolve the dispute arising out of the Agreement. If the matter is resolved or fails to be resolved within 20 Business Days then the dispute escalation process shall be deemed to have been concluded.
- 18.5 If such matter fails to be resolved with the period of 20 Business Days referred to in **Clause 18.4**, the parties may attempt to settle it by mediation in accordance with the model mediation procedures published by the Centre for Effective Dispute Resolution (**CEDR**). To initiate mediation, a party must give notice in writing (**Mediation Notice**) to the other parties to the dispute in accordance with **Clause 31**.
- 18.6 The parties will seek to agree the appointment of a mediator but, failing agreement within 20 Business Days of the service of the mediation notice, either party may ask CEDR to nominate a mediator.
- 18.7 In the event that there are no procedures available for nominating a mediator and CEDR is unable or unwilling to nominate a mediator, either party may ask the President of the Law Society of England & Wales (or its successor body) to nominate a mediator and to recommend a mediation procedure. The parties will accept such nomination under either this or the preceding clause and also the recommended mediation procedure.
- 18.8 If the dispute is not resolved within 40 Business Days of the service of the Mediation Notice, then either party may commence proceedings in accordance with **Clause 29**.
- 18.9 During this dispute escalation process, neither party shall commence or continue any litigation or proceedings against the other in respect of the matter in dispute but the parties may commence or continue such litigation or proceedings in respect of the matter in dispute when the dispute escalation process has been concluded.
19. **TERMINATION**
- 19.1 This Agreement may be terminated by the Advisor or NEF on six months' prior written notice to the other (or such shorter period if agreed by NEF and the Advisor in writing) in the case of the Advisor.
- 19.2 NEF may terminate this Agreement forthwith by notice in writing to the Advisor if:

- 19.2.1 the Advisor commits a material breach of this Agreement which cannot be remedied; or
  - 19.2.2 the Advisor commits a material breach of this Agreement which can be remedied but fails to remedy that breach within 30 Business Days of receipt of a written notice setting out the breach and requiring it to be remedied; or
  - 19.2.3 the Advisor, being a company or limited liability partnership, has a receiver, administrator or provisional liquidator appointed or passes a resolution for its winding-up (save for the purpose of a solvent restructuring previously approved in writing by NEF) or a court makes a winding up order in respect of it or it enters into any composition or arrangement with creditors (other than relating to a solvent restructuring previously approved in writing by NEF) or it ceases to carry on business or any steps or actions are taken in connection with any of these procedures; or
  - 19.2.4 the Advisor, being a partnership, has a receiver, administrator or provisional liquidator appointed or passes a resolution for its winding-up or a court makes a bankruptcy or winding up order in respect of it or any of its partners or it enters into any composition or arrangement with creditors or it ceases to carry on business or any steps or actions are taken in connection with any of these procedures; or
  - 19.2.5 the equivalent of any of the circumstances set out in **Clauses 19.2.3 to 19.2.4** (inclusive) occurs in relation to the Advisor under the jurisdiction to which the Advisor is subject; or
  - 19.2.6 the Advisor ceases or threatens to cease to trade; or
  - 19.2.7 the Advisor experiences a Change in Control which has not been approved in writing by the Holding Fund; or
  - 19.2.8 NEF has reasonable grounds for suspecting fraud or dishonesty on the part of the Advisor or any of its officers, employees, agents or sub-contractors; or
  - 19.2.9 the Key Person ceases to devote time to the provision of the Services and no suitable replacement for the Key Person has been approved by NEF Fund as described in, and within the time limits set out in this Agreement; or
  - 19.2.10 the Advisor has any professional or regulatory authorisation revoked which in the reasonable opinion of NEF, the Advisor is required to have in order to deliver the services set out in this Agreement.
- 19.3 This Agreement and the appointment of the Advisor shall terminate immediately on the happening of any of the following events:
- 19.3.1 termination of the Advisor's appointment by mutual agreement between NEF and the Advisor; or

- 19.3.2 the Key Person ceasing for any reason to be reasonably involved in providing the Services without a suitable replacement being appointed in accordance with **Clauses 3.6** and **3.7**.
- 19.4 The rights to terminate this Agreement given by this clause shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.
- 19.5 Upon the termination of this Agreement for any reason, subject as otherwise provided in this Agreement and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Agreement.
- 19.6 Termination shall not in any way affect any provisions of this Agreement intended to survive termination, including, without limitation, the provisions of **Clauses 14.1** and **20**.
- 19.7 Upon termination of this Agreement for whatever reason the Advisor shall if so requested by NEF return to NEF all papers, documents and other property belonging to NEF or relating to the Funds which it has in its possession or under its control (provided that the Advisor may take and retain copies of any documents that it reasonably believes it is required to retain in order to comply with any FCA Rules applying to it) and NEF Fund shall return to the Advisor any papers, documents and other property belonging to the Advisor which it has in its possession or under its control.

## 20. **CONFIDENTIALITY**

The Advisor shall at all times keep confidential and not disclose or use (except for the purposes of this Agreement) confidential information about the Funds, NEF and/or its Stakeholders. However, the Advisor may disclose such information if it has become known to the public other than as a result of a breach of this **Clause 20** or if the Advisor is requested or required to do so by the FCA or any other regulatory authority or agency (including the Holding Fund or the Funders) or by or under any law or court. The Advisor may also disclose such information to any Associate, delegate or agent of the Advisor and its or their directors, partners, members, officers and employees where the Advisor deems disclosure to be necessary or desirable for providing its services under this Agreement.

## 21. **FREEDOM OF INFORMATION**

- 21.1 In the event that NEF or a Stakeholder is in receipt of a request under FOIA or the EI Regulations in relation to the Fund, the Advisor shall provide to the NEF or a Stakeholder such assistance as they may request and by such deadlines as they may intimate to the Advisor in order to make a comprehensive answer to the request. In the event the Advisor is in receipt of a request under FOIA or the EI Regulations in relation to the Funds it shall inform NEF as soon as possible and not later than two Business Days following receipt of a request and shall provide NEF with whatever assistance the it may request in order to make a comprehensive answer to the request.
- 21.2 For the avoidance of doubt, NEF shall, at its sole discretion, determine whether or not to disclose any information pursuant to a request made under FOIA or the EI Regulations by

any third party. In no event shall the Advisor respond directly to any request for information received under FOIA or the EI Regulations unless expressly authorised to do so by NEF.

22. **ASSIGNMENT**

Neither party may, without the prior written consent of the other, assign, transfer, charge, subcontract or delegate (except as provided in **Clause 9**) or deal in any other manner with this Agreement or any of its rights or obligations under it with the exception of NEF having the right to assign to a Group Company.

23. **VARIATION**

This Agreement may only be varied in writing executed on behalf of each party.

24. **NOTICES**

24.1 Any notice to be served in connection with this Agreement shall be in writing (which, for the avoidance of doubt, shall include email) and any notice or other communication under or in connection with this Agreement shall be delivered to the registered office for the time being of the relevant party marked "For the urgent attention of the North East Finance (Holdings) Limited" in the case of NEF and "For the urgent attention of the Directors" in the case of the Advisor.

24.2 Any such notice or communication shall be deemed to have been served as follows:

24.2.1 in the case of delivery in person, on delivery;

24.2.2 in the case of service by mail, on the second Business Day after the day on which it was posted;

24.2.3 in the case of email, on receipt of acknowledgement that the addressee has received the email,

provided that any notice or communication not received on a Business Day or received after 17:00 hours local time on a Business Day in the place of receipt shall be deemed to be received on the next following Business Day.

24.3 In proving such service it shall be sufficient to prove that the notice or communication was properly addressed and left at or posted by mail to the place to which it was so addressed.

25. **FURTHER ASSURANCE**

Each party will do or procure the doing of all acts and things and execute or procure the execution of all such documents as any other party reasonably considers necessary to give full effect to the terms of this Agreement.

26. **ENTIRE AGREEMENT**

26.1 This Agreement and the documents referred to in it contain all the terms which the parties have agreed in relation to the subject matter of this Agreement, and supersedes any prior

written or oral agreements, representations or understandings between the parties in relation to such subject matter.

26.2 The parties acknowledge that this Agreement has not been entered into wholly or partly in reliance on, nor has either party been given any warranty, statement, promise or representation made by or on their behalf and other than as expressly set out in this Agreement. To the extent that any such warranties, statements, promises or representations have been given the recipient party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to them.

26.3 Nothing in this **Clause 25** will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

## 27. **SEVERANCE**

If any clause or part of this Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this Agreement and will be ineffective without, as far as is possible, modifying any other clause or part of this Agreement and this will not affect any other provisions of this Agreement which will remain in full force and effect.

## 28. **RIGHTS OF THIRD PARTIES**

28.1 A person who is the permitted successor to or assignee of the rights of a party (including as a result of the enforcement of the Assignment Agreement) is deemed to be a party to this Agreement and the rights of such successor or assignee shall, subject to and upon any succession or assignment permitted by this Agreement, be regulated by the terms of this Agreement.

28.2 Subject to **Clause 28.1**, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## 29. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall constitute an original and when taken together shall constitute one and the same agreement.

## 30. **LAW AND JURISDICTION**

This Agreement and the rights, obligations and relationships of the parties hereto under this Agreement shall be governed by and construed in accordance with the laws of England and the parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any claim or disputes which may arise out of or in connection with this Agreement.

## **SCHEDULE 1**

### **THE SERVICES**

The Advisor will work with NEF in relation to the Funds and providing the assistance and oversight envisaged in the Advisor's Tender.

The Advisor shall devote appropriate and adequate resources to:

- Providing high quality investment advice with a view to maximising the future value of the assets;
- Ensuring that the SMEs in the portfolio continue to receive active monitoring and administrative support as required;
- Prioritising assets for disposal;
- Developing indicative valuations for portfolio holdings on an annual basis;
- Undertaking sector research as appropriate;
- Developing realisation strategies for each of the priority assets for agreement with the Board;
- Encouraging the relevant management team to maximise the value of their businesses
- Engaging with management teams and acting as Board Observers where appropriate on behalf of the shareholder;
- Engaging with other investors in the portfolio assets as required and supporting fundraising activity undertaken by the portfolio companies;
- Initiating approaches to potential interested parties and negotiating on our behalf;
- Preparing investment memoranda as appropriate;
- Co-ordinating professional advisers acting for us in portfolio transactions;
- Reporting to the Board quarterly and preparing a quarterly Portfolio Realisation Review;
- Meeting with the Board and Advisory Board on a quarterly basis to discuss what is reported;
- Meeting on a monthly basis or as required with the executive team;
- Providing expert advice to the Board on matters relating to other investments;
- Providing NEF with such information as may be required to report to the Board and to stakeholders; and
- Making recommendations to the Board on specific asset disposals and other transactions.

## **SCHEDULE 2**

### **FEES**

**[This Schedule is to be completed to reflect proposals from the Advisor's tender.]**

## **SCHEDULE 3**

### **CONFLICT OF INTEREST POLICY**

#### **1. General Principles**

1.1 The Advisor shall at all times during the term of this Agreement comply with:

- The FCA's Principles for Business; and
- The Senior Management Arrangements, Systems and Controls (SYSC) Handbook of the FCA Rules

as amended or replaced from time to time.

1.2 The Advisor shall in particular have regard to and comply with its obligations under SYSC 10, including to:

- Identify conflicts of interest
- Manage conflicts of interest
- Establish and maintain a conflicts of interest policy
- Disclose any conflicts of interest
- Keep records of any conflicts of interest

#### **2. Management of conflicts**

2.1 The Advisor shall, on reasonable notice from NEF, provide to NEF all such information in relation to its management of conflicts of interest as it relates to the portfolio and/or NEF (including its conflicts policy and its records of conflicts of interest) as may be reasonably requested by NEF.

2.2 The Advisor shall notify in writing to NEF all conflicts of interest or potential conflicts of interest in relation to any Investment or any prospective transaction relation to an Investments as soon as reasonably practicable.

2.3 In respect of any conflict of interest or potential conflict of interest, the Advisor shall not proceed with any transaction until NEF has given its advice to the Advisor regarding the nature of the conflict and the manner in which the conflict has been and is being managed and whether any conditions should be attached to it.

2.4 The Advisor shall at all times act in the best interests of NEF, so far as practicable, and shall use its best endeavours to ensure fair treatment as between NEF and other clients whose assets it manages or advises upon.



IN WITNESS whereof this Agreement has been executed as a deed by or on behalf of the parties hereto the day and year first above written

**EXECUTED as a DEED**

by [TBC]

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**Director**

**Director**

**EXECUTED as a DEED**

by [NAME]

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**Director**

**Director**