



14 DECEMBER 2010



BIBLE INDEX

REGENERATION INVESTMENT FUND FOR WALES LLP

- Amended and re-stated Members' Agreement between (1) The Welsh Ministers
 (2) Amber Fund Management Limited and (3) Regeneration Investment Fund for
 Wales LLP dated 14 December 2010
- 2. Fund Management Agreement between (1) Regeneration Investment Fund for Wales LLP and (2) Amber Fund Management Limited dated 14 December 2010
- Investment Management Agreement between (1) Regeneration Investment Fund for Wales LLP (2) Lambert Smith Hampton Group Limited and (3) Amber Fund Management Limited dated 14 December 2010
- 4. Deed of Termination between (1) The Welsh Ministers (2) Welsh Development Management Limited and (3) Regeneration Investment Fund for Wales LLP dated 14 December 2010
- 5. Board Minutes of Regeneration Investment Fund for Wales LLP dated 14 December 2010



(1) THE WELSH MINISTERS
(2) AMBER FUND MANAGEMENT LIMITED
(3) REGENERATION INVESTMENT FUND FOR WALES LLP

Amended and re-stated Members' Agreement relating to the Regeneration Investment Fund for Wales LLP

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BETWEEN:

- (1) THE WELSH MINISTERS whose address is Crown Building, Cathays Park, Cardiff, CF10 3NQ (the "Welsh Ministers");
- (2) AMBER FUND MANAGEMENT LIMITED, a company registered in England and Wales under company number 6745576 whose registered office is at Two London Bridge, London, SE1 9RA ("Manager"); and
- (3) REGENERATION INVESTMENT FUND FOR WALES LLP, a limited liability partnership incorporated in England and Wales under registration number OC350927 whose registered office is at 1 Callaghan Square, Cardiff, CF10 5BT ("LLP" or "Partnership").

BACKGROUND

- (A) The Members have agreed to operate a business for the purpose of investing in public/private partnerships and other projects included in an integrated plan for sustainable urban development and the terms of this Agreement.
- (B) The LLP was registered at Companies House on 17 December 2009, registration number OC350927.
- (C) The Welsh Ministers have agreed to provide capital to the LLP in the sum of £30,000,000 (such sum being largely comprised of property). WEFO has also agreed to provide to the LLP through the WEFO Funding Agreement, a grant in the sum of £25,000,000.
- (D) The LLP has selected the Manager to act as the fund manager of the LLP, subject to the terms of the Fund Management Agreement. The Manager is authorised and regulated by the Financial Services Authority.
- (E) The Parties have agreed to enter into this Agreement to regulate their respective responsibilities and dealings between them and the LLP in the conduct of the business, management and affairs of the LLP.
- (F) It is the express intention of the Welsh Ministers that the Fund is developed to incorporate external private sector investment. If and when such investment is made, it is anticipated by the parties hereto that the Business will be transferred to a limited partnership at which time this Agreement will be varied to incorporate provisions appropriate to that status, subject to compliance with the necessary approvals and regulations.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (including in the Background and Schedules) the following words and expressions shall have the following meanings:

"Act"

the Limited Liability Partnerships Act 2000 and the Limited Liability Partnerships Regulations 2001 or either of them;

"Accounting Date"

31 March in each year or such other date as the Members may from time to time agree;

"Accounting Year"

in relation to the first Accounting Year, the period commencing on the date of incorporation of the LLP and ending on 31 March 2010 and in relation to any other Accounting Year the period of 12 months commencing on 1 April or such shorter period ending on the termination or expiry of this Agreement;

" Actual Fund IRR"

the actual internal rate of return calculated on the Fund Net Asset Value, from the Commencement Date (or such other date as is applicable for the relevant calculation) until the relevant calculation date;

"Actual Project IRR"

the actual internal rate of return generated by an Investment on the Realisation of a Project;

"Auditors"

the auditors of the LLP from time to time as determined by the Management Board;

"Bank"

the bankers of the LLP from time to time as determined by the Management Board;

"Business"

a business operating for the purpose of investing in the sustainable integrated development of city and urban areas in Wales on a market driven basis in order to stimulate and accelerate regeneration in accordance with the JESSICA initiative of the European Commission, as further described in Part 1 of Schedule 3;

"Business Day"

any day other than a Saturday or Sunday or a public or bank holiday in England and Wales;

"Business Plan"

the business plan of the LLP prepared by the Manager pursuant to the terms of the Fund Management Agreement from time to time, as approved by the Management Board;

"Capital Account"

in respect of any Member, an amount equal to his Capital Contribution less the total of any such capital amounts which have been repaid to that Member by the LLP;

"Capital Contribution"

in respect of any Member, the aggregate of any amounts contributed by him to the capital of the LLP pursuant to **clause 5**;

"Capital Contribution Percentage"

in respect of each Member, the proportion which his Capital Account in the LLP bears to the total aggregate of the Capital Accounts of all of the Members in the LLP;

"Carried Interest"

the entitlement of the Manager to receive the Project Carried Interest and the Fund Carried Interest, as more particularly set out in clause 14.5 and Schedule 4;

"Catch Up"

the additional payment (if any) due from the LLP to the Manager calculated in accordance with the provisions of Schedule 4 Part B and payable if the Actual Fund IRR exceeds the Fund Target IRR;

"Claw Back"

the payment (if any) due to the LLP from the Manager calculated in accordance with the provisions of Schedule 4 Part B and payable if the Fund IRR does not exceed the Fund Target IRR;

"Commencement Date"

the date of this Agreement;

"Completion"

the performance by the Parties of their respective obligations under clause 3;

"Confidential Information"

all information of a confidential nature relating to any Member or former Member or its associate or the LLP or its business (including, without limitation know-how, the terms of any contract to which the LLP is a party, financial and sales information, business and strategic plans, existing and proposed projects and the terms of this Agreement);

"Current Account"

in respect of each Member, an account to which any Net Profits allocated by the LLP to a Member are credited in accordance with **clause**5.2, pending the distribution of such Net Profits to Members on the winding up or dissolution of the LLP;

"Deed of Adherence"

a deed substantially in the same form as is set out in **Schedule 6**;

"Designated Members"

shall have the meaning ascribed to it in clause 2.3;

"ERDF"

European Regional Development Fund;

"Escrow Account"

the bank account to be opened in the name of the LLP into which 10% of any Project Carried Interest Payments are made pending the Fund Carried Interest calculation being calculated, in accordance with the provision of Schedule 4;

"First Break Date"

the date falling 6 years after the Commencement Date, on which the Manager or the LLP may terminate the Fund Management Agreement in accordance with its terms;

"Fund"

the investment fund constituted by the LLP established to invest the LLP's capital and the ERDF grant;

"Fund Carried Interest"

the carried interest payable to the Manager in accordance with the provisions of Schedule 4, based upon the performance of the Fund;

"Fund Hurdle Rate"

the Fund Target IRR, plus 4%;

"Fund IRR Cap"

an internal rate of return of 30%;

"Fund Management

the agreement with the Manager pursuant to

Agreement"

"Fund Net Asset Value"

which the Manager provides fund management and other services to the LLP;

the net present value of the Fund (including all Investments and any cash or other money or money's worth realised or arising from such Investments) including:

- the amount of borrowed money invested by the Fund (if any) outstanding at that time (including without limitation any letter of credit or bank guarantee issued by the Fund); and
- (ii) the aggregate sum of legal commitments in respect of future assets or investments that have been made by the Fund at that time (to the extent they are not already included as investments or cash);
- (iii) but after taking account of any Project Carried Interest payments made (including any sums retained in the Escrow Account);

calculated by assessing the net present value of the future projected net cash flows arising from the assets of the Fund discounted at the Project Target IRR for each Investment or at such other higher or lower rate or on such other basis as most accurately reflects the current value of the Fund's assets, such methodology to be independently reviewed annually by the Fund's auditors or valuation advisers and agreed between the parties or determined by Expert Determination in accordance with the provisions of Schedule 4 Part (F) in the absence of agreement.

Any Properties which are either held by the Fund or utilised in Investments shall be given the value ascribed to the property in Schedule 5.

"Fund Target IRR"

the target internal rate of return of the Fund as determined by the first Business Plan;

"Grant"

the grant of £25,000,000 made to the LLP pursuant to the WEFO Funding Agreement (together with any interest accrued thereon and the proceeds of any investments made with the Grant (or any sums arising from it)), but after deducting any sums repaid to WEFO (by virtue of the grant repayment provisions or otherwise under the WEFO Funding Agreement);

"Group"

a party, together with any subsidiary or holding company of that party (together with any other subsidiary of the holding company), as defined in Section 1159 Companies Act 2006;

"Independent Chair"

a person appointed to act as an independent chair of the Management Board in accordance with clause 8.1.6;

"Idle Funds Investment Policy" the policy agreed between the Management Board and the Manager, for the investment of the cash held by the Fund from time to time, in accordance with the requirements of the Regulations;

"Initial Period"

the period from the commencement of the Fund Management Agreement until the earlier of the termination of the Fund Management Agreement and 6 years after its commencement;

"Intellectual Property"

all intellectual and industrial property rights, including without limitation, patents, rights in know-how, trade marks, registered designs, design rights, unregistered models, copyright unregistered trade marks and (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world;

"Investment"

an investment made together with all legally binding commitments made by the Fund to invest by way of loan, equity or guarantee in a Project;

"Investment Manager"

the entity to be appointed to provide the services set out in the Investment Management Agreement;

"Investment Management Agreement" the agreement pursuant to which an Investment Manager is appointed to provide the services referred to therein by way of subcontract to the Manager;

"IPSUD"

an integrated plan for sustainable urban development having the characteristics set out in Schedule 3 Part 2;

"Management Board"

the management board constituted to determine matters relating to the LLP in accordance with clause 8;

"Members"

the Welsh Ministers and the Manager and thereafter any other persons admitted as members of the LLP from time to time in accordance with the terms of this Agreement;

"Net Profits"

the profits of the LLP for an Accounting Year as shown in the audited accounts of the LLP after deducting all expenditure and costs of managing the LLP;

"Objects"

the objects of the LLP as described in Background (A);

"Parties"

the Parties to this Agreement and the term "Party" shall be construed accordingly;

"Private Sector Member"

a Member admitted as a Member of the LLP following the date of this Agreement and designated as a Private Sector Member by the Welsh Ministers;

"Private Representative" Sector a representative of a Private Sector Member appointed to the Management Board in accordance with clause 8.1.4;

"Project"

is the recipient of an Investment made in

accordance with the Business Plan;

"Project Carried Interest"

the carried interest payable to the Manager in accordance with the provisions of Part D of Schedule 4, based upon the performance of each Project;

"Project Hurdle Rate"

the Project Target IRR in respect of each Project, plus 4%;

"Project IRR Cap"

an internal rate of return for a Project of 30% per annum;

"Project Target IRR"

the target internal rate of return calculated for each Project in respect of which an Investment is proposed to be made and agreed between the LLP and the Manager in writing in accordance with the provisions of Schedule 4 Part D;

"Properties"

the real estate which the Welsh Ministers have agreed to transfer to the LLP, details of which is set out in Schedule 5;

"Realisation"

the completion of the repayment of the loan to a Project (whether or not the entire sum due has been repaid), the unconditional and irrevocable release of a guarantee or the sale of an entire equity holding in each case in relation to an Investment;

"Renewal Date"

the date falling 6 years after the Commencement and every 6th anniversary thereafter;

"Representatives"

the Welsh Ministers Representatives and the Private Sector Representatives or any of them as the context shall permit (excluding, for the avoidance of doubt, the Independent Chair);

"Second Break Date"

the date falling 12 years after the Commencement Date, on which the Manager or the LLP may terminate the Fund Management Agreement in accordance with its terms;

"Secondary Period"

in the event of the Fund Management Agreement not expiring at the end of the Initial Period, the period from the expiry of the Initial Period until the earlier of the termination of the Fund Management Agreement and 6 years after the expiry of the Initial Period;

"Term"

the period during which the LLP will operate, in accordance with clause 13.1;

"Termination"

shall be the earlier of the date on which the Fund Management Agreement is terminated and the date on which this Agreement is terminated;

"Termination Date"

the day falling 12 years after the date of this Agreement;

"Voting Members"

all Members of the LLP, other than the Manager;

"WEFO Funding Agreement" the funding agreement between the Wales European Funding Office (WEFO) and the Partnership 23 March 2010 as amended from time to time pursuant to which WEFO made the Grant available to the Partnership, for use in connection with the Objects; and

"Welsh Ministers'
Representative"

a representative of the Welsh Ministers appointed to the Management Board in accordance with clause 8:1.3;

- 1.2 In this Agreement, a reference to:
 - 1.2.1 "E" is a reference to the lawful currency of the United Kingdom, i.e. pounds sterling;
 - 1.2.2 a statutory provision includes a reference to:
 - 1.2.2.1 the statutory provision as modified or re-enacted or both from time to time (after the date of this Agreement); and
 - 1.2.2.2 any subordinate legislation made under the statutory provision (after the date of this Agreement);

provided that any such modification re-enactment or legislation made after the date of this Agreement does not materially change the relevant provision;

- 1.2.3 a person includes a reference to any body corporate, unincorporated association, government body or partnership;
- 1.2.4 a person includes a reference to that person's legal personal representatives or successors;
- 1.2.5 a clause or Schedule, unless the context requires otherwise, is a reference to a clause of or schedule to this Agreement;
- 1.2.6 a person being obliged to "procure" that a body corporate does something shall be construed as a reference to that person being obliged to use its voting and other powers at any meeting of members or its representation (if any) on any board of directors or other governing body or committee of such body corporate to such effect; and
- 1.2.7 an "IRR" within any definition shall mean the relevant internal rate of return calculated as the discount rate which, when applied to the cashflow of the Fund, results in a net present value of zero.
- 1.3 The Schedules form part of this Agreement and shall have the same force and effect as if set out in the body of this Agreement and references to this Agreement include the Schedules.
- 1.4 The headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

2. THE LLP AND BUSINESS

- 2.1 This Agreement shall take effect from the date of this Agreement.
- 2.2 The Business of the LLP shall be carried on at Plas Glyndwr, Kingsway, Cardiff, CF10 3AH or such other place as the Members may determine in accordance with the terms of this Agreement.
- 2.3 The Welsh Ministers and the Manager shall be or become the designated members for the purposes of the Act (the "Designated Members"). The Designated Members shall not be entitled to receive any remuneration in their capacity as Designated Members and shall meet their own expenses.
- 2.4 No Member may cease to be a Designated Member without the prior written consent of the other Member, such consent not to be unreasonably withheld or delayed.

- 2.5 The Management Board may by notice in writing to the LLP (with the consent of the relevant Member) forthwith designate any Member as a Designated Member for the purposes of the Act or cancel any designation.
- 2.6 The LLP shall execute, deliver and perform all contracts and other undertakings and engage in all activities and transactions as may, in the reasonable opinion of the Management Board, be necessary or advisable in order to carry out the Business in accordance with the provisions of this Agreement.
- 2.7 The LLP shall continue in accordance with the Act until dissolved in accordance with the provisions of this Agreement.

COMPLETION

- 3.1 Completion shall take place immediately after the execution of this Agreement when the Parties shall pay their respective Capital Contributions to the LLP pursuant to clause 5.1, including in the case of the Welsh Ministers, the transfer of the Properties to the LLP (except to the extent that this has already taken place).
- 3.2 At Completion the Members shall procure that (to the extent not already done) resolutions of the Management Board and/or the Members (as required) are passed:
 - 3.2.1 approving the appointment of Patrick Lewis and Ceri Breeze as the initial members of the Management Board;
 - 3.2.2 accepting the appointment of the Manager as a Member of the LLP and accepting the resignation of Welsh Development Management Limited ("WDML") as a Member;
 - 3.2.3 appointing the Manager as a Designated Member and accepting the resignation of WDML as a Designated Member;
 - 3.2.4 terminating the partnership agreement entered into by the Welsh Ministers, WDML and the LLP on 22 March 2010, each party acknowledging that they have no outstanding claims thereunder; and
 - 3.2.5 authorising the Partnership to enter into the Fund Management Agreement and the Investment Management Agreement (as and when such agreements are finalised).

4. PARTNERSHIP PROPERTY

Any tangible and intangible assets of the LLP, including (without limitation) leases, furniture, professional equipment, computers, office and other equipment and the benefit of all contracts to which the LLP is a party and the Intellectual

Property in all items including documents, data, drawings, plans or any other work or any part or parts thereof produced or prepared by the LLP for the purpose of the Business shall be the assets of the LLP and not of the Members or any them.

5. CAPITAL, CURRENT ACCOUNT AND FUNDING

5.1 Capital

- 5.1.1 The initial capital of the LLP shall be the sum of thirty million pounds (£30,000,000.00), which shall be contributed by the Welsh Ministers in the following manner
 - 5.1.1.1 A Capital fifteen million four hundred thousand pounds (£15,400,000.00) (match funding)
 - 5.1.1.2 B Capital fourteen million six hundred thousand pounds (£14,600,000.00) (non match funding)
- 5.1.2 The Welsh Ministers also reserve the right to contribute by way of capital the costs incurred in establishing the LLP.
- The A Capital and the B Capital has been contributed by way of transfer of the Properties to the LLP with a valuation of twenty million six hundred and twenty-seven thousand pounds (£20,627,000.00) as at 23 March 2010 together with the payment of a cash sum of nine million three hundred and seventy three thousand pounds (£9,373,000.00).
- 5.1.4 The Manager shall contribute and shall have been deemed to have contributed one pound (£1.00) by way of any capital to the LLP (and upon the resignation or removal of the Manager as a Member or the winding up of the LLP, the Manager shall not be entitled to receive greater than one pound (£1.00) by way of repayment of capital, subject always to the express provisions of this Agreement entitling the Manager to the Carried Interest).
- 5.1.5 Additional monies contributed by any Member shall only constitute a Capital Contribution and form part of a Member's Capital Account with the prior written unanimous consent of the Members. Without such consent being obtained any additional monies contributed by the Members shall constitute a loan to the LLP.
- 5.1.6 Any distribution of the capital of the LLP shall be distributed to the Members in their Capital Contribution Percentages, except as otherwise provided for in Schedule 4.

5.2 Bank Account

- 5.2.1 The LLP shall maintain in the name of each Member an account (a "Current Account") to which there shall be allocated that Member's share of the Net Profits (if any) in accordance with clause 6.
- Notwithstanding the provisions of **clause 5.2.1**, if the Members unanimously decide to distribute any sum standing to the credit of a Member's Current Account, the amount so distributed shall be debited from the balance of the relevant Member's Current Account and shall be taken into account upon the distribution of the LLP's assets on winding up or dissolution, in accordance with the provisions of Schedule 4.
- 5.2.3 Any amounts standing to the credit of a Member's Current Account shall be distributed to that Member on the date on which this Agreement is terminated or the date upon which the LLP is wound up or dissolved or the expiry of 12 years from the Commencement Date, whichever shall occur first, in accordance with the provisions of Schedule 4.
- 5.2.4 No interest shall accrue on any sums credited to a Members' Current Account.
- 5.2.5 For the avoidance of doubt, it is not intended that any distributions are made to Members during the Term.
- 5.3 Subject to any contrary instructions being received from the Management Board the LLP shall open and maintain 3 separate bank accounts into which it shall pay the A Capital, the B Capital and the Grant (in accordance with the terms of the WEFO Funding Agreement) to the extent that such amounts are represented by cash.
- 5.4 The LLP shall procure that a full audit trail is maintained of all sums paid into and out of the bank accounts referred to in clause 5.3.
- 5.5 Any transactions undertaken by the LLP shall be conducted through such accounts.
- No new accounts will be opened by the LLP, or amendments made to the mandate under which the LLP operates its accounts with the Bank or any other account or facility opened with the Bank or any other bank or financial institution without a resolution of the Management Board.

6. RECEIPTS AND PROFITS

- 6.1 The Net Profits of the LLP shall be distributed in accordance with the directions of the Welsh Ministers from time to time subject always to the provisions of Schedule 4.
- 6.2 Each Member shall be entitled to share in the Net Profits in accordance with its respective Capital Contribution Percentage, subject to the Manager's Carried Interest entitlement.

CONDUCT OF LLP'S AFFAIRS

- 7.1 The Voting Members shall, and shall procure that the Management Board shall, exercise all voting rights and other powers of control available to them in relation to the LLP so as to procure (insofar as they are able by the exercise of such rights and power) that at all times during the term of this Agreement:
 - 7.1.1 the LLP carries on no business other than the Business;
 - 7.1.2 the LLP conducts its business and affairs in a proper and efficient manner for its own benefit;
 - 7.1.3 the LLP maintains, with a well-established and reputable insurer, adequate insurance against all risks usually insured against by businesses carrying on the same or a similar business;
 - 7.1.4 the LLP shall keep proper books of account and therein make true and complete entries of all its dealings and transactions of and in relation to the Business;
 - 7.1.5 the LLP shall prepare and provide to the Members financial reports by reference to such periods and containing such information as the Members shall from time to time decide;
 - 7.1.6 the LLP shall provide to the Voting Members:
 - 7.1.6.1 a financial statement (which shall include a cashflow projection for the following 12 months) and unaudited management accounts of the LLP within 30 days of the end of each quarter;
 - 7.1.6.2 draft annual accounts for the LLP within 4 months of the end of the financial year to which they relate; and
 - 7.1.6.3 annual audited accounts for the LLP, within 6 months from the end of the period to which they relate;

- 7.1.7 the LLP shall prepare its accounts in accordance with the Act and in accordance with all applicable accounting standards and principles and practices generally acceptable in the United Kingdom; and
- 7.1.8 the Voting Members shall each be entitled to examine the separate books and accounts to be kept by the LLP and be supplied with all relevant information, including monthly management accounts and operating statistics and such other trading and financial information in such form as the Voting Members may reasonably require to keep themselves properly informed about the Business and the affairs of the LLP.
- 7.2 Notwithstanding the provisions of clause 7.1 and for the avoidance of doubt, the Manager shall have no voting rights whatsoever in the LLP and the rights attributable to the Members pursuant to clause 7.1 shall only be for the benefit of the members other than the Manager.

8. MANAGEMENT BOARD

8.1 Constitution

- 8.1.1 Save in respect of the matters set out in **Schedule 1** which will require the prior consent of the majority of the Voting Members and those matters set out in **Schedule 2** which will require the prior consent of the Voting Members (including the Welsh Ministers), the Members hereby agree to delegate decision making powers in relation to the LLP to the Management Board.
- 8.1.2 The minimum number of Representatives appointed to the Management Board at any time shall be two and the maximum number shall be eight.
- 8.1.3 The Welsh Ministers may appoint up to five Welsh Ministers' Representatives to the Management Board by notice in writing from time to time to the LLP and may at any time remove (by notice in writing to the LLP) any such Welsh Ministers' Representative appointed by them and appoint another person in his or her place.
- 8.1.4 Upon the admission of a Private Sector Member, the Private Sector Member may appoint up to three Private Sector Representatives to the Management Board by notice in writing to the LLP and may at any time remove (by notice in writing to the LLP) any such Private Sector Representative appointed by it and appoint another person in his or her place.

- 8.1.5 Until such time as an Independent Chair is appointed, the Welsh Ministers shall appoint one of the Welsh Ministers' Representatives to be the chair of the Management Board. The chair will not be entitled to have a second or casting vote.
- 8.1.6 Upon the admission of a Private Sector Member, the Management Board will procure the appointment of an Independent Chair, who will be appointed by the Management Board through an open competitive selection process. The Independent Chair must be appointed by a unanimous resolution of the Management Board. The Independent Chair will not be entitled to a vote on any issues put to the Management Board.
- 8.1.7 The Independent Chair shall be appointed for an initial period of three years and may be re-appointed for such successive periods as the Management Board shall determine by unanimous resolution.
- 8.1.8 The initial representatives on the Management Board as at the date hereof shall be:

Representative	Name
Welsh Ministers'	Patrick Lewis
Representative	
Welsh Ministers'	Ceri Breeze
Representative	

- 8.1.9 Each Representative may appoint a proxy to attend a meeting of the Management Board and vote on that Representative's behalf at a Management Board meeting provided always that such proxy has sufficient knowledge and expertise to enable him or her to participate in the transaction of business at the relevant Management Board meeting. Written notice of the appointment of a proxy by a Representative shall be given to the Management Board at least 24 hours before the time for holding the meeting or adjourned meeting in respect of which the notice is served. The appointment of any proxy may be revoked from time to time by the giving of notice to the Management Board by the relevant Representative.
- 8.1.10 The Representatives shall not be entitled to any remuneration in their capacity as representatives on the Management Board. Save where otherwise agreed by the Members in writing each Representative's expenses shall be met by their respective appointors.

- 8.1.11 The Independent Chair shall be entitled to such remuneration as the Management Board shall determine and to be reimbursed by the LLP for all reasonable and proper expenses incurred by the Independent Chair in fulfilling his/her duties to the LLP.
- 8.1.12 The Management Board may delegate any of its powers to committees or sub-committees consisting of such Representatives as the Management Board shall think fit from time to time provided that each committee or sub-committee shall include a number of Welsh Ministers' Representatives equal to at least 50% of the membership of the relevant committee or sub-committee (unless the Welsh Ministers agree otherwise) and any committee or sub-committee so formed shall, in the exercise of the powers so delegated, conform to any regulations imposed on it by the Management Board.
- 8.1.13 The Management Board shall procure that the LLP enters into the Fund Management Agreement and the Investment Management Agreement following execution of this Agreement.
- 8.1.14 The Manager shall not be entitled to appoint a Representative or be in any way represented on the Management Board. The Manager shall have no right to vote on any resolution put to the Members and any requirement for unanimity or a specified majority shall exclude the Manager as if the Manager was not a Member.
- 8.1.15 In the absence of a requirement to the contrary, all decisions shall be made by simple majority.

8.2 Management Board Meetings

- 8.2.1 Subject to **clause 8.2.7**, the quorum necessary for the transaction of business at any Management Board meeting shall:
 - 8.2.1.1 whilst the Welsh Ministers and the Manager are the only Members, require the attendance of at least two Representatives;
 - 8.2.1.2 upon the admission of a Private Sector Member require the attendance of at least two Representatives, provided always that at least one Welsh Ministers' Representative and one Private Sector Representative are in attendance.
- 8.2.2 If the quorum identified in clause 8.2.1 is not present (in person or by means of a conference telephone or similar communications equipment in accordance with clause 8.2.7) within half an hour from the time appointed for the meeting, or if during such a meeting a quorum

ceases to be present, the meeting shall stand adjourned until the same day in the next week at the same time and place or such other time and place as the members of the Management Board present at the meeting may determine. The quorum for such adjourned meeting shall be one person only, provided that no meeting shall be quorate unless at least one Welsh Ministers' Representative is present.

- 8.2.3 Matters to be decided or determined by the Management Board shall be decided or determined at meetings of the Management Board. Meetings of the Management Board may be called by any Representative on ten clear (10) Business Days' notice in writing to the other Representatives (or such shorter period as all the other Representatives may consent to in writing). Such notice shall be accompanied by a written agenda specifying the matters to be raised at the Management Board Meeting, together with copies of all papers to be laid before the meeting.
- 8.2.4 Unless otherwise agreed by the Management Board, no decision may be taken on any matter at a duly convened meeting of the Management Board unless such matter was firstly noted in the written agenda of the meeting. The Management Board may determine from time to time a more flexible approach to its day to day dealings, including appropriate delegation to appointed staff or consultants.
- 8.2.5 The Members shall procure that the Management Board shall ensure that after each meeting of the Management Board, minutes are drawn up and signed by the chair of the meeting and such minutes shall act as evidence of the business transacted at each Management Board meeting.
- 8.2.6 Meetings of the Management Board should be held at such times as the Management Board shall determine from time to time provided always that the Management Board shall meet no less than twice in each calendar year at either the registered office of the LLP, or such other place as the Management Board shall determine from time to time, subject to clause 8.2.7.
- 8.2.7 Any Representative (or their proxies) may participate in a meeting of the Management Board by means of a conference telephone or similar communications equipment whereby each Representative participating in such meeting can hear each other. Participation in this manner shall be deemed to constitute presence in person and a quorum shall be deemed to have been constituted notwithstanding that no members of the Management Board are physically present at the same place during the meeting.

8.2.8 The Welsh Ministers may, at their sole discretion, invite up to three observers to attend meetings of the Management Board. Such observers shall be entitled to speak, but not vote at meetings of the Management Board.

8.3 Management Board Voting Rights

- 8.3.1 Each Representative shall have one vote at meetings of the Management Board. The Independent Chair will be entitled to a vote on the Management Board.
- 8.3.2 All resolutions of the Management Board shall be decided by majority vote save where such matters are reserved to a vote of the Members pursuant to **Schedule 1**, or require the unanimous approval of the Members pursuant to **Schedule 2** or as otherwise set out in this Agreement.
- 8.3.3 A resolution in writing as to a matter to be decided by the Management Board signed by all Representatives (or their proxies) entitled to vote on that matter shall be as valid and effectual as if it had been passed at a meeting of the Management Board, and for this purpose:
 - 8.3.3.1 a resolution may consist of several documents in a like form each signed by one or more Representatives of the Management Board; and
 - an email or other electronic communication sent by a Representative which sets out the text of a resolution and contains a statement to the effect that the Representative agrees to the resolution and such email or other electronic communication has been sent to and printed out by any member of the Management Board shall be deemed to be a resolution in writing by the Representative who sent it.

9. MEMBERS' MEETINGS

- 9.1 The Members shall procure that a meeting of the Members ("Members' Meeting") shall be held on a regular basis and at least once in every financial year of the LLP at which the affairs and direction of the LLP are discussed and an account of the LLP's business and progress is given to the Members. The quorum necessary for the transaction of business shall be one Voting Member (whilst there is no Private Sector Member) and that member shall be a representative of the Welsh Ministers.
- 9.2 Members' Meetings may also be called by any Member on not less than 20 Business Days' clear notice in writing to the other Member (or such shorter

period as the other Member may consent to in writing). The notice shall specify the time and place of the meeting and the general nature of the business to be transacted and shall be accompanied by any papers which will be considered at the meeting.

- 9.3 A resolution in writing as to a matter to be decided by the Members signed by all the Voting Members shall be as valid and effectual as if it had been passed at a Members' Meeting, and for this purpose:
 - 9.3.1 a resolution agreed by a person appointed by a Member as his proxy need not also be signed by the appointing Member;
 - 9.3.2 a resolution may consist of several documents in a like form each signed by one or more Members; and
 - 9.3.3 an email or other electronic communication sent by a Member, which sets out the text of a resolution and contains a statement to the effect that the Member agrees to the resolution and which has been sent to and printed out by any member of the Management Board shall be deemed to be a resolution in writing by the Member who sent it.
- 9.4 Any Member may participate in a Members' Meeting by means of a conference telephone or similar communications equipment whereby all Members participating can hear each other. Participation in this manner shall be deemed to constitute presence in person and a quorum shall be deemed to have been constituted notwithstanding that no Members may be physically present at the same place during the meeting.
- 9.5 In accordance with clause 9.1, no business shall be transacted at any Members' Meeting unless representatives of all Voting Members are present.
- 9.6 If all Members entitled to attend and vote at a Members' Meeting are not present within half an hour from the time appointed for the meeting, the meeting shall stand adjourned until the same day in the next week at the same time and place or to such other time and place as the Members may determine. If at the adjourned meeting all Members entitled to attend and vote are not present, the meeting shall stand adjourned until the same day in the next week at the same time and place or to such other time and place as the Members present may determine. If at the further adjourned meeting all Members are not present, the meeting shall continue provided at least a representative of the Welsh Ministers is present in person or by proxy.
- 9.7 A Voting Member may appoint a proxy to attend a Members' Meeting and vote on his behalf. Written notice of the appointment of a proxy by a Voting Member shall be deposited at the registered office of the LLP in a form acceptable to the Management Board (acting reasonably) at least 24 hours before the time for

holding the meeting or adjourned meeting in respect of which the notice is served.

- The appointment of any proxy pursuant to clause 9.7 may be revoked or replaced from time to time by notice in writing deposited at the registered office of the LLP by the relevant appointing Member.
- 9.9 A vote given by, or resolution signed by, a proxy or by the duly authorised representative of a corporation shall be valid notwithstanding the previous determination of the authority of the person voting unless notice of the determination was received by the LLP at its registered office before the commencement of the relevant meeting or adjourned meeting or before the date of the resolution.
- 9.10 For the avoidance of doubt, the Manager shall be entitled to receive notice of and attend all meetings of the Members, but shall not be entitled to vote on any matters and shall not be counted in any quorum. All requirements for a certain majority vote of Members shall be calculated excluding the Manager.

10. DECISIONS OF THE MEMBERS

- The Members have delegated the decision making of the LLP to the Management Board pursuant to, and subject to, the provisions of clause 8, clause 10.2, Schedule 1 and Schedule 2.
- 10.2 Prior to the admission of a Private Sector Member to the LLP, any resolution or matter to be decided by the Members shall be determined by the Welsh Ministers. Following the admission of a Private Sector Member, any resolution or matter to be decided by the Members shall be decided by a majority of the Members unless such resolution or matter relates to one of the provisions of Schedule 2.

11. MEMBERS' DUTIES

- 11.1 Each Member shall (whilst a member of the LLP within the meaning of the Act) at all times:
 - 11.1.1 show the utmost good faith to the other Members in all matters relating to the LLP and shall at all times give to the other Members a just and faithful account of them and also upon every reasonable request furnish a full and correct explanation of all such matters to the other Members;
 - 11.1.2 use his best skill and endeavours to promote the LLP and its business and enhance its reputation.

- During the term of this Agreement and after termination or expiration of this Agreement for any reason whatsoever, each Member and former Member (the "Receiving Party") shall:
 - 11.2.1 keep Confidential Information disclosed to him by any other Member(s) or the LLP (the "Disclosing Party") confidential; and
 - 11.2.2 not disclose such Confidential Information without the prior written consent of the LLP.
- 11.3 The obligations contained in **clause 11.2** shall not apply to Confidential Information:
 - 11.3.1 which is at the date of this Agreement in, or at any time after the date of this Agreement comes into, the public domain other than through breach of this Agreement; or
 - 11.3.2 which can be shown by the Receiving Party to the reasonable satisfaction of the Disclosing Party to have been known by the Receiving Party prior to it being disclosed by the Disclosing Party; or
 - 11.3.3 which subsequently comes lawfully into the possession of the Receiving Party from a third party; or
 - 11.3.4 to the extent required to be disclosed by any law (including without limitation, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004), court or regulatory authority (including the London Stock Exchange plc), or in the case of the Welsh Ministers, pursuant to its Code of Practice on Access to Information (as amended from time to time).
- 11.4 No Member shall enter into any agreement or arrangement (whether legally binding or not) in the name of or on behalf of the LLP or execute any document in the name of the LLP except to the extent he is expressly authorised to do so by the Management Board.

12. EXPULSION OF MEMBERS

- 12.1 If a Member (other than the Welsh Ministers):
 - 12.1.1 shall commit any material breach or a series of persistent breaches of this Agreement;
 - 12.1.2 shall be guilty of any conduct likely to have a material adverse effect upon the LLP or its business, or on the Welsh Ministers;

- 12.1.3 shall become bankrupt or insolvent or make any arrangement or composition with his creditors generally;
- 12.1.4 shall be guilty of fraud (whether in relation to the LLP or the Business or not);
- 12.1.5 shall be guilty of wilful default in his conduct in relation to the LLP or the Business;
- 12.1.6 who (directly, indirectly or through an associated entity) is also the Manager of the LLP pursuant to the Fund Management Agreement or the Investment Manager pursuant to the Investment Management Agreement, and the appointment under either or both of such agreements is/are terminated;
- 12.1.7 (being the Manager) is in breach of the Fund Management Agreement and that agreement is terminated in accordance with its terms;

then the LLP shall be entitled to serve written notice of that fact on the relevant Member (specifying the relevant breaches of this Agreement), on receipt of which he will be deemed to have been expelled forthwith from the LLP.

- 12.2 The Welsh Ministers cannot be expelled from the LLP in any circumstances.
- 12.3 Upon the expulsion of any Member pursuant to the provisions of clause 12.1, the expelled Member shall not be entitled to repayment of the expelled Member's Current Account or Capital Account balances or Carried Interest, except in accordance with the provisions of **Schedule 4** Part C or with the consent of the Welsh Ministers. For the avoidance of doubt, the decision of the Welsh Ministers to authorise any payment to an expelled Member pursuant to this **clause 12.3** shall be in the absolute discretion of the Welsh Ministers.
- 12.4 If following the expulsion of a Member, the Welsh Ministers decide to approve any distribution to the expelled Member, the expelled Member shall not be repaid the balance (if any) on its Capital Account or Current Account or Carried Interest until the LLP is wound up (or sooner if so determined in the absolute discretion of the Welsh Ministers) (the "Repayment Date"). The expelled Member shall receive the lower of the valuation of the Member's Capital Contribution Percentage as at the date of expulsion and the Repayment Date provided always that the amount of Capital repaid (together with any earlier repayments of Capital and payments made through the members Current Account) does not exceed the aggregate value of the Capital actually contributed by the Member. Any entitlement to Carried Interest shall be calculated in the manner set out in Schedule 4.

13. TERM/WINDING-UP/DISSOLUTION OF LLP

- 13.1 The LLP shall continue for a period of 12 years from the date hereof, subject to any extension(s) thereafter for such number of whole years as the Members may, with the unanimous consent of the Voting Members, determine, subject to a maximum term of 20 years.
- 13.2 In the event of any winding-up or dissolution of the LLP, the assets of the LLP (or proceeds of sale of such assets) shall be distributed to the Members after payment of all debts and liabilities of the LLP from such proceeds in accordance with the provisions of **Schedule 4**.

14. APPOINTMENT AND RETIREMENT OF MEMBERS

- 14.1 A person shall only be admitted to the LLP as a new Member with the prior written consent of the Welsh Ministers and provided that such person executes a Deed of Adherence.
- 14.2 A Member may not resign or retire from the LLP as a Member without the prior written consent of the Welsh Ministers, subject to **clause 14.5**.
- 14.3 Upon the resignation or retirement of any Member pursuant to the provisions of clause 14.2, the retiring Member shall not be entitled to repayment of the retiring Members Current Account or Capital Account balances, except with the consent of the Welsh Ministers and subject hereto, in accordance with the terms of Schedule 4. For the avoidance of doubt, the decision of the Welsh Ministers to authorise any payments to a retiring Member pursuant to this clause 14.3 shall be in the absolute discretion of the Welsh Ministers.
- 14.4 The sum payable to any Member who resigns or retires shall be calculated in accordance with the provisions of **clause 12.4**, but by reference to the date of resignation or retirement in place of the date of expulsion, subject to **clause 14.5**.
- 14.5 If the Manager retires upon the termination of the Fund Management Agreement in accordance with the terms of clause 15.2 of the Fund Management Agreement, the Manager shall be entitled to receive its full entitlement to Carried Interest in accordance with Schedule 4 as if the Fund was being wound up on the date of such termination, subject always to the provisions of paragraph 7 of Part A of Schedule 4.

15. TRANSFER OF MEMBERSHIP INTERESTS

15.1 Subject to clause 11.2 no Member shall assign, mortgage, charge or transfer its interest in the LLP or any part thereof or cease to be a member of the LLP (in each case) except with the prior written consent of the Welsh Ministers.

The Manager shall, on request by the Welsh Ministers, transfer its interest to the Welsh Ministers (or a nominee) for nominal consideration and retire as a Member of the LLP, provided always that the LLP remains liable to pay the Manager the full amount of its entitlement to Carried Interest in accordance with the terms of Schedule 4.

16. **DISPUTES**

- In the event that any Party considers there to be a dispute with any of the other Parties arising out of this Agreement it shall, as soon as reasonably practicable, notify the other Parties in writing, clearly setting out the nature and extent of the dispute. The Parties shall use all reasonable endeavours to negotiate in good faith and settle any dispute as soon as practicable. Such negotiations shall take place in the first instance at an operational level within each of the Parties concerned. In the event that any dispute is not resolved at that level the matter shall be escalated by each Party to an appropriate senior level within its respective organisation for further such negotiations.
- If, following escalation pursuant to clause 16.1 of this Agreement the dispute has not been settled within twenty-one (21) days of the date of the notice referred to in clause 16.1 (or sooner if the nature of the dispute so requires), the Parties shall discuss, in relation to the dispute in question, the relative advantages and disadvantages of any appropriate methods of dispute resolution (other than litigation through the courts) with a view to agreeing the most appropriate method of dispute resolution and the rules and procedures which shall apply thereto no later than 28 days of the date of such notice (or sooner if the nature of the dispute so requires).
- Nothing in this clause shall prevent any Party at any time from referring any dispute to the courts of England and Wales, save only where the Parties have agreed an appropriate method of dispute resolution and the rules and procedure applying thereto in accordance with clause 16.2 and the agreed process has commenced. For the avoidance of doubt, this clause shall not prevent any of the Parties from so referring any dispute if the agreed process has been applied but the dispute has not been resolved.

17. TERMINATION OF THIS AGREEMENT

This Agreement shall continue in full force and effect from the date of this Agreement until the LLP is either wound up or all Members agree in writing to its termination.

18. NOTICES

18.1 Any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by hand, first class post or facsimile (but not by

e-mail), addressed to the recipient at his address set out in this Agreement (or the Deed of Adherence, as applicable), or facsimile number as notified to the LLP in writing from time to time.

- 18.2 The notice, demand or communication will be deemed to have been duly served:
 - 18.2.1 if delivered by hand, at the time of delivery;
 - 18.2.2 if delivered by first class post, 48 hours after being posted excluding days other than Business Days;
 - 18.2.3 if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post to the other Party within 24 hours after transmission;

provided that, where in the case of delivery by hand or transmission by facsimile, such delivery or transmission occurs either after 4.00 pm on a Business Day, or on a day other than a Business Day, service will be deemed to occur at 9.00 am on the next following Business Day.

18.3 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

19. AMENDMENT TO THIS AGREEMENT

- 19.1 Any amendment to this Agreement must be in writing and signed by all Parties, subject to the provisions of **Schedule 2**.
- If a Private Sector Member is admitted as a Member of the LLP (subject to the provisions of **Schedule 2**), the Manager shall be obliged to execute any agreement amending this Agreement which is made to record the terms upon which the Private Sector Member has agreed with the Welsh Ministers to become a Member, provided that any such change does not materially and adversely affect the interests of the Manager (in the reasonable opinion of the Welsh Ministers) and is consistent with the Manager's commitment as set out in the Tender submitted by the Manager to the Welsh Ministers in relation to JESSICA dated 6 May 2010 and having due regard to the expression of intention set out in Recital (F) of this Agreement.
- 19.3 The Manager hereby appoints the Welsh Ministers (or their duly authorised representative) to act as the attorney of the Manager for the purpose of executing any agreement amending this Agreement in accordance with its terms.

20. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The Parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a Party to it.

21. ENTIRE AGREEMENT

This Agreement, and the documents referred to in it, constitute the entire Agreement between the Parties (save, for the avoidance of doubt, any statutory provisions which are not overridden by the terms of this Agreement). Nothing in this clause 21 will exclude any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the another Party.

22. WAIVER

- 22.1 No failure or delay by any Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 22.2 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

23. INVALIDITY/SEVERABILITY

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.

24. FREEDÓM OF INFORMATION

Nothing in this Agreement shall stop the Welsh Ministers from discosing any information which they in their absolute discretion consider to be required in order to comply with the Freedom of Information Act 2000, the Environmental Information Regulation 2004 any other statutory requirements whether or not existing at the date hereof, or pursuant to its Code of Practice on Access to Information (as amended from time to time). However, before the Welsh Ministers reply to a request that will involve disclosing information, where in the opinion of the Welsh Ministers the disclosure is likely to affect the commercial interests of the LLP or the Manager, the Welsh Ministers will usually consult the party concerned (but are not bound to do so). The Welsh Ministers will endeavour to give the LLP or the Manager at least 5 Business Days' notice of its intention to disclose (but are not bound to do so).

25. ACKNOWLEDGEMENT

The Parties acknowledge that the Welsh Ministers have a range of public law functions which will continue to accrue and be amended and that decisions in relation to each such function are obliged to be taken in the light of all relevant and to the exclusion of all irrelevant considerations. The Parties agree that nothing contained or implied in, or arising under or in connection with, this Agreement shall in any way prejudice, fetter or affect the functions of the Welsh Ministers or any of them nor oblige the Welsh Ministers or any of them to exercise, or refrain from exercising, any of their functions in any particular way.

26. GOVERNING LAW AND JURISDICTION

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with the Laws of England and Wales. The Courts of England and Wales shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and each Party irrevocably submits to the jurisdiction of the Courts of England and Wales.

27. COUNTERPARTS

This Agreement may be executed and delivered in any number of Counterparts, each of which so executed will be an original, but together will constitute one and the same instrument.

28. EXCLUSION OF SECTION 459 COMPANIES ACT 1985/SECTION 944 COMPANIES ACT 2006

The Parties hereby exclude the application of Section 459 Companies Act 1985 or Section 994 Companies Act 2006 for the term of this Agreement.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

SCHEDULE 1

Member Reserved Matters

- The following matters in relation to the LLP may only be approved or determined by way of a majority decision of all the Voting Members and shall not be delegated to the Management Board:
- 1.1 the entry into any agreement between the LLP and any Member (even if such agreement is on arm's length terms);
- the entry into any agreement or arrangement between the LLP and any third party if such agreement is not in the ordinary course of the Business or is not on arm's length terms;
- 1.3 the appointment or change of auditors; and
- 1.4 the creation of security over the LLP's assets.

SCHEDULE 2

Matters to be decided unanimously by the Voting Member(s)

- The following matters in relation to the LLP may only be approved or determined by way of a unanimous decision of all the Voting Member(s) (excluding the Manager);
- 1.1 extending or varying the scope or purpose of the Business;
- making any petition or passing any resolution to wind up the LLP or making any application for an administration or winding up order or any order having similar effect in a different jurisdiction in relation to the LLP or giving notice of intention to appoint an administrator or file a notice of appointment of an administrator;
- 1.3 consolidating or amalgamating with any company, LLP, association, partnership or legal entity or disposing of the LLP to any such person;
- 1.4 any variation of this Agreement;
- 1.5 any cash call on Members;
- 1.6 the admission of any new Members or expulsion of a Member;
- 1.7 the payment of any distributions to Members; and
- 1.8 commencing or defending any litigation relating to the LLP or its assets or in any way involving the LLP or the Welsh Ministers.

SCHEDULE 3

PART 1

Description of the Business

- 1. All investments must be within Wales.
- 2. All investments must be in public-private partnerships or other projects included in an Integrated Plan for Sustainable Urban Development (IPSUD).
- Investments may be in any aspect of physical regeneration including, but not limited to, land development and reclamation, infrastructure development, commercial property, residential development, renewable energy and waste.
- 4. The fund may invest in individual schemes through the provision of debt finance (both senior debt and mezzanine debt with a defined term and interest rate), provision of loan guarantees to third party lenders and through the investment of equity in public private partnerships and other project delivery vehicles.
- 5. All investments must comply with European State Aid requirements, both generally and in relation to any specific State Aid approvals in relation to the fund.
- 6. The fund must adopt an investment policy that reflects the best practice principles in relation to socially responsible investment and financing in order to support sustainable economic development, enhance the quality of life of the population and safe-guard the environment. The fund shall comply with the requirements of its ERDF grant in all respects but particularly ensuring that returns from ERDF investments are recycled into new schemes.
- The fund will produce an annual Business Plan to inform investment decision making.
- 8. The fund will seek to achieve a balanced portfolio of investments, both geographically within Wales and in terms of financial performance.
- 9. The fund will ensure that its investment decision making and management of its investment portfolio is conducted against the background of an appropriate risk management policy. The fund shall ensure that investments are placed with investees of good reputation and financial standing.
- Investee projects shall not include the creation and development of financial engineering instruments such as venture capital, loan and guarantee funds for enterprises.

11. The fund shall not re-finance acquisitions or participations in projects already completed.

PART 2

IPSUD

An IPSUD is a document or series of documents prepared by, on behalf of or endorsed by the public sector which identifies the medium to long-term social and economic needs of the urban area in which (or immediately adjacent to which) the proposed scheme is located. It will also clearly set out how those needs would be addressed in order to secure the long-term future of the area. The document(s) must include an analysis of the socio-economic situation, identify strategic objectives and set out particular actions by way of an integrated approach to the regeneration of the area.

The document(s) must analyse the following key issues the urban area in which (or immediately adjacent to which) the proposed scheme is located:

- Social (e.g. access to services and amenities, promoting social inclusion and well-being)
- Economic (e.g. strengthening economic growth, creating local employment, promoting entrepreneurship)
- Environmental (e.g. rehabilitation of the physical environment, preservation and development of the natural environment, creation of quality public spaces)
- Transport (e.g. integrated pedestrian and vehicular access, links to public transport, provision for cyclists).

The document(s) must incorporate sustainable development principles. This includes (but may not be limited to) enhancing the economic, social and environmental wellbeing of the people and communities of the urban area, achieving a better quality of life for our own and future generations in ways which promote equality of opportunity and which enhance the natural and cultural environment and respect its limits - using a fair share of the earth's resources and sustaining a cultural legacy. The document(s) should also prioritise the rehabilitation of the physical environment, regeneration of public spaces and re-use of brownfield sites.

The document(s) must clearly identify the nature of the scheme in question.

For these purposes "urban area" means a town, city or agglomeration of towns that is of at least 20 hectares in extent with a sufficient number and variety of shops and services to make it recognisably urban in character. It might have administrative, commercial, educational, entertainment and other social and civic functions. It would be a focus of a local network of transport, often a location for industries, and a place of employment for people from surrounding areas. The urban area will often, though not exclusively, have a

population of approximately 10,000 or more. Above all, it is the character of the settlement and the density of land use that will determine if it is an urban area.

SCHEDULE 4

PART A

Distribution of Capital on Winding up or Dissolution

Following the winding up or dissolution of the LLP, the net assets of the LLP available for distribution (the 'Distributable Assets') shall be distributed by the LLP as follows:

- (1) an amount equal to the Grant (less any sums repaid pursuant to the repayment provisions of the WEFO Funding Agreement) shall be paid in full to the Welsh Ministers (or as they shall direct) and subject to payment thereof;
- (2) the A Capital shall be repaid in full to the Welsh Ministers (less any A Capital already returned to the Welsh Ministers) and subject to payment thereof;
- (3) the B Capital shall be repaid in full to the Welsh Ministers (less any B Capital already returned to the Welsh Ministers) and subject to payment thereof;
 - The balance of the Distributable Assets (if any) will then be distributed between the Welsh Ministers and the Manager in the following manner:
- (4) an amount equal to the distribution of Fund Carried Interest to which the Manager is entitled pursuant to Schedule 4 Part B (subject to any Catch Up or Claw Back application thereto) shall be paid to the Manager; and
- (5) the balance of the Fund (if any) shall be paid to the Welsh Ministers (or as they shall direct);
- (6) any over/under payments of moneys made prior to a winding up or dissolution of the LLP (or as a result of a payment made pursuant to clause 14.5) shall be fully taken into account in the abovementioned distribution process and any over/under payments shall be re-imbursed by the relevant payer, on written demand received from the relevant payee; and
- (7) if the LLP does not have sufficient cash resources available to fully satisfy any obligations hereunder, the LLP shall make such cash payment as is reasonably possible, having regard to the cash resources then available to the LLP and its other financial commitments, and shall pay any balance then due as soon as reasonably possible (having regard to its other financial commitments). No interest shall accrue or become payable on any delayed payment made pursuant to this paragraph.

PART B

Fund Carried Interest

- (1) A Fund Carried Interest calculation shall be made on every Renewal Date during the life of the Fund and upon termination of the Fund Management Agreement other than pursuant to clause 15.3 or 15.4 of the Fund Management Agreement ("No Fault Termination Date").
- On each Renewal Date and No Fault Termination Date (or so soon thereafter as the annual audited accounts of the LLP are available for the purpose of the calculation), the Actual Fund IRR shall be calculated by the Manager for agreement with the LLP. If the parties do not agree the calculation, the calculation shall be determined by the Expert in accordance with the provisions of Schedule 4 Part F. If the Actual Fund IRR exceeds the Fund Target IRR, the Manager shall be entitled to receive a Fund Carried Interest payment. The Fund Carried Interest payment shall be calculated on the basis set out in Part A above, as if the LLP had been wound up on the relevant Renewal Date and paid on the basis of and subject to the provisions set out in this Schedule 4 Part B.
- (3) If on any Renewal Date or the No Fault Termination Date the Actual Fund IRR (after taking account of all Project Carried Interest payments due or made) is greater than the Fund Target IRR, the Fund shall make a Catch Up payment to the Manager, which shall be equal to the aggregate of:
 - (i) 10% of the amount by which the Actual Fund IRR exceeds the Fund Target IRR, up to a maximum of the Fund Hurdle Rate; and
 - (ii) 20% of the amount by which the Actual Fund IRR exceeds the Fund Hurdle Rate up to a maximum of the Fund IRR Cap.
- (4) With effect from each Renewal Date or the No Fault Termination Date, the Fund Target IRR, the Fund Hurdle Rate and the Fund IRR Cap, shall be re-set and any future calculations of Fund Carried Interest made thereafter shall be based upon any increase in the Fund Net Asset Value after the date of the immediately preceding Fund Carried Interest payment, taking account of all Carried Interest payments made.
- (5) If on any Renewal Date or the No Fault Termination Date the Actual Fund IRR is less than the Fund Target IRR, the Manager shall make a Claw Back payment to the Fund of an amount which after payment would result in the Actual Fund IRR being equal to the Fund Target IRR, provided that the maximum amount payable by the Manager shall be the amount (including accrued interest) in the Escrow Account at that time. Any balance held in the Escrow Account after making any payment due hereunder shall be paid to the Manager.

(6) Paragraph (7) of Part A shall apply to any payment made or due under Schedule 4
Part B.

PART C

Treatment of Fund Distributions on early termination

of the Fund Management Agreement

- (1) If the Fund Management Agreement is terminated pursuant to clause 15.3 or 15.4 of the Fund Management Agreement such date being the default termination date ("Default Termination Date"), the following provisions shall apply in respect of any Carried Interest calculations:
 - (i) no further distributions of Fund Carried Interest shall be made for the period from the last Renewal Date until the date of Termination, other than as required pursuant to paragraph (1)(ii);
 - the LLP shall procure a valuation of the Fund as at the Default Termination Date and if the Actual Fund IRR (after taking account of all Project Carried Interest payments due or made) is less than the Fund Target IRR, the Manager shall make a payment to the LLP of an amount which after payment would result in the Actual Fund IRR being equal to the Fund Target IRR, provided that the maximum amount payable by the Manager pursuant to this paragraph shall be the amount (including accrued interest) in the Escrow Account at that time. One half (50%) of any balance of money held in the Escrow Account after all payments due from the Manager to the LLP pursuant to this paragraph have been paid in full, shall be paid forthwith to the Manager and the balance shall be retained by the LLP;
 - the LLP shall procure the calculation of the net present value of each Project in which an Investment is outstanding at the date of Termination to establish whether on the basis of such net present value the internal rate of return of the Project as at that date (the "Termination IRR") exceeds the Project Target IRR. If the Termination IRR exceeds the Project Target IRR, the Manager shall be entitled to a payment which shall be equal to the aggregate of:
 - (i) 5% of the amount by which the Termination IRR exceeds the Project Target IRR, up to a maximum of the Project Hurdle Rate; and

(ii) if the Termination IRR exceeds the Project Hurdle Rate, 10% of the amount by which the Termination IRR exceeds the Project Hurdle Rate, subject to a maximum of the Project IRR Cap.

Any sum payable pursuant to this paragraph 1(iii) shall be discounted at an appropriate rate to take account of the acceleration in payment of the Project Carried Interest.

- (2) If the Fund Management Agreement is terminated other than pursuant to clause 15.3 or 15.4 of the Fund Management Agreement), the Manager shall be entitled to retain all entitlements to and payments of Carried Interest.
- (3) Any payments made pursuant to Schedule 4 Part C shall not prejudice any other rights of the parties under this Agreement.

Part D

Project Carried Interest

- (1) Prior to the LLP making an Investment, the LLP and the Manager shall agree a Project Target IRR in relation to the Project in which the Investment is to be made.
- (2) Upon a Realisation event occurring in relation to a Project, the Actual Project IRR shall be calculated and notified by the Manager to the LLP. If LLP does not agree the calculation of the Actual Project IRR the parties shall seek a determination from an Expert in accordance with the provisions of Part F below.
- (3) If, having agreed or determined the Actual Project IRR, the Actual Project IRR is greater than the Project Target IRR, the Manager shall be entitled to a payment which shall be equal to the aggregate of:
 - (i) 10% of the amount by which the Actual Project IRR exceeds the Project Target IRR, up to a maximum of the Project Hurdle Rate; and
 - (ii) if the Actual Project IRR exceeds the Project Hurdle Rate, 20% of the amount by which the Actual Project IRR exceeds the Project Hurdle Rate, subject to a maximum of the Project IRR Cap

(the aggregate sum payable being the "Project Interim Distribution").

- (4) The LLP shall retain 10% of each Project Interim Distribution payment in the Escrow Account in its name to be either:-
 - utilised in whole or in part to satisfy any Clawback obligation of the Manager pursuant to part B Schedule 4; or

(ii) paid (to the extent not required for the purpose set out in paragraph 4(i)) to the Manager.

Part E

Right of set off

For the avoidance of doubt, any sums due under this Schedule from the LLP to the Manager may be set off against any sums due from the Manager to the LLP hereunder or pursuant to the Fund Management Agreement.

Part F

Expert determination

- 1. If the Manager and the LLP do not agree the amount of any Claw Back, Catch Up or Carried Interest within 28 days of notification of the relevant amount, the Manager or the LLP may refer the matter in dispute to, and for determination by, an independent firm of chartered accountants agreed upon and appointed by the Members. If the Members do not agree upon the selection and/or do not appoint an independent firm of chartered accountants after a further 21 days, an independent firm of chartered accountants will be selected on the application of any Member by the President for the time being of the Institute of Chartered Accountants in England and Wales (the "President") and such person, whether selected by the parties or by the President in accordance with this paragraph 1, will be referred to as the "Expert".
- 2. The terms of appointment of the Expert and the basis upon which the Expert will act in determining the matters in dispute (as the Members hereby acknowledge and agree) will be as follows:
- 2.1 the Expert will act as an expert and not as a arbitrator;
- 2.2 the parties will each promptly provide the Expert with all information which the Expert reasonably requires to make his determination; and
- 2.3 the decision of the Expert will, in the absence of fraud or manifest error, be final and binding on the parties.
- The Expert's fees and any costs and expenses incurred in relation to his appointment will be borne in such proportions as the Expert shall determine and in the absence of such determination by the parties equally.
- 4. Except to the extent that the parties agree otherwise the Expert will determine its own procedure and will determine only the matters in dispute between the parties and what payments (if any) should be made by the Partnership to the Manager in respect of such matters in dispute;

- 5. The procedure of the Expert will:
- 5.1 give the parties a reasonable opportunity to make written representations to the Expert; and
- 5.2 require that each party supply the other with a copy of any written representations at the same time as they are made to the Expert;
- The determination of the Expert will be in writing and will be delivered to each of the Members at such time as the Expert will determine.
- 7. The Manager and the Partnership will pay their own costs and expenses in connection with any matters arising in connection with a determination hereunder including, where applicable, any costs associated with presentation of their case to the Expert.

SCHEDULE 5

Property to be Transferred by the Ministers to the LLP

RIFW Assets

Brackla Industrial Estate, Bridgend

Wonastow Road, Monmouth

Waenfynydd Farm, Llandudno Junction

Land at Lisvane, Cardiff

Imperial Courtyard, Newport

Upper House Farm Rhoose

Cogan Hall Farm, Penarth

Garth Park, Talbot Green

Ty Draw Farm, Pyle, Bridgend

Former Mayhew Foods site, Aberdare

Land at Liantrisant Business Park.

Anchor Way, Penarth

Towyn Way East, Towyn

St Georges Road, Abergele

Pen y Bryn Farm, St Asaph

Geotra Uchaf Farm, Penrhosgarnth

Ty Mawr, Anglesea

Land at Wrexham Industrial Estate

RIFW Assets to be Transferred

Imperial House, Newport

SCHEDULE 6

Deed of Adherence

THIS DEED OF ADHERENCE is made on [DATE] by [name, address, details] (the "New Member").

BACKGROUND:

This Deed is supplemental to a members' agreement dated [DATE] 2010 and made between (1) [THE WELSH MINISTERS] and (2) the [Fund Manager]; and (3) Regeneration Investment Fund for Wales LLP (the "Members' Agreement");

The New Member has agreed to become bound by the rights and obligations set out in the Members' Agreement on the terms as set out in this Deed.

OPERATIVE PROVISIONS

- 1. The New Member agrees severally with the other parties to the Members' Agreement (including such other parties as have entered into a Deed of Adherence under which they have become bound by the rights and obligations set out in the Members' Agreement) from time to time to observe, perform and be bound by the terms of the Members' Agreement which are capable of applying to the New Member and which have not been performed on or before the date of this Deed, to the intent and effect that the New Member shall be deemed with effect from the date on which the New Member is registered as a member of [NAME] LLP to be a party to the Members' Agreement as if he were named as a Member therein.
- Address for notices of the New Member for the purposes of clause [] of the Members' Agreement is:

[INSERT ADDRESS AND DETAILS]

 This Deed and all matters arising from or connected with it are governed by the law of England and Wales and subject to the exclusive jurisdiction of the Courts of England and Wales.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

EXECUTED as a **DEED** by applying the seal of the Welsh Ministers

The application of the seal of the Welsh Minister SEAU BRADLEY who is duly authorised for that purpose by the the Welsh Ministers under section 90(2) of the Signed: Signed: January 1.	e Director of	f Legal Services by authority of
EXECUTED as a DEED by AMBER FUND MANAGEMENT LIMITED acting by In the presence of)))	J Gralley
EXECUTED as a DEED on behalf of REGENERATION INVESTMENT FUND FOR WALES LLP acting by)	

)

In the presence of

EXECUTED as a **DEED** by applying the seal of the Welsh Ministers

The application of the seal of the Welsh Ministers is AUTHENTICATED by

who is duly authorised for that purpose by the Director of Legal Services by authority of the Welsh Ministers under section 90(2) of the Government of Wales Act 2006.

Signed:

EXECUTED as a DEED by

AMBER FUND MANAGEMENT LIMITED

acting by

in the presence of

LEO BEDFORD

AWares Amanda Woods Two London Bridge, London SEI 9RA

EXECUTED as a DEED on behalf of
REGENERATION INVESTMENT FUND
FOR WALES LLP acting by
in the presence of

EXECUTED as a **DEED** by applying the seal of the Welsh Ministers

The application of the seal of the Welsh Ministers is <u>AUTHENTICATED</u> by

who is duly authorised for that purpose by the Director of Legal Services by authority of the Welsh Ministers under section 90(2) of the Government of Wales Act 2006.

EXECUTED as a DEED by AMBER FUND MANAGEMENT LIMITED)
acting by	`)
in the presence of)

EXECUTED as a DEED on behalf of REGENERATION INVESTMENT FUND FOR WALES LLP acting by in the presence of