

North East Fund

Supported by the European Regional Development Fund

Invitation to Tender and Tender Specification For Consultants to Undertake Evaluation of ERDF Funded Venture Capital Fund

Tender Reference: TNEFL/2021/01

11th August 2021

**Suite D
Fifth Floor
West One
Forth Banks
Newcastle upon Tyne
NE1 3PA**



1. INTRODUCTION

The Contracting Authority for this Tender is **The North East Fund Limited (TNEFL)**, a company limited by guarantee with its registered office at Suite D, Fifth Floor, West One, Forth Banks, Newcastle upon Tyne, NE1 4PA: <https://www.northeastfund.org/>.

The North East Fund has been established with funding from: the England European Regional Development Fund (**ERDF**) as part of the European Structural and Investment Funds Growth Programme 2014-2020 (for which the Ministry for Housing, Communities and Local Government is the Managing Authority); the European Investment Bank and from returns on previous North East based, publicly supported investment funds.

The members of TNEFL are the seven North East Local Authorities: Durham County Council; Gateshead Council; Newcastle City Council; The Council of the Borough of North Tyneside; Northumberland County Council; South Tyneside Council and Sunderland City Council. These represent the geographic area in which The North East Fund operates and are the Local Authority members of the North East Local Enterprise Partnership, which supported the establishment of TNEFL. Helen Golightly, the Chief Executive of the North East Local Enterprise Partnership, is the Chair of the Board of The North East Fund Limited.

TNEFL is the holding fund manager for a venture capital and loan programme which invests in Small and Medium sized Enterprises (**SMEs**) based in the North East of England. It is the principal investor and a limited partner in five funds which are set up as limited partnerships and which are managed by four independent, FCA authorised fund management companies: Maven Capital Partners; Mercia Asset Management; NEL Fund Managers and Northstar Ventures.

The North East Fund began operating in March 2018 and to date its funds have invested c.£62m in c.300 companies and are expected to invest a further £58m in c.300 more companies in the period to March 2023 – with the potential to continue investing until 2025. The realisation phase of the five funds will continue at least until 2028, with the potential to be extended to 2032 – to allow time for the loans and investments made to be repaid and realised. Further information regarding the background and objectives of TNEFL is set out in section 2, below.

A condition of the ERDF funding received by TNEFL is that an independent mid-fund evaluation exercise be undertaken to assess the performance of TNEFL's programme against its objectives. The purpose of this Invitation to Tender is to elicit proposals from independent consultants with expertise in the evaluation of public sector investment / funding programmes to undertake this evaluation exercise – in accordance with the specifications detailed in section 4, below.



Details are set out below of what to include in your tender and how to ask any questions you may have regarding the process. **The closing date for tender submissions is 12 noon on Friday 17th September 2021.**

The contents of this Invitation to Tender are as follows:

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2. BACKGROUND OF THE NORTH EAST FUND

The North East Fund Limited (**TNEFL**) is an independent, publicly-funded organisation which was established in March 2018 to act as the holding fund manager of a £120m venture capital and loan fund programme designed to improve the supply of finance to SMEs based in the North East of England.

There was an acknowledged market failure in the provision of risk capital and growth finance for SMEs, which was exacerbated by the global financial crisis of 2007-2008. The Ministry for Housing, Communities and Local Government (**MHCLG**) therefore allocated a proportion of the 2014-2020 European Regional Development Fund Operational Programme for England to be used in Financial Instrument projects, in accordance with Title IV of the EU's Common Provisions Regulation No. 1303/2013. TNEFL was entrusted by government to operate as a “fund of funds” as defined in that Regulation.

This means that TNEFL has overall responsibility for the delivery of the programme and for ensuring that it meets its objectives. TNEFL was responsible for appointing the managers of the five funds and oversees their delivery, monitoring the fund managers' performance against their targets and their compliance with the contractual and regulatory framework. TNEFL secured commitments to provide £120m of investment capital from the programme's funders, which is channelled via the five investment funds (to which the fund managers also contribute some of their own capital) to SMEs – as loans, equity or quasi-equity investments on commercial terms, often alongside private investors who typically invest on the same terms as TNEFL's funds.

TNEFL therefore does not have a direct role in making investments in SMEs, which is done by the fund managers detailed below. TNEFL provides the investment capital to the funds; the fund managers are responsible for sourcing, negotiating and completing the investments and for monitoring them and assisting their investee companies to grow and to return the capital. TNEFL helps to promote the programme as a whole, to help maximise awareness across the seven Local Authority areas of the availability of this source of funding to the region's SMEs.

TNEFL contracted with and is directly accountable to the providers of the £120m of investment capital, which has been provided as:

- a loan of up to £60m from the European Investment Bank (**EIB**);
- repayable grant funding of up to c.£50m from the European Regional Development Fund (**ERDF**);
- repayable grant funding of up to c.£10m from North East Access to Finance Limited (**NEA2F**), as custodian of the returns on previous North East based, publicly supported investment funds – with the support of the Department for Business, Energy and Industrial Strategy, MHCLG and the British Business Bank.



NEA2F and ERDF also provide additional repayable grant funding to TNEFL to support the programme's operating expenses.

The EU regulations required that all ERDF-backed financial instrument projects be “based on an ex ante assessment which has established evidence of market failures or suboptimal investment situations, and the estimated level and scope of public investment needs, including types of financial instruments to be supported.”

In pursuance of proposals to deploy ERDF funding via financial instruments leveraged with EIB lending, the EIB and MHCLG commissioned an *ex ante* assessment of the market for SME finance in England, which was conducted in two parts. Block 1 was a market analysis exercise, which was used to inform judgements about market need and the financing gap. It was finalised in January 2015 and the main report can be accessed here:

https://www.fi-compass.eu/sites/default/files/publications/sme-ex-ante-assessment-block-1_1.pdf

Separate sections providing further analysis of the market within the different regions of England were also published at that time, and the Area Overview for the North East can be accessed here:

https://www.fi-compass.eu/sites/default/files/publications/north-east-area-overview-block-1_0.pdf

This analysis covers the geographies served by The North East Fund and also the Tees Valley Local Authority areas of: Darlington; Hartlepool; Middlesbrough; Redcar and Cleveland and Stockton-On-Tees. This wider North East area had been served by the North East Fund's predecessor, the North East JEREMIE Fund (see <https://northeastfinance.org/>), which invested £160m in 950 SMEs from 2010 to 2016 across both the North East and Tees Valley LEP areas. It was one of three 'JEREMIE' funds set up in England using 2007-2013 ERDF programme funds to address the market failure in provision of growth finance to SMEs.

The Tees Valley Local Enterprise Partnership ultimately elected to use its share of the current (2014-2020) ERDF programme to participate in the British Business Bank's Northern Powerhouse Investment Fund and so Block 2 of the ex ante assessment, which set out the proposed investment strategy for the North East area, related principally to the North East LEP area and to the programme now being delivered by the North East Fund. It can be accessed here:

https://www.fi-compass.eu/sites/default/files/publications/north-east-block-2_0.pdf

Investment policies for each of the funds were drafted to reflect the objectives summarised from page 19 onwards of this Block 2 ex ante assessment, and a public procurement process was undertaken to appoint managers for each of the funds. This resulted in the portfolio of funds and fund managers summarised in the following table:



Fund	Fund Manager	Capital Allocation	Principal Type of Investment
1 Innovation	Northstar Ventures	£27m	Equity and convertible loan notes.
2 Venture	Mercia Asset Management	£27m	Equity.
3 Growth Capital	NEL Fund Managers	£18m	Unsecured loans / quasi-equity.
4 Development Capital	Maven Capital Partners	£27m	Mezzanine debt / quasi-equity and equity.
5 Small Loan	NEL Fund Managers	£9m	Unsecured loans.
		£108m	

TNEFL made initial capital allocations to the five funds totalling 90% of the £120m of capital committed by the funders, and the funds began investing in May 2018 and have to date invested c.£62m in c.300 companies. The balance will be invested by March 2023, with the possibility of some of the unallocated 10% (£12m) of capital being allocated to each fund over the next two years and of the investment phase being extended beyond March 2023.

In brief, the characteristics of the five funds are as follows:

Innovation Fund: provides proof-of-concept, seed and venture capital funding, targeting early-stage businesses with high growth potential, including start-ups and university spin-outs. Maximum investment per funding round typically £500k. Links to: [fund site](#) and [portfolio](#).

Venture Fund: provides venture capital funding, targeting early-stage and more established businesses with high growth potential and investing principally in equity. Maximum investment per funding round is £1m. Links to: [fund site](#) and [portfolio](#).

Growth Capital Fund: provides unsecured loans / mezzanine finance typically between £100k and £500k to established, trading businesses. Link to: [fund site](#).

Development Capital Fund: provides equity finance and secured and unsecured quasi-equity/mezzanine finance, typically between £400k-£1m. Seeks companies with high growth potential; mainly established, mature businesses and some earlier-stage propositions. Links to: [fund site](#) and [portfolio](#).

Small Loan Fund: provides unsecured loans on standardised terms from £10k to £100k to trading businesses of all stages and sectors. Link to: [fund site](#).



Each fund was set targets relating to the following:

1. Rate / quantum of investment in companies based in Tyne & Wear and Northumberland;
2. Rate / quantum of investment in companies based in County Durham;
3. Number of existing companies (over 1 year old) receiving investment;
4. Number of new companies (less than 1 year old) receiving investment;
5. Quantum of financial returns on investments;
6. Quantum of private funding leveraged by investees as a result of TNEFL investment;
7. Number of jobs created by investee companies following investment;
8. Investments which facilitate increased use by investee of low carbon technologies;
9. Investments which assist investee companies to introduce new products;
10. Investments which facilitate investee companies' cooperation with research institutions.

These outputs all derive from the utilisation by the SMEs of the cash provided as loans/investments by the funds.

In addition, the fund managers were tasked with, and set targets for, providing non-financial support to SMEs – being the provision of information, diagnostic advice and signposting. This advice is provided both in the course of dealing directly with applicants, and potential applicants, for investment and also as seminars/workshop sessions. It is provided with the objectives of improving business performance and supporting the creation of new enterprises by helping more SMEs and entrepreneurs to access finance, by improving the levels of awareness and understanding of the types of finance available and of what is required to secure it. This includes providing information and advice on business plans, market analysis, financial forecasting etc. The support has to be delivered by the fund managers to secure the 3+ and 12+ hours of business support outputs classified under the ERDF programme as P13 and C4 outputs.

Since March 2020, the Covid-19 pandemic has of course affected the delivery of TNEFL's programme and as part of the evaluation exercise, the appointed consultant will be required to assess the impact of the pandemic on its performance against its objectives, which are summarised in the next section.

3. OBJECTIVES OF THE NORTH EAST FUND

The principal objectives of The North East Fund are to:

1. Establish a £120m fund-of-funds utilising ERDF, EIB and regional legacy monies to provide investment capital to North East LEP area SMEs which are unable to attract sufficient funding from private sources and which have viable business plans;
2. Address the market failures and funding gaps identified in the Ex Ante assessment;
3. Comply with the EIB's financial covenants and repayment targets and achieve the ERDF and other KPI targets set by the funding providers;
4. Create a long-term, 'evergreen' access to finance solution for North East SMEs by the generation of legacy funding which can be reinvested in the region's SMEs;
5. Contribute to a number of the thematic objectives of the 2014-2020 ERDF Programme and key objectives of the North East's Strategic Economic Plan, including:
 - a. Enhancing the competitiveness of SMEs;
 - b. Promoting the creation of new, sustainable and good quality jobs;
 - c. Increasing the number of new businesses created;
 - d. Improving SME productivity, performance and survival;
 - e. Supporting SMEs shift to a low carbon economy;
 - f. Improving take-up of investment finance by women and under-represented groups;
 - g. Promoting research, technological development and increased use of ICT
 - h. Increasing the survival rate of early stage businesses;
 - i. Increasing the number of businesses able to scale-up their activities;
6. Sustain and grow the SME finance ecosystem in the North East, through the direct and indirect impact of the programme on levels of activity in the region of investors and support services of corporate finance advisors, accountants, solicitors etc. This should include consideration of the impacts of The North East Fund and its predecessor programmes on the access to finance ecosystem in the region, in terms of the impact they have had on attracting and retaining fund management resource and on the capacity of the supporting professional advisory services;
7. Provide information to North East SMEs on available funding options and guidance which helps to improve business performance and ability to secure investment finance;
8. Attract additional investors to the region and help North East SMEs to maximise the capital and opportunities available to them by using TNEFL investments to leverage private sector co-investors and to benefit from their networks;
9. Maximise deal-flow and integration with the local economic infrastructure, by being solely focused on the North East LEP area and not adopting a multi-regional approach.
10. Build on the key characteristics of predecessor funds, making use of the fund-of-funds approach to ensure that the funds are delivered in responsive way which reflects changes in market conditions or regulations and which enables capital allocations to be made or adjusted appropriately.



4. SPECIFICATION OF REQUIREMENTS OF THE EVALUATION

The aim of the evaluation is to provide TNEFL and its stakeholders with an independent review of the performance to date of TNEFL and with observations/recommendations regarding the future delivery of its programme and any subsequent, publicly-backed North East SME finance initiatives.

The appointed consultant will be required to produce a written report which details the finding of its evaluation in relation to the following issues, and to deliver a presentation to TNEFL and its stakeholders on the findings – which will be delivered in person at TNEFL’s office in Newcastle upon Tyne or via videoconference, depending on the government’s Covid-19 guidance at that time. The appointed consultant will be required to review and report on the following:

Evaluation of Performance & Impacts of TNEFL to Date

1. Evaluation of how The North East Fund programme as a whole has performed to date against its objectives (summarised in section 3) and its KPI targets.
2. Evaluation of how each of the five sub-funds have performed to date against the requirements set out in their contracts, including their KPI targets.
3. Consideration of the impacts which the Covid-19 pandemic have had on the performance of TNEFL and its five sub-funds, and how TNEFL and its fund managers addressed it.
4. Consideration of whether TNEFL and its sub-funds are likely to achieve their overall KPI targets and, if not, the reasons for that.
5. Evaluation of the contribution made to date by TNEFL to the results and outcomes of the ERDF Operational Programme and to the key targets of the North East Local Enterprise Partnership’s Strategic Economic Plan.
6. Consideration of the impacts on the North East economy which TNEFL’s activities have had to date, taking into account: the private funding leveraged by the public (ERDF and legacy) contributions; employment created or sustained directly or indirectly as a result of TNEFL’s investments; the Gross Value Added effects delivered and consideration of a counter-factual scenario in which TNEFL had not been operational.

Evaluation of TNEFL’s Structure & Fund Portfolio and of the Current SME Finance Market

7. Evaluation of how well the TNEFL fund portfolio has addressed the market need and financing gaps identified in the ex ante assessment – including whether the composition/design of the sub-funds has proved to be appropriate.
8. Consideration of the current SME finance market (including grant funding), how it compares to the market as reflected in the ex ante assessment, and whether there are any implications for TNEFL’s portfolio. To include specific consideration of the appropriateness of the Small Loan Fund and its lending parameters.



9. Consideration of the effects of establishing TNEFL as a North East LEP area-specific programme, as opposed to a multi-regional venture capital and loan fund programme, including consideration of any impact of this approach on: numbers of fund management organisations active within the region; levels of investment activity; engagement and uptake within sub-regions; the entrepreneurial/start-up/business finance ecosystem in general, including professional intermediaries (corporate finance advisors, accountants), business accelerator/incubator programmes and university spin-outs etc.
10. Consideration of the cost effectiveness of TNEFL's programme. This will be an interim, indicative assessment as final value for money will depend on the quantum of returns ultimately generated by TNEFL's portfolio but it should provide an initial view based on: performance to date; expectation of future returns and market comparators, and should include consideration of the wider value added to the region's economy as a result of TNEFL's activity.

Observations & Recommendations Regarding Future Developments

As detailed in section 2, above, TNEFL has secured £120m of investment capital funding and to date has allocated 90% of this to its five sub-funds. Decisions on how the remaining £12m will be allocated will be made towards the end of 2021. The full £120m is due to be invested by March 2023; that deadline may be extended to December 2023 at the latest. At present, it is not clear how, whether or when provision of SME finance in the North East of the quantum provided by TNEFL and its predecessor fund will become available. Returns generated by previous publicly-backed, North East SME finance funds are ring-fenced for recycling in similar initiatives in the region, but may be insufficient to sustain c.£20m PA of investment from 2023/2024. TNEFL's stakeholders will be considering options regarding the ongoing provision of SME finance over the coming year and in light of that and the foregoing, the appointed consultant will be asked to provide observations and (as appropriate) recommendations on the following:

11. The likely effects of there being a hiatus in the supply of SME finance – whether from the end of March or December 2023 – on TNEFL's portfolio and on the region's SME ecosystem.
12. The desirability of funds having capital available to make follow-on investments in equity investments in their portfolios, and the impact on financial returns caused by the dilution in equity holdings which results from not being able to participate in further fundraisings.
13. The extent to which having a wholly in-region delivery structure has a beneficial effect on the outcomes of publicly funded venture capital and loan programmes aimed at addressing market failures – considering e.g. the number of sources of capital available to SMEs in the North East compared to similar regions and the progression and successful exit of investees from one iteration of publicly-backed funds to the next.



5. METHODOLOGY AND TIMEFRAME FOR DELIVERY OF EVALUATION

The appointed consultant will be expected to undertake a combination of desk-based research and consultations with stakeholders, including representatives of the funders, TNEFL staff and Board/Advisory Panel members, the fund managers and solicitors/accountants/corporate finance advisors who engage with the funds. It is not envisaged that a survey of SMEs will be undertaken for the purposes of this evaluation.

TNEFL will make available to the appointed consultant the quarterly monitoring reports prepared for stakeholders (which provide extensive quantitative information on the performance of the funds against all KPI targets and several other metrics) and such other management, investment and financial information as is required to evaluate the performance of TNEFL and its sub-funds.

The ex ante assessments referred to, and to which links are provided, in Section 2 of this Invitation to Tender will be relevant to the evaluation exercise. The evaluation should be framed with reference to them, to previous evaluations of publicly-backed SME venture capital projects and to relevant sources of current UK SME finance market information.

The evaluation exercise must be undertaken so that the final report is delivered to TNEFL by Friday 28th January 2022. The anticipated timeframe for the procurement of the consultants and completion of the evaluation and reporting exercise is set out below, which may be subject to change.

Indicative Timetable for Completion of Evaluation

Activity	Date
Invitation to Tender Published	Wednesday 11 th August 2021
Deadline for Tender Submissions	Friday 17 th September 2021, Noon
Outcome of Evaluation Notified to Bidders & Contract Awarded	By Friday 24 th September 2021
Project Inception Meeting Held	w/c 27 th September or 4 th October 2021
Progress Updates to be Provided	Frequency / Format to be Agreed
First Draft Evaluation Report Provided to TNEFL	By Friday 17 th December 2021
Final Evaluation Report Provided to TNEFL	By Friday 28 th January 2022
Presentation to TNEFL & Stakeholders on Findings from Evaluation	TBC – February / March 2022

6. TENDER RESPONSE

If your firm is interested in providing the services required by TNEFL, please submit a **tender proposal document** which provides your firm's proposals in relation to and in accordance with the following requirements. Your **tender proposal document** must be a maximum of 20 pages long and must set out how your firm will meet the requirements specified at Section 4, above, and the capabilities, qualifications and prior experience which makes it able to do so, and which must be structured as follows:

TENDER RESPONSE REQUIREMENTS	
Tender Response Section	Max score
1) Summary of Your Firm's Technical Ability and Sector Knowledge, which must include: <ul style="list-style-type: none"> - Your firm's knowledge and capabilities relevant to delivering the services specified in Section 4, above; - Demonstration of an understanding of the nature of TNEFL's business and how it will inform your delivery of the services required; - Demonstration of your firm's prior experience of evaluating publicly-funded projects, preferably including projects which used ERDF funding and also publicly-funded, SME venture capital and loan finance projects. 	40
2) Methodology for Undertaking the Evaluation <ul style="list-style-type: none"> - Detail the methodology your firm will follow to undertake the evaluation, including an indication of the source materials you will use and what information you will require to be provided by TNEFL. 	15
3) Delivery and Project Team <ul style="list-style-type: none"> - Summarise how your firm will deliver the services required as specified at Section 4, including how the work will be quality-assured; - Specify the individuals who will deliver the services – including identification of the individuals who will undertake the majority of the work and who will be the individual with overall responsibility for managing your relationship with TNEFL. - Provide summary CVs of the individuals who will deliver the services, detailing their relevant prior experience/qualifications. - Provide a project timetable detailing how you will deliver the services within the timeframe specified at section 5, above. 	15

<ul style="list-style-type: none"> - Demonstration of relevant prior experience of evaluating publicly-funded projects, preferably including projects which used ERDF funding and also publicly-funded, SME venture capital and loan finance projects. 	
<p>2. Methodology for Undertaking the Evaluation</p> <p>Provision of a detailed and credible methodology is provided which sets out how the evaluation will be undertaken in a way which will ensure a suitable quality of analysis will be provided of the areas specified in Section 4 of this ITT.</p>	15
<p>3. Delivery and Project Team</p> <ul style="list-style-type: none"> - Provision of a summary of how the services will be delivered to achieve the requirements specified at Section 4, including how the work will be quality-assured; - Identification of appropriate experienced/qualified individuals who will deliver the services – including identification of the individuals who will undertake the majority of the work and who will be the individual with overall responsibility for managing the relationship with TNEFL. - Provision of summary CVs of the individuals who will deliver the services, detailing their relevant prior experience/qualifications. - Provision a project timetable detailing how the evaluation exercise will be undertaken within the timeframe specified at section 5, above. 	15
<p>4. Price for Services</p> <ul style="list-style-type: none"> - 4.1 Fixed price for providing the services specified at section 4, above. - 4.2 Price of the day-rate(s) which will be charged should additional services be requested by TNEFL over and above those specified at section 4. 	<p>25</p> <p>5</p>
Total	100
<p>Scoring Principles in relation to criteria 1, 2 and 3:</p> <p><i>In relation to Criteria 1, 2 and 3, above, tender proposals will be scored as follows:</i></p> <ul style="list-style-type: none"> • <i>Outstanding: meets all of the requirements to a very high standard: 100% of Max Score;</i> • <i>Very Strong: meets all of the requirements to a high standard: 80% of Max Score;</i> 	

- *Good: meets all of the requirements to a good standard: 60% of Max Score;*
- *Acceptable: meets all or most of the requirements to an acceptable standard: 50% of Max Score;*
- *Weak: meets some of the requirements to an acceptable standard but most to an unacceptable standard or are not met at all: 25% of Max Score;*
- *Unacceptable: fails to meet any of the requirements to an acceptable standard: nil.*

The section 4 responses regarding price will be scored as follows.

For section 4.1, the fixed price for undertaking the work set out in Section 4 of this ITT, the lowest price proposal (or proposals, if two or more are identical prices) will receive the maximum score of 25 points. The other proposals will receive a score which is proportionately less, based on the lowest pricing proposal and the weighting shown in the above table. The bidder(s) which proposes the lowest total price in response to question/criteria 4.1 will receive 25 points and the other bidders which receive a score calculated as follows:

Amount of Lowest Bid ÷ Amount of Higher Bid x 25

The score for section 4.2, the day-rate cost of any additional work required, will be established on the same basis, with the lowest day-rate being awarded 5 points and higher day rates receiving a score proportionately lower. This will be based either on the blended rate (i.e. single day rate) proposed by bidders or on the implied blended rate based on the charge-out rate of the individual(s) identified as being those who will undertake most of the work. If necessary to ensure a fair comparison and scoring, TNEFL will seek clarification from bidders regarding day rates.

8 CONTRACTUAL ARRANGEMENTS

8.1 Contract Price

As indicated above, the contract price will be the **fixed price** payable for providing the services specified at Section 4, above. If additional services over and above those specified at Section 4 are required, TNEFL will require that the appointed consultant provides an estimate for providing the additional services – based on the day rate(s) proposed in their tender proposal document. The consultant shall be required to provide a breakdown of the actual time spent by the relevant individual(s) to provide the additional services, and the cost for them to reflect the actual time engaged, and any increase above the estimated cost for additional services will only be paid by TNEFL if its prior approval in writing to the increase has been obtained.



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8.2 Contract Terms

The appointed consultant will be required to enter into the Consultancy Agreement which is set out in draft at Appendix 2 to this Invitation to Tender, duly completed to reflect the terms of the appointed consultant's tender proposal document. This Invitation to Tender and the successful bidder's Tender Proposal Document shall form part of the contract, with the following precedence being applicable to the contract terms: (1) the completed Consultancy Agreement; (2) the terms of this Invitation to Tender; and (3) the proposals set out by the successful bidder in its tender proposal document.

9. SUBMISSION OF QUESTIONS, EXPRESSIONS OF INTEREST & TENDERS

If you intend to bid, **please register an expression of interest** by emailing alastair.smith@northeastfund.org. Responses to any questions received and/or any supplementary information issued will be emailed to all parties which register an interest. They will also be posted on the news section of TNEFL's website: <https://www.northeastfund.org/category/news/>

The closing date for tenders to be received is **12.00 noon on Friday 17th September 2021**. Your tender should be limited to a maximum of 20 pages of A4, including the CVs of team members.

Please email your tender document, with the subject '**Confidential - Tender ref TNEFL/2021/1**' to alastair.smith@northeastfund.org. Any questions about this tender should also be emailed to Alastair Smith at this address and must be received no later than Friday 10th September.

10. CONFIDENTIALITY AND TRANSPARENCY

To ensure a fair and transparent process, no approach of any kind should be made to anyone associated with TNEFL in connection with this tender other than your formal tender documentation and any clarification requests submitted to Alastair Smith as detailed above. Failure to comply with this may result in disqualification.

You must not disclose to anyone else any prices or other information contained in your submission before the decision on award of the contract is notified to you, and you must not make any arrangement with another party about whether or not they should bid. You must not try to obtain information about anyone else's tender before the decision on award of the contract is notified to you.

TNEFL will keep confidential and not disclose to any third party the tender proposal documents submitted by bidders, except as may be required in conjunction with audits undertaken by or on behalf of its funders and/or as may be required by any lawful authority.



11. FURTHER CONDITIONS APPLICABLE TO TENDER PROCESS

Tender submissions should remain open for acceptance for 30 days from the tender submission deadline.

TNEFL reserves the right to cancel the tender process and reject all tenders at any time prior to the award of the contract. The issue of this invitation to tender in no way commits TNEFL to enter into any contract pursuant to this tender process.

TNEFL shall not accept any liability for any costs resulting from the cancellation of this tender process nor for any other costs incurred by those tendering, who do so entirely at their own expense.

Any contract awarded as a result of this process will be awarded by the application of the evaluation criteria set out in Section 7 of this Invitation to Tender. Accordingly, TNEFL will not be bound to accept the lowest-price, or any, tender.

11th August 2021



Appendix 1 – Selection Pre-Conditions

All parties which submit a tender proposal document (Prospective Supplier) are deemed to agree that each of the following statements are accurate in respect of that party, unless it indicates otherwise within its tender proposal document or any accompanying covering letter:

1. The Prospective Supplier has prepared and submitted its tender in good faith, and has not fixed or adjusted the pricing or other proposals of the tender in accordance with any agreement or arrangement with any other person or party;
2. The Prospective Supplier has not communicated to any person other than TNEFL the amount or approximate amount of the pricing proposed in the tender, except where the disclosure, in confidence, of the approximate amount of the pricing was necessary to obtain insurance premium quotations;
3. The Prospective Supplier has not entered into any agreement or arrangement with any person or party that they shall refrain from tendering, that they shall withdraw any tender once offered or vary the amount of any tender to be submitted;
4. The Prospective Supplier has not and shall not make any offer to pay or give any sum of money or other valuable consideration directly or indirectly to any person or party outwith its own organisation (or, if applicable, its subcontractors/joint venture or consortia partners named in the tender proposal document) for the purposes of securing any of the actions referred to in paragraphs 1 to 3, above, or to seek to influence in any way the outcome of this tender process;
5. The Prospective Supplier is not subject to any insolvency proceedings (including petitions for winding up; winding up orders from the Court; appointment of receivers or administrators);
6. The Prospective Supplier is not subject to any material litigation which could affect its ability to deliver the services sought by this Invitation to Tender or which might reasonably be expected to undermine perceptions of its integrity or appropriateness to provide the services to TNEFL;
7. Neither the Prospective Supplier nor any of its directors or senior managers has any convictions, nor been subject to sanction by any regulatory body for, any offences relating to: business and professional activities; professional misconduct; fraud; social security or taxation laws or obligations;
8. The Prospective Supplier operates its business in accordance with the requirements of the Equality Act 2010 and the principles of anti-discrimination and equality of opportunity;
9. The Prospective Supplier has in place the human and technical resources to perform the contract to ensure compliance with the Data Protection Act 2018 and to ensure the protection of the rights of data subjects;
10. If, and to the extent, applicable to it, the Prospective Supplier satisfies all requirements under the Modern Slavery Act 2015.

Appendix 2 – Draft Contract

DATED

2021

THE NORTH EAST FUND LIMITED

AND

[CONSULTANT]

CONSULTANCY AGREEMENT



Between

1. **The North East Fund Limited** incorporated and registered in England and Wales with company number 10441614 and having its registered office at Fifth Floor, West One, Forth Banks, Newcastle upon Tyne, NE1 3PA (the “**Client**”); and
2. **TBC** (‘the **Company**’).

Recitals

- (a) The Company successfully tendered to provide the Services (as defined below) to the Client;
- (b) The Company is willing to provide the Services to the Client on the terms set out in this Agreement.

It is agreed as follows;

1. Preliminaries

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

Confidential Information means any information relating to the operation, services, affairs and finances of the Client, together with trade secrets, technical data and know-how relating to the operation of the Client or any of its suppliers, funders, clients or customers including (but not limited to) the Key Project Information (as defined below);

Data Controller has the meaning ascribed to it in the Data Protection Legislation;

Data Processor has the meaning ascribed to it in the Data Protection Legislation;

Data Protection Legislation means the Data Protection Act 2018 and General Data Protection Regulation and/or all applicable laws and regulations relating to processing of personal data and privacy, including where applicable, the guidance and codes of practice issued by the Information Commissioner;

Individuals means [TBC];

Invitation to Tender means the Invitation to Tender For Consultants to Undertake Evaluation of ERDF Funded Venture Capital Fund document dated 11th August 2021 published by the Client and pursuant to which this Contract was awarded;

Key Project Information means all information which is not in the public domain and which is of a confidential nature, supplied by the Client to the Company, including (but not limited to) the performance data relating to each sub-fund in which the Client is invested;

Personal Data has the meaning ascribed to it in the Data Protection Legislation;



Project means the provision of the Services by the Company to the Client;

Services means the services specified at Section 4 of the Invitation to Tender;

Tender Proposal Document means the tender proposal submitted by the Company to the Client, pursuant to which this contract was awarded;

Term means the period commencing on **TBC** [] 2021 and ending on **TBC** [] 2022.

1.2 References to clauses and schedules are unless otherwise stated to clauses of and schedules to this Agreement.

1.3 The headings of the clauses are for convenience only and shall not affect the construction or interpretation of this Agreement unless the context requires. Words importing one gender include all other genders and words importing the singular include the plural and vice versa.

2. Appointment

2.1 The Client appoints the Company to provide the Services on the terms and conditions of this Agreement. The Services are to be delivered by the Individuals and any substitution or replacement of the Individuals shall only be effected with the prior written consent of the Client.

2.2 The Company will consult regularly, at mutually convenient times, with Alastair Smith and/or such other individuals nominated by the Client to review progress in connection with the provision of the Services generally.

2.3 Unless the Company or an Individual has been specifically authorised to do so by the Client in writing:

2.3.1 neither the Company nor any of the Individuals shall have any authority to incur any expenditure in the name of or for the account of the Client;

2.3.2 the Company shall not hold itself (and shall procure that none of the Individuals hold themselves) out as having authority to bind the Client.

2.4 The Company shall not without the written consent of the Client directly or indirectly engage in any activity which in the reasonable opinion of the Client would give rise to a conflict of interests.

2.5 Timescales, appropriate action and the precise periods during which the Services are to be provided will be agreed between the Company and the nominated representatives of the Client and shall otherwise be as set out in the Schedule, with time being of the essence for the delivery of the Services.

2.6 The Company shall (and shall procure that the Individuals shall) provide the Services with all due care and skill.

3. Fees and Expenses

3.1 The Client shall pay the Company £[TBC] (exclusive of VAT) for all work undertaken to deliver the final report, as described in the Schedule. Any reasonable supplementary work requested by the Client shall be provided



by the Individuals for the Company at the rates specified in the Tender Proposal Document (pro rata as required).

- 3.2 The Client shall reimburse the Company for all reasonable travelling and other expenses properly incurred in the provision of the Services provided that evidence of such expenses having been incurred is provided to the reasonable satisfaction of the Client.
- 3.3 All sums payable under this Agreement unless otherwise stated are exclusive of VAT and other duties or taxes and will be paid against invoices as supplied by the Company.
- 3.4 The Company will be expected to devote sufficient resources as are necessary to deliver the Services to a high standard in the timescale permitted. No equipment will be provided by the Client to the Company.

4. Termination

- 4.1 This Agreement may be terminated at any time by mutual agreement.
- 4.2 This Agreement may be terminated by the Client or by the Company by delivery to the other party / parties of 4 weeks written notice.
- 4.3 This Agreement can be extended beyond the initial Term by mutual agreement.
- 4.4 Notwithstanding any other provisions of this Agreement in any of the following circumstances the Client may forthwith terminate this Agreement by serving written notice on the Company to that effect without prejudice to any other rights or remedies of the Client. In such event the Company shall not be entitled to any further payment from the Client except such sums as shall have accrued due at that time. The circumstances are if the Company (and, in respect of paragraphs 4.4.2, 4.4.3 and 4.4.5, any Individual):
 - 4.4.1 fails to provide the Services in accordance with the requirements set out in the Schedule;
 - 4.4.2 commits any material breach of this Agreement or is guilty of any gross default or wilful neglect in the course of providing the Services;
 - 4.4.3 repeats or continues (after warning) any breach of this Agreement;
 - 4.4.4 fails to attain any agreed targets without good reason;
 - 4.4.5 is guilty of fraud, dishonesty or any conduct likely to bring the Individual or the Client into disrepute;
 - 4.4.6 is unable to provide the Services.

5. Confidential Information, documents and Intellectual property (IP)

- 5.1 The Company is aware that in the course of the provision of the Services, it (and the Individuals) shall have access to and be entrusted with Confidential Information and intellectual property.
- 5.2 The Company shall not (except in the proper course of providing the Services or in respect of any qualifying disclosures pursuant to the Public Interest Disclosure Act 1998) during or after the Term divulge to any person or otherwise make use of (and shall use its best endeavours to prevent the publication or disclosure of) any Confidential Information or intellectual property of the Client. This restriction shall continue to apply after the termination of this Agreement without limit in point of time but shall cease to apply to information ordered to be disclosed by a court of competent jurisdiction or otherwise required to be disclosed by law, or which comes into the public domain otherwise than as a result of a breach by the Company of this Clause 5. This restriction



shall also apply to the Individuals and the Company undertakes to the Client to use its best endeavours to procure that the Individuals comply with the restrictions set out in this Clause 5.

- 5.3 The Company acknowledges that all books, notes, memoranda, records, lists of customers and suppliers and employees, correspondence, documents, computer and other discs and tapes, data listing, codes, designs and drawings and other documents and materials whatsoever (whether made or created by the Company or otherwise) relating to the business of the Client is the property of the Client and shall (unless there is a legal or regulatory requirement for the Company to retain all or the relevant part(s) of it) be surrendered to the Client by the Company upon termination of this Agreement or at the request of the Client at any time beforehand.
- 5.4 The Services are confidential and all data, reports and material will be the property of the Client. The Company will be permitted to call on the Client and quote the Client as a reference provided that the Company seeks written consent at the end of the project and that the Client agrees that the work has been completed to a high standard. The final report and other documentation produced, in whole or in part and any data or material gathered will remain the property of the Client and will not be used by the Company, the Individuals or other third party for any purpose, unless prior permission is sought and given in writing in advance by the Client. The only exceptions to the above are: data already in the public domain; data which was in the possession of the Company prior to its involvement with the Project and data gathered by the Company during the Term but which is gathered by or on behalf of the Company at a time when it is not engaged in providing the Services.
- 5.5 Further to all the above provisions of Clause 5, the Client retain all pre-existing background and other intellectual property (copyright, patent, ideas and know-how of any form) as well as retaining full and unfettered ownership of any new intellectual property arising directly from the work of the Company or any third party assisting the Company on the Project. The Company waives any rights to, or call on, the intellectual property of the Client and their subsidiaries, suppliers and customers whether on pre-existing or newly created intellectual property which relates directly to, or which derived directly from, the Project. In addition the Company agrees to respect the rights of any third party in respect of intellectual property ownership or rights.
- 5.6 The provisions of this Clause 5 are without prejudice to the duties and obligations of the Company to be implied into this agreement at common law.

6. Status of the Company and the Individuals

- 6.1 The relationship of the Company (and the Individuals) to the Client will be that of independent contractor and nothing in this agreement shall render the Company (nor any of the Individuals) an employee, worker, agent or partner of the Client and the Company shall not hold itself out as such and shall procure that the Individuals do not hold themselves out as such.
- 6.2 It is agreed that the Company shall be responsible, where applicable, for all income tax, National Insurance, corporation tax and VAT or similar contributions in respect of the payments made to the Company under this Agreement. The Company agrees to indemnify the Client on demand against all demands for any income tax, employer or employee National Insurance contributions, penalties or interest levied on such payments and against the Client's reasonable and proper costs of dealing with such demands.

7. Notice

Notice may be given by either party by email and/or by letter addressed to the other party at their registered office for the time being and any notice given by letter shall be deemed to have been given at the time at which the letter



would be delivered in the ordinary course of post or if delivered by hand upon delivery and in proving service by post it shall be sufficient to prove that the notice was properly addressed and posted.

8. Data Protection

- 8.1 For the purposes of this Clause, the terms "process" and "data subject" shall have the meanings given to them by applicable Data Protection Legislation; and "Company Personnel" shall mean all employees, agents, consultants and contractors of the Company and/or of any sub-contractor
- 8.1.1 With respect to the parties' rights and obligations under this Agreement, the parties agree that the Client is the Data Controller and that the Company is the Client's Data Processor.
- 8.2 The Company shall comply at all times with Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Client to breach any of their obligations under Data Protection Legislation.
- 8.3 The Company warrants to the Client that it provides sufficient guarantees to implement appropriate technical and organisational measures in such a manner that its processing pursuant to this Agreement shall meet the requirements of Data Protection Legislation and shall ensure the protection of the data subjects' rights.
- 8.4 The Company shall process any Personal Data it collects in the course of providing the services pursuant to this Agreement only for the purposes, and retain it only for such time, as required by the Client pursuant to this Agreement.
- 8.5 The Company shall:
 - 8.5.1 process Personal Data only in accordance with instructions from the Client (which may be specific instructions or instructions of a general nature, either express or implied by the terms of this Agreement, including (but not limited to) the specification of the Services);
 - 8.5.2 process the Personal Data only to the extent, and in such manner, as is necessary for the performance of this Agreement or as is required by applicable law or any regulatory body including without limitation the Information Commissioner;
 - 8.5.3 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 as more particularly set out in Data Protection Legislation. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - 8.5.4 take reasonable steps to ensure the reliability of any Company Personnel who have access to the Personal Data and ensure that the Company Personnel or other persons authorised to process the Personal Data are informed of the confidential nature of the Personal Data, have committed themselves to keep the Personal Data secure and comply with the obligations set out in this clause 8; and
 - 8.5.5 ensure that none of Company Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Client.

9. Miscellaneous

- 9.1 This Agreement is governed by and shall be construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts.
- 9.2 The Company warrants that by virtue of entering into this Agreement it will not be in breach of any express or implied terms of any contract or of any other obligations binding upon it.
- 9.3 No failure or delay by the Client in exercising any remedy, right, power or privilege under or in relation to this Agreement shall operate as a waiver of the same nor shall any single or partial exercise of any remedy, right, power or privilege preclude any further exercise of the same or exercise of any other remedy, right, power or privilege.
- 9.4 No variation of this agreement shall be valid unless it is in writing and signed by or on behalf of both parties. It is accepted by each party that emails shall constitute writing for this purpose.
- 9.5 This agreement may be executed in any number of counterparts, each of which, when executed, shall be an original and all the counterparts together shall constitute one and the same agreement.

11. Contracts (Right of Third Parties) Act 1999

The parties intend that no term of this agreement may be enforced pursuant to the Contracts (Rights of Third Parties) Act 1999 ("the Act") by a Third Party (as defined in the Act).

In Witness whereof duly authorised representatives of the Client and the Company have signed this Agreement on the date appearing at the head of this Agreement.

Signed by a duly authorised representative

Of the Client.....
Director of The North East Fund Limited

Of the Company.....
Director / Authorised Signatory of [TBC]

Date.....



Schedule of Services

Summary

The Services are those set out in Section 4 (headed “Specification of Requirements of the Evaluation”) of the Invitation to Tender document dated 11th August 2021 issued by the Client (the “ITT”) pursuant to which this contract is entered into. The Services shall be delivered by the Company in accordance with the proposals set out in the Tender Proposal Document which it submitted in response to the ITT (the “**Tender Proposal Document**”). The Tender Proposal Document shall be deemed to form part of this contract but in the event of any conflict between it and the terms of this Consultancy Agreement, the terms of this Consultancy Agreement shall prevail.

Deliverables

The Company will in accordance with the timetable set out below supply a written report to the Client, covering all matters specified in Section 4 of the ITT:

By [TBC] 2021	first draft report (electronic copy)
By [TBC] 2022	final report (electronic and 5x hard copies)

All opinion expressed in the report must be supported with appropriate evidence and accompanied by an explanatory commentary.

The report shall be addressed to The North East Fund Limited and to the Ministry for Housing, Communities and Local Government, as the Managing Authority of the European Regional Development Fund.

Resource / Fee Basis

The fee payable by the Client to the Company for providing the services specified at Section 4 of the ITT (including delivery of a presentation summarising the findings of the evaluation) will be as set out in Clause 3 of this Contract.

The Company shall procure that the Individuals provide the Services. The cost (exclusive of VAT) for the time of each individual shall be as set out in the Tender Proposal Document, pro rated as appropriate based on the charge-out rates specified in it.

The Company will provide an estimate of the cost for any work requested by the Client which is not included in the Specification of Requirements of the Evaluation set out at Section 4 of the ITT. Prior to the additional work commencing, the estimated cost must be agreed in writing (which may be email) between the Client and the Company, and the subsequent invoice issued by the Company following completion of the additional work shall give a breakdown of the time engaged by the Individuals to deliver the additional Services.

