



# Downing Ventures EIS

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Memorandum

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# Important notice

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If you are in any doubt about the content of this memorandum (the "Memorandum") and/or any action that you should take, you should seek advice immediately from an independent financial adviser authorised under the Financial Services and Markets Act 2000 ("FSMA") who specialises in advising on opportunities of this type. Applications will only be accepted if submitted through an FCA authorised Intermediary whose details are completed in section 10 of the Application Form. Nothing in this Memorandum constitutes investment, tax, legal or other advice by Downing LLP ("Downing") and your attention is drawn to the section headed "Risk factors" on pages 5 to 6 of this document. An investment through Downing Ventures (the "Service") will not be suitable for all recipients of this Memorandum.

This Memorandum constitutes a financial promotion pursuant to Section 21 of the FSMA and is issued by Downing LLP, Ergon House, Horseferry Road, London SW1P 2AL, which is authorised and regulated by the Financial Conduct Authority in the United Kingdom.

For the purposes of the Alternative Investment Fund Managers Directive (AIFMD), it is considered that the collection of portfolios which are managed on a collective basis may constitute an alternative investment fund (AIF).

Any references to tax laws or levels in this Memorandum are subject to change. Past performance is not a guide to future performance and may not be repeated. The value of Shares can go down as well as up and you may not get back the full amount invested. You should consider an investment through the Service as a medium to long term investment. Investments made through the Service are likely to be illiquid.

No person has been authorised to give any information, or to make any representation, concerning the Service other than the information contained in this Memorandum, the Brochure and the Application Pack, and, if given or made, such information or representation must not be relied upon. This Memorandum does not constitute an offer to sell or a solicitation of an offer to purchase securities and in particular does not constitute an offering in any state, country or other jurisdiction where, or to any person or entity to whom, an offer or sale would be prohibited.

This Memorandum contains information relating to an investment through the Service. An investment may only be made on the basis of this Memorandum (in particular, the Investor Agreement), the Brochure and the Application Pack. Downing has taken all reasonable care to ensure that the facts stated in this Memorandum are true and accurate in all material respects and that there are no other material facts whose omission would make any statement of fact or opinion in this Memorandum misleading. All statements of opinion or belief contained in this Memorandum and all views expressed and statements made regarding future events represent Downing's own assessment and interpretation of information available to it as at the date of this Memorandum. No representation is made or assurances given that such statements or views are correct or that the objectives of the Service will be achieved. Prospective Investors must determine for themselves what reliance (if any) they should place on such statements, views or forecasts, and no responsibility is accepted by Downing in respect thereof.

**Information correct as of 17 August 2016**

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This Memorandum contains additional information in respect of Downing Ventures. It should be read in conjunction with the Brochure and Application Pack.

## How to apply

- Read this Memorandum, the Brochure and the Application Pack.
- Discuss the opportunity with your intermediary.
- Complete and send your application and subscription to:

Downing LLP  
Ergon House  
Horseferry Road  
London SW1P 2AL

## If you have any questions, please contact us:

Telephone: 020 7416 7780  
Email: [eis@downing.co.uk](mailto:eis@downing.co.uk)  
Web: [www.downing.co.uk](http://www.downing.co.uk)

# The Service

## Who is this Service likely suitable for?

This opportunity may be suitable for Investors with the following characteristics:

- High net worth and sophisticated investors who are UK residents.
- Investors who have sufficient income tax liability to reclaim income tax relief at 30% of the amount invested into EIS companies.
- Investors who are seeking to shelter assets from inheritance tax.
- Investors who have realised a taxable capital gain they wish to defer.
- Investors who are looking to invest in a portfolio of small higher risk but potentially high return companies.
- Investors who will not need access to their capital for at least four to eight years and are comfortable with higher risk investments.

## Investment amounts

The minimum individual investment through the Service is £15,000, subject to the Manager's discretion. There is no restriction on the maximum Subscription by an individual. However, the maximum amount on which an Investor can obtain EIS tax reliefs in each of the tax years ending 5 April 2016 and 5 April 2017 is £1,000,000. Each spouse or civil partner has his or her own limits and they are not aggregated. These limits do not apply to capital gains tax deferral or IHT relief.

The Manager will seek to invest all funds raised into the underlying businesses within the shortest possible time frame although it may take some time to find enough suitable opportunities and investments could span more than one tax year. There is no guarantee that enough suitable opportunities will be found. Any remaining uninvested funds may be returned to Investors.

Should an Investor die before his or her Subscription is fully invested, all uninvested sums subscribed by him or her will be repaid (net of any costs) by the Manager upon receipt of notice from the Investor's personal representatives.

EIS investors are permitted to carry back part of their investment to the previous tax year, so long as they have not used their limit in the previous tax year. If EIS Investors have not used all of their £1,000,000 limit for the tax year ending 5 April 2016, then they could carry back up to £1,000,000 of their investment to that tax year in respect of investments made by the fund prior to 6 April 2017.

## Service structure

When Investors subscribe through the Service, they appoint the Manager to invest their Subscriptions on a discretionary basis in Qualifying Companies. The Service is based on an agreement between the Manager and each Investor as set out in the Investor Agreement in this Memorandum.

The Subscriptions made will be aggregated, where possible, for the purpose of making investments. The Shares will be held in the name of the Nominee acting as nominee for the Investors. The Investors will be the beneficial owners of the Shares. The Manager will be responsible for discretionary decisions in relation to the selection of, and (subject to limitations) the exercise of rights in relation to investments made, but the Investor retains beneficial ownership of the underlying Shares. An Investor cannot require the Manager to dispose of his or her interest in a Qualifying Company prior to disposal of the overall position of the Investors in that Qualifying Company. However, the Manager may, at its absolute discretion, have regard to any requests made to it to terminate any individual participation through the Service. Termination may result in a loss of EIS tax reliefs and crystallisation of any deferred gain.

## Life of the Service

In order to retain the EIS tax reliefs, Investors are required to hold Shares for the Three Year Period.

It would be prudent to view an investment made through the Service as medium to long term. A person should only invest through the Service with a view to leaving the investment intact for four to eight years from the date the underlying investments are made.

There are two distinct periods from the close of the fundraising as set out below.

## Exits

No Investor should invest if they might need access to their capital during the initial holding period. In the event of a request to exit early, the Manager will seek a buyer for the holding but can make no guarantee one will be found. Investors may have to accept a significant discount on their Shares in order to realise their investment early and they may lose the EIS tax reliefs.

It is the Manager's intention to offer Investors exit opportunities within four to eight years from the date the underlying investments are made. There are no arrangements for this, and no guarantee that it will be achieved. We will only invest in companies that have a potential route to exit at the time the initial investment is made.

When an investment is realised, the realisation proceeds will be paid to Investors. Investors may then have (assuming that there has been no change to the legislation and subject to personal circumstances) the opportunity to re-invest the proceeds through a new EIS service with a view to preserving any capital gains tax deferral, maintaining the inheritance tax exemption and obtaining further income tax relief.

## Withdrawals

Partial withdrawals from the Service are not permitted. However, Investors may terminate their Investor Agreement and make an early withdrawal from the Service by transferring their shareholdings in the Qualifying Companies into their own names. Please note that if a disposal of Shares to a third party occurs before the end of the Three Year Period, Investors will have to repay the initial income tax relief (if it has been claimed). Any deferred gains will crystallise on a disposal of Shares at any time.

The Manager will have a lien on all assets being withdrawn by an Investor and shall be entitled to dispose of some or all of the same and apply the proceeds in discharging that Investor's liability to the Manager in respect of damages or accrued but unpaid fees including any Performance Incentive accrued until the time of withdrawal. The balance of any sale proceeds and control of any remaining investments will then be passed to the Investor.

## Operation of the Service

### Client account

Investors' Subscriptions will be held in the Custodian's aggregated client account prior to investment in Qualifying Companies and, following the realisation of investments in Qualifying Companies, prior to the distribution of proceeds to Investors: The interest arising therefrom will be paid to the Manager and Custodian as a contribution towards the costs of establishing the Service.

All documents of title will be held by the Nominee and will be registered in the name of the Nominee.

Investors have no direct contractual relationship with the Custodian.

### Allocations

The Manager will maintain accounts which will be open to inspection by each Investor showing the amount contributed by that Investor and the amounts invested and yet to be invested on that Investor's behalf.

The number of shares in each Qualifying Company allocated to a particular Investor shall, where possible, be calculated by reference to the proportion which the Investor's Subscription bears to the total Subscriptions by all Investors at the time the investment is made. It is intended that monies received from each Investor will be invested on a pro-rata basis to his or her Subscription, as investment opportunities arise. Variations to this standard procedure will occur to avoid issuing fractions of shares, or, for example, where the Manager has received special instructions from an Investor or if an Investor is subject to professional rules preventing him or her from making an investment in a particular Qualifying Company.

### Investment in selected companies

When the Manager has selected a suitable Qualifying Company, and appropriate terms and conditions have been negotiated, it will subscribe for new shares in the Qualifying Company on behalf of Investors.

Share certificates will be issued in the name of the Nominee. Any dividends received by the Custodian or the Nominee from Qualifying Companies will be forwarded directly to Investors. The Manager does not anticipate any dividends being paid by the Qualifying Companies during at least the first four years from investment.

### Investment Agreement

As a precondition of investment, each Qualifying Company will normally be required to enter into an investment monitoring agreement regulating, to the extent possible, the conduct of its business. This agreement will normally remain in place until the investment is realised. The agreement will normally give the Manager the right to nominate a director to the board of the Qualifying Company and will require the supply of regular management accounts and other information to the Manager to enable it to monitor the Qualifying Company.

Until a realisation is achieved, the Manager will seek to ensure that EIS Companies comply with the EIS rules, and are appraised of the consequences should the relief be withdrawn. Tax relief may be withdrawn in certain circumstances and neither the Manager nor the Custodian accepts any liability for any loss or damage suffered by any Investor or other person in consequence of such relief being withdrawn or reduced. In this regard, Investors are strongly advised to read the risk factors set out on pages 5 to 6.

### The Custodian and Nominee

By completing the Application Form contained in this Memorandum, prospective Investors will, inter alia, be deemed to have agreed to the Custodian being appointed by the Manager to exercise the powers, and to carry out duties, on behalf of the Manager in accordance with the provisions of this paragraph, which are as follows:

#### (a) Function

The function of the Custodian will be to exercise the powers and duties which are conferred upon it by the terms of the Memorandum (including this paragraph).

#### (b) Restrictions on transfer

(i) The Custodian shall not be obliged to recognise the title of any person in whom an interest in shares in any EIS Company shall have become vested unless a properly validated notice or evidence of that person's entitlement shall have been produced to the Custodian.

(ii) The Custodian shall not be obliged to recognise any transfer or assignment of an interest in the Shares to any person unless such person shall have first agreed to enter into a transfer or assignment in a form approved by the Manager which shall incorporate an undertaking that such person will be bound by the terms of this paragraph.

#### (c) Custodian's and Nominee's obligations and powers

(i) The Manager will pass cheques to the Custodian, the Custodian will bank the cheques and hold aggregated cleared funds securely in one or more of its FCA approved designated client money bank accounts held by the Custodian on behalf of the Investor.



(ii) The Custodian will make payments from these client money accounts in accordance with proper instructions received from the Manager as relied upon under the FCA rules upon the purchase and delivery of securities providing the instructions comply with FCA rules. It is the responsibility of the Manager, not the Custodian or the Nominee, to ensure that appropriate investments are made.

(iii) All securities will be registered in the name of the Nominee and will be physically delivered to the Custodian.

(iv) The Custodian will hold the securities for safe keeping in its safe, or may at its discretion place them in the vault of an FCA authorised UK bank, held to the order of the Nominee.

(v) The Custodian will upon receipt of instructions from the Manager, together with simultaneous or advanced receipt of sale proceeds, deliver securities to the Nominee.

(vi) In order to safeguard Investors' assets the Custodian will not deliver cash without receipt of securities or securities without receipt of cash to any third party. The Custodian may at its sole discretion agree to place the securities with an approved firm of solicitors in England, held to the order of the Nominee, pending receipt of funds by the Custodian.

(vii) Following the sale of the Shares, the Manager will instruct the Custodian to distribute the monies held to the Investor. The Custodian will transfer funds to the Investor's bank accounts in accordance with proper instructions from the Manager.

(viii) The Custodian will be authorised, on the instruction of the Manager, to exercise voting, pre-emption or similar rights in relation to the Shares in accordance with the Articles of Association of the EIS Companies or any agreement entered into in connection with the subscription for the Shares, and to deal with any rights relating to any share issue made or proposed by an EIS Company.

(ix) The Custodian will seek to ensure that any dividends shall be paid direct to the Investor. In the event that any money in relation to the Shares is received by the Custodian it shall pay such money or monies' worth to the Investor subject to any legal obligations on the Custodian to make retentions for payment of tax and/or fees and expenses payable to the Manager.

(x) The Custodian will be entitled to carry out such reasonable other acts and deeds which are in its reasonable opinion necessary or reasonably incidental to its appointment as a Custodian.

#### (d) Appointment of new Custodian

The Manager may at any time accept the resignation of, or remove, the Custodian, subject to the terms of the agreement between the Manager and the Custodian and the FCA rules, and appoint a new Custodian in its place.

#### (e) Investment

The Custodian may place any monies for the time being held by it on deposit with any bank or building society.

#### (f) Indemnity

By completing the Application Form, each Investor agrees to indemnify Downing (in proportion to each Investor's respective interests in the Shares at the date of the indemnity claim) against any claim made against it by the Custodian and/or Nominee resulting from any and all direct liabilities, obligations, losses, damages, penalties, actions against the Custodian, judgements, suits against the Custodian, proper costs and expenses or disbursements of the Custodian (other than those resulting from the fraud, negligence, wilful default or breach of contract on the part of the Custodian) which may be imposed on, incurred by or asserted against the Custodian in properly performing its obligations or duties as a custodian of the Investor's Shares (under such custody agreement in force from time to time between Downing and the Custodian).

## Risk factors

Prospective Investors should be aware that the value of Shares in EIS Companies can fluctuate. In addition, there is no guarantee that the valuation of the Shares will fully reflect their underlying net asset value, or that Investors will be able to buy and sell at that valuation or at all.

An investment made through the Service is subject to a number of risks. Before making any investment decision, prospective Investors should consider carefully the risks attaching to investing through the Service together with all other information contained in the Memorandum, including, in particular, the risk factors described below. This information does not purport to be exhaustive and the risks below are not set out in order of priority. Additional risks and uncertainties not presently known to the Manager, or that the Manager currently deems to be immaterial, may also have an adverse effect on the business of the Qualifying Companies. Investors should consider carefully whether an investment made through the Service is suitable for them in light of the information in the Memorandum and their personal circumstances.

- Valuations of unquoted companies are determined by the Manager. However, as the Investor's portfolio will be holdings in small unquoted companies with very limited or no historical performance track record, such valuations will include a high degree of judgement, and the actual proceeds generated from the disposal of the Investor's interest in any Qualifying Company may materially differ from the Investor's carrying value prior to the disposal.
- The value of the Shares may go up or down. An Investor may not get back the full amount invested. There is no market, nor is there intended to be a market, in the Shares. As such, the Shares will not be readily realisable. It is not intended that any income or capital will be returned to Investors during the Three Year Period. After holding the Shares in the Qualifying Companies for the Three Year Period, it may still be difficult to realise the Shares or to obtain reliable information about their value.

- The performance of investments made through the Service is dependent on the Manager's ability to identify suitable Qualifying Companies undertaking appropriate Qualifying Trades. In addition, the investment timetable may not be achieved, which would delay the availability of EIS tax reliefs, or, in some cases, result in the loss of EIS tax reliefs. In some circumstances a delay could cause certain Investors to lose the opportunity to defer gains which occurred more than three years prior to investment in EIS Qualifying Companies.
- The past performance of the Manager is not a guide to the future performance of an investment made through the Service.
- The use of borrowing or other funding that will rank ahead of the Service's investments will significantly increase risk.
- Assets held by the Qualifying Companies may be charged as security to other funders. Accordingly, if the terms set out in the security documents are not adhered to, the chargee may enforce its security and the Qualifying Company will no longer control those assets.
- Investors will be the holders in minority interests in Qualifying Companies and accordingly may have little or no ability to influence how the business is conducted.
- There are circumstances in which an Investor could cease to qualify for the taxation advantages offered by the EIS.
- If a Qualifying Company ceases to carry on an Qualifying Trade during the Three Year Period, this could prejudice its qualifying status under the EIS. In addition, if a Qualifying Company does not employ the funds made available to it within the deadlines set out in the EIS, it would be in breach of these rules and tax reliefs would be withdrawn. The situation will be closely monitored with a view to preserving each Qualifying Company's qualifying status, but this cannot be guaranteed.
- A failure of a Qualifying Company to meet the qualifying requirements for the EIS could result in:
  - Investors being required to repay the income tax relief received on Subscription and interest on the same;
  - a liability to capital gains tax on a disposal of Shares; and
  - any deferred or exempted gain crystallising.
  - Investors not being able to claim income tax relief in respect of the Subscription for that Qualifying Company.
  - Investors not being able to defer any capital gain in respect of the Subscription for that Qualifying Company.
  - a full loss of the Subscription for that Qualifying Company.
- Where practicable, advance assurance that each Qualifying Company's activities should qualify under the EIS as appropriate will be sought from HMRC prior to investment. However, there can be no guarantee that the EIS tax reliefs will be available. In such circumstances, subscription monies will not be returned to investors.
- A sale of Shares in any Qualifying Company within the Three Year Period will result in the income tax relief available upon investment in those Shares becoming repayable and a liability to CGT on the disposal may arise.
- It is possible for Investors to lose their EIS tax reliefs and/or CGT deferral relief and/or IHT relief by taking or not taking certain steps; Investors are advised to take appropriate independent professional advice on the tax aspects of their investment.
- The investments may be limited to a small number of Qualifying Companies. Therefore, there may be limited diversification which could increase risk for Investors.
- The information set out in the Brochure and the Memorandum is based upon current taxation, other legislation and HMRC practice, and any changes in the legislation or HMRC practice may affect the value of an investment. In particular, if CGT rates increase then those Investors who choose to defer a gain may face a higher CGT liability when the deferred gain comes back in to charge following an exit. The value of the tax reliefs will depend on the individual circumstances of Investors.

## Definitions

"Adviser Charge"	fee agreed between an FCA authorised and regulated adviser, for advice and related services
"Application Form"	form contained in the Application Pack
"Application Pack"	application form and notes on application for investment under the Service
"AIFMD"	the Alternative Investment Fund Managers Directive (2011/61/EU)
"Brochure"	document dated 17 August 2016 describing the Service
"CGT"	capital gains tax
"Closing Date"	final date upon which applications will be accepted by the Manager
"Compound Return"	internal rate of return being the annualised compound discount rate which when applied to the initial investment and to subsequent distributions and to the value of the investment at a given point in time, produces a net present value of zero (expressed as a percentage)
"Custodian"	Thompson Taraz Depository Limited, of 35 Grosvenor Street, Mayfair, London W1K 4QX (registered number: 06043483; FCA No: 465415), or such organisation as the Manager may appoint to provide, and with whom it has agreed terms for, safe custody and custodial and nominee services in respect of the Service
"Downing" or "Manager"	Downing LLP, which is authorised and regulated by the Financial Conduct Authority in the United Kingdom (whose business was transferred from Downing Corporate Finance Limited)
"EIS"	Enterprise Investment Scheme
"EIS Companies"	companies which are qualifying EIS companies
"EIS Investments"	investments made in EIS Companies
"EIS Trade"	business which qualifies for EIS tax reliefs
"FCA"	Financial Conduct Authority and any successor body
"FSMA"	Financial Services and Markets Act 2000
"HMRC"	HM Revenue & Customs
"IHT"	inheritance tax
"IHTA 1984"	Inheritance Tax Act 1984
"Intermediary"	authorised intermediary who signs the Application Form and whose details are set out in section 10 of the Application Form
"Investor"	individual (and certain trustees) who completes an Application Form which is accepted by the Manager and so enters into the Investor Agreement and invests in Qualifying Companies through the Service
"Investor Agreement"	agreement to be entered into between each Investor and the Manager, in the terms set out in this Memorandum
"ITA 2007"	Income Tax Act 2007
"Memorandum"	this document dated 17 August 2016
"ML Regulations"	Money Laundering Regulations 2007
"NAV"	Net Asset Value
"Nominee"	TT Nominees Limited (registered number: 07822475) or such nominee as the Custodian may appoint to act as the Investor's nominee from time to time
"Performance Incentive"	performance-related incentive payable to the Manager and/or its executives as described on page 10
"Qualifying Companies"	EIS Companies
"Qualifying Trade"	business which qualifies for EIS tax reliefs
"Service"	Downing Ventures, a service set up to enable Investors to invest in Qualifying Companies by way of the Investor Agreement with the Manager
"Shares"	shares in a Qualifying Company purchased through the Service on behalf of Investors
"Subscription"	amount subscribed through the Service net of any Adviser Charges
"Three Year Period"	period beginning on the date the Shares in the Qualifying Company are issued or the date of commencement of the Qualifying Company's trade, whichever is later, and ending three years after the relevant date



# Taxation

## Qualifying Companies

Each Qualifying Company in which the Investor invests through the Service must initially (i.e. at the time of issue of the Shares) not be listed on a recognised stock exchange (as defined for the purposes of EIS rules) and there must be no "arrangements" in place for it to become so listed. In addition, throughout the Three Year Period, it must not be a subsidiary of, or be controlled by, another company; it must either exist to carry on a Qualifying Trade or else be the parent company of a trading group; and there must be no "arrangements" in existence for the company to become a subsidiary of, or be controlled by, another company.

A trading group is a group in which, directly or indirectly, more than 50% of the shares of each subsidiary are held by another member of the group, but any subsidiary employing any of the money raised by the issue of Shares must be a qualifying 90% subsidiary. Non-qualifying business activities (broadly, investment activities and non-qualifying trades) must not comprise a substantial part of the business of the group as a whole. The qualifying business activity for which the money is raised by the issue of Shares must be a trade conducted on a commercial basis and with a view to the realisation of profit. Although it is possible for qualifying activities to be carried on anywhere in the world, the company that issues the shares must have a "permanent establishment" (broadly, a taxable presence) in the UK.

For EIS purposes, the value of the gross assets of the Investee Company and any subsidiaries must not exceed £15 million immediately before the issue of Shares and £16 million immediately afterwards.

The maximum fundraising per EIS Company is restricted to £5 million per year and the maximum number of full-time employees (or full-time equivalent) in the EIS Company at the time of fundraising is restricted to a maximum of 249.

Most types of trades are EIS Trades but the following are excluded:

- a. Dealing in land, commodities or futures, or in shares, securities or other financial instruments;
- b. Dealing in goods otherwise than in the course of an ordinary trade of wholesale or retail distribution, or acting as a wholesaler or retailer of goods of a kind which are collected or held as investments if stock is not actively sold;
- c. Banking, insurance, money lending, debt factoring, hire purchase financing or other financial activities;
- d. Leasing, except certain lettings of ships, or receiving royalties or licence fees (subject to certain exceptional cases);
- e. Providing legal or accountancy services;
- f. Farming, market gardening, forestry, timber production, shipbuilding, coal and steel production;
- g. Property development;
- h. Operating or managing hotels (or similar establishments), nursing homes and residential care homes;

i. Electricity or heat generation or export from which FITs, ROCs or RHI are derived, except electricity generated from anaerobic digestion and hydro power; and

j. Providing services to a trade consisting of any of the above carried on by a "connected person".

The company must not be "in difficulty" when shares are issued. In practice, HMRC accept that a company will not be treated as "in difficulty" within three years of its formation or if it is able to raise funds from existing shareholders or the market.

Shares only qualify for EIS relief if they are ordinary shares which do not, at any time during the Three Year Period, carry any present or future preferential right to dividends (other than to certain fixed rate non cumulative dividends) or to an Investee Company's assets on its winding up, or any present or future right to be redeemed.

## Investment fund status

The Service has not been approved by HMRC under Section 251 of the ITA 2007. The effect of this is that the Investor can only obtain EIS income tax relief in the tax year in which each underlying investment is made, or the previous tax year, rather than in the tax year in which an approved fund closes.

The Manager reserves the right to return a surplus of cash if it concludes that it cannot be properly invested.

When each underlying investment is made, pursuant to this procedure, the Manager will send Investors in that fund an EIS3 Form, once the Qualifying Company has been trading for four months. The EIS3 Form will show the Investor's entitlement to EIS tax relief.

## EIS tax relief

To obtain the tax reliefs described in this section it is necessary for the Service to subscribe for new shares in an EIS Company. The summary overleaf gives only a brief outline of the tax reliefs and assumes that the Investor is a 40% taxpayer. It does not set out all the rules which must be met during the Three Year Period by the EIS Company and the Investor. The tax reliefs will only be relevant to Investors who pay UK income tax and/or wish to defer a capital gain.

The summary is not a substitute for the Investor obtaining professional advice before applying to subscribe for Shares.

## 1. Income tax relief

Individuals can obtain income tax relief on the amount subscribed for Shares in Qualifying Companies provided they are not connected with the issuing company. This is subject to the limit of £1,000,000 across all EIS investments in the tax years ending 5 April 2016 and 5 April 2017. Husbands and wives, and civil partners, can each subscribe up to £1,000,000 for EIS.

To calculate the relief, 30% is multiplied by the amount subscribed in EIS Companies (after deducting Adviser Charges if applicable). Note, Downing's offer charges are paid by the Qualifying Companies after Investors' subscriptions. The relief is given against the individual's income tax liability for the tax year in which the Shares are issued unless the individual makes a carryback claim to the previous tax year. The relief cannot exceed an amount which reduces the Investor's income tax liability to nil.

Income tax relief	
	£
Gross investment	104,000
Illustrative Adviser Charges*	(4,000)
Subscription for Shares	100,000
Less income tax relief at 30%	(30,000)
Net cost of investment	70,000

\* Total of initial Adviser Charge and funds set aside to cover four years ongoing Adviser Charges.

In respect of EIS investments made in the 2016/17 tax year, up to £1,000,000 of the Subscription may be carried back to the 2015/16 tax year (subject to a limit of £1,000,000 across all EIS investments in that tax year).

## 2. Exemption from capital gains tax

Any capital gains realised on a disposal of Shares in the Qualifying Companies after the Three Year Period, and on which EIS income tax relief has been given and not withdrawn, will be capital gains tax-free.

CGT exemption	
	£
Realisation after 3 years	115,000
Less original cost	(100,000)
Tax-free gain	15,000

Any capital gains realised on a disposal within the Three Year Period will be subject to CGT.

## 3. Loss relief against income or gains

Tax relief is available on any loss realised upon a disposal of Shares on which EIS income tax relief (see 1 above) has been given and not withdrawn. The amount of the loss (after taking account of any

income tax relief initially obtained) can be set against the individual's gains in the tax year in which the disposal occurs, or, if not so used, against gains of a subsequent year, or against the individual's taxable income in either the tax year in which the disposal occurs, or the previous tax year.

Loss relief	
	£
Realised value of Shares	Nil
Less subscription for Shares	(100,000)
Income tax relief at 30%	30,000
Loss before loss relief	(70,000)
Loss relief at 40%	28,000
Net loss	(42,000)

The table above assumes the loss has been set against income subject to a marginal tax rate of 40%.

## 4. CGT deferral relief

To the extent to which a UK resident Investor (including certain trustees) subscribes for EIS qualifying shares, he or she can claim to defer paying tax on all or part of a chargeable gain. The gain may have arisen on the disposal of any asset or a previously deferred gain brought back into charge. Although there is a limit of £1,000,000 for EIS income tax relief and for the exemption from capital gains tax upon a disposal (see 1 and 2 above), there is no limit on the amount of the Subscription which can be used to defer a gain. The Shares must be issued within one year before and three years after the date of the disposal which gives rise to the gain or the date upon which a previously deferred gain crystallises. The gain is deferred until there is a chargeable event, such as a disposal of Shares or an earlier breach of the EIS rules.

## 5. IHT – business property relief

Provided a shareholder has owned Shares in a Qualifying Company for at least two years, and certain conditions are met at the time of the transfer, up to 100% business property relief is available, which reduces the IHT liability on the transfer to nil.

The examples in this section are set out for illustrative purposes only. They are not, and should not be construed as, forecasts or projections of the likely performance of investments made through the Service. Please note that this is only a condensed summary of the taxation legislation and should not be construed as constituting advice which a potential Investor should obtain from his or her own investment or taxation adviser before subscribing through the Service. The value of any tax reliefs will depend on the individual circumstances of Investors and may be subject to change in the future.

## Charges - how Downing's charges are applied

### If you are investing through an adviser

Downing's initial charge:	2%
Initial charge to your adviser:	agreed with your adviser
Downing's annual fee:	2% plus VAT per annum
Ongoing fee to your adviser:	agreed with your adviser

### If you are investing through an intermediary who doesn't give you advice (execution only)

Downing's initial charge:	4% (2% of which will usually be paid to your intermediary unless indicated otherwise on your application form)
Downing's annual fee:	2.5% plus VAT per annum (0.5% of which will usually be paid to your intermediary for 4 years)

#### Initial charges

An initial charge of 2% of the amount Subscribed will be payable by Qualifying Companies at the time of investment. If you are investing through an intermediary who doesn't give advice the 2% balance of the initial charge of 4% will be deducted from the exit proceeds realised from four years' time onwards.

#### Annual fee

An annual fee of 2% of the amount Subscribed will be payable by Qualifying Companies usually annually in arrears. In some cases, Downing will charge an upfront payment of up to three years' annual fees at the time of investment. If you are investing through an intermediary who doesn't give advice the balance of the annual fee of 0.5% per annum will be deducted from the exit proceeds when realised.

#### Adviser Charges

Adviser charges are costs that you have agreed with your adviser, in payment for the advice they have provided to you. If agreed between you and your

adviser, Downing can facilitate adviser charges from your investment. For ongoing adviser fees, four years' of charges will be deducted from your subscription and set aside in a client cash account with ongoing adviser charges charged annually and paid from this account. If the funds in this account become exhausted, any further ongoing adviser charges will accrue against your portfolio until liquidity is available for these charges to be taken.

#### Annual management fee

Out of its fee, Downing will be responsible for all the usual running costs of Downing Ventures, namely custodian and nominee fees, bank charges, administration and reporting to investors.

#### Performance incentive

In order to align interests between Downing and Investors, no performance incentive is payable until Investors receive cash proceeds equal to the total invested in Qualifying Companies. The performance fee will then be payable at a rate of 20% of the exit proceeds between £1.00 and £1.10 and 30% thereafter (in respect of each £1.00 invested).

This performance incentive may be payable as a fee or by way of proceeds from equity in a Qualifying Company.

#### Charges to investee companies

An arrangement fee of up to 2% plus VAT of the amount invested will be charged to each investee company. Non-executive directors' fees of up to £5,000-£10,000 per annum may be payable by investee companies. Downing does not charge any other fees such as monitoring, service or exit fees. The cost of all deals that do not proceed to completion will be borne by Downing.

Although most fees and costs are payable by the Qualifying Companies to increase tax efficiency, and not by the Service directly, they will, in effect, reduce the returns generated by the Qualifying Companies for Investors. Any unpaid fees due to the Manager will be recouped from the proceeds of the sale of investments.

#### Worked example of adviser charges

Assuming a £100,000 investment and adviser charges (agreed between the client and the intermediary) of £2,000 for the initial advice and £500 per year (ignoring Downing charges). This example has been provided for illustrative purposes only - the Manager does not suggest any applicable level for adviser charges, which need to be agreed between advisers and investors.

	£	£
Gross investment		100,000
Initial adviser charge	2,000	
Funds set aside to pay ongoing adviser charges (£500 x 4 years)	2,000	(4,000)
Invested in Qualifying Companies		96,000
Income tax relief (30%)		28,800

# Investor Agreement

This Investor Agreement ("the Agreement") sets out the terms of the agreement between the Manager and the Investor in relation to the making of investments, by the Manager, on behalf of Investors (the "Service") as described in the Memorandum. Each such investment will constitute a "Portfolio". Upon acceptance of a signed Application Form, this Agreement, the Memorandum, the Application Form and those parts of the Brochure referred to herein will constitute the whole of the binding agreement between the Investor and the Manager.

## 1. Definitions, construction and interpretation

**1.1** The following terms shall have the following meanings in this Agreement:

**"Applicable Laws"** all relevant English laws, regulations and rules, including those of the FCA;

**"Application Form"** an application form to invest through the Service; completed by the Investor and (where applicable) their adviser in a form considered acceptable by the Manager;

**"Closing Date"** in respect of the Service, the date on which the final Subscription may be made by the Investor through the Service, which shall be a date determined by the Manager and notified to the Investor;

**"EIS"** the Enterprise Investment Scheme set out in ITA Sections 156-257, and in TCGA Sections 150A-150D and Schedule 5B;

**"EIS Relief"** the tax reliefs available under the EIS, including income tax relief, capital gains tax exemption, share loss relief and capital gains tax deferral relief;

**"FCA Rules"** the rules of the FCA as set out in the FCA's Handbook of Rules and Guidance and any other rules and guidance issued by the FCA from time to time;

**"Initial Period"** the period of two years commencing on the Closing Date;

**"Investment"** an investment acquired at the discretion of the Manager for the Investor through the Service;

**"Investment Objective"** the investment objective for the Investments made through the Service as set out in the Brochure and/or the Memorandum;

**"Investment Restrictions"** the investment restrictions for the Investments made through the Service as set out in the Brochure and/or the Memorandum;

**"Investment Services"** the investment services provided under Clause 4 of this Agreement;

**"Regulated Collective Investment Scheme"** an authorised open-ended investment company as defined in Section 237(3) of the Act; or an authorised unit trust scheme as defined in Section 237(3) of the

Act; or a recognised scheme under Sections 264, 270 or 272 of the Act.

**"Regulated Market"** any market included on the list maintained by the FCA in accordance with the provisions of Article 47 of MiFID and included as such on the FCA Register, or any equivalent market similarly regulated in another member state of the EEA.

**"Tax Advantages"** the various tax advantages, including EIS Relief, arising from subscriptions for shares in Qualifying Companies.

**"US Person"** (1) individuals who are United States of America (US) citizens (including dual citizens) or resident, US passport holders, green card holders, individuals born in the US who have not renounced their citizenship, permanent residents of the US and those with a "substantial presence" in the US as defined in US tax law; (2) a partnership or corporation organised in the US or under the laws of the US; (3) certain trusts with a US nexus; and (4) a non-US entity which is controlled by US Persons (if you are in any doubt as to whether you are a US Person you should consult an adviser).

**1.2** Words and expressions defined in either the Memorandum or the FCA Rules which are not otherwise defined in this Agreement shall, unless the context otherwise requires, have the same meaning in this Agreement.

**1.3** Any reference to a statute, statutory instrument or to rules or regulations shall be references to such statute, statutory instrument or rules and regulations as from time to time amended, re-enacted or replaced and to any codification, consolidation, re-enactment or substitution thereof as from time to time in force.

**1.4** References to the singular only shall include the plural and vice versa.

**1.5** Unless otherwise indicated, references to Clauses and Schedules shall be to clauses and schedules in this Agreement.

**1.6** Headings to Clauses are for convenience only and shall not affect the interpretation of this Agreement.

## 2. Investing through the Service

**2.1** This Agreement comes into force on the date that the Manager accepts the Investor's Application Form. An Application Form is accepted when recorded on the register of applications maintained by the Manager.

**2.2** This Agreement enables the Investor to invest through the Service.

**2.3** Where the Investor submits an Application Form which is accepted, and then the Investor makes Subscriptions, the Investor hereby appoints the Manager to fulfil its role in managing the Portfolio for the Investor on the terms set out in this Agreement. The Manager agrees to accept its appointment and obligations on the terms set out in this Agreement.

**2.4** The Manager is Downing LLP and is authorised and regulated by the Financial Conduct Authority with Firm Reference Number 545025. The Manager is a Limited Liability Partnership registered in England and Wales under registered number OC341575 and with a registered address at Ergon House, Horseferry Road, London SW1P 2AL. The FCA's registered address is 25 The North Colonnade, London E14 5HS. This Agreement is supplied to you in English and we will continue to communicate with you in English for the duration of this Agreement. The Investor is classified as a Retail Client. The Investor has the right to request a different client categorisation. However, if the Investor does so, and if the Manager agrees to such categorisation, the Investor will lose protections afforded by certain FCA Rules. This may include, but may not be limited to:

- (a)** the Investor will not be given any of the additional disclosures required to be provided to Retail Clients (for example, on costs, commissions, fees and charges, foreign exchange conversion rates, and information on managing investments);
- (b)** the Manager is entitled to assume that the Investor has the requisite knowledge and experience to understand the risks involved and that they are able financially to bear any investment risk consistent with their investment objectives;
- (c)** the Manager is entitled to assume that the Investor has the necessary level of experience and knowledge to understand the risks involved in relation to any investment, service, product or transaction contemplated by the Memorandum;
- (d)** the FCA Rules imposes detailed requirements on financial promotions directed at Retail Clients. Promotions directed at Professional Clients are simply subject to the high level requirement that they are fair, clear and not misleading;
- (e)** if the Manager were to hold money on behalf of a Retail Client the Manager would have to notify the client of whether interest is payable (which is not required for Professional Clients); and the Manager would not be able to transfer the money to a third party without notifying a Retail Client and without explaining who is responsible for that third party's actions or omissions, and the consequences where that third party becomes insolvent;
- (f)** if the Manager were to manage client assets, the Manager would be obliged to provide Retail Clients with more detailed information periodically. A Retail Client has a right to a periodic statement every three months, rather than every six months for a Professional Client;
- (g)** where the Manager places Investors' orders with third parties for execution, the factors taken into account in obtaining the best possible execution result for a Professional Client will differ to those for a Retail Client. It should be noted that Professional Clients can no longer opt out of best execution; and

**(h)** only Retail Clients are entitled to claim compensation under the Financial Services Compensation Scheme.

**2.5** The Investor confirms that he/she is suitably knowledgeable of the risks associated with Non-Readily Realisable Investments and/or has been suitably advised of these risks.

**2.6** The Investor confirms that he/she is not seeking advice from the Manager on the merits of any investment made through the Service.

**2.7** The Investor agrees that the Manager and Custodian may hold information about them and their affairs in order to verify their identity and financial standing (among other things the Manager and the Custodian may consult a credit or mutual reference agency, which may retain a record of the enquiry).

**2.8** Anti-money laundering regulations aim to prevent criminal property being used or disguised as legitimate wealth. To satisfy these regulations the Investor may have to produce satisfactory evidence of their identity before the Manager can do business with them, and from time to time thereafter. This identification process is designed to assist in the prevention of crime within the financial services industry. If the Investor does not provide the information when requested, the Manager may be unable to accept any instructions from them or provide them with any services.

**2.9** Following receipt of an Application Form, the Manager will write to the Investor enclosing the Manager's form of cancellation notice. If the Investor wishes to exercise his or her right to cancel, the Investor must notify the Manager in writing within 14 days of receipt of the Application Form, at its address as set out in Clause 2.4.

**2.10** If the Investor exercises his or her cancellation rights, the Custodian shall refund any monies paid by the Investor less any charges the Manager has already incurred for any service undertaken in accordance with the terms of the Agreement and less any sums paid to advisers and introducers. The Custodian is obliged to hold the Investor's investment monies until the Manager and the Custodian have completed satisfactorily their money laundering checks.

**2.11** The Manager and the Custodian will endeavour to arrange the return of any such monies as described at clause 2.10 as soon as possible (but in any event, not more than 30 days following cancellation). The Investor will not be entitled to interest on such monies.

**2.12** If the Investor does not exercise this right to cancel within the requisite time period, the Investor will still be entitled to exercise his or her right under Clause 14 below to terminate this Agreement, which is a separate right.

**2.13** The Investor acknowledges that, notwithstanding the right to cancel under the FCA Rules, he or she does not have the right to cancel, terminate and/or reverse any particular investment transaction executed for the account of the Investor before cancellation takes effect.



### 3. Subscription

**3.1** In respect of the Investor's Subscription:

(a) the Investor shall make a Subscription of not less than £15,000 through the Service, subject to the discretion of the Manager, at the same time as submitting his/her Application Form to invest;

(b) the Investor may make further Subscriptions through the Service up to and including the Closing Date. The total Subscriptions made through the Service by the Investor shall be the initial value of the Investor's Portfolio; and

(c) the Investor may not make any Subscription after the Closing Date.

**3.2** The Investor may make a withdrawal of his/her Portfolio, or terminate the Agreement, pursuant to Clause 14 below. In the case of there being excess Subscriptions through the Service which are not, in the Manager's view, capable of being invested appropriately in accordance with the Investment Objective and the Investment Restrictions .within the Initial Period, the Investor shall be deemed to have instructed the Manager to make a partial withdrawal from the Service immediately prior to the end of the Initial Period, such that the Service thereafter has at least 100% of the Subscriptions through the Service invested as at the end of the Initial Period and (unless the Manager, at its discretion, determines to return such excess Subscriptions) to have instructed the Manager to treat such sums withdrawn as new Subscriptions to a subsequent Service as determined by the Manager and notified by the Manager to the Investor (such instructions shall be subject to any such further instructions as are set out in the Investor's Application Form or as agreed with the Investor). The Investor's Application Form to subscribe through the Service shall be deemed to be an Application Form, repeated in similar terms, for any subsequent fund to which excess Subscriptions are diverted pursuant to the terms of this clause.

**3.3** Prior to investment in Investee Companies, and following the realisation of Investments in Investee Companies but prior to the distribution of proceeds, Investors' funds will be held by the Custodian in cash in a designated client money account with trust status. Funds may be held on overnight deposit or, where realisation for investment is not required immediately, in a term deposit not exceeding the lesser of the expected realisation date and three calendar months. All client money will be held in a Prudential Regulatory Authority approved UK bank, typically the Royal Bank of Scotland or another institution with equivalent standing and credit rating. Qualifying Shares will be issued in the name of the Nominee (and, for EIS purposes, the Qualifying Shares will be treated as if they were subscribed for and issued to the Investor who will retain beneficial ownership of them for the life of the Investment). Any

dividends received by the Nominee from Investee Companies will be forwarded directly to the Investor pro rata to the Investor's respective shareholding in such Investee Companies. These will be batched and paid out in dividend runs periodically. De minimis sums will apply as the cost of processing trivial dividends can outweigh the value of the dividend. However, the Manager does not anticipate that any dividends will be paid by the Investee Companies during the Relevant Period. All documents of title will be held by the Nominee on behalf of the Investors.

**3.4** The Investor acknowledges that any monies held on deposit by the Manager or the Custodian are held at the Investor's risk and that neither the Manager, nor any Custodian, nor any director or officer of any of them, will be liable to the Investor in the event of any loss in value of such Investments or the insolvency of any bank with which Investor's funds are deposited, nor will they be so liable in the event of any restriction on their ability to withdraw funds from such bank for reasons beyond the reasonable control of any of them.

### 4. Investment Services

**4.1** The Manager will provide investment services to the Investor as from the receipt of each Application on the terms set out in this Agreement. The Manager will exercise all discretionary powers in relation to the selection of, or exercising rights relating to, Investments on the terms set out in this Agreement. The Manager will also arrange for the Custodian to provide safe custody services in relation to Portfolio investments and cash.

**4.2** The Manager shall not, except as expressly provided in this Agreement or unless otherwise authorised, have any authority to act on behalf of, or in respect of, the Investor or to act as the agent of the Investor. The Investor acknowledges and agrees that the Custodian is not obliged to seek or accept any instruction or direction directly from the Investor in respect of the Custodian's execution of instructions from the Manager relating to the exercise of the Investor's rights relating to Investments.

### 5. Investment objectives and restrictions

**5.1** In performing its services, the Manager shall have regard to, and shall comply with, the Investment Objective and the Investment Restrictions.

**5.2** In performing its services, the Manager shall at all times have regard to:

(a) the need for the Investments to attract the Tax Advantages; and

(b) all applicable laws.

**5.3** The Manager reserves the right to return a small surplus of cash if it concludes that it cannot be properly invested for the Investor and it considers this to be in the best interests of the Investor having regard to availability of EIS Relief for the Investor.

**5.4** In the event of a gradual realisation of Investments, prior to termination of the Service under Clause 14.1, the cash proceeds of realised Qualifying Investments may be placed on deposit (in an interest bearing client account) or invested in government securities or in other investments of a similar risk profile. Any interest paid on such deposits will be payable to the Manager and the Custodian.

## **6. Terms applicable to dealing**

**6.1** The Investor should be aware that the Portfolio will be invested in a range of unlisted securities and that, although some may be traded on AIM or PLUS, there is generally no relevant market or exchange, and consequent rules and customs and there will be varying practices for different securities. Transactions in shares of such securities will be effected on the best commercial terms which can be secured.

**6.2** Where deals are aggregated with other Investors investing through the Service, the number of shares in a Qualifying Company allocated to the Investor shall be calculated by the Manager, taking into account the timing of Subscriptions and with reference to the proportion which the Investor's Subscription through the Service applied to such share purchase bears to the total Subscriptions by all Investors through the Service at a similar time to the Investor's Subscription, provided that Investors shall not have fractions of shares or if the Manager is acting on specific instructions from an Investor (if one or more of the Investors is an accountant, lawyer or other professional person who is subject to professional rules preventing him/her from making an investment in a particular Qualifying Company, then the number of shares so allocated to that Investor or Investors shall not be taken up and the cash value of such shares shall be returned to such Investor, such that the number of shares so allocated to other Investors shall not be increased). Investments may be made through the Service prior to the Closing Date.

**6.3** Subject to both the FCA Rules and the Manager's conflicts of interest policy (a summary of which is included at Schedule 2 of this Agreement) the Manager may make use of dealing commission arrangements in respect of deals undertaken through the Service as may be disclosed to the Investor from time to time.

**6.4** Subject to both the FCA Rules and the Manager's portfolio management policy (at Schedule 1 of this Agreement) the Manager will act in good faith and with due diligence in its choice and use of counterparties but, subject to this obligation, shall have no responsibility for the performance by any counterparty of its obligations in respect of transactions effected under this Agreement.

**6.5** The Manager may aggregate your transactions with those of other customers and of its employees in accordance with the FCA Rules. It is likely that the effect of such an allocation will not work to the Investor's disadvantage; however, occasionally this may not be the case. The Manager will allocate aggregated transactions promptly on a fair basis in accordance with the requirements of the FCA Rules.

**6.6** As an FCA authorised firm the Manager is required to take all reasonable steps to obtain the best possible result on behalf of clients when placing orders for execution that result from decisions by the Manager. Set out in Schedule 3 is the Manager's summary of its execution policy in respect of this requirement. Where applicable, the Manager's decisions will normally be executed by itself or the Custodian in accordance with its execution policy.

## **7. Reports and information**

**7.1** The Manager and where applicable the Custodian shall supply such further information which is in its possession or under its control as the Investor may reasonably request as soon as reasonably practicable after receipt of such request.

**7.2** The Manager shall provide the Investor with a periodic statement once every six months in respect of the Portfolio. The Investor may request in writing that the Manager provide a periodic statement every three months.

**7.3** Reports will include a measure of performance in the later stages of the Portfolio once valuations are available. Any statements, reports or information so provided by the Manager will state the basis of any valuations of investments provided.

## **8. Fees and expenses**

The Manager shall receive fees for its services, and reimbursement of its costs and expenses, as set out in this Memorandum. The Manager will pay the costs of the Custodian.

## **9. Management and custodian obligations**

**9.1** The Manager shall devote such time and attention and have all necessary competent personnel and equipment as may be required to enable it to provide the services properly and efficiently, and in compliance with the FCA Rules.

**9.2** Except as disclosed in any Memorandum issued in relation to the Service and as otherwise provided in this Agreement (for example, on early termination), the Manager shall not take any action which may prejudice the tax position of the Investor insofar as it is aware of the relevant circumstances, and in particular which may prejudice obtaining the Tax Advantages for the Investments.

**9.3** The Custodian will act as custodian of the cash and other assets of the Service.

**9.4** The Custodian will use reasonable care and skill in providing the services under the custodian agreement.

**9.5** The Custodian and the Nominee shall not, in the absence of fraud, negligence, wilful default or breach of contract directly relating to such cost, expense or liability on the part of the Custodian or any delegate, be liable to the Manager or to any Investor for any act or omission in the course or in connection with the proper provision of the services rendered by it hereunder or for any loss or damage which the Manager or Investor may sustain or suffer as a result or in the course of the proper discharge by the Custodian or any delegate of its duties hereunder or pursuant hereto.

**9.6** The Investors indemnify the Custodian and the Nominee from and against any and all direct liabilities, obligations, losses, damages, penalties, actions against the Custodian, judgements, suits against the Custodian, proper costs and expenses or disbursements (other than those resulting from the fraud, negligence, wilful default or breach of contract on the part of the Custodian) which may be imposed on, incurred by or asserted against the Custodian in properly performing its obligations or duties under the Custodian Agreement.

**9.7** The Investors or the Manager shall pay or reimburse the Custodian from time to time on demand for any transfer taxes payable upon transfers, exchanges or deliveries of securities made under the Custodian Agreement in accordance with the Memorandum.

**9.8** The Custodian is authorised to deduct from any cash received or credited to the Investor's account, any amount of taxes or levies required by any revenue or governmental authority for whatever reason in respect of the Investor's accounts.

**9.9** The Custodian and the Nominee shall register all securities in respect of which registration shall be necessary in order to perfect the transfer thereof or title thereto as soon as reasonably practicable after receipt of the necessary documents by or to the order of the Custodian in any name permitted by the FCA Rules. Where securities are subject to the law or market practice outside of the United Kingdom and it is, in the Custodian's opinion, in the Investors' best interests to do so (and only after the Custodian has received written consent from retail clients), the Custodian may register or record or arrange the registration or recording of securities in the Custodian's name, or the name of a third party. If legal title to securities is held by the Custodian, a nominee or a third party, securities shall be segregated and separately identifiable from the Custodian's assets, or the assets of a nominee or third party in accordance with FCA regulations and, in the event of the Custodian's default or the default or insolvency of a nominee or third party (as the case may be), securities will be protected from the claims of the Custodian's creditors or the creditors of a nominee or third party (as the case may be).

**9.10** The Custodian and the Nominee shall hold the certificates and other documents from time to time, representing or evidencing title to the securities by physical possession of the certificates or other instruments representing the securities in registered form, including, inter alia, brokers' receipts or confirmations for future contracts, options or similar investments.

**9.11** The Custodian and the Nominee shall clearly identify securities held by it or to its order hereunder as being the property of Investors using the Service (on an omnibus basis such that Investors are not individually identified to the Custodian or recorded in the records of the Custodian or Nominee) and shall maintain its records so as to ensure that it is readily apparent that the securities are the property of Investors. Documents of title for securities shall be recorded and accounts in which securities are

held shall be named or designated to make it clear that the relevant property belongs beneficially to Investors (on an omnibus basis and not by individual identification). Where securities are held by a delegate of the Custodian, the Custodian will take reasonable steps to ensure that the records of the relevant entity make it clear that securities are held by or on the Custodian's behalf for Investors and that they do not belong to the Custodian or any such delegate of the Custodian. The purpose of this is to make clear in the event of the failure of any such entity, that the securities are held on behalf of third parties and are not available to creditors of that entity if it fails. However, it cannot be guaranteed that there would be no loss of securities in the event of such a failure. Where securities are held by a delegate of the Custodian outside the UK, it may not be possible under the relevant law of that country for securities to be separately identifiable from the assets of the delegate of the Custodian or from the Custodian's assets and accordingly there may be a greater risk of loss in the event of a failure of any such delegate of the Custodian. In accordance with the FCA rules, the Manager maintains a register identifying each Investor's beneficial ownership and entitlement to Shares held by the Nominee.

**9.12** Although the Custodian will not commingle securities with its own property, the Custodian may commingle the securities with securities held for other customers. In addition, securities deposited with a delegate of the Custodian may be held in an omnibus account by the delegate of the Custodian. In each case individual client entitlements may not be identifiable by separate certificates, or other physical documents of title, entries on the register or equivalent electronic records. If there is an irreconcilable shortfall following any default by the Custodian or a delegate of the Custodian, the Investors may not receive their full entitlement and may share in the shortfall pro-rata among the Custodian's other clients or the delegate's other clients.

**9.13** The Manager shall have discretion to instruct the Custodian to exercise the voting and other rights attaching to the Investments provided that the voting and other rights exercisable by the Manager and the Custodian shall not exceed 50% of the aggregate rights relating to any investment.

## **10. Obligations of the Investor**

**10.1** The Service established by this Agreement is set up on the basis of the declaration made by the Investor in his/her Application Form which includes the following statements by the Investor:

- (a)** the fact as to whether or not the Investor wishes to seek EIS Relief for the Investments;
- (b)** the Investor agrees to notify the Manager if any Investment in any company is in a company with which the Investor is connected within sections 166, 167, 170 and 171 ITA 2007;
- (c)** the Investor agrees to notify the Manager if, within three years of the date of issue of shares, the Investor becomes connected with, or receives value from, a Qualifying Company which is an Investment; and

(d) the Investor confirms that the information stated in the Application Form in relation to him/her is true and accurate as at the date of this Agreement.

**10.2** The Investor must immediately inform the Manager in writing of any change of tax status, other material change in circumstance and any change in the information provided in the Application Form to which Clause 10.1 above refers.

**10.3** The Investor must provide the Manager with any information which it reasonably requests for the purposes of providing the Service pursuant to the terms of this Agreement.

## **11. Delegation and assignment**

**11.1** The Manager may employ agents, including associates, to perform any administrative, custodial or ancillary services to assist the Manager in performing the Service, in which case it will act in good faith and with due diligence in the selection, use and monitoring of agents but otherwise shall have no liability in respect of such agents.

**11.2** The Manager may from time to time change or amend the terms of the relationship with the Custodian, including replacement thereof and negotiate such terms on an arm's length basis in good faith.

**11.3** The Manager may assign this Agreement to any appropriately authorised and regulated person, such assignment being effective upon written notice to the Investor. This Agreement is personal to the Investor and the Investor may not assign it.

## **12. Potential conflicts of interest and disclosure**

**12.1** The Manager and the Custodian may provide similar services or any other services whatsoever to any other customer and neither the Manager nor the Custodian shall in any circumstance be required to account to the Investor for any profits earned in connection therewith. So far as is deemed practicable by the Manager or Custodian, the Manager or the Custodian will use all reasonable endeavours to ensure fair treatment as between the Investor and other customers in compliance with the FCA Rules.

**12.2** The Manager has in place a conflicts of interest policy (the "Conflicts Policy") pursuant to the FCA Rules which sets out how it identifies and manages conflicts of interest. Set out in Schedule 2 is a summary of the Manager's Conflicts Policy.

## **13. Liability**

**13.1** Each of the Manager and Custodian will at all times act in good faith and with reasonable care and due diligence. Nothing in this Clause 13 shall exclude any duty or liability owed to the Investor under the FCA Rules.

**13.2** The Manager and Custodian shall not be liable for any loss to the Investor arising from any investment decision made in accordance with the Investment Objectives and the Investment Restrictions or for other action in accordance with this Agreement, except to the extent that such loss is directly due to the negligence or wilful default or fraud of the Manager or Custodian or any of their own employees.

**13.3** The Investor agrees to indemnify the Manager from and against any and all direct liabilities, obligations, losses, damages, penalties, actions against the Manager, judgements, suits against the Manager, proper costs and expenses or disbursements (other than those resulting from the fraud, negligence, wilful default or breach of contract on the part of the Manager), which may be imposed on, incurred by or asserted against the Manager.

**13.4** The Manager may be separately engaged by some of the Qualifying Companies to assist those companies to raise finance. The Manager will receive a fee from each such unquoted company for its services. Part of the Manager's fee from such unquoted companies may therefore be calculated by reference to the amount that the Investor invests.

**13.5** The Manager gives no representations or warranty as to the performance of the Portfolio. EIS Investments are high risk Investments, being Non-Readily Realisable Investments. There is a restricted market for such Investments and it may therefore be difficult to sell the Investments or to obtain reliable information about their value. Investors should consider the suitability of investment in EIS Investments carefully and note the risk warnings set out in this Memorandum.

**13.6** If the Custodian should fail to deliver any necessary documents or to account for any Investments, the Manager will take all reasonable steps on the Investor's behalf to recover such documents or Investments or any sums due or compensation in lieu thereof but, subject thereto to the Manager's general duty of good faith, shall not be liable for such failure.

**13.7** In the event of any failure, interruption or delay in the performance of the Manager's obligations resulting from acts, events or circumstances not reasonably within the Manager's control (including, but not limited to: acts or regulations of any governmental or supranational bodies or authorities; breakdown, failure or malfunction of any telecommunications or computer service or services; and acts of war, terrorism or civil unrest) the Manager shall not be liable to the Investor for consequent loss in the value of an investment, or failure to perform investment transactions for the account of the Investor.

## **14. Termination**

**14.1** The Manager shall set a date, which it shall notify to the Investor, on which the Service will terminate. This is expected to be up to eight years after the Closing Date. On termination of the Service, all shares for the Investor's Portfolio may be transferred into the Investor's name or as the Investor may otherwise direct.

**14.2** An Investor may withdraw from the Service (and also, by terminating the Agreement in respect of an Investment, partially terminate this Agreement) prior to termination of the Service in which case all his/her Investments shall be sold and cash transferred but the Investor should note:

- (a) that he/she may lose EIS Relief in respect of them;
- (b) that it may not be practicable for the Shares to be sold, in which case there may be a delay in completing the withdrawal. If it is practicable to



effect, and the Investor decides to proceed with an early withdrawal, the Manager will, unless the Investor otherwise requests, effect the withdrawal on the last business day of the month following that in which such decision is made; and

(c) the Manager has a lien over the Investor's Investment in respect of damages or accrued but unpaid fees and shall be entitled to dispose of all or any such investments in order to discharge the Investor's liability and to pay any balance to the Investor.

**14.3** If:

(a) the Manager gives to the Investor not less than three months' written notice of its intention to terminate its role as Manager under this Agreement; or

(b) the Manager ceases to be appropriately authorised by the FCA or becomes insolvent

the Manager shall endeavour to make arrangements to transfer the Service to another fund manager in which case that manager shall assume the role of the Manager under this Agreement, failing which the Agreement shall terminate forthwith and, subject to Clause 15, the Investments in the Investor's Portfolio shall be transferred into the Investor's name or as the Investor may otherwise direct.

## **15. Consequences of termination**

**15.1** On termination of this Agreement pursuant to Clause 14, the Manager will use reasonable endeavours to complete all transactions in progress at termination expeditiously on the basis set out in this Agreement.

**15.2** Termination will not affect accrued rights, existing commitments or any contractual provision intended to survive termination and will be without penalty or other additional payments save that the Investor will pay fees, expenses and costs properly incurred by the Manager and the Custodian up to and including the date of termination and payable under the terms of this Agreement.

**15.3** On termination, the Manager may retain and/or realise such Investments as may be required to settle transactions already initiated and to pay the Investor's outstanding liabilities, including fees, costs and expenses payable under Clause 8 of this Agreement.

## **16. Risk warnings and further disclosures**

**16.1** Your attention is drawn to the risk warnings set out in the Memorandum.

**16.2** The Manager will not borrow money on behalf of Investors, nor lend securities or enter into stock lending or similar transactions. For the avoidance of doubt, the Qualifying Companies may borrow money or enter into similar transactions, subject to the Investment Objectives and Investment Restrictions.

**16.3** The Manager cannot require Investors to add further monies following subscription through the Service.

**16.4** The Manager will not use the Subscriptions to invest in warrants, units in collective investment schemes or derivatives of any sort.

## **17. Confidential information**

**17.1** None of the Manager, Custodian or Investor shall disclose to third parties or take into consideration information either:

(a) the disclosure of which by it would be or might be a breach of duty or confidence to any other person; or

(b) which comes to the notice of an employee, officer or agent of the Manager or the Custodian but properly does not come to the actual notice of that party providing services under this Agreement.

**17.2** The Manager and the Custodian will at all times keep confidential all information acquired in consequence of the services, except for information which:

(a) is in the public knowledge;

(b) they may be entitled or bound to disclose under compulsion of law;

(c) is requested by regulatory agencies;

(d) is given to their professional advisers where reasonably necessary for the performance of their professional services; or

(e) is authorised to be disclosed by the other party.

The Manager and the Custodian shall use all reasonable endeavours to prevent any breach of this sub-clause.

## **18. Complaints and compensation**

**18.1** The Manager and the Custodian have established procedures in accordance with the FCA Rules for consideration of complaints. Details of these procedures are available from them on request. Should an Investor have a complaint, they should contact the Manager. If the Manager cannot resolve the complaint to the satisfaction of the Investor, the Investor may be entitled to refer it to the Financial Ombudsman Service. Any complaints shall be the responsibility of the Manager.

**18.2** The Manager participates in the Financial Services Compensation Scheme, established under the Financial Services and Markets Act 2000, which provides compensation to eligible investors in the event of a firm being unable to meet its customer liabilities. Payments under the protected investment business scheme are limited to a maximum of £50,000. Further information is available from the Financial Services Compensation Scheme, 10th Floor, Beaufort House, 15 St Botolph Street, London EC3A 7QU.

## **19. Notices, instructions and communications**

**19.1** Notices of instructions to the Manager should be in writing and signed by the Investor, except as otherwise specifically indicated.

**19.2** The Manager may rely and act on any instruction or communication which purports to have been given by persons authorised to give instructions by the Investor under the Application Form or subsequently notified by the Investor from time to time and, unless that relevant party receives written notice to the contrary, whether or not the authority of such person



shall have been terminated.

**19.3** All communications to the Investor shall be sent (whether postal or electronic) to the latest address notified by the Investor to the Manager and shall be deemed to be received by the Investor on the second day after posting or on the day after dispatch in the case of electronic communication. All communications by the Investor shall be made in writing, in English, to the Manager at Ergon House, Horseferry Road, London SW1P 2AL or (save as otherwise provided) shall be made by telephone to the Manager, in which case conversations may be recorded for the avoidance of any subsequent doubt. Communications sent by the Investor will be deemed received only if actually received by the Manager. The Manager will not be liable for any delay or failure of delivery (for whatever reason) of any communication sent to the Investor.

## **20. Amendments**

The Manager may amend these terms and conditions in this Agreement by giving the Investor not less than 10 business days' written notice. The Manager may also amend these terms by giving the Investor written notice with immediate effect if such is necessary in order to comply with HMRC requirements in order to maintain the EIS Relief in order to comply with the FCA Rules.

## **21. Data protection**

All data which the Investor provides to the Manager is held by that party subject to the Data Protection Act 1998. The Investor agrees that the Manager and Custodian may pass personal data to each other and to other parties insofar as is necessary in order for them to provide their services as set in this Agreement and to the FCA and any regulatory authority which regulates them and in accordance with all other applicable laws.

Personal information will be stored on the Manager's database and may be used by the Manager to send the Applicant details of new and existing products (including by e-mail) unless the Applicant notifies the Manager in writing that it may not be used in this way. The Manager is registered under the data protection laws of the United Kingdom.

## **22. Entire agreement**

This Agreement, together with the Application Form, comprise the entire agreement of the Manager with the Investor relating to the provision of the Service.

## **23. Rights of third parties**

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

## **24. Severability**

If any term, condition or provision of this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term in, condition or provision shall not affect the validity, legality or enforceability of the remainder of this Agreement.

## **25. Governing law**

This Agreement and all matters relating thereto shall be governed by and construed in accordance with English Law and the parties submit to the exclusive jurisdiction of the English Courts.

## **26. Alternative Investment Fund Manager Directive (2011/61/EU)**

Prospective Investors should note that the Service is an 'alternative investment fund' ("AIF") for the purposes of the Alternative Investment Fund Managers Directive (2011/61/EU) ("AIFMD"). Downing is an alternative investment fund manager ("AIFM") for the purposes of AIFMD. Prospective Investors are advised that Downing is not currently subject to the AIFMD in the United Kingdom and accordingly Investors in the Service will not benefit from the protections and rights set out in the AIFMD. Notwithstanding the foregoing, Downing may in the future be required (or elect) to comply with AIFMD, in which case the information regarding Downing's compliance with AIFMD will be made available to Investors. Nothing herein should be construed as an offer or solicitation or as marketing of any AIF in the EEA save in circumstances where such an AIF is permitted to be marketed in accordance with AIFMD (and the laws and regulations implementing AIFMD in any EEA member state).

## **27. Foreign Account Tax Compliance Act**

The Foreign Account Tax Compliance Act (FATCA) came into force on 1 July 2014. The Investor agrees to supply information to the Manager to comply with FATCA and any other subsequent similar acts and to provide such information to HMRC or other bodies as applicable.

## **28. Custodian Terms and Conditions**

The Custodian will operate their Retail Client Terms and Conditions and these are available from their website.

### **Schedule 1: Portfolio management policy**

- 1.** The Manager will select companies on the basis of the Investment Objectives and Investment Restrictions set out in the Memorandum.
- 2.** The Manager is aware that new shares in Qualifying Companies should be held for the Three Year Period to obtain the benefits of the EIS.
- 3.** The Manager may look to exit an investment prior to the end of the Three Year Period if the growth of the investment has outperformed the market and covers any loss of tax benefit. It may also exit an investment in the event of a trade sale of the investment.
- 4.** Once the Three Year Period has expired, the Manager will use reasonable endeavours to liquidate the holdings with a view to the holdings becoming fully liquid between four and eight years of the Closing Date.

### **Schedule 2: Conflict of interest policy**

The Manager has produced a policy to manage effectively the conflicts of interest that may arise from its business as required by the rules and guidance

contained in chapter 10 of the Senior Management Arrangements, Systems and Controls rules issued by the FCA ("SYSC"). The policy has been reviewed and approved by the Manager and is subject to monitoring by the Manager.

Under the SYSC, the Manager is required to take all reasonable steps to identify conflicts of interest between:

- (1) the Manager, including its employees and contracted consultants, or any person directly or indirectly linked to them by control, and a client of the Manager; or
- (2) one client of the Manager and another client.

The Manager believes that it should identify any conflicts that may arise in other situations including between the Manager and any of its shareholders. Where the Manager owes a duty to such clients, it must maintain and operate arrangements to prevent any conflict from giving rise to a material risk of damage to the interests of its clients.

A copy of the Manager's "conflict of interests" policy is available upon request.

### Schedule 3: Execution policy

#### General

Execution factors and execution criteria:

Downing LLP ("Downing") has an obligation when executing orders on behalf of clients to obtain the best possible outcome. The FCA requires various execution factors to be taken into account including price; cost; speed; market impact, likelihood of execution and settlement; size; or any other consideration relevant to the execution of the order. Price will ordinarily merit a high relative importance in obtaining the best possible result. However, in some circumstances, Downing may appropriately determine that other execution factors are more important than price in obtaining the best possible execution result. Downing will determine the relative importance of the execution factors by using its commercial judgment and experience in light of market information available and taking into account the execution criteria.

The execution criteria are defined as the characteristics of the client, order (orders placed in the market will indicate a price range that is suitable for the investment decision), type of financial instrument (some shares are more liquid than others, and illiquid shares will be less easily tradable in volume) and the execution venue.

#### Specific instructions

We do not routinely accept specific instructions as to how we should execute orders; however, where an Investor has provided Downing with specific instructions regarding an order, Downing will endeavour to execute the order in accordance with those specific instructions. Investors should be aware that providing specific instructions to Downing in relation to the execution of a particular order may prevent Downing from taking the steps set out in

this execution policy to obtain the best possible result in respect of the elements covered by those instructions.

#### Monitoring and review

Downing will review the effectiveness of its execution policy and order execution arrangements on an annual basis. Whenever a material change occurs that affects Downing's ability to continue to obtain the best possible result for the Investor, Downing will notify the Investor of any material changes to its execution arrangements or its execution policy by posting an updated version on its website.

#### Notification of changes

Downing will notify its clients of any material changes to its order execution arrangements and policy. It may provide information, including details of any changes, either in a durable medium or via its website.

#### Unquoted investments specific

##### Characteristics of client order

In the absence of a specific client order or instructions from a client, Downing generates its decision to deal for its clients when it makes its investment management decision at one of its investment committee meetings called to decide whether to proceed with the investment/realisation decision.

##### Characteristics of financial instruments

All of the private equity financial instruments transacted in are shares, loan notes, options or other related instruments of private companies or other corporate bodies. None of them are admitted to trading on any regulated exchange, multilateral trading facility ("MTF") or other market. The mix of financial instruments is important and the mix is chosen to achieve optimum value generation for Downing's clients. Each structure is tailored to individual investment situations and there is no ideal structure. Downing is available to explain to its clients the characteristics of the financial instruments used in any individual situation.

##### Characteristics of execution venues

The most distinctive characteristic of the transactions that Downing directly executes is that they are inherently off-market transactions subject to direct negotiation with an independent third party.

In relation to acquisitions by Downing for its clients, the third party is generally the only possible source of the relevant instrument. Normally, this is the issuing company, though sometimes it is an existing holder of the relevant securities. In the case of disposals, the possibility of an IPO producing a higher price for Downing's clients is considered (and any disposals through an IPO are then handled through brokers in accordance with the policy for quoted investments) but, unless an IPO is considered clearly advantageous, the transaction remains off-market and handled through private negotiations with third parties who are willing to purchase the relevant instruments.

Accordingly, there is normally no choice of execution venue in either case, and generally there is only a choice of counterparty in the case of realisations. The decision of the Investment Committee on investment/realisation, and the negotiations with counterparties, and possible counterparties, therefore incorporate within them a consideration of the execution factors of price, costs, speed, likelihood of execution and settlement size and the nature of transaction and other relevant considerations, as part of the decision whether to buy or sell the relevant financial instrument on particular terms rather than, as may be the case with securities for which there is a choice of execution venue, the execution factors and related choice of venue being capable of separate consideration after a decision to trade has been taken without considering those factors.

#### Price and Value Generation

Depending on whether Downing is investing in or realising private equity investments, it will normally consider the best result to be paying the minimum total consideration or obtaining the maximum total consideration respectively for its clients, representing the price of its financial instruments less the costs related to execution, such as legal and other expenses. However, in relation to acquisitions, Downing also considers the overall best result for the client on realisation of the investment as part of its initial structuring of transactions. In some cases, negotiating the appropriate level of control over the conduct of the business and providing appropriate incentives for growth of the business may be regarded as more important to achieving the best possible result for its clients than simply getting the lowest possible acquisition cost. Equally, in relation to both acquisitions and disposals, although the pricing is of the highest importance, attention is also paid to the size of the stake and the importance of achieving completion of the transaction with a reliable counterparty in order to ensure settlement in view of the limited range of possible sellers and buyers in each case. Additionally, particularly on disposals, obtaining the highest possible price has to be weighed against any warranties, escrow agreements and any other ongoing liabilities on disposal.

In accordance with FCA requirements, Downing is obliged to inform its clients that client orders may be executed outside a regulated market or an MTF.

#### Special purpose vehicles ("SPVs")

Investments may be made in SPVs and accordingly Investors will be issued Shares in such SPVs. As shares in SPVs cannot be obtained from any other sources there is limited opportunity to apply the execution factors.

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