

DATED

2016

(1) SOUTH WEST INVESTMENT GROUP (CAPITAL) LIMITED

(2) XXXXXXXXXXXX LIMITED

**AGREEMENT FOR THE PROVISION
OF
SUPER DEBT RECOVERY SERVICES TO THE SOUTH WEST LOANS FUND
(CONVERGENCE)**

DRAFT: 22 DECEMBER 2015

SUBJECT TO CONTRACT/CONFIDENTIAL

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THIS AGREEMENT is made this day of 2016

BETWEEN:

- (1) **SOUTH WEST INVESTMENT GROUP (CAPITAL) LIMITED** (registered number 2360656) whose registered office is at Lowena House, Glenthorne Court, Truro Business Park, Truro TR4 9NY ("**SWIG Capital**"); and
- (2) **XXXXXX LIMITED** (registered number) whose registered office is at [registered office address] ("**SDR Manager**")

BACKGROUND

- (A) SWIG Capital has received public funding under the ERDF [Convergence] programme, which it has used to provide Loans of up to £250,000 to qualifying businesses.
- (B) FCFM is the Fund Manager currently appointed by SWIG Capital in relation to the Fund.
- (C) The investment period has now ended and SWIG Capital wishes to appoint the SDR Manager to provide a debt recovery service in relation to Loans in accordance with this Agreement and working alongside FCFM.
- (D) This Agreement (including its schedules) sets out the terms upon which the SDR Manager, primarily through the services of the Key Individual(s), will carry out the Super Debt Recovery Services (as defined below).

OPERATIVE PROVISIONS

1 INTERPRETATION

- 1.1 In this Agreement the following expressions have the following meanings unless inconsistent with the context:-

Expression	Meaning
"Act"	The Financial Services and Markets Act 2000 as amended, varied and supplemented from time to time.
"Affiliate"	any person which is, in relation to the company, its parent undertaking or its subsidiary undertaking, or a subsidiary undertaking of its parent undertaking or any other person controlled by or under the same control either directly or indirectly. "Parent undertaking" and "subsidiary undertaking" shall have the meaning attributed to them in the Companies Act 2006.
"Borrower"	the recipient of a Loan.
"the Commencement Date"	[] 2016.

"Confidential Information"	confidential information (however it is conveyed and on whatever media it is stored), which has either been designated as confidential by the disclosing party in writing or which would reasonably be considered as subject to a duty of confidentiality, and which the SDR Manager has obtained in the course of the provision of the Super Debt Recovery Services (and for the purposes of this definition, all information received by the SDR Manager from a Borrower shall be presumed to be confidential, unless the SDR Manager proves otherwise).
"Data Processor" and "Personal Data"	shall have the meanings respectively given in the Data Protection Act 1998.
"FCFM"	FCFM Group Limited (registered number: 09610476) whose registered office is at 295 Kings Road, London, England SW3 5EP.
"Fund"	the South West Loan Fund (Convergence) held by SWIG Capital.
"Funder"	DCLG and British Business Bank.
"Government"	HM Government acting through the Secretary of State for Communities and Local Government, or otherwise.
"IPR"	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
"Key Individual(s)"	XXXXXX.
"Loan"	a loan made from the Fund.
"Notified Borrowers"	has the meaning in Schedule 1.
"Person"	includes any individual, firm, partnership, association or company and any other

incorporated or unincorporated body.

"Regulatory Body" the Financial Conduct Authority or other appropriate regulatory body from time to time through which the SDR Manager is authorised to carry on regulated activity (as defined in the Act).

"Regulatory Body Rules" the rules of the appropriate Regulatory Body from time to time in force.

"Super Debt Recovery Services" the super debt recovery services to be provided by the SDR Manager under and pursuant to the terms of this Agreement in relation to the Fund as more particularly set out in referred to in clause 2 and Schedule 1.

"Termination Date" [date] (or as extended pursuant to clause 3.1).

- 1.2 The headings to the clauses are for convenience only and have no legal effect.
- 1.3 References to statutory provisions shall, where the context so admits or requires, be construed as including references to the corresponding provisions of any earlier statute (whether repealed or not) directly or indirectly amended, consolidated, extended or provisions of any subsequent statute directly or indirectly amending, consolidating, extending or replacing such provisions, and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute.
- 1.4 References to Clauses and the Schedules are to clauses of and the Schedules to this Agreement and references to this Agreement include the Schedules.
- 1.5 In the event of any conflict between any document forming part of this Agreement and any other document forming part of this Agreement the matter shall be referred to SWIG Capital for resolution in its absolute discretion.
- 1.6 References to the masculine gender shall include the feminine and neuter and references to the singular shall include the plural and vice versa.

2 SUPER DEBT RECOVERY SERVICES

- 2.1 SWIG Capital hereby engages the SDR Manager to provide the Super Debt Recovery Services to SWIG Capital.
- 2.2 The SDR Manager hereby agrees:
- 2.2.1 to provide the Super Debt Recovery Services, upon the terms and conditions set out in this Agreement;
- 2.2.2 to procure that the Super Debt Recovery Services are provided and/or overseen by the Key Individual(s);
- 2.2.3 to procure that the Key Individual(s) shall devote sufficient time and effort to carrying out the Super Debt Recovery Services, so as to satisfy the preceding sub-clause;

- 2.2.4 the SDR Manager shall, and shall procure that the Key Individual(s) shall, in performing its services and duties hereunder act in good faith in the best interest of the Fund and shall use all reasonable skill and care in promoting and protecting the Fund and performing the Super Debt Recovery Services;
- 2.2.5 to ensure that the obligations of the SDR Manager under this Agreement (so far as not performed by the Key Individual(s)) are performed by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
- 2.2.6 to maintain current and accurate records of all work undertaken in the provision of the Super Debt Recovery Services;
- 2.2.7 to maintain any consents, licences, insurances and authorisations necessary for the performance of the Super Debt Recovery Services; and
- 2.2.8 (if and to the extent relevant) to comply with the requirements of the Act and the Regulatory Body.

3 DURATION

- 3.1 This Agreement shall commence on the Commencement Date and shall continue (subject to earlier termination as provided in this Agreement) until the Termination Date (**Initial Term**), when it shall terminate automatically without notice unless, no later than one month before the end of the Initial Term (or any Extended Term agreed under this clause), SWIG Capital has notified the SDR Manager that the term of the Agreement shall be extended for a period of up to a further twelve calendar months from the last day of the Initial Term, (**Extended Term**). Unless it is further extended under this clause or terminated earlier in accordance this Agreement, the Agreement shall terminate automatically without notice at the end of an Extended Term, unless in each case terminated earlier by:
 - 3.1.1 either party giving to the other not less than three months' prior written notice; or
 - 3.1.2 by SWIG Capital giving notice to the SDR Manager that all Loans have been fully realised or written off, so that no Super Debt Recovery Services remain relevant, such notice to expire on the date specified therein for this purpose.
- 3.2 SWIG Capital shall review the Super Debt Recovery Services of the SDR Manager:-
 - 3.2.1 where SWIG Capital has reasonable concerns over the performance of the SDR Manager; or
 - 3.2.2 where the Funder requires SWIG Capital to undertake a review.

4 SDR MANAGER'S FURTHER OBLIGATIONS

- 4.1 The Super Debt Recovery Services are to be provided from the location specified by the SDR Manager in its tender to provide the Super Debt Recovery Services and/or such location(s) as SWIG Capital and the SDR Manager may agree from time to time, such consent not to be unreasonably withheld or delayed.

- 4.2 Provided that the SDR Manager is complying with its obligations under this Agreement then nothing in this Agreement shall prevent it from acting in a similar or any other capacity for any other Person subject to the provisions of clauses 2.2.3 and 10. In the event that a conflict of interest arises for the SDR Manager in its provision of the Super Debt Recovery Services, it shall provide details of the conflict to SWIG Capital and obtain the consent of SWIG Capital before carrying on the actions creating the conflict.
- 4.3 The SDR Manager shall perform the Super Debt Recovery Services (and shall procure that the Super Debt Recovery Services are performed/overseen by the Key Individual(s)) with all reasonable care, skill and diligence and in accordance with best commercial practices and standards in the industry for similar services.
- 4.4 The SDR Manager warrants to SWIG Capital that each of the Key Individual(s) is an employee and/or director of the SDR Manager. This warranty shall be deemed repeated on each day during the continuance of this Agreement.
- 4.5 The SDR Manager confirms it has not and shall not offer or give, or agree to give, to any member, employee or representative of the Funder, SWIG Capital or any other Affiliate of SWIG Capital any gift or consideration of any kind as an inducement or reward for doing or refraining from doing any act in relation to the obtaining or execution of this or any other agreement with the Funder or SWIG Capital or for showing or refraining from showing favour or disfavour to any person in relation to this or any such agreement.
- 4.6 The SDR Manager shall not and shall take all reasonable steps to ensure that the Key Individual(s) shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion or belief, disability, sexual orientation or otherwise) and shall ensure they comply with the contents of such Equal Opportunities legislation which is applicable to SWIG Capital as amended from time to time.
- 4.7 The SDR Manager may only substitute another director and/or employee of the SDR Manager for a Key Individual(s) with the prior written consent of SWIG Capital.
- 4.8 SWIG Capital reserve the right to request and be consulted over the removal or replacement of any Key Individual(s) if SWIG Capital reasonably considers this to be necessary to ensure the success of the Fund or the provision of the Super Debt Recovery Services or if any Key Individual(s) dies, becomes bankrupt or other insolvency event arises in respect of the Key Individual(s) or any Key Individual(s) becomes a patient under the provisions of the Mental Health Act 1983 or any Key Individual(s) is convicted of any criminal offence (excluding an offence under Road Traffic Legislation for which a sentence other than a term of imprisonment is imposed) and such request and consultation shall be adhered to by the SDR Manager.
- 4.9 The SDR Manager, when it is a Data Processor, shall only hold and process Personal Data on behalf of SWIG Capital after having taken appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data. Further the SDR Manager shall adhere to any guidelines issued from time to time by the Information Commissioner and shall procure that the Key Individual(s) shall at all times when performing the Super Debt Recovery Services comply fully with the Data Protection Act 1998. The SDR Manager acknowledges that Personal Data which it holds and/or processes on behalf of SWIG Capital shall

remain the property of SWIG Capital.

- 4.10 The SDR Manager shall and shall procure that the Key Individual(s) at all times provides the Super Debt Recovery Services in compliance with all statutes, statutory instruments, regulations, rules and orders made under any statute or directive having the force of law, and any applicable Regulatory Body Rules and any other laws, codes or other regulatory requirements (whether statutory or otherwise) relating to the provision of the Super Debt Recovery Services or performance of any obligations under this Agreement.
- 4.11 In providing the Super Debt Recovery Services the SDR Manager may reschedule loan repayments and/or negotiate suspension of capital with Notified Borrowers with the aim of securing repayment of capital provided that debt repayments shall not be extended beyond a five year term including their original repayment terms unless (i) the SDR Manager obtains SWIG Capital's prior written consent; and (ii) the final repayment date of the relevant loan is not later than 31 December 2020.
- 4.12 Where the SDR Manager is considering re-structuring the loan facility or undertaking any restructuring of the Notified Borrowers itself, it is to have regard to the State Aid Guidelines on Rescue and Restructuring and will ensure that any recovery work is conducted in full compliance with State Aid rules.
- 4.13 The SDR Manager shall, in administering, operating and managing any Loans, comply with the provisions of Regulation (EC) No 1083/2006 and Regulation (EC) No 1828/2006 in respect of "Financial Engineering Instruments".
- 4.14 The SDR Manager acknowledges that SWIG Capital is subject to reporting obligations imposed by the Funder and the SDR Manager undertakes to maintain such records and provide to SWIG Capital such information as SWIG Capital may reasonably require to enable SWIG Capital to comply with its reporting obligations. The SDR Manager shall, and shall procure that the Key Individual(s) shall, promptly provide SWIG Capital with any information and documents as SWIG Capital shall require from time to time in connection with the provision of the Super Debt Recovery Services in respect of which the Super Debt Recovery Services are provided under this Agreement.
- 4.15 In performing the Super Debt Recovery Services the SDR Manager shall deal on all matters with SWIG Capital personnel unless otherwise agreed.
- 4.16 The SDR Manager shall meet SWIG Capital and (if appropriate) FCFM at such times as SWIG Capital reasonably deem appropriate in relation to the Super Debt Recovery Services.
- 4.17 The SDR Manager shall permit staff or agents of SWIG Capital and the Funder (including their auditors) (upon reasonable notice, the SDR Manager acknowledging that three working days' notice shall in all circumstances be reasonable and that in appropriate circumstances shorter notice may be reasonable) access to any information maintained by the SDR Manager in relation to the Fund to ensure compliance with this Agreement as applicable and shall provide copies of originals thereof on request and any other information as is requested. In addition, and subject to clause 10.5, the SDR Manager agrees to keep the documents etc referred to in this clause 4.17 and in clause 4.14 (including originals where these are in its possession) until the Termination Date (or such earlier time as this contract shall terminate) or such other date as SWIG Capital may reasonably notify to it (it being noted that this may be up to 31 December 2025 to comply with SWIG Capital's

obligations under the terms governing the Fund).

- 4.18 The SDR Manager will comply with any reasonable guidelines or instructions that may be issued by SWIG Capital from time to time.
- 4.19 Any specific instructions by SWIG Capital to the SDR Manager or communications to SWIG Capital by the SDR Manager may be in writing under the hand of the person from time to time authorised by SWIG Capital or the SDR Manager as the case may be. The SDR Manager shall accept and comply with any such reasonable instructions or other communications from SWIG Capital which are within the terms of this Agreement.
- 4.20 Without prejudice to SWIG Capital 's rights under this Agreement, if SWIG Capital has any complaint about the performance of the SDR Manager under this Agreement that complaint should be directed, in the first instance, to the Chair of the Board of the SDR Manager or any other director of the SDR Manager who is unconnected with the complaint.
- 4.21 The SDR Manager will not have title to, own or have any other legal interest in the Funds or the Loans or other un-invested money belonging to SWIG Capital.
- 4.22 SWIG Capital shall notify the SDR Manager from time to time of the identify of the investee companies of the Fund to which the Super Debt Recovery Services should be applied.
- 4.23 The SDR Manager shall arrange its activities and take all other steps necessary to ensure, so far as it is reasonably possible without breaching any relevant statutory or other requirements that upon termination of this Agreement (for whatever cause (including without limitation expiry)) there are no persons who, by contract or operation of law, become or have a right to become employees of any successor fund manager or provider of Super Debt Recovery Services or SWIG Capital and will indemnify any successor fund manager and/or provider of Super Debt Recovery Services and/or SWIG Capital for all costs, claims and losses (including for any payments of compensation due to such persons howsoever arising) as a result of a breach of this provision but provided that such indemnity in respect of claims will be limited to the amount of any statutory redundancy payment and pay in lieu of notice to any persons whose employment is terminated by reason of redundancy and limited in time to the period of four months from the date of termination of employment.
- 4.24 In the event that, despite the SDR Manager taking the steps set out in clause 4.23, there is deemed to be a Relevant Transfer (as defined under the Transfer of Undertakings (Protection of Employment) Regulations 2006) in respect of any of the SDR Manager's employees engaged in the performance of the Super Debt Recovery Services (**Affected Employees**), the SDR Manager hereby undertakes that it shall indemnify any successor fund manager and/ or provider of Super Debt Recovery Services and/or SWIG Capital for all costs, claims and losses (including for any payments of compensation due to such persons howsoever arising) in relation to any act or omission by the SDR Manager prior to and including the date of the Relevant Transfer in relation to the employment, or termination of employment, of any of the Affected Employees.
- 4.25 The SDR Manager shall:
 - 4.25.1 perform its obligations under this Agreement (including those in relation to

the Super Debt Recovery Services) in accordance with:

- 4.25.1.1 all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
- 4.25.1.2 any other requirements and instructions which SWIG Capital reasonably imposes in connection with any equality obligations imposed on SWIG Capital at any time under applicable equality Law; and
- 4.25.2 take all necessary steps, and inform SWIG Capital of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

For the purposes of this clause 4.25, **Law**: means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the SDR Manager is bound to comply.

5 FEE

- 5.1 SWIG Capital shall pay to the SDR Manager a management fee in respect of the Super Debt Recovery Services of £[]¹ per annum (or pro rata if applicable up to the date of termination or expiry of this Agreement).
- 5.2 The fees referred to in clause 5.1 are stated **excluding** Value Added Tax.
- 5.3 The fees in clause 5.1 shall be payable in equal quarterly instalments in arrears in respect of Super Debt Recovery Services performed to the satisfaction of SWIG Capital, but so that the first instalment of the fee in clause 5.1 shall be £xxxxxx, paid on [date] (with equal instalments of £[] for each calendar quarter thereafter).
- 5.4 Without prejudice to its rights in clause 7.3, SWIG Capital shall not be obliged to pay to the SDR Manager any fees under this clause 5 where the Funder has exercised any rights that they may have under the terms governing the Fund to suspend, reduce or vary the fees and expenses that may be paid from the Fund to the SDR Manager where such a payment would put SWIG Capital in breach of those terms.
- 5.5 All payments of fees shall be made within 30 days of receipt of SWIG Capital of the SDR Manager's invoice therefor where such invoice is not disputed.

6 EXPENSES

- 6.1 Subject to clause 6.2, the fees payable to the SDR Manager under clause 5 shall be inclusive of any and all expenses which the SDR Manager incurs pursuant to this Agreement and accordingly no separate claim for expenses shall be made.

¹ Fees to be £63k per annum (split 5/11 Convergence and 6/11 Competitiveness) for year 1 and year 2 and then £30k for year 3 if extended.

- 6.2 If in the reasonable opinion of the SDR Manager it is necessary to incur professional fees and expenses specifically for the purpose of Super Debt Recovery Services (including instructing lawyers or other advisors or consultants in the manner agreed by SWIG Capital and the SDR Manager for their engagement) to achieve repayment of all or part of a Loan following a default under a loan agreement such reasonable fees and expenses may be charged to the Fund provided:
- 6.2.1 the prior written consent of SWIG Capital is obtained in all cases;
 - 6.2.2 invoices / receipts for expenses incurred are provided to SWIG Capital;
 - 6.2.3 the SDR Manager notifies SWIG Capital in advance that the SDR Manager intends to instruct lawyers or other advisors or consultants and the likely cost based on estimates obtained and updated if the cost is expected to exceed the original estimates;
 - 6.2.4 in the reasonable opinion of the SDR Manager the cost of instructing lawyers or other advisors or consultants is proportionate to the sums likely to be recovered; and
 - 6.2.5 the fees and expenses do not exceed normal market rates for the region.

7 TERMINATION

- 7.1 SWIG Capital may by notice in writing terminate this Agreement with immediate effect if:
- 7.1.1 the SDR Manager or the Key Individual(s) is in breach of any of the terms of this Agreement which in the case of a breach capable of remedy is not remedied by the SDR Manager or the Key Individual(s) within 10 days (or such shorter period as SWIG Capital and the SDR Manager agrees where the period is required by the Funder) of receipt by the SDR Manager of a notice from SWIG Capital specifying the breach and requiring its remedy; or
 - 7.1.2 the SDR Manager or the Key Individual(s) commits any act of gross misconduct and/or neglects or omits to perform the Super Debt Recovery Services or any of its or his duties or obligations under this Agreement or falls below the standard of performance of the Super Debt Recovery Services reasonably required by SWIG Capital; or
 - 7.1.3 the SDR Manager repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or
 - 7.1.4 the SDR Manager or the Key Individual(s) is accused (and such accusation is not in SWIG Capital's reasonable opinion frivolous or vexatious) of any fraudulent activity; or
 - 7.1.5 the SDR Manager or the Key Individual(s) fails or refuses after written warning from SWIG Capital to carry out the Super Debt Recovery Services or the duties reasonably and properly required of it under this Agreement; or

- 7.1.6 the SDR Manager enters into liquidation (other than for the purposes of reconstruction without insolvency); or makes any composition with its or his creditors; or has an administrator, receiver or receiver and manager or administrative receiver appointed over all or part of its or his undertaking or assets; or is the subject of a statutory demand; or enters into a voluntary arrangement with its or his creditors; or is the subject of an application for an administration order; or
- 7.1.7 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver; or
- 7.1.8 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the SDR Manager;
- 7.1.9 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the SDR Manager; or
- 7.1.10 a person becomes entitled to appoint a receiver over all or any of the assets of the SDR Manager or a receiver is appointed over all or any of the assets of the SDR Manager; or
- 7.1.11 the SDR Manager suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 7.1.12 the SDR Manager suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 7.1.13 the SDR Manager or the Key Individual(s) if an individual, is the subject of a bankruptcy petition order or dies; or
- 7.1.14 the SDR Manager or the Key Individual(s) engages in conduct which in the reasonable opinion of SWIG Capital brings, is likely to bring or is liable to bring the SDR Manager, SWIG Capital, the Fund or the Funder into disrepute; or
- 7.1.15 the SDR Manager or the Key Individual(s) is subject to investigation or challenge which in the reasonable opinion of SWIG Capital may have a detrimental effect on the Funder and/or the Fund; or
- 7.1.16 the SDR Manager or the Key Individual(s) is convicted of any criminal offence (excluding an offence under Road Traffic Legislation for which a sentence other than a term of imprisonment is imposed); or
- 7.1.17 the SDR Manager does not consult SWIG Capital over any changes in the identity of the person (or persons acting in concert) owning more than half of its share capital (either legal or beneficial) or after such consultation SWIG Capital (in its absolute discretion) is not satisfied that the new ownership of the SDR Manager is appropriate for this Agreement.

7.2 SWIG Capital may also terminate this Agreement pursuant to clause 3.

- 7.3 SWIG Capital may terminate this Agreement forthwith upon:
- 7.3.1 the Funder requiring the removal of the SDR Manager from the provision of the Super Debt Recovery Services as a result of the SDR Manager's performance of the Super Debt Recovery Services; or
 - 7.3.2 termination of the agreement under which SWIG Capital holds the Fund for any reason; or
 - 7.3.3 the cessation of employment by or directorship of the SDR Manager of the Key Individual(s) in circumstances where SWIG Capital has not approved expressly in advance any alternative arrangement or replacement; or
 - 7.3.4 if in the opinion of SWIG Capital the Key Individual(s) ceases to be involved actively in the provision of the Super Debt Recovery Services.
- 7.4 The SDR Manager may by notice in writing terminate this Agreement upon 30 days' notice if SWIG Capital is and remains in material breach of the terms of this Agreement (which shall mean being in default of making any payment when properly due hereunder to the SDR Manager where such payment is not disputed by SWIG Capital or is not paid during such notice period).
- 7.5 For the avoidance of doubt, in the event of termination by SWIG Capital pursuant to clause 3, 7.1, 7.2, or 7.3 hereof no further payment of fees to the SDR Manager under clause 5 shall be payable after the date of termination of this Agreement.
- 7.6 Upon termination or expiry of this Agreement for any reason, the SDR Manager shall at its own expense deliver up to SWIG Capital at such location and in such manner as SWIG Capital may reasonably request all documents, data and other materials whatsoever (and whether electronic or on paper or on any other medium) created, held or controlled by the SDR Manager in connection with the provision the Super Debt Recovery Services and shall permanently and securely delete, destroy and not retain copies of any such materials, save to the extent it may be required to do so by law.

8 INDEMNITY AND INSURANCE

- 8.1 The SDR Manager agrees to indemnify and keep indemnified SWIG Capital in respect of any and all claims, damages, proceedings, loss, costs, expenses, charges and liabilities of whatever nature (including, for the avoidance of doubt, any economic loss or loss of turnover, profit, business or goodwill) suffered or incurred by SWIG Capital in respect of the SDR Manager's provision of the Super Debt Recovery Services or any breach of this Agreement by the SDR Manager.
- 8.2 The SDR Manager agrees to obtain employer's liability insurance, professional indemnity insurance and public liability insurance each with a minimum cover of **£500,000, £500,000 and £500,000 respectively** in respect of any one incident with an insurance company approved by SWIG Capital in respect of the SDR Manager's and the Key Individual's(s') liability under this Agreement. Further, the SDR Manager agrees at the request of SWIG Capital to produce a certificate evidencing the existence of such insurance and renewal receipts and confirmation of payment of premiums as required from time to time. The SDR Manager also undertakes to notify SWIG Capital immediately upon there being any adverse material change to any insurance policy effected pursuant to this clause.

- 8.3 Nothing in this Agreement shall exclude or limit the SDR Manager's liability in respect of death or personal injury caused by the SDR Manager's own negligence.
- 8.4 Nothing in this Agreement shall exclude or limit SWIG Capital's liability in respect of death or personal injury caused by SWIG Capital's own negligence.

9 FREEDOM OF INFORMATION

- 9.1 The SDR Manager acknowledges that SWIG Capital is subject to the requirements of the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation ("**the FOIA**") and the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations ("**EIR**").
- 9.2 The SDR Manager acknowledges that SWIG Capital shall be responsible for determining in its absolute discretion whether:
- 9.2.1 to disclose any information which it has obtained under or in connection with this Agreement to the extent that SWIG Capital is required to disclose such information to a person making a disclosure request under the FOIA or the EIR ("**an RFI**")
- 9.2.2 any information is exempt from disclosure under the FOIA or the EIR.
- 9.3 The SDR Manager acknowledges that SWIG Capital may, acting in accordance with the Ministry of Justice Code of Practice on the Discharge of Functions of Public Authorities under Section 45 of the FOIA ("**the MoJ Code**"), be obliged under the MoJ Code, the FOIA or the EIR to disclose information subject to an RFI:
- 9.3.1 following consultation with the SDR Manager carried out in accordance with the MoJ Code;
- 9.3.2 without consulting with the SDR Manager where this is not required by the MoJ Code.
- 9.4 Where the SDR Manager is consulted in accordance with clause 9.3.1 then the SDR Manager shall respond with any views within five (5) working days.
- 9.5 In no event shall the SDR Manager respond directly to an RFI unless expressly authorised to do so by SWIG Capital.
- 9.6 The SDR Manager shall provide all necessary assistance as reasonably required by SWIG Capital to comply with its obligations under the FOIA and EIRs including without limitation to respond to an RFI by providing such information and access to documents and records as SWIG Capital reasonably requires in order to answer a disclosure request within the time for compliance set out in Section 10 of the FIOA.
- 9.7 The SDR Manager shall transfer to SWIG Capital all RFIs relating to this Agreement that it receives as soon as practicable and in any event within 2 days of receipt.
- 9.8 The provisions of this clause 9 shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

10 CONFIDENTIAL INFORMATION

- 10.1 The SDR Manager shall and shall procure that the Key Individual(s) and all other of its employees and professional advisers shall treat as confidential and shall not at any time either during the term of this Agreement or afterwards for any reason disclose or permit to be disclosed to any Person or otherwise make use of or permit to be made use of any Confidential Information where knowledge or details of the Confidential Information were received during the period of this Agreement or as a result of discussion or negotiations with SWIG Capital and/or the Funder or any of their Affiliates beforehand provided that the SDR Manager shall not be prevented from disclosing information where SWIG Capital and/or the Funder or any of their Affiliates as appropriate has consented in writing both to the information to be disclosed and to the Person to whom the information is to be disclosed and further provided that the SDR Manager shall not be liable for the disclosure of any such information which is or becomes in the public domain other than as a result of a breach of this clause.
- 10.2 The SDR Manager may disclose the Confidential Information:
- 10.2.1 to such of the SDR Manager's employees, agents, consultants or permitted subcontractors as need to know it for the purpose of discharging the SDR Manager's obligations to SWIG Capital. The SDR Manager shall ensure that its employees, agents, consultants or permitted subcontractors to whom it discloses the Confidential Information comply with this clause 10; and
 - 10.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.3 Without prejudice to the provisions of clause 15 the SDR Manager shall procure that the Key Individual(s) and all other of its employees (if any) having access to any Confidential Information and each Person to whom SWIG Capital or the Funder or any of their Affiliates consents to disclosure or information pursuant to this clause 10.3 (if any) shall be subject to the same obligations as the SDR Manager under this clause 10.3 and that SWIG Capital, the Funder or any of their Affiliates shall have the right to enforce such obligations in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.
- 10.4 Save with the prior written agreement of SWIG Capital (such consent not to be unreasonably withheld), the SDR Manager and the Key Individual(s) shall not, in the provision of the Super Debt Recovery Services, be involved in any negotiation or project of whatever nature between SWIG Capital, and/or the Funder or any of their Affiliates and any Person where the SDR Manager or the Key Individual(s) is or may be engaged or interested, either directly or indirectly in such Person, negotiation or project and it is the SDR Manager's responsibility to notify, SWIG Capital and the Funder or any of their Affiliates (as the case may be) in writing immediately of any such conflict or potential conflict which may arise.
- 10.5 Upon termination of this Agreement for whatever reason (including without limitation expiry) unless otherwise agreed with the prior written agreement of SWIG Capital and at other times when reasonably requested to do so by SWIG Capital the SDR Manager will deliver up to SWIG Capital all working papers or other material (in whatever format it is stored) and copies provided to it pursuant to this Agreement (including without limit the documents etc referred to in clause 4.14) subject to any regulatory requirements. The SDR Manager shall also ensure that it maintains

reliable back up in relation to all items referred to in this clause which shall be delivered up to SWIG Capital in accordance with this clause subject to any regulatory requirements.

10.6 The SDR Manager shall not include any reference to this Agreement or its subject matter in any publicity or promotional material whatsoever without the prior written consent of SWIG Capital.

10.7 In this clause 10 where any provision is for the benefit of SWIG Capital and/or the Funder it shall also apply to any other Affiliate of SWIG Capital.

11 INTELLECTUAL PROPERTY RIGHTS

11.1 All information, data, documents, business plans, financial statistics or workings, projections, reports, models and any other materials whatsoever produced by the SDR Manager or the Key Individual(s) pursuant to this Agreement (whether based on information they receive from a Notified Borrower or otherwise) in whatever medium held or recorded, and the IPR and/or other rights therein and thereto, shall belong to SWIG Capital absolutely. The SDR Manager hereby irrevocably and unconditionally waives any and all moral rights (if any) conferred on it or the Key Individual(s) by virtue of the Copyright Designs and Patents Act 1988 in any work arising from the provisions of the Super Debt Recovery Services

11.2 SWIG Capital agrees that in the event that any of the IPR as referred to in clause 11.1 effectively relate to a matter being developed for the benefit of a Borrower then SWIG Capital will upon the request of the SDR Manager and the Borrower consider entering into an agreement with the Borrower in respect of ownership or use of the relevant IPR upon such terms as SWIG Capital considers appropriate taking into account all the circumstances including without limit all financial and public sector frameworks under which SWIG Capital operates.

11.3 For the avoidance of doubt, the SDR Manager acknowledges that no IPR are assigned or otherwise transferred to it other than in accordance with this Agreement.

12 WARRANTIES

12.1 The SDR Manager warrants represents and undertakes to SWIG Capital that:-

12.1.1 the SDR Manager has full power and capacity to enter into and perform this Agreement and to do so will not constitute a breach of any other agreement to which they are a party and that the Key Individual(s) will during the continuance of this Agreement provide/oversee the Super Debt Recovery Services on behalf of the SDR Manager as contemplated by this Agreement;

12.1.2 in entering into this Agreement and in performing its obligations under this Agreement it is and will be at all times acting in accordance with its Memorandum and Articles of Association; and

12.1.3 the contents of its tender delivered on XXXXXXXX to SWIG Capital and any clarifications, statements and any other communications relevant to the selection of the SDR Manager pursuant to that tender are true, correct, accurate and not misleading to the knowledge and belief of the SDR Manager (having made all reasonable enquiries) and there have been no changes in the circumstances of the SDR Manager which affect in any way

the content of such tender.

13 STATUS

- 13.1 For the avoidance of doubt neither the SDR Manager nor the Key Individual(s) are or will be agents for or employees or a representative of SWIG Capital or the Funder (save where otherwise expressly agreed in writing).
- 13.2 Subject to the terms of this Agreement, neither the SDR Manager nor the Key Individual(s) have authority to act as agent of SWIG Capital or bind SWIG Capital in any way.

14 NOTICE

- 14.1 Any demand, notice or communication shall be deemed to have been duly served:-
 - 14.1.1 if delivered by hand, when left at the address for service provided for at the beginning of this Agreement; or
 - 14.1.2 if sent by properly addressed prepared first class post, 48 hours after being posted (excluding Saturdays, Sundays and public holidays).
- 14.2 Any demand, notice or communication pursuant to this Agreement must be made in writing addressed to the recipient at the recipient's address stated at the beginning of this Agreement or at such other address as may from time to time be notified in writing by the recipient to the sender at the recipient's address for service.

15 SUB-CONTRACTING

- 15.1 Save with the prior written consent of SWIG Capital and the Funder, the SDR Manager shall not encumber, assign or sub-contract any or all of its rights, interests, benefits, obligations or duties under this Agreement.

16 BRIBERY ACT

- 16.1 The SDR Manager confirms that it has acquainted itself with the Bribery Act 2010 and has and will continue to put in place all measures and policies required under the Bribery Act 2010 as is reasonably necessary from time to time to avoid any breach of the provisions of the Bribery Act 2010.
- 16.2 Without prejudice to the other provisions of this clause 16, the SDR Manager shall:
 - 16.2.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
 - 16.2.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom (**UK**);
 - 16.2.3 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
 - 16.2.4 promptly report to SWIG Capital any request or demand for any undue

financial or other advantage of any kind received by the SDR Manager in connection with the performance of this Agreement;

- 16.2.5 within two months of the date of this Agreement, and annually thereafter, certify to SWIG Capital in writing signed by an officer of the SDR Manager, compliance with this clause 16 by the SDR Manager and all persons associated with it under clause 16.2.2. The SDR Manager shall provide such supporting evidence of compliance as SWIG Capital may reasonably request.
- 16.3 The SDR Manager, shall ensure that any person associated with the SDR Manager, who is performing services in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the SDR Manager in this clause 16 (**Relevant Terms**). The SDR Manager, shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to SWIG Capital for any breach by such persons of any of the Relevant Terms.
- 16.4 Breach of this clause 16 shall be deemed a material breach under clause 7.
- 16.5 For the purpose of this clause 16, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 1 a person associated with the SDR Manager includes but is not limited to any subcontractor of the SDR Manager.
- 17 **GENERAL**
- 17.1 Any waiver of any breach of, or default under, any of the terms of this Agreement by SWIG Capital shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Agreement.
- 17.2 Any clause which by implication is intended to survive termination of this Agreement shall remain in full force and effect notwithstanding expiry or termination of this Agreement.
- 17.3 Without prejudice to SWIG Capital's accrued rights and liabilities under this Agreement, SWIG Capital will be entitled (subject to consultation with the SDR Manager) at any time to assign the benefit or delegate the burden of this Agreement.
- 17.4 If any provision or part of any provision of this Agreement is found by a court or other competent authority to be void or unenforceable, such provision or part of a provision shall be deleted from this Agreement and the remaining provisions or parts of the provision shall continue in full force and effect.
- 17.5 This Agreement (together with all documents referred to in it) is the entire agreement between SWIG Capital and the SDR Manager in respect of the Super Debt Recovery Services and shall only be amended or varied in writing signed by each party in the same manner as this Agreement is executed and with the consent of the Funder. For the avoidance of doubt the SDR Manager's standard terms and conditions (if any) are expressly excluded from this Agreement.
- 17.6 In the event of there being any conflict between the provisions in the Schedule and

any clauses in the main body of this Agreement the latter shall prevail.

- 17.7 The SDR Manager shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required by SWIG Capital or the Funder for the purpose of giving full effect to this Agreement.
- 17.8 This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales.
- 17.9 Subject to clause 1.5 and so far as it relates to the SDR Manager, any dispute, controversy or claim arising out of or in relation to this Agreement, or the breach termination or invalidity thereof, will be settled in the following manner:-
- 17.9.1 the matter shall be referred promptly to the Chair of SWIG Capital, and the Key Individual(s) of the SDR Manager for resolution;
- 17.9.2 if resolution is not resolved within 1 month or such other period as the persons nominated in clause 17.9.1 may agree pursuant to clause 17.9.1 the parties shall consider resolving the matter by mediation. To initiate a mediation any party must give notice in writing to the other parties pursuant to clause 14 ("**the mediation notice**") identifying the dispute. The parties will seek to agree the appointment of a mediator, but failing agreement within 1 month service of the mediation notice, any party may ask the Centre for Effective Dispute Resolution ("**CEDR**") to appoint a mediator. If any party refuses at any time to participate in the mediation procedure or, in any event, if the dispute is not resolved within 2 months of service of the mediation notice, then any party may refer the dispute to arbitration in accordance with clause 17.9.3;
- 17.9.3 any party may pursuant to clause 17.9.2 refer the dispute to arbitration in accordance with the Chartered Institute of Arbitrators' rules then in force.
- 17.10 Nothing in clause 17.9 shall prevent SWIG Capital or the SDR Manager taking injunctive relief action against the other in the courts of England and Wales.
- 17.11 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 17.12 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

18 RIGHTS OF THIRD PARTIES

- 18.1 The Funder and/or the Government shall have the right to enforce relevant clauses in this Agreement in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999 but otherwise the parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person not a party to it.
- 18.2 Neither SWIG Capital nor the SDR Manager shall rescind or vary any clause of this Agreement which is capable of enforcement by the Funder without the prior consent of the Funder. This obligation applies instead of those circumstances set out in

section 2(1)(a) to (c) to the Contracts (Rights of Third Parties) Act 1999.

19 CHANGE CONTROL

- 19.1 SWIG Capital may vary this agreement where (in SWIG Capital's opinion, acting reasonably) there is requirement to do so in order to avoid a breach by SWIG Capital of the terms governing the provision of the Fund, provided that any such variation must include such other amendments (if any) as shall be necessary to leave the SDR Manager overall in no better and no worse a position than if such variation had not been made.
- 19.2 SWIG Capital shall use its reasonable endeavours to discuss with the SDR Manager any proposed variation and its implications in advance but, subject thereto, may effect such a variation by serving a notice (a 'Variation Notice') on the SDR Manager, specifying the amendments to be made and the date on which they will take effect.

20 TRANSITIONAL ARRANGEMENTS

- 20.1 This clause 19 shall apply in the event of the termination of this Agreement (including without limitation expiry) for any reason and at any time.
- 20.2 In the event of the termination of this Agreement for any reason and at any time, the SDR Manager acknowledges that:
- 20.2.1 SWIG Capital may be required to appoint a replacement SDR Manager; and
- 20.2.2 the SDR Manager accepts an obligation to perform the Super Debt Recovery Services and otherwise act so as to ensure, in co-operation with SWIG Capital and/or any relevant successor fund manager/provider of Super Debt Recovery Services that any such transition to a replacement fund manager/provider of Super Debt Recovery Services and/or SWIG Capital is effected as efficiently as possible, with the minimum possible disruption to the provision of relevant successor services.
- 20.3 Without limiting the foregoing, the SDR Manager undertakes that in connection with such transition it will provide the following at such time, in such manner (including electronically and/or by hard copy) as SWIG Capital may reasonably require:
- 20.3.1 a record of all general enquiries about the fund and the source of those enquiries;
- 20.3.2 full information on all applicants to the fund including enquiry and application forms, business plans, contact details and relevant correspondence;
- 20.3.3 all data and information on loans offered, loans made and monitoring reports; and
- 20.3.4 all data and information on proposals rejected and the reasons given.
- 20.4 The SDR Manager also undertakes, in connection with such transition (including after the termination of this Agreement (including without limitation expiry) for any reason):

- 20.4.1 to attend such meetings with such persons as SWIG Capital may reasonably require;
- 20.4.2 to deal expeditiously with all reasonable requests for information; and
- 20.4.3 to co-operate in a 'shadow' operational period of up to two weeks or such longer period as may be agreed in writing between the parties.

21 COUNTERPARTS

This Agreement may be executed and delivered by the SDR Manager and SWIG Capital in one or more parts, which together shall constitute this Agreement.

IN WITNESS WHEREOF THE PARTIES have entered into this document on the date stated on its frontsheet

SCHEDULE 1 THE SUPER DEBT RECOVERY SERVICES

Establishing and operating enhanced debt management services including carrying out the following work in relation to companies in the portfolio which are notified to it by SWIG Capital as being in default (“**Notified Borrowers**”) and reporting to SWIG Capital which shall be carried out in accordance with the terms of this Agreement and which shall include the following:

- 1 Ensuring financial and other information is collected from Notified Borrowers at least monthly or otherwise as the SDR Manager shall deem necessary. Financial and other information will be reviewed by the SDR Manager to highlight potential problems with the investments so that such problems are notified to SWIG Capital as soon as possible to enable appropriate action to be taken including meeting with borrowers to seek explanations and discuss action plans.
- 2 Regular monitoring via Riskdisk (or similar) for insolvency proceedings against Notified Borrowers and reporting any information to SWIG Capital as soon as reasonably possible.
- 3 Managing data in an appropriate fashion, in accordance with the Data Protection Act 1998 and in a format agreed with SWIG Capital.
- 4 Reporting at least monthly to SWIG Capital (in a format to be agreed with SWIG Capital) within 7 days of the end of the month on such matters as SWIG Capital shall require including information received from Notified Borrowers and an analysis by the SDR Manager of Notified Borrowers’ accounts and business plans (including comparison to highlight any deviation against any original or updated forecasts) with recommendations for action or further investigation where appropriate.
- 5 Where appropriate, ensuring provisions of loan agreements with Notified Borrowers are enforced against borrowers and notices sent in accordance with relevant timescales – this may involve meeting with borrowers to discuss their financial position or other issues and reporting back to SWIG Capital when necessary between monthly reporting dates.
- 6 Dealing with requests from Notified Borrowers for early repayment or other events triggering early repayment under the loan agreements.
- 7 Attending meetings with SWIG Capital (no more than 4 times per annum) at its offices in Truro to discuss the content of reports and other issues.
- 8 Taking appropriate action to protect the value of investments made by the Fund, provided that the SDR Manager shall not enforce or threaten to enforce rights against the principal private residence of any individual (whether by reason of their ownership, management, office holding and/or guarantee obligations in respect of any investee company) without the prior written consent of SWIG Capital, including
 - the proactive engagement with boards of Notified Borrowers which appear to be at risk of insolvency and/or an inability to repay all or part of a Loan, so as to preserve value in the Fund;

- utilisation of the SDR Manager's expertise to negotiate directly with insolvency practitioners, including using the SDR Manager's knowledge of insolvency law and practice;
- early stage interventions when financial trends, or other diagnostic information, gives cause for concern;
- enhanced restructuring negotiations which could encompass: alterations to terms; negotiation with third parties; introduction of new money from shareholders or other financiers;
- meetings with Notified Borrowers at such times as the SDR Manager shall consider necessary or when requested by SWIG Capital;
- signposting of potential sources, and the introduction of external assistance (at no cost to the Fund) where appropriate;
- connectivity to other market opportunities;
- Engaging lawyers and other consultants to pursue recovery and enforce security in accordance with clause 6.2;
- Liaising with and co-operating with FCFM in relation to Notified Borrowers when requested to do so by SWIG Capital.

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for and on behalf of
SOUTH WEST INVESTMENT GROUP (CAPITAL) LIMITED

.....

Director,

PRINT NAME OF DIRECTOR:

for and on behalf of **XXXXXXX LIMITED**