

SOUTH WEST INVESTMENT GROUP (CAPITAL) LTD

Invitation to Tender
for the
Provision of Loan Fund Management Services
for the
South West Loans Fund II

PART D – FORM OF CONTRACT

16 March 2020

THIS PAGE INTENTIONALLY HAS NO CONTENT

DATED

2020

(1) SOUTH WEST INVESTMENT GROUP (CAPITAL) LIMITED

(2) [FUND MANAGER] LIMITED

**AGREEMENT
FOR
FUND MANAGEMENT SERVICES
FOR THE
SOUTH WEST LOANS FUND II**

CONFIDENTIAL / DRAFT

Note for Tenderers: the dates in this draft have been highlighted for ease of reference. They may be adjusted commensurately at the discretion of SWIG Capital before contract execution, in the event that the Commencement Date is delayed for any reason.

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THIS AGREEMENT is made as a Deed this day of

2020

BETWEEN:

- (1) **SOUTH WEST INVESTMENT GROUP (CAPITAL) LIMITED** (registered number 2360656) whose registered office is at Lowena House, Glenthorne Court, Truro Business Park, Threemilestone, Truro, Cornwall TR4 9NY (**SWIG Capital**); and
- (2) **[FUND MANAGER] LIMITED** (registered number XXXXX) whose registered office is at [] (**Fund Manager**).

BACKGROUND

- (A) SWIG Capital entered into a funding agreement with the South West of England Regional Development Agency (**SWRDA**), on the terms of which grants were made to SWIG Capital for the provision of Small Loans for Business of up to £50,000 and Finance for Business Loans up to £250,000 (the **Former SWLF**).
- (B) SWIG Capital also entered into a funding agreement with SWRDA dated 19 March 2010 for the provision of Small (Micro) Loans for Business up to £5,000 (subsequently £7,500) (the **Microcredit Loans Fund**).
- (C) SWIG Capital is also holding legacy funds from the Cleantech Low Carbon Mezzanine Co-Investment Fund (the **Cleantech Fund**).
- (D) The relevant functions of SWRDA in respect of the Former SWLF and the Microcredit Loans Fund have been transferred to the British Business Bank (**BBB**).
- (E) SWIG Capital is re-investing the legacies provided by returns from the investee businesses of the Former SWLF, the Cleantech Fund and Microcredit Loans Fund through the South West Loans Fund II (**SWLF II** - as defined below).
- (F) The SWLF II will provide loans from £25,000 to £250,000 to growth businesses in the LEP areas of Heart of the South West, West of England, Gloucestershire, Swindon and Wiltshire and Dorset.
- (G) The SWLF II will initially hold total funds of £5,730,000 constituted as to:
 - (a) £3,800,000 from legacy returns derived from the Former SWLF;
 - (b) £330,000 from legacy returns derived from the Microcredit Loans Fund;
 - (c) £800,000 from legacy returns derived from the Cleantech Fund; and
 - (d) £800,000 supplied by SWIG Capital.
- (H) SWIG Capital wishes to appoint the Fund Manager to manage and operate the SWLF II in accordance with this Agreement.
- (I) This Agreement (including its schedules) sets out the terms upon which the Fund Manager will manage and operate the SWLF II.

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; and for this purpose, "parent undertaking" and "subsidiary undertaking" shall have the meaning attributed to them in the Companies Act 2006.
"Agency"	the South West of England Regional Development Agency and the Secretary of State for Business, Innovation and Skills and (where applicable) their respective successors.
"Commencement Date"	[14 May 2020].
"Confidential Information"	information of a confidential nature (whenever received, 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 by the discloser as subject to a duty of confidentiality and includes but is not limited to information which relates to the business, affairs, plan, intentions, properties, assets, trading practices, developments, trade secrets, intellectual property rights, know-how, personnel, customers or suppliers of the Fund Manager, SWIG Capital and/or the Funders or any dealings in securities or investment policy of the SWLF II .
"Consumer Credit Act"	the Consumer Credit Act 1974 as amended by the Consumer Credit Act 2006.
"FM Tender"	the Fund Manager's response dated [date] in response to the ITT published by SWIG Capital seeking fund management services for the SWLF II

"Funders"	either or both of the European Regional Development Fund and BBB, as the context requires.
"Government"	HM Government acting through the Secretary of State for Housing, Communities and Local Government, or otherwise.
"Indexation Factor"	the product of the RPI for January in the then-current year divided by 290.6 (being the RPI in January 2020).
"Indexed"	in respect of any monetary amount, shall mean that such amount is expressed in January 2020 prices and shall be deemed to have been varied on 1 March 2021 and in each subsequent year by multiplying such amount by the Indexation Factor.
"Initial Phase"	the period from the Commencement Date until [1 March 2023]
"Investment and Operating Guidelines" or "IOGs"	the investment and operating guidelines as set out in Schedule 2 and as may be varied from time to time by SWIG Capital providing the Fund Manager with 30 days' notice of such variation.
"Investment Committee"	the investment approvals committee of the Fund Manager.
"Investment Performance Fee"	shall have the meaning set out in Schedule 3.
"Key Individual(s)"	[names] or any one of them as the context requires, each an employee and/or director of the Fund Manager, who is/are to perform the Services on behalf of the Fund Manager.
"Legacies"	the legacy returns from the investee businesses of the Former SWLF, the Cleantech Fund and the Microcredit Loans Fund.
"Microcredit Loans Fund"	the fund held by SWIG Capital previously constituted by grants provided by the Funders in accordance with the offer letter to SWIG Capital from the Agency dated 19 March 2010 by which the Agency offered the ERDF Grant of £1,000,000 and the Single Programme Grant of £500,000.
"Person"	includes any individual, firm, partnership, association or company and any other incorporated or unincorporated body.
"Qualifying Enterprise"	shall have the meaning ascribed to that expression in the IOGs.

"Realisation Performance Fee"	shall have the meaning set out in Schedule 3.
"Region"	the areas covered by the Heart of the South West LEP, West of England LEP, Gloucestershire LEP, Swindon and Wiltshire LEP and Dorset LEP.
"Regulatory Body"	the Financial Conduct Authority or any successor or other relevant regulatory body.
"Regulatory Body Rules"	the rules of the appropriate Regulatory Body from time to time in force.
"Relevant Investment"	a loan from the SWLF II to a Qualifying Enterprise in accordance with the Investment and Operating Guidelines.
"RPI"	the Retail Prices Index (All items) as published by the Office for National Statistics from time to time (the "Index") or, failing such publication or in the event of a fundamental change to the Index, such other index as SWIG Capital may reasonably determine or with such adjustments to the Index as SWIG Capital may reasonably determine, in each case with the intention of putting the parties in no better or worse position than if there had been no such failure or change.
"Second Phase"	the period commencing immediately following the end of the Initial Phase and ending on the Termination Date
"Services"	the loan fund management services to be provided by the Fund Manager under and pursuant to the terms of this Agreement in relation to the SWLF II as more particularly set out in Schedule 1.
"SME"	a small or medium-sized enterprise as defined in Commission Recommendation 2003/361/EC (and as varied, replaced or amended from time to time as applicable to the SWLF II).
"Termination Date"	31 July 2030

- 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 References to the masculine gender shall include the feminine and neuter and references to the singular shall include the plural and vice versa.

2 FUND MANAGEMENT SERVICES AND APPOINTMENT

2.1 SWIG Capital hereby confirms the appointment of the Fund Manager as of the Commencement Date to operate and be the manager of the SWLF II with full power and authority (subject to the relevant provisions of this Agreement, including the following provisions of this clause 2, clause 5 and clause 20) to act as manager of the SWLF II and as such manager to manage the SWLF II and the Fund Manager hereby confirms its agreement with SWIG Capital to act as such manager and to accept and carry out the Services.

2.2 It is agreed that:

2.2.1 the Fund Manager shall not execute any documents in connection with an investment on behalf of SWIG Capital without having verified that the investee will be a Qualifying Enterprise and that the investee has used reasonable endeavours to secure investment from alternative financial sources (in each case, in accordance with any relevant process and requirements set out in the IOGs from time-to-time);

2.2.2 subject to clauses 2.2.1 and 20, the Fund Manager is authorised by SWIG Capital to execute agreements to create, vary, deal with and terminate Relevant Investments and such agreements shall be executed by the Fund Manager acting on behalf of SWIG Capital (including, if required, as its attorney on such terms as the parties shall agree from time to time); and

2.2.3 the Fund Manager shall perform its services and duties hereunder on the terms of this Agreement (including the Investment and Operating Guidelines) and in a proper and efficient manner in accordance with best practice.

2.3 Without prejudice to the above, the Fund Manager shall perform its obligations set out in this Agreement and shall provide the Services, as set out in Schedule 1.

2.4 The Fund Manager shall liaise with SWIG Capital, to ensure that each Qualifying Enterprise which receives a loan from the SWLF II is accessing any other appropriate support programmes.

2.5 The Fund Manager shall use all reasonable endeavours to ensure that any SME that applies for an investment and is not appropriate for the SWLF II to invest in shall be directed to other funding sources or if thought appropriate other agencies in the Region which may be able to assist in developing its business opportunity into a credible vehicle for investment.

2.6 To assist the Fund Manager in performing the Services SWIG Capital agrees to keep the Fund Manager informed of any actions or concerns of any Funder which are relevant to the Fund Manager's appointment under this Agreement save if that Funder prohibits such disclosure.

2.7 The Fund Manager will not, when providing the Services, carry out or be required to

carry out any activities which require either the Fund Manager or SWIG Capital to hold or maintain any licences required under the Consumer Credit Act.

3 FINANCIAL SERVICES AND MARKETS ACT

- 3.1 The parties confirm that such amendments shall be made to this Agreement as may be necessary to comply with the Act and/or any amendment or alteration to this Agreement required in connection with the Act, with the intent that their respective activities in connection with this Agreement shall not require authorisation under or be regulated by the Act.

4 DURATION

- 4.1 This Agreement shall commence on the Commencement Date and shall continue for the Initial Phase and the Second Phase (subject to earlier termination as provided in this Agreement, including the right of SWIG Capital to terminate this Agreement at the end of the Initial Phase in accordance with clause 4.5).

- 4.2 SWIG Capital shall review the Services of the Fund Manager:

- 4.2.1 monthly (on a 'flash report' basis);
- 4.2.2 quarterly (based on the quarterly reports produced by the Fund Manager, as part of the Services);
- 4.2.3 every six months, with a more detailed review commencing in or around **August 2022** (such review being the '**Initial Phase Performance Review**', in accordance with clause 4.5);
- 4.2.4 where SWIG Capital has reasonable concerns over the performance of the Fund Manager; and
- 4.2.5 where the Funders require SWIG Capital to undertake a review.

- 4.3 Subject to clause 4.5 and 4.6, should SWIG Capital consider that the Services are not to the reasonable satisfaction of SWIG Capital (taking into account the Targets) then SWIG Capital may recommend to the Fund Manager a reasonable action plan and a relevant timescale in which the Fund Manager is to implement the action plan. Save where any such action and/or timescale may be imposed by the Funders, then SWIG Capital shall discuss the action plan and timescale with the Fund Manager before recommending it to the Fund Manager.

- 4.4 Failure to comply with an action plan and/or the timetable shall entitle SWIG Capital to terminate this Agreement (either with immediate effect or after such period as SWIG Capital may consider appropriate) by notice to the Fund Manager or to reduce the Services (including without limit the amount available for investment) and the fees payable to the Fund Manager by such amount as is equitable taking into account the reduced Services to be provided.

- 4.5 SWIG Capital will:

- 4.5.1 carry out the Initial Phase Performance Review and provide the Fund Manager with a summary of its findings (the '**Review Report**') by **30 November 2022**;

- 4.5.2 include in the Review Report SWIG Capital's provisional decision as to whether or not SWIG Capital intends to continue the term of this Agreement, so as to include the Second Phase;
 - 4.5.3 arrange a meeting with the Fund Manager on reasonable notice to discuss such findings (which the Fund Manager shall attend);
 - 4.5.4 afford the Fund Manager a reasonable opportunity to consult with SWIG Capital and comment on the Review Report in such meeting;
 - 4.5.5 within 14 days of such meeting confirm its decision in writing to the Fund Manager as to whether this Agreement shall be terminated at the end of the Initial Phase or shall continue, so as to include the Second Phase.
- 4.6 The decision pursuant to clause 4.5.5 shall be at the absolute discretion of SWIG Capital and there shall be no obligation on SWIG Capital to request or consider any action plan.
- 4.7 When confirming a decision pursuant to clause 4.5.5 to continue the term of the Agreement, SWIG Capital may stipulate that such continuance is conditional upon the acceptance by the Fund Manager of specified amendments to this Agreement, in which event the Fund Manager shall confirm acceptance of such amendments within seven days of receipt of such confirmation, failing which this Agreement shall terminate at the end of the Initial Phase.

5 **FUND MANAGER'S GENERAL OBLIGATIONS**

- 5.1 The Services are to be provided only at a location or locations to which SWIG Capital has given its prior written consent (having regard to the need for the Services to be provided within the Region).
- 5.2 The Fund Manager shall comply, and procure the compliance of the Key Individual(s), with all obligations relevant to the Services (save only for those which are applicable exclusively to SWIG Capital and in relation to which only SWIG Capital is capable of compliance) under this Agreement and otherwise provide the Services at all times and in all ways in a manner consistent with the content and objectives of this Agreement.
- 5.3 The Fund Manager shall and shall procure that the Key Individual(s) shall at all times comply with Investment and Operating Guidelines including (without limiting the generality of the foregoing) the reporting requirements and timescales specified therein.
- 5.4 The Fund 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 SWLF II and shall use all reasonable skill and care in promoting and protecting the SWLF II and performing the Services.
- 5.5 The Fund Manager confirms it has not and shall not offer or give, or agree to give, to any member, employee or representative of the Funders, 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 Funders or SWIG Capital or for showing or refraining from showing favour or disfavour to any person in relation to this or any such agreement.

- 5.6 The Fund Manager shall procure all goods, services and supplies which it requires in connection with the provision of the Services in accordance with the Public Contracts Regulations 2015, as if it were a contracting authority for the purposes of those Regulations, and shall notify SWIG Capital as soon as reasonably practicable before commencing any procurement process pursuant to this clause.
- 5.7 The Fund 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 the provisions of the Equality Act 2010 or any statutory modification or re-enactment thereof and any other relevant laws, 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.
- 5.8 The Fund Manager shall and shall procure that the Key Individual(s) shall at all times comply with any and all requirements relating to the provision of the Services under the Act, any applicable Regulatory Body Rules and any other laws, codes or other regulatory requirements (whether statutory or otherwise).
- 5.9 The Fund Manager will comply with and investments will only be recommended in accordance with this Agreement and with any other guidelines or instructions that may be issued by SWIG Capital from time to time.
- 5.10 The Fund Manager will at its own cost prepare a template for the form of contract under which Relevant Investments will be agreed and will obtain the prior written approval of SWIG Capital before using such template. The Fund Manager acknowledges that such template will provide for a requirement for specific targets including, but not limited to, the Targets (and the Fund Manager will be expected to draw up a specific form of contract for each Relevant Investment, adopting such template but with such targets having been fixed appropriately in each case).

6 MARKETING, COMMUNICATIONS, BOOKS AND RECORDS

- 6.1 In performing the Services the Fund Manager shall deal on all matters with SWIG Capital personnel unless otherwise agreed.
- 6.2 The Fund Manager shall meet SWIG Capital at such times as SWIG Capital reasonably deems appropriate in relation to the Services.
- 6.3 The Fund Manager shall also attend liaison meetings with each of the LEPs (Heart of the South West LEP, West of England LEP, Gloucestershire LEP, Swindon and Wiltshire LEP and Dorset LEP) and relevant Growth Hubs in the Region (or any of their respective successors), whenever reasonably requested to do so by SWIG Capital.
- 6.4 The Fund Manager shall market the SWLF II and shall only use marketing material approved by SWIG Capital. The Fund Manager shall consult with SWIG Capital before staging any event or making any press release and shall incorporate any reasonable suggestions from SWIG Capital in such event or press release. The Fund Manager will bear the costs of the production of marketing materials and any events initiated by them.
- 6.5 Any specific instructions by SWIG Capital to the Fund Manager or communications to SWIG Capital by the Fund Manager may be in writing under the hand, or by email, of the person from time to time authorised by SWIG Capital or the Fund Manager as the case may be. The Fund Manager shall accept and comply with any such instructions

or other communications from SWIG Capital which are within the terms of this Agreement.

- 6.6 Without prejudice to SWIG Capital's rights under this Agreement (including without limitation clauses 4.3, 4.4 and 13.3), if SWIG Capital has any complaint about the performance of the Fund Manager under this Agreement that complaint should be directed, in the first instance, to the Chair of the Board of the Fund Manager or any other director of the Fund Manager who is unconnected with the complaint.
- 6.7 The Fund Manager acknowledges that SWIG Capital is subject to reporting obligations imposed by the Funders and the Fund Manager undertakes to maintain such records and provide forthwith to SWIG Capital such information as SWIG Capital may reasonably require to enable SWIG Capital to comply with its reporting obligations including, but not limited to any relevant requirements set out in the IOGs from time-to-time.
- 6.8 The Fund Manager shall permit staff or agents of SWIG Capital and the Funders (including their auditors) (upon reasonable notice, the Fund Manager acknowledging that three working days' notice shall in all circumstances be reasonable and that in appropriate circumstances shorter notice may be reasonable) to examine all documents, books, records, information and receipts maintained by the Fund Manager in relation to the SWLF II to ensure compliance with this Agreement as applicable and shall provide copies of originals thereof on request and any other information as is requested.
- 6.9 In addition, subject to clause 17.4 and without prejudice to any other obligations arising under this Agreement, the Fund Manager agrees to keep the documents, books, records, information and receipts referred to in clauses 6.7 and 6.8 (including originals where these are in its possession) for no less than 12 years following termination of this Agreement or such other period as SWIG Capital may reasonably notify to it.

7 OTHER INTERESTS AND CONFLICTS

- 7.1 The Fund Manager shall not, and shall procure that the Key Individual(s) shall not, advise SWIG Capital to enter into and shall not otherwise arrange any transaction in which the Fund Manager or any Affiliate of the Fund Manager (or any of their respective directors or employees) has an interest, unless agreed in writing by SWIG Capital. For the purposes of this clause and clause 7.2, the circumstances in which the Fund Manager shall be regarded as having an interest shall include (but shall not be limited to) those where:
 - 7.1.1 a potential investee is a debtor of the Fund Manager, a Key Individual or any other fund managed by the Fund Manager;
 - 7.1.2 the Fund Manager, a Key Individual or any other fund managed by the Fund Manager owns or controls any equity or other interest in the potential investee; and /or
 - 7.1.3 where the Fund Manager, a Key Individual or any other fund managed by the Fund Manager may be in a position to advance funds to or otherwise invest in a potential investee.
- 7.2 In the event that a conflict of interest arises for the Fund Manager in its provision of the Services, it shall provide details of the conflict to SWIG Capital as soon as

possible, obtain the written consent of SWIG Capital before carrying on the actions creating the conflict and shall act in accordance with any Conflict of Interest Policy, contained within the IOGs.

- 7.3 Provided that the Fund Manager is complying with its obligations under this Agreement (including but not limited to clauses 8.1, 17 and 18) then nothing in this Agreement shall prevent it during the term of this Agreement from acting in a similar or any other capacity for any other Person.

8 KEY INDIVIDUALS

- 8.1 The Fund Manager shall procure that the Key Individual(s) shall devote sufficient time and effort to carrying out the Services on behalf of SWIG Capital in each case unless SWIG Capital acting reasonably otherwise consents.
- 8.2 The Fund Manager may only substitute another director and/or employee of the Fund Manager for a Key Individual with the prior written consent of SWIG Capital such consent not to be unreasonably withheld or delayed.
- 8.3 SWIG Capital reserves 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 SWLF II or the provision of the Services or if any Key Individual dies, becomes bankrupt or other insolvency event arises in respect of the Key Individual or any Key Individual becomes a patient under the provisions of the Mental Health Act 1983 or any Key Individual 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 Fund Manager.
- 8.4 The Fund Manager warrants that the Key Individual(s) are employees or directors of the Fund Manager and that under the contract of employment or contract of service between the Fund Manager and the Key Individual(s) any intellectual property rights arising out of or relating to work done by the Key Individual(s) for the Fund Manager will vest in the Fund Manager and that the Key Individual(s) will have no right title or interest whether legal or beneficial in any such intellectual property rights. The Fund Manager shall, if so required by SWIG Capital, produce written evidence of this signed by the Key Individual(s) to SWIG Capital. Where the individual is not an employee or director of the Fund Manager, the Fund Manager undertakes to ensure appropriate arrangements are put in place in relation to such individual so that the Fund Manager can give effect to the purpose behind this provision in relation to such individual. Such arrangements are to be to the satisfaction of SWIG Capital.

9 THE INVESTMENT COMMITTEE

- 9.1 The Fund Manager will constitute and operate an Investment Committee in accordance with the Investment and Operating Guidelines which will evaluate and approve investment and bad debts and provisions in accordance with the Investment and Operating Guidelines and shall meet at least every two weeks.

10 FEE

- 10.1 SWIG Capital shall pay to the Fund Manager a monthly management fee as set out in Schedule 3 to be invoiced by the Fund Manager monthly in arrears in respect of Services performed to the satisfaction of SWIG Capital in the preceding month, with the first instalment of the fees being due one month from the Commencement Date.
- 10.2 SWIG Capital shall also pay to the Fund Manager the Realisation Performance Fee and the Investment Performance Fee in accordance with the relevant provisions set out in Schedule 3.
- 10.3 Without prejudice to its rights in clause 13.3, SWIG Capital shall not be obliged to pay to the Fund Manager any fees under this clause 10 or expenses under clause 11 below in respect of any period after the date of expiry of a notice under clause 13.1, 13.2, 13.3, 13.4 or 13.5 of this Agreement or where the Funders have exercised any rights that they may have in relation to the SWLF II to suspend, reduce or vary the fees and expenses that may be paid to the Fund Manager.
- 10.4 All payments of fees shall be made in accordance with clause 10 within 30 days of receipt of SWIG Capital of the Fund Manager's invoice provided that such invoice is not reasonably disputed within such 30-day period.
- 10.5 Subject to clause 11, all fees and expenses payable by Qualifying Enterprises and charged by SWIG Capital in relation to Relevant Investments shall be for the account of SWIG Capital.
- 10.6 For the avoidance of doubt SWIG Capital shall be under no obligation to pay any fee or cost that the Fund Manager is entitled to recover directly from the Qualifying Enterprises.
- 10.7 All fees payable under this Agreement are stated exclusive of VAT, which shall be added (if applicable) at the rate from time to time in force.
- 10.8 Subject only to clause 11.2, the Fund Manager shall not charge any fee to any Qualifying Enterprise in connection directly or indirectly with any Relevant Investment.

11 EXPENSES

- 11.1 Subject to clauses 11.2 and 11.3, the fee payable to the Fund Manager under clause 10 shall be inclusive of any and all expenses which the Fund Manager incurs pursuant to this Agreement and accordingly no separate claim for expenses shall be made.
- 11.2 The Fund Manager may recover reasonable third-party due diligence costs from the relevant Qualifying Enterprise in which an investment is made, provided that such costs do not exceed the normal market rates for the Region. If such costs are not recoverable from the relevant Qualifying Enterprise because no investment is made due to adverse due diligence which prevents an investment completing or due to the withdrawal of the investee, then such third-party costs shall be borne by the Fund Manager.
- 11.3 If in the opinion of the Fund Manager it is necessary to instruct lawyers or other advisers or consultants to achieve repayment of all or part of a Relevant Investment following a default under a loan agreement, the reasonable fees and expenses of

instructing lawyers or other advisors or consultants may be recovered from the Fund provided:

- 11.3.1 the Fund Manager notifies SWIG Capital in advance that the Fund Manager intends to instruct lawyers or other advisors or consultants and the likely cost based on estimates obtained;
- 11.3.2 the Fund Manager engages lawyers or other advisors or consultants in its own name (or otherwise in accordance with such terms for the engagement of lawyers or other advisors as the Fund Manager and SWIG Capital may from time to time agree for this purpose);
- 11.3.3 the Fund Manager keeps SWIG Capital reasonably informed of the progress of the transaction and any increase in the fees and expenses payable;
- 11.3.4 in the reasonable opinion of the Fund Manager the cost of instructing lawyers or other advisors or consultants is proportionate to the sums likely to be recovered; and
- 11.3.5 the fees and expenses do not exceed normal market rates for the Region.

12 FUND ASSETS AND RECEIPTS

- 12.1 The Fund Manager will not have title to, own or have any other legal interest in the SWLF II or the investments or other un-invested money belonging to SWIG Capital and will not hold title documents other than as agent for SWIG Capital. Accordingly, the Fund Manager will immediately when requested by SWIG Capital deliver up to SWIG Capital or as it may direct any such title documents and also all related security and any files or other documents (including loan agreements and security documents).
- 12.2 The Fund Manager agrees that all payments of Relevant Investments shall be made by SWIG Capital.
- 12.3 The Fund Manager will so far as practicable ensure that any cheques or bankers drafts for income or other distributions payable to the SWLF II or for monies in payment for Investments disposed of for the account of the SWLF II (or in payment for any other sum payable to the SWLF II) which are received by the Fund Manager are paid as soon as practicable direct to the SWLF II 's bank account.

13 TERMINATION

- 13.1 SWIG Capital may by notice in writing terminate this Agreement with immediate effect if the Fund Manager, or in respect of clauses 13.1.3, 13.1.5, 13.1.6 or 13.1.7 if the Key Individual(s):
 - 13.1.1 is in material breach of any of the terms of this Agreement which in the case of a breach capable of remedy is not remedied by the Fund Manager within 10 days (or such shorter period as SWIG Capital and the Fund Manager agrees where the period is required by the Funders) of receipt by the Fund Manager of a notice from SWIG Capital specifying the breach and requiring its remedy; or
 - 13.1.2 commits any act of gross misconduct and/or neglects or omits to perform

the Services or any of its or his duties or obligations under this Agreement or falls below the standard of performance of the Services reasonably required by SWIG Capital; or

- 13.1.3 is guilty of any fraudulent activity; or
 - 13.1.4 fails or refuses after written warning to carry out the Services or the duties reasonably and properly required of it under this Agreement; or
 - 13.1.5 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, trustee in bankruptcy, 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
 - 13.1.6 is guilty of any conduct which is the reasonable opinion of SWIG Capital brings or is liable to bring the Fund Manager, SWIG Capital, or the Funders into disrepute; or
 - 13.1.7 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
 - 13.1.8 the Fund Manager does not consult SWIG Capital over any change in its ownership (either legal or beneficial) or after such consultation SWIG Capital (in its absolute discretion) is not satisfied that the new ownership of the Fund Manager is appropriate for this Agreement; or
 - 13.1.9 does not, in the reasonable opinion of SWIG Capital, provide the Services in accordance with the terms of this Agreement and good industry practice.
- 13.2 SWIG Capital may also terminate this Agreement pursuant to clause 4.
- 13.3 SWIG Capital may terminate this Agreement forthwith:
- 13.3.1 upon the Funders requiring the removal of the Fund Manager from providing the Services as a result of the Fund Manager's performance of the Services;
 - 13.3.2 if SWIG Capital is prevented as a result of the Fund Manager's performance of the Services from investing any further monies in Qualifying Enterprises from the SWLF II; or
 - 13.3.3 SWIG Capital is unable, from its funding arrangements in relation to the SWLF II, to pay all or any of the fees provided for in clause 10 or expenses in clause 11 during a period in which the Funders have exercised any right of suspension, reduction or variation of fees.
- 13.4 SWIG Capital may terminate this Agreement by giving the Fund Manager 14 days' prior written notice if SWIG Capital is prevented from making loans to Qualifying Enterprises from the SWLF II for reasons other than the Fund Manager's performance of the Services.

- 13.5 The Fund Manager may by notice in writing terminate this Agreement with immediate effect if SWIG Capital is in material breach of the terms of this Agreement (which shall mean being in default of making any undisputed payment when due hereunder to the Fund Manager and has not been caused or contributed to by circumstances outside of SWIG Capital's control (including, but not limited to, a Funder requirement or restriction)) which in the case of a breach capable of remedy by SWIG Capital is not remedied by SWIG Capital within 30 days of receipt of SWIG Capital of a notice from the Fund Manager specifying the breach and requiring its remedy.
- 13.6 For the avoidance of doubt, in the event of termination by SWIG Capital pursuant to clauses 13.1, 13.2, 13.3, 13.4 and 13.5 hereof no further payment of fees to the Fund Manager under clause 10 shall be payable after the date of termination of this Agreement, save for any fees already incurred and payable to the Fund Manager under clause 13.7.
- 13.7 Termination of this Agreement (for whatever cause) shall be without prejudice to transactions already initiated, transactions in progress shall be completed and the Fund Manager shall be entitled to a due proportion of any periodic fee (if applicable).
- 13.8 The Fund Manager shall arrange its activities and take other all steps necessary to ensure, so far as it is reasonably possible by adhering to any relevant statutory or other requirements that upon termination of this Agreement (for whatever cause) 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 SWIG Capital and will indemnify any successor fund manager 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.
- 13.9 In the event that, despite the Fund Manager taking the steps set out in clause 13.8, 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 Fund Manager's employees engaged in the performance of the Services (**Affected Employees**), the Fund Manager hereby undertakes that it shall indemnify any successor fund manager 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 Fund 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.

14 INDEMNITY AND INSURANCE

- 14.1 The Fund 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 Fund Manager's provision of the Services or any breach of this Agreement by the Fund Manager provided always and subject to clause 14.3 that the aggregate liability of the Fund Manager hereunder shall be limited in respect of any one incident to £1,000,000 Indexed.
- 14.2 The Fund Manager further agrees to indemnify SWIG Capital against any claim by

the Funders for repayment of any funding where such claims for repayment arises directly or indirectly from the Fund Manager's failure to adhere to the terms and conditions of this Agreement.

- 14.3 The Fund Manager agrees to obtain and maintain in effect employer's liability insurance and public liability insurance each with a minimum cover of £5,000,000 Indexed; and professional indemnity insurance with a minimum cover of £1,000,000 Indexed; each in respect of any one incident, with an insurance company approved by SWIG Capital in respect of the Fund Manager's and the Key Individual's(s) liability under this Agreement. Further, the Fund 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 Fund Manager also undertakes to notify SWIG Capital immediately upon there being any adverse material change to any insurance policy effected pursuant to this clause.
- 14.4 Nothing in this Agreement shall exclude or limit the Fund Manager's liability in respect of death or personal injury caused by the Fund Manager's own negligence.
- 14.5 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.

15 DATA PROTECTION

- 15.1 Both SWIG Capital and the Fund Manager undertake to perform and comply with the terms and conditions of the data processing agreement attached at Schedule 5.
- 15.2 The Fund Manager acknowledges that personal data (as defined in paragraph 1 of Schedule 5) which it holds and/or processes under this Agreement shall be the property of SWIG Capital.

16 FREEDOM OF INFORMATION

- 16.1 The Fund Manager acknowledges that SWIG Capital is subject to the requirements of the Freedom of Information Act 2000 ("the **FOIA**") and the Environmental Information Regulations 2004 ("**EIR**").
- 16.2 The Fund Manager acknowledges that SWIG Capital shall be responsible for determining in its absolute discretion whether:
- 16.2.1 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**");
- 16.2.2 any information is exempt from disclosure under the FOIA or the EIR.
- 16.3 The Fund Manager acknowledges that SWIG Capital may, acting in accordance with the Freedom of Information Code of Practice on the Discharge of Functions of Public Authorities under Section 45 of the FOIA published by the Cabinet Office in July 2018 (the "**FOIA Code**"), be obliged under the FOIA Code, the FOIA or the EIR to disclose information subject to an RFI:
- 16.3.1 following consultation with the Fund Manager carried out in accordance with the FOIA Code;

- 16.3.2 without consulting with the Fund Manager where this is not required by the FOIA Code.
- 16.4 Where the Fund Manager is consulted in accordance with clause 16.3.1 then the Fund Manager shall respond with any views within five (5) working days.
- 16.5 In no event shall the Fund Manager respond directly to an RFI unless expressly authorised to do so by SWIG Capital.
- 16.6 The Fund Manager shall provide all necessary assistance as reasonably required by SWIG Capital 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 FOIA.
- 16.7 SWIG Capital acknowledges that the Fund Manager expects, in the course of operating the SWLF II obtain from investees, potential investees and others information which those parties reasonably consider to be confidential and to fall within exemptions under the FOIA or the Environmental Information Regulations and where such information is provided to the Fund Manager SWIG Capital shall have due regard to any such opinion in exercising its duties and any relevant discretion in respect of disclosure.
- 16.8 The provisions of this clause 16 shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

17 CONFIDENTIAL INFORMATION

- 17.1 The Fund Manager shall, and shall procure that the Key Individual(s) and all other of its employees 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, provided that the Fund Manager shall not be prevented from disclosing information where SWIG Capital and/or the Funders 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 Fund 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.
- 17.2 Without prejudice to the provisions of clause 22 the Fund 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 Funders or any of their Affiliates consents to disclosure of information pursuant to this clause 17.2 (if any) shall be subject to the same obligations as the Fund Manager under this clause 17.2.
- 17.3 Save with the prior written agreement of SWIG Capital (such consent not to be unreasonably withheld), the Fund Manager and the Key Individual(s) shall not, in the provision of the Services, be involved in any negotiation or project of whatever nature between SWIG Capital, and/or the Funders or any of their Affiliates and any Person where the Fund 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 Fund Manager's responsibility to notify the Investment Committee and SWIG Capital in writing immediately of any such conflict or potential conflict which may arise.

- 17.4 Upon termination of this Agreement for whatever reason 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 Fund Manager will deliver up to SWIG Capital all working papers or other material (in whatever format it is stored) - provided to it pursuant to this Agreement (including without limit the documents, books, records, information and receipts referred to in clause 6.1) subject to any regulatory requirements. The Fund 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.
- 17.5 In this clause 17 where any provision is for the benefit of SWIG Capital and/or the Funders it shall also apply to any other Affiliate of SWIG Capital.

18 **INTELLECTUAL PROPERTY RIGHTS**

- 18.1 Unless otherwise agreed in writing by the parties, all documents, financial or other models, data, drawings, designs, proto-types, logos and other tradenames or trademarks and any other materials produced by the Fund Manager or the Key Individual(s) pursuant to this Agreement in whatever medium held or recorded and the copyright and/or design right and/or other rights therein and thereto shall belong to SWIG Capital absolutely.
- 18.2 The Fund 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 Services.
- 18.3 SWIG Capital and the Fund Manager agree that in the event that the intellectual property rights as referred to in clause 18.1 effectively relate to a matter being developed for the benefit of a Qualifying Enterprise then SWIG Capital will upon the request of the Fund Manager and the Qualifying Enterprise consider entering into an agreement with the Qualifying Enterprise in respect of ownership or use of the relevant intellectual property rights 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.
- 18.4 For the avoidance of doubt, the Fund Manager acknowledges that no intellectual property rights are assigned or otherwise transferred to it other than in accordance with this Agreement.

19 **WARRANTIES**

- 19.1 The Fund Manager warrants represents and undertakes to SWIG Capital that:-
- 19.1.1 the Fund 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 it is a party and that the Key Individual(s) will during the continuance of this Agreement provide the Services on behalf of the Fund Manager as contemplated by this Agreement;
 - 19.1.2 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
 - 19.1.3 the contents of the FM Tender and any clarifications, statements and any

other communications relevant to the selection of the Fund Manager pursuant to that tender are true, correct and accurate in all respects and any opinions therein are honestly held and there have been no changes in the circumstances of the Fund Manager which affect in any way the content of such tender.

20 **NO AGENCY**

The parties acknowledge and agree that the Fund Manager and the Key Individual(s) shall not be agents for or employees of SWIG Capital or the Funders; and that the Services are provided to SWIG on the basis of a client / service provider relationship.

21 **NOTICE**

21.1 Any demand, notice or communication shall be deemed to have been duly served:-

21.1.1 if delivered by hand, when left at the address for service provided for at the beginning of this Agreement; or

21.1.2 if sent by properly addressed prepared first class post, 48 hours after being posted (excluding Saturdays, Sundays and public holidays).

21.2 Any demand, notice or communication pursuant to this Agreement must be made in writing addressed (subject as provided in this clause 21.2) 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.

22 **SUBCONTRACTING**

22.1 Save with the prior written consent of SWIG Capital and the Funders, the Fund Manager shall not assign or subcontract any or all of its rights, benefits, obligations or duties under this Agreement.

23 **GENERAL**

23.1 Any waiver of any breach of, or default under, any of the terms of this Agreement by SWIG Capital or the Fund Manager shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Agreement.

23.2 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.

23.3 Without prejudice to SWIG Capital's accrued rights and liabilities under this Agreement, SWIG Capital will be entitled (subject to prior consultation with and agreement in writing of the Fund Manager such agreement not to be unreasonably withheld) at any time to assign the benefit or delegate the burden of this Agreement.

23.4 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.

23.5 This Agreement is the entire agreement between SWIG Capital and the Fund

Manager in respect of the 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 Funders. For the avoidance of doubt the Fund Manager's standard terms and conditions (if any) are expressly excluded from this Agreement

- 23.6 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.
- 23.7 This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales.
- 23.8 So far as it relates to the Fund 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:-
 - 23.8.1 the matter shall be referred promptly to the Executive Director of SWIG Capital, and the Managing Director of the Fund Manager for resolution;
 - 23.8.2 if resolution is not resolved within 1 month or such other period as the persons nominated in clause 23.8.1 may agree pursuant to clause 23.8.1 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 21 (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 23.8.3;
 - 23.8.3 any party may pursuant to clause 23.8.2 refer the dispute to arbitration in accordance with the Chartered Institute of Arbitrators' rules then in force.
- 23.9 Nothing in clause 23.8 shall prevent SWIG Capital or the Fund Manager taking injunctive relief action against the other in the courts of England and Wales.
- 23.10 This Agreement may be executed and delivered by the Fund Manager and SWIG Capital in one or more parts, which together shall constitute this Agreement.

24 **RIGHTS OF THIRD PARTIES**

- 24.1 The Funders and the Government shall have the right to enforce clause 5.2 of 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.
- 24.2 Save as specified in clause 24.1, a person who is not a party to this Agreement has no right under The Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

25 **TRANSITIONAL ARRANGEMENTS**

- 25.1 This clause 25 shall apply in the event of:

- 25.1.1 the termination (and/or the giving of a notice of termination) of this Agreement for any reason and at any time; or
 - 25.1.2 a reduction in the Services by SWIG Capital under clause 4.4.
- 25.2 In the event of one of the circumstances set out in clause 25.1, the Fund Manager acknowledges that:
- 25.2.1 SWIG Capital may be required to appoint a replacement Fund Manager; and
 - 25.2.2 the Fund Manager accepts an obligation to perform the Services and otherwise act so as to ensure, in co-operation with SWIG Capital and/or any relevant successor fund manager that any such transition to a replacement fund manager and/or SWIG Capital is effected as efficiently as possible, with the minimum possible disruption to the provision of relevant successor services.
- 25.3 Without limiting the foregoing, the Fund 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:
- 25.3.1 a record of all general enquiries about the SWLF II and the source of those enquiries;
 - 25.3.2 full information on all applicants to the SWLF II including enquiry and application forms, business plans, contact details and relevant correspondence;
 - 25.3.3 all data and information on loans offered, loans made and monitoring reports; and
 - 25.3.4 all data and information on proposals rejected and the reasons given.
- 25.4 The Fund Manager also undertakes, in connection with such transition (including after the termination of this Agreement for any reason):
- 25.4.1 to attend such meetings with such persons as SWIG Capital may reasonably require;
 - 25.4.2 to deal expeditiously with all reasonable requests for information; and
 - 25.4.3 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.

IN WITNESS WHEREOF the Parties have entered into this document as their deed on the date stated on its frontsheet.

SCHEDULE 1 THE SERVICES

The securing and monitoring of investment opportunities by the SWLF II which shall be carried out in accordance with this Agreement:

- 1 Locating and reviewing investment opportunities in line with the strategy and objectives of SWIG Capital in relation to the SWLF II and the Investment and Operating Guidelines.
- 2 Promoting and marketing to potential Qualifying Enterprises in accordance with clause 6.4 and promoting and developing relationships with partners.
- 3 Receiving and recording enquiries and applications for funding and inputting and maintaining a customer records management system.
- 4 Dealing promptly and efficiently with customer enquiries and applications for funding.
- 5 Perform initial review of applications, reject or proceed to full appraisal.
- 6 Appraising investment opportunities, assessing their commercial viability and potential for success, considering normal commercial factors, such as inter alia:
 - a) The investee's business plan;
 - b) The quality of the investee's management team;
 - c) The track record of the business;
 - d) The potential risk;
 - e) The likelihood of success;
 - f) The potential market for the product or service;
 - g) The possible need for additional future investment;
 - h) The attractiveness of the product or service to potential co-investors or future investors;
 - i) The quantum of investment required;
 - j) The timescale of the projected return and related risks.
- 7 Negotiating the terms of investments.
- 8 Making recommendations to the Investment Committee or such other body designated to consider and approve investment proposals, sanction papers in respect of such investment proposals as the Fund Manager consider to be commercially viable with a reasonable likelihood of success.
- 9 Approval of investments by the Fund Manager's Investment Committee

- 10 Managing the investment and due diligence process from start to legal completion, including for the avoidance of doubt, instructing lawyers and utilising any standard legal documents of the SWLF II relevant to the investment.
- 11 Production of template loan and security documents, including in accordance with clause 5.10.
- 12 Issuing indicative offer letters following Investment Committee approval of an investment proposal in the standard format for the SWLF II.
- 13 Monitoring the financial performance of the applicant for funding between sanction and legal completion and reporting to the Investment Committee any issues which may impact on the future viability of the investment including without limit, profitability or cashflow.
- 14 Monitoring the investments and reporting to the Investment Committee on the performance of investments and compliance with objectives of the SWLF II as set out in the Investment and Operating Guidelines including:
 - 14.1 monitoring of any performance indicators including but not limited to
 - 14.1.1 number, amount and reports of relevant investments;
 - 14.1.2 amount and breakdown of realisations;
 - 14.1.3 job creation and safeguards;
 - 14.1.4 private-sector leverage requirements;
 - 14.1.5 GVA added.
 - 14.2 financial monitoring of the investment including to identify potential problems with the investments.
- 15 Complying with the Investment and Operating Guidelines and the compliance procedures required of SWIG Capital and all Funders in relation to all aspects of the Services.
- 16 Providing information as required to SWIG Capital, and the Funders or any other appropriate authority.
- 17 Taking appropriate action after consultation with and agreement of SWIG Capital to enhance the value of investments made by the SWLF II.
- 18 Maintaining the standards and procedures required by SWIG Capital in relation to this Agreement.
- 19 Cooperation with the operator of other funds, growth hubs in each LEP area, and business support programmes operated by SWIG Capital, or any of their Affiliates for the benefit of Qualifying Enterprises in the relevant region.
- 20 Monitoring and follow-up contact with investees in the event of loan or interest default.
- 21 Engaging debt collection services if required in the event of investee default.

- 22 Managing data in an appropriate fashion, in accordance with Data Protection Legislation and Schedule 5.
- 23 Proactive early stage intervention and engagement with borrowers which appear to be at risk of insolvency or inability to repay or where financial trends or management information give cause for concern and so as to preserve value in the fund
- 24 Negotiation directly with insolvency practitioners and early stage intervention when financial trends or other diagnostic information gives cause for concern; red flag or traffic light system to highlight and address deterioration;
- 25 Restructuring negotiations which could include alterations to terms and negotiation with third parties
- 26 Such other services agreed between the parties from time to time.

The parties acknowledge that the Services set out in paragraphs 1 to 13 above will be required only during the investment phase of the SWLF II ; and that thereafter only such of the Services as are relevant to monitoring and realisation will be required.

SCHEDULE 2 INVESTMENT AND OPERATING GUIDELINES

[Note to tenderers: these IOGs will be clarified at the discretion of SWIG Capital in collaboration with the successful tenderer so as to ensure alignment with relevant policies and procedures of the Fund Manager]

1 Introduction

This document sets out the policy and operational guidelines for SWIG Capital Limited (**SWIG Capital**) and the Fund Manager of the South West Loan Fund II ("**Fund**") as it applies within the LEP areas Heart of South West, West of England, Gloucestershire, Swindon and Wiltshire and Dorset within the Competitiveness and Employment Operational Programme area.

This document is a live document and will be periodically updated by SWIG Capital in consultation with the Fund Manager to reflect best practice.

The document sets out process and monitoring rules to ensure consistency of process and reporting for audit purposes and ensure consistency with fund operations.

2 Product Specification

2.1 Descriptor, size and term

The Fund will initially be £5.73m.

Loans will be provided on the following basis:

- maximum 5 year term
- arrangement fee 5%
- loans only to incorporated businesses with a viable business plan
- businesses will be only eligible for the fund if they evidence they are unable to access funding from other financial sources
- interest rates set in reference to the EU Reference rate reflecting variety of risk to ensure no state aid conferred on the business (average 12%).
- investment wherever possible alongside banks or other investors
- security taken where appropriate
- loans between £25,000 and £250,000

The sole purpose of loan support is high growth business creation, development or expansion – thereby excluding the provision of loans to clear existing debts and/or existing loans from the lender (as a mechanism for managing bad debt on the part of the lender).

2.2 Eligible territories

The Fund will operate within the South West of England - excluding Cornwall and the Isles of Scilly – the territories defined within the Competitiveness and Employment Programme ERDF 2007-2013 (Competitiveness Operational Programme) as covered by the five LEP

areas of Heart of the SW, West of England, Gloucestershire, Swindon and Wiltshire and Dorset and the Fund Manager will report by reference to those five LEP areas.

2.3 Qualifying Enterprise

2.3.1 Eligibility is restricted to incorporated businesses (including social enterprises):

- with fewer than 250 employees and a turn-over of up to €50 million or a balance sheet of up to €43 million and which otherwise satisfies the definition of an SME in Commission Recommendation 2003/361/EC;
- of whose capital or voting rights, 25% or more is not owned by one enterprise, or jointly by several enterprises, that fall outside this definition of an SME
- demonstrating failure to secure finance from other financial sources; and
- with viable business plans.

2.3.2 Growth and growth potential characteristics

All businesses qualifying to access the Fund need to demonstrate to the satisfaction of the Fund Manager high growth potential based on an assessment at individual enterprise level rather than on broad sector characteristics or rigid financial and employment projections. Likely indicators of high growth potential are:

- Aspiration and attitude of the entrepreneur, owner / manager and senior management team
- Ability and capability of leadership team
- Seeking external finance
- Evidence of a strong order book (possibly International Trade)
- Potential customer demand
- Sound industry and sector knowledge
- Firms already growing but lacking structures and processes
- Evidence of willingness and capacity to innovate

2.4 Eligible Sectors and Activities

The following are INELIGIBLE activities

Eligibility of projects / investments will need to be considered on the basis of individual applications. However, projects which should not be assisted include those that fall within the following sectors:

- Large scale transport companies, dismantling of nuclear power stations, shipbuilding, coal and steel.
- Banks and insurance companies.
- Establishments providing generalised (school age) education. However, specialised activities involving technical education or vocational training, even at university level are eligible;

- Provision of local social welfare facilities e.g. hospitals, nursing homes, fire stations, parks, public libraries.
- Retail facilities unless it can be shown there is no displacement activity
- Building and renovation of housing.
- Major infrastructure in ports

Companies in dispute

Where a company / business or individual linked or connected to the company or business is in dispute or subject to formal audit investigation relating to current or previous European or UK Government funded business support then where the Fund Manager considers the dispute/investigation material (having consulted with SWIG Capital) until these issues are resolved the business is ineligible for support from the Fund.

2.5 Pricing

Loans are to be priced on a commercial basis taking into account strength of collateral and by reference to the EU Reference rates, which will vary from time to time. As of 1 January 2020, the benchmark reference rate is 0.94% They will attract higher interest rates than traditional commercial banking rates due to the higher risk factor.

The strength of the company will be determined by the Fund Manager by reference to fundamental analysis of company and environment in which it operates. The financial model is based on an average interest rate of 12%.

Fees

5% Arrangement fees based on principal amount of the loan. A contribution towards security and legal fees may be required. No further documentation fee may be charged. Arrangements fees can not be netted off the principal amount.

2.6 Branding

- All marketing, publicity and stationery materials are to carry the logo of HMG and where appropriate SWIG Capital and the Fund Manager(s) as delivering the Fund as well as any branding requirements of BBB.

3 Investment Policy

3.1 Growth Businesses

- Any funding must be to support growth; either for asset purchase or financing of working capital requirements. No funding should be in substitution of existing credit facilities for companies or to finance enhanced dividend / remuneration schemes for owners / managers.

3.2 Viable Businesses

- All applicants to the Fund will be required to evidence to the Fund Manager that the proposals are viable.
- All applicants must show a realistic and identifiable repayment source for any loan to enable funds to be repaid in line with forecasts.

3.3 Fund Liquidity and diversification

- The Fund will be managed to create a diverse portfolio of investments so that a range of businesses of different sectors and sizes are supported to spread potential default risk for the fund as a whole.
- The investment rate of the Fund will be managed to ensure that the Fund is not exhausted and that repayment profiles enable funds to be available to reinvest in future business opportunities and ensure that the output targets of the Fund – outlined in section 4 following to be achieved.

3.4 Cross Cutting Themes

SWIG Capital and the Fund Managers will ensure they pursue best practice policies in respect of cross cutting themes such as health and safety, equality and diversity and environmental sustainability.

3.5 Links to other Business Support Programmes

The Fund Manager will ensure that any business that successfully draws down a loan from the Fund will also be advised of, signposted to, or have as condition of the loan the adoption of any complementary business support programme(s) including referrals to Growth Hubs.

Empirical evidence indicates that the use of additional support programmes will contribute to improvement in business performance, enhance business survival prospects and reduce loan default rates.

3.6 Ethical Investment Policy

- The Fund will operate an ethical investment policy and ensure that it does not support businesses which might bring the Fund or its public sector funders into disrepute.
- Specific areas to avoid will include the sex industry or gambling related businesses.

3.7 State and Aid and Recovery

- Where the Fund Manager is considering re-structuring the loan facility or providing any additional finance, or undertaking any restructuring of the SME itself, it is to have regard to the state aid guidelines on rescue and restructuring aid and will ensure that any recovery work is conducted in full compliance with state aid rules.

4. Output Specification

4.1 Output Targets

The main purpose of the Fund is to create jobs and GVA. It is planned that the fund will create the following:

- 300 jobs
- £10m GVA
- £10.8m private sector leverage
- Support 180 SMEs with a loan (Based on lending an average of 3 loans a month at an average of 60k a month over 5 years)
- Target overall default rate of 20% maximum to include all costs of recovery including legal fees

In order for output claims to be valid the Fund Manager must comply with and confirm to SWIG Capital that they have complied fully with instructions (including template job monitoring forms) agreed with SWIG Capital from time to time.

4.2 Cross Cutting Themes/Social Impact data

Threshold requirements.

All businesses who receive loans must confirm to the Fund Manager that they have in place appropriate policies / statements/procedures which adhere to all relevant domestic standards for

- Health and Safety;
- Environmental;
- Equality
- Data Protection/GDPR
- Environmental sustainability

Social Impact Data

The Fund Manager will collect data relating to businesses that are owned or operated by or are intended to serve individuals recognised as being disadvantaged on account of ethnicity gender, age and disability.

4.3 Monitoring of Outputs and LEP meetings

- Output data will be recorded as part of the reporting function set out in Section 6.
- Where variations from forecasts are identified action plans to be prepared to ensure plans are back on track.

The Fund Manager will attend LEP/Growth Hub meetings as required and report performance as required.

5 Customer Journey / Loan Process

5.1 Customer Engagement

The precise nature of the customer journey and application forms will be set out in a separate process flowchart determined by the Fund Manager and agreed by SWIG Capital. What follows is an indication of expected minimum standards.

Access and information will be available through a range of different channels

5.1.1 Initial Enquiries

Website

- The details of the Fund, eligibility criteria and access information will be contained on the website of the Fund Manager

Telephone/Mail/via platform

- The Fund Manager will manage direct enquiries from potential clients or intermediaries. Where applicants are identified as ineligible they should be referred where possible to other sources of finance or business support.

Initial enquiries will be assessed on the basis of eligibility as specified in Section 2 above. These include the nature of request and the amount, location, sector and displacement issues. If the business is eligible the terms of finance will be explained and application forms provided and business plan requested. Some enquiries will be discounted at enquiry stage because of obvious ineligibility.

5.2 Loan Application and Processing

Application forms (drafted by the Fund Manager and approved by SWIG Capital) will be received by the Fund Manager and undergo a three stage evaluation.

- Desk evaluation of application form and business plan, if satisfactory a
- Visit to customers premises, if satisfactory an
- Internal appraisal proposal put to an investment committee. The constitution and terms of reference of which will be subject to the approval of SWIG Capital.

5.2.1 Desk evaluation

- Commercial evaluation: Based on principles of good lending practice including credit checks, criteria scoring, an appraisal of the form, Money Laundering/ID checks, other finance rejection, and business plan will be undertaken on all proposals,

5.2.2 Site visit

- All proposals if they progress beyond desk evaluation will require a site visit. During this visit business plan assumptions will be challenged, and assertions verified.

- If the Fund Manager is satisfied to proceed, they will produce an appraisal report using a standard template (approved by SWIG Capital), making recommendations to an investment committee.

5.2.3 Internal proposal to Investment Committee

- The investment committee will meet or communicate electronically regularly during the lending phase of the Fund at such other intervals as SWIG Capital shall agree with the Fund Manager.
- The investment committee may consider appraisals submitted via email as required.
- The appraisal report to investment committee/ will carry a recommendation from an employee of the Fund Manager who does not sit on the investment committee to support or decline with an explanation of the reasoning behind this.
- The investment committee will reach one of 4 possible decisions:
 - Further information required
 - Agreed without conditions
 - Agreed subject to conditions
 - Application for funding declined.

The applicant will be informed in writing of the outcome of the decision-making process within 48 hours. If proposal has been agreed this notification will include a summary heads of terms. If the proposal is rejected the applicant will be notified of the appeals procedure.

5.2.5 Appeals Procedure Proposals

- The applicant will have the right of appeal if their application is rejected but the applicant must put their appeal in writing along with reasons for appeal.
- Appeals are presented to next appeals panel meeting or investment committee meeting (as appropriate) and the applicant informed of its decision

5.2.6 Finance Agreements

- A loan agreement will be issued along with any other documents required such as Directors' guarantees, security documents, standing order mandate or direct debit forms and any conditions precedent. Loan agreements will be issued within 5 days of the borrower being notified that the application has been agreed and all relevant documents received by the Fund Manager.
- Loan offer letter to be in name of SWIG Capital Limited and signed by nominated signatories of the Fund Manager (approved by SWIG Capital)
- Following acceptance of an offer, completion of necessary security documentation and other loan pre-conditions the loan will be available for drawdown.

5.2.7 Payment Proposals

- Payment of the loan will be made through BACS from designated bank account of SWIG Capital.
- All arrangement and security fees will be invoiced to the business and must be paid by the business prior to draw down of the loan.

5.2.8 Credit control and monitoring of loan

- Monthly repayments will be monitored by SWIG Capital or such other arrangements as shall be agreed with the Fund Manager and in case of non-receipt they will notify the Fund Manager so that the client can be contacted immediately for an explanation of default.
- Debt management procedures should be followed by the Fund Manager to ensure either mutual solutions are found to manage arrears and restructure debt, or alternatively, pursue legal action to recover debt.
- On payment of the final loan repayment a letter will be sent by the Fund Manager to confirm final settlement.

6 Reporting and Audit Requirements

6.1 Economic Impact

In order to monitor the effectiveness of the loan interventions and evaluate the output and impacts of these on the economy by reference to the LEP areas referred to above detailed recording of business characteristics, outputs and impacts will be necessary.

The level of recording of this data will take place at four stages of the process

- At enquiry stage
- At application stage
- When loans provided
- Quarterly thereafter during monitoring of the Fund

The raw data will be collected in standard format by the Fund Manager by reference to relevant LEP area and provided to SWIG Capital as requested.

Frequency of reporting

Monthly headline data on a “flash report” basis on the following by LEP area:

- Number and value of enquiries received
- Number and value of applications received
- Number and value of offer letters issued
- Numbers and value of loans drawn (reported against target)
- Brief summary of any highlights / issues

Quarterly reports will be provided to include cumulative information on portfolio performance, details on individual loans, outputs and impacts and loan issues (including requests for write off or provision) within 21 days of the periods ending March, June, September and December. These reports will be forwarded by SWIG Capital to MHCLG and BBB.

All reports to show actual and variance for projected figures. Format of reports to be agreed with SWIG Capital.

SCHEDULE 3 FEE STRUCTURE

1. MANAGEMENT FEE

SWIG Capital shall pay the Fund Manager the following amounts in respect of the Services provided during the periods set out below, such amounts to be paid in equal monthly instalments:

PERIOD	AMOUNT PAYABLE (EXCLUDING VAT)
Commencement Date to 31 July 2025	
1 August 2025 to 31 July 2030	

2. INVESTMENT PERFORMANCE FEE

SWIG Capital shall pay the Fund Manager the Investment Performance Fee quarterly during the investment phase of this Agreement, calculated by reference to each quarter ending on 31 March, 30 June, 30 September and 31 December of each year (but so that the first such payment shall relate to the period from the Commencement Date to 30 September 2020; and the final such payment shall relate to the period from 1 April 2025 to 31 July 2025).

The Fund Manager will provide SWIG Capital with its invoice for the Investment Performance Fee promptly following each such quarter and shall at the same time provide in reasonable detail information as to the loans made in the relevant quarter and its calculation of the applicable fee.

The Investment Performance Fee for a relevant quarter (or pro rata where the relevant period is other than one quarter) shall be calculated as follows:

$$\text{IPF} = (\text{L} / \text{£}10,800,00) * \text{MIPF}$$

Where:

IPF = the Investment Performance Fee (excluding VAT) for that quarter

L = the amount of the loans actually advanced from the SWLF II in that quarter

MIPF = £[insert figure] being the maximum aggregate Investment Performance Fee payable during the relevant period of the Agreement, as set out in the FM Tender

3. REALISATION PERFORMANCE FEE

SWIG Capital shall pay the Fund Manager the Realisation Performance Fee, calculated in accordance with the following provisions, in respect of the period from **1 August 2020 to 31 July 2022** and each succeeding period of 12 months during the term of this Agreement (and pro rata where the final period of this Agreement is less than 12 months).

The Fund Manager will provide SWIG Capital with its invoice for the Realisation Performance Fee promptly following each such period and shall at the same time provide in reasonable detail information as to the realisations in the relevant period and its calculation of the fee.

The **Realisation Performance Fee** for a relevant period shall be calculated as follows:

$$\text{RPF} = (R / z) * \text{MRPF}$$

Where:

RPF = the Realisation Performance Fee (excluding VAT) for that period

R = the realisations actually returned to the SWLF II in that period

z = the projected maximum realisations for the SWLF II during the term of the Agreement **[being £11.86m]**

MRPF = £**[insert figure]** being the maximum aggregate Realisation Performance Fee (excluding VAT) payable during the term of the Agreement, as set out in the FM Tender

and, for this purpose, 'realisations' include capital and interest payments only.

[Notes: fees to be inserted to align with tender proposals]

SCHEDULE 4 TARGETS

- Invest £10.8 million in a target of 180 eligible SMEs by 31 July 2025.
- Achieve target of £10.8 million of private-sector leverage.
- Achieve target of 300 new jobs being created over the term of the Agreement
- Achieve target of increasing GVA by £10 million over the term of the Agreement.

These targets are without prejudice to the targets and objectives set out in the IOGs.

SCHEDULE 5 DATA PROTECTION

1 DEFINITIONS AND INTERPRETATION

1.1 In this Schedule, unless the context otherwise requires:

Agreed Purposes shall mean the following:

- a) in respect of the Fund Manager, providing the Services and otherwise complying with its obligations under this Agreement; and
- b) in respect of SWIGC, complying with its obligations under this Agreement and assessing the Fund Manager's compliance with its obligations under this Agreement.

Controller, data subject, personal data, personal data breach, processing and processor shall have the meaning given in the applicable Data Protection Legislation;

Data Discloser means a party that discloses Shared Personal Data to the other party.

Data Protection Legislation means the General Data Protection Regulation 2016/679, the UK Data Protection Act 2018 and all applicable laws and regulations that relate to the protection and Processing of personal data and privacy including together with any guidance and code of practice issued by the relevant data protection or supervisory authority and applicable to a party, all as amended, replaced or superseded from time to time.

Permitted Recipients means the parties to this agreement, the employees of each party, and any third parties engaged to perform obligations in connection with this agreement.

Shared Personal Data means the personal data to be shared between the parties for the Agreed Purposes.

1.2 In case of any conflict or inconsistency between the provisions of this Schedule and the main terms of the Agreement, the provisions contained in this Schedule shall prevail to the extent of the inconsistency, provided always that nothing in this Schedule shall permit the parties to process personal data in a manner which is prohibited by the Agreement.

1.3 A reference to a statute or statutory provision includes all subordinate legislation made under it from time to time, and is a reference to it as amended, extended or re-enacted from time to time (**Replacement Law**). References to terms defined in a statute or statutory provision shall be replaced with or incorporate (as the case may be) references to the equivalent terms defined in any Replacement Laws, once in force and applicable.

1.4 To the extent that a term of this Schedule requires the performance by a party of an obligation "in accordance with Data Protection Legislation" (or similar), unless otherwise expressly agreed in this Schedule, this requires performance in accordance with the relevant requirements of such Data Protection Legislation as is

in force and applicable at the time of performance (if any).

2 DATA PROTECTION: INFORMATION SHARED BETWEEN CONTROLLERS

- 2.1 This clause sets out the framework for the sharing of personal data between the parties as controllers. Each party acknowledges that one party (referred to in this clause as the **Data Discloser**) will regularly disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- 2.2 Both SWIG Capital and the Fund Manager shall comply with all the obligations imposed on a controller under the Data Protection Legislation and this Schedule.
- 2.3 Each party shall:
 - 2.3.1 ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
 - 2.3.2 give full information to any data subject whose personal data may be processed under this agreement of the nature such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
 - 2.3.3 process the Shared Personal Data only for the Agreed Purposes;
 - 2.3.4 not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
 - 2.3.5 ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;
 - 2.3.6 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
 - 2.3.7 not transfer any personal data received from the Data Discloser outside the EEA unless the transferor:
 - 2.3.7.1 complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and
 - 2.3.7.2 ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR; or (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) Binding corporate rules are in place or (iv) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.
- 2.4 Each party shall assist the other in complying with all applicable requirements of the

Data Protection Legislation. In particular, each party shall:

- 2.4.1 consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
 - 2.4.2 promptly inform the other party about the receipt of any data subject access request;
 - 2.4.3 provide the other party with reasonable assistance in complying with any data subject access request;
 - 2.4.4 not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;
 - 2.4.5 assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators;
 - 2.4.6 notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
 - 2.4.7 at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the personal data;
 - 2.4.8 use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
 - 2.4.9 maintain complete and accurate records and information to demonstrate its compliance with this paragraph 2 and allow for audits by the other party or the other party's designated auditor; and
 - 2.4.10 provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.
- 2.5 Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

3 DATA PROCESSING

3.1 The Fund Manager acknowledges and agrees that, if and where it processes personal data as a Processor (or sub Processor) it shall:

3.1.1 process the Personal Data only to the extent necessary for the purposes of performing the Fund Manager's obligations under the Agreement and otherwise in accordance with SWIG Capital's documented instructions and if the Fund Manager considers that any of SWIG Capital's instructions infringe the Data Protection Legislation, the Fund Manager shall notify SWIG Capital immediately; the Processing shall continue subject to paragraph 3.1.6 for the duration of the Agreement;

3.1.1.1 not appoint, replace or remove any sub Processor for Processing without SWIG Capital's prior written authorisation and where the Fund Manager does appoint, replace or remove any sub Processor, the Fund Manager shall:

3.1.1.2 remain fully liable for the acts and omissions of such sub Processor; and

3.1.1.3 procure that such sub Processor is subject to a written agreement containing:

3.1.1.3.1 data processing obligations no less onerous than those set out in this clause and that such agreement will meet the requirements of the Data Protection Legislation; and

3.1.1.3.2 a provision that such agreement will terminate automatically on termination or expiry of this Agreement;

3.1.2 not process the Personal Data in any country outside the European Economic Area (EEA) (or post-Brexit, the United Kingdom and the European Economic Area) unless:

3.1.2.1 the Fund Manager has obtained SWIG Capital's prior written authorisation to do so;

3.1.2.2 the Fund Manager has ensured that there are appropriate safeguards in relation to the transfer and Processing in accordance with Article 46 of GDPR and as determined by SWIG Capital;

3.1.2.3 the Data Subject has enforceable rights and effective legal remedies;

3.1.2.4 the Fund Manager complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

3.1.2.5 the Fund Manager complies with SWIG Capital's reasonable instructions;

and if the Fund Manager is required by applicable laws to transfer the Personal Data outside of the EEA (or post-Brexit the United Kingdom and

the European Economic Area), the Fund Manager shall inform SWIG Capital of such requirement before making the transfer (unless the Fund Manager is barred from making such notification under the relevant applicable law);

- 3.1.3 ensure that, in addition to any confidentiality provisions in this Agreement, all persons authorised by the Fund Manager to process the Personal Data are subject to appropriate duties of confidentiality;
- 3.1.4 have at all times during the term of this Agreement, taking in to account the nature of the Processing, appropriate technical and organisational measures in place to:
 - 3.1.4.1 provide a necessary level of security to protect any Personal Data against unauthorised or unlawful Processing and against accidental loss, alteration, destruction or damage; and
 - 3.1.4.2 assist SWIG Capital with fulfilling SWIG Capital's obligations to respond to requests from a Data Subject for access to, rectification, erasure or portability of, or for restriction of, or objections to, the Processing of, that Data Subject's Personal Data;
- 3.1.5 assist SWIG Capital's with SWIG Capital's compliance obligations in respect of security of Personal Data, notifications of breaches of Data Protection Legislation to supervisory authorities, communications of breaches of Data Protection Legislation to Data Subjects, the carrying out of data protection impact assessments and any consultations with supervisory authorities;
- 3.1.6 cease Processing the Personal Data in connection with this Agreement on the termination or expiry of this Agreement, or if earlier, on termination or cessation of the service to which they relate and, at SWIG Capital's request delete or return all Personal Data to SWIG Capital, and delete all existing copies unless applicable laws require their retention;
- 3.1.7 make available to SWIG Capital information reasonably necessary to demonstrate compliance with the obligations set out in this paragraph 3.1 and allow for and contribute to audits, including inspections, conducted by SWIG Capital or its representative;
- 3.1.8 provide SWIG Capital with the assistance and information required by SWIG Capital to satisfy SWIG Capital's record keeping obligations under the Data Protection Legislation and adhere to any applicable code of conduct or certification method approved under the GDPR;
- 3.1.9 at the earliest opportunity and in any event within 24 hours after having become aware:
 - 3.1.9.1 notify SWIG Capital of any unauthorised or unlawful Processing of any of the Personal Data to which this clause 2 applies and of any loss or destruction or other damage (Personal Data Breach); such notification shall include or as soon as reasonably possible the Fund Manager shall provide to SWIG Capital:

- 3.1.9.1.1 a description of the nature of the Personal Data breach including, to the extent possible, the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned;
- 3.1.9.1.2 the name and contact details of the duly authorised contact point where more information can be obtained;
- 3.1.9.1.3 a description of the likely consequences of the Personal Data Breach;
- 3.1.9.1.4 a description of the measures taken or proposed to be taken by the Fund Manager to address the Personal Data Breach, including, where appropriate, measures to mitigate its possible adverse effects;
- 3.1.9.1.5 an explanation of how the Personal Data Breach occurred;
- 3.1.9.1.6 a description of how the Fund Manager became aware of the Personal Data Breach;
- 3.1.9.1.7 the date and time of the Personal Data Breach;
- 3.1.9.1.8 the date and time when the Fund Manager became aware of the Personal Data Breach;
- 3.1.10 take such steps consistent with good industry practice to mitigate the detrimental effects of any such incident on the Data Subjects; and
- 3.1.11 fully co-operate with SWIG Capital in dealing with such incident and its consequences. The Fund Manager shall not disclose any information about or in connection with any Personal Data Breach, other than to SWIG Capital in accordance with this paragraph 3.1.9 or with the express prior written approval of a duly authorised representative of SWIG Capital;
- 3.1.12 maintain a written record of all categories of processing activities carried out on SWIG Capital's behalf, containing the following and make it available to the SWIG Capital and any relevant supervisory authority on request:
 - 3.1.12.1 the name and contact details of the Processor or Processors and of each Controller on behalf of which the Fund Manager is acting, and, where applicable, of the Controller's or the Processor's representative, and the data protection officer;
 - 3.1.12.2 the categories of processing carried out on behalf of each Controller;
 - 3.1.12.3 where applicable and subject always to paragraph 3.1.2, transfers of Personal Data to a third country or an international

organisation, including the identification of that third country or international organisation and, in the case of transfers referred to in the second subparagraph of GDPR Article 49(1), the documentation of suitable safeguards;

3.1.12.4 where possible, a general description of the technical and organisational security measures referred to in GDPR Article 32(1);

3.1.13 fully indemnify on demand, defend and hold harmless SWIG Capital and each of SWIG Capital's officers, employees and agents against all liability, damages, losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation, whether arising in tort (including without limitation negligence), in contract or otherwise), costs (including legal costs), fees, claims and expenses which SWIG Capital may incur or suffer arising out of or in connection with any breach of this paragraph 3.1 by the Fund Manager, the Fund Manager's personnel (including the Fund Manager's officers) and/or any third party to whom the Fund Manager has passed Personal Data, including any negligent or reckless act, omission or default. Notwithstanding anything to the contrary within this Agreement, nothing shall limit the Fund Manager's liability under this paragraph 3.1 or the indemnity in this paragraph 3.1.13.

Executed as a Deed by

..... (Name – block capitals)

..... (Name – block capitals)

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

..... Capacity:

..... Capacity:

Executed as a Deed by

..... (Name – block capitals)

..... (Name – block capitals)

for and on behalf of
[FUND MANAGER]

..... Capacity: Director

..... Capacity: Director / Company Secretary