

MEMBERS AGREEMENT
among
THE LOCAL AUTHORITIES
specified in Part 1 of the Schedule
and
BUSINESS LOANS SCOTLAND LIMITED



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MEMBERS AGREEMENT

among

THE LOCAL AUTHORITIES constituted under the Local Government, etc (Scotland) Act 1994 and as identified in Part 1 of the Schedule (hereinafter referred to as "**the Members**")

and

BUSINESS LOANS SCOTLAND LIMITED incorporated under the Companies Acts with company number SC500710 and having its registered office at 302 St Vincent Street, Glasgow, G2 5RZ (hereinafter referred to as "**the Company**")

WHEREAS:

- (A) the Company is a private company limited by guarantee incorporated on 17 March 2015 under the Companies Act 2006;
- (B) the Members have agreed to co-operate in establishing, managing and operating a loan fund and for this purpose have agreed to become members of the Company;
- (C) the Members have agreed to enter into this Agreement for the purposes of regulating their relationship with each other and certain aspects of the affairs of, and their dealings with, the Company; and
- (D) the Company has agreed with the Members that it will comply with the terms and conditions of this Agreement in so far as they relate to the Company.

NOW IT IS HEREBY AGREED AS FOLLOWS:-

1. **DEFINITIONS AND INTERPRETATION**

In this Agreement:-

1.1 unless there be something inconsistent therewith:-

"Allocated Monies" means the total aggregate amount of monies from the Fund allocated to each Member for the purposes of making Loans within that Member's Area;

"Area" means all of the Member's Areas detailed in column 2 of Part 1 of the Schedule.

"Articles" means the Articles of Association of the Company as amended from time to time;

"Board" means the Board of Directors of the Company from time to time;

“Disaggregation Policy”	means the policy for the allocation of the Fund as agreed, reviewed or amended from time to time in accordance with Clause 4;
“East Region Members”	means the following Members:- Aberdeen City, Aberdeenshire, Angus, Clackmannanshire, Dundee, East Lothian, City of Edinburgh, Falkirk, Fife, Midlothian, Perth & Kinross, Scottish Borders, Stirling and West Lothian;
“ERDF Funding”	means any monies received or receivable by the Company for the Fund from the European Regional Development Fund;
“ESIF”	means East of Scotland Investment Fund, incorporated under the Companies Acts with company number SC369981 and having its registered office at 3 rd Floor, Kingdom House, Kingdom Avenue, Glenrothes, Fife, KY7 5LY;
“ESIF Funds”	means funds transferred from ESIF for the purpose of granting Loans by the Company and to be allocated in accordance with clause 5;
“ESIF Loan”	means a loan made by ESIF in accordance with the terms of the ESIF Members Agreement;
“ESIF Members Agreement”	means the members agreement among the Local Authorities and ESIF (each as defined therein) dated [X];
“ESIF Member’s Area”	means the ESIF Members Area as defined in the ESIF Members Agreement.
“Financial Year”	means the financial year of the Company commencing on 1 April in any year to 31 March in the following year;
“Fund”	means the fund of monies held or receivable by the Company in accordance with this Agreement and comprising the following: (i) Member’s Contributions; (ii) ERDF Funding (iii) Repayments; (iv) ESIF Funds; (v) WSLF Funds (vi) any profit generated pursuant to Third Party Fund Management Services; and (vii) interest accrued on the Fund;
“Fund Manager”	means the individual employed by the Company to be the Fund Manager;
“Group”	means the Company and its subsidiaries from time to time;

“H & I Region Members”	means the following Members:- Argyll & Bute, Eileen Siar, Highland, Moray, Orkney and Shetland;
“Loan”	means a loan of monies, comprising part of the Fund, by the Company to a commercial enterprise located in a Member’s Area on such terms and conditions as the Company may determine in accordance with this Agreement;
“Loan Targets”	means the loan targets allocated to each Member by the Company;
“Member's Area”	means the area detailed in column 2 of Part 1 of the Schedule which corresponds to a Member by virtue of Section 1 and Parts I and II and Schedule 1 to the Local Government etc. (Scotland) Act 1994;
“Member's Contributions”	means the monies contributed to the Fund by a Member from time to time;
“Operations Manual”	means the operations manual agreed by the Operations Officers from time to time setting out the procedures governing the operation of the Company, including by way of illustration and not limitation, the offering, making and management of Loans;
“Operations Officers”	means the operations officers appointed from time to time pursuant to clause 17;
“Regions”	means the East Region, H & I Region and the West Region and “Region” shall be construed accordingly;
“Regional Fund Officer”	means an employee of the Company or third party contractor engaged to the regional fund officer of the Company;
“Regional Management Groups”	means those groups established and carrying on business in accordance with clause 8;
“Regional Officers Groups”	means those groups established and carrying on business in accordance with clause 9;
“Repayment”	means any Loan repayments;
“Third Party Fund	means fund, portfolio, debtor or related

Management Services	management, operational or administration services provided by the Company to third parties;
“Schedule”	means the schedule in three parts annexed to this Agreement;
“West Region Members”	means the following Members:- Dumfries & Galloway, East Ayrshire, East Dunbartonshire, East Renfrewshire, Glasgow, Inverclyde, North Ayrshire, North Lanarkshire, Renfrewshire, South Ayrshire, South Lanarkshire and West Dunbartonshire;
“WSLF”	means West of Scotland Loan Fund incorporated under the Companies Acts with company number SC166736 and having its registered office at London Road Centre, London Road, Kilmarnock, KA3 7BU;
“WSLF Funds”	means funds transferred from WSLF for the purpose of granting Loans by the Company and to be allocated in accordance with clause 5;
“WSLF Loan”	means a loan made by WSLF in accordance with the terms of the WSLF Members Agreement;
“WSLF Member”	means a Member of WSLF (as defined in the WSLF Members Agreement);
“WSLF Members Agreement”	means the members agreement among the Local Authorities and WSLF (each as defined therein) dated X 2005, as amended by a Deed of Amendment signed on 24 th , 25 th , 26 th and 29 th of March 2010 and 8 th , 12 th and 15 th of April 2010; and
“WSLF Member’s Area”	means the WSLF Members Area as defined in the WSLF Members Agreement.

- 1.2 reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted;
- 1.3 words importing the singular include the plural, words importing any gender include every gender, and words importing persons include bodies corporate and un-incorporate and (in each case) vice versa;
- 1.4 the expression “the Company”, where used in the undernoted clauses, shall be deemed to include each of the other companies in the Group (if any) from time

to time to the intent and effect that the provisions of the undernoted clauses shall apply in relation to each such company as they apply in relation to the Company, save for those provisions which expressly or by implication relate only to the Company:

- 1.4.1 clause 3.1;
- 1.4.2 clause 3.2;
- 1.4.3 clause 12.4;
- 1.4.4 clause 13;
- 1.4.5 clause 15;
- 1.4.6 clause 16; and
- 1.4.7 clause 18;

provided that where any of the above clauses require the consent of the Members or the directors of the Company, this shall still mean the consent of the Members and / or directors of the Company, not the members and / or directors of another member of the Group;

- 1.5 reference to Clauses and other provisions are references to Clauses and other provisions of this Agreement and any reference to a sub-clause is, unless otherwise stated, a reference to a sub-clause of the provision in which the reference appears; and
- 1.6 The headings shall not affect interpretation of this Agreement.

2. PURPOSE

- 2.1 Subject to the terms of this Agreement the business and purpose of the Company is:-
 - 2.1.1 to hold, manage and operate the Fund;
 - 2.1.2 to grant Loans in the Area;
 - 2.1.3 to receive Repayments; and
 - 2.1.4 subject to clause 18, to provide Third Party Fund Management Services.

3. LEGAL CAPACITY

- 3.1 The Company in carrying out its business as defined in Clause 2 shall hold itself out to the public as acting solely on its own behalf and shall act as a principal in any dealings with any third party, except in the case of Third Party Fund Management Services where the Company may act on behalf of third parties.

- 3.2 The Company shall not, in carrying out its business, act as an agent, trustee or nominee for and on behalf of any person including any Member, except where it is required to properly carry out any Third Party Fund Management Services.
- 3.3 The Members shall be entitled to make offers of Loan on behalf of the Company in accordance with the terms of this Agreement and the Operations Manual. The Members shall make clear to any potential borrowers that any Loan will be made by the Company and not by the Members themselves.

4. DISAGGREGATION POLICY

- 4.1 The Allocated Monies and Loan Targets shall be determined in accordance with the Disaggregation Policy.
- 4.2 The Disaggregation Policy shall be set by the Board and may be reviewed or amended by the Board from time to time.
- 4.3 The initial Allocated Monies are set out in Part 2 of the Schedule.
- 4.4 The initial Loan Targets are set out in Part 3 of the Schedule.
- 4.5 For the avoidance of doubt:-
- 4.5.1 the Allocated Monies remain assets of the Company and shall be held in a bank account in the name of the Company until they become Loans; and
- 4.5.2 any loan from a third party may not be used to grant Loans and shall not form part of the Allocated Monies.

5. WSLF FUNDS AND ESIF FUNDS

- 5.1 Any funds received by the Company from WSLF or ESIF shall be immediately allocated to the Member to whom the funds were allocated or would have been allocated under the terms of the ESIF Members Agreement or WSLF Members Agreement. For the avoidance of doubt, if repayments are received by the company in respect of a WSLF Loan made in a WSLF Member's Area which would have been allocated to that WSLF Member under the terms of the WSLF Members Agreement, then those funds shall be immediately allocated to that Member's Allocated Monies.
- 5.2 The Company hereby irrevocably and unconditionally guarantees to pay to any creditors of WSLF or EISF on demand, and in the currency in which the same falls due for payment, all monies and liabilities whatsoever which are now or at any time hereafter shall have been advanced to, become due, owing or incurred by WSLF or ESIF to or in favour of any creditors of WSLF or ESIF.

6. LOANS

- 6.1 The Company shall use the Fund to make Loans in accordance with the following terms:-
- 6.1.1 the Company shall only make Loans in the Area;

- 6.1.2 the Company shall not make a Loan of more than ONE HUNDRED THOUSAND POUNDS (£100,000) or such other limit as the directors of the Company may unanimously approve from time to time either in writing or at a meeting of the directors attended by all the directors of the Company;
 - 6.1.3 the interest rate on a Loan shall be 6% or such other limit as the directors of the Company may unanimously approve from time to time either in writing or at a meeting of the directors attended by all the directors of the Company;
 - 6.1.4 the Loans shall be made in accordance with the Operations Manual;
 - 6.1.5 the Company shall only make Loans to commercial enterprises in a Member's Area up to a maximum aggregate sum which is equal to the aggregate value of the Allocated Monies attributable by the Company to that Member;
 - 6.1.6 in any Loan to a limited company it may, at the sole discretion of the relevant Member, be a condition of the grant of the Loan that the Company obtains a personal guarantee and a Floating Charge, together with a Standard Security (where the borrower has heritable property), in security of the Loan;
 - 6.1.7 in any Loan to an individual, sole trader or partnership it may, at the sole discretion of the relevant Member, be a condition of the grant of the Loan that the Company obtains a Standard Security and the individual(s) involved shall personally guarantee the Loan (where in a partnership, jointly and severally), in security of the Loan;
 - 6.1.8 no Loan of a value above £50,000 shall be made, except in accordance with clause 6.6; and
 - 6.1.9 for the avoidance of doubt, in the event that the directors of the Company resolve to increase the loan limit specified in clause 6.1.2, no Member shall be obliged to increase the value of Loans that they request pursuant to clause 6.2.
- 6.2 So long as the proposed Loan complies with clause 6.1, following the Company's receipt of a receipt of a payment form from a Member (which may be faxed or emailed) which:
- 6.2.1 is signed by two authorised signatories of the Member with the required level of signing authority for the amount the Loan (intimated to the Company pursuant to clause 6.5);
 - 6.2.2 states the amount of the Loan;
 - 6.2.3 states who the relevant borrower is to be; and
 - 6.2.4 states when the Loan is to be made (being a date no less than 2 days after the Company's receipt of the notice issued pursuant to this clause 6.2);

(unless the same Member rescinds the request in writing prior to the date on which the Loan is to be made) the Company shall transfer the amount of the Loan by bank transfer (BACS) to the relevant borrower on the date the Loan is to be made.

- 6.3 The Members shall exercise that degree of skill and care as a reasonably experienced and diligent lender in the relevant sector would normally take in selecting and investigating each potential Loan and in negotiating the terms of the Loan. In particular, but without prejudice to the foregoing generality, the relevant Member shall ensure the completion of appropriate due diligence in respect of each of its proposed Loans, on the proposed borrower, any key parties or individuals and such matters relevant to them as the Member considers appropriate in the circumstances of the proposed Loan.
- 6.4 Notwithstanding clause 6.3, the parties acknowledge that the Company may (in informed circumstances) make Loans to certain borrowers and in certain circumstances where a commercial lender may not usually lend.
- 6.5 Each Member will prepare and submit to the Company a list of its authorised signatories and the levels of Loan that they can authorise pursuant to clause 6.2.1.
- 6.6 No Loan of a value exceeding £50,000 shall be made by the Company, except:
 - 6.6.1 in the case of a Loan proposed to be made by an East Region Member, with the prior consent of the East Regional Management Group;
 - 6.6.2 in the case of a Loan proposed to be made by a H & I Region Member, with the prior consent of the H & I Regional Management Group; and
 - 6.6.3 in the case of a Loan proposed to be made by a West Region Member, with the prior consent of the West Regional Management Group.

7. CORPORATE GOVERNANCE WORKING GROUP

- 7.1 The Corporate Governance Working Group will:
 - 7.1.1 be established to support the Board;
 - 7.1.2 consist of up to six members, including one Director and one Officer from each Region, together with the Fund Manager;
 - 7.1.3 meet at such times as considered necessary to fulfil its tasks and duties; and
 - 7.1.4 be remitted to:
 - (a) consider matters referred to it from the Board;
 - (b) provide advice / recommendations to the Board;
 - (c) provide support to staff members and the Fund Manager;
 - (d) advise on the recruitment of staff for the Company;
 - (e) develop relevant policies and strategies;

- (f) consider any item of business requiring a decision out with the normal Board meeting cycle;
- (g) ensure compliance with statutory rules and regulations and resolve issues as required; and
- (h) consider measures to ensure the sustainability of the Fund.

7.2 A record of any items remitted by the Board to the Corporate Governance Working Group and the resulting recommendations / decisions will be included in the minute of Board meetings and will be communicated to all Members via that mechanism.

8. REGIONAL MANAGEMENT GROUPS

8.1 There will be one Regional Management Group for each of the East Region Members, H & I Region Members and West Region Members.

8.2 Each Regional Management Group shall consist of one senior representative from each Member in that Region.

8.3 The Regional Management Groups will be established and be responsible for:

8.3.1 nominating three Directors to represent the relevant Region on the Board of Directors and ensuring that a suitable proxy is identified in the event that a Director is unable to attend a meeting of the Board of Directors;

8.3.2 appraising and determining all loan applications from their respective Region for Loans above £50,000 and up to £100,000 which have been recommended for approval by a Member Authority in that Region;

8.3.3 identifying appropriate individuals to represent the Member Authorities on the Regional Officers Group; and

8.3.4 monitoring and reviewing the Region's performance in terms of spend, targets and other appropriate areas.

8.4 Regional Management Groups will meet at least four times per annum, with compulsory meetings occurring 3 weeks prior to meetings of the Board of Directors. Additional meetings of a Regional Management Group may be called to consider loan applications in excess of £50,000

8.5 Unless determined otherwise by resolution of a Regional Management Group, the quorum for a meeting of a Regional Management Group shall be the higher of (1) three members of that Region; or (2) one-third of the Members in that Region.

8.6 Where loan applications in excess of £50,000 are being considered at a meeting of the Regional Management Group, the Member proposing the loan shall not be permitted to vote on the proposed resolution to approve that loan.

8.7 Draft minutes of the previous meeting of the Regional Management Groups will be circulated to members of the Regional Management Group within two weeks of that meeting and included with the agenda of the next meeting of the Board.

8.8 All members of the Regional Management Groups will receive draft minutes of meetings of the Board within two weeks of the date of the last meeting of the Board.

9. REGIONAL OFFICERS GROUPS

- 9.1 The Regional Officers Groups will be established to ensure that the Fund remains sensitive to the needs of local areas.
- 9.2 There will be one Regional Officer Group for each of the East Region Members, H & I Region Members and West Region Members.
- 9.3 Each Regional Officer Group will consist of an officer from each Member in that region, the Regional Loan Fund Officer and the Fund Manager.
- 9.4 Each Regional Officer Group will meet quarterly, with meetings taking place two weeks in advance of meetings of the Regional Management Group.
- 9.5 Representatives of each of the Regional Officer Groups shall meet representatives of the other Regional Officer Groups as and when required.
- 9.6 The Regional Officer Groups shall:
 - 9.6.1 be responsible for:
 - (a) Member performance and progress against ERDF targets;
 - (b) operational and compliance matters; and
 - (c) sharing good / best practice,
 - 9.6.2 assist in identifying:
 - (a) Member officers' training needs; and
 - (b) Marketing and promotional opportunities,
 - 9.6.3 monitor investments, manage arrears and debt management.
- 9.7 Draft minutes of meetings of the Regional Officers Group will be circulated to members of the Regional Officers Group within two weeks of the previous meeting and be signed off at the next meeting of the Regional Officers Group. Minutes of meetings of the Regional Officers Group will also be included with the agenda of the next meeting of the Regional Management Group.

10. ERDF FUNDING

- 10.1 The Company and each of the Members shall take such proper and reasonable action as is necessary to:
 - 10.1.1 ensure compliance with rules governing the application for and the use of ERDF Funds; and
 - 10.1.2 obtain further ERDF Funding for the Company.

11. REPAYMENT

- 11.1 The Company shall:-

- 11.1.1 receive Repayments in respect of Loans;
- 11.1.2 consolidate all Repayments received as part of the Fund in terms of this Agreement and the Disaggregation Policy.
- 11.2 The Company shall take such action as is reasonably necessary to recover monies due and outstanding on any Loans and, if necessary, enforce any security granted in consideration of making any Loan.
- 11.3 The Members shall give such assistance and co-operation as is reasonably requested by the Company to recover monies due and outstanding on any Loans to borrowers within their Member's Area.
- 11.4 Subject to the terms of the Disaggregation Policy, any Repayments received in respect of Loans made in a Member's Area shall be immediately allocated to that Member's Allocated Monies.

12. MANAGEMENT OF THE FUND

- 12.1 The Company shall ascertain and keep up to date records of the value of the Fund and any third party loan including a separate breakdown of Member's Contributions, ERDF Funding, Repayments and interest accrued and separately ascertain the value and allocation of all Allocated Monies. These records shall be available for inspection at any time during normal business hours by any of the Members giving the Company reasonable notice.
- 12.2 The Company shall hold the Fund in an interest bearing bank account in the name of the Company and shall not hold any other monies without the prior written consent of all the Members.
- 12.3 The Members shall procure that at least four board meetings are held in each Financial Year. The Company shall ensure that with the written notice (which may be by email to an email address provided by the relevant director for such purpose) for each board meeting a summary is included of (i) the value at that time of any third party loan and (ii) the value and allocation at that time of the Allocated Monies.
- 12.4 Except as the Members may otherwise agree in writing or except as otherwise provided or contemplated in this Agreement each Member shall exercise its powers in relation to the Company so as to ensure that:-
 - 12.4.1 the Company carries on and conducts its business and affairs in a proper and efficient manner and for its own benefit;
 - 12.4.2 the Company transacts all its business on arm's length terms;
 - 12.4.3 all business of the Company, other than routine day to day business, shall be undertaken and transacted by the directors;
 - 12.4.4 the Company shall keep books of account and therein make true and complete entries of all its dealings and transactions of and in relation to its business;

- 12.4.5 the Company shall include with the written notice for the first board meeting to occur after 14th May, 14th September, 14th November and 14th February in each Financial Year, unaudited management accounts for the Company in a form acceptable to the directors for the quarter ending on the previous 31st March, 30th June, 30th September and 31st December respectively;
- 12.4.6 the Company shall prepare its accounts on an historical cost basis and shall adopt such accounting policies as may from time to time be generally accepted in Scotland;
- 12.4.7 the Company shall prepare such accounts in respect of each accounting reference period as are required by statute and ensure procure that such accounts are audited as soon as practicable and in any event not later than 4 months after the end of the relevant accounting reference period;
- 12.4.8 the Company shall keep each of the Members fully informed as to all its financial and business affairs; and
- 12.4.9 if the Company requires any approval, consent or licence for the carrying on of its business in the places and in the manner in which it is from time to time carried on or proposed to be carried on the Company will use its best endeavours to maintain the same in full force and effect.

13. ADMINISTRATION OF THE FUND

- 13.1 Unless otherwise agreed by a majority of the directors of the Company either in writing or at a quorate meeting of the directors:-
 - 13.1.1 the auditors of the Company shall be [X];
 - 13.1.2 the bankers to the Company shall be [X];
 - 13.1.3 the registered office of the Company shall be at [X];
 - 13.1.4 the accounting reference date of the Company shall be 31st March in each year; and
 - 13.1.5 the secretary of the Company shall be the Fund Manager of the Company from time to time;
 - 13.1.6 each electronic payment by BACS transfer by the Company shall be signed or authorised (as the case may be) by one authorised signatory of the Company and each electronic payment by same-day transfer shall be signed or authorised by two authorised signatories of the Company.

14. DIRECTORS

- 14.1 The directors of the Company shall be appointed and removed in accordance with the Articles.

15. MEMBER'S PROTECTION

15.1 Matters requiring directors' approval

The Members shall exercise their powers in relation to the Company to procure that, except as otherwise provided or contemplated in this Agreement and except with the prior approval of a resolution of the directors or of a written resolution of the directors, the Company will not:-

- 15.1.1 enter into any service agreement with any employee or director which is not terminable without payment of compensation on not more than 3 months' notice;
- 15.1.2 dismiss any of its employees except in circumstances where the Company is entitled summarily to dismiss that employee;
- 15.1.3 enter into or vary any contract or arrangement (whether legally binding or not), with any of its directors or any Member or with any associate of a director or Member;
- 15.1.4 incur any material expenditure or liability of a capital nature (including, for this purpose, the acquisition of any asset under lease or hire purchase) except in respect of office machinery and equipment reasonably required in the ordinary course of its business;
- 15.1.5 enter into any contract or arrangement outside the ordinary course of its business with a value of more than £20,000;
- 15.1.6 pay any remuneration or expenses to any person other than as proper remuneration for work done or services provided or as proper reimbursement for expenses incurred in connection with its business;
- 15.1.7 make any gift or political or charitable donation;
- 15.1.8 except the guarantee granted in favour of WSLF and ESIF under Clause 5.2 of this Agreement, give any guarantee, indemnity or security in respect of the obligations of any other person;
- 15.1.9 create or allow to subsist any security over any of its assets;
- 15.1.10 borrow any money or obtain any advance or credit in any form;
- 15.1.11 lend any money to any person (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or grant any credit to any person except in the normal course of business;
- 15.1.12 sell, transfer, lease, licence or in any other way dispose of any of its assets otherwise than in the ordinary course of its business; or
- 15.1.13 factor or assign any of its book debts.

15.2 Matters requiring Members' approval

Unless otherwise agreed between at least 75% of the Members in writing (or 75% of those Members present at a general meeting of the Company), the Members shall exercise their powers in relation to the Company to procure that (except as otherwise provided or contemplated in this Agreement) the Company will not:-

- 15.2.1 make any distribution out of capital profits or capital reserves;
- 15.2.2 pass any resolution (whether pursuant to Part 7 of the Companies Act 2006 or otherwise) whereby its classification or status may be changed;
- 15.2.3 alter the provisions of its Articles of Association or pass any resolution for winding up;
- 15.2.4 acquire or make any investment in another company or business or incorporate any subsidiary;
- 15.2.5 change the nature or scope of its business as carried on from time to time or commence any new business not being ancillary or incidental to such business;
- 15.2.6 enter into any partnership or joint venture with any other person;
- 15.2.7 pay any emoluments to the directors of the Company; or
- 15.2.8 admit any additional members of the Company.

16. DIRECTORS' INSURANCE

- 16.1 The Company shall be obliged to purchase and maintain for the directors of the Company a policy of insurance against liabilities incurred by a director in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company.
- 16.2 The policy or policies of insurance purchased and maintained pursuant to clause 16.1 shall be such policy or policies as the directors of the Company resolve from time to time to purchase and maintain.

17. OPERATIONS OFFICERS

- 17.1 Each Member shall be entitled to appoint one Operations Officer by giving written notice to the Company of the appointment.
- 17.2 Each Member shall be entitled to remove their appointed Operations Officer by giving written notice to the Company of the removal.
- 17.3 For the avoidance of doubt, the appointment of an individual as an Operations Officer does not make that individual a director of the Company, although a Member shall be free to appoint a director of the Company as an Operations Officer of the Company.

- 17.4 The quorum for meetings of the Operations Officers shall be 6.
- 17.5 The Operations Officers shall be responsible for:-
- 17.5.1 the drafting, agreement and maintenance of the Operations Manual;
 - 17.5.2 the development of training programmes;
 - 17.5.3 the development and review of the Disaggregation Policy (although any changes to the Disaggregation Policy will only apply once they have been approved by the directors of the Company pursuant to clause 4.2);
 - 17.5.4 the development of an annual marketing and promotion strategy;
 - 17.5.5 the development of the Company's website; and
 - 17.5.6 such other tasks as the board of the Company may delegate to the Operations Officers from time to time.
- 17.6 Meetings and proceedings of the Operations Officers shall in all respects conform with this Agreement and any regulations imposed upon them from time to time by the board of the Company. Subject to any such regulations and this Agreement, the meetings and proceedings of the Operations Officers shall be governed (so far as applicable) by the provisions in the Articles regulating the meetings and proceedings of the board of the Company.

18. THIRD PARTY FUND MANAGEMENT SERVICES

- 18.1 In certain cases it may be in the interests of the Company and its Members to provide Third Party Fund Management Services. Such Third Party Fund Management Services may only be provided by the Company if they are approved in advance by a resolution (which may be in writing or approved at a meeting) of 75% of the directors of the Company. When determining whether to give such approval, the Members shall procure that the directors take account of the following:
- 18.1.1 the purposes set out in clauses 2.1.1, 2.1.2 and 2.1.3 must remain the principal purposes and objectives of the Company; and
 - 18.1.2 it is not in the interests of the Company or its Members to enter into any agreement to provide Third Party Fund Management Services that will result in a loss to the Company.

19. CONFIDENTIALITY

- 19.1 The Members undertake to each other and the Company that they will not, subject to any obligations on the Members in respect of Freedom of Information legislation, at any time hereafter use or divulge or communicate to any person other than to officers or employees of the Company or a Member whose province it is to know the same or on the instructions of the directors any confidential information concerning the business, accounts, finance or contractual arrangements or other dealings, transactions or affairs of the

Company which may come to their knowledge and they shall use their best endeavours to prevent the publication or disclosure of any confidential information concerning such matters.

20. THE ARTICLES

- 20.1 If, during the continuance of this Agreement, there shall be any conflict between the provisions of this Agreement and the provisions of the Articles then, during such period, the provisions of this Agreement shall prevail.
- 20.2 Each of the parties hereof undertakes with each of the other to fully and promptly observe and comply with the provisions of the Articles to the extent and effect that each and every provision thereof shall be enforceable by the parties hereto *inter se* and in whatever capacity.
- 20.3 Nothing contained in this Agreement shall be deemed to constitute an amendment of the Articles or of any previous articles of association of the Company.

21. SUSPENSION AND TERMINATION

- 21.1 The Members may by special resolution:
- 21.1.1 suspend a Member's membership of the Company on such terms as specified in the special resolution;
 - 21.1.2 rescind the suspension of a suspended Member; or
 - 21.1.3 terminate a Member's membership of the Company and status as a party to this Agreement.
- 21.2 A suspended Member shall not be entitled to direct the Company to make any Loans or make any use of the Allocated Monies except with the consent of the board of the Company. The other terms of this Agreement shall continue to apply to a suspended Member.
- 21.3 Any Member may terminate their membership of the Company at the end of any Financial Year provided that they give at least 12 months' written notice to the Company.
- 21.4 The termination of this Agreement however caused and the ceasing by any Member of its membership shall be without prejudice to any obligations or rights of any of the parties hereto which have accrued prior to such termination and shall not affect any provision of this Agreement which is expressly or by implication provided to come into effect on or to continue in effect after such termination.

22. PARTIES BOUND

- 22.1 The Company undertakes with each of the Members to be bound by and comply with the terms and conditions of this Agreement insofar as the same relate to the Company and to act in all respects as contemplated by this Agreement.

22.2 The Members undertake with each other to exercise their powers in relation to the Company so as to ensure that the Company fully and promptly observes, performs and complies with its obligations under this Agreement.

22.3 Each Member undertakes with each of the other parties hereto that whilst it remains a party to this Agreement it will not (except as expressly provided for in this Agreement) agree to cast any of the voting rights exercisable by it in accordance with the directions, or subject to the consent of, any other person (including another Member).

23. GENERAL

23.1 Notices

All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address as the recipient may designate by notice given in accordance with the provisions of this sub-clause. Any such notice may be delivered personally or by first class prepaid letter or by fax and shall be deemed to have been served if by personal delivery when delivered, or if by first class post 48 hours after posting and if by fax when despatched.

23.2 Successors bound

This Agreement shall be binding on and shall enure for the benefit of the statutory successors and assignees and personal representatives (as the case may be) of each of the parties hereto.

23.3 Assignment

None of the parties hereto may assign its rights or obligations in whole or in part hereunder without the prior written consent of the other parties hereto.

23.4 Good Faith

Each of the parties hereto undertakes with each of the others to do all things reasonably within its power which are necessary or desirable to give effect to the spirit and intent of this Agreement and the Articles.

23.5 Further assurance

The parties hereto shall, and shall use their respective reasonable endeavours to procure that any necessary third parties shall do, execute and perform all such further deeds, documents, assurances, acts and things as any of the parties hereto may reasonably require by notice in writing to the others to carry the provisions of this Agreement and the Articles into full force and effect.

23.6 Entire agreement

This Agreement constitutes the entire agreement between the parties hereto with respect to the matters dealt with herein and supersedes any previous agreement between the parties hereto in relation to such matters. Each of the parties hereto hereby acknowledges that in entering into this Agreement it has not relied on any representation or warranty except as expressly set out herein

or in any document referred to herein. No variation of this Agreement shall be valid or effective unless made by one or more instruments in writing signed by such of the parties hereto which would be affected by such variation.

23.7 Law

This Agreement shall be governed by and construed in accordance with Scots law and the parties hereto irrevocably submit to the exclusive jurisdiction of the courts in Scotland in respect of any dispute or matter arising out of or connected with this Agreement.

23.8 No partnership

Nothing in this Agreement shall constitute or be deemed to constitute a partnership between any of the parties hereto and none of them shall have any authority to bind the others in any way.

23.9 Waiver

No failure to exercise and no delay in exercising on the part of any of the parties hereto any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies otherwise provided by law.

23.10 Severability

Notwithstanding that any provision of this Agreement may prove to be illegal or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

23.11 Exercise of powers

Where any Member is required under this Agreement to exercise its powers to the Company to procure a particular matter or thing, such obligation shall be deemed to include an obligation to exercise its powers both as a Member and to procure that any director appointed by it (whether alone or jointly with any other person) shall procure such matter or thing.

24. WARRANTY OF AUTHORITY

24.1 Each member warrants to the other Members and to the Company that it has the necessary authority to enter into this Members' Agreement and to become a member of the Company.

25. **REGISTRATION**

25.1 The parties consent to the registration of this Agreement for preservation: IN WITNESS WHEREOF these presents consisting of this, the [X] preceding pages and the schedule in three parts annexed hereto are subscribed as follows:-

Subscribed for and on behalf of [X] by

_____, authorised signatory

at _____ on _____ before the following witness:-

.....
Witness

.....
Authorised Signatory

.....
Witness' Full Name

.....
Witness' Address

.....

.....

This is the Schedule in three parts referred to in the foregoing agreement among the local authorities specified in this Schedule and Scottish Local Authorities Business Loan Fund Limited dated [X]

THE SCHEDULE - PART 1

THE MEMBERS

Column (1)

Column (2)

Member

Area

THE SCHEDULE - PART 2

THE INITIAL ALLOCATED MONIES

INITIAL ALLOCATION OF ERDF FUNDING

THE SCHEDULE - PART 3

THE INITIAL LOAN TARGETS