

ANNEX D

[Required Forms]

**Interim Prudential
Sourcebook for
Investment
Businesses:
Required Forms**

These forms are the required forms referred to in IPRU(INV) and are listed below (a short contents list appears at the beginning of each section of the annex):

IPRU(INV) Chapter	FORM
2	Authorised professional firms
	[FCA] 2.1 Bond
3	Securities and Futures Firms which are not MiFID Investment Firms or which are Exempt BIPRU Commodities Firms
	[FCA] 3.1 Approved Form of Subordinated Loan Agreement
	[FCA] 3.2 Form of Deed of Termination
	[FCA] 3.3 Form of Deed of Variation
	[FCA] 3.4 Form of Guarantor Undertaking
	[FCA] 3.5 Guidance Notes
5	Investment Management Firms (former IMRO Firms)
	[FCA] 5.1 Prescribed Subordinated Loan Agreement
	[FCA] 5.2 Prescribed Approved Undertaking
9	Exempt CAD Firms
	[FCA] 9.1 Long Term Subordinated Loan Agreement
	10.2 [deleted]
	[FCA] 9.3 Form of Deed of Termination
	[FCA] 9.4 Form of Deed of Variation
	[FCA] 9.5 Form of Guarantor Undertaking
	10.6 [deleted]
	10.7 [deleted]
	[FCA] 9.8 Guidance Notes
13	Personal Investment Firms (Former PIA Firms)
	[FCA] 13.1 Form of subordinated loan (with guidance notes)

2. Authorised professional firms

Form
[FCA] 2.1 Form of Bond

Page
2

**FORM OF BOND FOR AUTHORISED PROFESSIONAL
FIRMS
(SEE IPRU (INV) 2)**

BY THIS BOND AS A DEED WE [] of [] (“the Principal”) and [] of [] (“the Surety”) as witnessed by its common seal (so that the Surety whose seal is affixed below shall alone be bound) are jointly and severally bound upon the terms and conditions herein set out to [] (“the Trustee”) in the sum of £[] ([sum in words]) or such other sum as may from time to time be agreed between the Surety and the Principal (“the Penalty Sum”).

WHEREAS:-

- (1) The Trustee has consented to enter into this bond as trustee and to hold the rights and benefits under this bond upon trust for any Customer of the Principal in accordance with the terms of this bond.**
- (2) The Surety at the request of the Principal has agreed to be bound in the Penalty Sum upon the terms and conditions hereinafter contained.**

NOW THIS DEED WITNESSES as follows:-

- (1) For the purposes of this bond a claim shall arise if the following conditions are satisfied:-**
 - a. the Scheme has determined the Principal to be in default;**
 - b. the Trustee has determined to pay compensation to an eligible claimant whose claim is in respect of a Civil Liability incurred by the Principal in connection with its carrying on of Regulated Activities; and**
 - c. the claim in question relates to a Loss.**
- (2) The Surety and the Principal are held and firmly bound to the Trustee for the payment of any sum arising out of any claim under the provisions of Clause 1 hereof to the extent that any such claim exceeds the sum of fifty thousand pounds (£50,000) provided that the aggregate of any such sum or sums does not exceed the Penalty Sum.**
- (3) The Trustee hereby declares that it holds all its rights and benefits under this bond upon trust for the Customers in respect of whom or for which such claim or claims were made absolutely.**
- (4) The Trustee shall, insofar as it may lawfully do so, notify the Surety of any claim or Matter of which the Trustee is aware which may give rise to any claim hereunder such notice to be addressed to the Surety in writing at its address set out above or to such other address as may have been notified to the**

Trustee in writing by the Surety and any such information which the Trustee shall when serving such notice designate as confidential shall be held and retained by the Surety in confidence.

- (5) Payment of any sum to the Trustee in respect of any claim shall be due thirty (30) days after the giving of notice thereof pursuant to Clause 4 hereof the Surety shall pay any such sum or sums on demand.**
- (6) The Surety may give written notice to the Trustee sent by recorded delivery service to the address set out above or such other address as the Trustee shall from time to time advise in writing (and serving a copy of such notice upon the Principal) terminating its liability under this bond which liability shall accordingly cease sixty (60) days after receipt by the Trustee in writing of such notice (“the Termination Date”) save in respect of any claim rising out of anything notified by the Trustee to the Surety pursuant to Clause 4 prior to or within the period of six months after the Termination Date.**
- (7) Notwithstanding the Release or Discharge of the Principal the Surety shall remain liable in respect of any claim arising during the period in which this bond was in force or which shall be made within six months of the Termination Date.**
- (8) The Principal and its executors administrators or representatives whosoever jointly and severally agree and covenant with the Surety and the Trustee as follows:-**
 - a. That they shall and will from time to time and notwithstanding the Release or Discharge of the Principal indemnify the Surety and its successors and assigns from and against all claims losses costs and expenses which the Surety shall or otherwise might at any time sustain or be put to under or by virtue of this bond.**
 - b. That the Principal is an authorised professional firm which has Permission under the Act to carry on Regulated Activities and will give notice forthwith to the Surety in writing if it shall cease to have such Permission or if it shall become aware of any Matter which might give rise to it being declared in default by the Scheme.**
 - c. That the Principal will calculate the Penalty Sum that may be required under this bond from time to time so as to ensure that it complies with the Rules.**
 - d. That the persons named herein are duly authorised for an on behalf of the Principal to execute this bond in the manner appearing below.**
 - e. That the Trustee is irrevocably authorised to provide such information to the Surety as it shall think fit or as may be required for the purpose of making any claim and the Surety is irrevocably authorised to provide such information to the Trustee in relation to the obligations of the**

Principal secured by this bond as it shall think fit.

f. That the Principal will duly and promptly pay the annual premium due in respect of this bond.

(9) In this bond words and expressions having capitalised initial letters shall have the meanings set out in this bond and where not so defined shall have the meanings set out in the Glossary annexed to the General Provisions Instrument 2001 and as the same may hereafter be varied amended or supplemented from time to time

“the Act”	means the Financial Services and Markets Act 2000 or any amendment or re-enactment of the provisions thereof;
“Civil Liability”	means a civil liability as defined in the Scheme Regulations;
“Customer”	means a customer as defined in the Scheme Regulations;
“Loss”	means a loss which has been the subject of a valid claim determined by the Scheme in respect of which the amount of the Civil Liability is in excess of £50,000;
“Matter”	means any proceedings initiated under the Act against the Principal in relation to its Regulated Activities;
“the Principal”	means the authorised professional firm named herein and includes each of the partners thereof where applicable;
"Release or Discharge"	means the release of the Principal in relation to the termination of any Authorisation under the provisions of the Act;
“Scheme”	means the Financial Services Compensation Scheme;
"Scheme Regulations"	means the Financial Services Compensation Scheme Regulations.

Save where the context otherwise requires words and expressions used herein and in the Act shall bear the meaning given to them in the singular shall include the plural.

**IN WITNESS THEREOF the Principal acting by*
and*
as their duly authorised representatives and the Surety have executed and delivered
this bond as a deed this day of**

EXECUTED AND DELIVERED AS A DEED by

Witness
Signature
Occupation
Address
.....

EXECUTED AND DELIVERED AS A DEED by

Witness
Signature
Occupation
Address
.....

*** Where appropriate this bond should be executed by the compliance partner
 and the partner with overall responsibility for the Principal's Regulated
 Activities**

3. Securities and Futures Firms which are not *MiFID* Investment Firms or which are Exempt BIPRU Commodities Firms

Form		Page
[FCA] 3.1	Approved Form of Subordinated Loan Agreement	2
[FCA] 3.2	Form of Deed of Termination	17
[FCA] 3.3	Form of Deed of Variation	19
[FCA] 3.4	Form of Guarantor Undertaking	21
[FCA] 3.5	Guidance Notes	23
[FCA] 3.6	Form of Approved Bank Bond (with power of attorney)	31
[FCA] 3.7	Approved Form of Undertaking	34

3.1 Approved Form of Subordinated Loan Agreement

A. Front Page

THIS AGREEMENT is made on the date set out in the Variable Terms (as set out in **Schedule 1** to this Agreement) and is to be effective on that date unless a different effective date is set out in those terms

BETWEEN -

- (1) **the Lender** (as defined in the Standard Terms set out in **Schedule 2** to this Agreement), and
- (2) **the Borrower** (as defined in the Standard Terms)

WHEREAS the Borrower wishes to use the Loan, or each Advance under the Facility (as those expressions are defined in the Standard Terms) as an eligible capital substitute in accordance with the *FCA's* rule [IPRU(INV) 3-63] and has fully disclosed to the *FCA* the circumstances giving rise to the Loan or Facility and the effective subordination of the Loan and each Advance.

IT IS AGREED THAT this Agreement shall comprise the Variable Terms set out in **Schedule 1** to this Agreement and the Standard Terms set out in **Schedule 2** to this Agreement.

This Agreement is executed by the parties the day and year indicated in the Variable Terms.

Schedule 1

B. Variable Terms

1. Date of Agreement	
2. Effective Date	
3. Lender	
4. Address of Lender	
5. Borrower	
6. Address of Borrower	

7. The Loan or Facility

With reference to paragraph 2 of the Standard Terms,

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8. Interest

With reference to paragraph 3 of the Standard Terms, interest shall be calculated and paid as follows -

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9. Repayment

With reference to paragraph 4(2) of the Standard Terms and subject always to paragraphs 4(3) (restrictions on repayment) and 5 (subordination) of the Standard Terms, the terms for repayment are -

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10. Additional terms

With reference to paragraph 11 of the Standard Terms, the additional terms to this Agreement are -

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10. **Additional terms (contd)**

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11. **Jurisdiction**

With reference to paragraph 16 of the Standard Terms, the person(s) indicated below is (are) appointed as agents for service of process -

(a) by the Lender -

--	--

of

--	--

(b) by the Borrower -

--	--

of

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Schedule 2

C. Standard Terms

Interpretation

1 (1) In this Agreement -

“Advance” means, where this Agreement is for a loan facility, an amount drawn or to be drawn down by the Borrower or otherwise made available by the Lender under this Agreement as that amount may be reduced from time to time by any repayment or prepayment permitted under this Agreement;

“Borrower” means the person identified as such in the Variable Terms and includes its permitted successors and assigns and, where the Borrower is a partnership, each Partner;

“Business Day” means any day except Saturday, Sunday or a bank or public holiday in England;

“Effective Date” means the date on which this Agreement is to take effect being the date of this Agreement unless otherwise stated in the Variable Terms;

“Excluded Liabilities” means Liabilities which are expressed to be and, in the opinion of the Insolvency Officer of the Borrower, do, rank junior to the Subordinated Liabilities in the Insolvency of the Borrower;

“Facility” means the loan facility referred to in paragraph 2(2);

“Financial Resources” has the meaning given in the Financial Rules;

“Financial Resources Requirement” has the meaning given it in the Financial Rules;

“Financial Rules” means the rules in IPRU(INV) Chapter 3 in the *Handbook*;

“Insolvency” means and includes liquidation, winding up, bankruptcy, sequestration, administration, rehabilitation and dissolution (whichever term may apply to the Borrower) or the equivalent in any other jurisdiction to which the Borrower may be subject;

“Insolvency Officer” means and includes any person duly appointed to administer and distribute assets of the Borrower in the course of the Borrower’s Insolvency;

- 1** (1) **“Lender”** means the person identified as such in the Variable Terms and includes its permitted successors and assigns;

“Liabilities” means all present and future sums, liabilities and obligations payable or owing by the Borrower (whether actual or contingent, jointly or severally or otherwise howsoever);

“Loan” means the indebtedness of the Borrower to the Lender referred to in paragraph 2(1) as that indebtedness may be reduced from time to time by any repayment or prepayment permitted under this Agreement;

“Partner” means, where the Borrower is a partnership, each and every partner of the Borrower as a partner and as an individual (see also paragraph 8);

“Senior Liabilities” means all Liabilities except the Subordinated Liabilities and Excluded Liabilities;

“Subordinated Liabilities” means all Liabilities to the Lender in respect of the Loan or each Advance made under this Agreement and all interest payable thereon.

“the FCA” means The Financial Conduct Authority Limited whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS; and

- (2) Any reference to any rules of the *FCA* is a reference to them as in force from time to time.
- (3) Reference to any gender includes a reference to all other genders.
- (4) Reference to a paragraph is to a paragraph of these Standard Terms, unless otherwise indicated.

The Loan or Facility

- 2** (1) Where as indicated in the Variable Terms this Agreement is for a loan, the Borrower hereby **acknowledges** its indebtedness to the Lender in the sum mentioned in the Variable Terms as an unsecured loan upon and subject to the terms and conditions of this Agreement.

- (2) Where, as indicated in the Variable Terms this Agreement is for a loan facility -

(a) the maximum aggregate principal amount of each Advance outstanding at any time under the Facility shall not exceed the maximum amount specified in the Variable Terms or such other amount as may be agreed between the Borrower and the Lender from time to time;

(b) the Facility will be available until the last available date specified in the Variable Terms; and

- 2 (2) (c) any specific terms dealing with the mechanics of drawdown are contained in the Variable Terms.
- (3) The Lender and the Borrower undertake to provide the FCA, immediately upon request, with details in writing of all principal and interest in respect of the Loan or each Advance outstanding for the time being and all payments of any amount made in the period specified by the FCA in the request.

Interest

- 3 Subject to the provisions of paragraphs 4 and 5, until repayment of the Loan or each Advance in full, the Borrower will pay to the Lender interest on the Loan or each Advance (or on any part or parts of it or them for the time being outstanding under this Agreement) calculated and payable in the manner set out in the Variable Terms.

Repayment

- 4 (1) The provisions of this paragraph are subject in all respects to the provisions of paragraph 5(subordination).
- (2) The terms concerning repayment are set out in the Variable Terms but are subject to paragraph 4(3).
- (3) (a) Unless the *FCA* otherwise permits, no repayment or prepayment of the Loan or any Advance may be made, in whole or in part, until five Business Days have elapsed from the *FCA* confirming in writing to the Borrower receipt of the Borrower's written notice of his intention to do so, except that -
- (i) where, immediately after repayment or prepayment, the Borrower's Financial Resources would be less than or equal to 120% of its Financial Resources Requirement, the prior written approval of the *FCA* shall be obtained before any repayment or prepayment;
 - (ii) any notice under this sub-paragraph or the terms referred to in subparagraph (2) above shall be ineffective if -
 - (aa) the Insolvency of the Borrower commences before the date on which such notice expires; or
 - (bb) the *FCA* notifies the Borrower orally or in writing of its refusal to consent to such repayment or prepayment by the time such notice period expires.
- (b) Payments of interest at a rate not exceeding the rate provided for in paragraph 3 may be made without notice to or consent of the *FCA*, except that where -
- (i) immediately after payment, the Borrower's Financial Resources would be less than or equal to 120% of its Financial Resources Requirement; or

- 4 (3) (b) (ii) before payment, the Insolvency of the Borrower commences,
no such payment may be made without the prior written approval of the *FCA*.
- (4) If in respect of the Loan or any Advance default is made for a period of -
- (a) seven days or more in the payment of any principal due, or
 - (b) 14 days or more in the payment of any interest due,
- the Lender may, at its discretion and after taking such preliminary steps or actions as may be necessary, enforce payment by instituting proceedings for the Insolvency of the Borrower after giving seven Business Day's prior written notice to the *FCA* of its intention to do so.
- (5) Subject to (6) below, the Lender may at its discretion, subject as provided in this Agreement, institute proceedings for the Insolvency of the Borrower to enforce any obligation, condition or provision binding on the Borrower under this Agreement (other than any obligation for the payment of principal moneys or interest in respect the Loan or any Advance) PROVIDED THAT the Borrower shall not by virtue of the institution of any such proceedings for the Insolvency of the Borrower be obliged to pay any sum or sums sooner than the same would otherwise have been payable by it.
- (6) The Lender may only institute proceedings for the Insolvency of the Borrower to enforce the obligations referred to in (5) above if -
- (a) a default under those obligations is not remedied to the satisfaction of the Lender within 60 days after notice of such default has been given to the Borrower by the Lender requiring such default to be remedied;
 - (b) the Lender has taken all preliminary steps or actions required to be taken by it prior to the institution of such proceedings; and
 - (c) the Lender has given seven Business Days' prior written notice to the *FCA* of its intention to institute such proceedings.
- (7) No remedy against the Borrower other than as specifically provided by this paragraph 4 shall be available to the Lender whether for the recovery of amounts owing under this Agreement or in respect of any breach by the Borrower of any of its obligations under this Agreement.

Subordination

- 5 (1) Notwithstanding the provisions of paragraph 4, the rights of the Lender in respect of the Subordinated Liabilities are subordinated to the Senior Liabilities and accordingly payment of any amount (whether principal, interest or otherwise) of the Subordinated Liabilities is conditional upon -
- (a) (if an order has not been made or an effective resolution passed for the Insolvency of the Borrower and, being a partnership, the Borrower has not been dissolved) the Borrower being in compliance with not less than 120% of its Financial Resources Requirement immediately after payment by the Borrower and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that -
 - (i) paragraph 4(3) has been complied with; and
 - (ii) the Borrower could make such payment and still be in compliance with such Financial Resources Requirement;
 - (b) (if an order has been made or effective resolution passed for the Insolvency of the Borrower or, if a partnership, the Borrower is to be dissolved) the Borrower being “solvent” at the time of, and immediately after, the payment by the Borrower and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that the Borrower could make such payment and still be “solvent”.
- (2) For the purposes of sub-paragraph (1)(b) above, the Borrower shall be “solvent” if it is able to pay its debts (other than the Subordinated Liabilities) in full disregarding -
- (a) obligations which are not payable or capable of being established or determined in the Insolvency of the Borrower, and
 - (b) the Excluded Liabilities.
- (3) Interest will continue to accrue at the rate specified pursuant to paragraph 3 on any payment which does not become payable under this paragraph 5.
- (4) For the purposes of sub-paragraph (1)(b) above, a report given at any relevant time as to the solvency of the Borrower by its Insolvency Officer, in form and substance acceptable to the FCA, shall in the absence of proven error be treated and accepted by the FCA, the Lender and the Borrower as correct and sufficient evidence of the Borrower’s solvency or Insolvency.

- 5** (5) Subject to the provisions of sub-paragraphs (6), (7) and (8) below, if the Lender shall receive from the Borrower payment of any sum in respect of the Subordinated Liabilities -
- (a) when any of the terms and conditions referred to in sub-paragraph (1) above is not satisfied, or
 - (b) where such payment is prohibited under paragraph 4(3), the payment of such sum shall be void for all purposes.
- (6) Any sum referred to in sub-paragraph (5) above shall be received by the Lender upon trust to return it to the Borrower.
- (7) Any sum so returned shall then be treated for the purposes of the Borrower's obligations hereunder as if it had not been paid by the Borrower and its original payment shall be deemed not to have discharged any of the obligations of the Borrower hereunder.
- (8) A request to the Lender for return of any sum referred to in sub-paragraph (5) shall be in writing and shall be made by or on behalf of the Borrower or, as the case may be, its Insolvency Officer.

Representations and undertakings of Borrower

- 6** From and after the date of this Agreement (or the Effective Date if earlier), the Borrower shall not without the prior written consent of the FCA -
- (a) secure all or any part of the Subordinated Liabilities;
 - (b) redeem, purchase or otherwise acquire any of the Subordinated Liabilities;
 - (c) amend any document evidencing or providing for the Subordinated Liabilities;
 - (d) repay any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;
 - (e) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part thereof to the Senior Liabilities might be terminated, impaired or adversely affected; or
 - (f) arrange or permit any contract of suretyship (or similar agreement) relating to its liabilities under this Agreement to be entered into, and
- other than as disclosed in writing to the FCA, the Borrower represents that it has not done so before the date of this Agreement (or the Effective Date if earlier).

Representations and undertakings of Lender

7 From and after the date of this Agreement (or the Effective Date if earlier), the Lender shall not without the prior written consent of the FCA -

- (a) assign, transfer, dispose of or encumber the whole or any part of the Subordinated Liabilities or purport to do so in favour of any person;
- (b) purport to retain or set off at any time any amount payable by it to the Borrower against any amount of the Subordinated Liabilities except to the extent that payment of such amount of the Subordinated Liabilities would be permitted at such time by this Agreement, and the Lender shall immediately pay an amount equal to any retention or set off in breach of this provision to the Borrower and such retention or set off shall be deemed not to have occurred;
- (c) amend or waive the terms of any document evidencing or providing for the Subordinated Liabilities;
- (d) attempt to obtain repayment of any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;
- (e) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part of them to the Senior Liabilities might be terminated, impaired or adversely affected; or
- (f) take or enforce any security, guarantee or indemnity from any person for all or any part of the Subordinated Liabilities, and the Lender shall, upon obtaining or enforcing any security, guarantee or indemnity notwithstanding this undertaking, hold the same (and any proceeds thereof) on trust for the Borrower, and

other than as disclosed in writing to the FCA, the Lender represents that it has not done so before the date of this Agreement (or the Effective Date if earlier).

Borrower being a partnership

8 Where the Borrower is a partnership -

- (a) this Agreement shall subsist in full force and effect notwithstanding any change which may take place from time to time in the constitution or title of the Borrower by the retirement of the present Partners or any of them or the assumption of new Partners or by a change of name PROVIDED THAT -
 - (i) a retired Partner shall continue to be liable for the payment of all sums due under this Agreement and implementation of all other obligations in this Agreement until the Lender and the remaining Partner(s) shall agree in writing to release a retired Partner from those obligations and the FCA has agreed in writing to the release; and

- 8** (a) (ii) in the event of a new Partner being assumed as a partner of the Borrower the other Partners shall procure that said assumed Partner shall become bound to the Lender as a party to this Agreement and shall execute such addendum hereto as the Lender and the FCA may consider necessary;
- (b) the obligations and undertakings of the Borrower under this Agreement shall bind the Borrower and the Partners jointly and severally.

Partial invalidity

- 9** If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

The FCA and indemnity

- 10** The FCA shall not, by virtue of having rights under this Agreement, be taken to be a trustee for, or have any obligations to, any person to whom some or all of the Senior Liabilities are owed. Each of the Lender and Borrower shall on demand indemnify the FCA against all claims, losses, costs, expenses and other liabilities made against or incurred by the FCA as a consequence of it having rights, or taking action under this Agreement.

Additional terms

- 11** Any additional terms agreed between the parties are set out in the Variable Terms provided that, if there is any inconsistency between the Variable Terms and the Standard Terms, the Standard Terms shall prevail.

Entire agreement

- 12** This Agreement forms the entire agreement as to the Subordinated Liabilities. If there are any other terms relating to the Subordinated Liabilities existing at the date hereof and not comprised in this Agreement such terms shall be of no further force and effect.

Amendments

- 13** Any amendments to this Agreement must be made by the prescribed Deed of Variation and any amendments made or purported to be made without the consent of the FCA shall be void. For the avoidance of doubt, nothing in this paragraph requires the FCA to be a party to this Agreement.

Notices to the FCA

- 14** A notice given to the FCA under this Agreement shall have no effect, and time shall not start to run in connection with that notice, until the FCA has given to the sender written confirmation of its receipt.

Law

- 15** This Agreement is governed by English law.

Jurisdiction

- 16** For the benefit of the FCA solely, each of the Borrower and the Lender irrevocably submits to the jurisdiction of the English Courts and, to the extent that it does not have a place of business within the jurisdiction, appoints the process agent specified in the Variable Terms as agent for receipt of service of process in such courts. Such jurisdiction shall be non-exclusive except to the extent that non-exclusivity prejudices the submission to the jurisdiction.

Rights of the FCA

- 17** Although not a party to the Agreement, the FCA may in its own right enforce a term of the Agreement to the extent that it purports to confer upon the FCA a benefit.

3.2 FORM OF DEED OF TERMINATION

THIS DEED OF TERMINATION is made on the day of 20.....

BETWEEN -

- (1) * [insert full name of Lender] (registered in [England] number *) whose registered office is at [*if an individual or partnership* of] * (“the **Lender**”).
- (2) * [insert full name of Borrower] (registered in [England] number *) whose registered office is at [*if an individual or partnership* of] * (“the **Borrower**”).
- (3) **The Financial Conduct Authority Limited** whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS (“**the FCA**”).

WHEREAS -

A subordinated loan agreement was entered in between the Lender (1); the Borrower (2); and the FCA (3) on [date] (“the Agreement”) pursuant to which the Lender agreed to make available to the Borrower a [Loan/Facility] of up to [£]. [insert brief details of any Variations] The parties to the Agreement now wish to terminate the Agreement.

IT IS AGREED THAT -

1. The Agreement shall be deemed terminated [in accordance with its terms] with effect from [the date of this Deed of Termination/insert relevant future date]. All obligations and liabilities arising before that date shall remain continuing.
2. This Deed is governed by English Law.

IN WITNESS WHEREOF this Deed has been executed by the parties and is intended to be and is hereby delivered on the date first above written.

Executed as a deed by [full name of Lender]

.....

Signed
Director

Signed
Director/Secretary

or

Signed as a deed by
[full names of individual partners of Lender]

(as such partners and as individuals)

Signed
Partner

Signed.....
Partner/Witness

or

Signed as a deed by [full name of Lender]
(if an individual)

Signed.....

in the presence of

Signed.....
Witness

Executed as a deed by [full name of Borrower]

..... Signed
Director

Signed
Director/Secretary

or

Signed as a deed by [full names of individual partners of Borrower] (as such partners and as individuals)

Signed.....
Partner

Signed.....
Partner/Witness

or

Signed as a deed by [full name of Borrower] (if an individual)

Signed.....

in the presence of

Signed.....
Witness

The Common Seal of THE FINANCIAL CONDUCT AUTHORITY LIMITED was hereunto affixed in the presence of

Signed
Authorised Signatory

Signed
Authorised Signatory

3.3 FORM OF DEED OF VARIATION

THIS DEED OF VARIATION is made on the day of 20.....

BETWEEN -

- (1) * [insert full name of Lender] (registered in [England] number *) whose registered office is at [*if an individual or partnership of*] * (“the **Lender**”);
- (2) * [insert full name of Borrower] (registered in [England] number *) whose registered office is at [*if an individual or partnership of*] * (“the **Borrower**”);
and
- (3) **The Financial Conduct Authority Limited** whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS (“the **FCA**”).

WHEREAS -

A subordinated loan agreement was entered into between the Lender (1); the Borrower (2); and the FCA (3) on [date] (“the Agreement”) pursuant to which the Lender agreed to make available to the Borrower a (Loan/Facility) of up to [£].

The parties to the Agreement now wish to vary the Agreement to [insert brief details].

IT IS AGREED THAT -

1. The Agreement shall be deemed varied [, in accordance with its terms,] from [the date of this Deed of Variation/insert relevant future date] so that the FCA is no longer a party to the agreement. Any obligation owed to or by, and any requirement for any consent or permission to be given to or by FCA shall be of no further effect. FCA is hereby released from each and every obligation owed by it under the Agreement. Although on execution of this deed the FCA is no longer a party to the Agreement, it may in its own right enforce a term of the Agreement to the extent that it purports to confer upon the FCA a benefit.

[insert additional clauses/details of amended clauses].

[to the extent that any term of the Agreement is inconsistent with their terms and conditions contained in the Approved Form, the terms and conditions in the Approved Form shall prevail (provided that for the purposes of this clause 1, in clauses 11 and 12 of the Approved Form, the expressions “Variable Terms” and “Agreement” shall be deemed to include references to the Agreement and this Deed)*

2. All other terms and conditions of the Agreement remain unchanged.
3. This Deed is governed by English Law.

IN WITNESS WHEREOF this Deed has been executed by the parties and is intended to be and is hereby delivered on the date first above written.

Executed as a deed by [full name of Lender]

.....

Signed
Director

Signed
Director/Secretary

or

Signed as a deed by [full names of individual partners of Lender] (as such partners and as individuals)

Signed.....
Partner

Signed.....
Partner/Witness

or

Signed as a deed by [full name of Lender] (if an individual)

Signed.....

in the presence of

Signed.....
Witness

Executed as a deed by [full name of Borrower]

.....

Signed
Director

Signed
Director/Secretary

or

Signed as a deed by [full names of individual

partners of Borrower]
(as such partners and as individuals)

Signed.....
Partner

Signed.....
Partner/Witness

or

Signed as a deed by [full name of Borrower]
(*if an individual*)

Signed.....

in the presence of

Signed.....
Witness

The Common Seal of THE FINANCIAL
CONDUCT AUTHORITY LIMITED
was hereunto affixed in the presence of

Signed
Authorised Signatory

Signed
Authorised Signatory

[FCA]

3.4 FORM OF GUARANTOR UNDERTAKING

This undertaking is entered into the [] day of [] 20[] by

[] (the "Guarantor") of [] in favour of

The Financial Conduct Authority Limited ("the FCA") whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS.

WHEREAS:-

- (A) By a subordinated loan agreement (the "Loan Agreement") [made on]/ [of even date] between [] (the "Lender"), [] (the "Borrower") and the FCA, the Lender made available to the Borrower a loan [facility] on the terms and conditions contained in the Loan Agreement.
- (B) By a guarantee (the "Guarantee") made [of even date] between the Guarantor and the Lender, the Guarantor guaranteed the obligations of the Borrower to the Lender under the Loan Agreement on the terms and conditions contained in the Guarantee.

IT IS HEREBY AGREED as follows:-

- 1 The Guarantor hereby undertakes to the FCA that all and any rights which the Guarantor may have against the Borrower in respect of the Guarantee (whether by subrogation or otherwise howsoever) shall be subordinated on the same terms and conditions (mutatis mutandis) set out in the Loan Agreement (as amended from time to time) and further undertakes and confirms that the Guarantor will be bound by the terms of the Loan Agreement as if the Guarantor were a party to it in place of the Lender.
- 2 This undertaking is governed by English law.

IN WITNESS whereof this deed has been executed by the Guarantor on the date first above written.

Executed as a Deed by
[]

Witness:.....

Witness's Name:

Witness's Address:

.....

3.5 Guidance Notes on Completion of Agreements

A GENERAL

Introduction

1. These Notes are designed to accompany the Approved Forms of Subordinated Loan Agreement, each of which is in four parts: the front page, the Variable Terms in Schedule 1, the Standard Terms in Schedule 2 and the signature page. The parties will need to set out details of themselves and the transaction in the Variable Terms and complete the signature page. The front page and the Standard Terms should remain unaltered.
2. All communications with the FCA regarding the proposed Agreement should in the first instance be via the firm's usual contact.
3. Firms are advised to ensure that the appropriate form of subordinated loan agreement is used (Chap 9/Chap 3). This is, of course, dependent on the firm's authorisation categorisation. Should the firm's categorisation change, this should be discussed with the firm's usual contact as it is likely that any subordinated loan agreement in place will have to be revised.

Preparation of the Agreement

4.
 - (a) The form containing the Variable Terms may be completed or re-typed according to preference.
 - (b) Rather than re-type the Standard Terms (Schedule 2), firms should simply **photocopy Schedule 2 of the FCA precedent (or print it from the website) and include it as part of the original Agreement.**
5. [Deleted]

Financial Rule IPRU(INV) 3-63

6. Firms are referred to rule IPRU(INV) 3-63 on the use of subordinated loans, including restrictions on approved lenders, repayment provisions and gearing limits.

B NOTES ON VARIABLE TERMS

Dates

7. If the **Effective Date of the Agreement** is to be different from the Date of the Agreement, care should be taken to record this in paragraph 2. Where this is the case, the Effective Date will normally be expected to be later than the Date of the Agreement. If the Effective Date is to be a date prior to the date of the Agreement (for example because the loan was drawn down before the Agreement was put in place), the firm will be expected to provide a reasonable explanation to the FCA as to why it was not possible to document the loan more promptly.

Addresses

8. Paragraphs 4 and 6: The address given should be the firm's registered office or equivalent.

Partnerships

9. Paragraph 5: Where the Borrower is a partnership, insert "See Additional Terms, paragraph 10() below" and in paragraph 10 of Schedule 1, insert the names and addresses of each of the partners.

The Loan or Facility

10. Paragraph 7: Check that paragraph 2 of the Standard Terms accurately reflects the intentions of the parties.
11. Suggested wording for a loan is:
"This is an agreement for the Loan of £[]."

12. Suggested wording for a facility is:

"This is an agreement for a Facility under which the Lender is committed to make Advances in pounds sterling to the Borrower up to a maximum amount of £[] until the last available date of the Facility being [.....(date)].

The terms (if any) agreed between the parties on the mechanics of drawdown are as follows - ". *

- * For example, the parties may wish to provide that:

“Advances may be drawdown in integral multiples of £100,000.”.

Interest

13. Paragraph 8: the FCA will be concerned if an excessive rate of interest compared with the market rate is charged. Broadly speaking a rate of interest will be regarded by the FCA as excessive if it is not a commercial one. Compound interest is not acceptable.

Repayment

14. Irrespective of the form of agreement being used, the specified notice period runs from the date of drawdown and, therefore, where a loan is in the form of a facility, each advance must be for a minimum of the required period.
15. Repayment clauses have given rise to confusion in the past. Sample wordings are set out below.
16. Under rule IPRU(INV) 3-63(5), an amount repayable within three months of the effective date of the loan or advance is only acceptable as an eligible capital substitute in the absence of a waiver. A notice period of less than three months will accordingly require a waiver which will not normally be given. In many cases the most convenient approach is to provide for repayment on the expiry of three months written notice, such notice to be given to the FCA as well as to the other party to the agreement.
17. Paragraph 9: Examples of suggested wordings for either a fixed repayment date or repayment on notice in relation to IPRU(INV) 3 are as follows:
- (a) "The Borrower shall repay [the Loan/each Advance made to it] on the date which falls three months after the date of drawdown of the [Loan/relevant Advance]."
 - (b) "The Borrower shall repay [the Loan/each Advance made to it] three months after the date on which:
 - (a) the Borrower gives written notice to the Lender and to the FCA; or
 - (b) the Lender gives written notice to the Borrower and to the FCA."

Note: either (a) or (b) above by itself is sufficient.

- (c) "[The Loan / Each Advance made to the Borrower] shall be repayable on the date specified by notice in writing given by the Lender to the Borrower and to the FCA or notice in writing given by the Borrower to the Lender and to the FCA, in either case that date being not less than three months after the date on which the notice is given."

Additional terms

18. Paragraph 10: Additional terms may be agreed between the borrower and lender such as those relating to -

- representations and warranties
- provision of financial and other information
- covenants
- costs and expenses
- taxes and increased costs
- mechanics of payment
- notices
- termination provisions.

However, they should not be inconsistent with the Agreement or the FCA rules. For example, any terms dealing with additional payments by the borrower (eg to compensate for taxes or increased costs) should be subject to the FCA's prior written consent. Covenants and additional representations and warranties should not be inconsistent with the existing representations and warranties in paragraphs 6 and 7 of the Standard Terms. Similarly, any notices clause should take into account paragraph 14 of the Standard Terms (notices to the FCA of no effect until receipt confirmed). Any inconsistency between the Variable Terms and the Standard Terms is resolved in favour of the Standard Terms (paragraph 11 of the Standard Terms).

The lender and borrower should note that the action which can be taken by the lender in response to any breach of representation, warranty or covenant by the borrower is considerably constrained by paragraphs 4 and 5 of the Standard Terms. Therefore the value to the lender of including additional representations, warranties or covenants is very limited.

19. See also note 9 above for the situation where the borrower is a partnership and notes 24 -25 below for additional terms relating to law and jurisdiction.

Law and jurisdiction

20. If the borrower or lender is resident in another jurisdiction and does not have a branch office within the United Kingdom, paragraph 11 of the Variable Terms should be completed.
21. The borrower should not be appointed agent for service of process on the lender in case a dispute arises between them.

C NOTES ON STANDARD TERMS

Representations and undertakings

22. Paragraphs 6(f) and 7(f): The guarantor or other provider of security must waive its right of subrogation against the borrower until all Senior Liabilities of the borrower have been paid in full. A form of deed for this purpose is available from the FCA.
23. On the effect of other terms relating to the subordinated liabilities not contained in this Agreement, see also paragraph 12 of the Standard Terms.
24. Paragraphs 15 and 16: See Notes 24-25 above.

D SIGNATURE PAGE

Arrangements for execution post FCA approval

25. **Two identical original Agreements** (i.e. the front page, the two Schedules and the signature page, each copy stapled or otherwise bound together) should be prepared for signature. Firms and lenders may use any of the execution forms set out in Notes 34-35 below.

E DEEDS OF VARIATION/ DEEDS OF TERMINATION

- 26. Firms are advised to ensure that the appropriate standard form is used. These forms are available from the FCA on request.
- 27. The recitals to the deed should refer to the amount of the loan/ each advance and where applicable, briefly summarise the effect of any previous variation of the agreement and of variation of the original agreement which is currently proposed.
- 28. A variation or termination of a subordinated loan agreement can only be effected by the execution of a further deed. In particular, this means that the formalities for executing a deed (see note 34-36 below) must be observed for all deeds of variation or termination and that all parties to the original agreement must also be parties to the subsequent deed of variation or termination. Only the forms set out at Notes 35(1) and (2) or 36(2) below are appropriate for execution as a deed.
- 29. A deed of variation will be required where the parties wish to change the terms of a subordinated loan agreement eg. where the amount of the loan or advance is to be increased. A deed of termination is needed where the parties wish to bring to terminate an agreement that is in place before it would otherwise come to an end. This could occur, for example, where the firm wants to substitute a new lender. Please note that where a subordinated loan agreement is terminated in this way, all obligations and liabilities of the parties arising before the date of termination remain in effect.

F Execution

- 30. In the case of English, Welsh and Northern Irish companies, reference is made to section 43 of the Companies Act 2006 under which a company may contract:
 - by writing under its common seal, or
 - through any person acting under its authority, express or implied.

Section 44 of the Companies Act 2006 governs the execution of documents by English, Welsh and Northern Irish companies.

- 31. Suggested wordings for English companies are:

(1) THE COMMON SEAL OF

[]
was hereunto affixed
in the presence of

.....
Director

.....
Director/secretary

OR

(2) EXECUTED as a deed

by
Director Director/secretary

(3) SIGNED for and on behalf of
[]

by

.....
Authorised signatory

(4) SIGNED for and on behalf of
[]

by

.....
Director Director/secretary

32. Suggested wording for individuals is –

(1) SIGNED by []
in the presence of -

Signature of witness

Name of witness

Address of witness

.....

OR

(2) EXECUTED as a deed by []

in the presence of -

Signature of witness

Name of witness

Address of witness

33. In the case of overseas companies or partnerships, appropriate wording should be used. If necessary, firms should obtain legal advice from lawyers qualified in the relevant jurisdiction.

FORM OF APPROVED BANK BOND

"A"

1. This Bond is issued by [] of [] ("the Bank") for the benefit of [] ("the Firm").
2. The Bank hereby IRREVOCABLY AND UNCONDITIONALLY undertakes to the Firm that forthwith upon receipt of a notice of demand in the form referred to in paragraph 3 of this Bond it shall pay to the Firm the sum of £[] ("the Bonded Amount").
3. The notice of demand referred to in paragraph 2 of this Bond is a notice duly executed by The Financial Conduct Authority Limited ("the FCA") on behalf of the Firm (pursuant to the power of attorney executed contemporaneously herewith) which :-
 - (i) is deposited at any time during the currency of this Bond at the address of the Bank set out in paragraph 1 of this Bond (or such other address as may be notified by the Bank in writing to the FCA for this purpose from time to time);
 - (ii) demands payment in full of the Bonded Amount; and
 - (iii) certifies that the Firm is in default of its financial resources requirement as determined in accordance with the rules in IPRU(INV) 3 in the *Handbook* ("the Financial Rules") as in force at the relevant time. The Bank shall not be entitled to inquire into or require proof of the facts stated in the notice of demand which, as between the Bank, the FCA and the Firm, shall be conclusive.
4. The Bank shall have no recourse to the assets of the Firm in respect of the Bonded Amount and no other person shall have recourse to the assets of the Firm in respect of the Bonded Amount until payment in respect of all present and future sums, liabilities and obligations payable or owing by the Firm (whether actual or contingent, jointly or severally or otherwise howsoever) has been made in full to all other creditors.
5. The Bank may not terminate the Bond unless -
 - (i) the Firm will have financial resources equal to at least 120% of its financial resources requirement as determined in accordance with the Financial Rules of the FCA as in force at the relevant time immediately after termination of the Bond; or
 - (ii) the Bank is authorised by the FCA to terminate the Bond.
6. This Bond will not be terminated before the date specified in paragraph 8 below through any act or default of the Firm or otherwise.
7. This Bond shall not be affected by any change in:-
 - (i) the constitution of the Bank or the Firm; or
 - (ii) the provisions of the Financial Rules of the FCA.

8. This Bond shall remain valid from the date of its issue until [] [and the Bank[and the Firm] hereby irrevocably submit to the non exclusive jurisdiction of the English courts and irrevocably appoint [] as agents for the service of process in the said jurisdiction].*

9. This Bond shall be governed by and construed and take effect in all respects in accordance with English law.

EXECUTED as a deed this [] day of [] 20[].

THE COMMON SEAL of)
[Bank])
was hereunto affixed)
in the presence of:-)

* Words in square brackets only necessary if the Bank or the Firm is incorporated outside the U.K.

POWER OF ATTORNEY

BY THIS POWER OF ATTORNEY given on the [] day of [] a company [incorporated in the United Kingdom] having its registered office at [] ("the Company") appoints The Financial Conduct Authority Limited ("the FCA") whose registered office is 25 The North Colonnade, Canary Wharf, London, E14 5HS to be the true and lawful attorney of the Company for the following purpose:-

By way of security for the obligation of the Company to maintain sufficient financial resources as required by the rules in IPRU(INV) 3 of the *Handbook* as in force from time to time to demand payment on behalf of the Company of the sums payable pursuant to the terms of the Approved Bank Bond (annexed hereto marked "A") in the manner prescribed by the terms of such Approved Bank Bond.

The Company declares the authority hereby conferred to be irrevocable as long as the Company shall remain authorised to conduct investment business in the United Kingdom by the FCA.

The authority hereby conferred may be exercised on behalf of the FCA by any one of its officers or employees duly authorised in that regard by a resolution of the FCA's Board or a duly authorised committee thereof.

This Power of Attorney shall be governed by and construed and take effect in all respects in accordance with English law.

IN WITNESS WHEREOF this deed has been duly executed by the Company and it is intended to be and is hereby delivered the day and year first above written.

THE COMMON SEAL of)
[Company])
was hereunto affixed)
in the presence of:-)

3.7 APPROVED FORM OF UNDERTAKING

THIS UNDERTAKING is entered into the [] day of [] 20[] BETWEEN:

- (1) [] of [] ("the Covenantor");
- (2) THE FINANCIAL CONDUCT AUTHORITY LIMITED ("the FCA") whose registered office is 25 The North Colonnade, Canary Wharf, London, E14 5HS; and
- (3) [] of [] ("the Principal") [and [] of [], [] of [], and [] of []] the individual partners of the Principal as such partners and as individuals **] +].

WHEREAS:

- (A) The Principal is authorised to carry on one or more regulated activities in the United Kingdom (as defined under the Financial Services and Markets Act 2000) by the FCA.
- (B) The Principal is required pursuant to the Financial Rules to maintain a Financial Resources Requirement (and the FCA has agreed that such Financial Resources Requirement may in part be represented by one or more undertakings in the form hereof to the extent that any undertaking(s) will not exceed the excess of 30% of the Principal's Base Requirement over the value of any Approved Bank Bond.
- (C) The Principal has requested the Covenantor to give an undertaking to the FCA for the purposes of the Principal's Financial Resources Requirement which the Covenantor has agreed to do.

NOW IT IS HEREBY AGREED AND DECLARED as follows:

1. **Definitions**

In this Undertaking:

"Base Requirement" has the meaning given in the Financial Rules;

"Business Day" means a day on which The International Stock Exchange of the United Kingdom Limited is open for business;

"Excluded Liabilities" means Liabilities which are expressed to be and in the opinion of the Insolvency Officer of the Principal [or, where relevant, the Insolvency Officer of a Partner**], do, rank junior to the Subordinated Liabilities in the insolvency of the Principal;

"Financial Resources" has the meaning given in the Financial Rules;

"Financial Resources Requirement" has the meaning given in the Financial Rules;

"the Financial Rules" means the rules in IPRU(INV) 3 of the *Handbook*;

"Insolvency" means and includes liquidation, winding up, bankruptcy and sequestration, administration, rehabilitation and dissolution (whichever term may apply to the Principal) or the equivalent in any other jurisdiction to which the Principal may be subject;

"Insolvency Officer" means and includes any person duly appointed to administer and distribute assets of the Principal in the course of the Principal's insolvency;

"Liabilities" means all present and future sums, liabilities and obligations payable or owing by the Principal [or any Partner**] (whether actual or contingent, jointly or severally or otherwise howsoever); [**"Partner"** means an individual partner of the Principal**];

"Senior Liabilities" means all Liabilities except all Liabilities in respect of any sums paid to the Principal under the terms of this Undertaking and Excluded Liabilities;

"Subordinated Liabilities" means all Liabilities to the Covenantor in respect of repayment of any sums paid to the Principal under the terms of this Undertaking. Any reference to any rules of the FCA is a reference to them as already amended and includes a reference to any revoked rules which may be remade with or without amendments, and to any future rules and/or amendments of them.

2. In consideration of the FCA agreeing to take this Undertaking into account for the purpose of determining compliance by the Principal with its Financial Resources Requirement the Covenantor with intent to bind its successors and assigns and any body corporate with which it may amalgamate or merge HEREBY UNDERTAKES with and to the FCA and the Principal that at any time after the occurrence of any Event of Default specified in paragraph 6 hereof ("Event of Default") and notwithstanding that any other Event of Default may have occurred prior thereto the Covenantor will on demand in writing made upon it by the FCA accompanied by a certificate of the FCA as referred to in paragraph 9 hereof ("the Certificate") pay to the Principal or as the case may be the FCA (as determined in accordance with paragraph 3 below) the sum of £[] ("the Specified Amount").
3. In the case of an Event of Default falling within any of sub-paragraphs (1)(a), (1)(b) or (1)(c) of paragraph 6 below the sum to be paid pursuant to paragraph 2 above shall be paid to the FCA to be used at its discretion for any lawful purpose of the FCA , and in the case of an Event of Default falling within sub-paragraph (1)(d) of paragraph 6 below the sum to be paid pursuant to paragraph 2 above shall be paid to the Principal.
4. The liability of the Covenantor hereunder shall not be affected or discharged and the Covenantor shall not be released from its obligations hereunder by any act, omission, matter or thing whatsoever whereby, if the Covenantor was treated as a surety, guarantor or cautioner for the Principal, its liability would or might have been so affected or discharged or it might have been so released.
5. the FCA may without notification to or the consent of the Covenantor and without affecting or discharging the Covenantor's liability hereunder or releasing the Covenantor from its obligations hereunder from time to time waive or omit or fail to exercise or delay exercising its rights hereunder in respect of any Event of Default and any such waiver, omission, failure or delay shall not prejudice or affect the FCA 's rights hereunder in respect of that Event of Default (except in the case of a waiver) or any other or further Event of Default (whether or not of the same kind).
6. (1) The following shall be Events of Default for the purposes hereof:
 - (a) the Principal is deemed to be insolvent (as determined in accordance with sub-paragraph (2) below);
 - (b) the Principal is unable or admits its inability to pay its debts as they fall due or makes a general assignment for the benefit of, or a compensation with, its creditors;

- (c) an encumbrancer takes possession or a receiver, judicial factor, or similar officer is appointed over all or any part of the undertaking or assets of the Principal;
- (d) the Principal shall in the bona fide opinion of the FCA have failed to maintain an excess of Financial Resources over its Financial Resources Requirement and in the bona fide opinion of the FCA shall not have remedied the same within seven days after being required by the FCA to restore the deficiency.

[(2) The Principal is deemed to become insolvent:

- (a) on the making of a winding-up order against it; or
- (b) on the passing of a resolution for a voluntary winding up in a case in which no statutory declaration has been made under Section 89 of the Insolvency Act 1986 or Article 534 of the Companies (Northern Ireland) Order 1986; or
- (c) on the holding of a creditors meeting summoned under Section 95 of that Act or Article 54 of that Order; or
- (d) on the appointment of an administrator for it under Section 9 of that Act; or
- (e) the occurrence of an event corresponding as nearly as may be to any of those mentioned in sub-paragraphs (a) to (d) above in any other jurisdiction to which the Principal may be subject.*]

[(2) The Principal is deemed to become insolvent:

- (a) in England and Wales on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under Section 420 of that Act; or
- (b) in Scotland, on the making of an award of sequestration on the estate of the partnership; or
- (c) in Northern Ireland, on the making of an adjudication of bankruptcy against any one of the partners; or
- (d) elsewhere on the occurrence of an event corresponding as nearly as may be to any of those mentioned above in this sub-paragraph.**]

[(2) The Principal is deemed to become insolvent if:

- (a) in England and Wales, a bankruptcy order is made against him; or in Scotland, an award of sequestration is made on his estate; or
- (b) in Scotland, and award of sequestration is made on his estate; or
- (c) in Northern Ireland, an adjudication of bankruptcy is made against him; or
- (d) elsewhere than in the United Kingdom, there occurs in relation to him any event corresponding to those mentioned above in this paragraph. *
* *]

7. This Undertaking shall be a continuing undertaking and shall apply irrespective of, and shall not be affected or discharged by, any matter relating to the compliance at any time by the Principal with its Financial Resources Requirement and in particular (but without limitation) the fact (if such be the case) that the Principal at any time complies or is able to comply with the Financial Resources Requirement without making use of this Undertaking or taking the same into account for the purposes of its Financial Resources Requirement.
8. This Undertaking shall apply in relation to any Event of Default occurring at or before the close of business on the earliest (if any) to occur of the following dates ("the Termination Date"):
 - (a) if the Covenantor gives the FCA not less than six months' written notice of its desire to terminate this Undertaking with effect from the date (being a date falling on or after the second anniversary of the date hereof) specified therein, such specified date;
 - (b) if the FCA and the Covenantor agree in writing to terminate this Undertaking with effect from the date specified in such agreement, such specified date; and
 - (c) if this Undertaking shall cease with effect from any day to be eligible to represent (in whole or in part) the Financial Resources Requirement to be maintained by the Principal pursuant to the Financial Rules, the date falling two business days after such day:

provided that no demand may be made upon the Covenantor hereunder later than midnight on the thirtieth business day after the Termination Date.

9.
 - (a) In any demand proceedings or otherwise under this Undertaking the occurrence of any Event of Default shall be conclusively proved by a certificate signed by a duly authorised signatory of the FCA which shall specify the Event of Default which has occurred and to which the certificate relates and shall give brief particulars thereof.
 - (b) If the FCA requires the Principal to remedy a breach of its Financial Resources Requirement as referred to in paragraph 6(1)(d) hereof, it shall notify the Covenantor thereof as soon as reasonably practicable thereafter.
10. A demand shall be duly made upon the Covenantor hereunder if it is signed by a duly authorised signatory of the FCA (accompanied by evidence reasonably satisfactory to the Covenantor of the signatory's authority) and is addressed to the Covenantor at its registered office [principal place of business in the United Kingdom] and posted by first-class mail and (if it has not been received prior thereto) the Covenantor shall be taken to have received such demand forty-eight hours after it is posted.
11. (1) The rights of the Covenantor to repayment of any sums paid to the Principal or, as the case may be, reimbursement by the Principal of any sums paid to the FCA under the terms of this Undertaking are subordinated to the Senior Liabilities and accordingly repayment of any such sums is conditional upon:
 - (a) (if an order has not been made or an effective resolution passed for the insolvency of the Principal) the Principal being in compliance with its Financial Resources Requirement prevailing at the time of payment by the Principal, and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that, subject to sub-paragraph (2) below, the Principal could make such payment and still be in compliance with such Financial Resources Requirement immediately thereafter;
 - (b) (if an order has been made or effective resolution passed for the insolvency of the Principal) [or if the Principal shall be

dissolved**] the Principal being solvent at the time of payment by the Principal, and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that the Principal could make such payment and still be solvent immediately thereafter. For the purposes of this sub-paragraph, the Principal shall be solvent if it is able to pay its debts in full and in determining whether the Principal is solvent there shall be disregarded obligations which are not payable or capable of being established or determined in the insolvency of the Principal and the Excluded Liabilities.

- (2) No payment of the Subordinated Liabilities shall be made at any time pursuant to sub-paragraph (1)(a) above unless:
 - (a) the Principal has given to the FCA prior written notification that it proposes to make such payment; and
 - (b) the FCA has notified the Principal in writing that it consents to such proposed payment.

The Principal shall give or procure that there are given to the FCA such information and auditor's certificate in relation to such proposed payment as the FCA may require.

- (3) For the purposes of sub-paragraph (1)(b) above a report given at any relevant time as to the solvency of the Principal by its Insolvency Officer, in form and substance acceptable to the FCA, shall in the absence of proven error be treated and accepted by the FCA, the Covenantor and the Principal as correct and sufficient evidence thereof.
- (4) If the Covenantor shall receive from the Principal [or any Partner**] payment of any sum in respect of the Subordinated Liabilities when any of the terms and conditions referred to in sub-paragraphs (1) or (2) above is not satisfied the payment of such sum shall be void for all purposes and [such sums shall be received by the Covenantor upon trust to return the same to the Principal+++] [the Covenantor shall at any time thereafter be bound to return such sum to the Principal or, as the case may be, its Insolvency Officer+] (and any sums so returned shall then be treated for the purposes of the Principal's obligations hereunder as if they had not been paid by the Principal and its original payment shall be deemed not to have discharged any of the obligations of the Principal hereunder). A request to the Covenantor for return of any sum under the foregoing provisions of this sub-paragraph (4) shall be in writing and shall be made by or on behalf of the Principal or, as the case may be, its Insolvency Officer.

12. The Covenantor will not without the prior written consent of the FCA :

- (i) assign or purport to assign to any person the whole or any part of the Subordinated Liabilities;
- (ii) purport to retain or set off at any time any amount payable by it to the Principal [or any Partner* *] against any amount of the Subordinated Liabilities except to the extent that payment of such amount of the Subordinated Liabilities would be permitted at such time by this Undertaking; amend any document evidencing or providing for the Subordinated Liabilities;
- (iii) amend any document evidencing or providing for the Subordinated Liabilities;

- (iv) attempt to obtain repayment of any of the Subordinated Liabilities otherwise than in accordance with the terms of this Undertaking;
 - (v) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part thereof to the Senior Liabilities might be terminated, impaired or adversely affected;
 - (vi) take any security from any person for all or any part of the Subordinated Liabilities, and the Covenantor shall, upon obtaining security in breach of this Undertaking, hold the same [on trust for+++][as agent of and for the benefit of+] the Principal.
13. The Covenantor acknowledges that the FCA would seek to enforce any breach of the undertaking of the Covenantor contained in Clause 2 hereof by seeking an order for specific performance thereof and the Covenantor acknowledges that an order for specific performance would be the remedy appropriate to be granted to the FCA for such a breach.
14. This Undertaking forms the entire agreement as to the agreement of the Covenantor to provide an undertaking in relation to the Principal's Financial Resources Requirement. If there are any other terms relating thereto existing at the date hereof and not comprised in this Undertaking such terms shall be of no further force and effect. No variation of or amendment to this Undertaking shall be of any effect unless it is in writing subscribed by all the parties hereto. Any amendment to this Undertaking made or purported to be made without the consent of the FCA shall be void.
- [15. This Undertaking shall subsist in full force and effect notwithstanding any change which may take place from time to time in the constitution or title of the Principal by the retirement of the present partners or [either] [any] of them or the assumption of new partners or by a change of name it being provided that:
- (a) A retired partner shall continue to be liable for the payment of all sums due hereunder and implementation of all other obligations herein contained until such time as the Bank and the remaining partner[s] shall agree in writing to release a retired partner from such obligations; and
 - (b) In the event of a new partner being assumed as a partner of the Principal the other partners shall procure that said assumed partner shall become bound to the Covenantor as a party to these presents and shall execute such addendum hereto as the Covenantor and the FCA may consider necessary. **] +]
- [16. The Principal and the Partners hereby acknowledge to the Covenantor and the FCA that subject to the foregoing provisions of the Agreement they will be jointly and severally liable to the Covenantor for any sum paid by the Covenantor hereunder and that irrespective of whether such sum was paid by the Covenantor to the Principal or to the FCA . **] +]
17. This Undertaking is governed by [English law+++++] [the law of Scotland+] [Northern Irish law+++++] [, and for the benefit of the FCA solely the Covenantor irrevocably submits to the jurisdiction of the [English Courts+++++] [Court of Session, Scotland+] [Northern Irish Courts+++++] and appoints [] as agent for receipt of service of process in such courts. Such jurisdiction shall be non-exclusive except to the extent that such non-exclusivity prejudices the submission to such jurisdiction].

Notes:

- (1) To be executed by the Covenantor under seal - other parties to execute either under seal or under hand.
- (2) Words in brackets throughout this document marked with a single asterisk are for use where the Principal is a corporation, those marked with a double asterisk are for use where the Principal is a partnership, and those marked with a triple asterisk where the Principal is an individual.
- (3) Words in brackets marked with a single cross are for use where the agreement is governed by Scottish law, with two crosses where the agreement is governed by either Scottish or Northern Irish law, three crosses where it is governed by either English or Northern Irish law, four crosses where it is governed by Northern Irish law and five crosses where it is governed by English law. Thus, for instance, words marked ++* * would be for use where the Borrower is a partnership and the agreement is governed by either Scottish or Northern Irish law.
- (4) Words in brackets in paragraph 17 above only required where either the Covenantor or the Principal (or both) are not incorporated in any part of the United Kingdom.

Investment Management Firms
(former IMRO Firms)

	Form	Page
[FCA] 5.1	Prescribed Subordinated Loan Agreement	2
[FCA] 5.2	Prescribed Approved Undertaking	12

PRESCRIBED SUBORDINATED LOAN AGREEMENT

THIS SUBORDINATED LOAN AGREEMENT is made the ____ day of ____ 20____ between:

- (1) [____] of [____] (“the Lender” which term includes its permitted successors and assigns);
- (2) [____] of [____] (“the Borrower” which term includes its permitted successors and assigns).

WHEREAS

- (A) The Borrower is [has applied to be] regulated by FCA.
- (B) The Borrower is required to maintain financial resources to meet the provisions of Chapter 5 of the Interim Prudential Sourcebook as they apply to the Borrower at any particular time.
- (C) The Lender has agreed to lend [has lent] to the Borrower an amount as set out herein upon and subject to the terms and conditions contained in this Agreement.

NOW IT IS HEREBY AGREED as follows:

- 1. Definitions In this Agreement:
 - “Business Day” means a day on which banks are open for all banking business in London;
 - “FCA” means the Financial Conduct Authority;
 - “Interest Amount” in respect of an Interest Period means the amount of interest payable in respect of such Interest Period calculated by applying the Rate of Interest in respect of such Interest Period to the average amount (calculated on a daily basis) of the principal of the Loan (together with any interest due but unpaid) outstanding during such Interest Period and multiplying the resulting sum by a fraction of which the numerator is equal to the actual number of days in the Interest Period concerned and the denominator is equal to 365;

“Interest Payment Date”

means [] and [] in each year;

“Interest Period”

means the period starting on the day following an Interest Payment Date and ending on the next following Interest Payment Date provided that the First Interest Period shall commence on the date hereof and end on the next following Interest Payment Date;

“Interim Prudential Sourcebook”

means the Interim Prudential Sourcebook for Investment Businesses made by the FCA;

“LIBOR”

in respect of an Interest Period means the rate determined by such London clearing bank as the Lender and Borrower shall agree to be the arithmetic mean (rounded to the nearest 1/16 of one per cent) of the offered quotations for 6 months sterling deposits in the London inter bank market at 11.00am (London time) on the Business Day prior to the commencement of such Interest Period;

“Loan”

means the Principal Amount (as defined in Clause 2) together with interest accrued thereon as may be outstanding from time to time;

“Rate of Interest”

in respect of an Interest Period means an amount expressed as a percentage per annum equal to the sum of LIBOR in respect of such Interest Period (expressed as a percentage per annum) and [] per cent per annum;

“Senior Creditors”

means all such persons who are:

- (a) unsubordinated creditors of the Borrower; or
- (b) subordinated creditors of the Borrower other than those whose claims are expressed to rank and do rank, pari passu with or junior to the claims of the Lender hereunder.

Clause headings in this Agreement are inserted for ease of reference only and shall not affect the construction of this Agreement.

2. The Loan

- (a) The Lender [hereby agrees to advance]/[has on [] advanced] to the Borrower by way of loan the principal amount of [] (the “Principal Amount”) upon and subject to the terms and conditions contained in this Agreement.
- [(b) [Upon signature hereof]/[On []] the Lender shall pay, or procure the payment of, the Principal Amount to the Borrower in freely available funds at its account number [] with [] bank.]

3. Interest

- (a) Subject to the provisions of Clause 7 of this Agreement:
 - (i) the Borrower will until repayment of the Loan in full pay to the Lender interest on the Loan or on any part or parts thereof for the time being remaining due hereunder in accordance with a written notice given by the Lender to the Borrower;
 - (ii) on each Interest Payment Date the Borrower shall pay to the Lender the Interest Amount in respect of the Interest Period ending on such Interest Payment Date;

provided that at no time during the continuance of this Agreement shall the Rate of Interest exceed an annual rate of 5 per cent above LIBOR.

		(b) No payment on account of interest shall be made at any time to the extent that such payment would cause the Borrower to be in breach of rule 5.2.1 of Chapter 5 of the Interim Prudential Sourcebook (or any equivalent Rule for the time being in force). Any amount of interest whose payment is deferred under this provision shall be paid when and to the extent that the Borrower would not be in breach of rule 5.2.1 of the Interim Prudential Sourcebook after such payment. [The Agreement may make provision for interest on interest.]
4.	Early Repayment	<p>Subject to the provisions of Clause 7 of this Agreement the Borrower may make an early repayment of the whole or any part of the Loan provided that:</p> <p>(a) the written consent of FCA to such repayment is first obtained by the Borrower;</p> <p>(b) the Borrower must give to the Lender not less than one Business Day's prior notice of its intention to make such repayment, specifying the amount thereof and the date on which it is to be made (such notice to be ineffective if the winding up of the Borrower commences before the date on which such notice expires); and</p> <p>(c) the Borrower shall simultaneously pay all interest accrued to the date of repayment.</p>
5.	Repayment of the Loan	<p>Subject to the provisions of Clause 7 of this Agreement the Loan shall be repayable upon the expiry of [] months' written notice given by the Lender to the Borrower provided that:</p> <p>(a) such notice shall expire on a day falling after [five] [two] years from the date of [drawdown] [hereof]; and</p> <p>(b) the prior written consent of FCA to the repayment has first been obtained by the Borrower and not withdrawn; but</p> <p>(c) such notice shall cease to have effect if the winding up of the Borrower commences before the date on which such notice expires.</p>
6.	Event of Default	<p>Subject to the provisions of Clauses 7 and 10 of this Agreement:</p> <p>(a) if default is made for a period of five Business Days or more in the payment of any of the principal amount of the Loan [or for a period of 15 Business Days or more in the payment of any of the interest due in respect of the Loan] the Lender may, after taking such preliminary steps or actions as may be necessary, institute proceedings to wind up the Borrower;</p>

- (b) if an order is made or an effective resolution is passed for the winding up of the Borrower, the Loan shall forthwith become repayable.

7. Subordination

Notwithstanding the provisions of Clauses 4, 5 and 6 of this Agreement, the rights of the Lender in respect of the Loan are subordinated in all respects to the rights of Senior Creditors in respect of amounts outstanding to them payable by the Borrower (“Senior Liabilities”) and accordingly payment of any amount (whether in respect of principal, interest or otherwise and whether by way of repayment or prepayment) of the Loan shall be in all respects conditional upon compliance with the provisions below:

- (a) The written consent of FCA to such payment is first obtained by the Borrower.
- (b) (i) If at any time or from time to time an order has been made or an effective resolution passed for the winding up of the Borrower, then any payment of any amount (whether in respect of principal, interest or otherwise and whether by way of repayment or prepayment) of the Loan which under any other Clause of this Agreement would fall due for payment whilst the Borrower was insolvent or in insolvent liquidation will not fall so due, and instead such payment will become due for payment only if and when and to the extent that the Borrower could make such payment in whole or in part and still be solvent (whether or not it was in liquidation) thereafter. [Interest pursuant to Clause 3 hereof will continue to accrue on each and every such payment which is suspended under this Clause. Any payment suspended under this Clause but ultimately made will be made according to the amount of principal or interest (as the case may be) due to the Lender and in the event of both principal and interest being so suspended, payment will be made on account of principal before any payment is made on account of interest, but such alteration in order of payment will not prejudice the right of the Lender (which the Borrower acknowledges and confirms) to receive, subject to this Clause 7(b)(i) the full amount to which it would have been entitled if monies from time to time available for payment had been applied instead on account of interest before principal].

(ii) For the purposes of Clause 7(a) and (b) the Borrower may, and will whenever requested by the Lender whilst any payment remains suspended, procure a report or opinion by its auditors or (if it is in liquidation) by its liquidator as to whether or not the Borrower would be solvent at any time in any circumstances or whether or to what extent any payment in respect of the Loan could be made without infringing the provisions of this Sub-Clause and in the absence of proven error such report or opinion shall be treated and accepted by the Borrower and the Lender as correct and sufficient evidence of such fact.

(iii) Nothing in this Clause shall prevent the Lender from presenting or supporting any petition to wind up the Borrower, and the Borrower shall not put forward or rely on the provisions of this Clause as a ground for opposing any petition presented or supported by the Lender.

8. Payments

Subject to the provisions of Clause 7 of this Agreement:

- (a) all payments to be made by the Borrower hereunder shall be made in immediately available funds before [] on the date on which payment is due in such manner as the Lender may from time to time direct;
- (b) if any sum becomes due for payment pursuant to this Agreement on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and interest shall be adjusted accordingly;
- (c) all sums payable by the Borrower hereunder shall be paid in full without set off or counter claim and free and clear of and without deduction or withholding for or on account of any present or future taxes, duties or other charges. If any payment shall be subject to any such tax or if the Borrower shall be required by law to make any such deduction or withholding, the Borrower will pay such tax, will ensure that such payment, deduction or withholding, will not exceed the minimum legal liability therefore and will simultaneously pay to the Lender such additional amounts as will result in the Lender receiving a net amount equal to the full amount which the Lender would have received had no such payment, deduction or withholding been required.

9.	Regulatory Consent	<p>The Lender will not without the prior written consent of FCA:</p> <ul style="list-style-type: none"> (a) assign or purport to assign to any person this Agreement or the whole or any part of its rights against the Borrower in respect of the Loan; (b) purport to retain or set off at any time any amount of the Loan against any amount otherwise payable by it to the Borrower except to the extent that payment of such amount of the Loan would be permitted at such time by this Agreement; (c) amend or waive or concur in amending or waiving the terms of this Agreement; (d) attempt to obtain repayment of the whole or any part of the Loan otherwise than in accordance with the terms of this Agreement; (e) take or omit to take any action whereby the subordination of the Loan or any part thereof as provided for in Clause 7 of this Agreement might be terminated, impaired or adversely affected; or (f) take any security from any person for all or any part of the Loan and so that the Lender shall, upon obtaining security in breach of this Clause, hold the same on trust for the Borrower.
10.	Sole Remedy	<p>The Lender shall not be entitled to any remedy against the Borrower in respect of any default by the Borrower in repayment or prepayment of the Loan, or to enforce any other term of this Agreement, other than to institute proceedings to wind up the Borrower, provided always that the Borrower shall not, by the institution of such proceedings, become or be obliged to pay any sums or sum sooner than the same would otherwise have been payable by it pursuant to this Agreement.</p>
11.	Trust	<p>Any amounts paid by the Borrower or received or recovered by the Lender or any security taken from any person in respect of the Loan in breach of the provisions of this Agreement and any distributions of any kind or character in respect of the Loan received or recovered by the Lender otherwise than in accordance with the provisions of this Agreement shall be held on trust by the Lender to return the same to the Borrower, or where applicable, the liquidator or other similar such officer.</p>

12.	Entire Agreement	The Borrower and the Lender acknowledge that this Agreement forms the entire agreement relating to the Loan. If there are any other terms relating to the Loan existing at the date hereof and not comprised in this Agreement such terms shall be of no further force and effect.
13.	Continuing Obligations	The obligations of the Borrower and Lender hereunder shall be continuing obligations and shall be and remain fully effective until the repayment of the Loan in full in accordance with the provisions of this Agreement.
14.	Governing Law	This Agreement shall be governed by and construed in accordance with the laws of England and each of the parties hereby irrevocably submits to the non-exclusive jurisdiction of the Courts of England and Wales, Scotland and Northern Ireland.
15.	Rights of the FCA	Although not a party to the agreement, the FCA may in its own right enforce a term of the agreement to the extent that it purports to confer upon the FCA a benefit.
16.	Notices	<p>Any notice of demand to be given or made hereunder may be delivered by hand or sent by first class registered or pre-paid post to the recipient at the address first above mentioned or such other address as it shall last notify to each of the other parties hereto. Such notice shall be deemed to have been received:</p> <p>(a) if delivered by hand, on the day of delivery;</p> <p>(b) if sent by first class registered or pre-paid post three days after the date of despatch (as to which the sender's certificate shall be conclusive).</p>
17.	Counterparts	<p>This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.</p> <p>IN WITNESS whereof the parties hereto have executed this Agreement as a deed the day and date first above written.</p>

Notes for Prescribed Subordinated Loan Agreement

These notes accompany the *prescribed subordinated loan agreement* and are intended to assist those who are or propose to be regulated by FCA. These notes relate solely to the mechanical drafting aspects of the prescribed agreement.

These notes refer to the Clauses in the order in which they appear in the prescribed agreement.

1. Parties Complete the name, registered number and registered office of the Lender and the Borrower.
2. Loan The Specimen Agreement provides for two alternative ways of advancing the Loan:
 - (a) one advance on the date of the Agreement; or
 - (b) one advance at a date other than the date of the Agreement. Firms are requested to specify clearly the date of the advance.
3. Interest The maximum rate of interest is 5 per cent above LIBOR. However, if a fixed rate of interest is charged, the Interest Rate must not exceed 5 per cent above LIBOR on the date the Loan is first taken out.

If the Loan is to be free of interest:

 - (a) Clause 3 should be deleted and replaced by the words “The Loan shall be interest-free”; and
 - (b) the definitions of “Interest Amount”, “Interest Payment Date”, “Interest Period”, LIBOR and “Rate of Interest” should be deleted and consequential changes should be made to Clauses 4(c), 6(a), 7(preamble), 7(b)(i), and 8(b) accordingly.
4. Repayment The specified date of repayment must not be less than two years after:
 - (a) the date of the Agreement; or
 - (b) where the principal amount was advanced after the date of the Agreement, the date the principal amount was advanced.

5.	Execution	The date of the Agreement is the date on which execution of the Agreement by all parties is completed. Execution must accord with the laws and regulations governing the execution of documents in the jurisdiction of the Firm's principal place of business (e.g. a company whose principal place of business is in England, Wales and Northern Ireland must observe the requirements of Part 4 of the Companies Act 2006).
6.	Number of copies of Agreements	Three copies of the Agreement should be executed by both the Lender and the Borrower and forwarded to FCA. FCA will retain one original Agreement and return the other two copies to the Firm.

PRESCRIBED QUALIFYING UNDERTAKING

THIS UNDERTAKING IS ENTERED INTO

THE DAY OF 20 BETWEEN

- (1) [] of [] (“the Bank” or “Holding Company”)
- (2) FINANCIAL CONDUCT AUTHORITY whose registered office is at 25 The North Colonnade, Canary Wharf, London E14 5HS (“FCA”) and
- (3) [] of [] (“the Principal”)

WHEREAS

- (A) The Principal is regulated by FCA
- (B) The Principal is required to maintain financial resources to meet the provisions of Chapter 5 of the Interim Prudential Sourcebook as they apply to the Principal and FCA has agreed that the Financial Resources Requirement may in part be represented by one or more undertakings in the form hereof
- (C) The Principal has requested the Bank or Holding Company to give an undertaking to FCA for the purposes of the Principal’s Financial Resources Requirement which the Bank or Holding Company has agreed to do

NOW THESE PRESENT WITNESS and it is hereby agreed and declared as follows:

1. In this Undertaking:

“Business Day”

means a day on which the Bank or Holding Company is open for business;

“Excluded Liabilities”

means Liabilities which are expressed to be and in the opinion of the liquidator of the Principal, do, rank junior to the Subordinated Liabilities in such liquidation;

“Financial Resources Requirement”

means the amount of liquid capital which the Principal is, pursuant to the Rules, required to maintain at any particular time;

“Interim Prudential Sourcebook”

means the Interim Prudential Sourcebook for Investment Businesses made by the FCA;

“Liabilities”

means all present and future sums, liabilities and obligations payable or owing by the Principal (whether actual or contingent, jointly or severally or otherwise howsoever);

“Senior Liabilities” means all Liabilities except all Liabilities in respect of any sums paid to the Principal under the terms of this Undertaking and Excluded Liabilities;

“Subordinated Liabilities”

means all Liabilities of the Principal to the Bank or Holding Company in respect of repayment of any sums paid to the Principal under the terms of this Undertaking;

“the Rules”

means the Rules of FCA from time to time; the term

“liquid capital”

has the meaning ascribed to it in the Rules;

any reference to an enactment is a reference to it as already amended and includes a reference to any repealed enactment which it may re-enact, with or without amendments, and to any future re-enactment and/or amendment of it.

2. (a) In consideration of FCA agreeing to take this Undertaking into account for the purpose of determining compliance by the Principal with its Financial Resources Requirement the Bank or Holding Company with intent to bind its successors and assigns and any body corporate with which it may amalgamate or merge HEREBY UNDERTAKES with and to FCA and the Principal that at any time after the occurrence of any Event of Default specified in paragraph 5 hereof (“Event of Default”) and notwithstanding that any other Event of Default may have occurred prior thereto the Bank or Holding Company will on demand in writing made upon it by FCA accompanied by a certificate of FCA as referred to in paragraph 8 hereof (“the Certificate”) pay to the Principal the sum of £[] (“the Specified Amount”).

(b) The Bank or Holding Company shall pay the Specified Amount to such account of the Principal as FCA may specify.
3. The liability of the Bank or Holding Company hereunder shall not be affected or discharged and the Bank or Holding Company shall not be released from its obligations hereunder by any act, omission, matter or thing whatsoever whereby, if the Bank or Holding Company was treated as a surety or guarantor for the Principal, its liability would or might have been so affected or discharged or it might have been so released.
4. FCA may without notification to or the consent of the Bank or Holding Company and without affecting or discharging the Bank’s or the Holding Company’s liability hereunder or releasing the Bank or Holding Company from its obligations hereunder from time to time waive or omit or fail to exercise or delay exercising its rights hereunder in respect of any Event of Default and any such waiver, omission, failure or delay shall not prejudice or affect FCA’s rights hereunder in respect of that Event of Default (except in the case of a waiver) or any other or further Event of Default (whether or not of the same kind).

5. The following shall be Events of Default for the purposes hereof:
- (a) the Principal is deemed to be unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986;
 - (b) the Principal is unable or admits its inability to pay its debts as they fall due or makes a general assignment for the benefit of, or a composition with, its creditors;
 - (c) an encumbrancer takes possession, or a receiver, administrator or similar officer is appointed, of all or any part of the undertaking or assets of the Principal;
 - (d) the Principal shall in the opinion of FCA be in breach of its Financial Resources Requirement and in the opinion of FCA shall not have remedied such breach within 5 Business Days after being required by FCA to restore the deficiency.
6. This Undertaking shall be a continuing undertaking and shall apply irrespective of, and shall not be affected or discharged by, any matter relating to the compliance at any time by the Principal with its Financial Resources Requirement and in particular (but without limitation) the fact (if such be the case) that the Principal at any time complies or is able to comply with the Financial Resources Requirement without making use of this Undertaking or taking the same into account for the purposes of its Financial Resources Requirement.
7. This Undertaking shall apply in relation to any Event of Default occurring at or before the close of business on the earliest (if any) to occur of the following dates (“the Termination Date”):
- (a) if the Bank or Holding Company gives FCA not less than six months’ written notice of its desire to terminate this Undertaking with effect from the date (being a date falling on or after the second anniversary of the date hereof) specified therein, such specified date;
 - (b) if FCA and the Bank or Holding Company agree in writing to terminate this Undertaking with effect from the date specified in such agreement, such specified date; and
 - (c) if this Undertaking shall cease with effect from any day to be eligible to represent (in whole or in part) the Financial Resources Requirement to be maintained by the Principal pursuant to the Rules, the date falling two Business Days after such day. Provided that no demand may be made upon the Bank or Holding Company hereunder later than midnight on the thirtieth Business Day after the Termination Date.
8. (a) In any demand proceedings or otherwise under this Undertaking the occurrence of any Event of Default shall be conclusively proved by a certificate signed by a duly authorised signatory of FCA which shall specify the Event of Default which has occurred and to which the certificate relates and shall give brief particulars thereof.
- (b) If FCA requires the Principal to remedy a breach of its Financial Resources Requirement as referred to in paragraph 5(d) hereof, it shall notify the Bank or Holding Company thereof as soon as reasonably practicable thereafter.

9. A demand shall be duly made upon the Bank or Holding Company hereunder if it is signed by a duly authorised signatory of FCA (accompanied by evidence reasonably satisfactory to the Bank or Holding Company of the signatory's authority) and is addressed to the Bank or Holding Company at its registered office [principal place of business in the UK] and posted by first class mail and (if it has not been received prior thereto) the Bank or Holding Company shall be taken to have received such demand forty-eight hours after it is posted.
10. (a) The rights of the Bank or Holding Company to repayment of any sums paid to the Principal under the terms of this Undertaking are subordinated to the Senior Liabilities and accordingly repayment of any such sums is conditional upon:
- (i) (if an order has not been made or an effective resolution passed for the winding up of the Principal) the Principal being in compliance with its Financial Resources Requirement prevailing at the time of payment by the Principal and no such payment which would otherwise fall due will fall so due except to the extent that, subject to sub-paragraph (b) below, the Principal could make such payment and still be in compliance with such Financial Resources Requirement immediately thereafter;
 - (ii) (if an order has been made or effective resolution passed for the winding up of the Principal) the Principal being solvent at the time of payment by the Principal and accordingly no such payment which would otherwise fall due for payment will fall due except to the extent that the Principal could make such payment and still be solvent immediately thereafter. For the purposes of this sub-paragraph, the Principal shall be solvent if it is able to pay its debts in full and in determining whether the Principal is solvent for the purposes of this sub-paragraph there shall be disregarded obligations which are not payable or capable of being established or determined in the winding up of the Principal and the Excluded Liabilities.
- (b) No payment of the Subordinated Liabilities shall be made at any time pursuant to sub-paragraph (a)(i) above unless:
- (i) the Principal has given to FCA prior written notification that it proposes to make such payment; and
 - (ii) FCA has notified the Principal in writing that it consents to such proposed payment.
- The Principal shall give or procure that there are given to FCA such information and auditor's certificate in relation to such proposed payment as FCA may require.
- (c) For the purposes of sub-paragraph (a)(ii) above a report given at any relevant time as to the solvency of the Principal by its liquidator, in form and substance acceptable to FCA, shall in the absence of proven error be treated and accepted by FCA, the Bank or Holding Company and the Principal as correct and sufficient evidence thereof.

(d) If the Bank or Holding Company shall receive from the Principal payment of any sum in respect of the Subordinated Liabilities when any of the terms and conditions referred to in sub-paragraphs (a) or (b) above is not satisfied the payment of such sum shall be void for all purposes and such sums shall be received by the Bank or Holding Company upon trust to return the same to the Principal and the Bank or Holding Company shall at any time thereafter be bound to return such sum to the Principal or, as the case may be, its liquidator (and any sums so returned shall then be treated for the purposes of the Principal's obligations hereunder as if they had not been paid by the Principal and its original payment shall be deemed not to have discharged any of the obligations of the Principal hereunder). A request to the Bank or Holding Company for return of any sum under the foregoing provisions of this sub-paragraph (d) shall be in writing and shall be made by or on behalf of the Principal or, as the case may be, its liquidator.

- 11.** The Bank or Holding Company will not without the prior written consent of FCA:
- (i) assign or purport to assign to any person the whole or any part of the Subordinated Liabilities;
 - (ii) purport to retain or set-off at any time any amount payable by it to the Principal against any amount of the Subordinated Liabilities except to the extent that payment of such amount of the Subordinated Liabilities would be permitted at such time by this Undertaking;
 - (iii) amend any document evidencing or providing for the Subordinated Liabilities;
 - (iv) attempt to obtain repayment of any of the Subordinated Liabilities otherwise than in accordance with the terms of this Undertaking;
 - (v) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part thereof to the Senior Liabilities might be terminated, impaired or adversely affected;
 - (vi) take any security from any person for all or any part of the Subordinated Liabilities, and the Bank or Holding Company shall, upon obtaining security in breach of this undertaking, hold the same on trust for the Principal.
- 12.** The Bank or Holding Company acknowledges that FCA would seek to enforce any breach of the Undertaking of the Bank or Holding Company contained in Clause 2 hereof by seeking an order for specific performance thereof and the Bank or Holding Company acknowledges that an order for specific performance would be the remedy appropriate to be granted to FCA for such a breach.
- 13.** This Undertaking forms the entire Agreement as to the agreement of the Bank or Holding Company to provide an undertaking in relation to the Principal's Financial Resources Requirement. If there are any other terms relating thereto existing at the date hereof and not comprised in this Undertaking such terms shall be of no further force and effect. No variation of or amendment to this Undertaking shall be of any effect unless it is in writing subscribed by all the parties hereto. Any amendment to this Undertaking made or purported to be made without the consent of FCA shall be void.

- 14.** This Undertaking is governed by English law [and for the benefit of FCA solely the Bank or Holding Company irrevocably submits to the jurisdiction of the Courts of England and Wales, Scotland and Northern Ireland and appoints [] as agent for receipt of service of process in such courts. Such jurisdiction shall be non-exclusive except to the extent that such non-exclusivity prejudices the submission to such jurisdiction].
- (1) *To be executed by the Bank or Holding Company under seal—other parties to execute either under seal or under hand.*
- (2) *Words in brackets in 9 and 14 above are required only where either the Bank or Holding Company or the Principal (or both) are not incorporated in any part of the UK.*
- (3) *Where the Principal is not a company, the provisions of the Undertaking shall (in agreement with FCA) be amended as appropriate to reflect the legal status of the Principal.*

9 Exempt CAD Firms

	Form	Page
[FCA]	9.1 Long Term Subordinated Loan Agreement	2
	10.2 [deleted]	
[FCA]	9.3 Form of Deed of Termination	17
[FCA]	9.4 Form of Deed of Variation	20
[FCA]	9.5 Form of Guarantor Undertaking	23
	10.6 [deleted]	
	10.7 [deleted]	
[FCA]	9.8 Guidance Notes	27

9.1 Approved Form of Long-Term Subordinated Loan Agreement

A. Front Page

THIS AGREEMENT is made on the date set out in the Variable Terms (as set out in **Schedule 1** to this Agreement) and is to be effective on that date unless a different effective date is set out in those terms

BETWEEN -

- (1) **the Lender** (as defined in the Standard Terms set out in **Schedule 2** to this Agreement), and
- (2) **the Borrower** (as defined in the Standard Terms)

WHEREAS the Borrower wishes to use the Loan, or each Advance under the Facility (as those expressions are defined in the Standard Terms) in accordance with FCA rule IPRU(INV) 9.5 and has fully disclosed to the FCA the circumstances giving rise to the Loan or Facility and the effective Subordination of the Loan and each Advance.

IT IS AGREED THAT this Agreement shall comprise the Variable Terms set out in **Schedule 1** to this Agreement and the Standard Terms set out in **Schedule 2** to this Agreement.

This Agreement is executed by the parties the day and year indicated in the Variable Terms.

Schedule 1

B. Variable Terms

1. Date of Agreement	
2. Effective Date	
3. Lender	
4. Address of Lender	
5. Borrower	
6. Address of Borrower	

7. The Loan or Facility

With reference to paragraph 2 of the Standard Terms,

--

8. Interest

With reference to paragraph 3 of the Standard Terms, interest shall be calculated and paid as follows -

--

9. Repayment

With reference to paragraph 4(2) of the Standard Terms and subject always to paragraphs 4(3) (restrictions on repayment) and 5 (subordination) of the Standard Terms, the terms for repayment are -

Notes to paragraph 9 -

1. The repayment date for the Loan must be one or more of -
 - a date not less than five years from the date of drawdown,
 - a date not less than five years from the Borrower giving notice in writing to the Lender and the FCA, or
 - a date not less than five years from the Lender giving notice in writing to the Borrower and the FCA.
2. Where this Agreement is for a loan facility each Advance must be treated separately and have a repayment date not less than five years from the date of drawdown, or be subject to not less than five years' notice or have and be subject to both.

10. **Additional terms**

With reference to paragraph 11 of the Standard Terms, the additional terms to this Agreement are -

--

11. **Jurisdiction** With reference to paragraph 16 of the Standard Terms, the person(s) indicated below is (are) appointed as agents for service of process -

(a) by the Lender -

--

of

--

(b) by the Borrower -

--

of

--

Schedule 2

C. Standard Terms

Interpretation

1 (1) In this Agreement -

“**Advance**” means, where this Agreement is for a loan facility, an amount drawn or to be drawn down by the Borrower or otherwise made available by the Lender under this Agreement as that amount may be reduced from time to time by any repayment or prepayment permitted under this Agreement;

“**Borrower**” means the person identified as such in the Variable Terms and includes its permitted successors and assigns and, where the Borrower is a partnership, each Partner;

“**Business Day**” means any day except Saturday, Sunday or a bank or public holiday in England;

“**Effective Date**” means the date on which this Agreement is to take effect being the date of this Agreement unless otherwise stated in the Variable Terms;

“**Excluded Liabilities**” means Liabilities which are expressed to be and, in the opinion of the Insolvency Officer of the Borrower, do, rank junior to the Subordinated Liabilities in any Insolvency of the Borrower;

“**Facility**” means the loan facility referred to in paragraph 2(2);

“**Financial Resources**” has the meaning given in the Financial Rules;

“**Financial Resources Requirement**” has the meaning given it in the Financial Rules;

“**Financial Rules**” means the rules in IPRU(INV) Chapter 9 in the *handbook*;

“**Insolvency**” means and includes liquidation, winding up, bankruptcy, sequestration, administration, rehabilitation and dissolution (whichever term may apply to the Borrower) or the equivalent in any other jurisdiction to which the Borrower may be subject;

“**Insolvency Officer**” means and includes any person duly appointed to administer and distribute assets of the Borrower in the course of the Borrower’s Insolvency;

- 1 (1) **“Lender”** means the person identified as such in the Variable Terms and includes its permitted successors and assigns;

“Liabilities” means all present and future sums, liabilities and obligations payable or owing by the Borrower (whether actual or contingent, jointly or severally or otherwise howsoever);

“Loan” means the indebtedness of the Borrower to the Lender referred to in paragraph 2(1) as that indebtedness may be reduced from time to time by any repayment or prepayment permitted under this Agreement;

“Partner” means, where the Borrower is a partnership, each and every partner of the Borrower as a partner and as an individual (see also paragraph 8);

“Senior Liabilities” means all Liabilities except the Subordinated Liabilities and Excluded Liabilities;

“Subordinated Liabilities” means all Liabilities to the Lender in respect of the Loan or each Advance made under this Agreement and all interest payable thereon.

“the FCA” means The Financial Conduct Authority Limited whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS; and

- (2) Any reference to any rules of the FCA is a reference to them as in force from time to time.
- (3) Reference to any gender includes a reference to all other genders.
- (4) Reference to a paragraph is to a paragraph of these Standard Terms, unless otherwise indicated.

The Loan or Facility

- 2 (1) Where as indicated in the Variable Terms this Agreement is for a loan, the Borrower hereby **acknowledges** its indebtedness to the Lender in the sum mentioned in the Variable Terms as an unsecured loan upon and subject to the terms and conditions of this Agreement.

- (2) Where, as indicated in the Variable Terms this Agreement is for a loan facility -

(a) the maximum aggregate principal amount of each Advance outstanding at any time under the Facility shall not exceed the maximum amount specified in the Variable Terms or such other amount as may be agreed between the Borrower and the Lender from time to time;

(b) the Facility will be available until the last available date specified in the Variable Terms; and

- 2 (2) (c) any specific terms dealing with the mechanics of drawdown are contained in the Variable Terms.
- (3) The Lender and the Borrower undertake to provide the FCA, immediately upon request, with details in writing of all principal and interest in respect of the Loan or each Advance outstanding for the time being and all payments of any amount made in the period specified by the FCA in the request.

Interest

- 3 Subject to the provisions of paragraphs 4 and 5, until repayment of the Loan or each Advance in full, the Borrower will pay to the Lender interest on the Loan or each Advance (or on any part or parts of it or them for the time being outstanding under this Agreement) calculated and payable in the manner set out in the Variable Terms.

Repayment

- 4 (1) The provisions of this paragraph are subject in all respects to the provisions of paragraph 5(subordination).
- (2) The terms concerning repayment are set out in the Variable Terms but are subject to paragraph 4(3).
- (3) (a) Except where the FCA otherwise permits, no repayment or prepayment of the Loan or any Advance may be made, in whole or in part, before the relevant repayment date provided for in paragraph 9 of the Variable Terms.
- (b) At the request of the Borrower, the FCA may permit the early repayment or prepayment of the Loan or any Advance, in whole or in part, only where, immediately after such repayment or prepayment, the Borrower's Financial Resources would be greater than 100% of its Financial Resources Requirement.
- (c) Payments of interest at a rate not exceeding the rate provided for in paragraph 3 may be made without notice to or consent of the FCA, except that where -
- (i) immediately after payment, the Borrower's Financial Resources would be less than or equal to 120% of its Financial Resources Requirement; or
- (ii) before payment, the Insolvency of the Borrower commences,
- no such payment may be made without the prior written consent of the FCA.
- (4) If in respect of the Loan or any Advance default is made for a period of -
- (a) seven days or more in the payment of any principal due, or
- (b) 14 days or more in the payment of any interest due,

- 4
- (4) The Lender may, at its discretion and after taking such preliminary steps or actions as may be necessary, enforce payment by instituting proceedings for the Insolvency of the Borrower after giving seven Business Day's prior written notice to the FCA of its intention to do so.
 - (5) Subject to (6) below, the Lender may at its discretion, subject as provided in this Agreement, institute proceedings for the Insolvency of the Borrower to enforce any obligation, condition or provision binding on the Borrower under this Agreement (other than any obligation for the payment of principal moneys or interest in respect of the Loan or any Advance) PROVIDED THAT the Borrower shall not by virtue of the institution of any such proceedings for the Insolvency of the Borrower be obliged to pay any sum or sums sooner than the same would otherwise have been payable by it.
 - (6) The Lender may only institute proceedings for the Insolvency of the Borrower to enforce the obligations referred to in (5) above if -
 - (a) a default under those obligations is not remedied to the satisfaction of the Lender within 60 days after notice of such default has been given to the Borrower by the Lender requiring such default to be remedied;
 - (b) the Lender has taken all preliminary steps or actions required to be taken by it prior to the institution of such proceedings; and
 - (c) the Lender has given seven Business Days' prior written notice to the FCA of its intention to institute such proceedings.
 - (7) No remedy against the Borrower other than as specifically provided by this paragraph 4 shall be available to the Lender whether for the recovery of amounts owing under this Agreement or in respect of any breach by the Borrower of any of its obligations under this Agreement.

Subordination

- 5
- (1) Notwithstanding the provisions of paragraph 4, the rights of the Lender in respect of the Subordinated Liabilities are subordinated to the Senior Liabilities and accordingly payment of any amount (whether principal, interest or otherwise) of the Subordinated Liabilities is conditional upon -
 - (a) (if an order has not been made or an effective resolution passed for the Insolvency of the Borrower and, being a partnership, the Borrower has not been dissolved) the Borrower being in compliance with not less than 120% of its Financial Resources Requirement immediately after payment by the Borrower and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that -
 - (i) paragraph 4(3) has been complied with; and

- 5 (1) (a) (ii) the Borrower could make such payment and still be in compliance with such Financial Resources Requirement; and
- (b) the Borrower being “solvent” at the time of, and immediately after, the payment by the Borrower and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that the Borrower could make such payment and still be “solvent”.
- (2) For the purposes of sub-paragraph (1)(b) above, the Borrower shall be “solvent” if it is able to pay its Liabilities (other than the Subordinated Liabilities) in full disregarding -
- (a) obligations which are not payable or capable of being established or determined in the Insolvency of the Borrower, and
- (b) the Excluded Liabilities.
- (3) Interest will continue to accrue at the rate specified pursuant to paragraph 3 on any payment which does not become payable under this paragraph 5.
- (4) For the purposes of sub-paragraph (1)(b) above, a report given at any relevant time as to the solvency of the Borrower by its Insolvency Officer, in form and substance acceptable to the FCA, shall in the absence of proven error be treated and accepted by the FCA, the Lender and the Borrower as correct and sufficient evidence of the Borrower’s solvency or Insolvency.
- (5) Subject to the provisions of sub-paragraphs (6), (7) and (8) below, if the Lender shall receive from the Borrower payment of any sum in respect of the Subordinated Liabilities -
- (a) when any of the terms and conditions referred to in sub-paragraph (1) above is not satisfied, or
- (b) where such payment is prohibited under paragraph 4(3), the payment of such sum shall be void for all purposes.
- (6) Any sum referred to in sub-paragraph (5) above shall be received by the Lender upon trust to return it to the Borrower.
- (7) Any sum so returned shall then be treated for the purposes of the Borrower’s obligations hereunder as if it had not been paid by the Borrower and its original payment shall be deemed not to have discharged any of the obligations of the Borrower hereunder.
- (8) A request to the Lender for return of any sum referred to in sub-paragraph (5) shall be in writing and shall be made by or on behalf of the Borrower or, as the case may be, its Insolvency Officer.

Representations and undertakings of Borrower

6 From and after the date of this Agreement (or the Effective Date if earlier), the Borrower shall not without the prior written consent of the FCA -

- (a) secure all or any part of the Subordinated Liabilities;
- (b) redeem, purchase or otherwise acquire any of the Subordinated Liabilities;
- (c) amend any document evidencing or providing for the Subordinated Liabilities;
- (d) repay any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;
- (e) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part thereof to the Senior Liabilities might be terminated, impaired or adversely affected; or
- (f) arrange or permit any contract of suretyship (or similar agreement) relating to its liabilities under this Agreement to be entered into, and

other than as disclosed in writing to the FCA, the Borrower represents that it has not done so before the date of this Agreement (or the Effective Date if earlier).

Representations and undertakings of Lender

7 From and after the date of this Agreement (or the Effective Date if earlier), the Lender shall not without the prior written consent of the FCA -

- (a) assign, transfer, dispose of or encumber the whole or any part of the Subordinated Liabilities or purport to do so in favour of any person;
- (b) purport to retain or set off at any time any amount payable by it to the Borrower against any amount of the Subordinated Liabilities except to the extent that payment of such amount of the Subordinated Liabilities would be permitted at such time by this Agreement, and the Lender shall immediately pay an amount equal to any retention or set off in breach of this provision to the Borrower and such retention or set off shall be deemed not to have occurred;
- (c) amend or waive the terms of any document evidencing or providing for the Subordinated Liabilities;
- (d) attempt to obtain repayment of any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;
- (e) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part of them to the Senior Liabilities might be terminated, impaired or adversely affected; or

- 7 (f) take or enforce any security, guarantee or indemnity from any person for all or any part of the Subordinated Liabilities, and the Lender shall, upon obtaining or enforcing any security, guarantee or indemnity notwithstanding this undertaking, hold the same (and any proceeds thereof) on trust for the Borrower, and

other than as disclosed in writing to the FCA, the Lender represents that it has not done so before the date of this Agreement (or the Effective Date if earlier).

Borrower being a partnership

- 8 Where the Borrower is a partnership -

- (a) this Agreement shall subsist in full force and effect notwithstanding any change which may take place from time to time in the constitution or title of the Borrower by the retirement of the present Partners or any of them or the assumption of new Partners or by a change of name PROVIDED THAT -

- (i) a retired Partner shall continue to be liable for the payment of all sums due under this Agreement and implementation of all other obligations in this Agreement until the Lender and the remaining Partner(s) shall agree in writing to release a retired Partner from those obligations and the FCA has agreed in writing to the release; and

- (ii) in the event of a new Partner being assumed as a partner of the Borrower the other Partners shall procure that said assumed Partner shall become bound to the Lender as a party to this Agreement and shall execute such addendum hereto as the Lender and the FCA may consider necessary;

- (b) the obligations and undertakings of the Borrower under this Agreement shall bind the Borrower and the Partners jointly and severally.

Partial invalidity

- 9 If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

The FCA and indemnity

- 10 The FCA shall not, by virtue of having rights under this Agreement, be taken to be a trustee or other fiduciary for, or have any obligations to, any person to whom some or all of the Senior Liabilities are owed. Each of the Lender and Borrower shall on demand indemnify the FCA against all claims, losses, costs, expenses and other liabilities made against or incurred by the FCA as a consequence of it having rights, or taking action under this Agreement.

Additional terms

- 11** Any additional terms agreed between the parties are set out in the Variable Terms provided that, if there is any inconsistency between the Variable Terms and the Standard Terms, the Standard Terms shall prevail.

Entire agreement

- 12** This Agreement forms the entire agreement as to the Subordinated Liabilities. If there are any other terms relating to the Subordinated Liabilities existing at the date hereof and not comprised in this Agreement such terms shall be of no further force and effect.

Amendments

- 13** Any amendments to this Agreement must be made by the prescribed Deed of Variation and any amendments made or purported to be made without the consent of the FCA shall be void. For the avoidance of doubt, nothing in this paragraph requires the FCA to be a party to this Agreement.

Notices to the FCA

- 14** A notice given to the FCA under this Agreement shall have no effect, and time shall not start to run in connection with that notice, until the FCA has given to the sender written confirmation of its receipt.

Law

- 15** This Agreement is governed by English law.

Jurisdiction

- 16** For the benefit of the FCA solely, each of the Borrower and the Lender irrevocably submits to the jurisdiction of the English Courts and, to the extent that it does not have a place of business within the jurisdiction, appoints the process agent specified in the Variable Terms as agent for receipt of service of process in such courts. Such jurisdiction shall be non-exclusive except to the extent that non-exclusivity prejudices the submission to the jurisdiction.

Rights of the FCA

- 17** Although not a party to the Agreement, the FCA may in its own right enforce a term of the Agreement to the extent that it purports to confer upon the FCA a benefit

9.3 FORM OF DEED OF TERMINATION

THIS DEED OF TERMINATION is made on the day of 20....

BETWEEN -

- (1) * [insert full name of Lender] (registered in [England] number *) whose registered office is at [*if an individual or partnership of*] * (“the **Lender**”).
- (2) * [insert full name of Borrower] (registered in [England] number *) whose registered office is at [*if an individual or partnership of*] * (“the **Borrower**”).
- (3) **The Financial Conduct Authority Limited** whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS (“**the FCA**”).

WHEREAS -

A subordinated loan agreement was entered in between the Lender (1); the Borrower (2); and the FCA (3) on [date] (“the Agreement”) pursuant to which the Lender agreed to make available to the Borrower a [Loan/Facility] of up to [£]. [insert brief details of any Variations] The parties to the Agreement now wish to terminate the Agreement.

IT IS AGREED THAT -

1. The Agreement shall be deemed terminated [in accordance with its terms] with effect from [the date of this Deed of Termination/insert relevant future date]. All obligations and liabilities arising before that date shall remain continuing.
2. This Deed is governed by English Law.

IN WITNESS WHEREOF this Deed has been executed by the parties and is intended to be and is hereby delivered on the date first above written.

Executed as a deed by [full name of Lender]

.....

Signed
Director

Signed
Director/Secretary

or

Signed as a deed by
[full names of individual partners of Lender]
(as such partners and as individuals)

Signed.....
Partner

Signed.....
Partner/Witness

or

Signed as a deed by [full name of Lender]
(if an individual)

Signed.....

in the presence of

Signed.....
Witness

Executed as a deed by [full name of Borrower]

.....

Signed
Director

Signed
Director/Secretary

or

Signed as a deed by [full names of individual
partners of Borrower]
(as such partners and as individuals)

Signed.....
Partner

Signed.....
Partner/Witness

or

Signed as a deed by [full name of Borrower]
(if an individual)

Signed.....

in the presence of

Signed.....
Witness

The Common Seal of THE FINANCIAL
CONDUCT AUTHORITY LIMITED
was hereunto affixed in the presence of

Signed
Authorised Signatory

Signed
Authorised Signatory

9.4 FORM OF DEED OF VARIATION

THIS DEED OF VARIATION is made on the day of 2.....

BETWEEN -

- (1) * [insert full name of Lender] (registered in [England] number *) whose registered office is at [*if an individual or partnership of*] * (“the **Lender**”);
- (2) * [insert full name of Borrower] (registered in [England] number *) whose registered office is at [*if an individual or partnership of*] * (“the **Borrower**”); and
- (3) **The Financial Conduct Authority Limited** whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS (“**the FCA**”).

WHEREAS -

A subordinated loan agreement was entered into between the Lender (1); the Borrower (2); and the FCA (3) on [date] 199 (“the Agreement”) pursuant to which the Lender agreed to make available to the Borrower a (Loan/Facility) of up to [£].

The parties to the Agreement now wish to vary the Agreement to [insert brief details].

IT IS AGREED THAT -

1. The Agreement shall be deemed varied [, in accordance with its terms,] from [the date of this Deed of Variation/insert relevant future date] so that the FCA is no longer a party to the Agreement. Any obligation owed to or by, and any requirement for any consent or permission to be given to or by, FCA shall be of no further effect. FCA is hereby released from each and every obligation owed by it under the Agreement. Although on the execution of this deed the FCA is no longer a party to the Agreement, it may in its own right enforce a term of the Agreement to the extent that it purports to confer upon the FCA a benefit.

[insert additional clauses/details of amended clauses].

to the extent that any term of the Agreement is inconsistent with their terms and conditions contained in the Approved Form, the terms and conditions in the Approved Form shall prevail (provided that for the purposes of this clause 1, in clauses 11 and 12 of the Approved Form, the expressions “Variable Terms” and “Agreement” shall be deemed to include references to the Agreement and this Deed.

2. All other terms and conditions of the Agreement remain unchanged.
3. This Deed is governed by English Law.

IN WITNESS WHEREOF this Deed has been executed by the parties and is intended to be and is hereby delivered on the date first above written.

Executed as a deed by [full name of Lender]

.....

Signed
Director

Signed
Director/Secretary

or

Signed as a deed by
[full names of individual partners of Lender]
(as such partners and as individuals)

Signed.....
Partner

Signed.....
Partner/Witness

or

Signed as a deed by [full name of Lender]
(if an individual)

Signed.....

in the presence of

Signed.....
Witness

Executed as a deed by [full name of Borrower]

.....

Signed
Director

Signed
Director/Secretary

or

Signed as a deed by [full names of individual

partners of Borrower]
(as such partners and as individuals)

Signed.....
Partner

Signed.....
Partner/Witness

or

Signed as a deed by [full name of Borrower]
(if an individual)

Signed.....

in the presence of

Signed.....
Witness

The Common Seal of THE FINANCIAL
CONDUCT AUTHORITY LIMITED was
hereunto affixed in the presence of

Signed
Authorised Signatory

Signed
Authorised Signatory

9.5 FORM OF GUARANTOR UNDERTAKING

This undertaking is entered into the [] day of [] 20[] by

[] (the "Guarantor") of [] in favour of

The Financial Conduct Authority Limited ("the FCA") whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS.

WHEREAS:-

- (A) By a subordinated loan agreement (the "Loan Agreement") made [of even date] between [] (the "Lender"), [] (the "Borrower") and the FCA, the Lender made available to the Borrower a loan [facility] on the terms and conditions contained in the Loan Agreement.
- (B) By a guarantee (the "Guarantee") made [of even date] between the Guarantor and the Lender, the Guarantor guaranteed the obligations of the Borrower to the Lender under the Loan Agreement on the terms and conditions contained in the Guarantee.

IT IS HEREBY AGREED as follows:-

- 1 The Guarantor hereby undertakes to the FCA that all and any rights which the Guarantor may have against the Borrower in respect of the Guarantee (whether by subrogation or otherwise howsoever) shall be subordinated on the same terms and conditions (mutatis mutandis) set out in the Loan Agreement (as amended from time to time) and further undertakes and confirms that the Guarantor will be bound by the terms of the Loan Agreement as if the Guarantor were a party to it in place of the Lender.
- 2 This undertaking is governed by English law.

IN WITNESS whereof this deed has been executed by the Guarantor on the date first above written.

Executed as a Deed by

[]

Witness:.....

Witness's Name:

Witness's Address:.....

.....

9.8 Guidance Notes on Completion of Agreements

A GENERAL

Introduction

1. These Notes are designed to accompany the Approved Forms of Subordinated Loan Agreement, each of which is in four parts: the front page, the Variable Terms in Schedule 1, the Standard Terms in Schedule 2 and the signature page. The parties will need to set out details of themselves and the transaction in the Variable Terms and complete the signature page. The front page and the Standard Terms should remain unaltered.
2. All communications with the FCA regarding the proposed Agreement should in the first instance be via the firm's inspector.
3. Firms are advised to ensure that the appropriate form of subordinated loan agreement is used (Chap 9/Chap 3). This is, of course, dependent on the firm's authorisation categorisation. Should the firm's categorisation change, this should be discussed with the firm's usual contact as it is likely that any subordinated loan agreement in place will have to be revised.

Preparation of the Agreement

4. (a) The form containing the Variable Terms may be completed or re-typed according to preference.
(b) Rather than re-type the Standard Terms (Schedule 2), firms should simply **photocopy Schedule 2 of the FCA precedent or print it from the website and include it as part of the original Agreement.**
5. [Deleted]

Financial Rules

6. Firms are referred to rule IPRU(INV) 9.5 on the use of subordinated loans, including restrictions on approved lenders, repayment provisions and gearing limits.

B NOTES ON VARIABLE TERMS

Dates

7. If the **Effective Date of the Agreement** is to be different from the Date of the Agreement, care should be taken to record this in paragraph 2. Where this is the case,

the Effective Date will normally be expected to be later than the Date of the Agreement. If the Effective Date is to be a date prior to the date of the Agreement (for example because the loan was drawn down before the Agreement was put in place), the firm will be expected to provide a reasonable explanation to the FCA as to why it was not possible to document the loan more promptly.

Addresses

8. Paragraphs 4 and 6: The address given should be the firm's registered office or equivalent.

Partnerships

9. Paragraph 5: Where the Borrower is a partnership, insert "See Additional Terms, paragraph 10() below" and in paragraph 10 of Schedule 1, insert the names and addresses of each of the partners.

The Loan or Facility

10. Paragraph 7: Check that paragraph 2 of the Standard Terms accurately reflects the intentions of the parties.
11. Suggested wording for a loan is:

"This is an agreement for the Loan of £[]."

12. Suggested wording for a facility is:

"This is an agreement for a Facility under which the Lender is committed to make Advances in pounds sterling to the Borrower up to a maximum amount of £[] until the last available date of the Facility being [.....(date)].

The terms (if any) agreed between the parties on the mechanics of drawdown are as follows - ". *

- * For example, the parties may wish to provide that:

"Advances may be drawdown in integral multiples of £100,000."

Interest

13. Paragraph 8: the FCA will be concerned if an excessive rate of interest compared with the market rate is charged. Broadly speaking a rate of interest will be regarded by the FCA as excessive if it is not a commercial one. Compound interest is not acceptable.

Repayment

14. Irrespective of the form of agreement being used, the specified notice period runs from the date of drawdown and, therefore, where a loan is in the form of a facility, each advance must be for a minimum of the required period.
15. Repayment clauses have given rise to confusion in the past. The wording of such clauses will differ depending on which form is being used. Sample wordings for each of these forms of agreement are set out below.

Long-term form

16. Firms are advised that for a long-term form the repayment date must be a specified date not less than 5 years from one or more of:

- the date of drawdown;
- the borrower giving notice in writing to the lender and the FCA; or
- the lender giving notice in writing to the borrower and the FCA.

17. Paragraph 9: Examples of suggested wordings for either a fixed repayment date or repayment on notice for a long-term form are as follows:

(a) "The Borrower shall repay [the Loan/each Advance made to it] on the [date which falls five years after the date] [fifth anniversary]of drawdown of the [Loan/relevant Advance]."

(b) "The Borrower shall repay [the Loan/each Advance made to it] five years after the date on which:

(a) the Borrower gives written notice to the Lender and to the FCA; or

(b) the Lender gives written notice to the Borrower and to the FCA."

Note: either (a) or (b) above by itself is sufficient.

(c) "[The Loan / Each Advance made to the Borrower] shall be repayable on the date specified by notice in writing given by the Lender to the Borrower and to the FCA or notice in writing given by the Borrower to the Lender and to the FCA, in either case that date being not less than five years after the date on which the notice is given."

18 [deleted]

19 [deleted]

Additional terms

20. Paragraph 10: Additional terms may be agreed between the borrower and lender such as those relating to -

- representations and warranties
- provision of financial and other information
- covenants
- costs and expenses
- taxes and increased costs
- mechanics of payment
- notices
- termination provisions.

However, they should not be inconsistent with the Agreement or the FCA rules. For example, any terms dealing with additional payments by the borrower (eg to compensate for taxes or increased costs) should be subject to the FCA's prior written consent. Covenants and additional representations and warranties should not be inconsistent with the existing representations and warranties in paragraphs 6 and 7 of the Standard Terms. Similarly, any notices clause should take into account paragraph 14 of the Standard Terms (notices to the FCA of no effect until receipt confirmed). Any inconsistency between the Variable Terms and the Standard Terms is resolved in favour of the Standard Terms (paragraph 11 of the Standard Terms).

21. The lender and borrower should note that the action which can be taken by the lender in response to any breach of representation, warranty or covenant by the borrower is considerably constrained by paragraphs 4 and 5 of the Standard Terms. Therefore the value to the lender of including additional representations, warranties or covenants is very limited.

22. See also note 9 above for the situation where the borrower is a partnership and notes 24 -25 below for additional terms relating to law and jurisdiction.

Law and jurisdiction

23. If the borrower or lender is resident in another jurisdiction and does not have a branch office within the United Kingdom, paragraph 11 of the Variable Terms should be completed.

24. The borrower should not be appointed agent for service of process on the lender in case a dispute arises between them.

C NOTES ON STANDARD TERMS

Representations and undertakings

25. Paragraphs 6(f) and 7(f): The guarantor or other provider of security must waive its right of subrogation against the borrower until all Senior Liabilities of the borrower have been paid in full. A form of deed for this purpose is available from the FCA.
26. On the effect of other terms relating to the subordinated liabilities not contained in this Agreement, see also paragraph 12 of the Standard Terms.
27. Paragraphs 15 and 16: See Notes 24-25 above.

D SIGNATURE PAGE

Arrangements for execution

28. **Two identical original Agreements** (i.e. the front page, the two Schedules and the signature page, each copy stapled or otherwise bound together) should be prepared for signature. Firms and lenders may use any of the execution forms set out in Notes 34-35 below.

E DEEDS OF VARIATION/ DEEDS OF TERMINATION

30. Firms are advised to ensure that the appropriate standard the FCA form is used. These forms are available from the FCA on request.
31. The recitals to the deed should refer to the amount of the loan/ each advance and where applicable, briefly summarise the effect of any previous variation of the agreement and of variation of the original agreement which is currently proposed.
32. A variation or termination of a subordinated loan agreement can only be effected by the execution of a further deed. In particular, this means that the formalities for executing a deed (see note 34-36 below) must be observed for all deeds of variation or termination and that all parties to the original agreement must also be parties to the subsequent deed of variation or termination. Only the forms set out at Notes 35(1) and (2) or 36(2) below are appropriate for execution as a deed.
33. A deed of variation will be required where the parties wish to change the terms of a subordinated loan agreement eg. where the amount of the loan or advance is to be increased. A deed of termination is needed where the parties wish to bring to terminate an agreement that is in place before it would otherwise come to an end. This could occur, for example, where the firm wants to substitute a new lender. Please note that where a subordinated loan agreement is terminated in this way, all obligations and liabilities of the parties arising before the date of termination remain in effect.

F Execution

34. In the case of English, Welsh and Northern Irish companies, reference is made to section 43 of the Companies Act 2006 under which a company may contract:
- by writing under its common seal, or
 - through any person acting under its authority, express or implied.

Section 44 of the Companies Act 2006 governs the execution of documents by English, Welsh, and Northern Irish companies.

13 Personal Investment Firms (former PIA firms)

	Form	Page
[FCA]	13.1 Form of subordinated loan (with guidance notes)	2

13.1 FORM OF SUBORDINATED LOAN AGREEMENT FOR PERSONAL INVESTMENT FIRMS (SEE IPRU (INV) 13)

NOTES FOR COMPLETION OF THIS DOCUMENT

This subordinated loan Agreement is to be used for injecting additional funds into a firm on a semi-permanent basis. This loan should normally be made in cash. You should speak to FCA before completing the Agreement if you intend to make the loan by a transfer or assignment of assets.

- (1) *This is the standard form prescribed by FCA for long term or short term subordinated loans. A long term subordinated loan must have an original maturity of at least five years or, where it has no fixed term, be subject to five years' notice of repayment; a short term subordinated loan must have an original maturity of at least two years or, where it has no fixed term, be subject to two years' notice of repayment. Delete from the heading and from paragraph 4(2) (Repayment of the Loan) whichever period in brackets is not relevant.*
- (2) *In paragraph 2, you should insert the Effective Date of the Loan, that is, the date on which the Lender will make the advance, if this differs from the date of the Agreement.*
- (3) *Words in brackets marked with a double asterisk ** are for use where the Borrower is a partnership.*

Governing Law

Number of crosses	Governing Law
+	Scottish
++	Scottish or Northern Irish
+++	English or Northern Irish
++++	Northern Irish
+++++	English

*Example: Words marked ++** will be for use where the Borrower is a partnership and the Agreement is governed by either Scottish or Northern Irish law.*

- (4) *Words in round brackets in paragraph 10 are only required where either the Lender or Borrower (or both) is not incorporated in any part of the United Kingdom.*
- (5) *You should speak to FCA before changing or amending this standard form (for example, by adding provisions relating to the terms of the Loan to be made to the Borrower by the Lender). FCA reserves the right to make a charge for considering any non-standard agreement.*

BETWEEN:-

- (1) [] of] of
 []
 (the “Lender” which term includes its permitted successors and assigns); and

- (2) [] of] of
 []
 (the “Borrower” which term includes its permitted successors and assigns); [and
 [] of] of
 [],
 [] of] of
 [] and] and
 [] of] of
 []
 the individual partners of the Borrower as such partners and as individuals]

IT IS AGREED AS FOLLOWS:-

1. DEFINITIONS

In this agreement:-

“**Effective Date**” means the date on which this Agreement is to take effect being the date of the Agreement unless otherwise stated in paragraph 2;

“**Excluded Liabilities**” means Liabilities which are expressed to be and, in the opinion of the Insolvency Officer of the Borrower, do rank junior to the Subordinated Liabilities in any Insolvency of the Borrower;

“**Financial Resource Requirement**” means 120 per cent. of the minimum amount of financial resources which the Borrower is required by FCA to maintain at any particular time in compliance with the Rules in chapter 13 of the Interim Prudential Sourcebook (“IPRU (INV)”) and any provisions amending or replacing them;

“**Insolvency**” means and includes liquidation, winding up, bankruptcy, sequestration, administration or dissolution (whichever term may apply to the Borrower) or the equivalent in any other jurisdiction to which the Borrower may be subject;

“**Insolvency Officer**” means and includes any person duly appointed to administer and distribute assets of the Borrower in the course of the Borrower’s Insolvency;

“**Liabilities**” means all present and future sums, liabilities and obligations payable or owing by the Borrower [or any Partner **] (whether actual or contingent, jointly or severally or otherwise howsoever);

“**Loan**” means the indebtedness of the Borrower to the Lender referred to in paragraph 2 as that indebtedness may be reduced from time to time by any repayment or prepayment permitted under this Agreement;

[“**Partner**” means an individual partner of the Borrower**];

“**Rules**” means the Rules of FCA from time to time in force;

“**Senior Liabilities**” means all Liabilities except the Subordinated Liabilities and Excluded Liabilities;

“**Subordinated Liabilities**” means all Liabilities to the Lender in respect of the Loan and all interest payable thereon.

2. LOAN

The Borrower hereby acknowledges its indebtedness to the Lender in the sum of [] as an unsecured loan upon and subject to the terms and conditions of this Agreement.

[Note: This paragraph may be adapted to reflect the actual basis on which the unsecured Loan arises and, if applicable, how it is to be drawn down. Members are requested to specify clearly the Effective Date of the Loan if it will differ from the date of the Agreement.]

3. INTEREST

Subject to the provisions of paragraphs 4 and 5, until repayment of the Loan in full the Borrower will [the Borrower and the partners hereby bind and oblige themselves jointly and severally to +**] pay to the Lender interest on the Loan or on any part or parts of it for the time being remaining due under this Agreement such interest to be calculated and to be payable as provided below.

[Enter details of interest calculations and manner and time of payments. The rate of interest is not to exceed an annual rate of five per cent. above the London Inter-Bank Offered Rate for deposits of the currency in question for the relevant interest period or (where a fixed rate of interest is charged) give per cent. per annum above such rate at the date the Loan is first taken out.]

4. REPAYMENT OF THE LOAN

- (1) The provisions of this paragraph are subject to the provisions of paragraph 5.
- (2) Except where the Borrower has obtained FCA’s prior written consent and that consent has not been withdrawn, **no** repayment or prepayment of the Loan shall be made, in whole or in part, earlier than a date:
 - (a) not less than [five years] [two years] from the date on which the Loan was first made; or

- (b) not less than [five years] [two years] from the date on which the Borrower gave notice in writing to the Lender and FCA, or
 - (c) not less than [five years] [two years] from the date on which the Lender gave notice in writing to the Borrower and FCA.
- (3) If default is made for a period of 7 days or more in the payment of any principal due in respect of the Loan or for a period of 14 days or more in the payment of any interest due in respect of the Loan the Lender may, in order to enforce payment, at its discretion and after taking such preliminary steps as may be necessary and after notifying FCA, institute proceedings for the Insolvency of the Borrower [or the Insolvency of all or any Partners**]. If an order is made or an effective resolution is passed for the winding up of the Borrower, the Loan shall become repayable.
- (4) The Lender may at its discretion, subject to the provisions which follow, institute proceedings for the Insolvency of the Borrower [or the Insolvency of all or any Partners**] to enforce any obligation, condition or provision binding on the Borrower [or on all or any Partners**+] under this Agreement (other than any obligation for the payment of principal moneys or interest in respect of the Loan) provided that the borrower [or any Partner**] shall not by virtue of the institution of any such proceedings be obliged to pay any sum or sums sooner than the same would otherwise have been payable by it. The Lender may only institute such proceedings to enforce the obligations referred to above if (i) the default is not remedied to the satisfaction of the Lender within 60 days after notice of such default is not remedied to the satisfaction of the Lender within 60 days after notice of such default has been given to the Borrower by the Lender (with a copy to FCA) requiring the default to be remedied and (ii) the Lender has taken all preliminary steps required to be taken by it prior to the institution of such proceedings.
- (5) No remedy against the Borrower [or any Partner**] other than as specifically provided by this paragraph shall be available to the Lender whether for the recovery of amounts owing under this Agreement or in respect of any breach by the Borrower [or any Partners**] of any of its obligations under this Agreement.

5. SUBORDINATION

- (1) Notwithstanding the provisions of paragraph 4, the rights of the Lender in respect of the Subordinated Liabilities are subordinated to the Senior Liabilities and accordingly payment of any amount whether principal (by way of repayment or prepayment), interest or otherwise, of the Subordinated Liabilities is conditional upon:-
- (a) (if an order has **not** been made or an effective resolution passed for the Insolvency of the Borrower) the Borrower being in compliance with its Financial Resource Requirement prevailing at the time of payment by the Borrower; and accordingly no such amount which would otherwise

fall due for payment shall be payable except to the extent that repayment under paragraph 4(2) above is permitted and the Borrower could make such payment and still be in compliance with its Financial Resource Requirement immediately thereafter; and

- (b) (if an order has been made or an effective resolution has been passed for the Insolvency of the Borrower [or if the Borrower shall be dissolved**]) the Borrower being solvent at the time of payment by the Borrower; and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that the Borrower could make such payment and still be solvent immediately thereafter. For the purposes of this sub-paragraph, the Borrower shall be solvent if it is able to pay its debts in full and in determining whether the Borrower is solvent for the purposes of this sub-paragraph there shall be disregarded obligations which are not payable or capable of being established or determined in the Insolvency of the Borrower.
- (2) (a) No payment of the Subordinated Liabilities (other than in respect of interest) shall be made at any time under sub-paragraph (1) above unless the Borrower has obtained FCA's prior written consent to such payment and that consent has not been withdrawn.
 - (b) The Borrower shall give or ensure that there are given to FCA such information and auditor's certificate in relation to the proposed payment as FCA may require.
- (3) Payments of interest at a rate not exceeding the rate provided in paragraph 3 may be made to the extent permitted by sub-paragraph (1) above without prior notification to FCA.
 - (4) For the purposes of sub-paragraph (1)(b) above a report given at any relevant time as to the solvency of the Borrower by its Insolvency Officer, in form and substance acceptable to FCA, shall in the absence of proven error be treated and accepted by FCA, the Lender and the Borrower as correct and sufficient evidence of the Borrower's solvency.
 - (5) If the Lender shall receive from the Borrower [or any Partner**] payment of any sum in respect of the Subordinated Liabilities where repayment is prohibited under paragraph 4(2) or when any of the terms and conditions referred to in sub-paragraphs (1) or (2) above is not satisfied the payment of such sum shall be void for all purposes and [any such sum shall be received by the Lender upon trust to return the same to the Borrower+++] [the Lender shall at any time thereafter be bound to return such sum to the Borrower, or, as the case may be, its Insolvency Officer+] (and any sum so returned shall then be treated for the purposes of the Borrower's obligations under this Agreement as if it had not been paid by the Borrower and its original payment shall be deemed not to have discharged any of the obligations of the Borrower). A request to the Lender for return of any sum under the foregoing provisions of this sub-paragraph (5) shall be in writing and shall be made by or on behalf of the Borrower or, as the case may be, its Insolvency Officer.

6. UNDERTAKINGS OF BORROWER

From and after the date of this Agreement (or the Effective Date if earlier), the Borrower will not [and no Partner will**] without the prior written consent of FCA:-

- (1) secure all or any part of the Subordinated Liabilities;
- (2) redeem, purchase or otherwise acquire any of the Subordinated Liabilities;
- (3) amend any document evidencing or providing for the Subordinated Liabilities;
- (4) repay any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;
- (5) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part of them to the Senior Liabilities might be terminated, impaired or adversely affected.

7. DOCUMENTATION

This Agreement forms the entire agreement as to the Subordinated Liabilities. If there are any other terms relating to the Subordinated Liabilities existing at the date of this Agreement and not comprised in it such terms shall be of no further force and effect. No variation of or amendment to this Agreement shall be of any effect unless it is in writing signed by all the parties. Any amendment to this Agreement made or purported to be made without the consent of FCA shall be void. For the avoidance of doubt, nothing in this paragraph requires the FCA to be a party to this agreement.

8. UNDERTAKINGS OF LENDER

The Lender will not without the prior written consent of FCA:-

- (1) assign or purport to assign to any person the whole or any part of the Subordinated Liabilities;
- (2) purport to retain or set-off at any time any amount payable by it to the Borrower [or any Partner**] against any amount of the Subordinated Liabilities except to the extent that payment of such amount of the Subordinated Liabilities would be permitted at such time by this Agreement, and the Lender shall immediately pay an amount equal to any retention or setoff in breach of this provision to the Borrower and such retention or set-off shall be deemed not to have occurred;
- (3) amend or waive the terms of any document evidencing or providing for the Subordinated Liabilities;
- (4) attempt to obtain repayment of any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;

- (5) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part of them to the Senior Liabilities might be terminated, impaired or adversely affected;
- (6) take or enforce any security, guarantee or indemnity from any person for all or any part of the Subordinated Liabilities, and the Lender shall, upon obtaining security, guarantee or indemnity in breach of this undertaking, hold the same [on trust for +++] [as agent of and for the benefit of ++] the Borrower.

[Note: Before giving its consent to a transaction falling under paragraph 8(6), FCA will need to be satisfied that the provider of security has waived his rights of subrogation against the Borrower until all Senior Liabilities of the Borrower have been paid in full.]

9. [This Agreement shall subsist in full force and effect notwithstanding any change which may take place from time to time in the constitution or title of the Borrower by the retirement of the present partners or [either] [any] of them or the assumption of new Partners or by a change of name it being provided that:-

- (a) a retired Partner shall continue to be liable for the payment of all sums due under this Agreement and implementation of all other obligation contained in it until such time as the Lender and the remaining Partner[s] shall agree in writing to release a retired Partner from such obligations and FCA has given its written consent to the release; and
- (b) in the event of a new partner being assumed as a Partner of the Borrower the other partners shall procure that the said assumed Partner shall become bound to the Lender as a party to this Agreement and shall execute such addendum to it as the Lender and FCA may consider necessary.

The obligations and undertakings of the Borrower under this Agreement shall bind the Borrower and the Partners jointly and severally. **+]

10. LAW [AND JURISDICTION]

- (1) This Agreement is governed by [English law +++++] [the law of Scotland +] [the law of Northern Ireland +++++] and, for the benefit of FCA solely, each of the Borrower and the Lender irrevocably submits to the jurisdiction of the [English Courts +++++] [Court of Session, Scotland +] [Northern Irish Courts +++++] (and, to the extent that it does not have a place of business within this jurisdiction, appoints [*name and address of agent for service*] as agent for receipt of service of process in such courts). Such jurisdiction shall be non-exclusive except to the extent that such non-exclusivity prejudices the submission to such jurisdiction.
- (2) Although not a party to the agreement, the FCA may in its own right enforce a term of the agreement to the extent that it purports to confer upon the FCA a benefit.

IN WITNESS whereof the parties hereto have duly executed this Agreement as a Deed the day and year first above written.

(EXECUTED AS A DEED and DELIVERED by
(the Lender
(and signed by:

Director

Director/Secretary

or

(SIGNED and DELIVERED as a DEED
by the individual partners of the Lender
(as such partners and as individuals
(in the presence of:

or

SIGNED and DELIVERED as a DEED by
the Lender (*if an individual*)
in the presence of:

(EXECUTED AS A DEED and DELIVERED by
(the Borrower
(and signed by:

Director

Director/Secretary

or

(SIGNED and DELIVERED as a DEED
(by the individual partners or the Borrower
(as such partners and as individuals
(in the presence of:

or

*SIGNED and DELIVERED as a DEED by
the Borrower (if an individual)
in the presence of:*

Dated this day of 20

BETWEEN

the Lender

and

the Borrower

**SUBORDINATED
LOAN AGREEMENT**
