



- (3) \*\*\*\*\* holder of \*\*\*\*\*passport number/identity card number \*\*\*\*\*, who is/are hereon appearing in the name of the company \*\*\*\*\*, a company registered in \*\*\*\*\* bearing company registration number \*\*\*\*\* and having its registered address situated at \*\*\*\*\*, duly authorised to appear hereon;

(hereinafter referred to as “the Beneficiary”) and

- (4) The Malta Financial Services Authority established under the Malta Financial Services Authority Act, Cap. 330, represented hereon by \*\*\*, duly authorised to appear hereon in virtue of the said Act;

(hereinafter referred to as “the MFSA”).

## **WHEREAS**

- (A) The Borrower is:

A Category X Investment Services Licence Holder issued under the Investment Services Act, and is required to maintain financial/capital resources to meet the provisions of its investment services licence as they apply to the Borrower and /or pursuant to the Capital Requirements Regulation (EU) No. 575/2013 (the “CRR”) and the Capital Requirements Directive 2013/36/EU (the “CRD”).

**Or**

An entity in the consolidated group to which the Beneficiary belongs.

- (B) The Beneficiary holds a Category X Investment Services Licence issued under the Investment Services Act and is required to maintain financial/capital resources to meet the provisions of its investment services licence and /or pursuant to the CRR and CRD as they apply to the Beneficiary, at any particular time.

- (C) The Lender has agreed to lend to the Borrower

**Or**

The Lender has agreed to lend to the Borrower for the benefit of the Beneficiary

an amount as set herein upon and subject to the terms and conditions contained in this Agreement.

- (D) \*\*\* declare/s that they/he/she are/is duly authorised to appear on behalf of the Lender  
\*\*\*in virtue of \*\*\*;  
\*\*\* declare/s that they/he/she are/is duly authorised to appear on behalf of the  
Borrower \*\*\*in virtue of \*\*\*;

*All parties, please initialise here*

\*\*\* declare/s that they/he/she are/is duly authorised to appear on behalf of the Beneficiary \*\*\* in virtue of \*\*\*.

NOW IT IS HEREBY AGREED as follows:

**1. The Loan**

(a) On the basis of this Agreement,

the Lender is hereby advancing to the Borrower by way of loan, who under the same title accepts,

**Or**

the Lender is hereby advancing to the Borrower for the benefit of the Beneficiary, and the Borrower under the same title accepts,

the principal amount of [( )] (“the Loan” or “the Principal Amount”).

(b) The Loan shall in no case be for a period of less than five (5) years from the date hereof, and thus the Loan shall be repayable on the ---/ ---/---- (the “Redemption Date”) and upon and subject to the terms and conditions contained in this Agreement.

**Or**

The Loan shall in no case be for a period of less than five (5) years from the date hereof, and accordingly the Borrower and the Lender agree that, subject to the provisions of Clauses 3 and 4 hereof, there shall be no fixed date of repayment and upon and subject to the terms and conditions contained in this Agreement.

(c) Each of the Lender and the Borrower hereby undertakes with the MFSA that forthwith upon request by the MFSA it will provide to the MFSA details in writing of all principal and interest in respect of the Loan outstanding for the time being and all payments of any amount made in the period specified by the MFSA in the request.

**2. Interest**

Subject to the provisions of Clause 5 of this Agreement:

The Borrower shall until repayment of the Loan in full, pay to the Lender annual interest on the Loan at a rate of -----% (which may not be amended on the basis of the credit standing of the Borrower) or on any part or parts thereof for the time being remaining due hereunder. Repayment of interest may not be accelerated other than in the circumstances specified in Clause 4 hereof.

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Provided that the Rate of Interest shall not exceed an annual rate of [eight percent (8%)] or any other maximum rate as may be set by the MFSA.

### 3. **Repayment of the Loan**

- (1) Subject to the provisions of Clauses 1(a), 4 and 5 of this Agreement, the Loan shall be repayable by the Borrower to the Lender [on the Redemption Date], provided that prior written notice has been given to the MFSA, and the prior written consent of the MFSA to such repayment has been obtained by the Borrower.
- (2) The Redemption Date, if applicable, may be deferred by agreement in writing of the parties hereto.

Provided that prior written notice to the MFSA and the prior written consent of the MFSA to such deferral, has been obtained by the Borrower.

Provided further that during the final five (5) years of maturity of the Loan, the amortisation provisions as set out in Article 64 of the CRR shall be implemented by the Borrower.

### 4. **Prepayment**

Subject to the terms and conditions of this Agreement, the Loan shall not be redeemed, nor shall the Borrower accelerate future scheduled payments of capital or interest prior to the Redemption Date. Provided that early redemption may occur in the event that the Borrower (*and /or/ the Beneficiary*) is the subject of liquidation or insolvency proceedings, or if on the application of the Borrower the MFSA permits the early redemption of the Loan for the reasons set out in Article 78(4) of the CRR, provided that the written consent of the MFSA to such prepayment is in any case first obtained by the Borrower.

OR

Subject to the terms and conditions of this Agreement, the Loan shall not be redeemed, nor shall the Borrower accelerate future scheduled payments of capital or interest without the prior written consent of the MFSA. Provided that redemption may occur in the event that the Borrower (*and /or/ the Beneficiary*) is the subject of liquidation or insolvency proceedings, or if on the application of the Borrower the MFSA permits the early redemption of the Loan for the reasons set out in Article 78(4) of the CRR, provided that the written consent of the MFSA to such prepayment is in any case first obtained by the Borrower.

### 5. **Subordination**

Notwithstanding the provisions of Clauses 3 and 4 of this Agreement, the rights of the Lender in respect of the Loan are subordinated in all respects to all the creditors of the

*All parties, please initialise here*

Borrower in respect of amounts outstanding to them payable by the Borrower ("Senior Liabilities") and accordingly payment of any amount of the Loan shall be in all respects conditional on the express prior written consent of the MFSA to such payment.

## 6. **Payments**

Subject to the provisions of Clause 5 of this Agreement 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.

## 7. **Covenants**

- (a) The Borrower hereby undertakes to the MFSA that it will not without the prior written consent of the MFSA:
- i. secure all or any part of the Loan; or
  - ii. amend or concur in amending the terms of this Agreement; or
  - iii. repay all or any part of the Loan otherwise than in accordance with the terms hereof; or
  - iv. take or omit to take any action whereby the subordination of the Loan or any part thereof as provided for in Clause 5 of this Agreement might be terminated, impaired or adversely affected; or
  - v. take or attempt to take any action the effect of which may lead, directly or indirectly, to the revocation or annulment of this Agreement or any terms thereof.
- (b) The Lender hereby undertakes to the MFSA that it will not without the prior written consent of the MFSA:
- i. 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;
  - ii. 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;

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- iii. amend or waive or concur in amending or waiving the terms of this Agreement;
- iv. attempt to obtain repayment of the whole or any part of the Loan otherwise than in accordance with the terms of this Agreement;
- v. take or omit to take any action whereby the subordination of the Loan or any part thereof as provided for in Clause 5 of this Agreement might be terminated, impaired or adversely affected; or
- vi. 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 for the Borrower.

## 8. **Entire Agreement**

Without prejudice to the application of the provisions of the CRR including in particular the provisions of Part Two Title I Chapter 4 thereof, the Borrower, the Lender, (the Beneficiary where applicable), and the MFSA 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. Any amendments to this Agreement made or purported to be made without the prior written consent of the MFSA shall be null and void.

## 9. **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.

## 10. **MFSA**

The MFSA is party to this Agreement only for the purpose of ensuring the enforceability of the provisions of this Agreement so as to satisfy itself that the Licence Holder (insert *name of Borrower* or *Beneficiary* as appropriate) complies with its applicable financial/capital resources requirements and the MFSA is not, and shall not be deemed to be under any duty towards, or to have any obligation of any nature towards, the other creditors of the Borrower or any of them.

Each of the Lender, the Borrower (and the Beneficiary where applicable), shall indemnify the MFSA against all claims, losses, costs, expenses and other liabilities made against or incurred by the MFSA as a consequence of the MFSA being a party to, or taking any action under, this Agreement.

*All parties, please initialise here*

The parties hereby signify their consent and understanding of the above provisions.

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**(Lender)** Name(s) and surname(s):

Duly authorised to appear in the name of and on behalf of the Lender (unless lender is a natural person)

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**(Borrower)** Name(s) and surname(s):

Duly authorised to appear in the name of and on behalf of the Borrower

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**(Beneficiary)** Name(s) and surname(s):

Duly authorised to appear in the name of and on behalf of the Beneficiary

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**The Malta Financial Services Authority**