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Deed poll and declaration

Why the FCA asks for a deed poll

When the business of the firm passes to the applicant, we need to be sure that all the regulatory obligations of the firm including obligations in respect of past business are accepted by the applicant. As part of the change of legal status process we require the deed poll set out in this section to be completed. This acknowledges the applicant's acceptance of responsibility, particularly in relation to complaints and any requirements to review past business. Such responsibility is joint and several. The deed poll does not relieve the firm from any liabilities that it may have for its past business once it ceases to be authorised.

By signing this deed poll you will be applying to cancel the existing firm's permission and seeking authorisation for the new applicant firm.

Deed in relation to the past business of a predecessor firm:

Notes

These explanatory notes are not intended to be comprehensive, and applicants are advised to refer to the Deed and to seek independent advice if they are unsure as to any of its effects.

Why does the FCA ask the successor firm to execute the Deed in relation to the past business of a predecessor firm?

When the business of a regulated firm (a "predecessor firm") passes to a new firm (known in the Deed as the "successor firm"), the FCA needs to be sure that the interests of consumers in respect of that past business are appropriately protected.

Generally, the FCA requires that the successor firm accepts responsibility for the past business of the predecessor firm and the purpose of the Deed is to ensure that consumers continue to be able to bring claims relating to the regulated activities and services of the predecessor firm.

The Deed binds the successor firm only if the change of legal status is granted.

What does the Deed do?

In respect of the business being transferred, the successor firm accepts that the FCA, the Financial Ombudsman Service, the Financial Services Compensation Scheme and consumers may (but need not) treat the regulated activities and services carried on by the predecessor firm (and any firm for which the predecessor firm accepted responsibility) as if such activities and services had been carried on by the successor firm. The successor firm also accepts responsibility and liability for the acts and omissions of the predecessor firm (and any firm for which the predecessor firm accepted responsibility) in respect of those activities and services and for any judgments or awards made against or settlements made by the predecessor firm.

In addition, the successor firm undertakes to carry out and complete any past business reviews involving the regulated activities and services of the predecessor firm and to meet the costs of providing any redress, and recognises that the FCA may attach a requirement to its Part 4A Permission obligating the successor firm to abide by the terms of the Deed.

What is the liability accepted by the successor firm?

The Deed provides that the successor firm is jointly and severally liable with the predecessor firm in respect of the predecessor firm's regulated activities and services. This means that a consumer may bring an action in respect of these activities and services against the predecessor firm, the predecessor firm and the successor firm, or the successor firm alone.

In addition, this deed contains an express contractual obligation for the benefit of, and enforceable, pursuant to the Contracts (Rights of Third Parties) Act 1999, by third parties which means that where a consumer has an award (for example, from a court or the Financial Ombudsman Service), the award is enforceable against the predecessor firm, the predecessor firm and the successor firm, or the successor firm alone. The position is the same whether the consumer pursues his claim against the predecessor firm, the successor firm or both. This is the case even if the award is a result of a voluntary settlement by the predecessor firm with the consumer.

The successor firm also accepts to pay any case fees relating to claims brought to the Financial Ombudsman Service, which would be payable if the claim had been made against the predecessor firm.

Successor firms concerned about existing liabilities and ongoing disputes may wish to obtain independent legal advice about how best to protect themselves.

Who can enforce the Deed?

The Deed is for the benefit of any consumer with a right to bring an action relating to the acts and omissions of the predecessor firm (or any firm for which the predecessor firm itself accepted responsibility) in respect of regulated activities or services. (Please note that the Deed defines "consumer" by reference to section 404EA of FSMA, which is a broad definition of the term and covers not only retail customers but also other users of services.)

The Deed is also entered into for the benefit of and is enforceable by the FCA, the Financial Ombudsman Service and the Financial Services Compensation Scheme.

Can the Deed be made public?

Yes, the FCA may bring the Deed to the attention of consumers and other third parties and may publish the Deed on its website.

How long does the successor firm's liability continue?

The successor firm's liability for the past business of the predecessor firm (and any firm for which the predecessor firm itself accepted responsibility) continues until such time as the Deed is varied, amended, terminated or rescinded in accordance with its terms (see further below). The successor firm may therefore continue to be liable even after it has ceased to be authorised.

However, the Deed is not intended to change the position as regards limitation.

Can the successor firm vary or terminate the Deed?

The Deed can only be varied or terminated with the prior written consent of the FCA.

Who must execute the Deed?

This must be the person(s) responsible for making the application:

The following guidance applies to companies, partnerships and unincorporated associations established under the laws of England. Applicants from other jurisdictions should ensure that the Deed is validly executed under the laws of their respective jurisdictions.

Type of applicant	Who must sign
Sole trader	The Deed must be executed as a deed by the sole trader in the presence of an independent witness who must also sign.
Company formed and registered under the Companies Act 2006 with one director	The Deed must be executed as a deed by the Director on behalf of the company in the presence of an independent witness who must also sign.
Company formed and registered under the Companies Act 2006 with more than one director	The Deed must be executed as a deed by either— (a) two officers of the company signing on its behalf (the officers may be either two directors or a director and the company secretary); or (b) a director of the company who signs on its behalf in the presence of an independent witness who must also sign.
Partnership	The Deed must be executed as a deed by either— (a) all the partners; or (b) one partner with a valid power of attorney to execute the Deed on behalf of the partnership in the presence of an independent witness who must also sign. Please note that in this case, the Power of Attorney must itself be executed by deed which is executed by all the partners.
Limited Partnership established under the Limited Partnerships Act 1907	The Deed must be executed as a deed as follows: <ul style="list-style-type: none"> • Where the General Partner is an individual, the Deed must be executed by the Limited Partnership (“LP”) acting by the General Partner in the presence of an independent witness who must also sign. • Where the General Partner is a corporate entity, the Deed must be executed by the LP acting by the corporate General Partner by either— <ul style="list-style-type: none"> (a) two officers of the corporate General Partner who sign on that company’s behalf (the officers may be either two directors or a director and the company secretary); or (b) a director of the corporate General Partner who signs on that company’s behalf in the presence of an independent witness who must also sign.

Type of applicant	Who must sign
Limited Liability Partnership established under the Limited Liability Partnerships Act 2000	<p>The Deed must be executed as a deed as follows:</p> <ul style="list-style-type: none"> • Where the members are individuals, the Deed must be executed by the Limited Liability Partnership (“LLP”) by either— <ul style="list-style-type: none"> (a) two members of the LLP on behalf of the LLP; or (b) one member of the LLP who signs on its behalf in the presence of an independent witness who must also sign. • Where the members are companies, the Deed must be executed on behalf of the LLP by either— <ul style="list-style-type: none"> (a) two corporate members – in this case, two officers from each company must sign on the respective company’s behalf (the officers may be either two directors or a director and the company secretary); or (b) one corporate member in the presence of an independent witness who must also sign. The corporate member should sign through two officers of the company (either two directors or a director and the company secretary).
Unincorporated association	<p>The Deed must be executed as a deed by either—</p> <ul style="list-style-type: none"> (a) all members of the unincorporated association; or (b) one person authorised to sign on behalf of all the other members (supported by a resolution of the committee of management or equivalent) in the presence of an independent witness who must also sign.

Deed in relation to the past business of a predecessor firm

Date of Deed (dd/mm/yyyy)

11 / 09 / 2014

Made by (insert name of applicant) (referred to in this Deed as the "successor firm")

A1 Financial Solutions Ltd

Introduction:

- (A) The business of a1 Financial Solutions [insert name(s) of predecessor firm(s) or business(es)] (referred to in this Deed as the "predecessor firm") is passing to the successor firm.
- (B) The FCA needs to ensure that the regulatory obligations of the predecessor firm, in particular its liabilities and obligations in respect of past regulated activities and services, are accepted by the successor firm.
- (C) The successor firm records its acceptance of those regulatory obligations by executing this Deed.

THIS DEED WITNESSES THAT:

1. Interpretation

1.1 In this Deed -

"FCA" means the Financial Conduct Authority and any successor organisation which is or becomes responsible for regulating the regulated activities or services comprised in the relevant business

"claim" means an action (whether past, present or future, actual or contingent) which—

(a) is, has been, or may be brought by a consumer in a court of law, tribunal or otherwise (and, for the avoidance of doubt, includes the making of a complaint to the Financial Ombudsman Service and the bringing of a claim to the Financial Services Compensation Scheme);

(b) relates to the acts or omissions of the predecessor firm or any firm for which the predecessor firm itself accepted responsibility; and

(c) is in respect of the regulated activities or services of the predecessor firm or any firm for which the predecessor firm itself accepted responsibility;

"complaint" means any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service or a redress determination (as defined in the Handbook), which:

(a) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and

(b) relates to an activity of that respondent, or of any other respondent with whom that respondent has some connection in marketing or providing financial services or products, which comes under the jurisdiction of the Financial Ombudsman Service, and includes,

- (i) under all jurisdictions of the Financial Ombudsman Service, part of a complaint, and

- (ii) under the Compulsory Jurisdiction, all or part of a relevant complaint;

“consumer” has the same meaning as in section 404EA of FSMA;

“Financial Ombudsman Service” means the scheme operator operating the ombudsman scheme pursuant to Part XVIA of FSMA;

“Financial Services Compensation Scheme” means the scheme manager of the compensation scheme established under Part XVA of FSMA;

“firm” means a person who is carrying on, or has carried on, regulated activities and services;

“FSMA” means the Financial Services and Markets Act 2000 (c. 8);

“Handbook” means the FCA’s handbook of rules and guidance;

“Part 4A permission” has the same meaning as in section 40(4)A of FSMA;

“regulated activity” is an activity which is regulated for the purposes of section 22(1)A of FSMA and any other activity which falls within the compulsory jurisdiction of the Financial Ombudsman Service from time to time;

“relevant business” means the business of the predecessor firm which is passing to the successor firm (including the business of any other firm for which the predecessor firm accepted responsibility, where such business is passing to the successor firm);

“services” means a service within the meaning of section 404E(2)A of FSMA.

1.2 The predecessor firm shall be considered to have accepted responsibility for another firm (“B”) where the predecessor firm has accepted responsibility and/or liability for the acts and omissions of B in respect of B’s regulated activities and services and the predecessor firm shall also be considered to have accepted responsibility for any firms for which B itself accepted such responsibility and/or liability.

1.3 The Interpretation Act 1978 applies to this Deed, so (unless the contrary intention appears):

- (a) the singular includes the plural, and the plural the singular;
- (b) the masculine includes the feminine; and
- (c) a reference to a statute or a statutory provision is a reference to it as amended from time to time.

1.4 Unless the contrary intention appears, a reference to a provision of the Handbook is a reference to it as amended from time to time.

2. Application of the Deed

This Deed shall be binding on the successor firm only if the [change of legal status/authorisation] is granted by the FCA.

3. Acceptance of liability and responsibility

3.1 In relation to the relevant business, the successor firm—

- (a) consents to the FCA, the Financial Ombudsman Service and the Financial Services Compensation Scheme treating the regulated activities and services carried on by the predecessor firm (and any firm for which the predecessor firm accepted responsibility) as the regulated activities and services carried on by the successor firm; and
- (b) undertakes to treat the regulated activities and services of the predecessor firm (and any firm for which the predecessor firm accepted responsibility), as if it had itself carried on those regulated activities and services.

3.2 In relation to the relevant business, the successor firm also accepts:

- (a) responsibility jointly and severally with the predecessor firm for the acts and omissions of the predecessor firm (and any firm for which the predecessor firm accepted responsibility) in carrying out such regulated activities and services; and
- (b) liability jointly and severally with the predecessor firm for any damages or other award (including a direction) and any sums due under an agreement or settlement in respect of those acts and omissions, whether such liability arises in contract, in tort or otherwise, and whether it is past, present or future, actual or contingent.

3.3 In particular, the successor firm expressly covenants that it will accept liability, jointly and severally with the predecessor firm, for any judgments or awards of a court, tribunal or otherwise (including in relation to the Financial Ombudsman Service) against the predecessor firm (or any firm for which the predecessor firm accepted responsibility) that—

- (a) are pending or existing; or
- (b) may result from proceedings that have already commenced, are in contemplation or may commence in the future,

whether or not the successor firm is, was, or will be involved in the proceedings.

3.4 For the avoidance of doubt, the liabilities in clauses 3.2 and 3.3 include liabilities admitted by the predecessor firm or liabilities arising under any compromise or settlement of a claim by the predecessor firm.

3.5 Without prejudice to the generality of clause 7, this clause is an agreement made for the benefit of, and is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by, any consumer, who has brought or who has the right to bring a claim relating to the acts or omissions of a predecessor firm in respect of regulated activities or services.

4. Past business reviews

4.1 Insofar as it is related to the relevant business, the successor firm undertakes—

- (a) that it shall carry out and complete any required past business review into the regulated activities and services of the predecessor firm or any firm for which the predecessor firm accepted responsibility; and
- (b) to meet the costs of providing redress to any person to whom such redress may be due.

4.2 For the purposes of sub-clause 4.1(a) above, a past business review includes (but is not limited to) a consumer redress scheme under section 404A of FSMA, a scheme which corresponds, or is similar, to a consumer redress scheme for the purposes of section 404F(7)A of FSMA, and the review of any pension business conducted by a firm in line with the provisions of a deemed scheme under section 404A of FSMA.

5. Rights of consumers

Where a consumer brings a claim relating to the relevant business, the consumer has the same rights against the successor firm as he has or but for this Deed would have had against the predecessor firm (or any firm for which the predecessor firm accepted responsibility) in a court of law, tribunal or otherwise.

6. Financial Ombudsman Service

6.1 **Notwithstanding the generality of clause 5, where a consumer brings a claim relating to the relevant business to the Financial Ombudsman Service—**

- (a) the successor firm consents to the Financial Ombudsman Service having the same jurisdiction and powers in relation to the successor firm alone or jointly with the predecessor firm as if the successor firm had been the predecessor firm (or any firm for which the predecessor firm accepted responsibility) and as if the claim had been made against the predecessor firm (or any firm for which the predecessor firm accepted responsibility); and
- (b) the successor firm agrees to act in accordance with the provisions of the Handbook relating to the handling of complaints as if the claim had been made against the predecessor firm (or any firm for which the predecessor firm accepted responsibility).

6.2 **Where an award is made by the Financial Ombudsman Service against the successor firm in respect of a claim relating to the relevant business, the successor firm agrees to act in accordance with the Handbook and FSMA in relation to compliance with such awards as if the claim was a complaint made against the predecessor firm (or any firm for which the predecessor firm accepted responsibility).**6.3 **Where an award is or has been made by the Financial Ombudsman Service against the predecessor firm in respect of a claim relating to the relevant business, the successor firm agrees, without prejudice to any of its other obligations as set out in the Deed, to act in accordance with the Handbook and FSMA in relation to compliance with such awards, whether or not the successor firm was involved in the proceedings.**6.4 **The successor firm undertakes to pay such case fees as may be prescribed in respect of a claim brought by a consumer to the Financial Ombudsman Service in relation to the relevant business as if the successor firm had been the predecessor firm (or any firm for which the predecessor firm accepted responsibility) and as if the claim had been made against the predecessor firm (or any firm for which the predecessor firm accepted responsibility).**

7. Enforceability

This Deed is entered into for the benefit of, and is enforceable by, the FCA, the Financial Ombudsman Service, the Financial Services Compensation Scheme and any consumer who has brought or who has the right to bring a claim relating to the acts or omissions of a predecessor firm in respect of regulated activities or services, whether under the Contracts (Rights of Third Parties) Act 1999 or by any other common law or statutory means of a third party taking benefit and enforcing any aspect of this Deed.

8. Scope of Part 4A permission

The successor firm applies for, and accepts that the FCA may attach, a requirement

to its Part 4A permission under section 43A of FSMA providing that the successor firm is obliged to abide by the terms of this Deed.

9. Disclosure of Deed

The successor firm consents to the FCA bringing this Deed to the attention of the Financial Ombudsman Service, the Financial Services Compensation Scheme, consumers and other third parties whether by publication on the FCA's website and/or other communication methods.

10. Duration

Subject to clause 11, this Deed shall continue to have effect.

11. Variation and termination

This Deed shall only be varied, amended, terminated or rescinded with the prior written consent of the FCA.

12. Governing law

This Deed is governed by and in accordance with the laws of England.

13. Valid execution of the Deed

13.1 The successor firm understands that this Deed constitutes part of its application for change of legal status and confirms that this Deed is validly executed and that any and all necessary authorities and resolutions have been properly obtained.

13.2 The successor firm understands that it is a criminal offence to knowingly or recklessly give the FCA information that is false or misleading in a material particular.

12 SEP 2014

EXECUTION

This Deed is EXECUTED AS A DEED, and DELIVERED on the date of this application by A1 Financial Solutions Ltd [Insert name of successor firm] and:

Signed on its behalf by:

Full Name (Print)

PAUL WALDRON

Signature

[Handwritten signature]

Date

11/09/14

Position and occupation

DIRECTOR

Address (((((

96 CARLTON TERRACE
EDINBURGH
EH7 5DD

In the presence of:

Full Name (Print)

ELAINE FRASER

Signature

[Handwritten signature]

Date

11/9/14

Position and occupation

MORTGAGE BROKER

Address (((((

34 QUALITY STREET
EDINBURGH
EH4 5BS

Signed on its behalf by:

Full Name (Print)

ALYDIA MUIR

Signature

[Handwritten signature]

Date

11/09/14

Position and occupation

DIRECTOR

Address (((((

10 BLAKE PARK
RD
EDINBURGH
EH4 6AN

In the presence of:

Full Name (Print)

ELAINE FRASER

Signature

[Handwritten signature]

Date

11/9/14

Position and occupation

MORTGAGE BROKER

Address (((((

34 QUALITY STREET
EDINBURGH
EH4 5BS

* See the guidance on pages iii and iv.

EXECUTION

This Deed is EXECUTED AS A DEED, and DELIVERED on the date of this application by A1 Financial Solutions Ltd *[Insert name of successor firm]* and:

Signed on its behalf by:

In the presence of:

Full Name
(Print) FENNIS CAMERON MATTHEWSON

Signature *[Handwritten Signature]*

Date 11/09/2014

Position and occupation DIRECTOR

(31 A NELSON STREET

(EDINBURGH

Address (EH3 6LJ

(

Full Name
(Print) ELAINE FRASER

Signature *[Handwritten Signature]*

Date 11/9/14

Position and occupation MORTGAGE BROKER

(34 QUALITY STREET

(EDINBURGH

Address (EH4 5BS

(

Signed on its behalf by:

In the presence of:

Full Name
(Print) _____

Signature _____

Date _____

Position and occupation _____

(_____

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Address (_____

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Full Name
(Print) _____

Signature _____

Date _____

Position and occupation _____

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* See the guidance on pages iiiii and iv.