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Final Form

2017

PCGH ZDP PLC

as Lender

and

POLAR CAPITAL GLOBAL HEALTHCARE GROWTH AND INCOME TRUST PLC

as Borrower

INTRA-GROUP LOAN AGREEMENT

Herbert Smith Freehills LLP

TABLE OF CONTENTS

Clause	Headings	Page
1.	DEFINITIONS, CONSTRUCTION AND THIRD PARTY RIGHTS	1
2.	LOAN	3
3.	CONDITION PRECEDENT	3
4.	REPAYMENT AND PREPAYMENT	3
5.	INTEREST	4
6.	PAYMENTS	4
7.	REPRESENTATIONS AND WARRANTIES	5
8.	COVENANTS	5
9.	EVENTS OF DEFAULT	6
10.	INDEMNITY	7
11.	SUBORDINATION.....	8
12.	INDIRECT TAXES.....	8
13.	DEFAULT INTEREST AND FEES	8
14.	MISCELLANEOUS	8
15.	NOTICES.....	9
16.	COUNTERPARTS.....	9
17.	GOVERNING LAW	9
18.	ENFORCEMENT	9

THIS LOAN AGREEMENT is dated

2017 and made between:

- (1) **PCGH ZDP PLC**, a public limited company incorporated in England and Wales with registered number 10700107, and whose registered office is at 16 Palace Street, London, SW1E 5JD (the "**Lender**"); and
- (2) **POLAR CAPITAL GLOBAL HEALTHCARE GROWTH AND INCOME TRUST PLC**, a public limited company incorporated in England and Wales with registered number 07251471, and whose registered office is at 16 Palace Street, London, SW1E 5JD (the "**Borrower**").

BACKGROUND

The Lender has agreed to make available a loan to the Borrower on the terms and subject to the conditions of this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS, CONSTRUCTION AND THIRD PARTY RIGHTS

1.1 Definitions

In this Agreement the following terms shall have the following meanings:

"Agreement" means this loan agreement.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

"Condition Precedent" has the meaning given to it in Clause 3.

"Deed of Undertaking" means agreement between the Borrower and the Lender whereby Borrower undertakes to make an additional funding in the capital of the Lender.

"Event of Default" has the meaning given to it in Clause 9.1.

"Finance Document" means this Agreement and the Deed of Undertaking.

"Financial Indebtedness" means (without double counting) any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with generally accepted accounting principles applicable to the Borrower concerned, be treated as a balance sheet liability (other than any liability in respect of a lease or hire purchase contract which would, in accordance with generally accepted accounting principles applicable to the Borrower concerned in force as at the date of this Agreement;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) the aggregate liability under derivative transactions entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;

- (i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) (inclusive) above.

"Gross Initial ZDP Placing Proceeds" the gross proceeds of the initial placing of ZDP Shares.

"Interest Rate" means two-and-an-half per cent (2.5%) per annum.

"Listing Rules" means the listing rules made by the UKLA under section 74 of the Financial Services and Markets Act 2000, as amended.

"Loan" means the principal amount made available under this Agreement as described in Clause 2 (*Loan*).

"Material Adverse Effect" means an event or circumstance which could reasonably be expected, in the opinion of the Lender, to impair materially the ability of the Borrower to perform and comply with its obligations under this Agreement.

"Net Asset Value" means the value of all assets of the Subscriber less liabilities to creditors (including provisions for such liabilities) determined in accordance with the Association of Investment Companies' valuation guidelines and in accordance with applicable accounting standards and the Subscriber's constitution.

"Repayment Date" means 19 June 2024 (or the date on which a Winding-Up Resolution, a ZDP Recommended Resolution or a ZDP Reconstruction Resolution is passed).

"Security" means any mortgage, standard security, pledge, lien, charge, security assignment, hypothecation, security interest or agreement or any other agreement or arrangement having a commercial effect analogous to the conferring of security.

"Sterling" and the sign "£" mean the lawful currency of the United Kingdom.

"Subsidiary" means a subsidiary within the meaning of section 1159 of the Companies Act 2006 and for the purpose of determining if an entity is a subsidiary within that section, the existence of any security over any shares in an entity which would otherwise be a subsidiary shall be ignored.

"Taxes" means any taxes, levies, duties, fees, deductions or withholding of any nature now or hereafter imposed, levied, collected, withheld or assessed by any taxing authority whatsoever.

"Winding-Up Resolution" has the meaning as ascribed to it in the ZDP Articles.

"ZDP Admission" means the admission of the ZDP Shares to be issued pursuant to the Initial ZDP Issue to: (i) listing on the standard segment of the Official List; and (ii) trading on the London Stock Exchange's main market for listed securities, becoming effective in accordance with the Listing Rules and the admission and disclosure standards of the London Stock Exchange.

"ZDP Articles" means the articles of association of the Lender, as amended and restated from time to time.

"ZDP Recommended Resolution " has the meaning as ascribed to it in the ZDP Articles.

"ZDP Reconstruction Resolution " has the meaning as ascribed to it in the ZDP Articles.

"ZDP Shares" means zero dividend preference shares of 0.01 penny each in the capital of the Lender.

1.2 Construction and Third Party Rights

1.2.1 Unless a contrary indication appears, any reference in this Agreement to:

- (A) a **"Clause"** is to a clause of this Agreement;
- (B) the **"Lender"** or the **"Borrower"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

- (C) "**assets**" includes present and future properties, revenues and rights of every description;
- (D) this Agreement, any other Finance Document or any other agreement or instrument is a reference to this Agreement, that Finance Document or to that other agreement or instrument as amended or novated;
- (E) "**indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (F) a "**person**" includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (G) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (H) "**repay**" (or any derivative form thereof) shall, subject to any contrary indication, be construed to include "**prepay**" (or, as the case may be, the corresponding derivative form thereof);
- (I) a provision of law is a reference to that provision as amended or re-enacted;
- (J) a time of day is a reference to London time; and
- (K) the word "**including**" is without limitation.

1.2.2 Headings are for convenience of reference only and shall not affect the construction of this Agreement.

1.2.3 The terms of this Agreement may be enforced only by a party to it and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

2. **LOAN**

Subject to the terms of this Agreement and Clause 3 below, the Lender shall lend the sum of £_____ (or if lesser the amount of the Gross Initial ZDP Placing Proceeds) to the Borrower to be invested in accordance with the Borrower's investment policy or for working capital purposes. The Lender is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

3. **CONDITION PRECEDENT**

The Loan made under this Agreement is subject on the ZDP Admission occurring by 8.00 a.m. on 20 June 2017 (or such later time and date as may be determined by the Borrower (acting in consultation with Panmure Gordon (UK) Limited and the Polar Capital LLP), (the "**Condition Precedent**"). For the avoidance of doubt, the Loan will be made only if the Condition Precedent is satisfied.

4. **REPAYMENT AND PREPAYMENT**

4.1 Subject to Clauses 4.2, 4.4 and 9 below, the Borrower shall repay the Loan and all unpaid interest accrued thereon in full on the Repayment Date.

- 4.2 Notwithstanding Clause 4.1 above, the total amount recoverable from the Lender under this Agreement shall not exceed at any time an amount which is equal to the Net Asset Value of the Borrower (as adjusted by the value of the Loan and any amounts due under the Deed of Undertaking).
- 4.3 If it becomes unlawful in any applicable jurisdiction for the Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain all or any part of the Loan:
- 4.3.1 the Lender shall promptly notify the Borrower upon becoming aware of that event; and
- 4.3.2 the Borrower shall repay the Loan on the date specified by the Lender in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law).
- 4.4 Notwithstanding anything to the contrary, the Loan and all unpaid interest accrued shall become due and payable upon the passing of a Winding-up Resolution, a ZDP Recommended Resolution or a ZDP Reconstruction Resolution in accordance with the provisions of the ZDP Articles.
- 4.5 The Borrower may, if it gives the Lender not less than 30 Business Days' prior notice (or such shorter period as the Lender may agree), prepay the whole or any part of the Loan.
- 4.6 Any notice of cancellation or prepayment given by any party under this Clause 4 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- 4.7 Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid.

5. **INTEREST**

The Borrower shall pay on the Repayment Date interest on the Loan at the Interest Rate from the date on which the Loan is made up to the Repayment Date. The Interest shall accrue daily and shall be compounded annually at each anniversary of this Loan Agreement and shall be paid in full on the date falling 2 Business Days before the Repayment Date.

6. **PAYMENTS**

6.1 **Payments Free and Clear**

All sums payable under this Agreement shall be made for value on their due date and be paid in immediately available funds free of any restriction, reservation or condition and (except to the extent required by law) without deduction or withholding on account of any amount, whether by way of set-off, counterclaim or otherwise. If a withholding, deduction or set-off is required by law to be made by the Borrower, the amount of the payment due from the Borrower shall be increased to an amount which (after making such withholding, deduction or set-off) leaves an amount equal to the payment which would have been due if no withholding, deduction or set-off had been required.

6.2 **Business Days**

Unless expressly stated otherwise, any payment which would otherwise be due on a day which is not a Business Day shall be due on the next Business Day. During any such extension of the due date for the payment of any sum, interest shall be payable on that sum at the rate applicable before the original due date.

7. REPRESENTATIONS AND WARRANTIES

7.1 The Borrower hereby represents and warrants that:

- 7.1.1 it has full power, authority and legal right to enter into and execute this Agreement to which it is a party and to perform its obligations under this Agreement;
- 7.1.2 it has taken all necessary action to authorise the borrowing of the Loan on the terms contained herein and entry into of this Agreement;
- 7.1.3 all necessary consents, licences, authorities and approvals have been obtained for the entering into and performance of this Agreement;
- 7.1.4 this Agreement constitute legal and valid obligations which are binding on the Borrower and are enforceable in accordance with their terms except in so far as affected by limitation on creditors rights generally;
- 7.1.5 the copy resolutions of the board of directors of the Borrower authorising the borrowing of the Loan, the performance of the terms and conditions under which the Loan was made (as detailed herein) and the entry into of this Agreement have not been superseded or revoked and remain in full force and effect;
- 7.1.6 neither the borrowing of the Loan, the performance of the terms and conditions under which the Loan was made nor the entry into of this Agreement will contravene any provision of any existing law or regulation, the constitutional documents of the Borrower or any obligation which is binding on the Borrower; and
- 7.1.7 no corporate action or other step has been taken and no legal proceedings have been started or threatened for the winding-up, dissolution or re-organisation of the Borrower or for the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer of the Borrower or over any of its assets.

8. COVENANTS

The Borrower covenants that, so long as any amount remains outstanding or unpaid under the Finance Documents, it will:

- 8.1.1 promptly supply such information regarding the Borrower, including its assets and its financial condition to the Lender as the Lender may reasonably require;
- 8.1.2 do all things necessary to preserve its corporate existence and the legal, valid, binding and enforceable character of this Agreement;
- 8.1.3 ensure that it has the right and is duly qualified to conduct any part of its business as it is conducted from time to time in all relevant jurisdictions;
- 8.1.4 maintain such insurance as a prudent company in its business would maintain;
- 8.1.5 promptly inform the Lender of any default or breach by the Borrower of any provision of any of this Agreement;
- 8.1.6 not do anything or permit anything to be done or to subsist which would have a Material Adverse Effect;
- 8.1.7 comply in all material respects with all laws and regulations binding on it and its assets; and

8.1.8 comply with the covenants listed in clause 2 of the Deed of Undertaking.

9. EVENTS OF DEFAULT

9.1 Each of the events set out below is an Event of Default (whether or not its occurrence is caused by any person outside the control of the Borrower or any other person):

9.1.1 the Borrower fails to pay any amount payable by it under this Agreement at the time, in the currency and in the manner in which it is expressed to be payable unless any failure to pay is caused solely by a technical or administrative delay or error in the transmission of funds outside the control of the Borrower and such failure is remedied to the satisfaction of the Lender within two Business Days of the due date therefor;

9.1.2 any representation, warranty or statement made or deemed to be made by the Borrower in this Agreement or in any notice or other document, certificate or statement delivered by it pursuant to, or in connection with, this Agreement is or proves to have been incorrect or misleading in any material respect when made or deemed to be made, unless the circumstances giving rise to the misrepresentation are:

- (A) capable of remedy; and
- (B) remedied within 10 Business Days of the earlier of the Borrower or the Lender becoming aware of the misrepresentation;

9.1.3 (other than those obligations referred to in Clauses 9.1.1 and 8) the Borrower fails duly to perform or comply with any undertaking or other obligation owed or assumed by it under this Agreement and, if any such non-performance or non-compliance is, in the opinion of the Lender, capable of remedy, it is not remedied to the satisfaction of the Lender within 10 Business Days after the Lender has given notice to the Borrower of such non-performance or non-compliance;

9.1.4 any Financial Indebtedness of the Borrower (other than under this Agreement) is not paid when due (or within any originally applicable grace period), or is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (howsoever described); or

- (A) a creditor of the Borrower becomes entitled to declare any Financial Indebtedness of the Borrower due and payable prior to its specified maturity (or within any originally applicable grace period) or payable on demand as a result of an event of default (howsoever described); or
- (B) any Financial Indebtedness of the Borrower becomes prematurely due and payable or is made payable on demand as a result of an event of default (howsoever described); or
- (C) any Security securing any Financial Indebtedness over an asset of the Borrower becomes immediately enforceable;
- (D) the Borrower is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness; or
- (E) the value of the assets of the Borrower is less than its liabilities (taking into account contingent and prospective liabilities); or
- (F) a moratorium is declared in respect of any indebtedness of the Borrower;

- 9.1.5 any corporate action, legal proceedings or other procedure or step is taken in relation to:
- (A) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Borrower;
 - (B) a composition, assignment or arrangement with any creditor of the Borrower; or
 - (C) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Borrower or any of its assets; or
 - (D) the enforcement of any Security over any assets of the Borrower, or any analogous procedure or step is taken in any jurisdiction;
- 9.1.6 any expropriation, attachment, sequestration, distress, execution or any analogous process in any jurisdiction affects any asset or assets of the Borrower and, if that asset is considered by the Lender not to be material in the context of the assets of the Borrower, such expropriation, attachment, sequestration, distress, execution or any analogous process in any jurisdiction is not discharged within 14 days;
- 9.1.7 there occurs, in relation to the Borrower, any event in any country or territory which in the opinion of the Lender corresponds with any of those mentioned in Clauses 9.1.4 to 9.1.6 above (inclusive);
- 9.1.8 the Borrower, without the prior written consent of the Lender, ceases, or threatens to cease or to carry on all or a substantial part of its business;
- 9.1.9 it is or becomes unlawful for the Borrower to perform any of its obligations under this Agreement which the Lender, acting reasonably, considers material;
- 9.1.10 this Agreement is not, or is alleged by the Borrower, not to be, binding on or enforceable against the Borrower; or
- 9.1.11 any event or series of events occurs which gives rise to a Material Adverse Effect.
- 9.2 The Lender may at any time, if an Event of Default has occurred which has not been remedied or waived, do any one or more of the following by notice in writing to the Borrower:
- 9.2.1 declare any part of the Loan to be immediately due and payable, whereupon the same will become immediately due and payable together with all accrued interest thereon; and/or
 - 9.2.2 declare any part of the Loan to be due and payable on demand, whereupon the same will immediately become due and payable on demand by the Lender to the Borrower together with all accrued interest thereon; and/or
 - 9.2.3 cancel the Loan in part pro rata or in full, whereupon the same will be so cancelled and, if cancelled in full, immediately reduced to zero.

10. INDEMNITY

The Borrower shall indemnify the Lender in respect of:

- 10.1 any stamp duty or other similar Taxes (by whomsoever payable) which may be or become payable in connection with the execution, delivery, performance, registration, production, amendment or attempted enforcement or enforcement of this Agreement or any document connected therewith;
- 10.2 any loss, costs (including legal costs), claims or expenses incurred as a consequence of:
- 10.2.1 the failure by the Borrower to make any payment under this Agreement on its due date;
 - 10.2.2 the occurrence of any other Event of Default; and
 - 10.2.3 the enforcement of the terms of this Agreement.

11. **SUBORDINATION**

The obligations of the Borrower under this Agreement shall, in the event of a winding-up of the Borrower, be subordinated in point of payment to the claims of the other unsecured creditors of the Borrower and no amount in respect of this Agreement shall be payable to the Lender until all of the claims of the other unsecured creditors have been paid in full. In such a winding-up the Borrower shall make payment under this Agreement only to the extent of the Borrower's assets following the payment in full of its other unsecured creditors.

12. **INDIRECT TAXES**

All amounts payable under or pursuant to this Agreement are exclusive of all value added, sales or other indirect taxes, which are, accordingly, payable by the Borrower in addition to the amounts in respect of which such taxes are chargeable.

13. **DEFAULT INTEREST AND FEES**

- 13.1 If the Borrower fails to pay any amount under this Agreement on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate of two-and-an-half per cent (2.5%) higher than the Interest Rate.
- 13.2 Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at six-monthly intervals but will remain immediately due and payable.

14. **MISCELLANEOUS**

14.1 **Partial Invalidity**

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

14.2 **Exercise of Rights and Remedies and Waivers Cumulative**

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

14.3 **Amendments and Waivers**

Any term of this Agreement may be amended or waived only with the written consent of the Lender.

14.4 Change of currency

If a change in any currency of a country occurs, this Agreement will, to the extent the Lender (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the relevant market and otherwise to reflect the change in currency.

14.5 Set Off

The Lender may, but shall not be obliged to, set-off against any monies actually and/or contingently due and payable by the Borrower to the Lender under this Agreement any monies due or payable to the Borrower from the Lender in any currency. The Lender may, at the cost of the Borrower, effect such currency exchanges as the Lender considers appropriate to implement such set-off.

14.6 Assignment

The rights of the parties under this Agreement are personal to it and neither the Borrower nor the Lender may assign or transfer any of its rights or obligations hereunder without the written consent of the other.

14.7 Costs

All costs and expenses which may be incurred by the Lender in the preparation and execution of this Agreement shall be payable on demand by the Borrower.

14.8 Whole Agreement

This Agreement embodies the entire agreement of the parties hereto in relation to the subject matter hereof and this Agreement shall supersede all other agreements and/or understandings whether written or oral in relation to the subject matter hereof.

15. NOTICES

All notices and communications under this Agreement shall be by letter or facsimile transmission to the addresses which appear above or to such other address or fax numbers as previously notified by one party to the other. Any such notice will only be effective:

15.1.1 if sent by way of fax, when received in legible form; or

15.1.2 if sent by way of letter, when it has been left at the relevant address or 3 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address.

16. COUNTERPARTS

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

17. GOVERNING LAW

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including any non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

18. ENFORCEMENT

18.1 The courts of England have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter, existence, negotiation, validity, termination or enforceability (including any non-contractual dispute or claim) (a "**Dispute**").

This Agreement has been entered into on the date stated at the beginning of this Agreement.

The Lender

SIGNED by
for and on behalf of **POLAR ZDP PLC**

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Director

The Borrower

SIGNED by
for and on behalf of **POLAR CAPITAL GLOBAL**
HEALTHCARE GROWTH AND INCOME
TRUST PLC

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Director