

# TERMS OF BUSINESS FOR INTERMEDIARIES



Version 1.3 Final dated 10 December 2021

FOR INTERMEDIARY AND PROFESSIONAL FINANCIAL ADVISORS ONLY. NOT FOR CUSTOMER USE.

These Terms of Business (Terms, or Agreement) set out the conditions on which You (Your), an Intermediary, are to submit Applications to Us (We, Our), Harpenden Building Society (the Society) of Mardall House, 9-11 Vaughan Road, Harpenden AL5 4HU either as an Appointed Representative or a Directly Authorised Intermediary as a member of our panel of Intermediaries. You and we are each a Party, together the Parties.

The name, address and date can be typed in these boxes.

Intermediary organisation name:

Dated:

of *[insert intermediary address]*

[acting under your Principal*[insert Principal name where applicable]*

of *[insert Principal address]*

These Terms apply to Appointed Representatives, the Principals of Appointed Representatives and Directly Authorised Intermediaries, regardless of whether a Mortgage Intermediary Network Agreement (MINA) has been entered into. In the event of any conflict between these Terms and any applicable MINA, these Terms shall prevail.

If you are an Appointed Representative and your Principal (commonly referred to as a Network) has entered into a MINA with us it is your responsibility to ensure that your Principal has advised you of the relevant terms of the MINA that apply to you. By entering into these Terms, you agree to comply with all terms of the MINA that apply to you (whether as an Appointed Representative or otherwise). When submitting each Application to us you accept and agree to these Terms.

We reserve the right to alter these Terms at any time and will provide an up to date copy on our website [www.harpendenbs.co.uk](http://www.harpendenbs.co.uk).

## **1. APPOINTMENT**

- 1.1 Once you apply to join our panel of Intermediaries we will conduct due diligence to establish that you are authorised to act as an Intermediary. In addition, at Our discretion, we may conduct due diligence on the controls you have in place, including, but not exclusively:
- Treating Vulnerable Customers Fairly;
  - Conflicts of Interest;
  - Treating Customers Fairly;
  - Fraud;
  - Money laundering;
  - Data Protection; and
  - Preventing Modern Slavery.
- 1.2 We appoint You to our panel of Intermediaries subject to the terms and conditions in this agreement. Your appointment as an intermediary is non-exclusive: You may make Applications to other Lenders, and We may accept Applications from other Intermediaries.
- 1.3 This agreement shall not create a partnership or joint venture between the parties. Neither party is authorised to make any commitments on behalf of, or hold itself out as an agent of the other party.
- 1.4 When you introduce Applicants to Us you shall not hold yourself out as an Appointed Representative of Us, and shall ensure that Applicants and third parties are made aware of your role as required by any Applicable Regulations.
- 1.5 This agreement takes effect from the date of its submission to Us and continues until either party gives the other party three months written notice, or is terminated in accordance with Section 14.

## **2 AUTHORISATION**

- 2.1 You warrant that you have obtained all necessary Permissions which are required for you to perform the Services and fulfil your obligations in accordance with these Terms and carry out all activities required in the processing of Applications and in dealing with Applicants in accordance with the Applicable Regulations.
- 2.2 You must be, directly or through your Principal as an Appointed Representative, authorised by the PRA or FCA and regulated by the FCA and be able to immediately provide to us when requested details of the following:
- 2.2.1 registration under the DP Legislation; and
- 2.2.2 any other licences, registration, authorisations, and powers that allow you to perform the Services and enter into and comply with these Terms.
- 2.3 You must notify us in writing without delay:
- 2.3.1 if any of your Permissions are withdrawn;
- 2.3.2 if you or your Principal (if applicable) are investigated for breach of the FSMA or receive any correspondence from the FCA in respect of any suspected breach;

- 2.3.3 if yours or your Principal's (if applicable) registration with the PRA and/or FCA is terminated;
- 2.3.4 if you are investigated by any regulatory body (to the extent that you are permitted to do so by the regulatory body);
- 2.3.5 if you are an Appointed Representative, your agreement with your Principal terminates for whatever reason;
- 2.3.6 You become aware of any matter that may materially affect Your ability to provide the Services in accordance with the terms of this agreement;
- 2.3.7 You become aware of any matter that may materially affect your ability to provide the Services whilst complying with the Applicable Regulations;
- 2.3.8 You become aware of a breach of the Applicable Regulations;
- 2.3.9 You receive any kind of payment, remuneration, commission, benefit or payment equivalent from any Applicant, or any third party in relation to any Application;
- 2.3.10 If it is reasonably foreseeable that You will be subject to Insolvency proceedings; or
- 2.3.11 If it reasonably foreseeable that You will be subject to a change authorisation status, or change in control.
- 2.4 You warrant that you or your Principal (as applicable) hold the correct Permissions relevant to the activity you undertake and to enable you to carry on business and perform your obligations under this Agreement, including but not limited to, FCA permissions under Part IV of the FSMA and the RAO to facilitate introductions in respect of the Agreed Products and advise on FCA regulated mortgage contracts.
- 2.5 If you are an Appointed Representative, you warrant that your agreement with your Principal provides authority for you to conduct the regulated activities detailed at clause 2.4.
- 2.6 You shall use all reasonable and professional skill, care, honesty and efficiency of a diligent provider of services similar to the Services and in accordance with good industry practices and standards and shall not denigrate in any manner our products, services, business or reputation.
- 2.7 You shall use appropriately skilled, competent, efficient, experienced and sufficient numbers of Staff to meet your obligations in accordance with these Terms.
- 2.8 We reserve the right to suspend or terminate Your membership of Our panel of Intermediaries if You breach any part of this section 2.

## **3 COMPLIANCE**

- 3.1 You must comply in full with all Applicable Regulations and carry out your activities in accordance with good industry practice, in good faith and so as not to prejudice our reputation or cause us to breach any Applicable Regulations. If you submit a fraudulent Application we reserve the right to remove you from our panel of Intermediaries and advise the FCA under the Information From Lenders

Scheme. We reserve the right to inform your Principal (if applicable) if we remove you from, or refuse you entry to, our panel of Intermediaries.

3.2 You shall ensure that:

- 3.2.1 you obtain all Consents that may be required from Applicants in order to perform your obligations under these Terms;
- 3.2.2 your choice of lender, products and services is unbiased and in the best interest of the Applicant and suitable for their needs and circumstances based on the information which is provided to you;
- 3.2.3 where applicable, you shall make full disclosure in writing and orally to Applicants of the fact and amount of any procurement fee you will receive in respect of the Application;
- 3.2.4 you conduct all aspects of your performance of the Services in accordance with all relevant sections of the Mortgages and Home Finance Conduct of Business Sourcebook ('MCOB') and the wider FCA Handbook;
- 3.2.5 explain the key features of the Agreed Products offered by the Society so as to enable consumers to make an informed choice;
- 3.2.6 advise consumers to read, and allow them sufficient time to do so, the terms and conditions of the Agreed Products offered by the Society, before they make an Application;
- 3.2.7 You shall identify potential conflicts of interests between Applicants, and between You and your Applicants;
- 3.2.8 You shall identify conflicts of interests between Us and You, or any other intermediary or principal that you become aware of;
- 3.2.9 You shall not give, solicit or accept an inducement or direct or refer any actual or potential Applicant to us if it is likely to represent a conflict with any duty that you owe to the Applicant;
- 3.2.10 You shall not seek to make a financial gain at the expense of the Applicant, except as standard commission or fee for the Services;
- 3.2.11 You shall not refer any Applicant to us if to do so were to disadvantage the Applicant in any way;
- 3.2.12 You shall not act for an Applicant if you have an interest in the outcome of the Application which is distinct from the Applicant's interest;
- 3.2.13 You shall maintain a record of potential conflicts of interests;
- 3.2.14 You shall maintain records of potential conflicts of interests for as long as the Applicant may make a claim against You or Us, but no longer than is reasonable under DP Legislation;
- 3.2.15 The identification of potential conflicts of interests that affect Us, or an Applicant referred to Us, shall be notified to Us without delay;
- 3.2.16 Records of potential conflicts of interests that affect us, or an Applicant referred to Us, shall be made available to Us on demand;
- 3.2.17 you do not inappropriately offer a financial or other incentive or inducement to a consumer to enter

immediately or quickly into an Agreed Product; and/ or

- 3.2.18 you do not make unsolicited calls or communicate unsolicited emails to consumers in performing the Services or unfairly request, suggest or direct a consumer to make contact on a premium rate phone number.
- 3.3 You warrant that the advice which you provide to Applicants in respect of all Applications will comply with all applicable FCA Handbook MCOB rules in respect of advised sales (including MCOB 4.7A) and that you will not submit to us any 'execution-only' or 'rejected advice' Applications.
- 3.4 We shall not be responsible for any failure by you to provide advice to any Applicants or any other breach of any Applicable Regulations, including MCOB and we may refuse to do anything that is otherwise required to be done under these Terms if to do so would be against any Applicable Regulations.
- 3.5 You warrant and represent that you have appropriate policies and procedures in place to ensure that in providing the Services you comply with your obligations under MCOB.7.6 We will not accept Applications from you submitted in your own name or on behalf of any Person acting on your behalf (including Staff, agents or consultants) who is not appropriately authorised or exempt from authorisation by the FCA or any other relevant regulatory authority and you accept responsibility for and warrant that all such Persons as aforesaid are appropriately authorised. We reserve the right to reject any Application submitted by you if we suspect that it does not meet the requirements set out in this section 3.

#### **4 APPLICATIONS**

- 4.1 Prior to submission of an Application, you must have taken reasonable steps to ensure the Application meets our up to date Lending Criteria. We reserve the right to alter our Lending Criteria at any time and will provide details on our website [www.harpendenbs.co.uk](http://www.harpendenbs.co.uk). We reserve the right in our absolute discretion and for any reason not to accept an Application submitted by you despite its meeting our Lending Criteria.
- 4.2 We will not accept liability for delays caused by incomplete or inaccurate information provided by you. We will keep you informed as to the progress of an Application if so reasonably requested, provided we have your current contact details.
- 4.3 You will ensure that prior to submitting an Application to us, you have identified and verified the identity of the Applicant in accordance with all Applicable Regulations and forward to us the relevant documentation we require from time to time including photographic identification for each Applicant in such form as we may specify. You will further ensure that the application submission process and the Application has been fully and properly completed and shall take all reasonable steps to ensure that the information included is in all material aspects accurate, correct and not misleading.

- 4.4 You shall identify common risk factors for vulnerability in your target Applicant groups and consider these while assessing whether an Applicant is vulnerable or is in a vulnerable situation.
- 4.5 You shall gather all relevant information from and about the Applicant to enable a robust assessment of whether an Applicant is vulnerable, and if so, how. This information shall be processed in line with DP Legislation.
- 4.6 You shall notify the conclusions of your assessment of an Applicant's vulnerability to Us at the submission of an Application. This notification shall be processed in line with DP Legislation.
- 4.7 Further information on the Applicant shall be made available to Us on demand, if we believe that we need to evaluate the Applicant for vulnerability.
- 4.8 Potential remedies for the Applicant's vulnerability shall be communicated to us at the submission of an Application.
- 4.9 You shall maintain records of the information used to evaluate an Applicant's vulnerability for as long as the Applicant may make a claim against You or Us, but no longer than is reasonable under DP Legislation, and shall be made available to Us on demand.
- 4.10 You, and any of your Staff, shall maintain awareness and understanding of regulations and good industry practice in treating vulnerable Applicants fairly.

## **5 MONEY LAUNDERING, ANTI-BRIBERY, CORRUPTION AND MODERN SLAVERY**

- 5.1 In relation to all business you refer to us, you agree to:
  - 5.1.1 comply with Money Laundering Regulations;
  - 5.1.2 comply with Anti-Bribery and Anti-Corruption Laws;
  - 5.1.3 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity has been carried out in the UK;
  - 5.1.4 promptly report to us any request or demand for any undue financial or other advantage of any kind received by you in connection with these Terms; and
  - 5.1.5 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.
- 5.2 You represent and warrant that neither you nor any Person employed by you has been convicted of any offence involving slavery and human trafficking.
- 5.3 Include in contracts with Your direct subcontractors and suppliers provisions which are at least as onerous as those set out in this section 5.
- 5.4 Notify us as soon as You become aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement.
- 5.5 You will, at all times, ensure you have in place reasonable prevention processes and controls so as not to cause us in any way to be in breach of the offences contained in the Criminal Offences Act 2017 concerning failure to prevent facilitation of tax evasion.

- 5.6 You will provide to Us any reasonably requested information to demonstrate Your compliance with this section 5.
- 5.7 You shall notify us as soon as you become aware of any breach or potential breach of this section 5. Any such breach may lead to termination of this Agreement.

## **6 MONITORING AND ACCESS**

- 6.1 You shall in relation to the discharge by regulators of their functions under Applicable Regulations and/or to assist us to meet our obligations under the same:
  - 6.1.1 make yourself available for meetings with us and/or regulators as reasonably requested;
  - 6.1.2 give us and/or regulators reasonable access to any records, including files, tapes or computer systems which are within your possession or control;
  - 6.1.3 print information in your possession or control which is held on computer or otherwise convert it into a readily legible format or any other record which we and/or a regulator may reasonably request; and
  - 6.1.4 answer truthfully, fully and promptly all questions which we or a regulator reasonably puts to you.
- 6.2 You will permit us, representatives of regulators and Persons appointed by regulators for the purposes of this section 6 to have access upon providing you with reasonable notice (unless due to fraud or suspected fraud in which case no notice is required), during reasonable business hours to any of your business premises where the Services have been performed and/or records held in respect of the Services:
  - 6.2.1 to assess your compliance with your obligations;
  - 6.2.2 to assist us to meet our obligations; and
  - 6.2.3 (in the case of regulators) to permit the discharge of regulators' functions under Applicable Regulations.
- 6.3 You shall keep such records in such form as we may reasonably specify from time to time.
- 6.4 You agree that our auditors, upon reasonable notice on up to two occasions per year (or at any time where the audit is due to fraud or suspected fraud, or at Our discretion where we reasonably believe that You have breached the terms of this agreement or the Applicable Regulations):
  - 6.4.1 will have a right of access to your records (save for protected items as defined in section 413 FSMA); and
  - 6.4.2 are entitled to require from you or other officers such information and explanations as our auditors reasonably consider necessary for the performance of their duties as auditors.
- 6.5 Without limitation to the foregoing, you agree to provide us, within 10 working days of request from us, reports showing in sufficient detail the source of Applications submitted under these Terms together with a report showing the progress and status of the Applications.

## **7 CONFIDENTIALITY**

- 7.1 Each party will keep all Confidential Information secret and confidential, will only use the other party's

Confidential Information for the proper performance of its obligations under these Terms and will not, without written consent, disclose Confidential Information in any way to any other Person other than in accordance with these Terms.

7.2 The obligations of confidentiality under this section 7 will not extend to information which the other party can show is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement, or was in the other party's written records prior to entering into the Agreement and is not subject to any confidentiality obligations, or was independently disclosed to the other party by a third party entitled to disclose the Confidential Information.

7.3 Confidential Information may be disclosed by either party to crime prevention or regulatory bodies that have a need to know such Confidential Information and to Staff, professional advisors, any Group member provided that they agree to keep such Confidential Information confidential on terms similar to these Terms.

7.4 Without prejudice to any other disclosure obligations under these Terms, either party may request and require the other to disclose any information in its possession and control as necessary for the requesting party to comply with its obligations under Applicable Regulations.

## **8. DATA PROTECTION**

- 8.1 The Parties acknowledge that where either Party processes Personal Data in relation to this Agreement, that Party (and their Appointed Representatives) will be carrying out the processing for its own purposes, and will be acting as a data controller as defined in the DP Legislation.
- 8.2 No Party (or any sub-contractor or Appointed Representative of a Party) shall act as a data processor of the other Party unless expressly agreed in writing.
- 8.3 Each Party (and their Appointed Representatives) shall at all times comply with its respective obligations under the DP Legislation.
- 8.4 Both parties shall not act in any way to cause the other to breach DP Legislation. Both parties shall register with the Information Commissioner's Office (ICO).
- 8.5 Each Party shall be liable for all costs, expenses, damages, and losses arising out of its own breach of the DP Legislation, including any breach caused by its employees, Appointed Representatives, contractors, consultants, agents, or sub-processors.
- 8.6 Each Party (employees, Appointed Representatives, contractors, consultants, agents, or sub-processors) shall:
  - 8.6.1 provide appropriate privacy notices to the Applicants in accordance with DP Legislation and have obtained all Consents and licences required by each Party for processing their personal data;
  - 8.6.2 retain any Customer Data only to the extent and duration that the law allows and in accordance with this Agreement;

8.6.3 ensure that appropriate safeguards are in place at all times in the lifecycle of the Customer Data, and ensuring that the Data Subject has enforceable rights and effective legal remedies regarding their personal data;

8.6.4 immediately inform the other Party after becoming aware of any personal data breach as defined under article 4 of the GDPR, security breach, complaint or information request from a Data Subject or the ICO, and shall provide reasonable assistance to the other Party in notifying any breach and dealing with any request from a Data Subject or the ICO relating to the DP Legislation; and

8.6.5 reasonably assist the other Party in complying with its obligations under the DP Legislation, including, but not exclusively, in completing data protection impact assessments, data subject access requests, and any communication with a regulator that may be required.

8.7 If you provide us with your Personal Data or that of any of your employees this will be processed by us in accordance with our Privacy Notice which is available on our website [www.harpendenbs.co.uk](http://www.harpendenbs.co.uk). You are responsible for ensuring that this is provided to relevant employees.

8.8 Your obligations under this section 8 shall survive any termination of your membership from our panel of intermediaries, or termination of this Agreement.

## **9. ADVERTISING**

- 9.1 You must obtain our written approval before using our logo, or distributing any advertising, press release or marketing literature that refers to us. Our approval of the copy means that we are happy with the form and content, but does not mean that we consider that it, or how it is provided to Applicants, complies with any applicable laws, regulations or codes of practice. It is your responsibility to ensure compliance of the same.
- 9.2 You must only make financial promotions in accordance with the provisions of MCOB 3A, and in particular, and without prejudice to the generality of the foregoing, ensure that you clearly and prominently communicate to consumers:
  - 9.2.1 the nature of the service the Society provides;
  - 9.2.2 the extent of your independence; and
  - 9.2.3 that you are paid commission by the Society.

## **10. FEES**

- 10.1 A fee will be due to you by us as set out in this section 10 following the completion of a Mortgage Advance. You will not be entitled to a fee in respect of any Application should it not be accepted by us and does not proceed to completion.
- 10.2 Fees payable pursuant to these Terms may be paid directly to you or directly to your Club or, if you are an Appointed Representative, to your Principal for onward payment to you. The onward payment of the Fees by your Club or Principal will be subject to the terms and conditions of any agreement you have with your Club or Principal.



- 10.3 All payments made under these Terms (whether to you, the Club, or to your Principal) will be made by bank transfer to an account in your name or in the name of the Club or in the name of your Principal, based in the UK (where the Services are performed) and shall be in the amount as agreed between you and us.
- 10.4 Where payment is made by us to the Club or to your Principal, the Club or Principal is responsible for the onward payment of Fees to you in respect of the Application. We are not responsible for any fees or fee arrangements between you and the Club or between you and your Principal.
- 10.5 You will promptly return to us, or to the Club or to your Principal as applicable, any overpayment by us.
- 10.6 We may, at our discretion, without advance notice amend the fee structure used to calculate Fees payable to you under these Terms. For the avoidance of doubt, any changes to the fee structure will only be applicable to Applications which are submitted to us after the change and not in respect of Applications which have been submitted to us prior to the change becoming effective.
- 10.7 Clauses 10.8 and 10.9 shall apply where, as the direct or indirect result of an Applicant making a payment to any Person, you knowingly receive a benefit that is not expressly set out in these Terms.
- 10.8 You will take all reasonable steps to ensure that any payment made (whether at completion or before or after completion of any Application) by any Applicant to any Person in connection with such Application and/or these Terms (in view of the services provided by that Person to the Applicant which are the subject of the payment) is:
- 10.8.1 of a reasonable amount, fair and not excessive; and
- 10.8.2 in compliance with MCOB 12.
- 10.9 You must disclose to us details of all applicable fees, payments and charges relating to an Application when you provide each Application to us.

## **11. INDEMNITY & INSURANCE**

- 11.1 Without prejudice to the indemnity provided at clause 11.2 You shall indemnify us in respect of all Losses (including legal fees) incurred by or awarded against us, or any member in our Group or our respective directors, officers, agents, employees, members and successors in interest (together the 'Indemnified Persons') in connection with any claim by a third party that you have infringed the intellectual property rights of that third party, any proceedings, claim or action against an Indemnified Person as a result of any breach by you of any warranties, representations or your obligations under these Terms or any Applicable Regulations or by reason of any misrepresentation, tortious or fraudulent act.
- 11.2 You shall have and shall maintain for the duration of any Services and for a period of at least six (6) years following termination of any Services a policy or policies of insurance covering all the liabilities you may incur in connection with these Terms.

Such policies shall be on terms that are reasonably acceptable to us and shall include professional indemnity insurance with cover of no less than an amount in accordance with chapter 3 of MIPRU. The terms of any insurance or the amount of cover shall not relieve you of any liabilities under these Terms.

- 11.3 You shall not by your acts or omissions cause any policy of insurance to become invalid or void.
- 11.4 You shall promptly upon request by us, provide us with evidence of your insurance cover and shall notify us of any material changes to the level, type or other material provisions of insurance cover from those notified to us.

## **12. LIABILITY**

- 12.1 Neither party will be liable to the other for special, indirect or consequential damages or Losses. With the exception of liability for fraud, fraudulent misrepresentation, death and personal injury (where no limit or exclusion of liability shall apply) your liability to us in respect of any breaches of this Agreement which occurred in any individual calendar year shall be limited to £1,000,000 (one million pounds sterling). Our liability to You for any breach arising from this agreement shall not exceed the amount of commission paid to You in the previous twelve-month period.
- 12.2 For applications via digital facilities presented by the Society You should read and consider the provisions of this section 12 carefully as they limit our liability to you under the Terms of Business in relation to your use of the digital facilities presented by the Society.
- 12.3 Nothing in the Terms of Business shall be taken to exclude our liability in a manner not permitted under the Regulatory Requirements, such as, limitations of our liability for death or personal injury caused by negligence, fraud or fraudulent misrepresentation.
- 12.4 Except as provided in clause 12.3 above, we do not accept any liability to you or any Applicant for any loss or damage suffered in relation to the following:
- 12.4.1 the use of or access to the digital facilities presented by the Society, the inability to use or access the digital facilities presented by the Society or the results of such use of the digital facilities presented by the Society;
- 12.4.2 any mistakes or omissions in the content of the digital facilities presented by the Society; and/ or
- 12.4.3 the unavailability of the digital facilities presented by the Society at any time or for any period.
- 12.5 For example, except as provided in clause 12.3 above, we shall not be liable to you or any Applicant for suffering or incurring any of the following losses due to or in connection with the use of, access to, or inability to use the digital facilities presented by the Society or as a consequence of you submitting Applications to us under the Terms of Business: loss of income; loss of revenues; loss of data; loss of profits; loss of contracts; loss of use; loss of opportunity; loss of business; loss of anticipated savings; loss of goodwill or reputation; or any indirect or consequential losses of any kind.

### **13. COMPLAINTS**

- 13.1 You shall maintain appropriate policies and procedures in relation to the handling of Complaints and shall manage all Complaints that relate to your activities in accordance with the rules and guidance set out in the FCA Handbook DISP.
- 13.2 If you receive a Complaint that you consider to relate to our activities you shall promptly notify us in writing and provide full details of the Complaint, including copies of all documents received, as soon as reasonably practicable. If we agree that the Complaint relates to our activities and should therefore be dealt with by us the parties shall notify the Person making the Complaint accordingly and we shall manage the Complaint from therein. If we disagree that the Complaint relates to our activities should be dealt with by us it shall be handled by you.
- 13.3 If we receive a Complaint that we consider to relate to your activities we shall promptly notify you in writing and provide full details of the Complaint, including copies of all documents received, as soon as reasonably practicable. You shall therein handle all such Complaints.
- 13.4 Without prejudice to section 6 you shall promptly provide us with all information relating to Complaints that we require and shall cooperate with our reasonable investigations and requests in relation to Complaints. Each party will provide to the other party reasonable support and cooperation to help them to resolve the Complaint. Each party will undertake to resolve each Complaint in a way that complies with FCA DISP, good practice from the Financial Ombudsman Scheme, and FCA Treating Customers Fairly.
- 13.5 You must immediately notify us of any Complaints relating to fraud or improper conduct by you, or might lead to a regulatory investigation.
- 13.6 You shall inform all Applicants how to complain to You and to the Financial Ombudsman Scheme.
- 13.7 Where any regulator brings any action or investigation in relation to any services or other activities provided by you or where disciplinary or complaints procedures are applied in relation to clause 13.5, we may:
  - 13.7.1 withhold or delay any payments otherwise due to you under this Agreement until you have implemented or discharged any sanctions resulting from those procedures; and/or
  - 13.7.2 indefinitely or temporarily limit or suspend any Services that you may provide to us.
- 13.8 We may disclose any identified or suspected non-compliance by you with the Applicable Regulations to other lenders and your Principal if applicable.

### **14. TERMINATION**

- 14.1 We continually review and update our panel of Intermediaries. On-going registration as a member of our panel of Intermediaries is dependent on regular submission to us of Applications that meet our Lending Criteria.

- 14.2 We therefore reserve the right by giving notice to you that we are terminating or suspending your registration as a member of our panel of Intermediaries (including your FCA Code) at any time within our sole discretion and without explanation). If you are a Directly Authorised Intermediary and are a Member of a Club, we reserve the right to notify your Club of your removal. If you are an Appointed Representative, notice of your termination may be given by us to your Principal. In the event that we have terminated or suspended your registration due to non-submission of any Applications to us for a certain period (as opposed to the quality of the Applications) you shall be entitled to apply to us for re-registration which we shall consider at our discretion.
- 14.3 In addition to clause 14.1 above, we may immediately terminate or suspend your registration (or the registration of any Person or body for which you are responsible as a member of our panel of Intermediaries) without notice in writing in the event of:
  - 14.3.1 Any material breach by you or any Person or body for which you are responsible of any of the provisions contained within these Terms;
  - 14.3.2 Any misconduct by you or any Person or body for which you are responsible which is or could be viewed as prejudicial to our business or reputation;
  - 14.3.3 You (or your Principal as applicable) cease to be appropriately authorised or exempt (as applicable) under the FSMA;
  - 14.3.4 Material litigation or reconstruction arises or is threatened or pending involving you and including (without limitation of the foregoing) bankruptcy, dissolution, administration, winding up or seizure of assets; and/ or
  - 14.3.5 Any failure by you or any Person or body for which you are responsible to comply with sections 4 (Applications), 2 (Authorisation), 3 (Compliance), 9 (Advertising), or 6 (Monitoring and Access).
- 14.4 In the event of termination (other than termination pursuant to clause 14.3 above) we agree:
  - 14.4.1 to pay any Fees payable in relation to any completions that have occurred prior to the date of termination and in relation to Applications that have been submitted and completions that occur in relation to those Applications within six months of the termination date;
  - 14.4.2 to inform you if any Applications already received will continue to be processed by us; and
  - 14.4.3 upon your written request to discuss with you the reasons for our decision to terminate or suspend your registration and if future re-registration is permissible.
- 14.5 You may withdraw your membership of our panel of Intermediaries at any time by providing us with notice in writing and we shall be entitled to remove you as a member of our panel of Intermediaries immediately upon receipt of such notice should we elect to do so.
- 14.6 In the event of termination you shall:
  - 14.6.1 promptly return to us any property, whether in hard copy or electronic form, belonging to us as reasonably requested;

- 14.6.2 cease all promotion of our Products, withdraw all communications, marketing material, advertising (including online advertising) and shall not denigrate in any manner our products, services, business or reputation;
- 14.6.3 provide us with all management information that we may reasonably require;
- 14.6.4 repay all sums then and subsequently outstanding to us within 28 days of the termination taking effect; and
- 14.6.5 use reasonable endeavours to ensure that all activities carried out under these Terms are transferred smoothly back to us or such other party as we may specify.
- 14.7 In the event of termination each party shall return to the other any Confidential Information relating to the other party in the possession or control of the party or its Staff save that the relevant party may retain copies of such Confidential Information to the extent necessary to comply with any Applicable Regulations. Following termination You shall continue to provide Us any information We require to comply with the Applicable Regulations.
- 14.8 Any termination under this section shall not affect any accrued rights or liabilities of either party nor shall it affect the provisions of any clause which is to continue to apply notwithstanding termination including sections 2 (Authorisation), 3 (Compliance), 4 (Applications), 5 (Money Laundering etc.), 6 (Monitoring and Access), 7 (Confidentiality), 8 (Data Protection), 9 (Advertising), 10 (Fees), 11 (Indemnity & Insurance), 12 (Liability), 13 (Complaints), 14 (Termination), and 15 (General) or the coming into force of any provision which is expressly or by implication intended to come into force on or after such termination.

## **15 GENERAL**

- 15.1 The rights of each of party under these Terms may be waived only in writing and any delay in exercising or failure to exercise any such right shall not be a waiver of that right.
- 15.2 If, at any time, any provision of these Terms is or becomes illegal, invalid or unenforceable in any relevant 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 relevant jurisdiction shall be affected or impaired.
- 15.3 These Terms replace our previous Intermediary terms and conditions which you may have previously agreed to. These Terms, together with any amendment agreement as referred to at the top of the Terms (if any) set out the entire agreement between the parties. No previous, oral or implied terms shall apply as between the parties in respect of any introductions made by you in respect of applications for Mortgage Advances.
- 15.4 We may set off any sums payable to you under these Terms against any sums that are due from you to us or a third party under these Terms or otherwise.

- 15.5 You may not assign, sub-contract, sub-delegate or transfer all or any part of your rights or obligations under these Terms, without our written consent which we shall not unreasonably withhold.
- 15.6 We may assign, novate or otherwise dispose of our rights under these Terms (in part or in whole) at any time to any Group member or to any successor of any part of the Harpenden Building Society operation or business.
- 15.7 These Terms shall not be enforceable under or by virtue of the Contracts (Rights of Third Parties) Act 1999 by a Person who is not a party, or a successor, transferee or assignee of a party.
- 15.8 Each party shall remain liable to the other for any breach of these Terms by its assignees, sub-contractors or transferees.
- 15.9 No variation of any of these Terms shall be effective unless it is in writing and signed by or on behalf of each of the parties save in respect of clause 6.4 which is not capable of variation.
- 15.10 Both parties agree to act in good faith in relation to each other for so long as these Terms between us remain in force and in particular, but without prejudice to any of these Terms, undertake to discuss any dispute that may arise and seek an amicable settlement in relation to any such dispute. For the avoidance of doubt, this will not prejudice the right of either party to pursue legal proceedings in respect of any such dispute.
- 15.11 You agree to disclose the existence of the agreement between us on these Terms and that you are being remunerated by us to any Person that you introduce to us under these Terms. You also agree that irrespective of any legal or other restrictions on disclosure, our agreement on these Terms, any payments under it and any information received by us about you may be disclosed to any member within our Group.
- 15.12 These Terms are governed by English Law.
- 15.13 The courts of England and Wales shall have exclusive jurisdiction over any disputes arising out of or in connection with these Terms.

Harpenden Building Society is authorised by the PRA and regulated by the FCA and PRA (FCA reference number 157260 [www.fca.org.uk](http://www.fca.org.uk)) and is a member of the Building Societies Association. Harpenden Building Society's registered office is Mardall House, 9-11 Vaughan Road, Harpenden AL5 4HU.

## **ANNEX A - DEFINITIONS**

The following definitions apply to these Terms:

'Agreed Products' means FCA regulated mortgage loans and unregulated mortgage loans secured on property by way of first charges provided by the Society and for the purposes of which the Intermediary will introduce Applicants;

'Anti-Bribery and Anti-Corruption Laws' means all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010, the Competition Act 1998 and the Enterprise Act 2002;



'Applicable Regulations' means all laws, regulations, orders, directions from regulators and industry codes of practice applicable to the sale, including without limitation, the FSMA, the FCA Handbook, the DP Legislation, the CCA, the Advertising Standards Authority British Code of Advertising, the Money Laundering Regulations, Anti-Bribery and Anti-Corruption Act Laws, MCD, MCOB and MIPRU;

'Applicant' means a Person or Persons applying for a Mortgage Advance;

'Applicant Data' means all information relating to and/or obtained from Applicants including all Personal Data relating to Applicants and any other data held by the intermediary which relates to the provision of the Services under this Agreement;

'Application' means any application for a Mortgage Advance that you send us on behalf of an Applicant; either in paper or electronic format (via digital facilities presented by the Society.)

'Appointed Representative' means a Person who acts as the representative of a Principal (as defined under section 39(2) of the FSMA) and for whom the Principal has accepted responsibility;

'Confidential Information' means in relation to either party, any and all information in whatever form (excluding Personal Data of any Applicants under the DP Legislation), whether oral or in writing that (i) by its nature is confidential; or (ii) the other party knows or ought to know is confidential or (iii) is designated by the Disclosing Party as confidential and is disclosed to or otherwise learnt or acquired by the Receiving Party in connection with these Terms;

'CCA' means the Consumer Credit Act 1974 as amended or replaced from time to time;

'Club' means a club which operates through an association of Members for the purposes of negotiating matters such as Fees with mortgage lenders and providing marketing and promotional activities on behalf of its Members;

'Complaint' means any complaint (as defined in the FCA's Dispute Resolution: Complaints section of the FCA Handbook) from any Applicant, Customer or customer of the Intermediary;

'Confidential Information' means any information obtained or received by a party as a result of entering into or performing its obligations under this agreement which is either which is either identified as confidential at the time of disclosure, or would be considered to be confidential by a reasonable person based on the nature of the information and the circumstances in which it was obtained or received;

'Consents' means the express informed consent to (i) receive direct marketing communications from the intermediary and the Society to their relevant contact details, (ii) for Personal Data to be transferred to and processed by the Society and (iii) for such data to be used in the Society's loan application process (including searches of the Applicant's credit history with fraud prevention agencies and credit reference agencies, credit scoring, account management activity and electronic verification of their identity for the purposes of the Money Laundering Regulations); such Consents shall not be bundled; 'Customer' means an individual introduced by the Intermediary to the Society who has entered into an agreement with the Society for an Agreed Product

'Control' means that definition in section 1124 of the Corporation Tax Act 2010;

'Customer Data' means all Personal Data related to and/or obtained from a Customer '

'digital facilities presented by the Society' means any digital system through which, with your client's consent, you may make an application for a mortgage product on your client's behalf;

'Directly Authorised Intermediary' means an Intermediary who is as an Authorised Person;

'Disclosing Party' means the party to whom any Confidential Information belongs and which is disclosed to the other party;

'DPA' means the Data Protection Act 2018;

'DP Legislation' means the DPA, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Data Protection (Charges and Information) Regulations 2018, Regulation (EU) 2016/679 (the 'General Data Protection Legislation' or the 'GDPR'), and all associated regulations, statutory instruments, guidance notes and codes of practice issued by the Information Commissioner's Office, as amended from time to time;

'FCA' means the Financial Conduct Authority (and any successor of the FCA);

'FCA Handbook' means the FCA's Handbook of rules and guidance pursuant to the FSMA as amended or replaced from time to time; 'Fees' means the procurement fees payable under clause 10 of these Terms;

'FSMA' means the Financial Services and Markets Act 2000 (and any associated or successor legislation or regulations);

'Group' means in relation to any party that party and every other legal Person which from time to time is or which becomes a subsidiary, majority shareholder or holding company of that party or a subsidiary of any such holding company (and the terms 'subsidiary' and 'holding company' shall have the meanings given to them by Sections 1159 and Schedule 6 of the Companies Act 2006);

'Indemnified Persons' means Us, or any member in our Group or our respective directors, officers, agents, employees, members and successors in interest;

'Information From Lenders Scheme' means the information and reporting scheme run by the FCA from time to time to help lenders tackle mortgage fraud;

'Intermediary' means any Person who submits an Application to us either (i) directly as an Authorised Person or (ii) as an Appointed Representative on behalf of a Principal (in which case both the Appointed Representative and the Principal shall be subject to these Terms);

'Lending Policy' means our policy on acceptance of business that we provide to you, which we may vary and or reissue from time to time; 'Losses' means losses, costs, actions, liabilities, damages, expenses, demands, claims, charges, penalties and fines;

'MCD' means Directive 2014/17 EU on credit agreements for consumers relating to residential immovable property, as implemented by the Mortgage Credit Directive Order 2015;

'MCOB' means the Mortgages and Home Finance: Conduct of Business sourcebook in the FCA Handbook;

'Member' means a member of the Club and those Persons engaged in introducing Applicants to us and shall include any Person who is authorised by the FCA and has the relevant Permissions to carry out the purposes contemplated by these Terms;

'MIPRU' means the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries;

'Money Laundering Regulations' means the Proceeds of Crime Act 2002, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, the Terrorism Act 2000 and Schedule 7 of the Counter Terrorism Act 2008 and any superseding or amending legislation;

'Mortgage Advance' means any advance (which may include a further advance) made by or on behalf of us including those secured or intended to be secured by a first charge over the Property;

'Mortgage Intermediary Network Agreement' means an agreement between a Principal and us governing the introduction of Applications to us by the Principal's Appointed Representatives;

'Network' means an authorised entity that provides administrative and compliance services to Appointed Representatives who may provide Services to Us;

'Panel of Intermediaries' means those Intermediaries registered to provide Services to Us;

'Permissions' means permissions, licenses, consents, or authorisations required under the FSMA or the CCA or any other relevant Applicable Regulations applicable to you whether as a Principal or Appointed Representative;

'Person' means a natural person, corporate or unincorporated body (whether or not having separate legal personality).

'PRA' means the Prudential Regulation Authority (and any successor of the PRA);

'Personal Data' is as defined under article 4 of the GDPR;

'Principal' means an Authorised Person who permits an Appointed Representative to carry on regulated activities on its behalf;

'Property' means the property over which security is, or is to be, taken in respect of the Mortgage Advance;

'Receiving Party' means that party to whom the Confidential Information of the other party is acquired in connection with any Application and/or these Terms;

'Relevant Data' means the Applicant Data and/or the Customer Data as the context requires.

'Services' means the services provided by you whereby you introduce Applications to us in order that we may consider if we will offer to provide a Mortgage Advance to such Applicants;

'Staff' means in respect of each party (as the context requires) any individual who is either (i) working for that party, or (ii) for the Principal of the Appointed Representative and who is under the Appointed Representative's control and supervision;

'Terms of Business' means these Terms, any and all Applications, where an Application is completed via digital facilities presented by the Society, and all other statements made and disclaimers submitted, as lawfully amended from time to time;

## SIGNATURES

### FOR THE BROKER

Signed:

Dated:

*This form can be signed by typing your name here and returning by email*

Name:

### FOR THE SOCIETY

Signed:

Dated:

*This form can be signed by typing your name here and returning by email*

Name: