

## TERMS OF BUSINESS FOR DIRECTLY AUTHORISED FIRMS

Version 1.7 dated 6 September 2022

This Terms of Business (Terms, Agreement) sets out the terms on which You (Your), a Mortgage Intermediary, may promote applications to Us (We, Our), Harpenden Building Society (the Society) of Mardall House, 9-11 Vaughan Road, Harpenden AL5 4HU for Our mortgage products (Mortgages) directly, or through a Mortgage Club (Club). You and We are each a Party, together the Parties.

Directly Authorised Firm name:

Registered business address:

FCA Registration number:

ICO Registration number:

### **WHERE YOU ACCESS THROUGH A MORTGAGE CLUB:**

Club business name:

This Agreement applies to Mortgage Intermediaries who work independently, or through a Mortgage Club, and Appointed Representatives (ARs) of Networks, whether a Mortgage Intermediary Network Agreement (MINA) with their Principal applies.

If you are an AR and Your Principal has entered into a MINA with Us, You shall ensure that You are aware of how to comply with the relevant terms of the MINA. In the event of any conflict between this Agreement and any applicable MINA, this Agreement shall prevail.

When submitting each Application to Us You shall comply with this Agreement.

This Agreement replaces Our previous terms and conditions, and sets out the entire agreement between the Parties, and no previous terms or arrangements shall apply.

We may revise this Agreement at any time and shall publish an up to date copy on Our website: [www.harpendenbs.co.uk](http://www.harpendenbs.co.uk).

## 1. DEFINITIONS

The terms in this Agreement have the following meanings:

- 1.1. '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, and the Financial Ombudsman Service, as updated from time to time;
- 1.2. 'Applicant' – means a person or persons applying for a Mortgage advance;
- 1.3. '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;
- 1.4. '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;
- 1.5. 'Data Protection 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, and associated terms are derived from this legislation;
- 1.6. 'Losses' – means losses, costs, actions, liabilities, damages, expenses, demands, claims, charges, penalties and fines; and
- 1.7. '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.

## 2. COMMENCEMENT AND DURATION

- 2.1. This Agreement shall become effective on Our receipt of Your signed electronic copy of this document.
- 2.2. This Agreement shall continue in force until terminated by either Party with three months' notice, or terminated by a material breach of its terms as set out in section 'Termination'.
- 2.3. We may terminate this Agreement if You do not place any new Mortgage applications with Us during any consecutive 12 month period, but You may apply for re-registration at Our discretion.

## 3. SERVICES

- 3.1. You shall, at Your discretion, make Our Mortgages available to Applicants.
- 3.2. We shall, at Our discretion, consider Applicants for Our Mortgages that You have proposed.

- 3.3. This Agreement is non-exclusive in that You may make Applications to other lenders, and We may consider Applications from other intermediaries.
- 3.4. We may carry out due diligence checks on Your Firm before accepting applications from You to ensure that You are authorised, and capable of complying with this Agreement and the Applicable Regulations. These checks may include background checks and Your arrangements for treating customers fairly, treating vulnerable customers fairly, countering financial crime, and preventing modern slavery.
- 3.5. You, and all of Your staff, shall at all times act with the reasonable professional skill, care, and diligence of an experienced mortgage intermediary, ensure that the application is suitable for the Applicant, and shall at all times comply with the Applicable Laws and Regulations. You, and Your staff shall not denigrate in any way Our Mortgages, services, employees, business or reputation.
- 3.6. This Agreement does not create a partnership or joint venture between the Parties, and neither Party is authorised to make any commitments on behalf of, or hold itself out as an agent of the other Party. You shall not represent yourself to Applicants as an AR of Us, and shall ensure that Applicants and third parties are aware of Your role as required by the Applicable Laws and Regulations.
- 3.7. You shall notify Us immediately if You become aware of any matter that may materially affect Your ability to comply with this Agreement, or to comply with the Applicable Regulations. You shall provide reasonable support to Us in the investigation and resolution of such a matter.

#### **4. AUTHORISATION**

- 4.1. You, and Your Principal (if applicable), warrant to have in place, and shall maintain all authorisations required to promote Our Mortgages to Applicants, throughout the term of this Agreement, in compliance with the Applicable Regulations.
- 4.2. We shall maintain, throughout the term of this Agreement, all authorisations required to process Our Mortgages in compliance with the Applicable Regulations. We (Harpenden Building Society) are authorised by the PRA, and regulated by the FCA and PRA (FCA reference number 157260) and are a member of the Building Societies Association.
- 4.3. If You are an AR, You warrant that your agreement with Your Principal enables You to comply with this Agreement and with the Applicable Regulations.
- 4.4. You, and Your Principal (if applicable), shall ensure that You do not by any act or omission cause Us to be investigated for, or be in breach of the Applicable Regulations.
- 4.5. You shall notify Us immediately if You, or Your Principal (if applicable), are investigated for a suspected breach of the Applicable Regulations, or if Your authorisation is withdrawn. If You are an AR, You shall notify Us immediately if Your agreement with Your Principal is terminated for any reason. You shall also notify Us immediately once You become aware of a breach of the Applicable Regulations.
- 4.6. We reserve the right to terminate this Agreement on any breach of these 'Authorisation' clauses.

- 4.7. You and Your Principal's (if applicable) obligations to comply with this 'Authorisation' section shall survive termination of this Agreement.

## 5. APPLICATIONS

- 5.1. You shall obtain an Applicant's authorisation to act on their behalf before submitting their application to Us. You shall also make the Applicant aware of all declarations and statements that You make on their behalf, and explain to the Applicant any key information that may affect their application.
- 5.2. Prior to submitting an application to Us, You shall provide the Applicant all the relevant information to comply with the Applicable Laws and Regulations, in addition to a copy of Our privacy notice which is available on Our website. You shall inform the Applicant about the use of credit checks as part of the application process.
- 5.3. You, and Your staff, shall comply with the Applicable Laws and Regulations, in addition to good industry practice in treating vulnerable Applicants fairly. You shall assess whether each Applicant is vulnerable, or is in a vulnerable situation. You shall notify Us of this assessment as part of their application, and reasonably provide us additional information if We believe We have to further assess the Applicant for vulnerability.
- 5.4. You shall ensure that Your applications meet Our current Lending Criteria, but even if they do, We may for any reason not accept an application. We update Our Lending Criteria from time to time and these publish on Our website.
- 5.5. You shall verify the identity of the Applicant, in compliance with the Applicable Regulations, in particular financial crime legislation, before submitting an application to Us. Verification information shall be disclosed to Us on request. You shall disclose to Us whether the Applicant is related to You, Your Club, Network, or Principal.
- 5.6. You shall provide Us all the information that We reasonably require of an application in a way that is complete, accurate, and not misleading. You shall not withhold any information from Us that may be material to an application. You shall promptly inform Us if You become aware that any information provided by You as part of an application is incomplete, inaccurate or misleading. We shall not accept liability for any delays in the application process due to incomplete, inaccurate, or misleading information provided by You.
- 5.7. You shall ensure that 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.
- 5.8. You shall identify potential conflicts of interests between Applicants, between You and Your Applicants, between You and Us, and between You and any other intermediary or principal. You shall maintain a record of potential conflicts of interests, and notify Us immediately on becoming aware of a conflict of interests that may relate to Us.
- 5.9. You and Your Principal's (if applicable) obligations to comply with this 'Applications' section shall survive termination of this Agreement. If You are suspected of submitting fraudulent applications, We may terminate this Agreement, and may inform fraud prevention agencies.

## **6. CROSS-SELLING**

- 6.1. We may contact the Applicant about their existing products, or in order to comply with the Applicable Laws and Regulations.
- 6.2. We may promote or sell Mortgage related products where We receive an unsolicited request from the Applicant, or after their Mortgage has been redeemed.

## **7. FEES**

- 7.1. You shall be due a fee following the completion of a Mortgage advance by Us to Your Applicant. No fee shall be due if an application does not proceed to completion or where We reasonably believe that You no longer act for the Applicant.
- 7.2. The fee shall be paid by Us to You within 1 month of completion through the agreed payment route as nominated during the application process, by bank transfer to the relevant nominated UK business bank account. You shall be solely responsible for nominating the payment route, and securing onward payments from Your Club.
- 7.3. The amount of the fee due to You shall be agreed with Us in advance. It shall be based on Our fee structure, which may be varied from time to time, and published on Our website. Payments shall include VAT where applicable.
- 7.4. Where the Applicant repays the Mortgage advance in full before the third monthly payment is due, no fee shall be due to You, and any fee already paid shall be considered an overpayment. Any overpayment by Us shall be promptly repaid by You, Your Club, Network, or Principal.
- 7.5. You shall disclose to Us and to the Applicant details of all fees, payments and charges relating to the application promised to You, Your Club, Network, or Principal. Where You knowingly receive a benefit, as a direct or indirect result of an Applicant making a payment relating to their application, You shall take all reasonable steps to ensure that the payment is of a reasonable amount, fair, not excessive, and complies with the Applicable Regulations, in particular anti-bribery laws.
- 7.6. Where You are liable for a payment to Us, this may be set off against any fees due to You.
- 7.7. Your material breach of this Agreement shall suspend Our liability to pay fees until the breach is remedied to Our satisfaction. Any fee due after the date of a material breach that leads to termination shall be forfeit by You.

## **8. MANAGEMENT INFORMATION & MONITORING**

- 8.1. You shall maintain records that are sufficient to enable You to demonstrate Your compliance with this Agreement, and with the Applicable Regulations.
- 8.2. You shall provide to Us sufficient management information about You and Your applications to enable Us to demonstrate Our compliance with the Applicable Regulations.
- 8.3. We shall keep You informed of Our progress in processing Your applications.

- 8.4. Neither Party shall be obliged to share any information with the other Party if to do so would mean a breach of confidence to a third party, a breach of contract with a third party, or would be in breach of this Agreement, or any Applicable Regulations.
- 8.5. No more than once in any per 12 month period You shall permit Us, or Our appointed representatives, reasonable access to Your premises to audit Your records to enable Us to confirm compliance with this Agreement, and with the Applicable Regulations. You shall be provided reasonable notice for such an audit, unless We reasonably believe that You have breached this Agreement, or the Applicable Regulations. You shall provide us with reasonable assistance with each audit.

## **9. DATA PROTECTION**

- 9.1. Each Party shall be registered as a Controller of Personal Data with the Information Commissioner's Office (ICO) and shall maintain its registration throughout the term of this Agreement.
- 9.2. Each Party shall act as an independent Controller of the Personal Data that it Processes. The Parties shall not at any time be considered Joint Controllers of any Personal Data. Neither Party shall be considered as a Processor under the instruction of the other Party. Each Party shall be responsible for independently complying with the Data Protection Legislation.
- 9.3. Each Party shall reasonably assist the other Party to comply with the Data Protection Legislation, including, but not exclusively, in completing data protection impact assessments, data subject access requests, and any communication with a regulator or Applicant that may be required.
- 9.4. If You transfer Your Personal Data or that of employees or Applicants to Us, We will ensure that at all times Our Processing is in accordance with Our Privacy Notice, which is updated from time to time and published on Our website, and in compliance with the Data Protection Legislation. You are responsible for ensuring that Our privacy notice is provided to relevant employees or Applicants and warrant that all relevant consents and authorisations have been obtained before their Personal Data is transferred to Us. Data Subjects may exercise their rights over this Personal Data throughout processing by Us.
- 9.5. If We transfer the Personal Data of employees or Applicants to You, You will ensure that at all times Your processing is in accordance with Your privacy notice, which shall be provided to Us before transfer, and in compliance with the Data Protection Legislation. We warrant that all relevant consents and authorisations have been obtained before the Personal Data is transferred to You.
- 9.6. Each Party shall maintain adequate technical and organisational measures to protect the Personal Data that it processes, to comply with the Data Protection Legislation and good industry practices.
- 9.7. Each Party shall not by act or omission cause the other Party to breach the Data Protection Legislation. Each Party shall keep indemnified the other Party against any claim, sanction, or liability for costs, expenses, damages, fines, and losses arising out of its own breach of the Data Protection Legislation, including any breach caused by its employees, sub-contractors, consultants, agents, contracted third parties, assignees, successors, transferees, Processors, or sub-Processors.

- 9.8. Each Party shall immediately inform the other Party after becoming aware of any Personal Data breach as defined in the Data Protection Legislation, 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 Data Protection Legislation.
- 9.9. Each Parties' obligations to comply with the Data Protection Legislation shall survive termination of this Agreement.

## **10. CONFIDENTIALITY**

- 10.1. Each Party shall keep confidential all information, of any type, that is acquired under a presumption of confidentiality, whether the Confidential Information is marked, or described as confidential at the time of acquisition.
- 10.2. Confidential Information shall only be used for the performance of this Agreement, and not used for any other purpose.
- 10.3. Confidential Information shall not be disclosed to third parties without written authority of the other Party. Unless it can be demonstrated that the Confidential Information is already in the possession of the other Party, or has been made public other than as a breach of this clause.
- 10.4. Confidential Information may be disclosed to employees, professional advisors, and regulators in order to comply with the Applicable Regulations, but only on similar terms of confidentiality to this clause.
- 10.5. If a Party becomes aware of any breach of this clause, it shall promptly notify the other Party, take all necessary steps to rectify the breach, give the other Party all reasonable assistance to recover the Confidential Information, and to remedy the breach.
- 10.6. Each Parties' obligations to comply with this clause shall survive termination of this Agreement.

## **11. MARKETING MATERIAL**

- 11.1. Each Party shall retain ownership of those intellectual property rights that it owns prior to the commencement of this Agreement.
- 11.2. You must obtain Our approval before using Our logo, Our marketing material, or any marketing material that refers to Us, not to be unreasonably withheld. It is Your responsibility to ensure that the content and distribution of this material complies with the Applicable Regulations. You must cease distribution of this material on reasonable notification from Us.
- 11.3. Financial promotions to Applicants must inform the Applicant that You are independent from Us, and that You may receive fees from Us. All financial promotions shall comply with the Applicable Regulations.

- 11.4. Neither Party shall, at any time, knowingly make any untrue or misleading statement in relation to the other Party nor make any press announcements or publicise this Agreement in any way, without the prior approval of the other Party.
- 11.5. After the date of Our Mortgage advance You shall not contact Applicants, except as is strictly necessary for the performance of this Agreement.

## **12. COMPLAINTS**

- 12.1. You shall inform all Applicants how to make a complaint about Your conduct, about Our conduct, and how to complain to the Financial Ombudsman Scheme. You shall handle all complaints in accordance with the Applicable Regulations.
- 12.2. You shall promptly inform Us about an Applicant's complaint about Our conduct, providing all the relevant information and reasonable support that will enable Us to address the complaint.
- 12.3. We shall inform You promptly about an applicant's complaint about Your conduct, providing You all the relevant information and reasonable support that will enable You to address the complaint.
- 12.4. You shall inform Us immediately of any complaint that relates to fraud, improper conduct, or might lead to a regulatory investigation, and reasonably keep Us informed of progress.
- 12.5. If You become subject to a regulatory investigation We may inform Your Principal (if applicable), inform other lenders, suspend processing of Your applications, and suspend payment of fees due to You until the investigation is satisfactorily concluded.
- 12.6. Your obligations to comply with this 'Complaints' section shall survive termination of this Agreement.

## **13. LIABILITY**

- 13.1. Your liability to Us for any breaches of this Agreement shall be limited to £1,000,000 (one million pounds sterling) in any calendar year, with the exception of liability for fraud, fraudulent misrepresentation, death and personal injury, which is unlimited by law.
- 13.2. Our liability to You for any breaches of this Agreement shall not exceed the sum of fees due to You in the 12 (twelve) month period previous to the date of the breach.
- 13.3. Each Party shall keep indemnified the other Party against any claim, sanction, or liability for expenses, damages, fines, and losses arising out of its own breach of this Agreement, of third party intellectual property rights, or of the Applicable Regulations, including any breach caused by its Principal (if applicable), employees, sub-contractors, consultants, agents, contracted third parties, assignees, successors, or transferees.
- 13.4. Neither Party will be liable to the other for special, indirect, or consequential expenses, damages, fines, or losses.
- 13.5. We shall not be liable to You, , or any Applicant for any direct, or indirect losses, due directly or indirectly from access to, loss of access to, data corruption from, or otherwise from use of Our digital services at <https://broker.harpendenbs.co.uk/>.



- 13.6. You shall maintain insurance adequate to cover Your provision of advice to Applicants, liabilities under this Agreement, and requirements of the Applicable Regulations, throughout the term of this Agreement, and for six year after termination. You shall notify Us of any change to Your) insurance cover, and share evidence of Your insurance policy on reasonable demand from Us.
- 13.7. You and obligations to comply with this 'Liability' section shall survive termination of this Agreement.

## **14. TERMINATION**

- 14.1. We may suspend or terminate this Agreement, if We reasonably believe You are subject to legal actions, have materially breached this Agreement or the Applicable Regulations, or have had any relevant authorisations investigated, suspended, withdrawn, or revoked.
- 14.2. We may suspend or terminate this Agreement, if We reasonably believe You, are threatened with or subject to reconstruction, bankruptcy, dissolution, administration, winding up, seizure of assets, insolvency, or change of control.
- 14.3. On termination, You shall promptly cease promotion of Our Mortgage products, return any of Our property, and provide Us with any management information and that We may reasonably request. You shall continue to reasonably assist Us to comply with the Applicable Regulations, ensure a smooth handover of Applicant files to Us or others, and promptly pay any overpayment due to Us.
- 14.4. On termination, We shall cease to accept applications from You, but will pay all relevant fees due to You on those applications that complete within six months of the date of termination.
- 14.5. Termination of this Agreement shall not affect any accrued rights or liabilities of either Party, nor shall it affect those rights and obligations that survive termination, nor those rights and obligations that are intended to come into force on a date after termination.

## **15. GENERAL**

- 15.1. Each Party shall remain liable to the other for any breach of this Agreement or the Applicable Regulations by its employees, sub-contractors, consultants, agents, contracted third parties, assignees, successors, or transferees.
- 15.2. This Agreement shall not be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party, assignee, successor, or transferee or of a Party.
- 15.3. You shall not assign, sub-contract, novate, transfer, or otherwise dispose of Your rights and obligations under this Agreement, without Our written consent which We shall not unreasonably withhold. We may assign, sub-contract, novate, transfer, or otherwise dispose of Our rights and obligations under this Agreement at any time. References to Us includes reference to Our assignees, successors, or transferees.
- 15.4. No variation of this Agreement shall be effective unless it is in writing and signed by both Parties. Each Party warrants that the signatory to this Agreement is fully authorised to

execute this Agreement on its behalf. Each Party shall be responsible for the payment of its own costs arising out of the negotiation, execution, and management of this Agreement.

- 15.5. Execution of this Agreement, and any variations, will take place electronically, using a secure contract signing system. Any notice, consent, approval, agreement, request, demand, instruction, information, or other communication required under this Agreement shall be communicated by email.
- 15.6. The rights of each of Party under this Agreement may be waived only in writing and any delay in exercising or failure to fully or partially exercise any such right, shall not be a waiver of that right, nor of any other rights.
- 15.7. If any term of this Agreement is or becomes illegal, invalid, or unenforceable, the legality, validity or enforceability of the remaining provisions shall not be affected.
- 15.8. Neither Party shall be liable for any failure or delay in performing its obligations under this Agreement, or complying with the Applicable Regulations, if such delay or failure is caused by a Force Majeure affecting that Party.
- 15.9. This Agreement is governed by English Law and is subject to the jurisdiction of the courts of England and Wales.

## SIGNATURES

### AUTHORISED INTERMEDIARY ORGANISATION SIGNATURE

Mortgage Intermediary signature:

Date of signature:

Mortgage Intermediary signatory name:

Mortgage Intermediary signatory job title:

### AUTHORISED SOCIETY SIGNATURE

Authorised Society signature:

Date of signature:

Society signatory name:

Society signatory job title:

End.