

TERMS OF BUSINESS AGREEMENT (TOBA) FOR MORTGAGE INTERMEDIARIES

ABOUT US

We're The Nottingham, comprising the Nottingham Building Society (NBS), Nottingham Property Services Limited, Nottingham Mortgage Services Limited, Harrison Murray Limited and HM Lettings Limited.

By registering with us, you agree:

- To the terms and conditions in this written agreement
- You always have the correct authority to act on behalf of applicants and permission to pass their information to us
- You will ensure your customer is aware that we will search their credit file and that the search will leave a hard footprint on their credit file
- You have all the appropriate authorisations from the Financial Conduct Authority (FCA) to submit applications
- You maintain the appropriate Data Protection Registrations as a controller of personal data
- You will only submit business for your own customers and not on behalf of another firm
- You will undertake appropriate 'Know Your Customer' checks, including the verification of identity, and record the details of all mortgage applicants before passing applications to us
- Your information, including how you use the NBS broker portal, may be used for monitoring and management information purposes
- We may pass any information you give to us including, but not limited to, information about you, your firm and your clients, to carefully selected and monitored third parties who provide a service to us, on the understanding that they will keep the information confidential. We will take reasonable steps to ensure that any third parties we supply information to adhere to the same levels of security as us
- You indemnify us in respect of any liability, losses, damages or costs that may occur arising from a breach of warranties and/or obligations, imposed by these terms of business, or due to any misrepresentation or negligence, or fraudulent act or default. Should you fail to comply we reserve the right to remove you from our intermediary panel.

BROKER APPLICATIONS

By submitting mortgage applications to us, you agree to these terms of business. All other terms and conditions, including your standard terms of business, are expressly excluded.

When you submit an application to us, you agree to do so in accordance with applicable regulations, using all reasonable skill and care and only by appropriately skilled and competent employees.

In relation to each application, you shall:

- if the applicant has expressed an interest in being contacted by us in relation to insurance, indicate that interest on their application
- where the application relates to a regulated mortgage contract, provide the applicant with all documentation required by, and in accordance with the regulatory requirements, including those in the FCA MCOBs handbook
- ensure the applicant is not you or your spouse/civil partner
- not pass to any applicant any information intended for your use alone unless required to comply with regulation or law
- only submit applications on the current version of the application submission process advised or provided to you by us
- take reasonable steps to ensure the information provided in and with the application is full, accurate and complete.

You will take all appropriate steps to vet employees and third parties, check their background and verify their qualifications.

You acknowledge you are not the exclusive supplier of any services to us.

We may refuse to accept mortgage applications.

KNOWING YOUR CUSTOMER (KYC) CHECKS

Before submitting an application to us, you will verify the applicant's identity in accordance with all applicable regulations and take all reasonable steps to ensure the information it contains is accurate, correct and not misleading.

You will not withhold any information or documentation that may be material to an application.

You shall have in place adequate disaster recovery processes and protections, including in relation to original documents and information obtained through 'knowing your customer' checks made, and held, by you.

AUTHORISATION REQUIREMENTS

You warrant you have obtained all necessary permissions to perform the services and lawfully fulfil your obligations and that you will not carry out any activities for which you do not have permission.

You will advise us of any changes in trading style, company name, directorship(s) and / or significant officer(s), trading/registered address, company name or permissions without delay.

FEES

If the application proceeds to completion, we will pay fees to you or your club, firm, network or company, as applicable.

We are not responsible for any fees or fee arrangements between you and your club, firm, network or company, as applicable.

You will take all reasonable steps to ensure any payment made by any applicant to any person in connection with this agreement is:

- of a reasonable amount and not excessive
- not substantially greater than the typical amount of comparable payments made to reputable organisations providing similar services
- in compliance with regulations, including FCA MCOBs Chapter 12.

Where relevant, you must disclose fees in accordance with the FCA MCOBs handbook and any other applicable regulations.

COMPLIANCE REQUIREMENTS

You must comply with all applicable regulations at all times.

You shall:

- maintain appropriate documented procedures for all your business operations including an internal complaints procedure which reflects 'best practice' as identified by the Financial Ombudsman Scheme requirements
- immediately notify us of any complaints relating to fraud or improper conduct concerning NBS applicants and where this is the case, maintain a complaints log and make that available to us for inspection
- ensure all training and competence standards set out or referred to in the FCA handbook are met
- obtain any consents that may be required from the applicants in order to perform your obligations, and ensure adequate consents have been collected before carrying out credit searches
- comply with all data protection regulations
- ensure that your choice of lender is unbiased and in the best interests of the applicant based on the information provided
- comply with all relevant provisions of the Bribery Act and assist us in meeting our obligations where appropriate
- where applicable, make full disclosure to applicants of the fact and amount of any commission you receive in respect of the application
- provide to us on request any management information as may be reasonably requested.

You shall not:

- give, solicit or accept an inducement, or direct or refer any actual or potential applicant to us, if it will conflict with any duty that you owe to the applicant under the applicable regulations, including FCA MCOBs
- seek to exclude or restrict any duty or liability or obligation owed under the applicable regulations, including the FSMA, CCA and any obligation in MCOBs
- You must immediately notify us of any complaints relating to fraud or improper conduct by you.

MONITORING AND ACCESS

In relation to the discharge by regulators of their functions under applicable regulations and/or to facilitate us to meet its obligations you shall:

- make yourself readily available for meetings with us and/or regulators
- give us and/or regulators reasonable access to records, files, tapes or computer systems that may be required for oversight or investigation
- provide and permit us and/or regulators to copy specified documents, files, tapes, computer data or other material in your possession or control
- print information in your possession, or control which is held on computer or otherwise convert it into a readily legible document, or any other record which we and/or regulators may reasonably request
- answer truthfully, fully and promptly all questions which are reasonably put to you by us and/or regulators.

INTELLECTUAL PROPERTY RIGHTS AND INDEMNITY

All intellectual property rights belonging to a party prior to this agreement shall remain vested in such party. None of the intellectual property rights, trade marks and brands shall be used by the other party without their prior written consent.

We will grant to you a royalty-free, non-exclusive, non-transferable licence to use the information and tools on the NBS broker portal to the extent necessary to perform the services during the term of this agreement.

CONFIDENTIALITY

When information is shared, the receiving party will treat and keep all confidential information of the disclosing party as confidential in perpetuity and will not, without the disclosing party's written consent, directly or indirectly communicate or disclose (whether in writing or orally or in any other manner) confidential information to any other person other than in accordance with the terms of this agreement.

ANTI-BRIBERY

You understand we are committed to complying with all anti-bribery laws and regulations that we are subject to, including the Bribery Act and the FCPA and agree that neither you nor any of your associated persons have taken or will take any action that might cause us to violate these.

You agree that you will not authorise, offer, give or agree to offer or give, directly or indirectly, any payment, gift or other advantage with respect to any activities undertaken relating to this agreement which:

- is intended to, or does, influence any person to act or reward any person for acting in breach of an expectation of good faith, impartiality or trust, or which it would otherwise be improper for the recipient to accept
- is made to or for the benefit of a public official to influence or affect any act or decision of a government entity, or securing an improper advantage
- would otherwise violate applicable anti-bribery law.

Breach of any of these provisions is a material breach of this agreement and, without prejudice to any other right, relief or remedy, entitles us to terminate this agreement immediately.

INDEMNITY AND INSURANCE

You shall be solely liable and will indemnify us in respect of all losses (including legal fees) incurred by or awarded against us, or any affiliate or their respective directors, officers, agents, employees, members and successors in interest in connection with any proceedings, claim or action as a result of any breach by you of your obligations under this agreement or any regulatory requirements.

You shall have in effect appropriate insurance for the term of this agreement and for

a period of three (3) years following termination. Such insurance must protect against all liabilities you may incur in connection with this agreement and be on terms that are reasonably acceptable to us. The insurance should include protection against professional indemnity risk with cover of no less than that required in chapter 3 of the prudential sourcebook for mortgage and home finance firms and insurance intermediaries. The terms of any insurance or the amount of cover shall not relieve you of any liabilities under this Agreement.

You shall not by your acts or omissions cause any policy of insurance to become invalid or void.

You shall provide evidence of your insurance cover on request and notify us of any material changes to the level, type, or other material provisions of insurance cover from those notified to us.

PROCESSING OF PERSONAL DATA

Note that capitalised terms in this section are defined as set out in data protection legislation, comprising the General Data Protection Regulation (Regulation (EU) 2016/679) and the Data Protection Act 2018 (Data Protection Laws). To the extent that either party processes personal data in connection with the performance of its obligations under this agreement, each party will comply with the requirements of all applicable data protection regulations.

Any processing and sharing of personal data must be undertaken paying due regard to the rights of data subjects and the security of their data.

Under the terms of this agreement and in respect of one or more data subjects making a single application to NBS, you will act as data controller to applicants for the purposes and duration of their application.

Where, under the terms of our contract with you, we have agreed to act as a data processor, we will act in that capacity until a mortgage offer is accepted, at which point we will become a data controller for the purposes of administering a mortgage.

When we are processing on behalf of you and you are the controller, you shall document the lawful basis for processing, inform data subjects of all the required detail required by data protection regulations and gain any required consents if applicable. Further, we will: process the personal data only on documented instructions from you; ensure that persons authorised to process the personal data have committed themselves to confidentiality obligations; assist you in complying with your obligations under Articles 32 to 36 of the General Data Protection Regulation (Regulation (EU) 2016/679); subject to regulatory obligations, at your option delete or return all personal data after the end of the relevant data processing; and make available to you all information necessary to demonstrate compliance with the applicable data protection regulations, including allowing for audits conducted by you, such audits to be subject to prior notification and any reasonable conditions set by us.

We may, with your consent, approach data subjects to discuss products and services associated to their mortgage application under the lawful basis of legitimate interest and in such case become data controller for that purpose from the time we contact the data subject.

We may use carefully selected sub processors to assist us with processing. When this is the case, we will only do so under the protection of a written agreement and will hold such sub processors to the same data protection obligations as are imposed upon us hereunder. We will notify you of all sub processors we intend to appoint, and you will have the opportunity to raise reasonable objections to their appointment. We will at all times remain fully liable for any failure by our appointed sub-processors to fulfil their data protection obligations.

We will assist you to respond to data subjects who wish to exercise their rights of access, erasure and restriction by notifying you of any such requests in reasonable time.

Where, under the terms of our contract with you, we have agreed to act as a data controller in common (which includes where we become a data controller as outlined above), each party becomes responsible for their own obligations to comply with all data protection regulations, which means that each party shall:

1. deploy appropriate technical and organisational measures to protect any personal data against any unauthorised or unlawful processing and against accidental loss, destruction or damage. Such measures shall include:
 - taking reasonable steps to ensure the reliability of employees and third parties which have access to the personal data
 - acting only in accordance with the terms of this agreement.

2. notify the other party immediately upon becoming aware of any actual, suspected or alleged breach of any applicable data protection regulations.
3. deal with all enquiries, requests, complaints and investigations (other than in relation to a data breach) it receives from an applicant or a data protection regulator (request). In the event that a request relates to personal data, it shall promptly, and in any event within 24 hours, notify the other party of such request and shall keep the other party regularly updated as to how it handles such request;
4. notify the other party without undue delay after, and in any event within 24 hours of, becoming aware of a data breach;
5. assist and co-operate fully with the other party to enable them to comply with its obligations under data protection laws, including in respect of keeping personal data secure, dealing with data breaches, complying with the rights of data subjects and carrying out data protection impact assessments; and
6. work with the other party to ensure that each of them is able to process the personal data it processes under or in connection with this agreement for the purposes contemplated by this agreement lawfully, fairly and in a transparent manner and in compliance with data protection laws. This shall include entering into such other written agreements as may be required from time to time to enable the parties to comply with data protection laws.
7. assist the other party in complying with its obligations under data protection laws, including by assisting with responding to requests from applicants and carrying out data protection impact assessments;
8. take reasonable steps to ensure the reliability of any of its employees, agents and sub-contractors who have access to personal data;
9. take reasonable steps to ensure the security of the personal data whilst in its possession;
10. ensure that only those of its employees, agents and sub-contractors who need to have access to personal data are granted such access and only for the purposes of performing its obligations under this TOBA; and
11. ensure that the employees, agents and sub-contractors who are reasonably required to have access to personal data:
 - are informed of the confidential nature of the personal data and are subject to appropriate contractual obligations of confidentiality;
 - undergo training in data protection laws and in the care and handling of personal data; and
 - comply with the obligations set out above.
12. not disclose any personal data to any third party save as permitted by this TOBA or with the prior consent of the applicant.

HOW WE WILL USE PERSONAL INFORMATION ABOUT YOU

We will use your information to manage our relationship, provide our services, for assessment and analysis, to prevent and detect crime, carry out regulatory checks, meet our obligations to any relevant regulatory authority, to develop and improve our services to you and our customers and to protect our interests.

By 'your information', we mean any information about you or your firm that you or third parties provide to us.

Where you provide personal and financial information relating to others (e.g. colleagues, partners, directors), you confirm that you have their consent or are otherwise entitled to provide this information to us.

When you register as a broker, we will make identity, fraud and other enquiries about you and keep a record of the same. We may also use and give out information to other lenders, insurers and other organisations for the detection and prevention of fraud or crime [for example, if you are suspected of knowingly submitting fraudulent mortgage applications during your relationship with us]. We and other organisations, including law enforcement agencies, may access and use this information to prevent and detect fraud, money laundering and other crimes. The information recorded by fraud prevention agencies may be accessed and used by other organisations.

We will retain information collected about you for as long as permitted for legitimate business purposes. You can view our privacy policy at: www.thenottingham.com/privacy-policy

GENERAL

The rights of each of the parties under this agreement may be waived only in writing, and any delay in exercising or failure to exercise any such right is not a waiver of that right.

If, at any time, any provision of this agreement 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. Any invalid or unenforceable provision will be severable.

Notwithstanding anything else contained in this agreement, neither party shall be liable for any failure, interruption or delay in performing its obligations under this agreement, in whole or in part, if such delay or failure is caused by an act of force majeure affecting that party. A party affected by such an event shall make all reasonable efforts to minimise its effects and shall resume performance as soon as possible thereafter.

Nothing in this agreement shall constitute you as agent or partner of us for any purpose and you shall have no authority or power to bind us to contract or liability for any purpose.

You may not assign, sub-contract, sub-delegate or transfer your rights or obligations under this agreement, without our prior written consent.

TERM AND TERMINATION

This agreement shall commence on the date of acceptance by you and shall continue until terminated by either party giving no less than 3 months written notice.

We may, without prejudice to our other rights or remedies, terminate this agreement immediately upon written notice if you are in breach.

GOVERNING LAW AND JURISDICTION

The agreement shall be governed by and construed in accordance with the laws of England and Wales.

The courts of England and Wales shall have exclusive jurisdiction over any disputes arising out of or in connection with this agreement.

LIABILITY

Your liability to us for any regulatory losses, fines, expenses or other losses arising from a breach by you of any law or regulation is not excluded or limited by this agreement.

DISCLOSURE

You agree to disclose the existence of this agreement and that you are being remunerated by us to any person you introduce to us.

CHANGES TO THIS AGREEMENT

We regularly review this agreement. When we change the agreement, we will notify you and you may obtain a copy of the most recent version at any time here:

www.thenottingham-intermediaries.com

Last updated 26 November 2018