



## GENERAL TERMS AND CONDITIONS

### INTRODUCTION

These terms and conditions (the “**General Terms and Conditions**”) shall apply to all arrangements entered into between Advance Mortgage Funding Limited (incorporated and registered in England and Wales with company number 02217569) whose registered office is at Newcastle House, Albany Court, Newcastle Business Park, Newcastle Upon Tyne, Tyne and Wear, NE4 7YB (“**TMA**”) and You.

Your agreement with TMA shall comprise:

- (i) the relevant registration form and confirmation email (in relation to the TMA Club Agreement) or Order Form and Services Appendix (in relation to each Service Agreement);
- (ii) any Service Specific Terms;
- (iii) Technology User Terms; and
- (iv) these General Terms and Conditions (as updated by TMA from time to time).

In the event of any conflict between the documents listed above, a document higher in the list shall take precedence over a document lower in the list to the extent of the conflict.

### 1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions shall apply in these General Terms and Conditions:

**Applicable Laws:** all applicable laws, statutes and regulations from time to time in force;

**Associated:** shall have the widest possible meaning and includes (but is not limited to): employees, officers, shareholders, owners, members, and/or business partners;

**Business Day:** a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;

**Commencement Date:** means the date that a Commercial Agreement commences as described in clause 2.1;

**Commercial Agreement:** means either a TMA Club Agreement or a Services Agreement;

**Completed Mortgage Product:** means an FCA regulated Mortgage Contract that has been sold by You to Your customer and for which the application has been submitted via TMA and which has completed with the Provider;

**Completed Insurance Product:** means an FCA regulated Non-Investment Insurance Contract that has been sold by You to Your customer and for which the agency with the Provider is registered with TMA and which has completed with the Provider;

**Confidential Information:** means information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to our or any Group Company's processes, assets, affairs and finances for the time being confidential to us or any Group Company and trade secrets including, without limitation, technical data and know-how relating to any Group Company's business or any

of its suppliers, clients, customers, agents, distributors, shareholders or management;

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly;

**Fees:** means:

- (i) in relation to any Completed Mortgage Product, the difference between the TMA Payment and the Corresponding Payment;
- (ii) in relation to any Completed Insurance Product, the TMA Insurance Payment; and
- (iii) in relation to the Services Agreement, any amount paid to TMA in accordance with the Services Agreement;

**FSMA:** means the Financial Services and Markets Act 2000;

**Group Company:** means TMA, its subsidiaries or holding companies from time to time and any subsidiary of any holding company from time to time;

**Initial Term:** means any initial term for any Service Agreement set out in the Order Form;

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**Order Form:** means a completed TMA order form signed by You and TMA;

**Providers:** means the list of institutions who TMA contracts with to provide Financial Service Products as set out at the TMA Website as updated by TMA from time to time;

**Services Agreement:** means an agreement for the provision of services by TMA to You (other than a TMA Club Agreement);

**Services:** means:

- (i) for the TMA Club Agreement, making the relevant TMA Club Products available to You via the Technology for You to advise on and sell to Your client's;
- (ii) for any Services Agreement, the services set out in the relevant Order Form.

**Service Specific Terms:** means any specific terms and conditions applying to any Service as provided by TMA for the relevant Service from time to time;

**Technology:** means software and/or systems provided or made available by TMA to You;

**Technology User Terms:** means any terms and conditions of TMA contained on any Technology or otherwise on any access point to the Technology;

**Term:** means the duration of the Commercial Agreement from the Commencement Date until the date that it is terminated in accordance with the Commercial Agreement;

**TMA Club Agreement:** means the agreement between You and TMA that provides You with access to TMA Panel Provider products which includes [the registration form completed by You, TMA's email to you confirmation of your membership] and these General Terms and Conditions;

**TMA Panel:** means, in relation to any product, the Providers that TMA has appointed to the relevant panel, as determined by TMA from time to time, a list of which are available on the TMA Website;

**TMA Policies:** TMA's policies (including fair use policies) made available to You by TMA and as amended by notification to You from time to time;

**TMA Schedule of Commission and Fees:** means the relevant statement of fees made available by TMA from time to time, including (as applicable) the Provider Commission rate tables ;

**TMA Website:** means any website operated by TMA from time to time including <https://www.tmaclub.com>;

**Unacceptable Person:** means any person who is subject to (or in TMA's opinion likely to be subject to) any sanctions, prohibitions, warnings or restrictions by any national government (or any governmental body) or who TMA otherwise acting reasonably considers a person that they consider unacceptable;

**VAT:** value added tax or any equivalent tax chargeable in the UK or elsewhere; and

**You:** means the person entering into the Commercial Agreement as shown on the relevant registration form or Order Form.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time.

1.10 A reference to **writing** or **written** includes fax.

1.11 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.12 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. COMMENCEMENT OF EACH COMMERCIAL AGREEMENT AND TERM

2.1 Each Commercial Agreement shall commence as follows:

- (a) in relation to a TMA Club Agreement, on the date that we send to you [confirmation of your acceptance by TMA];
- (b) in relation to any Services Agreement, on the date that the relevant Order Form has been signed by all the parties.

2.2 Each Commercial Agreement shall, unless terminated earlier in accordance with its terms (including clause 16 of these General Terms and Conditions), continue:

- (a) in relation to a TMA Club Agreement until either party gives the other no less than 1 months written notice; and
- (b) in relation to any Services Agreement until either party gives the other no less than 3 months written notice of termination save that no such notice can be given before the end of any Initial Term.

## 3. TMA'S RESPONSIBILITIES

3.1 TMA shall from the Commencement Date use reasonable endeavours to:

- (a) supply the Services;
- (b) make the Technology available to You;
- (c) use reasonable care and skill in the performance of the Services; and
- (d) use suitably qualified personnel in the provision of the Services.

## 4. FEES AND PAYMENT

### TMA Club Agreement

4.1 In relation to the TMA Club Agreement You accept that Your rewards are based exclusively on Your results. Details on how You earn commissions and fees are set out in the relevant TMA Schedule of Commission and Fees, as updated from time to time by TMA.

4.2 TMA are entitled to update the TMA Schedule of Commission and Fees (or any part) at any time by publishing an updated version of the relevant TMA Schedule of Commission and Fees. When TMA review the TMA Schedule of Commission and Fees TMA will take into account those factors that TMA consider, in its discretion, to be relevant. Where TMA update the TMA Schedule of Commission and Fees the changes shall take effect on the date set out in the updated TMA Schedule of Commission and Fees, or where no such date is set out, the date of the updated TMA Schedule of Commission and Fees.

### *Completed Mortgage Products*

4.3 In relation to Completed Mortgage Products the TMA shall receive all commission and fees applicable to the Completed Mortgage Product paid by the Provider. Notwithstanding any other provision of this agreement TMA shall have no obligation to make a payment to You in relation to any case, application, product or matter unless that case, application, product or matter has completed and the Provider has made a payment to or at the direction of TMA of all amounts due in relation to that case, application, product or matter (the "TMA Payment").

4.4 Subject to clauses 4.6, 4.15 and 4.17, TMA shall pay to You in relation to each Completed Mortgage Product an amount equal to the relevant 'net fee' set out in the TMA Schedule of Commission and Fees (the "Corresponding Payment").

4.5 TMA will make available to You from time to time the amount, or method of calculating of the Corresponding Payment in relation to any case, application, product or matter (whether by showing a table of rates or "retentions", or otherwise).

4.6 TMA will make payment of the Corresponding Payment to You, or credit the Corresponding Payment to You, in accordance with its current payment practices after receipt of the TMA Payment.

### *Completed Insurance Products*

4.7 In relation to any Completed Insurance Products You shall receive the amount due to You from the Provider directly in accordance with the TMA Schedule of Commission and Fees (the “**Insurance Commission Payment**”).

4.8 The timing and method of payment of the Insurance Commission Payment shall be as agreed between You and the Provider and You accept that TMA is not responsible or liable for the payment of the Insurance Commission Payment.

4.9 TMA shall receive payment from the Provider of the amount set out in the TMA Schedule of Commission and Fees in relation to each Completed Insurance Product (the “**TMA Insurance Payment**”).

4.10 You accept that the Insurance Commission Payment may be recoverable, in whole or part, by the Provider (for example where the relevant Insurance Commission Payment is a payment of “indemnity commission” or is made on “indemnity terms” and the policy lapses or is cancelled). You accept that You are solely responsible for the repayment of any such amount. Where TMA receives notice from a Provider of any recovery of the Insurance Commission Payment, TMA shall, where requested by the Provider, repay a pro rata amount of the TMA Insurance Payment.

#### Service Agreement

4.11 You shall pay to TMA the fees set out in the Order Form for each Service Agreement.

4.12 TMA shall be entitled to invoice you in relation to each Service Agreement as set out in the Order Form.

4.13 Where no invoice terms are set out in the Order Form, TMA shall be entitled to invoice You monthly in relation to the Services provided to You in that month.

#### General

4.14 You shall pay all invoices issued by TMA within 30 Calendar Days of the date of the invoice.

4.15 No payment will be made to You unless You have provided all the information required by TMA and the relevant Product has been fully reconciled. Where:

- (a) Information required by TMA (e.g. your bank account details for payment) is outstanding; and/or
- (b) any amount continues to be categorised by TMA as unreconciled;

4.16 If You receive any payment or payments, whether from TMA or directly from a client or a Provider, and such payment or payments include(s) any amount due to TMA (which will be the case if such payment or payments in total exceed(s) the amount due to You under clause 4.4), after deducting from such amount the amount due to You under clause 4.4 You will send the balance to TMA within 30 days. TMA agree that interest will be waived on this amount due provided it is paid within the 30 day period.

4.17 TMA shall be entitled to set off and deduct from any payment to you (including any Corresponding Payment) any amount due to TMA under any agreement that you have with TMA.

4.18 All charges and fees are stated exclusive of VAT which shall be payable in addition where applicable.

4.19 Without prejudice to any other right or remedy that it may have, if You fail to pay TMA any sum due under this agreement on the due date You shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest shall accrue each day at the rate of 4% a year above the Barclays Bank plc base rate from time to time.

4.20 Where any fee or charges are stated as a fixed amount, hourly rate, day rate or similar, TMA shall be entitled to increase those fees and charges annually

on 1 January by an amount equivalent to the percentage increase in the Consumer Prices Index plus 3% since the Commencement Date or the last increase applied under this clause (whichever is the most recent).

4.21 TMA shall not be required to pay to you any amount following the termination of this agreement including, for the avoidance of doubt, any renewal commission or similar payment received by TMA.

## **5. YOUR OBLIGATIONS AND WARRANTIES**

5.1 You shall:

- (a) co-operate with TMA in all matters relating to the Services;
- (b) provide to TMA in a timely manner all documents, information, items and materials in any form (whether owned by You or third party) reasonably required by TMA and ensure that they are accurate and complete;
- (c) ensure that all equipment that You use to access the Services (including access to the Technology) is in good working order and meets all minimum requirements set by TMA in relation to the access and use of the Services and conforms to all relevant United Kingdom standards or requirements;
- (d) ensure that You do not upload any malicious code (applying the widest definition to that term) to the Technology nor upload anything that would breach any Applicable Laws;
- (e) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable TMA to provide the Services in particular maintain Your FCA authorisations and permissions;
- (f) notify TMA immediately where You no longer hold any necessary licence and/or consent required to advise on and/or sell any financial services products;
- (g) notify TMA if You are Associated with any person that is (or would be likely to be considered) an Unacceptable Person;
- (h) ensure that all Providers are permitted by You and Your client to share the relevant Application Information with TMA;
- (i) remain responsible for any clawback of Your payments under the terms of business entered into with any Provider;
- (j) meet any performance requirements that TMA determines are relevant to the receipt of the Services from time to time (including, for example minimum persistency levels for Insurance Products); and
- (k) only permit named users to access any Services and ensure that access details (including log on details) are not shared with unauthorised users.

5.2 You warrant (on an ongoing basis) that:

- (a) all information provided about You and any person Associated with You (including during the registration and on-boarding process) is complete, truthful, accurate and is not misleading;
- (b) You are not, and have not, been subject to an investigation or disciplinary process by the FCA; and
- (c) You are not, and have not, been subject to any investigation or disciplinary process by any Provider and have not been prohibited by any Provider from advising on or selling any of that Provider’s products.

5.3 You shall notify us immediately if, at any time, you are in breach of any of the warranties in clause 5.2 and You indemnify TMA against any losses, expenses

and costs that TMA incurs as a result of any breach by You of a warranty in clause 5.2.

## **6. TMA CLUB AND TECHNOLOGY**

6.1 From the Commencement Date You shall be entitled to submit applications for relevant products in accordance with TMA requirements (as made available by TMA from time to time) as a member of the TMA club.

6.2 You accept that where you have registered with TMA to access Non-Investment Insurance Contracts from Providers on the TMA Panel, TMA is entitled to register your 'agency' with those Providers under TMA's account with those Providers. You shall provide TMA with all information that it requires to register such 'agency'. You undertake to inform TMA when you change or seek to change your 'agency' registration with any TMA Panel Provider without first having given written notice to TMA that you intend to move your 'agency'.

6.3 Where TMA provides Technology to You, You have a non exclusive, non transferrable, personal right to use and access such Technology only in relation to the receipt of the Services and only as specifically set out by TMA in writing. All Technology supplied by TMA is provided 'as is' without any warranty as to the suitability, availability or

6.4 You shall not use or access the Technology that TMA provide other than as TMA have set out to You.

6.5 You accept that your right to use the Technology expressly excludes any of the following to the maximum extent permitted by law:

- (a) copying, reproducing, publishing, distributing, redistributing, broadcasting, transmitting, modifying, adapting, editing, abstracting, storing, archiving, displaying publicly or to third parties, selling, licensing, leasing, renting, assigning, transferring, disclosing (in each case whether or not for charge) or in any way commercially exploiting any part of any Technology (including any associated documentation);
- (b) permitting any use of any Technology in any manner by any third party (including permitting use in connection with any timesharing or service bureau, outsourced or similar service to third parties or making any Technology (or any part, including any associated documentation) available to any third party or allowing or permitting a third party to do any of the foregoing);
- (c) combining, merging or otherwise permitting any Technology to become incorporated in any other program or service, or arranging or creating derivative works based on it (in whole or in part); or
- (d) attempting to reverse engineer, observe, study or test the functioning of or decompile the Technology (or any part),

except as expressly permitted under the Commercial Agreement.

6.6 All Technology that TMA provide are supplied on an 'as is' basis and TMA do not warrant the availability of such Technology or that the Technology will be uninterrupted or error free.

6.7 Technology User Terms may apply to Technology supplied to You which TMA will set out in documentation associated with that Technology. Those specific terms and conditions shall be incorporated into this agreement as described in the Introduction above.

6.8 TMA are entitled to change, modify, update and replace any Technology at any time without notice to You and TMA shall be entitled to terminate any licence and/or right to use Technology immediately (or on such longer notice as TMA considers appropriate) at any time by giving notice to You.

6.9 Where TMA provide You with the use of Technology You shall pay all associated fees set out by TMA.

6.10 TMA may agree with You continued access and/or use of Technology following the termination of this Agreement, subject to agreeing any associated fees and charges. Where TMA agree such arrangement with You this clause shall survive termination of the Agreement.

## **7. FINANCIAL SERVICES ADVICE**

7.1 You warrant to TMA that you are, and shall remain, directly authorised by the FCA and have permission from the FCA to advise and sell all products that you are able to access through the TMA Club Agreement.

7.2 You and TMA agree that TMA is not providing any service that would be considered a regulatory activity under FSMA or providing a financial promotion under FSMA.

7.3 The parties agree that in relation to all financial services (including advice on products and the product itself) provided to any of Your customers, You shall be responsible for ensuring that it complies with the Applicable Laws and all regulatory requirements applying to the provision of the financial services.

7.4 In the event that TMA receives any complaint or contact from a customer of You in relation to any financial service provided to that customer of You, TMA shall, as soon as practicable, refer that complaint or contact to You and provide all reasonable assistance to You in responding to the complaint or contact.

7.5 You undertakes at Your own expense to defend TMA or, at its option, settle any claim or action brought against TMA from any client of You in relation to the provision of financial services and shall be responsible for, and indemnify TMA against, any losses, damages, costs (including legal fees) and expenses incurred by or awarded against TMA as a result of or in connection with any such claim.

## **8. RELATIONSHIP SUPPORT**

8.1 Where TMA considers it appropriate TMA may provide relationship support to You. The form and extent of relationship support provided by TMA shall be determined solely by TMA.

## **9. 3<sup>RD</sup> PARTY SUPPLIERS**

9.1 TMA may market 3<sup>rd</sup> party suppliers and their products and services to You. TMA may also introduce you, or refer You, to 3<sup>rd</sup> party suppliers. The 3<sup>rd</sup> party suppliers are independent businesses and not connected to TMA. TMA has however negotiated exclusive pricing that You will be able to access in relation to the 3<sup>rd</sup> party supplier's products and services.

9.2 TMA may make introductions and/or referrals to 3<sup>rd</sup> party suppliers in any way that it considers appropriate including via links on the TMA website.

9.3 Where you want to receive services and/or products from a 3<sup>rd</sup> party supplier You shall enter into an agreement directly with the 3<sup>rd</sup> party supplier. TMA shall not be responsible for any products and/or services that you have agreed to purchase with the 3<sup>rd</sup> party supplier.

9.4 Where you purchase products and services from 3<sup>rd</sup> party suppliers following marketing by TMA or pursuant to an introduction or referral by TMA, the 3<sup>rd</sup> Party Supplier is entitled to appoint TMA to collect the fees due to the 3<sup>rd</sup> party supplier.

9.5 Where TMA is instructed by a 3rd party supplier to collect payment for its services and products from You, TMA shall be entitled to deduct from any amounts due to You, such amount as is due to that 3rd party supplier and to pay that amount to the 3rd party supplier in settlement of any amounts that You owe to that 3rd party supplier. You agree that TMA is entitled to rely upon notice from the 3rd party supplier in relation to any amount that should be paid to the 3rd party supplier and TMA shall have no obligation to validate or seek your confirmation of amounts claimed by the 3rd party supplier. You agree that where any issue, dispute, inaccuracies or errors arises in relation to the amount paid or the services received subject to TMA providing to You confirmation of the payments that TMA have made to the 3rd party supplier, TMA shall have no

liability to You or the 3rd party supplier and shall not be involved in any associated dispute.

9.6 Notwithstanding any marketing, introduction or referral by TMA, You accept that it is your responsibility to determine whether or not the 3<sup>rd</sup> party supplier's product and/or service is appropriate for You and Your requirements and TMA shall not have any liability to You in relation to the services and products supplied by the 3<sup>rd</sup> party supplier.

## 10. INTELLECTUAL PROPERTY RIGHTS

10.1 You acknowledges that all Intellectual Property Rights in the Services (including the Technology and any documentation provided by TMA) belong and shall belong to TMA or the relevant third-party owners (as the case may be), and You shall have no rights in or to the Services (including the Technology and any documentation provided by TMA) other than the right to use it in accordance with the terms of the licence set out at clause 6 or such other licence provided in writing by TMA.

10.2 To the extent that You, any of Your Associates or any person acting on its or their behalf acquires any Intellectual Property Rights in the Technology or any other part of the Services, You shall assign or procure the assignment of such Intellectual Property Rights with full title guarantee (including by way of present assignment of future Intellectual Property Rights) to TMA or such third party as the Supplier may elect. You shall execute all such documents and do such things as the Supplier may consider necessary to give effect to this clause 10.2.

10.3 You may be able to store or transmit your data (including your client's data) using the Technology or receiving the Services. You hereby grant a royalty-free, non-transferable, non-exclusive licence for TMA (and each of its direct and indirect sub-contractors) to use, copy and otherwise utilise that data to the extent necessary to perform or provide the Services or to exercise or perform the TMA's rights, remedies and obligations under the Commercial Agreement.

10.4 TMA undertakes at its own expense to defend You or, at its option, settle any claim or action brought against You alleging that the use of the Technology (or any part thereof) in accordance with the terms of the licence at clause 6 infringes the Intellectual Property Rights of a third party (a "**Technology IP Claim**") and shall be responsible for, and indemnifies You against, any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against You as a result of or in connection with any such Technology IP Claim. For the avoidance of doubt, clause 11.3 shall not apply where the Technology IP Claim in question is attributable to use of the Technology (or any part thereof) by You other than in accordance with the terms of this Agreement, use of the Technology and/or the Services in combination with any hardware or software not supplied or specified by TMA if the infringement would have been avoided by the use of the Technology and/or Services not so combined, or use of a non-current release of the Technology.

10.5 If any third party makes a Technology IP Claim, or notifies an intention to make a Technology IP Claim against You, You shall:

- (a) as soon as reasonably practicable, give written notice of the Technology IP Claim to TMA, specifying the nature of the Technology IP Claim in reasonable detail;
- (b) not make any admission of liability, agreement or compromise in relation to the Technology IP Claim without the prior written consent of TMA (such consent not to be unreasonably conditioned, withheld or delayed);
- (c) give TMA and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of You, so as to enable TMA and its professional advisers to examine them and to take copies (at TMA's expense) for the purpose of assessing the Technology IP Claim; and

- (d) subject to TMA providing security to You to You's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as TMA may reasonably request to avoid, dispute, compromise or defend the Technology IP Claim.

You warrants that all Intellectual Property Rights in the trade marks and brands of You and any other information, document or material supplied by You ("**Firm IP**") may be used by TMA to perform its obligations under this Agreement.

10.6 You grants TMA a royalty-free, worldwide, non-exclusive licence to use its Intellectual Property Rights in the Firm IP for the provision of the Services and in communications with lenders and clients for the purpose of the Services together with any marketing activity carried out by TMA.

10.7 You undertakes at Your own expense to defend TMA or, at its option, settle any claim or action brought against TMA alleging that the possession of the Firm IP or use of the Firm IP infringes the Intellectual Property Rights of a third party ("**Firm Brand IP Claim**") and shall be responsible for, and indemnifies TMA against, any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against TMA as a result of or in connection with any such Firm Brand IP Claim.

## 11. COMPLIANCE WITH LAWS AND POLICIES

11.1 In performing its obligations under this agreement, TMA shall comply with the Applicable Laws that apply to the provision of the Services.

11.2 You shall at all times comply with:

- (a) the Applicable Laws; and
- (b) TMA Policies.

## 12. DATA PROTECTION

12.1 Each of the parties shall comply with their respective obligations, and may exercise their respective rights and remedies, set out in the Data Protection Schedule.

## 13. CONFIDENTIALITY

13.1 Each party undertakes that it shall not at any time disclose to any person any Confidential Information of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause [14.2](#).

13.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority (including any listing authority).

13.3 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

## 14. LIABILITY

14.1 References to liability in this clause include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

14.2 Nothing in this Commercial Agreement limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

14.3 Nothing in this agreement shall limit Your liability under:

- (a) clause 11.7 (Firm IPR Indemnity)
- (b) clause 7.4 (Financial Services Indemnity).

14.4 Nothing in this agreement shall limit TMA's liability under clause 11.3 (Technology IPR Indemnity).

14.5 TMA has no liability to You or any other person for any advice given by You as a result of receiving the Services and/or as a result of You advising on or selling any Financial Services Products arising under or in connection with this agreement.

14.6 Subject to clause 15.2, TMA's total aggregate liability to You within any calendar year shall not exceed:

- (a) For the TMA Club Agreement, the greater of £10,000 and the amount of Fees received by TMA in the previous calendar year; or
- (b) For each Services Agreement, the amount of Fees that are payable to TMA under the Services Agreement in that calendar year.

14.7 Subject to clause 15.2 and clause 15.3, neither party shall be liable for indirect or consequential loss.

14.8 Unless You notify TMA that You intend to make a claim in respect of an event within the notice period, TMA shall have no liability for that event. The notice period for an event shall start on the day on which You became, or ought reasonably to have become, aware of the event having occurred and shall expire 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

14.9 If TMA's performance of its obligations under this agreement is prevented or delayed by any act or omission of You, Your agents, subcontractors, consultants or employees, then, subject to clause 14.2 TMA shall have no liability to You for that delay or non-performance. In addition, TMA shall be entitled to payment of any losses and/or expenses that TMA suffers as a result of the act or omission.

## 15. TERMINATION

15.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole

purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (d) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (g) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.1(b) to clause 16.1(i) (inclusive); and/or
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

15.2 Without affecting any other right or remedy available to it, TMA may terminate this agreement with immediate effect by giving written notice to You if:

- (a) You fail to pay any amount due to the TMA;
- (b) any Provider notifies the TMA that it will no longer accept applications from You;
- (c) the proportion of Completed Insurance Products that are cancelled and/or lapse within any clawback period exceeds a level that is acceptable to the TMA;
- (d) You cease to be authorised by the FCA;
- (e) You are an individual or a partnership, and You or any of the partners in the partnership is the subject of an interim order or has a statutory demand served upon You or any of them under the Insolvency Act 1986 or has a bankruptcy petition presented in respect of You or any of them;
- (f) You undergo a change of Control; and/or
- (g) if TMA considers that You are Associated in any way with any Unacceptable Person.

15.3 TMA may suspend all or part of the Services at any time where you are in breach of any of the terms of the Commercial Agreement (including where You

have not paid any amount due in full) and/or where it would otherwise have a right to terminate the Commercial Agreement.

## 16. CONSEQUENCES OF TERMINATION

16.1 On termination or expiry of this agreement You shall immediately pay to TMA all of TMA's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, TMA may submit an invoice, which shall be payable immediately on receipt.

16.2 On termination or expiry of this agreement, the following clauses shall continue in force: 1, 7, 9, 10, 12, 13, 14, 16, 18, 20, 22, 25, 26, 27 and 28. Any other clause expressly stated to continue following termination shall also survive termination.

16.3 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

## 17. FORCE MAJEURE

17.1 **Force Majeure Event** means any circumstance not within a party's reasonable control.

17.2 Provided it has complied with clause 17.4 and subject to clause 17.6, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

17.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

17.4 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

17.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 15 Business Days, the party not affected by the Force Majeure Event may terminate this agreement by giving 15 Business Days' written notice to the Affected Party.

17.6 You accept that you cannot claim a Force Majeure Event has prevented the payment of any amount due under this agreement.

## 18. ASSIGNMENT

18.1 This agreement is personal to You and You shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

18.2 TMA may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this agreement. TMA is entitled to novate this agreement to any other company in the same group as TMA by giving you written notice. You shall enter into any document required by TMA in order for TMA to exercise its rights in this clause.

18.3 TMA is entitled to subcontract any part of the Services and to appoint such service providers as it considers appropriate to support the delivery of the Services.

## 19. VARIATION

19.1 TMA is entitled to update these General Terms and Conditions at any time where it considers it necessary to comply with any Applicable Laws or where TMA considers it appropriate for other commercial reasons.

19.2 Where TMA updates its General Terms and Conditions it shall publish the updated General Terms and Conditions and they shall apply from the date of publication unless TMA states otherwise in the published update.

19.3 Subject to TMA's right to unilaterally vary this agreement, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## 20. WAIVER

20.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

20.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## 21. SEVERANCE

21.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

21.2 If any provision or part-provision of this agreement is deemed deleted under clause 21.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## 22. ENTIRE AGREEMENT

22.1 This agreement (as described in the Introduction) together with any Technology User Terms constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

22.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

## 23. NO PARTNERSHIP OR AGENCY

23.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

23.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## 24. THIRD PARTY RIGHTS

24.1 Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

24.2 The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.

## 25. NOTICES

25.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post

or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

25.2 A notice given under or in connection with this agreement is not valid if sent by email except for the purposes of termination as set out in clause 15 (**Termination Notice**). A Termination Notice given to a party under or in connection with this agreement shall be in writing and may be sent via email to the following address:

- (a) TMA: customerservices@tmaclub.com
- (b) You: at the email address indicated on your relevant Registration Form.

25.3 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address; or
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.
- (c) If sent by email at the time of transmission, or if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 25, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

25.4 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

25.5 A notice given under this agreement is not valid if sent by email.

## 26. DISPUTES

26.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the relationship manager of You and relationship manager of TMA shall attempt in good faith to resolve the Dispute;
- (b) if the relationship manager of You and the relationship manager of TMA are for any reason unable to resolve the Dispute within [30] days either party shall be entitled to issue proceedings to resolve the Dispute.

26.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 28 which clause shall apply at all times.

## 27. GOVERNING LAW

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

## 28. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.



## DATA PROTECTION SCHEDULE

### Definitions and Interpretation

In this Schedule the following words and expressions have the following meanings:

<b>“Data Protection Schedule “</b>	this data protection schedule, including its appendices
<b>“Data Protection Legislation”</b>	all legislation and regulations relating to the protection of personal data including the Data Protection Act 2018, the GDPR, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all other industry guidelines and codes of practice issued by any Regulatory Body, in each case as amended from time to time
<b>“Data Security Standards”</b>	the minimum standards of security to be applied to the storage, transfer or transmission of Personal Data including, but not limited to, those set out in TMA’s Policy
<b>“GDPR”</b>	has the meaning given to UK GDPR in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018
<b>“Losses”</b>	all damage, losses (including loss of profit or loss of revenue), liabilities, claims, actions, costs, expenses (including the costs of legal or professional services, costs incurred in dealing with any enhanced supervisory or enforcement action from any Regulatory Body and legal costs being on a paid basis), proceedings, demands and charges whether arising under contract, statute or at common law and including, in all cases and to the extent permitted by law, fines imposed or levied by any Regulatory Body
<b>“Protected Data”</b>	means Personal Data received from or on behalf of You in connection with the performance of TMA’s obligations under this Agreement
<b>“TMA Privacy Notice”</b>	privacy notices published by TMA from time to time as they relate to either the processing of (1) customer data or (2) other personal data that may be processed by TMA in the course of giving effect to, or performing its obligations under, the Commercial Agreement
<b>“Regulatory Body”</b>	any organisation, authority, office, firm or other person carrying out any supervisory or regulatory function in relation to compliance by Us and/or You with the Data Protection Legislation including the Office of the Information Commissioner and the FCA (to the extent that such applies to the processing or security of personal data)

and **Controller, Data Subject, Personal Data, Process/Processed/Processing** and **Processor** shall have the meanings given to those terms in the Data Protection Legislation

### Compliance with Data Protection Laws

1.1 The parties agree that You are a Controller and that TMA is a Processor for the purposes of processing Protected Data pursuant to this agreement. You shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. You shall ensure all instructions given by You to TMA in respect of Protected Data (including the terms of this agreement) shall at all times be in accordance with all Data Protection Laws. Nothing in this Agreement relieves You of any responsibilities or liabilities under any Data Protection Laws.

1.2 TMA shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of this agreement.

1.3 You shall indemnify and keep indemnified TMA against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by You of Your obligations under this paragraph 1.

### Instructions

1.4 The parties agree:

1.4.1 TMA shall only process the Protected Data in accordance with the Appendix and this Agreement (including with regard to any transfer to which paragraph 1.11 relates), except to the extent:

(a) that alternative processing instructions are agreed between the parties in writing; or

(b) otherwise required by applicable law (and shall inform You of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest); and

1.4.2 if TMA believes that any instruction received by it from You is likely to infringe the Data Protection Laws it shall be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing.

#### **Security**

1.5 TMA shall implement and maintain such technical and organisational measures as it considers appropriate to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.

#### **Sub-processing and personnel**

1.6 You provide general authorisation to TMA's use of sub-processors to provide processing activities on the Protected Data on behalf of You.

1.7 The details of TMA's current sub-processors are available from TMA on request. In line with Article 28(2) of GDPR You have the opportunity to object to changes in sub-processors. The appointment of any sub-processor shall not relieve TMA of its obligations under this agreement.

1.8 TMA shall ensure that where it appoints any Processor that Processor is subject to contract obligations as required by Article 28(4) of GDPR;

#### **Assistance**

1.9 TMA shall (at Your cost and expense):

1.9.1 assist You in ensuring compliance with Your obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of the processing and the information available to TMA; and

1.9.2 taking into account the nature of the processing, assist You (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of You's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR in respect of any Protected Data.

1.10 TMA shall at Your cost and expense refer to You all requests it receives for exercising any Data Subjects' rights under Chapter III of the GDPR which relate to any Protected Data. It shall be You's responsibility to reply to all such requests as required by applicable law.

#### **International transfers**

1.11 You authorise the international transfer of Protected Data where it is reasonably necessary for the performance of the Services or where it is necessary for TMA's compliance with Applicable Laws.

#### **Audits and processing**

1.12 TMA shall, in accordance with Data Protection Laws, make available to You on request such information that is in its possession or control as is necessary to demonstrate TMA's compliance with the obligations placed on it under this paragraph and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR.

#### **Breach**

1.13 TMA shall notify You without undue delay and in writing on becoming aware of any Personal Data Breach in respect of any Protected Data.

#### **Deletion/return and survival**

1.14 On the end of the provision of the Services relating to the processing of Protected Data (the **Processing End Date**), at Your cost and expense and Your option, TMA shall either return all of the Protected Data to You or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law or policy of TMA requires TMA to store such Protected Data.

1.15 This paragraph shall survive termination or expiry of this Agreement:

1.15.1 indefinitely in the case of paragraph 1.3 and 1.14; and

1.15.2 in the case of all other provisions of this paragraph, until the later of:

(a) the termination or expiry of this Agreement; or

(b) return or secure deletion or disposal of the last of the Protected Data in TMA's (or any of its Sub-Processor's) possession or control in accordance with this Agreement.

## APPENDIX – DATA PROCESSING DETAILS

Processing of the Protected Data by TMA under this Agreement shall be for the subject-matter, duration, nature and purposes and involve the types of Personal Data and categories of Data Subjects set out in this Appendix.

### **Subject matter and duration of the Processing of the Personal Data**

The subject matter of the Processing of the Personal Data is to give effect to the terms of the agreement, in particular, to enable the Parties to carry out their respective roles of mortgage and protection club and directly authorised firm, the details in relation to which are more particularly set out in the agreement.

The duration of the Processing of Personal Data is the term of the agreement or such longer period as required under a parties regulatory responsibility, applicable laws, data retention policies or where the party may have any legal liability to the other or third parties.

### **The nature and purpose of the Processing of the Personal Data:**

The process of inputting of any data onto Technology and the application to lender or provider and receipt of fees as a result of product sales and all administration activities carried out in connection with or ancillary to such tasks.

### **The types of the Personal Data to be Processed**

#### Customer Data:

- Title, names, date of birth, gender, nationality, civil/marital status, contact details, addresses and documents that are necessary to verify customer identity;
- Employment and remuneration information, (including salary/bonus schemes/overtime/sick pay/other benefits), employment history;
- Bank account details, tax information, loans and credit commitments, personal credit history, sources of income and expenditure, family circumstances and details of dependents;
- Health status and history, details of treatment and prognosis, medical reports;
- Any pre-existing mortgage and/or insurance products and the terms and conditions relating to these;
- Records of marketing preferences or objections; and
- Website data including IP addresses, geo location markers and browser generated information.

### **The categories of Data Subject to whom the Personal Data relates**

Your Customers and potential customers in relation to the use of, the financial advisory services provided by You.