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## Terms of Business AN AGREEMENT BETWEEN

The Broker **INSERT YOUR FIRM NAME**

Address **INSERT YOUR ADDRESS**

.....

.....

.....

The Client

.....

.....

Address

.....

.....

.....

.....

### Defined terms

<b>The Agreement</b>	<b>Means the agreement by and between The Broker and The Client, that comprises these terms and conditions.</b>
<b>Appraisal Fee</b> <b>DELETE SECTION IF NOT APPLICABLE</b>	The fee set out in clause 3.1 below
<b>Arrangement Fee</b>	The Fee set out at clause 3.2 hereof
<b>Completion</b>	The date any Finance Agreement with a Lender becomes effective following a Lending Proposal
<b>Credit Broking Services</b>	The Services Which We provide to You under this Agreement
<b>Commission</b>	A sum of money that is paid upon completion of a task from a Lender
<b>Commencement of this Agreement;</b>	The date on which We commence providing Credit Broking to
<b>Confirmation of Instructions Letter</b>	A confirmation that You instruct the Broker to engage with Brokering services
<b>Fee, Fees</b>	The Appraisal Fee, the Broker Arrangement Fee or the Renewal Fee as the case may be
<b>Financial Conduct Authority</b>	The conduct regulator for financial services firms and financial markets in the UK and the prudential supervisor
<b>Finance Agreement</b>	A loan, credit or hire agreement

**YOUR COMPANY NAME** is an Appointed Representative of Optimum ELITE, a trading name of Optimum Commercial Solutions Limited, which is authorised and regulated by the Financial Conduct Authority (FCA). The FCA is the independent watchdog that regulates financial services

Optimum Commercial Solutions Limited is included on the Financial Services Register under registration number 808754. You can check this via the FCA website [www.fca.org.uk](http://www.fca.org.uk) or by calling them on 0800 111 6768

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<b>Finance Offer</b>	A written offer setting out proposed terms of finance issued by any Lender whether such offer is conditional or unconditional or any replacement thereof
<b>Finance Product</b>	Is an instrument in which a person can either: make a financial; borrow money; or. save money
<b>Financial Services Register</b>	The register helps consumers to confirm the authenticity and contact details of regulated financial services firms
<b>Home Finance Plan</b>	A regulated mortgage contract, home purchase plan, home reversion plan or regulated sale and rent back agreement.
<b>Lender, Lenders</b>	Any lender to whom the Lending Proposal is presented
<b>Lending Proposal</b>	The proposal prepared by Us setting out the requirements recorded in the Confirmation of Instructions provided in accordance with paragraph 1 of the attached Terms and Conditions as varied from time to time
<b>Loan Amount;</b>	The sum of any amounts payable by a Lender to You following the issue of a Finance Offer by that lender which has been accepted by You
<b>Parties to The Agreement</b>	A party to a contract is one who holds the obligations and receives the benefits of a legally binding agreement
<b>Privacy Notice</b>	The Notice provided to You about how We process Your Personal Data
<b>Regulated Mortgage Contract;</b>	<p>A contract which, at the time it is entered into, satisfies the following conditions:</p> <p>(1) the contract is one where a lender provides credit to an individual or trustees (the 'borrower');</p> <p>(2) the contract provides for the obligation of the borrower to repay to be secured by a mortgage on land in the EEA; and</p> <p>(3) at least 40% of that land is used, or is intended to be used, as or in connection with a dwelling.</p>

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<b>Renewal Fee</b> <b>DELETE THIS SECTION IF NOT APPLICABLE</b>	The Fee set out in clause 3.3 below
<b>Contract</b>	A written agreement that is intended to be enforceable by law.
<b>Funding Structure</b>	The mix of debt and equity that a company uses to finance its operations
<b>Suitability Letter</b>	A report outlining a Brokers recommendation as to which provider they feel is most suitable, responsibilities, postponement, implementation plans and next steps.
<b>The Code</b>	The Code of practice of the National Association of Commercial Finance Brokers.
<b>The Broker</b>	[insert firm's full legal name, as registered with Companies House and/or the FCA]
<b>The Ombudsman</b>	The Financial Ombudsman Service, Exchange Tower, London, E14 9SR
<b>The Regulated Activities Order</b>	The Financial Services and Markets Act 2000(Regulated Activities) Order 2001
<b>Unsecured Lending</b>	A loan that is issued and supported only by the borrower's creditworthiness, rather than by any type of collateral
<b>We, Our, Us;</b>	The Broker as referred to above
<b>You, Your;</b>	The Client as referred to above

## 1. Appointment of the Broker

- 1.1 This document sets out how We will deal with You in the provision of Credit Broking Services. We will start providing Credit Broking Services, and The Agreement will be dated, once We and You have signed The Agreement. This date will be the Commencement of The Agreement.

## 2. Standards Statement

- 2.1 **YOUR COMPANY NAME** is an Appointed Representative of Optimum ELITE, a trading name of Optimum Commercial Solutions Limited, which is authorised and regulated by the Financial Conduct Authority (FCA). The FCA is the independent watchdog that regulates financial services.

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- 2.2 **YOUR COMPANY NAME** is a member of the National Association of Commercial Finance Brokers (NACFB). We adopt a strict Code of Practice and Minimum Standards set by the Association. You can check Our membership status by contacting the NACFB on the below link.

<https://www.nacfb.org/>

## 3. Appraisal and Arrangement Fees

### 3.1 Appraisal Fee - **DELETE SCETION IF NOT APPLICABLE**

In consideration of the appointment, You will pay to The Broker an Appraisal Fee of £ [XX.XX] for the purposes of assessing and preparing the Lending Proposal; the Appraisal Fee shall be paid on the Commencement of The Agreement.

### 3.2 Arrangement Fee

At the point the Finance Offer is made by a Lender to whom We presented the Lending Proposal, You will pay **in addition to the Appraisal Fee in clause 3.1, (DELETE IF NOT APPLICABLE)**, The Broker an Arrangement Fee of [£XX] % of the Loan Amount. Payment of the Arrangement Fee shall be made within 14 days of the date of issue of the Finance offer by that Lender.

The Arrangement Fee is payable once a Finance Offer has been presented to You although this can be paid on drawdown of the Finance if preferred.

**CARE – DELETE THIS SECTION BELOW IF UNREGULATED BUSINESS**

### 3.3 Refund of Fees etc

#### 3.3.1 Unless the Lending Proposal comprises an application for a Regulated Mortgage Contract or Home Finance Plan (as defined by the Regulated Activities Order), You may be entitled to a refund if:

(a) You do not enter into any other Finance Agreement within a period of 6 months commencing on the date We submit a Lending Proposal, or if there is more than one Lending Proposal submitted by Us, the first Lending Proposal; or

(b) within the period referred to in (a) You accept a Finance Offer and enter into a Finance Agreement but exercise a right to withdraw under section 66A of the Consumer Credit Act 1974 or a right to cancel under section 69 of the Consumer Credit Act 1974:

then We shall refund the [Appraisal Fees / Arrangement Fee] paid under this Agreement less £5.00 in accordance with clause 3.3.2

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3.3.2 If clause 3.3.1 of this agreement applies then the refund shall be paid by Us within 30 days of the end of the period referred to in 3.3.1. (a) above or the date upon which it is clear to Us that the Finance Offer will not proceed to Completion whichever is sooner.

3.3.3 If the circumstances referred to in clause 3.3.1 apply, and Fees have become due, they will cease to be payable.

3.3.4 For the avoidance of doubt, no Fees are refundable, or cease to be payable, if the Lending Proposal comprises a Regulated Mortgage Contract or Home Finance Plan.

## 4 Client Acknowledgement

4.1 You acknowledge that:

4.1.1 You have been urged to seek such independent advice as You consider necessary before signing The Agreement;

4.1.2 We source Lending Proposals from an unrestricted number of Lenders.

4.1.3 We may receive Commission from the Lender as well as receiving Fees separately from You pursuant to clause 3.1, 3.2 and 5.1 of The Agreement; for the avoidance of doubt these sums are subject to the terms of Our arrangements with the Lender who pays that Commission.

4.1.4 You have read The Brokers terms and conditions set out below and agree that they form part of this agreement.

4.2 You consent that; You agree to pay the Fees.

4.21 You are aware that We may receive Commission from a Lender for the arrangement of The Agreement and You have no objections to Us receiving this amount.

4.22 You are aware that We are required to disclose the nature of Commission in Our communications, as well as when making a recommendation to You. The existence and nature of Commission arrangements where the Commission varies depending on the Lender, product or other permissible factors will always be disclosed. The disclosure will also cover how the arrangements could affect Our recommendations to You. Such disclosures will be made in Our Suitability Letter issued to You.

## 5 Renewal of this Agreement

5.1 The Agreement continues for a period of six months from the date We first submit a Lending Proposal for You at which stage, should You by then have not entered into a Finance Agreement, it

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will lapse. **DELETE FOLLOWING TEXT IF NOT REGULATED OR APPLICABLE** Should You then wish to continue receiving Credit Broking Services, after We have refunded any Fees payable by You under clause 4 above, you may request that We renew it upon payment of the Renewal Fee to The Broker of £ [xxx]. The Renewal Fee will be refunded by Us in the same circumstances and on the same conditions as is set out in clause 3.3 above.

5.2 Should the Agreement be renewed under this clause, it will continue the same terms, subject to the terms of this clause, save that;

5.3 The Renewal Fee will be payable in place of the Appraisal Fee.

5.4 The Arrangement Fee will become payable, or repayable, (if already refunded pursuant to clause 3.3), on the making of any new Finance Offer, or if a Finance Offer previously made, for which the Appraisal Fee has been refunded, has resulted in a Finance Agreement being signed by You but will be subject to the same terms as to repayment as are set out in clause 3.3.

**Signed** .....  
(The Broker/an authorised Officer for and on behalf of the of The Broker)

**Dated** The .....day of .....

**Signed** .....  
(The Client [a duly authorised partner/Director] for and on behalf of the client)

**Dated** The .....day of .....

## BROKERS' TERMS AND CONDITIONS

### 1. Confirmation of Instructions

- 1.1. Before signing The Agreement, The Broker will complete a Confirmation of Instructions (see below instructions) which shall be read and take effect as if they form part of The Agreement. .  
**CARE – COMPLETE THE INSTRUCTIONS BOX ON PAGE 6 AT FOOT OF THESE TERMS.**
- 1.2. Any change to or variation of the Instructions will not affect the liability of the Client to pay any Fee pursuant to The Agreement.

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## 2. Your duty to Us

- 2.1. The Client agrees to be act with utmost good faith in the provision of information to The Broker. The duty is continuous and applies to all the information the Client provides, whether The Broker has asked for it or whether The Client has provided it voluntarily. The Client agrees not to withhold information from the Broker.
- 2.2. The Client agrees to take all reasonable steps and use all reasonable endeavours to comply with and satisfy any condition imposed by the Lender who has made a Finance Offer that accords with the requirements set out in the Confirmation of Instructions letter.
- 2.3. The client agrees to notify the Broker if at any time, they intend to appoint an additional or alternate Broker or intermediary to obtain an offer of finance for them whereupon The Broker will be entitled to terminate this Agreement forthwith.
- 2.4. If the Client fails to notify The Broker that they intend to appoint an alternate or additional Broker or intermediary prior to doing so and if an Offer of Finance is obtained from any Lender the Client will pay the Arrangement Fee calculated by reference to the Finance Offer made but otherwise in accordance clause 3.2 of the Agreement to the Broker.

## 3. Introductory Commission

- 3.1. The Lender may pay The Broker introductory commission in respect of the funding set out in the Finance Offer. If commission is to be paid, and the amount of commission is known to The Broker prior to acceptance of the Finance Offer, The Client will be informed that commission will be paid.
- 3.2. Commission paid to The Broker may vary in amount depending on the Lender or product. Where the nature of any financial arrangement, including the amount of commission or any other type of remuneration is known, in advance of The Broker promoting or recommending a particular Lender or Finance Product, this information will be disclosed to You.
- 3.3. The Client having acknowledged the matters set out under the Client Acknowledgment consents to The Broker receiving and retaining any commission paid.

## 4. Termination

- 4.1. The Broker may terminate the Agreement by giving 14 days written notice to The Client.

## 5. National Association of Commercial Finance Brokers – The Code

- 5.1. The Broker agrees to act on behalf of the Client in accordance with the terms of the Code of Practice of the National Association of Commercial Finance Brokers (NACFB) as amended (the Code) and a copy of the Code is available on request from the Association or on the NACFB website [www.nacfb.org](http://www.nacfb.org)

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5.2. The Broker will investigate and deal with any complaints raised by The Client concerning the services provided under The Agreement promptly and reasonably but if The Broker is unable to resolve any complaint to The Client's satisfaction the Code of Practice stipulates the procedures available to The Client including NACFB Mediation.

5.3. If The Client is unhappy with The Broker's response to their complaint, and the complainant falls within the regulated activities, they may be able to complain to the Financial Ombudsman Service at:

**Address:** Financial Ombudsman Service, Exchange Tower, London, E14 9SR.

**Contact:** 0800 0234567, 0300 1239123.

**Website:** [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

5.4. The Ombudsman will be able to confirm whether he can look at the complaint. If The Client is entitled to make a complaint to the Ombudsman, then they are not bound to follow any alternative procedure and can make their complaint to the Ombudsman within the timescales set down by the rules applicable to that scheme, details of which will be provided to the Client by Us on request.

## 6. Amendments

6.1. Any amendment whether proposed by The Broker or The Client shall be notified in writing to the other party. Any amendment proposed by the Broker shall take effect on the date specified unless in the meantime The Client notifies The Broker to the contrary or requests an extension of time. Any amendment proposed by The Client shall take effect when accepted by The Broker in writing.

## 7. Privacy Notice and Data Protection

7.1. A Privacy Notice has been issued separately from the Terms of Business. Being transparent and providing accessible information to individuals about how We will use Your personal data is a key element of the EU General Data Protection Regulation (GDPR)

7.2. This Privacy Notice details;

lawful bases for processing data, who We are, how We use the information about You, marketing consent, what information is collected, why the personal data is required, Our data retention periods and individuals' rights to personal data. More detailed information can be obtained on request.

7.3. You must be confident You understand how Your data will be processed. If You require further clarification, please contact Us before entering into an Agreement.

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7.4. If You have not received or seen the Privacy Notice, Contact Us before confirming to this agreement.

## 8. Assignments and third-party rights

8.1. This Agreement is personal to The client and a person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

## 9. Professional Indemnity

9.1. The Broker will maintain professional indemnity insurance cover in respect of its business with and on standard terms offered by reputable insurers.

## 10. Exclusions

10.1. The Client accepts that The Broker shall have no liability for any economic loss (whether direct, indirect or consequential) insofar as it relates in any way to loss of business, loss of Client data, interruption of business or loss of profits or goodwill because of the manner of performance by The Broker of any obligations arising under The Agreement. This exclusion of liability will not, however, otherwise affect any statutory rights of The Client.

## 11. Choice of Law

11.1. The Agreement shall be construed in accordance with English Law and the parties irrevocably agree to submit to the exclusive jurisdiction of the English Courts.

**We have been instructed by You to obtain a Finance Offer from a reputable lending source. The following terms are those advised by US as likely to apply to any Finance Offer. They are subject to Your acceptance of The Agreement. When The Agreement has been signed, the Confirmation of Instructions Letter will form a contractual part of The Agreement.**

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## CONFIRMATION OF INSTRUCTIONS

Required amount	£[.....]	
Term	[.....] years	
Interest rate	From [..] % Per Annum over [.....] (e.g. Bank Base/Libor/FHBR)	
Type of loan	[.....] (e.g. capital and interest/interest only)	
Early redemption Fee	£[.....]	
Security offered Inc. personal guarantees.	[.....]	
Client's estimated value of security(ies)	£[.....]	
Lender's Fees and disbursements	£[.....]	(payable by the Client)

**Note:** The Broker cannot guarantee that these terms will be achieved.

Any Lender selected by The Broker will undertake a thorough examination of The Client's ability to service the loan. This will include approval of accounting and financial information and a valuation for bank purposes of any property offered as security, Approval of this information is at the sole discretion of the Lender (and not The Broker). Several factors, beyond the control of The Broker, may emerge during this process and cause the lender to weight, or vary, the terms indicated in this memorandum which will be revised accordingly.

In addition, funders may require some or all the following:

- Suitable insurance on, for example, Buildings, Plant, Machinery and Stock
- Appropriate life or term assurance, including keyman insurance
- Directors guarantees
- An independent survey or valuation, for bank purposes, of any security
- Detailed financial and accounting information including bank statements, projections and accounts
- independent Solicitors to prepare and complete the loan and security documents
- Any other information as necessary to show the viability of the application e.g. Business Plan.

I understand and agree to the Terms of Business and Terms and Conditions.

Signed (The Client) [.....]

Date .....day of.....20()

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