

pms[®] Master Terms and Conditions

These Master Terms and Conditions (the "Agreement") govern the relationship between:

- (1) The Party whose full details appear in the Application Form(s) to receive services from PMS (the "Member"); and
- (2) Point One Ltd (trading as PMS[®]) registered in England and Wales with Company number 4293924 and whose registered office is at Pixham End, Dorking, Surrey, RH4 1QA (the "Service Provider").

BACKGROUND

- A The Member is engaged in the provision of financial intermediary services, the provision of which is regulated by statute and the FSA.
- B The Service Provider provides services relating to the introduction of new business to Institutions and Members together with ancillary compliance and support services.
- C The Service Provider has agreed to provide the Services to the Member in support of its Regulated Mortgage & General Insurance Business on the terms set out in this Agreement and the service schedule in force between the Member and the Service Provider from time to time (the "Service Schedule").
- D For the avoidance of doubt, this Agreement does not relate to the Mortgage Club operated by the Service Provider.

IT IS AGREED AS FOLLOWS:-

1. DEFINITIONS

- 1.1 In this Agreement, the Application Form and the Service Schedule defined words and expressions will (unless the context requires otherwise) have the meanings set out in appendix 1.
- 1.2 In this Agreement, the Application Form and the Service Schedule (unless the context otherwise requires):
 - 1.2.1 reference to a statutory provision shall include that provision as from time to time modified or re-enacted and any subordinate legislation;
 - 1.2.2 the masculine gender shall include feminine and the singular number shall include the plural and vice versa and references to persons include bodies corporate, unincorporated associations and partnerships (whether or not any of the same have a separate legal personality);
 - 1.2.3 this Agreement incorporates the appendices to it. Reference to a clause or appendix is to a clause of or appendix to this Agreement and reference to a paragraph is to a paragraph of an appendix to this Agreement. This Agreement also incorporates the Service Schedule and the Application Form;
 - 1.2.4 reference to the parties to this Agreement includes their respective permitted assigns and personal representatives;
 - 1.2.5 where there is more than one Member, all obligations of the Member in this Agreement are given or made jointly and severally; and
 - 1.2.6 any phrase introduced by the words "including", "include", "in particular" or any similar expression shall be construed as illustrative only and shall not be construed as limiting the generality of any preceding words to the Agreement.

2. THE AGREEMENT

- 2.1 In consideration of the Member paying the charges specified in the Application Form and in consideration of the mutual covenants set out in this Agreement and the Service Schedule, the Service Provider will provide the Services to the Member in respect of the Member's Regulated Mortgage & General Insurance Business on the terms set out in this Agreement and the Service Schedule. For the avoidance of doubt, notwithstanding any other provision of this Agreement, any clauses relating to Agencies shall relate solely to Protection Business.
- 2.2 The relationship between the Service Provider and the Member shall not be deemed to be that of a partnership or principal and agent, nor shall it be deemed to be that of employer and employee. The Service Provider shall not be responsible for any acts, omissions, representations or misrepresentations of the Member. In particular the Service Provider shall not be bound by any acts of the Member.

- 2.3 The scope of this Agreement is restricted to those activities set out in the Service Schedule and applies only to FSA regulatory and compliance issues relating to the Regulated Mortgage & General Insurance Business of the Member and for which the Member has the relevant Permissions. The Services do not include any other regulatory, legal or accounting aspects or Services relating to Excluded Contracts. For the avoidance of doubt, in relation to travel and motor insurance, the only Services available relate to checking financial promotions by the compliance support unit, unless and until the Member is notified otherwise by the Service Provider.
- 2.4 In the event of conflict between the terms of these terms and conditions, the Application Form and the Service Schedule, the Application Form shall take precedence followed by these terms and conditions.

3. TERM OF THE AGREEMENT

The Member acknowledges and accepts to be bound to this Agreement, and the Service Schedule and the Application Form by completing, signing and returning the Application Form to the address set out therein. The Agreement in these terms and conditions and the Service Schedule and the Application Form shall come into effect on the date stipulated in the notice to the Member from the Service Provider notifying it that the Application Form has been countersigned by the Service Provider and that the Member's application to receive the Services set out in the Service Schedule has been successful. This Agreement and the Service Schedule shall continue unless and until terminated in accordance with clause 8.

4. OBLIGATIONS OF THE SERVICE PROVIDER

- 4.1 The Service Provider will provide the Services with reasonable skill and care.
- 4.2 Where access to enhanced rates on Protection Business written by the Member through the Agencies is available pursuant to the Service Schedule, the Service Provider will use reasonable endeavours to arrange such rates from time to time with Institutions.
- 4.3 Where the Service Provider procures access for the Member or any financial advisers or mortgage brokers working for the Member ("Users") to the Portal, or procures the availability of discounted software licences for the Member pursuant to the Service Schedule, the use and availability of such Portal will be governed by the Portal Terms and the use and availability of such software may be governed by separate terms and conditions which the Member will accept and comply with. Such Portal Terms or licences are supplemental to (and do not replace) the terms of this Agreement and/or the Service Schedule and will apply to the Portal or software to which they relate. For the avoidance of doubt, neither the Service Provider nor any member of the PMS Group shall have any liability of any nature whatsoever to the Member for any other third party services arranged for or promoted to the Member by the Service Provider under this Agreement and/or the Service Schedule.
- 4.4 The Application Form will state which of appendix 2 or 3 (or a combination of both) applies thereto.
- 4.5 The Service Provider will not give information relating to Clients to any party (save for members of the PMS Group and/or any Regulator and/or other legal, governmental, administrative, professional or other regulatory body where requested to do so and/or in accordance with clause 7) or otherwise make use of or divulge, disclose or make known to any person any information relating to the Clients, or make contact with any Client unless required to do so by law or the rules of any Regulator or other legal, governmental, administrative, professional or other regulatory body. For the avoidance of doubt, the Clients are the clients of the Member.
- 4.6 Where applicable to the Service Schedule and Application Form, the Service Provider will use reasonable endeavours to make arrangements for agencies with enhanced rates to either be entered into by the Member or for enhanced rates to be applied to existing agencies of the Member for Protection Business introduced to the Institutions through such agencies, as applicable. Both new and enhanced existing agencies referred to in this clause 4.6 shall be referred to as "Agencies" in this Agreement and the Service Schedule and shall incorporate a provision for all Gross Turnover in respect of Protection Business introduced to the Institutions through such Agencies to be paid into the Account. The Member hereby consents to the Service Provider receiving the original commission statements directly from the Institutions with copies to the Member for information, where provided. For the avoidance of doubt, Procuration Fees and other fees for mortgage advice will not be paid into the Account in accordance with this clause 4.6.
- 4.7 Where the Service Schedule refers to guidance and feedback being provided by the Service Provider on various items, the Member acknowledges and agrees that in no circumstances will the Service Provider be deemed to have "approved" such items.
- 4.8 Where the Service Schedule refers to guidance on completion of RMAR and/or RMAR terminology, the Member acknowledges and agrees that in no circumstances will the Service Provider be deemed to provide or be liable for any accounting or finance advice.

- 4.9 Where the Service Schedule refers to the Service Provider providing access for the Member to preferential professional indemnity insurance rates from one broker from time to time, the Service Provider shall use reasonable endeavours to provide such access and the Member acknowledges and agrees that the availability of any professional indemnity insurance cover available to the Member from such broker will be at the discretion of the broker and subject to separate terms and conditions between the Member and the broker to which the Service Provider is not a party. In accordance with clause 4.3, neither the Service Provider nor any member of the PMS Group shall have any liability of any nature whatsoever to the Member or any third party in respect of such insurance.
- 4.10 Where the Service Provider carries out audits, health checks and/or file checking as part of the Services, the Service Provider is only responsible for auditing and checking files and systems and controls information provided by the Member, the review of which is completed within normal working hours on Working Days during which such parts of the Services are delivered.
- 4.11 Where the compliance manual is provided as part of the Services and such compliance manual contains template legal agreements, the Member acknowledges that the Service Provider is not liable to the Member in relation to the content thereof subject to clause 11.4 and acknowledges that they should only be used by the Member following independent legal advice.
- 4.12 Where any of the Services are provided to the Member remotely, the Member shall comply with clause 5.12 and the Service Provider shall use reasonable endeavours to provide such Services in accordance with applicable service standards published by the Service Provider from time to time.
- 4.13 The Service Provider reserves the right not to accept instructions or provide the Services where, in its reasonable opinion, it considers it reasonable to do so.

5. OBLIGATIONS OF THE MEMBER

- 5.1 The Member will as soon as possible and in any event within 5 Working Days, save where prevented from doing so by any law, court order or regulatory duty of confidentiality, advise the Service Provider of any disciplinary action or investigation taken or carried out by any Regulator and/or other legal, governmental, administrative, professional or other regulatory body in respect of the Member's business or any matter which has (or is likely to have) an adverse impact on the fit and proper status of the Member for FSA purposes.
- 5.2 The Member will as soon as possible and in any event within 5 Working Days, inform the Service Provider if it ceases to trade; suffers an event insolvency or bankruptcy (including without limitation, any winding up, the appointment of a receiver or administrative receiver or the entering into of any composition with creditors); or if the Member or any director or person having Control of the Member is charged with any criminal offence relating to their involvement in the Member's business.
- 5.3 The Member will not print on any of its stationery, literature or any other material (whether printed or electronic) the name (or any derivation thereof) of the Service Provider or any member of the PMS Group, neither will it use the logo of the Service Provider or any member of the PMS Group without the prior consent in writing of the Service Provider. Further, the Member shall not use the corporate and/or trading name of the Service Provider or any member of the PMS Group as part of its corporate or trading name.
- 5.4 The Member will not represent to any third party its relationship with the Service Provider or any member of the PMS Group without the prior written consent of the Service Provider save to the extent required by law, regulatory authority, court order or Stock Exchange rules.
- 5.5 The Member will not in any way harm the Service Provider or any member of the PMS Group or their/its interests (including their names and/or reputations) and will disclose to the Service Provider all matters which shall, in the sole opinion of the Service Provider, be reasonable so to disclose.
- 5.6 The Member warrants to the Service Provider and the PMS Group that at the date of commencement of this Agreement and for the duration of this Agreement that it is an Authorised Person and that it has all necessary Permissions, memberships, authorisations and registrations in respect of the FSA, the Data Protection Act 1998 and the Consumer Credit Act 1974 (where applicable) and of any other statute or regulatory regime applicable to its Regulated Mortgage & General Insurance Business and that it complies with the requirements of the FSA, FSMA and all other relevant requirements.
- 5.7 Where applicable to the Service Schedule, immediately after the commencement thereof, the Member shall take all steps and do all actions required by the Service Provider in relation to the Agencies and in particular, to enable the Service Provider to comply with clause 4.6. For the avoidance of doubt, nothing in this Agreement is intended to prejudice the independent status of the Member should they choose to be so.
- 5.8 Following a request from the Service Provider, the Member shall provide the Service Provider with copies of its FSA returns relating to Protection Business where requested by the Service Provider to carry out the reconciliation referred to in appendix 2 or to evidence the Gross Turnover of the Member, in both cases where appendix 2 is stated to be relevant in the Application Form.

- 5.9 During the continuance and after termination of this Agreement, the Member will not share any materials or advice provided by the Service Provider with any third party. The Member hereby acknowledges and agrees that all materials provided by the Service Provider are owned by the Service Provider and that the Member has no rights of any nature whatsoever in relation thereto, save for a limited personal and non-transferable licence to use them during the continuance of this Agreement, the Application Form and Service Schedule solely for the purpose of receiving the Services and subject to any reasonable instructions provided by the Service Provider or members of the PMS Group from time to time. Such licence is strictly subject to the Member's compliance with the terms of this Agreement, the Application Form and the Service Schedule.
- 5.10 The Member acknowledges that it is advised by the Service Provider to ensure it has and maintains appropriate insurance in respect of its Regulated Mortgage & General Insurance Business; obligations under this Agreement and the Service Schedule; and that it seeks legal advice on the terms of this document, the Application Form and Service Schedule before entering into them.
- 5.11 By entering into this Agreement, whenever the Portal is accessed by the Member or any Users, the Member undertakes to comply with the Portal Terms and shall procure that the Users do the same. The Member shall be liable to the Service Provider and the PMS Group for any breach of the Portal Terms by any of the Users.
- 5.12 Where any of the Services are to be provided to the Member remotely:
- 5.12.1 Copy documents and files which the Member wishes the Service Provider to review should be uploaded by the Member onto the Portal in accordance with procedures and instructions set out on the Portal from time to time, or other instructions provided to the Member by the Service Provider in writing (including by email). All original and/or signed documents and files should also be retained by the Member. Neither the Service Provider nor any member of the PMS Group will be responsible for the security of any information sent to them unless and until it is actually received by them. Once received by the Service Provider, such information shall be dealt with as set out in this Agreement and the Privacy Policy and/or any future agreements between the Parties relating to such subjects. The Member will remain the Data Controller (as defined in the DPA) of all data sent to the Service Provider and the PMS Group; and
- 5.12.2 By the Member or any Users uploading information and documentation in connection with the Services to be provided remotely onto the Portal in accordance with clause 5.12.1 above and inputting instructions requested onto that Portal, the Member thereby instructs the Service Provider to provide the relevant remote services and the Service Provider (or relevant member of its Group) shall be entitled to carry out such work without seeking further authorisation from the Member. If at any time the Member wishes to alter the instructions provided or wishes the Service Provider to cease providing such Services or to stop work on a particular part thereof, such instructions should be made in writing (including email) to the Service Provider's Compliance Development Manager.
- 5.13 In the event any Users download any software by Users available from the PMS Group through the Portal, the licence relating to such software is between the relevant member of the PMS Group and the respective User(s) (the "Licence"). The PMS Group is aware however that the data and equipment used by such Users and therefore affected by the Licence and such software is likely to belong to the Member. It is therefore made clear to the Users on the Portal and in the Licence that they should only download the software with the express permission of the Member. In the event the Member suffers any loss relating to the download or use of such software, the liability of the PMS Group to the Member is set out in clause 11 of this Agreement save that the maximum aggregate exposure of the PMS Group to the Member shall be limited to £250.

6. CHARGES

- 6.1 The Application Form will state which of appendix 2 or appendix 3 (or a combination of both of them) is relevant and the provisions of the specified appendix or appendices shall apply thereto.
- 6.2 In the event additional services beyond the Services detailed in the Service Schedule are provided to the Member by the Service Provider, such additional services shall be charged for as agreed in advance between the parties and will be invoiced separately. For the avoidance of doubt and notwithstanding any other provision of this Agreement and/or the Service Schedule, the terms of this Agreement save for appendix 2 and/or 3 shall apply to the provision of such additional services.

7. DATA PROTECTION

- 7.1 For the purposes of this clause 7, the terms "data controller", "data processor", "data subject", "personal data" and "sensitive personal data" shall each have the meanings attributed to them in the Data Protection Legislation and "Data" shall mean personal data and/or sensitive personal data.
- 7.2 The Service Provider and the Member shall at all times comply with the Data Protection Legislation in relation to the processing of Data in connection with this Agreement and the Service Schedule.

- 7.3 The Member shall be the data controller of all Data disclosed by it to the Service Provider and/or any member of the PMS Group for the purposes of this Agreement and the Service Schedule.
- 7.4 The Member warrants as at the date hereof and during the continuance of this Agreement and Service Schedule to the Service Provider and the PMS Group that it has obtained all consents from data subjects which are required to: transfer the Data to the Service Provider and/or any member of the PMS Group; allow the Service Provider and/or any member of the PMS Group to process such Data in accordance with this Agreement and/or the Service Schedule and/or any instructions from the Member and/or to the extent reasonably necessary for the Service Provider to perform its obligations under this Agreement and/or the Service Schedule; and for the Service Provider and the PMS Group and sub-contractors to process such data. The Member also warrants to the Service Provider and the PMS Group that no instruction given by the Member will place the Service Provider or any member of the PMS Group in breach of the Data Protection Legislation or give rise to any third party claims against the Service Provider or any member of the PMS Group.
- 7.5 The Service Provider in performing its obligations under this Agreement and the Service Schedule in respect of any Data used will be the data processor and will:
- 7.5.1 process the Data strictly in accordance with the Member's instructions and/or as set out in this Agreement and Service Schedule;
 - 7.5.2 permit only those of its employees whom it reasonably believes are reliable to access the Data;
 - 7.5.3 co-operate as requested by the Member and at the Member's sole cost and expense to enable the Member to respond to all subject access requests which may be received from the data subjects in accordance with the requirements of the DPA;
 - 7.5.4 not disclose the Data to a third party in any circumstances other than as set out in this Agreement, the Privacy Policy or the Service Schedule or at the specific request of the Member; and
 - 7.5.5 ensure that appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of or damage to personal data.
- 7.6 The Member will indemnify and keep indemnified the Service Provider and/or any member of the PMS Group in full and on demand against any and all Liability suffered or incurred by it and/or any member of the PMS Group arising out of or in connection with any action or claim brought by a third party caused by a breach by the Member of the Data Protection Legislation and/or this clause 7.
- 7.7 Details of the Member will be stored on one or more databases owned or operated by or on behalf of the Service Provider and/or members of the PMS Group. Such information may be subject to the Data Protection Legislation. By entering into this Agreement, the Application Form and the Service Schedule the Member consents to the Service Provider and/or any member of the PMS Group processing, both manually and by electronic means, the Member's personal data for the purposes of providing advice, administration, marketing and management and to the extent necessary for the performance by the Service Provider of its obligations under this Agreement and the Service Schedule. "Processing" includes obtaining, recording or holding information or data, transferring it to other companies in the PMS Group, Institutions, other third parties providing products or services which the Service Provider considers may be relevant to the Member's Regulated Mortgage & General Insurance Business ("Third Parties") for marketing purposes, solicitors and/or other debt recovery agencies for debt recovery purposes, the FSA, any Regulator or any other statutory, governmental or regulatory body for legitimate purposes, market analysts for market research/analysis purposes, carrying out operations on the information or data, and/or relevant members of the PMS Group transferring and/or receiving it back electronically via any portal provided by members of the PMS Group and used by the Member and/or employees or contractors of the Member directly to Institutions or to and from Institutions via a third party software/IT functionality providers. By entering into this Agreement, the Member agrees that the Service Provider, members of the PMS Group, Institutions and/or Third Parties may also contact the Member (including by telephone, email and/or other electronic means) for marketing purposes. If at any time the Member wishes the Service Provider or any member of the PMS Group to cease processing its personal data, or contacting them for marketing purposes they should notify the Service Provider at their registered address or any other address notified to the Member by the Service Provider from time to time.
- 7.8 The Member agrees that the Service Provider will hold information relating to the Member, its Regulated Mortgage & General Insurance Business, its Clients, employees and consultants who hold regulated Permissions or whose details are passed to the Service Provider by the Member as contact points for the Member's Regulated Mortgage & General Insurance Business (including personal data and/or sensitive personal data). The Member agrees that the Service Provider may use and share any such data received with:
- 7.8.1 the PMS Group in the course of business and for purposes connected with the Services, the Service Provider and/or members of the PMS Group provide;
 - 7.8.2 any appropriate Regulator and/or any other legal, governmental, administrative, professional or other regulatory body;

- 7.8.3 any solicitors or other debt recovery agencies for debt recovery purposes; and/or
- 7.8.4 any Institution or other Third Party product provider for marketing analysis purposes, educational purposes and with Institutions and Third Parties for marketing purposes (save in relation to Client data) and also for purposes which, in the Service Provider's reasonable opinion, enable it to provide the Services.
- 7.9 By entering into this Agreement and the Service Schedule, the Member consents to any Institution and/or Third Party from time to time providing management information to the Service Provider or any member of the PMS Group regarding business levels and commission information relating to the Member, and to the Service Provider providing such information to Institutions and other Third Parties.
- 7.10 By entering into this Agreement, the Member acknowledges and agrees to comply with the Privacy Policy. In the event of any conflict between this clause 7 and the Privacy Policy, the Privacy Policy shall prevail.

8. SUSPENSION AND TERMINATION OF THE AGREEMENT

- 8.1 The Service Provider shall have the right to terminate this Agreement, the Application Form and the Service Schedule or suspend the provision of any or all of the Services to which the Service Schedule relates immediately or on whatever period of notice it shall, in its reasonable opinion, deem fit for any reason which it in its reasonable discretion deems fit on providing written notice to the Member. In exercising its rights under this clause 8.1 the Service Provider will use reasonable endeavours to provide one month's notice of termination or suspension, save where necessary in the reasonable opinion of the Service Provider to terminate this Agreement, the Application Form or Service Schedule or suspend the Services on a shorter period of notice. For the avoidance of doubt, termination of this Agreement, the Application Form and Service Schedule and/or suspension of the Services shall not relieve the Member of its obligations under this Agreement and/or Service Schedule.
- 8.2 The Member may terminate this Agreement and the Service Schedule:
 - 8.2.1 by providing one month's written notice to the Service Provider;
 - 8.2.2 if the Service Provider commits a material breach of a material provision of this Agreement, the Application Form or the Service Schedule which is incapable of remedy or which fails to be remedied within one month of the Service Provider being notified of the same; and/or
 - 8.2.3 by providing one month's notice in writing to the Service Provider if the Service Provider suffers an event of insolvency listed in clause 5.2 (save in respect of any intra-group arrangement or re-organisation).
- 8.3 For the avoidance of doubt and notwithstanding any other provision of this Agreement, the Application Form or the Service Schedule, this Agreement terminates automatically in the event the Service Schedule or Application Form terminates and vice versa.

9. CONSEQUENCES OF TERMINATION

- 9.1 On termination of this Agreement, the Application Form and the Service Schedule the following provisions apply to the extent they relate to this Agreement or the Service Schedule:
 - 9.1.1 The Member will immediately cease to use any material (whether stored electronically or otherwise) belonging to or provided by the Service Provider and/or which when displayed or printed would bear the name or logo of the Service Provider or any member of the PMS Group;
 - 9.1.2 The Member will forthwith return to the Service Provider all software programmes and documentation provided to the Member by the Service Provider or any member of the PMS Group and copies thereof and shall ensure that all such software programmes are deleted from all systems used by the Member or any person or entity associated with it. The Member acknowledges and agrees that the Service Provider will notify the providers of software made available to the Member pursuant to the Service Schedule of the fact this Agreement and the Service Schedule has terminated and ask such software providers to cease making such software available on the enhanced/discounted terms provided, as a result of this Agreement and Service Schedule. Following termination, the Service Provider may also check with such software providers that the enhanced/discontinued software terms have ceased to be applied to the Member;
 - 9.1.3 The Member will forthwith and thereafter not represent itself as being in any way associated with or connected with the Service Provider or any member of the PMS Group;

- 9.1.4 The Member will forthwith and thereafter cease to benefit from any commercial advantage (including without limitation, any enhanced commission and/or fee rates and/or any discounted/enhanced software) derived under this Agreement and/or the Service Schedule (as applicable). For the avoidance of doubt, the Service Provider will inform all relevant Institutions of the termination of this Agreement and/or Service Schedule (as applicable) so that any enhanced commission or fee rates applying to the Member's Agencies pursuant to this Agreement will be removed. For the avoidance of doubt, in the event the Member or any Users continue to be members of the Mortgage Club and use the Portal for such purposes after termination of this Agreement, the commercial advantages derived by the Member or such Users by virtue of being a member of the Mortgage Club shall not cease;
- 9.1.5 Where appendix 2 is relevant to the terminated Application Form and Service Schedule(s), all sums standing to the credit of the Account (including accrued interest) shall forthwith be paid to the parties in the proportions to which they are then entitled under the Application Form, or as varied in accordance with this Agreement from time to time. Any Gross Turnover relating to Protection Business which has not been paid into the Account by the date of termination of this Agreement, the Application Form and the Service Schedule shall be paid into the Account upon receipt by either of the parties and shall belong to the parties in the proportions to which they are entitled under the Application Form and be accounted for as if such monies had been paid into the Account prior to its termination;
- 9.1.6 Subject to clause 9.1.4, access to the Portal or any other portals made available by the Service Provider or any member of the PMS Group to the Member and users employed/engaged by them shall be removed; and
- 9.1.7 The Member will cease to have access to statements referred to in paragraph 1.4 of Appendix 2 online, and will instead receive hard copy statements for a period of 3 months only. Thereafter, all statements will cease.
- 9.2 During the continuance of this Agreement and the Service Schedule, including without limitation, upon serving or receiving notice to terminate this Agreement, the Application Form and/or the Service Schedule, the Member shall carry on the Regulated Mortgage & General Insurance Business in the ordinary and usual course and shall not do any act or omission to harm the Service Provider or any member of the PMS Group (which shall include where appendix 2 applies, a breach of appendix 2 and/or the Service Schedule, concealing Regulated Mortgage & General Insurance Business and/or delaying the writing and submitting of Regulated Mortgage & General Insurance Business through the Agencies to avoid or delay paying Gross Turnover into the Account).

10. NOTICES

- 10.1 Any notice or other communication to be given or served under or in connection with this Agreement, the Application Form and/or the Service Schedule will be sufficiently given or served if sent by e-mail to the address on the Application Form or any alternative e-mail address subsequently notified in writing by the parties to each other, or if delivered or sent to the address of the relevant party set out in the Application Form, or such other address as shall be notified by the parties to each other in writing from time to time. Where the Member is a partnership, notices or communications under or in connection with this Agreement will also be deemed sufficiently served if delivered or sent to the e-mail address of one partner or to the last known home address of any partner (and service on one partner shall be deemed to be service on all the partners).
- 10.2 A notice so delivered shall be deemed to have been served on the recipient on the day of sending (if by e-mail) and a notice so posted shall be deemed to have been served on the recipient on the day following the date of posting.

11. INDEMNITY AND LIMITATION OF LIABILITY

- 11.1 Except as expressly set out in this Agreement, all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, in relation to the supply, non supply or delay in supplying the Services are excluded to the extent permitted by law.
- 11.2 Subject to clause 11.4, the Service Provider is not liable to the Member in contract, tort (including negligence or breach of statutory duty) or otherwise for any of the following Losses, whether direct or indirect, arising out of, or in connection with, the supply, non supply or delay in supplying the Services or otherwise in connection with this Agreement or the Service Schedule:
- 11.2.1 loss of actual or anticipated profits;
 - 11.2.2 loss of business opportunity;
 - 11.2.3 loss of anticipated savings;
 - 11.2.4 loss of goodwill;
 - 11.2.5 injury to reputation;
 - 11.2.6 loss of data; or
 - 11.2.7 any indirect, special or consequential loss howsoever caused.

- 11.3 Subject to clause 11.4, the entire liability of the Service Provider in respect of this Agreement and the Service Schedule arising out of or in connection with the supply, non supply or delay in supplying the Services, or otherwise in connection with or as a result of a breach of this Agreement or Service Schedule, whether in contract, tort (including negligence or breach of statutory duty) or otherwise shall be solely to the Member and is limited to:
- 11.3.1 where appendix 2 of this agreement applies the Minimum Annual Sum stated in the Application Form or;
- 11.3.2 where appendix 3 of this agreement applies the monthly fee stated in the Application Form multiplied by 12;
- in respect of each event or series of connected events.
- 11.4 Nothing in this Agreement shall operate to exclude or restrict either party's liability for:
- 11.4.1 death or personal injury resulting from negligence;
- 11.4.2 breach of the obligations arising from section 12 of the Sale of Goods Act 1979, and/or section 2 of the Supply of Goods and Services Act 1982; or
- 11.4.3 fraud or deceit.
- 11.5 The Member shall promptly notify the Service Provider of any claim, potential claim, Losses and/or potential Losses and shall use its best endeavours to mitigate any Losses and/or potential Losses it may suffer or incur relating to such claim or matter giving rise to such claim.
- 11.6 Notwithstanding any other provisions of this Agreement or the Service Schedule save for clause 11.4, the Service Provider shall have no liability to the Member for any Losses unless the Member brings a claim in respect of the same within 3 years of the date where the Member first becomes aware or ought reasonably to have become aware of the facts which give rise to such claim or alleged liability, or within any relevant statutory limitation period, whichever it the earlier.
- 11.7 Subject to clause 5.13 which relates to the download of software by Users available from the PMS Group through the Portal, all liability in relation to the Portal is set out in the Portal Terms.

12. NON-COMPETITION CLAUSE

- 12.1 The Member agrees with and undertakes to the PMS Group that it shall not without the prior written consent of the Service Provider for the duration of this Agreement and for a period of 9 months after the termination of this Agreement in any Relevant Capacity in connection with any business which is or is intended or about to be competitive with the Restricted Business:
- 12.1.1 solicit or canvass the custom of any Customer;
- 12.1.2 solicit or canvass the custom of any Potential Customer;
- 12.1.3 deal with any Customer;
- 12.1.4 deal with any Potential Customer;
- 12.1.5 solicit or entice away, or attempt to entice away from the Service Provider or any member of the PMS Group any Restricted Employee; or
- 12.1.6 employ, offer to employ or enter into partnership with any Restricted Employee with a view to using the knowledge or skills of such person in connection with any business or activity which is or is intended to be competitive with the Restricted Business.
- 12.2 The Member agrees with and undertakes to the PMS Group that it shall not without the prior written consent of the Service Provider for the duration of this Agreement and for a period of 6 months after the termination or expiration of this Agreement in any Relevant Capacity within the United Kingdom set up, carry on, provide services to, be associated with, or be engaged or interested in any business which is or is intended or about to be competitive with the Restricted Business save as a shareholder of not more than 3% of any public company whose shares are quoted on any recognised stock exchange or the Alternative Investment Market.
- 12.3 The restrictions contained in this clause 12 are considered by the parties to be reasonable in all the circumstances. Each sub clause constitutes an entirely separate and independent restriction and the duration, extent and application of each of the restrictions are no greater than is necessary for the protection of the interests of the Service Provider.

13. ANNOUNCEMENTS

No announcement concerning this Agreement, the Application Form and/or the Service Schedule will be made without the prior written approval of the Service Provider.

14. PERSONAL REPRESENTATIVES AND SUCCESSORS IN TITLE

This Agreement and the Service Schedules will be binding upon and enure for the benefit of each party's personal representatives and successors in title.

15. VARIATIONS

- 15.1 This Agreement may be varied by the Service Provider notifying the Member in writing (including by e-mail) that an amended version of this Agreement has been published online at www.trustpms.com and/or Premier Mortgage Service Online. Any changes to this Agreement will take effect on the date specified in such notice.
- 15.2 The Service Schedule and the Application Form may be varied upon provision of written notice to the Member by the Service Provider. Any such variation shall take effect on the date specified in such notice.
- 15.3 The Service Provider will use reasonable endeavours to provide the Member with one month's notice of variation to this Agreement, the Application Form and/or the Service Schedule save where it is necessary in the reasonable opinion of the Service Provider that such variations are required to take effect in a shorter period of time.
- 15.4 At the discretion of the Service Provider, this Agreement, the Application Form and the Service Schedule may also be varied in writing signed by all the parties.

16. WAIVER

No waiver by any party of any breach or non-fulfilment by the other of any provisions of this Agreement, the Application Form or the Service Schedule will be deemed to be a waiver of any subsequent or other breach of that or any other provision and no failure to exercise or delay in exercising any right or remedy under this Agreement or the Service Schedule will constitute a waiver of such right or remedy. No single or partial exercise of any right or remedy under this Agreement or the Service Schedule will preclude or restrict the further exercise of any such right or remedy. The rights and remedies of the parties provided in this Agreement and any Service Schedule are cumulative and not exclusive of any rights and remedies provided by law.

17. SEVERABILITY

The invalidity illegality or unenforceability of any provisions of this Agreement, the Application Form or the Service Schedule will not affect the continuation in force of the remainder of this Agreement or the Service Schedule. If any provision or part thereof shall be found void, invalid, illegal or unenforceable by any court of competent jurisdiction, but would be valid if some words were deleted therefrom, the period thereof reduced, or area covered or range of activities reduced, such provision shall apply with such modifications as may be necessary to make it valid and effective.

18. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Any member of the PMS Group shall have the right to enforce any term of this Agreement, the Service Schedule and/or the Application Form. Otherwise, a person who is not a party to this Agreement and/or the Service Schedule will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term thereof. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. For the avoidance of doubt, the parties may amend this Agreement, the Application Form and/or Service Schedule in accordance with the provisions of this Agreement without the consent of any person who has been granted rights under the Contracts (Rights of Third Parties) Act 1999.

19. GOVERNING LAW

This Agreement, the Application Form and the Service Schedule will be governed by and construed in accordance with English Law and the parties submit for all purposes in connection with this Agreement, the Application Form and the Service Schedule to the exclusive jurisdiction of the English Courts.

20. ENTIRE AGREEMENT

Save as agreed in writing between the parties and/or save for any amendment in writing between the Service Provider and the Member, or otherwise in accordance with clause 15, this Agreement, the Service Schedule and the Application Form and documents referred to herein and therein contain the entire agreement between the Parties with respect to the subject matters thereof. In particular, save as agreed in writing between the parties, this Agreement, the Service Schedule and the Application Form supersede any previous agreement between the parties or the Member and any member of the PMS Group relating to the Services. Save as set out above, any such previous agreements between the parties shall terminate and cease to have effect from the date this Agreement and the Service Schedule come into effect provided always that provisions in such agreement(s) stated to survive termination thereof shall so survive and that such termination shall not affect any accrued rights and obligations of any party arising out of such previous agreement(s) as at the date of such termination. The Member acknowledges and agrees that in entering into this Agreement and the Service Schedule, it does not rely on and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) of any person (whether a party to this Agreement or Service Schedule or not)

other than as expressly set out in this Agreement and the Service Schedule. Nothing in this clause 20 shall however operate to limit or exclude any liability for fraud or fraudulent misrepresentation. By entering into this Agreement, the Member hereby waives any claims it may have against the Service Provider and/or any member of the PMS Group in respect of any failure on the part of the Service Provider and/or any member of the PMS Group to properly serve notice to terminate and/or vary the terms of any such previous agreement(s) in accordance with the terms thereof.

21. CONFIDENTIALITY

The Member accepts that this Agreement, the Application Form and the Service Schedule are completely confidential and that no copies are to be given to any third party nor will the contents of this Agreement, the Application Form or the Service Schedule be discussed or transmitted to any other person firm or company PROVIDED ALWAYS that the before mentioned restriction shall not prevent the Member from supplying copies of this Agreement or discussing the terms thereof with their professional advisers for the purposes of obtaining professional advice. This clause 21 shall survive termination of this Agreement and/or the Service Schedule.

22. RIGHT OF SET OFF

The Service Provider shall be entitled to set off against and retain from any sums due to the Member pursuant to this Agreement, the Application Form and the Service Schedule any contingent or actual liabilities of the Member to the Service Provider or any member of the PMS Group. Further, where there is a debt relating to the Member in any account of the Service Provider or other member of the PMS Group and there is a positive balance in the Account or vice versa, such positive balances may be set off against the negative balances.

23. ASSIGNMENT

The Service Provider, but not the Member, may at any time assign the benefit or delegate the burden of this Agreement, the Application Form and the Service Schedule or otherwise sub-contract, mortgage, charge or otherwise transfer or hold on trust any or all of its rights and obligations under this Agreement and/or the Service Schedule.

24. FORCE MAJEURE

In the event of any failure, interruption or delay in the performance of any of the Services resulting from acts, events or circumstances not reasonably within the control of the Service Provider, including, but not limited to, industrial disputes, acts or regulations of any governmental, legal, administrative, professional or other regulatory body or authority, failure or malfunction of any telecommunications or systems, acts of God, war, terrorism, civil disturbance, acts/omissions of third parties, court order or labour dispute, the Service Provider shall not be liable or have any responsibility of any kind for any Liability or other loss incurred or suffered by the member and such non-performance shall not be a breach, default or ground for termination of this Agreement and/or the Service Schedule.

25. INTELLECTUAL PROPERTY

The Member shall not (save as expressly set out in this Agreement, the Application Form or the Service Schedule and then only until any termination of this Agreement, the Application Form and/or the Service Schedule) have any rights in or to use any registered or unregistered intellectual property either owned by or licensed to the Service Provider and/or any member of the PMS Group. For the avoidance of doubt, the compliance manual and all materials provided by the Service Provider in providing the Services constitutes intellectual property owned by the Service Provider for the purposes of this Agreement, the Application Form and the Service Schedule and the Member may only use such materials to the extent necessary to perform its obligations in this Agreement, the Application Form and the Service Schedule.

26. DEFAULT INTEREST

If the Member fails to pay on the due date any amount payable by it under this Agreement, the Application Form and/or the Service Schedule, the Service Provider shall be entitled to charge the Member interest on the overdue amount at the rate of 8% per annum above the base rate for the time being of The Bank of England. Such interest shall accrue on a daily basis from the date such payment was due, shall be compounded no more frequently than monthly and shall continue until payment in full is received by the Service Provider. In addition, the Service Provider reserves the right to charge the Member an administration fee of £20.00 in respect of each notice which they issue to the Member in connection with the non or late payment of any amount.

27. VAT

Save where specified in this Agreement, the Application Form or the Service Schedule:

- 27.1 All payments to be made by the Member to the Service Provider are calculated without regard to VAT. If any such payment constitutes the whole or any part of the consideration for a taxable or deemed taxable supply (whether that supply is taxable pursuant to the exercise of an option or otherwise) by the Service Provider, the amount of that payment shall be increased by an amount equal to the amount of VAT that is chargeable in respect of the taxable supply in question and the Member shall make payment of such increased amount upon production of a valid VAT invoice;
- 27.2 Any sums payable under this Agreement, the Application Form or the Service Schedule by the Service Provider to the Member will be treated as VAT (or any other applicable sales tax) inclusive regardless of whether the Member has issued a VAT invoice identifying VAT. The Member undertakes to notify any person with whom it shares commission that any payments made to that person are inclusive of VAT or any other applicable sales tax whenever this applies, irrespective of whether that person has issued the Member with an invoice identifying the relevant tax; and
- 27.3 All payments by the Service Provider to the Member in respect of commission shall be made without deduction of income tax, national insurance contributions or any other taxes or sums for which the Member may be liable to account. The Member shall account at all times to the proper authorities for such taxes, national insurance contributions and other monies for which it may be accountable as a result of the receipt of such commissions.

28. FURTHER ASSURANCE

The Member shall at its own cost do and procure to be done all such further acts and things and execute and procure the execution of all such other documents as the Service Provider may from time to time require (including any power of attorney) for the purpose of giving the Service Provider the full benefit of the provisions of this Agreement, and the Application Form and/or the Service Schedule or relating thereto.

APPENDIX 1

DEFINITIONS

"**Account**" means a bank account held in the name of the Service Provider but which allows for Member monies to be separately identifiable, into which is paid all Gross Turnover.

"**Agencies**" shall have the meaning set out in clause 4.6.

"**Application Form**" means the application form filled in by the Member and returned to the Service Provider indicating the Member's acceptance of and agreement to be bound to the terms of this Agreement and the Service Schedule.

"**Authorised Person**" means a person who is authorised as defined in section 31 of the FSMA and who holds all authorisations and Permissions required under the FSMA (and/or any rules or regulations made under it) in order to carry on regulated activities.

"**Clawback**" means the repayment of clawed back commission to an Institution.

"**Client**" means all clients of the Member for whom Regulated Mortgage & General Insurance Business is conducted.

"**Control**" shall be construed in accordance with the meaning of "Controller" set out in section 422 FSMA.

"**Customer**" shall mean any person, firm or company who at any time during the continuation of this Agreement was a customer of the Service Provider or any member of the PMS Group and from whom the Member had obtained business on behalf of the Service Provider or any member of the PMS Group.

"**Data Protection Legislation**" means, to the extent applicable to this Agreement and/or the Service Schedule, the DPA and all other applicable laws, regulations and codes of practice relating to the processing of personal data, sensitive personal data and/or privacy under any jurisdiction in or from which any of the parties perform this Agreement and/or Service Schedule.

"**DPA**" means the Data Protection Act 1998.

"**Excluded Contracts**" shall have the meaning set out in the definition of Regulated Mortgage & General Insurance Business below.

"**FSA**" means the Financial Services Authority and any organisation replacing the same from time to time during the continuance of this Agreement.

"**FSMA**" means the Financial Services and Markets Act 2000.

"**Gross Turnover**" means all gross commissions, fees and/or fees in lieu of commissions and/or other income including renewal commission payable on all Protection Business introduced to the Institutions under the Agencies by the Member. For the avoidance of doubt, this excludes Procurement Fees and other fees relating to mortgage advice.

"**Institutions**" means any life assurance company or unit trust group or fund management group or any operators of collective investment schemes, banks, building societies, general insurers, lenders or any other similar institutions with whom the Member conducts Regulated Mortgage & General Insurance Business (or Protection Business where such definition is used in the context of Agencies).

"**Liability**" means any liability whatsoever (whether at common law, under legislative contract or regulations, by virtue of the rules of any Regulator or other body or organisation or howsoever otherwise), claim, payment, loss, damage, expense or disbursement of any nature whatsoever including, without limitation or prejudice to the foregoing, any VAT which the Service Provider cannot recover or any other liability to taxation and/or any professional fees and/or expenses.

"**Losses**" means all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services), proceedings, demands and charges.

"**Minimum Annual Sum**" shall have the meaning set out in paragraph 1.11 of appendix 2.

"**Mortgage Club**" means the mortgage club owned and operated by the Service Provider.

"**Permission(s)**" means a permission given by the FSA under Part IV of the FSMA (permission to carry on regulated activities) or having effect as if so given save for Permissions in respect of Excluded Contracts.

"**PMS**" means Point One Limited (trading as PMS or Premier Mortgage Service) registered in England and Wales with company number 4293924 and whose registered office is at The Southmark Building, 3 Barrington Road, Altrincham, Cheshire WA14 1GY.

"**PMS Group**" means any holding company or subsidiary or member of Bankhall Investment Management Limited, company number 2052824, and any subsidiary of such holding company.

"**Portal**" means the portal named Premier Mortgage Service Online owned and operated by member(s) of the PMS Group.

"**Portal Terms**" means the terms and conditions of use of the Portal available on the Portal.

"**Potential Customer**" shall mean any person, firm or company with whom the Member had carried out negotiations on behalf of the Service Provider or any member of the PMS Group at any time during the three months immediately prior to the date of termination of this Agreement with a view to such person, firm or company becoming a customer of the Service Provider or any member of the PMS Group.

"**Privacy Policy**" means the PMS privacy policy available on the Portal as amended from time to time.

"**Procurement Fees**" means the total amount paid by a mortgage lender to a mortgage intermediary whether directly or indirectly, in connection with providing applications from customers to enter into Regulated Mortgage Contracts with that mortgage lender.

"**Protection Business**" means pure protection contracts as per articles 10(1) and (2) of the Regulated Activities Order 2001 (SI 2001/544).

"**RAO**" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544).

"Regulated Mortgage & General Insurance Business" means regulated mortgage business as set out in article 53A (advising) and article 25A(i) (arranging) of the Regulated Activities Order 2001 (SI 2001/544); and the following non-investment insurance contracts as per articles 10(1) and (2) of the Regulated Activities Order 2001 (SI 2001/544): household insurance in the categories of buildings, contents, accidental, sickness, unemployment, travel, private medical, motor and pure protection contracts as per articles 10(1) and (2) of the Regulated Activities Order 2001 (SI 2001/544); but excluding any other form of non-investment insurance contract ("Excluded Contracts"); and Protection Business. This definition shall also include any non-regulated mortgage and general insurance business notified by the Service Provider to the Member from time to time.

"Regulator" means any competent regulatory authority (either statutory or by voluntary trade agreement) which regulates the provision of financial services products to members of the public and which authorises (where relevant) the Service Provider or the Member.

"Relevant Capacity" means either alone or jointly with another or others, whether as principal, agent, consultant, director, partner, shareholder, independent contractor, or in any other capacity, whether directly or indirectly, through any other person, firm, organisation or company and whether for the benefit of the Member or that of others.

"Restricted Business" means the provision of support services to independent intermediaries as carried out by the Service Provider or any member of the PMS Group during the continuance of and as at the date of termination of this Agreement and/or operating or being otherwise involved in a mortgage club or commercial network of firms or parties directly outsourced by the FSA.

"Restricted Employee" shall mean any employee of the Service Provider or any member of the PMS Group employed at the date of termination of this Agreement in the capacity of Director or in any research, technical, IT, financial, marketing or sales function or other managerial role and with whom the Member has worked at any time during the 12 months preceding the termination of this Agreement and shall not include any employee employed in an administrative, clerical, manual or secretarial capacity.

"RPI" means retail price index.

"RMAR" means Retail Mediation Activities Return.

"Services" means the services listed in the Service Schedule.

"Service Schedule" shall have the meaning set out in recital C of this Agreement.

"Third Parties" shall have the definition as set out in clause 7.7.

"Users" shall have the meaning in clause 4.3.

"Working Day" means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory holiday in any part of the United Kingdom and during which banks are open for a full range of banking transactions and Working Days shall be construed accordingly.

APPENDIX 2

Where the Application Form states that this appendix 2 is relevant, the following provisions shall apply.

1. GROSS TURNOVER SPLIT

- 1.1 The Service Provider and the Member shall procure that all Gross Turnover of the Member (including fees or other income relating to Protection Business paid directly by Institutions to the Member but for the avoidance of doubt excluding Procuration Fees) shall be paid into the Account.
- 1.2 All Gross Turnover paid into the Account shall be divided between the Service Provider and the Member at the split rate set out in section 3 of the Application Form.
- 1.3 After the termination of this Agreement, the Application Form and the Service Schedule, Gross Turnover relating to such period shall belong to the Member provided that where such monies or any other payments are received into the Account thereafter, the Service Provider shall be entitled to deduct an administration fee equivalent to 10% of any such monies before forwarding the balance to the Member. Such deduction rates shall apply for three months after the termination of this Agreement and/or Service Schedule. Thereafter, such percentage shall increase to 25%. For the avoidance of doubt, the Member shall be responsible for making all notifications to Institutions in relation to the termination of this Agreement, the Application Form and/or Service Schedule.
- 1.4 In the event of any of the Institutions claiming Clawback in relation to Protection Business written by the Member through the Agencies during the continuance of this Agreement, the Application Form and the Service Schedule the Member is solely responsible for repayment of any such Clawback during the continuance of this Agreement directly to the Institutions but may recover from the Service Provider the same percentage of such Clawback as the percentage of Gross Turnover payable to the Service Provider once settled pursuant to the Application Form and this Agreement. On termination of this Agreement, the Application Form and/or Service Schedule, the Service Provider shall have no further liability to the Member or any other third party for any Clawback whether relating to Gross Turnover paid into the Account before or after termination or not. Neither the Service Provider nor any member of the PMS Group shall have any liability of any nature whatsoever in respect of any other repayments to Institutions or third parties during the continuance of after termination of this Agreement and Service Schedule.
- 1.5 On a day of each week to be notified by the Service Provider to the Member, the Service Provider will advise the Member of the amount standing to the credit of the Member in the Account and will separately advise the Member as to the amounts to which the Service Provider and the Member are respectively entitled thereunder pursuant to the provisions of this paragraph 1.5 and the Service Schedule. Such notification will include a statement showing all commissions received by the Service Provider in relation to Protection Business conducted by the Member through the Agencies and all claims for Clawback made against it. Where electronic data has not been received from the Institutions by the Service Provider, the Service Provider will provide a copy statement to the Member. All other copy statements are to be obtained directly by the Member from the Institution(s) concerned. For the avoidance of doubt, such statements may not be provided for all debts if any Agencies of the Member with a single Institution falls into overall debt. The Service Provider will then as soon as reasonably practicable advise the bank managing the Account to make the payment of the amount due to the Member. For the avoidance of doubt, where the balance of the Account is nil, the Service Provider will not notify the Member in accordance with this paragraph 1. Notification will however be made where there is a negative balance on the Account. For the avoidance of doubt, statements will only be available online during the continuance of this Agreement, the Service Schedule and the Application Form. Following termination, the Member will receive hard copy statements in accordance with this paragraph 1.4 for a period of three months only.
- 1.6 In respect of monies relating to business transacted by the Member prior to the date of this Agreement or any other monies which do not relate to Protection Business written through the Agencies which are received and administered by the Service Provider, the Service Provider's systems are unable to differentiate such sums from Gross Turnover paid into the Account during the continuance of this Agreement, therefore the Service Provider shall be entitled to deduct an administrative charge in respect of such sums equal to the Service Provider's apportionment set out in the Application Form prior to forwarding such sums to the Member in accordance with paragraph 1.5.
- 1.7 Where an Institution makes available commission information in whatever form, including via an online commission system, then the Member hereby permits the Service Provider to have such access to such information as the Service Provider shall require.
- 1.8 The Service Provider will cease to be under any obligation to accept any payments from the Institutions into the Account relating to Protection Business with effect from the date the Member ceases to be an Authorised Person. In the event the Service Provider pays any sums to the Member from the Account in relation to any Protection Business application submitted by the Member after it has ceased to be an Authorised Person, the Member undertakes to repay any such fees and/or commission in respect of such application to the Service Provider in full and on demand.

- 1.9 In the event there is a negative balance on the Account, the Member shall comply with any request from the Service Provider and/or any Institutions to credit the Account with sufficient funds to bring such balance to nil or a positive figure within 28 days of being requested to do so by the Service Provider. This paragraph 1.9 shall survive the termination of this Agreement and/or Service Schedule.
- 1.10 The Service Provider has the right to deduct overdue payments due from the Member from the Account subject to providing the Member with 28 days notice and to the extent that the Account does not become overdrawn as a result. The Service Provider is also entitled to reclaim from the Member any bank charges and an administration fee of £20 in relation thereto and to payments to the Service Provider from such Account at the request of the Member.
- 1.11 It is the intention of the parties that during the continuance of this Agreement, the Application Form and the Service Schedule, where this appendix 2 applies, the Service Provider will receive the minimum level of income per annum set out in section 3 of the Application Form in consideration of the provision of the Services (the "Minimum Annual Sum"). Accordingly, within one month of 30 June and 31 December (the "Reconciliation Dates") of each year during the continuance of this Agreement, the Application Form and the Service Schedule, the Service Provider shall carry out a reconciliation exercise and shall notify the Member of the result thereof within 10 Business Days of completion and the Member will pay the balance to the Service Provider within 10 Business Days of receipt of a written demand. For the purposes of such reconciliations, the Member shall (and shall procure that any other relevant party shall) comply with clause 5.8. Save as set out below, in the event the income received by the Service Provider under the Application Form and Service Schedule is less than half the Minimum Annual Sum referred to in the Service Schedule Application Form in any respective period ending on any Reconciliation Date, the Service Provider shall be entitled at its discretion to deduct a sum equal to any shortfall from the amount standing to the credit of the Member in the Account on expiry of 10 Business Days from notifying the Member of the same. Where the amount standing to the credit of the Member in the Account is insufficient to cover in full the amount of such shortfall, the Member shall pay the balance to the Service Provider immediately on demand or, at the discretion of the Service Provider, it may set off the balance against future sums to be credited to the Member in the Account until the entire amount of the shortfall is paid in full. In the event the first Reconciliation Date referred to above falls before the expiry of 6 months from the date of the commencement of the Service Schedule the first reconciliation will be carried out on the next Reconciliation Date and the amount then due to the Service Provider by such date shall be calculated on a pro rata basis.
- 1.12 The percentage share of Gross Turnover due to the Service Provider is set out in section 3 of the Application Form, which forms part of this Agreement and the Service Schedule. Such rate shall apply on commencement of this Agreement, the Application Form and Service Schedule and, where appropriate in the reasonable opinion of the Service Provider shall be reviewed, along with the Services, following completion of the reconciliations by written notice provided to the Member by the Service Provider.
- 1.13 Where following completion of any reconciliation it is in the Service Provider's reasonable opinion that it is apparent that the incorrect percentage split has been applied to the Member, an appropriate adjustment shall be agreed between the parties in writing.

APPENDIX 3

Where the Application Form states that this appendix 3 is relevant, the following provisions shall apply.

1. MONTHLY FEE

- 1.1 The Member shall pay to the Service Provider the monthly fee set out in section 3 of the Application Form (which forms part of this Agreement and the Service Schedule) in consideration of the Services. Any such fee shall be paid monthly in advance to the Service Provider by the Member by direct debit set up by the Member on or before the commencement of the Service Schedule to a bank account notified in writing to the Member by the Service Provider from time to time. The Service Provider shall be entitled to vary the charge referred to in this appendix 3 once in any twelve month period commencing from the first anniversary of the date of commencement of the Service Schedule. Such variation shall reflect an annual increase of the greater of 5% of the existing fee at the time of increase or RPI for the period and shall take effect on provision of the written notice from the Service Provider in accordance with clause 15.