

# **INTERMEDIARY AGREEMENT 18/05/2018**

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## **1. AGREEMENT OVERVIEW**

This agreement applies to Intermediaries registering with Promise Solutions for the purpose of researching and being updated about new products and services with a view to submitting applications via our web based underwriting & sourcing system or any other means.

## **2. PARTIES TO THIS AGREEMENT**

### 2.1

Promise Solutions (registered address)  
2<sup>nd</sup> floor Fullard House,  
Neachells Lane,  
Wolverhampton,  
WestMidlands.  
WV11 3QG.

Registered in England company number 048227774  
Authorised and regulated by the FCA  
Authorisation number: 681423

Referred to in this agreement as **Promise**

## 2.2

The Intermediary who will submit or refer loan applications to Promise and agrees to be bound by the terms & conditions of this agreement. (Intermediary)

### **3. PRODUCTS & SERVICES**

The products available to the Intermediary by way of this agreement are:

- I. Regulated and non regulated second charge loans – Promise may act as a Packager, Club or accept Referrals
- II. Regulated first charge mortgages – Promise may act as a Packager or a Club
- III. Non regulated first charge mortgages – Promise may act as a Packager, a Club or accept Referrals
- IV. Non regulated commercial mortgages and loans – Promise may act as a Packager, a Club or accept Referrals

#### 3.1

To support the provision of the products above Promise provides access to a number of resources. These are value added services and are not guaranteed but include:

#### 3.2

Loan Brain - Free access to our loan sourcing & underwriting system conditional upon it being used to source and submit an application to us, and/or create a record of secured loan quotation for compliance purposes. It is available at 2 levels:

- (i) Loan Brain Lite – minimal application data capture resulting in loan options that may be available subject to full underwriting
- (ii) Loan Brain Pro – more comprehensive application data capture and a full underwriting option

#### 3.3

Compliance audit trail - Loan Brain automatically provides you with a record of quotation for your compliance file whether you are using it for a secured loan application or remortgage comparison.

#### 3.4

Case tracking - You will have 24/7 on line / remote access to case notes detailing application progress.

#### 3.5

Underwriting expertise - Our team of experienced underwriters is available to discuss a case with you even if you are not ready to formally submit an application/enquiry.

### **4. RESPONSIBILITY FOR SUITABLE ADVICE**

#### 4.1

We accept business from Intermediaries in 3 channels:

- (a) Referral – Promise selling. The Intermediary supplies the enquiry and Promise takes responsibility for the sale of the product including advice where appropriate as well as functioning as a packager.
- (b) Packager – Intermediary selling. The Intermediary supplies the enquiry and takes responsibility for the sale of the product and advice where appropriate. Promise functions only as a packager offering a business to business service to the Intermediary.
- (c) Club – Intermediary Selling. Promise provides a product advice a placement service to the broker. The intermediary deals direct with the lender through Promise's club arrangements and is paid direct by the lender. The intermediary is responsible for all packaging and the sale in regard to the product sold.

#### 4.2

For the avoidance of doubt suitable advice is deemed to mean:

##### 4.2.1

Recommendation of a product from our lenders product range, which is available to the client, having taken all relevant factors in to account which can clearly be shown to be in the client's best interests.

##### 4.2.2

Recommendation of a product which embraces & complies with the spirit and explicit terms/conditions of applicable legislation featured within MCOB and the MCD.

##### 4.2.3

Recommendation of a product which does not result in client detriment when compared with:

- (a) An alternative product from the range available to the client from our lender panel
- (b) Deciding not to proceed with the loan

#### 4.3

When Promise is acting as a packager the responsibility for the sale and suitability of the product lies entirely with the Intermediary. Promise will use its best endeavours to offer and package products from its panel which best meet the Intermediaries requirements but accepts no liability for the suitability of the product or makes any guarantee that alternative or cheaper products are not available.

#### 4.4

When Promise is taking responsibility for the sale of a regulated product, its scope shall be limited to second charges only. Any Intermediary authorised by the FCA to advise on regulated first charge mortgages shall remain responsible for ensuring that more suitable first charge alternatives are not available from its panel of lenders. The Intermediary will ask Promise to cancel its application at anytime during the process and will revert to a first mortgage application or other solution should the Intermediary deem this to provide a more suitable outcome for the borrowers.

## **5. TREATING CUSTOMERS FAIRLY**

### 5.1

Both parties agree to uphold and apply the spirit & explicit terms/conditions of the principles established by the FCA known as TCF. For the avoidance of doubt these are:

- (i) Consumers can be confident that they are dealing with firms where the fair treatment of customers is central to the corporate culture.
- (ii) Products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly.
- (iii) Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale.
- (iv) Where consumers receive advice, the advice is suitable and takes account of their circumstances.
- (v) Consumers are provided with products that perform as firms have led them to expect, and the associated service is of an acceptable standard and as they have been led to expect.
- (vi) Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint.

## **6. OBLIGATIONS – both parties**

Each party agrees and warrants:

### 6.1.

It will obtain and maintain in force all authorisations, consents, licences, registrations & permissions needed to conduct its business in a lawful manner. To include without limitation FCA permissions and obligations under the DPA.

### 6.2

Should it fail to maintain all authorisations, consents, licences, registrations & permissions, or have grounds to believe they may be withdrawn or not renewed, it will promptly advise the other party.

## **7. PROMISE SOLUTIONS OBLIGATIONS**

We will:

### 7.1

Allow the registered Intermediary a means of secure access to Loan Brain and a website for submissions and support conditional upon it being used for its intended purpose.

### 7.2

Allocate sufficient resources to achieve & maintain service levels at a standard expected by professionals within the financial services sector.

7.3

Use all reasonable endeavours to provide the loan being applied for, whilst acting in accordance with the terms and spirit of this agreement at all times.

7.4

Promise Solutions retains absolute discretion as to whether to allow an Intermediary to register and benefit from the products & services featured in this agreement.

## **8. INTERMEDIARIES OBLIGATIONS**

The Intermediary will:

8.1

Use Loan Brain and other facilities provided by Promise for the purpose for which they are intended and not attempt to copy, duplicate or reverse engineer any elements of the sourcing system.

8.2

Take full responsibility for all users of Loan Brain who use the Intermediaries account.

8.3

Hold all necessary FCA permissions for the submission, sale & advice of regulated products.

8.4

Comply with all relevant regulations as featured in MCOB and the MCD for the sale and promotion of regulated products.

8.5

Manage application data in accordance with the requirements of the DPA.

8.6

Only provide accurate information in support of any application to the best knowledge of the Intermediary

## **9. MULTIPLE USERS OF INTERMEDIARIES ACCOUNT**

9.1

Where multiple users of one Intermediary account are required clear definition of the status and authority of the user will be needed. These will typically be:

- Principal – usually the business owner and the person holding FCA permissions.
- Appointed Representative – an employee or sub contract worker of the Principal using the Principal's permissions
- Agent – typically of self employed status with a commercial relationship with the Principal and using the Principal's permissions

## 9.2

The formal relationship being established by this agreement is between Promise Solutions and the Principal. The products & services on offer may be made available to a Principal's Appointed Representative or Agent on the strict understanding that the following conditions are met:

## 9.3

The requirements of MCOB wider FCA principles are met in full in regard to all regulated activity. The Principal takes full responsibility for the actions of the Appointed Representative or Agent, and ensures compliance with MCOB the MCD at all times.

## 9.4

Remuneration will be paid directly to the Principal unless explicitly agreed otherwise

## **10. NETWORKS**

### 10.1

Our products and services are available to Intermediaries working via a network through the network's dedicated portal. Submissions of this type will automatically receive the terms and conditions applicable to the network. Intermediaries via networks will typically be from Appointed Representatives (AR) making use of the networks FCA permissions and compliance regime.

Commissions will be as provided to the AR by the network

## **11. CROSS SELLING & OWNERSHIP OF CLIENT**

### 11.1

Promise Solutions does not cross sell products of any description. When the product being applied for is not available, or unacceptable, it may suggest alternative financial solutions such as:

- (i) A remortgage from it's complex mortgage panel
- (ii) A bridging loan
- (iii) An unregulated product

This would only be done with the explicit approval and acceptance of the Intermediary. Other remuneration terms would apply and be negotiated on a case by case basis.

### 11.2

Ongoing ownership of the client is considered to be with the Intermediary. All requests for additional finance, products or services post completion of the loan would be directed to the Intermediary.

## **12 REMUNERATION**

### 12.1

Remuneration of registered Intermediaries varies by product range and the service offered. There will also be occasions where the standard remuneration differs to accommodate unusual circumstances. Any non standard commissions will be confirmed with the intermediary in advance.

### 12.2.1

Second charge term loans.

The Intermediary's remuneration does not differ dependant on who is giving the advice – Promise or the Intermediary. However for clarity the remuneration for intermediaries is as follows:

### 12.2.2

Referral – Promise Selling

Promise will charge a fee (Promise fee) which includes normal third party costs including mortgage references, consent, legal searches and credit reports. The Promise fee does not include valuation costs (if required) which borrowers can add to the loan or pay separately. The Promise fee will be made clear to intermediaries and borrowers throughout the process.

Intermediaries may also charge a fee (Intermediary fee) which can be added to the loan or paid by the borrowers separately. In each case Promise will collect the Intermediary fee and pass it to the intermediary. Under no circumstances can the intermediary charge a separate fee.

In the interests of TCF and preventing disproportional fee charging the intermediary fee shall not exceed the Promise fee.

In addition Promise will pay the Intermediary 50% of any commission it receives from the lender in relation to the loan application

Example

Intermediary fee	£995
Intermediary commission	£450
Total intermediary income	£1445

### 12.2.3

Packaging – Intermediary selling

Promise will charge a fee (Promise fee) which includes normal third party costs including mortgage references, consent, legal searches and credit reports. Promise's fee does include valuation costs, if required, which borrowers can add to the loan or pay separately. Promise's fee will be made clear to intermediaries and borrowers throughout the process.

Intermediaries may also charge a fee (Intermediary fee) which can be added to the loan or paid by the borrowers separately. In each case Promise will collect the Intermediary fee and pass it to the intermediary. Under no circumstances can the intermediary charge a separate fee.

In the interests of TCF and preventing disproportional fee charging the intermediary fee shall not exceed the Promise fee.

In addition Promise will pay the Intermediary 50% of any commission it receives from the lender in relation to the loan application

## Example

Intermediary fee	£995
Intermediary commission	£450
Total intermediary income	£1445

### 12.2.4

#### Club –Intermediary selling

Promise aims to pay intermediaries the same amount of commission and fees he / she would get if by dealing direct with the lender. Any exception to this will be notified to the intermediary before proceeding.

### 12.2.5

#### Fee administration – applicable to Second Charge referral and packaging only

Fees added to the loan – will be deducted from the loan by the lender and sent directly to Promise. The Intermediary's fee would be dispersed within 2 working days of receipt by Promise.

Valuation fees (paid upfront / not added to the loan) – are payable at the point of the valuation being instructed.

Broker fees (paid upfront / not added to the loan) – are payable at the point of the binding offer being produced and are 100% refundable if the applicant chooses not to proceed to completion. The Intermediary would be paid within 2 working days of Promise being in receipt of cleared funds or the loan completing – which ever is the latest.

### 12.3

#### Short term Bridging / development loans and all commercial loans.

The introducing Intermediary will receive 50% of the broker fee and lender commission after deduction of any third party costs incurred by Promise.

### 12.4

#### First mortgages

#### 12.4.1

##### Packaging – Intermediary selling.

The introducing Intermediary will receive 50% of the lender commission after deduction of any third party costs incurred by Promise. Intermediaries may charge their own fees or share in the fees charged by Promise. This will be discussed and made clear to the intermediary at the outset

#### 12.4.2

##### Club –Intermediary selling

Promise aims to pay intermediaries the same amount of commission and fees he / she would get if by dealing direct with the lender. Any exception to this will be notified to the intermediary before proceeding.



## 12.5

### Payment of commissions

#### 12.5.1

With the exception the club options, Intermediaries agree and authorise Promise to receive all other fees or lender commissions relating to transactions under this agreement and to pass the agreed share on to the Intermediary or, in the case of appointed representatives, it's Principal within 2 working days by post or by bank transfer in to a nominated back account.

#### 12.5.2

When using the Club option to place a second or first charge mortgage the intermediary recognises that the lender may pay Promise an additional commission for providing the placement service and agrees to select Promise as the payment route in regard to that client application

#### 12.5.3

In the event of a lender clawing back an element of the commission it has paid to Promise the intermediary agrees to repay its share of the commission to Promise within 10 working days. Should a partial refund of commission be required the amount the intermediary shall repay will be pro rata in the same ratios that the commission was originally shared between Promise and the Intermediary. In the event of non payment Promise shall be entitled to charge interest on the amount at Barclays Base Rate plus 7% and offset the debt against other commissions due to the Intermediary.

## **13. THIRD PARTIES**

### 13.1

Intermediaries authorise Promise to pass details of enquiries to third party lenders and intermediaries on its panel at Promise's discretion for the purpose of researching possible solutions. No contact will be made with Intermediary's clients without the express permission of the Intermediary.

### 13.2

The Intermediary warrants that it has on every occasion obtained appropriate permission for client details to be passed to Promise and it's panel of third party providers.

### 13.3

Where an enquiry is referred by Promise to a third party which offers products not covered in this agreement, such referral would only be made with the explicit agreement of the introducing intermediary. Remuneration would be bespoke and agreed on a case by case basis.

## **14. FCA PERMISSIONS**

### 14.1

All Promise Intermediaries must hold valid FCA permission which is appropriate for the business to be transacted and the Intermediary's part in the transaction. Promise will take steps to evidence this at the outset. The Intermediary must inform Promise immediately in the event that permissions held are revoked, expire or in some other way become or threaten to become invalid.

### 14.2

Each party will ensure that it's conduct is limited to the permissions it holds.

## **15. DATA PROTECTION & MANAGEMENT**

### **15.1**

When you submit an enquiry or application to us (including when you do so via Loan Brain our loan sourcing system) you do so as a controller of the personal data which you have collected. You are responsible for the processing of that personal data and ensuring that such processing is undertaken in accordance with the requirements of all current Data Protection Laws.

### **15.2**

Before sharing the data with us you shall ensure that you have obtained any necessary consent and/or other lawful purpose for transferring the personal data to us, and have complied with all other necessary lawful requirements to enable the lawful transfer of the personal data to us. This includes providing us with the applicants email address in order to provide our privacy statement. We will receive the personal data as a controller or processor dependent on who is taking responsibility for Advice.

### **15.3**

Each party shall be separately and independently responsible under Data Protection Law for any personal data in respect of which each party is a controller or processor while the personal data is in their possession or under their control. The parties shall, where necessary, cooperate with, and provide reasonable assistance to one another in order to enable each party to comply with their obligations under Data Protection Laws, including (but not limited to):

- making available to the other party in a timely manner any correspondence from any data subjects or any relevant supervisory authority in relation to the processing of personal data by that party (to the extent that this is legally permitted)
- Informing each other of any Data Security Incident which may impact the other party, in as far as such Data Security Incident involves the personal data which is processed in relation to this agreement

### **15.4**

You will not divulge to any third party any documents or materials of any kind containing information we have identified as confidential information or which relates to our business or affairs or those of any of our subsidiaries or affiliates or associated companies.

### **15.5**

Some or all of the information supplied to us in connection with an application will be held on computer and/or paper and will comprise personal data. Unless required to do so by law, we will not disclose such information to anyone else other than our agents or other third parties to assist in the provision of the services governed by this agreement.

### **15.6**

Each party would inform the other in writing if in reasonable opinion there has been a failure to comply with any provision of applicable Data Protection Laws.

### **15.7**

Any breach of clause 15.6 by you will be a material breach of this Agreement which is not capable of being remedied, irrespective of whether any financial loss or reputational damage arises, and irrespective of the level of any financial loss or deprivation of benefit arising, as a consequence of such a breach.

### **15.8**

Please note that all telephone calls are recorded for security and training purposes.

## **16. INDEMNITY & LIABILITY LIMITS**

### 16.1

The Intermediary indemnifies Promise Solutions from any cost, loss, damage or liability incurred as a result of a direct or indirect breach of this agreement by the Intermediary, up to its full value.

### 16.2

Promise Solutions shall have no liability under any circumstances for a breach by the Intermediary of CONC, MCOB or any legislation applicable to the provision of the products & services covered by this agreement.

### 16.3

Nothing in this agreement shall limit or exclude Promise Solutions liability for an act resulting in harm which may not be lawfully excluded. For example negligence, corruption or fraud.

## **17. FORCE MAJEURE**

### 17.1

Any party that is subject to a Force Majeure event shall not be in breach of this agreement provided that:

### 17.2

It promptly issues an event notice in writing of the nature & extent of the event causing the failure or delay in performance.

### 17.3

It has used all reasonable endeavours to mitigate the effect of the event and to continue with its obligations as defined by this agreement as soon as practicably possible

### 17.4

Both parties seek to minimise the detrimental effect of an event and meet within 7 days from the delivery of an event notice to agree on suitable recovery action.

## **18. TERMINATION**

### 18.1

Either party may terminate this agreement immediately in the event of a material breach of its terms & conditions.

### 18.2

Either party may terminate this agreement without reason by giving 7 days notice in writing to the other party.

18.3

The agreement will end with immediate effect should the Intermediary be considered declared insolvent by way of formal action, or the firm possibility of formal action designed to pursue insolvency.

18.4

The agreement will end with immediate effect should the Intermediary be considered untrustworthy by virtue of formal regulatory body action, the threat of such action or abuse of any of the terms & conditions of this agreement.

18.5

In the event of termination Intermediary pipeline remuneration on applications being processed in accordance with the terms & conditions of this agreement will be honoured.

18.6

Termination of any kind by either party must be communicated in writing.

18.7

Termination of this agreement shall not affect the rights & remedies of either party accrued up to the date of termination.

18.8

All provisions expressed or intended to survive termination shall continue in full force & effect.

## **19. CONFIDENTIALITY**

19.1

Each party undertakes that it may disclose confidential information arising from the relationship created by this agreement to employees, officers, representatives or advisers of it only for the purposes of carrying out its obligations under this agreement.

19.2

Each party undertakes to the other that it shall not at any time during the term of the agreement, or for a period of 5 years following termination of the agreement, disclose to any person or body other than those described in 19.1 concerning the business affairs, customers and suppliers of the other party.

19.3

Each party may waive the obligations of clause 19.2 only in exceptional circumstances for example a legitimate request by a court of law, government or regulatory body. The provisions of the DPA will apply at all times.

## **20. VARIATION**

20.1

Promise is entitled to amend the terms & conditions of this agreement at any time. Advance notice of not less than 1 week, will be given. The amendment will be communicated & achieved by way of:

20.2

The amended version of the agreement being published on Promise Solutions web site [www.promisesolutions.co.uk](http://www.promisesolutions.co.uk)

20.3

Continued use of the products & services available under this agreement, following the issue of notice, will be deemed to be acceptance by the Intermediary.

## 21. LAW & JURISDICTION

21.1

Any dispute or claim arising out of this agreement shall be governed in accordance with the law of England & Wales.

## 22. GLOSSARY OF TERMS

Appointed Representative	A Principal's employee, sub contract worker or agent reliant on use of the Principal's FCA permissions.
Agent	Of self employed status with a commercial relationship with the Principal, reliant on use of the Principal's FCA permissions.
DPA	The Data Protection Act 1998 and any update of it
Commencement Date	The date that you click to accept the terms and conditions of the agreement.
Confidential Information	All secret or confidential information (including commercial; financial; marketing & technical information, together with know-how, trade secrets and other information in written, electronic or any other form or medium), whether disclosed before, on or after the date of this Agreement
Directly Authorised	A person holding FCA permission for regulated activity
FCA	The Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London, E14 5HS.
Force Majeure	Any event outside the reasonable control of either party affecting it's ability to perform any of its obligations.
Intermediary	Broker, financial adviser, member or any authorised user of the service. Each of these definitions meaning the same.
Loan Brain	A loan sourcing and underwriting tool owned and managed by Promise Solutions
Master Broker	Promise Solutions, the provider of the loan sourcing & underwriting system known as Loan Brain, and a distributor of financial products.
MCOB	Mortgage Conduct of Business sourcebook, part of the FCA handbook detailing rules & standards applicable to the sale of regulated mortgage products.
Network	A firm which is Principal to Appointed Representatives and is responsible for their compliance with applicable regulations.
Packager	A distributor of loan products on behalf of lenders who typically don't have their own sales outlets. Obtains all references needed to support the loan application before submitting them to the lender for underwriting, compliance checks and final sign off. As a packager Promise accepts no responsibility for the suitability of the product sold.
Referral	An enquiry is introduced on the understanding that Promise will deal with the

	borrower directly any will be responsibility for the sale of the financial product.
Principal	Usually the business owner, or senior manager and the person holding FCA permissions. Takes responsibility for the actions of his/her Appointed Representatives and Agents.
TCF	Treating Customer Fairly principles as established by the FCA
The MCD	An EU-wide framework of conduct rules for mortgage firms in force from 21 March 2016