

# Capitalise Platform Terms of Use

## 1. About us

- 1.1 This website, and the online broking service offered through the website (**Service**), is operated by Capitalise.com Platform Ltd (**we, us, our** or **Capitalise**). Our registered company number is 09256446 and our registered address is at 3rd Floor, 2 Valentine Place, London, SE1 8QH, United Kingdom.
- 1.2 Capitalise.com Platform Ltd, trading as Capitalise, is authorised and regulated by the Financial Conduct Authority (FCA) for regulated credit agreements.

## 2. Our Service

- 2.1 We operate a commercial credit broking platform through this website to facilitate Borrowers' applications to a select group of Lenders for certain loan and other finance and credit Products which may be appropriate to the needs of their business. We do not provide advice to users of our platform other than advice on the technical use of the website and Service.
- 2.2 Capitalise is not a lender or a supplier of credit or other financial products. We do not offer any financial products via the website and we will not be a party to any agreement entered into between users of the Service, nor do we make any representations or warranties relating to any agreement entered into between users of the Service, nor in respect of the parties thereto.
- 2.3 If a Borrower and a Lender enter into a contract as a result of our Service, we will be paid a commission by the Lender. If another party (an Introducer)

introduces a Borrower to us, we may also be obliged to pay commission to the Introducer.

- 2.4 The Service offered through this website is only available to Users which have fully registered to use the Service in accordance with and subject to these Terms of Use (**Terms**). The Service can only be used in accordance with these Terms. If you do not agree to these Terms, you may not use the Service.

### 3. Terms of Use

- 3.1 These Terms, together with our [website terms of use](#), set out the basis on which you are allowed to use our Service. Your use of the Service as a prospective and/or registered Borrower, Lender or Introducer will be subject to these Terms. By using the website and the Service you agree to be bound by these Terms and our [website terms of use](#).
- 3.2 The payment of commission to us by Lenders is subject to the Lender Commission Terms, and the payment of commission by us to Introducers is subject to the Introducer Commission Terms. When the Lender Commission Terms or Introducer Commission Terms are agreed separately between us and a Lender or Introducer (as applicable), they will be incorporated into and form a part of these Terms.
- 3.3 The way in which we use personal data is explained in our [privacy and cookies policy](#), which forms part of the [website terms of use](#).
- 3.4 We may change these Terms from time to time. If we do so, we will update the Terms on the website. Your use of the website will be taken as your acceptance of the latest version of these Terms. Any changes to these Terms will not apply to any transactions that were agreed as a result of our Service before the date on which the changes take effect, unless required by

applicable law. We recommend that you regularly check these terms of use to see if they have been updated since your last review.

3.5 These Terms were last updated on 9th July 2019.

## 4. Location of Service

The Service is directed solely at Borrowers, Lenders and Introducers established in and conducting business from England. If you access and use the Service from territories outside England, you do so of your own accord and are responsible for complying with local laws. You agree that you will not make any claim to the effect that the Service is conducted in, or subject to, the laws of any country other than England.

## 5. Eligibility to use the Service

5.1 To use our Services as a Borrower, Lender or Introducer you will need to:

- a) satisfy the applicable requirements set out in paragraphs 8 to 10 of these Terms;
- b) accept these Terms, our [website terms of use](#) and our [privacy policy](#);
- c) if you are a Lender, separately agree the Lender Commission Terms with us, and if you are an Introducer, separately agree the Introducer Commission Terms with us; and
- d) register as a Borrower, Lender or Introducer in accordance with paragraph 6 and paragraphs 8 to 10 (as applicable).

5.2 If you cease to be eligible to be a User, you must inform us as soon as reasonably practicable by emailing us at [support@capitalise.com](mailto:support@capitalise.com). If that happens, or if we independently become aware that you are no longer eligible to be a User, your Account will be suspended or terminated in our discretion. If you later become eligible to use our Service again and supply

us with sufficient information to verify your eligibility to use the Service, we may, on request and in our discretion, reactivate your Account.

## 6. Registration

- 6.1 In order to register as a User, you will need to:
- a) complete the applicable registration form on the website and submit it to us;
  - b) provide all mandatory information required by these Terms; and
  - c) set up log-in details consisting of a username and password.
- 6.2 If you do not supply all of the mandatory information that we request via the Service, we cannot provide the Service to you.
- 6.3 Your registration form will need to identify and register one or more individuals who will act as your Authorised User. If you are a sole trader, you will be the Authorised User. You warrant that the individual(s) will have the necessary authority to act on your behalf and bind you in performing all your obligations as a user of the Service for the purposes of using the website and our Service at all times, and that you will not permit any individual who does not have such authority to use the website or Service on your behalf. If an Authorised User leaves your organisation or is otherwise no longer authorised to access and use the Service on your behalf, you must: (i) de-register the applicable Authorised User; (ii) designate a replacement Authorised User; and (iii) provide all mandatory information regarding the replacement Authorised User, by emailing us at [support@capitalise.com](mailto:support@capitalise.com).
- 6.4 Once you have registered for the Service, we may contact you and/or third parties to verify the information and/or provide us with further information to support your application (for example where required by applicable law).

- 6.5 Once you have fully complied with the registered process in paragraphs 6.1 to 6.3, your Account will be activated automatically. Once your Account has been activated, it will remain open until it is suspended or terminated in accordance with these Terms.
- 6.6 In addition to our other rights under these Terms, we reserve the right in our discretion to disable an Account at any time if, in our opinion: (i) you have failed to comply with any provision of these Terms; (ii) if any details you provide for the purposes of registering as a User are false or incorrect; or (iii) if we think it is necessary to protect other Users and/or the security or the operation of the website.
- 6.7 A User's registration to use the Service is strictly personal to that User and cannot be assigned to any third party.

## 7. Your information

- 7.1 You represent and warrant that all information that you give to us, including information provided about you (and in the case of Introducers, about Borrowers) during the course of registration as a User, is accurate, complete, up-to-date and not misleading at all times. You must notify us promptly if any of that information changes, or if you become aware of any additional relevant information, following your registration as a User.
- 7.2 You are solely responsible for any information you make available via the Service, including, if you are a Borrower or Introducer, the Borrower Information. You must not provide us or any User with any information that you do not own or have permission to display, publish or post, and you represent and warrant that you will comply with this paragraph 7.2 at all times.
- 7.3 You agree to indemnify us and other Users from and against any Loss suffered or incurred as a result of or in connection with any claim:

- a) relating to the use and/or possession of any information, data, content or materials you provide and/or make available via the Service breaches the intellectual property or other proprietary rights of any other User or third party; or
- b) arising from or in connection with a breach by you of paragraphs 7.1 and/or 7.2.

## 8. Provisions applicable to Borrowers

8.1 You may only apply to register to use the Service as a Borrower if you meet the following criteria:

- a) you are established in and are conducting business from the United Kingdom;
- b) you have all necessary consents and regulatory approvals to use the Service; and
- c) you are either: (i) a sole trader; (ii) a limited liability partnership with two or more partners; or (iii) a limited liability company.

Personal borrowing or other credit services are not provided through Capitalise, and individuals acting as consumers (and not as sole traders) are not allowed to use the Service.

8.2 Each Borrower acknowledges that the type of Products that the Borrower is entitled to request via the Service will depend on the legal status of the Borrower (i.e. whether the Borrower is a sole trader, limited liability company or limited liability partnership). The type of Products that a limited liability partnership may request via the Service will also depend on the number of members that the Borrower has. These differences are reflected in the Decision Tree, which may vary from time to time. Accordingly, each Borrower must notify us of their legal status (and, if applicable, the number of partners in a limited liability partnership) when prompted via the website.

Further, each Borrower warrants that:

- a) the legal status notified on registration is correct as at the date of registration of the Borrower; and
- b) if a Borrower's legal status changes following registration as a Borrower (for example from a sole trader to a limited liability company), the Borrower will notify us as soon as reasonably practicable of this change at [support@capitalise.com](mailto:support@capitalise.com).

8.3 If a Borrower fails to comply with paragraph 8.2 we may treat a failure to do so as a material breach of these Terms and may suspend and/or terminate the Borrower's Account and access to the Service.

8.4 In addition to the eligibility criteria set out in these Terms, Borrowers acknowledge that:

- a) there may be additional eligibility criteria for Products offered by particular Lenders. Lenders will be solely responsible for making Borrowers aware of these criteria; and
- b) Capitalise may, from time to time, apply additional eligibility criteria for some Products where required by applicable law or business requirements. Capitalise will notify Borrowers via the website and/or by email if any eligibility requirements change.

## 9. Provisions applicable to Lenders

You may only apply to register to use the Service as a Lender if:

- a) you are authorised and permitted to act as a lender under the Financial Services and Markets Act 2000 and/or other applicable legislation; or
- b) you are an independent lender operating only in unregulated products; and
- c) you have all necessary consents and regulatory approvals to use the Service.

## 10. Provisions applicable to Introducers

- 10.1 You may only apply to register to use the Service as an Introducer if:
- a) you are established in and are conducting business from England; and
  - b) you have all necessary consents and regulatory approvals to use the Service;
- 10.2 If you apply to register as an Introducer, we will contact your Authorised User to discuss your application and may ask you to provide us with further information so that we can evaluate your application.
- 10.3 Each Introducer must notify us of their regulated status when prompted on registration. Further, each Introducer warrants that if the Introducer's regulated status changes following registration as an Introducer (for example if it becomes no longer regulated under applicable law), the Introducer will notify us as soon as reasonably practicable of this change at [support@capitalise.com](mailto:support@capitalise.com).
- 10.4 Introducers are only allowed to use the Service to introduce prospective Borrowers to Lenders that comply with the eligibility criteria in paragraph 8.1. Introducers acknowledge that the type of Products that Introducers may apply for on behalf of Borrowers via the Service will depend on the factors set out in paragraph 8.2. Accordingly, the Introducer must notify us of the Borrower's legal status (and in the case of a limited liability partnership, the number of members) when prompted on the website. Further, each Introducer warrants that:
- a) the Borrower Information as notified on registration is correct as at the date of registration of the Introducer or the date of the first Borrower introduction via the Service, whichever is later; and
  - b) if a Borrower's legal status changes (for example from a sole trader to a limited liability company) or other material Borrower Information changes

following Introducer's registration, the Introducer will notify us as soon as reasonably practicable of this change at [support@capitalise.com](mailto:support@capitalise.com).

10.5 Without limiting any other rights we may have, if an Introducer fails to comply with the notification requirements in either paragraph 10.3 or paragraph 10.4, we may treat the failure as a material breach of these Terms and may:

- a) suspend and/or terminate the Introducer's Account and access to the Service; and/or
- b) with respect to any Finance Agreements entered into after the relevant status or other material change relating to the Borrower or Introducer: (i) withhold any Commission that would otherwise be payable to the Introducer with respect to those Finance Agreements; or (ii) if any such Commission has already been paid to the Introducer, demand that such Commission be refunded to us (in which case the Introducer will refund such Commission promptly and in any event within seven days of demand).

10.6 Each Introducer warrants and represents that they have obtained all necessary consents and permissions from the applicable Borrower in order to:

- a) enable the Introducer to provide information about the Borrower via the Service; and
- b) to enable us to provide updates to the Introducer about the progress of any discussions between the Borrower and Lender(s) via the Service and any resulting Finance Agreements.

Introducers must indemnify us from all Loss suffered or incurred as a result of or in connection with any claim that the Introducer has failed to comply with paragraph 6(a) and/or (b).

10.7 Each Introducer will act in a professional manner and in accordance with good industry practice and applicable laws at all times in respect of its use of, and activities relating to, the Service.

## 11. Standard Checks

11.1 A User's registration to use the Service is subject to completion of our Standard Checks to our satisfaction. We may in our sole discretion suspend an Account while we conduct our Standard Checks.

11.2 We may conduct our Standard Checks on each organisation wishing to register as a User, and may also conduct further checks where we are required to do so following a change in applicable law and/or as we may require from time to time (in our absolute discretion). This may, for example, include conducting checks to confirm:

- a) that the organisation meets the applicable criteria set out in these Terms;
- and
- b) the User's identity.

We may also obtain financial and credit reports from third parties and/or screening an organisation's identity against criminal lists provided by third parties. In order to register and activate an Account and maintain your registration as a User, you must provide the details we request and authorise third parties as necessary to release details about you. All personal data collected as part of these Standard Checks will be processed in accordance with our privacy policy.

11.3 While we apply minimum criteria for access to the Services under these Terms and may undertake Standard Checks, we do not endorse any Users and take no responsibility for and make no representation as to the reliability of any Users. Users should not rely on our Standard Checks, and are

responsible for undertaking their own due diligence and using their own judgement in making any decisions with respect to any transactions.

## 12. Using the Service

12.1 If a Borrower or Introducer wishes to use our Service to make a Product Request, the Borrower or Introducer (as applicable) must:

- a) ensure that the Borrower is entitled to apply for the particular Product(s) via the Service (as reflected in the Decision Tree);
- b) complete and submit the relevant Product application form on the website; and
- c) submit any additional Borrower Information requested on the application form.

The Borrower acknowledges that we may conduct searches of publicly available information (such as the Companies House database) in order to verify information provided by the Borrower or Introducer.

12.2 Once a Borrower has submitted the application form for a Product and all information required by these Terms, our matching algorithm will:

- a) analyse the Borrower Information and the Borrower's Product requirements; and
- b) subject to paragraph 12.3, match the Borrower with one or more Lenders who offer one or more of the requested Products.

12.3 As the risk exposure for each Product Request and the availability of Products will vary from time to time, we cannot guarantee that every Product Request will be matched with one or more Lenders, or that each Product Request will result in an offer for a Product by any Lenders.

12.4 If a Borrower has been matched with one or more Lenders, we will then present the Borrower's Product Request and the information about the

Borrower as described in paragraph 12.5 to each of those Lenders by email and/or via the Lender's dashboard on the website.

- 12.5 The following information will be presented to the applicable Lender(s) by Capitalise on behalf of the Borrower under paragraph 12.4 (in respect of which Capitalise provides no representations as to the accuracy or validity of such information): (a) name of the Borrower; (b) name(s) of the director(s) of the Borrower; (c) turnover of the Borrower; (d) the amount of funding required by the Borrower; (e) the Product requested; (f) contact details for the Borrower; (g) any other information provided by the Borrower or Introducer; (h) if applicable, all publicly available information relating to the Borrower from Companies House; and (i) any data derived from a third party site or application if the Borrower or Introducer has provided log in details for that site or application for this purpose (**Lending Passport Information**). The Lending Passport Information will be treated as the Borrower's Confidential Information under these Terms. The Lender(s) will only use such information for the purposes of considering the Product Request and for no other purpose. Each Lender must indemnify us and the Borrower for any Loss suffered or incurred as a result of the Lender's failure to keep the Lending Passport Information strictly confidential in accordance with these Terms.
- 12.6 A financial provider may need to retain your personal data for a reasonable period in order to comply with requests for assessments from a regulator - even when you do not take up the quote with them. You can contact the financial provider for information on your rights.
- 12.7 Once a Lender has received notification from us under paragraph 12.4, it may, in its sole discretion, conduct further checks to assess whether it wishes to offer the Borrower a Product provided that the Lender will not

conduct any consumer credit checks unless it has given reasonable notice to the Borrower that it intends to do so.

- 12.8 A Borrower will be notified via the Service and/or email if a Lender wishes to progress discussions with the Borrower with respect to the Product Request. The Borrower and Lender will then be able to communicate directly via the Service with respect to the Product Request. Any Finance Agreements will be concluded in accordance with section 14.
- 12.9 If a Lender does not wish to pursue a Product Request, the Borrower will be automatically notified via the Service and/or email.
- 12.10 We cannot guarantee that any Lender(s), or any particular Lender(s), will make an offer for a Product to any Borrower through the Service, or that any Product Request will lead to a Finance Agreement.
- 12.11 Lenders may, in their sole discretion, decide not to pursue any commercial discussions with a Borrower following notification from us under paragraph 12.4.
- 12.12 A Lender must notify us promptly and in any event within seven days if and when:
- a) the Lender makes an offer to a Borrower for a Product offline; and
  - b) the Lender enters into a Finance Agreement and/or any other related agreement relating to a Product with a Borrower as a result of the introduction made via the Service, in which case the Lender must also provide us (via the Service) with a copy of the Finance Agreement and any other related details that we reasonably require (including details regarding the Product size and tenure).

We may contact the Borrower to verify the information provided by the Lender under this paragraph 12.12.

12.12 You are solely responsible for your interactions with other Users via the Service. We reserve the right, but are not obliged, to monitor actions and disputes between you and other Users via the Service.

## 13. Accounts

Users can access a summary of their activity using the Service via the personalised dashboard provided to each User in their Account. Certain metrics will also be provided to Lenders and Introducers via the dashboard on a portfolio basis.

## 14. Finance Agreements

14.1 We will not be a party to any Finance Agreement or any other agreement that is initiated between the Borrower and/or Introducer and Lender through the Service.

14.3 The terms of any Finance Agreement will be subject to negotiation and agreement between the applicable parties outside the Service. We will not act as agent or otherwise participate in any discussions between the Introducer and/or Borrower and Lender with respect to any such agreement.

14.4 We recommend that you seek independent advice and/or conduct your own due diligence with reference to your own particular financial objectives before entering into any Finance Agreement. You will be responsible for entering into any Finance Agreements on the basis of your own skill and judgement and having conducted due diligence.

14.5 If a Lender notifies us that a Borrower has defaulted under or otherwise breached the terms of a Finance Agreement, we reserve the right to suspend and/or terminate that Borrower's access to the Service.

## 15. Fees and Commission

15.1 We do not charge Borrowers any fees to use the Service, and we do not collect any fees from Borrowers on behalf of Lenders or Introducers.

15.2 If a Borrower and Lender enter into a Finance Agreement:

- a) the Lender must pay us the applicable Commission in accordance with the Lender Commission Terms, which are incorporated into and form a part of these Terms; and
- b) if applicable, an Introducer may be entitled to a share of Commission payable by the Lender in accordance with the Introducer Commission Terms.

When a Lender accepts an introduction to a Borrower, we will immediately notify the Borrower of the Commission that would be payable by the Lender to Capitalise based on the submitted Product in the notification centre. We will provide separate notifications for each Lender. We will also provide this information to the Borrower via email within three Business Days of the Lender's acceptance of the introduction. We will only be paid Commission from a Lender once a Finance Agreement has been entered into.

15.3 We may vary the Lender Commission Terms and/or Introducer Commission Terms from time to time by agreement between us and the Lender or Introducer (as applicable).

15.4 We may charge Lenders interest on all Commission outstanding beyond the date on which it due for payment to us. We may charge interest on that basis from the date payment was due up to and including the date of payment (including after any judgment has been obtained) at the rate of 4% per annum above the base rate of HSBC Bank plc.

## 16. Information and communications provided by us

16.1 In addition to the data and information (for example relating to other Users) that is provided via the Service, we may, from time to time, provide you with information via the Service, website and/or in emails, such as whitepapers, that we believe may be relevant or of interest to you ( **Service Information**). In signing up to the Service, you authorise Capitalise to provide you with such information.

16.2 You acknowledge and agree that:

- a) any information provided by us (including Service Information) is provided for information purposes only and cannot be relied on as a guarantee of any particular result;
- b) neither the Service nor any Service Information constitutes any form of advice, recommendation or endorsement by us with respect to Users, Products or risk levels; and
- c) we do not offer any advice about the risks relating to any particular Products or a Borrower's credit worthiness or reliability.

16.3 We cannot assure you that any Service Information is complete, up-to-date or error free, and we will not be liable to you for any Loss if it is not.

## 17. Restrictions

When using the Service, you will not:

- a) breach these Terms or otherwise use the Service in an unauthorised manner;
- b) carry out any unlawful, illegal or fraudulent activities;
- c) communicate with other Users in an unauthorised or unlawful manner or in breach of applicable laws;

- d) breach the information requirements in section 7;
- e) use a proxy or any system preventing the identification of your computer system;
- f) send viruses, Trojan horses or any other computer program that is intended to or might destroy, harm, damage or interfere with our technical infrastructure, systems or databases; or intercept our systems, data or information;
- g) use bots, spiders or any other automatic or manual process to monitor, scrape and/or copy our website without our prior written consent; or
- h) carry out any action that is intended to or might degrade or otherwise detrimentally affect the Service.

## 18. Warranties, representations and disclaimers

18.1 You represent and warrant that, at the date of your initial registration and each time you use the Service:

- a) you have legal authority and capacity to agree to these Terms and use our website and Service lawfully;
- b) each individual you register as your Authorised User is properly authorised to access and use the Service on your behalf;
- c) you meet the applicable User criteria set out in these Terms;
- d) all information you provide to us via the Service is, at the date it is provided, complete, accurate and not misleading; and
- e) you will comply with all applicable laws in respect of your use of the Service and any activities related to your use of the Service.

18.2 We cannot give any warranty or representation in respect of any Products. We do not warrant or represent that any Products offered by Lenders via the

Service will be fit for your purpose or that they are the best or most competitive available in the whole market.

18.3 While we take all reasonable efforts to ask for and verify information provided to us for the purposes of carrying out the Service, we are relying on the information provided by our Users and cannot guarantee that information provided to us (including Borrower Information) will be accurate, complete or error-free. We will not be liable for any errors or omissions in any content provided by Users including for any inaccurate or incomplete User details.

18.4 Except as expressly set out in these Terms, no implied conditions, warranties or other terms, including any implied term relating to satisfactory quality or fitness for purpose, will apply to the website or the Service.

## 19. Liability

19.1 Nothing in these Terms will in any way limit or exclude our liability or any User's liability:

- (a) for negligence causing death or personal injury;
- (b) for fraud or fraudulent misrepresentation;
- (c) under any express indemnity in these Terms;
- (d) for all amounts properly due and payable under these Terms; or
- (e) for anything else which may not be legally excluded or limited.

19.2 Subject to paragraph 19.1, we will not be liable for any:

- (a) loss of profits;
- (b) loss of revenue;
- (c) loss of anticipated savings;
- (d) loss of sales or business;

(e) loss of agreements or contracts;

(f) loss of use or corruption of software, data or information;

(g) loss of or damage to goodwill; (in each case whether such loss is direct or indirect); or

(h) indirect, consequential or special loss or damage; even if we have been advised of the possibility of such damages and whether such loss or liability arises due to negligence, breach of contract, misrepresentation or for any other reason.

19.3 Subject to clause 19.1, we will not be liable to you for any:

(a) losses which arise as a result of your unauthorised use of the Service (including any breach by you of these Terms);

(b) losses that were not caused by our breach of these Terms; or

(c) losses caused by the acts or omissions of third parties providing credit rating or other financial information.

19.4 Subject to the provisions of this clause 19, our total aggregate liability to a Borrower in relation to the Service and anything which we may have done or not done in connection with the Service (and whether the liability arises because of breach of contract, negligence or for any other reason) will be limited, in respect of each event or series of connected events, to £10,000.

19.5 Subject to the provisions of this clause 19, our total aggregate liability to an Introducer in relation to the Service and anything which we may have done or not done in connection with the Service (and whether the liability arises because of breach of contract, negligence or for any other reason) will be limited in respect of each event or series of connected events, to: (a) 125% of the total of all amounts payable by us to the Introducer under or in connection

with these Terms in the 12 month period immediately preceding the event (or most recent event in a series of connected events).

- 19.6 Subject to the provisions of this clause 19, our total aggregate liability to a Lender in relation to the Service and anything which we may have done or not done in connection with the Service (and whether the liability arises because of breach of contract, negligence or for any other reason) will be limited in respect of each event or series of connected events, to: (a) 125% of the total of all amounts payable by the Lender to us under or in connection with these Terms in the 12 month period immediately preceding the event (or most recent event in a series of connected events).

## 20. Indemnities

- 20.1 You will indemnify us from any Loss that we suffer or incur as a result of or in connection with any claims, proceedings or actions arising in respect of your breach of these Terms.
- 20.2 Each party to a Finance Agreement (an **indemnifying party**) will indemnify us from or against any Loss that we suffer or incur in connection with any claim by the other party to the Finance Agreement or by any third party in relation to the indemnifying party's acts or omissions in relation to the Finance Agreement.

## 21. Suspension and termination of Accounts

- 21.1 You may close your Account with us at any time by notifying us under paragraph 25.1.
- 21.2 We reserve the right to suspend or terminate your Account (and your right to use the Service) at any time without prior notice and without liability to you if:
- a) we have reason to suspect that you are connected to unlawful or illegal activity or an organisation prohibited by applicable law;

- b) we have been notified of any actual or threatened unauthorised use of your Account details or other actual or potential security breach or we otherwise suspect an unauthorised or fraudulent use of your Account;
- c) it becomes or might become illegal or in breach of applicable laws or regulations for us to continue to allow you to use the Service;
- d) you breach or we have reason to suspect that you have breached these Terms or you no longer meet the criteria for registration set out in these Terms;
- e) you suffer an Insolvency Event;
- f) we are required to do so under applicable law or are directed to do so by a court or other body of competent jurisdiction; or
- g) your Account has been inactive for 12 months.

Except to the extent that we are prohibited from doing so by law or such disclosure would compromise reasonable security measures, we will use reasonable efforts to notify you in advance of the suspension or cancellation of your Account. Where this is not reasonably possible, we will endeavour to do so immediately after the cancellation or suspension. If the suspension or cancellation of your Account is in connection with (b) of this clause, we will provide you with new log-in details as soon as practicable and you may request the same by email or by phone.

21.3 If your Account is suspended or terminated for whatever reason:

- a) you will not be entitled to access or use that Account (in the case of suspension, for the period of suspension); and

- b) if you are a Lender, that suspension or termination will not affect your obligation to pay us any outstanding Commission that is or becomes due and payable to us under these Terms.
- 21.4 If you close your Account voluntarily and you are an Introducer, that will not affect our obligation to pay any outstanding Commission to you that is or becomes due and payable under these Terms.
- 21.5 All disclaimers, indemnities and exclusions in these Terms will survive termination of an Account or these Terms for any reason, as well as any other provisions in these Terms that by their nature are intended to survive such termination.

## 22. Confidentiality

- 22.1 Lenders and Introducers must keep confidential any Borrower Information and any other confidential information that is supplied or made available to it via the Service. Borrowers must keep confidential any confidential information is disclosed to it via the Service. Confidential information will include all information marked as being confidential and any other information that should reasonably be assumed to be confidential.
- 22.2 You must not disclose any confidential information disclosed to you via the Service except to:
- a) those of your employees or agents who need the information in order to enable you to analyse the relevant information and (if applicable) for the purposes of negotiating a Product and/or Finance Agreement;
  - b) your accountants and/or auditors and/or lawyers; and/or

- c) any temporary staff, contractors or consultants working for you, provided that disclosure of the information is necessary in order to enable the person to whom it is disclosed to carry out the work concerned.
- 22.3 You will be responsible for ensuring that any person to whom information is disclosed complies with any conditions of confidentiality applying to the information concerned under these Terms.
- 22.4 The confidentiality obligations in this section will not apply to information which:
- a) is or becomes available to the public other than because of any breach of these Terms;
  - b) is, when it is supplied, already known to whoever it is disclosed to in circumstances in which they are not prevented from disclosing it to others;
  - c) is independently obtained by whoever it is disclosed to in circumstances in which they are not prevented from disclosing it to others; or
  - d) you are required to disclose by a court or by any regulatory authority, provided that if you are required to do so, you will, wherever practicable (and subject to applicable law), consult with the disclosing party as soon as is reasonably practicable before making such disclosure.
- 22.5 Use of any personal information you submit via the website is governed by our [privacy and cookies policy](#).

## 23. Anti-money laundering

- 23.1 Each Lender warrants and represents that it will comply fully with its obligations under the Money Laundering Regulations 2007 (**MLR**) including with respect to its use of the Service.
- 23.2 Borrowers and Introducers acknowledge the importance of openness and accuracy in the information provided and/or made available via the Service

to facilitate compliance with the MLR and other applicable law. If you have reason to believe that financial crime of whatever type maybe involved with transactions introduced via the Service you should contact us or the relevant authorities directly.

- 23.3 We may disclose Borrower Information or other information submitted or made available to us via the Service if we are required to do so by the MLR or other applicable law.

## 24. General

- 24.1 **Force majeure:** We will not be liable to you for any delay or failure in performing any of our obligations under these Terms if such delay or failure is caused by:

- a) circumstances outside our reasonable control (including any delay caused by any User or third party, and any failure of the internet or an internet connection); or
- b) any failure, error, essential maintenance, critical change, repairs or alteration of any computer systems, communication system or transmission link under third party control.

- 24.2 **No partnership or agency:** Nothing in these Terms is intended to, or will be deemed to: (a) establish any partnership or joint venture between you and us; or (b) constitute you and us as agents of one another.

- 24.3 **No waiver:** No failure or delay by you or us in exercising any of our rights under these Terms will be deemed to be a waiver of that right, and no waiver by you or us of a breach of any provision of these Terms will be deemed to be a waiver of any subsequent breach of the same or any other provision.

- 24.4 **Severability:** If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part, these

Terms will continue to be valid as to its other provisions and the remainder of the affected provision.

- 24.5 **Entire agreement:** These Terms, together with the [website terms of use](#), the [privacy policy](#), and the Lender Commission Terms or Introducer Commission Terms (as applicable) constitute the entire agreement between us, and you acknowledge that you have not relied on any representations, statements or precontractual statements that are not expressly set out in these Terms. Without limiting the generality of the foregoing, you will not have any remedy for innocent or negligent misrepresentation based on any statement made by us in respect of the Service. However, nothing in this paragraph will limit or exclude any liability for fraudulent misrepresentation.
- 24.6 **Notices:** All notices given by you to us must be given via email, registered post or courier to the address set out at the end of these Terms. We will contact you using the email address associated with your Account. Notices will be deemed served: (a) in the case of email, 24 hours after sending, unless this does not fall on a Working Day, in which case the email will be deemed served on the next Working Day after it was sent; (b) by courier, when delivered; and (c) by registered post, two Working Days after despatch. All notices given must be in the English language.
- 24.7 **Third party rights:** A person who is not a party to the agreement between us may not enforce any of these Terms under the Contracts (Rights of Third Parties) Act 1999.
- 24.8 **Governing law and jurisdiction:** These Terms and your access to and use of the Service will be governed by English law. Any dispute regarding these Terms or the Service will be dealt with by the English courts. Nothing will prevent us from bringing proceedings to protect our confidential information or intellectual property rights before any competent court.

## 25. Contacting us

25.1 If you have any questions or complaints about these Terms or the Service, please contact us:

- a) by emailing us at [support@capitalise.com](mailto:support@capitalise.com); or
- b) by writing to us at 3rd Floor, 2 Valentine Place, London, SE1 8QH, United Kingdom.

25.2 We aim to respond no more than five days after you contact us, and our response will state whether it is our final response or that we are investigating the matter further. We may need to ask you questions in order to understand the details of your question or complaint. Any questions we ask, and any response we give, will be sent to the email address under which your Account is registered.

25.3 If a complaint relates to a Finance Agreement, you may have the right to complain directly to the Financial Ombudsman Service. For further information and contact details please see: <http://financial-ombudsman.org.uk/>.

## 26. Definitions and interpretation

26.1 Defined terms used in these Terms will have the following meanings:

**"Account"** means a User's account to use the Service that is activated following registration in accordance with paragraph 6.5;

**"Authorised User"** means a natural person who is appointed by a User to act as such on the User's behalf for the purposes of using the Services in accordance with these Terms;

**"Borrower"** means a sole trader or entity fulfilling the criteria in paragraph 8.1 who or which has registered with us in accordance with these Terms and has an activated Account;

**"Borrower Information"** means any and all information and data submitted or made available to us by a Borrower and/or their Introducer (including information imported or made available to us via third party services and/or applications);

**"Commission"** means either: (a) the applicable commission payable to us by a Lender; or (b) the share of commission payable by us to an Introducer, in accordance with the Lender Commission Terms or Introducer Commission Terms (as applicable);

**"Decision Tree"** means the Capitalise decision tree set out at Registration, as may be varied by Capitalise from time to time, that sets out the types of Products that Borrowers are able to apply for via the Service;

**"Finance Agreement"** means an agreement entered into between a Borrower and a Lender in respect of any Product as a result of the Service;

**"Insolvency Event"** in relation to a person, means the other party becomes insolvent, makes composition with its creditors, has a receiver or administrator of its undertaking or the whole or a substantial part of its assets appointed, or an order is made, or an effective resolution is passed, for its administration, receivership, liquidation, winding-up or other similar process, or has any distress, execution or other process levied or enforced against the whole or a substantial part of its assets (which is not discharged, paid out, withdrawn or removed within 28 days), or is subject to any proceedings

which are equivalent or substantially similar to any of the foregoing under any applicable jurisdiction, or ceases to trade or threatens to do so;

**"Introducer"** means an individual, sole trader or entity fulfilling the criteria in paragraph 10.1 who or which has registered with us as an introducer in accordance with these Terms and has an activated Account;

**"Introducer Commission Terms"** means the terms setting out the applicable share of Commission payable by us to an Introducer under these Terms, as agreed separately in writing between us and an Introducer;

**"Lender"** means an entity fulfilling the criteria in paragraph 9.1 which has registered with us as a lender in accordance with these Terms and which has an activated Account;

**"Lender Commission Terms"** means the terms setting out the applicable Commission payable to us by a Lender under these Terms, as agreed separately in writing between us and a Lender;

**"Lending Passport Information"** is defined in paragraph 12.5;

**"Loss"** means any loss, damage, claims, proceedings, costs or expenses;

**"Product"** means a type of finance or credit facility that may be offered by Lenders via the Service from time to time, subject to the restrictions set out in the Decision Tree;

**"Product Request"** means a request by a Borrower, or by an Introducer on behalf of a Borrower, for a Product via the Service;

**"Service"** is defined in paragraph 1.1;

**"Service Information"** is defined in paragraph 16.1;

**"Terms"** is defined in paragraph 2.4;

**"User"** means a Borrower, Lender or Introducer, as applicable;

**"website"** means this website operated by Capitalise.com Platform Ltd;

**"Working Day"** means any day other than a Saturday or Sunday or a bank holiday in the United Kingdom;

**"you"** means, as the context requires: (a) a business or entity which accesses this website as a prospective Borrower, Lender or Introducer; or (b) a User.

26.2 In these Terms, unless it says otherwise:

- a) reference to a person includes a legal person (such as a limited company) as well as a natural person;
- b) reference to "including" in these Terms will be treated as being by way of example and will not limit the general applicability of any preceding words;
- c) reference to any legislation will be to that legislation as amended, extended or reenacted from time to time and to any subordinate provision made under that legislation;
- d) references to paragraphs will be to those in these Terms; and
- e) reference to these Terms will include reference to these Terms after they have been amended, added to or replaced by new terms.