

Client Handover Agreement

This document is exclusively intended for professionals, only.

THIS HANDOVER AGREEMENT IS DATED _____

For the following applicant(s): _____;

AND MADE BETWEEN;

PARTIES

- (1) **Phillips Capital Ltd** trading as **Phillips Capital, Phillips Capital Private Clients & Phillips Venture Capital** incorporated and registered in England and Wales with company number 11149189 whose registered office address is at 63 West Road, Newcastle Upon Tyne NE4 9PX, with FCA registration 812541 (Collectively referred to as “**PCG**” in this Agreement);

AND

- (2) _____ (the “Introducer”).

1. Background

- 1.1 PCG and the Introducer have entered into an Introduction Agreement (“Introducer Agreement”) and this Handover Agreement is made subsequent to the same. For the avoidance of doubt, in the event of any conflict between the terms of the Introducer Agreement and the terms of this Handover Agreement, the conflicting term of this Handover Agreement shall prevail in relation to the Applicant (defined below) and the subject matter of the application process for the agreed outcome.
- 1.2 This Handover Agreement is to clarify which party is responsible for the Advice (defined below) [if applicable] given to the Applicant and the process required to optimise efficiency in managing the Agreed Product application process.
- 1.3 PCG is authorised and regulated by the Financial Conduct Authority for Credit Broking.
- 1.4 The Introducer is making this Introduction to PCG to offer the Applicant a financial product within PCG’s scope of services, namely regulated or unregulated mortgage or loan contract
- 1.5 PCG does not provide advice under any circumstances and will introduce the introduced client to an appropriately authorised and experienced third-party who has direct access to the clients required product or financial service.

2. Definitions and Interpretation

Advice	The activity specified in article 53A of the Order, which is in summary: advising a person in their capacity as a borrower or potential borrower on the merits of entering into or varying a Regulated Mortgage Contract; for the avoidance of doubt PCG does not provide financial advice under any circumstances, and nor are we responsible for advice provided by any third-party.
Agreed Product	Loans secured by way of a second charge against property, buy to let products and first charge mortgages, whether or not those loans are regulated by the FCA and including, without limitation, Regulated Mortgage Contracts;
Applicable Legislation	The Consumer Credit Acts 1974 and 2006 (“CCA”), Data Protection Legislation; the Financial Services and Markets Act 2000 (“FSMA”), the Rules of the FCA and all other applicable statutes, regulations and guidance;
Applicant	An individual who wishes to apply for an Agreed Product or service;
Applicant Data	Information about an Applicant that is supplied to PCG by the Introducer;

Business Day	means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
Professionals	Professional services are occupations in the service sector requiring special training in the arts or sciences. Some professional services require holding professional degrees and licenses and they also require specific skills such as architects, accountants, engineers, doctors, lawyers, brokers, advisors, solicitors, and teachers.
Data Protection Legislation	means (i) the Data Protection Act 1998, until the effective date of its repeal (ii) the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK, and (iii) any successor legislation to the Data Protection Act 1998 and the GDPR, in particular the Data Protection Bill 2017-2019, once it becomes law;
FCA	The Financial Conduct Authority;
Regulated Mortgage Contract	A contract under which, in accordance with article 61(3) of the Order, a lender provides credit to an individual or to trustees and the obligation of the borrower to repay is secured by a mortgage on land at least 40% of which is used, or is intended to be used, as or in connection with a dwelling, and which is not excluded from the definition of a Regulated Mortgage Contract by any Applicable Legislation. For the avoidance of doubt where a contract meets both the requirements for a Regulated Mortgage Contract and a home improvement plan only, it will be treated as a home purchase plan only and not a Regulated Mortgage Contract.
Permission	Permission, as granted by the FCA, to undertake a regulated activity under the FSMA (Regulated Activities) Order 2001 (the 'Order'). Credit Broking.

3. Appointment

- 3.1 The Introducer shall, subject to having received the relevant consents and authority from the Applicant, refer the Applicant to PCG to complete the Agreed Product application process and the Introducer will confirm, if applicable, any fee paid by the Applicant to the Introducer in relation to the application for the Agreed Product.
- 3.2 The Introducer shall refer the Applicant to PCG to complete the Agreed Product application process in accordance with clause 4, 5 or 6 of this Handover Agreement as applicable.
- 3.3 The Introducer permits PCG to make direct contact with the Applicant and to retain records of business arranged in accordance with the requirements of the FCA.
- 3.4 PCG will at no point 'cross-sell' any other products to the Applicant which the Applicant has not approached the Introducer for under the Agreed Product application, unless otherwise expressly asked for by the Applicant.

4 Where the Introducer does not have FCA Permissions, the following terms shall apply:

- 4.1 The Introducer confirms that they do not have Permission and therefore is instructing PCG under the terms of this Handover Agreement for PCG to take control of the client's application process under its own terms and conditions.
- 4.2 The Introducer confirms that no Advice has been given to the Applicant by the Introducer as at the date of this Handover Agreement.
- 4.3 PCG will complete a full disclosure process on the Applicant and the Applicants requirements, and PCG confirms that during such, no specific Advice has been provided to the client by the introducer.
- 4.4 PCG accepts no responsibility for the Advice given to the Applicant by any third-party we introduce the client to.
- 4.5 For the avoidance of doubt; PCG does not provide advice under any circumstances and nor are we responsible for any advice given by a third-party.

5. **When the Introducer has FCA Permission, the following terms shall apply:**
 - 5.1 The Introducer refers the Applicant to PCG to complete the Agreed application process.
 - 5.2 PCG will complete the disclosure process and confirms that during such, the client advises which avenue of finance they choose to peruse.
 - 5.3 PCG accepts no responsibility for the Advice given to the Applicant by any third-party we have introduced them to.
 - 5.4 For the avoidance of doubt; PCG does not provide advice under any circumstances and nor are we responsible for any advice given by a third-party.
6. **When the Introducer has Permission and provides the Advice to the Applicant, the following terms shall apply:**
 - 6.1 The Introducer will complete the disclosure process and confirms that during such, the Introducer identifies the most suitable Agreed Product for the Applicant. PCG will provide a list of all Agreed Products the Applicant is eligible for, for the Introducer to then decide the most suitable Agreed Product.
 - 6.2 The Introducer will provide all information required by PCG to generate a full quotation for the Introducer to then quote the Applicant.
 - 6.3 The Introducer shall have obtained the relevant consents for PCG to carry out a complete credit search on and assessment behalf of the Applicant.
 - 6.4 Only once the Applicant has accepted the Advice given, PCG will then liaise directly with the Applicant in order to complete the packaging process. For the avoidance of doubt, no contact will be made between PCG and the Applicant until the Introducer has confirmed the appropriate Advice has been given and the Applicant has accepted the quotation.
 - 6.5 The Introducer shall keep a full record of such research and investigation surrounding the reasons why the Agreed Product was recommended by the Introducer, all of such will be maintained and upon request, be made available to PCG.
 - 6.6 The Introducer accepts full liability and responsibility for the Advice given to the Applicant with regards to establishing the Applicant's needs and recommending the most suitable Agreed Product.
 - 6.7 For the avoidance of doubt; PCG does not provide advice under any circumstances and nor are we responsible for any advice given by a third-party.
7. **Data Protection**
 - 7.1 **Definitions:**
 - i. **Agreed Purposes:** The performance by each party of its obligations under this Handover Agreement.
 - ii. **Controller, Data Controller, Processor, Data Processor, Data Subject, Personal Data, Processing and Appropriate Technical and Organisational Measures:** as set out in the Data Protection Legislation in force at the time.
 - iii. **Data Protection Legislation:** (i) the Data Protection Act 1998, until the effective date of its repeal (ii) the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK, and; (iii) any successor legislation to the Data Protection Act 1998 and the GDPR, in particular the Data Protection Bill 2017-2019, once it becomes law.
 - iv. **Permitted Recipients:** The parties to this Handover Agreement, the employees of each party, any third parties engaged to perform obligations in connection with this Handover Agreement which shall include the lenders and providers of the regulated and non-regulated mortgage market, and those parties professional representatives and advisers such as lawyers, bankers, representative suppliers, the Data Subject employers, accountants, mortgage companies holding the first mortgage over the property which is the subject of the Agreed Product, pension companies and credit reference agencies.
 - v. **Shared Personal Data:** The Personal Data to be shared between the parties under this Handover Agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of Data Subject:
 - **Identity Data** includes first name, maiden name, last name, username or similar identifier, marital status, title, date of birth and gender of the data subject.
 - **Contact Data** includes billing address, delivery address, email address and telephone numbers of the Data Subject.

- **Financial Data** includes income and expenditure, bank account and payment card details of the Data Subject.
- **Transaction Data** includes details about payments to and from PCG and the Data Subject.
- **Employment Data** includes details of your employment status and your employer.

7.2 **Shared Personal Data.** Signature of this Handover Agreement shall put the parties in the position that they are both Data Controllers of the Applicants Personal Data. The provisions which follow set out the framework for the sharing of Personal Data between the parties as Data Controllers. Each party acknowledges that one party (the Data Discloser) will regularly disclose to the other party (the Data Recipient) Shared Personal Data collected by the Data Discloser for the Agreed Purposes. Each party shall:

- 7.2.1 ensure that it has all necessary consents and notices in place to enable lawful transfer of the Shared Personal Data to the Data Recipient for the Agreed Purposes;
- 7.2.2 give full information to any Data Subject whose Personal Data may be processed under this Handover Agreement of the nature such Processing. This includes giving notice that, on the termination of this Handover Agreement, Personal Data relating to them may be retained by or, as the case may be, transferred to one or more of the Data Recipients, their successors and assigns;
- 7.2.3 process the Shared Personal Data only for the Agreed Purposes;
- 7.2.4 not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
- 7.2.5 ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less demanding than those imposed by this Handover Agreement;
- 7.2.6 process no other Personal Data acquired in connection with this Handover Agreement other than the Shared Personal Data;
- 7.2.7 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.
- 7.2.8 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Data Subject has been obtained and the following conditions are fulfilled:
 - 7.2.8.1 the Data Subject has enforceable rights and effective legal remedies with regard to the transferred Personal Data; and
 - 7.2.8.2 the transferring party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred.

7.3 **Compliance:** Each party shall comply with the Data Protection Legislation and agrees that any material breach of the Data Protection Legislation shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this Handover Agreement with immediate effect.

7.4 **Mutual assistance.** Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

- 7.4.1 allow the other party to approve and, if the other party deems necessary, to amend any notices given to Data Subjects in relation to the Shared Personal Data;
- 7.4.2 promptly inform the other party about the receipt of any Data Subject access request;
- 7.4.3 provide the other party with reasonable assistance in complying with any Data Subject access request;
- 7.4.4 not disclose or release any Shared Personal Data in response to a Data Subject access request without first consulting with and obtaining the consent of the other party.
- 7.4.5 assist the other party, at the cost of the other party, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 7.4.6 notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- 7.4.7 at the written direction of any Data Subject, delete or return Personal Data and copies thereof to the Data Subject on termination of this Handover Agreement unless required by law to store the Personal Data;

- 7.4.8 use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from Personal Data transfers;
 - 7.4.9 maintain complete and accurate records and information to demonstrate its compliance with this clause 7 and allow for audits by the other party or the other party's designated auditor; and
 - 7.4.10 provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.
- 7.5 **Indemnity.** Each party shall indemnify the other against all claims and proceedings and all liability, loss, costs and expenses incurred by the other as a result of any claim made or brought by an Applicant. Subject or other legal person in respect of any loss, damage or distress caused to them as a result of any breach by the other party of the Data Protection Legislation by that party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.
- 8. PCG agrees:**
- 8.1. To deliver the highest possible levels of service, professionalism and integrity in connection a financial product;
 - 8.1 To pay the Introducer a minimum commission of 40% of the revenue generated post completion of the Agreed Product;
 - 8.1.1 PCG will pay the Introducer within thirty (30) Business Days of the completion of the Agreed Product.
 - 8.1.2 Should the third-party lender or finance institution who have provided the Agreed Product to the Applicant, reclaim any commission paid back from PCG for any reason, PCG reserves the right to clawback commission from the Introducer in the following rates:
 - 8.1.2.1 100% will be reclaimed within the first 6 months of the completion of the Agreed Product that was the subject of the application:
 - 8.1.2.2 50% will be reclaimed within 6 – 12 months from the date of the completion of the Agreed Product that was the subject of the application; and
 - 8.1.2.3 no clawback after 12 months.
- 9. Warranties and understanding:**
- 9.1 The Introducer warrants the following:
 - 9.1.1 Unless clause 5 is in operation, The Introducer shall not provide any Advice to the Applicant on any Agreed Product and as at the date of signature of this Handover Agreement, PCG shall be in control of the application process.
 - 9.1.2 They will disclose, or have already disclosed, to the Applicant any payment or other reward or advantage received from PCG for making the introduction.
 - 9.1.3 They will retain written records of all disclosures made to the Applicant.
 - 9.1.4 That they are not a member of PCG or any associated lending partner.
- 9.2 Both parties agree
- 9.2.1 Both parties will cooperate fully with the other party in the event of any investigation made by a regulatory body, by providing any relevant information and / or document(s) required. Any complaints received in relation to the Agreed Product, each party will promptly advise the other.
- 10 Indemnity**
- 10.1 Subject to clause 10.3 and 10.4, the Introducer shall indemnify PCG for and against any loss, cost, damage, expense or other liability suffered or incurred as a result of any breach of this Handover Agreement.
 - 10.1 Subject to clause 8, PCG total liability to the Introducer for breach of its obligations under this Agreement shall be subject to an aggregate limit on liability of £50,000.
 - 10.2 Nothing in this Handover Agreement excludes or limits the liability of either party for:
 - 10.2.1 death or personal injury caused by negligence,

- 10.2.2 fraud or fraudulent misrepresentation;
- 10.2.3 Any matter in respect of which it would be unlawful to exclude or restrict liability
- 10.3 Subject to clause 8, neither party shall under any circumstances whatever be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, revenue, goodwill, or anticipated savings.

11 No Partnership or Agency

- 11.1 Nothing in this Handover Agreement is intended to, nor will it, establish any partnership or joint venture between the parties, or make either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party.

12 Termination

- 12.1 Either party may terminate this Handover Agreement at any penalty by either party giving notice in writing to that effect to the other party, or upon PCG ceasing to conduct a whole of market offering for the Agreed Products.
- 12.2 All clauses that shall are drafted and intended to remain in force after termination of this Handover Agreement shall remain in force.
- 12.3 Termination of this Handover Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Handover Agreement which existed at or before the date of termination.

13 Confidentiality

- 13.1 Unless permitted to do so under 13.2, each party undertakes to the other that it shall not at any time during this Handover Agreement, or for five years after termination of it, disclose to any person any confidential information concerning the business, affairs, customers or suppliers of the other party.
- 13.2 Each party may disclose the other party's confidential information to third parties who need to know such information for the purposes of carrying out the party's obligations under this Handover Agreement, or as may be required by law, court order or by any regulator, or to enable it or the third party concerned to meet its statutory or regulatory obligations.
- 13.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Handover Agreement.
- 13.4 All documents and other records (in whatever form) containing confidential information supplied to or acquired by the Introducer from PCG shall be returned promptly to PCG on termination of this Handover Agreement, and no copies shall be kept, whether digitally or otherwise.

14 Anti Bribery

- 14.1 **Compliance with Bribery Act 2010.** The Introducer shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption (Relevant Requirements), including but not limited to the Bribery Act 2010 (BA 2010);
 - 14.1.1 **Compliance with PCG policies.** The Introducer shall comply with PCG code of ethics and anti-bribery policies as PCG may update them from time to time (**Relevant Policies**);
 - 14.1.2 **Introducer's policies and procedures.** The Introducer shall have and shall maintain in place throughout the term of this Handover Agreement its own policies and procedures, including adequate procedures under the BA 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies, and will enforce them where appropriate;
 - 14.1.3 **Reporting obligation.** The Introducer shall promptly report to PCG any request or demand for any undue financial or other advantage of any kind received by the Introducer in connection with the performance of this Handover Agreement;
 - 14.1.4 **Compliance certification.** The Introducer shall within three (3) months of the date of this Handover Agreement, and annually thereafter, certify PCG in writing signed by an officer of the Introducer, compliance with this clause 11 by the Introducer and all persons associated with it. The Introducer shall provide such supporting evidence of compliance as PCG may reasonably request.

- 14.2 **Ensuring compliance from associated persons.** The Introducer shall ensure that any person associated with the Introducer who is performing in connection with this Handover Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Introducer in this clause (**Relevant Terms**). The Introducer shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to PCG for any breach by such persons of any of the Relevant Terms.
- 14.3 **Definitions.** For the purpose of this clause 11, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

15 Entire agreement

- 15.1 This Handover Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter of the Applicant and the Applicant application.
- 15.2 Each party acknowledges that in entering into this Handover Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Handover Agreement.
- 15.3 Misrepresentation and misstatement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Handover Agreement.
- 15.4 Fraud. Nothing in this clause shall limit or exclude any liability for fraud.

16 Variation

- 16.1 This Handover Agreement may only be varied with the agreement of both parties in writing. Email shall not suffice as writing for the purposes of this clause.

17 Third parties

- 17.1 No one other than a party to this Handover Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

18 Severance

- 18.1 If any provision or part-provision of this Handover Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Handover Agreement.
- 18.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Handover Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

19 No Waiver

- 19.1 No failure or delay by a party to exercise any right or remedy provided under this Handover Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 19.2 No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20 Law and Jurisdiction

- 20.1 This Handover Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 20.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Handover Agreement or its subject matter or formation (including non-contractual disputes or claims).

By signing this eight (8) page Handover Agreement, we are confirming full understanding and agreement of the entire contents of this Handover Agreement.

This Handover Agreement has been entered into on the date stated at the beginning of it.

Signed by	Signed by
For and on behalf of	For and on behalf of
Phillips Capital	