

# CAPITALSTACKERS

## TERMS AND CONDITIONS FOR BORROWERS (EDITION 3 - AUGUST 2016)

### 1. INTRODUCTION

1.1 These Terms and Conditions explain:

1.1.1 how CapitalStackers works;

1.1.2 how to become a Borrower on the CapitalStackers Network; and

1.1.3 how you may use the Website.

1.2 CapitalStackers is authorised by the Financial Conduct Authority. Click [here](#) for full details.

1.3 If you decide you want to become a Borrower using the CapitalStackers Network, you must comply with these Terms and Conditions, which should be read alongside, and are in addition to the Policies and any Finance Documents ultimately entered into. Please read these Terms and Conditions carefully and print a copy for your future reference.

1.4 By registering on and using the Website and the services provided via the Website, you confirm that you have read, understood and agree to these Terms and Conditions and the Policies (as each may be amended from time to time). Furthermore, if you are acting on behalf of any other person, limited liability partnership or limited company, you confirm that such person or organisation is authorised to enter into the type of transactions set out on the Website and that such person or organisation agrees to these Terms and Conditions and the Policies.

1.5 References herein and in the Policies to "CapitalStackers", "we", "us" and "our" are to CapitalStackers Ltd (a company registered in England and Wales with company number 07361691) whose registered office is at Riverside House, Kings Reach Business Park, Yew Street, Stockport, SK4 2HD.

1.6 References to "you" and "your" means a user of the Website and the services provided via that Website.

1.7 CapitalStackers will perform an administrative role in relation to the Website to bring together prospective Borrowers and Lenders through the operation of that Website. In addition to each transaction entered into with a Borrower via the Website, CapitalStackers Trustees Limited (a company limited by guarantee) will act as agent and attorney of the Lending Members in making funding available to Borrowers and will co-ordinate the draw-down process, including the monitoring of the legal documentation relating to the Loans. CapitalStackers will, via its own client account, administer the collection of funds from Lending Members and the payment of Loan monies to Borrowers. CapitalStackers will monitor the payment by Borrowers of interest and capital for onward payments to Lending Members and will take steps as instructed by the Trustee upon a default by a Borrower.

### 2. DEFINITIONS AND INTERPRETATION

2.1 The following definitions and rules of interpretation apply in these Terms and Conditions, unless the context otherwise requires:

2.1.1 "**Accepted Bid**" means a Bid which has been accepted by us in writing;

2.1.2 "**Accepted Secondary Market Bid**" means a Secondary Market Bid, which has been accepted by the Seller.

- 2.1.3 “**Active Bid**” means a Bid which has been made and which has not (a) expired or (b) been rejected by us in writing;
- 2.1.4 “**Agreed Bid**” means a Bid by a Lending Member at a defined discounted rate of interest acceptable at the outset to the Borrower;
- 2.1.5 “**Auction**” means the process described in paragraph 6 by which we will seek to find Lending Members willing to fund a Facility to Borrowers;
- 2.1.6 “**Auction Closing Date**” means the date on which an Auction closes for new Bids, as specified on the Website;
- 2.1.7 “**Auction Particulars**” means the information and documentation described in paragraph 5.7 available in relation to each request for funding for review in respect of each opportunity on the Website;
- 2.1.8 “**Bid**” means an offer by a Lending Member to lend a specified sum of money to a prospective Borrower at a specified rate of interest in an Auction;
- 2.1.9 “**Borrower**” means the entity to whom monies are lent via the Network;
- 2.1.10 “**Business Day**” means a day (other than a Saturday or a Sunday) on which commercial banks are generally open for normal banking business in London.
- 2.1.11 “**Deposit**” means, in respect of the sale of a Loan in the Secondary Market, a fixed percentage of the Loan (or part of the Loan) to be sold as set by us from time to time;
- 2.1.12 “**Facility**” means, in aggregate, all Loans to be provided by Lending Members to a Borrower pursuant to the Finance Documents.
- 2.1.13 “**Facility Documents**” means the facility agreement between a Borrower and the Trustee setting out the terms of a Facility and any ancillary documents thereto executed at the time the Facility is granted to the Borrower;
- 2.1.14 “**Finance Documents**” means the Facility Documents, the Security Documents and any ancillary documents thereto;
- 2.1.15 “**Hallidays**” means Hallidays Group Ltd of Riverside House, Kings Reach Business Park, Yew Street, Stockport SK4 2HD;
- 2.1.16 “**Layer**” means a portion of a Facility between particular interest rate parameters;
- 2.1.17 “**Lender**”, “**Lending Member**” or “**Member**” means a person who is registered and recognised by us as Lending Member of the Network; and “**Lending Membership**” shall be construed accordingly;
- 2.1.18 “**Loan**” means a loan made to a Borrower by a Lending Member using the Network forming part of the Facility and made pursuant to the Finance Documents;
- 2.1.19 “**Network**” means the peer to peer lending network established by the Website;
- 2.1.20 “**Non-Agreed Bid**” means a Bid at a rate of interest specified by a Lending Member;
- 2.1.21 “**the Policies**” means the CapitalStackers Privacy Policy, Cookie Policy, Acceptable Use Policy and Website Terms of Use;

- 2.1.22 “**Purchaser**” means, in respect of the sale of a Loan (or part thereof) in the Secondary Market, the Lending Member that has made an Accepted Secondary Market Bid.
- 2.1.23 “**Sales Commission**” means the commission to be paid by the Seller to us on completion of the sale of a Loan (or part thereof) in the Secondary Market as set by us as published on the Website from time to time.
- 2.1.24 “**the Secondary Market**” means the ability of Lending Members and, in certain circumstances, of Borrowers to sell a Loan (or part thereof) to another Member via the Network;
- 2.1.25 “**Secondary Market Bid**” means a bid, by a Lending Member to purchase a Loan (or part thereof) offered for sale on the Secondary Market.
- 2.1.26 “**the Security Documents**” means any security documents entered into by a Borrower and any security documents created by any person guaranteeing or creating security for the liabilities of a Borrower;
- 2.1.27 “**the Seller**” means, in respect of the sale of a Loan (or part thereof) in the Secondary Market, the Lending Member that is selling such Loan (or part thereof);
- 2.1.28 “**the Term Sheet**” means in relation to any prospective Facility, any document signed on behalf of both CapitalStackers and the prospective Borrower detailing the principal terms in relation to that Facility and the fees, costs and expenses payable by the prospective Borrower to CapitalStackers and/or the Trustee;
- 2.1.29 “**the Trustee**” means CapitalStackers Trustees Limited;
- 2.1.30 “**the Website**” means the website operated by CapitalStackers at [www.capitalstackers.com](http://www.capitalstackers.com).

## 2.2 In these Terms and Conditions:

- 2.2.1 neither the section headings nor the relative order of the sections shall affect the interpretation of these Terms and Conditions;
- 2.2.2 reference to a person shall include a reference to an individual, firm, company, corporation, unincorporated body of persons or any state or any agency of any person;
- 2.2.3 reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force for the time being, taking account of any amendment or re-enactment or extension and includes any former statute, statutory provision or subordinate legislation which it amends or re-enacts;
- 2.2.4 reference to “writing” or “written” includes faxes and email;
- 2.2.5 reference to “these Terms and Conditions” (or any provision of them) or any other document shall be construed as a reference to these Terms and Conditions, that provision or that document as it is in force for the time being and as amended, varied or supplemented in accordance with these Terms or the agreement of the relevant parties.

## 3. HOW TO BECOME A BORROWER

- 3.1 You will not be permitted to apply to borrow via the Website unless you meet the following criteria:
- 3.1.1 you are a limited liability company registered in the United Kingdom;
- 3.1.2 you are a limited liability partnership registered in the United Kingdom;

- 3.1.3 you are not subject to any restriction affecting your ability to borrow on the Website under the laws and regulations of any jurisdiction;
  - 3.1.4 you must have a valid UK bank or building society account to facilitate Facility repayments;
  - 3.1.5 you must have a permanent place of business in the United Kingdom;
  - 3.1.6 you and your directors or members (if you are an LLP) must meet minimum credit and fraud risk criteria which will include obtaining a minimum score from a credit reference bureau;
  - 3.1.7 you must be able to satisfy all due diligence enquiries as to project and/or your financial covenant as requested;
  - 3.1.8 you agree to certain warranties as will be set out in the Term Sheet and the Finance Documents following the completion of due diligence; and
  - 3.1.9 you must submit all details of your business as may be requested by us, some of which may be published on the Website for Lending Members to view.
- 3.2 CapitalStackers retains the right to refuse to accept applications to borrow without giving a reason.
- 3.3 You must register your details on the Website, although you will not be permitted to borrow using the Website until we have carried out identity and fraud checks on you and, if appropriate, your members, directors and shareholders. We use our own internal guidelines and policies when assessing applications but have complete discretion as to whether to allow you to be a Borrower (or continue to be a Borrower) on the Website.
- 3.4 In addition to our own guidelines and policies we may authenticate your identity using identity and verification service providers. We may require you to send us copies of relevant identification documents, including relevant passports plus a utility bill and anything else we may require. If you do not provide all appropriate identification documents, you will not be able to borrow on the Website (for more details on about how we use your information, please refer to our [Privacy Policy](#)).
- 3.5 Only once we have satisfied ourselves as to your identity and suitability to be a Borrower on the Website, will you be able to borrow via the Website.
- 3.6 If at any time, and for any reason whatsoever, we cease to be satisfied as to your identity and/or your suitability to be a Borrower, we shall be entitled to suspend and/or terminate your right to borrow using the Website.
- 3.7 You warrant to us that all of the information provided to us by you or any person on your behalf in the course of the registration and borrowing process is true and accurate in all respects and not rendered misleading by any omission. You will inform us immediately in writing if any of the information you have provided to us changes.

#### **4. USER NAME AND PASSWORD**

- 4.1 On registering with us as a Borrower, you will be asked to provide a user name, email address and a password. Your unique user name and password will be used in order to access parts of the Website. Each time you wish to access your borrower account or check the progress of Facility applications, you will need to enter your user name and password. Your user name and password are personal to you and are not transferable.
- 4.2 You must keep your user name and password secure at all times and you are responsible for all information and activity on the Website by anyone using your user name and password. If you authorise an employee, sub-contractor or agent to use your CapitalStackers account, you will be responsible for their activity on the Website. Any breach of security, loss, theft or unauthorised use

of a user name, password or other security information must be notified to us immediately. We reserve the right not to act on your purported instructions where we suspect that the person logged into your CapitalStackers account is not you or we suspect illegal or fraudulent activity or unauthorised use.

## 5. THE BORROWING PROCESS

- 5.1 Once you have registered on the Website, you may at any time apply to borrow money via the Website.
- 5.2 You must firstly complete all details of the Facility required on the Facility request page of the Website and confirm the application (the "Facility Request") by clicking the "Confirm" button on that page.
- 5.3 When a fully and correctly completed Facility Request is received by us, we will review the same and contact you either to inform you that we believe that you do not meet the outline deal criteria for borrowing via the Website, or to inform you that you do appear to meet our criteria.
- 5.4 In the event that we inform you that you do meet the outline criteria we will ask for further information from you and at your cost including, but not limited to the security to be offered in respect of any such Facility, any prior ranking debt, the term of the Facility required and other material terms applicable to the Facility, details of the property upon which the Facility will be secured, a valuation report and reports on title relating to that property and other professional reports, together with (if applicable) copies of lease documentation relating to that property and/or a summary of that documentation.
- 5.5 Having reviewed such material and concluding that all criteria appear to be met, we will then endeavour to agree with you the principal terms of the proposed Facility for inclusion in the Term Sheet. Whilst many of the terms of the Term Sheet will not be legally binding, signature by you of the Term Sheet will, among things, commit you to pay to us certain fees and expenses, as detailed in the Term Sheet.
- 5.6 On agreement of the Term Sheet we will carry out, or arrange to have carried out, at your cost detailed due diligence in relation to you, the purpose for which you have applied for the Facility and the assets that you will provide as security for the Facility. We will further prepare reports in relation to the documents provided to us in 5.4 above and facilitate the preparation of the Finance Documents between you and the Trustee as specified in the Term Sheet.
- 5.7 On agreement of the terms of the Finance Documents (other than the interest rate) we shall prepare a draft of the Auction Particulars to be uploaded to the Website setting out what we, in our absolute discretion, consider to be all relevant information relating to the Facility requested by you, including details about yourself, the amount, term, security, headline terms of the Finance Documents and any due diligence reports prepared pursuant to 5.6 above. Our Privacy Policy sets out what information is provided to Lending Members.
- 5.8 We will provide you with copies of the Auction Particulars before publication for your approval. You will be responsible for checking the accuracy and completeness of this information and must notify us in writing of any errors or omissions in relation to such information within two Business Days of receipt by you of the Auction Particulars. If we do not hear from you within that period you will be deemed to have accepted the contents of the Auction Particulars and approved the same.
- 5.9 Following your approval (or deemed approval) we will be authorised by you to post the Auction Particulars on the Website and commence the Auction and Lending Members may start to bid to lend you monies. Once the Auction has commenced the information about you in the Auction Particulars may not be amended.

5.10 Lending Members will be able to ask specific questions or request further information about the Auction Particulars by posting them on the Website. Normally any such communication will be available to all Lending Members to view. Responses to such questions may be provided by you and/or us.

5.11 Although Lending Members and other authorised visitors to the Website are subject to confidentiality undertakings, we are unable to guarantee observance thereof. Therefore, prior to us publishing Auction Particulars you should take all steps necessary to protect your commercial position.

## 6. THE AUCTION PROCESS

6.1 Each Lending Member will be able to read the Auction Particulars, and all other particulars from other prospective Borrowers, before deciding whether or not to make a Bid.

6.2 Prior to the Auction Process you may agree with us that certain bids at an agreed rate of interest may be Agreed Bids that cannot be outbid

6.3 Facilities made through the Network may be at different rates of interest for defined portions of that Facility (each portion being a "Layer" and each Facility subject to Layers being "Layered"), and, for the avoidance of doubt, rates within each Layer may also vary. Examples of how Layering works can be found on the Website.

6.4 Once a Lending Member has selected an opportunity on which it wishes to make a bid it will be asked to:

6.4.1 state the amount of money that it is prepared to make available to a Borrower;

6.4.2 the Layer(s) (if the Facility is Layered) in which it wishes to participate;

6.4.3 the type of bid it wishes to make (Agreed Bid or Non-Agreed Bid), or a combination of both; and

6.4.4 in the case of Non-Agreed Bids the annual interest rate required by the Lending Member for participation in that Layer.

6.5 The minimum Bid which a Lender may make in relation to each Facility and Layer thereof will be specified for each separate Auction. A Lender may at any time during the Auction process enter a further Bid(s) for a different amount(s) at a different interest rate in respect of the same Auction.

6.6 By entering the Bid in respect of a proposed Facility, that Bid becomes an "Active Bid" and is entered into the Auction for that particular Facility.

6.7 An Agreed Bid, made in isolation, becomes an Accepted Bid on it being entered into the relevant Auction.

6.8 If two Lending Members bid the same amount at the same interest rate then, in the event of competition, priority will be given to the Lending Member whose Bid is received (or is deemed to have been received) by us first.

6.9 Once sufficient Bids have been received to fully fund a Facility, further Bids entered in relation to that Facility reduce the interest rate if they are successful and entered before the Auction Closing Date.

6.10 At the Auction Closing Date, if sufficient Bids have been made to fund the Facility, Loans shall be made between the Borrower and:-

6.10.1 such Lending Members who have Agreed Bids, pursuant to those Agreed Bids; and

- 6.10.2 such Lending Members who have Non-Agreed Bids with the lowest interest rates which are sufficient to fund the Facility, pursuant to those Non-Agreed Bids.
- 6.11 For the avoidance of doubt, if a Lending Member makes multiple Bids at differing interest rates and/or in differing Layers, all or some of which become Accepted Bids, each such Accepted Bid shall constitute a Loan between the Lending Member and the Borrower.
- 6.12 If by the Auction Closing Date of a particular Auction insufficient Bids have been received to fulfil your requirements for the Facility, you will have the option of either:
- 6.12.1 extending the Auction Closing Date;
- 6.12.2 not proceeding any further with the Auction; or
- 6.12.3 proceeding on the basis of the Bids made at the Auction Closing Date subject to you making good the shortfall in any funds required. For the avoidance of doubt and so as not to prejudice the rights of committed Lending Members, in the event that any shortfall is so made good, you will participate as a Lending Member, shall rank *pari passu* in the normal way and may, during the term of the Facility, offer all or any part of the Facility so made good by you for sale to Members on the Secondary Market. If you do not make good the shortfall as envisaged in this paragraph 6.12.3 you will be deemed to have elected not to complete the Loan and paragraph 6.14 shall be deemed to apply
- 6.13 At the end of an Auction Period and the Facility becoming fully funded at an aggregate interest rate no greater than that included in the Auction Particulars or as agreed with you pursuant to 6.12 above you may elect not to complete the Facility by Notice to us in writing within 48 hours of written receipt of notification of the Facility being fully funded or funded to the amount agreed pursuant to 6.12 above.
- 6.14 In the event that a Facility is not made or you elect not to complete a Facility, you will still be liable to us for the payment of any costs and expenses as set out in the Term Sheet, but for no other costs and expenses.
- 6.15 We make no warranty or representation that sufficient Lending Members will offer to lend monies in respect of any Facility which you apply to borrow.

## **7. COMPLETION OF THE FACILITY**

As soon as reasonably practicable after notification that the Facility is fully funded and the solicitors acting for the Trustee, as agent and attorney for the Lending Members, confirming that they are satisfied with the documentation provided under 5.4 above and the Finance Documents referred to at 5.6 above, whichever is the later, the Facility will be available for drawdown.

## **8. THE ROLE OF CAPITALSTACKERS**

- 8.1 CapitalStackers performs an administrative role in matching Borrowers and Lenders and in facilitating payments, the collection of monies due and onward distribution of funds. We are not a party to any Finance Documents, although we will negotiate the term sheet and will in addition facilitate the preparation and negotiation of the Finance Documents and hold monies received from Lending Members to facilitate Loans or repayments received from Borrowers in our client account.

## **9. ROLE OF THE SECURITY TRUSTEE ATTORNEY AND AGENT**

- 9.1 Because of the way in which the Auction process operates and the possibility of the Facility comprising many Lending Members, it is not practicable for each Lending Member to sign the Finance Documents. We have therefore made arrangements for the Trustee to act as attorney and agent on behalf of each Lending Member.

- 9.2 The use of the Trustee is not only to safeguard the interests of Lending Members but also to fulfil instructions arising from the voting process if ever a decision is needed in connection with the Facility or taking legal action, but also has the effect of keeping the identity of the Lending Members confidential.
- 9.3 The Trustee has 4 directors, 1 being a non-Hallidays director of CapitalStackers and 3 being Hallidays directors.
- 9.4 The Trustee's duties under the Finance Documents are solely administrative in nature. The Trustee has no obligations of any kind to any party and/or in connection with the Finance Documents.
- 9.5 The Trustee is authorised by each Lending Member to exercise the rights, powers, authorities and discretions specifically given to the Trustee under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.
- 9.6 The Trustee will hold the benefit of any security created on trust for the Lending Members involved in the relevant Facility.
- 9.7 The Trustee may act in relation to the Finance Documents through its own personnel and agents.

## 10. ADMINISTRATION OF LOANS

- 10.1 CapitalStackers shall be entitled to engage, pay for and rely on the advice or services of any lawyers, accountants, valuers, surveyors or other experts in relation to any Facility or any Security Document. Any fees payable in relation to any such advice or services shall be for the account of the Borrower.
- 10.2 CapitalStackers may undertake the following administrative tasks:
- 10.2.1 receiving Compliance Certificates and management information from the Borrower;
  - 10.2.2 discussing performance issues with the Borrower;
  - 10.2.3 issuing chasing letters and demands; and
  - 10.2.4 amending the terms of the Finance Documents, provided that such amendments do not affect the interest rate payable, the terms of the Facility, the capital repayment schedule or the security.
- 10.3 We will provide regular information to Lending Members through the Website on the status of the Loan(s) made by them, including amounts outstanding, capital and interest received and any problems experienced with collecting amounts that are due from Borrowers.
- 10.4 Subject to any matters upon which the Trustee is required to consult with Lending Members, the Trustee shall have discretion in the exercise of any authority vested in it as agent, attorney and security trustee respectively in accordance with the terms of the Finance Documents.

## 11. REPAYMENT AND INTEREST

- 11.1 Payments made by you and received by us in cleared funds later than 12:00 shall be deemed to have been received on the following Business Day for interest calculation purposes. This is to allow sufficient time for us to process payments to each of your Lenders.
- 11.2 Terms relating to repayment of principal and interest each Facility will be documented in the Finance Agreements.

## 12. DEFAULT PROCEDURES

12.1 If we become aware of a default in the payment of any principal, interest or fee payable under any Finance Document, or if we otherwise receive notification of an event of default under the terms of any Finance Document, we shall promptly:

12.1.1 enter into dialogue with you with a view to the remedying of the default without delay;

12.1.2 notify the relevant Lending Members of the relevant circumstances; and

12.1.3 if appropriate, put together a suitably qualified default management team, comprising a lawyer, an insolvency practitioner and any other professional deemed by us to be required, whose task it shall be to produce a report on the default situation and a recommended course of action.

12.2 The Trustee shall not implement any of the following proposed courses of action without having the consent or deemed consent of the relevant Lending Members in relation to the proposal:

12.2.1 the commencement of any enforcement action or legal process against a Borrower;

12.2.2 the release of any security (save where the relevant Facility has been repaid in full);

12.2.3 the issue of any waiver letter; or

12.2.4 the restructuring of the Facility or security.

12.3 In relation to a proposed course of action, each relevant Lending Member shall be deemed to have given its consent to such proposal if the Trustee shall have arranged a poll of the relevant Lending Members and it shall have been approved by the majority who vote in that poll as provided for in the Lenders' Terms and Conditions.

12.4 Save as may be specified in any applicable inter-creditor or priority document to the contrary, all money arising from the enforcement of any Security Documents will be paid in the following order:

12.4.1 first, to meet any costs incurred in respect of any enforcement action by the Trustee and/or any manager, receiver or administrator appointed by it;

12.4.2 second, to meet the payment of any outstanding fees due to the Trustee in respect of the relevant Facility;

12.4.3 third, to meet the payment of outstanding interest on the relevant Loans due to each Lending Member; and

12.4.4 fourth, to repay the capital amount of the Loans to Lending Members on a proportional basis by reference to the amount of the Loan(s) held by each Lending Member in each respective Layer, being in the order that the Layers with the lowest interest rates take priority.

## 13. SECONDARY MARKET

13.1 In the event that a Borrower has elected to make good a shortfall in funding of a Facility in accordance with 6.12.3 (such portion of the Facility being a "**Shortfall Loan**"), at any time after the completion of a Facility, such a Borrower may offer a Shortfall Loan (or parts thereof) for sale to other Lending Members on the Secondary Market, subject always to the following terms:-

13.1.1 each of the Seller and the Purchaser acknowledges that the sale of a Shortfall Loan shall be completed as an assignment of such Shortfall Loan from the Seller to the Purchaser;

- 13.1.2 the Seller acknowledges that all his right, title and interest in the Shortfall Loan including, for the avoidance of doubt, the Seller's rights with regard to decision making under clause 7 of the Lenders Terms and Conditions shall be transferred to the Purchaser;
- 13.1.3 the Purchaser acknowledges that, following the completion of the sale of the Shortfall Loan, they shall be bound by the Lender's Terms and Conditions as if they were the Seller with regard to the Shortfall Loan.
- 13.1.4 to offer a Shortfall Loan for sale on the Secondary Market, the Seller must specify:-
- (a) the amount of the Shortfall Loan to be sold;
  - (b) the price which the Seller is offering the Shortfall Loan for sale ("the **Offer Price**"); and
  - (c) the date by which the sale of the Shortfall Loan must complete, which shall not be more than 2 weeks from the date of the offer for sale ("the **Offer Closing Date**").
- 13.1.5 once offered for sale, other Lending Members may place Secondary Market Bids by specifying:-
- (a) the date on which you will complete the sale, which must be on or before the date specified by the Seller ("the **Proposed Completion Date**"); and
  - (b) the price which you are willing to pay for the Shortfall Loan, which, for the avoidance of doubt, need not be greater than or equal to the Offer Price.
- 13.1.6 once a Secondary Market Bid has been placed, the Seller shall be entitled (but not obliged) to accept the Secondary Market Bid, which, on acceptance, shall become an Accepted Secondary Market Bid;
- 13.1.7 in the event that the Purchaser does not already have a Loan participation within the Facility to which the Shortfall Loan relates, we reserve the right to require the Purchaser to pay a Deposit to us prior to allowing the Purchaser access to the Facility's dataroom;
- 13.1.8 once a Purchaser has an Agreed Secondary Market Bid and subject always to 13.1.7, above, the Purchaser shall be entitled to review the Facility's dataroom containing, inter alia:-
- (a) the Finance Documents;
  - (b) the Auction Particulars; and
  - (c) any updated reports from us; the Trustee; professional advisors; or the Borrower.
- 13.1.9 on or before the Proposed Completion Date, the Purchaser shall confirm whether they wish to confirm or cancel the Agreed Secondary Market Bid. In the event that the Purchaser has not confirmed or cancelled the Agreed Secondary Market Bid by the Proposed Completion Date, the Agreed Secondary Market Bid shall automatically be cancelled.
- 13.1.10 in the event that the Purchaser withdraws the Agreed Secondary Market Bid prior to confirmation and such Purchaser has paid a Deposit to us, we shall, subject to 13.1.12, return such Deposit to the Purchaser.
- 13.1.11 once confirmed, an Agreed Secondary Market Bid may not be withdrawn and the Purchaser shall be bound to complete on the sale. Immediately on confirmation of the Agreed Secondary Market Bid, the Purchaser shall be required to transfer the agreed sale price (less, if applicable, any Deposit) to our client account immediately.

13.1.12 in the event that either the Seller or the Purchaser withdraw from the sale of the Shortfall Loan following the confirmation of an Agreed Secondary Market Bid (which for the avoidance of doubt, can only be agreed with the consent of the other party), then we reserve the right to levy an administration fee against one, or both of the Seller and Purchaser and reserve the right to deduct such fees from any monies to be returned to either the Seller or the Purchaser.

13.1.13 if, by the Offer Closing Date, there are no Agreed Secondary Market Bids, the Seller shall be entitled, at their election, to either:-

- (a) extend the Offer Closing Date for a period of up to 2 weeks; or
- (b) withdraw from the sale of the Shortfall Loan, whereupon such withdrawal may incur an administration fee from us.

13.1.14 on completion of the sale of the Shortfall Loan:-

- (a) the Seller and the Purchaser undertake to execute all such documentation as necessary to perfect the sale and/or assignment of the Shortfall Loan; and
- (b) we shall deduct our Sales Commission (together with any unpaid fees or charges owing by the Seller) prior to transmitting the balance of the Sale Proceeds to the Seller.

13.1.15 immediately following the sale of any Loan (or part thereof) on the Secondary Market the Purchaser must own a participation greater than, or equal to the minimum participation specified for that Facility (or Layer as the case may be);

13.1.16 immediately following the sale of any part of a Loan, the part of the Loan retained by the Seller must be greater than or equal to the minimum participation specified for that Facility (or Layer as the case may be).

#### **14. BORROWERS' AGREEMENTS WITH CAPITALSTACKERS**

14.1 You acknowledge and agree that CapitalStackers makes no warranty or representation as to the availability of any Facility or Loan from our Lending Members.

14.2 Calculations provided on the Website regarding interest rates are for guidance purposes only and are not warranted or guaranteed.

14.3 The information on the Website does not constitute advice or recommendations to participate in the Network.

14.4 You are responsible for the accuracy of the information and documentation displayed on or via the Auction Particulars, and for ensuring that such information and/or documentation is up to date and error-free.

#### **15. CONFIDENTIALITY**

15.1 Each Borrower is responsible for maintaining the security of its user name and password for use on the Website.

15.2 You must notify us immediately if there is any unauthorised use of your password or user name or any other security breach of which you become aware.

15.3 Each Borrower is responsible for all use of the Website through its user name and password.

15.4 CapitalStackers is registered under the Data Protection Act 1998 with registration number Z3093424.

## 16. **TERMINATION OF MEMBERSHIP**

- 16.1 A Borrower may terminate its Membership, provided no Facilities are outstanding, with immediate effect by sending us written notice of termination.
- 16.2 We may terminate a Membership at any time and for any reason with immediate effect by sending written notice of termination to the Member. In both cases, complete termination will only be possible if that Member in question does not have any current outstanding Facility.
- 16.3 Termination of Membership will not affect any outstanding Facility or other Finance Documents to which you are a party at that time.

## 17. **LIABILITY**

- 17.1 You shall be liable to us for any loss or damage suffered by us as a result of any breach of these terms and conditions, any Term Sheet or any Finance Document.
- 17.2 We do not provide any investment advice and nothing appearing on the Website is intended to constitute advice or a recommendation to enter into a Facility via the Website.
- 17.3 Neither we nor the Trustee will be liable to you for any loss or damage which you may suffer as a result of being a Borrower or using the Website, except where such loss or damage was caused by our gross negligence, wilful misconduct or fraud by us or our employees. We are not responsible for any breach of these terms and conditions arising from circumstances outside of our reasonable control. In any event, our entire financial liability to you (howsoever arising) arising as a result of or in connection with your use of the Website shall not exceed the aggregate amount of your outstanding Facilities.

## 18. **COMPLAINTS PROCEDURE**

- 18.1 If you have a complaint, it should be communicated to the Managing Director of CapitalStackers by email at [complaints@capitalstackers.com](mailto:complaints@capitalstackers.com).
- 18.2 One or more officers of CapitalStackers will investigate the complaint and recommend appropriate actions to address or resolve the problem within 28 days.
- 18.3 In the event that the proposed resolution is not acceptable to the complainant, the Hallidays directors of the Trustee will be asked to decide on the appropriate action and their decision shall be final.

## 19. **GENERAL TERMS**

- 19.1 The information provided on the Website is directed solely at and is for use solely by the persons and organisations that meet the criteria set out at 3 above and the equivalent criteria set out in the Terms and Conditions applying to prospective Lenders.
- 19.2 You confirm you have read and understand the Terms and Conditions applying to prospective Lenders.
- 19.3 The Website and its content is not intended for distribution to, or use by, any person or entity in any jurisdiction where such distribution or issue will be contrary to applicable law or regulation.
- 19.4 We are not responsible for content downloaded or posted by other users on the Website. We do not accept any responsibility for editing any content downloaded or posted on the Website by any person other than us.
- 19.5 You agree to use the Website only for lawful purposes and in a way which does not infringe the rights of anyone else or restrict or inhibit anyone else's use and enjoyment of the Website.

- 19.6 You warrant that you have taken all reasonable precautions to ensure that any data you upload or otherwise submit to the Website is free from viruses and anything else which may have a contaminating or destructive effect on a part of the Website or any other technology.
- 19.7 The content and material available on the Website is for information purposes only and should not be regarded as an offer, solicitation, invitation, advice or recommendation to buy or sell investments, securities or any other financial services or banking products. If you are unsure about whether a product is suitable for you, you should contact an independent financial adviser.
- 19.8 We accept no responsibility or liability for your use of content on the Website and such use is entirely at your own risk. While we take reasonable precautions to prevent the existence of computer viruses or other malicious programs on the Website, we accept no liability for them if they do exist. It is your responsibility to use, update and maintain anti-virus software on your computer.

## 20. **AMENDMENTS TO THESE TERMS AND CONDITIONS**

- 20.1 We may update or amend these Terms and Conditions and/or the Facility conditions from time to time to comply with law or to meet our changing business requirements. We may not always be able to give you advance notice of such updates or amendments but will post them on the Website. By continuing to use the Website, we agree to be bound by these Terms and Conditions as updated or amended from time to time.
- 20.2 The date upon which these Terms and Conditions were last updated or amended will be set out at the beginning hereof.

## 21. **OTHER IMPORTANT TERMS**

- 21.1 If any of these Terms and Conditions is found to be illegal, invalid or unenforceable by any Court of competent jurisdiction, the remainder shall continue in full force and effect.
- 21.2 All disclaimers, indemnities and exclusions in these Terms and Conditions shall survive termination of the Agreement between us for any reason.
- 21.3 We may, in whole or in part, release, compound, compromise, waive or postpone, in our absolute discretion, any liability owed to us or right granted to us in these Terms and Conditions without in any way prejudicing or affecting our rights in respect of that or any other liability or right not so released, compounded, compromised, waived or postponed.
- 21.4 No single or partial exercise, or failure or delay in exercising any right, power or remedy by us, shall constitute a waiver by us of, or impair or preclude any further exercise of, that or any right, power or remedy arising under these Terms and Conditions or otherwise.
- 21.5 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to these Terms.
- 21.6 These Terms and Conditions are governed by English law. In the event of any matter or dispute arising out of or in connection with these Terms and Conditions, you and we irrevocably and unconditionally submit to the non-exclusive jurisdiction of the English Courts.