

CAPITALSTACKERS

TERMS AND CONDITIONS FOR LENDERS (EDITION 4 - AUGUST 2016)

1. INTRODUCTION

1.1 These Terms and Conditions explain:

1.1.1 how CapitalStackers works;

1.1.2 how to become a Member of CapitalStackers as a Lending Member; and

1.1.3 how you may use the Website.

1.2 CapitalStackers does not offer any investment advice or recommendation in relation to lending proposals appearing on the Website. CapitalStackers accepts no responsibility and disclaims all liability for any information about a Borrower made available to Lenders through the Website or otherwise.

1.3 CapitalStackers is authorised by the Financial Conduct Authority. Click [here](#) for full details. Loans to Borrowers made via the Website will be for amounts which may be in excess of £25,000 and will be made wholly or predominantly for the purposes of a business. We shall not be involved in consumer credit activities.

1.4 If you decide to become a Member of CapitalStackers as a Lending Member, you must comply with these Terms and Conditions, which should be read alongside, and are in addition to the Policies. Please read these Terms and Conditions carefully and print a copy for your future reference.

1.5 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, limited company, pension fund or trust, 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.

1.6 References herein and in the Policies to "CapitalStackers", "we", "us" and "our" are to CapitalStackers Limited (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.

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

1.8 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 ("Trustees" a company limited by guarantee) will act as agent and attorney of the Lending Members in relation to the making of Loans available to Borrowers. All funds provided by Lenders for the purposes of Loans will be processed through our client account in accordance with CASS 7.10.7A of the Financial Conduct Authority's Handbook, as the same may be amended from time to time. CapitalStackers will collect the payment by Borrowers of interest and capital for onward payments to Lending Members, monitor a Borrower's performance in respect of its Loans and will take steps on behalf of Lenders, 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 (b) been outbid in accordance with these Terms and Conditions or (c) been rejected by us in writing;
- 2.1.4 **“Agreed Bid”** means a Bid by the prospective Lending Member at a defined discounted rate of interest acceptable at the outset to the Borrower;
- 2.1.5 **“Auction”** means an auction run via the Website involving the advertising on the Website of a Borrower’s application for a Facility involving the live tracking of Bids;
- 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 5.3 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 **“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.
- 2.1.11 **“Facility”** means, in aggregate, all Loans to be provided by Lending Members to a Borrower pursuant to the Finance Documents.
- 2.1.12 **“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;
- 2.1.13 **“Finance Documents”** means the Facility Documents, the Security Documents and any ancillary documents thereto;
- 2.1.14 **“Hallidays”** means Hallidays Group Ltd of Riverside House, Kings Reach Business Park, Yew Street, Stockport SK4 2HD.
- 2.1.15 **“Layer”** means a portion of a Facility between particular interest rate parameters;
- 2.1.16 **“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;
- 2.1.17 **“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;
- 2.1.18 **“Membership Number”** means the unique number issued to each Member upon successful registration as a Member of the Network;
- 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 the prospective 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 **“Proposal”** means a proposal, by a Borrower, for a Facility to be provided using the Network.
- 2.1.23 **“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.
- 2.1.24 **“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.
- 2.1.25 **“the Secondary Market”** means the ability of Lending Members and, in certain circumstances, of Borrowers to sell a Loan (or a part thereof) to another Member via the Network.
- 2.1.26 **“Secondary Market Bid”** means a bid, by a Lending Member to purchase a Loan (or part thereof) offered for sale on the Secondary Market.
- 2.1.27 **“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;
- 2.1.28 **“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).
- 2.1.29 **“the Trustee”** means CapitalStackers Trustees Limited;
- 2.1.30 **“the Website”** means the website operated by CapitalStackers at 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 LENDER

- 3.1 You will not be permitted to make bids to lend via the Website unless you meet the following criteria:
- 3.1.1 you are not subject to any restriction affecting your ability to lend on the Website under the laws and regulations of any jurisdiction.

- 3.1.2 if you are an individual, you are over 18 years of age;
- 3.1.3 you must have a valid and current account which is in your name with a bank or a building society authorised in the United Kingdom, as all transfers made by you in respect of successful bids to fund on the Website must be made from this account;
- 3.2 CapitalStackers retains the right to refuse membership without giving a reason.
- 3.3 You must register your details on the Website, although you will not be permitted to lend using the Website until we have carried out identity and fraud checks on you and, if appropriate, your members, directors, shareholders or other stakeholders. We use our own internal guidelines and policies when assessing applications but have complete discretion as to whether to allow you to be a Lender (or continue to be a Lender) on the Website.
- 3.4 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 make offers to lend on the Website (for more details on about how we use your information, please refer to our Privacy Policy).
- 3.5 Once we have satisfied ourselves as to your identity and suitability to be a Lender on the Website, you will be able to participate in Loans 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 Lender, we shall be entitled to suspend and/or terminate your right to make any further Bids to lend 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 lending 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, PASSWORD AND MEMBERSHIP NUMBER

- 4.1 On registering with us as a Lender, 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 make a Bid or check the progress of Bids, you will need to enter your user name and password. Bidding will be conducted through your Membership Number in order to keep your identity confidential. Your user name and password are personal to you and are not transferable. Borrowers and other Lenders will be able to review statistics about your bidding history and Loans that you have made through the Website by reference only to your Membership Number.
- 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 LENDING PROCESS

- 5.1 Lending opportunities will be offered in the form of an Auction conducted through the Website. Information regarding available opportunities will be available on the Website. We may also notify you by email when new lending opportunities become available. However, we accept no responsibility if you do not receive such notification.

- 5.2 Borrowers whose applications for funding are accepted for inclusion on the Website will be required to provide details of the proposed transactions specific to that Borrower, including the maximum amount it wishes to raise via the Auction on our Website, the security to be offered in respect of any such Facility, any prior ranking debt, the length of the Facility required and other material terms applicable to the Facility.
- 5.3 The information and documentation contained in the Auction Particulars may (amongst other things) include 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.
6. **MAKING A BID**
- 6.1 You should read the Auction Particulars in relation to any Proposal carefully and in detail and should, where appropriate, seek your own independent professional advice in relation to the content of those Auction Particulars, before deciding whether or not to make a Bid.
- 6.2 By making a Bid, you confirm to us that you have read and understood the Auction Particulars in respect of the corresponding Loan opportunity and that such Bid or Bids, should it be an Accepted Bid may not be withdrawn and is an irrevocable commitment by you to provide the Loan in question.
- 6.3 Each Facility 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 you have selected an opportunity on which you have decided that you wish to make a Bid, you will be asked to:
- 6.4.1 state the amount of money that you are prepared to make available to the Borrower;
 - 6.4.2 the Layer(s) (if the Facility is Layered) in which you wish to participate;
 - 6.4.3 the type of bid you wish to make (Agreed Bid or Non-Agreed Bid), or, if permitted by the Auction in question, a combination of both; and
 - 6.4.4 in the case of Non-Agreed bids the annual interest rate you wish to charge for that participation in that Layer.
- 6.5 Your offer to lend or each "Bid" becomes an "Active Bid" when it is entered into the Auction on the relevant Borrower's page.
- 6.6 The minimum Bid which may be made will be specified for each separate Facility and (if appropriate) Layer thereof. You may increase your Active Bid at any time during the Auction process or enter a further Bid(s) for a different amount(s) at a different interest rate(s) in respect of the same Auction.
- 6.7 In addition to being asked whether in respect of a Layered Facility you wish to make an Agreed Bid or a Non-Agreed Bid you will have the option of combining multiple Agreed and Non-Agreed Bids in different Layers of the proposed Facility. Should any one component of a Bid fail for whatever reason, all other components of that Bid in relation to the Facility in question will be cancelled and you will be given the reason why and prompted to bid again.
- 6.8 An Agreed Bid, made in isolation, becomes an Accepted Bid on it being entered into the Auction on the relevant Borrower's page.
- 6.9 During the progress of the Auction, you will be able to view the progress via our Website and see whether other Members have outbid you. 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 bidder whose Bid is received first by us.

- 6.10 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.
- 6.11 At the Auction Closing Date, if sufficient Bids have been made to fund the Facility, Loans shall be made between the Borrower and:-
- 6.11.1 such Lending Members who have Agreed Bids, pursuant to those Agreed Bids; and
- 6.11.2 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.
- 6.12 If by the Auction Closing Date for a particular Auction insufficient Bids have been received to fulfil a Borrower's requirements for the Facility, the Borrower has the option of either:
- 6.12.1 extending the Auction Closing Date; or
- 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 the Borrower 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, the Borrower shall 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 Loan so made good by him for sale to Members on the Secondary Market. If the Borrower does not make good the shortfall as envisaged by this paragraph 6.12.3 paragraph 6.14 shall be deemed to have applied.
- 6.13 The Borrower will be entitled at any time during the Auction to notify us that they do not wish to complete the Facility.
- 6.14 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.
- 6.15 On the Auction Closing Date, you will be informed whether or not your Bid has become an Accepted Bid by us by email, which will contain details of the amount to be lent and the interest rate applicable and you must honour the commitment to make the Loan(s).
- 6.16 Following notification that your Bid is an Accepted Bid, you will be required to transfer the amount of your Loan(s) to our client account immediately.
- 6.17 All deposits to our client account by you must be made from the bank account that you originally registered on the Website or such other bank account which, subject to our prior approval, you notify us of.

7. ROLE OF THE SECURITY TRUSTEE, ATTORNEY AND AGENT

- 7.1 Because of the way in which the Auction process operates and the possibility that there may be 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 on behalf of each Lending Member when Loans are made. Each Lending Member irrevocably agrees to appoint the Trustee as its attorney to execute all documents which may be required to complete the Facility to be entered into with the Borrower. Each Lending Member agrees that it will not take any enforcement action or commence

any process against any Borrower in its own name but will act only through the agent or the security trustee in accordance with these Terms.

- 7.2 The use of the Trustee is not only to represent the Lending Members and to take whatever action is required if ever a decision in relation to the making a Facility or taking legal action, but also has the effect of keeping the identity of the Lending Members confidential.
- 7.3 The Trustee has been established as a company limited by guarantee in order to preserve its independence from CapitalStackers.
- 7.4 The Trustee has 4 directors, 1 being a non-Hallidays director of CapitalStackers and 3 being Hallidays directors.
- 7.5 Each Lending Member appoints the Trustee to act as its agent in connection with any Loan made including any Finance Documents, including to execute (whether under seal or under hand) and to deliver any Finance Documents to be executed and delivered on its behalf. Each Lending Member confirms and agrees that:
- 7.5.1 it does not wish to be registered as the joint proprietor of any mortgage or charge created pursuant to any Finance Document and accordingly authorises the Trustee to hold such mortgage or charge in its sole name as trustee for the Lending Member; and
- 7.5.2 it will not take any action or commence any process against any Borrower in its own name but will only act through the Trustee who should be entitled to act as set out herein.
- 7.6 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.
- 7.7 Each Lending Member authorises the Trustee pursuant to instructions given by us 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.
- 7.8 Each Lending Member agrees that the Trustee will hold the benefit of the Finance Documents and of any security created thereunder on trust for the Lending Members involved in respect of the relevant Facility.
- 7.9 In following the instructions of CapitalStackers or the Lending Members the Trustee may act in relation to the Finance Documents through its own personnel and agents.
- 7.10 Subject to the provisions herein the Trustee shall have absolute discretion in the exercise of any right, power or authority vested in it as Security Trustee and Agent in accordance with the terms of the Finance Documents.
- 7.11 In respect of any matter decided on by the Lending Members pursuant to the provisions of paragraph 10 below, the Trustee shall:
- 7.11.1 act in accordance with the instructions given to it by us or the Lending Members (or if so instructed by us or the Lending Members refrain from acting or exercising any right, power, authority or discretion vested in it as security trustee); and
- 7.11.2 not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with the instructions of the Lending Members.
- 7.12 The Trustee may seek clarification from us or the Lending Members of any instructions received from us or the Lending Members and may elect not to act pending receipt of such clarification to its reasonable satisfaction.

- 7.13 In the absence of instructions from us or the Lending Members, the Trustee will take instructions as to any action or the refraining from taking action, as the case may be, from CapitalStackers.
- 7.14 The Trustee will not be liable for any action taken by it (or any omission to take action) under or in connection with any Finance Document unless directly caused by its gross negligence or wilful misconduct.
- 7.15 No Lending Member may take proceedings against any officer, employee or agent of the Trustee in respect of any claim it may have against the Trustee or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Trustee may rely on this paragraph.
- 7.16 By way of supplement to the Trustee Act 1925 and the Trustee Act 2000 (to the extent not inconsistent with the terms hereof), it is expressly declared that the Trustee:
- 7.16.1 may rely on any representation, notice, instruction or document believed by it to be genuine, correct and appropriately authorised;
 - 7.16.2 may rely on any statement made by a director, authorised signatory or employee of any person regarding any matter which may reasonably be assumed to be within his knowledge or within his power to verify;
 - 7.16.3 shall not be bound to account to any Lending Member for any sum or the profit element of any sum received by it on its own account;
 - 7.16.4 may engage, pay for and/or rely on the advice or services of any lawyers, accountants, surveyors or other experts;
 - 7.16.5 may act through its personnel and agents;
 - 7.16.6 may delegate by power of attorney or otherwise, to any person and for any period all or any of the trusts, powers and authorities vested in the Trustee by any Finance Document and such delegation may be made on such terms and subject to such conditions, including power to sub-delegate, as the Trustee may specify and provided that the Trustee shall have exercised reasonable care in the selection of such delegate, the Trustee shall not be responsible for any loss incurred by reason of any misconduct or default on the part of such delegate or sub-delegate and shall not be bound to supervise the actions and conduct of such delegate or sub-delegate;
 - 7.16.7 shall not be responsible for the adequacy, accuracy and/or completeness of any information whatsoever supplied to any person in connection with any Finance Document;
 - 7.16.8 shall not be responsible for the legality, validity, effectiveness, adequacy, enforceability or priority afforded by any Finance Document;
 - 7.16.9 shall not be liable for any failure to perfect the security created or constituted by any Finance Document;
 - 7.16.10 may store any of the Finance Documents and any other documents delivered to it with any bank or building society within the United Kingdom, any company whose business includes the safe custody of documents or any firm of lawyers, or, in respect of any insurance policies, may place the policy documents with any insurance broker, in each case without being bound to enquire as to the existence or adequacy of any insurance held by any such person;
 - 7.16.11 shall not be obliged to disclose to any person any information if the disclosure would or might in its reasonable opinion constitute a breach of law or a breach of fiduciary duty;

7.16.12 may refrain from doing anything which would or might in its reasonable opinion constitute a breach of law and may do anything which in its opinion is necessary to comply with law; and

7.16.13 shall have full power to determine all questions and doubts arising in relation to the interpretation or application of any of the provisions of any of the Finance Documents as it affects the Trustee and every such determination (whether made upon a question actually raised or implied in the acts or proceedings of the Trustee) shall be conclusive and binding.

8. ADMINISTRATION OF LOANS

8.1 CapitalStackers and the Trustee shall be entitled to rely on any instruction, notice or document that it believes to be genuine given to it by any Lending Member or any person on its behalf.

8.2 CapitalStackers and the Trustee 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.

8.3 Subject to 10 below, each Lending Member hereby permits us to undertake the following administrative tasks:

8.3.1 receiving compliance certificates and management information from the Borrower;

8.3.2 discussing performance issues with the Borrower;

8.3.3 issuing chasing letters and demands; and

8.3.4 amending the terms of the Facility Agreement or the Security Documents, provided that such amendments do not affect the interest rate payable, the terms of the Facility, the capital repayment schedule or the security.

8.4 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.

8.5 Subject to paragraph 10, the Trustee shall have discretion in the exercise of any authority vested in it as Agent and Security Trustee respectively in accordance with the terms of the Finance Documents.

9. REPAYMENT AND INTEREST

9.1 When and how you receive interest and are repaid capital on your Loan(s) depend on the terms of the particular Loan and the purpose of the Loan, each of which will be set out in the particular Auction Particulars. However, without prejudice to specific Auction Particulars the key principles to be adhered to are as follows:

9.1.1 Development Loans – interest will be rolled up and paid out with principal at Facility maturity;

9.1.2 Investment Loans – interest will be paid quarterly with net income being applied first to the lowest Layers and if there is insufficient income to meet the entire interest payment due, the interest not paid will be rolled up and paid out with principal at Facility maturity.

In respect of all Loans, at their maturity, principal (and any rolled up interest) will be paid in priority of their Layer, with lower Layers taking priority over higher Layers. In the event that there are insufficient funds to fully redeem any layer then Lenders in that Layer will receive monies pro-rata to their principal. Where an external party has provided senior debt, all Lending Member Loans are subordinated to and repaid only after such third party senior debt provider has been fully repaid.

9.2 In the event that any Lending Member has any unpaid fees or charges owing to us when interest and/or capital is due to be repaid in respect of any Loan, we reserve the right to deduct such unpaid fees or charges from the sums due to the Lending Member prior to payment.

10. PROCEDURES FOR VOTING

10.1 Whilst certain decisions relating to a Facility may be made without reference to the Lending Members of the relevant Facility there are certain matters which will require the consent of Lending Members.

10.2 Any communication from us which requires a Lending Member to vote on a particular course of action must be responded to within 5 Business Days. If the Lending Member does not vote within such time period, then that Lending Member will be deemed to have waived their voting rights and be disregarded for that particular vote and will not be included in any quorum required for a majority or unanimous decision to be made.

10.3 References to requirement for a unanimous decision relate to unanimity in respect of votes actually cast. If a member chooses not to vote he will be treated as having waived his voting right and not included in the calculation of the result of the vote.

10.4 Where there are more than two courses of action on which to vote, we shall endeavour to devise a poll that will result in a clear decision for one of those courses of action where that is appropriate. We shall have absolute discretion in designing such a poll and interpreting its outcome.

10.5 If we receive votes from Lending Members that account for below 35 per cent of the amount of the voting rights, we shall first satisfy ourselves that the method used to communicate with Lending Members has operated to our satisfaction and, if not, we shall repeat the voting procedure after taking all practical steps to correct or overcome the errors in transmission of messages.

10.6 The voting rights of each Lending Member will be weighted having regards to the amount of the outstanding Loan(s) made by that Lending Member in respect of the Facility in question and the applicable interest rate thereon and will be calculated using the following formula:

$$\text{Layer Amount} \times \text{Layer Weighted Rate} \div \text{Facility Amount} \div \text{Facility Weighted Rate}$$

where:

(a) Layer Amount is the aggregate amount of Loan participations within each Layer;

(b) Layer Weighted Rate is the weighted average rate of all Loan participations in each Layer;

(c) Facility Amount is the aggregate of all Loan participations; and

(d) Facility Weighted Rate is the weighted average rate of all Loan participations.

Where a Lending Member is invested in multiple Layers their voting rights shall be the sum of the above calculation for each Layer. We and the Trustee will act in accordance with the majority vote of those Lending Members who have voted taking into account any minimum poll and majority threshold requirements. Examples of how this formula works can be found on the Website.

10.7 If no requisite majority for a particular course of action is achieved, then we shall instruct the Trustee to take whatever action we think fit in its absolute discretion. In all circumstances, we shall communicate the decision made to all Lending Members as soon as reasonably practicable.

11. DEFAULT PROCEDURES

- 11.1 If we become aware of a default in the payment of any principal, interest or fee payable under any Finance Document, or if it otherwise receives notification of an event of default under the terms of any Finance Document, we shall promptly:
- 11.1.1 enter into dialogue with the Borrower with a view to the remedying of the default without delay;
 - 11.1.2 notify the relevant Lending Members of the relevant circumstances; and
 - 11.1.3 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.
- 11.2 We shall not implement any of the following proposed courses of action without having the consent or deemed consent of the relevant Lending Members in accordance with paragraph 10 in relation to the proposal:
- 11.2.1 the commencement of any enforcement action or legal process against a Borrower;
 - 11.2.2 the release of any security (save where the relevant Facility has been repaid in full);
 - 11.2.3 the issue of any waiver letter; or
 - 11.2.4 the restructuring of the Facility or security.
- 11.3 Each Lending Member agrees:
- 11.3.1 that it will keep all user email accounts from which the email address details provided to us when the CapitalStackers account was created current and (if necessary) paid up; and
 - 11.3.2 that it is responsible for checking messages on a sufficiently regular basis.
- 11.4 In relation to a proposed course of action, each relevant Lending Member shall be deemed to have given its consent to such proposal if we shall have arranged a poll of the relevant Lending Members as provided for in paragraph 10 above and it shall have been approved by the majority who vote in that poll as provided for above.
- 11.5 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:
- 11.5.1 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;
 - 11.5.2 second, to meet the payment of any outstanding fees due to the Trustee in respect of the relevant Facility; and
 - 11.5.3 third, to meet the payment of outstanding interest on the relevant Loans and to repay the capital amount of the Loans to Lending Members on a proportional basis by reference to the amount of the Loans made by each Lending Member in each respective Layer, being in the order of priority that the Layers with the lowest interest rates take priority.
- 11.6 For the avoidance of doubt it is the intention that Trustees will never be deemed to be a mortgagee in possession following any default under any Finance Document.

12. SECONDARY MARKET

12.1 At any time after the completion of a Facility, a Lending Member may offer any Loan(s) (or parts thereof) ("**Secondary Market Sale Loan**") which they have in a Facility for sale to other Lending Members on the Secondary Market, subject always to the following terms:-

12.1.1 each of the Seller and the Purchaser acknowledges that the sale of a Secondary Market Sale Loan shall be completed as an assignment of such Secondary Market Sale Loan from the Seller to the Purchaser;

12.1.2 the Seller acknowledges that all his right, title and interest in the Secondary Market Sale Loan including, for the avoidance of doubt, the Seller's rights with regard to decision making under clause 7, above, shall be transferred to the Purchaser;

12.1.3 the Purchaser acknowledges that, following the completion of the sale of the Secondary Market Sale Loan, they shall be bound by these terms and conditions as if they were the Seller with regard to the Secondary Market Sale Loan.

12.1.4 to offer a Secondary Market Sale Loan for sale on the Secondary Market, the Seller must specify:-

- (a) the amount of the Secondary Market Sale Loan to be sold;
- (b) the price which the Seller is offering the Secondary Market Sale Loan for sale ("**Offer Price**"); and
- (c) the date by which the sale of the Secondary Market Sale Loan must complete, which shall not be more than 2 weeks from the date of the offer for sale ("**Offer Closing Date**").

12.1.5 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 ("**Proposed Completion Date**"); and
- (b) the price which you are willing to pay for the Secondary Market Sale Loan, which, for the avoidance of doubt, need not be greater than or equal to the Offer Price.

12.1.6 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;

12.1.7 in the event that the Purchaser does not already have a Loan participation within the Facility to which the Secondary Market Sale 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;

12.1.8 once a Purchaser has an Agreed Secondary Market Bid and subject always to 12.1.7, 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.

- 12.1.9 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.
- 12.1.10 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 12.1.12, return such Deposit to the Purchaser.
- 12.1.11 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.
- 12.1.12 in the event that either the Seller or the Purchaser withdraw from the sale of the Secondary Market Sale 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.
- 12.1.13 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 Secondary Market Sale Loan, whereupon such withdrawal may incur an administration fee from us.
- 12.1.14 on completion of the sale of the Secondary Market Sale Loan:-
- (a) the Seller and the Purchaser undertake to execute all such documentation as necessary to perfect the sale and/or assignment of the Secondary Market Sale 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.
- 12.1.15 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);
- 12.1.16 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).

13. THE ROLE OF CAPITALSTACKERS

- 13.1 CapitalStackers performs an administrative role in matching Borrowers and Lenders and in facilitating payments, the collection of monies due and onward distribution of funds by way of our client account. We are not a party to any Finance Documents, although we will negotiate the term sheet, facilitate the preparation and negotiation of the Finance Documents and engage in enforcement of the Lending Members rights under the Finance Documents as referred to above.

14. **LENDERS' AGREEMENTS WITH CAPITALSTACKERS**

- 14.1 You acknowledge and agree that CapitalStackers makes no warranty or representation as to either the ability of Borrowers to meet their obligations in relation to any Facility or Loan or their credit risk and we are in no way liable for any default by a Borrower.
- 14.2 You acknowledge that any Bid you make and any Loan you make as a consequence of an Accepted Bid is made entirely at your own risk.
- 14.3 Calculations provided on the Website of the likely rate of return on Loans are for guidance purposes only and are not warranted or guaranteed.
- 14.4 The information on the Website does not constitute advice, recommendations or an endorsement of Loan requests from Borrowers. The information is not intended to be relied upon as a sole basis for deciding whether or not to participate in Loan(s) to any particular Borrower.
- 14.5 We make no representation or warranty as to the accuracy of the information and documentation displayed on or via the Auction Particulars, nor whether such information and/or documentation is up to date and error-free.
- 14.6 You acknowledge that any representation and warranties in relation to such information and documentation will be set out in the Facility Agreement and Finance Documents relating to the Facility, that such representations and warranties are given to the Trustee as trustee for Lending Members.
- 14.7 We do not warrant or represent that there will be sufficient Bids for any Facility to be fully funded or that there will be sufficient prospective Loans for Lending Members to participate in.

15. **CONFIDENTIALITY**

- 15.1 Each Lending Member 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 Lending Member is responsible for all use of the Website through its user name and password.
- 15.4 Each Lending Member accepts that it owes a duty of confidentiality to us with regard to:
- 15.4.1 the Finance Documents; and
- 15.4.2 any information provided in relation to potential or actual Borrowers.
- 15.5 CapitalStackers is registered under the Data Protection Act 1998 with registration number Z3093424.

16. **TERMINATION OF MEMBERSHIP**

- 16.1 A Lending Member may terminate its Lending Membership with immediate effect by sending us written notice of termination.
- 16.2 We may terminate a Lending Membership at any time and for any reason with immediate effect by sending written notice of termination to the Lending Member. In both cases, complete termination will only be possible if that Member in question does not have any current Loans outstanding.
- 16.3 Termination of Lending Membership will not affect any outstanding Loans. If a Lending Member has outstanding Loans at the time Membership is terminated, access to the Website will be limited so that no new Bids can be made and only management of existing Loans is possible.

17. **LIABILITY**

- 17.1 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 Loan.
- 17.2 Lending Members are responsible for obtaining their own independent financial advice before making any lending decisions.
- 17.3 Neither we nor the Trustee will be liable to any Lending Member for any loss or damage which it may suffer as a result of being a Lending Member or using the Website, except where such loss or damage was caused by our gross negligence or wilful misconduct. In any event, our entire financial liability to you (howsoever arising) as a result of or in connection with your Lending Membership, shall be limited to the loss of funds belonging to you whilst they are under our control and specifically excluding any period when they have been loaned to a Borrower.

18. **COMPLAINTS PROCEDURE**

- 18.1 If a Lending Member has a complaint, it should be communicated to the Managing Director of CapitalStackers by email at 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 will be asked to decide on the appropriate action and their decision shall be final.
- 18.4 If you remain unsatisfied, you are at liberty to refer your complaint to the Financial Ombudsman within six months of receipt of our final decision. Forms for this purpose should be requested by email to: complaints@capitalstackers.com.

19. **GENERAL TERMS**

- 19.1 The information provided on the Website is directed solely at and is for the use solely by persons and organisations that meet the criteria set out at paragraph 3 above and the equivalent criteria set out in the Terms and Conditions applying to prospective Borrowers.
- 19.2 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.
- 19.3 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.
- 19.4 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.
- 19.5 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.
- 19.6 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.
- 19.7 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 Loan 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, you 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.