

## Referral services agreement

THIS AGREEMENT is made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ (Commencement Date)

## BETWEEN

Heartland Bank Australia Limited ABN 54 087 651 750 (Australian Credit Licence 245606) of Level 20, 8 Exhibition Street, Melbourne, Victoria 3000 (Heartland Bank); and

\_\_\_\_\_ ABN \_\_\_\_\_

(Australian Credit Licence: \_\_\_\_\_) of

\_\_\_\_\_ [Address] (Referrer)

## Background

- A Heartland Bank is the provider of Heartland Bank Loan Products.
- B The Referrer is \_\_\_\_\_ [insert description i.e. is an authorised deposit taking institute or describe business mode]. The Referrer, during the course of its business receives enquiries in relation to reverse mortgage products.
- C The Lender intends to appoint the Referrer to refer potential customers to it.

## Agreed Terms

### 1 Definitions and interpretation

#### 1.1 Definitions

**Business Day** means any day on which a trading bank is usually open for business in Melbourne, Victoria, Australia.

**Confidential Information** means the confidential information of a party, which relates to the subject matter of this Agreement and includes information relating to the:

- (a) personnel, policies and business relationships and strategies of the other party; or
- (b) terms of this Agreement.

**Customer** means a person referred to Heartland Bank by the Referrer for the purposes of discussing and potentially obtaining a Heartland Bank Loan.

**Customer Referral** means the details of a Customer provided by the Referrer by way of the Heartland Bank Referrer Form.

**DDOs** means the design and distribution obligations in Pt 7.8A of the Corporations Act (Cth) 2001 and Guide 274.

**Distribution Information** in respect of each Heartland Bank product, means, 'distribution information' as defined in paragraph 274.221 of Guide 274, including:

- (a) the reasonable steps the Referrer has taken to ensure the referral of that product being consistent with the relevant TMD; and
- (b) any information required to be provided to Heartland Bank in accordance with the Reporting Requirements.

**Guide 274** means *ASIC Regulatory Guide 274 – Product Design and Distribution Obligations*.

**Heartland Bank Loan** means any loan and mortgage provided by Heartland Bank to a Customer, including a Heartland Bank Reverse Mortgage and its variations.

**Heartland Bank Referrer Form** means Heartland Bank's Referrer Form which is required to be completed by the Referrer who wishes to provide a Customer Referral to Heartland Bank.

**Law** means Commonwealth of Australia and State legislation including, without limitation, the Corporations Act 2001 (Cth), Competition and Consumer Act 2010 (Cth) (and Australian Consumer Law), National Consumer Credit Protection Act (Cth) (and National Credit Code), Privacy Act 1988 (Cth) (and if relevant, the Australian Privacy Principles), Anti-Money Laundering and Counter Terrorism Financing Act 2006 (Cth), regulations, by-laws and other subordinate legislation and, ASIC requirements and guidelines, and common law and equity.

**Loss** means any direct pecuniary loss, damage, cost, interest, expense, fee, penalty, fine, forfeiture, assessment, demand, claim, proceeding, cause of action, liability or damages incurred by a person.

**Personal Information** has the same meaning as that term in the *Privacy Act 1988* (Cth).

**Reporting Requirements** means, in respect of a product, the Referrer's obligation to report to Heartland Bank regarding any complaint, material feedback, significant dealing or dealing of that product outside the target market, in accordance with the TMD.

**TMD** means the target market determination provided by Heartland Bank to the referrer for each Heartland Bank product prepared in accordance with s994B of the Corporations Act 2001."

## 1.2 Interpretation

In this Agreement, unless the context otherwise indicates:

- (a) a word importing the singular includes the plural and vice versa, a word importing a gender includes each other gender and a reference to a person includes an individual or a firm, body corporate, or association (whether incorporated or not);
- (b) a reference to a person includes the person's legal personal representatives, successors and assigns;
- (c) a reference to a clause, party or schedule is a reference to a clause of or party to this Agreement;
- (d) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (e) a reference to "dollars" or "\$" is to Australian currency;
- (f) a covenant, agreement, representation, warranty or indemnity on behalf of two or more persons (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (g) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (h) if this Agreement requires an action to be undertaken on a day that is not a Business Day, that action must be undertaken on the next following Business Day; and
- (i) headings are inserted for convenience and do not affect the interpretation of this Agreement.

## 2 Appointment

From the Commencement Date:

- 2.1 Heartland Bank appoints the Referrer to refer Customers in accordance with this Agreement; and
- 2.2 The Referrer accepts its appointment by Heartland Bank.

### 3 Relationship

- 3.1 Nothing in this Agreement shall be deemed to create an employment, partnership, joint venture or agency relationship between the parties.
- 3.2 The Referrer confirms that it is not a credit representative, contractor or employee of Heartland Bank and will not promote itself as such.

### 4 Commencement and Term

This Agreement will commence on the Commencement Date and will continue until terminated in accordance with clause 10 of this Agreement.

### 5 Referrer obligations

- 5.1 The Referrer must act in good faith in all dealings with Heartland Bank.
- 5.2 Despite any other provision of this Agreement, the parties acknowledge and agree that this Agreement is made on a non-exclusive basis.
- 5.3 The Referrer will not represent to a Customer that:
- (a) it acts in any capacity other than as a referrer; or
  - (b) has any authority to bind or purport to bind Heartland Bank or pledge the credit of Heartland Bank.
- 5.4 The Referrer will not enter into contractual relations on Heartland Bank's behalf.
- 5.5 With respect to its obligations under this Agreement, the Referrer must:
- (a) only inform Customers that Heartland Bank is able to offer Heartland Bank Loans;
  - (b) disclose to Customers that the Referrer will receive a fee for any successful Heartland Bank Loan application as a result of providing a Customer Referral;
  - (c) ensure that all Customer Referrals are in the form provided by Heartland Bank and signed by the Customer; and
  - (d) use best endeavours to communicate any Customer Referral to Heartland Bank by emailing the approved referral form to Heartland Bank in a timely and professional manner but in any event, within 5 Business Days of it being signed by the Customer.
- 5.6 The Referrer must at all times fully comply with the DDOs, to the extent that they apply to it, and in particular, in respect of each Customer Referral:
- (a) to take reasonable steps that will, or are reasonably likely to, result in each Customer Referral being consistent with the relevant TMD;
  - (b) to collect and keep complete and accurate records of Distribution Information; and
  - (c) to comply with the Reporting Requirements in the relevant TMD, using the Design and Distribution Obligations Reporting Form in Annexure 1 to this Agreement.

### 6 Heartland Bank obligations

- 6.1 Heartland Bank must act in good faith in all dealings with the Referrer.
- 6.2 With respect to its obligations under this Agreement Heartland Bank will use reasonable endeavours to:
- (a) contact the Customer within 10 Business Days of receipt of a Customer Referral to discuss the referral including Heartland Bank's Loan product, the loan process and Heartland Bank's responsible lending practices; and
  - (c) maintain adequate records of each Customer Referral.

## 7 Fees

- 7.1 Heartland Bank will pay into a bank account nominated by the Referrer, a fee of \$300 (plus GST) for every successful Heartland Bank Loan application (regardless of the number of applicants in that application) that results from a Customer Referral upon settlement of that loan (**Referral Fee**).
- 7.3 Heartland Bank will pay any Referral Fees due and owing to the Referrer within 14 days of the completion of the month the loan was settled and provide the Referrer with appropriate tax invoices as required.

## 8. Confidentiality

- 8.1 A party shall not, without the prior written approval of the other party, disclose the other party's Confidential Information.
- 8.2 Each party shall take all reasonable steps to ensure that its officers, employees, agents, advisers or contractors engaged for the purposes of this Agreement, do not make public or disclose the other party's Confidential Information.
- 8.3 A party shall not be in breach of this clause in circumstances where it is legally compelled to disclose such Confidential Information.

## 9. GST

- 9.1 Terms used in this clause have the meaning given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 9.2 Unless otherwise expressly stated in this Agreement, all prices or other sums payable or consideration to be provided under this document are exclusive of GST.
- 9.3 If GST is payable by the supplier on any supply made under this document the recipient will pay to the supplier an amount equal to the GST payable on the supply. That amount will be paid at the same time that the consideration for the supply is payable under the document but is included in the consideration. The supplier shall upon receiving that amount from the recipient provide the recipient with a valid tax invoice in respect of the supply.
- 9.4 Where the recipient is required to pay for or reimburse an expense or outgoing of the supplier, the amount to be paid by the recipient is the amount of the expense or outgoing less any input tax credit in respect of such expense or outgoing that the supplier is entitled to.
- 9.5 Each party acknowledges and agrees that:
- (a) It is registered for GST, and will notify the other party promptly if it ceases to be registered for GST;
  - (b) Heartland Bank will issue to the Referrer a valid recipient created tax invoice (RCTI) for each taxable supply made for which consideration is payable, and the Referrer will not issue RCTI's in respect of those supplies; and
  - (c) For all taxable supplies made under this Agreement to which sub-clause 9.5(b) does not apply, the party which is the supplier will provide a valid tax invoice to the party which is the recipient.
- 9.6 Heartland Bank acknowledges that it must not issue a document that would otherwise be a RCTI on or after the date when Heartland Bank or the Referrer has failed to comply with any requirements of the determination.

## 10. Termination

- 10.1 Either party may terminate this Agreement at any time by giving the other party 7 days written notice.
- 10.2 If either party:
- (a) breaches any material provision of this Agreement and fails to remedy such a breach within 5 Business Days of the breach occurring;

- (b) breaches any material provision of this Agreement and the non-defaulting party reasonably believes that such breach is not capable of remedy under this Agreement;
- (c) ceases to hold an Australian Credit Licence;
- (d) enters into a deed or scheme of arrangement or an order is made for it to be wound up;
- (e) goes into liquidation;
- (f) is placed under official management, receivership or an administrator is appointed to its affairs; or
- (g) materially alters its business which results in a party being in direct competition with the other,

(each known as **Termination Events**),

the party not in default may terminate this Agreement immediately upon written notice to the other.

- 10.3 Each party must advise the other party immediately if it becomes aware that a Termination Event has occurred.
- 10.4 If this Agreement is terminated under this clause 10, in addition to any other rights or remedies provided by law:
- (a) Heartland Bank will immediately pay to the Referrer any Referral Fees due but unpaid to the Referrer in terms of this Agreement;
  - (b) each party is released from its obligations under this Agreement, other than in relation to confidentiality obligations; and
  - (c) each party retains any rights, entitlements or remedies it had against any other party in connection with any breach or claim that has arisen before termination.

## 11 Mutual representations and Warranties

Both parties represent and warrant to each other that:

- 11.1 it has the power and authority to enter into this Agreement;
- 11.2 it holds any licences, registration or other authorities it requires in order to conduct its business at each place at which the business is conducted;
- 11.3 it will comply at all times with the requirements of any applicable legislation, as well as any other statute or law to which it may be subject; and
- 11.4 it will notify the other party immediately if, during the Term of this Agreement, it ceases to be licenced or registered under an applicable legislation, or if it is the subject of any application, objection, inquiry, investigation, disciplinary action or prohibition order under any legislation or by any regulator.

These representations and warranties are also taken to be made and given on each day that this Agreement continues.

## 12 Notices

- 12.1 All notices to be given under this Agreement shall be addressed as follows:

To: Heartland Bank Australia Limited  
Address: Level 20, 8 Exhibition Street, Melbourne, VIC 3000  
Email: brokers@heartlandbank.com.au  
Attention: Heartland Bank Distribution Team

To:  
Address:  
Email:  
Attention:

12.2 Any notice to be given in relation to this Agreement shall be given in writing and shall be deemed to have been duly given if delivered in person, sent by email or mailed by prepaid mail. A notice will be taken to be given:

- (a) in the case of delivery in person/courier, on the date it was delivered or if this is not a Business Day then the following Business Day;
- (b) in the case of delivery by post, 3 Business Days after it was posted; or
- (c) in the case of email, on confirmation that the message was delivered.

If delivered or receipt occurs on a day which is not a Business Day or is later than 4.00pm (local time), it will be taken to have been given at the commencement of the next Business Day.

## 13 Dispute

13.1 The Parties agree that, if a dispute arises under this Agreement, the Parties will, in good faith, endeavour to resolve the dispute by negotiation. If the Parties cannot resolve the dispute, the matter will be referred to non-binding mediation (in which the mediator shall act as an expert and not an arbitrator).

13.2 If the Parties do not agree on the procedures to be adopted, the timetable or the mediator, the matter will be referred a mediator (acting as an expert and not an arbitrator) who must be appointed by the President for the time being of the Law Institute of Victoria, to determine the procedures and set the timetable.

## 14 Governing Law

This Agreement is governed by the laws of Victoria. Both parties agree to submit to the non-exclusive jurisdiction of the courts of Victoria and the courts of appeal from them.

## 15 Insurance

15.1 The Referrer must hold professional indemnity insurance:

- (a) with an insurer authorised under the *Insurance Act 1973* (Cth) to conduct insurance business in Australia;
- (b) which covers the Referrer and all directors, officers and employees;
- (c) on such terms and conditions covering such risks and for such amounts as would be maintained in accordance with prudent business practice having regard to the business carried on by Heartland Bank.

15.4 The Referrer agrees to provide to Heartland Bank, at Heartland Bank's reasonable request from time to time, evidence satisfactory to Heartland Bank that the Referrer has a current indemnity insurance policy.

## 16 Miscellaneous

16.1 Any rights under this Agreement can only be waived by a party in writing.

16.2 Heartland Bank may vary this Agreement at any time by giving the Referrer 7 days' notice in writing of the amendment or variation. The notice will be dated according to its sending date. The Referrer will be entitled to terminate this Agreement without any cost or penalty by providing written notice of such termination to Heartland Bank within 7 days of the amendment or variation taking effect. If the Referrer terminates this Agreement, clauses 10.4 and 10.5 shall apply.

16.3 The rights, powers and remedies provided in these terms are in addition to any rights, powers and remedies provided by law.

16.4 No party may assign or transfer any of its rights or obligations under this Agreement without prior written consent in writing from the other party.

16.5 If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

- 16.6 This agreement may be executed in counterparts. All executed counterparts constitute one document. Counterparts may be exchanged by facsimile or email.
- 16.7 The agreement constitutes the entire agreement between the parties with respect to the subject matter in this Agreement and supersedes all previous communications, representations, inducements, undertakings, agreements or arrangements between the parties or their respective officers or agents and after the date of this Agreement, no party shall be entitled as against any other party or the officers or agents of any such party to bring suit on the basis of any verbal or written communications, representations, inducements, undertakings, agreements or arrangements except as expressly provided in this Agreement.
- 16.8 Each party must bear their own costs and disbursements of and incidental to the preparation and the carrying into effect of this Agreement.
- 16.9 This agreement supersedes all other agreements between the parties, except for clauses which survive termination.



**Executed as an Agreement:**

**Executed by Heartland Bank Australia Limited (ABN 54 087 651 750)** by the following authorised person in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Full name of officer

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Position held by officer

**Executed for \_\_\_\_\_ (ABN)**  
under s127(1) of the Corporations Act:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Full name

## Annexure 1

### Form of Design and Distribution Obligations Reporting Form

From \_\_\_\_\_ (the **Referrer**)

To Heartland Bank Australia Limited (**Heartland Bank**)

Date: \_\_\_\_\_

#### DESIGN AND DISTRIBUTION OBLIGATIONS REPORTING

We refer to:

- (a) the referral agreement between us dated \_\_\_\_\_; and
- (b) the **Target Market Determination** in respect of \_\_\_\_\_ (**Product**) (**TMD**).

This information is provided [in respect of the quarterly reporting period ending on \_\_\_\_\_ (**Reporting Period**)<sup>1</sup>] **OR** [because we have become aware of a significant dealing, which we are required to report to you as soon as possible<sup>2</sup>].

Our report as follows<sup>3</sup>:

Complaints received (#) (if any)	
Substance of complaint(s)	
How complaint(s) were resolved (if applicable)	
Description of any material, general feedback given by applicants or customers in respect of the product	
Date and description of any 'significant dealing' not consistent with the TMD	
Description of any dealing outside the target market and the reason the distribution occurred outside the target market	

Signed for the **Referrer** by:

Signature \_\_\_\_\_

Name \_\_\_\_\_

Position \_\_\_\_\_

**DRAFTING NOTES** (delete once form is completed)

<sup>1</sup>This form must be provided, if material feedback is received, or required under the regulation, no later than 10 business days following the end of the Reporting Period.

<sup>2</sup>For example, a distributor may consider a dealing outside the TMD to be significant because (i) they represent a material proportion of the overall distribution conduct carried out by the distributor in relation to the product, or (ii) they constitute an individual transaction which has resulted in, or will or is likely to result in, significant detriment to the consumer (or class of consumer), or (iii) the issuer has reasonably identified the this type of dealing as significant or a regulatory or court identifies this type of dealing as significant.

<sup>3</sup>Please attach a separate document if more space is required.