

Distribution agreement

An agreement between **Heartland Bank Australia Limited ABN 54 087 651 750** ("Heartland Bank") and:

Distributor ("You") _____

ACN/ABN: _____

Australian credit licence number: _____

Trading name (if any): _____

Contact person: _____

Full address: _____

Postal address: _____

State: _____ Postcode: _____

Email address: _____

Business phone: _____

Mobile phone: _____

Fax number: _____

Appointment date: _____

CONTENTS

KEY TERMS	6
OUR OBLIGATIONS AND ACKNOWLEDGEMENTS.....	8
1. APPOINTMENT.....	8
2. COMMISSION.....	8
3. COMMISSION ACCOUNT.....	8
4. PROMOTIONAL MATERIAL.....	8
5. TRANSFER OF CLIENTS.....	8
6. SALE OF YOUR PORTFOLIO.....	8
YOUR OBLIGATIONS AND ACKNOWLEDGEMENTS.....	9
7. APPOINTMENT.....	9
8. AUTHORITY.....	9
9. COMMISSION.....	9
10. REPRESENTATIONS BY DISTRIBUTOR.....	10
11. LEGISLATION.....	10
12. OUR PRODUCTS.....	10
13. HEARTLAND BANK LOANS.....	10
14. DEALING WITH CLIENT MONEY.....	11
15. PROPOSALS AND APPLICATIONS.....	11
16. ADVERTISING.....	11
17. CONFIDENTIALITY.....	11
18. BROKERS.....	12
19. HEARTLAND BANK INFORMATION.....	12
20. SOFTWARE, PLATFORMS AND SYSTEMS.....	12
21. CLIENT SERVICING.....	12
22. SALE OF YOUR PORTFOLIO.....	12
23. SUBCONTRACTING AND ASSIGNING.....	13
24. TRANSFER OF CLIENTS.....	13
25. INDEMNITY.....	13
26. PROFESSIONAL INDEMNITY INSURANCE.....	13
27. AUDIT RIGHTS.....	13
28. DESIGN AND DISTRIBUTION OBLIGATIONS.....	14
29. BY YOU.....	14
30. BY US.....	14
31. EFFECT OF ENDING THIS AGREEMENT - WHEN THIS AGREEMENT COMES TO AN END.....	14
32. SUCCESSOR.....	15
33. SALE OF YOUR PORTFOLIO AFTER THIS AGREEMENT ENDS.....	15
GENERAL.....	15
34. VARIATION.....	15
35. CHANGE IN LAW.....	16
36. NOTICES.....	16
37. WAIVER.....	17
38. LAW AND INTERPRETATION.....	17
39. DISPUTE RESOLUTION.....	17
40. EXTENT OF THIS AGREEMENT.....	18
41. JOINT AND SEVERAL LIABILITY.....	18
42. GST.....	18
43. APPROVALS AND CONSENTS.....	18
44. COSTS.....	18
45. EXECUTION OF SEPARATE DOCUMENTS.....	19
46. FURTHER ACTS.....	19

47. SEVERABILITY 19

48. BENEFIT OF AGREEMENT FOR HEARTLAND BANK ENTITIES..... 19

49. NO DISPARAGING ACTIONS OR REMARKS..... 19

SCHEDULE OF COMMISSION (CLAUSES 2, 3) 20

SCHEDULE OF REPRESENTATIONS (CLAUSE 10) 21

SIGNATURE PAGE 22

CHECKLIST 23

BANK ACCOUNT DETAILS..... 23

ANNEXURE - FORM OF DESIGN AND DISTRIBUTION OBLIGATIONS REPORTING FORM..... 24

IMPORTANT - PLEASE READ

This is an important document. Please read it carefully. You should seek your own independent legal advice before you sign it.

The following is a summary of important points.

- We appoint you as an independent contractor to distribute Heartland Bank Products on our behalf. See clause 1.
- In return for you agreeing to distribute Heartland Bank Products, we will set up a Commission Account in your name and credit it with Commission for each Heartland Bank Product you distribute. In certain circumstances we may suspend or cease payment of Commission to you. See clauses 2, 3, 9 and 30.
- You own your own clients. This means that you have the right to any future Commission payable for the Heartland Bank Products for which you are considered to be the original Distributor who sold a Heartland Bank Product. This is called your **Portfolio**. In servicing the client Heartland Bank reserves the right to advise the client if they are eligible for further advances (if any) on moving to the next age band. If the client draws down a further advance where one of your Brokers have assisted with then you will be entitled to commission on this so long as the client has not transferred to a different Distributor.
- We can transfer any of your clients to a different Distributor if we receive a signed request in writing from them. See clauses 5 and 24.
- You can sell your Portfolio to a person who has a current Distributor Agreement with us and whom we have approved in writing. However, you give us a first right of refusal to buy your Portfolio. See clauses 6, 22 and 32.
- You make certain warranties and representations to us, and you agree to comply with the rules we have regarding Heartland Bank Products, client money, advertising, and confidentiality. See clauses 8 and 10 to 17.
- Any person who sells Heartland Bank Products on your behalf is called your Broker. A Broker must first be notified to and approved by Heartland Bank by completion of our "Broker Application Form". You "own" the clients who are sold Heartland Bank Products by your Broker. You are responsible for your Broker's actions. See clauses 18 and 25.
- We may supply you with access to our software to assist you to distribute Heartland Bank Products. See clause 20.
- You must take out professional indemnity insurance and you agree to indemnify us in certain situations. See clauses 25 and 26.
- You can end this Agreement by giving us 7 Business Days' notice. We can end this Agreement in certain circumstances, including, if you are in breach, if there is a Substantial Change In Your Ownership (if you are a Company), without our prior written consent or on 7 Business Days' notice. See clauses 29 and 30.
- Details of what happens when this Agreement ends can be found in clause 30.
- We can vary this Agreement (including any schedule attached to it) by giving you notice in writing, however we cannot reduce (by variation) Commission payable for any part of your Portfolio issued before the effective date of the variation. If you do not agree to the variation, you can notify us in writing and this Agreement will end. If you do not notify us within 14 days, you will be taken to have accepted the variation and the Agreement will continue as varied. See clause 34.

KEY TERMS

Detailed below are definitions of Key Terms used in this Agreement:

"ACL" means an Australian Credit Licence or the Australian Credit Licence you or any of your Brokers acts under as a credit representative

"Agreement"

means this Distribution Agreement as varied from time to time and includes any schedules attached to it.

"ASIC"

means Australian Securities and Investments Commission.

"Broker"

means an adviser or an employee appointed or authorised by you to distribute Heartland Bank Products on your behalf or in association with you and, who has first been approved in writing by Heartland Bank.

"Business Day"

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

"Client"

means a current owner of a Heartland Bank Product included in your Portfolio with us.

"Commission"

means the Initial Commission, Subsequent Drawdown Commission and Service Trail Commission. Details are in the Schedule of Commission.

"Commission Account"

means an account with us in your name into which we pay any Commission owed to you from time to time.

"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:

- (i) the reasonable steps you have taken to ensure the distribution of that product being consistent with the relevant TMD; and
- (ii) any information required to be provided to us in accordance with the Reporting Requirements.

"Distribution Agreement"

means a current Distribution Agreement between us and a Distributor.

"Drawdown"

means when a drawdown has been made by the Client under their Heartland Bank Loan.

"Guide 274"

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

"Heartland Bank Loan"

means any loan and mortgage provided by us to a client.

"Heartland Bank Product"

means any product provided by us to a Client including, without limitation, a Heartland Bank Loan.

"Intellectual Property Rights"

means all intellectual property rights including current and future registered and unregistered rights in respect of copyright designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, inventions, and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

"Initial Commission"

means the commission immediately payable to you on drawdown of a Heartland Bank Loan or in respect of any other Heartland Bank Product as set out under the 'At Settlement' column in the Schedule of Commission (and as varied from time to time in accordance with this Agreement).

"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 2009 (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, ASIC requirements and guidelines, and common law and equity.

"Reporting Requirements"

means, in respect of a Heartland Bank Product, your obligation to report to us regarding any complaint, material feedback, significant dealing or dealing of that product outside the target market, in accordance with the TMD.

"Representations"

means the representations and warranties made by the Distributor to Heartland Bank as described in the Schedule of Representations.

"Schedule of Commission"

means the most recent Schedule of Commission which applies to this Agreement.

"Software"

has the meaning given to it in clause 20.

"Subsequent Drawdown Commission"

means the commission relating to any further drawdowns of a Heartland Bank Loan where one of your Brokers have assisted with the further drawdown or in respect of any other Heartland Bank Product as set out under the '*Subsequent Drawdown Commission*' column in the Schedule of Commission (and as varied from time to time in accordance with this Agreement).

"Substantial Change in your Ownership"

means the transfer of the legal or beneficial ownership of, or of any interest in, any shares in you since the date this Agreement was signed which:

- (i) Alters the beneficial ownership of 50% or more of you; or
- (ii) Alters the beneficial ownership of shares carrying 50% or more of the voting rights at any shareholders' meeting of you; or
- (iii) Alters the beneficial ownership of shares in either allowing the holder of the shares to appoint a director or directors having 50% or more of the voting rights at any directors' meeting in respect of you; or
- (iv) Alters the beneficial ownership of shares carrying an entitlement to receive 50% or more of any dividend or distribution declared by you.

"Service Trail Commission"

means the commission payable in respect of your Portfolio as set out under the '*Service Trail*' column in the Schedule of Commission (and as varied from time to time in accordance with this Agreement).

"TMD"

means the target market determination we provide you with for each Heartland Bank product prepared in accordance with s994B of the Corporations Act 2001.

"we", "us", "our", "Heartland Bank"

means Heartland Bank Australia Limited ABN 54 087 651 750 (Australian Credit Licence Number 245606) and any of its related bodies corporate, associates and associated entities (as those terms are respectively defined in section 9 of the *Corporations Act 2001* (Cth)) from time to time, including without limitation ASF Custodians Pty Ltd ABN 49 106 822 780 (Australian Credit Licence Number 386781).

"you", "your", "Distributor"

means the Distributor whose full name is stated on the front of this Agreement and where context requires, includes the Brokers of the Distributor.

OUR OBLIGATIONS AND ACKNOWLEDGEMENTS

WE AGREE:

1. Appointment

- a. to appoint you (on a non-exclusive basis) as an independent contractor to distribute Heartland Bank Products and to service the needs of the persons who buy Heartland Bank Products or enter into a Heartland Bank Loan or both (as the case may be) ("**Client**");
- b. to authorise you to appoint Brokers with our prior written consent (as contemplated by clause 18 of this Agreement);
- c. your appointment starts on the Appointment Date specified on the first page of this Agreement.

2. Commission

- a. to set up a Commission Account in your name when you sign this Agreement;
- b. to credit your Commission Account with Commission for Heartland Bank Products sold by you and/or your Brokers;
- c. not to reduce your entitlement to Commission (by variation) for that part of your Portfolio issued before the effective date of any variation to the Schedule of Commission, though further advances, where one of your Brokers have assisted with the further advance, will earn Commission on the terms prevailing when they are drawn down.

3. Commission Account

- a. to calculate the balance on your Commission Account on a daily basis and then pay any credit balance to you;
- b. that you own your own Clients;
- c. that you are entitled to any future Commission payable for the Heartland Bank Product for which you are considered by Heartland Bank to be the original Distributor who sold a Heartland Bank Product, including Subsequent Drawdown Commissions in respect of any further advances, where one of your Brokers have assisted with the further advance, drawn down by a Client provided that that Client has not at that time or times transferred to another Distributor.

4. Promotional Material

- to provide you with such promotional material, brochures and other information as we consider necessary to aid you in the sale of Heartland Bank Products.

5. Transfer of Clients

- a. if a Client included in your Portfolio requests that the right to contact and distribute Heartland Bank Products to them be transferred to another distributor then this will only be done 30 days after receipt of a signed request in writing from that Client;
- b. to notify you immediately if we receive a signed request in writing.

6. Sale of your Portfolio

- a. subject to you first offering your Portfolio to us to buy (in accordance with clause 22(iii)), you can sell your Portfolio to any person who has a current Distribution Agreement and has been approved by us in writing prior to the sale (and provided that ongoing service will be provided to clients within your Portfolio post sale, our approval will not be unreasonably withheld);
- b. to give you reasonable assistance to help you to sell your Portfolio.

YOUR OBLIGATIONS AND ACKNOWLEDGEMENTS

YOU AGREE:

7. Appointment

- a. you are an independent contractor and not an agent, employee, partner or joint venturer of Heartland Bank. You must not hold yourself out, and must procure that your Brokers do not hold themselves out, as an agent, employee, partner or joint venturer of Heartland Bank, pledge the credit of Heartland Bank or that Heartland Bank is a linked credit provider to you;
- b. we may appoint other distributors to distribute Heartland Bank Products;
- c. if you or your Brokers (as the case may be) wish to distribute a Heartland Bank Product which comprises or includes a "financial product" (as that term is defined in Division 3 of Part 7.1 of the *Corporations Act 2001* (Cth)), then prior to dealing in that financial product or those financial products you (or your Brokers, as the case may be) must at your cost:
 - i. obtain an Australian financial services licence (as that term is defined in s.761A of the *Corporations Act 2001* (Cth)) as contemplated by Chapter 7 of the *Corporations Act 2001* (Cth);
 - ii. ensure that your Brokers hold the requisite qualifications and authorisations for the purposes of providing a Heartland Bank Product that comprises a "financial product";
 - iii. become a member (and maintain membership for the term of this Agreement) of such professional or industry association or body of which you are legally required to become a member or of which is required by Heartland Bank;
- d. if you or your Brokers intend at any time to engage in a credit activity (as that term is defined in section 6 of the *National Consumer Credit Protection Act 2009* (Cth)) then:
 - i. you must (and must procure that your Brokers), at your own cost, comply with all relevant Laws including holding an Australian Credit Licence;
 - ii. you must not (and must procure that your Brokers do not) represent to any person or imply that you or your Brokers are credit representatives of Heartland Bank;
- e. prior to your appointment or the appointment of a Broker, you will complete, or you will procure that the Broker completes "The Reverse Mortgage Accreditation Module" and, in addition, any such other training as notified by us from time to time (including any Heartland Bank refresher courses);
- f. at your own cost, to become a member of an ASIC-approved external dispute resolution scheme; and
- g. you will perform your obligations under this Agreement with reasonable care, skill and diligence and use reasonable endeavours to ensure that your Brokers are of good fame and character, and are sufficiently competent to distribute the Heartland Bank Products.

8. Authority

- a. not without our prior written approval to:
 - i. make any representation or agreement on our behalf;
 - ii. commit us to providing any approvals or benefits;
 - iii. incur any expenditure or liability on our behalf except as expressly provided in this Agreement;
 - iv. induce any person to purchase Heartland Bank Products by offering a prize, gift or other inducements.

9. Commission

- a. we can change the terms and rates of any of the Schedules at any time on written notice to you;
- b. we can terminate the payment of Service Trail Commissions in certain circumstances as set out in clause 31(c);
- c. you must pay any clawback amounts in accordance with the Schedule of Commissions (as varied from time to time);
- d. we may, on written notice to you, set off against any Commissions we owe to you, any clawback amounts you owe to us.

See clause 31(b) and 34.

Please note: we will not reduce the amount of Initial Commission and Service Trail Commission for that part of your Portfolio issued before the effective date of any variation to the Schedule of Commission (refer clause 2). Further advances (if any, where one of your Brokers have assisted with) will however be subject to the Subsequent Drawdown Commission terms prevailing if and when they are drawn down by a Client.

10. Representations by Distributor

- a. that you make each of the Representations to Heartland Bank and that, as at the date of this Agreement and during the term of this Agreement, each of the Representations shall be accurate, true and correct;
- b. that Heartland Bank is entering into this Agreement in reliance upon the truth and accuracy of the Representations and that Heartland Bank will suffer loss and damage if any of the Representations are not accurate, true and correct;
- c. that if, during the term of this Agreement, any of the Representations cease to be accurate, true and correct then you must within 7 days of becoming aware of that fact, notify Heartland Bank in writing of details of the manner in which such Representation(s) had ceased to be accurate, true and correct.

11. Legislation

- a. to abide by, and procure that your Brokers abide by, Heartland Bank's Code of Conduct and Accreditation Manual (and any lawful direction of Heartland Bank) and, if relevant to you, to abide by any other professional or industry association's or body's Code of Conduct (including that issued from time to time by either the Mortgage Finance Association of Australia or the Finance Brokers Association of Australia);
- b. to observe and comply strictly with all Laws with which the Distributor (including its Brokers, if any) is legally required to observe and comply, in respect of undertaking activities under this Agreement, in respect of engaging in a credit activity and/or in respect of carrying on a financial services business to provide financial services (as the case may be);
- c. to advise us as soon as practicable after becoming aware of a breach of the *Privacy Act 1998* (Cth) by you or your Brokers involving information of the Client.

12. Our Products

- a. we can at any time and from time to time amend, change or withdraw any Heartland Bank Product;
- b. we can introduce other products for you to distribute;
- c. to observe and comply strictly with any rules, requirements and directions which we may provide to you and your Brokers from time to time regarding Heartland Bank Products;
- d. to stop distributing Heartland Bank Products from the date this Agreement ends;
- e. we are not obliged to approve any application for a Heartland Bank Product submitted by you and may decline the application or approve the application subject to any terms or conditions imposed by us at our sole discretion.

13. Heartland Bank Loans

- a. not to offer Heartland Bank Loans at rates or on terms other than those advised by us or published by us from time to time;
- b. not to represent that a Heartland Bank Loan will be approved or a further advance will be made under an existing Heartland Bank Loan or any other statements about the ongoing nature of the Heartland Bank Loan without our prior written consent;
- c. not to engage in conduct where we consider that you are seeking to refinance home loans held by Clients and the major reason for refinancing is the generation of Commission rather than the servicing of the Client's needs;

- d. we may at any time and from time to time change the terms or lending criteria applicable to any Heartland Bank Loan.

14. Dealing with Client money

- a. to forward to us all payments made by Clients within 1 Business Day of receipt by you;
- b. if the payment made by a Client in respect of a Heartland Bank Product is by cheque then the cheque should be made payable to "Heartland Bank";
- c. to ensure that any cheques payable to us are marked "Account Payee Only" or "Not Negotiable";
- d. to ensure that Clients only make payments to us by payment methods approved by us in writing;
- e. that (except to the extent that legislation otherwise provides) we will not have received a payment until the payment is cleared by our bank.

15. Proposals and Applications

- a. to send completed proposals and application forms (where applicable) to us as soon as practicable and in any event within 5 Business Days of receipt;
- b. to advise us of any relevant change in the circumstances of a Client of which you become aware before or after we issue a Heartland Bank Product for that Client;
- c. not to submit any application or proposal (whether in paper form, scanned electronically, or through our Broker Portal) to us which you believe contains false or misleading information (whether by inclusion or omission or otherwise);
- d. not to accept any liability for a pending/potential claim on our behalf;
- e. not to confirm the acceptance of any proposal or application on our behalf without written notice from us to that effect;
- f. we will rely on the information accompanying applications submitted, in conjunction with you and your Brokers compliance with our procedures when we are determining whether or not we will make a Heartland Bank Product available to an applicant or Client.

16. Advertising

- a. to comply with all Laws applicable to advertising;
- b. to obtain our written consent before using any of our names, the names of any entities within the Heartland Bank group, our logos or the names of Heartland Bank Products in any promotional material, provided that at no time do we transfer any right title or interest in our Intellectual Property Rights to you;
- c. not to use any of our promotional material which we have not provided directly to you;
- d. not to modify any promotional material provided by us without obtaining our prior written consent;
- e. without limiting the generality of the foregoing, you must not use our Intellectual Property Rights (including our trade marks) unless authorised by us in writing;
- f. this clause 16 survives the termination of this Agreement.

17. Confidentiality

- a. to comply with the *Privacy Act 1988 (Cth)* and, where applicable, the Australian Privacy Principles in your dealings with us and with Clients;
- b. to maintain the strictest confidentiality of information relating to everyone who may have business with us;
- c. not to disclose any information about Heartland Bank which has not already been made public without first obtaining our written consent;
- d. that your duty of confidentiality does not relieve you of your duty to provide us with any information which might influence our decision to issue a Heartland Bank Product;
- e. this clause 17 survives the termination of this Agreement.

18. Brokers

- a. you are responsible for and accept liability for the conduct, representations and actions of any Brokers you may have from time to time;
- b. you must not employ or engage a Broker to distribute Heartland Bank Products or Heartland Bank Loans unless you have first:
 - i. notified Heartland Bank in writing of the identity and related details of the proposed Broker by completion of our Broker Application Form;
 - ii. received from Heartland Bank, Heartland Bank's written approval to you employing or engaging an Broker to distribute Heartland Bank Products or Heartland Bank Loans (as the case may be); and
 - iii. complied with your obligations in clause 7(e) to procure that the Broker completes the training described in that clause.
- c. to indemnify us in accordance with clause 25 in respect of your Brokers (if any);
- d. to advise us immediately if you terminate your arrangement, association or contract with any Broker;
- e. to terminate the appointment and authority to distribute Heartland Bank Products (including Heartland Bank Loans) of those Brokers which Heartland Bank specifies, immediately upon Heartland Bank giving you written notice to do so.

19. Heartland Bank Information

- a. that any promotional and product material we provide to you remains our property. However, you are authorised to use it under the terms of this Agreement, to distribute Heartland Bank Products;
- b. to return any promotional and product material if we request you to do so when this Agreement ends.

20. Software, Platforms and Systems

- a. to use the Broker Portal, lending systems and any other software or technology platform which we provide you with access to in order to distribute Heartland Bank Products ("**Software**") only for the purposes we have notified to you in writing;
- b. not to make copies of the Software;
- c. not to alter or tamper with the Software;
- d. to comply with any rules we supply you about your access to and use of the Software;
- e. property in the Software shall at all times remain with us;
- f. all terms, conditions and warranties implied by custom, general law or statute in relation to the provision of the Software are excluded by us except where to do so would contravene any statute or cause any part of this clause to be void;
- g. all liability for indirect or consequential loss or damage (including but not limited to lost revenue, lost profits or loss of data) incurred or suffered by you or any third party arising directly or indirectly out of the supply, delay in supplying, failure to supply or use of the Software is excluded by us whether or not we had knowledge that you or a third party might incur that loss or damage.

21. Client Servicing

- a. to provide excellent, professional and ongoing service to Clients who own the Heartland Bank Products in your Portfolio;
- b. notify us as soon as practicable after becoming aware of any complaints made on or on behalf of an application or Client in connection with your services as it relates to Heartland Bank Products or in respect of the Heartland Bank Products.

22. Sale of your Portfolio

- a. to sell your Portfolio only to a buyer:
 - i. who has a current Distribution Agreement with us and whom we have first approved in writing; and
 - ii. who will provide ongoing service to the Clients within your Portfolio; and
 - iii. only after you have first offered (in writing) to sell the Portfolio to us at the same price and on the same conditions as the proposed buyer and either:

1. we have rejected your offer in writing; or
2. we have not responded to your offer within 5 Business Days of receiving your written offer.

23. Subcontracting and assigning

- a. not to subcontract any right, obligation or interest under this Agreement other than to your Brokers as permitted under this Agreement;
- b. not to assign this Agreement to another party without our prior written consent;
- c. we can assign any or all of our rights under this Agreement to any other person on written notice to you.

24. Transfer of Clients

- a. that we may allocate another distributor to a Client 30 days after receipt of a signed request in writing from the Client;
- b. to provide us with any information you hold about the Client which the Client authorises us to obtain.

25. Indemnity

- a. in consideration of Heartland Bank agreeing to appoint you as a Distributor, to indemnify us against all losses, damages, liabilities, costs, claims and expenses (including legal fees on a solicitor/own client basis) which we may incur as a direct or indirect result of any act or omission (whether negligent or otherwise) by you (and by any of your employees, contractors and agents, as the case may be) or a breach by you (and by any of your employees, contractors and agents, as the case may be) of this Agreement or any act or omission by your Broker(s) which causes you to breach this Agreement;
- b. this indemnity continues to apply even if this Agreement has ended and is in addition to any other right or remedy which we may have;
- c. to pay any amount under this indemnity if requested to do so by us within 7 Business Days of our written request;
- d. this clause 25 survives termination of this Agreement.

26. Professional Indemnity Insurance

- a. to obtain and maintain professional indemnity insurance with an insurer approved by us in writing for at least two million dollars (\$2,000,000) for any single occurrence and in the aggregate (capped at \$20,000,000) in respect of both you and all of your Brokers and, if your insurance policy does not include cover all of your Brokers, then you must procure that each of your Brokers obtain and maintain professional indemnity insurance with an insurer approved by us for at least two million dollars (\$2,000,000) for any single occurrence and in the aggregate, to provide us with evidence of all such insurance on execution of this Agreement and annually thereafter, or at such other time or times as may be requested by Heartland Bank. All such insurance must, amongst other things, specifically cover advice on and recommendations concerning home equity release loan products;
- b. to ensure that during the term of this Agreement such professional indemnity insurance is, and at all times remains, adequate (as that term is defined in ASIC Regulatory Guide 210).

27. Audit rights

- during and after the term of this Agreement upon reasonable notice from us, you must allow us, acting reasonably, to conduct audits in relation to the performance of this Agreement ("**Audits**"). Such Audits may be carried out by our internal or external auditors or both. We will be responsible for our and our auditors costs and charges in connection with the Audits. You agree to provide your reasonable cooperation with the auditors and will be responsible for providing reasonable resources and assistance at your cost. All information accessed or disclosed in an Audit will be treated as confidential information.

28. Design and Distribution Obligations

- a. to fully comply with the DDOs, to the extent that they apply to you and, in particular, in respect of each Heartland Bank Product you sell or have sold:
 - i. to take reasonable steps that will, or are reasonably likely to, result in the distribution of that product being consistent with the relevant TMD;
 - ii. to collect and keep complete and accurate records of Distribution Information; and
 - iii. to comply with the Reporting Requirements in the relevant TMD, using the Design and Distribution Obligations Reporting Form attached as an Annexure to this Agreement.

ENDING THIS AGREEMENT

29. By you

- you can end this Agreement at any time by giving us 7 Business Days' notice in writing.

30. By us

- a. we can end this Agreement at any time by giving you 7 Business Days' notice in writing;
- b. we can give you notice in writing and end this Agreement immediately if:
 - i. you (not being a company) die;
 - ii. you, not being a company, become bankrupt or, being a corporation, a receiver, receiver and manager or administrator is appointed over you or your assets or you go into liquidation;
 - iii. you breach your obligations under this Agreement and such breach is not remedied within 7 Business Days of notice by us of the breach;
 - iv. you are in breach of your obligations under this Agreement and such breach is not capable of remedy;
 - v. you breach any of the Representations or any of the Representations cease at any time to be accurate, true and correct;
 - vi. you are or have been in our opinion involved in any serious or wilful misconduct or you have been convicted of or charged with any offence concerning directly or indirectly the engaging in a credit activity or the provision of any financial product or financial service;
 - vii. you or your Brokers knowingly participating in acts of fraud, illegality or dishonestly with respect to any applications for Heartland Bank Products, including but not limited to you knowingly providing us with information about or supporting an application that is false or misleading by statement or omission;
 - viii. anything happens which, in our reasonable opinion, adversely affects your ability to observe your obligations under this Agreement.
 - ix. you deposit payment of loan repayments, premiums or contributions from a Client into a bank account operated or controlled by you;
 - x. You and each of your Brokers do not complete Heartland Bank's training or any refresher courses or other training notified by us from time to time (as provided for by clause 7(e));
 - xi. any act or omission by you or any of your Brokers may or could, in Heartland Bank's opinion, have a prejudicial effect on Heartland Bank's reputation or expose Heartland Bank to complaint;
 - xii. you or any of your Brokers at any time cease to be "fit and proper" persons to engage in credit activities, within the meaning of ASIC Regulatory Guide 1 or 204; or
 - xiii. you are a company and there is a Substantial Change in your Ownership without our prior written consent.

31. Effect of ending this Agreement - When this Agreement comes to an end

- a. When this Agreement comes to an end, you agree:
 - i. to stop distributing Heartland Bank Products;
 - ii. to continue to account to us for all cheques payable to us and all other funds which you receive from Clients in relation to Heartland Bank Products;
 - iii. clauses 17, 18 and 25 continue to apply after this Agreement has ended.

- b. We agree, subject to 31(c) below, to credit your Commission Account with any Commission payable to you for any applications we have accepted prior to this Agreement ending. Service Trail Commission payments made after the date of termination of this Agreement will be calculated based on the value of your Portfolio as at the date of termination of this Agreement.
- c. Notwithstanding clause 31(b):
- i. we may, at our absolute discretion by written notice to you, cease to pay Commission, including Service Trail Commissions, from the date of termination of this Agreement if we have terminated this Agreement pursuant to clauses 30(vi) or clause 30(vii);
 - ii. Commission will cease to be paid in respect of any Heartland Bank Product that is repaid after the date of this Agreement on and from the date such Heartland Bank Product is repaid;
 - iii. Commission will cease to be paid:
 - if you hold an ACL, or are authorised under an ACL, and that ACL or authorisation is removed, withdrawn or cancelled; or
 - you cease to provide ongoing service to clients; or
 - if any of your Brokers who holds an ACL or is authorised under an ACL has that ACL or authorisation cancelled, or they cease to provide ongoing service to clients, provided that in this case, only the portion of Commission referable to that Broker will cease to be paid; and
 - iv. we may, after the Agreement has terminated, at our sole discretion, terminate any current ongoing Service Trail Commission payments by making a single lump sum payment to you equivalent to 2.5 times the annualised amount paid in the last three months prior to the end of the 12 months period.

32. Successor

- a. We agree that if this Agreement has ended:
- i. because you (being a natural person) have died; or
 - ii. by notice from you, because of your ill health, retirement or emigration from Australia;
- b. then
- iii. you or (in the event of your death) the executor of your estate may give us written notice nominating someone else to manage your Portfolio under the terms of this Agreement and to receive future Commission;
 - iv. you or your executor must give us written notice of such nomination within 90 Business Days after the day this Agreement has ended. We reserve the right to accept or reject the nominee.

33. Sale of your Portfolio after this Agreement ends

- a. We agree:
- i. you will continue to have the right to sell your Portfolio even after this Agreement ends subject always to clause 22;
 - ii. you will be entitled to Commission from your Portfolio until you sell your Portfolio or your entitlement to Commission otherwise ceases in accordance with clause 31(c). From the date of sale the right to receive your Commission passes to the buyer of your Portfolio (refer clause 22).

GENERAL

34. Variation

- a. we can vary this Agreement (including any Schedules attached to it) at any time. We will give you written notice of the variation. The variation will not take effect until 7 days after we send you notice of the variation. The notice of variation will be dated according to its posting date. If you do not agree to the variation, you must notify us in writing within 14 days of the posting date. Such notice will be deemed to be notice of termination of the Agreement under clause 29. If we do not receive such notice from you, you will be deemed to have agreed to the variation;

- b. no oral communication will constitute a variation;
- c. no variation will prejudice both of our entitlement or liability under this Agreement arising prior to the effective date of the variation or will have the effect of reducing your right to Commission on Heartland Bank Products issued prior to the date of the variation.

35. Change in Law

- a. In this clause, the following definitions apply:

"Change in Law" means:

- i. the enactment or making of a new Relevant Law; or
- ii. any amendment, repeal or change in any Relevant Law; or
- iii. any publication by a regulator or other government agency of any code, guidance, information sheet or other similar document in respect of the interpretation of Relevant Law (including, without limitation, ASIC Regulatory Guides), whether binding or non-binding.

"Relevant Law" means each of:

- i. the Laws;
 - ii. any conditions placed on a regulatory licence held by a party (that is relevant to the obligations of that party under this Agreement);
 - iii. the requirements of ASIC or any other applicable regulatory or statutory authority or industry representative body;
 - iv. any other relevant legislation or subordinate legislation, common law, codes of practice, ASIC policy statements, industry standards (whatever called) and ethical standards (whatever called) which are or come into force during the term of this Agreement.
- b. If it is or will become unlawful, as a result of a Change in Law, for a party to perform any of its obligations as contemplated by this Agreement, the party affected may promptly notify the other party in writing upon becoming aware of that event (**"Change in Law Notice"**).
 - c. The parties agree to meet within 20 Business Days of the date of the Change in Law Notice to negotiate in good faith any amendments to this Agreement as are reasonably necessary to fairly address to the Change in Law.
 - d. If the parties are unable to reach agreement on the amendments to this Agreement within 20 Business Days of meeting under clause 35(c), either party may terminate this Agreement with 30 days' written notice to the other party.

36. Notices

From us:

- we will give you a notice under this Agreement by delivering, posting or faxing or sending it by electronic mail ("email") to one of your addresses on the front page of this Agreement or if you have given us notice of a change of address, to your new address;

From you:

- you can give a notice to us under this Agreement by delivering, posting, faxing or sending it by email to one of our addresses on the front page of this Agreement or if we have notified you of a change of address, to our new address.

Delivery

- A notice sent by delivery/courier will be treated as received on the date it was delivered or if this is not a Business Day then the following Business Day.

Post

- A notice sent by post will be treated as received 3 Business Days after it was posted

Email

- A notice sent by email will be treated as received at the time the email entered the information processing system designated in the recipient's email address.

37. Waiver

- a. You agree that:
- no failure to exercise or delay in exercising any of our rights or remedies under this Agreement will amount to a waiver of any of those rights or remedies under this Agreement;
 - if we exercise or partially exercise a right under this Agreement this does not prevent us exercising any other right or remedy or further exercising the right or remedy which has been partially exercised;
 - if we specifically waive compliance by you of any obligation on one occasion that this does not prevent us from exercising the right or any other right on another occasion.

38. Law and Interpretation

- a. We both agree that:
- the law of the State of Victoria will apply to this Agreement and any dispute relating to this Agreement will be decided by a Court of the State of Victoria, or a Court entitled to hear appeals therefrom.
 - reference to any statute or statutory provision shall include any modification or re-enactment of, or any legislative provisions substituted for, and all legislation and statutory instruments issued under such provision;
 - words denoting the singular shall include the plural and vice versa;
 - words denoting individuals shall include corporations, associations, trustees, instrumentalities and partnerships and vice versa;
 - words denoting any gender shall include all genders;
 - references to parties, parts, clauses, annexures and schedules are references to parties, parts, clauses, annexures, and schedules to this Agreement as modified or varied from time to time;
 - references to any document, deed or agreement shall include references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;
 - references to any party to this Agreement or any other document, deed or agreement shall mean, in the case of a company, its successors and/or assigns and, in the case of a natural person, his representatives and permitted assigns;
 - all references to dates and times are to Melbourne time and all references to "\$" and "dollars" are to the lawful currency of Australia;
 - this Agreement is not to be construed to the disadvantage of a party because that party was responsible for its preparation; and
 - any agreement, covenant, representation, warranty, undertaking or liability arising under this agreement on the part of two or more persons is to be taken to be made or given by such persons jointly and severally.

39. Dispute Resolution

- a. We both agree:
- if a dispute arises between both of us under this Agreement, both of us will, in good faith, endeavour to resolve the dispute by negotiation between us. If we cannot resolve the dispute, we both agree that the matter will be referred to non-binding mediation (in which the mediator shall act as an expert and not an arbitrator);
 - if both of us 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.

40. Extent of this Agreement

- a. We both agree that:
 - i. the entire agreement about your appointment as a Heartland Bank Distributor between us is set out in this Agreement and this Agreement replaces any previous agreements (oral or written) entered into by both of us.

41. Joint and Several Liability

- a. You agree that:
 - i. where there is more than one of you, each of you are both liable individually and together for the performance of both of your obligations under this Agreement.

42. GST

- a. In this clause 42 the expressions "consideration", "determination", "GST", "input tax credit", "recipient", "supply" and "tax invoice" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- b. Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this document are inclusive of GST.
- c. 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.
- d. 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.
- e. Each party acknowledges and agrees that:
 - i. it is registered for GST, and will notify the other party promptly if it ceases to be registered for GST;
 - ii. Heartland Bank will issue to the Distributor a valid recipient created tax invoice (**RCTI**) for each taxable supply made for which consideration is payable in accordance with clauses 2 and 3, and the Distributor will not issue RCTI's in respect of those supplies; and
 - iii. for all taxable supplies made under this Agreement to which sub-clause 42(e)(ii) does not apply, the party which is the supplier will provide a valid tax invoice to the party which is the recipient.
- f. 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 Distributor has failed to comply with any requirements of the determination.

43. Approvals and consents

- Unless this Agreement expressly provides otherwise, a party may give or withhold an approval or consent in that party's absolute discretion and subject to any conditions determined by the party. A party is not obliged to give its reasons for giving or withholding a consent or approval or for giving a consent or approval subject to conditions.

44. Costs

- Except as otherwise set out in this Agreement, each party must pay its own costs and expenses in relation to preparing, negotiating, executing and completing this Agreement and any document related to this Agreement.

45. Execution of separate documents

- This Agreement is properly executed if each party executes either this document or an identical document. In the latter case, this Agreement takes effect when the separately executed documents are exchanged between the parties.

46. Further acts

- Each party must at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this Agreement and all transactions incidental to it.

47. Severability

- Each provision of this Agreement is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from this Agreement in the relevant jurisdiction, but the rest of this Agreement will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

48. Benefit of agreement for Heartland Bank entities

- a. Heartland Bank Australia Limited ABN 54 087 651 750 ("HEARTLAND BANK") enters into this Agreement on its own behalf and for the benefit of each member of Heartland Bank and:
 - i. each member of Heartland Bank is an express third party beneficiary to this Agreement and provisions in favour of HEARTLAND BANK are intended to create a benefit in favour of and be enforceable by each member of Heartland Bank;
 - ii. all representations, warranties and indemnities given by you under this Agreement are given in favour of HEARTLAND BANK and each member of Heartland Bank and this clause applies notwithstanding any inconsistent provision of this Agreement provided HEARTLAND BANK ensures that each member of Heartland Bank adheres to the terms and conditions of this Agreement.

49. No disparaging actions or remarks

- a. Each party undertakes to the other that it will not do or say anything with the intent to:
 - i. damage the goodwill or reputation of the other party or of any business carried on by any such party;
 - ii. cause any person to cease to do business with any such party on substantially equivalent terms to those previously enjoyed by the party.

SCHEDULE OF COMMISSION (Clauses 2, 3)

Clawback

A 100% commission clawback will apply to any loans fully repaid and closed in the first 12 months, other than those occurring due to death.

Commissions

In respect of each Heartland Bank Reverse Mortgage, the Distributor must select one of the following options at the time an application is submitted. Only the selected option will apply to that particular Reverse Mortgage.

Express Reverse Mortgage

Option	At Settlement	Service Trail	Subsequent Drawdown Commission
1	0.88% on drawn portion 0.44% on undrawn portion	0.22% p.a. Paid monthly based on increasing value of loans in the Portfolio	0.44% per draw

Standard Reverse Mortgage

Option	At Settlement	Service Trail	Subsequent Drawdown Commission
1	0.88% on drawn portion 0.44% on undrawn portion	0.22% p.a. Paid monthly based on increasing value of loans in the Portfolio	0.44% per draw
2	1.00% of drawn portion	0.00%p.a.	1.00% per draw

Standard Reverse Mortgage - Aged Care Option

	At Settlement	Service Trail	Subsequent Drawdown Commission
	1.00% of drawn portion	0.00%p.a.	1.00% per draw

SCHEDULE OF REPRESENTATIONS (Clause 10)

1. There is no banning order or disqualification order under Part 2-4 of the *National Consumer Credit Protection Act 2009* (Cth) in force against the Distributor;
2. The Distributor is not banned from engaging in a credit activity under a law of a state or territory of Australia or that it is the subject of an enforceable undertaking agreed with or in favour of ASIC;
3. The Distributor has not been found liable within the last 10 years of conduct which is or is deemed to be misleading or deceptive, or has been convicted, within the last 10 years, of fraud or dishonesty; and
4. There is no ruling, finding or order (whether made by a court of competent jurisdiction in any state or territory of Australia or by ASIC or otherwise) issued or in force against the Distributor or against any director, secretary or senior manager of the Distributor.
5. The Distributor is:
 - (if a company) not insolvent, in receivership or under administration;
 - (if an individual) not bankrupt.
 - (if a company) has obtained (if it is a company) all corporate authorisations and approvals necessary to enable it to enter into this Agreement and such authorisations and approvals remain in full force and effect.

SIGNATURE PAGE

DATE: _____

Executed by the parties as an agreement:

1. If you are a **company**, executed by:

Either:

Director _____ Director/Secretary _____

Name _____ Name _____

Or:

Sole Director/Sole Secretary _____

Name _____

Note: two Directors, or one Director and the Company Secretary, must sign this Agreement, unless the company has a sole Director who is also the sole Company Secretary, in which case that sole Director must sign this Agreement.

2. If you are a **natural person, sole trader or partnership**, signed sealed and delivered by:

Individual/Partner(s) Signature(s) _____

Individual/Partner(s) Names _____

In the presence of:

Signature of Witness _____

Full Name of Witness _____

Address & Occupation of Witness _____

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

Signature of authorised person _____

Authorised person name: _____

Witness signature _____

Witness name: _____

CHECKLIST

Have you provided us with:

- copy Certificate of Incorporation
- copy Professional Indemnity insurance policy
- your Bank account evidence
- your ABN
- confirmation of Australian Credit Licence

BANK ACCOUNT DETAILS

Please attach a copy of either the deposit slip or statement for this account

Account Name: _____

Bank Name and Branch: _____

BSB

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-

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Account No

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ANNEXURE – Form of Design and Distribution Obligations Reporting Form

From _____ (the **Distributor**)

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**)¹] **OR** [because we have become aware of a significant dealing, which we are required to report to you as soon as possible²].

Our report as follows³:

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 **Distributor** by:

Signature _____

Name _____

Position _____

DRAFTING NOTES (delete once form is completed)

¹This 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.

²For 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.

³Please attach a separate document if more space is required