

Conditions for Avison Young Committed Offer Platform

Users, Potential Buyers and Buyers

Avison Young Committed Offers is a new, innovative and pioneering platform for buying and selling property. It provides users with numerous benefits, including: speed and certainty of sale, transparency and reduced risk of gazumping or double-selling, as well as being able to make offers pressure-free from the comfort of your own home or office via desktop, tablet or mobile phone.

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These Conditions govern the conduct of Users, Potential Buyers and Buyers using the Avison Young Committed Offer Platform.

Key points to note for using the Avison Young Online Committed Offer Platform:

1. The Avison Young Online Committed Offer Competitive Process is not a sale by the 'modern method of auction'.
2. When the process ends, you will be liable to immediately make payment of the Administration Fee.
3. Together with the other terms set out in these Conditions, the Administration Fee grants you an exclusive period to negotiate a Contract for the Property you have made a Committed Offer for on terms included in the Legal Pack. We call this the Exclusivity Period.
4. *Some* negotiation may be possible during this Exclusivity Period, but Potential Buyers should not assume that the Contract will be amended from the version that is included in the Legal Pack.
5. The Administration Fee will not be refunded if a Contract is not concluded, unless the Seller is at fault.
6. If a Contract is successfully concluded during the Exclusivity Period, the Administration Fee will not be deducted from the purchase Price of the Property or included as part of the deposit required for the purchase of the Property.

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The individual parts of these Conditions are:

- **Important notices before registering to make a Committed Offer (Part 1)**

Read these important notices first.

- **The Terms and Conditions (Part 2)**

These terms regulate the conduct of any transaction that occurs on the Platform. By making a Committed Offer or buying any Property offered for sale on the Platform you do so on the basis that you accept these Terms and Conditions.

- **Exclusivity Agreement (Part 3)**

If:

- (i) The Seller has Accepted your Committed Offer; and
- (ii) You have paid the Administration Fee,

then we will enter into the Exclusivity Agreement with you on behalf of the Seller (please see details below).

The Terms and Conditions and the Exclusivity Agreement are legally binding.

Part 1 – Important notices

1.2 A prudent Potential Buyer or Buyer should, before making a Committed Offer for a Property:

- (a) take professional advice from a legal adviser and in appropriate cases a chartered surveyor and an accountant.
- (b) read the Terms and Conditions and the Exclusivity Agreement.
- (c) have finance available for the Administration Fee and purchase Price. If you do not have the appropriate finance available for the Administration Fee, then you will not be entered into the Exclusivity Agreement and as a result your Committed Offer will not have been Accepted.

1.3 In addition, before buying a Property a prudent Buyer should:

- (a) carry out the relevant searches and make enquiries.
- (b) check whether Value Added Tax (“VAT”) registration and election is advisable.
- (c) inspect the Property (if possible).
- (d) check that what is said in the Particulars of Sale is accurate.
- (e) check the content of all available leases and other documents relating to the Property.
- (f) review the Legal Pack and forward it to their legal adviser.

These Conditions assume that the Potential Buyer or Buyer has acted prudently. If you choose to make a Committed Offer on or buy a Property without taking these precautions you do so at your own risk.

Part 2 - Terms and Conditions

1 Glossary

- 1.1 This glossary defines the meaning of words used in the Terms and Conditions and the Exclusivity Agreement.
- 1.2 Wherever it makes sense:
- (a) Singular words can be read as plurals and plurals as singular words.
 - (b) A “person” includes a corporate body.
 - (c) Words of one gender include the other genders.
 - (d) References to legislation are to that legislation as it may have been modified or re-enacted by the date of the Marketing Period or the Contract date.
- 1.3 Where the following words appear capitalised they have the following specified meanings:
- (a) **Acceptance** occurs where:
 - (i) your Committed Offer is accepted by the Seller; and
 - (ii) you have paid the Administration Fee.
 - (b) **Administration Fee** is the amount stated within the administration fee document included within the relevant Property Listing and paid by or on behalf of a Buyer in accordance with clause 11 (*Committed Offer Acceptance*).
 - (c) **Agent Fee** is the amount defined in paragraph 1 of Schedule 1 (exclusive of any applicable VAT).
 - (d) **Approved Financial Institution** is a bank or building society that has signed up to the banking code or business banking code or is otherwise acceptable to us.
 - (e) **Business Day** is any day except Saturday or Sunday, a bank holiday in England and Wales and Good Friday or Christmas Day.

- (f) **Buyer** is the Potential Buyer whose Committed Offer is Accepted and is therefore entered into the Exclusivity Agreement for the Property.
- (g) **Committed Offer** is the amount that a properly authorised Potential Buyer places against a Property as part of the Competitive Process. A Committed Offer may bind the Potential Buyer to enter into the Exclusivity Agreement if the Committed Offer is Accepted.
- (h) **Competitive Process** is the process described in these Conditions under which a Potential Buyer can make a Committed Offer on Properties with the potential to obtain an Exclusivity Period in relation to a specific Property.
- (i) **Conditions** are these terms, which include the important notices set out in Part 1, the Terms and Conditions set out in Part 2 and the form of the Exclusivity Agreement set out in Part 3.
- (j) **Contract** the contract for land between the Seller and Buyer by which the Seller agrees to sell and the Buyer agrees to buy during the Exclusivity Period subject to the terms of the Exclusivity Agreement.
- (k) **Exclusivity Agreement** is the agreement in the form as set out in Part 3 of these Conditions by which the Buyer and the Seller agree to be bound giving the Buyer the exclusive right to attempt to conclude a Contract to purchase the Property within the Exclusivity Period at the Price.
- (l) **Exclusivity Period** is the period of 4 weeks from the date of the Exclusivity Agreement, unless otherwise agreed by the Seller in writing.
- (m) **Legal Pack** the documents that may include title if registered, the entries on the register and other documents listed or referred to in the Particulars of Sale relating to the Property.
- (n) **Listing** is a Property that is the subject of the Competitive Process which may include the Legal Pack, Particulars of Sale and other details relating to the Property.
- (o) **Marketing Period** is the time period allocated by the Seller for a given Property to allow Potential Buyers to make a Committed Offer.
- (p) **Particulars of Sale** is the description of the Property used in a Listing.
- (q) **Payment Processor** is our chosen payment processing service provider.
- (r) **Platform** is the *Avison Young Online Committed Offer* platform ran and operated by the Platform Hosting Provider.
- (s) **Platform Hosting Provider** is our third party provider that runs the Platform and related hosting and support functions.
- (t) **Potential Buyer** is a person or persons that completes the Registration Process and is authorised to make a Committed Offer on a Property during the relevant Marketing Period.

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- (u) **Price** is the price that the Buyer has provided in its Committed Offer for the Property and is Accepted by the Seller.
 - (v) **Property** is the property subject to a Listing as described by the Particulars of Sale on the Platform.
 - (w) **Registration Process** is the process by which information and data are taken in relation to a Potential Buyer in accordance with clause 5 of the Terms and Conditions.
 - (x) **Seller** is the person or persons authorised to sell the Property as part of a Competitive Process.
 - (y) **Terms and Conditions** means Part 2 of these Conditions.
 - (z) **User** is a person who has registered to access the Platform, but has not yet completed the Registration Process.
 - (aa) **We, us, our or Avison Young** is Avison Young (UK) Limited.
 - (bb) **You or your** means any person using part of the Avison Young Committed Offer Platform. Depending on the context you may be a User, a Potential Buyer or a Buyer.

2 Agreement to these Terms and Conditions

- 2.1 Your use of the Platform and any service contained within constitutes acceptance by you of these Terms and Conditions together with any documents referred to in them. If you do not agree to these Terms and Conditions, you must not use the Platform.
- 2.2 These Terms and Conditions incorporate the following additional documents which, where applicable, also apply to your use of the Platform:
 - (a) our website terms of use (<https://www.avisonyoung.co.uk/terms-of-use/>); and
 - (b) our privacy and cookie policy (<https://www.avisonyoung.co.uk/privacy-policy>) which set out (amongst other things) the terms on which we process any personal data that we collect from you, or that you provide to us; and
 - (c) in the event of a Committed Offer being Accepted, the relevant third party terms of our Payment Processor for taking payment of the Administration Feeall of which may be amended from time to time.
- 2.3 To the extent that there is an inconsistency or conflict between any of the provisions of the above documents and the provisions of these Terms and Conditions, the provisions of these Terms and Conditions take precedence.
- 2.4 We may change these Terms and Conditions and/or we or the relevant third parties may change the documents referred to in these Terms and Conditions from time to time. You will be deemed to accept the updated Terms and Conditions or referenced documents if you continue to use the Platform after the Terms and Conditions or referenced documents (as applicable) have been updated. We will not notify you of any updates. It is your responsibility to check the Terms and Conditions and referenced documents for updates.

3 Availability of the Platform

- 3.1 We strive to ensure that the Platform will be available to you at all times but cannot guarantee that the Platform will operate continuously and will be uninterrupted, nor can we guarantee that any content on it, will be free from errors or omissions. We may suspend,

withdraw, discontinue or change all or any part of the Platform without notice. We will not be liable to you if for any reason the Platform is unavailable at any time or for any period.

- 3.2 We reserve the right to update the Platform and change its content from time to time without any notice to you.
- 3.3 On occasion, necessary maintenance or upgrade work may require us to make the Platform unavailable without notice.
- 3.4 You are responsible for making all arrangements necessary for you to have access to the Platform including, without limitation, ensuring that you have working hardware and sufficient internet connection.
- 3.5 The Platform and its content is intended to be accessed and used in the United Kingdom. If you choose to access the Platform from outside the United Kingdom, you do so at your own risk.

4 User Set Up Process and Initial Access

- 4.1 A basic User account may be set up without providing all of the information detailed in clause 5.1 below. The information required to sign up for a basic User account will be determined by us from time to time as requested during the Registration Process.
- 4.2 A User is able to view some Listings and will have limited functionality of the Platform. By using the Platform as a User you agree to be bound by these Terms and Conditions.
- 4.3 Unless and until Users have completed the Registration Process they will not be entitled to make a Committed Offer on Listings.

5 Registration Process

- 5.1 Before you can make a Committed Offer, you must complete the Registration Process. To do this you must:
 - (a) provide your full name;
 - (b) provide your email address;
 - (c) provide your current home address;
 - (d) provide your country of residence;
 - (e) provide your mobile phone number (which will need to be verified through a two-factor authentication system);
 - (f) provide two identification documents for yourself including your proof of address and proof of identification;
 - (g) provide identification documents for the Buyer (if the Potential Buyer and Buyer are not the same person);
 - (h) provide your solicitor's details;
 - (i) provide your bank card details from an Approved Financial Institution;
 - (j) provide proof of your source of income;
 - (k) read and accept these Conditions; and

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- (l) provide the information required for relevant KYC (know your customer) and AML (anti-money laundering) checks.
- 5.2 In each case where details or documentary evidence is required to be provided in clause 5.1, it shall be subject to the reasonable acceptance requirements of us and the Seller, as may be communicated to the Potential Buyer from time to time.
 - 5.3 Once you have completed the process stated within clauses 5.1 and 5.2 above, we will receive a request for authorisation of your account. If we are satisfied with the information you have provided and you have passed the relevant KYC and AML checks, we will approve your registration and you will receive an email confirming that you are eligible to place a Committed Offer.
 - 5.4 The Registration Process will only be considered complete once you have received the confirmation email from us. Upon receiving the confirmation email you will be able to make a Committed Offer on any available Property on the Platform.
 - 5.5 We reserve the right to reject an application, or suspend or terminate your account at any time, in our absolute discretion.
 - 5.6 Where necessary, we reserve the right (in our absolute discretion) to make further enquiries to seek further verification and/or implement further controls and monitoring systems with respect to you or the relevant User or attempted registrations in order to establish the identity of the person using or intending to use the Platform.

6 Account

- 6.1 When registering, you will be asked to create a password. You are responsible for maintaining the confidentiality of your password and restricting access to your computer. You are accountable for any activities conducted by any person using your password.
- 6.2 If you believe that someone has accessed your username or password without authorisation, you must promptly notify us.
- 6.3 When a Property is advertised for sale on the Platform, provided you have completed the Registration Process, you will be granted access to make a Committed Offer on Properties solely on the basis that you have accepted these Terms and Conditions in accordance with clause 2.
- 6.4 You agree that we can send you emails at key stages throughout the Competitive Process, including without limitation, confirmation of when a Committed Offer has been placed, when a Listing has been removed or when a Committed Offer has been successful.

7 Platform Operation

- 7.1 We will use our reasonable endeavours to provide the online facilities through the Platform and to hold the Competitive Process on the date and time referred to in the relevant Listing.
- 7.2 If for any reason we encounter any issues which affect our ability to run the Competitive Process and/or the Platform or your ability to access the Platform and, where applicable, make Committed Offers and/or send/receive notifications, we reserve the right to suspend or cancel a Listing.
- 7.3 Our decision on the conduct and outcome of the Competitive Process via the Platform is final, and we further reserve the right to declare any results of the Listing null and void for any reason or no reason.
- 7.4 We may cancel or rearrange a Listing at our discretion and we will not be liable to any person for any loss or damage suffered by reason of the fact that the listing is not or cannot be held at all or at the date and time referred to in the Listing.

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- 7.5 A Listing may be sold or withdrawn from sale prior to the commencement of the Competitive Process.
 - 7.6 The Property will finally be sold in accordance with the terms of the Contract.
 - 7.7 Our website or the Platform may contain links to third party products, services and/or websites that are not affiliated to us. We have no control over the contents of those sites or resources, and we do not guarantee or take responsibility for them. Any links or advertisements on our website or the Platform should not be taken as an endorsement by us of any kind.

8 User, Potential Buyer and Buyer Obligations

- 8.1 Where you are acting as a Potential Buyer and/or Buyer, you warrant (meaning, you promise the following things are true):
 - (a) You are over 18 years of age or acting through a corporate entity;
 - (b) that the bank card details provided to us as part of your Registration Process are either your own or that you have explicit permission to use them;
 - (c) you are legally entitled to:
 - (i) accept these Terms and Conditions;
 - (ii) enter into the Exclusivity Agreement; and
 - (iii) enter into a Contract;
 - (d) that you will provide any information reasonably required by us to complete any further KYC (know your customer) or AML (anti-money laundering) checks; and
 - (e) that you will promptly supply any information we reasonably need from you to enable us to complete the Exclusivity Agreement.
- 8.2 You warrant that your use of the Platform, including any content that you upload, will be in compliance with all applicable laws whether local, national or international.
- 8.3 You agree that you will not use the Platform:
 - (a) in any way that is fraudulent;
 - (b) to transmit any unsolicited or unauthorised advertising or promotional material, for example spam emails;
 - (c) to send any material which is illegal, or which is sexually explicit, discriminatory, incites hatred, or which would otherwise be considered immoral or offensive by a reasonable proportion of the population;
 - (d) to knowingly transmit any data, send or upload any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware; or
 - (e) in any way that interferes with, damages or disrupts any part of the Platform, any equipment or network on which the Platform is stored, or any information or documentation made accessible via the Platform.

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- 8.4 Except for identification and verification information and documentation provided at our request or unless otherwise agreed by us, any content you upload to the Platform will be considered non-confidential and non-proprietary. You retain all of your ownership rights in your content, but you are required to grant us and other users of the Platform a limited licence to use, store and copy that content and to distribute and make it available to third parties including, without limitation, the relevant Payment Processor and/or the Platform Hosting Provider.
 - 8.5 We also have the right to disclose your identity to any third party who is claiming that any content posted or uploaded by you to the Platform constitutes a violation of their intellectual property rights, or of their right to privacy.
 - 8.6 We will not be responsible, or liable to any third party, for the content or accuracy of any content posted by you or any other user of the Platform.
 - 8.7 We have the right to take such action as we deem appropriate if, in our opinion, such content does not comply with these Terms and Conditions. We exclude liability for any action that we take in response to a breach (as determined in our sole opinion) of these Terms and Conditions. The action that we take does not exclude our right to take any other action permitted by law.
 - 8.8 The views expressed by other users on the Platform do not represent the views of the us or our third party providers.
 - 8.9 You are solely responsible for securing and backing up your content and making a record of any communication or notification from or to us in relation to the Platform.

9 Properties

- 9.1 The information contained in a Listing is provided for general guidance and for illustrative purposes only. We do not accept responsibility for, and, to the fullest extent permitted by law, exclude any liability for, any loss or damage whatsoever arising out of or related to the accuracy or completeness of any information contained in a Listing or for any action taken in reliance on such information by any person whether User, Potential Buyer or Buyer, estate agent, advertiser, introducer or otherwise including incurring costs for the purpose of making a Committed Offer. We do not make any representation or give any warranty, guarantee, condition, undertaking or term either expressed or implied as to the condition, quality, state of readiness or fitness for purpose of any Property.
- 9.2 Notwithstanding the generality of the foregoing, please note that all details in respect of the Property are provided by the Seller, and you should not rely on them as statements or representations of fact.
- 9.3 No person employed or engaged by or on behalf of the Platform has any authority to make or give any representation or warranty whatsoever in relation to any Property. The Platform does not constitute, nor constitute part of, an offer, contract, warranty or guarantee.
- 9.4 We strongly suggest that you satisfy yourself by inspection or otherwise as to any information contained in a Listing or otherwise on the Platform including by viewing and inspecting any applicable Property (including the conduct of any relevant surveys) and any other relevant documentation.
- 9.5 We suggest that any Potential Buyer or Buyer seeks proper legal, accounting, banking, tax, surveying and, if appropriate, independent financial advice, from a qualified professional adviser. Nothing on the Platform may be regarded or taken as legal, financial or any other advice.
- 9.6 We are not obliged to organise or carry out accompanied viewings or inspections with Potential Buyers. Where we do provide access for viewings or inspections, we inform prospective Potential Buyers or persons authorised by the prospective Potential Buyers for

viewing or inspection of the Properties as to how and when the inspection or viewings may be carried out.

- 9.7 Where keys are made available in accordance with this clause 9, we will require confirmations from the Potential Buyer or other authorised person to whom the keys are made available that they will be returned and that they are made available only to enable inspection of the Property.
- 9.8 Any Potential Buyer or Buyer given access to the Property for the purposes of a viewing or inspection will indemnify us and the Seller and hold us and the Seller harmless against any losses, damages or claims that may be made or suffered by reason of any damage or loss to the Property directly or indirectly by reason of the fact that the prospective Potential Buyer or other authorised person is given access to the Property. We are not responsible for any such loss, damage, or claim suffered by or made against any Potential Buyer or Buyer.

10 Committed Offers

- 10.1 Committed Offers will be made in pounds sterling and are exclusive of any VAT that may apply.
- 10.2 Once a Committed Offer has been placed it cannot be withdrawn.
- 10.3 No Committed Offers will be Accepted unless we have received the Administration Fee.
- 10.4 Payment processing is conducted by our chosen Payment Processor.
- 10.5 We reserve the right to refuse to accept a Committed Offer or offer for any reason.
- 10.6 If there is a dispute over Committed Offers we are entitled to resolve it. In such an event, our decision is entirely at our discretion and will be final.
- 10.7 Where a guide price or range of prices is used, that price in the Particulars of Sale is just a guide and does not guarantee that making a Committed Offer for that amount will result in a Committed Offer being Accepted. Guide prices may be subject to change.
- 10.8 We may extend or shorten the Marketing Period at any given time. Once the Marketing Period has ended, no further Committed Offers can be made and no existing Committed Offers can be amended.

11 Committed Offer Acceptance

- 11.1 After Acceptance, the Property will be marked as 'Sold'.
- 11.2 The Potential Buyer agrees that where a Seller accepts a Committed Offer:**
- (a) we will take the Administration Fee from the bank card details provided by you; and**
 - (b) enter into the Exclusivity Agreement with you on behalf of the Seller.**
- This will constitute 'Acceptance' of the Committed Offer.**
- Read these Terms and Conditions and the terms of the Exclusivity Agreement very carefully before placing any Committed Offers.**
- 11.3 Following Acceptance of a Committed Offer you will be bound by the terms of the Exclusivity Agreement. These Terms and Conditions will continue to apply to your use of the Platform.

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- 11.4 For the avoidance of doubt, the Seller may in its sole discretion Accept any Committed Offer made on a particular Listing at any time during the Marketing Period.
- 11.5 By placing a Committed Offer on the Property and subsequently having the Committed Offer Accepted in accordance with this clause 11 of the Terms and Conditions, the Buyer agrees and accepts that the Administration Fee has been paid as a fee to us for the operation of the Competitive Process.
- 11.6 At the start of the Exclusivity Period the operation of the Competitive Process has already been fully performed, therefore the Buyer is not entitled to a right to cancel these services.

12 Administration Fee and re-Listing

Declined payment

- 12.1 If your Committed Offer is Accepted and the Administration Fee is declined when we attempt to take the payment, then the Exclusivity Agreement shall not be completed. At our sole discretion, the following shall happen:
- (a) You will be notified by email that you have until a set time of our choosing to make the Administration Fee; or
 - (b) we may treat the Committed Offer as void and the Seller may offer the Listing to any other Potential Buyer; or
 - (c) we may re-offer the Property for sale again by reopening the Marketing Period for the Listing.
- 12.2 In any event, in such circumstances you remain liable for the Administration Fee and we reserve the right to take action against you to receive that Administration Fee and the costs of doing so until an Administration Fee is received.

Non-concluded Contract due to Seller fault

- 12.3 The Administration Fee is non-refundable in all circumstances except where the Seller commits a material breach of the Exclusivity Agreement.
- 12.4 If the Seller commits a material breach of the Exclusivity Agreement you will notify us of the breach together with reasonably detailed information and evidence of the breach. Where in our reasonable opinion a material breach by the Seller of the Exclusivity Agreement has occurred we will refund you an amount equal to the Administration Fee within 30 days of our determination.

Nature of Administration Fee

- 12.5 The Administration Fee itself is a fee paid to us for the operation of the Competitive Process and will not form part of the Price or the deposit for the Property.

13 Our Role

- 13.1 As agents for the Seller we are authorised to:
- (a) allow Potential Buyers to make a Committed Offer on the Property; and
 - (b) receive the Administration Fee; and
 - (c) enter into the Exclusivity Agreement on behalf of the Seller.
- 13.2 We will use reasonable endeavours to ensure:

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- (a) that we carry out relevant KYC (know your customer) and AML (anti-money laundering) checks with our chosen third party providers promptly; and
 - (b) we respond to any reasonable and proper queries raised by the Potential Buyers prior to Acceptance in a timely manner.

13.3 Our decision on the conduct of the Competitive Process is final.

13.4 We are authorised to cancel or amend the Marketing Period or amend the way in which a Property is offered for sale through a Listing. We may also combine or separate Properties within their respective Listings. We retain the right to sell or withdraw a Listing at any time for any reason prior to Acceptance which shall void any Committed Offers already made.

13.5 If required, we may delegate performance of services from time to time by instructing one or more other persons, firms or companies upon such terms as we consider appropriate in our sole and absolute discretion which may include, without limitation, our designated Payment Processor and/or our Platform Hosting Provider.

14 AML and Compliance

14.1 We are required to report all knowledge or suspicion (or reasonable grounds for knowledge or suspicion) that a criminal offence giving rise to any direct or indirect benefit from criminal conduct has been committed. This duty to report exists regardless of whether the suspected offence has been, or is about to be, committed by a client or by a third party.

15 Intellectual Property Rights

15.1 The Platform, our website and any content contained therein, including but not limited to design, search results, images, graphics, structure, layouts and the underlying source code are subject to the intellectual property rights of us and our licensors. All such rights are reserved.

15.2 You must not copy, modify, reproduce, transmit or distribute the paper or digital copies of any materials you have printed off or downloaded in any way, and you must not use any illustrations, photographs, video or audio sequences or any graphics separately from any accompanying text without our prior written consent.

15.3 You must not use any part of the content on the Platform for commercial purposes without obtaining a licence to do so from us and (as may be relevant) our licensors.

15.4 If you print off, copy or download any part of the Platform in breach of these Conditions, your right to use the Platform will cease immediately and you must, at our option, return or destroy any copies of the materials you have made.

16 Data and Information

16.1 We will only use the personal information provided to us to provide the Platform services, or to inform you about similar services which we provide, unless you tell us that you do not wish to receive this information by ticking the 'opt out' box through the Platform website, or by ticking the relevant box on the relevant web page.

16.2 You acknowledge and agree that we may pass your details to credit reference agencies, solicitors, the Seller, Platform Hosting Provider and other third parties as necessary under these Terms and Conditions.

17 Our Limitation of Liability

17.1 You accept that we cannot offer guarantees against internet connectivity and server or software malfunction. If an internet, server or software problem occurs we reserve the right to stop or pause the Marketing Period and to restart it when the service is restored.

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- 17.2 References to liability in this clause 17 include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 17.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 17.4 Nothing in this clause 17 shall limit your payment obligations under these Terms and Conditions.
- 17.5 Nothing in these Conditions limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by sections 49, 50, 51 and 53 of the Consumer Rights Act 2015 (where relevant).
- 17.6 Subject to clauses 17.3, 17.4 and 17.5 the following types of losses are wholly excluded:
- (a) any unforeseeable losses being unexpected; and
 - (b) loss of sales or business.
- 17.7 The following clauses 17.8 and 17.9 shall only apply to Users, Potential Buyers and Buyers who are corporate bodies.
- 17.8 Subject to clauses 17.3, 17.4 and 17.5 the following types of losses are wholly excluded:
- (a) loss of profits;
 - (b) loss of agreement or contracts;
 - (c) loss of anticipated savings;
 - (d) loss of use or corruption of software, data or information;
 - (e) loss of or damage to goodwill;
 - (f) indirect or consequential loss;
- 17.9 Subject to clauses 17.3, 17.4, 17.5 and 17.8 we will not be liable under these Terms and Conditions to a User, Potential Buyer or Buyer that is a corporate body for any losses.

18 The Particulars of Sale and Other Information

- 18.1 We will take reasonable care to prepare the Particulars of Sale that describe the Property. The Particulars of Sale are based on information supplied by or on behalf of the Seller. You have ultimate responsibility to check that the information is correct.
- 18.2 The Particulars of Sale may change prior to Acceptance and it is your responsibility to check that you have the correct version.
- 18.3 If we provide reports, information or copies of documents supplied to us by others we are not responsible for the accuracy of that report, information or document.

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- 18.4 The Legal Pack and/or the Listing will state whether VAT or any substituted or similar tax is payable on the Property.
- 18.5 For the avoidance of doubt, nothing within the Listing, Legal Pack and/or Particulars of Sale shall constitute an offer from the Seller nor shall the Listing, Legal Pack and/or the Particulars of Sale form any part of the Contract.

19 Binding obligations

- 19.1 These Terms and Conditions should be read together with the Exclusivity Agreement applicable to a particular Property. If there is inconsistency between these Terms and Conditions and the provisions of the Exclusivity Agreement the relevant provisions of the Exclusivity Agreement shall apply.
- 19.2 As these Terms and Conditions and the Exclusivity Agreement contain legally binding obligations on you it is recommended you seek independent legal advice on these Terms and Conditions and the Exclusivity Agreement before making any Committed Offer on a Property.

20 Applicable Law

- 20.1 These Conditions, their subject matter and the formation of any agreement thereunder (and any non-contractual disputes or claims) are governed by English law. Any dispute arising under these Conditions (and any non-contractual disputes or claims) is to be subject to the exclusive jurisdiction of the courts of England and Wales.

Part 3 - Form of Exclusivity Agreement

This agreement is made on the time and date that the relevant Committed Offer is Accepted in accordance with clause 11 (*Committed Offer Acceptance*) of the Terms and Conditions.

Parties

Buyer is the relevant person or persons whose Committed Offer is Accepted in accordance with clause 11 (*Committed Offer Acceptance*) of the Terms and Conditions and is therefore entered into this Exclusivity Agreement for the Property.

Seller is the relevant person or persons authorised to Sell the Property as part of a Competitive Process and who has Accepted a Committed Offer in accordance with clause 11 (*Committed Offer Acceptance*) of the Terms and Conditions

Background

- A This Exclusivity Agreement is binding from the date and time that the relevant Committed Offer pursuant to the Terms and Conditions is Accepted.
- B This Exclusivity Agreement describes the terms and conditions for the Seller and Buyer during and after the Exclusivity Period.

Agreed terms

1 Glossary

- 1.1 This glossary defines the meaning of words used in this Exclusivity Agreement.
- 1.2 This Exclusivity Agreement shall be read in conjunction with the Terms and Conditions. Terms defined in the glossary in clause 1 (*Glossary*) of the Terms and Conditions also apply to this Exclusivity Agreement.
- 1.3 Wherever it makes sense:
 - (a) Singular words can be read as plurals and plurals as singular words.
 - (b) A “person” includes a corporate body.
 - (c) Words of one gender include the other genders.
- 1.4 Where the following words appear capitalised they have the following specified meanings:
 - (a) **Accepted Property** is the relevant Property that has been Accepted in accordance with clause 11 (*Committed Offer Acceptance*) of the Terms and Conditions.
 - (b) **Buyer’s Obligations** are the obligations of the Buyer set out in clause 4 below.
 - (c) **Buyer’s Solicitors** are the Buyer’s nominated solicitor or legal representative.
 - (d) **Seller’s Obligations** are the obligations of the Seller set out in clause 2 below.

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- (e) **Seller's Solicitors** are the Seller's nominated Solicitor or legal representative.
 - (f) **Transaction Documents** are the draft Contract for the Accepted Property and the most up to date version of the Legal Pack.

2 Seller's Obligations

2.1 In consideration of the Buyer undertaking and incurring costs in connection with the Buyer's Obligations, the Seller undertakes:

- (a) to instruct its solicitors as soon as possible to send the Transaction Documents to the Buyer's Solicitors by email, first class post or by recognised document exchange or by hand to its address or document exchange number (as appropriate);
- (b) during the Exclusivity Period not to send, instruct or permit anyone else to send any Transaction Documents to anyone other than the Buyer's Solicitors;
- (c) during the Exclusivity Period, not to (nor instruct or allow anyone else to):
 - (i) transact or attempt to transact with the title to the Accepted Property except with the Buyer; or
 - (ii) solicit or respond to any offer to transact or attempt to transact with the title to the Accepted Property with anyone other than the Buyer.

2.2 During the Exclusivity Period the Seller agrees:

- (a) not to grant (or instruct anyone to grant) another Exclusivity Agreement of the Accepted Property;
- (b) not to send, instruct, or permit anyone else to send any contract for sale of the Accepted Property to anyone other than the Buyer's Solicitors;
- (c) to provide access to the Accepted Property (where possible) that may be reasonably required by any surveyor or valuer appointed by the Buyer;
- (d) not to negotiate terms with anyone other than the Buyer for the sale of the Accepted Property;
- (e) to use all reasonable efforts to proceed to a formal exchange of Contracts for the Price within the Exclusivity Period; and
- (f) to immediately instruct the Seller's Solicitors to issue a Contract for the sale of the Accepted Property to the Buyer's Solicitors.

3 Waiver of Buyer's rights

- 3.1 By placing a Committed Offer on the Accepted Property and subsequently having the Committed Offer Accepted in accordance with clause 11 (*Committed Offer Acceptance*) of the Terms and Conditions, the Buyer agrees and accepts that the Administration Fee has been paid as a fee to Avison Young for the operation of the Competitive Process.
- 3.2 At the start of the Exclusivity Period the operation of the Competitive Process has already been fully performed, therefore the Buyer is not entitled to a right to cancel these services.

4 Buyer's Obligations

- 4.1 Upon Acceptance the Buyer will immediately instruct the Buyer's solicitors to take such steps as are necessary to enable the Contract to be exchanged for the Price within the Exclusivity Period.
- 4.2 If:
- (a) the Buyer withdraws from the process during the Exclusivity Period;
 - (b) exchange of Contracts has not otherwise been achieved on expiry of the Exclusivity Period;
 - (c) the Seller terminates in circumstances where the Buyer is in material breach of the Buyer's obligations,
 - (d) the Buyer does not provide AML and/or KYC information in a timely manner to allow the Contract to be exchanged before the expiry of the Exclusivity Period
- then, for the avoidance of doubt, the Buyer will not be entitled to a refund of the Administration Fee.
- 4.3 The Buyer agrees to promptly:
- (a) if the Buyer intends to use a loan or mortgage in connection with the purchase of the Accepted Property, the Buyer shall apply to the relevant lender and complete all necessary documentation and do all such things as the lender may require to process the Buyer's application as soon as possible including the payment of any application fees;
 - (b) if the Buyer's mortgagee or lender requires that the Accepted Property is surveyed and/or valued, the Buyer will use all reasonable endeavours to arrange for the survey or valuation to take place at the Accepted Property as soon as reasonably possible including the payment of any valuation fee; and
 - (c) keep Avison Young or its partner agent and the Seller's Solicitors informed of progress with the application for the loan.
- 4.4 The Buyer agrees not to attempt to materially negotiate any of the terms contained within the Transaction Documents.
- 4.5 The Buyer will be required to pay the Seller's reasonable legal fees stated within the Contract. The Buyer is responsible for liaising with the Seller to obtain details of such expenses.

5 Termination and the Administration Fee

Foregoing Administration Fee.

- 5.1 The Buyer may terminate this agreement with immediate effect by written notice to the Seller in which case the Buyer will forfeit the Administration Fee.
- 5.2 This agreement shall terminate on expiry of the Exclusivity Period and if at such time Contracts are not exchanged through no fault of the Seller, then the Buyer will forfeit the Administration Fee.
- 5.3 The Seller may terminate this agreement with immediate effect by written notice to the Buyer if the Buyer is in breach of any of the Buyer's Obligations, in which case the Buyer will forfeit the Administration Fee.

Recovery of Administration Fee.

- 5.4 The Buyer may terminate this agreement with immediate effect by written notice to the Seller if the Seller is in material breach of the Seller's obligations, in which case the Administration Fee will be

returned to the Buyer in accordance with and subject to clauses 12.3 and 12.4 (*non-concluded Contract due to Seller fault*) of the Terms and Conditions.

- 5.5 The Seller may terminate this agreement with immediate effect by written notice to the Buyer at the Seller's discretion and convenience, in which case, provided the Buyer has taken all reasonable steps to comply with the Buyer's obligations, an amount equivalent to the Administration Fee will be paid to the Buyer from the Seller.

6 Time of the Essence

Time is of the essence for the purposes of this agreement.

7 Exclusion of third party rights

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

This agreement has been entered into following the end of the Marketing Period in accordance with clause 11 (*Committed Offer Acceptance*) of the Terms and Conditions.