

Commercial Mortgage Terms and Conditions 2021

England and Wales

Contents

1	Interpretation and definitions	4
2	Rules	12
3	The offer	12
4	Provisions for payment	14
5	Interest	15
6	Changing the interest rate	17
7	Changing the monthly payment	18
8	Conditions contained in the offer	19
9	Early repayment and overpayments	20
10	Redemption of prior security interests	20
11	Indemnity	20
12	Illegality	21
13	Demand and notice	21
14	Representations and warranties	21
15	General covenants	23
16	Property covenants	24
17	Leasehold property	28
18	Your power to grant leases	28
19	Financial information and financial covenants	29
20	Events of default	29
21	Receiver	33
22	Special terms – charity borrowers	35
23	Environmental risk	35
24	Transfer of the mortgage	36
25	The money secured by the mortgage and release	36
26	Interest-only schemes	37
27	Expenses	38
28	Charges	39
29	Rights relating to the property and powers of attorney	40
30	Set-off and consolidation of accounts	41
31	General	41

Commercial Mortgage Terms and Conditions 2021 England and Wales

These **conditions**, when read with your **offer** set out the terms that govern your mortgage.

It is important that you read these **conditions** carefully. If you have any queries about these **conditions**, please ask us or your solicitor or conveyancer.

How we use your data

(this does not form part of the conditions)

Data protection and confidentiality

Our Privacy Notice can be found at ecology.co.uk/homepage/privacy-notice

We encourage you to read this important document which explains how we use your personal data; describes the categories of personal data we process and for what purpose. You will always be able to view our Privacy Notice on our website, however, if you would like to receive a paper copy please contact the Community and Business Lending Team and we will put one in the post for you.

Solving problems

Our aim is to provide a high standard of service to all our customers. However, occasionally things can go wrong. When this happens, we want to put matters right as quickly as possible.

If you do have a complaint about any aspect of the service you have received, please contact us straightaway. We have an established complaints procedure, a copy of which is available on request. This explains how we will try to resolve your complaint and how, if you are still not satisfied, you may have the right for it to be investigated impartially by the Financial Ombudsman Service whose address is: Exchange Tower, London E14 9SR or you can visit their website financial-ombudsman.org.uk.

1. Interpretation and definitions

Interpretation

- 1.1. When used in these **conditions** references to:

“**Us**”, “**we**”, “**our**” and “**the Society**” refer to Ecology Building Society and any successors who take over some or all of our rights under the **mortgage** and any other persons entitled to the benefit of the **mortgage** at law or in equity;

“**you**” and “**your**” refer to the **borrower** and anyone who takes over your responsibilities for the payment of the **mortgage**. If there is more than one **borrower** then all these **conditions** apply equally to all of you and separately to each of you. It is important to note that this means that each of you is responsible on your own for the whole of the **money you owe us**, and not just a part or proportion of it.

- 1.2. Words given a special meaning by **condition 1.6** are printed throughout these **conditions** in bold type.
- 1.3. The headings in these **conditions** are for ease of reference and are not to be taken into account when interpreting them.
- 1.4. Each of the provisions of these **conditions** shall be severable and distinct from one another and if one or more of such provisions is invalid or unenforceable the remaining provisions shall not in any way be affected.
- 1.5. Reference to any Act or legislation includes reference to the Act or legislation as for the time being amended, replaced or re-enacted and includes reference to any sub-ordinate legislation (including any European Community law which is applicable in the United Kingdom) order regulation or direction made under or by virtue of that Act or legislation.
- 1.6. In these **conditions**, the words listed below have the meanings shown beside them –

Definitions

“**borrower**” means the person or persons named as the borrower in the **mortgage deed** and includes their personal representatives. If two or more people are the **borrower**, then **borrower** means all of them together and each one of them separately;

Where “the **borrower**” are the trustees of an unincorporated association, covenants and obligations entered into by the **borrower** are entered into so as to bind the trustees and the members of such association from time to time and the assets of such association, but not so as to make the trustees personally liable beyond the extent to which such assets are (or ought to be) under the control of such trustees or otherwise available to satisfy such covenants.

Where the persons forming the “**borrower**” are carrying on business in partnership under a firm name the monies and liabilities hereby secured shall (notwithstanding any change in the composition of the partnership) include the monies and liabilities which shall at any time hereafter be due, owing or incurred to **the Society** by the person or persons from time to time carrying on the partnership business under that name or under any name in succession and the expression “the **borrower**” shall be construed in this way.

Where a restrictive obligation is imposed on the **borrower**, it shall be deemed to include an obligation on the **borrower** not to permit or suffer such restrictive obligation to be done by any other person.

“**borrower’s indebtedness**” means:

all present and future obligations and liabilities (whether actual or contingent, whether owed jointly, severally or in any other capacity whatsoever and of whatsoever amount) (and whether on or at any time after demand) be due, owing or incurred in whatsoever manner to **the Society** by the **borrower** in respect of the **mortgage debt** and whether or not **the Society** shall have been an original party to the relevant transaction;

all costs, charges and expenses incurred hereunder by us and/or any **receiver**, and all other monies paid by us and/or any **receiver** in connection with the Loan or the **property** charged to us pursuant to the **security** including without prejudice to the generality of the foregoing, the costs shall include all costs incurred by or charged to us (on a full indemnity basis) in taking, perfecting, enforcing or exercising (or attempting to perfect, enforce or exercise) any power under the mortgage and/or the **security**; and

“**borrowings**” means (without double counting):

money borrowed or raised and includes capitalised interest;

any liability under any bond, note, debenture, loan stock, redeemable preference share-capital or other instrument or security;

any liability for acceptance or documentary credits or discounted instruments;

any liability for the acquisition cost of assets or services payable on deferred payment terms where the period of deferment is more than 90 days;

any liability under debt purchase, factoring and similar agreements and capital amounts owing under finance leases, hire purchase or conditional sale agreements or arrangements;

the net liability under any derivative transaction protecting against or benefiting from fluctuations in any rate or price;

any other arrangements having the commercial effect of borrowing; and

any liability under any guarantee or indemnity in respect of any obligation falling within the above.

“building contract” means the contract for the construction of the development approved by us as required by the offer and any variations or replacement contract approved by us in writing.

“cashflow” means, for any specified period, **EBITDA**, plus or minus net movements in working capital, less Tax paid and capital expenditure paid (net of capital expenditure funded by asset disposals and/or hire-purchase and/or finance leasing) by the **borrower** plus any exceptional or extraordinary items received in cash and minus any exceptional or extraordinary items paid in cash, in each case in that period.

“change of control” means, in relation to a company or other body corporate, that any person or group of persons acting in concert gains direct or indirect **control** of that company or body corporate.

For the purposes of this definition,

“control” means the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to: (a) cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the relevant entity; or (b) appoint or remove all, or the majority of, the directors or other equivalent officers of the relevant entity; and

“acting in concert” means a group of persons who, pursuant to an agreement or understanding (whether formal or informal) actively co-operate, through the acquisition of shares in the relevant entity, whether directly or indirectly, to obtain or consolidate **control** of the relevant entity.

“company sale” means any transaction (including, without limitation, any sale, transfer or other disposal and any series of transactions whether taking place at the same time or not) pursuant to which all or any of the shares (or other ownership interests) in the capital of the Borrower are sold to one or more persons.

“charges” means all fees which we set from time to time in relation to mortgages generally and which we may pass on to you either -

- (a) as the **charge** for a service of the kind mentioned in **condition 28.2**; or
- (b) by way of repayment of particular **expenses**.

“completion” means the date on which we release funds for the loan; that is to say, the day we post a cheque, or make an electronic transfer of money, to you or your solicitor or conveyancer, or to any other person on your behalf.

“development” means the scheme of development of the property (where applicable) referred to in the offer.

“early repayment charge” means any additional payment which the **offer** requires you to make if you repay all or part of the **borrower’s indebtedness** before the end of the **repayment period**.

“**EBIT**” means, for any specified period, the profit (or, as the case may be, surplus) of the **borrower** before the deduction of Interest and taxation or the addition of Interest receivable, disregarding profits (or, as the case may be, surplus) or losses arising in respect of exceptional or extraordinary items, in each case in that period.

“**EBITDA**” means, for any specified period, EBIT for such period after adding back depreciation and amortisation or impairment of goodwill (or any other intangible assets) to the extent deducted from EBIT, in each case in that period.

“**EUIR**” means Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.

“**event of default**” shall mean any of the circumstances set out in section 17 of these **conditions** and an **event of default** is “continuing” if it has not been remedied or waived by the **Society**.

“**expense**”, “**expenses**” means the reasonable costs and expenses we have to pay or incur in connection with the mortgage or the mortgage debt in relation to:

- (a) providing a service in connection with the **mortgage** or the **property**;
- (b) collecting or recovering all or any of the **mortgage debt**;
- (c) bringing or defending any legal proceedings relating to the **mortgage**, the **mortgage debt**, the **property** or any other security for the **mortgage debt**;
- (d) protecting, preserving, or enforcing any security for the **mortgage debt**;
- (e) providing or refusing to grant any consent or approval as required under these **Conditions**;
- (f) insuring the **property** in accordance with these **Conditions**;
- (g) remedying any breach of the **mortgage** by **you** or any of **your** responsibilities under the **mortgage**;
- (h) exercising or enforcing any of our rights or powers under the **mortgage** or under law;
- (i) releasing the **property** or any other security **we** hold in respect of the **mortgage debt**.

Our expenses will include fees, costs, charges, and expenses which we have to pay to third parties. Our expenses may be charged by way of those fees set out in the **tariff** from time to time.

“**financial statements**” means the most recently certified or where the **borrower** is under a legal obligation to produce audited accounts, audited accounts of the **borrower**.

“**further loan**” means any further money which we lend you under the **mortgage**.

“**insurance policy**” means an insurance policy or contract required under condition 16.2.

“**individual**” means natural person.

“**interest**” means, for any specified period, interest and any amounts in the nature of interest in relation to any **borrowings** (including, without limitation, the interest element of finance leases, guarantee fees, discount and acceptance fees but excluding arrangement fees), in each case in that period.

“**interest-only scheme**” means any scheme which is set out in the **offer** and which provides that the repayment of all or some of the loan is to be put off until the end of the **repayment period** or any shorter period stated in the scheme.

“**loan**” means any money we lend to you which you and we agree is to be secured by the **mortgage deed** under the terms of these conditions and your **offer** letter and, where the context admits, the outstanding balance of that loan from time to time.

If you have more than one **loan**, references to the **loan** are references to each **loan** considered separately and references to **monthly payments** and the **repayment period** mean the **monthly payments** and **repayment period** which apply to the **loan** in question, if they are different.

“**LPA**” means the Law of Property Act 1925.

“**minimum interest rate**” means any minimum interest rate we will charge on all or, if relevant, a part of the mortgage debt from time to time as set out in the offer.

“**month**” means a calendar month.

“**monthly payment**” means the amount which you must pay each month. Your initial **monthly payment** will be shown in your **offer**, but we may change the **monthly payment** in accordance with **condition 7**.

“**mortgage**” means the entire agreement under which we agree to make a **loan** to you and includes the **mortgage deed**, the **security**, these **conditions**, the **tariff** and your **offer**. If we have agreed to make more than one **loan** to you, the **mortgage** includes the terms and conditions of each **offer**.

“**mortgage account**” means the record we maintain of the **mortgage debt** from time to time.

“**mortgage debt**” means all of the money which **you** owe **us** under the **mortgage** at any time including:

- (a) the **loan**;
- (b) any unpaid interest, fees, **expenses**; and
- (c) **any early repayment** or other **charge**;
- (d) but if you are a **guarantor**, the “**mortgage debt**” will be all money owed any amount under any **guarantee** or **third-party charge**.

“mortgage deed” means any deed of legal charge that you sign, and which says that these **conditions** are incorporated in it.

“net borrowings” means, at any time, the total borrowings of the **borrower** less sums standing at credit of all accounts of the borrower with the **Society** in respect of which we have valid and enforceable rights of set-off.

“net rental income” means **rental income** other than **tenant contributions**.

“net worth” means, at any time, the aggregate of the amount paid up on the issued share capital of the **borrower** and the amount standing to the credit of its capital and revenue reserves (including any share premium account or capital redemption reserve but excluding any revaluation reserve, and deducting any amounts attributable to intangible assets including goodwill).

“offer” has the following meanings –

When applied to this **loan**, the **offer** means the mortgage offer by which we offered to make the **loan** to you, including any mortgage illustration and special conditions referred to in it;

When applied to any **further loan**, the **offer** means the **further loan** offer by which we offered to make the **further loan** to you, including any mortgage illustration and special conditions referred to in it;

Your **offer** may consist of more than one document; and

In every case, references to the **offer** include any changes we make to the **offer** terms before we lend you the money, and any changes which you and we agree after that.

“person” includes any person, firm, company, corporation, government, state or agency of a state, association, unincorporated body of persons, trust or partnership (whether or not having a separate legal personality) and any two or more of the foregoing.

“potential event of default” means any event which with the giving of notice or passing of time in the reasonable opinion of the **Society** will or is likely to constitute an **event of default**.

“property” means all estates or interests in any freehold or leasehold **property** (or any part of it) described in the **mortgage deed**. It includes all buildings, fixtures, fittings, fixed plant or machinery at any time situated on and forming part of that property and of any kind (including buildings, fixtures and fittings, fixed plant or machinery added after **completion** of the **mortgage**), all easements, rights, agreements and other benefits in respect of that property and the benefit of any covenants for title given or entered into by **you** in respect of that property.

“property rights” means any rights to which you may become entitled in respect of the **property**, including –

compensation or other money received or receivable in respect of damage caused to the **property** or because it (or any part of it) has reduced in value, or been compulsorily purchased;

any agreement, option, right of pre-emption, guarantee or indemnity relating to the **property** or its construction, state or condition;

any **share** in or rights of membership in a management company, or tenants' or residents' association;

the benefit of any right to obtain the improvement of, or any payment in connection with, any roads, sewers, drains and other services or amenities;

any policy providing insurance against title defects or adverse rights; and

any other benefits which you may have or receive in respect of the **property**, but not including money or grants payable to you in respect of maintenance or improvement or any money from the insurance which is dealt with in **condition 16**;

"property sale" means any transaction (including, without limitation, any sale, transfer, lease or other disposal and any series of transactions whether taking place at the same time or not) pursuant to which the **property** is disposed of to one or more **persons**.

"rebuilding cost" means the full cost of rebuilding the **property**, including all demolition and clearance costs, all professional fees and the cost of meeting planning and local authority requirements.

"repayment period" means the period of time during which you agree to repay the **loan** to us as specified in your **offer**.

"realisation value" means the **market value** as that term is defined or referred to in the RICS Appraisal and Valuation Manual (current edition) published by the RICS. **Realisation value** shall be determined (at such time or from time to time as we decide) by a professionally qualified valuer appointed by us (at the expense of the **borrower**).

"receiver" means any person, whether or not an employee or officer of **the Society**, appointed by us as a receiver and/or manager or administrative receiver of the security given by the **borrower** to us whether such appointment is pursuant to the LPA or otherwise.

"rental income" means the aggregate of all amounts paid or payable to, or for the benefit or account of, the **borrower** in connection with the letting, licensing or use of the **property** and all other properties held by **the Society** as **security** now or hereafter.

"rules" means **the Society's rules** in force from time to time.

“**security**” means the mortgage deed and documents set out in these **conditions** and any other such deeds and documents held by **the Society** from the **borrower** from time to time, or from any third party in relation to the liabilities of the **borrower** from time to time. The **security** will be a continuing security until released or discharged by us.

“**tariff**” means our list of fees and **charges** that apply to your **mortgage**.

“**tax**” means any tax, levy, impost, duty or other charge or withholding of a similar nature (including, without limitation, any penalty or interest payable in connection with any failure to pay or delay in paying any of the same).

“**tenant contributions**” means any amount paid to the **borrower** by any tenant under a lease or any other occupier of the **property**, by way of:

(a) contribution to:

- (i) insurance premia;
- (ii) the cost of an insurance valuation;
- (iii) a service charge in respect of the **borrower's** costs under any repairing or similar obligation or in providing services to a tenant or occupier of, or with respect to, the **property**; or

(b) VAT or similar taxes.

“**term**” means the period commencing on the date upon which the Loan (or part of it) is first drawn and ending on the date upon which the Loan falls due for repayment in accordance with the provisions of your **offer** letter.

“**test period**” means a period of 12 months.

“**third party charge**” means a **mortgage deed** executed as security for the **mortgage debt** by someone who is not the borrower, and which incorporates these **Conditions**.

“**total debt service**” means, in relation to any specified period, the aggregate of interest, scheduled repayments due in respect of the **borrowings**, and dividends and distributions to the extent paid by the **borrower**, in each case in the **test period**.

“**VAT**” means value added tax, sales tax or any similar tax.

“**working day**” shall mean any day other than a Saturday, Sunday or Bank Holiday in England and Wales.

“**year**” means a **year** from 1st January to 31st December.

2. Rules

- 2.1 So long as we are a building society and you are an **individual**, and unless the offer says otherwise, you are admitted to membership of **the society**, if you are not already a member of **the society**. However, only the first named **individual** borrower will have borrowing membership rights e.g. voting rights.
- 2.2 Members of **the Society** are bound by the rules, a copy of which is available from our website.
- 2.3 **You** agree to comply with the rules so long as you are a member of **the Society**.
- 2.4 In the event of a conflict between the **rules** and any other document forming part of the agreement for the **mortgage**, the other document shall prevail.
- 2.5 If your membership of **the Society** arises solely by virtue of the mortgage, a transfer of the **mortgage** by the **Society** under **Condition 24** may result in your ceasing to be a member of **the Society**.

3. The offer

- 3.1 You must not alter the **offer**. If you want to change anything in the offer you must contact us, directly or through your intermediary. If we agree a change, we will send you a new offer and we will be bound only by the details in the most recent **offer**.
- 3.2 Until we make the **loan**, the following apply:
- (a) if the loan does not go ahead you must pay any fees or expenses we have incurred in accordance with the **offer**;
 - (b) we can change the offer or withdraw it altogether as set out in the offer. If we do change the terms, we will send you a new offer and we will be bound only by the details in the most recent offer.
- 3.3 We are not obliged to make any **loan** until all requirements in the **offer** have been met.
- 3.4 If the **offer** says that we will make a loan in instalments, or that we will hold back any money, or allow interest to be rolled up, we need not release the instalments or amounts held back or allow rolling up if you do not keep to the terms of the **mortgage**.
- 3.5 If the **interest** rate is variable it may change before, on or after completion as provided in these Conditions.
- 3.6 You must complete and return to us the Direct Debit mandate supplied to you.
- 3.7 The **mortgage deed** secures the repayment of the mortgage debt and the rest of the secured liabilities.

- 3.8 Section 93 of the LPA does not apply to the **mortgage deed**. This means that if you want to redeem the mortgage debt we can require you to repay any other loan or liabilities you have with us.
- 3.9 The **mortgage deed** is a continuing security for the secured liabilities. This means that we do not have to discharge the mortgage deed after you have paid the mortgage debt until **you** have also repaid the rest of the secured liabilities.
- 3.10 Where you execute the **mortgage deed**, you also charge to us:
- (a) any rights **you** have under any agreement or guarantee relating to the property;
 - (b) any rights **you** have to claim damages in relation to the property (such as a claim arising from a misrepresentation about the value of the property or against someone who has damaged the property);
 - (c) any rights **you** have to shares in a management or residents' company or similar association because of your interest in the property;
 - (d) all easements and rights which benefit the property;
 - (e) any right **you** may have to compensation or insurance money payable in respect of the property;
 - (f) any right **you** may have to extend the term of any lease of the property or to take a new lease or acquire the freehold or other such interest in the property;
 - (g) any leasehold or freehold interest in the property which **you** acquire after the date of the mortgage deed; and
 - (h) (where **you** are a limited company) by way of fixed charge the goodwill of any business, trade and undertaking carried on by you at the property and by way of floating charge your book debts and all your assets and undertaking not charged by way of fixed charge.
- 3.11 **You** will take any action which we reasonably request you to in respect of the rights set out in **condition 3.10**. If we request, **you** will sign a document assigning any of these rights to us as security for the **borrower's indebtedness**. This document will be prepared by us and will incorporate these Conditions.
- 3.12 If, on realisation of our security, the net proceeds are not enough to repay all of the **mortgage debt**, you will pay the shortfall to us immediately. Any shortfall will bear interest at the interest rate until the mortgage debt is paid in full.
- 3.13 **Interest** will be charged at the interest rate after any court order requiring you to pay the whole or any part of any shortfall.

4. Provisions for payment

- 4.1. You agree to pay us the **monthly payments** until you have repaid all the **money you owe us**.
- 4.2. You must make the **monthly payments** by the end of each **month**, starting in the **month** following the date of the **mortgage**.
- 4.3. We will work out the **monthly payment** so as to provide that -
 - (a) if your **loan** is a repayment loan, the **monthly payment** will be calculated so as to pay off the **loan** and interest by the end of the **repayment period**;
 - (b) if your **loan** is an interest-only loan, the **monthly payment** on the interest-only portion will only cover interest, and all other amounts you owe us under the **mortgage** (including the **loan** itself and any **expenses** and **charges** that are added to the **borrower's indebtedness**) must be paid separately by the end of the **repayment period**.
- 4.4. Your **offer** will tell you whether your loan is repayment or interest-only. It may be that one part of the **loan** is on a repayment basis and the other part is on an interest-only basis.
- 4.5. If we allow you to pay your **mortgage** (or any part of it) on an interest-only basis, you must repay the **loan** (or any part of it subject to an **interest-only scheme**) and any **expenses** and **charges** at the end of the **repayment period**.
- 4.6. If we release the **mortgage** in error (because, for example, we miscalculate the amount of the **borrower's indebtedness**) we may claim from you any amount still owing. However, we will not be entitled to do this if we do not give you notice in writing within three **months** of the date of release (unless you or any **guarantor** was aware of the mistake at the time of the release), or if you can show that you have changed your financial position to your disadvantage, as a result of the error, at a time when you were not aware of it.
- 4.7. The terms on which we may allow you to -
 - (a) postpone or pay reduced **monthly payments**;
 - (b) increase the **borrower's indebtedness** (whether by means of a **further loan** or otherwise); or
 - (c) offset any of your savings account balances against the **borrower's indebtedness** for the purpose of determining the amount of interest you have to pay;

will be as set out in the **offer** or as agreed by us from time to time.

- 4.8. We will use any payments you make to us or we otherwise recover under the **mortgage** in the following way. First, we will use them towards payment of any arrears of **monthly payments**. Any balance will be used towards payment of any interest you owe and any outstanding **expenses** or **charges**, in such order as we may decide. Any remaining balance after that will be used to reduce the principal amount of the **loan**. If a **receiver** is appointed, his remuneration and all costs and expenses of and incidental to his and her appointment will be discharged as the first priority.
- 4.9. We may place any payments you make to us or otherwise received by us or the **receiver** under the **mortgage** in an interest-bearing suspense account and keep there for so long as we or the **receiver** considers prudent.

5. Interest

- 5.1. We will charge interest on the **borrower's indebtedness** at the **interest rate**. The interest rate is an annual rate (unless the **offer** states otherwise). The interest rate charged will be as set out in the **offer** and in the case of variable rates, will vary from time to time. Notwithstanding everything else in these Conditions under no circumstances will the interest rate be less than any applicable **minimum interest rate**.
- 5.2. Interest will be calculated on a daily basis from the day we debit the **mortgage account** or, in the case of **expenses** we incur (including any charge by way of fee) and so debited, from the first day of the following month and is payable as part of the **monthly payments**. Each **monthly payment** will be calculated on the basis of one-twelfth of a **year**, and not on the basis of the exact number of days in a particular **month**.
- 5.3. In calculating your interest on this basis, we therefore take account of the following –
- (a) the amount of your **loan** (or **further loan**) and the date in the **month** on which it is first made;
 - (b) the balance of your **loan** (or **further loan**) outstanding at the end of each **month**;
 - (c) the amount and date of all payments made each **month** to reduce the **capital** of your **loan** or **further loan**;
 - (d) the amount of any interest due from you but not paid at the end of the previous **month**;
 - (e) any **expenses** or **charges** due from you and remaining unpaid, which are dealt with in **conditions 27 and 28**.

5.4. We may at any time change the method by which we calculate and charge interest by giving you personal notice. The alteration will apply from the date stated in the notice, which will not be earlier than 10 days after the date we issue the notice. We may make the alteration for any of the following reasons (or a combination of one or more reasons) where those circumstances apply at the time or where we reasonably anticipate they will apply in the near future: -

- (a) to respond to a change in the mortgage market generally, mortgage interest rates charged by other UK lenders or mortgages similar to yours;
- (b) to respond to a change in the costs or interest rates of our funding from other commercial lenders or from Bank of England facilities (or the rates we offer to customers on our deposit accounts);
- (c) to respond to a change in our costs incurred by us in providing the mortgage (including, but not limited to our administration or operating costs, or regulatory or compensation scheme levies and charges);
- (d) to respond to an increased cost or risk incurred by us as a result of any change of use of the property or its occupation (for example, if the property is let);
- (e) to maintain a prudent level of stability and financial strength in the interests of our members, investors, depositors, other borrowers and stakeholders in our business as a whole;
- (f) to respond to an increased risk of shortfalls or defaults on the accounts of mortgage borrowers (whether generally or our mortgage borrowers only);
- (g) to respond to changes in the law or the decisions of a court or ombudsman;
- (h) to respond to changes to our relevant regulatory requirements;
- (i) to respond to new or amended statements or codes of practice applicable to our business; or
- (j) where it is reasonable for us to conclude that the alteration will not be to your disadvantage.

Any change that we make under this **condition 5.4** will be proportionate to the reason(s) we have for making the change.

5.5. Interest will continue to be charged at the **interest rate**:

- (a) even if we get a court order against you for payment of some or all of the **money you owe us**; and
- (b) if the **repayment period** ends before you have repaid all of the **money you owe us**.

6. Changing the interest rate

- 6.1. Where the **offer** specifically provides for a reduction in the **interest rate** at the end of a particular period, we will reduce the rate at that time provided you have complied with all the terms of the **offer**, the **mortgage** and these **conditions**.
- 6.2. Where the **offer** specifically provides for an increase in the **interest rate** at the end of a particular period, we will increase the rate automatically at that time.
- 6.3. The remaining paragraphs of this **condition** apply to changes in the **interest rate** where we are free to vary it in accordance with these **conditions**.
- 6.4. We may reduce the **interest rate** at any time without advance notice, but we will give you personal notice of the reduction at the earliest opportunity after it has been made.
- 6.5. We can also increase the **interest rate** for any of the following reasons (which may relate to circumstances existing at the time or those which we reasonably anticipate will apply in the near future): -
 - (a) to respond to a change in the mortgage market generally, mortgage interest rates charged by other UK lenders or mortgages similar to yours;
 - (b) to respond to a change in the costs or interest rates of our funding from other commercial lenders or from Bank of England facilities (or the rates we offer to customers on our deposit accounts);
 - (c) to respond to a change in our costs incurred by us in providing the mortgage (including, but not limited to our administration or operating costs, or regulatory or compensation scheme levies and charges);
 - (d) to respond to an increased cost or risk incurred by us as a result of any change of use of the property or its occupation (for example, if the property is let);
 - (e) to maintain a prudent level of stability and financial strength in the interests of our members, investors, depositors, other borrowers and stakeholders in our business as a whole;
 - (f) to respond to an increased risk of shortfalls or defaults on the accounts of mortgage borrowers (whether generally or our mortgage borrowers only);
 - (g) to respond to changes in the law or the decisions of a court or ombudsman;
 - (h) to respond to changes to our relevant regulatory requirements;
 - (i) to respond to new or amended statements or codes of practice applicable to our business; or
 - (j) for any other reason set out specifically in the offer.

Any change that we make under this **condition 6.5** will be proportionate to the reason(s) we have for making the change.

- 6.6. This paragraph applies if we wish to increase or reduce the **interest rate** at a time when the **offer** allows us to charge you an **early repayment charge** on repaying the whole of the **money you owe us**. In such a case, we will only change the **interest rate** by the same amount and with effect from the same date as we do for all our other **borrowers** with similar mortgages who are not subject to the **early repayment charge**.
- 6.7. We will give you a minimum of 10 days' notice of a change under **condition 6.5** before it takes effect.
- 6.8. We will give you notice of a change in the **interest rate** by either posting it to you or delivering the notice to you under **condition 13**.

7. Changing the monthly payment

- 7.1. We may change the **monthly payment** for the reasons given at **condition 7.2** by giving you a minimum of 10 days' notice prior to a change in the **monthly payment**.
- 7.2. We may change the **monthly payment** for any of the following reasons -
- (a) to reflect a change in the **interest rate** under the **offer** or **condition 6**;
 - (b) to provide for the repayment of any **further loan** we make to you;
 - (c) to provide for the repayment of any **expenses** which become due under **condition 27**;
 - (d) to provide for the payment of any **charges** which become due under **condition 28**;
 - (e) to take account of any repayments of capital which you make other than as part of your **monthly payment**;
 - (f) to reflect the introduction or cancellation of any **interest-only scheme**;
 - (g) to reflect any overpayments made by you that have reduced the **mortgage debt**;
 - (h) if we need to provide for any other matter to ensure -
 - (i) that the **borrower's indebtedness** is repaid by the end of the **repayment period**; or
 - (ii) that, if different **repayment periods** apply to different parts of the **borrower's indebtedness**, each part is repaid by the end of the **repayment period** which applies to it.

Any change that we make under this **condition 7.2** will be proportionate to the reason(s) we have for making the change.

- 7.3. We will review your account annually to determine whether the **monthly payment** should be changed under **conditions 7.1 and 7.2(c)** to provide for repayment of any **expenses**.

- 7.4. We will not include any arrears balance in the recalculation of the **monthly payment** following any of the events listed at **condition 7.2 (a) – (g)**. Instead, you are required to contact us to make a separate arrangement to ensure that any arrears balance (which will attract interest at the **interest rate**) is repaid within a reasonable timeframe. You should make contact with us to make this separate arrangement as soon as the **mortgage** falls into arrears.
- 7.5. **Charges and expenses**, including those incurred due to arrears, are included in the recalculation of the **monthly payment**.
- 7.6. We may change the payment day from time to time for any of the following reasons:
- (a) to accommodate changes in technology or our systems; or
 - (b) to accommodate the technology or systems of a transferee.

We will tell you of the change in one of the ways set out in **Condition 6.8**. The notice will be given a reasonable amount of time before the change takes effect and this will be at least 30 days.

- 7.7. You can change the payment day if we agree. We will act reasonably in considering such a request from you.
- 7.8. **Other Charges and Additional Costs**

In the event of any change in the requirements of law, the Bank of England or any other competent regulatory authority the decisions of which are binding on or observed by us (whether or not having the force of law) the result of which is, in the reasonable opinion of **the Society**, to increase the cost to us of making available the **loan** (including any amounts which have not been drawn) or to reduce our return on the **loan** then the **borrower** will repay to us such sum as we may notify to the **borrower** by way of compensation. Such amount will be payable forthwith by the **borrower** on receipt of our notification save that we may elect to defer any such payment or to recover any such payment or to recover any such amount by increasing the interest rate.

8. Conditions contained in the offer

- 8.1. This **condition** applies if the **offer** contained any general or special conditions telling you what will happen, or what you must do, in particular circumstances following **completion** of the **mortgage**.
- 8.2. In relation to any such conditions (and whether or not they are specifically referred to in these **conditions**), you must -
- (a) follow all the requirements;
 - (b) take all the steps; and
 - (c) meet all the necessary time-limits;
- set out in them.

9. Early repayment and overpayments

You may make early repayment of all or part of the **mortgage debt** or make overpayments at any time before the end of the term. The **offer** describes whether any **early repayment charge** will be payable.

10. Redemption of prior security interests

We may at any time redeem, or procure the transfer to it of, any prior interest (regardless of whether it is held by us) secured over any property at the borrower's cost. All principal monies, interest, costs, charges and expenses incurred in and incidental to any such redemption or transfer under shall be paid by the borrower on demand, in each case together with interest calculated in the manner referred to in condition 5.

11. Indemnity

11.1. The **borrower** will indemnify (and keep indemnified) **the Society** and any **receiver** on written demand against any loss or expense, including legal fees, which we and/or the **receiver** sustain or incur as a consequence of:

- (a) any event of default;
- (b) redeeming of any prior interest secured over any **property**; or
- (c) any payment being received other than on its due date and in accordance with the provisions of the **offer**;

together each case with interest at the **interest rate** calculated on a daily basis from the date it is incurred or becomes payable to us or the Receiver until the date of payment, whether before or after any judgment. The **borrower's** liability in each case includes any loss or expense on account of funds borrowed, contracted for or utilised to fund any amount payable in respect of the **loan** (or part thereof).

11.2. If an **event of default** or a **potential event of default** occurs then (while it is continuing unwaived) we shall be entitled to initiate an investigation of, and/or instruct the preparation of a report (accounting, legal, valuation or otherwise including, without limitation, a **valuation**) on, the business and affairs of the **borrower** which we consider necessary to ascertain the financial position of the **borrower**, all fees and expenses incurred by us in so doing being payable by the **borrower**.

12. Illegality

If, in the opinion of the **Society**, the introduction of any law or regulation or change in its interpretation, makes it unlawful for us to maintain all or any part of the **loan** or carry out all or any of its obligations in relation to them then we will serve notice to that effect on the **borrower** and that notice will release us from those obligations. The **borrower** will then repay to **the Society** (on its demand or on such later date as we reasonably specify) the **loan** together with any other sums payable to us under the notice served.

13. Demand and notice

- 13.1. If we have to serve on you a letter or other document under this **mortgage** it will be in writing and sent to your registered address or other address last known to us.
- 13.2. If we send a notice in the post, we can assume you have received it by the time specified in the **Society's rules** or, if the **rules** no longer apply, 48 hours after we have posted it regardless of the class of post used.
- 13.3. If there is more than one of you, then if you share the same address, we will send a single copy of the notice addressed to both or all of you as appropriate. If you have different addresses, we will send a copy of the notice to each address shown on our records.
- 13.4. In these **conditions** a reference to "personal notice" means a letter or (if you have agreed with us that we are to contact you in this way) email or other forms of electronic communication.

14. Representations and warranties

The **borrower** represents and warrants to **the Society** on accepting a **loan** as follows:

- 14.1. It is duly incorporated and/or validly existing under the laws of the jurisdiction of its incorporation or formation;
- 14.2. It has its centre of main interests (for the purposes of the **EUR**) in the United Kingdom and has no "establishment" (as that term is used in Article 2(h) of the **EUR**) in any jurisdiction outside the United Kingdom;
- 14.3. The **borrower's** obligations under these **conditions** constitute valid, legal and binding obligations of the **borrower**, are enforceable against the **borrower** in accordance with their terms and will not cause the **borrower** to exceed its powers, nor to violate any law or regulation, to which it is subject, or any agreement to which it is a party;
- 14.4. No **event of default** has occurred and is continuing and the entry into and performance of this letter will not constitute a default under any legally binding obligation of the **borrower**;

- 14.5. The latest **financial statements** give a true and fair view of the financial position of the **borrower** for the period to which they relate and there has been no material adverse change in the financial position since the end of such period;
- 14.6. There exists no mortgage, charge, lien or other encumbrance over the whole or any part of the undertaking or assets of the **borrower**, and the **borrower** has no **borrowings** other than from **the Society**, save in each case for those which have been expressly disclosed in writing to us prior to the **borrower's** acceptance of the **loan**;
- 14.7. No litigation, arbitration or similar proceedings are pending, presently taking place, or threatened against the **borrower** which might have a material adverse effect on its assets or the **borrower's** ability to perform its obligations hereunder;
- 14.8. There is not to the knowledge of **you** or **your** directors, secretary or other officer or manager any pending or threatened litigation or any proceedings against **you** the outcome of which might seriously affect the continued operation of **your** business or **your** solvency; and
- 14.9. (If applicable) the signatory(ies) of the **offer** of **loan** has/have been duly authorised to act on its behalf;
- 14.10. It is not in default of any agreement to which it is a party;
- 14.11. It is up to date with the payment of all Taxes;
- 14.12. All information furnished by the **borrower** to the **Society** in connection with the negotiation of the Loan was and remains true and accurate in all respects and does not omit any fact thereby rendering misleading any statement contained therein;
- 14.13. It holds all licences and consents (including environmental) necessary for the ownership of its property and to conduct its business and has complied in all material respects with those licences and consents and with any environmental laws applicable to its business;
- 14.14. No substances capable of causing harm to man or any other living organism or damaging the environment have been used, disposed of or released at or from any property owned or occupied by the **borrower** or (to the best of the **borrower's** knowledge) from any adjoining property which, in either case, is likely to result in a liability which might have a material adverse effect on its assets or its ability to perform its obligations hereunder;
- 14.15. It is either owner or licensee of all intellectual property rights used in its business and use of them does not infringe any third-party rights;
- 14.16. The **property** (or any other asset in respect of which **we** hold security) is not subject to any mortgage charge or lien (except a lien arising by operation of law in the ordinary course of business or a mortgage or charge previously disclosed and consented to in writing to us) in favour of anyone other than us;

- 14.17. The **property**, on completion of any approved construction, renovation, conversion or other material alterations as detailed in the **offer of loan**, is in good repair and condition free from any structural, latent or other defect and the need for any unusual or major repair work has not been identified and is not currently envisaged; and
- 14.18. It has not received any adverse surveyors', engineers' or other professional reports or advice in respect of the **property** which might reasonably be expected to have a material adverse effect.

The above representations and warranties will be deemed to be repeated by the **borrower** on the day before any drawing is made under the **loan** and on each date upon which interest falls due for payment under the terms of the **offer**.

15. General covenants

The **borrower** will, whilst the **loan** or any part thereof remains to be repaid (save where **the Society** agrees in writing to the contrary):-

- 15.1. not without the express prior written consent of **the Society** create any mortgage, charge, pledge, lien, encumbrance or security interest whatsoever over the whole or any part of its undertaking or assets, present or future (including uncalled capital);
- 15.2. ensure that its obligations in respect of the **loan** and the **security** at all times rank ahead of all of its other **borrowings** unless statutorily preferred;
- 15.3. give us notice in writing immediately upon becoming aware of the occurrence of any **event of default** or **potential event of default**;
- 15.4. not, without our express prior written consent, acquire, merge or dispose of the whole or any substantial part of its business or assets, or to make any material change in the nature of its business which would materially alter the nature of the business;
- 15.5. note that, we may, from time to time, and no more often than every 3 years, at our option, require assets charged to Ecology by the borrower to be revalued by an independent professional valuer acceptable to us.
- 15.6. insure and keep insured its assets and the **property** in such manner as accords with good industry practice and shall pay the premiums as they become due and shall provide us with a copy of the relevant policies and insurance premium receipt upon request;
- 15.7. maintain its assets in good and marketable condition;
- 15.8. continue to pay all of its UK **Taxes**, unless contested in good faith;
- 15.9. comply with all environmental laws applicable to its operations and obtain from the appropriate authorities all environmental consents required in respect thereof;

- 15.10. advise us in writing promptly of any litigation, arbitration or similar proceedings are pending, presently taking place, or threatened against the **borrower** which might have a material adverse effect on its assets or the **borrower's** ability to perform its obligations hereunder;
- 15.11. take whatever steps and execute whatever documents we may reasonably require in order to give effect to the **security**;
- 15.12. comply with all laws and regulations and promptly give to us a copy of any notice concerning compliance with them;
- 15.13. preserve and defend its intellectual property rights and observe all covenants and stipulations affecting them;
- 15.14. maintain its "centre of main interests" for the purposes of the **EUIR** in the United Kingdom at all times;
- 15.15. not lend or give credit to or indemnify or guarantee any other person(s) save in the ordinary course of its business;
- 15.16. not alter the accounting principles and practices applied in its Financial Statements (unless to comply with laws or on the advice of its auditors or accountants (as the case may be));
- 15.17. not enter an arrangement for finance not shown in its balance sheet as **borrowings**; and
- 15.18. comply with the terms of the **security**.

16. Property covenants

16.1. Occupational Leases

(a) The **borrower** must not without the **Society's** prior written consent:

- (i) enter into any agreement for lease or grant or permit the assignment of any occupational lease provided that in the case of an assignment of an occupational lease, we shall not unreasonably withhold consent where the **borrower** is under an obligation not to do so under such occupational lease; nor
- (ii) determine, vary or accept the surrender of any lease; nor
- (iii) agree to any downward rent reviews in respect of any lease,

provided that:

(A) the **borrower** may, without the prior written consent of Ecology, grant an occupational lease of the **property** which is due to expire within the following six months on normal commercial terms,

provided further that the **borrower** shall not be permitted to exercise its rights under any of provisions of paragraph (A) above if an **event of default** is outstanding or would occur as a result of any such exercise by the **borrower**.

16.2. Insurance

- (a) The Borrower shall ensure that at all times from the date of the **offer** letter:
- (i) insurance of the **property** and the plant and machinery on the **property** (including fixtures and improvements) on a full reinstatement basis, including site clearance, professional fees, VAT, subsidence and, if required by **the Society**, not less than three years' loss of rent on all occupational leases;
 - (ii) third party liability insurance;
 - (iii) insurance against acts of sabotage including any third-party liability arising from such risks; and
 - (iv) such other insurance as a prudent company in the same business as the **borrower** would effect,
- is in force in an amount, form, and with an insurance company or underwriters, acceptable to **the Society**.
- (b) All insurances required under this paragraph must be:
- (i) in an amount and form acceptable to us; and
 - (ii) with an insurance company or underwriter that is acceptable to us.
- (c) The **borrower** shall use its best endeavours to ensure that we receive any information in connection with each insurance policy (including copies of each insurance policy) which we may reasonably require.
- (d) The **borrower** must notify us of any renewal and variation, or cancellation of any insurance policy made or, to the knowledge of the Borrower, threatened or pending.
- (e) The **borrower** must not do or permit anything to be done which may make void or voidable any insurance policy.
- (f) The **borrower** must ensure that:
- (i) each premium for insurance is paid promptly and, in any event, at least five **Working Days** prior to the commencement of the period of insurance for which that premium is payable;
 - (ii) all other things necessary to keep each insurance policy in force are done; and
- (g) If the **borrower** fails to comply with any of its obligations under this paragraph, we may (but shall not be obliged to), at the expense of the **borrower**, effect any insurance on behalf of **the Society** (and not in any way for the benefit of the **borrower**) and take such other action as we may reasonably consider necessary or desirable to prevent or remedy any breach of this paragraph.

- (h) Except as provided in the following provisions of this sub-paragraph (i), the proceeds of any insurance policy must, if we so require, be used to prepay the **loan**. To the extent required by an insurance policy, or lease, the **borrower** may if no **event of default** is continuing apply all moneys received under any insurance policy in respect of the **property** towards replacing, restoring, or reinstating the **property**. Where the proceeds of third-party liability insurance are with respect to the liabilities of the **borrower** to a third party, those proceeds may be paid to that third party.

16.3. Protection of Interest in Property

- (a) The **borrower** shall:
- (i) keep or procure to be kept:
 - (A) the Property in good and substantial repair and condition and adequately and properly painted and decorated; and
 - (B) all of its other assets (if any) in good and substantial repair and in good working order and condition, ordinary wear and tear excepted;
 - (ii) comply in all material respects with the terms of all applicable laws and regulations including (without limitation) all legislation relating to public health, town & country planning, building control, fire precautions and health and safety at work;
 - (iii) promptly notify the **Society** of the acquisition by the Borrower of any estate or interest in any freehold or leasehold property;
 - (iv) promptly pay or cause to be paid and indemnify **the Society** and any **receiver** against all present and future rent, rates, taxes, duties, charges, assessments, impositions and outgoings whatsoever now or at any time in the future payable in respect of the Property (or any part thereof) or by the owner or occupier thereof;
 - (v) not make any structural or material alteration to or to the user of the Property or any part of the Property or do or permit to be done anything which is a "development" within the meaning of any legislation relating to planning permission from time to time (or any orders or regulations under such legislation) or make or permit others to make any application for planning permission in respect of the Property or any part of the Property or do or permit to be done any act, matter or thing where to do so would have a material and adverse effect on the value of the Property or on the marketability of the Property;
 - (vi) not do or knowingly permit to be done any act as a result of which any head lease pursuant to which the Property is held and/or any occupational lease to which the Property is subject from time to time may become liable to forfeiture or otherwise determined;

- (vii) observe and perform all covenants, agreements and stipulations from time to time affecting its interest in the Property or contained in any lease or agreement under which any part of the Property may be held or is subject to;
- (viii) not allow any person other than itself to be registered under the Land Registration Act 2002 as proprietor of the Property (or any part thereof) or create or permit to arise any overriding interest (as specified in Schedule 1 or Schedule 3 to the Land Registration Act 2002) affecting the Property (or any part thereof);

We will not unreasonably refuse a request from you to do something under **condition 16.3**, but we may require a **charge** or additional interest to be paid as a condition of giving our consent. The amount of any **charge** may be set out in the **tariff**. We will set the amount of any **charge** not set out in the **tariff**, and any additional interest we require you to pay, at a level which is proportionate having regard to any additional costs we will (or are likely to) incur and any new or increased risks to the **property**.

16.4. This paragraph applies if you receive a notice or order which affects the **property** from any statutory authority or from anyone claiming to exercise a statutory right over the **property**. Where this paragraph applies, you agree to -

- (a) send us a copy of the notice or order within 14 days of receiving it;
- (b) give us written notice of any steps which you intend to take in response to the notice or order;
- (c) make any reasonable representations about the notice or order which we ask you to make.

16.5. Conduct of the development

Where the **offer** indicates that the **loan** is provided to finance a **development**, in addition to your other obligations you must:

- (a) co-operate with our monitoring surveyor and deliver to him any information about the **development** and its conduct required in order to complete all reports required to be supplied to us;
- (b) supply us with such additional information and/or updates about the progress of the development as **we** require from time to time;
- (c) take all steps to procure that the building contractor and all other parties to the **building contract** and other documents relating to the development comply in full with their obligations thereunder and in particular ensure that the **development** is completed in accordance with the programme and to the costings approved by our monitoring surveyor;
- (d) comply in full with your obligations under the **building contract** and all documents relating to the **development** and not modify, vary, release or waive the same without our prior written consent;

- (e) promptly notify us about any material events affecting the conduct of the **development** and/or likely to delay its implementation or affect its cost or adversely affect its completed value;
- (f) promptly enter into any agreements or bonds with highway and other authorities or other persons required for the conduct of the **development** in a form approved by **us**;
- (g) procure the grant to us of any licences or rights to use and produce any drawings or designs relating to the development which we may require (whether created by you or by any other person); and
- (h) generally conduct the **development** in an efficient and professional manner, in accordance with all legal requirements and as a prudent, efficient and professional developer.

17. Leasehold property

- 17.1. This **condition** applies if you hold the **property** under a lease.
- 17.2. You must -
 - (a) pay the rent due under the lease on time;
 - (b) keep to all the tenant's obligations under the lease;
 - (c) if asked, show us receipts for the rent and other sums payable under the lease.
- 17.3. Our security includes any of the following interests which you acquire -
 - (a) a new or extended lease of the **property**;
 - (b) an interest in the freehold of the **property** or in the freehold of any building which includes the **property**.
- 17.4. If you acquire an interest mentioned in **condition 17.3**, you agree to do the following no later than one **month** after completing the acquisition -
 - (a) deliver the title deeds for the interest to us;
 - (b) if asked, grant us a mortgage of the interest in a form approved by us.

18. Your power to grant leases

- 18.1. These **conditions** exclude your statutory power -
 - (a) to grant a lease of the **property** or agree to grant one;
 - (b) to allow anyone to surrender a lease of the **property**.
- 18.2. If you wish to grant a lease or tenancy of the **property**, or to agree to any changes affecting the same, then unless the **offer** sets out the terms on which you may do so, you must first get our written consent.

19. Financial information and financial covenants

- 19.1. The **borrower** covenants that for so long as the **loan** is outstanding it will supply to **the Society**:
- (a) within 28 calendar days before the commencement of each financial year of the **borrower**, its budget for that period (including profit (or, as the case may be, surplus) and loss account, balance sheet, cash flow forecasts and projected capital expenditure);
 - (b) within 270 calendar days of the end of each financial year of the **borrower**, its **financial statements** for that period (including a cash flow statement), prepared in accordance with generally accepted account principles and practices in the UK; and
 - (c) such further financial information as we may from time to time reasonably require.
- 19.2. The **borrower** covenants that it will promptly provide to **the Society** such documentation and/or information as we may request from time to time in relation to it (or any other person connected with it) in order for us to comply with any law, regulation or guidelines applicable to it from time to time (including, without limitation, any anti-money laundering or “know your customer” rules).

20. Events of default

- 20.1. An **event of default** occurs where: -
- (a) the **borrower** fails to make any payment in full when due under the **Offer of Loan Agreement** with us unless the failure to pay is caused by administrative or technical error and payment is made within 2 business days of its due date;
 - (b) the **borrower** fails to perform and observe any of its other obligations under the Agreement with us and if such failure is capable of remedy it is remedied within 10 business days of **the Society** giving notice to the **borrower** or the **borrower** becoming aware of the failure to perform or comply;
 - (c) (if the **property** is a leasehold property) the borrower fails to perform and observe any of its obligations in the underlying lease;
 - (d) any representation or warranty made by the **borrower** for the purpose of inducing us to make available the Loan, or when repeated in accordance with the **loan** is or becomes incorrect in any material respect;

- (e) the **borrower** ceases or threatens to cease to carry on its business or a significant part of it (except as part of a solvent reconstruction approved by Ecology) or is unable or admits an inability to pay its debts (owing to us or otherwise) as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with its creditors as a whole with a view to rescheduling any of its indebtedness;
- (f) a moratorium is declared or takes effect in respect of any indebtedness of the **borrower**;
- (g) any corporate action, legal proceedings or other procedural step is taken, or notice given, in relation to:
 - (i) a winding-up, dissolution, administration of, or the appointment of an administrator or **receiver** to, the **borrower** (provided that in the case of a winding up petition issued by a creditor this subparagraph (i) shall not apply if the petition is in the opinion of the **borrower** vexatious or frivolous and the petition is discharged stayed or dismissed within 10 Business Days of issue by the creditor); or
 - (ii) a composition, assignment or arrangement with any creditor of the **borrower**; or
 - (iii) any attachment, distress, diligence, arrestment, execution or other legal process is levied, enforced or sued against the **borrower** or its assets or any person validly takes possession of any of the property or assets of the **borrower** or steps are taken by any person to enforce any **security** right against any of the property or assets of the **borrower** (provided that in the case of a winding up petition issued by a creditor this subparagraph iii shall not apply if the petition is in the opinion of the **borrower** vexatious or frivolous and the petition is discharged stayed or dismissed within 10 Business Days of issue by the creditor); or
 - (iv) the appointment of a provisional liquidator, a liquidator, **receiver** (of any sort), administrator, compulsory or interim manager or other similar officer in respect of the **borrower**; or
 - (v) any analogous procedure or step is taken in any jurisdiction;
- (h) if the **borrower** is an **individual**, any application is made to a court for an interim order under Part VIII of the Insolvency Act 1986, or a meeting is convened of, or any arrangement, scheme, compromise, moratorium or composition entered into with, any of his creditors (whether under Part VIII of the Insolvency Act 1986 or otherwise), or a bankruptcy petition is presented against him or her or he or she is adjudged bankrupt (whether in England or elsewhere) or has a **receiver** appointed in respect of his or her property or assets or any part of it or any expropriation, attachment, sequestration, distress or execution affects any of his or her assets, or any analogous procedure or step is take in any jurisdiction;

- (i) the **borrower** (being an **individual**) dies or becomes mentally incapable of conducting his or her business affairs;
- (j) the **borrower** does not comply with regulations or the law applicable to its business or with environmental law or licences or any litigation or other proceedings, including any proceedings concerned with liability for contamination or pollution, are commenced or threatened against the **borrower** which in each case, in the reasonable opinion of **the Society**, may materially adversely affect the ability of the **borrower** to perform its obligations to us;
- (k) a notice has been served on the **borrower** notifying the owner of the **Property** that the **Property** is to be compulsorily purchased or acquired (other than any minor part which does not affect the value of the remaining **Property**) or is materially damaged or destroyed;
- (l) There occurs in relation to any person other than the **borrower** which has granted any security or guarantee in favour of **the Society** in support of the **borrower's indebtedness**, any of the circumstances referred to in paragraphs (e) to (i) inclusive of this schedule;
- (m) the **borrower**, or any of its subsidiaries, sells, transfers or otherwise disposes of the whole or a substantial part of its undertakings or assets without the prior written consent of **the Society**;
- (n) a **change of control** occurs without our prior written consent;
- (o) any **security** is withdrawn or proves to be unenforceable in whole or in part, or where we consider that such **security** is insufficient or inadequate and the **borrower** when requested fails to provide replacement or additional **security** to our satisfaction;
- (p) any part of this letter or any **security** ceases to be legal or effective (or the **borrower** so alleges) or any consent required to enable the **borrower** to perform its obligations under this letter or any **security** ceases to have effect;
- (q) any licence, authority, permit, consent, agreement or contract which is material to the business from time to time of the **borrower** or the construction and completion of a development is terminated, withheld or modified which in the opinion of **the Society**, may materially adversely affect the ability of the **borrower** to perform its obligations to us; or
- (r) a material adverse change occurs in the financial condition, results of operations or business of the borrower which **we** reasonably believe might adversely affect the **borrower's** ability to perform their obligations to us;
- (s) any other event occurs which the **borrower** has agreed in writing with us makes the security enforceable;
- (t) the **property** is sold, abandoned or compulsorily purchased.

- 20.2. If an **event of default** occurs and is continuing, we may by notice to the **borrower**: -
- (a) cancel any outstanding commitment on its part under the **loan**; and/or
 - (b) declare that all or part of the **loan** and the other **borrower's indebtedness** be immediately due and payable whereupon they shall become immediately due and payable;
 - (c) take any step to enforce the **security**, or exercise any other right available to us; and/or
 - (d) increase the interest rate, payable in respect of the **loan**, such interest to be paid monthly in arrears and if not paid will bear interest itself at the same rate.
- 20.3. If an event of default occurs and is continuing, we may also:
- (a) require **you** to leave the property so that we may take possession of the property or, if the property is let, collect the rent;
 - (b) sell, agree to sell, or grant an option over the **property** and any other security for the **mortgage debt** on any terms we reasonably decide, using the power of sale conferred by the LPA as varied by these Conditions. The restrictions on the power of sale in Section 103 of the LPA will not apply;
 - (c) appoint a **receiver(s)**;
 - (d) (if you are a limited company) appoint an administrator;
 - (e) exercise all the other powers conferred on mortgagees by the LPA or by a **receiver** under these **conditions**;
 - (f) vary, end, renew or accept surrenders of leases or tenancies of the **property** with or without a premium or other compensation or consideration including the payment of money to a lessee or tenant on a surrender of any rights relating to other parts of the **property** containing any covenants on the part of us or anyone else generally on terms which we think fit;
 - (g) make any arrangements or compromises about any lease of the **property**, any other **security** for the **mortgage debt**, any covenants, conditions or restrictions relating to the property or anything else;
 - (h) grant or agree to grant a lease or tenancy of the whole or any part of the **property** (and the restrictions on granting leases in Section 99 of the LPA do not apply to us);
 - (i) carry out repairs, improvements, alterations or additions to the **property**;
 - (j) apply for any planning and other consents;

- (k) at **your** cost (and as your agent only if you are not a limited company but under any floating charge if you are and the goods in question are yours) remove, store, sell, rent or in any other way deal with any of your furniture or goods or those of any other person staying in the **property** after we have given written notice to you requiring them to be removed. We will not be responsible for any loss or damage caused by exercising this power unless we failed to take reasonable care in dealing with the furniture or goods;
- (l) require **you** to indemnify us, on demand, against all losses, costs, **expenses** or liabilities we incur as a result of the occurrence of the event; and
- (m) require **you** to make such regular **monthly payments** of capital and or interest as we determine is appropriate to protect us as a prudent lender in place of your current payment terms.

21. Receiver

- 21.1. We may from time to time remove any **receiver** appointed by us (subject, in the case of an administrative receivership, to section 45 of the Insolvency Act 1986) and, whenever it may deem appropriate, may appoint a new **receiver** in the place of any **receiver** whose appointment has terminated.
- 21.2. If at any time there is more than one **receiver** of all or any part of the **property** and/or the income of the **property**, each **receiver** shall have power to act individually (unless otherwise stated in the appointment document).
- 21.3. Any **receiver** shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and us (or, failing such agreement, to be fixed by us) and section 109(6) of the **LPA** shall not apply. The remuneration of any **receiver** shall be payable by the **borrower** and shall form part of the **borrower's indebtedness**.
- 21.4. Any **receiver** shall be the **borrower's** agent and the **borrower** shall (subject to the Companies Act 2006 and the Insolvency Act 1986) be solely responsible for his acts and defaults and for the payment of his remuneration. We shall not incur any liability (either to the **borrower** or to any other person) by reason of the appointment of a **receiver** or for any other reason.
- 21.5. Any **receiver** shall have:
 - (a) all the powers which are conferred by the **LPA** on mortgagees in possession and receivers appointed under the **LPA** but without the restrictions contained in sections 103 or 109(1) of that **LPA**;
 - (b) (whether or not he is an administrative receiver) all the powers which are listed in schedule 1 of the Insolvency Act 1986;
 - (c) all powers which are conferred by any other law or regulation conferring power on receivers;

- (d) the following additional powers:
- (i) to take possession of, collect and get in all or any part of the **property** and/or income in respect of which he was appointed;
 - (ii) to manage the **property** as he thinks fit;
 - (iii) to redeem any interest secured in respect of the **property** and to borrow or raise any money and secure the payment of any money in priority to the **borrower's indebtedness** for the purpose of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;
 - (iv) to sell or concur in selling, leasing or otherwise disposing of all or any part of the **property** in respect of which he was appointed without the need to observe the restrictions imposed by section 103 of the **LPA**, and, without limitation:
 - (A) fixtures may be severed and sold separately from the **property** containing them, without the **borrower's** consent;
 - (B) the consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration (and the amount of such consideration may be dependent upon profit or turnover or be determined by a third party); and
 - (C) any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit;
 - (v) to alter, improve, develop, complete, construct, modify, refurbish or repair any building or land and to abandon, complete or undertake or concur in the completion or undertaking (with or without modification) of any **building contract** in which the **borrower** was concerned or interested before his appointment;
 - (vi) to carry out any sale, lease or other disposal of all or any part of the **property** by conveying, transferring, assigning or leasing the **property** in the **borrower's** name and, for that purpose, to enter into covenants and other contractual obligations in the **borrower's** name and so as to bind it;
 - (vii) to take any such proceedings in the **borrower's** name as he shall think fit in respect of the **property** and/or income in respect of which he was appointed (including proceedings for recovery of rent or other monies in arrears at the date of his appointment);
 - (viii) to exercise any voting rights attached to any of the **property**;
 - (ix) to enter into or make any such agreement, arrangement or compromise as he shall think fit;
 - (x) to insure, and to renew any insurances in respect of, the **property** as he shall think fit (or as directed by us);

- (xi) to appoint and employ such managers, officers and workmen and engage such professional advisers as he shall think fit (including to employ any firm, partner, company or other entity with which he is associated);
- (xii) to form one or more subsidiaries of the **borrower** (if it is a company) and to transfer to any such subsidiary all or any part of the **property**;
- (xiii) to operate any rent review clause in any lease under which the **property** is held in respect of which he was appointed and to apply for any new or extended lease; and
- (xiv) to:
 - (A) give valid receipts for all monies and to do all such other things as may seem to him to be incidental or conducive to any other power vested in him or necessary or desirable for the realisation of any **property**;
 - (B) exercise in relation to each **property** all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the **property**; and
 - (C) use the **borrower's** name for any of the above purposes.

21.6. We may limit the powers of the **receiver** in the appointment documents which appoint him to be the **receiver**.

22. Special terms – charity borrowers

The following conditions are to apply and to supplement the terms and conditions detailed in these **conditions**: -

- 22.1. In addition to the **events of default**, as specified in **condition 20**, it shall be considered an **event of default**:
 - (a) if **the Society** in its discretion considers that the **borrower** is no longer entitled or eligible to charitable status;
 - (b) if the **borrower** ceases to be a registered charity; or
 - (c) if an inquiry is instituted by the Charity Commission under Section 46 of the Charities Act 2011.

23. Environmental risk

- 23.1. The **borrower**, by accepting the terms of these conditions, warrants and represents to **the Society** that the **borrower** is in full compliance with all applicable current laws, regulations and practices relating to the protection of the environment from pollution (the “environmental responsibility”) and is not aware of any circumstances which may prevent full compliance in the future.

- 23.2. The **borrower** shall indemnify **the Society** (and any **receiver** appointed by Ecology) and their respective employees, agents and officers (the "indemnified persons") against all costs, claims, expenses and liabilities (the "claims") of whatever kind incurred by any indemnified persons arising out of or in connection with (directly or indirectly) breach or alleged breach of the environmental responsibility.

24. Transfer of the mortgage

- 24.1. We may transfer, charge or otherwise dispose of, at law and/or in equity, some or all of our rights under the **mortgage** in favour of a third party at any time. We will only transfer our rights if -
- (a) the third party agrees to exercise the transferred rights in accordance with a statement of policy which we approve before the transfer; and
 - (b) we reasonably think that the policy described in the statement is no less favourable to you, to any material extent, than the policy we were following before the transfer.
- 24.2. If we transfer all of our rights under the **mortgage** to a third party who is not a building society, the **rules** will no longer apply.
- 24.3. Unless the terms of the transfer state otherwise, a transferee of the **mortgage** will be able to exercise all the rights, powers and remedies which we could exercise before the transfer.
- 24.4. You will be bound by any statement of fact which we make in the terms of transfer unless we made the statement without taking reasonable care.
- 24.5. This **condition** does not apply to a transfer of the **mortgage** on a merger between us and another building society, or to a transfer of our business to a company under the Building Societies Act 1986. Instead, the provisions of that Act will apply.
- 24.6. In the event of any such merger or transfer we may disclose any information relating to you and the **mortgage**.

25. The money secured by the mortgage and release

- 25.1. The **mortgage** secures -
- (a) the **borrower's indebtedness**; and
 - (b) any other money which you owe us at any time and which we have agreed should be secured by the **mortgage**.
- 25.2. Until the **borrower** has repaid the **borrower's indebtedness**, we will not release any **property** which we hold as security.

- 25.3. We will only release the **property** we hold security on the condition that any assurance, security or payment you made is not being avoided, reduced, or ordered to be repaid under any law relating to liquidation, bankruptcy or insolvency. If any such avoidance, reduction occurs or any order to repay is made, then the release shall have no effect and will not affect our right to enforce the **security**. As between you and us, the **mortgage** shall be deemed to have remained at times effective and held by us as security for the **borrower's indebtedness**.
- 25.4. If we are of the reasonable opinion that your assurance, security or payment is susceptible of being avoided, reduced or ordered to be repaid, we may in our absolute discretion retain all or part of the security and other rights under this Agreement as security for the borrower's indebtedness after they have been paid and discharged in full.

26. Interest-only schemes

- 26.1. Where the **offer** says that the **loan** is made under an **interest-only scheme** or where we later agree to allow the provisions of such a scheme to apply to you, we will work out your **monthly payment** in accordance with **condition 7**.
- 26.2. Under any **interest-only scheme** you must -
- (a) keep in place suitable arrangements for ensuring that you will be able to repay all the **borrowings** covered by the scheme at the end of the **repayment period** (or at the end of any shorter period stated in the scheme); and
 - (b) if asked, provide us with such evidence as we may reasonably require showing that these arrangements remain in place.
- 26.3. For the purposes of **condition 26.2**, "suitable arrangements" include any savings, **property**, investment or pension plans which you have taken out and which we accept are reasonably likely to produce (individually or in combination) at the end of the **repayment period** (or at the end of any shorter period stated in the **interest-only scheme**) a sum sufficient to repay all the **borrowings** covered by the scheme.
- 26.4. We may cancel an **interest-only scheme** and convert your interest-only **mortgage** to a repayment **mortgage** during the **repayment period** if -
- (a) you do not keep up with payments under any arrangements intended to ensure that you will be able to repay the **borrowings**, and that failure jeopardises your ability to carry out your repayment strategy effectively; or
 - (b) we have any other reasonable grounds to believe that the arrangements intended to ensure that you will be able to repay **borrowings** will not be effective.

27. Expenses

- 27.1. In these **conditions**, "**expenses**" means all reasonable costs and expenses relating to the **mortgage** which are of the kind mentioned in **condition 27.2** and which -
- (a) we have to pay to any other person; or
 - (b) we have incurred as internal administrative costs.
- 27.2. Our **expenses** include (but are not limited to) all costs, and expenses paid or incurred in -
- (a) taking legal proceedings in respect of the **mortgage** (this applies whether or not you are a party to the proceedings);
 - (b) exercising any of the rights or powers given to us by statute or these **conditions**;
 - (c) recovering any of the **borrowings** or **mortgage debt**;
 - (d) protecting or preserving our **security**;
 - (e) insuring the **property**;
 - (f) doing any work or making any payment which is needed to put right any failure of yours to keep to these **conditions**.
- Any such **expenses** arising out of **condition 27.1(a) or 27.1(b)** may also include legal costs of a reasonable amount which we have reasonably incurred.
- 27.3. You must pay us all **expenses** in full, unless you show that:
- (a) the **expenses** were incurred unreasonably; or
 - (b) the amount of the **expenses** is unreasonable.
- 27.4. Unless the **expenses** are repaid as part of a set **charge** under the provisions of **condition 28**, you must repay them as soon as we give you personal notice requiring you to do so. If the **expenses** are still unpaid after 7 days, we may add them to your account and charge interest on them from the date when the notice was given.

28. Charges

- 28.1. In these **conditions**, "**charges**" means all fees which we set from time to time in relation to **mortgages** generally and which we may pass on to you either -
- (a) as the **charge** for a service of the kind mentioned in **condition 28.2**; or
 - (b) by way of repayment of particular **expenses**.
- 28.2. The services which we may charge for include (but are not limited to) -
- (a) supplying or copying deeds or documents to you or anyone acting for you;
 - (b) discharging the **mortgage**;
 - (c) releasing the **property** or the **property rights** from our security;
 - (d) releasing any title deeds;
 - (e) processing any application you make for a **further loan** or for any change in the terms of the **mortgage**;
 - (f) providing you with any other service you request and which we agree to provide.
- 28.3. Our **charges** will reflect what we reasonably estimate to be the cost to us of doing the work for which the **charges** are made. They may include an amount to cover any **expenses** which you are liable to repay but which we have decided not to demand separately.
- 28.4. We can (unless otherwise stated in the **offer**) change the **charges** we levy at any time. Changes may include the abolition of, or amendment to, existing **charges** or the introduction of new **charges**, and may only be made if we reasonably believe that the change is needed for any of the following reasons (which may relate to circumstances existing at the time or those which are expected to apply in the near future) -
- (a) to respond to changes in the costs (including tax) we incur in providing the service, or carrying out the function, to which the **charge** relates;
 - (b) to respond to changes to relevant regulatory requirements;
 - (c) to respond to new (or changes to) any statements or codes of practice designed to enhance consumer protection.
- Any change that we make under this **condition 28.4** will be proportionate to the reason(s) we have for making the change.
- 28.5. We publish a **tariff** of our commercial **charges** and will make a copy of this available to you at least once a **year** if there have been any changes to it. If we have increased any of the **charges** or introduced any new ones, you will not have to pay the amount involved unless we have also given you personal notice of the alteration or the new **charge** (either as a separate notice or as part of some other communication).

- 28.6. A change which abolishes a **charge**, or reduces the amount of an existing **charge**, may be introduced with immediate effect and without notice.
- 28.7. We will give you personal notice of any **charges** incurred. **Charges** will be payable by you as soon as they arise and interest will be charged on them immediately. We will add **charges** to your account. However, you may choose to make payment of the **charges** direct to us at any time.

29. Rights relating to the property and powers of attorney

- 29.1. You appoint us and (as a separate appointment) any receiver we appoint to be your attorney and to do the following things in your name and on your behalf -
- (a) exercise or enforce any of the **property rights** and receive any money which becomes payable under them;
 - (b) give any notice and take any proceedings which are needed to exercise or enforce any of the **property rights**;
 - (c) transfer any shares to a purchaser of the **property** or exercise any votes attached to the shares;
 - (d) execute any document and do any other reasonable thing which is needed to allow any of our rights and powers under the **mortgage** to be effectively exercised;
 - (e) give us a power of attorney to sign any documents and take any action that you have agreed but failed to sign or take under these **conditions**.
- 29.2. Our rights under this **condition** will last while the **mortgage** is in existence. You may not revoke this power of attorney until the mortgage debt has been fully repaid.
- 29.3. The attorney will be legally entitled to do things on **your** behalf and the attorney's acts will bind **you** as though **you** had done them.
- 29.4. **You** agree to sign any document and do anything else which **we** reasonably request **you** to do in order to:
- (a) perfect or improve any security created or intended to be created for the repayment of the **mortgage debt**;
 - (b) help the exercise or the proposed exercise by us of any of our powers under the **mortgage**; or
 - (c) protect, manage or sell the **property** or any other security for the repayment of the **mortgage debt**.
- 29.5. **We** will be entitled to delegate our power of attorney to third parties where this is reasonable in order to help the exercise of **our** powers. **We** will not be liable for anything which is done under the power of attorney unless **we** have not used reasonable care in exercising the power.

30. Set-off and consolidation of accounts

- 30.1. If any of the events set out in **condition 20** above have occurred, whether or not we have demanded repayment of the mortgage debt, **we** can:
- (a) combine or consolidate all or any liabilities and accounts **you** have with or to **us** at the time; and/or
 - (b) where **you** have any account with us which is in credit, including any account you hold jointly with others who are not named on the **mortgage**, to the extent permitted by law, **we** can set-off or transfer any credit balance on any one or all of such accounts towards repayment of any of the mortgage debt which is due and payable.

We are not obliged to give you prior notice before exercising any of our rights under this Condition 30.

31. General

- 31.1. If we decide to relax any of the terms of the **mortgage**, or not to enforce them at any particular time, this will not affect any of our powers or rights or stop us from taking any action in the future.
- 31.2. If we cannot enforce any term of the **mortgage**, this will not stop us from enforcing the others. Each term is separate from the others.
- 31.3. If **we** decide to relax any term or not enforce any of our rights, this will not affect our rights or powers in any way.
- 31.4. If **you** do not comply with any of the terms of the mortgage and we do not take action, we will still be able to take action if you fail to comply with any term in the future.
- 31.5. We may change the terms and **conditions** applying to your **mortgage**. Where we do so, we will give you at least one **month's** written notice (unless we are not permitted to do so by law or regulation, in which case we will give you as much notice as is permitted). We will only make such a change to comply with law or regulation, to correct an error in an existing term or **condition** or to enable us to provide you with additional or improved services in relation to your mortgage or to make these **mortgage** conditions clearer or easier to understand. We will not make any change under this **condition** 31.5 that is to your disadvantage unless we are required to do so by law or regulation.
- 31.6. If **we** make a mistake in calculating the amount payable by **you** or make any other mistake about the **mortgage** this will not affect any of **our** rights, including our ability to claim the right amount from **you** either before or after the **mortgage** has been released, with **interest** at the interest rate until repayment.

- 31.7. A letter from **us** or receipt of payment stating the **mortgage** has been repaid in full does not prevent you from being personally liable if we later find out that the amount of the **mortgage debt** was understated by mistake. **We** will act reasonably in exercising our rights. This Condition does not affect any legal rights you may have as a result of the mortgage debt being understated.
- 31.8. The **mortgage** is governed by the law of England and Wales and any dispute will be subject to the jurisdiction of the courts of England and Wales only.

Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority.

Community and commercial mortgages offered by Ecology Building Society are not regulated by the Financial Conduct Authority.

Financial Services Register No. 162090.