

## MortgageBrain B2C Plug-in Terms and Conditions

### 1. TERM

- 1.1 This Agreement shall commence on the Start Date and shall be for an initial term of 3 months and shall continue in force thereafter unless and until this Agreement is terminated in accordance with clause 9.

### 2. MORTGAGE BRAIN LTD'S RIGHTS AND OBLIGATIONS

- 2.1 Mortgage Brain Ltd will provide the Services with reasonable skill and care; and supply you with access to the Software as a service as set out in the Order Form.
- 2.2 Mortgage Brain Ltd may update (i) the Form(s); (ii) the Software; and/or (iii) the Services, in each case as Mortgage Brain Ltd considers necessary from time to time.

### 3. SOFTWARE AND SOFTWARE LICENCE

- 3.1 Mortgage Brain Ltd grants to you, subject to the terms and conditions in this Agreement, a non-exclusive, non-transferable, revocable licence to use the Software as a service for the term of this Agreement and only in the manner set out in this Agreement and in writing in the Order Form.
- 3.2 the Software may only be used by you solely for (i) sourcing mortgages for End Users; and/or (ii) processing Content on behalf of End Users You shall not permit any third party to use the Software nor Services

### 4. YOUR OBLIGATIONS

- 4.1 You shall use the Software and/or Services for your own internal business purposes and for the purpose(s) set out in writing in the Order Form.

### 5. DATA PROTECTION

- 5.1 You authorise Mortgage Brain, on your behalf and on behalf of the other members of your Group, to Process the Agreement Personal Data during the term of this Agreement as a Data Processor/Processor for the purpose set out in **Schedule 1**.
- 5.2 You warrant to Mortgage Brain, on your own behalf and on behalf of the other members of your Group, that:
- 5.2.1 You have all necessary rights to authorise Mortgage Brain to Process Agreement Personal Data in accordance with this Agreement and the Data Protection Laws; and
- 5.2.2 your instructions to Mortgage Brain relating to Processing of Agreement Personal Data will not put Mortgage Brain in breach of Data Protection Laws, including with regard to International Transfers.
- 5.3 If Mortgage Brain reasonably considers that any instructions from you or a member of your Group relating to Processing of Agreement Personal Data may put Mortgage Brain in breach of Data Protection Laws, Mortgage Brain will be entitled not to carry out that Processing and will not be in breach of this Agreement or otherwise liable to you or any member of your Group as a result of its failure to carry out that Processing.

### APPOINTMENT OF SUB-PROCESSORS

- 5.4 You authorise Mortgage Brain, on your own behalf and on behalf of the other members of your Group, to engage any person/Group Company of Mortgage Brain as a sub-processor for the Processing of Agreement Personal Data. Mortgage Brain will remain liable to you for performance of the Sub-Processor's obligations.
- 5.5 Mortgage Brain will:

- 5.5.1 Process the Agreement Personal Data only on documented instructions from you or the relevant member of your Group (unless Mortgage Brain or the relevant Sub-Processor is required to Process Agreement Personal Data to comply with applicable laws, in which case Mortgage Brain will notify you of such legal requirement prior to such Processing unless such applicable laws prohibit notice to you on public interest grounds). For the purpose of this **clause** Error! Reference source not found., **the** obligations on Mortgage Brain to perform the Services are documented instructions. Nothing in this **clause** Error! Reference source not found. **will permit you to vary Mortgage Brain's obligations under this Agreement;**
- 5.5.2 ensure that any individual authorised to Process Agreement Personal Data:
  - 5.5.2.1 is subject to confidentiality obligations or is under an appropriate statutory obligation of confidentiality; and
  - 5.5.2.2 complies with **clause** Error! Reference source not found.;
- 5.6 Mortgage Brain will only make an International Transfer if:
  - 5.6.1 the government of the United Kingdom or the European Commission makes a binding decision that the country or territory to which the International Transfer is to be made ensures an adequate level of protection for Processing of Personal Data;
  - 5.6.2 Mortgage Brain or the relevant Sub-Processor provides adequate safeguards for that International Transfer in accordance with Data Protection Laws, in which case you will execute any documents (including data transfer agreements) relating to that International Transfer which Mortgage Brain or the relevant Sub-Processor requires it to execute from time to time; or
  - 5.6.3 Mortgage Brain or the relevant Sub-Processor is required to make the International Transfer to comply with applicable laws, in which case Mortgage Brain will notify you of such legal requirement prior to such International Transfer unless such applicable laws prohibit notice to you on public interest grounds.
- 5.7 Mortgage Brain will:
  - 5.7.1 notify you without undue delay after becoming aware of a Data Security Incident;
  - 5.7.2 provide reasonable assistance to you (at your cost) in:
    - 5.7.2.1 complying with its obligations under the Data Protection Laws relating to the security of Processing Agreement Personal Data;
    - 5.7.2.2 documenting any Data Security Incidents and reporting any Data Security Incidents to any Supervisory Authority and/or Data Subjects; and
    - 5.7.2.3 conducting privacy impact assessments of any Processing operations and consulting with Supervisory Authorities, Data Subjects and their representatives accordingly.
- 5.8 allow for and contribute to audits, including inspections, that directly relate to the Services provided under this Agreement by Mortgage Brain, conducted by you or another auditor mandated by you, provided that you gives Mortgage Brain at least 21 days' prior written notice of each such audit and that each audit is carried out at the your cost, during business hours, so as to cause the minimum disruption to Mortgage Brain's business and without you or your auditor having any access to any data belonging to a person other than you. You will not exercise its audit rights more than once in any twelve (12) calendar month period, except (i) if and when required by instruction of a competent data protection authority; (ii) where you reasonably believe a further audit is necessary due to a Security Incident suffered by Mortgage Brain; or (iii) where you have a reasonable belief that Mortgage Brain has breached, or is in breach, of this Amendment Agreement. Mortgage Brain will provide up to a maximum of one (1) days effort towards any audit or inspection in any twelve (12) calendar month period. For the purposes of this clause 5, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Processing" (and "Process"

and "Processed" shall be construed accordingly") and "Sensitive Personal Data" shall have the meaning assigned to them in the Act.

- 5.9 Within the period of 3 months after termination or expiry of this Agreement, you can request from Mortgage Brain the return to you of any Agreement Personal Data held by Mortgage Brain under this Agreement either:
  - 5.9.1 as a .csv export (at no cost); or
  - 5.9.2 as a zip file of .pdf documents and a .xml file containing the customer record (for which a nominal fee may be charged); or
  - 5.9.3 in such other format as may be requested by you, subject to our prior agreement and receipt from you of an additional fee for this service based on Mortgage Brain's then standard hourly rates for this service, which are available upon request.
- 5.10 Mortgage Brain shall be entitled to: securely delete and destroy all Agreement Personal Data from the date following one month from the termination or expiry of this Agreement; notwithstanding which it may retain Agreement Personal Data thereafter to the extent and for so long as reasonably required by law to do so, (which need shall be notified to you in advance, where lawful to do so) and thereafter shall securely destroy such Agreement Personal Data within a reasonable period.

## 6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All IPR in the logos and trademarks of Mortgage Brain Ltd (whether registered or unregistered), Software, the Form(s) produced by Mortgage Brain Ltd and any other products or services provided by or on behalf of Mortgage Brain Ltd shall be the property of Mortgage Brain Ltd

## 7. FEES AND PAYMENT

- 7.1 All Fees in this Agreement are exclusive of VAT. VAT will be payable in addition to the Fees at the rates for the time being prescribed by law.

| Band | Initial set up | Monthly licence | Annual user |
|------|----------------|-----------------|-------------|
| 1    | £150           | £30             | 1,200       |
| 2    | £150           | £100            | 5,000       |
| 3    | £150           | £200            | 12,500      |
| 4    | £150           | £500            | 35,000      |

- 7.2 Ongoing Fees/Licence Fees shall commence on the 1st of the month following order confirmation
- 7.3 If any sum payable under this Agreement is not paid without prejudice to Mortgage Brain Ltd's other rights and remedies, such sum will accrue interest from the due date until payment has been made in full at the rate of 4% per annum over Bank of Scotland base rate from time to time both before and after judgment.

## 8. LIMITATION OF LIABILITY

- 8.1 MortgageBrain B2C Plug-In and Static Best Buy Tables are based on defined Mortgage Brain Ltd procedures and no warranty is given regarding the accuracy of information contained therein or that the software is error free. Mortgage Brain Ltd accepts no liability for any incorrect or inappropriate advice given by You, or for any other inappropriate sales made by You following the receipt of a Lead Form. Mortgage Brain Ltd's total Liability in respect of any other loss or damage arising in any Year shall not in any circumstances exceed 100% of the Fees due and payable or paid by You under this Agreement in the relevant Year.

## 9. TERMINATION

- 9.1 Either party may terminate this Agreement for convenience upon giving thirty days' notice in writing to the other provided that such notice shall expire no earlier than the end of the initial term as set out in clause 1.

## 10. CONSEQUENCES OF TERMINATION

- 10.1 Notwithstanding the termination of this Agreement, You shall immediately pay any and all accrued but unpaid Fees due prior to or upon termination.
- 10.2 Upon termination of this Agreement the licence set out in **clause 3** shall automatically cease and You shall immediately cease using/accessing the Software and the Services;
- 10.3 When this Agreement terminates it is your responsibility to cancel your direct debit with your bank if applicable.

## 11. ACCEPTANCE

- 11.1 You will be deemed to have accepted the terms of this Agreement by returning the Order Form and Direct Debit Mandate

## 12. DEFINITIONS AND INTERPRETATION

**“Act”** means the Data Protection Act 2018 (incorporating GDPR) and any future legislation enacted in replacement or amendment of the Act.

**“Agreement Personal Data”** means Personal Data which is to be Processed under this Agreement, as more particularly described in Schedule 1

**“Content”** means the data and information the End User inputs or is otherwise included on the Form(s), including personal data of End Users.

**“Data Protection Laws”** means any applicable laws in force in the United Kingdom from time to time that relates to data protection, the processing of personal data and privacy, including the Data Protection Act 2018 including the General Data Protection Regulation (EU) 2016/679 (“Act) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and references to “Data Processor”, “Data Subjects”, “Personal Data”, “Process”, “Processed”, “Processing”, “Processor” and “Supervisory Authority” have the meanings set out in, and will be interpreted in accordance with, such laws

**“Data Security Incident”** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Agreement Personal Data transmitted, stored or otherwise Processed

**“End User”** means a customer, who accesses the Website

**“Form(s)”** means the Mortgage Search Enquiry Form and the Lead Enquiry Form,

**“Lead Enquiry Form”** means the enquiry form from which leads from End Users to mortgage brokers are generated

**“Lead Generation Software”** means software which works with the Lead Enquiry Form to generate a lead which is then notified to the nominated mortgage

**“Order Form”** means the document You sign confirming your order and agreement with these terms and conditions

**“Plug-In”** means that part of the Software which forms part of the Plug-In and Static Best Buy Table Service package and as further detailed in writing in the Order Form.

**“Service” or “Services”** means the Mortgage Brain Limited hosted Website, Plug-In Service as a service as well as provision of certain accompanying services if applicable and to the extent set out in writing in the Order Form

**“Software”** means the Website, Content Management System, MortgageBrain B2C Sourcing Software, the Source Database, the Plug-In, the Lead Generation Software as set out in writing in the Order Form, as such Software may be amended from time to time in accordance with this Agreement.

**“Source Database”** means the master database owned, hosted, managed and run by or on behalf of Mortgage Brain Limited which has information on available mortgage products.

**“Sub-Processor”** means any third party appointed by Mortgage Brain to Process Agreement Personal Data

**“Website Content”** means all text and graphics that make up the website

## SCHEDULE 1

### Agreement Personal Data

|                                     |   |
|-------------------------------------|---|
| <b>Subject matter of Processing</b> | Mortgage Brain provides Website Plugins as specified in the Agreement, including the lead/enquiry form.   |
| <b>Duration of Processing</b>       | The Term of the Agreement plus 1 month.   |
| <b>Nature of Processing</b>         | Storage, back-up and recovery only. Supplier has access to Personal Data only for the provision of support and maintenance.   |
| <b>Purpose of Processing</b>        | The Agreement Personal Data is processed to send marketing material to End Users, to provide support services to you and its End Users and enable you to use the mortgage sourcing software and Key point of sale software as specified in the Agreement. |
| <b>Type of Personal Data</b>        | All Personal Data stored by you for its business purposes, including names, contact details, date of birth, employment history, salary and financial information.   |
| <b>Categories of Data Subject</b>   | Your employees, customers and End Users.  |

I HEREBY CONFIRM THAT I HAVE READ AND ACCEPT THE ABOVE TERMS AND CONDITIONS.