

MortgageBrain Classic Terms and Conditions

This MortgageBrain Classic Agreement is made between You and Mortgage Brain Limited (registered number 02085187), whose registered office is at 6 The Courtyard, Buntsford Drive, Bromsgrove, Worcestershire, B60 3DJ ("Mortgage Brain").

INSTALLATION AND/OR USE OF THE SOFTWARE PROVIDED WITH THIS AGREEMENT CONSTITUTES YOUR ACCEPTANCE OF THIS AGREEMENT. IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT, PROMPTLY DELETE AND RETURN THE SOFTWARE AND ANY ACCOMPANYING ITEMS TO MORTGAGE BRAIN. MORTGAGE BRAIN WILL REFUND ANY SUMS PAID IN ADVANCE FOR THE SOFTWARE OR SERVICES.

1. Term

This Agreement shall commence on the Start Date and shall continue thereafter unless terminated in accordance with clause 11 of this Agreement.

2. Mortgage Brain's obligations

2.1 Subject to you complying with your obligations under this Agreement, Mortgage Brain will provide the Services on the following terms and conditions.

2.2 Mortgage Brain will:

2.2.1 provide the Services with reasonable skill and care; and

2.2.2 supply you with a copy of the Software under the terms of this Agreement.

2.3 Mortgage Brain shall use reasonable commercial endeavours to:

2.3.1 protect and secure the e-trading System against hackers and viruses;

2.3.2 make the URD generally available for registration purposes;

2.3.3 make the Forms and eKFI Request Form generally available on MTE electronically; and

2.3.4 make downloads from the Source Database generally available to update the MortgageBrain Classic Software.

2.4 Mortgage Brain may use MTEL to provide some of the Services.

3. Software licence

3.1 Mortgage Brain grants to you, subject to the terms and conditions in this Agreement, a non-exclusive, non-transferable, licence to use the Software.

3.2 Without prejudice to the other provisions of this Agreement the licence granted in clause 3.1 is subject to the following conditions:

3.2.1 You may, subject to the Copyright (Computer Program) Regulations 1992, only make so many copies of the Software as are reasonably necessary for operational security and lawful use. Such copies and the media on which they are stored shall be the property of Mortgage Brain. You shall make full and accurate records of such copying and location of the copies and make these available to Mortgage Brain on request from time to time.

3.2.2 You shall not modify or remove any copyright or proprietary notices on the Software and shall reproduce such notices on any copies of the Software.

3.2.3 The Software may only be used by you:

3.2.3.1 solely for (i) sourcing mortgages (ii) providing mortgage illustrations to clients and (iii) processing Content, on behalf of clients; and

3.2.3.2 on a computer system running a compatible operating system. Details of such compatible operating systems are available on request from Mortgage Brain.

3.2.4 You shall not permit any third party to use the Software nor use the Software on behalf of or for the benefit of any third party (except mortgage applicants) in any way whatsoever, including any consulting, service-bureau, time-sharing, rental or services of any other kind.

3.2.5 You shall not link to, access or otherwise use the Software or Source Database or cause them to be used in conjunction with, any third party software, database or other application without the prior written consent of Mortgage Brain. You are not allowed to use third party software which is designed to replicate, run or operate in conjunction with the Software and/or Source Database without Mortgage Brain's written consent. The use of the Software on your personal computer with a standard operating platform and your standard desktop applications is permitted.

3.2.6 Except to the extent permitted by law, you shall not decompile, reverse engineer, disassemble or otherwise derive the source code of the Software nor permit any third party to do so.

3.2.7 Save as otherwise provided, you shall not, and shall not permit any third party to, copy, make error corrections to or otherwise modify or adapt the Software nor create derivative works based upon the Software or permit any part of the Software to be combined with or become incorporated in any other computer programs.

3.2.8 You shall effect and maintain adequate security measures to safeguard the Software against access to or use by unauthorised persons and ensure that the Software and all copies are kept under your control and shall notify Mortgage Brain immediately on becoming aware of any unauthorised use of the Software by any person.

3.3 You shall permit Mortgage Brain or its authorised representatives to inspect and have access to any premises and equipment where the Software is located to ensure that you are complying with your obligations under this Agreement.

3.4 Maintenance including Software updates shall be provided in accordance with the Schedule.

3.5 You shall indemnify Mortgage Brain, keep Mortgage Brain indemnified and hold Mortgage Brain harmless from and against all claims, liabilities, proceedings, costs, damages, losses, or expenses incurred by Mortgage Brain caused by, or in any way connected with your use of the Software or the unauthorised use of the Software by any third party whether through breach of this Agreement or any other negligent or wrongful act.

4. Your obligations

4.1 You shall:

4.1.1 use the Services for your own internal business purposes only;

4.1.2 comply with the terms and conditions of this Agreement, including the Schedule, the terms of any Forms or eKFI Request Forms or any other requirements communicated by the Lenders directly to you;

4.1.3 register on-line with the URD and register with the Lenders, as appropriate;

4.1.4 comply with the terms and conditions of the URD (available on first logging-on onto the URD) and the Lenders' individual registration processes;

4.1.5 comply with any Lenders' terms and conditions applicable from time to time which may relate, without limitation, to individual mortgage products, service levels or compensation, and which may be notified to you by the Lenders by post, fax, or email or by posting on the relevant Lender's website;

4.1.6 ensure that you are using up-to-date Forms, eKFI Request Forms and the latest mortgage product information by accessing downloads from the Source Database via the MortgageBrain Classic Software not less than once every 24 hours;

4.1.7 request Illustrations direct from the Lender where the MortgageBrain Classic Software shows Illustration Checking has failed;

4.1.8 ensure that any Illustration complies with the FSMA before sending to a mortgage applicant;

4.1.9 comply with all applicable statutes, regulations, orders, rules, guidelines and guidance notes that affect the mortgage market including those made under and in accordance with the FSMA;

4.1.10 ensure your continuing authorisation by the FCA in relation to all relevant regulated activities as defined by FSMA and, in the event of cancellation or variation of your authorisation either on your own volition or at the FCA's own initiative, shall notify Mortgage Brain of such cancellation or variation within seven days;

4.1.11 pay Mortgage Brain the Fees;

4.1.12 ensure that any terms and conditions that need to be brought to the attention of the mortgage applicant (your client) or have to be confirmed by you, whether on your own behalf or on behalf of the mortgage applicant to the Lenders are so complied with;

4.1.13 be responsible for your connectivity to the Internet or to Mortgage Brain's servers or as agreed in a Corporate Agreement, as applicable;

4.1.14 be responsible for ensuring your IT system is compatible with the MortgageBrain Classic Software and/or the e-trading System as applicable.

4.1.15 be responsible for securing data stored within the MortgageBrain Classic Software on your hard drive or server as appropriate.

4.2 Before you may use the e-trading System to send Content electronically to the Lenders you must register on the URD.

4.3 You shall ensure you are properly authorised by the FCA and that the use and appearance of any information and data, as appropriate, will comply with all applicable statutes, regulations, orders, rules, guidelines and guidance notes that affect the mortgage market, including those made under and in accordance with the FSMA. You will comply with all applicable laws, regulations, guidelines and codes of practice so affecting you including, but not limited to, those relating to a regulated firm's reporting requirements. You, as an authorised firm, will be liable for any breach of or under the FSMA including but not limited to any breach of the relevant provisions of MCOB relating to the accuracy of any Illustrations supplied to a mortgage applicant.

4.4 Notwithstanding termination of this Agreement, you shall permit Mortgage Brain to access and use data forming part of Content for any or all of the following purposes:

4.4.1 statistical analysis of usage of Lenders' mortgage products;

4.4.2 in connection with obtaining quotes for other products offered by the Lenders where you have opted to receive such quotes;

4.4.3 in connection with the business activities of Mortgage Brain and its affiliates from time to time.

5. Data protection

5.1 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.

5.2 You acknowledge that you are Data Controller and Mortgage Brain is not the Data Processor for the provision of the Software and Services under this Agreement except under circumstances described in clause 5.8.

5.3 You shall take appropriate technical and organisational measures against the unauthorised or unlawful Processing of the Agreement Data and against actual loss or destruction of, or damage to, the Agreement Data, having regard to the state of technological development and the cost of implementing any measures, which measures must ensure a level of security appropriate to the harm that might result from unauthorised or unlawful processing or accidental loss, destruction or damage of and the nature of the Agreement Data;

5.4 You acknowledge that you (and/or any other Data Controllers with whom you operate in relation to the collection and use of prospect or customer data within the Agreement Data) are responsible for compliance with the Act and any applicable financial services obligations in respect of your collection, input into and use of Agreement Data in the Software and that Mortgage Brain is not responsible for deciding the manner and purpose of use of the Agreement Data, or for its input or accuracy but only for hosting the Agreement Data and provision of the Services in accordance with the terms of this Agreement.

5.5 Accordingly you represent and warrant that your collection and use of the Agreement Data is and will be lawful, in compliance with the Act and that you have all necessary consents and authorisations for its hosting in the Software by Mortgage Brain and use by Mortgage Brain for the Services (including sharing relevant Agreement Data with requested Lenders and agreed third parties) as envisaged by this Agreement.

5.6 The obligations in clause 5.5 above shall include (for the avoidance of doubt) obtaining the consent to transfer personal data to the Lenders and other third parties as appropriate.

5.7 Mortgage Brain will use reasonable endeavours to ensure that data it accesses and uses pursuant to clause 4.4 does not constitute Personal Data (as defined in the Act).

5.8 Mortgage Brain may, if requested, provide telephone based support by way of a screen-sharing exercise. Should you take advantage of this service you expressly permit Mortgage Brain to process data on your behalf. You are responsible for monitoring any screen-sharing session. You should instruct Mortgage Brain to destroy any data processed at the end of the screen-sharing session.

5.9 You shall ensure that You have adequate security measures to protect personal data created in the Software Such measures would include: -

- (a) only running supported versions of Windows,
- (b) ensure Windows is updated monthly with Microsoft's security updates,
- (c) running anti-virus software,
- (d) using strong Windows passwords to protect the PC,
- (e) using screen savers to restrict access after a period of inactivity and
- (f) using hard disk encryption for protection if the PC is lost or stolen

6. Mortgagebrain Classic software and VPD

6.1 The Lenders may either (1) check mortgage product details; or (2) verify certain features of the individual mortgage products on the MortgageBrain Classic Software; or (3) use the "Illustration Checking Service" to check the accuracy of the KFI or ESIS as described in the Appendix.

6.2 Mortgage products that have been checked or verified by the Lender will be indicated as such within the MortgageBrain Classic Software via downloads from the Source Database.

6.3 The provision of this Service is subject to the conditions set out in the Schedule, and you acknowledge that any claim you may have on behalf of a mortgage applicant, in respect of any VPD mortgage product is a claim against the Lender and not against Mortgage Brain.

6.4 When a checked or a VPD mortgage product is withdrawn by a Lender such mortgage product will remain on the Source Database, though it shall be indicated as withdrawn, for a period of up to 30 days and subsequently transferred to the MortgageBrain Classic Software via downloads from the Source Database. After any such withdrawal, you will not use or sell any such mortgage products.

6.5 You acknowledge that Mortgage Brain may provide links from the MortgageBrain Classic Software to third party products for example insurance products.

6.6 You acknowledge that in respect of the Services including use of the MortgageBrain Classic Software Mortgage Brain is not responsible for:

6.6.1 the availability or accuracy or otherwise of data including mortgage products; and

6.6.2 any failure or reduction in the level or quality of the Services due to the actions, omissions or obligations of the Lenders to provide data or to co-operate with Mortgage Brain in making mortgage product information available.

7. Intellectual property rights

7.1 All IPR in the Source Database, the URD, Illustration Checking Service including but not limited to the sample KFI/ESIS parameters and the format of KFI/ESIS results, the eKFI Request Form, the Software, application programme interfaces (API) and any other products or services supplied by Mortgage Brain or MTEL from time to time belong to MTEL or Mortgage Brain.

7.2 Mortgage Brain shall defend or, at its option, settle any claim brought against you that your normal use or possession of the Software in accordance with this Agreement infringes any IPR of any third party and shall pay any damages finally awarded against you in respect of such claim and any reasonable costs and expenses incurred by you provided that:

7.2.1 Mortgage Brain is given immediate and complete control of such claim, all information and assistance as Mortgage Brain reasonably requires at Mortgage Brain's cost, and you do not prejudice the defence of such claim; and

7.2.2 the claim does not arise from use of any release other than the most recent or penultimate versions of the Software or from any circumstances set out at clause 8.3 or breach of clause 3.2.

7.3 In the event that a claim as contemplated by clause 7.2 is made or in Mortgage Brain's opinion is likely to be made, Mortgage Brain may at its option:

7.3.1 procure the right for you to continue to use the Software affected;

7.3.2 change or replace all or any part of the Software; or

7.3.3 terminate this Agreement immediately on written notice in respect of the affected Software.

7.4 Clauses 7.2 and 7.3 state the entire liability of Mortgage Brain to you in respect of any a claim as contemplated by clause 7.2.

8. Warranties

8.1 Mortgage Brain warrants that:

8.1.1 for a period of 30 days, the Software will function in all material respects with the documentation and the media on which the Software is provided will be free from defects in workmanship and materials when properly used in accordance with this Agreement; and

8.1.2 it has tested for viruses in the Software using commercially available virus checking software, consistent with current industry practice.

8.2 If during the warranty period Mortgage Brain receives written notice from you of any breach of the warranties given in clause 8.1, together with any information as may be reasonably necessary to assist Mortgage Brain in resolving the breach, then Mortgage Brain shall at its own expense and within a reasonable time remedy the breach in question by repairing or replacing the Software or part thereof.

8.3 The warranties in clause 8.1 shall not apply if the Software:

8.3.1 has been altered by any person other than Mortgage Brain;

8.3.2 is used in combination with any software or materials not supplied or approved by Mortgage Brain; or

8.3.3 is used in a manner for which it was not intended or other than as permitted by this Agreement.

8.4 Mortgage Brain further represents and warrants that:

8.4.1 it possesses the full power and authority to enter into and perform its obligations under this Agreement;

8.4.2 it has obtained consent from third parties including MTEL as are required for it to fulfil its obligations under this Agreement;

8.4.3 it is registered or notified as appropriate under the Act;

8.4.4 it shall take all reasonable measures to ensure that all Services provided to you under this Agreement comply with all applicable laws and regulations in the United Kingdom.

8.5 You acknowledge that:

8.5.1 it is your own responsibility to ensure that the Software meets your requirements and that Mortgage Brain does not warrant that it shall be suitable for your requirements;

8.5.2 software in general is not error free and that the existence of such errors in the Software shall not by themselves constitute a breach of this Agreement.

8.6 You represent and warrant that:

8.6.1 you possess the full power and authority to enter into and perform your obligations under this Agreement;

8.6.2 you have or will procure all necessary consents from mortgage applicants or other originators of the Content and/or data to allow the Lenders to process or control the data and/or Content and, where applicable, to allow Mortgage Brain to use Content and/or data in the ways set out in clause 4.4 and clause 5.8;

8.6.3 you are currently authorised by the FCA in the conduct of all relevant regulated activities as defined in the FSMA and shall continue to be so authorised for the duration of this Agreement; and

8.6.4 you are an authorised firm under the FSMA and will comply with all applicable provisions of the FSMA.

8.7 Clauses 8.1 and 8.4 constitute the only warranties given by Mortgage Brain in respect of the Services. Express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.

9. Fees and payment

9.1 In consideration of Mortgage Brain making the Services available, you will pay Mortgage Brain the Fees, monthly in advance, as stated on your order form (which may be amended by you in writing from time to time) or as notified to you by Mortgage Brain from time to time and invoices shall be raised accordingly. The Fees shall be due and payable until this Agreement is properly terminated.

9.2 All Fees in this Agreement are exclusive of VAT and disbursements. VAT will be payable in addition to the Fees at the rates for the time being prescribed by law. Disbursements are chargeable in accordance with Mortgage Brain's standard pricing policy. An invoice will not be issued unless you request one.

9.3 You will pay the Fees, VAT and any disbursements:

9.3.1 by direct debit under the terms of the direct debit scheme collected on or after the 15th of each month; or

9.3.2 as otherwise agreed between you and Mortgage Brain.

9.4 If any sum payable under this Agreement is not paid when due then without prejudice to Mortgage Brain's other rights such sum will accrue interest from the due date until payment in full at 4% per annum over Bank of Scotland plc base rate from time to time both before and after judgment.

9.5 All Fees may be increased at any time by Mortgage Brain on giving 30 days' notice to you; you are deemed to accept such increase unless you exercise your rights under clause 11.1.

9.6 From time to time when new rules and regulations affecting regulated mortgage contracts come into effect under the FSMA, or other laws or governmental order or regulation, Mortgage Brain will review the Services and make them compliant so far as it is able and it is appropriate. Mortgage Brain is not an authorised firm under the FSMA. It will review all Fees and if necessary, owing to the provisions to make the Services compliant, it may revise the Fees provided it gives written notice to you.

9.7 If the provisions of clauses 9.1 to 9.6 conflict with the payment provisions of the Corporate Agreement, the provisions in the Corporate Agreement shall prevail.

10. Limitation of liability

10.1 The following provisions of this clause 10 set out the total Liability of Mortgage Brain which for the purposes of this clause 10 includes MTEL in respect of any breach of its obligations arising under or in connection with this Agreement whether in contract, tort (including negligence), restitution or otherwise.

10.2 Nothing in this Agreement particularly this clause 10, shall limit or exclude either party's Liability for fraud, or for death or personal injury resulting from negligence or to the extent such limitation or exclusion is unlawful.

10.3 Mortgage Brain's total Liability in respect of loss of or damage to tangible property shall not in any circumstances exceed £1,000,000 in any Year.

10.4 Subject to clauses 10.2, 10.3, and 10.5 and other than in respect of clause 7.2 Mortgage Brain'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 payable or paid by you under this Agreement in a Year or £3,000.00, whichever is the greater.

10.5 Mortgage Brain will have no liability under or in connection with this Agreement in respect of:

10.5.1 loss of profits, loss of business, loss of revenue, loss of contract, loss of goodwill, loss of anticipated earnings or savings (whether any of the foregoing are direct, indirect or consequential loss or damage); or

10.5.2 loss of use or value of any data or equipment including software, wasted management, operation or other time (whether direct, indirect or consequential); or

10.5.3 any indirect or consequential loss or damage; or

10.5.4 the poor performance, or lack of connectivity, or lack of availability of the Internet or telecommunications; or

10.5.5 the Content and/or data or accuracy of the Content and/or data sent to the Lenders; or

10.5.6 incorrect data (including mortgage product information and Illustrations) originating from the Source Database; or

10.5.7 any Liability arising out of or under or for breach of MCOB or any other provisions under the FSMA; or

10.5.8 any Liability arising out of the Illustration Checking Service described in the Appendix;

howsoever arising.

10.6 Mortgage Brain shall have no liability in respect of any claim or claims for a Lender failing to honour a VPD.

10.7 The Fees have been set by Mortgage Brain on the basis of the exclusions and restrictions of Liability in this clause 10 and would be higher without those provisions. In the circumstances, you agree that those provisions are reasonable and will accept the risk and/or insure accordingly.

11. Termination

11.1 Either party may terminate this Agreement by giving 30 days written notice to the other at any time. Communication by email to accounts@mortgage-brain.co.uk is acceptable.

11.2 Either party may terminate this Agreement immediately upon written notice to the other if the other:

11.2.1 is in material breach of this Agreement and fails to remedy such breach within 30 days of notice being served by the other party;

11.2.2 becomes the subject of a petition in bankruptcy, whether voluntary or involuntary, which if involuntary is not dismissed within 60 days, or becomes insolvent, or ceases to do business in the normal course or any other similar situation arises; or

11.2.3 is prevented from performing its obligations under this Agreement for a period of 30 consecutive days or more due to a force majeure event described in clause 15.5.

11.3 If you fail to access downloads from the Source Database for 30 days or more Mortgage Brain shall have the right to immediately terminate this Agreement.

11.4 Mortgage Brain shall have the right to terminate this Agreement immediately if you are in breach of clause 8.6.

11.5 The clauses in this Agreement which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

11.6 Any termination of this Agreement shall be without prejudice to the accrued rights and remedies of the parties.

12. Consequences of termination

12.1 Notwithstanding the termination of this Agreement, you shall be obliged to pay forthwith any accrued but unpaid Fees due on termination.

12.2 You shall cease use of the licences granted under clause 3.1 and return all copies of (and delete from your systems) the Software to Mortgage Brain. Your right to access the URD will also cease.

12.3 You shall return or destroy all the Confidential Information of Mortgage Brain's on termination. In the case of destruction, you shall certify such destruction to Mortgage Brain within 14 days following request for such certification.

12.4 When this Agreement terminates it is your responsibility to cancel your direct debit with your bank.

12.5 We will provide reasonable assistance for you to export client details in our standard format available on request.

13. Corporate customers

13.1 If you are a member of a corporate or network or other group using the Services by virtue of a Corporate Agreement and there is a conflict between any of the terms of this Agreement and the Corporate Agreement, the conflict will be resolved according to the following order of priority:

13.1.1 the Corporate Agreement;

13.1.2 this Agreement.

13.2 If you change your status from having a direct relationship with Mortgage Brain to being a member as described under clause 13.1 or change your membership to being covered by a different Corporate Agreement it is your responsibility to close your old account with Mortgage Brain and cancel any applicable direct debit or terminate this Agreement, if applicable, under clause 11.1 and ensure correct registration under the terms of the new Corporate Agreement.

14. Confidential information

14.1 "Confidential Information" means all information of a confidential or proprietary nature (including information imparted orally) relating to this Agreement, Mortgage Brain's products and services including the Software and related IPR, the Illustration Checking

Service including but not limited to the sample KFI/ESIS parameters and the format of the results, URD and related IPR, processes, potential or actual customers, suppliers or Lenders, business revealed to or learnt by you at any time from Mortgage Brain.

You shall:

14.1.1 keep the Confidential Information secret;

14.1.2 only disclose the Confidential Information to any of your employees on a need to know basis and you shall ensure that such employee keeps the Confidential Information secret;

14.1.3 use the Confidential Information only in connection with this Agreement; and

14.1.4 not copy the Confidential Information without the prior written consent of Mortgage Brain.

15. General

15.1 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

15.2 Mortgage Brain may modify or add to this Agreement at any time by notifying you. If you do not accept any such modification you must stop using the Services immediately and inform us of your objection to the modification.

15.3 Except as expressly provided for in this Agreement nothing in this Agreement shall be construed as creating a partnership or joint venture of any kind between the parties. Neither party shall have the authority or power to bind the other party.

15.4 You shall not assign, sublicense or otherwise transfer this Agreement or any of its rights or obligations whether in whole or in part without the prior written consent of Mortgage Brain.

15.5 Neither party will be liable to the other for any failure or delay or for the consequences of any failure or delay in performance of this Agreement, excluding your obligation to pay the Fees, if it is due to any event beyond the reasonable control of a party to this Agreement including, without limitation, acts of God, war, industrial disputes, protests, fire, flood, storm, tempest, explosion, an act of terrorism and national emergencies. If such delay or failure continues for at least 30 days, the party not subject to such an event shall be entitled to terminate this Agreement in accordance with clause 11.2.3. The party subject to such event shall, as soon as practicable, give notice of the event to the other party, such notice to include a reasonable forecast of the duration of the event.

15.6 No failure of either party to enforce its rights under this Agreement at any time for any period shall be construed as a waiver of such rights.

15.7 If any provision in this Agreement is found or held to be invalid or unenforceable, then the meaning of such provision shall be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it shall be severed from the remainder of this Agreement which shall remain in full force and effect. However, if the severed provision is essential and material to the rights or benefits received by either party, the parties shall use their best efforts to negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly effects their intent in entering into this Agreement.

15.8 This Agreement constitutes and contains the entire agreement of the parties and supersedes any and all prior agreements (including an Evaluation Licence and/or any previous Broker Agreement as applicable) negotiations, correspondence, representations (except fraudulent representations), understandings and communications between the parties, whether written or oral, respecting the subject matter.

15.9 All notices that are required to be given under this Agreement shall be in writing and shall be sent to the registered or trading addresses as appropriate of each party, or as otherwise notified to the other, by first class pre-paid letter or by email and shall be deemed to have been received:

15.9.1 by first class post, 48 hours after the date of mailing;

15.9.2 by email, immediately upon transmission.

15.10 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties hereto irrevocably submit to the exclusive jurisdiction of the English Courts.

16. Definitions

“Act” means the Data Protection Act 1998 and any future legislation enacted in replacement or amendment of the Act including GDPR.

“Content” means the data and information you input or otherwise include on the Form(s) and/or eKFI Request Form(s), including but not limited to personal data of mortgage applicants.

“Corporate Agreement” means an agreement between Mortgage Brain and a third party (with whom you have an affiliation) which governs the commercial terms of your accessing and using the Services.

“eKFI Request Form” means the generic electronic KFI/ESIS request form available on MTE for use by you or which may be submitted to the Lenders by you manually.

“ESIS” means the European standardised information sheet, produced by (i) the Lender or (ii) Mortgage Brain in accordance with the MCOB for use by you and to supply to a mortgage applicant.

“e-trading System” means MTE, the MortgageBrain Classic Software and all related IPR which allow transmission of the Content electronically from you to the Lenders.

“Fees” means all the fees payable under this Agreement by you to Mortgage Brain pursuant to clause 9.

“Form(s)” means the Lenders’ mortgage application / decision in principle forms and full mortgage application forms, as appropriate, as amended from time to time, available via downloads from the Source Database.

“FSMA” means the Financial Services and Markets Act 2000 and any of its accompanying rules and regulations including equivalent legislation in ROI.

“FCA” means the Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London, E14 5HS.

“KFI” means the key facts illustration, produced by (i) the Lender or (ii) Mortgage Brain in accordance with the MCOB for use by you and to supply to a mortgage applicant.

“Illustration” means the KFI or ESIS, as appropriate, produced by (i) the Lender or (ii) Mortgage Brain in accordance with the MCOB for use by you and to supply to a mortgage applicant.

“IPR” means all intellectual and industrial property rights including patents, know-how, registered trademarks, registered designs, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, database rights, and any other rights in any invention, discovery or process.

"Lenders" means any mortgage provider who makes available its Forms on MTE and/or which provides data including mortgage product information to Mortgage Brain for inclusion on the Source Database. In the case of verified product details, "Lenders" may include the providers of Exclusive or re-badged mortgage products (e.g. a Corporate or Network).

"Liability" means liability in or for breach of contract, negligence (as defined in Section 1(1) Unfair Contract Terms Act 1977), misrepresentation (excluding fraudulent misrepresentation), tortious claim (including breach of statutory duty), restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any terms of this Agreement.

"MortgageBrain Classic Software" means Mortgage Brain's proprietary software MortgageBrain Classic version 2.2 or above that is stored and used on your personal computer which comprises: data extracted from the Source Database; a mortgage sourcing tool; a browsing tool; an illustration tool; the client database; the archiver software which may store all illustrations given to mortgage applicants; the calculators and graphing function

"MCOB" means the Mortgage Conduct of Business Sourcebook comprising part of the FCA's Handbook of Rules and Guidance.

"MTEL" means Mortgage Brain's nominated sub-contractor, Mortgage Trading Exchange Limited, whose registered office is at 6 The Courtyard, Buntsford Drive, Bromsgrove, Worcestershire, B60 3DJ and whose registered number is 03340621.

"MTE" means the proprietary mortgage form processing software that is designed to capture and transmit Content from you to the Lender.

"Schedule" means the schedule appended to this Agreement and which forms part of this Agreement.

"Services" means the services to be provided to you pursuant to the Schedule and MTE and/or the MortgageBrain Classic Software as appropriate.

"Software" means the MortgageBrain Classic Software and MTE as applicable.

"Source Database" means the databases owned, managed and run by Mortgage Brain which have information on available mortgage products in the UK and the Lenders' Forms from which updates are produced for the Software.

"Start Date" means the date when you have accepted this Agreement by clicking on the acceptance button below.

"URD" means the user registration database in which you must register if you wish to submit Content to a Lender via MTE.

"VPD" means the verified mortgage product features which the Lender may verify from time to time as detailed in the Schedule.

"Working Day" means a day other than a Saturday, Sunday or bank or public holiday in England during the hours 8.30am to 5.30pm except for Christmas Eve and New Year's Eve when the hours will be 8.30am to 12noon.

"Year" means twelve months from the Start Date and the anniversaries thereof.

Schedule

The services

- Mortgage Brain will provide the MortgageBrain Classic Software to you.
- You will be entitled to use the MortgageBrain Classic Software to provide Illustrations and access the Lender mortgage product information via downloads from the Source Database.
- You may elect to sell the Lenders' products and accordingly correspond with the Lenders by (i) using the e-trading System, or (ii) sending eKFI Request Forms and Forms using any other reasonable alternative method of transmission, as notified by the Lender from time to time.
- MTE has the configured electronic Forms and eKFI Request Forms within it which allows for electronic trading. The Services allow you to send Content electronically to the Lenders.
- You will ensure any Illustration shall be produced in accordance with the FSMA and used by you on terms agreed between you and the Lender.
- The MortgageBrain Classic Software will display an automated warning if the data from the Source Database is more than 1 complete day out of date; you must then download information from the Source Database immediately to update the Software.
- MTE will encrypt the Content during transmission to the Lender.
- Mortgage product details shown within the MortgageBrain Classic Software are supplied "as-is" by Mortgage Brain.
- For details of the minimum hardware and software required please refer to the Help documentation.
- Support will be available from Mortgage Brain either via the telephone helpline or by email. The telephone helpline is available Monday-Friday 8.30am - 5.30pm except for (i) Wednesdays when the hours will be 10.00am - 5.30 pm (ii) Christmas Eve and New Year's Eve when the hours will be 8.30am until 12 noon and (iii) English Bank & Public Holidays when the helpline will be closed. Emails will be replied to during the telephone helpline opening hours. All calls to the telephone helpline will be charged at the national rate.
- For further details of the Services please refer to the Help documentation.

eKFI Request Forms

The Lender may allow you to submit eKFI Request Forms to them electronically via MTE. Illustrations will be issued prior to you submitting Form(s) for the same mortgage applicant.

It is the responsibility of you and the Lender to ensure an Illustration has been issued to a mortgage applicant prior to submission of Form(s) for the same mortgage product.

Mortgage Brain is not responsible for the eKFI Request Forms sent to the Lender nor any associated data protection issues under the Act concerned with eKFI Request Forms. Mortgage Brain does not in any way vet, view or advise on the eKFI Request Form sent by you or Illustrations sent by the Lender nor is it Mortgage Brain's responsibility to do so.

MTE will ensure that the eKFI Request Forms are encrypted during transmission to the Lender.

Mortgage Brain does not accept any responsibility for yours or the Lender's software, hardware, systems and connectivity to the Internet. The Internet by its very nature is not a controlled medium and use of the Internet (including availability of) is entirely at your and the Lender's risk.

The Lender will be responsible for all information provided to you and subsequently to a mortgage applicant.

VPD

VPD mortgage products will be indicated as such in the MortgageBrain Classic Software via downloads from the Source Database. The VPD service may be enhanced from time to time and the 10 features of VPD may go up as well as down in number.

Verified Product Description

VPD are mortgage products that have been checked by the Lender and then confirmed as correct in the detail with regards to the following 10 features:

- Interest rates;
- Early redemption terms;
- Higher loan to value fees and/or mortgage indemnity premiums;
- Product fees;
- Application fees;
- Mortgage purpose and/or type;
- Valuation fees;
- Loan to value ratios (subject to valuation);
- Maximum and minimum loan (secured loans); and
- Cash backs.

Mortgage Brain may vary these features at its sole discretion.

Availability

VPD does not certify that the mortgage product is continuously available.

Conditions of VPD

You will comply with the following conditions for the VPD to be effective:

1. You will download data from the Source Database via the MortgageBrain Classic Software on your personal computer no more than 24 hours prior to the issuing of an illustration to any mortgage applicant (your client).
2. You must retain a copy, which must be date stamped, of the illustration supplied to the mortgage applicant(s) in the event of any future claim to substantiate the illustration terms being different to the mortgage product terms.
3. Any application for reimbursement to cover loss incurred through incorrect mortgage product features will only be considered by the Lender if the loss was solely incurred by a mortgage applicant.
4. The Lender has the discretion to exclude any reimbursement to a mortgage applicant where you have clearly failed to exhibit the duty of care as defined in the Mortgage Code Compliance Guidelines and any future sales process guidelines or regulations in providing advice to mortgage applicants.

The Lender and/or Mortgage Brain will not be responsible for incorrect VPD owing to:

- any external instances for which the Lender and/or Mortgage Brain cannot be held responsible and which fall outside of their control e.g. base rate movements, legislative changes, the performance of the Internet;
- data corruption and/or deliberate tampering by unauthorised third parties with the data in or from the Source Database;
- you not having downloaded data from the Source Database via the MortgageBrain Classic Software.

Level of Verification

Where the Lender provides VPD on a mortgage product it is confirming that the 10 features have been checked for correctness but will offer no form of compensation or payment as of right to a mortgage applicant if any of the details are later found to be incorrect.

Incorporation of VPD within the MortgageBrain Classic Software

You will have access to any VPD mortgage products within the MortgageBrain Classic Software. A single filter will be available to you with the option to select and view mortgage

products that are verified by the Lenders in isolation i.e. without mortgage products that are not verified.

Maintenance Services

Mortgage Brain shall during the term of this Agreement provide Software updates free of charge to you for all Software licensed to you under this Agreement so you have the most up to date version of the Software. Software updates will be provided at Mortgage Brain's sole discretion. Further, Mortgage Brain shall provide telephone support to you up to a maximum of 2 hours per calendar month in respect of the Services and Software. If you require more than 2 hours support this shall be classed as an Additional chargeable Service at Mortgage Brain's prevailing rates.

- You shall install such Software updates within 7 Working Days of them being issued.
- Mortgage Brain will use reasonable endeavours to respond to all support calls within 1 Working Day.
- Mortgage Brain will only support the most recent and penultimate commercially available releases of the Software.
- Mortgage Brain will only provide Software updates on the most recent commercially available releases of the Software.

Additional Services

Additional services are available from Mortgage Brain on request under separate agreement.

Appendix

Illustration Checking Service

Illustration Checking is a service that Mortgage Brain offers to the Lenders, it is not available to you. The following gives a description of the Illustration Checking Service:

- Mortgage Brain may check new or amended mortgage products by producing results for these products from the MortgageBrain Classic Software for up to 10 different scenarios and comparing these with Illustrations obtained directly from the Lenders for the same scenarios.
 - Mortgage Brain shall use reasonable endeavours to check Illustrations obtained from the lender on the relevant mortgage product with Mortgage Brain's results.
 - Mortgage Brain will endeavour to make available on the Source Database an indicator within 1 Working Day of Mortgage Brain's results matching (within tolerance) the Lender's Illustration to show that Illustration Checking has been successfully completed.
 - In the event Mortgage Brain's results do not match (within tolerance) the Lender's Illustration, the relevant mortgage product(s) will be made available to you via

downloads from the Source Database but will not be indicated as having passed Illustration Checking.

- Mortgage Brain will endeavour to ensure that the MortgageBrain Classic Software will suppress your ability to produce an Illustration (from the MortgageBrain Classic Software) in relation to that mortgage product and a warning message will be given to you telling you to request an Illustration direct from the Lender.
- Illustration Checking will be successful when 4 or more of the Lender's Illustrations match Mortgage Brain's results per mortgage product. If less than 4 Illustration checks are possible on a particular mortgage product then Mortgage Brain may select alternatives at its reasonable discretion.

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