

This Agreement is made between you and Mortgage Brain Ltd (Mortgage Brain) (Company Registration No: 02085187) whose registered office is at 6, The Courtyard, Buntsford Gate, Buntsford Drive, Bromsgrove, Worcestershire, B60 3DJ.

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 RETURN THE SOFTWARE AND ANY ACCOMPANYING ITEMS TO MORTGAGESTREAM.

## **1. Term**

- 1.1 This Agreement shall commence on the Start Date and shall continue thereafter unless terminated in accordance with clause 10 of this Agreement.
- 1.2 Mortgage Brain retain the right to only supply the software to registered FCA Brokers holding a Consumer Credit Licence, and valid regulatory registration.
- 1.3 By downloading the software, you grant Mortgage Brain permission to contact you.
- 1.4 Mortgage Brain reserve the right to amend this licence agreement at any time. It is your (the Client's) responsibility to check the [www.mortgagestream.co.uk](http://www.mortgagestream.co.uk) website as necessary to check the latest licence conditions.
- 1.5 Any infringements of these Terms & Conditions of the licence results in licence revocation without refund.

## **2. Mortgage brain's obligations**

- 2.1 Subject to you complying with your obligations under this Agreement, Mortgage Brain will provide the Software on the following terms and conditions.
- 2.2 Mortgage Brain will supply you with a copy of the Software Application under the terms of this Agreement.
- 2.3 Supply of any interfaces to third party software or systems is provided by Mortgage Brain as a non-chargeable additional feature. Removal of such interface or interfaces resulting from the actions of said third party or parties is not the responsibility of Mortgage Brain: Mortgage Brain cannot be held responsible for reduction of functionality resulting from such third party actions.
- 2.4 Supply of any interfaces to third party software or systems is provided by Mortgage Brain in order to reduce the amount of re-keying of data required. Mortgage Brain does not warrant that all relevant data is transferred to third party software or systems: It is your (the client's) responsibility to ensure that any extra data is entered into the third party software or systems in order to ensure their correct functioning. This is particularly true of mortgage and insurance sourcing systems, where complete information is required for those systems to source the correct product(s).

- 2.5 Mortgage Brain reserve the right to amend the cost of the system licences from time to time on giving 30 days' notice.

### 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 processing Content; 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 Clients) in any way whatsoever, including any consulting, service-bureau, time-sharing, rental or services of any other kind.
- 3.2.5 Except to the extent permitted by law, you shall not decompile, reverse engineer, disassemble or otherwise derive the source code or database of the Software nor permit any third party to do so.
- 3.2.6 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 or database to be combined with or become incorporated in any other computer programs.
- 3.2.7 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.
- 3.2.8 You shall not copy the licence onto more than one machine, without the express permission of Mortgage Brain.
- 3.2.9 You shall not read data from or write data to the MortgageStream database using any other software than the MortgageStream program, or any other

program supplied to you by Mortgage Brain, without the express written permission of Mortgage Brain.

- 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. Such access may be required from time to time to ensure the correct operation of the system, help in the diagnosis of any defects, and for licensing of the system. Such access may be in person, or via remote control from Mortgage Brain's or their authorised representatives' computers.
- 3.4 Any refusal on your part to grant such access as requested, may result in the temporary or permanent revocation of your licence, without recourse or refund.
- 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.
- 3.6 The purchase of a specific number of user licences entitles you to have the system installed on that number of already networked PCs.
- 3.7 In some cases, it may be possible for Mortgage Brain to import existing client data into the system. The level of such import will be made clear to you if requested. Mortgage Brain reserve the right to charge for this one-off service and will quote on a case by case basis.

## **4. Your obligations**

- 4.1 You shall:
  - 4.1.1 use the Software for your own internal business purposes only;
  - 4.1.2 comply with the terms and conditions of this Agreement;
  - 4.1.3 register with Mortgage Brain by calling 020 8665 3200;
  - 4.1.4 be responsible for ensuring your IT system is compatible with the Software. In particular, you should ensure that your computer network is of such a standard of reliability as is compatible with running a client-server database application; namely CAT 5e standard network cabling, and NOT wireless networking.
  - 4.1.5 You shall pay Mortgage Brain for your use of the Software the sum specified from time to time in our published tariffs or as otherwise agreed. The tariffs will be notified to You from time to time. You shall pay all sums due by You to Mortgage Brain by direct debit which will be collected on or around the 15<sup>th</sup> of each month unless otherwise agreed in writing. You are obliged to pay for the full term of the software licence granted to you by

Mortgage Brain, irrespective of whether you continue to use the software for the period of that licence.

- 4.1.6 You are responsible for maintaining adequate security, storage and backup processes for your data (including reports, templates and call recordings as well as client data)
- 4.2 You are fully responsible for the accuracy of any information stored on the Software.
- 4.3 You are licensed to use the database on the specified server (or single) computer. You shall not move that database to any other computer, without prior permission from Mortgage Brain. Failure to comply will involve revocation of Mortgage Brain's support responsibility. Subsequent to Mortgage Brain's permission to move the database, Mortgage Brain will require the removal of the licence from the original computer prior to moving to another computer. Mortgage Brain reserve the right to charge for this service.
- 4.4 Should you require now or later to increase the number of simultaneous users beyond our recommended maximum, we shall advise a migration of data to, or installation of, a SQL Server database. This may necessarily incur extra costs by you to Microsoft Corp., for the SQL Server licence(s), should you not already own such a valid licence. Such licence costs are outside the scope of any licence payments payable to Mortgage Brain.
- 4.5 You should be aware of any limitations imposed by Microsoft on the maximum number of network users that can simultaneously access shared folders on the network and that you have the correct number of Client Access Licences (CALs). These limits are not the responsibility of Mortgage Brain.

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

## **6. Intellectual property rights**

- 6.1 All IPR in the Software belongs to Mortgage Brain.
- 6.2 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:

- 6.2.1 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
  - 6.2.2 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 7.3 or breach of clause 3.2.
- 6.3 In the event that a claim as contemplated by clause 6.2 is made or in Mortgage Brain's opinion is likely to be made, Mortgage Brain may at its option:
- 6.3.1 procure the right for you to continue to use the Software;
  - 6.3.2 change or replace all or any part of the Software; or
  - 6.3.3 terminate this Agreement immediately on written notice in respect of the Software.
- 6.4 Clauses 6.2 and 6.3 state the entire liability of Mortgage Brain to you in respect of any a claim as contemplated by clause 6.2.

## **7. Warranties**

- 7.1 Mortgage Brain warrants that:
- 7.1.1 for a period of 14 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
  - 7.1.2 it has tested for viruses in the Software using commercially available virus checking software, consistent with current industry practice.
- 7.2 If during the warranty period Mortgage Brain receives written notice from you of any breach of the warranties given in clause 7.1, 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 repair or replacing the Software or part thereof. The remedies in this clause 7.2 are your sole and exclusive remedies for breach of the warranty in clause 7.1.
- 7.3 The warranties in clause 7.1 shall not apply if the Software:
- 7.3.1 has been altered by any person other than Mortgage Brain.
  - 7.3.2 is used in combination with any software or materials not supplied or approved by Mortgage Brain; or

- 7.3.3 is used in a manner for which it was not intended or other than as permitted by this Agreement.
- 7.4 Mortgage Brain further represents and warrants that:
  - 7.4.1 it possesses the full power and authority to enter into and perform this Agreement;
  - 7.4.2 it is registered or notified as appropriate under the Act.
- 7.5 You acknowledge that:
  - 7.5.1 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;
  - 7.5.2 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.
- 7.6 You represent and warrant that:
  - 7.6.1 you possess the full power and authority to enter into and perform this Agreement;
- 7.7 Clauses 7.1 and 7.4 constitute the only warranties given by Mortgage Brain in respect of the Software. 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.



## **8. Fees and payment**

- 8.1 Mortgage Brain is licensing the Software to you for an agreed monthly or annual fee.
- 8.2 Mortgage Brain reserves the right to charge you a fee to make the Software compliant to any modification in regulatory practice.
- 8.3 There is no charge for initial installation of the software. However, changes to your network configuration and/or changes to the server location resulting in the requirement to move the location of the MortgageStream server on your network will incur a fee.
- 8.4 Further installation of the system on extra PCs, without the concurrent purchase of further system licences will incur a fee. The system will ordinarily be installed on the same number of PCs as the number of licences purchased: The exception to this is if a server PC is used for data storage and separate workstation PCs connect to this server, in which case the system will also be installed on the server. The allowed number of user logins is ordinarily governed by the number of purchased licences.
- 8.5 Should maintenance work be required to be carried out on the system by Mortgage Brain staff as a result of the Client failing to maintain adequate computer network reliability (see 4.1.4), then Mortgage Brain reserve the right to charge a fee for this service.

## **9. Limitation of liability**

- 9.1 Neither party will be liable to the other for any losses arising out of or under this Agreement, save that both parties will have unlimited liability to the other for personal injury or death resulting from that party's negligence; for fraud and deceit; for breach of clauses 5, 6, 7.4 and 12; and for any other liability for which they cannot limit or exclude liability by law.
- 9.2 The liability provisions in clause 9.1 have been set by Mortgage Brain on the basis of the restrictions in this Clause 9. In the circumstances, you agree that those provisions are reasonable and will accept the risk and/or insure accordingly.
- 9.3 Mortgage Brain accepts no responsibility for the compliance and accuracy of the letter templates supplied. They merely serve as a guide for standard letters: It is the responsibility of the individual broker or adviser to ensure that the contents of the letters correspond and comply with their individual requirements.
- 9.4 Mortgage Brain will not be liable to You for loss of profit; business interruption; loss of business information; loss of goodwill; other commercial loss; loss of opportunity or for any indirect, special or consequential loss (whether or not the possibility of such loss was brought to our attention or was foreseeable by Us) suffered by You or damages suffered by any Client arising out of or in connection with Your use of the software or its unavailability regardless of whether such damages arise in tort or in contract and regardless of whether We have been advised.



- 9.5 Mortgage Brain accepts no responsibility for loss or damage to data as a result of defects in third-party software, misuse of the system, or hardware failure. It is the Client's responsibility to ensure that adequate data backup procedures are in place and adhered to (including reports, templates and call recordings as well as client data)
- 9.6 We would remind brokers that any calculators in MortgageStream™ are for illustrative purposes only, for internal use, and that it is the broker's responsibility to ensure they provide accurate information in the form of an Illustration.

## **10. Termination**

- 10.1 Either party may terminate this Agreement by giving 30 days written notice to the other at any time.
- 10.2 Either party may terminate this Agreement immediately upon written notice to the other if the other:
  - 10.2.1 is in material breach of this Agreement and fails to remedy such breach within 30 days of notice being served by the other party; or
  - 10.2.2 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.
- 10.3 The clauses in this Agreement which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

## **11. Consequences of termination**

- 11.1 You shall cease use of the licence granted under clause 3.1 and return all copies of (and delete from your systems) the Software to Mortgage Brain.
- 11.2 You shall return or destroy all the Confidential Information (hereinafter defined in clause 12) 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.
- 11.3 In the event that you terminate this agreement in this manner described in Clause 10.1, Mortgage Brain reserves the right to charge the full monthly or annual fee as appropriate.

## **12. Confidential information**

- 12.1 "Confidential Information" means all information of a confidential or proprietary nature (including information imparted orally) relating to Mortgage Brain's products and services including the Software and related IPR, processes, potential

or actual customers, suppliers', business revealed to or learnt by you at any time from Mortgage Brain. You shall:

- 12.1.1 keep the Confidential Information secret;
- 12.1.2 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;
- 12.1.3 use the Confidential Information only in connection with this Agreement; and
- 12.1.4 not copy the Confidential Information without the prior written consent of Mortgage Brain.

### **13. General**

- 13.1 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.
- 13.2 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 Software immediately and inform us of your objection to the modification.
- 13.3 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.
- 13.4 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.
- 13.5 Failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights.
- 13.6 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.
- 13.7 This Agreement, constitutes and contains the entire agreement of the parties and supersedes any and all prior agreements including any previous the Software Agreement, negotiations, correspondence, representations (except fraudulent representations), understandings and communications between the parties, whether written or oral, respecting the subject matter.

13.8 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 fax transmission and shall be deemed to have been received:

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

13.8.2 by fax, immediately upon transmission.

13.9 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.

## **14. Definitions**

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

"Clients" means your customers which are the mortgage applicants.

"Content" means the data and information you input, including but not limited to personal data of Clients.

"Illustration" means the KFI (Key Facts Illustration) or ESIS (European standardised information sheet), 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, in each case in the UK.

"Software" means "MortgageStream" which is the proprietary mortgage case management software and all related IPR.

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

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