

TERMS AND CONDITIONS PERTAINING TO INTRODUCER APPOINTED REPRESENTATIVES TO MORTGAGES FOR BUSINESS LIMITED

BACKGROUND

These Terms and Conditions set out the basis upon which MFB will make non-regulated mortgage products available to introducers through appointment as Introducer Appointed Representatives of Mortgages for Business Limited. Introducers will not be registered with FSA but will be subject to suitability tests before appointment.

1. Definitions and Interpretations

1.1. In these Terms and Conditions, unless the context requires otherwise, the following expressions shall have the following meanings:

“Additional Services”	additional services that may be provided to the IAR by MFB after the Commencement Date including services provided in accordance with clauses 2.3 and 10 of these Terms and Conditions
“BTL Mortgage”	Buy to Let mortgage products designed to support the financing of property transactions within the private rental sector
"Business"	the placing of contracts for the supply of Financial Services Products
"Business Day"	a day (not being Saturday or Sunday) on which banks are open for general business in London
"Clawback Liability"	the charge imposed by a Provider for the clawback of a procurement fee or other fee or Commission paid by a Provider
“Client”	a client introduced to MFB by the IAR in accordance with these Terms and Conditions
"Commencement Date"	the date of acceptance by MFB of an application to become an IAR
“Commission”	commission paid by a Provider on the sale of a Product including indemnity and non indemnity, trail, incremental and renewal
“Companies Acts”	the Companies Act 1985 as amended and updated by the Companies Act 2006

"Completed Case"	an application for the sale of a Product which has been accepted by the relevant Provider in accordance with the relevant terms of business of that Provider
"Data Protection Legislation"	all legislation and regulations relating to the protection of personal data including the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all other industry guidelines or codes of practice issued by the Office of the Information Commissioner
"Financial Services Products"	products including mortgages, protection insurance, ASU Products, general insurance, commercial insurance, private medical insurance, pensions and investments
"FSA"	The Financial Services Authority (and any successor of the FSA)
"FSMA"	The Financial Services and Markets Act 2000
"Good Industry Practice"	the exercise of such reasonable skill, care, prudence, efficiency, foresight and timeliness as would be expected from a reasonably and suitably skilled, trained and experienced person engaged in the same type of undertaking and for the same or similar circumstances
"IAR"	an Introducer Appointed Representative of mortgage business to MFB who wishes to make arrangements for another person to enter into a BTL Mortgage contract as the borrower
"Indemnify"	to indemnify, keep indemnified and hold harmless MFB from and against all costs (including the costs of enforcement), expenses, liabilities, direct, indirect or consequential losses (including pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs which MFB incurs
"Lender"	a Provider of mortgage products
"MFB"	Mortgages for Business Limited (Company Number 2502713) whose registered office is at 53-55 High Street, Sevenoaks , KENT TN13 1JF

“MFB Network”	The network of independent mortgage brokers established by MFB to transact non-regulated mortgage business
“Mortgage Flow”	the BTL Mortgage sourcing system developed and kept up-to-date by MFB
“NACFB”	National Association of Commercial Finance Brokers
"Personal Data"	has the meaning given to it by the Data Protection Act 1998
“Principals”	all directors, officers or partners in the IAR or shareholders holding more than 10% of any class of share in the IAR
“Provider”	A provider of Financial Services Products
"Regulatory Requirements"	all statutes, regulations or orders relevant to the activities envisaged by these Terms and Conditions including any applicable requirements of Data Protection Legislation, Anti Money Laundering Regulations or the Financial Services Authority
"Relevant Proportions"	the proportions in which Commission was split by MFB between MFB and the IAR
“Supplementary Services”	services supplied to the IAR by third parties introduced by MFB
"Taxes"	includes all present and future taxes, levies, imposts, duties, fees charges, deductions or withholdings of whatever nature and wherever levied charged or assessed or any amount payable on account of or as security for any of the foregoing, together with any interest thereon and any fine, surcharge or penalties in respect thereof
“Termination Date”	either (1) where notice is given by either party under these Terms and Conditions the date of the expiry of that notice period or (2) where these Terms and Conditions is terminated other than by the giving of notice the date on which the action or event giving rise to the termination occurs
"Trading Name"	Mortgages for Business, Mortgages for Me, Mortgage Flow, Insurance for Landlords

1.2. In these Terms and Conditions, unless otherwise expressly provided, any reference to:

- (a) a "party" shall mean either MFB or an IAR as the context dictates and "parties" shall comprise MFB and the IAR. A "party" shall be construed so as to include their respective successors and permitted assigns from time to time;
- (b) a "person" shall be construed as a reference to any individual, firm, company, body corporate, government, state or state entity or any association or partnership (whether or not having separate legal personality) or any two or more of the foregoing;
- (c) these Terms and Conditions or any other document or instrument is a reference to these Terms and Conditions or that other document or instrument as the same may have been, or may from time to time be, amended or supplemented;
- (d) any statutory provision shall include a reference to such provision as from time to time re-enacted, amended, extended or replaced;
- (e) references to a "**subsidiary**" or "**holding company**" are to be construed in accordance with section 736 of the Companies Acts;

and unless otherwise expressly provided

- (f) words importing the singular shall include the plural and vice versa;
- (g) all references to months are to calendar months; and
- (h) any phrase introduced by the term "including", "in particular" or any similar expression will be construed as illustrative and will not limit the sense of the words preceding that term.

2. How the IAR Relationship Works

- 2.1. The IAR carries on business as a mortgage broker. These Terms and Conditions set out the terms upon which MFB has agreed to transact non-regulated mortgages on a non-exclusive basis on behalf of the IAR.
- 2.2. These Terms and Conditions, including those relating to the mechanics of payment of Commission, will apply only to Business actually placed by the IAR through MFB from time to time.
- 2.3. The IAR and MFB agree that, save for any subsequent agreements relating to the provision by MFB of Additional Services, these Terms and Conditions contains the entirety of the agreement between the IAR and MFB in relation to (i) the mechanics of payment of Commission to the IAR following completion of a contract for the sale of a Financial Services Product and (ii) the compliance by the IAR with all Regulatory Requirements. These Terms and Conditions supersede and replace any previous agreements between the parties in relation to matters contemplated by these Terms and Conditions.

- 2.4. In circumstances where the IAR accepts these Terms and Conditions on behalf of itself or its registered individual advisors from time to time then the acts of such registered individual advisors shall be deemed to be acts of the IAR and binding upon the IAR.

3. Basis of Agreement between MFB and the IAR

- 3.1. MFB agrees to transact BTL Mortgage Business with Lenders on behalf of the IAR on the basis of the rates, deals and promotions determined by MFB and published on its website from time to time.
- 3.2. The IAR agrees that:
 - 3.2.1. the contract for the supply of a Product is formed directly between the Client and the Lender and that MFB shall have no liability in connection with the terms of supply of the Product by the Lender;
 - 3.2.2. the IAR has no authority, whether actual or implied to bind MFB to any agreement or arrangement with any Lender;
 - 3.2.3. MFB has complete discretion to agree with Lenders to vary, renegotiate or otherwise amend the terms upon which Lenders make Products available to the Clients which includes the alteration of the rates of Commission payable to MFB from time to time; and
 - 3.2.4. MFB may take such steps as it considers are reasonably necessary to verify the identity of the IAR (including its Principals and registered individual advisors of the IAR from time to time), and, in particular, the IAR agrees that MFB may use information supplied by the IAR in the registration process, (or subsequently supplied either by the IAR or its Principals or registered individual advisors of the IAR) in order to assess the fitness and propriety of the IAR (or any Principals or registered individual advisors of the IAR) as a financial services intermediary. The IAR expressly acknowledges that this may include searches of (i) the FSA register and databases, (ii) credit references agencies (iii) HM Land Registry and (iv) databases and resources made available from time to time to MFB by Lenders. In circumstances where the IAR accepts the terms of these Terms and Conditions on behalf of itself, its directors, shareholders or its registered individual advisors from time to time then the IAR warrants to MFB that it has the consent of such persons to carry out the checks and searches referred to in this clause 3.2.4.
 - 3.2.5. MFB agrees to provide the IAR with reasonable notice of alteration to the rates of Commission payable to the IAR on the sale of a BTL Mortgage by the publication of such rates or information on its website.

4. Duration

These Terms and Conditions shall commence on the Commencement Date and shall continue unless and until terminated in accordance with clause 12 (Termination).

5. Warranties and Undertakings on the part of the IAR

- 5.1. The IAR warrants, represents and undertakes on an ongoing basis during the term of these Terms and Conditions:
- 5.1.1. its obligations under these Terms and Conditions will be performed by a sufficient number of appropriately experienced, qualified, competent and trained personnel in accordance with Good Industry Practice. Any changes to the Principals of the IAR or its registered individuals will be notified to MFB within 30 days of such change taking effect;
 - 5.1.2. it has the consent of its Clients to disclose Client data or any Personal Data to MFB and that any such data will only be transferred to MFB via a secure method of communication;
 - 5.1.3. it will maintain a Professional Indemnity insurance policy at least equal in terms of its cover to that negotiated for members of the NACFB by its brokers. In the event that the IAR chooses not to utilise the NACFB scheme, the IAR undertakes to provide a copy of their policy to MFB.
 - 5.1.4. there are no actions, suits or proceedings or regulatory investigations pending, or to the IAR's knowledge, threatened against or affecting the IAR or its Principals before any court or administrative body that might affect the ability of the IAR to meet and carry out its obligations under these Terms and Conditions; and
 - 5.1.5. it shall not at any time during these Terms and Conditions and for a period of 12 months following the Termination Date solicit, induce or entice away from MFB or employ, engage or appoint or in any way cause to be employed, engaged or appointed any person who was employed, engaged or appointed by MFB at any time during the period of 12 months immediately before the Termination Date. It is expressly acknowledged by the IAR that breach by the IAR of this clause 5.1.6 shall entitle MFB to compensation at an amount equal to 50% of the annual gross salary of the employee concerned, in addition to any other compensation that MFB may be entitled to at law.
- 5.2. The IAR will transact BTL Mortgage Business in accordance with guidelines produced by MFB as published on its website.

- 5.3. The IAR agrees to utilise Mortgage Flow to assist in selecting appropriate Products for sale to customers. Terms and Conditions for the use of Mortgage Flow are set out in a separate agreement for the use of that product.

6. Transacting Business and payment of Commission

- 6.1. The rates of Commission payable to the IAR in relation to the sale of Products shall be published by MFB on MFB's website from time to time.
- 6.2. MFB will receive all Commission that is due from a Lender in connection with any BTL Mortgage. That element of the Commission that is due to the IAR will be received on trust for the IAR and MFB will make payment to the IAR within 15 Business Days of receipt of the Commission from the Lender.
- 6.3. In the event that a Lender determines that there is a Clawback Liability then MFB shall be entitled to recover any Commission credited to the IAR as follows:
 - 6.3.1. MFB may exercise any right of set-off it may have against the IAR under clause 13.1.4; or
 - 6.3.2. in the event that MFB determines that no set-off is possible then the IAR shall pay to MFB its Relevant Proportion of the Clawback Liability as soon as reasonably practicable following a request to do so by MFB and in any event within 15 Business Days.

7. MFB Exclusion and Limitation of Liability

- 7.1. Subject to clause 7.4 and except as expressly set out in these Terms and Conditions, MFB expressly excludes to the fullest extent permissible in law:
 - 7.1.1. all conditions, warranties and stipulations, express (other than those set out in these Terms and Conditions) or implied, statutory, customary or otherwise which, but for such exclusion, may subsist in favour of the IAR; and
 - 7.1.2. all and any liability whatsoever (whether in contract, tort, breach of statutory duty, restitution or otherwise) for any direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) suffered by the IAR whether as a consequence of entering into these Terms and Conditions, the provision by MFB of any Additional Services or otherwise.
- 7.2. in circumstances where the Additional Services comprise the purchase by the IAR of compliance related documentation and/or services from MFB such materials and services:
 - 7.2.1. have not been approved as compliant by the FSA;

7.2.2. have not been tailored by MFB for the IAR and it is the responsibility of the IAR to ensure that they are suitable to meet the regulatory requirements of the IAR at the date of use by the IAR;

and further any liability in relation to compliance on the part of MFB (including the taking of any enforcement action by the FSA) is excluded.

7.3. Subject to clauses 7.1, 7.2 and 7.4 the aggregate liability whatsoever of MFB under these Terms and Conditions and, if applicable, the provision by MFB of the Additional Services, (whether in contract, tort, breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct loss howsoever caused will be limited to £250,000.

7.4. MFB does not exclude or limit liability to the IAR for:

7.4.1. personal injury or death resulting from the negligence of MFB;

7.4.2. any matter which it would be illegal for MFB to attempt to exclude or limit its liability; or

7.4.3. fraud.

8. IAR Indemnities and Client Complaints

8.1. The IAR agrees to indemnify MFB in respect of:

8.1.1. a direct or indirect breach or negligent performance or failure in performance of any of the warranties and undertakings contained in clause 5 or the ongoing obligations regarding regulatory compliance contained in clause 11;

8.1.2. any breach by the IAR of any Regulatory Requirement; and

8.1.3. complaints made by Clients against the IAR.

8.2. The IAR agrees that it shall be solely responsible for all advice provided by it to Clients. The IAR shall inform MFB in writing of all complaints the IAR receives from Clients where the Business has been placed through MFB as soon as reasonably practicable following the IAR becoming aware of such complaints.

8.3. The IAR agrees that it shall be solely responsible for the payment of all Taxes on all Commission and other sums received by the IAR pursuant to these Terms and Conditions.

9. Ownership of Clients

MFB agrees (on behalf of itself but not on behalf of any Lender) that whilst all Clients will become clients of MFB in order to transact Business, the Clients belong primarily to the IAR and that MFB will not deal in or otherwise copy Client related information without the prior consent of the IAR save in connection with the progression of an application for a Product on behalf of a Client.

10. Additional and Supplementary Services

- 10.1. MFB may from time to time provide the IAR with Additional Services including training services, compliance support services (including approval of financial promotions in accordance with FSA requirements) and access to electronic sourcing systems for Financial Services Products. Subject to clause 7 the provision by MFB of such additional services shall be the subject of separate agreement between the MFB and the IAR.
- 10.2. MFB may from time to time facilitate the provision of Supplementary Services by third party suppliers covering such IAR requirements as marketing, website design and hosting. These services will be subject to a contract between the third party supplier and the IAR and MFB accepts no liability in connection with such Supplementary Services.

11. Regulatory Compliance

- 11.1. At all times during the continuance of these Terms and Conditions the IAR shall ensure that it:
 - 11.1.1. has all authorisations, permissions and licences as may be required by all relevant Regulatory Requirements from time to time to perform any of its obligations under these Terms and Conditions;
 - 11.1.2. complies with all obligations imposed upon it from time to time by any Regulatory Requirement;
 - 11.1.3. in accordance with Good Industry Practice, has the appropriate policies and procedures in place to ensure that it is kept up to date with any changes to any Regulatory Requirement; and
 - 11.1.4. maintains the appropriate and required registrations with the Information Commissioner's Office in respect of data protection compliance and the Office of Fair Trading in respect of its consumer credit licence

and the IAR further agrees that it shall inform MFB in writing as soon as reasonably practicable following the IAR becoming aware that any obligation contained in this clause 11 is no longer being fulfilled by the IAR.

12. Termination

- 12.1. MFB may terminate the agreement with an IAR immediately upon service of written notice if:
 - 12.1.1. the IAR is in material breach of these Terms and Conditions (being a single event or series of events which are together a material breach) and either such breach is not capable of remedy or, if such breach is capable of remedy, the IAR fails to remedy the

- breach within 10 Business Days of receipt of a written notice from MFB requiring the breach to be remedied;
- 12.1.2. the IAR is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or is subject to any insolvency proceedings;
- 12.1.3. a receiver, administrative receiver, administrator, liquidator or trustee in bankruptcy is appointed to assume control of any asset of the IAR;
- 12.1.4. the IAR has passed a resolution for its winding up (save for the purpose of voluntary construction or amalgamation);
- 12.1.5. the IAR suffers a revocation or suspension of authorisation or permission from the FSA;
- 12.1.6. in the opinion of MFB, the IAR engages in any conduct that may be prejudicial to the business, which shall include loss of goodwill and reputation of the MFB Group; or
- 12.1.7. MFB is required to do so by law or any regulatory authority.

13. Effect of Termination

- 13.1. In the event that the IAR agreement is terminated, MFB:
- 13.1.1. shall not transact any further applications for Business from the IAR under these Terms and Conditions;
- 13.1.2. will use its best endeavours to facilitate the completion of all applications for Business placed with Lenders prior to the Termination Date;
- 13.1.3. where MFB has an obligation to pay Commission to the IAR under the terms of these Terms and Conditions, will pay the IAR all Commission due in respect of Completed Cases where the relevant Business was received and accepted by the relevant Lender prior to the Termination Date; and
- 13.1.4. without prejudice to any other rights MFB may have, shall be entitled to set off any outstanding Commission against any liability, howsoever arising and whether the liability is present or future, liquidated or un-liquidated that the IAR may have to MFB.
- 13.2. In the event that the IAR relationship is terminated, the IAR:
- 13.2.1. shall remain responsible for all Clawback Liability that the IAR would have been liable for had these Terms and Conditions not terminated and will indemnify MFB accordingly;
- 13.2.2. shall within 20 Business Days of the Termination Date destroy all stationery, marketing and promotional materials that imply any connection between the IAR and MFB which shall include an obligation to disable access to any website used by the IAR for promotional purposes; and

- 13.2.3. without prejudice to any rights relating to passing off or trademark infringement, will not with effect from the Termination Date use in connection with any business which is competitive with the business of the MFB Group and its network of Introducers any name (in whatever form) which includes any Trading Name or any trading style or get up which is confusingly similar to that used by the MFB Group at the Termination Date (it being acknowledged that this obligation shall extend to using all reasonable endeavours to change the corporate name of the IAR if requested to do so by MFB).
- 13.3. The right to terminate the IAR relationship shall not prejudice any other right of or remedy of either party in respect of the breach concerned (if any) or any other breach.
- 13.4. All provisions of these Terms and Conditions which are (expressly or by implication) intended to have effect after termination shall to the extent required for such purpose survive any such termination.

14. Notices

- 14.1. Any notice or other communication given in connection with these Terms and Conditions will be in writing and will be delivered personally or sent by first class post. The relevant address for service will be the address set out in the IAR's application form or to any other address which the recipient has notified in writing to the sender received not less than seven Business Days before the notice was despatched.
- 14.2. A notice or other communication is deemed given:
- 14.2.1. if delivered personally, upon delivery at the address provided for in this clause (provided that if it is delivered personally on a day which is not a Business Day or after 4pm on a Business Day it will instead be deemed to have been made the next Business Day); or
- 14.2.2. if sent by pre-paid first class post, on the second Business Day after posting it.
- 14.3. The provisions of this clause will not apply, in the case of the service of court documents, to the extent that such provisions are inconsistent with the Civil Procedure Rules.

15. Assignment

- 15.1. These Terms and Conditions shall be binding upon, and enure for the benefit of, each of the parties hereto and their respective successors and permitted assigns (and any person to whom MFB shall transfer or novate any rights and/or obligations under these Terms and Conditions).
- 15.2. The IAR shall not assign or transfer any of its rights, benefits or obligations under these Terms and Conditions without the prior written consent of MFB.

15.3. MFB may assign all or any part of its rights or benefits or transfer all or any part of its obligations under these Terms and Conditions.

15.4. MFB may disclose on a confidential basis to any actual or potential assignee or transferee of any rights, benefits or obligations under any of these Terms and Conditions such information about the IAR as MFB shall consider appropriate.

16. Severance

If at any time any of the provisions of these Terms and Conditions is or becomes illegal, invalid or unenforceable in any respect under any law or regulation of any jurisdiction, neither the legality, validity and enforceability of the remaining provisions of these Terms and Conditions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected or impaired as a result.

17. Further Assurance

Each party will do, or will procure the doing of, at its own cost all acts and things and execute, or procure the execution of, all documents as the other party reasonably considers necessary to give full effect to the terms of these Terms and Conditions.

18. Third Party Rights

18.1. A person who is not a party to these Terms and Conditions has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of these Terms and Conditions.

18.2. The parties may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under these Terms and Conditions without the consent of any person who is not a party.

19. General

19.1. These Terms and Conditions and the documents referred to in it constitutes the entire agreement between the parties and supersedes any previous agreement, understanding, undertaking or arrangement of any nature whatsoever between the parties relating to the subject matter of these Terms and Conditions. The IAR acknowledges that it has not entered into these Terms and Conditions wholly or partly in reliance on any warranty, statement, promise or representation made by or on behalf of MFB. Nothing in this clause 19.1 will exclude any liability which one party would otherwise have to the other in respect of any statements made fraudulently.

- 19.2. Failure or delay by any party in exercising any right or remedy under these Terms and Conditions will not in any circumstances operate as a waiver of it, nor will any single or partial exercise of any right or remedy in any circumstances preclude any other or further exercise of it or the exercise of any other right or remedy.
- 19.3. Any waiver or any breach of, or any default under, any of the terms of these Terms and Conditions will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of these Terms and Conditions.
- 19.4. The rights and remedies expressly provided for by these Terms and Conditions will not exclude any rights and remedies provided for by law.
- 19.5. MFB may notify changes to the terms of these Terms and Conditions to the IAR in writing or via any electronic platform used by the IAR from time to time.
- 19.6. Nothing contained in these Terms and Conditions and no action taken by the parties pursuant to these Terms and Conditions will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employee and employee.

20. Law and Jurisdiction

- 20.1. These Terms and Conditions shall be governed by and construed in accordance with English law.
- 20.2. Each of the parties irrevocably agrees that the courts of England shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with these Terms and Conditions and for such purposes hereby irrevocably submits to the jurisdiction of such courts.