

# Standard Terms of Business

— for Mortgage Intermediaries



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# Investec Bank plc Standard Terms of Business for Mortgage Intermediaries

## 1. Definitions and interpretation

1.1. In these Terms of Business the following words and expressions have the following meanings:

**Agent** – an officer or employee of the Intermediary who introduces or may introduce an Applicant to Investec.

**Agreement** – the agreement between the Parties relating to the introduction of persons wishing to obtain a loan from Investec, consisting of the Application and these Terms of Business as amended from time to time.

**Anti-Bribery Laws** – the UK's Bribery Act 2010 and all other anti-bribery laws and requirements of those countries or territories in which the Intermediary operates in connection with this Agreement.

**Anti-Tax Evasion Laws** – the UK's Criminal Finances Act 2017 and all other anti-tax evasion laws and requirements of those countries or territories in which the Intermediary operates in connection with this Agreement.

**Applicant** – a person who applies for a Loan from Investec as a result of an introduction made by the Intermediary.

**Application** – the form appended to these Terms of Business and signed by or on behalf of the Intermediary.

**Associated Persons** – any person or entity who performs services for or on behalf of the Intermediary in connection with this Agreement, including without limitation its directors, officers, employees as well as any agents, subsidiary undertakings and/or sub-contractors.

**Business Day** – a day, other than a Saturday or Sunday, on which banks are open for business in London.

**Client** – an Applicant to whom Investec agrees to provide a Loan.

**Commission** – the amount payable by Investec to the Intermediary in respect of a Loan that is drawn in whole or in part by a Client, in accordance with condition 4.

**Confidential Information** – in relation to either Party (the Disclosing Party), any information, including any information relating to the operations, processes, plans, intentions, product information, know-how, design rights, trade secrets, software, market opportunities, customers, customer details and business affairs of the Disclosing Party (or, where Investec is the Disclosing Party, of any other member of Investec Group), but excluding any information which the Party in receipt of the information (the Receiving Party) can reasonably prove:

- a) was already known to it prior to its receipt from the Disclosing Party;
- b) was subsequently disclosed to it lawfully by a third party who did not obtain it (whether directly or indirectly) from the Disclosing Party; or
- c) was in the public domain at the time of receipt by the Receiving Party or subsequently entered into the public domain other than by reason of breach of this Agreement or breach of any obligation of confidence owed by the Receiving Party or its agents or subcontractors to the Disclosing Party.

**Data Protection Laws** – any applicable data protection or privacy laws. It shall include (a) the Data Protection Directive 95/46/EC and ePrivacy Directive 2002/58/EC as implemented by countries within the EEA, (b) from 25 May 2018, the General Data Protection Regulation, and/or (c) other laws that are similar, equivalent to or that are intended to implement, amend, or replace, the laws that are identified in (a) and (b) above.

**Good Industry Practice** – the degree of professionalism, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced intermediary and/or arranger of loans in the UK.

**Intermediary** – the person named in Section 1 of the Application.

**Investec** – Investec Bank plc (registered number 00489604) registered in England and Wales, whose registered office is at 30 Gresham Street, London EC2V 7QP, and its successors and assignees.

**Investec Group** – Investec Bank plc, Investec plc (registered number 03633621) registered in England and Wales, whose registered office is at 30 Gresham Street, London EC2V 7QP, Investec Limited (registered in South Africa number 1925/002833/06) whose registered office is at 100 Grayston Drive, Sandown, Sandton, South Africa and the holding companies (and other subsidiaries of those holding companies) and any direct or indirect subsidiaries of those three companies.

**Loan** – any type of secured loan or credit arrangement that may be made available by the Relevant Investec Team to any person from time to time.

**Party** – Investec or the Intermediary and any reference to the Parties means both of them.

**Product Information** – information made available by Investec (in printed and/or electronic form) concerning the Loans Investec is prepared to make available to persons and the general terms on which Investec may be willing to make such Loans available.

**Relevant Investec Team** – any of the following:

- a) the UK Private Bank Banking team within Investec, as such team may be redesignated or reconstituted from time to time; and
- b) any other team within Investec which the Parties agree from time to time is a Relevant Investec Team for the purposes of this Agreement.

**Relevant Laws** – all laws, rules, regulations, regulatory guidelines, industry codes of practice, statements of good industry practice, and orders of court or of any Ombudsman or regulator, that (in each case) apply to the activities of the relevant Party under this Agreement.

**Sanction** – a person shall be or become the subject of a Sanction if any of the questions set out in Section 5 of the Application has been or can be answered “yes” in respect of that person.

**Target Market** – Investec’s identified target market

**Vulnerable Client** – Either an Applicant or Client that meets the Financial Conduct Authority’s definition of Vulnerable Customer, being someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care.

- 1.2. Unless the contrary intention appears, words in the singular include the plural and vice versa and references to any gender include every other gender. Any reference to a person shall be deemed to be a reference to any natural person, partnership, firm or other unincorporated body, company, limited liability partnership or other incorporated body, or any other legal person howsoever constituted.
- 1.3. Where the words “including”, “include” or “for example” are used, they shall be read as if followed by the words “without limitation”.
- 1.4. References to acts of Parliament, subordinate legislation, regulations and rules shall be to such acts, subordinate legislation, regulations or rules as may be subsequently amended, substituted, modified or re-enacted from time to time.
- 1.5. Where the Intermediary is a partnership established in England, Wales or Northern Ireland, references to the Intermediary in this Agreement are to the partnership and all the partners of the partnership. The partners shall be parties to this Agreement and this Agreement shall be binding on the partnership and all of the partners jointly and severally.

## 2. Product Information, Target Market and training

- 2.1. On the intermediary section of its website, Investec shall make Product Information and details of its Target Market available to the Intermediary. The Intermediary may provide a copy of the Product Information to an Applicant, potential Applicant or Client.
- 2.2. The Intermediary shall be responsible for ensuring that Agents adequately understand the Product Information and Target Market. At the request of the Intermediary, Investec shall provide such further information as the Parties (acting reasonably) agree is required to ensure that Agents can adequately explain to and/or advise Applicants (as the case may be) appropriately concerning the Loans.
- 2.3. Investec does not represent or warrant that any Loan is suitable for any person (including any Applicant or Client) and Investec is not providing, nor shall it be required to provide, any financial, legal, tax, investment or other advice to the Intermediary, any Agent, any Applicant, any Client or any other person nor shall Investec be deemed to have done so by virtue of it making a Loan available to an Applicant. The Intermediary shall be responsible for assessing whether any Loan is appropriate for promotion to the Intermediary’s clients.

### 3. Introductions and cross-selling

- 3.1. The Intermediary shall not carry out any activity involving the promotion of Loans outside the United Kingdom, and shall not promote Loans through any third party (other than its Agents) or allow any third party (other than its Agents) to provide advice on Loans, without the prior written consent of Investec.
- 3.2. Unless otherwise agreed by Investec in writing, the Intermediary shall only promote Loans using information provided as part of the Product Information and shall not make any changes to, or supplement, any Product Information which the Intermediary is permitted to share with Applicants.
- 3.3. Where Investec agrees to permit the Intermediary to promote Loans using promotional materials other than the Product Information, and/or to make changes to or supplement any Product Information (any such other material or such changes or supplemental material being Additional Material), Investec's agreement shall be subject to the following provisions and to such other requirements as Investec may specify in writing at the time of giving its agreement:
  - 3.3.1. the Intermediary alone shall be responsible for ensuring that the Additional Material complies with all Relevant Laws and shall not represent or imply that it is publishing the Additional Material as the agent of Investec (or any other member of Investec Group), or that Investec (or any other member of Investec Group) has approved any Additional Material; and
  - 3.3.2. Investec shall have the right to review the content of any Additional Material for the purpose of protecting the commercial interests and reputation of Investec and Investec Group, and must consent to its publication prior to it being published. Any suggestion or opinion given by Investec shall not constitute legal advice by Investec to the Intermediary or any other party, or sign-off by Investec of that Additional Material as being fit for purpose and/or compliant with all Relevant Laws.
- 3.4. The Intermediary shall ensure that all Agents are suitably trained, have all necessary professional qualifications and have sufficiently detailed and reasonable knowledge and experience to enable them to perform their obligations in respect of Applicants and Clients in accordance with all Relevant Laws and Good Industry Practice.
- 3.5. The Intermediary shall ensure each of the Agents it intends to use has not been the subject of any Sanction.
- 3.6. Where the Intermediary becomes aware that any Agent has become the subject of a Sanction, or that the requirements set out in condition 3.4 are no longer met by that Agent, the Intermediary shall ensure that that Agent ceases to introduce Applicants to Investec and shall notify Investec that Investec should no longer accept introductions from that Agent.
- 3.7. The Intermediary shall inform Investec as soon as possible of any change in its Agents (for example, removal of an Agent for any reason, or addition of a new Agent), providing such information regarding the change as Investec may reasonably require in order to perform its obligations under this Agreement.
- 3.8. The Intermediary shall not purport to have any power or right to act on behalf of Investec or to bind Investec to any agreement, commitment or warranty.
- 3.9. Nothing in this Agreement shall establish an exclusive intermediary relationship between the Parties.
- 3.10. Investec shall not be obliged to provide a Loan to any Applicant and may refuse any application without any obligation to notify the Intermediary or to provide the Intermediary or the Applicant with any reason for doing so. Where an Agent is unknown to Investec, Investec may decline to consider any introduction it receives from an Agent until the Intermediary has confirmed to Investec that the Agent is an officer or employee of the Intermediary who is authorised to make such introductions.
- 3.11. The Intermediary agrees that once an Applicant becomes a Client under this Agreement, nothing in this Agreement shall prohibit Investec (or any other member of Investec Group) from promoting and/or selling (to the extent permitted under Relevant Laws) other products or services to that Client. Where the relevant Client takes another product or service from Investec or another member of Investec Group, no Commission shall be payable to the Intermediary in respect of that other product or service.
- 3.12. The Intermediary will provide to an Applicant or Client such information as Investec may reasonably require, and within the timescales reasonably specified by the Investec, to assist Investec in complying with its obligations under Data Protection Laws.

## 4. Commission

- 4.1. Subject to the provisions of this condition 4, the maximum Commission payable by Investec to the Intermediary (the Maximum Commission) will be either the percentage of the Loan amount as shown in the Commission % column or, where applicable, the figure in the Maximum Commission column (whichever is lower) in respect of a Client who draws a Loan (or any part of it).

NEW LENDING	COMMISSION %	MAXIMUM COMMISSION
Residential Mortgage (excl. extensive renovations and Self-build)	0.4%	£25,000
Residential Mortgage which is an extensive renovation*	0.4%	£25,000
Self-build	0.4%	£25,000
BTL	0.5%	NA
Commercial	0.5%	NA

MID TERM PRODUCT SWITCH	COMMISSION %	MAXIMUM COMMISSION
Residential Mortgage (excl. extensive renovations and Self-build)	0.25%	£12,500
Residential Mortgage which is an extensive renovation*	0.25%	£12,500
Self-build	0.25%	£12,500
BTL	0.25%	NA
Commercial	0.25%	NA

\*Investec shall determine at its sole discretion whether the product is an extensive renovation product.

- 4.2. Investec shall document in the illustration and binding Loan offer the Commission that Investec is prepared to pay to the Intermediary in the event that the proposed Loan (or any part of it) is drawn. Any reduction in the arrangement fee payable to Investec, that Investec chooses to give to the Client, may result in a pro rata reduction in the percentage of the Loan amount that the Intermediary will receive. In any case, the Commission payable in respect of a Loan will be detailed in the Loan illustration and binding Loan offer.
- 4.3. Upon request from the Intermediary, Investec shall confirm in writing the Commission that Investec is prepared to pay to the Intermediary in the event that the proposed Loan (or any part of it) is drawn.
- 4.4. Investec shall be entitled in its sole discretion to pay less Commission than it has specified to the Intermediary or no Commission, where, in Investec's reasonable opinion, the Intermediary (or the relevant Agent):
- 4.4.1. has failed to provide to Investec such information, documentation and/or assistance relating to the Loan application as Investec may reasonably require for the purposes of processing the Loan application; and/or
  - 4.4.2. has otherwise failed to meet the standards of Good Industry Practice in respect of introducing the Applicant to Investec.

In such circumstances, Investec shall inform the Intermediary as soon as possible and in any event no later than the scheduled date of drawdown (or first drawdown) of the Loan, specifying its reasons.

- 4.5. Any Commission which Investec agrees to pay shall be a one-off commission payment in respect of each relevant Loan which is drawn by a Client.
- 4.6. No Commission shall be payable where, for any reason, no part of the relevant Loan is drawn.
- 4.7. Investec shall pay the Commission to the Intermediary within 20 Business Days of the later of (1) the Loan (or any part of it) being drawn and (2) receipt of the Intermediary's invoice for payment. Payment shall be to the account whose details are set out in the Application (or to such other account as the Parties may agree from time to time).
- 4.8. Any Commission paid by Investec to the Intermediary shall be deemed to be inclusive of value added tax (or any similar tax) if applicable.

- 4.9. Where applicable and to the extent required by Relevant Laws and Good Industry Practice, the Intermediary shall inform each Applicant or Client, using clear and intelligible language, that the Intermediary shall be paid Commission by Investec for referring (or having referred) that Applicant or Client to Investec and shall either indicate the specific amount of Commission payable or the means by which it will be calculated.
- 4.10. Investec shall be entitled to vary the Maximum Commission at any time by notice in writing to the Intermediary. Such variation shall apply in respect of any Applications sent to Investec by the Intermediary subsequent to the date of such notice, but shall not affect any Applications which are already being processed at that date.

## 5. Compliance

- 5.1. Each Party shall comply in all respects with all Relevant Laws and Good Industry Practice in performing its obligations under or pursuant to this Agreement. Without prejudice to the preceding sentence, each Party shall (and shall ensure that its directors, employees, agents, sub-contractors and affiliates shall):
  - 5.1.1. comply with all data protection, privacy or similar laws anywhere in the world, that apply in relation to any personal data that is processed by either Party under or in connection with this Agreement. Condition 6 sets out further data protection obligations of the Intermediary. Each Party acknowledges and agrees that, for the purposes of this Agreement, each Party shall be acting as a data controller and not as a data processor in respect of such personal data;
  - 5.1.2. at all times comply with Anti-Bribery Laws. In the furtherance of the foregoing, each Party undertakes that it shall (and shall ensure that its directors, employees, agents, sub-contractors and affiliates shall) have in place adequate processes and procedures to ensure compliance with Anti-Bribery Laws at all times. Condition 5.5 sets out further obligations of the Intermediary to comply with Anti-Bribery Laws;
  - 5.1.3. have in place such policies and procedures relating to the handling of complaints from its clients as are required to comply with all Relevant Laws and Good Industry Practice; and
  - 5.1.4. have in place such policies and procedures relating to the identification and supporting of Vulnerable Clients as are required to comply with Relevant Laws and Good Industry Practice.

- 5.2. Without prejudice to condition 5.1, the Intermediary:
- 5.2.1. warrants that (and shall be deemed each time it introduces an Applicant or Client to Investec to warrant that) it holds all authorisations, permissions and/or licences as are required by the Intermediary to perform its obligations under this Agreement; and
  - 5.2.2. must immediately inform Investec in writing:
    - 5.2.2.1 where it ceases to be hold any authorisation, permission or licence which is required by it to perform its obligations under this Agreement; or
    - 5.2.2.2 where it has become the subject of a Sanction.
- 5.3. The Intermediary shall supply to Investec such documentation or information as Investec may reasonably request from time to time:
- 5.3.1. as evidence of the Intermediary's compliance with all Relevant Laws; or
  - 5.3.2. in order for Investec to comply or demonstrate compliance with any Relevant Laws.
- 5.4. The Intermediary shall allow Investec, Investec's auditors and/or any other person representing Investec or Investec's regulators (including the Financial Conduct Authority) access during normal business hours and upon not less than ten Business Days' notice (or within such shorter period as may be prescribed or required by Investec's regulators in any particular instance) to such premises of the Intermediary and/or to such information, documentation and systems as Investec, its auditors or its regulators may reasonably require for the purpose of assessing the Intermediary's compliance with all Relevant Laws and the requirements of this Agreement or in order for Investec to comply or demonstrate compliance with any Relevant Laws.

**Intermediary's compliance with Anti-Bribery and Anti-Tax Evasion Laws**

- 5.5. The Intermediary shall at all times comply with Anti-Bribery Laws. The Intermediary shall further ensure that Associated Persons, where these exist in connection with this Agreement, comply with Anti-Bribery Laws. The Intermediary represents, warrants and undertakes that it has in place and shall maintain adequate processes policies and procedures to ensure compliance with Anti-Bribery Laws at all times and to minimise the risk of any offence being committed by the Intermediary or its Associated Person under Anti-Bribery Laws. The Intermediary shall provide copies of such policies and procedures to Investec upon request.
- 5.6. The Intermediary shall comply with Anti-Tax Evasion Laws. The Intermediary represents, warrants and undertakes that it shall not, through any act or omission, knowingly facilitate a third party in engaging in any form of tax evasion or tax fraud, or otherwise engage in any activity, practice or conduct that would constitute a tax evasion facilitation offence under Anti-Tax Evasion Laws. The Intermediary shall further ensure that Associated Persons, where these exist in connection with this Agreement, comply with Anti-Tax Evasion Laws. The Intermediary represents, warrants and undertakes that it has in place and shall maintain adequate policies and procedures to ensure compliance with Anti-Tax Evasion Laws at all times and to minimise the risk of any offence being committed by the Intermediary or its Associated Person under Anti-Tax Evasion Laws. The Intermediary shall provide copies of such policies and procedures to Investec upon request.

## 6. Data Protection Obligations of the Intermediary

- 6.1. **General data protection compliance** The Intermediary warrants that it shall at all times comply with all applicable Data Protection Laws.
- 6.2. **Consent, records of consent and disclosure** The Intermediary warrants that it shall obtain all necessary consents from the Applicant or Client, valid under the applicable Data Protection Laws, to enable it to provide its services to the Applicant or Client and to disclose the Applicant or Client's personal data to Investec for the provision of services by Investec and to ensure the lawfulness of any associated processing of personal data, including obtaining the Applicant or Client's consent for processing their payment card information (such as card and card holder details), including where applicable obtaining special (e.g., explicit) consent for the processing of any sensitive personal data and more specifically of any electronic communications data, location data, biometric data or genetic data relating to any Applicant or Client, whose data are processed in the connection with the services provided by the Intermediary, and that it shall maintain adequate records of such consents and provide access to Investec to audit such records within 30 days of a notice from Investec to the Intermediary requesting such an audit. The Intermediary shall also ensure that it discloses to the Applicant or Client that it will monitor and track the progress of the Applicant or Client's Loan application.



- 6.3. **Data retention limitation** The Intermediary warrants that it will safely erase all personal data, as soon as it is no longer needed, and in accordance with any applicable Data Protection Laws; and will safely dispose of any media containing such data.
- 6.4. **Data subject rights** The Intermediary warrants that it will grant any Applicant or Client whose personal data is processed for the purposes of the services it provides, in relation to which it (the Intermediary) is the controller upon their request, all the relevant rights under any applicable Data Protection Laws, including (in summary):
  - 6.4.1. the right to be informed of the processing by the Intermediary, of the Intermediary's own motion, either when the data are obtained from the Applicant or Client or as otherwise required by any applicable Data Protection Laws, in such detail as may be required under any applicable Data Protection Laws ("transparency");
  - 6.4.2. the right to receive confirmation as to whether or not data relating to them are being processed and information at least as to the purposes of the processing, the categories of data concerned, and the recipients or categories of recipients to whom the data are disclosed (and such other information as may be required under any applicable Data Protection Laws) ("right to confirmation of processing");
  - 6.4.3. the right to have communicated to them in an intelligible form, the data undergoing processing and any available information as to their source (and such other information as may be required under any applicable Data Protection Laws) ("right of access");
  - 6.4.4. the right to obtain, as appropriate, the rectification, erasure or blocking of data the processing of which does not comply with the provisions of any applicable Data Protection Laws, in particular because of the incomplete or inaccurate nature of the data ("right of rectification and erasure");
  - 6.4.5. the right to have third parties to whom the data have been disclosed notified of any rectification, erasure or blocking/restriction of processing, unless this proves impossible or involves a disproportionate effort; and
  - 6.4.6. the right to have any data erased upon request, unless the retention of the data is allowed under any applicable Data Protection Laws ("right to be forgotten").
- 6.5. The Intermediary will always as soon as practical cease the provision of its services in relation to any data subject who objects to it.
- 6.6. The Intermediary will provide such information as Investec may reasonably require, and within the timescales reasonably specified by the Investec, to assist Investec in complying with any requests from an Applicant or Client relating to personal data processing.
- 6.7. **Confidentiality and reliability of personnel** The Intermediary warrants that it will only use reliable personnel in its processing relating to the services it provides and that it will instruct its personnel operating in relevant Data Protection Laws and confidentiality laws and rules, and will place all such staff under a duty of confidentiality, in accordance with any applicable Data Protection Laws (and/or with other legislation or rules, such as telecommunication legislation or professional ethics rules, as may also be applicable).
- 6.8. **Security** The Intermediary warrants that it will implement and adopt appropriate (state of the art) technical and organisational security and confidentiality measures, and keep appropriate logs, in relation to all data obtained from the Applicant or Client and which it processes in relation to the services that it provides to the Applicant or Client. This data includes any payment card information (such as card and card holder details) that the Intermediary obtains and processes when making payments on behalf of the Applicant or Client. These measures will meet all the data security requirements of any applicable Data Protection Laws in respect of data security and confidentiality.
- 6.9. **Requests from authorities** The Intermediary warrants that if it receives a request, notice or other communication from a supervisory authority (in particular, from the Information Commissioner) or from a law enforcement or national security agency in relation to data processed by Investec acting as a data controller it will as soon as reasonably possible, and in any case, within 24 hours of receipt, inform Investec and will involve Investec in the handling of the request.

## 7. Intermediary indemnity

- 7.1. The Intermediary shall be solely liable for, and shall indemnify Investec and keep Investec indemnified in respect of, all losses, claims, demands, actions, costs, expenses, fines, liabilities and damages (including legal fees and expenses) incurred by or awarded against Investec, or any member of the Investec Group or their respective directors, officers, agents, employees, members and successors in interest (together the "Indemnified Persons") in connection with any claim, action or proceeding against an Indemnified Person in connection with a breach of:

- 7.1.1. the Intermediary's obligations under condition 5.2 of this Agreement;
  - 7.1.2. any Relevant Laws; or
  - 7.1.3. the Intermediary's obligations under condition 6 (Data Protection) of this Agreement. For the purposes of this condition 7.1.3 only, the Intermediary's entire liability, whether arising in contract, tort, negligence, misrepresentation, for breach of duty or otherwise, shall be limited to £2,000,000 in respect of each claim or series of connected claims.
- 7.2. The Intermediary's obligations under condition 7 shall survive termination or expiry of the Agreement.

## 8. Intermediary's information undertakings

- 8.1. The Intermediary shall, within 20 Business Days of receipt of a request from Investec, provide to Investec (in such format as Investec may reasonably require) a report specifying the information requested in Section 4 and Section 5 of the Application, updated to refer to the twelve-month period preceding the date of Investec's request, together with such other information as Investec may reasonably require in order to allow Investec to assess the continued suitability of Investec engaging the Intermediary as an introducer of Loans.
- 8.2. Without prejudice to condition 8.1, the Intermediary shall promptly inform Investec, providing (to the extent permitted by law) full details, where any action, proceeding or regulatory investigation is commenced or taken in relation to any of the activities of the Intermediary (whether under this Agreement or otherwise).
- 8.3. Where an Applicant or Client (or any person acting on their behalf) either orally or in writing expresses dissatisfaction, or refers a complaint, to the Intermediary in relation to the terms of a Loan, Investec's activities and/or the content of any documentation or information made available by Investec to an Applicant, a Client or the Intermediary in relation to a Loan, the Intermediary shall, no later than the next Business Day after the Intermediary becomes aware of the expression of dissatisfaction or complaint, refer such matter to Investec and shall inform the Applicant or Client that it has done so. Investec shall assume responsibility for the handling of that matter.
- 8.4. For the avoidance of doubt, condition 8.3 shall not apply where the expression of dissatisfaction or complaint relates solely to the conduct of the Intermediary and/or any Agent in providing services to the Applicant or Client. In such circumstances the Intermediary alone shall determine how to deal with the expression of dissatisfaction or complaint.

## 9. Duration and termination

- 9.1. This Agreement shall continue unless and until terminated in accordance with the provisions of this condition 9.
- 9.2. Each Party shall be entitled to terminate this Agreement on giving not less than three (3) months' prior written notice to the other.
- 9.3. Either Party shall be entitled to terminate this Agreement immediately by written notice to the other if:
  - 9.3.1. the other Party commits a breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that Party being notified in writing of the breach; or
  - 9.3.2. the other Party becomes unable to pay its debts in the ordinary course of business, passes a resolution for winding up or has a receiver or administrator appointed over all or any of its assets, becomes insolvent (whether voluntary or involuntary), placed in liquidation, ceases to carry on business as a going concern, suffers any event analogous to or comparable with any of the above in any jurisdiction; or
  - 9.3.3. the other Party ceases to hold such authorisations, permissions and/or licences as are required by that Party to perform its obligations under this Agreement.
- 9.4. Investec shall be entitled to terminate this Agreement immediately by written notice to the Intermediary where:
  - 9.4.1. any action, proceeding or regulatory investigation is commenced or taken in relation to any of the activities of the Intermediary (whether under this Agreement or otherwise);
  - 9.4.2. any complaint is made by any Applicant or Client in relation to any of the activities of the Intermediary under this Agreement; and/or
  - 9.4.3. the Intermediary or any of its employees, agents or sub-contractors does or omits to do anything under this Agreement, and in the reasonable opinion of Investec this is detrimental to the best interest and/or business and/or reputation of Investec and/or any other member of the Investec Group.

- 9.5. On termination of this Agreement (howsoever caused), the Intermediary shall cease promoting Loans and shall promptly return to Investec at its own expense (or at Investec's request promptly securely destroy) all Product Information and Additional Material together with all other Confidential Information of Investec and/or of any other member of Investec Group (including all copies in whatever form of any such information).
- 9.6. Termination of this Agreement shall not prejudice or affect the rights and liabilities of the Parties to each other at the date on which termination takes effect.

## 10. Confidentiality

- 10.1. Save as is otherwise required by law or any regulatory authority, each Party (the Receiving Party) undertakes to the other Party (the Disclosing Party) that during the term of the Agreement and thereafter it will keep secret and will not without the prior written consent of the Disclosing Party disclose to any third party any Confidential Information learned by the Receiving Party or disclosed to the Receiving Party pursuant to or otherwise in connection with the Agreement.
- 10.2. To the extent that it is necessary to perform its obligations under this Agreement, the Receiving Party may disclose Confidential Information to its employees, agents or sub- contractors as may reasonably be necessary provided that before any such disclosure the Receiving Party shall make such persons aware of their obligations of confidentiality under the Agreement and shall at all times procure compliance with such obligations of confidentiality.
- 10.3. Save to the extent required in order to promote and/or provide Loans to potential Applicants, Applicants and Clients, or to comply with Relevant Laws, neither Party shall disclose or announce the existence of the relationship between the Parties or the subject matter of this Agreement.

## 11. Relationship between the Parties

- 11.1. Nothing in this Agreement and no action taken by the Parties pursuant to this Agreement shall constitute or be deemed to constitute between the Parties a partnership, agency, association, joint venture or other cooperative entity.

## 12. General

### **Assignment and transfer**

- 12.1. The Intermediary shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Investec, such consent not to be unreasonably withheld or delayed.
- 12.2. Investec may at any time assign, novate or transfer (Transfer) this Agreement in whole or in part to any person (the Transferee) provided that the Transferee has, at the date on which the Transfer takes effect, all necessary licences, permits, registrations and authorisations required by all Relevant Laws to enable it to perform its obligations and exercise its rights under this Agreement as so Transferred. The Intermediary shall execute all documents reasonably required to give effect to any such Transfer.

### **No waiver**

- 12.3. No delay or omission on the part of either Party in exercising any right or remedy under this Agreement shall impair that right or remedy or operate as or be taken to be a waiver of it, nor shall any single partial or defective exercise by either Party of any such right or remedy preclude any other or further exercise under this Agreement of that or any other right or remedy.

### **Disclosures**

- 12.4. Subject to any Relevant Laws, Investec will be entitled to disclose to any member of the Investec Group who proposes to enter into an Application with the Intermediary all information, financial information and any other information given to Investec in relation to the Intermediary.

### **Entire agreement and relationship with other agreements**

- 12.5. This Agreement contains all the terms which the Parties have agreed in relation to the subject matter of this Agreement and supersedes any prior written or oral agreements, representations or understanding between the Parties relating to that subject matter. Neither Party to this Agreement has been induced to enter into this Agreement by a statement or promise which it does not contain, save that this condition shall not exclude any liability which one Party would otherwise have to the other Party in respect of any statement made fraudulently by that Party.
- 12.6. Unless otherwise expressly agreed in writing between the Parties, this Agreement is separate from and does not amend, supplement or otherwise affect, nor is it or shall it be amended, supplemented or otherwise affected by:
- 12.6.1. any other commercial agreement between the Parties that may exist from time to time; or
  - 12.6.2. any commercial agreement that may exist between the Intermediary and any other team or division within Investec Bank plc (not being a Relevant Investec Team) regarding the introduction of loans to that team or division within Investec Bank plc

### **Amendment**

- 12.7. Investec may amend this Agreement at any time by giving not less than three (3) months' prior written notice to the Intermediary. This condition 12.6 shall not apply however where condition 4.10 applies.

### **Notices**

- 12.8. Any notice to be given under this Agreement shall either be delivered in person or sent by first class post to the recipient's address as set out in this Agreement, or to such other address as may be notified in writing from time to time by the recipient. Any notice to Investec under this Agreement should be sent to 30 Gresham Street, London, EC2V 7QP.
- 12.9. Notice shall be deemed to have been delivered at the time of delivery (in the case of delivery in person) or on the third Business Day after posting (in the case of delivery by first class post).

### **Third party rights**

- 12.10. No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party who is not a Party, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

### **Governing law and jurisdiction**

- 12.11. This Agreement shall be governed and construed in accordance with English law and the Parties agree to submit to the exclusive jurisdiction of the English courts.