

# Solomon Brothers

Barristers, Solicitors, Attorneys

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DX 82, Perth Email: mailroom@solbros.com.au  
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6 September 2001

Our Ref: PFF/6406969  
Enquiries: Paul Fletcher  
Email: pfletcher@solbros.com.au  
Your Ref:

Australian Competition & Consumer Commission  
233 Adelaide Terrace  
PERTH WA 6000



Dear Sirs

## AUSTRALIAN FINANCE GROUP PTY LTD - SECTION 93 NOTICE

We act for Australian Finance Group Pty Ltd ("AFG"). AFG operates nationally in the industry of mortgage finance broking. AFG utilises a network of agents who, as independent contractors, act as "Introducers" to AFG of applicants and potential applicants for mortgage finance. The AFG Introducers are engaged by written contract entitled "Commission and Software User Agreement". A copy of a standard form of that contract is attached.

By clause 3.8 of the contract, Introducers agree to effectively supply their services as Introducer exclusively to AFG during the term of the contract. This exclusive dealing arrangement could be in breach of section 47(4) of the *Trade Practices Act (1974)* (the "TPA") if the conduct has the purpose of substantially lessening competition.

We note that section 47 of the TPA has no application to contracts regulating the conditions of employment of employees. However, the Introducers are, in terms of the contract, independent commission agents rather than employees - refer to clause 13.1.

In our submission, the exclusive dealing arrangement does not have the purpose of substantially lessening competition for the supply to mortgage brokers of the services of introduction of clients seeking mortgage finance. The percentage of the market affected by the restriction, measured in terms of persons available to provide the services of commission agent, or Introducer, to lenders and mortgage brokers promoting the lender's loan products, is either zero or so small as to not be measurable. Each of the financial institutions whose loan products AFG promotes operates freely in the marketplace independently of AFG using its own employees and agents. There is no shortage of persons available in the marketplace to supply to any lending institution or mortgage broker the services of promoting loan products to consumers of mortgage finance. Furthermore, the agreement may be terminated by either party on giving 30 days prior written notice to the other party.

Yours faithfully

A handwritten signature in cursive script that reads "Solomon Brothers".

Handwritten initials, possibly "AD", in the top right corner.



P2001/2-01(CWF)

FORM G

COMMONWEALTH OF AUSTRALIA

*Trade Practices Act 1974 - subsection 93(1)*

**EXCLUSIVE DEALING: NOTIFICATION**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in subsection 47(4) of that Act in which the person giving notice engages or proposes to engage.

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1. (a) Name of person giving notice:

AUSTRALIAN FINANCE GROUP PTY LTD

- (b) Short description of business carried on by that person:

Mortgage broking.

- (c) Address in Australia for service of documents on that person:

c/- Solomon Brothers, Level 40 Exchange Plaza, 2 The Esplanade,  
Perth Western Australia.

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

Acquisition of services of commission agents.

- (b) Description of the conduct or proposed conduct:

Securing exclusive access to the services.

3. (a) Class or classes of persons to which the conduct relates:

Commission agents introducing borrowers.

- (b) Number of those persons:

(i) At present time: 2000

(ii) Estimated within the next year: 2000


(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:

Paul Francis Fletcher  
c/- Solomon Brothers  
Level 40 Exchange Plaza  
2 The Explanade  
PERTH WA 6000

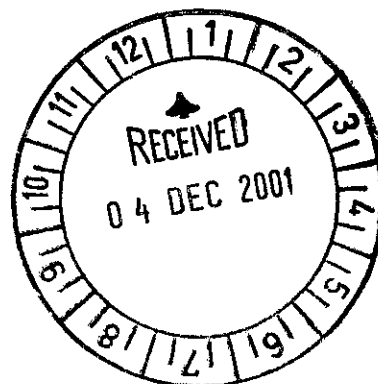
Dated 6<sup>th</sup> September 2001

Signed on behalf of the person giving this notice:

  
\_\_\_\_\_  
Solicitor and Agent  
for and on behalf of  
Australian Finance Group Pty Ltd

PAUL FRANCIS FLETCHER  
Full name

SOLICITOR  
Description



## DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe the part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in subsection 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3(a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b)(ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

## NOTICE

If this notification is in respect of conduct of a kind referred to in subsection 47(6) or (7), or paragraph 47(8)(c) or (9)(d), of the *Trade Practices Act 1974* ("the Act"), it comes into force at the end of the period prescribed for the purposes of subsection 93(7A) of the Act ("the prescribed period") unless the Commission gives a notice under subsection 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under subsection 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under subsection 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in subsection 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or 9(a), (b) or (c), of the Act, it comes into force when it is given.

**COMMISSION AND SOFTWARE USER AGREEMENT**

AGREEMENT dated the \_\_\_\_\_ day of \_\_\_\_\_ 2001.

BETWEEN:

**Australian Finance Group Pty Ltd  
("AFG")**

*[Each State to enter Company Address]*

AND

\_\_\_\_\_ of \_\_\_\_\_  
("Introducer")

**RECITALS**

- A. AFG is engaged in the business of finance, and residential mortgage broking/facilitation.
- B. In consideration of the Introducer completing, processing or referring residential mortgage or non-residential mortgage finance applications to AFG, AFG agrees to pay commissions to the Introducer on the terms and conditions set out in Part One of this Agreement.
- C. AFG is the supplier and absolute owner of the residential mortgage comparison/qualification software known as Electronic Finance Broker ("the EFB Software").
- D. AFG will allow the Introducer to use the EFB Software during the term of this Agreement on a non-exclusive and non-transferable basis on the terms and conditions set out in Part Two of this Agreement.

**THE PARTIES COVENANT AND AGREE AS FOLLOWS:**

**PART ONE**

**1. APPOINTMENT AND COMMISSIONS**

- 1.1 AFG hereby appoints the Introducer to introduce to AFG finance applications for a term of ten (10) years ("the Term), subject to earlier termination pursuant to Clause 7, upon and subject to the terms of this Agreement.
- 1.2 In consideration of the Introducer referring or submitting to AFG finance applications by prospective borrowers acceptable to AFG and lenders, AFG will pay the commissions detailed in this Clause 1.
- 1.3 With respect to each month in which sufficient residential mortgage finance applications

submitted or referred to AFG by the Introducer are settled so as to achieve the benchmark as defined in Clause 1.4 either in that particular month or as part of the monthly average:

- 1.3.1 over the period comprising the particular month plus the prior eleven (11) consecutive months of the Term ("the Year"); or
- 1.3.2 over the period, if less than twelve (12) months of the Term has elapsed, comprising the particular month plus each prior month of the Term as has elapsed ("the Short Term").

in addition to the Up-Front Commission AFG will, subject to each of the conditions specified in Clause 2 and subject to Clause 7.6.3, pay to the Introducer the Trail Commission for each application referred or submitted by the Introducer that has settled.

- 1.4 For the purpose of Clause 1.3 the benchmark for each month shall be achieved if:
  - 1.4.1 total funds borrowed under residential finance applications referred or submitted by the Introducer settled in that month is not less than \$ \_\_\_\_\_; or
  - 1.4.2 the average monthly amount of funds borrowed under residential finance applications referred or submitted by the Introducer and settled during the Year or, in the event Clause 1.3.2 applies referred or submitted by the Introducer and settled during the Short-Term, is not less than \$ \_\_\_\_\_; or
  - 1.4.3 \_\_\_\_\_ or more residential mortgage finance applications referred or submitted by the Introducer are settled in that month; or
  - 1.4.4 the average number of mortgage applications referred or submitted by the Introducer settled per month during the Year or, in the event Clause 1.3.2 applies, during the Short Term is \_\_\_\_\_ or more.
- 1.5 The commissions payable by AFG for the various types of referrals and submissions are as follows:-

- 1.5.1 **Referral Commission**

In consideration of the referral of prospective borrowers satisfactory to AFG and acceptable to the lender, an Up-Front Commission equal to \_\_\_\_% of the gross Up-Front Commission received by AFG from the lender in respect of each such application being the commission rate specified in Schedule A for each lender/loan product or such amended rate as the lenders may set from time to time. In addition the Trail Commission, for the purposes of Clause 1.3 is \_\_\_\_% of the Trail Commission received by AFG from the lender in respect of the application.

### **1.5.2 Completed Application Commission**

In consideration of the submission on behalf of prospective borrowers of completed finance applications satisfactory to AFG and acceptable to the lender, an Up-Front Commission equal to \_\_\_% of the gross Up-Front Commission received by AFG from the lender in respect of each such application being the commission rate specified in Schedule A for each lender/loan product or such amended rate as the lenders may set from time to time. In addition the Trail Commission, for the purposes of Clause 1.3 is \_\_\_% of the Trail Commission received by AFG from the lender in respect of the application.

### **1.5.3 Completed and Processed Application Commission**

In consideration of the submission of completed and processed finance applications satisfactory to AFG and acceptable to the lender, an Up-Front Commission equal to \_\_\_% of the gross Up Front Commission received by AFG from the lender in respect of each such application being the commission rate specified in Schedule A for each lender/loan product or such amended rate as the lenders may set from time to time. In addition the Trail Commission, for the purposes of Clause 1.3 is \_\_\_% of the Trail Commission received by AFG from the lender in respect of the application.

### **1.5.4 Leads Supplied Commission**

In consideration of the completion by the Introducer of finance applications where AFG has referred the Introducer to the borrower, an Up-Front Commission equal to \_\_\_% of the gross Up-Front Commission received by AFG from the lender in respect of each such application being the commission rate specified in Schedule A for each lender/loan product or such amended rate as the lenders may set from time to time. In addition the Trail Commission, for the purposes of Clause 1.3 is \_\_\_% of the Trail Commission received by AFG from the lender in respect of the application.

### **1.5.5 Non Residential mortgage Applications Commission**

In consideration of the referral by the Introducer of non-residential mortgage, consumer and commercial finance applications satisfactory to AFG, such fee as is negotiated between AFG and the Introducer on a case by case basis with respect to each application that is accepted by a lender.

- 1.6 All Trail Commission shall, subject to Clause 2, be payable monthly in arrears.
- 1.7 In this Agreement "Up-Front Commission" means a once-off commission payable at a specified rate by reference to and in respect of the establishment of a loan involving the provision of services by the Introducer.
- 1.8 In this Agreement "Trail Commission" means an ongoing commission payable at a specified rate by reference to and in respect of the continued existence of a loan the establishment of which involved the provision of services by the Introducer.

## 2. CONDITIONS

- 2.1 The commissions referred to in Clause 1 will only be payable by AFG to the Introducer upon AFG receiving the corresponding commissions from the relevant lender. Subject to the foregoing, the commissions, other than Trail Commissions, will be payable by direct credit to the bank account nominated by the Introducer weekly in arrears.
- 2.2 If at any time after the first three (3) months of the Term the Introducer fails to maintain during the Term the monthly average specified in Clause 1.4.2 or Clause 1.4.4 ("Average") the entitlement of the Introducer to receive Trail Commission in relation to any loans written during the Term is suspended and is not reinstated until achievement of the Average re-occurs.
- 2.3 The commission amounts payable to the Introducer are subject to variation in accordance with any increase or decrease in the amount of commission received by AFG from the relevant lenders.
- 2.4 In the event that an application, in respect of which commission has already been paid by AFG to the Introducer ("Unearned Commission"), is withdrawn or declined by a lender or the lender claws back from AFG any commission that has been paid to AFG by the lender in respect of any application, the Introducer authorises AFG to deduct from other commission payments due to the Introducer an amount equal to the Unearned Commission or the same proportion thereof as the proportion clawed back by the lender. Notwithstanding the foregoing, the Introducer acknowledges and agrees that the Unearned Commission is a debt due to AFG that is due and payable to AFG on demand.
- 2.5 On or about each anniversary of the commencement date during the Term of this Agreement the parties will confer for the purpose of reviewing commission rates and the other terms and conditions of this Agreement and to determine whether by mutual agreement any variations are to be made. No variation to this Agreement shall be of any effect unless in writing and executed by both parties.

## 3. OBLIGATIONS OF THE INTRODUCER

During the Term, the Introducer agrees to:

- 3.1 ensure that it and all its employees (if any) act ethically and comply with all the necessary laws, licensing requirements and regulatory and statutory requirements relating to consumer and commercial finance including all requirements of any consumer credit code and any self regulatory industry body and any corresponding legislation in force in the relevant State or Territory of Australia;
- 3.2 if required by law or requested by AFG, maintain registration as a finance broker unless exempt from such registration and any other registration pursuant to corresponding legislation in force in the relevant State or Territory of Australia in which the Introducer is carrying on business;
- 3.3 indemnify and keep indemnified AFG against all losses, damages, claims, fees, expenses and costs arising as a consequence of the Introducer failing to comply with any of the



matters referred to in Sub-Clause 3.1;

- 3.4 maintain professional indemnity insurance policy approved by AFG in its reasonable discretion for a sum of not less than \$1,000,000 with a reputable insurer. Certificate of Insurance to be clearly endorsed to cover finance broking/residential mortgage facilitation a copy of which is to be provided to AFG within 14 days of the signing of this Agreement. A copy of the subsequent renewal policy is to be forwarded to AFG.
  - 3.5 advise AFG within 24 hours of the commencement of any legal action against the Introducer or the Introducer's employees and subcontractors relating to breaches of obligations referred to in Sub-Clause 3.1, insolvency or bankruptcy;
  - 3.6 undertake, and ensure that its relevant employees and contractors undertake sufficient training each year to maintain the highest level of competence and appropriate accreditations with respect to loan origination;
  - 3.7 make no use of the AFG name and any AFG logo or trademark other than as reasonably necessary for the purposes of presenting themselves as a representative of AFG pursuant to the terms of this Agreement. Any use of the AFG logo and name on business cards and promotional material is subject to the prior approval of AFG.
  - 3.8 not during the Term without the prior written consent of AFG provide services either directly or indirectly, including via corporate body, trust or other entity, in any capacity including as employee, director or consultant, in any trade, business or occupation which competes with the AFG business of finance and residential mortgage broking / facilitation.
  - 3.9 make full disclosure to each prospective borrower, whose application is referred or submitted to AFG, of the Introducer's entitlement to be paid commission by AFG in relation to the application including the amount of that commission.
  - 3.10 supply to AFG a list of the name and address of each employee and contractor of the Introducer authorised to prepare finance applications or other documents for submission to AFG and agrees to keep that list constantly up to date.
4. With respect to each Lead supplied to the Introducer by AFG the Introducer agrees that it will not deal with the Lead in any commercial transaction whatsoever other than as required in order to complete the finance application the subject of the referral and the Introducer agrees that AFG retains the exclusive right to otherwise deal with that Lead.

## **PART TWO**

### **5. CONDITIONS OF USE**

- 5.1 In consideration of the fee payable by the Introducer to AFG on or before the execution of this Agreement in the amount of \$ ....., AFG hereby grants to the Introducer a non-exclusive non-transferable licence to utilise the EFB Software and associated user manuals ("User Manuals") within Australia during the Term and on the terms and conditions of this Agreement.
- 5.2 The Introducer acknowledges AFG's proprietary interest in the EFB Software and the

User Manuals and agrees not to copy or reproduce in any manner the EFB Software or User Manuals (in whole or part) except with the written consent of AFG and then only where necessary to enable proper use of the EFB Software in the manner reasonably contemplated by the parties.

- 5.3 AFG shall retain the sole and exclusive ownership of and copyright in the EFB Software at all times.
- 5.4 The Introducer agrees to notify AFG immediately upon becoming aware of any unauthorised use or copying of the whole or any part of the EFB Software or the User Manuals.
- 5.5 The Introducer agrees with AFG not to modify the whole or any part of the EFB Software or combine or incorporate the whole or any part of the EFB Software in any other program or system without the prior written consent of AFG which consent AFG may grant or withhold in its absolute discretion.
- 5.6 The Introducer agrees not to decompile, reverse assemble or reverse compile the EFB Software or any part of the EFB Software.
- 5.7 The Introducer agrees not to use the EFB Software for any purpose other than facilitating the introduction to AFG of finance applications to the financiers by whom AFG is accredited as listed in Schedule A as amended by AFG from time to time.
- 5.8 In further consideration of the licence granted by AFG to the Introducer to use the EFB Software the Introducer agrees that it will not during the Term approach, whether directly or via a third party, with a finance application any of the institutions listed in Schedule A, as amended by AFG from time to time, except by way of referral or submission of the application via AFG.

## 6. USE AT OWN RISK

The Introducer acknowledges and agrees with AFG that:

- 6.1 the EFB Software consists of sales assistance tools provided to the Introducer by AFG in good faith but without any guarantee as to accuracy or fitness for purpose and the Introducer takes full responsibility for their use of the EFB Software; and
- 6.2 AFG has made no representations and given no undertakings with respect to the efficacy of the EFB Software other than as expressly stated in this Agreement.

## GENERAL TERMS

### 7. TERMINATION

- 7.1 This Agreement may be terminated by either party on giving 30 days prior written notice to the other party.
- 7.2 Upon the occurrence of an event of default by the Introducer AFG may, in the event that the default involves a rectifiable breach by the Introducer of this Agreement which is not rectified within fourteen (14) days of receipt by the Introducer from AFG of written

notice of default or is a default by breach which is not rectifiable or is a default other than by reason of breach of this Agreement, forthwith terminate this Agreement by notice in writing to the Introducer and the Introducer will forthwith lose any entitlement to receive any further commission pursuant to this Agreement whether or not the same shall have accrued prior to the date of termination.

7.3 In addition to default by breach of this Agreement, an event of default occurs if the Introducer is a body corporate and:

7.3.1 an application is made, a resolution is passed or a meeting is convened for the purpose of considering a resolution, for the Introducer to be wound up unless the winding up is for the purpose of reconstruction or amalgamation;

7.3.2 a resolution is passed, or a meeting is convened for the purpose of considering a resolution, for the appointment of an administrator of the Introducer's affairs;

7.3.3 the Introducer is insolvent as defined by Section 95A (1) of the Corporations Law or the Introducer admits in writing its inability to pay its debts;

7.3.4 the Introducer makes a compromise or arrangement with its creditors, or an application to a Court for an order summoning a meeting of any class of its creditors;

7.3.5 a controller as defined by the Corporations Law is appointed in respect of any property of the introducer;

7.3.6 an investigation is commenced under Section 13 of the Australian Securities Commission Act to investigate the affairs of the Introducer;

7.3.7 a meeting of the Introducer has been called to pass a resolution pursuant to Section 188 of the Corporations Law;

7.3.8 an event has occurred which would constitute grounds on which the Introducer could be wound up by a court having jurisdiction to do so pursuant to Sections 459(2) or 461 of the Corporations Law;

7.3.9 an application is made or notice given or other procedure commenced for the dissolution or cancellation of the registration of the Introducer under the Corporations Law or similar process;

7.4 If the Introducer is a natural person:

7.4.1 an event of default occurs if he or she commits an act of bankruptcy, is convicted of an indictable offence other than an offence which relates to the ownership or driving of a motor vehicle or commits a breach of any term of this Agreement;

7.4.2 this Agreement terminates automatically upon the death of the Introducer; and

7.4.3 AFG is entitled to terminate the Agreement with immediate effect by written notice to the Introducer or his or her legal personal representative in the event that the Introducer suffers Permanent Disablement.

7.5 In this Agreement "Permanent Disablement" means where due to accident and/or illness the Introducer suffers from a disability which is irremediable, or which cannot be remedied within six (6) months, and which renders the Introducer incapable of performing his or her services as an Introducer to AFG under this Agreement.

## 7.6 Consequences of Termination of this Agreement

7.6.1 Upon termination of this Agreement:-

7.6.1.1 all rights granted to the Introducer under this Agreement will terminate;

7.6.1.2 the Introducer must immediately return to AFG all AFG documents and other AFG material, copies of the EFB Software and the User Manuals and, revisions, enhancements and upgrades of the EFB Software and the User Manuals which are in the possession, custody or control of the Introducer;

7.6.1.3 the termination will not affect any rights or powers of AFG, nor will it affect any provision of this Agreement which is expressly or by implication intended to continue in force after such termination.

7.6.2 Upon termination of this Agreement due to any reason other than the occurrence of an event of default by the Introducer, the Introducer shall be entitled to receive any Up Front Commission which has accrued but is unpaid as at the date of termination.

7.6.3 Upon termination of this Agreement the Introducer's entitlement to continue to receive Trail Commission shall terminate except to the extent that Clause 14 provides otherwise.

## 8. INJUNCTION

The Introducer acknowledges that in the event of a breach or threatened breach by the Introducer of any term of this Agreement AFG may pursue all remedies available to it at law and in equity including seeking injunctive relief as against the Introducer.

## 9. PRIVACY ACT AND CREDIT INFORMATION

9.1 The Introducer acknowledges and agrees that AFG is authorised to make approaches to a credit reporting agency throughout the term of this contract to obtain a report about the consumer and commercial creditworthiness of the Introducer.

9.2 The Introducer acknowledges that information referred to in Clause 9.1 may include any information about the Introducer's creditworthiness, credit standing, credit history, credit capacity and credit providers.

9.3 The Introducer acknowledges that AFG will make such approaches as are referred to in Clause 9.1 in compliance with the Commonwealth Privacy Act, Section 18E(8) (c).

- 9.4 Where the Introducer is a company it undertakes to procure from each director written permission for AFG to make the inquiries and obtain the information referred to in Clauses 9.1 and 9.2 as if such persons were the Introducer. It is a condition precedent to the commencement of operation of the appointment of Introducer by AFG in Clause 1.1 that such written permission by those persons be supplied to AFG.
- 9.5 Where the Introducer has employees or contractors involved in performing services in connection with introducing to AFG finance applications the Introducer undertakes to procure from each such person written permission for AFG to make the inquiries and obtain the information referred to in Clauses 9.1 and 9.2 as if such persons were the Introducer. It is a condition precedent to the commencement of operation of the appointment of Introducer by AFG in Clause 1.1 that such written permission by those persons be supplied to AFG.
- 9.6 AFG and the Introducer agree that any credit information received shall remain confidential between the parties.

## 10. **CONFIDENTIALITY**

- 10.1 All work undertaken by the Introducer for AFG arising out or in respect of, relating to, or in a way connected with, this Agreement shall be confidential.
- 10.2 The Introducer shall not at any time either during the continuance of this Agreement or after termination of this Agreement for any reason disclose or make available to any person, any strategies, documents, advice, discussion, opinions or information relating to suppliers, staff, and/or customers of AFG, or other confidential information or trade secrets supplied to or acquired by the Introducer during the course of this Agreement, nor at any time use or attempt to use any such information or trade secrets supplied to or acquired by the Introducer during the course of this Agreement in any manner whatsoever other than as properly required to give effect to the terms of this Agreement.
- 10.3 The Introducer shall not at any time for any reason without the prior written approval of AFG copy, memorise or in any manner reproduce or reverse engineer any such confidential information unless the same shall be specifically required for this Agreement.
- 10.4 Any breach of this confidentiality Clause may be considered by AFG as an event of default as defined in Clause 7 of this Agreement.
- 10.5 The Introducer shall not, either during the course of this Agreement or any time thereafter, make reference to any work undertaken during the course of the Agreement for AFG for promotional or other purposes without stating that such work was carried out for AFG or its subsidiaries and affiliated companies as the case may be.

## 11. **ACT HONESTLY AND COMPLY WITH ACTS**

The Introducer covenants to act honestly and in good faith and to comply with all relevant statutes and all regulations made thereunder.

## 12. **INDEMNITY**

The Introducer shall indemnify and keep indemnified AFG from and against any claim against AFG or liability whatsoever of AFG to any third party arising out of any act, deed, omission or representation of the Introducer or any breach by the Introducer of this Agreement.

### 13. MISCELLANEOUS

- 13.1 The Introducer acknowledges that it is an independent contractor and nothing in this Agreement shall be deemed or construed to give rise to or create any employment relationship between the parties.
- 13.2 The Introducer acknowledges that the Introducer will be solely responsible for paying income tax in respect of any commissions received pursuant to this Agreement and that AFG is not liable or otherwise responsible to deduct from the commissions or pay any amount in respect of pay-roll tax or any compulsory workers compensation or superannuation contributions.
- 13.3 Subject to Clause 13.4 each of the commissions shall be GST inclusive and AFG shall be under no obligation to compensate the Introducer for any GST payable by the Introducer in respect of any taxable supply, as defined in the A New Tax System (Goods and Services Tax) Act, comprised in the provision by the Introducer of services under this Agreement.
- 13.4 In the event that a lender compensates AFG in money for GST payable by AFG in connection with the services provided by AFG in deriving commission from the lender with respect to a loan, then AFG will pay to the Introducer the same percentage of the GST compensation amount as the Up-Front Commission percentage payable to the Introducer with respect to that loan.
- 13.5 The Introducer acknowledges and agrees that unless specifically authorised by AFG in writing, the Introducer does not have the power or authority to enter into any agreement or arrangement on AFG's behalf or bind AFG in any way whatsoever.
- 13.6 The Introducer acknowledges and agrees that AFG is authorised to rely and act on any finance application, non-residential mortgage finance application or other document in accordance with the terms of this Agreement which appears on its face to have been prepared on behalf of the Introducer and AFG shall not be bound to inquire into the authenticity or validity of any such document.
- 13.7 AFG will not be liable for any loss arising out of its reliance on or acceptance of any document produced to it under Sub-Clause 13.6 and the Introducer will indemnify and keep indemnified against all losses, damages, claims, fees, expenses and costs arising as a consequence of that reliance or acceptance.
- 13.8 The Introducer warrants that all information specified in Schedule B is true and complete and that the Introducer has never been charged with or convicted of a criminal offence. The Introducer authorises AFG to make inquiries of and receive information from any police department in order to verify the accuracy of this warranty.
- 13.9 AFG will bear the cost of any stamp duty payable in respect of this Agreement.
- 13.10 The parties will do anything and execute all documents reasonably required by the other

party to give effect to the terms of this Agreement.

- 13.11 The parties will not assign or purport to assign any rights under this Agreement without the prior written consent of the other parties.
- 13.12 This Agreement will be governed by and construed in accordance with the laws of Western Australia and, where applicable the laws of the Commonwealth of Australia.
- 13.13 This document is not an agreement binding on either party until both parties have executed it.
- 13.14 To the extent that any one or more of the sections Clauses or sub-Clauses of this Agreement or any portion, or portions thereof, ("Parts") are or become unenforceable or are prohibited those Parts shall be to that extent severed from this Agreement without invalidating or modifying the remainder which shall continue in full force and effect between the parties as if the Parts had not been included herein.

#### 14. SPECIAL CONDITION

- 14.1 In the event that this Agreement is terminated due to retirement from the industry or the death of the Introducer or due to the Introducer suffering Permanent Disablement or is terminated by AFG other than by reason of default by the Introducer, then AFG will, subject to Clause 14.6, during the balance of the term of each existing loan, continue to pay to the Introducer after the termination all Trail Commission to which the Introducer would have been entitled with respect to that loan under this Agreement, had the Agreement not been terminated.
- 14.2 Subject to Clause 14.6, in the event that this Agreement is terminated for any reason by the Introducer when not in default under this Agreement and other than as a result of death or Permanent Disablement of the Introducer then provided that the Introducer has as at the date of termination provided its services to AFG under the Agreement for at least            months and the Introducer has achieved the benchmark referred to in Clause 1.4 for the Year ending on the date of termination, AFG will continue to pay to the Introducer after the termination all Trail Commission to which the Introducer would have been entitled with respect to that loan under this Agreement, had the Agreement not been terminated.
- 14.3 The right of the Introducer, or of the trustee of their estate in the event of their death, to receive Trail Commission in relation to all loans for which Trail Commission is payable to them is hereinafter referred to as their "Trail Commission Portfolio".
- 14.4 The Introducer is entitled to sell their Trail Commission Portfolio at any time during the Term provided that:
  - i) the entire Trail Commission Portfolio of the Introducer is offered for sale;
  - ii) written notice of intention to sell the Trail Commission Portfolio is provided to AFG and the written consent of AFG to the sale is obtained
  - iii) AFG has first right of refusal and AFG is to be given thirty (30) days within which to notify the Introducer in writing whether it elects to purchase the Trail

## Commission Portfolio.

- 14.5 In the event that AFG elects to exercise its right to purchase the Trail Commission Portfolio it shall pay to the Introducer the fair market value of that Trail Commission Portfolio, established by an independent valuer agreed between the parties and in the absence of agreement appointed by the President of the Western Australian Institute of Certified Practicing Accountants, by two equal annual instalments, the first instalment being payable within fourteen (14) days of settlement and subsequent instalments on the first anniversary of that date.
- 14.6 After termination of this Agreement all Trail Commissions will cease to become payable when the aggregate annual amount of Trail Commission payable to the Introducer falls below Four Hundred dollars (\$400.00).
- 14.7 In the event the Introducer sells their Trail Commission Portfolio they shall thereafter cease to make any use whatsoever of any information in their possession with respect to the data base maintained by AFG of applicants for finance.
- 14.8 Clause 14 shall survive the termination of the Agreement.



E. EXECUTED as an agreement.

**SIGNED** for and on behalf of **Australian Finance Group Pty Ltd** by its duly authorised officer in the presence of )  
).....  
)

.....  
Signature of Witness

.....  
Name of Witness

**WHERE INTRODUCER IS A NATURAL PERSON**

**SIGNED** by )  
in the presence of: ).....

.....  
Signature of Witness

.....  
Name of Witness

**WHERE INTRODUCER IS A COMPANY**

The **COMMON SEAL** of )  
)  
(ACN ) is affixed in )  
accordance with its Articles of Association )  
in the presence of: )

.....  
Director

.....  
Secretary

**SCHEDULE 'A'**

**COMMISSION SCHEDULE**

[NOTE: INCLUDE CURRENT COMMISSION SCHEDULE]

**SCHEDULE 'B'**

TO Australian Finance Group Pty Ltd  
Ground Floor, 6 Thelma Street  
WEST PERTH WA 6005

FACSIMILE NO (08) 9420-7808

BUSINESS DEVELOPMENT MANAGER \_\_\_\_\_

---

**Company/Agency Details**

Business Name \_\_\_\_\_

BUSINESS CLASSIFICATION  
(ie, Accountant, Financial Planner, Broker) \_\_\_\_\_

Office Address \_\_\_\_\_  
\_\_\_\_\_

Postal Address \_\_\_\_\_  
\_\_\_\_\_

Office Telephone Number \_\_\_\_\_

Office Facsimile Number \_\_\_\_\_

Office Email Address \_\_\_\_\_

---

**Primary Contact**

Full Name \_\_\_\_\_

Date of Birth \_\_\_\_\_

Home Address \_\_\_\_\_  
\_\_\_\_\_

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**Other Directors/Partners/Associates**

Full Name \_\_\_\_\_

Date of Birth \_\_\_\_\_

Full Name \_\_\_\_\_

Date of Birth \_\_\_\_\_

Full Name \_\_\_\_\_

Date of Birth \_\_\_\_\_

Full Name \_\_\_\_\_

Date of Birth \_\_\_\_\_

TO

Australian Finance Group Pty Ltd  
Ground Floor, 6 Thelma Street  
WEST PERTH WA 6005

FACSIMILE NO

(08) 9420-7808

BUSINESS DEVELOPMENT MANAGER

INTRODUCER

ADDRESS

FACSIMILE NO

---

**DETAILS OF APPROVED OFFICER**

BUSINESS CLASSIFICATION  
(ie, Accountant, Financial Planner, Broker)

FULL NAME

DATE OF BIRTH

DRIVER'S LICENCE NUMBER

RESIDENTIAL ADDRESS

TELEPHONE NO

FACSIMILE NO

MOBILE NO

EMAIL ADDRESS

PREVIOUS EMPLOYERS (last 5 years)

POSITION(S) HELD

REFERENCES

(1)

(TEL)

(2)

(TEL)

LIST MEMBERSHIPS (ie, MIAA)

ATTACH COPY OF BRIEF RESUME

## ATTACHMENT 1

### Higher Commission Rates for Performance Residential

The Up Front Commission and Trail Commission payable to the Introducer pursuant to Clauses 1.5.1, 1.5.2, 1.5.3 and 1.5.4 shall be increased in accordance with performance on the following scale:

#### EXAMPLE ONLY

\$4.0M - \$10.0M settled per month %                      %

Clause 1.5.1	Referral Commission	Up Front	Trail
Clause 1.5.2	Completed Application Commission	Up Front	Trail
Clause 1.5.3	Completed and Processed Application Commission	Up Front	Trail
Clause 1.5.4	Leads Supplied Commission	Up Front	Trail

\$10.0M - \$20.M settled per month

Clause 1.5.1	Referral Commission	Up Front	Trail
Clause 1.5.2	Completed Application Commission	Up Front	Trail
Clause 1.5.3	Completed and Processed Application Commission	Up Front	Trail
Clause 1.5.4	Leads Supplied Commission	Up Front	Trail

\$20.M - %25.0M settled per month

Clause 1.5.1	Referral Commission	Up Front	Trail
Clause 1.5.2	Completed Application Commission	Up Front	Trail
Clause 1.5.3	Completed and Processed Application Commission	Up Front	Trail
Clause 1.5.4	Leads Supplied Commission	Up Front	Trail

\$25.0M and over settled per month

Clause 1.5.1	Referral Commission	Up Front	Trail
Clause 1.5.2	Completed Application Commission	Up Front	Trail
Clause 1.5.3	Completed and Processed Application Commission	Up Front	Trail
Clause 1.5.4	Leads Supplied Commission	Up Front	Trail

## ATTACHMENT 2

### Higher Commission Rates for Performance Commercial/Consumer

The Up Front Commission and Trail Commission payable to the Introducer pursuant to Clause 1.5.5 shall be increased in accordance with performance on the following scale:

#### EXAMPLE ONLY

\$4.0M - \$10.0M settled per month		%	%
Clause 1.5.5	Non Residential Mortgage Applications Commission	Up Front	Trail
\$10.0M - \$20.M settled per month			
Clause 1.5.5	Non Residential Mortgage Applications Commission	Up Front	Trail
\$20.M - %25.0M settled per month			
Clause 1.5.5	Non Residential Mortgage Applications Commission	Up Front	Trail
\$25.0M and over settled per month			
Clause 1.5.5	Non Residential Mortgage Applications Commission	Up Front	Trail