

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

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

1. **TERM**  
This Agreement shall commence on the Start Date and shall continue thereafter unless terminated in accordance with **clause 10** of this Agreement.
2. **MORTGAGE BRAIN'S OBLIGATIONS**
  - 2.1 Subject to you complying with your obligations under this Agreement, Mortgage Brain will provide the Services on the following terms and conditions.
  - 2.2 Mortgage Brain will:
    - 2.2.1 provide the Services with reasonable skill and care; and
    - 2.2.2 supply you with a copy of the Software under the terms of this Agreement.
  - 2.3 Mortgage Brain shall use reasonable commercial endeavours to:
    - 2.3.1 protect and secure the System against hackers and viruses;
    - 2.3.2 make the System generally available for you to access;
3. **SOFTWARE LICENCE**
  - 3.1 Mortgage Brain grants to you, subject to the terms and conditions in this Agreement, a non-exclusive, non-transferable, licence to use the Software.
  - 3.2 Without prejudice to the other provisions of this Agreement the licence granted in **clause 3.1** is subject to the following conditions:
    - 3.2.1 You may, subject to the Copyright (Computer Program) Regulations 1992, only make so many copies of the Software as are reasonably necessary for operational security and lawful use. Such copies and the media on which they are stored shall be the property of Mortgage Brain. You shall make full and accurate records of such copying and location of the copies and make these available to Mortgage Brain on request from time to time.
    - 3.2.2 You shall not modify or remove any copyright or proprietary notices on the Software and shall reproduce such notices on any copies of the Software.
    - 3.2.3 The Software may only be used by you:
      - 3.2.3.1 solely for your own business purposes; and
      - 3.2.3.2 on a computer system running a compatible operating system. Details of such compatible operating systems are available on request from Mortgage Brain.
    - 3.2.4 You shall not permit any third party to use the Software nor use the Software on behalf of or for the benefit of any third party (except mortgage applicants) in any way whatsoever, including any consulting, service-bureau, time-sharing, rental or services of any other kind.
    - 3.2.5 You shall not link to, access or otherwise use the Software or cause it to be used in conjunction with, any third party software, database or other application without the prior written consent of Mortgage Brain. You are not allowed to use third party software which is designed to replicate, run or operate in conjunction with the Software without Mortgage Brain's written consent. The use of the Software on your personal computer with a standard operating platform and your standard desktop applications is permitted.
    - 3.2.6 Except to the extent permitted by law, you shall not decompile, reverse engineer, disassemble or otherwise derive the source code of the Software nor permit any third party to do so.
    - 3.2.7 Save as otherwise provided, you shall not, and shall not permit any third party to, copy, make error corrections to or otherwise modify or adapt the Software nor create derivative works based upon the Software or permit any part of the Software to be combined with or become incorporated in any other computer programs.
    - 3.2.8 You shall effect and maintain adequate security measures to safeguard the Software against access to or use by unauthorised persons and ensure that the Software and all copies are kept under your control and shall notify Mortgage Brain immediately on becoming aware of any unauthorised use of the Software by any person.
  - 3.3 You shall permit Mortgage Brain or its authorised representatives to inspect and have access to any premises and equipment where the Software is located to ensure that you are complying with your obligations under this Agreement.
  - 3.4 Maintenance including Software updates shall be provided in accordance with **Schedule 1**.
  - 3.5 You shall indemnify Mortgage Brain, keep Mortgage Brain indemnified and hold Mortgage Brain harmless from and against all claims, liabilities, proceedings, costs, damages, losses, or expenses incurred by Mortgage Brain caused by, or in any way connected with your use of the Software or the unauthorised use of the Software by any third party whether through breach of this Agreement or any other negligent or wrongful act.
4. **YOUR OBLIGATIONS**
  - 4.1 You shall:
    - 4.1.1 use the Services for your own internal business purposes only;
    - 4.1.2 comply with the terms and conditions of this Agreement, including the Schedules;
    - 4.1.3 comply with all applicable statutes, regulations, orders, rules, guidelines and guidance notes that affect the mortgage market including those made under and in accordance with the FSMA;
    - 4.1.4 ensure your continuing authorisation by the FCA in relation to all relevant regulated activities as defined by FSMA and, in the event of cancellation or variation of your authorisation either on your own volition or at the FCA's own initiative, shall notify Mortgage Brain of such cancellation or variation within seven days;
    - 4.1.5 pay Mortgage Brain the Fees;
    - 4.1.6 ensure that any terms and conditions that need to be brought to the attention of the mortgage applicant (your client) or have to be confirmed by you, whether on your own behalf or on behalf of the mortgage applicant to the Lenders are so complied with;
    - 4.1.7 be responsible for your connectivity to the Internet or to Mortgage Brain's servers or as agreed in a Corporate Agreement, as applicable;
    - 4.1.8 be responsible for ensuring your IT system is compatible with the Key Software as applicable.
  - 4.2 You shall ensure you are properly authorised by the FCA and that the use and appearance of any information and data, as appropriate, will comply with all applicable statutes, regulations, orders, rules, guidelines and guidance notes that affect the mortgage market, including those made under and in accordance with the FSMA. You will comply with all applicable laws, regulations, guidelines and codes of practice so affecting you including, but not limited to, those relating to a regulated firm's reporting requirements. You, as an authorised firm, will be liable for any breach of or under the FSMA.
  - 4.3 Notwithstanding termination of this Agreement, you shall permit Mortgage Brain to access and use data forming part of Content for any or all of the following purposes:
    - 4.3.1 statistical analysis of usage of Lenders' mortgage products;
    - 4.3.2 in connection with obtaining quotes for other products offered by the Lenders where you have opted to receive such quotes;
    - 4.3.3 in connection with the business activities of Mortgage Brain and its affiliates from time to time.
5. **DATA PROTECTION**
  - 5.1 You authorise Mortgage Brain, on your behalf and on behalf of the other members of your Group, to Process the Agreement Personal Data during the term of this Agreement as a Data Processor/Processor for the purpose set out in **Schedule 2**.
  - 5.2 You warrant to Mortgage Brain, on your own behalf and on behalf of the other members of your Group, that:
    - 5.2.1 You have all necessary rights to authorise Mortgage Brain to Process Agreement Personal Data in accordance with this Agreement and the Data Protection Laws; and
    - 5.2.2 your instructions to Mortgage Brain relating to Processing of Agreement Personal Data will not put Mortgage Brain in breach of Data Protection Laws, including with regard to International Transfers.

5.3 If Mortgage Brain reasonably considers that any instructions from you or a member of your Group relating to Processing of Agreement Personal Data may put Mortgage Brain in breach of Data Protection Laws, Mortgage Brain will be entitled not to carry out that Processing and will not be in breach of this Agreement or otherwise liable to you or any member of your Group as a result of its failure to carry out that Processing.

#### APPOINTMENT OF SUB-PROCESSORS

5.4 You authorise Mortgage Brain, on your own behalf and on behalf of the other members of your Group, to engage any person/Group Company of Mortgage Brain as a sub-processor for the Processing of Agreement Personal Data. Mortgage Brain will remain liable to you for performance of the Sub-Processor's obligations.

5.5 Mortgage Brain will:

5.5.1 Process the Agreement Personal Data only on documented instructions from you or the relevant member of your Group (unless Mortgage Brain or the relevant Sub-Processor is required to Process Agreement Personal Data to comply with applicable laws, in which case Mortgage Brain will notify you of such legal requirement prior to such Processing unless such applicable laws prohibit notice to you on public interest grounds). For the purpose of this **clause 5.5.1, the obligations on Mortgage Brain to perform the Services are documented instructions. Nothing in this clause 5.5.1 will permit you to vary Mortgage Brain's obligations under this Agreement;**

5.5.2 ensure that any individual authorised to Process Agreement Personal Data:

5.5.2.1 is subject to confidentiality obligations or is under an appropriate statutory obligation of confidentiality; and

5.5.2.2 complies with **clause 5.5.1**;

5.6 Mortgage Brain will only make an International Transfer if:

5.6.1 the government of the United Kingdom or the European Commission makes a binding decision that the country or territory to which the International Transfer is to be made ensures an adequate level of protection for Processing of Personal Data;

5.6.2 Mortgage Brain or the relevant Sub-Processor provides adequate safeguards for that International Transfer in accordance with Data Protection Laws, in which case you will execute any documents (including data transfer agreements) relating to that International Transfer which Mortgage Brain or the relevant Sub-Processor requires it to execute from time to time; or

5.6.3 Mortgage Brain or the relevant Sub-Processor is required to make the International Transfer to comply with applicable laws, in which case Mortgage Brain will notify you of such legal requirement prior to such International Transfer unless such applicable laws prohibit notice to you on public interest grounds.

5.7 Mortgage Brain will:

5.7.1 notify you without undue delay after becoming aware of a Data Security Incident;

5.7.2 provide reasonable assistance to you (at your cost) in:

5.7.2.1 complying with its obligations under the Data Protection Laws relating to the security of Processing Agreement Personal Data;

5.7.2.2 documenting any Data Security Incidents and reporting any Data Security Incidents to any Supervisory Authority and/or Data Subjects; and

5.7.2.3 conducting privacy impact assessments of any Processing operations and consulting with Supervisory Authorities, Data Subjects and their representatives accordingly.

5.8 Mortgage Brain will:

5.8.1 make available to you reasonable information necessary to demonstrate compliance with the obligations set out in this **clause 3**; and

5.9 allow for and contribute to audits, including inspections, that directly relate to the Services provided under this Agreement by Mortgage Brain, conducted by you or another auditor mandated by you, provided that you gives Mortgage Brain at least 21 days' prior written notice of each such audit and that each audit is carried out at the your cost, during business hours, so as to cause the minimum disruption to Mortgage Brain's business and without you or your auditor having any access to any data belonging to a person other than you. You will not exercise its audit rights more than once in any twelve (12) calendar month period, except (i) if and when required by instruction of a competent data protection authority; (ii) where you reasonably believe a further audit is necessary due to a Security Incident suffered by Mortgage Brain; or (iii) where you have a reasonable belief that Mortgage Brain has breached, or is in breach, of this Amendment Agreement. Mortgage Brain will provide up to a maximum of one (1) days effort towards any audit or inspection in any twelve (12) calendar month period. For the purposes of this clause 5, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Processing" (and "Process" and "Processed" shall be construed accordingly") and "Sensitive Personal Data" shall have the meaning assigned to them in the Act.

5.10 Mortgage Brain will use reasonable endeavours to ensure that data it accesses and uses pursuant to **clause 4.3** does not constitute Personal Data (as defined in the Act).

5.11 Within the period of 3 months after termination or expiry of this Agreement, you can request from Mortgage Brain the return to you of any Agreement Data held by Mortgage Brain under this Agreement either:

5.11.1 as a .csv export (at no cost); or

5.11.2 as a zip file of .pdf documents and a .xml file containing the customer record (for which a nominal fee may be charged); or

5.11.3 in such other format as may be requested by you, subject to our prior agreement and receipt from you of an additional fee for this service based on Mortgage Brain's then standard hourly rates for this service, which are available upon request.

5.12 Mortgage Brain shall be entitled to: securely delete and destroy all Agreement Data from the date following three months from the termination or expiry of this Agreement; notwithstanding which it may retain Agreement Data thereafter to the extent and for so long as reasonably required by law to do so, (which need shall be notified to you in advance, where lawful to do so) and thereafter

- shall securely destroy such Agreement Data within a reasonable period.
6. **INTELLECTUAL PROPERTY RIGHTS**
- 6.1 All IPR in the Software, the System, application program interfaces (API's) and any other products or services supplied by Mortgage Brain from time to time belong to Mortgage Brain.
- 6.2 Mortgage Brain shall defend or, at its option, settle any claim brought against you that your normal use or possession of the Software in accordance with this Agreement infringes any IPR of any third party and shall pay any damages finally awarded against you in respect of such claim and any reasonable costs and expenses incurred by you provided that:
- 6.2.1 Mortgage Brain is given immediate and complete control of such claim, all information and assistance as Mortgage Brain reasonably requires at Mortgage Brain's cost, and you do not prejudice the defence of such claim; and
- 6.2.2 the claim does not arise from use of any release other than the most recent or penultimate versions of the Software or from any circumstances set out at **clause 7.3** or breach of **clause 3.2**.
- 6.3 In the event that a claim as contemplated by **clause 6.2** is made or in Mortgage Brain's opinion is likely to be made, Mortgage Brain may at its option:
- 6.3.1 procure the right for you to continue to use the Software affected;
- 6.3.2 change or replace all or any part of the Software; or
- 6.3.3 terminate this Agreement immediately on written notice in respect of the affected Software.
- 6.4 **Clauses 6.2** and **6.3** state the entire liability of Mortgage Brain to you in respect of any a claim as contemplated by **clause 6.2**.
7. **WARRANTIES**
- 7.1 Mortgage Brain warrants that:
- 7.1.1 for a period of 30 days, the Software will function in all material respects with the documentation and the media on which the Software is provided will be free from defects in workmanship and materials when properly used in accordance with this Agreement; and
- 7.1.2 it has tested for viruses in the Software using commercially available virus checking software, consistent with current industry practice.
- 7.2 If during the warranty period Mortgage Brain receives written notice from you of any breach of the warranties given in **clause 7.1**, together with any information as may be reasonably necessary to assist Mortgage Brain in resolving the breach, then Mortgage Brain shall at its own expense and within a reasonable time remedy the breach in question by repair or replacing the Software or part thereof.
- 7.3 The warranties in **clause 7.1** shall not apply if the Software:
- 7.3.1 has been altered by any person other than Mortgage Brain;
- 7.3.2 is used in combination with any software or materials not supplied or approved by Mortgage Brain; or
- 7.3.3 is used in a manner for which it was not intended or other than as permitted by this Agreement.
- 7.4 Mortgage Brain further represents and warrants that:
- 7.4.1 it possesses the full power and authority to enter into and perform its obligations under this Agreement;
- 7.4.2 it has obtained consent from third parties as are required for it to fulfil its obligations under this Agreement;
- 7.4.3 it is registered or notified as appropriate under the Act;
- 7.4.4 it shall take all reasonable measures to ensure that all Services provided to you under this Agreement comply with all applicable laws and regulations in the United Kingdom.
- 7.5 You acknowledge that:
- 7.5.1 it is your own responsibility to ensure that the Software meets your requirements and that Mortgage Brain does not warrant that it shall be suitable for your requirements;
- 7.5.2 software in general is not error free and that the existence of such errors in the Software shall not by themselves constitute a breach of this Agreement.
- 7.6 You represent and warrant that:
- 7.6.1 you possess the full power and authority to enter into and perform your obligations under this Agreement;
- 7.6.2 you have or will procure all necessary consents from mortgage applicants or other originators of the Content and/or data to allow the Lenders to process or control the data and/or Content and, where applicable, to allow Mortgage Brain to use Content and/or data in the ways set out in **clause 4.3**;
- 7.6.3 you are currently authorised by the FCA in the conduct of all relevant regulated activities as defined in the FSMA and shall continue to be so authorised for the duration of this Agreement; and
- 7.6.4 you are an authorised firm under the FSMA and will comply with all applicable provisions of the FSMA.
- 7.7 **Clauses 7.1** and **7.4** constitute the only warranties given by Mortgage Brain in respect of the Services. Express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.
8. **FEES AND PAYMENT**
- 8.1 In consideration of Mortgage Brain making the Services available, you will pay Mortgage Brain the Fees, monthly in advance, as stated on your order form (which may be amended by you in writing from time to time) or as notified to you by Mortgage Brain from time to time and charges shall be raised accordingly. The Fees shall be due and payable until this Agreement is properly terminated.
- 8.2 All Fees in this Agreement are exclusive of VAT and disbursements. VAT will be payable in addition to the Fees at the rates for the time being prescribed by law. Disbursements are chargeable in accordance with Mortgage Brain's standard pricing policy. An invoice will not be issued unless you request one.
- 8.3 You will pay the Fees, VAT and any disbursements:
- 8.3.1 by direct debit under the terms of the direct debit scheme collected on or after the 15th of each month; or
- 8.3.2 as otherwise agreed between you and Mortgage Brain.
- 8.4 If any sum payable under this Agreement is not paid when due then without prejudice to Mortgage Brain's other rights such sum will accrue interest from the due date until payment in full at 4% per annum over Barclays Bank plc base rate from time to time both before and after judgment.
- 8.5 All Fees may be increased at any time by Mortgage Brain on giving 30 days' notice to you; you are deemed to accept such increase unless you exercise your rights under **clause 10.1**.
- 8.6 From time to time when further rules and regulations affecting regulated mortgage contracts come into effect under the FSMA, or other laws or governmental order or regulation, Mortgage Brain will review the Services and make them compliant so far as it is able and it is appropriate. Mortgage Brain is not an authorised firm under the FSMA. It will review all Fees and if necessary, owing to the provisions to make the Services compliant, it may revise the Fees provided it gives written notice to you.
- 8.7 If the provisions of **clauses 8.1** to **8.6** conflict with the payment provisions of the Corporate Agreement, the provisions in the Corporate Agreement shall prevail.
9. **LIMITATION OF LIABILITY**
- 9.1 The following provisions of this **clause 9** set out the total Liability of Mortgage Brain in respect of any breach of its obligations arising under or in connection with this Agreement whether in contract, tort (including negligence), restitution or otherwise.
- 9.2 Nothing in this Agreement particularly this **clause 9**, shall limit or exclude either party's Liability for fraud, or for death or personal injury resulting from negligence or to the extent such limitation or exclusion is unlawful.
- 9.3 Mortgage Brain's total Liability in respect of loss of or damage to tangible property shall not in any circumstances exceed £1,000,000 in any Year.
- 9.4 Subject to **clauses 9.2, 9.3**, and **9.5** and other than in respect of **clause 6.2** Mortgage Brain's total Liability in respect of any other loss or damage arising in any Year shall not in any circumstances exceed 100% of the Fees payable or paid by you under this Agreement in a Year or £3,000.00, whichever is the greater.
- 9.5 Mortgage Brain will have no liability under or in connection with this Agreement in respect of:
- 9.5.1 loss of profits, loss of business, loss of revenue, loss of contract, loss of goodwill, loss of anticipated earnings or savings (whether any of the foregoing are direct, indirect or consequential loss or damage); or
- 9.5.2 loss of use or value of any data or equipment including software, wasted management, operation or other time (whether direct, indirect or consequential); or
- 9.5.3 any indirect or consequential loss or damage; or
- 9.5.4 the poor performance, or lack of connectivity, or lack of availability of the Internet or telecommunications; or
- 9.5.5 the Content; or
- 9.5.6 any Liability arising out of or under or for breach of MCOB or any other provisions under the FSMA; howsoever arising.
- 9.6 The Fees have been set by Mortgage Brain on the basis of the exclusions and restrictions of Liability in this **clause 9** and would

- be higher without those provisions. In the circumstances, you agree that those provisions are reasonable and will accept the risk and/or insure accordingly.
10. **TERMINATION**
- 10.1 Either party may terminate this Agreement by giving 30 days written notice to the other at any time.
- 10.2 Either party may terminate this Agreement immediately upon written notice to the other if the other:
- 10.2.1 is in material breach of this Agreement and fails to remedy such breach within 30 days of notice being served by the other party;
- 10.2.2 becomes the subject of a petition in bankruptcy, whether voluntary or involuntary, which if involuntary is not dismissed within 60 days, or becomes insolvent, or ceases to do business in the normal course or any other similar situation arises; or
- 10.2.3 is prevented from performing its obligations under this Agreement for a period of 30 consecutive days or more due to a force majeure event described in **clause 14.5**.
- 10.3 If you fail to access the System for 30 days or more Mortgage Brain shall have the right to immediately terminate this Agreement.
- 10.4 Mortgage Brain shall have the right to terminate this Agreement immediately if you are in breach of **clause 7.6**.
- 10.5 The clauses in this Agreement which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.
- 10.6 Any termination of this Agreement shall be without prejudice to the accrued rights and remedies of the parties.
11. **CONSEQUENCES OF TERMINATION**
- 11.1 Notwithstanding the termination of this Agreement, you shall be obliged to pay forthwith any accrued but unpaid Fees due on termination.
- 11.2 You shall cease use of the licences granted under **clause 3.1** and return all copies of (and delete from your systems) the Software to Mortgage Brain. Your right to access System will also cease. We will retain your database for a period of up to 3 months.
- 11.3 You shall return or destroy all the Confidential Information of Mortgage Brain's on termination. In the case of destruction, you shall certify such destruction to Mortgage Brain within 14 days following request for such certification.
- 11.4 When this Agreement terminates it is your responsibility to cancel your direct debit with your bank.
12. **CORPORATE CUSTOMERS**
- 12.1 If you are a member of a corporate or network or other group using the Services by virtue of a Corporate Agreement and there is a conflict between any of the terms of this Agreement and the Corporate Agreement, the conflict will be resolved according to the following order of priority:
- 12.1.1 the Corporate Agreement;
- 12.1.2 this Agreement.
- 12.2 If you change your status from having a direct relationship with Mortgage Brain to being a member as described under **clause 12.1** or change your membership to being covered by a different Corporate Agreement it is your responsibility to close your old account with Mortgage Brain and cancel any applicable direct debit or terminate this Agreement, if applicable, under **clause 10.1** and ensure correct registration under the terms of the new Corporate Agreement.
13. **CONFIDENTIAL INFORMATION**
- 13.1 "Confidential Information" means all information of a confidential or proprietary nature (including information imparted orally) relating to this Agreement, Mortgage Brain's products and services including the Software and related IPR, processes, potential or actual customers, suppliers or Lenders, business revealed to or learnt by you at any time from Mortgage Brain. You shall:
- 13.1.1 keep the Confidential Information secret;
- 13.1.2 only disclose the Confidential Information to any of your employees on a need to know basis and you shall ensure that such employee keeps the Confidential Information secret;
- 13.1.3 use the Confidential Information only in connection with this Agreement; and
- 13.1.4 not copy the Confidential Information without the prior written consent of Mortgage Brain.
14. **GENERAL**
- 14.1 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 14.2 Mortgage Brain may modify or add to this Agreement at any time by notifying you. If you do not accept any such modification you must stop using the Services immediately and inform us of your objection to the modification.
- 14.3 Except as expressly provided for in this Agreement nothing in this Agreement shall be construed as creating a partnership or joint venture of any kind between the parties. Neither party shall have the authority or power to bind the other party.
- 14.4 You shall not assign, sublicense or otherwise transfer this Agreement or any of its rights or obligations whether in whole or in part without the prior written consent of Mortgage Brain.
- 14.5 Neither party will be liable to the other for any failure or delay or for the consequences of any failure or delay in performance of this Agreement, excluding your obligation to pay the Fees, if it is due to any event beyond the reasonable control of a party to this Agreement including, without limitation, acts of God, war, industrial disputes, protests, fire, flood, storm, tempest, explosion, an act of terrorism and national emergencies. If such delay or failure continues for at least 30 days, the party not subject to such an event shall be entitled to terminate this Agreement in accordance with **clause 11.2.3**. The party subject to such event shall, as soon as practicable, give notice of the event to the other party, such notice to include a reasonable forecast of the duration of the event.
- 14.6 No failure of either party to enforce its rights under this Agreement at any time for any period shall be construed as a waiver of such rights.
- 14.7 If any provision in this Agreement is found or held to be invalid or unenforceable, then the meaning of such provision shall be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it shall be severed from the remainder of this Agreement which shall remain in full force and effect. However, if the severed provision is essential and material to the rights or benefits received by either party, the parties shall use their best efforts to negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly effects their intent in entering into this Agreement.
- 14.8 This Agreement constitutes and contains the entire agreement of the parties and supersedes any and all prior agreements (including an Evaluation Licence and/or any previous Agreement as applicable) negotiations, correspondence, representations (except fraudulent representations), understandings and communications between the parties, whether written or oral, respecting the subject matter.
- 14.9 All notices that are required to be given under this Agreement shall be in writing and shall be sent to the registered or trading addresses as appropriate of each party, or as otherwise notified to the other, by first class pre-paid letter or fax transmission and shall be deemed to have been received:
- 14.9.1 by first class post, 48 hours after the date of mailing;
- 14.9.2 by fax, immediately upon transmission.
- 14.10 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties hereto irrevocably submit to the exclusive jurisdiction of the English Courts.
15. **DEFINITIONS**
- "Act" means the Data Protection Act 2018 (incorporating GDPR) and any future legislation enacted in replacement or amendment of the Act.
- "Agreement Personal Data" means Personal Data which is to be Processed under this Agreement, as more particularly described in Schedule 2
- "Content" means the data and information you input or otherwise to the System, including but not limited to personal data of mortgage applicants.
- "Corporate Agreement" means an agreement between Mortgage Brain and a third party (with whom you have an affiliation) which governs the commercial terms of your accessing and using the Services.
- "Data Protection Laws" means any applicable laws in force in the United Kingdom from time to time that relates to data protection, the processing of personal data and privacy, including the Data Protection Act 2018 including the General Data Protection Regulation (EU) 2016/679 ("Act") and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and references to "Data Processor", "Data Subjects", "Personal Data", "Process", "Processed", "Processing", "Processor" and "Supervisory Authority" have the meanings set out in, and will be interpreted in accordance with, such laws

“**Data Security Incident**” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Agreement Personal Data transmitted, stored or otherwise Processed

“**Fees**” means all the fees payable under this Agreement by you to Mortgage Brain pursuant to **clause 8**.

“**FSMA**” means the Financial Services and Markets Act 2000 and any of its accompanying rules and regulations.

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

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

“**Key Software**” means Mortgage Brain’s proprietary software version 2.4 or above that is stored and used on your personal computer and our servers as appropriate which comprises: the point of sale and compliance management software.

“**Lenders**” has the same meaning as defined by FSMA.

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

“**MCOB**” means the Mortgage Conduct of Business Sourcebook comprising part of the FCA’s Handbook of Rules and Guidance.

“**Schedule**” means the schedules appended to this Agreement and which form part of this Agreement.

“**Services**” means the services to be provided to you pursuant to **Schedule 1** and/or Key Software as appropriate.

“**Software**” means the Key Software.

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

“**Sub-Processor**” means any third party appointed by Mortgage Brain to Process Agreement Personal Data

“**System**” means the Mortgage Brain servers which you access when using the Software.

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

“**Year**” means twelve months from the Start Date and the anniversaries thereof.

**Schedule 1  
The Services**

- Mortgage Brain will provide the Key Software to you.
- Mortgage Brain will provide you with reasonable access to the System
- For details of the minimum hardware and software required please refer to the user guide.
- Support will be available from Mortgage Brain either via the telephone helpline or by email. The telephone helpline is available Monday-Friday 8.30am - 5.30pm except for (i) Wednesdays when the hours will be 10.00am - 5.30 pm (ii) Christmas Eve and New Year's Eve when the hours will be 8.30am until 12 noon and (iii) English Bank & Public Holidays when the helpline will be closed. Emails will be replied to during the telephone helpline opening hours. All calls to the telephone helpline will be charged at the national rate.
- For further details of the Services please refer to the user guide.

**Maintenance Services**

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

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

**Additional Services**

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

**SCHEDULE 2**

**Agreement Personal Data**

<b>Subject matter of Processing</b>	Mortgage Brain provides point of sale software as specified in the Agreement.
<b>Duration of Processing</b>	The Term of the Agreement plus 3 months.
<b>Nature of Processing</b>	Storage, back-up and recovery only. Supplier has access to Personal Data only for the provision of support and maintenance.
<b>Purpose of Processing</b>	The Agreement Personal Data is processed to send marketing material to End Users, to provide support services to you and its End Users and enable you to use the mortgage sourcing software and Key point of sale software as specified in the Agreement.
<b>Type of Personal Data</b>	All Personal Data stored by you for its business purposes, including names, contact details, date of birth, employment history, salary and financial information.
<b>Categories of Data Subject</b>	Your employees, customers and End Users.

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