

This 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”).

USE OF THE LENDIX USER REGISTRATION DATABASE WEB SITE CONSTITUTES YOUR ACCEPTANCE OF THIS AGREEMENT. IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT, PROMPTLY DISCONTINUE YOUR ACCESS TO THE WEB SITE.

## 1. TERM

This Agreement shall commence on the Start Date and shall continue thereafter unless terminated in accordance with clause 9 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 access to the Software and Service under the terms of this Agreement.

## 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 shall not modify or remove any copyright or proprietary notices on the Software and shall reproduce such notices on any copies of the Software.

3.2.2 The Software may only be used by you:

3.2.2.1 solely for registering to use Lendix to register to access certain participating web sites; and

3.2.2.2 on a computer system running a compatible operating system and internet browser. Details of such compatible operating systems and internet browsers are available on request from Mortgage Brain.

3.2.3 You shall not permit any third party to use the Software on behalf of or for the benefit of any third party in any way whatsoever, including any consulting, service-bureau, time-sharing, rental or services of any other kind.

3.2.4 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.

3.2.5 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.

3.2.6 Save as otherwise provided, you shall not, and shall not permit any third party to, copy, make error corrections to or otherwise modify or adapt the Software nor create derivative works based upon the Software or permit any part of the Software to be combined with or become incorporated in any other computer programs.

3.2.7 You shall effect and maintain adequate security measures to safeguard the Software against access to or use by unauthorised persons and 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 equipment that the Software is accessed from to ensure that you are complying with your obligations under this Agreement.

3.4 Maintenance including Software updates shall be provided in accordance with the Schedule.

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 Software and Services for your own internal business purposes only;

4.1.2 comply with the terms and conditions of this Agreement, including the Schedule, or any other requirements communicated by the Lenders directly to you;

4.1.3 register with the Lenders, as appropriate;

4.1.4 comply with the Lenders' individual registration processes;

4.1.5 comply with any Lenders' terms and conditions applicable from time to time;

4.1.6 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;

4.1.7

4.1.8 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;

4.1.9 be responsible for your connectivity to the Internet or to Mortgage Brain's servers or as agreed in a Corporate Agreement, as applicable;

4.1.10 be responsible for ensuring your IT system is compatible with the Software.

4.2

4.3 For the duration of this Agreement and notwithstanding any 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 the Software

4.3.3 in connection with the business activities of Mortgage Brain and its affiliates from time to time.

4.4 For the duration of this Agreement, you shall permit Mortgage Brain to access and use data relating to your operating system, browser and other hardware information for the purposes of customer support and statistical analysis.

## 5. DATA PROTECTION

5.1 For the purposes of this clause 5, the terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Processing” (and “Process” and “Processed” shall be construed accordingly”) and “Sensitive Personal Data” shall have the meaning assigned to them in the Act.

5.2 You acknowledge that Mortgage Brain is the Data Controller for the purposes of the provision of the Software and Services under this Agreement.

5.3 Where Mortgage Brain processes Personal Data (which may include Sensitive Personal Data) for the purposes of carrying out its obligations under this Agreement (“Agreement Data”) it shall:

5.3.1 take appropriate technical and organisational measures against the unauthorised or unlawful Processing of the Agreement Data and against actual loss or destruction of, or damage to, the Agreement Data, having regard to the state of technological development and the cost of implementing any measures, which measures must ensure a level of security appropriate to the harm that might result from unauthorised or unlawful processing or accidental loss, destruction or damage of and the nature of the Agreement Data;

5.3.2 provide prompt cooperation with any reasonable request for information and/or assistance relating to its Processing of the Agreement Data; and

5.4 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

5.5 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.

5.6 You acknowledge that from time to time Mortgage Brain may appoint and use third party sub-contractors as sub-processors of Agreement Data to assist in delivering the Software and Services under this Agreement. Details of all such sub-processors are available upon reasonable written request.

5.7 Where sub-contractors are appointed by Mortgage Brain for the purposes of this clause 5, Mortgage Brain shall take reasonable steps to ensure that adequate safeguards for the Agreement Data are put in place by written contract with each such sub-contractor and shall remain responsible for compliance by each sub-contractor with the obligations set out in this clause 5.

## 6. INTELLECTUAL PROPERTY RIGHTS

6.1 All IPR in the Software, application programme interfaces (API) 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 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 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 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 the Software and Services provided to you under this Agreement comply with all applicable laws and regulations in the United Kingdom and the Republic of Ireland.

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 4.4;

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 Software and 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. LIMITATION OF LIABILITY

8.1 The following provisions of this clause 8 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.

8.2 Nothing in this Agreement particularly this clause 8 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.

8.3 Mortgage Brain's total Liability in respect of loss of or damage to tangible property shall not in any circumstances exceed £500 in any Year.

8.4 Subject to clauses 8.2, 8.3, and 8.5 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 £3,000.00.

8.5 Mortgage Brain will have no liability under or in connection with this Agreement in respect of:

8.5.1 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

8.5.2 loss of use or value of any data or equipment including software, wasted management, operation or other time (whether direct, indirect or consequential); or

8.5.3 any indirect or consequential loss or damage; or

8.5.4 the poor performance, or lack of connectivity, or lack of availability of the Internet or telecommunications; or

8.5.5 any Liability arising out of or under or for breach of MCOB or any other provisions under the FSMA.

## 9. TERMINATION

9.1 Either party may terminate this Agreement by giving 30 days written notice to the other at any time. Written notice includes email to [accounts@mortgage-brain.co.uk](mailto:accounts@mortgage-brain.co.uk).



9.2 Either party may terminate this Agreement immediately upon written notice to the other if the other:

9.2.1 is in material breach of this Agreement and fails to remedy such breach within 30 days of notice being served by the other party;

9.2.2 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

9.2.3 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 12.5.

9.3 Mortgage Brain shall have the right to terminate this Agreement immediately if you are in breach of clause 7.6.

9.4 The clauses in this Agreement which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

9.5 Any termination of this Agreement shall be without prejudice to the accrued rights and remedies of the parties.

## 10. CONSEQUENCES OF TERMINATION

10.1 You shall cease use of the licences granted under clause 3.1 and delete any shortcuts you have created.

10.2 You shall return or destroy all the Confidential Information of Mortgage Brain on termination. In the case of destruction, you shall certify such destruction to Mortgage Brain within 14 days following request for such certification.

## 11. CONFIDENTIAL INFORMATION

11.1 “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:

11.1.1 keep the Confidential Information secret;

11.1.2 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;

11.1.3 use the Confidential Information only in connection with this Agreement; and

11.1.4 not copy the Confidential Information without the prior written consent of Mortgage Brain.

## 12. GENERAL

12.1 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.

12.2 Mortgage Brain may modify or add to this Agreement at any time by notifying you. If you do not accept any such modification you must stop using the Software and Services immediately and inform us of your objection to the modification.

12.3 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.

12.4 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.

12.5 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 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 9.2.3. 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.

12.6 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.

12.7 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.

12.8 This Agreement constitutes and contains the entire agreement of the parties and supersedes any and all prior agreements, negotiations, correspondence, representations (except fraudulent representations), understandings and communications between the parties, whether written or oral, respecting the subject matter.

12.9 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 email and shall be deemed to have been received:

12.9.1 By first class post, 48 hours after the date of mailing;

12.9.2 By email to [accounts@mortgage-brain.co.uk](mailto:accounts@mortgage-brain.co.uk) immediately upon transmission.

12.10 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.

## 13. DEFINITIONS

**“Act”** means the Data Protection Act 1998 and any future legislation enacted in replacement or amendment of the Act including equivalent legislation in the Republic of Ireland (ROI).

**“Content”** means the data and information you input

**“FSMA”** means the Financial Services and Markets Act 2000 and any of its accompanying rules and regulations, and any relevant successor Acts including equivalent legislation in ROI.

“**FCA**” means the Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN.

“**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.

“**Lenders**” means any mortgage provider who participates in Lendex or MTE.

“**Lendex**” means the proprietary web-based mortgage form processing software that is designed to capture and transmit application forms and related data from you to the Lender and to receive and process the Lender’s replies.

“**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 (or any successor code) comprising part of the FCA’s Handbook of Rules and Guidance.

“**Schedule**” means the schedule appended to this Agreement and which forms part of this Agreement.

“**Services**” means the services to be provided to you pursuant to the Schedule.

“**Software**” means Mortgage Brain’s proprietary software known as “The Lendex User Registration Database” that is accessed via the internet.

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

“**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

### The Services

- Mortgage Brain will provide you access to the Software.
- You will be entitled to use the Software to register for Lendex and/or MTE and/or to gain access to any participating lender web sites.
- For details of the minimum hardware operating system, browser and other software required please email customerservices@mortgage-brain.co.uk.
- Support will be available from Mortgage Brain either via the telephone helpline or by email. The telephone helpline is available on Working Days 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. Emails will be replied to during the telephone helpline opening hours. All calls to the telephone helpline will be charged at the national rate or other rate as notified from time to time.

### Maintenance Services

Mortgage Brain shall during the term of this Agreement provide Software updates free of charge for all Software licensed to you under this Agreement so you have access



to the most up to date version of the Software. Software updates will be provided at Mortgage Brain's sole discretion.

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.

Mortgage Brain may provide up to 1 hour's telephone training. If you require more than 2 hours support this shall be classed as an Additional chargeable Service at Mortgage Brain's prevailing rates.

Mortgage Brain will use reasonable endeavours to respond to all support calls within 1 Working Day.

#### Additional Services

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

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