

**THIS AGREEMENT** is dated [DATE]

## **PARTIES**

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Supplier**).
- (2) West Bromwich Building Society, a building society whose Principal Office is at 2 Providence Place, West Bromwich B70 8AF (**Customer**).

(each a party and together the parties)

## **BACKGROUND**

- (A) The Supplier is in the business of providing the Services.
- (B) The Customer wishes to obtain and the Supplier wishes to provide the Services on the terms set out in this Agreement.

## **AGREED TERMS**

### **1. Interpretation**

#### **1.1 Definitions.**

**Affiliate:** means in respect of either party, any subsidiary, subsidiary undertaking or holding company of that party or any subsidiary undertaking of such holding company, in each case for the time being and as such terms are defined in section 1159 and section 1162 of the Companies Act 2006.

**Agreement:** the agreement made between the parties, as amended, restated and/or novated from time to time, including all other documents attached to or otherwise incorporated into the agreement and any agreements made under or pursuant to the same, including any statement of work, call-off or order.

**Audit Right Holders:** has the meaning given in clause 11.1.

**Authorised Service Recipients:** such of the Customer's ultimate holding company and all subsidiaries of its ultimate holding company as may be notified by the Customer to the Supplier from time to time.

**Business Continuity Plan/BCDR:** a plan dealing with major incidents involving physical damage or constraints to assets to ensure that the Services are not compromised at any time.

**Confidential Information:** means in relation to either party to this Agreement any and all information relating to the business affairs, developments, personnel, suppliers or customers of that party (or any of its Affiliates), in whatever form whether in oral, tangible or in documented form, that is by its nature confidential,

the other party knows or ought to know is confidential and/or is designated as confidential and shall include, in respect of the Customer, all Customer Data.

**Critical Service Failure:** any of the following events:

- (a) a persistent breach of the Supplier's obligations under this Agreement, where such persistent breaches together constitute a material breach of the Supplier's obligations;
- (b) [the performance of the Services (or any part) falls to below any threshold identified as a critical failure;]
- (c) [the performance of the Services (or any part) falls to below any one or more Service Level(s) more than [◆] times in any [◆] month period;]
- (d) [the occurrence of [six (6)] or more defaults by the Supplier which are either incapable of remedy or which are capable of remedy but which are not remedied within [thirty (30)] calendar days of the written notice;]
- (e) [a failure to implement the BCDR Plan or restore any of the affected Services in accordance with its terms];
- (f) [a significant incident causes or has caused extensive and unmanageable operational disruption to any member of the Customer Group so that it is no longer able to stay within its impact tolerances (being the maximum tolerable level of disruption to an important business service, as determined by the Customer in accordance with operational resilience requirements);]
- (g) [insert additional triggers which should constitute an irremediable material breach]; or
- (h) an event where the Supplier's performance of any Service falls below the critical service threshold set out in the table in Schedule 1 for that Service.

**Customer Data:** all data and information (including Personal Data as defined in Schedule 4 (Data Processing)) in any form belonging to or otherwise relating to (a) the Customer or any member of the Customer Group, (b) any past, present and/or future customer of the Customer or any member of the Customer Group and/or (c) any users or personnel of any of the foregoing or any of their operations, which in each case may be inputted into, generated by or derived from use of the Services or otherwise used, collected or processed by or on behalf of the Supplier, Subcontractors or Staff (and any adaptation of derivative works of the same).

**Customer Group:** the Customer and its Affiliates from time to time and members of the Customer Group shall be construed accordingly.

**Data and Security Requirements:** all provisions in this Agreement relating to confidentiality, data and security, including clause 8 (Data and Security), Schedule 3 (Security) and Schedule 4 (Data Processing).

**Deliverables:** all Documents, products and materials developed by the Supplier or its agents, Sub-Contractor, consultants and employees in relation to the Services in any form.

**Divested Entity:** the whole or part of any member (or more than one of them) of the Customer Group which ceases, on or after Divestment, to be a member of or part of a member of the Customer Group.

**Divestment:** the sale or transfer of the whole or part of any member(s) of the Customer Group so that it ceases to be a member of or part of a member of the Customer Group (including any interim or final divestment to or from an intermediate holding entity and whether such sale or transfer is made by (or instigated by) a Resolution Authority, member of the Customer Group or otherwise).

**Document:** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**Ethics:** has the meaning referred to in clause 15.

**Exit:** has the meaning referred to in clause 20.

**Exit Period:** has the meaning given in clause 20.2.

**Good Industry Practice:** all relevant practices and professional standards that would be expected of a well-managed expert service provider performing services substantially similar to the Services (taking into account factors such as the service levels, term and pricing), to customers of the same nature and size as the Customer Group.

**In-Put Material:** all information, data, documents, specifications, instructions, content, software, code, scripts, materials, equipment, tooling, works, designs, know-how and other items in any form that are supplied or made available by or on behalf of a party to the other party for the purposes of this Agreement including any modifications, updates or derivatives of the foregoing created during the performance of the Services that do not constitute the Deliverables.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Regulator:** any governmental, statutory, regulatory, supervisory or resolution authority and any other competent authority or entity in any jurisdiction having responsibility for the regulation or governance of any member of the Customer

Group, this Agreement, the Services (or any part) or persons or entities appointed by or on the direction of such entities, including the Financial Conduct Authority, Prudential Regulation Authority, Bank of England and Information Commissioner's Office.

**Relevant Law:** (a) any statute, regulation, by law, ordinance or subordinate legislation in force; (b) the common law; (c) any binding court order, judgment or decree; and (d) any applicable industry code, policy, guidance, supervisory materials, standard or accreditation terms enforceable by law, including those stipulated by any Regulator, in each case for the time being.

**Resolution Authority:** any Regulator appointed with Resolution Powers.

**Resolution Event:** in relation to any member of the Customer Group, the occurrence of, or any event arising as a result of or in connection with: (a) the exercise or anticipated exercise by a Regulator of a resolution tool or any Resolution Powers including (i) any pre-stabilisation measures and assessments or (ii) the exercise of stabilisation powers by a Resolution Authority; (b) any deterioration in the financial circumstances or entry into a period of stress within the meaning of the PRA Supervisory Statement 9/16 or PRA Supervisory Statement 4/21 (including any amended or replacement versions), resolution or restructuring; (c) the commencement of insolvency proceedings or the making by the court, of a building society insolvency order or a building society administration order; (d) the filing of a petition for, giving notice of, or the proposal or passing of, a resolution or winding up order; (e) any step being taken or procedure commenced with a view to the appointment of a liquidator, an administrator, a receiver, an administrative receiver or other equivalent officer in respect of the member of the Customer Group or all or any part of the member of the Customer Group's assets; (f) it being unable to pay its debts as they fall due; (g) the value of its assets being less than its liabilities, including its contingent and prospective liabilities; and/or (h) any analogous event in any other jurisdiction.

**Resolution Period:** for each Resolution Event, the period commencing on the date upon which a Resolution Event occurs, and ending when the Customer and all relevant Regulators have confirmed that all actions to be taken and rights to be exercised in respect of the Resolution Event have been completed and exercised (as applicable).

**Resolution Powers:** the powers of the applicable resolution authority, including any powers conferred under or by virtue of the Banking Act 2009 (especially sections 48Z and 70C-D), the Building Societies (Insolvency and Special Administration) Order 2009/805, the Financial Services (Banking Reform) Act 2013 or any other legislation or regulatory framework implementing Directive 2014/59/EU (especially Articles 68 and 71) into national law, in each case as amended or replaced.

**Service Credits:** the sums attributable to a Service Failure as specified in 0 (Services).

**Service Failure:** a failure to deliver any part of the Services in accordance with the Service Levels.

**Service Level:** all required service levels specified or referenced in this Agreement including the service levels to which the Services are to be provided as set out in 0.

**Services:** all or, as the context requires, any of the obligations of the Supplier under this Agreement, the provision of the services and any solution, item or output to be produced, provided and/or made available in connection with the performance of the Supplier's obligations under this Agreement, including as set out or referenced in this Agreement and its Schedules.

**Staff:** any employees, officers, staff, contractors, agents and individuals contracted to the Supplier or any of its Subcontractors and involved to any extent in the performance of the Services and/or the performance of this Agreement.

**Subcontractor (or Sub-Contractor):** means any third party (including any of the Supplier's Affiliates) providing goods and/or services directly or indirectly to the Supplier at any level of the supply chain in connection with the performance of the Services.

1.2 The rules of interpretation in this clause apply. References to clauses and Schedules are to the clauses and Schedules of this Agreement. A reference to writing or written includes email.

## 2. Commencement and duration

2.1 The Supplier shall provide the Services to the Customer and the Authorised Service Recipients from the date of this Agreement, subject to earlier termination in accordance with this Agreement.

2.2 The Services supplied under this Agreement shall continue to be supplied for a period of [TERM] and, after that, shall continue to be supplied unless this Agreement is terminated by one of the Parties giving the other at least [NUMBER] months' notice, unless this Agreement is terminated in accordance with **clause 18**.

## 3. Supplier's responsibilities; compliance and regulators

- 3.1 The Supplier shall provide the Services and Deliverables in accordance with Schedule 1 and allocate sufficient resources to the Services to enable it to comply with this obligation.
- 3.2 The Supplier shall comply with and ensure that the Services comply with all Relevant Laws; not cause any member of the Customer Group to breach Relevant Laws; obtain, maintain and comply with all authorisations, registrations, licences and similar required by Relevant Law; and notify the Customer immediately in writing of developments with material or adverse impact on performance or compliance, and of breaches or suspected breaches of Relevant Laws by it or Subcontractors.
- 3.3 The Supplier shall co-operate fully with each Regulator and any person appointed by a Regulator; provide on request all information to enable a Regulator to supervise the performance of the Services; comply with any request of a Regulator in exercise of its information-gathering and investigatory powers; and acknowledge that nothing prevents disclosure of information to Audit Right Holders and/or Regulators.
- 3.4 All obligations of the Supplier under this Agreement shall, where the context so requires, include an obligation on the Supplier to procure that any relevant Sub-contractor shall also perform such obligations or give the Supplier all necessary assistance to enable the Supplier to perform such obligations.
- 3.5 The Supplier shall meet, and time is of the essence as to, any performance dates specified in 0. If the Supplier fails to do so, the Customer may (without prejudice to any other rights it may have):
  - 3.5.1 terminate this Agreement in whole or in part without liability to the Customer;
  - 3.5.2 refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
  - 3.5.3 purchase substitute services from elsewhere;
  - 3.5.4 hold the Supplier accountable for any loss and additional costs incurred; and
  - 3.5.5 have all sums previously paid by the Customer to the Supplier under this Agreement refunded by the Supplier.
- 3.6 If Supplier reasonably suspects a delay in the performance of the Services or fails to perform the Services by such dates as agreed in 0 (Services) the Supplier shall immediately notify the Customer and shall agree an alternative timeframe for delivery. Supplier shall use all commercially reasonable endeavours to mitigate the impact of any delays
- 3.7 The Supplier shall:
  - 3.7.1 co-operate with the Customer in all matters relating to the Services;
  - 3.7.2 subject to the prior written approval of the Customer, appoint or, at the written request of the Customer, replace without delay:

- 3.7.2.1 the Supplier's Manager, who shall have authority under this Agreement contractually to bind the Supplier on all matters relating to the Services; and
- 3.7.2.2 any member of the Supplier's Team, who shall be suitably skilled, experienced and qualified to carry out the Services.
- 3.7.3 subject to **clause 3.5** ensure that the same person acts as the Supplier's Manager throughout the term of this Agreement;
- 3.7.4 procure the availability of the Supplier's Manager and Supplier's Team to provide the Services during the term of this Agreement;
- 3.7.5 promptly inform the Customer of the absence (or anticipated absence) of the Supplier's Manager, or any member of the Supplier's Team. If the Customer requires, the Supplier shall provide a suitably qualified replacement;
- 3.7.6 not make any changes to the Supplier's Manager or the Supplier's Team without the prior written approval of the Customer (such approval not to be unreasonably withheld or delayed); and
- 3.7.7 ensure that the Supplier's Team use reasonable skill and care in the performance of the Services.
- 3.8 The Supplier shall ensure that the Services meet the Service Levels set out in 0.
- 3.9 Notwithstanding the Customer's right to claim Service Credits in accordance with **Schedule 1**, if there is a Service Failure the Supplier shall:
  - 3.9.1 notify the Customer promptly of the Service Failure in accordance with the agreed response times set out in 0;
  - 3.10 provide the Customer with a Remediation Plan in accordance with 0;
    - 3.10.1 deploy all additional resources and take all remedial action that is necessary to rectify or to prevent the Service Failure from recurring; and
    - 3.10.2 carry out its actions in accordance with the Remediation Plan.
  - 3.11 The Supplier shall use all reasonable endeavours to continue to provide the affected services in accordance with this Agreement.

#### **4. Change control and governance**

- 4.1 The Customer may monitor the Supplier's performance and the parties shall comply with Schedule 1 (Governance).
- 4.2 The Supplier shall:
  - 4.2.1 keep full, true and accurate records to show compliance with this Agreement for its duration and for seven (7) years afterwards or any longer period required in order to comply with Relevant Laws; and
  - 4.2.2 provide the Customer with all information relating to this Agreement reasonably requested by the Customer.
- 4.3 The Supplier shall, in accordance with Good Industry Practice, maintain effective risk management and internal audit policies and procedures, conduct

regular internal audits including an annual audit of Services, store documents and provide them on request, and co-operate with the Customer Group and their third-party suppliers as necessary to perform the Services and resolve issues.

- 4.4 Either party may request a change to the Services, and the Supplier shall promptly provide a change proposal with feasibility, impact, timeframe and charges; the Supplier shall not unreasonably withhold or delay consent and shall negotiate reasonably. The parties shall discuss the proposed change and the Supplier shall provide any further information reasonably requested by the Customer. The Supplier shall not unreasonably withhold or delay its consent to any requested change and shall negotiate each change acting reasonably.
- 4.5 The Supplier shall monitor any proposed changes to Relevant Laws, develop plans to accommodate such changes and notify the Customer of such changes and plans. The Supplier shall not withhold or delay its consent to a change to this Agreement or any Services requested by the Customer to enable compliance with Relevant Laws or any instruction, guidance, notification or other communication from a Regulator where such change is technically possible (“**Mandatory Change**”). Subject to the Customer’s approval, the Supplier shall develop all Mandatory Changes and implement the same within an agreed planned maintenance window.

## 5. Charges and payment

- 5.1 The Customer may at any time, without notice to the Supplier, request a change to the Services, and the Supplier shall promptly provide a change proposal with feasibility, impact, timeframe and charges; the Supplier shall not unreasonably withhold or delay consent and shall negotiate reasonably. The parties shall discuss the proposed change and the Supplier shall provide any further information reasonably requested by the Customer. The Supplier shall not unreasonably withhold or delay its consent to any requested change and shall negotiate each change acting reasonably.
- 5.1 The Customer shall pay each invoice which is properly due and submitted to it by the Supplier, within 30 days of receipt, to a bank account nominated in writing by the Supplier.
- 5.2 If a party fails to make any payment due to the other party under this Agreement by the due date for payment, then, without limiting the other party's remedies under clause 20, the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above Barclays Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount.
- 5.3 In relation to payments disputed in good faith, interest under clause **Error! Reference source not found.** is payable only after the dispute is resolved, on sums found or agreed to be due, from 30 days after the dispute is resolved until payment.
- 5.4 Invoices covering payment in respect of materials purchased by, or services provided to, the Supplier, or for reimbursement of expenses, shall be payable by the Customer only if accompanied by relevant receipts.

- 5.6 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services in such form as the Customer shall approve. The Supplier shall allow the Customer to inspect such records at all reasonable times on request.
- 5.7 Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. If the liabilities to be set off are expressed in different currencies, the Customer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.
- 5.8 Should the Supplier fail to meet agreed SLAs the Customer shall be entitled to claim Service Credits from the Supplier in accordance with 0 (Services) and any relevant Statement of Work (in accordance with the Statement of Work template set out at **Annex 2** to this Agreement).
- 5.9 The Supplier shall not amend or otherwise alter any invoice issued under this Agreement after the period of twenty-one (21) days commencing on and including the date stated on that invoice (the **Amendment Window**).
- 5.10 Any request for, or implementation of, changes to an invoice, including corrections to pricing, quantities, descriptions, tax treatment, references, dates, or recipient details, must be notified in writing to the Customer and fully effected within the Amendment Window. After expiry of the Amendment Window, the invoice shall be final, conclusive, and binding on the parties for all purposes, save only for: a) manifest error evident on the face of the invoice; or b) adjustments strictly required by applicable law or regulation, including mandatory tax compliance, in each case provided that the Supplier gives prompt written notice with reasonable particulars and supporting evidence.

## **6 Quality of Services; standards and service levels**

- 6.1 The Supplier warrants that it has requisite power, authority and reputation, ability, expertise, capacity, resources and organisation to perform reliably and professionally, will meet all Service Levels and measure performance monthly, perform with skill, care and diligence and in accordance with Good Industry Practice, deliver everything required to provide the Services except Customer-responsibility items, and use adequate numbers of suitably qualified and pre-screened Staff.
- 6.2 If there is a failure likely to have an adverse effect, the Supplier shall notify the Customer, investigate, take necessary action to minimise impact and prevent recurrence, provide regular updates, and correct the failure promptly.

## 7. Intellectual property

- 7.1 The Supplier assigns to the Customer, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services (including the Deliverables).
- 7.2 At its own expense, the Supplier shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement, including securing for the Customer all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Customer in accordance with clause **Error! Reference source not found..**
- 7.3 The Supplier shall obtain waivers of any moral rights in the products of the Services (including the Deliverables) to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

## 8. Indemnity and insurance

- 8.1 The Supplier shall indemnify and hold the Customer harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Customer as a result of or in connection with:
- 8.1.1 any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the products of the Services (including the Deliverables); or
- 8.1.2 any claim made against the Customer in respect of any liability, loss, damage, injury, cost or expense sustained by the Customer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services or the Deliverables as a consequence of a breach or negligent performance or failure or delay in performance of this Agreement by the Supplier.
- 8.2 The Supplier shall maintain for the duration of this Agreement and for seven years thereafter the following insurances with reputable insurers on customary market terms:
- 8.2.1 professional indemnity of not less than £5 million per occurrence;
- 8.2.2 public liability of not less than £5 million per occurrence;

- 8.2.3 employer's liability as required by Relevant Law with limits of at least £5 million per occurrence and a waiver of subrogation where permitted; and
- 8.2.4 network risk and cyber liability of not less than £5million per occurrence. The Supplier shall provide certificates on request, notify material changes and not invalidate policies.

## **9. Confidentiality**

9.1 Supplier undertakes that it shall not at any time disclose to any person any In-put Material, technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Customer, its employees, agents, consultants or Sub-Contractors, or any other Confidential Information concerning the Customer's business or its products which the Supplier may obtain, except as permitted by clause 9.2.

9.2 The Supplier may disclose the Customer's Confidential Information:

- 9.2.1 to the Supplier's team and to such of its other employees, agents, consultants or Sub-Contractor as need to know it for the purpose of discharging the Supplier's obligations to the Customer. The Supplier shall ensure that its employees, agents, consultants or Sub-Contractor to whom it discloses the Customer's Confidential Information comply with this clause 9; and
- 9.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 9.2.3 The Supplier shall not use the Customer's Confidential information for any purpose other than to perform its obligations under this Agreement.
- 9.2.4 All In-put Materials, Customer's Equipment and all other materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier shall, at all times, be and remain the exclusive property of the Customer, but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Customer. They shall not be disposed of or used other than in accordance with the Customer's written instructions or authorisation.
- 9.2.5 Without prejudice to any other rights or remedies that the Customer may have, the Supplier acknowledges and agrees that damages alone would not be an adequate remedy for the breach of the terms of this clause 9 by the Supplier. Accordingly, the Customer shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this clause 9.

This clause 9 shall survive termination of the Contract.

## **10. Data protection; location of processing**

10.1 The data processing provisions set out in Schedule 4 (Data Processing) apply and are in addition to the parties' obligations under Data Protection Laws.

10.2 The Supplier shall not provide Services from, or keep, process or transfer Customer Data outside the United Kingdom without prior written consent on at least three (3) months' prior notice with sufficient details to assess risk, including the proposed location.

## **11. Audit and access**

11.1 The Supplier shall provide the Customer, Customer Group members, their representatives (including internal or external auditors), Regulators and any persons appointed by any of them (Audit Right Holders) full and unrestricted inspection, access and audit rights (with unlimited frequency and remote or on-site) to Supplier and Subcontractors' data, systems and networks used for the Services, penetration testing results, company and financial information, external auditors, Staff and premises, to monitor the Agreement and ensure compliance with this Agreement and Relevant Laws, and such rights shall not be impeded or limited by other arrangements.

11.2 The Supplier shall provide copies of requested documentation, co-operate fully, and ensure certifications and third party reports meet expectations and provide additional information on request; if an audit reveals any failing, the Supplier shall promptly develop and implement a remediation plan and report progress.

## **13. Data and security**

13.1 The Supplier shall, and shall procure Subcontractors shall, comply with the Data and Security Requirements; implement appropriate technical, security and organisational measures; verify operation to [Cyber Essentials Plus] [ISO/IEC 27001] [and PCI-DSS] [SOC 1 & 2 Type II]; maintain certifications and provide annual evidence; implement anti-virus and anti-malware measures; avoid introducing viruses or unlawful data; limit and authorise access to Customer Data; and undertake security monitoring including insider-threat monitoring.

13.2 Accessibility and backup. The Supplier shall ensure the Customer can access, extract and download all Customer Data in an industry standard, comprehensible electronic format throughout the Agreement and Exit Period, and maintain appropriate backup, archiving and recovery to ensure complete and accurate copies.

13.3 Security Incidents. On any actual or suspected Security Incident, the Supplier shall immediately notify the Customer, investigate, take remedial action and mitigation, provide assistance including with the Customer's own investigation, at no additional cost save where caused by the Customer with costs agreed and reasonable.

13.4 Penetration testing. The Supplier shall conduct annual penetration testing using an independent third party, covering externally and internally hosted environments and IT security efficacy, and provide CREST-accredited reports within ten calendar days of receipt and on request; the Customer may conduct or appoint third parties to conduct testing and annual IT security due diligence with seven days' notice and full access to systems; ineffective measures shall be remediated per a remediation plan with regular reporting. Optional vulnerability resolution times may be included as agreed.

#### **14. Subcontracting**

14.1 The Supplier shall not subcontract obligations or disclose Customer Data to any third party without prior written consent; shall give not less than three (3) months' prior written notice of proposed subcontracting or material subcontract changes with sufficient detail for risk assessment; shall remain fully liable for Subcontractors and oversee all subcontracted Services; shall ensure Subcontractors are bound by contracts prohibiting further subcontracting and disclosure without consent and granting equivalent legal, compliance, data and audit rights; the Customer may withdraw consent in specified risk circumstances; and the Supplier shall maintain oversight capacity, conduct diligence and monitoring at least annually, provide reports on request and promptly rectify failings.

#### **15. Ethics**

15.1 The Supplier shall comply with the Customer's Supplier Code of Conduct available at <http://www.westbrom.co.uk/suppliers/supplier-code-of-conduct>.

15.2 The Supplier shall, and shall procure its Staff and Subcontractors shall, comply with Relevant Laws relating to anti-bribery and corruption, anti-slavery and human trafficking, anti-money laundering and anti-facilitation of tax evasion, including the Bribery Act 2010, Modern Slavery Act 2015, Criminal Finances Act 2017, the Economic Crime and Corporate Transparency Act 2023 and Money Laundering Regulations 2017; not commit offences under such laws; take reasonable steps to prevent slavery and human trafficking; maintain and enforce appropriate policies to prevent money laundering, tax evasion and facilitation, slavery and human trafficking, and bribery; provide annual compliance certifications signed by an officer within two months of the Agreement date and annually thereafter with supporting evidence on request;

flow-down equivalent obligations contractually; provide prompt notifications of suspected breaches, requests to facilitate tax evasion, undue advantages, and changes relating to foreign public officials; and ensure no conflicts of interest arise.

## **16. Business Continuity and Disaster Recovery**

16.1 The Supplier shall maintain comprehensive business continuity and disaster recovery plans in accordance with Good Industry Practice detailing processes to ensure continuity and operational resilience; may update plans without prior consent provided protections are not reduced; shall immediately notify the Customer of disruptions, review, update and test plans at least annually and before material changes, provide test reports within ten calendar days on receipt and on request including findings, vulnerabilities, recommendations and remediation timeframes, remediate vulnerabilities within identified timeframes, and assist with the Customer's own arrangements including scenario testing.

## **17. Resolution and operational continuity**

17.1 The Supplier acknowledges the Resolution Powers of the applicable Resolution Authority, which take precedence; during any Resolution Period, the Supplier shall continue to provide Services, shall not terminate, suspend, modify or extinguish the Agreement (subject to specified non-payment termination), shall ensure continued access to operational assets supporting the Services, and may rely on instructions of the Resolution Authority; the Customer shall continue to pay undisputed charges during the Resolution Period; following any Resolution Event and notwithstanding any Divestment, the Supplier shall continue Services to each Divested Entity for up to two years or longer if required by the Resolution Authority, novate the Agreement as required, and not increase charges or impose additional conditions; after the Resolution Period, Supplier termination or suspension rights are reinstated only for acts or breaches after the Resolution Period.

## **18. Termination**

18.1 Either party may terminate for material breach (irremediable or not remedied within 30 calendar days) or insolvency events. For Supplier material breaches incapable of remedy, triggers include Critical Service Failure, unauthorised Customer Data use or access arising from breach of Data and Security Requirements, and breach of Audit, BCDR, Compliance/Regulators, Ethics or Subcontracting obligations.

18.2 The Customer may also terminate immediately for breaches of Relevant Law or Agreement terms, impediments altering performance, material changes

affecting Services, weaknesses in management or security of Confidential Information or Customer Data, regulatory direction, legal compliance issues, customer interests, change of control, or failure to replace a Subcontractor after consent withdrawal within three (3) months.

18.3 [Notwithstanding any other provision, the Supplier shall serve not less than twelve (12) months' prior written notice of any non-renewal.]

## 19. Survival

19.1 Termination or expiry shall not affect provisions intended to continue beyond termination, including Audit, records, Insurance, Exit, General and Data and Security Requirements.

## 20. Exit

20.1 The parties shall develop, maintain, review, update and test an Exit Plan at least annually and before material changes; the initial version is set out in Schedule 5 (Exit Plan); the Supplier shall provide an updated version within ten calendar days of request incorporating reasonable Customer comments; if not agreed within thirty calendar days, either party may refer for resolution under Schedule 2 (Governance).

20.2 On expiry or termination, at the Customer's request the Supplier shall continue to provide Services for up to [twelve (12)] months (the Exit Period) on the terms of this Agreement; implement the Exit Plan; support an orderly transfer including assistance to a successor; not alter, remove or delete Customer Data without prior approval; use reasonable endeavours to avoid detriment to quality during transition; make available a suitably qualified representative to oversee transfer; and answer reasonable questions and disclose details of ongoing work.

20.3 Outputs licence. The Supplier grants to the Customer and each Customer Group member a non-exclusive, worldwide, perpetual, irrevocable, royalty-free licence to, and to authorise any successor supplier to, copy, store and use Outputs for replacement services and regulatory and archiving purposes.

20.4 By the end of the Exit Period, the Supplier shall return and/or securely destroy all Customer Confidential Information and Customer Data (including backups) as instructed, and return any other Customer material.

## 21. Assignment and novation

21.1 The Customer may assign, transfer or novate this Agreement, in whole or in part, to: (a) a purchaser of all or substantially all of the Customer's business or assets to which this Agreement relates; or (b) any member of the Customer's group or any successor entity from a merger, reorganisation or restructuring, in

each case without prior consent, provided written notice is given as soon as reasonably practicable and the assignee agrees in writing to be bound. Except as permitted above, neither party may assign, transfer or novate without the other party's prior written consent, not to be unreasonably withheld or delayed.

## **22. Dispute resolution**

22.1 The dispute resolution procedure set out in Schedule 2 (Governance) applies, including good-faith escalation and mediation before court proceedings after specified waiting periods.

## **23. General**

23.1 **Force Majeure.** Neither party shall be liable for any delay or failure in the performance of its obligations for so long as and to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 30 days, the party not affected may terminate this agreement by giving not less than 14 days' written notice to the affected party.

23.2 **Variation.** No variation of this Agreement or change to the Services is valid unless in writing and signed by authorised representatives of each party.

23.3 **Exclusivity.** [The Customer agrees that the arrangements envisaged by this Agreement are not exclusive and each party may at any time enter into the same or similar agreements with other third parties.]

23.4 **Governing law and jurisdiction.** This Agreement and any dispute or claim (including non-contractual) arising out of or in connection with it shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably submits to the exclusive jurisdiction of the English courts.

**Schedule 1: Services and Service Levels**

**[insert relevant schedule for service levels]**

## Schedule 2: Governance

### 1 Representative and Meetings

1.1 Each party shall appoint an authorised representative to act as the principle point of contact for matters relating to this Agreement and shall use reasonable endeavours to ensure continuity of its appointed representative.

1.2 The parties shall hold the following meetings:

Meeting	Topic and detail	Frequency	Attendees
Service review	<i>[Discuss and review the performance of this Agreement, including any topics for discussion reasonably specified by the Customer.]</i>	<i>[Monthly]</i>	<i>[Insert]</i>
Relationship review	<i>[Assess the Supplier's performance and the wider relationship attended by senior representatives of the parties.]</i>	<i>[Annual]</i>	<i>[Insert]</i>
Ad hoc	<i>[Such other meetings or calls as may be required by the Customer if the Customer reasonably considers that the Supplier has not performed its obligations in accordance with this Agreement.]</i>	<i>[Ad hoc]</i>	<i>[Insert]</i>
Other	<i>[Insert]</i>	<i>[Insert]</i>	<i>[Insert]</i>

### 2 Reporting

The Supplier shall provide the following reports to the Customer, with the minimum content and at the frequency specified below:

Report	Contents	Other	Frequency
Service report	<ul style="list-style-type: none"> <li><i>[Performance against each Service Level with sufficient detail to enable the Customer to monitor and verify the Supplier's performance against the Service Levels;]</i></li> </ul>	<i>[Insert]</i>	<i>[Monthly]</i>

	<ul style="list-style-type: none"> <li>• <i>[Details of service failures, incidents and problems;]</i></li> <li>• <i>[insert any other required content.]</i></li> </ul>		
Usage & charges	<ul style="list-style-type: none"> <li>• <i>[Breakdown of usage and charges for each element of the Services, including any overage, with sufficient detail to enable Customer to understand and verify the charges;]</i></li> <li>• <i>[insert any other required content]</i></li> </ul>	<i>[Insert]</i>	<i>[Annual]</i>
Other	<i>[Insert]</i>	<i>[Insert]</i>	<i>[Insert]</i>

### 3 Dispute Resolution

3.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (Dispute) then the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Services Director/Operations Manager of the Supplier and Operational Relationship Manager of the Customer shall attempt in good faith to resolve the Dispute;
- (b) if the Services Director/Operations Manager of the Supplier and Operational Relationship Manager of the Customer are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Complaints Manager of the Supplier and Head of Operations of the Customer who shall attempt in good faith to resolve it; and
- (c) if the Complaints Manager of the Supplier and Head of Operations of the Customer are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR

notice should be sent to CEDR Solve. The mediation will start not later than 14 days after the date of the ADR notice.

- 3.2 No party may commence any court proceedings under clause 36 in relation to the whole or part of the Dispute until 90 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 3.3 If the Dispute is not resolved within 90 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 90 days, or the mediation terminates before the expiration of the said period of 90 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 36 in this Agreement.

### **Schedule 3: Pricing**

#### **Part 1. Price**

[DETAILS OF PRICE, FOR EXAMPLE THE FIXED PRICE OR DAILY RATE.]

#### **Part 2. Payment**

[THE PAYMENT SCHEDULE, WHICH SHOULD INCLUDE THE DATES OR EVENTS ON WHICH INSTALMENTS ARE TO BE INVOICED AND THE AMOUNT OF EACH INSTALMENT.]

## Schedule 4: Data Processing

### 4 Definitions

4.1 In this **Error! Reference source not found.**, the following terms shall have the meanings set out below:

- (a) "**Data Protection Laws**" means laws and regulations applicable to the parties' Processing of Personal Data under the Agreement, in each case as may be amended, extended or replaced from time to time, including without limitation the UK GDPR, the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003.
- (b) "**Customer Personal Data**" means the Personal Data Processed by the Supplier, on behalf of the Customer under, or in connection with, the Agreement as more particularly described in **Error! Reference source not found.** (Details of Processing activities), and which forms part of the Customer Data.
- (c) "**UK GDPR**" means the UK General Data Protection Regulation, as defined under section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018 and part of UK domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended).
- (d) The terms "**Controller**", "**Data Subject**", "**Information Commissioner**", "**Personal Data**", "**Personal Data Breach**", "**Processing**" (and "**Process**" and "**Processed**" shall be construed accordingly) and "**Processor**" have the same meanings as described in the UK GDPR.

### 5 General

5.1 For the purposes of the Agreement and Data Protection Laws, the Customer and the Supplier acknowledge that the Customer is the Controller and the Supplier is a Processor of any Customer Personal Data Processed in connection with the Services and each of the Supplier and the Customer shall perform their respective obligations under the Agreement in accordance with Data Protection Laws. This **Error! Reference source not found.** is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Laws.

- 5.2 Notwithstanding paragraph 2.1, the parties each acknowledge and agree that they may need to Process Personal Data in relation to each party's representatives (in their respective capacities as Controllers) in order to (as appropriate):
- (a) administer and provide the Services;
  - (b) request and receive the Services;
  - (c) compile, dispatch and manage the payment of invoices relating to the Services;
  - (d) manage the Agreement and resolve any disputes relating to it;
  - (e) respond and/or raise general queries relating to the Services; and
  - (f) comply with their respective regulatory obligations,

and each party shall Process such Personal Data for the purposes set out in this paragraph 2.2 in accordance with their respective privacy policies and fair processing notices.

## 6 Processing

- 6.1 Paragraphs 6 to 14 of this **Error! Reference source not found.** apply to all Processing of Customer Personal Data performed by the Supplier on behalf of the Customer within the scope of the Agreement.
- 6.2 The Supplier shall Process Customer Personal Data only on the documented instructions from the Customer. The Customer's instructions shall, initially, be those detailed and set out in the Agreement. The Customer shall, subsequently, be entitled to, in writing or in other text form, modify, amend or replace such instructions by issuing new instructions to the point of contact designated by the Supplier.
- 6.3 **Error! Reference source not found.** to this **Error! Reference source not found.** defines the subject matter and duration of the Processing, the nature and purpose of the Processing, the categories of data subjects, types of Personal Data, special categories of Personal Data that will be processed under the Agreement as well as the Processing activities implemented under the Agreement.
- 6.4 The Supplier shall:
- (a) Process Customer Personal Data only on behalf of the Customer in accordance with the Customer's documented instructions set forth in

the Agreement (unless required by Relevant Law in the UK to act otherwise, in which case the Supplier shall inform the Customer unless prohibited by Relevant Law in the UK), or as otherwise necessary to perform its obligations under the Data Protection Laws. The Supplier shall promptly inform the Customer if, in its opinion, an instruction from the Customer infringes Data Protection Laws;

- (b) act in compliance with Data Protection Laws;
- (c) ensure the reliability of persons authorised to Process the Customer Personal Data and ensure that such persons Processing the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- (d) be entitled to make its own day to day operational decisions to the extent that these do not breach the terms of this **Error! Reference source not found.**, the Data and Security Requirements, conflict with the instructions of the Customer or in any way which would be interpreted such that the Supplier would be considered a Controller in respect of any such Processing or otherwise of the Customer Personal Data.

## **7 Right to Inspect and Audit**

- 7.1 In addition to any audit rights granted pursuant to the Agreement, the Supplier shall make available to the Customer all relevant information necessary to demonstrate compliance with its obligations under this **Error! Reference source not found.** and allow for and contribute to audits conducted by the Customer or another auditor mandated by the Customer.

## **8 Personal Data Breaches**

- 8.1 Notwithstanding the terms of clause **Error! Reference source not found.** (Security incidents), the Supplier shall promptly notify the Customer without undue delay and in any event within twenty-four (24) hours after becoming aware of an actual or suspected Personal Data Breach. Such notice shall:
  - (a) describe the nature of the Personal Data Breach including where possible, the categories and approximate number of Data Subjects concerned, and the categories and approximate number of Personal Data records concerned;
  - (b) communicate the name and contact details of the data protection officer or other contact point where more information can be obtained;

- (c) describe the likely consequences of the Personal Data Breach; and
  - (d) describe the measures taken or to be taken by the Supplier to address the Personal Data Breach, including, where appropriate, the measures to mitigate the possible adverse effects.
- 8.2 Where, and in so far as, it is not possible to provide the information at the same time, the information may be provided in phases.

## 9 Sub-Processing

The Supplier shall not transfer the Customer Personal Data to any third party, or allow any third party to access the Customer Personal Data, unless done so in compliance with clause **Error! Reference source not found.** (Subcontracting).

## 10 Personal Data Transfers

The Supplier shall not, except in accordance with the instructions of the Customer in writing, carry out any Processing of Customer Personal Data, or transfer any Customer Personal Data, outside the UK (nor shall any Subcontractor acting as a sub-Processor make a transfer outside the UK to a third party).

## 11 Return or deletion of Personal Data

- 11.1 The Supplier will at no additional cost to the Customer, delete or return (at the Customer's option) in a commonly accessible and machine readable format, all Customer Personal Data [in accordance with **Error! Reference source not found. (Error! Reference source not found.)**] or, if earlier,] upon a request by the Customer.
- 11.2 If any Relevant Law in the UK, government or Regulator requires the Supplier to retain any documents or materials or Customer Personal Data that the Supplier would otherwise be required to return or destroy, the Supplier will notify the Customer in writing of that retention requirement, giving details of the documents, materials or Customer Personal Data that it must retain, the legal basis for retention, and establishing a specific timeline for deletion or destruction once the retention requirement ends.

## 12 Security

- 12.1 The Supplier shall secure the Customer Personal Data against unauthorised or unlawful Processing and accidental destruction, damage or loss, including by compliance with the relevant provisions of the Agreement

concerning, data, information and/or security including as set out in the Data and Security Requirements.

- 12.2 The Customer and the Supplier shall cooperate to fulfil their obligations under Article 32(1)(d) of the UK GDPR to implement a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing of Customer Personal Data.

### **13 Data subject access requests**

- 13.1 The Supplier will immediately inform the Customer of requests from Data Subjects exercising their rights under Data Protection Laws (including subject access rights, the right to rectification, erasure or to port data, the right to restrict or to object to the Processing (or automated processing) of Personal Data) addressed directly to the Supplier in respect of the Customer Personal Data. The Supplier shall not directly reply to such requests unless expressly instructed to do so by the Customer. The Customer shall be responsible for responding to such requests of Data Subjects assisted by the Supplier, insofar as possible.
- 13.2 The Supplier shall assist the Customer by implementing appropriate technical and organisational measures taking into account the information available to the Supplier and nature of Processing, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests for exercising a Data Subject's rights as laid down in Chapter III of the UK GDPR.

### **14 Assistance**

- 14.1 Taking into account the information available to the Supplier and the nature of Processing, the Supplier will assist the Customer, including by technical and organisational measures to ensure the Customer can meet its obligations relating to the security of Processing, the notification of a Personal Data Breach and the completion of data protection impact assessments or transfer risk assessments.
- 14.2 At the request of the Customer, the Supplier shall assist the Customer at no additional cost in:
- (a) responding to Data Subjects who have exercised their rights under the UK GDPR;
  - (b) in meeting the Customer's obligations as set out in the Data Protection Laws and this **Error! Reference source not found.** in

relation to the security of Processing, the notification of Personal Data Breaches; and

- (c) the completion of data protection impact assessments, including consulting with the Information Commissioner or other applicable Regulator (where applicable).

## **Schedule 5: Exit Plan**

[Initial version of Exit Plan to be inserted.]

**Schedule 6: TUPE**

**[insert TUPE schedule if relevant]**

## **Schedule 6 Code of Ethics and Anti-bribery Policy**

[Insert the Anti-bribery policy.]

**Execution**

Signed by

[NAME OF DIRECTOR/SIGNATORY]

for and on behalf of [NAME OF SUPPLIER]

Signed by

[NAME OF DIRECTOR]

for and on behalf of West Bromwich Building Society Director