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## LMI FRANCHISING LIMITED SERVICE PROVIDER TERMS AND CONDITIONS

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### BACKGROUND:

These Terms and Conditions shall apply to the Agreement between LMI Franchising Limited a company registered in England under number 09614538 whose registered office is at 31 Rodney Street, Liverpool L1 9EH (the "Client") and the service provider whose details are set out in the Agreement (the "Service Provider").

### 1. Definitions and Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

<b>"Agreement"</b>	means the agreement entered into by the Service Provider and the Client incorporating these Terms and Conditions (or variation thereof agreed upon by both Parties) which shall govern provision of the Services;
<b>"Business Day"</b>	means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in England;
<b>"Commencement Date"</b>	means the date on which provision of the Services will commence, as defined in the Agreement;
<b>"Confidential Information"</b>	means information which is disclosed to the Service Provider by the Client pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
<b>"Fees"</b>	means any and all sums due under the Agreement from the Client to the Service Provider, as specified in the Agreement;

**“Intellectual Property Rights”** means (a) any and all rights in any patents, trade marks, service marks, registered designs, applications (and rights to apply for any of those rights) trade, business and company names, internet domain names and e-mail addresses, unregistered trade marks and service marks, copyrights, database rights, know-how, rights in designs and inventions;

(b) rights under licences, consents, orders, statutes or otherwise in relation to a right in paragraph (a);

(c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) which now or in the future may subsist; and

(d) the right to sue for past infringements of any of the foregoing rights;

**“Services”** means the services to be provided by the Service Provider to the Client in accordance with the Agreement, as fully defined in the Agreement (including the schedule of the Agreement), and subject to the terms and conditions of the Agreement; and

**“Term”** means the term of the Agreement as defined therein.

1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;

1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

1.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions as amended or supplemented at the relevant time;

1.2.4 a Clause or paragraph is a reference to a Clause of these Terms and Conditions or to a Clause of the Agreement, as appropriate; and

1.2.5 a "Party" or the "Parties" refer to the parties to the Agreement.

1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.

1.4 Words imparting the singular number shall include the plural and vice versa.

1.5 References to any gender shall include the other gender.

1.6 References to persons shall include corporations.

## 2. **Provision of the Services**

- 2.1 With effect from the Commencement Date, the Service Provider shall, throughout the Term of the Agreement, provide the Services to the Client.
- 2.2 The Service Provider shall provide the Services with reasonable skill and care, commensurate with prevailing standards in the Service Provider's sector in the United Kingdom.
- 2.3 The Service Provider shall act in accordance with all reasonable instructions given to it by the Client.
- 2.4 The Service Provider shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.
- 2.5 The Service Provider shall use all reasonable endeavours to accommodate any reasonable changes in the Services that may be requested by the Client.

## 3. **Intellectual Property Rights**

- 3.1 In consideration of the payment of £1.00 (one pound) to the Service Provider by the Client the Service Provider hereby assigns the ownership of any and all Intellectual Property Rights that may subsist in anything produced by the Service Provider in the course of providing the Services.
- 3.2 In complying with the provisions of sub-Clause 3.1, the Service Provider shall undertake to execute any such agreements and perform any such actions that may be necessary to put such assignments into effect and shall exclusively bear any costs associated therewith.
- 3.3 The Service Provider shall waive all moral rights arising out of Chapter IV of the Copyright, Designs and Patents Act 1988.
- 3.4 The Service Provider undertakes not to through it or by way of any of its contractors, employees, directors, shareholders or licensees apply for any registration of or make use of any trademark that is identical or similar to any name of the Client or any of the Client's goods and/or services.
- 3.5 The Service Provider shall not make use of any information provided by the Client or acquired during the Services for its own benefit or supply any Intellectual Property Rights associated with the Services to any competitor of the Client.

## 4. **Obligations**

- 4.1 The Client shall use all reasonable endeavours to provide all pertinent information to the Service Provider that is necessary for the Service Provider's provision of the Services.
- 4.2 In the event that the Service Provider requires the decision, approval, consent or any other communication from the Client in order to continue with the provision of the Services or any part thereof at any time, the Client shall provide the same in a reasonable and timely manner.
- 4.3 The Service Provider shall not poach any client or customer of the Client or offer any services and/or goods to any client or customer of the Client that are similar to the goods and/or services of the Client.

4.4 The Service Provider shall not solicit the services of any employees of the Client.

## 5. Fees, Payment and Records

5.1 The Client shall pay the Fees to the Service Provider in accordance with the provisions of the Agreement.

5.2 The Service Provider shall invoice the Client for Fees due in accordance with the provisions of the Agreement.

5.3 All payments required to be made pursuant to the Agreement by the Client shall be made within thirty Business Days of receipt by the Client of the Service Provider's invoice which must include a purchase order number provided by the Client.

5.4 Where any payment pursuant to the Agreement is required to be made on a day that is not a Business Day, it may be made on the next following Business Day.

5.5 The Service Provider shall be required to:

5.5.1 keep, or procure that there are kept, such records and books of account as are necessary to enable the amount of any sums payable pursuant to the Agreement to be accurately calculated; and

5.5.2 at the reasonable request of the Client allow the Client or its agent to inspect those records and books of account and, to the extent that they relate to the calculation of those sums, to take copies of them.

## 6. Liability, Indemnity and Insurance

6.1 The Service Provider shall ensure that it has in place at all times suitable and valid insurance that shall include public liability insurance.

6.2 In the event that the Service Provider fails to perform the Services with reasonable care and skill it shall carry out any and all necessary remedial action at no additional cost to the Client.

6.3 The Service Provider shall compensate the

6.4 Nothing in these Terms and Conditions nor in the Agreement shall limit or exclude the Service Provider's liability for death or personal injury.

6.5 The Service Provider shall indemnify the Client against any costs, liability, damages, loss, claims or proceedings arising out of the Service Provider's breach of the Agreement or negligence.

6.6 Neither Party shall be liable to the other or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.

6.7 Where the Service Provider is a corporate body such as a limited company or limited liability partnership the individual directors, shareholders and/or members undertake to be personally liable where the Service Provider has entered into administration or liquidation or has ceased (or has threatened to) trading.

## **7. Guarantee**

- 7.1 The Service Provider shall guarantee that the product of all Services provided will be free from any and all defects for a period that shall be defined in the Agreement.
- 7.2 If any defects in the product of the Services appear during the guarantee period set out in the Agreement the Service Provider shall rectify any and all such defects at no cost to the Client.
- 7.3 The Service Provider warrants that the Client shall be free to use all the Intellectual Property Rights of the product of the Services and in so doing shall not infringe the Intellectual Property Rights of any third party.

## **8. Confidentiality**

- 8.1 The Service Provider shall undertake that, except as provided by sub-Clause 8.2 or as authorised in writing by a director of the Client it shall, at all times during the continuance of the Agreement and after its termination:
  - 8.1.1 keep confidential all Confidential Information;
  - 8.1.2 not disclose any Confidential Information to any other party;
  - 8.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Agreement;
  - 8.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
  - 8.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 8.1.1 to 8.1.4 of the Agreement.
- 8.2 The Service Provider may disclose any Confidential Information to any governmental or other authority or regulatory body where required to do so by law.
- 8.3 The provisions of Clause 8 of the Agreement shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.

## **9. Force Majeure**

- 9.1 No Party to the Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.
- 9.2 In the event that a Party to the Agreement cannot perform their obligations hereunder as a result of force majeure for a continuous period of 30 days, then either Party may at its discretion terminate the Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all Services provided up to the date of termination. Such payment shall take into account any prior

contractual commitments entered into in reliance on the performance of the Agreement.

## 10. Term and Termination

- 10.1 The Agreement shall come into force on the agreed Commencement Date and shall continue for a defined Term from that date or until completion of the Services.
- 10.2 The Client may terminate the Agreement by giving to the other not less than 15 day's written notice.
- 10.3 Either Party may immediately terminate the Agreement by giving written notice to the other Party if:
  - 10.3.1 any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within 30 Business Days of the due date for payment;
  - 10.3.2 the other Party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within 30 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
  - 10.3.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
  - 10.3.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
  - 10.3.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);
  - 10.3.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
  - 10.3.7 the other Party ceases, or threatens to cease, to carry on business; or
  - 10.3.8 control of the Service Provider is acquired by any person or connected persons not having control of that other Party on the date of the Agreement. For the purposes of Clause 10, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 10.4 For the purposes of sub-Clause 10.4.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 10.5 The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

**11. Effects of Termination**

Upon the termination of the Agreement for any reason:

- 11.1 any sum owing by the Client under any of the provisions of the Agreement shall become immediately due and payable unless the Services are subject to dispute;
- 11.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;
- 11.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which existed at or before the date of termination;
- 11.4 subject as provided in Clause 11 of the Agreement and except in respect of any accrued rights the Client shall be under any further obligation to the Service Provider;
- 11.5 the Service Provider shall (except to the extent referred to in Clause 8 of the Agreement) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the Client (at the Service Provider's costs) any documents in its possession or control which contain or record any Confidential Information;
- 11.6 the Service Provider shall immediately sign any documents relating to the Intellectual Property Rights in and to the products of the Services as requested by the Client and the Service Provider shall not transfer any such rights to any third party;
- 11.7 the Service Provider shall have no right to withhold any monies or Intellectual Property Rights.

**12. No Waiver**

No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

**13. Further Assurance**

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.

**14. Costs**

Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement.

15. **Set-Off**

The Service Provider shall not be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.

16. **Assignment and Sub-Contracting**

The Client shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors and shall have the right to assign the Agreement to any third party.

17. **Time**

All times and dates referred to in the Agreement shall be of the essence of the Agreement.

18. **Relationship of the Parties**

Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.

19. **Third Party Rights**

19.1 No part of the Agreement shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

19.2 Subject to Clause 19 of the Agreement, the Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

20. **Notices**

20.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

20.2 Notices shall be deemed to have been duly given:

20.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

20.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

20.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

20.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.



21. **Entire Agreement**

21.1 The Agreement along with these Terms and Conditions contain the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

21.2 Each Party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

22. **Counterparts**

The Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

23. **Severance**

In the event that one or more of the provisions of the Agreement and/or of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement and/or these Terms and Conditions. The remainder of the Agreement and/or these Terms and Conditions shall be valid and enforceable.

24. **Law and Jurisdiction**

The Agreement and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales whose courts shall have exclusive jurisdiction.