

Dated: May 2018

LFMI MEDIA SERVICES LIMITED T/A RUE POINT MEDIA

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

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1. INTERPRETATION

1.1 THE FOLLOWING DEFINITIONS AND RULES OF INTERPRETATION APPLY IN THESE CONDITIONS.

1.2 Definitions:

- “Applicable Law”** means (i) any and all laws, statutes, regulations, by-laws, orders, ordinances and court decrees that apply to the performance and supply of the Services or the Processing of Personal Data, and (ii) the terms and conditions of any applicable approvals, consents, exemptions, filings, licences, authorities, permits, registrations or waivers issued or granted by, or any binding requirement, instruction, direction or order of, any applicable government department, or authority having jurisdiction in respect of that matter.
- "Business Day"** means a day (other than a Saturday, Sunday or public holiday) when banks in Dublin are open for business.
- "Charges"** means the charges payable by the Customer for the supply of the Services in accordance with clause 5 (Charges and Payment).
- "Commencement Date"** has the meaning given in clause 2.2.
- "Conditions"** means these terms and conditions set out in this document as amended from time to time in accordance with clause 11.5.
- "Contract"** means the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.
- "Control"** means the beneficial ownership of more than 50% of the issued share capital of the company or the legal power to direct or cause the direction of the general management of the company and the expression **change of control** shall be construed accordingly.
- "Customer"** means the person or firm who purchases Services from the Supplier.
- “Controller”** has the meaning given to it in the GDPR.
- “Data Protection Legislation”** means all Applicable Laws, including the GDPR, and any binding codes of practice or regulations or other legislation made under or separate to the GDPR relating to the Processing of Personal Data
- "Deliverables"** means the media monitoring and evaluation/insight Services produced by the Supplier for the Customer.
- “DP Losses”** means all liabilities, including all:

- (a) costs (including legal costs), claims, demands, actions, settlements, ex-gratia payments, charges, procedures, expenses, losses and damages (including relating to material and non-material damage); and
- (b) to the extent permitted by Applicable Law:
 - (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a court or regulatory authority;
 - (ii) compensation to a Data Subject ordered by a court or regulatory authority; and
 - (iii) the costs of compliance with investigations by a regulatory authority.

“GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data as applicable as of 25 May 2018, as may be amended from time to time.

"Intellectual Property Rights" means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks 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, rights in computer software, 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.

"Order" means the Customer's order for Services as set out in the Customer's purchase order form or the Customer's written acceptance of the Supplier's quotation, the Customer's written acceptance of a quotation by the Supplier, or overleaf, as the case may be.

"Order Confirmation Email" means the order confirmation email sent by the Supplier to the Customer confirming the Customer's Order.

"Personal Data" has the meaning given to it in the GDPR.

“Processor” has the meaning given to it in the GDPR

"Processing"	has the meaning given to it in the GDPR and the expression "process" shall be construed accordingly.
"Services"	means the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification.
"Specification"	means the description or specification of the Services provided in writing by the Supplier to the Customer.
"Sub-Processor"	means another Processor engaged by the Supplier for carrying out Processing activities in respect of the Personal Data.
"Supplier"	means LFMI Media Services Limited t/a Rue Point Media, a company registered in Ireland with company number 607880 whose registered office is at Suite 332, The Capel Building, Mary's Abbey, Dublin 7.
"Supplier Materials"	has the meaning set out in clause 4.1.7.

1.3 **INTERPRETATION:**

1.4 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.5 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.6 A reference to **writing** or **written** includes email.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Customer confirms acceptance (by email or in writing) of the Order Confirmation Email to the Supplier.

2.3 The Contract shall commence on the date stated on the Order Confirmation Email (the **"Commencement Date"**) and continue for the initial term stated in the email and will renew for subsequent three (3) month periods unless either party provides written notice to the other party at least 30 days prior to the expiration of the initial term or subsequent renewal term.

2.4 Any samples, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 5 Business Days from its date of issue.

3. SUPPLY OF SERVICES

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates and times specified to the Customer, but any such dates and times shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
 - 4.1.1 ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
 - 4.1.2 co-operate with the Supplier in all matters relating to the Services;
 - 4.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
 - 4.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 4.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start and in particular, to obtain the relevant end user copyright licenses required to access the content sent by the Supplier to the Customer in compliance with any applicable laws;
 - 4.1.6 comply with all applicable laws;
 - 4.1.7 keep all materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier

Materials other than in accordance with the Supplier's written instructions or authorisation;

4.1.8 comply with any additional obligations as set out in the Specification.

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):

4.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

4.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and

4.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. CHARGES AND PAYMENT

5.1 The Charges for the Services shall be calculated based on estimated Customer volumes and shall be set out in the Order Confirmation Email. The Customer shall be deemed to accept the Charges upon Customer acceptance of the Order Confirmation Email.

5.2 The Supplier reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12 month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be the latest available figure for the percentage increase in the Retail Prices Index. In addition to the above, the Supplier reserves the right to increase the Charges based on actual volumes of content received by the Customer when such Customer volumes are materially more than the estimates provided for in the Order Confirmation Email. Such reviews may be carried out by the Supplier after every three month period of the Contract.

5.3 The Supplier shall invoice the Customer on a monthly basis as per the Charges set out in the Order Confirmation Email.

5.4 The Customer shall pay each invoice submitted by the Supplier:

5.4.1 within 30 days of the date of the invoice; and

5.4.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

- 5.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.6 will accrue each day at 4% per annum above Bank of Ireland's base rate from time to time but at 4% a year for any period when that base rate is below 0%.
- 5.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.8 Clause 5.2 above relates to Services which are provided by the Supplier for fixed Charges only. In the instance that the Supplier provides certain Services to the Customer which will be provided for variable charges, such variable charges will be as agreed between the parties and as set out in the Order Confirmation Email. The Supplier reserves the right to increase such variable charges as described in this clause on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12 month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be the latest available figure for the percentage increase in the Retail Prices Index.
- 5.9 Where monthly service fees are charged as part of variable agreements, the full monthly service fee will be charged if the service is received for any part of the month. Pro-rate calculations will not apply to monthly service fees

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 6.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to use the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business. This clause 6.2 shall be subject to any third-party intellectual property rights that the Supplier and Customer are obliged to comply with.
- 6.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.
- 6.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the

Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

7. DATA PROTECTION AND DATA PROCESSING

- 7.1 Each party agrees to comply with, and process all Personal Data, in accordance with Data Protection Legislation.
- 7.2 To the extent that either party is deemed a Processor or Controller for the purpose of the GDPR, each party confirms it is aware of all applicable obligations under the GDPR and have in place mechanisms to ensure adherence to the relevant provisions of the GDPR.
- 7.3 In respect of all Processing of Personal Data from the Customer carried out pursuant to the Contract, the parties agree that the Customer is the Controller and that the Supplier is the Processor.
- 7.4 The Supplier shall process the Personal Data only in accordance with the Contract and Customer's instructions from time to time and shall not process the Personal Data for any purposes other than those authorised by the Customer ("**Processing Instructions**").
- 7.5 The Supplier shall:
 - 7.5.1 contact the Customer as soon as reasonably practicable if it is ever unsure as to the parameters of any Processing Instructions;
 - 7.5.2 unless prohibited by Applicable Law, notify the Customer if it is aware that Applicable Law requires it to process the Personal Data from the Customer other than in accordance with Processing Instructions;
 - 7.5.3 notify the Customer if, in its opinion, the processing of Personal Data from the Customer in accordance with Processing Instructions infringes Data Protection Legislation;
 - 7.5.4 ensure that its personnel receive adequate training on compliance with Data Protection Legislation;
 - 7.5.5 shall not permit any Sub-Processor to process Personal Data of the Customer without the Customer's prior approval (not to be unreasonably withheld, conditioned or delayed).
- 7.6 The Supplier warrants that, having regard to the state of technological development, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, it shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk to the security of the Personal Data.
- 7.7 The Customer warrants and represents that:
 - 7.7.1 the processing of Personal Data by the Customer will be carried out in accordance with Data Protection Legislation;

7.7.2 the Supplier is entitled to process Personal Data from the Customer pursuant to the Contract for the purpose of providing the Services and such use will comply with Data Protection Legislation;

7.7.3 all Personal Data provided by the Customer to the Supplier is necessary, accurate and up-to-date;

7.7.4 all Processing Instructions shall at all times be in accordance with Data Protection Legislation; and

7.7.5 it is satisfied that:

(a) the Supplier's processing operations are suitable for the purposes for which the Customer proposes to use the Services and engage the Supplier to process the Personal Data; and

(b) the Supplier has sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements of Data Protection Legislation.

7.8 The Supplier shall without undue delay, notify the Customer if it receives a request from or on behalf of a data subject of Personal Data, received from the Customer, to exercise any of the rights given to data subjects by Data Protection Legislation.

7.9 The Supplier shall (at the Customer's expense) provide such further information and assistance as the Customer reasonably requires in handling and responding to such notifications in accordance with its obligations under Data Protection Legislation.

7.10 The Customer shall indemnify and keep indemnified the Supplier in respect of all DP Losses suffered or incurred by, awarded against or agreed to be paid by, the Supplier and any Sub-Processor arising from or in connection with any:

7.10.1 non-compliance by the Customer with Data Protection Legislation;

7.10.2 processing carried out by Supplier or any Sub-Processor pursuant to any Processing Instruction that infringes Data Protection Legislation;
or

7.10.3 breach by the Customer of any of its obligations under this Contract.

8. LIMITATION OF LIABILITY

8.1 Nothing in the Contract shall limit or exclude the Supplier's liability for:

8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

8.1.2 fraud or fraudulent misrepresentation; or

8.1.3 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

- 8.2 Subject to clause 8.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 8.2.1 loss of profits;
 - 8.2.2 loss of sales or business;
 - 8.2.3 loss of agreements or contracts;
 - 8.2.4 loss of anticipated savings;
 - 8.2.5 loss of use or corruption of software, data or information;
 - 8.2.6 loss of or damage to goodwill; and
 - 8.2.7 any indirect or consequential loss.
- 8.3 Subject to clause 8.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to one hundred per cent (100%) of the average annual Charges (calculated by reference to the Charges in successive 12-month periods from the Services Start Date) paid by the Customer under the Contract.
- 8.4 The implied terms as stated within the Sale of Goods and Supply of Services Act, 1980 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.5 This clause 8 shall survive termination of the Contract.

9. TERMINATION

- 9.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 9.1.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
 - 9.1.2 the other party takes any step or action in connection with its entering into examinership, provisional liquidation, liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 9.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

- 9.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
 - 9.2.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or
 - 9.2.2 there is a change of Control of the Customer.
- 9.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 9.1.2 to clause 9.1.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

10. CONSEQUENCES OF TERMINATION

- 10.1 On termination of the Contract:
 - 10.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 10.1.2 the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 10.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

11. GENERAL

- 11.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

11.2 Assignment and other dealings.

11.2.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

11.2.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

11.3 Confidentiality.

11.3.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.3.2.

11.3.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

11.4 Entire agreement.

11.4.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

11.4.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

11.4.3 Nothing in this clause shall limit or exclude any liability for fraud.

11.5 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.6 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy

provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

11.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

11.8 **Notices.**

11.8.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid registered post or other next working day delivery service at its registered office (if a company) or its principal place of business.

11.8.2 Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid registered post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by email, at 9.00 am on the next Business Day after transmission.

11.8.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

11.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of Ireland.

11.10 **Jurisdiction.** Each party irrevocably agrees that the courts of Ireland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.