

Charity Agreement: Terms and Conditions

These Terms and Conditions, together with the Order Form, form a binding Agreement (which will come into force in accordance with clause 2). Please read both documents carefully before completing and signing the Order Form.

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following terms have the following meanings:

- 1.1.1 **"Advertisement(s)"**: the final published advertisement(s) on the Platform(s) that will promote the Charity;
- 1.1.2 **"Advertisement Copy"**: any advertising materials supplied by or on behalf of Charity or produced for Charity in the form intended for publication by LMEL;
- 1.1.3 **"Advertising Codes"**: the British Code of Advertising, Sales Promotion and Direct Marketing Practice used by the Advertising Standards Authority to self-regulate the UK marketing industry (CAP Code) or any replacement code in the UK, and any other applicable Acts of Parliament or regulatory code from time to time in force relating to advertising, promotions and/or marketing.
- 1.1.4 **"Charity"**: a registered charity applying to be (or which has been registered as) a charity partner for an Event, the details of which will be set out in the Order Form, and on whose behalf Permitted Transferees shall take part in an Event for the purposes of fundraising.
- 1.1.5 **"Charity Mark(s)"**: the Charity name and any trade mark(s) that Charity wishes to be displayed as part of the Advertisement and/or Listing on the Platform;
- 1.1.6 **"Charity Partner(s)"**: a registered charity wishing to be (or has been registered as) a charity partner for the Event(s), on whose behalf selected participants shall take part in the Event(s) for the purposes of fundraising;
- 1.1.7 **"Commencement Date"**: the date on which the Agreement comes into effect, as defined at clause 2.2 of these Terms and Conditions;
- 1.1.8 **"Copy Date"**: the date by which the Advertisement Copy and/or Listing Copy must be submitted to LMEL as stated by LMEL from time to time;
- 1.1.9 **"Data Protection Legislation"**: the UK GDPR (which merges the Data Protection Act 2018 and the UK's retained sections of the General Data Protection Regulation ((EU) 2016/679)), as amended or updated from time to time and any successor legislation to the UK GDPR or the Data Protection Act 2018;
- 1.1.10 **"Edition"**: any edition of the Event(s);
- 1.1.11 **"Entries"** an Entry to an Event which cannot be transferred to a subsequent Year and/or Edition;
- 1.1.12 **"Force Majeure Event"** any circumstance not within a Party's reasonable control including: (a) acts of God, abnormally inclement weather, extreme weather (e.g. extreme heat), flood, lightning, storm, drought, earthquake or other natural disaster; (b) epidemic, pandemic or infectious disease; (c) terrorist attack, civil war, civil commotion or riots, crowd disorder, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination or sonic boom; (e) any law or any action taken by a government or public authority, court, competent national authority or governing body, including cancelling a public event, imposing capacity restrictions, imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; (f) collapse of buildings, subsidence, structural damage, fire, explosion or accident; (g) solely where LMEL is seeking to rely on clause 10, non-performance by suppliers or subcontractors to LMEL; (h) a death of a member of the British royal family; (i) athlete boycott; (j) interruption or failure of utility service but excluding any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the Party seeking to rely on clause 10, or companies in the same group as that Party); and (k) solely where LMEL is seeking to rely on clause 10, non-performance by suppliers, consultants or subcontractors to LMEL);
- 1.1.13 **"Intellectual Property Rights"**: patents, utility models, rights to inventions, copyright 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;
- 1.1.14 **"Listing(s)"**: the final published listing(s) on the Platform(s) that will promote the Charity for the Event(s);
- 1.1.15 **"Listing Copy"**: any materials supplied by or on behalf of Charity (including the Charity Marks) or produced for the Charity in the form intended for publication as part of a Listing by LMEL on the Platform;
- 1.1.16 **"LMEL Invoice"**: means the invoice issued by LMEL to Charity in respect of the Charges, on the completion (and acceptance of) the application made by the Charity for the Event(s) via the Order Form in accordance with clause 2;
- 1.1.17 **"Official Fundraising Partner"**: the official fundraising partner of the Events (being at the date of signature of this Agreement, Online Giving Ltd, trading as 'Enthuse',) or such other official fundraising partner as may be contracted by LMEL from time-to-time;

- 1.1.18 "Registration Form": shall have the meaning given to it in clause 4.4;
- 1.1.19 "**Order Form**": shall have the meaning given to it in clause 2.14.4;
- 1.1.20 "**Permitted Transferees**": shall have the meaning given to it in clause 4.6;
- 1.1.21 "**Platform(s)**": an Event website(s) and/or entry systems to be specified by LMEL for the publication of the Advertisement and/or Listings;
- 1.1.22 "**Proposed Transferees**": shall have the meaning given to it in clause 4.2.1;
- 1.1.23 "**Publication Date**": the date which the Advertisement and/or Listing is published on the Platform;
- 1.1.24 "**Privacy Policy**": LMEL's privacy policy which can be found at <https://www.londonmarathonevents.co.uk/privacy-policy>
- 1.1.25 "**Registration System**": LMEL's system allowing submission of Proposed Transferees and registration of Permitted Transferees;
- 1.1.26 "**Rights**": the rights granted by LMEL to Charity relating to the Entries, specifically the right to an Advertisement and/or Listing where the Entries have been granted to Charity by LMEL;
- 1.1.27 "**Services**": the services that LMEL provides in relation to the Advertisement and/or Listings (where Charity has purchased Listing(s) (as indicated in the Order Form));
- 1.1.28 "**Term**": means from and including the Commencement Date until 23:59 on the day of an Event; and
- 1.1.29 "**Year**": means each calendar year of the Term (or part thereof).

- 1.2 Clause headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 This Agreement shall be binding on, and enure to the benefit of, the Parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any Party shall include that Party's personal representatives, successors and permitted assigns.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.9 A reference to **writing** or **written** includes email.
- 1.10 Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- 1.11 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.

2 BASIS AND TERM OF CONTRACT

- 2.1 Submission of an Order Form by the Charity constitutes an offer by the Charity to purchase the Entries, Rights and/or Services from LMEL pursuant to these Terms and Conditions (the "**Offer**").
- 2.2 Following submission of the Order Form, LMEL shall send to the Charity an email confirming whether or not the Charity has been successful in its application for the Entries and Advertising Package(s) (if applicable). Where the Charity has been successful the contract shall automatically be formed on transmission by LMEL of the email confirmation, at which point, and on which date, this Agreement shall commence ("**Commencement Date**"). In this connection, the Charity accepts and acknowledges that:
 - 2.2.1 it may only be successful in its application for a selection of the Entries and Advertising Package(s) (if applicable) it applied for in the Order Form; and
 - 2.2.2 the Charity may receive more than one email confirming whether or not it has been successful in its application for the Entries and Advertising Package(s) (if applicable) if it has applied for Entries and Advertising Package(s) (if applicable) relating to more than one Event, in which case there may be multiple Commencement Dates per Event (and clause 2.2 shall be construed accordingly).
- 2.3 This Agreement shall commence on the Commencement Date and shall, unless terminated earlier in accordance with clause 11, continue for the Term.

3 OBLIGATIONS OF CHARITY

- 3.1 Charity undertakes, represents and warrants that it shall throughout the Term:
- 3.1.1 provide LMEL such information as LMEL may request from time to time for the purpose of providing the Services (where Charity has purchased Listing(s) (as applicable)), Rights and Entries;
 - 3.1.2 co-operate with LMEL and any third-party suppliers of LMEL in all matters relating to the Services (where Charity has purchased Listing(s) (as applicable)), Rights and Entries and comply with all reasonable requests from time to time from LMEL;
 - 3.1.3 register itself for, and maintain, an account with the Official Fundraising Partner for the duration of the Term;
 - 3.1.4 use all reasonable endeavours to:
 - (a) promote the Official Fundraising Partner to: (a) the Permitted Transferees; and (b) participants who have secured their own places independently but registered with the Charity as entering an Event to fundraise for the Charity;
 - (b) to encourage the individuals detailed in clauses 3.1.4(a) and (b) to raise money through Official Fundraising Partner;
 - 3.1.5 take all reasonable steps to protect the integrity of LMEL and the Events; and
 - 3.1.6 comply with all applicable laws, statutes, regulations and codes from time to time in force, including the Bribery Act 2010 and the Modern Slavery Act 2015.
- 3.2 Charity undertakes and represents that it is a registered charity and shall remain as a registered charity throughout the Term.

4 RIGHTS AND ENTRIES

- 4.1 Subject to the restrictions contained herein, LMEL hereby grants the Rights to Charity to be exercised at the Events.
- 4.2 Subject always to:
- 4.2.1 Charity obtaining all necessary permissions under the Data Protection Legislation to allow it to enter details of each individual to whom it wishes to transfer an Entry ("**Proposed Transferee**");
 - 4.2.2 Charity ensuring that the Proposed Transferee accepts and understands the manner in which LMEL will obtain, use and process their personal data, as detailed in the Privacy Policy; and
 - 4.2.3 Charity's continued compliance with the Data Protection Legislation,
- Charity shall provide LMEL with the name and email address (and any other information reasonably required by LMEL) of each Proposed Transferee by no later than the date specified by LMEL.
- 4.3 Charity accepts and acknowledges that any data provided by Charity to LMEL shall be processed in accordance with the Privacy Policy and by entering into this Agreement Charity confirms that it has read and understood the provisions of the Privacy Policy.
- 4.4 LMEL shall send to each Proposed Transferee a link to a form on the Registration System ("**Registration Form**") to complete and Charity shall procure that the Proposed Transferee shall complete the Registration Form within the timeframes specified by LMEL from time to time ("**Deadline**").
- 4.5 Charity shall be permitted to change the identity of the Proposed Transferee at any time before the Deadline but not after the Deadline.
- 4.6 Subject to clause 4.7, if LMEL approves a Proposed Transferee, each such Proposed Transferee shall be permitted to use the Entry ("**Permitted Transferee**").
- 4.7 For the avoidance of doubt, LMEL has the right in its absolute discretion to refuse to permit the transfer of an Entry to a Proposed Transferee, to withdraw any such approval and/or to grant such approval on such terms as it thinks fit.
- 4.8 The Rights (and their exercise) and the use and transfer of the Entries are subject to the following restrictions and Charity represents, undertakes and warrants that it shall, and shall procure that each Permitted Transferee shall, comply with such restrictions:
- 4.8.1 A Charity shall only transfer an Entry to a Permitted Transferee.
 - 4.8.2 Subject to clause 4.5, a Permitted Transferee shall not be permitted to further transfer their Entry.
 - 4.8.3 Entries shall not be sold, offered for sale or transferred to any other charity, firm or company.
 - 4.8.4 Entries shall not be used in any way in connection with, or as part of any premium, competition, lottery or promotion save one that is approved in writing in advance by LMEL.

- 4.8.5 A Charity shall not enter into any promotion with any third party using the Rights or Entries without the prior written approval of LMEL.
- 4.8.6 A Charity shall not engage in joint promotions with any third party in relation to the Events without LMEL's prior written consent.
- 4.8.7 Neither the Charity or the Permitted Transferee may publicise the number of the Entries that it holds but the Charity may advertise availability of entries to the public in the media (including social media).
- 4.8.8 Entries shall only be used by Permitted Transferees who are 18 years or older at the date of an Event.
- 4.8.9 LMEL reserves the right in its absolute discretion to refuse to allow entry to the Events to any person.
- 4.8.10 Charity shall be responsible for ensuring the fitness and suitability for the Events of each Proposed Transferee and Permitted Transferee.
- 4.8.11 Entries shall only be valid if the details, via the Registration System, are provided by the Proposed Transferee before the closing date fixed by LMEL before an Event.
- 4.8.12 The use of the Entries is subject to the Events' standard terms and conditions from time to time.
- 4.8.13 Entries cannot be used as part of a hospitality or travel package without the advance written consent of LMEL.
- 4.8.14 Charity shall use the full name of the Event(s) in all publications, postings and documents (including any title sponsor or presenting partner name, if applicable).
- 4.9 Excluding in relation to the Entries, LMEL shall have the right, for any reason, to exchange any of the Rights and/or any other ancillary services for Rights and/or other ancillary services that are, in LMEL's reasonable opinion, equivalent Rights and/or other ancillary services.

5 SERVICES, ADVERTISEMENTS AND LISTINGS

- 5.1 This clause 5 shall only apply if Charity has purchased Advertisement and/or Listing(s) (as indicated in the Order Form).
- 5.2 LMEL shall:
 - 5.2.1 in performing the Services LMEL shall use reasonable endeavours to meet any performance dates agreed in writing between the Parties; and
 - 5.2.2 perform the Services with a level of care, skill and diligence in accordance with standard practice in LMEL's industry, profession or trade.
- 5.3 Charity shall deliver the Advertisement Copy and/or Listing Copy to LMEL by the Copy Date in the format required by LMEL. LMEL reserves the right to charge for any additional work that LMEL may be required to undertake as a result of non-conforming Advertisement Copy and/or Listing Copy.
- 5.4 Advertisement Copy and/or Listing Copy shall include the provision of colour Charity Marks to be included within the Advertisement and/or Listing(s). Should Charity fail to deliver the Charity Marks by the Copy Date, the Listing(s) will be published without them, with no discount. LMEL shall not be liable for Charity failing to provide a Charity Mark by the Copy Date.
- 5.5 In the event that Charity wishes to withdraw any publication of a Listing it shall notify LMEL in writing and LMEL shall use its reasonable endeavours to withdraw such Listing within a reasonable period of time provided that no refund or other compensation shall be due to Charity in the event of any such withdrawal.
- 5.6 Each Listing shall be Published at the agreed times during the Term which may be amended: (i) by LMEL, in its sole discretion as a result of a Force Majeure Event; and/or (ii) where both Parties agree in writing.
- 5.7 Charity represents, warrants and undertakes that:
 - 5.7.1 all necessary licenses and consents for publication of any Advertisement Copy and/or Listing Copy and Listing have been obtained by Charity and, where applicable, paid for including copyright in the Advertisement Copy and/or Listing Copy and Listing;
 - 5.7.2 no Advertisement Copy and/or Listing Copy or Advertisement and/or Listings, nor any part of Advertisement Copy and/or Listing Copy or Advertisement and/or Listing (including illustrations or quotations), infringes the Intellectual Property Rights or any other right of any third party;
 - 5.7.3 the publication or issuance to the public or any ancillary use of any Advertisement Copy and/or Listing Copy or Advertisements and/or Listing on a Platform will not infringe the Intellectual Property Rights or any other rights of any third party;
 - 5.7.4 no Advertisement Copy and/or Listing Copy or Advertisements or Listings contains any obscene, indecent, defamatory or in any other way unlawful material and that all factual statements contained in the Advertisement Copy and/or Listing Copy or Advertisement or Listing is true and will not expose LMEL to civil or criminal proceedings;
 - 5.7.5 all Advertisement Copy and/or Listing Copy and Advertisement and/or Listings published on the Platform by LMEL comply with the Advertising Codes; and

5.7.6 due and careful enquiry has been made to ensure that nothing contained in the Advertisement Copy and/or Listing Copy and Advertisements and/or Listings may make its publication illegal or actionable for any reason.

5.8 Excluding in relation to the Advertising Packages and the Entries, LMEL shall have the right, for any reason, to exchange any of the Rights and/or any other ancillary services for Rights and/or other ancillary services that are, in LMEL's reasonable opinion, equivalent Rights and/or other ancillary services

6 CHARGES, PRICING AND PAYMENT

6.1 In consideration of the provision of the Entries and/or the Services, Charity shall pay to LMEL the Charges detailed in the Confirmation emails and/or LMEL Invoice.

6.2 The Charges are exclusive of VAT, which will be paid by Charity if applicable.

6.3 Unless otherwise stated, all invoices (including the LMEL Invoice) issued by LMEL in accordance with this Agreement shall be payable by the Charity within thirty (30) days of the date of the invoice.

6.4 All amounts payable to LMEL under this Agreement are to be paid free and clear of currency control restrictions, bank charges, fees, duties or other transactional costs, the payment of which shall be the sole responsibility of Charity.

6.5 No deductions may be made from, nor purported right of set-off exercised in relation to the Charges.

6.6 Charity shall pay interest on any late payment from the due date until the date of payment forthwith on demand. Such interest shall be calculated on a daily basis at a rate per annum equal to four per cent (4%) above the base interest rate of the Bank of England. In the event of late payment, LMEL reserves the right to waive any agreed discounts.

6.7 Charity accepts and acknowledges that the Entries cannot be used, and the Rights cannot be exercised, where any monies due to be paid to LMEL by Charity (under this Agreement or any other agreement) remain due and unpaid.

7 INTELLECTUAL PROPERTY

7.1 Charity represents and warrants that:

7.1.1 it owns or is entitled to use the Advertisement Copy and/or Listing Copy and Charity Marks and any other material supplied to LMEL in relation to this Agreement and LMEL shall be entitled to see evidence to this effect on request; and

7.1.2 LMEL's use of the Advertisement Copy and/or Listing Copy and Charity Marks in accordance with the terms of this Agreement will not infringe the rights of any third party.

7.2 LMEL shall retain ownership of all Intellectual Property Rights relating to LMEL and the Events, including their names and logos and the Registration System.

7.3 Charity shall retain ownership of all Intellectual Property Rights relating to Charity, including the Charity Marks.

7.4 Charity shall use its best endeavours not to damage (or allow to be damaged) LMEL's Intellectual Property Rights or goodwill.

7.5 Charity shall not use LMEL's Intellectual Property Rights in any form without the prior written consent of LMEL.

7.6 This Agreement does not constitute an 'Official Charity', 'Official Sponsor' or 'Official Partner' agreement and Charity shall in no way and under no circumstances represent itself as an official charity, sponsor or partner, to LMEL and/or the Events or being associated with or endorsed by LMEL.

7.7 Where Charity has purchased Advertisement(s) and/or Listing(s) (as indicated in the Order Form), Charity grants and LMEL accepts a worldwide, non-exclusive, royalty free, sub-licensable licence to use the Advertisement Copy and/or Listing Copy and Charity Mark(s) for the duration of the Term for the creation and the delivery of the Listings and Services.

8 INDEMNITY

8.1 Charity shall keep LMEL indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by LMEL as a result of or in connection with any claim (whether actual or threatened) made against LMEL by a third party arising out of, or in connection with:

8.1.1 where Charity has purchased Listing(s) (as indicated in the Order Form), the publication of any Listing, including for actual or alleged infringement of a third party's Intellectual Property Rights; and

8.1.2 any breach of the warranties set out in clause 7.1.

8.2 This clause 8 will survive expiry or termination of the Agreement.

9 CONFIDENTIALITY

- 9.1 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 or of any member of the group of companies to which the other Party belongs, except as permitted by clause 9.2.
- 9.2 Each Party may disclose the other Party's confidential information:
- 9.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party'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.
- 9.3 No Party shall use any other Party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
- 9.4 Neither Party shall make any announcement about this Agreement or its terms without the prior consent of the other Party. Charity may not disclose any information, confidential or otherwise, about its association with LMEL or the Events via any form of media (including the internet or social media) without the prior approval of LMEL with the exception that the Charity may announce that it has the right to the Entries.
- 10 FORCE MAJEURE**
- 10.1 Excluding payment by Charity of the Charges, any Party that is subject to a Force Majeure Event shall not be in breach of this Agreement and shall be excused from performance under this Agreement while and to the extent they are unable to perform due to any Force Majeure Event, provided that it:
- 10.1.1 as soon as reasonably practicable notifies the other Party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
- 10.1.2 could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
- 10.1.3 has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 10.2 If the effect of a Force Majeure Event continues for a continuous period of four (4) months or longer, each Party shall have the right to terminate this Agreement upon written notice to the other Party (save that a decision by LMEL to cancel or reschedule, or alter the format of, the Events and/or amend and/or cancel the Events in accordance with clause 10.3 shall extinguish the termination right set out in this clause 10.2 and the provisions of clauses 10.3 shall apply). Excuse from performance does not extend the Term. This termination shall be without prejudice to the rights of the Parties in respect of any breach of this Agreement occurring before termination.
- 10.3 Where such action becomes necessary and/or advisable (in LMEL's reasonable opinion) due to a Force Majeure Event, Charity accepts and acknowledges that LMEL shall be permitted in its sole discretion by serving notice on Charity to:
- 10.3.1 reschedule the Event to a date that falls within eight (8) months of the original date of the rescheduled Event. The Charity accepts and acknowledges that should LMEL so reschedule the Event, the Entries and Rights that were due to be exercised/used at the postponed Event shall instead be apply to the rescheduled Event. No refund shall be due to Charity and the Rights and/or Services shall instead be delivered for the rescheduled Event;
- 10.3.2 cancel the Event. Where the Event is cancelled (without prejudice to their rights and liabilities arising before this cancellation) the Parties shall, in respect of the period following LMEL's cancellation notice, thereafter be relieved of their rights and obligations under this Agreement in respect of the Event. The Charity accepts and acknowledges that should LMEL so cancel the Event, LMEL shall have the option of either: (a) permitting Charity to exercise the unused Listing, Rights and/or Entries, in which case no refund shall be due to Charity and the Listings (where Charity has purchased Listing(s) as indicated in the Order Form) shall instead be delivered for the rearranged Event (pursuant to sub-clause 10.3.1); or (b) refund the Charity a pro-rata amount of the Charges pertaining to the Entries and Rights that the Charity was unable to use or exercise and Advertisements and/or Listings that have not been listed by LMEL;
- 10.3.3 alter the format of an Event. The Charity accepts and acknowledges that should any change in the format of an Event mean that any Advertisements and/or Listings, Rights and Entries that were due to be exercised/used at an Event, are unable to be exercised/used at an Event (in the reasonable opinion of LMEL), LMEL shall have the option of either: (a) permitting Charity to exercise the unused Rights, Services and/or Entries at the altered Event, in which case no refund shall be due to Charity and the Advertisements and/or Listings and Services (where Charity has purchased Advertisement(s) and/or Listing(s)) shall instead be delivered for the reformatted Event; and/or (b) refund the Charity a pro-rata amount of the Charges pertaining to the Entries and Rights that the Charity was unable to use or exercise;
- 10.4 Charity accepts and acknowledges that should LMEL take any of the actions permitted under clause 10.3:
- 10.4.1 the Charges pertaining to the Advertisement(s) and/or Listing(s) and Services shall not be refunded by LMEL;
- 10.4.2 the level of any pro-rata refund applied by LMEL pursuant to clause 10.3 shall be determined by LMEL in its sole discretion, acting reasonably; and

10.4.3 LMEL shall not be in breach of this Agreement by virtue of taking any of the actions permitted under clause 10.3.

11 TERMINATION

11.1 Either Party has the right to terminate this Agreement at any time if the other Party:

11.1.1 commits a material or persistent breach of this Agreement which is incapable of remedy or which it fails to remedy within 14 days of written notice from the other Party; and/or

11.1.2 becomes insolvent, has appointed a receiver, administrative receiver or administrator of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, or is the subject of a resolution passed for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction).

11.2 LMEL has the right to terminate this Agreement with immediate effect by giving written notice to Charity in the event that:

11.2.1 Charity commits fraud, or Charity acts in any manner which in the opinion of LMEL brings or is likely to bring LMEL and/or the Events into disrepute or is materially adverse to the interests of LMEL; and/or

11.2.2 Charity loses its charitable status and/or ceases to be a registered Charity.

11.3 On termination of this Agreement for any reason:

11.3.1 Charity's (and any Permitted Transferee's) rights to use the Entries or exercise the Rights shall immediately cease;

11.3.2 the accrued rights, remedies, obligations and liabilities of the Parties as at termination will not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination; and

11.3.3 clauses which expressly or by implication have effect after termination will continue in full force and effect.

12 LIMITATION OF LIABILITY

12.1 Subject to clause 12.5, LMEL shall not be liable to Charity under this Agreement for any loss, damage, cost, expense or other claim for compensation arising as a direct or indirect result or breach or non-performance of this Agreement due to a Force Majeure Event.

12.2 Subject to clause 12.5, where Charity has purchased Advertisements and/or Listing(s) (as indicated in the Order Form), LMEL disclaims all liability for any damage, special, indirect or consequential loss, occasioned by error, late publication or the failure of an Advertisement and/or Listing to appear from any cause whatsoever.

12.3 Subject to clause 12.5, under no circumstances shall LMEL be liable to Charity for any of the following, whether in contract, tort (including negligence) or otherwise:

12.3.1 any indirect or consequential losses;

12.3.2 any data loss and/or corruption;

12.3.3 loss of revenue or anticipated revenue;

12.3.4 loss of savings or anticipated savings;

12.3.5 loss of business opportunity;

12.3.6 loss of profits or anticipated profits; or

12.3.7 loss of wasted expenditure.

12.4 Subject to clause 12.5, LMEL's maximum aggregate liability in contract, tort (including negligence) or otherwise, however arising, out of or in connection with the performance of LMEL's obligations under this Agreement, in respect of any one or more incidents or occurrences during the Term, shall be limited to a sum equal to the amount of the Charges received by LMEL in the year prior to such act(s) or omission(s).

12.5 Neither Party excludes or limits its liability to the other Party for death or personal injury caused by its negligence, or in respect of any other liability to the extent that it cannot be excluded or limited as a matter of law.

13 NOTICES

13.1 Any notice authorised by this Agreement must be in writing, may be given by hand or sent by first class post, recorded or registered delivery to the other's address as provided in this agreement, or sent by e-mail to the Chief Executive or Managing Director of the other Party.

13.2 Any notice sent by post will be deemed given on the third day after it was posted. Proof that the notice or other information was properly addressed, sent first class, recorded or registered delivery will be sufficient evidence that such notice has been duly given. Any notice sent by e-mail will be deemed given on the date of transmission.

14 GENERAL

- 14.1 Charity may not novate, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of LMEL.
- 14.2 Any waiver by either Party of a breach of any provision of this Agreement will not be considered as a waiver of any subsequent breach of the same or any other provision. No oral variation of the terms of this Agreement will be binding. A variation will be binding only if made in writing and signed by a duly authorised officer of Charity and a LMEL Authorising Manager.
- 14.3 No person who is not Party to this Agreement will have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause 14.3 does not affect any right or remedy that exists or is available other than pursuant to said Act. Nothing in this Agreement will be deemed to create or imply the existence of partnership or joint venture between the Parties.
- 14.4 This Agreement constitutes the entire understanding between the Parties and all previous agreements whether written, oral or implied between the Parties will cease to be effective. Neither Party shall have any remedy in respect of misrepresentation or untrue statement made by the other Party unless and to the extent that a claim lies for breach of the terms of this Agreement. This clause 14.4 does not preclude liability for fraudulent misrepresentation.
- 14.5 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement is deemed deleted under this clause 14.5 the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 14.6 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).