

# LMG Data Project Policy

## 1. The Member's Privacy and Confidentiality Obligations

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- (a) The Member agrees that it must:
- (i) treat as confidential and keep secret all Confidential Information which is disclosed to the Member by or on behalf of LMG;
  - (ii) not make use of any Confidential Information or Material, whether directly or indirectly;
  - (iii) take all reasonable precautions to preserve the secrecy and confidentiality of the Confidential Information and, in particular, take all reasonable action to prevent unauthorised persons from obtaining access to the Confidential Information by any direct or indirect means; and
  - (iv) not publish or communicate or permit the publication or communication of any of the Confidential Information to any Third Party other than (if reasonably necessary for the Approved Purposes) to those Representatives who have a need to review the Confidential Information and who are made aware of the Member's obligation of confidentiality under this policy.
- (b) The Member agrees that its obligations specified in this clause 2(b) shall continue in force until the later to occur of:
- (i) agreement by both parties; or
  - (ii) three (3) years from the date that the Member ceases to be a Member.

## 2. LMG's Privacy and Confidentiality Obligations

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- (a) LMG is committed to protecting the Member's privacy and is bound by the *Privacy Act 1988* (Cth) (**Privacy Act**) and in particularly, by the Australian Privacy Principles (**APPs**), which set out the standards required by law for collecting, managing and disclosing personal information.
- (b) The Member acknowledges that the Approved Provider and other industry data collating and reporting agencies are contractually bound to honour the Member's confidentiality and privacy in the provision of the Services.
- (c) Subject to clause 2(g), LMG undertakes not to name, nominate, refer to, or in any way indicate or identify the Member or the Outlet to any medium whatsoever, except:
- (i) in any report or document prepared for the Member specifically, and provided directly and only to the Member as a business report intended to assist the Member in knowing and understanding its business;
  - (ii) in listing the names of all of those outlets (including the Outlet) whose data is or may be included in the combined data; and
  - (iii) to industry data reporting and collating agencies who have entered into agreements with LMG to provide Member confidentiality on terms similar to LMG's obligations within this Agreement. For the avoidance of doubt, the data reporting and collating agencies must not report or disclose individual member data to any third party.

- (d) Subject to clause 2(g), LMG will use reasonable endeavours to keep secret and protect and preserve the confidential nature and secrecy of the Member's Confidential Information except to the extent reasonably required for the Approved Purposes. Without limiting this obligation, LMG will not:
- (i) use or permit any person to use the Member's Confidential Information for any purpose other than for the Approved Purposes and except as authorised by the Member;
  - (ii) disclose or in any way communicate to any other person any of the Member's Confidential Information except as authorised by the Member;
  - (iii) permit unauthorised persons to have access to places where the Member's Confidential Information is displayed, reproduced or stored except as authorised by the Member; or
  - (iv) make or assist any person to make any unauthorised use of the Member's Confidential Information except as authorised by the Member.
- (e) LMG will take reasonable steps to enforce the confidentiality obligations imposed by this clause 2(b) including diligently prosecuting, at its own cost, any breach or threatened breach of those obligations by a person to whom LMG has disclosed the Confidential Information and cooperate and provide the Member with all reasonable assistance, in any action which it may take to protect the confidentiality of the Member's Confidential Information.
- (f) LMG agrees to continue to observe the obligations of confidentiality contained in this clause 2(f) until the expiration of three (3) years from the date of receipt of the Reports.
- (g) Special Conditions
- The Member specifically authorises LMG and its agents, and specifically exempts from the confidentiality requirements specified in clause 2, to disclose both for its own reporting and processing purposes, and for the purpose of providing necessary proof to suppliers and others, the quantities and sales amounts of particular products which are subject to rebates to the Member from time-to-time and as part of LMG's promotional programme(s) based upon such data.
- (h) Breach
- LMG will promptly notify the Member of all information which comes to its attention regarding any actual or potential disclosure or use of the Confidential Information, except as authorised under this policy.

### 3. Intellectual Property

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The Member acknowledges and agrees that:

- (i) all right, title, and interest in all Intellectual Property Rights (collectively **Rights**) in and to the Software, Output Data and Reports and any works created that are derived from or based on Raw Data or the Member's Feedback vest in LMG immediately upon creation and will remain the exclusive property of LMG. To the extent that any Rights vest in the Member, by this policy the Member immediately assigns all such Rights to LMG and agrees to do all things reasonably necessary to confirm or register such Rights as being the property of LMG.

- (ii) except as expressly permitted in this policy, the Member must not reproduce, modify or prepare derivative works based upon, distribute, sell, transfer, publish, Transmit, or otherwise use the Output Data or the Reports.
- (iii) To the extent that the Output Data includes Raw Data, the Member grants LMG a perpetual, irrevocable, transferrable, royalty-free licence to use, store, copy, modify, sell, transfer, publish, communicate and create derivative works based on such Raw Data.

#### 4. Definitions and interpretation

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##### (a) Definitions

In this document, unless the context requires otherwise:

**Affiliate** means, with respect to any party, any corporation or other legal entity that Controls, is Controlled by or is in common Control with such party.

**Approved Provider** means NostraData Pty Ltd ACN 139 103 656, or such other provider that LMG nominates from time to time.

**Approved Purposes** means:

- (i) The provision of the Services, including the provision of Reports to LMG, by the Approved Provider; and
- (ii) The provision of data research services from industry data collating and reporting agencies which have given a written undertaking to LMG not to disclose and not to identify within reporting the information provided by LMG; and
- (iii) Subject to the Approved Provider providing the Reports to LMG, LMG will use the Reports for the following purposes:
  - (A) supplying the Reports to each participating outlet to provide relevant business information;
  - (B) using the Reports in a collated form to negotiate deals and improved product selection with suppliers;
  - (C) utilising the Reports at LMG's discretion for the benefit of participating members' business outcomes;
  - (D) utilising the reports to provide LMG business insights and process efficiencies; and
  - (E) using the Reports to rebate to individual members for pricing and promotional arrangements based upon 'sales-out' data by product or in summary.

**Business** means the business conducted by the Member and the Outlet.

**Confidential Information** means:

- (i) all information submitted or disclosed by the Member to LMG;
- (ii) all information learned or accessed by a party to this document at any time in connection with the Approved Purposes (including during negotiations, discussions and meetings) and includes without limitation the Raw Data, information learned or

accessed by LMG from Raw Data supplied by the Member, information which, at the time of disclosure, is identified as being confidential, information which, of implied necessity, is confidential and information which the Member knows or ought reasonably be expected to know is confidential or which a party knows or ought reasonably to know is confidential;

- (iii) any agreement, arrangement or understanding relating to the Approved Purposes;
- (iv) information developed by the Member independently of the disclosure, communication or access from LMG; or
- (v) information disclosed or communicated, or accessed by the Member from a Third Party under no obligation of confidence to LMG in respect of that information;
- (vi) information whether disclosed verbally, in writing, in electronic form or by any other means or whether translated from the original form, re-compiled, made into a compilation, partially copied, modified, updated or otherwise altered;
- (vii) but does not include Non-Confidential Information.

**Control** has the meaning given to it in section 50AA of the Corporations Act.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Feedback** means the Member's feedback, comments and suggestions for improvements to the Services or Reports.

**Files** means the files that are related to the POS Software and/or any other folder which the Outlet or the Outlet's POS Provider Transmit to LMG.

**Intellectual Property Rights** means all present and future intellectual and industrial property rights conferred by Law and wherever existing, including patents, designs, copyright, rights and circuit layouts, database rights, trade marks, know-how, domain names, brand names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration and including any application or right to apply for registration and any renewal or extension of rights.

**Law** means the common law (including equity), current and future Acts of the Parliament of the Commonwealth of Australia, or of the Parliament of the jurisdiction that is the governing law of this document or of the jurisdiction where any matter or thing is done or to be done under this document, and related regulations, by-laws and other subordinate legislation.

**Material** means all memoranda, notes, computer records or other storage media containing any Raw Data or any documents or records of whatever type or media prepared by the Member or the Outlet, or by any of the Member or the Outlet's employees or advisers.

**Non-Confidential Information** means Information which:

- (i) at the time of disclosure or at any time thereafter is identified in writing as such;
- (ii) is publicly available as at the date of this document or becomes publicly available after the date of this document but not by way of a breach of this document;
- (iii) prior to disclosure was lawfully known and in respect of which the person who disclosed the information was not bound by any other obligations of confidentiality;

- (iv) comes into the possession of a party from a Third Party not party to this document, who by disclosing that information was not breaching any obligations of confidentiality which may have been imposed upon that Third Party; or
- (v) is found by final and binding court judgment to either not constitute Confidential Information or not otherwise be subject to any obligations under this document;

**Outlet** means the Member's Outlet as specified in the Member's Details.

**Output Data** means the Raw Data that is Transmitted to or imported into the Software for the purpose of providing the Services or creating reports and derivative works.

**POS Software** means the point of sale software installed at the Outlet.

**Raw Data** means all data collected, stored in or otherwise made accessible to LMG by the Member including information and data in the Outlet's Files, which includes:

- (i) the Material;
- (ii) stock on hand and inventory;
- (iii) retail prices;
- (iv) purchase data;
- (v) scan data;
- (vi) information about customers including numbers of customers and loyalty data;
- (vii) suppliers;
- (viii) customer foot fall counts;
- (ix) trading hours;
- (x) employees and wages (where agreed specifically with the Member and the Member grants access to its rostering system for analysis and insights for the Member),

and such other information and data that the Member allows LMG to access and use, or that the Member does not object to LMG accessing and using within 30 days of the Member receiving a written request for such access and use.

**Related Body Corporate** has the meaning given in section 50 of the *Corporations Act*.

**Reports** means the group analysis, benchmarking and performance metrics, product and sales performance reports, employment and wage reports, research reports and other reports produced using the Raw Data in relation to the Business prepared by LMG or the Approved Provider on LMG's behalf.

**Representative** means an advisor, employee, agent, financier, director or officer of a party.

**Services** means the Raw Data collection, interpretation, analysis and reporting services to be provided by the Approved Provider to the Member and which LMG will utilise for the Approved Purposes, or services that are substantially similar to the services provided by the Approved Provider.

**Software** means the software deployed and made available by LMG to the Member at the Outlet from time to time, including any software of the Approved Provider.

**System** means the computers, point of sale software used or operated in connection with the Member's Business from time to time, which at the date of this document means the POS Software and the computers at the Outlet.

**Third Party** means an entity other than a party to this document, a Related Body Corporate or an Affiliate of a party to this document.

**Transmit** means to upload, submit, link, transmit, transfer or make available (in a manner approved by LMG in its discretion) information and data pursuant to this document.