

# Member Terms and Conditions

## Definitions

In these terms and conditions the following words and phrases shall have the following meanings unless the context requires otherwise:

**“Estate Agent”** means estate and/or lettings agents (and in Scotland, solicitor agents), details of which are set out in the Membership Form.

**“Content”** means any content and materials (including property details and intellectual property rights of whatever nature, supplied or made available by, on behalf of or instruction of the Member to Luxury Homes UK, any Group company or on the website/s).

**“Contract”** or **“Agreement”** means a contract between Luxury Homes UK and our Member governed by these Terms and Conditions and the Membership Form.

**“Property Developer”** means the developer details set out in the Membership Form.

**“Fees or Commission”** means the amounts due to Luxury Homes UK by our Member under the Contract and set out or calculated in accordance with the Membership Form.

**“Lead or Client”** means either an email or telephone call received by our Member from buyers, renters, owners or any other party, who has contacted our Member using details supplied by Luxury Homes UK by referral or on its website(s).

**“Brand”** means the Luxury Homes UK logo or any other logo representing Luxury Homes UK.

**“Member”** means the Estate Agent, Property Developer or Owner.

**“Membership Form”** means the membership form indicating Services to be provided.

**“Services”** means the services to be provided by Luxury Homes UK as set out in the Membership Form and which may include any, or a combination of the following:

- A process facilitating the upload by our Member of property details (including images) to our Website
- Displaying our Member’s properties on our Website
- The provision of Leads to our Member
- The provision of advertising services to our Member
- The provision of reports and access to reporting tools to our Member

**“Website(s)”** means the website located at [www.luxuryhomesuk.com](http://www.luxuryhomesuk.com) and any other website whose domain is owned or controlled or powered by Luxury Homes UK or any Partner/Group Company via which Luxury Homes UK Services and/or Content are provided.

**“Start Date”** a start date for the Contract or Agreement as may be specified in the Membership Form

**“Luxury Homes UK”** means LHUK Limited, a company incorporated in England and Wales under Company No. 6718776 whose Registered Office is at

## Contract between Luxury Homes UK and our Member

1.1. No contract shall subsist unless waived by Luxury Homes UK, a Membership Form completed and signed by our Member is received by Luxury Homes UK and until the later of the Start Date (if any) and Luxury Homes UK commencing provision of Services (whether by facilitating display of Content on our Website or otherwise whereupon Luxury Homes UK and our member shall be deemed to have entered into a legally binding Contract on the Terms and Conditions set out herein.

1.2. The Contract shall be between Luxury Homes UK and our Member and shall comprise the Membership Form and these Terms and Conditions which shall constitute the entire agreement between the parties to the exclusion of all previous terms and conditions (whether between our Member and Luxury Homes UK or our Member and another partner or group company. In the event of any conflict between these Terms and Conditions and the Membership Form, the Terms and Conditions shall prevail.

1.3. All Contracts between Luxury Homes UK and our Member shall be governed by these Terms and Conditions (unless otherwise agreed in writing) and any variation to these Terms and Conditions shall have no effect unless expressly agreed in writing and signed by Luxury Homes UK. From time to time, Luxury Homes UK envisages that changes may need to be made to these Terms and Conditions. Luxury Homes UK reserves the right at its absolute discretion, but acting reasonably, to alter these Terms and Conditions at any time without prior notice to our Member. Any changes will be posted on our Website(s) and become effective at the time of posting.

## **Services**

2.1 Subject to these Terms and Conditions, Luxury Homes UK will provide its Member with the Services in accordance with the Membership Form.

2.2 Luxury Homes UK may vary the Services from time to time with or without notice to its Member.

## **Content and Obligations**

3.1 Our Member warrants and represents that:

3.1.1. It is an Estate Agent, Owner or Property Developer as reasonably determined by Luxury Homes UK and that it does not act as a consumer in relation to the Contract.

3.1.2. Content will comply with all applicable laws, regulations and codes of practice in the United Kingdom and will not be defamatory or infringe any copyright, trademark or other intellectual property rights or rights of any third party.

3.1.3. It is responsible for the integrity of the Content which is in all respects true, complete and accurate to the best of our Member's knowledge and belief and our Member shall promptly update or correct Content on becoming aware of any errors or inaccuracies.

3.1.4. Within no more than 3 business days of a sale or rental contract being entered into in respect of a property, our Member will either alter the status of the properties details in the upload provided to Luxury Homes UK so that it may be displayed as "sold" or "rented" on our Website(s) or will remove the property from the upload provided to Luxury Homes UK so that it is no longer displayed on our Website(s).

3.1.5. It has the authority to market the properties in the Content.

3.1.6. It holds all necessary authorities, consents and licenses necessary to use, display, reproduce, publish the Content and grants Luxury Homes UK a license of the Content on the terms set out herein.

3.1.7. It has read and will abide by all notices posted on our Website(s) from time to time that are relevant to the provision of our Services.

3.1.8. It shall not use the Luxury Homes UK name, trade or services marks of Luxury Homes UK in a defamatory or derogatory manner or in any way that might bring Luxury Homes UK, its directors or employees to disrepute nor shall the member misuse or deface any advertising materials provided to it.

3.1.9. It will abide by any applicable industry code of conduct or guidelines issued by any relevant trade organization and will abide by all applicable laws and regulations applying to or affecting Members including, but not limited to, The Property Misdescriptions Act 1991.

3.2 Our Member grants Luxury Homes UK a non-exclusive, royalty free, perpetual license to copy, reproduce, display, publish, adapt for any purpose and otherwise use as necessary and to give effect to the Contract (including entering into agreements with third parties in relation to the publishing or access of Content through online media not belonging to or controlled by Luxury Homes UK) the Content on our Website(s) and/or in connection with provision of Services.

3.3 Luxury Homes UK may in its absolute discretion, and without notice from its Member, at any time remove, cause to be removed or decline to display any Content on our Website(s) or require the Content to be amended at any time (as appropriate) if Luxury Homes UK considers or has reason to believe that our Member is in breach of this Contract or where it deems the Content to be of poor quality in terms of its presentation or information provided.

3.4 Our Member acknowledges and agrees that:

3.4.1. Luxury Homes UK shall not be under any obligation to monitor or censor the Content that appears on our Website(s), but Luxury Homes UK reserves the right for itself to do so.

3.4.2. Luxury Homes UK is not responsible for any error or omissions in any Content.

3.4.3. Systems and technological failure may impede or prevent access to all or any part of the content displayed on our Website(s), Luxury Homes UK makes no representation or warranty that our Website(s) will be accessible or available at all times, or that the whole or any part of our Website(s) will be free from error and Luxury Homes UK may suspend temporarily or alter the operation of our Website(s) for legal or technical reasons without notice to our Member.

3.4.4. It is responsible for and will pay all telecommunications and internet access charges incurred by it when using our Website(s).

3.4.5. Transmission of data over the internet can be subject to delays and errors and can cause corruption of data for which Luxury Homes UK shall not be responsible.

3.4.6. Luxury Homes UK may limit the number of properties that may be displayed to 2,000 per branch (in the case of an estate agent) or 100 per property development (in the case of a property developer) and the number of photographs that may be displayed by our Member to 25 images per property.

3.4.7. Our Member is prohibited from uploading to our seeking to display or advertise on our Website(s) or use the Services to promote commercial properties and our Member agrees that it shall only use the Services in relation to residential properties that are situated in the countries/regions displayed on our Website(s).

3.4.8. Where the Services are limited in any way (including but not limited to limits set out in 3.4.6. or 3.4.7.) the Member will make no attempt to exceed such limits unless granted prior by Luxury Homes UK.

3.4.9. In providing the Services, and in order to provide information of other Luxury Homes UK products and services, Luxury Homes UK may contact our Member by electronic means, including email and other electronic media, unless the Member informs Luxury Homes UK in writing that it does not wish to be contacted by these means.

3.4.10. It shall for the duration of the Contract, take reasonable steps to promote our Website(s) to its customers and display any advertising materials provided by Luxury Homes UK at its premises, provide a link on its website to our Website(s) and include our logo in its sales and advertising materials. For the purpose of carrying out these obligations, Luxury Homes UK grants our Member a non-exclusive license for the duration of the Contract to use, display and copy our logo, the Luxury Homes UK brand and any trade or services marks used by Luxury Homes UK and copyright.

3.5. Any third part, purporting to act as agent for or on behalf of a prospective Member, contracting with Luxury Homes UK for the provision for Services warrants and represents that it has full and valid authority of that prospective Member to bind it and to the extent that the third party exceeds its authority and/or the prospective Member refuses to pay any Fees or Commissions that third party shall be liable, on an indemnity basis, for all Fees and Commissions due hereunder.

## **Fees and Commissions**

4.1. Fees (plus VAT and any other taxes or duties thereon) and any other charges due hereunder shall be paid by our Member in accordance with these Terms and Conditions.

4.2. All Fees are exclusive of any Value Added Taxes or other applicable sales tax. Valued Added Tax will be charged at the applicable rate to Members in the United Kingdom only.

4.3. Estate Agents shall pay Luxury Homes UK 10% of its total sales or booking Fee or Commission. This Fee is payable to Luxury Homes UK within 15 days of close of sale/booking.

4.3.1. Property Developers shall pay Luxury Homes UK 1% of the sales price. This Fee is payable to Luxury Homes UK within 15 days of close of sale.

4.3.2. Home Owners shall pay Luxury Homes UK 1% of the sales price. This Fee is payable to Luxury Homes UK within 15 days of close of sale.

4.4. If our Member fails to pay any amount due to Luxury Homes UK by the due date for payment then:

4.4.1. Luxury Homes UK reserves the right to charge our Member interest on any outstanding amounts at the rate of 1.5% for every month over the due date until settlement of the outstanding sums or discharge of debt.

4.4.2. Without prejudice to any other right or remedy available to Luxury Homes UK, Luxury Homes UK shall be entitled to terminate or suspend the Contract, remove any reference or prevent access to the Content submitted to our Website(s) without notice to our Member and until payment of all outstanding Fees is made in full.

4.5. Luxury Homes UK reserves the right to charge our Member its reasonable administration costs in dealing with any failed payments and/or its costs in relation to pursuing outstanding amounts (including legal fees).

4.6. Luxury Homes UK reserves the right to charge its Members an administration fee of £100 per branch (in the case of an Estate Agent) or £100 per development (in the case of a Property Developer) if having terminated one Contract with Luxury Homes UK they wish to enter into another Contract with Luxury Homes UK within 12 months of the termination.

4.7. Luxury Homes UK does not guarantee the quality or quantity of Leads provided to its Members.

4.8. Luxury Homes UK reserves the right to vary its Fees and Commissions and any structure of charges in place from time to time subject to providing 30 days written notice to our Member. Any services provided after changes have taken effect will be subject to the relevant new Fees and/or new charging structure.

## **Liability**

5.1. All warranties, conditions, representations or other terms implied by statute or common law in relation to our Website(s) and any services provided to our Member by Luxury Homes UK are excluded to the fullest extent permitted by law.

5.2. Luxury Homes UK shall not be liable to the Member under or in connection with the Contract for any loss of business, contracts, profits, anticipated profits, savings or data, or for damage to hardware and software, or for any indirect, special or consequential loss or damage whatsoever.

5.3. Except as provided in Clause 5.4, the total liability of Luxury Homes UK for loss or damage under or in connection with the Contract (including any liability for negligence on the part of itself, its directors, employees, agents or assigns) shall not exceed the aggregate amount of Fees (exclusive of VAT) paid by our Member in the

three months immediately preceding the month in which our Member incurred the loss or damage occasioning such liability to Luxury Homes UK.

5.4. Nothing in the Contract shall exclude or limit liability for death or personal injury resulting from the negligence of Luxury Homes UK for any other liability that cannot be excluded or limited by law.

5.5. Luxury Homes UK shall not be liable for any liability caused by our Members breach of Contract.

5.6. Our Member accepts full liability for and shall indemnify Luxury Homes UK on demand against any and all claims, losses, damages, costs and expenses (including reasonable legal and other professional fees) incurred by Luxury Homes UK in relation to any third party claim arising from the Content except to the extent that the foregoing results directly from the negligence of Luxury Homes UK and the Member shall indemnify Luxury Homes UK against all such claims, losses, damages, costs and expenses.

5.7. Our Member agrees that Clause 5 is fair and reasonable.

## **Confidentiality**

Luxury Homes UK and our Member agree to keep any and all Confidential Information that is obtained about the other strictly confidential. "Confidential Information" means any information or matter concerning the business, finances, technology or affairs of the other party which is not in the public domain (other than by breach of this clause) but shall not include any information that either party is required to disclose by law. This clause shall survive termination of the Contract.

## **Termination and effect of termination**

7.1. Each Contract shall continue until terminated in accordance with these Terms and Conditions.

7.2. Luxury Homes UK or our Member shall be entitled to terminate the Contract at will:

7.2.1. Where no Initial Term is specified in the Membership Form, and subject to clause 7.8, on at least 30 days written notice, to the other party such notice to expire at the end of a calendar month.

7.2.2. Where an Initial Term is specified in the Membership Form, on at least 30 days written notice (to expire at the end of a calendar month falling not before the expiry of the Initial Term).

7.3. Either party may terminate the Contract immediately upon written notice to the other party if the other party commits any material or persistent breach of the Contract or ceases to carry on its business or is unable to pay its debts as they fall due.

7.4. Without limiting any other rights contained in these Terms and Conditions, Luxury Homes UK may immediately, suspend access to or temporarily remove any Content from our Website(s) (or cause any of those things to occur) if our Member breaches this Contract and fails to rectify that breach immediately upon receipt of notice requiring rectification.

7.5. On termination of the Contract for whatever reason all Fees and any other sums due from the Member to Luxury Homes UK shall immediately become payable.

7.6. Termination or suspension shall not affect the accrued rights or liabilities of Luxury Homes UK or our Member nor, in the case of termination, any provision of the Contract which is expressed as surviving the Contract or which is required to survive the Contract to give effect thereto.

7.7. Where the Contract provides on either the Membership Form for the provision of additional, premium or add on Services which are stated as being subject to a minimum order period or term (other than the Initial Term), our Member may not terminate the Contract until the expiration of such minimum order period.

7.8. On termination of the Contract the license referred to in clause 3.4.10 shall immediately terminate.

## **General**

9.1. Luxury Homes UK and our Member shall comply with the Data Protection Act 1998 in relation to use of personal data obtained from users of the Website(s).

9.2. Nothing in these Terms and Conditions shall be deemed to create an exclusive arrangement between our Member and Luxury Homes UK nor any agency, partnership or joint venture between the parties.

9.3. The Member may not assign, transfer or dispose of the benefit or burden of the Contract without the prior written consent of Luxury Homes UK.

9.4. If any provision of the Contract shall be held to be illegal, void, invalid or unenforceable the legality, validity and enforceability of the remainder of the Contract shall not be affected.

9.5. No failure or delay by Luxury Homes UK or our Member in exercising any of its rights or remedies under the Contract shall operate as a waiver of those rights or remedies. No waiver of any breach of the Contract shall be effective unless in writing and shall apply only in relation to the matter in respect of which it was specifically given.

9.6. Any notice required or permitted to be given by either party to the other under the Contract shall be in writing and addressed to that other party as its registered office or principal place of business or nominated email account. Any notice or document shall be deemed to have been served (i) if delivered, at the time of delivery, (ii) if posted, two days after it was put into the post, or (iii) if sent by facsimile or email at the time of dispatch. In proving service of a notice or document it shall be sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted as a prepaid first class letter or that the facsimile or email message was properly addressed and dispatched as the case may be.

9.7. No person other than the parties to the Contract and members of Luxury Homes UK have any rights under the Contracts (Rights of Third Parties) act 1999 to enforce any term of the Contract. This does not affect any right or remedy of any third party that exists or is available apart from that Act.

9.8. The Contract shall be governed by and construed in accordance with English law and Luxury Homes UK and our Member submit to the exclusive jurisdiction of the English courts.

These Member Terms and Conditions were last updated on 1<sup>st</sup> December, 2010