

GfK RETAIL AND TECHNOLOGY UK LIMITED TERMS & CONDITIONS OF SERVICE

1 DEFINITIONS

In these conditions:-

Agency means a third party appointed by the Client to provide Client with services which necessitate use of the GfK Data.

Agreement means these Terms, Proposal/s, the Appendix and (where applicable) the Agreement Summary.

Agreement Summary means the document, executed by GfK and the Client, to which these Terms may be appended (which also details the Client).

Appendix means the Data Publication Appendix attached to these Terms.

Authorised User means those employees of Client who have access to the GfK Software.

Background IPR means any of the following, whether created before, during or after the Agreement: (i) GfK Intellectual Property Rights; and (ii) methods and systems GfK uses to provide the Services, including without limitation, sampling, research, and methods of process or questioning, research products, sample or panel database(s), systems of analysis, observation, questions or questionnaire forms (unless provided by the Client or developed by GfK solely for Client), and completed questionnaires, as well as all computer software or programs, models or systems, and analysis, used in GfK's performance of the Services, whether or not such methodologies or software are patentable or copyrightable.

Client means the counterparty to the Agreement with GfK as stated in the Agreement Summary (or in the absence of an Agreement Summary, as referred to on GfK's invoice).

Client Data means any data provided by the Client forming part of the product feed and enabling GfK to perform the Services, as agreed and specified in the Proposal.

Confidential Information means all information which is disclosed or provided (whether orally, in writing, graphically, electronically or by any means) by Disclosing Party its Representatives to the other Receiving Party or its Representatives which is of a confidential or proprietary nature or which a reasonable person would believe should be treated as such, including but not limited to technical information, designs, recipes, plans, programs, methods, systems, formulae, processes, technology, object code, source code, executable code, metadata, flow charts, devices, designs, machines, inventions, research or development projects, plans for future project development, financial information, sales practices, business plans, marketing and pricing plans and strategies, customers, suppliers, Personal Data and all other confidential information of every kind and character, together with any analyses, compilations, studies or other documents prepared by the Receiving Party and/or its Representatives that contain or otherwise reflect such information.

Database means the database owned, developed and maintained by GfK and its Group as part of the IFR Services, containing the data relating to the continuous monitoring of classes of products in various countries.

Data Protection Laws means the applicable laws and regulations relating to the collection, use, storage or disclosure of information about an identifiable individual which shall include (once in force) the GDPR.

Disclosing Party means the party disclosing Confidential Information to the Receiving Party or its Representatives.

Effective Date means the date referred to as such on the Agreement Summary, or if no date is specified, the Effective Date shall be the same as the Start Date of the first Proposal.

Electronic Reports means the Reports delivered via email or GfK Software.

Fees means the fees payable by the Client in respect of the performance of the Services, as set out in the Proposal.

Force Majeure Event means any acts, events, omissions or accidents beyond either of the parties' reasonable control including but not limited to any of the following: flood, earthquake, windstorm or other natural disaster; war, terrorist attack, civil war, civil commotion or riots; fire, explosion or accidental damage; adverse weather conditions; interruption or failure of utility service, including but not limited to electric power, gas or water; any labour dispute, including but not limited to strikes, industrial action or lockouts and; non-performance by either of GfK suppliers or subcontractors and third party website owners preventing or objecting to the collection of information from their websites.

GDPR means The General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679).

GfK means GfK Retail and Technology UK Limited, a company registered in England and Wales with company registration number 2450463 whose registered office is at Level 18, 25 Canada Square, Canary Wharf, London, E14 5LQ.

GfK Data means all data produced and owned by GfK in the course of its business including but not limited to the Reports, OPI Data and Database and any data derived from any of the same.

GfK Software means any software which the Client accesses or uses as part of the Services, including but not limited to any internet portal or Web browser plug-in used to access the Reports or OPI Data.

Good Industry Practice means the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in activities of a similar scope and complexity to those that are the subject of this Agreement and under the same or similar circumstances, where such contractor is seeking to comply with its contractual obligations.

Group means each and any Parent Undertaking or Subsidiary Undertaking of a party and each and any subsidiary of a Parent Undertaking of a party. **Parent Undertaking** and **Subsidiary Undertaking** shall have the meanings given to them as in section 1162 of the Companies Act 2006.

IFR Reports means the reports created by GfK from the Database (including the Electronic Reports).

IFR Services means the provision of IFR Reports and related services, as detailed in the Proposal.

Industry Standards means generally accepted professional industry standards and practices for survey research including any guidelines or codes of conduct published by the MRS (Market Research Society) and ESOMAR (The World Association of Research Professionals) and the international standards ISO 9001:2008 Quality Standards and ISO 20252:2012 market, opinion and social research.

Initial Period means in relation to a Proposal, the minimum period as set out in the Proposal (or if none specified, twenty-four (24) months) and commencing on the Start Date.

Intellectual Property Rights means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in Confidential Information (including know-how, tools and trade

secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Losses means all losses, damages, liabilities, costs, expenses, fines and penalties (including, without limitation, reasonable legal fees and costs).

OPI Data means the data collected by GfK from third party websites on consumer goods pricing data and availability information more particularly described in the Proposal.

OPI Services means online pricing intelligence services, including the provision of OPI Data (as described more particularly in the Proposal).

Partners means any GfK partner who has agreed to share their data with GfK for the purposes of GfK being able to provide the Services to Client and other third parties.

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

PoS Services means the point of sale services, including the provision of PoS Reports (as described more particularly in the Proposal).

Product Categories means such field or range of products as the parties agree shall be the subject matter of the Reports or OPI Data, and as further particularised in the Proposal.

Proposal means the document provided by GfK which sets out the specification of the Services and the Fees and which is incorporated into the Agreement (and subject to these Terms) by: (i) reference to it on an Agreement Summary; or (ii) in the absence of an Agreement Summary, by GfK commencing the provision of the Services set out in the Proposal.

Receiving Party means the party receiving Confidential Information from the Disclosing Party or its Representatives.

Renewal Period means in relation to a Proposal, a twelve (12) month period commencing upon the expiry of the Initial Period and each successive twelve (12) month period thereafter.

PoS Reports means the reports including the point of sale data (including the Electronic Reports) being the aggregated and anonymised data and reports relating to information received from Partners and other organisations to be supplied by GfK to Client pursuant to this Agreement and more particularly described in the Proposal.

Reports means the PoS Reports and IFR Reports (as the context permits).

Publication Request means a request from the Client to publish GfK Data.

Representatives means with respect to any party, any Group company of that Party and its and their respective directors, officers, employees, independent contractors, workers and professional advisors (including, without limitation, legal advisers and accountants).

Services means the services specified in the Proposal, including (where applicable) the provision of PoS Services, OPI Services and/or IFR Services (and also any additional services pursuant to clause 4.4).

Special Analysis means additional analysis of the basic data in the Reports, Database and/or OPI Data.

Start Date means the operational commencement date of the Services under the applicable Proposal (following any set-up or implementation) and which is specified in the Proposal (or such alternative date as may be notified by GfK to the Client by email).

Term means the Initial Period and (if applicable) any Renewal Periods.

Terms means these terms and conditions of service.

Third Party Data means any third party information used by GfK in the provision of the Services, including but not limited to: (i) data supplied by Partners; and (ii) data collected from third party sources, including but not limited to sample surveys, stores, advertisements and third party websites.

2. FORMATION OF THE CONTRACT

2.1 These Terms are the only terms upon which GfK is prepared to deal with the Client in respect of the provision of the Services and they shall govern the Agreement to the entire exclusion of all other terms and conditions. No terms or conditions endorsed upon, delivered with or contained in any purchase order (or similar document), the Client's acceptance of the Proposal, or acknowledgement or acceptance of Client's order by GfK, shall form part of the Agreement and the Client waives any right which it might have to rely on such terms and conditions.

2.2 Unless otherwise expressly stated in writing, the Proposal, including all other quotations and estimates provided to Client by GfK will not constitute an offer, capable of acceptance, but are merely invitations to treat. All quotations in respect of Fees are valid for a maximum period of ninety (90) days starting from the date of the original quotation. Notwithstanding the foregoing, GfK reserves the right to revoke or alter any Fee quotation if, within a period of thirty (30) days from the date of the original quotation, a currency fluctuation occurs which is similar to that referred to in clause 5.4 below.

3. THE TERM

3.1 The Agreement shall come into force on the Effective Date and shall remain in force until six (6) months after all Proposals have terminated or expired, unless terminated earlier in accordance with clause 12.

3.2 The Term of each Proposal shall automatically be extended for a Renewal Period at the end of its Initial Period and (if applicable) at the end of each Renewal Period, unless a party gives written notice to terminate such Proposal to the other party, not later than six (6) months before the end of the Initial Period or the applicable Renewal Period.

4. THE SERVICES

4.1 GfK shall (from the Start Date) provide the Services:

- in accordance with Good Industry Practice;
- in compliance with the Industry Standards;
- by applying correct methodological concepts and scientific analysis of the relevant research; and
- in all material respects with the specifications in the Proposal.

4.2 GfK shall use its reasonable endeavours to deliver the Services within the agreed timescales, but time shall not be of the essence in that regard.

4.3 In the event of a breach of clause 4.1 GfK shall, as the Client's sole and exclusive remedy (at GfK's option) either:

- re-perform the relevant Services (or part of them) to comply with 4.1; or
- terminate the provision of such Services by notice to the Client and provide the Client with a refund of the amounts paid in respect of such terminated Services.

- 4.4 Additional services may be provided by GfK to the Client from time to time where mutually agreed by the parties using a variation in accordance with clause 14. The additional services will be provided for additional fees and may include, for example (but without limitation):
- a new Proposal;
 - Special Analysis;
 - more frequent reporting, trade or market sectors analysis (in the case of PoS Services);
 - additional application sources (in the case of OPI Services) or product sets; or
 - additional instore tracking (in the case of IFR Services).
5. **THE FEES AND PAYMENT TERMS**
- 5.1 The Client shall pay the Fees to GfK in consideration for the Services. The Fees are expressed to be net of VAT which shall be paid by the Client at the rate and from time to time in the manner prescribed by law. All Fees shall be paid in GBP unless otherwise agreed in the Proposal.
- 5.2 Unless otherwise agreed in the Proposal, the Fees will be increased on upon the first anniversary of the Start Date and thereafter at annual intervals. Such increases shall be at a rate equal to the percentage increase of the Retail Price Index (All Items) (the **RPIX**) calculated by the Office for National Statistics or any Government substitution therefore in respect of the preceding six month period. For the purpose of this clause 5.2, the RPIX at each review will be that shown in the issue dated two (2) months prior to the date of increase.
- 5.3 Unless otherwise agreed in the Proposal, one quarter of the Fees will be due and payable on or before either the Start Date or 14 (fourteen) days after the date of the Agreement (whichever shall be the later). The second and each subsequent quarter of the Fees will be due and payable on the first day of every third calendar month following the Start Date. Invoices for any additional services agreed will be submitted for payment at the end of the month during which such services were performed. The Client shall pay all invoices promptly and in any event within thirty (30) days of the date of issue of each invoice. Time for payment shall be of the essence.
- 5.4 Where GfK agrees (in a Proposal) that the Fees can be paid in a currency other than GBP then if the Fees (when converted to GBP by GfK at the time of invoicing (**Invoiced Fees**) are 5% (or more) less than the Fees were when converted to GBP by GfK on the date of the Proposal (**Proposal Fees**), then GfK reserves the right to increase the Fees by the difference between the Invoiced Fees and the Proposal Fees (and the Client shall pay the same in accordance with the Agreement).
- 5.5 The Client shall, acting reasonably and in good faith be entitled to dispute any invoice provided by GfK by providing GfK with notice of the dispute (including full details) within fourteen (14) days of the date of invoice, provided always that the undisputed part is paid by the due date. The parties shall use reasonable endeavours to resolve any dispute as soon as is reasonably practicable and the Client shall pay the amount determined to be payable within seven (7) days of the parties reaching agreement.
- 5.6 The Client shall not be entitled to set off against any amount payable under this Agreement any amount due by GfK to the Client under this Agreement or any other agreement.
- 5.7 GfK reserves the right at any time in its sole discretion to demand security for payments before continuing with the provision of the Service or delivering any of the information to the Client, notwithstanding any subsisting agreement to provide credit to the Client or any provision to the contrary contained in these Terms.
- 5.8 Save in respect of a bona-fide disputed amount in accordance with clause 5.5, in the event of late payment, GfK reserves the right to:
- suspend the Services; and
 - charge interest equal to 5% per annum above the Bank of England Base Rate, accruing on a daily rate (and compounded at the end of every calendar month) between the due date and the date of payment.
6. **GfK DATA, THIRD PARTY DATA & GfK SOFTWARE**
- 6.1 GfK reserves the right to make alterations to the contents or layout of the GfK Data which do not in its reasonable opinion result in any substantial change in the nature of the Service.
- 6.2 GfK does not warrant that the supply of GfK Data will be free from interruption or accurate, complete, reliable, secure, useful or fit for purpose. GfK does not predict or assure any particular substantive results of its Services in advance, nor does GfK accept any liability for Client's interpretation of GfK Data. Although Services are provided in accordance with clause 4.1, the GfK Data is subject to the limits of statistical error.
- 6.3 Client acknowledges and agrees that the supply of Services is dependent upon Third Party Data and that there is no guarantee of the availability, completeness or accuracy of such Third Party Data. For example (and without limitation), a Partner could cease or change the supply of Third Party Data, a website owner may object to the collection of Third Party Data from their website (or may implement additional technical measures limiting or preventing the collection of the Third Party Data) and/or GfK may not be able to gain access to an applicable store. Therefore GfK:
- does not accept any liability for unavailability, incompleteness or inaccuracy of Third Party Data which impacts on the Services;
 - reserves the right to make changes to the Services, to the extent it is necessary to do so due to the unavailability, incompleteness or inaccuracy of any Third Party Data.
- 6.4 To the extent GfK Software is detailed in the Proposal or GfK otherwise provides access to GfK Software to the Client, GfK grants the Client a non-exclusive, non-transferable and revocable licence to use the GfK Software, to the extent necessary for the Client to receive the Services. GfK does not warrant that the GfK Software will be free from interruption or accurate, complete, reliable, secure, useful or fit for purpose.
- 6.5 Client accepts that due to the highly proprietary nature of the GfK Software and the contents of the data and reports, online access is restricted to Authorised Users who are dealing with market research issues within Client's operation. Client shall be liable for all Authorised Users use of the GfK Software. Client shall keep a list of the names and contact details of the individuals who are Authorised Users and shall keep this list continuously updated and upon GfK's request provide a copy of such list to GfK. Client undertakes to keep any logon details and passwords provided to it by GfK, secure and not disclose them to any third party.
- 6.6 Client shall not introduce or export into any part of GfK systems any (without limitation) malicious code, Trojans, worms and viruses, lock, authorisation key or similar device that impairs or could impair the operations of the GfK systems, or in any other way cause disruption to the systems or operations of GfK. Client may not reverse engineer the GfK Software in any manner, nor may Client modify or reuse any GfK Software in any manner not specifically set out in the Agreement.
- 6.7 GfK reserves the right to suspend Client's (or any Authorised User's) access to the GfK Software in the event that:
- Client (or any Authorised User) is in breach of any of this clause 6;
 - GfK reasonably suspects the Client's (or Authorised User's) continued access of the GfK Software may cause damage or disruption to the systems or operations of GfK; or
 - an Authorised User has not accessed the GfK Software for a period of three (3) months or more.
- 6.8 GfK may restore the Client's access to the GfK Software if to GfK's reasonable satisfaction, any breach and/or threat to its systems or operations has been remedied.
- 6.9 Client acknowledges and agrees that the GfK Software may not be available during any scheduled or emergency maintenance periods. GfK will use all reasonable efforts to keep such times of non-availability to a minimum. Where such non-availability is within GfK's control, GfK shall use reasonable efforts to restore access to the GfK Software as soon as possible. Client waives any claims it may have in respect of non-availability of the GfK Software for the reasons set out in this clause 6.
7. **CLIENT OBLIGATIONS & CLIENT DATA**
- 7.1 The Client shall:
- provide GfK with all co-operation reasonably requested by GfK in relation to this Agreement in order for GfK to provide the Services; and
 - carry out its obligations in a timely and efficient manner.
- 7.2 In the event of any delays in the Client's performance of its obligations, GfK may adjust any agreed timetable or delivery timescales as reasonably necessary.
- 7.3 Where referred to in the Proposal, the Client shall provide Client Data to GfK. GfK does not accept any liability for any failure or delay in performing its obligations as a result of unavailability, incompleteness or inaccuracy of data provided by Client to GfK (including but not limited to Client Data). GfK may access, process, use and disclose Client Data as is reasonably necessary to:
- operate or maintain the Services (including virus scanning);
 - evaluate or improve the performance and implementation of the Services;
 - perform statistical analyses and other data mining activities and to present such data in whatever format GfK requires to measure, amongst other things, interest in and use of the Services; and
 - develop and design new products and services.
- 7.4 Following termination of this Agreement or the applicable Proposal, GfK will no longer process or use any Client Data, provided that it may retain any information in an archived computer system backup made in accordance with GfK security and/or disaster recovery procedures and such archived copy will:
- eventually be erased or destroyed in the ordinary course of GfK's data processing procedures; and
 - will remain fully subject to the obligations of confidentiality stated herein.
- 7.5 Client shall comply with all applicable laws and regulations with respect to the use of GfK Data. Without prejudice to the generality of the foregoing, the Client agrees that GfK Data will be used by Client in compliance with any applicable competition and anti-trust laws.
- 7.6 Client shall (on demand) indemnify and keep indemnified GfK and each GfK Group company in respect of any Losses suffered by GfK and or any GfK Group company as a result of any breaches of clauses 7, 9, 11 and/or the Appendix.
8. **DATA PROTECTION AND SECURITY**
- 8.1 For the duration of this Agreement and to the extent that any Personal Data is processed by any party, that party shall comply in full with the provisions and obligations imposed on it by the Data Protection Laws.
- 8.2 The Client shall ensure that the GfK Data is kept secure and shall use the best available security practices and systems applicable to the use of the GfK Data to prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the GfK Data.
- 8.3 If the Client becomes aware of any misuse of any GfK Data, or any security breach in connection with this Agreement that could compromise the security or integrity of the GfK Data or otherwise adversely affect GfK or if the Client learns or suspects that any security credentials have been revealed to or obtained by any unauthorised person, the Client shall, at the Client's expense, promptly notify GfK and fully co-operate with GfK to remedy the issue as soon as reasonably practicable.
- 8.4 The Client shall provide such co-operation as is reasonably requested by GfK as part of any security investigations undertaken by GfK.
9. **OWNERSHIP OF INTELLECTUAL PROPERTY AND LICENCE**
- 9.1 The Client acknowledges and agrees that:
- all rights title and interest in the Background IPR, GfK Data and GfK Software (including but not limited to an improvements, enhancements and adaptations of the same) are the property of GfK or its licensors, as the case may be;
 - it shall have no rights in or to the Background IPR, GfK Data or GfK Software other than the right to use them in accordance with the express terms of this Agreement; and
 - GfK or its licensors has or have made and will continue to make substantial investment in obtaining, verifying, selecting, coordinating, developing, presenting and supplying the Background IPR, GfK Data and GfK Software.
- 9.2 Subject to the provisions of clause 11, GfK grants to the Client a non-exclusive, non-transferable, non-sublicensable, revocable, licence to use the GfK Data for its own internal business purposes and reporting to its shareholders. This licence shall not include any right to access or use documents and materials generated in the course of obtaining Third Party Data, which GfK shall not be obliged to deliver to the Client.
- 9.3 GfK grants to Client a non-exclusive, non-transferable, non-sublicensable, revocable licence to use the Background IPR to the extent necessary to use the GfK Data in accordance with this Agreement. Client may not reverse engineer the Background IPR in any manner, nor may Client modify or reuse any Background IPR in any manner not specifically set out in the Agreement.

- 9.4 The Client may use the GfK Data in any presentation made to its clients in the ordinary course of business (provided that it does not make available to such clients any hard copies of such presentations) and that it shall otherwise keep the GfK Data strictly confidential. Unless GfK has given its prior written consent in accordance with the Appendix, Client shall not:
- disclose, publish, sell, distribute, copy or reproduce in full or part, the GfK Data, (except for its own internal business purposes, or as otherwise permitted under clause 11, or the Appendix); or
 - allow any third party to access the GfK Data to come into the possession of anyone, other than: (i) its Representatives, or (ii) (subject to clause 9.5 below) an Agency in the course of such Agency providing services to Client solely for Client's own internal business purposes.
- 9.5 The Client shall be responsible for ensuring that any Representatives or Agencies (where GfK provides its written consent to the Client to share GfK Data with such Agencies) comply with the provisions of this Agreement in relation to the use of GfK Data (including but not limited to this clause 9 and clause 11). The Client shall promptly notify GfK in writing once the Agency has completed the applicable services which use the GfK Data. The Client shall ensure that Agencies shall, within fourteen (14) days of such completion:
- destroy or return to the Client all documents and materials (and any copies) containing, reflecting, incorporating, or based on the GfK Data;
 - erase all the GfK Data from its computer systems or which is stored in electronic form (to the extent possible); and
 - certify in writing to the Client that it has complied with the requirements of this clause 9.5 (and the Client shall provide such certification to GfK upon request).
- 10. LIMITATION OF LIABILITY**
- 10.1 Nothing in this Agreement excludes or limits the liability of either party in respect of:
- death or personal injury caused by its negligence (including negligence of its employees, agents or contractors);
 - fraud, fraudulent misrepresentation or fraudulent misstatement; or
 - liability which may not otherwise be limited or excluded under applicable law.
- 10.2 Subject to clause 10.1 and clause 10.3, GfK's aggregate liability, under or arising out of the Agreement and whether arising from breach of contract, tort (including but not limited to negligence), breach of statute, misrepresentation or otherwise shall not exceed twenty-five thousand pounds (£25,000).
- 10.3 Subject to clause 10.1, GfK shall not be liable under or arising out of the Agreement and whether arising from breach of contract, tort (including but not limited to negligence), breach of statute, misrepresentation or otherwise for any:
- special, indirect or consequential loss;
 - pure economic loss;
 - loss of profits;
 - loss of revenue;
 - loss of contracts;
 - loss of business; or
 - loss of goodwill.
- and in the case of the types of loss in clauses 10.3 (b) to (g), whether such losses are direct, special, indirect or consequential losses.
- 10.4 Except as expressly provided in this Agreement (and so far as is permitted by applicable law), GfK excludes all representations and warranties, express or implied (including but not limited to any warranty as to satisfactory quality, or fitness for a particular purpose).
- 11. CONFIDENTIALITY AND DATA PUBLICATION**
- 11.1 Receiving Party undertakes that it shall not at any time during this Agreement, and for a period of five (5) years after its termination, disclose to any person any Confidential Information of the Disclosing Party or its Representatives. Receiving Party shall not use any Confidential Information of Disclosing Party for any purpose other than to perform its obligations under this Agreement.
- 11.2 Receiving Party agrees that any system or process used by it or its Representatives for (but not limited to) gathering, storing, processing or transmitting Confidential Information shall be regularly security assessed and that if any vulnerabilities or threats that pose a risk to any Confidential Information of the Disclosing Party or its Representatives are discovered during the assessment, it shall rectify such vulnerabilities as soon as is reasonably practicable.
- 11.3 Receiving Party may disclose the Disclosing Party's Confidential Information to its Representatives who need to know such information for the purposes of carrying out the Receiving Party's obligations under this Agreement. Receiving Party shall ensure that its Representatives to whom it discloses Disclosing Party's Confidential Information comply with this clause 11.
- 11.4 The provisions of this clause 11 shall not apply to any information that:
- was publicly known and generally available to the Receiving Party or its Representatives prior to the time of disclosure by the Disclosing Party or its Representatives;
 - becomes publicly known and generally available after disclosure by the Disclosing Party through no action or inaction of the Receiving Party or its Representatives in breach of this Agreement;
 - is or becomes available to the Receiving Party or its Representatives on a non-confidential basis from a source other than the Disclosing Party or its Representatives, provided such source is not known by the Receiving Party or its Representatives to be subject to another confidentiality agreement with or other obligation of secrecy to the Disclosing Party, its Representatives or another party with respect to such information, or
 - is independently developed by the Receiving Party or its Representatives without use of the Confidential Information, as shown by the Receiving Party's or its Representatives' files and records or other evidence in the Receiving Party's or its Representatives' possession.
- 11.5 Client acknowledges that in relation to PoS Services:
- a representative survey of a given retail panel by GfK is only possible through the co-operation of a large number of Partners who do not wish to have the survey results made publicly known; and
- the confidential handling of the Reports and associated GfK Data supplied by GfK is therefore of prime importance to the functioning of the co-operation between GfK and its customers.
- 11.6 The Client may only publish the GfK Data in the limited circumstances identified in the Appendix. Otherwise, unless expressly approved in writing by GfK pursuant to the Appendix, the Client shall not (and shall procure that its Representatives shall not) use the GfK Data:
- whilst identifying GfK as the source of such data, information or reports;
 - for the purpose of supporting litigation;
 - in any advertising or promotional copy;
 - for supporting comparative advertising claims;
 - for resale or syndication; or
 - for distribution to any media outlet in support of external public relations efforts, including news articles, interviews, press releases and events.
- 12. TERMINATION AND SUSPENSION**
- 12.1 Without affecting any of its rights or remedies, either party to this Agreement may terminate this Agreement or a Proposal with immediate effect by giving notice to the other party if the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified to do so. Failure to pay the Fees shall (without limitation) constitute a material breach.
- 12.2 Either party shall be entitled to terminate the Agreement or a Proposal upon notice to the other if:
- the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
 - a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
 - an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company); or
 - the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver; or
 - a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days; or
 - any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.2 (a) to (h) (inclusive); or
 - the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 12.4 GfK may (without any liability to the Client) terminate this Agreement (or the applicable Proposal) if for any reason any Partner ceases to supply any data which GfK is reliant upon to provide the Services. In such event, GfK shall terminate this Agreement (or the applicable Proposal) by giving Client notice in writing specifying the date of termination.
- 12.5 Upon termination of the Agreement or a Proposal for any reason, all Fees already invoiced, together with any other Fees that would have been payable until the end of the Initial Period or Renewal Period (as applicable) shall immediately become payable.
- 12.6 For the avoidance of doubt, in the event of any termination of this Agreement or a Proposal, GfK shall be entitled to, at any time, delete any database it GfK may have created in connection with the provision of the Services and GfK shall have no obligation to maintain, retain or store in whole or part any copies thereof. Subject to the provisions of clauses 9 and 11 Client may continue to use the GfK Data provided during the Term after the termination of this Agreement.
- 12.6 The termination of the Agreement or a Proposal shall be without prejudice to the accrued rights and liabilities of the parties. The provisions of clauses 1, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 shall survive termination of the Agreement and each Proposal.
- 13. FORCE MAJEURE**
- Where GfK is delayed or prevented from performing its obligations under this Agreement by a Force Majeure Event, GfK shall notify Client as soon as reasonably possible with details of the Force Majeure Event, its effect on GfK's obligations and its estimated duration. GfK shall use its reasonable endeavours to mitigate the effect of the Force Majeure Event upon the performance of its obligations under this Agreement. If the Force Majeure Event or circumstances prevent GfK from performing any of its obligations under this Agreement for a period of more than forty-five (45) days, Client may terminate this Agreement by giving GfK thirty (30) days written notice and upon expiry of the notice period, this Agreement will terminate.
- 14. MISCELLANEOUS**
- Subcontractors** - Client acknowledges and agrees that GfK may subcontract all or part of its obligations without consent of the Client but shall remain responsible as the primary obligor. **Variation** - No variation of this Agreement shall be valid unless it is in writing and signed by, or on behalf of, authorised representatives of each of its parties. **Waiver** - No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or

remedy. **Suggestions** - to assist with the development and to enhance the competitiveness of the Services, Client may from time to time provide suggestions, comments or other feedback to GfK with respect to the Services. GfK shall be free to use, disclose, reproduce, license or otherwise distribute, and exploit suggestions as it sees fit, entirely without obligation or restriction of any kind on account of Intellectual Property Rights. **Severance** - If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the parties to the Agreement shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves such parties' original commercial intention. **Entire Agreement** - This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in this Agreement. **Assignment** - Neither party shall, without the prior written consent of the other (not to be unreasonably withheld or delayed) assign the Agreement, save that

either party may assign the Agreement to any Group company. **Notices** - A notice given to a party under or in connection with this Agreement shall be in writing and sent to the party at the address given in this Agreement or as otherwise notified in writing to the other party. Notices served by the Client must be marked for the attention of GfK's Legal Department. **Third Party Rights** - The parties do not intend that any term of the Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties, save that any part of the Agreement which confers a benefit on any member of the GfK Group may be enforced by any member of the GfK Group. However GfK and Client shall be entitled to vary the Agreement and/or terminate it without the consent of any member of the GfK Group. **Governing law and jurisdiction** - 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. The parties to this Agreement irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims). **Electronic Execution & Counterparts** - This Agreement may be signed in counterparts, each of which shall be deemed an original and both of which taken together shall constitute one and the same instrument. Signed PDF copies received by email shall be deemed originals for all purposes. Each party to this Agreement agrees to use electronic signatures; and be subject to the applicable laws governing the use of electronic signatures.

APPENDIX - DATA PUBLICATION**1 Data publication**

- 1.1 The Client may only publish GfK Data upon receipt of written approval from GfK prior to publication.
- 1.2 Should the Client wish to publish GfK Data, it must submit a Publication Request to GfK prior to publication. Each Publication Request shall set out the GfK Data that the Client wishes to publish and provide a reasonable level of detail of the proposed publication.
- 1.3 Upon receipt of written approval from GfK, the Client may only publish the GfK Data in accordance with the following provisions:
 - (a) GfK must be quoted as the data source, except where GfK Data is used in combination with additional data sources;
 - (b) any GfK Data published should only refer to the Client's own market/sector/brand performance, as applicable;
 - (c) GfK Data may not be quoted in statements regarding competitor performance. This includes but is not limited to references such as '*market leader*' or '*number 1*', which directly or indirectly refer to the position of competitors;
 - (d) GfK Data may only be quoted at total product group level. GfK will not substantiate quotes on product sub segments;
 - (e) GfK Data may only be quoted at total market level. GfK will not substantiate quotes made on single distribution channels; and
 - (f) GfK Data may only be quoted from the results of GfK syndicated retail panel or continuous studies. GfK will not substantiate or support quotes from ad hoc studies.
- 1.4 GfK requires a minimum of five (5) days to process Publication Requests.

THE PROPOSAL

POS SERVICES

1. **Start Date**

2. **Initial Period**

3. **PoS Reports**

Description:

Countries:

Top Product Group:

Product Group(s):

Reporting Period:

Frequency:

4. **GfK Software (method of delivery)**

5. **Content**

6. **Fees (ex VAT)**

7. **Invoicing Schedule**

THE PROPOSAL - OPI SERVICES

1. **Start Date**
2. **Initial Period**
3. **OPI Data**
4. **GfK Software (method of delivery)**
5. **Number of User Accounts**
6. **Displayed Attributes**
7. **Client Data**
8. **Fees (ex VAT)**
9. **Invoicing Schedule**

THE PROPOSAL - IFR SERVICES

1. **Start Date**

2. **Initial Period**

3. **IFR Reports**

Description:

Countries: Top Product Group:

Product Group(s):

Reporting Period:

Frequency:

4. **Stores**

5. **GfK Software (method of delivery)**

6. **Fees (ex VAT)**

7. **Invoicing Schedule**