

1. DEFINITIONS

In these conditions:-

Agreement means these Terms, the Proposal 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 details the Client and the applicable Proposal).

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

Change means a change to the scope of the Services.

Change Request means a request by a party for a Change.

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

Client Personal Data means any Personal Data provided by the Client to GfK to enable it to provide the Services, including but not limited to the contact information in any sample provided by the Client.

Concept Products means Client's new concepts, products, services or designs, where such concepts, products, services or designs form part of the Services to be conducted by GfK survey interviewers.

Concept Testing means the provision of services involving Concept Products.

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.

CT Disclosure has the meaning given to it in clause 11.1.

Custom Research Deliverables means reports, documents, products and materials developed exclusively for the Client by GfK or its Representatives (and at the Client's request and expense).

Data Controller has the meaning given to in the GDPR.

Data Processor has the meaning given to in the GDPR.

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.

Data Security Breach means any breach of security relating to the confidentiality, integrity or availability of Personal Data.

Data Subject has the meaning given to in the GDPR.

Deliverables means the Custom Research Deliverables and Syndicated Studies.

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 date upon which GfK actually commences the provision of the Services (as confirmed by GfK to the Client).

Fees means the fees as set out in the applicable 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.

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

GfK means GfK U.K. Limited, a company registered in England and Wales with company registration number 2512551 whose registered office is at Level 18, 25 Canada Square, Canary Wharf, London, E14 5LQ.

GfK Personal Data means any Personal Data collected from or pertaining to Respondents (which is not Client Personal 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.

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.

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.

IPR Claim has the meaning given to it in clause 6.4.

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

New Release any new version of the Software which from time to time is publicly marketed and offered for purchase by GfK in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

Panel Members has the meaning given to it in clause 9.15.

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

Portal means the URL address notified by GfK to Client as accessed by the Authorised User enabling the Authorised User to download the Reports.

Prior Consultation has the meaning given to it in the GDPR.

Privacy Impact Assessment has the meaning given to it in the GDPR.

Processing has the meaning given to it the GDPR, and "Process" will be construed accordingly.

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.

Reports means the Deliverables in the form of a report that an Authorised User downloads from the Portal.

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).

Respondent means a participant in GfK's market research, including but not limited to survey respondents, interviewees and panellists.

Services means the services to be performed by GfK including but not limited to the provisions of Deliverables (and where applicable, Concept Testing, User Experience Services and Usability Testing) and other associated services (in all cases as set out in the Proposal).

Software means the GfK online portal reporting service as may be more particularly described in the Proposal.

Syndicated Studies means Services comprising the provision of a Deliverable or a panel study in the applicable Proposal and is to be or has been developed by GfK on its own with its own funding for the benefit of multiple clients, on a syndicated basis in conjunction with other clients of GfK or under consideration of clients' needs but on the basis of GfK's own panels and data arising out of these panels and which will be available by way of a licence to use such services and products.

Terms means these terms and conditions of service.

Usability Testing means usability testing or design incorporating the principles that seek to minimise user risks and maximise error tolerance having regard to the applicable standards relating to usability testing.

User Experience Services means custom research services that involve the direct observation and measurement of consumer's experience of specified products and services and which may involve GfK using its own (or those of a third party) studios, analytics and tools to perform such services.

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 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 30 days from the date of the original quotation, a currency fluctuation occurs which is similar to that referred to in clause 5.5 below.

3. THE SERVICES

3.1 GfK shall provide the Services:

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

3.2 In the event of a breach of clause 3.1 GfK shall, as the Client's sole and exclusive remedy (at GfK's option) either:

- (a) re-perform the relevant Services (or part of them) to comply with 3.1; or
- (b) 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. THE TERM

4.1 This Agreement shall commence upon the Effective Date and subject to earlier termination under clause 12, shall continue until the later of the date upon which all:

- (a) Services have been provided by GfK; and
- (b) Fees have been paid by the Client and received by GfK in cleared funds.

5. PAYMENT AND THE FEES

5.1 In consideration for the Services, Client shall pay GfK the Fees. The Fees are exclusive of VAT, which shall be charged, if applicable and the Client shall pay all invoices in pounds sterling, unless otherwise specified in the relevant Proposal. Any withholding or service tax deducted from remittance of payments in respect of GfK invoices will be automatically charged back to the Client. If GfK subsequently receives a refund in respect of such tax charge, GfK shall refund an amount equal to the tax refund back to the Client.

5.2 Unless specifically stated otherwise in the Proposal, the Fees payable in respect of the Services may be charged 50% on or around the Effective Date and 50% upon completion of the Services. Subject to clause 5.3, Client shall pay all invoices within thirty (30) days of the date of the invoice.

5.3 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 amount determined to be payable within 7 days of the parties reaching agreement.

5.4 Save in respect of a bona-fide disputed amount in accordance with clause 5.3, in the event of late payment, GfK reserves the right to:

- (a) suspend the Services; and
- (b) 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.

5.5 Changes to the Services and Increases in the Fees

- (a) **Change Request** - Either party may submit a Change Request and the parties shall co-operate in good faith with each other, whilst discussing the scope and nature of the Change Request. GfK shall notify the Client of any additional Fees, costs or expenses (together with the impact on any project timescales) to apply in relation to the implementation of the Change Request and with the prior agreement of the Client, GfK shall implement the Change and increase the Fees, expenses and/or costs accordingly.
- (b) **Currency Fluctuations** - 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).

(c) **Incidence Rates** - GfK uses the best information available when estimating the incidence rate for a behaviour, but GfK provides no guarantee of any incidence rate. If the actual net incidence rate and/or the interview length differs significantly from the estimated net incidence rate or interview length as provided by Client or developed by GfK and agreed to by Client, GfK will increase the price of the survey based on the actual net incidence rate and interview length. If this would result in the price of the survey increasing by more than ten percent (10%), GfK will agree such increase with Client.

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.

6. INTELLECTUAL PROPERTY AND COPYRIGHT

6.1 The Deliverables:

(a) **Custom Research Deliverables** - Subject to the provisions of clause 6.2 and clause 7, or as may be specifically set out in the Proposal, the copyright in the Custom Research Deliverables shall transfer to the Client on the later of completion of delivery or when GfK has received in full all sums due to it in respect of such Custom Research Deliverables.

(b) **Syndicated Studies** - Subject to the provisions of clause 6.2 and clause 7, GfK grants to Client a non-exclusive non-transferable, non-sublicensable (other than to Representatives) licence to use the Syndicated Studies for its own internal purposes. Client acknowledges and agrees that any Syndicated Studies are licensed and not sold to Client and GfK shall at all times retain sole and exclusive ownership rights in all parts of the Syndicated Studies and any part thereof, including for the avoidance of doubt any data used by GfK in connection with such Services. GfK, not Client, will determine the design and the contents of the standard elements of the Syndicated Studies.

(c) **Use of Deliverables** - The Client shall not (and shall procure that its Representatives shall not) use the Deliverables or any data derived from the Deliverables or Services in any manner which breaches applicable law. The Client shall be responsible for ensuring that any use by Representatives of the Deliverables, data derived from the Deliverables and the Services, complies with the terms of this Agreement.

6.2 **Background IPR** - GfK shall at all times retain sole and exclusive ownership of Background IPR. GfK shall own all right, title and interest in any improvements, enhancements and adaptations of the Background IPR. GfK grants to Client a non-exclusive, non-transferable, non-sublicensable (other than to Representatives) licence to use the Background IPR to the extent necessary to use the Deliverables 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.

6.3 Access to the Portal and use of the Software Services

(a) Client accepts that due to the highly proprietary nature of the Portal and the contents of the data and reports, online access is restricted to Authorised Users only who are dealing with market research issues within Client's operation. Client shall be liable for all Authorised Users use of the Portal and the 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.

(b) 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.

(c) GfK reserves the right to suspend Clients (or any Authorised User) access to the Portal and/or use of the Software in the event:

- (i) Client (or any Authorised User) is in breach of any of this clause 6.3; or
- (ii) if GfK reasonably suspects the Clients (or Authorised User's) continued access of the Portal and/or use of the Software may cause damage or disruption to the systems or operations of GfK; or
- (iii) if an Authorised User has not accessed the Portal for a period of three (3) months or more.

- (d) GfK may restore the Client's access of the Portal and/or use of the Software if to GfK's reasonable satisfaction, any breach and/or threat to its systems or operations has been remedied.
- (e) Client acknowledges and agrees that the Portal and the Software may not be available during any scheduled or emergency maintenance periods.
- (f) 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 Portal and use of the Software as soon as possible. Client waives any claims it may have in respect of non-availability of the Software and/or access to the Portal for the reasons set out in this clause 6.3.
- (g) The Software is provided to the Client on an "as is" basis and all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.
- (h) GfK reserves the right to:
- make alterations in the method of collection or processing of information or in the content or layout of the Services (including within the Reports); and
 - provide upgrades of the Services that corrects faults, adds functionality or otherwise amends or upgrades the Services.
- (i) GfK reserves the right to provide New Releases, in which event, Client shall pay additional Fees in relation to such New Release and GfK shall cease to support the Software with effect from the date of the New Release.
- 6.4 Indemnity for third party claim on Intellectual Property Rights** – Subject to clause 6.5, GfK will indemnify Client from and against all Losses suffered or incurred by Client arising out of or in connection with any claim brought against the Client for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use of the Deliverables (**IPR Claim**). The indemnity provided under this clause 6.4 shall not apply to the extent that the IPR Claim arises out of or results from:
- any act or omission of Client or its Representatives which constitutes a breach of the Agreement or negligence;
 - GfK's use of anything provided by the Client or its Representatives in the provision of the Deliverables, including but not limited Intellectual Property Rights, Confidential Information or other materials or information;
 - any modification to the Deliverables not carried out by GfK; or
 - any combination of the Deliverables with anything not provided by GfK.
- 6.5** The Client shall:
- promptly notify GfK of any IPR Claim;
 - permit GfK, at its own cost, to conduct all negotiations and proceedings;
 - permit GfK to settle the claim (provided any such settlement wholly and unconditionally releases the Client from liability under the IPR Claim);
 - provide GfK with such reasonable assistance regarding the IPR Claim as is required by GfK, subject to reimbursement by GfK of the Client's reasonable costs; and
 - not, without prior consultation with GfK, make any admission relating to the IPR Claim or attempt to settle it, provided that GfK considers and defends any IPR Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Client into disrepute.
- 7. CONFIDENTIALITY & PUBLICITY**
- 7.1** Receiving Party undertakes that it shall not at any time during this Agreement, and for a period of two 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.
- 7.2** 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.
- 7.3** 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 7.
- 7.4** The provisions of this clause 7 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.
- 7.5** Unless expressly approved in writing by GfK, the Client shall not (and shall procure that its Representatives shall not) use the Deliverables or any data derived from the Deliverables or Services:
- 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.
- 7.6** GfK shall retain copies of Deliverables for two (2) years from the date of completion of the applicable Services.
- 8. CLIENT PERSONAL DATA**
- 8.1** GfK acts as a Data Processor in respect of the Client Personal Data it Processes on behalf of the Client. The Client is a Data Controller in respect of the Client Personal Data and shall comply with its obligations as a Data Controller under Data Protection Law. The Client warrants, represents and undertakes to GfK that it has obtained all necessary approvals and consents (or that there is otherwise a legal basis in accordance with the Data Protection Law) for it to provide Client Personal Data to GfK to enable it to perform its obligations under the Agreement. The Client warrants, represents and undertakes to GfK that, with respect to any Client Personal Data it provides to GfK for the purpose of sending invitations to participate in any survey research on behalf of Client, it shall:
- have first obtained verifiable consent from every individual included in such list specifying that they have agreed to receive emails inviting them to participate in survey research;
 - provide to GfK upon request the date, time, method of contact and IP address (if by email) by which Client obtained such consent from, as well as the nature of the Client's relationship with, each such individual; and
 - has not received any withdrawal or opt-out of such consent and agrees immediately to notify GfK if it does.
- 8.2** GfK shall implement and maintain an effective information security program that:
- includes administrative, technical, and physical safeguards; and
 - has appropriate technical and organisational measures,
- in each case, adequate to insure the security and confidentiality of Client Personal Data, protect against any anticipated threats or hazards to the security or integrity of Client Personal Data, protect against unauthorized access to or use of Client Personal Data, protect Client Personal Data against unlawful Processing or Processing otherwise than in accordance with this Agreement, and protect against accidental loss, destruction, damage, alteration or disclosure of Client Personal Data.
- 8.3** Without limiting the foregoing, such safeguards and measures shall include (as a minimum):
- implementing the measures prescribed by Data Protection Law;
 - taking reasonable steps to ensure the reliability of its Representatives having access to the Client Personal Data; and
 - implementing and maintaining reasonable disposal measures and training of its Representatives in the handling of Client Personal Data and the key principles of the Data Protection Law applicable to their handling of Client Personal Data.
- 8.4** If the Client is or becomes aware of any reason that would prevent its compliance with Data Protection Law or any incident of non-compliance with Data Protection Law in connection with the Processing of Client Personal Data under this Agreement it shall notify

- GfK in the most expedient time possible. GfK shall comply with its obligations as a Data Processor under Data Protection Law. If GfK is or becomes aware of any reason that would prevent its compliance with Data Protection Law or any incident of non-compliance with Data Protection Law in connection with the Processing of Client Personal Data under this Agreement it shall notify the Client in the most expedient time possible.
- 8.5 GfK shall maintain records in accordance with Article 30 of GDPR, including but not limited to maintaining a record of all categories of Client Personal Data, Data Subjects, purpose of the Processing, recipients of the Client Personal Data and location of the Client Personal Data. GfK shall make such records available to Client within fourteen (14) days of receiving a written request.
- 8.6 In order to ensure that Client's instructions in respect of any Client Personal Data can be carried out as required under this Agreement, GfK shall have in place appropriate processes and any associated technical measures that will ensure that Client's instructions can be complied with. Such processes and technical measures shall include (but not be limited to) what is reasonably necessary to comply with Client's instructions relating to the following:
- (a) requests made by Data Subjects to Client, or any exercise of privacy rights, in respect of Client Personal Data;
 - (b) provision of appropriate interfaces or support for other processes of Client in ensuring information is provided to Data Subjects as required by Data Protection Law;
 - (c) updating, amending or correcting the Client Personal Data of any individual upon request of Client from time to time;
 - (d) cancelling or blocking access to any Client Personal Data upon receipt of instructions from Client; and
 - (e) the flagging of Client Personal Data files or accounts to enable Client to apply particular rules to Client Personal Data, such as the suppression of marketing activity.
- 8.7 GfK shall not acquire rights or interest in the Client Personal Data, will only Process the Client Personal Data in accordance with this Agreement and any other written instructions of the Client.
- 8.8 GfK agrees to assist the Client within such reasonable timescale as may be specified by the Client with all Data Subjects rights requests received from the Data Subjects of the Client Personal Data Processed in connection with this Agreement. Should GfK receive any such requests directly, GfK will as soon as is reasonably practicable inform the Client that it has received the request and forward the request to the Client. GfK will not respond in any way to such a request, except on the instructions of the Client.
- 8.9 GfK agrees to assist the Client within such reasonable timescale as may be specified by the Client with the conduct of Privacy Impact Assessments and Prior Consultation requests to regulatory bodies in relation to Client Personal Data Processing under this Agreement.
- 8.10 GfK shall be entitled to transfer Client Personal Data to its Representatives and subcontractors for the purposes of providing the Services. GfK shall be responsible for procuring that its Representatives and subcontractors comply with the terms of this clause 8. GfK will ensure that any transfers of Client Personal Data to third countries or international organisations are compliant with Chapter V of GDPR.
- 8.11 GfK will notify the Client within forty-eight (48) hours of a Data Security Breach, detailing the nature of the breach, the likely consequences and any mitigating measures being taken and shall further support the Client in any notification of the breach to regulatory bodies and/or Data Subjects. GfK shall take prompt action to investigate the Data Security Breach and to identify, prevent and make best efforts to mitigate the effects of any such Security Breach in accordance with its obligations under this clause 8 and, subject to Client's prior agreement, to carry out any recovery or other action necessary to remedy the Data Security Breach. GfK shall not release or publish any filing, communication, notice, press release, or report concerning any Data Security Breach in respect of Client Personal Data without Client's prior written approval.
- 8.12 GfK shall return, destroy or permanently erase all Client Personal Data within twelve (12) months of the Services being completed in respect of that Client Personal Data.
- 9. GfK PERSONAL DATA**
- 9.1 Client acknowledges and agrees that GfK shall not be required to disclose any GfK Personal Data except in specifically described research situations, such as validation or modelling, permitted by and in accordance with the applicable laws and Industry Standards. In the event any such disclosure does take place, the following provisions of this clause 9 shall apply.
- 9.2 Client acts as a Data Processor in respect of the GfK Personal Data it Processes on behalf of GfK. GfK is a Data Controller in respect of the GfK Personal Data and shall comply with its obligations as a Data Controller under Data Protection Law. GfK warrants represents and undertakes to the Client that it has obtained all necessary approvals and consents (or that there is otherwise a legal basis in accordance with the Data Protection Law) for it to provide GfK Personal Data to the Client to enable it to be used in accordance with this Agreement.
- 9.3 Client shall implement and maintain an effective information security program that:
- (a) includes administrative, technical, and physical safeguards; and
 - (b) has appropriate technical and organisational measures,
- in each case, adequate to insure the security and confidentiality of GfK Personal Data, protect against any anticipated threats or hazards to the security or integrity of GfK Personal Data, protect against unauthorized access to or use of GfK Personal Data, protect GfK Personal Data against unlawful Processing or Processing otherwise than in accordance with this Agreement, and protect against accidental loss, destruction, damage, alteration or disclosure of GfK Personal Data.
- 9.4 Without limiting the foregoing, such safeguards and measures shall include (as a minimum):
- (a) implementing the measures prescribed by Data Protection Law;
 - (b) taking reasonable steps to ensure the reliability of its Representatives having access to the GfK Personal Data; and
 - (c) implementing and maintaining reasonable disposal measures and training of its Representatives in the handling of GfK Personal Data and the key principles of the Data Protection Law applicable to their handling of GfK Personal Data.
- 9.5 If GfK is or becomes aware of any reason that would prevent its compliance with Data Protection Law or any incident of non-compliance with Data Protection Law in connection with the Processing of GfK Personal Data under this Agreement it shall notify the Client in the most expedient time possible. The Client shall comply with its obligations as a Data Processor under Data Protection Law. If the Client is or becomes aware of any reason that would prevent its compliance with Data Protection Law or any incident of non-compliance with Data Protection Law in connection with the Processing of GfK Personal Data under this Agreement it shall notify GfK in the most expedient time possible.
- 9.6 Client shall maintain records in accordance with Article 30 of GDPR, including but not limited to maintaining a record of all categories of GfK Personal Data, Data Subjects, purpose of the Processing, recipients of the GfK Personal Data and location of the GfK Personal Data. Client shall make such records available to GfK within five (5) days of receiving a written request.
- 9.7 In order to ensure that GfK's instructions in respect of any GfK Personal Data can be carried out as required under this Agreement, Client shall have in place appropriate processes and any associated technical measures that will ensure that GfK's instructions can be complied with. Such processes and technical measures shall include (but not be limited to) what is necessary to comply with GfK's instructions relating to the following:
- (a) requests made by Data Subjects to GfK, or any exercise of privacy rights, in respect of GfK Personal Data;
 - (b) provision of appropriate interfaces or support for other processes of GfK in ensuring information is provided to Data Subjects as required by Data Protection Law;
 - (c) updating, amending or correcting the GfK Personal Data of any individual upon request of GfK from time to time;
 - (d) cancelling or blocking access to any GfK Personal Data upon receipt of instructions from GfK; and
 - (e) the flagging of GfK Personal Data files or accounts to enable GfK to apply particular rules to GfK Personal Data, such as the suppression of marketing activity.
- 9.8 The Client shall not acquire rights or interest in the GfK Personal Data, will only Process the GfK Personal Data in accordance with this Agreement to enable it to exercise its rights in relation to the Deliverables and in accordance with any other written instructions of GfK.
- 9.9 The Client agrees to assist GfK within such reasonable timescale as may be specified by GfK with all Data Subject rights requests received from the Data Subjects of the GfK Personal Data Processed in connection with this Agreement. Should the Client receive any such requests directly, the Client will as soon as is reasonably practicable inform GfK that it has received the request and forward the request to GfK. The Client will not respond in any way to such a request, except on the instructions of GfK.
- 9.10 The Client agrees to assist GfK within such reasonable timescale as may be specified by GfK with the conduct of Privacy Impact Assessments and Prior Consultation requests to regulatory bodies in relation to GfK Personal Data Processing under this Agreement.
- 9.11 The Client shall be entitled to transfer GfK Personal Data to its Representatives for the sole purposes of exercising its rights in relation to the Deliverables in accordance with this Agreement. The Client shall be responsible for procuring that its Representatives comply with the terms of this clause 9. The Client shall ensure that any transfers of GfK Personal Data to third countries or international organisations are compliant with Chapter V of GDPR.
- 9.12 The Client will notify GfK within twenty-four (24) hours of a Data Security Breach, detailing the nature of the breach, the likely consequences and any mitigating measures being taken and shall further support GfK in any notification of the breach to regulatory bodies and/or Data Subjects. The Client shall take immediate action to investigate the Data Security Breach and to identify, prevent and make best efforts to mitigate the effects of any such Security Breach in accordance with its obligations under this clause

9 and, subject to GfK's prior agreement, to carry out any recovery or other action necessary to remedy the Data Security Breach. The Client shall not release or publish any filing, communication, notice, press release, or report concerning any Data Security Breach in respect of GfK Personal Data without GfK's prior written approval.

- 9.13 GfK reserves the right to collect e-mail addresses from Respondents on non-Business CATI and CAPI surveys where the sample has not been provided by the Client, for the purpose of further participation in market research surveys carried out by GfK.
- 9.14 Client, its directors and its agents are expressly prohibited from using any information including video or audio recordings (such as those produced as a result of any online community platform, chat rooms, and telephone surveys or otherwise) about Respondents for the purposes of identifying the Respondents. The Deliverables shall only be used for analysing and reporting data at the aggregate level, and calibrating sample weights for statistical purposes. In addition, Client agrees to have any third parties who will have access to identifying information about Respondents sign a non-disclosure agreement in a form reasonably acceptable to GfK.
- 9.15 Client acknowledges that GfK has spent significant time and resources recruiting individuals who have met necessary or desirable verification requirements and have been selected to join or opted in to GfK's panels (**Panel Members**) and that any Panel Member Personal Data is the Confidential Information of GfK and Client shall not and shall procure that its Representatives shall not:
- decompile, reverse engineer or disassemble any portion of Panel Member Personal Data,
 - for its own or for a third party's account directly or indirectly recruit, solicit or otherwise contact any Panel Member.
- 9.16 The Client shall return, destroy or permanently erase all GfK Personal Data within fourteen (14) days of a request from GfK.
- 9.17 GfK and/or its auditors shall be permitted to audit the Client's systems, personnel, policies, records and processes to verify the Client's compliance with this clause 9, by providing no less than thirty (30) days' notice to the Client.

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;
 - an indemnity;
 - liability which may not otherwise be limited or excluded under applicable law; or
 - the Client, in respect of the Fees due or payable.
- 10.2 Subject to clause 10.1 and clause 10.4, neither party's aggregate liability, under or arising out of clauses 6, 7, 8 and 9 and whether arising from breach of contract, tort (including but not limited to negligence), breach of statute, misrepresentation or otherwise shall exceed one million pounds (£1,000,000).
- 10.3 Subject to clause 10.1, clause 10.2 and clause 10.4, neither party'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 exceed one hundred thousand pounds (£100,000).
- 10.4 Subject to clause 10.1, neither party shall 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 10.4 (b) to (g), whether such losses are direct, special, indirect or consequential losses.
- 10.5 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); and without limiting the generality of the foregoing, Client expressly acknowledges and agrees that GfK provides no warranty in relation to the survey response rates. All figures contained in GfK's reports that are estimates derived from sample surveys should be viewed as subject to the normal limits of survey error. GfK does not predict or assure any particular substantive results of its research in advance, nor does GfK accept any liability for:
- Client's interpretation of GfK's reports or of other data furnished to Client by GfK;

- any errors caused by errors in data provided by Client to GfK; or
- resale of survey results or other data by Client.

11. **CONCEPT TESTING, USER EXPERIENCE SERVICES & USABILITY TESTING**
- 11.1 **Concept Testing** - Client may require GfK to conduct Services involving Concept Testing. Client acknowledges and agrees that where its interviewers are asked to expose, reveal, disclose or describe Confidential Information as part of such Concept Testing to Respondents (**CT Disclosure**), GfK bears no responsibility in relation to such CT Disclosure. Client releases GfK from and against any and all liability resulting from or related to CT Disclosure. Where the Client requires GfK to conduct Concept Testing, Client will (on demand) indemnify and keep GfK and its Representatives indemnified in full from and against all Losses suffered or incurred by GfK or its Representatives arising out of or in connection with any claim against GfK or its Representatives arising out of or in connection with any description, presentation, use examination or trialling of such Concept Product, whether or not Client is the manufacturer, distributor or agent in respect of such Concept Product. If Client requests that GfK transport or arrange for the transport of any such property at any time, Client assumes the sole risk of loss, theft or damage to such property.
- 11.2 **User Experience Services & Usability Testing** - Should GfK engage in any human factors, ergonomic, User Experience Services or Usability Testing at Client's request;
- Client shall provide GfK with all product information (including without limitation any safety, discomfort, defect, inefficiency, or error-generating history) that is pertinent to the research;
 - Client shall create or approve and will ultimately be responsible for the research protocols, the sample design and the screener design;
 - Client shall (on demand) indemnify and keep GfK and its Representatives indemnified in full from and against all Losses arising from any claim or investigation alleging any failure in generating a product that is safe, comfortable, efficient or effective for users of the product, or in detecting any defects in a product's safety, comfort, efficiency or effectiveness.
 - Client shall be fully responsible for any bodily injury, death, illness or incapacity experienced by Respondents or GfK's Representatives as a result of testing any products, and Client shall (on demand) indemnify and keep GfK and its Representatives indemnified in full from and against all Losses arising resulting from the testing of the products;
 - GfK specifically excludes any warranty, commitment or obligation that the results of any human factors, user experience or ergonomic research performed by GfK will:
 - generate a product that is safe, comfortable, efficient or effective for users of the product,
 - detect any defects in a product's safety, comfort, efficiency or effectiveness; or
 - effectively contribute to any approval of the product by any regulatory body.
- 11.3 GfK does not warrant that Client will have ownership rights in any visual, technical or functional elements of any user interface (including without limitation its features and its "look and feel") that GfK recommends or suggests to Client. Client agrees that it has engaged GfK to advise on usability of a specific product, tool, or method of Client's and acknowledges and agrees that GfK, in preparing the Deliverables, conducts its research:
- focusing solely and exclusively on such usability and usability improvements, based substantially on the subjective perceptions of Respondents and expertise and knowledge of human factors psychology; and
 - without respect to other factors, including but not limited to whether a proposed solution or development:
 - is technologically feasible, cost effective, or comports with existing law or regulations; or
 - has previously been developed by a third party (and GfK does not (and is not obliged to) conduct any patent or other Intellectual Property Rights searches).
- 11.4 If the Services include the testing of new products, concepts, strategies, advertising campaigns or the like, GfK will have no liability if Respondents breach the confidentiality under which that testing is conducted.
- 11.5 Neither GfK nor its employees will be responsible for any inadvertent loss, theft or damage of or to Client's sample products or other tangible property which Client may provide to GfK.
12. **TERMINATION & CONSEQUENCES**
- 12.1 Either party may terminate the Agreement at any time by providing the other with at least ninety (90) days' notice.
- 12.2 Without affecting any of its rights or remedies, either party to this Agreement may terminate this Agreement 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.
- 12.3 Either party shall be entitled to terminate the Agreement upon notice to the other if:

- (a) 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
 - (b) 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
 - (c) 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
 - (d) 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
 - (e) 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
 - (f) 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;
 - (g) 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
 - (h) 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 12.3 (a) to (h) (inclusive); or
 - (i) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 12.4 In the event of any termination of the Agreement by GfK for any reason or termination of the Agreement by the Client pursuant to clause 12.1, the Client shall pay the applicable Fees for all work carried out, expenses incurred and financial commitments entered into by GfK as at the date of termination of the Agreement (including third party cancellation charges and termination fees).
- 12.5 Upon termination of the Agreement for any reason, all Fees which have been invoiced shall be immediately become payable.
- 12.6 The termination of the Agreement shall be without prejudice to the accrued rights and liabilities of the parties. The provisions of clauses 1, 6, 7, 8, 9, 10, 11, 12, 14 and 15 shall survive termination of the Agreement.

13. NON-SOLICITATION

Neither party shall, for a period of twelve (12) months from the Effective Date, (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of that party, any employee of the other party who is employed or engaged in any services which are relevant to the Services. A party shall not be in breach of this clause 13 as a result of running a national advertising campaign open to all comers and not specifically targeted at any of the staff or the customers of the other party. If either party commits any breach of clause 13, the breaching party shall, without prejudice to any other rights or

remedies of the claiming party, on demand, pay to the claiming party a sum equal to twelve (12) months' basic salary that was payable by the claiming party to that employee, worker or independent contractor plus the recruitment costs incurred by the claiming party in replacing such person.

14. FORCE MAJEURE

GfK shall not be liable for any delays in or failure to perform its obligations arising from a Force Majeure Event.

15. 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. **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