



THESE RETAILER TERMS ARE THE EXCLUSIVE TERMS GOVERNING THE USE AND SUPPLY OF GfK DATA AND RETAILER DATA BY RETAILER AND GfK. BY USING OR ACCESSING THE GfK DATA, RETAILER AGREES TO COMPLY WITH THESE RETAILER TERMS. BY USING OR ACCESSING RETAILER DATA, GfK AGREES TO COMPLY WITH THESE RETAILER TERMS. THESE RETAILER TERMS SHALL APPLY WHETHER OR NOT AN AGREEMENT SUMMARY HAS BEEN EXECUTED BY THE PARTIES.

1. RETAILER DATA & GfK DATA

GfK agrees to provide GfK Data to Retailer in consideration for the Retailer Data from Retailer (clause 3) (whether directly or from a third party designated by GfK).

2. GfK DATA, THIRD PARTY DATA AND GfK SOFTWARE

2.1 GfK shall supply GfK Data to Retailer, at a frequency determined by GfK.

2.2 GfK grants to Retailer a non-exclusive, non-transferable, non-sublicensable, revocable, licence to use GfK Data for its own internal business purposes.

2.3 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 GfK Data, nor does GfK accept any liability for Retailer's interpretation of GfK Data.

2.4 Retailer acknowledges and agrees that the supply of GfK Data is dependent upon the supply of Retailer Data by Retailer and Third Party Data by its Participants and that those Participants provide no guarantee to GfK about the availability, completeness of accuracy of such Third Party Data. Therefore GfK:

- (a) does not accept any liability for unavailability, incompleteness or inaccuracy of Retailer Data or Third Party Data which impacts on GfK Data; and
- (b) reserves the right to make changes to GfK Data, to the extent it is necessary to do so due to the unavailability, incompleteness or inaccuracy of any Retailer Data or Third Party Data.

2.5 GfK grants Retailer a non-exclusive, non-transferable and revocable licence to use the GfK Software, to the extent necessary for Retailer to receive GfK Data. GfK does not warrant that the GfK Software will be free from interruption or accurate, complete, reliable, secure, useful or fit for purpose.

2.6 GfK reserves the right to suspend Retailer's access to the GfK Software (with or without notice) for any reason.

2.7 All rights title and interest in GfK Data and GfK Software (including but not limited to any improvements, enhancements and adaptations of the same) are the property of GfK or its licensors, as the case may be.

2.8 Unless GfK has given its prior written consent, Retailer shall not disclose, publish, sell, distribute, copy or reproduce in full or part, GfK Data, or allow any third party to access GfK Data to come into the possession of anyone, other than its Representatives. Unless expressly approved in writing by GfK, Retailer shall not (and shall procure that its Representatives shall not) use GfK Data:

- (c) whilst identifying GfK as the source of such data, information or reports;
- (d) for the purpose of supporting litigation;
- (e) in any advertising or promotional copy;
- (f) for supporting comparative advertising claims;
- (g) for resale or syndication; or
- (h) for distribution to any media outlet in support of external public relations efforts, including news articles, interviews, press releases and events.

2.9 Retailer shall comply with all applicable laws and regulations with respect to the use of GfK Data. Retailer agrees that GfK Data will be used by Retailer in compliance with any applicable competition and anti-trust laws.

3. RETAILER DATA

3.1 Retailer shall supply Retailer Data to GfK. Where required by GfK, such Retailer Data must be provided to GfK via a third party designated by GfK.

3.2 The frequency of the supply of Retailer Data shall be as determined by GfK and be in an agreed and consistent computerised form, itemising sales of all products and services sold by Retailer covering the content and categories agreed with GfK. Where applicable, the Retailer shall also give GfK all access reasonably necessary to conduct a manual stocktake audit to obtain the Retailer Data.

3.3 Retailer grants to GfK and its Group an exclusive, perpetual right and licence, to do the following:

- (a) to access, use and Manipulate Retailer Data for its own business purposes; and
- (b) to Distribute the Manipulated versions of Retailer Data to third parties and to permit them to use the same for their own business purposes.

3.4 Retailer warrants, represents and undertakes to GfK that it has all necessary rights, approvals and consents to supply GfK with Retailer Data (and that GfK's use of Retailer Data will not infringe the Intellectual Property Rights (or other rights) of any third party).

4. LIMITATION OF LIABILITY

4.1 Nothing in these Retailer Terms excludes or limits the liability of either party in respect of:

- (a) death or personal injury caused by its negligence (including negligence of its employees, agents or contractors);
- (b) fraud, fraudulent misrepresentation or fraudulent misstatement; or
- (c) liability which may not otherwise be limited or excluded under applicable law.

4.2 Subject to clause 4.1 and clause 4.3, GfK's aggregate liability, under or arising out of the Agreement and the Retailer Terms and whether arising from breach of contract, tort (including but not limited to negligence), breach of statute, misrepresentation or otherwise shall not exceed five thousand pounds (£5,000).

4.3 Subject to clause 4.1, GfK shall not be liable under or arising out of the Agreement and the Retailer Terms and whether arising from breach of contract, tort (including but not limited to negligence), breach of statute, misrepresentation or otherwise for any:

- (a) special, indirect or consequential loss;
- (b) pure economic loss;
- (c) loss of profits;
- (d) loss of revenue;
- (e) loss of contracts;
- (f) loss of business; or
- (g) loss of goodwill,

(and in the case of the types of loss in clauses 4.3 (b) to (g), whether such losses are direct, special, indirect or consequential losses).

4.4 Except as expressly provided in the Retailer Terms (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).

5. CONFIDENTIALITY

5.1 Receiving Party undertakes that it shall not at any time 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 these Retailer Terms.

5.2 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 these Retailer Terms. Receiving Party shall ensure that its Representatives to whom it discloses Disclosing Party's Confidential Information comply with this clause 6.

5.3 The provisions of this clause 5 shall not apply to any information that:

- (a) 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;
- (b) 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 these Retailer Terms;
- (c) 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
- (d) 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.

6. TERMINATE

6.1 Either party may terminate the Agreement or cease the supply of Retailer Data or GfK Data (as applicable) by providing the other party with no less than ninety (90) days' written notice. GfK may terminate the Agreement (or cease the supply of GfK Data) if for any reason any Participant ceases to supply any data which GfK is reliant upon to provide GfK Data.

6.2 Either party may terminate the Agreement (or cease the provision of Retailer Data or GfK Data, as applicable) with immediate effect by giving written notice to the other party if the other party commits a material breach of any term of the Retailer Terms and (if such breach is remediable) fails to remedy that breach within a period of seven (7) days after being notified in writing to do so.

6.3 In the event that Retailer ceases the supply of Retailer Data for any reason, GfK shall be entitled to cease the supply of GfK Data. The termination of the Agreement (or ceasing of the supply of Retailer Data or GfK Data, as applicable) shall be without prejudice to the accrued rights and liabilities of the parties. The provisions of clauses 2.8, 2.9, 3.3, 3.4, 4, 5, this 6.3, 7 and 8 shall survive termination of the Agreement (and the ceasing of the supply of GfK Data or Retailer Data, as applicable).

7. GENERAL

Subcontractors - Retailer acknowledges and agrees that GfK may subcontract all or part of its obligations without consent of Retailer but shall remain responsible as the primary obligor. **Variation** - No variation of the Agreement or Retailer Terms shall be valid unless it is in writing and signed by, or on behalf of, authorised representatives of each of its parties. **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 the Retailer Terms. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in the Retailer Terms. **Assignment** - Neither party shall, without the prior written consent of the other (not to be unreasonably withheld or delayed) assign the Agreement or the Retailer Terms, save that GfK may assign the Agreement to any Group company. **Notices** - A notice given to a party under or in connection with the Agreement or the Retailer Terms shall be in writing and sent to the party at the address given in the Agreement or the Retailer Terms or as otherwise notified in writing to the other party. Notices served by Retailer 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 or Retailer Terms 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 or Retailer Terms which confers a benefit on any member of the GfK Group may be enforced by any member of the GfK Group. However GfK and Retailer shall be entitled to vary the Agreement (or Retailer Terms) and/or terminate it without the consent of any member of the GfK Group. **Governing law and jurisdiction** - The Agreement and the Retailer Terms, 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 courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement (or the Retailer Terms) or its subject matter or formation (including non-contractual disputes or claims). **Electronic Execution & Counterparts** - The 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 the Agreement agrees to use electronic signatures; and be subject to the applicable laws governing the use of electronic signatures.

8. DEFINITIONS

The following terms used in these Retailer Terms shall have the following meanings:

Agreement means the Agreement Summary and Retailer Terms.

Agreement Summary means any agreement summary signed by both parties, to which Retailer Terms are attached.

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.

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

Distribute means to make accessible by any means (including re-selling, sub-licensing, transferring or disclosing) and the terms "**Distributed**" and "**Distribution**" shall be construed accordingly.

GfK Data means the data supplied by GfK, as referred to on the Agreement Summary (or in the absence of an Agreement Summary, as determined by GfK from time to time).

GfK Software means any software or Portal provided by GfK which Retailer accesses or uses to receive GfK Data.

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.

Intellectual Property Rights means in relation to either party 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 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.

Manipulate means to combine or aggregate with other information or data or to otherwise adapt, modify, reformat or enhance in any way and the term "**Manipulated**" shall be construed accordingly.

SHORT- FORM RETAILER TERMS & CONDITIONS



Participants means other partners of GfK who are in a similar business sector as Retailer and who have signed a partnership agreement with GfK agreeing to share their data with GfK for the purposes of GfK being able to provide the 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).

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

Retailer Data means the data supplied by Retailer as referred to on the Agreement Summary (or in the absence of an Agreement Summary, as determined by GfK from time to time).

Retailer Terms means these Short Form Retailer Terms & Conditions.

Third Party Data means any third party information used by GfK in the provision of the GfK Data, including but not limited to: (i) data supplied by Participants; and (ii) data collected from any other third party sources.