

# Sky's Framework Terms and Conditions for Data Matching & Analytical Services

## ("Terms and Conditions")

### 1. DEFINITIONS AND INTERPRETATION

1.1 Unless otherwise defined in this Agreement, terms used in relation to the IT and market insight industries or other relevant business contexts will be interpreted in accordance with their generally understood meaning in the relevant industry or business context.

1.2 In the Agreement, the following definitions apply:

**Affiliate:** in relation to any Party, any person, company, association or other separate legal entity which, directly or indirectly: (a) is Controlled by that Party; (b) Controls that Party; or (c) is under substantially common Control with that Party.

**Agency:** the Client's named advertising, marketing or media agency as specified in the Order.

**Agreement:** as defined in the Order.

**Assumptions:** the assumptions set out in the Order upon which Sky's performance of the Services are based.

**Background IP:** Intellectual Property Rights (i) owned by or licensed to a Party; or (ii) in any items which are independently developed by a Party or its Representatives.

**BARB:** Broadcasters' Audience Research Board Limited.

**BARB End User Licence:** the licence required to be entered into by the Client pursuant to clause 5.2.

**Business Day:** a day (other than a Saturday or Sunday) on which banks in the City of London are open for ordinary banking business.

**Campaign:** a marketing campaign agreed between the Parties in writing or via email from time to time.

**Charges:** the charges payable by the Client for the supply of the Services as specified on the Order.

**Client:** the entity specified on the Order.

**Client Data:** the dataset delivered by the Client or its agent to Sky or its Third Party Contractors pursuant to the Data Brief or as agreed between the Parties via email from time to time, which shall include any updates to such dataset that may be provided by the Client.

**Commencement Date:** the date the Order has been signed by all Parties.

**Confidential Information:** in respect of Sky or the Client, information in any form (whether written, electronic, graphic, oral or otherwise) that falls within any of the following categories:

(a) it has been provided by the Party or its Representatives to the other Party or that Party's Representatives in connection with this Agreement and which was marked confidential (or a similar designation) or was stated to be confidential at the time of disclosure;

(b) it concerns the customers, finances, sales, marketing, products, suppliers, employees, business operations, forecasts or management of, or it would ordinarily be deemed by a reasonable person to be confidential or proprietary to: (i) in the case of the Client's Confidential Information: the Client or Client's Affiliates; or (ii) in the case of Sky's Confidential Information: Sky or its Representatives;

(c) the Sky Data, the Matched Data and the Client Data; or

(d) the provisions (but not the existence) of this Agreement and the process of its negotiation.

**Control:** the power of a person, company, association or other separate legal entity to secure (whether by the holding of shares, possession of voting rights or by virtue of any powers conferred by articles of association, constitution, partnership agreement or other document regulating such person) that the affairs of another are conducted in accordance with its wishes and "Controlled" shall be construed accordingly.

**Data Brief:** Sky's data brief which contains the technical, functional and delivery requirements for the supply of Client Data.

**Data Protection Laws:** the: Privacy and Electronic Communications (EC Directive) Regulations 2003 and any subordinate or associated regulations and the General Data Protection Regulation (EU) 2016/679 ("GDPR") (together with laws implementing or supplementing the GDPR in Member States, in each case as amended and superseded from time to time), and/or all applicable laws, rules, regulations, from time to time, in each case in each jurisdiction where the services are delivered in relation to data privacy.

**Deliverables:** the results, reports, and other deliverables or materials created or produced by, or on behalf of, Sky for the Client as part of the Services, including those identified as such in the Order, but excluding the Matched Data, the Developments and Background IP.

**Dependencies:** the responsibilities, tasks, obligations or functions of the Client as set out in the Order which are required for the performance of the Services.

**Developments:** all know-how, methodology, templates, models, customer attributes, source code, inventions, works of authorship and improvements to Intellectual Property Rights owned or licensed by Sky, created, made or discovered by Sky, solely or in collaboration with others, in the course of its performance of the Services or in the development of the Deliverables, including any Intellectual Property Rights in such items, but excluding Background IP and Deliverables.

**Good Industry Practice:** means, in relation to Sky, the exercise of that degree of skill and care which would reasonably be expected to be exercised by a reputable supplier providing services of the same (or materially similar) nature as those to be provided by Sky under this Agreement.

**Instruction:** means a written instruction addressed to Sky about how it, as Client's data processor or sub-processor, as the situation dictates, should process personal data under this Agreement on behalf of the Client.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and neighbouring and related rights, trademarks, 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 right, topography rights, moral 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 rights to apply for and be granted and renewals or extensions of, and rights to claim priority from, such rights, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Law:** all applicable legislation, statutes, directives, regulations, judgments, decisions, decrees, orders, instruments, by-laws, and other legislative measures or decisions having the force of law, treaties, conventions and other agreements between states, or between states and the European Union or other supranational bodies, rules of common law, customary law and equity and all civil or other codes and all other laws of, or having effect in, any jurisdiction from time to time.

**Matched Data:** the hashed data set created by Sky or (where the Client has a separate agreement with such Third Party Contractor) its Third Party Contractors as a consequence of combining, matching or aggregating the Client Data (wholly or in part) with the Sky Data (wholly or in part) and other data or information or to adapt the Client Data (wholly or in part).

**Order:** the order form for data matching and analytical services agreed between the Parties detailing, amongst other things, the description of the Services.

**Party:** means Sky or the Client and includes their respective successors in title and permitted assigns, and "Parties" will be construed accordingly.

**Representatives:** a Party's employees, officers, representatives, advisers, or Affiliates and Third Party Contractors.

**Services:** the services, including the creation, production and delivery of Deliverables, as set out in the Order.

**Sky:** Sky UK Limited, a company incorporated in the United Kingdom with registered company number 02906991 and having its registered office address at Grant Way, Isleworth, Middlesex, TW7 5QD

**Sky Advertising Agreement:** the agreement entered into between the Client (or its Agency) and Sky for the provision of booking a Sky advertising campaign.

**Sky Data:** data determined by Sky which is owned or licensed by Sky or its Affiliates, to be used in the performance of the Services but excluding Client Data (whether appended to Sky Data or otherwise).

**Term:** has the meaning given to it in the Order.

**Third Party Contract:** any applicable contract or licence in which Sky or its Affiliates are a party to and which the Services are materially dependent upon, and "**Third Party Contractor**" shall mean the counterparty to such contract. For the avoidance of doubt, Third Party Contractor shall include BARB.

**Web Portal:** (if applicable) the internet facing software application service through which the Client may load the Client Data and/or access the Deliverables as outlined in the Order or in the Data Brief.

1.3 For the purpose of this Agreement the following terms; "supervisory authority", "personal data breach", "data protection impact assessment", "data subject", "personal data", "process" and "processing", "data controller", "data processor", "data subject" shall have the same meanings as ascribed to them under the Data Protection Law (where applicable).

1.4 Except where the context requires otherwise words importing the singular include the plural and vice versa; a gender includes all genders; and persons include unincorporated associations, partnerships and any entity with legal standing. References to "include" or "including" are construed as being without limitation. References to "clauses" are references to clauses of these Terms and Conditions. Clause headings are for ease of reference only and do not affect the interpretation or construction of the Agreement. References to a particular Law or provision of Law shall be construed as a reference to such Law or provision as amended and in force from time to time and to any Law which re-enacts or consolidates (with or without modification) any such Law.

1.5 This Agreement is the result of arm's length negotiations between the Parties and each will be construed to have been drafted by both Parties such that any ambiguities will not be construed against either Party as a result of that Party having drafted or proposed the relevant provision.

1.6 A reference to any remedy, consequence or right of a Party pursuant to a breach of a provision by the other Party does not limit any other right or

remedy of the Party unless it is expressly stated to do so.

## 2. ACCEPTANCE OF ORDERS

2.1 From time to time, the Parties may agree to enter into separate Orders which shall incorporate and be governed by these Terms and Conditions (except insofar as these Terms and Conditions are explicitly referenced and varied by the Order or any special terms in the Order).

2.2 Any of the terms and conditions that the Client may state on any quote, invoice, or other documentation to apply to any Order shall have no force or effect with respect to the Services.

## 3. SUPPLY OF SERVICES

3.1 The Parties agree that if the Dependencies are met and Assumptions are correct, Sky shall supply the Services and provide the Deliverables to the Client in accordance with the Order in all material respects.

3.2 Sky shall use reasonable endeavours to meet any performance dates agreed between the Parties, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

## 4. CHARGES AND PAYMENT

4.1 In consideration of the performance of the Services, the Client will pay Sky the Charges specified in the respective Order. The Client shall supply to Sky a valid purchase order for the Charges and, if applicable, any expenses prior to completion of the Services. Sky shall invoice the Client as outlined in the Order. The Client shall pay such invoice in cleared funds to a bank account nominated in writing by Sky within thirty (30) days of the date of the invoice.

4.2 Sky shall be entitled to charge the Client for any reasonable expenses incurred by Sky in connection with the Services (i.e. travel, hotel and subsistence) with the Client's prior approval.

4.3 All amounts payable by the Client under this Agreement are exclusive of amounts in respect of VAT chargeable for the time being. Where any taxable supply for VAT purposes is made under this Agreement by Sky to the Client, the Client shall, on receipt of a valid VAT invoice from Sky, pay to Sky such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

4.4 Without limiting any other right or remedy of Sky, if the Client fails to make any payment due to Sky under this Agreement by the due date for payment (Due Date), Sky shall have the right to charge interest on the overdue amount at the rate of two percent (2%) per annum above the then current base rate of Royal Bank of Scotland accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

4.5 The Client shall pay all amounts due under this Agreement in full without any deduction or withholding except as required by Law and the Client shall not be entitled to assert any credit, set-off or counterclaim against Sky in order to justify withholding payment of any such amount in whole or in part. Sky may, without limiting its other rights or remedies, set off any amount owed to it by the Client against any amount payable by Sky to the Client.

## 5. CLIENT'S REPRESENTATIONS AND WARRANTIES

5.1 The Client shall:

(a) use the Deliverables solely for its own benefit and only for its own internal business purposes. The Client shall not sell, assign, licence, reproduce, republish, display, disclose, transmit or distribute, commercially exploit, decompile or reverse engineer or otherwise provide or allow the provision of such Deliverables or any contents or insights comprised in them to any third party without the prior written consent of Sky (such consent may be withheld at Sky's sole discretion), except that the Client may disclose the Deliverables to its Agency provided that: (i) such disclosure is for the sole benefit of the Client's internal business purposes (and not for the Agency's own or other purposes); (ii) the Client procures that the Agency keep such information confidential as if the Agency was a signatory to clause 8.6 of this Agreement, and (iii) the Client shall be liable for any losses suffered by Sky for any breach of the Agency not complying with such purpose;

(b) co-operate with Sky in all matters relating to the Services and procure the good faith co-operation of its Agency;

(c) provide Sky with such information, data and materials as Sky may reasonably require in order to perform the Services and warrant that such information is to the best of the Client's knowledge materially complete and accurate including the information, data and materials set out the Order. The Client shall also correct any inaccurate personal data it processes when it becomes aware of such inaccuracy;

(d) obtain and maintain all necessary licences, permissions and consents which may be required for Sky to process the information, data and materials in order to perform the Services, before the date on which Client Data is transferred to Sky; and

(e) not use the Deliverables (i) for the purposes of supporting litigation unless a court order is obtained in relation to the relevant action; (ii) for supporting comparative claims for any reason, including for advertising or other publication purposes; (iii) for distribution to any media outlet in support of external public relations efforts, including news articles, interviews, press releases and events, (iv) in any misleading or illegal manner, or (v) in a manner which would materially or adversely impact upon the reputation or

goodwill of Sky.

5.2 If BARB data is being used to provide the Services, as specified on the Order, the Client:

(a) shall be a paid-up BARB licence holder and continue to hold such licence for the term of this Agreement (for the avoidance of doubt, the Client itself, and not an Affiliate or its Agency, must hold such licence);

(b) agrees to comply with all obligations under such BARB licence despite any other provision in this Agreement.

(c) acknowledges and agrees that Sky has made it aware of Sky's obligations and limitations in using BARB related information or data pursuant to the subscriber agreement between Sky and BARB; and

(d) agrees that, despite Sky's confidentiality obligation pursuant to clause 9, Sky may inform BARB that it is providing the Client with BARB related data and the Client acknowledges that BARB may publish its name in its central subscriber list.

5.3 If Sky's performance of any of its obligations under this Agreement is prevented or delayed by any failure of the Client to perform any of the Dependencies or any relevant obligation, any material act or omission by the Client or to the extent that any of the Assumptions are incorrect ("Client Default"):

(a) Sky shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve itself from the performance of any of its obligations to the extent the Client Default prevents or delays Sky's performance of any of its obligations; and

(b) Sky shall not be liable for any costs, fines or losses sustained or incurred by the Client arising directly or indirectly from Sky's failure or delay to perform any of its obligations, including for the avoidance of doubt any fines which may arise if the Client do not have a legal basis for Sky to perform the Services.

## 6. WEB PORTAL

6.1 During the Term, Sky may grant the Client a limited right to use the Web Portal to either (i) transfer the Client Data to Sky; and/or (ii) access the Deliverables.

6.2 The Client shall use all reasonable endeavours to prevent any unauthorised access or use of the Web Portal and in the event of any such unauthorised access or use, shall notify Sky immediately on becoming aware of any unauthorised access to, or use of, the Web Portal by any person.

6.3 In the event of any conflict between the terms of use on the Web Portal and the Agreement, the terms in the Agreement shall prevail.

## 7. INTELLECTUAL PROPERTY RIGHTS

7.1 Nothing in this Agreement will operate to transfer ownership of the Background IP of either Party to the other Party.

7.2 Client grants Sky and its Affiliates a non-exclusive licence to use, modify and copy the Client Data and any Client Background IP provided to Sky or its Affiliates for the purposes of performing their respective obligations under this Agreement and, if applicable, the Sky Advertising Agreement.

7.3 As between the Parties:

(a) the Matched Data will be jointly owned by each of Sky and the Client and, unless authorised by this Agreement or in writing, neither Party shall have the right to use the Matched Data without the prior written consent of the other Party, such consent may be withheld at a Party's sole discretion; and

(b) Sky will own the Intellectual Property Rights in the Deliverables and Developments.

7.4 In respect of the Matched Data:

(a) Sky is authorised to use, modify, copy and delete the Matched Data for the purposes of providing the Services and performing its obligations under this Agreement; and

(b) it will be hosted in a technical environment owned or controlled by Sky or its Affiliates and the Client shall have no right of access to such environment or the Matched Data except pursuant to clause 12 (Audit).

the Client shall have no right to, or access to, the Sky Data pursuant to this Agreement.

7.5 Sky grants the Client:

(a) a non-exclusive licence during the Term to use any Sky's Developments in connection with the Services and for its own internal business purposes; and

(b) a perpetual, irrevocable and non-exclusive licence to use the Deliverables in the United Kingdom for its own internal business purposes.

7.6 Sky shall at all times whether during or after termination or expiry of this Agreement indemnify the Client against all losses, damages, costs (including reasonable legal fees) and liabilities suffered by, incurred by or awarded against the Client arising out of or in relation to any infringement or alleged infringement of any Intellectual Property Rights of any third party as a result of the Client's receipt of the Deliverables.

7.7 Notwithstanding any other provision in this Agreement, clause 7.6 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly as a result of the use of the Client's Data or any parts of the Matched Data that have been provided by the Client or derived

from such parts.

7.8 The Client shall at all times whether during or after termination or expiry of this Agreement indemnify Sky against all losses, damages, costs (including reasonable legal fees) and liabilities suffered by, incurred by or awarded against Sky arising out of or in relation to any infringement or alleged infringement of any Intellectual Property Rights of any third party as a result of Sky's receipt of Client Data or use or possession of any Intellectual Property Rights provided or otherwise made available to Sky by the Client under this Agreement.

## 8. DATA PROTECTION

8.1 Sky and the Client acknowledge that for the purposes of the Data Protection Laws: (i) the Client is the data controller and Sky is the Client's data processor in respect of any personal data provided by the Client (including Client Data) and processed by Sky under this Agreement; and (ii) in relation to the personal data in the Sky Data, Sky is the data controller.

8.2 The Parties agree to comply with their respective obligations under Data Protection Law in respect of the provision of personal data contained in the Client Data delivered to Sky.

8.3 Sky shall process the Client's personal data only in accordance with this Agreement and the Client's lawful Instructions from time to time (despite clause 14.3, the Parties may communicate by e-mail with regard to Client Data instructions) and shall not process the Client's personal data for any purpose other than for the purpose of performing its obligations under this Agreement. Sky shall notify the Client in the event it reasonably believes any given Instruction given by the Client is unlawful.

8.4 Sky shall:

(a) not, unless otherwise agreed between the Parties, transfer the personal data in the Client Data outside of the European Economic Area;

(b) take reasonable steps to ensure the reliability of all its employees and subcontractors who have access to the personal data in the Client Data and ensure that they are bound by appropriate confidentiality obligations;

(c) promptly comply with any reasonable request from the Client requiring it to delete Client Data and Matched Data;

(d) to the extent Sky shares any personal data contained in the Client Data with any third party, the Client acknowledges that Sky does not act as Data Controller and Sky shall ensure that it and any such third party complies with all Data Protection Law concerning the sharing of such personal data;

(e) provide reasonable assistance to the Client where, in relation to the processing of personal data described in this clause 8, the Client is required to: (i) respond to the exercise of any right afforded to a data subject under Data Protection Law, carry out a data protection impact assessment, undertake prior consultation with the relevant supervisory authority, or demonstrate its compliance with its obligations under Data Protection Law, and in each case such assistance shall be at Client's request and cost; (ii) carry out an audit or facilitate an inspection by a supervisory authority of Sky's premises and relevant systems, provided that where such audit or inspection concerns systems provided by Sky's sub-contractors, the scope of such audit and inspection shall be as permitted under the relevant agreement in place between Sky and such sub-contractor and, in any case, such assistance shall be at Client's request and cost; and (iii) file a notification of a personal data breach and prior consultation with the relevant supervisor authority and, where such personal data breach is not directly caused by Sky's actions, such assistance shall be at Client's request and cost; and

(f) notify Client: (i) as soon as reasonably possible, if it receives any requests or queries from supervisory authorities or data subjects relating to personal data in respect of which the Client is the data controller; and (ii) without undue delay, if it becomes aware of a personal data breach, providing reasonable information.

(g) .

8.5 Sky warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:

(a) take appropriate technical and organisational measures against the unauthorised or unlawful processing of personal data contained in the Client Data and against the accidental loss or destruction of, or damage to, such data to ensure a level of security appropriate to: (i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and (ii) the nature of the data to be protected; and

(b) take reasonable steps to ensure compliance with those measures.

8.6 The Client represents and warrants that:

(a) it will be solely responsible for determining the legal basis for Sky to process the personal data contained in the Client Data;

(b) Sky will have no liability for failure of the Client to accurately determined the legal basis prior to the processing of the Client Data;

(c) it is responsible for ensuring that the privacy statement rendered to data subjects accurately reflects and is consistent with the scope of the Services;

(d) if applicable, the Client has provided each data subject with appropriate information as to how Sky will process the personal data contained in the Client Data as required by Data Protection Law;

(e) it has full authority to grant the licences granted by Client under this Agreement; and

(f) that it has reviewed the technical and organisational security measures Sky applies when it processes personal data as Client's data processor and that it deems them appropriate and has taken steps to ensure that any data it or its affiliates and agents pass to Sky are transferred securely.

8.7 Client consents to Sky appointing subcontractors to assist it with the provision of the Services including the processing of personal data, provided that Sky shall provide reasonable prior notice to the Client of such appointment and provided further that no such subcontractor is established in a territory that is not deemed to provide an adequate level of protection under Data Protection Law or that otherwise is deemed an adequate recipient of personal data under Data Protection Law. Sky shall also provide Client with reasonable prior notice of any subsequent change of terms to an agreement Sky has with any of its subcontractors where such change is relevant to either Party's compliance with Data Protection Law and the Client shall have 14 days to reasonably object. If the Client fails to respond the Client shall be deemed to have consented to the appointment. Sky shall ensure that the terms on which it appoints sub-contractors comply with Data Protection Law and are not less onerous than those set out in this clause 8.

8.8 Nothing in this Agreement restricts either Party from collecting, processing, storing and using any personal data such Party independently collects directly from a data subject in accordance with such Party's own data protection notice, service agreements and Applicable Law.

## 9. CONFIDENTIALITY

9.1 Subject to clauses 9.2 and 9.3, Sky and the Client:

(a) shall treat as strictly confidential: (i) in the case of Sky, any Confidential Information of the Client; and (ii) in the case of the Client, any Confidential Information of Sky and its Affiliates; and

(b) shall not, except with the prior written consent of the disclosing Party, make use of (save for the purposes of performing its obligations under this Agreement) or disclose or make available in whole or part to any person any Confidential Information except on a need to know basis or for the performance of the Services.

9.2 Clause 9.1 shall not apply if and to the extent that the Party using or disclosing Confidential Information can demonstrate that:

(a) such disclosure is required by Law or by any court or other authority having applicable jurisdiction provided that, as far as it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible;

(b) such Confidential Information has been placed in the public domain other than through the fault of that Party;

(c) such Confidential Information has been independently developed by that Party without reference to the Confidential Information of the other Party;

(d) such Confidential Information was already known by that Party prior to the disclosure without an obligation of confidentiality, or without a breach of such an obligation of confidentiality or Law; or

(e) such Confidential Information was, is, or becomes independently received from a third party without any obligation of confidence and the Party using or disclosing Confidential Information has made reasonable enquiries that the third party owed no obligation of confidence to the other Party.

9.3 Sky may disclose Confidential Information to its Representatives where such disclosure is reasonably required for the purposes of exercising its rights or performing its obligations under this Agreement and/or, if applicable, in connection with the performance of the Sky Advertising Agreement. Sky and/or the Client may disclose the Deliverables to the Agency. Such disclosure shall be made on the basis that the relevant third party shall have confidentiality obligations no less onerous than the one contained in this Agreement.

9.4 The Parties agree that any claim by one Party for a breach by the other of Data Protection Law or their obligations under this Agreement which relate to the provision of Client Data or Matched Data must be claimed under the clause 8.

9.5 Notwithstanding clause 9.1, on completion of the Services, Sky may evaluate the effectiveness of a campaign and may produce a case study (describing the Client, in general terms the scope of work, Sky's approach to the Services and the results delivered) for inclusion in Sky's future sales collateral, pitches and press releases. Sky will obtain the approval of the Client (which can be withheld at the sole discretion of the Client) before publishing such case study. On receipt of the approval by the Client, the Client hereby grants, or will procure the grant of, a non-exclusive, non-transferable, royalty-free licence to Sky to use, execute, reproduce and display the Client's name and company logo for reference, marketing or advertising purposes. In addition to the mechanisms for giving notice specified in clause 14.3, the Parties may communicate in respect of any matter relating to the Case Study by their Representatives via email.

## 10. LIMITATION OF LIABILITY AND WARRANTIES

10.1 Nothing in the Agreement shall limit or exclude either Party's liability for:

(a) any liability which any Party may have to an individual (or to the estate of a deceased individual) for the death of, or personal injury sustained by, such individual to the extent such death or personal injury was caused by its negligence, or the negligence of a Party's employees, agents or subcontractors (as applicable);

(b) any liability which a Party may have for fraud or fraudulent misrepresentation; or

(c) any liability to the extent any such limitation or exclusion of liability would be in contravention of Law.

10.2 Subject to clause 10.1:

(a) neither Party will be liable to the other Party for any special, indirect or consequential loss or damage including any loss of business or profits, loss of business opportunity, loss of anticipated savings, depletion of goodwill, loss or corruption of data or information in each case whether arising from contract, tort (negligence), breach of statutory duty or otherwise;

(b) the maximum aggregate liability of Sky to the Client in respect of the indemnity in clause 7.6 and a breach of clause 7 (Intellectual Property Rights) shall be limited to £500,000;

(c) the maximum aggregate liability of Sky to the Client in respect of a breach of clauses 8 (Data Protection) or clause 9 (Confidentiality) shall be limited to £500,000; and

(d) subject to (b) and (c) above, the maximum aggregate liability of Sky to the Client in respect of any losses suffered or incurred by the Client arising out of or in relation to any proceedings, claim or action resulting from any breach of contract, tort (negligence) or breach of statutory duty, shall be limited to £15,000.

10.3 Sky warrants that:

(a) it will perform its obligations under this Agreement in accordance with Law and Good Industry Practice; and

(b) it has full authority to grant the licences granted by Sky under this Agreement.

10.4 Except as set out in the Agreement, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by Law, excluded from this Agreement.

10.5 In no event does Sky warrant that the use of the Service will be uninterrupted or error-free or that the Service or Deliverables obtained by the Client will meet the Client's requirements or achieve a particular result.

10.6 The Client accepts responsibility for the selection of Services and/or Deliverables to achieve its intended results and acknowledges that the Services have not been developed to meet the individual requirements of the Client.

10.7 The Client acknowledges and agrees that: (i) the Services and/or Deliverables are not intended to be used as the sole basis for any business decision, and are based upon data which is provided by third parties, the accuracy and/or completeness of which it is not possible and/or economically viable for Sky to guarantee; (ii) the Services and/or Deliverables also involve models and techniques based on statistical analysis, probability and predictive behaviour, and are an estimate derived from a combination of data and as such are subject to limits of statistical error; and (iii) Sky Data may represent an estimate of the actual size of its viewing audience, and may be thought of as the best estimate that can be made from a range of possible values and therefore Sky will not be liable for:

(a) any inaccuracy, incompleteness or other error in the Deliverables or Developments; or

(b) Client's interpretation of the Deliverables; or

(c) any failure of the Services to achieve any particular result for the Client.

10.8 The Client acknowledges and agrees that the data formats, calculation rules and guidelines provided by Third Party Contractors may change over time. Sky may at its sole discretion determine whether to adapt the Service to the changes made by Third Party Contractors. If Sky deems it necessary to apply the relevant changes to the Service, Sky shall use commercially reasonable endeavours to apply the relevant changes to the Service after becoming aware of the changes made by Third Party Contractors.

10.9 Sky will not be responsible for any delays, delivery failures or any other loss or damage resulting from the transfer of data over communication networks and facilities.

10.10 Each Party warrants that it has the right to enter into this Agreement and that the person signing an Order on behalf of that Party has the requisite authority to bind that Party.

## 11. TERMINATION

11.1 Without limiting any rights that have accrued under this Agreement or any of its other rights or remedies, each Party may terminate this Agreement or any Order with immediate effect by giving written notice to the other Party if:

(a) the other Party commits a material breach of this Agreement and (if such a breach is remediable) fails to remedy that breach within twenty (20) Business Days of that Party being notified in writing of the breach;

(b) the other Party is unable to pay its debts for the purposes of section 123 of the Insolvency Act 1986 or makes or proposes any voluntary arrangement or composition with its creditors or if a bankruptcy or winding up petition is presented to it or if it enters into compulsory or voluntary liquidation or has a receiver or other officer appointed over the whole or any part of its assets or undertaking or has an administrator appointed to manage its affairs, business and property or if it takes or suffers any similar action in consequence of debt or insolvency under the laws of the United

Kingdom or any equivalent of the foregoing in any other jurisdiction; or

(c) the other Party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

11.2 Without limiting its other rights or remedies, Sky may terminate this Agreement or an Order with immediate effect by giving written notice to the Client if:

(a) the Client fails to pay any undisputed amount due under this Agreement on the Due Date for payment;

(b) any change in Law prohibits the delivery of the Services and/or Deliverables or requires Sky to materially alter the scope of the Services and/or Deliverables; or

(c) a Third Party Contractor terminates or materially alters any Third Party Contract so that the Services are unable to be materially performed, provided that Sky uses its reasonable endeavours to avoid such alteration or termination.

## 12. CONSEQUENCES OF TERMINATION OR EXPIRY

12.1 On termination of this Agreement:

(a) Sky shall cease using the Client Data;

(b) the Matched Data and Client Data relating to the particular Order will be deleted from Sky systems by Sky within 30 days and the licence granted by the Client to Sky pursuant to clause 7.2 shall terminate except as otherwise specified in the Order; and

(c) the accrued rights, remedies, obligations and liabilities of the Parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry.

12.2 Despite any other provision in this Agreement the Client acknowledges that Sky's obligation to delete Client Data and Matched Data is subject to any requirements under Law and/or Sky's archiving processes, however Sky shall not retain any copies of such personal data and, where such copies are retained in Sky's archives, Sky shall not process them for any purpose other than archiving and delete them immediately from its production systems should it need to restore such systems from its archives.

## 13. AUDIT

13.1 Each Party shall make available to the other Party all information necessary to demonstrate compliance with its obligations and allow for and cooperate with audits, including inspections, conducted by the other Party or another auditor mandated by the such other Party. Client acknowledges that Sky may need to Audit the Client in compliance with its obligations under its agreements with its Third Party Contractors. Where the reason for the audit is not as a result of a security incident or as a result of an applicable Law then reasonable notice shall be not less than ten (10) Business Days' notice and the audit shall take place only during office hours on Business Days. Party requesting the audit shall pay for its own costs and the reasonable costs of the other Party (which must be approved in advance of being incurred) in carrying out such audit.

13.2 Audit access by any third party representative of either Party shall be subject to such representative(s) agreeing confidentiality obligations equivalent to those in clause 9 in respect of the information obtained, provided that all information obtained may be disclosed to the Party appointing the audit.

## 14. GENERAL

14.1 Force majeure:

(a) For the purposes of this Agreement, Force Majeure Event means an event beyond the reasonable control of either Party including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Sky, failure of a utility or telecommunication service or transport network, pandemic, act of God, war, riot, civil commotion, malicious damage, change of Law, compliance with any Law, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

(b) Neither Party shall be liable to the other Party as a result of any delay or failure to perform its obligations under this Agreement as a result of a Force Majeure Event provided that the Parties use all reasonable endeavours to mitigate the impact of the Force Majeure Event upon the Services.

(c) If the Force Majeure Event prevents Sky or its Representatives from providing any of the Services for more than 10 weeks, either Party shall, without limiting its other rights or remedies, have the right to terminate this Agreement immediately by giving written notice to the other Party.

14.2 Assignment and subcontracting:

(a) Neither Party shall, without the prior written consent of the other (such consent not to be unreasonably withheld), assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement, save that, without obtaining Client's prior consent, Sky shall be entitled to:

(i) assign any of its rights or obligations to an Affiliate in the event of an internal corporate restructure, spin-off, acquisition or merger; and/or (ii) sub-contract or assign its obligations to an Affiliate (including the right to appoint an Affiliate as a sub-Processor) and to engage individual sub-contractors (engaged either as an individual or via a corporate entity) to perform certain of its obligations.

(b) Sky shall: (i) where outlined on the Order, ensure that its subcontractors performing the Services shall have undergone appropriate pre-employment background checks; (ii) be responsible to the Client for all of the actions or omissions of its sub-contractors in respect of this Agreement and in compliance with all Laws; and (iii) procure that its subcontractors comply with Sky's obligations under all applicable Laws.

14.3 Notices:

(a) Any notice or other communication required to be given to a Party under or in connection with this Agreement shall be in writing and shall be delivered to the other Party by hand or sent by prepaid first-class post, recorded delivery or by commercial courier to the addresses specified in the Order. In the event of such notice being served to Sky, it shall be addressed to Commercial Contracts Manager, c/o 4 Victoria Square, St Albans Herts AL1 3TF Email: contractadmin@sky.uk and a copy must also be delivered to: General Counsel, Sky UK Limited, Grant Way, Isleworth, Middlesex, TW7 5QD, United Kingdom.

(b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

(c) This clause 14.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Agreement shall not be validly served if sent by e-mail.

14.4 Entire agreement and remedies:

(a) This Agreement sets out the entire agreement between Sky and the Client relating to the subject matter hereof and, save to the extent expressly set out in this Agreement, supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties, promises, assurances and arrangements of any nature whatsoever, whether or not in writing, relating thereto.

(b) The Parties have not entered into this Agreement in reliance upon, and shall not have any claim or remedy in respect of, any statement, representation, warranty, undertaking, assurance, promise, understanding or other provision made by or on behalf of the other Party, any of its representatives or any other person which is not expressly set out in this Agreement.

(c) Save as expressly set out in this Agreement, the only right or remedy of Sky or the Client in relation to any statement, representation, warranty, undertaking, assurance, promise, understanding or other provision set out in this Agreement shall be for breach of this Agreement to the exclusion of all other rights and remedies (including those in tort or arising under statute) and, in respect of any breach of this, the only remedy shall be a claim for damages in respect of such breach.

14.5 Survival: Clauses which expressly or by implication have effect after termination shall continue in full force and effect including for the avoidance of doubt clauses 1, 7, 8.6, 9, 12, 13 and 14.

14.6 Waiver: A waiver of any right under this Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a Party in exercising any right or remedy under this Agreement or by Law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. 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. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by Law.

14.7 Severance: If a court or any other 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 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 provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

14.8 No partnership: Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the Parties, nor constitute any Party the agent of another Party for any purpose. No Party shall have authority to act as agent for, or to bind, the other Party in any way.

14.9 Third parties: Except as expressly set out elsewhere in this Agreement, a person who is not a Party shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any the terms of this Agreement.

14.10 Variation: Except as expressly set out in this Agreement, any variation, including the introduction of any additional terms and conditions, to this Agreement, shall only be binding when agreed in writing and signed by each Party.

14.11 Counterparts: This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one

agreement.

14.12 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, English law, and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

**Signed for and on behalf of:**

Company: \_\_\_\_\_

by: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_