

Retail Sales Monitor

BRC Terms

1. Introduction

- a) Welcome to the Retail Sales Monitor (**RSM**), a scheme owned and operated by the British Retail Consortium, a company limited by guarantee incorporated and registered in England and Wales with company number 00405720 whose registered office is at The Form Rooms, 22 Tower Street, London, England, WC2H 9NS (**we/us/our/BRC**).
- b) The RSM is a measure of UK wide retail sales performance that acts as both a benchmark for participating retailers (**Participants**) and as a key economic indicator. These terms and conditions (**Terms**) govern the data and other content you upload, access or download relating to the RSM. You warrant and represent that you have full capacity and authority to bind the organisation for whom you work to enter into and perform the obligations set out these Terms. References to 'you' below in these Terms shall include the Participant that employs you. The RSM is provided to you through a reporting platform (the **Reporting Platform**) operated by a separate provider (the **Provider**) and governed by the Provider's terms set out separately (**Reporting Platform Terms**). Unless expressly agreed with you in writing, you may only access the RSM through the Reporting Platform and all references in these Terms to RSM shall include the Reporting Platform unless the context requires otherwise. By accessing, using or uploading any data to the RSM, you accept these Terms and the Reporting Platform Terms and agree to comply with them.
- c) Only employees of the Participant that it has selected and that we have authorised in writing may access and use the RSM (**Authorised Users**).
- d) Authorised Users upload retail sales data based on the categories of products the Participant sells in accordance with these Terms (**Participant Data**) which is subject to aggregation including weekly and monthly (collectively, **Aggregated Data**). We make available content to Participants which includes current and historic Aggregated Data across categories - on dashboards and in data files through the Reporting Platform (**Content**). Participant Data is only used for the purposes of creating Aggregated Data.
- e) You shall supply your Participant Data only unless we have agreed in writing with you that you may supply the retail sales data of a group of Participants on behalf of the organisation for whom you work.
- f) We use Aggregated Data (and information derived from it) for various purposes, including publishing in press releases, providing information to subscribers and financial institutions and referring to such data in presentations. To ensure published data is representative of UK retail sales as a whole, before publication, the Aggregated Data within each sales category are weighted (based on weightings derived from the ONS Family Spending survey) to reflect the contribution of each category to total retail sales.

2. Accessing and using the RSM

Participant Data

- a) Authorised Users shall upload Participant Data in the format and at the time periods specified by us from time to time and in accordance with any documentation provided to you by us from time to time.
- b) You shall ensure that:
 - (i) you have the necessary rights and permissions to upload the Participant Data;
 - (ii) the BRC's use of the Participant Data in accordance with these Terms, will not infringe the rights of any third party; and
 - (iii) you use your reasonable endeavours to check the accuracy of data provided in the data submission before it is uploaded.

Authorised Users

- c) You must tell us as soon as reasonably possible if any Authorised User no longer requires access to the Reporting Platform or whose employment with the Participant has ended. You will be responsible for ensuring that the Authorised Users comply with these terms and will be responsible for any acts or omissions of the Authorised Users when using the Reporting Platform. You agree to notify us promptly in writing if you become aware of any event or action which might reasonably impair the Reporting Platform's security, such as improper access to the password of an Authorised User.

- d) You shall not, and shall ensure Authorised Users shall not, take any actions intended to disrupt the operation of the RSM, and not to gain or attempt to gain unauthorised access to any part of the Reporting Platform to which we do not permit access by Authorised Users.

Use of Aggregated Data

- e) You shall, and shall ensure Authorised Users shall, keep the Aggregated Data and all other Content made available within RSM, confidential, only use it for the purposes of the Participant's business and not disclose or make available or allow to come into, or stay in, the possession of any person who is not an Authorised User using it for the purposes of the Participant's business.
- f) Except as permitted in this clause 2, you shall not: offer, use, copy, maintain, distribute, sell, transfer, market, sublicense, dispose of or rent or otherwise commercially exploit any part of any Content available through the RSM or Reporting Platform.
- g) Nothing in this clause 2 shall prevent Authorised Users from disclosing Aggregated Data to the Participant's employees provided you ensure: i) it is kept confidential by the Participant's employees; ii) the employees only use the Aggregated Data for the purposes of the Participant's business; and iii) it is used in compliance with applicable laws.
- h) Nothing in this clause 2 shall prevent the Participant or its Authorised Users from publicly referring to material previously published by the BRC in any of its publicly available reports or press releases in accordance with the terms of use of the website from which they are accessed, except to the extent any information in those releases have been withdrawn from publication.

3. Intellectual property rights

- a) The Participant grants to us a non-exclusive, fully-paid for, royalty-free, perpetual, non-terminable, sub-licensable, worldwide licence to create the Aggregated Data from the Participant Data and to use, support and maintain the Aggregated Data (and any data collated or derived from it) including for the purposes of: (i) operating, providing, promoting or improving the RSM (and any successor schemes or any services which are the same as or similar or complimentary to the RSM, whether provided by us or any third party from time to time); (ii) complying with these Terms; and (iii) providing the Aggregated Data and related services to the Participant and third parties.
- b) Without limiting the generality of clause 3(a), we shall have the right: (i) to make available the Aggregated Data to all participants and users of the RSM; (ii) to use Aggregated Data (and information collated or derived from it) in our sole discretion for any purposes, including publishing in press releases, providing information to subscribers and financial institutions and referring to such data in presentations (both internal and external), however, certain Aggregated Data (in our sole discretion) may not be published and may only be made available to Participants via the Reporting Platform; and (iii) to permit the Provider to use the published data (and information collated or derived from it) in connection with the promotion of the RSM or the Reporting Platform.
- c) Without prejudice to any licence granted in these Terms, ownership of the intellectual property rights in: (i) the Participant Data shall at all times remain with the Participant which supplied such data to us and the Participant may use its own Participant Data for any purpose; and (ii) the RSM and all Content shall be owned by us and our third-party licensors and the Participant is granted a limited, non-exclusive, non-transferable, revocable, royalty-free licence to use the Content and files downloaded from the Reporting Platform in accordance with these Terms.
- d) Neither the Participant nor its Authorised Users shall acquire any title, right or interest in or to the RSM or any Content, including any material derived from that Content.
- e) You acknowledge and agree that if our relationship with our Provider terminates or expires and such Provider ceases to provide the Reporting Platform, the Participant Data (including, for the avoidance of doubt, all historical Participant Data provided by you) shall be transferred to a replacement Provider.
- f) We reserve the right to change any product categories within the RSM from time to time and to give reasonable notice of such changes.

4. Our liability to you

- a) The express terms and conditions in these Terms shall apply in place of all warranties, conditions, terms, representations, statements, undertakings and obligations whether expressed or implied by statute, common law, custom, usage or otherwise (including any made in correspondence prior to acceptance of these Terms), all of which are excluded to the fullest extent permitted by law.
- b) In particular:
 - i. we cannot guarantee that the RSM and Reporting Platform will always be available, accessible or error-free; and
 - ii. we make no warranties in respect of the Reporting Platform including any harm that may be caused by the transmission of a computer virus or similar harmful programming routine. Any content downloaded or otherwise obtained through the use of the RSM is done at your own risk and you will be solely responsible for any damage to your devices and systems or loss of data that results from the download or use of any such content or any virus.
- c) Where the RSM or any Content contains links to websites or resources provided by third parties, these links are provided for your information only and we do not assume any responsibility for the content of such websites or resources or your use of them. Any such links should not be interpreted as an endorsement by us of any such third-party websites and resources. We will not be liable for any loss or damage that may arise from your use of any linked websites.
- d) Nothing in these Terms shall limit or exclude the liability of either party for death or personal injury resulting from its negligence, for fraud or fraudulent misrepresentation or for any other liability that cannot be limited or excluded by applicable law or in respect of its indemnification obligations under these Terms.
- e) Subject to clause 4(d), we shall not be liable for: (i) any loss of data (except arising from a deliberate or wilful disclosure by us), use of data, reputation, goodwill or opportunity; (ii) any loss of or failure to realise expected profit, revenue or savings or any other form of pure economic loss, or any wasted expenditure, in each case, whether such loss is direct or indirect; or (iii) any indirect, special, incidental, punitive, consequential damages or losses that you (including the Participant) or any other person suffers, in each case howsoever arising.
- f) Subject to the foregoing provisions in this clause 4, our maximum aggregate liability to you, whether arising in contract, tort, out of breach of statutory duty or otherwise, and, whether in respect of a single event, series of connected events or of unconnected events, under or in connection with these Terms (and any agreement with you incorporating them) shall not exceed £50,000.

5. Commencement, termination and suspension

- a) Subject to clause 6(a), these Terms shall be effective and binding on you on the date you accept them using the Reporting Platform.
- b) Either we or you may, on giving written notice to the non-terminating party and with immediate effect, terminate any agreement between you and us made under these Terms. Upon termination of such agreement, we shall be entitled to terminate your and all Authorised Users' access to the RSM, and any rights granted to you and Authorised Users, including in relation to any Aggregated Data or Content, shall terminate immediately. Such termination for any reason shall not affect any accrued rights, remedies, obligations or liabilities existing at termination or any provisions of these Terms which are expressly or impliedly intended to continue following termination, which shall survive such termination, including the rights granted to us under clause 3 and the provisions of clauses 4, 5 and 6.
- c) We may (acting reasonably and without notice) temporarily or permanently suspend, limit, deny or disable your and any Authorised User's access to the RSM, at any time and for any reason and we may terminate any agreement between you and us under these Terms, including, in each case, if you commit a breach (or we reasonably suspect that you may have breached or continue to breach) these Terms or if the Participant: ceases to be a member of the BRC, enters into liquidation; makes any arrangements with, or makes a general assignment for the benefit of, its creditors; has a receiver, manager, administrative receiver or administrator appointed over the whole or substantially the whole of its undertaking or assets; ceases (or threatens to cease) to carry out its business; makes any material change in its business; or suffers any analogous process under any foreign law.
- d) We shall be entitled to continue using the historic Participant Data in connection with the RSM to ensure that the risk of identification of any other participant's data within the Aggregated Data made available via the RSM is reduced to an acceptable level, as determined by us in our sole discretion.
- e) If, following termination of the agreement under these Terms, the Participant gives written notice to us that it wishes to have its historic Participant Data deleted, then, subject to clause 5(d), we shall procure the Provider deletes from the Reporting Platform that Participant Data within 60 days of our receipt of that notice.

6. Other important terms

- a) Your obligations and rights under these Terms may not be assigned or transferred to any third party. These Terms do not constitute, establish or imply any partnership, joint venture, agency, employment or fiduciary relationship between you and us. If any provision, or part of a provision, of these Terms is found by any court to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of these Terms, which shall remain in full force and effect and the relevant provision shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. These Terms shall not be enforceable by a third party under the Contracts (Rights of Third Parties) Act 1999. Any waiver of any right under these Terms shall only be effective if it is in writing. We may amend these Terms from time to time by posting updated Terms on the Reporting Platform, which will be effective 30 days after the date of posting, and any other amendments to these Terms must be agreed between you and us in writing. Any breach of the Reporting Platform Terms shall be deemed a breach of these Terms. Words that appear after the expression "include", "including", "other" "for example", "such as" or "in particular" (or any similar expression) in these Terms shall not limit the meaning of the words appearing before such expression.
- b) You shall indemnify, keep indemnified, defend and hold harmless BRC, its officers, members, employees and licensors on demand from and against any claim, liability, damages, losses, interest, award, actions, proceedings, fines, penalties, costs or expenses (including legal and other professional services expenses on a full indemnity basis) any of them suffer, incur or pay arising out of or in connection with your breach or negligent performance of any of these Terms.
- c) Any notice under or in connection with these Terms shall be in writing and delivered by email, personally, or by mail to such address as the relevant non-terminating party provided to the terminating party. Such notices shall be sufficiently given and deemed to have been received, in case of first class post, 7 days after it was posted, personal delivery, on the date of dispatch and email, on the date of dispatch.
- d) These Terms shall be governed by and construed in accordance with the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute (contractual or non-contractual) arising in connection with these Terms.