

Rate Card

(& Terms and Conditions of Use)

Effective 1 January 2019

Introduction

This Rate Card sets out the terms on which persons (usually companies) who are not BARB Underwriters may access the BARB Television Audience Measurement Service. Anyone who wishes to become a User of BARB's services (as defined in this Rate Card) needs to sign a Letter of Consent with BARB agreeing to the terms and conditions of this Rate Card.

The BARB service to which this Rate Card relates is for the reporting of in-house live and time-shift viewing via television sets and non-TV devices within 28 days of broadcast.

This Rate Card is divided into three parts. Part A sets out the Fees payable, Part B sets out the general terms and conditions, and Part C sets out definitions of words and expressions capitalised in this Rate Card. Any words and expressions which are not defined in Part C shall bear their ordinary and natural meaning.

Fees payable

There are a variety of Fees payable, depending on the use of the Data and corresponding Licence required, as set out in Parts 1 to 7 of Part A. More than one Fee may be payable. If you are unsure as to which Fee(s) you should be paying please contact BARB. Please contact BARB to discuss Fees payable for any type of usage not covered herein.

BARB will from time to time update or amend the contents of this Rate Card. Any amendments to this Rate Card will be communicated to Users via the BARB website at www.barb.co.uk (and via any other methods BARB may, in its discretion, choose to use).

Warranty

Each User hereby warrants, represents and undertakes to BARB that neither it, nor any of its Clients, has used Data in any way which is inconsistent with or outside the scope of the BARB Licence(s) granted to it hereunder, nor has it or any of its Clients used Data or otherwise disclosed Data to any third party otherwise than in accordance with the terms of this Rate Card. This warranty, representation and undertaking shall be deemed to be given by each User on each day on which they are a BARB Licence holder hereunder and any breach hereof shall constitute a material breach of the Rate Card entitling BARB to terminate all BARB Licences entered into by the relevant User with immediate effect.

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Part A Fees

1 Annual Fees for BARB reported television channels, interactive and non BARB reported UK television channels and services

1.1 Channel Set-Up Fee (where applicable) **£6,980**

This is a non-refundable one-off Fee payable for each television channel the User wishes to have reported by BARB. It is payable on submission of an application form and also when the User materially changes the content of an existing channel so that a new unique BARB channel code has to be allocated in accordance with BARB's procedures. A channel will not be reported unless and until the Channel Set-Up Fee is paid.

1.2 Annual Fee for each television channel separately reported by BARB, based on share of Total UK Television Viewing (rounded up/down to 2 decimal places), all individuals aged 4+.

Share of Total UK Television Viewing %	Annual Subscription £
Under 0.05 or interactive and non BARB reported UK television channels and services	45,330
0.05 to 0.49	84,220
0.50 to 0.99	168,420
1.00 to 1.49	252,960
1.50 to 1.99	336,830
2.00 to 2.49	420,760

Fees for channels with a share of Total UK Television Viewing in excess of 2.49% are available from BARB on request.

Payment of these annual Fees will also entitle the User to use Data for publicising the channel and promoting sales of airtime and /or sponsorship opportunities.

A User may elect by notice in writing to BARB to receive BVOD (broadcasters' video on demand) Services, the Fees for which shall be included in the annual Fees outlined in this paragraph 1.2. If a User elects to receive BVOD Services, such election shall be irrevocable and the BVOD Services shall continue until such time as the User (who shall from thereon be a BVOD Broadcaster) ceases to have its linear television channels measured and reported by BARB. The terms and conditions set out in this Rate Card will apply to BVOD Services (as applicable).

1.3 Reporting of simulcast channels, e.g. high definition ("HD") channels

(i) Broadcasters have the option to have viewing to HD channels reported separately at the Fees stated above. Alternatively, upon request to BARB, viewing to HD channels that are 100% simulcast with a BARB-reported Standard Definition (SD) channel may be included in the audience reported to the SD channel as follows as part of the same Databases:

(a) Channel Set-Up Fee: **£1,420**

(b) Annual Fee **£1,720**

(ii) Further (subject to technical feasibility) a broadcaster may opt to have viewing to a 100% simulcast HD channel reported in a separate Database ("Data Base 1") (but not in Data Base 2 where it will be aggregated with viewing to the SD channel) as follows:

(a) Channel Set-Up Fee **£2,840**

(b) Annual Fee **£3,440**

(iii) Simulcast HD channels will be required to pay the additional cost of encoding the broadcast stream in order for viewing on these platforms to be reported.

1.4 Encoding broadcast content

In a small number of circumstances it is not possible to ascertain definitively where content which is simulcast or a repeat transmission emanates from. Encoding content is an option for broadcasters to enable BARB to more accurately determine which is the originating source channel for simulcast or repeat played-back material. For the avoidance of doubt, all viewing in these circumstances can be captured and allocated to transmission content but encoding ensures that the originating channel can also be identified. The cost of an encoder is **£8,770** (in some cases it may be necessary to deploy more than one encoder). Please refer to the User reference section of the BARB website, www.barb.co.uk for more information about the encoding system and its implementation.

1.5 Programme and spot amendment services are provided by BARB, intended to correct small numbers of errors that may be discovered subsequent to the original submission of programme and commercial logs. Logs delivered outside the amendment cycles (please see the amendment cycles timetable as published on the BARB website) will be subject to a late amendment Fee of **£560** per log (invoiced by the relevant BARB contractor).

1.6 Terms and conditions relating to reporting of television channels are set out in paragraph 2 of Part B. These terms and conditions must be complied with in order for BARB to successfully report the channel.

2 **Annual Licence to analyse Data and use it for television airtime planning and buying and reporting to Clients only (subject to paragraph 2.3 below)**

2.1 Annual Licence up to and including £2.6m annual total UK Television Billings: **£15,330**

2.2 Annual Licence over £2.6m: **0.6% of annual total UK Television Billings**

2.3 Where the User is a non-IPA agency or a media independent, the User may use the Data to provide BARB-Related Services to its Clients (which do not need to be either Users or End Users) provided that such BARB-Related Services consist only of extracts from the Data that are (i) related directly to the relevant Client's business or the business of direct competitors of the relevant Client, or (ii) relating to the TV market as a whole for

the purpose of determining general TV viewing trends, subject in the case of (i) and (ii) to the Data being used at all times by that Client for Internal Purposes only.

3 Annual Licence to access Data files and/or for onward distribution of BARB-Related Services to Users and/or End Users

3.1 Total number of Clients (including Users and End Users, but excluding BARB Underwriters) to which any BARB-Related Services are provided in the calendar Year (irrespective of the period of time during the Year that those BARB-Related Services were provided):

No. of Clients	Annual Fee £
0 to 4	10,040
5 to 8	14,830
9 to 12	19,630
13+	29,060

3.2 Direct access to Data

All Data files are available electronically through Databases in accordance with the terms of this Licence.

3.3 For Users requiring direct access to the Data, the following files are available:

Data Set	Annual Fee £
1 – daily panel viewing file	10,770
2 – daily consolidated impacts by time (IBT) file, programmes & files to create 4-screen viewing data	10,770
3 – daily consolidated spots & breaks file	10,770

Universe and overnight files, together with the BARB master file, the Combined Content Identification master file (CCIDS) and other supporting files are included in the Fee for data sets 1, 2 and 3. Purchasers of these data sets may also access BARB Establishment Survey data files, including back data from 2011.

	Annual Fee £
Overnights – 5 minute file (included in Data Sets 1, 2 and 3)	5,440
Sponsorship File	5,440
Programme Events File	4,740
Commercial Events File	4,740

Lifestyle Insights (Additional Panel Classification File)	1,670
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The following report is available for purchase by End Users holding an End User (Limited Usage) Licence, and is otherwise free to all other End Users and Users. The Fee for this report is payable annually in advance and is non-refundable.

Establishment Survey Data File	Annual Fee £410
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3.4 Users which provide BARB-Related Services are responsible for ensuring all their Clients are BARB Licence holders or BARB Underwriters. Client lists must be supplied quarterly (within 30 days after the end of the relevant quarter) to BARB in accordance with Part B of the Rate Card, indicating how each Client is licensed or that it is a BARB Underwriter. It is the responsibility of the User to issue End User Licences to their Clients which are not already BARB Licence holders or BARB Underwriters and to forward such End User Licences executed by the End User to BARB for counter signature prior to supplying BARB-Related Services (and for the avoidance of doubt no User shall be permitted to provide BARB-Related Services to a Client until such time as the executed copy of the End User Licence has been provided to BARB). Users shall collect the Fee from their Clients on BARB's behalf.

3.5 Users shall review and monitor the use of the BARB-Related Services by Clients at least annually in order to determine if an End User Licence is appropriate for the BARB-Related Services being used by the Client and shall notify BARB of the outcome of such review. If the User and/or BARB determine that the Client has used or is using BARB-Related Services outside the scope of its End User Licence at any time, such action shall be a material breach of the End User Licence by the Client and BARB shall be entitled to terminate the End User Licence in accordance with its terms.

3.6 End User Licence

The Fees to be paid by End Users purchasing BARB-Related Services from a User holding a Data File Access and Onward Distribution Licence are set out in paragraph 3.8 of Part A of this Rate Card. The BARB-Related Services acquired may only be used for Internal Purposes by the purchaser and its employees and Consultants (in accordance with the terms set out in paragraph 5.12 of Part B of this Rate Card) which will be bound by all the obligations of and terms applicable to all BARB Users.

3.7 End User (Limited Usage) Licence

End User (Limited Usage) Licences (as set out in paragraph 3.8 of Part A of this Rate Card) are available only to Clients of companies supplying BARB-Related Services. Users wishing to supply BARB-Related Services pursuant to an End User (Limited Usage) Licence are required to check with BARB whether the Client is eligible for such access before doing so, to issue the Client an End User Licence and to forward the same to BARB for counter signature and to inform BARB of the amount payable by the Client for the BARB-Related Services purchased, accompanied by a remittance for the Fee due.

3.8 Annual End User Licence Fees

(a) Annual End User Licence Fee to access BARB-Related Services

£6,800

(b) Annual End User (Limited Usage) Licence Fee to access BARB-Related Services with a combined expenditure from all suppliers of no more than **£14,250** on BARB-Related Services in a Year

10% of expenditure (minimum £375)

(c) Annual End User (Limited Usage) Licence Fee for PR Agencies to access BARB-Related Services with a combined expenditure from all suppliers of no more than **£3,750** on BARB-Related Services in a calendar Year

£375

(d) Annual Licence for access to estimates of advertising expenditure derived from Data

£300

4. Annual Publishing Licences

All Data and information obtained from it are copyright to BARB, reproduction of which must be credited accordingly.

4.1 Annual Licence Fee for those media owners, platform operators and advertising networks that distribute advertising and television content online only to publish Data for promotional and marketing purposes.

£113,670

4.2 Annual Licence Fee to publish Data including programme rankings, charts, graphs or tables, provided that Data constitutes less than 1/3 of the total editorial content of a single publication (and for the avoidance of doubt, a webpage published on a website will constitute a single publication).

£31,430

4.3 Annual Licence Fee to publish Data as described in paragraph 4.2 above for the following categories:

£15,730

- Publishers with a circulation or subscription base in the Year of under 500 copies or recipients (irrespective of whether a recipient pays to subscribe to the publication or not);
- Publishers of headline data of record (i.e. aggregates and other headline figures which are at least 6 months old);

4.4 Annual Licence Fee to publish Data as described in and on the basis set out in paragraph 4.2 above in a trade publication to an industry based readership. **£20,800**

4.5 Licence Fee for the permission to publish Data as described in paragraph 4.2 above in a single one-off report, such permission to be granted once in each calendar Year only. **£5,000**

4.6 One-off Licence Fee to publish a small amount of BARB information as described in paragraph 4.2 above for academic consumption only. **£55**

5 Annual Licence for the use of Data in connection with the allocation and regulation of UK television broadcast licences conducted under statute or regulation, including the publication of Data relating to their Declared Business

Annual Licence Fee **£793,370**

6 Annual Licence to use Data for the promotion, marketing and sale of televisual content and/or merchandising and merchandising rights and any ancillary activities relating thereto

6.1 Annual Licence Fee based on all revenue arising during the current Year from Programme Sales (being the promotion, marketing and sale of televisual content and/or merchandising and merchandising rights and any ancillary activities relating thereto) in the UK and/or revenue arising during the current Year from Programme Sales in any territory where Data is used for such purposes.

Sales £	Annual Licence £
Up to 12m	10,040
12m to 30m	22,950
30m to 50m	35,810
50m to 100m	48,580
Over 100m	74,380

6.2 Payment of the Fees set out in paragraph 6.1 of this Part A will allow the User to use extracts from the Data for its own productions and those of its competitors for Programme Sales.

6.3 For the avoidance of doubt, any User requiring the use of Data for the purpose of Programme Sales or for any commercial purpose relating to Programme Sales shall be required to hold the Licence set out in paragraph 6.1 of this Part A and shall not be entitled to use Data for these purposes pursuant to any other Licence which may be granted hereunder including (without limitation) an End User Licence.

7 Annual Licence to use Data for the promotion of sales of airtime and/or sponsorship opportunities for third party channels not wholly owned by the User (excluding BARB Underwriter channels)

7.1 (a) Annual Licence Fee which allows access to Data to promote the sales of airtime and/or sponsorship opportunities

£9,700

(b) An annual Licence Fee per share point (or part thereof) for the cumulative Total UK Television Viewing for all the third party channels represented during the Year

£4,700

7.2 Payment of the annual Fees set out in paragraph 7.1 will also permit the User to provide BARB-Related Services to their Clients provided that they consist only of extracts from the Data that is relevant to their channels and that of their direct competitors.

Part B. Terms and Conditions

1 **Supply of Data**

- 1.1 Subject to payment of all sums due under this Rate Card and to the provisions of paragraph 6 of Part B (Accuracy of Data and Liability), BARB shall use its reasonable endeavours to:
- Procure (where a User holds an appropriate Licence) that the Data Processing Contractor(s) provide the User promptly with Direct Access to the Data; and
 - Procure that the Data Processing Contractor(s) report and include audience measurement information in the Data for each BARB reported television channel.
- 1.2 BARB shall take reasonable steps (having regard to the nature of BARB and the resources that are available to BARB) to ensure that BARB's Contractors follow the procedures which have been agreed between BARB and such Contractors for the carrying out of the research and the provision of Data for the Service.
- 1.3 BARB shall be entitled, on 30 days' written notice, to vary the nature, substance, quality and quantity of the Data but shall not be entitled to exercise this right unreasonably. In the event that BARB exercises its right under this paragraph, the User may, notwithstanding any other provision in this Rate Card or any other right or remedy, terminate its agreement under this Rate Card on not less than 30 days' written notice to BARB.

2 **Reporting of channels**

- 2.1 Upon BARB commencing reporting viewing to a channel, the User must supply immediately and on an ongoing basis to BARB, or BARB's Data Processing Contractor(s), in the time, manner and format set out in such specification or rules as the Data Processing Contractor(s) may from time to time publish:
- Accurate (to within one second) information about the timing and duration of programmes and commercials included in each channel provided by the User;
 - The platform(s) on which the channel is carried, such service information code as the platform provider may from time to time use in relation to that channel and the electronic programme guide number ("EPG number") allotted to the channel by the platform provider; and
 - Such other information as BARB or the Data Processing Contractor(s) may from time to time require for the purposes of reporting the channel.
- 2.2 The User shall promptly notify any changes, errors or amendments to the information referred to in paragraph 2.1 to BARB (or, if BARB so requests, to the Data Processing Contractor(s) in such format as the Data Processing Contractor(s) may from time to time require) in accordance with the terms of this Rate Card.

- 2.3 If the User fails to provide or keep up to date the information referred to in paragraph 2.1 in relation to any channel which it provides, such channel may not be separately reported.
- 2.4 Where the User repeatedly submits programme logs or the information referred to in paragraph 2.1 for a particular channel late (as defined by reference to the specifications or rules published by the Data Processing Contractor(s)), BARB reserves the right to instruct the Data Processing Contractor(s) to cease reporting that channel until such time as BARB is satisfied (acting reasonably) that the information will henceforth be provided in a timely fashion.
- 2.5 Where the User wishes to make amendments, for the purpose of correcting errors, to information submitted in accordance with paragraph 2.1, BARB shall use its reasonable endeavours to procure that the Data Processing Contractor(s) implements such amendments. BARB reserves the right to charge the User a reasonable Fee for amending the information referred to in paragraph 2.1.
- 2.6 Programme titles must conform to the accepted BARB convention and a genre and sub-genre must be assigned for all transmitted programmes.

3 Reporting of BVODs

- 3.1 Each BVOD Broadcaster hereby agrees that it will use all reasonable endeavours to work with the Data Processing Contractor to the extent reasonably necessary to enable the Data Processing Contractor to measure and report viewing of its Viewing Player.
- 3.2 Each BVOD Broadcaster hereby agrees that it will (subject to paragraphs 3.6, 3.7 and 3.8):
- (a) install the Plug-In provided by the Data Processing Contractor onto its Viewing Player or work with the Data Processing Contractor to install the Plug-In as soon as practicable after delivery of the Plug-In by the Data Processing Contractor;
 - (b) allow the Data Processing Contractor access to the Viewing Player on a continuing basis for the purpose of allowing the Plug-In to collect the Data;
 - (c) allow the Data Processing Contractor to extract the Data via the Plug-In; and
 - (d) allow the Data Processing Contractor, BARB and/or any sub-contractor appointed to process the Data, as well as allowing access to the Data to any auditor appointed pursuant to the Data Processing Contractor Agreement.
- 3.3 In the event that a BVOD Broadcaster becomes aware of any issue, technical or otherwise, preventing the extraction of the Data it will notify BARB, such notification to be made as soon as practicable after the BVOD Broadcaster becomes aware of the issue and in any event within 2 Working Days.
- 3.4 In the event that an issue occurs which prevents the Plug-In from extracting the Data or which means that use of the Plug-In has a material detrimental effect on the Viewing Player the relevant BVOD Broadcaster will use all reasonable endeavours to assist the Data Processing Contractor to resolve such issue, at the BVOD Broadcaster's sole cost

where such issue is caused by a fault or defect in the Viewing Player solely, and otherwise at the reasonably incurred costs to be apportioned between the relevant BVOD Broadcaster and the Data Processing Contractor on a pro rata basis according to fault.

- 3.5 Each BVOD Broadcaster will notify BARB as soon as practicable in the event that it develops or otherwise uses a Viewing Player which it has not notified BARB of in writing previously. The BVOD Broadcaster will work with the Data Processing Contractor to ensure that the Data from such additional Viewing Player is measured in accordance with the terms of this Rate Card.
- 3.6 Notwithstanding any other provision in this Rate Card, a BVOD Broadcaster shall be entitled to suspend access to its Viewing Player in the event that:
- (a) continued use of the Plug-In constitutes an infringement of third party intellectual property rights;
 - (b) any legislation is enacted or regulation brought into force which would make continued use of the Plug-In or the Viewing Player unlawful; or
 - (c) the use of the Plug-In has a material detrimental effect on the performance of the Viewing Player (in which case paragraph 3.4 shall apply),

and in each event above the suspension of access may continue for the duration of the specific event.

- 3.7 A BVOD Broadcaster shall not be required to provide access to a Viewing Player where (i) such Viewing Player is not available to the general public (ii) the viewing figures for such Viewing Player do not reach a material threshold (such threshold to be agreed between BARB and the relevant BVOD Broadcaster) such as to justify the costs of implementing the Plug-In; or (iii) the Viewing Player is to be discontinued within six months of the date on which the BVOD Broadcaster refuses access to that Viewing Player.
- 3.8 Notwithstanding any other provision in this Rate Card, and paragraph 3.2(c) in particular, BARB shall ensure that the Data Processing Contractor allows BVOD Broadcasters to implement, at each BVOD Broadcaster's discretion, an option that allows an individual viewer to notify the Data Processing Contractor that such viewer's data is not to be processed by the Data Processing Contractor, and in the event that such notification has been made the Data Processing Contractor shall, to the extent it is technically possible to do so, delete such data immediately after collection and shall not process, anonymise or aggregate such data and such data shall not form part of the Data.

4 **Software**

- 4.1 BARB warrants and undertakes that it shall procure that the Data Processing Contractor shall:
- (a) use all reasonable endeavours and accord with good industry practice to procure that no Disabling Software is contained in, introduced into or affects the Plug-In, the Viewing Players or any related software (**Software**) (including by using the most up-to-date virus definitions for the Plug-In from time to time);

- (b) if Disabling Software is found to have been contained in, introduced into or to affect the Software:
 - (i) as soon as reasonably practicable notify BARB; and
 - (ii) as soon as reasonably practicable co-operate with BARB to eliminate the Disabling Software or fix the Software and prevent its reoccurrence;
- (c) if any Disabling Software is found to have been contained in, introduced into or to have affected the Software (i) as a direct result of the integration or use of the Plug-In solely or (ii) as a direct result of the action or inaction of the Data Processing Contractor in breach of this Rate Card (or as a combination of both), the Data Processing Contractor shall take the action required by paragraph (b) at its own cost, otherwise BARB shall ensure the reasonably incurred costs of complying with paragraph (b) shall be apportioned between the BVOD Broadcaster and the Data Processing Contractor on a pro rata basis according to fault;
- (d) give each relevant BVOD Broadcaster an opportunity to perform its own acceptance test of the Plug-In (and any updates and revisions) to ensure that the use or integration of the Plug-In does not and will not adversely affect Viewing Players and each relevant BVOD Broadcaster will not be obliged to implement any update or revision where such update or revision has a significant adverse effect on the Viewing Player;
- (e) at its cost, fix any defects in relation to the Plug-In which adversely affect the collection of Data or have a material detrimental effect on the performance of the Viewing Player, or otherwise provide an alternative in the event that it is unable to fix such defects, provided that where defects are not attributable to the Data Processing Contractor or the Plug-In solely, reasonably incurred costs will be apportioned between the relevant BVOD Broadcaster and the Data Processing Contractor on a pro rata basis according to fault;
- (f) ensure that the Plug-In does not contain open source software, meaning software for which the underlying programming code is publicly available to users so that they may read it, make changes to it and/or build new versions of the software incorporating their changes; and
- (g) the use of the Plug-In as reasonably envisaged by the parties under this Rate Card shall not infringe the Intellectual Property Rights of any third party (provided that the Data Processing Contractor shall not be liable for infringement claims which are caused in whole or in part by modifications, changes or other alterations to the Plug-In which are made by BARB or the BVOD Broadcasters or by any third party on their behalf, in each case other than in accordance with the written directions of the Data Processing Contractor).

4.2 BARB shall indemnify, defend and hold harmless any BVOD Broadcaster and their directors, officers, employees, successors and assigns from any and all Losses arising from or in connection with the failure by BARB to procure that the Data Processing Contractor and its sub-contractors, employees, agents and/or independent contractors comply with the obligations set out in paragraph 4.1, provided that such BVOD Broadcaster(s): (a) conducted appropriate acceptance testing of the Plug-In prior to implementation and in line with any

reasonable instructions of the Data Processing Contractor; and (b) use their reasonable endeavours to mitigate any Losses (including by ceasing to use the Plug-In and/or removing it from the relevant Viewing Players upon BARB or the Data Processing Contractor's reasonable request) and provided that BARB has successfully recovered such Losses from the Data Processing Contractor, having used its best endeavours to do so.

- 4.3 The maximum liability of BARB for any breach or series of related breaches of this paragraph 4 shall not exceed £1,000,000 (one million GBP) and the aggregate liability of BARB for the period of the relevant contract between BARB and the Data Processing Contractor shall not exceed £3,000,000 (three million GBP).

5 Usage and ownership of Data

- 5.1 Users may only use the Data and BARB-Related Services in accordance with the terms of a BARB Licence purchased under the terms set out in this Rate Card. If a User does not have a Licence for onward distribution as set out in paragraph 3 of Part A of the Rate Card or for publication (including publication in newspapers and periodicals online and in reports for Clients as set out in paragraph 4 of Part A of the Rate Card) it may use the Data only for its own Internal Purposes.
- 5.2 Other than as expressly permitted in this Rate Card, no User shall, without the prior written consent of BARB, directly or indirectly pass on, transfer, publish or sell any Data or extracts from Data or information or data verified by, derived from or distilled from Data to any person who is not also a User or an End User and shall procure that such persons will not publicise, use, transfer, sell or reference in any way the Data or any information or data verified by, derived or distilled from Data and shall use the same solely for its Internal Purposes.
- 5.3 Subject to any BARB Licence the User may have under paragraphs 3 and 4 of Part A of the Rate Card, the User shall treat the Data as confidential to BARB and shall not disclose or otherwise divulge any part of the Data (whether electronically or otherwise) to any person or make any other use whatsoever of the Data without the prior consent in writing of BARB. This obligation shall not apply to any part of the Data which is in the public domain otherwise than as a result of a breach of this Rate Card.
- 5.4 The copyright and database right in the Data, the Databases and the Reports shall at all times remain vested in BARB and any reproduction of the Data shall be credited to BARB provided that nothing in this paragraph 5.4 shall prevent the use of the Data, the Databases and the Reports by the User in accordance with the terms of the Rate Card.
- 5.5 Without express permission from BARB in writing, the User shall not make any copy of the whole or part of either of the Databases or the Reports except for any purposes permitted by this Rate Card and no such copy which is made for such purposes shall be made available by the User to any other person except as permitted by this Rate Card.
- 5.6 Except where the User is entitled pursuant to the terms of this Rate Card to provide Data and BARB-Related Services to persons who are not BARB Underwriters, Users or End Users or where the User requires Data only for its own Internal Purposes, BARB shall make available to the User on the secure section of BARB's website or otherwise as

BARB sees fit, the Central User List and shall use reasonable endeavours to make available details of changes as and when they occur.

- 5.7 Where the User provides BARB-Related Services to its Clients pursuant to this Rate Card, it shall provide, quarterly (within 30 days after the end of the relevant quarter), a list of Clients to whom BARB-related information is provided pursuant to this Rate Card and shall promptly notify BARB of any changes to that list.
- 5.8 The name of the User and of any of its Clients who are registered pursuant to this Rate Card shall be added to the Central User List which shall be published on the secure section of BARB's website or otherwise as BARB sees fit (although BARB shall not identify which Clients relate to any specific User).
- 5.9 Where the User provides BARB-Related Services to its Clients pursuant to this Rate Card, it shall ensure that each of its Clients to whom it provides BARB-Related Services is made aware of the limitations contained in this Rate Card on the Client's use of the Data and shall ensure its Clients are either Users or End Users. If a User fails to comply with the obligations set out in this paragraph 5.9, BARB shall be entitled to terminate all BARB Licences held by such User upon written notice with immediate effect.
- 5.10 If a User creates, issues or publishes its own TV viewing/media consumption data (whether or not it has used Data in verifying, substantiating or calibrating such data) it shall procure that its Clients shall not refer to, adopt or otherwise use the BARB name or any derivatives of the BARB name or logos associated with the BARB name in conjunction with such data or in any manner which might suggest, or may lead a person to believe, that the data is provided by, verified by or derived from Data without first obtaining the prior written consent of BARB which may, in its absolute discretion, attach such conditions to such reference, adoption or use as it considers fit.
- 5.11 Each User shall indemnify BARB in respect of any Losses caused to or suffered by BARB as a result of such User's failure to comply with the terms and conditions of the Rate Card.
- 5.12 A Consultant is permitted to access a User or an End User's Data without needing a separate End User Licence provided that the following criteria are met:
 - The Consultant typically works from the User or End User's offices and uses such User or End User's facilities like any other employee of the User or End User;
 - The Consultant is working with Data exclusively for one Client at a time; and
 - The Consultant does not advertise, whether on his or her website or otherwise, that it provides BARB-Related Services.

6 **Accuracy of Data and Liability**

- 6.1 BARB does not warrant the accuracy of the Data and accepts no liability whatsoever to the User in relation to the Data or the Service whether in contract, tort or otherwise

including liability for any errors, defects or omissions in the Data, any harm caused to any computer system caused in whole or in part by the installation or uploading of the Data onto that system, delays in the delivery of the Data or any breakdown or cessation of the Service or the supply of the Data from the Data Processing Contractor(s) howsoever caused.

- 6.2 Without prejudice to paragraph 6.1, the User hereby acknowledges that the Data (in whatever form) is the result of statistical sampling and survey procedures which are designed to produce estimates of television audiences within the limits of normal statistical error.
- 6.3 In no circumstances shall BARB be liable to the User in contract, tort or otherwise for loss (whether direct or indirect) of profits, goodwill, business (including advertising revenue) or anticipated savings or for any indirect or consequential loss whatsoever (including any such loss suffered by any other person in circumstances where that person is entitled to recover the same from the User).
- 6.4 If either party (the "affected party") is affected by Force Majeure it shall promptly notify the other party of the nature and extent of the circumstances in question. Notwithstanding any other provisions of this Rate Card, neither party shall be deemed to be in breach of this Rate Card, or otherwise be liable to the other, for any delay in performance or other non-performance of any of its obligations under this Rate Card (other than any obligation to pay any moneys as they fall due) to the extent that the delay or non-performance is due to Force Majeure of which it has notified the other party and the time for performance of that obligation shall be extended accordingly. If the affected party is prevented by Force Majeure from performing its obligations under this Rate Card (other than any obligation to pay any moneys as they fall due) for a continuous period of three months or more, either party may terminate this Rate Card forthwith on written notice to the other. Where BARB is the affected party and this Rate Card is terminated under this paragraph, BARB shall refund to the User any sums paid in advance on a pro rata basis.
- 6.5 Without prejudice to the foregoing, BARB's liability to the User in contract, tort or otherwise arising under or in connection with this Rate Card for any incident or series of related incidents shall be limited to the lesser of:
- (a) A reasonable proportion (having regard to the direct loss suffered by the User and any direct losses suffered by other Users to BARB as a result of the incident or series of related incidents in question) of such sum as BARB is reasonably able to recover from the Contractors in respect of such incident or series of related incidents, and
 - (b) £500,000,
- but shall not in any event exceed the actual amount of the liability so incurred.
- 6.6 Paragraph 6.5 shall not apply in circumstances where as a result of an incident or series of related incidents that affects or is likely to affect all or a significant proportion of BARB's Users such that (but for this paragraph 6.6) BARB's liability in aggregate to all affected Users in respect of such incident or series of related incidents would exceed the

level of BARB's insurance cover from time to time. In such circumstances, BARB's liability to the User in contract, tort or otherwise arising under or in connection with this Rate Card shall be limited to the greater of:

- (a) A reasonable proportion (having regard to the direct loss suffered by the User and any direct losses suffered by other Users to BARB as a result of the incident or series of related incidents in question) of such sum as BARB is reasonably able to recover from the Contractors in respect of such incident or series of related incidents, and
- (b) Such sums as are recoverable under BARB's insurance cover apportioned pro rata to the value of each User's claim,

but shall not in any event exceed the actual amount of the liability so incurred.

- 6.7 BARB shall use its reasonable endeavours to maintain an appropriate level of insurance cover having regard to the resources available to BARB, the nature and scale of possible claims against BARB, availability of appropriate insurance at a reasonable premium and other factors that appear relevant to BARB (acting reasonably).
- 6.8 Each provision, including any part of any provision, of this paragraph is to be construed as a separate exclusion or limitation applying and surviving even if for any reason one or other of such provision (or part thereof) is held to be inapplicable or unreasonable in any circumstances and shall remain in force notwithstanding termination of this Rate Card.
- 6.9 BARB does not hereby exclude or restrict liability either for death or personal injury resulting from its own negligence or for fraud.
- 6.10 References in this paragraph 6 to tort include negligence and breach of statutory duty.
- 6.11 Except as expressly stated in this Rate Card, all warranties and conditions whether express or implied by statute, common law or otherwise (including but not limited to the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or as to the use of reasonable care and skill) are hereby excluded to the extent permitted by law.

7 Payment Terms

- 7.1 Fees (except for the Channel Set-Up Fee and any End User Licences) payable in relation to any Year shall be payable quarterly in advance in equal instalments on 2 January, 1 April, 1 July and 1 October in each Year. The subscription Fees and Licence Fees payable under paragraphs 1, 2.1 (but for the avoidance of doubt not 2.2), 3 (excluding 3.7(b) and (c)), 4, 5, 6 and 7 of Part A by a person who becomes a User during the course of a Year shall be the total annual Fee that would have been payable had that person been a User since the beginning of that Year (the "Total Annual Fee"), prorated to the beginning of the month during which that person became a User (the "Prorated Fee"). An initial payment shall be due and payable on the date that person became a User which shall be calculated as the amount of the Prorated Fee less an amount or amounts of 25% of the Total Annual Fee per quarter remaining in the

Year. 25% of the amount of the Total Annual Fee shall then be due and payable in each subsequent quarter. Notwithstanding the previous two sentences, where a person becomes a User during the fourth quarter the Prorated Fee shall be immediately due and payable on the date on which the person becomes a User.

- 7.2 The Channel Set-Up Fee is a non-refundable one-off Fee payable in respect of each television channel the User wishes to have separately reported by BARB. It is payable in full on submission of the completed User application form and thereafter on each occasion when the User materially changes the content of an existing channel to the extent that a new unique BARB channel code has to be allocated, in accordance with BARB's procedures. A channel shall not be reported unless and until the Channel Set-Up Fee is paid.
- 7.3 Fees in relation to End User Licences shall be payable annually in advance before any BARB-Related Services are provided to an End User. It is the User's responsibility to make sure each of its Clients is a User in its own right or has a paid-up End User Licence. Where a new End User was not in possession of an End User Licence (or, in any Year when the End User Licence regime was not in existence, any authorisation which was used in place of an End User Licence) that End User will only be required to pay a Fee for that Year pro rated from the first day of the month in which it became an End User to 31 December of that Year, but in all other circumstances it will be required to pay the full annual Fee in accordance with paragraph 3.7 of Part A of this Rate Card.
- 7.4 Every entity using Data or BARB-Related Services must be a User or an End User in its own right and have its own Licence or End User Licence, regardless of whether it forms part of a Corporate Group with another User or End User.
- 7.5 Where the User is paying a Fee based on an estimated amount of UK Television Billings, Programme Sales or any other Fee which cannot be calculated in advance, it shall pay the Estimate on account of the Fee (as the case may be) in accordance with the following provisions:
- (a) The User shall, in relation to any Year, pay the Estimate for the Year in quarterly instalments in advance on 2 January, 1 April, 1 July and 1 October in each Year.
 - (b) The User shall, in relation to each Year, submit to BARB a statement in such form as BARB may reasonably prescribe of the User's forecast of the Fee (as the case may be) for that Year, to which BARB shall have regard in establishing the Estimate for that Year. The forecast shall be based, in good faith, on the relevant Appropriate Measure. The first such statement shall be submitted on the date such User became a BARB User and each subsequent statement shall be submitted not later than 1 November immediately before the Year in question.
 - (c) Users holding Licences under paragraphs 2, 3 and 6 of Part A shall deliver to BARB as soon as available and not later than 31 January after the end of each Year a statement of the amount of the Fee which is payable for that Year and the amounts by reference to which the Fee was calculated. If BARB considers it necessary to confirm the accuracy of the statement, BARB may, in addition to any other rights it may have under this Rate Card, require by notice in writing to the

User that the statement be certified as correct by the User's auditors at the User's cost. BARB may not give any such notice later than one Year after receipt of the statement to which it relates. If the Fee is more than the Estimate, the User shall forthwith pay the difference to BARB. If it is less, BARB shall forthwith repay the difference to the User or issue an appropriate credit note as the User shall decide.

- (d) Users holding a Licence under paragraph 7 of Part A shall base their forecast for the Fee in paragraph 7.1(b) of Part A on the cumulative share of Total UK Television Viewing for the third party channels they represent (excluding BARB Underwriter channels), as provided by BARB, for the period of 12 months expiring 30 June in the preceding Year (the "base period"). The Fee for paragraph 7.1(b) shall be reconciled not later than 31 January after the end of each Year using the cumulative share of Total UK Television Viewing for the third party channels represented (excluding BARB Underwriter channels) for the period of 12 months expiring 31 December for the Year of the Rate Card (the "calendar year").
- (e) BARB may charge interest on any underpayment by the User at the annual rate of 3% above BARB's principal banker's normal base rate from time to time. The User may charge interest on any overpayment at the same rate.

- 7.6 The Fee for each channel for each Year will be calculated by reference to the average share of Total UK Television Viewing of that channel for the period of 12 months expiring 30 June in the preceding Year (the "base period").
- 7.7 Where the calculation referred to in paragraph 7.6 is not possible because the channel was not reported by BARB until after the start of the base period, the average share will be calculated quarterly by reference to the most recent figures that are available to BARB (covering a period not exceeding 12 months) and each quarterly instalment will be calculated at the annual rate applicable to that share.
- 7.8 BARB reserves the right to suspend the User's access to the Data and/or suspend reporting of one or more television channels in the event of late payment by the User of any sums due under this Rate Card until such time as all outstanding sums are paid in full. Further, in the event of persistent late payment by the User, BARB reserves the right to vary (at its discretion) the payment terms set out in this Rate Card.
- 7.9 Without prejudice to any other rights it may have, BARB may charge interest on any late payment at an annual rate of 3% above BARB's principal banker's normal base rate from time to time for the period from when the same was due until payment.
- 7.10 Without prejudice to the User's right to terminate this Rate Card under paragraph 9.2 and notwithstanding paragraph 14.2, BARB reserves the right at any time and from time to time to publish a new Rate Card to take effect in substitution for any Rate Card which is then in effect and to change any Fees or other sums payable pursuant to the Rate Card and this paragraph provided that not less than 30 days' written notice along with details of the proposed changes to the Rate Card has been given to the User of the implementation of the new Rate Card or the change.

7.11 Unless otherwise specified in this Rate Card, all sums that are required to be paid in advance shall be non-refundable.

8 Compliance

8.1 The User shall maintain proper books of account and records in relation to its use of the Data and, where relevant, to the persons to whom the User provides BARB-Related Services, to all BARB-Related Services provided to such persons and to all amounts payable in respect of BARB-Related Services.

8.2 Any books and records to be maintained under this Rate Card shall be subject to inspection at reasonable intervals on reasonable notice by BARB, its employees, agents or professional advisers who shall be entitled to take copies or extracts from such books and records and to such further information and action as may reasonably be required to establish or verify the User's compliance with its obligations under this Rate Card, including the amounts payable under this Rate Card, the accuracy of the User's forecast of the Appropriate Measure, and compliance with the confidentiality provisions of this Rate Card.

8.3 The User shall cooperate with any inspection or other request carried out under paragraph 8.2 and shall, where access to any third party's books or records is necessary for the purposes of BARB carrying out such an inspection, procure the co-operation of such third party.

8.4 BARB, its employees, agents and professional advisers shall treat books, records and information provided in accordance with this paragraph 8 as confidential and shall not disclose or otherwise divulge the same or any information contained in such books and records to any other person. The rights and obligations of the parties under paragraphs 8.1 to 8.4 shall continue for a period of 12 months following termination of this Rate Card.

9 Termination

9.1 This Rate Card may be terminated by either party by not less than three months' written notice in writing expiring on 31 December, 31 March, 30 June or 30 September in any Year.

9.2 The User may terminate this Rate Card by notice in writing (such notice to take effect forthwith) given to BARB within 30 days after any change to the Rate Card pursuant to paragraphs 1.3 and/or 7.10 of Part B of this Rate Card is notified to the User.

9.3 Either party may terminate this Rate Card at any time by written notice (such notice to take effect forthwith or as otherwise specified in the notice):

- (a) In the event of a material breach of this Rate Card that is capable of remedy, if the other party shall fail to remedy such breach (including, in the case of the User, any failure to pay any sum due or to submit any statement) within 14 days after the first party shall have given it notice in writing specifying the breach and requiring it to be remedied;

- (b) In the event of a material breach of this Rate Card by the other party that is incapable of remedy;
- (c) If the other party shall have a receiver (including an administrative receiver) appointed over the whole or any part of its assets, if any order shall be made or a resolution passed for its winding up (except for the purpose of amalgamation or reconstruction), if it shall enter into any composition or arrangement with its creditors generally or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if it ceases or threatens to cease to carry on business.

9.4 BARB may terminate this Rate Card at any time and with immediate effect by written notice if the Data Processing Contractor(s) cease(s) for any reason to make the Data available to BARB.

9.5 Upon the termination for any reason of this Rate Card:

- (a) All obligations on BARB to make Data available to the User shall cease. The User shall (unless termination is pursuant to paragraph 9.3) be entitled to continue to use Data already made available to it provided that in so doing it continues to comply with the provisions of this Rate Card and provided that, if it has a Licence to sell analyses, reports or interpretation of Data or to sell an extract from or access to or copies of Data, it shall continue to do so only to those Clients to whom it has provided such analyses, reports or interpretation or extracts, access or copies during the current Year up to the date of termination;
- (b) Any Fee paid or payable by the User for the then current Year shall be apportioned pro rata down to the date of termination;
- (c) If any Fee is payable under this Rate Card, the User shall within 30 days after any such termination submit to BARB a statement (if required by BARB, certified as correct by the User's auditors at the User's cost) for the period down to the date of termination and any Fee payable to BARB or repayable to the User by BARB shall be paid as soon as practicable thereafter;
- (d) The rights and obligations of either party arising under paragraphs 6 and 8 shall survive termination of the Rate Card; and
- (e) Subject as aforesaid, the termination of this Rate Card shall be without prejudice to any claim by either party against the other arising prior to the termination.

10 **Transfer and Assignment**

10.1 The User shall not without the prior consent of BARB assign or transfer any of its rights or obligations under this Rate Card to any third party, provided that (i) BARB shall not unreasonably withhold its consent to an assignment or transfer of any such rights and (ii) any assignee or transferee shall sign a Letter of Consent.

10.2 BARB shall not without the prior consent of the User assign or transfer any of its rights or obligations under this Rate Card to any third party provided that the User shall not

unreasonably withhold its consent to an assignment or transfer of any such rights and provided further (notwithstanding the foregoing) BARB shall be entitled at any time without the consent of the User to transfer all its rights and obligations to any purchaser or transferee of the whole or substantially the whole of the assets and undertaking of BARB if it has first procured that any such purchaser or transferee has undertaken in writing to the User to be bound by the terms of this Rate Card as if it were a party hereto in place of BARB. Automatically on such a purchase or transfer (subject to the giving of the said undertaking by the purchaser/transferee to the User):

- (a) The User shall look to the purchaser/transferee to discharge the liabilities of BARB under the Rate Card and to observe and perform all the obligations of BARB under it;
- (b) Without prejudice to the obligations assumed by the purchaser/transferee pursuant to the said undertaking, the User shall release and discharge BARB and BARB shall release and discharge the User from all obligations contained in this Rate Card and from all claims and demands whatsoever arising out of or in respect of the Rate Card whether prior to, on or subsequent to the purchase/transfer;
- (c) The User shall observe and perform all its obligations under this Rate Card and in particular pay all sums in every way as if the purchaser/transferee had been a party to this Rate Card in place of BARB. Without limiting the generality of the foregoing, the User acknowledges and agrees that the purchaser/transferee shall have the right to enforce this Rate Card and pursue all claims and demands whatsoever arising out of or in respect of this Rate Card whether arising prior to, on or subsequent to the date of such purchase/transfer.

11 Data Protection / Privacy of Panel Members

- 11.1 For the purposes of this Rate Card, the terms "processing", "personal data", "data controller", "data processor" and "data subject" shall bear the same meanings as set out in the Legislation.
- 11.2 The User represents, warrants and undertakes to BARB that it shall not, under any circumstances actively seek to discover the identity of the Panel Members, whether by reverse engineering or decompiling Data, correlating or cross-referencing Data with the User's own data regarding the identity of the User's Clients, or otherwise.
- 11.3 The User acknowledges that BARB does not have consent from the Panel Members to allow BARB to disclose the identity of those Panel Members to it or any third party. Accordingly, any attempt by the User to discover the identity of all or any of the Panel Members may result in a fine, payment for damages and/or criminal sanctions being imposed upon BARB. In the event that a fine, payment for damages and/or criminal sanction is imposed upon BARB as a result of such actions by the User, the User shall indemnify BARB against all losses, liabilities, claims arising in relation thereto.
- 11.4 In the event that the User discovers the identity of any Panel Member, the User shall not attempt to contact that Panel Member and shall promptly notify BARB that it has discovered the identity of a Panel Member. In such circumstances, BARB shall be

entitled to take any steps which it considers reasonably necessary in order to protect the integrity of the Service and the Data and the anonymity of the Panel Member, including the suspension of the User's access to Data.

- 11.5 BARB reserves the right, on reasonable notice, during normal business hours and acting confidentially, either itself or through an appointed agent or representative, to inspect the User's premises for the purpose of establishing that the User has not breached, is not in breach of, and has not made any attempts to breach this paragraph 11. The User shall co-operate with any such investigation and shall ensure its employees co-operate with any such investigation.
- 11.6 Each of BARB and any Users (which shall include, for the avoidance of doubt, any BVOD Broadcasters) shall comply with the Legislation so far as it is applicable in undertaking its obligations under this Rate Card (and in particular unless otherwise set out in this Rate Card, each User shall only be responsible for compliance with the Legislation under this Rate Card in relation to the Contract Data until the point in time of the collection of the Contract Data by the Data Processing Contractor, to the extent applicable).
- 11.7 BARB and the relevant BVOD Broadcaster shall be data controllers in common in respect of the Customer Personal Data.
- 11.8 BARB shall engage the Data Processing Contractor as its data processor in respect of its processing of the Customer Personal Data.
- 11.9 Without limiting the parties' obligations under this paragraph 11, each of BARB and any BVOD Broadcaster shall abide by its own data protection and data security policies in undertaking any processing of data under this Rate Card.
- 11.10 BVOD Broadcasters hereby consent to the Data Processing Contractor collecting the Contract Data via the Plug-In on behalf of BARB subject to BARB's compliance with paragraph 11.16 and paragraph 11.17.
- 11.11 BARB warrants and undertakes that it will and it will ensure that the Data Processing Contractor and its sub-contractors, employees, agents and/or independent contractors will:
 - (a) subject to paragraph 11.11(b), treat all Customer Personal Data as personal data;
 - (b) duly observe and comply with the obligations set out in the Legislation in connection with this Rate Card and the Customer Personal Data, regardless of whether the Legislation is applicable to the Customer Personal Data (except in relation to any requirement to make third party notifications, obtain data subject consents other than pursuant to paragraph 11.11(e), or comply with data subject requests other than pursuant to paragraph 11.11(e), to the extent the same is not required by the Legislation in relation to such Customer Personal Data);
 - (c) treat all Contract Data as confidential;

- (d) not transfer, or permit the transfer of, the Customer Personal Data outside the European Economic Area, including by its sub-contractors, employees, agents and/or independent contractors unless such transfer is made where reasonably practicable with the prior written consent of BARB and in any event, in accordance with the Legislation;
- (e) promptly provide such assistance as a BVOD Broadcaster may reasonably require (including a copy of all relevant Customer Personal Data (to the extent that such Customer Personal Data is "personal data")) in order for a BVOD Broadcaster to deal with any request for subject access under the Legislation and assist the BVOD Broadcaster in its management of access requests, queries and complaints, provided that (i) the BVOD Broadcaster reimburses BARB's reasonable and pre-agreed costs of providing such assistance, and (ii) BARB uses all reasonable endeavours to minimise such costs;
- (f) implement and maintain appropriate technical and organisational measures to protect the Customer Personal Data against accidental or unlawful processing, destruction or accidental loss, alteration, unauthorised disclosure or access or damage, and against all other unlawful forms of processing sufficient to comply with the obligations imposed by the Legislation and where relevant and reasonably practicable the information security policies as notified to BARB from time to time (within a reasonable period of time from the date of notification) to ensure the Customer Personal Data is kept securely;
- (g) notify each BVOD Broadcaster as soon as possible and in any event, within 48 hours, (or sooner where required in order to comply with applicable Legislation) if it becomes aware of, or reasonably suspects the occurrence of, any unauthorised or unlawful processing, loss of, damage to or destruction of any of the Customer Personal Data or of any other data security breach under the Legislation;
- (h) use measures which are consistent with good industry practice and reflect current technology and regulatory requirements to anonymise the Contract Data;
- (i) not retain Customer Personal Data or any copies or records incorporating Customer Personal Data for longer than is reasonably necessary to carry out the Services other than as provided for in Paragraph 11.11(j) below;
- (j) on 5 Working Days' written notice from a BVOD Broadcaster either exercising its rights pursuant to this Rate Card or notifying BARB of an individual's exercise of his or her rights pursuant to the Legislation, such notice requiring that BARB and the Data Processing Contractor cease collecting or otherwise processing their data and/or delete certain data, to cease to process the relevant Customer Personal Data (provided that where all collection from a BVOD Broadcaster's Viewing Player is to cease, the BVOD Broadcaster has deactivated the Plug-In in the Viewing Player) and/or delete or destroy the relevant Customer Personal Data (except for so long as such Customer Personal Data is required to be held in relation to audit or regulatory requirements or where such Customer Personal Data is contained in electronic backups made in the normal course of the Data Processing Contractor's business, provided it continues to be kept in accordance

with this paragraph 11.11 for such time and is deleted as soon as reasonably practicable thereafter).

- 11.12 The Data Processing Contractor will only return the Contract Data back to the BVOD Broadcasters or provide the Contract Data to BARB in an anonymised and non-aggregated form.
- 11.13 BARB confirms and warrants that, subject to paragraph 11.11(e), it will not have or seek to have direct access to Customer Personal Data.
- 11.14 Each BVOD Broadcaster hereby warrants and undertakes that it will obtain and maintain all necessary registrations, notifications and authorisations required to permit the Data Processing Contractor to collect the Customer Personal Data via use of the Plug-In, and to the extent required for it to be processed lawfully in accordance with the Legislation, provided that where BARB believes registrations, notifications and authorisations are necessary for activity beyond the scope of the services of the Data Processing Contractor BARB will request in writing that the BVOD Broadcaster obtain such registrations, notifications and authorisations, and the BVOD Broadcaster will not refuse such requests unreasonably.
- 11.15 BARB will be solely responsible for ensuring:
- (a) the Data Processing Contractor will anonymise or otherwise process the Customer Personal Data in accordance with Paragraph 11.11(h); and
 - (b) the Data Processing Contractor will combine the anonymised Customer Personal Data with other data of BARB in its possession in order to develop the Service in accordance with the instructions from BARB from time to time.
- 11.16 BARB represents, warrants and undertakes that all Data provided by the BARB-Related Services to a BVOD Broadcaster (including the combined data referred to in Paragraph 11.15(b)) will have been anonymised or otherwise processed such that it does not constitute the 'personal data' of that BVOD Broadcaster's viewers under the Legislation.
- 11.17 BARB shall at all times whether during or after termination or expiry of this Rate Card indemnify, defend and hold harmless the BVOD Broadcasters and their directors, officers, employees, successors and assigns (Indemnified Parties) from any and all Losses arising from or in connection with the failure by BARB to ensure that the Data Processing Contractor and its sub-contractors, employees, agents and/or independent contractors comply with the obligations set out in paragraph 11.11 (a "**DP Claim**"), provided that the Indemnified Parties use their reasonable endeavours to mitigate their Losses in respect of the DP Claim and provided that BARB has successfully recovered such Losses from the Data Processing Contractor, having used its best endeavours to do so.
- 11.18 The maximum liability of BARB for any breach or series of related breaches of this paragraph 11 shall not exceed £2,000,000 (two million GBP) and the aggregate liability of BARB for the period of the relevant contract between BARB and the Data Processing Contractor shall not exceed £6,000,000 (six million GBP).

12 Notices

- 12.1 Any notice to be given under this Rate Card shall be treated as duly given at the time of delivery if delivered personally and 48 hours (Saturdays, Sundays and public holidays excluded) after being posted if sent pre-paid by first class post by either party to the other at the address set out in the Letter of Consent in relation to the User and at the address set out in paragraph 12.2 in relation to BARB or such other address as either party shall designate for this purpose by written notice to the other.
- 12.2 Notices to BARB shall be delivered to:

Broadcasters' Audience Research Board Limited
20 Orange Street
London WC2H 7EF
Attention: Sarah Mowbray

13 Acceptance

- 13.1 A User must indicate its acceptance of the terms and conditions of this Rate Card by signing a Letter of Consent.
- 13.2 BARB will have no obligations or liability to any party which has not signed a Letter of Consent, or in relation to when BARB has not counter-signed a Letter of Consent.

14 General Terms and Conditions

- 14.1 This Rate Card shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the English and Welsh courts.
- 14.2 This Rate Card and the Letter of Consent shall constitute the entire agreement between the parties with respect to the subject matter thereof and supersede all prior agreements between the parties relating thereto. A person who has not signed a Letter of Consent shall not be entitled to enforce any term of this Rate Card under the Contracts (Rights of Third Parties) Act 1999.
- 14.3 All amounts set out in this Rate Card are exclusive of VAT.
- 14.4 References in this Rate Card to "year", "annually", "per annum" etc are references to calendar Years.
- 14.5 The Introduction and headings in this Rate Card are to be read as part of the operative paragraphs and may affect the interpretation of this Rate Card.
- 14.6 References in this Rate Card to paragraphs are, unless the context otherwise requires, references to paragraphs of the relevant Part of this Rate Card.
- 14.7 References in this Rate Card to any statute or statutory provision include, unless the context otherwise requires, references to that statute or provision as from time to time amended, extended or re-enacted.

- 14.8 The masculine includes the feminine and the neuter, and the singular includes the plural and vice versa.
- 14.9 Where a word or expression is described as including a particular item or items, use of the word "including" shall not limit the generality of the foregoing word or expression.
- 14.10 Where there is a conflict between the Introduction, Part A and/or Part B of this Rate Card, Part A will prevail, followed by the Introduction.

Part C. Definitions

In this Rate Card capitalised terms shall have the following meanings unless the context otherwise requires:

Appropriate Measure means, in any Year:

- (a) in relation to a Licence under paragraph 2 of Part A of this Rate Card, the User's estimate of its UK Television Billings;
- (b) in relation to a Licence under paragraph 3 of Part A of this Rate Card, the User's estimated number of Clients purchasing BARB-Related Services;
- (c) in relation to a Licence under paragraph 4.3 of Part A of this Rate Card, the User's estimate of its likely circulation;
- (d) in relation to a Licence under paragraph 6 of Part A of this Rate Card, the User's estimate of Programme Sales;

Associate means in relation to a company means any holding company of that company and any other subsidiary of that holding company (within the meaning of section 1159 of the Companies Act 2006) from time to time;

BARB Licence or **Licence** means each and any Licence granted to a User pursuant to a Letter of Consent and in accordance with the terms and conditions of the Rate Card;

BARB Underwriter means an entity as identified on the Central User List as may be updated from time to time;

BARB-Related Service means any service which:

- (a) includes Data, or
- (b) is in any way based on Data,

but does not include a service consisting of the resale of Data without any added value arising from the processing of the Data and/or its combination with any other data;

BVODs means a broadcaster's video on demand service;

BVOD Broadcaster means a User who is also a broadcaster of BVODs which has elected to receive the BVOD Services pursuant to a Licence under paragraph 1.2 of Part A of this Rate Card;

BVOD Services means the measurement of Viewing Players provided by BARB at the election of a BVOD Broadcaster pursuant to a Licence granted under paragraph 1.2 of Part A of this Rate Card;

Central User List means a list compiled by BARB of the names of each person whom BARB treats as a User or as an End User pursuant to this Rate Card;

Channel Set-Up Fee means a one-off Fee payable by relevant Users for each television channel which they wish to have reported by BARB as set out in paragraph 1 of Part A of the Rate Card;

Client means a client of the User to whom the User provides BARB-Related Services, being a User or an End User as appropriate;

Consultant means an expert engaged for a specialist project by a User or an End User whether acting as a sole trader, on a short-term contract of employment or providing such expertise through his own limited liability entity;

Contract Data means the data collected from a Viewing Player by the Data Processing Contractor;

Contractors means any such research contractors as are appointed by BARB from time to time in relation to the Service;

Corporate Group means, in relation to any company, that company and its Associates;

Customer Personal Data means (i) the Contract Data, whether or not such Contract Data is 'personal data' under the Legislation; and (ii) any data resulting from the processing (including anonymising) of the Contract Data, except where such processing of such Contract Data means the resulting data no longer constitutes 'personal data' under the Legislation;

Data means television (including BVODs) audience measurement data which is compiled into one or other of the Databases by the Data Processing Contractor(s) for the Service;

Data Processing Contractor(s) means any such research contractors as are appointed by BARB from time to time to process Data for the Service;

Databases means the databases of the Data known as "Database 1" and "Database 2" which are maintained by the Data Processing Contractor(s) for the Service and other databases containing the Data that the Data Processing Contractor(s) may from time to time maintain;

Declared Business means the business or businesses carried on by the User as set out in the Letter of Consent;

Direct Access means on-line electronic access to the Databases;

Disabling Software means any software, virus, Trojan horse, time bomb or any other code that is harmful, disabling or which enables unauthorised access to the Viewing Players or to the Data or theft of or damage to the Data or damage to the Viewing Players or otherwise impairs the operation of the Viewing Players;

End User means a Client of a User who has signed an End User Licence;

End User Licence means an end user licence pursuant to paragraph 3.6 of Part A of the Rate Card in the form annexed to this Rate Card;

End User (Limited Usage) Licence means a limited End User Licence pursuant to paragraph 3.7 of Part A of the Rate Card;

Estimate means a reasonable estimate made by BARB of the Fee payable by the User pursuant to the Rate Card for any Year, such estimate to be based on the User's forecast for that Year on the assumption that this Rate Card will remain in force throughout the Year;

Fee(s) means any fee(s) or Licence fee(s) payable as set out in this Rate Card;

Force Majeure means in relation to either party any circumstances beyond the reasonable control of that party (including any strike, lockout or other form of industrial action) which prevent that party from being able to satisfy its material obligations hereunder;

Internal Purposes means purposes which are internal to the User's Declared Business, or to the business of any Client but shall not include (i) any other business carried on by the User, (ii) resale of Data or BARB-Related Services to or sharing with third parties, (iii) the purposes of publicising the User's Declared Business or the business of any Client or End User, (iv) (where applicable) promoting Programme Sales and sales of a User or End User's airtime and/or sponsorship opportunities, (v) publishing in any form (electronic or otherwise) and (vi) other purposes which BARB may from time to time identify in guidance issued to Users and End Users generally;

Introduction means the introduction to this Rate Card;

Legislation means the Privacy and Electronic Communications (EC Directive) Regulations 2003 and the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 and any successive legislation and other applicable data protection and data security legislation including (without limitation) the General Data Protection Regulation (EU) 2016/679 (**GDPR**) and all related national laws, regulations and secondary legislation, including the Data Protection Act 2018;

Letter of Consent means the letter of consent to the terms of this Rate Card in substantially the form annexed to this Rate Card, to be signed by the User and by BARB;

Losses means all losses, liabilities, fines, damages, awards (including tribunal awards), compensation, reasonable costs and expenses including legal fees on a solicitor/client basis, other reasonable professional fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

Panel Member means a member of the public whose input is used in order to generate the Data;

Plug-In is a piece of software developed by the Data Processing Contractor to be added to the Viewing Players to add the specific functionality of collection of Data to the Viewing Players;

Programme Sales means the promotion, marketing and sale of televisual content and/or merchandising and merchandising rights and any ancillary activities relating thereto;

Rate Card means the Introduction and Parts A, B and C of this Rate Card, together with the Letter of Consent;

Service means a television audience measurement service based on the Data provided by BARB;

Total UK Television Viewing means, in relation to any channel, the total UK television viewing figures for that channel as established from the Data;

UK Television Billings means, in relation to a Licence under paragraph 2 of Part A of the Rate Card, all amounts invoiced by such a User in consideration of securing the inclusion of advertisements in a UK television service or the securing of sponsorship of programmes in such a service, and, in relation to Users who obtain advertising airtime direct from commercial broadcasters, the amounts invoiced to the User in consideration of including such advertisements and / or permitting such sponsorship;

User means any BARB Underwriter or a person who has signed, or is treated by BARB as though it has signed, a Letter of Consent with BARB as a user of the Service;

Viewing Player means the BVOD Broadcaster players (including where necessary any player associated with a BVOD Broadcaster player and used for the delivery of advertisements) notified to BARB by the BVOD Broadcaster from time to time;

Working Day means any day other than a Saturday, Sunday or public holiday in England and Wales; and

Year means any calendar year starting on 1 January.

Annexure A: Letter of Consent

The Directors
Broadcasters' Audience Research Board (**BARB**)
20 Orange Street
London
WC2H 7EF

[Date]

Name of User:

Trading Name of User (if different from above):

Company Registration Number of User (where relevant):

Registered Address of User:

Address for service of User (pursuant to paragraph 12.1 in Part B of the Rate Card):

Declared Business of User (for the purposes of the definition of "Declared Business" as set out in the Rate Card):

Licence(s) applied for by User (as set out in Part A of the Rate Card):

Dear Sirs,

We refer to the Rate Card effective 1 January 2019 (the **Rate Card**) issued by BARB and the application form submitted by us for the provision of BARB's services.

We confirm that we have been supplied with and have read a copy of the Rate Card. We hereby undertake to observe, perform and be bound by all the terms and conditions of the Rate Card which are applicable to us, to the intent and effect that we shall be deemed with effect from the date of this letter to be a party to the Rate Card as if named as a party to that Rate Card.

Signed by

sign here:

duly authorised for and on behalf of

[name of company]

[title of authorised signatory]

print name:

Signed by

sign here:

duly authorised for and on behalf of

**Broadcasters' Audience Research
Board Limited**

Finance Director

print name: Nigel McLachlan

Annexure B: End User Licence

Dated:

Between:

- (1) **Broadcasters' Audience Research Board Limited** (registered number 3611026) whose registered office is at 20 Orange Street, London WC2H 7EF (the **Company** or **BARB**); and
- (2) **[Company name]**, incorporated and registered in **[place of incorporation]** with company number **[company registration number]** whose registered office is at **[registered address]** (you, the **End-User**).

In this end-user licence agreement ("End User Licence") the following expressions have the following meanings:

BARB-Related Service means any service which:

- (a) includes Data, or
- (b) is in any way based on Data,

but does not include a service consisting of the resale of Data without any added value arising from the processing of the Data and/or its combination with any other data;

BARB Underwriter means an entity as identified on the Central User List as may be updated from time to time;

BVODs means a broadcaster's video on demand service;

Central User List means a list compiled by BARB of the names of each person whom BARB treats as an End User or as a User pursuant to the Rate Card;

Consultant means an expert engaged for a specialist project by an End User whether acting as a sole trader, on a short-term contract of employment or providing such expertise through his own limited liability entity;

Data means television (including BVODs) audience measurement data which is compiled into one or other of the Databases;

Databases means the databases of the Data known as "Database 1" and "Database 2" which are maintained by the Data Processing Contractor(s) and other databases maintained from time to time by the Data Processing Contractor(s);

Data Processing Contractor(s) means any such research contractors as are appointed by the Company from time to time to process and/or supply Data;

Declared Business means the business or businesses carried on by the End User;

Programme Sales means the promotion, marketing and sale of televisual content and/or merchandising and merchandising rights and any ancillary activities relating thereto;

Rate Card means the document containing this End User Licence at Annexure B and additionally comprising the Introduction, Part A, Part B and Part C as may from time to time be varied by BARB; and

User means any BARB Underwriter or a person who has signed, or is treated by BARB as though it had signed, a letter of consent with BARB as a user of the service.

It is agreed that:

1 Licence

- 1.1 The Company hereby grants the End User a limited, non-exclusive, non transferable, non-sublicensable, fully paid-up licence to access and use the BARB-Related Services from a holder of a BARB Licence for onward sales from the date of execution of this End User Licence until termination of this End User Licence, subject to the terms and conditions set out herein.
- 1.2 The Company expressly reserves any and all other rights in and to the Data other than the limited licence rights set out herein.

2 Scope of the Licence

- 2.1 Except as otherwise provided under this End User Licence, the End User may use the BARB-Related Services only for their own internal purposes, that is to say for purposes which are internal to the business carried on by it but shall not include: (i) any other business carried on by the End User, (ii) resale of BARB – Related Services to or sharing with third parties, (iii) for the purposes of publicising the End User's Declared Business, (iv) Programme Sales or promoting sales of the End User's airtime and/or sponsorship opportunities (v) publishing in any form (electronic or otherwise) and (vi) other purposes which BARB may from time to time identify in guidance issued to Users and End Users generally.
- 2.2 For PR Agencies, a maximum value of £3,750 worth of data, cumulative across the calendar Year, may be purchased and provided to their Clients to inform of the estimated audience for a programme their Client featured in.
- 2.3 A Consultant is permitted to access an End User's Data without needing a separate End User Licence provided that the following criteria are met:
 - the Consultant typically works from the End User's offices and uses such End User's facilities like any other employee of the End User;

- the Consultant is working with Data exclusively for one Client at a time; and
- the Consultant does not advertise, whether on his or her website or otherwise, that it provides BARB-Related Services.

2.4 Subject to paragraphs 2.1 and 2.2 the End User shall treat the BARB-Related Services as confidential to the Company and shall not disclose or otherwise divulge or permit access to any part of the BARB-Related Services (whether electronically or otherwise) to any person or make any other use whatsoever of the BARB-Related Services except as provided under this End User Licence. This obligation shall not apply to any part of the BARB-Related Services which is in the public domain otherwise than as a result of a breach of this End User Licence except as permitted by this End User Licence.

3 **BARB-Related Services**

3.1 The End User hereby acknowledges that the Data (in whatever form) is the result of statistical sampling and survey procedures which are designed to produce estimates of television audiences within the limits of normal statistical error.

3.2 The Company does not warrant the accuracy of the Data and, subject to paragraph 5, the Company accepts no liability whatsoever to the End User in relation to the Data whether in contract, tort or otherwise including (without limitation) any errors, defects or omissions in the Data, any harm caused to any computer system caused in whole or in part by the installation or uploading of the Data onto that system delays in the delivery of or access to the Data, or any breakdown or cessation of the supply of the Data from the Data Processing Contractor(s), howsoever caused.

4 **Intellectual Property Rights**

The End User acknowledges and agrees that the copyright and all similar rights in the Data used in the BARB-Related Services shall at all times remain vested in the Company provided that nothing in this paragraph 4 shall prevent the use of the Data used in the BARB-Related Services by the End User in accordance with the terms of this End User Licence.

5 **Limitation of Liability**

5.1 The Company does not exclude or in any way limit liability for any liability to the extent the same may not be excluded or limited as a matter of law. Without limiting the foregoing, the Company does not exclude or restrict liability for its own fraud or for death or personal injury resulting from its own negligence.

5.2 The Company shall in no circumstances be liable to the End User in contract, tort or otherwise for loss (whether direct or indirect) of profits, goodwill, business (including, without limitation, advertising revenue) or anticipated savings or for any indirect or consequential loss whatsoever (including any such loss suffered by any other person in circumstances where that person is entitled to recover the same from the End User).

5.3 The Company's total aggregate liability to the End User (which shall include the Company's liability to an End User arising out of damage, loss, liability or cost incurred by that End User's Clients) in contract, tort or otherwise arising under or in connection with this End User Licence for any incident or series of incidents shall be limited to the

lesser of: (i) £50,000; and (ii) a reasonable proportion (having regard to the Company's liability to any other Users as a result of the incident or series of related incidents in question) of such sums as are recoverable under the Company's insurance cover for the time being following any other claims on the Company's insurance cover relating to the Company's liability to its Users. In addition, in the event that the Company receives a further sum from Data Processing Contractors in relation to the relevant incident or series of incidents, such further sum shall be reasonably apportioned between the Users having regard to the Company's liability to each BARB User and/or End User and the Company shall use reasonable endeavours to enforce the terms of its contracts with the Data Processing Contractors to recover such further sums for apportionment.

5.4 Each provision of this paragraph is to be construed as a separate exclusion or limitation applying and surviving even if for any reason one or other of such provisions is held to be inapplicable or unreasonable in any circumstances and shall remain in force notwithstanding termination of this End User Licence.

6 **Indemnities**

Without limitation to any other rights of the Company under this End User Licence or otherwise, including without limitation the rights of termination under paragraph 7, the End User shall indemnify the Company up to an amount of £500,000 for any damage, loss, liability or cost incurred by the Company arising out of any use of the BARB-Related Services by the End User in breach of any limitations on the use of BARB-Related Services under this End User Licence and the Rate Card, subject to the Company using reasonable endeavours to mitigate such damage, loss, liability or cost.

7 **Termination and Expiry**

7.1 The Company may terminate this End User Licence immediately in writing if at any time:

- there ceases to be any User or a User fails to pay their Fees payable under the Rate Card when due or commits or causes any material breach of its obligations under the Rate Card;
- an End User commits or causes to be committed any material breach of its obligations under this End User Licence provided that in the case of a breach capable of remedy the End User shall first have been given written notice by the Company or a User specifying the breach complained of and requiring the same to be remedied within a reasonable period of time from notification thereof and the End User shall have failed to comply therewith; or
- an End User becomes insolvent, makes any composition or arrangement with its creditors, or goes into liquidation whether voluntary or compulsory, or if any order is made or a resolution is passed for its winding up (other than for the purposes of a bona fide reconstruction), or if it ceases or threatens to cease trading or suffers the appointment of a receiver or administrator over the whole or part of any of its assets.

7.2 On termination of this End User Licence for any reason, the End User shall immediately cease accessing or receiving any BARB-Related Services not already made available to it. The End User shall however be permitted to use BARB-Related Services already made available to it and shall continue to comply with the provisions under this End User Licence.

8 **Third Parties**

8.1 Except insofar as this End User Licence expressly provides, a person who is not a party to this End User Licence has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this End User Licence but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

8.2 Nothing in this End User Licence or any agreement, arrangement, understanding, liability or obligation under or in connection with this End User Licence is intended to confer any benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999.

9 **Compliance**

9.1 The End User shall maintain proper books of account and records in relation to its use of the Data.

9.2 Any books and records to be maintained under this End-User Licence shall be subject to inspection on reasonable notice by BARB, its employees, agents or professional advisers who shall be entitled to take copies or extracts from such books and records and to such further information and action as may reasonably be required to establish or verify the End User's compliance with its obligations under this End User Licence.

9.3 The End User shall cooperate with any inspection or other request carried out under paragraph 9.2.

9.4 BARB, its employees, agents and professional advisers shall treat books, records and information provided in accordance with this paragraph 9 as confidential and shall not disclose or otherwise divulge the same or any information contained in such books and records to any other person. The rights and obligations of the parties under paragraphs 9.1 to 9.4 shall continue for a period of 12 months following termination of this End User Licence.

10 **Whole Agreement**

The parties acknowledge that although this End User Licence and the documents referred to in it contain the whole agreement between them relating to the subject matter of this End User Licence, they exist and are to be read and construed in the wider context of the Rate Card (which is published on the BARB website at www.barb.co.uk) and, to the extent that there is any inconsistency between the two, the parties to this Agreement agree that the terms of the Rate Card shall prevail and that this Agreement shall be amended accordingly.

11 **Law and Jurisdiction**

This End User Licence shall be governed by and construed in accordance with the laws of England and Wales and each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales over any claim, dispute or matter arising under or in connection with this End User Licence.

Signed by _____ sign here:

duly authorised for and on behalf of

[name of company]

[title of authorised signatory]

print name:

Signed by _____ sign here:

duly authorised for and on behalf of

**Broadcasters' Audience Research
Board Limited**

Finance Director

print name: Nigel McLachlan
