

Skydeo Services Terms of Use

Last Modified: March 2023

Welcome to the Skydeo Services' Terms of Use. These Terms of Use ("**TOU**") cover your use of: (1) the Skydeo Dashboard and (2) Data (collectively, the "**Skydeo Services**").

We hope that these terms of use will help ensure that the products, services, and information you might gain through your use of the Skydeo Services will be beneficial to you and your business. These terms are important and we cannot permit you to use the Skydeo Services unless you agree to them. By using the Skydeo Services you are agreeing to these terms.

We reserve the right to modify these TOU at any time without notice to you. Your use of the Skydeo Services following any such modification constitutes your agreement to follow and be bound by these TOU as modified. You agree to review these TOU on a regular basis and always remain in compliance.

1. DATA AVAILABILITY AND USE.

1.1 Overview.

- a. "**User**" means you, the person or entity accessing and utilizing the Skydeo Services and services. "**Authorized Partner**" means a third-party platform, marketplace or publisher: (i) with whom User has a direct agreement for media buys and the necessary terms and conditions as set forth in this TOU; and (ii) to whom Skydeo can distribute Audience Files at User's direction. "**Audience File**" means a targeting segment of the User-selected Authorized Partner's applicable IDs.
- b. Skydeo provides the license and use of applicable and available first-party and third-party consumer segments, demographic data, and/or behavioral data applicable to targetable consumers in the United States ("**Data**"). User acknowledges and agrees that Skydeo may of its own volition change the Data available through the Skydeo Services at any time during the term of this TOU.
- c. User wishes to license use of the Data for use via the Skydeo Services for its own use or for the benefit of its third-party client(s) (where user is acting as an agency) in targeted online and mobile campaigns and related directly related and permitted services (such

as audience counts and campaign measurement) as performed by receiving Authorized Partners.

1.2 Authorization. Skydeo authorizes User to incorporate use of the Data via the Skydeo Services in the creation and distribution of Audience Files and subsequent use with Authorized Partners solely in connection with the permitted uses described below (the “**Authorized Uses**”) and subject to the terms and conditions as set forth herein. Any use of any Data or Audience File that is not expressly permitted as an Authorized Use is strictly prohibited. The Data will reside within the Skydeo authorized databases of the Skydeo Services for the creation and distribution of Audience Files to Authorized Partners, but at no time will or may any of the Data be directly accessed by User or passed on to User’s designated Authorized Partners or any other third party without Skydeo’s prior written consent.

1.3 Authorized Uses. User may use the Data in solely connection with the creation of Audience Files for use in targeted online and mobile marketing campaign services to market User’s own – or a User’s client’s own where User is an agency – products and services (including permitted targeting exclusion), as well as directly related targeted audience counts, targeted audience segmentation development, and campaign measurement reporting.

1.4 Obligations.

- a. All advertising and/or marketing communications connected with the use of the Data and Audience Files must be: (i) devoid of any reference to any selection criteria or presumed knowledge concerning the intended recipient (for instance, ad text stating “We know you’re pregnant, so you might like...” would not be permissible); and (ii) comply with all applicable laws, rules, regulations, and privacy policies (including both User’s and each applicable Authorized Partner’s).
- b. The Data and Audience Files (or related campaign) may not be used in connection with: (i) the establishment of any individual’s creditworthiness or to determine any consumer’s eligibility for credit, insurance, or employment; (ii) the advertisement or marketing of products or services in connection with the sale or exchange of any products that are illegal in the jurisdiction in which the targeted advertisement is served to the consumer, including but not limited to illegal drugs and illegal weapons; or (iii) the advertising or marketing of products or services in connection with the sale or exchange of any illicit products, including, but not limited to, sexual services (both online and offline) and pornography.
- c. User shall comply with all privacy and data protection laws, rules, and regulations, and with the published policies, principles, and best practices of the Digital Advertising Alliance (“**DAA**”) or other

generally accepted consumer targeting and notice and choice industry group (such as the Network Advertising Initiative (“NAI”) that are or may in the future be applicable to the permitted uses of the Data and Audience Files. For clarity, User need not be a participating member of such industry group(s) but is required to comply with the selected group’s published policies and best practices for consumer notice and choice with regard to targeted advertising.

- d. Skydeo may, in its sole discretion, approve or deny Skydeo Services’ making available or subsequent use of the Data in whole or in part and the creation and/or distribution of any Audience File(s) for the benefit of User or any User client(s).
- e. Because each Authorized Partner is acting as User’s service provider, User acknowledges and agrees that it is required to use commercially reasonable efforts to include the following or materially similar provisions in its direct agreement(s) with each Authorized Partner intended to receive any Audience File. Where or to the extent User is unable to obtain an Authorized Partner’s written agreement to such following terms and conditions, then User further acknowledges and agrees that User itself shall be directly liable to Skydeo for any failure by any such Authorized Partner’s to comply with such terms and conditions.
 - (i) Authorized Partner is permitted to utilize each Audience File it receives: (A) solely for the benefit of User (including for User’s own client, where applicable); (B) within its own services; and (C) solely in performance of the Authorized Uses addressed in this TOU, excluding any permitted distribution of any Audience File (or part thereof) to or use on another platform other than its own.
 - (ii) Promptly following completion of its performance of the Authorized Use(s) for User, Authorized Partner shall cease all use of and promptly and irreversibly destroy the applicable Audience File(s).
 - (iii) Authorized Partner may not provide or distribute any Audience File to any third party, including, but not limited to, User itself, nor may Authorized Partner otherwise modify, reuse, or reverse engineer (or attempt to reverse engineer) any Audience File or associate any IDs contained therein with personally identifiable information unless such IDs themselves already constitute personally identifiable information.

- (iv) Authorized Partner shall provide User with all necessary Audience File usage reporting information, including applicable pricing, and in a prompt and timely manner.
 - (v) Authorized Partner is strictly prohibited from: (A) “white labeling” any Audience File or part thereof nor including any Audience File or part thereof in any kind of blind exchange environment; (B) reselling any Audience File or part thereof or the usage thereof; (C) redistributing any Audience File or any part or output thereof (including any derived audience) to any third party; or (D) creating any derivative segments or products or creating any new segments or new products from any Audience File or part thereof (for clarity, permitted campaign analytics or measurement reporting does not constitute a new product).
 - (vi) In accordance with Section 3.7 below, each Authorized Partner shall permit audits by Skydeo or Skydeo’s-designated third party of: (A) User’s account; (B) any environments within Authorized Partner’s services where any distributed Audience File is processed (including storage and any and all uses); and (C) all books, records, and billing/payment of User in connection with use of any Audience File(s).
 - (vii) Authorized Partner shall comply with all obligations as applicable to User with regard to Skydeo’s Confidential Information and intellectual property, security obligations, warranties, and disclaimers.
 - (viii) Authorized Partner shall apply all applicable consumer opt outs and requests as communicated to Authorized Partner by User and by consumers.
 - (ix) Authorized Partner shall comply with all obligations as set forth in Sections 1.4(a)–(c) above.
 - (x) Skydeo shall be a third-party beneficiary of all representations, warranties, and covenants made by Authorized Partner to User.
- f. User acknowledges and agrees that it or the applicable Authorized Partner(s) must timely provide all usage reporting of each Audience File to Skydeo, to include User’s name, Data segment/element name(s) used in the creation of the used Audience File(s) and impressions served in each such campaign; any failure to accurately and timely provide complete usage reporting to Skydeo shall constitute a material breach of this TOU by User and for which

Skydeo may terminate this TOU in its sole discretion immediately upon the provision of notice to User.

- g. If a User is using its license and access to Data (and any resulting Audience File(s)) for the benefit of one or more of User's own clients (for example, User is acting as an agency for its own clients), User acknowledges and agrees that it itself is solely responsible to Skydeo for all use and compliance with the terms of this TOU Agreement by User and each and all of its own clients.
- h. In any instance where Skydeo is unable to enforce a claim directly against any User's client or Authorized Partner due to lack of privity of contract or any other legal remedy, User shall assume all responsibility and liability to Skydeo as if such client's or Authorized Partner's actions or inactions were those of User itself.

2. **PRICING / PAYMENT.** Fees incurred for User's use of the Data, Audience Files, and any applicable derivatives will be invoiced by and made available via the Skydeo Services, and User is solely responsible for payment of applicable fees to Skydeo, such undisputed payments to be made in a timely manner. User's failure to make timely payments to Skydeo for use(s) of Data licensed to User by Skydeo pursuant to this TOU and resulting Audience Files will constitute a material default by User, and Skydeo may, in its sole discretion: (a) suspend any User utilization of the Data (and/or any use of any and all Audience Files via any Authorized Partners); and (b) require User's payment in full of any past due invoices before User may use or continue to use any Data or Audience File(s) created therefrom, whether or not already distributed to any Authorized Partner(s).

3. **CONFIDENTIALITY.**

3.1 "Confidential Information" means, with respect to the party providing or owning such information ("**Disclosing Party**"), any and all information of the Disclosing Party that is provided or made available to the other party (or to whom permitted access is provided) ("**Receiving Party**") pursuant to this TOU, including, but not limited to, the Data, taxonomies and information related to the Data (including applicable third-party data provider names and permitted uses), Audience Files, proposals relating to such information, all related Data pricing information, and concepts, data, drawings, documents, proposals, specifications, programs, data models, data integration tools and techniques, code, programs, and works, as well as samples, specimens, copyrights, patents, trademark applications and/or registrations, trade secrets, know-how, customers, customer lists, prospective customers, marketing plans, distribution plans, contracts, agreements, security systems and procedures, communications networks and systems, research and development activities, marketing activities, purchasing activities, accounting and financial records of the Disclosing Party, and any other proprietary information, including information relating to the development, testing, manufacture, creating and licensing of data, software products, and services.

3.2 The Disclosing Party's Confidential Information does not include information that: (a) is or becomes a part of the public domain through no act or omission of the Receiving Party; (b) was in the Receiving Party's lawful possession prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party; (c) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; (d) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; or (e) is required to be disclosed by law or other governmental authority (but only to the extent so required and solely in connection with such disclosure) or, in the case of Skydeo is required to be disclosed to an applicable third party, such as a third-party data provider; provided, however, that the Receiving Party shall first have given notice to the Disclosing Party so that a protective order, if appropriate, may be sought by the Disclosing Party.

3.3 The Receiving Party will: (a) hold the Disclosing Party's Confidential Information in strict confidence; (b) not disclose such Confidential Information to any third party or to use it for any purpose other than as specifically authorized by the Disclosing Party (including as addressed in this TOU); and (c) employ all reasonable steps to protect the Confidential Information of the Disclosing Party from unauthorized or inadvertent disclosure, including without limitation those steps that it takes to protect its own proprietary information. Except as may be otherwise specified in this TOU, the Receiving Party may disclose the Disclosing Party's Confidential Information only to those of its employees having a need to know and only to the extent necessary to enable the parties to adequately perform their respective responsibilities to each other. The Receiving Party hereby undertakes to ensure the individual compliance of such employees with the terms hereof. No copies of the Confidential Information may be made by the Receiving Party except as necessary to perform related services as requested by the Disclosing Party. Confidential Information may not be translated into another format or language, or decompiled or reverse engineered without the Disclosing Party's prior written consent.

3.4 User shall not use any of Skydeo's Confidential Information (including, but not limited to, the Data itself or any resulting Audience File) for any purpose other than as provided in this TOU, including, but not limited to, creating any product, computer software program, or user documentation that is similar to or competitive with the Data.

3.5 User agrees that at all times it shall maintain current, accurate, and complete books and records relating to its usage of the Data and Audience Files. All relevant books and records are for use are deemed to be the Confidential Information of both User and Skydeo and is permitted to be disclosed to each applicable third-party data provider.

3.6 The parties acknowledge and agree that either party's breach (as Receiving Party) of the provisions of this TOU concerning confidentiality may result in irreparable harm and significant injury to the Disclosing Party and/or its clients or partners that may be difficult to ascertain. In the event of any breach of the terms of this Section 3., the Disclosing Party will have the right to seek an immediate injunction

without posting bond in addition to any other remedies that may be available to such Disclosing Party at law or in equity.

4. TERM AND TERMINATION.

4.1 Either party may in its sole discretion terminate this TOU by providing at least thirty (30) days' prior written notice to the other party. Either party may terminate this TOU to be effective immediately upon written notice to the other party in the event the other party is in default under this Agreement and fails to cure such default within five (5) days' written notice from the other party specifying the nature of such default.

4.3 In the event that applicable legislation, governmental regulations, court order, or any applicable third-party data provider's' requirements (collectively or individually, "**Legal Obligations**") limit or prohibit the delivery or use of any Data or Audience File(s), or if, in its reasonable judgment, Skydeo determines that the delivery or use of any Data or Audience File(s) would or be likely to violate any Legal Obligations, Skydeo may either suspend access to or use of Data and applicable Audience File(s) or terminate this TOU in part or in its entirety, to be effective upon the date so stated by Skydeo and notwithstanding Section 4.1 above. User itself may effectively suspend performance of this TOU by simply ceasing its use of any Data and Audience File(s) and any derivatives thereof.

4.4 Upon termination of this TOU for any reason, each Receiving Party will cease use of (and, if and where applicable and to the extent not otherwise necessary to the contrary, destroy) all Confidential Information of the applicable Disclosing Party and any copies thereof. User shall promptly pay any and all fees invoice by and owed to Skydeo. In no event will User be entitled to a refund of any amounts paid.

5. REPRESENTATIONS AND WARRANTIES.

5.1 Each party hereby represents and warrants that: (a) it has full power and authority to enter into and perform its obligations under this TOU; (b) its execution and delivery of this TOU have been duly authorized; (c) its entry into this TOU does not violate any applicable laws or regulations and does not breach any other agreement or covenant to which it is a party or is bound; and (d) it will otherwise comply with all applicable laws and regulations related to its performance of this TOU.

5.2 User further represents and warrants that: (a) it will not use any Data or Audience File in or in connection with targeting any individual who has exercised an option to which User (or User's client, where applicable) has, directly or indirectly, committed to honoring any opt out of having such individual's data disclosed and used for targeted advertising; (b) to the extent any individual exercises any opt out right with or applicable to User (or User's client) following use of the Data or Audience File, User (or User's client, as applicable) will remove such individual from all future applicable targeting by or for the benefit of User (or such User client, as applicable), including, but not limited to, further use of the same or any other Data and resulting Audience File(s);

(c) its use of the Data and each Audience File shall comply with applicable laws and Section 1.4 above; (d) it shall comply with any Legal Obligations made known to User by Skydeo; and (e) none of the activities for which it uses any Data or Audience File will directly or indirectly constitute, involve, or facilitate the commission by Skydeo of any unlawful or illegal act or any offense (including without limitation the infringement of any laws relating to defamation, obscenity or indecency) or the infringement of the rights of any other person.

5.3 SKYDEO EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, HEREUNDER WITH REGARD TO THE DATA, THE SKYDEO SERVICES, AUDIENCE STUDIO, AND ANY PARTS HERE OF. SUCH DISCLAIMERS SHALL INCLUDE ALL IMPLIED WARRANTIES OF ACCURACY, COMPLETENESS, CURRENTNESS, MERCHANTABILITY, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE.

5.4 FURTHER, SKYDEO EXPRESSLY DISCLAIMS (ANY WARRANTY THAT THE USE OF ANY DATA AND AUDIENCE FILE (INCLUDING ANY DERIVATIVE[S] THEREOF) OR ANY PART(S) OF THE PRECEDING WILL BE UNINTERRUPTED OR ERROR FREE. EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS TOU, THE DATA IS MADE AVAILABLE FOR USE "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. EXCEPT AS OTHERWISE STATED IN THIS TOU, THERE ARE NO OTHER WARRANTIES EXPRESS OR IMPLIED HEREUNDER, INCLUDING IMPLIED WARRANTIES OF ACCURACY, COMPLETENESS, CURRENTNESS, MERCHANTABILITY, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE.

6. LIMITATIONS OF LIABILITY.

6.1 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATED TO THIS TOU AND ANY DATA OR ANY AUDIENCE FILE, INCLUDING LOST INCOME OR LOST REVENUE AND WHETHER BASED IN CONTRACT, TORT, OR ANY OTHER THEORY.

6.2 SKYDEO'S AGGREGATE LIABILITY TO USER FOR DAMAGES THAT ARISE OUT OF OR ARE RELATED TO THIS AGREEMENT SHALL BE LIMITED TO \$100,000.00. IF SUCH DAMAGES INCLUDE THE COST OF CONSUMER NOTIFICATION OR CREDIT MONITORING, SKYDEO SHALL BE LIABLE FOR SUCH DAMAGES (SUBJECT TO THE FOREGOING LIMITATION) ONLY IF NOTICE OR CREDIT MONITORING IS REQUIRED BY APPLICABLE LAW.

6.3 THE LIMITATIONS OF LIABILITY AS SET FORTH IN SECTION 6.1 AND SECTION 6.2 ABOVE SHALL NOT APPLY TO EITHER PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER (EXCEPT WHERE SO EXPRESSLY STATED AS APPLICABLE IN THE INDEMNIFICATION OBLIGATIONS) OR FOR DAMAGES RESULTING FROM THE OTHER PARTY'S ACTS AND/OR OMISSIONS

CONSTITUTING GROSS NEGLIGENCE, INTENTIONAL MISCONDUCT, OR FRAUD. THE LIMITATIONS OF LIABILITY IN THIS TOU SHALL IN NO WAY BE AFFECTED BY THE LEGAL THEORY OR FORM UNDER WHICH ANY ACTION IS BROUGHT. FURTHER, THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS TOU AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN.

6.4 SKYDEO SHALL HAVE NO RESPONSIBILITY OR LIABILITY TO ANY OF USER'S OWN CLIENTS (IF AND WHERE APPLICABLE).

6.5 EACH PARTY SHALL HAVE A DUTY TO MITIGATE DAMAGES FOR WHICH THE OTHER PARTY IS RESPONSIBLE.

7. INDEMNIFICATION.

7.1 User shall indemnify and hold Skydeo, its agents, service providers, and employees, as well as all applicable third-party data providers, harmless from and against any third-party (including any third-party data provider's) claim, action, or liability (including damages, costs, expenses, and reasonable attorneys' fees) that may arise against any such indemnified parties resulting from or in connection with: (a) User's (and any User's client's and any Authorized Partner's, each where applicable) failure to comply with any applicable law(s) or Section 1.4(a)–(c); (b) any failure by User to pass through and enforce all required terms and conditions to each applicable Authorized Partner; (c) any Authorized Partner's failure to comply with any of the terms and conditions as set forth in Section 1.4.e.; (d) User's (or User's client's, where applicable) and each applicable Authorized Partner's inappropriate or unpermitted actions in breach of their respective obligations as set forth in this TOU; and/or (e) resulting from the misappropriation, misuse, or unauthorized use by User (and/or by any User's client or Authorized Partner) of any Data and/or Audience File (or part thereof).

7.2 Skydeo shall indemnify and hold User, its agents, service providers (including applicable Authorized Partners), and employees harmless from and against any third-party claim, action, or liability (including damages, costs, expenses, and reasonable attorneys' fees) that may arise against any such indemnified parties resulting from or in connection with Skydeo's failure to comply with any applicable law(s).

7.3 The indemnifying party shall have the right to exercise reasonable control over any litigation within the scope of its indemnities; provided, however, that the indemnified party shall have the right to participate in any such litigation insofar as it concerns claims against it. The right to participate includes the indemnified party's right to select and retain counsel to represent it at its own expense. Each indemnified party will cooperate to the extent necessary in the defense of any claim within the scope of these indemnities.

8. MISCELLANEOUS.

8.1 User authorizes Skydeo to use its name, logo and/or trademark without notice to or consent in connection with certain marketing and promotional materials that Skydeo may disseminate to the public. The materials may include, but are not limited to, brochures, internet website, press releases and any other materials relating the fact that User is a customer of Skydeo.

8.2 This TOU shall be governed and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles, and shall benefit and shall be binding upon the parties hereto and their respective successors and permitted assigns. Any dispute arising out of or related to this TOU shall be resolved exclusively in the state or local courts located in Travis County, Texas to which jurisdiction both parties irrevocably submit.

8.3 This TOU constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all written or oral prior agreements and understandings between the parties concerning such subject matter. Any amendment shall be in writing and signed by authorized representatives of each party. If any one or more of the provisions of the TOU shall for any reason be held to be invalid, illegal, or unenforceable, the same shall not affect any of the other portions of this TOU. Failure or delay by either party in exercising any right hereunder shall not operate as a waiver of such right. The descriptive headings of the sections of this TOU and any exhibits or attachments are inserted for convenience only.

8.4 Neither party may assign its rights and obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, however, that no consent shall be required for assignment by either party to an affiliated corporation or other entity under common control with such party, provided that: (a) the assigning party shall remain fully liable for performance hereunder, unless the parties agree otherwise in writing; (b) the party to whom the assignment is made has sufficient resources to perform all obligations under this TOU; and (c) with regard to User's assignment of this TOU, the party to whom the assignment is made does not constitute a competitor of Skydeo.

8.5 Except as otherwise provided by this TOU or applicable law, any notice or other communication required hereunder shall be made by electronic mail and deemed to be received upon transmission. A party may change the name or address of the designated recipient by giving notice to the other party. Any notice or communication shall be deemed given upon receipt. If to Skydeo, notices or other communications required hereunder shall be sent _____@skydeo.com. If to User, notices or other communications required hereunder shall be sent to the email address as provided by User to Skydeo.

8.6 If performance of any obligation under this TOU is directly prevented or interfered with by an act or condition outside the reasonable control of a party hereto (a "**Force Majeure Event**") – such as fire, strike, or labor disputes of a third-party, war or violence, and/or court order or requirement of a government agency – the party suffering

such Force Majeure Event shall, upon giving prompt written notice to the other party, be excused from such performance during such occurrence to the extent performance is not possible.

8.7 The words “include”, “includes”, “including”, and “e.g.”, when following a general statement or term, are not to be construed as limiting the general statement or term to any specific item or matter set forth or to similar items or matters, but rather as permitting the general statement or term to refer also to all other items or matters that could reasonably fall within its scope. Where appropriate, the plural includes the singular and the singular includes the plural.

8.8 Any provision of this TOU that contemplates performance or observance subsequent to any termination or expiration of this TOU – including, without limitation, all provisions with respect to confidentiality, limitation on liabilities, and indemnification – shall survive any termination or expiration of this TOU and continue in full force and effect.