

## **ELECTRONIC PRODUCT CATALOG - U.P.C. DATABASE LICENSE AGREEMENT**

In the event of a conflict in the provisions of any attachments hereto and the provisions set forth in this Agreement, the provisions of such attachments shall govern.

1. **Database.** U.P.C. Data Market agrees to provide for Purchaser Electronic Product Catalogs / U.P.C. Database(s). Such Database(s) are hereinafter referred to as “the Database”.

2. **Technology License.** U.P.C. Data Market hereby grants Purchaser a non-exclusive, non-transferable, non-assignable, non-sub-licensable, worldwide license to use the Database. Purchaser shall not rent, lease, loan, sell, sub-license, assign, disseminate, or otherwise transfer the Database to any third party including any subsidiaries or affiliates of Purchaser. Purchaser shall not reverse-engineer, decompile, or disassemble the Database, and Purchaser shall not modify or create derivative works of the Database.

3. **Confidential Information.** Each party hereto (“Such Party”) shall hold in trust for the other party hereto (“Such Other Party”), and shall not disclose to any nonparty to the Agreement, any confidential information of Such Other Party. Confidential information is information which relates to Such Other Party’s research, development, trade secrets or business affairs, but does not include information which is generally known or easily ascertainable by non-parties of ordinary skill in computer design and programming.

4. **Use of Work Product.** U.P.C. Data Market and Purchaser agree that Purchaser shall have nonexclusive ownership of any deliverable product utilizing the Database and the ideas embodied therein.

5. **Liability.** U.P.C. Data Market warrants to Purchaser that the Databases to be delivered have been procured from the manufacturers, authorized manufacturer’s representatives, or independent data sources; and that, to the best of U.P.C. Data Market’s knowledge, Purchaser’s use of the databases do not infringe on the intellectual property rights of any manufacturer or third party. Every attempt has been made to verify the data and image components of the Database. However, as the components of the Database are gathered from various data sources, elements of the Database are subject to human and / or machine error; therefore, U.P.C. DATA MARKET CANNOT AND DOES NOT WARRANT THAT THE DATABASE WILL BE ERROR FREE OR THAT ALL DATA FIELDS WILL BE AVAILABLE OR PROVIDED FOR EACH PRODUCT IN THE DATABASE. U.P.C. DATA MARKET DOES NOT WARRANT THAT THE DATABASE WILL MEET ALL THE NEEDS OF THE PURCHASER. U.P.C. DATA MARKET MAKES NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

In no event shall U.P.C. Data Market be liable for special or consequential damages, either in contract or tort, whether or not the possibility of such damages has been disclosed to U.P.C. Data Market in advance or could have been reasonably foreseen by U.P.C. Data Market, and in the event this limitation of damages is held unenforceable then the parties agree that by reason of the difficulty in foreseeing possible damages all liability to Purchaser shall be limited to One Hundred dollars (\$100.00) as liquidated damages and not as penalty.

**6. Indemnification.** U.P.C. Data Market shall, at its sole expense, defend, indemnify and hold Purchaser and its' officers, directors, agents and employees harmless from and against all liability, damages and costs (including reasonable attorneys' fees and court costs) that may result from or arise out of any claim or suit brought against Purchaser or its' officers, directors, agents or employees in connection with or arising out of the infringement by the Database of any patent, copyright, trade secret, or other proprietary right of a third party prior to the expiration or termination of this Agreement. The foregoing indemnity shall not apply to any infringement claim to the extent that the claim arises from (i) the modification of the Database by, or on behalf of, Purchaser, except to the extent such modification is done by or at the direction of U.P.C. Data Market; (ii) Purchaser's use of the Database in conjunction with Purchaser's data to the extent no such infringement would occur absent such combination; (iii) Purchaser's use of the Database with other software or hardware, to the extent no such infringement would occur absent such combination; or (iv) Purchaser's use of the Database in breach of this Agreement.

Purchaser shall, at its sole expense, defend, indemnify and hold U.P.C. Data Market and its' officers, directors, agents and employees harmless from and against all liability, damages and costs (including reasonable attorneys' fees and court costs) that may result from or arise out of any claim or suit asserted or brought against U.P.C. Data Market by a third party in connection with or arising out of (i) content, technology, software, or hardware not provided by U.P.C. Data Market, (ii) any illegal or unauthorized use of the Database by Purchaser, its' officers, directors, employees, or contractors; and (iii) any electronic commerce activities relating to third parties to the extent such claim or suit would not have occurred absent the Database.

**7. Refunds and Returns.** As there is no valid means of establishing non-use or destruction of the Database once delivered, U.P.C. Data Market will accept no Returns or issue no Refunds. Should, however, there be found a technical inaccuracy in the data, U.P.C. Data Market will make all efforts to supply corrections.

**8. Complete Agreement.** This Agreement contains the entire agreement between the parties hereto with respect to the matters covered herein. No other agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of U.P.C. Data Market by any of its employees or agents, or contained in any sales materials or brochures, shall be deemed to bind the parties hereto with respect to the subject matter hereof. Purchaser acknowledges that it is entering into this Agreement solely on the basis of the representations contained herein.

9. **Applicable Law.** U.P.C. Data Market shall comply with all applicable laws in delivering the Database, but shall be held harmless for violation of any governmental procurement regulation to which it may be subject but to which reference is not previously made. This Agreement shall be construed in accordance with the laws of the State of Texas.

10. **Scope of Agreement.** If the scope of any of the provisions of the Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provisions shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of this Agreement shall not thereby fail, but that the scope of such provisions shall be curtailed only to the extent necessary to conform to law.

11. **Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other party. Except for the prohibition on assignment contained in the preceding sentence, this Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto.

12. **Data Assurance.** Should an item, or series of items, in a purchased Database category, be found missing – said data will be delivered to Purchaser within a reasonable time frame: provided that the manufacturer or distributor of said item(s) is valid, and is a member in good standing of GS1-US.