

## **Digimarc Agreement** (Last Updated April 28, 2016)

### **INTRODUCTION**

This Agreement is between Digimarc Corporation (“**Digimarc**”) and the GS1 member accepting this Agreement (“**you**”). This Agreement contains the terms and conditions that govern your Digimarc-enablement of GS1 Global Trade Item Numbers (each a “**GTIN**”) through GS1 US, Inc.’s (“**GS1 US**”) Portal (the “**Digimarc-Enablement Service**”), and Digimarc’s provision of information to consumers reading Digimarc Barcodes containing Digimarc-enabled GTINs using mobile devices (the “**Resolver Service**”). The Digimarc-Enablement Service and the Resolver Service are collectively referred to as the “**Services**” in this Agreement.

This Agreement takes effect when you click to acknowledge your acceptance (the “**Effective Date**”).

By Digimarc-enabling your GTINs using the Digimarc-Enablement Service, you are purchasing the right to embed your GTINs as Digimarc Barcodes. Digimarc Barcodes can be imperceptibly embedded in, and read from, enabled items. When a Digimarc Barcode containing a GTIN is read by a barcode scanner equipped with Digimarc software, the GTIN is provided to the device, similar to the behavior of a traditional, visible Universal Product Code. When a Digimarc Barcode containing a GTIN is read by a consumer mobile device equipped with Digimarc software, the Resolver Service will provide product data and a URL specified by you to the consumer mobile device application.

### **TABLE OF CONTENTS**

1. Terms of Acceptance
2. Separate Agreement
3. Fees and Payment
4. Digimarc Account
5. Data Sharing and Privacy
6. Digimarc Barcodes
7. Resolver Service
8. Web Experiences
9. Product Data
10. Your Warranties
11. Indemnity
12. Warranty Disclaimer
13. Limitation of Liability
14. Investigations
15. Term and Termination
16. Dispute Resolution
17. Trademarks
18. Miscellaneous

## **1. TERMS OF ACCEPTANCE**

You may use the Services subject to the terms of this Agreement. You may not accept this Agreement or use the Services if you are not the owner of the GTIN or are a person barred from using such Services under the laws, rules, or regulations of the United States or other countries, including the country of which you are a resident or the country from which you use the Services. Countries in which use of the Services is prohibited include Cuba, Iran, North Korea, Sudan, and Syria.

## **2. SEPARATE TERMS**

You may have a separate agreement with Digimarc establishing other terms for your use of the Services (“Separate Terms”). If there is any conflict between the terms in this Agreement and your Separate Terms, the Separate Terms will control.

## **3. FEES AND PAYMENT**

**A. Fees and Payment.** You agree to pay the fees stated on the GS1 US Portal for your use of the Services. GS1 US, on behalf of Digimarc, will charge your selected payment method for fees you incur for your use of the Services and for any additional amounts (including any taxes and late fees) that accrue in connection with your use of the Services. You authorize GS1 US to charge your selected payment method for those fees. You agree to maintain a valid payment method with GS1 US at all times. You are responsible for the timely payment of all fees. All sales are final.

**B. Taxes.** Your fees will also include applicable taxes. For each GTIN you Digimarc-enable, taxes are based on the bill-to address and the tax rate in effect at the time you purchase the right to embed that GTIN.

**C. Prices.** Prices for the Services may change at any time without prior notice to you. Digimarc does not offer price protection or refunds.

## **4. DIGIMARC ACCOUNT**

Your use of the Digimarc-Enablement Service may entail your transmission, or GS1 US’s transmission on your behalf, of information to Digimarc to create an account with Digimarc to enable you to manage your Digimarc-enabled GTINs. You consent to the transfer to Digimarc of all information you supply to create that account.

## **5. DATA SHARING AND PRIVACY**

Digimarc will implement reasonable and appropriate measures to protect personal information you provide Digimarc and personal information GS1 US provides Digimarc on your behalf in connection with your use of the Digimarc-Enablement Service. Digimarc will treat personal information you provide Digimarc in connection with your use of the Digimarc-Enablement Service, or which GS1 US provides to Digimarc on your behalf in connection with the Digimarc-Enablement Service, in accordance with its Privacy Policy at <https://www.digimarc.com/company/privacy-policy>. By accepting this Agreement, you agree to the Privacy Policy. You agree to review the Privacy Policy from time to time.

## **6. DIGIMARC BARCODES**

You may only use a Digimarc Barcode containing your Digimarc-enabled GTIN during the period for which you pay to Digimarc-enable that GTIN. Your Digimarc-enabled GTINs are subject to annual renewal fees. Renewal will occur automatically unless you cancel. Each renewal may require payment of additional fees. On the expiration of the period for which you have Digimarc-enabled a GTIN, Digimarc will disable the Resolver Service for that Digimarc-enabled GTIN, and you agree to cease creating and printing items embedded with Digimarc Barcodes containing that Digimarc-enabled GTIN.

## **7. RESOLVER SERVICE**

You may associate your Digimarc-enabled GTINs with a URL (a “**Web Experience**”). The Resolver Service delivers Web Experiences and product data associated with Digimarc-enabled GTINs to consumer mobile device applications equipped with Digimarc software that read Digimarc Barcodes containing those Digimarc-enabled GTINs. Digimarc will provide the Resolver Service for each Digimarc-enabled GTIN you embed as a Digimarc Barcode during the period for which you pay to Digimarc-enable that GTIN.

## **8. WEB EXPERIENCES**

You agree not to use Digimarc Barcodes containing your Digimarc-enabled GTINs to direct to Web Experiences: (i) that violate any law; (ii) that infringe or misappropriate any intellectual property rights; or (iii) that are otherwise objectionable. If any Web Experience you associate with a Digimarc Barcode violates this provision, Digimarc may disable the Resolver Service for that Digimarc Barcode, without prior notice or liability to you.

## **9. PRODUCT DATA**

In conformity with then-current GS1 requirements, GS1 shall collect product-identifying data corresponding to each item of content enabled with a Digimarc Barcode containing a GTIN. You provide that product-identifying data to GS1 for its use and distribution.

## **10. YOUR WARRANTIES**

You represent and warrant to Digimarc: (i) that you have sufficient rights to all GTINs you use in connection with the Digimarc-Enablement Service; (ii) that all GTINs you use in connection with the Digimarc-Enablement Service are and will remain valid during the period for which you pay to Digimarc-enable those GTINs; and (iii) that you will comply with all laws, rules, and regulations applicable to your use of the Services and your performance under this Agreement.

## **11. INDEMNITY**

**A. Scope.** Digimarc agrees to defend, indemnify and hold harmless you, and your subsidiaries, affiliates, successors, attorneys, officers, directors, and employees (collectively, “Indemnitees”) from and against any and all claims, damages, liabilities, losses, judgments, costs, and attorneys’ fees arising directly out of or in connection with any claim that the Resolver Service and/or Digimarc Barcodes infringe any intellectual property right, including any third party patents or any patents owned or previously owned by Digimarc or any of its affiliates.

**B. Third Party Claims.** Promptly after receipt by an Indemnatee of notice of the commencement or threatened commencement of any action or proceeding involving a claim in respect of which Indemnatee is entitled to indemnification under this section, Indemnatee shall notify Digimarc of such claim. No delay or failure to so notify Digimarc shall relieve Digimarc of its obligations under this Agreement except to the extent that Digimarc has suffered actual prejudice by such delay or failure. No later than ten (10) days before the date on which any response to a complaint or summons is due, if applicable, Digimarc may notify Indemnatee that Digimarc will assume control of the defense and settlement of such

claim (a “Notice of Assumption”). If Digimarc delivers a Notice of Assumption within the required notice period, Digimarc shall assume control (subject to Indemnatee’s right to participate at Indemnatee’s cost and expense) over the defense and settlement of the claim and diligently defend the claim; provided, however, that (i) Digimarc shall keep Indemnatee fully apprised as to the status of the defense; and (ii) Digimarc shall obtain the prior written approval of Indemnatee before entering into any settlement of such claim imposing any financial obligations or restrictions on Indemnatee or otherwise adversely impacting Indemnatee. If Digimarc does not deliver a Notice of Assumption relating to any claim within the required notice period, or if, after the assumption of the defense by Digimarc, Digimarc has failed to defend the claim diligently, Indemnatee shall have the right to defend the claim in any reasonable manner as it may deem appropriate. Digimarc shall promptly reimburse Indemnatee for all reasonable costs and expenses incurred by Indemnatee, including attorneys’ fees, in connection therewith to the full extent of the Digimarc’s indemnification obligations under this section.

**C. First Party Claims.** Notwithstanding anything to the contrary in the foregoing, in the event that, for any reason, Digimarc is or becomes a plaintiff in any action or proceeding in respect of which Indemnatee is entitled to indemnification under this section, Digimarc’s right to defend, or to otherwise participate in the legal defense of such action or proceeding, shall immediately terminate. In such case, Indemnatee shall be permitted to immediately commence or assume, as applicable, the full defense of such action or proceeding in its sole and absolute discretion (subject to the provisions below), and Digimarc shall promptly reimburse Indemnatee for all reasonable defense costs and expenses incurred by Indemnatee, including attorneys’ fees, in connection therewith to the full extent of Digimarc’s indemnification obligation under this section. The parties agree that Digimarc may, at its sole expense, hire independent claims counsel to review and approve defense costs and invoices, consult on the defense of the action or proceeding, and review and approve proposed settlements (“Independent Claims Counsel”); provided, however, that the parties expressly agree that during the pendency of the case, Independent Claims Counsel shall not be permitted to consult with or provide information to Digimarc that would or could be material to such action or proceeding. If Independent Claims Counsel is hired, any settlement of such action or proceeding shall be subject to the written approval of Independent Claims Counsel (such approval not to be unreasonably withheld).

**D. Cooperation.** Indemnitees and Digimarc agree to cooperate with each other and with Independent Claims Counsel in the defense and settlement of any claim under this section.

**E. Exclusive Right and Remedy.** This section sets forth the exclusive rights and remedies of Indemnitees and the exclusive obligations of Digimarc with respect to any claims or other matters of indemnification which are part of the subject matter of this Agreement.

## **12. WARRANTY DISCLAIMER**

THE SERVICES ARE PROVIDED “AS-IS” AND “AS PROVIDED” WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY LAW, DIGIMARC DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. DIGIMARC FURTHER DISCLAIMS ANY WARRANTY: (I) THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR WILL BE CONSTANTLY AVAILABLE, UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (II) THAT THE SERVICES WILL BE EFFECTIVE, ACCURATE, OR RELIABLE; (III) THAT THE QUALITY OF THE SERVICES WILL MEET YOUR EXPECTATIONS; OR (IV) THAT ANY ERRORS OR DEFECTS IN THE SERVICES WILL BE CORRECTED. DIGIMARC SPECIFICALLY DISCLAIMS ANY LIABILITY FOR ANY ACTIONS RESULTING FROM YOUR USE OF THE SERVICES. YOU USE THE SERVICES AT YOUR OWN DISCRETION AND RISK, AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO

YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM YOUR USE OF THE SERVICES.

### **13. LIMITATION OF LIABILITY**

DIGIMARC IS NOT LIABLE TO YOU OR ANYONE ELSE FOR: (I) ANY LOSS OF USE, DATA, GOODWILL, OR PROFITS, WHETHER OR NOT FORESEEABLE; OR (II) ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING THOSE (A) RESULTING FROM LOSS OF USE, DATA, OR PROFITS, WHETHER OR NOT FORESEEABLE; (B) BASED ON ANY THEORY OF LIABILITY, INCLUDING BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, OR OTHER TORTIOUS ACTION; OR (C) ARISING FROM ANY OTHER CLAIM ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF THE SERVICES OR YOUR USE OF DIGIMARC BARCODES. NOTHING IN THESE TERMS LIMITS OR EXCLUDES DIGIMARC'S LIABILITY FOR GROSS NEGLIGENCE, FOR DIGIMARC OR ITS EMPLOYEES' INTENTIONAL MISCONDUCT, OR FOR DEATH OR PERSONAL INJURY.

WITH THE EXCEPTION OF DIGIMARC'S OBLIGATIONS UNDER SECTION 10, DIGIMARC'S TOTAL LIABILITY IN ANY MATTER ARISING OUT OF OR RELATED TO THESE TERMS IS LIMITED TO US \$100 OR THE AGGREGATE AMOUNT THAT YOU PAID FOR USE OF THE SERVICES DURING THE 12-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE LIABILITY, WHICHEVER IS LARGER. THIS LIMITATION WILL APPLY EVEN IF DIGIMARC HAS BEEN ADVISED OF THE POSSIBILITY OF THE LIABILITY EXCEEDING THE LIABILITY LIMIT AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE LIMITATIONS AND EXCLUSIONS IN THIS SECTION 11 APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW.

### **14. INVESTIGATIONS**

Digimarc may access or disclose information about you or your use of the Services: (i) when it is required by law; (ii) to respond to your requests for customer service support; or (iii) when Digimarc, in its discretion, determines it necessary to protect the rights, property, or personal safety of Digimarc or the public.

### **15. TERM AND TERMINATION**

**A. Term.** This Agreement will commence on the Effective Date and remain in effect until terminated by you or Digimarc, as follows:

**B. Termination by You.** You may cease using the Services at any time. Your decision to cease using the Services will not relieve you of any obligation to pay any outstanding fees or result in any refund of previously paid fees.

**C. Termination by Digimarc.** Digimarc may terminate this Agreement at any time if you breach any provision of this Agreement, if you fail to pay fees when due, or if Digimarc ceases providing the Digimarc-Enablement Service or Resolver Service.

**D. Effect of Termination.** Upon termination of this Agreement, you must (i) cease using the Digimarc-Enablement Service; and (ii) cease creating and printing items embedded with Digimarc Barcodes containing your Digimarc-enabled GTINs. Digimarc may cease providing the Resolver Service for Digimarc Barcodes containing your Digimarc-enabled GTINs at any time following termination of this Agreement.

**E. Survival.** Digimarc's warranty disclaimers and limitations of liabilities and the dispute resolution provisions stated in this Agreement will survive termination of this Agreement.

## **16. DISPUTE RESOLUTION**

**A. Process.** For any concern or dispute you may have, you agree to first try to resolve the dispute informally by contacting Digimarc. If a dispute is not resolved within 30 days of submission, you must resolve your claims against Digimarc relating to this Agreement through final and binding arbitration, except to the extent your claims qualify for small claims court.

**B. Rules.** JAMS will administrate the arbitration in Portland, Oregon, USA, under its Comprehensive Arbitration Rules and Procedures. There will be one arbitrator. If the parties cannot agree on an arbitrator, JAMS will be asked to select one. The arbitration will be conducted in the English language. Judgment upon the award rendered may be entered and will be enforceable in any court of competent jurisdiction having jurisdiction over the parties.

**C. No Class Actions.** You may only resolve disputes with Digimarc on an individual basis, and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action.

**D. Injunctive Relief.** In the event of your or others' unauthorized access to or use of the Services or content in violation of these terms, you agree that Digimarc may apply for injunctive remedies in any jurisdiction.

## **17. TRADEMARKS**

"Digimarc," "Digimarc Barcode," "Digimarc Discover," and Digimarc's "circle-d" logo are Digimarc trademarks. You agree not to create any branding for products or services you offer, or use any trademark, that uses the term "Digimarc," "Digimarc Barcode," "Digimarc Discover," Digimarc's "circle-d" logo, the terms "marc" or "mark," or any other Digimarc trademark. Any goodwill arising out of or relating to your use of any Digimarc trademark, whether registered or not, any similar mark, or the term "marc" or "mark," will inure to the sole benefit of Digimarc. You assign to Digimarc all right, title, and interest in and to all trademarks used by you in violation of this section.

## **18. MISCELLANEOUS**

**A. Waiver.** Digimarc's failure to enforce any term is not a waiver of that term.

**B. Severability.** If a particular term is not enforceable, the unenforceability of that term will not affect any other terms.

**C. Headings.** Section headings are for reference only and will not be used to interpret this Agreement.

**D. Third Party Beneficiaries.** No person or other entity is a third party beneficiary of this Agreement.

**E. Feedback.** If you submit ideas, suggestions, or proposals ("**Feedback**") to Digimarc, you grant Digimarc a non-exclusive, worldwide, royalty-free license that is sub-licensable and transferrable, to make, use, sell, have made, offer to sell, import, reproduce, publicly display, distribute, modify, and publicly perform the Feedback.

**F. Relationship.** No agency, partnership, joint venture, fiduciary, or similar relationship is created by this Agreement. Neither party has the authority to bind the other party except as provided in this Agreement.

**G. Force Majeure.** Digimarc is not responsible for its failure to perform due to unforeseen circumstances beyond its control, such as acts of God, wars, riots, embargoes, strikes, acts of civil, or military authorities, fires, or floods.

**H. Modifications.** Digimarc reserves the right to modify this Agreement at any time. Modifications to this Agreement will be effectively immediately. Your continued use of the Services will be deemed your acceptance of this Agreement, as modified.

**I. Notices.** You may send Digimarc notices at: Digimarc Corporation, 9405 SW Gemini Drive, Beaverton, Oregon 97008, USA, Attention: General Counsel. Digimarc may send you notices by email, postal mail, postings on the GS1 US Portal, or any other legally acceptable means.

**J. Contact.** If you have any questions or comments, please contact  
\_\_\_\_\_ @digimarc.com

