

SKUvantage Pty Limited
End User License Agreement
Last Updated 9th July 2018

Please note, these terms and conditions cover the following categories of users:

- **Client User:** Employees or agents of SKUvantage clients who's content is on SKULibrary and who have the ability to access this content;
- **SKULibrary User:** Non-client users of SKULibrary who access SKULibrary for manual download of content;
- **API User:** Users who receive product information as an Application Programming Interface (**API**) feed; and
- **Served user:** Users who receive product information using the placement of an iFrame or JavaScript or other means of serving content directly on their web site or internet platform.
- Other users who have access to SKULibrary

1. DEFINITIONS

In these Conditions the following definitions apply:

- (a) **API Service** means the distribution of Product Information to API Users with an API feed.
- (b) **API User** means any entity or person which agrees to use the API Service and where the context requires "API User" shall also include any individual person in such entity which uses the API Service.
- (c) **Conditions** means these terms and conditions as amended from time to time.
- (d) **Competitor** means any organisation that competes with SKUvantage in the areas of product content production, product content syndication, product content management or other product content services
- (e) **Contract** means the Contract between the User and SKUvantage for the supply of Services in accordance with these Conditions and any Client Agreement.
- (f) **Client Agreement** means the Client Agreement made between SKUvantage and an organisation for which SKUvantage is providing services.
- (g) **Client Services** means the service executed through the SKULibrary platform of creating and syndicating Product Information and transmission of Product Information to Client Users, SKULibrary Users, API Users and Served Users.
- (h) **Client User** means any entity or person which agrees to use the Client Services and where the context requires "Client User" shall also include any individual person in such entity, or an appointed agent of such entity, which uses the Client

Services. Client Users are typically brand owners seeking to distribute their content via the SKUvantage services.

- (i) **End Date** means the date that SKUvantage is notified by a Client User that the Retail Product is to be removed from display on Retailers websites.
- (j) **IPR** means any patents, trademarks, service marks, copyrights, database rights, moral rights, rights in a design, know-how, confidential information and any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the Australia or any other part of the world together with any goodwill relating or attached thereto.
- (k) **Live Date** means the date that SKUvantage is notified by a Client User that the Retail Product is ready to be displayed on Retailer's websites.
- (l) **Order** means a User's order for Services as set out in the User's purchase order form or the User's acceptance of a quotation (as appropriate).
- (m) **Password** means any password given to a User by SKUvantage or agreed with the User by SKUvantage for the purpose of gaining access to the Services.
- (n) **Product Information** means any data about a Retail Product entered into the Services for access by any User. This includes images, descriptions, data, video, attachments, 360 spins and any other information stored against Retail Product.
- (o) **Retail Product** means any product in the Services designated a Retail Product by SKUvantage in its absolute discretion, and described on the Services by images or data. A Retail Product will also include non-product Digital Assets, such as marketing material, logos, point of sale information, and other generalised media assets.
- (p) **Served Service** means the distribution of Product Information to Served Users with an iFrame or Javascript or other means of serving content directly onto any Users' internet enabled platforms.
- (q) **Served User** means any entity or person which agrees to use the Served Service and where the context requires "Served User" shall also include any individual person in such entity which uses the Served Service.
- (r) **Servers** means the hardware upon which the SKUvantage Applications run and includes the operating system and all other software required to run the hardware.
- (s) **Services** means the API Service, Served Service, and/or the SKULibrary Service, and includes the Product Information.
- (t) **SKULibrary Data** means any Product Information and related information stored on the SKULibrary platform.
- (u) **SKULibrary Service** means the service enabling a SKULibrary User to download and use Product Information and related information from the SKULibrary service.
- (v) **SKULibrary User** means any entity or person which agrees to use the SKULibrary Service and where the context requires "SKULibrary User" shall also include any individual person in such entity which uses the SKULibrary Service. SKULibrary

Users are typically those that access SKULibrary for the manual download of product information. A SKULibrary User may also be a Client User, depending on the context of their use and means of access of the Product Information.

- (w) **SKUvantage** means SKUvantage Pty Limited a company ABN 50 158 804 114
- (x) **SKUvantage Applications** means the applications that receive and manage the storage and dissemination of Product Information, with the primary source of product information being the SKULibrary platform.
- (y) **Third Party IPR** means any IPR used in the Services and owned by a third party.
- (z) **Transfer Methods** means the methods and specifications applying to the downloading Product Information to and from the SKUvantage Applications.
- (aa) **User** means any user of the SKUvantage Applications including but not limited to Client Users, SKULibrary Users, API Users, and Served Users.
- (bb) **Username** means any username given to a User by SKUvantage or agreed with the User by SKUvantage for the purpose of gaining access to the Services.

2. BASIS OF CONTRACT

- (a) These terms apply to any person who accesses or uses any SKUvantage Application or Services, and shall take effect immediately such access is obtained. Use of the SKUvantage Application or Service is deemed acceptance of these terms. If you do not accept these terms you must cease using the SKUvantage Application immediately.
- (b) These Conditions shall be read in conjunction with any Client Agreement. In the event of conflict between these Conditions and any Client Agreement, the Client Agreement conditions shall prevail.
- (c) These Conditions apply to the exclusion of any other terms that the User seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- (d) These Conditions and any Client Agreement (if any) constitute the entire agreement between the parties ("the Contract"). The User acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the SKUvantage which is not set out in these agreements.
- (e) These Conditions shall apply to all Services provided by SKUvantage to the User associated with the Username, irrespective of which recipients of the User's Username and Password, uses the Services.

3. CHARGES AND PAYMENT

- (a) In consideration of the provision of the Services by SKUvantage, the User shall pay the charges as set out in any applicable Order. For the avoidance of doubt, there is no charge as a SKULibrary User, unless otherwise advised prior to log in credentials being provided.

- (b) The User shall, unless otherwise agreed in writing with SKUvantage, pay any charges within 14 days of date of the invoice.

4. SUPPLY OF SERVICES BY SKUVANTAGE

- (a) Unless otherwise authorised in a separate Client Agreement, Users cannot upload material to any SKUvantage Application but may download Product Information as made available by SKUvantage from time to time. The User shall only have access to the Product Information and Services to the extent that SKUvantage, IPR owner or Client User has elected to make the Product Information publicly visible to the User.
- (b) Product Information can only be downloaded from the SKUvantage Applications in accordance with the Transfer Methods used by SKUvantage including but not limited to downloading via the SKULibrary Service, and as otherwise identified to the User by SKUvantage from time to time.
- (c) Unless the User is an authorised Served User, the User must not obtain the Product Information automatically via any method that serves Product Information directly from SKUvantage Applications to the User or the User's systems
- (d) Any User download that SKUvantage considers large or disruptive to good performance of the Services may be subject to special arrangements for accessing a service. SKUvantage reserve the right to block IP addresses and users, who's activity it considers unwarranted or excessive.
- (e) Users can only access Product Information or use the Services for the express purpose of benefiting the owner of the Intellectual Property in that Product Information, or only in accordance with any agreement that the User has with that owner.
- (f) Any **Competitor** organisation must receive explicit written permission from SKUvantage, prior to logging in to the platform. To log in without this written permission is a breach of this contract.

5. USERS' OBLIGATIONS

- (a) The User shall:
 - (i) only use the Services for lawful purposes;
 - (ii) not use the Services to receive, store or transmit material that is obscene, threatening, menacing, offensive, discriminatory, defamatory, in breach of confidence, in breach of IPR or otherwise unlawful;
 - (iii) not transmit or cause to be transmitted through the Services any electronic material (including viruses) which may cause detriment or harm to any computer service of SKUvantage, its clients or any other person whatsoever;
 - (iv) not be entitled to use any Product Information, or SKULibrary Data, or any other data obtained through its use of the Service(s) until the relevant Live Date, or at any time after the relevant End Date;

- (v) not redistribute or publish (whether for a commercial benefit or not) any of the materials or Product Information obtained through its use of the Service or SKUvantage Application;
 - (vi) not share or disclose, or give permission to share or disclose, implied or otherwise, Product Information over which it does not own the IPR to any other third party without the consent of the owner of the IPR;
 - (vii) communicate any change of the email address that is accessible by the User for the purposes of creating a Username;
 - (viii) update the User's Password as and when requested by SKUvantage, and permit SKUvantage to change that Password as it deems necessary;
 - (ix) permit SKUvantage to contact the User for relevant purposes for informing the User about information regarding the Services; and
 - (x) use the Services or the Product Information for any purpose that is not to the benefit of the owner of the IPR, without written permission from SKUvantage or the IPR owner.
 - (xi) not use the Services for the purpose of sending unsolicited communications to any third party, or otherwise engages in activity that breaches privacy, direct marketing, or other laws in the Users, or communication recipient's country.
- (b) The User acknowledges and agrees that access by the User is at the User's risk as to any damage to software or data by viruses or otherwise. No warranty or representation is given or made by SKUvantage as to the quality of or suitability for any purpose of, any electronic material that may be downloaded by the User.
 - (c) All Users must have an email address as their Username for access to the Services and have access to the email account of that email address, for the purposes of receiving notices and other information regarding the Services.
 - (d) Users are not permitted to continue to access services should they no longer be engaged with the organisation associated with the Username.
 - (e) Any User gaining access through the sharing of any other User's log in credentials to Agents or other parties by the User, deliberately or otherwise, will also be bound by this Contract.

6. SKULIBRARY USER

- (a) Without prejudice to clause 5, the SKULibrary User:
 - (i) shall at all times comply with any instructions or directions given to it in connection with the SKULibrary Data, its use, or otherwise including in particular in respect of any Live Date or End Date for use of the SKULibrary Data; and
 - (ii) shall only have access to the SKULibrary Data to the extent that SKUvantage or any relevant SKUvantage client, IPR owner or Client User

or API User (as appropriate) has elected to make the Product Information publicly visible to the User.

7. API USER

- (a) Without prejudice to clause 5, or any superseding Client Agreement the API User shall:
- (i) request updates of data from the API service at least once every seven days;
 - (ii) apply any product data amendments or any product deletions to any consumer accessed media accurately and within 24 hours of such refreshment;
 - (iii) without limit to the generality of clause 7(a)(ii) above, remove from display and from any consumer accessed media all product data for any product for which the API feed denotes superseded or delete, according to the usage instructions of the API feed;
 - (iv) permit SKUvantage to publish the name and standard logo of the API User as an API User of the Service;
 - (v) at all times when publishing any Product Information, publish the correct Product Information, provided by SKUvantage through the Services, against the correct corresponding Retail Product;
 - (vi) use data from the data feed only for the purposes of making reasonable use of the Services and as otherwise permitted under these Conditions;
 - (vii) respond to support calls from SKUvantage made in respect of failures in connection with the transfer feed of the Product Information within 4 hours of receiving the call and use reasonable endeavours to rectify any failures within one working day of the failure first occurring; and
 - (viii) within 3 months of being requested to do so by SKUvantage, make changes to the data schemas and interfaces to the Services and update its interfaces in order to confirm the changes made to the data schemas and interface.
- (b) SKUvantage shall contact the API User within a reasonable time of becoming aware of any material failure in the data feed.
- (c) Notwithstanding any other Client Agreement to the contrary, SKUvantage is under no obligation to maintain an API service to the API user, and has the rights to amend, suspend or terminate this service at its own discretion by giving prior notice to the API User.

8. CLIENT USER

- (a) Without prejudice to clause 5, or any superseding Client Agreement the Client User shall:

- (i) ensure it has appropriate authority to view and/or approve the Retail Product for display on Retailer websites;
- (ii) where the Client user has edit access, ensure all Product Information provided by SKUvantage, as part of the Client Agreement are representative of the Retail Product and all text transcribed by SKUvantage is consistent with the pack information of the relevant Retail Product, and report any errors to SKUvantage as soon as these are known;
- (iii) cease to access the Services using their login details if they cease to be an employee of the Client company, and instead source a new log in; and
- (iv) comply with the terms of the SKUIbirary User in relation to any content for which the Client User's company is not the rightful owner of the IPR.

9. SERVED USER

- (a) Without prejudice to clause 5, the Served User shall:
 - (i) enable the presentation of the served content on the Served User's platform, ensuring that the served content can be viewed in it's entirety, including when due to any changes of the presentation layer design by SKUvantage. Such changes may or may not be communicated prior to the change being made;
 - (ii) remove any presentation layers from Served User's platform if instructed to do so by SKUvantage or a Client User, where that Client User is the owner of the IPR; and
 - (iii) not use the presentation layer code for any automated processes for the capture of Product Information. That process being executable as a Served user.

10. INDEMNITIES

- (a) The User will indemnify and keep indemnified SKUvantage against all losses, costs, and liabilities, and all expenses, including reasonable legal or other professional expenses, suffered or incurred by SKUvantage arising out of or in connection with:
 - (i) any claim made against SKUvantage for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with misuse of Product Information relating to any Retail Products by the User; or
 - (ii) any claim made against SKUvantage in respect of the wrongful use or disclosure of Product Information by the User.

11. INTELLECTUAL PROPERTY RIGHTS

- (a) The User acknowledges that it shall not acquire any IPR in the Services and that it shall have no rights in or to the IPR other than the right to use it in accordance with the licence granted in clause 11(d) and any superseding Client Agreement.

- (b) Any IPR in the Services created, brought into existence by or acquired by SKUvantage during the term of the Conditions shall vest and remain vested in SKUvantage.
- (c) SKUvantage shall, using its best endeavours according to any Client Agreement, procure that the owners or authorised licensors of any Third Party IPR in the Services shall grant SKUvantage a license or, if itself a licensee of those rights, shall grant SKUvantage an authorised sub-license of the Third Party IPR.
- (d) SKUvantage licenses the IPR in the Services to the User on a limited non-exclusive and non-transferrable basis to the extent necessary and possible under any Client Agreement, to enable the User to make reasonable use of the Services and not for any other purposes. If the Contract terminates, then the license shall automatically terminate.

12. LIMITATION OF LIABILITY

- (a) Notwithstanding any other provision in Client Agreements, this clause 12 sets out the limit on the entire financial liability of SKUvantage (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) in respect of its breach of the Contract and any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- (b) All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- (c) The User acknowledges and agrees that SKUvantage's sole responsibility in relation to the contents of the Product Information is to obtain the Client User's approval to publish and distribute the contents of the Product Information.
- (d) SKUvantage is not liable for consequential or indirect losses including, but not limited to the User's loss of profits, or loss of business, or depletion of goodwill and/or similar losses, or loss of anticipated savings, or loss of goods, or loss of contract, or loss of use, or loss of corruption of data or information, or any other special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (e) SKUvantage or any of its officers, employees or agents shall not be liable for:
 - (i) any spread of any virus to any computer used by the User;
 - (ii) any loss or damage suffered by the User as a result of the Users failure to comply with clauses in this Contract;
 - (iii) any loss or damage suffered by the User as a result of any unavailability of the services;
 - (iv) any loss or damage suffered by the User as a result of the User not receiving notices from the User not maintaining its Username as an accurate mirror of its accessible email address;

- (v) the accuracy or completeness of any material available through the Services nor any loss occasioned to a User or any other person acting or refraining from acting in reliance on, or as a result of, the material included in or omitted from the Services;
- (vi) the Product Information including the accuracy or completeness of the Product Information as it's the responsibility of the User to approve the contents of the Product Information;
- (vii) SKUvantage total liability to the other party in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising under or in connection with the Contract shall be limited to an amount equal to, AUD 5,000, or two times the amount of the annual charges payable by the User at the time of the breach, whichever is the lower; or
- (viii) the consequences of any failure to provide the Services due to Force Majeure or liquidation or Bankruptcy of SKUvantage.

13. TERMINATION

- (a) Subject to clause 13(b), without limiting its other rights or remedies, either party shall have the right to terminate the Contract by serving notice on the other party of not less than:
 - (i) one month in respect of the API Service for API User;
 - (ii) one month in respect of the Served Content Service for Served User; or
 - (iii) immediately in respect of the SKULibrary Service for SKULibrary Users. If there is no breach of this Contract by the User, then any fees will be refunded on a pro-rate basis.
- (b) This Contract is terminated immediately upon termination of the Client Agreement.
- (c) This Contract is terminated immediately if the User ceases to have access to the email account associated with their Username. At this point the User may no longer log in to, or execute, any SKUvantage Application using this Username and must form a new agreement with a new Username
- (d) Without limiting its other rights or remedies, either party (Terminating Party) may terminate the Contract with immediate effect by notice to the other party (Defaulting Party) on or at any time after the occurrence of any of the events specified below:
 - (i) a breach by the Defaulting Party of its obligations under the Contract which (if the breach is capable of remedy) the Defaulting Party has failed to remedy within 10 Business Days after receipt of notice in writing from the Terminating Party requiring the Defaulting Party to do so;
 - (ii) the Defaulting Party goes into liquidation either compulsorily or (except for the purpose of reconstruction or amalgamation) voluntarily;

- (iii) a receiver is appointed in respect of the whole or any part of the Defaulting Party; or a provisional liquidator is appointed to the Defaulting Party or the Defaulting Party enters into a voluntary arrangement or any other composition or compromise with the majority by value of its creditors or has a winding-up order or passes a resolution for the voluntary winding-up or has an administrative receiver appointed or takes steps towards any such event; or
- (e) On termination of the Contract (for whatever reason) by the User, SKUvantage shall not have any obligation to repay any amount of any charges paid by the User.
- (f) All payments payable to SKUvantage under the Contract shall become due and payable immediately on termination of the Contract notwithstanding any other provision. This clause is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- (g) On termination, SKUvantage reserves the right to require the User to remove any Product Information acquired by the User as part of the Services from its systems and publications. The User may seek permission from the owner of the IPR to retain this Product Information.

14. FORCE MAJEURE

Neither party shall have any liability and shall not be responsible to the other party for any failure or delay caused by any circumstance beyond that party's reasonable control in performing any obligations in the Contract, including but not limited to any failures or delays caused by circumstances or factors which arise or occur outside of SKUvantage's Servers from time to time.

15. CONFIDENTIALITY

A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the receiving party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The Receiving Party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 15 shall survive termination of the Contract.

16. SEVERABILITY

If any provision of the Conditions is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction, such provision shall be severed and the remainder of these Conditions shall continue in full force and effect as if the Conditions had been executed with the illegal or unenforceable provision eliminated.

17. NOTICES

Any notice shall be in writing and each party's email address of physical premises. Fax is excluded as a means of providing Notices.

18. VARIATION

- (a) SKUvantage reserves the right at any time to modify the Contract and to impose new or additional terms or conditions on any User or their use of the Services.
- (b) If any User continues to use the Services after being notified of any such modification or additional term or condition, any such modification or additional term or condition (as appropriate) shall be deemed to have been accepted by the User and shall be effective and be incorporated into the Contract.

19. GOVERNING LAW AND JURISDICTION

The Conditions shall be governed by Australian, New South Wales law and the parties irrevocably submit to the exclusive jurisdiction of the New South Wales courts.