

## **Mediamark Research Inc. On-Line User License Agreement**

Mediamark Research Inc. ("Mediamark") has developed a proprietary survey of United States consumers relating to media behavior, consumer lifestyles and products/services usage ("Mediamark Data"). **Mediamark has licensed the university where you a student, faculty member or staff member ("University") use of the Mediamark Data solely for academic teaching and research purposes.** Upon your acceptance of the following license terms, you will be given access to use the Mediamark Data solely for academic teaching and research purposes under the University's license and these license terms. If you decline to accept these license terms, you will not be provided access to the Mediamark Data.

### **ARTICLE 1--MEDIAMARK DATA INTEGRITY/PROPRIETARY RIGHTS**

#### **1-1. License and Use.**

1-1.1 **Upon your acceptance of these license terms, Mediamark grants you a non-exclusive, non-transferable license to use the Mediamark Data for academic teaching and research purposes only.** There is no fee for this license, which is subordinate to the University license and shall terminate upon termination of the University license. In addition to the terms of this license, your right of access and use of the Mediamark Data is subject to the policies, rules and regulations of the University regarding access and use of proprietary materials through the University systems and facilities, as well as applicable law.

1-1.2 In the event Mediamark reasonably determines that you are using the Mediamark Data in an unauthorized or inappropriate manner, Mediamark may, after providing written notice to University identifying the unauthorized or inappropriate use and a reasonable opportunity for you to cease utilizing the Mediamark Data in such manner, terminate the license accepted by you and block you from further access to the Mediamark Data.

#### **1-2. Reserved Rights.**

1-2.1 **The Mediamark Data are confidential and copyrighted and are made available for your use solely for academic teaching and research activities during the Term of the University's license.**

1-2.2 All intellectual property rights in the Mediamark Data shall at all times remain the exclusive property of Mediamark. You may use the Mediamark Data only in the limited manner provided for by this Agreement and the University license. Mediamark may elect to retain or not to retain an archival copy of the Mediamark Data beyond the Term of the University's license agreement, as Mediamark in its sole discretion may determine from time to time.

1-2.3 You shall not reverse engineer, de-compile, disassemble or otherwise seek to derive the source code or algorithms underlying Mediamark's software or the unedited survey data underlying the Mediamark Data.

**1-3. Secrecy of Respondents.** You agree that the identity and location of interviewers, respondents, and areas in which the interviews upon which the Mediamark Data are based and conducted are privileged and confidential information to Mediamark. Mediamark shall not be required to disclose such information to you or any other person. You agree that you shall not seek to ascertain such privileged and confidential information at any time or in any manner whatsoever (including but not limited to legal process initiated by you).

#### **1.4 Restrictions**

**1-4.1 Except as expressly provided by this Agreement, you may not use, disclose, publish, distribute, sell, reproduce or otherwise disseminate the Mediamark Data. No right of publication is granted to you for any part of the Mediamark Data.** Authorized copies or reproductions of any part of a Mediamark Data within the scope of permitted use under the University's policies, rules and regulations must include Mediamark's copyright and confidentiality notice appearing on such Mediamark Data.

**1-4.2 You may not (a) provide to any person other than a student, faculty member, or staff member of the University, and then only for academic teaching or research purposes, access to tapes, disks, diskettes or other devices containing the Mediamark Data (or any part of it) in tabulated or untabulated form or (b) provide access to any other output or product that could be decompiled or otherwise manipulated to permit the Mediamark Data to be extracted in a "raw" or untabulated form. You shall employ appropriate security measures and systems to insure that persons not authorized to access the Mediamark Data are unable to obtain access to the Mediamark Data or any such "raw" or untabulated data from any copies, etc. made by you or in your possession.**

1-4.3 Except as permitted by this Agreement, you may not modify or copy all or any part of the Mediamark Data in any manner nor create any derivative work or other products from the Mediamark Data without the prior written permission of Mediamark (which it may withhold in its sole discretion). Except as permitted by this Agreement, no part of the Mediamark Data may be reproduced, or transmitted, in any form or by any means whether electronic, mechanical, photocopying, recording, or otherwise without prior written permission of Mediamark (which it may withhold in its sole discretion).

1-4.4 You shall not process the Mediamark Data or store any output generated from the Mediamark Data through any facilities outside the University.

1-4.5 You agree that you will use the Mediamark Data in accordance with all federal, state and local laws, and in a manner which gives due consideration to matters concerning privacy, confidentiality, and other issues to which individual and business consumers may be sensitive. In the event that legislation or governmental regulations restrict the provision or use of personal respondent identification information (e.g., respondent name and address) in a manner that affects either Mediamark or your use of the Mediamark Data under this Agreement, Mediamark may change the terms of permitted access and use at any time by posting the same on-line with this Agreement.

1-4.6 You shall not use, or permit others to use, the Mediamark Data for credit granting, credit monitoring, account review, collection, insurance underwriting, employment or any other purpose covered by the Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq ("FCRA")), Federal Trade

7/6/05

Commission interpretations of the FCRA, and similar state statutes. If you breach this provision, or if a court or regulatory agency of competent jurisdiction determines that your use of the Mediamark Data is subject to the FCRA, Mediamark may immediately terminate this Agreement by posting notice on-line with this Agreement and pursue any other legal and equitable remedies to which Mediamark may be entitled.

1-4.7 Mediamark may, at any time, impose restrictions and/or prohibitions on the use of the Mediamark Data, to the extent they are imposed on Mediamark by third parties. Without limiting the foregoing, such restrictions or prohibitions may arise out of local, state or federal statutes or regulations; judicial or regulatory interpretations thereof; or contractual obligations placed upon Mediamark by its data source providers. You agree to strictly comply with any such restrictions.

**1-5. Title.** The Mediamark Data are the property of Mediamark and you are given access under license only. Upon termination of the University license, you shall destroy, and irretrievably erase, all copies of the Mediamark Data including those on any media or any computer system in your possession or control.

## **ARTICLE 2--GENERAL**

**2-1. DISCLAIMER OF WARRANTIES.** MEDIAMARK MAKES NO REPRESENTATIONS OR WARRANTIES EXPRESS OR IMPLIED (INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE) WITH RESPECT TO THE MEDIAMARK DATA. Mediamark attempts to assure the accuracy of the Mediamark Data, but is not responsible for any errors or omissions therein.

### **2-2. Indemnity.**

**2-2.1 Mediamark Indemnity.** Mediamark shall at its own expense hold harmless and indemnify you and defend any action brought against you based on a claim that the Mediamark Data infringes any United States patents, copyrights, licenses or trade secrets, or defames, disparages, or violates the rights of privacy or publicity of any person; provided, however, you must promptly notify Mediamark in writing of any such claim and, provided further, Mediamark shall have the exclusive right to control such defense. In no event shall you settle any such claim, lawsuit or proceeding without Mediamark's prior written approval. Your failure to give prompt notice will not vitiate Mediamark's Indemnity obligations unless the late notice has materially prejudiced Mediamark's right of defense.

**2-2.2 Your Indemnity.** You shall at your own expense hold harmless and indemnify Mediamark and defend any action brought against Mediamark or in which Mediamark has involuntarily become involved through subpoena or other legal process, in either case outside the scope of Mediamark's indemnity under Section 3-2.1, as a result of your use of the Mediamark Data; provided, however, Mediamark must promptly notify you in writing of any such claim or proceeding and, provided further, you shall have the exclusive right to control such defense in cases where Mediamark is a party. Mediamark's failure to give prompt notice will not vitiate your indemnity obligations unless the late notice has materially prejudiced your right of defense. In no event shall Mediamark settle any such claim, lawsuit or proceeding without your prior written approval. You shall reimburse Mediamark for any expense or cost incurred by Mediamark in connection with any lawsuit, arbitration or other proceeding arising from your activities involving the Mediamark Data and in

7/6/05

which Mediamark is not a party and where you cannot assume the defense or other action on Mediamark's behalf. Mediamark shall give you notice of any such proceeding under which such reimbursement will be sought promptly after Mediamark has been subpoenaed, etc. The expenses and costs to be reimbursed to Mediamark in any such matter include (without limitation) reasonable attorney fees, expert witnesses, travel and per diem costs for hotels, taxis, meals etc. and miscellaneous out of pocket costs.

**2-3. Injunctive Relief.** You agree that any breach by you of the provisions of this Agreement to protect Mediamark's confidential and proprietary rights and interests will cause irreparable harm and loss to Mediamark and Mediamark may seek issuance of an injunction to prohibit any such actual or threatened breach by you. Mediamark may also seek any other available remedy, including the right to obtain damages.

**2-4. Entire Agreement.** This Agreement and the University license agreement constitutes the complete and exclusive statement of the terms and conditions between the parties, and supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to the subject matter of this Agreement. This Agreement may not be modified or altered except by written instrument signed by both parties.

**2-5. Governing Law.** This Agreement and performance hereunder shall be governed by the laws of the State of New York (without regard to its choice of law provisions). An appropriate federal or state court located in the State of New York or the State where the University is located shall have jurisdiction and venue for any litigation arising out of this Agreement or your access or use of the Mediamark Data.

**2-6. Limitation on Action.** No action, regardless of form, arising out of this Agreement may be brought by either party more than two years after the cause of action has arisen, provided that neither violation of Mediamark's proprietary rights in the Mediamark Data nor the parties' indemnification obligations under Section 3-2 shall be subject to this limitation.

**2-7. Severability.** If any provision of this Agreement shall be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted and the balance of the Agreement enforced without such provision.

**2-9. Assignment.** Neither party may assign, and you may not sublicense, any of your rights, duties or obligations under this Agreement, in whole or in part, to any person or entity without prior written consent of the other party.

**2-10. Survival.** The provisions of Sections 1-2 through 1-5 and Article 2 shall survive the expiration or termination of this Agreement.

**2-11. No Waiver.** The waiver or failure of either party to exercise any right in any respect provided for herein shall not be deemed a waiver of any further right hereunder.

**2-12. Remedies.** The rights and remedies of Mediamark set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to it in law or in equity.