

**DATA EXCHANGE AND MARKETING RESEARCH AGREEMENT**

This agreement (“Agreement”) is entered into on this \_\_\_\_\_ day of \_\_\_\_\_ 2015, (“the Effective Date”) between the Retail and Technology Division of GfK US, LLC, a Delaware limited liability company with a principal place of business at 200 Liberty Street, 4th Floor, New York, NY 10281 (“GfK”) and \_\_\_\_\_ (“Retailer”) with corporate offices located at \_\_\_\_\_ (“Retailer”) with respect to the exchange of data and performance of services as more fully described below.

(Proposal Service or Product)

**DESCRIPTION OF REPORT(S), PROPOSAL, SERVICE OR PRODUCT**

<p><b>DELIVERABLES:</b></p>	<p style="text-align: center;"><b>RETAILER</b></p> <p><b>Retailer Deliverables.</b> Retailer shall provide GfK with electronic POS data, including individual store-level sales, each week (Sunday through Saturday) for all product categories sold by the Retailer in all U.S. and Canadian retail locations and if applicable, Internet (collectively, “POS Data”). Retailer shall provide the POS Data, by SKU, to GfK. Retailer shall provide only the sales and product information outlined below; no customer information or any other personal information that could be used to identify a Retailer customer will be disclosed to or used by GfK.</p> <p><b>Data Format.</b> Retailer shall provide GfK data in some other agreed upon file format. Sales files (historical and on-going) delivered via secure FTP or via email, to a designated email account.</p> <p><b>Data Included.</b> Retailer shall provide, but not be limited to, the following data elements within the file: unique store identifier, unique department (Category) identifier, unique product identifier (e.g. UPC, SKU), unique product description, retail list price, dollar sales, unit sales, end of fiscal week date.</p> <p><b>Term.</b> This term of this Agreement shall be from the Effective Date through ___ year/s thereafter (the “Term”).</p> <p><b>Exclusivity.</b> During the Term, as extended by any renewals, and for a period of six (6) months thereafter, the Retailer agrees that it will not provide or otherwise distribute any POS data to any additional research companies other than GfK for the purposes of aggregating sales data or reporting such aggregated sales in the pet specialty Channel.</p> <p style="text-align: center;"><b>GfK</b></p> <p><b>GfK Deliverables.</b> GfK will combine the POS Data received from Retailer with POS Data received from other retailers’ stores (both chains and independents) and provide reports (“Reports”) of the aggregated data to the Retailer and GfK’s other customers as follows:</p> <ul style="list-style-type: none"> <li>• <b>Itemization of Reporting.</b> Effective upon receipt of Retailer POS Data, GfK will provide Retail Sales and Retail Share (as each term is defined herein) for the tires category in one or more countries until such time that information for the US market becomes available. At that point, GfK will provide Retail Sales and Retail Share information for the US market.</li> <li>• <b>Information to be Provide in Reports.</b> Each Report shall include (i) retail sales, which consists of sales to consumers for each channel (“Retail Sales”) and (ii) retail share, which consists of the percentage of retail sales for each reported item (“Retail Share”), in each case, provided in sales dollars and sales units on a national basis for each report period for the above itemization. For the avoidance of doubt, it is the intent of the parties that GfK shall incorporate regional information at a later date to be agreed by the parties. For purposes of this Agreement, a “reported item” means any level reported below the category level (i.e., a manufacturer, brand and all the way down to the UPC level under a category) and will also include attribute details (e.g., run flat, rim size, speed rating, etc.). The Reported Item data shall be provided on an aggregate basis for all outlets in the Tire Specialist channel.</li> <li>• <b>Service and Support.</b> GfK will deliver up to four (4) in-person presentations per year at the Retailer’s headquarters (each, a “Presentation”). Each Presentation will discuss market trends and benchmark the Retailer’s performance against those trends. The Presentations shall take place at a date and time to be mutually agreed by the parties. For purposes of this Agreement, the foregoing shall be referred to collectively as the “GfK Deliverables.”</li> </ul>
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<b>TOTAL FEES:</b>	None – Participating retailers will receive the GfK Deliverables above at no cost throughout the Term.
<b>PAYMENT SCHEDULE:</b>	Not Applicable
<b>DELIVERY SCHEDULE:</b>	POS data for each week (Sunday to Saturday) shall be delivered by Retailer to GfK by close of business on the following Monday. GfK may withhold delivery of Reports should Retailer fail to timely deliver POS data.

**GfK US, LLC, Retail & Technology Division**

\_\_\_\_\_

**By** \_\_\_\_\_

\_\_\_\_\_  
(Title) (Date)

\_\_\_\_\_  
(Printed Name)

**By** \_\_\_\_\_

**Managing Director** \_\_\_\_\_  
(Title) (Date)

**Neil Portnoy** \_\_\_\_\_  
(Printed Name)

Subject to Terms and Conditions which Follow
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**GfK US LLC is an Equal Opportunity Employer**

## TERMS OF AGREEMENT

- Retailer is providing POS Data to GfK and is acquiring a license to receive and use reports, research, and other material on the aggregation of POS data of Retailer data with POS data furnished by other retailers. Retailer and GfK hereby agree that each party hereto shall be governed by the following terms and conditions.
1. **GfK**
    - 1.1 GfK hereby agrees to do the following:
      - 1.1.1 To provide Retailer with Web access to, or copies of, each Report, study, data, database or chart described in this Agreement (the "GfK Deliverable") by the delivery date stipulated on the first page hereof or any annexes to this Agreement.
      - 1.1.2 To provide Retailer with at least the same amount of time and attention in interpretation and evaluation of the GfK Deliverables, including such information, advice, and recommendations in connection with the GfK Deliverables, as it provides to other similarly situated Retailers.
    2. **RETAILER:** Retailer hereby agrees to do the following:
      - 2.1 To provide GfK with the Retailer Deliverable as specified in the Delivery Schedule above. No customer information or any other personal information that could be used to identify a Retailer customer will be disclosed to or used by GfK.
      - 2.2 During the Term, as extended by any renewal periods as agreed by the parties in writing, and for a period of six (6) months thereafter, the Retailer agrees that it will not license, provide or otherwise distribute the data specified on the first page to any additional research companies other than GfK for the purpose of aggregating and reporting sales in the pet specialty Channel.
      - 2.3 To pay GfK for the GfK Deliverables according to the payment schedule in the Agreement above.
      - 2.4 To exercise at least the same amount of diligence and efforts to protect and guard the Confidential Information (defined below) of GfK as Retailer exercises with its own confidential and proprietary information, and to avoid divulging, publishing, loaning, reproducing in whole or in part, giving, selling, or permitting any third parties to divulge, publish, loan, reproduce, in whole or in part, give, or sell any Confidential Information. The same principles shall apply, *mutatis mutandis*, to GfK's handling of Retailer Confidential Information (defined below).
      - 2.5 To promptly advise GfK in the event Retailer becomes aware of any disclosure of Confidential Information by or to any person or entity, which is not a party to this Agreement, or of any third party offering reports or seeking to collect data of the type Retailer is furnished to GfK if for the purpose of aggregating such data with other retailers and/or reporting the results of such aggregation.
  3. **CONFIDENTIAL INFORMATION:** Retailer acknowledges that the methods of collecting, assembling, compiling, describing, interpreting, and evaluating sales data from parties such as Retailer, as well as the graphic designs and forms contained in the GfK Deliverables, are the confidential and proprietary information of GfK and that GfK has the exclusive ownership rights in and to same (the "Confidential Information"). Notwithstanding the foregoing, GfK acknowledges that business and strategic information provided to GfK by Retailer including the Retailer's own POS Data and Sales and Source Information -- are confidential ("Retailer Confidential Information") and will not be used by GfK for any other purpose than to create the GfK Deliverables or other types of aggregated reports which will be furnished to Retailer. The parties further agree that neither Confidential Information nor Retailer Confidential Information shall include any information in the public domain or information obtained from a third party not under any confidentiality obligation to the disclosing party.
  4. **BREACH OF CONFIDENTIALITY:** Retailer shall not divulge Confidential Information or permit same to become known to a person or entity which is not a party to this Agreement. Upon the occurrence of such a breach under this Agreement, GfK may enjoin such action, in addition to exercising all other available remedies, whether equitable, legal, or provided hereunder. The same principles shall apply, *mutatis mutandis*, to GfK's handling of Retailer Confidential Information; *provided that* GfK shall be permitted to disclose the Retailer Confidential Information to each of its Representatives that need to know such information for the purpose of preparing the GfK Deliverable. As used herein, the term "Representatives" means GfK's affiliates and its and their respective directors, officers, employees, advisors and/or agents (including, without limitation, attorneys and accountants). GfK shall (i) cause its Representatives to maintain the confidentiality of the Retailer Confidential Information in accordance with the terms of this Agreement, (ii) be responsible for any breach of this Agreement by any of its Representatives, and (iii) take all reasonable measures to restrain its Representatives from prohibited or unauthorized disclosure or use of the Retailer Confidential Information.
  5. **LICENSES:** Retailer is hereby granted a license to use the Confidential Information contained in the GfK Deliverables for internal management use, which license is revocable by GfK in the event of a breach of this Agreement by Retailer. GfK is hereby granted a license to use the Retailer Confidential Information in generating reports of aggregated sales data such as the GfK Deliverables.
  6. **THE GfK DELIVERABLE:** GfK, not Retailer, will determine the design and the contents of the standard elements of the GfK Deliverables. GfK shall at all times retain sole and exclusive ownership rights in the GfK Deliverable as well as all intellectual property owned or used by GfK in connection therewith. Retailer must maintain the confidentiality of any information and deliverables provided by GfK in connection with this Agreement. All data compiled and used for the purpose of preparing the GfK Deliverable (including any website established by GfK and all information and documentation thereon) shall remain the property of GfK and shall be controlled by GfK through its offices at Liberty Street in New York City, New York.
  7. **REPRESENTATION WITH RESPECT TO DELIVERABLE:** The GfK Deliverables to be provided hereunder shall be based on data developed through research and/or analytical methods which, in GfK's opinion, are reasonable and accurate indices of the market activity covered in the GfK Deliverables. To facilitate improvements in GfK services and to meet changing conditions and circumstances, GfK shall have the right to make, without notice, any changes in the GfK Deliverables or information which, in its judgment, will tend to improve the GfK service. Figures contained in the GfK Deliverables are produced in accordance with commonly accepted market research methods and, as such, are subject to limits of statistical error. While reasonable and customary care is taken in preparing the GfK Deliverables, GfK cannot guarantee the completeness, correctness, or accuracy of data sources or results from individual respondents. Accordingly, in no event shall GfK be liable for errors contained in any deliverable or other results or data or for any loss arising from or in connection with Retailer's use or interpretation thereof.
  8. **LIMITED USE:** The GfK Deliverables and Confidential Information furnished hereunder are provided for the sole use and benefit of Retailer, and no person or entity which is not a party to this Agreement shall be entitled to use or obtain any rights in the GfK Deliverables or Confidential Information without prior written consent of GfK. Except for use within Retailer's organization in connection with the ordinary course of its business, Retailer acknowledges and agrees that it will not publish, sell, distribute, copy or reproduce in full or part, any GfK Deliverable, without the prior express written authorization from GfK (except where transmission or communication is to client's outside advertising or marketing agencies and is directly related to client's advertising or marketing (including merchandising and assortment) decisions and, then, provided that each such recipient first agree in writing to maintain the confidentiality of the transmitted information). This obligation shall survive any termination of this agreement. Notwithstanding the foregoing or any other provision herein, Retailer can disclose the output from the GfK Deliverable to any third party consultant or advisor who is under obligation of confidentiality to GfK. Retailer shall be responsible and liable to GfK for any confidentiality breach committed by such third party consultant or advisor.
  9. **DISCLAIMER: THE GfK DELIVERABLE IS FURNISHED TO RETAILER AS IS AND THERE ARE NO WARRANTIES OF ANY KIND (EXPRESS OR IMPLIED), INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. GfK DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE OF THE GfK DELIVERABLES IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS, OR OTHERWISE. THE GfK DELIVERABLES PRODUCED PURSUANT TO THIS AGREEMENT CONSTITUTE THE ACCUMULATION OF AVAILABLE DATA BY GfK AND RELIANCE THEREON AND USE THEREOF BY RETAILER SHALL BE AT RETAILER'S SOLE RISK. NEITHER GfK NOR ANYONE ELSE INVOLVED IN THE CREATION, PRODUCTION, OR DELIVERY OF THE GfK DELIVERABLES SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES WHETHER UNDER A THEORY OF WARRANTY, CONTRACT OR TORT (INCLUDING DAMAGE FOR LOSS OF BUSINESS REVENUE OR PROFITS, LIABILITY OF RETAILER TO A THIRD PARTY, BUSINESS INTERRUPTION, FAILURE TO**

- REALIZE SAVINGS, AND THE LIKE) ARISING OUT OF THIS AGREEMENT OR THE USE OR INABILITY TO USE THE GfK DELIVERABLES, EVEN IF RETAILER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND RETAILER HEREBY WAIVES THE RIGHT TO CLAIM SUCH DAMAGES.**
10. **LIMITATION OF LIABILITY:** The sole and exclusive remedy of Retailer or any other party using the GfK Deliverables, for any breach of warranty (expressed or implied) or for breach of this Agreement by GfK shall be limited to the refund of an amount not to exceed the fee for the applicable GfK Deliverable(s) paid hereunder. In no event shall GfK or any of GfK's suppliers be liable for special, incidental, or consequential damages arising out of this Agreement, directly or indirectly, and Retailer hereby waives any right to claim such damages in connection with this Agreement.
  11. **TERM AND TERMINATION:** This Agreement shall continue for three (3) years (the Initial Term) and shall be automatically renewed for additional one year terms unless earlier terminated subsequent to the Initial Term and on six months advance written notice. GfK may terminate this agreement without notice for Respondent's breach of the provisions of Paragraph 2. Notwithstanding the foregoing, this Agreement shall immediately terminate upon revocation of the license referenced in Paragraph 5. Notwithstanding any termination or expiration of this Agreement, the provisions of Paragraphs 3, 4, 5, 8, 9, 10 and 18 shall survive indefinitely.
  12. **NO RESTRICTION:** Subject to the provisions regarding Retailer Confidential Information, this Agreement shall not operate to prohibit GfK from furnishing to any other person or persons, firm, association, corporation or other entity any type of information, data, service, and Deliverables similar or related to that which is furnished hereunder.
  13. **NON-PERFORMANCE:** GfK shall not be obligated to furnish GfK Deliverables or data when, in the sole discretion of GfK, conditions are not such to permit GfK techniques to produce measurements (if applicable) deemed reliable by GfK and in accordance with its standards. Upon the failure of GfK to furnish GfK Deliverables for such reasons, GfK shall reduce the sum payable under this contract in a proportionate amount, which shall be sufficient to compensate GfK for its efforts and reasonable expenses.
  14. **NON-ASSIGNMENT:** This Agreement is personal in nature and may not be assigned by Retailer without the prior written consent of GfK. GfK may, without consent, assign its rights or obligations hereunder to an affiliate or successor in business which agrees to be bound by all terms and conditions of this Agreement. Subject to the foregoing limitations upon assignability by Retailer, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
  15. **ENTIRE AGREEMENT; WAIVER; CONFLICT:** This Agreement contains the entire understanding between the parties hereto with regard to the subject matter hereof and may only be modified in writing by the parties. No waiver by either party of any breach of this Agreement by the other shall be deemed to be a waiver of any preceding or subsequent breach thereof. In the event of any conflict between the terms and conditions contained in this Agreement and any other agreement between the parties, including any License or Maintenance and Service Agreement, this Agreement shall control.
  16. **GOVERNING LAW; VENUE; JURISDICTION:** This Agreement shall be interpreted under the laws of the State of New York and each party hereby irrevocably submits to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York or any court of the State of New York located in the City of New York and waives any objection based on forum non conveniens or any other objection to venue.
  17. **TAXES:** All net charges under this Agreement shall be increased to the extent of any sales, use, or other tax of any governmental authority now or hereafter levied or required to be collected by GfK on behalf of Retailer. Retailer is also responsible for any assessed interest or penalties of delinquent payment of any such taxes if those taxes are not collected at such time when payment for the applicable GfK Deliverable is made.
  18. **DELIVERY:** Delivery of a Deliverable by either party shall be deemed made at such time as the same is posted on a secure website established by GfK, or delivered electronically to or by Retailer.
  19. **NORMATIVE DATABASE:** Retailer hereby grants GfK permission to include the Retailer Confidential Information within various normative databases that GfK maintains or may hereafter maintain to better service its clients; *provided that* GfK will maintain the anonymity of the Retailer Confidential Information and will specifically design such databases to prevent client identification by others. For the avoidance of doubt, GfK will ensure that the Retailer Confidential Information is used in aggregated form only and in a manner that is not directly attributable to or identified with Retailer.

GfK (REVISED March 2015)