



# Terms and Conditions of Use for New Zealand Users

(Effective January 1, 2011)

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## 1 This Agreement

- 1.1 This Agreement sets out the terms and conditions which govern Your access to and use of GS1net.
- 1.2 By agreeing to be bound by the terms of this Agreement, You also agree to be bound by the terms and conditions of the GS1 GDSN, Inc. Terms of Participation Agreement for Non-U.S. Trading Partners ("**GDSN Terms**"), which can be found at [http://www.gs1nz.org/gs1net\\_terms\\_conditions.php](http://www.gs1nz.org/gs1net_terms_conditions.php)

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## 2 GS1net

- 2.1 GS1 will provide You with a Company Alias, User ID and Password ("**Sign On**") in order to enable You to access and use GS1net. You must keep the Sign On details assigned to You secret at all times and not permit any person, other than Your authorised users, to use GS1net, and then only in accordance with this Agreement. You must immediately notify GS1 of any breach of security of the Sign On assigned to You. GS1 may change the Sign On assigned to You at any time. Users must not use any automated scripts to log on or perform any activities on GS1net using the online interface.
- 2.2 GS1 will use reasonable endeavours to ensure that GS1net performs substantially in accordance with the GS1net user documentation published by GS1 from time to time.
- 2.3 GS1 may from time to time make modifications to GS1net, including its design, functionality and appearance.
- 2.4 You acknowledge that GS1 is not a party to any transaction made through or as a result of GS1net and that GS1 has no responsibility:
  - (a) for the accuracy or completeness of any information placed on GS1net by You or by any other party including Vendors or Buyers (including, without limitation, prices of, or trading terms relating to, any products included in a catalogue hosted on GS1net); or
  - (b) with respect to any product promoted or purchased or sold as a result of GS1net or the terms of any such transaction; or
  - (c) with respect to the transaction itself (including any claim or dispute relating to that transaction).
- 2.5 You must comply with all applicable laws and all reasonable directions issued by GS1 from time to time in relation to Your use of GS1net.

- 2.6 Without limiting any other provision of this Agreement and unless otherwise specified by GS1, You are solely responsible:
- (a) as a Vendor, for supplying, maintaining and updating all Content on GS1net and administering access to Content by Your trading partners and staff or other representatives; and
  - (b) as a Vendor, for reviewing and checking all Content on GS1net (including, without limitation, any Content updated by GS1 at your request) as correct and complete; and
  - (c) as a Vendor or Buyer, for obtaining at Your own cost all equipment and software necessary to enable You to access and use GS1net.
- 2.7 You must not permit any third party to access or use GS1net without the prior written consent of GS1.
- 2.8 GS1 may access GS1net on Your behalf without notice for purposes associated with GS1net, including but not limited to administration, training, education and support.
- 2.9 GS1 will use reasonable efforts to ensure that, except as permitted in clause 3, Content made available through GS1net is available only to persons who are registered users of GS1net.
- 2.10 You must not, and must ensure that any person accessing or using GS1net via your computer systems does not :
- (a) use any data or information entered onto, or made available to you via, GS1net by other members and users of GS1net ("Trading Partner Information") other than for the purposes of conducting transactions and exchanges of data in the manner reasonably contemplated by these terms and conditions;
  - (b) repackage, resell, on-supply, distribute or disclose Trading Partner Information to third parties except by the publish and subscribe data exchange processes subscribed to, and provided within, GS1net.
- 2.11 GS1 may at any time without consultation with or any liability to You, remove from GS1net any Content which it reasonably regards as inappropriate or likely to cause a breach of this Agreement by You, or a breach of any applicable law.
- 2.12 GS1 may at any time and for any reason without consultation suspend Your access to or use of GS1net without any liability to You. GS1 will attempt to notify You of any such suspension but will not be liable to You if it does not do so.
- 2.13 You acknowledge that whilst individuals may unsubscribe from certain publications, one (1) individual must be nominated to receive communications from GS1net in relation to your agreement. Due to the business critical nature of some GS1net communications, including User Group meetings and GS1net Community Notices, all GS1net Champion, GS1net Administrator, and GS1net Back-up Administrator contacts are unable to Opt Out of this type of communication without providing a new contact name to take up that position. This is to ensure every business has been communicated to about changes relating to the GS1net service. To support this, you must immediately advise GS1:
- (a) of any change in your location, email or postal address detailed in the Registration Form; and
  - (b) if the GS1net Champion, GS1net Administrator, or GS1net Back-up Administrator ceases to be an employee or appropriate contact between you and GS1, details of a replacement contact.

- 2.14 GS1 may vary the terms and conditions contained in this Agreement at any time provided that GS1 provides 14 days notice addressed to the GS1net Administrator at the address or email address detailed in the Registration Form or as varied in accordance with clause 2.13.
- 2.15 Upon receipt of notice of any variation in accordance with clause 2.14, You may terminate this Agreement by notice in writing to GS1 within 30 days.
- 2.16 GS1 may, at any time, discontinue any product, system, service or catalogue provided through, or associated with, GS1net.

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### 3 GDSN Participation

- 3.1 GS1net is connected to the GDSN, which is an internet based, interconnected network of interoperable data pools, via a central global registry operated by GS1 GDSN, Inc and known as the "GS1 Global Registry". This enables:
- (a) GS1 to participate and act as a Data Pool in the GDSN for locally certified master data;
  - (b) the publication of key searchable data (namely Your GLN, Your products' GTINs, Your Target Market Country Code, Your Target Market Sub-Division (if applicable) and Your products' GPC Codes) on the GS1 Global Registry (not including Product Descriptions, any Product Details or any Pricing); and
  - (c) You and other Buyers, Vendors and HealthCare Users to participate in international transactions through GS1net.
- 3.2 The GS1 Global Registry and Your access to it via GS1net are subject to the GDSN Terms. Accordingly, You acknowledge and agree that Your right to participate and use GS1net and to access the GS1 Global Registry or the GDSN are conditional on You being bound by and complying with the GDSN Terms, and that You agree to be bound by the GDSN Terms.

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### 4 Fees and payment

- 4.1 You must pay GS1 the Fees. Unless otherwise specified, all Fees are exclusive of GST, and exclusive of any other applicable taxes and duties (which must be paid by You).
- 4.2 GS1 will issue invoices for the Fees to You from time to time. You must pay those invoices within 30 days from the date of invoice. Payment may be made by cheque, electronic funds transfer to GS1's nominated bank account, credit card or agreed direct debit authority. An administration surcharge may apply to credit card payments. All invoices will be Tax Invoices for GST purposes.
- 4.3 If either party:
- (a) is liable to pay GST on a supply made in connection with this Agreement; and
  - (b) certifies to the recipient of the supply that it has not priced the supply to include GST,
- then the recipient of the supply agrees to pay that party an additional amount equal to the consideration payable for the supply multiplied by the prevailing GST rate (provided that the party issues a Tax Invoice with respect to that supply).
- 4.4 For Default and Consequences of Default refer to Clause 7 within GS1 New Zealand Terms and Conditions of Trade, available on the GS1 New Zealand website.
- 4.5 **GS1 may, from time to time, increase the Fee by written notice. Publication of the increased Fee on GS1's website shall constitute written notice of such increase. Your continued use of GS1net after such notice shall constitute acceptance of such increase.**

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## 5 Warranties and indemnities

5.1 In using GS1net, You must:

- (a) comply with all applicable laws (including but not limited to the Fair Trading Act 1986, the Commerce Act 1986 and the Consumer Guarantees Act 1993);
- (b) use GS1net strictly in accordance with this Agreement for the purposes contemplated by this Agreement;
- (c) not tamper with or otherwise modify GS1net;
- (d) take all precautions necessary and appropriate in the circumstances to protect the security, privacy and confidentiality of GS1net;
- (e) take all precautions necessary and appropriate in the circumstances not to post, send or otherwise make available through GS1net any material that contains any virus, trojan, worm or similar deleterious program that may damage or interfere with the operation of GS1net;
- (f) not post, send or otherwise make available through GS1net any material that:
  - (i) infringes GS1net's or a third party's intellectual property rights;
  - (ii) is defamatory, harassing or obscene;
  - (iii) is illegal, fraudulent, misleading or deceptive; or
  - (iv) is classified by GS1, in its sole discretion, as inappropriate for inclusion on GS1net;
- (g) provide to GS1 information which is reasonably necessary for GS1 to make available GS1net and ensure that this information is both accurate and complete and delivered to GS1 in a timely manner;
- (h) not breach or attempt to breach the security of GS1net; and
- (i) not interfere with the normal operation of GS1net.

5.2 GS1 agrees to:

- (a) comply with all applicable laws in relation to its operation of GS1net; and
- (b) take all reasonable precautions to protect the security, privacy and confidentiality of GS1net.

5.3 You agree to indemnify GS1 and keep it indemnified against any liability, loss, cost or damage which GS1 suffers or incurs arising out of or in connection with:

- (a) a breach by You of this Agreement;
- (b) any claim against GS1 by a third party relating to Your use of GS1net;
- (c) a claim by a third party that any Content infringes the intellectual property rights of that third party; and
- (d) without limiting the foregoing, any error, inaccuracy, omission, defect, lack of completeness, misrepresentation or other imperfection in respect of any Content.

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## 6 Liability

- 6.1 To the maximum extent permitted by law:
- (a) all terms, conditions and warranties which would otherwise be implied into this Agreement are excluded; and
  - (b) where any implied term may not be excluded, GS1 limits its liability for breach of that term (at GS1's option) to the resupply or payment of the cost of resupply of the relevant services.
- 6.2 Without limiting clause 6.1, GS1 does not warrant that GS1net will be available at or for any particular time or that it will be free from error or interruption.
- 6.3 To the maximum extent permitted by law, GS1 excludes all liability (whether arising in negligence, breach of Agreement or breach of any other law) that it may have for any loss or damage arising from:
- (a) the use of or reliance on GS1net, the GS1 Global Registry or the GDSN;
  - (b) any support services, documentation or other products or services provided to you by GS1 in respect of your use of GS1net, the GS1 Global Registry or the GDSN; and
  - (c) arising from any delay, error or failure in the determination, verification or notification to you of the GST classification of food and grocery items in accordance with clause 7.3(c),

whether that loss or damage is direct, indirect or consequential (including loss or corruption of data, loss of any Agreement, loss of any business revenue, loss of profits, failure to realise expected profits or savings or any other commercial loss or economic loss of any kind).

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## 7 Intellectual Property

- 7.1 Unless otherwise expressly provided in this document, You agree that all intellectual property rights in and to GS1net are owned by GS1 or its licensors.
- 7.2 You warrant to GS1 that You own, or are entitled to use the intellectual property rights in the Content, and that You have the right to grant GS1 the licence referred to in clause 7.3.
- 7.3 You grant GS1 a non-exclusive, perpetual, irrevocable and royalty free licence to use, reproduce and adapt the Content for the purposes of:
- (a) providing GS1net;
  - (b) making that Content (other than the Confidential Content) available to any registered user of GS1net (whether that Content is made available in connection with GS1net or otherwise) on or after the date on which, according to GS1's rules for GS1net from time to time, that Content is made available to all registered users of GS1net; and
  - (c) making that Australian market specific Content (including Confidential Content) available to the Australian Tax Office or to any other Australian governmental authority or body as required by law (whether that Content is made available in connection with GS1net or otherwise) for any purposes associated with the determination or verification of the GST classification of food and grocery items published on GS1net.

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## 8 Privacy, Confidentiality and security

- 8.1 GS1's commitment to privacy is set out in the "Privacy Statement" available at [www.gs1nz.org](http://www.gs1nz.org). You acknowledge that You have read and understood the Privacy Statement and consent to the collection, use and disclosure of personal information in accordance with the Privacy Statement.

Where You are an individual, You understand and agree to GS1 obtaining information about You and using or disclosing personal information about You on the terms and for the purposes set out in the GS1 Privacy Statement available at [www.gs1nz.org](http://www.gs1nz.org). You acknowledge and agree that such terms and purposes include disclosure of personal information to the Australian Tax Office or Inland Revenue Department in connection with disclosure of Content pursuant to clause 7.3(c) above.

- 8.2 Each party ("**Recipient**") must keep the confidential information of the other party ("**Discloser**") confidential, safe and secure and not disclose it to any person other than:
- (a) the Recipient's agents, advisors, Agreementors and personnel who have a need to know, provided they are subject to an obligation to keep the confidential information confidential; or
  - (b) where required to do so by law.
- 8.3 The Recipient will use the confidential information of the Discloser solely for the purpose of using or operating GS1net in accordance with this Agreement.
- 8.4 Confidential information includes:
- (a) in the case of GS1, all Sign On details provided to You; and
  - (b) in the case of You, the Confidential Content.
- 8.5 Confidential information does not include any information that is:
- (a) public knowledge at the time it is supplied to Recipient, or becomes public knowledge subsequently other than through breach of an obligation of confidence; or
  - (b) in Recipient's lawful possession prior to it being supplied to Recipient.
- 8.6 You are advised that privacy complaints about acts or practices of GS1 may be investigated by the Privacy Commissioner who can request that GS1 change its privacy practices in appropriate circumstances.

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## 9 Term and termination

- 9.1 This Agreement commences on the date on which You agree to these terms and conditions and continues, subject to payment by You of the applicable Fees, until terminated in accordance with this Agreement.
- 9.2 Either party may terminate this Agreement by notice to the other party if:
- (a) the other party breaches any term of this Agreement and, if it is capable of being remedied, does not remedy it within 14 days after receipt of notice requiring it to do so; or
  - (b) the other party becomes insolvent, has a controller or receiver appointed, enters into liquidation, provisional liquidation or administration, is subject to an arrangement for protection from its creditors, fails to comply with a statutory demand, it is otherwise unable to pay its debts when they fall due or something having a similar effect to the foregoing happens in connection with the party.
- 9.3 Either party may terminate this Agreement at any time by giving 30 days notice in writing to the other party.

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## 10 Nutrition Information

If You are required pursuant to the Food Act 1981 and associated Regulations, or otherwise to comply with the Australian New Zealand Food Standards Code ("Code") You must:

- (a) when entering any Content in respect of any product or item, include in the Content any and all information that You are required to include by way of nutrition information upon any label attached to that product or item pursuant to the Code including, without limitation, any nutrition information required under Standard 1.2.8 published pursuant to the Code;
- (b) warrant that all Content provided by You in accordance with clause 9(a) is accurate and complete; and
- (c) must keep all Content in respect of any product or item up to date and not allow Content to become out of date or inaccurate; and
- (d) indemnify, and keep indemnified and held harmless, GS1 in respect of any liability, loss, cost or expense arising out of any breach of this Clause 10.

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## 11 Healthcare Data Providers

- 11.1 Subject to clauses 11.2 and 11.3, Healthcare Data Providers may access the NPC for the purposes of:
- (a) uploading verified, corrected or updated Healthcare Data into the NPC for the purpose of making that verified, corrected or updated Healthcare Data available to Healthcare Data Recipients; and
  - (b) entering new Healthcare Data into the NPC or modifying existing Healthcare Data contained in the NPC for the purpose of making that Healthcare Data available to Healthcare Data Recipients.
- 11.2 Prior to any Healthcare Data (including, without limitation, new, verified, corrected or updated Healthcare Data) being made available to Healthcare Data Recipients by Healthcare Data Providers, the Healthcare Data Provider must submit the Healthcare Data to the QA Process in order to:
- (a) allow the review and provision of feedback on the Healthcare Data; and
  - (b) ensure that each Healthcare is assigned to the correct virtual NPC group with the appropriate Anatomical Therapeutic Chemical classification index code.
- 11.3 The Healthcare Data Provider will not make any Healthcare Data available to Healthcare Data Recipients unless the release of that information has been approved in the course of the QA Process.
- 11.4 You:
- (a) warrant that all Content (including, without limitation, all Healthcare Data) provided by You is accurate and complete; and
  - (b) must keep all Content (including, without limitation, NPC Data) provided by You up to date and not allow such Content to become out of date or inaccurate; and
  - (c) will indemnify and keep indemnified, and held harmless, GS1 in respect of any and all liability, loss, cost or expense arising out of any breach of this Clause 11.4.
- 11.5 You agree that the Commonwealth, or a third party on behalf of the Commonwealth, may use Your Healthcare Data for the purpose of using the NPC.

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## 12 Healthcare Data Recipients

- 12.1 Healthcare Data Recipients may access the Healthcare Data contained within the NPC for the purpose of:
- (a) searching the NPC; and
  - (b) downloading Healthcare Data from the NPC for inclusion in their own databases.
- 12.2 Healthcare Data Recipients must ensure they have downloaded the most recently updated Healthcare Data from the NPC and incorporated it within their own Healthcare databases before making their NPC databases available to their clients.
- 12.3 On and from the day this Agreement expires or is terminated, You must not use any Healthcare Data downloaded from the NPC:
- (a) in a manner that would involve operating a service or system similar to the NPC; or
  - (b) in a manner that suggests that the use of the Healthcare Data is endorsed by, or otherwise has the authority or support of, or is in any way associated with, the Commonwealth Department of Health and Ageing.
- 12.4 GS1 does not warrant the accuracy, currency or completeness of any Healthcare Data and will not be liable to You, or any person who obtains Healthcare Data or any data based on, or derived from, Healthcare Data from You and You will indemnify, and keep indemnified and held harmless, GS1 in respect of any such liability.

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## 13 NPC Information

- 13.1 Healthcare Data Recipients and Healthcare Data Providers acknowledge and agree that Healthcare Data and information (including personal information) of Healthcare Data Recipients and Healthcare Data Providers may be made available by GS1 to the Commonwealth Department of Health and Ageing and to other persons who:
- (a) are associated with, or provide services in respect of, the operation of the NPC; or
  - (b) replace GS1 or GS1net as the provider or host of the NPC or a similar service established by the Commonwealth Department of Health and Ageing.

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## 14 General

- (a) The parties are independent Agreementors. Nothing in this Agreement makes a party an agent, partner or joint venturer of the other.
- (b) You may not assign this Agreement without GS1's prior written consent.
- (c) This Agreement (and the GDSN Terms) is the entire agreement of the parties concerning its subject matter.
- (d) An obligation of a party (other than an obligation to pay money) will be suspended to the extent the party is prevented from performing that obligation because of an event beyond its reasonable control.
- (e) This Agreement is governed by New Zealand law. By agreeing to the terms and conditions of this Agreement You are submitting to the non-exclusive jurisdiction of the courts of New Zealand or any court that may hear appeals from those courts for determining any dispute concerning this Agreement.

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## 15 Definitions

15.1 In this Agreement the following words have these meanings unless a contrary intention appears:

**Buyer** means a person using GS1net for the purpose of viewing the Content of Vendors and, unless expressly stated to the contrary, includes NPC Data Recipients.

**Confidential Content** means the prices of, or trading terms relating to, any products included in a catalogue hosted on GS1net, which You have designated as being available only to particular trading partners, and other Content to the extent to which, according to GS1's rules for GS1net from time to time, it is subject to restrictions on disclosure.

**Content** means the text, images and other material provided by You to GS1 for purposes of publication on GS1net and, unless expressly stated to the contrary, includes NPC Data.

**Data Pool(s)** means those persons or entities, including GS1, that have executed a participation agreement with GS1 GDSN, Inc, by which they have agreed to access the GDSN and the GS1 Global Registry on behalf of their subscribing customers. A list of Data Pools from time to time can be found on the GDSN website at [www.gs1.org](http://www.gs1.org).

**Fees** mean GS1's fees for the GS1net service, as published by it from time to time.

**GS1net** means the on-line catalogue service operated by GS1 which is currently provided at the following website: <http://www.gs1nz.org/gs1net.php> or such other website as is notified by GS1 from time to time. It includes a validation component for the validation of all inbound on-line messages and the GDSN Global Registry which records the GTIN, suppliers GLN, GPC code and Target Market code of each item.

**GDSN** means the Global Data Synchronisation Network which is an internet based, interconnected network of interoperable data pools, connected via a central global registry operated by GS1 GDSN, Inc and known as the "GS1 Global Registry", that enables data synchronization in accordance with the GS1 System Standards.

**GS1** means GS1 New Zealand Incorporated.

**GS1 Global Registry** means a global registry including the index for item and party master data which is accessible to Data Pools certified as being compliant with the GS1 System standards.

**GS1 System standards** means an integrated system of global standards (as varied from time to time) that provides for identification and communication of information regarding products, assets, services and locations.

**GST** has the meaning given to that term in the Goods and Services Tax Act 1985;

**GTIN** means Global Trade Item Number.

**Healthcare Data** means NPC product data and information contained within the NPC.

**Healthcare Data Providers** means Healthcare suppliers or other persons who provide Healthcare Data.

**Healthcare Data Recipients** means administrators, developers, maintainers of other electronic health systems and all other persons that access or use Healthcare Data;

**Healthcare Users** means Healthcare Data Providers or Healthcare Data Recipients.

**NPC** means the National Product Catalogue for Healthcare, hosted by GS1 on GS1net, and established by National e-Health Transition Authority (NeHTA) containing healthcare product data linked to, among other things, a GTIN.

**Primary Contact** means the person nominated by You as the “Primary Contact” in the Registration Form or advised to GS1 pursuant to clause 2.13.

**QA Process** means the course of action taken by the person or persons appointed by the Commonwealth Department of Health and Ageing-and independent of GS1 New Zealand - to provide quality assurance services in respect of the NPC.

**Registration Form** means the registration form for GS1net which is designated by GS1 from time to time.

**Tax Invoice** has the meaning given to that term in Goods and Services Tax Act 1985;

**Vendor** means a person using GS1net for the promotion (by way of a catalogue or otherwise) of its goods and, unless expressly stated to the contrary, includes Healthcare Data Providers.

**You** means the entity whose details are set out in the Registration Form and includes Healthcare Data Providers and Healthcare Data Recipients.