

# **GS1 New Zealand Information Agreement**

# GS1 INFORMATION AGREEMENT

## PARTIES

1. GS1 NEW ZEALAND INCORPORATED ("GS1");

AND

2. YOU, the person that supplies Information (as defined below) to GS1/GS1 Global

## Background

A. You are a Customer of GS1.

B. You are choosing to accept services (as defined in the GS1 Terms and Conditions) from GS1, which will require You to provide information to GS1 for storage within its Information Management System ("IMS") and the GS1 Global Systems.

C. This Agreement governs both Parties' obligations regarding the storage and use of the information provided by You in the context of receiving the services (as defined) provided by GS1.

AS A SUPPLIER OF INFORMATION TO GS1, GS1 AND YOU AGREE AS FOLLOWS

### 1. Definitions and Interpretation

1.1 "Business Day" means a day (other than a Saturday, Sunday, or public holiday) on which banks are open for general banking business in Wellington, New Zealand;

1.2 "Confidential Information" means information belonging to one of the Parties that is not in the public domain, whether oral, written or embodied in other physical or electronic form, concerning matters including, but not limited to, the business affairs and operations of the Party;

1.3 "Covid-related Services" are defined as a service for GS1 Identifier(s) allocated to assist the Ministry of Health Covid-19 contact tracing response when tracing is required or mandated by the New Zealand Government. The GLN is encoded in a QR code poster and must (at a minimum) always be used to identify a physical location;

1.4 "Customer" means customers of GS1 whether Members of GS1 or not, and includes You;

1.5 "Force Majeure" means any occurrence or omission as a direct result of which the party relying on it is prevented from or delayed in performing any of its obligations under this Agreement (other than payment of money) and that is beyond the reasonable control of that party, including but not limited to acts of God, epidemics, pandemics, sabotage, terrorism, public disorders, industrial actions, transportation failures or delays, shortage of materials, breakdowns in computer facilities, telecommunication delays or malfunctions, delay or non-supply of electricity for any reason whatsoever, and government directives whether valid or invalid;

1.6 "GS1 Global Systems" means the systems of GS1 Global Office, and GS1 Member Organisations including but not limited to; websites, registries, libraries, data transfer between systems and users of these systems which may include third party users of data;

1.7 "GS1 Terms and Conditions" means the GS1 Terms and Conditions which govern all users of GS1 Services, available at [www.gs1nz.org](http://www.gs1nz.org), as amended from time to time;

1.8 "Information" means all information, data and material or any nature and in any form provided by you to GS1 (or to GS1 Global for inclusion in the GS1 Global Systems);

1.9 "IMS" means the information management system operated by GS1;

1.10 "Intellectual Property" means all copyright, trademarks, and patents (whether registered or unregistered), database rights, data and information, and any other rights generally accepted as falling

within the definition of "intellectual property" whether created before, on or after the date that this Contract was agreed by You.

1.11 "Person" includes partnerships, associations, and corporations as well as individuals; and

1.12 "Services" means those services provided by GS1 as selected by You and includes services supplied incidental thereto, including but not limited to electronic storage services contemplated by this Agreement, and may include Covid-related Services.

## **Interpretation**

1.13 By using GS1 Services You agree to abide by the GS1 Terms and Conditions and the terms of this Agreement. To the extent of any inconsistency between the two, the terms of this Agreement shall prevail.

1.14 Initially capitalised terms that are defined in the GS1 Terms and Conditions have the same meaning where used in this Agreement unless the context otherwise requires.

## **2. Provision of Information**

2.1 The Information will be provided to GS1 and/or GS1 Global by You:

- a) for the purposes of GS1 delivering the Services; and
- b) for inclusion in GS1's IMS and other systems and in GS1 Global Systems, so that GS1, and GS1 Global and its licensees and affiliates (including GS1), can provide services to their respective customers, members, and others.

2.2 You warrant that the Information:

- a) originates from, is authorised, or approved by You (validated in accordance with GS1 Global rules and specifications as amended from time to time) and You must be able to demonstrate this upon GS1 request;
- b) does not violate any third party rights, including privacy rights, copyrights, trade marks, patents or other Intellectual Property of any third party, or violate any applicable laws or regulations in any jurisdiction;
- c) does not contain any malware, virus, Trojans, worms, logic bombs or any other materials or functionality which are malicious or technologically harmful to the GS1 IMS platform or GS1 Global Systems or any other user of those platforms or systems;
- d) is not harmful under the Harmful Digital Communications Act 2015, objectionable under the Films Videos Publications Classification Act 1993, defamatory, or otherwise illegal or infringing of anyone's rights, in any jurisdiction; and
- e) where sourced by You from someone else, is provided with their authorisation, and, despite that, remains subject to Your obligations set out in this Agreement.

2.3 If GS1 becomes aware that any Information is causing or may cause harm to GS1 Global, or any other user, Customer or third party or any of their systems, or otherwise breaches this Agreement, it may take action to remedy that issue, including but not limited to temporarily suspending or definitively blocking the information from the GS1 IMS platform or GS1 Global Systems. Nothing in this clause or otherwise makes GS1 or GS1 Global responsible or liable to You, any other Customer or anyone else for the Information or its accuracy or compliance with clause 2.2. Any such warranties or representations on the part of GS1 or GS1 Global are excluded to the maximum extent permitted by law and, in any case, GS1 shall be under no liability whatsoever to You or anyone else for any consequential or indirect cost, damage, loss and/or expense (including loss of revenue, profit, opportunity or savings) suffered or incurred by You or them.

2.4 You fully indemnify GS1 and GS1 Global from and against any damage, cost (including full legal indemnity costs on a solicitor and own client basis), expense, compensation, fine, penalty or other liability whatsoever suffered or incurred by either or both of them and resulting from a breach by You of this Agreement and in particular, but without limitation, the provisions of clause 2.2.

### **3. Conditions and Restrictions on Use of Information**

3.1 By agreeing to the terms and conditions of this Agreement, You consent to use of the Information by GS1 for the purposes of providing the Services to You and to other Customers and users.

3.2 GS1 will not use or disclose any information belonging to You to any third party (with the exception of other Customers who have access to the IMS for delivery of their GS1 services) for any purpose whatsoever other than the purpose, or a purpose ancillary to the purpose, for which the information was provided by You (as set out in this Agreement), without obtaining prior consent from You, unless the information is already in the public domain as a result of a previous authorised disclosure by You or a third party.

3.3 GS1 may use the information provided by You (and, where appropriate, any information that is in the public domain as a result of a previous authorised disclosure by You or a third party), for its own internal purposes (including but not limited to research and statistical purposes), without obtaining prior consent from You.

### **4. Storage and Security of Information**

4.1 GS1 will hold the Information (other than that provided to GS1 Global Systems) and will use reasonable endeavours at all times to ensure that the Information is protected by security safeguards as are reasonable in the circumstances to protect against:

- a) Loss;
- b) Unauthorised access;
- c) Inadvertent destruction;
- d) Unauthorised modification;
- e) Unauthorised disclosure; or
- f) Any other misuse,

provided that GS1 is not responsible for such matters in respect of Information that is held in GS1 Global Systems and is not liable for any breach of this clause caused by Force Majeure.

4.2 If it is necessary for the Information to be disclosed to a third party in connection with the delivery of the Services, GS1 will use reasonable endeavours at all times to ensure that everything reasonably within the power of GS1 is done to prevent misuse of the information in connection with that disclosure.

### **5. Access**

5.1 You will have access to the Information held by GS1 if that access is:

- (a) For the purposes of receiving the Services; and
- (b) In a manner envisaged by this Agreement.

5.2 GS1 reserves the right in its absolute discretion to restrict, suspend or terminate access to information relating to You stored on the IMS or the GS1 Global Systems in the event that You default in your obligations under this Agreement or the Contract (as defined in the GS1 Terms and Conditions). This will include but will not be limited to failure to pay for Services provided and invoiced by GS1 and for the avoidance of doubt includes the period during which an invoice may be disputed.

5.3 Notwithstanding clauses 5.1 and 5.2, to the extent that Information held by GS1 is "personal information" for the purposes of the Privacy Act 2020, access to (and correction of) such information will be governed by that Act.

5.4 For the purposes of UK and EU data protection laws, GS1 is a "Data Controller" and will comply with all relevant laws relating to disclosing personal data.

### **6. Termination of Access**

6.1 Given the nature of the Services provided under this Agreement, GS1 cannot warrant that access to the Information will be uninterrupted or error free.

6.2 Further to clauses 5.2 and 6.1, the Parties agree that access by You to the Information may be restricted, suspended, or terminated at any time by GS1 without notice, including (without limitation) due to the following:

- (a) Telecommunications failure or fault network or system outages;
- (b) A Force Majeure event;
- (c) A determination by GS1 that such action is necessary for the purposes of maintenance, restoration, upgrade, or enhancement of the IMS or the GS1 Global Registry, or any other GS1 network or systems that might also affect operation of the IMS or GS1 Global Systems;
- (d) Interference with the IMS, GS1 Global Systems or the efficiency of the GS1 network by You, following a failure to remedy the situation upon the reasonable request of GS1;
- (e) A request or requirement to do so by any applicable law or relevant authority;
- (f) In the event that You miss payment to GS1 in breach of this Agreement without alternative arrangements being made, and for the avoidance of doubt may include the period during which an invoice is disputed; or
- (g) In the event You are in breach of any obligation owed to GS1 under this Agreement.

6.3 In the event of termination certain information will be retained by GS1 on the IMS Platform or GS1 Global Systems for GS1 internal purposes.

## **7. Confidentiality**

7.1 The Parties agree and undertake that they will not, during the term of this Agreement or at any time thereafter (except in accordance with clause 7.3) disclose to any person any Confidential Information of or relating to the other Party which it becomes aware of or privy to as a result of this Agreement.

7.2 The Parties agree and undertake to take all reasonable precautions to prevent unauthorised disclosure of each other's Confidential Information to any other person and to ensure that its officers, employees, contractors, and agents do not disclose the other Party's confidential information to any other person.

7.3 Nothing in this Agreement prohibits disclosure of information which:

- (a) Was obtained lawfully from a third party, provided that it was not acquired directly or indirectly by that third party from another GS1 customer; or
- (b) Is required to be disclosed by law or any government or governmental body, authority or agency having authority over a Party.

## **8. Exclusions**

8.1 You acknowledge and accept that use of the services and use of the IMS or GS1 Global Systems facilitating provision of the services, is at Your own risk.

8.2 You acknowledge that GS1 and GS1 Global are supplying, and You are accessing and using, the Services and any data and information supplied as part of the Services, and You are providing Information to GS1, for business purposes, and that the protection of data and information entrusted to GS1 and GS1 Global by You and other Data Providers justifies the restrictions on access and use and Your assurances set out in this Agreement. Accordingly, you agree that:

- (a) the provisions of the Consumer Guarantees Act 1993 do not apply;
- (b) sections 9, 12A, 13, and 14(1) of the Fair Trading Act 1986 do not apply;
- (c) contracting out of the above statutory provisions is fair and reasonable;
- (d) you have had a sufficient opportunity to review this Agreement and take independent advice on it, and you understand its terms; and

(e) this Agreement is not unfair or unreasonable and it protects the legitimate interests of GS1, GS1 Global and other Data Providers who supply data and information that is included in GS1's systems and in the GS1 Global Systems, and the legitimate interests of users of that Information.

## **9. Return or Destruction of Information**

9.1 In the event of termination under clause 11.1 of this Agreement You will return to GS1 or destroy, whichever is requested by GS1 and is appropriate in the circumstances, all information including Intellectual Property belonging to GS1.

## **10. Intellectual Property**

10.1 You acknowledge and agree that any Intellectual Property Rights in the IMS and GS1 Services are owned by or licensed to GS1.

## **11. Termination of Agreement**

11.1 Either Party may terminate this Agreement for any reason whatsoever on provision of thirty (30) days written notice to the other Party.

11.2 If GS1 has a right to terminate the Contract or suspend or terminate Services under the Contract (as defined in the GS1 Terms and Conditions), it shall be entitled to terminate this Agreement on the same basis and process as set out in the GS1 Terms and Conditions.

11.3 The rights and obligations of the Parties under clauses 2.2, 2.4, and 7 to 15 (inclusive) will survive termination of this Agreement.

11.3 Information provided by You which has been included in the GS1 Global Systems or otherwise made available to other Customers by GS1 or GS Global may continue to be retained and used for that purpose after termination but may be marked as not being updated.

## **12. Applicable Law and Jurisdiction**

12.1 This Agreement will be governed by the laws of New Zealand.

12.2 The Parties hereby submit to the exclusive jurisdiction of the Courts of New Zealand.

## **13. Dispute Resolution**

13.1 The Parties will attempt to settle any dispute (including as to termination) arising between them by good faith negotiations between themselves within ten (10) days of the dispute arising or an agreed longer period.

### **Mediation**

13.2 If a dispute or difference cannot be settled by good faith negotiation in accordance with clause 14.1 above, the Parties may attempt in good faith to resolve the issue by mediation.

13.3 The rules applying to the mediation procedure will be as agreed between The Parties or as recommended by the New Zealand Law Society (or its equivalent) at the time the dispute arises.

### **Arbitration or Litigation**

13.4 If the Parties cannot agree to attempt to resolve the issue by mediation, or the issue cannot be settled by mediation within twenty (20) Business Days of notice requesting mediation or such longer period as the Parties agree, the Parties can either agree to attempt to resolve the issue by arbitration in accordance with clause 13.5 below and the Arbitration Act 1996, or one of the Parties may choose to file proceedings in a court of law.

13.5 If the Parties agree to proceed to arbitration and are unable to agree upon an arbitrator within a reasonable time after arbitration is commenced, an arbitrator will be appointed upon the request of either Party by the President of the New Zealand Law Society (or its equivalent). That appointment is binding on the Parties to the arbitration and is not subject to appeal.

13.6 The Parties agree that any decision reached during arbitration in accordance with clause 13.5 above can be judicially reviewed by the Courts.

13.7 The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject to this Agreement and varied accordingly.

#### **14. Severability**

14.1 If any of this Agreement's terms become illegal or invalid those terms will:

- (a) be severable and treated as deleted from this Agreement; and
- (b) not affect the validity or enforceability of the remaining terms of this Agreement.

#### **15. No Waiver**

15.1 A Party's failure or delay in exercising any right under this Agreement will not operate as a waiver. A single or partial exercise of any right will not prevent the exercise of that right in the future.