

Title	National Product Catalogue Terms and Conditions of Use
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Terms and Conditions of use for Australian Users

1.0 This Agreement

- 1.1 This Agreement sets out the terms and conditions which govern Your access to and use of the National Product Catalogue.
- 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 Data Excellence, Inc. Terms of Participation Agreement for Non-U.S. Trading Partners (“GDSN Terms”), a copy of which are included in Annexure A and the current version of which can be found at http://www.gs1.org/docs/gdsn/support/GDSN_Terms_of_Participation_non_US.pdf

2.0 GS1 Australia Subscription Membership

- 2.1 GS1 is a membership based organisation and each user of GS1 services (including the National Product Catalogue service) is required to be a “Subscriber Member” of GS1 (as that term is used in the Constitution of GS1).
- 2.2 You acknowledge that, if You are not already a “Subscriber Member”, by subscribing to the National Product Catalogue service, You hereby subscribe to become a “Subscriber Member” under the Constitution of GS1 in the category of a “Restricted Services Member” and agree to be bound by the current applicable Membership and Licence Subscription terms and conditions for the period of this Agreement as well the GS1 Terms of Trade published on its web site from time to time.
- 2.3 If you have already subscribed to be a “Subscriber Member” in connection with a GS1 Subscription Membership & Licence Agreement, You remain subject to the terms and conditions of Your GS1 Subscription Membership & Licence Agreement in addition to the terms of this Agreement.

3.0 National Product Catalogue

- 3.1 GS1 will provide You with a Company Alias (or Global Location Number), User ID and Password (“Sign On”) in order to enable You to access and use the National Product Catalogue. 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 the National Product Catalogue, 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 the National Product Catalogue using the online interface.
- 3.2 GS1 will use reasonable endeavours to ensure that the National Product Catalogue performs substantially in accordance with the National Product Catalogue user documentation published by GS1 from time to time.

- 3.3 GS1 may from time to time make modifications to the National Product Catalogue, including its design, functionality and appearance.
- 3.4 You acknowledge that GS1 is not a party to any transaction made through or as a result of the National Product Catalogue and that GS1 has no responsibility:
- (a) for the accuracy or completeness of any information placed on the National Product Catalogue by You or by any other party including Publishers or Recipients (including, without limitation, prices of, or trading terms relating to, any products included in a catalogue hosted on the National Product Catalogue); or
 - (b) with respect to any product promoted or purchased or sold as a result of the National Product Catalogue or the terms of any such transaction; or
 - (c) with respect to the transaction itself (including any claim or dispute relating to that transaction).
- 3.5 You must comply with all applicable laws and all reasonable directions issued by GS1 from time to time in relation to Your use of the National Product Catalogue.
- 3.6 Without limiting any other provision of this Agreement and unless otherwise specified by GS1, You are solely responsible:
- (a) as a Publisher, for supplying, maintaining and updating all Content on the National Product Catalogue and administering access to Content by Your trading partners and staff or other representatives;
 - (b) as a Publisher, for reviewing and checking all Content on the National Product Catalogue (including, without limitation, any Content updated by GS1 at Your request and any determination or confirmation of the GST classification of food and beverage items by GS1) as correct and complete; and
 - (c) as a Publisher or Recipient, for obtaining at Your own cost all equipment and software necessary to enable You to access and use the National Product Catalogue.
- 3.7 You must not permit any third party to access or use the National Product Catalogue without the prior written consent of GS1.
- 3.8 GS1 may access the National Product Catalogue on Your behalf without notice for purposes associated with the National Product Catalogue, including but not limited to administration, training, education and support. For troubleshooting purposes only, temporary user access to Your catalogue information may be provided to the National Product Catalogue solution provider and will be removed upon completion of the troubleshooting task, such access will be restricted to exclude new item creation or price updates.

- 3.9 GS1 may share Your company, contact and National Product Catalogue implementation information with National Product Catalogue Recipients upon the Data Recipient request.

National Product Catalogue Recipients, when accessing Content through the Application Programming Interface (API) Query ("**Recipient Query**"), will have visibility of all data elements that are considered neutral i.e. not trading partner dependant.

Without limiting any other provision of this Agreement, GS1 may at any time provide Content about Your products from the National Product Catalogue and GTIN Search to GS1 Services, GS1 NZ Services and contracted government agencies.

This Content will:

- (a) contain, for Content to be shared other than with the GS1 Registry Platform and GS1 Registry Services, basic product information such as, but not limited to, product number, product description, brand name, category and net content and other "on pack" or consumer label data;
- (b) contain, for Content to be shared with the GS1 Registry Platform and GS1 Registry Services, the following fields: product number or GTIN; brand name; product or label description; medium resolution product image (if available); net content and unit of measure; target market; company name; and product classification (category) subject to such additional or changed fields as be notified by GS1 from time to time ;
- (c) contain, for Content to be shared with Recipients via the Recipient Query, all those data elements that are considered neutral i.e. not trading partner dependant; and
- (d) in all cases be restricted, at the time of sharing, to Publicly Available Product Data.

If You do not wish Your Content to be made available to organisations that You have not specifically published to, You can opt out through the designated management process or by contacting the National Product Catalogue administration team directly. If You are an Individual or Sole Trader You have the right to be de-identified upon request.

- 3.10 GS1 will use reasonable efforts to ensure that, except as permitted in Clauses 3.9 and 4.0, Content made available through the National Product Catalogue is available only to persons who are registered users of the National Product Catalogue or applicable governmental regulatory or other authorities or bodies as required by law or regulation.
- 3.11 You must not, and must ensure that any person accessing or using the National Product Catalogue, or on Your behalf, does not:
- (a) use any data or information entered onto, or made available to You via, the National Product Catalogue by other members and users of the National Product Catalogue ("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; or

- (b) repackage or transform, resell, on-supply, distribute or disclose Trading Partner Information (whether in the format supplied to You or altered in anyway by You or Your Third Party Service Providers) to third parties except by the publish and subscribe data exchange processes subscribed to, and provided within, the National Product Catalogue.

Furthermore, You acknowledge that You are expressly prohibited from accessing or using the Content other than for Your own business purposes and warrant that the Content will not be used for the purposes of resale or redistribution in whole or in part by You, or any third party recipient of the Content from You, via a means of exchange other than provided for within the National Product Catalogue.

For avoidance of doubt, Third Party Service Providers that handle Content published to or from the National Product Catalogue are expressly prohibited from using that Content in any form whatsoever for any organisation other than for the specific Publisher or Recipient the Content was published to or on behalf of.

- 3.12 GS1 may at any time without consultation with You remove from, or inhibit from being loaded into, the National Product Catalogue any GTINs where those GTINs have not been licenced directly to You, or directly to the brand owner, by a recognised GS1 member organisation.
- 3.13 GS1 may at any time without consultation with or any liability to You, remove from the National Product Catalogue 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.
- 3.14 If You are a Recipient, You acknowledge and warrant that You are responsible for the ongoing use of any Publisher's Content on the National Product Catalogue accessed by or delivered to You and that any subsequent use of that Content, by You and any of Your service providers, contractors or agents, is only for the purposes intended by the Publisher when publishing to You and that it will be used expressly for Your own business purposes excepting where those purposes involve reselling or repurposing the Content. Furthermore, if you have delivered such Content to Your service providers, contractors or agents, You warrant that You have requested that any such service provider, contractor or agent warrants they will only use that Content for Your business purposes.
- 3.15 In the event GS1 migrates the National Product Catalogue from one platform to another, or upgrades the software to meet GDSN requirements and/or standards, and there are requirements on You for data validation and/or maintenance:
 - (a) GS1 will advise You the data validation and/or maintenance requirements to be completed; and
 - (b) You acknowledge it is Your responsibility to ensure that the necessary data validation and/or maintenance requirements are completed satisfactorily according to the advice and by the required date whether by Yourself or by Your nominated Third Party Service Provider and that such data validation and/or maintenance is performed entirely at Your cost; and

- (c) You acknowledge that if You, or Your nominated Third Party Service Provider, have not completed the required data validation and/or maintenance by the required date GS1 will have the authority to make the required data validation and maintenance changes on Your behalf provided that GS1 gives You at least 30 days written notice of the mapping change requirements. In this event GS1 is not responsible for ensuring that any data altered meets Your business requirements.
- 3.16 GS1 may at any time and for any reason without consultation suspend Your access to or use of the National Product Catalogue 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.
- 3.17 You acknowledge that whilst individuals may unsubscribe from certain publications, at least one (1) individual must be nominated to receive communications from GS1 in relation to invoices, billing and payment ("Invoice Contact"). Due to the business-critical nature of invoicing and payment, Invoice Contacts are unable to Opt Out of this type of communication without providing a new contact name to take up that position.
- 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 Invoice contact ceases to be an employee or appropriate contact between You and GS1, details of a replacement contact.
- 3.18 GS1 may vary the terms and conditions contained in this Agreement at any time provided that GS1 provides 14 days notice addressed to the Primary Contact at the address or email address detailed in the Registration Form or as varied in accordance with Clause 3.17.
- 3.19 Upon receipt of notice of any variation in accordance with Clause 3.17, You may terminate this Agreement by notice in writing to GS1 within 30 days.
- 3.20 GS1 may, at any time, discontinue any product, system, service or catalogue provided through, or associated with, the National Product Catalogue.

4.0 GDSN Participation

- 4.1 The National Product Catalogue is connected to the GDSN, which is an internet based, interconnected network of interoperable data pools, via a central global registry operated by GS1 Data Excellence, 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 Publishers, Recipients and HealthCare Users to participate in international transactions through the National Product Catalogue.
- 4.2 The GS1 Global Registry and Your access to it via the National Product Catalogue are subject to the GDSN Terms. Accordingly, You acknowledge and agree that Your right to participate and use the National Product Catalogue 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.

5.0 Fees and Payment

- 5.1 You must pay GS1 the Fees. Unless otherwise specified, all Fees are exclusive of GST, and exclusive of any other applicable federal and state taxes and duties (which must be paid by You).
- 5.2 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 electronic funds transfer or BPAY 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.
- 5.3 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).

- 5.4 If You are overdue in payment of any amount, GS1 may charge an administration fee for any overdue amount at the rate of fifty Australian dollars (\$50.00) (exclusive of GST) plus all costs and expenses incurred by its mercantile agents in respect of anything instituted or being considered against You as a liquidated sum (which You hereby acknowledge is a genuine pre-estimate of the costs of GS1 in collecting such amount), together with interest calculated at a rate equivalent to two percent (2%) higher than the rate for the time being fixed under Section 2 of the Penalty Interest Rates Act 1983 (Vic) from (and including) the date the payment was due until (but excluding) the date it is received in full (together with administration fees and interest).
- 5.5 GS1 reserves the right to charge a fee in relation to bank processing charges imposed on GS1 in respect of payments for this agreement
- 5.6 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 the National Product Catalogue after such notice shall constitute acceptance of such increase.

6.0 Warranties and Indemnities

- 6.1 In using the National Product Catalogue, You must:
- (a) comply with all applicable laws (including the Competition and Consumer Act 2010 (Cth), and state fair trading legislation);
 - (b) use the National Product Catalogue strictly in accordance with this Agreement for the purposes contemplated by this Agreement;
 - (c) not tamper with or otherwise modify the National Product Catalogue;
 - (d) take all precautions necessary and appropriate in the circumstances to protect the security, privacy and confidentiality of the National Product Catalogue;
 - (e) take all precautions necessary and appropriate in the circumstances not to post, send or otherwise make available through the National Product Catalogue any material that contains any virus, trojan, worm or similar deleterious program that may damage or interfere with the operation of the National Product Catalogue;
 - (f) not post, send or otherwise make available through the National Product Catalogue any material that:
 - i. infringes the National Product Catalogue'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 the National Product Catalogue;
 - (g) provide to GS1 information which is reasonably necessary for GS1 to make available the National Product Catalogue 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 the National Product Catalogue; and
- (i) not interfere with the normal operation of the National Product Catalogue.

6.2 GS1 agrees to:

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

6.3 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 the National Product Catalogue;
- (c) a claim by a third party that any Content infringes the intellectual property rights or moral 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.

7.0 Liability

7.1 To the maximum extent permitted by law:

- (a) all terms, conditions and warranties which would otherwise be implied into this Agreement and all remedies or liability under any legislation are excluded; and
- (b) where any such term, condition or warranty is implied by legislation, or any remedy or liability under any legislation arises, and such legislation provides that the term, condition, warranty, remedy or liability 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. You acknowledge and agree that the foregoing limitation of liability is fair and reasonable in all the circumstances.

7.2 Without limiting Clause 7.1, GS1 does not warrant that the National Product Catalogue, GSDN, GS1 Global Registry, or any other GS1 Services will be available at or for any particular time, or that they will be free from error or interruption. You acknowledge that despite all reasonable precautions on GS1's part, there is a risk of unauthorised access to, or alteration of, transmissions of data or information to or from Your electronic device or available through the Services.

- 7.3 Without limiting Clause 7.1, GS1 does not warrant that support services including (without limitation) Ongoing Data Maintenance will be available at or for any particular time, or that they will be free from error or interruption. GS1 must re-perform any support services not performed in accordance with these Terms provided that GS1 receives notice within 30 days after support services are performed.
- 7.4 To the maximum extent permitted by law, GS1 excludes all liability (whether arising in negligence, breach of contract or under any other legal theory) that it may have for any loss, costs, expense, damage or liability of any kind including, without limitation, loss or corruption of data, any loss of revenue or profits, any failure to realise expected savings, or indirect, consequential, incidental, special exemplary or punitive loss or damage, howsoever caused (including through GS1's negligence), suffered or incurred by You arising from or in connection with:
- (a) the access to, use of or reliance on the National Product Catalogue, the GS1 Global Registry, the GDSN or other Services or any information available through the Services;
 - (b) any services, documentation or other products or services provided to You by GS1 (or its nominees) in respect of Your use of the National Product Catalogue, the GS1 Global Registry, the GDSN, or other Services or any information available through the Services;
 - (c) arising from any delay, error or failure in the determination, verification or notification to You of the GST classification of food and beverage items in accordance with Clause 8.3(c);
 - (d) the access or use of the Content by any governmental regulatory or other authority or body;
 - (e) any injury, sickness or death;
 - (f) any decision or action taken by You in reliance on information available through the Services;
 - (g) any unauthorised access to, or alteration of, transmissions of data or information to or from Your electronic device or available through the Services; or
 - (h) any interruption, error or defect in the Services or information available through the Services.
- 7.5 To the maximum extent permitted by law, GS1's total aggregate liability arising under or in connection with this Agreement or its subject matter is limited to an amount equal to the total amount of the Fees paid by You in the twelve (12) months immediately preceding the date that the cause of action (or, if more than one, the first such cause) arises.
- 7.6 The provisions of this Clause 7.0 (Liability) are additional to, and not in lieu of, the terms of the GDSN Terms.

8.0 Intellectual Property

- 8.1 Unless otherwise expressly provided in this document, You agree that all intellectual property rights in and to the National Product Catalogue are owned by GS1 or its licensors.
- 8.2 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 8.3.
- 8.3 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 the National Product Catalogue;
 - (b) making that Content (other than the Confidential Content) available to any registered user of the National Product Catalogue (whether that Content is made available in connection with the National Product Catalogue or otherwise) including the provision of a title to use that Content for their legitimate business purposes as contemplated by this Agreement on or after the date on which, according to GS1's rules for the National Product Catalogue from time to time, that Content is made available to all registered users of the National Product Catalogue; and
 - (c) making that Content (including Confidential Content) available to the Australian Tax Office or to any other governmental regulatory or other authority or body as required by law (whether that Content is made available in connection with the National Product Catalogue or otherwise) for any purposes associated with the determination or verification of the GST classification of food and non-alcoholic items published on the National Product Catalogue.

For the avoidance of doubt such licence specifically does not transfer ownership rights to GS1.

- 8.4 You warrant that Your performance of this contract (including provision of any Content) or the use of Content by GS1 and its personnel, and any registered user of the National Product Catalogue and their personnel, in accordance with this contract will not infringe the moral rights of the personnel of GS1 or registered user. You must use reasonable endeavours to ensure that none of Your personnel or Your third party's personnel will institute, maintain or support any claim or proceeding against GS1, GS1's personnel, registered users of the National Product Catalogue or their personnel, for infringement of any of their moral rights.

9.0 Privacy, Confidentiality and Security

9.1 GS1's commitment to privacy is set out in the GS1 Australia Privacy and Security Policy available at <http://www.gs1au.org> ("Privacy Policy"). You acknowledge that You have read and understood such policy and consent to the collection, use and disclosure of personal information in accordance with it.

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 that policy.

You acknowledge and agree that such terms and purposes include disclosure of personal information to the Australian Tax Office in connection with disclosure of Content pursuant to Clause 8.3 (c) as above.

9.2 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.

9.3 The Recipient will use the confidential information of the Discloser solely for the purpose of using or operating the National Product Catalogue in accordance with this Agreement.

9.4 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.

9.5 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.

9.6 You are advised that complaints about acts or practices of GS1 may be investigated by the Privacy Commissioner who has power to award compensation against GS1 in appropriate circumstances.

10.0 Term and Termination

- 10.1 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.
- 10.2 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.
- 10.3 Either party may terminate this Agreement at any time by giving 30 days notice in writing to the other party.
- 10.4 The provisions of Clauses 3.4, 4.0, 5.5, 6.0, 7.0, 8.0, 9.0, 11.0, 15.0, 17.0, 19.0, 20.0 and 21.0 shall survive termination of this Agreement.

11.0 Food Standards Australia & New Zealand Information Requirements

- 11.1 If You are required pursuant to the Food Standards Australia & New Zealand Act 1991, or otherwise, to comply with the Australian New Zealand Food Standards Code ("Code"):
- (a) You must, 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) You warrant that all Content provided by You in accordance with Clause 11.1(a) is accurate and complete; and
 - (c) You 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 You will 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 11.0.

- 11.2 If You maintain any Content in relation to products or items comprising packaged foods for consumption within the Food, Beverage, Liquor and Food Service sectors You can elect to publish your Content to FSANZ for the purpose of the Australian Branded Food Database via the standard National Product Catalogue publishing mechanisms and, in doing so, You acknowledge that:
- (a) FSANZ is entitled to use that Content solely for the purposes of the Australian Branded Foods Database;
 - (b) the Content published by You to FSANZ will be publicly available subject to Clause 11.3; and
 - (c) FSANZ may collect their own product content about Your product and use that content in the event You do not publish Your Content to FSANZ for the purposes of the Australian Branded Foods Database.
- 11.3 If You elect to publish Your Content to FSANZ, You are required to provide and maintain (via the mechanism described in GS1's rules as amended from time to time) Content Permissions for FSANZ regarding their use of the Content and visibility thereof on the FSANZ public website and/or Australian Branded Foods Database according to the following permissions:
- (a) Level 0 – No restrictions: No restrictions on publishing any product data on the public website, or
 - (b) Level 1 – Minimum Data set: Publish the FSANZ Minimum Product Data including FVNL and Fibre; or
 - (c) Level 2 – Exclude FVNL & Fibre: Publish the FSANZ Minimum Product Data, excluding FVNL & Fibre; or
 - (d) Level 3 – Private: Exclude all product data from the public website.
- You, and FSANZ will be provided with a statement of the selected visibility instructions at the time Your Content is made ready for publication to FSANZ.
- 11.4 For the purposes of Clause 11.3, FSANZ Minimum Product Data is defined as:
- (a) Global Trade Item Number (GTIN);
 - (b) Product identification such as brand owner and brand names;
 - (c) Nutrition information panel information and listed ingredients;
 - (d) Pack and serve size; and
 - (e) If displayed, health star rating and health star rating category.
- 11.5 While FSANZ is asking manufacturers to provide allergen information, allergen declarations will not be published on the Australian Branded Food Database public website.

12.0 Healthcare Data Providers

- 12.1 Subject to Clauses 12.2 and 12.3, Healthcare Data Providers may access the National Product Catalogue for Healthcare for the purposes of:
- (a) uploading verified, corrected or updated Healthcare Data into the National Product Catalogue for Healthcare for the purpose of making that verified, corrected or updated Healthcare Data available to Healthcare Recipients; and
 - (b) entering new Healthcare Data into the National Product Catalogue for Healthcare or modifying existing Healthcare Data contained in the National Product Catalogue for Healthcare for the purpose of making that Healthcare Data available to Healthcare Recipients.
- 12.2 Prior to any Healthcare Data (including, without limitation, new, verified, corrected or updated Healthcare Data) being made available to Healthcare 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 product is assigned to the correct virtual National Product Catalogue for Healthcare group with the appropriate Anatomical Therapeutic Chemical classification index code.
- 12.3 The Healthcare Data Provider will not make any Healthcare Data available to Healthcare Recipients unless the release of that information has been approved in the course of the QA Process.
- 12.4 You:
- (a) warrant that all Content (including, without limitation, all Healthcare Data) provided by You is accurate and complete;
 - (b) must keep all Content (including, without limitation, National Product Catalogue for Healthcare 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 hold harmless, GS1 in respect of any and all liability, loss, cost or expense arising out of any breach of this Clause 12.4.
- 12.5 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 National Product Catalogue for Healthcare.

13.0 Healthcare Recipients

- 13.1 Healthcare Recipients may access the Healthcare Data contained within the National Product Catalogue for Healthcare for the purpose of:
- (a) searching the National Product Catalogue for Healthcare; and
 - (b) downloading Healthcare Data from the National Product Catalogue for Healthcare for inclusion in their own databases.
- 13.2 Healthcare Recipients must ensure they have downloaded the most recently updated Healthcare Data from the National Product Catalogue for Healthcare and incorporated it within their own Healthcare databases before making their National Product Catalogue for Healthcare databases available to their clients.
- 13.3 On and from the day this Agreement expires or is terminated, You must not use any Healthcare Data downloaded from the National Product Catalogue for Healthcare:
- (a) in a manner that would involve operating a service or system similar to the National Product Catalogue for Healthcare; 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 Australian Digital Healthcare Agency (formerly NeHTA).
- 13.4 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.

14.0 National Product Catalogue for Healthcare Information

- 14.1 Healthcare Recipients and Healthcare Data Providers acknowledge and agree that Healthcare Data and information (including personal information) of Healthcare Recipients and Healthcare Data Providers may be made available by GS1 to the Australian Digital Healthcare Agency (formerly NeHTA) and to other persons who:
- (a) are associated with, or provide services in respect of, the operation of the National Product Catalogue for Healthcare; or
 - (b) replace GS1 or the National Product Catalogue as the provider or host of the National Product Catalogue for Healthcare or a similar service established by the Australian Digital Healthcare Agency (formerly NeHTA).
- 14.2 Healthcare Data Providers acknowledge and agree that copies of Data Quality Insights Reports will be made available by GS1 to both the Healthcare Data Providers and additionally to the Australian Digital Healthcare Agency (formerly NeHTA) and Healthcare Data Recipients as a means of monitoring, comparing and improving Data Quality within the National Product Catalogue.

- 14.3 The Healthcare Item Data Lake is a searchable repository where Healthcare Data Providers can share information about their products with eligible Data Recipients who have been declared Healthcare Sector Ready.
- 14.4 Healthcare Data Providers may choose and are encouraged to publish their Healthcare Item Data to the designated Data Recipient, namely the "Healthcare Item Data Lake". All Healthcare Data Providers selling to the healthcare market who have been declared Healthcare Sector Ready are eligible to publish their data to the Healthcare Lake. From 1 July 2023, GS1 Australia shall publish all active items to the same Data Recipient on behalf of Healthcare Data Providers. However, Health Data Providers may choose to opt out from publishing their data to the Healthcare Item Data Lake at any time by providing written notice to GS1 Australia in accordance with Clause 19.
- 14.5 Healthcare providers may still publish GTINs with a future or blank CVD to the Healthcare Lake, but such GTINs will only become discoverable by a Healthcare Requester's API calls when the CVD becomes today's date or earlier.
- 14.6 To qualify as a Healthcare Requester, the organisation must be a fully registered and financial Data Recipient. To be approved, a Healthcare Requester must additionally be one of the following:
- (a) Federal, State or Territory Health Department or their related agencies;
 - (b) Private and public hospitals/clinics;
 - (c) recognised healthcare product distributors or buying groups;
 - (d) pharmacy chains or pharmacy buying groups;
 - (e) recognised aged care providers;
 - (f) recognised Healthcare solution providers who provide value added services based on the data; or
 - (g) any other healthcare product buying groups.

In addition, a solution provider must either be a fully registered Data Recipient, or acting on behalf of their Data Recipient client, with the sole purpose of requesting the content for the end-use only by the Data Recipient.

15.0 Third Party Service Provider Obligations

- 15.1 This Clause 15.0 applies to You only if You are a Third Party Solution Provider acting on behalf of Publishers or Recipients who are licenced users of the National Product Catalogue (“Your Customers”).
- 15.2 Without limiting any other provision of these National Product Catalogue Terms and Conditions and unless otherwise specified by GS1 in writing, You are solely responsible for:
- (a) obtaining all necessary licences from Your Customers in relation to Your use of their content;
 - (b) complying with all Your Customers’ obligations in respect of their use of the National Product Catalogue when acting on Your Customers’ behalf; and
 - (c) complying with all applicable laws in relation to Your use of Your Customer’s content.
- 15.3 You acknowledge that GS1 is not party to any transaction between You, Your Customers or otherwise in relation to Your use of Your Customer’s Content (otherwise than as set out in these National Product Catalogue Terms and Conditions) and that GS1 has no responsibility:
- (a) for ensuring the correctness, accuracy, completeness or suitability for intended purpose of any Content on the National Product Catalogue service; or
 - (b) with respect to any transaction itself (including any claim or dispute relating to that transaction).
- 15.4 You acknowledge that Your access to or use of Your Customer’s Content on the National Product Catalogue service may be suspended, without liability to GS1, at any time:
- (a) by the Publisher or Recipient for any reason; or
 - (b) by GS1 for any reason including, without limitation, if all Publishers or Recipients for whom You act have been suspended or terminated.
- GS1 will attempt to notify You of any such suspension but will not be liable to You if it does not do so.

16.0 National Product Catalogue Hosted Mapping Services

- 16.1 If You have requested GS1 to provide Hosted Mapping Services, You acknowledge:
- (a) Hosted Mapping Services are provided on the basis of an agreed one off fee to develop, and an ongoing fee to host, each individual map;
 - (b) GS1 will develop each requested individual map according to an agreed written map specification;
 - (c) in the event of upgrades to the National Product Catalogue to meet GDSN, GS1 Registry Platform or GS1 Registry Services, or requirements standards, any maintenance of individual maps to meet the revised standard will be performed at Your cost;
 - (d) any maintenance of individual maps to meet Your revised business and technical requirements will be performed at Your cost; and
 - (e) it is Your responsibility to ensure that each hosted map performs in accordance with Your agreed written requirements and as such You will indemnify, and keep indemnified and held harmless, GS1 in respect of any liability, loss, cost or expense arising out of any individual map not performing as expected.

17.0 National Product Catalogue Business Validation Rules

- 17.1 You, as a Publisher or Third Party Service Provider:
- (a) are entitled to use the National Product Catalogue Business Validation Rules solely against data content that is being loaded into the National Product Catalogue; and
 - (b) must not apply the National Product Catalogue Business Validation Rules to any data being loaded to any other system other than the National Product Catalogue other than for the express purpose of loading to the National Product Catalogue.
- 17.2 You, as a Recipient or Third Party Service Provider:
- (a) may only apply the National Product Catalogue Business Validation Rules to data that has specifically been sent directly from registered Publishers;
 - (b) must not apply the National Product Catalogue Business Validation Rules to any data received from the National Product Catalogue unless the Publisher exchanging that data is a registered National Product Catalogue user;
 - (c) must not apply the National Product Catalogue Business Validation Rules to any data received from the National Product Catalogue where it has been simply passed on as a "GDSN pass-through"; and

- (d) for avoidance of any doubt, have no right to access or use Content from the GS1 Registry Platform or GS1 Registry Services under this Agreement. You cannot use the GS1 Registry Platform or GS1 Registry Services as a Data Recipient under this Agreement unless you enter into a separate agreement with GS1.

17.3 You acknowledge that You must not share externally the National Product Catalogue Business Validation Rules to any third parties without prior written approval from GS1.

18.0 Ongoing Data Maintenance

- 18.1 An ongoing agreement is automatically entered into between You and GS1 Australia to cover any current or future assistance requirements for loading, managing and maintaining the Content on Your behalf ("Ongoing Data Maintenance").
- 18.2 Ongoing Data Maintenance has no end date and can be terminated at any time upon issuance of a request in writing by either You or GS1 Australia.
- 18.3 Ongoing Data Maintenance can be requested at any time by submission of an Ongoing Data Maintenance request electronically via the electronic form available on the website www.gs1au.org or via email.
- 18.4 Ongoing Data Maintenance has no minimum spending commitment. GS1 Australia will provide estimates for each Ongoing Data Maintenance request. Each estimate will include the estimated effort required to meet the requirements as well as the time and materials rate applicable at the time of the estimate. Where the price is related to time and materials, the price includes labour but does not include travel expenses (airfares, taxis, accommodation, parking, taxis, mileage and other incidental expenses) and other expenses needed for production of the Deliverables which will be charged to You at cost and only incurred with Your express permission. Each estimate will expire 14 days from the date of each request.
- 18.5 GS1 Australia will invoice You in arrears from time to time but no later than the end of each quarter in which any work is completed. You must pay all invoices within 30 days of the invoice date. GS1 Australia may change credit terms upon reasonable notice at any time when, in GS1 Australia's opinion, Your financial condition, previous payment record, or the nature of Your relationship with GS1 Australia so warrants. If any sum due to GS1 Australia remains unpaid after 60 days from the date of invoice:
 - (a) You must pay GS1 Australia a late payment fee equal to 5% of the invoiced amount; and
 - (b) GS1 Australia may terminate these Terms pursuant to Clause 10.2.
- 18.6 If GS1 Australia is liable to pay GST on the supply of GS1 Services and Deliverables, then You must pay GS1 Australia an additional amount equal to the price set out in the Details multiplied by the prevailing GST rate.
- 18.7 If GS1 Australia personnel are required to work outside of GS1 Australia's normal business hours, GS1 Australia reserves the right to increase its quoted rates to meet any additional costs it may incur.

- 18.8 If any delays in delivery of any Ongoing Data Maintenance request are caused by You or as a result of You not fulfilling Your obligations, GS1 Australia may charge additional costs incurred as a result of such delays and adjust the agreed delivery schedule accordingly.

19.0 Notices

- 19.1 All notices and other communications in connection with these GS1 National Product Catalogue Terms and Conditions:
- (a) must be in writing; and
 - (b) take effect from the time they are received unless a later time is specified.
- 19.2 If sent by registered post, notices and other communications are taken to be received the day after posting (or seven days after posting if sent to or from a place outside Australia).
- 19.3 Notices and other communications sent by email are taken to be received at the time shown in the email transmission report at the time that the whole communication was sent.
- 19.4 It is Your responsibility to ensure that notices sent to You, or Your staff, by email are able to be received by the intended recipient and are not blocked, bounced or sent to off-line folders.
- 19.5 Notices for You will be sent to the address specified on Your Registration Form (or such other address as You may notify GS1 of from time to time). You may specify a different address for the GS1 National Product Catalogue service.
- 19.6 Notices for GS1 must be sent to the Compliance Officer of GS1 at GS1's address as notified to You from time to time.

20.0 General

- 20.1 The parties are independent contractors. Nothing in this Agreement makes a party an agent, partner or joint venturer of the other.
- 20.2 You may not assign this Agreement without GS1's prior written consent.
- 20.3 This Agreement (and the GDSN Terms) are the entire agreement of the parties concerning their respective subject matter.
- 20.4 In the event You subscribe to other GS1 services, and have executed a subscription agreement for those services, the terms and conditions of those service agreements govern those services alone and do not have any meaning or relevance to, or affect upon, these terms and conditions.
- 20.5 An obligation of a party (other than an obligation to pay money) is suspended to the extent the party is prevented from performing that obligation because of an event beyond its reasonable control.

- 20.6 This Agreement is governed by the law in force in the state of Victoria, Australia. You submit to the non-exclusive jurisdiction of the courts of the state of Victoria, Australia, and courts of appeal from them for determining any dispute concerning this Agreement.

21.0 Definitions

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

Affiliate means, with respect to a particular person or entity, any entity that directly or indirectly controls, is controlled by, or is under common control with such person or entity.

API Request Messages means standard format Application Programming Interface documents published by GS1 Australia which document how to retrieve data from either the NPC or Healthcare Item Data Lake using API requests.

Australian Branded Foods Database means the publicly accessible database and associated website developed, operated and maintained by FSANZ to compile and publicly disclose comprehensive product information and Content for all products in the food and liquor sectors and inform the government decision making around health and nutrition initiatives such as Healthy Food Partnership Reformulation Program and the Health Star Rating system.

Australian Users means those users of the National Product Catalogue service that have subscribed to the service offered by GS1 Australia and governed by the Terms and Conditions of use for Australian users.

Brand Owner means a manufacturer of a product or a retailer with a private label product.

Buyer has the same meaning as Recipient.

Community Visibility Date (CVD) means the definition as it appears in the NPC Data Dictionary.

Confidential Content means the prices of, or trading terms relating to, any products included in a catalogue hosted on the National Product Catalogue, 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 the National Product Catalogue from time to time, it is subject to restrictions on disclosure.

Content means the text, images and other material provided by You, or any other party to GS1 for purposes of publication on the National Product Catalogue, or by the National Product Catalogue to You as a recipient of publication, and unless expressly stated to the contrary includes National Product Catalogue for Healthcare Data.

Content Permissions means the permissions granted by You to FSANZ regarding the use of Content You have published to FSANZ.

Data Pool(s) means those persons or entities, including GS1, that have executed a participation agreement with GS1 Data Excellence, 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.

Data Quality Insights Reports means detail and summary reports provided by GS1 Australia to Healthcare Suppliers that report on compliance to the applicable National Product Catalogue Validation Rules.

Data Recipient means any person viewing or using any Content and includes, without limitation, consumers, retailers, internet application providers and public authorities.

Designee means a person who is a Brand Owner's authorized party who creates, maintains, manages or delivers Content on behalf of a Brand Owner.

Fees mean GS1's fees for the National Product Catalogue service, as published by it from time to time (and "Fee" has a corresponding meaning).

Food Product Information means information regarding food product composition including but not limited to allergens, ingredients, nutrition, dietary and other related information.

FSANZ means the independent statutory agency Food Standards Australia & New Zealand established by the Food Standards Australia New Zealand Act 1991 (FSANZ Act).

FSANZ Minimum Product Data means the minimum dataset required by FSANZ to populate the Australian Branded Foods Database as defined by FSANZ from time to time.

FSANZ NPC Portal means the on-line catalogue service operated by GS1 for the maintenance and publishing, retrieval or synchronisation of master data and digital content which is currently provided at the following website: <https://www.mygs1.gs1au.org/MyGS1> or such other website as is notified by GS1 from time to time. The sole recipient of Content published in the FSANZ NPC Portal is FSANZ who can receive the Content via either of the FSANZ NPC Portal or the National Product Catalogue.

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 Data Excellence, Inc. and known as the "GS1 Global Registry", which enables data synchronization in accordance with the GS1 System Standards.

GS1 means GS1 Australia Limited (ABN 67 005 529 920).

GS1 AISBL means the international not for profit association incorporated under Belgian law with registered office at Avenue Louise 326, 1050 Brussels, Belgium, registered with the register of legal entities (district of Brussels) under number 419.640.608.

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 NZ means GS1 New Zealand Incorporated.

GS1 NZ Services means any services or supplies offered by GS1 NZ from time to time other than the Services under this Agreement such as, but not limited to, GS1 Registry Platform and GS1 Registry Services, Product Vault, Trusted Data Services, ProductRecallNZ and MediaLibrary.

GS1 Registry Platform means a registry of keys that includes components including but not limited to infrastructure, global data dictionary, GS1 key registry, data in services and data out services.

GS1 Registry Services means a set of capabilities to get data into the GS1 Registry Platform (“GS1 Registry Data In Services”) and a set of capabilities to get data out of the GS1 Registry Platform (“GS1 Registry Data Out Services”).

GS1 Services means any services or supplies offered by GS1 from time to time other than the Services under this Agreement such as, but not limited to, GS1 Registry Platform and GS1 Registry Services, Trusted Content Services, Smart Media, Recall and Recall Health.

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 A New Tax System (Goods and Services Tax) Act 1999.

GTIN means Global Trade Item Number.

GTIN Search comprises database and access functionality that allows users to obtain a list of GTINs encompassing basic data including but not limited to GTIN, Target Market, Publisher GLN, Publisher Name, Description, tax office (ATO) Approval Status (where applicable), Global Product Classification details and End Availability Date for all active GTINs that have passed their community visibility date.

Healthcare Data means National Product Catalogue for Healthcare product data and information contained within the National Product Catalogue for Healthcare.

Healthcare Data Providers means Healthcare vendors and suppliers or other persons who provide Healthcare Data.

Healthcare Item Data means trading partner neutral item master data content, and specifically excludes any trading partner dependent item data or Recipient specific pricing data.

Healthcare Item Data Lake (Healthcare Lake) means a searchable repository of Healthcare Item Data that enables each supplier of products to the healthcare sector (regulated healthcare and non-regulated healthcare) to centrally share their item master data to approved Healthcare Requesters.

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

Healthcare Requester means an organisation approved by GS1 Australia to request Healthcare Item Data from the Healthcare Lake via API Request Messages.

Healthcare Users means Healthcare Data Providers or Healthcare Recipients.

Hosted Mapping Services means the provision of a customised hosted mapping solution to facilitate the exchange of data with the National Product Catalogue in a data format different to the standard National Product Catalogue data definitions to meet a National Product Catalogue user's particular requirements.

Moral Rights means a right of attribution of authorship, a right not to have authorship falsely attributed and a right of integrity of authorship.

NPC Data Dictionary means the electronic repository which provides the meaning of the fields used in the National Product Catalogue.

National Product Catalogue means the suite of on-line catalogue services operated by GS1 for the maintenance and publishing, retrieval or synchronisation of master data and digital content which is currently provided at the following website: <https://www.gs1au.org/mygs1/login-mygs1/> or such other website as is notified by GS1 from time to time. It includes the publishing and distribution platforms FSANZ NPC Portal, NPC Publisher, National Product Catalogue, NPC Recipient and NPC Digital Content (formerly known as Smart Media), a validation component National Product Catalogue Business Validation Rules for the validation of all inbound on-line messages, and the GDSN Global Registry which records the GTIN, Publisher's GLN, GPC code and Target Market code of each item. For avoidance of doubt, the GS1 Registry Platform is separate from the National Product Catalogue.

National Product Catalogue Business Validation Rules means a set of business rules used within the National Product Catalogue to define acceptable data content requirements against and across the National Product Catalogue data field(s) and contains an associated rule number, level of error and error message that will result if a validation rule is breached.

National Product Catalogue for Healthcare means the catalogue hosted by GS1 on the National Product Catalogue and established by the Australian Digital Healthcare Agency formerly known as the National e-Health Transition Authority (NeHTA) containing healthcare product data linked to, among other things, a GTIN.

New Zealand Users means those users of the National Product Catalogue service that have subscribed to the service offered by GS1 New Zealand and governed by the Terms and Conditions of use for New Zealand users.

Ongoing Data Maintenance means the optional service that GS1 provides to assist You, on request, to load or update your Content in the National Product Catalogue.

Primary Contact means the person nominated by You as the "Primary Contact" in the Registration Form and as captured in GS1's CRM system or advised to GS1 pursuant to Clause **Error! Reference source not found.**

Publicly Available Product Data means GTINs in the National Product Catalogue where the Community Visibility Date field has a value of the current date or earlier in time.

Publisher means a person who has access rights to use the National Product Catalogue for the promotion (by way of a catalogue or otherwise) of its goods and, unless expressly stated to the contrary, includes Healthcare Data Providers. The term Publisher is interchangeable with Vendor and shall carry the same meaning.

QA Process means the course of action taken by the person or persons appointed by the Australian Digital Healthcare Agency (formerly NeHTA), and independent of GS1 Australia, to provide quality assurance services in respect of the National Product Catalogue for Healthcare.

Recipient means a person who has access rights to use the National Product Catalogue for the purpose of viewing the Content of Publishers and, unless expressly stated to the contrary, includes National Product Catalogue for Healthcare Recipients and Healthcare Requesters. Recipient is interchangeable with Buyer and both shall carry the same meaning.

Registration Form means the registration form for the National Product Catalogue which is designated by GS1 from time to time.

Services means any services or supplies provided or to be provided by GS1 under this Agreement, any may include, without limitation, the National Product Catalogue, GDSN, or GS1 Global Registry.

Tax Invoice has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999.

Third Party Service Provider means a party authorised by a Publisher or Recipient to manage the transfer of Content to, or from, the National Product Catalogue service on behalf of that Publisher or Recipient.

Vendor has the same meaning as Publisher.

You means the entity whose details are set out in the Registration Form and includes Healthcare Data Providers, Healthcare Recipients and Healthcare Requesters. **Your** has a corresponding meaning.

Terms and Conditions of use for New Zealand Users

1.0 This Agreement

- 1.1 This Agreement sets out the terms and conditions which govern Your access to and use of the National Product Catalogue.
- 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 Data Excellence, Inc. Terms of Participation Agreement for Non-U.S. Trading Partners (“GDSN Terms”), a copy of which are included in Annexure A and the current version of which can be found at https://www.gs1.org/docs/gdsn/support/GDSN_Terms_of_Participation_non_US.pdf

2.0 GS1 New Zealand Membership

- 2.1 GS1 New Zealand is a membership based organisation and each user of GS1 New Zealand services, even if not a GS1 New Zealand member, is required to abide by the GS1 New Zealand Terms and Conditions of Trade published on its web site from time to time.

3.0 National Product Catalogue

- 3.1 GS1 will provide You with a Company Alias (or Global Location Number), User ID and Password (“Sign On”) in order to enable You to access and use the National Product Catalogue. 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 the National Product Catalogue, 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 the National Product Catalogue using the online interface.
- 3.2 GS1 will use reasonable endeavours to ensure that the National Product Catalogue performs substantially in accordance with the National Product Catalogue user documentation published by GS1 from time to time.
- 3.3 GS1 may from time to time make modifications to the National Product Catalogue, including its design, functionality and appearance.

- 3.4 You acknowledge that GS1 is not a party to any transaction made through or as a result of the National Product Catalogue and that GS1 has no responsibility:
- (a) for the accuracy or completeness of any information placed on the National Product Catalogue by You or by any other party including Publishers or Recipients (including, without limitation, prices of, or trading terms relating to, any products included in a catalogue hosted on the National Product Catalogue); or
 - (b) with respect to any product promoted or purchased or sold as a result of the National Product Catalogue or the terms of any such transaction; or
 - (c) with respect to the transaction itself (including any claim or dispute relating to that transaction).
- 3.5 You must comply with all applicable laws and all reasonable directions issued by GS1 from time to time in relation to Your use of the National Product Catalogue.
- 3.6 Without limiting any other provision of this Agreement and unless otherwise specified by GS1, You are solely responsible:
- (a) as a Publisher, for supplying, maintaining and updating all Content on the National Product Catalogue and administering access to Content by Your trading partners and staff or other representatives; and
 - (b) as a Publisher, for reviewing and checking all Content on the National Product Catalogue (including, without limitation, any Content updated by GS1 at Your request) as correct and complete; and
 - (c) as a Publisher or Recipient, for obtaining at Your own cost all equipment and software necessary to enable You to access and use the National Product Catalogue.
- 3.7 You must not permit any third party to access or use the National Product Catalogue without the prior written consent of GS1.
- 3.8 GS1 may access the National Product Catalogue on Your behalf without notice for purposes associated with the National Product Catalogue, including but not limited to administration, training, education and support. For troubleshooting purposes only, temporary user access to Your catalogue information may be provided to the National Product Catalogue solution provider and will be removed upon completion of the troubleshooting task, such access will be restricted to exclude new item creation or price updates.
- 3.9 GS1 may share Your company, contact and National Product Catalogue implementation information with National Product Catalogue Recipients upon the Data Recipient request.
- National Product Catalogue Recipients, when accessing Content through the Application Programming Interface (API) Query ("**Recipient Query**"), will have visibility of all data elements that are considered neutral i.e. not trading partner dependant.

Without limiting any other provision of this Agreement, GS1 may at any time provide Content about Your products from the National Product Catalogue and GTIN Search to GS1 Services, GS1 Australia Services and contracted government agencies.

This Content will:

- (a) contain, for Content to be shared other than with the GS1 Registry Platform and GS1 Registry Services, basic product information such as, but not limited to, product number, product description, brand name, category and net content and other “on pack” or consumer label data;
- (b) contain, for Content to be shared with the GS1 Registry Platform and GS1 Registry Services, the following fields: product number or GTIN; brand name; product or label description; medium resolution product image (if available); net content and unit of measure; target market; company name; and product classification (category) subject to such additional or changed fields as be notified by GS1 from time to time;
- (c) contain, for Content to be shared with Recipients via the Recipient Query, all those data elements that are considered neutral i.e. not trading partner dependant; and
- (d) in all cases be restricted, at the time of sharing, to Publicly Available Product Data.

If You do not wish Your Content to be made available to organisations that You have not specifically published to, You can opt out through the designated management process or by contacting the National Product Catalogue administration team directly. If You are an Individual or Sole Trader You have the right to be de-identified upon request.

3.10 GS1 will use reasonable efforts to ensure that, except as permitted in Clauses 3.9 and 4.0, Content made available through the National Product Catalogue is available only to persons who are registered users of the National Product Catalogue or applicable governmental regulatory or other authorities or bodies as required by law or regulation.

3.11 You must not, and must ensure that any person accessing or using the National Product Catalogue or on Your behalf, does not:

- (a) use any data or information entered onto, or made available to You via, the National Product Catalogue by other members and users of the National Product Catalogue (“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 or transform, resell, on-supply, distribute or disclose Trading Partner Information (whether in the format supplied to You or altered in anyway by You or Your Third Party Service Providers) to third parties except by the publish and subscribe data exchange processes subscribed to, and provided within, the National Product Catalogue.

Furthermore, You acknowledge that You are expressly prohibited from accessing or using the Content other than for Your own business purposes and warrant that the Content will not be used for the purposes of resale or redistribution in whole or in part by You, or any third party recipient of the Content from You, via a means of exchange other than provided for within the National Product Catalogue.

For avoidance of doubt, Third Party Service Providers that handle Content published to or from the National Product Catalogue are expressly prohibited from using that Content in any form whatsoever for any organisation other than for the specific Publisher or Recipient the Content was published to or on behalf of.

- 3.12 GS1 may at any time without consultation with You remove from, or inhibit from being loaded into, the National Product Catalogue any GTINs where those GTINs have not been licenced directly to You, or directly to the brand owner, by a recognised GS1 member organisation.
- 3.13 GS1 may at any time without consultation with or any liability to You, remove from the National Product Catalogue 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.
- 3.14 If You are a Recipient, You acknowledge and warrant that You are responsible for the ongoing use of any Publisher's Content on the National Product Catalogue accessed by or delivered to You and that any subsequent use of that Content, by You and any of Your service providers, contractors or agents, is only for the purposes intended by the Publisher when publishing to You and that it will be used expressly for Your own business purposes excepting where those purposes involve reselling or repurposing the Content. Furthermore, if you have delivered such Content to Your service providers, contractors or agents, You warrant that You have requested that any such service provider, contractor or agent warrants they will only use that Content for Your business purposes.
- 3.15 In the event GS1 migrates the National Product Catalogue from one platform to another, or upgrades the software to meet GDSN requirements and/or standards, and there are requirements on You for data validation and/or maintenance:
 - (a) GS1 will advise You the data validation and/or maintenance requirements to be completed; and
 - (b) You acknowledge it is Your responsibility to ensure that the necessary data validation and/or maintenance requirements are completed satisfactorily according to the advice and by the required date whether by Yourself or by Your nominated Third Party Service Provider and that such data validation and/or maintenance is performed entirely at Your cost; and
 - (c) You acknowledge that if You, or Your nominated Third Party Service Provider, have not completed the required data validation and/or maintenance by the required date GS1 will have the authority to make the required data validation and maintenance changes on Your behalf provided that GS1 gives You at least 30 days written notice of the mapping change requirements. In this event GS1 is not responsible for ensuring that any data altered meets Your business requirements.
- 3.16 GS1 may at any time and for any reason without consultation suspend Your access to or use of the National Product Catalogue 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.

3.17 You acknowledge that whilst individuals may unsubscribe from certain publications, one (1) individual must be nominated to receive communications from the National Product Catalogue in relation to Your agreement ("Primary Contact"). Due to the business-critical nature of some National Product Catalogue communications, including User Group meetings and National Product Catalogue Community Notices, all National Product Catalogue Champion, National Product Catalogue Administrator, and National Product Catalogue 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 National Product Catalogue 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 National Product Catalogue Champion, National Product Catalogue Administrator, or National Product Catalogue Back-up Administrator ceases to be an employee or appropriate contact between You and GS1, details of a replacement contact.

3.18 GS1 may vary the terms and conditions contained in this Agreement at any time provided that GS1 provides 14 days' notice addressed to the National Product Catalogue Administrator at the address or email address detailed in the Registration Form or as varied in accordance with Clause 3.17.

3.19 Upon receipt of notice of any variation in accordance with Clause 3.17, You may terminate this Agreement by notice in writing to GS1 within 30 days.

3.20 GS1 may, at any time, discontinue any product, system, service or catalogue provided through, or associated with, the National Product Catalogue.

4.0 GDSN Participation

4.1 The National Product Catalogue is connected to the GDSN, which is an internet based, interconnected network of interoperable data pools, via a central global registry operated by GS1 Data Excellence, 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 Recipients, Publishers and HealthCare Users to participate in international transactions through the National Product Catalogue.

- 4.2 The GS1 Global Registry and Your access to it via the National Product Catalogue are subject to the GDSN Terms. Accordingly, You acknowledge and agree that Your right to participate and use the National Product Catalogue 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.

5.0 Fees and Payment

- 5.1 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).
- 5.2 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 electronic funds transfer or BPAY to GS1's nominated bank account, credit card or agreed direct debit authority.
- 5.3 An administration surcharge may apply to credit card payments. All invoices will be Tax Invoices for GST purposes.
- 5.4 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).
- 5.5 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.
- 5.6 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 the National Product Catalogue after such notice shall constitute acceptance of such increase.

6.0 Warranties and Indemnities

- 6.1 In using the National Product Catalogue, 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 the National Product Catalogue strictly in accordance with this Agreement for the purposes contemplated by this Agreement;
 - (c) not tamper with or otherwise modify the National Product Catalogue;

- (d) take all precautions necessary and appropriate in the circumstances to protect the security, privacy and confidentiality of the National Product Catalogue;
- (e) take all precautions necessary and appropriate in the circumstances not to post, send or otherwise make available through the National Product Catalogue any material that contains any virus, trojan, worm or similar deleterious program that may damage or interfere with the operation of the National Product Catalogue;
- (f) not post, send or otherwise make available through the National Product Catalogue any material that:
 - i. infringes the National Product Catalogue'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 the National Product Catalogue;
- (g) provide to GS1 information which is reasonably necessary for GS1 to make available the National Product Catalogue 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 the National Product Catalogue; and
- (i) not interfere with the normal operation of the National Product Catalogue.

6.2 GS1 agrees to:

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

6.3 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 the National Product Catalogue;
- (c) a claim by a third party that any Content infringes the intellectual property rights or moral 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.

7.0 Liability

- 7.1 To the maximum extent permitted by law:
- (a) all terms, conditions and warranties which would otherwise be implied into this Agreement and all remedies or liability under any legislation are excluded; and
 - (b) where any such term, condition or warranty is implied by legislation, or any remedy or liability under any legislation arises, and such legislation provides that the term, condition, warranty, remedy or liability 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. You acknowledge and agree that the foregoing limitation of liability is fair and reasonable in all the circumstances.
- 7.2 Without limiting Clause 7.1, GS1 does not warrant that the National Product Catalogue, GSDN, GS1 Global Registry, or any other GS1 Services will be available at or for any particular time, or that they will be free from error or interruption. You acknowledge that despite all reasonable precautions on GS1's part, there is a risk of unauthorised access to, or alteration of, transmissions of data or information to or from Your electronic device or available through the Services.
- 7.3 Without limiting Clause 7.1, GS1 does not warrant that support services including (without limitation) Ongoing Data Maintenance or ProductFlow Data Fix will be available at or for any particular time, or that they will be free from error or interruption. GS1 must re-perform any support services not performed in accordance with these Terms provided that GS1 receives notice within 30 days after support services are performed.
- 7.4 To the maximum extent permitted by law, GS1 excludes all liability (whether arising in negligence, breach of contract or under any other legal theory) that it may have for any loss, costs, expense, damage or liability of any kind including, without limitation, loss or corruption of data, any loss of revenue or profits, any failure to realise expected savings, or indirect, consequential, incidental, special exemplary or punitive loss or damage, howsoever caused (including through GS1's negligence), suffered or incurred by You arising from or in connection with:
- (a) the access to, use of or reliance on the National Product Catalogue, the GS1 Global Registry, the GSDN or other Service or any information available through the Services;
 - (b) any services, documentation or other products or services provided to You by GS1 (or its nominees) in respect of Your use of the National Product Catalogue, the GS1 Global Registry, the GSDN, or other Services or any information available through the Services;
 - (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 7.1;
 - (d) the access of use of the Content by any governmental regulatory or other authority or body;
 - (e) any injury, sickness or death;

- (f) any decision or action taken by You in reliance on information available through the Services;
 - (g) any unauthorised access to, or alteration of, transmissions of data or information to or from Your electronic device or available through the Services; or
 - (h) any interruption, error or defect in the Services or information available through the Services.
- 7.5 To the maximum extent permitted by law, GS1's total aggregate liability arising under or in connection with this Agreement or its subject matter is limited to an amount equal to the total amount of the Fees paid by You in the twelve (12) months immediately preceding the date that the cause of action (or, if more than one, the first such cause) arises.
- 7.6 The provisions of this Clause 7.0 (Liability) are additional to, and not in lieu of, the terms of the GDSN Terms.

8.0 Intellectual Property

- 8.1 Unless otherwise expressly provided in this document, You agree that all intellectual property rights in and to the National Product Catalogue are owned by GS1 or its licensors.
- 8.2 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 8.3.
- 8.3 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 the National Product Catalogue;
 - (b) making that Content (other than the Confidential Content) available to any registered user of the National Product Catalogue (whether that Content is made available in connection with the National Product Catalogue or otherwise) including the provision of a title to use that Content for their legitimate business purposes as contemplated by this Agreement on or after the date on which, according to GS1's rules for the National Product Catalogue from time to time, that Content is made available to all registered users of the National Product Catalogue; and
 - (c) making that Australian market specific Content (including Confidential Content) available to the Australian Tax Office or to any other Australian governmental regulatory or other authority or body as required by law (whether that Content is made available in connection with the National Product Catalogue or otherwise) for any purposes associated with the determination or verification of the GST classification of food and non-alcoholic grocery items published on the National Product Catalogue.

For the avoidance of doubt such licence specifically does not transfer ownership rights to GS1.

- 8.4 You warrant that Your performance of this contract (including provision of any Content) or the use of Content by GS1 and its personnel, and any registered user of the National Product Catalogue and their personnel, in accordance with this contract will not infringe the moral rights of the personnel of GS1 or registered user. You must use reasonable endeavours to ensure that none of Your personnel or Your third party's personnel will institute, maintain or support any claim or proceeding against GS1, GS1's personnel, registered users of the National Product Catalogue or their personnel, for infringement of any of their moral rights.

9.0 Privacy, Confidentiality and Security

- 9.1 GS1's commitment to privacy is set out in the "Privacy Statement" available at www.gs1nz.org ("Privacy Statement". 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 that statement.

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 8.3(c) above.

- 9.2 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.
- 9.3 The Recipient will use the confidential information of the Discloser solely for the purpose of using or operating the National Product Catalogue in accordance with this Agreement.
- 9.4 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.
- 9.5 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.
- 9.6 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.

10.0 Term and Termination

- 10.1 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.
- 10.2 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.
- 10.3 Either party may terminate this Agreement at any time by giving 30 days notice in writing to the other party.
- 10.4 The provisions of Clauses 3.4, 4.0, 5.5, 6.0, 7.0, 8.0, 9.0, 15.0, 17.0, 20.0, 21.0 and 22.0 shall survive termination of this Agreement.

11.0 Food Product Information Requirements

- 11.1 If You are required pursuant to the Food Standards Australia & New Zealand Act 1991, or otherwise, to comply with the Australian New Zealand Food Standards Code ("Code"):
- (a) You must, 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) You warrant that all Content provided by You in accordance with Clause 11.1(a) is accurate and complete; and
 - (c) You 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 You will 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 11.0.

12.0 Healthcare Data Providers

- 12.1 Subject to Clauses 12.2 and 12.3, Healthcare Data Providers may access the National Product Catalogue for Healthcare for the purposes of:
- (a) uploading verified, corrected or updated Healthcare Data into the National Product Catalogue for Healthcare for the purpose of making that verified, corrected or updated Healthcare Data available to Healthcare Recipients; and
 - (b) entering new Healthcare Data into the National Product Catalogue for Healthcare or modifying existing Healthcare Data contained in the National Product Catalogue for Healthcare for the purpose of making that Healthcare Data available to Healthcare Recipients.
- 12.2 Prior to any Healthcare Data (including, without limitation, new, verified, corrected or updated Healthcare Data) being made available to Healthcare 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 product is assigned to the correct virtual National Product Catalogue for Healthcare group with the appropriate Anatomical Therapeutic Chemical classification index code.
- 12.3 The Healthcare Data Provider will not make any Healthcare Data available to Healthcare Recipients unless the release of that information has been approved in the course of the QA Process.
- 12.4 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, National Product Catalogue for Healthcare 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 hold harmless, GS1 in respect of any and all liability, loss, cost or expense arising out of any breach of this Clause 12.4.
- 12.5 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 National Product Catalogue for Healthcare.

13.0 Healthcare Recipients

- 13.1 Healthcare Recipients may access the Healthcare Data contained within the National Product Catalogue for Healthcare for the purpose of:
- (a) searching the National Product Catalogue for Healthcare; and
 - (b) downloading Healthcare Data from the National Product Catalogue for Healthcare for inclusion in their own databases.
- 13.2 Healthcare Recipients must ensure they have downloaded the most recently updated Healthcare Data from the National Product Catalogue for Healthcare and incorporated it within their own Healthcare databases before making their National Product Catalogue for Healthcare databases available to their clients.
- 13.3 On and from the day this Agreement expires or is terminated, You must not use any Healthcare Data downloaded from the National Product Catalogue for Healthcare:
- (a) in a manner that would involve operating a service or system similar to the National Product Catalogue for Healthcare; 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 Australian Digital Healthcare Agency (formerly NeHTA).
- 13.4 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.

14.0 National Product Catalogue for Healthcare Information

- 14.1 Healthcare Recipients and Healthcare Data Providers acknowledge and agree that Healthcare Data and information (including personal information) of Healthcare Recipients and Healthcare Data Providers may be made available by GS1 to the Australian Digital Healthcare Agency (formerly NeHTA) and to other persons who:
- (a) are associated with, or provide services in respect of, the operation of the National Product Catalogue for Healthcare; or
 - (b) replace GS1 or the National Product Catalogue as the provider or host of the National Product Catalogue for Healthcare or a similar service established by the Australian Digital Healthcare Agency (formerly NeHTA).
- 14.2 Healthcare Data Providers acknowledge and agree that copies of Data Quality Insights Reports will be made available by GS1 to both the Healthcare Data Providers and additionally to the Australian Digital Healthcare Agency (formerly NeHTA) and Healthcare Data Recipients as a means of monitoring, comparing and improving Data Quality within the National Product Catalogue.

- 14.3 The Healthcare Item Data Lake is a searchable repository where Healthcare Data Providers can share information about their products with eligible Data Recipients who have been declared Healthcare Sector Ready.
- 14.4 Healthcare Data Providers may choose and are encouraged to publish their Healthcare Item Data to the designated Data Recipient, namely the "Healthcare Item Data Lake". All Healthcare Data Providers selling to the healthcare market who have been declared Healthcare Sector Ready are eligible to publish their data to the Healthcare Lake. From 1 July 2023, GS1 Australia shall publish all active items to the same Data Recipient on behalf of Healthcare Data Providers. However, Health Data Providers may choose to opt out from publishing their data to the Healthcare Item Data Lake at any time by providing written notice to GS1 Australia in accordance with Clause 19.
- 14.5 Healthcare providers may still publish GTINs with a future or blank CVD to the Healthcare Lake, but such GTINs will only become discoverable by a Healthcare Requester's API calls when the CVD becomes today's date or earlier.
- 14.6 To qualify as a Healthcare Requester, the organisation must be a fully registered and financial Data Recipient. To be approved, a Healthcare Requester must additionally be one of the following:
- (a) Federal, State or Territory Health Department or their related agencies;
 - (b) Private and public hospitals/clinics;
 - (c) recognised healthcare product distributors or buying groups;
 - (d) pharmacy chains or pharmacy buying groups;
 - (e) recognised aged care providers;
 - (f) recognised Healthcare solution providers who provide value added services based on the data; or
 - (g) any other healthcare product buying groups.

In addition, a solution provider must either be a fully registered Data Recipient, or acting on behalf of their Data Recipient client, with the sole purpose of requesting the content for the end-use only by the Data Recipient.

15.0 Third Party Service Provider Obligations

- 15.1 This Clause 15.0 applies to You only if You are a Third Party Solution Provider acting on behalf of Publishers or Recipients who are licenced users of the National Product Catalogue (“Your Customers”).
- 15.2 Without limiting any other provision of these National Product Catalogue Terms and Conditions and unless otherwise specified by GS1 in writing, You are solely responsible for:
- (a) obtaining all necessary licences from Your Customers in relation to Your use of their content;
 - (b) complying with all Your Customers’ obligations in respect of their use of the National Product Catalogue when acting on Your Customers’ behalf; and
 - (c) complying with all applicable laws in relation to Your use of Your Customer’s content.
- 15.3 You acknowledge that GS1 is not party to any transaction between You, Your Customers or otherwise in relation to Your use of Your Customer’s Content (otherwise than as set out in these National Product Catalogue Terms and Conditions) and that GS1 has no responsibility:
- (a) for ensuring the correctness, accuracy, completeness or suitability for intended purpose of any Content on the National Product Catalogue service; or
 - (b) with respect to any transaction itself (including any claim or dispute relating to that transaction).
- 15.4 You acknowledge that Your access to or use of Your Customer’s Content on the National Product Catalogue service may be suspended, without liability to GS1, at any time:
- (a) by the Publisher or Recipient for any reason; or
 - (b) by GS1 for any reason including, without limitation, if all Publishers or Recipients for whom You act have been suspended or terminated.
- GS1 will attempt to notify You of any such suspension but will not be liable to You if it does not do so.

16.0 National Product Catalogue Hosted Mapping Services

- 16.1 If You have requested GS1 to provide Hosted Mapping Services, You acknowledge:
- (a) Hosted Mapping Services are provided on the basis of an agreed one off fee to develop, and an ongoing fee to host, each individual map;
 - (b) GS1 will develop each requested individual map according to an agreed written map specification;
 - (c) in the event of upgrades to the National Product Catalogue to meet GDSN, GS1 Registry Platform or GS1 Registry Services requirements standards, any maintenance of individual maps to meet the revised standard will be performed at Your cost;
 - (d) any maintenance of individual maps to meet Your revised business and technical requirements will be performed at Your cost; and
 - (e) it is Your responsibility to ensure that each hosted map performs in accordance with Your agreed written requirements and as such You will indemnify, and keep indemnified and held harmless, GS1 in respect of any liability, loss, cost or expense arising out of any individual map not performing as expected.

17.0 National Product Catalogue Business Validation Rules

- 17.1 You, as a Publisher or Third Party Service Provider:
- (a) are entitled to use the National Product Catalogue Business Validation Rules solely against data content that is being loaded into the National Product Catalogue; and
 - (b) must not apply the National Product Catalogue Business Validation Rules to any data being loaded to any other system other than the National Product Catalogue other than for the express purpose of loading to the National Product Catalogue.
- 17.2 You, as a Recipient or Third Party Service Provider:
- (a) may only apply the National Product Catalogue Business Validation Rules to data that has specifically been sent directly from registered Publishers;
 - (b) must not apply the National Product Catalogue Business Validation Rules to any data received from the National Product Catalogue unless the Publisher exchanging that data is a registered National Product Catalogue user;
 - (c) must not apply the National Product Catalogue Business Validation Rules to any data received from the National Product Catalogue where it has been simply passed on as a "GDSN pass-through"; and

- (d) for avoidance of any doubt, have no right to access or use Content from the GS1 Registry Platform or GS1 Registry Services under this Agreement. You cannot use the GS1 Registry Platform or GS1 Registry Services as a Data Recipient under this Agreement unless you enter into a separate agreement with GS1.

17.3 You acknowledge that You must not share externally the National Product Catalogue Business Validation Rules to any third parties without prior written approval from GS1.

18.0 Ongoing Data Maintenance

- 18.1 An ongoing agreement is automatically entered into between You and GS1 New Zealand to cover any current or future assistance requirements for loading, managing and maintaining the Content on Your behalf ("Ongoing Data Maintenance").
- 18.2 Ongoing Data Maintenance has no end date, and can be terminated at any time upon issuance of a request in writing by either You or GS1 New Zealand.
- 18.3 Ongoing Data Maintenance can be requested at any time by submission of an Ongoing Data Maintenance request electronically via the electronic form available on the website www.gs1nz.org or via email.
- 18.4 Ongoing Data Maintenance has no minimum spending commitment. GS1 New Zealand will provide estimates for each Ongoing Data Maintenance request. Each estimate will include the estimated effort required to meet the requirements as well as the time and materials rate applicable at the time of the estimate. Where the price is related to time and materials, the price includes labour but does not include travel expenses (airfares, taxis, accommodation, parking, taxis, mileage and other incidental expenses) and other expenses needed for production of the Deliverables which will be charged to You at cost and only incurred with Your express permission. Each estimate will expire 14 days from the date of each request.
- 18.5 GS1 New Zealand will invoice You in arrears from time to time but no later than the end of each quarter in which any work is completed. Time for payment for the invoices shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be due on 20th day of each month following the date of the invoice. GS1 New Zealand may change credit terms upon reasonable notice at any time when, in GS1 New Zealand's opinion, Your financial condition, previous payment record, or the nature of Your relationship with GS1 so warrants. If any sum due to GS1 Zealand remains unpaid after 60 days from the date of invoice, GS1 New Zealand may terminate these Terms pursuant to Clause 10.2.
- 18.6 If GS1 New Zealand is liable to pay GST on the supply of GS1 New Zealand Services and Deliverables, then You must pay GS1 New Zealand an additional amount equal to the price set out in the Details multiplied by the prevailing GST rate.

- 18.7 If GS1 New Zealand personnel are required to work outside of GS1 New Zealand's normal business hours, GS1 New Zealand reserves the right to increase its quoted rates to meet any additional costs it may incur.
- 18.8 If any delays in delivery of any Ongoing Data Maintenance request are caused by You or as a result of You not fulfilling Your obligations, GS1 New Zealand may charge additional costs incurred as a result of such delays and adjust the agreed delivery schedule accordingly.

19.0 Product Flow Data Fix

- 19.1 ProductFlow Data Fix can be engaged by submission of a ProductFlow Data Fix request electronically via the electronic form available on the website www.gs1nz.org or via email.
- 19.2 ProductFlow Data Fix has no end date, and can be terminated at any time upon issuance of a request in writing by either You or GS1 New Zealand.
- 19.3 There is no cost to You to opt in to ProductFlow Data Fix. There is no cost to You for GS1 New Zealand to amend data content on Your behalf.
- 19.4 GS1 New Zealand will only resolve National Product Catalogue data errors where a physical product has been received, and on data attributes that can be physically confirmed, or otherwise confirmed with You.
- 19.5 It is Your responsibility to check the correctness of the data content amended by GS1 New Zealand on your behalf in the National Product Catalogue.
- 19.6 Some data fields will not be amended by GS1 New Zealand, but may be advised to be changed by You. These include but are not limited to: pricing data, internal data (e.g. SKU codes), release dates, dangerous/hazardous goods information, liquor market segment, and pallet information.

20.0 Notices

- 20.1 All notices and other communications in connection with these GS1 National Product Catalogue Terms and Conditions:
- (a) must be in writing; and
 - (b) take effect from the time they are received unless a later time is specified.
- 20.2 If sent by registered post, notices and other communications are taken to be received the day after posting (or seven days after posting if sent to or from a place outside New Zealand).
- 20.3 If sent by email, notices and other communications are taken to be received at the time shown in the email transmission report as the time that the whole communication was sent.
- 20.4 It is Your responsibility to ensure that notices sent to You, or Your staff, by email are able to be received by the intended recipient and are not blocked, bounced or sent to off-line folders.

- 20.5 Notices for You will be sent to the address specified on Your Registration Form (or such other address as You may notify GS1 of from time to time). You may specify a different address for the GS1 National Product Catalogue service.
- 20.6 Notices for GS1 must be sent to the Corporate Services Manager of GS1 at GS1's address as notified to You from time to time.

21.0 General

- 21.1 The parties are independent contractors. Nothing in this Agreement makes a party an agent, partner or joint venturer of the other.
- 21.2 You may not assign this Agreement without GS1's prior written consent.
- 21.3 This Agreement (and the GDSN Terms) are the entire agreement of the parties concerning their respective subject matter.
- 21.4 In the event You subscribe to other GS1 services, and have executed a subscription agreement for those services, the terms and conditions of those service agreements govern those services alone and do not have any meaning or relevance to, or affect upon, these terms and conditions.
- 21.5 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.
- 21.6 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.

22.0 Definitions

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

Affiliate means, with respect to a particular person or entity, any entity that directly or indirectly controls, is controlled by, or is under common control with such person or entity.

API Request Messages means standard format Application Programming Interface documents published by GS1 Australia which document how to retrieve data from either the NPC or Healthcare Item Data Lake using API requests.

Australian Users means those users of the National Product Catalogue service that have subscribed to the service offered by GS1 Australia and governed by the Terms and Conditions of use for Australian users.

Brand Owner means a manufacturer of a product or a retailer with a private label product.

Buyer has the same meaning as Recipient.

Community Visibility Date (CVD) means the definition as it appears in the NPC Data Dictionary

Confidential Content means the prices of, or trading terms relating to, any products included in a catalogue hosted on the National Product Catalogue, 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 the National Product Catalogue from time to time, it is subject to restrictions on disclosure.

Content means the text, images and other material provided by You, or any other party to GS1 for purposes of publication on the National Product Catalogue, or by the National Product Catalogue to You as a recipient of publication, and unless expressly stated to the contrary includes National Product Catalogue for Healthcare Data.

Data Pool(s) means those person s or entities, including GS1, that have executed a participation agreement with GS1 Data Excellence, 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 <http://www.gs1.org>

Data Quality Insights Reports means detail and summary reports provided by GS1 Australia to Healthcare Suppliers that report on compliance to the applicable National Product Catalogue Validation Rules.

Data Recipient means any person viewing or using any Content and includes, without limitation, consumers, retailers, internet application providers and public authorities.

Designee means a person who is a Brand Owner's authorized party who creates, maintains, manages or delivers Content on behalf of a Brand Owner.

Fees mean GS1's fees for the National Product Catalogue service, as published by it from time to time (and "Fee" has a corresponding meaning).

Food Product Information means information regarding food product composition including but not limited to allergens, ingredients, nutrition, dietary and other related information.

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 Data Excellence, Inc. and known as the "GS1 Global Registry", which enables data synchronization in accordance with the GS1 System Standards.

GS1 means GS1 New Zealand Incorporated.

GS1 AISBL means the international not for profit association incorporated under Belgian law with registered office at Avenue Louise 326, 1050 Brussels, Belgium, registered with the register of legal entities (district of Brussels) under number 419.640.608.

GS1 Australia means GS1 Australia Limited (ABN 67 005 529 920).

GS1 Australia Services means any services or supplies offered by GS1 Australia from time to time other than the Services under this Agreement such as, but not limited to, GS1 Registry Platform and GS1 Registry Services, Trusted Content Services, Smart Media, Recall and Recall Health.

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 Registry Platform means a registry of keys that includes components including but not limited to infrastructure, global data dictionary, GS1 key registry, data in services and data out services.

GS1 Registry Services means a set of capabilities to get data into the GS1 Registry Platform ("**GS1 Registry Data In Services**") and a set of capabilities to get data out of the GS1 Registry Platform ("**GS1 Registry Data Out Services**").

GS1 Services means any services or supplies offered by GS1 from time to time other than the Services under this Agreement such as, but not limited to, GS1 Registry Platform and GS1 Registry Services, Product Vault, Trusted Data Services, ProductRecallNZ and MediaLibrary.

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.

GTIN Search comprises database and access functionality that allows users to obtain a list of GTINs encompassing basic data including but not limited to GTIN, Target Market, Publisher GLN, Publisher Name, Description, tax office (ATO) Approval Status (where applicable), Global Product Classification details and End Availability Date for all active GTINs that have passed their community visibility date. GTIN Search replaces the GS1net Registry functionality.

Healthcare Data means National Product Catalogue for Healthcare product data and information contained within the National Product Catalogue for Healthcare.

Healthcare Data Providers means Healthcare vendors and suppliers or other persons who provide Healthcare Data.

Healthcare Item Data means trading partner neutral item master data content, and specifically excludes any trading partner dependent item data or Recipient specific pricing data.

Healthcare Item Data Lake (Healthcare Lake) means a searchable repository of Healthcare Item Data that enables each supplier of products to the healthcare sector (regulated healthcare and non-regulated healthcare) to centrally share their item master data to approved Healthcare Requesters.

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

Healthcare Requester means an organisation approved by GS1 Australia to request Healthcare Item Data from the Healthcare Lake via API Request Messages.

Healthcare Users means Healthcare Data Providers or Healthcare Recipients.

Hosted Mapping Services means the provision of a customised hosted mapping solution to facilitate the exchange of data with the National Product Catalogue in a data format different to the standard National Product Catalogue data definitions to meet a National Product Catalogue user's particular requirements.

Moral Rights means a right of attribution of authorship, a right not to have authorship falsely attributed and a right of integrity of authorship.

NPC Data Dictionary means the electronic repository which provides the meaning of the fields used in the National Product Catalogue.

National Product Catalogue means the suite of on-line catalogue services operated by GS1 for the maintenance and publishing, retrieval or synchronisation of master data and digital content which is currently provided at the following website: <http://www.gs1nz.org> or such other website as is notified by GS1 from time to time. It includes the publishing and distribution platforms NPC Publisher, National Product Catalogue, NPC Recipient and NPC Rapid Loader, a validation component National Product Catalogue Business Validation Rules for the validation of all inbound on-line messages, and the GDSN Global Registry which records the GTIN, Publisher's GLN, GPC code and Target Market code of each item. For avoidance of doubt, the GS1 Registry Platform is separate from the National Product Catalogue.

National Product Catalogue Business Validation Rules means a set of business rules used within the National Product Catalogue to define acceptable data content requirements against and across the National Product Catalogue data field(s) and contains an associated rule number, level of error and error message that will result if a validation rule is breached.

National Product Catalogue for Healthcare means the catalogue hosted by GS1 on the National Product Catalogue, and established by the Australian Digital Healthcare Agency formerly known as the National e-Health Transition Authority (NeHTA) containing healthcare product data linked to, among other things, a GTIN.

New Zealand Users means those users of the National Product Catalogue service that have subscribed to the service offered by GS1 New Zealand and governed by the Terms and Conditions of use for New Zealand users.

Ongoing Data Maintenance means the optional service that GS1 provides to assist You, on request, to load or update your Content in the National Product Catalogue.

Primary Contact means the person nominated by You as the "Primary Contact" in the Registration Form or advised to GS1 pursuant to Clause 3.17.

ProductFlow means the GS1 New Zealand service that verifies digital content against physical product specimens.

Product Flow Data Fix means the optional service that GS1 New Zealand provides to correct data that has been found to be erroneous upon assessment of a physical product supplied by You via ProductFlow.

Publicly Available Product Data means GTINs in the National Product Catalogue where the Community Visibility Date field has a value of the current date or earlier in time.

Publisher means a person who has access rights to use the National Product Catalogue for the promotion (by way of a catalogue or otherwise) of its goods and, unless expressly stated to the contrary, includes Healthcare Data Providers. The term Publisher is interchangeable with Vendor and shall carry the same meaning.

QA Process means the course of action taken by the person or persons appointed by the Australian Digital Healthcare Agency (formerly NeHTA), and independent of GS1 New Zealand, to provide quality assurance services in respect of the National Product Catalogue for Healthcare.

Recipient means a person who has access rights to use the National Product Catalogue for the purpose of viewing the Content of Publishers and, unless expressly stated to the contrary, includes National Product Catalogue for Healthcare Recipients and Healthcare Requesters. Recipient is interchangeable with Buyer and both shall carry the same meaning.

Registration Form means the registration form for the National Product Catalogue which is designated by GS1 from time to time.

Services means any services or supplies provided or to be provided by GS1 under this Agreement, any may include, without limitation, the National Product Catalogue, GDSN, or GS1 Global Registry.

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

Third Party Service Provider means a party authorised by a Publisher or Recipient to manage the transfer of Content to, or from, the National Product Catalogue service on behalf of that Publisher or Recipient.

Vendor has the same meaning a Publisher.

You means the entity whose details are set out in the Registration Form and includes Healthcare Data Providers, Healthcare Recipients and Healthcare Requesters. **Your** has a corresponding meaning.

Annexure A

GS1 Data Excellence Inc. TERMS OF PARTICIPATION AGREEMENT FOR NON U.S. TRADING PARTNERS

This GS1 Data Excellence, Inc. Terms of Participation Agreement ("Participation Agreement") is made and entered into between GS1 Data Excellence, Inc., a Delaware not-for-profit corporation ("GS1 Data Excellence"), and the person(s) or entity(ies) which are identified as a Trading Partner hereunder.

1. Definitions. The parties have agreed on the following definitions to apply to this Participation Agreement.

"Data Pool(s)" means those persons or entities that have executed a Global Registry Access and License Agreement ("GRALA") with GS1 Data Excellence, by which they have access to use the GDSN and the GS1 Global Registry™ on behalf of subscribing customers. A list of certified data pools can be found on the GDSN website at www.gs1.org

"Global Data Synchronization Network" or "GDSN" means a network of interoperable Data Pools and the GS1 Global Registry™ that enables data synchronization per the GS1 System Standards.

"GDSN Data" means any and all Trading Partner data or information exchanged within or through the GDSN and/or registered in the GS1 Global Registry including but not limited to Trading Partner Proprietary Information.

"GDSN Participant(s)" means any Data Pool(s) and/or Trading Partner(s) as defined herein.

"GS1 Global Registry™" means a global registry for item and party master data which is accessible to Data Pools certified as being compliant within the GS1 System Standards.

"GS1 System Standards" means an integrated global standards system that provides for accurate identification and communication of information regarding products, assets, services and locations.

"Non GDSN Member" means any third person, party or entity which is neither a Trading Partner nor Data Pool as defined herein.

"Source Trading Partner" means the owner of GDSN Data.

"Trading Partner(s)" shall mean the manufacturer, supplier, wholesaler, distributor, retailer or other member of global supply and demand chain which has agreed to and indicated its written acceptance to the Participation Agreement, pursuant to which Trading Partner is entitled to participate in the GDSN, subject to Trading Partner's selected Data Pool's compliance with its obligations to GS1 Data Excellence.

"Trading Partner Proprietary Information" means any and all information relating to Trading Partner's products, product formulations, pricing, cost data, methods, processes, designs, secrets, techniques, capabilities, permissions, instructions, specifications, requirements, orders, shipments, business or project descriptive materials, marketing information, customer information and any other information owned by, or to which Trading Partner has the lawful right to use, and employed by Trading Partner for the purpose of facilitating Trading Partner's participation in the GDSN, which is not otherwise in the public domain and which is treated as confidential by Trading Partner.

2. Subscription to GDSN. Upon written acceptance of the terms and conditions of this attachment and upon Company's selected Data Pool's payment of the applicable Data Pool fee to GS1 Data Excellence, Trading Partner shall be deemed to have been granted by GS1 GDSN a subscription for the right to participate in the GDSN and, in furtherance thereof, to utilize the GS1 Global Registry™. Trading Partner acknowledges that Trading Partner is not obtaining any license or ownership to the GS1 Global Registry™ or to any proprietary technology, processes, concepts or other proprietary intellectual property or confidential information of GS1 Data Excellence pertaining to the GDSN or to the GS1 Global Registry™. Trading Partner's rights are limited to participation in the GDSN in accordance with the terms and conditions stated herein. Trading Partner may register certain attributes in the GS1 Global Registry™, including, without limitation, (i) the Global Trade Item Number® ("GTIN®"), (ii) the Global Location Number (GLN) of the data source, (iii) the target market country code, (iv) the target market subdivision code, (v) the catalogue item classification, (vi) the GLN of the source Data Pool, (vii) the registry catalogue item state and (viii) the item status; however, Trading Partner acknowledges and understands that the registration, publication, subscription and synchronization functions of the GS1 Global Registry™ are to be performed by Trading Partner's selected Data Pool(s).

3. Conditions to Subscription. Trading Partner acknowledges and agrees that its failure to comply with any of the following material covenants, conditions and obligations, or any of the other terms and conditions contained in this attachment, shall constitute a breach hereof and shall be grounds for the immediate termination by GS1 Data Excellence of Trading Partner's participation in the GDSN.

A. Access and Participation in GS1 Global Registry/GDSN. Trading Partner shall participate in the GDSN and obtain access to the GS1 Global Registry™ through one Data Pool which has complied with all applicable GS1 GDSN certification requirements. However, based on a Trading Partner's business needs, a Trading Partner may join more than one Data Pool to obtain access to the GS1 Global Registry™ and GDSN. If Trading Partner undertakes to become a Data Pool, it must separately execute a Global Registry Access and License Agreement with GS1 Data Excellence.

B. GDSN Data. All GDSN Data must comply with GS1 System Standards, either directly or through third party data alignment via a GDSN Data Pool.

C. Standards and Policies. Trading Partner shall comply with all standards and policies adopted and/or implemented by GS1 Data Excellence from time to time governing the GDSN and the GS1 Global Registry™, including, but not limited to, access and service level standards, acceptable use policies, developmental and technical functionality, certification and marketing, educational and training policies and standards. Trading Partner acknowledges that GS1 Data Excellence reserves the right to amend and modify such standards and policies and may introduce modifications, changes, enhancements, new versions and new releases to all or part of the GDSN from time to time. GS1 Data Excellence agrees that each policy and standard will be published and will be made available to Trading Partner's Data Pool at least 120 days prior to the effective date, and further acknowledges that such amendment, modification, changes, etc. shall become effective as against such Trading Partner on the effective date thereof. Trading Partner agrees that in the event of any ambiguity, inconsistency or other question of interpretation concerning any standards or policies adopted by GS1 Data Excellence, the determination of the GS1 Data Excellence Board of Directors shall be conclusive and binding.

D. Participation Agreement. Trading Partner acknowledges that GS1 Data Excellence reserves the right to amend, modify or change this Participation Agreement from time to time. GS1 Data Excellence agrees that the amended, modified or changed Participation Agreement shall be made available to Trading Partner's Data Pool at least 120 days prior to the effective date for submission to Trading Partner, and Trading Partner agrees that the amended, modified or changed Participation Agreement shall become effective as against such Trading Partner on the effective date thereof, shall operate as written acceptance by the Trading Partner as of the effective date thereof and shall supersede and replace all prior Participation Agreements between GS1 Data Excellence and Trading Partner.

E. Fees. GS1 Data Excellence does not charge the Trading Partner a separate subscription fee to participate in the GDSN. GS1 Data Excellence collects its annual fees from the Data Pool directly, which annual payment allows the Data Pool to provide coverage to all of its Trading Partners to participate in the GDSN. The Trading Partner's selected Data Pool retains the discretion to charge its Trading Partners and allocate its costs across its Trading Partners as it deems necessary.

F. Help Desk. Trading Partner acknowledges and agrees that GS1 Data Excellence shall not be responsible for providing help desk support or any other support or resource services to Trading Partner and that help desk support resources and services shall be provided exclusively by or on behalf of Trading Partner's Data Pool.

G. Disclosure of GDSN Data.

(a) Trading Partner acknowledges that it shall not disclose, disseminate, provide or make available the GDSN Data of a Source Trading Partner to a Non GDSN Member without the Source Trading Partner's prior written consent. (b) A Trading Partner shall not represent itself as a GDSN certified data pool, a GDSN certified data source or the like in the absence of its execution of an active GRALA with GS1 Data Excellence.

H. Trading Partner Information Security.

(a) GS1 Data Excellence, shall during the term of this Agreement, provide security for Trading Partner's Proprietary Information within the GDSN at least at levels and in the manner in which GS1 Data Excellence secures its own proprietary information, but in no event less than a reasonable degree of care.

(b) GS1 Data Excellence hereby acknowledges that the Trading Partner Proprietary Information shall at all times remain the sole property of Trading Partner. GS1 Data Excellence agrees that it will not disclose, disseminate, provide, or make available any Trading Partner Proprietary Information in any form to any person without Trading Partner's prior written consent, except to those persons whose access is necessary to facilitate Trading Partner's Participation in the GDSN.

(c) Notwithstanding the foregoing, nothing herein shall prevent GS1 Data Excellence from disclosing Trading Partner's Proprietary Information upon GS1 Data Excellence establishing that the Trading Partner Proprietary Information: (i) has been published or has become part of the public domain other than by acts or omissions of GS1 Data Excellence, its employees, agents or contractors; (ii) was lawfully in the possession of GS1 Data Excellence at the time of disclosure to it and was not acquired by GS1 Data Excellence directly or indirectly from Trading Partner; (iii) was received after disclosure to GS1 Data Excellence by a third party who had a lawful right to disclose such information to GS1 Data Excellence; or (iv) was independently developed by GS1 Data Excellence without knowledge or use of the Trading Partner Proprietary Information.

(d) GS1 Data Excellence hereby agrees to indemnify and hold Trading Partner harmless from and against any claims made against Trading Partner which arise as a result of a breach by GS1 Data Excellence of the terms of this Paragraph 3H.

I. DISCLAIMER OF WARRANTIES. TRADING PARTNER ACKNOWLEDGES AND AGREES THAT GS1 Data Excellence MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY MATTER, AND ANY SUCH REPRESENTATIONS OR WARRANTIES ARE EXPRESSLY DISCLAIMED, INCLUDING BUT NOT LIMITED TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF OR PARTICIPATION IN THE GDSN OR THE GS1 GLOBAL REGISTRY™ OR ANY COMPONENT THEREOF OR ANY INFORMATION OR DATA DERIVED THEREFROM.

J. LIMITATION OF LIABILITY. EXCEPT AS SET FORTH IN PARAGRAPH 3H ABOVE, GS1 GDSN SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER, CONSEQUENTIAL, INDIRECT, INCIDENTAL PUNITIVE OR OTHERWISE THAT MAY ARISE FROM THE TRADING PARTNER'S PARTICIPATION IN THE GDSN OR THE USE OF THE GS1 GLOBAL REGISTRY™ BY TRADING PARTNER OR FOR ANY FAILURE OR REFUSAL BY GS1 GDSN TO GRANT TRADING PARTNER ACCESS TO THE GDSN OR GS1 GLOBAL REGISTRY™ BASED ON A BREACH BY THE TRADING PARTNER'S SELECTED DATA POOL OF ITS OBLIGATIONS TO GS1.

K. Term; Termination. The term of this Participation Agreement shall commence on the day of Trading Partner's written acceptance of the terms and conditions herein, and unless sooner terminated, superseded or replaced in accordance with the terms hereunder, shall continue in effect for a period of one year there from (the "Initial Term.") This Participation Agreement shall renew automatically at the end of the Initial Term (each being a "Renewal Term") subject to Trading Partner's selected Data Pool being in good standing with regard to GS1 Data Excellence and continued compliance by the Trading Partner of all the terms and conditions herein. Notwithstanding the above, either party may terminate this Participation Agreement (i) immediately, if the other party breaches any material provision of this Participation Agreement and fails to cure such breach within 30 days of receipt of written notice of such breach from the non-breaching party or (ii) during the Initial Term or the Renewal Term by providing 60 days prior written notice to the other party.

L. Law. The terms in this Participation Agreement shall be governed by and construed in accordance with the laws of the Country, Nation, Republic or Union agreed upon between Trading Partner and the Data Pool which is applicable to claims or disputes arising under the agreement between the Data Pool and its Trading Partner for data pool services or data synchronization services. If Trading Partner has a registered business office in the United States, then the terms in this Participation Agreement shall be governed by and construed by the laws of State of Delaware without regard to the principles of conflict of laws.

M. Notices. All notices required to be given hereunder shall be in writing and shall be deemed delivered (i) when delivered by hand, (ii) one business day after being given to a nationally or internationally recognized overnight carrier, (iii) when sent by confirmed facsimile with a copy sent by other means as permitted in this section, or (iv) six days after deposit in the United States mail by registered or certified mail, return receipt requested, and fourteen days after deposit in international mail.

Notice to GS1 Data Excellence shall be given to:

GS1 Global Office GS1 Legal Counsel Blue Tower
326 Avenue Louise, Bte 10
B-1050 Brussels Belgium
cc: Sanjay Mandloi, President, GS1 Global Solutions
President, GS1 Data Excellence, Inc.

at above address

N. Survival of Clauses. GS1 Data Excellence and Trading Partner acknowledge and agree that those Paragraphs of this Participation Agreement which by their terms must survive the expiration or termination of this Participation Agreement shall survive the expiration or termination of this Participation Agreement.

O. Entire Agreement. This Participation Agreement sets forth the entire understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings, inducements or conditions, express or implied, oral or written, except as herein contained.

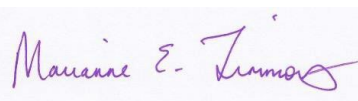
P. Publicity. Neither party will use the other party's name or trademarks in any advertising, sales promotion or publicity matters without the other party's written consent.

Q. Assignment. This Participation Agreement shall inure to the benefit of, and be binding upon and enforceable by, the parties hereto and their respective successors and permitted assigns. Trading Partner shall not assign its rights or obligations under this Participation Agreement in whole or in part without the prior written consent of GS1 Data Excellence, which consent shall be in GS1 Data Excellence's reasonable discretion; provided, however, that Trading Partner may assign any of its rights and obligations hereunder without the consent of GS1 Data Excellence (but with prior notice) (i) to any existing or newly formed wholly-owned subsidiary of Trading Partner or (ii) to any entity that acquires all or substantially all of the stock or assets of Trading Partner. GS1 Data Excellence may assign its rights or obligations under this Participation Agreement without the consent of Trading Partner. GS1 Data Excellence shall provide written notice to Trading Partner of any such assignment.

4. Terms of GDSN Subscription. Trading Partner acknowledges and agrees that, as a condition to its participation in the GDSN and utilization of the GS1 Global Registry™, it shall be obligated to comply with the terms and conditions as set forth in this Participation Agreement, as such terms may be amended, modified or changed from time to time. Furthermore, Trading Partner acknowledges and agrees that GS1 Data Excellence is, and is intended to be, a third party beneficiary to this Participation Agreement, and shall be entitled to (i) enforce any rights granted to GS1 Data Excellence by the Participation Agreement directly against Trading Partner, (ii) seek damages directly against Trading Partner for any breaches by Trading Partner of the obligations set forth in the Participation Agreement or (iii) terminate Trading Partner's participation in the GDSN and utilization of the GS1 Global Registry™ to the extent Trading Partner breaches any of the terms and conditions herein.

GS1 GDSN, Inc.

COMPANY NAME:

By: 

By:

Name: Marianne Timmons

Name:

Title: President

Title: