

Title	GS1 Smart Media Terms and Conditions of Use
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Disclaimer

This document sets out the terms and conditions which govern Your use of the GS1 Smart Media service. You acknowledge that You have read, understand and agree to be legally bound by them. This document does not take effect until Your Registration Form has been received and accepted by GS1 and GS1 has notified You of such acceptance (unless You are a Third Party Service Provider to which clause 1.7 of these GS1 Smart Media Terms and Conditions applies).

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1.0 Formation of an Agreement

- 1.1 It is a condition of Your subscription to the Smart Media service that You are capable of forming a legally binding contract.
- 1.2 Subject to these GS1 Smart Media Terms and Conditions, You may complete a Registration Form for the GS1 Smart Media service.
- 1.3 Upon acceptance of Your Registration Form, an agreement is formed between You and GS1 comprising the terms and conditions of:
- (a) these GS1 Smart Media Terms and Conditions; and
 - (b) Your Registration Form, (**Agreement**).
- 1.4 The Agreement does not take effect until Your Registration Form has been received and accepted by GS1, with such acceptance totally at the discretion of GS1, and GS1 has notified You of such acceptance.
- 1.5 You may only complete a Registration Form for, and apply for access to and use of, the GS1 Smart Media service if You are:
- (a) a Publisher; or
 - (b) a Recipient; or
 - (c) a Third Party Service Provider of a Publisher or Recipient, but only where the Publisher or Recipient (as the case may be) is a Current GS1 Smart Media Subscriber as at the time GS1 receives Your Registration Form.
- 1.6 If GS1 accepts Your Registration Form as a Publisher, Recipient or Third Party Service Provider to a Publisher or Recipient the following provisions of these GS1 Smart Media Terms and Conditions shall apply to You in each of those cases:

If You are a:	The following provisions apply to You:
Publisher	Clauses 1.0 - 3.0 Clause 4.0 Clauses 7.0 - 16.0
Recipient	Clauses 1.0 - 3.0 Clause 5.0 Clauses 7.0 - 16.0
Third Party Service Provider to a Publisher or Recipient	Clauses 1.0- 3.0 Clause 6.0 Clauses 7.0 - 16.0

- 1.7 Despite any other provision of this document, if You are a Third Party Service Provider to a Publisher or Recipient who has been provided access to the GS1 Smart Media service by any Publisher or Recipient and You have not completed a Registration Form for the GS1 Smart Media service, or have not had a Registration Form accepted by GS1, Your access to and use of the GS1 Smart Media Service shall constitute an agreement by You:
- (a) to be governed by these GS1 Smart Media Terms and Conditions, as if You had completed a Registration Form for the GS1 Smart Media service and the Registration Form was accepted by GS1; and
 - (b) that You have read, understood and agree to be legally bound by them, subject to the condition that GS1 may elect not to provide, or to suspend or terminate at any time Your access to and use of, the GS1 Smart Media service until such time as You:
 - (a) provide written evidence that You are authorised by a Publisher or Recipient (as the case may be) who is a Current GS1 Smart Media Subscriber; or
 - (b) complete a Registration Form for the GS1 Smart Media service and such Registration Form is accepted by GS1.
- GS1 will attempt to notify You of any suspension or termination under this clause 1.7 but will not be liable to You if it does not do so.
- 1.8 If there is any inconsistency between the terms and conditions of these GS1 Smart Media Terms and Conditions and the provisions of any Registration Form for this Service, the provisions of the Registration Form will prevail to the extent of that inconsistency.
- 1.9 In the event You have subscribed to the GS1 Smart Media service via a Third Party Service Provider You acknowledge that GS1 is not a party to any transaction between You and the Third Party Service Provider, and the terms and conditions of any agreement between You and the Third Party Service Provider are not binding on GS1 and do not in any way affect the terms and conditions of this agreement. Should Your agreement with the Third Party Service Provider cease to be in force You will remain a subscriber of the GS1 Smart Media service until You terminate Your subscription in accordance with the terms and conditions of this Agreement.

2.0 GS1 Australia Subscription Membership

- 2.1 GS1 is a membership based organisation and each user of GS1 services (including the Smart Media 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 Smart Media service, You are deemed to be a "Subscriber Member" under the Constitution of GS1 in the category of "Restricted Services Member" and agree to be bound by the current applicable Membership and Licence Subscription terms and conditions, as well as the [GS1 Terms of Trade](#) published on the GS1 Australia website from time to time, for the period of this Agreement.

- 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, as well as the GS1 Terms of Trade published on the GS1 Australia website from time to time, in addition to the terms of this Agreement.

3.0 GS1 Smart Media service

- 3.1 GS1 will provide You with a User ID and Password (“**Sign On**”) in order to enable You to access and use the Smart Media service. 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 Smart Media service, 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 Smart Media service using the online interface.
- 3.2 GS1 will use reasonable endeavours to ensure that the GS1 Smart Media service performs substantially in accordance with the GS1 Smart Media user documentation published by GS1 from time to time.
- 3.3 You must immediately advise GS1:
- (a) the details of any change in Your location, email or postal address detailed in the Registration Form; and
 - (b) if any Primary and/or Secondary Contact on Your Registration Form ceases to be an employee or appropriate contact between You and GS1, the details of a replacement Primary or Secondary Contact. You acknowledge that one (1) individual must be nominated at all times as a Primary Contact to receive communications from GS1 in relation to the GS1 Smart Media service.
- 3.4 GS1 may from time to time make modifications to the GS1 Smart Media service, including its design, functionality and appearance.
- 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 GS1 Smart Media service.
- 3.6 You must comply with any regulatory requirements (and in particular of regulated Healthcare products) of Your Content with regards to limitations or specific requirements relating to advertising or similar which may impact images or statements related to the products.
- 3.7 You grant to GS1 a non-exclusive, worldwide, royalty free, license to use Your company name and Your brand names for the sole purpose of identifying You on GS1 marketing material as a Publisher or Recipient of the GS1 Smart Media service.

- 3.8 GS1 may access the GS1 Smart Media service on Your behalf without notice for any purpose associated with the overall administration and management of the GS1 Smart Media service, including, but not limited to, training, education and support.
- 3.9 GS1 Australia will, at the client's request, integrate data from the National Product Catalogue service to the GS1 Smart Media service including the creation of visibility settings. You acknowledge that it is Your responsibility to ensure that the Smart Media default visibility settings are appropriate for each item and will adjust any visibility setting to meet Your requirements via the GS1 Smart Media online interface. You will also notify GS1 if there are any changes to the blanket visibility settings in GS1 Smart Media.
- 3.10 GS1 Australia may make changes to the Content to ensure that it meets minimum standards including naming conventions and basic product attributes definition. These changes may include, but are not limited to, updating basic product attributes (GTIN + description), asset naming (file naming to GS1 standards), file format (conversion from TIFF/TIF to JPEG, or CMYK to RGB) and meta data (file naming of clipping paths to GS1 standards). You acknowledge that it is Your responsibility to ensure that any amended Content is correct, accurate, complete or suitable for the intended purpose.
- 3.11 GS1 will, on request of Recipients, make changes to the Content for that Recipient prior to sending the data to the Recipient. These changes may include, but are not limited to, converting accented characters to non-accented and removing special characters such as © or "TM".
- 3.12 GS1 Australia may offer additional Smart Media catalogue maintenance services, including but not limited to the Content Creation Service, which shall be contracted on a separate agreement. In the event of conflict, the terms and conditions of this agreement shall take precedence.
- 3.13 GS1 may grant access to Your Content on the GS1 Smart Media service to any third party certification organisation or government authority for audit or compliance purpose or otherwise as required to do so by law.
- 3.14 GS1 may, at any time and for any reason, suspend
- (a) Your access to or use of the GS1 Smart Media service; or
 - (b) the access to or use of the Service by any third party (including any trading partner of You),
- 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.
- 3.15 GS1 may, at any time, discontinue the GS1 Smart Media service or any product, system, service or catalogue provided through, or associated with, the GS1 Smart Media service.

- 3.16 GS1 may at any time without consultation with You remove from, or inhibit from being loaded into, the GS1 Smart Media service any GTINs where those GTINs have not been licenced directly to You, or directly to the brand owner, by a recognised GS1 member organisation.
- 3.17 GS1 may vary the terms and conditions contained in these GS1 Smart Media Terms and Conditions at any time provided that GS1 provides not less than fourteen (14) days' notice of such variations to the terms and conditions, such notice addressed to the Primary Contact. Publication of amended terms and conditions of these GS1 Smart Media Terms and Conditions on GS1's website shall constitute written notice to You.
- 3.18 Upon the giving of a notice in accordance with clause 3.17, You may terminate this Agreement by notice in writing to GS1 within thirty (30) days of the date that GS1 gives the notice in accordance with clause 3.17.

4.0 Publisher's obligations

- 4.1 This clause 4.0 applies to You only if You are a Publisher.
- 4.2 You are responsible for setting up and maintaining Your Profile Settings including, but not limited to, settings as to Your Recipients who may have access to Your Content on the GS1 Smart Media service.
- 4.3 You may provide to GS1 any Content in relation to Your Products for the GS1 Smart Media service by any of the following ways:
- (a) uploading of Content in a manner specified in the GS1 Smart Media Rules;
 - (b) transferring, or linking to, information in relation to Your Products in a manner specified in the GS1 Smart Media Rules;
 - (c) directing a nominated Third Party Service Provider to do any of the above in paragraphs (a) or (b) on Your behalf;
 - (d) transferring information from other GS1 data services such as the National Product Catalogue service, Barcode Check or Photography services; or
 - (e) directing GS1 to do any of the above in paragraphs (a), (b) or (d) on Your behalf through the use of the Content Creation Service.
- 4.4 Without limiting any other provision of these GS1 Smart Media Terms and Conditions and unless otherwise specified by GS1 expressly in writing, You are solely responsible for:
- (a) reviewing, checking, maintaining and updating Your Profile Settings;
 - (b) ensuring that Your Product records and associated Content have the appropriate access settings to enable publication to the appropriate Recipients;

- (c) providing, reviewing, checking, maintaining and updating all Content on the GS1 Smart Media service in relation to Your Products (including, without limitation, any Content migrated at Your request or direction from any other GS1 data service such as the National Product Catalogue or Content Creation Service);
- (d) ensuring that all Content in relation to Your Products on the GS1 Smart Media service:
 - i. complies with all Applicable Laws;
 - ii. is correct, accurate, complete or suitable for the intended purpose and any inaccurate, incomplete, out-of-date Content is updated or otherwise removed;
 - iii. does not infringe GS1's or any third party's intellectual property rights;
 - iv. is not defamatory, harassing or obscene;
 - v. is not illegal, fraudulent, inaccurate, incorrect, incomplete, misleading or deceptive or likely to mislead or deceive persons accessing or viewing the Content; and
 - vi. meets all requirements for Content in the GS1 Standards or as otherwise specified in the GS1 Smart Media Rules;
- (e) obtaining all necessary licences from third parties in relation to Your Content (including, without limitation, from any third party certification organisations); and
- (f) obtaining at Your own cost all equipment and software necessary to enable You to access and use the GS1 Smart Media service.

The above responsibilities apply even when GS1 has done some action, under Your direction on Your behalf, in relation to Your Profile Settings or Content.

- 4.5 You acknowledge that GS1 is not party to any transaction between You and Your Recipients or otherwise involving Your Products or any Content in relation to Your Products made available on the GS1 Smart Media service and that GS1 has no responsibility:
- (a) for ensuring the correctness, accuracy, completeness or suitability for intended purpose of any Content in relation to Your Products on the GS1 Smart Media service; or
 - (b) with respect to any transaction itself (including any claim or dispute relating to that transaction).
- 4.6 GS1 may, at any time, without any liability to You, remove from the GS1 Smart Media service any Content which it reasonably regards as:
- (a) infringing GS1's or any third party's intellectual property rights or Moral Rights (including, but not limited to, third party certification organisations);
 - (b) defamatory, harassing or obscene;
 - (c) illegal, fraudulent, inaccurate, incorrect, incomplete, misleading or deceptive or likely to mislead or deceive persons accessing or viewing the Content;

- (d) inappropriate, incorrect, inaccurate or incomplete;
 - (e) failing to meet any requirement in the GS1 Standards or requirements for Content specified in the GS1 Smart Media Rules;
 - (f) likely to cause a breach of this Agreement (including, without limitation, any warranty) by You; or
 - (g) likely to cause a breach of any Applicable Law.
- 4.7 You warrant to GS1 that You own, or are entitled to use, the Intellectual Property Rights and Moral Rights in Your Content for the purposes of loading to and sharing from the GS1 Smart Media service and that You have the right to grant GS1 the licence referred to in clause 4.8. Where Your Content contains any material in which any third party has Intellectual Property Rights or Moral Rights, You warrant to GS1 that You have the right to grant GS1 the licence referred to in clause 4.8 or You must procure a licence from that third party to GS1 in substantially the same terms.
- 4.8 You grant GS1 a non-exclusive, perpetual, worldwide, irrevocable and royalty free licence to use, reproduce and adapt Your Content for the purposes of:
- (a) providing the GS1 Smart Media service;
 - (b) making that Content available to Your Recipients (whether that Content is made available in connection with the GS1 Smart Media service or otherwise) in accordance with the GS1 Smart Media Rules;
 - (c) making that Content available to other services of GS1; and
 - (d) making that Content available to third party certification organisations or to government authorities for audit and compliance purposes or otherwise as required to do so by law.
- 4.9 You are solely responsible for management and enforcement of Your Intellectual Property Rights with respect to Your Recipients and their use of Your Content. You agree that GS1 shall not be responsible for any Loss whatsoever incurred by You as the result of any use by Your Recipients of Your Content.
- 4.10 Where You and another person provide Content in relation to the same Product and this creates an issue interfering with the use of the Smart Media service, GS1 will liaise with You and the other person to determine who shall be the provider of that Content. You must use Your best endeavours to assist GS1 in relation to such matters.
- 4.11 You recognise GS1's right to share basic content about Your Items with other GS1 and GS1 International services such as, but not limited to, GS1 Registry Platform and its related services, and GEPIR for the purposes of authentication. If You are an Individual or Sole Trader You have the right to be de-identified upon request.
- 4.12 To ensure You are provided with a high quality service, GS1, from time to time, may rely on external service providers. You acknowledge that such external service providers may act beyond our reasonable control and that You will not hold GS1 or its external service providers liable for damages caused by an action or omission attributable to them.

- 4.13 A reference in these GS1 Smart Media Terms and Conditions to Content provided by You is a reference to Content provided in any of the ways described in clause 4.3.

5.0 Recipient's obligations

- 5.1 This clause 5.0 applies to You only if You are a Recipient.
- 5.2 Without limiting any other provision of these GS1 Smart Media Terms and Conditions and unless otherwise specified by GS1 expressly in writing, You are solely responsible for:
- (a) obtaining all necessary licences from the Publisher in relation to Your use of the Publisher's Content; and
 - (b) complying with all Applicable Laws in relation to Your use of the Publisher's Content.
- 5.3 You may receive Content only relating to those Publishers in respect of whom You are a Recipient ("**Your Publishers**") from the GS1 Smart Media service by any of the following ways:
- (a) downloading of Content of Your Publishers in a manner specified in the GS1 Smart Media Rules;
 - (b) transferring, or linking to, information in relation to Your Publishers' Products in a manner specified in the GS1 Smart Media Rules;
 - (c) directing a nominated Third Party Service Provider to do any of the above in paragraphs (a) or (b) on Your behalf; or
 - (d) directing GS1 to do any of the above in paragraphs (a) or (b) on Your behalf.

For the avoidance of doubt, nothing in this Agreement permits You to access or use Content for any person other than Your Publishers or in any way other than as expressly provided in this clause 5.3 and You are expressly prohibited from accessing or using any Content for Your own business purposes (other than acting on behalf of Your Publishers to do any of the above in paragraphs (a) or (b)) or for the purposes of resale or redistribution in whole or in part.

- 5.4 You acknowledge that GS1 is not party to any transaction between You and the Publisher or otherwise in relation to Your use of the Publisher's Content (otherwise than as set out in these GS1 Smart Media 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 GS1 Smart Media service; or
 - (b) with respect to any transaction itself (including any claim or dispute relating to that transaction).

- 5.5 You acknowledge that Your access to or use of the Publisher's Content on the GS1 Smart Media service may be suspended or terminated, without liability to GS1, at any time:
- (a) by the Publisher for any reason; or
 - (b) by GS1 for any reason including, without limitation, if the Publisher has been suspended or terminated.

GS1 will attempt to notify You of any such suspension or termination but will not be liable to You if it does not do so.

- 5.6 You acknowledge and warrant that You are responsible for the ongoing use of any Publisher's Content on the Smart Media service accessed by or delivered to You and that any subsequent use of that Content, by You and any of Your Third Party 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. Furthermore, if You have delivered such Content to Your Third Party Service Providers, contractors or agents, You warrant that You have requested that any such Third Party Service Provider, contractor or agent warrants they will only use that Content for Your business purposes.

6.0 Third Party Service Provider's obligations

- 6.1 This clause 6.0 applies to You only if You are a Third Party Service Provider acting on behalf of Publishers or Recipients who are licenced users of GS1 Smart Media ("**Your Customers**").
- 6.2 Without limiting any other provision of these GS1 Smart Media Terms and Conditions and unless otherwise specified by GS1 expressly in writing, You are solely responsible for:
- (a) obtaining all necessary licences from Your Customer in relation to Your use of their Content; and
 - (b) complying with all Applicable Laws in relation to Your use of Your Customer's Content.
- 6.3 You may deal or exchange Content only relating to Your Customers with the GS1 Smart Media service by any of the following ways:
- (a) uploading or downloading Content in a manner specified in the GS1 Smart Media Rules;
 - (b) transferring, or linking to, information in relation to Your customer's Products in a manner specified in the GS1 Smart Media Rules; or
 - (c) directing GS1 to do any of the above in paragraphs (a) or (b) on Your behalf.

For the avoidance of doubt, nothing in this Agreement permits You to access or use Content for any person other than Your Customer or in any way other than as expressly provided in this clause 6.3 and You are expressly prohibited from accessing or using any Content for Your own business purposes (other than acting on behalf of Your Customers to do any of the above in paragraphs (a) or (b)) or for the purposes of resale or redistribution in whole or in part.

- 6.4 You acknowledge that GS1 is not party to any transaction between You, Your Customer or otherwise in relation to Your use of Your Customer's Content (otherwise than as set out in these GS1 Smart Media 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 GS1 Smart Media service; or
 - (b) with respect to any transaction itself (including any claim or dispute relating to that transaction).
- 6.5 You acknowledge that Your access to or use of Your Customer's Content on the GS1 Smart Media service may be suspended or terminated, without liability to GS1, at any time:
- (a) by Your Customer for any reason or by GS1 if notified by Your Customer that You no longer act on their behalf; or
 - (b) by GS1 for any reason including, without limitation, if all Your Customers have been suspended or terminated.

GS1 will attempt to notify You of any such suspension or termination but will not be liable to You if it does not do so.

7.0 General obligations

- 7.1 You must, at all times:
- (a) comply with all Applicable Laws in relation to Your use of the GS1 Smart Media service;
 - (b) use GS1 Smart Media strictly in accordance with these GS1 Smart Media Terms and Conditions for the purposes contemplated by this Agreement;
 - (c) not tamper with or modify, or attempt to tamper with or modify, the GS1 Smart Media service;
 - (d) take reasonable precautions not to post, send or otherwise make available through the GS1 Smart Media service any material that contains any virus, trojan, worm or similar deleterious program that may damage or interfere with the operation of GS1 Smart Media;
 - (e) not breach, or attempt to breach, the security of the GS1 Smart Media service;
 - (f) not interfere with, or attempt to interfere with, the normal operation of the GS1 Smart Media service; and
 - (g) not cause, permit or assist any other person directly or indirectly to do any of the above acts.

8.0 Fees and payment

- 8.1 You must pay GS1 the Fees annually in advance for the period from 1 July to the immediately following 30 June. If the Agreement commences after 1 July in any year, that year's Fees will be pro-rated on a monthly basis from the first day of the month of commencement to the 30 June immediately following the date of commencement.
- 8.2 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).
- 8.3 GS1 will issue invoices for the Fees to You from time to time. You must pay those invoices within thirty (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. All invoices will be *Tax Invoices* for GST purposes.
- 8.4 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).
- 8.5 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).
- 8.6 GS1 reserves the right to charge a fee in relation to bank processing charges imposed on GS1 in respect of payments for this agreement.
- 8.7 GS1 may, from time to time, change the Fees by written notice, such change in Fees to take effect on and from the 1 July immediately following the date of such written notice. Publication of the changed Fee on GS1's website shall constitute written notice of such changes. Your continued use of the GS1 Smart Media service after such notice shall constitute acceptance of such changes.

- 8.8 You agree that GS1 may make inquiries of third parties to obtain Your Turnover to determine the Fees applicable to You and to verify any Turnover information provided by You and otherwise Your compliance with this Agreement and GS1 may, in its sole discretion, use this Turnover information to assess or re-assess the Fees payable by You.
- 8.9 You acknowledge that if You make Content available to other GS1 data services You will need to pay, in addition to the Fees, any fees and charges in respect of those other GS1 data services.

9.0 Indemnity

- 9.1 You agree to indemnify and keep indemnified GS1 and its officers, employees, agents, contractors and service providers ("**Those Indemnified**") from and against any Loss of any kind which Those Indemnified suffer or incur arising out of or in connection with:
- (a) a breach by You of any provision of this Agreement (including, without limitation, any warranty given under this Agreement); or
 - (b) any claim, loss, damage, action, demand, remedy, suit, proceeding or right of action against Those Indemnified by any third party relating to Your access to or use of the GS1 Smart Media service; or
 - (c) if You are a Publisher, any claim, loss, damage, action, demand, remedy, suit, proceeding or right of action against Those Indemnified by any Recipient or third party relating to:
 - I. an allegation or finding that any Content in relation to Your Products infringes the Intellectual Property Rights or Moral Rights of that or any other third party; or
 - II. an allegation or finding that any Content in relation to Your Products is illegal, fraudulent, inaccurate, incorrect, incomplete, misleading or deceptive or likely to mislead or deceive, offensive or defamatory.

10.0 Liability

- 10.1 To the maximum extent permitted by law, GS1's liability under any guarantee, condition or warranty (including, without limitation, any guarantee, condition or warranty of merchantability, acceptable quality, fitness for purpose or fitness for disclosed result), or any other right or remedy, under any legislation or implied into this Agreement by any legislation ("**Statutory Warranties**") is hereby excluded.

Where GS1 is liable under any Statutory Warranties, and any legislation avoids or prohibits provisions in a contract excluding or modifying the application of, or exercise of, or liability under, such Statutory Warranties, GS1's liability for any breach of such Statutory Warranties shall be limited, at GS1's option, to one or more of the following:

- (a) if the breach relates to goods: the replacement of the goods or the supply of equivalent goods; the repair of such goods; the cost of replacing the goods or of acquiring equivalent goods; or the cost of having the goods repaired; and

- (b) if the breach relates to services: the supplying of the services again or the cost of having the services supplied again.

You acknowledge and agree that reliance by GS1 on this limitation of liability is fair and reasonable in all the circumstances.

10.2 Without limiting clause 10.1, GS1 does not represent or warrant that the GS1 Smart Media service will be available at or for any particular time or that it will be free from error or interruption.

10.3 To the maximum extent permitted by law, GS1 excludes all liability (whether arising in contract, tort or otherwise) that it may have for any Loss arising from:

- (a) the use of, or reliance on, the GS1 Smart Media service;
- (b) the use of, or reliance on, any other GS1 or third party service or software which integrates, in any way, with the GS1 Smart Media service;
- (c) the use of, or reliance on, any Content on the GS1 Smart Media service including, but not limited to, the availability, quality, correctness, accuracy, completeness or suitability of any Content on the GS1 Smart Media service; or
- (d) any support services, documentation or other products or services provided to You by GS1 in respect of Your use of the GS1 Smart Media service,

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

11.0 Intellectual Property and Moral Rights

11.1 Unless otherwise expressly provided in this document, You agree that all registered and unregistered, present or future Intellectual Property Rights in and to the GS1 Smart Media service and any GS1 Content in relation to the foregoing are owned by GS1 or its licensors.

11.2 You warrant that Your performance of this contract (including provision of any Content, data or information) or the use of Content, data or information by GS1 and its personnel, and any registered user of the Service and their personnel, in accordance with this contract will not infringe the Moral Rights of the personnel of GS1 or any 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, or registered users of the Service or their personnel, for infringement of any of their Moral Rights.

12.0 Privacy and confidentiality

- 12.1 GS1's commitment to privacy is set out in the "Privacy Statement" available at www.gs1au.org. You acknowledge that You have read and understood the Privacy Statement and consent to the collection, use and disclosure of personal information in accordance with the Privacy Statement.
- 12.2 Where You are an individual, You understand and agree to GS1 obtaining, using and disclosing Personal Information about You on the terms and for the purposes set out in the GS1 Privacy Statement and for the purposes of providing You with the services contemplated by this contract and the Instructions for Use.
- 12.3 Where You are not an individual, You warrant that You have obtained all necessary consents and authorisations from any person whose Personal Information is provided by You to GS1 (including Personal Information relating to Company Users) for the use by GS1 of that Personal Information for the purposes of providing and operating the Service and otherwise in the manner contemplated by the GS1 Privacy Statement, this contract and the Instructions for Use.
- 12.4 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.
- 12.5 Each party ("**Receiving Party**") 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 Receiving Party's agents, advisors, contractors and personnel who have a need to know, provided they are subject to an obligation to keep the confidential information confidential or, in the case of GS1, as contemplated by this Agreement; or
 - (b) where required to do so by law.
- 12.6 The Receiving Party will use or disclose the confidential information of the Discloser solely for the purpose of using or operating the GS1 Smart Media service in accordance with these GS1 Smart Media Terms and Conditions or, in the case of GS1 the provision of other services to You or disclosure to third party certification organisations or government authorities (as applicable).
- 12.7 For the purposes of this clause 12.0, confidential information includes, in the case of GS1, any technical information, drawings or trade secrets in relation the design and specification of the GS1 Smart Media service.
- 12.8 Confidential information does not include any information that is:
- (a) public knowledge at the time it is supplied to Receiving Party, or becomes public knowledge subsequently other than through breach of an obligation of confidence; or
 - (b) in Receiving Party's lawful possession prior to it being supplied to Receiving Party.

13.0 Term and termination

- 13.1 This Agreement commences on the date on which You agree to these GS1 Smart Media Terms and Conditions and continues until terminated in accordance with these GS1 Smart Media Terms and Conditions.
- 13.2 Either party may terminate this Agreement by notice to the other party if:
- (a) the other party fails to pay in full any Fees payable under this Agreement by the due date for payment;
 - (b) the other party breaches any term of this Agreement and, if it is capable of being remedied, does not remedy it within fourteen (14) days after receipt of notice requiring it to do so; or
 - (c) 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.
- 13.3 Either party may terminate this Agreement at any time by giving thirty (30) days notice in writing to the other party.
- 13.4 Any termination of this agreement will be without prejudice to the rights of each party against any other in respect of anything done or omitted under this agreement prior to such termination or expiration (as the case may be).
- 13.5 Upon any termination of this Agreement:
- (a) Your rights to access and use the GS1 Smart Media service shall cease;
 - (b) if You are a Publisher, You acknowledge that all access, through the GS1 Smart Media service, by Your Recipients to Content in relation to Your Products shall be suspended;
 - (c) You must pay all Fees due or payable to GS1 under this Agreement within seven (7) days; and
 - (d) You are not entitled to a rebate or refund of any Fees already paid in advance.
- 13.6 The provisions of clauses 3.7, 4.5, 4.8, 5.4, 6.4, 8.5, 9.0, 10.0, 11.0, 12.0, 13.0, 14.0, 15.0 and 16.0 shall survive termination of this Agreement.

14.0 Notices

- 14.1 All notices and other communications in connection with these GS1 Smart Media Terms and Conditions:
- (a) must be in writing; and
 - (b) take effect from the time they are received unless a later time is specified.
- 14.2 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).
- 14.3 Notices and other communications sent by email are taken to be received at the time shown in the email transmission report as the time that the whole communication was sent.
- 14.4 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.
- 14.5 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 Smart Media service or National Product Catalogue service. Notices for GS1 must be sent to the Compliance Officer of GS1 at GS1's address as notified to You from time to time.

15.0 General

- 15.1 The parties are independent contractors. Nothing in this Agreement makes a party an agent, partner or joint venturer of the other.
- 15.2 You may not assign this Agreement without GS1's prior written consent.
- 15.3 This Agreement constitutes the entire agreement of the parties concerning its subject matter and supersedes all previous agreements, understandings and negotiations concerning that subject matter.
- 15.4 A provision of this Agreement or a right created under this Agreement may not be waived except in writing, signed by the party giving the waiver.
- 15.5 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.
- 15.6 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.

- 15.7 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 Victoria and courts of appeal from them for determining any dispute concerning this Agreement.
- 15.8 If any provision of this Agreement is held to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation it must be read down so that is valid and enforceable (or, if it cannot be so read down, severed) so that the validity and enforceability of the remaining provisions are not affected.

16.0 Definitions

In these GS1 Smart Media Terms and Conditions, the following words have these meanings unless a contrary intention appears:

Applicable Laws means any and all statutes, regulations, by-laws, ordinances or subordinate legislation in force from time to time which pertains to Your use of, and access to, the GS1 Smart Media service and includes, without limitation, those relating to trade practices, fair trading, food labelling, intellectual property, privacy and confidentiality and, in the case of the Publisher, all the foregoing in relation to Your Products.

Content means Product images, Product photography, Product information, Product certifications, Product related reports or other digital data and files relating to Products provided by the Publisher to GS1 for purposes of inclusion in the GS1 Smart Media service and includes, without limitation:

- (a) any images, photography, information, certification, reports and other digital data and files updated by GS1 on the Publisher's behalf; and
- (b) any images, photography, information, certification, reports and other digital data and files transferred from, or linked to, in accordance with the GS1 Smart Media Rules (including, without limitation, data transferred from, or linked to, from other GS1 data services such as the National Product Catalogue service) (whether by You or GS1 on the Publisher's behalf); and
- (c) any images, photography, information, certification, reports and other digital data and files provided by any third party on the Publisher's behalf; and
- (d) any images, photography, information, certification, reports or other digital data linked to in any website designated by the Publisher.

Constitution means the Constitution of GS1 as amended from time to time.

Content Creation Service means the service that GS1 optionally provides to assist with production, management and sharing of product images and on-pack data for digital marketing.

Current GS1 Smart Media Subscriber means, in respect of a date, any person who has completed a Registration Form for the GS1 Smart Media service that has been accepted by GS1 and GS1 has notified that person of acceptance prior to that date and whose access to the GS1 Smart Media service has not been terminated at that date.

Fees mean GS1's annual fees for the GS1 Smart Media service, as published by it from time to time, or as agreed to by GS1 in writing (and "Fee" has a corresponding meaning).

GEPiR (and "Global Electronic Party Information Registry") means the internet based service that gives access to basic contact information for companies that are members of GS1 in Australia or other jurisdictions.

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

GS1 Content means any data (whether in the form of text, images or otherwise) created or developed by GS1 or on its behalf.

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

GS1 Smart Media service means the service of providing an electronic database of Content for the purpose of enabling Publishers to exchange their Content in relation to their Products with Recipients, operated by GS1.

GS1 Smart Media Rules means GS1's rules (if any) for the GS1 Smart Media service issued from time to time in relation to:

- (a) access to the GS1 Smart Media service by Users;
- (b) the process of designation by Publishers of Recipients for disclosure of Content (made available through the GS1 Smart Media service);
- (c) disclosure of Content to Recipients;
- (d) processes, methods and tools used for uploading and download of Content;
- (e) mandatory requirements for Content; and
- (f) other matters in relation to the operation by GS1 of the GS1 Smart Media service or the use of GS1 Smart Media service by Users.

GS1 Standards means any standards (as varied from time to time) that provides for identification and communication of Content and information regarding products, assets, services and locations and includes specifically the Product Image Specification GS1 Standards Document (as varied from time to time).

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

Intellectual Property Rights means any and all:

- (a) current and future registered and unregistered rights in respect of copyright, designs, semiconductor or circuit layouts, trade marks, trade names, business names, trade secrets, know-how, confidential information, patents, inventions and discoveries;
- (b) applications for grant of any of the above;
- (c) other rights of a similar nature arising (or capable of arising) under statute or at common law in the Commonwealth of Australia or anywhere else in the world; and

- (d) other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation 1967.

Loss means any liability, expenses, losses, damages and costs (including legal costs on a full indemnity basis, whether incurred by or awarded against a party) and consequential and indirect losses or damages including those arising of any third party claim.

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

Primary Contact means the person nominated by You as the "Primary Contact" in the Registration Form or as advised to GS1 pursuant to clause 3.3.

Products means goods of any kind.

Publisher means a person who is either:

- (a) located in Australia and/or New Zealand and who is a supplier of commercial quantities of Products anywhere in the world; or
- (b) located outside of Australia or New Zealand and who is a supplier of commercial quantities of Products in Australia and/or New Zealand, and who provides, or is likely to provide, Content for use in the GS1 Smart Media service in relation to that person's Products. For the sake of clarity, GS1 may elect not to accept any Registration Form from a person as a Publisher if GS1 is not satisfied, and until such time as the person satisfies GS1, that the person is supplying, or intends to supply, commercial quantities of Products.

Recipient means any person who is a Trading Partner of a Publisher (or a person who is likely to become a Publisher). For the sake of clarity, GS1 may elect not to accept any Registration Form from a person as a Recipient if GS1 is not satisfied, and until such time as the person satisfies GS1, that the person is a Trading Partner of a Publisher or person likely to become a Publisher.

Registration Form means the registration form for the GS1 Smart Media service, in such form as is designated by GS1 from time to time.

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

Third Party Service Provider means a party authorised by a Publisher or Recipient to manage the transfer of Content to, or from, the GS1 Smart Media service on behalf of that Publisher or Recipient.

Trading Partner means, in respect of a Publisher:

- (a) a retailer (including online retailer), wholesaler or buying group of the Publisher's Products;
- (b) a government department or agency who acquires the Publisher's Products (including any government health department or health agency) or any public or private hospital or other health care services provider who acquires the Publisher's Products; or
- (c) a person belonging to any similar class of persons published by GS1 from time to time as being a "Trading Partner" who acquires the Publisher's Products.

Turnover means Your Australian based revenue, including all related entities in which You have a majority interest, for a 12-month period regardless of the number of Items utilising the GS1 System.

User means a person using the GS1 Smart Media service for the purpose of accessing the Content in relation to Products and includes, without limitation:

- (a) a Publisher; or
- (b) a Recipient; or
- (c) GS1, or any other person authorised by GS1, for the purpose of providing access to other persons to view the Content in accordance with this Agreement.

You means the entity whose details are set out in the Registration Form to which this Agreement relates and any executors, administrators, successors and permitted assigns of that entity, and “**Your**” has a corresponding meaning.