

Title	GS1 Recall and GS1 Recall Health Terms and Conditions of Use
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1.0 This contract

- 1.1 This contract sets out the terms and conditions which govern Your access to and use of GS1 Recall referred to hereafter as the “**Service**”.
- 1.2 By submitting a Registration Form You agree to be bound by the terms and conditions set out in this contract during the period referred to in clause 10.1 and that You will be so bound upon GS1 providing confirmation and acceptance of your Registration Form or otherwise providing You with access to the Service.
- 1.3 You acknowledge and agree that any act or omission of any of Your Authorised Personnel or any other person accessing the Service from any computer system operated by You or via Your Login (including acceptance of the terms of this contract or any variation to them) shall be treated as an act or omission of You. Any person accepting the terms of this contract on Your behalf warrants that he or she has Your authority to do so.

2.0 The service

- 2.1 You acknowledge that You will not be provided with access to, or use of, the Service until Your Registration Form has been accepted by GS1 and GS1 has notified You of such acceptance.
- 2.2 GS1 will provide You with a username and password (“Login”) in order to enable You to access and use the Service. You must keep the Login details assigned to You secure at all times and in accordance with clause 9.7 not permit any person, other than your Authorised Personnel, to access or use the Service, and then only in accordance with this contract. You must ensure that your Authorised Personnel are aware of, and comply with, the terms of this contract. You must immediately notify GS1 of any breach of security in respect of the Login assigned to You. GS1 may change the Login assigned to You at any time.
- 2.3 GS1 will use its reasonable endeavours to ensure that the Service performs substantially in accordance with the Service user documentation published by GS1 from time to time. GS1 does not guarantee that the Service will be available, or will so perform, at all times but will use its reasonable endeavours to schedule controlled maintenance activities outside of Business Hours.
- 2.4 GS1 may make modifications to the Service, including its design, functionality and appearance from time to time and without notice to You.
- 2.5 You acknowledge that GS1 is not a party to any activity conducted through, or as a result of, the Service and that GS1 has no responsibility:
 - 2.5.1 for the accuracy or completeness of any information placed or published on or accessed or delivered through the Service by You or by any other party;
 - 2.5.2 for any requirement for You to comply with any Obligation, including in respect of any Recall or Withdrawal;

- 2.5.3 for any action or transaction undertaken based on information provided to, obtained from, or accessed through the Service;
- 2.5.4 for any failure by You to comply with any law, including any provision or requirement of the Australian Consumer Law or of any person exercising any power or authority thereunder;
- 2.5.5 in respect of any act, matter or thing arising out of any transaction, action or inaction involving or associated with Your use of the Service (including any claim or dispute relating to that transaction, action or inaction); or
- 2.5.6 for any act, matter or thing arising out of the introduction or transmission of malicious information, files or code provided to, obtained from, or assessed through the use of, the Service,

and You hereby release GS1 from any, and all, liability arising therefrom.

2.6 You acknowledge that if You have implemented the Recall API interface:

- 2.6.1 it functions as specified; and
- 2.6.2 it may alter with each Recall functional update release and that You are solely responsible for:
 - 2.6.2.1 ensuring that any interconnected systems or applications are aligned with said releases;
 - 2.6.2.2 ensuring that it delivers content appropriately to or from those interconnected systems or applications; and
 - 2.6.2.3 updating Your Production environment with any information that may become available or has altered within each release.

2.7 You acknowledge that not all persons to whom notice of a Recall or Withdrawal should or must be given by You will be subscribers to the Service and that:

- 2.7.1 to the extent that any such persons are subscribers, it is Your responsibility to ensure that:
 - a. such persons are selected as recipients for Notifications; and
 - b. such persons receive all required notices including taking reasonable steps to confirm their receipt of any Notification; and
- 2.7.2 to the extent that any such persons are not subscribers, it is Your responsibility to ensure that:
 - a. such persons are selected as recipients for Notifications; and
 - b. such persons' contact information such as email address is correct, and
 - c. such persons receive all required notices including taking reasonable steps to confirm their receipt of any Notification.

You acknowledge and agree that GS1 is not obliged to provide access to the Service to any third party, including any trading partner of You.

- 2.8 GS1 may access the Service on Your behalf without notice for purposes associated with the Service, including administration, training, education and support.
- 2.9 Notifications may be issued via the Service. You agree that the Authorised Receivers will receive these Notifications from the Service and that You will not request that these Notifications be discontinued.
- 2.10 You acknowledge and agree that GS1:
- 2.10.1 is not responsible for the generation and maintenance, and ensuring the accuracy and completeness, of any non-subscribing mailing lists used in conjunction with the Service; and
 - 2.10.2 is not accountable for performance of any mailing list.
- Furthermore You agree it is Your responsibility to manage the results, successful or otherwise, of the use of any mailing list.
- 2.11 GS1 may (but is not obliged to), at any time and without any liability to You, amend or remove from the Service any Content (and any data, text or information entered onto the Service by any third party) which it reasonably regards as incorrect, misleading, inappropriate or likely to cause a breach of this contract by You or a breach of any applicable law.
- 2.12 GS1 may at any time and for any reason suspend:
- 2.12.1 Your access to or use of the Service; or
 - 2.12.2 the access to or use of the Service by any third party (including any trading partner of You),
- without any liability to You.
- Save in the circumstances contemplated by clause 10.4, 10.4 GS1 will use its reasonable endeavours to provide at least 48 hours notice of any such suspension where practicable, however, GS1 will not be liable to You for any failure to do so.
- 2.13 GS1 may vary the terms and conditions contained in this contract, including the schedule of Fees, at any time provided that GS1:
- 2.13.1 provides no less than 30 calendar days notice of the variation by:
 - a. notice addressed to the Primary Contact at the address or email address detailed in the Registration Form or as varied in accordance with clause 3.6.2; or
 - b. posting details of the change on the GS1 Website,provided that, if You utilise the Service following delivery or posting of any such notice, You will be deemed to have accepted the contract as varied; or
 - 2.13.2 first requires one of the Authorised Personnel to accept the contract, as varied, during the process for accessing or using the Service.

- 2.14 You may terminate this contract by notice in writing to GS1 within 30 calendar days of:
- 2.14.1 delivery or posting of notice of any variation in accordance with clause 2.13.1a, unless You have accepted the contract as varied; or
 - 2.14.2 any requirement to accept the contract, as varied, being made in accordance with clause 2.13.1b, provided that the contract, as varied, has not been so accepted.
- 2.15 GS1 may, at any time, discontinue any product, system, service, directory or catalogue provided through, or associated with, the Service. GS1 will use its reasonable endeavours to provide at least 48 hours notice of any such discontinuance where practicable. Should GS1 discontinue the provision of the Service in its entirety, GS1 must refund to You any Fees paid in advance on a pro rata basis according to the unexpired period for which the Fees have been paid.

3.0 Your obligations

- 3.1 You may only use the Service for Your internal business purposes.
- 3.2 You must comply with all Instructions for Use, applicable laws and all reasonable directions issued by GS1 from time to time in relation to Your use of the Service including any Instructions for Use published on the GS1 Website. You acknowledge that any failure to comply with any Instructions for Use may result in the Service failing to operate in the manner intended.
- 3.3 Without limiting any other provision of this contract and unless otherwise specified by GS1, You are solely responsible for:
- 3.3.1 supplying, maintaining and updating all Content on the Service;
 - 3.3.2 reviewing, checking and amending all Content on the Service (including, without limitation, any Content updated by GS1 at Your request) and ensuring that at all times such Content remains correct, complete and up to date;
 - 3.3.3 the results of all access to Content by Your trading partners, staff or other representatives;
 - 3.3.4 ensuring that You comply with all legal requirements relating to any Recall, notwithstanding Your use of the Service in respect of that Recall;
 - 3.3.5 ensuring and confirming that all intended recipients of Notifications receive such Notifications;
 - 3.3.6 maintaining systems and procedures to ensure Recalls are attended to in accordance with law, including in circumstances where there is failure of the Service to operate in accordance with the Instructions for Use (regardless of whether or not such failure is notified to You);
 - 3.3.7 the content of all Notifications initiated by You;
 - 3.3.8 determining the organisations to whom any Notification is to be delivered;

- 3.3.9 Ensuring that Your use of the Service meets, at minimum, the capability standard expected of the entire Recall user community by complying with the Service Minimum Capability requirements;
 - 3.3.10 reviewing and taking action in respect of all Notifications received by You;
 - 3.3.11 where the Service is unavailable for any reason, taking all necessary alternate steps to ensure compliance with any Obligations; and
 - 3.3.12 obtaining at Your own cost all equipment and software necessary to enable You to access and use the Service.
- 3.4 You must not permit any third party to access or use the Service without the prior written consent of GS1.
- 3.5 You agree to appoint and maintain at all times a Primary Contact and to ensure that Your Primary Contact:
- 3.5.1 maintains, and keeps up to date, Your details and Content on the Service;
 - 3.5.2 has the sole responsibility for creating, and does create, accounts within the Service and any related GS1 services or applications enabling other Authorised Personnel to access and use the Service;
 - 3.5.3 is solely responsible for creating, altering or deleting usernames and passwords enabling other Authorised Personnel to access and use the Service (including where Authorised Personnel are replaced or such usernames or passwords are forgotten);
 - 3.5.4 assigns appropriate roles and levels of access to Your Authorised Personnel; and
 - 3.5.5 notifies GS1 of any change to the details of any Authorised Personnel.
- 3.6 You must immediately advise GS1:
- 3.6.1 of any change in Your location, email or postal address detailed in the Registration Form completed or subsequently amended by You;
 - 3.6.2 if any of the Authorised Personnel ceases to be an employee, or to act in the capacity as an Authorised Personnel, of details of a replacement Authorised Personnel (including the name, address, phone number and email address of the replacement Authorised Personnel and the Authorised Personnel position they are to hold); and
 - 3.6.3 updates to any information relating to such change in Your location, email, postal address or Authorised Personnel on the appropriate areas in the Service.

4.0 GS1 Australia subscription membership

- 4.1 GS1 is a membership based organisation and users of GS1 services (including GS1 the Service) are required to be “subscriber members” of GS1 (as that term is used in the Constitution of GS1).
- 4.2 If you are a current and financial subscriber member of GS1 (“**Financial Subscriber Member**”), You acknowledge that You remain subject to the terms and conditions of your GS1 Subscription Membership & Licence Agreement in addition to the terms of this Agreement. If You are a Financial Subscriber Member, clauses 4.3 to 4.5 do not apply.
- 4.3 If you are not a Financial Subscriber Member, upon acceptance of Your Registration Form, you will be deemed to be a subscriber member of GS1 in the category of a “Restricted Services Member” in which case clauses 4.4 and 4.5 apply.
- 4.4 You acknowledge and agree that as a Restricted Services Member:
- 4.4.1 You are obliged to comply with any conditions advised to You, or published on the GS1 Website, to which Restricted Service Members are subject to;
 - 4.4.2 You agree to be bound by the current applicable Subscription Membership and Licence terms and conditions, as well as the GS1 Australia Terms of Trade published on the GS1 Australia website from time to time, for the period of this Agreement;
 - 4.4.3 Your only rights as a Restricted Service Member are to use the Service in accordance with this Agreement and You will not be entitled to exercise any other right or power or be entitled to some of the other benefits to which Financial Subscriber Members are entitled. Without limiting the foregoing, a Restricted Service Membership does not entitle You to use any service of GS1 other than the Service; and
 - 4.4.4 Your Restricted Service Membership will:
 - a. be suspended during any period in which Your right to use the Service is suspended; and
 - b. will cease upon Your right to use the Service ceasing or upon termination of this Agreement.
- 4.5 Subject to any applicable conditions of membership and to completion of any required application and other prerequisite actions for membership (including the payment of applicable fees), You may take out membership as a Financial Subscriber Member at any time. If You become a Financial Subscriber Member, Your Restricted Service Membership shall lapse and clause 4.2 shall apply.

5.0 Fees and payment

- 5.1 Expressions set out in italics in this clause 4.5 bear the same meaning as those expressions in the GST Act.
- 5.2 You warrant that all information provided by You to GS1 in respect of its calculation of the Fees payable by You is complete, accurate and up to date. If requested by GS1, You must provide up to date information for the purposes of the calculation of the Fees payable by You. GS1 may increase the Fees payable by You where any up to date information warrants such increase.
- 5.3 You agree, on request, to provide a declaration as to Your Turnover (using such form as may be specified by GS1 from time to time) upon renewal or as requested by GS1 from time to time from You. You acknowledge that GS1 may obtain Your Turnover information from, or verify Your Turnover information with, third parties and GS1 may, in its sole discretion, use this Turnover information to assess or re-assess the Fees payable by You.
- 5.4 You, or your nominated Agent, must pay GS1 the Fees.
- 5.5 GS1 will issue invoices for the Fees to You, or if You have subscribed through an agency arrangement Your nominated Agent, from time to time. You, or Your nominated Agent must pay those invoices within 30 calendar days of the date of invoice. Payment may be made by cheque, electronic funds transfer to GS1's nominated bank account, credit card or agreed direct debit authority. An administration surcharge may apply to credit card payments at GS1's option. All invoices will be issued as *tax invoices* for GST purposes.
- 5.6 If You, or Your nominated Agent, fail to pay the Fees on the due date for payment:
- 5.6.1 GS1 may suspend or terminate Your access to, and use of, the Service in accordance with clause 2.12 ; or
- 5.6.2 For any overdue amount GS1 may charge an administration fee of \$50.00 (exclusive of GST) plus all costs and expenses incurred by it and its mercantile agents, legal advisors or other consultants or contractors 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 the rate of 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.
- 5.7 To the extent that a party makes a *taxable supply* in connection with this contract, except where express provision is made to the contrary, and subject to this clause, the *consideration* payable by a party under this contract represents the *value of the taxable supply* for which payment is to be made.

- 5.8 Subject to the delivery of a *tax invoice*, if a party makes a *taxable supply* in connection with this contract for a *consideration* which, under the preceding clause represents its *value*, then the party liable to pay for the *taxable supply* must also pay, at the same time and in the same manner as the *value* is otherwise payable, the amount of any GST payable in respect of the *taxable supply*.
- 5.9 A party's right to payment under the preceding clause is subject to a valid *tax invoice* being delivered to the party liable to pay for the *taxable supply*.
- 5.10 For clarity, unless expressly stated to the contrary, the amount of the Fees payable by You, or Your nominated Agent, are exclusive of GST and You, or Your nominated Agent, must pay GST in addition to the Fees.

6.0 Use of the service and indemnities

- 6.1 In respect of Your use of the Service, You must:
- 6.1.1 comply with all applicable laws (including the Australian Consumer Law and applicable State fair trading legislation);
 - 6.1.2 promptly comply with all reasonable directions given by GS1;
 - 6.1.3 comply with all Instructions for Use;
 - 6.1.4 ensure that all personnel utilising the Service (including all Authorised Personnel) are adequately trained in the use of the Service and are familiar with, and comply with, all Instructions for Use and the terms of this Contract;
 - 6.1.5 ensure that all Content is, and remains, accurate and up to date;
 - 6.1.6 provide Content in such form (including electronic format), and comply with any standards for the formatting or provision of Content, as required by GS1 from time to time;
 - 6.1.7 use the Service strictly in accordance with this contract and for the purposes contemplated by this contract;
 - 6.1.8 not tamper with or otherwise modify the Service;
 - 6.1.9 take reasonable precautions to protect the security, privacy and confidentiality of the Service;
 - 6.1.10 take all reasonable precautions not to post, send or otherwise make available through the Service any material that contains any virus, trojan, worm or similar deleterious program that may damage or interfere with the operation of the Service or the computer system of GS1 or any third party user of the Service;
 - 6.1.11 not post, send or otherwise make available through the Service any material that:
 - a. infringes GS1's, or any third party's, intellectual property rights;
 - b. is defamatory, harassing or obscene;
 - c. is illegal, fraudulent, misleading or deceptive; or
 - d. is classified by GS1, in its sole discretion, as inappropriate for inclusion on the Service;

- 6.1.12 provide to GS1 any information which it reasonably requires for the purposes of the operation of the Service and ensure that this information is both accurate and complete and is delivered to GS1 in a timely manner;
 - 6.1.13 not breach or attempt to breach the security of the Service; and
 - 6.1.14 not interfere with the normal operation of the Service.
- 6.2 GS1 agrees to:
- 6.2.1 comply with all applicable laws applying to it in respect of the operation of the Service; and
 - 6.2.2 take reasonable precautions to maintain the security of the Service.
- 6.3 You agree to indemnify GS1 and keep it indemnified against any Loss which GS1 suffers or incurs arising out of or in connection with:
- 6.3.1 a breach of this contract by You;
 - 6.3.2 any claim against GS1 by a third party relating to, or arising out of, Your use of the Service;
 - 6.3.3 any access to, or use of, the Service by any employee, contractor, agent or associate of You;
 - 6.3.4 any claim by a third party that any Content infringes the intellectual property rights or Moral Rights of that third party;
 - 6.3.5 any failure by You to comply with any Instructions for Use; and
 - 6.3.6 without limiting the foregoing, any error, inaccuracy, omission, defect, lack of completeness, misrepresentation or other imperfection in respect of any Content or of any Notification generated by You.

7.0 Liability

- 7.1 To the maximum extent permitted by law:
- 7.1.1 all terms, conditions and warranties which would otherwise be implied in this contract are excluded; and
 - 7.1.2 where any implied term may not be excluded, GS1 limits its liability for breach of that term (at GS1's option) to:
 - a. if the breach relates to services:
 - I. the resupplying of the services again; or
 - II. payment of the cost of having the services supplied again; and
 - b. if the breach relates to goods:
 - I. the replacement, or supply, of equivalent goods;
 - II. the repair of the goods;
 - III. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - IV. the payment of the cost of having the goods repaired.

- 7.2 Without limiting clause 7.17.1, GS1 does not warrant that the Service will be available at or for any particular time or that it will be free from error or interruption. You agree that You must maintain a procedure for conducting Recalls and Withdrawals that assumes a lack of access to the Service to apply in the event of any lack of availability or failure of the Service.
- 7.3 To the maximum extent permitted by law, You agree that GS1 shall not be liable to You for any loss, cost, expense, liability or damage ("Loss") (whether arising in negligence, breach of contract, and breach of any other law or otherwise) arising from:
- 7.3.1 this contract;
 - 7.3.2 Your failure to access or use the Service in accordance with any Instructions for Use;
 - 7.3.3 Your use of, or reliance on, the Service;
 - 7.3.4 any failure by GS1 to provide all or part of the Service;
 - 7.3.5 any failure to deliver any Notification;
 - 7.3.6 any failure by any third party to take action in respect of any Recall or Withdrawal, including upon receipt of any Notification; or
 - 7.3.7 any support services, documentation or other products or services provided to You by GS1 in respect of Your use of the Service.
- 7.4 You agree that GS1 shall not be liable to You for any direct, indirect or consequential Loss (including loss or corruption of data, loss of any contract, 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).
- 7.5 GS1 does not warrant that the entitlement to use, or use of, the Service satisfies all or any legal or statutory obligations, standards or laws ("**Obligations**") including:
- 7.5.1 any Obligations referred to in the Australia New Zealand Food Standards Code (including Standard 3.2.2) or the Australian Consumer Law (including Part 3-3); or
 - 7.5.2 any obligations referred to in the Uniform Recall Procedure for Therapeutic Goods or the Therapeutic Goods Act 1989.

Without limiting the foregoing, GS1 does not warrant that any Notification will successfully be delivered to any person or organisation including to any authority (including any "responsible Minister" as that term is used in the Australian Consumer Law) nor that any such Notification will satisfy any Obligations.

- 7.6 You acknowledge and agree that the Fees charged by GS1 are determined by GS1:
- 7.6.1 with a view to making the Service accessible for use by persons rather than with the primary motivation of deriving profit; and
 - 7.6.2 on the assumption that the exclusions and limits on liability and the indemnities and releases from liability granted by You pursuant to this contract are, and will remain, enforceable against You,
- and You agree that the exclusions and limits on liability and the indemnities and releases from liability set out in this contract are fair and reasonable.
- 7.7 You acknowledge that GS1 is not responsible for monitoring the conduct of any Recall or Withdrawal, verifying any Content or any information provided by any third party via the Service or confirming the content, delivery or receipt of any Notification.
- 7.8 You acknowledge that the Service may be provided to assist You in the conduct of business (or activities) which may include use as a system for conducting Recalls and Withdrawals and complying with Obligations but that it is not designed or intended to ensure or guarantee such performance or compliance. You acknowledge and agree that You remain solely liable and responsible for Your business activities and performance and for compliance with Obligations and that You will not make any claim, nor take any action, against GS1 in respect of any Loss suffered by You as a result of any non-compliance by You with any Obligation or failure to adequately conduct or perform any business activity, including any Recall or Withdrawal. Without limiting the foregoing, You acknowledge that it is Your sole responsibility to ensure compliance with all Obligations and You agree to take all such reasonable steps as are required to ensure such compliance by means in addition to the use of the Service.

8.0 Intellectual property and Moral Rights

- 8.1 Unless otherwise expressly provided in this document, You agree that all intellectual property rights in and to the Service 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 all 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:
- 8.3.1 providing and operating the Service;
 - 8.3.2 making the Content available to any User or third parties in connection with their use and/or Your use of the Service;
 - 8.3.3 complying with its Obligations under this contract; and
 - 8.3.4 carrying out any action reasonably contemplated by this contract.

- 8.4 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.

9.0 Privacy, confidentiality and security

- 9.1 GS1's commitment to privacy is set out in the "Privacy Statement" available at the GS1 Website (by clicking "Privacy"). 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.
- 9.2 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.
- 9.3 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 Authorised Personnel and 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 Privacy Statement, this contract and the Instructions for Use.
- 9.4 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.
- 9.5 Each party ("Recipient") must use reasonable endeavours to keep the confidential information of the other party ("Discloser") confidential, safe and secure and not disclose it to any person other than:
- 9.5.1 for the purposes contemplated by this contract;
 - 9.5.2 to the Recipient'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
 - 9.5.3 where required to do so by law.
- 9.6 Save as otherwise provided in, or contemplated by, this contract, the Recipient will use the confidential information of the Discloser solely for the purpose of using or operating the Service in the manner contemplated by this contract.

- 9.7 You must not disclose Your Login details to any person other than Your Authorised Personnel and those staff, contractors or agents who have a need to know for the purposes of You accessing and using the Service in the manner contemplated by this contract.
- 9.8 Subject to clause 9.9, in this clause, “**Confidential Information**” of a party means trade secrets, ideas, know-how, concepts, processes, data, plans, materials, product development and other information, regardless of its form, that the Recipient knows, or ought reasonably know, is required by the Discloser to be treated as confidential information.
- 9.9 Confidential information does not include any information that is:
- 9.9.1 public knowledge at the time it is supplied to the Recipient, or becomes public knowledge subsequently other than through breach of an obligation of confidence;
 - 9.9.2 information that the Discloser ought reasonably know is intended to be disclosed in the course of the Discloser’s, or any other User’s, use of the Service (including Content and Notifications); or
 - 9.9.3 in the Recipient’s lawful possession prior to it being supplied to Recipient.
- 9.10 You acknowledge that the operation of the Service involves the transfer of data to, and storage of data in, countries other than Australia. Such data may include Personal Information. You consent and agree to such transfer and storage.

10.0 Term and termination

- 10.1 This contract commences on the first to occur of:
- 10.1.1 GS1 advising You of acceptance of Your Registration Form;
 - 10.1.2 You accepting the terms of the Contract during access to the Service website; or
- You accessing or using the Service, and continues, subject to payment by You of the applicable Fees, until terminated in accordance with this contract or otherwise in accordance with law.
- 10.2 Either party may terminate this contract by written notice to the other party if:
- 10.2.1 the other party breaches any term of this contract and, if the breach is capable of being remedied, does not remedy it within 14 calendar days after receipt of notice requiring it to do so; or
 - 10.2.2 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 contract at any time, without cause, by giving no less than 30 calendar days notice in writing to the other party.
- 10.4 GS1 may immediately suspend Your use of the Service or terminate this contract by giving notice to You if:
 - 10.4.1 You breach any of the provisions of clause 6.1; or
 - 10.4.2 You fail to pay any amount payable to GS1 pursuant to this contract on the due date for payment.
- 10.5 Termination of this contract in accordance with this clause 10.0 or any other provision of this contract or otherwise in accordance with law shall not affect any accrued right or remedy of either party.

11.0 Agency arrangements

- 11.1 Clauses 11.1 through 11.5 apply to You only if You are have subscribed to the Service through an agency arrangement with a nominated Agent.
- 11.2 Without limiting any other provision of these Terms and Conditions and unless otherwise specified by GS1 in writing, You are solely responsible for complying with all Your obligations in respect of Your use of the Service.
- 11.3 You acknowledge that (except where You have granted such responsibility and access) Your Agent has no responsibility:
 - 11.3.1 for ensuring the correctness, accuracy, completeness or suitability for intended purpose of any Content in the Service; or
 - 11.3.2 with respect to any transaction itself (including any claim or dispute relating to that transaction).
- 11.4 You acknowledge that Your access to or use of Your Content in the Service may be suspended, without liability to GS1, at any time:
 - 11.4.1 by Your Agent for any reason; or
 - 11.4.2 by GS1 for any reason including, without limitation, if Your Agent has not paid any all due invoices in accordance with Clause 5.6.

GS1 will attempt to notify You of any such suspension but will not be liable to You if it does not do so.
- 11.5 In the event that either You, or Your nominated Agent, terminates the agency relationship in respect of this Service subscription, You can continue to use the Service by re-registering for the Service in accordance with Clause 1.0. In this instance GS1 will make reasonable attempts to restore Your existing account settings and access to historical Content, but can make no guarantees thereto.
- 11.6 If You are an Agent, You agree to be bound by the terms and conditions of this Agreement as if You were one of Your customers subscribed to the Recall Service whether or not You are a user of the Service for Your own Recall purposes.

12.0 Notices

- 12.1 All notices and other communications in connection with these GS1 Recall Terms and Conditions of Use:
- a) must be in writing; and
 - b) take effect from the time they are received unless a later time is specified.
- 12.2 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).
- 12.3 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.
- 12.4 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 Recall service.
- 12.5 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.
- 12.6 Notices for GS1 must be sent to the Compliance Officer of GS1 at GS1's address as notified to You from time to time.

13.0 General

- 13.1 The parties are independent contractors. Nothing in this contract makes a party an agent, partner or joint venturer of the other.
- 13.2 You may not assign this contract without GS1's prior written consent, such consent not to be unreasonably withheld.
- 13.3 This contract is the entire agreement between the parties concerning its subject matter.
- 13.4 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.
- 13.5 This contract 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 contract.

14.0 Definitions

In this contract, the following words have these meanings unless a contrary intention appears:

Agent means the third party that is paying for the Service subscription through an agency arrangement due to an existing commercial relationship between You and that third party.

Australian Consumer Law has the meaning given in the *Competition and Consumer Act 2010*.

Authorised Approver means any person nominated by You as the "Authorised Approver" in the Registration Form or advised to GS1 pursuant to clause 3.6.2.

Authorised Initiator means any person nominated by You as the "Authorised Initiator" in the Registration Form or advised to GS1 pursuant to clause 3.6.2.

Authorised Personnel means the Primary Contact, Authorised Initiator, Authorised Approver and Authorised Receiver.

Authorised Receiver means any person nominated by You as the "Authorised Receiver" in the Registration Form or advised to GS1 pursuant to clause 3.6.2.

Business Hours means 9.00am to 5.00pm (AEST) on a day which is not a Saturday, Sunday or public holiday in Melbourne.

Content means the data, text, information and other materials provided by You to GS1 (or directly to the Service) for the purposes of publication on, or use in relation to, the Service.

Fees mean GS1's fees to You for the use of and access to the Service, as published by it from time to time, including on the GS1 Website (and "Fee" has a corresponding meaning).

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

GS1 Website means the website maintained by GS1 at: www.gs1au.org or gs1recallnetadmin@gs1au.org or such other website or websites as are maintained by GS1 for the purposes of providing the Service.

GST has the meaning given to that term in the GST Act.

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

Instructions for Use means any instructions, user documentation and other directions for use of the Service made available by GS1 to You (including any instructions relating to the Service published on the GS1 Website).

Login has the meaning given in clause 2.2.

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.

Notifications means email or other electronic notifications sent by the Service to any person providing any information, request or notification in respect of a Recall or Withdrawal initiated by the Service user.

Obligations has the meaning given in clause 7.5.

Personal Information has the meaning given in the *Privacy Act 1988* (Cth).

Primary Contact means the person nominated by You as the "Primary Contact" in the Registration Form or advised to GS1 pursuant to clause 3.5.

Recall means an action taken by a person or organisation to remove from distribution, sale and/or consumption or use, any good or service due to a possible health and/or safety risk to consumers.

Registration Form means the registration form utilised for applying for, or accepting an invitation in respect of, access to the Service in the format determined by GS1 from time to time.

Service means the on-line service for assisting in communicating and managing Recalls and Withdrawals, GS1 Recall, operated by GS1 via the GS1 Website. The Service means either of the recall and withdrawal services operated by GS1 Australia; GS1 Recall and GS1 Recall Health.

Service Minimum Capability means the Service user community best practice standards being a minimum of 1 person in Your organisation completing the training applicable to Your use of the Service AND continued demonstrated ability to send/receive mock or production Withdrawals and/or Recalls at minimum once every 12 months.

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

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 that has been approved by GS1 to access and/or maintain content in the Service.

Withdrawal means an action taken by a person or organisation to remove from distribution, sale and/or consumption or use, any good or service due to reasons other than a possible health and/or safety risk to consumers.

You means the entity whose details are set out in the Registration Form (and "you", "your" and "Your" has a corresponding meaning).

15.0 Interpretation

In this contract, unless the context requires otherwise:

- 15.1 headings are for convenience and do not affect interpretation;
- 15.2 the singular includes the plural and vice versa;
- 15.3 words denoting any gender include all genders;
- 15.4 where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- 15.5 a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph, schedule or annexure of this contract;
- 15.6 a reference to this contract includes any schedules or annexures;
- 15.7 a reference to any document or agreement includes reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- 15.8 a reference to "\$", "\$A" or "dollar" is a reference to Australian currency;
- 15.9 a reference to a time or date in connection with the performance of an obligation is a reference to the time or date in the State, Territory or other place where that obligation is to be performed;
- 15.10 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 15.11 words and expressions denoting natural persons include bodies corporate, partnerships, associations, governments and governmental authorities and agencies and vice versa;
- 15.12 a reference to any legislation, statutory instrument or regulation shall be construed in accordance with the Acts Interpretation Act 1901 (Cth) (or the equivalent State legislation, as applicable) and includes that legislation as amended from time to time; and
- 15.13 "include", "includes" and "including" are not words of limitation.