

<b>Title</b>	<b>MyGS1 Terms and Conditions of Use</b>
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## 1.0 INTRODUCTION

- 1.1 These terms and conditions (**Terms**) apply to Your access to and use of the MyGS1 Portal (**Portal**) including Your use of the GS1 system on the Portal.
- 1.2 In accessing and using the Portal, You acknowledge that these Terms form a legally binding agreement between You (either as an individual or an organisation on whose behalf You access the Portal) and GS1 Australia Limited (referred to as **GS1 Australia**, us, we or our).
- 1.3 You should read these Terms carefully. If You do not accept these Terms, You must immediately cease accessing and using the Portal.
- 1.4 In addition to these Terms Your use of the Portal, and the GS1 system through the Portal, is also governed by the following documents:
  - (a) The terms and conditions of the GS1 Australia Subscription Membership & Licence Agreement ([Subscription Membership & Licence Agreement](#)), which sets out the terms and conditions relating to Your use of GS1 Identification (ID) Keys and Barcode Symbols and other Authorised GS1 Data Carriers;
  - (b) The [GS1 Australia Privacy Policy](#); and
  - (c) [Terms of Trade](#), (**Other Terms and Conditions**).
- 1.5 By accessing and using the Portal, You acknowledge that You have read, understood, and agree to be legally bound by those Other Terms and Conditions.

## 2.0 ACCESS

- 2.1 You must be a subscriber member of GS1 Australia (**GS1 Member**) to access the Portal.
- 2.2 In order to access the Portal, You must register and activate Your account by selecting a user name and password. You are responsible for keeping this user name and password secure and are responsible for all use and activity carried out under this user name.

- 2.3 We may terminate or suspend Your access to the Portal if You cease to be, or are suspended as, a GS1 Member for any reason or You are in breach of Your Obligations under the Subscription Membership & Licence Agreement or any other agreement between You and GS1 Australia.
- 2.4 In accessing and using the Portal, You agree:
- (a) that You will only use the Portal strictly in accordance with these Terms;
  - (b) to provide true and accurate information to GS1 Australia in respect of any transaction or lodgement made through the Portal;
  - (c) not to provide false or misleading information or engage in misleading or deceptive conduct in connection with the Portal;
  - (d) not to access or attempt to access materials or functions on the Portal You are not authorised to use;
  - (e) not to interfere with or disrupt (or attempt to interfere or disrupt) the rights of others to use the Portal;
  - (f) not to use the Portal to conduct or solicit the performance of any illegal activity; and
  - (g) that You are responsible for actively managing correspondence sent by GS1 Australia to You through the Portal.

### **3.0 USE OF THE PORTAL**

- 3.1 The Portal is provided to assist GS1 Members to access various resources and tools to utilise the GS1 system and other services of GS1 Australia.
- 3.2 We may suspend or remove access to some or all of the Portal, conditionally or unconditionally, in our absolute discretion. Some parts of the Portal may only be available to certain classes of GS1 Members.
- 3.3 We may accept or reject any request placed through the Portal in our discretion. We may cancel any request if there is an error or omission in the request or if the request is unable to be processed.

## 4.0 FEES

- 4.1 The Portal may provide functionality to pay Your GS1 member subscription fees and other fees relating to the GS1 system and other services ordered by You as prescribed on the Portal or invoiced by us (**Fees**).
- 4.2 Unless specified otherwise, all Fees prescribed on the Portal are exclusive of GST.
- 4.3 All payments are made by a secure server, which will encrypt each transaction as a security precaution, and all payments must be made in Australian Dollars only.
- 4.4 If You choose to pay by credit, debit or charge card, You authorise us to debit the amount that is payable for an accepted order from Your nominated credit, debit or charge card. You must not pay, or attempt to pay, for services through any fraudulent or unlawful means.

## 5.0 TERMINATION

- 5.1 We may, by written notice to You, suspend performance of our Obligations under these Terms, including suspending access to part or all of the Portal immediately and without liability to You for compensation or damages if, in our opinion, Your use of the Portal or the GS1 system may violate any laws, regulations or ruling, infringes upon another person's rights or otherwise fails to comply with any of Your Obligations under these Terms or Other Terms and Conditions.

## 6.0 INTELLECTUAL PROPERTY

- 6.1 Unless otherwise indicated, all intellectual property in the Portal, including all copyright and trade marks, is owned by GS1 Australia. Some material on the Portal is included as part of the GS1 system under licence or agreement of third party licensors.
- 6.2 Other than for the purposes of, and subject to the conditions prescribed under the Copyright Act 1968 (Cth) and similar legislation which applies in the jurisdiction in which You are located, and except as expressly authorised by these Terms, You may not in any form or by any means:
  - (a) copy, adapt, reproduce, store, distribute, print, display, perform, publish or create derivative works from any part of the Portal or the GS1 system; or

- (b) commercialise any information, products, services or materials obtained from any part of the Portal, the GS1 system or us, except as otherwise authorised by us or with our prior written permission.
- 6.3 Trade marks used on the Portal and in the GS1 system are our trade marks (registered or unregistered) or trade marks of third parties. If You use any trade marks owned by us, in reference to us, the GS1 system or the Portal, You must include a statement attributing that trade mark to us. You must not use any of our trade marks or trade marks of third parties featured on the Portal or the GS1 system:
  - (a) in, or as the whole or part of, Your own trade marks;
  - (b) in connection with any business, products or services which are not ours (other than as expressly licensed by us or as provided under these Terms);
  - (c) in a manner which may be confusing, misleading or deceptive to any person, or
  - (d) in a manner that disparages us, the third party owners of the trade marks, the Portal or the GS1 system.

## 7.0 LINKS ON THE PORTAL

- 7.1 The Portal may contain links to other websites (**Linked Websites**). Those links are provided for convenience only and may not remain current or be updated by us.
- 7.2 We are not responsible for the content or privacy policies or practices of persons or companies associated with Linked Websites. We will not be liable to You, or any other person, for any loss arising in respect of use or access to Linked Websites. When You access any Linked Websites, You do so entirely at Your own risk.
- 7.3 Our linking to Linked Websites should not be construed as an endorsement, approval or recommendation by us, or the owners or operators of those Linked Websites, of any information, graphics, materials, products or services referred to or contained on those Linked Websites, unless and to the extent expressly stipulated to the contrary.

## 8.0 VERIFIED BY GS1 SERVICE

8.1 If You use the **Verified by GS1 service (VbG)** from within MyGS1, the terms and conditions specific to the use of the Verified by GS1 service as contained in Attachment A will apply and prevail in the extent of any inconsistency over these terms and conditions.

## 9.0 MANAGE MY PRODUCTS SERVICE

9.1 If You use the **Manage My Products service** from within MyGS1, the terms and conditions specific to the use of the Manage My Products service as contained in Attachment B will apply and prevail in the extent of any inconsistency over these terms and conditions.

## 10.0 DISCLAIMERS

- 10.1 The information on the Portal is of a general nature only and has been prepared without taking account of the objectives, requirements or needs of any particular person or company. Nothing in the content on the Portal is, or is intended to be, professional or legal advice.
- 10.2 The Portal is provided to You strictly on an “as is” and “as available” basis. You must take Your own precautions to ensure that the process which You employ for accessing the Portal does not expose You to the risk of viruses, malicious code or other forms of interference emanating from access to the Portal via the internet, which may damage the systems on Your device.
- 10.3 We do not warrant that Your access to the Portal will be free from interruptions, errors or viruses. For the avoidance of doubt, we are not liable to You, or any other person, and do not accept responsibility for any loss suffered as a result of interference with or damage to the systems on Your device which arises in connection with Your use of or inability to use the Portal.
- 10.4 You must maintain Your own separate copies of all data You input onto the Portal. While we use and employ data backup processes and other procedures to prevent data loss, we make no representation or warranty that there will be no loss of data.

## 11.0 LIMITATION OF LIABILITY

11.1 To the fullest extent permitted by law, our 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 these Terms by any legislation (**Statutory Warranties**) is hereby excluded. Where we are 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, our liability for any breach of such Statutory Warranties shall be limited, at our option, to:

- (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 us on this limitation of liability is fair and reasonable in all the circumstances.

11.2 To the maximum extent permitted by law, GS1 Australia does not accept liability for, and You hereby forever release us from any claim, action or demand in respect of, any loss or damage of any kind howsoever caused (including through our negligence) suffered or incurred by You arising out of or in connection with:

- (a) Your access to or use of the Portal;
- (b) any errors or omissions on the Portal;
- (c) any errors in or omissions from any Linked Websites; and
- (d) any decision or action taken by You in reliance on information on the Portal or any Linked Websites.

## **12.0 INFORMATION PROVIDED BY YOU**

- 12.1 You consent to our collection, disclosure, use and keeping of personal information You provide to us in accordance with the terms of our Privacy Policy.
- 12.2 No data transmission over the internet can be guaranteed as totally secure. Whilst we strive to protect such information, we do not warrant and cannot ensure the security of any information which You transmit to us.
- 12.3 Any information which You transmit to us is transmitted at Your own risk. Once we receive Your transmission, we will take reasonable steps to preserve the security of such information.
- 12.4 You acknowledge that You are solely liable for all information, data and content provided to GS1 Australia through the Portal. To the maximum extent permitted by law, GS1 Australia does not accept liability for, and You hereby forever release us from any claim, action or demand in respect of, any loss or damage of any kind howsoever caused (including through our negligence) suffered or incurred by You arising out of or in connection with any third party's use of the information, data or content so provided by You.

## **13.0 GOVERNING LAW**

- 13.1 These Terms are governed by the laws in force in the State of Victoria, Australia and You agree to submit to the exclusive jurisdiction of the courts of that State in respect of any dispute arising from these Terms.

## **14.0 AMENDMENTS TO TERMS**

- 14.1 We reserve the right to amend these Terms from time to time. Amendments will be effective immediately upon notification to You through Your last notified contact details or notification on our Portal. Your continued use of the Portal following such notification will constitute an agreement by You to be bound by these Terms as amended.

## 15.0 DEFINITIONS

**Alliance Number Licence** means the licence provided by a GS1 Member Organisation to a member in respect of a range of numbers that can be assigned to that member's products or items for use in the United States of America.

**Content** means the text, images and other material comprising the Data provided by the Verified by GS1 service to You as a Data Recipient.

**Data** means information about a product that has been provided to the GS1 Global Registry Platform by a Data Provider.

**Data Provider** means a person who has provided Data about their GTINs to the GS1 Registry Platform.

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

**Designee** means a person who is a Data Provider's authorised party who creates, maintains, manages or delivers Data on behalf of a Data Provider.

**Fees** means GS1 Australia's fees for the use of any solution or service as published by GS1 Australia from time to time (and **Fee** has a corresponding meaning).

**GCP Licence** means the licence provided by a GS1 Member Organisation to a member in respect of a range of numbers that can be assigned to that member's products or items.

**GS1** means collectively GS1 AISBL, GS1 Australia and the GS1 Member Organisations.

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

**GS1 Australia** means the GS1 Member Organisation with an exclusive licence granted by GS1 AISBL to allocate GS1 ID Keys in Australia and means the legal entity GS1 Australia Limited (ABN 67 005 529 920).

**GS1 GSMP** means the community based Global Standard management Process for creating and maintaining GS1 standards, guidelines and associated collateral.

**GS1 ID Keys** means, in respect of a GS1 Member, a range of GS1 Identification numbers and individual keys assigned by GS1 Australia that are licensed to that subscriber member by GS1 Australia in accordance with its GS1 licence.



**GS1 Member** means a subscriber member of GS1 Australia.

**GS1 Member Organisations** means members of GS1 International which includes GS1 Australia and '**GS1 Member Organisation**' has a corresponding meaning.

**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.

**GTIN** means Global Trade Item Number.

**GTIN Licence** means the licence provided by a GS1 Member Organisation to its member in respect of a single product or item.

**Inactive License** has the meaning defined in Attachment A Clause 3.

**Linked Websites** means links to other websites as defined in Clause 7.1.

**Manage My Products service** means the service provided by GS1 Australia to its customers to assign GS1 ID Keys allocated to them by GS1 Australia (or other GS1 Member Organisations) to their products.

**Non-disclosure Information** means data and information that has been designated as, or by its nature is, private and not to be disclosed to third parties.

**Obligations** means legal or statutory obligations, standards or laws.

**Other Terms and Conditions** means documents other than this set of terms and conditions that also govern the use of the Portal, as defined in Clause 1.4.

**Portal** means the MyGS1 Portal and includes any solutions or services accessible via the MyGS1 portal.

**Privacy Policy** means the GS1 Australia Privacy Policy which is set out at <https://www.gs1au.org/gs1-australia-privacy-policy/>

**Statutory Warranties** means those warranties defined in Clause 11.1.

**Subscription Membership & Licence Agreement** means the GS1 Australia Subscription Membership & Licence Agreement as defined in Clause 1.4.

**Terms** means the terms and conditions of this agreement and any attachments and appendices thereof.

**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.



**Value-Added Product** means a product or service offered by You to Your end-users that uses the Data and adds appreciable value to it as defined in Attachment A Clause 2.1.4.

**Verified by GS1 service or VbG** means the service provided by GS1 Australia to its customers to get Data out of the GS1 Registry Platform.

**You, you** and **Your** means the entity accessing the Portal and/or any of the application services or solutions accessible therein.

## **ATTACHMENT A: Verified by GS1 service**

The following terms and conditions in this Attachment A are applicable only to those users who elect to use the Verified by GS1 functionality within the MyGS1 Portal.

### **1.0 THE VERIFIED BY GS1 SERVICE**

- 1.1 This Attachment A sets out the terms and conditions which govern Your access to, and use of, the Verified by GS1 service as a Data Recipient.
- 1.2 Subject to the other terms and conditions of this Agreement, GS1 Australia will provide such data and information comprising the Verified by GS1 service as is published by GS1 Australia from time to time.
- 1.3 GS1 Australia will use its reasonable endeavours to ensure that the Verified by GS1 service performs substantially in accordance with the user documentation published by GS1 Australia from time to time. GS1 Australia does not guarantee that the Verified by GS1 service will be available, or will so perform, at all times but will use reasonable endeavours to schedule controlled maintenance activities outside of Business Hours.
- 1.4 GS1 Australia may from time to time make modifications to the Verified by GS1 service, including its design, functionality and appearance and without notice to You. Where this requires a change to the terms of and annexures to, this Agreement, written notification will be provided.
- 1.5 You acknowledge that GS1 is not a party to any activity or transaction made through or as a result of the Verified by GS1 service and that GS1 has no responsibility:
  - 1.5.1 for the accuracy or completeness of any information placed or published on or accessed through the Verified by GS1 service by You or by any other party;
  - 1.5.2 for any requirement for You to comply with any Obligation;
  - 1.5.3 for any action or transaction undertaken based on information provided to, obtained from, or accessed through the Verified by GS1 service;
  - 1.5.4 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 power or authority thereunder; or

- 1.5.5 in respect of any act, matter or thing arising out of any transaction, action or inaction involving or associated with Your use of the Verified by GS1 service (including any claim or dispute relating to that transaction, action or inaction), and You hereby release GS1 from any and all liability arising therefrom.
- 1.6 GS1 may (but is not obliged to), at any time and without any liability to You, amend or remove from the Verified by GS1 service any Content which it reasonably regards as incorrect, misleading, inappropriate or likely to cause a breach of this Agreement by You or a breach of any applicable law.
- 1.7 GS1 Australia may at any time and for any reason suspend:
- 1.7.1 Your access to or use of the Verified by GS1 service; or
  - 1.7.2 the access to or use of the Verified by GS1 service by any third party (including any trading partner of You),
- without any liability to You.
- GS1 Australia will use its reasonable endeavours to provide at least 48 hours notice of such suspension where practicable, however GS1 will not be liable to You for any failure to do so.
- 1.8 GS1 Australia may vary the terms and conditions contained in this Agreement, including the schedule of Fees, at any time provided that GS1 Australia provides no less than 30 calendar days notice of the variation by:
- 1.8.1 notice addressed to the contact for the Verified by GS1 service nominated to GS1 Australia; or
  - 1.8.2 posting details of the change on the GS1 Australia website,
- provided that, if You utilise the Verified by GS1 service 30 days or more after delivery or posting of any such notice, You will be deemed to have accepted the Agreement as varied.
- 1.9 You may terminate this Agreement by notice in writing to GS1 Australia within 30 calendar days of delivery or posting of notice of any variation in accordance with Clause 1.8 of this Attachment unless You have accepted the Agreement as varied.
- 1.10 GS1 Australia may, at any time, discontinue any product, system, service, directory or catalogue provided through, or associated with, the Verified by GS1 service. GS1 will use its reasonable endeavours to provide at least 48 hours notice of any such discontinuance where practicable. Should GS1 Australia discontinue the provision of the Verified by GS1 service in its entirety, GS1 Australia must refund to You any Fees paid in advance for that service on a pro rata basis according to the unexpired period for which the Fees have been paid.

- 1.11 You acknowledge that certain data and information is provided to GS1 on the basis that it will not be disclosed to third parties (“**Non-disclosure Information**”) and that data or information provided as part of the Verified by GS1 service will not include such data or information. GS1 Australia shall not be obliged to advise You where Non-disclosure Information is withheld or excluded from the data or information provided as part of the Verified by GS1 service.

## 2.0 RESTRICTIONS ON DATA USE

- 2.1 You, as a Data Recipient, shall not:

- 2.1.1 present, publish or use Data in a manner that is false or misleading; infringes rights of third parties (including Data Provider or Designee’s rights) and/or violates any applicable laws and regulations;
- 2.1.2 modify the content of Data in publishing or disseminating such Data (unless You have express written authorisation of Data Provider or Designee to do so);
- 2.1.3 publish or use Data in a manner that implies any endorsement by Data Provider, Designee or GS1 (unless You have express written authorisation of the Data Provider, the Designee or GS1 to do so);
- 2.1.4 use, sell, sublicense, distribute or otherwise make available the Data to third parties, otherwise than as part of a Value-Added Product and, if applicable, You shall ensure that any third party (including, but not limited to, solution providers, agents, subsidiaries, and sub-contractors) You make Data available to is also bound by the restrictions as set out in this Clause 2.0. For the purpose of this Clause, “**Value-Added Product**” means a product or service offered by You to Your end-users that uses the Data and adds appreciable value to it, including, without limitation, by combining it with other data, information or analyses sourced or developed by You or by processing or presenting the Data in a novel way. Replicating the Data and/or the Service shall not be considered as adding appreciable value; and
- 2.1.5 decompile, reverse-engineer, alter, or in any way tamper (or attempt to do so) with all or part of the of the Verified by GS1 service or any software or solution comprised therein or connected thereto, nor cause, permit or assist any other person directly or indirectly to do any of the above.

### 3.0 INACTIVE LICENCE

- 3.1 In the event that You, as a Data Recipient, encounter a GTIN that relates to an Inactive Licence,
- 3.1.1 You may assist GS1 by notifying GS1 Australia of said GTIN; and
- 3.1.2 if You are a sales organisation, GS1 recommends that You also notify Your suppliers of such Inactive Licence for the supplier to notify its respective GS1 Member Organisation.
- 3.2 For the purpose of this section, “**Inactive License**” means a GCP License, one-off GTIN License or Alliance Number License that has either expired or terminated under the applicable terms and conditions.

### 4.0 FEES AND PAYMENT

- 4.1 Expressions set out in italics in this Clause 4.0 bear the same meaning as those expressions in the GST Act.
- 4.2 You warrant that all information provided by You to GS1 Australia in respect of its calculation of the Fees payable by You is complete, accurate and up to date. If requested by GS1 Australia, You must provide up to date information for the purposes of the calculation of the Fees payable by You. GS1 Australia may increase the Fees payable by You where any up to date information warrants such increase. GS1 Australia requires that the initial invoice be paid and cleared before delivery of the required Content.
- 4.3 You must pay GS1 Australia the Fees, if applicable to you.
- 4.4 You agree that GS1 Australia 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 Australia may, in its sole discretion, use this Turnover information to assess or re-assess the Fees payable by You.
- 4.5 GS1 Australia will issue invoices for the Fees to You from time to time. You must pay those invoices within 30 days of the date of invoice. Payment may be made by cheque, electronic funds transfer to GS1 Australia’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.
- 4.6 If You fail to pay the Fees on the due date for payment:
- 4.6.1 GS1 Australia may suspend or terminate Your access to, and use of, the Verified by GS1 service in accordance with Clause 1.7 or Clause 5.0 of this Attachment; and

- 4.6.2 for any overdue amount GS1 Australia 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.
- 4.7 To the extent that a party makes a *taxable supply* in connection with this Agreement, except where express provision is made to the contrary, and subject to this Clause 4.0, the consideration payable by a party under this Agreement represents the value of the *taxable supply* for which payment is to be made.
- 4.8 Subject to the delivery of a tax invoice, if a party makes a taxable supply in connection with this Agreement for a consideration which, under the preceding Clause 4.7 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*.
- 4.9 A party's right to payment under the preceding Clause 4.8 is subject to a valid tax invoice being delivered to the party liable to pay for the *taxable supply*.
- 4.10 For clarity, unless expressly stated to the contrary, the amount of the Fees payable by You are exclusive of *GST* and You must pay *GST* in addition to the Fees.

## **5.0 SUSPENSION AND TERMINATION**

- 5.1 Agreement to use the Verified by GS1 service commences on the first to occur of:
- 5.1.1 You accepting the terms of the Agreement during access to the Verified by GS1 service website; or
- 5.1.2 You accessing or using the Verified by GS1 service, and continues, subject to payment by You of any applicable Fees until June 30 of each year of use or part thereof until either party chooses to terminate this Agreement upon the next expiration or earlier by sending a written notice to the other party.

- 5.2 GS1 Australia may suspend Your access to, and use of, the Verified by GS1 service with immediate effect if You (or an authorised user of Yours) commits a material breach of any provision of these Terms of Use and until such breach is cured, or in order to prevent imminent damage to a third party. If the breach remains uncured for fifteen (15)] consecutive days, GS1 Australia shall have the right to terminate Your access to and use of the Verified by GS1 service with immediate effect.
- 5.3 Either party may terminate this Agreement at any time, without cause, by giving no less than 30 days notice in writing to the other party.
- 5.4 Termination of this Agreement in accordance with this Clause 5.0 or any other provision of this Agreement or otherwise in accordance with law shall not affect any accrued right or remedy of either party.
- 5.5 The provisions of Clauses 4.6, 5.0, 6.0, 7.0, 8.0 and 9.0 of this Attachment shall survive termination of this Agreement.

## **6.0 DISCLAIMERS AND WARRANTIES**

- 6.1 The Verified by GS1 service displays Data that is not owned nor controlled by GS1 AISBL or GS1 Australia, therefore the Data is made available on an 'as is' and 'as available' basis. Verifications made by the Verified by GS1 service are limited to automated logical checks and do not include physical or legal validations of the accuracy of the Data. Neither GS1 Australia nor the GS1 Member Organisations, Data Providers nor Designees represent or warrant that the Data is accurate, complete and/or up-to-date. Use of the Data, and the Verified by GS1 service is at Your sole risk.
- 6.2 GS1 Australia does not represent or warrant that the Verified by GS1 service will be secure or free from error or interruption.
- 6.3 Neither GS1 AISBL nor GS1 Australia represent or warrant that the Verified by GS1 service and the Data are suitable for any regulatory purpose, including without limitation any regulatory reporting requirements in the healthcare sector. To the fullest extent permitted by law, GS1 makes no representations or warranties, express, implied or otherwise, regarding any matter, including the Data, and the Verified by GS1 service. Any such representations or warranties are expressly disclaimed.

## **7.0 LIMITATION OF LIABILITY**

- 7.1 To the fullest extent permitted by law, GS1 AISBL, GS1 Australia, GS1 Member Organisations, Data Providers and/or Designees shall not be liable for any damages whatsoever, including but not limited to actual, direct, consequential, indirect, incidental or punitive damages, whether such liability is based on breach of contract, breach of warranty or otherwise, even if advised of the possibility of such damages, that may arise from Your use of the Verified by GS1 service or the Data or for any failure or refusal by GS1 Australia to grant You access to the Verified by GS1 service or the Data, or any harm, effects or damages suffered by You as a result thereof.

## **8.0 INDEMNITY**

- 8.1 You, as a Data Recipient, shall fully indemnify, hold harmless and defend GS1 AISBL, GS1 Australia and the GS1 Member Organisations from and against all claims, actions, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including reasonable attorneys' fees and costs), brought by any third party which arise out of, relate to or result from any use by You of the Data, the Verified by GS1 service or the GS1 Registry Platform in breach of these Terms of Use or any applicable laws or regulations.

## **9.0 INTELLECTUAL PROPERTY AND MORAL RIGHTS**

- 9.1 Unless otherwise expressly provided in this document, You agree that all intellectual property and moral rights in and to the Verified by GS1 service are owned by GS1 Australia or its licensors.
- 9.2 You agree that where any claim is made that Your use of the Verified by GS1 service, or any Data or information provided as part of the Verified by GS1 service, involves or constitutes any breach of the intellectual property or moral rights of GS1 or of any third party, You agree to discontinue all such use upon becoming aware of such claim or upon receipt of any direction from GS1 Australia to do so.

## **ATTACHMENT B: Manage My Products service**

The following terms and conditions in this Attachment B are applicable only to those users who elect to use the Manage My Products service within the MyGS1 Portal.

### **1.0 THE MANAGE MY PRODUCTS SERVICE**

- 1.1 This Attachment B sets out the terms and conditions which govern Your access to, and use of, the Manage My Products service as a GS1 Australia subscriber member.
- 1.2 Subject to the other terms and conditions of this Agreement, GS1 Australia will provide such data and information comprising the Manage My Products service as is published by GS1 Australia from time to time.
- 1.3 GS1 Australia will use its reasonable endeavours to ensure that the Manage My Products service performs substantially in accordance with the user documentation published by GS1 Australia from time to time. GS1 Australia does not guarantee that the Manage My Products service will be available, or will so perform, at all times but will use reasonable endeavours to schedule controlled maintenance activities outside of Business Hours.
- 1.4 GS1 Australia may from time to time make modifications to the Manage My Products service, including its design, functionality and appearance and without notice to You. Where this requires a change to the terms of, and annexures to, this Agreement, written notification will be provided.
- 1.5 You acknowledge that GS1 is not a party to any activity or transaction made through, or as a result of, the Manage My Products service and that GS1 has no responsibility:
  - 1.5.1 for the accuracy or completeness of any information placed or published on or accessed through the Manage My Products service by You or by any other party;
  - 1.5.2 for any requirement for You to comply with any Obligation;
  - 1.5.3 for any action or transaction undertaken based on information provided to, obtained from, or accessed through the Manage My Products service;
  - 1.5.4 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 power or authority thereunder; or

- 1.5.5 in respect of any act, matter or thing arising out of any transaction, action or inaction involving or associated with Your use of the Manage My Products service (including any claim or dispute relating to that transaction, action or inaction),
- and You hereby release GS1 from any and all liability arising therefrom.
- 1.6 GS1 may (but is not obliged to), at any time and without any liability to You, amend or remove from the Manage My Products service any Content which it reasonably regards as incorrect, misleading, inappropriate or likely to cause a breach of this Agreement by You or a breach of any applicable law.
- 1.7 GS1 Australia may at any time and for any reason suspend:
- 1.7.1 Your access to or use of the Manage My Products service; or
- 1.7.2 the access to or use of the Manage My Products service by any third party (including any trading partner of You),
- without any liability to You.
- GS1 Australia will use its reasonable endeavours to provide at least 48 hours notice of such suspension where practicable, however GS1 will not be liable to You for any failure to do so.
- 1.8 GS1 Australia may vary the terms and conditions contained in this Agreement, including the schedule of Fees, at any time provided that GS1 Australia provides no less than 30 calendar days notice of the variation by:
- 1.8.1 notice addressed to the contact for the Manage My Products service nominated to GS1 Australia; or
- 1.8.2 posting details of the change on the GS1 Australia website, provided that, if You utilise the Manage My Products service 30 calendar days or more after delivery or posting of any such notice, You will be deemed to have accepted the Agreement as varied.
- 1.9 You may terminate this Agreement by notice in writing to GS1 Australia within 30 calendar days of delivery or posting of notice of any variation in accordance with Clause 1.8 of this Attachment unless You have accepted the Agreement as varied.

- 1.10 GS1 Australia may, at any time, discontinue any product, system, service, directory or catalogue provided through, or associated with, the Manage My Products service. GS1 will use its reasonable endeavours to provide at least 48 hours notice of any such discontinuance where practicable. Should GS1 Australia discontinue the provision of the Manage My Products service in its entirety, GS1 Australia may refund to You any Fees paid in advance for that service on a pro rata basis according to the unexpired period for which the Fees have been paid.
- 1.11 You acknowledge that certain data and information is provided to GS1 on the basis that it will not be disclosed to third parties ("**Non-disclosure Information**") and that data or information provided as part of the Manage My Products service will not include such data or information. GS1 Australia shall not be obliged to advise You where Non-disclosure Information is withheld or excluded from the data or information provided as part of the Manage My Products service.

## 2.0 RESTRICTIONS ON DATA USE

- 2.1 You, as a Data Provider, shall:
- 2.1.1 not present, publish or use Data in a manner that is false or misleading; infringes rights of third parties (including Data Provider or Designee's rights) and/or violates any applicable laws and regulations;
  - 2.1.2 not modify the content of Data in publishing or disseminating such Data (unless You have express written authorisation of Data Provider or Designee to do so);
  - 2.1.3 ensure that any third party (including, but not limited to, solution providers, agents, subsidiaries, and sub-contractors) You make Data available to is also bound by the restrictions as set out in this Clause 2.0.; and
  - 2.1.4 not decompile, reverse-engineer, alter, or in any way tamper (or attempt to do so) with all or part of the of the Manage My Products service or any software or solution comprised therein or connected thereto, nor cause, permit or assist any other person directly or indirectly to do any of the above.

- 2.2 If GS1 Australia, in its sole discretion, suspects or believes that Data is submitted to or published in the Manage My Products service and/or in violation of this agreement (e.g. it violates a third party's intellectual property rights), it may take appropriate remedial action including, without limitation, by temporarily suspending the availability of or definitively removing the said Data from the Manage My Products service.
- 2.3 If Data Provider acts on behalf of (e.g. as an agent, distributor, content provider) a Principal Data Provider (e.g. a manufacturer) to create, maintain, manage and/or deliver its Principal Data Provider's Data, Data Provider must be able to demonstrate its authority to provide Principal Data Provider's Data for the purpose and grant the license set out in this agreement at all times and on GS1 Australia's first request.

### **3.0 FEES AND PAYMENT**

- 3.1 Expressions set out in italics in this Clause 4.0 bear the same meaning as those expressions in the GST Act.
- 3.2 You warrant that all information provided by You to GS1 Australia in respect of its calculation of the Fees payable by You is complete, accurate and up to date. If requested by GS1 Australia, You must provide up to date information for the purposes of the calculation of the Fees payable by You. GS1 Australia may increase the Fees payable by You where any up to date information warrants such increase. GS1 Australia requires that the initial invoice be paid and cleared before delivery of the required Content.
- 3.3 You must pay GS1 Australia the Fees, if applicable to you.
- 3.4 You agree that GS1 Australia 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 Australia may, in its sole discretion, use this Turnover information to assess or re-assess the Fees payable by You.
- 3.5 GS1 Australia will issue invoices for the Fees to You from time to time. You must pay those invoices within 30 days of the date of invoice. Payment may be made by cheque, electronic funds transfer to GS1 Australia'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.

- 3.6 If You fail to pay the Fees on the due date for payment:
- 3.6.1 GS1 Australia may suspend or terminate Your access to, and use of, the Manage My Products service in accordance with Clause 1.7 or Clause 5.0 of this Attachment; and
  - 3.6.2 for any overdue amount GS1 Australia 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.
- 3.7 To the extent that a party makes a *taxable supply* in connection with this Agreement, except where express provision is made to the contrary, and subject to this Clause 4.0, the consideration payable by a party under this Agreement represents the value of the *taxable supply* for which payment is to be made.
- 3.8 Subject to the delivery of a tax invoice, if a party makes a taxable supply in connection with this Agreement for a consideration which, under the preceding Clause 3.7 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*.
- 3.9 A party's right to payment under the preceding Clause 3.8 is subject to a valid tax invoice being delivered to the party liable to pay for the *taxable supply*.
- 3.10 For clarity, unless expressly stated to the contrary, the amount of the Fees payable by You are exclusive of *GST* and You must pay *GST* in addition to the Fees.

## 4.0 SUSPENSION AND TERMINATION

- 4.1 Agreement to use the Manage My Products service commences on the first to occur of:
- 4.1.1 You accepting the terms of the Agreement during access to the Manage My Products service website; or
  - 4.1.2 You accessing or using the Manage My Products service, and continues, subject to payment by You of any applicable Fees until June 30 of each year of use or part thereof until either party chooses to terminate this Agreement upon the next expiration or earlier by sending a written notice to the other party.
- 4.2 GS1 Australia may suspend Your access to, and use of, the Manage My Products service with immediate effect if You (or an authorised user of Yours) commits a material breach of any provision of these Terms of Use and until such breach is cured, or in order to prevent imminent damage to a third party. If the breach remains uncured for fifteen (15)] consecutive days, GS1 Australia shall have the right to terminate Your access to and use of the Manage My Products service with immediate effect.
- 4.3 Either party may terminate this Agreement at any time, without cause, by giving no less than 30 days notice in writing to the other party.
- 4.4 Termination of this Agreement in accordance with this Clause 45.0 or any other provision of this Agreement or otherwise in accordance with law shall not affect any accrued right or remedy of either party.
- 4.5 Notwithstanding termination of Your GS1 Australia Subscription Membership and Licence Agreement, GS1 may retain the Data provided by Data Provider in the Manage My Products service. By default such Data will be shown but marked as no longer updated. Data Provider may however request that GS1 no longer shows the data.
- 4.6 The provisions of Clauses 3.6, 4.0, 5.0, 6.0, 7.0 and 8.0 of this Attachment shall survive termination of this Agreement.

## 5.0 DISCLAIMERS AND WARRANTIES

- 5.1 Data Provider understands and agrees that its Data (including any weblinks) is shared by GS1 Australia with Data Recipients (which may include consumers) through both local and global GS1 services such as but not limited to the GS1 Registry Platform.
- 5.2 Data Provider understands that Data will be validated against and shall comply with the GS1 GSMP approved data validation rules and any other technical specifications that may be implemented and/or as amended from time to time. Data Provider shall be responsible for the quality of the data.
- 5.3 Data Provider represents and warrants that its Data:
  - i. originates from, is authorised or approved (validated) by the Data Provider;
  - ii. does not violate any third-party rights, including privacy rights, copyrights, trademarks, patents or other intellectual property rights of any third party, or violates any applicable laws or regulations; and
  - iii. does not contain any virus, Trojans, worms, logic bombs or any other materials which are malicious or technologically harmful.
- 5.4 GS1 Australia does not represent or warrant that the Manage My Products service will be secure or free from error or interruption.
- 5.5 GS1 Australia does not represent or warrant that the Manage My Products service and the Data are suitable for any regulatory purpose, including without limitation any regulatory reporting requirements in the healthcare sector. To the fullest extent permitted by law, GS1 makes no representations or warranties, express, implied or otherwise, regarding any matter, including the Data, and the Manage My Products service. Any such representations or warranties are expressly disclaimed.

## **6.0 LIMITATION OF LIABILITY**

- 6.1 To the fullest extent permitted by law GS1 AISBL, GS1 Australia, as well as any GS1 Member Organisation shall not be liable for any damages whatsoever, including but not limited to actual, direct, consequential, indirect, incidental or punitive damages, whether such liability is based on breach of contract, breach of warranty or otherwise, even if advised of the possibility of such damages, that may arise from Your use of the Manage My Products service or the Data or for any failure or refusal by GS1 Australia to grant You access to the Manage My Products service or the Data, or any harm, effects or damages suffered by You as a result thereof.
- 6.2 To the fullest extent permitted by law, Data Provider shall be liable for the Data it shares in the Manage My Products service. To the fullest extent permitted by law, neither GS1 Australia, GS1 AISBL nor any other GS1 Member Organisation shall be liable to a third party for any harm, effects or damages whatsoever, including but not limited to actual, direct, consequential, indirect, incidental or punitive damages, even if advised of the possibility of such damages, arising out of or in relation to the third party's use of Data Provider's Data.

## **7.0 INDEMNITY**

- 7.1 Data Provider shall fully indemnify, hold harmless and defend GS1 Australia, GS1 AISBL, as well as any GS1 Member Organisation from and against all claims, actions, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including reasonable attorneys' fees and costs), brought by any consumer, government agency or other third party which arise out of, relate to or result from:
- i. any allegation that any use, publication or distribution of Data Provider Data infringes any patent, copyright, trademark, data base right or other intellectual property right;
  - ii. any breach or alleged breach of [this agreement] or any applicable laws or regulations by Data Provider and/or its Authorised Users; and/or
  - iii. any allegation that any Data Provider Data has been made available by Data Provider in breach of the Data Provider warranties given herein.

## **8.0 INTELLECTUAL PROPERTY AND MORAL RIGHTS**

- 8.1 Unless otherwise expressly provided in this document, You agree that all intellectual property and moral rights in and to the Manage My Products service are owned by GS1 Australia or its licensors.
- 8.2 You agree that where any claim is made that Your use of the Manage My Products service, or any Data or information provided as part of the Manage My Products service, involves or constitutes any breach of the intellectual property or moral rights of GS1 or of any third party, You agree to discontinue all such use upon becoming aware of such claim or upon receipt of any direction from GS1 Australia to do so.