

# Terms & Conditions of GS1 South Africa Membership

**Note:** This Subscription Membership & Licence Agreement sets out the terms and conditions relating to Your use of GS1 Identification (ID) Keys and Barcode Symbols and other Authorised GS1 Data Carriers. You acknowledge that You have read, understood, and agree to be legally bound by them. This Subscription Membership & Licence Agreement does not take effect until Your Licence Application has been received and accepted by GS1 South Africa and until GS1 South Africa has notified You of such acceptance

## 1. Application

These General Terms and Conditions are applicable to all - GS1 South Africa members

## 2. GS1 Membership and Grant of Licence

- a. You are hereby accepted as, and Your Licence Application constitutes an application to be, a subscriber member of GS1 South Africa
- b. GS1 South Africa grants You an exclusive, non-transferable, non-sublicenseable, worldwide, revocable license to the GS1 Identification Keys allocated to You subject to these General Terms and Conditions and solely for Authorised Uses

## 3. Each Member must:

### 3.1. In general:

- a. Comply with all applicable laws and regulations (including but not limited to the Consumer Protection Act).
- b. promptly complies with all reasonable directions given by GS1 South Africa.
- c. Comply with all Instructions for use of the GS1 system;
- d. ensure that all personnel utilising the GS1 system (including all authorised personnel) are adequately trained in the use of the GS1 system and are familiar with, and comply with, all instructions for use and these Terms and Conditions; provide content in such form (including electronic format) and comply with any standards for the formatting or provision of content, as is required by GS1 South Africa at any required period.
- e. Use the GS1 system and the GS1 Identification Keys strictly in accordance with these Terms and Conditions and for the purposes contemplated by these Terms and Conditions;
- f. Take reasonable precautions to protect the security, privacy and confidentiality of the GS1 system of standards whilst in the use of your business;

## 4. Term

- a. The Licence and these terms and conditions come into effect for You on the date on which GS1 South Africa notifies You of its acceptance of Your Licence Application and continues for the duration of the current fiscal year (**01 March 2022 to 28 February 2023**) or until terminated. It will be renewed annually subject to Your compliance with this Subscription Membership & Licence Agreement including payment of the annual Fee.

## 5. Use of Intellectual Property

- a. Members must recognise title in respect of GS1 South Africa; all its Intellectual Property and shall not at any time deal, sell, distribute, or copy any of GS1 South Africa's Intellectual Property or related Intellectual Property.
- b. Members are entitled to use Intellectual Property and the related specific content thereon provided they are in good standing with their membership accounts.
- c. Members shall not misuse GS1 South Africa's supplied information and shall recognise GS1 South Africa's title to Intellectual Property and all related Intellectual Property and shall not at any time do or suffer to be done any act or anything which may in any way impair their rights in any related Intellectual Property.
- d. Members shall not at any time directly or indirectly challenge, call into question or raise any questions concerning the validity of information supplied by GS1 South Africa or its related Intellectual Property.

## 6. Intellectual Property Infringement

- a. If it comes to a Members' notice that there is an infringement or suspected infringement of the Intellectual Property, the Member will promptly notify GS1 South Africa in writing GS1 South Africa will have control over any steps GS1 South Africa may wish to take in relation to the suspected infringement and all such steps shall be at GS1 South Africa's cost.
- b. Members will provide such information and assistance in respect of suspected infringement as GS1 South Africa reasonably requests.

## 7. GS1 South Africa Data privacy, Trademarks for Marketing /Promotion

- a. GS1 South Africa recognises that in the marketing and promotion of Products, Members may also wish to use the Trademarks. Members will only have the right to use the Trademarks subject to additional Terms and Conditions.
- b. Personal data provided to us will be used to communicate with you, to manage your access to certain services or create accounts on our website, to provide you with marketing materials or invite you to trainings and other events. Company data provided by you as well as product data (including GTINs) may be shared by GS1 South Africa in its product catalogues and services to identify that Your company (or if you are a sole trader You) are the license-holder for a GS1 Identification Key.
- c. A member must seek permission from GS1 South Africa by means of a written letter seeking permission to make use of any Trademarks in marketing and/or promotional materials.
- d. Members may only use the Trademarks if GS1 South Africa have given prior written approval (which approval may be granted or withheld in GS1 South Africa's sole discretion). Members will submit samples of the proposed marketing and promotional materials to GS1 South Africa for approval at least 15 Business Days prior to the intended date of use. GS1 South Africa may waive these approval requirements in any particular instance should they choose to do so.
- e. If Members are permitted to use the Trademarks for marketing and promotional materials, Members must ensure that the Trademarks are used strictly in accordance with any directions and/or conditions prescribed by GS1 South Africa. Furthermore, the use thereof shall remain subject to these Terms and Conditions.

## 8. Privacy, Processing of Information and Security

- a. A Member's privacy is very important to GS1 South Africa and therefore we will use reasonable efforts to ensure that any information, including personal information, provided by the Member, or which is collected from the Member, is stored in a secure manner.
- b. Read our privacy policy on [www.gs1za.org](http://www.gs1za.org).
- c. The Member agrees to give (where applicable) honest, accurate and current information about the Member to GS1 South Africa and to maintain and update such information.
- d. The information collected may include the following: information collected from "cookies" (as more fully explained below); information collected when members by submitting any information to GS1 South Africa in any form and/or requesting licencship of the GS1 System the Member further acknowledges that such conduct constitutes an unconditional, specific and voluntary consent to the processing of such information by GS1 South Africa under any applicable law.
- e. Which consent shall, in the absence of any reasonable written objection received from the Member, be indefinite and/or for the period required in terms of any applicable law.
- f. Unless a Member has consented GS1 South Africa do not sell, exchange, transfer, rent or otherwise make available any personal information about the Member (such as name, address, email address, telephone or fax number) to

third parties, but do however reserve the right to disclose aggregated information regarding our Members and usage of the Website (such as traffic patterns) to, amongst others, advertisers and suppliers and the Member indemnifies GS1 South Africa from any unintentional disclosures of such information to unauthorized persons.

- g. GS1 South Africa may disclose personal information in response to a specific request by a law enforcement agency, subpoena, court order, or as otherwise required by law.
- h. GS1 South Africa uses industry standard secure socket layer encryption technology to protect Members personal or business information details as the data travels over the Internet. However, there is no 100% secure transmission of data on the Internet given the current state of Internet technology. Therefore, GS1 South Africa cannot guarantee the absolute security of any information transmitted and each Member hereby indemnifies the GS1 South Africa in respect of all losses suffered by such Member because of a security breach when such information is transmitted.
- i. You acknowledge that, whilst individuals may unsubscribe from certain communications, one (1) individual must be nominated at all times to receive communications from GS1 in relation to Your subscription membership (including, without limitation, GS1's newsletter to subscriber members).
- j. To the extent necessary to perform Your obligations under this Subscription Membership & Licence Agreement and on a 'need-to-know' basis only; if GS1 South Africa's authorises it in writing; or as required by law.
- k. You agree that South Africa's may make any inquiries it deems necessary to investigate Your creditworthiness including undertaking enquiries with financial institutions, credit reporting agencies, any personal credit and/or consumer credit information providers (Sources). You authorise the Sources to disclose any information concerning Your creditworthiness in its possession to GS1 South Africa. You agree that GS1 may disclose any information in its possession concerning Your credit worthiness (to the Sources (including, without limitation, information as to whether You are in default of payment of any Fees).
- l. You agree to indemnify GS1 South Africa against all claims, suits, losses, damages or costs suffered or incurred by GS1 South Africa.

## 9. GS1 Registry Platform & Verified by GS1

- a. As part of its membership, GS1 South Africa offers to the GS1 Members to share a limited set of product data about the products identified by their GTINs through "Verified by GS1", a global data repository that will allow trading partners to authenticate your barcode numbers and will enhance the visibility of products around the world.
- b. For this section, "Data" means the GTIN and a limited set of six data attributes (brand, label description, medium resolution image, target market, company name, product classification) made available by the Member to GS1 South Africa in the context of Verified by GS1 Services.
- c. Member understands and agrees that:
  - i. the Data is shared by GS1 South Africa with Verified by GS1, a global service operated by GS1 AISBL (GS1 Global Office) and provided locally by GS1 South Africa;
  - ii. the Data is made available by Member to Verified by GS1 under the terms of the "GS1 Verified by GS1 Terms of Uses" (available on the GS1 International Website), as amended from time to time, which are binding on Member.
  - iii. Member understands that the use of the Data by data recipients accessing Verified by GS1 will be subject to the "GS1 Cloud Terms of Use" (available on the GS1 International

- Website), as amended from time to time.
- d. **Consent:** Data Provider understands and agrees that its Data is shared by GS1 South Africa with data recipients through both local and global GS1 services.
  - e. **Warranties:** 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.
  - f. **Warranty Disclaimer:** The company acknowledges and agrees that GS1 makes no representations or warranties, express or implied, regarding any matter, and any such representation or warranty is expressly disclaimed, including but not limited to the merchantability or fitness for a particular purpose or use of the GS1 System, the GCP and the GS1 Identification Keys.
  - g. **Data Quality:** Data Provider understands that Data will be validated against and shall comply with the validation rules [set out in the *GS1 General Specifications, available via <https://www.gs1.org/barcodes-epcrid-ids/gs1-general-specifications>*, the *Global Data Dictionary*] 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.
  - h. **Remedial Action:** If GS1 South Africa, in its sole discretion, suspects or believes that Data submitted to or published in the GS1 Activate, GDSN and Trusted Source systems is 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 GS1 Activate, GDSN and Trusted Source systems).
  - i. **Effect of Termination:** Notwithstanding termination of this [GS1 South Africa's] Licence Agreement, GS1 may retain the data provided by Data Provider. [By default, such data will be shown but marked as no longer updated. A Data Provider may however request that GS1 no longer shows the data, this request must be made and submitted to GS1 South Africa in writing.
  - j. **Limitation of Liability:** Data Provider shall be liable for the data it shares in the GS1 Activate, GDSN and Trusted Source systems to the fullest extent permitted by law, neither GS1 South Africa, 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.
  - k. **Indemnity:** Data Provider shall fully indemnify, hold harmless and defend GS1 South Africa, 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 Data Provider in breach of the Data Provider warranties given herein.
  - l. **Designees:** 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 South Africa's first request.
- m. **Restrictions on Data Use:** Data Recipient shall not:
    - a) 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;
    - b) modify the content of Data in publishing or disseminating such Data (unless it has express written authorisation of Data Provider or Designee to do so);
    - c) publish or use Data in a manner that implies any endorsement by Data Provider, Designee or GS1 (unless it has express written authorisation of the Data Provider, the Designee or GS1 to do so);
    - d) 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, Data Recipient shall ensure that any third party (including, but not limited to, solution providers, agents, subsidiaries, and sub-contractors) it makes Data available to is also bound by the restrictions as set out in section 9 of this agreement. For the purpose of this section, "Value-Added Product" means a product or service offered by Data Recipient to its 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 Data Recipient 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
    - e) decompile, reverse-engineer, alter, or in any way tamper (or attempt to do so) with all or part of the of the GS1 Activate, GDSN and Trusted Source systems 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.
  - n. **Inactive License:** In the event that Data Recipient encounters a GTIN that relates to an Inactive License, (i) Data Recipient may assist GS1 by notifying GS1 of the said GTIN; and (ii) if Data Recipient is a sales organisation, GS1 recommends that it also notify its suppliers of such Inactive Licence for the said supplier to notify GS1 South Africa. 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.
  - o. **Suspension & Termination:** GS1 may suspend a Data Recipient's access to and use of the Verified by GS1 solution with immediate effect if Data Recipient (or an Authorised User of Data Recipient) 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 [e.g., fifteen (15)] consecutive days, GS1 shall have the right to terminate Data Recipient's access to and use of the Verified by GS1 solution with immediate effect."
  - p. **Disclaimer of Warranties:** The Verified by GS1 solution displays Data that is not owned nor controlled by GS1 AISBL or GS1 South Africa, therefore the Data is made available on an 'as is' and 'as available' basis. Verifications made by the Verified by GS1 solution are limited to automated logical checks and do not include physical or legal validations of the accuracy of the Data. Neither GS1 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 solution is at Data Recipient's sole risk. GS1 does not represent or warrant that the Verified by GS1 solution will be secure or free from error or interruption. Neither GS1 AISBL nor GS1 South Africa represent or warrant that the Verified by GS1 solution 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 solution. Any such representations or warranties are expressly disclaimed.
- q. **Limitation of Liability:** To the fullest extent permitted by law, GS1 AISBL, GS1 South Africa, GS1 Member Organisations, Data Provider and/or Designee 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 Data Recipient's use of the Verified by GS1 solution or the Data or for any failure or refusal by GS1 to grant Data Recipient access to the Verified by GS1 solution or the Data, or any harm, effects or damages suffered by Data Recipient as a result thereof.
  - r. **Indemnity:** Data Recipient shall fully indemnify, hold harmless and defend GS1 AISBL, GS1 South Africa 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 Data Recipient of the Data, the Verified by GS1 solution or the GS1 Registry Platform in breach of these Terms of Use or any applicable laws or regulations.
- ## 10. Fees, Payments, Refunds and Interest Payments
- a. You must pay the annual licence fee to GS1 South Africa annually in advance within 30 days of the date of GS1 South Africa 's invoice being received.
  - b. GS1 South Africa may, from time to time, increase the fees by written notice. Publication of the increased Fee on GS1 South Africa's website shall constitute written notice of such increase. Your continued use of the GS1 system after such notice shall constitute acceptance of such increase.
  - c. Where Items bearing GS1 Identification Keys issued and/or registered to You are already in the supply chain at the time this Subscription Membership & Licence Agreement is terminated, notwithstanding such termination, you will remain liable for a fee equivalent to the then current Fee on a pro-rata basis for the period that those Items continue to be in the supply chain beyond any annual period for which a Fee has already been paid. You must pay such pro-rata fee within 30 days of the date of GS1 South Africa invoice in respect of such fee.
  - d. If You are overdue in payment of any amount, GS1 South Africa may charge an administration fee for any overdue amount (exclusive of VAT) plus all costs and expenses incurred by its collections agents in respect of anything instituted or being considered against You as a liquidated sum (which You hereby acknowledge is a genuine pre-estimate of the costs of GS1 South Africa in collecting such amount), subject to a court order being granted to this effect.
  - e. GS1 South Africa reserves the right to charge a fee in relation to bank processing charges imposed.
  - f. Payments made by Members utilising the payment facility on the Website are subject to the following terms and conditions: payments are to be made within 30 days from the date of invoice, unless otherwise agreed to in writing by GS1 South Africa; payments will be allocated to the relevant account as per the reference provided; all amounts quoted by GS1 South Africa, and the Initiatives will be in South African Rand (ZAR) and will be exclusive of VAT; A Member's payment will be reconciled/allocated to its account within a period of 2 Business Days after the date on which the payment has been received;
  - g. GS1 South Africa does not accept any liability for a Member's payment that has

- been rejected/declined or not been allocated to the correct account. It is a Member's responsibility to ensure that it quotes the correct account and reference numbers; its personal details are correct; and any errors in this regard are rectified timeously and that the correct payment ensues.
- i. GS1 South Africa has no duty or obligation to inform a Member that a payment has been rejected/declined.
- 11. Refunds**
- a. In circumstances where a Member is entitled to any refund from GS1 South Africa, the following terms and conditions shall apply: a refund request must be made by a Member within 30 Business Days after the date on which the payment was made;
  - b. GS1 South Africa has the sole discretion in determining whether to approve a refund request; no refund will be made to a Member if that Member is in arrears; and
  - c. All refunds will be made on such terms and conditions as GS1 South Africa may prescribe.
- 12. Default Interest and Recovery of Costs and Expenses**
- a. Any amount due by a Member to GS1 South Africa shall, unless otherwise agreed, be paid within 60 days of the date of the invoice.
  - b. Any invoice not paid within 60 days from the date of issue shall attract interest at a rate of 6% from the date of the invoice to the date of payment (both inclusive).
  - c. GS1 South Africa reserve the right to claim from any Member, full reimbursement for any costs and expenses that GS1 South Africa has incurred in the collection of any overdue invoices; and/or institute legal proceedings against any Member for payment of any overdue invoices (including, but not limited to, the right to claim any damages because of Your conduct, your use of the GS1 Identification Keys, Electronic Product Codes or Authorised Data Carriers, or any breach of these terms and conditions (including, without limitation, any representation or warranty) by You (except to the extent caused by GS1 South Africa's negligence or wilful misconduct), Subject to an arbitration or subject to a court order being granted to this effect.
- Confidentiality, Assignment & Indemnity**
- a. Members will always keep confidential and secure, and not exploit or otherwise misuse, any information of GS1 South Africa which is identified as or would reasonably be expected to be, proprietary, confidential, or commercially sensitive. Members will only disclose that information to the extent: necessary to perform their obligations on a "need-to-know" basis;
  - b. GS1 South Africa authorises it in writing; or as required by law.
- Assignment and Sublicences**
- Members shall not assign, transfer or sub-license their rights and obligations under these Terms and Conditions.
- Limitation of Liability**
- e. To the maximum extent permitted by law: all terms, conditions and warranties which would otherwise be implied into this contract are excluded; and where any implied term may not be excluded, GS1 South Africa's limits the liability for breach of that term to the resupply or payment of the cost of resupply of the relevant services.
  - f. To the full extent permitted by law, GS1 South Africa excludes all liability (whether arising in negligence, breach of contract or breach of any law) in connection with this Subscription Membership & Licence Agreement for any indirect or consequential loss or damage, including lost profits and revenue.
  - g. To the full extent permitted by law, GS1 South Africa's total liability to You for loss or damage of any kind arising out of this Subscription Membership & Licence Agreement which is not excluded by clause is limited, for all claims, to the total Fee paid during the 12-month period prior to the relevant liability accruing.
- h. Indemnity**
- Without prejudice to any rights or remedies available to GS1 South Africa arising from any of the provisions of these Terms and Conditions, the Member agrees to indemnify GS1 South Africa and keep it indemnified against all Losses which GS1 South Africa may suffer or incur arising out of or in connection with a breach of these Terms and Conditions or any of the Member's obligations herein contained;
- i. Any claim against GS1 South Africa by a third party relating to, or arising out of, a Member's use of the Services;
  - ii. Any access to, or use of, the Services by any employee, contractor, agent or associate of a Member;
  - iii. The use by a Member of the Website or any payments made via the Website;
  - iv. Any claim by a third party that any content//> infringes the intellectual property rights of that third party;
  - v. Any failure by a Member to comply with any instructions for use; and
  - vi. 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 the Member.
- 13. Liability**
- a. To the maximum extent permitted by law: all terms, conditions and warranties which would otherwise be implied in these Terms and Conditions are excluded; and
  - b. Where any implied term may not be excluded GS1 South Africa limits its liability for any breach of that term)
- 14. General Disclaimer**
- a. These Terms and Conditions (and any reference to it includes any documents annexed to it) or which may be made available to any person as a result of them being a Member of GS1 South Africa is distributed for the use by the Member only.
  - b. These Terms and Conditions are not comprehensive, nor do they cover all items that may be material to the Member.
  - c. These Terms and Conditions are strictly confidential. They may not be copied, disclosed or distributed to any other person, without the prior written approval of GS1 South Africa unless such person is advising the recipient in regard to becoming a Member of the GS1 South Africa, and in either case only subject to such person acknowledging expressly in writing in favour of the GS1 South Africa that it is aware of and agrees to terms hereof.
- 15. Competition Law Disclaimer**
- a. GS1 South Africa and the Members purpose is to enhance the ability of all industry members to compete more efficiently and effectively and to promote partnership amongst members across the consumer goods industry in resolving shared, non-competitive matters in the most effective and efficient manner to the ultimate benefit of the consumer.
  - b. GS1 South Africa and the Members recognise that all South African consumers have the right to the benefits of free and open competition.
- 16. Global Company Prefix Splits, Misuse & Consequences**
- a. Should a member enquire to split their range to a smaller/cheaper one, GS1 will require a full set of attributes that will allow for the conducting of a full analysis of a members' GTIN usage, and thereafter, allowable options will be shared with the enquiring member on the way forward for their prefix split request.
  - b. If GS1 South Africa member has had one approved prefix split on a GS1 Global Company Prefix range they will not be considered for or allowed an additional split on that range.
- c. Should a member furnish their prefix split request and proof of usage of GTINS and approval for a prefix split is granted by GS1 South Africa, the member must not exceed the use of the agreed upon GTIN/s or prefix range.
  - d. Should a member be found to have erroneously or deliberately exceeded the original agreed upon split range of GTINS and/or has used beyond their allocated range, GS1 South Africa reserves the right to impose a penalty fee of R10 000 excluding VAT as well as GS1 South Africa, re-invoicing and recharging the member strictly in accordance with the established usage which is found to be against the original split agreement between GS1 South Africa and the member in question.
  - e. A request by the GS1 Member to split a prefix range is a declaration by that member that they need only the agreed upon amount and nothing more. Once a member signs off on a split, this is deemed a declaration agreement that what they are paying for is what they need and will abide to use from that split range going forward. The range in question will not be expanded after it has already been split.
  - f. Should it be found that the GS1 Global Company Prefix, which has been split, has been used up completely by the member, the member is then required to register a brand-new prefix and not expect to be allowed to reopen/unlock any previously reduced ranges as GS1 South Africa will not allow this.
  - g. If a member erroneously or deliberately exceeds the usage agreed upon during a split, they will be accountable for a penalty fee as stated above in clause 10e as well as re-invoiced and rebilled accordingly.
  - h. Members who do not abide by the terms and conditions applicable to Prefix splits will face the necessary legal action.
  - i. GS1 South Africa reserves the right to terminate any member who is found to be in breach of these terms and conditions.
- 17. Dispute Resolution**
- a. Should any dispute or difference arise between GS1 South Africa and a Member relating to or arising out of these Terms and Conditions, including the implementation, execution, interpretation, rectification, termination or cancellation, then the dispute or difference will be referred for arbitration to AFSA in terms of AFSA's arbitration rules for the time being in force
  - b. A Member agrees that the decision of the arbitrator in the arbitration proceedings:
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    1. Shall be binding;
    2. Will be carried into effect; and
    3. Will be made an order of any court in the applicable jurisdiction.
    4. Notwithstanding the foregoing, nothing herein shall be construed as precluding any party from applying to court for a temporary interdict or other relief of an urgent nature, pending the decision of the award of the arbitrator, including and appeal.
- 18. VAT and Other Taxes**
- a. All amounts payable under this Subscription Membership & Licence Agreement are exclusive of VAT.
  - b. If a party making a supply under this Subscription Membership & Licence Agreement (the 'Supplier') is liable to pay VAT on that supply; and the fee or charge stated in this Subscription Membership & Licence Agreement for that supply does not expressly
  - c. Include VAT, then the party receiving the supply must pay the Supplier an additional amount equal to the consideration payable for the supply multiplied by the prevailing VAT rate.
  - d. GS1 South Africa VAT will issue a tax invoice to You for the Fee.
  - e. You must pay all other taxes imposed in South Africa in respect of this Subscription Membership & Licence Agreement.
- 19. Your Obligations**

- a. You must: not at any time during the term of this Subscription Membership & Licence Agreement, or after its termination, do or omit to do anything whereby GS1 South Africa's goodwill, trade or business may be prejudicially affected or brought into disrepute;
- b. You must comply with the standards set out in the GS1 South Africa's manuals/guidelines and such other directions in relation to use of the GS1 Identification Keys, Electronic Product Codes and Authorised GS1 Data Carriers as GS1 South Africa's may give from time to time.
- c. To assist in authentication of GS1 Identification Keys and Electronic Product Codes still in circulation, you must, on request, provide to GS1 South Africa details of all GS1 Identification Keys and Electronic Product Codes issued and/or registered to You that have been applied by You, or for or on behalf of You, in the previous twelve months; and all GS1 Identification Keys, Electronic Product Codes (whether or not issued and/or registered to You) and Authorised GS1 Data Carriers that You have processed in the previous twelve months.
- d. You represent and warrant to GS1 South Africa that Your Licence Application is true, accurate and complete, in every aspect.
- 20. Use of GS1 Identification Keys, Electronic Product Codes and Authorised GS1 Data Carriers and other Intellectual Property**
- a. You may use only GS1 Identification Keys and Electronic Product Codes (if applicable) for the Authorised Uses; must not apply any GS1 Identification Keys or Electronic Product Codes issued and/or registered by GS1 South Africa to any other person (Issued Company) in respect of an Item or thing to identify, track or trace any Item or thing other than that Issued Company's Item or thing; must not use any numbers that copy (in whole or in part) any numbers comprised in the GS1 system or that are similar in appearance so as to confuse, or to be likely to confuse, persons that the numbers are associated with in any way the GS1 system; must only apply the GS1 Identification Keys or Electronic Product Codes (if applicable) issued and/or registered to You in respect of Your Items; must not alter any GS1 Identification Keys or Electronic Product Codes (if applicable) in any way; recognise GS1 South Africa's title to the GS1 Identification Keys, Electronic Product Codes, Authorised Data Carriers and the GS1 system and related intellectual property and must not at any time do, assist any other person to do, or allow to be done, any act or thing which may in any way invalidate, challenge, contest or impair GS1 South Africa's rights in regards to GS1 Identification Keys, Electronic Product Codes, Authorised Data Carriers and the GS1 system or related intellectual property; must not permit or procure anyone else to apply the GS1 Identification Keys or Electronic Product Codes (if applicable) issued and/or registered to You to anything (other than to Items being trade items manufactured by or for You under contract); must ensure that the Products bear all proprietary notices that GS1 South Africa may require from time to time.
- b. A member company or non-member company is prohibited from:
- Using any number licensed by any GS1 member organisation such as GS1 South Africa.
  - Using numbers that are copied or are like the GS1 system
  - Altering the numbers in any way
  - Challenging GS1's ownership of the GS1 numbers.
- d. Numbers are for the exclusive use of the member company.
- e. Numbers cannot be transferred/sold to third parties.
- 21. GS1 Identification Keys Membership Subscription and Licence**
- a. Must not sell, transfer or assign (or attempt to sell, transfer or assign) the GS1 Identification Keys or Electronic Product Codes (if applicable) issued and/or registered to You by GS1 South Africa.
- 22. Acquisitions & Mergers, Partial Purchases, Splits or Spin-offs of a Member Company.**
- a. In the event of any member undergoing any acquisitions, mergers, sells off or spin offs of their company or registered affiliates, requests concerning the Global Company prefixes must be made to GS1 South Africa in writing.
- b. GS1 South Africa requires written proof as well as the applicable authorised signatories to provide the full information in writing before any changes or alterations of membership information can be applied to GS1 South Africa's databases.
- c. No changes to Global Company Prefixes registered members will be made without members following GS1 rules for global company prefix registration.
- d. Further to this, the GTIN Management standard is to be followed in detail to deal with what is/is not permissible regarding GTIN management applicable to mergers, acquisitions, sell offs and splits or spin offs,
- 23. Termination**
- a. If You, the licensee, elect to terminate this Agreement for any reason, a request for termination must be advised on a standard GS1 South Africa's Termination of Subscription Membership & Service Notification Form, or copy thereof, signed by an authorised representative of your organisation.
- b. Non- payment of subscription membership fees is not recognised as a proper request to terminate.
- c. In its discretion, GS1 South Africa's may terminate this Subscription Membership & Licence Agreement immediately by giving notice.
- d. If You fail to pay any Fee by its due date; You commit a breach of Your obligations under this Subscription Membership & Licence Agreement; You are declared bankrupt, go into liquidation, have a receiver or other controller appointed, or (being a company) are wound up otherwise than for a reconstruction; or the GS1 Primary Prefix Licence is terminated or GS1 South Africa otherwise ceases to hold the necessary licence rights to issue GS1 Identification Keys or Electronic Product Codes in South Africa.
- e. In other circumstances GS1 South Africa may terminate this Subscription Membership & Licence Agreement by giving six months written notice to any member.
- f. You may terminate this Subscription Membership & Licence Agreement by giving one month's written notice to and/or GS1 South Africa on a standard GS1 South Africa's Termination of Subscription Membership & Service Notification Form, or copy thereof, signed by an authorised representative of your organisation.
- g. Termination of this Subscription Membership & Licence Agreement does not relieve either GS1 South Africa's or You from liability arising from any prior breach of the terms of this
- 24. Subscription Membership & Licence Agreement.**
- a. For the avoidance of doubt, termination does not relieve you from your obligations regarding payment of any outstanding fees for this subscription membership and licence.
- 25. Consequences of Termination**
- a. On termination of this Subscription Membership & Licence Agreement, your rights under this Licence Agreement terminate and You must: immediately cease applying the GS1 Identification Keys, Electronic Product Codes (if applicable) and Authorised Data Carriers to any of Your Items from the termination date; and within 7 days, pay to GS1 South Africa all amounts due to GS1 South Africa under this Subscription Membership & Licence Agreement at the termination date.
- b. You are not entitled to any rebate or refund of the Fee or any other fees or charges paid under this Subscription Membership & Licence Agreement, unless this Agreement expressly states otherwise. The termination or breach of this Agreement does not affect those provisions.
- c. On termination or breach of this Agreement for any reason (including, without limit, the non- payment of fees payable hereunder) You expressly authorise and allow GS1 South Africa's to make reasonable enquiries with third parties (including, without limit, retailers) to ascertain whether You are acting in breach of this Agreement and any clause herein.
- 26. Regulatory Requirements for Medical Products**
- 27.1. You understand that GS1 South Africa is a GS1 Member Organisation of GS1 International which has been accredited by certain regulatory agencies as an issuer of UDIs and in that capacity both are subject to certain regulatory obligation such as, but not limited to, reporting of companies that use the GS1 Standards for unique identification of medical devices.
- 27.2. You understand that when You use a GS1 ID Key to identify an Item that may be characterised as a medical device under the laws of the country where such product is marketed ('Medical Device'), the following rules shall apply
- a. upon making Your Licence Application, You must inform GS1 South Africa if a GS1 ID Key will be used to identify a Medical Device and in which country the related product will be marketed;
- b. You are, and shall at all times remain, responsible for the information about the Medical Device provided by You to GS1 South Africa and for compliance with any applicable regulatory obligations and shall ensure any information provided to GS1 South Africa is accurate and up to date at all times;
- c. GS1 South Africa may monitor correct implementation of the GS1 Standards by You;
- d. In the event GS1 South Africa identifies a UDI Deficiency, GS1 South Africa may inform You in writing (addressed to Your usual contact person) of such UDI Deficiency, suggesting a way to correct the UDI Deficiency and requiring You to correct such UDI Deficiency within 90 calendar days from the date of the notification (the 'UDI Correction Period');
- e. GS1 South Africa may monitor whether You have corrected a UDI Deficiency within the UDI Correction Period. Failing such correction, at the latest eight (8) calendar days after expiry of the UDI Correction Period, GS1 South Africa may contact You again and seek to amicably resolve the UDI Deficiency;
- f. If the UDI Deficiency is not corrected within an additional period of 90 days from the expiry of the UDI Correction Period and pertains to a repeated and/or deliberate misuse of the GS1 Standards related to UDI, GS1 International, working with GS1 South Africa, may inform the relevant regulator and modify the use (including suspension and revocation) of the GS1 ID Key for UDI implementation in the relevant jurisdiction, as a follow-up action taken in cooperation with the relevant regulator; and
- g. You acknowledge and agree that GS1 South Africa must, in the context of its regulatory obligations, share certain information with the relevant regulators either directly or via GS1 International, including without limitation the fact that You use GS1 ID Keys to identify Medical

Devices marketed in the regulator's country, the GS1 ID Key, the name of Your company, as well as any identified and uncorrected UDI Deficiencies. You understand that neither GS1 South Africa nor GS1 International may be held liable for any direct or indirect consequences, losses or damages resulting from GS1 South Africa and/or GS1 International providing such information to a regulator.

## 27. Training

- a. You are required to attend an initial basic training session to familiarise Yourself with the GS1 system. If the initial basic training is attended within 3 months of the date the subscription membership was granted then it will be provided free of charge.
- b. You may elect to attend other training courses and sessions attendance at which may attract fees and charges.

## 28. Membership Subscription and Licence Notices

- a. All notices and other communications in connection with this Subscription Membership & Licence Agreement:
  - a. must be in writing; and
  - b. take effect from the time they are received unless a later time is specified.
- b. 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 South Africa). If sent by facsimile or email, notices and other communications are taken to be received at the time shown in the facsimile or email transmission report as the time that the whole communication was sent.
- c. Notices for You will be sent to the address specified on Your Licence Application (or such other address as

You may notify GS1 South Africa (from time to time). Notices for GS1 South Africa must be sent to the Executive of GS1 South Africa's at GS1 South Africa's address as notified to You from time to time.

## 29. General Provisions

- a. This Subscription Membership & Licence Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.
- b. This Subscription Membership & Licence Agreement is governed by the law in force in South Africa. Each party submits to the non-exclusive jurisdiction of the courts of that place.
- c. A provision of this Subscription Membership & Licence Agreement or a right created under it may not be waived except in writing, signed by the party giving the waiver.
- d. GS1 South Africa may vary the terms and conditions of this Subscription Membership & Licence Agreement at any time by providing not less than one (1) month's written notice to You. Amendments to the Terms and Conditions shall be via email where necessary, and when statements are sent out. Publication of amended terms and conditions of this Subscription Membership & Licence Agreement on GS1 South Africa's website shall constitute written notice to You. Any such variation notified by GS1 South Africa takes effect immediately after such notice period (unless a later date is specified in the notice). If You do not accept the variation to the terms and conditions, you must terminate this Agreement by written notice to GS1 South Africa at any time prior to such variation taking effect. Your continued use of the GS1 system after such notice shall constitute acceptance of these amended terms and conditions.

- e. You must not assign, transfer or sublicense Your rights or obligations under the Licence or this Subscription Membership & Licence Agreement generally without the prior written consent of GS1. GS1 may require, as a condition to its consent to any transfer of Your rights under the Licence, the provision to GS1 of a completed and signed transfer form in respect of the transfer of rights, in such form as may be required by GS1 from time to time.
- f. We may offer Additional Products and Services, for which we may charge You additional fees and charges (in addition to Fee) and which will be subject to separate terms and conditions.

## 30. Definitions

These meanings apply to this Agreement unless the contrary intention appears:

- a. **Additional Products and Services** means all products and services provided by GS1 South Africa other than the GS1 system, including, without limitation, all training, testing, consultancy and data synchronisation services (such as GDSN, GS1 Cloud).
- b. **Authorised GS1 South Africa Data Carriers** means data carriers designed to carry the GS1 Identification Keys and other attribute information in a machine-readable form and includes two dimensional and three-dimensional Barcode Symbols and Radio Frequency Identification (RFID) tags.
- c. **Authorised Uses'** means use in Your ordinary business operations in connection with the identification of locations in your business for the purpose of aiding the tracking and tracing of Items at any point in the supply chain

## APPENDIX - GLOSSARY OF TERMS

1. **'Barcode Symbols'** means the data carriers designed to carry the GS1 Identification Keys and other attribute information in a machine-readable form.
2. **"Business Day"** means any day of the week except Saturday, Sunday or a national public holiday in South Africa.
3. **"Business Hours"** means shall be from 08h00 to 17h00 on a Business Day;
4. **"Companies Act"** means the Companies Act, No. 71 of 2008 (as amended from time to time);
5. **"Consumer Protection Act"** means the Consumer Protection Act, No. 68 of 2008 (as amended from time to time).
6. **"Data Provider"** means a Participant that is registered to provide information to GS1 South Africa for use through the Verified by GS1 Services.
7. **"Data Recipients"** means third parties accessing or using the Brand Owner Data, either directly or indirectly, in or through the Verified by GS1 Services, Webservice, API, including retailers, internet application providers and governmental organisations, subject to the acceptance of the GS1 South Africa Terms of Use.
8. **"Document"** means this document containing the Terms and Conditions.
9. **"Electronic Product Codes"** means, in respect of a subscriber member of GS1 South Africa, the specific range of electronic product codes issued and/or registered to that member by GS1 South Africa in accordance with the GS1 Primary Licence and any additional related information issued to that member by GS1 South Africa.
10. **'Fee'** means the fee for subscription membership payable annually by You to GS1 South Africa specified in the Licence Application (as varied from time to time).
11. **"General Terms and Conditions"** means those terms and conditions set out in Part A of this Document."
12. **"GS1 Company Prefix"** means a unique string of four to twelve digits used to issue GS1 identification keys, issued by a GS1 MO.
13. **"GS1 Global Location Number for Electronic Data Interchange"** means a barcode number that can be used to identify any location, globally and uniquely. This location number is usually used in Electronic Data Interchange messages to identify the sender or recipient of such message.
14. **"GS1 GTIN/s"** means the GS1 global trade item numbers issued to a GS1 Member by GS1 for use by the GS1 Member in accordance with the GS1 Terms and Conditions.
15. **"GS1 Member"** means a Member of GS1.
16. **"GS1 Terms and Conditions"** means those terms and conditions set out in this document.
17. **'GS1 Identification (ID) Keys' or 'GS1 ID Keys' or 'GS1 Numbers'** means, in respect of a subscriber member of GS1 South Africa, the GS1 Company Prefix and associated range of GS1 Identification numbers, and individual keys assigned by GS1 South Africa, that are allocated to that member by GS1 South Africa in accordance with the GS1 Master South Africa Licence and any additional related information issued to that member by GS1 South Africa in accordance with the GS1 system's technical standards, regardless of how they are encoded in data carriers.
18. **'GS1 International'** means GS1 association internationale sans but lucratif, an international non-profit association incorporated in Belgium.
19. **'GS1 South Africa Master Licence'** means the exclusive licence granted by GS1 International to GS1 South Africa to issue GS1 Identification Keys and Electronic Product Codes and administer the GS1 system in South Africa.
20. **'GS1 Standards'** means any and all standards, guidelines and rules relating to the GS1 system (as may be implemented, amended or replaced by GS1 South Africa or GS1 International from time to time) and includes, without limitation, the following (as may be implemented, amended or replaced from time to time):
  - a. the GS1 General Specifications, available at <https://www.gs1.org/barcodes-epcrfid-id-keys/gs1-general-specifications>
  - b. the GDSN Standards, available at <https://www.gs1.org/standards/gdsn/currencystandard>
  - c. the GTIN Standard, available at [https://www.gs1.org/sites/default/files/docs/barcodes/GS1\\_GTIN\\_Management\\_Standard.pdf](https://www.gs1.org/sites/default/files/docs/barcodes/GS1_GTIN_Management_Standard.pdf)
  - d. all other standards, guidelines, rules specified at [https://www.gs1.org/docs/Default/Log\\_website\\_posting.pdf](https://www.gs1.org/docs/Default/Log_website_posting.pdf)
  - e. all implementation guidelines, technical specifications and other information relating to the foregoing published from time to time on GS1 International's website at [www.gs1.org](http://www.gs1.org); and
  - f. all implementation guidelines, technical specifications and other information relating to the foregoing published from time to time on GS1 South Africa's website.
21. **'GS1 system'** means: the system of specifications, standards, and guidelines administered by GS1.
22. **"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.
23. **"Intellectual Property"** means (in relation to the Initiatives) patents, registered designs, utility models, trademarks, applications for any of the foregoing, inventions, unregistered trademarks, copyright, confidential information, know-how, processes and trade secrets and other intellectual property, and equivalents of any of the foregoing anywhere in the world and includes the Trademarks and the Website.
24. **'Item'** means a trade item, process, service, shipment, asset, entity or location.
25. **'Licence'** means the licence granted by GS1 to You to use the GS1 Identification Keys.
26. **'Licence Application'** means the application whereby You applied to be issued and/or registered for GS1 Identification Keys and (if applicable) Electronic Product Codes and to which this Subscription Membership & Licence Agreement relates.
27. **"Liquidation Event"** means, in relation to a Member, any of the following events or circumstances: a provisional or final order or declaration is made or a meeting of the directors or shareholders of that Member is convened to consider the passing of, or a resolution is passed or filed (in the case of business rescue proceedings pursuant to the provisions of Chapter 6 of the Companies Act) for the administration, custodianship, receivership, bankruptcy, liquidation, sequestration, winding-up, dissolution or placing under supervision for business rescue proceedings of it or its estate, other than pursuant to an internal restructure or refinancing in circumstances other than insolvency; or an application is made by any affected person for an order placing it under supervision for business rescue proceedings as contemplated in section 131(1) of the Companies Act; or it admits inability to pay its debts generally as they fall due or admits to being otherwise insolvent or stops, suspends or threatens to stop or suspend payment of all or a material part of its debts or proposes or seeks to make or makes a general assignment or any arrangement or composition with or for the benefit of its creditors or a moratorium is agreed or declared in respect of or affecting all or a material part of its indebtedness; or it takes any proceeding or other step with a view to the general readjustment, rescheduling or deferral of its indebtedness (or any part thereof which it would otherwise be unable to pay when due) or proposes to take any such step other than pursuant to an internal restructure / refinancing in circumstances other than insolvency;
28. **"Losses"** means collectively any losses, costs, expenses, penalties, liabilities and/or damages.
29. **"Member"** means GS1 Members and/or Initiative Members (as the context may require).
30. **"Membership"** means the state of being a Member of GS1 and/or any Initiative.
31. **"Products"** means the products manufactured, marketed, distributed and/or sold by a Member.
32. **"Services"** means the services rendered by GS1 and/or any Initiative from time to time.
33. **"South Africa"** means the Republic of South Africa.
34. **'Subscription Membership & Licence Agreement'** means this Subscription Membership & Licence Agreement,
35. **'Trademarks'** means the trademarks associated with GS1 and/or the GS1 system.
36. **"UDI Deficiency"** means a misconception of the UDI, a mismatch between the name of the company holding the license for the GS1 ID Key and the company using the GS1 ID Key or any other inaccurate, incomplete or outdated information related to the UDI.
37. **"Unique Device Identifier"** or **"UDI"** means a GS1 ID Key used for unique identification of a medical device.
38. **'Validation and Allocation Rules'** means the GS1 Standards relating to validation and assignment of GS1 ID Keys (as may be implemented, amended or replaced by GS1 South Africa or GS1 International from time to time) and includes, without limitation:
39. **"VAT"** means value-added tax, as levied in terms of the VAT Act.
40. **"VAT Act"** means the Value-Added Tax Act No. 89 of 1991 (as amended period)
41. **'You'** means the individual, company, corporation or other legal entity named in the Licence Application. "Your" has a corresponding meaning, holding companies, officers, representatives, servants and/or agents (as the context may require).

## About GS1 South Africa

GS1 is a neutral, not-for-profit organisation that develops and maintains the most widely used global standards for efficient business communication. We are best known for the barcode, named by the BBC as one of “the 50 things that made the world economy”. GS1 standards and services improve the efficiency, safety and visibility of supply chains across physical and digital channels in 25 sectors. With local Member Organisations in 115 countries, 1.5 million user companies and 6 billion transactions every day, GS1 standards create a common language that supports systems and processes across the globe.

For more information visit the GS1 South Africa website [www.gs1za.org](http://www.gs1za.org)