

NEOGRID USAGE AGREEMENT

NeoGrid Usage Agreement

Agentrics LLC, doing business as **NeoGrid**, is committed to ensuring that its web-based trading exchange (the "**NeoGrid Exchange**") is used in a manner that complies with all competition laws. This Agreement contains important confidentiality provisions necessary to ensure compliance with these laws. NeoGrid has also adopted an Antitrust Policy to address other compliance issues, such as the equal treatment of all companies using the NeoGrid Exchange. Use of the NeoGrid Exchange by you ("**Company**") is subject to the terms and conditions of this Usage Agreement, including applicable Service Terms and the NeoGrid Antitrust and Privacy Policies (collectively, the "**Agreement**").

- 1. Access to the NeoGrid Exchange.** During the term of this Agreement, Company shall have the right to use the NeoGrid Exchange services purchased by Company solely to conduct business on Company's own behalf. Company agrees to designate an Authorized User who shall be Company's primary agent in providing Company's Authorized Users with access to the NeoGrid Exchange ("**Administrator**"). The Administrator will have the ability to update Authorized User profiles, approve new Authorized User accounts, close delinquent Authorized User accounts and view and update Company transactions. For purposes of this Agreement, the term "**Authorized Users**" shall mean persons who are employees, contractors or agents of Company or Company's affiliates who have been authorized to access the NeoGrid Exchange by Company's Administrator. Company shall be responsible for ensuring that each of Company's Authorized Users is made aware of and complies with the terms and conditions of this Agreement. The use of a user identification and password assigned to an Authorized User of a Company shall be deemed to constitute an act by the Company. Company is responsible for providing the hardware, software and telecommunications services Authorized Users may need to view or participate in the NeoGrid Exchange.
- 2. NeoGrid Exchange as a Marketplace.** NeoGrid only provides an electronic marketplace and NeoGrid is not a party to transactions between Company and other users of the NeoGrid Exchange. NeoGrid has no control over and is not responsible for the quality, safety or legality of the goods or services offered or sold, the truth or accuracy of any information provided by users (including the information related to a user's perceived or actual identity) or the ability of users to complete the purchase or sale of goods or services.
- 3. Confidential Information; Use of Content.** Company's "**Confidential Information**" shall include all information that is treated by Company as confidential, including without limitation, all: (a) content, pricing information and other materials which Company or any of Company's Authorized Users supply, post or otherwise provide to NeoGrid in connection with this Agreement and (b) information which Company or any of Company's Authorized Users provide to other users to facilitate transactions occurring on the NeoGrid Exchange. NeoGrid "**Confidential Information**" shall include all information that is treated as confidential by NeoGrid, including without limitation, all: (a) technology (including hardware and software) used to operate the NeoGrid Exchange; and (b) technical information (including, without limitation, results of any operational or performance testing of the NeoGrid Exchange whether conducted by NeoGrid or Company), non-public training materials and operational, business, pricing and financial information of NeoGrid. Confidential Information of a party shall not include any information that: (a) is known to the party receiving such information at the time of disclosure; (b) is or becomes generally known to the public other than through a breach of this Agreement; (c) is independently developed by the party receiving such information without reliance on or use of such information; or (d) is rightfully provided to the party receiving such information by a third party not subject to an obligation of confidentiality.

Each party shall take commercially reasonable precautions to safeguard the confidentiality of the other party's Confidential Information and shall not use or disclose such Confidential Information except as may be provided in this Agreement. Each party may disclose Confidential Information of another party to its employees, contractors and agents who have a need to know such information in connection with the conduct of business on the NeoGrid Exchange, provided that each such employee, contractor or agent has agreed to be bound by confidentiality obligations similar to those contained in this Agreement. Each party acknowledges that any unauthorized use or disclosure of Confidential Information of the other party may cause irreparable damage to the other party or others. If an unauthorized use or disclosure of Confidential Information occurs, the party making the unauthorized disclosure or use shall immediately notify the other party and any other affected parties, and shall, at its own expense, take commercially reasonable steps to recover such Confidential Information and prevent subsequent unauthorized use or disclosure thereof. If Confidential Information is required to be disclosed under any law, statute, rule, regulation or policy

of any country, or any instrumentality or political subdivision thereof (collectively, "**Laws**"), the party who is requested to disclose such information shall notify the other party which provided such information prior to disclosure and shall reasonably cooperate with the other party at the other party's expense to obtain an appropriate protective order or other assurance that confidential treatment will continue to be accorded such information.

NeoGrid may disclose Confidential Information and other information and materials provided by a company ("**Content**") to other companies using the NeoGrid Exchange who are designated through use of the NeoGrid Exchange to be provided access to such Content. Company and other companies using the NeoGrid Exchange receiving Content from others shall maintain the confidentiality of any confidential information provided and agree to use the Content solely for the purpose for which it was provided. NeoGrid is not responsible for any confidentiality breach committed by a company using the NeoGrid Exchange. NeoGrid may extract information, in aggregated form only and in a form which does not specifically identify a company or a specific transaction (or enable this information to be derived when combined with other data) ("**Aggregated Data**"), from Content and other data collected through use of the NeoGrid Exchange. NeoGrid may only provide Aggregated Data to others for the purpose of increasing market awareness, adoption and utilization of NeoGrid services. NeoGrid may publish certain registration information (including company name and contact information) in a trading partner directory available only to other users of the NeoGrid Exchange. NeoGrid will not disclose a company's registration information to third parties for sales and marketing purposes without the company's consent.

4. **Payment.** Company shall pay all fees (including any transaction or subscription fees) ("**Fees**"), if applicable, in accordance with the terms and conditions set forth in the applicable Service Terms. Unless otherwise stated, Fees will be due 30 calendar days after the date of receipt of the applicable invoice. For delinquent Fees, NeoGrid may charge a late fee equal to the lesser of: (a) 1.5% per month; or (b) the highest amount permitted by Law. Company is responsible for any applicable value added, use, sales or other taxes, duties or assessments applicable to Company's use of the NeoGrid Exchange. NeoGrid may conduct an audit of Company's usage of the NeoGrid Exchange (upon reasonable notice to Company, during normal business hours and subject to the confidentiality provisions of this Agreement) in order to verify Company's compliance with this Agreement.
5. **Company Conduct.** Company agrees to comply with the NeoGrid Antitrust Policy and all Laws applicable to Company's use of the NeoGrid Exchange. Company specifically agrees not to use the NeoGrid Exchange in furtherance of any anti-competitive or collusive activity, including without limitation, the improper exchange of competitively sensitive information, price-fixing, market allocation, price signaling, market signaling, coordinated pricing or group boycotts, which could result in the violation of any Laws. Company agrees not to breach or facilitate the breach of any security measure implemented by the NeoGrid Exchange. Company agrees not to modify, copy or distribute any part of the technology used to operate NeoGrid Exchange or allow access to or use of the NeoGrid Exchange by or for the benefit of any third party, including without limitation, providing timeshare services, service bureau services, outsourcing or consulting services. Company agrees not to engage in any conduct that would restrict or inhibit other users from using and enjoying the full benefits of the NeoGrid Exchange and agrees to use reasonable efforts to ensure that Content Company provides to the NeoGrid Exchange is true and accurate, does not infringe upon the intellectual property rights of any third party and is not defamatory, trade libelous, threatening or harassing.
6. **No Warranty.** EXCEPT AS MAY BE EXPRESSLY SET FORTH IN THE APPLICABLE SERVICE TERMS, THE NEOGRID EXCHANGE AND ALL SERVICES PROVIDED TO COMPANY ARE PROVIDED "AS IS" AND "AS AVAILABLE", AND NEOGRID DOES NOT MAKE ANY WARRANTIES OR CONDITIONS OF ANY KIND WITH RESPECT TO THE NEOGRID EXCHANGE OR ANY COMPONENT THEREOF. NEOGRID EXPRESSLY DISCLAIMS ALL IMPLIED AND STATUTORY WARRANTIES AND CONDITIONS OF ANY KIND, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING FROM TRADE USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE. NEOGRID ALSO EXPRESSLY DISCLAIMS THE APPLICATION OF ANY PROVISIONS OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (ALSO COMMONLY REFERRED TO AS THE VIENNA CONVENTION). THE FOREGOING DISCLAIMERS SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY LAW.
7. **Limitations on Liability.** NEITHER COMPANY NOR NEOGRID (AND ITS THIRD PARTY SUPPLIERS, LICENSORS AND CONTRACTORS) SHALL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF USE, LOSS OR CORRUPTION OF DATA, TRANSACTION LOSSES, INTERRUPTION OF BUSINESS LOSSES OR COSTS OF PROCURING SUBSTITUTE GOODS) RESULTING FROM, ARISING OUT OF OR IN ANY WAY RELATING TO THE NEOGRID EXCHANGE OR DISRUPTION THEREOF, REGARDLESS OF THE FORM OF THE CLAIM OR ACTION, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, STATUTE OR OTHERWISE, AND REGARDLESS OF WHETHER OR NOT SUCH

DAMAGES WERE FORESEEN, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE TOTAL AGGREGATE LIABILITY OF COMPANY AND OF NEOGRID (AND ITS THIRD PARTY SUPPLIERS, LICENSORS AND CONTRACTORS) FOR CLAIMS RELATED TO THIS AGREEMENT OR SUBJECT MATTER HEREOF, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, STATUTE OR OTHERWISE, SHALL NOT IN EITHER PARTY'S CASE EXCEED THE FEES PAID OR PAYABLE IN CONNECTION WITH THE TRANSACTION GIVING RISE TO THE CLAIM OR, IF THERE IS NO SUCH TRANSACTION, U.S. \$10,000. THE FOREGOING LIMITATION SHALL NOT APPLY TO FEES DUE AND OWING. COMPANY AND NEOGRID ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 7 ARE A CONDITION OF ENTERING INTO THIS AGREEMENT AND ARE REFLECTED IN THE FEES BEING CHARGED FOR ACCESS TO AND THE USE OF THE NEOGRID EXCHANGE. THE FOREGOING LIMITATIONS OF LIABILITY SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY LAW.

8. **Term and Termination.** The term of this Agreement shall continue until terminated as provided herein. Company and NeoGrid shall each have the right to terminate this Agreement for convenience at any time upon 30 days' written notice to the other party. If a party breaches this Agreement, the other party may terminate this Agreement on 10 days' written notice to the breaching party unless the breaching party cures the breach within the notice period. Except as set forth in the applicable Service Terms, upon termination, NeoGrid shall have no obligation to refund any Fees paid by Company hereunder and any outstanding commitments by Company to pay Fees hereunder shall become immediately due and payable; provided that if the termination was by Company due to NeoGrid' breach or by NeoGrid for its convenience, NeoGrid shall refund to Company the unused portion of any prepaid Fees. Sections 3, 4 and 7 through 16 of this Agreement and any other provisions or terms of this Agreement that by their nature should survive, shall survive termination of this Agreement.
9. **Force Majeure.** Neither party shall have any liability to the other or to third parties for any failure or delay in performing any obligation under this Agreement, excluding payment obligations, due to circumstances beyond its reasonable control, including, without limitation, acts of God or nature, actions of the government, fires, floods, strikes, civil disturbances or terrorism or power, communications, satellite, or network failures.
10. **Assignment.** Company may not assign or otherwise transfer this Agreement (including by operation of Law), in whole or in part, without NeoGrid' prior written consent which shall not be unreasonably withheld.
11. **Governing Law; Exclusive Jurisdiction; Claims** This Agreement and all rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the NeoGrid Exchange shall be governed by, construed and enforced in accordance with the Laws of the State of Illinois (excluding any conflict of laws provisions of the State of Illinois which would refer to and apply the substantive Laws of another jurisdiction). Any suit or proceeding relating to this Agreement, including arbitration proceedings, shall be brought in the courts, state and federal, located in or having jurisdiction over Chicago, Illinois. THE PARTIES HEREBY CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN OR HAVING JURISDICTION OVER CHICAGO, ILLINOIS. Notwithstanding the foregoing, claims for injunctive relief relating to the breach or threatened breach of a party's confidentiality obligations hereunder may be brought in any court having jurisdiction. Any claim arising out of or in connection with this Agreement shall be brought within two years of the date on which the claim first arose. Each party acknowledges that any breach of its obligations under this Agreement may cause irreparable injury to the other party for which such party may have inadequate remedies at law and, therefore, each party shall be entitled to equitable relief in addition to all other available remedies. The failure of either party to enforce, or the delay by either party in enforcing, any of its rights under this Agreement shall not be deemed to be a waiver or modification by either party of any of its rights under this Agreement.
12. **Severability.** If any provision of this Agreement is held by a court to be invalid or unenforceable in whole or in part, the parties agree that (a) such holding shall not affect the validity or enforceability of the other provisions of this Agreement and (b) the invalid or unenforceable provisions shall be amended in a manner so as to best accomplish the objectives of the original provision to the fullest extent allowed by Law.
13. **UCITA DISCLAIMER.** THE PARTIES AGREE THAT THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT OR ANY VERSION THEREOF ADOPTED BY ILLINOIS OR ANY OTHER STATE, IN ANY FORM ("UCITA"), SHALL NOT APPLY TO THIS AGREEMENT. TO THE EXTENT UCITA IS APPLICABLE, THE PARTIES AGREE TO OPT OUT OF THE APPLICABILITY OF UCITA PURSUANT TO THE OPT OUT PROVISIONS CONTAINED THEREIN.
14. **Notices.** Any notice required or permitted to be delivered pursuant to this Agreement shall be in writing and shall be deemed given upon delivery. Unless otherwise agreed, all notices shall be in English. Notices to Company shall be addressed to the address provided by the Administrator. Notices to NeoGrid shall be addressed as follows: NeoGrid, LLC, 55 West Monroe Street, Suite

3590, Chicago, IL 60603 USA, Attention, Elmar Jakoby, Senior Vice President and Chief Financial Officer.

15. **Reporting Copyright Infringements.** To report a copyright infringement, please send a notice of infringement to NeoGrid at the address set forth in Section 14. The notice should contain the following: (a) name of person/entity complaining, including contact information; (b) identification and location of infringing material; (c) a statement citing a good faith belief that the material is infringing; and (d) a statement made that the information contained in the complaint is accurate and that the complaint is authorized by the copyright holder.
16. **Entire Agreement; Amendment.** This Agreement, including any applicable Service Terms and the NeoGrid Antitrust and Privacy Policies, constitutes the complete and entire agreement between the parties and supersedes any prior or contemporaneous agreements or understandings between the parties with respect to its subject matter. NeoGrid shall have the right to amend this Agreement at any time. Should NeoGrid amend this Agreement, NeoGrid will email a notice describing the amendments to registered administrators at the addresses then on file with NeoGrid and will post a notice on the log-in or other prominent page indicating that the Agreement has been amended with a link to a description of the amendments. For a period of 30 days after the amended Agreement is posted, the Agreement applicable to Company's prior use of the NeoGrid Exchange will continue to apply. Company's use of the NeoGrid Exchange after this period shall constitute Company's acceptance of and agreement to be bound by the amended Agreement.

The Service Terms for specific NeoGrid services and the NeoGrid Antitrust and Privacy Policies are available under the Usage Agreement link at www.NeoGrid.com.

May 11, 2006

[Back to Top](#)

NeoGrid Service Terms for Auctions and Negotiations

Use of the Auction Service is subject to these NeoGrid Auction Service Terms and the NeoGrid Usage Agreement.

1. Initiating an Auction.

- a. To initiate an Auction, you must be authorized to initiate Auctions and must complete all required fields and requests for information (either by providing new information or by using a template created by you) on the "New Auction" screen(s).
- b. In creating your Auction, you must complete all necessary information, including, without limitation, setting up your Business Terms and Conditions, Bid Controls and Bid Attributes and electing the AutoExtend feature for your Auction or part of your Auction.
- c. Your Auction may consist of multiple items. In addition, you may set up several Auctions for a group of related items and associate them into a single Auction event. You may add items to an Auction or Auctions to an Auction event any time prior to the opening date of the Auction, as applicable.
- d. You may create a Public Auction or a Private Auction and may specifically invite other companies to participate in the Auction. NeoGrid shall notify these other companies of your invitation by posting your Auction on the applicable Bidder's Auction Home Page. The notice may include, without limitation, the type of Auction, the type and quantity of goods or services offered for sale or purchase and the pricing terms or conditions of the Auction.
- e. You should carefully review all information before submitting your proposed Auction. The creation of an Auction certifies that you are authorized to buy or sell the quantity of the described goods or services pursuant to the terms and conditions set forth in the Auction.
- f. Unless otherwise provided herein, the Auction shall close at the date and time set by you. You may not retract, modify, limit or suspend the Auction after the start date and time of that Auction regardless of whether any Bids have been submitted. You may, however, terminate or cancel your Auction at any time.
- g. At the close of your Auction, you may elect to award a Bid. It is your sole and exclusive responsibility to finalize any Auction Transaction with the Bidder.

2. Bidding in an Auction.

- a. Before you submit your Bid, you should carefully review all the information (including all attached files) provided in the Auctioneer's Terms and Conditions, including the Business Terms and Conditions, Bid Controls, the Bid Attributes and the Auctioneer's Bidding Rules.
- b. A Bid must equal or be greater than (or less than, in a Buyer's Auction) any stated Bid Start Price, if any, and satisfy all the terms and conditions set forth in the Auctioneer's Terms and Conditions.
- c. You may not retract a Bid once it has been submitted.
- d. Once a Bid is submitted, you certify that you are authorized to buy or sell the quantity of the described goods or services and agree to buy or sell such goods or services pursuant to the Auctioneer's Terms and Conditions.
- e. You may utilize the Proxy Bid Feature. By electing the Proxy Bid Feature, you allow the NeoGrid Server to automatically place a Bid on your behalf to be the Winning Bid, subject to any increment or minimum or maximum Bid amounts set by you. Once you submit your

Bid, you may not terminate or modify your selections in the Proxy Bid Feature or retract a Bid placed through the Proxy Bid Feature.

- f. Unless otherwise restricted by the Auctioneer, Bidders participating in an Auction will have access to the current Bids (but not identities) of other Bidders.
- g. If elected by the Auctioneer, when a Bid is submitted within the time period designated by the Auctioneer, an Auction may go into AutoExtend. The Auction shall go into AutoExtend for the number of times and for a total period of time designated by the Auctioneer. AutoExtend can be for all or for specific items in an Auction, or for all or for specific Auctions in an Auction Event.

3. **Winning Bids.**

- a. Once an Auction closes, the Auctioneer may in its sole discretion elect to accept one or more Bids as the winning Bid or Bids. The Auctioneer is not required to accept the Winning Bid, and may, in its sole discretion, elect to accept a Losing Bid as the winning Bid.
- b. The Auctioneer will notify the Bidder whose Bid was selected as the winning Bid.
- c. The Auctioneer's Terms and Conditions will govern the resulting Auction Transaction (such as pricing, delivery, change orders, delivery pricing warranties, refunds, confidentiality, etc.) and the payment of all applicable taxes and other costs and expenses arising out of or in connection with the resulting Auction Transaction.

4. **Defined Auction Terms.**

"Auction" means an on-line offer to purchase or to sell certain goods or services, and includes without limitation, an Auction Transaction.

"Auction Service" means web pages located on the NeoGrid Exchange enabling companies to buy or sell goods or services through Auctions.

"Auction Transaction" means any agreements, transactions or contracts that take place between a Bidder and the Auctioneer as a result of an Auction.

"Auctioneer" means a company posting a request for Bids to purchase or sell goods or services.

"Auctioneer's Bidding Rules" means the information provided by the Auctioneer which provides general rules regarding the bidding process of the Auction such as which companies can place Bids, whether a Bidder can increase or decrease its Bid and whether the Auction will go into AutoExtend.

"Auctioneer's Terms and Conditions" means all the information (whether provided on-line or off-line) provided by the Auctioneer, including, without limitation, Bid Controls, Bid Attributes, Auctioneer's Bidding Rules, Business Terms and Conditions and two-dimensional and three-dimensional data.

"AutoExtend" means the feature that automatically extends an Auction if a Bid is submitted within a period of time designated by the Auctioneer. The period of extension and the total number of extensions is designated by the Auctioneer.

"Bid" means an offer by a company to purchase or to sell, as applicable, goods or services.

"Bid Attributes" means the unique specifications, such as color, size or weight, that an Auctioneer will require for one or more items in an Auction.

"Bid Controls" means specific terms and conditions regarding the Auction as set by the Auctioneer, such as terms and conditions regarding the duration of the Auction, any preview dates, the ability of Bidders to place multiple Bids and the ability of Bidders to view other Bids.

"Bid Start Price" means the minimum amount, in the case of a Seller's Auction, or the maximum amount, in the case of a Buyer's Auction, that a Bidder can Bid.

"Bidder" means a company who offers to purchase or to sell goods or services.

"Business Terms and Conditions" means the terms and conditions of the proposed Auction Transaction, including without limitation, terms and conditions addressing shipping, payment and delivery.

"Buyer" means the company, within a single Auction Transaction, that responds to an offer to sell goods or services or posts an offer to purchase goods or services.

"Buyer's Auction" means an Auction created by a Buyer who wants to purchase (rather than sell) goods or services.

"Home Page" means the web page an Authorized User accesses upon entering the Auction Service.

"Losing Bid" means any Bid that is not the Winning Bid. The Losing Bid status does not necessarily mean that the respective Bid will not be a Bid selected by the Auctioneer as a winning Bid.

"Private Auction" means an Auction where only certain designated companies have been invited.

"Public Auction" means an Auction which is open to all companies authorized to participate in the Auction Service.

"Seller" means a company, within a single Auction Transaction, that offers goods or services for sale or responds to an offer to purchase goods or services.

"Seller's Auction" means an Auction created by a Seller who wants to sell (rather than buy) goods or services.

"Winning Bid" means the highest Bid in the case of a Seller's Auction, or the lowest Bid in the case of a Buyer's Auction. The Winning Bid status does not necessarily mean that the respective Bid will be a selected or a winning Bid.

5. **Service Interruptions.** The NeoGrid Exchange is scheduled to be available 24 hours a day, 5 days a week; however, NeoGrid does not guarantee the availability of the NeoGrid Exchange or that access will be uninterrupted or error-free. NeoGrid reserves the right to interrupt, limit, suspend or terminate the operations of the NeoGrid Exchange from time-to-time for any purpose, including, without limitation, for the purposes of maintenance, upgrades and the like, provided that, when practicable, NeoGrid will use commercially reasonable efforts to provide companies with notice of any substantial interruption, limitation, suspension or termination. NeoGrid is not responsible for any errors or delays in the posting of an Auction or any Bid. If you experience technical difficulties in using the Auction Service, you should seek assistance from the NeoGrid help desk.
6. **No Manipulation or Interference.** You agree not to manipulate, by any means, the price of any goods or services offered on the NeoGrid Exchange, including, without limitation, through the use of an alias or decoys or by placing false offers for the sale or purchase of goods or services. Furthermore, you agree not to unfairly influence any bidding, unfairly influence the outcome of an Auction or otherwise unfairly interfere with, interrupt or manipulate any component of the NeoGrid Exchange or the Auction Service. While NeoGrid has no obligation to monitor and is not involved in Auction transactions on the NeoGrid Exchange, NeoGrid may from time to time elect to monitor an Auction transaction taking place on the NeoGrid Exchange.
7. **Fees.** The Fees charged to a company holding an Auction are set forth in a separate fee schedule between NeoGrid and the company. Currently, there is no fee charged for bidding in an Auction. NeoGrid will be entitled to the applicable Fees resulting from all transactions that are originated, negotiated or consummated, in whole or in part, using the NeoGrid Exchange. In the event that you are unable to complete a transaction on the NeoGrid Exchange due to a NeoGrid service problem, no transaction fee will be payable with respect to the uncompleted transaction.

May 11, 2006

[Back to Top](#)

NeoGrid Service Terms for Sourcing

Use of the NeoGrid Sourcing Service is subject to these Service Terms and the NeoGrid Usage Agreement. The NeoGrid Sourcing Service offers broad sourcing functionality, including the ability to conduct and participate in auctions, RFIs, RFQs and RFPs as described below.

1. **Auctions.**
 - a. To initiate an auction, the auctioneer must complete the online auction form by supplying information on the goods or services the auctioneer wishes to purchase or sell and inviting other companies to participate in the auction. The auctioneer should carefully review all auction information before scheduling the auction. By scheduling the auction, the auctioneer certifies that it is authorized to buy or sell the quantity of the described goods or services pursuant to the terms and conditions set forth in the auction.
 - b. Before a bidder places a bid in an auction, the bidder should carefully review all the information provided for the auction, including all attached files. By submitting a bid, the bidder certifies that it is authorized to buy or sell the quantity of the described goods or services pursuant to the terms and conditions set forth in the auction. A bidder may not retract a bid once it has been submitted.
 - c. When an auction closes, the auctioneer may in its sole discretion elect to accept one or more bids. The auctioneer is not required to accept the best bid, and may, in its sole discretion, elect to accept another bid. The auctioneer will notify the bidder whose bid was selected.
2. **Requests for Information ("RFI").** A RFI is a request for information which is often used by a buyer to obtain information on products or services offered by a supplier. To initiate an RFI, the buyer completes an online RFI form which includes information on the goods or services the buyer wishes to purchase and questions for the buyer's suppliers. An RFI is often used by a buyer as a qualification step prior to conducting an auction or a RFQ.
3. **Requests for Quotation ("RFQ").** A RFQ enables a buyer to collect quotations from suppliers. A RFQ is typically used when the goods or services desired are complex and hard to define. To initiate a RFQ, the buyer completes an online RFQ form which includes information on the goods or services the buyer wishes to purchase. Once the buyer's suppliers have submitted an initial round of quotations, the buyer has the opportunity to fine-tune the RFQ and initiate further negotiations, as necessary. At the conclusion of this process, the buyer typically either accepts a quote or initiates an auction for the goods and services.
4. **Requests for Proposal ("RFP").** A RFP is an information and bid exchange between a buyer and its suppliers. It is a combination of a RFI and a RFQ. To initiate a RFP, the buyer completes an online RFP form. This form will include information on the goods or services the buyer wishes to purchase, questions for the buyer's suppliers as well as a request for the suppliers to provide quotes. Once the buyer's suppliers have submitted an initial round of responses and quotations, the buyer has the opportunity to fine-tune the RFP and initiate further rounds of negotiations, as

necessary. At the conclusion of this process, the buyer typically either accepts a quote or initiates an auction for the goods and services.

5. **Service Interruptions.** The NeoGrid Exchange is scheduled to be available 24 hours a day, 5 days a week; however, NeoGrid does not guarantee the availability of the NeoGrid Exchange or that access will be uninterrupted or error-free. NeoGrid reserves the right to interrupt, limit, suspend or terminate the operations of the NeoGrid Exchange from time-to-time for any purpose, including, without limitation, for the purposes of maintenance, upgrades and the like, provided that, when practicable, NeoGrid will use commercially reasonable efforts to provide companies with notice of any substantial interruption, limitation, suspension or termination. NeoGrid is not responsible for any errors or delays in posting information. If you experience technical difficulties in using the NeoGrid Sourcing Service, you should seek assistance from the NeoGrid help desk.
6. **No Manipulation or Interference.** You agree not to manipulate, by any means, the price of any goods or services offered on the NeoGrid Exchange, including, without limitation, through the use of an alias or decoys or by placing false offers for the sale or purchase of goods or services. Furthermore, you agree not to unfairly influence any bidding, unfairly influence the outcome of any sourcing event or otherwise unfairly interfere with, interrupt or manipulate any component of the NeoGrid Exchange or the NeoGrid Sourcing Service. While NeoGrid has no obligation to monitor and is not involved in sourcing event on the NeoGrid Exchange, NeoGrid may from time to time elect to monitor an sourcing event taking place on the NeoGrid Exchange.
7. **Fees.** The Fees charged to a company initiating a sourcing event are set forth in a separate fee schedule between NeoGrid and the company. There is no fee charged for bidding in an Auction, RFQ or RFP; or for providing information in a RFI or RFP. NeoGrid will be entitled to the applicable Fees resulting from all transactions that are originated, negotiated or consummated, in whole or in part, using the NeoGrid Exchange. In the event that you are unable to complete a transaction or a sourcing event on the NeoGrid Exchange due to a NeoGrid service problem, no transaction fee will be payable with respect to the uncompleted transaction or event.

May 11, 2006

[Back to Top](#)

NeoGrid Service Terms for CPFPR

Use of the CPFPR Service is subject to these Service Terms and the NeoGrid Usage Agreement.

1. **CPFPR Process.**
 - a. The Retailer and the Supplier will first establish a Program Plan for their collaboration. The Program Plan will, at a minimum, address the following topics: objectives of the collaboration; responsible parties and contact information; products on which collaboration will occur; categories of data to be collected; history and projection timeframes for exchanged data; data update frequency; exception definitions; exception resolution process; and any other matters deemed desirable by the users. The parties may agree to amend the Program Plan from time to time based on their experience with the CPFPR Service.
 - b. After agreeing on a Program Plan, the Retailer and the Supplier will each transmit their respective product data specified in the Program Plan to the NeoGrid Exchange Server. The data transmitted must conform to the then current format and protocols established for the CPFPR Service by NeoGrid. Should the CPFPR Service identify an error, the party providing the erroneous data will be notified and requested to correct and re-transmit the data.
 - c. The CPFPR Service will generate Exceptions and Alerts based on the data transmitted by the Retailer and the Supplier and the Exception definitions agreed to by the parties in the Program Plan. When an Exception is generated, each party will review the Exception internally to prepare for a collaborative meeting or telephone call with the other party.
 - d. The Retailer and the Supplier will have a collaborative face to face meeting or telephone call to review the Exceptions and work to resolve the Exceptions. Resolution may result in the production of a consensus forecast or inventory plan.
 - e. The Retailer and the Supplier may then update their respective internal forecasts and inventory plans to reflect this consensus.
 - f. This process repeats at the frequency agreed to by the Retailer and the Supplier in the Program Plan.
2. **Defined CPFPR Terms.**

"Alert" means an email message generated by the CPFPR Service which provides notification of the occurrence of an Exception.

"CPFPR Service" means web pages located on the NeoGrid Exchange enabling Retailers and Suppliers to collaboratively manage their supply chain.

"Exception" means a variance between the Retailer data and the Supplier data which falls outside of a predefined range.

"Program Plan" means the plan established by the Retailer and Supplier prior to using the CPFPR Service which, at a minimum, addresses the following topics: objectives of the collaboration; responsible parties and contact information; products on which collaboration will occur; categories of data to be collected; history and projection timeframes for exchanged data; data update

frequency; exception definitions; exception resolution process; and any other matters deemed desirable by the parties.

"Retailer" means a purchaser of goods which manages one or more components of its supply chain function with a Supplier through the CPFR Service.

"Supplier" means a supplier of goods which manages one or more components of its supply chain function with a Retailer through the CPFR Service.

3. **Service Interruptions.** The NeoGrid Exchange is scheduled to be available 24 hours a day, 5 days a week; however, NeoGrid does not guarantee the availability of the NeoGrid Exchange or that access will be uninterrupted or error-free. NeoGrid reserves the right to interrupt, limit, suspend or terminate the operations of the NeoGrid Exchange from time-to-time for any purpose, including, without limitation, for purposes of maintenance, upgrades and the like, provided that, when practicable, NeoGrid will use commercially reasonable efforts to provide companies with notice of any substantial interruption, limitation, suspension or termination. If you experience technical difficulties in using the CPFR Service, you should seek assistance from the NeoGrid help desk. While NeoGrid has no obligation to monitor and is not involved in the data exchanges and collaborations which occur via the CPFR Service, NeoGrid may elect to monitor a particular data exchange or on line collaboration.
4. **Fees.** The Fees charged to a company using the CPFR Service are set forth in a separate fee schedule between NeoGrid and the company.
5. **Included Modules.** The basic CPFR Service includes only the Collaborate and Monitor software modules. A company may subscribe to the Market Manager and OneView software modules for an additional fee. For more information, please contact your NeoGrid CPFR representative.

May 11, 2006

[Back to Top](#)

NeoGrid Service Terms for Supplier Performance Management

Use of the NeoGrid Supplier Performance Management Service is subject to these Service Terms and the NeoGrid Usage Agreement.

1. NeoGrid Supplier Performance Management Process.

- a. **Program.** The Host Company will first establish a Supplier Performance Management Program ("Program") to: (i) identify the KPIs to be shared with Trading Partners; (ii) identify the product categories and locations to be reported; (iii) define the frequency of data update and reporting; and (iv) establish the processes to be used for engaging Trading Partners into the Program. The Host Company may amend the Program from time to time based on its experience using the Performance Management Service.
- b. **Configuration.** NeoGrid will work with the Host Company to configure the Supplier Performance Management Service to meet the Program requirements.
- c. **Trading Partner Invitation.** Once configured, the Supplier Performance Management Service will send the Trading Partners invited by the Host Company an invitation to participate in the Supplier Performance Management Service with the Host Company. Upon receipt of an invitation, the Trading Partner will be asked to register for the Supplier Performance Management Service with the authentication key provided in the invitation. This will enable the Trading Partner to obtain a unique user id and password.
- d. **Data Extraction and Transmission.** The Host Company will extract the data described in the Program for each Trading Partner, reformat the data for KPI measurement and transmit the reformatted data to NeoGrid. The data transmitted must conform to the agreed format and protocols established for the Supplier Performance Management Service by NeoGrid. Should an error occur, NeoGrid will notify the Host Company and request that the Host Company correct and re-transmit the data.
- e. **Reporting.** The Supplier Performance Management Service will generate a scorecard report for each Trading Partner based on the data transmitted by the Host Company across all of the Trading Partner's KPIs. Exception reports will be generated based on deviation between target and actual KPIs for each Trading Partner. Additionally, the Program may define benchmark reports based on all of the Trading Partners of the Host Company.
- f. **Collaboration.** The Host Company may also create and manage collaborative activities with its Trading Partners using the collaboration module of the Supplier Performance Management Service. This module is flexible and can be used for a variety of activities, including issue resolution, business reviews, special projects and promotion or other event management.

2. Defined Terms.

"Exception" means a deviation between the target and actual performance for a KPI based on a specific time period, product group and location combination for a Trading Partner. Negative deviations reflect performance worse than target and positive deviations reflect performance better than target.

"Host Company" means the company which establishes the Program, provides the source data to NeoGrid and works with one or more Trading Partners on performance improvement.

"KPI" means a key performance indicator established by the Host Company in the Program.

"Supplier Performance Management Service" means web pages located on the NeoGrid Exchange which enable a Host Company and one or more of its Trading Partner to confidentially share data and jointly improve performance.

"Trading Partner" means a company invited by a Host Company to participate in the Program.

3. **Service Interruptions.** NeoGrid does not guarantee the availability of the NeoGrid Exchange or that access will be uninterrupted or error-free. NeoGrid reserves the right to interrupt, limit, suspend or terminate the operations of the NeoGrid Exchange from time-to-time for any purpose, including, without limitation, for purposes of maintenance, upgrades and the like, provided that, when practicable, NeoGrid will use commercially reasonable efforts to provide companies with notice of any substantial interruption, limitation, suspension or termination. If you experience technical difficulties in using the Supplier Performance Management Service, you should seek assistance from the NeoGrid help desk. While NeoGrid has no obligation to monitor and is not involved in the data exchanges and collaborations which occur via the Supplier Performance Management Service, NeoGrid may elect to monitor a particular data exchange or on line collaboration.
4. **Fees.** The Fees charged to a Host Company using the Supplier Performance Management Service are set forth in a separate fee schedule between NeoGrid and the Host Company. The Program established by the Host Company will define any Fees which may be charged to Trading Partners using the Supplier Performance Management Service. The Trading Partner will be notified of any such Fees prior to activation or renewal of the Service.

May 11, 2006

[Back to Top](#)

NeoGrid Service Terms for Data Synchronization

Use of the Data Synchronization Service is subject to these Service Terms and the NeoGrid Usage Agreement.

1. Data Synchronization Process.

- a. The Supplier will provide Data in accordance with the instructions, standards, and requirements provided to the Supplier by NeoGrid. The Supplier is solely responsible for the content of the Data it provides and for providing any updates to the Data.
- b. NeoGrid will post the Data on the NeoGrid Exchange to enable synchronization with Retailers using either the NeoGrid Exchange or a third party data pool interoperating with the NeoGrid Exchange.
- c. NeoGrid will provide Retailers with Data made available by a Supplier on the NeoGrid Exchange or through a third party data pool interoperating with the NeoGrid Exchange.
- d. If NeoGrid registers the Data or processes the Data through the GS1 Global Registry, each Supplier and Retailer hereby agrees to the terms of the GS1 GDSN, Inc. Terms of Participation Agreement as a "Trading Partner", as defined therein, with respect to the Data so registered or processed. There are no fees charged to Trading Partners by GS1 GDSN, Inc. under the terms of the GS1 GDSN, Inc. Terms of Participation Agreement.

2. Defined Data Synchronization Terms.

"Data" means the party, price, and item data provided by a Supplier, and all updates thereto.

"Data Synchronization Services" means the electronic service provided on the NeoGrid Exchange which enables Suppliers to synchronize Data with Retailers.

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

"GS1 GDSN, Inc. Terms of Participation Agreement" means the agreement between GS1 GDSN, Inc. and each participating Supplier and Retailer, a copy of which is attached to these Service Terms.

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

"Retailer" means a purchaser of goods which manages one or more components of its supply chain function with a Supplier through the Data Synchronization Service.

"Supplier" means a supplier of goods which manages one or more components of its supply chain function with a Retailer through the Data Synchronization Service.

3. **Service Interruptions.** The NeoGrid Exchange is scheduled to be available 24 hours a day, 5 days a week; however, NeoGrid does not guarantee the availability of the NeoGrid Exchange or that access will be uninterrupted or error-free. NeoGrid reserves the right to interrupt, limit, suspend or terminate the operations of the NeoGrid Exchange from time-to-time for any purpose, including, without limitation, for purposes of maintenance, upgrades and the like, provided that, when practicable, NeoGrid will use commercially reasonable efforts to provide companies with notice of any substantial interruption, limitation, suspension or termination. If you experience technical difficulties in using the Data Synchronization Service, you should seek assistance from the NeoGrid help desk.
4. **Fees.** The Fees charged to a company using the Data Synchronization Service are set forth in a separate fee schedule between NeoGrid and the Retailer or Supplier.

May 11, 2006

[Back to Top](#)

Attachment to NeoGrid Service Terms for Data Synchronization

GS1 GDSN, INC. TERMS OF PARTICIPATION AGREEMENT

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

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

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

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

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

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

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

2. **Subscription to GDSN.** Upon written acceptance of the terms and conditions of this attachment and upon Company's selected Data Pool's payment of the applicable Data Pool fee to GS1 GDSN, Trading Partner shall be deemed to have been granted by GS1 GDSN a subscription for the right to participate in the GDSN and, in furtherance thereof, to utilize the GS1 Global Registry™. Trading Partner acknowledges that Trading Partner is not obtaining any license or ownership to the GS1 Global Registry™ or to any proprietary technology, processes, concepts or other proprietary intellectual property or confidential information of GS1 GDSN pertaining to the GDSN or to the GS1 Global Registry™. Trading Partner's rights are limited to participation in the GDSN in accordance with the terms and conditions stated herein. Trading Partner may register certain attributes in the GS1 Global Registry, including, without limitation, (i) the Global Trade Item Number® ("GTIN®"), (ii) the Global Location Number (GLN) of the data source, (iii) the target market country code, (iv) the target market subdivision code, (v) the catalogue item classification, (vi) the GLN of the source Data Pool, (vii) the registry catalogue item state and (viii) the item status; however, Trading Partner acknowledges and understands that the registration, publication, subscription and synchronization functions of the GS1 Global Registry™ are to be performed by Trading Partner's selected Data Pool(s).
3. **Conditions to Subscription.** Trading Partner acknowledges and agrees that its failure to comply with any of the following material covenants, conditions and obligations, or any of the other terms and conditions contained in this attachment, shall constitute a breach hereof and shall be grounds for the immediate termination by GS1 GDSN of Trading Partner's participation in the GDSN.
 - A. Trading Partner shall participate in the GDSN and obtain access to the GS1 Global Registry™ through a Data Pool which has complied with all applicable GS1 GDSN certification requirements. Trading Partner may join more than one Data Pool to obtain access to the GS1 Global Registry™ based on Trading Partner's business needs and requirements. If Trading Partner undertakes to become a Data Pool, it must separately execute a Global Registry Access and License Agreement with GS1 GDSN.
 - B. All Trading Partner data must comply with GS1 System standards, either directly or through third party data alignment via a GDSN Data Pool.
 - C. Trading Partner shall comply with all standards and policies adopted and/or implemented by GS1 GDSN from time to time governing the GDSN and the GS1 Global Registry™, including, but not limited to, access and service level standards, acceptable use policies, developmental and technical functionality, certification and marketing, educational and training policies and standards. Trading Partner acknowledges that GS1 GDSN reserves the right to amend and modify such standards and policies and may introduce modifications, changes, enhancements, new versions and new releases to all or part of the GDSN from time to time. GS1 GDSN agrees that each policy and standard will be published and will be made available to Trading Partner's Data Pool at least 120 days prior to the effective date, and further acknowledges that such amendment, modification, changes, etc. shall become effective as against such Trading Partner on the effective date thereof. Trading Partner agrees that in the event of any ambiguity, inconsistency or other question of

interpretation concerning any standards or policies adopted by GS1 GDSN, the determination of the GS1 GDSN Board of Directors shall be conclusive and binding.

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

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

F. Trading Partner Information Security.

- a. GS1 GDSN, shall during the term of this Agreement, provide security for Trading Partner's Proprietary Information at least at levels and in the manner in which GS1 GDSN secures its own proprietary information, but in no event less than a reasonable degree of care.
- b. GS1 GDSN hereby acknowledges that the Trading Partner Proprietary Information shall at all times remain the sole property of Trading Partner. GS1 GDSN agrees that it will not disclose, provide, or make available any Trading Partner Proprietary Information in any form to any person without Trading Partner's prior written consent, except to those persons whose access is necessary to facilitate Trading Partner's Participation in the GDSN.
- c. Notwithstanding the foregoing, nothing herein shall prevent GS1 GDSN from disclosing Trading Partner's Proprietary Information upon GS1 GDSN establishing that the Trading Partner Proprietary Information: (i) has been published or has become part of the public domain other than by acts or omissions of GS1 GDSN, its employees, agents or contractors; (ii) was lawfully in the possession of GS1 GDSN at the time of disclosure to it and was not acquired by GS1 GDSN directly or indirectly from Trading Partner; (iii) was received after disclosure to GS1 GDSN by a third party who had a lawful right to disclose such information to GS1 GDSN; or (iv) was independently developed by GS1 GDSN without knowledge or use of the Trading Partner Proprietary Information.
- d. GS1 GDSN hereby agrees to indemnify and hold Trading Partner harmless from and against any claims made against Trading Partner which arise as a result of a breach by GS1 GDSN of the terms of this Paragraph 3F.

G. Warranty Disclaimer. TRADING PARTNER ACKNOWLEDGES AND AGREES THAT GS1 GDSN MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND ANY SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED, INCLUDING BUT NOT LIMITED TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE GDSN OR THE GS1 GLOBAL REGISTRY™. EXCEPT AS SET FORTH IN PARAGRAPH 3F ABOVE, GS1 GDSN SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER, CONSEQUENTIAL OR OTHERWISE, THAT MAY ARISE FROM THE TRADING PARTNER'S PARTICIPATION IN THE GDSN OR THE USE OF THE GS1 GLOBAL REGISTRY™ BY TRADING PARTNER OR FOR ANY FAILURE OR REFUSAL BY GS1 GDSN TO GRANT TRADING PARTNER ACCESS TO THE GDSN OR GS1 GLOBAL REGISTRY™ BASED ON A BREACH BY THE TRADING PARTNER'S SELECTED DATA POOL OF ITS OBLIGATIONS TO GS1 GDSN.

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

I. Law. The terms in this Participation Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to the principles of conflict of laws.

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

Notice to GS1 GDSN shall be given to:

GS1 GDSN, Inc.

Attn: Clement D. Erhardt, III, Secretary

Princeton Pike Corporate Center

1009 Lenox Drive, Suite 202
Lawrenceville, NJ 08648

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

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

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

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

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

GS1 GDSN, INC.:

Signed By:
Printed Name: Sally A. Herbert
Title: President
Address: GS1 GDSN, Inc.
Blue Tower, Avenue Louise 326, bte 10
B-1050 Brussels Belgium

Trading Partner:

Signed By: (See Note Below)
Printed name:
Title:
Address:

Note: You will be deemed to have accepted the terms of this Participation Agreement as a "Trading Partner" by acknowledging your agreement to the terms of the NeoGrid Usage Agreement and the NeoGrid Service Terms for Data Synchronization. Under these circumstances, your signature is not required to bind you and GS1 GDSN, Inc. to the terms of this Participation Agreement.

May 11, 2006

[Back to Top](#)

NeoGrid Service Terms for Product Lifecycle Management

Use of the Product Lifecycle Management ("PLM") Service is subject to these Service Terms and the NeoGrid Usage Agreement.

1. PLM Process.

- a. The PLM Service enables a Retailer and its Trading Partners to internally manage or collaborate with others on Product Development Related Activities.
- b. Prior to initiating a collaboration process, the Retailer will define the System Configuration and Work Flow for its particular use of the PLM Service.
- c. The Retailer will then initiate an activity and the PLM Service will send the Trading Partners invited by the Retailer an invitation to participate in the collaboration. Upon receipt of an invitation, the Trading Partner will be asked to register for the PLM Service with the authentication key provided in the invitation. This will enable the Trading Partner to obtain a unique user id and password.
- d. When the PLM Service identifies a new task or an overdue task for a Participant, the PLM Service will notify the Participant via SMTP email and direct the Participant to the Participant's PLM Service home page. Upon the Participant's completion of the task, the PLM Service will log completion of the task. This log will also be accessible by other Participants in the collaboration. A Participant's failure to complete a task on the schedule

defined by the System Configuration and Work Flow may result in the generation of an alert to other Participants in the collaboration.

2. **Defined PLM Terms.**

"Participant" means the Retailer or a Trading Partner.

"Product Development Related Activities" means activities related to the development of one or more new products. These activities may also include the maintenance of current product information, such as specifications and pack copy, and supplier and product quality evaluations.

"PLM Service" means the NeoGrid Exchange solution which enables Retailers and Trading Partners to collaboratively manage their product development.

"Retailer" means a purchaser of goods which manages its Product Development Related Activities, internally or with Trading Partners, using the PLM Service.

"System Configuration and Work Flow" means the work flow processes, Participant roles and security profiles, glossaries of terms, data requirements, best practice guides and other material prepared by the Retailer before the initiation of a collaboration. The System Configuration and Work Flow will specify the Participants responsible for the accuracy of the product information.

"Trading Partner" means a supplier of goods or services to a Retailer which uses the PLM Service to manage its provision of these goods or services.

3. **Service Interruptions.** The NeoGrid Exchange is scheduled to be available 24 hours a day, 5 days a week; however, NeoGrid does not guarantee the availability of the NeoGrid Exchange or that access will be uninterrupted or error free. NeoGrid reserves the right to interrupt, limit, suspend or terminate the operations of the NeoGrid Exchange from time-to-time for any purpose, including without limitation, for purposes of maintenance, upgrades and the like, provided that, when practicable, NeoGrid will use commercially reasonable efforts to provide companies with notice of any substantial interruption, limitation, suspension or termination. If you experience technical difficulties in using the PLM Service, you should seek assistance from the NeoGrid help desk. While NeoGrid has no obligation to monitor and is not involved in the collaborations which occur with the PLM Service, NeoGrid may elect to monitor a particular on line collaboration.

4. **Fees.** The Fees charged to a Participant using the PLM Service are set forth in a separate fee schedule between NeoGrid and the Participant or in a registration invitation sent to the Participant.

May 11, 2006

[Back to Top](#)

NeoGrid Antitrust Policy

It is the policy of NeoGrid that the NeoGrid Exchange not be used by any company to further any anti-competitive or collusive conduct, or to engage in other activities that could violate any antitrust or competition law, regulation, rule or directives of any country (collectively "**Antitrust Laws**") or otherwise impair full and fair competition.

It is also the policy of NeoGrid to provide access to the NeoGrid Exchange to all participants in the retail industry who meet the terms and conditions for access. Those terms and conditions for access are objective, reasonable, and designed to encourage and preserve the ability of all participants in the retail industry to compete vigorously and pursue their individual competitive advantages on such matters as quality, service and price.

Company acknowledges that its participation in the NeoGrid Exchange is subject to the Antitrust Laws and Company agrees to comply fully with the Antitrust Laws. Company agrees that it will not use the NeoGrid Exchange, directly or indirectly, to reach or attempt to reach agreements or understandings with one or more of its competitors to: (a) set or establish minimum or maximum prices, or standardize the method by which prices are calculated; (b) allocate any market by geography, customer, product or any other means; (c) reduce output, production rates, product development or innovation in any market; (d) engage in a group boycott of one or more customers, suppliers or buyers for any reason; or (e) further or attempt to further any anti competitive conduct.

Company agrees that it will not use the NeoGrid Exchange, directly or indirectly to post or communicate: (a) unpublished prices or fees for any product or service, except to another company to whom a proposed price or fee is being quoted in connection with negotiating or reaching a specific bona fide purchase or sale agreement; (b) to a competitor intentions to change prices or fees in the future; (c) to a competitor proposed future prices or fees; (d) to a competitor terms of sale with specific customers; (e) intentions to bid or not to bid for a contract, provided that Company's decision to respond or not respond to a request for quotes or invitation to bid shall not constitute a breach of this clause; or (f) any codes or other devices that enable other companies to calculate otherwise unpublished prices or fees, or that communicate intentions or proposals to change prices or fees.

Company also agrees that it will not use the NeoGrid Exchange, directly or indirectly, to obtain or attempt to obtain, or exchange or attempt to exchange, confidential or proprietary information regarding any other company other than in the context of a bona fide business transaction.

Company shall implement procedures to ensure compliance with the Antitrust Laws, the confidentiality provisions of the Usage Agreement and this Antitrust Policy by its Authorized Users, and shall audit the effectiveness of such procedures and make improvements to address any deficiencies. Company agrees that Company is solely responsible for obtaining appropriate legal advice related to its compliance with the Antitrust Laws and the applicability of the Antitrust Laws to any particular transaction and that NeoGrid has no responsibility or liability for the compliance of any transaction with the Antitrust Laws.

NeoGrid has appointed an Antitrust Compliance Officer to ensure that NeoGrid and its employees conduct business in furtherance of the Antitrust Laws and comply with this Antitrust Policy and the confidentiality provisions of the Usage Agreement. The Antitrust Officer will also periodically review NeoGrid policies with respect to antitrust compliance and confidentiality and implement internal policies within NeoGrid to ensure compliance with this Antitrust Policy and the confidentiality provisions of the Usage Agreement by NeoGrid and its employees. Any questions or concerns regarding this Antitrust Policy or the confidentiality provisions of the Usage Agreement should be addressed to the Legal Department, NeoGrid, LLC, 625 North Washington Street, Suite 400, Alexandria, VA 22314 USA (legal@NeoGrid.com).