

Whole Foods Vendor Reporting Portal Terms and Conditions

This is a legal agreement between you, as an authorized representative of your company, ("you"), and Whole Foods Market Services, Inc. ("WFMSI") and its Affiliates. An Affiliate of WFMSI is any corporation, or entity directly or indirectly controlled by, controlling, or under common control with WFMSI.

This Agreement concerns your rights to access and use this site and the information and data contained therein (the "Site"). In consideration for WFMSI granting you a license to access and use the Site, you are agreeing to be bound by the terms of this Agreement.

If you do not agree to all of the terms of this Agreement, do not access or use the Site. If at any point you no longer agree to all the terms of this Agreement, do not further access or use the Site and delete all copies of the data from the Site in your possession or control. Your prior access and use of Site, and any data therefrom, will continue to be governed by this Agreement.

Accordingly, for and in consideration of the provision, access and use of the Site, you agree:

1. Restrictions:

- a. **The rights granted to you for the Site are personal to you and may not be shared with any other person or entity, regardless of their affiliation with you. Sharing of your login information or other credentials is prohibited.**
- b. **You may not automate the pulling of data from the Site.**
- c. **If you are a broker, you may not aggregate data from the Site.**
- d. **Violations of these restrictions are grounds for the immediate termination of your license to use the Site. If your license is terminated, WFMSI may choose, in its sole discretion, to reactivate your license, but is under no obligation to do so. In the event of a termination for a violation of these restrictions, WFMSI may implement, in its sole discretion, a waiting period of six (6) months prior to your eligibility to request a new license, which request may be denied in WFSMI's sole discretion.**

2. Confidential Information. "Confidential Information" means information contained on or accessed via the Site and includes, but is not limited to:

- a. any terms of a business and commercial nature, such as financial information, price lists, marketing data, sales data and economic data, business plans, customer lists, and vendor or supplier lists; and
- b. any other information that is not in the public domain obtained from the Site.

3. Obligations for Confidential Information. You will (i) not disclose Confidential Information to any third party other than as expressly permitted under this Agreement; (ii) restrict disclosure of Confidential Information to only your employees or agents who need to know the Confidential Information and who are bound by confidentiality terms and restrictions of use substantially similar to those in this Agreement but in no event less than reasonable terms; (iii) be liable to WFMSI for any unauthorized use of Confidential Information by any such employees or agents in violation of such terms; (iv) not reverse engineer, de-compile or disassemble any Confidential Information; and (v) promptly notify WFMSI upon discovery of any unauthorized use or disclosure of the Confidential Information or the Site and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Agreement.

4. Treatment of Confidential Information. You hereby covenant and agree that you will not (either directly or indirectly) reveal or disclose Confidential Information or allow access to the Site to any other person, partnership, association, or corporation or the like. You will treat all Confidential Information received, accessed or viewed from the Site as confidential and proprietary in nature and will safeguard the secrecy of the Confidential Information by following the same procedures used in safeguarding your own valuable confidential information, but in no event with less than a reasonable standard of care. **Sales data, including but not limited to pricing, volume and margins, is the proprietary and trade secret information of WFMSI or the provider of the underlying goods and will be treated with the highest standards of care and security.** Notwithstanding the above, you may disclose Confidential Information to your employees or agents; provided however that you will ensure that any recipient of Confidential Information agrees to maintain confidence to the same extent required of you.

5. Breach. You understand and agree that WFMSI is entitled, in the event of any breach or threatened breach of this Agreement, to a restraining order and/or injunction from any competent court of equity to enjoin and restrain you and your employees or agents from any disclosure of Confidential Information of WFMSI. Such equitable remedies shall be in addition to and not in lieu of any other remedy WFMSI may be entitled by law. WFMSI may terminate this Agreement and your access to the Site upon reasonable suspicion or actual notice of your violation of any of these this Agreement and will not be liable for any claims or actions arising out of such termination.

6. Confidential Information Exceptions. Confidential Information will not include information:

- a. which is, at the time your access to the Site, known to the trade or the public through no fault of you;
- b. d. which becomes at a later date known to the trade or the public through no fault of you and then only after such later date;
- c. e. which is disclosed to you in good faith by a third party who has an independent lawful right to such information with no similar obligation not to disclose.

If you are requested or required by law or by any court or governmental agency or authority to disclose any of the Confidential Information, you must provide WFMSI with reasonable notice of such request or requirement prior to such disclosure. WFMSI (or the owner of the Confidential Information, either for the purposes of this Section, WFMSI) may then either seek appropriate protective relief from all or part of

such request or requirement or waive compliance with the provisions of this Agreement with respect to all or part of such request or requirement. You will cooperate with WFMSI in attempting to obtain, at the expense of WFMSI, any protective relief that WFMSI chooses to seek. If, after WFMSI has had a reasonable opportunity to seek such relief, it fails to obtain such relief, and, in the opinion of counsel for you, you are legally compelled to disclose any of the Confidential Information to such court, agency, or authority, then you may disclose that portion of the Confidential Information that your counsel advises that you are compelled to disclose.

7. No Warranty. TO THE MAXIMUM EXTENT PERMITTED BY LAW, WFMSI EXPRESSLY DISCLAIMS ANY WARRANTY FOR THE SITE AND THE INFORMATION AND DATA THEREIN. THE SITE AND ALL INFORMATION IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. YOU ASSUME THE ENTIRE RISK ARISING OUT OF THE USE OR ACCESS TO THE SITE.

8. Indemnity. You agree to fully defend and indemnify WFMSI from any and all claims, liabilities, and costs (including reasonable attorney's fees) related to (1) your use of the Site or (2) your violation of the terms and conditions of this Agreement.

9. Limitation of Liability. IN NO EVENT WILL WFMSI BE LIABLE, WHETHER IN CONTRACT, TORT, OR OTHERWISE, FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR ANY LOSS OF USE, LOSS OF TIME, INCONVENIENCE, COMMERCIAL LOSS, OR LOST PROFITS, SAVINGS, OR REVENUES TO THE FULL EXTENT SUCH MAY BE DISCLAIMED BY LAW EVEN IF INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. WFMSI'S LIABILITY WILL IN ANY EVENT AND UNDER ANY THEORY OF RECOVERY BE LIMITED TO \$500.00.

10. Termination. Either party may terminate this Agreement upon thirty (30) days written notice, however, the terms and conditions of this Agreement will continue in full force and effect with respect to prior usage and access of the Site. The obligations of the parties incurred herein will terminate five (5) years from the date this Agreement is terminated. Immediately upon request by WFMSI, you will either destroy or return to WFMSI all Confidential Information (including all electronic or hard copies) in your possession and you will certify in writing to WFMSI that such return or destruction has occurred in accordance with WFMSI's instructions.

11. Support. WFMSI is NOT obligated to provide any support or new versions of the Site. If you wish, you may contact WFMSI and report problems and provide suggestions regarding the Site. WFMSI has no obligation whatsoever to respond in any way to such a problem report or suggestion. WFMSI may make changes to the Site any time, without any obligation to notify you.

12. **Severability.** If it is determined in any legal proceedings before a competent tribunal, that any part of this Agreement is invalid, illegal or unenforceable, such part shall be deemed to be severed from this Agreement and the remainder of this Agreement shall continue in full force and effect.

13. **No Assignment.** You may not assign or transfer (by operation of law or otherwise) this Agreement, in whole or in part, without the prior written consent of WFMSI.