

BRAND OWNER LICENSE AGREEMENT

IMPORTANT – READ CAREFULLY BEFORE PROCEEDING

THIS IS A BINDING LEGAL CONTRACT

YOU UNDERSTAND AND AGREE THAT BY CHECKING THE BOX AND CLICKING THE “ACCEPT” OR “I AGREE” BUTTON, THE BRAND OWNER IS AGREEING TO BE LEGALLY BOUND BY ALL OF THESE TERMS AND CONDITIONS, WHICH INCLUDES A LIMITED LICENSE, DISCLAIMERS OF WARRANTY, AND LIMITATIONS OF LIABILITY. IF YOU DO NOT AGREE TO THIS AGREEMENT, YOU ARE NOT PERMITTED TO SHARE BRAND OWNER DATA WITH GS1 US OR RECEIVE GS1 US VERIFICATION SERVICES.

This Brand Owner License Agreement (this “Agreement”) is made and by and between the Brand Owner (which is both the corporation, organization, business or other entity, as well as the natural person(s) who will access and use the GS1 US Verification Services on such entity’s behalf) (“**Brand Owner**”, “**You**” or “**Your**”), and GS1 US, Inc. (“**GS1 US**”), and sets forth the Brand Owner’s rights and obligations with respect to Brand Owner Data and the use of GS1 US Verification Services. GS1 US and Brand Owner may be identified individually as “**Party**” or collectively as “**Parties**” in this Agreement.

1. **Definitions.** Capitalized terms shall have the meaning set out below.

- a) “**Brand Owner(s)**” means a manufacturer or retailer with private label products.
- b) “**Brand Owner Data**” means product data owned by or licensed to a manufacturer or retailer with private label products, including but not limited to brand names, product descriptions, GTINs, GLNs, manufacturer information, and other product information.
- c) “**GS1 Company Prefix**” means a globally unique number assigned to companies by GS1 US to create identification numbers such as GTINs and GLNs.
- d) “**GS1 US Global Trade Item Number**” or “**GTIN**” is a globally unique number that is used by a company to uniquely identify all of its trade items, such as products or services that are priced, ordered or invoiced at any point in the supply chain.
- e) “**GS1 US Global Location Number**” or “**GLN**” is a globally unique number that is used to identify a physical location or legal entity.
- f) “**GS1 US Certified Solution Provider**” refers to any third party that is appropriately skilled and certified by GS1 US to perform services related to Brand Owner Data.
- g) “**Third Party Data Carriers**” refers to any third party that provides services relating to barcodes, QR codes, data matrix codes, RFID tags, or DWcodes in conjunction with Brand Owner Data.

2. **License Grant by Brand Owner.** Subject to the terms and conditions of this Agreement, Brand Owner hereby grants to GS1 US, and GS1 US hereby accepts such grant of:

(i) a royalty-free, non-exclusive, world-wide right and license to the Brand Owner Data, including but not limited to the right and license to distribute, sub-license, create derivative works from, or otherwise use the Brand Owner Data, subject to the terms and conditions of this Agreement (the “**Brand Owner License**”);

(ii) a royalty-free, non-exclusive, world-wide right and license to the Brand Owner name, logo, brand identifications, trade names, service marks, trademarks, and copyrightable material

related thereto (each a “**Brand Owner Mark**”) subject to the following conditions (the “**Brand Owner Trademark License**”): (i) all uses of a Brand Owner Mark shall be limited to the purposes of this Agreement; (ii) GS1 US agrees not to adopt, use or apply for registration of a Brand Owner Mark (or any marks confusingly similar thereto) anywhere in the world; and (iii) all uses of a Brand Owner Mark shall inure to the benefit of Brand Owner.

3. **Brand Owner obligations.** Brand Owner 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 Brand Owner License Agreement, shall constitute a breach hereof and shall be grounds for the termination by GS1 US of this Agreement.

- (i) Brand Owner shall obtain a GS1 Company Prefix from GS1 US to manage its Brand Owner Data.
- (ii) Brand Owner shall have an ongoing duty to provide to GS1 US Brand Owner Data that is accurate, correct, complete and “authentic,” no less than annually and pursuant to GS1 Standards requirements. Brand Owner Data shall be considered “authentic” if such data is owned by Brand Owner or licensed to Brand Owner for uses that include publication, distribution and dissemination to third parties including consumers and the public.
- (iii) Brand Owner covenants, represents and warrants that it shall not submit, publish, upload, post or transmit to, or otherwise distribute to GS1 US any content, communication, information, or Brand Owner Data or part thereof, which:
 - a. violates any privacy rights, copyrights, trademarks, patents, or other intellectual property rights of any third party or violates any other applicable law;
 - b. contains or introduces a virus, Trojans, worm, logic bomb or any other materials which are malicious or technologically harmful;
 - c. constitutes or contains false or misleading statements of fact or indications of origin;
 - d. restricts, inhibits or interferes with any other party’s distribution of their Brand Owner Data;
 - e. subjects GS1 US to all or part of any license obligations relating to any open source software.
- (v) Brand Owner represent and warrants it shall comply with all applicable laws and regulations in its performance under this Agreement.
- (vi) GS1 US retains the right to refuse, use or distribute any Brand Owner Data without prior notice to Brand Owner if it believes Brand Owner has violated any terms in this Agreement.
- (vii) Brand Owner agrees to indemnify, defend, and hold harmless GS1 US, and all of its directors, officers, employees, owners, agents, and affiliates (individually a “**Beneficiary**” and collectively the “**Beneficiaries**”) from and against all claims, actions, lawsuits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation reasonable attorneys’ fees and costs), which arise out of, relate to, or result from (1) any allegation that any Brand Owner Data is corrupted, incorrect, inaccurate, faulty, outdated, or in any other way misrepresentative; (2) any allegation that any Brand Owner activity, or use or dissemination of Brand Owner

Data infringes any patent, copyright, trademark, or other intellectual property right; (3) any alleged breach of any representation or warranty of Brand Owner contained in these Brand Owner Terms of Participation and/or (4) any alleged breach of any term, covenant, obligation, duty or requirement by Brand Owner under these Brand Owner Terms of Participation or applicable law. You will cooperate as fully required by GS1 US in the defense of any claim subject to the indemnification obligations set forth herein.

Notwithstanding the foregoing, GS1 US retains the exclusive right to settle, compromise, and pay any and all claims. GS1 US reserves the right to assume the exclusive defense and control of any claims. You will not settle any claims without, in each instance, the prior written consent of an office of GS1 US.

4. **Standards and Policies.** Brand Owner shall comply with all standards and policies adopted and/or implemented by GS1 US from time to time governing the use or distribution of Brand Owner Data which shall be available on the website of GS1 US. Brand Owner acknowledges that GS1 US reserves the right to amend and modify such standards and policies from time to time. GS1 US agrees that each policy and standard will be published and will be made available to Brand Owner at least 30 days prior to the effective date, and Brand Owner agrees and acknowledges that such amendment, modification, changes, etc., shall become effective as against such Brand Owner on the effective date thereof.

5. **GS1 US Verification Services.** GS1 US shall provide the following services to Brand Owner pursuant to the terms of this Agreement: (i) verification and authentication of GS1 Company Prefix(es) licensed to Brand Owner; (ii) validation of GTINs issued to Brand Owner; and (iii) identification of issues associated therewith on behalf of Brand Owners and notification to Brand Owners regarding same.

6. **DISCLAIMER OF WARRANTIES.** BRAND OWNER ACKNOWLEDGES AND AGREES THAT GS1 US MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY MATTER, AND ANY SUCH REPRESENTATIONS OR WARRANTIES ARE EXPRESSLY DISCLAIMED, INCLUDING BUT NOT LIMITED TO INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR BRAND OWNER'S USE OF GS1 US VERIFICATION SERVICES OR ANY COMPONENT THEREOF OR ANY INFORMATION OR DATA DERIVED THEREFROM. GS1 US EXPRESSLY DISCLAIMS ANY HOSTING, SECURITY OR OTHER OBLIGATIONS RELATING TO ANY BRAND OWNER DATA AND ANY THIRD PARTY'S USE THEREOF.

7. **LIMITATION OF LIABILITY.** GS1 US 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, OR THAT MAY ARISE FROM THE USE OR DISTRIBUTION OF BRAND OWNER DATA, OR ANY HARM, EFFECTS OR DAMAGES SUFFERED BY BRAND OWNER AS A RESULT THEREOF.

8. **Governing Law and Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of New Jersey, without regard to conflicts of laws provisions. You will only bring any action or proceeding arising out of or related to this Agreement in the appropriate state or federal court located in Mercer County in the State of New Jersey. Any cause of action You may have under this Agreement must be commenced within one year after the claim or cause of action arises. If for

any reason a court of competent jurisdiction finds any provision of this Agreement, or any portion thereof, to be unenforceable, that provision will be enforced to the maximum extent permissible so as to effect the intent of the Agreement, and the remainder of the Agreement will continue in full force and effect.

9. **Notices.** Unless expressly stated otherwise herein, any notice, demand, request or delivery required or permitted to be given by either Party pursuant to the terms of this Agreement shall be in writing and shall be deemed given: (i) when delivered personally; (ii) on the next business day after timely delivery to an overnight courier; (iii) on the third business day after deposit in the U.S. mail (certified or registered mail return receipt requested, postage prepaid); and (iv) upon confirmation of receipt by facsimile transmission. Any notice shall be addressed as follows: (a) if to Brand Owner, at the address provided by Brand Owner to GS1 US; or (b) if to GS1 US, to:

GS1 US, Inc.
1009 Lenox Drive
Lawrenceville, NJ 08648
Attention: Legal Department

10. **Survival.** GS1 US and Brand Owner acknowledge and agree that Sections 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 will survive the expiration or termination of this Agreement.

11. **Entire Agreement.** This Agreement constitutes the entire agreement between You and GS1 US with respect to Brand Owner Data and Your use of GS1 US Verification Services. GS1 US reserves the right, at its sole discretion, to change, modify, add, or remove any portion of this Agreement, in whole or in part, at any time. Notification of changes in the Agreement will be provided in writing to the last address provided by You to GS1 US.

12. **Binding Nature; Assignment.** This Agreement will be binding on the Parties, their respective successors, and permitted assigns. Brand Owner may not resell, assign or transfer any of its rights or obligations under this Agreement without the prior written consent of GS1 US; provided that Brand Owner, upon not less than fifteen (15) business days prior written notice, may assign its rights and obligations under this Agreement to an affiliate that expressly assumes in writing Brand Owner's obligations and responsibilities hereunder and Brand Owner shall remain fully liable for and shall not be relieved from the full performance of and compliance with all obligations under this Agreement.

13. **Relationship of Parties.** Neither Party is an agent for the other and has no authority to represent or bind the other Party as to any matters, except as expressly authorized in this Agreement. GS1 US has the sole right and obligation to supervise, manage, contract, subcontract, direct, procure, perform or cause to be performed, all work to be performed by GS1 US under this Agreement.

14. **Due Authority; Binding Agreement.** Each Party represents and warrants to the other Party that: (i) it has full power and authority to enter into this Agreement and to perform its respective obligations herein; and (ii) this Agreement represents a valid and legally binding obligation of such Party and is enforceable against such Party in accordance with the terms hereof.

15. **Waiver of Default; Cumulative Remedies.** A delay or omission by either Party to exercise any right or power under this Agreement shall not be construed to be a waiver, nor shall any waiver by either Party in the performance of any covenant (or breach thereof) be construed to be a waiver of any other or

succeeding breach. No waiver or discharge shall be valid unless in writing and signed by an authorized representative of the Party. All remedies provided for in this Agreement shall be cumulative and in addition to (and not in lieu) of any other remedies available to either Party at law, in equity or otherwise.