



*You understand and agree that by checking the box and clicking the “accept” button, your organisation is agreeing to be legally bound by the following three agreements: **GS1 Company Prefix License (Section A), Activate Terms of Use (Section B) and GS1 Cloud Brand Owner Terms of Participation (Section C).***

## **A. GS1 Company Prefix License**

This “GS1 Company Prefix License” (the “**License**”) is entered into by and between GS1 AISBL, an international not for profit association incorporated under Belgian law with registered office at Avenue Louise 326, 1050 Brussels, Belgium, (RPM Brussels: 419.640.608) (“**GS1**”) and the entity which is identified as “**Company**” hereunder, and which provides its acceptance hereto.

1. **Grant of License.** Subject to the terms of this License and for the Term of the License, GS1 hereby grants Company a non-exclusive, non-transferable, worldwide, revocable licence to use the GS& Company Prefix (“**GCP**”) issued to it in connection with the sale and supply of its products. The license granted herein shall not be sublicensed in whole or in part, and any attempted sublicense shall be void ab initio.
2. **Use.** A GCP gives access to all applications using the GS1 system identification standards. A GCP allows Company to create any of the GS1 identification keys, including but not limited to Global Trade Item Number (“**GTIN**”), Global Location Number (“**GLN**”) and Serial Shipping Container Code (“**SSCC**”)(“**GS1 Identification Keys**”). To assist Company in creating and managing GTINs, GS1 makes available to company a specific service named “Activate” which is governed by separate Terms of Use (see section B below).
3. **Term.** The License comes into effect for Company on the date on which GS1 notifies Company of its acceptance of its application and continues until terminated as provided in section 9.
4. **Fees.**
  - a. Company shall pay the annual license fee for the GCP (“**License Fee**”) to GS1 annually within 30 days of the date of GS1’s invoice.
  - b. GS1 may, from time to time, increase the License Fee.
  - c. GS1 reserves the right to charge interest at 12% per annum in case of default to pay at the due date.
  - d. Company acknowledges and agrees that GS1 may recover any cost it incurs related to recovering any late or unpaid fees to GS1 including but not limited to interest, debt collection fees, and reasonable legal fees.
  - e. Where products bearing the GS1 identification numbers issued to Company are already in the marketplace at the time the License is terminated, notwithstanding such termination, Company will remain liable for a fee equivalent to the then current License Fee for the period that Company continues to distribute those products bearing the GS1 identification numbers.
5. **Company obligations and Permitted Use.** Company shall:
  - a. not at any time do or commit to do anything whereby the goodwill or reputation of GS1 may be prejudices or brought into disrepute;

- b. only use the GCP that is issued to it in the connection with the manufacture, sale and identification of its products;
- c. only use GS1 Identification Keys issued to it by GS1 or a GS1 Member Organisation;
- d. not, and not attempt to, alter, transfer, share, sell, lease, sub-license, or subdivide the GCP and/or GS1 Identification Keys and may not permit them to be used by any other party;
- e. not use any numbers that replicate the GS1 numbering system and GS1 Identification Keys;
- f. recognises GS1's title to the GCP and related intellectual property and shall not at any time do or allow to be done any act or thing which may in any way impair GS1's right, title or interest in the GCP or related intellectual property;
- g. ensure that its products bear all proprietary notices that GS1 may require Company to display from time to time;
- h. comply with the GS1 General Specifications, available via <https://www.gs1.org/barcodes-epcrfid-id-keys/gs1-general-specifications>, and any other technical specifications that may be implemented and/or as amended from time to time;
- i. shall forthwith notify GS1 of any change to its contact details (including contact name(s), telephone number, email address, webpage) and shall ensure that its details are up-to-date and correct at all times;
- j. notify GS1 of any change in corporate structure including but not limited to merger, acquisition, partial purchase, split or "spin off";
- k. upon termination, assist GS1 to identify GS1 Identification Keys that may be in circulation and ensure that retailers and distributors are, upon request, required to provide to GS1 details of all GS1 Identification Keys relating to Company that have been processed in the preceding 12 months; and
- l. ensure that it has and maintains all necessary approvals, permits and licenses to operate its business activities and that the manufacture, distribution, packaging and/or sale of its products comply with all applicable laws.

**6. Liability and Indemnity.**

- a. **DISCLAIMER OF WARRANTIES:** COMPANY ACKNOWLEDGES AND AGREES THAT GS1 MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY MATTER, AND ANY SUCH REPRESENTATION OR WARRANTY IS EXPRESSLY DISCLAIMED, INCLUDING BUT NOT LIMITED TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF THE GS1 SYSTEM, THE GCP AND THE GS1 IDENTIFICATION KEYS.
- b. **LIMITATION OF LIABILITY:** TO THE FULLEST EXTENT PERMITTED BY LAW, GS1'S TOTAL LIABILITY TO COMPANY FOR LOSS OR DAMAGE OF ANY KIND ARISING OUT OF THIS LICENSE WHICH IS NOT EXCLUDED BY SECTION 6.A IS LIMITED, FOR ANY AND ALL CLAIMS, TO THE TOTAL LICENSE FEE PAID DURING THE 12 MONTH PERIOD PRIOR TO THE RELEVANT LIABILITY ACCRUING. GS1 SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER, CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE OR OTHERWISE THAT MAY ARISE FROM COMPANY'S USE OF A GCP AND/OR THE GS1 SYSTEM.
- c. **INDEMNITY:** Company holds GS1 and its affiliates, and each of their respective directors, officers, agents, employees, and representatives harmless from and against any claims, actions, proceedings, damages, costs, expenses (including reasonable attorney's fees), and liabilities arising out of or in connexion to Company's (including its officers, employees and agents) non-observance or breach of this License (except to the extent caused by GS1's negligence or wilful misconduct).

**7. Suspension.** GS1 may suspend Company's GCP license with immediate effect by a written notice to Company if Company commits a material breach of any provision of this License and until such time that such breach is cured.

**8. Termination.** GS1 may terminate the License: (i) immediately by giving written notice if Company fails to pay the License Fee by its due date or if Company commits a breach of its obligations under this License



which it fails to cure within 15 days of a written notice, or (ii) to the fullest extent permitted by law, with immediate effect in the event that Company goes into administration, liquidation or bankruptcy or is otherwise dissolved. Either GS1 or Company may terminate this License in any other circumstances by giving six months written notice to the other party. Company may terminate this License by thirty (30) days advance written notice sent to GS1 in case GS1 amends the terms of the License in accordance with section 14 below. Termination of this License does not relieve either GS1 or Company from liability arising from any prior breach of the terms of this License.

9. **Consequences of Termination.** In the event that the License is terminated, Company shall:
- immediately cease applying the GS1 Identification Keys to any of the products manufactured, distributed, packaged and/or sold by Company after the termination date;
  - forthwith withdraw the products that use or display any GS1 Identification Key created under this License from the market or re-label the products to ensure that the GS1 Identification Keys are unreadable;
  - where products bearing GS1 Identification Keys issued to Company remain in the marketplace at the time of termination then, notwithstanding such termination, Company remains liable for a fee equivalent to the License Fee for the period that Company's Products continue to be distributed or otherwise remain in the marketplace;
  - assist GS1 to contact and verify with third party distributors and retailers through which Company has sold its p whether Company has complied with its post-termination obligations described herein; and
  - be immediately liable for all outstanding fees due and payable to GS1, such outstanding fees to attract a penalty interest rate of 12% per annum, or other such rate determined by GS1 from the original due date for payment.
10. **Privacy.** GS1 will handle any personal data provided by Company and its Authorised Users in accordance with the Privacy Policy available on the Website (as amended from time to time).
11. **Assignment.** Company shall not assign its rights and obligations under this License to any other party (whether to a related entity or third party) without the prior express written consent of GS1, such consent to be given in GS1's absolute discretion. Any purported assignment of this License by Company, without GS1's prior express written consent, shall be void *ab initio*.
12. **Notices.** All notices required to be given hereunder shall be in writing (email included) to the other party's registered business address, principal place of business or the (email) address identified when registering to use Activate or otherwise updated by Company or its Authorised Users in Activate from time to time.
13. **Authority to Contract.** Company represents and warrants that it holds the necessary authority and is authorised to enter into this binding agreement and fulfil its obligations hereunder.
14. **Amendment.** GS1 reserves the right to amend this License from time to time and such amendment shall generally be made available to Company via the contact details given to GS1 and such changes shall take effect sixty (60) days after the amendment has been communicated to Company, unless Company decides to terminate the License in accordance with section 8 above.
15. **Entire Agreement.** This License set forth the entire understanding between the parties hereto with respect to the subject matter herein, and supersedes all prior written agreements and understandings, inducements or conditions, express or implied, oral and written, except as contained herein.
16. **No Partnership.** The parties acknowledge and agree that this License does not constitute any joint venture, partnership or contract of employment between them. Nothing in this License is to be constructed to imply a joint venture, agency, or partnership agreement between the parties.

17. **No Waiver.** Neither the failure nor delay on the part of a party to exercise any right, remedy, power or privilege in whole or in part under this License shall operate as or be construed as a waiver thereof. No waiver shall be effective unless it is in writing and signed by the party asserted to grant such waiver.
18. **Severability.** The provisions of this License are independent and several of each other, and no provision shall be affected or rendered invalid and unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.
19. **Applicable law and jurisdiction.** This License shall be governed by and construed in accordance with the laws of Belgium, without regard to principles of conflict of laws. In addition, Company consents and agrees to submit itself to the exclusive jurisdiction of any court located in Brussels, Belgium for any actions, suits or proceedings arising out of or relating to this License. Notwithstanding the aforementioned, Company accepts that GS1 shall nevertheless be allowed to apply for injunctive remedies or relief (or other equivalent types of urgent legal remedy) in any jurisdiction.
20. **Translations.** These Terms of Use are originally drafted in English. Any translation is made available as a courtesy only and, in case of discrepancy between the original English version and the translation, the English version shall prevail.

## **B. ACTIVATE TERMS OF USE**

*(version 1 June 2018)*

“**Activate**” is a web-hosted service provided by GS1 AISBL, an international not for profit association incorporated under Belgian law with registered office at Avenue Louise 326, 1050 Brussels, Belgium, (RPM Brussels: 419.640.608) (“**GS1**”) and accessible via <https://www.gs1.org/services/activate> (or any successor website) (the “**Website**”). The agreement resulting from the consent to these Terms of Use is between your organisation (“**Company**”), (where applicable) you in your capacity of Authorised User and GS1. These Terms of Use are effective as of the date on which they were first consented to by Company.

1. **General Provisions.** Company acknowledges that it has read these Terms of Use and that accepts the terms thereof. If Company does not agree to all of the terms and conditions of these Terms of Use, it may not access or otherwise use Activate. GS1 may amend these Terms of Use at any time and the amended Terms of Use will become effective upon posting thereof on the Website. Company’s continued access to or use of the Activate after such posting shall constitute its acceptance to the amended Terms of Use.
2. **Service.** Activate allows to create and manage Global Trade Item Numbers (“**GTINs**”) to identify Company’s products created on the basis of a GS1 Company Prefix (“**GCP**”) licensed from GS1 under the “GS1 Company Prefix License” (the “**License**”) and to generate corresponding barcode images.
3. **Access.** Company’s right to access Activate is contingent upon its License with GS1 being current. If, at any time, Company ceases to be in good standing under the License (i.e. it fails to meet all its obligations under the License), its right to access Activate will be suspended and terminated as set forth in section 13 below and further access will be denied. Company may designate persons to use its account (“**Authorised Use(s)**”). Company shall be responsible and liable for all access to and use of Activate and the Website by Authorised Users or otherwise through Company’s account and for the Authorised Users’ compliance with these Terms of Use. Upon registration, Company will receive login details for use by Authorised Users only. Company shall maintain the confidentiality of such login details and notify GS1 immediately of any unauthorised use or threatened use thereof.



4. **Permitted Use.** Company may access Activate for internal business or educational purposes only. Any other use of Activate is strictly prohibited. GS1 may for quality assurance and/or analytics purposes monitor Company's use of Activate.
5. **GS1 Cloud. (a)** For the purpose of this section, "**Brand Owner Data**" means the GTINs and a limited set of product data attributes (currently: brand, label description, medium resolution image, target market, company name, product classification) created, managed and made available by Company through Activate. **(b)** Company understands and agrees that (i) the Brand Owner Data is shared by GS1 with data recipients through the GS1 Cloud, a global service operated by GS1; (ii) Company is making the Brand Owner Data available to the GS1 Cloud under the terms of the "*GS1 Cloud Brand Owner Terms of Participation*" (attached as APPENDIX 1), as amended from time to time, which are binding on Company. **(c)** GS1 commits that the use of the Brand Owner Data by data recipients accessing the GS1 Cloud will be subject to the "*GS1 Cloud Terms of Use*" (available on <https://www.gs1.org/gs1-cloud/contracts> ), as amended from time to time. **(d)** Any complaints about the unlawfulness of the Brand Owner Data will be handled in accordance with the "*Notice and Take Down Procedure*", (available on <https://www.gs1.org/gs1-cloud/contracts> ), as amended from time to time, which Company agrees to comply with. **(e)** Company may request that the Brand Owner Data it has made available be removed from the GS1 Cloud at any time by notifying GS1 in accordance with the GS1 Cloud Brand Owner Terms of Participation.
6. **Representations and warranties.** Company represents, warrants and covenants that: (a) it shall not upload, post, transmit to, distribute or otherwise publish through Activate or the Website any communication or any part thereof which: (i) restricts or inhibits any other user from using and enjoying Activate or the Website; (ii) is unlawful, threatening, abusive, libellous, defamatory, obscene, vulgar, offensive, pornographic, profane, sexually explicit or indecent; (iii) constitutes or encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate law; (iv) violates, plagiarises or infringes the rights of GS1 or any other third party including, without limitation, copyright, trademark, patent, rights of privacy or publicity or any other proprietary right; (v) contains a virus or other harmful component; or (vi) constitutes or contains false or misleading statements of fact or indications of origin; and (b) it is (and its Authorised Users are) legally competent and have full power and authority to enter into the agreement governed by these Terms of Use.
7. **DISCLAIMER OF WARRANTIES.** ACTIVATE, INCLUDING ALL CONTENT, SOFTWARE, FUNCTIONS, MATERIALS AND INFORMATION MADE AVAILABLE THEREON OR ACCESSIBLE THERE THROUGH, IS PROVIDED "AS IS". TO THE FULLEST EXTENT PERMISSIBLE BY LAW, GS1 MAKES NO REPRESENTATION OR WARRANTIES OF ANY KIND WHATSOEVER FOR OR RELATING TO ACTIVATE AS WELL ANY OF THE MATERIALS, OR RELATING TO ANY LINKS TO OTHER SITES OR FOR ANY BREACH OF SECURITY ASSOCIATED WITH THE TRANSMISSION OF SENSITIVE INFORMATION TO OR THROUGH ACTIVATE AND/OR THE WEBSITE OR ANY LINKED SITE. FURTHERMORE, GS1 DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. GS1 DOES NOT WARRANT THAT THE WEBSITE OR THE OPERATION THEREOF WILL BE UNINTERRUPTED, OR THAT THE MATERIALS WILL BE ERROR FREE, OR THAT DEFECTS WILL BE CORRECTED, OR THAT THE WEBSITE OR THE SERVER THAT MAKES IT AVAILABLE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.
8. **LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, COMPANY AGREES THAT NEITHER GS1 NOR ANY OF ITS EMPLOYEES, OFFICERS, DIRECTORS, AGENTS OR REPRESENTATIVES SHALL BE LIABLE FOR ANY DAMAGES FOR LOSS OF PROFITS, RESULTING FROM THE USE OR THE INABILITY TO USE ACTIVATE OR THE WEBSITE (WHETHER OR NOT ANY SUCH INABILITY TO USE THE WEBSITE ARISES FROM ANY ACTION OR NEGLIGENCE OF GS1), OR FROM ANY ERRORS CONTAINED IN THE MATERIALS EXCHANGED OR OTHERWISE TRANSFERRED ON OR THROUGH ACTIVATE, OR FOR ANY TRANSACTION MADE ON THE WEBSITE, OR ARISING FROM ANY OTHER MATTER RELATING TO ACTIVATE OR THE WEBSITE.
9. **Third Party Equipment and use of the World Wide Web.** If GS1 publishes a list of system requirements and/or compatible equipment for use in conjunction with Activate, such list neither constitutes an endorsement of such equipment, nor any warranty or representation that the equipment will function to

Company's satisfaction. Because GS1 has no control over equipment that is manufactured and/or distributed by third parties, Company's use of equipment is solely its responsibility and the GS1 shall not be responsible for any defects, malfunctions or any other problems that may arise in its use of equipment. Activate may contain links to other World Wide Web Internet sites. Links to and from Activate and any other site(s) do not constitute an endorsement by GS1 of such site(s), or of its owner or provider, or of any products or services offered for sale thereby or information contained thereon.

10. **Indemnification.** Company agrees to indemnify, defend and hold GS1 and all its officers, directors, agents, employees and affiliates (hereinafter referred to collectively as the "**Indemnified Parties**") harmless from and against any and all liability and costs incurred by the Indemnified Parties in connection with any claim arising out of any breach by Company of these Terms of Use or any of the foregoing representations, warranties and covenants, or in connection with any claim arising out of any transaction offered or made via Activate, including, without limitation, legal fees and costs. Furthermore, Company releases the Indemnified Parties from any claims, demands and/or damages, actual or consequential, of every kind and nature known or unknown, suspected and unsuspected, disclosed or undisclosed, arising out of or in any way related to any transaction instituted or made via Activate. Company shall cooperate as fully as reasonably required in the defence of any claim. GS1 reserves the right to assume the exclusive defence and control of any matter subject to indemnification by Company.
11. **Intellectual Property.** All (intellectual property) rights, title and interest in and to the Website and Activate are owned by GS1 or its licensors. Company shall not decompile, reverse-engineer, alter, or in any way tamper with all or part of the Activate and/or the Website or any software comprised therein, nor cause, permit or assist any other person directly or indirectly to do any of the above. GS1 may place certain materials on the Website relating to GS1 and its business and/or relating to Activate (the "**Materials**"). All such Materials are also protected by copyright laws and international conventions and treaties, and are owned or controlled by GS1 or by the party credited as the owner or provider thereof. Company agrees to honour any and all copyright notices and any other restrictions contained in the Materials. GS1 may change, suspend or discontinue any aspect, feature or database of Activate at any time, without prior notice. GS1 may also impose limits on certain services or features or restrict Company's access to any of the Materials without providing prior notice or incurring any liability.
12. **Confidentiality.** Company acknowledges that communications to and from the Website are not confidential. Company furthermore acknowledges that by submitting a communication to the Website, no confidential, fiduciary, contractually implied or other relationship is created between Company and GS1, other than as set forth in this Agreement.
13. **Suspension and Termination.** GS1 may suspend Company's access to and use of Activate with immediate effect by a written notice to Company if Company (or one of its Authorised User(s)) commit a material breach of any provision of these Terms of Use or of the License and until such breach is cured. If the breach remains uncured for fifteen (15) consecutive days, GS1 shall have the right to terminate Company's access to and use of Activate by written notice with immediate effect. If the breach is cured to GS1's satisfaction, Company's access to and use of Activate shall be restored. Company may terminate the agreement governed by these Terms of Use at any time for any reason without any right to indemnification (subject to section 10 herein) by giving fifteen (15) days' notice in writing to GS1. Any terms which, by their nature, extend beyond termination of Activate shall survive such termination.
14. **Privacy.** GS1 will handle any personal data provided by Company and its Authorised Users in accordance with the Privacy Policy available on the Website (as amended from time to time).
15. **Notices.** All notices required to be given hereunder shall be in writing (email included) to the other party's registered business address, principal place of business or the (email) address identified when registering to use Activate or otherwise updated by Company or its Authorised Users in Activate from time to time.





16. **Severability.** If any provision of these Terms of Use is deemed to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect to the fullest extent permitted by law.
17. **No Waiver.** Failure by GS1 to assert a right under these Terms of Use shall not be deemed as a waiver to exercise such right. No waiver of any right set forth herein shall be deemed effective unless given in writing and signed by the GS1.
18. **Assignment.** Company shall not assign or otherwise transfer its rights or obligations under these Terms of Use in whole or in part without the prior written consent of GS1. GS1 may assign its rights or obligations under these Terms of Use but to an affiliate only without Company's consent.
19. **Law.** These Terms of Use shall be governed by and construed in accordance with the laws of Belgium, without regard to principles of conflict of laws. In addition, Company consents and agrees to submit itself to the exclusive jurisdiction of any court located in Brussels, Belgium for any actions, suits or proceedings arising out of or relating to these Terms of Use. Notwithstanding the aforementioned, Company accepts that GS1 shall nevertheless be allowed to apply for injunctive remedies or relief (or other equivalent types of urgent legal remedy) in any jurisdiction.
20. **Translations.** These Terms of Use are originally drafted in English. Any translation is made available as a courtesy only and, in case of discrepancy between the original English version and the translation, the English version shall prevail.

### **c. GS1 CLOUD BRAND OWNER TERMS OF PARTICIPATION**

*(Version February 2018)*

These GS1 Cloud Brand Owner Terms of Participation ("**Terms of Participation**") are entered into by and between GS1 and the entity which is identified as Company hereunder, and which provides its acceptance hereto in any of the following ways: in writing, by accepting the publication of Brand Owner Data to the GS1 Cloud as a recipient in the GDSN, by click-to-accept, by reference to these Terms of Participation in another agreement or otherwise. These Terms of Participation are effective as of the date on which they were first accepted by Company in accordance with any of the above methods.

1. **Definitions.** In these Terms of Participation, capitalised terms shall have the following meaning:
  - a) "**Affiliate**" means, with respect to a particular person, any entity that directly or indirectly controls, is controlled by, or is under common control with such person.
  - b) "**Authorised Users**" means any person or entity accessing or using the GS1 Cloud and the Service through Company's account.
  - c) "**Brand Owner**" means a manufacturer or a retailer with private label products.
  - d) "**Brand Owner Data**" means product data expressed as data attributes (whether in the form of text, images or otherwise) owned by or licensed to Company and provided to GS1 for publication in and distribution through the GS1 Cloud.
  - e) "**Data Recipient**" means a party viewing and/or using the Brand Owner Data, in or through the GS1 Cloud, subject to the acceptance of the GS1 Cloud Terms of Use.
  - f) "**Data Source**" means the party (GS1 Member Organisation, data pool, etc) that has executed an agreement with GS1 or an Affiliate of GS1 pursuant to which such party provides Brand Owner Data collected in another service or database operated by it to the GS1 Cloud from time to time.
  - g) "**Designee**" means a party authorised by a Brand Owner to create, maintain, manage and/or deliver its principal's Brand Owner Data (including, without limitation, a distributor or a content provider), it being understood that such party must be able to demonstrate its authority to provide and license Brand Owner Data to GS1 for the purpose of the GS1 Cloud and grant the license set out in Section 3 at all times and at GS1's first request.

- h) **"GDSN"** means the Global Data Synchronisation Network, a network of interoperable data pools and the GS1 Global Registry™ that enables data synchronization per the GS1 System standards.
  - i) **"GS1"** means GS1 AISBL, an international not for profit association incorporated under Belgian law with registered office at Avenue Louise 326, 1050 Brussels, Belgium, (RPM Brussels: 419.640.608).
  - j) **"GS1 Cloud"** means the platform, including all equipment, systems, software and processes necessary to operate it, operated by GS1 or any of its Affiliates from time to time to provide the Service.
  - k) **"GS1 Cloud Terms of Use"** means the terms applying to any view and/or use by a Data Recipient of the Brand Owner Data made available to it in the GS1 Cloud, available on the Website, as amended from time to time.
  - l) **"GS1 Member Organisation"** means a member organisation of GS1; as such term is normally understood with respect to GS1.
  - m) **"GS1 system"** means the specifications, standards, and guidelines administered by GS1.
  - n) **"Information Provider"** means the person or entity that effectively uploads the Brand Owner Data to the GS1 Cloud, which may include without limitation the Brand Owner, a Designee or the Data Source.
  - o) **"Metadata"** means any and all data captured through Data Recipients' use of the GS1 Cloud, including statistics reflecting or based on Data Recipients' interactions with the GS1 Cloud and information submitted by Data Recipients when using the GS1 Cloud, such as information entered by Data Recipients into an interface associated with the GS1 Cloud.
  - p) **"Notice & Take Down Procedure"** means the "GS1 Cloud Policy on the Notice & Take Down Procedure", as published on the Website, as amended from time to time.
  - q) **"Party"** means Company or GS1.
  - r) **"Policies"** means the Privacy Policy and the Notice & Take Down Procedure and any policies adopted, implemented, and/or modified by GS1 from time to time, governing operational aspects of the GS1 Cloud and made available on the Website.
  - s) **"Privacy Policy"** means the "GS1 Cloud Privacy Policy", as published on the Website.
  - t) **"Service"** has the meaning given in section 2 below.
  - u) **"trusted"** means, in relation to data, if such data originates from, is authorised or validated by a Brand Owner.
  - v) **"Website"** means a section of the website designed, owned and controlled by GS1 where the Service is offered (<https://www.gs1.org/gs1-cloud/contracts> or any successor website).
2. **Service.** The GS1 Cloud is a platform through which GS1 and the GS1 Member Organisations are providing a global service which enables Brand Owners (directly or via a Designee) to share trusted data about their products with Data Recipients and enables Data Recipients to view and/or use such trusted data (the **"Service"**). GS1 will provide the Service with reasonable skill and care and in accordance with applicable laws and regulations. GS1 does not represent or warrant that the Service will be secure or free from error or interruption. GS1 may from time to time make modifications to the Service and/or to GS1 Cloud, including to its design, functionalities and appearance, or cease its operation.
3. **License Grant.** Company is a Brand Owner or a Designee and wishes to share Brand Owner Data via the Service. Subject to the terms and conditions of these Terms of Participation, (a) Company hereby grants to GS1, and GS1 hereby accepts such grant, a non-exclusive, world-wide, non-transferable (except as expressly set out herein), royalty-free right and license (including the right to sub-license to Data Recipients subject to the GS1 Cloud Terms of Use) to use the Brand Owner Data for any purpose related to the GS1 Cloud and the Service, and (b) GS1 hereby grants to Company (acting through its Authorised Users), and Company hereby accepts such grant, a right of access to the GS1 Cloud and the Service for its own business purposes (including, without limitation or for the management of its own Brand Owner Data, administration of its Authorised Users). For the avoidance of doubt, Company may also use the Service as a Data Recipient and enjoy access to all available Brand Owner Data subject to Company consenting to the GS1 Cloud Terms of Use.



#### 4. **Company Obligations.**

- a) Company covenants, represents and warrants that it shall not make available in the GS1 Cloud any Brand Owner Data, which:
  - (i) is not trusted;
  - (ii) violates any privacy rights, copyrights, trademarks, patents, or other intellectual property rights of any third party or violates any applicable laws or regulations;
  - (iii) does not comply with the GS1 system or violates applicable Policies;
  - (iv) contains or introduces a virus, Trojans, worm, logic bomb or any other materials which are malicious or technologically harmful;
  - (v) restricts, inhibits or interferes with any other party's use of the GS1 Cloud; or
  - (vi) subjects, GS1 and/or the GS1 Cloud to all or part of any license obligations relating to any open source software.
- b) Company shall not decompile, reverse-engineer, alter, or in any way tamper with all or part of the GS1 Cloud or any internet site or any software comprised therein, nor cause, permit or assist any other person directly or indirectly to do any of the above.
- c) Company shall be responsible and liable for all access to and use of the GS1 Cloud, the Website and the Service by Authorised Users or otherwise through Company's account and for the Authorised Users' compliance with these Terms of Participation. Upon registration, Company will receive login details for use by Authorised Users only. Company shall maintain the confidentiality of such login details and notify GS1 immediately of any unauthorised use or threatened use thereof.

#### 5. **Quality of Brand Owner Data.**

- a) Company shall make reasonable efforts to:
  - (i) provide Brand Owner Data of the best quality available to it on an ongoing basis, and
  - (ii) inform GS1 promptly upon becoming aware of any inaccuracy or other quality issue relating to the Brand Owner Data published or distributed through in the GS1 Cloud.
- b) GS1 may, but has no obligation to, monitor and verify that the Brand Owner Data, as submitted to or published in the GS1 Cloud, complies with the provisions of these Terms of Participation. If GS1, in its sole discretion, suspects or believes that certain Brand Owner Data is submitted to or published in the GS1 Cloud in violation of these Terms of Participation (e.g. it violates a third party's intellectual property rights), it may take appropriate remedial action in its sole discretion (including without limitation by temporarily suspending the availability of or definitively removing the said Brand Owner Data from the GS1 Cloud). In exercising its rights pursuant to this Section, GS1 shall use reasonable efforts to adhere to the Notice & Take Down Procedure.
- c) GS1 may, but has no obligation to, share information with Company in the form of automated reports pertaining to basic data quality checks effectuated in the GS1 Cloud. Company understands that these reports are provided as a courtesy only and that it shall use such reports at its sole risk.

#### 6. **Termination.**

- 6.1. Notwithstanding any other arrangements between Company and a Data Source, either Party may terminate the participation of Company to the GS1 Cloud (i) with immediate effect if the other Party breaches any material provision of these Terms of Participation and fails to cure such breach within 15 days of receipt of written notice of such breach from the other Party, (ii) if either Party starts any insolvency or liquidation proceedings (in which case no notification shall be required), and (iii) at any time for any reason by giving thirty (30) days' notice in writing to the other Party. GS1 also reserves the right to limit the visibility of the Brand Owner Data Company's participation to the GS1 Cloud if it is in breach of a contract with a GS1 Member Organisation (e.g. it is no longer current in its payment obligations towards such GS1 Member Organisation). GS1 will notify Company of any termination in accordance with section 15 below. For the avoidance of any doubt, a termination of Company's participation to the GS1 Cloud shall not affect any other agreement Company may have with GS1 or any of its Affiliates in relation to the GDSN.

- 6.2. Upon termination of the participation of Company to the GS1 Cloud: (i) Company's rights to access and use the GS1 Cloud under these Terms of Participation shall cease; (ii) all Brand Owner Data in the GS1 Cloud shall cease to be made available to Data Recipients, but GS1 may retain any of the Brand Owner Data for its records and for internal purposes; and (iii) any Brand Owner Data which has been shared with any Data Recipient prior to such termination may continue to be used by such Data Recipient in accordance with the GS1 Cloud Terms of Use, and GS1 shall under no circumstances be liable for any action or inaction of such Data Recipient. The provisions of Sections 1, 4 b), 5 b), 9, 10, 11, 12, 15 and 19 shall survive termination.
7. **Further Warranties of Company.** Company covenants, represents and warrants that (i) these Terms of Participation represents a valid and legally binding obligation on it and is enforceable against it in accordance with its terms, (ii) it has full power and authority to grant the license as referred to in Section 3 and to perform its obligations herein and (iii) the use of Brand Owner Data by GS1 and/or Data Recipients (for the latter, in compliance with the GS1 Cloud Terms of Use) shall not infringe any copyrights, trademarks, patents, database rights or other intellectual property rights of any third party nor violate any applicable laws or regulations.
8. **Warranties of GS1.** GS1 covenants, represents and warrants that (i) these Terms of Participation are enforceable against GS1 in accordance with its terms and (ii) GS1 shall not use the Brand Owner Data for any purposes other than the GS1 Cloud and the Service.
9. **DISCLAIMER OF WARRANTIES.** COMPANY ACKNOWLEDGES AND AGREES THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER GS1 NOR THE GS1 MEMBER ORGANISATIONS MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED (OTHER THAN THOSE SET OUT IN SECTION 8 ABOVE), REGARDING ANY MATTER, INCLUDING THE GS1 CLOUD, THE SERVICE, ANY BRAND OWNER DATA PUBLISHED TO OR DISTRIBUTED THROUGH THE GS1 CLOUD, AND ANY REPORTS, DATA OR INFORMATION PROVIDED BY GS1 TO COMPANY. ANY SUCH REPRESENTATIONS OR WARRANTIES ARE EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, GS1 DOES NOT REPRESENT OR WARRANT THAT THE GS1 CLOUD WILL BE AVAILABLE AT OR FOR ANY PARTICULAR TIME OR THAT IT WILL BE SECURE OR FREE FROM ERROR OR INTERRUPTION.
10. **LIMITATION OF LIABILITY.** EXCEPT FOR VIOLATIONS OF SECTION 8 ABOVE, TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER GS1 NOR THE GS1 MEMBER ORGANISATIONS SHALL BE LIABLE TO COMPANY FOR ANY HARM, EFFECTS OR DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO ACTUAL, DIRECT, CONSEQUENTIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER SUCH LIABILITY IS BASED ON (I) BREACH OF CONTRACT, (II) BREACH OF WARRANTY OR OTHERWISE, (III) COMPANY'S, COMPANY'S AUTHORISED USERS' OR A DATA RECIPIENT'S USE OF THE GS1 CLOUD AND/OR THE BRAND OWNER DATA, (IV) A FAILURE OR REFUSAL BY GS1 TO GRANT ACCESS TO THE GS1 CLOUD OR (V) A BREACH BY THE INFORMATION PROVIDER AND/OR BY A DATA RECIPIENT OF ANY OF THEIR/ITS OBLIGATIONS TO GS1.
11. **Indemnity.** Company shall fully indemnify, hold harmless and defend GS1, its Affiliates, as well as any GS1 Member Organisation and, for each of the aforementioned, their directors, officers, employees, and agents from and against all claims, actions, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including reasonable attorneys' fees and costs), brought by any consumer, government agency or other third party which arise out of, relate to or result from (i) any allegation that any use, publication or distribution of Brand Owner Data infringes any patent, copyright, trademark, data base right or other intellectual property right; (ii) any breach or alleged breach of these Terms of Participation or any applicable laws or regulations by Company and/or its Authorised Users; and/or (iii) any allegation that any Brand Owner Data has been made available in the GS1 Cloud by Company in breach of Section 4 a) or Section 7. Notwithstanding the aforementioned, GS1 shall retain the right to assume the defence and conduct of the claim in its sole discretion as well as the right to settle any such claim.

12. **Intellectual Property and Confidentiality.** Unless otherwise expressly provided in these Terms of Participation, Company agrees that all intellectual property rights in and to the Website, the GS1 Cloud, the Service and any Metadata are owned by GS1 or its licensors. Each Party will keep the other Party's confidential information in the strictest confidence and only use such information for the purpose of performing its obligations or exercising its rights pursuant to these Terms of Participation.
13. **Amendments.** Company acknowledges that GS1 reserves the right to amend these Terms of Participation from time to time. GS1 agrees that the amended Terms of Participation shall be made available to Company (either directly to its Authorised Users or via its selected Data Source) at least thirty (30) days prior to the effective date and shall become effective as against Company on the effective date thereof, unless Company terminates its participation in accordance with section 6 (a) (iii). The continued use of the Service by the Data Recipient after the aforementioned period of thirty (30) days shall be deemed to constitute the Data Recipient's consent to the amended Terms of Use.
14. **Privacy.** GS1 will handle any personal data (including any personal data of an Authorised User) in accordance with the Privacy Policy on the Website.
15. **Notices.** All notices required to be given hereunder shall be in writing (email included) to the other Party's registered business address, principal place of business or address identified on its webpage or the (email) address identified when registering to use the Service or otherwise updated by the Authorised User from time to time.
16. **Severability.** If any provision of these Terms of Participation is deemed to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect to the fullest extent permitted by law.
17. **No Waiver.** Failure by GS1 to assert a right under these Terms of Participation shall not be deemed as a waiver to exercise such right. No waiver of any right set forth herein shall be deemed effective unless given in writing and signed by the GS1.
18. **Assignment.** Company shall not assign its rights or obligations under these Terms of Participation in whole or in part without the prior written consent of GS1. GS1 may assign its rights or obligations under these Terms of Participation to an Affiliate without Company's consent. GS1 shall provide written notice to Company of any such assignment.
19. **Law.** These Terms of Participation shall be governed by and construed in accordance with the laws of Belgium, without regard to principles of conflict of laws. In addition, each of the Parties consents and agrees to submit itself to the exclusive jurisdiction of any court located in Brussels, Belgium, for any actions, suits or proceedings arising out of or relating to these Terms of Participation. Notwithstanding the above, Company agrees that GS1 shall nevertheless be allowed to apply for injunctive remedies or relief (or other equivalent types of urgent legal remedy) in any jurisdiction.
20. **Translations.** These Terms of Participation are originally drafted in English. Any translation is made available as a courtesy only and, in case of discrepancy between the original English version and the translation, the English version shall prevail.