



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 (www.gs1.org/gs1-cloud 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.

- a) 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.

- b) 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.