

GS1 CLOUD BRAND OWNER TERMS OF PARTICIPATION

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 a Brand Owner 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.

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) “**Brand Owner**” means a manufacturer, a retailer with private label products or a Designee who provides Brand Owner Data to the GS1 Cloud.
 - c) “**Brand Owner Data**” means product data expressed as data attributes (whether in the form of text, images or otherwise) owned by or licensed to Brand Owner and provided by an Information Provider to GS1 for publication in and distribution through the GS1 Cloud. In the context of the GS1 Cloud, Brand Owner Data shall be considered “**trusted**” or “**authentic**” if such data originates (directly or through a Designee) from a manufacturer or a retailer with private label products.
 - d) “**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.
 - e) “**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.
 - f) “**Designee**” means a party authorised by a manufacturer or retailer with private label products 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 Brand Owner Data to the GS1 Cloud and grant the license set out in Section 3 at all times and at GS1’s first request.
 - g) “**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.
 - h) “**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).
 - i) “**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.
 - j) “**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.
 - k) “**GS1 Member Organisation**” means a member organisation of GS1; as such term is normally understood with respect to GS1.
 - l) “**GS1 System Standards**” means an integrated global standards system that provides for accurate identification and communication of information regarding products, assets, services and locations.

- m) **“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 or the Data Source.
- n) **“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.
- o) **“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.
- p) **“Party”** means Brand Owner or GS1.
- q) **“Policies”** means the policies adopted, implemented, and/or modified by GS1 from time to time, governing the GS1 Cloud and made available on the Website, including the Privacy Policy and the Notice & Take Down Procedure.
- r) **“Privacy Policy”** means the "GS1 Cloud Privacy Policy", as published on the Website.
- s) **“Service”** has the meaning given in section 2 below.
- t) **“Website”** means a section of the website designed, owned and controlled by GS1 where the Service is offered (www.gs1.org/gs1-cloud).

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 to share trusted information about their products with Data Recipients and enables Data Recipients to view and/or use Brand Owner 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. Subject to the terms and conditions of these Terms of Participation, Brand Owner 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.

4. Brand Owner Obligations.

- a) Brand Owner covenants, represents and warrants that it shall not make available in the GS1 Cloud any Brand Owner Data, which:
 - (i) is not authentic;
 - (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 applicable GS1 System Standards 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) Brand Owner 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.

5. Quality of Brand Owner Data.

- a) Brand Owner 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, 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 Brand Owner in the form of automated reports pertaining to basic data quality checks effectuated in the GS1 Cloud. Brand Owner 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 Brand Owner and the Data Source, either Party may terminate the participation of Brand Owner 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 terminate the Brand Owner's participation to the GS1 Cloud if it is in breach of a contract with a GS1 Member Organisation. GS1 will attempt to notify Brand Owner of any termination but will not be liable to Brand Owner if it does not do so. For the avoidance of any doubt, a termination of the Brand Owner's participation to the GS1 Cloud shall not affect any other agreement the Brand Owner may have with GS1 or any of its Affiliates in relation to the GDSN.
- b) Upon termination of the participation of Brand Owner to the GS1 Cloud: (i) such Brand Owner'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 inclusion and distribution as Metadata; and (iii) any Brand Owner Data which has been shared with any Data Recipient 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 Brand Owner.** Brand Owner covenants, represents and warrants that (i) these Terms of Participation represents a valid and legally binding obligation on Brand Owner and is enforceable against Brand Owner 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.** BRAND OWNER 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, ANY BRAND OWNER DATA PUBLISHED TO OR DISTRIBUTED THROUGH THE GS1 CLOUD, AND ANY REPORTS, DATA OR INFORMATION PROVIDED BY GS1 TO THE BRAND OWNER. 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 BRAND OWNER 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) BRAND OWNER'S 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 BRAND OWNER'S SELECTED DATA SOURCE, INFORMATION PROVIDER AND/OR BY A DATA RECIPIENT OF ANY OF THEIR/ITS OBLIGATIONS TO GS1.
- 11. Indemnity.** Brand Owner 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 Brand Owner Data is corrupted, incorrect, inaccurate, faulty, outdated, or in any other way misrepresentative; (ii) 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; (iii) any breach or alleged breach of these Terms of Participation or any applicable laws or regulations by Brand Owner; (iv) any allegation that any Brand Owner Data has been made available in the GS1 Cloud by Brand Owner in breach of Section 4 a) or Section 7 and/or (v) any reliance in any Brand Owner Data. 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.** Unless otherwise expressly provided in these Terms of Participation, Brand Owner 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.

- 13. Amendments.** Brand Owner 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 Brand Owner (either directly or via its selected GS1 Data Source) at least sixty (60) days prior to the effective date and shall become effective as against Brand Owner on the effective date thereof.
- 14. Privacy.** GS1 will handle any personal data 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.
- 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.** Brand Owner 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 Brand Owner's consent. GS1 shall provide written notice to Brand Owner 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, you agree that GS1 shall nevertheless be allowed to apply for injunctive remedies or relief (or other equivalent types of urgent legal remedy) in any jurisdiction.