



SOLUTION PARTNER PROGRAM 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, BY PARTICIPATING IN THE GS1 US SOLUTION PARTNER PROGRAM (DEFINED BELOW) PROVIDED BY GS1 US, YOU, ARE AGREEING TO BE LEGALLY BOUND BY ALL OF THESE TERMS AND CONDITIONS, WHICH INCLUDE A LIMITED LICENSE, DISCLAIMERS OF WARRANTY, AND LIMITATIONS OF LIABILITY. IF YOU DO NOT AGREE TO THIS AGREEMENT, YOU ARE NOT PERMITTED TO PARTICIPATE IN THE GS1 US SOLUTION PARTNER PROGRAM.

This Solution Partner Program Agreement (the “**Agreement**”) is made and entered into by and between GS1 US, Inc. (“**GS1 US**”), and the entity identified in this Agreement or in your application accompanying this Agreement (hereinafter “**Partner**”, “**You**”, or “**Your**”). GS1 US and Partner are collectively hereinafter referred to as the “**Parties**”, or when used individually, a “**Party**”.

To become a Partner of the GS1 US Solution Partner Program (the “**Program**”), You must fully complete and submit an online application or otherwise submit an application to GS1 US through a form provided by GS1 US that may be made available from time to time by GS1 US in connection with the Program. To apply, You must provide all requested information, including submitting a complete and accurate application that correctly identifies Your Company, including, its profit or non-profit status, so we can evaluate Your eligibility to participate and select which tier of Solution Partner You are applying for (e.g., Bronze, Silver, Gold or Elite) (each a “**SP Tier**”). We will evaluate Your application, potentially schedule a follow-up telephone consultation with You (in our discretion), and then subsequently notify You of Your application's acceptance or rejection, acting in our sole discretion.

WHEREAS, the fundamental mission of GS1 US is to design, implement, and administer global standards and solutions to improve the efficiency and visibility of business processes, and provides education and support to the communities it serves. In order to support GS1 US and its mission, Partner seeks membership in the Program.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements set forth in this Agreement, the Parties intending to be legally bound hereby agree as follows:

1. **TERM AND TERMINATION.**

- A. **Effective Date & Initial Term.** Upon acceptance of the Partner's membership Application by GS1 US, this Agreement shall be effective starting on the date the membership is deemed valid by GS1 US (“**Effective Date**”) and shall continue for one (1) year from the Effective Date (“**Initial Term**”), unless earlier terminated pursuant to the terms of this Agreement.
- B. **Renewal.** This Agreement shall automatically renew on the anniversary date of the Initial Term and each year thereafter (each being a “**Renewal Term**”), unless either Party gives the other Party written notice of its intention to terminate this Agreement at least thirty (30) days prior to the end of either the Initial Term or any Renewal Term. The Initial Term and each Renewal Term are collectively referred to in this Agreement as the “**Term**”.
- C. Notwithstanding the terms above, this Agreement may be terminated as follows: (i) by either Party at any time and for any reason upon ninety (90) days advance written notice to the other Party; (ii) if the other Party is in breach of this Agreement after written notice and the breaching Party fails to cure the breach within thirty (30) days or written notice; or (iii) immediately by the non-breaching Party if the terms and conditions of the Content License (defined below) or the GS1 US Trademark License (defined below) or the Partner Trademark License (defined below) (as applicable) are breached by the other Party (without the need to provide an opportunity to cure), (iv) by a Party, in the event the other Party commences a liquidation or dissolution or becomes the subject of a bankruptcy or insolvency proceeding, or (v) by GS1 US, to the extent any License Agreement or other agreement entered into with You terminates or expires.

2. **EFFECT OF EXPIRATION AND TERMINATION.** Upon the expiration or termination of this Agreement:

- A. The Content License, GS1 US Trademark License and the Partner Trademark License will automatically terminate;
- B. Partner will immediately cease using, and return or, if directed to so by GS1 US, destroy, the GS1 US Proprietary Information (defined below), cease using any GS1 US Mark (defined below) provided to it by GS1 US, remove all marketing, promotion and other materials regarding the Program from its website(s) and online profiles, destroy all marketing, promotion and other materials regarding the Program then in Partner's possession and control, and destroy all materials (including, without limitation, all letterhead, promotional materials and the like) in its possession or control which contain or otherwise display the GS1 US Mark. Partner will provide a certificate executed by a corporate officer attesting to the return or destruction of all GS1 US Proprietary Information upon GS1 US's written request. GS1 US will cease using Partner's Mark (defined below) and will immediately remove Partner from any directory of members of the Program in any future public editions of that directory;
- C. Partner will remain obligated to pay to GS1 US any amounts required, due and owing under this Agreement, including, without limitation, all applicable Fees (defined below). But if this Agreement is terminated by GS1 US for convenience pursuant to Section 1 above, Partner will be entitled to a pro rata percentage return of the Fees previously paid by Partner to GS1 US for the canceled portion of the Term to the extent those Fees are not subject to any offset on account of other amounts due to GS1 US from Partner, including under other agreements entered into by the Parties; and
- D. Any GS1 US Member (defined below) that has been introduced to GS1 US through the efforts of Partner will remain a GS1 US Member pursuant to the terms and conditions then in existence in any agreement between GS1 US and that GS1 US Member through the end of the term as described in that agreement, and GS1 US will be able to renew that agreement with that GS1 US Member without duty, compensation or liability to Partner.

3. **REGISTRATION DATA.** Partner agrees to provide and maintain current, complete, and accurate registration data as set forth in the application for the purpose of maintaining such data with GS1 US for identifying the Partner and the participants from Partner who act on behalf of Partner.

- A. **Licenses.** The licenses granted in this Section are conditioned upon Partner's strict compliance with the Requirements set forth in the attachment, which is attached hereto and incorporated herein by reference (“**Attachment A**”).
- B. As part of the Program and subject to the terms and conditions of this Agreement, GS1 US hereby grants to Partner, and Partner hereby accepts:
 1. a limited non-exclusive, non-sublicensable, non-transferable, and revocable right and license, during the Term: (a) for the use of GS1 US Proprietary Information, but only to the extent that Partner requires access to and use of the GS1 US Proprietary Information for the sole and exclusive purpose of: (i) participating in the Program in accordance with the terms of this Agreement; (ii) supporting the GS1 US memberships of GS1 US and its affiliates in the application of GS1 Standards and the use of the GS1 US Proprietary Information; and (iii) increasing awareness, adoption and implementation of the GS1 Standards and GS1 US Guidelines and Solutions through clear, consistent messages to the GS1 US Community (collectively (i) through (iii), the “**Content License**”). The Content License may not be sublicensed, in whole or in part, by Partner, and any attempted sublicense will be void ab initio and GS1 US, at its option, may immediately terminate this Content License. Partner will include, and will under no circumstances remove, GS1 US's, copyright, trademark, service mark or other proprietary notices on any complete or partial copies of the GS1 US Proprietary Information in the same form and location as the notices appear on the original work. Notwithstanding the grant of the Content License to Partner, as

between GS1 US and Partner, the GS1 US Proprietary Information will at all times remain the sole property of GS1 US. Nothing in this Agreement will affect a transfer of any copyrights, trademarks, patents, service marks or other intellectual property rights in the GS1 US Proprietary Information from GS1 US to Partner (it being acknowledged by Partner that GS1 US will retain all rights in the GS1 US Proprietary Information).

2. A limited, non-exclusive, non-sublicensable, non-transferable, and revocable right and license, during the Term, solely to use (a) the Solution Partner Program Trademark associated with the Program in the United States (the "**GS1 US Mark**"); and (b) in accordance with the particular program(s) selected by Partner, subject to the following conditions (the "**GS1 US Trademark License**"): (i) all uses of the GS1 US Mark by Partner will be solely limited to the purposes of this Agreement and for use in the United States; (ii) Partner agrees not to adopt, use or apply for registration of the GS1 US Mark (or any marks confusingly similar to them) anywhere in the world or combine the GS1 US Mark with any of the Partner's Marks; and (iii) all uses of the GS1 US Mark will inure solely to the benefit of GS1 US or its affiliates, as applicable.
 - C. Partner hereby grants to GS1 US, during the Term, a worldwide, non-exclusive, royalty-free, limited, non-transferable and irrevocable right and license to use the Partner's name, logo, brand identifications, trade names, service marks or trademarks (the "**Partner's Mark**"), subject to the following conditions (the "**Partner Trademark License**"): (i) all uses of the Partner's Mark will be limited to the purposes of this Agreement; (ii) GS1 US agrees not to adopt, use or apply for registration of the Partner's Mark (or any marks confusingly similar to them) anywhere in the world; and (iii) subject to GS1 US rights in its own trademarks, service marks and trade names, all uses of the Partner's Mark will inure solely to the benefit of Partner or its affiliates, as applicable.
 - D. **Advertising and Marketing.** Partner's activities with respect to any advertising, marketing, promotion and public relations in connection with the Program shall be subject to the prior written approval of GS1 US. Exercise by GS1 US of an approval right hereunder will not under any circumstances void, nullify or constitute a waiver of Partner's indemnification obligations set forth in this Agreement or of any of GS1 US's rights. Partner agrees to actively and consistently promote its services consistent with the obligations it undertakes in this Agreement, at its sole cost and expense, consistent with the approvals provided. Each Party will pay all expenses incurred by it in connection with its obligations hereunder and will be solely responsible for the acts, omissions and expenses of its employees, representatives and agents in connection therewith unless otherwise agreed to by the other Party in writing. Each Party agrees and covenants that during and after the Term, that it, and its employees and agents, shall not disparage the other Party or any of the other Parties' products or its agents or employees.
 - E. **Restrictions on Appointment.** Partner acknowledges that this Agreement is personal to Partner and Partner will not authorize or appoint any unaffiliated party to market or promote the Program services. As used in this Agreement, an affiliate is any company owned by, owning or under common control with, Partner. This Agreement grants Partner only the limited rights set forth in this Agreement, but does not convey title or ownership of any GS1 US property (including, but not limited to, the services, GS1 US Proprietary Information Content License or the GS1 US Mark) to Partner.
 - F. **GS1 US's Reserved Rights.** GS1 US reserves all rights not expressly granted to Partner under this Agreement. Nothing in this Agreement shall be construed as restricting GS1 US's right to sell, lease, license, promote, market, publish, or otherwise distribute the Solution Partner services, in whole or in part, directly or through any other entity or agent. GS1 US reserves the right to modify, add to or discontinue the Program at any time, upon notice to Partner.
 - G. **Relationship of the Parties.** This Agreement does not constitute a franchise or an exclusive grant to Partner of any specific customer, end user, territory or geographic area. This Agreement in no way establishes an employer-employee relationship and the Parties agree and acknowledge that they are independent contractors. Except as provided in this Agreement, neither Party has any right, power, or authority to act, or to create any obligation, express or implied, on behalf of the other Party.
4. **PROGRAM TIER BENEFITS AND COMMITMENTS.**
- A. In order to encourage and support the awareness, adoption and implementation of the Program, the Parties agree that their respective commitments are specifically set forth in **Attachment A** to this Agreement and are incorporated herein by this reference.
 - B. Depending on the SP Tier level selected by Partner, which SP Tiers are specifically set forth on <https://www.gs1us.org/what-we-do/partners/become-gs1-us-solution-partner1> ("**Tier Benefits Page**"), provided Partner pays the Fees, Partner will be entitled to receive the SP Tier benefits identified at the different SP Tier levels. For the Initial Term, the fees (the "**Fees**") identified with Your selected SP Tier shall be due and payable upon the Effective Date. For each Renewal Term thereafter, the Fees applicable to Your SP Tier shall be payable upon each anniversary of the Effective Date unless and until terminated in accordance with this Agreement. The SP Tier benefits You are entitled to receive are identified on the Tier Benefits Page. Certain benefits in each SP Tier will require Partner to agree to additional terms and conditions in order to gain access to such benefit. Failure of the Partner to execute and agree to such terms in the form presented will mean Partner forfeits their right to receive such benefit. Further, benefits must be used within the year such benefit is granted to Partner and any failure to utilize any benefit in the current year in which the benefit is granted will result in forfeiture of the benefit (i.e., unused benefits in one (1) year do not carry over to subsequent years). Also, any benefits such as onsite training services provided by GS1 US (as applicable to certain SP Tiers), do not include the cost and expenses for GS1 US to travel to/from the Partner's location and will be billed separate as mutually agreed to by the Parties. GS1 US has the right to change and update SP Tier benefits and levels, at its sole discretion, and in the event GS1 US changes the SP Tier benefits and/or levels, the changes will become effective to You the following Term year after such changes are made. To the extent one (1) of the SP Tier benefits is the opportunity to participate in a case study, GS1 US does not guarantee Your participation in such a study but only gives You the opportunity to present Your case to be included in such a case study. To the extent Partner decides to change its SP Tier level either up or down, Partner agrees to execute an addendum to this Agreement acknowledging their decision to change their SP Tier.
 - C. Depending on the SP Tier level selected by Partner, Partner hereby agrees that as a participant in any GS1 US work group, the Partner: (i) shall be required to execute an opt-in charter agreement for any work group in which Partner participates; and (ii) shall not be required to make or use any system or component in accordance with a technical standard, guideline, recommendation, prototype, specification and/or any other deliverable or artifact approved by the participants in a GS1 US work group ("**Approved Guideline**") and that Partner shall not be required to implement any Approved Guideline. Partner represents that the selection of its designated representative(s) by Partner is made by an officer or equivalent individual having the power to bind the Partner and its affiliates to the terms and conditions hereof. Any capitalized term not defined in this Section 4(C) shall derive its meaning from the definition provided in GS1 US Intellectual Property Policy set forth on https://www.gs1us.org/desktopmodules/bring2mind/dmx/download.aspx?command=core_download&entryid=669&language=en-US&portalid=0&tabid=134 ("**GS1 US IP Policy**").
 - i. **Patent Licensing Obligation.** Subject to the exclusion provisions of Section 4(C)(iv) below, Partner agrees to grant and hereby grants to any other partner, entity, or individual who implements an Approved Guideline or any guidelines, specifications, and/or recommendations published by GS1 US regarding an Approved Guideline ("**Implementers**") a GS1 US royalty-free license to all claims in any patent or patent application in any jurisdiction in the world that would necessarily be infringed by implementation of all or any part of a Draft Guideline and/or an Approved Guideline ("**Essential Claims**") that the Partner owns and/or any that the Partner has the right to license without obligation of payment or other consideration to an unrelated third party. The license: (i) shall be limited to implementations of any portion of an Approved Guideline, and to what is required by an Approved Guideline; (ii) may, at the option of the Partner, be conditioned on a grant of a reciprocal royalty-free license to all Essential Claims owned or controlled by the licensee; (iii) shall not be conditioned on payment of royalties, fees or other consideration; and (iv) shall not impose any further conditions or restrictions on the use of any technology, intellectual property rights, or other restrictions on behavior of the licensee, but may include reasonable, customary terms relating to operation or maintenance of the license relationship such as choice of law and dispute resolution. The term of the license shall extend for the life of the Essential Claims.

- ii. **Copyright Licensing Obligation.** Partner agrees to grant and hereby grants to all Implementers a non-exclusive, irrevocable, worldwide right and royalty free license to use, copy, publish, display, translate or distribute the Copyrighted Works, or portions thereof, and to create derivative works therefrom. The license: (i) shall be limited to implementations of an Approved Guideline, and to what is required to implement an Approved Guideline; (ii) may, at the option of the Partner, be conditioned on a grant of a reciprocal royalty-free license to any and all Copyrighted Works owned or controlled by the licensee; (iii) shall not be conditioned on payment of royalties, fees or other consideration; and (iv) shall not impose any further conditions or restrictions on the use of any technology, intellectual property rights, or other restrictions on behavior of the licensee, but may include reasonable, customary terms relating to operation or maintenance of the license relationship such as choice of law and dispute resolution. Partner further agrees to grant and hereby grants to GS1 US a non-exclusive license to use, copy, publish, display, translate, or distribute the Copyrighted Works.
- iii. **Review Period.** Partner is bound to the obligations of Sections 4(C)(i) and 4(C)(ii), only if Partner had been represented during three (3) GS1 US Work Group meetings.
- iv. **EXCLUSION FROM GS1 US ROYALTY-FREE LICENSING REQUIREMENTS.**
 - i. **Exclusion Requires Proper Disclosure.** Partner may exclude Essential Claims from the licensing obligations of Section 4(C)(i) and Section 4(C)(ii) only for those Essential Claims that were properly disclosed pursuant to the following parameters: Partner shall disclose Essential Claims of which the Partner has knowledge, after making a reasonable inquiry into Partner's and its affiliate(s)'s patents, at the following times: (i) within five (5) days of making a Contribution to a GS1 US Work Group that implicates subject matter included in the Essential Claims; (ii) within fifteen (15) days of any call for Essential Claims made by GS1 US or the GS1 US Work Group facilitator; (iii) within fifteen (15) days of the creation, dissemination or discussion of a Draft Guideline; and (iv) within fifteen (15) days of the approval of an Approved Guideline. For the sake of clarity, a GS1 US Work Group meeting does not in and of itself trigger a new disclosure obligation pursuant to this Section 4(C)(iv).
 - ii. **Notice of Exclusion.** Partner may provide notice that Partner is unwilling to offer a GS1 US Royalty-Free License to Essential Claims that the Partner owns and/or has the right to license without obligation of payment or other consideration to an unrelated third party ("**Notice of Exclusion**"). In such Notice of Exclusion, Partner shall indicate the specific claims of the Disclosed IP that will be excluded ("**Excluded Claims**") and which part(s) of the Draft Guideline and/or Approved Guideline would infringe the Excluded Claims. Partner shall further indicate in the Notice of Exclusion whether or not it is willing to provide a license to the Essential Claims on reasonable and non-discriminatory terms, to make, have made, use, sell, have sold, offer to sell, import, and distribute and dispose of products and/or services that utilize a Draft Guideline and/or an Approved Guideline ("**RAND License**") to the Excluded Claims. Partner hereby acknowledges that GS1 US has the right to request additional information from Partner with regard to any Notice of Exclusion provided by Partner. Partner hereby agrees to cooperate with GS1 US and provide such additional information to GS1 US within thirty (30) days of receiving any such request for additional information. Partner hereby acknowledges that a Notice of Exclusion shall not be effective until GS1 US is satisfied with the level of detail provided in both the Notice of Exclusion and in any requests for additional information related to that Notice of Exclusion.
 - iii. **Timing of Notice of Exclusion.** For the Notice of Exclusion to be effective, Partner must provide the Notice of Exclusion within fifteen (15) calendar days after disclosing the Disclosed IP. Any Notice of Exclusion received more than fifteen (15) calendar days after the disclosure of the Disclosed IP will not be effective, and Partner shall remain bound by the licensing obligations of Section 4(C).
 - iv. **RAND License.** Any RAND License granted pursuant to Section 4(C)(iv)(ii): (1) shall be available to all Implementers, worldwide, whether or not they are participants or members of GS1 US; (2) shall extend to the Essential Claims owned or licensable by the Partner; (3) shall be limited to implementations of a Draft Guideline and/or an Approved Guideline, and to what is required by a Draft Guideline and/or an Approved Guideline; (4) may, at the option of the Partner, be conditioned on a grant of a reciprocal RAND license to all Essential Claims owned or controlled by the licensee; (5) may be conditioned on payment of reasonable, non-discriminatory royalties or fees; and (6) shall not impose any further conditions or restrictions on the use of any technology, intellectual property rights, or other restrictions on behavior of the licensee, but may include reasonable, customary terms relating to operation or maintenance of the license relationship such as choice of law and dispute resolution. The term of the license shall extend for the life of the Essential Claims.
 - v. **Logistics.** Partner shall provide the Notice of Exclusion to the GS1 US Group facilitator.
 - vi. **Designing Around Excluded Claims.** GS1 US reserves the right to direct the GS1 US Work Group to design around the Excluded Claims. Additionally, GS1 US may, at its sole discretion, alter a Draft Guideline and/or an Approved Guideline to avoid infringing the Excluded Claims.
 - vii. **Publication of Notices of Exclusion.** Partner acknowledges that GS1 US may, at its sole discretion, publish any Notices of Exclusion to other members of the GS1 US Work Group and/or to the general public.

5. DATA PRIVACY.

- A. GS1 US uses the Partner's Mark, Partner Trademark License and any personal data You provide, including the name, title and contact information for all persons participating in the Program for the purpose of administering Your participation in the Program, including You in our Partner directory and to make You aware of and/or to market other upcoming GS1 US events, products and/or services. You hereby represent that You have the right to make any personal data You provide to GS1 US for these purposes. To this end, GS1 US may disclose Your personal data to third party service providers. GS1 US may also disclose Your personal data as disclosed in our Privacy Policy located at <http://www.gs1us.org/privacy-policy> and Terms of Use located at <http://www.gs1us.org/terms-of-use>. If You do not want GS1 US to use the Partner's Mark or personal data in order for us to market You to our GS1 US Members such as in our directory or otherwise, You may opt-out by contacting GS1 US via email at spprograms@gs1us.org.
- B. Notwithstanding any provision in this Agreement to the contrary, GS1 US will not provide any information regarding: (1) Members of the GS1 US community who utilize any part of the GS1 US system; or (2) access to any information provided by GS1 US member companies ("**GS1 US Members**") to GS1 US. The failure of GS1 US to provide Partner with access to the foregoing information will not constitute a breach of this Agreement by GS1 US, and will not result in any liability or other obligation of GS1 US or its affiliates to Partner hereunder if the provision of that information will cause, or could cause, as determined by GS1 US, in its sole discretion, a breach by GS1 US of any of those contractual limitations.
- C. Partner acknowledges and agrees that this Agreement does not grant Partner any rights to participate in the GS1 US system, nor does this Agreement confer upon Partner any rights granted to any GS1 US Members except those as expressly stated herein.
- D. Partner may provide, at its sole cost and expense, data to GS1 US about third parties Partner provides services to as part of the Program. Partner expressly permits, and agrees to obtain express written permission from all third parties, to share data with GS1 US and for GS1 US to use and analyze the data in order to: (i) determine whether such third party is in compliance with GS1 US standards; and (ii) for GS1 US internal business purposes.

6. PROPRIETARY RIGHTS.

- A. Except as otherwise set forth in this Agreement: (1) the GS1 US Proprietary Information and all copies thereof, and any modifications, improvements or other changes thereto, are proprietary to GS1 US and title thereto at all times remains with GS1 US; and (2) all applicable rights to patents, copyrights, trademarks and trade secrets in and to the GS1 US Proprietary Information are and will remain the property of GS1 US. Partner agrees not to extend, improve, modify or otherwise change the GS1 US Proprietary Information. Partner will not sell, transfer, publish, disclose, display or otherwise make available the GS1 US Proprietary Information, or copies thereof, to third parties. Partner will not sublicense any of its rights under this Agreement. Partner agrees to use its reasonable efforts to cause its officers, directors, employees and agents, to execute and deliver any document or instrument requested from time to time by GS1 US to confirm GS1 US's ownership of the

GS1 US Proprietary Information or any improvements, modifications or other alterations or changes thereto.

- B. Notwithstanding Section 6(A), Partner may develop systems software or other intellectual property that enables GS1 US Members to leverage the GS1 US standards provided that any and all intellectual property rights in such development shall not limit, hinder, alter, modify or adversely affect any intellectual property rights (whether patentable or unpatentable, or copyrightable or not copyrightable) of GS1 US in any GS1 US Proprietary Information ("**Partner Development**"). Partner shall promptly disclose to GS1 US and will furnish to GS1 US all relevant information pertaining to such Partner Development.

7. CONFIDENTIAL INFORMATION.

- A. For purposes of this Agreement, confidential or proprietary information shall include all non-public information regarding GS1 US, its employees, clients, and related companies, all employee lists, electronic files, client data, investor information, employee files and databases, logs, reports, specifications, pricing, methods, processes, financial data, lists, apparatus, statistics, programs, research, developments or related information, or its or their respective clients concerning past, present or future business activities and all and other intellectual property rights related thereto (collectively, "**GS1 US Proprietary Information**"). Partner agrees that it will not disclose, provide, or make available any GS1 US Proprietary Information, in any form to any person without GS1 US's prior written consent, except to bona fide employees, officers or directors of Partner whose access is necessary to enable Partner to exercise its rights hereunder. Prior to the disclosure of any GS1 US Proprietary Information to a third party (which disclosure will be made only with the consent of GS1 US) that third party will in writing agree to be bound by the same obligations of confidentiality to which Partner is subject hereunder, and Partner will remain responsible for and will indemnify and hold GS1 US, and if applicable, its affiliates, harmless from and against a breach by that third party of that obligation of confidentiality. Further, Partner will not reverse engineer, decompile, disassemble or adopt any process, technique, or procedure or make any attempt to ascertain or derive the source code to the GS1 US Proprietary Information. GS1 US will be entitled to equitable relief, including injunctive relief and specific performance, in addition to all other remedies available to it, in the event of any breach of this Section 7.
- B. Notwithstanding the foregoing, nothing in this Agreement will prevent Partner from disclosing GS1 US Proprietary Information upon Partner's establishing that the GS1 US Proprietary Information: (1) has been published or has become part of the public domain other than by acts or omissions of Partner, its employees, agents or contractors; (2) was lawfully in the possession of Partner at the time of disclosure to it and was not acquired by Partner directly or indirectly from GS1 US; (3) was received after disclosure to Partner by a third party who had a lawful right to disclose that information to Partner; or (4) was independently developed by Partner without knowledge or use of the GS1 US Proprietary Information.

8. INDEMNIFICATION.

- A. GS1 US will indemnify Partner against all damages awarded and costs actually incurred by Partner pursuant to any legal proceeding (including settlement costs and reasonable attorneys' fees and costs reasonably incurred in the defense of any such proceeding) brought against Partner by third parties arising only out of third parties allegations that any GS1 US Mark used in compliance with this Agreement licensed to Partner under this Agreement infringes, violates or misappropriates: any United States intellectual property rights; if (1) Partner promptly notifies GS1 US in writing of any such claim or any threatened claim; and (2) GS1 US is permitted to fully control the defense and settlement thereof so long as such settlement does not impose a financial obligation on Partner.
- B. GS1 US and its affiliates alone will be responsible for taking those actions which they determine are reasonably necessary or desirable in their sole discretion in connection with any infringement or alleged infringement by a third party of the GS1 US Proprietary Information, and Partner agrees to cooperate with GS1 US by taking whatever action GS1 US and its affiliates determine to be reasonably necessary or desirable, subject to reimbursement by GS1 US of reasonable legal fees and other expenses incurred in connection with that cooperation.
- C. Partner shall defend, at Partner's expense, indemnify and hold GS1 US, its parent, and each of their respective successors, assigns and licensees, and the officers, directors, employees, agents, representatives and equity holders of each of the foregoing, harmless from and against any and all losses, liabilities, damages, penalties, fines, costs, expenses (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings made or brought by a third party alleging, or arising out of or related to: (i) Partner's (or its employees' use or misuse of the Content License; (ii) breach or alleged breach of this Agreement; (iii) its provision of services to third parties, including, without limitation, failure to provide accurate data; (iv) Partner's failure to comply with applicable law or regulation; (v) if Partner's Mark or Copyrighted Works infringes, violates or misappropriates any copyright, copyright application, trademark, trademark application, service mark or service mark application, including, without limitation any claim relating to the provisions of Section 4(C) above, or (vi) Partner's negligence or willful misconduct.
- D. **Third-Party Claims.** If a Party entitled to indemnification hereunder (an "**Indemnified Party**") receives written notice of the commencement of any action or proceeding, the assertion of any claim by a third-party or the imposition of any penalty or assessment for which indemnity may be sought under Section 8, as applicable (a "**Third Party Claim**") and the Indemnified Party intends to seek indemnity pursuant to Section 8, as applicable, the Indemnified Party will promptly provide the Party providing indemnification hereunder (the "**Indemnifying Party**") with written notice of such Third Party Claim. The Indemnifying Party is entitled to participate in or, at its option, assume the defense, appeal or settlement of such Third Party Claim, with counsel selected by the Indemnifying Party and approved by the Indemnified Party, which approval will not be unreasonably withheld or delayed. The Indemnified Party will fully cooperate with the Indemnifying Party in connection therewith. The Indemnified Party is entitled at any time to employ separate counsel to represent itself, but if the defense, appeal or settlement of such Third Party Claim has been assumed by the Indemnifying Party with its approved counsel as provided above, any separate counsel employed by the Indemnified Party is at the Indemnified Party's expense. The Indemnifying Party may not settle any Third Party Claim, the defense or settlement of which is controlled by it, without the Indemnified Party's prior written consent which consent will not be unreasonably withheld or delayed. If the Indemnifying Party fails to assume the defense, appeal or settlement of any Third Party Claim within ten (10) days after receipt of notice thereof from the Indemnified Party, the Indemnified Party may undertake the defense, appeal or settlement of such Third Party Claim at the expense and for the account of the Indemnifying Party.

9. DISCLAIMER AND WARRANTIES.

- A. **Disclaimer.** In no event will either Party be liable to the other Party for special, indirect, incidental, lost profits or consequential damages (including loss of business or goodwill), regardless of whether such liability is based on breach of contract, breach of warranty or otherwise arising from the course of work under this Agreement or usage of information, even if a Party has been advised of the possibility of such damages.
- B. **Representations & Warranties.** You warrant and represent to GS1 US that all services You provide and all business You conduct as a Solution Partner shall not harm the reputation of GS1 US. You : (i) shall conduct Your activities in a professional and competent manner; (ii) not employ deceptive, misleading, or unethical practices; (iii) shall not make any representations, warranties, or guarantees to customers on behalf of GS1 US; (iv) shall comply with all applicable federal, state and local laws, rules and regulations; (v) acknowledge that You are not in an Office of Foreign Assets Control of the U.S. Treasury Department ("**OFAC**") sanctioned country and will not otherwise conduct business with sanctioned entities/countries (or have otherwise received OFAC approval) and are in compliance with OFAC regulations; and (vi) shall comply with all intellectual property and proprietary rights protections for GS1 US. Each Party represents and warrants to the other Party that its performance of its obligations under this Agreement will be in material compliance with all applicable laws, rules and regulations. The warranties made in this Section 9 are limited warranties and the only warranties being made by the Parties hereunder, whether express, implied, by operation of law or otherwise.

10. LIMITATION OF LIABILITY.

- A. The provisions of Section 8 above state the sole, exclusive and entire liability of the respective Parties, and the sole remedy to the respective Parties, with respect to the infringement of third-party intellectual rights by a Party's Proprietary Information or Mark.
- B. Neither GS1 US, nor any of GS1 US's affiliates, nor Partner will be liable to the other or any third party, and the measure of damages will not include, any amounts for indirect, incidental, consequential (including lost profits), exemplary or punitive damages even if such Party has been advised of the possibility of those damages. Except with respect to a breach of Sections 9 or the indemnification obligations in Section 8 above, the total liability of any Party (or a GS1 US affiliate pursuant to Section 8(B) above) to the other Party under this Agreement, whether on account of actions or claims based on contract, equity, tort or otherwise, shall not exceed the Fees paid by Partner to GS1 US in the twelve (12) months prior to the determination of liability.

- 11. GOVERNING LAW.** This Agreement and performance under it shall be governed by, construed in accordance with and enforced under the applicable laws of New Jersey, without reference to the choice of law rules to the contrary. The rules of construction construing the terms against the draftsmen shall not apply. Any legal actions or claims relating to this Agreement must be filed and litigated only in a state or federal court sitting in the county of Mercer in the State of New Jersey, U.S.A. The Parties consent to the exclusive jurisdiction of such courts and waive any objection to such venue.

- 12. NOTICE.** Any notice hereunder directed to the Partner shall be considered made when sent to the Partner in accordance with the Partner data set for the time the Partner joined the Program. Notice from the Company to GS1 US shall be made to:

GS1 US, Inc.
Princeton South Corporate Center
300 Charles Ewing Blvd.
Ewing, NJ 08628
Attention: Legal Department

All notices, requests, demands and other communications required or permitted under this Agreement will be in writing and will be deemed to have been duly given, made and received: (1) when delivered, if made by hand delivery; (2) the next day, following deposit with a reputable overnight courier service such as FedEx or UPS; (3) when sent, if transmitted by facsimile with confirmation of receipt via the U.S. mail; or (4) on the third (3rd) day following deposit in the U.S. mail, certified or registered, postage prepaid, return receipt requested, addressed to each Party's address as specified on the signature line to this Agreement. Any Party may alter the address to which communications or copies are to be sent by giving notice of that change of address in conformity with the provisions of this Section for the giving of notice.

13. MISCELLANEOUS.

- A. Binding Nature: Assignment. This Agreement will inure to the benefit of, and be binding upon and enforceable by, the Parties and their respective successors and permitted assigns. Partner will not, by operation of law or otherwise, assign this Agreement, nor its rights or obligations under this Agreement (including, without limitation, the Content License or the GS1 US Trademark License), in whole or in part, without the prior written consent of GS1 US, which consent will be in GS1 US's sole discretion.
- B. Counterparts. This Agreement may be executed in any number of counterparts (whether facsimile or original), each of which will be deemed to be an original, and all of which will together constitute one and the same instrument.
- C. Due Authority: Binding Agreement. Each of GS1 US and Partner 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 that Party and is enforceable against that Party in accordance with its terms.
- D. Entire Agreement. This Agreement sets forth the entire understanding among the Parties with respect to the subject matter hereof, and understandings, inducements or conditions, express or implied, oral or written, except as herein contained. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof.
- E. Modification. 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 address provided as part of registration data.
- F. Relationship of Parties. It is understood and agreed that GS1 US and Partner are separate legal entities. Nothing contained in this Agreement will be deemed or construed by the Parties, nor by any third party, as creating any partnership or joint venture relationship between the Parties. Nothing in this Agreement will constitute or permit either Party to execute on behalf of the other any contract or other document, or to bind or otherwise obligate the other Party.
- G. Severability. The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.
- H. Survival. GS1 US and Partner acknowledge and agree that the provisions of Sections 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 will survive the expiration or termination of this Agreement.
- I. Waiver of Default; Cumulative Remedies. Neither the failure nor any delay on the part of either Party to exercise any right, remedy, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor will any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver will be effective unless it is in writing and signed by the Party asserted to have granted that waiver. 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.



SOLUTION PARTNER PROGRAM AGREEMENT
ATTACHMENT A

I. **FEES:** GS1 US hereby offers participation in its Program for the Fees and, by joining the program, Partner agrees to:

- A. Complete the appropriate Partner application and tier selection;
- B. Satisfy all the below Program Requirements to become and maintain Partner's status as a GS1 US Solution Partner; and
- C. Pay the annual program Fees and relevant certification testing fees according to the terms and conditions in this Attachment A.

II. **BASIC PROGRAM REQUIREMENTS:** GS1 US requires and Partner agrees to satisfy the following Program Requirements during the Term of the Agreement:

- A. *Partner in Good Standing.* A "**Partner in Good Standing**" means a Partner who remits fees in a timely manner in accordance with the program payment terms.
- B. Partner will support the proper use of GS1 Company Prefixes or GS1 Identification Keys, including but not limited to: Global Location Numbers (GLN); Global Trade Item Numbers (GTIN); Universal Product Code (U.P.C.) codes; or U.P.C. numbers, unless expressly agreed to in writing by GS1 US.
- C. *Program Representative.* Partner will assign a program representative in charge who will work cooperatively with GS1 US personnel. That individual will have overall responsibility for understanding the process and procedures to train, certify, and coordinate the execution of Program.
- D. *Education and Training.* Within one hundred twenty (120) days from execution of this Agreement (and the departure date of their only educated/certified resource), Partner will have a resource successfully complete the GS1 US Foundations Series for Solution Partners. If requisite education and training is not completed within one hundred twenty (120) days, the Partner may not receive some Program benefits.
- E. *Certificates and Certification.* Certificates are offered at the individual Professional level and Certifications are offered at the Product level. Separate agreements and additional fees apply to each category.
 - 1. *Professional Certificate.* Depending on the SP Tier level selected by Partner, Partner may be eligible to send individuals through scheduled GS1 US Education and Training classes or private classes organized through GS1 US. The current professional certificate courses are
 - GS1 Standards Professional Designation Course
 - GDSN Package Measurement Rules Professional Designation Course
 - GS1 US National Data Quality Program: Auditor Certification Course
 - Digital Listing Content Professional Course
- F. *Marketing.* In all marketing and communications initiatives related to the Agreement, Partner will:
 - Comply with GS1 US usage guidelines: Obtain written approval from authorized GS1 US personnel within commercially reasonable timeframe for any press releases;
 - Cease use of materials upon request by GS1 US within a commercially reasonable timeframe; and
 - Feature the relevant GS1 US Solution Partner Trustmark on Solution Partner's website with a link to the GS1 US website. Partner is wholly responsible for the design, coding and implementation of this link.