



ITEM LEVEL READINESS PROGRAM MEMBERSHIP 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, AND YOUR PARTICIPATION IN THE GS1 US ITEM LEVEL READINESS PROGRAM PROVIDED BY GS1 US, YOU, ON BEHALF OF THE COMPANY ARE AGREEING TO BE LEGALLY BOUND BY ALL OF THESE TERMS AND CONDITIONS, WHICH INCLUDES A LIMITED LICENSE, DISCLAIMERS OF WARRANTY, AND LIMITATIONS OF LIABILITY. IF YOU DO NOT AGREE TO THIS AGREEMENT, YOU ARE NOT PERMITTED TO PARTICIPATE IN THE GS1 US ITEM LEVEL READINESS PROGRAM.

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

1. **PURPOSE.** The purpose of this Agreement is to set forth the terms and conditions under which Company shall be granted membership in the GS1 US Item Level Readiness Program (“**GS1 US ILRP**”). Membership in GS1 US ILRP shall require acceptance of this Agreement and membership in good standing with GS1 US. GS1 US ILRP is intended to assist Company in optimizing its EPC/RFID efforts in support of item level tagging and integrate EPC/RFID into Company’s business.
2. **TERM AND TERMINATION.**
 - A. **Effective Date & Initial Term.** Upon acceptance of the Company’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**”).
 - B. **Renewal.** This Agreement shall automatically be renewable on the anniversary date of the Initial Term and each year thereafter, (each being a “**Renewal Term**” and collectively with the Initial Term, the “**Term**”), subject to the then applicable terms and conditions established by GS1 US, including, but not limited to, timely payment of all applicable annual renewal membership fees and continued compliance with all of the terms and conditions of this Agreement, unless sooner terminated in accordance with this Agreement
 - C. **Termination.** Notwithstanding the above, this Agreement shall terminate upon: (i) a material breach by a Party to perform its obligations under this Agreement (which, in case of Company, shall include, among other things, failure to make any payments when due), which breach continues for a period of thirty (30) days following receipt of written notice by the other Party; (ii) the bankruptcy or insolvency of a Party (in which event no notice shall be required); (iii) the sale of Company to an entity, whether by sale of all or substantially all of Company’s assets, merger or consolidation, in which Company is *not* the surviving party, or sale of equity which results in the transfer of more than 50% of the voting interests in Company, *provided* further that Company must send written notice to GS1 US within ninety (90) days from the close of such sale; or, (iv) at any time and for any reason either party terminates Company’s Membership Agreement by sending written notice at least thirty (30) days in advance to the other Party. Upon termination, Company shall, unless directed otherwise by GS1 US, immediately be removed from the GS1 US ILRP.
3. **REGISTRATION DATA.** Company agrees to provide and maintain current, complete, and accurate registration as set forth in the application for the purpose of maintaining such data with GS1 US for identifying the Company.
4. **PROGRAM TYPES.**
 - A. **Basic Supplier Readiness Program:**
 1. Knowledge transfer on the GS1/EPCglobal standards and how they support Item Level Tagging (web-based and quarterly teleconferences);
 2. Education on encoding a EPC (GTIN to EPC);
 3. Interactive adoption roadmap, with live access to the tasks and tools;
 4. Access to GS1/EPCglobal Privacy Guidelines (web based); and
 5. Serialization best practices and support
 - B. **SOW Program:** At Company’s request, Company may participate in the SOW program, which provides customized solutions that are tailored to the needs of the client.
5. **FEES & INVOICING.**
 - A. **Fees.** GS1 US reserves the right to review the fee schedule annually and make such changes as may be necessary. Company agrees to pay an annual GS1 US ILRP membership fee. Subject to its right to terminate this Agreement as set forth in Paragraph 2(C), Company agrees to pay an annual membership fee prior to the anniversary date on which this Agreement may be renewed. Company agrees that if, for any reason, Company does not pay the annual membership fee, this Agreement is terminated and all services provided to Company shall cease.
 - B. **Invoicing; Taxes.** GS1 US shall invoice Company the annual membership fees and any applicable taxes for the Initial Term upon the Effective Date and, for all Renewal Terms, no less than thirty (30) days prior to the commencement of each Renewal Term. Company shall pay all invoices (which shall include any applicable tax(es)) within thirty (30) of receipt of the invoice. All fees and charges shall be net of all taxes that Company is required by law to withhold and remit to a taxing authority. In addition to GS1 US fees and any charges under this Agreement, Company is responsible for all taxes, which GS1 US is specifically required by law to collect, unless Company has provided GS1 US with a copy of a tax exemption certificate.
6. **MARKETING COMMUNICATIONS INCLUDING PRESS RELEASES.** The Parties agree that GS1 US may refer to Company as a member of GS1 US ILRP. The Company is aware and has read the following policies and expectations as a GS1 US ILRP member:
 - **Company Permissions:** As GS1 US ILRP member, Company agrees to support various public and press events when appropriate for Company business, permit the use of Company’s name and logo on GS1 US public and promotional materials and permits GS1 US to identify applicant as a participant in the initiative.
 - **Contact Information Expectations:** Company shall provide additional contacts to GS1 US for future account management and to enable Company to participate in the benefits offered by the GS1 US community.
7. **LICENSE.** Company grants GS1 US and the participating item level readiness members, to the extent necessary to facilitate Company’s participation in the GS1 US ILRP, a non-exclusive, worldwide right and license to use Company’s name, logos, trademarks, service marks, copyrightable material, content, Company proprietary information and any other applicable intellectual property, solely for the purpose to carry out the communications and information gathering purposes as required to participate in the GS1 US ILRP. Such license shall terminate with respect to GS1 US and participating members, upon Company’s withdrawal as a GS1 US ILRP member.
8. **CONFIDENTIALITY.** Company 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 Company whose access is necessary to enable Company 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 Company is subject hereunder, and Company 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. 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 Paragraph 8.

Notwithstanding the foregoing, nothing in this Agreement will prevent Company from disclosing GS1 US Proprietary Information upon Company'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 Company, its employees, agents or contractors; (2) was lawfully in the possession of Company at the time of disclosure to it and was not acquired by Company directly or indirectly from GS1 US; (3) was received after disclosure to Company by a third party who had a lawful right to disclose that information to Company; or (4) was independently developed by Company without knowledge or use of the GS1 US Proprietary Information.

9. INDEMNIFICATION. Company will indemnify, defend and hold GS1 US, Inc. and its officers, employees, directors, representatives, agents and affiliates (each, an "**Indemnified Party**"), harmless against any and all damages awarded and costs incurred by GS1 US pursuant to any legal proceeding (including settlement costs and reasonable attorneys' fees and costs reasonably incurred in the defense of any such proceeding) arising out of Company's breach of this Agreement, or any third party claim brought against an Indemnified Party alleging that Company's mark infringes or misappropriates any copyright, copyright application, trademark, trademark application, service mark or service mark application.

10. DISCLAIMER; LIMITATION OF LIABILITY; WARRANTIES.

- A. **Disclaimer.** In no event will either Party be liable for special, indirect, incidental, lost profits or consequential damages (including loss of data, 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 or data, even if a Party has been advised of the possibility of such damages.
- B. **Limitation of Liability.** The Parties shall not be liable for, and the measure of damages shall not include, any amounts, for indirect, incidental, consequential, exemplary, or punitive damages, even if advised of the possibility of such damages. The total liability of GS1 US under this Agreement, whether on account of actions or claims based in contract, equity, tort or otherwise, shall not exceed the fees paid by Company to GS1 US in the twelve (12) months prior to the determination of liability.
- C. **Warranty.** GS1 US makes no warranties, express or implied, and any such warranties are expressly disclaimed, concerning the merchantability or fitness for a particular purpose of the work performed under this Agreement.

11. MISCELLANEOUS.

- A. **Binding Nature; Assignment.** This Agreement will be binding on the Parties, their respective successors, and permitted assigns. Neither Party may assign this Agreement without the prior written consent of the other Party, provided that Company, upon not less than fifteen (15) business days prior written notice, may assign its rights and obligations under this Agreement to an Affiliate that expressly assumes in writing Company's obligations and responsibilities hereunder and Company shall remain fully liable for and shall not be relieved from the full performance of and compliance with all obligations under this Agreement.
- B. **Due Authority; Binding Agreement.** Each Party represents and warrants to the other Party that: (i) it has full power and authority to enter into this Agreement and to perform its respective obligations herein and (ii) this Agreement represents a valid and legally binding obligation of such Party and is enforceable against such Party in accordance with the terms hereof.
- C. **Entire Agreement; Severability; Modification.** This Agreement will be binding on the Parties, their respective successors, and permitted assigns. Neither Party may assign this Agreement without the prior written consent of the other Party, provided that Company, upon not less than fifteen (15) business days prior written notice, may assign its rights and obligations under this Agreement to an Affiliate that expressly assumes in writing Company's obligations and responsibilities hereunder and Company shall remain fully liable for and shall not be relieved from the full performance of and compliance with all obligations under this Agreement.
- D. **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.
- E. **OFAC Acknowledgement.** Company acknowledges that it is not currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("**OFAC**") or any similar sanctions imposed by any other body, governmental or other, to which Company is subject and will not otherwise conduct business with sanctioned entities/countries (or have otherwise received OFAC approval) and are in compliance with OFAC regulations.
- F. **Notice.** Any notice hereunder directed to the Company shall be considered made when sent to the Company in accordance with the Company data set for the time the Company joined the Initiative. 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

- G. **Relationship of Parties.** Neither Party is an agent for the other and has no authority to represent or bind the other Party as to any matters, except as expressly authorized in this Agreement. GS1 US has the sole right and obligation to supervise, manage, contract, subcontract, direct, procure, perform or cause to be performed, all work to be performed by GS1 US under this Agreement.
- H. **Survival.** GS1 US and Company acknowledge and agree that the provisions of Paragraphs 6, 7, 8, 9, 10 and 11 will survive the expiration or termination of this Agreement.
- I. **Waiver of Default; Cumulative Remedies.** A delay or omission by either Party to exercise any right or power under this Agreement shall not be construed to be a waiver, nor shall any waiver by either Party in the performance of any covenant (or breach thereof) be construed to be a waiver of any other or succeeding breach. No waiver or discharge shall be valid unless in writing and signed by an authorized representative of the Party. All remedies provided for in this Agreement shall be cumulative and in addition to (and not in lieu) of any other remedies available to either Party at law, in equity or otherwise.