



GS1 US RX EPCIS TESTING SERVICE CERTIFICATION 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 YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD AND AGREE THAT THE FOLLOWING TERMS AND CONDITIONS GOVERN THE RX TESTING CERTIFICATION PROGRAM. IF YOU DO NOT AGREE WITH THIS AGREEMENT, DO NOT CLICK I AGREE.

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

WHEREAS, GS1 US designs, implements and administers global standards, guidelines and solutions to improve the efficiency and visibility of supply and demand chains; and

WHEREAS, Applicant desires to submit EPCIS test files for testing in the GS1 US Rx EPCIS Testing Service Certification Program;

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. **DEFINITIONS**

1.1 “**Test File**” means EPCIS conformance test scenario files, generated for manufacturers or wholesalers, for commissioning, packing, and shipping events, as outlined in the GS1 US Implementation Guideline.

1.2 “**Applicant Data**” means after Applicant is issued a Finding of Certification, any data obtained by Applicant from third parties and made available to GS1 US, by or on behalf of Applicant pursuant to this Agreement, including, without limitation, data Applicant collects from third parties when it confirms whether such third party is compliant with GS1 US standards and any other materials or information provided by Applicant to GS1 US in connection with this Agreement.

1.3 “**Application**” means this Agreement along with Applicant Information submitted to GS1 US.

1.4 “**Certification**” means verification that the EPCIS test files of the 3rd Party Testing Service is consistent with EPCIS 1.2 and R1.2 Implementation Guideline and the Rx Compliance Test Cases.

1.5 “**Finding of Certification**” means a determination that the Version of Testing Service is consistent with Rx Compliance Test Cases and the Web Portal Service which has been certified by GS1 US.

1.6 “**Certification Process**” means the process of verifying Testing Service is consistent with the Rx Compliance Test Cases and the Web Portal Service which has been certified by GS1 US.

1.7 “**Certification Mark**” means the following logo. GS1 US may alter, revoke or add additional GS1 US Certification Marks, from time to time at its sole discretion:



1.8 “**Testing Service**”, means the Testing Service program, source code, object code, and assembly code, as identified in this Agreement.

1.9 “**Product for Review**” means Testing Service identified by Applicant in this Agreement and submitted for Certification to GS1 US by Applicant.

1.10 “**Proprietary Information**” means any confidential or proprietary information of Applicant submitted to GS1 US with this Agreement or that at the time of disclosure is conspicuously marked as being “**Confidential**” or “**Proprietary**.”

1.11 “**Version**” means the particular edition or instance of the Testing Service being requested by Applicant.

2. **CERTIFICATION**

2.1 GS1 US hereby agrees to perform a Certification of the Version of Testing Service submitted by Applicant. During the Certification Process, GS1 US agrees to hold all Proprietary Information in confidence except for such disclosure that is reasonably necessary to support the Certification Process.

2.2 GS1 US agrees to issue a Finding of Certification for the Version of Testing Service for any of the Rx Compliance Test Cases for which the Version Testing Service passes the Certification Process. If the Version of Testing Service fails the Certification Process for one or more of Rx Compliance Test Cases, GS1 US will not issue a Finding of Certification. If the Version of Testing Service fails the Certification Process for all Rx Compliance Test Cases, GS1 US will not issue any Findings of Certification for the Version of Testing Service for any of the Rx Compliance Test Cases. The determination to issue a Finding of Certification is within the sole discretion of GS1 US. Upon the conclusion of the Certification Process, GS1 US agrees to timely inform Applicant of the results of the Certification Process. Applicant shall not be credited any refunds as a result of findings which indicate failures.

2.3 If the Version of Testing Service fails the Certification Process for one or more of Rx Compliance Test Cases, Applicant may submit a new Version of Testing Service to GS1 US with a new Application. Applicant will be charged additional fees.

2.4 Applicant hereby agrees to timely submit all documents and/or information for Testing Service as required by this Application. Applicant further agrees to provide GS1 US with any additional documents and/or information with respect to Testing Service as requested by GS1 US in a timely manner.

2.5 Applicant must be a member in good standing of the GS1 US Solution Partner Program.

2.6 Applicant acknowledges and represents that Applicant has provided accurate, current, and complete information in this Application. Applicant hereby agrees that Applicant shall notify GS1 US if any of the information provided as part of the Application or Certification Process changes when such change occurs.

3. **FEES/PRE-CERTIFICATION SUPPORT**

3.1 GS1 US reserves the right to review the fee schedule annually and GS1 US will make such changes as may be necessary and Applicant agrees to pay GS1 US such fee. This fee shall be due when Applicant returns Application to GS1 US. GS1 US shall not perform any part of the Certification Process until any and applicable fees are processed.

3.2 If Applicant requires precertification support to execute the test plan, Applicant may be charged additional fees which shall be subject to the written consent of both parties.

4. **TERM, TERMINATION AND SCOPE**

4.1 This Agreement shall be effective upon receipt of payment for services (“**Effective Date**”).

4.2 This Agreement shall terminate upon failure of Applicant to timely comply with any provision of this Agreement. Either Party may terminate this Agreement at any time by providing the other Party with at least thirty (30) days’ written notice of its intent to terminate. In the event of termination by Applicant, GS1 US shall be entitled to retain any and all fees paid by Applicant. In the event of such termination by GS1 US (other than upon Applicant’s failure to comply with this Agreement), any Findings of Certification previously granted by GS1 US shall continue with full force and effect.

4.3 GS1 US shall have sole discretion to revoke any and all granted or pending Findings of Certification and associated Certification Marks at any time upon written notice to Applicant.

4.4 Any Findings of Certification and the use of associated Certification Marks granted by GS1 US are expressly limited to the Version of Testing Service submitted by Applicant to GS1 US for Certification and to the Rx Compliance – Test Cases for which the Version of Testing Service passes the Certification

Process. Any Testing Service that may be inconsistent in any way from the Version of Testing Service submitted by Applicant to GS1 US for Certification shall not be covered by any Finding of Certification provided by GS1 US.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 **Right to Use Trademarks, Service Marks and Trade Names.** GS1 US hereby grants Applicant a limited, personal, non-transferable, non-sublicensable, revocable, non-exclusive license to use the Certification Mark and other GS1 US-designated marketing and promotional materials provided by GS1 US to Applicant (collectively, the "Marks") solely upon a Finding of Certification for Applicant to market its Certification. Upon GS1 US's written request, Applicant will provide copies of all materials used by Applicant to market and promote its services. If Applicant reproduces Marks, it will do so only in the format furnished by GS1 US. Applicant may use the Marks only for purposes of marketing and promoting its Certification in connection with this Agreement and will make no other use of the Marks without GS1 US's prior written consent. Applicant will not challenge or contest the validity of the Marks or any other of GS1 US's trademarks, service marks or trade names or do anything that could reasonably be expected to jeopardize or diminish their value or GS1 US's rights in them. Applicant recognizes and acknowledges that: (i) the goodwill associated with Applicant's use of the Marks inure solely and exclusively to GS1 US; and (ii) it will not acquire any rights to the Marks as a result of Applicant's use thereof, and that all such use by Applicant will inure to GS1 US's benefit.

5.2 **Advertising and Marketing.** Applicant's activities with respect to any advertising, marketing, promotion and public relations 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 Applicant's indemnification obligations set forth in this Agreement or of any of GS1 US's rights. Applicant 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 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.

5.3 **Restrictions on Appointment.** Applicant acknowledges that this Agreement is personal to Applicant and Applicant will not authorize or appoint any unaffiliated party to market or promote the Services. As used in this paragraph, an affiliate is any GS1 US owned by, owning or under common control with, Applicant. This Agreement grants Applicant 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 and the Marks) to Applicant.

5.4 **GS1 US's Reserved Rights.** GS1 US reserves all rights not expressly granted to Applicant 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 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 Certification at any time, upon notice to Applicant.

5.5 **Relationship of the Parties.** This Agreement does not constitute a franchise or an exclusive grant to Applicant 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.

6. APPLICANT DATA

6.1 Applicant will provide, at its sole cost and expense, Applicant Data to GS1 US in the event Applicant provides certification services to a third party seeking a GS1 US trustmark. Applicant expressly permits, and agrees to obtain express written permission from all third parties, to share Applicant Data with GS1 US and for GS1 US to use and analyze the Applicant Data in order to: (i) determine whether such third party has earned a GS1 US trustmark; and (ii) for GS1 US internal business purposes.

7. DAMAGES AND WAIVERS

7.1 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 Testing Service for which any Findings of Certification have been issued. GS1 US does not warrant that the Testing Service will meet any or all requirements of Applicant or of the Rx Compliance Test Cases.

7.2 Applicant hereby acknowledges that GS1 US makes no representations regarding whether Testing Service may infringe the intellectual property rights of any third party. Applicant hereby agrees to hold GS1 US harmless for any claims of infringement of intellectual property rights made by third parties with respect to Testing Services and/or arising from any Finding of Certification and/or the Certification Process.

7.3 Notwithstanding anything to the contrary contained in this Agreement, GS1 US shall not be liable for any consequential, special, indirect, incidental, exemplary or punitive damages of any kind or nature whatsoever, or any lost income or profits, regardless of whether arising from breach of contract, tort or from any other theory of liability, ARISING UNDER THIS AGREEMENT even if advised of the possibility of such loss or damage or if such loss or damage could have been reasonably foreseen.

7.4 THE LIMIT OF LIABILITY OF GS1 US TO APPLICANT FOR ANY CAUSE OR COMBINATION OF CAUSES OF ACTION SHALL BE, IN THE TOTAL AMOUNT, LIMITED TO THE LESSER OF THE FEES PAID BY APPLICANT TO GS1 US WITH RESPECT TO THE CERTIFICATION PROCESS OR \$1,000.00.

8. REPRESENTATIONS AND WARRANTIES

8.1 Applicant represents and warrants to GS1 US that: (i) it has the full power and authority to enter into and perform the Agreement and that the execution and delivery of the Agreement has been duly authorized; (ii) the execution, delivery and performance of this Agreement by Applicant does not and will not materially conflict with, violate, or result in a breach of any provision of any government or court order, judgment or decree, or with any other contract or agreement to which Company is a party or by which it is bound; (iii) it is the owner of, or otherwise has the right to license, the Applicant Data to GS1 US for the purposes identified in this Agreement and has the right to grant to GS1 US the ability to use and analyze the Applicant Data, as contemplated under this Agreement; (iv) the performance of its obligations under this Agreement will not violate and will at all times be in compliance with all applicable law, rules and regulations; (v) the collection, compilation and delivery of the Applicant Data to GS1 US, will not breach any confidentiality obligations Applicant has agreed to with respect to the Applicant Data; (vi) any third parties whose information is included within the Applicant Data provided consent that its data made be shared by Applicant with third parties, such as GS1 US; and (vii) it shall be solely responsible for any failure of it to comply with the terms of any agreement it entered into with a third party that restricts the ability of Applicant to share the Applicant Data with GS1 US.

9. INDEMNIFICATION

9.1 Applicant shall defend, at Applicant's expense, any proceedings or actions brought against GS1 US, its officers, agents or employees resulting from GS1 US's use of Applicant's Testing Service during the Certification Process or from Applicant's use of any Finding of Certification. In addition, Applicant agrees to pay all claims, costs, expenses, liabilities, damages and attorneys' fees resulting from any such proceedings. Applicant will indemnify and defend GS1 US, and its respective officers, directors, employees, agents and other representatives from and against all claims, costs, expenses and damages, including reasonable attorneys' fees, arising out of or relating to: (i) GS1 US's use of Applicant's Testing Service during the Certification Process or from Applicant's use of any Finding of Certification; (ii) any actual or alleged violation, breach or default by Applicant of its representations, warranties and obligations contained in this Agreement or non-fulfillment of any covenant or failure to perform obligations hereunder, including, but not limited to, any breach or misuse of Applicant Data; (iii) the negligence or willful misconduct of Company or Company personnel; (iv) Applicant's failure to obtain the Applicant Data and/or share it with GS1 US in compliance with its third party agreements; and (v) any injury to person or damage to property resulting in any way from any act, omission on the part of Applicant in the performance or failure to perform any obligation hereunder

10. NOTICE

10.1 All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by an internationally recognized overnight courier service, by facsimile or registered or certified mail (postage prepaid, return receipt requested). Any notice hereunder directed to the Applicant shall be considered made when sent to the Applicant in accordance with the Applicant data set for the time the Applicant executed the Agreement. Notice from the Applicant to GS1 US shall be made to:



GS1 US, Inc.
Princeton South Corporate Center
300 Charles Ewing Boulevard
Ewing, New Jersey 08628
Attention: Legal Department

11. MISCELLANEOUS PROVISIONS

11.1 Nothing contained in this Agreement will be construed to place the GS1 US and Applicant in the relationship of principal and agent, master and servant, employer and employee, partners, or joint ventures, and no Party shall, either expressly or by implication, represent itself as having any authority to make contracts in the name of or binding on any other Party, or to obligate or bind any other Party in any way.

11.2 Nothing contained in this Agreement requires the commission of any act or the payment of any compensation that is contrary to any law. If there exists any conflict between this Agreement and any such law, the provision or provisions hereof affected will be curtailed, limited or eliminated to the extent, but only to the extent, necessary to remove such conflict; and as so modified, this Agreement and the provisions thereof will continue in full force and effect.

11.3 Each Party acknowledges that it has obtained or has been afforded the opportunity to obtain, independent legal advice with respect to this Agreement and that it understands the nature and consequences of this Agreement. No provision of this Agreement will be interpreted against the drafting party as a result of such drafting.

11.4 This Agreement will be governed by and construed in accordance with the substantive laws of the State of New Jersey and the federal laws of the United States applicable to agreements made, and wholly performed, in that jurisdiction without regard to its conflicts of laws principles and the Parties consent to the jurisdiction of such courts in any such action or proceeding and waives any objection to venue laid therein.

11.5 Applicant 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 Applicant 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

11.6 This Agreement will be binding on the benefit of each of the Parties, and their successors and assigns. This Agreement may not be assigned or transferred by Applicant, in whole or in part, by operation of law or otherwise, without the written consent of GS1 US. Any such assignment or transfer made without GS1 US's consent will be void.

11.7 The provisions of Section 4.3, Articles 5 through Article 11, shall survive the termination or expiration of this Agreement.

11.8 This Agreement constitutes the entire agreement and understanding between GS1 US and Applicant, and supersedes all prior and contemporaneous agreements, representations, warranties or understandings between GS1 US and Applicant with respect to the subject matter of this Agreement. This Agreement may not be modified orally, but only by a subsequent agreement in writing signed by the Parties.

11.9 All article and section headings in this Agreement appear for convenience of reference and will not affect the meaning or interpretation of this Agreement