

## **GS1 GDSN, INC. TERMS OF PARTICIPATION AGREEMENT FOR U.S. TRADING PARTNERS**

This **GS1 GDSN, Inc.** Terms of Participation Agreement ("Participation Agreement") is made and entered into between GS1 GDSN, Inc., a Delaware not-for-profit corporation ("GS1 GDSN"), and the person(s) or entity(ies) which are identified as a Trading Partner hereunder.

**1. Definitions.** The parties have agreed on the following definitions to apply to this Participation Agreement.

**"Data Pool(s)"** means those persons or entities that have executed a Global Registry Access and License Agreement with the GS1 GDSN, by which they have access to use the GDSN and the GS1 Global Registry™ on behalf of subscribing customers. A list of certified data pools can be found on the GDSN website at [www.gs1.org](http://www.gs1.org).

**"Global Data Synchronization Network" or "GDSN"** means a network of interoperable Data Pools and the GS1 Global Registry™ that enables data synchronization per the GS1 System standards.

**"GS1 Global Registry™"** means a global registry for item and party master data which is accessible to Data Pools certified as being compliant within the GS1 System standards.

**"GS1 System standards"** means an integrated global standards system that provides for accurate identification and communication of information regarding products, assets, services and locations.

**"Trading Partner(s)"** shall mean the manufacturer, supplier, wholesaler, distributor, retailer or other member of global supply and demand chain which has agreed to and indicated its written acceptance to the Participation Agreement, pursuant to which Trading Partner is entitled to participate in the GDSN, subject to Trading Partner's selected Data Pool's compliance with its obligations to GS1 GDSN.

**"Trading Partner Proprietary Information"** means any and all information relating to Trading Partner's products, product formulations, pricing, cost data, methods, processes, designs, secrets, techniques, capabilities, permissions, instructions, specifications, requirements, orders, shipments, business or project descriptive materials, marketing information, customer information and any other information owned by, or to which Trading Partner has the lawful right to use, and employed by Trading Partner for the purpose of facilitating Trading Partner's participation in the GDSN, which is not otherwise in the public domain and which is treated as confidential by Trading Partner.

**2. Subscription to GDSN.** Upon written acceptance of the terms and conditions of the Participation Agreement and upon Company's selected Data Pool's payment of the applicable Data Pool fee to GS1 GDSN, Trading Partner shall be deemed to have been granted by GS1 GDSN a subscription for the right to participate in the GDSN and, in furtherance thereof, to utilize the GS1 Global Registry™. GS1 GDSN and Trading Partner agree that upon Trading Partner's written acceptance of the terms and conditions of the Participation Agreement, any existing Global Registry Subscription Agreement between the parties shall automatically terminate and the terms of the Participation Agreement shall govern. Trading Partner acknowledges that Trading Partner is not obtaining any license or ownership to the GS1 Global Registry™ or to any proprietary technology, processes, concepts or other proprietary intellectual property or confidential information of GS1 GDSN pertaining to the GDSN or to the GS1 Global Registry™. Trading Partner's rights are limited to participation in the GDSN in accordance with the terms and conditions stated herein. Trading Partner may register certain attributes in the GS1 Global Registry™, including, without limitation, (i) the Global Trade Item Number® ("GTIN®"), (ii) the Global Location Number (GLN) of the data source, (iii) the target market country code, (iv) the target market subdivision code, (v) the catalogue item classification, (vi) the GLN of the source Data Pool, (vii) the registry catalogue item state and (viii) the item status; however, Trading

Partner acknowledges and understands that the registration, publication, subscription and synchronization functions of the GS1 Global Registry™ are to be performed by Trading Partner's selected Data Pool(s).

**3. Conditions to Subscription.** Trading Partner acknowledges and agrees that its failure to comply with any of the following material covenants, conditions and obligations, or any of the other terms and conditions contained in the Participation Agreement, shall constitute a breach hereof and shall be grounds for the immediate termination by GS1 GDSN of Trading Partner's participation in the GDSN.

A. Trading Partner shall participate in the GDSN and obtain access to the GS1 Global Registry™ through a Data Pool which has complied with all applicable GS1 GDSN certification requirements. Trading Partner may join more than one Data Pool to obtain access to the GS1 Global Registry™ based on Trading Partner's business needs and requirements. If Trading Partner undertakes to become a Data Pool, it must separately execute a Global Registry Access and License Agreement with GS1 GDSN.

B. All Trading Partner data must comply with GS1 System standards, either directly or through third party data alignment via a GDSN Data Pool.

C. Trading Partner shall comply with all standards and policies adopted and/or implemented by GS1 GDSN from time to time governing the GDSN and the GS1 Global Registry™, including, but not limited to, access and service level standards, acceptable use policies, developmental and technical functionality, certification and marketing, educational and training policies and standards. Trading Partner acknowledges that GS1 GDSN reserves the right to amend and modify such standards and policies and may introduce modifications, changes, enhancements, new versions and new releases to all or part of the GDSN from time to time. GS1 GDSN agrees that each policy and standard will be published and will be made available to Trading Partner's Data Pool at least 120 days prior to the effective date, and further acknowledges that such amendment, modification, changes, etc. shall become effective as against such Trading Partner on the effective date thereof. Trading Partner agrees that in the event of any ambiguity, inconsistency or other question of interpretation concerning any standards or policies adopted by GS1 GDSN, the determination of the GS1 GDSN Board of Directors shall be conclusive and binding.

D. Fees. GS1 GDSN does not charge the Trading Partner a separate subscription fee to participate in the GDSN. GS1 GDSN collects its annual fees from the Data Pool directly, which annual payment allows the Data Pool to provide coverage to all of its Trading Partners to participate in the GDSN. The Trading Partner's selected Data Pool retains the discretion to charge its Trading Partners and allocate its costs across its Trading Partners as it deems necessary.

E. Help Desk. Trading Partner acknowledges and agrees that GS1 GDSN shall not be responsible for providing help desk support or any other support or resource services to Trading Partner and that help desk support resources and services shall be provided exclusively by or on behalf of Trading Partner's Data Pool.

F. Trading Partner Information Security.

(a) GS1 GDSN, shall during the term of this Agreement, provide security for Trading Partner's Proprietary Information at least at levels and in the manner in which GS1 GDSN secures its own proprietary information, but in no event less than a reasonable degree of care.

(b) GS1 GDSN hereby acknowledges that the Trading Partner Proprietary Information shall at all times remain the sole property of Trading Partner. GS1 GDSN agrees that it will not disclose,

provide, or make available any Trading Partner Proprietary Information in any form to any person without Trading Partner's prior written consent, except to those persons whose access is necessary to facilitate Trading Partner's Participation in the GDSN.

(c) Notwithstanding the foregoing, nothing herein shall prevent GS1 GDSN from disclosing Trading Partner's Proprietary Information upon GS1 GDSN establishing that the Trading Partner Proprietary Information: (i) has been published or has become part of the public domain other than by acts or omissions of GS1 GDSN, its employees, agents or contractors; (ii) was lawfully in the possession of GS1 GDSN at the time of disclosure to it and was not acquired by GS1 GDSN directly or indirectly from Trading Partner; (iii) was received after disclosure to GS1 GDSN by a third party who had a lawful right to disclose such information to GS1 GDSN; or (iv) was independently developed by GS1 GDSN without knowledge or use of the Trading Partner Proprietary Information.

(d) GS1 GDSN hereby agrees to indemnify and hold Trading Partner harmless from and against any claims made against Trading Partner which arise as a result of a breach by GS1 GDSN of the terms of this Paragraph 3F.

G. Warranty Disclaimer. TRADING PARTNER ACKNOWLEDGES AND AGREES THAT GS1 GDSN MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND ANY SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED, INCLUDING BUT NOT LIMITED TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE GDSN OR THE GS1 GLOBAL REGISTRY™. EXCEPT AS SET FORTH IN PARAGRAPH 3F ABOVE, GS1 GDSN SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER, CONSEQUENTIAL OR OTHERWISE, THAT MAY ARISE FROM THE TRADING PARTNER'S PARTICIPATION IN THE GDSN OR THE USE OF THE GS1 GLOBAL REGISTRY™ BY TRADING PARTNER OR FOR ANY FAILURE OR REFUSAL BY GS1 GDSN TO GRANT TRADING PARTNER ACCESS TO THE GDSN OR GS1 GLOBAL REGISTRY™ BASED ON A BREACH BY THE TRADING PARTNER'S SELECTED DATA POOL OF ITS OBLIGATIONS TO GS1 GDSN.

H. Term; Termination. The term of this Participation Agreement shall commence on the first day following Trading Partner's written acceptance of the terms and conditions herein, and unless sooner terminated in accordance with the terms hereunder, shall continue in effect for a period of one year therefrom (the "Initial Term.") This Participation Agreement shall renew automatically at the end of the Initial Term (each being a "Renewal Term") subject to Trading Partner's selected Data Pool being in good standing with regard to GS1 GDSN and continued compliance by the Trading Partner of all the terms and conditions herein. Notwithstanding the above, either party may terminate this Participation Agreement (i) immediately, if the other party breaches any material provision of this Participation Agreement and fails to cure such breach within 30 days of receipt of written notice of such breach from the non-breaching party or (ii) at the end of the Initial Term or at the end of the Renewal Term by providing 60 days prior written notice to the other party.

I. Law. The terms in this Participation Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to the principles of conflict of laws.

J. Notices. All notices required to be given hereunder shall be in writing and shall be deemed delivered (i) when delivered by hand, (ii) one business day after being given to a nationally or internationally recognized overnight carrier, (iii) when sent by confirmed facsimile with a copy sent by other means as permitted in this section, or (iv) six days after deposit in the United States mail by registered or certified mail, return receipt requested, and fourteen days after deposit in international mail.

Notice to GS1 GDSN shall be given to:  
GS1 GDSN, Inc.

Attn: Clement D. Erhardt, III, Secretary  
Princeton Pike Corporate Center  
1009 Lenox Drive, Suite 202  
Lawrenceville, NJ 08648

K. Survival of Clauses. GS1 GDSN and Trading Partner acknowledge and agree that those Paragraphs of this Participation Agreement which by their terms must survive the expiration or termination of this Participation Agreement shall survive the expiration or termination of this Participation Agreement.


L. Entire Agreement. This Participation Agreement sets forth the entire understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings, inducements or conditions, express or implied, oral or written, except as herein contained.

M. Publicity. Neither party will use the other party's name or trademarks in any advertising, sales promotion or publicity matters without the other party's written consent.

N. Assignment. This Participation Agreement shall inure to the benefit of, and be binding upon and enforceable by, the parties hereto and their respective successors and permitted assigns. Trading Partner shall not assign its rights or obligations under this Participation Agreement in whole or in part without the prior written consent of GS1 GDSN, which consent shall be in GS1 GDSN's reasonable discretion; provided, however, that Trading Partner may assign any of its rights and obligations hereunder without the consent of GS1 GDSN (but with prior notice) (i) to any existing or newly formed wholly-owned subsidiary of Trading Partner or (ii) to any entity that acquires all or substantially all of the stock or assets of Trading Partner. GS1 GDSN may assign its rights or obligations under this Participation Agreement without the consent of Trading Partner. GS1 GDSN shall provide written notice to Trading Partner of any such assignment.

**4. Terms of GDSN Subscription.** Trading Partner acknowledges and agrees that, as a condition to its participation in the GDSN and utilization of the GS1 Global Registry™, it shall be obligated to comply with the terms and conditions as set forth in this Participation Agreement, as such terms may be amended from time to time as more fully set forth therein. Furthermore, Trading Partner acknowledges and agrees that GS1 GDSN is, and is intended to be, a third party beneficiary to this Participation Agreement, and shall be entitled to (i) enforce any rights granted to GS1 GDSN by the Participation Agreement directly against Trading Partner, (ii) seek damages directly against Trading Partner for any breaches by Trading Partner of the obligations set forth in the Participation Agreement or (iii) terminate Trading Partner's participation in the GDSN and utilization of the GS1 Global Registry™ to the extent Trading Partner breaches any of the terms and conditions herein.

GS1 GDSN, Inc.

By:   
Name: Sally A. Herbert  
Title: President

17 May 2007