



GS1 Canada Terms and Conditions

These GS1 Canada Terms and Conditions ("Terms") apply to all services provided by GS1 Canada ("GS1 Canada") and the recipient of such services from GS1 Canada ("Subscriber"), unless otherwise agreed by the parties.

The Terms posted on GS1 Canada's website are effective the date accepted by the Subscriber in writing, which may be performed electronically through a website, by email acceptance, or otherwise, or upon receipt of the Services by the Subscriber, whichever occurs first. Alternatively, the Terms may be executed in hardcopy form accompanied by a cover sheet, in which case any terms or conditions in said cover sheet shall be incorporated into the Terms.

These Terms apply to and are incorporated into Service Agreements. In the event of any conflict between these Terms and the applicable Service Agreement, the terms of the Service Agreement shall govern to the extent of such conflict. The Terms together with the applicable Service Agreement, are referred to collectively as the "**Agreement**".

If you are an individual user of the Services, you agree to the following. You agree:

- (1) that for the purposes of this Agreement, your use of the GS1 Canada website is included in the definition of "Services" and you are included in the definition of "Subscriber";
- (2) to comply with the terms and conditions of this Agreement as

- applicable to your use of the Services (including the Subscriber responsibilities set out in Section 4);
- (3) in using the Services, other than the GS1 Canada public website, you are only doing so in the course of your employment with a Subscriber and that your access to such Services is contingent on your employer's continued subscription to the applicable Services;
- (4) that any personal information you provide to GS1 Canada during your use of the Services will be handled in accordance with the GS1 Canada Privacy Policy; and
- (5) that you will comply with the terms of the GS1 Canada User Code of Conduct.

Unless otherwise agreed by the parties, this Agreement applies to Subscriber's use of the Services and supersedes any previous agreements with respect to the subject matter herein.

GS1 Canada reserves the right to make changes to this Agreement, including any Service Agreement and agreements linked or otherwise included in this Agreement. GS1 Canada will notify the Subscriber of such changes by: (a) prominently posting a notice on the My GS1 Canada Portal ("**Portal**") for a period of at least 30 days before such changes will become effective ("**Effective Change Date**"); and/or (b) sending the Subscriber an email notification of such changes at least 30 days prior to the Effective Change Date. As of the Effective Change Date, the most current and up to date version of this Agreement will be accessible on the Portal, and the continued use of the Portal



or any GS1 Canada Services will signify continued acceptance to the revised Agreement. With respect to any such changes of the Agreement, GS1 Canada agrees that it will not materially degrade the Services without written agreement of the parties.

GS1 Canada is a not for profit association that is directed by industry to provide services that are based on non-competitive industry wide business process issues, which are identified and managed through sector governance procedures.

1. **Interpretation**

The follow definitions shall apply to these Terms:

"Affiliate" means, with respect to any entity, any other entity which directly or indirectly controls, is controlled by or is under common control with such entity, and for the purposes of this definition the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise and the term "controlled" shall have a meaning correlative to the foregoing;

"Authorized Users" means persons appointed by the Subscriber in accordance with Section 4.6 and includes Primary Contact(s), Designated Agent(s), and Subscriber Personnel.

"Confidential Information" means all or any part of the trade secrets, know-how, technical expertise,

financial or business information, and any other information relating to the Discloser and its products or services, whether conveyed verbally, visually or contained in the documents provided by Discloser to Recipient or acquired by the Recipient in connection with the Agreement that is identified as confidential or which should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding the disclosure."

"Content" means the text, data, images and other material that: (a) pertains to the Subscriber's products and is provided by the Subscriber to GS1 Canada for purposes of publication in or use within the Services; and/or (b) is accessed by the Subscriber or its Authorized Users through any GS1 Canada product or Service, as applicable.

"Designated Agent" means the person appointed by the Subscriber in accordance with Section 4.6 to act on behalf of the Subscriber in fulfilling its obligations under the Agreement including, but not limited to, loading and maintaining Content.

"Fees" means, with respect to these Terms or any applicable Service Agreements, the fees payable to GS1 Canada by the Subscriber.

"GS1 Proprietary Information" means any and all intellectual property rights that GS1 Canada holds in the Services, including the Content and the software used to provide the Services.

"Participant" (or **"Participation"**)



means a participant in (or having participation in) GS1 Canada Services.

"Primary Contact" means the person appointed by the Subscriber in accordance with Section 4.5, to act on behalf of the Subscriber, who shall act as the primary contact to GS1 Canada in relation to the Services and be responsible for appointing all other Authorized Users in accordance with Section 4.6.

"Product Catalogue" means the totality of products assigned a GTIN and entered by the Subscriber or its Designated Agent in any GS1 Canada data pool.

"Restricted Content" means the service specific content, such as prices of, or trading terms relating to, any products included in a Product Catalogue hosted in GS1 Canada data pools, which the Subscriber has designated as being available only to designated Trading Partners, and other Content to the extent to which should be subject to restrictions on disclosure. GS1 Canada reserves the right to specify categories of Restricted Content from time-to-time.

"Services" has the meaning provided to it in Section 2.

"Service Agreement" means any service agreement entered into by GS1 Canada and the Subscriber or its employees relating to the Services.

"Subscriber Personnel" means a director, officer, or employee of the Subscriber appointed by the

Subscriber in accordance with Section 4.6, to act on behalf of the Subscriber in fulfilling its obligations under the Agreement such as loading and maintaining Content relating to products covered by the Subscriber's Company Prefix Licence.

"Trading Partner" shall mean the manufacturer, supplier, wholesaler, distributor, retailer, healthcare or foodservice provider or other member of global supply and demand chain which is a Participant.

2. **Definition of Service**

The Services provided by GS1 Canada under this Agreement consist of the services that GS1 Canada offers or may offer from time to time, all of which are described in any applicable Service Agreement(s) agreed to by the parties. Additional Service Agreement(s) may be added to this Agreement by the parties through an online service registration process on the GS1 Canada website, or through other written means approved by both parties.

3. **GS1 Canada Responsibilities**

3.1. As part of the Services, GS1 Canada will :

a) provide each Authorized User with a user ID and password ("**Sign On**") to enable the Subscriber to access and use the Services. The Subscriber must not permit any third party to access or use the Services without the express written consent of GS1 Canada. GS1 Canada may change a Sign On at any time after giving notice to the Subscriber;



- b) subject to section 4.1 (e), provide telephone and/or e-mail support for the Services via the GS1 Canada "Industry Support Services Group" on its national toll-free number or via e-mail address in accordance with section 4.2 below;
 - c) provide and manage the Services and the GS1 Canada website with the user documentation published periodically by GS1 Canada for the Services and provided to the Subscriber;
 - d) comply with all applicable laws, regulations, rules, and standards imposed by any government or any other duly constituted public authority having jurisdiction over the subject matter of the Agreement;
 - e) protect confidential Content available through the Services in accordance with the applicable security standards set out in Section 9.5; and
 - f) provide Authorized Users with applicable training modules for services and access and use of the Portal.
- 3.2. Support descriptions and availability and response targets for issues associated with the Services can be found in the applicable Service Agreement, and/or the Portal, and may be subject to change from time to time.
- 3.3. GS1 Canada may from time to time make modifications to any aspect of the Services, including without limitation its design, functionality and appearance, without notice to the Subscriber.
- 3.4. GS1 Canada may remove from any part of the Services any of the Subscriber's Content that it reasonably regards as inappropriate or likely to cause a breach of the Agreement by the Subscriber. Where reasonably practical, GS1 Canada will give the Subscriber notice prior to removal of any such Content.
- 3.5. GS1 Canada may at any time suspend or limit the Subscriber's access to or use of any part of the Services for:
- a) actions by the Subscriber or its Authorized Users that are deemed by GS1 Canada to be a breach, suspected breach, or anticipated breach of the Agreement or compromise the integrity of the Services;
 - b) actions by the Subscriber or its Authorized Users that are deemed by GS1 Canada to endanger the use and operation of Services;
 - c) use by the Subscriber or its Authorized Users of the information or Content available through the Services for purposes other than outlined in the Agreement or consented to by the owners of such information or Content; or
 - d) termination of the Subscriber's Participation with GS1 Canada.
- 3.6. Except where termination of the Subscriber's Participation with GS1 Canada leads to a suspension pursuant to Section 3.5, GS1 Canada will attempt to notify the Subscriber in writing of any such suspension.
- 3.7. GS1 Canada may contract with subcontractors to provide the



systems and perform parts of Services. Any subcontract that GS1 Canada enters into shall not relieve, release or affect in any manner any of GS1 Canada's duties, liabilities or obligations hereunder, and GS1 Canada shall be and remain liable hereunder to the same extent as if GS1 Canada had performed those parts of the Services.

- 3.8. Unless Subscriber's Affiliate(s) have separately contracted for Services with GS1 Canada, the definition of Subscriber includes Subscriber's Affiliates. Subscriber remains wholly liable of the acts or omissions of its Affiliates in accordance with this Agreement or arising out of, or in any way related to, the Services. If Subscriber has franchisees or owner operators that will be using the Services, Subscriber is responsible for ensuring that franchisees and/or owner operators agree to these terms and will be liable for the acts or omissions of such franchisees or owner operators as if they were Affiliates. Additional Fees may apply for Affiliates, franchisees or owner operators depending on the size of the organization and the services required.

4. **Subscriber Responsibilities**

- 4.1. The Subscriber is solely responsible:
- a) for entering, maintaining, validating, certifying, rejecting and correcting Content available on the Services (with the exception of Content provided by GS1 Canada), and administering access to Content by the Subscriber's designated Trading Partners. The Subscriber

understands that third parties will rely on the accuracy of such Content, which may concern the health and/or safety of the public;

b) for promptly correcting Content and loading updated Content on to the Services in the event the Subscriber discovers an error in any Content provided by the Subscriber or its Authorized User;

c) for obtaining at the Subscriber's own cost all equipment, software and/or Internet services (including browser software and Internet service provider) necessary to enable the Subscriber to access and use the Services;

d) for implementing further procedures and measures necessary to safeguard and back-up the Subscriber's files, data, Content and programs;

e) ensuring that users utilize the training materials prior to contacting GS1 Canada for support. Please note that GS1 Canada may direct Authorized Users who have not completed the applicable training modules to do so prior to providing support;

f) compliance with GS1 standards, including compliance with standards relating to the non-reuse of GTINs and other GS1 Canada identifiers (as applicable to specific product lines or Services, as articulated in GS1 Global standards) and, in the case of Content recipients, not accepting products or Content that do not comply with such standards; and



- g) ensuring Authorized Users comply with this Agreement and any applicable end user licensing terms.
- 4.2. In using the Services, the Subscriber and its Authorized Users will at all times:
- a) comply with all applicable laws;
 - b) comply with all procedures, as established or modified by GS1 Canada, in relation to the Subscriber's use of the Services;
 - c) comply with the GS1 Canada's "[User Code of Conduct](#)";
 - d) use the Services strictly for its own business purposes and in accordance with the Agreement for the purposes contemplated by the Agreement;
 - e) keep the Sign On details confidential and not permit any party, other than the Subscriber's Authorized Users, to use the Subscriber's Sign On to access the Services, and notify GS1 Canada immediately by phone or by email of any breach of security of the Subscriber's Sign On;
 - f) not tamper with or otherwise modify the Services; and
 - g) take reasonable precautions to protect the security, privacy and confidentiality of the Services as accessible by the Subscriber.
- 4.3. The Subscriber will not, and will ensure that any person accessing or using the Services via the Subscriber's Sign On's or computer systems, including its Authorized Users, does not:
- a) use any Content entered onto, or made available to the Subscriber via the Services by Trading Partners and other users of the Services ("**Trading Partner Information**") other than for the purposes of conducting transactions and exchanges of Content in the manner reasonably contemplated by the Agreement;
 - b) repackage, resell, redistribute or disclose any Content to third parties except as otherwise set out in the applicable Service Agreement.
 - c) post, send or otherwise make available through the Services any material that:
 - i) contains any virus, trojan, worm or similar deleterious program that may damage or interfere with the operation of any aspect of the Services;
 - ii) infringe GS1 Canada's or a third party's intellectual property rights;
 - iii) is defamatory, harassing or obscene; or
 - iv) is illegal, fraudulent, misleading or deceptive.
- 4.4. The Subscriber will provide to GS1 Canada and update all information and Content that is reasonably necessary for GS1 Canada to provide the Services to the Subscriber and the Subscriber's applicable Trading Partner(s), including the Authorized User information, and ensure that this information and Content is both accurate and complete and delivered to GS1 Canada in a timely manner.



- 4.5. To appoint a Primary Contact, the Subscriber must identify such individual to GS1 Canada by contacting GS1 Canada at 1.800.567.7084 or at info@gs1ca.org (or through the Portal if GS1 Canada makes such functionality available) and providing the Authorized User Information. Primary Contact(s) will be the only Authorized User(s) who will be able to agree to Service Agreements through the Portal, and must be duly authorized by the Subscriber to enter into such agreements. For greater certainty, if the Primary Contact(s) do not have the necessary authority to bind the Subscriber to Service Agreements, the Subscriber is responsible for ensuring that such individual(s) is/are designated the necessary authority to enter into Service Agreements on the Portal.
- 4.6. To appoint certain individuals or entities as Authorized Users with respect to certain Services, a Primary Contact must identify such individuals or entities to GS1 Canada through the appropriate process detailed below:
- a) to appoint a Designated Agent, the Subscriber must contact GS1 Canada at 1.800.567.7084 or at info@gs1ca.org and provide the Authorized User Information. A letter of authorization or designation of agent form must be provided to GS1 Canada; a \$150 administration fee applies.
 - b) to appoint Subscriber Personnel, the Subscriber must contact GS1 Canada at 1.800.567.7084 or at info@gs1ca.org (or through the Portal if GS1 Canada makes such functionality available) and provide the Authorized User Information.
- 4.7. The Subscriber is liable for the acts of its Authorized Users. GS1 Canada may act upon the Subscriber's identification of such parties given electronically, and has no liability for the use of such Services by the Authorized Users. The actions and omissions of Subscriber's Authorized Users are binding on Subscriber.
- 4.8. **Standards Development.** As may be reasonably requested by GS1 Canada from time to time, the Subscriber agrees to: (a) participate on committees and in working groups to develop standards and technical specifications relating to user requirements for the sector; and (b) develop and strengthen the use of existing standards and technical specifications.
5. **Fees and payment**
- 5.1. Unless otherwise set out in the applicable Service Agreement:
- a) the Subscriber or its Designated Agent will pay the Fees in accordance with the applicable Service within 30 days from the date of invoice. Any amounts not fully paid within 30 days shall accrue interest at the lower of 18% per annum (1.5% per month) and the highest rate of interest provided by and allowed by applicable law, until paid in full;
 - b) Fees are subject to change upon 30 days' notice to the Subscriber. If



the Subscriber continues to use Services following the expiration of 30 days from the date of such notice, the Subscriber is deemed to have accepted the new Fees;

c) fees are in Canadian currency, and exclude any applicable federal and provincial taxes and duties. The Subscriber is responsible to pay all applicable taxes. If GS1 Canada elects, at its sole discretion, to accept foreign currencies, GS1 Canada's then current policies shall apply;

d) payment may be made by online credit card payment through the Portal. GS1 Canada may also make payment available through cheque or electronic funds transfer to GS1 Canada's nominated bank account or agreed direct debit authority; and

e) in the event that Subscriber requests that GS1 Canada uses a third party or Subscriber run vendor management tool for the submission of invoices, GS1 Canada shall in its sole discretion elect whether to use such tool and, in the event that GS1 Canada does elect to use such tool, Subscriber will be invoiced, and shall be responsible for the payment of any fees, associated with such tools;

f) GS1 Canada shall have the right to inquire about and furnish information regarding the Subscriber and the Subscriber's account from and to any others, including credit reporting agencies.

g) The following fees shall apply:

i) In the event that Subscriber wishes to register a GS1

Company Prefix (as defined in the License Agreement) that has been acquired from a foreign GS1 member organization ("**Foreign Identifier**") with GS1 Canada for hosting within GS1 Canada Services, Subscriber shall pay GS1 Canada's then current Foreign Identifier fee, as communicated by GS1 Canada to Subscriber during registration, This Foreign Identifier fee is payable for each Foreign Identifier hosted in GS1 Canada's Services and is payable on an annual basis in advance.

ii) In the event that Subscriber is a subscriber of a foreign GS1 member organization and wishes to participate in GS1 Canada Services, an annual participation fee (communicated by GS1 Canada during registration) shall apply. This fee is payable on an annual basis in advance.

5.2. Without affecting any rights or remedies available to GS1 Canada in this Agreement, GS1 Canada may, at its sole discretion, adhere to the following collection procedure:

a) A cost recovery fee will be applied to all invoices that are outstanding for over 65 days ("**Cost Recovery Fee**") from the date of invoice. The Cost Recovery Fee represents a reasonable pre-estimate of costs for the additional administration



incurred to obtain payment of an overdue invoice. Invoice age is calculated from 30 days after the date of invoice.

b) If any invoice remains outstanding for over 75 days, the Subscriber's Trading Partners may be notified that the Subscriber's service is at risk by reason of outstanding invoices.

c) If any invoice remains outstanding over 105 days, the Subscriber's ability to access any of the Services provided under this Agreement will be suspended.

d) If any invoice remains outstanding over 120 days, the Subscriber's account will be forwarded to a collection agency.

e) If any invoice remains outstanding for more than 150 days, GS1 Canada reserves the right to terminate the applicable Service Agreement. Upon termination, the Subscriber's Trading Partners may be notified that the Subscriber's Product Catalogue within GS1 Canada's data pools is no longer active and the Subscriber will no longer be permitted to utilize any GTINs assigned to it through the Services.

GS1 Canada shall not be liable for the consequences that flow from its actions taken with respect to non-payment as set out in this Section 5.2. Subscriber consents to the disclosure of information in accordance with, and as required for, this Section 5.2.

5.3. **Invoice Disputes:** Any questions or discrepancies regarding charges on the Subscriber's invoice must be reported to GS1 Canada Industry Support Services within 30 days of the invoice date. In its report to GS1 Canada Industry Support Services, the Subscriber must provide a detailed explanation of the disputed charges. If any portion of the charges due to GS1 Canada by the Subscriber are subject to a bona fide dispute relating to such charges, the Subscriber will pay to GS1 Canada, on the date such amounts are due, all amounts not disputed in good faith by the Subscriber. Failure to contact GS1 Canada within this time period will constitute the Subscriber's acceptance of the full invoiced amount, as well as additional charges for the processing of late payments.

6. **Disclaimer of Warranties and Limitation of Liability**

6.1. **GS1 Canada Warranty.** GS1 Canada warrants that it owns or otherwise has the rights in the Services and has the right to provide the Services.

6.2. EXCEPT AS EXPRESSLY STATED ELSEWHERE IN THE APPLICABLE SERVICE AGREEMENT, ALL SERVICES AND CONTENT ARE PROVIDED "AS IS" AND GS1 CANADA DISCLAIMS ALL AND MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY MATTER, INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OF (i) ANY OF



THE SERVICES OR ANY COMPONENT THEREOF PROVIDED BY GS1 CANADA OR ANY THIRD PARTY SERVICE PROVIDER, OR CONTENT AVAILABLE THROUGH THE SERVICES, OR (ii) TO THE EXTENT ACCESSIBLE THROUGH OR WITH THE ASSISTANCE OF GS1 CANADA, ANY GS1 CANADA DATA POOLS.

6.3. NEITHER GS1 CANADA, NOR ANY THIRD PARTY SERVICE PROVIDER, SHALL BE LIABLE FOR, AND THE MEASURE OF DAMAGES SHALL NOT INCLUDE, ANY AMOUNTS FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES EVEN IF GS1 CANADA HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6.4. THE TOTAL LIABILITY OF GS1 CANADA TO THE SUBSCRIBER, WHETHER UNDER THE AGREEMENT OR UNDER THE GENERAL LAW, WHETHER BASED ON ACTIONS OR CLAIMS UNDER STATUTE, OR IN CONTRACT, EQUITY, TORT OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID BY THE SUBSCRIBER UNDER THE APPLICABLE SERVICE AGREEMENT WITHIN THE 6 MONTHS PRIOR TO THE OCCURRENCE OF THE EVENT(S) GIVING RISE TO THE SUBSCRIBER'S CLAIM AGAINST GS1 CANADA. THIS LIMITATION OF LIABILITY WILL NOT APPLY TO A PARTY'S INDEMNIFICATION OBLIGATIONS SET OUT IN THE AGREEMENT OR CLAIMS ARISING OUT FROM A PARTY'S EGREGIOUS OR WILFUL MISCONDUCT.

7. Indemnification

7.1. This Section 7.1 applies if and when Subscriber requests that GS1 Canada send electronic communications to third parties on Subscriber's behalf ("**Third Party Communications**") and provides GS1 Canada with contact information for the applicable third party recipients ("**Communication Recipients**") and where Subscriber shares personal information with GS1 Canada. By making a request for Third Party Communications or sharing personal information with GS1 Canada, Subscriber represents and warrants that it has complied with all applicable laws, including with respect to: (a) the collection, use and disclosure of personal information (in accordance with the Personal Information Protection and Electronic Documents Act and applicable provincial legislation); and (b) the sending of commercial electronic communications (in accordance with Canadian Anti-Spam Legislation). Subscriber shall indemnify and hold GS1 Canada and its directors, suppliers, officers and employees harmless for any third party claims, awards or liability arising from Subscriber's breach, or alleged breach, of this Section 7.1, including allegations that GS1 Canada did not have the appropriate consent to send Third Party Communications.

7.2. GS1 Canada is a not for profit organization and does not self-insure for the risks associated with the indemnification of any Subscriber. GS1 does not provide any indemnity



with regards to this Agreement to the Subscriber. The Subscriber shall indemnify and promptly reimburse GS1 Canada for the defense of, and hold GS1 Canada and its officers, directors and employees harmless from and against any and all third party claims, actions, liabilities, losses, damages, judgments, grants, costs and expenses (including legal fees and expenses) arising out of or in connection with:

- a) product liability, resulting from or pertaining to the use or operation of the Services by the Subscriber or its Authorized Users whether or not caused by the negligent or tortious acts or omissions of the Subscriber or any Authorized User; or
- b) a breach of the Subscriber's obligations of confidentiality under this Agreement.

8. Intellectual Property

8.1. Ownership

The Subscriber agrees and acknowledges that all intellectual property rights in and to:

- a) the Services;
- b) any deliverables or customised solutions (unless otherwise expressly agreed by the parties in a Service Agreement);
- c) any delivery method provided by GS1 Canada, including user interfaces, machine to machine interfaces, and online data asset portals; and
- d) training materials or other materials accessed through the Services;

are owned by GS1 Canada or its licensors. Except as expressly set out herein, nothing in this Agreement or any Service Agreement shall grant Subscriber any interest or other right in, to or under, the ownership of all patents, copyrights, trade-marks, service marks, trade secrets and other intellectual property relating to or associated with (i) – (iv) above. All technical content concerning the Services, including information contained in any Service Agreement, is Confidential Information of GS1 Canada. Subscriber may not re-sell or re-distribute any portion of the Services or Content or make any portion of the Service available to any third party without GS1 Canada's express written consent.

8.2. GS1 Canada License

Subject to Subscriber's compliance with the applicable Service Agreement, GS1 Canada grants to Subscriber a non-exclusive, non-transferable, non-assignable limited license during the term set out in the applicable Service Agreement to use and access the applicable Service (including associated deliverables and delivery methods) solely for the purpose of accessing and using the Service in the manner described in that Service Agreement.

8.3. Subscriber License

a) The Subscriber represents and warrants that has all necessary rights, licenses or consents reasonably required for GS1 Canada to provide the Services in respect of the information and Content that the



Subscriber provides to GS1 Canada, including all rights required to grant the licenses described below.

b) There are two basic models for data distribution that GS1 Canada follows: "Open Data" and "Publication/Subscription". An "Open Data" model is intended to allow unrestricted distribution of data to third parties. A "Publication/Subscription" model is intended to restrict the sharing of data to a pre-authorized list of third parties. Unless Content is specifically designated as being subject to Publication/Subscription model, as set out in the description of the Service or otherwise agreed by the Parties, GS1 Canada will have the right to treat the Content it receives from Subscriber as subject to the Open Data model. As such:

- i) for Content not subject to an express Publication/Subscription model, including Open Data Content, and Content that is publically available on the packaging of any product, Subscriber grants GS1 Canada a perpetual, irrevocable, royalty free, worldwide right to use the Content to provide Services, and to publish and distribute the Content to third parties, including trading partners; and
- ii) for Content subject to an express Publication/Subscription model, Subscriber grants GS1 Canada a perpetual, irrevocable, royalty free, worldwide right to use the Content to provide services, and to publish and

distribute the Content to the third parties authorized or consented to by Subscriber.

c) GS1 Canada may sublicense these rights to GS1 Canada's Affiliates and service providers.

d) Recipients of Content distributed in accordance with the models discussed in this Section 8.3 may be solution providers that further distribute the Content to end users that are not GS1 Canada subscribers. GS1 Canada uses commercially reasonable efforts to require that the use of such Content is managed by such third party solution providers in a manner substantially similar to the requirements set out in this Agreement and the applicable Service Agreement.

8.4. **Third Party Content.**

a) Certain names or logos are service marks or trademarks of GS1 Canada. All other service marks and trademarks are the property of their respective owners. GS1 Canada is not responsible for other service marks, trademarks, and company names that may be the trademarks and/or service marks of their respective owners, nor does the use of third party names or trademarks, or any references to their products or services constitute an endorsement by GS1 Canada of such parties' or their products or services. GS1 Canada does not endorse or warrant the accuracy or reliability of, or assume any liability in connection with, any Content that is provided or



posted by third parties, or any of their products or services.

b) The Services may contain references or links to third party websites. GS1 Canada has no control over these websites or the Content within them. Subscriber's use of any linked website is subject to the terms and conditions of use and privacy policy of the operator of the linked website, so Subscriber should review them carefully. GS1 Canada disclaims any and all warranties and liabilities in connection with Subscriber's use of linked websites.

c) If Subscriber believes that any material infringes upon Subscriber's copyright rights, Subscriber may notify GS1 Canada of the alleged infringement. The following information should be provided:

a) a subject line "Copyright Infringement Notice;"

b) a description of the copyrighted work that Subscriber believes has been infringed;

c) the URL of the website and a description of where the allegedly infringing material is located on that website;

d) a statement by Subscriber that Subscriber has a good faith belief that the alleged infringing material is not authorized by the copyright owner, its agent, or the law;

e) a statement by Subscriber, made under penalty of perjury, that all the information in the notice is accurate, and that Subscriber is the copyright owner (or, if not the copyright

owner, that Subscriber is authorized to act on the behalf of the owner of an exclusive right that is allegedly infringed); and

f) an authorized individual's electronic or physical signature.

g) At its sole discretion, GS1 Canada reserves the right to respond to notices that do not comply with any of these requirements.

8.5. **Grant of licences from the Subscriber.**

The Subscriber grants to GS1 Canada or will procure for GS1 Canada from third parties all necessary rights, licenses or consents reasonably required for GS1 Canada to provide the Services in respect of the information and Content that the Subscriber provides to GS1 Canada, including without limitation a non-exclusive, perpetual, worldwide, fully paid up, sub licensable, irrevocable and royalty free license to use, reproduce and adapt:

a) the Content for the purposes of providing the Services and making Content (other than the Restricted Content) available to any Trading Partner using the Services according to GS1 Canada's rules for the applicable Services;

b) the Restricted Content in order to make the Restricted Content available to the Trading Partners designated by the Subscriber for the purpose of providing the Service;

c) The Subscriber's name, logos, trademarks, service marks, copyrightable material, Subscriber proprietary information and any



other applicable intellectual property to the extent necessary to facilitate GS1 Canada's provision of the Services and the Subscriber's use of the Services; and

- d) The Subscriber's name and logo;
 - (i) in promotional material (including promotional material published by a third party service provider engaged by GS1 Canada to provide aspects of the Services.); (ii) on the GS1 Canada website; and (iii) in any GS1 Canada board meeting.
- 8.6. Other than expressly granted in the Agreement, nothing in the Agreement shall affect a transfer from GS1 Canada to the Subscriber or from the Subscriber to GS1 Canada of copyright, trademark, any other applicable intellectual property rights, or anything derived from any of the foregoing. For clarity, all software and systems developed by or licenced by GS1 Canada are and shall remain the intellectual property of GS1 Canada, including any customized software or interfaces.
- 8.7. The Subscriber shall under no circumstances remove or otherwise alter any GS1 Canada copyright, trademark, service mark or other proprietary notices on any complete or partial copies of GS1 Proprietary Information. GS1 shall under no circumstances remove or otherwise alter any Subscriber copyright, trademark, service mark or other proprietary notices on any complete or partial copies of the Subscriber proprietary information.

8.8. Updates and Modifications

GS1 Canada expressly reserves the right to modify or amend the Services by introducing modifications, changes, enhancements, new versions and new releases to all or part of the Services from time to time. For any new functionality introduced in a new version of the Services ("**Additional Functionality**"), the Subscriber will have the right to use Additional Functionality only after executing the appropriate Service Agreement and paying an additional Fee, if any, based on then-current standard Fee schedule for such Additional Functionality. In the event that the Subscriber uses any Additional Functionality, it shall be deemed to have agreed to pay the Fees attributable to such Additional Functionality.

8.9. Intellectual Property Infringement

If the Services set out in the applicable Service Agreement, or any part thereof, is held to constitute an infringement or misappropriation, and use of the Services by the Subscriber is enjoined, or GS1 Canada reasonably believes that such use will be enjoined, then GS1 Canada shall, at its own expense, either (a) procure for the Subscriber the right to continue using the Services or part thereof; (b) replace the Services with a non-infringing product that functions in substantially the same manner in all material respects as the Services; (c) modify the Services



to eliminate any such infringement or misappropriation; or (d) refund to the Subscriber the applicable pro-rata portion of the licence fees paid by the Subscriber to GS1 Canada upon the receipt by GS1 Canada of signed written certification from the Subscriber that such Services and any copies thereof in the Subscriber's possession have either been returned to GS1 Canada or destroyed, and the Agreement, as to the infringing Services shall automatically terminate. GS1 Canada shall not be liable to the Subscriber under any provision of the Agreement if any patent or copyright infringement or claim thereof is based upon (i) the use of the Services, or any part thereof, in connection with any product software system not delivered by GS1 Canada; (ii) the use of the Services in any manner for which it, or any part thereof was not designed; (iii) any modification of the Services, or any part thereof, by or for the Subscriber in a manner causing it to become infringing; or (iv) use by the Subscriber of any release or version of the Services other than the most current release or version where use of the most current release or version would have avoided the claim of infringement.

8.10. **Copying.** The Subscriber shall not copy, translate, disassemble or decompile, nor create or attempt to create the source code from the object code of the GS1 Proprietary Information, or use it to create a

derivative work, unless authorized in writing by GS1 Canada.

8.11. **User Content**

a) Through the Services, Subscriber and Users may have the ability to post information relating to the Services ("**User Content**"). In providing User Content to this website, Subscriber represents and warrants that: (1) Subscriber is the owner or licensee of the User Content and have a right to post it; (2) the User Content does not and will not violate the intellectual property, publicity, or any other rights of any person; and (3) posting of the User Content does not and will not violate this Agreement or any applicable law or regulation.

b) Posting of User Content to this website is subject to the following rules:

- i) Subscriber is responsible and liable for any User Content that it submits, posts, or displays.
- ii) Subscriber shall not abuse, threaten, intimidate, or harass other users of this website.
- iii) posting through the Services is limited to posting information relating to the Services.
- iv) GS1 Canada reserves the right, in its sole discretion, to review, edit, or delete any User Content.

9. **Confidentiality and Security**



- 9.1. Each party ("**Recipient**") must keep the Confidential Information of the other party ("**Discloser**") confidential, safe and secure and not disclose it to any person other than:
- a) the Recipient's agents, advisors, contractors, subcontractors and personnel who have a need to know, provided they are subject to an obligation to keep the confidential information confidential; and/or
 - b) where required to do so by law, provided that, where permitted to do so, the disclosing Recipient shall provide prior notice to the Discloser so that Discloser has the opportunity to seek a protective order.
- 9.2. The Recipient will use the Confidential Information of the Discloser solely for the purpose of using or operating the Services in accordance with the Agreement.
- 9.3. "**Confidential Information**" includes:
- a) in the case of GS1 Canada, all Sign On details provided to the Subscriber, GS1 Proprietary Information, and information of a third party that is made available through the Services; and
 - b) in the case of the Subscriber, any Restricted Content disclosed to GS1 Canada and the Subscriber's proprietary information.
- 9.4. Confidential Information does not include any information that is:
- a) public knowledge at the time it is supplied to Recipient, or becomes public knowledge subsequently other than through breach of an obligation of confidence;
- b) received by a third party that is not under an obligation of confidence to the Discloser; or
 - c) in Recipient's lawful possession prior to it being supplied to Recipient.
- 9.5. Each party acknowledges that any unauthorized disclosure of the other party's Confidential Information may cause immediate and irreparable harm and, therefore, agrees (i) to take the same precautions to protect the other party's Confidential Information from unauthorized disclosure as it takes with respect to its own Confidential Information, but in no event with less than reasonable care, and (ii) that the other party shall be entitled to seek injunctive relief and other equitable remedies for a breach of its obligations hereunder in addition to any other rights or remedies to which it may be entitled.
- 9.6. Upon termination of the Agreement or any part thereof, each party shall immediately cease use of the other party's Confidential Information within 30 days after any such termination, deliver to the other party, at its expense or, at the other party's request, destroy all copies of the other party's Confidential Information in any form then in its possession or control excepting copies that have been archived, which shall remain securely stored, and an officer of such party shall provide the other with written acknowledgement thereof. The



obligations under this Section 9.6 shall be carried out to the extent and only with regard to Confidential Information that is not required for the provision of the Services that the Subscriber will continue to receive following such termination.

- 9.7. As a member of the global GS1 organization, GS1 Canada participates in, and provides services that, facilitate the sharing of information regarding Subscribers, including but not limited to company name, address, telephone, fax, e-mail address, GTINs, GLNs, container codes and similar information. A prominent example of such a service is the Global GS1 Electronic Party Information Registry ("**GEPIR**"). The Subscriber consents to GS1 Canada's sharing of such information in conjunction with such services, including GEPIR.
- 9.8. As a member organization of GS1, GS1 Canada participates in GS1 global initiatives and projects ("**Global Initiatives**"). For example, GS1 Canada may participate in the GS1 Cloud Service. The GS1 Cloud is a platform through which GS1 and the GS1 member organisations provide a global service to enable participating Content providers to share trusted information about their products with Content recipients and enables such recipients to view and/or use such Content (the "**GS1 Cloud Service**"). The GS1 Cloud Service is designed to contain basic information about every GTIN. All member organizations of GS1, including GS1 Canada, may be obligated to participate if and when

the GS1 Cloud Service is launched by GS1 publically. If GS1 Canada participates in the GS1 Cloud Service, the terms and conditions applicable to the GS1 Cloud Service, which apply to all participants (including Subscriber), can be found at <https://www.gs1.org/gs1-cloud/contracts>. Use of the service is also subject to the Terms of Use available at <https://www.gs1.org/terms-use>, which also applies to Subscriber's use of the GS1 Cloud service. GS1 may update these agreements from time to time and such new terms and conditions will apply to the GS1 Cloud and GS1 Cloud participants (including Subscriber where applicable). More information about the GS1 Cloud Service can be found at <https://www.gs1.org/services/gs1-cloud>. The applicable data sets from all GS1 Canada subscribers (including Subscriber, as applicable) will be included in the GS1 Cloud Service by GS1 Canada unless a subscriber opts out of the GS1 Cloud Service. GS1 Canada shall notify Subscriber about Global Initiatives in which GS1 Canada is participating, including the GS1 Cloud Service, and any applicable agreements with respect to such initiatives that apply to Subscriber by posting a notice and link to the applicable agreements on the GS1 Canada website. Subscriber agrees to comply with any such required agreements relating to Global Initiatives.

- 9.9. The Subscriber's account information may, from time to time, be disclosed



to other member organizations of the GS1 organization in order to service the Subscriber's account, to respond to questions and to streamline services and products made available by GS1.

10. **Term and Termination**

10.1. This Agreement commences on the date on which the Subscriber agrees to the terms and conditions of these Terms and continues until the last Service Agreement is terminated in accordance with the terms and conditions of the Agreement. The Subscriber must pay all Fees due and payable to GS1 Canada up until the date of termination.

10.2. In addition to any other right of termination provided for in the Agreement, either party may terminate the Agreement or any part thereof, by written notice to the other party if:

a) the other party breaches any term of the Agreement and, if it is capable of being remedied, fails to remedy it within 30 days after receipt of notice requiring it to do so;

b) the other party becomes insolvent, has a receiver or trustee in bankruptcy appointed, enters into liquidation, is subject to an arrangement for protection from the Subscriber's creditors, fails to comply with a statutory demand, is otherwise unable to pay the Subscriber's debts when due; or

c) the other party sells or assigns its rights, duties or obligations under the Agreement to any person or entity in whole or in part, whether

by assignment merger, transfer of assets, sale of stock, operation of law or otherwise.

10.3. Unless otherwise set out in a Service Agreement, either party may terminate any Service Agreement, at any time by providing 60 days written notice to the other party. Upon termination of any Service Agreement for convenience by the Subscriber in accordance with this section, the Subscriber will not be entitled to any refund of prepaid Fees.

10.4. If the Agreement is terminated or the Subscriber is decertified for access to a portion of the Services as described in a Service Agreement, access to the Content in the Subscriber's Product Catalogue also terminates.

10.5. GS1 Key Identifiers and/or GS1 Company Prefixes (as such terms are defined in the License Agreement) obtained after March 31, 1997 must be registered for, and renewed on an annual basis, in accordance with the GS1 Canada Key Identifier/Prefix License Agreement at www.gs1ca.org/e/licenceagreement ("**License Agreement**"). To terminate the Subscriber's License Agreement, complete the process set out in the License Agreement. A termination fee applies. Termination of a License Agreement also terminates participation benefits including access to industry support services, GS1 Canada "Learning Zone" and the Portal. Additionally, the Subscriber will no longer be



- permitted to use any of the applicable GS1 Canada Identifiers or GS1 Canada Prefixes assigned to it through the Services.
- 10.6. An organization that obtained a Company Prefix Licence prior to April 1, 1997 must pay annual subscription fees in order to be able to access other GS1 Canada services, pending acceptance of the Service Agreement and submitting payment of any required fees for each service.
- 10.7. Both GS1 Canada and Subscriber agree to comply with their respective obligations under the GS1 Change of Data Pool Service Provider Policy (available [here](#)).
11. **General**
- 11.1. The parties are independent contractors. Nothing in the Agreement makes a party an agent, partner or joint venturer of the other.
- 11.2. The Subscriber may not assign the Agreement or any part thereof without GS1 Canada's prior written consent; provided however, the Subscriber may assign the Agreement without consent, to an Affiliate or to a successor of all or part of the business to which the Agreement relates, provided that such Affiliate or successor is not a competitor of GS1 Canada. GS1 Canada may not assign the Agreement or any part thereof without the Subscriber's prior written consent; provided however, GS1 Canada may assign the Agreement without consent, to an Affiliate or to a successor of all or part of the business to which the Agreement relates.
- 11.3. GS1 Canada shall have the right, no more than once annually, at its own expense, to perform an inspection of the Subscriber's relevant records and systems solely for the purpose of ensuring compliance with the requirements of the Agreement. The Subscriber agrees to reasonably cooperate with any such inspection and GS1 Canada agrees that it shall conduct its inspection rights with minimal interference to the Subscriber's business operations during the Subscriber's normal business hours with not less than thirty (30) days prior notice. Should the audit determine that the Subscriber has not paid the Fees applicable to its actual usage of the Services, the Subscriber shall immediately pay the difference and shall also pay GS1 Canada's reasonable expenses relating to the audit.
- 11.4. An obligation of a party (other than an obligation to pay money) is suspended to the extent the party is prevented from performing that obligation because of an event beyond its reasonable control. The party shall be excused from further performance of the obligation(s) for as long as such event prevails and the party continues to use commercially reasonable efforts to recommence performance to the extent possible. The non-performing party that is prevented, hindered or delayed in its performance shall immediately notify the other party in writing.



- 11.5. The law of the Province of Ontario governs the Agreement. The Subscriber agrees to submit to the exclusive jurisdiction of the courts of Ontario for the determination of any dispute concerning the Agreement. The Subscriber waives any rights under the *Class Proceedings Act*, 1992 of the Province of Ontario, S.O. 1992, Chapter 6, to have the action in which the Subscriber asserts the Subscriber's claim certified as a class proceeding and the Subscriber appointed as a representative plaintiff.
- 11.6. Any provision of these Terms or any Service Agreement that should, by their nature, survive termination or expiration of the Agreement, including but not limited to Section 6, 7, 8.3 (c)(ii), 8.7 and 11, shall survive termination or expiration of this Agreement.
- 11.7. The failure of either party to exercise any right, power or option given under the Agreement, or to insist upon the strict compliance with the Agreement, shall not constitute a waiver of the terms and conditions of the Agreement with respect to that or any other subsequent breach thereof.
- 11.8. Any notice required under the Agreement may be given electronically to GS1 Canada at info@gs1ca.org; and to the Subscriber by notice through the Portal or at the contact information the Subscriber has provided. Additional information relating to the Services is available by contacting GS1 Canada by one of the following methods:
- Telephone: 1-800-567-7084
E mail: info@gs1ca.org
Mail: GS1 Canada
1500 Don Mills Road, Suite 800
Toronto, ON M3B 3K4
- 11.9. Les parties reconnaissent que ce contrat a été négocié et est rédigé en langue anglaise. The parties acknowledge that this contract was negotiated and is made in the English language.