

SOLUTION PROVIDER AGREEMENT

This Service Agreement (hereinafter referred to as the “**Agreement**”) is entered and made effective from ___ day of _____, Two Thousand ____ (___/___/20__).

BY AND BETWEEN

GS1 INDIA (Under Ministry of Commerce & Industry, Government of India) a Society registered at Delhi under the Societies Registration Act 1860, having its registered office at 330, 2nd Floor, August Kranti Bhawan, Bhikaji Cama Place, New Delhi-110066 (hereinafter referred to as the “**GS1 India**”, which expression shall unless repugnant to the context and meaning thereof deem to mean and include its successors and permitted assigns) of the **ONE PART**;

AND

_____, a **Company registered under Companies Act, 2013**, having its registered office at _____ (hereinafter referred to as “**Solution Provider**”, which expression shall unless repugnant to the context or meaning thereof shall mean and include its successors and permitted assigns) of the **OTHER PART**.

GS1 India and the Solution Provider are hereinafter individually referred to as “**Party**” and collectively as “**Parties**”.

WHEREAS:

- A. GS1 India is a not-for-profit standard body set up by the Ministry of Commerce & Industry, Govt. of India and leading Chambers of Commerce comprising CII, FICCI, ASSOCHAM, IMC, FIEO besides BIS, IIP, Spices Board and APEDA to educate and assist Indian Industry in adoption of GS1 global standards. GS1 India is affiliated to GS1, Brussels which currently oversees 114 GS1 organizations worldwide.
- B. GS1 India allocates unique & universal GS1 Company Prefix Number (GCP) to various companies (also known as subscribers) for their use, as per the terms and conditions therein. By using GCP Numbers, Subscribers create unique product codes (GTINs) for all their products and use it on their product packaging. GS1 India has *Datakart* service for its subscribers, wherein GS1 India subscribers (i.e. brand owners/ manufacturers) generate & manage GTINs, product images, product dimensions and various other products attributes on GS1 India’s *Datakart* interface (hereinafter referred to as “GS1 India *Datakart*”).
- C. Solution Provider is, inter alia, engaged in the business of

- D. Solution Provider has approached GS1 India and has expressed its interest and desire to access product data validation services (hereinafter referred to as “Services”) using GS1 India DataKart.

NOW THEREFORE, THE PARTIES HERETO AGREE AND THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. ARRANGEMENT BETWEEN THE PARTIES

- 1.1 Solution Provider shall be extending POS/Product Master Data Solution to _____ for which they intend to validate product master data received from these retail points by using DataKart Services of GS1 India. While rendering the Services, Solution Provider shall have the access to GS1 India’s DataKart Application Interface. Solution Provider shall extract the APIs through a secured network in XML or JSON formats or as mutually agreed /decided by both the parties, i.e. Solution Provider and GS1 India from time to time. Solution Provider shall be responsible for integration of their internal systems with GS1 India DataKart APIs at its own costs / expenses.
- 1.2 GS1 India shall provide the access of the data to Solution Provider through APIs wherever the Brand owners / manufacturers are willing or have not restricted to share their product information with third parties.
- 1.3 Solution Provider shall be responsible for obtaining and keeping valid all such licenses as may be required by it for providing any services and/or for the fulfilment of any of its or obligations under this Agreement. Solution Provider shall be solely responsible, at its own cost, for obtaining all necessary approvals, sanctions, permissions, licenses to render the services as required by the applicable laws.
- 1.4 Solution Provider shall be permitted only to offer the POS/ Product Master Data related services to _____ etc.
- 1.5 Solution Provider shall use only GS1 India’s white-listed IPs to extract data from GS1 India DataKart portal available on Datakart interface.

2. PAYMENT TERMS

- 2.1 In consideration for accessing the data using GS1 India DataKart API, the Solution Provider shall need to pay the Fee as mentioned in Annexure 1 attached herewith (as decided by GS1 India from time to time) to GS1 India.
- 2.2 If Solution Provider fails to pay the Fee as mentioned in Annexure 1 below to GS1 India within the payment due date, this will be considered as breach of Agreement and GS1 India shall have the absolute right to block the access of Solution Provider on DataKart portal.
- 2.3 Upon expiration or termination of this Agreement, the Solution Provider shall be liable to pay all outstanding payments on the basis of the agreed rates to GS1 as on the date of termination.

3. TERM

GS1 India agrees to provide the Services under this agreement with effect from _____ for a period of one (1) year (“**Term**”), unless terminated earlier in accordance with the provisions of this Agreement. The Parties can mutually decide to extend the Term of the Agreement.

4. CONDITION RELATED TO SERVICES

4.1 Solution Provider’s personnel shall have no right to claim any employment with the GS1 India and by no means Solution Provider or its employees can be considered as an associate, assignee, contractor, partner or representative of GS1 India in any manner whatsoever as otherwise mentioned in this Agreement

5. OBLIGATION OF THE PARTIES

5.1 GS1 India being a neutral standards body shall not be bound to exclusively promote or utilize the services of the Solution Provider and may also simultaneously opt for services through other Solution Providers.

5.2 Solution Provider is permitted to use the GS1 India’s DataKart API in their software applications/ solutions / products developed by them. The details of the Solution Provider shall be uploaded / hosted by GS1 India on its platform as well as on GS1 Global website. Solution Provider may be permitted to use the caption “Powered by GS1 India DataKart” only on its platform, promotional material and printed materials, only.

5.3 Solution Provider is strictly **NOT** authorized to further resell / distribute / share the data (whether in raw form or otherwise) accessed through GS1 India DataKart API to any POS solutions, app providers, solution providers, aggregators, marketing analyst, etc. under any circumstances. Such above mentioned deeds will be considered as breach of the agreement and will invite legal action by GS1 India and GS1 India will have the right to block the access to its DataKart portal immediately. However, the rights over the final deliverables shall always rest with the Solution Provider subject to restrictions as mentioned in this clause.

5.4 To increase the visibility of GS1 standards (GTINs), Solution Provider shall provide the list of all GTINs (GS1 / non-GS1) or actual item master data with or without GTINs with GS1 India on quarterly basis for which the format shall be provided by GS1 India. GS1 India shall issue a notice to Solution Provider in case it fails to do so, and Solution Provider must provide the said details within a period of 30 days from receiving such notice from GS1 India.

5.5 The product data available on the GS1 India DataKart portal has been (is being) uploaded by the manufacturer / brand owners directly. Therefore GS1 India shall not be responsible for any incompleteness / inaccuracies of any data available on GS1 India DataKart portal. Solution Provider shall use / access the product’s data and images as available on

DataKart and wherever allowed / permitted by Brand owners to share with specified trading partners.

6. REPRESENTATION, WARRANTIES AND COVENANTS OF SOLUTION PROVIDER

6.1 Solution Provider represents, warrants and covenants to the GS1 India that:

- a) it has full capacity, power and authority to enter into this Agreement and has duly authorised the execution, delivery and performance of this Agreement and during the Term of this Agreement, will continue to have full capacity, power and authority to carry out and perform all its duties and obligations as contemplated herein;
- b) Any services rendered to third party by Solution Provider pursuant to clause 1.1 of this Agreement shall be rendered and performed by it with utmost care and diligence and shall be of the highest quality and standards.
- c) it shall not take any action or commit any omission which would or is likely to directly or indirectly jeopardise in any way the rights (including without limitation Intellectual Property Rights) of the GS1 India
- d) while associated with GS1 India or after termination of this Agreement, Solution Provider shall not develop any applications /software similar to GS1 India DataKart for commercial purposes, at least for a period 36 months from the date of the termination. However, it is clarified that the said restriction shall not prohibit Solution Provider from entering into agreement with any third-party vendor providing similar services to that of GS1 India before the date of termination.

6.2 The GS1 India gives no warranty and makes no representation as to the accuracy, completeness, suitability, fitness of any data, documents, etc. (available at DataKart portal) for any purposes.

7. TERMINATION AND CONSEQUENCES

7.1 This Agreement can be terminated by either party by giving 7 (Seven) days prior notice (in writing). However, in the event of a breach or default of any provisions of this Agreement by Solution Provider, GS1 India shall be entitled to terminate the Agreement forthwith without any notice.

7.2 Upon the termination of this Agreement for any reason whatsoever, GS1 India shall delist the whitelisted IP and Solution Provider shall not be able to download any further data.

7.3 Upon the termination of this Agreement, GS1 India shall have the sole right to decide for revival / extension /renewal of the said Agreement for any further period at its sole discretion.

8. MISCELLANEOUS

- a. **Indemnity-** Solution Provider hereby agrees to forthwith indemnify, defend and hold harmless GS1 India and its affiliate(s) and their respective officers, directors, employees and representatives, agents and assignees (“Indemnitee”) from and against any and all Claims (as defined below) asserted against, imposed upon or incurred by an Indemnitee due to, arising out of or relating to: (i) any breach by Solution Provider of any representation, warranty, term, condition or covenant set forth in this Agreement; (ii) any negligent or illegal act or omission or wilful misconduct of Solution Provider; (iii) all claims, demands, actions, causes of action, losses and damages which GS1 India may suffer or which may be brought against GS1 India as a result of or in any way arising out of any breach by Solution Provider under the provisions of this Agreement. “Claim(s)” shall mean any and all foreseeable or unforeseeable and alleged or actual actions, causes of action (whether in tort, agreement or strict liability, and whether in law, equity, statutory or otherwise), bodily harm or personal injury (including sickness, disease or death of any person), claims, damages, demands, judgments, lawsuits, legal proceedings, liability, loss, property damage, sanctions, settlement payments, reasonable costs or expenses of any nature whatsoever, whether accrued, absolute, contingent or otherwise; including, without limitation, reasonable attorneys’ fees and costs (whether or not suit is brought).

Upon receipt of a notice of Claim against the GS1 India (whether received from the GS1 India or from a third party), Solution Provider shall immediately take all necessary and appropriate actions to protect GS1 India’s interests.

- b. **Confidential Information-** Solution Provider and its persons/employees (including sourced/outsourced support) will at all times, both during the Term and thereafter, keep in confidence all of GS1 India’s Confidential Information, and will not use such Confidential Information without GS1 India’s prior written consent. Solution Provider and its persons/employees (including sourced support) shall not disclose GS1 India’s Confidential Information to any person except to such persons to whom it is necessary to disclose the Confidential Information for purposes permitted under this Agreement and who have agreed to receive it under terms at least as restrictive as those specified in this Agreement. Solution Provider’s employees (including sourced support) will take reasonable measures to maintain the confidentiality of GS1 India’s Confidential Information, but never less than the standard of care that an ordinarily prudent business would exercise to maintain the secrecy of its own confidential information.

For purposes hereof, Confidential Information” shall mean all information relating to finance, legal, technical, operational and strategic plans of GS1 India, any information pertaining to the employee(s), members of GS1 India, which has been or will be disclosed, in writing by GS1 India to Solution Provider’s employees (including sourced support), and which is either marked or stated to be confidential, or is by its nature, reasonably intended to be confidential; but shall not include the following for purposes of this Agreement:

- (i) Information that was known prior to the disclosure thereof under this

Agreement, through no breach of any third party obligation of confidentiality.

- (ii) Information that is or becomes generally available to the public other than as a result of a disclosure directly or indirectly by GS1 India.
 - (iii) Information that is independently collected or collated by Solution Provider's employees (including sourced support) without reference to the Confidential Information provided by GS1 India.
 - (iv) Information that is or becomes available to Solution Provider's employees (including sourced support) on a non-confidential basis from a source other than GS1 India, provided that such source has represented to Solution Provider's employees (including sourced support) that it is not bound by any obligation of confidentiality in relation thereto.
 - (v) Information required to be disclosed pursuant to the requirements of any applicable laws or regulations, or any order, directive of the court or Government authority or instrumentality thereof.
- c. **Intellectual Property-** Solution Provider hereby acknowledges that all right, title and interest in the GS1 India's DataKart will remain the exclusive Intellectual Property Rights of the GS1 India and Solution Provider does not and shall not acquire, claim any ownership, right, title, interest, license over the GS1 India's DataKart Intellectual Property Rights.
- d. **Non-Compete** – Solution Provider shall not, either during the Term of this Agreement or for a period of three (3) years following the termination of this Agreement, without the prior written consent of GS1 India, provide any services or interested in a business which is the same as, or substantially similar to, or in competition with, the GS1 India's business. However, it is clarified that the said restriction shall not prohibit Solution Provider from entering into agreement with any third-party vendor providing similar services to that of GS1 before the date of termination.
- e. **Assignment-** This Agreement may not be assigned by any of the Parties hereto without the prior written consent of the other party.
- f. **Notices-** Unless otherwise provided herein, all notices or other communications under or in connection with this Agreement shall be given in writing and may be sent by personal delivery or post or courier or facsimile. Any such notice or other communication will be deemed to be effective if sent by personal delivery, when delivered, if sent by post, two days after being deposited in the post and if sent by courier, one day after being deposited with the courier, and if sent by facsimile, when sent (on receipt of a confirmation to the correct facsimile number)
- g. **Severability-** The invalidity or unenforceability of any provisions of this Agreement in any jurisdiction shall not affect the validity, legality or enforceability of the remainder of this Agreement in such jurisdiction or the validity, legality or enforceability of this Agreement, including any such provision, in any other jurisdiction, it being intended that

all rights and obligations of the Parties hereunder shall be enforceable to the fullest extent permitted by law

- h. **Dispute Resolution-** Any dispute, controversy or claims arising out of or relating to this Agreement or the breach, termination or invalidity thereof, the Parties shall make every effort to amicably settle the same through mutual discussions, negotiations and consultations. In the event the Parties cannot settle the dispute amicably, the dispute shall be settled by arbitration in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996(as amended). The arbitral tribunal shall be composed of sole arbitrator to be mutually appointed by the Parties. In case if the Parties have a difference of opinion in finalizing the sole arbitrator then each Party shall select its own arbitrators and the two appointed arbitrators therein by the Parties shall jointly appoint the third arbitrator. Awards of the arbitration shall be final, conclusive and binding on the Parties. The place of arbitration shall be New Delhi. The arbitral procedure shall be conducted in the English language and any award or awards shall be rendered in English. The award of the arbitrator shall be final and conclusive and binding upon the Parties.
- i. **Governing Law and Jurisdiction-** The provisions of this Agreement shall be governed by, and construed in accordance with laws of Republic of India. The Parties agree that subject to Arbitration provisions of this Agreement, in the event of any dispute between the Parties in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement), the Courts in Delhi shall have the exclusive jurisdiction.

**IN WITNESS WHEREOF THIS AGREEMENT HAS BEEN EXECUTED ON THE DAY AND YEAR
HEREINABOVE FIRST WRITTEN**

Signed and delivered for and on behalf of

GS1 India

(Authorised Signatory)

Signed and delivered for and on behalf of [.]

(Authorised Signatory)

In presence of:

1.

2.