



GS1 US INTELLECTUAL PROPERTY RIGHTS POLICY

1. INTRODUCTION

This GS1 US Intellectual Property Rights Policy (“**Policy**”) governs the treatment of intellectual property in the production of deliverables by GS1 US (“**GS1 US**”).

This Policy applies to all Participants of a GS1 US Work Group and their Affiliates (as defined below). GS1 US may amend this Policy at any time in its sole discretion. In the event of such change to this Policy, GS1 US will provide instructions for transition to the new Policy; however, no amendment to this Policy will be effective in less than thirty (30) calendar days from the date that GS1 US publishes an amended Policy.

2. DEFINITIONS

2.1 “**Affiliate**” means, with respect to any Participant, any other individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity that now or in the future is controlling, controlled by, or under common control with the Participant.

2.2 “**Approved Guideline**” means a technical standard, guideline, recommendation, prototype, specification and/or any other deliverable or artifact approved by the Work Group.

2.3 “**Contribution**” means any submission of concepts, data, suggestions, or revisions to a Draft Guideline and/or an Approved Guideline, whether in written or oral form, made with the intention of influencing the content of the Draft Guideline and/or the Approved Guideline.

2.4 “**Copyrighted Works**” shall mean any and all original and creative works owned or freely sublicensable by Participant that are embodied in any Contribution made by Participant, including advertising and promotional materials, educational materials, guides, graphics, photographs, illustrations, images, video and audio clips, music, sounds, scripts, data, files, software, compilations, designs, and other copyrightable works.

2.5 “**Draft Guideline**” means a draft technical standard, guideline, recommendation, prototype, specification and/or any other deliverable or artifact created by, disseminated by and/or circulated among Participants of the Work Group.

2.6 “**Essential Claims**” means all claims in any patent or patent application in any jurisdiction in the world that would necessarily be infringed by implementation of all or any part a Draft Guideline and/or an Approved Guideline.

2.7 “**Group Facilitator**” means a duly authorized representative of GS1 US assigned to handle the administrative responsibilities of the Work Group.

2.8 “**GS1 US Royalty-Free License**” shall mean a non-assignable, non-sublicensable, royalty-free license to the Essential Claims to make, have made, use, sell, have sold, offer to sell, import, distribute and dispose of products and/or services that utilize a Draft Guideline and/or an Approved Guideline.

2.9 “**Implementer**” shall mean any company, entity, or individual who implements an Approved Guideline or any guidelines, specifications, and/or recommendations published by GS1 US

regarding an Approved Guideline.

2.10 “**Participant**” shall mean any company, entity, or individual that participates in the Work Group.

2.11 “**RAND License**” shall mean a license to the Essential Claims on reasonable and non-discriminatory terms, to make, have made, use, sell, have sold, offer to sell, import, and distribute and dispose of products and/or services that utilize a Draft Guideline and/or an Approved Guideline.

2.12 “**Representatives**” means the individual(s) authorized by the Participant to represent the Participant in the activities of a Work Group. Such Representatives shall be specifically identified upon enrollment in a Work Group.

2.13 “**Work Group**” means a group of one or more Participants formed for the purpose of creating Draft Guidelines and/or Approved Guideline and in which the Participant participates.

3. GENERAL

3.1 Participant and its Affiliates agree to the terms hereof as a condition of its participation in a Work Group of GS1 US.

3.2 Participant shall execute an opt-in charter agreement for any Work Group in which Participant participates.

3.3 Participant represents that the designation of the Representative(s) by Participant is hereby made by an officer or equivalent individual having the power to bind the Participant and its Affiliates to the terms and conditions hereof.

3.4 Participant and GS1 US agree that participation in a Work Group shall not constitute an undertaking to make or use any system or component in accordance with an Approved Guideline and that Participant shall not be required to implement any Approved Guideline.

4. LICENSING OBLIGATION

4.1 **Patent Licensing Obligation.** Subject to the exclusion provisions of Article 6, Participant agrees to grant and hereby grants to all Implementers a GS1 US Royalty-Free License to any Essential Claims that the Participant owns and/or any that the Participant has the right to license without obligation of payment or other consideration to an unrelated third party. The license (1) shall be limited to implementations of an Approved Guideline, and to what is required by an Approved Guideline; (2) may, at the option of the Participant, be conditioned on a grant of a reciprocal royalty-free license to all Essential Claims owned or controlled by the licensee; (3) shall not be conditioned on payment of royalties, fees or other consideration; and (4) shall not impose any further conditions or restrictions on the use of any technology, intellectual property rights, or other restrictions on behavior of the licensee, but may include reasonable, customary terms relating to operation or maintenance of the license relationship such as choice of law and dispute resolution. The term of the license shall extend for the life of the Essential Claims.

4.2 **Copyright Licensing Obligation.** Participant agrees to grant and hereby grants to all Implementers a non-exclusive license to use, copy, publish, display, translate or distribute the Copyrighted Works,



or portions thereof, and to create derivative works therefrom. The license (1) shall be limited to implementations of an Approved Guideline, and to what is required by an Approved Guideline; (2) may, at the option of the Participant, be conditioned on a grant of a reciprocal royalty-free license to any and all Copyrighted Works owned or controlled by the licensee; (3) shall not be conditioned on payment of royalties, fees or other consideration; and (4) shall not impose any further conditions or restrictions on the use of any technology, intellectual property rights, or other restrictions on behavior of the licensee, but may include reasonable, customary terms relating to operation or maintenance of the license relationship such as choice of law and dispute resolution. Participant further agrees to grant and hereby grants to GS1 US a non-exclusive license to use, copy, publish, display, translate, or distribute the Copyrighted Works.

4.3 Review Period. A Participant is bound to the obligations of Section 4.1 and Section 4.2 only if Participant has been represented by a Representative on the Work Group during three (3) Work Group meetings.

5. DISCLOSURE

5.1 Generally. Participant agrees that, by participating in Work Group, Participant has an ongoing duty to disclose Essential Claims to GS1 US.

5.2 Disclosure and Timing. Participant shall disclose Essential Claims of which the Participant has knowledge, after making a reasonable inquiry into Participant's and its Affiliate(s)'s patents, at the following times: (i) within five (5) days of making a Contribution to the Work Group that implicates subject matter included in the Essential Claims; (ii) within fifteen (15) days of any call for Essential Claims made by GS1 US or the Group Facilitator of a Work Group; (iii) within fifteen (15) days of the creation, dissemination or discussion of a Draft Guideline; (iv) and within fifteen (15) days of the approval of an Approved Guideline. For the sake of clarity, a Work Group meeting does not in and of itself trigger a new disclosure obligation pursuant to this Section 5.2.

5.3 Disclosure Contents. Any disclosure made by Participant pursuant to Section 5.2 shall contain, (i) in the case of issued patents and published patent applications, any patent and/or application numbers owned or licensable by Participant that contain Essential Claims and (ii) in the case of unpublished patent applications, an indication that an unpublished patent application owned or licensable by the Participant exists and an identification of the specific portions of the Draft Guideline and/or Approved Guideline that cause the unpublished patent application to contain one or more Essential Claims. ((i) and (ii), individually and collectively, "Disclosed IP"). Within fifteen (15) days of the publication of an unpublished patent application that has previously been disclosed under this Section, Participant shall disclose the patent and/or application numbers corresponding to the previously unpublished patent application.

5.4 Publication of Disclosures. Participant acknowledges that GS1 US may, at its sole discretion, publish any Disclosed IP to other Participants of the Work Group and/or to the general public.

5.5 Disclosure Logistics. Participant shall make such disclosure pursuant to Section 5.2 to the Group Facilitator of the Work Group.

5.6 No Search Required. Satisfaction of the disclosure requirement in Section 5.2 shall not require that Participant perform a search of patents the Participant does not own.

5.7 Failure to Disclose. For any patent and/or patent application that contains Essential Claims but that Participant failed to disclose as required by Section 5.2, Participant agrees to grant and hereby grants to all Implementers a GS1 US Royalty-Free License to the Essential Claims and agrees not to assert Participant's rights in the Essential Claims against any Implementer. The license grant made pursuant to this Section 5.7 shall not be subject to the exclusion provisions of Article 6.

6. EXCLUSION FROM GS1 US ROYALTY-FREE LICENSING REQUIREMENTS

6.1 Exclusion Requires Proper Disclosure. Participant may exclude Essential Claims from the licensing obligations of Article 4 only for those Essential Claims that were properly disclosed pursuant to Section 5.2.

6.2 Notice of Exclusion. Participant may provide notice that Participant is unwilling to offer a GS1 US Royalty-Free License to Essential Claims that the Participant owns and/or has the right to license without obligation of payment or other consideration to an unrelated third party ("Notice of Exclusion"). In such Notice of Exclusion, Participant shall indicate the specific claims of the Disclosed IP that will be excluded ("Excluded Claims") and which part(s) of the Draft Guideline and/or Approved Guideline would infringe the Excluded Claims. Participant shall further indicate in the Notice of Exclusion whether or not it is willing to provide a RAND License to the Excluded Claims. Participant hereby acknowledges that GS1 US has the right to request additional information from Participant with regard to any Notice of Exclusion provided by Participant. Participant hereby agrees to cooperate with GS1 US and provide such additional information to GS1 US within thirty (30) days of receiving any such request for additional information. Participant hereby acknowledges that a Notice of Exclusion shall not be effective until GS1 US is satisfied with the level of detail provided in both the Notice of Exclusion and in any requests for additional information related to that Notice of Exclusion.

6.3 Timing of Notice of Exclusion. For the Notice of Exclusion to be effective, Participant must provide the Notice of Exclusion within fifteen (15) calendar days after disclosing the Disclosed IP. Any Notice of Exclusion received more than fifteen (15) calendar days after the disclosure of the Disclosed IP will not be effective, and Participant shall remain bound by the licensing obligations of Article 4.

6.4 RAND License. Any RAND License granted pursuant to Section 6.2, (1) shall be available to all Implementers, worldwide, whether or not they are Participants or members of GS1 US; (2) shall extend to the Essential Claims owned or licensable by the Participant; (3) shall be limited to implementations of a Draft Guideline and/or an Approved Guideline, and to what is required by a Draft Guideline and/or an Approved Guideline; (4) may, at the option of the Participant, be conditioned on a grant of a reciprocal RAND license to all Essential Claims owned or controlled by the licensee; (5) may be conditioned on payment of reasonable, non-discriminatory royalties or fees; and (6) shall not impose any further conditions or restrictions on the use of any technology, intellectual property rights, or other restrictions on behavior of the licensee, but may



include reasonable, customary terms relating to operation or maintenance of the license relationship such as choice of law and dispute resolution. The term of the license shall extend for the life of the Essential Claims.

6.5 **Logistics.** Participant shall provide the Notice of Exclusion to the Group Facilitator of the Work Group.

6.6 **Designing Around Excluded Claims.** GS1 US reserves the right to direct the Work Group to design around the Excluded Claims. Additionally, GS1 US may, at its sole discretion, alter a Draft Guideline and/or an Approved Guideline to avoid infringing the Excluded Claims.

6.7 **Publication of Notices of Exclusion.** Participant acknowledges that GS1 US may, at its sole discretion, publish any Notices of Exclusion to other Participants of the Work Group and/or to the general public.

7. RESIGNATION FROM WORK GROUP

7.1 **Resignation.** Participant may resign from the Work Group at any time upon thirty (30) days' prior written notice to the Group Facilitator of the Work Group.

7.2 **Effect of Resignation.** Upon Participant's resignation, the provisions of this Policy shall terminate. Notwithstanding the foregoing, Participant shall remain bound by any and all obligations to grant GS1 US Royalty-Free Licenses and/or RAND Licenses that arose pursuant to the terms of this Policy before the date of Participant's resignation from the Work Group.

8. **NO THIRD PARTY RIGHTS.** PARTICIPANT SHALL NOT MAKE ANY CONTRIBUTION THAT, TO THE KNOWLEDGE OF PARTICIPANT'S REPRESENTATIVES TO THE WORK GROUP, VIOLATES THE COPYRIGHT OR TRADE SECRET RIGHTS OF ANY OTHER PARTICIPANT OR ANY THIRD PARTY.

9. **INDEMNIFICATION.** Participant shall defend, indemnify and hold harmless GS1 US and its officers, directors, employees, shareholders, customers, agents, successors and assigns from and against any and all loss, damage, settlement, costs or expense (including legal expenses and expenses of other professionals), as incurred, resulting from, or arising out of (i) any breach of this Policy and (ii) any third party claim which alleges that any product or service of the Participant which incorporates, implements, and/or practices all or any part of an Approved Guideline infringes upon, misappropriates, or violates any patents, copyrights, or registered trademarks.