



## **TERMS OF USE**

### **For GS1 India's API QR Code Subscription**

The "Terms of Use" as laid in this document binds Applicant Company to use GS1 India's API QR Code Subscription as per the term and conditions mentioned herein below. This document is deemed to be a valid agreement for all legal purposes.

#### **1. Definitions:**

- 1.1 "GS1 India" is a Society registered at New Delhi under the laws of India, having its registered office at 330, 2nd Floor, August Kranti Bhawan, Bhikaji Cama Place, New Delhi-110066. GS1 India is affiliated to GS1 Global, Brussels and is responsible for allocation and administration of GS1 standards in India.
- 1.2 "API QR Code" refers to the 'subscription' related to QR code label generation for Active Pharmaceutical Ingredients (API), provided by GS1 India through GS1 India's Datakart portal (website) to the Registered Subscriber(s).
- 1.3 "Intellectual Property" includes, but not limited to, the technologies, functionalities and other programs used by GS1 India to provide the DataKart Service.
- 1.4 "Registered Subscriber(s)" refers to the company which has an active subscription of GS1 (from any GS1 MO worldwide) and is further registering to GS1 India's API QR Code Subscription as per the terms and conditions mentioned herein.
- 1.5 Products refer to the specific brand, variant, goods, items, packaging details etc. owned by brand owner(s)/ supplier(s) in respect of which the Registered Subscriber is desirous of availing GS1 India's API QR Code subscription.
- 1.6 Product Data refers to data/information/images and other Product and/or Product Packaging attributes entered/ uploaded by Registered Subscribers at GS1 India's Datakart portal while generating API QR code labels.
- 1.7 Fee(s) refers to the license fees (including API license, implementation & support, data hosting charges) payable by the Registered Subscriber for the right to access and use GS1 India's DataKart portal for API QR code label generation. The fee paid to GS1 India is non-refundable, non-transferrable, non-adjustable and is subject to revision by GS1 India at any time at its sole discretion. Taxes/duties on the Fees payable shall be in addition to the applicable fees as per prevalent Government rules.

1.8 Term refers to the period as specified at the time of granting the license/rights to use/access the DataKart portal for API QR code label generation and includes any such renewed period as granted from time to time post validity of initial/existing period. The grant/validity and continuity of license is subject to the validity / renewal of the subscription of API QR code subscription and such other conditions as specified from time to time by GS1 India.

## 2. Recitals

With reference to Notification No. G.S.R 20(E) dated January 18, 2022, authentication of API packs using QR code is asked by the Ministry of Health & Family Welfare, Government of India. Every active pharmaceutical ingredient (bulk drug) manufactured or imported in India shall bear Quick Response code on its label at each level packaging that store data or information readable with software application to facilitate tracking and tracing. The stored data or information shall include the following minimum particulars, namely: -

- (i) Unique product identification code,
- (ii) Name of the API,
- (iii) Brand name (if any),
- (iv) Name and address of the manufacturer,
- (v) Batch no.,
- (vi) Batch size,
- (vii) Date of manufacturing,
- (viii) Date of expiry or retesting,
- (ix) Serial shipping container code,
- (x) Manufacturing license no. or import license no. (xi) Special storage conditions required (if any).

GS1 India provides an application module under its existing cloud application known as GS1 India's DataKart portal (also referred to as DataKart portal). The module enables API manufacturers to comply to the aforesaid rules and regulations.

The title and full and complete ownership rights to the GS1 India's DataKart portal and any related trademark, trade secret, copyright or other proprietary rights are, and will remain, the exclusive property of GS1 India. The Registered Subscriber is being provided with a revocable and non-transferable privilege to use the DataKart portal. Further, GS1 India is authorized to grant such right of access and use DataKart portal at its sole discretion, to the Registered Subscriber, in accordance with the conditions set out hereunder and other provisions that may be drafted from time to time.

### **3. Confidentiality**

Each party (being the “Receiving Party”) shall require its respective officers, directors, employees, agents, advisers and other representatives to keep confidential the contents of the terms herein and all information received from the other party (being the “Disclosing Party”) in connection with and pursuant to the provision or subscription/usage of the DataKart Service including any Product Data and not to disclose such information to third parties, except as necessary to perform its obligations or exercise its rights hereunder or with the written consent of the other Party where required by law or court order without the prior written consent of the other Party. Notwithstanding the foregoing, this shall not apply to information that is (i) in the public domain, (ii) lawfully obtained from a third party who is entitled to disclose such information or (iii) independently developed by the other party without reference to such information.

The Receiving party shall store all confidential information of the Disclosing Party in its possession, custody or control securely, so as to minimise the risk of loss, destruction or unauthorised access.

Upon termination of this agreement or at any time at Disclosing Party’s request, Receiving Party shall immediately return to Disclosing Party all of the confidential information (including any material containing a reproduction) in its possession, power or control without keeping any copies and destroy or hand over to Disclosing Party all notes relating to the confidential information (and any copies) prepared by Receiving Party. If any confidential information is stored electronically (whether on a computer or otherwise), Receiving Party shall permanently erase that confidential Information and notify in writing to that effect to the Disclosing Party.

### **4. Grants**

GS1 India grants license/right to access and use the GS1 India’s DataKart portal for API QR code label generation only. For purposes herein, it is clarified that the license/right provided herein does not permit the Registered Subscriber to access any other services at GS1 India’s DataKart portal other than for API QR code label generation.

The clarification / interpretation of the above stated notification is the responsibility of the Registered Subscriber and not of GS1 India.

The implementation support and solution offered by GS1 India shall be as per the notification stated above. Compliance to any subsequent clarification / notification would be chargeable extra as decided by GS1 India.

The Registered Subscriber shall use the DataKart portal solely for the purposes and functions expressly permitted herein and in accordance with the terms set out herein and any other provisions expressly or impliedly communicated to the Registered Subscriber.

If the data is hosted by the registered subscriber's at their end, then GS1 India shall not be responsible for any issue related to data availability / data connectivity.

GS1 India is not responsible for the completeness and accuracy of any data as maintained/provided by the Registered Subscriber in the DataKart portal while generating API QR code. GS1 India makes no warranty, either express or implied, written or oral, with respect to the usage of DataKart portal for API QR code label generation by the Registered Subscriber and GS1 India expressly disclaims any and all implied warranties of merchantability, fitness for a particular purpose.

## **5. License fees**

In consideration of provision of license to use the DataKart portal of GS1 India for API QR code label generation, the Registered Subscriber shall pay a non-refundable, non-adjustable and non-transferable License/Rights Fee ("Fees") to GS1 India in full and in advance. Part payment will lead to withdrawal/revocation of the license, resulting in termination of Datakart Service subscription. The Registered Subscriber shall, before the expiry of each term, receive a renewal intimation for its license for another term. The Registered Subscriber needs to renew its subscription to continue the subscription. This is without prejudice to any other rights and remedies that may be available to GS1 India under law and equity in such circumstances.

## **6. Registered Subscriber's obligations as to conformity of directions of GS1 India**

The Registered Subscriber shall adhere to all instructions/directions pertaining to the use of the GS1 India's DataKart portal. The Registered Subscriber, for best results/outcome, shall adhere to the technical specs as set out by GS1 India and made available from time to time.

## **7. Use and Protection of Intellectual Property**

7.1 The Registered Subscriber regards the DataKart portal and the Intellectual property related thereto as the sole property of GS1 India. The Registered Subscriber acknowledges that the right to grant access and use of DataKart portal is exclusive to GS1 India and it shall not attempt to act in any contrary manner.

7.2 The Registered Subscriber does not have the right to pass-on/assign the right to access and use the DataKart portal/ Intellectual Property of GS1 India. The goodwill generated or any other rights that accrue by the use of the DataKart portal /related to Intellectual Property of GS1 India, shall at all times, belong to GS1 India exclusively.

7.3 The Registered Subscriber under all circumstances can call to the attention of GS1 India, the use of any Intellectual Property of GS1 India or the DataKart portal, by any third party or any such activities of third parties, which in the opinion of the Registered Subscriber could amount to infringement of the legal rights of GS1 India.

## **8. Warranties and Representations**

8.1 The Registered Subscriber warrants that it shall use API QR code subscription, only for the company and in the country for whom it has been licensed/granted for, and not for any of its sister concern, subsidiaries, branches at other countries etc. The Registered Subscriber warrants that it shall not use the name or other forms of identification of GS1 India as its own or refer to as associated with, its own name/products. Further, the Registered Subscriber shall not lease/ pass-on/ rent the rights granted.

8.2 The Registered Subscriber warrants that it shall not use the subscription if it has failed to comply with the terms of its use or pay the requisite license/rights fee. In case of continued use, the Registered Subscriber accepts to be legally liable to GS1 India for unpaid license/rights fee, damages and any other amounts that may be levied by GS1 India.

8.3 The Registered Subscriber warrants that it will be bound by the terms and conditions with respect to Clause(s) 12 and 13 even after the termination or when the Registered Subscriber ceases to be a subscriber of DataKart Service.

## **9. Consequences of Misuse**

9.1 GS1 India has taken protection against unauthorized use of DataKart portal under applicable laws in India. Unauthorised use means, use of DataKart portal by any company or at any country without registering with GS1 India or had previously registered with GS1 India but has discontinued (cancelled/ terminated/ revoked) at a later date due to any reason.

9.2 For the continued use and access to the API QR code subscription, the Registered Subscriber must ensure that it has an active subscription of GS1 barcodes at all times.

## **10. Action against third parties**

GS1 India shall have the exclusive right to take all/any action against third parties with respect to violation of IP rights, and if required, the Registered Subscriber shall co-operate fully with GS1 India in any such action, in all manner possible.

## **11. Termination**

- 11.1 Termination for breach: GS1 India is entitled to terminate the license/rights after giving 15 days' notice of termination, when there is failure on the part of the Registered Subscriber to make payment of license/rights fee, or if it has reasons to believe that the Registered Subscriber has not been adhering to the standards prescribed, is acting in detrimental manner towards the interest of GS1 India, is acting contrary to the general business practices or norms of the trade, or is involved in any such similar activity, or for failure on the part of the Registered Subscriber to perform its obligations or the disqualification of the Registered Subscriber such as liquidation, winding- up etc. or any change in ownership, constitution etc. of the Registered Subscriber, that is not informed to GS1 India and which may affect the relationship between the parties.
- 11.2 Voluntary termination: GS1 India may unilaterally revoke the rights granted to the Registered Subscriber with respect to use of the subscription by sending appropriate written notice of 30 days. The Registered Subscriber can also voluntarily terminate the agreement by sending an appropriate written notice of 30 days to this effect to GS1 India.
- 11.3 On termination, the Registered Subscriber shall forthwith pay GS1 India all amounts due pertaining to outstanding dues against the Registered Subscriber as communicated by GS1 India.

## **12. Consequences of Termination**

Upon termination, the Registered Subscriber shall discontinue the subscription and all other forms of rights/representations granted by GS1 India with immediate effect. Any needful continuance must be approved in writing by GS1 India. The license/right to access and use the DataKart portal for API QR code label generation and other rights granted, shall stand revoked upon termination. Further, the Registered Subscriber must ensure the proprietary rights of GS1 India are protected irrespective of the surrender, and that all use of rights granted is stopped consequent to the termination.

## **13. Indemnity**

The Registered Subscriber shall indemnify GS1 India against all actions, claims including third party claims, costs, damages and expenses, which GS1 India may suffer or sustain as a result of the actions by the Registered Subscriber. All precautions have been taken by GS1 India in provision of API QR code label subscription to the Registered Subscriber. However, in the event of any fault in such provisions by GS1 India, liability of GS1 India shall stand limited to the amount (against API license fee) paid by the Registered Subscriber to GS1 India during past 12 months.

Notwithstanding anything herein, GS1 India shall not be liable to the Registered Subscriber for any loss of profit, business, goodwill or revenue or any special, punitive, indirect or consequential loss or damages arising as a result of use of the subscription by the Registered Subscriber, howsoever caused and irrespective of any negligence or fault.

#### **14. Miscellaneous**

- 14.1 No waiver and severance: There will be no waiver by GS1 India to any of the Registered Subscribers' obligations, unless made in writing. Nor any waiver by GS1 India in respect of any breach be deemed to constitute a waiver of, or consent to, any subsequent breach(s) by the Registered Subscriber. In the event that any provision is declared by any judicial or other competent Authority to be void, voidable or illegal, the remaining provisions shall continue to apply, unless GS1 India in its sole discretion, decides to do otherwise.
- 14.2 Upon the occurrence of a Termination Event, and for a period of two years from the date of such termination, the Registered Subscriber shall not solicit for employment, employ or otherwise retain (directly or indirectly) any employee of the GS1 India without the prior written consent of GS1 India.
- 14.3 Governing Law shall always be the laws of the Republic of India and every interpretation will be deemed to be made in India. The jurisdiction in all matters of dispute shall lie exclusively with the Courts in New Delhi.
- 14.4 Use of Logo: Registered Subscriber(s) acknowledges and agrees that GS1 India may use their logos and trade names / entity name to represent GS1 India's subscriber at GS1 India's website(s), mobile application(s), published materials, documents, reports etc.
- 14.5 Change of Address: Each of the parties shall give notice to each other on change/acquisition of a new business address within 7 (seven) working days of such change.