GS1 US Rapid Recall Express™ License Agreement

This GS1 US Rapid Recall Express™ License Agreement ("Agreement") is made and entered into by and between GS1 US, Inc. (hereinafter "Licensor") and the entity who completes the Rapid Recall Express Form (hereinafter "Licensee"), effective as of the date Licensee submits the Rapid Recall Express Form ("Effective Date"). Licensor and Licensee are collectively hereinafter referred to as the "Parties".

BY CLICKING "I AGREE", LICENSEE EXPRESSLY AGREES AND CONSENTS TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, AS DEFINED HEREIN.

WITNESSETH:

WHEREAS, Licensor designs, implements and administers global standards and solutions to improve the efficiency and visibility of supply and demand chains;

WHEREAS, Licensor is the sole and exclusive owner of the Rapid Recall Express Form and of all intellectual property and other rights in and to such Form and the content thereof, including but not limited to the GS1 US trademarks and services marks depicted therein and the GS1 US Keys and other standardized attributes in a specific configuration designed to meet the needs of users of the Rapid Recall Express Form (hereinafter "the RRX Form");

WHEREAS, Licensee wishes to use the RRX Form to report, monitor and communicate about product recalls via Licensee’s own communication, processing and transmission systems (hereinafter the "Licensed Services");

WHEREAS Licensee acknowledges and accepts that the RRX Form may change from time to time and that the terms and conditions of this Agreement shall govern such modified RRX Form(s);

WHEREAS, Licensor is willing to grant to Licensee the limited, non-exclusive and non-transferable right and license to use the RRX Form in connection with the Licensed Services; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

ARTICLE 1 - OWNERSHIP OF RRX FORM

1.1 Licensee acknowledges and agrees that the RRX Form comprises a creative, new and original work of authorship and that Licensor is the sole and exclusive owner of all worldwide and universal right, title and interest in and to the RRX Form.

1.2 Licensee shall not challenge or make any claim adverse to Licensor’s right, title or interest in and to the RRX Form.

ARTICLE 2 - GRANT OF LICENSE

2.1 The license granted pursuant to this Agreement is subject to the terms and conditions herein, in addition to the terms and conditions identified at the following URL which are incorporated herein by reference: http://www.gs1us.org/terms-of-use (the "Additional Terms") (collectively, the "Terms and Conditions"). To the extent there is a conflict between this Agreement, the Additional Terms or any other terms of use, this Agreement shall control unless expressly stated otherwise.

2.2 Licensor hereby grants to Licensee, subject to the Terms and Conditions, a limited, non-exclusive, non-transferable right and license during the term of this Agreement to access and use the RRX Form in connection with the Licensed Services. Licensee acknowledges and agrees that this Agreement pertains only to Licensee’s use of the RRX Form and that Licensee is solely responsible for communicating, transmitting and processing product recall information that may be input into the form using Licensee’s own communication, processing and transmission systems. Licensor shall not be responsible for, and shall bear no liability in connection with, the transmission, processing or communication of the RRX Form or the information contained therein.

2.3 Licensee acknowledges and agrees that Licensor shall have the right to use (i) Licensee’s company name and/or logo on Licensor’s website and in Licensor’s promotional and advertising materials to identify Licensee as a user of the RRX Form.

2.4 Licensee further acknowledges and agrees that nothing herein shall grant to or confer upon Licensee any right, title, or interest in the RRX Form other than the non-exclusive right to use the RRX Form in connection with utilizing the Licensed Services pursuant to the Terms and Conditions as defined herein. All rights not expressly granted to Licensee herein are reserved to Licensor.

ARTICLE 3 – USE OF RRX FORM

3.1 Licensee shall use the RRX Form only in the manner provided for in this Agreement.

3.2 Licensee shall not make any false or misleading written or oral representations of fact concerning Licensee, Licensor or the Licensed Services, and shall not use the RRX Form in a manner so as to misrepresent its relationship with Licensor or the source or origin of the Licensed Services.

3.3 Licensee shall not remove or otherwise alter any GS1 US copyright, trademark, service mark or other proprietary notices that appear in the RRX Form.

ARTICLE 4 – MODIFIED RRX FORM

4.1 Licensee is permitted to modify the RRX Form (hereinafter a "Modified RRX Form") by changing the content or layout of the RRX Form customized for its own use. However, Licensee shall not acquire or assert any proprietary rights to or interest in any Modified RRX Form, or support or assist any third party to do so.

4.2 Licensee shall not use a Modified RRX Form in a manner so as to misrepresent its relationship with Licensor or the source or origin of the Licensed Services.
4.3 Licensee shall not use in any Modified RRX Form any GS1 US copyright, trademark, service mark or other proprietary notices that otherwise appear in the RRX Form. As clarification, and without limitation: (1) Licensee shall not refer to a Modified RRX Form as “Rapid Recall Express”; (2) Licensee shall not refer to “Rapid Recall Express” in any way in a Modified RRX Form other than to state that the Modified RRX Form is “based on Rapid Recall Express”; and (3) Licensee shall not refer to “GS1 US” in any Modified RRX Form.

ARTICLE 5 - INDEMNIFICATION

5.1 Licensee is not aware of any impediment to its ability to grant this License but makes no warranty in that regard.

5.2 Notwithstanding any other provision of this Agreement, Licensor shall NOT indemnify Licensee and its affiliates, successors, assigns, officers, directors, employees, agents, and representatives from and against any and all claims, suits, actions, losses, costs, penalties and damages of whatsoever kind or nature (including but not limited to settlement amounts, expert witness fees and reasonable attorney’s fees and costs) (hereinafter “Claims”) arising from or related, directly or indirectly, to Licensee’s use of the RRX Form, a Modified RRX Form, or the Licensed Services.

5.3 Licensee shall indemnify and hold harmless Licensor and its affiliates, successors, assigns, officers, directors, employees, agents, and representatives from and against any and all Claims arising from or related, directly or indirectly, to the breach by Licensee of any of its obligations pursuant to the Terms and Conditions of this Agreement or any use of the RRX Form, a Modified RRX Form, or the Licensed Services not explicitly authorized by this Agreement.

ARTICLE 6 - NOTIFICATION OF INFRINGEMENT BY THIRD PARTIES

6.1 Licensee shall promptly notify Licensor in writing of any third party’s adoption, copying or use of the RRX Form, or any colorable variation or imitation thereof, which would infringe or impair, tend to impair or dilute Licensor’s rights in and to the RRX Form. Licensee further agrees to take no action of any kind with respect to such infringement or adverse use (other than the provision of notice required herein), except by and in accordance with an express written authorization of Licensor.

6.2 Licensor, in its sole discretion, shall have the right to decide whether or not proceedings shall be instituted against any and/or all third party infringements. In the event Licensor decides that action should be taken against any such third party, Licensor may take such action whether in its own name or, alternatively, Licensor may authorize Licensee to initiate such action in Licensee’s name at Licensor’s cost and expense. In either event, Licensee shall cooperate fully with Licensor to whatever extent Licensor deems necessary or appropriate to prosecute such action and for the protection of Licensor’s rights to the RRX Form.

ARTICLE 7 - TERM AND TERMINATION

7.1 Except as provided herein, the term of this Agreement shall be indefinite unless sooner terminated in accordance with Article 7 of this Agreement, except that this Agreement shall terminate forthwith in the event that either party ceases to do business and has not assigned this Agreement as provided in Article 9.1.

7.2 Licensor or Licensee may terminate this Agreement by providing thirty (30) days prior written notice of termination to the other party.

7.3 Notwithstanding any other terms contained herein, Licensor may immediately terminate this Agreement upon ceasing to offer the RRX Form or the Licensed Services.

ARTICLE 8 – DISCLAIMER AND LIMITATION OF LIABILITY

8.1 DISCLAIMER. LICENSOR DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, REGARDING ANY MATTER, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF ACCURACY OR RELIABILITY OF ANY CONTENT, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR USE OF THE RRX FORM, A MODIFIED RRX FORM, INFORMATION OR DATA DERIVED THEREFROM, THE LICENSED SERVICES, OR ANY RELATED SERVICES.

8.2 LIMITATION OF LIABILITY. LICENSOR SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, LIQUIDATED, SPECIAL OR EXEMPLARY DAMAGES OR PENALTIES (EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) ARISING IN CONNECTION HEREBY, INCLUDING, BUT NOT LIMITED TO, LOSSES OF BUSINESS, REVENUE OR ANTICIPATED PROFITS.

ARTICLE 9 - MISCELLANEOUS

9.1 Binding Nature; Assignment. This Agreement will be binding on the Parties, their respective successors, and permitted assigns. Neither Party may assign this Agreement without the prior written consent of the other Party, provided that Company, upon not less than fifteen (15) business days prior written notice, may assign its rights and obligations under this Agreement to an Affiliate that expressly assumes in writing Company’s obligations and responsibilities hereunder and Company shall remain fully liable for and shall not be relieved from the full performance of and compliance with all obligations under this Agreement.

9.2 Due Authority; Binding Agreement. Each Party represents and warrants to the other Party that: (i) it has full power and authority to enter into this Agreement and to perform its respective obligations herein; and (ii) this Agreement represents a valid and legally binding obligation of such Party and is enforceable against such Party in accordance with the terms hereof.

9.3 Entire Agreement; Modification. This Agreement constitutes the entire agreement of the Parties relating to the subject matter addressed in this Agreement. This Agreement supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed in this Agreement, whether oral or written.

9.4 Governing Law. This Agreement and the interpretation of this Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey without regard to its conflicts of laws principles. Jurisdiction over and venue in any legal proceeding directly or indirectly arising out of or relating to Agreement shall be in the
9.5 **Headings.** Headings in this Agreement are used for convenience only and shall not affect its construction or interpretation.

9.6 **No Agency or Joint Ventures.** This Agreement shall not create or be considered to create the relationship of master and servant, principal and agent, partnership or joint venture between the parties hereto, and neither party shall be liable for any obligation, liability, representation, negligent act or omission to act on the part of the other party.

9.7 **Notice.** All notices and communications required or permitted under this Agreement shall be in writing and shall be delivered personally, by overnight mail, or by electronic mail with confirmation of receipt, to Licensor or Licensee at the respective addresses the parties provide to each other or to such other address as Licensor or Licensee may from time to time specify by notice to the other given as provided in this paragraph. The date of giving such notice shall be the date of personal delivery or of sending the electronic mail or one day after deposit with an overnight mail service. Licensor’s current address for notification purposes is:

GS1 US, Inc.
Princeton Pike Corporate Center
1009 Lenox Drive, Suite 202

Lawrenceville, New Jersey 08648

9.8 **Severability.** The provisions of this Agreement are severable, and if any provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such provision, or part thereof, in such jurisdiction and shall not in any manner affect such provision in any other jurisdiction.

9.9 **Successors and Assigns.** This Agreement shall be binding on the Parties and Licensor’s successors and assigns. However, this Agreement may not be transferred, assigned, or sublicensed by Licensee without the prior written approval of Licensor, which approval may be granted or refused in Licensor’s sole discretion.

9.10 **Survival.** Parties acknowledge and agree that the provisions of Paragraphs 1, 3, 4, 5, 8, and 9 will survive the expiration or termination of this Agreement.

9.11 **Waiver of Default; Cumulative Remedies.** A delay or omission by either Party to exercise any right or power under this Agreement shall not be construed to be a waiver, nor shall any waiver by either Party in the performance of any covenant (or breach thereof) be construed to be a waiver of any other or succeeding breach. No waiver or discharge shall be valid unless in writing and signed by an authorized representative of the Party. All remedies provided for in this Agreement shall be cumulative and in addition to (and not in lieu) of any other remedies available to either Party at law, in equity or otherwise.