

Terms of Service | Fixed Asset Management Platform

Software as a Service (SaaS)

These Terms of Service ("Terms") govern the access to and use of the Fixed Asset Management Platform offered under a Software as a Service (SaaS) model by GS1 Kenya Limited ("GS1 Kenya") and constitute a binding legal agreement between GS1 Kenya and the legal entity or person accessing the Services

1. DEFINITIONS

- **"Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with a party, where "control" means the direct or indirect ownership or control of at least a majority of the voting rights, or the power to direct management and policies.
- **"Agreement"** means collectively these Terms, the Order Form(s), any Service Level Agreements (SLAs), Statements of Work (SOWs), and any attachments or addenda executed between the parties.
- **"Customer Data"** means all electronic data, information, or material submitted, uploaded, stored, or processed by Users or on the Customer's behalf into the Platform. This explicitly includes "Personal Data" as defined under the Kenya Data Protection Act, 2019.
- **"Documentation"** means the online or written user guides, system specifications, instructional manuals, and technical documentation regarding the Platform made available by GS1 Kenya.
- **"Effective Date"** means the date when the first Order Form is fully executed by both parties, or when the Customer first accesses the Platform, whichever is earlier.
- **"Force Majeure"** means an event beyond the reasonable control of the affected party, including acts of God, natural disasters, epidemics, pandemics, government lockdowns, acts of war, terrorism, cyber-warfare, nationwide telecommunications outages, or third-party infrastructure failures outside GS1 Kenya's control.
- **"Intellectual Property Rights"** means all registered and unregistered rights recognized globally and under Kenyan law (including the Copyright Act, Cap 130; Industrial Property Act, 2001; and Trademarks Act, Cap 506) regarding intellectual work product, including patents, copyrights, design rights, trade secrets, trademarks, service marks, know-how, and domain names.
- **"Order Form"** means the subscription-ordering document executed by the Customer and GS1 Kenya specifying the tiers, fees, quantities, and specific scope of the Services purchased.
- **"Platform / Services"** means the cloud-based Fixed Asset Management software application, including barcode/RFID asset-tracking software modules, mobile verification components, APIs, modifications, enhancements, updates, and derivative works made available online by GS1 Kenya.
- **"Third-Party Service"** means any external software, cloud application, hardware integration (such as third-party barcode scanners), or service provisioned by an entity other than GS1 Kenya.
- **"User"** means a named individual employee, consultant, or authorized representative of the Customer who has been supplied with user credentials to access the Platform under the Customer's account.
- **"we", "us", or "our"** means GS1 Kenya Limited, a company limited by guarantee incorporated under the Laws of Kenya, with its registered offices in Nairobi, Kenya.
- **"you" or "your"** means the company, corporate body, or legal entity accepting this Agreement, whose authorized signatory warrants the legal capacity to bind the entity to these Terms.

2. USAGE RIGHTS AND SCOPE OF SERVICE

2.1. Access Grant.

Subject to the strict compliance with these Terms and the timely payment of all applicable subscription fees, GS1 Kenya grants the Customer a limited-term, non-exclusive, non-sub licensable, non-transferable right to access and use the Fixed Asset Management Platform solely for internal asset management and operational tracking business purposes.

2.2. System Subscriptions.

Services are provided under annual corporate subscription agreements. GS1 Kenya reserves the right to audit, monitor, and review subscription usage and utilization metrics to ensure compliance

with the applicable subscription terms and contractual usage limits.

2.3. Platform Versions and Updates.

GS1 Kenya continuously deploys maintenance patches, standard feature updates, and platform optimizations. Standard system updates are provided automatically to all active subscription tiers. Custom workflows or specialized configurations requested outside standard product specifications are excluded unless explicitly itemized under an independent Statement of Work.

2.4. Customer Responsibilities.

The Customer maintains sole accountability and liability for:

- Maintaining absolute confidentiality of all assigned User authentication credentials.
- Configuring internal roles, user access matrices, and data visibility permissions safely.
- All activities, asset modifications, deletions, or data uploads performed under their active tenant account.
- Ensuring all Users abide strictly by the technical rules outlined in the Documentation.
- Promptly notifying GS1 Kenya via written notice if any credential compromise or anomalous system penetration is suspected.

2.5. Usage Restrictions.

The Customer shall not permit any third party to:

- Rent, lease, license, resell, or distribute the platform as a commercial service bureau or multi-tenant white-label product.
- Reverse engineer, decompile, or attempt to derive the underlying source code, system mechanics, or proprietary data models of the Platform.
- Copy, alter, modify, or engineer derivative works based upon the Platform's layout, UI, framework, or features.
- Frame, mirror, or scrape the Platform's interface, database components, or intellectual property asset designs.
- Conduct unauthorized vulnerability scans, load testing, or penetration testing without explicit written authorization from GS1 Kenya.

- Use the Platform to store, distribute, or transmit malicious code, trojans, viruses, or unsolicited electronic communications (spam) in breach of the Kenya Information and Communications Act (KICA), Cap 411A.

3. SERVICE AVAILABILITY AND TECHNICAL SUPPORT

3.1. Uptime Commitment.

GS1 Kenya will utilize commercially reasonable endeavors to maintain platform availability twenty-four (24) hours a day, seven (7) days a week, targeting a 99.5% service uptime. This excludes scheduled system maintenance, critical emergency patching, or service disruptions directly caused by Force Majeure events or downstream internet service provider (ISP) connectivity drops within Kenya.

3.2. Scheduled Maintenance.

Routine maintenance requiring planned system downtime will be executed during non-peak business hours (typically weekends or night hours in East Africa Time). GS1 Kenya will deliver reasonable advance notice (minimum 48 hours) via in-app alerts or email communications prior to executing planned outages.

3.3. Technical Support Services.

Standard support consists of self-service Documentation, ticketing desks, knowledge bases, and user training manuals. Live help desk support, email diagnostics, and remote technical interventions will be delivered in accordance with the support severity levels agreed upon in the corporate Order Form or SLA during official Kenyan working hours (0800hrs to 1700hrs EAT, Monday to Friday, excluding Gazetted public holidays).

4. FEES, BILLING, AND TAXATION

4.1. Subscription Fees.

The Customer shall pay all subscription fees explicitly defined in the applicable Order Form. Fees are fixed for the duration of the current subscription term. GS1 Kenya reserves the right to modify baseline subscription fees upon renewal, provided that written notification is delivered to the Customer at least thirty (30) days prior to the expiration of the active subscription period.

4.2. Prorated Scaling.

If the Customer increases user capacities, activates add-on modules, or integrates supplemental hardware modules midway through a billing cycle, charges for the incremental volume will be dynamically calculated on a prorated basis aligned with the remaining duration of the active subscription term.

4.3. Currency and Billing Data.

All financial obligations are invoiced and payable in Kenya Shillings (KES) unless specified otherwise on the invoice face. The Customer agrees to maintain updated, accurate billing profiles, tax credentials, and designated primary corporate contacts at all times.

4.4. Taxation.

Fees listed under this Agreement are exclusive of all applicable statutory duties, levies, and taxes. In strict accordance with Kenyan tax laws, Value Added Tax (VAT) at the prevailing statutory rate (currently 16%) will be appended to invoices and borne entirely by the Customer. Where applicable, the Customer shall be entitled to apply statutory Withholding Tax (WHT) deductions on professional services, provided they immediately issue valid statutory tax withholding certificates to GS1 Kenya within thirty (30) days of payment.

4.5. Delinquency and Non-Payment.

Invoiced amounts not settled within thirty (30) days from the invoice date shall accrue interest penalty charges calculated at 1.5% per month on the overdue balance, or the maximum statutory rate permitted by law, whichever is lower. Continued non-payment for a period exceeding fifteen (15) days post-due-date constitutes a material breach, granting GS1 Kenya the absolute right to temporarily suspend tenant access to the Platform without liability.

5. PROPRIETARY AND INTELLECTUAL PROPERTY RIGHTS

5.1. GS1 Kenya Ownership.

GS1 Kenya, or its direct licensors, retains absolute and exclusive ownership of all rights, titles, and interests, alongside all global Intellectual Property Rights, in and to the Fixed Asset Management Platform. This includes the source code, visual design layouts, database architecture, methodology

configurations, systemic usage data, and any analytical outputs developed by GS1 Kenya. No implicit transfer of intellectual property occurs under this Agreement.

5.2. Customer Data Ownership.

As between the parties, the Customer retains exclusive ownership of all rights, titles, and intellectual property over the Customer Data inputted into the Platform. The Customer hereby grants GS1 Kenya and its secure hosting subcontractors a limited, non-exclusive, royalty-free, worldwide license to host, parse, cache, transmit, and display Customer Data solely for the required operational purpose of fulfilling its service delivery and support obligations under this Agreement.

5.3. Feedback Integration.

Should the Customer or its Users volunteer ideas, feature optimizations, architectural feedback, or recommendations ("Feedback") to GS1 Kenya, the Customer grants GS1 Kenya an irrevocable, perpetual, transferable, royalty-free license to use, embed, commercialize, or replicate such feedback across its public SaaS applications without payment or restriction.

5.4. Usage Analytics.

GS1 Kenya may collect aggregated system metadata, volumetric performance insights, and system trends derived from usage patterns ("Usage Data"). This information will be processed strictly in an anonymized, consolidated manner for system optimization, benchmarking, and internal product enhancement, ensuring no specific corporate identity or underlying Personal Data is identifiable.

6. CONFIDENTIALITY AND DATA PROTECTION REGULATION

6.1. Confidential Information.

"Confidential Information" encompasses all business, financial, technical, or strategic data disclosed by one party ("Discloser") to the other ("Recipient"), which is flagged as confidential or should reasonably be understood as such by context. The Platform designs and technical specifications are explicitly deemed GS1 Kenya's Confidential Information, while all uploaded inventory assets and financial records are deemed Customer Confidential Information.

6.2. Non-Disclosure Obligations.

The Recipient will employ at least a reasonable standard of care to secure the Discloser's Confidential Information from unauthorized exposure or distribution. Access must be restricted strictly to employees, Affiliates, or technical advisors who demonstrate a legitimate need-to-know and are legally bound by confidentiality covenants no less protective than those contained herein.

6.3. Legal Mandates.

If a party is legally compelled by a court of competent jurisdiction or a regulatory body in Kenya (such as the EACC, KRA, or Data Protection Commissioner) to disclose the other party's Confidential Information, it shall issue immediate written notice to the Discloser (unless legally barred) to enable the Discloser to seek protective relief.

6.4. Data Protection Compliance (Kenya Data Protection Act, 2019).

To the extent that the Customer Data comprises "Personal Data" of employees or suppliers (e.g., full names, phone numbers, email addresses, or biometric profiles attached to asset ownership):

- **Roles:** The Customer is the designated **Data Controller** and GS1 Kenya operates strictly as a **Data Processor** acting on the explicit instructions of the Controller.
- **Lawful Processing:** The Customer warrants that it has established all requisite lawful bases, necessary consents, and regulatory notifications required under the Data Protection Act, 2019, to collect and transmit such Personal Data to GS1 Kenya for cloud processing.
- **Data Localization:** GS1 Kenya shall host and store all Customer Data within secure cloud architecture. In compliance with the Data Protection (General) Regulations, 2021, if any cross-border data transfer is initiated, GS1 Kenya ensures appropriate safeguards or adequacy determinations are maintained.
- **Data Security Mandate:** GS1 Kenya will enforce robust administrative, technical, and organizational security protocols, including database encryption at rest, HTTPS transport encryption, access logging, and multi-factor authentication (MFA) parameters, to safeguard against accidental loss, alteration, or unauthorized exposure.

- **Breach Notification:** In strict alignment with Section 43 of the Kenya Data Protection Act, 2019, GS1 Kenya will notify the Customer in writing within forty-eight (48) hours upon confirming any unauthorized data breach or cybersecurity compromise affecting the Customer's Personal Data repository.

7. THIRD-PARTY SERVICES AND INTEGRATIONS

7.1. Disclaimer of Third-Party Integrations.

The Platform may interact with external Enterprise Resource Planning (ERP) frameworks, legacy database systems, or hardware components (e.g., third-party scanner devices). GS1 Kenya provides no express warranties, representations, or indemnities concerning the continuous stability, interoperability, or operational uptime of external third-party software tools, which remain subject to separate licensing arrangements between the Customer and those specific providers.

7.2. Data Inter-exchange.

If the Customer configures API access or webhooks to transfer data components from the Fixed Asset Platform to a third-party application, the Customer acknowledges that such data transfers are executed entirely at their own risk, and GS1 Kenya shall not be held liable for down-stream deletion, corruption, or exposure of data occurring outside its direct control perimeter.

8. TERM, SUSPENSION, AND TERMINATION

8.1. Duration and Automatic Renewal.

The initial subscription term shall be one (1) year from the Effective Date, billed in advance as per the Order Form. Upon expiration, the subscription will automatically renew for successive, consecutive one-year periods unless either party delivers an explicit written notice of non-renewal to the other party at least thirty (30) days prior to the closure of the then-current billing term.

8.2. Termination for Cause.

Either party may terminate this Agreement immediately upon written notice if:

- The other party commits a material breach of these Terms and fails to cure such

breach within thirty (30) days of receiving a formal written notice of default.

- The other party becomes insolvent, enters into corporate receivership, undergoes statutory liquidation, or executes an assignment for the benefit of creditors under the Insolvency Act, 2015 of Kenya.

8.3. Post-Termination Effects.

Upon the expiration or active termination of this Agreement:

- All granted user license permissions, API keys, and system access rights terminate immediately.
- Outstanding financial payment obligations accrued up to the actual date of termination remain fully enforceable and payable.
- Prepaid, unused subscription fees are non-refundable, except where termination is driven directly by GS1 Kenya's uncured material breach.

8.4. Customer Data Retrieval and Deletion.

The Customer may independently export standard asset inventories and reports at any point during an active subscription term. Upon contract termination or expiration, GS1 Kenya will preserve the production data environment for a maximum window of fourteen (14) calendar days ("Data Retrieval Window"). Within this period, the Customer may request technical data extraction support, subject to standard hourly consulting rates. Upon the expiration of the 14-day window, GS1 Kenya will permanently purge, overwrite, and securely delete all Customer Data from its live production servers, retaining no further liability to make the data available.

9. WARRANTIES AND DISCLAIMERS

9.1. Mutual Representation.

Each party formally represents and warrants that it possesses the requisite corporate capacity, statutory compliance, and legal authority to execute this contract and perform all obligations detailed herein.

9.2. GS1 Kenya Limited Performance Warranty.

GS1 Kenya warrants that the Platform will operate materially in conformance with the functional descriptions outlined in its official Documentation.

In the event of a documented system malfunction, the Customer's sole and exclusive remedy is limited to requesting technical remediation or patch correction from GS1 Kenya.

9.3. Warranty Exclusions.

EXCEPT AS EXPRESSLY ARTICULATED IN SECTION 9.2, THE PLATFORM IS PROVIDED TO THE MAXIMUM EXTENT PERMITTED BY LAW ON AN "AS IS" AND "AS AVAILABLE" BASIS. GS1 KENYA EXPRESSLY DISCLAIMS ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A SPECIFIC INVENTORY USE-CASE, NON-INFRINGEMENT, OR THAT SYSTEM OPERATIONS WILL BE COMPLETELY ERROR-FREE, UNINTERRUPTED, OR FREE FROM TRANSMISSION LAGS. THE CUSTOMER ACKNOWLEDGES THAT GS1 KENYA DOES NOT OFFER STATUTORY AUDITING, TAXATION, OR LEGAL ACCOUNTING ADVICE THROUGH THE USE OF ITS PLATFORM FEATURES.

10. INDEMNIFICATION

10.1. Intellectual Property Indemnity by GS1 Kenya.

GS1 Kenya will defend and indemnify the Customer against third-party lawsuits alleging that the unmodified, standalone use of the Platform directly infringes the registered copyright or patent rights of a third party within Kenya. If an injunction halts platform use, GS1 Kenya may at its sole option: (i) procure the legal right for the Customer to continue using the software; (ii) modify the Platform to remove the infringement while keeping equivalent functionality; or (iii) terminate the subscription and issue a prorated refund for any prepaid, unused fees.

10.2. Indemnity Exclusions.

GS1 Kenya assumes no liability if the infringement claim arises from: (a) combining the Platform with software or infrastructure not supplied by GS1 Kenya; (b) data models or assets custom-engineered to the Customer's specific design templates; or (c) usage of the software in clear violation of these Terms.

10.3. Customer Data Indemnity.

The Customer will defend and indemnify GS1 Kenya against any third-party claims, administrative fines, or legal actions resulting from the Customer's collection, entry, or processing of Customer Data that violates intellectual property rights, privacy



rights, or breaches the Kenya Data Protection Act, 2019.

11. LIMITATION OF LIABILITY

11.1. Monetary Cap.

TO THE MAXIMUM EXTENT PERMITTED BY THE LAWS OF KENYA, AND EXCEPT FOR A PARTY'S EXPRESS INDEMNIFICATION LIABILITIES UNDER SECTION 10 OR INTENTIONAL REVENUE MISREPRESENTATION, THE MAXIMUM AGGREGATE FINANCIAL LIABILITY OF EITHER PARTY FOR ANY CLAIMS ARISING OUT OF OR LINKED TO THIS AGREEMENT WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), SYSTEM FAILURE, OR STATUTORY BREACH SHALL NOT EXCEED THE TOTAL SUBSCRIPTION FEES PAID OR PAYABLE BY THE CUSTOMER TO GS1 KENYA FOR THE SERVICES WITHIN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE SPECIFIC EVENT GIVING RISE TO LIABILITY.

11.2. Consequential Damages Exclusion.

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY LOSS OF REVENUE, LOSS OF EXPECTED PROFIT, LOSS OF BUSINESS OPPORTUNITIES, DATA CORRUPTION, OR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTS, OR CONSEQUENTIAL DAMAGES, REGARDLESS OF WHETHER THE PARTY WAS INFORMED OF THE PROBABILITY OF SUCH DAMAGES IN ADVANCE.

12. GENERAL PROVISIONS AND GOVERNING LAW

12.1. Compliance with Local Laws.

Both parties shall fulfill their obligations under this Agreement in strict compliance with all relevant laws of Kenya, including the Bribery Act, 2016, the Anti-Corruption and Economic Crimes Act, and the Data Protection Act, 2019.

12.2. Assignment restrictions.

Neither party may assign, delegate, or transfer its contractual rights or obligations under this Agreement to a third party without the prior written consent of the other party. However, either party may assign the contract in its entirety without consent to a successor entity via a corporate merger, acquisition, or restructuring of asset ownership.

12.3. Independent Contractors.

The relationship between GS1 Kenya and the Customer is strictly that of independent contractors. Nothing in this text shall be construed to establish a partnership, joint venture, employer-employee relationship, or commercial agency between the parties.

12.4. Severability.

If any clause, phrase, or provision of these Terms is deemed invalid, illegal, or unenforceable by a court of competent jurisdiction, such invalidity shall not compromise the remaining provisions, which shall continue in full force and effect.

12.5. Entire Agreement.

This Agreement constitutes the entire contract between GS1 Kenya and the Customer regarding the SaaS Fixed Asset Management Platform and completely supersedes all prior or contemporaneous oral or written proposals, agreements, or understandings.

12.6. Governing Law.

The validity, construction, performance, and interpretation of this Agreement shall be governed exclusively by and construed in accordance with the Laws of the Republic of Kenya.

12.7. Dispute Resolution.

Any dispute, controversy, or claim arising out of or relating to this Agreement, including its formation, breach, or termination, shall first be subjected to mutual good-faith negotiations between the senior executives of both parties.

- If negotiation fails to resolve the dispute within thirty (30) days, the matter shall be referred to and finally resolved by arbitration administered by the **Nairobi Centre for International Arbitration (NCIA)** in accordance with the NCIA Arbitration Rules.
- The tribunal shall consist of one (1) arbitrator mutually agreed upon by the parties, or failing agreement, appointed by the NCIA Registrar.
- The seat and venue of the arbitration shall be Nairobi, Kenya, and the language of the proceedings shall be English.
- Notwithstanding the above, either party retains the right to seek interim injunctive

relief or conservatory orders from a Kenyan court of competent jurisdiction.

12.8. Notices.

Any formal legal notice required under this contract must be delivered in writing via trackable courier or registered mail to the principal corporate offices, or sent via electronic mail to the designated corporate addresses. Email notices are deemed legally received at 0900hrs EAT on the next working business day after transmission.

- **Legal Notices to GS1 Kenya:**

GS1 Kenya Limited,

Nairobi, Kenya.

Attn: Legal & Compliance Department

*GS1 Kenya Fixed Asset Management Platform SaaS
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