



## GSMA NETWORK SETTINGS EXCHANGE TERMS OF USE FOR MNO/MVNOs

*Effective date of last revision: 1 September 2019*

These terms of use govern Your agreement as a MNO/MVNO with GSMA for use of GSMA Network Settings Exchange. Please read these terms of use carefully before You register or use GSMA Network Settings Exchange. These terms of use tell You how the GSMA Network Settings Exchange works, how our agreement may be updated or terminated, and other important information.

By registering, using or accessing GSMA Network Settings Exchange, You agree to these terms of use, as updated from time to time in accordance with clause 10.1. If You think that there is a mistake in these terms, please contact GSMA at imeihelpdesk@gsma.com.

### INTRODUCTION:

- (A) The GSMA represents the interests of mobile operators worldwide, uniting more than 750 operators with over 350 companies in the broader mobile ecosystem, including handset and device makers, software companies, equipment providers and internet companies, as well as organisations in adjacent industry sectors.
- (B) GSMA Network Settings Exchange is a platform operated by GSMA to enable device manufacturers (**Brand Owner/OEMs**) to optimally configure their mobile device products with network settings such that subscribers can fully enjoy the services offered by specific mobile network operators (**MNOs**) and mobile virtual network operators (**MVNOs**) via a common efficient network setting information exchange system.
- (C) GSMA Network Settings Exchange enables MNOs and MVNOs to submit Settings Information to be provided to Brand Owners/OEMs for the appropriate customisation of Brand Owners'/OEMs' devices, through a central global database and exchange platform.

YOU AGREE THAT:

### 1. Definitions

1.1 In this Agreement, unless the context indicates otherwise:

**Affiliate** means any subsidiary or holding company of an entity, any subsidiary of any of its holding companies and any partnership, company or undertaking (whether incorporated or unincorporated) in which that entity has the majority of the voting rights or economic interest.

**Agreement** means these GSMA Network Settings Exchange Terms of Use.

**Brand Owner/OEM** means Original Equipment Manufacturer but includes any entity or brand owner providing mobile devices irrespective of manufacturing capability.

**Confidential Information** means any information that by its nature is deemed confidential in connection with this Agreement, including any information disclosed by GSMA to You; (i) on the express basis that such information is confidential; or (ii) which might reasonably be expected by either party to be confidential in nature.

**Default Settings** means the default Settings Information provided by the GSMA Terminal Steering Group, however these are always overridden by any Settings Information provided by an MNO/MVNO.

**Fees** means the annual fees payable by MNO and MVNO Users for submitting to, and hosting of, Settings Information on the Platform, as described in clause 4.

**GSMA** means GSMA Ltd., a Georgia not-for-profit corporation and a wholly-owned subsidiary of the GSM Association, with an office at 165 Ottley Drive, Suite 150, Atlanta, Georgia 30324, U.S.



**Intellectual Property Rights** means copyrights, database rights, patents, utility models, know-how, registered and unregistered design rights, trade marks, confidential information, trade secrets, and other intellectual property, in each case whether registered or unregistered, and any rights to apply for the foregoing, which may subsist anywhere in the world.

**Multi-Affiliate Order** means a written addendum to this Agreement signed by You and GSMA which grants access to the Platform to Your Permitted Affiliates and/or permits You to publish Settings Information for or on behalf of Your Permitted Affiliates.

**Platform** means **GSMA Network Settings Exchange**, being the platform for Settings Information exchange located at <https://imeidb.gsma.com/nsx>, as further described in TS.32

**Permitted Affiliate(s)** means Your Affiliate(s) who are permitted to use the Platform under Your Agreement, or on whose behalf You are permitted to upload Settings Information pursuant to this Agreement, as set out in clause 5.2 or as otherwise approved by GSMA.

**Policies** means TS.32, TS.36, and any other relevant GSMA policy and permanent reference documents, relating to GSMA Network Settings Exchange each as updated from time to time by GSMA and notified to You by GSMA from time to time via imeidb.gsma.com.

**Settings Information** means: (a) the device technical configuration information submitted by MVNOs/MNOs to the Platform; and (b) the Default Settings.

**Tax** means any tax, levy or duty payable in relation to the Fees or otherwise in relation to this Agreement.

**Term** means the term of this Agreement, as set out in clause 7.1.

**TS.32** means GSMA document Technical Adaptation of Devices through Late Customisation, as updated from time to time by GSMA and available at <https://www.gsma.com/newsroom/resources/technical-adaptation-of-devices-through-late-customisation/>.

**TS.36** means GSMA document *TS.36 Device Setting Database V3.0*, as updated from time to time by GSMA and available at <https://www.gsma.com/newsroom/resources/devices-setting-database/>

**User** means any user of the Platform, including MNOs, MVNOs and Brand Owner/OEMs, as the context requires.

**You** or **Your** means you as the counterparty to this Agreement, being a User approved by GSMA to use the GSMA Network Settings Exchange, as further set out in clause 2 (Registration Requirements and Process).

1.2 In this Agreement, unless the context indicates otherwise:

- (a) clause and other headings are for ease of reference only and will not affect this Agreement's interpretation;
- (b) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (c) references to any party include that party's successors and permitted assigns;
- (d) references to a "person" include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (e) the term "includes" or "including" (or any similar expression) is deemed to be followed by the words "without limitation"; and



- (f) references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form.

## **2. Registration Requirements and Process for MNOs/MVNOs**

- 2.1. In order to register for, and to use, GSMA Network Settings Exchange, You must be either a Mobile Network Operator (MNO) or a Mobile Virtual Network Operator (MVNO). MNO/MVNO registrations must be at the local/regional/operational level, rather than at a group/global level. MNO/MVNOs with multiple locations or networks should have multiple accounts based on the location and networks operated.
- 2.2. The registration process for MNOs and MVNOs is:
  - (a) MNOs and MVNOs will be required to complete the online registration process and agree to this Agreement.
  - (b) Upon submission, GSMA will review the registration request and verify the user requesting access and that it is an approved user type (being a mobile network operator or mobile virtual network operator).
  - (c) GSMA may request additional details and or documents for verification purposes in order to approve a registration.

GSMA reserves the right to accept or reject a registration in its sole discretion.

## **3. Use of Credentials and Passwords**

- 3.1. If Your application is approved by GSMA (where required), You will be issued with unique user ID(s) and password(s) (“**User Credentials**”). You must ensure that the User Credentials are not shared outside of Your organization or misused in any way. You must keep User Credentials confidential and secure. You will be responsible for all use of, and activity associated with, Your User Credentials (whether such use or activity is authorized by You or not). You must immediately notify GSMA in the event of suspected or actual loss, theft, unauthorized access or hacking of Your User Credentials.
- 3.2. GSMA retains the right to remove, disallow or cancel User Credentials in its sole and absolute discretion. GSMA may, without any prior notice to You, terminate, cancel or suspend Your User Credentials if, in GSMA's sole and absolute discretion, GSMA determines that Your use of the User Credentials would or may constitute or cause (or has constituted or caused) a breach, contravention, or infringement of this Agreement, any rights of any third party or any applicable laws, rules or regulations.

## **4. Use of GSMA Network Settings Exchange by MNO/MVNOs**

- 4.1. You may access the Platform to update and/or add new device Settings Information. Settings Information will be uploaded as via the TS.36 document and template provided on the Platform. For the avoidance of doubt, Your Settings Information is published to Brand Owners/OEM Users only, and is not published to other MNO/MVNO Users on the Platform.
- 4.2. You may restrict access to Your Settings Information via the Platform to Your preferred Brand Owners/OEMs. When a new Brand Owner/OEM is added to the Platform, Your registered contact will be sent an email notifying You that a new OEM has joined. You then have 15 days to elect to disallow that Brand Owner/OEM access Your Settings Information. During this 15 day period, Your Settings Information will not be available to the new Brand Owner/OEM, unless you have opted to allow all Brand Owners/OEMs access to Your Settings Information. After this 15 day election period, Your Settings Information will automatically be made available to the new Brand Owner/OEM unless you have selected to disallow access to that Brand Owner/OEM. It is Your responsibility to review new Brand Owner/OEM Users as they join the Platform to indicate if access to Your Settings Information should not be provided to those Brand Owner/OEM Users.
- 4.3. You grant to GSMA and its affiliates a non-exclusive, worldwide, transferable, unrestricted, irrevocable royalty-free and sub-licensable right to use any information and data submitted by You to the Platform,



including without limitation any Settings Information. You acknowledge that Settings Information submitted by You to the Platform will be made available to Brand Owner/OEM Users, and accordingly GSMA cannot control how Settings Information is used, changed, or disclosed by Brand Owner/OEM Users or third parties. You acknowledge that GSMA may utilize the Settings Information provided by You for analysis and potential future service expansion for the benefit of the mobile ecosystem.

- 4.4. End users' initial mobile network experience may depend on Your Settings Information being kept up-to-date and accurate. Accordingly, You confirm that You will use reasonable endeavours to ensure that, to the best of Your knowledge, the Settings Information uploaded by You to the Platform is maintained as accurate and up-to-date at all times. When new network settings become available or Your existing network settings are updated, You will update Your Settings Information in the Platform as soon as possible.
- 4.5. Fees are payable annually in advance by MNOs/MVNOs for use of the Platform. Fees are set out at <https://imeidb.gsma.com/nsx/licensing> ("**Fee Notice**") and updated annually by GSMA with effect on 1 April in accordance with clause 10.

If You have a Multi-Affiliate Order: the fees set out in Your Multi-Affiliate Order will prevail over the Fees set out in the Fee Notice, provided that in the event of any annual increase in the Fees set out in the Fee Notice, an equal annual percentage-based fee increase will apply to Your fees in the same proportion, with effect from your Multi-Affiliate Order annual renewal date. GSMA will provide notice of any such changes in accordance with clause 10.

- 4.6. The Fees are payable to GSMA annually in advance, prior to accessing and using GSMA Network Settings Exchange. Fees are payable:
  - (a) within 30 days of invoice by GSMA; or
  - (b) prior to the expiry date of your then-current Subscription if You are renewing a Subscription.Your Subscription commences on the date that Your payment and application has been processed by GSMA. You should allow up to 30 days for the processing of Your application and payment prior to the commencement of Your Subscription. No refunds or discounts are provided due to any delay in processing Your application or payment.
- 4.7. Invoices will be generated following Your successful registration and agreement to this Agreement, and then annually in advance of Your Subscription renewing. Invoices will be delivered by email to Your main contact provided in the registration process.
- 4.8. Payment of invoices must be made by bank/wire transfer in accordance with the invoice instructions. Please note that payment by bank transfer can take 5 to 10 working days for the money to reach GSMA. Your User Credentials for the Platform will not be provided until the invoice payment has been received to the GSMA account indicated on the invoice. You will be sent a notification email when the payment has been received.
- 4.9. Upon the expiration of the Subscription, Your Subscription will automatically renew for successive one year Subscriptions (each a "**Renewal Subscription**"), unless:
  - (a) either You, or GSMA provides written notice of non-renewal at least 30 days prior to the end of the then-current Subscription;
  - (b) You do not pay the renewal invoice, as set out in subsection (b) below; or
  - (c) Your Subscription is otherwise terminated in accordance with this Agreement.

GSMA will invoice You for the Renewal Subscription no later than 30 days prior to the expiry of the then-current Subscription. If the Renewal Subscription invoice remains unpaid at the expiry of the then-current Subscription, Your Subscription and this Agreement will automatically expire.



4.10. Upon termination or expiry of Your Subscription for any reason, no refunds, discount or credit will be offered in respect of the termination, expiry, or failure by You to renew Your Subscription, except where:

- (a) GSMA terminates this Agreement for convenience pursuant to clause 7.3; or
- (b) You terminate this Agreement pursuant to clause 10,

while You currently hold a Subscription, in which case GSMA may offer a pro rata refund for the remaining months in Your Subscription.

4.11. In the event of late or non-payment of any invoice, GSMA may remove or disable Your Settings Information and/or de-activate or suspend Your Platform account in its sole discretion.

4.12. The Fees do not include any Tax. To the extent that the Fees are subject to any Tax, the Fees may be increased by the amount of such Tax and GSMA reserves the right to recover such Tax from You at any time. If Tax is required to be paid on the Fees in Your own country then You will be liable for its payment, in addition to the amount of the Fees.

4.13. GSMA reserves the right to charge interest on overdue amounts at an annual rate of two percent (2%) per calendar month over current London Interbank Offered Rate (Libor).

## 5. Multi-Affiliate Licenses

5.1. Except as set out in any Multi-Affiliate Order, You acknowledge that the Agreement is personal to You as a single MNO or MVNO, and You are not permitted to use the Platform to publish Settings Information for or on behalf of other MNOs or MVNOs (whether wholly owned by You or otherwise).

5.2. In order to extend a subscription to an Affiliate, or to publish Settings Information for or on behalf of an Affiliate, You must nominate the relevant Affiliate MNO(s) or MVNO(s) in a Multi-Affiliate Order (each a “**Permitted Affiliate**”) and pay the relevant fees stated in the Multi-Affiliate Order. A Multi-Affiliate Order requires a single group billing point. If You wish to permit further Affiliates to publish Settings Information on the Platform, You must obtain the prior written consent of GSMA.

5.3. Permitted Affiliates must comply with the restrictions and obligations placed upon You under this Agreement. Acts and omissions of Permitted Affiliates are deemed to be acts and omissions of You. This Agreement does not create a contractual relationship between GSMA and any Permitted Affiliate. Permitted Affiliates shall have no right to enforce any term of, or any rights in relation to, this Agreement. You shall defend, indemnify and hold GSMA harmless against any claim, liability, loss, injury, damage, cost or expense (including reasonable legal fees) incurred by GSMA and other Users to any third party (whether a User or otherwise) arising out of or in relation to this Agreement and any use of the Platform (whether directly or indirectly) by Your Permitted Affiliates.

## 6. Intellectual Property, Data and Confidentiality

6.1. You acknowledge that all rights, title and interest in the Platform, Settings Information and the related process, methods, system, and all related materials, including all Intellectual Property Rights therein, are retained solely by GSMA (in respect of the Platform and Default Settings) and the relevant MNO/MVNOs Users (in respect of Settings Information). You are granted no licence or right, whether express or implied, to use any of the foregoing except as expressly set out in this Agreement.

6.2. You agree to disclose Confidential Information only to Your officers, employees, consultants, affiliates, or contractors on a “need to know” basis and only where they have entered into confidentiality agreements sufficient to prohibit further unauthorized use or disclosure of the Confidential Information.

6.3. GSMA will treat any Personal Data provided by You in accordance with the Privacy Policy available at <https://imeidb.gsma.com/nsx>.



## 7. Term and Termination

- 7.1. This Agreement shall be effective from the date that You indicate Your acceptance to this Agreement, until terminated or lapsed in accordance with the terms set out in this Agreement (“**Term**”).
- 7.2. You may terminate this Agreement at any time by 30 days’ written notice to GSMA.
- 7.3. GSMA may terminate this Agreement by 90 days’ written notice to You.
- 7.4. Either party may terminate this Agreement with immediate effect by written notice to the other party if an encumbrancer takes possession, or a receiver is appointed, of any of the other party’s property or assets; or the other party becomes subject to an administration order or make any voluntary arrangement with its creditors; or the other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such a manner that the company resulting effectively agrees to be bound by or assume the other party’s obligations under this Agreement); or if the other party ceases, or threatens to cease, to carry on business; or if the other party suffers any similar process under the law of the other party’s domicile or place of jurisdiction.
- 7.5. GSMA may terminate this Agreement with immediate effect by written notice to You:
  - (a) if You commit a material breach of Your obligations under this Agreement which is incapable of remedy or which remains uncorrected for a period of 7 days after receiving written notice from GSMA of the breach; or
  - (b) in the event of any relevant legislative or regulatory change which in the opinion of GSMA, acting reasonably, requires this Agreement be terminated or suspended.
- 7.6. You accept that, in the event of any actual or reasonably suspected breach of this Agreement by You, including any misuse of the Platform or Settings Information, and without limiting the rights and remedies of GSMA under this Agreement or otherwise at law, GSMA may, at its sole discretion:
  - (a) terminate or suspend this Agreement, and discontinue your access to the Platform without notice; and/or
  - (b) communicate the actual or alleged breach or infringement to Brand Owners/OEMs, MNOs, MVNOs, government authorities and other telecommunications organisations (including regulators, customs etc.); and/or
  - (c) withdraw or suspend all or some of Your Settings Information from the Platform;with no liability, refund or other compensation payable to You by GSMA.
- 7.7. Upon termination, lapsing, or expiry of this Agreement for any reason whatsoever:
  - (a) termination will be without prejudice to either party's rights and remedies in respect of any breach of this Agreement by the other party, where the breach occurred before the termination of this Agreement; and
  - (b) the provisions of clauses 2, 3, 4.3, 4.9 to 4.13, 5, 6, 7.7, 8, 98 and 10 of this Agreement, together with such other provisions reasonably required to give effect to those clauses or which by their nature are intended to survive termination, will remain in full force and effect following termination or expiry.

## 8. Limitation of Liability

GSMA and Platform Users provide and use the Platform and the Settings Information in good faith for the benefit of the wider mobile telecommunications ecosystem. Accordingly:

- 8.1. You accept that GSMA, by providing You with access to the Platform, is providing an exchange platform for Settings Information provided by numerous third party data sources. GSMA does not perform any checks or vetting, and does not accept any responsibility for the accuracy or completeness of the Settings



Information, including any Default Settings, provided via the Platform. You acknowledge and agree that GSMA, its contributors and licensors and MNOs/MVNOs have no responsibility for the accuracy, currency or completeness of the Settings Information obtained via the Platform or otherwise.

- 8.2. The Platform, Settings Information, and any other related information or services provided by (i) GSMA or any of its affiliates, and/or (ii) MNOs or MVNOs; are provided “as is” and without any warranty of any kind. OEM Users access the Platform without warranty or representation of any kind, and will not be liable for any failure or delay to implement Settings Information.
- 8.3. For the avoidance of doubt, GSMA and OEM Users accept no responsibility for third party claims based on or in relation to their respective use of Settings Information or otherwise in relation to the Platform, including without limitation claims by device owners or subscribers in relation to network performance. You indemnify and hold harmless GSMA and OEM Users against all costs, losses and expenses arising from or in relation to any such third party claims.
- 8.4. All warranties, whether express, implied, or statutory, including without limitation any implied or other warranties of merchantability, fitness for a particular purpose, quality, accuracy, completeness, timing, or title are expressly disclaimed and excluded by GSMA, You, and other Platform Users.
- 8.5. You agree that GSMA, its members and affiliates, You, and all other Users shall not be liable to each other for any loss of profits, loss to reputation, loss of contracts, or any indirect, punitive, special or consequential loss, damage or delay in relation to this Agreement, the Platform (including without limitation any Settings Information), howsoever caused.
- 8.6. In no event shall the liability of:
  - (a) GSMA to any User (including You); or
  - (b) You to GSMA; or
  - (c) any User to any other User (in each case including You);under or in relation to this Agreement or the Platform (including without limitation any Settings Information) exceed GBP £1,000 (one thousand pounds sterling) in aggregate. This clause 8.6 shall not apply to limit fees payable (namely pursuant to clauses 4.5, 4.12, and 4.13) or in respect of clause 8.3.
- 8.7. Notwithstanding any other provision of this Agreement, nothing in this Agreement excludes or limits any person’s liability for: (i) any death or personal injury caused by its negligence; (ii) any fraud or fraudulent misrepresentation; or (iii) any other liability which cannot be excluded under applicable law.

## 9. Notices

- 9.1. Unless specifically stated otherwise in this Agreement, any notice required to be given pursuant to this Agreement will be directed:
  - (a) If to GSMA: *GSMA Ltd., Attn: Deputy General Counsel, 165 Ottley Drive, Suite 150, Atlanta, Georgia 30324, United States of America*; with an advance copy to [imeihelpdesk@gsma.com](mailto:imeihelpdesk@gsma.com) and [legalnotices@gsma.com](mailto:legalnotices@gsma.com).
  - (b) If to You: To the email address in Your account details, as updated by You from time to time via [imeihelpdesk@gsma.com](mailto:imeihelpdesk@gsma.com) or via Your account settings at <https://imeidb.gsma.com/nsx>.
- 9.2. Any notice required to be given pursuant to this Agreement will be deemed to be properly given immediately upon delivery.

## 10. Modifications

- 10.1. GSMA may amend this Agreement (including the Policies) by not less than 60 days’ written notice to You. Your continued use of the Platform or the Information following notice of the changes to this Agreement constitutes Your acceptance of the amended Agreement. In the event that such amendments are materially detrimental to You, You may elect to terminate this Agreement on 30 days’ written notice to GSMA.



## 11. General

- 11.1. This Agreement is the complete, final and exclusive entire agreement between the parties relating to the subject matter and supersedes any and all prior agreements, representations, communications, undertakings, or discussions relating to the subject matter hereof.
- 11.2. If any term, provision, covenant or condition of this Agreement is held invalid or unenforceable for any reason, the parties agree that such invalidity shall not affect the validity of the remaining provisions of this Agreement and further agree to substitute for such invalid or unenforceable provision a valid and enforceable provision of similar intent and economic effect.
- 11.3. You may not transfer or assign any of Your liabilities or rights under this Agreement to any other person without the prior written consent of GSMA, such consent not to be unreasonably withheld. GSMA may at any time transfer or assign any of its liabilities or rights under this Agreement to any other entity upon written notice to You.
- 11.4. No failure or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. The rights powers and remedies provided in this Agreement are cumulative and are in addition to any rights, powers or remedies provided by law.
- 11.5. No person shall be liable for any failure to perform or delay in performance of any of its obligations under or in relation to this Agreement caused by circumstances beyond the reasonable control of that person (which may include but not be limited to one or more of the following: governmental regulations; riot; civil unrest; military action; terrorism; earthquake; disease or epidemic; storm; flood; inability to obtain supplies of power, fuel, or transport; exercise of emergency powers by any governmental authority) (a "**Force Majeure Event**"). A party claiming to be affected by a Force Majeure Event will not be entitled to invoke the provisions of this clause to the extent that such party fails to take all reasonable steps to prevent, avoid, overcome and mitigate the effects of such Force Majeure Event.
- 11.6. Nothing in this Agreement is intended to create a partnership or joint venture of any kind between the parties, or to authorise any party to act as agent for the other.
- 11.7. Except as expressly stated otherwise in this Agreement, each party shall bear full and sole responsibility for its own expenses, liabilities and costs of operation.
- 11.8. Subject to clause 10, this Agreement may not be varied, modified, altered, or amended except by agreement in writing by the parties' duly authorised representatives.
- 11.9. Save for the provisions of clauses 5.3 and 8, which may be enforced by and between Platform Users, no person who is not a party to this Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 (UK) or otherwise to enforce any term of this Agreement.
- 11.10. This Agreement shall be construed and interpreted in accordance with the laws of England excluding its rules for choice of law and the parties hereby submit to the exclusive jurisdiction of the English Courts located in London.
- 11.11. This Agreement was written in English. To the extent any translated version of this Agreement conflicts with the English version, the English version controls.