



## GSMA NETWORK SETTINGS EXCHANGE TERMS OF USE FOR BRAND OWNERS/OEMS

*Effective date of last revision: 1 September 2019*

These terms of use govern Your use as an OEM/Brand Owner with GSMA 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 9.1. If You think that there is a mistake in these terms, please contact GSMA at [imeihelpdesk@gsma.com](mailto: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 enables MNOs and MVNOs to submit Settings Information into the GSMA Network Settings 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:

**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.

**GSMA** means GSMA Ltd., a Georgia not-for-profit corporation and a wholly-owned subsidiary of the GSM Association, with an office at Armour Yards, 165 Ottley Drive, Suite 203, 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.

**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.



**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.

**Term** means the term of this Agreement, as set out in clause 6.1.

**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 OEM/Brand Owners**

- 2.1. In order to register for, and to use, GSMA Network Settings Exchange, You must be a Brand Owner/OEM with an active/approved TAC Allocation account through GSMA IMEI Db.
- 2.2. Brand Owners/OEMs may access the Platform through a valid and active GSMA IMEI Db account. Upon entering Your account You will need to activate Your access to the Platform and accept this Agreement prior to accessing to the Platform.
- 2.3. If You require additional credentials for personnel to access only the Platform (and not other GSMA IMEI Db services), please contact the GSMA IMEI Helpdesk ([imeihelpdesk@gsma.com](mailto:imeihelpdesk@gsma.com)) for assistance. GSMA reserves the right to accept or reject an application for additional credentials 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 as a Brand Owner/OEM

- 4.1. As a Brand Owner/OEM User, You may access Settings Information on the Platform through Your GSMA IMEI Db account, following acceptance of this Agreement. The Platform will then allow You to download Settings Information from the MNOs and MVNOs who have approved/allowed You to access their Settings Information on the Platform. You can use this Settings Information to input into your device settings platforms to ensure that end user devices have the most up-to-date settings. You acknowledge that Brand Owner/OEM names and usage of the Platform to access Settings Information will be visible to GSMA and MNO/MVNO Users. The Platform may send You email notifications of new additions or changes to Settings Information and other notifications deemed helpful in the management of device settings.
- 4.2. You acknowledge that not all MNO/MVNO User's Settings Information may be made available to you via the Platform, and that MNO/MVNO Users may select to which Brand Owners/OEMs their Settings Information will be made available. Accordingly, for the first 15 days from receiving Platform access, Brand Owners/OEMs cannot access MNOs/MVNOs' Settings Information (except those who have allowed every Brand Owner/OEM access). During that time (and at any time thereafter), MNO/MVNOs can opt out of providing You with access.
- 4.3. The Settings Information provided via the Platform may also include Default Settings recommended by the GSMA Terminal Steering Group. Any Default Settings are always overridden by any Settings Information provided by an MNO/MVNO. GSMA recommends that You should select which settings to use in the following order of preference:
  - (a) Settings Information provided by the MNO/MVNO; then
  - (b) Default Settings provided by GSMA Terminal Steering Group; then
  - (c) Your own settings.
- 4.4. You may use the Settings Information only as required for the technical configuration of Your own mobile devices for functioning on the relevant MNO/MVNO networks. You must otherwise treat Settings Information as Confidential Information. You may not otherwise use, disclose, sell, or permit to be used, disclosed, or sold, the Settings Information, nor allow any third party to access, copy, transcribe, store or transfer any Settings Information. Your right to use the Settings Information is worldwide, non-exclusive, non-transferable and non-sub-licensable. The limitations of liability in clause 7.6 of this Agreement shall not apply to any breach by You of this clause 4.4.
- 4.5. There are no Fees payable by Brand Owners/OEMs for use of the Platform.

#### 5. Intellectual Property, Data and Confidentiality

- 5.1. 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.



5.2. 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.

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

## 6. Term and Termination

6.1. 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”).

6.2. You may terminate this Agreement at any time by 30 days’ written notice to GSMA.

6.3. GSMA may terminate this Agreement by 90 days’ written notice to You.

6.4. 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.

6.5. 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.

6.6. 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.);

with no liability or compensation payable to You by GSMA.

6.7. 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, 4.4, 5, 6.7, 7, 8 and 9 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.



## 7. 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:

- 7.1. You accept that the 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 the 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.
- 7.2. 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.
- 7.3. For the avoidance of doubt, GSMA and MNO/MVNO Users accept no responsibility for third party claims based on or in relation to Your use of Settings Information, Default Settings, 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 MNO/MVNO Users against all costs, losses and expenses arising from or in relation to any such third party claims.
- 7.4. 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.
- 7.5. 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 or the Platform, howsoever caused.
- 7.6. Save for in respect of clauses 7.3, 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 exceed GBP £1,000 (one thousand pounds sterling) in aggregate.
- 7.7. 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.

## 8. Notices

- 8.1. 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, Armour Yards, 165 Ottley Drive, Suite 203, Atlanta, Georgia 30324, United States of America*; with an advance copy to [imeihelpdesk@gsmam.com](mailto:imeihelpdesk@gsmam.com) and [legalnotices@gsmam.com](mailto:legalnotices@gsmam.com).
  - (b) If to You: To the email address in Your account details, as updated by You from time to time via [imeihelpdesk@gsmam.com](mailto:imeihelpdesk@gsmam.com) or via Your account settings at <https://imeidb.gsmam.com/nsx>.
- 8.2. Any notice required to be given pursuant to this Agreement will be deemed to be properly given immediately upon delivery.

## 9. Modifications

- 9.1. 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.

## 10. General

- 10.1. 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.
- 10.2. Notwithstanding anything to the contrary in this Agreement, if You (or one of Your affiliates) have a separately signed agreement with GSMA governing Your use of the Platform, that agreement will apply instead of this Agreement.
- 10.3. 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.
- 10.4. 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.
- 10.5. 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.
- 10.6. 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.
- 10.7. 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.
- 10.8. 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.
- 10.9. Subject to clause 9, this Agreement may not be varied, modified, altered, or amended except by agreement in writing by the parties' duly authorised representatives.
- 10.10. Save for the provisions of clause 7, which may be enforced 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.
- 10.11. 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.
- 10.12. This Agreement was written in English. To the extent any translated version of this Agreement conflicts with the English version, the English version controls.