

## SAMSUNG SDS AMERICA, INC.

### GENERAL TERMS

These general terms ("**General Terms**") (collectively with each applicable Schedule) are entered into by and between Samsung SDS America, Inc. ("**Samsung SDS**") and Customer as set forth in the Quote Form that expressly incorporates these General Terms. The General Terms will apply to the provision of Product(s) and Services(s) as set forth in the Quote Form. Each Quote Form must be signed by both Customer and Samsung SDS in order to be valid. No Quote Form subsequent to any previous Quote Form shall affect any previous Quote Form, unless expressly stated to the contrary in such subsequent Quote Form.

#### 1. DEFINITIONS

- 1.1. "**Agreement**" means the Quote Form and any terms incorporated therein by reference including these General Terms.
- 1.2. "**Fees**" means the fees for the Products and Services as set forth in the Quote Form.
- 1.3. "**Marks**" means all trademarks, service marks, trade names, logos, or other words or symbols, identifying the Software or Samsung SDS's business.
- 1.4. "**Quote Form**" means the commercial document that contains terms specific to the Transaction (e.g., price, Product descriptions, statements of work, quantity, delivery dates).
- 1.5. "**Product(s)**" means equipment and/or Software (as defined in the applicable Software Schedule) provided by Samsung SDS to Customer under these General Terms.
- 1.6. "**Schedule**" refers to each Schedule (i.e., Software Schedule, Hardware Schedule, Services Schedule) to these General Terms (together, the "**Schedules**") that contains terms and conditions applicable to the particular type of Product and/or Services to be delivered and/or performed.
- 1.7. "**Services**" means the services to be performed by Samsung SDS for Customer under this Agreement.
- 1.8. "**Taxes**" means any tax, levy or similar governmental charge that may be assessed by any jurisdiction on any amounts due under this Agreement, including tariffs, customs fees, VAT, GST, consumption, sales and use taxes.
- 1.9. "**Transaction**" means one transaction (together, the "**Transactions**") entered into by the parties for Products and/or Services through the execution of a Quote Form.

#### 2. INTRODUCTION; AGREEMENT STRUCTURE

- 2.1. These General Terms and the applicable Schedule shall govern use of the Products and Services ordered by Customer pursuant to an executed Quote Form, and each Quote Form forms a separate and independent contract for Customer's access to the Products and Services with Samsung SDS. The Quote Form shall contain the particular type of Product and/or Services to be delivered and shall be governed by the respective Schedule (i.e. Software by the Software Schedule, Hardware by the Hardware Schedule, and Services by the Services Schedule). Any Quote Form may call for the provision of any combination of Software, Hardware and Services.
- 2.2. It is expressly agreed that the terms included in any Customer's purchase order, Customer's procurement internet portal, or any other similar non-Samsung SDS document are void and have no legal effect and shall not apply to the Products and Services ordered herein. These General Terms may not be modified and the rights and restrictions may not be altered or waived except in a writing signed by authorized representatives of Customer and of Samsung SDS. If a defined term is relevant only to a specific Schedule, that term will apply only to that Schedule. The Schedules attached to, or that incorporate by reference, these General Terms, set forth the supplemental terms and conditions that apply specifically to certain types of Samsung SDS's offerings which may be different than, or in addition to, these General Terms.
- 2.3. The parties entering into one or more Quote Forms will not, by itself, commit Customer to purchase, or Samsung SDS to provide, any specific Products or Services. Upon the parties' execution of the Quote Form for a specific Transaction, Samsung SDS will provide the Products and/or perform the Services specified on the Quote Form in accordance with the terms of such Quote Form.

#### 3. FEES AND TAXES; PRICING, INVOICING AND PAYMENT OBLIGATION

- 3.1. Payments. Customer will pay all Fees described in the Quote Form, in accordance with the payment terms found therein and herein.
- 3.2. All amounts payable by Customer to Samsung SDS under this Agreement are exclusive of any Taxes. Customer will pay all Taxes, except solely to the extent it provides Samsung SDS with a certificate of exemption to avoid or reduce the Taxes, which is accepted by the applicable taxing authority. For the avoidance of doubt, Customer will not be required to pay or reimburse Samsung SDS for any taxes based upon the net worth, capital, or net income of Samsung SDS.
- 3.3. Customer shall pay or reimburse Samsung SDS for (i) travel and living expenses, and (ii) any other out-of-pocket expenses incurred in connection with the performance of these General Terms provided such expenses are approved in advance in writing or are part of a budget approved in advance in writing.
- 3.4. Customer will pay all amounts due to Samsung SDS pursuant to the Quote Form by check delivered at Samsung SDS's offices as set forth in Quote Form. Any late payment will accrue interest at the lesser of (i) one and one half percent (1.5%) per month, and (ii) the maximum interest allowable under applicable law. Customer will pay interest upon remitting the principal amount to Samsung SDS.

#### 4. ORDER OF PRECEDENCE

In the event of inconsistencies between the terms the General Terms and the applicable Schedule(s) and Quote Form, the following order of precedence shall be, in decreasing order of precedence: Schedule(s); General Terms; and Quote Form.

## 5. MARKS

As between Samsung SDS and Customer, all Marks are and will remain the exclusive property of Samsung SDS or its licensors, whether or not specifically recognized or perfected under the laws of the territory. Unless otherwise specifically provided under these General Terms, Customer shall not acquire any right in the Marks. Customer will not register, directly or indirectly, any trademark, service mark, trade name, company name, Internet domain name, or other proprietary or commercial right, that is identical or confusingly similar to a Mark, or constitutes a translation of a Mark. Customer will not use the Marks for any purpose without Samsung SDS's prior written consent.

## 6. NONDISCLOSURE

- 6.1. If a party discloses its Confidential Information to the other party under these General Terms, for purposes of this Section (Nondisclosure), the disclosing party shall be referred to as the **"Disclosing Party"** and the receiving party shall be referred to as the **"Receiving Party"**. **"Confidential Information"** shall mean the Disclosing Party's confidential information, including, but not limited to, information concerning the Disclosing Party's products, services, sales, performance, plans, strategies, customers, finances, human resources, processes, management, contracts, project documentation, software and hardware, technical data, drawings, schematics, know-how, idea, inventions (whether patentable or not), and the same information types of its parent and/or affiliated companies, and subsidiaries, as may be appropriate, and any third party proprietary information given to the Receiving Party by or through the Disclosing Party that would otherwise fall under this definition. Confidential Information may be disclosed in writing, orally or in other tangible or intangible form, and must be either marked, otherwise identified as confidential or proprietary, or be information which ought to be considered confidential or proprietary based on its nature or from the circumstances surrounding its creation or disclosure. The Products, any documents, Product updates, or other materials or documents provided to Customer pursuant to these General Terms and a Quote Form, and these General Terms and its contents, shall be considered Samsung SDS's Confidential Information. Confidential Information covered by this Section (Nondisclosure) shall also include Confidential Information belonging to the Disclosing Party but disclosed by the Disclosing Party's parent, affiliated companies, employees, consultants, and agents (collectively, **"Representatives"**) on behalf of the Disclosing Party.
- 6.2. The Receiving Party shall hold and keep in confidence, and protect from unauthorized disclosure or use, all Confidential Information of the Disclosing Party, using the same means it uses to hold in confidence, and protect, its own Confidential Information, but in no event using less than reasonable care. The Receiving Party shall make use of the Confidential Information only for the purpose of performing its obligations under these General Terms. The Receiving Party shall not disclose Confidential Information, whether directly or indirectly, to any third party without prior written approval of the Disclosing Party. However, the Receiving Party may grant access and disclose the Confidential Information of the Disclosing Party only to those of its Representatives on a "need to know" basis provided each such Representative is subject to written obligations of confidentiality, non-disclosure, and use restrictions, substantially as restrictive than those contained herein, and that are applicable, by their own terms, to the Disclosing Party's Confidential Information that is so disclosed to any such Representatives. The Receiving Party shall be liable for all acts and omissions of such Representatives. Each Receiving Party shall be responsible for any breach of the terms of these General Terms by any of its Representatives and shall take all commercially reasonable measures (including, but not limited to, court proceedings in the appropriate circumstances) to restrain such Representatives from unauthorized disclosure or use of the Confidential Information of the Disclosing Party.
- 6.3. Confidential Information shall not include any information which:
  - (i) is made public by the Disclosing Party, or is in the public domain otherwise than as a result of a breach of these General Terms;
  - (ii) was in the possession of the Receiving Party without an obligation of confidentiality before its receipt of the Confidential Information whether directly or indirectly from the Disclosing Party, as evidenced by the Receiving Party's written records;
  - (iii) is disclosed to the Receiving Party in good faith by a third party who had a lawful right to make such disclosure without breach of any confidentiality obligation; or
  - (iv) is independently developed by Receiving Party without use of the Confidential Information as evidenced by the Receiving Party's written records.
- 6.4. Upon request by and at the election of the Disclosing Party at any time, the Receiving Party shall within fifteen (15) days from the date of such request return or destroy all Confidential Information of the Disclosing Party and all documents containing any such Confidential Information and any and all copies or extracts thereof. The Receiving Party shall also, at the same time, remove and delete all electronic copies of such Confidential Information from all storage media and furnish written verification of complete removal and deletion to the Disclosing Party.
- 6.5. The Receiving Party agrees and acknowledges that the Confidential Information of the Disclosing Party constitutes valuable proprietary information for which there may be no adequate remedy at law for any breach of the obligation under this Section (Nondisclosure), which breach may result in irreparable harm to the Disclosing Party. The Receiving Party therefore agrees that upon any such breach or threatened breach of the provisions of these General Terms, the Disclosing Party shall be entitled, in addition to any other remedies it may have at law or in equity, to obtain injunctive, prohibitory or other urgent relief against such breach or threatened breach and the Receiving Party and its Representatives shall not plead as a defense to such action by the Disclosing Party that the Disclosing Party has an adequate remedy or other remedies at law.
- 6.6. Notwithstanding anything else in this Section (Nondisclosure) and to the minimum extent legally required, the Receiving Party may disclose Confidential Information to the extent required by law, or by a valid order of any governmental or applicable regulatory body, provided that the Receiving Party shall promptly provide the Disclosing Party with written notice of such order prior to such disclosure (unless prohibited by such law or order) so as to afford the Disclosing Party reasonable opportunity to oppose such disclosure, or obtain a protective order, and the Receiving party shall provide reasonable assistance to the Disclosing Party in connection with the Disclosing Party's efforts to obtain such a disclosure limitation or protective order. Confidential Information disclosed pursuant to this Subsection shall itself be considered Confidential Information.

## 7. TERM AND TERMINATION

- 7.1. Term. The provisions of this Agreement apply to each Product and Service beginning upon the Quote Form Effective Date and continuing through the expiration of the applicable Services or License Term stated in the Quote Form unless otherwise terminated in accordance with this Agreement. Any termination of a Quote Form shall not affect, amend or modify any of the terms, provisions, rights or obligations under any other Quote Form and such other Quote Form(s) will remain in full force and effect according to the terms thereof.
- 7.2. Either party will have the right to terminate the Quote Form, if the other party (i) breaches a material term of this Agreement and fails to correct the breach within thirty (30) days of written notice that describes the breach in reasonable detail, or (ii) ceases to conduct business in the normal course, is declared insolvent, undergoes any procedure for the suspension of payment, makes a general assignment for the benefit of creditors, or a petition for bankruptcy, reorganization, dissolution, or liquidation is filed by or against it.
- 7.3. Samsung SDS may terminate this Agreement, upon written notice to Customer in the event that Customer breaches Section 6 (Nondisclosure) of these General Terms or for such other reason as may be set forth in a Schedule.
- 7.4. Upon the expiration or termination of Quote Form, for any reason, all rights granted to Customer hereunder will immediately cease, and Customer will promptly comply with the termination obligations specified below and otherwise cooperate with Samsung SDS to terminate relations in an orderly manner:
  - (i) Customer must pay within thirty (30) days all amounts which have accrued prior to such termination, as well as all sums remaining unpaid for Products and Services ordered under applicable Quote Form plus related Taxes;
  - (ii) Customer will, at Samsung SDS's option, destroy or deliver to Samsung SDS or its designee all items within Customer's possession or control that contain any Samsung SDS Confidential Information or bear a Mark associated with the license granted hereunder, except to the extent that retention of any such materials is required by law; and
  - (iii) Customer will, at Samsung SDS's option, deliver to Samsung SDS a certificate, executed by an officer of Customer, on which Samsung SDS may rely, which certifies that Customer has complied with all of its termination obligations set forth in these General Terms and the applicable Schedule(s).
- 7.5. Provisions that survive termination or expiration of these General Terms include Section 6 (Nondisclosure) and those Sections as set forth in a Schedule, and others which by their nature are intended to survive.

## 8. MISCELLANEOUS

- 8.1. Force Majeure. Neither party shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; pandemic, electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export, import or other license and permit); or other events outside the reasonable control of the obligated party. Both parties will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than thirty (30) days, either party may cancel unperformed Services and the affected Quote Form upon written notice. This Section (Force Majeure) does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Customer's obligation to pay for Products and Services ordered or delivered.
- 8.2. Language. Customer agrees that the English language has been elected to express the terms of this Agreement and the English version shall be deemed the original. The English language of this Agreement may be translated into other language for purpose of convenience, but in the event of a dispute between the English version and the translated version, the English version shall prevail.
- 8.3. Governing Law And Jurisdiction. This Agreement is governed by the substantive and procedural laws of New Jersey and Customer and Samsung SDS agree to submit to the exclusive jurisdiction of, and venue in, the courts in New Jersey in any dispute arising out of or relating to this Agreement.
- 8.4. Legal Notices. All notices and consents required to be given or made by the parties shall be deemed properly made if sent by nationally recognized (recognized in the country of the sending party) overnight courier or certified mail (return receipt requested) to the addresses set forth below or such other address as a party may designate to the other party in writing.

If to Samsung SDS:  
Samsung SDS America, Inc.  
100 Challenger Road, 6<sup>th</sup> Floor  
Ridgefield Park, NJ 07660  
Attn: CFO

with a copy to:  
Legal Department  
100 Challenger Road, 6<sup>th</sup> Floor  
Ridgefield Park, NJ 07660  
Attn: General Counsel

If to Customer: At the Customer address entered in the electronic login for acceptance of the Quote Form  
Attn: Legal Department

Any non-legal notice required under this Agreement must be provided to the other party in writing.

- 8.5. Assignment. Customer may not assign, delegate, sub-contract, or otherwise transfer this Agreement or the Quote Form or any rights or obligations under it, or give or transfer Products or any Services or an interest in them to another individual or entity without Samsung SDS's prior written approval. Any attempt to do so without Samsung SDS's prior written approval shall be void.
- 8.6. Independent Contractor. Samsung SDS and Customer are independent parties. Nothing in this Agreement will be construed to make either party an agent, employee, franchisee, joint venture, or legal representative of the other party. Except as otherwise provided in these General Terms, neither party will either have, or represent itself to have, any authority to bind the other party or act on its behalf. Customer and Samsung SDS each will be responsible for paying their own employees, including employment related taxes and insurance.

- 8.7. Severability. If any provision of this Agreement is held to be invalid or unenforceable, it shall either be (a) reformed only to the extent necessary to make it enforceable, and such decision shall not affect the enforceability (i) of such provision under other circumstances or (ii) of the remaining provisions hereof under all circumstances, or (b) if such reformation is not possible, severed from this Agreement and the remainder of this Agreement shall continue in full force and effect.
- 8.8. Statute Of Limitation. Except for actions for nonpayment or breach of Samsung SDS's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than two (2) years after the cause of action has accrued.
- 8.9. Third Party Beneficiary. Customer expressly acknowledges and agrees that Samsung SDS Co., Ltd. is an intended third party beneficiary of this Agreement. Samsung SDS Co., Ltd. is entitled to the same rights and protections afforded Samsung SDS under this Agreement and are entitled to enforce the terms and conditions of this Agreement, as is Samsung SDS. Other than as specified in this Section (Third Party Beneficiary), no third party beneficiary relationships are created by these General Terms.
- 8.10. Construction. Words importing the singular include the plural, words importing any gender include every gender and words importing persons include entities, corporate and otherwise; and (in each case) vice versa. The section headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement. Whenever the terms "including" or "include" are used in this Agreement in connection with a single item or a list of items within a particular classification (whether or not the term is followed by the phrase "but not limited to" or words of similar effect) that reference shall be interpreted to be illustrative only, and shall not be interpreted as a limitation on, or an exclusive enumeration of the items within such classification.
- 8.11. Remedies. Except as expressly provided to the contrary herein, all remedies set forth in this Agreement are the sole and exclusive remedy.
- 8.12. Entire Agreement. This Agreement is the complete agreement for the Products and/or Services ordered by Customer and supersedes all prior or contemporaneous agreements, both written and oral regarding such Products and Services. Neither party has entered into this Agreement in reliance upon any representation, warranty, covenant or undertaking of the other party that is not set out or referred to in this Agreement.

## SOFTWARE SCHEDULE

This Software Schedule (this "**Software Schedule**") is a Schedule to the General Terms and all such terms shall apply to Software ordered by a Customer under a Quote Form.

### 1. DEFINITIONS

Capitalized terms used but not defined in this Software Schedule have the meanings set forth in the General Terms.

- 1.1. "**Separate Terms**" refers to separate license terms that are specified in the Software Documentation, readmes or notice files and that apply to Separately Licensed Third Party Technology.
- 1.2. "**Separately Licensed Third Party Technology**" refers to third party technology that is licensed under Separate Terms and not under the terms of the General Terms.
- 1.3. "**Software**" refers to (a) the software owned or distributed by Samsung SDS that Customer has ordered under the Quote Form, (b) Software Documentation and (c) any Software updates acquired through Technical Support.
- 1.4. "**Software Documentation**" refers to the Software user manual and Software installation manuals, in human- or machine-readable format, in any medium. Software Documentation may be delivered with the Software and/or made available to Customer by Samsung SDS. Software Documentation shall include any updated Software Documentation that Samsung SDS provides with updates.
- 1.5. "**Technical Support**" consists of technical support services for the Software and is described in this Software Schedule and the Software Technical Support Policy as further described in Section 4 below.

### 2. RIGHTS GRANTED

- 2.1. Subject to Customer's compliance with the General Terms and the Software Documentation, Samsung SDS hereby grants to Customer, and Customer hereby accepts, a non-exclusive, non-assignable, non-transferable, personal, royalty free, limited right, without right of sublicense, to use the Software for up to the number of licenses and for the license type (term) specified in the Quote Form, solely for Customer's own internal business operations.
- 2.2. The license granted to Customer for the Software is subject to the applicable licensing metrics, licensing rules, license type (term) designation, and additional restrictions as set forth in the Quote Form.
- 2.3. Unless otherwise specified in the Quote Form, Customer may only make one (1) copy of the Software for each Software license, and its Software media, licensed by Customer under the Quote Form for use by such Customer. Subject to the terms and conditions of this Software Schedule, Customer may use, copy and distribute Software Documentation intended for distribution to Customer's end users in connection with its permitted use of the Software.
- 2.4. The Software is licensed solely in machine-readable object code format. All rights not expressly granted to Customer are retained by Samsung SDS.

### 3. RESTRICTIONS

- 3.1. Customer may only use the Software as expressly permitted under this Software Schedule, including the applicable Quote Form in effect, and in compliance with the Software Documentation. Customer may not:
  - a) remove or modify any Software markings or any notice of Samsung SDS's or its licensors' proprietary rights;
  - b) distribute or make the Software available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific Software license Customer has acquired);
  - c) use the Software in combination with any hardware, programs, or data unless Customer has obtained or otherwise possess sufficient rights with respect to such hardware, programs, or data to enable such combination;
  - d) cause or permit reverse engineering (unless required by law for interoperability), disassembly or decompilation of the Software (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by Software) otherwise attempt to discover the source code of the Products delivered in object code; or
  - e) disclose results of any Software benchmark tests without Samsung SDS's prior written consent.
  - f) modify, port, create derivative works of, adapt or translate the Products.
- 3.2. use the Software on a time-sharing, service bureau, remote job entry, or other multiple user basis; (b) if applicable, install the Software on a network or other multi-user computer system in a manner that would make the Software available to a number of persons in excess of the permitted number of end users.

### 4. TECHNICAL SUPPORT

- 4.1. Technical Support may be provided to Customer by Samsung SDS, or a Samsung SDS authorized reseller, for the Software. Technical Support also includes Software maintenance to the extent set forth in the Technical Support policies. Customer agrees to cooperate with Samsung SDS and provide the access, resources, materials, personnel, information and consents that Samsung SDS may require in order to perform the Technical Support. The Technical Support policies are incorporated by reference into this Software Schedule and are subject to change at Samsung SDS's discretion, however, Samsung SDS Technical Support policy changes will not result in a material reduction in the level of Technical Support services provided for supported Software during the

period for which fees for Technical Support have been paid. A copy of the current version of the Technical Support policy can be accessed at <https://www.samsungsds.com/us/en/support/contracts/generic-tc.html>

- 4.2. Technical Support is effective upon the Software license term Commencement Date unless otherwise stated in the Quote Form.
- 4.3. If Customer decides to purchase Technical Support for any Software within a Software set licensed by Customer under a single Quote Form, Customer is required to purchase Technical Support at the same level for all Software within that Software set. If Customer decides not to purchase Technical Support for a Software, Customer may not update such unsupported Software with updates or new versions of the Software that are provided by Samsung SDS for the Software for which Technical Support has been purchased.

## **5. DELIVERY AND INSTALLATION**

- 5.1. Customer is responsible for installation of the Software.
- 5.2. If ordered, Samsung SDS will deliver the tangible media to the delivery address specified on the Quote Form. Customer agrees to pay applicable media and shipping charges.

## **6. PRICING, INVOICING AND PAYMENT OBLIGATION**

- 6.1. In entering into payment obligations under the Quote Form, Customer agrees and acknowledges that Customer has not relied on the future availability of any Software or updates. However, (a) if Customer orders Technical Support, the preceding sentence does not relieve Samsung SDS of its obligation to provide such Technical Support under the General Terms, if and when available, in accordance with Samsung SDS's then current Technical Support policies, and (b) the preceding sentence does not change the rights granted to Customer under a Quote Form and the General Terms.
- 6.2. Software fees are invoiced as of the Software license Commencement Date set forth in the Quote Form.
- 6.3. Technical Support fees are invoiced annually in advance. The period of performance for all Technical Support is effective upon the Software license Commencement Date as set forth in the Quote Form.
- 6.4. In addition to the prices listed on the Quote Form, Samsung SDS will invoice Customer for any applicable shipping charges or applicable Taxes and Customer will be responsible for such charges and Taxes.

## **7. EXPIRATION/TERMINATION**

- 7.1. The Software license shall commence on the Software license Commencement Date set forth in the Quote Form and shall expire at the end of the license type (term) set forth in the Quote Form unless terminated earlier in accordance with the General Terms. In addition to a party's right to terminate under Section 7 of the General Terms, Samsung SDS may terminate the Quote Form in the event that Customer breaches Section 3 (Restrictions) or 10 (Ownership) of this Software Schedule. Notwithstanding anything to the contrary contained herein, Samsung SDS shall be under no obligation to authorize use of the Software by Customer unless and until the associated license fee is paid by Customer.
- 7.2. Upon expiration or termination of the Agreement Customer will purge from its computer systems, storage media, and other files and, at Samsung SDS's option, destroy or deliver to Samsung SDS or its designee, all copies of the Software within Customer's possession or control, except to the extent that retention of any such materials is required by law. In the event that Customer retains any such materials under this Subsection 7.2, then such materials shall be considered Samsung SDS's Confidential Information.
- 7.3. In addition to those Sections stated in Section 7.4 of the General Terms, Section 6 (Pricing, Invoicing and Payment Obligation), Section 15 (Limitation of Liability), Section 10 (Ownership) Section 16 (Warranties, Disclaimers), Section 17 (Software IP Infringement Indemnity), and Section 18 (Software Indemnification) of this Software Schedule shall survive termination or expiration of the Agreement

## **8. REGISTRATION**

Certain Software will require Customer to register and provide certain data about Customer. In consideration of use of such Software, in registering and providing such data, Customer represents and warrants that: (a) the information about Customer is true, accurate, current, and complete (apart from optional items) as required by the Software registration forms ("Registration Data") and (b) Customer will maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If Customer provides any information that is untrue, inaccurate, not current or incomplete, or Samsung SDS has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Samsung SDS has the right to suspend or terminate Customer's account and refuse any and all current or future use of Software. All Software Registration Data become the exclusive property of Samsung SDS and Samsung SDS Co., Ltd.

## **9. OPEN SOURCE SOFTWARE; SEPARATELY LICENSED THIRD PARTY TECHNOLOGY**

- 9.1. Software may contain or be distributed with third party software covered by an open source software license ("Open Source Software") covered by a different license. The General Terms applies exclusively to Customer's access to, and use of Software excluding the portion containing Open Source Software and does not alter in any way the terms and conditions of the respective Open Source Software.
- 9.2. The Software may be provided to Customer with Separately Licensed Third Party Technology and the Software may not function, or function fully, without such Separately Licensed Third Party Technology. To the extent that Separately Licensed Third Party Technology is provided along with the Software, Samsung SDS shall provide a notice to Customer via either the Software Documentation readme file accompanying the Software files, or notice files accompanying the Software files. Separately Licensed Third Party Technology is licensed to Customer under the Separate Terms. The Separate Terms are specified in the aforementioned Software Documentation, readme files or notice files. Customer's use of the Separately Licensed Third Party Technology is governed solely by the Separate Terms and is not restricted in any way by the General Terms. For clarity, any third party technology provided

by Samsung SDS to Customer that is not Separately Licensed Third Party Technology shall be deemed part of the Software and is licensed to Customer under the terms of the General Terms and this Software Schedule.

## **10. OWNERSHIP**

As between Samsung SDS and Customer, all rights, title and interest in and to the Software, including patents, patent rights, copyrights, trade secrets, and other proprietary, industrial, or intellectual property rights, are and will remain the exclusive property of Samsung SDS or its licensors, whether or not specifically recognized or perfected under applicable law. Third party licensors shall have the rights to protect their own proprietary rights to the extent included in the Software in the event of any infringement. Customer's Software license confers no title or ownership and is not a sale of any rights in the Software. Customer will not acquire any right in the Software, except the limited rights specified in the General Terms. Samsung SDS or its licensor will own all rights in any copy, translation, modification, adaptation, or derivative work of the Software, including any improvement or development thereof. Samsung SDS shall have a royalty-free, worldwide, perpetual license to use or incorporate into the Software any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or Customer's customers. If, by operation of law or otherwise, Customer is deemed to own any rights in the Software, as a derivative work or otherwise (other than the limited rights specified in the General Terms), Customer hereby agrees to assign, and upon the creation of any such rights shall be deemed to assign, all such rights, including the right to adapt or create derivative works and the right to exploit such derivative works, to Samsung SDS or its licensor on an exclusive, perpetual, irrevocable, worldwide, and royalty-free basis, without the right to claim or receive any additional consideration. If Customer or any of its employees is deemed under applicable law to retain any rights in the development of the Software, including any economic or moral rights, Customer grants, and will cause its employees to grant, to Samsung SDS or its licensor, the exclusive, perpetual, irrevocable, worldwide, and royalty-free license to use, modify, and market the Software and any derivative works based thereon, and in the case of moral rights, Customer waives, and covenants that it shall have its employees waive, all such moral rights. At Samsung SDS's request, Customer will execute, or obtain the execution of, any instrument that may be appropriate to assign these rights to Samsung SDS or its licensors or perfect these rights in Samsung SDS's or its licensors' name. All rights (including all intellectual property rights) to and/or with respect to the Software not expressly licensed by Samsung SDS hereunder, are expressly and exclusively retained by Samsung SDS and its licensors.

## **11. SAFE USE**

Software and Technical Support are not designed for or specifically intended for use in nuclear facilities or other hazardous applications. Customer agrees that it is Customer's responsibility to ensure safe use of Software and Technical Support in such applications. Software and Technical Support are not designed, intended or licensed for use in hazardous environments requiring fail-safe controls. Samsung SDS specifically disclaims any express or implied warranty of fitness for such purposes.

## **12. EXPORT**

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Software. Customer agrees that such export laws govern Customer's use of the Software (including technical data) provided under the General Terms, and Customer agrees to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). Customer agrees that no data, information, Software (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

## **13. AUDIT**

Customer agrees that Samsung SDS has the right to audit (electronic or otherwise) Customer's use of Software and Technical Support. As part of any such audit, Samsung SDS or its authorized representative will have the right, on forty-five (45) days' prior notice to Customer, to inspect Customer's records, systems and facilities, including machine IDs, serial numbers and related information, to verify Customer's use of Software and/or Technical Support. Additionally, within forty-five (45) days of the audit request, Customer will provide to Samsung SDS all records and information requested by Samsung SDS in order to verify Customer's use of Software and/or Technical Support. Customer will provide full cooperation to enable any such audit. Samsung SDS may use an independent auditor to assist with such verification, provided Samsung SDS has a written confidentiality agreement in place with such auditor. If Samsung SDS determines that Customer's use of Software and/or Technical Support is not in conformity with the General Terms, Customer will immediately pay for valid license(s) to bring Customer's use of Software and/or Technical Support into compliance and pay the reasonable costs of the audit. Customer agrees to pay within thirty (30) days of written notification any fees applicable to Customer's use of the Software in excess of Customer's license rights under the General Terms at the then current Software list price. In addition to such payment rights, Samsung SDS reserves the right to seek any other remedies available at law or in equity. Customer agrees to be responsible for any costs incurred with the audit.

## **14. U.S. GOVERNMENT RESTRICTED RIGHTS**

14.1. U.S. Government End Users Only. This Subsection (U.S. Government End User only) shall apply only to U.S. Government end users: Customer acknowledges that the Software was developed exclusively at the private expense of Samsung SDS and/or its predecessors in interest. Elements of the Software constitute "commercial computer software," as that term is defined in the Federal Acquisition Regulations ("FAR") Part 2.101. All such commercial computer software is licensed to the U.S. Government in accordance with the provisions of FAR Part 227.7202-3(a), and the United States Government acknowledges that it shall only receive rights with respect to such commercial computer software as expressly set forth in the License. All non-commercial technical data and computer software elements of the Software which do not constitute "commercial computer software" are licensed to the United States Government with "limited rights" and/or "restricted rights" (as applicable), as those terms are defined in FAR Part 52.227-14(a) or the Department of Defense FAR Supplement ("DFARS") Part 252.227-7013(a)(13) and DFARS Part 252.227-7014(a)(14) respectively, as applicable. All duplication, disclosure and other use by the U.S. Government of such noncommercial technical data and/or computer software is subject to restrictions set forth in FAR Part 52.227-14(g)(3) and FAR Part 52.227-14(g)(4), or DFARS Part 252.227-7013(b)(3) and DFARS Part 252.227-7014(b)(3), as applicable.

14.2. For All Other End Users. This Subsection (For All Other End Users) shall apply only to non-U.S. Government end users. Customer agrees that it shall reproduce, and shall cause its affiliates (solely to the extent Customer is expressly allowed to so distribute the Software to such affiliates under the General Terms) and its and their sublicensees (solely to the extent Customer is expressly allowed to so distribute the Software to such sublicensees under the General Terms) (solely to the extent Customer's affiliates are

expressly allowed to so distribute the Software to their sublicensees under the General Terms) to reproduce, all copies of the Software (or any portion thereof) with all data rights markings provided by Samsung SDS in accordance with FAR Part 52.227-14(g)(3) and FAR Part 52.227-14(g)(4), or DFARS Part 252.227-7013(f)(3), as applicable.

## **15. LIMITATION OF LIABILITY**

- 15.1. EXCEPT FOR SAMSUNG SDS'S OBLIGATIONS UNDER SECTION 17 (SOFTWARE IP INFRINGEMENT INDEMNIFICATION) OF THIS SOFTWARE SCHEDULE, OR BREACH OF SECTION 6 (NONDISCLOSURE) OF THE GENERAL TERMS, IN NO EVENT SHALL SAMSUNG SDS, ITS AFFILIATES, OR ITS SUPPLIERS, BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE, PROFITS, DATA, OR GOODWILL, ARISING OUT OF OR IN CONNECTION WITH THE GENERAL TERMS, WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN.
- 15.2. EXCEPT FOR SAMSUNG SDS'S OBLIGATIONS UNDER SECTION 17 (SOFTWARE IP INFRINGEMENT INDEMNIFICATION) OF THIS SOFTWARE SCHEDULE, OR BREACH OF SECTION 6 (NONDISCLOSURE) OF THE GENERAL TERMS, IN NO EVENT SHALL SAMSUNG SDS'S CUMULATIVE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE GENERAL TERMS EXCEED AN AMOUNT EQUAL TO THE LOWER OF (i) TEN PERCENT (10%) OF THE TOTAL AMOUNTS CUSTOMER HAS PAID SAMSUNG SDS UNDER THE QUOTE FORM OR (ii) THE TOTAL AMOUNTS CUSTOMER HAS PAID SAMSUNG SDS UNDER THE QUOTE FORM IN THE SIX (6) MONTHS PRECEDING THE ARISING OF THE CAUSE OF ACTION. NOTWITHSTANDING THE FOREGOING LIMITATION IN THIS SECTION 15.2, IN THE CASE OF SAMSUNG SDS'S LIABILITY, IF SUCH LIABILITY RESULTS FROM CUSTOMER'S USE OF THE SOFTWARE OR TECHNICAL SUPPORT, SUCH LIABILITY SHALL BE LIMITED TO THE FEES CUSTOMER PAID SAMSUNG SDS FOR THE DEFICIENT SOFTWARE OR TECHNICAL SUPPORT GIVING RISE TO THE LIABILITY.
- 15.3. THIS SECTION (LIMITATION OF LIABILITY) WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY DESPITE THE FOREGOING EXCLUSION AND LIMITATIONS.

## **16. WARRANTIES, DISCLAIMERS**

- 16.1. SAMSUNG SDS DOES NOT GUARANTEE THAT THE SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS, PERFORM ERROR-FREE OR UNINTERRUPTED, OR THAT SAMSUNG SDS WILL CORRECT ALL SOFTWARE ERRORS.
- 16.2. THE SOFTWARE AND TECHNICAL SUPPORT IS PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES, REPRESENTATIONS, AND GUARANTEES WITH RESPECT TO THE SOFTWARE, TECHNICAL SUPPORT, OR OTHERWISE ARE HEREBY VOID, OVERRIDDEN, EXCLUDED, AND DISCLAIMED.

## **17. SOFTWARE IP INFRINGEMENT INDEMNIFICATION**

- 17.1. Subject to Subsections 17.2, 17.3 and 17.4 below, if a third party makes a claim against Customer alleging that the unmodified Software infringes a third party's intellectual property rights, Samsung SDS, at Samsung SDS's sole cost and expense, will defend Customer against the claim and indemnify Customer from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by Samsung SDS, if the Customer does the following:
- a) notifies the Samsung SDS promptly in writing, not later than ten (10) days after the Customer receives notice of the claim (or sooner if required by applicable law);
  - b) gives Samsung SDS sole control of the defense and any settlement negotiations or compromise; and
  - c) gives Samsung SDS the information, authority and assistance Samsung SDS needs, at Samsung SDS's expense, to defend against or settle the claim.
- 17.2. If Samsung SDS believes or it is determined that any of the Software may have violated a third party's intellectual property rights, Samsung SDS, at its option, may choose to either modify the Software to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially practicable, Samsung SDS may terminate the General Terms and the license for, and require return of, the applicable Software and refund the license fees Customer has paid to Samsung SDS for the affected Software (prorated based on a three (3) year useful life) and unused, prepaid Technical Support fees paid to Samsung SDS. If such return materially affects Samsung SDS's ability to meet its obligations under the relevant Quote Form, then Samsung SDS may, at its option and upon thirty (30) days prior written notice, terminate the Quote Form.
- 17.3. In the event that the Software is Separately Licensed Third Party Technology and the associated Separate Terms do not allow termination of the license, in lieu of ending the license for the Software, Samsung SDS may end the license for, and require return of, the Software associated with that Separately Licensed Third Party Technology and shall refund any Software license fees Customer may have paid to Samsung SDS for the Software license and any unused, prepaid Technical Support fees Customer has paid to Samsung SDS.
- 17.4. Samsung SDS will not indemnify not defend Customer if the Customer (i) makes a correction or modification of the Software not provided by Samsung SDS or otherwise alters or uses it outside the scope of use identified in the Software Documentation; (ii) uses a version of Software which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of Software which was provided to the Customer; (iii) fails to properly install an update; (iv) continues to use the applicable Software after the end of the license to use that Software; or (v) combines the Software with items not provided by Samsung SDS or approved for combination with the Software in the Software Documentation. Samsung SDS will not indemnify nor defend Customer to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by Samsung SDS. Samsung SDS will not indemnify nor defend Customer for any portion of an infringement claim that is based upon the combination of any Software with any products or services not provided by Samsung SDS. Solely with respect to

Separately Licensed Third Party Technology that is part of or is required to use a Software and that is used: (a) in unmodified form; (b) as part of or as required to use a Software; and (c) in accordance with the license grant for the relevant Software and all other terms and conditions of the General Terms, Samsung SDS will indemnify Customer for infringement claims for Separately Licensed Third Party Technology to the same extent as Samsung SDS is required to provide infringement indemnification for the Software under the terms of the General Terms. Samsung SDS will not indemnify nor defend Customer for infringement caused by Customer's actions against any third party if the Software as delivered to Customer and used in accordance with the terms of the General Terms would not otherwise infringe any third party intellectual property rights.

17.5. This Section (Software IP Infringement Indemnification) provides Customer's exclusive remedy and Samsung SDS's sole liability in connection with any Software infringement claims.

#### **18. SOFTWARE INDEMNIFICATION**

Customer shall, at its sole expense, defend, indemnify, and hold harmless Samsung SDS and its licensors from and against any and all claims, proceedings, damages, injuries, liabilities, losses, costs, and expenses (including attorneys' fees and litigation expenses) that Samsung SDS or its licensors may incur relating to or arising from (i) any modification of or addition to the Software not provided or approved in writing by Samsung SDS, or (ii) any infringement, misappropriation, or other claim that arises from the combination of the Software with any hardware, software or data not authorized in writing by Samsung SDS, provided that such claim would not have arisen from the use of the Software alone.

## HARDWARE SCHEDULE

This Hardware Schedule (this "**Hardware Schedule**") is a Schedule to the General Terms and all such terms shall apply to Hardware ordered by a Customer under a Quote Form.

### 1. DEFINITIONS

Capitalized terms used but not defined in this Hardware Schedule have the meanings set forth in the General Terms.

- 1.1. "**Commencement Date**" means the date the Hardware is delivered as set forth in the Quote Form.
- 1.2. "**Hardware**" refers to (a) the hardware equipment (including components, options and spare parts) ("**Equipment**") owned or distributed by Samsung SDS that Customer can order under a Quote Form, and (b) Hardware Documentation.
- 1.3. "**Hardware Documentation**" refers to the user manuals and installation manuals, in human- or machine-readable format, in any medium. Hardware Documentation may be delivered with the Hardware and/or made available to Customer by Samsung SDS.
- 1.4. "**Integrated Software**" refers to any software or programmable code that is embedded or integrated in the Hardware and enables the functionality of the Hardware, e.g., firmware. Integrated Software does not include and Customer does not have rights to (a) code or functionality for diagnostic, maintenance, repair or technical support services, or (b) separately licensed applications, Operating Systems, Software, development tools, or system management software or other code that is separately licensed by Samsung SDS. Samsung SDS reserves the right to designate new software features as Integrated Software in subsequent releases and that designation will be specified in the applicable documentation.
- 1.5. "**Operating System**" refers to the software that manages Hardware. Operating System does not include Software or Integrated Software.
- 1.6. "**Software**" refers to the software owned or distributed by Samsung SDS that Customer can order under the General Terms pursuant to a Quote Form. Software does not include Integrated Software or any Operating System.
- 1.7. "**Software Documentation**" refers to the Software user manual and Software installation manuals, in human- or machine-readable format, in any medium that may be delivered to or accessed by Customer.
- 1.8. "**Technical Support**" consists of technical support services for the Hardware and is described in this Hardware Schedule and the Hardware Technical Support Policy as further described in Section 5 below.

### 2. RIGHTS GRANTED

- 2.1. Customer has the right to use the Operating System delivered with the Hardware subject to the terms of the separate third party license agreement(s) delivered with the Hardware. Customer is licensed to use the Operating System and any Operating System updates acquired through Technical Support only as incorporated in, and as part of, the Hardware.
- 2.2. Subject to Customer's compliance with the General Terms, Customer will have the limited, non-exclusive, royalty free, non-transferable, non-assignable right to use Integrated Software delivered with the Hardware subject to the terms of this Hardware Schedule and the applicable documentation. Customer will be licensed to use that Integrated Software and any Integrated Software updates acquired through Technical Support only as incorporated in, and as part of, the Hardware.

### 3. RESTRICTIONS

- 3.1. Customer shall not remove any copyright notices or labels on the Operating System and Integrated Software. Customer shall not decompile or reverse engineer (unless required by law for interoperability) the Operating System or Integrated Software.
- 3.2. Customer acknowledges that to properly operate certain Hardware, Customer's facility must meet a minimum set of requirements as described in the Hardware Documentation. Such requirements may change from time to time, as communicated by Samsung SDS to Customer in the applicable Hardware Documentation.
- 3.3. The prohibition on the assignment or transfer of the Operating System or any interest in it under Subsection 8.5 of the General Terms shall apply to all Operating Systems licensed under this Hardware Schedule, except to the extent that such prohibition is rendered unenforceable under applicable law.

### 4. OPEN SOURCE SOFTWARE

The Integrated Software may contain or be distributed with third party software covered by an open source software license (such software, the "**Open Source Software**") covered by a separate license agreement. The General Terms applies exclusively to Customer's access to, and use of the Integrated Software excluding the portion containing Open Source Software and does not alter in any way the terms and conditions of the respective Open Source Software separate license agreement.

### 5. TECHNICAL SUPPORT

- 5.1. Technical Support may be provided to Customer by Samsung SDS, or a Samsung SDS authorized reseller, for the Hardware. Technical Support also includes Hardware maintenance to the extent set forth in the Technical Support policies. Customer agrees to cooperate with Samsung SDS and provide the access, resources, materials, personnel, information and consents that Samsung SDS may require in order to perform the Technical Support. The Technical Support policies are incorporated by reference into this Hardware Schedule and are subject to change at Samsung SDS's discretion, however, Samsung SDS Technical Support policy changes will not result in a material reduction in the level of Technical Support services provided for supported Hardware during the period for which fees for Technical Support have been paid. A copy of the current version of the Hardware Technical Support policy can be accessed at <https://www.samsungsds.com/us/en/support/contracts/generic-tc.html>

5.2. Technical Support is effective upon the Hardware Commencement Date unless otherwise stated in Quote Form.

## 6. OWNERSHIP

As between Samsung SDS and its licensors and Customer, all rights, title and interest in and to the Operating System and Integrated Software, including patents, patent rights, copyrights, trade secrets, and other proprietary, industrial, or intellectual property rights, are and will remain the exclusive property of Samsung SDS or its licensors, whether or not specifically recognized or perfected under applicable law. Third party licensors shall have the rights to protect their own proprietary rights to the extent included in the Operating System and Integrated Software in the event of any infringement. Customer's Operating System and Integrated Software licenses confer no title or ownership and are not a sale of any rights in the Operating System or Integrated Software. Customer will not acquire any right in the Operating System or Integrated Software, except the limited rights specified in the General Terms. Samsung SDS or its licensor will own all rights in any copy, translation, modification, adaptation, or derivative work of the Operating System and Integrated Software, including any improvement or development thereof. Samsung SDS shall have a royalty-free, worldwide, perpetual license to use or incorporate into the Operating System and Integrated Software any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or Customer's customers. If, by operation of law or otherwise, Customer is deemed to own any rights in the Operating System and/or Integrated Software, as a derivative work or otherwise (other than the limited rights specified in the General Terms), Customer hereby agrees to assign, and upon the creation of any such rights shall be deemed to assign, all such rights, including the right to adapt or create derivative works and the right to exploit such derivative works, to Samsung SDS or its licensor on an exclusive, perpetual, irrevocable, worldwide, and royalty-free basis, without the right to claim or receive any additional consideration. If Customer or any of its employees is deemed under applicable law to retain any rights in the development of the Operating System and/or Integrated Software, including any economic or moral rights, Customer grants, and will cause its employees to grant, to Samsung SDS or its licensor, the exclusive, perpetual, irrevocable, worldwide, and royalty-free license to use, modify, and market the Operating System, and/or Integrated Software and any derivative works based thereon, and in the case of moral rights, Customer waives, and covenants that it shall have its employees waive, all such moral rights. At Samsung SDS's request, Customer will execute, or obtain the execution of, any instrument that may be appropriate to assign these rights to Samsung SDS or its licensors or perfect these rights in Samsung SDS's or its licensors' name. All rights (including all intellectual property rights) to and/or with respect to the Operating System and Integrated Software not expressly licensed by Samsung SDS hereunder, are expressly and exclusively retained by Samsung SDS and its licensors.

## 7. EXPORT

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Hardware, Operating System and Integrated Software. Customer agrees that such export laws govern Customer's use of the Hardware, Operating System and Integrated Software (including technical data) provided under the General Terms, and Customer agrees to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). Customer agrees that no data, information, Hardware, Operating System or Integrated Software (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

## 8. AUDIT

Customer agrees that Samsung SDS has the right to audit (electronic or otherwise) Customer's use of the Operating System, Integrated Software, and Technical Support. As part of any such audit, Samsung SDS or its authorized representative will have the right, on forty-five (45) days' prior notice to Customer, to inspect Customer's records, systems and facilities, including machine IDs, serial numbers and related information, to verify Customer's use of the Operating System, Integrated Software and Technical Support. Additionally, within forty-five (45) days of the audit request, Customer will provide to Samsung SDS all records and information requested by Samsung SDS in order to verify Customer's use of the Operating System, Integrated Software and Technical Support. Customer will provide full cooperation to enable any such audit. Samsung SDS may use an independent auditor to assist with such verification, provided Samsung SDS has a written confidentiality agreement in place with such auditor. If Samsung SDS determines that Customer's use of the Operating System, Integrated Software and/or Technical Support is not in conformity with the General Terms, Customer will immediately pay for valid license(s) to bring Customer's use of the Operating System, Integrated Software and/or Technical Support into compliance and pay the reasonable costs of the audit. Customer agrees to pay within thirty (30) days of written notification any fees applicable to Customer's use of the Operating Software, Integrated Software in excess of Customer's license rights under the General Terms at the then current list price. In addition to such payment rights, Samsung SDS reserves the right to seek any other remedies available at law or in equity. Customer agrees to be responsible for any costs incurred with the audit.

## 9. U.S. GOVERNMENT RESTRICTED RIGHTS

9.1. U.S. Government End Users Only. This Subsection (U.S. Government End User only) shall apply only to U.S. Government end users: Customer acknowledges that the Operating System and Integrated Software was developed exclusively at the private expense of Samsung SDS and/or its predecessors in interest or its licensors. Elements of the Operating System and Integrated Software constitute "commercial computer software," as that term is defined in the Federal Acquisition Regulations ("FAR") Part 2.101. All such commercial computer software is licensed to the U.S. Government in accordance with the provisions of FAR Part 227.7202-3(a), and the United States Government acknowledges that it shall only receive rights with respect to such commercial computer software as expressly set forth in the License. All non-commercial technical data and computer software elements of the Operating System and Integrated Software which do not constitute "commercial computer software" are licensed to the United States Government with "limited rights" and/or "restricted rights" (as applicable), as those terms are defined in FAR Part 52.227-14(a) or the Department of Defense FAR Supplement ("DFARS") Part 252.227-7013(a)(13) and DFARS Part 252.227-7014(a)(14) respectively, as applicable. All duplication, disclosure and other use by the U.S. Government of such noncommercial technical data and/or computer software is subject to restrictions set forth in FAR Part 52.227-14(g)(3) and FAR Part 52.227-14(g)(4), or DFARS Part 252.227-7013(b)(3) and DFARS Part 252.227-7014(b)(3), as applicable.

9.2. For All Other End Users. This Subsection (For All Other End Users) shall apply only to non-U.S. Government end users. Customer agrees that it shall reproduce, and shall cause its affiliates (solely to the extent Customer is expressly allowed to so distribute the Integrated Software to such affiliates under the General Terms) and its and their sublicensees (solely to the extent Customer is expressly allowed to so distribute the Integrated Software to such sublicensees under the General Terms) (solely to the extent

Customer's affiliates are expressly allowed to so distribute the Integrated Software to their sublicensees under the General Terms) to reproduce, all copies of the Integrated Software (or any portion thereof) with all data rights markings provided by Samsung SDS in accordance with FAR Part 52.227-14(g)(3) and FAR Part 52.227-14(g)(4), or DFARS Part 252.227-7013(f)(3), as applicable.

## 10. LIMITATION OF LIABILITY

- 10.1. EXCEPT FOR SAMSUNG SDS'S OBLIGATIONS UNDER SECTION 15 (IP INFRINGEMENT INDEMNIFICATION) OF THIS HARDWARE SCHEDULE, OR SAMSUNG SDS'S BREACH OF SECTION 6 (NONDISCLOSURE) OF THE GENERAL TERMS, IN NO EVENT SHALL SAMSUNG SDS, ITS AFFILIATES, OR ITS SUPPLIERS, BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE, PROFITS, DATA, OR GOODWILL, ARISING OUT OF OR IN CONNECTION WITH A QUOTE FORM TO THIS HARDWARE SCHEDULE, WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN.
- 10.2. EXCEPT FOR SAMSUNG SDS'S OBLIGATIONS UNDER SECTION 15 (IP INFRINGEMENT INDEMNIFICATION) OF THIS HARDWARE SCHEDULE, OR SAMSUNG SDS'S BREACH OF SECTION 6 (NONDISCLOSURE) OF THE GENERAL TERMS, IN NO EVENT SHALL SAMSUNG SDS'S CUMULATIVE LIABILITY ARISING OUT OF OR IN CONNECTION WITH A QUOTE FORM EXCEED AN AMOUNT EQUAL TO THE LOWER OF (i) TEN PERCENT (10%) OF THE TOTAL AMOUNTS CUSTOMER HAS PAID SAMSUNG SDS UNDER THE APPLICABLE QUOTE FORM OR (ii) THE TOTAL AMOUNTS CUSTOMER HAS PAID SAMSUNG SDS UNDER THE QUOTE FORM IN THE SIX (6) MONTHS PRECEDING THE ARISING OF THE CAUSE OF ACTION. NOTWITHSTANDING THE FOREGOING LIMITATION IN THIS SECTION 10.2, IF SUCH LIABILITY RESULTS FROM CUSTOMER'S USE OF THE HARDWARE OR TECHNICAL SUPPORT, SUCH LIABILITY SHALL BE LIMITED TO THE FEES CUSTOMER PAID SAMSUNG SDS FOR THE DEFICIENT HARDWARE OR TECHNICAL SUPPORT GIVING RISE TO THE LIABILITY.
- 10.3. THIS SECTION (LIMITATION OF LIABILITY) WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY DESPITE THE FOREGOING EXCLUSION AND LIMITATIONS.

## 11. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

- 11.1. Samsung SDS provides the following limited warranties ("**Limited Warranty**"). Each reference to a Limited Warranty in this Section 11 (Warranties, Disclaimers and Exclusive Remedies) shall mean the applicable Limited Warranty for either the Hardware, Integrated Software, Media or Technical Support.

### A. Hardware

i) Samsung SDS warrants that the Hardware will be free from, and using the Operating System and Integrated Software will not cause in the Hardware, material defects in materials and workmanship for one (1) year from the Commencement Date. The Limited Warranty applies only to Hardware that has been (1) manufactured by or for Samsung SDS, and (2) sold by Samsung SDS (either directly or by a Samsung SDS-authorized reseller). The Hardware may be new or like new. The Limited Warranty applies to Hardware that is new and Hardware that is like-new which has been remanufactured and certified for warranty by Samsung SDS.

(ii) The Limited Warranty does not apply to normal wear of the Hardware. The Limited Warranty is extended only to the original purchaser or original lessee of the Hardware and may be void in the event that title to the Hardware is transferred to a third party.

(iii) The Limited Warranty does not apply to any Hardware which has been:

- a. modified, altered or adapted without Samsung SDS's written consent (including modification or removal of the serial number tag on the Hardware);
- b. maltreated or used in a manner other than in accordance with the relevant documentation;
- c. repaired by any third party in a manner which fails to meet Samsung SDS's quality standards;
- d. improperly installed by any party other than Samsung SDS or an authorized Samsung SDS certified installation partner;
- e. used with equipment or software not covered by an Samsung SDS warranty, to the extent that the problems are attributable to such use;
- f. relocated, to the extent that problems are attributable to such relocation;
- g. used directly or indirectly in supporting activities prohibited by U.S. or other national export regulations;
- h. used by parties appearing on the then-current Korea and U.S. export exclusion list;
- i. relocated to countries subject to Korea and U.S. trade embargo or restrictions;
- j. used remotely to facilitate any activities for parties or in the countries referenced in Subsections 11.1(a)(iii)(h) and 11.1(a)(iii)(i) above;
- or
- k. purchased from any entity other than Samsung SDS or a Samsung SDS authorized reseller.

(iv) FOR ANY BREACH OF THE LIMITED WARRANTY, CUSTOMER'S EXCLUSIVE REMEDY AND SAMSUNG SDS'S ENTIRE LIABILITY SHALL BE THE REPAIR OR, AT SAMSUNG SDS'S OPTION AND EXPENSE, REPLACEMENT OF THE DEFECTIVE HARDWARE RETURNED PREPAID BY CUSTOMER, OR IF SUCH REPAIR OR REPLACEMENT IS NOT COMMERCIALY REASONABLY ACHIEVABLE, THE REFUND OF THE FEES CUSTOMER PAID SAMSUNG SDS FOR THE DEFECTIVE HARDWARE AND THE REFUND OF ANY UNUSED PREPAID TECHNICAL SUPPORT FEES CUSTOMER HAS PAID FOR THE DEFECTIVE HARDWARE.

(v) TO THE EXTENT NOT PROHIBITED BY LAW, THE LIMITED WARRANTY IS EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS WITH RESPECT TO THE HARDWARE, INCLUDING ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY SUCH OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS ARE HEREBY VOID, OVERRIDDEN, EXCLUDED AND DISCLAIMED.

### B. Integrated Software

(i) Samsung SDS warrants that the Integrated Software will be in material compliance with its documentation for a period of ninety (90) days from the Commencement Date.

(ii) The Limited Warranty does not apply to normal wear of the Integrated Software. The Limited Warranty is extended only to the original purchaser or original lessee of the Hardware and may be void in the event that title to the Hardware is transferred to a third party.

(iii) The Limited Warranty does not apply to any Integrated Software which has been:

- a. modified, altered or adapted without Samsung SDS's written consent (including modification or removal of the serial number tag on the Hardware);
- b. maltreated or used in a manner other than in accordance with the relevant documentation;
- c. repaired by any third party in a manner which fails to meet Samsung SDS's quality standards;
- d. improperly installed by any party other than Samsung SDS or an authorized Samsung SDS certified installation partner;
- e. used with equipment or software not covered by an Samsung SDS warranty, to the extent that the problems are attributable to such use;
- f. relocated, to the extent that problems are attributable to such relocation;
- g. used directly or indirectly in supporting activities prohibited by U.S. or other national export regulations;
- h. used by parties appearing on the then-current Korea and U.S. export exclusion list;
- i. relocated to countries subject to Korea and U.S. trade embargo or restrictions;
- j. used remotely to facilitate any activities for parties or in the countries referenced in Subsections 11.1(b)(iii)(h) and 11.1(b)(iii)(i) above; or
- k. purchased from any entity other than Samsung SDS or a Samsung SDS authorized reseller.

(iv) FOR ANY BREACH OF THE LIMITED WARRANTY, CUSTOMER'S EXCLUSIVE REMEDY AND SAMSUNG SDS'S ENTIRE LIABILITY SHALL BE THE REPAIR OR, AT SAMSUNG SDS'S OPTION AND EXPENSE, REPLACEMENT OF THE DEFECTIVE INTEGRATED SOFTWARE RETURNED PREPAID BY CUSTOMER, OR IF SUCH REPAIR OR REPLACEMENT IS NOT COMMERCIALY REASONABLY ACHIEVABLE, THE REFUND OF THE FEES CUSTOMER PAID SAMSUNG SDS FOR THE DEFECTIVE INTEGRATED SOFTWARE AND THE REFUND OF ANY UNUSED PREPAID TECHNICAL SUPPORT FEES CUSTOMER HAS PAID FOR THE DEFECTIVE INTEGRATED SOFTWARE.

(v) TO THE EXTENT NOT PROHIBITED BY LAW, THE LIMITED WARRANTY IS EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS WITH RESPECT TO THE INTEGRATED SOFTWARE, INCLUDING ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY SUCH OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS ARE HEREBY VOID, OVERRIDDEN, EXCLUDED AND DISCLAIMED.

### **C. Media**

(i) Samsung SDS warrants that the Operating System media and the Integrated Software media (collectively, "**Media**") will be free from material defects in materials and workmanship for a period of ninety (90) days from the Commencement Date. The Limited Warranty applies only to Media that has been (1) manufactured by or for Samsung SDS, and (2) sold by Samsung SDS (either directly or by a Samsung SDS-authorized reseller).

(ii) The Limited Warranty does not apply to normal wear of the Media. The Limited Warranty is extended only to the original purchaser or original lessee of the Hardware and may be void in the event that title to the Hardware is transferred to a third party.

(iii) The Limited Warranty does not apply to any Media which has been:

- a. modified, altered or adapted without Samsung SDS's written consent (including modification or removal of the serial number tag on the Hardware);
- b. maltreated or used in a manner other than in accordance with the relevant documentation;
- c. repaired by any third party in a manner which fails to meet Samsung SDS's quality standards;
- d. improperly installed by any party other than Samsung SDS or an authorized Samsung SDS certified installation partner;
- e. used with equipment or software not covered by an Samsung SDS warranty, to the extent that the problems are attributable to such use;
- f. relocated, to the extent that problems are attributable to such relocation;
- g. used directly or indirectly in supporting activities prohibited by U.S. or other national export regulations;
- h. used by parties appearing on the then-current Korea and U.S. export exclusion list;
- i. relocated to countries subject to Korea and U.S. trade embargo or restrictions;
- j. used remotely to facilitate any activities for parties or in the countries referenced in Subsections 11.1(c)(iii)(h) and 11.1(c)(iii)(i) above; or
- k. purchased from any entity other than Samsung SDS or a Samsung SDS authorized reseller.

(iv) FOR ANY BREACH OF THE LIMITED WARRANTY, CUSTOMER'S EXCLUSIVE REMEDY AND SAMSUNG SDS'S ENTIRE LIABILITY SHALL BE THE REPAIR OR, AT SAMSUNG SDS'S OPTION AND EXPENSE, REPLACEMENT OF THE DEFECTIVE MEDIA RETURNED PREPAID BY CUSTOMER, OR IF SUCH REPAIR OR REPLACEMENT IS NOT COMMERCIALY REASONABLY ACHIEVABLE, THE REFUND OF THE FEES CUSTOMER PAID SAMSUNG SDS FOR THE DEFECTIVE MEDIA AND THE REFUND OF ANY UNUSED PREPAID TECHNICAL SUPPORT FEES CUSTOMER HAS PAID FOR THE DEFECTIVE MEDIA.

(v) TO THE EXTENT NOT PROHIBITED BY LAW, THE LIMITED WARRANTY IS EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS WITH RESPECT TO THE MEDIA, INCLUDING ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY SUCH OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS ARE HEREBY VOID, OVERRIDDEN, EXCLUDED AND DISCLAIMED.

### **D. Technical Support**

(i) Samsung SDS warrants that Technical Support services will be provided in a professional manner consistent with industry standards for a period of ninety (90) days from the date of provision. Customer must notify Samsung SDS of any Limited Warranty deficiency within ninety (90) days from performance of the deficient technical support service.

(ii) The Limited Warranty is extended only to the original purchaser or original lessee of the Hardware and may be void in the event that title to the Hardware is transferred to a third party.

(iii) The Limited Warranty does not apply to any Technical Support which has been:

- a. modified, altered or adapted without Samsung SDS's written consent (including modification or removal of the serial number tag on the Hardware);
- b. maltreated or used in a manner other than in accordance with the relevant documentation;
- c. used with equipment or software not covered by an Samsung SDS warranty, to the extent that the problems are attributable to such use;
- d. relocated, to the extent that problems are attributable to such relocation;
- e. used directly or indirectly in supporting activities prohibited by U.S. or other national export regulations;
- f. used by parties appearing on the then-current Korea and U.S. export exclusion list;
- g. relocated to countries subject to Korea and U.S. trade embargo or restrictions;
- h. used remotely to facilitate any activities for parties or in the countries referenced in Subsections 11.1(d)(iii)(h) and 11.1(d)(iii)(i) above; or
- i. purchased from any entity other than Samsung SDS or a Samsung SDS authorized reseller.

(iv) FOR ANY BREACH OF THE LIMITED WARRANTY, CUSTOMER'S EXCLUSIVE REMEDY AND SAMSUNG SDS'S ENTIRE LIABILITY SHALL BE RE-PERFORMANCE OF THE DEFECTIVE TECHNICAL SUPPORT SERVICES, OR IF SUCH RE-PERFORMANCE IS NOT COMMERCIALY REASONABLY ACHIEVABLE, THE REFUND OF THE FEES CUSTOMER PAID SAMSUNG SDS FOR THE DEFECTIVE TECHNICAL SUPPORT.

(v) TO THE EXTENT NOT PROHIBITED BY LAW, THE LIMITED WARRANTY IS EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS WITH RESPECT TO THE TECHNICAL SUPPORT, INCLUDING ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY SUCH OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS ARE HEREBY VOID, OVERRIDDEN, EXCLUDED AND DISCLAIMED.

11.2. SAMSUNG SDS DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE HARDWARE, OPERATING SYSTEM, INTEGRATED SOFTWARE OR MEDIA.

11.3. EXCEPT AS MAY BE PROVIDED IN THE APPLICABLE LICENSE AGREEMENT(S), THE OPERATING SYSTEM IS PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES, REPRESENTATIONS, AND GUARANTEES WITH RESPECT TO THE OPERATING SYSTEM OR SOFTWARE PROVIDED BY A THIRD PARTY ARE HEREBY VOID, OVERRIDDEN, EXCLUDED, AND DISCLAIMED.

11.4. Replacement units for defective parts replaced under the applicable Limited Warranty may be new or like new quality. Such replacement units assume the warranty status of the Hardware into which they are installed and have no separate or independent warranty of any kind. Title in all defective parts shall transfer back to Samsung SDS upon removal from the Hardware.

## 12. DELIVERY, INSTALLATION AND ACCEPTANCE OF HARDWARE

12.1. Customer is responsible for installation of the Hardware unless Customer purchases installation Services from Samsung SDS for that Hardware under a Quote Form. Samsung SDS will deliver the Hardware to the delivery address specified by Customer on the Quote Form.

12.2. Acceptance of the Hardware is deemed to occur on delivery. Samsung SDS may invoice Customer for partial deliveries. Samsung SDS may make substitutions and modifications to the Hardware that do not cause a material adverse effect in overall Hardware performance. Samsung SDS will use its reasonable commercial efforts to deliver the Hardware within a timeframe that is consistent with Samsung SDS's past practices regarding the amount and type of Hardware that Customer has ordered.

12.3. Title to the Hardware will transfer upon delivery.

## 13. PRICING, INVOICING AND PAYMENT OBLIGATION

13.1. Customer may change a Hardware order prior to shipment subject to the then current change order fee as established by Samsung SDS from time to time.

13.2. In entering into payment obligations under a Quote Form, Customer agrees and acknowledges that Customer has not relied on the future availability of any Hardware, Operating System, Integrated Software or updates to the same. However, (a) if Customer orders Technical Support, the preceding sentence does not relieve Samsung SDS of its obligation to provide such technical support under the General Terms, if and when available, in accordance with Samsung SDS's then current Technical Support policies, and (b) the preceding sentence does not change the rights granted to Customer under a Quote Form and the General Terms.

13.3. Hardware and Integrated Software fees are invoiced as of the Commencement Date.

13.4. Technical Support fees are invoiced annually in advance. The period of performance for all Technical Support is effective upon the Hardware Commencement Date.

13.5. In addition to the prices listed on the Quote Form, Samsung SDS will invoice Customer for any applicable freight charges or applicable Taxes, and Customer will be responsible for such charges and Taxes.

## 14. TERM AND TERMINATION

- 14.1. This Hardware Schedule will become effective on the Commencement Date set forth in the Quote Form and will continue in effect thereafter until the parties have fulfilled all obligations under the Quote Form; provided, however, that a Quote Form will terminate prior to the occurrence of such expiration if such Quote Form is terminated by a party as permitted under the General Terms or in accordance with the Quote Form.
- 14.2. In addition to those Sections stated in Section 7.4 of the General Terms, Section 6 (Ownership), Section 10 (Limitation of Liability, Subsections 11.1(a)(v), 11.1(b)(v), 11.1(c)(v) and 11.1(d)(v) of Section 11 (Warranties, Disclaimers and Exclusive Remedies), Section 13 (Pricing, Invoicing and Payment Obligation), Section 15 (IP Infringement Indemnity), and Section 16 (Indemnification by Customer), of this Hardware Schedule shall survive termination or expiration of the General Terms.

## **15. IP INFRINGEMENT INDEMNIFICATION**

- 15.1. Subject to Subsections 15.2 and 15.3 and below, if a third party makes a claim against Customer alleging that the unmodified Hardware infringes a third party's intellectual property rights, Samsung SDS, at Samsung SDS's sole cost and expense, will defend Customer against the claim and indemnify Customer from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by Samsung SDS, if the Customer does the following:
- a. notifies the Samsung SDS promptly in writing, not later than ten (10) days after the Customer receives notice of the claim (or sooner if required by applicable law);
  - b. gives Samsung SDS sole control of the defense and any settlement negotiations or compromise; and
  - c. gives Samsung SDS the information, authority and assistance Samsung SDS needs, at Samsung SDS's expense, to defend against or settle the claim.
- 15.2. If Samsung SDS believes or it is determined that any of the Hardware may have violated a third party's intellectual property rights, Samsung SDS, at its option, may choose to either modify the Hardware to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially practicable, Samsung SDS may terminate the Agreement and the license for, and require return of, the applicable Hardware and refund any unused, prepaid Technical Support fees paid to Samsung SDS.
- 15.3. Samsung SDS will not indemnify or defend Customer if the Customer (i) makes a correction or modification of the Hardware not provided by Samsung SDS or otherwise alters or uses it outside the scope of use identified in the Hardware Documentation; (ii) uses a version of Hardware which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of Hardware which was provided to the Customer; (iii) fails to properly install an update; (iv) continues to use the applicable Hardware after the end of the license to use that Hardware; or (v) combines the Hardware with items not provided by Samsung SDS or approved for combination with the Hardware in the Hardware Documentation. Samsung SDS will not indemnify nor defend Customer to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by Samsung SDS. Samsung SDS will not indemnify nor defend Customer for any portion of an infringement claim that is based upon the combination of any Hardware with any products or services not provided by Samsung SDS. Samsung SDS will not indemnify nor defend Customer for infringement caused by Customer's actions against any third party if the Hardware as delivered to Customer and used in accordance with the terms of the Agreement would not otherwise infringe any third party intellectual property rights.
- 15.4. This Section (IP Infringement Indemnification) provides Customer's exclusive remedy and Samsung SDS's sole liability in connection with any Hardware infringement claims.

## **16. INDEMNIFICATION BY CUSTOMER**

Customer shall, at its sole expense, defend, indemnify, and hold harmless Samsung SDS and its licensors from and against any and all claims, proceedings, damages, injuries, liabilities, losses, costs, and expenses (including attorneys' fees and litigation expenses) that Samsung SDS or its licensors may incur relating to or arising from (i) any modification of or addition to the Hardware, Operating System, Integrated Software not provided or approved in writing by Samsung SDS, or (ii) any infringement, misappropriation, or other claim that arises from the combination of the Hardware, Operating System or Integrated Software with any hardware, software or data not authorized in writing by Samsung SDS, provided that such claim would not have arisen from the use of the Hardware, Operating System or Integrated Software alone.

## SERVICES SCHEDULE

This Services Schedule (this "**Services Schedule**") is a Schedule to the General Terms and all such terms shall apply to Services ordered by a Customer under a Quote Form

### 1. DEFINITIONS

Capitalized terms used but not defined in this Services Schedule have the meanings set forth in the General Terms.

- 1.1. "**Hardware**" refers to the hardware equipment owned or distributed by Samsung SDS that Customer can order under the General Terms pursuant to a Quote Form attached to a Hardware Schedule.
- 1.2. "**Services**" means the professional services ordered by Customer under a Quote Form which may include installation, development, consulting, education, integration, implementation or installation but does not include Technical Support or any cloud services.
- 1.3. "**Software**" refers to the software owned or distributed by Samsung SDS that Customer can order under the General Terms pursuant to a Quote Form.
- 1.4. "**Specifications**" means the definitive specifications for the Services expressly contained in the Quote Form.
- 1.5. "**Work Product**" means the work product or deliverables created for Customer as part of the Services.

### 2. RIGHTS GRANTED

- 2.1. Samsung SDS retains all ownership and intellectual property rights to the Work Product. Work Product shall be considered as Samsung SDS's Confidential Information. Upon payment of the fees for Services, Customer have the non-exclusive, non-assignable, royalty-free, perpetual, limited right, without right of sublicense, to use the Work Product solely for Customer's internal business operations. This provision does not grant, amend, or modify any license for any Product or documentation owned or distributed by Samsung SDS or its licensors. All rights not expressly granted by Samsung SDS are reserved by Samsung SDS.
- 2.2. Services provided may be related to Customer's license to use Products owned or distributed by Samsung SDS, which Customer acquires under a separate Quote Form to a Software Schedule or a Hardware Schedule. The terms of the applicable Product Schedule and Quote Form shall govern Customer's use of such Products.
- 2.3. If third party software is to be used by Samsung SDS in performing the Services under a Quote Form, both parties shall consult with each other on the treatment thereof, and take necessary actions including the execution of a license agreement between Samsung SDS or the Customer and the relevant third party. Any issue or infringement of rights related thereto shall be managed pursuant to an agreement for use of the relevant third party software, regardless of Samsung SDS's intellectual property infringement indemnification obligations hereof.

### 3. AUTHORIZED REPRESENTATIVES

- 3.1. Within three (3) days of the signing of the Quote Form, each party shall nominate, in writing, the person who will act as its representative and who will be responsible for providing any information which may be required by the other party to perform its obligations under the Quote Form.
- 3.2. For project-type works, the parties shall ensure that their respective representatives will meet periodically as specified in the Quote Form between the Quote Form Commencement Date and the planned acceptance date to discuss and minute the progress of the Services.

### 4. WARRANTIES, DISCLAIMERS

- 4.1. Samsung SDS warrants for a period of ninety (90) days from the date of provision that Services will be provided in a professional manner consistent with industry standards ("Services Warranty Period").
- 4.2. FOR ANY BREACH OF THE WARRANTY SET FORTH IN SUBSECTION 4.1, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND SAMSUNG SDS'S ENTIRE LIABILITY SHALL BE THE RE-PERFORMANCE OF THE NON-CONFORMING SERVICES, OR, IF SAMSUNG SDS CANNOT CORRECT THE NON-CONFORMING SERVICES AFTER UNDERTAKING COMMERCIALY REASONABLE EFFORTS, CUSTOMER MAY END THE NON-CONFORMING SERVICES AND SAMSUNG SDS SHALL REFUND THE FEES CUSTOMER PAID TO SAMSUNG SDS FOR THE NON-CONFORMING SERVICES.

In order to obtain warranty coverage pursuant to this Subsection 4.2, Customer must provide Samsung SDS with the following during the Services Warranty Period: (i) written notice of any warranty non-conformities and (ii) a written description of the nonconformity. Customer shall be deemed to have agreed that the Services have been provided in accordance with Samsung SDS's warranty contained in Subsection 4.1 if Samsung SDS does not receive the aforementioned written notice of nonconformity within the Services Warranty Period.

- 4.3. Samsung SDS warrants for a period of thirty (30) days from the date of provision of the Work Product to Customer that the Work Product shall substantially conform to the Specifications ("Work Product Warranty Period"). Samsung SDS does not warrant that the operation of the Work Product will be uninterrupted or error-free.
- 4.4. FOR ANY BREACH OF THE WARRANTY SET FORTH IN SUBSECTION 4.3, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND SAMSUNG SDS'S ENTIRE LIABILITY SHALL BE THAT SAMSUNG SDS WILL (I) USE COMMERCIALY REASONABLE EFFORTS TO CORRECT NONCONFORMITIES IN THE NONCONFORMING WORK PRODUCT, OR (II) IF SAMSUNG SDS IS UNABLE, AFTER COMMERCIALY REASONABLE EFFORTS, TO CORRECT SUCH NONCONFORMITIES, REFUND THE AMOUNT PAID BY CUSTOMER FOR SUCH WORK PRODUCT. IN THE EVENT OF SUCH REFUND, CUSTOMER'S LICENSE TO USE SUCH WORK PRODUCT GRANTED IN THIS SERVICE SCHEDULE SHALL AUTOMATICALLY TERMINATE, AND

CUSTOMER SHALL PURGE FROM ITS COMPUTER SYSTEMS, STORAGE MEDIA, AND OTHER FILES AND, AT SAMSUNG SDS'S OPTION, DESTROY OR DELIVER TO SAMSUNG SDS OR ITS DESIGNEE, ALL COPIES OF THE WORK PRODUCT PROVIDED.

In order to obtain warranty coverage pursuant to this Subsection 4.4, Customer must provide Samsung SDS with the following during the Work Product Warranty Period: (i) written notice of the warranty claim; (ii) a written description of the non-conformity; (iii) if applicable, a description of the operating conditions, including the specific hardware/software configuration, under which such non-conformity occurred; and (iv) if applicable, a representative sample of inputs for repeating and analyzing such non-conformity. Customer shall be deemed to have agreed that the Work Product has been provided in accordance with Samsung SDS's warranty contained in Subsection 4.3 if Samsung SDS does not receive the aforementioned written notice of nonconformity within the Work Product Warranty Period.

- 4.5. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 4 (WARRANTIES; DISCLAIMERS), ALL WARRANTIES, REPRESENTATIONS, AND GUARANTEES WITH RESPECT TO THE SERVICES AND THE WORK PRODUCT, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE), ARE HEREBY VOID, OVERRIDDEN, EXCLUDED AND DISCLAIMED.

## **5. CHANGE CONTROL PROCESS**

- 5.1. Any request for any change in Services must be in writing; this includes requests for changes in project plans, scope, specifications, schedule, designs, requirements, service deliverables, software environment, hardware environment or any other aspect of Customer's order under a Quote Form. Samsung SDS shall not be obligated to perform tasks related to changes in time, scope, cost, or contractual obligations until Customer and Samsung SDS agree in writing to the proposed change in an amendment to the applicable Quote Form and/or applicable exhibit(s).
- 5.2. The amendment shall include, at a minimum, the following items: (i) a description of the scope of the Services or terms and conditions to be added or changed, and (ii) the proposed adjustment of the fees or additional fees to be paid to Samsung SDS for any additional Services.
- 5.3. If Samsung SDS performs the Services added or changed as requested by Customer without any prior written mutual agreement, Samsung SDS shall be paid by Customer for such Services so added or changed.

## **6. CUSTOMER'S OBLIGATIONS**

- 6.1. Customer acknowledges that Customer's timely provision of and access to office accommodations, facilities, equipment, assistance, cooperation, complete and accurate information and data from Customer's officers, agents, and employees, and suitably configured computer products (collectively, "cooperation") are essential to Samsung SDS's performance of any Services under a Quote Form. Samsung SDS will not be responsible for any delay or deficiency in performing Services if such delay or deficiency results from Customer's failure to provide full cooperation.
- 6.2. Customer acknowledges that Samsung SDS's ability to perform the Services and any related estimate depends upon Customer's fulfillment of the following obligations and the following project assumptions:
- Maintain the properly configured hardware/operating system platform to support the Services.
  - Obtain licenses under separate contract for any necessary Samsung SDS software and hardware programs before the commencement of Services.
  - If applicable, maintain annual Technical Support for the Samsung SDS Software and Hardware under separate contract throughout the term of the Services.
  - Provide Samsung SDS with full access to relevant functional, technical and business resources with adequate skills and knowledge to support the performance of Services.
  - Provide, for all Samsung SDS resources performing Services at Customer's site, a safe and healthful workspace (e.g., a workspace that is free from recognized hazards that are causing, or likely to cause, death or serious physical harm, a workspace that has proper ventilation, sound levels acceptable for resources performing Services in the workspace, and ergonomically correct work stations, etc.).
  - Provide any notices, and obtain any consents, required for Samsung SDS to perform Services.
  - Provide Samsung SDS access to any production environment or shared development environments to the extent necessary for Samsung SDS to perform Services.
  - If while performing Services Samsung SDS requires access to other vendor's products that are part of Customer's system, Customer will be responsible for acquiring all such products and the appropriate license rights necessary for Samsung SDS to access such products on Customer's behalf.
  - Designate a Customer employee as a project manager who shall work together with Samsung SDS's project manager to facilitate an efficient delivery of Services.

## **7. FEES, INVOICING AND PAYMENT OBLIGATION**

Customer shall pay Samsung SDS the fees set forth in the Quote Form. Fees are invoiced in advance of the Services performance, unless otherwise set forth in the Quote Form. The period of performance for all Services is effective upon the Start Date set forth in the Quote Form.

## **8. EXPIRATION; TERMINATION**

- 8.1. The Services shall commence on the Start Date set forth in the Quote Form and continue in effect thereafter until the parties have fulfilled all obligations under the Quote Form; provided, however, that a Quote Form will terminate prior to the occurrence of such expiration if such Quote Form is terminated by a party as permitted under the General Terms or in accordance with the Quote Form.

- 8.2. If the Agreement is terminated due to Customer's breach of the General Terms, the payment date of all fees due to Samsung SDS shall automatically be accelerated so that they shall become due and payable on the effective termination date, even if longer terms had been provided previously.
- 8.3. In addition to those Sections stated in Section 7.4 of the General Terms, Section 2 (Rights Granted) Section 4 (Warranties, Disclaimers), Section 7 (Fees, Invoicing and Payment Obligation), Section 11 (Limitation of Liability, Section 12 (IP Infringement Indemnity), and Section 13 (Indemnification by Customer), of this Services Schedule, and other sections that are intended to survive termination or expiration of the General Terms, shall survive termination or expiration of the General Terms.

## **9. SUSPENSION**

- 9.1. Customer may at any time request that Samsung SDS suspend the Services, or any part of them, by giving fifteen (15) days prior written notice to Samsung SDS and Samsung SDS shall, at its sole discretion, grant or reject such request. In the event Samsung SDS agrees to suspend the Services, Samsung SDS shall be paid for all Services rendered through the date of such suspension, including any expenses or additional costs incurred by Samsung SDS in the interruption, resumption and remobilization of Services under the General Terms. Once the Customer directs Samsung SDS to resume work on the Services, the Services schedule shall be adjusted to reflect an extension of time commensurate with such suspension of work.
- 9.2. No suspension of the Services under the General Terms is permitted in the aggregate to exceed a period of forty-five (45) calendar days within any one (1) year of Services under the General Terms. If the total number of days of suspension exceeds forty-five (45) calendar days, Samsung SDS may treat the suspension as a termination of the General Terms by Customer.

## **10. INSPECTION**

- 10.1. Upon Samsung SDS completing the provision of the Work Product, it shall notify Customer in writing, resulting in the inspection of the Work Product by the Customer. Upon receipt by Customer of such notice, Customer shall conduct an inspection of such Work Product with the attendance of Samsung SDS within fourteen (14) days of the receipt of the notice ("Initial Inspection Period").
- 10.2. Customer may reject the final Work Product if such Work Product does not conform substantially in accordance with the Specifications. However, if Customer fails to give SDSA a written notice specifying such non-conformance, the Work Product shall be deemed to have been accepted by Customer.
- 10.3. If the Work Product is so rejected by Customer in accordance with the above, Customer may request Samsung SDS to respond to such failure by giving a written notice to Samsung SDS containing a detailed description of such nonconformities of the Work Product and Samsung SDS shall have fourteen (14) business days to correct such nonconformities and re-provide such Work Product to Customer. Customer shall have seven (7) business days after receipt of notice of the completion of the re-provided Work Product to conduct an inspection of the re-provided Work Product ("Second Inspection Period"). Customer may again reject such re-provided Work Product if it does not substantially conform to the Specifications. If Customer fails to give Samsung SDS the written notice specifying the failure of the re-provided Work Product to so meet the Specifications within the Second Inspection Period, the Work Product shall be deemed to have been accepted by Customer.
- 10.4. If Customer rejects such re-performed Work Product in accordance with the above, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR SUCH FAILURE SHALL BE THE REFUND OF THE AMOUNT PAID BY CUSTOMER FOR SUCH WORK PRODUCT.

## **11. LIMITATION OF LIABILITY**

- 11.1. EXCEPT FOR SAMSUNG SDS'S OBLIGATIONS UNDER SECTION 12 (IP INFRINGEMENT INDEMNIFICATION) OF THIS SERVICES SCHEDULE, OR SAMSUNG SDS'S BREACH OF SECTION 6 (NONDISCLOSURE) OF THE GENERAL TERMS, IN NO EVENT SHALL SAMSUNG SDS, ITS AFFILIATES, OR ITS SUPPLIERS, BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE, PROFITS, DATA, OR GOODWILL, ARISING OUT OF OR IN CONNECTION WITH A QUOTE FORM TO THIS SERVICES SCHEDULE, WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN.
- 11.2. EXCEPT FOR SAMSUNG SDS'S OBLIGATIONS UNDER SECTION 12 (IP INFRINGEMENT INDEMNIFICATION) OF THIS SERVICES SCHEDULE, OR SAMSUNG SDS'S BREACH OF SECTION 6 (NONDISCLOSURE) OF THE GENERAL TERMS, IN NO EVENT SHALL SAMSUNG SDS'S CUMULATIVE LIABILITY ARISING OUT OF OR IN CONNECTION WITH A QUOTE FORM TO THIS SERVICES SCHEDULE EXCEED AN AMOUNT EQUAL TO THE LOWER OF (i) TEN PERCENT (10%) OF THE TOTAL AMOUNTS CUSTOMER HAS PAID SAMSUNG SDS UNDER THE QUOTE FORM OR (ii) THE TOTAL AMOUNTS CUSTOMER HAS PAID SAMSUNG SDS UNDER THE QUOTE FORM IN THE SIX (6) MONTHS PRECEDING THE ARISING OF THE CAUSE OF ACTION. NOTWITHSTANDING THE FOREGOING LIMITATION IN THIS SECTION 11.2, IF SUCH LIABILITY RESULTS FROM CUSTOMER'S USE OF WORK PRODUCT, SUCH LIABILITY SHALL BE LIMITED TO THE FEES CUSTOMER PAID SAMSUNG SDS FOR THE DEFICIENT WORK PRODUCT GIVING RISE TO THE LIABILITY.
- 11.3. THIS SECTION (LIMITATION OF LIABILITY) WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY DESPITE THE FOREGOING EXCLUSION AND LIMITATIONS.

## **12. IP INFRINGEMENT INDEMNIFICATION**

- 12.1. Subject to Subsections 12.2, 12.3 and 12.4 below, if a third party makes a claim against Customer alleging that the unmodified Work Product infringes a third party's intellectual property rights, Samsung SDS, at Samsung SDS's sole cost and expense, will defend Customer against the claim and indemnify Customer from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by Samsung SDS, if the Customer does the following:

- a. notifies the Samsung SDS promptly in writing, not later than ten (10) days after the Customer receives notice of the claim (or sooner if required by applicable law);
  - b. gives Samsung SDS sole control of the defense and any settlement negotiations or compromise; and
  - c. gives Samsung SDS the information, authority and assistance Samsung SDS needs, at Samsung SDS's expense, to defend against or settle the claim.
- 12.2. If Samsung SDS believes or it is determined that any of the Work Product may have violated a third party's intellectual property rights, Samsung SDS, at its option, may choose to either replace or modify the Work Product to be non-infringing (while substantially preserving its utility or functionality) or procure the right for continued use, or if these alternatives are not commercially practicable, Samsung SDS may terminate the General Terms and the license for, and require return of, the affected Work Product and refund the amount of the fees Customer has paid to Samsung SDS for the affected Work Product. If such return materially affects Samsung SDS's ability to meet its obligations under the relevant Quote Form, then Samsung SDS may, at its option and upon thirty (30) days prior written notice, terminate the Quote Form.
- 12.3. Samsung SDS will not indemnify not defend Customer if: (i) Customer has used the Work Product in conjunction with any system, equipment, software or data provided by a third party without the written consent of Samsung SDS; (ii) Samsung SDS has developed the Work Product using tangible or intangible materials provided by Customer, including, but not limited to, hardware, software, program design or specifications, or Samsung SDS as made any amendment, adaptation or modification upon the request of Customer; or (iii) Customer unilaterally has amended, adapted or modified the Work Product. . Samsung SDS will not indemnify nor defend Customer for infringement caused by Customer's actions against any third party if the Work Product as delivered to Customer and used in accordance with the terms of the Customer Agreement would not otherwise infringe any third party intellectual property rights.
- 12.4. THIS SECTION (IP INFRINGEMENT INDEMNIFICATION) PROVIDES CUSTOMER'S EXCLUSIVE REMEDY AND SAMSUNG SDS'S SOLE LIABILITY IN CONNECTION WITH ANY INFRINGEMENT CLAIMS.

### **13. INDEMNIFICATION BY CUSTOMER**

Customer shall, at its sole expense, defend, indemnify, and hold harmless Samsung SDS and its licensors from and against any and all claims, proceedings, damages, injuries, liabilities, losses, costs, and expenses (including attorneys' fees and litigation expenses) that Samsung SDS or its licensors may incur relating to or arising from (i) any modification of or addition to the Work Product not provided or approved in writing by Samsung SDS, or (ii) any infringement, misappropriation, or other claim that arises from the combination of the Work Product with any hardware, software or data not authorized in writing by Samsung SDS, provided that such claim would not have arisen from the use of the Work Product alone.