

**SAMSUNG SDS AMERICA, INC.**  
**SERVICE TERMS FOR INDIRECT PURCHASERS**

Updated on November 16, 2020

These Service Terms for Indirect Purchasers (“**Terms**”) set forth the terms and conditions that govern all Professional Services (as defined below) that are purchased by a customer (“**Customer**”) through an authorized reseller (“**Reseller**”). These Terms will not apply if Customer has a separate applicable agreement with Samsung SDS America, Inc. (“**SDSA**”) for the provision of Professional Services. SDSA and Customer are each referred to in these Terms as a “**party**” and collectively as the “**parties.**”

1. DEFINITIONS.

“**Business Contact Information**” means any information that would allow an individual at Customer to be contacted, including names, addresses, email addresses, telephone numbers, user IDs, and other similar information relating to any employee, representative, agent, contractor, or end user.

“**Business Day**” means a day other than a Saturday, Sunday, or other day on which commercial banks in New York City are authorized or required by Law to be closed for business.

“**Deliverables**” means all documents, deliverables, and other materials that are delivered to Customer or prepared by or on behalf of SDSA in the course of performing the Professional Services, including any items identified as such in a Statement of Work.

“**Intellectual Property Rights**” means all: **(a)** patents, patent disclosures, and inventions (whether patentable or not); **(b)** trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith; **(c)** copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases; **(d)** trade secrets, know-how, and other confidential information; and **(e)** all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

“**Personally Identifiable Information**” means information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household, including the categories of information listed in Section 1798.140(o)(1) of the California Consumer Privacy Act of 2018.

“**Pre-Existing IP**” means Intellectual Property Rights, existing, owned, or otherwise licensed by Customer or SDSA prior to entering into these Terms.

“**Professional Services**” means any professional services provided by SDSA, as described in a Statement of Work issued by SDSA or otherwise.

“**Professional Services Materials**” mean all materials and information, including software, tools, know-how, utilities, methodologies, inventions, or innovations of any kind and/or information that SDSA or a Resource working on SDSA’s behalf may create, conceive, develop, use or reduce to practice, alone or jointly with others, in the course of, or as a result of, performing Professional Services, including any modifications or improvements to such materials.

“**Resource**” means all individuals involved in the performance of Professional Services as employees or independent contractors of SDSA or any of SDSA’s subcontractors or suppliers.

“**Statement of Work**” means a document issued by SDSA to Customer that includes: **(a)** a description of the Professional Services, including any Deliverables; **(b)** the applicable fees and payment terms for such Professional Services; and **(c)** any other applicable terms and conditions. SDSA, in its sole discretion, may

require Customer to sign any Statement of Work.

2. PURCHASE THROUGH RESELLER. Customer acknowledges that Reseller is not authorized to alter, amend or modify these Terms. SDSA is not liable for any act or omission of any Reseller.
3. SCOPE OF SERVICES. SDSA will perform Professional Services in accordance with these Terms and any applicable Statement of Work. Changes to the Professional Services specified in a Statement of Work will not be effective unless a change order has been executed by authorized representatives of both parties. Professional Services are of a scalable, repeatable nature and, as such, the same or similar Professional Services have been and will continue to be provided to other SDSA customers. No custom development activity will be performed as Professional Services. Any custom development will be subject to a separate written agreement that is signed by authorized representatives of the parties.
4. FEES AND EXPENSES. All fees for Professional Services are as agreed to between Reseller and Customer. In addition to fees for Professional Services, Customer shall pay any out-of-pocket expenses, including travel, meals, and lodging, that are reasonably incurred by SDSA during the performance of the Professional Services. Customer's payment obligations for the Professional Services, including for fees and expenses, will be with Reseller, not SDSA.
5. INTELLECTUAL PROPERTY RIGHTS. Each party will retain all right, title, and interest in and to its Pre-Existing IP. SDSA will retain all right, title, and interest in and to the Professional Services, Professional Services Materials, Deliverables, and Intellectual Property Rights embodied therein. In no event will Professional Services Materials be deemed to include Customer's Pre-Existing IP or Confidential Information. Customer hereby grants SDSA a non-exclusive, worldwide, royalty-free, fully paid-up license to use Customer's Pre-Existing IP and Confidential Information for the sole purpose of performing the Professional Services and providing the Deliverables. Upon receipt of full payment, SDSA hereby grants to Customer a limited, non-exclusive, non-transferable, terminable license, with no right to sublicense, to use the Deliverables, including any information incorporated in such Deliverables, and Professional Services Materials solely for Customer's internal business purposes. Customer shall not re-distribute the Deliverables (including any Professional Services Materials incorporated therein) to any third parties without SDSA's prior written consent.
6. WARRANTY. SDSA warrants that Professional Services will be performed in a professional and workmanlike manner consistent with generally accepted industry practices ("**Services Warranty**"). If Customer believes that SDSA has breached this Services Warranty, then Customer must notify SDSA of the breach in reasonable detail within thirty (30) days after the date on which the breach first occurred. If SDSA receives a timely notice under this Section 6, SDSA will use commercially reasonable efforts to correct or re-perform the Professional Services described by Customer in its notice to SDSA to the extent that those Professional Services failed to comply with the Services Warranty. The remedy stated in this Section 6 is the sole remedy, and SDSA's sole obligation, with respect to any Professional Services that fail to comply with the Services Warranty. EXCEPT FOR THE SERVICES WARRANTY, SDSA HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, SDSA MAKES NO WARRANTY OF ANY KIND THAT ANY PROFESSIONAL SERVICES WILL: **(a)** MEET THE REQUIREMENTS OF CUSTOMER OR ANY THIRD PARTY; **(b)** OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OTHER GOODS, SERVICES, HARDWARE, SOFTWARE, TECHNOLOGIES, INFORMATION, OR MATERIALS; OR **(c)** BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.
7. COOPERATION. 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 SDSA's performance of any Professional Services under a Statement of Work. In addition, Customer shall obtain all licenses and other consents required for SDSA to provide the Professional Services without infringing any third-party Intellectual Property Rights. SDSA will not be responsible for any delay or deficiency in performing Professional Services if such delay or deficiency results from Customer's failure to

provide full cooperation or to obtain any license or consent.

8. **BUSINESS CONTACT INFORMATION.** Customer hereby irrevocably grants to SDSA and its affiliates, and to its and their respective subcontractors and suppliers, all rights and permissions in or relating to Business Contact Information that are necessary for them to exercise their rights and perform their obligations in connection with the Statement of Work and the Professional Services. Customer's obligations under this Section 8 include making any disclosures and obtaining any consents required to provide information regarding any individual to SDSA and its affiliates, and to its and their respective subcontractors and suppliers. Except for Business Contact Information, Customer shall not disclose any Personally Identifiable Information or any information that is subject to any data privacy or security law, rule, or regulation to SDSA or its affiliates, or to any of their respective subcontractors or suppliers. SDSA will handle all Business Contact Information in accordance with the privacy policy set forth on its website, <https://www.samsungsds.com/en/us>, as it may be relocated or amended by SDSA.

9. **CONFIDENTIAL INFORMATION.**

9.1 The exchange of information in connection with Professional Services is governed by these Terms, in particular, this Section 9 (Confidential Information), which supersedes any prior agreement between the parties relating to information exchanged in connection with these Terms or a Statement of Work.

9.2 If a party discloses its Confidential Information to the other party under these Terms, for purposes of this Section 9 (Confidential Information), the disclosing party is referred to as the "**Disclosing Party**" and the receiving party is referred to as the "**Receiving Party**." Except as otherwise set forth in Section 9.4, "**Confidential Information**" means any non-public information disclosed or made available by the Disclosing Party or any of its Representatives to the Receiving Party or any of its Representatives in oral, visual, written, electronic, or other tangible or intangible form, including any information that is marked, or at the time of disclosure is otherwise designated, as being confidential, and any other information that would be regarded as confidential by a reasonable person based on its nature or the circumstances of its disclosure. Without limiting the foregoing, Confidential Information includes: **(a)** information regarding business, pricing, sales, marketing, affairs, customers, clients, suppliers, plans, intentions, opportunities, operations, processes, and products; **(b)** techniques, specifications, technical data, test procedures and results; **(c)** inventions, know-how, trade secrets, designs, documentation, hardware or software of the Disclosing Party; and **(d)** any information, notes, analysis, or other materials derived from any Confidential Information.

9.3 The Receiving Party shall take all actions as are reasonably necessary and appropriate to preserve and protect all Confidential Information, at all times exercising at least the same degree of care that it uses to preserve and protect its own Confidential Information, but in no event less than a reasonable degree of care. The Receiving Party shall use Confidential Information only for the purpose of performing its obligations or exercising its rights under these Terms. The Receiving Party shall not disclose Confidential Information, whether directly or indirectly, to any third party without the prior written consent of the Disclosing Party. However, the Receiving Party may grant access to and disclose Confidential Information only to its directors, officers, employees, consultants, or agents (collectively, "**Representatives**") to whom disclosure is necessary to the performance of the Receiving Party's obligations or exercising its rights under these Terms, provided that each such Representative is subject to written obligations of confidentiality that are substantially as restrictive as those contained in these Terms and that are applicable, by their own terms, to the Disclosing Party's Confidential Information. The Receiving Party shall be liable for all acts and omissions of its Representatives in breach of this Section 9 (Confidential Information), and shall take all commercially reasonable measures (including court proceedings when appropriate) to restrain such Representatives from unauthorized disclosure or use of Confidential Information.

9.4 Confidential Information does not include any information that: **(a)** is made public by the Disclosing Party, or is in the public domain other than as a result of a breach of these Terms; **(b)** was already known to or in the possession of the Receiving Party without an obligation of confidentiality before its receipt of Confidential Information whether directly or indirectly from the Disclosing Party, as evidenced by the Receiving Party's written records; **(c)** 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 **(d)** is independently developed by the Receiving Party without use of Confidential Information as evidenced by the Receiving Party's written records.

9.5 Upon request by and at the election of the Disclosing Party at any time, or upon termination or expiration of the Statement of Work (or, if the parties have not entered into a Statement of Work, the termination of Professional Services), the Receiving Party shall within ten (10) days from the date of such request, termination, or expiration 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 remove and delete all electronic copies of Confidential Information from all storage media (except for Confidential Information contained in backups) and furnish written verification of complete removal and deletion to the Disclosing Party within thirty (30) days from the date of the Disclosing Party's request or the termination or expiration of the Statement of Work. Confidential Information contained in backups will be permanently destroyed at the end of the Receiving Party's retention period, and all of the obligations under this Section 9 (Confidential Information) will continue to apply until such permanent destruction.

9.6 The parties agree and acknowledge that Confidential Information constitutes valuable proprietary information for which there may be no adequate remedy at law for any breach of the obligation under this Section 9 (Confidential Information), which breach may result in irreparable harm to the Disclosing Party. The parties therefore agree that upon any such breach or threatened breach of the provisions of these 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 or other remedies at law.

9.7 Notwithstanding anything to the contrary in this Section 9 (Confidential Information), and to the minimum extent legally required, the Receiving Party may disclose Confidential Information to the extent required by law or order by a government, court, or applicable regulatory body, provided that the Receiving Party shall promptly provide the Disclosing Party with written notice of the required disclosure prior to such disclosure (unless notice is prohibited by such law) so as to afford the Disclosing Party reasonable opportunity to seek relief 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 relief or protective order.

10. TERMINATION. Either party may terminate a Statement of Work immediately on written notice if the other party materially breaches the Statement of Work and fails to cure its breach within thirty (30) days after its receipt of a notice from the non-breaching party that describes the breach in reasonable detail. No termination will relieve Customer from its obligations to pay any amounts that have accrued under this Agreement or any Statement of Work prior to such termination, including all expenses and time and material costs incurred or expended by SDSA, and any early termination fees set forth in such terminated Statement of Work, which will be immediately due upon termination. Customer may request that SDSA complete the Professional Services in progress after notice of termination. SDSA may, in its sole discretion, elect to complete such Professional Services, and, upon completion, will be entitled to full compensation.

#### 11. LIMITATION OF LIABILITY.

11.1 EXCEPT AS PROVIDED BELOW IN SECTION 11.3, IN NO EVENT WILL SDSA, ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THESE TERMS (INCLUDING ANY STATEMENT OF WORK) OR THEIR SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, STRICT LIABILITY, AND OTHERWISE TO CUSTOMER OR ANY THIRD PARTY, FOR ANY: **(a)** INCREASED COSTS, DIMINUTION IN VALUE, OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; **(b)** LOSS OF GOODWILL OR REPUTATION; **(c)** USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY SOFTWARE, INFORMATION, BUSINESS, OR SERVICE; **(d)** LOSS, DAMAGE, CORRUPTION, RECOVERY, OR RECONSTRUCTION OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; **(e)** COST OF REPLACEMENT GOODS OR SERVICES; OR **(f)** CONSEQUENTIAL, ENHANCED, EXEMPLARY, INCIDENTAL, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES, IN EACH CASE REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

11.2 EXCEPT AS PROVIDED BELOW IN SECTION 11.3, AND TO THE EXTENT PROHIBITED BY APPLICABLE LAW,

IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF SDSA, ITS AFFILIATES, AND ITS AND THEIR RESPECTIVE SUPPLIERS UNDER OR IN CONNECTION WITH THESE TERMS (INCLUDING ANY STATEMENT OF WORK) OR THEIR SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY OF LIABILITY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, STRICT LIABILITY, AND OTHERWISE, EXCEED THE FEES PAID BY CUSTOMER FOR THE PROFESSIONAL SERVICES UNDER THE APPLICABLE STATEMENT OF WORK. THIS LIMITATION IS CUMULATIVE AND NOT PER INCIDENT.

11.3 The limitations set forth in Sections 11.1 and 11.2 will not apply to liability for claims arising from: **(a)** death or bodily injury caused by a Party's negligence or gross negligence; **(b)** willful misconduct, fraud, or any liability which cannot be excluded under applicable law; or **(c)** Customer's indemnification obligations under Section 12 (Indemnification).

12. INDEMNIFICATION. Customer shall, at its sole expense, defend, indemnify, and hold harmless SDSA and its affiliates and licensors from and against any and all claims, proceedings, damages, injuries, liabilities, losses, costs, and expenses (including attorneys' fees and litigation expenses) that SDSA or its licensors may incur relating to or arising from: **(a)** any modification of or addition to a Deliverable not provided or approved in writing by SDSA; **(b)** any infringement, misappropriation, or other claim that arises from the combination of a Deliverable with any hardware, software or data not authorized in writing by SDSA, provided that such claim would not have arisen from the use of the Deliverable alone; or **(c)** any failure by Customer to obtain any third-party licenses or consents, including software licenses, that are required for SDSA to freely and without interruption perform the Professional Services.

13. FORCE MAJEURE. Neither party will be liable to the other for any alleged loss or damages resulting from acts of God, acts of civil or military authority, governmental priorities, fire, floods, earthquakes, epidemics, quarantine, energy crises, strikes, labor trouble, terrorism, war, riots, accidents, shortages, delays in transportation or any other causes beyond the reasonable control of a party.

14. WAIVER. Any waiver or failure to enforce any provision of these Terms on any occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Either party's exercise of any right or remedy provided in these Terms will be without prejudice to its right to exercise any other right or remedy.

15. SEVERABILITY. In the event any provision of these Terms is held by a court of competent jurisdiction to be unenforceable for any reason, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions hereof will be unaffected and remain in full force and effect.

16. ASSIGNMENT. Customer may not assign any rights or delegate any obligations under these Terms without the prior written consent of SDSA. Any purported assignment by Customer without SDSA's prior written consent will be null and void.

17. SUBCONTRACTORS. SDSA may use subcontractors to fulfill its obligations under these Terms. SDSA will be responsible for its subcontractors' obligations hereunder.

18. INDEPENDENT CONTRACTORS. The relationship of the parties under these Terms is that of independent contractors. Nothing set forth in these Terms will be construed to create the relationship of principal and agent, franchisor/franchisee, joint venture, or employer and employee between the parties. Neither party will act or represent itself, directly or by implication, as an agent of the other party.

19. AUDIT. Customer grants SDSA and its independent accountants the right to audit Customer or Customer's subcontractors once annually during regular business hours upon reasonable notice to verify compliance with these Terms.

20. CHOICE OF LAW AND FORUM. These Terms and all Statements of Work are governed by and will be construed in accordance with the internal substantive and procedural laws of the State of New Jersey (without giving effect to any choice or conflict of law provision or rule, whether of the State of New Jersey or any other jurisdiction). Any legal suit, action, or proceeding arising out of or relating to these Terms or any Statement of Work must be instituted in the federal courts of the United States of America or the courts of the State of New Jersey, in each case located in the State of New Jersey in Newark, and each party irrevocably submits to the

exclusive jurisdiction of such courts in any such suit, action, or proceeding. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT.

21. NO THIRD-PARTY BENEFICIARIES. Except as expressly provided above in Section 12 (Indemnification), no third-party beneficiary relationship is created by these Terms.

22. NOTICES. All notices and consents that are given or made by a party to the other party under these Terms must be made in writing and personally delivered or sent to the other party by nationally recognized overnight courier (i.e., FedEx or UPS) or certified mail (return receipt requested). Notices to SDSA must be sent to: Samsung SDS America, Inc., 100 Challenger Road, 6th Floor, Ridgefield Park, New Jersey 07660, Attn.: Legal Department. Notices and consents to Customer must be sent to the address provided by Customer to SDSA during the customer registration process or to the address for Customer that is set forth in the Statement of Work. If either party updates its address in a notice sent in accordance with this Section 22, then notice must be sent to that party at the address set forth in its notice. Notices are effective upon receipt. Notices that are delivered on a Business Day after 5:00 p.m. at the receiving party's location, or at any time on a day that is not a Business Day, are hereby deemed to be received on the following Business Day. Notices that are rejected by the receiving party are hereby deemed to be received upon their rejection. Notices that cannot be delivered because of the receiving party's failure to notify the other party of a change of address in accordance with this Section 22 are deemed to be received upon the inability to deliver.

23. ENTIRE AGREEMENT. These Terms, including any supplemental terms referenced herein or an applicable Statement of Work: **(a)** represent the entire agreement and understanding between the parties with respect to the Professional Services; **(b)** supersede any previous communications, representations or agreements between the parties regarding their subject matter; and **(c)** prevail over any conflicting or additional terms in any quote, purchase order, acknowledgement, or similar communications between the parties or between Customer and a SDSA authorized reseller.

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