

**GENERAL TERMS AND CONDITIONS**  
**FOR RESELLERS OF**  
**SAMSUNG SDS AMERICA, INC.'S OFFERINGS AND SERVICES**

In addition to the terms and conditions in the cover page (the “**Cover Page**”) to these General Terms and Conditions (“**General Terms**”) that has been signed by the parties, these General Terms govern the purchase and resale of SDSA Offerings and Third-Party Offerings (collectively, “**Offerings**”) from Samsung SDS America, Inc. (“**SDSA**,” “**we**,” “**us**,” or “**our**”) by the reseller that signed the Cover Page (“**Reseller**,” “**you**,” or “**your**”). In this Agreement, the term “**party**” refers to you or us, and the term “**parties**” refers to both you and us.

**1. Structure of the Agreement.**

When the term “**Agreement**” is used in these General Terms or the Cover Page, it refers to both of those documents and any accepted Purchase Order and fully executed Related SOW, collectively. These General Terms govern all Purchase Orders and Related SOWs. Only a valid Purchase Order will obligate us to supply, and you to purchase, any Offering or Professional Services. Only a Related SOW that has been signed by both parties will obligate us to provide, and you to purchase, any Related Services. Each Purchase Order or Related SOW is a separate agreement. None of your separate terms and conditions will apply or otherwise be binding upon us. You make no commitment to purchase, and we make no commitment to supply, any Offering, Professional Services, or Related Services by entering into this Agreement.

**1.1 Third-Party Offerings.**

**1.1.1 General Terms for Third-Party Offerings.** You hereby acknowledge that all Third-Party Offerings are: **(a)** designed, manufactured, developed, licensed, maintained, and supported exclusively by one or more third parties and not us, and **(b)** governed by Third-Party Terms. The availability of any Third-Party Offering from us does not indicate an affiliation with or endorsement of that Third-Party Offering or any third party. We have no obligation to ensure that any use of any Third-Party Offering complies with any applicable Law. You shall look solely to the licensor or provider of a Third-Party Offering for any Losses or claims arising from or relating to the use of any Third-Party Offering, and you hereby release us from any claims arising from the use of any Third-Party Offering.

**1.1.2 Specific Terms for Knox Offerings.** All Knox Offerings are Third-Party Offerings. You shall ensure that any Customer purchasing a Knox Offering is presented with and has read and agreed to the applicable Third-Party Terms prior to downloading, accessing, using, or receiving the Knox Offering. The Third-Party Terms for Knox Offerings are currently located at <https://www.samsungknox.com/en/eula>. You hereby acknowledge that we are not the licensor or provider of any Knox Offering and that we do not provide any support or maintenance for any Knox Offering. You shall look solely to the licensor or provider of a Knox Offering for any Losses or claims arising from or relating to that Knox Offering. You hereby release us from any Losses or claims arising from or relating to the use of any Knox Offering.

**1.2 SDSA Offerings.** SDSA Offerings are governed solely by a separate end user license agreement or other terms and conditions that are between us (or its licensors, as applicable) and the Customer purchasing a license or subscription to the SDSA Offering (“**SDSA Terms**”). SDSA Terms may be made available at <https://www.samsungsds.com/us/legal/terms.html>, provided as a hard-copy, or presented as a “click-through” agreement during the installation or login process. You hereby agree to ensure that any Customer purchasing a SDSA Offering is presented with and has read and agreed to the applicable SDSA Terms prior to downloading, accessing, using, or receiving the SDSA Offering. You shall not grant any rights or make any warranties or representations with respect to any SDSA Offering. We may, in our sole discretion, make evaluation, trial, beta and other not-for-sale versions of SDSA Offerings available to you in accordance with additional terms and conditions. We may modify or discontinue any SDSA Offering at any time in our sole discretion.

**2. Ordering.**

**2.1 Quotes.** During the Term, you may request Quotes from us for Offerings and Professional Services. We shall use commercially reasonable efforts to respond to each request for a Quote within a reasonable period of time. When requesting a Quote for Professional Services, you must include in your request the prospective Customer’s Business Contact Information, a description of the requested Professional Services, and any information required for us to prepare a Quote. A Quote listing the expected scope of services and an initial price estimate based on the information provided to us will generally precede the preparation of a Statement of Work. You hereby acknowledge that we may engage in direct discussions with a prospective Customer and that we may require any prospective Customer to sign our standard nondisclosure agreement at any time. Pricing for any Statement of Work may differ from the estimate in the Quote on

which it is based. We may decline to provide a Quote, in whole or in part, for any reason, and all Quotes are subject to our withdrawal or modification for any reason and at any time. Quotes do not obligate us to sell, or you to purchase, any Offering or Professional Services. Any terms and conditions contained in any of your requests or other correspondence regarding a Quote are void and unenforceable against us.

**2.2 Purchase Orders.** You may purchase an Offering or Professional Services from us by submitting a Purchase Order to the SDSA sales representative that we designate in writing or as otherwise instructed by us. No Purchase Order will be binding on us until we accept it. All Purchase Orders accepted by us will be governed exclusively by this Agreement even if the Purchase Order includes language to the contrary. We shall use commercially reasonable efforts to accept or reject each Purchase Order within 10 Business Days of its receipt, provided that our failure to reject any Purchase Order will not be deemed to be an acceptance of that Purchase Order. A Purchase Order is deemed to be accepted when we: **(a)** sign and return it to you, or otherwise accept it in writing, **(b)** ship any Hardware listed in the Purchase Order, **(c)** provide any Credentials for an Offering listed in the Purchase Order, or **(d)** begin to perform Professional Services under a Statement of Work identified in the Purchase Order. We may reject any Purchase Order, in whole or in part, for any reason. Each Purchase Order is hereby deemed to incorporate these General Terms, even if the Purchase Order does not expressly refer to this Agreement. You acknowledge and agree that all Purchase Orders are exclusively governed by this Agreement and that we are permitting you to use your own Purchase Order forms solely for your convenience. Except for Transaction Terms, any term or condition in any Purchase Order that supplements or conflicts with any provision in these General Terms is void, even if that Purchase Order contains language to the contrary.

**2.3 Related SOWs.** You may purchase Related Services from us via a Related statement of work (“Related SOW”). Each Related SOW hereby incorporates and is exclusively governed by these General Terms. Any amendment that is contained in a Related SOW will not apply to any other Related SOW. Reseller makes no obligation to purchase, and SDSA makes no commitment to supply, any Related Services by entering into this Agreement. Only a Related SOW that has been signed by both parties constitutes a commitment to purchase and provide Related Services. Each Related SOW is a separate agreement. To be valid, any changes to any Related SOW, including the scope of Related Services, must be set forth in a written change order that has been signed by both parties. Reseller acknowledges and agrees that the Related Services that SDSA performs are of a scalable and repeatable nature, and that SDSA has and will continue to perform the same or similar Related Services for SDSA’s other customers.

**2.4 No Right to Cancel or Modify.** Except as otherwise provided in Section 12.2 (Termination by SDSA) and Section 12.3 (Termination by Either Party), Purchase Orders are non-cancellable and can only be modified by a written amendment that has been signed by an authorized representative of each party.

### **3. Professional Services.**

**3.1 General.** Professional Services will be set forth in a Statement of Work. Each Statement of Work is a separate agreement between us and the applicable Customer that incorporates and is governed by the Service Terms for Indirect Purchasers available at <https://www.samsungsds.com/us/legal/terms.html>, as they may be moved or amended by us (the “Professional Services Agreement”). We will have no liabilities or obligations to you arising from or relating to any Statement of Work. We will have no liability to you for any termination of any Statement of Work, either by us or the Customer, including for any amounts that the Customer is or would otherwise have become obligated to pay to you had the Statement of Work not been terminated. Any termination of a Statement of Work by us or the Customer is deemed to be a termination of the Purchase Order for the applicable Professional Services, provided that the Purchase Order will otherwise remain in effect with respect to any other Offering or Professional Services specified therein. Before any Professional Services are resold to a Customer, you shall ensure that the Customer is aware of the Professional Services Agreement and that your written agreement with the Customer includes the following statement (with the bracketed language appropriately replaced):

All professional services that are provided by Samsung SDS America, Inc. (“SDSA”) and resold to [NAME OF CUSTOMER] are governed by the Samsung SDS America, Inc. Service Terms for Indirect Purchasers available at <https://www.samsungsds.com/us/legal/terms.html>, as they may be moved or amended by SDSA (“Professional Services Agreement”). The Professional Services Agreement constitutes a separate agreement between SDSA and [NAME OF CUSTOMER]. [NAME OF CUSTOMER] hereby accepts the Professional Services Agreement.

### **4. Reseller’s Rights, Obligations, and Restrictions on the Offerings and Professional Services.**

**4.1 Reseller’s Rights.** Subject to this Agreement, we hereby grant to you a nonexclusive, non-sublicensable, nontransferable right to resell the Offerings and Professional Services described in a Quote to your Customers in the

Territory.

4.2 Reseller's Obligations. You shall: **(a)** complete training and obtain certifications for the Offerings and Professional Services, as required by us; **(b)** market, advertise, promote, and sell the Offerings and Professional Services throughout the Territory consistent with good business practice and applicable Law; **(c)** devote sufficient qualified personnel and maintain adequate facilities to fulfill your obligations under this Agreement; **(d)** submit monthly reports to us in connection with your resale activities under this Agreement specifying the sales information for the previous calendar month; and **(e)** deliver the Offerings to your Customers or an authorized Second-Tier Reseller exactly as received from us or our suppliers, or have us deliver or arrange for the delivery of the Offerings directly to the Customers or Second-Tier Resellers.

4.3 Reseller's Restrictions. You shall not: **(a)** except as authorized by us in writing, purchase any Offering or Professional Services for yourself or for resale to any of your Affiliates; **(b)** use any Offering, except as expressly authorized under this Agreement and, where use of an Offering is authorized under this Agreement, in accordance with the applicable SDSA Terms or Third-Party Terms; **(c)** modify any Offering, or remove, alter, or obscure any markings, including any copyright, trademark, or other mark indicating proprietary rights, whether on any Offering, Documentation, or other materials relating to any Offering, or any copies of the same; **(d)** purchase or resell any Offering or Professional Services for use in the planning, construction, operation or maintenance of any nuclear facility, or for life-support, mass transportation, avionics, or any other high risk use where the failure of the Offering, or defect in the Professional Services or a SDSA Deliverable, could result in death, personal injury, harm to the environment, or damage to real or tangible personal property; **(e)** engage in any conduct that may be detrimental to us or to any Offering, such as allowing Credentials to be placed in the public domain, or to our reputation; **(f)** sell, export, or re-export any Offerings or Professional Services to Customers located outside of the Territory, or sell any Offerings or Professional Services, directly or indirectly, to any Person whom you know or have reason to believe intends to resell the Offerings or Professional Services outside of the Territory; **(g)** enter into any agreement that requires you to take any actions that are in conflict with the terms of this Agreement; **(h)** perform or disclose the results of any benchmark tests on any Offering; **(i)** refurbish or repair any Hardware obtained from us or sell or otherwise distribute any refurbished or repaired Hardware other than as expressly authorized in a written agreement between you and the applicable manufacturer; or **(j)** resell any Offering that you acquire from unauthorized third parties.

4.4 Cloud Services. You shall include in each agreement between you and a Customer purchasing Cloud Services an acknowledgment that the Customer is solely responsible for determining whether the administrative, technical, and physical controls implemented by the provider are adequate to ensure the confidentiality, security, and availability of Customer's account and data, including to protect Customer's account and data from unauthorized access, acquisition, disclosure, destruction, or alteration, or from any loss, unavailability, misuse, or damage in accordance with applicable Law and the Customer's requirements. WE HAVE NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF ANY CUSTOMER DATA OR SOFTWARE.

4.5 Relationship. You shall act as a nonexclusive independent contractor and will not have any authority to assume or create any obligation or responsibility on our behalf or on behalf of any third-party manufacturer, licensor, or provider of any Offering, or to bind us or any third-party manufacturer, licensor, or provider of any Offering in any manner whatsoever. This Agreement does not create a partnership, agency, joint venture, employment, or franchise relationship between the parties. Except as provided in this Agreement, you have the sole discretion to determine your own methods of operation, accounting practices, insurance coverage, personnel practices, advertising and promotion, customer service, and service area coverage within the Territory. If any provision of this Agreement is deemed to create a franchise relationship between the parties, then the parties shall negotiate in good faith to modify this Agreement so as to carry out their original intent as closely as possible so that this Agreement can be consummated as a reseller agreement and not a franchise agreement.

4.6 Non-Exclusivity. Nothing in this Agreement should be construed to imply any grant of exclusivity for your benefit, and we are free to engage any other parties, or use our own personnel, to perform substantially the same distribution and sales activities that are to be conducted by you under this Agreement, both within and outside the Territory.

4.7 Appointment of Second-Tier Resellers. You may appoint 1 or more Persons to market, promote, distribute, and sell Offerings and Professional Services in the Territory (each, a "**Second-Tier Reseller**"); provided that: **(a)** your agreement with the Second-Tier Reseller is subject and subordinate in all respects to this Agreement; **(b)** the Second-Tier Reseller is familiar with and has agreed in writing to comply with all applicable terms of this Agreement; **(c)** you remain directly responsible to us for the due performance of all of your obligations under this Agreement; and **(d)** we give our prior written consent to the appointment of the Second-Tier Reseller. You are fully responsible for any act or omission by any of your

Second-Tier Resellers.

4.8 **Business Contact Information.** We may use your Business Contact Information to market and sell Offerings and Professional Services to you and to otherwise exercise our rights and perform our obligations under this Agreement. We may disclose your Business Contact Information to our Affiliates, subcontractors, and suppliers so that they can provide you with the Offerings described in a Purchase Order, and we may disclose your Business Contact Information to our Resources, Affiliates, and subcontractors for their use in connection with any Professional Services. You shall not provide us with any Business Contact Information unless you have first given notice to all of the affected individuals and obtained their consent as required for us and our Resources, Affiliates, subcontractors, and suppliers to carry out all of the activities described in this Section 4.8 without violating any Law or any privacy or other right of any Person. Except for Business Contact Information, you shall not provide any Personal Information to us or any Resource. Unless this Agreement provides otherwise, we will handle all Business Contact Information in the same manner, if applicable, as we handle Personal Information under the SDSA Privacy Policy.

## 5. Ownership.

5.1 **Offerings.** Title to Hardware will pass to you as provided below in Section 7 (Shipping; Title; Risk of Loss; Delivery of Software and Cloud Products). Title to Software will remain with the applicable licensor. You hereby acknowledge that the manufacturer, licensor, or provider of any Offering (and their respective licensors) owns, without limitation, all right, title, and interest in and to all of the Intellectual Property Rights relating to such Offering, and that you will not, by virtue of your purchase of the Offering or otherwise, obtain any right, title, or interest in or to such Intellectual Property Rights, except as expressly authorized and only for the specific purposes set forth in the Third-Party Terms or SDSA Terms, as applicable.

5.2 **Deliverables.** Except as otherwise provided in the Professional Services Agreement, we retain all ownership and Intellectual Property Rights in and to any materials or information developed by us or on our behalf in the course of providing Professional Services, including all SDSA Deliverables. Any ownership and Intellectual Property Rights in and to any materials or information developed by or on behalf of a third-party in the course of providing any Third-Party Service, including all deliverables, are as set forth in the applicable Third-Party Terms.

5.3 **SDSA Marks.** Subject to the terms and conditions of this Agreement, we hereby grant to you a nontransferable, nonexclusive right and license during the Term to use our and Samsung SDS Co., Ltd.'s ("**SDS**") trademarks, tradenames, service marks, and logos ("**SDSA Marks**") solely in the Territory and solely in connection with the marketing, promotion, and sales of SDSA Offerings and Professional Services in accordance with our prior written instructions and Trademark Usage Policy. In each case, you shall clearly indicate the ownership of the SDSA Marks. You shall cooperate with us and permit us to review your use of the SDSA Marks and your compliance with our prior written instructions and Trademark Usage Policy. If we determine, in our sole discretion, that your use of any SDSA Mark does not comply with this Agreement, you shall promptly modify or discontinue your use of SDSA Marks as directed by us. You shall provide reasonable assistance to us in connection with the protection and prosecution of the SDSA Marks.

5.4 **Marketing Materials.** During the Term, we may provide you with access to SDSA marketing materials. You shall use SDSA marketing materials in strictly in accordance with this Agreement and our prior written instructions.

5.5 **Feedback.** You shall promptly notify us of any comments, ideas, suggestions, complaints, or other feedback regarding any Offering or Professional Services ("**Feedback**") that you receive from any Customer or Second-Tier Reseller. Any Feedback that you provide to us, including your own Feedback, will be our property and constitute our Confidential Information.

5.6 **Reservation of Rights.** All rights, title, and interest not expressly granted under this Agreement are reserved by us and the applicable third parties. Only Software licenses are sold under this Agreement. No Software is sold under this Agreement.

## 6. Terms for Related Services

6.1 **Reseller Obligations.** With respect to all Related Services, Reseller shall: (i) provide SDSA with complete and accurate information relevant to the Related Services, and promptly inform SDSA of any changes to that information that may affect any Deliverable or the Related Services; (ii) provide SDSA with access to internal stakeholders who have decision-making authority; (iii) appoint a project manager who is authorized to resolve any issues that may arise during the course of the Related Services and, at SDSA's request, make appropriately qualified staff available to assist SDSA with the provision of the Related Services; (iv) provide the tools reasonably necessary for SDSA to perform the Related Services; and (v) ensure that Reseller has in place all agreements, licenses, and consents required for SDSA to provide the Related

Services without violating any Law, Intellectual Property Right, or any other right of any Person. SDSA is not be responsible for any delay or deficiency in performing the Related Services or any defect in any Deliverable that results from Reseller's failure to fully and timely meet any of Reseller's obligations under this Section 6.2.

6.2 Subcontractors; Place of Performance. SDSA may use subcontractors to fulfill its obligations under any Related SOW. SDSA will be responsible for the performance of its obligations by its subcontractors in accordance with this Agreement.

6.3 Software License. Subject to the terms of this Agreement, Reseller represents and warrants that it has obtained all licenses, consents, and permissions required for SDSA to install Third-Party Software (including any updates or supplements thereto) on any mobile device or tablet Offering and to reproduce Third-Party Software (including any updates or supplements thereto) in the quantities and to the extent necessary for the foregoing purpose.

6.4 Ownership. All legal right, title, and interest in and to Third-Party Software remains with its third-party licensors.

6.5 Support. SDSA is not obligated to provide any support or maintenance to End Users for any Third-Party Software.

## 7. Shipping; Title; Risk of Loss; Delivery of Software and Cloud Products.

7.1 Shipping; Title; Risk of Loss. Unless otherwise expressly agreed to by the parties, we will arrange for the shipment of Hardware that you purchase as an Offering under this Agreement to the delivery location indicated in the applicable Purchase Order. In no event will any carrier be deemed to be our agent, even if we select and engage the carrier. Title and risk of loss or other damage to Hardware will transfer to you when the Hardware is made available to the initial carrier at the point of origin. If we arrange for shipping or use our account, we will pay the carrier's Shipping Costs and charge them back to you (FOB Origin, Freight Prepaid and Charged Back). Otherwise, you shall directly pay all Shipping Costs (FOB Origin, Freight Collect). You are solely responsible for procuring adequate insurance for each shipment. We will use commercially reasonable efforts to meet scheduled shipping dates, but we will not be liable for failing to meet any shipping or delivery date. We may make early or incremental deliveries of any Offering.

7.2 Inspection. All Hardware shipments must be inspected upon delivery for damage and to ensure receipt of the proper quantity. Any shortage or visual damage to the packaging (each, an "**Exception**") must be reported to the carrier and noted in the bill of lading at the time of delivery. You shall provide us with a copy of the bill of lading noting the Exception within five (5) Business Days after the shipment's delivery date. We shall review any timely notice provided under this Section 7.2 and undertake commercially reasonable efforts to cure any Exception that occurred prior to the transfer of risk of loss or damage. To the extent that we comply with our obligations in this Section 7.2, we will not be in breach of our obligation to provide you with the Offering that you have purchased. For the avoidance of doubt, in no event will we be responsible for any Exception unless you strictly comply with your obligations under this Section 7.2. Offerings are not be subject to any express or implied rights of acceptance or rejection, except as provided in this Section 7.2. You have no acceptance rights with respect to Professional Services or any SDSA Deliverables.

7.3 Digital Delivery. Subject to your payment in full of all amounts due for any Offering that requires a license key or other access or activation credentials (collectively, "**Credentials**"), we will either provide you or the applicable Second-Tier Reseller or Customer with the Credentials or instructions on how to obtain them. You shall employ, and shall ensure that all Second-Tier Resellers and Customers employ, physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to **(a)** securely administer the distribution and use of all Credentials, and **(b)** protect against any unauthorized access to or use of all Credentials. We are not liable for any authorized or unauthorized use, access, or any other activities that occur under any Credentials. All Credentials are our Confidential Information and, for Third-Party Offerings, the Confidential Information of the applicable third party.

## 8. Fees, Taxes, and Invoicing.

8.1 Fees. All fees are exclusive of: **(a)** shipping, freight, terminal charges, and handling charges (collectively, "**Shipping Costs**"), and **(b)** sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by you under this Agreement (other than taxes on our income) (collectively, "**Taxes**"). You shall pay all fees, Shipping Costs, Taxes, and any other amounts due under this Agreement in accordance with Section 8.2 (Invoicing). Shipping Costs are payable by you unless the Quote issued by us expressly states that Shipping Costs are included in the quoted amount, regardless of whether you include them in your Purchase Order. All fees, Shipping Costs, Taxes are stated in U.S. Dollars. Notwithstanding anything to the contrary in this Agreement, your payment obligations to us in connection with any Offering, Professional Services or Related Services are not dependent

upon your receipt of payment from any Second-Tier Reseller or Customer.

8.2 Invoicing. We shall issue invoices on or after the date on which a Purchase Order is accepted. We may condition the delivery of any Offering, the commencement of any Professional Services, or the performance of any Related Services upon our prior receipt of any or all amounts due to us under the applicable Purchase Order or any other Purchase Order, applicable Related SOW or agreement between the parties. Except as expressly provided in this Agreement, including in Section 8.4 (Credit) and Section 12.4.5 (Accrued Fees), all invoiced amounts are due and payable to us within thirty (30) days from the invoice date.

8.3 Late Payments; No Setoffs or Refunds. You shall pay interest on all late payments, calculated daily and compounded monthly, at the lesser of the rate of one and one-half percent (1.5%) per month or the highest rate permissible under applicable Law. You shall perform your obligations under this Agreement without setoff, deduction, recoupment, or withholding of any kind. All fees and other amounts paid to us are nonrefundable.

8.4 Credit. We reserve the right to periodically check your credit during the Term. If we determine, in our sole discretion, that your financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to our other rights, we may do either or both of the following without any liability to you: **(a)** amend the payment terms specified in Section 8.2 (Invoicing), including for existing Purchase Orders and/or Related SOWs, effective immediately upon notice to you; and **(b)** delay the provision of any Offering, Professional Services or Related Services. No actions taken by us under this Section 8.4 will be deemed to be a waiver by us of any of our rights to enforce your obligations under this Agreement.

## 9. Indemnification.

9.1 General Indemnification. You shall defend, indemnify, and hold harmless us and our Affiliates, directors, officers, employees, agents, subcontractors, successors and permitted assigns (collectively, the “**SDSA Indemnitees**”) from and against any and all Losses arising from or relating to any Claim against an SDSA Indemnitee: **(a)** for any actual or alleged environmental harm, personal injury, death, or damage to real or tangible personal property caused (in whole or in part) by the negligence, willful misconduct, criminal misconduct, or fraudulent actions of you, any Second-Tier Reseller, or any of your or any Second-Tier Reseller’s respective agents, representatives, employees, or subcontractors; **(b)** arising from or relating to any actual or alleged breach of any of your obligations under Section 14.5 (Ethical Business Practices); **(c)** arising from or relating to any actual or alleged representation or warranty made by you with respect to any Offering, Professional Services, or SDSA Deliverable that is inconsistent with or in addition to the warranties, if any, set forth in the applicable Third-Party Terms, SDSA Terms, or Professional Services Agreement; **(d)** arising from or relating to the possession, use, selection, distribution, delivery, resale, purchase, or operation of any Offering by you, or any Second-Tier Reseller or Customer, other than as contemplated in the applicable Documentation or in violation of the applicable Third-Party Terms or SDSA Terms; **(e)** arising from or relating to any actual or alleged act or omission by a Second-Tier Reseller that, if committed or omitted by you, would constitute a breach of this Agreement; **(f)** SDSA’s installation of Third-Party Software; **(g)** Reseller’s failure to obtain any licenses, permissions, or consents that are required for SDSA to freely and without interruption perform the Related Services without violating any Law, Intellectual Property Rights, or any other right of any third party; **(h)** Reseller’s use or combination of any Deliverable with any other product, hardware, software, services, information, items, or materials; and **(i)** any modification of a Deliverable that SDSA did not make or approve in writing. Reseller shall not enter into any settlement of a Claim without SDSA’s prior written consent.

9.2 IP Indemnification. You shall defend, indemnify, and hold harmless the SDSA Indemnitees from and against any and all Losses arising from or relating to any third-party Claim against an SDSA Indemnitee alleging any infringement or misappropriation (including Claims for joint, direct, or indirect infringement or misappropriation) of any Intellectual Property Right to the extent arising from or relating to any actual or alleged: **(a)** use or combination of any Offering by you, or any Second-Tier Reseller or Customer, with any other product, hardware, software, services, information, or materials; **(b)** your use of any SDSA Mark in violation of this Agreement; or **(c)** your use of the trademark of any manufacturer, licensor, or provider of a Third-Party Offering in any manner that is not expressly permitted in writing either by us or the applicable manufacturer, licensor, or provider.

9.3 Procedure. A SDSA Indemnitee shall promptly, and in any event no later than twenty (20) days after the SDSA Indemnitee learns of the Claim, notify you of any Claim for which the SDSA Indemnitee is entitled to indemnification under this Agreement; provided, however, that any failure by the SDSA Indemnitee to provide timely notice of the Claim will only relieve you of your indemnification obligations to the extent that the failure materially prejudices you. To assume the defense of an SDSA Indemnitee, you shall promptly notify the SDSA Indemnitee of the assumption and retain independent legal counsel that is reasonably acceptable to the SDSA Indemnitee. The SDSA Indemnitee is entitled to participate in the defense of any claim by counsel of its own choosing. You shall pay any costs, expenses, and fees (including, but not limited

to, filing fees, court costs, investigation costs, and reasonable attorneys' and other professionals' fees) incurred in connection with the defense of any Claim, except for any counsel fees incurred by an SDSA Indemnitee to participate in the defense provided by you after you have assumed and while you are meeting your defense obligations to the SDSA Indemnitee. You may not settle any Claim against an SDSA Indemnitee without the SDSA Indemnitee's prior written consent, which may not be unreasonably withheld or delayed.

## 10. Warranties.

10.1 Reseller Warranties. You represent and warrant that: **(a)** you have the full power and authority to enter into and fulfill your obligations under this Agreement and any Purchase Order, and that the person signing this Agreement on your behalf, or submitting any Purchase Order on your behalf, is duly authorized to do so; **(b)** your performance of your obligations under this Agreement will not violate any agreements between you and any third party; **(c)** you are and will remain in compliance with all applicable Laws, including all anti-bribery laws and regulations, at all times during the Term in connection with any aspects of this Agreement or any other transaction involving us; or **(d)** you have not and will not, directly or indirectly, offer or grant to any Person any undue advantage, or request or accept any undue advantage, to improperly influence actions or omissions. You hereby waive your right to make any assertion or claim against us that a Purchase Order was issued or signed by you without the requisite authority or approvals.

### 10.2 Disclaimers.

10.2.1 EXCEPT FOR ANY WARRANTIES THAT MAY BE EXPRESSLY CONTAINED IN THE SDSA TERMS OR PROFESSIONAL SERVICES AGREEMENT, WHICH ARE MADE BY US DIRECTLY AND EXCLUSIVELY TO THE APPLICABLE CUSTOMER, SDSA, ITS AFFILIATES AND SUBCONTRACTORS HEREBY DISCLAIM ALL WARRANTIES WITH RESPECT TO ALL OFFERINGS, PROFESSIONAL SERVICES, RELATED SERVICES AND SDSA DELIVERABLES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHER, INCLUDING: **(a)** ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT; **(b)** ALL WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE; AND **(c)** ANY WARRANTY THAT ANY OFFERING, PROFESSIONAL SERVICES, RELATED SERVICES OR SDSA DELIVERABLES WILL MEET YOUR REQUIREMENTS OR THE REQUIREMENTS OF ANY SECOND-TIER RESELLER, CUSTOMER, OR OTHER THIRD PARTY, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OTHER GOODS, SERVICES, HARDWARE, SOFTWARE, TECHNOLOGIES, INFORMATION, OR MATERIALS, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

10.2.2 THIRD-PARTY OFFERINGS MAY BE COVERED BY A SEPARATE WARRANTY THAT IS PROVIDED DIRECTLY TO THE CUSTOMER BY A THIRD PARTY. ANY WARRANTY PROVIDED FOR ANY THIRD-PARTY OFFERING IS STRICTLY BETWEEN THE CUSTOMER AND THE THIRD-PARTY MAKING THE WARRANTY. YOU HEREBY AFFIRM THAT WE WILL NOT BE LIABLE, UNDER ANY CIRCUMSTANCES, FOR ANY BREACH OF WARRANTY CLAIMS, OR FOR ANY DAMAGES ARISING OUT OF THE FAILURE OF A THIRD PARTY TO HONOR ITS WARRANTY OBLIGATIONS, INCLUDING UNDER ANY THIRD-PARTY TERMS OR OTHERWISE. THIS AGREEMENT DOES NOT AMEND, AUGMENT, OR OTHERWISE MODIFY ANY WARRANTIES PROVIDED BY A THIRD PARTY UNDER ANY THIRD-PARTY TERMS OR ANY OTHER AGREEMENT.

10.2.3 SDSA OFFERINGS, PROFESSIONAL SERVICES, AND SDSA DELIVERABLES MAY BE COVERED BY A SEPARATE WARRANTY THAT IS PROVIDED DIRECTLY TO THE CUSTOMER BY US. WARRANTIES FOR A SDSA OFFERING ARE LIMITED TO THOSE WARRANTIES, IF ANY, THAT ARE EXPRESSLY SET OUT IN THE SDSA TERMS THAT GOVERN THE SDSA OFFERING, AND WARRANTIES FOR PROFESSIONAL SERVICES OR SDSA DELIVERABLES ARE LIMITED TO THOSE WARRANTIES, IF ANY, THAT ARE EXPRESSLY SET OUT IN THE PROFESSIONAL SERVICES AGREEMENT THAT GOVERNS THE PROFESSIONAL SERVICES OR SDSA DELIVERABLES. THIS AGREEMENT DOES NOT AMEND, AUGMENT, OR OTHERWISE MODIFY ANY WARRANTY THAT MAY BE PROVIDED UNDER ANY SDSA TERMS OR PROFESSIONAL SERVICES AGREEMENT.

10.2.4 THE ABOVE DISCLAIMERS WILL NOT APPLY TO THE EXTENT THAT THEY ARE PROHIBITED BY APPLICABLE LAW.

## 11. Limitation of Liability.

11.1 Excluded Damages. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL WE, OUR AFFILIATES, OR ANY OF OUR OR THEIR RESPECTIVE SUPPLIERS AND SUBCONTRACTORS, BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING ANY PURCHASE ORDER OR RELATED SOW) OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, STRICT LIABILITY, AND OTHERWISE TO YOU 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, 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. THE EXCLUSIONS IN THIS SECTION 11.1 APPLY 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 Liability Cap. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF US, OUR AFFILIATES, AND OUR AND THEIR RESPECTIVE SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING ANY PURCHASE ORDER) OR ITS 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 AMOUNTS PAID BY YOU TO US DURING THE ONE-YEAR PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM, OR, IF THE LIABILITY ARISES FROM AN OFFERING OR PROFESSIONAL SERVICES, THE AMOUNTS PAID BY YOU TO US FOR THE OFFERING OR PROFESSIONAL SERVICES GIVING RISE TO THE CLAIM. THE LIMITATION IN THIS SECTION 11.2 APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

## 12. Term and Termination.

12.1 Term. The term of this Agreement begins on the Effective Date and continues for a period of two (2) years (the “**Initial Term**”), unless and until earlier terminated as provided under this Agreement or pursuant to applicable Law. Upon the completion of the Initial Term, the Agreement will automatically renew for successive one (1) year renewal terms unless and until either party provides written notice of nonrenewal at least sixty (60) days before the end of the then-current term, or unless and until earlier terminated as provided under this Agreement or pursuant to applicable Law (each, a “**Renewal Term**”, and together with the Initial Term and other Renewal Terms, the “**Term**”).

12.2 Termination by SDSA. We may terminate this Agreement, any Purchase Order or Related SOW for cause effective immediately by providing you with a written notice of termination if: **(a)** we reasonably believe that you are in violation of the U.S. Foreign Corrupt Practices Act or any other applicable anti-bribery Law; **(b)** you fail to pay any amounts when due under this Agreement; and such failure continues for a period of ten (10) or more days after your receipt of a notice of nonpayment from us; **(c)** you fail to make at least two (2) consecutive payments or three (3) non-consecutive payments when due under this Agreement; **(d)** you breach Section 4.3 (Reseller’s Restrictions), Section 5 (Ownership), or Section 13 (Nondisclosure) of this Agreement; or **(e)** you become insolvent or file, or have filed against you, a petition for voluntary or involuntary bankruptcy or under any other insolvency Law, make or seek to make a general assignment for the benefit of your creditors, or apply for, or consent to, the appointment of a trustee, receiver, or custodian for a substantial part of your property, or are generally unable to pay your debts as they become due. In the case of SDSA’s termination for your breach, SDSA may, in its sole discretion, accelerate the due date of all unpaid fees and other amounts due under any Purchase Order, Statement of Work or Related SOW.

12.3 Termination by Either Party. Either party may terminate a Purchase Order for cause effective immediately by providing the other party with a written notice of termination if the other party is in material breach of that Purchase Order (other than a breach described above in Section 12.2 (Termination by SDSA)) and the material breach remains uncured for a period of thirty (30) days from the other party’s receipt of a notice to cure.

### 12.4 Effects of Termination

12.4.1 Purchase Orders. Any Purchase Order identified in a notice of termination issued by us pursuant to Section 12.2 (Termination by SDSA) or either party pursuant to Section 12.3 (Termination by Either Party) will terminate as provided in the notice of termination. Any termination or expiration of a Purchase Order will not be deemed to be a termination or expiration of any other Purchase Order not duly identified in the same notice of termination. This Agreement will continue to govern those other remaining Purchase Orders. If a terminated Purchase Order includes Professional Services, we may enter into direct payment arrangements with the applicable Customer for any future amounts that may become due, and you will no longer have any right to collect any amounts that are or would otherwise have become due to you in connection with the applicable Statement of Work.

12.4.2 Related SOW. Any Related SOW that is duly identified in a notice of termination provided under Section **Error! Reference source not found.** (Termination by SDSA) or Section **Error! Reference source not found.** (Termination by Either Party) will terminate on the date of the applicable termination notice, and all other then-current Related SOWs that are not terminated will remain in effect and continue to be governed by the terms and



conditions in this Agreement. You will remain obligated to pay all fees for all Related Services that were performed through the effective termination date of each Related SOW and all expenses that were incurred in connection with the provision of those Related Services.

12.4.3 Product Return. You shall return all Hardware in your inventory to us within ten (10) days after your receipt of our request for its return. If you fail to return all of the requested Hardware within ten (10) days of the request, we may invoice you for the list price of such Hardware, with payment due within ten (10) days of your receipt of the invoice.

12.4.4 Confidential Information. Each party will return or destroy the other party's Confidential Information in accordance with Section 13.4 (Return or Destruction of Confidential Information).

12.4.5 Accrued Fees. The due date of all unpaid fees and other amounts due will automatically be accelerated so that all invoiced and accrued fees will be due and payable on or before the effective termination date, even if longer terms had been provided previously.

12.4.6 Marketing Materials. You shall immediately cease using all SDSA Marks and any marketing materials provided to you by us.

12.4.7 License and Subscription Terms. Subject to our receipt of payment in full, any Offering that is provided or licensed for a term will continue as provided in the applicable Third-Party Terms or SDSA Terms.

12.4.8 Survival. The following provisions shall survive termination or expiration of this Agreement: Section 5 (Ownership), Section 8 (Fees, Taxes, and Invoicing), Section 9 (Indemnification), Section 10.2 (Disclaimers), Section 11 (Limitation of Liability), Section 12.4 (Effects of Termination), Section 3 (Nondisclosure), Section 4 (Miscellaneous), Section 5 (Definitions), and any others that, by their nature, are intended to survive.

### 13. Nondisclosure.

13.1 Confidential Information. If a party discloses its Confidential Information to the other party under this Agreement, for purposes of this Section 3 (Nondisclosure), 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 13.3 (Exclusions from Confidential Information), "**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; **(d)** the terms of this Agreement; and **(e)** any information, notes, analysis, or other materials derived from any Confidential Information.

13.2 Restrictions on Disclosure and Use; Protection. 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 exercise its rights under this Agreement. 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 Representatives to whom disclosure is necessary to the performance of the Receiving Party's obligations or exercising its rights under this Agreement, provided that each such Representative is subject to written obligations of confidentiality that are substantially as restrictive as those contained in this Agreement 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 3 (Nondisclosure), and shall take all commercially reasonable measures (including court proceedings when appropriate) to restrain such Representatives from unauthorized disclosure or use of Confidential Information.

13.3 Exclusions from Confidential Information. 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 this Agreement; **(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.

**13.4 Return or Destruction of Confidential Information.** Upon request by and at the election of the Disclosing Party at any time, or upon termination or expiration of this Agreement, 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 this Agreement. The Receiving Party shall permanently destroy Confidential Information contained in backups at the end of the Receiving Party's retention period, and all of the obligations under this Section 3 (Nondisclosure) will continue to apply until such permanent destruction.

**13.5 Remedy.** 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 3 (Nondisclosure), 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 this Agreement, 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.

**13.6 Compelled Disclosures.** Notwithstanding anything to the contrary in this Section 13 (Nondisclosure), the Receiving Party may disclose Confidential Information to the minimum extent required by Law or an order issued 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 a 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.

#### **14. Miscellaneous.**

**14.1 Entire Agreement.** This Agreement, including any Schedules that may apply and any terms expressly incorporated herein by reference, is the complete agreement between the parties regarding its subject matter and supersedes all prior or contemporaneous agreements or representations, whether written or oral, regarding its subject matter. 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. Each Purchase Order is to be treated as a separate agreement that incorporates this Agreement by reference, whether or not the incorporation is expressly stated.

**14.2 Government Rights.** All Products to be provided to, or acquired by, the United States Government are subject to Federal Acquisition Regulation ("**FAR**") 52.227.19 (Commercial Computer Software License), and you hereby accept full responsibility for ensuring that the Products qualify for all protections thereunder. Compliance with this Section 14.2, including the fulfillment of any requirements to obtain such protection, is solely your responsibility and obligation, and in no event will we be obligated to take any action to be afforded such protection hereunder. All Products (including Software and any related Documentation) are restricted by a license agreement in accordance with FAR 12.212 and Defense Federal Acquisition Regulation Supplement ("**DFARS**") 227.7202, as applicable. The Products, including all Software, were developed fully at private expense. We do not accept any government flow-down provisions, including, without limitation, any provisions set forth in or pursuant to the FAR, DFAR, or any federal, state, or local laws, codes, rules, policies, supplements, or other documents, or any terms in a prime contract or higher-tier subcontract. You shall not provide any Customers with any rights to any Products in addition to the restricted rights described in this Section 14.2.

**14.3 Publicity.** You shall not make any press release regarding this Agreement without our prior written consent. Notwithstanding the foregoing, during the Term, we may **(a)** use your name and trademarks in any general listing of our resellers, including on Our Website or any other website, in our sole discretion, **(b)** use your name in connection with proposals to third parties, and **(c)** otherwise refer to you in print or electronic form for marketing, reference, and other business purposes.

**14.4 Policies and Guidelines.** You shall regularly monitor our website for all applicable policies, guidelines, and all documentation referenced in this Agreement. You hereby acknowledge that you have read and understand the policies and

guidelines referenced in this Agreement and agrees to the terms and conditions set out in those policies and guidelines.

**14.5 Ethical Business Practices.** You hereby acknowledge and agree that you and your owners, directors, officers, employees, and agents have not, and will not, make or promise to make payments of money or anything of value, directly or indirectly, to any government or public sector entity officials, public international organization officials, political parties, or candidates for political office, or employee of a commercial customer or supplier, for the purpose of obtaining or retaining business or securing any improper advantage. You agree to accurately document all transactions related to this Agreement and any Purchase Order in your financial books, records, statements, and in reports or other documents provided to us. You agree that the handling and disbursement of funds related to any transaction with us must be pursuant to a duly authorized written contract with us that includes clearly defined procedures. No undisclosed or unrecorded fund or asset related to any transaction with us may be established or maintained for any purpose. You agree that any violation of this Section 14.5 constitutes just cause for the immediate termination by us of this Agreement without any liability incurred by us to you. The obligations under this Section 14.5 will survive the termination or expiration of this Agreement and any Purchase Order.

**14.6 Export Control.** Export laws and regulations of the United States and any other relevant and applicable local export laws and regulations apply to the Offerings, Professional Services, and SDSA Deliverables. You hereby acknowledge and agree that such export laws govern your use and distribution of the Offerings, Professional Services, and SDSA Deliverables (including technical data and other Documentation), and you shall comply with all such export laws and regulations (including “deemed export” and “deemed re-export” regulations). You shall not export, directly or indirectly, any data, information, Offerings, Professional Services, or SDSA Deliverables, in violation of these laws, and you shall ensure that no data, information, Offerings, Professional Services, or SDSA Deliverables are used for any purpose prohibited by these laws, including nuclear, chemical, or biological weapons proliferation, or development of missile technology.

**14.7 Audit.** Upon written notice to you at least ten (10) days prior to such audit, we or our designated representatives shall have the right to access, audit, and review your books and records, and to keep copies thereof, to the extent relevant to this Agreement, including to ensure your compliance with Section 14.5 (Ethical Business Practices). We or our designated representatives shall conduct all such audits during regular business hours and shall not unreasonably interfere with your business activities. You shall fully and in a timely manner cooperate with any audit conducted by us or on our behalf, including by providing complete and accurate responses to all inquiries and any requested documents.

**14.8 Validity.** If any provision in this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, that provision shall either be **(a)** reformed only to the extent necessary to make it enforceable, and such decision shall not affect the enforceability of **(i)** such provision under other circumstances, or **(ii)** the remaining provisions of this Agreement 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.

**14.9 Headings and Construction.** The headings assigned to the sections of this Agreement are for convenience only and do not limit the scope and applicability of the sections. “Include” and “including” are words of expansion, not limitation.

**14.10 No Waiver.** No waiver of any right or obligation under this Agreement will be effective unless it is in writing and signed by the party granting the waiver. The waiver by either party of any breach of this Agreement will not constitute a waiver of any other or subsequent breach.

**14.11 Order of Precedence.** In the event of inconsistencies between the Cover Page, these General Terms, an applicable Schedule, and any Purchase Order, the documents will control in the following descending order of precedence: the Cover Page; the Schedule; these General Terms; and the Purchase Order.

**14.12 Modification.** This Agreement and any Purchase Order may only be modified by a written agreement that has been signed by both of the parties.

**14.13 Notice.** All notices and consents that are given or made by a party under this Agreement 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) at the address indicated for that party in the Cover Page or to such other address as a party may later designate to the other party in a notice sent in accordance with this Section 14.13. Notices are effective upon receipt. Notices that are delivered on a Business Day after 5:00 p.m. at the recipient’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 14.13 are deemed

to be received upon the inability to deliver.

14.14 Assignment. You may not assign, transfer, or delegate any of its rights or obligations under this Agreement, including by merger (whether or not you are the surviving entity), operation of law, or otherwise, without our prior written consent. Any attempted assignment or transfer in violation of this Section 14.14 is hereby deemed to be void. This Agreement binds and inures to the benefit of the parties and their respective permitted successors and permitted assigns.

14.15 Force Majeure. You are not responsible for any failure or delay of performance if caused by any: act of war, hostility, or sabotage; act of God; epidemic or pandemic; electrical, internet, or telecommunication outage that is not caused by us; government restrictions (including the denial or cancellation of any export or other license); or other event outside our reasonable control. We shall use reasonable efforts to mitigate the effect of a force majeure event. This Section 14.15 does not excuse us from our obligation to take reasonable steps to follow its normal disaster recovery procedures.

14.16 Remedies. Except as expressly provided to the contrary herein, all your remedies that are set forth in this Agreement are your sole and exclusive remedies.

14.17 Counterparts. The Cover Page may be executed in counterparts, each of which is hereby deemed to be an original and all of which taken together will constitute a single agreement. Electronic signatures (including electronically transmitted signatures in a fixed and unmodifiable format) will have the same effect as their originals.

14.18 Time Limit for Claims. Except for Actions for breach of confidentiality and non-payment of amounts owed under this Agreement, 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.

14.19 Third-Party Beneficiaries. You expressly acknowledge and agree that SDS is an intended third party beneficiary of this Agreement. SDS is entitled to the same rights and protections afforded to us under this Agreement. Except for SDS and the SDSA Indemnitees, no other third party beneficiary relationship is created by this Agreement.

14.20 Agreement Drafting. This Agreement is the result of arm's length negotiations between the parties, both of whom have had the opportunity to consult legal counsel, and shall be construed to have been drafted by both parties such that any ambiguities in this Agreement will not be construed against either party.

14.21 Governing Law; Jurisdiction; Jury Waiver. This Agreement is 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). The United Nations Convention for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to this Agreement. Any legal suit, action, or proceeding arising out of or relating to this Agreement 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, 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.

## 15. Definitions.

**"Action"** means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise, and whether with or without merit.

**"Affiliate"** means, with respect to a Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

**"Business Contact Information"** means any information that would allow an individual connected to your organization, any Second-Tier Reseller, or any 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.

**"Claim"** means any Action brought, alleged, threatened, or asserted against a Person entitled to indemnification under

the indemnification provisions set forth in this Agreement.

**“Cloud Services”** means the cloud services that are identified in a Purchase Order, including the Documentation and any Maintenance Releases made available for the Cloud Services by their providers. Cloud Services provided by a third party are Third-Party Offerings, and Cloud Services provided by us are SDSA Offerings. Cloud Services that are provided by us are referred to in this Agreement as **“SDSA Cloud Services”** or as an **“SDSA Offering,”** and Cloud Services provided by a third party are referred to in this Agreement as **“Third-Party Cloud Services”** or a **“Third-Party Offering.”**

**“Confidential Information”** has the meaning given above in Section 13.1 (Confidential Information).

**“Credentials”** has the meaning given above in Section 7.3 (Digital Delivery).

**“Customer”** means the Person purchasing an Offering or Professional Services from you or a Second-Tier Reseller for that Person’s own use.

**“DFARS”** has the meaning given above in Section 14.2 (Government Rights).

**“Disclosing Party”** has the meaning given above in Section 13.1 (Confidential Information).

**“Documentation”** means, with respect to an Offering, any **(a)** user manuals, handbooks, and installation guides that are issued by the Offering’s licensor, manufacturer, or provider, or **(b)** end user documentation or information in any form or medium that describes the functionality, components, features, or requirements of the Offering, including any aspect of installation, configuration, integration, operation, or use, that are issued by the Offering’s licensor, manufacturer, or provider.

**“Effective Date”** has the meaning given in the Cover Page.

**“End User”** means a customer of Reseller.

**“Exception”** has the meaning given above in Section 7.2 (Inspection).

**“Expenses”** has the meaning given above in Section 8.1 (Fees).

**“FAR”** has the meaning given above in Section 14.2 (Government Rights).

**“Feedback”** has the meaning given above in Section 5.5 (Feedback).

**“Hardware”** means the equipment, machines, devices, and other hardware identified in a Purchase Order, including all components, options, spare parts, replacement parts, Documentation, and Integrated Software. All Hardware available under this Agreement is a Third-Party Offering.

**“Initial Term”** has the meaning given above in Section 12.1 (Term).

**“Integrated Software”** means any software, firmware, operating systems, applications, and other machine code that is embedded or otherwise contained in Hardware, including any Documentation and Maintenance Releases made available by the applicable licensor.

**“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.

**“Knox Offering”** means any Knox-branded Software, Knox-branded Cloud Services, or Knox-branded Third-Party Services that are described in a Purchase Order. For clarity, all Knox Offerings are Third-Party Offerings.

**“Law”** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement, or rule of law of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

**“Losses”** means all losses, liabilities, damages, deficiencies, Claims, Actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ and other professionals’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

**“Maintenance Release”** means any update, upgrade, release, or other adaptation or modification of any Offering,

including any updated Documentation, which may contain, among other things, error corrections, enhancements, improvements, or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Offering.

**“Offering”** has the meaning given above in Section 1 (Agreement Structure).

**“Our Website”** means our website located at <https://www.samsungds.com/us>, including any page on that website and any replacement or successor website.

**“Person”** means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

**“Personal Information”** means any information that either identifies a natural Person or can be used, either alone or in combination with other information, to identify a natural Person. Without limiting the scope of this definition, Personal Information includes: **(a)** a natural Person’s first and last name and contact information; **(b)** social security, driver’s license, passport, and other government identification numbers; **(c)** cardholder data (as defined in the Payment Card Industry Data Security Standard), nonpublic personal information (as defined in the Gramm-Leach-Bliley Act), credit histories, and other financial information); **(d)** Protected Health Information (as defined in the Health Insurance Portability and Accountability Act, as amended by the Health Information Technology for Economic and Clinical Health Act), biometric and genetic information, and any other information regarding the health of physical or mental characteristics of a natural Person; **(e)** IP addresses, network and hardware identifiers, geolocation information, and device identification numbers; and **(f)** information regarding a natural Person’s racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, or information concerning an individual’s sex life or sexual orientation.

**“Professional Services”** means the professional services described in a Statement of Work and provided to a Customer by us under a Professional Services Agreement.

**“Professional Services Agreement”** has the meaning given above in Section 3 (Professional Services).

**“Purchase Order”** means a document that you create and submit to us in order to purchase 1 or any combination of Offerings or Professional Services that you will resell under this Agreement.

**“Quote”** means any quotation or proposal issued by us to you under this Agreement for any Offering or Professional Services.

**“Receiving Party”** has the meaning given above in Section 13.1 (Confidential Information).

**“Related Services”** means professional services that are related to an Offering, described in a Related SOW, and provided by SDSA to Reseller. For clarity, Related Services are not Professional Services as defined in this Agreement.

**“Related SOW”** means a document that describes the Related Services to be performed by us for the Reseller, including the scope of work, fees, and any other terms and conditions agreed upon by us and the Reseller.

**“Renewal Term”** has the meaning given above in Section 12.1 (Term).

**“Representatives”** means a party’s Affiliates, directors, officers, employees, consultants, subcontractors, Resources, attorneys, tax advisors, and agents who are subject to written obligations of confidentiality that are substantially as restrictive as those contained in this Agreement and that are applicable, by their own terms, to the Disclosing Party’s Confidential Information..

**“Resource”** means any individual involved in the performance of Professional Services as our employee or independent contractor, or an employee or independent contractor of any of our Affiliates, licensors, subcontractors, or suppliers.

**“Schedule”** means a Schedule to this Agreement that contains specific terms and conditions that apply to a particular type of Offering or Professional Services or under particular circumstances.

**“SDSA Deliverables”** means all documents, deliverables, and other materials that are delivered to Customer or prepared by us or on our behalf in the course of performing Professional Services and/or Related Services for that Customer.

**“SDSA Indemnitees”** has the meaning given above in Section 9.1 (General Indemnification).

**“SDSA Marks”** has the meaning given above in Section 5.3 (SDSA Marks).

**“SDSA Offering”** means any SDSA Software or SDSA Cloud Services.

“**SDSA Privacy Policy**” means the privacy policy set forth at <https://www.samsungds.com/us/legal/privacy.html>, as it may be relocated on Our Website or amended by us.

“**SDSA Terms**” has the meaning given above in Section 1.2 (SDSA Offerings).

“**Second-Tier Reseller**” has the meaning given above in Section 4.7 (Appointment of Second-Tier Resellers).

“**Shipping Costs**” has the meaning given above in Section 8.1 (Fees).

“**Software**” means any software that is described in a Purchase Order and any Integrated Software, together with any: **(a)** Documentation provided by the licensor, **(b)** Maintenance Releases to such software, and **(c)** any support and maintenance that the licensor may make available for the software. Software licensed by us is referred to in this Agreement as “**SDSA Software**” or as an “**SDSA Offering**,” and Software licensed by a third party is referred to in this Agreement as “**Third-Party Software**” or as a “**Third-Party Offering**.”

“**Statement of Work**” means a document that describes the Professional Services to be performed by us for a Customer under a Professional Services Agreement, including the scope of work, fees, and any other terms and conditions agreed upon by us and the Customer.

“**Taxes**” has the meaning given above in Section 8.1 (Fees).

“**Term**” has the meaning given above in Section 12.1 (Term).

“**Territory**” means the United States.

“**Third-Party Offering**” means any Hardware, Third-Party Software, Third-Party Cloud Services, or Third-Party Services.

“**Third-Party Service**” means any service ordered from us that is provided by a third party, including standard, extended, or enhanced warranty services, support and maintenance, and other similar services that are either included at no additional charge with the initial purchase of an Offering or distributed or resold by us for a fee.

“**Third-Party Software**” means the software (regardless of format in which distributed) designed to run on an Offering, including all patches, upgrades, and any other updates and all related materials and documentation, each of which are owned or licensed by the applicable third-party licensor.

“**Third-Party Terms**” means the separate agreement between the Customer and any third party that governs a Third-Party Offering, including end user license agreements, subscription agreements, warranty agreements, terms and conditions for maintenance and support, cloud product/service agreements, and any other similar terms and conditions.

“**Trademark Usage Policy**” means our Trademark Usage Policy set forth at <https://www.samsungds.com/us/legal/terms.html>, as it may be relocated on Our Website or amended by us.

“**Transaction Terms**” means: **(a)** for an Offering, its manufacturer, product name, model number, stock keeping number, serial number, quantity, delivery address, and shipping method; **(b)** for Software (other than Integrated Software), its licensor, product name, stock keeping number or other identification number, license term, billing unit (e.g., the license metric, subscription term, or hours, as applicable), and quantity; **(c)** for a Third-Party Service, the name of its provider (e.g., the licensor or manufacturer providing support or enhanced warranty services), name of the Third-Party Service, stock keeping or other identification number, billing unit, quantity, and term; **(d)** for all Offerings, the requested delivery date, unit price or fee, billing address, and delivery location; and **(e)** for Professional Services, the Customer’s name, fees, and the effective date or unique identifier provided by us for the applicable Statement of Work.

[End of Document]