

**GENERAL TERMS AND CONDITIONS**  
**FOR CUSTOMERS 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 and any Offerings and Services Schedule, these General Terms govern the purchase of Offerings and Services from Samsung SDS America, Inc. (“**SDSA**,” “**we**,” “**us**,” or “**our**”) by the customer that signed the Cover Page (“**Customer**,” “**you**,” or “**your**”). In this Agreement, the term “**party**” refers to you or us, and the term “**parties**” refers to both you and us. Capitalized terms not otherwise defined have the meanings ascribed to them in Section 14 (Definitions).

**1. Structure of the Agreement.**

When we use the term “**Agreement**” in these General Terms, any Offerings and Services Schedule, or the Cover Page, we are referring to all of those documents and any accepted Purchase Order or fully executed Statement of Work, collectively. These General Terms govern all Purchase Orders and Statements of Work. Any Offerings and Services Schedule that we may provide to you will contain specific terms and conditions that apply to certain Offerings and Services. You make no commitment to purchase, and we make no commitment to supply, any Offering or Services by entering into this Agreement. Only a Purchase Order that we accept in accordance with Section 2.1 (Purchase Orders) will obligate us to provide, and you to purchase, any Offering. Only a Statement of Work that has been signed by both parties will obligate us to provide, and you to purchase, any Services. Each Purchase Order and Statement of Work is a separate agreement. None of your separate terms and conditions will apply or otherwise be binding upon us.

**2. Ordering Process.**

2.1 Pricing. During the Term, you may ask us to provide you with pricing for Offerings or Services that you wish to purchase from us. We shall use commercially reasonable efforts to respond to each pricing request by providing a Quote within a commercially reasonable period of time, but we are not required to provide you with any Quote. We may modify or withdraw any Quote that we elect to provide at any time and for any reason. Quotes do not constitute an offer to sell you any Offering or 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 Offerings from us by submitting one or more Purchase Orders to the SDSA sales representative that we designate in writing. No Purchase Order will be binding on us until we accept it in writing. We shall use commercially reasonable efforts to accept or reject each Purchase Order within 10 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. Each Purchase Order is hereby deemed to incorporate these General Terms and the applicable portions of any Offerings and Services Schedule, 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 the Transaction Terms, any term or condition in any Purchase Order that supplements or conflicts with any provision in these General Terms or any Offerings and Services Schedule is void, even if that Purchase Order contains language to the contrary.

2.3 Statements of Work. Each Statement of Work hereby incorporates and is exclusively governed by these General Terms and any applicable terms and conditions in any Offerings and Services Schedule. Any conflict between any term or condition in any Statement of Work and any term or condition in these General Terms will be resolved in favor of these General Terms or any Offerings and Services Schedule, except that a Statement of Work may expressly amend a provision in these General Terms or the Offerings and Services Schedule by conspicuously identifying that provision in the amendment. Any amendment that is contained in a Statement of Work will not apply to any other Statement of Work. No Statement of Work will be effective until both parties have signed it. To be valid, any changes to any Statement of Work, including the scope of Services, must be set forth in a written change order that has been signed by both parties. We are not obligated to perform any Services that are not within the scope of a Statement of Work until they are described in a fully executed change order.

2.4 No Right to Cancel or Modify. Except as otherwise provided in Section 11.2 (Termination by SDSA) and Section 11.3 (Termination by Either Party), Purchase Orders that we have accepted in accordance with Section 2.2 (Purchase Orders) and fully signed Statements of Work are non-cancellable.

**3. Offerings and Services.**

3.1 Third-Party Offerings. 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. By ordering a Third-Party Offering, you represent that you have read and agree to the applicable Third-Party Terms, which are a separate agreement between you and the manufacturer, licensor, or provider of that Third-Party Offering. Third-Party Offerings with a term will commence as provided in the applicable Third-Party Terms. You hereby release us from any and all claims arising from or relating to the use or possession of any Third-Party Offering, and you shall look solely to the manufacturer, licensor, or provider of a Third-Party Offering for any Losses arising from or relating to the use or possession of that Third-Party Offering.

3.2 SDSA Offerings. Your use of any SDSA Offering is governed by a separate end user license agreement or other terms and conditions that are between us (or our licensors, as applicable) and you ("**SDSA Terms**"). SDSA Terms may be posted on Our Website, provided as a hard-copy, or presented as a "click-through" agreement during the installation or login process. By ordering a SDSA Offering, you represent that you have read and agree to the applicable SDSA Terms.

3.3 Cloud Services. You hereby acknowledge that you are solely responsible for determining whether the administrative, physical, and technical controls for any Cloud Service Offering are adequate to ensure the confidentiality, integrity, and availability of your account and data, including to protect your account and data from unauthorized access, acquisition, disclosure, destruction, or alteration, or from any unavailability, loss, misuse, or damage in accordance with applicable Law and your requirements. WE HAVE NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF ANY OF YOUR CONTENT OR FOR ANY UNAUTHORIZED ACCESS TO YOUR ACCOUNT OR DATA.

#### 3.4 Services.

3.4.1 Description and Nature. Services will be described in a Statement of Work. You acknowledge and agree that the Services we perform are of a scalable and repeatable nature, and that we have and will continue to perform the same or similar Services for our other customers.

3.4.2 Customer Obligations. With respect to all Services, you shall: **(a)** provide safe and secure office space, facilities, equipment, network access, high-speed internet, and other accommodations as required for onsite activities; **(b)** make available to us any remote access required to provide the Services; **(c)** provide us with complete and accurate information relevant to the Services, and promptly inform us of any changes to that information that may affect any Deliverable or the Services; **(d)** provide us with access to internal and external stakeholders who have an interest in the outcome of the Services and decision-making authority; **(e)** appoint a project manager who is authorized to resolve any issues that may arise during the course of the Services and, at our request, make appropriately qualified staff available to assist us with the provision of the Services; **(f)** provide the tools, infrastructure, system components, and other technology required for us to perform the Services; **(g)** ensure that you have in place all licenses and consents required for us to provide the Services without violating any Law, Intellectual Property Right, or any other right of any Person; **(h)** be responsible for securing your network, applications, data, and any methods of remote access provided by you; and **(i)** perform all of your obligations set out in each Statement of Work. We will not be responsible for any delay or deficiency in performing the Services or any defect in any Deliverable that results from your failure to fully and timely meet any of your obligations under this Section 3.4.2.

3.5 Customer Restrictions. You shall not: **(a)** purchase any Offering or Services for resale or resell or otherwise transfer any Deliverable, including any Intellectual Property Rights therein; **(b)** use any Offering, except as expressly authorized under the applicable SDSA Terms or Third-Party Terms; **(c)** use any SDSA Materials or Deliverables, except as expressly authorized under this Agreement and the applicable Statement of Work; **(d)** modify any Offering, SDSA Materials, or Deliverables, or remove, alter, or obscure any markings thereon, including any copyright, trademark, or other mark indicating proprietary rights; **(e)** use any Offering, SDSA Materials, or Deliverables for or in connection with any High Risk Use; **(f)** export or re-export any Offering, SDSA Materials, or Deliverables outside of the United States in violation of any export control Laws; **(g)** enter into any agreement that requires you to take any actions that conflict with the terms and conditions in this Agreement; **(h)** perform or disclose the results of any benchmarking tests on any Offering, SDSA Materials, or Deliverables; **(i)** install or use any SDSA Materials or Deliverable in any way that would subject SDSA's or its licensor's intellectual property or technology to obligations beyond those included in this Agreement; **(j)** reverse engineer, decompile, disassemble, copy, derive source code, object code, trade secrets or create any derivative works from or about any SDSA Offerings, SDSA Materials, or Deliverables, or access or use any SDSA Offerings, SDSA Materials, or Deliverables for the purpose of developing or operating products or services intended to be competitive with any SDSA Offerings, SDSA Materials, or Deliverables, except pursuant to Customer's non-waivable rights under applicable Law; or **(k)** develop, operate, or create a competing product (whether publicly available or for internal use) to the SDSA Offerings currently known as "Zero Touch Mobility," except pursuant to Customer's non-waivable rights under applicable Law.

#### 4. Ownership.

4.1 **Offerings.** Except for hardware that you purchase as an Offering under this Agreement, you will not receive title to any Offering under or in connection with this Agreement. In addition, you will not obtain any rights, title, or interest in or to any Intellectual Property Rights in any Offering under or in connection with this Agreement other than those rights that are granted to you in the applicable SDSA Terms or Third-Party Terms. Title to hardware Offerings will pass to you upon their delivery to the initial carrier at the point of origin, except that title to any Software that is installed or embedded in any hardware Offering (“**Internal Code**”) will remain with its licensors. You will not receive any right, title, or interest in or to any Internal Code other than those rights that are expressly granted to you in the applicable license terms.

4.2 **Deliverables.** Upon your payment of all amounts due under the applicable Statement of Work, and subject to the terms and conditions in this Agreement, we hereby grant to you a limited, non-exclusive, non-transferable, royalty-free, revocable, perpetual license (without the right to sublicense) to use the Deliverables solely for your own internal business purposes, provided that this license does not apply to any Third-Party Materials. Third-Party Materials are governed by the applicable open source or other third-party license. Except as expressly provided in this Section 4.2, we and our licensors retain all right, title, and interest in and to the Deliverables, including all Intellectual Property Rights therein.

4.3 **SDSA Materials.** Except for the limited license expressly granted in this Section 4.3, we and our licensors retain all right, title, and interest in and to any software (including computer programs, code, and scripts), hardware, methodologies, techniques, processes, know-how, specifications, trade secrets, documentation, data, works of authorship, inventions, and any other creations or innovations of any kind developed by or for us, including any developments and derivatives thereto, whether made separately from or in connection with this Agreement (“**SDSA Materials**”). We hereby grant to you a limited, non-exclusive, non-transferable, royalty-free, revocable license (without the right to sublicense) to use any SDSA Materials that we may provide to you during our performance of the Services strictly in accordance with our instructions and solely as necessary for you to perform your obligations under the applicable Statement of Work, provided that this license does not apply to any Third-Party Materials. To the extent that any SDSA Materials are incorporated into a Deliverable or otherwise necessary for the permitted use of a Deliverable, we hereby grant to you a limited, non-exclusive, non-transferable, royalty-free, revocable, perpetual license (without the right to sublicense) to use those SDSA Materials solely as required for you to use that Deliverable for your own internal business purposes, provided that this license does not apply to any Third-Party Materials.

4.4 **Customer Materials.** You hereby grant to us and our Resources a non-exclusive, worldwide, royalty-free, fully paid-up license to use Customer’s computer programs, scripts, techniques, processes, copyrights, trade secrets, data, and any other items or materials developed by or for Customer, including any developments and derivatives thereto, that are or were made independently of this Agreement and any Statement of Work (“**Customer Materials**”) for the purpose of performing the Services and providing the Deliverables. Except for the limited license expressly granted in this Section 4.4, you and your licensors retain all right, title, and interest in and to Customer Materials.

4.5 **Business Contact Information.** We may use your Business Contact Information to market and sell Offerings and 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 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 4.5 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.

4.6 **Feedback.** You may, but are not required to, provide comments, ideas, suggestions, complaints, and other feedback to us or any Resource regarding any Offering, Services, SDSA Material, or Deliverable (collectively, “**Feedback**”). You hereby grant to us a worldwide, perpetual, non-exclusive, fully paid, royalty-free, irrevocable, sub-licensable license to display, exploit, copy, distribute, perform, use, modify, and create derivative works of any Feedback for any purpose, including to incorporate Feedback into our products and services and to use Feedback to improve our operations and support our other customers. For the purposes of clarity, this Section 4.6 does not grant us any other rights in any of your copyrights or patents.

4.7 **Reservation of Rights.** All rights, title, and interest not expressly granted under this Agreement are reserved by the parties and their respective licensors.

## 5. Shipping and Delivery.

5.1 Hardware Shipping and 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. Risk of loss or damage 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.

5.2 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 5 Business Days after the shipment's delivery date. We will review any timely notice provided under this Section 5.2 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 under this Section 5.2, 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 5.2. Offerings are not subject to any express or implied rights of acceptance or rejection, except as provided in this Section 5.2 with respect to hardware that you purchase from us as an Offering. You have no acceptance rights with respect to Services or Deliverables, except as expressly set out in a Statement of Work.

5.3 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**"), you will be provided the Credentials and instructions on how to obtain a copy of any software for which you have purchased a license. You shall employ administrative, physical, and technical controls and safeguards as necessary to: **(a)** securely administer the distribution and use of all Credentials; and **(b)** protect against any unauthorized access to or use of Credentials. We are not liable for any authorized or unauthorized access or any other activities that occur under any Credentials. All Credentials are our Confidential Information.

## 6. Fees; Taxes and Invoicing.

6.1 Fees. All fees are exclusive of: **(a)** 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**"). For Services, you shall also pay any expenses that become due under a Statement of Work (collectively, "**Expenses**"). You shall pay all fees, Shipping Costs, Taxes, Expenses, and any other amounts due under this Agreement in accordance with Section 6.2 (Invoicing). Unless a Quote expressly states that Shipping Costs and Taxes are included in our fees, Shipping Costs and Taxes are payable by you in addition to fees, even if you do not include them in your Purchase Order. All fees, Shipping Costs, Taxes, and Expenses are stated in U.S. Dollars.

6.2 Invoicing. We will invoice you for Offerings on or after the date on which we accept your Purchase Order for them. We will invoice you for Services either in advance or in accordance with the schedule, if any, contained in the applicable Statement of Work. We may condition the delivery of any Offering or Deliverable, or the performance of any Services, upon our prior receipt of any or all amounts due to us under the applicable Purchase Order or Statement of Work, or upon our receipt of any or all amounts due to us under any other Purchase Order or Statement of Work. Except as expressly provided in this Agreement, including in Section 6.4 (Credit) and Section 11.4.3 (Payment Obligations), all invoiced amounts are due and payable within 30 days from the date of the applicable invoice. You hereby grant to us a security interest in all Offerings purchased under this Agreement in order to secure your payment in full for those Offerings. You agree that we may execute and file a financing statement or any other documents that are necessary to perfect our security interest in the Offerings, which will terminate when we receive all amounts due to us under the applicable Purchase Order.

6.3 Late Payments; No Right to Setoff or Refund. We may require you to pay interest on all amounts that become past due under this Agreement from the due date of your late payment, calculated daily and compounded monthly, at the lesser of the rate of 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.

6.4 Credit. We may 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: **(a)** amend the payment terms specified in Section 6.2 (Invoicing), including for existing Purchase Orders and Statements of Work, effective immediately upon notice; and **(b)** delay the provision of any Offering or Services. No actions taken by us under this Section 6.4 will be deemed to be a waiver of any of our rights to enforce your obligations under this Agreement.

## 7. General Indemnification.

You shall defend, indemnify, and hold harmless the SDSA Indemnitees from and against any and all Losses arising from or relating to any actual or alleged: **(a)** 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 or any of your agents, representatives, employees, or subcontractors; **(b)** breach of Section 3.5 (Customer Restrictions), Section 9.1 (Customer Warranties), or Section 13.5 (Books and Records); **(c)** possession, use, or operation of any Offering by you or any of your end users other than as contemplated in the applicable Documentation or in violation of the applicable Third-Party Terms or SDSA Terms; or **(d)** possession, use, or operation of any SDSA Materials or Deliverables by you other than as contemplated in the applicable Statement of Work or in violation of this Agreement.

## 8. IP Indemnification.

8.1 By Customer. 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 a 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 or SDSA Material or Deliverable by you with any other product, hardware, software, services, information, items, or materials; **(b)** modification of an Offering, SDSA Material, or Deliverable that we do not make or approve in writing; **(c)** use or possession of any Customer Materials in accordance with this Agreement; or **(d)** failure by you to obtain any third-party licenses, permissions, or consents, including software licenses, permission to access networks and stored data, and consents from individuals regarding their Personal Information, that are required for us to freely and without interruption perform the Services.

### 8.2 By SDSA.

8.2.1 Indemnity. We shall defend, indemnify, and hold harmless the Customer Indemnitees from and against any and all Losses finally awarded against a Customer Indemnitee in connection with a third-party Claim brought against the Customer Indemnitee alleging any infringement or misappropriation (including Claims for joint, direct, or indirect infringement or misappropriation) of any Intellectual Property Right by a Deliverable, except to the extent that the Claim is based on any actual or alleged: **(a)** use or combination of the Deliverable with any other product, hardware, software, services, information, item, or material; **(b)** modification to the Deliverable that we did not make or approve in writing; **(c)** use of the Deliverable in violation of this Agreement, the applicable Statement of Work, applicable Law, or any additional terms and conditions that may apply; **(d)** use of Third-Party Materials; **(e)** use of any version of a Deliverable other than the most current version or failure to timely implement any patch, bug fix, or other incremental update to the Deliverable; or **(f)** third-party Claims or Losses for which you are obligated to indemnify SDSA Indemnitees pursuant to Section 8.1.

8.2.2 Mitigation. If any Deliverable is subject to a Claim covered by Section 8.2.1 (Indemnity), or in our reasonable opinion is likely to become the subject of a Claim covered by Section 8.2.1 (Indemnity), then we may, at our sole option and expense: **(a)** obtain the right for you to continue using the Deliverable materially as contemplated by this Agreement; **(b)** modify the Deliverable to make it non-infringing; **(c)** substitute the Deliverable, or any portion thereof, with a non-infringing replacement that has similar functionalities; or **(d)** stop providing the Services and require you to return the Deliverable, or the allegedly infringing portion of the Deliverable, to us. If we elect to exercise our rights under clause (d) of this Section 8.2.2, we will refund any unused, prepaid fees for Services that we will no longer be providing, plus any amounts you paid to us for the Deliverable, or portion thereof, that you are required to return. Any refund that we may issue for any complete or partial Deliverable that you return to us will be based on a straight-line depreciation over a period of three years commencing on the date of its delivery to you.

8.2.3 Exclusive Remedy. SECTION 8.2 (BY SDSA) OF THIS AGREEMENT STATES OUR ENTIRE LIABILITY, AND YOUR EXCLUSIVE REMEDY, WITH RESPECT TO ANY INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS BY ANY THIRD-PARTY OFFERINGS, SDSA MATERIAL, SERVICES, OR DELIVERABLES. OUR ENTIRE LIABILITY, AND YOUR EXCLUSIVE REMEDY, WITH RESPECT TO ANY INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY ANY SDSA OFFERING IS AS EXPRESSLY STATED OR EXCLUDED IN THE SDSA TERMS THAT APPLY TO THE SDSA OFFERING.

8.3 Procedure. A SDSA Indemnitee or Customer Indemnitee (each, an “**Indemnitee**”) entitled to indemnification for a Claim under Section 8 (IP Indemnification) (each, an “**IP Claim**”) shall promptly, and in no event more than 10 days after learning of an IP Claim, notify the other party (“**Indemnifying Party**”) of that IP Claim; provided, however, that an Indemnitee’s failure to provide the Indemnifying Party with timely notice of an IP Claim brought against it will only relieve the Indemnifying Party from its obligations under Section 8 (IP Indemnification) to the extent that the Indemnitee’s failure materially prejudices the Indemnifying Party. To assume the Indemnitee’s defense, the Indemnifying Party shall promptly notify the Indemnitee of the assumption and retain independent legal counsel that is reasonably acceptable to the Indemnitee. The Indemnitee is entitled to participate in the defense of any IP Claim by counsel of its own choosing. The Indemnifying Party shall pay any costs, expenses, and fees (including filing fees, court costs, investigation costs, and reasonable attorneys’ and other professionals’ fees) incurred in connection with the defense of any IP Claim, except for any attorneys’ fees incurred by an Indemnitee to participate in the defense of an IP Claim after the independent counsel has been engaged on the Indemnitee’s behalf. The Indemnifying Party may settle a Claim against an Indemnitee without the Indemnitee’s prior written consent only if the settlement: **(a)** does not entail an admission of liability by the Indemnitee; **(b)** does not entitle the claimant to any monetary relief other than funds that are paid in their entirety by the Indemnifying Party; **(c)** contains or requires that the claimant release the Indemnitee from all liability arising from or relating to the Claim; and **(d)** does not entitle the claimant to any injunctive relief other than a requirement to stop any infringing use of the materials. All settlements not meeting those criteria are subject to the Indemnitee’s prior written approval, which the Indemnitee may not unreasonably withhold or delay.

## 9. Warranties and Disclaimers.

9.1 Customer 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 or Statement of Work, and that the person signing this Agreement or any Statement of Work on your behalf, or submitting any Purchase Order on your behalf, is duly authorized to do so; **(b)** the 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 and all export-related Laws, at all time during the Term in connection with any aspects of this Agreement or any of your other dealings with us; **(d)** you and your owners, directors, officers, employees, and agents have not and will not, directly or indirectly, provide or pledge anything of value (including funds) to any Person (including any government or public sector entity officials, public international organization officials, political parties, or candidates for political office) for the purpose of obtaining or retaining business or securing any improper advantage; and **(e)** you and your owners, directors, officers, employees, and agents have not and will not, directly or indirectly, request or accept anything of value (including funds) from any Person (including any government or public sector entity officials, public international organization officials, political parties, or candidates for political office) in order to improperly influence any of your actions or omissions. You hereby waive your right to make any assertion or claim that a Purchase Order was issued or a Statement of Work was signed without the requisite authority or approvals.

9.2 Services Warranty. We warrant that the Services will be performed in a professional and workmanlike manner consistent with generally accepted practices in the IT services industry (“**Services Warranty**”). If you believe that we have breached this Services Warranty, then you must notify us of the breach in reasonable detail within 30 days after the date on which the breach first occurred. If a breach of the Services Warranty has occurred and we receive proper notice of that breach under this Section 9.2, we will use commercially reasonable efforts to correct or re-perform the defective Services. THE REMEDY STATED IN THIS SECTION 9.2 IS YOUR SOLE REMEDY, AND OUR SOLE LIABILITY, WITH RESPECT TO ANY SERVICES THAT FAIL TO COMPLY WITH THE SERVICES WARRANTY.

9.3 Disclaimers. EXCEPT FOR THE SERVICES WARRANTY, ANY WARRANTIES FOR AN SDSA OFFERING THAT ARE EXPRESSLY SET OUT IN THE APPLICABLE SDSA TERMS, AND ANY WARRANTIES THAT CANNOT BE DISCLAIMED UNDER APPLICABLE LAW, WE AND OUR AFFILIATES, LICENSORS, SUPPLIERS, AND SUBCONTRACTORS HEREBY DISCLAIM ALL WARRANTIES WITH RESPECT TO ALL OFFERINGS, SERVICES, SDSA MATERIALS, AND 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, SERVICES, SDSA MATERIALS, OR DELIVERABLE WILL MEET YOUR OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OTHER GOODS, SERVICES, HARDWARE, SOFTWARE, TECHNOLOGY, INFORMATION, OR MATERIALS, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. THIS AGREEMENT DOES NOT AMEND, AUGMENT, OR OTHERWISE MODIFY ANY WARRANTIES PROVIDED TO YOU BY A THIRD-PARTY UNDER ANY THIRD-PARTY TERMS OR ANY WARRANTY THAT MAY BE PROVIDED BY US UNDER ANY SDSA TERMS. YOU ACKNOWLEDGE AND AGREE THAT ANY WARRANTY THAT MAY BE PROVIDED FOR ANY THIRD-PARTY OFFERING IS

STRICTLY BETWEEN YOU AND THE THIRD PARTY MAKING THE WARRANTY AND THAT WE AND OUR AFFILIATES AND SUBCONTRACTORS WILL NOT BE LIABLE, UNDER ANY CIRCUMSTANCES, FOR ANY BREACH OF ANY WARRANTY BY A THIRD PARTY UNDER ANY THIRD-PARTY TERMS. YOU FURTHER ACKNOWLEDGE AND AGREE THAT WE MAKE NO WARRANTY FOR ANY SDSA OFFERING UNDER THIS AGREEMENT AND THAT YOU MUST LOOK EXCLUSIVELY TO THE SDSA TERMS GOVERNING AN SDSA OFFERING FOR ANY WARRANTIES THAT MAY APPLY.

## 10. Limitation of Liability.

10.1 Excluded Liabilities. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL WE, OUR AFFILIATES, OR ANY OF OUR OR THEIR RESPECTIVE LICENSORS, SUPPLIERS, OR SUBCONTRACTORS, BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING ANY PURCHASE ORDER OR STATEMENT OF WORK) 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 OTHER PERSON FOR ANY: **(a)** INCREASED COSTS, DIMINUTION IN VALUE, LOST BUSINESS, LOSS OF PRODUCTION, LOST REVENUES, OR LOST PROFITS; **(b)** LOSS OF GOODWILL OR REPUTATIONAL HARM; **(c)** USE, INABILITY TO USE, INTERRUPTION, OR DELAY IN USING ANY HARDWARE, SOFTWARE, SYSTEM, DATA, OR SERVICE; **(d)** LOST OR CORRUPTED DATA, OR PHYSICAL OR LOGICAL DAMAGE TO ANY SYSTEM, INCLUDING ANY COSTS RELATING TO THE RECOVERY, REPAIR, OR RECONSTRUCTION OF ANY DATA, HARDWARE, OR SOFTWARE; **(e)** DATA BREACH OR SECURITY INCIDENT, INCLUDING ANY BREACH OF THE CONFIDENTIALITY, INTEGRITY, OR AVAILABILITY OF ANY PERSONAL INFORMATION, NETWORK, OR SYSTEM; **(f)** COST OF REPLACEMENT GOODS OR SERVICES; OR **(g)** CONSEQUENTIAL, ENHANCED, EXEMPLARY, INCIDENTAL, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES. THE EXCLUSIONS IN THIS SECTION 10.1 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.

10.2 Liability Cap. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL OUR AND OUR AFFILIATES', LICENSORS', SUPPLIERS', AND SUBCONTRACTORS' COLLECTIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING ANY PURCHASE ORDER OR STATEMENT OF WORK) EXCEED THE FEES THAT YOU HAVE PAID TO US UNDER THIS AGREEMENT DURING THE ONE-YEAR PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE LIABILITY, OR, IF THE LIABILITY ARISES FROM A SPECIFIC OFFERING, SERVICES, SDSA MATERIALS, OR DELIVERABLE, THE FEES YOU PAID TO US UNDER THIS AGREEMENT FOR THE APPLICABLE OFFERING, SERVICES, SDSA MATERIALS, OR DELIVERABLE GIVING RISE TO THE LIABILITY. THE LIMITATION IN THIS SECTION 10.2 APPLIES TO ANY LIABILITY ARISING UNDER ANY THEORY OF LIABILITY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, AND STRICT LIABILITY, AND IT APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

## 11. Term and Termination.

11.1 Term. The term of this Agreement begins on the Effective Date and continues for a period of two 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-year renewal terms unless and until either party provides the other party with a written notice of nonrenewal at least 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 any other Renewal Terms, the "**Term**").

11.2 Termination by SDSA. We may immediately terminate this Agreement or any Purchase Order or Statement of Work for cause if: **(a)** we reasonably believe that you are in violation of any applicable export control or anti-bribery Law or regulation, including the US Foreign Corrupt Practices Act; **(b)** you fail to pay any amounts when due under this Agreement and your failure continues for a period of at least 10 days after we notify you of the nonpayment; **(c)** you fail to make at least two consecutive payments or three non-consecutive payments when due under this Agreement; **(d)** you breach Section 3.5 (Customer Restrictions), Section 4 (Ownership), Section 9.1 (Customer Warranties), Section 12 (Confidentiality), or Section 13.5 (Books and Records); or **(e)** you become insolvent, make a general assignment for the benefit of your creditors, are the subject of a bankruptcy petition, or a trustee, receiver, or custodian is appointed for a substantial portion of your property.

11.3 Termination by Either Party. If a party materially breaches this Agreement (other than as described above in Section 11.2 (Termination by SDSA)) and then fails to cure its material breach within 30 days of receiving a reasonably descriptive notice of that breach from the non-breaching party, then the non-breaching party may terminate any Purchase Order or Statement of Work affected by that material breach immediately upon notice to the other party. The non-breaching party may, in its sole discretion, extend the 30-day cure period in writing without waiving any of its rights under this Agreement or applicable Law.

#### 11.4 Effects of Termination.

11.4.1 Purchase Orders and Statements of Work. Any Purchase Order or Statement of Work that is duly identified in a notice of termination provided under Section 11.2 (Termination by SDSA) or Section 11.3 (Termination by Either Party) will terminate on the date of the applicable termination notice and all other then-current Purchase Orders and Statements of Work that are not terminated will remain in effect and continue to be governed by the terms and conditions in this Agreement.

11.4.2 Return of Confidential Information and Materials. Each party will return or destroy the other party's Confidential Information in accordance with Section 12.4 (Return or Destruction of Confidential Information).

11.4.3 Payment Obligations. You will remain obligated to pay all fees for all Services that were performed through the effective termination date of each Statement of Work and all Expenses that were incurred in connection with the provision of those Services. You will also remain obligated to pay all amounts due in connection with any Purchase Order. In the case of our termination for your breach, we may, in our sole discretion, accelerate the due date of all unpaid fees and other amounts due under any Purchase Order or Statement of Work.

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

11.4.5 Survival. The following provisions will survive termination or expiration of this Agreement: Section 4 (Ownership), Section 6 (Fees; Taxes and Invoicing), Section 7 (General Indemnification), Section 8.1 (By Customer), Section 8.3 (Procedure), Section 9.3 (Disclaimers), Section 10 (Limitation of Liability), Section 11.4 (Effects of Termination), Section 12 (Confidentiality), Section 13 (Miscellaneous), Section 14 (Definitions), and any others that, by their nature, are intended to survive.

## 12. Confidentiality.

12.1 Confidential Information. If a party discloses its Confidential Information to the other party under this Agreement, for purposes of Section 12 (Confidentiality), 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 12.3 (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 a party's business, pricing, sales, marketing, affairs, customers, clients, suppliers, plans, intentions, opportunities, operations, processes, and products; **(b)** any negotiated terms of this Agreement; and **(c)** for us, SDSA Materials and the Deliverables.

12.2 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 the Receiving Party uses to preserve and protect its own Confidential Information, but in no event may the Receiving Party use 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 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, except that the Receiving Party may disclose Confidential Information to its Representatives to the extent that they need to know the Confidential Information in order for the Receiving Party to perform its obligations or exercise its rights under this Agreement. The Receiving Party is liable for all acts and omissions of its Representatives in breach of Section 12 (Confidentiality), and it shall take all commercially reasonable measures (including court proceedings when appropriate) to restrain its Representatives from engaging in any unauthorized disclosure or use of Confidential Information.

12.3 Exclusions from Confidential Information. Confidential Information does not include any information that: **(a)** is or becomes generally available to the public or otherwise part of the public domain other than due to a breach of this Agreement; **(b)** was lawfully known to the Receiving Party without any obligation on the Receiving Party under any contract or Law to keep it confidential; **(c)** is lawfully received by the Receiving Party from any Person other than the Disclosing Party or its Representatives without any obligation on the Receiving Party under any contract or Law to keep it confidential; or **(d)** is independently developed by the Receiving Party without the use of the Disclosing Party's Confidential Information.

12.4 Return or Destruction of Confidential Information. Within 10 days after the expiration or termination of this Agreement, or within 10 days after receiving a written request from the Disclosing Party, the Receiving Party shall return (or



destroy, if requested by the Disclosing Party in writing) all of the Disclosing Party's Confidential Information, except that the Receiving Party may retain any copies of Confidential Information that are contained in the Receiving Party's automated backups for the period of time that the Receiving Party customarily retains automated backups under its standard policies and practices. Section 12 (Confidentiality) will continue to protect the Disclosing Party's Confidential Information until it is returned or permanently destroyed.

12.5 **Remedy.** The parties acknowledge and agree that Confidential Information constitutes valuable proprietary information and that any breach of Section 12 (Confidentiality) may cause the Disclosing Party to sustain irreparable harm for which it has no adequate remedy at law. For any actual or threatened breach of Section 12 (Confidentiality), the Disclosing Party may, in addition to any other remedies it may have at law or in equity, seek injunctive relief and the Receiving Party and its Representatives shall not plead as a defense to that action that the Disclosing Party has an adequate or other remedies at law.

12.6 **Compelled Disclosures.** Notwithstanding anything to the contrary in this Agreement, the Receiving Party may disclose Confidential Information to the minimum extent required by Law, provided that the Receiving Party shall promptly provide the Disclosing Party with prior written notice of the required disclosure (unless notice is prohibited by Law) so as to afford the Disclosing Party a reasonable opportunity to seek relief or obtain a protective order. 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.

### 13. Miscellaneous.

13.1 **Entire Agreement.** This Agreement 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 expressly referred to in this Agreement. Each Purchase Order and Statement of Work is to be treated as a separate agreement that incorporates these General Terms and any Offerings and Services Schedule by reference, whether or not the incorporation is expressly stated in that Purchase Order or Statement of Work.

13.2 **Government Rights.** All software provided to you in connection with this Agreement, including all of its components and Documentation, is a "commercial item," as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as those terms are used in 48 C.F.R. 12.212. Accordingly, if you are an agency of the US Government or any contractor for any agency of the US Government, you only receive those rights with respect to any software and related Documentation provided to you in connection with this Agreement as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense licensees and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

13.3 **Publicity.** You shall not make any press release regarding this Agreement without our prior written consent. Notwithstanding the foregoing, we may: (a) use your name and trademarks in any general listing of our customers, 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.

13.4 **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, Services, SDSA Material, and Deliverables, including their related technical data and other Documentation. You hereby acknowledge and agree that such export laws govern your use and distribution of the Offerings, Services, SDSA Material, and Deliverables, including their respective 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, Services, SDSA Material, or Deliverables, or any related technical data or other Documentation, in violation of these laws, and you shall ensure that no data, information, Offerings, Services, or SDSA Material are used for any purpose prohibited by these laws, including nuclear, chemical, or biological weapons proliferation, or development of missile technology.

13.5 **Books and Records.** You agree that the handling and disbursement of any funds related this Agreement or any of your other dealings with us must be pursuant to a duly authorized written contract between you and us that includes clearly defined procedures, and you shall create and maintain books and records that record all funds, assets, and transactions relating to all of your dealings with us, whether under this Agreement or in connection with any other relationship between you and us. No undisclosed or undocumented funds or assets relating to any transaction with us may be established or maintained for any purpose.

13.6 Audit. Upon at least 10 days' written notice, we or our designated representatives will have the right to access, audit, review, copy, and retain copies of your books and records that are relevant to this Agreement, including to ensure your compliance with Section 9.1 (Customer Warranties) and Section 13.5 (Books and Records). We or our designated representatives will conduct any audit during your regular business hours and take commercially reasonable measures to avoid unreasonably interfering with your business activities. You shall fully and in a timely manner cooperate with any audit, including by providing complete and accurate responses to all inquiries and any requested books and records.

13.7 Validity. If any provision in this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions in this Agreement will remain in full force and effect. To the extent possible, any invalid or unenforceable provision will be reformed to carry out the intent of the original provision. If the invalid or unenforceable provision cannot be reformed to carry out the intent of the original provision, then the invalid or unenforceable provision will be severed from this Agreement and the remainder of this Agreement will continue in full force and effect.

13.8 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.

13.9 No Waiver. No waiver of any right or obligation under this Agreement will be effective unless it is in writing and signed by an authorized representative of 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.

13.10 Order of Precedence. In the event of any inconsistency between the Cover Page, these General Terms, any Offerings and Services Schedule, and any Purchase Order or Statement of Work, the documents will control in the following descending order of precedence: the Cover Page; the Offerings and Services Schedule; these General Terms; and the Purchase Order or Statement of Work, except that a Statement of Work may amend these General Terms as provided above in Section 2.3 (Statements of Work).

13.11 Modifications. To be valid, any modifications to this Agreement must be in writing and signed by an authorized representative of each party, except that we may modify these General Terms or any Offerings and Services Schedule by posting a revised version on Our Website. Modifications are effective when posted. You accept any modifications to this Agreement by submitting a Purchase Order or delivering a signed Statement of Work to us after the date on which those modifications become available on Our Website. You agree to check Our Website for revisions to this Agreement, including these General Terms and any Offerings and Services Schedule, immediately prior to your submission of a signed Statement of Work or Purchase Order to us.

13.12 Notices. All notices given under this Agreement must be in writing and sent to the other party at the notice address indicated for that party in the Cover Page. Each notice must be sent with a unique US Postal Service or national transportation company tracking number. Notices will be deemed to be effective when delivered, as indicated in the tracking system maintained by the US Postal Service or national transportation company. A notice that is rejected or cannot be delivered because a party moved without notifying the sender of its new address will be deemed to be effective upon its attempted delivery.

13.13 Assignment. You may not assign, transfer, or delegate any of your 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 13.13 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.

13.14 Force Majeure. We 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 we do not cause; government restrictions (including the denial or cancellation of any export or other license); or other event outside of our reasonable control. We shall use reasonable efforts to mitigate the effect of a force majeure event. This Section 13.14 does not excuse us from our obligation to take reasonable steps to follow our normal disaster recovery procedures.

13.15 Counterparts. The Cover Page and any Statement of Work 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, will have the same effect as their originals.

13.16 Third-Party Beneficiaries. Except for Indemnitees and as expressly provided in this Agreement with respect to our Affiliates, licensors, suppliers, subcontractors, and Resources, no third-party beneficiary relationship is created by this Agreement.

13.17 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 this Agreement must be construed to have been drafted by both parties such that any ambiguities in this Agreement will not be construed against either party.

13.18 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. EXCEPT AS PROHIBITED BY APPLICABLE LAW, 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.

13.19 Subcontractors. We may use subcontractors to fulfill our obligations under any Purchase Order or Statement of Work. We will be responsible for the performance of our obligations by our subcontractors' in accordance with this Agreement.

13.20 Relationship. The relationship of the parties under this Agreement is that of independent contractors. This Agreement does not create a partnership, agency, joint venture, employment, or franchise relationship between the parties.

#### 14. 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 **(a)** with respect to a Person, including both of the parties, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person; and **(b)** for us, in addition to the "Affiliates" described in the preceding clause (a), any company in the Samsung Group (as "enterprise group" is defined under the Korean Monopoly Regulation and Fair Trade Act), including, but not limited to, all Samsung Group affiliates and subsidiaries located anywhere in the world. 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 to be contacted, including names, addresses, email addresses, telephone numbers, user IDs, and other similar information relating to any of your employees, representatives, agents, contractors, consultants, or end users.

**"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 Service"** means a cloud service that is identified in a Purchase Order, including its Documentation, any Maintenance Releases made available by its provider, and any support and maintenance that the provider or licensor may make available for the cloud service.

**"Customer Indemnitees"** means you and your directors, officers, employees, agents, successors, and permitted assigns, collectively.

**"Deliverables"** means all documents, deliverables, and other materials that are produced in the course of performing Services and identified as a deliverable in a Statement of Work. Deliverables do not include Open Source Software.

**"Documentation"** means any printed or digital information regarding the installation, configuration, integration, operation, or use of any Offering that is issued or updated by the licensor, manufacturer, or provider of that Offering, including any manuals, handbooks, policies, installation guides, specifications, requirements, frequently asked questions, knowledgebase sites, wiki pages, and other documentation.

**"Effective Date"** has the meaning given in the Cover Page.

**"High Risk Use"** means any use for, or in connection with, the design, construction, maintenance, or operation of any

service, environment, system, or application: **(a)** that requires fail-safe performance, such as safety response systems; **(b)** is used for stock trading or financial transactions; **(b)** is used in connection with a hazardous facility, mass transportation, or for medical or life-saving purposes; **(c)** in which the use or failure of the Services could lead to personal injury, death, environmental harm, or severe physical or property damage; or **(d)** or for any similar purpose.

**“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.

**“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, 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”** means any SDSA Offering or Third-Party Offering.

**“Offerings and Services Schedule”** means a schedule to these General Terms that SDSA may provide and that contains terms and conditions applicable to the particular type of Offering, Services, or both to be delivered or performed.

**“Open Source Software”** means any software code that is distributed under an open source license that is approved as of the Effective Date by the Open Source Initiative as meeting its Open Source Definition or any similar license, including any license that requires: **(a)** the software (including any modifications and derived Services) to be made available in source code form; **(b)** any modifications and derived works to be distributed under the same terms as the license of the original; **(c)** the software to be licensed for the purpose of making derivative Services; or **(d)** the software to be redistributable at no charge.

**“Our Website”** means the SDSA website located at <https://www.samsungsds.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.

**“Purchase Order”** means a document that you create and submit to us in order to purchase 1 or more Offerings under this Agreement.

**“Quote”** means any quotation or proposal that we provide to you under this Agreement for any Offering or Services.

**“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 Services as our employee or independent contractor, or an employee or independent contractor of any of our Affiliates, licensors, subcontractors, or suppliers.

**"SDSA Indemnitees"** means SDSA and our Affiliates, directors, officers, employees, agents, successors and permitted assigns, collectively.

**"SDSA Offering"** means any license or subscription to any SDSA-branded Software, cloud service, or support and maintenance, or any other SDSA-branded product or service that you procure from us under this Agreement pursuant to a Purchase Order that has been accepted by us in writing, including all related Documentation and updates.

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

**"Services"** means the professional services described in a Statement of Work and provided to you under this Agreement.

**"Shipping Costs"** means shipping, freight, terminal charges, and handling charges, collectively.

**"Software"** means any utilities, operating systems, machine code, firmware, or other system code; compilers, linkers, and other programming tools, applications, and embedded and other code (including source code and object code) that tells a computer, mobile device, or other hardware what to do, together with any Documentation, Maintenance Releases, and support and maintenance provided by its licensor. Software licensed by SDSA is referred to in this Agreement as a SDSA Offering, and Software licensed by a third party is referred to in this Agreement as a Third-Party Offering.

**"Statement of Work"** means a document that describes the Services to be performed by us under this Agreement, including the scope of Services, fees, and any other terms and conditions agreed upon by the parties.

**"Third Party Offering"** means any license or subscription to any software, cloud service, appliance, support and maintenance, or warranty services, or any hardware or other product or service of a third party that we resell to you under this Agreement pursuant to a Purchase Order, including any updates to and Documentation for that third-party product or service. Services that are described in a Statement of Work and performed on our behalf by a subcontractor are not a Third-Party Offering.

**"Third-Party Terms"** means the separate agreement between you and any third party that governs any 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.

**"Third-Party Materials"** means any hardware, Software, intellectual property or other materials owned by third parties that constitute a part of or are incorporated in any part of the Deliverables or SDSA Materials.

**"Transaction Terms"** means any one or more of the following terms specified in a Purchase Order: **(a)** the Offerings to be purchased, including any make, model number, UPC, SKU, or other identifier; **(b)** the quantity of each of the Offerings ordered; **(c)** the date of delivery; **(d)** the fees for the Offerings to be purchased; **(e)** Customer's billing address; and **(f)** the Delivery Location.

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