

Samsung Business Services Terms and Conditions (USA)

The sale and performance of Samsung Business Services is governed by these Samsung Business Services Terms and Conditions (the "Terms and Conditions"). The Terms and Conditions apply to all: 1) enterprise purchases of Services (as defined below) directly from Samsung; and 2) enterprise purchases of Services through an authorized Samsung reseller or distributor ("reseller").

By placing your Order (as defined below) for the Services, receiving delivery of the Services, utilizing the Services, or clicking/checking any "I Agree" button or box or similar on the Samsung Business Services website in connection with your purchase, you agree to be bound by these Terms and Conditions.

These Terms and Conditions are agreed between (i) you, either individually if you are agreeing to it in your own capacity, or if you are authorized to agree to these terms on behalf of your company or another entity, between the entity for whose benefit you act (in either case, "you", "your" or "Customer"), and (ii) Samsung Electronics America, Inc. ("Samsung"). The Services and Deliverables are solely for your internal business use unless permitted by Samsung in writing.

If you purchased Services through a reseller, final prices and sales terms will be between you and the reseller; however, these Terms and Conditions apply to Samsung's provision of the Services to you. Section 3 below sets forth the payment terms that apply to you if Services are purchased directly from Samsung.

Capitalized terms used but not defined in these Terms and Conditions shall have the meanings as set forth in the applicable Order.

1. **Service Descriptions.** As used herein, "Services" means each Samsung enterprise service offering as described in a service guide (each, a "Samsung Service Guide") or an Order. Each Samsung Service Guide or Order describes: (i) available service options; (ii) specific projects, tasks, functions, responsibilities and services to be furnished by Samsung to Customer; (iii) deliverables to be provided (the "Deliverables"); (iv) assumptions, conditions and dependencies impacting the Services or upon which the pricing or delivery of the Services might be based; (v) the charges and expenses for the Services ("Fees"); (vi) additional terms and conditions that apply to the particular Services (for example, service levels, performance requirements, milestones, project plans, acceptance testing, and license rights for Deliverables); and (vii) the duration of the Services (the "Service Term").

2. **Services.** On the Service Start Date (as defined below), Samsung shall commence providing Customer with the Services set forth in the Order, and Customer shall commence with the performance of its obligations thereunder. Unless otherwise set forth in an Order, Customer's acceptance of the Services occurs upon performance of the Services by Samsung.

A. **Services Manager.** All communications regarding any Order shall be directed to the applicable Customer or Samsung contacts. The Samsung and Customer contacts shall have the authority to act on behalf of the respective party in all day-to-day matters pertaining to the applicable Order, but shall not have the authority, through action, inaction or otherwise, to amend or modify these Terms and Conditions or an Order. Either party may change its designated contact upon written notice to the other party.

B. **Service Locations.** Samsung may provide the Services (or portions thereof) from any location determined by Samsung or relocate the provision of the Services (or any portion thereof).

C. **Access & Use.** Customer acknowledges that it is responsible (administratively and financially) for obtaining all required approvals, licenses, authorizations, consents, and permits for Samsung to use or access the Customer sites or Customer contractor sites, with such sites being kept free of health and safety hazards.

D. **Changes to Scope of Services.** If the applicable Samsung Service Guide or Order permits change requests, either Samsung or Customer may request changes to the then existing scope of Services or Deliverables, including new or additional services, in accordance with the following change control procedures. All change requests will: (i) be in writing; (ii) have a description of the requested change; (iii) describe the purpose for the change; (iv) determine the priority of the change; (v) reflect the date of requested implementation; (vi) identify the pricing impact of the change, if any; and (vii) give the name of the individual authorized to request such changes.

Changes requested will be reviewed by the receiving party as soon as possible, and all changes mutually agreed to by the parties will become effective upon the date set forth in the document executed by both parties describing such changes.

E. **Customer Obligations.** Customer acknowledges that the ability of Samsung to provide certain Services and Deliverables in accordance with these Terms and Conditions and the associated Service Guide or Order (including the agreed pricing and delivery models) are contingent upon, and Customer represents, warrants and covenants that: (i) the Customer Materials (as defined below) provided by Customer shall be accurate, complete and accessible in the manner and in the format required by Samsung; and (ii) Customer will cooperate and provide timely performance of its obligations. In the event any Customer Materials are found to be inaccurate, incomplete or not properly accessible or formatted, or Customer fails to perform its obligations, in addition to Section 2(G) below, the parties agree to negotiate in good faith equitable changes to the impacted Order, which may include, without limitation, changes to the Fees charged to Customer. Customer is responsible for completing and maintaining a backup of all existing data, content, programs and Samsung will have no liability for loss or recovery of data or programs, or loss of use of systems arising out of the Services.

F. If you have ordered a Samsung technical support services offering, Samsung will provide Customer's Named Callers (as defined in the applicable service guide) with log-in credentials for access to Samsung's Support Portal for the purposes of creating and tracking Customer support requests (the "Support Portal"). Customer agrees not to: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Support Portal available to any third party, other than the Named Callers; (ii) modify, adapt, or otherwise attempt to gain unauthorized access to the Support Portal or related systems or networks; (iii) use the Support Portal in any unlawful manner; (iv) use the Support Portal in any manner that interferes with or disrupts the integrity or performance of the Services and its components; (v) attempt to decipher, decompile, reverse engineer or otherwise discover the source code of any software making up the Support Portal; (vi) use the Support Portal to store or transmit any "protected health information" as that term is defined in 45 C.F.R. 160.103 or sensitive financial information, such as credit card numbers, social security numbers (or other national identifiers) and banking information; or (vii) use the Support Portal to knowingly post, transmit, upload, link to, send or store any viruses, malware, Trojan horses, time bombs, or any other similar harmful software. Samsung may suspend Customer's access to the Support Portal if Samsung becomes aware of any non-compliance with the foregoing provisions and Samsung shall not be liable to Customer or any other third party for any such suspension or discontinuation of Customer's access and use of the Support Portal.

G. **Savings Clause.** The failure or delay of Samsung in its performance of its obligations under these Terms and Conditions or any Order is excused to the extent such failure is a result of: (i) any act or omission of Customer or any entity or individual acting on Customer's behalf including Customer's failure to perform (or cause to be performed) its obligations hereunder, (ii) unavailability of Customer's materials or systems, including those provided by third parties, (iii) the reliance of Samsung on instructions, authorizations, approvals or other information from Customer's representative(s); or (iv) any act or omission of a third party not under the control of Samsung. Samsung will use commercially reasonable efforts to perform the Services and provide the Deliverables notwithstanding such circumstances, and Customer agrees to reimburse Samsung for any additional charges and expenses incurred as a result of such efforts.

H. **Subcontracting.** Samsung may, at its option and in its sole discretion, subcontract all or any part of its obligations under any Order (including to an Affiliate of Samsung). In the event that Samsung subcontracts any of its obligations, Samsung shall be responsible and liable for any such subcontractor or subcontractor personnel performance to the same extent as if such obligations were performed by Samsung or Samsung employees. For the purposes of these Terms and Conditions, an "Affiliate" of a party means an entity controlling, controlled by, or under common control with that party. "Control" means direct or indirect control of fifty percent (50%) or more of the voting power to elect directors thereof, or for any other entity, the power to direct the management of such entity.

I. **Insurance.** Samsung and Customer shall each maintain insurance in commercially reasonable amounts to protect itself and the other party from any and all claims for damage to property or personal injury (including death) made by anyone, that may arise from the Services performed under these Terms and Conditions.

3. **Ordering, Cost and Payment.**

For Orders placed with a reseller, Customer will receive an invoice directly from reseller and Sections 3. C. and 3. G. will not apply.

A. **"Order"** means the submission of a Customer purchase order to Samsung or a reseller that references and incorporates a Samsung quote, Samsung Service Guide, order acknowledgement, order form, service schedule, statement of work, Services SKU or any other mutually-agreed form of order (including those accessible by URL), together with these Terms and Conditions. No pre-written terms of your purchase order will be binding on Samsung. After receipt of your Order, Samsung will provide you with a scheduled date for the start of the Services (the "Service Start Date"). Your Order is considered binding by Samsung and non-cancellable by you once Samsung has provided you with a Service Start Date. The parties may enter into one or more Orders and each Order is independent from any other Order. Quoted prices are effective until the expiration date of the Samsung quote. Samsung reserves the right, for any reason or for no reason whatsoever, to reject any Order received from Customer. Samsung may revise or discontinue Services at any time without penalty, including after Customer places an Order, but prior to the Service Start Date.

B. **Payment.** Customer shall pay Samsung the fees as set forth in the applicable Order ("Fees"). Any increases in the Fees or cost of conducting the Services or providing the Deliverables incurred by reason of a Customer request for a change in scope or modification of the Services or Deliverables shall be borne by Customer.

C. **Invoices; Payment Terms.** Samsung shall issue invoices in accordance with the Order. Customer shall pay all amounts due under an Order within thirty (30) days after the date of the applicable invoice.

D. **Late Payments.** Payment terms shall be strictly enforced, and late payments shall be assessed monthly interest at the lesser of one and one-half percent (1.5%) or the maximum rate permitted by applicable law. Should Customer fail to make timely payments under an Order, Samsung may, at its discretion, suspend further performance of all Services, without limiting any other remedies it may have pursuant to these Terms and Conditions. If Customer fails to pay any due and payable amounts within ten (10) days after receipt of Samsung's written notice that such amounts are past due, Customer shall be deemed to be in material breach hereunder and Samsung may immediately terminate any Order and pursue all other remedies. Should it become necessary to institute collection proceedings for amounts invoiced to Customer and unpaid following the applicable due date, Customer shall pay all reasonable out-of-pocket costs and expenses incurred by Samsung in connection with such proceedings, including without limitation reasonable attorneys' fees, without regard to whether a suit is filed by Samsung.

E. **Travel and Lodging.** Unless otherwise agreed in the applicable Order, the Fees are exclusive of any travel, lodging or other living expenses incurred in Samsung's provision of the Services. Customer shall promptly reimburse Samsung for Samsung's reasonable expenses actually incurred in the performance of the Services hereunder upon Samsung's presentation to Customer of reasonable documentation evidencing such expenses.

F. **Taxes.** All costs shall be paid in US Dollars and shall be exclusive of taxes. Any taxes, duties, excises or tariffs imposed on Fees paid in respect of an Order shall be the responsibility of Customer notwithstanding any change in law, policy or tax rate impacting the amount of taxes required to be remitted in connection with an invoice referred to in Section 3(C); provided, however, that Customer shall have no responsibility for taxes calculated solely by reference to the net income of Samsung. If Samsung is required by law to directly pay any taxes, fees, excises, tariffs or other charges for which Customer has responsibility pursuant to this Section 3(F), Customer shall promptly reimburse Samsung upon Samsung's presentation to Customer of documentation evidencing such payment.

G. **Credit.** Samsung may, in its sole discretion, agree to extend credit to Customer. Customer shall comply with Samsung's policies and procedures regarding the extension of credit to customers. Samsung may revoke or reduce credit approval at any time without prior notice. Customer shall complete a Samsung credit application and if requested, provide financial statements prior to Samsung's execution of any Order. In the event that Samsung, in its sole discretion, does not approve Customer's credit, Samsung may elect to grant payment terms of cash in advance or some other agreed upon fully secured option such as a stand-by letter of credit, or such other terms as Samsung shall determine.

4. **Certain Representations, Warranties and Covenants of Customer.**

As of the date of each Order hereunder:

A. **Formation; Authority.** Customer represents, warrants and covenants that: it is duly formed, validly existing and in good standing under the laws of the state of its formation; it has all requisite power and authority to execute, deliver and perform its obligations under these Terms and Conditions and any Order, and any executed modification thereof; its performance under these Terms and Conditions and any Order have been duly authorized by all requisite corporate action; and that these Terms and Conditions together with the Order constitutes the legal, valid and binding agreement of Customer, enforceable against it in accordance with its terms.

B. **Anti-Bribery.** Customer represents, warrants and covenants that it is fully aware of and will comply with, and will not take any action or omit to take any action that would cause either Customer or Samsung to be in violation of, (i) the U.S. Foreign Corrupt Practices Act, the U.K. Anti-Bribery Act, or the India Prevention of Corruption Act of 1988, (ii) any other applicable anti-corruption laws, or (iii) any regulations promulgated under any such laws. Customer represents, warrants and covenants that neither it nor any of its employees is an official or employee of any government (or any department, agency or instrumentality of any government), political party, state owned enterprise or a public international organization such as the United Nations, or a representative or any such person (each, an "Official"). Customer further represents, warrants and covenants that, to its knowledge, neither it nor any of its employees has offered, promised, made or authorized to be made, or provided any contribution, thing of value or gift, or any other type of payment to, or for the private use of, directly or indirectly, any Official for the purpose of influencing or inducing any act or decision of the Official to secure an improper advantage in connection with, or in any way relating to, (A) any government authorization or approval involving Samsung, or (B) the obtaining or retention of business by Samsung. Customer further represents, warrants and covenants that it will not in the future offer, promise, make or otherwise allow to be made or provide any such payment and that it will take all lawful and necessary actions to ensure that no such payment is promised, made or provided in the future by any of its employees. If Customer does not abide with any of the above mentioned representations, warranties, or covenants, then Samsung shall reserve its right to terminate all Orders immediately without any prior notice or penalty, in addition to any other remedies available to it at law and/or in equity.

C. **Customer Materials.** Customer represents, warrants and covenants that: (i) it possesses all necessary rights and licenses to all information, data, intellectual property, software, services, systems, facilities or other materials it provides to Samsung under an Order (collectively, "Customer Materials"); (ii) Samsung's use of any Customer Materials does not contravene, violate or conflict with any other agreement to which Customer or any other applicable party that is the owner of, or has any right to, a particular Customer Material is a party; and (iii) Samsung's use of any Customer Materials in connection with performing its obligations under these Terms and Conditions or an Order (including, but not limited to incorporating, including or embedding Customer Materials into, or using Customer Materials in connection with creating any Deliverables) does not infringe, misappropriate or violate any third party right; and (iv) if any Customer Materials include or make use of any free, open source or other publicly available software ("FOSS") and such Customer Materials are to be embedded in or used in conjunction with a Deliverable, Customer will provide Samsung with a complete and accurate list of such FOSS, including a copy of the applicable FOSS licenses and copyright notices.

D. **Customer Business.** Customer represents, warrants and covenants that its business (including Customer's use of the Services and/or Deliverables as permitted in these Terms and Conditions) is operated in strict compliance with all applicable federal, state, and local laws, rules, regulations, directives and governmental requirements (including all applicable privacy and data protection laws) currently in effect and as they become effective.

5. **Limited Warranties.**

A. **Samsung Warranty.** Samsung warrants to Customer that all Services (i) shall be performed in a professional and workmanlike manner in accordance with reasonable standards of the industry; and (ii) shall conform in all material respects to the written specifications set forth in the applicable Samsung Service Guide at the time of performance. Customer's sole remedy for any breach of the warranty provided in this Section 5.A or any warranty

related to the Services provided in any Order shall be re-performance of any Services found to be defective thereunder.

B. Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5 WITH RESPECT TO SERVICES OR IN AN ORDER, SAMSUNG PROVIDES THE SERVICES AND DELIVERABLES ON AN "AS IS," "WHERE IS" BASIS AND MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE SERVICES OR DELIVERABLES, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. FURTHER, SAMSUNG DOES NOT WARRANT THAT THE SERVICES OR DELIVERABLES WILL MEET CUSTOMER'S REQUIREMENTS OR ANY LEGAL OR OTHER REQUIREMENTS, OR THAT THE OPERATION OF THE SERVICES OR DELIVERABLES WILL BE UNINTERRUPTED OR ERROR-FREE.

6. Confidentiality.

A. Definition of Confidential Information. "Confidential Information" shall mean all business information, technical data or know-how, in whatever form, which the disclosing party (the "Discloser") transmits to the receiving party (the "Recipient") in any manner relating to the properties, business activities or operations of Discloser, including (i) all information of Discloser that is not known to the public, without regard to the form in which such information is disclosed; (ii) any and all of the foregoing which is prepared by Recipient or its employees or agents that contains, reflects or is based upon, in whole or in part, any of the Confidential Information; and (iii) the contents of discussions and negotiations between the parties concerning the Services or Deliverables. Confidential Information shall not include information that Recipient can demonstrate: (A) is or (through no improper action or inaction by Recipient or any affiliate, agent, consultant or employee of Recipient) becomes part of the public domain; (B) was lawfully in the possession of or known by Recipient on a non-confidential basis at the time of disclosure by Discloser; (C) was received on a non-confidential basis from a third party having a lawful right to disclose such information; or (D) was independently developed by Recipient without reference to or use of the Confidential Information of Discloser as demonstrated by Recipient's records.

B. Non-Disclosure and Use. Recipient agrees to keep confidential and not to use the Confidential Information of Discloser for any purpose other than in furtherance of the performance or receipt of the Services, or with respect to Samsung as Recipient, the provision of the Services or Deliverables. Recipient shall not disclose Discloser's Confidential Information to any person or entity other than Recipient's employees, agents, advisors, subcontractors, and service providers and representatives with a need to know the Confidential Information in order to carry out the purpose contemplated by these Terms and Conditions and who agree to be bound by Recipient's obligations under these Terms and Conditions with regard to nondisclosure and use of such Confidential Information. Recipient will not (and will cause its employees, Affiliates or agents not to) reverse-engineer, decompile or disassemble any part of, or remove any proprietary marking from, Discloser's Confidential Information.

C. Care. Recipient shall use at least the same degree of care to safeguard and to prevent disclosure to third parties of Confidential Information as it employs to safeguard its own information of a similar nature, but in no event less than reasonable care. Recipient shall promptly (i) notify Discloser in writing of the details and circumstances of any unauthorized disclosure, misuse or misappropriation of any of Discloser's Confidential Information (an "Unauthorized Use") which may come to Recipient's attention; (ii) use best efforts to rectify or cure such Unauthorized Use and retrieve any such disclosed Confidential Information; and (iii) use best efforts to provide assistance to and cooperate with Discloser to rectify or cure such Unauthorized Use and to prevent further misuse or disclosure of such Confidential Information.

D. Mandatory Disclosure. If Recipient becomes legally compelled to disclose any of Discloser's Confidential Information, Recipient shall (i) promptly notify Discloser of such requirement before any disclosure is made so that Discloser may seek a protective order or other appropriate remedy limiting disclosure or use of such information; and (ii) provide reasonable assistance to Discloser to seek such remedy at Discloser's expense. If such protective order or other remedy is not obtained, Recipient may furnish only that portion of such Confidential Information that, in the written opinion of its legal counsel, it is legally required to disclose, and Recipient agrees to make commercially reasonable efforts to obtain assurance that confidential treatment will be accorded to the Confidential Information.

E. Ownership; No Rights Granted. Discloser will retain the title and full ownership rights to its Confidential Information. No license, express or implied, in the Confidential Information is granted to Recipient other than to use the information in the manner and to the extent expressly authorized herein.

F. Return of Confidential Information. Upon the written request of Discloser, all of Discloser's Confidential Information in tangible form shall be, at Discloser's sole discretion, either promptly returned to Discloser or promptly destroyed by Recipient, and in either case not retained by Recipient or its Affiliates in any form; provided, however, if Confidential Information cannot be purged from Recipient's information or communications systems using commercially reasonable efforts, Recipient shall suppress such Confidential Information and allow it to be accessible only to Recipient's employees with administrative privileges who shall be subject to a confidentiality obligation to Recipient at least as protective as those contained in these Terms and Conditions. Notwithstanding anything to the contrary contained herein, Recipient's legal department may retain an archival copy of all or any portion of Discloser's Confidential Information to the extent required by applicable law or regulation or for the purpose of defending or prosecuting claims relating to these Terms and Conditions. The rights and obligations of the parties regarding the non-disclosure and use of Confidential Information exchanged under these Terms and Conditions will survive any return, retention or destruction of any Confidential Information.

G. Remedies. The parties acknowledge and agree that money damages would not be a sufficient remedy for any breach of this Section 6, and that any such breach may cause immediate and irreparable harm. Accordingly, each party agrees that, in the event of any breach or threatened breach of this Section 6 by Recipient, Discloser shall be entitled to seek, in addition to all remedies otherwise available at law or in equity, injunctive relief.

7. Data & Data Security.

A. Business Contact Information. The parties agree (notwithstanding any contrary provisions of these Terms and Conditions) that each party may store, access and otherwise process business contact information (including the names, titles, roles, postal and e-mail addresses, telephone and facsimile numbers and other, similar contact information) of the personnel and contractors of the parties, their Affiliates and subcontractors anywhere they do business, for purposes related to the provision and receipt of the Services. Each party may share business contact information relating to personnel and contractors of the other party with its Affiliates and third parties acting on such party's behalf, for their use with respect to such party's business operations. Samsung may use such business contact information and other data and information generated in connection with the performance of Services to provide the Services and Deliverables, manage Customer's account, provide Service related notifications, bill for the Services and improve the Services and Deliverables.

B. HIPAA, PHI and Other Sensitive Information. Customer understands and acknowledges that none of the Services, Deliverables, nor the Samsung systems used to provide the Services or Deliverables are configured to receive and store: (i) personal health information ("PHI") as that term is defined in under the Health Insurance Portability and Accountability Act ("HIPAA") and that Samsung is neither a "Covered Entity" or a "Business Associate" (as those terms are defined in HIPAA); or (ii) sensitive financial information, such as credit card numbers, social security numbers (or other national identifiers) and banking information ("Sensitive Information"). Customer agrees on behalf of itself and its users, not to use the Services or Deliverables to store or transmit any PHI or Sensitive Information to Samsung and that in the event Customer does not comply with this section, Samsung is not responsible for the security of such information.

C. Security Measures. Customer assumes sole responsibility for the establishment of appropriate security measures for its wireless devices and the computer systems it uses in conjunction with the Services and/or Deliverables.

8. Proprietary Rights. Unless otherwise set forth in an Order, the following provisions in this Section 8 will apply to the Orders under these Terms and Conditions.

A. Samsung Intellectual Property. As between Samsung and Customer, Samsung will own all copyrights, patents, trademarks, trade secrets, and other intellectual property rights ("IPR") in any materials, know-how, methodologies, processes, techniques, tools, forms, templates, and

software (whether written or machine-readable), collectively "Materials" that are: (i) owned by or licensed to Samsung, its subcontractors, or their respective Affiliates prior to the Service Start Date, (ii) developed by Samsung, its subcontractors, or their respective Affiliates during the provision of the Services or the development or delivery of the Deliverables (including the Deliverables, themselves), or otherwise used by Samsung to perform the Services or develop or deliver the Deliverables, or (iii) modifications, enhancements, and derivative works of the Materials described in (i) through (ii) (collectively, "Samsung IPR"). For the avoidance of doubt, Samsung IPR does not include Customer Materials provided to Samsung for Samsung's use in connection with the Services or delivery of the Deliverables.

B. License to Samsung. Customer grants to Samsung a non-exclusive, irrevocable, perpetual, royalty-free, sub-licensable and transferable right and license to use, copy, make derivative works of, distribute, display, sublicense any Customer Materials solely to the extent necessary for Samsung to provide the Services and Deliverables under these Terms and Conditions and any Order.

C. License to Customer for Deliverables. With respect to any Deliverables that constitute software (a "Software Deliverable"), subject to Customer's compliance with: (i) these Terms and Conditions; (ii) the terms of an Order; and (iii) the terms of any applicable third party licenses of IPR included in a Software Deliverable, Samsung grants Customer a non-exclusive, non-transferable, non-sublicensable, revocable and limited license to use, copy, install and display such Software Deliverables solely for the internal use of Customer or its Affiliates for the original purpose and functionality of that Deliverable. If any Samsung IPR, or a portion thereof, is delivered with a Software Deliverable, Samsung hereby grants to Customer a non-exclusive, royalty free, fully paid up, revocable license to use, copy, install and display such Samsung IPR, provided however that the foregoing license does not authorize Customer to separate Samsung IPR from the Software Deliverable with which it was delivered.

D. Use of FOSS. Customer agrees that as part of a Deliverable, Samsung may make use of FOSS. If so, Samsung will include in the applicable Order a list of such FOSS, including notice of the associated FOSS license(s) and terms as of its delivery to Customer as part of a Deliverable. CUSTOMER ACKNOWLEDGES AND AGREES THAT ITS USE AND DISTRIBUTION OF ANY SUCH FOSS IS SUBJECT TO THE TERMS OF THE APPLICABLE FOSS LICENSE(S), AND THAT IT IS RESPONSIBLE FOR ITS COMPLIANCE WITH THE TERMS OF SUCH FOSS LICENSE(S). CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT, PRIOR TO COPYING, MODIFYING, OR DISTRIBUTING ANY FOSS, IT WILL CONFIRM THAT IT HAS ALL NECESSARY RIGHTS AND PERMISSIONS TO DO SO FROM THE APPLICABLE THIRD PARTY LICENSOR (THE "LICENSOR"), WHICH CONFIRMATION MAY INCLUDE OBTAINING A SEPARATE LICENSE FROM THE LICENSOR EXPRESSLY AUTHORIZING IT TO DO SO.

9. Feedback. Customer or its Users may from time to time, provide suggestions, enhancement or other feedback to Samsung with respect to the Services or Deliverables or related documentation (collectively, "Feedback"). Customer agrees that all Feedback is and shall be given by Customer entirely voluntarily. Samsung shall be free to use, disclose, reproduce, license or otherwise distribute and exploit the Feedback in its discretion, without restriction, accounting, or other obligation of any kind or nature. The use of the Feedback will not impose any confidentiality or other obligations on Samsung relating to the Feedback. However, Samsung agrees not to disclose the source of such Feedback to third parties.

10. Indemnification.

A. Indemnification by Customer. Customer shall be solely responsible for its use of the Services and Deliverables in connection with its business operations, including, but not limited to, protecting against loss or error resulting from use of any or all of the Services or Deliverables. Customer will indemnify, defend and hold harmless Samsung, its Affiliates, and each of their respective officers, directors, employees and agents from and against any and all losses, costs, liabilities or expenses (including but not limited to reasonable attorney's fees) arising, directly or indirectly, out of or in connection with: (i) the willful or negligent acts or omissions of Customer; (ii) any breach by Customer of these Terms and Conditions; (iii) the failure of Customer to hold all necessary rights to, and interest in, any properties, materials (including Customer Materials) that Customer makes available to Samsung to perform Samsung's obligations under these Terms and Conditions or any Order; (iv) a third party claim that Customer's use of the Services or Deliverables for a purpose or in a manner for which they were not intended or

designed, infringes a U.S. patent or copyright; (v) any claim related to Customer's end users use of Customer's products or services (including those products, software or services that may incorporate or rely upon a Deliverable or Service); (vi) a breach of any term of a Service Schedule or Order; or (vii) any claim, action or other proceeding related to any of the situations or events described in subparts (A) through (E) of Section 10.B.

B. Indemnification by Samsung. If you purchased Services directly from Samsung, Samsung shall defend or settle any third party claim that the Services infringe a U.S. patent or copyright, provided that Customer (i) promptly notifies Samsung in writing of such claim; (ii) grants Samsung sole control over the defense and settlement thereof pursuant to Section 10.C; and (iii) cooperates with any request by Samsung for assistance in defending such claim; provided, however, that Samsung will have no obligation or liability with respect to any such claim if the claim is based, in whole or in part, on (A) the specifications set forth in the applicable Orders, or any modifications made by Samsung thereto pursuant to Customer's instructions or request; (B) any combination of the Services with Customer or third party services or products or Customer Materials; (C) the use of the Services for a purpose or in a manner for which they were not intended or designed; (D) any modification made to the Services by Customer or any third party; (E) any intellectual property right owned or licensed by Customer, including any Customer Materials; or (F) any FOSS. THE FOREGOING CONSTITUTES SAMSUNG'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT CLAIM ARISING HEREUNDER.

C. Indemnification Procedures. Promptly after receipt by either party (in each case, an "Indemnitee") of notice of the commencement or threatened commencement of any action or proceeding involving a claim in respect of which Indemnitee is entitled to indemnification under this Section 10, Indemnitee shall notify the other party (in such instance, the "Indemnitor") of such claim. No delay or failure to so notify Indemnitor shall relieve Indemnitor of its obligations under these Terms and Conditions except to the extent that Indemnitor has suffered actual prejudice by such delay or failure. Within thirty (30) days following receipt of notice from Indemnitee relating to any claim, but no later than fifteen (15) days before the date on which any response to a complaint or summons is due, if applicable, Indemnitor shall notify Indemnitee that Indemnitor shall assume control of the defense and settlement of such claim (a "Notice of Assumption"). If Indemnitor delivers a Notice of Assumption within the required notice period, Indemnitor shall assume control (subject to Indemnitee's right to participate at Indemnitee's cost and expense) over the defense and settlement of the claim and diligently defend the claim; provided, however, that (i) Indemnitor shall keep Indemnitee fully apprised as to the status of the defense; and (ii) Indemnitor shall obtain the prior written approval of Indemnitee before entering into any settlement of such claim that does not include a full and final release of Indemnitee, or any settlement asserting any liability against Indemnitee, imposing any obligations or restrictions on Indemnitee, ceasing to defend against such claim or otherwise adversely impacting Indemnitee. If Indemnitor does not deliver a Notice of Assumption relating to any claim within the required notice period, or if, after the assumption of the defense by Indemnitor, Indemnitor has failed to defend the claim diligently, Indemnitee shall have the right to defend the claim in such manner as it may deem appropriate. Indemnitor shall promptly reimburse Indemnitee for all reasonable costs and expenses incurred by Indemnitee, including attorneys' fees, in connection therewith to the full extent of Indemnitor's indemnification obligation under this Section 10.

11. Term and Termination.

A. Term. These Terms and Conditions shall be effective as of the Service Start Date and shall remain in effect during the Service Term.

B. Termination for Insolvency. Samsung may immediately terminate an Order by written notice to Customer if (i) Customer shall become insolvent or make a general assignment for the benefit of creditors; (ii) Customer files a petition for bankruptcy or has filed against it a petition for bankruptcy which is not dismissed within thirty (30) days; or (iii) Customer proposes any dissolution or becomes involved in legal, financial or reorganization proceedings that, in the opinion of Samsung, interfere with the diligent performance and satisfactory completion of Customer's obligations hereunder.

C. Termination for Breach. Either party may terminate an Order immediately upon written notice to the other party in the event that the other is in material breach or default under these Terms and Conditions or the terms of

an Order or Service Guide and fails to remedy such breach within thirty (30) days of notice thereof from the non-breaching party.

D. **Survival.** With respect to an Order or Service Guide, any provision of these Terms and Conditions that contemplates performance or observance subsequent to any termination or expiration of an Order shall survive any termination or expiration and continue in full force and effect.

12. **Limitation of Liability.** IN NO EVENT SHALL SAMSUNG (OR ITS SUPPLIERS OR AFFILIATES) BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, LOST PROFIT OR OTHER SIMILAR DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THESE TERMS AND CONDITIONS OR ANY ORDER OR SERVICE GUIDE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SAMSUNG'S TOTAL AGGREGATE LIABILITY FOR DAMAGES OF ANY NATURE UNDER OR IN CONNECTION WITH AN ORDER, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, EXCEED THE AMOUNT PAID BY CUSTOMER TO SAMSUNG UNDER THE APPLICABLE ORDER GIVING RISE TO THE ACTION OR CLAIM. IN NO EVENT SHALL SAMSUNG HAVE ANY LIABILITY ARISING OUT ANY OF CUSTOMER'S MATERIALS PROVIDED TO SAMSUNG IN CONNECTION WITH THE SERVICES HEREUNDER.

13. **Force Majeure.** Samsung shall not be held responsible for any delay or failure in performance of any part of these Terms and Conditions or an Order to the extent such delay or failure is attributable to a force majeure event, including without limitation: power or telecommunications failures or outages, hardware failures, software defects, fires, explosions, epidemics, riots, civil disturbances, malicious damage, industry-wide shortages of labor or materials, work stoppages, strikes and other similar events, labor disputes, accidents, weather, floods, storms, earthquakes and other natural disasters, acts of God, war, terrorism, blockades, embargoes, prohibitions or restrictions or changes in applicable law or delays arising from compliance with any law or government regulation or other similar causes beyond its control and without the fault or negligence of Samsung or its subcontractors.

14. **Miscellaneous.**

A. **Notices.** All notices, demands and other communications shall be in writing and shall be deemed to have been given if delivered personally, or three days after mailing by certified mail (return receipt requested) or national overnight carrier (with proof of delivery) to the respective addresses listed in the Order or to such other address as either party may designate by providing notice in accordance with this Section 14.A.

B. **Assignment.** Samsung may assign an Order without the prior consent of Customer. Customer may not assign an Order without the prior consent of Samsung. Any permitted assignee or successor of a party's rights and obligations under an Order shall be bound by the Terms and Conditions. Any attempted assignment in violation of the foregoing shall be void and of no effect.

C. **Independent Contractor.** The relationship between the parties under these Terms and Conditions is that of independent contractors, and nothing contained herein shall be construed to create a relationship of employer and employee or principal and agent between Customer and Samsung nor shall it be deemed a partnership, joint venture or fiduciary relationship for any purpose. Neither party shall act or have authority to act for or on behalf of the other party, and all representations made and agreements executed by each party shall be such party's sole responsibility.

D. **Governing Law; Jurisdiction; Waiver of Immunity.** THESE TERMS AND CONDITIONS WILL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, EXCLUDING THE PRINCIPLES OF CONFLICT OF LAWS THEREOF THAT WOULD CAUSE THE LAWS OF ANOTHER JURISDICTION TO APPLY. THE PARTIES HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS IN NEW YORK AND AGREE THAT ANY ACTION, SUIT OR PROCEEDING CONCERNING, RELATED TO OR ARISING OUT OF THIS AGREEMENT SHALL BE HEARD AND DETERMINED IN IN THE SUPREME COURT OF THE STATE OF NEW YORK, NEW YORK COUNTY, AND/OR, IF APPLICABLE, THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND FURTHER IRREVOCABLY WAIVE ANY

OBJECTION WHICH THEY MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH DISPUTE BROUGHT IN SUCH COURT OR ANY DEFENSE OF INCONVENIENT FORUM FOR THE MAINTENANCE OF SUCH DISPUTE. BOTH PARTIES AGREE TO WAIVE TRIAL BY JURY FOR ALL CLAIMS ARISING HEREUNDER. The parties acknowledge and agree that the transactions contemplated under these Terms and Conditions are commercial in nature, and the parties expressly and irrevocably waive (i) any claim or right which the parties may have to immunity (whether sovereign immunity or otherwise) for the parties or with respect to any of the parties' assets in connection with any legal action, award or other proceedings to enforce these Terms and Conditions, including, without limitation, immunity from service of process, immunity of any of the parties' assets from pre- or post-judgment attachment or execution and immunity from the jurisdiction of any court or tribunal; and (ii) service of process pursuant to the Hague Convention.

E. **Convention on Sale of Goods.** The parties acknowledge and agree that the Uniform Computer Information Transactions Act and the United Nations Convention on Contracts for the International Sale of Goods do not and will not apply to the transactions contemplated herein.

F. **Export Control.** Customer acknowledges that any products, software or technical information disclosed under these Terms and Conditions, or an Order are subject to U.S. and non-U.S. export laws and regulations and any use or transfer thereof must be made in compliance with such regulations. Customer shall not transfer, directly or indirectly, any product, technical data, software or Confidential Information furnished hereunder to any country without first obtaining all required licenses or other governmental approvals and otherwise complying with all applicable export control laws.

G. **Non-Solicitation.** Customer shall not, directly or indirectly, solicit for employment, hire or induce to terminate or breach an employment or contractor relationship with Samsung, or any employee or independent contractor of Samsung with whom Customer has had contact in connection with the relationship arising under these Terms and Conditions or an Order; provided, however, that a general solicitation of the public, including any solicitation through the media, shall not be considered a breach of this Section 14. G. so long as such general solicitation is not designed to target Samsung's employees and contractors.

H. **Interpretation; Priority.** These Terms and Conditions shall be interpreted in accordance with its terms and without any strict construction in favor of or against either party. The section headings included herein are for convenience only and shall not limit or otherwise affect the interpretation of any of the terms or provisions herein. Each Order entered into by the parties during the Service Term shall be governed by these Terms and Conditions. In the event of a conflict between the terms in these Terms and Conditions and the terms in an Order, the terms in these Terms and Conditions will control unless the Order expressly indicates otherwise.

I. **Entire Agreement; Amendment; Severability; Counterparts.** These Terms and Conditions, including all Orders referenced herein, constitute the entire agreement of the parties with respect to the subject matter hereof and supersede all prior verbal or written agreements with respect to such subject matter, including any previous Nondisclosure Agreements or similar agreements between the parties. No amendment, waiver or modification of these Terms and Conditions or an Order will be binding upon either party unless made in writing and signed by duly authorized representatives of such party, and no failure or delay in enforcing any right will be deemed a waiver of such right. If any term or provision of these Terms and Conditions shall be found to be illegal or unenforceable, such illegal or unenforceable provision will be deemed modified to the limited extent required to permit its enforcement in a manner most closely approximating the intention of the parties expressed herein. Samsung reserves the right to modify this Agreement, including to reflect changes in law or business practices. Samsung shall notify Customer of the change by a reasonable means of notice, including posting the revised Agreement at <http://www.samsung.com/us/business/services/samsung-business-services> and Customer should regularly visit the site to review the most current version of this Agreement. Customer agrees that its continued use of the Samsung Services or Deliverables after the changes becomes effective as indicated in the revision date below shall constitute Customer's acceptance of the revised Agreement.

J. **Hazardous Activities.** The Services and Deliverables are not intended for use, and shall not be used, in the operation of nuclear facilities, aircraft navigation, communication systems, air traffic control machines, medical devices, medical equipment or other activities in which the failure of

the Services to attain a desired result could lead to death, personal injury, or physical or environmental damage.

K. **Publicity; Advertising.** Customer shall not advertise, promote or otherwise publicize matters relating to these Terms and Conditions, including the existence of any relationship between the parties, without the prior written consent of Samsung. Except as otherwise expressly provided in these Terms and Conditions, Customer shall not use any trade name, trademark, service mark, insignia, symbol or other identification of Samsung without Samsung's prior written permission.

--Samsung Business Services Terms and Conditions (USA) Rev. 04 25 18 --