

## SAMSUNG SUBSCRIPTION PROGRAM

### CUSTOMER TERMS AND CONDITIONS FOR PARTICIPATING IN THE SAMSUNG SUBSCRIPTION PROGRAM

#### 1. GENERAL:

- 1.1 You are entering into these Terms and Conditions with Samsung Electronics Australia Pty Ltd ABN 63 002 915 648 (“**Samsung**”, “**Us**”, “**We**”).
- 1.2 Asurion Australia Pty Ltd, its employees and contractors (collectively “**Asurion**”) may provide elements of the Program as Our agent or as an independent contractor.
- 1.3 Words with special meanings in these Terms and Conditions are capitalized like this: “Special Word”. Definitions of words with special meanings are found in clause 15.

#### 2. INFORMATION ABOUT THE PROGRAM

##### 2.1 Payment Plan

The Samsung Subscription Program (hereafter the “**Program**”) is available to You if you purchase an Eligible Device under a Payment Plan and otherwise comply with these Terms and Conditions.

The LatitudePay+ terms and conditions for the Payment Plan may be found at <https://www.latitudepay.com/customer-terms-conditions/>

##### 2.2 Subscription Program

Subject to these Terms and Conditions, the Samsung Subscription Program allows You to upgrade your Eligible Device for a New Device if You have:

- (a) paid the minimum number of Instalments in accordance with the terms of Your Payment Plan;
- (b) provided Your Existing Device to Us and it is in Good Working Condition; and
- (c) otherwise complied with these Terms and Conditions.

##### 2.3 Samsung Care+

- (a) As part of your participation in the Program, you also are entering in the terms and conditions for Samsung Care+ Upgrade (**Samsung Care+ Terms**), which are contained in Schedule 1 of these Terms and Conditions. In summary, Samsung Care+ permits you to swap your Eligible Device for a Like Mobile Device (as defined in the Samsung Care+ Terms) twice in 18 months from the start of the Program, once in the first 12 months, with the second swap available from month 13 of your subscription. You must return your Eligible Device to complete the swap. Please note that, pursuant to the Samsung Care+ Terms, your participation in Samsung Care+ may be rejected under clause 3.2 of the Samsung Care+ Terms. If this occurs, we will notify You of this.
- (b) Please note that your participation in the Program and your Payment Plan will continue in circumstances where your participation in Samsung Care+ is rejected.

#### 3. THESE TERMS AND CONDITIONS:

Please read these Terms and Conditions carefully. Your participation in the Program is subject to Your compliance with these Terms and Conditions and the Samsung Care+ Terms. Your participation in the Samsung Care+ Program is subject to Your compliance with the Samsung

Care+ Terms. These Terms and Conditions outline Your responsibilities under the Program and provide You with other important information.

#### **4. ELIGIBILITY FOR THE PROGRAM:**

To be eligible to participate in the Program, You must:

- (a) be an Australian resident who is at least 18 years old;
- (b) be capable of entering into a binding contract;
- (c) have entered into a Payment Plan for your Eligible Device;
- (d) confirm Your Eligible Device has not been reported lost or stolen;
- (e) provide Your full name, address, phone number and valid credit card details; and
- (f) confirm that You are not registered or required to be registered for Goods and Services Tax, and as such, Your supply of Your Existing Device is not a taxable supply for the purposes of A *New Tax System (Goods and Services Tax) Act 1999*.

#### **5. UPGRADE CRITERIA**

##### **Free Upgrade**

5.1 You will be entitled to upgrade your Eligible Device for a New Device at no additional cost if:

- (a) You have paid the equivalent of at least 12 Instalments in accordance with the terms of your Payment Plan and the plan is not in arrears; and
- (b) Your Eligible Device is provided to Us in Good Working Order.

5.2 If Your Eligible Device has been Mis-Graded and is not in Good Working Order, You will be required to pay the Mis-Grading Fee.

##### **Early Upgrade**

5.3 You will be entitled to upgrade your Eligible Device to a New Device for the Early Upgrade Fee if:

- (a) You have paid the equivalent of between 9 and 11 Instalments (inclusive) in accordance with the terms of Your Payment Plan; and
- (b) Your Existing Device is provided to Us in Good Working Order.

5.4 If Your Eligible Device has been Mis-Graded and is not in Good Working Order, You will be required to pay the Mis-Grading Fee.

##### **Damaged Device**

5.5 If your Eligible Device is not in Good Working Order, You will need to pay a **Damage Upgrade Fee** as a requirement to upgrading to a New Device.

5.6 Where you upgrade a Damaged Device, the upgrade will count as a Swap Request under clause 5 of the Samsung Care+ Terms. Where you have an available swap under the Samsung Care+ Terms, the upgrade will reduce your remaining Swap Requests available. Where you do not have any remaining Swap Requests at the time of the upgrade, You will be required to pay the Mis-Grading Fee in addition to the Damage Upgrade Fee.

#### **6. UPGRADING YOUR EXISTING DEVICE:**

6.1 To participate in the Program, You will need to:

- (a) download the Samsung Subscription App from the Google Play store which is operated by Asurion;

- (b) use the Samsung Subscription App to confirm that Your Eligible Device qualifies for the Program and you are entitled to seek a Free Upgrade or Early Upgrade;
- (c) once the Samsung Subscription App confirms that Your Existing Device qualifies for the Program, You will be provided with:
  - a. an assessment of whether your Eligible Device is in Good Working Order;
  - b. Whether you qualify for Free Upgrade or are required to pay the Early Upgrade Fee or the Damage Upgrade Fee, and the amount of such applicable Fee; and
  - c. a unique Upgrade ID that you can use to apply at the point of sale when purchasing Your New Device online or instore.

The Samsung Subscription App is operated by Asurion who are solely responsible for assessing Your Eligible Device and determining whether Your device is eligible for the Program, is in Good Working Order, qualifies for a Free Upgrade or an Early Upgrade and the amount of any applicable Fee.

- (d) meet the identification requirements set out in clause 6.1(d)a or clause 6.1(d)b below:
  - a. You must provide Asurion with a copy of Your valid driver's licence bearing Your full name, Your date of birth, Your photograph, Your residential address and Your signature. You provide this by uploading a photograph of Your valid driver's licence to the Samsung Subscription App; or
  - b. Where You are unable to provide the identification in clause 6.1(d)a above, Asurion will advise You of alternative identification documents that You can provide to satisfy the identification requirements.
  - c. Where You are unable to meet the identification requirements set out in clause 6.1(d)a or clause 6.1(d)b above, You cannot participate in the Program.
- (e) before entering Your Upgrade ID at the point of sale, You must confirm Your agreement to:
  - a. Where you are purchasing online, post Your Existing Device to Asurion within seven days of receiving your New Device, so Asurion can undertake a final assessment of Your Eligible Device to validate that it qualifies for the Program and the Eligible Device has not been mis-graded; and
  - b. subject to Asurion validating that Your Eligible Device qualifies for the Program, transfer ownership of Your Existing Device to Asurion, with ownership of your Eligible Device being transferred to Asurion when the device is returned to it and all eligibility criteria in this clause are met.
- (f) have sufficient available funds in Your LatitudePay+ account, or be approved for an increased limit.

6.2 Once you have upgraded your Eligible Device to a New Device, Samsung (through Asurion) will pay the outstanding amount owed on your Payment Plan for the Eligible Device to Latitude.

6.3 You will commence a new Payment Plan with Latitude for the New Device.

## **7. INFORMATION ABOUT FEES**

7.1 You will need to enter valid credit card details into the Samsung Subscription App in connection with an Upgrade request, which only accepts credit card details (debit card

details are not acceptable). The Samsung Subscription App is operated by Asurion and the Fees below are payable to Asurion. You authorize Asurion to pre-authorise charges to Your credit card in respect of the largest of the following fees:

- (a) a **Device Non-Return Fee** if You do not return Your Eligible Device to Us within seven days after the date on which You receive Your New Device.
- (b) an **In-eligible Device Fee** if You return a device which is an In-eligible Device. Upon payment of Your In-eligible Device Fee, Your In-eligible Device will be returned to You.
- (c) a **Mis-Grading Device Fee** if You return a Mis-Graded Device.
- (d) an **Early Upgrade Fee** if You upgrade your Eligible Device for a New Device in accordance with clause 5.2.
- (e) a **Damage Upgrade Fee** if you upgrade your Eligible Device for a New Device in accordance with clause 5.3,

and when applicable authorise Asurion to charge Your credit card for the applicable Fee listed above.

7.2 If you do not return your Eligible Device as required and Asurion is unable to charge the Device Non-Return Fee to your credit card under clause 7.1, you acknowledge that Asurion may issue a notice to Latitude to reverse any credit and refund any amount it has paid in accordance with clause 6.2, and your debt to Latitude will be reinstated.

7.3 Asurion are solely responsible for determining whether any Fees are payable and charging Your credit card under this clause 7.

## 8. PRIVACY AND CREDIT CARD SECURITY

8.1 By applying to participate, or participating in, the Program You consent to Asurion and Us collecting, handling, storing and/or disclosing Your Personal Information in accordance with Data Privacy Laws and Our respective privacy policies, a copy of which is available at <https://www.asurion.com.au/eng/privacy-policy/> and <https://www.samsung.com/au/info/privacy/>.

8.2 We are committed to the security and confidentiality of Your credit card details. Your credit card details will be encrypted upon collection and then destroyed by Us upon the completion of the upgrade of Your Existing Device.

## 9. YOUR RESPONSIBILITIES:

9.1 Before posting Your Eligible Device to Asurion:

- (a) We recommend that You back up any files, photos or other data which You have stored on Your Existing Device.
- (b) You must remove the SIM card, memory card and any personal or confidential data. SIM cards received by Asurion will not be returned to You, they will be securely destroyed and You will need to contact your carrier for a replacement SIM. Data remaining on Your Eligible Device will be securely wiped and Your Eligible Device may also be reset to factory settings. Asurion will not be able to recover any data stored on Your Eligible Device.
- (c) You must disable all activation or device locking features (e.g., Find My iPhone, Google account locks and Samsung account locks). These features may prevent Your Eligible Device from being wiped and factory reset until You disable the feature. If You send Asurion Your Eligible Device and it is locked, Asurion will contact You to assist You to unlock Your Eligible Device remotely. If You fail to unlock Your Eligible Device remotely or fail to respond to Asurion's request to unlock Your Eligible Device remotely, You may be charged an In-eligible

Device Fee. Upon payment of Your In-eligible Device Fee, Your In-eligible Device will be returned to You.

9.2 When posting Your Eligible Device to Asurion:

- (a) Use the pre-paid digital return label provided to You to post Your Eligible Device to Us from Your local Australia Post outlet; and
- (b) Ensure that You also post to Us Your stylus (where Your Eligible Device comes with one).

## 10. TERM AND TERMINATION

10.1 Samsung will provide the Program to you from the Start Date until it is terminated in accordance with this clause.

10.2 Your rights and obligations in relation to LatitudePay+ in relation to termination of your participation in the Program are addressed in the LatitudePay+ link in clause 2 above.

10.3 *Termination by you:* You can terminate your participation in the Program in the following circumstances:

10.3.1 if you are entitled to reject the Eligible Device under the Australia Consumer Law (for example, because of a major failure) and you elect to return the Eligible Device for a refund; or

10.3.2 your Eligible Device is subject to a recall and is returned.

As participation in the Program does not require the payment of an upfront fee, there is no entitlement to a refund in relation to termination of your rights under these Terms and Conditions.

10.4 *Termination by Samsung* – Samsung may immediately terminate your participation in the Program and these Terms and Conditions at any time if Samsung reasonably believes that:

10.4.1 you are using the Program (whether intentionally or not) in a way that may adversely impact the reputation of Samsung;

10.4.2 you are using the Program in a manner which is, or is reasonably believed to be:

- (a) fraudulent, illegal or related to any criminal activity; or
- (b) intended to make a commercial gain;

10.4.3 you have breached a material provision of these Terms and Conditions;

10.4.4 you default on making payments due under Your Payment Plan;

10.4.5 you become bankrupt or are otherwise unable to pay your debts as they fall due;

10.4.6 you have provided Samsung with incorrect, false or incomplete information;

10.4.7 you have not paid any amounts due to Asurion under these Terms and Conditions for a period exceeding 30 days from its due date; or

10.4.8 you are likely to create imminent harm or harass or are abusive to any personnel of Samsung and its service providers, sub-contractors and agents.

10.5 *Automatic* – Your Subscription to the Program and the Agreement will terminate immediately if Samsung discovers that you have transferred, sold, displayed for sale, or let on hire your Eligible Device. Your Subscription cannot be transferred to another person, and any person who acquires your Eligible Device will not have any benefit under these Terms.

## 10.6 *Consequences of termination*

- 10.6.1 *No reactivation* – If your participation to the Program has been terminated in relation to an Eligible Device, your participation to the Program cannot be reactivated for that Eligible Device.
- 10.6.2 *Samsung Care+* – Termination under these Terms and Condition also results in your subscription to Samsung Care+ terminating at the same time.

## 11. LIABILITY

We will not be liable or responsible for any failure to perform, or any delay in the performance of, any of Our obligations under these Terms and Conditions (including any obligations that are performed by Asurion) that is caused by events outside Our or Asurion's reasonable control or due to Our or Asurion's compliance with any applicable laws or regulations.

## 12. LOST OR STOLEN DEVICES:

- 12.1 The criteria for a Good Working Order Device and an Acceptable Damaged Device include, amongst other things, that Your Eligible Device is not IMEI blocked. Devices are usually IMEI blocked when they have been reported as lost or stolen, with IMEI blocking preventing You from receiving or making phone calls. We will submit the IMEI number of Your Eligible Device to AMTA to check that it has not been reported as lost or stolen.
- 12.2 If Your Eligible Device has been reported as lost or stolen, We may request that You provide Us with any additional documents or information including proof of ownership. In the event that there is insufficient proof of ownership, We will deal with Your Eligible Device in accordance with the relevant law which may include providing Your Eligible Device to the relevant authorities.

## 13. MISCELLANEOUS

- 13.1 Entering into the Program does not prevent You from exercising Your rights under Samsung's Change of Mind Policy, a copy of which is available here [https://www.samsung.com/au/estore/static/link\\_mindpolicy\\_p/](https://www.samsung.com/au/estore/static/link_mindpolicy_p/).
- 13.2 If You exercise Your right to return Your New Samsung Device during the 14 day change of mind period set out in Samsung's Change of Mind Policy, or if Samsung has agreed to refund You the Purchase Price of Your New Device because Your New Device is defective, We will return Your Eligible Device to You unless Your Eligible Device has been altered by Us and/or is no longer in Our custody.
- 13.3 Severability. If a provision of these terms is invalid or unenforceable, it may be severed from these terms and the remaining provisions of these terms continue in force.
- 13.4 These Terms and Conditions will be governed by and construed in accordance with the laws of New South Wales.

## 14. ENQUIRIES

If you have any queries, complaints or feedback regarding the Program, please contact Us at 1300 362 603

## 15. DEFINITIONS:

In these Terms and Conditions, the following words have the following meanings:

**Acceptable Damaged Device** means an Eligible Device which is not in Good Working Order but is not an In-eligible Device.

**AMTA** means Australian Mobile Telecommunications Association.

**Damage Upgrade Fee** means the fee payable by You to Asurion upon making a successful Damage Upgrade Request.

**Damage Upgrade Request** means a request to upgrade an Eligible Device which is not in Good Working Order.

**Data Privacy Laws** means Commonwealth, State and/or Territory legislation in relation to the collection, use, storage, transfer, security or disclosure of any personal information, including the *Privacy Act 1988* (Cth) that applies to Us.

**Early Upgrade Fee** means the fee payable by You to Asurion upon making a successful Early Upgrade Request.

**Eligible Device** means a smart phone that You own of a make and model that is eligible for participation in the Program, as determined by Us and Samsung.

**Fees** means the fees payable to Asurion as outlined in clause 7.1.

**Good Working Order** means an Eligible Device which is in good working order as determined by a series of functional tests and device condition assessments performed using the Samsung Subscription App.

**IMEI** means international mobile equipment identity.

**In-eligible Device** is a device You own that:

- (a) is not an Eligible Device;
- (b) is not in Good Working Order;
- (c) does not have all activation and device locking features disabled (eg, Find My iPhone, Google account locks and Samsung account locks).
- (d) is AMTA blocked;
- (e) contains non genuine parts;
- (f) has missing parts;
- (g) has an operating system bypass (e.g. jailbroken);
- (h) does not have clear chain of ownership; and/or
- (j) is an Incorrect Device.

**In-Eligible Device Fee** means a fee that applies where Your Device is determined to be an In-eligible Device, which is equal to the amounts payable to Latitude as referred to in clause 6.2 in respect of the Payment Plan.

**Incorrect Device** is a device that does not contain the same IMEI as the device that You assessed for trade-in using the Samsung Subscription App.

**Instalments** means the monthly payments due under Your Payment Plan.

**Mis-Graded** or **Mis-Grading** means that Your Eligible Device has been incorrectly assessed using the Samsung Subscription App as a result of misrepresentations You have made about Your Eligible Device when using the Samsung Subscription App.

**Mis-Graded Device** means Your Eligible Device has been Mis-Graded.

**Mis-Grading Device Fee** means a fee which is equal to the Samsung Care+ Swap Fee.

**New Device** means a new Samsung smart phone which is available for You to purchase from Samsung of a make and model that is eligible for participation in the Program, as determined by Samsung.

**Payment Plan** means a Latitude Pay+ 18 month by now pay later product allowing You to pay for the Eligible Device in 18 equal monthly Instalments without any establishment fee, and the waiver of account keeping fees provided all monthly instalment are paid on time in accordance with the Payment Schedule.

**Payment Schedule** means the scheduled instalment payments notified to You by LatitudePay+.

**Personal Information** means information or an opinion about an identified individual or an individual who is reasonably identifiable: (a) whether the information or opinion is true or not; and (b) whether the information or opinion is recorded in a material form or not.

**Samsung Subscription App** means the application used to assess whether Your Existing Device qualifies for upgrade under the Program.

**You** and **Your** means you, being an individual who meets the eligibility criteria in clause 4 of these Terms and Conditions.



## Schedule 1 - SAMSUNG CARE+ UPGRADE TERMS AND CONDITIONS

### 1. TERMS, ACCEPTANCE AND INTERPRETATION

- 1.1 These terms and conditions (**Terms**) set out the agreement between you and **Samsung** (the **Agreement**) in relation to your Samsung Care+ Upgrade subscription (the **Program**).
- 1.2 You acknowledge that you have read and fully understood these **Terms**. Your use of the **Program**, upon the **Start Date**, constitutes unconditional acceptance to be bound by these **Terms** as may be amended from time to time.
- 1.3 Words and phrases which appear in bold are defined in the context which they appear or in the definition clause 13 below.
- 1.4 A reference to “you” and “your” means the customer who seeks to enroll or has enrolled for the **Program**.
- 1.5 Australian Consumer Law and Consumer Guarantees - Our goods and services, including Samsung Care+, come with statutory Consumer Guarantees that cannot be excluded under the Australian Consumer Law. If your Registered Device (which includes a Like Mobile Device received under a Swap) suffers a defect or failure which is covered by a Consumer Guarantee, you are entitled to a repair, replacement or refund (at Samsung’s discretion) for a minor failure or a refund or compensation for a major failure. When you request a **Swap** under Samsung Care+, we will ask you to provide information about your Registered Device to determine if there is a defect or failure that is covered under a Consumer Guarantee. Any remedy under the Australian Consumer Law will not be considered a **Swap** under this Agreement and a **Swap Fee** will not be payable.

### 2. PROGRAM OVERVIEW

Subject to these **Terms**, Samsung Care+ permits you to swap your Registered Device for a **Like Mobile Device** twice in 18 months from the **Start Date**. One Swap Request request may be made in the first 12 months, with the second swap available from month 13 of your subscription. You must return your Registered Device to complete a Swap.

### 3. ENROLMENT

- 3.1 *Eligibility Criteria* – In order to apply for enrolment for the **Program** for an **Eligible Device** you must:
  - 3.1.1 provide your full name and email address; and
  - 3.1.2 have an active enrollment in the **Samsung Subscription Program**.

*Time of application* – You are deemed to have made your application at the time you purchase your **Eligible Device** and enroll into the **Samsung Subscription Program**
- 3.2 *Acceptance and rejection*
  - 3.2.1 If your application to enrol in the **Program** is unsuccessful, **Samsung** will inform you of this (by email, telephone or SMS) within 7 days of your application date. Otherwise, the **Start Date** of your **Subscription** to the **Program** is the later of the date upon which:

- (a) you receive written confirmation of your **Subscription**; or
  - (b) you receive your **Eligible Device**, which has been registered under the **Program**.
- 3.2.2 Your application will be unsuccessful:
  - (a) if you have previously been rejected or terminated from the **Program** or service similar to the **Program**; or
  - (b) for any other reasons in Samsung's reasonable discretion.
- 3.2.3 Your application for enrolment in the **Program** may be rejected or your **Subscription** to the **Program** may be terminated within 30 days of your application date if any of the eligibility criteria in clause 3.1 and/or 3.2.2 are not met.
- 3.2.4 Upon enrolment into the Program, your **Eligible Device** will become your **Registered Device**.
- 3.3 *Enrolment conditions*

You are only entitled to enrol one Eligible Device in your Subscription. You may enrol multiple **Eligible Devices** (each with a separate IMEI and MDN) under separate **Subscriptions**, which requires the purchase of a separate **Eligible Device** and enrolment in the Subscription Program.
- 4. **FEES**
  - 4.1 *Enrolment Fee* - Samsung Care+ Upgrade is inclusive benefit of the **Samsung Subscription Program**, for which there is no separate or additional charge.
  - 4.2 *Swap Fee* - For each **Swap Request** for a **Swap** under these **Terms** you will pay the applicable fee provided to you immediately prior to your Swap (**Swap Fee**). The Swap Fee must be paid at the time of your **Swap Request** using the **Samsung Care+ Portal** or any other payment method that **Samsung** may choose to make available.
  - 4.3 *Device Non-Return Fee (Registered Device)* – You must return your **Registered Device** (using the reply-paid envelope) to Samsung within 14 days of receipt of the **Like Mobile Device** or you will be charged a **Device Non-Return Fee**. You will be advised of the amount of the **Device Non-Return Fee** when you make a **Swap Request**. You authorise **Samsung** to charge your **Credit Card** for the **Device Non-Return Fee**.
  - 4.4 *Device Non-Return Fee (Like Mobile Device)* –
 

If you are supplied a defective **Like Mobile Device** pursuant to a **Swap** and you are sent a second **Like Mobile Device** as a substitute, you must return the first Like Mobile Device to Samsung within 14 days of its receipt, using the reply-paid envelope. If you do not, you will be charged a Device Non-Return Fee. You will be advised of the amount of the Device Non-Return Fee when we agree to issue a second Like Mobile Device. You authorise **Samsung** to charge your **Credit Card** for the **Device Non-Return Fee**.
  - 4.5 *Incorrect Device* - If the **Device** you return pursuant to a **Swap** does not correspond to the **Registered Device** (model & IMEI), then you must return the correct **Registered Device** (at your own cost) within 7 days of receipt of a notice from Samsung to do so. If you fail to do so, **Samsung** will charge you a **Device Non-Return Fee**. The notice from **Samsung** will specify the amount of the applicable **Device Non-Return Fee**. You authorise Samsung to charge your Credit Card for the Device Non-Return Fee. You may request **Samsung** to return the Incorrect Device to you at your cost.
  - 4.6 *Inoperable Device* – If you return a **Registered Device** as part of a **Swap** and it is:

- 4.6.1 disabled or locked (including IMEI blocked) and Samsung is not able to remedy this;
- 4.6.2 has missing, customised or non-original parts,  
(either, an **Inoperable Device**), your **Swap Request** will be cancelled. If a **Like Mobile Device** has already been dispatched to you, **Samsung** will take reasonable steps to contact you and request that you, within 14 days:
- 4.6.3 unlock or enable the **Inoperable Device** or take other steps to make the device operable; or
- 4.6.4 return the **Like Mobile Device**.
- 4.7 If you do not comply with either clause 4.6.3 or 4.6.4 (as the case may be), **Samsung** will charge you an **Inoperable Device Fee**. You authorise **Samsung** to charge your **Credit Card** for the **Inoperable Device Fee**. **Samsung** will return the **Inoperable Device** to you and charge you for the delivery fees. You authorise **Samsung** to charge your **Credit Card** for the delivery fees.
- 4.8 *Modified Devices* – If the **Device** you return pursuant to a **Swap** has been subject to **Modification**, then **Samsung** will:
  - 4.8.1 reject the **Swap Request** at the time the **Registered Device** is received and your **Swap Request** will be considered cancelled. **Samsung** will refund the **Swap Fee** by the original method of payment;
  - 4.8.2 upon your request, return the **Registered Device** to you at your cost. You authorise **Samsung** to charge your **Credit Card** for the delivery fees.
- 4.9 *GST* - All fees set out in this clause 4 and throughout these **Terms** are inclusive of GST. In the event of a change to the rate of GST, **Samsung** reserves its right to adjust the **Fees** and prices accordingly.
- 5. SWAP REQUEST**
- 5.1 You may file up to two **Swap Requests** in the 18-month period from the **Start Date (Limit)**.
- 5.2 One **Swap Request** may be made in the first 12 months, with the second **Swap** available from month 13 of your subscription. You may make a **Swap Request** by using the **Samsung Care+ Portal**.
- 5.3 Your **Swap Request** will only be accepted if:
  - 5.3.1 the **IMEI** of the **Registered Device**, subscriber's name and mobile phone number correspond with the information given to **Samsung** by you at enrolment or pursuant to any change in accordance with clause 9;
  - 5.3.2 you provide any additional information reasonably requested by **Samsung**, including in the form of a signed confirmation or acknowledgment;
  - 5.3.3 you are within the **Limit** as set out in clause 5.1 above;
  - 5.3.4 **Samsung** has no reasonable belief that you have transferred, retailed, sold, or hired your **Registered Device** to another person;
  - 5.3.5 the **Swap Request** is not for a **Device Accessory**;
  - 5.3.6 the **Registered Device** has not been the subject of **Modification**; and
  - 5.3.7 **Samsung** reasonably believes that you are not using the **Program** in a manner which is, or is reasonably believed to be, (i) fraudulent, illegal or related to any criminal activity, or (ii) intended to make a commercial gain.
- 5.4 *Information* - When you make a **Swap Request**, you are not required to establish that your **Registered Device** is broken or damaged.

## 6. SWAP

- 6.1 *Preparation* - You must turn off any personal lock security feature before returning your **Registered Device** via the pre-paid envelope provided.
- 6.2 *Title and rights* - Title in and any rights to the **Registered Device** shall be transferred to **Samsung** on the **Acceptance Date** of your **Swap Request** relating to that **Registered Device**. You hereby assign to **Samsung** all associated rights and benefits of any **Samsung** warranty. You shall not transfer, sell, hire or otherwise deal with the **Registered Device** in a manner that is not consistent with the ownership rights of **Samsung**.
- 6.3 *Samsung actions* – **Samsung**, as the owner of the previous **Registered Device**, may take any other action consistent with ownership of the previous **Registered Device** that it deems necessary including informing the Police and any other relevant law enforcement authorities to assist in recovery of the previous **Registered Device**.
- 6.4 *Data left on Device and transfer* – You shall be solely responsible for all data stored in your **Registered Device** and you shall delete all data from the **Registered Device** before providing it to **Samsung**. **Samsung** is not responsible for data you leave on the **Registered Device** and will not transfer any such data or information between the **Registered Device** and the **Like Mobile Device**.
- 6.5 *No representation or warranty* – **Samsung** makes no representation or warranty that any **Like Mobile Device** will be identical, of the same colour or offer the same functionalities as your **Registered Device**.

## 7. DELIVERY

- 7.1 *Address* – Except in relation to international delivery pursuant to clause 7.3, the delivery must be to your registered or billing address. **Samsung** will not deliver a **Like Mobile Device** to any public place.
- 7.2 *Timings* – A **Like Mobile Device** will be dispatched to you on the same business day that you submit a **Swap Request**, provided that we receive your **Swap Request** by 3pm AEST/AEDT on a Business Day, and the **Swap Request** is approved on that Business Day.
- 7.3 *Costs* – Deliveries to an address in Australia will be made at no charge to you.
- 7.4 *International delivery*
- 7.4.1 If you make a **Swap Request** for delivery to a location outside of Australia, a **Like Mobile Device** will be delivered to you by **Courier** at your cost. You must pay the delivery costs by **Credit Card** at the time of your **Swap Request**.
- 7.4.2 You must return (at your cost) your **Registered Device** to **Samsung** within 21 days of receipt of your **Like Mobile Device** or a **Device Non-Return Fee** will be charged. You will be advised of the amount of the **Device Non-Return Fee** when you make a **Swap Request**. You authorise **Samsung** to charge your **Credit Card** for the **Device Non-Return Fee**.
- 7.5 The **Like Mobile Device** will not be delivered in original packaging.
- 7.6 *Acknowledgement*. You acknowledge that:
- 7.6.1 the **Program** is not intended to be used for commercial gain;
- 7.6.2 **Samsung** will delete all data on the previous **Registered Device** without reference to you;
- 7.6.3 upon acceptance of the **Swap Request**, title in the **Registered Device** is transferred to **Samsung** in accordance with clause 6.1; and

- 7.6.4 where your **Registered Device** is replaced under a warranty claim or pursuant to any statutory Consumer Guarantee, you must contact **Samsung** through the **Samsung Care+ Portal** to advise us of the replacement **IMEI** number.

## 8. TERM AND TERMINATION

- 8.1 **Samsung** will supply the **Program** to you from the **Start Date** until it is terminated in accordance with this clause.
- 8.2 *Termination by you:* You can terminate your **Subscription** to the **Program** in the following circumstances:
- 8.2.1 if you are entitled to reject the **Device** under the Australia Consumer Law (for example, because of a major failure) and you elect to return the **Device** for a refund; or
- 8.2.2 your **Device** is subject to a recall and is returned.
- As the Subscription to the Program is provided at no additional cost, there is no entitlement to a refund in relation to termination of your Subscription.
- 8.3 *Termination by Samsung* – **Samsung** may immediately terminate your **Subscription** to the **Program** and the **Agreement** at any time if **Samsung** reasonably believes that:
- 8.3.1 you are using the **Program** (whether intentionally or not) in a way that may adversely impact the reputation of **Samsung**;
- 8.3.2 you are using the **Program** in a manner which is, or is reasonably believed to be:
- (a) fraudulent, illegal or related to any criminal activity; or
- (b) intended to make a commercial gain;
- 8.3.3 you have breached a material provision of these **Terms**;
- 8.3.4 you become bankrupt or are otherwise unable to pay your debts as they fall due;
- 8.3.5 you have provided **Samsung** with incorrect, false or incomplete information;
- 8.3.6 you have not paid any amounts due to **Samsung** under these **Terms** for a period exceeding 30 days from its due date; or
- 8.3.7 you are likely to create imminent harm or harass or are abusive to any personnel of **Samsung** and its service providers, sub-contractors and agents.
- 8.3.8 you upgrade your device as part of the Samsung Subscription Program and the **Registered Device** covered under this **Agreement** is no longer in your possession
- 8.4 *Automatic* – Your **Subscription** to the **Program** and the **Agreement** will terminate immediately if **Samsung** discovers that you have transferred, sold, displayed for sale, or let on hire your **Registered Device**. Your **Subscription** cannot be transferred to another person, and any person who acquires your **Registered Device** will not have any benefit under these **Terms**.
- 8.5 *Consequences of termination*
- 8.5.1 *No reactivation* – If your subscription to the **Program** has been terminated in relation to a **Registered Device**, your subscription to the **Program** cannot be reactivated for that **Registered Device**.
- 8.5.2 *Swap Requests* – If you have made a **Swap Request** which is not fulfilled as at the time of the termination, the **Swap Request** may be cancelled.

## 9. CHANGE OF REGISTERED DEVICE

Your **Registered Device** may not change except for:

- 9.1 the change made pursuant to a **Swap**; or
- 9.2 the exchange of your **Registered Device** under a warranty scheme or statutory Consumer Guarantee.

You must inform **Samsung** through the **Samsung Care+ Portal** of any change under clause 9.2 and provide proof of the exchange where necessary in order for **Samsung** to update its records with the **IMEI** of the new **Device**, from which time the new **Device** will become the **Registered Device**.

## 10. DATA PRIVACY

10.1 *Device Program*. The Samsung Personal Data Protection Policy which may be found at <https://www.samsung.com/au/info/privacy/> or such other link as may be notified by Samsung from time to time (**PDP Policy**), which applies to the **Program**.

10.2 *Consent*. You also agree that by:

10.2.1 making an application to enrol for or continuing to use the **Program**, you are giving consent to **Samsung** and its service provider, **Asurion**, to collect, use and/or disclose your Personal Information in accordance with the Data Privacy Laws and the **PDP Policy** for the purposes of:

- (a) assessing your eligibility to enrol, and continuing to be enrolled in the **Program** or using the **Program**;
- (b) providing you with the **Program**;
- (c) allowing direct and indirect contact with you in connection with the **Program**;
- (d) managing commercial risks, and preventing, detecting, and investigating suspected illegal activity, fraud, or disputes (collectively the **Purposes**);
- (e) complying with any relevant governmental and/or regulatory authorities where legally required;

10.2.2 using the **Program**, you consent to **Samsung**'s service provider, **Asurion**, storing or hosting data with **Asurion's** affiliates, partners and subsidiaries, or with **Asurion's** unaffiliated third parties including third-party service providers, whether in Australia or other countries, for the purpose of providing you with the Program or for any other purpose specified in the **PDP Policy**.

## 11. MISCELLANEOUS

11.1 *Changes* – The features and services of the **Program**, these **Terms** and the **Fees** are subject to change. **Samsung** will notify you of any changes that are likely to be of material detriment to you through the **Website**. The latest version of these Terms will be made available on the **Website**.

11.2 *Service providers, contractors and third parties* – Samsung has appointed **Asurion** to provide services in respect of the operation of the **Program**, including dealing with all customers, the provision of **Like Devices** and processing payments on Samsung's behalf. **Samsung** may also use other third parties in respect of the **Program**. Actions taken by any party appointed by **Samsung** are taken to be actions of **Samsung** and your sole recourse will be against **Samsung** and not **Asurion** or any other third party.

- 11.3 *Governing law* – The **Agreement** will be governed by and construed in accordance with the laws of New South Wales.
- 11.4 *Entire agreement* – This Agreement represents the parties' entire agreement in relation to Samsung Care+ and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing.
- 11.5 *Promotions* - **Samsung** may from time to time offer promotions relating to all or any of the **Program**. Any such promotions shall be governed by the terms and conditions of the applicable promotion, and by these **Terms** to the extent that the promotion's terms and conditions are silent. In the event of any conflicts between a promotion's terms and conditions and these **Terms**, the promotion's terms and conditions shall prevail.

## 12. ENQUIRIES

If you have any queries, complaints, claims or feedback regarding the **Program**, please contact Samsung by using the **Samsung Care+ Portal**.

## 13. DEFINITIONS

- 13.1 **Acceptance Date** means the date when Samsung accepts your **Swap Request**.
- 13.2 **Asurion** means Asurion Australia Pty Ltd (ABN 18 155 388 275)
- 13.3 **Courier** means a third-party logistics agent appointed by **Samsung** to make deliveries in relation to the **Program**.
- 13.4 **Credit Card** includes: VISA and MasterCard credit cards or any other credit card advised to you at the time of payment.
- 13.5 **Data Privacy Laws** means Commonwealth, State and/or Territory legislation in relation to the collection, use, storage, transfer, security or disclosure of any personal information, including (without limitation) the *Privacy Act 1988* (Cth).
- 13.6 **Device** means an Australian variant of a Samsung mobile wireless device that:
- (a) has a display screen;
  - (b) supports one or more wireless network connectivity options; and
  - (c) is operated using voice, touch or a miniature keyboard.
- It does not include any **Device Accessories**.
- 13.7 **Device Accessory** means anything that is either:
- (a) provided by Samsung, as the original manufacturer, in the box with a **Device**; or;
  - (b) sold separately to be used in conjunction with a **Device**. It includes:
    - (i) **SIM** cards;
    - (ii) memory cards;
    - (iii) chargers;
    - (iv) ear buds;
    - (v) boxes;
    - (vi) cases;
    - (vii) cables;
    - (viii) mounts; and

- (ix) docking stations.
- 13.8 **Device Non-Return Fee** is the fair market value cost to replace your original Registered Device or, if the model of your original Registered Device is no longer available, a similar device in the same Device Category, and includes any administration fee applied in connection with the failure to return.
- 13.9 **Device Category** means the tier outlined for your **Registered Device** as advised in your **Agreement** and the supported **Device** list on the **Website** at the time of your enrolment.
- 13.10 **Eligibility Declaration** means a web form completed by you regarding the condition of your **Eligible Device**;
- 13.11 **Eligible Device** means a **Device** supplied to you:
- (a) as new by **Samsung** or any of its approved **Retail Partners** and registered in the **Program** at the time of purchase or transfer; or
  - (b) as a **Like Mobile Device**, pursuant to the **Program**;
  - (c) by **Samsung** under warranty or Consumer Guarantee, the details of which (including the **IMEI**) you have reported to Samsung through the **Samsung Care+ Portal**.
- 13.12 **Enrolment Fee** has the meaning given to that term in clause 4.1.
- 13.13 **Fees** means the fees set out in clause 4 and clause 7.
- 13.14 **IMEI** means the international mobile equipment identity number of a **Device**.
- 13.15 **Inoperable Device Fee** is a reimbursement fee equal to the fair market value of the **Like Mobile Device** sent to you pursuant to a **Swap**.
- 13.16 **Hardware Modification** means any modification made to a **Device's** hardware not undertaken or authorised by **Samsung**.
- 13.17 **Like Mobile Device** means a **Device**, compared to the **Registered Device**, that:
- (a) may be new or refurbished;
  - (b) is of similar kind, quality and functionality;
  - (c) may be a different model or colour;
  - (d) has a different **IMEI**; and
  - (e) does not include any **Device Accessories**.
- 13.18 **Limit** has the meaning given to that term in clause 5.1.
- 13.19 **Modification** means **Software Modification** or **Hardware Modification** or both.
- 13.20 **Personal Information** means information or an opinion about an identified individual or an individual who is reasonable identifiable:
- (a) whether the information or opinion is true or not; and
  - (b) whether the information or opinion is recorded in a material form or not.
- 13.21 **Registered Device** means an **Eligible Device** that **Samsung** has registered with reference to its **IMEI** for the **Program** in accordance with these **Terms**.
- 13.22 **Retail Partner** means an agent, appointed by Samsung to sell **Subscriptions** to the **Program**.



- 13.23 **Retail Store** means any Samsung Store or any retail store in Australia approved by **Samsung** to sell the **Program**.
- 13.24 **Samsung** means Samsung Electronics Australia Pty Ltd (ABN 63 002 915 648)
- 13.25 **Samsung Care+ Portal** means an on-line web portal, which may be accessed via the **Website**, and which Subscribers will use to lodge Swap Requests and carry out other administrative tasks in relation to the Program.
- 13.26 **Samsung Store** means a retail store branded as “Samsung” in Australia operated by or on behalf of Samsung.
- 13.27 **Samsung Subscription Program** means the program offered to Samsung customers under which they can trade-in an eligible existing device for the ability to upgrade to a new Samsung device if they meet the minimum repayment amount to qualify.
- 13.28 **Software Modification** means modification made to a **Device**’s operating system not undertaken or authorised by **Samsung** and includes software modification known as ‘jail-breaking’ and ‘rooting’.
- 13.29 **Start Date** has the meaning given to that term in clause 3.2.
- 13.30 **Subscriber means** a subscriber to the **Program**, who has complied with all eligibility criteria and has been accepted into the **Program**.
- 13.31 **Subscription** means your subscription to the **Program**, pursuant to these Terms and your Agreement with Samsung.
- 13.32 **Swap** means the exchange of a **Subscriber’s Registered Device** for a **Like Mobile Device** permitted under these **Terms**.
- 13.33 **Swap Fee** means the fee set out in clause 4.2.
- 13.34 **Swap Request** means a request for a **Swap** permitted under these **Terms**.
- 13.35 **Website** means the **Samsung** website.