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 purchase and use of Samsung Care+ (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 enrol 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 24 months from the Start Date. You must return your Registered Device to complete the 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 pay the upfront Enrolment Fee.

3.2 Time of application – You must make your application either:
   3.2.1 at the time you purchase your Eligible Device; or
   3.2.2 up to 30 days after you purchase your Eligible Device (Post Purchase Application) subject to successfully completing the Post Purchase Declaration via the Samsung Care+ Portal including the following:

(a) uploading proof of purchase of your Eligible Device;
(b) confirmation that your Eligible Device is in your possession and in good working order by:
   (i) uploading an image of back of your Device and an image of the front of your Device with the IMEI displayed on screen; and
(ii) completing a declaration about the condition of your Device.

3.3 Acceptance and rejection -

3.3.1 If your application to enrol in the Program is unsuccessful, Samsung will inform you of this (by email, telephone or SMS) within:

(a) 7 days of your application date where you made your application at the same time you purchased your Eligible Device; or
(b) 30 days of your application date where you made a Post Purchase Application.

Otherwise, the Start Date of your Subscription to the Program is the date upon which you receive your Eligible Device, which has been registered under the Program.

3.3.2 Your application may be unsuccessful:

(a) if you have previously been rejected or terminated from the Program or service similar to the Program; or
(b) if you make a Post Purchase Application and:
   (i) fail to comply with the requirements in clauses 3.2.2(a) and 3.2.2(b); or
   (ii) the images you upload of your Device indicate that your Device is not in good working order, as reasonably determined by us.

(c) for any other reasons in Samsung’s reasonable discretion.

3.3.3 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 are not met.

3.3.4 Upon enrolment into the Program, your Eligible Device will become your Registered Device.

3.4 Enrolment conditions – You may enrol multiple Eligible Devices (each with a separate IMEI and MDN) under separate Subscriptions. You will be charged an Enrolment Fee for each enrolled Eligible Device and each Subscription will have separate Swap entitlements.

4. FEES

4.1 Enrolment Fee – You will pay the applicable fee provided to you immediately prior to your application for enrolment (Enrolment Fee):

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; and/or

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 Inoperable 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 24-month period from the Start Date (Limit).

5.2 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 you are successfully enrolled in the Program;
5.3.2 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;
5.3.3 you provide any additional information reasonably requested by Samsung, including in the form of a signed confirmation or acknowledgment;
5.3.4 you are within the Limit as set out in clause 5.1 above;
5.3.5 Samsung has no reasonable belief that you have transferred, retailed, sold, or hired your Registered Device to another person;
5.3.6 the Swap Request is not for a Device Accessory;
5.3.7 the Registered Device has not been the subject of Modification; and
5.3.8 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.
7.1 **Address** – Except in relation to international delivery pursuant to clause 7.5, 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 and approve your **Swap Request** by 3pm AEST/AEDT on a **Business Day**, and a **Like Mobile Device** is available in stock.

7.3 **Backorders** – If a **Like Mobile Device** is not available in stock at the time you make a **Swap Request**, we will place a priority backorder request for a **Like Mobile Device**.

7.4 **Costs** – Deliveries to an address in Australia will be made at no charge to you.

7.5 **International delivery** -

7.5.1 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**.

7.5.2 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**.

7.6 The **Like Mobile Device** will not be delivered in original packaging.

7.7 **Acknowledgement** – You acknowledge that:

7.7.1 the **Program** is not intended to be used for commercial gain;

7.7.2 **Samsung** will delete all data on the previous **Registered Device** without reference to you;

7.7.3 upon acceptance of the **Swap Request**, title in the **Registered Device** is transferred to **Samsung** in accordance with clause 6.2; and

7.7.4 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 Australian 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.
If you elect to terminate your **Subscription** in accordance with clause 8.2.1 or 8.2.2, **Samsung** will discuss with you any available refund options in relation to 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, or are likely to breach, these **Terms**;

8.3.4 you are or may become bankrupt or 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.

8.4 **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; or

9.3 If there is at least 10 full months remaining of your **Subscription**, you may transfer your **Subscription** to a new upgraded **Eligible Device**. The new **Eligible Device** must be in the same **Device Category** as your **Registered Device**. If
applicable, you will be advised of the associated transfer fee immediately prior to the Subscription transfer.

9.4 You must inform Samsung through the Samsung Care+ Portal of any change under clause 9.2 or 9.3 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 Business Day means any day except Saturday and Sunday and any public holiday recognised in the State of New South Wales.

13.4 Courier means a third-party logistics agent appointed by Samsung to make deliveries in relation to the Program.

13.5 Credit Card includes: VISA and MasterCard credit cards or any other credit card advised to you at the time of payment.

13.6 Customised Mobile Device means a Device that has been customised or made to order for a particular end user (e.g. an exclusive colour variant of a Device that is only offered for sale on Samsung’s Website and requires special production).

13.7 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).

13.8 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 Accessory.

13.9 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.

13.10 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.

13.11 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.

13.12 Eligible Device means a Device supplied to you:

(a) as new by Samsung or any of its approved Retail Partners and is eligible to be 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.

13.13 Enrolment Fee has the meaning given to that term in clause 4.1.

13.14 Fees means the fees set out in clause 4 and clause 7.

13.15 IMEI means the international mobile equipment identity number of a Device.

13.16 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.

13.17 Hardware Modification means any modification made to a Device’s hardware not undertaken or authorised by Samsung.

13.18 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;
(e) does not include any **Device Accessories**; and
(f) is not a **Customised Mobile Device**.

13.19 **Limit** has the meaning given to that term in clause 5.1.

13.20 **Modification** means **Software Modification** or **Hardware Modification** or both.

13.21 **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.

13.22 **Post Purchase Declaration** means a web form completed by you regarding the condition of your **Eligible Device**.

13.23 **Registered Device** means an **Eligible Device** that **Samsung** has registered with reference to its **IMEI** for the **Program** in accordance with these **Terms**.

13.24 **Retail Partner** means an agent, appointed by **Samsung** to sell **Subscriptions** to the **Program**.

13.25 **Retail Store** means any **Samsung** store or any retail store in Australia approved by **Samsung** to sell the **Program**.

13.26 **Samsung** means Samsung Electronics Australia Pty Ltd (ABN 63 002 915 648)

13.27 **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**.

13.28 **Samsung Store** means a retail store branded as “Samsung” in Australia operated by or on behalf of **Samsung**.

13.29 **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’.

13.30 **Start Date** has the meaning given to that term in clause 3.3.

13.31 **Subscriber** means a subscriber to the **Program**, who has complied with all eligibility criteria and has been accepted into the **Program**.

13.32 **Subscription** means your subscription to the **Program**, pursuant to these **Terms** and your **Agreement** with **Samsung**.

13.33 **Swap** means the exchange of a **Subscriber’s Registered Device** for a **Like Mobile Device** permitted under these **Terms**.

13.34 **Swap Fee** means the fee set out in clause 4.2.

13.35 **Swap Request** means a request for a **Swap** permitted under these **Terms**.

13.36 **Website** means the **Samsung** website.