

**SAMSUNG SERVICES - STANDARD TERMS AND CONDITIONS**

**PART A: GENERAL TERMS AND CONDITIONS**

Your attention is particularly drawn to paragraphs A4.2 and E5 (Customer Obligations), E9 and E10 (Staff Transfer in Service Contracts) and A8 (Limits and Exclusions of Liability).

**A1 STRUCTURE OF SAMSUNG TERMS AND CONDITIONS**

A1.1 Subject to A2.2, your Agreement ("**Agreement**") with Samsung is made up of all of the following elements, which shall be read in the following order of priority in the event of any conflict, ambiguity or inconsistency between them:

A1.1.1 the Cover Sheet with specifics of the Customer's order ("**Cover Sheet**"), which may be attached to the Services Description or this Standard Terms and Conditions document;

A1.1.2 any Statement of Work, Product Description, Software Description or Services Description for the products, software or services Samsung is selling to you (or in the case of software, which Samsung is enabling you to licence from Samsung, SEC or a third party) including any Default Project Plan (where there is no agreed Project Plan)

A1.1.3 Part E (*Standard Services Terms*);

A1.1.4 Part D (*Software and Software Support Terms*);

A1.1.5 Part C (*Terms of Sale of Products*);

A1.1.6 Part B (*Charges and Payment*); and

A1.1.7 this Part A (*General Terms and Conditions*).

**A2 INTERPRETATION**

A2.1 The following definitions and rules of interpretation apply in this Agreement.

**Affiliate or Affiliates:** includes, in relation to either party or any business entity from time to time controlling, controlled by, or under common control with, either party, including in relation to Samsung, SEC, or any direct or indirect subsidiary of SEC.

**Applicable Law:** means all laws, regulations, secondary legislation or other mandatory code which applies to the party and/or the Products and/or Services.

**Background IPR:** means Intellectual Property Rights that belong to or are licensed to a party (or that party's licensors, subcontractors or Affiliates) prior to the date of this Agreement, or that are generated or acquired after the Effective Date independently of this Agreement, or are generated, improved or acquired for application to Samsung's customers generally.

**Charges:** means the charges to be paid by the Customer to any Samsung Affiliate under this Agreement as set out in C the Service Description or Cover Sheet.

**Customer Background Material:** means all Documents, information and materials

provided by the Customer relating to the Services.

**Customer Data:** means the Confidential Information belonging to the Customer which consists of structured data, application content or business records which Customer provides to Samsung as part of any Services.

**Customer's Equipment:** any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services.

**Consumer:** any natural person, who is acting for purposes which are outside his trade, business or profession.

**Default Project Plan:** A standard plan for implementation of Services identified in the Service Description.

**Description:** in respect of services the Service Description; in respect of goods, the Product Description; and in respect of software and software licences, the Software Description.

**Deliverables:** all Documents, Products and materials developed by any Samsung Affiliate or its agents, subcontractors, consultants and employees in relation to the Services in any form, including but not limited computer programs, data, reports and specifications (including any drafts of the above).

**Document:** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**Disclosing Party:** means the party to this agreement or its Affiliate disclosing an item of Confidential Information.

**Export Control Laws:** any applicable law on export control plus the export control laws of the United Kingdom, United States of America and Republic of Korea.

**Force Majeure:** refers to an event including, but not limited to, acts of God, war, civil commotion, riot, blockade or embargo, fire, explosion, breakdown, union dispute, earthquake, epidemic, flood, windstorm, lack or failure of sources of supply, the passage of any law, order, proclamation, regulation, ordinance, demand, requisition or requirement or any other act of any governmental authority, beyond the reasonable control of the parties, whether or not foreseeable, which renders performance impossible or economically impractical.

**Foreground IPR:** Intellectual Property Rights created specifically and exclusively for the Customer by Samsung or a Samsung Affiliate that are not Samsung Background Materials.

**Intellectual Property Rights or IPR:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Non-Genuine Products:** mean any and all products: (i) to which a trade mark or any type of Samsung Background IPR has been affixed without the express written consent from any Samsung Affiliate, (ii) that have not been manufactured by any Samsung Affiliate, (iii) were produced with the intent to counterfeit or imitate products genuinely

sold by Samsung or a Samsung Affiliate, or (iv) where any form of Samsung or Samsung Affiliate copyright notice, trade mark, logo, confidentiality notice, serial number or other product identifier have been removed, altered, or destroyed.

**Personal Data:** has the meaning given in the Data Protection Act 2018 .

**Product(s):** Any goods sold (to the Customer or a leasing company), transferred, leased or made available for the Customer's or Customer Affiliate's use under this Agreement.

**Product Description:** Samsung's standard description of the Products, as issued from time to time by Samsung or on behalf of SEC.

**Project Plan:** the Specific Project Plan, if any is identified in the Cover Sheet, otherwise the Default Project Plan.

**Purchase Order:** the Cover Sheet, or if there is no Cover Sheet, the document titled "purchase order" agreed between the parties.

**Recipient:** means, the party to this Agreement, or its Affiliate, receiving an item of Confidential Information;

**Software:** means any software solution, software application, content or any other material developed or licenced by a Samsung Affiliate for use in any of the Samsung devices but excluding any Samsung Standard Services.

**Software Description:** Samsung's (or the software licensor's) standard description of the software provided or accessed under this agreement including any "end user licence agreement" or open-source licensing terms associated with that software.

**Software Support:** means support services for Software, the terms for which will be set out in the Software Description;

**SEC:** Samsung Electronics Corporation Limited of 416 Maetan-3dong, Yeongtong-gu, Suwon-City, Gyeonggi-do, 443-742, Republic of Korea.

**Service Description:** Samsung's standard services description document or standard "statement of work" for a service, as amended from time to time by Samsung, which shall include (but not be limited to) the Samsung Professional Services Key Features;

**Services:** the services described in the Statement of Work (which may refer out to other Service Descriptions, or include Software or Products with their own Software Description or Product Description) as amended or supplemented by the Cover Sheet.

**Samsung Background Materials:** any Document, information and material provided by or on behalf of Samsung Affiliate relating to the Services, Products, software or Description, and any Intellectual Property Rights subsisting in them or evidenced by them which (i) existed prior to the commencement of this Agreement, (ii) is developed or created independently of the Agreement or (iii) which is developed in connection with the Agreement but used for multiple customers and/or used just for the customer but not completely and specifically paid for by the customer.

**Samsung's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by Samsung Affiliate or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate Agreement between the parties under which title passes to the Customer.

**Third Party:** means any person other than Samsung, Samsung Entities and Samsung Affiliates, or Company, or Company's affiliates, agents or employees.

**VAT:** value added tax chargeable under English or other applicable local law from time to time.

- A2.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- A2.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- A2.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- A2.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- A2.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- A2.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- A2.8 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- A2.9 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- A2.10 References to clauses and paragraphs are to the clauses of this Agreement.
- A2.11 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

### **A3 PRODUCTS, SERVICES**

- A3.1 The Products, Services, Software, Software Support to be provided by or on behalf of Samsung are set out in the Cover Sheet, purchase order or contract terms set out in paragraph A3.
- A3.2 The Customer warrants that it is purchasing the Products for its own use and accordingly shall ensure that any Customer Data required for the registration and use by the Products is provided to Samsung and any Samsung Affiliate is correct and made available with all necessary consents to allow Samsung and Samsung Affiliates to deliver the goods, software and services under this Agreement.
- A3.3 The Customer acknowledges that unless specifically agreed in writing by Samsung, any alterations to Products shall invalidate the User Warranty provided by Samsung. The Customer shall not decompile, disassemble, or reverse engineer the Products, or otherwise attempt to derive the source code, algorithms, ideas, structure, sequence, or organization of the Products except to be in compliance with mandatory law or to the extent required to be permitted by applicable law.

### **A4 CUSTOMER'S OBLIGATIONS AND CUSTOMER DELAY**

- A4.1 The Customer shall:
  - A4.1.1 perform or procure the performance of any Customer obligations or dependencies set out in Cover Sheet or Description; and

A4.1.2 comply with all Applicable Law.

A4.2 If Samsung's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees:

A4.2.1 Samsung shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay; and

A4.2.2 where pre-specified charges or payments exist in this Agreement (for example, missed appointment charges in a Service Description) those charges shall apply; and; or

A4.2.3 where no –pre-specified charges or payments are specified in this Agreement, Samsung may charge, and the Customer shall pay, the direct costs of mitigating the delay or directly from the prevention calculated (i) in respect of costs at the actual value of such costs and (ii) in respect of labour or time, at the hourly rate of the staff or contractor involved. Samsung shall use reasonable endeavours to mitigate any such costs or charges.

#### **A5 INTELLECTUAL PROPERTY RIGHTS**

A5.1 Except as explicitly set out in this Agreement, each party's Intellectual Property Rights shall be and remain vested in that party or the relevant Affiliate, and no licence or assignment of any Intellectual Property Rights is made by either party.

A5.2 The Parties agree and acknowledge that:

A5.2.1 Samsung and/or Samsung Affiliates are the owners of the relevant Samsung Background IPR (which for the purposes of this clause A6.2 includes any Samsung software subsequently installed by the Customer) and Customer agrees that it will not take any action to challenge or interfere with, directly or indirectly, the validity of the Samsung Background IPR or any Samsung or Samsung Affiliate's use, ownership, or registration of the Samsung Background IPR; and

A5.2.2 where this Agreement relates to the provision of Services, any Foreground IPR generated as result of such provision shall belong to Samsung and the Customer hereby assigns, by way of present assignment of future rights where applicable, all right title and interest in the Foreground IPR to Samsung;

A5.3 other than Samsung Background IPR and Samsung Foreground IPR, Samsung agrees and acknowledges that the Customer and/or Customer Affiliates are the owners of all information, data and other material loaded, installed or used on any Project Hardware by the Customer and/or Customer Affiliates and/or other suppliers to Customer or a Customer Affiliate.

#### **A6 CONFIDENTIALITY AND SAMSUNG'S PROPERTY**

A6.1 Samsung and the Customer shall keep in strict confidence and not disclose the terms and conditions of this Agreement as well as all commercial and technical information acquired in connection with the purpose hereof (hereinafter jointly referred to as "**Confidential Information**") to third parties and not use the Confidential Information for any other purpose other than (in the case of Samsung) the manufacture, sale, delivery of the Products, the licensing of the software and the planning, delivery and execution of the Services and (in the case of the Customer) receipt of the goods, services or software, in each case except with the consent of the other party. The parties undertake that their employees and any other persons authorized by them shall observe the same degree of confidentiality as they would themselves and shall implement necessary internal rules in order to ensure confidentiality.

- A6.2 Notwithstanding paragraph A7.1, Samsung may disclose the Confidential Information to any SEC Affiliate, and any subcontractor of Samsung or a Samsung Affiliate who is involved with the manufacture, delivery, licensing or provisioning of the goods, software or services or any Intellectual Property Rights therein to the extent that Samsung reasonably believes necessary for delivery of services to the Customer and related internal reporting and review provided that Samsung imposes upon the Recipient of any Confidential Information a contractual obligation of confidence in respect of the Confidential Information.
- A6.3 Upon termination or expiration of this Agreement, the restriction of use and the obligation for the Recipient to keep the Confidential Information confidential shall survive such termination or expiration and continue to be in full force and effect for a period of 4 years.
- A6.4 Confidential Information does not include information which:
- A6.4.1 is disclosed with the specific prior written consent of the Disclosing Party;
  - A6.4.2 at the time of disclosure is published or becomes otherwise available to the general public as part of the public domain through no act, failure or negligence of the Recipient and without any breach of this Agreement;
  - A6.4.3 is rightfully received from a third party without any obligation of confidentiality;
  - A6.4.4 where the information was developed by, or for, the Recipient independently of any information received under the Agreement and by persons who had no access to, or knowledge of, that information; and/or
  - A6.4.5 is required to be disclosed under any law, governmental rule or regulation, or court order, provided that where this occurs, the party disclosing the information where practicable and/or permissible consults with the other party on the terms, timing and content of the disclosure and endeavours to limit the scope of the required disclosure.

## **A7 LIMITATION OF LIABILITY**

- A7.1 Nothing in this Agreement limits or excludes liability or shall be taken as seeking to exclude or limit, any liability which the applicable law does not permit to be excluded, or, as the case may be, limited, but only to the extent that such exclusion or limitation is not permitted or would make this Agreement or any part of it void, voidable or unenforceable. Depending on the applicable law, this may include wilful abandonment, gross negligence, death or injury caused by negligence, fraud, fraudulent misrepresentation or warranties as to ownership which cannot be excluded by law.
- A7.2 Subject to clause A7.1 and Part E (*Services*), Samsung shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for any of the following types of loss, whether direct or indirect:
- A7.2.1 loss of or corruption to software;
  - A7.2.2 loss of profits;
  - A7.2.3 loss of sales or business or business opportunities;
  - A7.2.4 loss of agreements or contracts;
  - A7.2.5 loss of anticipated savings;
  - A7.2.6 loss of or damage to goodwill;

A7.2.7 loss of use or corruption of software, data or information;

A7.2.8 any indirect or consequential loss.

A7.3 Subject to paragraph A7.1 and A7.2, Samsung's total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement or the subject matter of this Agreement shall be limited to:

A7.3.1 per claim, the greater of GBP50,000 (or equivalent in local currency at the date of the first alleged breach) and 100% of the charges paid or payable under Cover Sheet for the 12 month period leading up to the date of the claim; and

A7.3.2 in respect of all claims (connected or unconnected) in the aggregate, 100% of the charges paid or payable under the Cover Sheet for the 12 month period leading up to the date of the claim.

## **A8 TERM AND TERMINATION**

A8.1 The term of this Agreement will be as specified (in order of priority) in the Cover Sheet, Statement of Work or relevant Description (as the case may be) (the "**Term**"). If no Term is specified in any agreed document, either party may terminate this Agreement on giving 90 days written notice to the other. If the parties continue to work with each other after expiry of the Term, this Agreement shall automatically apply to any future services provided by the Samsung to the Customer unless the Parties agree otherwise in writing.

A8.2 Either party may, without prejudice to its other rights or remedies, suspend or terminate this Agreement with immediate effect by written notice to the other party if one or more of the following events occurs:

A8.2.1 the other party commits a material breach of the Agreement (being a single event or a series of events which together amount to a material breach) which:

A8.2.1.1 is capable of being remedied and following notice from the other party requiring the party to cure the breach, that party does not cure the breach within thirty (30) days of the receipt of written notice of the breach; or

A8.2.1.2 is not capable of being remedied (other than by the payment of money);

A8.2.2 (except in Spain) any of the following events occur in respect of a party :

A8.2.2.1 any moratorium, arrangement or composition with its creditors (including any voluntary arrangement as contemplated in the Council Regulation (EC) No 1346/2000 on insolvency proceedings) being obtained or entered into by or in relation to the party or any steps being taken to obtain or enter the same or any proceedings being commenced in relation to the party under any law, regulation or procedure relating to the reconstruction or adjustment of debts or the party commencing negotiations with one (1) or more of its creditors with a view to the general readjustment or rescheduling of all or part of its debts;

A8.2.2.2 a petition being presented at court (and not being discharged within twenty (20) days), or a resolution being passed or an order being made for the winding up, bankruptcy or dissolution of the party ;

A8.2.2.3 a receiver, manager, sequestrator, administrative receiver, or other similar officer, or other encumbrancer taking possession of or being appointed over, or any distress, execution, attachment or other process being levied or enforced (and not being discharged within five (5) days) upon, against or in respect of the whole or any material part of the assets, rights or revenues of the party;

- A8.2.2.4 the party ceases or threatens to cease to carry on the whole or a substantial part of its business or if the party is dissolved;
- A8.2.2.5 a petition or other form of application is presented or made at court for the making of an administration order or the appointment of an administrator of the party or an administrator of the party is appointed or notice of intention to appoint such an administrator is given or filed at court;
- A8.2.2.6 the party is subject to any winding up (whether provisional or final), judicial management, dissolution or business rescue arrangements (or in respect of all of the foregoing any analogues arrangements under any law to which the party is subject) or the party stops or suspends payments of its debts or is (or is deemed to be) unable to or has no real prospect of being able to or admits inability to pay its debts as they fall due or fails to satisfy any judgment debt in whole or in part within fourteen (14) days; or
- A8.2.2.7 if the party suffers any event analogous to the events set out in clauses A8.2.2.1 to A8.2.2.6 in any jurisdiction.
- A8.3 Where no fixed term is specified for the Agreement, Samsung may terminate this agreement for any reason upon providing not less than 6 months' prior written notice at any time to the other party.

#### **A9 CONSEQUENCES OF TERMINATION**

##### **A9.1 On termination or expiry of this Agreement:**

- A9.1.1 the Customer shall immediately pay to Samsung all of Samsung's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Samsung may submit an invoice, which shall be payable immediately on receipt;
- A9.1.2 the Customer shall, within a reasonable time, return all of Samsung's Equipment, Samsung Background Materials and Deliverables which are the property of Samsung.
- A9.1.3 the Customer shall comply with its Exit obligations under the Service Description;
- A9.1.4 the following paragraphs shall continue in force (to the same extent as they applied during the Term), A7, A8.3, A9, A14, A15, D1, E7.4, E9 and E9.1.
- A9.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- A9.3 If the Customer wrongfully terminates, or purports to terminate this Agreement, or Samsung terminates this Agreement under A8.2.1, then Samsung may recover any costs or termination or lost profit incurred as the result of the termination or purported termination. The parties may agree a pre-agreed termination fee in lieu of or part of Samsung's rights to claim under this clause.

#### **A10 FORCE MAJEURE**

- A10.1 Unless the provisions of clause E6 apply, Samsung shall not be held liable for non-performance, in full or in part, of its obligations defined in this Agreement if such non-performance is caused by an event of Force Majeure.
- A10.2 Any references within the Service Description to "Next Business Day" Service provision shall be provided by Samsung on a reasonable endeavours basis. Samsung shall not



be in breach of the terms of this Agreement if it is unable to provide Next Business Day service due to factors outside of its reasonable control.

#### **A11 ANTI-BRIBERY**

A11.1 Each party represents, warrants and covenants that:

A11.1.1 it is fully aware of and will comply with, and in the performance of its obligations under this Agreement will not take any action or omit to take any action that would cause either party to be in violation of, (i) any applicable anti-corruption laws, or (ii) any regulations promulgated under any such laws:

A11.1.2 to its best 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 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**”) 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 the supply of these goods or services, or (B) the obtaining or retention of business in relations to these goods or services.

A11.1.3 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 employee of the party.

A11.2 Each party shall have and shall maintain in place throughout the term of this Agreement its own policies and procedures that are adequate to ensure compliance with any applicable anti-corruption laws.

A11.3 Each party represents, warrants and covenants that neither it, nor any of its employees, have provided or offered, or will provide or offer, any illegal or improper bribe, kickback, payment, gift or anything of value (but excluding any reasonable and ordinary business entertainment or gifts of an unsubstantial value that are customary in local business relationships and permitted by applicable law) to Samsung, the Customers or their respective directors, officers, employees and representatives in connection with this Agreement, the applicable Cover Sheet or any resale of the Products hereunder.

#### **A12 EXPORT CONTROL, TRANSPORT, CUSTOMS**

A12.1 Each party acknowledges that any Products, Documentation or other information disclosed under this Agreement may be subject to the export laws and regulations of the United States of America, the European Union and national laws (“**Export Control Laws**”) and any use or transfer thereof must be made in compliance with such regulations. Each party shall not transfer, directly nor indirectly, any Product, Document or other information furnished under this Agreement to any country or person without first obtaining all required licenses or other governmental approvals and otherwise complying with all relevant export control laws including the Export Control Laws.

#### **A13 CONSUMER PROTECTION, WASTE**

A13.1 Customer warrants that it is not a Consumer.

A13.2 Where the Agreement requires Samsung to deliver Products, Software or Services

directly to end users and/or to replace electrical or electronic equipment (“**EEE**”) already owed or used by or on behalf of that end user, then unless the Cover Sheet specifically states that SEUK is to be responsible for disposal of WEEE, then as between the parties Customer shall be responsible for:

- A13.2.1 compliance with any law which creates benefits for consumers or imposes burdens on the supplier of consumers;
- A13.2.2 compliance with any law which creates benefits for end users or imposes burdens on supplier in respect of distance selling or sales made at a distance including but not limited to laws implementing the Consumer Rights Directive (2011/83/EU); and
- A13.2.3 any obligations or liabilities arising from EU Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE) (recast), or equivalent or similar laws or local law implementation thereof including the cost of removal and lawful disposal of both the pre-existing EEE and the delivered material

#### **A14 STANDARD PROVISIONS**

A14.1 *Electronic Transactions:* If the Parties specifically agree in writing to do business electronically:

- A14.1.1 electronic transactions under this Part A shall mean signing contracts or placing or accepting orders;
- A14.1.2 the Parties will not legally contest the validity or enforceability of electronic transactions;
- A14.1.3 electronic transactions will be admissible if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceeding to the same extent and under the same conditions as if they were hard copy signed documents;
- A14.1.4 electronic transactions may be conducted through Electronic Data Exchange (EDI) or other electronic methods that the Parties may agree to; and
- A14.1.5 each Party shall use commercially reasonable security measures to limit access to passwords and to limit access to the sites used to process electronic transactions, to authorized persons. Each Party shall be responsible for any unauthorized use of the sites or issuance of messages caused by the failure of its security measures.

A14.2 *Payments on Business Days:* If the date for payment of any amount under this Agreement is not a day on which banks are open for business in the territory in which Samsung is based (“**Business Day**”), then such payment shall be made on the next day which is a Business Day or if such next Business Day is in another calendar month, then on the last Business Day of such month the payment is due.

A14.3 *Variation:* Subject to clause E1 and A14.1, no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

A14.4 *Waiver:* The rights and remedies of each party under, or in connection with, the Agreement may be waived only by express written notice to the other party. Any waiver shall apply only in the instance, and for the purpose for which it is given. No right or remedy under, or in connection with, the Agreement shall be precluded, waived or impaired by: any failure to exercise or delay in exercising it, any single or partial exercise of it, any earlier waiver of it, whether in whole or in part; or any of the above in relation to any other right or remedy (be it of similar or different character).

A14.5 *Severance*: If any provision of the Agreement is or becomes illegal, invalid or unenforceable, in any respect: it shall not affect or impair the legality, validity or enforceability of any other provision of the Agreement; and the parties will use reasonable endeavours to negotiate in good faith with a view to replacing it with a valid and enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the illegal, invalid or unenforceable provision but differing from the replaced provision as little as possible. If any illegal, invalid or unenforceable provision would be legal, valid or enforceable if some part of it were deleted, such provision shall apply with the minimum modifications necessary to make it legal, valid or enforceable.

A14.6 Assignment etc:

A14.6.1 Samsung may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement (including as provided pursuant to clause A15.7) provided that it gives prior written notice of such dealing to the Customer.

A14.6.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

A14.7 *Financing*: Samsung may assign this Agreement or any of its rights thereunder in whole or in part, to a Samsung Affiliate for the purposes of financing without prior notice to or consent of Customer. Samsung may, without notice to or consent of Customer, release information that Samsung holds about this Agreement and Customer for these purposes. Each successive assignee of Samsung shall have all of the rights under this Clause but none of the obligations of Samsung under this Agreement. Customer shall continue to look to Samsung for the performance of Samsung's obligations under this Agreement, including the provision of Services and Customer waives and releases any assignees of Samsung pursuant to this Clause from any claim arising from the performance of Samsung's obligations under this Agreement. Customer shall not assert (including by way of defence, counterclaim or set off) against any assignees of Samsung any claim that Customer has against Samsung. In the event of an assignment by Samsung, Customer shall remit payments due in accordance with remittance instructions of the assignee.

A14.8 *Rights and Remedies*: The rights and remedies arising under, or in connection with, the Agreement are cumulative. Any termination of the Agreement and/or parts thereof does not affect any accrued rights or liabilities of either party and nor does it affect the coming into force or the continuance in force of any provision of the Agreement that is expressly or by implication intended to come into or continue in force on or after such termination.

A14.9 *No partnership or agency*: Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

A14.10 *Entire Agreement*: This Agreement constitutes the entire Agreement between the parties relating to its subject matter and supersedes and extinguishes all previous Agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to or associated with its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Nothing in this clause shall limit or exclude any liability for fraud. Unless specifically stated in the Cover Sheet, these terms do not replace or amend:

A14.10.1 any Agreement physically signed in writing between the Parties relating to the subject matter of this Agreement;

A14.10.2 any Agreement on Samsung standard terms relating to either the subject matter of this Agreement or standard distribution or reseller Agreements; or

A14.10.3 any Agreement with any Samsung Affiliate relating to the subject matter of this Agreement.

A14.11 *Third Party Rights*: SEC shall have the power to enforce any term of this Agreement as if it were Samsung. Other than this, no one other than a party to this Agreement shall have any right to benefit from, or enforce, any of its terms.

A14.12 *Admissibility of Counterparts*: This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

A14.13 *Governing Law*: Subject to clause E7.4, this Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law. Any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the English courts.

A14.14 *Disputes*: Samsung and the Customer agree that any conflict, dispute, controversy, or claim arising out of or relating to this Agreement or the relationship created by this Agreement, with respect to contractual or non-contractual obligations, (the "Dispute") shall first be resolved by escalating the Dispute to their respective business managers. Within fourteen (14) days of written notice of a Dispute, the business managers shall meet in person or by phone and work in good faith to resolve the Dispute including by way of appointment of a mutually agreeable mediator to resolve the Dispute.

## **A15 NOTICES**

A15.1 Any notice given by one party to another under the Agreement shall be in writing, delivered by hand or by prepaid first class or special delivery post to the address given on the Cover Sheet and in all cases marked for the attention of any person listed on the Cover Sheet (or, if no-one is identified) the Chief Executive Officer in relation to the Customer and the Head of Legal in relation to Samsung. Notices under the Agreement shall not be validly served by email.

A15.2 Notices delivered by hand shall be given on the day of receipt (unless received after 5.00pm in which case they shall be given on the next Business Day. Notices sent by prepaid first class post or special delivery shall be deemed to have been given two (2) Business Days after the date of posting.

A15.3 Either party may vary its address and/or contact for notices by giving notice to the other. The notice must expressly state that the new address is the address for notices and/or the new contact is the contact to whose attention all future notices should be brought, as the case may be.

## **PART B: CHARGES AND PAYMENT**

### **B1 GENERAL**

B1.1 In consideration of the provision of the Products, Services and/or Software (as applicable) by or on behalf of Samsung, the Customer shall pay the Charges as set out in Cover Sheet, or as set out in a document identified by the Cover Sheet, which shall specify whether they shall be on:

- B1.1.1 a time and materials basis,
- B1.1.2 a fixed price basis,
- B1.1.3 a per event or unit charge or
- B1.1.4 a combination of some or all of these.

B1.2 The Charges may be payable to Samsung directly, or to the reseller from whom the Customer purchased the Products/ Services. In the event that Samsung is charging the Customer for the Services directly, the terms of this Part B shall apply.

B1.3 Paragraph B2 below shall apply to the extent that Samsung provides Services on a time and materials basis and no alternative method of charging is agreed.

B1.4 Paragraph B3 below shall apply to the extent where Samsung provides Products, Services and/or Software licences for a fixed price and no alternative method of charging is agreed.

B1.5 Paragraph B4 below shall apply to the extent that Samsung provides Products, Services or Software on a per-event or per-unit charge and no alternative method of charging is agreed.

B1.6 The remainder of this Part B (*Charges and Payment*) shall apply in all cases.

## **B2 TIME AND MATERIALS**

B2.1 Where Services are provided on a time and materials basis:

- B2.1.1 the charges payable for the Services shall be calculated in accordance with (i) any daily rates agreed by the parties (including any indexation or periodic increase to the same) or (ii) in the absence of any specific agreement Samsung's standard daily fee rates, as amended from time to time;
- B2.1.2 Samsung's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day, worked between 8.00 am and 5.30 pm on weekdays (excluding public holidays in the country where the work is being performed);
- B2.1.3 Samsung shall be entitled to charge an overtime rate of 200% of the normal daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in paragraph B2.1.2;
- B2.1.4 all charges quoted to the Customer shall be exclusive of VAT, which Samsung shall add to its invoices at the appropriate rate;
- B2.1.5 Samsung shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in clause B1.2 and clause B1.4.

## **B3 FIXED PRICE**

B3.1 Where Products, Services or Software licences are provided for a fixed price:

- B3.1.1 the total price for the Products, Services and/or Software shall be the amount set out in or referred to in the Cover Sheet; or
- B3.1.2 if no price is specified or referred to in the Cover Sheet the price shall be Samsung's standard list price at the date of the order.

#### **B4 INVOICING**

- B4.1 Subject to paragraph B1.2 and unless otherwise specified elsewhere in this Agreement, Samsung shall be entitled to invoice for the Charges as follows:
- B4.1.1 where this Agreement provides for the download of Software, the Charges shall be payable at the point when the software is downloaded;
  - B4.1.2 where this Agreement provides for the purchase of Products or copies of Software on physical media, the Charges shall be payable in full when the Products or physical media are dispatched by or on behalf of Samsung;
  - B4.1.3 where this Agreement provides for the provision of Services which are not subject to a formal process or testing for acceptability, the Charges shall be payable in full immediately prior to commencement of the Services;
  - B4.1.4 where the Agreement provides for the provision of Services which are subject to a formal process for determining acceptability or service readiness ("**Acceptance Tests**"), the Charges shall be payable in full immediately on completion of the Acceptance Tests; and
  - B4.1.5 where the Agreement specifies milestone payments or other staged, stepped, or periodical payment, Samsung shall only be entitled to invoice for Charges which the time or milestone test has been completed.
- B4.2 Samsung shall invoice the Customer for the Charges that are then payable, together with expenses, the costs of materials and VAT, where appropriate, calculated as provided in clause B2.1.
- B4.3 The Customer shall pay each valid VAT invoice submitted to it by Samsung, in full and in cleared funds, within 30 days of receipt to a bank account previously nominated in writing by Samsung.

#### **B5 NON PAYMENT BY CUSTOMER**

- B5.1 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Samsung on the due date the Customer shall pay interest on the overdue amount at the rate of 4% per annum above HSBC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- B5.2 All sums payable to Samsung under this Agreement shall become due immediately on its termination, despite any other provision. This clause B5.2 is without prejudice to any right to claim for interest under the law, or any such right under this Agreement.
- B5.3 All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

#### **B6 VAT, WITHHOLDING TAX**

- B6.1 Samsung and/or relevant Samsung Affiliate has excluded VAT and any withholding taxes from all Charges set out in this Agreement, quote, product description, purchase form or Cover Sheet unless explicitly stated in such documents as having been included.
- B6.2 All such taxes of the type referred to in B6.1 will be applied to the invoices in accordance with local laws and payable by Customer. Should Customer be required by law to make any such deduction or withholding, Customer shall provide

Samsung/Samsung Affiliate with all certificates of payment and certificates of residence to enable Samsung/Samsung Affiliate to obtain a tax or other credit in respect of such deduction or withholding and the parties agree to cooperate and do all things necessary to take full advantage of any double taxation treaty that may be available.

- B6.3 If any withholding or deduction of tax for any reason must be deducted from any amount payable or paid by Customer to Samsung/Samsung Affiliate under this Agreement for which Samsung/Samsung Affiliate does not receive a full tax credit, Customer shall pay such additional amounts as may be necessary to ensure that Samsung/Samsung Affiliate receives a net amount equal to the full amount which it would have received had payment not been made subject to such tax or withholding. Samsung shall procure that relevant Samsung Affiliate accounts for all local taxes payable in connection with the Charges and/or Services to the relevant taxation authorities

## **PART C: SALE OF PRODUCTS**

### **C1. PRODUCTS - USER WARRANTY**

- C1.1 Samsung provides a warranty in respect of the Products as described in the user warranty which is included with the Products (the “**User Warranty**”). No other warranty is given in respect of Products which are otherwise supplied on a “AS IS” basis.
- C1.2 Notwithstanding anything stated herein to the contrary, then unless it is covered by the Services, the Customer shall be solely responsible for any errors, faults or defects to Products caused by the Customer.
- C1.3 All items not manufactured by Samsung are warranted only as warranted by the manufacturer of such items. Otherwise all such items are sold on an “AS IS” basis subject to applicable law.
- C1.4 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care. The Customer acknowledges that it is not relying on Samsung’s skill or judgement.
- C1.5 Any warranty by Samsung hereunder shall exclude losses caused by improper or insufficient maintenance, normal wear and tear, and any improper operating, storing, handling, installation, and bracing.
- C1.6 Samsung’s liability is limited to the warranty obligations set forth above and subject to the limits and exclusions of liability in Clause A7. Samsung shall not have any further responsibility or liability in respect of the Products whatsoever, other than any liabilities that may arise under applicable law.
- C1.7 All rights and privileges and every exemption, limitation, defence or immunity of whatever nature applicable to Samsung or to which Samsung is entitled hereunder or under the applicable law shall also be available and shall extend to protect Samsung’s directors, personnel, agents, affiliates, subcontractors and suppliers.
- C1.8 Except with respect to Products returned to Samsung pursuant to the User Warranty, there shall be no right granted to any person to return to Samsung any Products purchased by the Customer under this Agreement. Unless otherwise agreed, the Customer shall be responsible for all shipping charges and costs for Products returned pursuant to this Section. Furthermore, the risk of loss in respect of Products returned to Samsung hereunder shall not pass to Samsung until such time as the Products arrive and are accepted by Samsung at the address specified by Samsung for such return.

- C1.9 If any returned Products are found to perform as warranted after Samsung tests the returned Products, Samsung may return the Products to the Customer, and the Customer shall pay to Samsung the reasonable fees incurred by Samsung in addition to all shipping costs. Further, if any issue with the Products is attributable to any acts of the Customer, the Customer shall promptly reimburse Samsung upon receipt of invoice for the cost of any warranty services provided by Samsung pursuant to this Section with regard to such Products.
- C1.10 In case the Customer provides or offers a warranty to Customers above and beyond warranties provided by Samsung, the Customer shall be solely responsible for such additional coverage and shall safeguard and hold harmless Samsung or any Samsung Affiliate from all claims and demands in connection with such additional coverage. Such offer shall make it expressly clear that the additional warranty or coverage is not provided by Samsung and that Samsung has no obligations or responsibilities under or in connection with the warranty.
- C1.11 Notwithstanding anything stated contrary herein, the Customer shall be responsible for the risk and costs, including any transportation and insurance, associated with the delivery, installation and warranty of the Products to the Customers.

#### **PART D: SOFTWARE AND SOFTWARE SUPPORT TERMS**

##### **D1. LICENSING**

- D1.1 Subject to D1.3 below, the terms of the licence that apply to the Software are the terms of the End User Licence Agreement (“**EULA**”) for that Software as identified in the Software Description or available from [www.samsung.com](http://www.samsung.com).
- D1.2 All Software is licenced not sold, and the licensor is the party identified in the EULA.
- D1.3 The terms of this Agreement relate only to the sale and purchase of the licence granted on the terms of the EULA, and do not apply to, alter, amend or vary the terms of the licence (i.e. the EULA) itself.
- D1.4 Diagnostic software (i.e. software which identifies faults, or usage patterns or levels but no personal data and reports these to Samsung) (“**Diagnostic Software**”) may be embedded in, reside on, or may be loaded onto a Samsung device. Diagnostic Software and method of entry or access to it constitute valuable trade secrets of Samsung. Title to Diagnostic Software shall at all times remain solely with Samsung or Samsung's licensors. The Customer agrees that (i) the Customer's acquisition of a Samsung device does not grant the Customer a license or right to use Diagnostic Software in any manner, and (ii) that unless separately licensed by Samsung to do so, the Customer will not use, reproduce, distribute, or disclose Diagnostic Software for any purpose (or allow third parties to do so). The Customer agrees at all times (including subsequent to the expiration of this Agreement or a unit of Samsung brand device hereunder) to allow Samsung to access, monitor, and otherwise take steps to prevent unauthorized use or reproduction of Diagnostic Software.

##### **D2. THIRD PARTY SOFTWARE**

- D2.1 The Customer's use of any Third Party Software provided by Samsung is subject to the terms of the Third Party Software licences.
- D2.2 The Customer shall comply with the Third Party Software licences and shall hold Samsung fully indemnified for any losses it may suffer if the Customer breaches this clause.
- D2.3 Samsung makes no representation that the operation of the software supplied to the Customer under this Agreement will be uninterrupted or error free or that any specific requirement that the Customer may have requested will be met.



## **PART E: STANDARD SERVICE TERMS**

### **E1. DEFINITIONS**

E1.1 In this Part E, the following terms shall have the following meaning:

**Employment Regulations:** means the Acquired Rights Directive (Council Directive 77/187/EEC) as amended by Council Directive 98/50/EEC and consolidated by Council Directive 2001/23/EEC and, in each jurisdiction, the local statutory instruments implementing and giving effect to such Directive or any successor thereto or replacement thereof or any local laws providing for the automatic transfer of employment;

**Replacement Services:** any services which are identical or substantially similar to any of the Services and which Customer receives in substitution for any of the Services following the termination or expiry of this Agreement, whether those services are provided by Customer internally or by any Replacement Supplier.

**Replacement Supplier:** any third party provider of Replacement Services appointed by Customer from time to time.

**Customer Staff List:** a list prepared and updated by Customer of staff and/or third party staff engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of preparation of the list.

**Service Transfer:** At the termination or expiry of this Agreement or an Cover Sheet, the provision of Replacement Services.

**Staffing Information:** in relation to a person (subject to the Data Protection Legislation), but including in an anonymised format:

- their ages, dates of commencement of employment or engagement and gender;
- details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise;
- the identity of their employer or relevant contracting party;
- their relevant notice periods and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual redundancy payment schemes;
- the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them;
- details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and customer car schemes applicable to them;
- any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- details of any such individuals on long-term sickness absence, maternity or other statutory leave or otherwise absent from work; and
- copies of all relevant documents and materials relating to such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals).

**Samsung Final Staff List:** the list of all Samsung Personnel engaged in or wholly or mainly assigned to the provision of the Services or any part of the Services at the Service Transfer Date.

**Samsung Personnel:** all employees, staff, other workers, agents and consultants of Samsung and of any 3rd party who are engaged in the provision of the Services from time to time.

**Samsung Provisional Staff List:** a list prepared and updated by Samsung of all Samsung Personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of preparation of the list.

**Service Transfer Date:** the date on which the Services (or any part of the Services), for whatever reason transfer from Samsung to Customer or any Replacement Supplier.

**Transferring Employees:** (on entry) those employees whose contract of employment are expected to transfer to Samsung or a Samsung Affiliate or assignee pursuant to the Employment Regulations on or after the Cover Sheet Commencement Date, or (on exit) those employees whose contract of employment are expected to transfer to Customer or a Replacement Supplier pursuant to the Employment Regulations on a Service Transfer Date.

**Transferred Employees:** means those Transferring Employees whose contract of employment transferred to Customer or any Replacement Supplier pursuant to the Employment Regulations on a Service Transfer Date.

- E1.1 For the purposes of this Part only, references to “Customer” include any third party service provider or outsourcing company providing the services to a Customer.

## **E2. NON-EXCLUSIVITY**

- E2.1 Samsung acknowledges that it is not being appointed as an exclusive provider of any of the Services and the Customer may at any time perform any part of the Services itself or procure them from a Third Party. The Customer does not guarantee that any, or any specific level of, Services will be required from Samsung pursuant to this Agreement.

## **E3. CONTINUOUS IMPROVEMENT**

- E3.1 Samsung shall review the provision of the services no less than annually and consider how the Services could be improved. Where Samsung identifies improvements that it believes will benefit its customers as a whole, Samsung shall seek to improve the Services.

## **E4. SAMSUNG'S OBLIGATIONS**

- E4.1 Samsung shall, or procure that its subcontractors shall:
  - E4.1.1 deliver the Services exercising all due care and diligence normally and customarily exercised by professional service providers engaged in performing services of a similar kind to the Services and in accordance with the Service Level Agreement;
  - E4.1.2 comply with the Project Plan; but any such dates shall be estimates only and time for performance by Samsung shall not be of the essence of this Agreement; and
  - E4.1.3 observe all health and safety rules and regulation and regulations and any other reasonable security requirements that apply at any of the Customer's premises and that have been communicated to it in advance in writing

provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement.

E4.2 Except to the extent that E3 or the Service Description requires provision by the Customer, Samsung shall ensure that it provides and maintains all information, rights, permissions, Consents, technology, facilities, premises, management, staff, expertise, equipment and other resources necessary to enable it to fulfil its obligations under the Agreement.

E4.3 Samsung shall otherwise perform its obligations under this Agreement in accordance with all Applicable Law.

## **E5. CUSTOMER'S OBLIGATIONS**

E5.1 In addition to its obligations under paragraph A3.2, the Customer shall:

E5.1.1 reasonably co-operate with Samsung in all matters relating to the Services;

E5.1.2 subject to the Customer's usual security requirements provide, for Samsung, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by Samsung or any of them;

E5.1.3 provide, in a timely manner, such Customer Background Material and other information as Samsung may require, and ensure that it is accurate in all material respects;

E5.1.4 be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from any of its premises in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing Samsung of all of the Customer's obligations and actions under this Clause; and

E5.1.5 inform Samsung of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises.

E5.2 The Customer shall not, without the prior written consent of Samsung, at any time from the date of this Agreement to the expiry of 12 months after the termination or expiry of this Agreement, solicit or entice away from Samsung or employ or attempt to employ any person who is, or has been, engaged as an employee of Samsung nor a Samsung Affiliate in the provision of the Services provided this shall not apply in case of any application by such employees responding to a published vacancy by the Customer and/or the Customer's Affiliates.

## **E6. FORCE MAJEURE AND BUSINESS CONTINUITY AND DISASTER RECOVERY (BCDR)**

E6.1 Subject to the exceptions set out in paragraphs **E6.2** , neither party shall be liable to the other for delay or non performance of its obligations under the Agreement to the extent that this is due to a Force Majeure Event.

E6.2 A party cannot claim relief from liability where the Force Majeure Event is caused by its (or its Sub Contractors') neglect, failure to take reasonable precautions against the relevant Force Majeure Event, or is caused by its agents, employee(s), Sub Contractors or Samsungs (unless such failure is itself the result of a Force Majeure Event).

E6.3 Where Samsung is delayed or prevented from performing its obligations under the Agreement by a Force Majeure Event it shall either notify the Customer directly or give

a general support or service management notification. Where the Customer is delayed or prevented from performing its obligations under the Agreement by a Force Majeure Event it shall notify Samsung as soon as reasonably possible in writing with reasonable details of the Force Majeure Event, its effect on the relevant obligations and its estimated duration. The affected party shall endeavour to mitigate the effect of the Force Majeure Event upon the performance of its obligations under the Agreement, and shall keep the other party updated on its progress in doing so and on the on-going impact of the Force Majeure Event. Samsung may give any notice or information under this provision by way of a website or general support announcement or other mechanism that applies to multiple customers.

- E6.4 Subject to paragraph **E6.6**, as soon as reasonably possible following the end of the Force Majeure Event and subject to any clauses appointing Third Parties to provide the Services, the affected party shall notify the other and the Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event, unless agreed otherwise by the parties.
- E6.5 If any Force Majeure Event prevents the a party from fulfilling its material obligations under the Agreement for a continuous period of more than thirty (30) days either party may terminate the affected Agreement with written notice to take immediate effect.
- E6.6 Except to the extent specified in the Service Description or Special terms in the Cover Sheet, the Services do not include any business continuity, disaster recovery, data backup or data restoration on for the Services.

#### **E7. CHANGE CONTROL**

- E7.1 If either party requests a change to the scope or execution of the Services, and the service is one which Samsung or its subcontractor is prepared to change or individually tailor, Samsung shall, within a reasonable time, provide a written estimate to the Customer of:
  - E7.1.1 the likely time required to implement the change;
  - E7.1.2 any necessary variations to Samsung's charges arising from the change;
  - E7.1.3 the likely effect of the change on the Project Plan; and
  - E7.1.4 any other impact of the change on this Agreement.
- E7.2 If the Customer wishes Samsung to proceed with the change, Samsung has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services, the relevant Project Plan and any other relevant terms of this Agreement to take account of the change and this Agreement has been varied in accordance with its terms.
- E7.3 Samsung may, from time to time and without notice, change the Services in order to:
  - E7.3.1 comply with any applicable safety or statutory requirements; or
  - E7.3.2 provide general service improvements or better alignment with other Samsung Services;

provided that such changes do not materially affect the nature, scope of, or the charges for the Services. Samsung will notify Customer of any such changes, and Customer may reject the changes by giving notice in writing.
- E7.4 Samsung may charge for the time it spends assessing a request for change from the Customer on a time and materials basis in accordance with paragraph B2.1.

- E7.5 Where broadly equivalent services are being provided to Customer Affiliates in more than one country, the parties shall manage control centrally as far as reasonably possible.

## **E8. DISPUTES**

- E8.1 Where the Purchase Order includes any elements of services or is an Cover Sheet, the law to be applied for the purposes of paragraph A14.13 is English law and the courts of England shall have exclusive jurisdiction.

- E8.2 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it ("**Dispute**") then except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause:

E8.2.1 where the Parties have service managers who are in contact, that they shall endeavour to resolve the dispute by internal escalations;

E8.2.2 where the Parties have no existing service management relationship, the disputing party shall give the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. Both parties shall appoint representatives to discuss and endeavour to resolve the dispute;

E8.2.3 if the parties fail to resolve the dispute by information discussion, they may, if they both agree to do so, refer the matter to mediation in accordance with the CEDR Model Mediation Procedure or other agreed process. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve.

## **E9. PERSONNEL AND STAFFING**

- E9.1 Samsung shall, insofar as is lawful, vet all Samsung Personnel to ensure that:

E9.1.1 they have provided satisfactory proof of their identity to their employer; and

E9.1.2 they have complied with all relevant immigration regulations and lawfully live and work in the country in which they are providing the Services.

- E9.2 During the Term, Samsung Personnel will be and remain employees of Samsung (or its permitted subcontractors, group companies and assigns), and Samsung (or such permitted subcontractors) will provide for and pay the compensation and other benefits of Samsung Personnel, including salary, health, accident and workers' compensation benefits and all taxes and contributions that an employer is required to pay with respect to the employment of employees.

## **E10. RESTRICTION ON STAFF TRANSFER AND INDEMNITY**

- E10.1 The application of the Employment Regulations depends on factors which are within the Customer's knowledge and control and which Samsung cannot know about unless specifically informed by the Customer. The Customer acknowledges that all prices, fees and charges as advised by Samsung under this Agreement are quoted on the basis that no employees, ex-employees, staff, other workers, agents and consultants of the Customer any 3rd party engaged (or previously engaged) by the Customer (or any sub-contractor or Affiliate of any third party engaged by the Customer) will transfer employment or claim to transfer employment to Samsung on the basis of the Employment Regulations as a result of the entering into of this Agreement, any Managed Services Order, any variation or amendment of either of the foregoing.

- E10.2 The Customer will indemnify Samsung against all costs, claims, liabilities (including pension and retirement liabilities whether transferred as a result of the Employment

Regulations or as a result of any government scheme, union or works council agreement or for any other reason), awards, damages, fines, losses, and expenses (including all reasonable legal fees and professional charges) that Samsung, Samsung Affiliates and their respective subcontractor(s) may incur arising from or in connection with claims by employees, ex-employees, staff, other workers, agents and consultants of the Customer and of any third party engaged by the Customer (including for the avoidance of doubt the Customer's Customer), that their employment has, or should have, transferred to Samsung, its subcontractor(s) and/or its or their Affiliates or subcontractors or assignees in accordance with the Employment Regulations or as a result of Samsung, its subcontractor(s) and/or its or their Affiliates performing any of the Services.

E10.3 Without prejudice to paragraph **E10.2**, if for any reason any person does, or claims to transfer to Samsung as a result of this Agreement, any Managed Services Order or the Transfer Regulations then:

E10.3.1 Samsung may refuse to engage that person notwithstanding its obligations under the Employment Regulations; and

E10.3.2 in addition to the indemnity in paragraph **E10.2** the Customer shall additionally indemnify and hold harmless Samsung against:

E10.3.2.1 any failure by the Customer to perform and discharge any obligations under the Employment Regulations;

E10.3.2.2 any act or omission by the Customer in respect of any such person before the date on which such person was deemed by law to transfer;

E10.3.2.3 any and all claims in respect of all emoluments and outgoings in relation to the personnel so transferring (including without limitation, all wages, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) payable in respect of any period before the date of deemed transfer; and

E10.3.2.4 any claim arising out of the provision of, or proposal by the Customer to offer any change to any benefit, term or condition or working conditions of any person so transferring, in respect of any period before the deemed transfer;

E10.3.2.5 any claim made by or in respect of any person employed or formerly employed by the Customer for which it is alleged Samsung may be liable by virtue of this Agreement and/or the Employment Regulation, including any claims arising from the refusal to engage that person under paragraph E10.3.1; and

E10.3.2.6 associated tax liabilities and all reasonable legal expenses and legal fees.

E10.4 For the purposes of this paragraph E10, references to the "Customer" include the Customer's Affiliates, and any sub-contractor (direct or indirect) of, or third party retained by, the Customer or the Customer's Affiliates. Notwithstanding the foregoing, the indemnity in E8.2 is given solely by the entity entering into this Agreement.

E10.5 For the purposes of this paragraph E10, references to Samsung include Samsung's Affiliates, and any sub-contractor (direct or indirect) of, or third party retained by, Samsung or of any of Samsung's Affiliate.

E10.6 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this Schedule to the extent necessary to ensure that any of the parties defined as

Samsung for the purposes of this paragraph E10 shall have the right to enforce the obligations owed to, and indemnities given to each by the Supplier or Samsung respectively. The permission of those parties shall not be required to amend this Agreement

**E11. CUSTOMER DATA AND DATA PROTECTION**

E11.1 To the extent that the Services include Customer viewing, holding or processing Customer Data:

E11.1.1 Samsung acknowledges that Customer Data is the property of the Customer, a member of the Customer Group or the Customer's customer, as the case may be and the Customer reserves on its behalf and on the behalf of the members of the Group and the Customer Customers, all Intellectual Property Rights which may, at any time, subsist in Customer Data.

E11.1.2 Samsung shall only store, copy or use Customer Data to the extent necessary to perform its obligations under the Agreement and shall not disclose it to any third party without the prior written approval of Customer.

E11.1.3 In the event that, at any time and from time to time, through the provision of the Services, Samsung or any subcontractor is deemed by virtue of the Copyright and Rights in Databases Regulations 1997 or otherwise to be the first owner of any database right or other Intellectual Property Rights in or in relation to any of Customer Data, Samsung shall immediately assign all Intellectual Property Rights in that Customer Data to Customer, and shall do such things, and shall procure that any subcontractor assigns and does all such things, as Customer may reasonably consider are necessary to give effect to this clause.

E11.2 Within this paragraph E7, "Data Protection Legislation" means the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy. "UK Data Protection Legislation" means any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

E11.3 "Data Controller", "Data Processor", "Data Subject", "Personal Data" and "Processing" shall have the same meanings as in the Data Protection Legislation and "Processed" and "Process" shall be construed in accordance with the definition of "Processing".

E11.4 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause E11 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation. In this clause E7, "Applicable Laws" means (for so long as and to the extent that they apply to Samsung) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and "Domestic UK Law" means the UK Data Protection Legislation and any other law that applies in the UK.

E11.5 The parties acknowledge that for the purposes of the Data Protection Legislation, Customer is the data controller and Samsung is the data processor.

E11.6 Without prejudice to the generality of clause E11.4, Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Samsung for the duration and purposes of this agreement.

E11.7 Without prejudice to the generality of clause E11.4, Samsung shall, in relation to any Personal Data processed in connection with the performance by Samsung of its obligations under this agreement:

- E11.7.1 process that Personal Data only on the written instructions of Customer unless Samsung is required by Applicable Laws to otherwise process that Personal Data. Where Samsung is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Samsung shall promptly notify Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Samsung from so notifying Customer;
- E11.7.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- E11.7.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- E11.7.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of Customer has been obtained and the following conditions are fulfilled:
- E11.7.4.1 Customer or Samsung has provided appropriate safeguards in relation to the transfer;
  - E11.7.4.2 the data subject has enforceable rights and effective legal remedies;
  - E11.7.4.3 Samsung complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - E11.7.4.4 Samsung complies with reasonable instructions notified to it in advance by Customer with respect to the processing of the Personal Data;
- E11.7.5 assist Customer, at Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- E11.7.6 notify Customer without undue delay on becoming aware of a Personal Data breach;



E11.7.7 at the written direction of Customer, delete or return Personal Data and copies thereof to Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and

E11.7.8 maintain complete and accurate records and information to demonstrate its compliance with this clause E11 and allow for audits by Customer or Customer's designated auditor on reasonable notice by Customer, and subject to Customer complying with all written directions and instructions imposed by Samsung in relation to the audit.

E11.8 Customer consents to Samsung using such third party processors as may be notified in writing to the Customer as third-party processors of Personal Data under this agreement. Samsung confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause E11. As between Customer and Samsung, Samsung shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause E11.

## **E12. WARRANTIES**

E12.1 Samsung represents and warrants that:

E12.1.1 it has full power and authority to execute, deliver and perform its obligations under this Agreement;

E12.1.2 the Services shall be provided by suitable, appropriately qualified, experienced and competent personnel;

E12.1.3 the possession of and/or use by Customer, of any material made available by or on behalf of Samsung and any Deliverables shall not infringe the Intellectual Property Rights of any Third Party or expose Customer to any claim from a Third Party that the possession of and/or use of such material infringes a Third Party's Intellectual Property Rights;

## **E13. MDM SOFTWARE SUPPORT**

E13.1 In order for Samsung to provide the Services, the Customer must provide any required authorisations (for example, authorisation letters or non-disclosure terms) to Samsung and the Customer's MDM software provider of choice so that Samsung can contact the MDM Software provider on the Customer's behalf.

E13.2 The Customer will also need to share certain information with the MDM provider, including device logs for the purposes of providing the Services. Once the Customer and the MDM provider have confirmed that Samsung can initiate these requests, a copy of the support terms and the authorisations needs to be provided to Samsung. Once the authorisations are in place and support terms have been received, Samsung will use commercially reasonable efforts to resolve the support requests with MDM Software providers in accordance with the terms of any agreed Service Description. If a problem arises with the MDM software and Samsung is unable to resolve the issue, Samsung will contact the MDM software provider and create a "problem incident" or "trouble ticket" on the Customer's behalf. Samsung will follow the process set forth in the Customer support terms and will monitor the problem resolution process on the Customer's behalf until the MDM Software provider has provided a resolution, steps towards a resolution, workaround, configuration changes, or escalation of a bug report in accordance with the Customer support terms.

E13.3 The process set out at E13.1 and E13.2 above does not include support of the application itself or the deployment of the application in the Customer's environment.

Samsung may require a licensed copy of the application to be provided. If the enterprise application integrates into Customer back-end systems, then access to those systems may also be required for effective root cause analysis and issue resolution.