

**Carahsoft Rider to Manufacturer Commercial Supplier Agreements**  
**(for U.S. Government End Users)**  
**Version 20160504**

- 1. Scope.** This Carahsoft Rider and the Manufacturer's Commercial Supplier Agreement (CSA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").
  
- 2. Applicability.** The terms and conditions in the attached Manufacturer's CSA are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's CSA is inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's Multiple Award Schedule Contract, GS-35F-0119Y, including, but not limited to the following:
  - (a) Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", defined as an entity authorized to order under Government contracts as set forth in Government Order 4800.2H ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.
  
  - (b) Changes to Work and Delays.** Subject to General Services Administration Acquisition Regulation (GSAR) 552.238-81 Modifications (Federal Supply Schedule) (APR 2014) (Alternate I – APR 2014) and GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) regarding which of the GSAR and the FAR provisions shall take precedence.
  
  - (c) Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  
  - (d) Audit.** During the term of this CSA: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this CSA. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice

and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this CSA.

- (e) **Termination.** Clauses in the Manufacturer's CSA referencing termination or cancellation of the Manufacturer's CSA are hereby deemed to be deleted. Termination shall be governed by the GSAR 552.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

Carahsoft may request cancellation or termination of the CSA on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section (q) below or if such remedy is otherwise ordered by a United States Federal Court.

- (f) **Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider and the CSA will be governed by and construed in accordance with the laws of the United States. All clauses in the Manufacturer's CSA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.

- (g) **Force Majeure.** Subject to GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer's CSA referencing unilateral termination rights of the Manufacturer's CSA are hereby deemed to be deleted.

- (h) **Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (MAY 2014) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer's CSA are hereby deemed to be deleted.

- (i) **Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (MAY 2014), and all clauses governing waiver of jury trial in the Manufacturer's CSA are hereby deemed to be deleted.

- (j) **Customer Indemnities.** All of the Manufacturer's CSA clauses referencing Customer Indemnities are hereby deemed to be deleted.

- (k) **Contractor Indemnities.** All of the Manufacturer's CSA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the

Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.

- (l) Renewals.** All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.
- (m) Future Fees or Penalties.** All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.
- (n) Taxes.** Taxes are subject to GSAR 552.212-4(k) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) and GSAR 552.212-4 (w)(1)(x) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored).
- (o) Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.
- (p) Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer's CSA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.
- (q) Dispute Resolution and Venue.** Any disputes relating to the Manufacturer's CSA and to this Rider shall be resolved in accordance with the FAR, the GSAR and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. See GSAR 552.212-4 (w)(1)(iii) Contract Terms and Conditions – Commercial Items, Law and Disputes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). The Ordering Activity expressly acknowledges that Carahsoft, as the vendor selling the Manufacturer's licensed software, shall have standing under the Contract Disputes Act to bring such claims that arise out of licensing terms incorporated into Multiple Award Schedule Contract GS-35F-0119Y.

**(r) Limitation of Liability: Subject to the following:**

Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

**(s) Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.

**(t) Public Access to Information.** Manufacturer agrees that the CSA and this Rider contain no confidential or proprietary information and acknowledges the CSA and this Rider will be available to the public.

**(u) Confidentiality.** Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court. The Licensee may provide information to other components of the United States Government pursuant to proper requests for such information as permitted by law, regulation or policy (e.g., disclosures to Congress, auditors, Inspectors General, etc.).

**END USER LICENSE AGREEMENT  
FOR SAMSUNG KNOX FOR ENTERPRISE**

This End User License Agreement For Samsung KNOX For Enterprise ("EULA" or this "Agreement") is a binding contract between the Ordering Activity ("Customer") and Samsung Electronics America, Inc. ("Samsung") which governs Customer's use of Samsung KNOX For Enterprise and services provided therewith (collectively, the "Software").

THIS AGREEMENT CONSTITUTES A BINDING LEGAL AGREEMENT BETWEEN CUSTOMER AND SAMSUNG.

CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS READ AND UNDERSTOOD THIS AGREEMENT, AND CUSTOMER AGREES TO COMPLY WITH AND BE BOUND BY ITS TERMS. IF CUSTOMER IS NOT WILLING TO BE BOUND BY THE TERMS OF THIS AGREEMENT, CUSTOMER MAY NOT ACCESS OR USE THE SOFTWARE.

This EULA includes the following attachments which are incorporated herein by reference:

Attachment "A". Samsung Support and Maintenance Services (as applicable)

## **1. LICENSE**

**1.1 Grant of License.** Subject to the terms and conditions of this EULA, during the applicable license term, Samsung hereby grants to Customer, and any employee or contractor of Customer whom Customer authorizes to access and use the Software on behalf of and for the benefit of Customer ("Customer Representative") a limited, non-exclusive, non-transferable and non-sublicensable license for Customer and Customer Representatives to use the object code form of the Software for Customer's purposes only and, solely in accordance with the applicable documentation provided by Samsung for use of the Software ("Documentation"). Customer may use the Documentation for internal purposes only. Customer may not use the Software for any purpose or in any way, not expressly permitted by this EULA. The Software is licensed, not sold. All references to the Software includes all related graphics, user interfaces, scripts and services provided by Samsung for use of the Software, and any updates, upgrades, enhancements, modifications, revisions or additions to the Software made available to Customer by Samsung. However, Samsung is under no obligation to provide any updates, upgrades, enhancements, modifications, revisions or additions to the Software except if Customer has purchased maintenance services from Samsung or a Samsung KNOX authorized reseller.

**1.2 Restrictions.** As a condition of the license granted in Section 1.1, Customer shall not: (i) use the Software or any portion thereof, except as expressly authorized by this EULA; (ii) use the Software or any portion thereof on equipment, products, or systems not identified in Documentation; (iii) modify the Software or any portion thereof or create derivative works based upon any Software or any portion thereof; (iv) reverse engineer or decompile, decrypt, disassemble or otherwise reduce the Software or any portion thereof to human-readable form; (v) use the Software or any portion thereof in any way that is in violation of any applicable laws; (vi) distribute, sell, license or otherwise provide the Software or any portion thereof to any third parties; (vii) use the Software or any portion thereof to perform services for third parties except as otherwise expressly provided herein; (viii) release, publish, and/or otherwise make available to any third party the results of any performance, functional or security evaluation of the Software or any portion thereof without the prior written approval of Samsung; (ix) alter or remove any proprietary notices or legends contained on or in the Software or any portion thereof; or (ix) use the Software for emergency, lifesaving, life support, nuclear energy equipment, air traffic control, the operation of critical communication system, public transportation control or other ultra-hazardous uses where failure of the Software to perform would be reasonably expected to cause deaths, injuries or severe physical property or environmental losses. Any attempt to do any of the foregoing shall be deemed as a material breach under this Agreement.

## **2. INTELLECTUAL PROPERTY, LICENSES**

**2.1 Ownership.** The Software is proprietary to Samsung or its licensors, and protected under applicable copyright, patent, trademark and trade secret laws. Customer further acknowledges and agrees that, as between Customer and Samsung, Samsung owns and shall continue to own all right, title and interest in and to the Software, including associated intellectual property rights under the applicable laws. This EULA does not grant Customer any ownership

interest in or to the Software, but only a limited license to use that is revocable in accordance with the terms of this EULA.

**2.2 Open Source Software.** The Software may contain or be provided with open source libraries, components, utilities and other open source software (collectively, “Open Source”), which Open Source may have applicable license terms as identified on a website designated by Samsung or otherwise provided with the applicable Documentation. Notwithstanding anything to the contrary herein, use of the Open Source shall be subject to the applicable Open Source license terms and conditions to the extent required by the applicable licensor (which terms shall not restrict the license rights granted to Customer hereunder but may contain additional rights).

### **3. SPECIAL PROVISION: USE OF SAMSUNG KNOX CONTAINER**

**3.1 Container.** The Software provides additional security by creating a separate Samsung KNOX Container (“Container”), which is designed to isolate Customer’s or Customer Representative’s data and applications from certain attacks including data leakage, malware & malicious attacks such as vicious virus infection (“Malicious Attacks”). For further information, please visit: <http://www.samsungknox.com/en>

**3.2 Third Party Applications.** Third party applications that may be downloaded, included in, or installed in the Container will be wrapped to be capable of operating in the Samsung KNOX Container. Samsung will not be responsible for any failure of performance, deterioration, or malfunction of such applications or of the Container to effectively isolate data or applications within the Container from Malicious Attacks. Because Samsung has no control over such third party applications, Customer acknowledges and agrees that Samsung is not responsible for the availability of such third party applications and is not responsible or liable for any content, advertising, products, services, or other materials on or available through the third party applications. Customer expressly acknowledges and agrees that use of third party applications is at Customer’s sole risk and that the entire risk of unsatisfactory quality, performance, accuracy and effort is with Customer. It is up to Customer to take precautions to ensure that whatever Customer selects to use is free of such items as viruses, worms, Trojan horses, and other items of a destructive nature. References to any names, marks, products, or services of any third parties are provided solely as a convenience to Customer, and do not constitute or imply an endorsement, sponsorship, or recommendation of, or affiliation with the third party or its products and services. Customer agrees that Samsung shall not be responsible or liable, directly or indirectly, for any damage or loss, including but not limited to any damage to the mobile device or loss of data, caused or alleged to be caused by, or in connection with, use of or reliance on any such third party content, products, or services available on or through any such third party application. Customer acknowledges and agrees that the use of any third party application is governed by such third party provider’s terms of use, license agreement, privacy policy, or other such agreement and that any information or personal data Customer provides, whether knowingly or unknowingly, to such third party application provider, will be subject to such third party privacy policy, if such a policy exists. SAMSUNG DISCLAIMS ANY RESPONSIBILITY FOR ANY DISCLOSURE OF INFORMATION OR ANY OTHER PRACTICES OF ANY THIRD PARTY APPLICATION PROVIDER. SAMSUNG EXPRESSLY DISCLAIMS ANY WARRANTY REGARDING WHETHER CUSTOMER’S PERSONAL INFORMATION IS CAPTURED BY ANY THIRD PARTY APPLICATION PROVIDER OR THE USE TO WHICH SUCH PERSONAL INFORMATION MAY BE PUT BY SUCH THIRD PARTY APPLICATION PROVIDER.

**3.3 Trusted Boot.** Software provides a security feature, called Trusted Boot, which is designed to detect unauthorized rooting and custom ROM (i.e., to detect non-Samsung-official firmware), which may have been installed in Customer’s or Customer Representative’s device during booting time. Upon detection of such unauthorized rooting or custom ROM, the Container will be automatically locked and Customer or Customer Representative may not use the data or application stored or installed in the Container. *Thus, Customer and Customer Representative are strongly advised to back up important data or information as set forth in Section 3.4.*

**3.4 Back-Up.** Customer and Customer Representative may not pull out the data or information stored in the Container. Customer and Customer Representative are strongly advised to back-up any data and information before storing or using them in the Container. Samsung shall not be liable for any loss of data or information arising from Customer’s or Customer Representative’s failure to back-up.

### **4. SUPPORT AND MAINTENANCE SERVICES**

Support and Maintenance Services (“Maintenance Service”) may be delivered by Samsung in accordance with Attachment A. If Samsung provides Maintenance Services to Customer on behalf of a Samsung KNOX authorized reseller (“Authorized Reseller”), the policies of Attachment A will be applicable. If Customer has paid an Authorized

Reseller the relevant fees to obtain support and/or maintenance services directly from such Authorized Reseller, Customer should contact such Authorized Reseller for such support and/or maintenance and relevant sections under this EULA and Attachment A shall not apply.

## **5. INFORMATION; PRIVACY**

Customer agrees that the following information will be provided to Samsung by Customer and/or Customer Representative in encrypted form for the sole purpose of validation and activation of the Software, improving the Software or for statistical or demographic analysis:

*Samsung KNOX License Key, unique mobile device identifier, MODEL description of mobile device, Android OS Version, Build Number, Samsung KNOX-SDK version, MCC (Mobile Country code) / MNC (Mobile network code), Country ISO code, CSC code (customer software configuration), Samsung KNOX Container ID, Activation time for container, Customer Representative's e-mail address in hashed form, Customer Representative's e-mail domain, Samsung KNOX Login frequency, Samsung KNOX usage time.*

Unless stated otherwise herein, the above information will be collected, processed and used in accordance with Samsung's Privacy Policy at <https://www.samsungknox.com/en/privacy-policy> ("Privacy Policy"), which is hereby incorporated by this reference. The Privacy Policy governs how Samsung collects, processes, stores and uses information provided by Customer and/or Customer Representative or relating to Customer's or Customer Representative's use of the Software. Samsung may update the Privacy Policy from time to time, so please periodically review the Privacy Policy.

## **6. TERM; TERMINATION**

**6.1 Term.** The license granted herein with respect to the Software shall remain effective until terminated or until the applicable license term expires, whichever is earlier. This EULA is entered into as of the earlier of the date that Customer accepts the terms herein or first accesses or uses any Software (the "Effective Date").

## **7. LIMITED WARRANTIES; DISCLAIMER**

**7.1 Limited Warranties.** For a period of ninety (90) days from the date of initial delivery of the Software to Customer, Samsung warrants that such Software materially conforms to the specifications described in the relevant Documentation. Customer's sole and exclusive remedy and the entire liability of Samsung and its licensors under this limited warranty will be, at Samsung's option, repair or replacement of such Software, or if repair or replacement is not possible, to refund the license and any associated support and maintenance fees paid for such non-conforming Software upon the return and removal (as applicable) of all such Software from servers and devices. Samsung represents and warrants to Customer that Maintenance Services, if provided by Samsung, shall be professional, workmanlike and performed in a manner conforming to generally accepted industry standards and practices for similar services. Samsung's entire liability and Customer's sole and exclusive remedy for any breach of the preceding warranty for Maintenance Services will be for Samsung to re-perform the nonconforming services, provided that Samsung must have received written notice of the non-conformity from Customer no later than ninety (90) days after the original delivery of the services by Samsung. The express warranties specified above do not apply if the Software or any portion of the foregoing: (i) has been altered, except by Samsung; (ii) has not been used, installed, operated, repaired, or maintained in accordance with this EULA and/or Documentation; (iii) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or (iv) is used on equipment, products, or systems not meeting specifications identified by Samsung in the applicable Documentation. Additionally, the warranties set forth herein only apply when notice of a warranty claim is provided to Samsung within the applicable warranty period specified herein and do not apply to any bug, defect or error caused by or attributable to software or hardware not supplied by Samsung.

**7.2 Disclaimer.** EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION 7, THE SOFTWARE IS PROVIDED "AS IS", "WHERE IS" AND "AS AVAILABLE" AND WITHOUT WARRANTIES OF ANY KIND. SAMSUNG AND ITS LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OR GUARANTEES OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, REGARDING THE SOFTWARE, AND SPECIFICALLY DISCLAIMS ALL SUCH WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WITHOUT LIMITING THE PREVIOUS DISCLAIMER, SAMSUNG AND ITS LICENSORS DO NOT REPRESENT, WARRANT OR GUARANTEE THAT THE SOFTWARE WILL

(i) OPERATE IN AN UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE MANNER, (ii) WILL ALWAYS BE AVAILABLE OR FREE FROM ALL HARMFUL COMPONENTS OR ERRORS OR (iii) WILL BE SECURE OR IMMUNE (INCLUDING THE CONTENT DELIVERED TO CUSTOMER OR THE INFORMATION CUSTOMER PROVIDED) FROM UNAUTHORIZED ACCESS OR MALICIOUS ATTACKS.

**8. LIMITATION OF LIABILITY** TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SAMSUNG OR ITS LICENSORS BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE DAMAGES OR LOST PROFITS, EVEN IF SAMSUNG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF SAMSUNG ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE USE OF OR INABILITY TO USE SOFTWARE, ASSOCIATED SERVICES, OR OTHERWISE, EXCEED THE FEES CUSTOMER PAID FOR THE SOFTWARE OR MAINTENANCE SERVICE. THIS LIMITATION WILL APPLY REGARDLESS OF THE THEORY OF LIABILITY, WHETHER BREACH OF CONTRACT, NEGLIGENCE, INFRINGEMENT OR ANY OTHER THEORY REGARDLESS OF WHETHER OR NOT SAMSUNG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION AND WAIVER ALSO APPLIES TO ANY CLAIMS CUSTOMER MAY BRING AGAINST ANY OTHER PARTY TO THE EXTENT THAT SAMSUNG WOULD BE REQUIRED TO INDEMNIFY THAT PARTY FOR SUCH CLAIM. MULTIPLE CLAIMS SHALL NOT EXPAND THE LIMITATIONS SET FORTH IN THIS SECTION.

THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM SAMSUNG'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW. NOTHING CONTAINED HEREIN SHALL BE CONSTRUED IN DEROGATION OF THE U.S. DEPARTMENT OF JUSTICE'S RIGHT TO DEFEND ANY CLAIM OR ACTION BROUGHT AGAINST THE U.S., PURSUANT TO ITS JURISDICTIONAL STATUTE 28 U.S.C. §516.

NOTWITHSTANDING THE FOREGOING, OR ANY OTHER PROVISION OF THIS AGREEMENT OR ANY OTHER AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SAMSUNG OR ITS LICENSORS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY DAMAGES OF ANY TYPE, REGARDLESS OF THE THEORY OF LIABILITY, ARISING FROM OR RELATING IN ANY WAY TO ANY USE OF THE SOFTWARE OTHER THAN AS PERMITTED UNDER THE TERMS OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY USE OF THE SOFTWARE THAT IS PROHIBITED BY SECTION 1.2 HEREOF.

## **9. CONFIDENTIALITY**

The Software (and any performance data, benchmark results, security assessments and all other technical information relating to the Software), the Documentation, and any other information provided by Samsung in connection with the Software shall be deemed the confidential information of Samsung ("Confidential Information"). Notwithstanding the foregoing, Confidential Information shall not include information that Customer can evidence in writing: (a) is already known to Customer without restriction as to disclosure prior to disclosure by Samsung; (b) becomes publicly available without fault of Customer; (c) is rightfully obtained by Customer from a third party without restriction as to disclosure; or (d) is independently developed or created by Customer without use of the Confidential Information. Except as otherwise expressly authorized herein, Customer agrees to: (i) use the Confidential Information only to perform hereunder or exercise rights granted to it hereunder; (ii) treat all Confidential Information in the same manner as it treats its own similar proprietary information, but in no case will the degree of care be less than reasonable care; and (iii) disclose the Confidential Information only to Customer's employees and agents who have a need to know such information for the purposes of this EULA, provided that any such employee or agent shall be subject to obligations of non-use and confidentiality with respect to the Confidential Information at least as restrictive as the terms of this EULA, and Customer shall remain liable for any non-compliance of such employee or agent with the terms of this EULA. Nothing in this EULA shall prevent Customer from disclosing information to the extent Customer is legally compelled to do so by any governmental investigative or judicial agency pursuant to proceedings over which such agency has jurisdiction; provided, however, that prior to any such disclosure, Customer shall: (i) assert the confidential nature of the information to the agency, (ii) immediately notify Samsung in writing of the agency's order or request to disclose, and (iii) cooperate fully with Samsung in protecting against any such disclosure and obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality. The confidentiality

obligations under this Section shall survive any expiration or termination of this EULA and be effective for a period of three (3) years after the expiration or termination of this EULA

## **10. GENERAL TERMS**

**10.1 Independent Contractors.** The parties are independent contractors, and this EULA shall not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties.

**10.2 Entire EULA; Modifications.** This EULA supersedes and cancels all previous written and previous or contemporaneous oral communications, proposals, representations, and agreements relating to the subject matter contained herein. This EULA prevails over any pre-printed, conflicting or additional terms of any purchase order, ordering document, acknowledgement or confirmation or other document issued by Customer, even accepted in writing by both parties .

**10.3 Export.** Software and Documentation, including any technical data provided by Samsung hereunder, may be subject to export, re-export or import control laws under the country of origin, destination or use, including regulations under such laws. Customer shall comply fully with all international and national laws and regulations that apply to the Software and Documentation and to Customer and Customer Representative's use thereof, including, but not limited to, the U.S. Export Administration Regulations, end-user, end-use and destination restrictions issued by U.S. and other governments. Without limiting the generality of the foregoing, Customer expressly agrees that Customer shall not, and shall cause Customer Representative to agree not to, export, directly or indirectly, re-export, divert, or transfer the Software and Documentation or any technical data thereof to any destination, company or person restricted or prohibited by U.S. laws or regulations or laws or regulations of any other applicable jurisdiction. Customer represents and warrants that (i) Customer is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) Customer are not listed on any U.S. Government list of prohibited or restricted parties.

**10.4 Severability.** If any term or provision of this EULA is held to be void or unenforceable by any judicial or administrative authority, such determination shall not affect the validity of enforceability of the remaining terms and provisions of this EULA. The remaining provisions of this EULA shall remain in effect and shall be construed in accordance with its terms.

**10.5 Headings.** The headings contained in this EULA are for reference purposes only and shall not affect the meaning or interpretation of this EULA.

**10.6 No Waiver.** The failure of Samsung to enforce at any time any of the provisions of this EULA, or the failure by Samsung to require at any time performance by Customer of any of the provisions of this EULA, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the right of Samsung to enforce such provision thereafter. The express waiver by Samsung of any provision, condition or requirement of this EULA shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

**10.7 U.S. Government.** Customer agrees that all Software, including all components thereof, and Documentation qualify as "commercial items," as that term is defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which this EULA may be incorporated, Customer will acquire the Software and Documentation with only those rights set forth in this EULA. Customer agrees that all Software and Documentation are "commercial computer software" and "commercial computer software documentation," and accepts he rights and restrictions herein.

**10.8 Notice.** Any notice required or permitted to be given in accordance with this EULA shall be in writing. Notices to Samsung shall be sent by personal delivery, registered or certified mail (return receipt requested, postage prepaid) or commercial express courier (with written verification of receipt) to:

**Samsung Electronics America, Inc.**

Attn: Legal Dept.,

1301 E. Lookout Drive, Richardson, Texas 75082.

For contractual purposes, Customer consents to receive communications from Samsung electronically. Notices sent to Customer shall be sent by personal delivery, electronic mail, registered or certified mail (return receipt requested, postage prepaid) or commercial express courier (with written verification of receipt) to: the electronic address Customer have provided to Samsung or its Authorized Reseller in connection with licensing Software or invoicing. All notices will be deemed given: (i) when delivered personally; (ii) 24 hours after electronic mail is sent, unless Samsung is notified that the email address is invalid; (iii) five (5) days after having been sent by registered or certified mail, (or ten (10) days for international mail); or (iv) one (1) day after deposit with a commercial express courier specifying next day delivery (or two (2) days for international courier packages specifying 2-day delivery). Customer or Samsung may change its address for receipt of notice by notice to the other in accordance with this Section.

## **ATTACHMENT “A”**

### **SAMSUNG SUPPORT AND MAINTENANCE SERVICES**

#### **1. Hours of Operations**

Operating hours of Samsung Support and Maintenance Services (“Maintenance Service”) is as follows:(i) 24 hours a day, 7 days a week (For English Only).

#### **2. Support Channels**

Samsung will, upon the request of Customer or Customer’s personnel designated for Maintenance Service (“Technical Personnel”), provide Maintenance Service via the following channels:

(a) Web Portal (support.samsungknox.com): Samsung will provide Technical Personnel with log-in credentials for access to Samsung’s Web Portal, and provide a variety of support services, including, self-help articles, FAQs, discussion forums, and tools to raise and track tickets.

(b) Online Tickets: Technical Personnel may raise tickets for Maintenance Service through the Web Portal.

(c) Phone Support: Contact information for Maintenance Service will be provided to Technical Personnel.

#### **3. Support and Maintenance Services**

Samsung will, upon the request of Technical Personnel, provide Maintenance Service as set forth below.

- Provide Technical Personnel with proactive Maintenance Service
- Provide Technical Personnel with FAQ articles and knowledgebase (including discussion boards) through support.samsungknox.com
- Triage, investigate, troubleshoot, and resolve customer issues and technical questions
- Respond to Technical Personnel’s inquiries related to Samsung KNOX usage, configuration, and basic Samsung KNOX support questions
- Share issues with relevant parties for resolution e.g. MDM, carriers or Samsung KNOX technical support
- Provide KNOX code fixes and maintenance releases
- Provide Maintenance Service in accordance with the protocol set forth below.

However, please note the following when making notifications of issues:

- Any and all notifications to Samsung shall be made by Customer’s Technical Personnel
- Authorized Reseller should be the first point of contact for any Customer.
- No workaround will be promptly available.

#### **4. Support and Maintenance Service Protocol**

Samsung is not required to provide any Maintenance Service if the Software or any portion of the foregoing: (i) has been altered, except by Samsung; (ii) has not been used, installed, operated, repaired, or maintained in accordance with this EULA and/or Documentation; (iii) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or (iv) is used on equipment, products, or systems not meeting specifications identified by Samsung in the applicable Documentation.

4.1 For the purposes of Maintenance Service, the following definitions will apply:

a. **“Level 1 Issue”** means any issue that (A) makes operation of the Samsung KNOX service impossible or incurs security breach that enables unauthorized third parties to obtain access to users’ data, (B) impacts a significant number of users, and (C) results in a serious loss or degradation of Customer’s business. For example, an issue (i) that makes Container inaccessible to a significant number of users, which results in severe degradation of Customer’s business, or (ii) arising from critical applications or emails within the Container, which causes the Container to crash frequently among a significant number of users, which results in severe degradation of Customer’s business.

b. **“Level 2 Issue”** means any issue that (A) causes widespread or sporadic impairment partially to the Samsung KNOX service, (B) impacts a significant number of users, and (C) results in a loss or degradation of Customer’s business. For example, an issue (i) that makes the Container inaccessible to a significant number of users, which results in degradation of Customer’s business, or (ii) arising from critical applications or emails within the Container, which causes the Container to fail certain functions sporadically among a significant number of users, which results in degradation of Customer’s business.

c. **“Level 3 Issue”** means any issue that (A) causes impairment (e.g. a bug or non-conformity) partially to the Samsung KNOX service, (B) impacts several users, and (C) results in a slight degradation of Customer’s business. For example, an issue (i) that causes sporadic impairment of the Container to a few number of users, which results in slightly impacting Customer’s business, or (ii) arising from critical applications or emails within the Container, which causes impairment of a certain function, such as failure in attaching files to an email or opening attached files of an email, and etc.

d. **“Level 4 Issue”** means any issue that (A) causes minor impairment partially to the Samsung KNOX service, (B) impacts very few users or no one, and (C) has little or no impact to Customer’s business. For example, (i) questions on using features, (ii) changes to configuration, or (iii) new feature requests of the Samsung KNOX service would all qualify as a Level 4 Issue.

4.2 Maintenance Service will be provided for Level 1, 2, 3 and 4 Issue. Issues must be delivered with proper detail allowing the error to be analyzed.

4.4. Samsung will, upon Technical Personnel’s request, response in accordance with the time periods set forth below.

**Issue Severity Response Time After Notification**

Level 1 Issue 2 Business Hours

Level 2 Issue 4 Business Hours

Level 3 Issue 24 Business Hours

Level 4 Issue 48 Business Hours