

SDSA MUTUAL NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (the “Agreement”) is made effective on [date] day of [month], [year] (the “Effective Date”), by and between **SAMSUNG SDS America, Inc.**, a California corporation, with its principal office located at 100 Challenger Rd., 6th Floor, Ridgefield Park, NJ 07660 (“SDSA”) and [company name], a [state of formation and type of company e.g. corporation, limited liability company, partnership, etc.], with its principal place of business at [address] (the “Company”).

WHEREAS, the parties intend to enter into discussions to explore business opportunities with each other (the “Purpose”); and

WHEREAS, in furtherance of the Purpose, the parties will be disclosing to each other certain Confidential Information (as defined below) and each party has agreed to accept such Confidential Information of the other party as will be disclosed on the terms and conditions set out below.

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein, and other good and valuable consideration, each party agrees as follows:

1. “**Disclosing Party**” shall mean the party disclosing Confidential Information and “**Receiving Party**” shall mean the party to whom Confidential Information is disclosed. “**Confidential Information**” shall mean all non-public information including but not limited to information concerning the products, services, sales, performance, plans, strategies, customers, financial or human resources, processes, management, contracts, project documentation, software and hardware, technical data, drawings, schematics, know-how, ideas and inventions (whether patentable or not) of Disclosing Party. Confidential Information may be in writing, oral, visual, or in other tangible, or intangible, form. Confidential Information shall be marked, or otherwise identified, as confidential or proprietary, or consist of information which reasonably should be considered as confidential or proprietary from its nature or from the circumstances surrounding its creation or disclosure. Disclosing Party’s Confidential Information shall also include (i) the confidential information of its affiliates, subsidiaries, parent, and third parties, for which Disclosing Party is obligated to hold in confidence, and (ii) confidential information of Disclosing Party disclosed to Receiving Party on behalf of Disclosing Party by Disclosing Party’s affiliates, subsidiaries, parent, consultants, or agents (collectively, “**Representatives**”), provided that such information as described in sub-clauses (i) and (ii) of this sentence would otherwise fall within the definition of Confidential Information set forth in this section.
2. Receiving Party shall hold and keep in strict confidence all Confidential Information of Disclosing Party using the same means it uses to protect its own Confidential Information and in any event not less than reasonable means to protect Disclosing Party’s Confidential Information from unauthorized disclosure or use. Receiving Party shall in particular restrict the physical location and use of Confidential Information to areas of restricted access in its premises and store Confidential Information in a manner that reasonably does not permit unauthorized access. Receiving Party shall use the Confidential Information only for the Purpose. Receiving Party shall not, unless otherwise expressly provided in this Agreement, disclose Confidential Information, whether directly or indirectly, to any third party without prior written approval of Disclosing Party.
3. Confidential Information shall not include any information to the extent that it:
 - a) is made public by the Disclosing Party, or is in the public domain otherwise than as a result of a breach of this Agreement;
 - b) was in the possession of Receiving Party before its receipt of the Confidential Information whether directly or indirectly from Disclosing Party, as evidenced by Receiving Party’s written records;
 - c) is disclosed to Receiving Party in good faith by a third party who had a lawful right to make such disclosure without breach of any confidentiality obligation; or
 - d) is independently developed by Receiving Party without use of the Confidential Information as evidenced by Receiving Party’s written records.
4. Receiving Party may make disclosures of Confidential Information, to the minimum extent legally required, in accordance with a judicial or other governmental order, provided Receiving Party shall (i) give Disclosing Party reasonable written notice prior to disclosure pursuant to such order (unless prohibited by such order), (ii) use diligent efforts to limit disclosure and to obtain confidential treatment, or a protective order, and allow

the Disclosing Party to participate in the proceedings, and (iii) comply with any applicable protective order or equivalent.

5. Receiving Party shall only disclose Confidential Information of Disclosing Party to those of its Representatives who (a) are directly involved in the Purpose and whose duties require them to possess or have access to such Confidential Information on a "need to know" basis and (b) are under obligations of confidentiality, non-disclosure, and use restriction, substantially as restrictive as those set out in this Agreement. Receiving Party shall take all reasonable measures (including, but not limited to, court proceedings in the appropriate circumstances), at its own expense, to restrain Representatives from unauthorized disclosure or use of Confidential Information. Receiving Party shall be fully liable to the Disclosing Party for any improper use or disclosure of Confidential Information by Receiving Party's Representatives. Receiving Party shall, upon knowledge of any unauthorized disclosure, failure to hold in confidence, misappropriation, or misuse, by any of its Representatives of any Confidential Information, immediately inform the Disclosing Party in a writing containing reasonable details about the unauthorized act or omission.
6. Upon request by and at the election of Disclosing Party at any time, Receiving Party shall, within fifteen (15) days from the date of such request, return to Disclosing Party, or destroy, all Confidential Information of Disclosing Party, all documents containing any such Confidential Information, and any and all copies or extracts thereof. Receiving Party shall also, at the same time, remove and delete all electronic copies of such Confidential Information from all storage media and furnish to Disclosing Party written verification, signed by an officer of Receiving Party, of complete removal and deletion.
7. Neither party shall issue any news releases or make any announcements of any kind in any media concerning any part or all of the Purpose, including the existence of this Agreement, without the prior written consent of the other party.
8. All information developed, compiled or otherwise derived by Receiving Party and/or its Representatives from Confidential Information of Disclosing Party ("**Derivative Information**") shall be deemed Confidential Information of Disclosing Party. The obligations in this Agreement extend to Derivative Information. Any copies, reproductions, or reductions to writing, of Confidential Information shall be the property of Disclosing Party.
9. Nothing in this Agreement is intended to nor shall be construed as conferring on Receiving Party or its Representatives, whether expressly or by implication, any rights in or to any Confidential Information of Disclosing Party, other than the limited right to review such Confidential Information for the Purpose in accordance with the provisions of this Agreement. All other rights including but not limited to all industrial and intellectual property rights remain fully vested in Disclosing Party or such other third party disclosing Confidential Information through Disclosing Party, as the case may be.
10. This Agreement shall commence on the Effective Date and shall continue in effect until a party terminates this Agreement, for any reason, upon five (5) days' written notice to the other party. With respect to any Confidential Information provided to Receiving Party, the confidentiality, non-disclosure, and use restriction terms of this Agreement shall survive any expiration or termination of this Agreement until such time as such Confidential Information falls into one of the exceptions in Section 3 above.
11. Receiving Party acknowledges that Confidential Information constitutes valuable proprietary information and as such there can be no adequate remedy at law for any breach of this Agreement and that a breach may result in irreparable harm to Disclosing Party. Receiving Party therefore agrees that upon any breach or threatened breach of this Agreement, Disclosing Party shall be entitled, in addition to any other remedies it may have at law or in equity, to obtain injunctive, prohibitory or other urgent relief against such breach or threatened breach and Receiving Party and its Representatives shall not plead as a defense to such action by Disclosing Party that Disclosing Party has an adequate remedy or other remedies at law.
12. Disclosing Party does not make any representation or warranty with respect to any information provided pursuant to this Agreement and that all such information provided is solely on an "as is" basis. This Agreement imposes no obligation on either party to purchase, sell, license, or transfer of any service or products.
13. This Agreement shall be binding upon and for the benefit of the parties herein, their permitted successors

and assigns. Neither party may assign nor delegate its rights or obligations under this Agreement without the prior written consent of the other party. Any attempted assignment or delegation in violation of the preceding shall be void and of no effect.

14. This Agreement does not create any agency or partnership or joint venture relationship between the parties.
15. This Agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous written or oral agreements, commitments, understandings and communication between the parties with respect to or in connection with the subject matter hereof.
16. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, excluding its conflict of laws rules, and the parties agree to submit to the jurisdiction of the courts of the State of New Jersey.
17. This Agreement may be amended, modified or supplemented only by written agreement signed by the authorized representatives of the parties.
18. If any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason or in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of Disclosing Party.
19. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute a single agreement.
20. With respect to each party's performance under this Agreement, the parties shall comply (and shall ensure their officers, directors, and employees comply), with respect to each party's performance under this Agreement, with all applicable anti-corruption laws and regulations. No payments or transfers of value shall be made, in respect of each party's performance under this Agreement, which have the purpose or effect of public or commercial bribery, acceptance or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining or retaining business or directing business to any person or entity.
21. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision. Any waiver to be effective must be in writing signed by an authorized officer of the waiving party.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives.

SAMSUNG SDS America, Inc.

[Company Name]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____