

CASE COMP/C-3/39.939 – SAMSUNG ELECTRONICS
ENFORCEMENT OF UMTS STANDARD ESSENTIAL PATENTS

COMMITMENTS OFFERED TO THE EUROPEAN COMMISSION

In accordance with Article 9 of Council Regulation (EC) No 1/2003, Samsung Electronics Co., Ltd. and any legal entity directly or indirectly controlled by it as defined by Council Regulation (EC) No 139/2004¹ ("**Samsung Electronics**") hereby voluntarily offer formal commitments (the "**Commitments**") to the European Commission (the "**Commission**") in Case COMP/C-3/39.939.

Nothing in these Commitments may be construed as implying that Samsung Electronics agrees with the concerns expressed in the Commission's Statement of Objections of 21 December 2012. Consistent with Article 9 of Council Regulation (EC) No 1/2003, the Commitments are given in the understanding that the Commission will confirm that there are no grounds for further action in relation to Samsung Electronics' conduct which was the subject of the Commission's Statement of Objections of 21 December 2012. These Commitments are without prejudice to Samsung Electronics' position should the Commission or any other party conduct proceedings or commence other legal action against Samsung Electronics.

A. COMMITMENTS WITH REGARD TO SEEKING INJUNCTIVE RELIEF

1. Samsung Electronics commits not to file a claim seeking Injunctive Relief before any court or tribunal in the EEA for infringement of Samsung Electronics' Mobile SEPs against any Potential Licensee who, by signing and returning Samsung Electronics' Invitation to Negotiate (which is annexed as Annex A to the Commitments and constitutes an integral part thereof) within sixty (60) days of receipt, agrees to, and thereafter complies with, the framework for determining FRAND terms for a license for Mobile SEPs for Mobile Devices set out in this Clause 1 ("**Licensing Framework**") as the exclusive means for determining FRAND terms of a license agreement for Mobile SEPs for Mobile Devices covering, to the extent not already licensed, (i) Samsung Electronics' Mobile SEPs ("**Unilateral License**"); or, if either Party seeks Reciprocity, (ii) both Samsung Electronics' Mobile SEPs and certain of the Potential Licensee's Mobile SEPs as covered by Reciprocity ("**Cross-License**");

¹ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ("the EC Merger Regulation"), OJ L 24/1, 29 January 2004.

- a. Samsung Electronics and the Potential Licensee (each a "**Party**", collectively the "**Parties**") shall negotiate for a period of twelve (12) months starting on the Commencement Date ("**Mandatory Negotiation Period**") on FRAND terms with a view to agreeing a Unilateral License or a Cross-License, as specified above, provided that:
 - i. the Parties may, by mutual written agreement citing this Clause 1.a.i and Clause 2.i. of the Annex A Invitation to Negotiate or of the Annex B Invitation to Negotiate, as the case may be, specify an alternative procedure for determining FRAND terms during the Mandatory Negotiation Period; and
 - ii. in the case of a Unilateral License, the Potential Licensee may, within thirty (30) days from the Commencement Date, reduce the Mandatory Negotiation Period to a minimum of six (6) months by communicating in writing to Samsung Electronics that it demands a reduction of the Mandatory Negotiation Period.
 - b. In the event that neither the FRAND terms for a Mobile SEPs license nor an alternative procedure for determining FRAND terms for a Mobile SEPs license has been agreed by the Parties during the Mandatory Negotiation Period, the Parties shall submit the matter to arbitration or to court adjudication in order to determine the FRAND terms of a Unilateral License or, as applicable, a Cross-License, in accordance with Section B of these Commitments (the "**Third-Party Determination of FRAND Terms**"). For the avoidance of doubt, in the case of a Cross-License, the Third-Party Determination of FRAND Terms of Samsung Electronics' Mobile SEPs and the Potential Licensee's Mobile SEPs will be conducted within the same forum and proceedings.
2. Samsung Electronics is relieved from its obligations under these Commitments, and may, in particular, file a claim for Injunctive Relief before any court or tribunal in the EEA for infringement of Samsung Electronics' Mobile SEPs against the Potential Licensee, without so doing constituting a breach of these Commitments, if:
- a. the Potential Licensee fails to agree or comply with the provisions of the Licensing Framework;
 - b. the Potential Licensee is facing Imminent Default, or, where a particular Potential Licensee legal entity is facing Imminent Default, with respect to that legal entity;
 - c. the Potential Licensee has filed and maintains, or files a claim for Injunctive Relief before any court or tribunal in the EEA against Samsung Electronics or a customer of Samsung Electronics for a Mobile Device or component thereof that is made, marketed, distributed or sold by Samsung Electronics, based on

infringement of any of the Potential Licensee's Mobile SEPs, and Samsung Electronics, subsequent to the Potential Licensee's claim for Injunctive Relief, offers to be bound by the Licensing Framework applied to it as potential licensee of certain of the Potential Licensee's Mobile SEPs, by signing and delivering to the Potential Licensee an Annex A Invitation to Negotiate for, as relevant, a Unilateral or a Cross-Licence and/or, as the case may be, to the extent the Potential Licensee's claim for Injunctive Relief is based on any Mobile SEPs which are not covered by the Annex A Invitation to Negotiate, an Annex B Invitation to Negotiate, which, if accepted, will lead to a separate Third-Party Determination of FRAND Terms, unless the Parties otherwise agree:

- d. a Unilateral License or a Cross-Licence is terminated under the circumstances provided for in Clause 3.f.
3. Nothing herein shall:
- a. prevent or restrict Samsung Electronics from negotiating, seeking arbitration of or entering into any license agreement on any terms or in any manner that is mutually agreed upon between the Parties (including entering into a world-wide (cross-) license agreement);
 - b. prevent or restrict Samsung Electronics from enforcing any license agreement;
 - c. prevent or restrict Samsung Electronics from pursuing claims (including damages for infringement), defences or relief other than Injunctive Relief;
 - d. preclude Samsung Electronics from pursuing claims (including claims for injunctive relief) in relation to patents other than Samsung Electronics' Mobile SEPs;
 - e. preclude Samsung Electronics from pursuing claims (including claims for injunctive relief) against products other than Mobile Devices; or
 - f. preclude Samsung Electronics from terminating a Unilateral License or a Cross-Licence concluded in the context of the Licensing Framework in the event the Potential Licensee files a claim for Injunctive Relief before any court or tribunal in the EEA against Samsung Electronics based on alleged infringement of any of the Potential Licensee's Mobile SEPs, where Samsung Electronics has offered or offers to be bound by the same process as set out in the Licensing Framework applied to it as licensee of such Mobile SEPs by signing and delivering the Annex B Invitation to Negotiate.
4. Nothing in these Commitments shall restrict the ability of the Potential Licensee, in the case of a Unilateral License, or either Party, in the case of a Cross-Licence, from challenging the validity, essentiality or infringement of the other Party's Mobile SEPs outside the context of the Third-Party Determination of FRAND Terms.

B. THIRD-PARTY DETERMINATION OF FRAND TERMS

5. In the event that neither the FRAND terms for a license nor an alternative procedure for determining FRAND terms for a license has been agreed by the Parties during the Mandatory Negotiation Period, the Parties shall, within sixty (60) days of the end of the Mandatory Negotiation Period, choose whether to submit the matter to arbitration or to court adjudication in order to determine the FRAND terms of a Unilateral License or, as applicable, a Cross-License. If the Parties within this sixty (60) day period mutually agree to submit the matter for arbitration of the FRAND terms, the Parties shall commence Third-Party Determination of FRAND Terms by way of arbitration, in accordance with the arbitration procedure set out in Clause 9. If the Parties within this sixty (60) day period mutually agree to submit the matter to court adjudication of the FRAND terms, the Parties shall commence Third-Party Determination of FRAND Terms by way of court adjudication, in accordance with the court adjudication procedure set out in Clauses 10 and 11.
6. If the Parties have failed to reach agreement on whether to submit the Third-Party Determination of FRAND Terms for arbitration or to court adjudication within this sixty (60) day period, the Parties shall commence Third-Party Determination of FRAND Terms by way of court adjudication, in accordance with Clauses 10 and 11.
7. The procedure and method for determining FRAND terms will be decided by the judge(s), in the case of court adjudication, or arbitrators, in the case of arbitration (subject to Clause 9 in respect of arbitration and Clauses 10 and 11 in respect of court adjudication).
8. Nothing in these Commitments shall restrict the ability of the Potential Licensee, in the case of a Unilateral License, or either Party, in the case of a Cross-License, from making or maintaining arguments regarding validity, essentiality and infringement of the other Party's Mobile SEPs during the Third-Party Determination of FRAND Terms. Nothing in these Commitments may be construed as altering the burden of proof on patent validity, infringement, and essentiality, which shall be governed by the relevant applicable law.

Arbitration Procedure

9. The arbitration procedure shall be conducted as follows (unless the Parties mutually agree to follow a different arbitration procedure):
 - a. The dispute shall be finally settled under the rules of arbitration of the ICC, unless the Parties mutually agree that the arbitration tribunal will be the patent

mediation and arbitration centre as established under Article 35(1) of the Agreement on a Unified Patent Court.

- b. The first arbitral panel shall be made up of three (3) arbitrators, each with at least ten (10) years' relevant experience in the information and communications technology sector and/or in IP licensing. The president of the first arbitral panel shall be a qualified practising lawyer who has experience in the information and communications technology sector in either patent licensing or patent litigation. Legal qualification is not an absolute requirement for the other arbitrators. Each Party may select one arbitrator, and the president shall be selected by the two party-appointed arbitrators from a list of names nominated by the Parties, or failing agreement, the president shall be appointed by the arbitral tribunal.
- c. The arbitration will be conducted in English. The arbitration will be governed by the laws of England and Wales.
- d. The seat of the arbitration will be in an EEA jurisdiction in which national laws permit Parties to agree to make an arbitration decision subject to appeal to a second arbitral tribunal.
- e. The arbitration will be conducted in strict confidence and the arbitral proceedings and decision shall be confidential. Each Party shall maintain the confidentiality of the arbitral decision and the confidential documents submitted in the course of the arbitration by the other Party, unless such documents are used in the proceedings for any appeal of the arbitration decision pursuant to Clause 9.f. or disclosure is required by law or pursuant to an order by a court, tribunal, or a governmental authority. A non-confidential version of the arbitral decision shall be published within 90 days following the issuance of such decision. The non-confidential version of the arbitral decision may disclose the methodology relied upon by the arbitral panel to arrive at specific FRAND terms, but shall in no event disclose specific FRAND terms.
- f. The first arbitral tribunal's decision shall be subject to a de novo appeal on issues of fact and law in accordance with the following procedure:
 - i. Either Party may appeal the first arbitral tribunal's decision to a second arbitral tribunal within thirty (30) days of notification of the decision to the Parties.
 - ii. Unless the Parties agree otherwise, the second arbitral panel shall be chosen in accordance with the procedure and requirements set out at Clause 9.b above, but no member of the first arbitral panel shall serve as a member of the second arbitral panel or otherwise be involved in the appeal in any capacity.

- iii. The Parties can agree to limit the issues to be considered on appeal.
- iv. Subject to Clause 9.f.iii, the Parties agree expressly that the second arbitral tribunal shall have full authority to revisit the issues decided by the first arbitral tribunal and that the first arbitral tribunal's decision shall be final and binding except to the extent to which issues therein are appealed within thirty (30) days. For the avoidance of doubt, any issues in the first arbitral tribunal's award that are not appealed within thirty (30) days shall be final and binding, and in any event, the second arbitral tribunal's decision shall be final and binding on the Parties.
- v. The appeal shall be treated as a separate arbitration. The seat of the arbitration shall be in the same jurisdiction as the first arbitration.
- g. The arbitral panel shall take into account issues of validity, infringement, and essentiality raised by the Parties in making the Third-Party Determination of FRAND Terms. In doing so, the arbitral panel may employ case management methods if it finds it appropriate in light of the number of Mobile SEPs involved.
- h. Any procedural rules governing the arbitration procedure not set out in these Commitments will, at each instance, be decided by the arbitral panel, in accordance with the procedural rules of the relevant arbitral tribunal.

Court Adjudication

10. The venue for the court adjudication procedure will be the Patents Court, High Court of England and Wales (or any successor court), or the UPC (the "**Court**"). The court adjudication procedure shall be conducted as follows:
- a. both Parties agree to submit to the jurisdiction of the Court, and neither Party shall contest the jurisdiction of the Court, for purposes of the Third-Party Determination of FRAND Terms;
 - b. the Parties will bring the dispute relating to FRAND terms before the Court through an action seeking a declaration of those terms by the Court;
 - c. the Parties will jointly request the Court to determine FRAND terms;
 - d. both Parties will undertake all necessary procedural steps stipulated by the Court to bring about a determination of FRAND terms by the Court;
 - e. both Parties will be bound by the final outcome of that procedure (without prejudice to the Parties' rights of appeal). The final outcome of that procedure shall not bind the Parties outside the EEA unless the Parties agree otherwise; and
 - f. both Parties will request the Court to take into account issues of validity, infringement, and essentiality raised by the Parties in making the Third-Party

Determination of FRAND Terms, and will agree to the Court employing case management methods if the Court finds it appropriate in light of the number of Mobile SEPs involved.

11. If the Court to which the Parties have jointly made the request for a Third-Party Determination of FRAND Terms decides that it will not issue a declaratory judgment determining FRAND terms, then the Parties shall commence Third-Party Determination of FRAND Terms by way of the arbitration procedure as set out in Clause 9.

C. REVIEW

12. Pursuant to Article 9(2) of Council Regulation (EC) No 1/2003, the Commission may, upon the request of Samsung Electronics or on its own initiative, reopen the proceedings where there has been a material change in any of the facts on which the Decision was based.
13. In particular, the Commission may, on the request of Samsung Electronics or on its own initiative, reopen the proceedings in light of a judgment delivered by the Court of Justice (in Case C-170/13 or in another case) regarding the circumstances under which the seeking of an injunction on the basis of a standard essential patent can constitute an infringement of Article 102 TFEU. In this context, the Commission shall take full account of any such judgment. The Commission shall respond to a request to reopen the proceedings by Samsung Electronics in writing and within a reasonable time. The Commission shall give reasons for the position it takes in its response.

D. DURATION

14. These Commitments will be applicable for five years from the Effective Date. Upon the expiry of the Commitments, Samsung Electronics shall remain subject only to any contractual obligations under any Invitation to Negotiate into which the Parties entered during the term of the Commitments. Any license agreement concluded in the context of the Licensing Framework will remain valid for the duration provided by its terms.

E. COMMITMENTS WITH REGARD TO NON-CIRCUMVENTION

15. These Commitments are intended to ensure that Potential Licensees who negotiate in accordance with the Licensing Framework will not be subject to Injunctive Relief

sought by Samsung Electronics on the basis of its Mobile SEPs. Samsung Electronics shall not circumvent or attempt to circumvent these Commitments.

16. Nothing shall prevent Samsung Electronics from selling or assigning any of its Mobile SEPs to any Third Party, provided that:
 - a. the Third Party agrees to become a successor to Samsung Electronics' FRAND Commitments in relation to such Mobile SEPs, and
 - b. where Samsung Electronics retains any financial interest in the revenues that are or could be generated by its Mobile SEPs being sold or assigned following this sale or assignment, Samsung Electronics shall ensure that the Third Party to whom Samsung Electronics sells or assigns such Mobile SEPs agrees to comply with these Commitments, in relation to the Mobile SEPs so sold or assigned, until these Commitments have expired.

F. MONITORING TRUSTEE

17. Samsung Electronics shall appoint a Monitoring Trustee to monitor Samsung Electronics' compliance with the Commitments, for a period of five years from the Effective Date. The Monitoring Trustee shall be independent of Samsung Electronics (and any other undertaking affiliated with Samsung Electronics), any Potential Licensee and any competitor of Samsung Electronics (and any other legal entity directly or indirectly controlled or affiliated with a competitor of Samsung Electronics). The Monitoring Trustee would be remunerated by Samsung Electronics in a way that does not influence or impede the independent and effective fulfilment of its mandate. The Monitoring Trustee should possess the necessary qualifications to carry out its mandate. The Monitoring Trustee should be familiar with the IT and telecommunications industries to which these Commitments relate and have the experience and competence necessary for carrying out its functions. The Monitoring Trustee shall neither have nor become exposed to a conflict of interest. In particular, the Monitoring Trustee shall not provide services to, or become employee of, Samsung Electronics, any Potential Licensee or any competitor of Samsung Electronics in Mobile Devices, neither during the Monitoring Trustee's mandate nor for a period of one year following termination of the Monitoring Trustee's mandate.

Proposal by Samsung Electronics

18. No later than one month after the Effective Date, Samsung Electronics shall submit a list of at least two persons whom Samsung Electronics proposes to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Monitoring Trustees fulfil the requirements set out in Clause 17 above and shall include:

- a. the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties set forth in Clauses 25 and 26; and
- b. the outline of a plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.

Approval or rejection by the Commission

19. The Commission shall have the discretion to approve or reject the proposed Monitoring Trustees and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfil its obligations. The Commission shall give reasons in case of rejection of a proposed Monitoring Trustee. If only one person is approved, Samsung Electronics shall appoint or cause to be appointed, the individual concerned as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Samsung Electronics shall be free to choose the Monitoring Trustee to be appointed from among the persons approved. The Monitoring Trustee shall be appointed within two weeks of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal(s) by Samsung Electronics

20. If all the proposed Monitoring Trustees are rejected, Samsung Electronics shall submit the names of at least two more persons within one month of being informed of the rejection(s), in accordance with the requirements and the procedure set out in Clauses 18 to 19 above.

Monitoring Trustee nominated by the Commission

21. If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom Samsung Electronics shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

Replacement, discharge and reappointment of the Monitoring Trustee

22. If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest:

- a. the Commission may, after hearing the Monitoring Trustee, require Samsung Electronics to replace the Monitoring Trustee; or
- b. Samsung Electronics, with the prior approval of the Commission, may replace the Monitoring Trustee.

23. If the Monitoring Trustee is removed, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand-over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to at Clauses 18 to 20 above.
24. The Monitoring Trustee shall cease to act as Monitoring Trustee only upon the expiration of these Commitments or after the Commission has discharged it from its duties.

Duties and obligations of the Monitoring Trustee

25. The Monitoring Trustee shall:
- a. provide to the Commission, sending Samsung Electronics Co., Ltd. a non-confidential copy at the same time, a written report on Samsung Electronics' compliance with the Commitments within one month of the receipt of Samsung Electronics' report; and
 - b. report in writing to the Commission, sending Samsung Electronics Co., Ltd. a non-confidential copy at the same time, if it concludes on reasonable grounds that Samsung Electronics is failing to comply with these Commitments.
26. The Monitoring Trustee shall not:
- a. have any involvement in the arbitration or court adjudication relating to Samsung Electronics' Mobile SEPs;
 - b. participate in commercial licensing negotiations of Samsung Electronics;
 - c. have access to Samsung Electronics' books, records, documents, management or other personnel, facilities, sites and technical information books or internal documents except the report provided by Samsung Electronics Co., Ltd.;
 - d. have any decision-making powers or powers of the investigation of the kind vested in the Commission pursuant to Council Regulation (EC) No 1/2003;
 - e. undertake any significant work not covered by its mandate unless it has received written express instructions from the Commission. Where the Monitoring Trustee is required to exercise its own initiative, it shall discuss the work involved with the Commission and obtain its prior approval before undertaking any significant work; and
 - f. disclose any confidential information to anyone other than the Commission. Any confidential information obtained by the Monitoring Trustee in performance of the duties and obligations specified in these Commitments shall be kept in the strictest confidence and shall be used solely for the purpose of performing the duties and obligations specified in these Commitments. The Monitoring Trustee

shall ensure that adequate safeguards are established and adhered to in taking delivery of, tracking the dissemination of, monitoring the use of, protecting against the disclosure of and determining the safe disposal of confidential information. These safeguards must be effective to protect the confidential information, but shall not be such as to prevent the Monitoring Trustee from effectively fulfilling their duties and obligations specified in these Commitments. The Monitoring Trustee shall not make any public statements relating to the performance of their functions in relation with these Commitments. The Monitoring Trustee shall sign confidentiality undertakings warranting their knowledge of and compliance with their duties and obligations specified in these Commitments. The Monitoring Trustee shall abide by the obligations of non-disclosure imposed in Article 28(2) of Council Regulation (EC) No 1/2003 with regard to any information acquired in their performance or from the Commission, even after the term of their mandate.

Duties and obligations of Samsung Electronics

27. By 1 December 2014, and within 30 days after the end of each quarter thereafter (*e.g.*, by April 30 with respect to the first quarter of every subsequent relevant year), Samsung Electronics Co., Ltd. shall submit to the Monitoring Trustee a written report setting forth in detail the manner and form in which the Commitments are complied with by Samsung Electronics. Samsung Electronics Co., Ltd. also commits to provide the Monitoring Trustee with a report on the implementation of the Commitments by 1 December in each subsequent year during the term of the Commitments. The contents of the reports shall comprise:
- a. whether Samsung Electronics has filed any claims seeking Injunctive Relief before any court or tribunal in the EEA on the basis of any Mobile SEPs relating to Mobile Devices and the details of such claims;
 - b. the identity of the Potential Licensees with which Samsung Electronics initiated negotiations under the Licensing Framework, when such negotiations were initiated and whether the negotiation is for a Cross-License or Unilateral License;
 - c. whether the Parties agreed an alternative procedure pursuant to Clause 1b of the Commitments, and if so, what the alternative procedure involves;
 - d. how the deadlines foreseen by the Licensing Framework have been set;
 - e. the outline of any agreement to submit to Third-Party Determination of FRAND Terms by means of arbitration or court determination (including which venue);
 - f. the terms agreed upon following negotiations, or established as a result of the Third Party Determination of FRAND Terms; and

g. any changes to Samsung Electronics' portfolio of Mobile SEPs, including purchases, sales and assignments of any Mobile SEPs.

28. The Monitoring Trustee may ask Samsung Electronics for explanations relating to matters covered by Clause 27 a) – g). Samsung Electronics may comply with any such informational request made by the Monitoring Trustee at its sole discretion. The Commission reserves the right to exercise its powers of investigation set out in Section V of Council Regulation (EC) No 1/2003 should Samsung Electronics decline such a request made by the Monitoring Trustee.

G. DEFINITIONS

"Annex A Invitation to Negotiate" is the document substantially in the form set out in Annex A, and which constitutes an integral part of the Commitments.

"Annex B Invitation to Negotiate" is the document substantially in the form set out in Annex B, and which constitutes an integral part of the Commitments.

"Cross-License" has the meaning set forth in Clause 1.

"Commencement Date" means the date Samsung Electronics receives its Annex A Invitation to Negotiate or Annex B Invitation to Negotiate, as the case may be, returned and signed by the Potential Licensee.

"Court " has the meaning set forth in Clause 10.

"Decision" means the decision adopted by the European Commission in Case COMP/C-3/39.939 pursuant to Article 9(1) of Council Regulation (EC) No 1/2003.

"EEA" means the territories of the Contracting Parties to the Agreement on the European Economic Area.

"**Effective Date**" means the date upon which Samsung Electronics receives formal notification of the Decision.

"**Essential**" has the meaning given in the relevant policies of the SSO by which the relevant Mobile Standard has been adopted. Should such a definition not be provided for in the relevant policies of the respective SSO, the definition of Essential has the meaning given in Section 15 (Definitions) of the ETSI Rules of Procedure, 30 November 2011.

"**ETSI**" means the European Telecommunications Standards Institute.

"**FRAND**" means fair, reasonable, and non-discriminatory.

"**FRAND Commitment**" means a commitment to an SSO to license one or more Mobile SEPs on FRAND terms (or reasonable and non-discriminatory (RAND) terms) pursuant to the policies of such SSO.

"**ICC**" means the International Chamber of Commerce, a private alternative dispute resolution provider, with headquarters at 38 cours Albert 1er, 75008 Paris, France.

"**IEEE**" means the Institute of Electrical and Electronics Engineers.

"**Imminent Default**" means the occurrence of any of the following events:

- a) a Potential Licensee passes a resolution for its winding up or a court of competent jurisdiction makes an order for Potential Licensee's winding up or dissolution;
- b) the making of an administration order in relation to a Potential Licensee or the appointment of a receiver over, or an encumbrancer taking possession of or selling, an asset of a Potential Licensee; or
- c) a Potential Licensee making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally.

"**Injunctive Relief**" means a ruling of any legal court or tribunal in the EEA that does or would prevent a party from making, using, selling, offering for sale, or importing in or into

the EEA any Mobile Device on which a Mobile Standard reads, based on alleged infringement of a Mobile SEP. This includes corrective measures ordered by a court or tribunal, such as the recall, the definitive removal from the channels of commerce and the destruction of any Mobile Device.

"Licensing Framework" has the meaning set forth in Clause 1. For the avoidance of doubt, the Licensing Framework includes the alternative procedure for determining FRAND terms mutually agreed by the Parties.

"Mandatory Negotiation Period" has the meaning set forth in Clause 1.a.

"Mobile Device" means a mobile computing device (end user product) which is either:

- a) a smartphone, defined as a wireless phone built on a mobile operating system, with advanced Internet browsing and application capabilities; or
- b) a tablet, defined as mobile computer built on a mobile operating system, which offers enhanced multimedia and touch screen functionality to the end-user.

For the avoidance of doubt, the definition of Mobile Device does not include any type of desktop, notebook, subnotebook, or laptop computers.

"Mobile SEP" means, for the purposes of these Commitments, a patent (including all existing and future members of its patent family in the EEA) granted in the EEA that is or may become, and remains, Essential to any Mobile Standard in at least one EEA Contracting Party and which has been declared as such to an SSO. For the avoidance of doubt, the definition of Mobile SEP includes such patents which are: (i) owned by or assigned to Samsung Electronics – or, as the case may be, the Potential Licensee – prior to the Effective Date and declared Essential to any Mobile Standard to an SSO after the Effective Date; and/or (ii) acquired by or assigned to Samsung Electronics – or, as the case may be, the Potential Licensee – after the Effective Date and declared Essential to any Mobile Standard to an SSO.

"Mobile Standard" means, for the purposes of these Commitments, any standard adopted by an SSO and implemented in one or more components incorporated in a Mobile Device, including, but not limited to:

- a) the second, third and fourth generation ETSI/3GPP mobile standards, including:
 - i. Global System for Mobile Communications (GSM), a second generation mobile cellular system (encompassing the developments of GSM technology through General Packet Radio System (GPRS) and Enhanced Data Rates for GSM

- Evolution (EDGE));
 - ii. Universal Mobile Telecommunications System (UMTS), a third generation mobile cellular system, which is a standard for mobile phone and data terminal wireless communication;
 - iii. Long Term Evolution (LTE), a fourth generation mobile cellular system, which is a standard for wireless communication for mobile phones and data terminals (including improvements of that standard); and
- b) 802.11 Wifi standards as adopted by IEEE (including improvements of any such standards).

"Party" and **"Parties"** have the meaning set forth in Clause 1.a.

"Potential Licensee" means any legal entity that Samsung Electronics believes requires a license to any Mobile SEP which Samsung Electronics owns or to which Samsung Electronics has the right to grant a license. For the purpose of a licence agreement covering a Cross-License, as set out in Clause 1, Potential-Licensee also means a parent directly or indirectly controlling such a legal entity, or any other legal entity directly or indirectly controlled by such a parent if they hold Mobile SEPs. For the purpose of Clause 3.f. Potential Licensee includes any legal entity that has previously concluded a Unilateral License or a Cross-License in the context of the Licensing Framework.

"Reciprocity" means "reciprocity" as defined in the FRAND Commitment or as defined by the SSO to which a FRAND Commitment regarding the Mobile SEP(s) has been made, unless mutually agreed otherwise by the Parties. If not defined in the FRAND Commitment or by the relevant SSO, Reciprocity means for the purposes of these Commitments making an offer to license Mobile SEPs on FRAND terms conditional on the other Party reciprocating in respect of its Mobile SEPs reading on the same Mobile Standard under terms and conditions consistent with the FRAND Commitments covering such patents. For the avoidance of doubt, an offer to license Mobile SEPs on FRAND terms requesting Reciprocity may not be made conditional on the other Party offering a license to the other Party's intellectual property rights that are not Mobile SEPs.

"SSO" means a standard setting organisation which produces and/or maintains standards or specifications under a defined process. The definition of SSO includes but is not limited to ETSI and IEEE.

"**Third Party**" means any undertaking other than Samsung Electronics Co., Ltd. and any legal entity directly or indirectly controlled by Samsung Electronics Co., Ltd. within the meaning of Council Regulation (EC) No 139/2004.²

"**Third-Party Determination of FRAND Terms**" has the meaning set forth in Clause 1.b.

"**Unilateral License**" has the meaning set forth in Clause 1.

"**UPC**" means Unified Patent Court as established by the Agreement on a Unified Patent Court.

For and on behalf of

Samsung Electronics

A handwritten signature in cursive script, reading "Jae Wan Chi", is written over a horizontal line.

Name: Jae Wan Chi

Title: Executive Vice President

Date: Feb 3, 2014

² Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24/1, 29 January 2004.

Annex A: Invitation to Negotiate

[Potential Licensee]

[Date]

Re: Annex A Invitation to Negotiate

Dear Sirs,

This letter is an Annex A Invitation to Negotiate, as defined in the commitments (the "**Commitments**") made binding by the decision of the European Commission (the "**Commission**") in Case No. COMP/C-3/39.939 (the "**Decision**"). This Annex A Invitation to Negotiate is sent pursuant to Clause I of the Commitments. Copies of the Commitments and the Decision are provided in the Appendix. Throughout this document [Potential Licensee] and Samsung Electronics (each a "**Party**") are collectively referred to as the "**Parties**". All other words and expressions defined in the Commitments have the same meaning when used in this letter.

This Annex A Invitation to Negotiate will bind the Parties to the Licensing Framework from the Commencement Date until the occurrence of any of the following events ("**Terminating Events**");

- a) FRAND terms for [a Unilateral License of Samsung Electronics' Mobile SEPs] [or:] [a Cross-License] between the Parties have been finally determined or agreed pursuant to the Licensing Framework; or
- b) the Commitments have been amended pursuant to Clauses 12 and 13 of the Commitments and such amendment removes the requirement for Samsung Electronics to sign an Annex A Invitation to Negotiate prior to filing a claim seeking Injunctive Relief.

For the avoidance of doubt, neither Party may unilaterally terminate this Annex A Invitation to Negotiate.

The Parties agree as follows:

1. Within two weeks of the Commencement Date, the Parties shall initiate all necessary steps to withdraw any requests for Injunctive Relief on the basis of any Mobile SEPs that they have pending against each other in the EEA and shall complete the

withdrawals of any such requests as soon as possible. From the Commencement Date until the occurrence of a Terminating Event, the Parties shall not enforce or file new requests for Injunctive Relief on the basis of any Mobile SEPs against each other in the EEA.

2. The Parties will negotiate FRAND terms during the Mandatory Negotiation Period, with a view to agreeing [a Unilateral License] [or;] [a Cross-License], provided that:
 - i. the Parties may, by mutual written agreement citing this Clause 2.i and Clause 1.a.i of the Commitments, specify an alternative procedure for determining FRAND terms during the Mandatory Negotiation Period; and
 - ii. in the case of a Unilateral License, Potential Licensee may, within thirty (30) days from the Commencement Date, reduce the Mandatory Negotiation Period to a minimum of six (6) months by communicating in writing to Samsung Electronics that it demands a reduction of the Mandatory Negotiation Period.
3. In the event that neither the FRAND terms for a Mobile SEPs license nor an alternative procedure for determining FRAND terms for a Mobile SEPs license has been agreed by the Parties during the Mandatory Negotiation Period, within sixty (60) days of the end of the Mandatory Negotiation Period, the Parties shall choose whether to submit the matter to arbitration or to court adjudication in order to determine the FRAND terms of [a Unilateral License] [or;] [a Cross-License], in accordance with Clauses 8 to 10 (inclusive) below. In the case of a Cross-License, the Third-Party Determination of FRAND Terms of Samsung Electronics' Mobile SEPs and [Potential Licensee]'s Mobile SEPs will be conducted within the same forum and proceedings. If the Parties within this sixty (60) day period mutually agree to submit the matter for arbitration of the FRAND terms, the Parties shall commence Third-Party Determination of FRAND Terms by way of arbitration, in accordance with the arbitration procedure set out in Clause 8 below. If the Parties within this sixty (60) day period mutually agree to submit the matter to court adjudication of the FRAND terms, the Parties shall commence Third-Party Determination of FRAND Terms by way of court adjudication, in accordance with the court adjudication procedure set out in Clauses 9 and 10 below.
4. If the Parties have failed to reach agreement on whether to submit the Third-Party Determination of FRAND Terms for arbitration or to court adjudication within this sixty (60) day period, the Parties shall commence Third-Party Determination of FRAND Terms by way of court adjudication, in accordance with Clauses 9 and 10.
5. The procedure and method for determining FRAND terms will be decided by the judge(s), in the case of court adjudication, or arbitrators, in the case of arbitration (subject to Clause 8 below in respect of arbitration and Clauses 9 and 10 below in respect of court adjudication).

6. Nothing herein shall restrict the ability of any Party from making or maintaining arguments regarding validity, essentiality and infringement of the other Party's Mobile SEPs during the Third-Party Determination of FRAND Terms. Nothing in this Annex A Invitation to Negotiate may be construed as altering the burden of proof on patent validity, infringement, and essentiality, which shall be governed by the relevant applicable law.
7. Nothing herein shall restrict the ability of any Party from challenging the validity, essentiality or infringement of the other Party's Mobile SEPs outside the context of the Third-Party Determination of FRAND Terms.

Arbitration Procedure:

8. The arbitration procedure shall be conducted as follows (unless the Parties mutually agree to follow a different arbitration procedure):
 - a. The dispute shall be finally settled under the rules of arbitration of the ICC, unless the Parties mutually agree that the arbitration tribunal will be the patent mediation and arbitration centre as established under Article 35(1) of the Agreement on a Unified Patent Court.
 - b. The first arbitral panel shall be made up of three (3) arbitrators, each with at least ten (10) years' relevant experience in the information and communications technology sector and/or in IP licensing. The president of the first arbitral panel shall be a qualified practising lawyer who has experience in the information and communications technology sector in either patent licensing or patent litigation. Legal qualification is not an absolute requirement for the other arbitrators. Each Party may select one arbitrator, and the president shall be selected by the two party-appointed arbitrators from a list of names nominated by the Parties, or failing agreement, the president shall be appointed by the arbitral tribunal.
 - c. The arbitration will be conducted in English. The arbitration will be governed by the laws of England and Wales.
 - d. The seat of the arbitration will be in an EEA jurisdiction in which national laws permit Parties to agree to make an arbitration decision subject to appeal to a second arbitral tribunal.
 - e. The arbitration will be conducted in strict confidence and the arbitral proceedings and decision shall be confidential. Each Party shall maintain the confidentiality of the arbitral decision and the confidential documents submitted in the course of the arbitration by the other Party, unless such documents are used in the proceedings for any appeal of the arbitration decision pursuant to Clause 8.f. below or disclosure is required by law or pursuant to an order by a court, tribunal,

or a governmental authority. A non-confidential version of the arbitral decision shall be published within 90 days following the issuance of such decision. The non-confidential version of the arbitral decision may disclose the methodology relied upon by the arbitral panel to arrive at specific FRAND terms, but shall in no event disclose specific FRAND terms.

- f. The first arbitral tribunal's decision shall be subject to a de novo appeal on issues of fact and law in accordance with the following procedure:
 - i. Either Party may appeal the first arbitral tribunal's decision to a second arbitral tribunal within thirty (30) days of notification of the decision to the Parties.
 - ii. Unless the Parties agree otherwise, the second arbitral panel shall be chosen in accordance with the procedure and requirements set out at Clause 8.b above, but no member of the first arbitral panel shall serve as a member of the second arbitral panel or otherwise be involved in the appeal in any capacity.
 - iii. The Parties can agree to limit the issues to be considered on appeal.
 - iv. Subject to Clause 8.f.iii above, the Parties agree expressly that the second arbitral tribunal shall have full authority to revisit the issues decided by the first arbitral tribunal, and that the first arbitral tribunal's decision shall be final and binding except to the extent to which issues therein are appealed within thirty (30) days. For the avoidance of doubt, any issues in the first arbitral tribunal's award that are not appealed within thirty (30) days shall be final and binding, and in any event, the second arbitral tribunal's decision shall be final and binding on the Parties.
 - v. The appeal shall be treated as a separate arbitration. The seat of the arbitration shall be in the same jurisdiction as the first arbitration.
- g. The arbitral panel shall take into account issues of validity, infringement, and essentiality raised by the Parties in making the Third-Party Determination of FRAND Terms. In doing so, the arbitral panel may employ case management methods if it finds it appropriate in light of the number of Mobile SEPs involved.
- h. Any procedural rules governing the arbitration procedure not set out in these Commitments will, at each instance, be decided by the arbitral panel, in accordance with the procedural rules of the relevant arbitral tribunal.

Court Adjudication:

9. The venue for the court adjudication procedure will be the Patents Court, High Court

of England and Wales (or any successor court), or the UPC (the "**Court**"). The court adjudication procedure shall be conducted as follows:

- a. both Parties agree to submit to the jurisdiction of the Court, and neither Party shall contest the jurisdiction of the Court, for purposes of the Third-Party Determination of FRAND Terms;
- b. the Parties will bring the dispute relating to FRAND terms before the Court through an action seeking a declaration of those terms by the Court;
- c. the Parties will jointly request the Court to determine FRAND terms;
- d. both Parties will undertake all necessary procedural steps stipulated by the Court to bring about a determination of FRAND terms by the Court;
- e. both Parties will be bound by the final outcome of that procedure. The final outcome of that procedure shall in any event not bind the parties outside the EEA unless the parties agree otherwise; and
- f. both Parties will request the Court to take into account issues of validity, infringement, and essentiality raised by the Parties in making the Third-Party Determination of FRAND Terms, and will agree to the Court employing case management methods if the Court finds it appropriate in light of the number of Mobile SEPs involved.

10. If the Court to which the Parties have jointly made the request for a Third-Party Determination of FRAND Terms decides that it will not issue a declaratory judgment determining FRAND terms, then the Parties shall commence Third-Party Determination of FRAND Terms by way of the arbitration procedure as set out in Clause 8.

* * *

11. [Potential Licensee] must indicate its agreement to comply with the Licensing Framework by signing and returning the enclosed copy of this letter to Samsung Electronics within sixty (60) days of receipt. If [Potential Licensee] fails to do so, Samsung Electronics will not be bound to comply with the Licensing Framework *vis-à-vis* [Potential Licensee] and will be relieved of all obligations under the Commitments with respect to [Potential Licensee]. In particular, Samsung Electronics may file a claim for Injunctive Relief against [Potential Licensee] before any court or tribunal in the EEA for infringement of Samsung Electronics' Mobile SEPs without so doing constituting a breach of the Commitments.

12. Samsung Electronics shall not make this Annex A Invitation to Negotiate conditional in any way going beyond the provisions of the Commitments and the Decision.

Likewise, if [Potential Licensee] conditions its acceptance of this Annex A Invitation to Negotiate, in any way going beyond the provisions of the Commitments and the Decision [Potential Licensee] will not be deemed validly to have accepted it, and Samsung Electronics will be relieved of all obligations under the Commitments *vis-à-vis* [Potential Licensee].

13. Samsung Electronics may terminate a Unilateral License or Cross-License concluded in the context of the Licensing Framework in the event [Potential Licensee] files a claim for Injunctive Relief before any court or tribunal in the EEA against Samsung Electronics based on alleged infringement of any of [Potential Licensee]'s Mobile SEPs, where Samsung Electronics has offered or offers to be bound by the same process as set out in the Licensing Framework applied to it as licensee of such Mobile SEPs by signing and delivering an Annex B Invitation to Negotiate. After terminating the Unilateral License or Cross-License, Samsung Electronics may, in particular, file a claim for Injunctive Relief before any court or tribunal in the EEA for infringement of Samsung Electronics' Mobile SEPs against [Potential Licensee], without so doing constituting a breach of the Commitments.
14. Any information exchanged pursuant to this Annex A Invitation to Negotiate shall be kept strictly confidential.
15. This Annex A Invitation to Negotiate and any non-contractual obligations or liabilities arising out of or in connection with it shall be governed by the laws of England and Wales. It shall be construed and applied in light of the Decision and the Commitments. The courts of England or, if the Parties jointly agree, the UPC will have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Annex A Invitation to Negotiate. Any action or proceeding in respect of any such dispute or claim shall be brought before the High Court of Justice in London, England or, as the case may be, the UPC.

Below, Samsung Electronics will list:

- (i) a reasonable number of representative Mobile SEPs and representative claims of those Mobile SEPs which Samsung Electronics believes are infringed by [Potential Licensee's] Mobile Devices;
- (ii) the Mobile Standards which Samsung Electronics believes are implemented in [Potential Licensee's] relevant Mobile Devices; and
- (iii) a proposed duration for [a Unilateral License of Samsung Electronics' Mobile SEPs] [or:] [a Cross-License], which will not be less than five years.

[]

[In case Samsung Electronics offers to determine FRAND terms for a Cross License to a Potential Licensee which has one or more Mobile SEPs:

Your signed copy of this Annex A Invitation to Negotiate must be accompanied by a list of:

- (i) a reasonable number of representative Mobile SEPs and representative claims of those Mobile SEPs which [Potential Licensee] believes are infringed by Samsung Electronics' Mobile Devices; and
- (ii) the Mobile Standards which [Potential Licensee] believes are implemented in Samsung Electronics' relevant Mobile Devices; and
- (iii) a proposed duration for a Cross-License, which will not be less than five years.]

[In case Samsung Electronics offers to determine FRAND terms for a Unilateral License to a Potential Licensee which has one or more Mobile SEPs:

If you seek Reciprocity, please check the box below the signature line.]

Yours faithfully

Name:

Title:

for and on behalf of **Samsung Electronics**

Samsung Electronics seeks Reciprocity.

Agreed and accepted by

Name:

Title:

for and on behalf of **[Potential Licensee]**

[Potential Licensee] seeks Reciprocity.]

Dated _____

Annex B: Invitation to Negotiate

[Company]

[Date]

Re: Annex B Invitation to Negotiate

Dear Sirs,

This letter is an Annex B Invitation to Negotiate, as defined in the commitments (the "**Commitments**") made binding by the decision of the European Commission (the "**Commission**") in Case No. COMP/C-3/39.939 (the "**Decision**"). This Annex B Invitation to Negotiate is sent pursuant to [Clause 2.c. or 3.f.] of the Commitments. Copies of the Commitments and the Decision are provided in the Appendix. Throughout this document [Company] and Samsung Electronics (each a "**Party**") are collectively referred to as the "**Parties**". All other words and expressions defined in the Commitments have the same meaning when used in this letter.

This Annex B Invitation to Negotiate will bind the Parties to the Licensing Framework from the Commencement Date until the occurrence of any of the following events ("**Terminating Events**");

- a) FRAND terms for a unilateral license of [Company]'s Mobile SEPs that are not covered by Reciprocity between the Parties have been finally determined or agreed pursuant to the Licensing Framework; or
- b) the Commitments have been amended pursuant to Clauses 12 and 13 of the Commitments and such amendment removes the requirement for Samsung Electronics to sign an Annex B Invitation to Negotiate prior to filing a claim seeking Injunctive Relief.

For the avoidance of doubt, neither Party may unilaterally terminate this Annex B Invitation to Negotiate.

The Parties agree as follows:

1. Within two weeks of the Commencement Date, the Parties shall initiate all necessary steps to withdraw any requests for Injunctive Relief on the basis of any Mobile SEPs that they have pending against each other in the EEA and shall complete the

withdrawals of any such requests as soon as possible. From the Commencement Date until the occurrence of a Terminating Event, the Parties shall not enforce or file new requests for Injunctive Relief on the basis of any Mobile SEPs against each other in the EEA.

2. The Parties will negotiate FRAND terms during the Mandatory Negotiation Period, with a view to agreeing a unilateral license, provided that:
 - i. the Parties may, by mutual written agreement citing this Clause 2.i and Clause 1.a.i of the Commitments, specify an alternative procedure for determining FRAND terms during the Mandatory Negotiation Period; and
 - ii. Samsung Electronics may, within thirty (30) days from the Commencement Date, reduce the Mandatory Negotiation Period to a minimum of six (6) months by communicating in writing to [Company] that it demands a reduction of the Mandatory Negotiation Period.
3. In the event that neither the FRAND terms for a Mobile SEPs license nor an alternative procedure for determining FRAND terms for a Mobile SEPs license has been agreed by the Parties during the Mandatory Negotiation Period, within sixty (60) days of the end of the Mandatory Negotiation Period, the Parties shall choose whether to submit the matter to arbitration or to court adjudication in order to determine the FRAND terms of a unilateral license, in accordance with Clauses 9 to 11 (inclusive) below.
4. If the Parties within this sixty (60) day period mutually agree to submit the matter for arbitration of the FRAND terms, the Parties shall commence Third-Party Determination of FRAND Terms by way of arbitration, in accordance with the arbitration procedure set out in Clause 9 below. If the Parties within this sixty (60) day period mutually agree to submit the matter to court adjudication of the FRAND terms, the Parties shall commence Third-Party Determination of FRAND Terms by way of court adjudication, in accordance with the court adjudication procedure set out in Clauses 10 and 11 below.
5. If the Parties have failed to reach agreement on whether to submit the Third-Party Determination of FRAND Terms for arbitration or to court adjudication within this sixty (60) day period, the Parties shall commence Third-Party Determination of FRAND Terms by way of court adjudication, in accordance with Clauses 10 and 11.
6. The procedure and method for determining FRAND terms will be decided by the judge(s), in the case of court adjudication, or arbitrators, in the case of arbitration (subject to Clause 9 below in respect of arbitration and Clauses 10 and 11 below in respect of court adjudication).
7. Nothing herein shall restrict the ability of any Party from making or maintaining

arguments regarding validity, essentiality and infringement of the other Party's Mobile SEPs during the Third-Party Determination of FRAND Terms. Nothing in this Annex B Invitation to Negotiate may be construed as altering the burden of proof on patent validity, infringement, and essentiality, which shall be governed by the relevant applicable law.

8. Nothing herein shall restrict the ability of any Party from challenging the validity, essentiality or infringement of the other Party's Mobile SEPs outside the context of the Third-Party Determination of FRAND Terms.

Arbitration Procedure:

9. The arbitration procedure shall be conducted as follows (unless the Parties mutually agree to follow a different arbitration procedure):
 - a. The dispute shall be finally settled under the rules of arbitration of the ICC, unless the Parties mutually agree that the arbitration tribunal will be the patent mediation and arbitration centre as established under Article 35(1) of the Agreement on a Unified Patent Court.
 - b. The first arbitral panel shall be made up of three (3) arbitrators, each with at least ten (10) years' relevant experience in the information and communications technology sector and/or in IP licensing. The president of the first arbitral panel shall be a qualified practising lawyer who has experience in the information and communications technology sector in either patent licensing or patent litigation. Legal qualification is not an absolute requirement for the other arbitrators. Each Party may select one arbitrator, and the president shall be selected by the two party-appointed arbitrators from a list of names nominated by the Parties, or failing agreement, the president shall be appointed by the arbitral tribunal.
 - c. The arbitration will be conducted in English. The arbitration will be governed by the laws of England and Wales.
 - d. The seat of the arbitration will be in an EEA jurisdiction in which national laws permit Parties to agree to make an arbitration decision subject to appeal to a second arbitral tribunal.
 - e. The arbitration will be conducted in strict confidence and the arbitral proceedings and decision shall be confidential. Each Party shall maintain the confidentiality of the arbitral decision and the confidential documents submitted in the course of the arbitration by the other Party, unless such documents are used in the proceedings for any appeal of the arbitration decision pursuant to Clause 9.f. below or disclosure is required by law or pursuant to an order by a court, tribunal, or a governmental authority. A non-confidential version of the arbitral decision

shall be published within 90 days following the issuance of such decision. The non-confidential version of the arbitral decision may disclose the methodology relied upon by the arbitral panel to arrive at specific FRAND terms, but shall in no event disclose specific FRAND terms.

- f. The first arbitral tribunal's decision shall be subject to a de novo appeal on issues of fact and law in accordance with the following procedure:
 - i. Either Party may appeal the first arbitral tribunal's decision to a second arbitral tribunal within thirty (30) days of notification of the decision to the Parties.
 - ii. Unless the Parties agree otherwise, the second arbitral panel shall be chosen in accordance with the procedure and requirements set out at Clause 9.b above, but no member of the first arbitral panel shall serve as a member of the second arbitral panel or otherwise be involved in the appeal in any capacity.
 - iii. The Parties can agree to limit the issues to be considered on appeal.
 - iv. Subject to Clause 9.f.iii above, the Parties agree expressly that the second arbitral tribunal shall have full authority to revisit the issues decided by the first arbitral tribunal, and that the first arbitral tribunal's decision shall be final and binding except to the extent to which issues therein are appealed within thirty (30) days. For the avoidance of doubt, any issues in the first arbitral tribunal's award that are not appealed within thirty (30) days shall be final and binding, and in any event, the second arbitral tribunal's decision shall be final and binding on the Parties.
 - v. The appeal shall be treated as a separate arbitration. The seat of the arbitration shall be in the same jurisdiction as the first arbitration.
- g. The arbitral panel shall take into account issues of validity, infringement, and essentiality raised by the Parties in making the Third-Party Determination of FRAND Terms. In doing so, the arbitral panel may employ case management methods if it finds it appropriate in light of the number of Mobile SEPs involved.
- h. Any procedural rules governing the arbitration procedure not set out in these Commitments will, at each instance, be decided by the arbitral panel, in accordance with the procedural rules of the relevant arbitral tribunal.

Court Adjudication:

- 10. The venue for the court adjudication procedure will be the Patents Court, High Court of England and Wales (or any successor court), or the UPC (the "**Court**"). The court

adjudication procedure shall be conducted as follows:

- a. both Parties agree to submit to the jurisdiction of the Court, and neither Party shall contest the jurisdiction of the Court, for purposes of the Third-Party Determination of FRAND Terms;
 - b. the Parties will bring the dispute relating to FRAND terms before the Court through an action seeking a declaration of those terms by the Court;
 - c. the Parties will jointly request the Court to determine FRAND terms;
 - d. both Parties will undertake all necessary procedural steps stipulated by the Court to bring about a determination of FRAND terms by the Court;
 - e. both Parties will be bound by the final outcome of that procedure. The final outcome of that procedure shall in any event not bind the parties outside the EEA unless the parties agree otherwise; and
 - f. both Parties will request the Court to take into account issues of validity, infringement, and essentiality raised by the Parties in making the Third-Party Determination of FRAND Terms, and will agree to the Court employing case management methods if the Court finds it appropriate in light of the number of Mobile SEPs involved.
11. If the Court to which the Parties have jointly made the request for a Third-Party Determination of FRAND Terms decides that it will not issue a declaratory judgment determining FRAND terms, then the Parties shall commence Third-Party Determination of FRAND Terms by way of the arbitration procedure as set out in Clause 9.

* * *

12. [Company] must indicate its agreement to comply with the Licensing Framework by signing and returning the enclosed copy of this letter to Samsung Electronics within sixty (60) days of receipt. If [Company] fails to do so, Samsung Electronics will not be bound to comply with the Licensing Framework *vis-à-vis* [Company] and will be relieved of all obligations under the Commitments with respect to [Company]. In particular, Samsung Electronics may file a claim for Injunctive Relief against [Company] before any court or tribunal in the EEA for infringement of Samsung Electronics' Mobile SEPs without so doing constituting a breach of the Commitments.
13. Samsung Electronics shall not make this Annex B Invitation to Negotiate conditional in any way going beyond the provisions of the Commitments and the Decision. Likewise, if [Company] conditions its acceptance of this Annex B Invitation to

Negotiate, in any way going beyond the provisions of the Commitments and the Decision [Company] will not be deemed validly to have accepted it, and Samsung Electronics will be relieved of all obligations under the Commitments *vis-à-vis* [Company].

14. Samsung Electronics may terminate a Unilateral License or Cross-License concluded in the context of the Licensing Framework in the event [Company] files a claim for Injunctive Relief before any court or tribunal in the EEA against Samsung Electronics based on alleged infringement of any of [Company]'s Mobile SEPs, where Samsung Electronics has offered or offers to be bound by the same process as set out in the Licensing Framework applied to it as licensee of such Mobile SEPs by signing and delivering an Annex B Invitation to Negotiate. After terminating the Unilateral License or Cross-License, Samsung Electronics may, in particular, file a claim for Injunctive Relief before any court or tribunal in the EEA for infringement of Samsung Electronics' Mobile SEPs against [Company], without so doing constituting a breach of the Commitments.

Any information exchanged pursuant to this Annex B Invitation to Negotiate shall be kept strictly confidential.

15. This Annex B Invitation to Negotiate and any non-contractual obligations or liabilities arising out of or in connection with it shall be governed by the laws of England and Wales. It shall be construed and applied in light of the Decision and the Commitments. The courts of England or, if the Parties jointly agree, the UPC will have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Annex B Invitation to Negotiate. Any action or proceeding in respect of any such dispute or claim shall be brought before the High Court of Justice in London, England or, as the case may be, the UPC.

Your signed copy of this Annex B Invitation to Negotiate must be accompanied by a list of:

- (i) a reasonable number of representative Mobile SEPs that are not covered by Reciprocity between the Parties and representative claims of those Mobile SEPs which [Company] believes are infringed by Samsung Electronics' Mobile Devices; and
- (ii) the Mobile Standards which [Company] believes are implemented in Samsung Electronics' relevant Mobile Devices; and
- (iii) a proposed duration for a unilateral license, which will not be less than five years.

Yours faithfully

Name:

Title:

for and on behalf of **Samsung Electronics**

Agreed and accepted by

Name:

Title:

for and on behalf of **[Company]**

Dated _____