**Samsung KNOX SDK Evaluation License Agreement**

**This Samsung KNOX SDK Evaluation License Agreement** (hereafter referred to as the “Agreement”) is made and is entered into on April 16, 2013 (“Effective Date”) between **Samsung Electronics Co.,Ltd.**, a Korea corporation with a principal place of business at 416 Maetan 3-dong, Yeongtong-gu Suwon-si, Gyeonggi-do 443-742, (“SAMSUNG”), and **NQ Mobile Inc.**, a Cayman corporation with a principal place of business at Bldg. 4, 11 Heping Li East St., Dongcheng District, Beijing, P.R. China, ( “LICENSEE” ). SAMSUNG and LICENSEE may be referred to individually as a “Party”, and collectively as the “Parties”.

# DEFINITIONS

## **“Authorized Site(s)”** means the LICENSEE site(s) owned or controlled by LICENSEE set forth in Exhibit B, where LICENSEE is authorized to load and maintain the Deliverables and use the Licensed Technology solely for the Purpose.

## **“Confidential Information”** means: (i) the Licensed Technology, information, data, know-how (in whatever form or format) and documentation related to the Licensed Technology, and all Derivative Works of any of the foregoing; (ii) any information designated in writing by either Party as confidential and any information which if disclosed orally, is identified as confidential at the time of disclosure and is summarized in writing and sent to the recipient within thirty (30) days after its oral disclosure; and (iii) the terms and conditions of this Agreement.

## **“Deliverables”** means the software, hardware and documentation identified in Exhibit A, including any updates and bug fixes.

## **“Derivative Work”** means derivatives of a party’s contribution to the Deliverables hereunder, which term shall include: (i) for copyrightable or copyrighted material, any translation, abridgement, revision or other form in which an existing work may be recast, transformed or adapted; (ii) for work protected by topography or mask right, any translation, abridgement, revision or other form in which an existing work may be recast, transformed or adapted; (iii) for patentable or patented material, any improvement; and (iv) for material protected by trade secret, any new material derived form or employing such existing trade secret.

## **“Intellectual Property”** means all intellectual property, including, but not limited to, trade secrets, databases, know how, inventions (whether or not patentable), improvements, discoveries, conceptions, ideas, techniques, designs, products, developments, documentation, Licensed Technology, methods, drawings, diagrams, models, software tools and software programs (including but not limited to object code), data, data analysis, data interpretation, written reports, and all rights therein including copyright, trademarks, trade names, moral rights, patent rights, database rights, rights in designs and all registrations and applications therefore, and all continuations, continuations in part, divisional applications, and renewals of any of the foregoing, in any part of the world.

## **“Licensed Technology”** means the Samsung KNOX SDK set forth in Exhibit A, including all modifications, enhancements, updates and bug fixes thereto, in whole or in part, and all Intellectual Property rights relating to any of the foregoing.

# LICENSE GRANT/Restrictions:

## **License.** Subject to the terms and conditions of this Agreement, SAMSUNG grants to LICENSEE a non-exclusive, non-transferable, royalty-free, revocable, non-assignable, and limited term license to use the Licensed Technology at the Authorized Sites solely during the evaluation period identified in Exhibit A (the “Evaluation Period”) and solely for the purpose (the “Purpose”) of internally evaluating the Licensed Technology for potential use in a certain product LICENSEE and SAMSUNG agree on and in connection with Samsung Knox. For the avoidance of doubt, LICENSEE shall have no right to make any enhancement, modification or Derivative Work thereof, or to instantiate any portion of the Licensed Technology or any enhancement, modification or Derivative Work thereof, without prior obtaining a written approval from SAMSUNG.

## **Restrictions**. LICENSEE agrees to restrict access to the Licensed Technology solely to those of its employees or consultants who have a need to use the Licensed Technology in performing LICENSEE’s duties and exercising LICENSEE’s rights in furtherance of the Purpose, and the Licensed Technology may not be downloaded except at the Authorized Site(s). LICENSEE may not reverse engineer, decompile or disassemble any portion of the Licensed Technology, nor shall LICENSEE modify, translate or create any Derivative Work of the Licensed Technology or any portion thereof. LICENSEE shall not distribute, transfer, assign, or otherwise disclose, to any third party, the Licensed Technology, any Derivative Work, enhancement, modification, or any other data created or derived from the Licensed Technology. No right is granted to LICENSEE to sublicense any of the rights granted to LICENSEE under this Agreement. LICENSEE shall not remove or alter any copyright, trademark, trade name or other proprietary notices, legends, symbols or labels appearing on or in copies of the Licensed Technology and all Derivative Works of any of the foregoing.

## **No Implied License**. **EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT, NOTHING HEREIN SHALL BE CONSTRUED TO GRANT EITHER PARTY ANY LICENSE, BY IMPLICATION, ESTOPPEL, OR OTHERWISE, TO ANY INTELLECTUAL PROPERTY OF THE OTHER.**

# CONFIDENTIAL INFORMATION

## **Duty to Protect.** For the duration of this Agreement and five (5) years after its termination (the “Confidentiality Period”), SAMSUNG and LICENSEE each agrees that it shall not disclose the Confidential Information of the other to any third party nor to use the Confidential Information of the other for any purpose except the Purpose. The Receiving Party shall protect the Confidential Information of the Disclosing Party using the same standard of care as it uses to safeguard its own confidential information of a like nature from unauthorized disclosure or dissemination, and in no event less than a reasonable degree of care.

## **Duty to Designate as Confidential.** The disclosing Party shall use reasonable efforts to: (i) at the time of disclosure, designate as “Confidential” or “Proprietary” any information in tangible form that contains any Confidential Information of such Party; and (ii) within a reasonable time after disclosure, summarize in a writing delivered to the receiving party any information that is disclosed orally or in a visual or other intangible Notwithstanding anything to the contrary, the Confidential Information identified in Section 1.2(i) (i.e., the Licensed Technology, information, data, know-how (in whatever form or format) and all Derivative Works of any of the foregoing) shall be the Confidential Information of SAMSUNG and shall not require any designation as “Confidential” or “Proprietary.”

## **Exclusions.** Confidential Information shall not include any information to the extent it (i) is or becomes a part of the public domain through no breach of this Agreement or act or omission on the part of the Receiving Party, (ii) is received by the Receiving Party in good faith from a third party, lawfully in possession thereof and having no obligation of confidentiality with respect thereto, (iii) is known to the Receiving Party, without any obligation of confidentiality, prior to its first receipt from the Disclosing Party as established by documentary evidence in existence at the time the Receiving Party received it; or (iv) is independently developed by or on behalf of the Receiving Party, by those who have not had either direct or indirect access to any of the Disclosing Party’s Confidential Information, as evidenced by proper business records.

## **Ownership; Return.** All Confidential Information of a Party shall remain the exclusive property of such Party or its licensors. Upon termination of this Agreement, each Party receiving such Confidential Information agrees to return or destroy all such Confidential Information upon the written request of the other Party. Each Party agrees to notify the other Party if it becomes aware of any use of the Confidential Information that is not authorized by this Agreement.

## **Remedies.** Each Party acknowledges that, in the event of a breach of this Agreement by either Party or any of its officers, directors, agents, or employees, the other Party may suffer irreparable harm that may not be fully remedied by monetary damages, therefore agrees that the other Party shall have the right to seek specific performance, injunctive relief, or similar equitable relief. The rights of each Party under this Section 3.5 shall not in any way be construed to limit or restrict its rights to seek or obtain other damages or relief available under this Agreement or applicable law.

# OWNERSHIP OF LICENSED TECHNOLOGY:

## **EACH PARTY EXPRESSLY AGREES AND SHALL NOT TAKE ANY ACTION IN CONTRADICTION THAT SAMSUNG RETAINS ALL RIGHT, TITLE AND INTEREST TO THE LICENSED TECHNOLOGY. EXCEPT AS EXPRESSLY LICENSED UNDER THIS AGREEMENT, NO RIGHT, INTEREST OR OWNERSHIP OF SAMSUNG’ INTELLECTUAL PROPERTY RIGHTS IN THE LICENSED TECHNOLOGY IS, BY IMPLICATION OR OTHERWISE, IN ANY MANNER TRANSFERRED, LICENSED, LEASED OR PERMITTED FOR DISCLOSURE, USE OR EXPLOITATION FOR ANY PURPOSE.**

# WARRANTY AND LIMITATIONS OF LIABILITY

## SAMSUNG provides the Licensed Technology to LICENSEE “as-is” and without any warranty whatsoever.

## **Warranty Disclaimer. THE LICENSED TECHNOLOGY AND ALL ACCOMPANYING MATERIALS ARE PROVIDED "AS IS" AND “WITH ALL FAULTS,” WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SAMSUNG HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED AND STATUTORY, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANT­ABILITY AND FITNESS FOR A PARTICULAR PURPOSE (REGARDLESS OF WHETHER SAMSUNG KNOWS OF SUCH PURPOSE) AND AGAINST INFRINGEMENT.**

## Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SAMSUNG BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES) ARISING OUT OF THE USE OF OR INABILITY TO USE THE LICENSED TECHNOLOGY, EVEN IF SAMSUNG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

# Term/effect of termination.

# The term of this Agreement shall be limited to the Evaluation Period defined in Exhibit A. SAMSUNG may terminate this Agreement with or without cause in its sole and absolute discretion.

# Upon expiration or earlier termination of this Agreement, all rights granted to LICENSEE shall immediately terminate, and LICENSEE shall return or destroy all copies of the Licensed Technology and Derivative Works thereof. The following sections shall survive any expiration or termination of this Agreement: 3 (Confidentiality), 4 (Ownership of Licensed Technology), 5 (Warranty), 6.2, and 7 (General).

# general.

# Assignment. Neither this agreement nor any rights, obligations, or licenses granted hereunder may be assigned, transferred or delegated, by LICENSEE without the prior written consent of SAMSUNG.

# Entire Agreement. This Agreement and its Exhibits constitute the entire agreement between SAMSUNG and LICENSEE with respect to the rights and obligations of the Parties with respect to its subject matter, and supersedes and terminates any prior or contemporaneous agreements or understandings relating to such subject matter. There are no surviving prior or contemporaneous representations, warranties, or agreements between the Parties. In the event any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable because it is invalid or in conflict with any law of any relevant jurisdiction, the validity of the remaining provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular provisions held to be unenforceable, unless such construction would materially alter the meaning of this Agreement.

# Governing Law/Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the Republic of Korea, without regard to conflicts of laws provision thereof. Any and all controversies or claims of any nature arising out of or relating to this Agreement or the breach, termination or validity thereof, whether based on contract, tort, statute, fraud, misrepresentation or any other legal or equitable theory (the "Claim") shall be resolved solely and exclusively by arbitration to be held in Seoul, the Republic of Korea, and conducted in English under the Rules of Arbitration of the International Chamber of Commerce; provided, however, that each party may file any action necessary to enforce its or its affiliates’ intellectual property rights in any court of competent jurisdiction, including but not limited to equitable relief. The arbitral award shall be final and binding on the parties. Except to the extent entry of judgment and any subsequent enforcement may require disclosure, all matters relating to the arbitration, including the award, shall be held in confidence.

# Export Requirements. LICENSEE may not export the Licensed Technology outside of its country where Authorized Site is located without SAMSUNG’ express written consent. The Licensed Technology and all related technical information or materials may be subject to export controls under Korean, U.S., or any relevant Government export regulations, and LICENSEE shall comply with all such regulations.

# Notice. Any notice by a party under this Agreement shall be in writing in English and personally delivered, delivered by facsimile, or sent via reputable overnight courier or certified mail, first-class postage pre-paid and return receipt requested, to the addresses and facsimile numbers provided in Exhibit B.

# Publicity; Press Releases. No press release, advertising, sales literature, or other publicity or statements relating to the existence of this Agreement or the relationship between the Parties created by this Agreement shall be made by either Party without the prior written approval of the other Party, except for: (a) restatements of previously-approved statements; (b) disclosures required by applicable law or regulation; and (c) disclosures to either Party’s attorneys or accountants.

# Headings. The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such section or in any way affect the Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and effective, by their representatives thereunto duly authorized, as of the Effective Date first set forth above.

|  |  |
| --- | --- |
| **SAMSUNG** | **LICENSEE** |

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| --- | --- |
| Signature | Signature |
| Printed Name: | Printed Name**: 唐铁兵** |
| Title: | Title: Deputy General Manager |
| Date: | Date: |

**Exhibit A**

1. **EVALUATION PERIOD**.

This license is granted 180 days from the Effective Date.

1. **DELIVERABLES.**

"Samsung KNOX SDK", which includes the APIs, applications, documentation, data, files, libraries, materials, IDE (Integrated Development Environment), sample code, software (source code and object code), simulators and tools provided or made available to LICENSEE by SAMSUNG pursuant to this Agreement. For the purpose of clarity, Samsung KNOX SDK is SAMSUNG’s proprietary information and software is considered neither as open source nor in the public domain.

**Exhibit B**

**LICENSEE’S AUTHORIZED SITE(S).**

LICENSEE’s “Authorized Site(s)” is/are as follows:

NQ Mobile, Bldg. 4, 11 Heping Li East St., Dongcheng District, Beijing, P.R. China

NQ Mobile, Bldg. 5, 11 Heping Li East St., Dongcheng District, Beijing, P.R. China

# NOTICE:

If to LICENSEE, then:

Company: NQ Mobile Inc.

Attn: Fang Qi

Address: NQ Mobile, Bldg. 4, 11 Heping Li East St., Dongcheng District, Beijing, P.R. China

Email:fangqi@nq.com

Tel: +86 10 85655555 ext 2329

Fax:+86 10 85655518

If to SAMSUNG, then:

Company: Samsung Electronics Co., Ltd

Attn: Lee Kwang-Hyung

Address: 129, Samsung-ro youngtong-gu, Suwon-si, Gyeonggi-do, Korea

Email:k21.lee@samsung.com

Tel: +82-31-301-7311

Fax:+82-279-7623

All notices shall be deemed effective on the date (“Notice Date”) of personal delivery, upon confirmation of a facsimile transmission, one (1) day after deposit with an overnight courier, or five (5) days after deposit in the mail.