

Hosting IT Services Terms and Conditions

1. How these Terms and Conditions work

- 1.1 These Terms and Conditions incorporate the Master Services Terms and Conditions (the "**MSTC**") which are available on our website at www.outsourcing.co.uk and apply to the Hosting Services you have asked us to provide. Please see clause 1 of the MSTC for details of how the Order Form, MSTC and these Terms and Conditions work together to govern our provision of the Hosting Services to you.
- 1.2 Where an Order Form refers to the provision of Scribe and/or Storesafe services in connection with Hosting Services, you acknowledge and agree that our Scribe Terms and Conditions and Storesafe Terms and Conditions respectively apply to those services.
- 1.3 The defined terms below apply in these Terms and Conditions.

"Ensim"	Ensim Corporation, 3945 Freedom Circle Suite 1100, Santa Clara, CA, USA, 95054;
"Ensim Software"	Software in which Ensim own the Intellectual Property Rights;
"HMC Platform"	hosted messaging and collaboration infrastructure;
"Hosting Services"	means any Hosted Business Email, Hosted Email Archival, Hosted Enterprise Blackberry TM, Hosted SharePoint, Hosted CRM services, offerings and any other hosting services to be provided by us as described in an Order Form (and " Hosting Service " means any one of the Hosting Services);
"Licence Terms"	in respect of Microsoft Software, those licensing conditions and restrictions set out in Schedule 1, in respect of Ensim Software those licensing conditions and restrictions set out in Schedule 2, and in respect of RIM Software, those licensing conditions and restrictions set out in Schedule 3 as changed from time to time by the relevant Licensor and communicated to you by us posting the changed terms on the Outsourcery Website;
"Microsoft"	Microsoft Ireland Operations Limited of 70 Sir Rogerson's Quay, Dublin 2, Ireland;
"Microsoft Software"	Software in which Microsoft own the Intellectual Property Rights;
"RIM"	Research in Motion Limited of 295 Phillip Street, Warterloo, Ontario, N2L 2W8, Canada;
"RIM Software"	Software in which RIM own the Intellectual Property Rights;
"Service Credit"	has the meaning given to it in clause 3.1;

2. What we will do

- 2.1 We will provide the Hosting Services in accordance with these Terms and Conditions.

3. What happens if our Hosting Services are unavailable

- 3.1 If the Hosting Services are unavailable for reasons other than due to:

- (a) a Customer Failure;
- (b) Scheduled Maintenance outside Business Hours or where we have given you 7 days notice; or
- (c) a fault affecting any telecommunications service connecting the edge device(s) of your information technology network (whether comprising Your Equipment or otherwise) to the edge device(s) of the information technology network from which we provide Hosting Services (whether via the public switched telecommunications network or otherwise and including any Enterprise Connectivity Services and/or Business Connectivity Services);

we will credit to your account an amount calculated in accordance with this clause 3 ("**Service Credit**").

- 3.2 Subject to clause 14.1 of the MSTC, the Service Credit will be your only remedy in respect of any unavailability of the Hosting Services.
- 3.3 For each whole period of 30 minutes in which the Hosting Services are unavailable, you will receive a Service Credit of 10% of the Charges you have paid for the month in which the unavailability occurred (calculated on a pro-rate basis as appropriate), up to a maximum total of 100% of the Charges for that month.

4. Specific Licence Terms which apply for different Hosting Services

- 4.1 All Software made available for your use pursuant to this Order is provided subject to all Charges being paid and the Licence Terms as detailed in the table below. You must observe and comply and you must ensure that all End-Users observe and comply with these Licence Terms, including any restrictions on the use, copying, decompilation and transfer of the Software.

Service	Specific Terms Applicable
If you are taking a Microsoft Hosting Service	Those at Schedule 1
If you are taking a Hosting Service which is on the HMC Platform	Those at Schedule 2
If you are taking a RIM Hosting Service	Those at Schedule 3

5. Liability

5.1 We will be liable for loss of or damage to your data where:

- (a) we have failed to carry out scheduled back-ups (once every 24 hours); or
- (b) we have lost or damaged back-up tapes or other media upon which your data is stored; or
- (c) we have otherwise failed to comply with the Security Policy to the extent that the same is relevant to the provision of the Services;

provided always that you have:

- (i) taken all reasonable measures that a prudent and responsible data controller would take to ensure the safety, security and integrity of its data, and to mitigate the risk or any loss of or damage to such data; and
- (ii) notified us of such loss or damage within twenty four hours of such event occurring.

6. Audit

6.1 If an audit conducted in accordance with clause 22.1 of the MSTC uncovers a payment shortage in respect of Microsoft Software you must pay us 15% per unit price for each Microsoft Software product which was not paid for. In such circumstances we will presume that such unreported use of the Microsoft Software began upon commencement of this Order unless you can reasonably demonstrate a different scope and duration of usage.

7. General

7.1 Clauses 3.2, 5 and 6 will continue to be in force even if this Order has terminated.

Schedule 1

TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SOFTWARE

This document governs the use of Microsoft software, which may include associated media, printed materials, and "online" or electronic documentation (individually and collectively, "Licensed Products") provided by Outsourcery Limited (hereinafter referred to as "**Company**"). Company does not own the Licensed Products and the use thereof is subject to certain rights and limitations of which Company must inform you. Your right to use the Licensed Products is subject to the terms of your agreement with Company, and to your understanding of, compliance with, and consent to the following terms and conditions, which Company does not have authority to vary, alter, or amend.

1 DEFINITIONS

"**Client Software**" means software that allows a Device to access or utilize the services or functionality provided by the Server Software

"**Device**" means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, "smart phone," server or other electronic device.

"**Server Software**" means software that provides services or functionality on a computer acting as a server.

"**Software Documentation**" means any end user document included with server software.

"**Redistribution Software**" means the software described in Paragraph 4("Use of Redistribution Software") below.

2 OWNERSHIP OF LICENSED PRODUCTS.

The Licensed Products are licensed to Company from an affiliate of the Microsoft Corporation (collectively "Microsoft"). All title and intellectual property rights in and to the Licensed Products (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and "applets" incorporated into the Licensed Products) are owned by Microsoft or its suppliers. The Licensed Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the Licensed Products does not transfer any ownership of the Licensed Products or any intellectual property rights to you.

3 USE OF CLIENT SOFTWARE.

You may use the Client Software installed on your Devices by Company only in accordance with the instructions, and only in connection with the services, provided to you by Company. The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User License Agreement that may be presented in electronic form during your use of the Client Software.

4 USE OF REDISTRIBUTION SOFTWARE.

In connection with the services provided to you by Company, you may have access to certain "sample", "redistributable" and/or software development ("SDK") software code and tools (individually and collectively "Redistribution Software").

YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS ("SPUR") APPLICABLE TO COMPANY, WHICH TERMS MUST BE PROVIDED TO YOU BY COMPANY. Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by Company.

5 COPIES. You may not make any copies of the Licensed Products; provided, however, that you may (a) make one

copy of Client Software on your Device as expressly authorized by Company; and (b) you may make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of your agreement with Company, upon notice from Company or upon transfer of your Device to another person or entity, whichever occurs first. You may not copy any printed materials accompanying the Licensed Products.

6 LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION AND DISASSEMBLY.

You may not reverse engineer, decompile, or disassemble the Licensed Products, except and only to the extent that applicable law, notwithstanding this limitation, expressly permits such activity.

7 NO RENTAL.

You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Licensed Products to any third party, and may not permit any third party to have access to and/or use the functionality of the Licensed Products except for the sole purpose of accessing the functionality of the Licensed Products in the form of software services in accordance with the terms of this agreement and any agreement between you and Company.

8 TERMINATION.

Without prejudice to any other rights, Company may terminate your rights to use the Licensed Products if you fail to comply with these terms and conditions. In the event of termination or cancellation of your agreement with Company or Company's agreement with Microsoft under which the Licensed Products are licensed, you must stop using and/or accessing the Licensed Products, and destroy all copies of the Licensed Products and all of its component parts.

9 NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT.

ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY COMPANY AND NOT BY MICROSOFT, ITS AFFILIATES OR SUBSIDIARIES.

10 PRODUCT SUPPORT.

Any support for the Licensed Products is provided to you by Company and is not provided by Microsoft, its affiliates or subsidiaries.

11 NOT FAULT TOLERANT. THE LICENSED PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND ARE NOT DESIGNED,

MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE LICENSED PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

12 EXPORT RESTRICTIONS.

The Licensed Products are of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and U.S. laws that apply to the Licensed Products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by the U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.

13 LIABILITY FOR BREACH.

In addition to any liability you may have to Company, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.

Schedule 2

ENSIM UNIFY ELECTRONIC AGREEMENT

TERMS OF USE

IMPORTANT: Please Read Carefully

You are granted a personal, non-transferable, nonexclusive license to use the software solely for your internal business purposes. You may not (a) modify, translate, decompile, disassemble, reverse engineer or otherwise attempt to derive source code or create derivative works based upon the software, (b) sell, lease, rent, license, sublicense or otherwise distribute the software or (c) remove, alter or destroy any proprietary, trademark or copyright markings or notices used in conjunction with, placed upon or contained within the software or any related documentation. You will comply with the terms and conditions of all Ensim and third-party software supplier license agreements provided with or embedded in any software.

You do not acquire any rights of any kind in and to any Ensim or third-party software supplier trademark, trade name, logo or product designation. IN NO EVENT WILL ENSIM OR ANY THIRDPARTY SOFTWARE SUPPLIER BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO YOUR USE OF THE SOFTWARE INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, BUSINESS INTERRUPTION OR LOSS OF DATA OR BUSINESS INFORMATION, EVEN IF ENSIM OR SUCH SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. REGARDLESS OF THE CAUSE OR FORM OF ACTION, NEITHER ENSIM'S NOR ITS SUPPLIER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO YOUR USE OF THE SOFTWARE SHALL EXCEED THE TOTAL AMOUNT PAID BY YOU FOR THE SOFTWARE.

You acknowledge that the software is subject to United States export control laws and regulations which restrict exports, reexports and disclosures to foreign persons of cryptographic items and are also subject to certain foreign laws which may restrict the export, reexport, import and/or use of such items. Your right to use the software hereunder is expressly made subject to any export laws, regulations, orders or other restrictions imposed by the United States or by any other country or governmental entity on the software. You will not import, export or reexport, directly or indirectly, any software or related information to any country or foreign person to which such import, export or reexport is restricted or prohibited, or as to which such country, government or any agency thereof requires an export license or other governmental approval at the time of import, export or reexport without first obtaining such license or approval. You unconditionally accept full responsibility for your compliance with these requirements. The foregoing contains the complete agreement between you and Ensim with respect to the licensing of the software; it is to be interpreted and governed in accordance with the laws of the State of California and can be amended or modified only in a writing signed on behalf of you and Ensim. US Government Restricted Rights. Notice - Distribution and use of products including computer programs and any related documentation and derivative works thereof, to and by the United States Government, are subject to the Restricted Rights provisions of FAR 52.227-19, paragraph (c)(2) as applicable, except for purchases by agencies of the Department of Defense (DOD). If the software is acquired under the terms of a Department of Defense or civilian agency contract, the software is "commercial item" as that term is defined at 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 of the Federal Acquisition Regulations and its successors and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995) of the DOD FAR 2 Supplement and its successors. All U.S. Government end users acquire the software with only those rights set forth in this Agreement. Unpublished - rights reserved under the copyright laws of the United States.

Schedule 3

BlackBerry Enterprise Server Software Licence Agreement

This BlackBerry Enterprise Server Software License Agreement (the "Agreement") is a legal agreement between you individually, or if you are authorized to acquire the Software on behalf of your company or another organization, between the entity for whose benefit you act ("You") and Research In Motion Limited ("RIM") (together the "Parties" and individually a "Party"). BY INDICATING YOUR ACCEPTANCE BY CLICKING ON THE APPROPRIATE BUTTON BELOW, OR BY INSTALLING OR USING THE SOFTWARE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU HAVE ANY QUESTIONS OR CONCERNS ABOUT THE TERMS OF THIS AGREEMENT, PLEASE CONTACT RIM VIA <http://www.blackberry.com/legal/index.shtml>. IF, PRIOR TO ACTIVATING THE SOFTWARE, YOU DECIDE YOU ARE UNWILLING TO AGREE TO THE TERMS OF THIS AGREEMENT, PROMPTLY RETURN THE BLACKBERRY ENTERPRISE SERVER SOFTWARE AND THE ACCOMPANYING DOCUMENTATION AND PACKAGING TO RIM OR THE RIM AUTHORIZED DISTRIBUTOR FROM WHOM YOU OBTAINED THE SOFTWARE. If You have already paid for the Software within the previous ninety (90) days, provide RIM with Your proof of purchase and RIM will refund the fees You have paid for these items to You. Upon providing You with reasonable notice, RIM reserves the right to make changes to this Agreement.

1 Definitions

"Airtime Service Provider" means the service provider that supports the BlackBerry Solution. If You wish information about which service providers support the BlackBerry Solution from whom You subscribe for airtime services in Your location, please contact RIM via legal@rim.com.

"Authorized User(s)" means any of Your employees, consultants or independent contractors You authorize to use the Software or to whom You otherwise make the Software available.

"BlackBerry Desktop Software" or "Desktop Software" means RIM proprietary desktop software, regardless of the form or media in or on which it is provided to You, which software can be used to provision and maintain cable based synchronization between the Handheld Product and the BES Software. If the BES Software is used to wirelessly provision and synchronize a Handheld Product, the Desktop Software is not a required part of the BlackBerry Solution and provides optional desktop management functionality.

"BlackBerry Enterprise Server Software" or "BES Software" means the RIM proprietary software licensed by RIM hereunder, regardless of the form or media in or on which it is provided to You, which integrates with and provides a consolidated link between Your messaging platform, Your other corporate application servers and the Handheld Products provisioned to operate with the BES Software. The BES Software communicates with Handheld Products using push-based encrypted wireless data transmission.

"BlackBerry Solution" means the BES Software and one or more of the following: RIM Products, Handheld Software, Desktop Software, the Services, and RIM supplied accessories and Documentation. You must have a subscription for airtime on a wireless network in order to use the

BlackBerry Solution. Airtime services offered for use with the BlackBerry Solution

("Airtime Services") are provided to You by an Airtime Service Provider and shall be subject to the terms and conditions of an agreement between You and the Airtime Service Provider pertaining to the Airtime Services.

"Documentation" means the applicable "Installation and Getting Started Guide" or "Getting Started Guide" available via <http://www.blackberry.com/knowledgecenterpublic/llisapi.dll?func=ll&objId=7963&objAction=browse&sort=name> and any other standard end user documentation provided by RIM in conjunction with a RIM Product or item of Software.

"Handheld Product(s)" means: (a) a RIM BlackBerry wireless handheld device; or (b) a wireless handheld device manufactured or distributed by a third party who has been authorized by RIM to have such wireless handheld device operate in conjunction with the Handheld Software ported to that particular device.

"Handheld Software" means RIM proprietary software, firmware and data flashed or otherwise residing on a Handheld Product at the time of purchase, or otherwise provided for installation on a Handheld Product.

"RIM Product" means the RIM BlackBerry wireless handheld device and/or any RIM accessories for such RIM BlackBerry wireless handheld device, but shall not include any Software.

"Services" means any RIM service provided to You in conjunction with the BlackBerry Solution.

"Software" means the BlackBerry Enterprise Server Software and, if You use the BES Software to wirelessly provision Handheld Products (i.e. You do

not use the Desktop Software to provision the Handheld Products), means the Handheld Software on those Handheld Products that are wirelessly provisioned using the BES Software. The term Software shall not include the Desktop Software, or any Third Party Software whether or not Third Party Software accompanies or is provided with the Software. Use of such software products shall be governed by and subject to Your agreement to the terms of separate software licenses for those products. In no event shall such separate software licenses impose any additional obligations, or obligations inconsistent with the terms of this Agreement, upon RIM whatsoever.

"Third Party Software" means software applications proprietary to a third party but shall not include software licensed by RIM from a third party for incorporation into a RIM software product and distribution as an integral part of that RIM software product under a RIM brand. Where the Handheld Product is not a RIM BlackBerry wireless handheld device, there may be instances (including, without limitation the provision of Sun Microsystems Java software) where Third Party Software is integrated with a RIM software product, but is not licensed hereunder since that software is licensed to You directly by the manufacturer or distributor of such Handheld Product ("Manufacturer") pursuant to the terms of the Manufacturer's license with the Third Party Software supplier.

2 Agreement to License Software

You acknowledge that You are supplied with the Software, even if such items are purchased or acquired separately from the BES Software and that RIM provides the Services conditional upon Your acceptance of the terms and conditions herein and any additional terms and conditions that You agree to be bound by from time to time, and Your payment of all fees due for the Software and the Services. For greater certainty, this Agreement does not constitute a sale of the Software or any portion thereof to You.

3 Right to Use Software

The license to You to use the Software is conditional upon payment of all license fees due for the Software whether to RIM or to a RIM authorized distributor of the Software.

4 Email System

Except as the Parties specifically agree in writing, You shall be solely responsible for the selection, implementation, and performance of any and all third party equipment and hardware, Third Party Software and telecommunication equipment and services (including, without limitation, Internet email connectivity and Airtime Services used in connection with the Software) used in association with the BlackBerry Solution. You are responsible for ensuring that the email system and computer(s) with which You choose to operate the BlackBerry

Solution meet RIM's minimum standards for interoperability, including, without limitation, processing speed, memory requirements, the choice of email server and client software and the use of dedicated Internet access for accessing Internet email.

5 Use of the BlackBerry Software

The license granted to You hereunder is subject to the following terms and conditions:

5.1.1 You and Your Authorized Users will only use the Software and access the Services in accordance with this Agreement and the Documentation;

5.1.2 If You are acquiring the Software as an individual and not on behalf of a company or other entity, You are over the age of majority;

5.1.3 You and Your Authorized Users will comply with Your obligations under this Agreement and with all applicable laws, regulations and agreements respecting the use of the Software and access to the Services;

5.1.4 You will ensure that any information that is provided to RIM pursuant to this Agreement is true, accurate, current and complete;

5.1.5 You will be responsible for all activities with respect to the Software or in accessing the Services undertaken by You or undertaken by anyone who has access to the Software through You;

5.1.6 You represent and warrant, as an individual or on behalf of a company or other entity, that You have the right and the authority to enter into this Agreement;

5.1.7 You and Your Authorized Users will not knowingly, after making such inquiries as a reasonable person would undertake in Your position or in Your Authorized Users' position as the case may be, use or permit others to use the Software or access the Services in isolation or with any other software or data to transmit data in a manner that in RIM's judgment, acting reasonably interferes with, degrades, or adversely affects any software, system, network or data used by any person including RIM or an Airtime Service Provider and You will not use or allow any person to use the Software or access the Services in a way that has a detrimental effect upon RIM, an Airtime Service Provider or their respective customers or product or service(s), and will take reasonable steps to avoid doing so;

5.1.8 You and Your Authorized Users will not transmit harassing, abusive, libellous, illegal or deceptive messages or information using the BlackBerry Solution or any portion thereof;

5.1.9 You and Your Authorized Users will not use the BlackBerry Solution or any portion thereof to commit or attempt to commit a crime or facilitate the commission of any crime or other illegal or tortious acts;

5.1.10 You and Your Authorized Users will not sell or transfer, or attempt to sell or transfer, the Software or any part thereof without the written permission of RIM or use the Software or access

the Services on behalf of a third party whether in the operation a service bureau or otherwise;

5.1.11 You and Your Authorized Users will cooperate with RIM and provide information and copies of records requested by RIM to assist RIM in investigating or determining whether there has been a breach of all or part of this Section 5 or any other provision of this Agreement and provide RIM with access to the premises and computers where the Software is used; and

5.1.12 You will be responsible for obtaining (including paying the fees or charges for) any necessary approvals, licenses or permits, including, but not limited to exchange control approvals, and will take all actions as may be necessary to ensure that full payment of all amounts owing to RIM will be made. RIM reserves the right to promptly stop all supply of products and services to You if You fail to obtain any necessary approvals, licenses or permits and to demand the return of all products sold and delivered which are the subject of non-payment.

6 Software Licence

Subject to the terms and conditions herein, this Agreement hereby grants to You a personal, revocable, non-exclusive non-transferable license to: (a) install one copy of the BES Software on a single server residing on Your premises; (b) use and permit Authorized Users to use the BES Software solely as part of the BlackBerry Solution, including without limitation to wirelessly provision Handheld Products up to the licensed number of Handheld Products; (c) use and permit Authorized Users to use the Handheld Software on the Handheld Products wirelessly provisioned using the BES Software solely as part of the BlackBerry Solution and solely on the Handheld Product on which the Handheld Software was originally installed. You may not use or allow the use of the Software or access the Services other than for Your own internal or personal purposes or if You permit such use, the personal purposes of Your Authorized Users. You may not provision more Handheld Products or otherwise have more Authorized Users than the number of users for whom license fees have been paid to RIM to use the Software. You and each of Your Authorized Users may download a single copy of the Documentation from <http://www.blackberry.com/legal/index.shtml> RIM's website solely for Your use in conjunction with the use of the Software as authorized hereunder. Nothing herein obligates RIM to supply You with future upgrades or updates of the Software. However, if RIM does provide You with any upgrades or updates to the Software, either directly or through an authorized distributor, such updates or upgrades shall be subject to the terms and conditions of this Agreement or such agreement, if any, which accompanies such upgrades or updates, and may be subject to additional payments. Except to the extent that RIM is expressly precluded by law from prohibiting these activities, You may not print, copy, reproduce, distribute, modify or in any other manner duplicate the Software, in whole or in part. For the purposes of this provision "copy or

reproduce" shall not include copying of statements and instructions of the Software during program execution when used in accordance with and for the purposes described in the Documentation or copies made of the Software in the course of making regular backups of the computer or system on which the Software is installed, in accordance with industry standard business practices. You may not copy any written materials accompanying any portion of the Software unless specifically authorized in writing to do so by RIM.

7 Intellectual Property

Neither You nor Your Authorized Users acquire any intellectual property or other proprietary rights, including patents, designs, trademarks, copyright or rights in any confidential information or trade-secrets, in or relating to the BlackBerry Solution or any part thereof under this Agreement. Any rights and licenses not expressly granted herein or in a separate agreement between RIM and You are expressly reserved. The Software is only licensed to you as expressly set out herein, and it and all Documentation is protected by Canadian, U.S. and international copyright and patent laws pursuant to international conventions and treaties. There are severe penalties, both civil and criminal, for intellectual property infringement. You agree that nothing in this Agreement shall affect any rights and recourse to any remedies that RIM may have under any applicable law relating to the protection of RIM's intellectual property or other proprietary rights.

8 Export Restrictions; US Government Rights

You acknowledge that the Software may include encryption software that may be controlled for import, export or purposes under the laws and regulations of the country(ies) and/or territory(ies) in which the Software is used ("Applicable Law"). In particular, You acknowledge that the Software is of Canadian origin, is subject to Canadian laws and regulations, and may be subject to restrictions on export or re-export to countries subject to Canadian embargoes (currently Angola, Eritrea, Ethiopia, Iraq, Liberia, Myanmar (Burma), Rwanda and Sierra Leone) or to persons or entities prohibited from receiving Canadian exports (including, but not limited to, those involved with missile technology or nuclear, chemical or biological weapons). You hereby represent that: (i) to the best of Your knowledge You are eligible to receive RIM Products and Software under Applicable Law; (ii) You will import, export, or re-export the RIM Products and/or the Software to, or use the Software in, any country or territory only in accordance with Applicable Law; and (iii) You will ensure that Your Authorized Users and any other persons use the RIM Products and/or the Software in accordance with the foregoing restrictions. The Software is provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in DFARS 227.7202 or in FAR 52.227-19, or their successors, as applicable.

Contractor is Research In Motion Limited, 295 Phillip Street, Waterloo, Ontario, Canada N2L 3W8. You hereby agree to indemnify RIM from any claims, actions, liability or expenses (including reasonable lawyers' fees) resulting from Your failure to act in accordance with the certifications and commitments in this section.

9 Security

The BES Software and Handheld Software include a level of encryption data security for communications between the Handheld Products and the computer system on which the BES Software is installed. You assume full responsibility for the establishment of appropriate security measures to control access to the Handheld Products and such computer system.

10 Confidentiality

You acknowledge and agree that the Software was developed at considerable time and expense by RIM and is confidential to and a trade-secret of RIM. You also acknowledge that RIM has copyright over the Software. You agree that You and Your Authorized Users will maintain the Software in strict confidence and will not disclose or provide access thereto to any person except to any of Your employees with a need for access to exercise the license rights conferred hereby. You do not have the right to obtain or use any source code for the Software, and You agree that, except to the extent that RIM is expressly precluded by law from prohibiting You from doing so, You and Your Authorized Users will not alter, modify, adapt, create derivative works, translate, deface, reverse engineer, decompile or disassemble the Software, or attempt to perform any of the foregoing prohibited activities, or otherwise derive or attempt to derive the source code of any Software or portion thereof, and You further agree not to permit, authorize, acquiesce, encourage, allow or enable any other person to do so.

11 Term

This Agreement shall be effective upon Your agreement to be bound by the terms of this Agreement, (as manifested by the conduct described in the preamble above) and shall end upon termination of this Agreement in accordance with the provisions set out herein. Upon expiration or termination of this Agreement, You will cease all use of the Software and destroy and/or permanently delete all copies of the BES Software in Your possession.

12 Remedies and Termination for Default

If You or any of Your Authorized Users breach any provision of this Agreement RIM may, in addition to all other rights and remedies provided by this Agreement or by law, terminate this Agreement and any other license agreement between You and RIM for any other portion of the BlackBerry Solution

used by You or Your Authorized Users with the Software by providing notice of termination. You will be deemed to be in breach of this Agreement if: (i) You fail to comply with or perform a term or condition herein; (ii) You or any Authorized User interfere with RIM's customer service or business operations; (iii) You materially contravene any other license agreement that You may have with RIM for any other portion of the BlackBerry Solution used by You or Your Authorized Users with the Software, including without limitation, the terms of any click-wrap or shrink-wrap agreement that You have agreed to on RIM's website or otherwise; or (iv) You violate any code of conduct or other guidelines by which You may be governed in conjunction with Your use of the BlackBerry Solution or any portion thereof. In addition, RIM may terminate this Agreement and cease to provide the Services if RIM is prevented from licensing or providing any portion of the BlackBerry Solution or the Airtime Service Provider is prevented from providing the Airtime Services by any law, regulation, requirement or ruling issued in any form whatsoever by judicial or other governmental body, or if a notice from a government agency or department indicates RIM is not permitted to license or provide any portion of the BlackBerry Solution or that the Airtime Service Provider is not permitted to provide the Airtime Services. Nothing herein shall be construed to require RIM to seek a waiver of any law, rule, regulation or restriction, or seek judicial review or appeal of any court order. RIM shall have no liability to You arising from or related to the termination of this Agreement as set out herein.

13 Indemnity / Liability

You shall defend, indemnify, and hold harmless RIM, RIM's affiliates and their officers, directors, employees, suppliers, agents, successors, and assigns (each a "RIM Indemnified Party") from any claims, damages, losses, costs or expenses (including without limitation attorney fees) incurred by a RIM Indemnified Party in connection with all claims, suits, judgments and causes of action for: (i) infringement of patents or other intellectual property or proprietary rights arising from combining with or using any device (other than a Handheld Product), system or service in connection with the BlackBerry Solution or any portion thereof; (ii) damages arising from You or any of Your Authorized Users breaching Sections 5, 6, 7, 8, 10, or 16 herein; (iii) libel, slander, defamation or infringement of copyright or other intellectual property or proprietary right with respect to material transmitted by You or any of Your Authorized Users using the BlackBerry Solution or any portion thereof; (iv) any injury, death or property damage arising from Your negligence or misconduct or the negligence or misconduct of Your Authorized Users in connection with Your use or Your Authorized Users' use of the BlackBerry Solution or any portion thereof (other than such damage to person or property (excluding data) that directly arises from the use of the Software or other RIM Products strictly in accordance with the Documentation which specifically pertains to such

version of Software and/or RIM Products); or (v) claims made by third parties against RIM arising from or related to Your use of the BlackBerry Solution or any portion thereof (other than such claims that arise solely from the use of the Software and/or RIM Products strictly in accordance with the Documentation which specifically pertains to such version of Software and/or RIM Products). No remedy herein conferred upon RIM is intended to be, nor shall it be construed to be, exclusive of any other remedy provided herein or as allowed by law or in equity, but all such remedies shall be cumulative. In the event of the termination of this Agreement pursuant to Section 12, You shall pay to RIM all attorney fees, collection fees, and related expenses, expended or incurred by RIM in the enforcement of any right or privilege hereunder (including, but not limited to, telephone, freight, express and postal charges, expenses of paid investigators and reasonable compensation for time of RIM's representatives).

14 Limited Warranty

14.1.1 Services. THE SERVICES ARE PROVIDED TO YOU 'AS IS' AND 'AS AVAILABLE' WITHOUT WARRANTY, CONDITION OR REPRESENTATION OF ANY KIND. RIM SHALL HAVE NO LIABILITY TO YOU, OR ANY AUTHORIZED USER OR OTHER THIRD PARTY, CLAIMING BY OR THROUGH YOU, FOR ANY ISSUE RELATING TO THE SERVICES OR THE AIRTIME SERVICES, INCLUDING WITHOUT LIMITATION, THE ACCURACY, TIMELINESS OR CONTINUED AVAILABILITY OF SUCH SERVICES OR AIRTIME SERVICES. You acknowledge and agree that Handheld Products acquired from one Airtime Service Provider may not operate on the network of another Airtime Service Provider.

14.1.2 Products. You acknowledge and agree that no warranty is provided hereunder with respect to any portion of the BlackBerry Solution or any Handheld Product other than the express warranty in Section 14(c) for the Software. Any warranty with respect to any such item, if any, is contained in a separate agreement or warranty card accompanying that item.

14.1.3 Software. If during the ninety (90) day period following delivery of the BES Software to You (the "Warranty Period"), the Software as originally provided to You is not capable of performing the functions described in the Documentation when used as specified by RIM in the Documentation applicable to the specific version of the Software in conjunction with other unaltered portions of the BlackBerry Solution, RIM will, at its sole option and discretion either make efforts to correct or provide You with a workaround for such problem (which may be provided in a form at RIM's reasonable discretion, including in the course of telephonic customer support provided to You, in a generally available software fix release, or made available to You at our website) or provide You with a refund for the one time fees paid by You for the applicable Software if You cease to use the Software, and the media (if any) on which the Software was provided

to You and all packaging related thereto is returned to RIM in accordance with Your normal warranty return mechanism (which may be through a RIM authorized distributor) within the Warranty Period together with proof of purchase. Notwithstanding anything to the contrary in this Agreement, the above obligation does not apply to updates of the Software. Updates are provided 'as is' and without warranty of any kind. Upgrades, for which You have paid additional license fees, shall be subject to the warranty set out above for a period of ninety (90) days from the date that the upgrade for any Software is delivered to You. RIM shall provide support and maintenance for any updates or upgrades provided to You under the terms of a support agreement with RIM. The foregoing is RIM's only obligation and is Your sole and exclusive remedy for any defects, errors, or problems You may experience related to the Software. The above obligation will not apply if the failure of the Software to perform the functions described in the Documentation is due to: (i) use of the Software in a manner inconsistent with any of the obligations set out in Sections 5 and 6 of this Agreement or in a manner inconsistent with the instructions, including the safety instructions, specified by RIM in the Documentation applicable to the specific version of the Software; (ii) malfunction or other problem related to any hardware, software, network, or communication system other than a component of the BlackBerry Solution; or (iii) any external causes affecting the Software, including the media upon which the Software is provided, such as accident, disaster, electrostatic discharge, fire, flood, lightning, water or wind, or correction of errors attributable to software other than the Software. The Software may include Sun Microsystems, Inc. ("Sun") Java code. Any such code is provided to You by RIM "AS IS" and at no charge with no representations, warranties or conditions either express or implied, including without limitation any warranties or conditions of merchantability, quality, performance, fitness for a particular purpose, durability, title or noninfringement. In no event shall either RIM or Sun be liable to You for any damages whatsoever, including without limitation any direct, indirect, consequential, punitive, exemplary damages, arising out of or in relation to the provision of the Sun Java code as part of the Software, its performance or lack of performance, even if RIM or Sun has been advised of the possibility of such damages. You acknowledge that this limitation and exclusion is reasonable given that this code is provided at no charge. This paragraph 14(c) sets out Your sole remedies in respect of the Software and any breach of the warranty set out herein.

15 Limitation and Exclusion of Liability

The only type of damages that can be recovered against RIM arising from or related to this Agreement including without limitation in relation to the provision, use, performance or nonperformance of the Software or any portion thereof, shall be Your direct foreseeable damages (the "Direct

Damages"), caused solely by a breach or breaches of this Agreement by RIM. Without expanding on the specific remedies set out in Section 14 above in no event shall: (i) the aggregate liability of RIM exceed the amount paid by You for the particular item(s) of Software that gave rise to the claim or to which the claim relates; and (ii) RIM shall only be liable for damages incurred during the period of such failure, delay or non-performance of the Software. RIM SHALL HAVE NO LIABILITY WHATSOEVER TO YOU HEREUNDER FOR ANY DAMAGES HOWSOEVER ARISING UNDER OR RELATED TO THIS AGREEMENT FOR ANY PORTION OF THE BLACKBERRY SOLUTION OR HANDHELD PRODUCTS, OTHER THAN THE DAMAGES EXPRESSLY SET FORTH ABOVE RELATED TO THE SOFTWARE. FOR THE AVOIDANCE OF DOUBT, DIRECT DAMAGES DO NOT INCLUDE AND TO THE EXTENT PERMITTED BY LAW RIM SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF BUSINESS, LOST PROFITS OR REVENUES, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR CORRUPTION OR LOSS OF DATA, FAILURES TO TRANSMIT OR RECEIVE ANY DATA, PROBLEMS ASSOCIATED WITH ANY APPLICATIONS USED IN CONJUNCTION WITH THE SOFTWARE, DOWNTIME COSTS, LOSS OF THE USE OF THE BLACKBERRY SOLUTION, OR ANY ASSOCIATED PRODUCTS, COST OF SUBSTITUTE GOODS, FACILITIES, OR SERVICES, COST OF CAPITAL, OR OTHER PECUNIARY LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN INCLUDING WITHOUT LIMITATION THE USE OF OR INABILITY TO USE THE SOFTWARE OR ANY THIRD PARTY SOFTWARE, EVEN IF RIM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. RIM DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DURABILITY, TITLE AND ANY OTHER IMPLIED WARRANTY OR CONDITION ARISING BY STATUTE OR CUSTOM OR USAGE OF TRADE. THE PARTIES ALSO AGREE THAT THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT ("UCITA"), AS ENACTED IN ANY STATE SHALL NOT APPLY TO THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY LAW UCITA IS HEREBY EXCLUDED IN ITS ENTIRETY FROM APPLICATION TO THIS AGREEMENT. The limited warranties set out in this Agreement give You specific legal rights. You may also have other rights that vary by State or Province. Some jurisdictions may not allow the exclusion or limitation of implied warranties and conditions. To the extent permitted by law, any implied warranties or conditions relating

to the Software to the extent they cannot be excluded as set out above are limited to ninety (90) days from the date of delivery to You of the item of Software that gave rise to the claim or to which the claim relates. RIM SHALL BE LIABLE TO YOU AS EXPRESSLY PROVIDED IN THIS AGREEMENT BUT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SHALL HAVE NO OTHER OBLIGATION, DUTY, OR LIABILITY WHATSOEVER IN CONTRACT, TORT OR OTHERWISE TO YOU OR YOUR AUTHORIZED USERS INCLUDING ANY LIABILITY FOR NEGLIGENCE. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS AGREEMENT SHALL APPLY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION, DEMAND, OR ACTION BY YOU OR YOUR AUTHORIZED USERS INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY AND SHALL SURVIVE A FUNDAMENTAL BREACH OR BREACHES OR THE FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT OR OF ANY REMEDY CONTAINED HEREIN. IN NO EVENT SHALL ANY OFFICER, DIRECTOR, EMPLOYEE, AGENT, DISTRIBUTOR, SUPPLIER, INDEPENDENT CONTRACTOR, SUCCESSOR OR ASSIGN OF RIM OR ANY AFFILIATE OF RIM HAVE ANY LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT. NOTWITHSTANDING SECTION 21(a), THESE PERSONS AND ENTITIES ARE INTENDED THIRD PARTY BENEFICIARIES HEREOF.

16 Consent to Collection of Information

By submitting personal information (including, without limitation, personal information about employees and customers) to RIM pursuant to this Agreement, including without limitation names, addresses and telephone numbers, You warrant that You have obtained all consents necessary under applicable law to release such personal information to RIM for the collection, use, processing, transmission and disclosure of such information by RIM for the purposes of RIM internal use, specifically the purposes for which such information has been requested, such as billing requirements, any purposes for which RIM may reasonably require such information in order to facilitate provision of the Services, and in accordance with RIM's privacy policy, which may be viewed at <http://www.blackberry.com/legal/index.shtml>. RIM reserves the right to modify its privacy policy from time to time in its discretion. If information is disclosed to an Airtime Service Provider to facilitate the provision of the BlackBerry Solution, or related products or services (including the Services) to You, the Airtime Service Provider's privacy policy will be applicable. You agree to inform all individuals whose personal information you provide to RIM that they may have rights to access and correct their personal information under applicable laws and regulations.

17 Assignment and Delegation

RIM may assign this Agreement without notice to You. You shall not assign this Agreement without the prior written consent of RIM (such consent may be withheld or conditioned at RIM's discretion) and any assignment without RIM's prior written consent shall be null and void and of no effect. RIM may perform all obligations to be performed under this Agreement directly or may have some or all obligations performed by its contractor or subcontractors or affiliates.

18 Notices

Except as otherwise provided in this Agreement, all notices or other communications hereunder shall be deemed to have been duly given when made in writing and delivered in person, by courier or deposited in the mail, postage prepaid, registered mail, return receipt requested, and addressed to You at the billing address supplied to RIM by You, and addressed to Research In Motion Limited, 295 Phillip Street, Waterloo, Ontario, Canada, N2L 3W8, with a copy (which shall not constitute notice) to RIM's Vice President, Legal at the same address. In addition to the foregoing, RIM may, at its option, give You any notice under this Agreement by email. Notice to You by email shall be deemed to have been duly given when transmitted to an email address furnished by You to RIM.

19 Force Majeure

Notwithstanding any other provision of this Agreement, neither Party shall be deemed in default of this Agreement for failure to fulfil its obligations when due to causes beyond its reasonable control. This provision shall not be construed as excusing non-performance of any obligation by either Party to make payment to the other Party under this Agreement.

20 Entire Agreement

This Agreement constitutes the entire agreement between the Parties hereto with respect to the Software and the use thereof, and cancels and supersedes any prior understandings and agreements between the Parties hereto with respect thereto. There are no provisions, representations, undertakings, agreements, or collateral agreements between the Parties other than as set out herein in this Agreement. Further, You acknowledge that no statements or representations made by or on behalf of RIM have been relied upon by You in agreeing to enter into this Agreement.

21 General

21.1.1 No Third Party Beneficiaries. Except as otherwise specifically stated in this Agreement, the provisions herein are for the benefit of the Parties and not for any other person or entity.

21.1.2 Waivers of Default. Waiver by either Party of any default by the other Party shall not be deemed a continuing waiver of such default or a waiver of any other default.

21.1.3 Survival. The terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the performance hereof by either or both Parties shall so survive the completion of performance, cancellation or termination of this Agreement. Without limiting the generality of the foregoing, the terms and conditions in Sections 5, 7, 8, 10, and 16 shall so survive.

21.1.4 Governing Law and Dispute Resolution. If You reside in Canada and the BES Software is shipped or delivered to You in any format in Canada, this Agreement is to be construed under the laws of the Province of Ontario. Otherwise, this Agreement is to be construed under the laws of the State of New York, excluding any body of law governing conflicts of law. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods is hereby excluded in its entirety from application to this Agreement. Any disagreement or dispute arising out of or relating to this Agreement, or the breach thereof which the Parties are unable to resolve after good faith negotiations, shall be submitted first to the upper management level of the Parties. The Parties, through their upper management level representatives shall meet within thirty (30) days of the dispute being referred to them and if the Parties are unable to resolve such disagreement or dispute within thirty (30) days of meeting, such disagreement or dispute shall be settled by final and binding arbitration to be conducted in Ontario, Canada in accordance with the Commercial Rules of the American Arbitration Association. Each of the Parties shall appoint one arbitrator, and the two arbitrators shall jointly appoint a third arbitrator. Each Party shall bear one-half of the costs associated with the arbitration proceedings. No dispute between the Parties, or involving any person but You, may be joined or combined together, without the prior written consent of RIM. Judgment upon the award rendered by the three arbitrators may be entered in any Court having jurisdiction thereof. Notwithstanding the foregoing, RIM has the right to institute legal or equitable proceedings in a court of law for claims or disputes regarding: (i) amounts owed by You to RIM in connection with Your license for the Software if applicable; and (ii) Your violation or threatened violation of Sections 5, 6, 7, 8, and 10 of this Agreement. The Parties specifically agree that, in the event that there is a dispute under this Agreement and such dispute is to be resolved in a court of law, such dispute shall not be resolved by jury trial.

21.1.5 Severability. If a provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather (unless a failure of consideration would result therefrom)

the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of each Party shall be construed and enforced accordingly.

21.1.6 Language. It is the express will of the Parties that this Agreement and all related documents be drawn up in English. C'est la volonté expresse des Parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

22 Inconsistency

If there is any inconsistency between this Agreement and any software license or end user agreement provided in the packaging of the Software, the provisions of this Agreement shall apply to the extent of the inconsistency. If there is any inconsistency between this Agreement and any software license or end user agreement provided in connection with any upgrades or

updates to the Software, the provisions of such other license or end user agreements shall apply, to the extent of the inconsistency.

23 Compliance with Laws

You will, at Your expense, obtain and maintain the governmental authorizations, licenses, registrations and filings that may be required under the laws of Your jurisdiction to execute or perform this Agreement or any related license agreements. In the event any governmental authorization, license, registration and/or filing is required, You will notify RIM of such requirement and will only proceed with any governmental authorization, license, registration and/or filing process upon RIM's express written consent. You will otherwise comply with all laws, regulations and other legal requirements within Your jurisdiction that apply to this Agreement or any related license agreements.