

Hosting Terms and Conditions

1 Definitions

1.1 In these terms and conditions (unless the context otherwise requires):

Acceptable Use Policy means *HBT's* policy for the Customer's use of the Services, as set out on *HBT's* Website or as otherwise provided to the Customer by *HBT*, and as may be revised by *HBT* from time to time;

Act means the Communications Act 2003

Activation Date means with respect to an Order, the date on which the Services or any part thereof first become active and available for use by the Customer under that Order;

Associate means in respect of any party hereto:

- (1) any firm or body corporate in which such party directly or indirectly:
 - (a) owns more than half the capital or business assets; or
 - (b) has the power to exercise more than half the voting rights; or
 - (c) has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing such firm or body corporate; or
 - (d) has the right to manage the business of such firm or body corporate;
- (2) any person, firm or body corporate which directly or indirectly has in or over such party the rights or powers listed in sub-clause (1) above (**a controller**); and
- (3) any firm or body corporate in which a controller directly or indirectly has the rights or powers listed in sub-clause (1) above.

Charges mean the charges payable by the Customer to *HBT* for and/or in connection with the provision, implementation, maintenance and support and/or administration of the Services as set out in *HBT* Price List and any other charges payable pursuant to this Contract (including the Professional Services Charges) or otherwise agreed in writing between *HBT* and the Customer;

Commencement Date means the date upon which this Contract is executed by both parties;

Confidential Information means all information whether verbal, written, stored or otherwise obtained including, but not limited to, data, facts and statistics about the business affairs, products, product development, trade secrets, know-how, personnel, customers or suppliers of the disclosing party whether or not they are or were designated or marked as confidential together with all information derived by the receiving party from the foregoing which is by its nature confidential or proprietary;



Contract means the contract between *HBT* and the Customer comprising these Terms and Conditions, together with the Order Form, any Statement of Work and/or any other documents specifically incorporated into such contract, and/or any Schedules hereto;

Control shall have the meaning set out in section 840 of the Income and Corporation Taxes Act 1988;

Customer means the person (not being an individual consumer), proprietorship, partnership, corporation, government or other subscription or publicly funded enterprise, company or other body corporate named in the Order Form;

Customer Details means the data which identifies the Customer or any employee, director, officer, partner, shareholder, or other relevant individual of the Customer;

Customer Materials any materials supplied to *HBT* by the Customer in connection with the implementation and/or performance of the Services;

Customer Services means the helpdesk support and any other support and maintenance services to be provided by *HBT* and/or any Third Party Service Provider as set out on the Order Form or as may otherwise be notified to the Customer from time to time;

Data Processor shall have the meaning given to that term in the Data protection Act 1998;

Deliverables the deliverables to be provided to the Customer under a Statement of Work;

Ensim means Ensim Corporation, 3945 Freedom Circle Suite 1100, Santa Clara, CA, USA, 95054

Ensim Software means Third Party Software the Intellectual Property Rights in which are owned by Ensim

Equipment means any hardware and/or peripherals owned, controlled, licensed or provided by the Customer or otherwise made available for the purposes of receiving the Service but excluding any Reseller Equipment;

Head Agreement means the agreement for the time being between *HBT* and the Hosting Service Provider appointing *HBT* to resell the Services;

Hosting Service Provider means the third party for the time being that is hosting the Services;

Initial Minimum Period means the period commencing on the Commencement Date and running for the number of months specified in the Order Form;

Intellectual Property Rights means any intellectual property rights of whatever nature subsisting at any time in any part of the world including, without limitation, copyrights, design rights, patents, registered designs, trade marks, service marks, rights in trade secrets, know how and other confidential information, rights in respect of databases, the rights to apply for any of the foregoing and applications for any of the foregoing;



HBT Price List means the list of charges [set out in the Order Form] OR [in force from time to time and available on the *HBT Website*, together with the method of calculation of the charges]; ¹

HBT Website means the website located at [hbtcommunications.com] or such other website as may be notified by *HBT* from time to time;

Licence Terms means licensing conditions and restrictions of the Software manufacturer, supplier or Licensor, including:

- (a) in respect of Microsoft Software and Ensim Software those licensing conditions and restrictions set out set out in schedule 1 as such terms may be amended from time to time and communicated to the Customer by *HBT* posting the same on *HBT Website*;
- (b) in respect of RIM Software, the terms set out in clause 6 and those licensing conditions and restrictions set out set out in schedule 1 and such other terms as are communicated to the Customer from time to time, as such terms may be amended from time to time and communicated to the Customer by *HBT* posting the same on *HBT Website*; and
- (c) in respect of any other Software the licensing conditions and restrictions the details of which shall be made available on request;

Licensor the licensors of Software (including Third Party Software) to the Hosting Service Provider and/or *HBT* for the provision of the Services under this Contract including Microsoft, Ensim and RIM

Microsoft means Microsoft Ireland Operations Limited of 70 Sir John Rogerson's Quay, Dublin 2, Ireland;

Microsoft Software means Third Party Software the Intellectual Property Rights in which are owned by Microsoft

Minimum Contract Period means:

- (a) the Minimum Period and 30 days thereafter; OR
- (b) the fixed period of the Contract as specified in the Order Form.

Minimum Period means the Initial Minimum Period and any Subsequent Minimum Period as set out in this Contract that the Customer has agreed to receive and pay for the Services;

Order means an order placed by the Customer with *HBT* for the provision of Services;

¹ Reseller to determine method of communicating pricing to Customers.



Order Form means the written application form containing the details of an order for Services placed by the Customer;

Personal Data shall have the meaning given to that term in the Data protection Act 1998;

Processing shall have the meaning given to that term in the Data protection Act 1998 and the term "Process" shall be construed accordingly;

Professional Services means any services to be provided to the Customer by *HBT* and/or its sub-contractor pursuant to clause 4.1 in connection with the implementation of the Services and as set out in a Statement of Work;

Professional Services Charges means the charges in respect of the Professional Services as set out in the Statement of Work together with all reasonable related expenses;

HBT Equipment means any hardware, peripherals and/or other equipment supplied to the Customer by *HBT* for use in respect of the Services;

RIM means [Research In Motion Limited of 295 Phillip Street, Waterloo, Ontario, N2L 3W8, Canada]

RIM Software means Third Party Software the Intellectual Property Rights in which are owned by RIM;

Service Failures means any failure, error or defect in the provision of the Services arising from, caused by or contributed to by the acts or omissions of the Customer or third parties including other providers of telecommunications, computers or other equipment or services including internet services; or any failure, error or defect arising as a result of causes beyond the reasonable control of *HBT*;

Service Level in relation to the Services means the performance standard, if any, set out in this Contract;

Services means any Hosted Business Email, Hosted Email Archival, Hosted Enterprise Blackberry TM, Hosted SharePoint, Hosted CRM services, offerings and any other hosting and/or associated services including any Professional Services to be provided by *HBT* and/or any of its contractor(s) (including the Hosting Service Provider) to the Customer pursuant to this Contract as described in the Order Form as such services may be amended from time to time in accordance with this Contract (and "Service" shall mean any one of the Services);

Software means machine-readable instructions and data (and copies thereof) including middleware and firmware and related updates and upgrades, licensed materials, user documentation, user manuals, and operating procedures used or required to be used in the provision of or for the Customer to access the Services;

Start Date means the target date for the commencement of the provision of the Services to the Customer as specified or agreed to by *HBT*



Statement of Work means a statement of work in substantially the form set out in Schedule 3 (or in such other form as may from time to time be agreed in writing) setting out the Professional Services and signed by *HBT* and the Customer

Subsequent Minimum Period means a period, commencing immediately upon expiry of the previous Initial Minimum Period or Subsequent Minimum Period being of equal duration to the Initial Minimum Period;

Territory means England, Scotland, Wales, Northern Ireland and the Isles of Scilly, but excluding the Channel Islands and the Isle of Man

Third Party Service Provider means any provider of any Third Party Services, including the Licensors and the Hosting Service Provider;

Third Party Services means any part of the Services which *HBT* procures from a third party, including any third party services, equipment and/or Third Party Software which *HBT* uses in order to provide the Services.

Third Party Software means any Software the Intellectual Property Rights in which are owned by a party other than *HBT* or its Associates.

- 1.2 The terms "includes" and "including" shall be construed as if followed by the words "without limitation".
- 1.3 Words importing the masculine shall include the feminine and neuter and vice-versa and words importing persons shall include bodies corporate and unincorporated associations and partnerships.
- 1.4 The headings to the clauses of this Contract are for convenience only.

2 Term and Start Date

- 2.1 This Contract shall commence on the Commencement Date and shall continue (subject to earlier termination in accordance with the terms of this Contract) for the Minimum Contract Period being EITHER:
- 2.1.1 the Minimum Period (including, as the case may be, an Initial Minimum Period or any Subsequent Minimum Period) and thereafter unless and until terminated by either party giving to the other not less than 30 days' prior written notice, such notice to expire no later than 30 days after the Initial Minimum Period or relevant Subsequent Minimum Period; OR
- 2.1.2 the fixed period of the Contract, if the Order Form so specifies.
- 2.1.3 For the avoidance of doubt, an Initial Minimum Period will automatically be deemed to continue into a Subsequent Minimum Period unless terminated in accordance with Clause 2.1.1.



2.1.4 In default of the number of months being specified in this Contract, the Initial Minimum Period shall automatically be 24 months.

2.2 *HBT* shall use its reasonable endeavours to activate and make the Services available by the Start Date. However, the Start Date and any other dates given in this Contract are estimates provided for planning purposes only. *HBT* shall have no liability for any failure to meet the Start Date or any other date as, save as expressly provided elsewhere in this Contract, time is not of the essence in relation to any matter.

2.3 No order shall be binding upon *HBT* unless and until accepted in writing by *HBT*.

3 **Obligations of *HBT***

3.1 *HBT* shall provide the Services and the Customer Services in accordance with the terms of this Contract. The Services shall commence on the Activation Date notified by *HBT*.

3.2 The Services and Customer Services are provided solely for use by the Customer in the course of the Customer's business.

3.3 *HBT* shall use reasonable skill and care when providing the Services and Customer Services. but does not guarantee that the Services shall be continuously available to the Customer or free from Service Failures.

3.4 In the event of unavailability of the Services for reasons other than Service Failures, *HBT* shall reimburse the Customer by way of a credit to the Customer's account an amount calculated in accordance with this clause 3.4 ("**Service Credit**"). The Service Credit shall be the sole remedy of the Customer in respect of any unavailability of the Services to the exclusion of any other remedy of the Customer in contract or tort (including negligence or otherwise). The Service Credit shall be equivalent to a percentage of the Charges paid by the Customer in respect of the month in which the unavailability occurred and shall be calculated in accordance with the table set out below.

| <u>Availability</u> | <u>Percentage refund</u> |
|---------------------|--------------------------|
| 95% to 99.9% | 25% |
| 90% to 94.9% | 50% |
| 89.9% or below | 100% |

3.5 *HBT* shall not be obliged to provide the Services to the Customer:

3.5.1 if the Customer enters into this Contract otherwise than in the course of its business; or



- 3.5.2 if the Customer uses the Services otherwise than in the course of its business; or
 - 3.5.3 if the Customer is not located in a geographic location where the Services can be received; or
 - 3.5.4 where there is a technical reason why the Customer would not be able to receive the Services.
- 3.6 The Customer must immediately report any fault to *HBT* via the Customer Services, providing sufficient information to enable *HBT* to investigate the problem. *HBT* shall log the time of receipt of all such reports.
- 3.7 Where *HBT* spends time investigating a fault reported by the Customer and conclude that there has been a Service Failure *HBT* reserves the right to charge the Customer for all reasonable costs and expenses incurred in investigating the report and the Customer agrees to pay such charges.
- #### 4 Professional Services
- 4.1 *HBT* shall, or shall procure that its contractor shall, provide the Professional Services as agreed between *HBT* and the Customer and as set out in a Statement of Work.
- 4.2 Any such Professional Services shall be set out in a sequentially numbered Statement of Work setting out:
- 4.2.1 the scope of the services to be provided (or procured) by *HBT*;
 - 4.2.2 the Deliverables to be delivered to *HBT* Customer;
 - 4.2.3 the identity of any specific individual(s) to be allocated to the provision of the Professional Services;
 - 4.2.4 the period during which the Professional Services are to be provided;
 - 4.2.5 the specification for the Professional Services;
 - 4.2.6 any acceptance tests to be carried out in respect of the Professional Services; and
 - 4.2.7 the Charges to be paid to *HBT* in respect of those Professional Services.
- 4.3 No Statement of Work shall be binding until approved in writing by the Customer and signed by a duly authorised representative of both parties.
- 4.4 *HBT* shall perform (or procure the provision of) the Professional Services and deliver the Deliverables in each case in accordance with the terms of this Contract and shall use all reasonable endeavours to do so in accordance with any timescales identified in the relevant Statement of Work.
- 4.5 *HBT* shall perform (or shall procure the provision of) the Professional Services in a workmanlike and professional manner and exercise reasonable skill and care.



- 4.6 The Customer may, by written notice to *HBT*, cancel a Statement of Work at any time prior to the commencement of the Professional Services the subject of that Statement of Work. If such notice is received by *HBT* more than 30 days prior the scheduled commencement date of the Professional Services, no charges or other sums shall be payable by the Customer in respect of the cancelled Professional Services. In all other cases, cancellation charges may be invoiced by *HBT* as set out in the Statement of Work (or as otherwise communicated to the Customer in writing) and such invoices shall be payable by the Customer within 30 days of receipt.
- 4.7 *HBT* hereby grants (or shall procure the grant of) to the Customer a non-exclusive, personal licence to use, maintain, update and/or copy the Deliverables to the extent necessary to gain the full benefit of the Services, such licence to terminate automatically upon the termination of this Contract.

5 Obligations of the Customer

- 5.1 The Customer shall only use the Services in accordance with the terms of this Contract, the Acceptable Use Policy, any relevant manuals provided by *HBT* from time to time and any other reasonable operating instructions given to the Customer by *HBT*.
- 5.2 The Customer agrees not to use the Services in a way which would:
- 5.2.1 contravene or cause *HBT* and/or the Hosting Service Provider to contravene any laws or regulations including, but not limited to, the Act, and any licence under the Act which is applicable to *HBT* and/or the Hosting Service Provider;
 - 5.2.2 contravene the Acceptable Use Policy;
 - 5.2.3 cause a material degradation of the Services to any other customer of *HBT* and/or the Hosting Service Provider;
 - 5.2.4 contravene any reasonable operating instructions or other instructions (including, without limitation, any manual) which *HBT* may provide from time to time;
 - 5.2.5 involve the sending of unsolicited marketing or advertising materials;
 - 5.2.6 result in the transmission or storage of any material which is intended to be a hoax call to emergency services or the sending of any pornographic, obscene or abusive, defamatory, menacing or offensive nature or which would result in the breach of any third party's intellectual property rights, confidential information or privacy; or
 - 5.2.7 breach or cause *HBT* and/or the Hosting Service Provider to breach any applicable data protection legislation including, but not limited to, the Data Protection Act 1998.



- 5.3 The Customer shall:
- 5.3.1 not install, use, copy, access or distribute any Software (including Third Party Software), nor allow any third party to do so, nor appoint any reseller to do so, except as expressly permitted in accordance with this Contract or as otherwise authorised by *HBT* and (in respect of Third Party Software) the relevant Licensor;
 - 5.3.2 not use the Services in respect of hazardous environments requiring fail-safe performance in which the failure of the Services or Software could lead to death, personal injury or severe physical, property or environmental damage. Examples of these environments include the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control or life support systems;
 - 5.3.3 not separate the components of the Software by installing them on different servers, or by upgrading or downloading them at different times; and
 - 5.3.4 not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Software.
- 5.4 All Software made available for use by the Customer pursuant to this Contract is provided subject to the Licence Terms. The Customer shall observe and comply with these Licence Terms, including any restrictions on the use, copying, decompilation and transfer of the Software.
- 5.5 Notwithstanding any provision to the contrary, the Software licence ("**Software Licence**") may be terminated by the manufacturer, supplier or licensor in accordance with its terms; and in addition (without prejudice to the generality of the foregoing) the Customer shall ensure that any Software is only used during the continuance of this Contract in accordance with a valid and subsisting Software Licence.
- 5.6 Except to the extent and in the circumstances expressly required to be permitted by law, the Customer shall ensure that neither it nor any third party shall copy, alter, modify, adapt, translate, decompile, disassemble or reverse engineer the Software.
- 5.7 The Customer agrees to indemnify, keep indemnified and hold harmless *HBT* and the Hosting Service Provider from and against any claims, proceedings or threatened proceedings from third parties and against any loss or damage suffered by *HBT* and/or the Hosting Service Provider arising from any breach by the Customer of its obligations under this Contract including this clause 5.7, and for all costs and expenses reasonably incurred by *HBT* and/or the Hosting Service Provider in investigating and defending any such claims, proceedings or threatened proceedings; such indemnity to continue notwithstanding the termination of this agreement by either party.



6 Hosted Enterprise Blackberry Services

6.1 The additional terms set out in schedule 1 part C shall apply to the provision of the Hosted Enterprise Blackberry Services to the Customer (if applicable).

7 Access to Premises and Information

7.1 The Customer shall provide to *HBT*, or such third party nominated by *HBT*, such information and documentation relating to the implementation, maintenance and support and/or administration of the Services as is necessary to enable *HBT* and/or its contractors to implement, maintain and support and administer the provision of those Services.

7.2 The Customer shall ensure that *HBT*, its contractors and/or any third party providing the Professional Services are provided with such access to the computer equipment, software and network links owned by, licensed to and/or used by the Customer as may be reasonably necessary for the implementation, maintenance and support, administration and/or other performance of the Services.

7.3 The Customer shall ensure, prior to the date on which *HBT*, its contractors and/or any third party providing the Professional Services commence the provision of any services in connection with the implementation, maintenance and support and/or administration of any Services at the premises of the Customer that:

7.3.1 such premises provide adequate working space and facilities as *HBT*, its contractors and/or any third party providing the Professional Services may reasonably require to carry out such services;

7.3.2 it has obtained all necessary consents to enable *HBT*, its contractors and/or any third party providing the Professional Services to enter onto and remain upon the premises to carry out such services; and

7.3.3 the Customer shall effect and maintain throughout the provision of such services insurance cover for the benefit of *HBT*, its contractors and/or any third party providing the Professional Services and their respective employees, agents and contractors against any and all reasonably foreseeable risks in providing the Professional Services at such premises on terms reasonably acceptable to *HBT* and/or its contractors.

8 Equipment

8.1 With the exception of Reseller Equipment, the Customer shall be responsible for providing all necessary hardware, software, network facilities and telecommunications services to access and make use of the Services provided by *HBT*.

8.2 The Customer shall ensure that the Equipment;



- 8.2.1 are capable of enabling access to the public switched telecommunications network using exchange lines provided by BT or alternative carrier;
 - 8.2.2 are supplied and maintained in a safe condition and good working order;
 - 8.2.3 meet the minimum technical specifications required to be compatible with the Service; and
 - 8.2.4 conform at all times with the relevant standard designated by all relevant legislation, including the Act and all applicable regulations, instructions and orders.
- 8.3 *HBT* shall not be under any obligation to connect or keep connected any Equipment if it does not so conform or if it is liable to cause or does cause death, personal injury or damage to property or to impair the quality of the Services provided by *HBT*.
- 8.4 In respect of any *HBT* Equipment, such *HBT* Equipment is provided to the Customer subject to *HBT*'s then current standard terms and conditions for the supply of such Reseller Equipment as communicated to the Customer prior to the delivery of such *HBT* Equipment.

9 Charges and Payment

- 9.1 The Customer shall pay *HBT* the Charges as specified in this Contract and as subsequently varied pursuant to this Contract. Charges shall be payable by the Customer with effect from the Activation Date.
- 9.2 In relation to each Statement of Work the Reseller shall pay to *HBT* the Professional Services Charges set out in such Statement of Work at the times set out in such Statement of Work. In absence of any express time for payment of the Professional Service Charges being set out in the Statement of Work, *HBT* shall be entitled to invoice the Customer for the Professional Services upon completion of the relevant Professional Services and the Customer shall pay such invoice in accordance with clause 9.9.
- 9.3 *HBT* may vary all or any of the Charges at any time on giving not less than 30 days' notice to the Customer to pass through any changes made by a Third Party Service Provider.
- 9.4 *HBT* may increase all or any of the Charges at any time on giving not less than 30 days' notice to take account of any increase in *HBT*'s costs of providing the Services.
- 9.5 *HBT* may increase the Charges at any time on giving not less than 30 days' notice to reflect any increase in the charges prevailing in the marketplace for services comparable to the Services.
- 9.6 *HBT* may at any time on notice to the Customer amend any terms as to payment so as to ensure that it is paid the Charges on or prior to the date on which *HBT* is to pay any Third Party Service Provider in respect of the Services or goods to which such charges relate.



- 9.7 All Charges are stated exclusive of value added tax (VAT) or other applicable taxes. The Customer shall be responsible for paying VAT and other applicable taxes which shall be included in *HBT* invoices at the applicable rate(s).
- 9.8 *HBT* shall issue invoices for the Services in accordance with the billing dates specified in this Contract.
- 9.9 The Customer shall pay the Charges within 14 days of the date of the relevant *HBT* invoice, unless otherwise agreed by *HBT*. The Customer shall not be entitled to set-off, contra or withhold any payment due to *HBT* against any sums of whatsoever nature that are due to the Customer from *HBT* or that the Customer claims are due from *HBT*, and time of payment of all sums under this Contract is of the essence.
- 9.10 Where Charges are not paid by the Customer in accordance with this clause 9 *HBT* may require the Customer to pay all sums due under this Contract on demand, and reserve the right to charge:
- 9.10.1 interest (both before and after any judgment) on all amounts overdue from the Customer pursuant to The Late Payment of Commercial Debts (Interest) Act 1998 at the rate of statutory interest in force from time to time accruing on a daily basis from the due date of payment until receipt by *HBT* of the overdue amount (including any accrued interest and compensation, PLUS
- 9.10.2 compensation arising out of late payment pursuant to section 5A of the Late Payment of Commercial Debts (Interest) Act 1998.

10 Security of the Services

- 10.1 The Reseller provides no guarantee or warranty as to the security of the Services and the Customer shall indemnify, keep indemnified and hold harmless *HBT* and the Hosting Service Provider, and shall pay to *HBT* such sums as would if paid to the Hosting Service Provider indemnify in full, keep indemnified and hold harmless the Hosting Service Provider from and against any claim or demand of whatsoever nature and howsoever arising as a result of the said security or any failure thereof.
- 10.2 Where the Customer is aware or becomes aware of any matter which the Customer knows or ought reasonably to be expected to know constitutes a threat to the security of the Services, then the Customer has a duty pursuant to this Contract immediately to advise *HBT* of such matter.
- 10.3 The Customer is responsible for all use and misuse of any passwords giving access to the Services.
- 10.4 *HBT* and its Third Party Service Providers and/or other sub-contractors shall be entitled to inspect and monitor from time to time all usage being made of the Services including communications being made and received to verify compliance with this Contract.



11 Variation of Services

11.1 *HBT* shall be entitled, upon giving not less than 30 days notice to the Customer where practical, to make variations and additions to the Services and these Terms and Conditions from time to time (acting reasonably) including:-

11.1.1 to improve or add to the Services;

11.1.2 to make changes for operational reasons where these do not have a materially adverse effect on the Services; and/or

11.1.3 to pass through any change made by any Third Party Service Provider to any Third Party Services; and/or

11.1.4 in order to comply with any law or legal obligation (whether under common law, statute, tort or otherwise), or any change to any law or legal obligation; and/or

11.1.5 in order to comply with any final order, provisional order, direction, notice, specification, designation or consent made by the Office of Communications; and/or

11.1.6 in order to maintain the integrity or security of the Services and/or any part of the systems use or to provide the Services.

For the avoidance of doubt, *HBT* shall not be obliged to give any greater notice of any changes by a Third Party Service Provider than the Third Party Service Provider gives to *HBT*.

11.2 *HBT* may at any time change the Services:

11.2.1 if it needs to do so to comply with any applicable safety or other statutory requirements; or

11.2.2 where the change does not materially detract from the quality or performance of the Services.

11.3 In relation to any Third Party Services, including any elements which are sub-contracted to or supplied by third parties, and any third party premises that may host any systems used to provide the Services, the following terms will apply:

11.3.1 *HBT* shall use all reasonable endeavours to monitor and supervise the supply of such Third Party Services, but, except as otherwise provided in this Contract in respect of Third Party Services provided by the Hosting Service Provider, *HBT* shall not otherwise be responsible for or liable for any malfunction, failure, non-operation, default, or non-availability of such Third Party Services, unless due to *HBT's* negligence or default;

11.3.2 if the third party changes its specifications for the Third Party Services after the date of this Contract, or that third party replaces the same with a new version, or ceases to supply the same, or *HBT* decides to replace the same, except in respect of Third Party Services provided by the



Hosting Service Provider, *HBT* shall be entitled (without prejudice to any of its other rights and remedies) to substitute for the Third Party Services an alternative which shall as far as is reasonably possible provide substantially the same functionality, and to make a reasonable resulting variation to the Charges and other terms of this Contract. *HBT* would as far as practicable pre-plan this with the Customer;

11.3.3 if the third party increases its charges for the Third Party Services, *HBT* shall be entitled to make a resulting increase to the Charges to pass on the cost increase in accordance with clause 9.3; and

11.3.4 *HBT* may change the Third Party Service Provider at any time. In such case, this may involve a temporary suspension in the Service and re set-up.

12 Suspension of Services

12.1 *HBT* reserves the right to interrupt the service or change the technical specification of the Services for operational reasons (such as maintenance or service upgrades) or because of an emergency. In these circumstances where possible *HBT* will give notice to the Customer of such interruption however, the Customer shall have no claim against *HBT* for any such interruption.

12.2 *HBT* may suspend the provision of the Services or any part thereof in its absolute discretion and without notice if:

12.2.1 the Customer fails, or *HBT* believes the Customer will fail, to meet any of its obligations under this Contract including, but not limited to;

12.2.1.1 failure to make payment pursuant to clause 9; or

12.2.1.2 failure to comply with the Acceptable Use Policy;

12.2.2 technical limitations exist or arise which make the provision of the Services impossible or materially limit the functionality or performance of the Services; or

12.2.3 in the opinion of *HBT* the Customer's conduct may result in the breach of any law or is otherwise prejudicial to the interests of *HBT*; or

12.2.4 in the opinion of *HBT* it is necessary for operational reasons such as upgrades to the Services or regular or emergency maintenance; or

12.2.5 *HBT* is obliged to comply with any order, instruction or request of a competent governmental, emergency services organisation or regulatory or other authority; or

12.2.6 *HBT* is entitled to terminate this Contract under clause 13 or 15; or



12.2.7 any Third Party Service Provider temporarily suspends or takes out of use the Services for operational purposes; or

12.2.8 *HBT* is required to suspend the Services by the Hosting Service Provider as a result of the occurrence of any event or default of the Customer that would entitle *HBT* to suspend the Services under this clause 12

12.3 *HBT* shall, where practical, give the Customer notice of intention to suspend the Services and, in relation to suspension for the reasons stated in Clauses 12.2.2, 12.2.4 or 12.2.5 above, shall restore the Services as soon as *HBT* is reasonably able to do so.

12.4 If *HBT* exercises its right to suspend the Services this shall not restrict their right to terminate this Contract.

12.5 The Customer shall indemnify, keep indemnified and hold harmless *HBT* and the Hosting Service Provider from and against any claim or demand of whatsoever nature and howsoever arising against *HBT* and/or Hosting Service Provider as a result of suspension pursuant to this clause.

13 Termination

13.1 *HBT* may terminate this Contract with immediate effect by notice in writing if the Customer:

13.1.1 fails to pay any sums due to *HBT* whether pursuant to clause 9 or within 30 days of receiving a written payment demand from *HBT*; or

13.1.2 fails to comply with the Acceptable Use Policy; or

13.1.3 fails to remedy a material breach of this Contract capable of remedy within 30 days of receiving the notice specifying the breach; or

13.1.4 is in material breach of this Contract and that breach cannot be remedied; or

13.1.5 commits persistent breaches of the Contract whether remedied or not.

13.2 *HBT* may terminate this Contract with immediate effect by notice in writing if;

13.2.1 there is a change of control of the Customer; or

13.2.2 any of the circumstances set out in clause 0 occurs.

13.3 Either party may terminate this Contract with immediate effect by notice in writing to the other party if the other:

13.3.1 commits a material breach of this Contract, and (where capable of remedy) fails to remedy the breach within 30 days of a written notice to do so; or



- 13.3.2 is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of their creditors, or goes into voluntary (otherwise than for reconstruction or amalgamation), compulsory liquidation or a receiver or manager or administrator or administrative receiver is appointed over their assets, anything analogous to, equivalent or similar to the above occurs to a party in any jurisdiction governing that party; or
- 13.3.3 ceases trading; or
- 13.3.4 is unable to pay its debts as and when they fall due within the meaning of section 123 of the insolvency Act 1986.
- 13.4 In the event of termination of this Contract by *HBT* pursuant to Clauses 13.1, 13.2.1, 13.3 or 13.6.1 during the Minimum Contract Period the Customer shall be deemed to have repudiated this Contract and shall pay to *HBT*, in addition to any unpaid Charges due at the date of termination, an amount equal to the remaining Charges for Services that the Customer would have incurred up to the end of the Minimum Contract Period had the termination not taken place, less an accelerated payment discount at the Bank of England base rate current at the date of termination calculated on a daily basis to take account of early receipt. The provisions of this clause 13.4 are without prejudice to any other rights and remedies of *HBT*.
- 13.5 *HBT* may terminate this Contract if there is a material impact on its ability to provide the Services for whatsoever reason and shall, insofar as it is able to do so, give the Customer due notice of the said termination.
- 13.6 *HBT* may terminate this Contract with immediate effect by notice in writing to the Customer if:
- 13.6.1 the Customer fails to comply with any of the Licence Terms; or
- 13.6.2 *HBT* is informed by any Third party Service Provider that such Third Party Service Provider is required to cease any Third Party Services (in whole or in part) by a competent regulatory authority (e.g. pursuant to a withdrawal, revocation or non-renewal of authorisations); or
- 13.6.3 any Third Party Service Provider supporting the Services ceases to do so for whatever reason; or
- 13.6.4 any agreement between the Hosting Service Provider and any of its Licensors is terminated (for any reason), or varied in a manner that means *HBT* can no longer comply with any provision of this Contract; or
- 13.6.5 the Head Agreement is terminated (for any reason); or
- 13.6.6 any Third Party Services or any Third Party Software cease to be provided (in whole or in part) by any Third Party Service Provider to *HBT* or for use or resale by *HBT* for whatever reason; or



13.6.7 any Third Party Service Provider changes the terms of its provision of telecommunications services to *HBT* for the Services beyond the reasonable control of *HBT*; or

13.6.8 any Third Party Services which are essential to the provision of the Services ceases to be available at all or at an appropriate capacity and there shall not be available any suitable replacement; or

13.6.9 any authorisation licence or other permission for *HBT* or any Third Party Service Provider under the Act is revoked, withdrawn or not renewed for whatever reason; or

13.6.10 *HBT* is required to terminate this Contract by the Hosting Service Provider as a result of the occurrence of any event or default of the Customer that would entitle *HBT* to terminate this Contract under this clause 13.

13.7 The Customer shall indemnify, keep indemnified and hold harmless *HBT* and the Hosting Service Provider from and against any claim or demand of whatsoever nature and howsoever arising against *HBT* and/or Hosting Service Provider as a result of termination pursuant to this clause 13.

13.8 Upon termination of this Contract each party shall return to the other party any Confidential Information of the other which it has in its possession.

14 Termination by the Customer

14.1 Where the Customer purports to terminate this Contract after expiry of the Minimum Contract Period other than in accordance with clause 2.1 or 13.3 *HBT* shall be entitled (without prejudice to any of its other rights) to treat such purported termination as a repudiatory breach and accept such repudiation by terminating this Contract in which case the Customer shall pay to *HBT* an amount equivalent to the cost of 30 days Charges which the Customer would have incurred had the Customer given 30 days' prior written notice of termination in accordance with clause 2.1.

14.2 Where the Customer purports to terminate this Contract during the Minimum Contract Period other than in accordance with clause 13.3, *HBT* shall be entitled (without prejudice to any of its other rights and remedies) to treat such purported termination as a repudiatory breach and accept such repudiation by terminating this Contract in which case the Customer shall pay to *HBT*, in addition to any unpaid Charges due at the date of termination, an amount equal to the remaining Charges for Services that the Customer would have incurred up to the end of the Minimum Contract Period had the termination not taken place, less an accelerated payment discount at the rate of the Bank of England base rate current at the date of termination calculated on a daily basis to take account of early receipt.

15 Force Majeure

15.1 Neither party shall be obliged to carry out any obligation under this Contract (other than the Customer's obligation to pay the Charges and to indemnify *HBT* and/or the Hosting Service Provider) where performance of such obligation is prevented due to any cause beyond a party's reasonable control



including but not limited to, any act of God, severe weather, failure or shortage of power supplies, flood, drought, lightning or fire, labour shortage or labour dispute, the act or omission from the Government, highways authorities, other telecommunications operators or administrations or other competent authority, the obstruction by a third party of line of sight between microwave installations, war, military operations, or riot, or difficulty, delay or failure in manufacture, production or supply by third parties of the Services resulting from the same or a similar type of force majeure event and breakdown of any Equipment.

- 15.2 If any event described in clause 15.1 lasts more than 14 days from the date of its commencement and that event prevents either party from performing all or a material part of its obligations during that period either party may terminate this Contract by giving 30 days written notice to the other party.
- 15.3 A party relying on this clause 15 shall use reasonable endeavours to mitigate the effects of a force majeure event.

16 Information and Confidentiality

- 16.1 The Customer will provide *HBT* with any information which *HBT* may reasonably require to enable to proceed with the performance of its obligations under this Contract.
- 16.2 The Customer acknowledges that *HBT* reserves the right to review or edit any of the Customer's information (including but not limited to information about the communications such as origin, destination, duration, route and time) or third party information which the Customer uses in connection with the Services for the purposes of any of the following:
- 16.2.1 performing its obligations under this Contract;
 - 16.2.2 correcting, maintaining and improving the Services;
 - 16.2.3 ensuring that the Customer is complying with the Acceptable Use Policy;
 - 16.2.4 monitoring the performance of the Services including the Customer's usage;
 - 16.2.5 collating information to provide non-specific statistics to assist in *HBT* or any Reseller third party supplier's business planning;
 - 16.2.6 complying with applicable laws, regulations and statutory instruments; or
 - 16.2.7 complying with any request for information or disclosure from a Court or other appropriately authorised body.
- 16.3 Neither party shall disclose to any third party without the prior written consent of the other party any Confidential Information which is received from the other party as a result of this Contract except that the Hosting Service Provider may disclose Confidential Information to its employees, to the Hosting Service Provider and to *HBT*'s other suppliers and sub-contractors and employees of its Associates who



will comply with the obligations of confidentiality on *HBT* set out in this clause 16. Each party agrees that any Confidential Information received by it from the other party shall only be used for the purposes of the performance of its obligations and/or the exercise of its rights. These restrictions shall not apply to any information which:

16.3.1 is or becomes generally available to the public other than as a result of a breach of an obligation under this clause 16; or

16.3.2 is acquired from a third party who owes no obligation of confidence in respect of the information; or

16.3.3 is or has been independently developed by the recipient; or

16.3.4 is required by any Court of competent jurisdiction or by a governmental or regulatory authority or where there is a legal right, duty or requirement to disclose such Confidential Information.

17 Data Protection

17.1 *HBT* and the Customer each agree to comply with their respective obligations under applicable data protection legislation (including the Data Protection Act 1998) and maintain all relevant registrations, including (in relation to the Customer) such registrations and consents as the Customer should obtain and maintain to enable *HBT* and/or the Hosting Service Provider to process personal data in connection with the performance by *HBT* of its obligations under this Contract.

17.2 Except in respect of Customer Details the use of which is governed by clause 17.3, if and to the extent that *HBT* Processes Personal Data in the capacity of the Data Processor of the Customer in the course of performing its obligations under this Contract, *HBT* shall:

17.2.1 act in accordance with the Customer's instructions in respect of the Processing of such Personal Data from time to time; and

17.2.2 use appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction or damage.

17.3 Any and all Customer Details supplied by the Customer is held and may be used and disclosed in accordance with [*Reseller's*] current privacy policy available on the *HBT* Website.

17.4 Notwithstanding anything to the contrary, *HBT* and/or the Hosting Service Provider shall be entitled to put any data obtained under or in connection with this Contract into a computerized directory and may use and disclose such data in order to enable *HBT* and/or the Hosting Service Provider to provide the Services and market other products and services to the Customer.

17.5 The Customer acknowledges and agrees that in submitting data (including Customer Details) to *HBT* under or in connection with this Contract, it gives its consent (and it shall procure that each of the other End Users shall give its consent, as required) for such data to be shared with the Hosting Service



Provider and the Licensors for use by the Hosting Service Provider and the Licensors for purposes in connection with the provision of the Services. The Customer hereby consents (and it shall procure that each of the other End Users shall give its consent) to HBT and/or the Hosting Service Provider transferring Personal Data outside of the European Economic Area to the extent necessary in connection with this clause 17.5.

- 17.6 Notwithstanding anything to the contrary, the Customer agrees that *HBT* and/or the Hosting Service Provider shall be entitled, when required by law, to disclose to government agencies passwords, decryption codes, and details of the Customer's information processed using the Services, upon written notice to the Customer
- 17.7 The provisions of this clause 17 shall survive the termination of this Contract.

18 Intellectual Property

- 18.1 The Customer shall not use any trade names, trademarks or service marks of HBT or the Licensors without the express written consent of HBT (in respect of any trade names, trademarks or service marks owned by HBT) or the relevant Licensor (in respect of any trade names, trademarks or service marks owned by any Licensor).
- 18.2 The Customer must not without the express consent of the Hosting Service Provider use the Hosting Service Provider's trade names, trademarks or service marks
- 18.3 Copyright in all software, documents, drawings and information supplied to the Customer in connection with this Contract remain vested in *HBT* or the copyright owner. Such software, documents, drawings and information are confidential and will not be copied, disclosed or used (except for the purpose for which they were supplied) without *HBT's* prior written consent and in respect of Third Party Software, the prior written consent of the relevant Licensor.
- 18.4 The Customer hereby grants HBT and the Hosting Service Provider a non-exclusive licence with a right to grant sub licences to use the Customer Materials solely to the extent and for the period necessary for HBT, any sub-contractor and/or any third party providing the Professional Services to perform HBT's obligations under this Contract such licence to terminate no later than the termination of this Contract. HBT shall comply with any reasonable terms, restrictions or instructions given by the Customer from time to time in relation to the use of the Customer Materials.
- 18.5 Where the Customer provides Customer Materials to HBT and/or any sub-contractor under or in connection with this Contract, the Customer shall indemnify and keep indemnified HBT and the Hosting Service Provider and shall pay to the Hosting Service Provider such sums as would indemnify and keep indemnified the third party contractor(s) providing the Professional Services in respect of any losses, liabilities, damages, costs and/or expenses (including reasonable legal fees) incurred by Reseller, the Hosting Service Provider and/or any of the contractors providing the Professional Services in connection with any claim, action, proceeding or demand (each whether actual, pending or threatened) that the use of the Customer Materials for the purpose for which they were provided under



this Contract infringes the Intellectual Property Rights of any third party to the extent that such claim, action, proceeding or demand is due to the performance of the Services in accordance with this Contract or in accordance with the specific instructions of the Customer provided always that HBT shall:

- 18.5.1 give notice to the Customer of any such claim as soon as reasonably practicable upon becoming aware of the same; and
- 18.5.2 give the Customer the conduct of the defence to any such claim and shall not at any time admit liability or otherwise attempt to settle such claim; and
- 18.5.3 give the Customer all assistance reasonably requested by the Customer in connection with any such claim.

19 Limitation of Liability

19.1 *HBT* shall not be liable whether in contract, tort (including negligence), breach of statutory duty or otherwise for:

- 19.1.1 loss of profits, anticipated profits, production, business, business opportunity, goodwill, revenue, or anticipated savings (whether direct or indirect); or
- 19.1.2 loss of, corruption of, or damage to data or software (whether direct or indirect); or
- 19.1.3 loss of use of any computer or equipment (whether direct or indirect); or
- 19.1.4 wasted management or staff time (whether direct or indirect); or
- 19.1.5 any special indirect or consequential loss or damage; or
- 19.1.6 any loss suffered by any third party or any liability to any third party.

For the purposes of the foregoing, "loss" includes a partial loss or reduction in value as well as a complete or total loss.

19.2 The total liability of *HBT* (other than liability governed by clause 19.3) arising out of or in connection with this Contract (whether arising in contract, in tort, including negligence, as a result of breach of statutory duty or otherwise howsoever) is limited to a sum equivalent to the total of Charges paid to *HBT* in the previous 12 months or £150.00 (whichever the greater), for any one cause of action or series of causes of action arising out of the same event, act or omission (the "Per Claim Cap") and, in aggregate, to a sum equivalent to 200% of the Per Claim Cap for any and all causes of action arising in any 12 month period.

19.3 *HBT's* liability (whether arising in contract, in tort (including negligence), or as a result of breach of statutory duty or otherwise howsoever) for damage to tangible property shall be limited to £5000.00 in



respect of each incident or series of connected incidents. For the purposes of this clause, neither data nor software constitutes "tangible property".

19.4 Nothing in this Contract shall exclude or restrict the liability of either party for:

19.4.1 death or personal injury arising as a result of its negligence; or

19.4.2 for its fraud; or

19.4.3 for any other liability which cannot be excluded or limited by law.

19.5 The express terms of this Contract are in lieu of all warranties, conditions, terms, undertakings and obligations whether oral or in writing and whether express or implied by statute, common law, custom, trade usage, course of dealings or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

19.6 *HBT* are not liable to the Customer for the acts or omissions of any other party, including other providers of telecommunications, computers or other equipment or services including internet services.

19.7 No delay in enforcing any of the provisions of this Contract shall affect or restrict the rights of *HBT* arising under this Contract.

19.8 *HBT* shall not be in breach of this Contract or under any liability for any failure to perform or for delay in performing any obligation under this Contract (in whole or in part) to the extent that the performance of such obligation is prevented, frustrated, hindered or delayed as a result of any breach of this Contract by the Customer or any voluntary act or omission of the Customer.

20 Severability

Each provision of this Contract operates separately. If any provision of this Contract is held to be invalid or unenforceable in whole or part such provision shall be deemed not to form a part of the Contract and the enforceability of the remainder of the Contract shall not be affected.

21 Variation and Assignment

21.1 Notwithstanding any other provision of this Contract, *HBT* may vary this Contract at any time by notice in writing to the Customer if it needs to do so to comply with terms contained in *HBT*' contracts with any Third Party Supplier and/or any contracts between the Hosting Service Provider and any Licensor or any law or statutory obligation and will:

21.1.1 notify the Customer within 48 hours of *HBT* being notified or otherwise becoming aware of the need for the said change; and

21.1.2 use its reasonable endeavours to ensure that any change to the Contract does not result in any deterioration in the Services.



- 21.2 Without prejudice to any and/or all of the provisions of this Contract, *HBT* may in its absolute discretion:
- 21.2.1 assign or otherwise transfer the benefit of this Contract or any part thereof to any third party; or
 - 21.2.2 subcontract the performance of this Contract or any part thereof to one or a number of third parties.
- 21.3 In the event of the termination (but not expiry) of the Head Agreement, the Customer and *HBT* hereby agree that upon the date (**Novation Date**) specified in a notice received by the Customer from the Hosting Service Provider (**Novation Notice**), the rights and obligations under this Contract (on its then current terms) shall be automatically novated from *HBT* to the Hosting Service Provider upon the following terms:
- 21.3.1 the Hosting Service Provider shall assume all the obligations of *HBT* to the Customer under or arising from this Contract on or following the Novation Date. Such assumption by the Hosting Service Provider of the obligations of *HBT* shall be confirmed in the Novation Notice;
 - 21.3.2 the Customer hereby agrees to be bound by its obligations under this Contract (to the extent arising on or following the Novation Date) in every way as if the Hosting Service Provider had been a party to the Contract in place of *HBT*; and
 - 21.3.3 the Customer and *HBT* hereby agree that all rights and liabilities in respect of the obligations of *HBT* and/or the Customer under this Contract that accrued prior to the Novation Date shall remain rights and liabilities as between the Customer and *HBT*. The Customer hereby agrees that the Hosting Service Provider shall have no liability to the Customer (whether in contract or in tort or otherwise) arising from any act or omission of *HBT* in the performance or purported performance of all or any of [*Reseller's*] obligations to the Customer under the Contract prior to the Novation Date.
- 21.4 The Customer shall not assign, sub-contract or otherwise transfer this Contract or any of its rights or obligations arising under it without the written consent of *HBT*.
- 21.5 Except as expressly permitted under this Contract, no variation to the terms of this Contract shall be valid unless agreed to in writing by a duly authorised representative of each party.
- 21.6 The Customer warrants and represents that it is entering into this Contract in the course of a business.
- 21.7 Nothing in this Contract is to be construed as establishing or implying any partnership or joint venture between the parties, or as appointing any party as agent or employee of any other party. No party shall hold out any other party as its partner or joint venturer.



22 Entire Contract

- 22.1 The Contract as herein defined constitutes the entire contract between *HBT* and the Customer and supersedes all prior negotiations, representations, proposals, understandings and undertakings whether written or oral relating to its subject matter.
- 22.2 In the event of any conflict between the Terms and Conditions of this Contract and the terms of any other document, then these Terms and Conditions shall take precedence.
- 22.3 Each party acknowledges that in entering into this Contract (and any other document to be entered into pursuant to it) it does not rely on any representation, warranty, collateral contract or other assurance of any person (whether party to this Contract or not) that is not set out in this Contract or the documents referred to in it. Each party waives all rights and remedies which, but for this clause, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance. The only remedy available to any party in respect of any representation, warranty, collateral contract or other assurance that is set out in this Contract (or any document referred to in it) is for breach of contract under the terms of this Contract (or the relevant document). Nothing in this Contract shall, however, limit or exclude any liability for fraud.

23 No Waiver

Any waiver of any breach of any provision of the Contract will not constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions of the Contract.

24 Counterparts

This Contract may be executed in any number of counterparts each of which when executed and delivered shall be an original but all the counterparts together shall constitute one and the same document.

25 Notices

- 25.1 Notices given under this Contract must be in writing and may be delivered by hand or first class post to the following addresses:
- 25.1.1 To *HBT* at the address of the *HBT* office shown on the Order Form or any alternative address which *HBT* notifies to the Customer;
- 25.1.2 To the Customer at the address to which the Customer asks *HBT* to send invoices, the address of the Customer shown on the Order Form or, if the Customer is a company, to its registered office.

A party may change its address for service of notices by notice to the other in accordance with this clause .



- 25.2 A notice shall be treated as having been received:
- 25.2.1 if delivered by hand between 9.00 am and 5.00 pm on a Business Day (which time period is referred to in this clause as **Business Hours**), when so delivered; and if delivered by hand outside Business Hours, at the next start of Business Hours; and
 - 25.2.2 if sent by first class post, at 9.00 am on the second Business Day after posting if posted on a Business Day and at 9.00 am on the third Business Day after posting if not posted on a Business Day.
- 21.3 In proving that a notice has been given it shall be conclusive evidence to prove that delivery was made, or that the envelope containing the notice was properly addressed and posted (as the case may be).
- 21.4 For the purposes of this clause "Business Day" means a day other than a Saturday, Sunday or public holiday in England and Wales.

26 **Audit**

- 26.1 During the term of this Contract and for a period of 2 years after the termination of this Contract the Customer shall keep separate accounts and records giving correct and adequate details of:
- 26.1.1 all payments made in respect of this Contract; and
 - 26.1.2 the Customer's use of the Services and Software (including Third Party Software);
- and shall upon request report to *HBT* in respect of the above and/or permit *HBT*, the Hosting Service Provider, the Licensors and its and their duly appointed representatives at all reasonable times to inspect all such accounts and records and to take copies thereof.
- 26.2 In the event that an audit conducted in accordance with clause 26.1 uncovers a payment shortage in respect of the Charges, the Customer shall pay *HBT*:
- 26.2.1 in respect of Microsoft Third Party Software, 15% per unit price for each Microsoft Third Party Software product which was not paid for. In such circumstances *HBT* shall presume that such unreported use of the relevant Third Party Software began upon commencement of this Contract unless the Customer can reasonably demonstrate a different scope and duration of usage; or
 - 26.2.2 in respect of any other Software or other element of the Charges, any unpaid amount which is due and payable in accordance with the terms of this Contract.
- 26.3 In the event that an audit conducted in accordance with clause 26.1 uncovers a payment shortage of Charges of 5% or more, the Customer shall reimburse *HBT*, the Hosting Service Provider and/or its Licensors for the expenses incurred in conducting such audit.



27 Third Party Rights

- 27.1 The Hosting Service Provider and each Licensor may in its own right enforce the provisions of this Contract in accordance with the Contracts (Rights of Third Parties) Act 1999 (“the Act”) which shall apply to this Contract.
- 27.2 Notwithstanding Clause 27.1, *HBT* and the Customer may agree to rescind or vary this Contract without the consent of any Licensor.
- 27.3 Subject to clause 27.1, a person who is not a party to this Contract has no right under the Act to enforce any term of this Contract but this does not effect any right or remedy of a third party which exists or is available apart from that Act.

28 Operative Law

This Contract shall be construed in accordance with and governed by the laws of England and in the event of any dispute relating to or arising from this Contract the parties agree to submit to the non-exclusive jurisdiction of the English Courts.



Schedule 1

Licence Terms

Schedule 1A

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 Genesis Communications 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.

responsible directly to Microsoft for any breach of these terms and conditions.

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



Schedule 1B

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.

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Schedule 1C

Additional Terms in respect of the Hosted Enterprise Blackberry Services

1 Definitions and interpretation

- 1.1 In this schedule 1C, the terms defined in clause 1 shall have the same meaning set out in clause 1, and unless the context otherwise requires, the following terms shall have the following meaning. In the event that a term defined in this paragraph 1 is also defined in clause 1, the definition in this paragraph 1 shall apply for the purposes of this schedule 1:

BES Software means RIM's proprietary software, regardless of the form or media in or on which it is provided, which is designed to integrate with and provide a consolidated link between one or more messaging platforms, or other corporate applications servers and Handhelds provisioned to operate with the BES Software. The BES Software is designed to communicate with Handhelds using push-based encrypted wireless data transmission;

BES Software Licence means the Blackberry Enterprise Server Software Licence Agreement entered into between the Hosting Service Provider and RIM as set out in schedule 2, as amended from time to time and communicated to the Customer by *HBT* posting the amended version of such agreement (or a link thereto) on the *HBT* Website;

BlackBerry SDK Software means the C++ and/or the JDE software development kits as applicable;

BlackBerry Solution means one or more of the following: the BES Software, Handhelds, Handheld Software, Desktop Software, or any RIM services that RIM expressly agrees to provide. For clarification purposes, the BlackBerry Solution specifically excludes Service Access. End Users must have a subscription for Network Services in order to use the BlackBerry Solution and/or access to network infrastructure if applicable. Network Services shall be subject to the terms and conditions of an agreement between End Users and the Network Provider pertaining to the Network Services;

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

End User means the Customer and any of the Customer's employees, agents or independent contractors who use the BlackBerry Solution and/or is authorised directly or indirectly to access the BES Software or the Hosted BES Solution, or otherwise to whom the functionality of the BES Software is made available by the Hosting Service Provider to the End User;



End User Data means any information of any kind that personally identifies (or that can be used together with other information or data, to personally identify) and End User;

Handhelds means a BlackBerry wireless device manufactured by or on behalf of RIM. For clarity, Handhelds do not include PDAs or phones manufactured by or on behalf of third parties, even if such third parties are BlackBerry Connect/Built-In licensees;

Handheld Software means RIM proprietary: (a) software; (b) firmware; (c) data flashed or otherwise residing on a Handheld at the time of purchase, or otherwise provided for installation on a Handheld; and/or (d) software sent over the wireless network to a Handheld;

Hosted BES Solution means the Hosted BES Software operated by the Hosting Service Provider on equipment owned, controlled or dedicated to the Hosting Service Provider, communicating with Handhelds of End Users which have been provisioned to operate in conjunction with such Hosted BES Software;

Hosted BES Software means those copies of the BES Software licensed by RIM to the Hosting Service Provider and which are used by the Hosting Service Provider to provide the Hosted BES Solution to End Users on the terms set out in this schedule 1C;

Network Provider means the service provider who provides the wireless network and related communication infrastructure, or access to the foregoing, as well as any licences or sub-licences reasonably necessary for the operation of or access to the foregoing that supports the provision of the BlackBerry Solution to the End User;

Network Services means wireless network services offered by a Network Provider for use in connection with the BlackBerry Solution;

Reverse Engineer includes any act of reverse engineering, translating, disassembling, decompiling, decrypting or deconstructing (including any aspect of "dumping of RA/ROM or persistent storage", "cable or wireless link sniffing" "protocol analysis", or "black box" reverse engineering) software or hardware or any method or process of obtaining or converting any information, data, or software from one form into a human readable form;

RIM Licence means RIM's then current standard software licence in whatever form or medium provided by RIM in conjunction with the RIM Software, including but not limited to the licence in respect of BES Software as communicated to the Customer by the Reseller and/or the Hosting Service Provider and the "BlackBerry End User/Software Licence Agreements" provided with the BES Software and Handhelds.

RIM Products means the Handhelds and the RIM Software

RIM Mark means any trademarks, trade names, service marks, commercial symbols, trade dress or logos the Intellectual Property Rights in which are owned by RIM;



RIM Software consists of the Desktop Software, software and/or firmware residing on or used in association with Handhelds from time to time (including without limitation the BlackBerry wireless e-mail, over the air calendar and address book applications), Blackberry SDK Software, any BES Software and all other software the Intellectual Property Rights in which are owned by RIM, but excluding all other Third Party Software;

Service Access means the services provided by RIM's relay infrastructure (the network infrastructure connected to Network Services for the purpose of redirecting wireless e-mail and data) which is responsible for delivering such services as e-mail and data to Handhelds. Service Access includes both BlackBerry Enterprise Server Services and BIS Services;

Technical Support Services means the technical support services provided by RIM or a sub-contractor of RIM to the Customer in regard to the use and operation of RIM Products;

Transition Period means the period for transitioning End Users to an alternative service to the Hosted BES Solution provided by the Hosting Service Provider following the termination of the provision of the Hosted BES Solution under this Contract in accordance with the terms of this Contract, such period being (i) within 10 days of the effective date of termination of the provision of the Hosted BES Solution by the Hosting Service Provider under this Contract in the case of a breach by the Hosting Service Provider relating to any of RIM's confidential information or Intellectual Property, and (ii) within 30 days from the effective date of termination of the provision of the Hosted BES Solution by the Hosting Service Provider under this Contract in all other cases.

- 1.2 For the purposes of this schedule 1C, each and every obligation of the Customer to do, or to refrain from doing, any act or thing shall include an obligation upon the Contractor to procure that each other End User shall also do, or refrain from doing, such act or thing.

2 Customer Obligations

- 2.1 In respect of any Hosted Enterprise Blackberry Services supplied to the Customer by HBT, the Customer shall comply with the terms of this schedule 1C.
- 2.2 Except to the extent that the following restrictions are prohibited by law, the Customer shall not:
- (a) modify, reproduce, or Reverse Engineer all or any portion of any RIM Products or attempt to do so; or
 - (b) Authorise, or acquiesce in, any other person engaging in these activities, or attempting to do so; or
 - (c) use the RIM Products or any information contained therein or otherwise provided by RIM (directly or indirectly) for the purposes of developing, or having developed any products competitive with any of the RIM Products;



- 2.3 The Customer shall not engage in any unauthorised use of or exploitation of the RIM Software, or engage in unauthorised use or exploitation of the Intellectual Property or confidential information of RIM, or attempt to do any of the above.
- 2.4 The Customer shall not use the functionality of the Hosted BES Software or the Hosted BES Solution for any purpose other than the internal business or personal purposes of the Customer.
- 2.5 The Customer shall not transfer, assign, copy, modify, reproduce or use any RIM Software for any purposes other than in conjunction with the permitted use of the Hosted BES Solution.
- 2.6 The Customer shall comply with such export restrictions arising out of encryption software in RIM's hardware and RIM Software as communicated to the Customer by HBT, the Hosting Service Provider and/or RIM from time to time.
- 2.7 The Customer acknowledges and agrees that RIM is not responsible to the Customer or any other End User for any warranty provided by HBT and/or the Hosting Service Provider (if any) in respect of the Hosted BES Solution and/or the RIM Products.
- 2.8 All rights and licences in and to the RIM Products granted under this Contract shall terminate automatically upon the expiration of the Transition Period.
- 2.9 The Customer hereby consents and shall procure the consent of each End User to the disclosure by HBT and/or the Hosting Service Provider of the End User Data to RIM and its Associates for the purposes of enabling RIM to perform its obligations under the Master Alliance Agreement between the Hosting Service Provider and RIM in respect of the Hosted BES Solution supplied to the End User under this Contract and facilitating the transition of End Users to and alternative solution upon the termination of the provision of the Hosted BES Solution under this Contract.
- 2.10 The Customer shall not distribute or use in any way any viruses, contaminating or destructive features, "backdoors", "time bombs", "Trojan Horses", "sniffer" routines, "worms", bots, "drop dead devices", harmful software code, file, program or programming routine or other contaminating or destructive features or other computer software routines or hardware components designed to:
- (a) permit unauthorised access to, or use of, the RIM Software, BlackBerry Solution, or computer systems on which the RIM Software is loaded, or to which RIM Products are linked,
 - (b) disable, damage, or erase the RIM Software, or the BlackBerry Solution; or
 - (c) perform any other similar actions that would preclude full use of the RIM Software, the RIM Products or the BlackBerry Solution by RIM, its channel partners, its authorized sub-licensees, or their end users.



- 2.11 The Customer shall not do any of the following acts when accessing and/or using the RIM Products and/or the Hosted BES Solution:
- (a) incorporate any data, content, files or materials in any medium whatsoever that:
 - (i) includes content, material, graphics, sounds, video, screens, code or information that is unlawful or fraudulent, or violates or infringes any patent, copyright, trademark, trade secret or any other Intellectual Property of others;
 - (ii) includes any inappropriate language, or material that is unlawful, libellous, slanderous, defamatory or invasive of another person's right of privacy or right of publicity or personality, or that RIM may reasonably deem harmful, vulgar, obscene, derogatory, pornographic, abusive, harassing, threatening, hateful, objectionable with respect to race, religion sexual orientation, age group, national origin or gender, injurious to the reputation or business or goodwill of RIM or the BlackBerry brand or otherwise unfit for publication; or
 - (iii) suggests or encourages any illegal activity; or
 - (b) publish, transmit, distribute or upload any unauthorised or unsolicited bulk email solicitations, chain letters, advertisements, marketing or promotional materials, "junk mail", "spam", pyramid schemes or any other solicitations or communications, including without limitation spamming the RIM Products or other mobile phones or computers, or use or collect RIM Product user e-mail addresses or phone numbers, or other user information for any purpose other than the legitimate internal purposes of the Customer, or use the RIM Products to perform any data collection, extraction or mining or gain or attempt to gain unauthorised access to the wireless device memory and software programs or applications.
- 2.12 The Customer shall comply with all applicable laws, regulations and agreements in respect of access to and use of the RIM Software and the Hosted BES Solution.
- 2.13 The Customer shall not use the Hosted BES Solution or the RIM Software to commit or attempt to commit a crime or facilitate the commission of any crime or other illegal or tortious act.
- 2.14 The Customer co-operate with HBT, the Hosting Service Provider and/or its Licensors and provide information and copies of records requested by HBT, the Hosting Service Provider and/or its Licensors to assist HBT, the Hosting Service Provider and/or its Licensors in investigating or determining whether there has been a breach of this Contract.
- 2.15 The Customer shall not without the express authorisation of an authorised representative of RIM use, permit or acquiesce in any third party in using any RIM Mark in any way, including without limitation as part of any products, services, domain name or company name.



- 2.16 In the event that HBT is to procure the provision of Technical Support Services by RIM to the Customer, as a condition of HBT or procuring the provision of such Technical Support Services the Customer shall agree to be bound by the then current version of the Technical Support Terms that are available for the Customer to access on the website specified by RIM from time to time.
- 2.17 The Customer represents, if applicable, that it shall comply with high standards of ethical conduct and all applicable laws, and govern its conduct with respect for human rights in the spirit of internationally recognized social and ethical standards (e.g. Social Accountability ("SA") 8000), including without limitation the United Nations' "Universal Declaration of Human Rights and the Convention on Rights of the Child" which established standards regulating work place issues of international concern such as: Child Labour; Forced Labour; Health and Safety; Freedom of Association; Right to Collective Bargaining; Discrimination, Harassment and Abuse; Disciplinary Practices; Working Hours; Compensation, Wages and Benefits; and Compliance with all applicable laws.

3 BES Software Licence

- 3.1 The Customer acknowledges and agrees that it has reviewed the terms of the BES Software Licence and that it and all other End Users are deemed to be "Authorized Users" for the purposes of the BES Software Licence.
- 3.2 The Customer shall, and shall procure that all other End Users shall, comply with all of the obligations of and perform all actions and activities required of Authorized Users as set out in the BES Software Licence Agreement.
- 3.3 The Customer shall comply with the obligations in respect of export restrictions as set out in clause 8 of the BES Software Licence as if references in such clause 8 to "you" were references to the Customer.

4 Limitation of liability

- 4.1 Without prejudice to the provisions of clause 19, for the avoidance of doubt, RIM is not a party to this Contract and shall not be liable to the Customer in respect of any breach of this Contract.
- 4.2 As a condition of [Reseller's] ability to provide access to the Hosted BES Solution to End Users, to the extent permissible by law, the Customer shall be liable to HBT for any and all damages caused as a result of any breach of the terms in this Contract relating to the use of the RIM Products without limitation or exception.

5 Indemnities

- 5.1 The Customer shall defend, indemnify and hold harmless HBT, the Hosting Service Provider and RIM against any and all claims, actions, proceedings, costs, damages and expenses (including reasonable legal fees and disbursements) arising out of or in connection with:



- (a) the failure of any End User to adhere to any agreement, including a software licensing agreement, in circumstances where this is ordinarily required by RIM;
- (b) any unauthorised use by End Users of the RIM Software, or the confidential information or Intellectual Property Rights of RIM, or any violation by such End Users of any applicable agreement with RIM, including any RIM Licence;
- (c) any breach by any End User of the obligations of the Customer and/or End Users as set out in this schedule 1C and/or any breach by the Customer of any obligation to RIM under any other Agreement;

provided that: (a) HBT promptly notifies the Customer in writing no later than twenty-one (21) days after HBT or RIM's receipt of notification of a potential claim; (b) the Customer may assume control of the defence of such claim and all related settlement negotiations; and (c) HBT provides the Customer, at the Customer's request and expense, with assistance, information and authority necessary to perform the Customer's obligations under this paragraph 5.1



Schedule 2

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 non-infringement. 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 non-performance 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.



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.



Schedule 3

Form of Statement of Work

Reference Number: ♦

This **Statement of Work** is made pursuant to the Contract dated [] and made between HBT and ♦ ("Customer")

Part 1 The Services

- 1.1 Scope of the Services
- 1.2 Individuals

Part 2 Customer

Part 3 Charges (Fees and Expenses)

- 3.1 The Charges
- 3.2 Payment Profile

Customer shall pay the Professional Service Charges to HBT in accordance with the following milestones:

| Milestone | % of Charges payable upon achieving Milestone |
|-----------|---|
| ♦ | ♦ |
| ♦ | ♦ |
| ♦ | ♦ |



**Part 4
Period of engagement**

**Part 5
Specification**

**Part 6
The Acceptance Tests**

- 6.1 In the absence of any express acceptance tests in respect of a Deliverable, the relevant Deliverable shall be deemed to be accepted either:
- (a) when the Customer's nominated representative provides HBT and/or the Hosting Service Provider with a written notification of acceptance, having conducted reasonable examination and for testing of the Deliverable against the relevant specification; or
 - (b) in absence of such written acceptance, 21 days after the delivery of the relevant Deliverable (or such other period as agreed between the Customer and HBT).

Signed

Signed.....

Duly authorised for and on behalf of
♦ *[Customer Name]*

Duly authorised for and on behalf of
HBT

Dated.....

Dated.....

