

## **EXHIBIT 37**

**MEGAN M. CHUNG'S DECLARATION IN SUPPORT OF APPLE INC.'S MOTION  
FOR SUMMARY JUDGMENT ON COPYRIGHT INFRINGEMENT, DMCA  
VIOLATIONS AND PSYSTAR'S AFFIRMATIVE DEFENSES**

**SYSTEM SOFTWARE LICENSE AGREEMENT (Version 1.2) FOR  
THE PLAYSTATION®3 SYSTEM**

June 18, 2008

PLEASE READ THIS SYSTEM SOFTWARE LICENSE AGREEMENT  
CAREFULLY TO UNDERSTAND YOUR RIGHTS AND OBLIGATIONS.

ACCESS TO OR USE OF THE SYSTEM SOFTWARE IN THE SONY  
COMPUTER ENTERTAINMENT INC. ("SCE")'S PLAYSTATION®3  
COMPUTER ENTERTAINMENT SYSTEM UNIT ("PS3™ system") IS  
EXPRESSLY CONDITIONED UPON ACCEPTANCE OF THE TERMS OF THIS  
AGREEMENT.

This Agreement is a contract with SCE. This Agreement applies to any system software or firmware included in the PS3™ system, and any patches, updates, upgrades, or new versions of the system software or firmware provided to or made available for your PS3™ system through any SCE service or online network, SCE website or PS3™ system game disc (software is collectively, "System Software").

**1. LICENSE GRANT**

Subject to the terms and conditions of this Agreement, all System Software is licensed to users solely for personal, non-commercial use on the PS3™ system in the country in which the PS3™ system was designed by SCE to operate. To the extent permitted by applicable law, your rights to use or access the current version of the System Software will cease upon installation of a newer version of the System Software onto your PS3™ system, whether such installation occurs through manual or automatic download by SCE through SCE's online network, or otherwise. SCE does not grant any license to System Software obtained by users in any manner other than through SCE's authorized distribution methods. Your use or access to open source software or freeware included with the System Software is subject to additional terms and conditions set forth in the instruction manual or documentation for the PS3™ system or at <http://www.scei.co.jp/ps3-license/index.html>. Such additional terms are hereby incorporated by reference. You do not have any ownership rights or interests in the System Software. All intellectual property rights therein belong to SCE and its licensors, and all use or access to such System Software shall be subject to the terms of this Agreement and all applicable copyright and intellectual property laws. Except as expressly granted in this Agreement, SCE and its licensors reserve all rights, interests and remedies.

**2. RESTRICTIONS**

You may not lease, rent, sublicense, publish, modify, adapt, or translate any portion of the System Software. To the fullest extent permitted by law, you may not reverse engineer, decompile, or disassemble any portion of the System Software, or create any derivative works, or otherwise attempt to create System Software source code from its object code. You may not (i) use any unauthorized, illegal, counterfeit, or modified hardware or software in connection with the System Software, including use of tools to bypass, disable, or circumvent any encryption, security, or authentication mechanism for the PS3™ system; (ii) violate any laws, regulations or statutes, or rights of SCE, its affiliated companies, or third parties in connection with

your access to or use of the System Software, including the access, use, or distribution of any software or hardware that you know or should have known to be infringing or pirated; (iii) use any hardware or software to cause the System Software to accept or use unauthorized, illegal, or pirated software or hardware; (iv) obtain the System Software in any manner other than through SCE's authorized distribution methods; or (v) exploit the System Software in any manner other than to use it in your PS3™ system in accordance with the accompanying documentation and with authorized software or hardware, including use of the System Software to design, develop, update, or distribute unauthorized software or hardware for use in connection with the PS3™ system for any reason. Any violation of these restrictions will void the PS3™ system's warranty and affect your ability to obtain warranty services and repair services from SCE or its affiliated companies.

### **3. SERVICES AND UPDATES**

From time to time, SCE may provide updates, upgrades or services to your PS3™ system to ensure it is functioning properly in accordance with SCE guidelines or provide you with new offerings. Some services may be provided automatically without notice when you sign onto SCE's online network, and others may be available to you through SCE's website or authorized channels. Without limitation, services may include the provision of the latest update or download of new release that may include security patches, and new or revised settings and features which may prevent access to pirated games, or use of unauthorized hardware or software in connection with the PS3™ system. Some services may change your current settings, cause a loss of data or content, or cause some loss of functionality. It is recommended that you regularly back up any data on the hard disk that is of a type that can be backed up. Other services may be made available to you by third parties who will require you to accept their terms and conditions and privacy policy ("Third Party Agreement"). You acknowledge that SCE and its affiliated companies do not control such services, content, and terms, and that you elect to use such service or content at your own risk. Notwithstanding any provision of any terms and conditions, in the event of any conflict between this Agreement and the Third Party Agreement, this Agreement shall control.

### **4. COLLECTION OF INFORMATION/ AUTHENTICATION**

SCE may retrieve information about your hardware and software for authentication, copy protection, account blocking, system monitoring/diagnostics, rules enforcement, game management and other purposes. The information collected is not your personally identifying information and there is no way to identify you from this information. SCE may use DNAS (Dynamic Network Authentication System), a proprietary system designed to authenticate game titles and the PS3™ system when you connect the PS3™ system to a network, to collect this information. Any unauthorized transfer, exhibition, export, import or transmission of programs and devices circumventing DNAS may be prohibited by law. SCE reserves the right to use any other authentication or security system, or method in connection with the PS3™ system.

### **5. INTERNET FEATURES**

Use of any feature that requires access to internet connection, including the PS3™

system's internet browser ("Internet Features") is at your own risk. Internet Features may require wireless LAN access which may NOT be available at your location, free of charge, or free from interruption or disconnections. See your wireless LAN provider for details. Internet Features may NOT support all wireless LAN access connection points or Web sites. Browsing websites, or accessing any of the content may result in viruses, loss or corruption of data, or other problems. You must comply with all applicable laws and regulations. See other terms and conditions of use in the user's manuals. You are responsible for all fees in connection with access to or use of the internet.

## **6. WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY**

The System Software and the contents, programs, and services on or provided through the System Software, including Internet Features are provided "AS IS". SCE and its affiliated companies expressly disclaim any implied warranty of merchantability, warranty of fitness for a particular purpose and warranty of non-infringement.

SCE AND ITS AFFILIATED COMPANIES EXCLUDE ALL LIABILITY FOR ANY LOSS OF DATA, LOSS OF PROFIT, OR ANY OTHER LOSS OR DAMAGE SUFFERED BY YOU OR ANY THIRD PARTY, WHETHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL HOWEVER ARISING, AS A RESULT OF ACCESSING TO OR USING THE SYSTEM SOFTWARE OR ANY OF THE CONTENTS, PROGRAMS, FEATURES OR SERVICES ON OR PROVIDED THROUGH THE SYSTEM SOFTWARE. SO LONG AS THIS PROVISION IS ENFORCEABLE IN YOUR JURISDICTION, THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

## **7. TERMINATION**

If SCE determines that you have violated the terms of this Agreement, SCE may take all actions to protect its interests, including denial of any services such as warranty services and repair services provided for your PS3™ system and termination of your access to PlayStation@Network, implementation of upgrades or devices intended to discontinue unauthorized use, or reliance on any other remedial efforts as reasonably necessary to prevent the use of a modified PS3™ system, or any pirated material or equipment. SCE and its licensors reserve the right to bring legal action in the event of a violation of this Agreement. SCE reserves the right to participate in any government or private legal action or investigation relating to your conduct.

## **8. EXPORT CONTROL**

The PS3™ system may contain technology that is subject to certain restrictions under the export control laws and regulations of the United States, including but not limited to the Export Administration Regulations, and the embargo and sanctions regimes of the U.S. Department of Treasury, Office of Foreign Asset Controls. As such, the PS3™ system may not be exported or re-exported to persons and entities prohibited by such laws and regulations.

## 9. GENERAL LEGAL

By using or accessing the System Software, you agree to be bound by all current terms of this Agreement. To access a printable, current copy of this Agreement, go to <http://www.scei.co.jp/ps3-eula/> on your personal computer. SCE, at its sole discretion, may modify the terms of this Agreement at any time, including any terms in the PS3™ system documentation or manual, or at <http://www.scei.co.jp/ps3-license/index.html>. Please check back on this website from time to time for changes to this Agreement. Your continued access to or use of the System Software will signify your acceptance of any changes to this Agreement. In the event of any conflict between this Agreement and the Terms of Service and User Agreement for SCE's online network, the terms of this Agreement shall control the use of or access to, the System Software.

Document selection

Country / Region selection

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### PLAYSTATION®NETWORK

#### TERMS OF SERVICE AND USER AGREEMENT

\*Version 2.0 (November 8, 2007); updates noted in red

PLEASE READ THIS ENTIRE AGREEMENT AND INDICATE WHETHER YOU AGREE TO ITS TERMS BY CLICKING THE "ACCEPT" OR "DO NOT ACCEPT" BUTTON AT THE END OF THE AGREEMENT. YOUR ACCESS TO SONY COMPUTER ENTERTAINMENT AMERICA'S PLAYSTATION®NETWORK ("PSN") IS EXPRESSLY CONDITIONED UPON YOUR ACCEPTANCE OF THE TERMS OF THIS AGREEMENT. IF YOU CLICK THE "DO NOT ACCEPT" BUTTON, YOU WILL NOT BE ABLE TO ACCESS PSN.

This Agreement is a contract between you and Sony Computer Entertainment America Inc. ("SCEA") and can be accepted only by an adult 18 years or older. If you are under 18, you must ask your parent or legal guardian to consent to this Agreement and Privacy Policy. By clicking the "ACCEPT" button yourself, you affirm that you are 18 years or older and you accept this Agreement. You also affirm that you are accepting this Agreement on behalf of, and all legal and financial responsibility and liability for the actions of, your child, and for all subordinate accounts ("Sub Accounts") attached to your Master Account.

This Agreement applies to services, software and content provided through or in connection with PSN, including via the PLAYSTATION®Store and virtual communities, whether delivered onto the PLAYSTATION®3 computer entertainment system, the PSP®(PlayStation®Portable) system, a personal computer or otherwise. Such services, software, and content include subscriptions, data, system software, fixes, updates or newer releases and peripheral materials.

If you accept this Agreement, you are subject to its terms and all other agreements that you have entered into in connection with PSN. You agree that you will not directly or indirectly use PSN (i) in any way for any commercial purpose, (ii) in any way that violates the law or the community code of conduct, or (iii) in any way that harms or has the potential to harm SCEA, its parent company, or any affiliates, subsidiaries, licensors, providers, partners of SCEA or its parent company, and users. You agree that you will not use any unauthorized hardware or software to access or use PSN.

#### 1. PSN ACCOUNT REGISTRATION

Through PSN, you can participate in SCEA's online community, play games online, and purchase content and services, such as new levels for your favorite games or subscriptions to games. PSN may not be available, or may not be supported, in some countries and some languages. You must create a PSN account in order to access PSN's content and services. SCEA reserves the right to deny the creation of any account at its discretion and for any reason. Currently, there are no charges for creating a PSN account, but there may be charges associated with certain online content or services that are available through PSN. All information provided during PSN account registration must be truthful and accurate. There are two types of PSN accounts: Master Accounts and Sub Accounts. All PSN accounts have an associated PSN mailbox for receiving text mail.

If you are 18 years or older, you can create a Master Account for yourself. Each Master Account can create up to six (6) associated Sub Accounts. You are not permitted to create Sub Accounts for persons under the age of 18 who are not your children or for whom you are not the legal guardian.

A Master Account has access to and control over the following aspects of its Sub Accounts: (i) financial aspects; (ii) content availability and (iii) certain chat features. Text mail from SCEA that relates to a Sub Account's purchases on PSN will be sent to the mailbox of the associated Master Account. At its sole discretion, SCEA may send text mail to the Master Account relating to the Sub Account's other activities on PSN.

A child under 18 can only have a Sub Account associated with a Master Account of the child's parent or legal guardian. If you are creating a Sub Account for a child under the age of 13, you must provide (i) your consent for SCEA to disclose, pursuant to SCEA's privacy policy, your child's personally identifying information to third parties for the purpose of allowing your child to participate in PSN activities, such as video and voice chat and gameplay; and (ii) your credit card information. Your credit card will be used to verify parental consent under laws requiring such consent. You will not be charged a fee for creating the Sub Account. If you do not consent to the disclosure of this requested information, you will not be able to create a Sub Account for the child. If all requested information is provided, a separate email containing a code will be sent to the Master Account's email account with instructions to complete registration by entering the code into the Sub Account using a personal computer. You will need to create for your child an Online ID that will be associated with the child's PSN Sub Account. Please note that the Online ID is publicly available to and viewable by all PSN users and your child may receive text emails from any PSN users, including adults, in your child's PSN account mailbox. The parent's Master Account will not be notified of such text emails sent to a child's Sub Account mailbox. As the parent or legal guardian, it is your sole responsibility to monitor your child's access to or use of PSN, as well as any communications made or received by your child on or through PSN.

Some content and services may not be appropriate for children under a certain age. Please check age ratings for content and services before access, download or purchase. Not all content and services are rated. Some content is designed to be downloaded to your PLAYSTATION®3 computer entertainment system or PSP® (PlayStation®Portable) system and will be accessible by all users of that unit. Please monitor your child's access to content, services, and communications that may be age inappropriate. PSN parental controls will not apply to certain materials, including downloaded content and unrated or streamed materials, services, and communications. Your child may not be able to access content, services or play games rated for users older than his or her registered

age. In some countries, parents and legal guardians with Master Accounts will be permitted to set their parental controls to override content restrictions on certain materials for associated sub accounts. Please see the PLAYSTATION®3 System Software User's Guide for more information.

A Master Account can also create Sub Accounts for people over the age of 18. Credit card information is not required to create a Sub Account for someone over 18. Adult Sub Account holders must accept this Terms of Service and User Agreement and the applicable Privacy Policy themselves. The Master Account holder is jointly











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### Xbox LIVE and Games for Windows LIVE Terms of Use

Last updated: September 2008

#### 1. This Is a Contract between You and Microsoft.

This is a contract between you and Microsoft Corporation (located at One Microsoft Way, Redmond, WA 98052-6399 United States , U.S. phone: 1800-4MY-XBOX / International phone: (425 ) 635-7180 ) or, based on where you live, one of the Microsoft Corporation affiliates. We will refer to ourselves in this contract as "Microsoft", "we", "us", or our. A printable version of the most current form of this contract is posted online at [www.xbox.com/en-US/live/legal/legal-tou.htm](http://www.xbox.com/en-US/live/legal/legal-tou.htm) (or a successor web page).

This contract covers your use of the Xbox LIVE and Games for Windows LIVE interactive services, and governs any other related services for which you choose to sign up (for example, specific game subscriptions), content, and other media (for example, items downloaded from Xbox LIVE Marketplace or Games for Windows LIVE Marketplace and their successors); software, machines, support, papers, updates, or upgrades. We refer to all of these as the "Service" and, except where context requires otherwise and even if not expressly referenced in the applicable section, "Service" includes any "Other Items" (defined in Section 8(a)) that you may have obtained access to through or in relation to other aspects of the Service. To avoid any confusion, when you register to use the Service, you are registering for both the Xbox LIVE service and the Games for Windows LIVE service s.

The Service is offered to you conditioned on your acceptance of all terms in this contract. By selecting "ACCEPT" below, you are representing that you are 18 years old (and have reached the "age of majority" if that is not 18 years of age where you live) and you are attaching your electronic signature to and agreeing to all terms in this contract. In addition, if you were a party to a prior version of this contract, that version may have stated that the contract can only be updated on 30 days' notice. By selecting "ACCEPT" below, you are also agreeing to waive the applicability of this notice requirement. If you do not agree to this contract, in its entirety, or if you were a party to a prior version of this contract and do not agree to waive the notice requirement, you must select "DECLINE" and discontinue your registration, and you will have no right to use the Service.

You must have a Windows Live ID to register to use the Service. For additional information, see [Get your Windows Live ID](#). If you already have a Windows Live ID when you are registering for the Service, you can use this Windows Live ID; if you do not, a Windows Live ID will be automatically created for you. A Windows Live ID that is automatically created, however, will have functionality limited to use with the Service. If you wish to use an automatically-created Windows Live ID for purposes other than signing in to the Service, you must also agree to the applicable terms of use or terms of service for a general-purpose Windows Live ID.

**Please note that we do not provide warranties for the Service. The contract also limits our liability. These terms are in Sections 1 8 and 19 and we ask you to read them carefully.**

#### 2. Additional Terms.

Certain games, content offerings, features, or events (for example, sweepstakes and tournaments) that are available via the Service may contain

additional terms, codes of conduct, or guidelines that govern your use of those games or features, or your participation in those events (and we refer to all of these, collectively, as "Additional Terms"). If any terms in this contract conflict with any Additional Terms, then the terms in this contract will control as applied to the Service and your legal relationship with Microsoft. Nothing in any Additional Terms will increase our legal liability or change your relationship with us (unless we are the contracting party identified in the Additional Terms, and we state, in the Additional Terms, our intent to modify the terms of this contract). The Additional Terms may, however, form an additional contract between you and a third party (for example, a third party that is offering content to you or sponsoring a tournament that you want to play in). Any dealings between you and such a third party are solely between you and the third party, and your relationship with the third party may be governed by the Additional Terms. We do not endorse and will not be responsible or liable for any aspect of any such dealings.

Certain features of the Service may be made available to you through web sites, online services or applications operated by third parties. As above, your dealings with any of these third parties are solely between you and the applicable third party and may be governed by other terms or agreements that apply to those web sites and third party features and content. Your use of any part of the Service as accessed through a third party web site, however, is still governed by this contract - even if the terms or agreements applicable to such a third party web site state otherwise.

### **3. When You May Use the Service.**

You may start using the Service as soon as you have finished the sign-up process. No withdrawal right or other "cooling off" period applies to the service, and you waive any applicable "cooling off" period, except if the law requires a "cooling off" period despite your waiver and even when a Service starts right away.

### **4. How You May Use the Service.**

In using the Service, you will:

- obey the law;
- obey any codes of conduct or other notices we provide, including the Xbox Live Code of Conduct ([www.xbox.com/en-us/live/codeofconduct.htm](http://www.xbox.com/en-us/live/codeofconduct.htm) and its successors);
- obey the Microsoft Anti-spam Policy, which is available at [privacy.msn.com/anti-spam](http://privacy.msn.com/anti-spam);
- keep your Service account password secret; and
- promptly notify us if you learn of a security breach related to the Service.

### **5. How You May Not Use the Service.**

In using the Service, you may not:

- use the Service for commercial purposes (except as expressly permitted by us);
- engage in, facilitate, or further unlawful conduct;
- use the Service in a way that harms us or our advertisers, affiliates, resellers, distributors, or vendors, or any customer of ours or our advertisers, affiliates, resellers, distributors, or vendors;
- use any portion of the Service as a destination linked from any unsolicited bulk messages or unsolicited commercial messages ("spam"); or send, either directly or indirectly, any spam through the Service;
- use any automated process or service to access and/or use the Service (such as a BOT, a spider, periodic caching of information stored by Microsoft, or "meta-searching");
- use any unauthorized means to modify or reroute, or attempt to modify or reroute, the Service;
- damage, disable, overburden, or impair the Service (or the networks connected to the Service) or interfere with anyone else's ability to access or use the Service;
- resell or redistribute the Service, or any part of the Service;
- disrupt, or try to gain unauthorized access to: any account, computer, hardware, or network related to the Service;
- obtain (or try to obtain) any data from the Service or related hardware,

except data that we intend to provide or make available to you;

- use the Service or related hardware to design, develop, or update unauthorized software;
- use or distribute unauthorized cheats, macros, or scripts; or
- exploit a bug, or make an unauthorized modification, to any software or data to gain unfair advantage in a game, contest, or promotion.

In addition, your use of the Service is subject to your compliance with the Code of Conduct ([www.xbox.com/en-us/live/codeofconduct.htm](http://www.xbox.com/en-us/live/codeofconduct.htm) and its successors). You agree that we may also discontinue your access to the Service if you do any of the following while connected to the Service:

- Defame, abuse, harass, stalk, threaten, or otherwise violate the legal rights (such as rights of privacy and publicity) of others;
- Publish, distribute, or disseminate any inappropriate, profane, defamatory, infringing, obscene, indecent, or unlawful content, topic, name, material, file, or information;
- Publish, distribute, or disseminate any content, topic, name, material, file, or information that incites, advocates, promotes, depicts, constitutes, or expresses child pornography, profanity, hatred, bigotry, racism, illegal drug use, gratuitous or graphic violence, or criminal or fraudulent activity;
- Create a Gamertag, avatar or use text in other profile fields that may offend other members. This includes comments that look, sound like, stand for, hint at, abbreviate, or insinuate or relate to any of the following: profane words/phrases, topics or content of a sexual nature, hate speech (including but not limited to racial, ethnic, or religious slurs), illegal drugs/controlled substances, or illegal activities;
- Use the Service or any material or information made available through the Service in any manner that infringes any copyright, trademark, patent, trade secret, or other proprietary right of us or any third party;
- Upload files that contain viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software or programs that may damage the operation of the Service, another person's original Xbox, Xbox 360 console, or other property;
- Download or use any material sent or provided by another user of the Service that you know, or reasonably should know, cannot be legally shared or distributed in such manner (except as expressly permitted by us);
- Send, either directly or indirectly, any unsolicited bulk messages or unsolicited commercial communications;
- Participate in pyramid schemes or chain letters;
- Harvest or otherwise collect information about others, including e-mail addresses, without their consent;
- Create a false identity for the purpose of misleading others;
- Falsify or delete any author attributions, legal or other proper notices, or proprietary designations or labels of the origin or source of software or other material contained in a file that is transferred;
- Make false complaints or provide false feedback about other users of the Service;
- Use, download, or otherwise copy, or provide to a third party (whether or not for a fee) any: (i) directory of users of the Service, (ii) information about users of the Service, or (iii) Service usage information;
- View, intercept, or attempt to intercept private communications not intended for you;
- Violate any relevant law or posted guidelines or codes relating to the use of the Service; or
- Provide or offer to provide services for the provision of gambling or wagering.

#### **6. You Are Responsible for Your Service Account.**

Only you may use your Service account. For some parts of the Service, we may notify you that you may set up additional member accounts that are dependent on your account (an "associated account"). You are responsible for all activity that takes place with your Service account or an associated account. Except as otherwise stated in this Section 6, you may not authorize any third party to access and/or use the Service on your behalf, except where we provide a mechanism for third parties to access the Service on your behalf. We may limit who may use your Service account or any associated accounts.

If you allow or enable a minor to use your Service account or an associated account, then:

- You represent that you are the parent or legal guardian of each such minor;
- You acknowledge that you are aware that some features of the Service, and some content available through the Service may contain or expose users to material that is unsuitable for minors, and you agree to supervise usage by minors whom you permit to use the Service. The Service is not intended for use by children under 13, except together with a parent or other adult supervision;
- You acknowledge that we offer "Family Settings" on the Service and the Xbox 360 console, and also offer "Parental Controls" for Windows Vista, that are intended to help you limit access to material that may be unsuitable for minors. By applying Family Settings to an associated account at sign-up, you may, among other things, help to prevent any user of an associated account from making additional purchases and from having access to voice and video chat, which is intended to diminish the ability of such user to communicate with other users. You may view or revise your Family Settings in the Xbox Dashboard in the System area, or by logging into your account on [xbox.com/myxbox](http://xbox.com/myxbox). Additional information about Family Settings is available at [www.xbox.com/support/familysettings/default.htm](http://www.xbox.com/support/familysettings/default.htm); and
- You are responsible for any material to which a user of your subscription either gains or is denied access (including as a result of your use or non-use of Family Settings or Parental Controls). You acknowledge that use of Family Settings, Parental Controls, or both, is not a substitute for your personal supervision of your minor children or minors for whom you are the legal guardian.

#### 7. If You Are An Associated Account User.

If you are the user of an associated account, then the holder of the Service account has full control over your associated account. This control includes the right to end the Service, close or alter your associated account at any time, and, in some cases, to request and receive machine and Service usage information related to your associated account. As an associated account user, this contract applies to your use of the Service, except for the following Sections: 6 (You are Responsible for Your Service Account); 8 (If You Pay Microsoft); and 26 (Notices We Send to You).

#### 8. If You Pay Microsoft.

**a. Charges.** This Section 8 applies in all situations in which you directly pay us, whether that payment is for the Service (including renewals) or for any additional items and services (such as games, downloads, Service upgrades, or other premium features) that may be available for purchase through the Service (collectively, "Other Items"). If you pay a company other than us for the Service, then the charges and billing terms are as stated by the other company. Even if you do not pay for the Service itself, you may still incur charges incidental to using the Service; for example, charges for Internet access, mobile text messaging, or other data transmission.

**b. Payment.** When you create a billing account, you enter your payment method. You must be authorized to use the payment method. You authorize us to charge you for the Service **and for any paid feature of the Service for which you choose to sign-up or use while this contract is in force** using your payment method. You will pay all charges in advance. We may charge you a different amount than what you approved. If it is a greater amount, we will tell you the amount and the date of the charge at least 10 days before we make the charge. Also, we may charge you up to the amount you have approved, and notify you in advance of the difference. If your purchase is a subscription, we may bill you for more than one of your prior billing periods together, although we will not bill you more than once in any billing period for each such subscription. Other purchases (such as a one-time download) will be billed when the purchase is made. If we informed you that the Service will be provided indefinitely or automatically renewed, we may automatically renew your Service and charge you for any renewal term at the prices specified in Section 8(e). In some cases relating to Service offers available on Xbox 360 consoles, you may have the option to create or renew a subscription with a prepaid card instead of your payment method. Your Service may be cancelled at the end of your subscription term if you do not have a billing account or have not elected to auto-renew your subscription with a charge to your payment method, or you have not entered a prepaid card for purposes of renewing your Service. If you sign up for an Xbox Live Gold Membership on an Xbox 360 console using a prepaid card, your subscription will continue but will downgrade to a free Xbox Live Silver Membership at the end of your pre-paid Gold



membership period, regardless of whether you have a billing account . To maintain your Gold membership, you must set your account to automatically renew with a charge to your payment method ,or you must enter a new prepaid card. If you modify your Service from an original Xbox console to an Xbox 360 console, your Service will automatically renew annually at the then-current annual subscription price following the end of your current Service term (regardless of whether that current Service term is an annual or monthly term).

**c. Updates to Your Billing Account.** You must keep all information in your billing account current, including your billing address and the expiration date of your credit card. You can access and make changes to your billing account via the "Account Management" section of the Xbox Dashboard, or if you access your Service via a personal computer, at <https://billing.microsoft.com> . You may change your Payment Method at any time. If you tell us to stop using your payment method, we may cancel your Service. **Your notice to us will not affect charges we submit to your billing account before we reasonably could act on your request.**

**d. Trial Period Offers.** You may have received access to the Service for a limited period of time free of charge. Unless we notify you otherwise, if you are participating in any trial period offer, you must cancel the applicable Service by the end of the trial period to avoid incurring charges. If you do not cancel the applicable Service , and we have informed you that the Service will automatically be converted into a paid subscription at the end of the trial period, then you authorize us to charge your payment method. If you do not have a billing account, then the applicable subscription will expire at the end of your trial period. If, however, you are participating in any Xbox Live Gold Membership trial period on an Xbox 360 console, your subscription will continue but will downgrade to a free Xbox Live Silver Membership at the end of your Gold membership trial period, regardless of whether you have a Billing Account. In this case, to maintain your Gold membership level, you must either set your Gold membership to automatically renew with a charge to your payment method, or you must enter a new prepaid card for the Service.

**e. Prices and Price Increases.** Prices for the Service exclude all taxes and telecommunication charges, unless expressly stated otherwise. You are responsible for any taxes that you are obligated to pay or that we may collect from you. You are responsible for all other charges (for example, telecommunications charges). Currency exchange settlements are based on your agreement with your payment method provider. We may change the price of the Service from time to time upon notice to you. In addition, the price we set for certain features or functions in the Service may vary depending on whether the features or functions are accessed from Xbox LIVE or from Games for Windows LIVE, and we reserve the right to make various features or functions, in our sole discretion, available with or without charge from Xbox LIVE, Games for Windows LIVE, or both.

- If there is a specific time length and price for your Service offer, then that price will remain in force for that time. After the offer period ends, your use of the Service will be charged at the then current price.
- If your Service is provided on a period basis (for example, monthly), with no specific time period, then we will notify you upon a price change.

If you do not agree to these changes, then you must cancel and stop using the Service before the changes take place. If you cancel your Service, then (unless the terms of your subscription state otherwise) your Service subscription will end immediately.

**f. Refund Policies.** Unless otherwise provided by law or in connection with any particular Service offer, all charges are non-refundable and the costs of any returns will be at your expense. There are, however, certain circumstances under which you may be entitled to a refund for certain Services. Additional information about refunds is available at <http://support.xbox.com/support/en/us/xbox360/xboxlive/myaccount/xboxliveaccountfaq/intro-accountfaq.aspx>.

**g. Billing Statement; Errors.** Charges on your Billing Account will be summarized for you via online statement or via e-mail receipt sent to the e-mail address you provided at initial Service sign-up. You agree that such online statement or e-mail receipts are the only statement of your Billing Account that we need to provide to you. **IT IS YOUR RESPONSIBILITY TO PRINT OR SAVE A COPY OF EACH ONLINE STATEMENT OR EMAIL RECEIPT AND TO RETAIN COPIES FOR YOUR RECORDS.** If you sign up to the Service via an Xbox 360 console or personal computer, or modify your Service from an original Xbox

console to an Xbox 360 console, then we may provide you with an online billing statement. Go to <https://billing.microsoft.com> to view, print, or request a paper copy of this statement. If you request a paper copy of the online billing statement, we may charge you a retrieval fee. To request a paper copy of an e-mail receipt, call Xbox Customer Support. We will only provide paper copies for the prior 120 days. If we make an error on your bill, we will correct it promptly after you tell us and we investigate the charge. You must tell us within 120 days after an error first appears on your bill. **You release us from all liability and claims of loss resulting from any error that you do not report to us within 120 days after the error first appears on your email receipt or online statement.** If you do not tell us within this time, we will not be required to correct the error. We can, but are not obligated to, correct billing errors at any time.

**h. Canceling the Service.** You may cancel the Service at any time, with or without cause. Go to <http://www.xbox.com/en-US/support> to obtain information on cancelling your Service. Certain Service offers may require cancellation charges, and you will pay all cancellation charges as specified in the materials describing the offer. Cancellation of the Service by you will not alter your obligation to pay all charges made to your billing account.

**i. Late Payments.** Except to the extent prohibited by law, we may assess a late charge if you do not pay on time. You must pay these late charges when we bill you for them. The late charge will be the lesser of 1% of the unpaid amount each month or the maximum rate that is permitted by law. We may use a third party to collect past due amounts. You must pay all reasonable costs we incur to collect any past due amounts. These costs include reasonable attorneys' fees and other legal fees and costs. We may suspend or cancel your Service if you fail to pay any amounts due on time.

**j. Internet Access Service.** You are responsible for paying the fees charged by your internet access provider. Those fees are in addition to the fees you pay us for the Service.

#### **9. Payments to You.**

Your right to any payment due you under a Service is conditioned upon you promptly providing us with all information we require to properly make the payment (for example, bank account information for receiving the payment). We will use reasonable efforts to tell you what information we require in advance of your use of the applicable Service. Even if we do not tell you in advance, you must provide us the information we request before your right to receive the payment accrues. You are responsible for the accuracy of the information you provide and any taxes you may incur as a result of receiving a payment. You must also comply with any other conditions we place on your right to any payment. If you receive a payment that was not due to you, we may reverse or seek return of the payment, and you agree to cooperate with us in our efforts to do this.

#### **10. Your Materials.**

You may be able to submit materials for use in connection with the Service. The Service includes publicly accessible areas ("public areas of the Service") and areas to which you can control access by others ("shared and private areas of the service"). You understand that Microsoft does not control or endorse the content that you and others post or provide on the Service. Except for content that we license to you, we do not claim ownership of the materials you post or provide on the Service. However, with respect to content you post or provide, you have granted to those members of the public to whom you have granted access (for content posted on shared and private areas of the service) or to the public (for content posted on public areas of the service), and, in either case, to us, free, unlimited, worldwide, nonexclusive, perpetual, and irrevocable permission to:

- use, modify, copy, distribute, and display the content in connection with the service and other Microsoft products and services;
- publish your name, Gamertag, or other information you supply in connection with the content; and
- grant these rights to others.

If the submission is a photograph or other digital image, you also expressly waive any and all rights of privacy and publicity with respect to the image. You understand that we may need to make copies, change the format, transcode, or otherwise process content posted on the Service, including on shared and private areas of the Service, to:

- store and retrieve the content;
- make the content available to you and those members of the public to whom you have granted access;
- conform to connecting networks' technical requirements; or
- conform to the limitations and terms of the Service.

This section only applies to legally permissible content and only to the extent that use and publishing of legally permissible content does not violate the law. You understand that sharing content that violates others' copyrights, privacy, publicity, or other intellectual property rights breaches this contract. You represent and warrant that you have all the rights necessary for you to grant the rights in this Section 10 and that the use and publication of the content does not violate any law. We will not pay you for your content. We may refuse to publish your content, and we may remove your content from the Service at any time.

#### **11. Privacy.**

In order to operate and provide the Service, we collect certain information about you. We use and protect that information as described in the Microsoft Online Privacy Notice (<http://go.microsoft.com/fwlink/?LinkId=81184>, and its successors). In particular, we may access or disclose information about you, including the content of your communications, in order to: (a) comply with the law or respond to lawful requests or legal process; (b) protect the rights or property of Microsoft or our customers, including the enforcement of our agreements or policies governing your use of the Service; or (c) act on a good faith belief that such access or disclosure is necessary to protect the personal safety of Microsoft employees, customers, or the public.

We may use technology or other means to protect the Service, protect our customers, or stop you from breaching this contract. These means may include, for example, filtering to stop spam or increase security. These means may hinder or break your use of the Service.

To provide you the Service, we may collect certain information about Service performance, your machine, and your Service use. We may automatically upload this information from your machine. Such data may include console hardware and operating performance data, and network performance and service quality data. Any software or hardware errors, which may occur while you are connected to Xbox Live or offline, may be uploaded and reported. All such data may be stored with the console's unique identifier, and may be associated with other personally identifiable information. You may read about this data collection in more detail in the Microsoft Online Privacy Notice at <http://go.microsoft.com/fwlink/?LinkId=81184>.

Additionally, to evaluate and enable the features and functions of the Service, such as leaderboards, live-hosted gameplay, achievements, tournaments, and gamer profile sharing, you grant Microsoft and each of our affiliates, resellers, distributors, service providers, partners, and/or suppliers (each, a "Microsoft party"), permission to use, track, store, copy, distribute, broadcast, transmit, publicly display and perform, and reproduce your game scores, your game play sessions, your presence on the Service, the time that you spend on or within particular portions of the Service, portions of the Service that are displayed on your monitor or screen and the duration of that display, rankings, statistics, gamer profiles, avatars, content that you may submit, and other usage information with or without attribution to you, your gamertag, or avatar and without notice or compensation to you of any kind. To avoid any confusion, we have the right to make information pertaining to your use of, and gameplay on, Xbox LIVE available through Games for Windows LIVE, and vice versa.

You should not expect any level of privacy concerning your use of the live communication features (for example, voice chat, video and communications in live-hosted gameplay sessions) offered through the Service. These communications may be monitored; however, we cannot monitor the entire Service and make no attempt to do so. You understand that these communications can be recorded and used by others, and communications in live-hosted gameplay sessions may be broadcast to others. Some games may utilize game managers and hosts. Game managers and hosts are not authorized Microsoft spokespersons, and their views do not necessarily reflect those of Microsoft. We do not routinely monitor your use of the communication features of the Service. However, to the maximum extent permitted by law, we may monitor your communications and may disclose information about you as set forth in this Section 11.

## 12. Intellectual Property.

If you receive from us software or content (e.g., text, images, video, graphics, music, sound, games) associated with the Service (for purposes of this Section 1 2, we refer to all of these, as applicable, as "software"), your use of that software is under the terms of the license (including any statement of specific authorized uses or restrictions, such as the Special Video Content described in Section 1 3 below) presented to you for acceptance with that software. If there is no license presented to you, or unless otherwise stated in this contract, then we grant you a limited, personal, non-exclusive, revocable license to use the software only for and during the authorized use of this Service and/or the game or other product to which the software relates. You may not copy, download, modify or create derivative works, publish, transmit, sell or attempt to sell or transfer, or otherwise use or exploit any software unless we or our suppliers have expressly allowed you to do so.

Copyright and other intellectual property laws and treaties protect the software and all other aspects of the Service. We, or our suppliers, own the title, copyright, and other intellectual property rights in the software and Service, and the software and Service are solely licensed and not sold. We and our suppliers reserve all other rights to the software and Service that are not expressly granted in this contract. You do not have ownership rights to any software made available or accessible on or in relation to the Service, or any other aspect of the Service (except you may own your own submissions), regardless of how the software and Service are used, accessed, downloaded, or otherwise made available to you.

We may automatically check your version of the software. We may automatically download upgrades to the software to your computer or console to update, enhance, and further develop the Service.

Unless we notify you otherwise, your license to use the software will end on the date your Service ends, and you must promptly uninstall and delete the software. We may disable the software after the date the Service terminates.

You will not disassemble, decompile, or reverse engineer any software included in the Service, except and only to the extent that the law expressly permits this activity.

The software is subject to United States export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the software. These laws include restrictions on destinations, end users, and end use. For additional information, see [www.microsoft.com/exporting](http://www.microsoft.com/exporting).

If you use the software to access content that has been protected with Microsoft Digital Rights Management ("DRM"), to let you play the content, the software may automatically request media usage rights from a rights server on the Internet and download and install available DRM updates. For more information, see [www.microsoft.com/Silverlight/resources/Privacy.aspx?v=2.0.30226](http://www.microsoft.com/Silverlight/resources/Privacy.aspx?v=2.0.30226) and its successor pages.

## 13. Special Video Content.

**a. Special Video Content – General Terms.** We may offer certain video content ("Special Video Content") on the Service on: (i) a limited time-based video-on-demand basis ("VOD Content"), or (ii) an unlimited time, retained license basis ("Retained Rights Content") for your use only via Xbox 360 consoles. The price points and formats for all Special Video Content are as set forth on the applicable areas of the Service from which the Special Video Content will be made available (the "Special Video Content Pages"). Each license of Special Video Content obtained through the Service is subject to the additional terms and conditions of this Section 1 3. To the extent that the terms contained in the other sections of this contract conflict with the terms of this Section 1 3, the terms of this Section 1 3 control with respect to any license you obtain for the Special Video Content. Special Video Content may not be available in all territories in which the Service is available. We reserve the right not to offer VOD Content or Retained Rights Content, or both, in any such territory. Except as expressly stated in this Section 1 3, you may not reproduce, distribute, perform, display, create derivative works from or otherwise use the Special Video Content. You may not modify, reverse engineer, reverse compile, decompile or otherwise attempt to derive the source code of any element of the Special Video Content. You may not attempt to circumvent any copyright protection technology or alter or remove any copyright management information contained in any Special Video Content. All rights to the Special Video Content not expressly granted in this Section 1 3 are

specifically reserved to Microsoft and/or its licensors. Any license you obtain for Special Video Content shall be subject to termination upon the cancellation of the Service in the manner provided in Section 2.0 below.

**b. VOD Content.** Effective on payment of the required fees, we grant you a personal, non-exclusive, non-transferable, limited right and license, subject to the terms of this contract, to view and privately display in your residence, for non-commercial purposes, solely via an Xbox 360 console, any VOD Content you obtain via the Service. The initial license to each item of VOD Content is limited in its term and duration to fourteen (14) days from its original date and time of download or twenty-four (24) hours from the start of its initial display and viewing, whichever occurs first, unless otherwise specified as being limited to a shorter term at the time of purchase (the "VOD Viewing Time"). Once a license to an item of VOD Content is obtained, a copy of such VOD Content will be saved to your Xbox 360 console for the VOD Viewing Time. Upon the expiration of the VOD Viewing Time, you will no longer be able to view the VOD Content without obtaining an additional license (which we may make available in our discretion at such time). You may not copy or move the VOD Content from its originally stored location.

**c. Retained Rights Content.** Effective on payment of the required fees, we grant you, a personal, non-exclusive, non-transferable, limited right and license, subject to the terms of this contract, to view and privately display in your residence, for non-commercial purposes, solely on an Xbox 360 console, any Retained Rights Content you obtain via the Service only for and during your authorized use of the Service. Once a license to an item of Retained Rights Content is obtained, a copy of such Retained Rights Content will be saved to your Xbox 360 console. You may not copy or move the Retained Rights Content from its originally stored location, but you may download any previously obtained Retained Rights Content from the Service to another Xbox 360 console (a "Roaming Xbox 360 console"), for no additional cost, by logging into the Service, confirming your valid license for the Retained Rights Content, and following any further instructions we may provide for downloading to a Roaming Xbox 360 console. You are only permitted to download and playback such Retained Rights Content for as long as you are logged into the Service via such Roaming Xbox 360 console. You may not copy or move the Retained Rights Content from any Roaming Xbox 360 Console to which it has been downloaded.

#### **14. Microsoft Authentication Network.**

We may provide you with credentials on our authentication network to use with the Service. You are solely responsible for any dealings with third parties (including advertisers) who use our authentication network, including the delivery of and payment for products and services. This contract applies to you whenever you access or use the credentials you obtained with the Service. When you use our authentication network to gain access to any web site or service, the terms and conditions for that site or service, if different from this contract, may also apply to you in your use of that site or service. Please refer to the terms of use for each web site that you visit or service that you access.

We may cancel or suspend your access to our authentication network for inactivity, which we define as failing to sign in to our authentication network for an extended period, as determined by us. If we cancel your credentials, your right to use our authentication network immediately ceases.

#### **15. Microsoft Points.**

If you are using the Service via an Xbox 360 console or personal computer, you can participate in the Microsoft Points service. Microsoft Points is a service by which you can acquire Points and redeem those Points for certain online services and digital products. You can see how many Points you have by checking your Points balance at <https://billing.microsoft.com>. You can obtain selected services or digital products that we elect to offer in exchange for Points. You can do this by redeeming your Points as indicated in the particular messaging you see for those offers.

You can acquire Points in a variety of ways. For example, you can purchase Points, or certain services may give you Points for using the service or specific features of the service (also known as "promotion Points"). You can earn promotion Points only for actions you actually complete. You are responsible for any tax consequences that may result from your participation in the Points service.

When you obtain Points, you have obtained a limited license to a digital product. Points have no monetary value. You may not obtain any cash or

money in exchange for Points, regardless of how you acquired those Points. Points are not your personal property. Your only recourse for using Points is to obtain the specific online services or digital products that we offer for Points redemption. We may further restrict your Points redemption offers based on your country of residence. We encourage you to redeem your Points. The existence of a particular offer available for Points redemption is not a commitment by us to maintain or continue to make the offer in the future. The scope, variety, and type of online services and digital products that you may obtain by redeeming Points can change at any time. We have no obligation to continue making offers available for Points redemption.

Promotion Points may expire at any time, as set forth in the messaging related to that promotion. We may cancel, suspend, or otherwise limit your access to your Points balance if we suspect fraudulent, abusive, or unlawful activity with regard to your Points balance. Once we delete Points from a balance, we will not reinstate them, except at our discretion. When we cancel, suspend, or otherwise limit access to your Points balance, your right to use your Points balance immediately ceases. We will use reasonable efforts to investigate Points balances that are subject to access limitations and to reach a final decision on the limitations promptly. In addition, we may limit your use of the Points service, including applying limits to: the number of Points you may have credited to your Points balance at one time, the number of Points you may redeem within a given time period (for example, one day), and the number of promotion Points you may obtain in a single event.

If we post Points to your balance for an activity that is subsequently voided, canceled, or involves a returned item, then we will remove those Points from your balance. You must ensure that we properly post your Points to your Points balance. If you believe that you have validly acquired Points that we have not posted to your Points balance, we will not consider posting these Points unless you contact us within 12 months after the date you claimed to have acquired those Points. We may require reasonable documentation to support your claim.

#### **16. Service Operation and Equipment.**

The Service may only be accessed with an original Xbox, an Xbox 360 console, a personal computer, or other device authorized by us, or by logging into your account via Xbox.com. You agree that you are using only authorized software and hardware to access the Service, that your software and hardware have not been modified in any unauthorized way (e.g., through unauthorized repairs, unauthorized upgrades, or unauthorized downloads), and that we have the right to send data, applications or other content to any software or hardware that you are using to access the Service for the express purpose of detecting an unauthorized modification. Any attempt to disassemble, decompile, create derivative works of, reverse engineer, modify, further sublicense, distribute, or use for other purposes the Service, any game, application, or other content available or accessible through the Service, or any hardware or software associated with the Service or with an original Xbox or Xbox 360 console is strictly prohibited and may result in cancellation of your account and/or your ability to access the Service, and the pursuit of other legal remedies by Microsoft. Microsoft may take any legal action it deems appropriate against users who violate Microsoft's systems or network security, this contract or any additional terms incorporated or referenced in this contract, and such users may also incur criminal or civil liability.

Microsoft reserves complete and sole discretion with respect to the operation of the Service. Microsoft may, among other things: (a) restrict or limit access to the Service; (b) retrieve information from the original Xbox, Xbox 360 console, personal computer, and any connected peripheral device used to log onto the Service as necessary to operate and protect the security of the Service, and to enforce this contract; and (c) upgrade, modify, withdraw, suspend, or discontinue any functionality or feature of the Service, any game or other content available or accessible through the Service, or any hardware or software associated with the Service or with an original Xbox or Xbox 360 console, or personal computer, from time to time without notice, which may involve the automatic download of related software directly to your original Xbox, Xbox 360 console, or personal computer, including software that prevents you from accessing the Service, playing pirated games, or using unauthorized hardware peripheral devices.

#### **17. How We May Change the Contract.**

If we change this contract, then we will require you to agree to a new contract that includes such changes if you want to continue to receive the Service. If

you do not want to agree to the new contract, you may cancel the Service. Your continued use of the Service will be deemed acceptance of and agreement to the new contract.

**18. WE MAKE NO WARRANTY.**

**We provide the Service "as-is," "with all faults," and "as available." We do not guarantee the accuracy or timeliness of information available from the Service. The Microsoft parties give no express warranties, guarantees, or conditions under or in relation to the Service, this contract or its subject matter. You may have additional consumer rights under your local laws that this contract cannot change. We exclude any implied warranties, including those of merchantability, fitness for a particular purpose, workmanlike effort, and non-infringement.**

**19. LIABILITY LIMITATION.**

**You can recover from the Microsoft parties for all claims only direct damages up to a total, aggregate amount equal to your Service fee for one month. You cannot recover any other damages, including consequential, lost profits, special, indirect, incidental, or punitive damages.**

This limitation applies to anything related to:

- the Service;
- third party content (including code), third party programs, or third party conduct;
- viruses or other disabling features that affect your access to or use of the Service;
- incompatibility between the Service and other services, software, and hardware;
- delays or failures you may have in initiating, conducting, or completing any transmissions or transactions in connection with the Service in an accurate or timely manner; and
- claims for breach of contract; breach of warranty, guarantee, or condition; strict liability; negligence; or other tort.

It also applies even if:

- this remedy does not fully compensate you for any losses, or falls of its essential purpose; or
- Microsoft knew or should have known about the possibility of damages.

**Some states do not allow the exclusion or limitation of incidental, consequential, or certain other damages, so the above limitation or exclusion may not apply to you. They also may not apply to you because your province or country may not allow the exclusion or limitation of incidental, consequential, or other damages.**

**20. Changes to the Service; If We Cancel the Service.**

**We may change the Service or delete or discontinue features, games, or other content at any time and for any reason (or no reason). We may cancel or suspend your Service at any time. Our cancellation or suspension may be without cause and without notice. Upon Service cancellation, your right to use the Service stops right away. Once the Service is cancelled or suspended, any data you have stored on the Service may not be retrieved later. Our cancellation of the Service will not alter your obligation to pay all charges made to your billing account. If we cancel the Service in its entirety without cause, then we will refund to you on a pro-rata basis the amount of payment that you have made corresponding to the portion of your Service remaining at the time of cancellation.**

**21. Interpreting the Contract.**

**All parts of this contract apply to the maximum extent permitted by law. A court may hold that we cannot enforce a part of this contract as written. If this happens, then we will replace that part with terms that most closely match the intent of the part that we cannot enforce. The rest of this contract will not change. This is the entire contract between you and us regarding your use of the Service. It supersedes any prior contract or statements regarding your use of the Service. If you have confidentiality obligations related to the Service, those obligations remain in force even after termination or cancellation of the Service (for example, you may have been a**

beta tester). The section titles in the contract do not limit the other terms of this contract.

**22. Assignment.**

We may assign this contract, in whole or in part, at any time with or without notice to you. You may not assign this contract, or any part of it, to any other person. Any attempt by you to do so is void. You may not transfer to anyone else, either temporarily or permanently, any rights to use the Service or any part of the Service.

**23. No Third Party Beneficiaries; Microsoft Affiliates.**

This contract is solely for your and our benefit. It is not for the benefit of any other person, except for permitted successors and assigns under this contract. Certain sections of this contract are for the benefit of Microsoft's affiliates. As a result, Microsoft and Microsoft's affiliates are entitled to enforce this contract. Except for Microsoft's affiliates, this contract does not create any enforceable rights by anyone other than you and Microsoft.

**24. Claim Must Be Filed Within One Year.**

**Any claim related to this contract or the Service may not be brought unless brought within one year after the claim arises. If it is not filed in time, then that claim is permanently barred. This applies to you and your successors. It also applies to us and our successors and assigns.**

**25. Your Notices to Us.**

You may notify us as stated in the customer support or "help" area (if any) for the Service. If there is no such customer support or "help" area, you may notify us by postal mail (we do not accept email notices). Send postal mail notices as follows:

**Microsoft Corporation**

**Attention: Xbox Live Customer Service**

**One Microsoft Way**

**Redmond, Washington 98052-6399**

**USA**

**26. Notices We Send You; Consent Regarding Electronic Information.**

This contract is in electronic form. We have promised to send you certain information in connection with the Service and have the right to send you certain additional information. There may be other information regarding the Service that the law requires us to send you. We may send you this (and any other) information in electronic form. You have the right to withdraw this consent, but if you do, we may cancel your Service. **We may provide required information to you:**

- **by e-mail at the e-mail address you specified when you signed up for your Service;**
- **by access to a Microsoft web site that will be designated in an e-mail notice sent to you at the time the information is available; or**
- **by access to a Microsoft web site that will be generally designated in advance for this purpose.**

**Notices provided to you via e-mail will be deemed given and received on the transmission date of the e-mail.** As long as you access and use the Service, you agree that you will have, or have access to, the necessary software and hardware to receive such notices. If you do not consent to receive any notices electronically, you must stop using the Service.

**27. Choice of Law and Location for Resolving Disputes.**

If this contract is with Microsoft Corporation, then claims for breach of this contract will be subject to the laws of the State of Washington, without reference to conflict of laws principles. If this contract is with a Microsoft affiliate, claims for breach of this contract will be subject to the laws of the place of incorporation for such Microsoft affiliate, without reference to conflict of laws principles. All other claims, including claims regarding consumer protection laws, unfair competition laws, and in tort, will be subject to the laws of your state of residence in the United States, or, if you reside outside the United States, under the laws of the country to which we direct your Service. If this contract is with Microsoft Corporation, you consent to the exclusive jurisdiction and venue of state or federal courts in King County, Washington, USA for all



disputes relating to this contract or the Service. If this contract is with a Microsoft affiliate, you consent to the exclusive jurisdiction and venue of the courts located in the place of incorporation for such Microsoft affiliate for all disputes relating to this contract or the Service. You cannot revoke this consent.

## 28. NOTICES.

### Copyright and Trademark Notices

All contents of the Service are Copyright © 2008 Microsoft Corporation and/or its suppliers, One Microsoft Way, Redmond, Washington 98052-6399 U.S.A. All rights reserved. Copyright and other intellectual property laws and treaties protect any software or content provided as part of the Service. Microsoft, Xbox, Xbox 360, Xbox Live, the Xbox logos and/or other Microsoft products and services referenced herein may also be either trademarks or registered trademarks of Microsoft in the United States and/or other countries. The names of actual companies and products mentioned in this contract may be the trademarks of their respective owners. Any rights not expressly granted in this contract are reserved. Certain software used in certain Microsoft web site servers may be based in part on the work of the Independent JPEG Group. Copyright © 1991-1996 Thomas G. Lane. All rights reserved. "gnuplot" software which may be used in certain Microsoft web site servers is copyright © 1986-1993 Thomas Williams, Colin Kelley. All rights reserved.

### Notices and Procedure for Making Claims of Copyright Infringement

Under Title 17, United States Code, Section 512(c)(2), notifications of claimed copyright infringement should be sent to service provider's designated agent. **ALL INQUIRIES NOT RELEVANT TO THE FOLLOWING PROCEDURE WILL RECEIVE NO RESPONSE. See Notice and Procedure for Making Claims of Copyright Infringement at [www.microsoft.com/info/cpyrtInfrg.htm](http://www.microsoft.com/info/cpyrtInfrg.htm).**

### Respect Copyright

Please respect the rights of artists and creators. Content such as music, photos, and video may be protected by copyright. People appearing in content may have a right to control use of their image. You may not share other people's content unless you own the rights or have permission from the owner.

### Support

Customer support is not offered for the Service, unless provided otherwise in this contract or the materials we publish in connection with a particular component of the Service specify that it includes customer support.

[Microsoft Game Studios](#) | [Jobs](#) | [Forums](#) | [Sitemap](#) | [Newsletter](#) | [Mobile](#) | [Feedback](#) | [Advertise](#) | [RSS](#)

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## **EXHIBIT 39**

**MEGAN M. CHUNG'S DECLARATION IN SUPPORT OF APPLE INC.'S MOTION  
FOR SUMMARY JUDGMENT ON COPYRIGHT INFRINGEMENT, DMCA  
VIOLATIONS AND PSYSTAR'S AFFIRMATIVE DEFENSES**



# End User License Agreement

**IMPORTANT: PLEASE READ THIS END USER LICENSE AGREEMENT CAREFULLY. DOWNLOADING, INSTALLING OR USING CISCO OR CISCO-SUPPLIED SOFTWARE CONSTITUTES ACCEPTANCE OF THIS AGREEMENT.**

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*The following terms of the Agreement govern Customer's access and use of the Cisco or Cisco-supplied software ("Software"), except to the extent: (a) there is a separate signed agreement between Customer and Cisco governing Customer's use of the Software, or (b) the Software includes a separate "click-accept" license agreement as part of the installation and/or download process. To the extent of a conflict between the provisions of the foregoing documents, the order of precedence shall be (1) the signed agreement, (2) the click-accept agreement, and (3) the Agreement.*

**License.** Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a nonexclusive and nontransferable license to use for Customer's internal business purposes the Software and the Documentation for which Customer has paid the required license fees. "Documentation" means written information (whether contained in user or technical manuals, training materials, specifications or otherwise) pertaining to the Software and made available by Cisco with the Software in any manner (including on CD-Rom, or on-line). In order to use the Software, Customer may be required to input a registration number or product authorization key and register Customer's copy of the Software online at Cisco's website to obtain the necessary license key or license file.

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Americas Headquarters:  
Cisco Systems, Inc., 170 West Tasman Drive, San Jose, CA 95134-1706 USA

Customer's license to use the Software shall be limited to, and Customer shall not use the Software in excess of, a single hardware chassis or card or such other limitations as are set forth in the applicable Supplemental License Agreement or in the applicable purchase order which has been accepted by Cisco and for which Customer has paid to Cisco the required license fee (the "Purchase Order").

Unless otherwise expressly provided in the Documentation or any applicable Supplemental License Agreement, Customer shall use the Software solely as embedded in, for execution on, or (where the applicable Documentation permits installation on non-Cisco equipment) for communication with Cisco equipment owned or leased by Customer and used for Customer's internal business purposes. No other licenses are granted by implication, estoppel or otherwise.



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- (i) transfer, assign or sublicense its license rights to any other person or entity (other than in compliance with any Cisco relicensing/transfer policy then in force), or use the Software on unauthorized or secondhand Cisco equipment, and Customer acknowledges that any attempted transfer, assignment, sublicense or use shall be void;
- (ii) make error corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software, or permit third parties to do the same;
- (iii) reverse engineer or decompile, decrypt, disassemble or otherwise reduce the Software to human-readable form, except to the extent otherwise expressly permitted under applicable law notwithstanding this restriction;
- (iv) use or permit the Software to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of Cisco; or
- (v) disclose, provide, or otherwise make available trade secrets contained within the Software and Documentation in any form to any third party without the prior written consent of Cisco. Customer shall implement reasonable security measures to protect such trade secrets.

To the extent required by law, and at Customer's written request, Cisco shall provide Customer with the interface information needed to achieve interoperability between the Software and another independently created program, on payment of Cisco's applicable fee, if any. Customer shall observe strict obligations of confidentiality with respect to such information and shall use such information in compliance with any applicable terms and conditions upon which Cisco makes such information available.

**Software, Upgrades and Additional Copies.** For purposes of the Agreement, "Software" shall include (and the terms and conditions of the Agreement shall apply to) computer programs, including firmware, as provided to Customer by Cisco or an authorized Cisco reseller, and any upgrades, updates, bug fixes or modified versions thereto (collectively, "Upgrades") or backup copies of any of the foregoing. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT: (1) CUSTOMER HAS NO LICENSE OR RIGHT TO MAKE OR USE ANY ADDITIONAL COPIES OR UPGRADES UNLESS CUSTOMER, AT THE TIME OF MAKING OR ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLDS A VALID LICENSE TO THE ORIGINAL SOFTWARE AND HAS PAID THE APPLICABLE FEE FOR THE UPGRADE OR ADDITIONAL COPIES; (2) USE OF UPGRADES IS LIMITED TO CISCO EQUIPMENT FOR WHICH CUSTOMER IS THE ORIGINAL END USER PURCHASER OR LESSEE OR OTHERWISE HOLDS A VALID LICENSE TO USE THE SOFTWARE WHICH IS BEING UPGRADED; AND (3) THE MAKING AND USE OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY.

**Proprietary Notices.** Customer agrees to maintain and reproduce all copyright and other proprietary notices on all copies, in any form, of the Software in the same form and manner that such copyright and other proprietary notices are included on the Software. Except as expressly authorized in the Agreement, Customer shall not make any copies or duplicates of any Software without the prior written permission of Cisco.

**Term and Termination.** The Agreement and the license granted herein shall remain effective until terminated. Customer may terminate the Agreement and the license at any time by destroying all copies of Software and any Documentation. Customer's rights under the Agreement will terminate immediately without notice from Cisco if Customer fails to comply with any provision of the Agreement. Upon termination, Customer shall destroy all copies of Software and Documentation in its possession or control. All confidentiality obligations of Customer and all limitations of liability and disclaimers and restrictions of warranty shall survive termination of this Agreement. In addition, the provisions of the sections titled "U.S. Government End User Purchasers" and "General Terms Applicable to the Limited Warranty Statement and End User License Agreement" shall survive termination of the Agreement.

**Customer Records.** Customer grants to Cisco and its independent accountants the right to examine Customer's books, records and accounts during Customer's normal business hours to verify compliance with this Agreement. In the event such audit discloses non-compliance with this Agreement, Customer shall promptly pay to Cisco the appropriate license fees, plus the reasonable cost of conducting the audit.

**Export, Re-Export, Transfer and Use Controls.** The Software, Documentation and technology or direct products thereof (hereafter referred to as Software and Technology), supplied by Cisco under the Agreement are subject to export controls under the laws and regulations of the United States (U.S.). Customer shall comply with such laws and regulations governing export, re-export, transfer and use of Cisco Software and Technology and will obtain all required U.S. and local authorizations, permits, or licenses. Cisco and Customer each agree to provide the other information, support documents, and assistance as may reasonably be required by the other in connection with securing authorizations or licenses. Information regarding compliance with U.S. export, re-export, transfer and use may be located at the following URL:

[http://www.cisco.com/www/export/compliance\\_provision.html](http://www.cisco.com/www/export/compliance_provision.html).

**U.S. Government End User Purchasers.** The Software and Documentation qualify as "commercial items," as that term is defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which the Agreement may be incorporated, Customer may provide to Government end user or, if the Agreement is direct, Government end user will acquire, the Software and Documentation with only those rights set forth in the Agreement. Use of either the Software or Documentation or both constitutes agreement by the Government that the Software and Documentation are "commercial computer software" and "commercial computer software documentation," and constitutes acceptance of the rights and restrictions herein.

### Limited Warranty

Subject to the limitations and conditions set forth herein, Cisco warrants that commencing from the date of shipment to Customer (but in case of resale by an authorized Cisco reseller, commencing not more than ninety (90) days after original shipment by Cisco), and continuing for a period of the longer of (a) ninety (90) days or (b) the warranty period (if any) expressly set forth as applicable specifically to software in the warranty card accompanying the product of which the Software is a part (the "Product") (if any): (a) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (b) the Software substantially conforms to the Documentation. The date of shipment of a Product by Cisco is set forth on the packaging material in which the Product is shipped. Except for the foregoing, the Software is provided "AS IS". This limited warranty extends only to the Customer who is the original licensee. Customer's sole and exclusive remedy and the entire liability of Cisco and its suppliers under this limited warranty will be (i) replacement of defective media and/or (ii) at Cisco's option, repair, replacement, or refund of the purchase price of the Software, in both cases subject to the condition that any error or defect constituting a breach of this limited warranty is reported to Cisco or the party supplying the Software to Customer, if different than Cisco, within the warranty period. Cisco or the party supplying the Software to Customer may, at its option, require return of the Software and/or Documentation as a condition to the remedy. In no event does Cisco warrant that the Software is error free or that Customer will be able to operate the Software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Cisco does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack.

**Restrictions.** This warranty does not apply if the Software, Product or any other equipment upon which the Software is authorized to be used (a) has been altered, except by Cisco or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Cisco, (c) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; or (d) is licensed for beta, evaluation, testing or demonstration purposes. The Software warranty also does not apply to (e) any temporary Software modules; (f) any Software not posted on Cisco's Software Center (on Cisco.com URL where Cisco makes the Software publicly available to licensed customers); (g) any Software that Cisco expressly provides on an "AS IS" basis on Cisco's Software Center; or (h) any Software for which Cisco does not receive a license fee.

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EXCEPT AS SPECIFIED IN THIS WARRANTY SECTION, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW AND ARE EXPRESSLY DISCLAIMED BY CISCO, ITS SUPPLIERS AND LICENSORS. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED

WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. THIS WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. This disclaimer and exclusion shall apply even if the express warranty set forth above fails of its essential purpose.

### **General Terms Applicable to the Limited Warranty Statement and End User License Agreement**

**Disclaimer of Liabilities.** REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL CISCO OR ITS SUPPLIERS BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR LOST OR DAMAGED DATA, BUSINESS INTERRUPTION, LOSS OF CAPITAL, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE SOFTWARE OR OTHERWISE AND EVEN IF CISCO OR ITS SUPPLIERS OR LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In no event shall Cisco's or its suppliers' or licensors' liability to Customer, whether in contract, tort (including negligence), breach of warranty, or otherwise, exceed the price paid by Customer for the Software that gave rise to the claim or if the Software is part of another Product, the price paid for such other Product. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

Customer agrees that the limitations of liability and disclaimers set forth herein will apply regardless of whether Customer has accepted the Software or any other product or service delivered by Cisco. Customer acknowledges and agrees that Cisco has set its prices and entered into the Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

**Controlling Law, Jurisdiction.** If you acquired this Software in the United States, Latin America, or the Caribbean, the Agreement and Hardware and Software warranties ("Warranties") are controlled by and construed under the laws of the State of California, United States of America, notwithstanding any conflicts of law provisions; and the state and federal courts of California shall have exclusive jurisdiction over any claim arising under the Agreement or Warranties. If you acquired this Software in Canada, unless expressly prohibited by local law, the Agreement and Warranties are controlled by and construed under the laws of the Province of Ontario, Canada, notwithstanding any conflicts of law provisions; and the courts of the Province of Ontario shall have exclusive jurisdiction over any claim arising under the Agreement or Warranties. If you acquired this Software in Europe or Asia, unless expressly prohibited by local law, the Agreement and Warranties are controlled by and construed under the laws of England, notwithstanding any conflicts of law provisions; and the English courts shall have exclusive jurisdiction over any claim arising under the Agreement or Warranties. If you acquired this Software in Japan, unless expressly prohibited by local law, the Agreement and Warranties are controlled by and construed under the laws of Japan, notwithstanding any conflicts of law provisions; and the Tokyo District Court of Japan shall have exclusive jurisdiction over any claim arising under the Agreement or Warranties. If you acquired this Software in Australia, unless expressly prohibited by local law, the Agreement and Warranties are controlled by and construed under the laws of the State of New South Wales, Australia, notwithstanding any conflicts of law provisions; and the State and federal courts of New South Wales shall have exclusive jurisdiction over any claim arising under the Agreement or Warranties. The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods. Notwithstanding the foregoing, either party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's intellectual property or proprietary rights. If any portion hereof is found to be void or unenforceable, the remaining provisions of the Agreement and Warranties shall remain in full force and effect. Except as expressly provided herein, the Agreement constitutes the entire agreement between the parties with respect to the license of the Software and Documentation and supersedes any conflicting or additional terms contained in any Purchase Order or elsewhere, all of which terms are excluded. The Agreement has been written in the English language, and the parties agree that the English version will govern.

Product warranty terms and other information applicable to Cisco products are available at the following URL:

<http://www.cisco.com/go/warranty>

## **EXHIBIT 40**

**MEGAN M. CHUNG'S DECLARATION IN SUPPORT OF APPLE INC.'S MOTION  
FOR SUMMARY JUDGMENT ON COPYRIGHT INFRINGEMENT, DMCA  
VIOLATIONS AND PSYSTAR'S AFFIRMATIVE DEFENSES**

## BLACKBERRY SOFTWARE LICENSE AGREEMENT

This BlackBerry Software License Agreement (the "Agreement") is a legal agreement between you individually if you are agreeing to it in your own capacity, 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 DOWNLOADING, INSTALLING, ACTIVATING 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 AT [LEGALINFO@RIM.COM](mailto:LEGALINFO@RIM.COM).

### Return.

IF, PRIOR TO DOWNLOADING, INSTALLING, ACTIVATING OR USING THE SOFTWARE, YOU DECIDE YOU ARE UNWILLING TO AGREE TO THE TERMS OF THIS AGREEMENT, YOU HAVE NO RIGHT TO USE THIS SOFTWARE AND YOU SHOULD: (A) PROMPTLY RETURN THE SOFTWARE TO RIM, DELETE IT, OR DISABLE IT; (B) IF YOU HAVE PURCHASED A RIM PRODUCT ON WHICH THE SOFTWARE IS PRE-INSTALLED BY OR ON BEHALF OF RIM, PROMPTLY RETURN THE RIM PRODUCT AND THE ACCOMPANYING SOFTWARE AND ITEMS (INCLUDING DOCUMENTATION AND PACKAGING) TO RIM OR THE RIM AUTHORIZED DISTRIBUTOR FROM WHOM YOU OBTAINED THE RIM PRODUCT AND ACCOMPANYING SOFTWARE AND ITEMS; OR (C) IF YOU HAVE PURCHASED A THIRD PARTY HANDHELD PRODUCT ON WHICH THE SOFTWARE IS PRE-INSTALLED BY OR ON BEHALF OF RIM, PROMPTLY ARRANGE FOR THE DISABLEMENT OF THE SOFTWARE WITH RIM OR THE RIM AUTHORIZED DISTRIBUTOR FROM WHOM YOU OBTAINED THE THIRD PARTY HANDHELD PRODUCT AND ACCOMPANYING SOFTWARE AND ITEMS. If You have paid for the Software, and/or for the RIM Product which You acquired with that Software and are unable to usefully use without that Software, (as applicable), and You provide RIM or the authorized distributor from whom You acquired the Software for the RIM Products with Your proof of purchase within ninety (90) days from the date You acquired the Software, RIM or the authorized distributor will refund the fees (if any) to You which You have paid for these items. To get a refund for Software on Third Party Handheld Products (note however that the Software is provided at no charge on some Third Party Handheld Product(s) and hence there may be nothing to refund) please contact Your authorized distributor of the Software for that Third Party Handheld Product. If You are unable to obtain a refund for the Software from an authorized distributor please contact RIM at [legalinfo@rim.com](mailto:legalinfo@rim.com).

Definitions. Unless the context requires otherwise, the defined terms in this Agreement shall have the meanings set out below (and where the context so admits the singular shall include the plural and vice versa).

"Airtime Service" means wide-area wireless network services and any other network services (including wireless local area network, satellite services and Internet services) required for Your BlackBerry Solution.

"Airtime Service Provider" means the service provider of Airtime Services that support Your BlackBerry Solution.

"Authorized User(s)" means any of the following who You give permission to use the Software as part of Your BlackBerry Solution: (a) subject to subparagraph (d) below, any of Your employees, consultants or independent contractors; (b) any friend or family member, or any person that resides in Your premises; (c) any third party who hosts the Software on Your behalf under an agreement with You for such hosting (e.g. IT outsourcer) and who has read and agreed to abide by the terms of this Agreement; and (d) any other person who RIM authorizes in writing.

"BlackBerry Handheld Product" means a wireless handheld device manufactured by or on behalf of RIM.

"BlackBerry Handheld Software" means the RIM proprietary software (comprised of RIM proprietary: software, firmware, interfaces, content and other data; and Third Party Components) designed for use on a Handheld Product that is: (a) loaded on the Handheld Product as originally shipped by RIM; or (b) transmitted, distributed or otherwise made available by or on behalf of RIM from time-to-time for use on a Handheld Product. Examples of BlackBerry Handheld Software include the handheld



software pre-installed on a BlackBerry Handheld Product, and the "BlackBerry Application Suite" product transmitted, distributed or otherwise made available by or on behalf of RIM from time to time for use on Third Party Handheld Products.

"BlackBerry PC Software" means RIM proprietary personal computer software (comprised of RIM proprietary software, interfaces, content and other data; and Third Party Components) designed for only a single user to use and access at any one time. An example of BlackBerry PC Software is "BlackBerry Desktop Software", which can be used to provision and maintain synchronization between Your Handheld Product and Your personal computer and provides other desktop management functionality.

"BlackBerry Prosumer Service(s)" means services designed to provide at least some portion of the functionality of BlackBerry Server Software without requiring RIM customers to acquire BlackBerry Server Software. It includes RIM offerings such as the RIM "BlackBerry Internet Service" and "BlackBerry Mail". All or a portion of certain BlackBerry Prosumer Service(s) may not be supported by Your Airtime Service Provider.

"BlackBerry Server Software" means RIM proprietary server software (comprised of RIM proprietary: software, interfaces, content and data; and Third Party Components), a single copy of which is designed to be accessed by multiple Handheld Products at any one time. Examples of BlackBerry Server Software include the "BlackBerry Enterprise Server" product, which is designed to integrate with and provide a link between certain corporate application servers (such as email servers) and the Handheld Products provisioned to operate with "BlackBerry Enterprise Server" software, and the "BlackBerry Unite!" product, which is designed to integrate and provide a link between Your personal computer running the "BlackBerry Unite!" product and the Handheld Products provisioned to operate with the "BlackBerry Unite!" product.

"Documentation" means the applicable installation guide or standard end user documentation prepared and supplied by RIM for the specific type and version of Software, RIM Product or Service, including any safety instructions. Documentation is also available via <http://www.blackberry.com/knowledgecenterpublic/livelink.exe?func=11&objId=8067> or by contacting RIM at [legalinfo@rim.com](mailto:legalinfo@rim.com). For certainty, Documentation does not include any installation guide or end-user documentation that is prepared other than by RIM by or on behalf of an Airtime Service Provider or other third party.

"Handheld Product" means: (a) a BlackBerry Handheld Product; or (b) a Third Party Handheld Product.

"RIM Product" means any of the BlackBerry Handheld Products and any RIM supplied accessories for such BlackBerry Handheld Product exclusive of any Software, including, without limitation, any smart card reader.

"Software" means any of the BlackBerry Handheld Software, BlackBerry PC Software or BlackBerry Server Software provided to You under this Agreement, in whatever form, medium or manner provided or subsequently installed or used. If the Software has the capability to provision (i.e. activate) BlackBerry Handheld Software, then, the term "Software" includes any and all BlackBerry Handheld Software (including any and all updates or upgrades thereto) that is provisioned using the Software. The term "Software" shall not include any Third Party Software, whether or not the Third Party Software accompanies, is provided with, or operates in conjunction with, the Software and/or any other portion of Your BlackBerry Solution or Third Party Handheld Product.

"Service" means any RIM service provided to You in conjunction with Your BlackBerry Solution (including, without limitation, any RIM service, such as BlackBerry Prosumer Service, for which You subscribe, and any new RIM service or modification to an existing RIM service that RIM provides, or otherwise makes available to You from time-to-time).

"Third Party Components" means software, interfaces, and firmware, licensed by RIM from a third party for incorporation into a RIM product and distribution as an integral part of that RIM product under a RIM brand.

"Third Party Content" means content proprietary to a third party, including, without limitation, third party files, databases and websites.

"Third Party Handheld Product" means any wireless handheld device, other than a BlackBerry Handheld Product, on which BlackBerry Handheld Software or any portion thereof, has been designed by RIM to operate, and in relation to which RIM has

entered into an agreement with Your Airtime Service Provider authorizing that third party wireless device to access the RIM infrastructure.

"Third Party Services" means services provided by a third party, excluding Airtime Services.

"Third Party Software" means software applications proprietary to a third party but shall not include Third Party Components.

"Your BlackBerry Solution" means the Software, and at least one of the following additional items which You obtain, install, provision, or otherwise authorize and accept responsibility for the use of in conjunction with the Software, as applicable in Your circumstances: RIM Product, BlackBerry Server Software, BlackBerry Handheld Software, BlackBerry PC Software and Service(s); along with the applicable Documentation.

Software and Documentation License. The Software is licensed and not sold under this Agreement. Subject to the terms and conditions herein, this Agreement grants You a personal, revocable, non-exclusive, non-transferable license that permits You and Your Authorized Users:

- (a) if the Software is BlackBerry Server Software:
  - to install and use up to the number of copies (including virtual copies) of the Software corresponding to the fees for the Software paid to RIM or RIM's authorized distributor (and if no fees for the Software are payable to RIM or RIM's authorized distributor, then to install and use up to the number of copies otherwise authorized by RIM); and
  - to enable up to the number of Handheld Products corresponding to the fees paid to RIM or RIM's authorized distributor to access the Software (and if no fees are payable to RIM or RIM's authorized distributor to enable Handheld Products to access the Software, then to enable up to the number of Handheld Products otherwise authorized by RIM) (for example, if You are running "BlackBerry Enterprise Server" software, You must acquire client access licenses for the number of Handheld Products used in conjunction with that BlackBerry Server Software); and
- (b) if the Software is BlackBerry Handheld Software or BlackBerry PC Software and:
  - if the Software is pre-installed on hardware, then, to use the single copy of that Software installed on the hardware; or
  - if the Software is not pre-installed on hardware, then, to install and use, and permit Authorized Users to install and use, the Software on the applicable hardware corresponding to the fees for the number of copies of the Software paid to RIM or RIM's authorized distributor (and if no fees are payable to RIM or RIM's authorized distributor for the Software, then to install and use up to the number copies otherwise authorized by RIM).

In all cases, You or Your Authorized Users may not use or allow the use of the Software or access the Services other than for Your own internal or personal purposes and other than as part of Your BlackBerry Solution. If an Authorized User wishes to use the BlackBerry Handheld Software with another BlackBerry solution (i.e. a BlackBerry solution comprised of RIM proprietary products, software or services which You have not obtained, installed or provisioned, and You are prepared to permit, but do not accept responsibility for, such use; "Other BlackBerry Solution"), then such use is not covered by this license agreement and the Authorized User must enter into a separate license agreement with RIM entitling him or her to use the BlackBerry Handheld Software as part of the Other BlackBerry Solution. (e.g. if You are a corporation and Your employee wishes to use the BlackBerry Handheld Software, in conjunction with his or her home installation of "BlackBerry Unite!" or personal BlackBerry Prosumer Services, and You permit but do not take responsibility for such use, Your employee must, in addition to being an Authorized User under this Agreement, enter into a BlackBerry Software License Agreement with RIM, in his or her personal capacity, entitling use of the Software with this Other BlackBerry Solution). In most cases the BlackBerry Software License Agreement will be presented to the individual when he or she installs the "BlackBerry Unite!" product or provisions the BlackBerry Handheld Software for use with BlackBerry Prosumer Services, and is otherwise available from RIM at [www.blackberry.com/legal](http://www.blackberry.com/legal)). This license does not imply any rights to: (i) future upgrades or updates of the Software or Third Party Software; (ii) in the case of BlackBerry Handheld Software on a Handheld Product, the ability to access applications, other than those included in the Software; or (iii) acquire any new or modified Services.

The Software may include functionality to automatically check for updates or upgrades to the Software. Unless You, or a third party with whom You have an agreement to provide Your BlackBerry Solution or portions thereof to You, configures Your BlackBerry Solution to preclude the transmission or use of upgrades or updates to the Software, Third Party Software or Services, You hereby agree that RIM

may make such updates or upgrades available to You from time-to-time. If RIM, either directly or through a distributor (including Your Airtime Service Provider) makes any updates or upgrades to the Software or Services available to You, such updates or upgrades shall be subject to the terms and conditions of this Agreement unless the Software or Service(s) is expressly provided to You under other, or additional terms and conditions, in which case, those other, or additional terms and conditions (which may include the payment of additional fees), shall apply.

You may not print, distribute or modify the Software, in whole or in part. You may not copy, reproduce or in any other manner duplicate the Software, except as authorized in this Agreement or in a separate written agreement between You and RIM. For the purposes of this provision "copy" or "reproduce" shall not include copying of statements and instructions of the Software that naturally occurs during normal program execution when used in accordance with and for the purposes described in the Documentation or in the course of making unmodified regular back-ups of the Software or of the computer or system on which the Software is installed, in accordance with industry standard business practices. You may not copy any Documentation or portion thereof unless specifically authorized in writing to do so by RIM. You may download a single copy of the Documentation from <http://www.blackberry.com/knowledgecenterpublic/livelink.exe?func=ll&objId=8067> solely for Your use under these terms and conditions.

Use of Your BlackBerry Solution. You are responsible for all activities with respect to Your BlackBerry Solution undertaken by You and Your Authorized Users and You will ensure that:

- (a) You and Your Authorized Users will only use Your BlackBerry Solution and any component thereof, in accordance with this Agreement, all applicable laws and regulations, and the appropriate Documentation for Your BlackBerry Solution or portion thereof;
- (b) You have the right and authority to enter into this Agreement, either on Your own behalf or on behalf of a company or other entity, or minor, and that You are over the age of majority;
- (c) Any information that is provided to RIM pursuant to this Agreement is true, accurate, current and complete;
- (d) You and Your Authorized Users will not knowingly, after making such inquiries as a reasonable person in Your or Your Authorized User's position would undertake, use or permit others to use Your BlackBerry Solution or portion thereof in isolation or with any other software or 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 or otherwise has a detrimental effect upon RIM, an Airtime Service Provider or any of their respective customers or products or services, and You will immediately cease any such activity upon RIM delivering notice of same to You;
- (e) You and Your Authorized Users will not transmit harassing, abusive, libelous, illegal or deceptive messages, content or information;
- (f) You and Your Authorized Users will not use Your BlackBerry Solution, or any part thereof, to commit or attempt to commit a crime or facilitate the commission of any crime or other illegal or tortious acts, including any breach of privacy or infringement, violation or misappropriation of any intellectual property rights and/or other proprietary rights of any third party (including, without limitation, copying and sharing Third Party Content for which You and Your Authorized Users do not have the rights to copy and share, or unlawfully circumventing any digital rights management protections);
- (g) You and Your Authorized Users will not sell, rent, lease, or transfer, or attempt to sell, rent, lease, or transfer, the Software or any part thereof, or Your entitlement to use the Services or any part thereof, (including operating a service bureau or equivalent service using the Software to any other person, without the prior express written permission of RIM;
- (h) You and Your Authorized Users will not transfer, or attempt to transfer, any Software or any part thereof pre-installed by or on behalf of RIM on a BlackBerry Handheld Product for use on any other handheld device without the prior written permission of RIM; and
- (i) You and Your Authorized Users will cooperate with RIM and provide information requested by RIM to assist RIM in investigating or determining whether there has been a breach of this Agreement and provide RIM with access to the premises and computers where the RIM Products, Services or Software are or have been used. You hereby authorize RIM to cooperate with: (1) law enforcement authorities in the investigation of suspected criminal violations; (2) third parties in investigating acts in violation of this Agreement; and (3) system administrators at Internet service providers, networks or computing facilities in order to enforce this Agreement. Such cooperation may include RIM disclosing Your or Your Authorized Users username, IP address, or other personal information.

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Your Computer Systems and Airtime Services. Except as the Parties expressly agree in writing, RIM has no responsibility for the selection, implementation, interoperability and performance of any and all third party hardware (including, without limitation, Third Party Handheld Product(s)), software and services (including, without limitation, Internet connectivity and Airtime Services) used in association with Your BlackBerry Solution. In most instances, Your BlackBerry Solution will require a subscription for Airtime Services in order to use Your BlackBerry Solution and You must acquire this subscription through an Airtime Service Provider, either directly or where available through RIM, which Airtime Services shall be subject to the terms and conditions of such Airtime Service Provider. If You wish to obtain information about which Airtime Service Providers support Your BlackBerry Solution in Your location please contact RIM via [legalinfo@rim.com](mailto:legalinfo@rim.com). You are responsible for ensuring that the hardware, software and services (including, without limitation, Internet connectivity and Airtime Services) with which You choose to operate Your BlackBerry Solution meets RIM's minimum requirements, including, without limitation, the processing speed, memory, client software and the availability of dedicated Internet access required for Your BlackBerry Solution as set out in the Documentation, and that You and Your Authorized Users' use of such hardware, software and/or services with Your BlackBerry Solution is not in violation of any licenses, terms, conditions, laws, rules and/or regulations respecting the use of such hardware, software or services.

Desktop Cryptography Support. The Software may include software modules that allow users to extend certain of their existing desktop-based cryptography implementations (such as S/MIME v.3 (or greater) or implementations based on the RFC 2440 standards) (each a "Desktop Cryptography Implementation") wirelessly to certain Handheld Products. You cannot use each such software module without first obtaining and using a separately available installer. A list of the distributor(s) of the appropriate installer may be found at

[http://www.blackberry.com/select/legal/smime\\_pgp.shtml](http://www.blackberry.com/select/legal/smime_pgp.shtml). RIM does not provide any portion of the cryptography infrastructure required for the Desktop Cryptography Implementation itself and RIM takes no responsibility for the selection, acquisition, implementation, performance or non-performance, support, accuracy or reliability of any portion of Your cryptography infrastructure, including, without limitation, the selection, accuracy or reliability of the infrastructure software, or any trust signatures, public keys, third party certificates and related services, or any authentication or authentication method, used in conjunction with the cryptography infrastructure. You are responsible for ensuring that You comply with any terms and conditions, rules and regulations respecting Your use of the applicable cryptography infrastructure, certificates, public keys, and any other services or software You may use in conjunction with Your particular Desktop Cryptography Implementation. RIM HAS NO LIABILITY WHATSOEVER FOR ANY ISSUE ARISING FROM OR RELATING TO YOUR DESKTOP CRYPTOGRAPHY IMPLEMENTATION.

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Term. This Agreement shall be effective upon Your agreeing to be bound by the terms of this Agreement (as described in the preamble above) and shall continue in effect unless terminated in accordance with the provisions set out herein.

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Indemnity/Liability. You shall defend, indemnify, and hold harmless RIM, RIM's affiliates, suppliers, successors, agents, authorized distributors and assigns and each of their directors, officers, employees and independent contractors (each a "RIM Indemnified Party") from any claims, damages, losses, costs or expenses (including, without limitation, legal fees and costs) incurred by a RIM Indemnified Party in connection with all claims, suits, judgments and causes of action: (i) for 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 Your BlackBerry Solution or any portion thereof; (ii) for damages arising from the breach of any of the following Sections of this Agreement: "Desktop Cryptography Support", "Use of Your BlackBerry Solution", "Software and Documentation License", "Your Computer Systems and Airtime Services", "Intellectual Property", "Export Restrictions", "Confidentiality", "No Reverse Engineering"; (iii) for any injury, death or property damage arising from Your or Your Authorized Users' negligence or misconduct in connection with Your or

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IN ADDITION TO THE LIMITATIONS AND EXCLUSIONS SET OUT ABOVE, IN NO EVENT SHALL ANY DIRECTOR, EMPLOYEE, AGENT, DISTRIBUTOR, SUPPLIER, INDEPENDENT CONTRACTOR OF RIM OR ANY AFFILIATES OF RIM HAVE ANY LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT.

NOTHING IN THIS AGREEMENT IS INTENDED TO SUPERSEDE ANY EXPRESS WRITTEN AGREEMENTS OR WARRANTIES PROVIDED BY RIM FOR PORTIONS OF YOUR BLACKBERRY SOLUTION OTHER THAN THE SOFTWARE.

Consent to Collection of Personal Information. By submitting personal information about You and/or Your Authorized Users (which may or may not, depending on applicable law, include, without limitation, a name, email address, telephone number, Handheld Product information, Airtime Service Provider information, and information about the use of Your BlackBerry Solution functionality), to RIM, Your Airtime Service Providers and/or their affiliated companies through Your use of Your BlackBerry Solution (or any portion thereof) and/or Service or associated Airtime Services, You consent to the collection, use, processing, transmission, and/or disclosure of such information by RIM and/or its affiliated companies, and You warrant that You have obtained all consents necessary under applicable law from Your Authorized Users to disclose their personal information to RIM and/or its affiliate companies and for RIM and/or its affiliated companies to collect, use, process, transmit, and/or disclose such personal information, which may also include the use, processing, transmission, and/or disclosure of such information to Your and/or Your Authorized Users' Airtime Service Provider and/or within RIM and its affiliated companies, for: (a) the internal use of RIM and its affiliated companies, including, without limitation: (i) understanding and meeting Your needs and preferences, (ii) developing new and enhancing existing services and product offerings, and (iii) managing and developing RIM's business and operations; (b) any purpose related to the billing, activation, provision, maintenance, deactivation and/or Your and/or Your Authorized Users' use of Your BlackBerry Solution and/or related products and/or services (including the Service); (c) providing You and/or Your Authorized Users with upgrades or updates of the Software, notice of upgrades or updates, Third Party Software, Third Party Content or Third Party Services and/or related products and/or services (including the Service); (d) any purposes permitted or required by any applicable law; and/or (e) any of the other purposes which are set out in RIM's then current privacy policy, which may be viewed at <http://www.blackberry.com/legal/privacy.shtml>. The collection, use, processing, transmission, and/or disclosure of Your or Your Authorized Users' personal information for the purposes noted above are in strict accordance with RIM's privacy policy and applicable privacy laws. RIM reserves the right to modify its privacy policy from time-to-time in its sole discretion and You agree to regularly review RIM's privacy policy for any updated information. If Your personal information is disclosed to Your Airtime Service Provider, Your or Your Authorized Users' Airtime Service Provider's privacy policy, or the terms and conditions relating to the collection, use, processing, transmission, and/or disclosure of personal information negotiated between RIM and You and/or Your Authorized Users' Airtime Service

Provider, if any, shall apply. 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.

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, and/or in the case of Airtime Services, by the Airtime Service Provider or its subsidiaries or affiliates.

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 at 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 electronically. Electronic notice to You shall be deemed to have been duly given when transmitted to an address furnished by You to RIM.

Force Majeure. Notwithstanding any other provision of this Agreement, neither Party shall be deemed in default of this Agreement for failure to fulfill 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.

General.

- i. Third Party Beneficiaries. RIM's affiliates and RIM and its affiliates' directors, officers and employees thereof are intended third party beneficiaries for the purpose of the Sections of this Agreement entitled, "Limitation of Liability" and "Disclaimer". Except as otherwise specifically stated in this Section, the provisions herein are for the benefit of the Parties and not for any other person or entity.
- ii. Waivers of Default. No Party is to be deemed to have waived or forfeited any right under this Agreement, whether on the basis of failure, delay or any other legal or equitable doctrine, unless such waiver is made in writing signed by an authorized signatory of the Party against whom the waiver is sought to be enforced. Waiver of any provision, or any breach of any provision, of this Agreement in one instance shall not constitute a waiver as to any other instance.
- iii. Survival. The terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the performance hereof shall so survive the completion of performance, cancellation or termination of this Agreement.
- iv. Governing Law and Dispute Resolution. If You reside in Canada and the Software is shipped or delivered to You in any format in Canada, this Agreement is to be governed by and construed under the laws of the Province of Ontario. Otherwise, this Agreement is to be governed by and 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, except to the extent specifically prohibited by applicable law in Your jurisdiction, 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 ("Rules") and shall be heard by one arbitrator appointed in accordance with the said Rules and to be mutually agreed to by the Parties within thirty (30) days of the appointment of the arbitrator, failing which a neutral third party shall appoint the arbitrator. If the provisions of the foregoing are prohibited by law in Your jurisdiction, the arbitration shall be: (i) held in Your jurisdiction; (ii) settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce ("ICC Rules"); and (iii) heard by one arbitrator appointed in accordance with the ICC Rules and to be mutually agreed to by the Parties within thirty (30) days of the appointment of the arbitrator, failing which a neutral third party shall appoint the 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 arbitrator may be entered in any Court having jurisdiction thereof. Notwithstanding the foregoing, RIM has the right to institute legal or equitable proceedings, including

proceedings seeking injunctive relief, in a court of law for claims or disputes regarding: (i) amounts owed by You to RIM in connection with Your acquisition of Your BlackBerry Solution or any portion thereof, if applicable; and (ii) Your violation or threatened violation of the Sections of this Agreement entitled, "Desktop Cryptography Support", "Use of Your BlackBerry Solution", "Software and Documentation License", "Intellectual Property", "Export Restrictions", "Security", "Confidentiality", "No Reverse Engineering" and "Effect of Termination" of this Agreement. You irrevocably waive any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consent to service of process by mail or in any other manner permitted by applicable law and irrevocably consent and attorn to the jurisdiction of the courts located in the Province of Ontario or the State of New York, as the case may be, for any such claims arising from or related to 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. The Parties hereby waive all rights to a trial by jury in any matter related to or arising from this Agreement.

- v. Severability. To the extent any provision or portion thereof of this Agreement is determined to be illegal, invalid or unenforceable by a competent authority in any jurisdiction, then such determination of that provision or portion thereof will not affect: (a) the legality, validity or enforceability of the remaining provisions of this Agreement; or (b) the legality, validity or enforceability of that provision in any other jurisdiction, and that provision (or portion thereof) will be limited if possible and only thereafter severed, if necessary, to the extent required to render the Agreement valid and enforceable.
- vi. Language. If this Agreement is translated into a language other than English, the English version will prevail to the extent that there is any conflict or discrepancy in meaning between the English version and any translation thereof. Unless, and only to the extent, prohibited by law in Your jurisdiction, any and all disagreements, disputes, mediation, arbitration or litigation relating to this Agreement shall be conducted in the English language, including, without limitation, any correspondence, discovery, submissions, filings, pleadings, oral pleadings and arguments, and orders or judgments.
- vii. Inconsistency. If there is any inconsistency between this Agreement and any software license or end user agreement (other than this Agreement) provided in the packaging or accompanying materials of any portion of Your BlackBerry Solution, 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. In the event of any inconsistency between any documentation provided in the packaging of any portion of Your BlackBerry Solution and the Documentation for the appropriate RIM Product or item of Software, the provisions of the Documentation shall apply to the extent of the inconsistency.
- viii. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and there are no provisions, understandings, communications, representations, warranties, undertakings, collateral agreements or agreements between the Parties relating to the Software other than as set out in this Agreement. Notwithstanding the foregoing, other agreements between the Parties may govern the use of other components of Your BlackBerry Solution. This Agreement supersedes any prior or contemporaneous provisions, understandings, communications, representations, warranties, undertakings, collateral agreements and agreements between the Parties, whether oral or written, with respect to the subject matter hereof, and You acknowledge that You have not relied on any of the foregoing in agreeing to enter into this Agreement. This Agreement may be amended at any time upon mutual agreement by the Parties. Except to the extent that RIM is expressly precluded by applicable law, RIM further reserves the right to make changes to this Agreement either to reflect changes in business practices, or to reflect changes in or required by law, by providing You with reasonable notice of the change either electronically (as contemplated by the Notice provision above) or by posting notice of the change at <http://www.blackberry.com/legal/index.shtml>. If You continue to use the Software and/or the Service more than sixty (60) days after notice of the change has been given or You do not contact [legalinfo@rim.com](mailto:legalinfo@rim.com) sixty (60) days after notice of the change has been given to inquire as to Your options, You shall be deemed to have accepted this change.
- ix. Compliance With Laws. You will, at Your expense, obtain and maintain all licenses, registrations and approvals required by the government authorities or applicable law in Your jurisdiction for the execution and performance of this Agreement or any related license agreements. In particular and for the avoidance of doubt, You will comply with all applicable laws and regulations and will obtain any necessary license, registration and approval from competent government authorities for the importation and use of any Software that contains commercial encryption or other security functions. You will provide RIM with the assurances and official documents that RIM periodically may request to verify Your compliance with this obligation.

Amalgamation of Agreements. In order to ensure: a) consistent terms apply to Desktop Software, Server Software and BlackBerry Handheld Software, when each is used as part of Your BlackBerry Solution; and b) clarity with respect to which license terms apply to BlackBerry Handheld Software when used as part of Your BlackBerry Solution, regardless of the manner in which You provisioned that BlackBerry Handheld Software, BY INDICATING YOUR ACCEPTANCE TO THE TERMS OF THIS AGREEMENT IN THE MANNER SET OUT ABOVE, YOU ARE ALSO AGREEING THAT THIS AGREEMENT REPLACES AND SUPERSEDES THE PREVIOUSLY EXISTING BLACKBERRY END USER/SOFTWARE LICENSE AND BLACKBERRY ENTERPRISE SERVER SOFTWARE LICENSE AGREEMENTS TO THE EXTENT SUCH AGREEMENTS ARE OTHERWISE APPLICABLE, AS OF THE DATE OF YOUR ACCEPTANCE OF THIS AGREEMENT, TO ANY SOFTWARE THAT FORMS PART OF YOUR BLACKBERRY SOLUTION. All references to the BlackBerry End User/Software License or BlackBerry Enterprise Server Software License Agreement in other agreements or documentation that You have with RIM for Your BlackBerry Solution, shall be deemed to be references to this BlackBerry Software License Agreement (unless that would not make sense in the context, e.g. where, as in this provision, a distinction is intended to be made between the previously existing agreements and the BlackBerry Software License Agreements, references to the previously existing agreements would not be deemed to be references to the BlackBerry Software License Agreements). Any amendments or addendums, to the previously existing BlackBerry End User/Software License or Blackberry Enterprise Software License Agreements, under which RIM supplied any software to You, shall be deemed to be amendments or addendums to this BlackBerry Software License Agreement. IF YOU HAVE ANY QUESTIONS OR CONCERNS ABOUT THE TERMS OF THIS AGREEMENT, PLEASE CONTACT RIM AT [legalinfo@rim.com](mailto:legalinfo@rim.com).