

## BBM ENTERPRISE FOR PERSONAL USE TERMS OF SERVICE

**Welcome to BBM Enterprise for Personal Use!** BBM Enterprise is being offered to You for personal use on a special basis due to the end of life of the BBM Consumer platform. By using or accessing any of the BBM services or products (collectively, the "Services"), including any text, graphics, photos, software, websites, or other materials appearing on, made available as part of, or uploaded to the Services (collectively, "Content"), You agree to be bound by these Terms of Service, including the attached Schedule(s) (collectively, the "Agreement") and our Privacy Policy at [www.blackberry.com/legal/privacy.shtml](http://www.blackberry.com/legal/privacy.shtml).

"You" means: (i) you as an individual if you are using or accessing the Services in your own personal capacity, or (ii) if you are using or accessing the Services on behalf of a company or other entity, you and the entity for whose benefit you are using or accessing the Services. The terms "BlackBerry", "we" and "us" have the meaning set out in Section 22. See [www.blackberry.com](http://www.blackberry.com) for further contact information.

You and BlackBerry are each sometimes referred to as a "Party" and collectively the "Parties".

We are committed to maintaining the privacy and security of personal information. See our privacy policy (referenced above) and Sections 17 and 18 of this Agreement for information about how we process personal information.

THIS AGREEMENT CONTAINS PROVISIONS THAT LIMIT OR EXCLUDE OUR LIABILITY TO YOU AND THAT OTHERWISE IMPACT YOUR LEGAL RIGHTS. THIS AGREEMENT DOES NOT AFFECT, DEROGATE FROM, DIMINISH OR EXCLUDE YOUR MANDATORY STATUTORY RIGHTS OR MANDATORY STATUTORY BENEFITS APPLICABLE IN YOUR JURISDICTION, (TO THE EXTENT THAT YOU MAY BE ENTITLED TO SUCH MANDATORY STATUTORY RIGHTS) OR BLACKBERRY'S MANDATORY STATUTORY OBLIGATIONS IN YOUR JURISDICTION (TO THE EXTENT BLACKBERRY MAY HAVE SUCH OBLIGATIONS).

IF YOUR PRIMARY ADDRESS IS IN CANADA, THE UNITED STATES OF AMERICA, THE UNITED KINGDOM, CHINA (INCLUDING THE Hong Kong Special Administrative Region of the People's Republic of China, "HONG KONG"), THEN THIS AGREEMENT REQUIRES YOU TO USE ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES RATHER THAN JURY OR JUDGE TRIALS, OR CLASS ACTIONS.

IF YOU ARE A RESIDENT OF FRANCE DEFINED AS A CONSUMER WITHIN THE MEANING OF THE FRENCH CONSUMER CODE, SOME PROVISIONS OF THIS AGREEMENT SHALL NOT APPLY TO YOU AND TO THE EXTENT THAT YOU MAY EXTEND TO SUCH MANDATORY RIGHTS PROVIDED FOR BY LAW, THIS AGREEMENT SHALL IN NO CASE AFFECT YOUR MANDATORY RIGHTS PROVIDED FOR BY LAW.

IF YOU ARE A RESIDENT OF ITALY DEFINED AS "CONSUMER" WITHIN THE MEANING REFERRED TO IN ITALIAN LEGISLATIVE DECREE NO. 206 AS OF SEPTEMBER 6, 2005 (WHICH MEANS THAT YOU ARE A PHYSICAL PERSON ACTING FOR PURPOSES THAT DO NOT ENTER IN THE CONTEXT OF YOUR TRADE, ACTIVITY OR PROFESSION) YOU MAY ENTITLED TO THE RIGHTS SET OUT IN ITALIAN LEGISLATIVE DECREE NO. 206 OF SEPTEMBER 6, 2005, AS AMENDED AS REQUIRED, AND NO PROVISION OF THIS AGREEMENT SHALL APPLY TO YOU. RESTRICTION OR DELETION OF THESE RIGHTS, OR EVEN THE CHOICE OF APPLICABLE LAW UNDER ARTICLE 24 (d) OF THIS AGREEMENT.

## **1. ELIGIBILITY TO USE THE SERVICES**

In order to use the Services, including obtaining a user account or BlackBerry ID, You must be at least Minimum Age and either over the age of majority, an emancipated minor, or possess legal parental or guardian consent, and be fully able and competent to enter into this Agreement. "Minimum age" means 13 years old except for the following countries: (a) in Spain and South Korea, it means 14 years old; and (b) in the Netherlands it means 16 years old. Some portions of the Services, including Content, may be subject to additional age restrictions.

If You are entering into this Agreement on behalf of a company or other entity, You represent and warrant that You have the authority to enter into this Agreement on such company's or other entity's behalf.

You also represent that to the best of Your knowledge You are eligible to use the Services (including receiving any software that is provided by us as part of the Services) under applicable law, and are not located in a country that is subject to a U.S. or Canadian government embargo, or that has been designated by the U.S. or Canadian government as a "terrorist supporting" country, and that You are not listed on any U.S. or Canadian government list of prohibited or restricted parties.

## **2. RULES FOR USING THE SERVICES**

You are responsible for all activities with respect to Your use of the Services, including any Content You upload or post to, or otherwise transmit, through the Services. If You are a corporation or other legal entity, You agree that You are responsible for the activities of Your employees, agents and any other persons You authorize to use the Services on Your behalf. Without limiting the above, in using or accessing the Services, You must ensure that:

- (a) the Services are used in accordance with this Agreement, the applicable Services documentation, and in compliance with all applicable laws and regulations (for example, if the use of any portion of the Services, such as video and/or voice calling is not permitted by applicable laws in Your jurisdiction, You may not use such portion of the Services);  
all information You provide under this Agreement and in the course of using the Services, including when creating a user account, including a BlackBerry ID, is true, accurate, current and complete, and You agree to update such information to keep it true, accurate, and complete for so long as You continue to use the Services or account;
- (b) You will not knowingly take any action that interferes with, degrades or adversely affects the Services, or any software, hardware, system, network, Content, or service used by any person in conjunction with the Services, or otherwise has a detrimental effect upon us or our subsidiaries and affiliates ("BlackBerry Group of Companies"), an Internet or mobile wireless service provider ("Service Provider"), or any of the BlackBerry Group of Companies' or Service Providers' customers or infrastructure or products or services, and You will immediately cease any such activity upon request by us;
- (c) the Services, or any portion thereof, are not used to transmit, publish, post, upload, distribute or disseminate any inappropriate, harassing, abusive, defamatory, libellous, obscene, illegal or deceptive Content;
- (d) the Services, or any portion thereof, are not used to commit or attempt to commit a crime or facilitate the commission of any crime or other illegal or tortious acts, including uploading, collecting, storing, posting, transmitting, communicating or otherwise making available any information or material that You do not have a right to collect, store or make available;

- (e) the Services are not used to upload, post, transmit, or otherwise make available any Content that contains a virus or any other form of malicious code or data that is likely or intended to have an adverse impact on, or provide unauthorized access to, the Services or any other software, hardware, services or data, and if You become aware of the existence of any such Content, You will promptly notify us;
- (f) You do not sell, rent, lease, or transfer, or attempt to sell, rent, lease, or transfer, the Services, including any Content made available to You as part of the Services, or Your entitlement to the Services or any part thereof, to any other person, without our prior express written permission or, where services or any Content is provided by someone other than us, without the prior express written permission of such provider;
- (g) You do not attempt to gain unauthorised access to any Services, accounts, computer systems or networks connected to the Services, through hacking, password mining or any other means, or obtain or attempt to obtain any materials or information through any means not intentionally made available to You by the Services;
- (h) the Services, or any portion thereof, (including information obtained through the Services) are not used to impersonate any person or entity, or falsely state or otherwise misrepresent Your affiliation with a person or entity, or to create a false identity to mislead others, including *phishing and spoofing*;
- (i) You do not use the Services to develop, or to assist anyone in developing a competitive product or service or for other competitive purposes, including for the purposes of monitoring the Services availability, performance, or functionality, or for benchmarking purposes;
- (j) You do not use any software, devices, scripts or other means to "scrape", "crawl" or "spider" any part of the Services and do not use bots or other automated methods to access the Services, invite contacts, send or redirect messages, or perform similar activities unless expressly permitted by us;
- (k) except to the extent that we are expressly precluded by law from prohibiting these activities, You agree that You will not alter, modify, adapt, create derivative works, translate, deface, or reverse engineer (or otherwise attempt to convert any of the software into human readable form) the Services or attempt to do so, or acquiesce, authorise or encourage any other party to do the same; and
- (l) You cooperate with us, and provide information requested by us, to assist us in investigating or determining whether there has been a breach of this Agreement and provide us or our appointed independent auditor with access to the premises and equipment where the Services are or have been used and to any associated records. In addition, You hereby authorise the BlackBerry Group of Companies to cooperate with: (i) law enforcement authorities in the investigation of suspected criminal violations; (ii) third parties in investigating acts in violation of this Agreement; and (iii) system administrators at Service Providers, networks or computing facilities in order to enforce this Agreement. Such cooperation may include us disclosing Your username, IP address, and other personal information.

### **3. YOUR CONTENT AND CONTENT PROVIDED BY US AND THIRD PARTIES**

- (a) Your Content. This Agreement does not transfer to us any ownership of Content that You post, upload or otherwise transmit using the Services. However, so that we can provide the Services, You grant to us a worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free and non-exclusive license to use, distribute, reproduce, modify, adapt, publicly perform, and publicly display, as is reasonable to provide and maintain the Services, any

Content that You send, upload, post or otherwise make available through the Services. You warrant and covenant to us that You have the right to grant to us such licenses.

- (b) **Your Right to Use Content Provided by Us.** You may use Content made available by us or our affiliates in connection with the Services solely for Your personal use and in accordance with this Agreement and the specific license terms and conditions applicable to the Content ("Usage Rules"), if any. Usage Rules will be detailed in the documentation for the applicable Service or Content, which You should familiarize Yourself with and review from time to time as we may make prospective changes. Where the Services allow You to acquire Content through in-app downloading or purchase, Usage Rules may be contained in the descriptions of the Content or presented as part of the download or purchase process. Unless expressly stated otherwise in the applicable Usage Rules, emoticons, stickers and similar Content provided by us as part of or for use in conjunction with the Services may only be reproduced and distributed in conjunction with Your use of the Services (e.g. adding emoticons and stickers to messages sent to Your BBM contacts) and may not otherwise be reproduced or distributed.
- (c) **Possible Exposure to Offensive Content.** We do not control the Content that is made available to You by others in connection with Your use of the Services, or any third party service used in conjunction with the Services. You understand that by using the Services, You may be exposed to Content that is, or that You consider to be, offensive, indecent, or otherwise objectionable. We and our designees have the right (but not the obligation) in our sole discretion to pre-screen, refuse, or remove Your Content or any third party Content from the Services. In addition to the general disclaimers in Section 16, we do not guarantee or provide any other similar assurance regarding the accuracy, integrity, or quality of, and are not liable for any such items.
- (d) **Controls and Adult Supervision.** Portions of the Services, third party services accessible through the Services, or Your device software may include settings that permit You to block or filter certain Content, services or persons. It is Your responsibility to select and enable such settings to Your desired preference. With respect to settings made available by us, we do not guarantee that such settings are error-free, will block all relevant Content, services, or persons, or cannot be disabled or circumvented by others who have access to the services or Your device or computer. If You allow Your child to use the Services, or any portion thereof, it is Your responsibility to determine whether a particular Service, third party service or Content is appropriate for Your child, and You are fully responsible for Your child's access to and use of the Services, third party services and Content, including all financial charges or other liability incurred in respect of such use or access.
- (e) **Volume and Storage Limitations.** We may establish general practices and limits concerning use of the Services, including, the volume of Content that may be stored, the maximum period of time during which the Content, including message/discussion postings, will be retained on any Service (including any cloud storage service), and/or the period of time during which You may continue to use or access any Content. You agree that we have no responsibility or liability whatsoever for the loss or deletion of, the unauthorized access to, or the failure to store any Content and You should keep an alternative back-up copy of any Content for which retaining a copy is important for You.
- (f) **Feedback.** We welcome Your feedback regarding the Services, but we cannot receive feedback unless we are able to freely use the feedback to improve the Services. Therefore, unless we otherwise agree with You in writing, You hereby agree that we own all feedback, comments, suggestions, ideas, concepts and changes that You provide to us regarding the Services and all associated intellectual property rights (collectively the "Feedback"), and You hereby assign to us all of Your right, title and interest in Your Feedback. You will not

knowingly provide us any Feedback that is subject to third party intellectual property rights. You agree to cooperate fully with us with respect to signing further documents and doing such other acts as are reasonably requested by us to confirm that we own the Feedback and to enable us to register and/or protect any associated intellectual property rights and/or confidential information.

#### **4. SECURITY, ACCOUNTS AND PASSWORDS**

- (a) Use of Accounts and Passwords. You agree that You are responsible for all activity that occurs through Your user account(s), including all financial charges or liability incurred in respect of such activity. If You become aware of any unauthorized use of all or any portion of Your user account(s), including any passwords, You should contact BlackBerry Customer Support (contact information located at [www.bbm.com/support](http://www.bbm.com/support)). We may take such actions that we deem appropriate following receipt of such notification, but have no obligation to take any action. You agree that notifying us as set out above does not relieve You of responsibility for all activity that occurs using Your passwords, or on or through Your user accounts.
- (b) Accessing Other Services. Your user account credentials (including Your BlackBerry ID, as applicable) can also be used by You to access other products or services that utilize Your user account credentials and that You are eligible to access ("ID Accessible Services"). Unless You and BlackBerry agree to other terms and conditions governing Your use of Your account credentials in association with ID Accessible Services, You agree that the terms and conditions of this Agreement that apply to the user account credential service that forms part of the Services, also apply to the use of Your user account credentials with ID Accessible Services; including without limitation, Sections 1, 2, 5, 7, 9, 11 to 19 and this Section 4. In addition, any termination of this Agreement will not affect the application of such terms and conditions to Your continued use of Your user account credentials with other ID Accessible Services, unless BlackBerry indicates that such termination is intended to terminate Your right to use Your user account credentials with other ID Accessible Services.

#### **5. LICENSE TO USE THE SERVICES**

- (a) License. Subject to the terms and conditions of this Agreement, we grant to You a personal, revocable, non-exclusive, non-transferable license to access and use the Services, including any software provided by us as part of the Services, for Your own internal or personal use. Portions of the Services require You to obtain and use software in order to access the Services and You are permitted to install and use such software to access the Services on the device or computer for which it is designed, or if expressly permitted by the usage rules governing the third party digital storefront (e.g. iTunes Store for iOS versions of the software) from which You acquired the software, the number of devices expressly permitted by such rules. The software is licensed and not sold under this Agreement.
- (b) Fees and Subscriptions. Fees may apply to some portions of the Services ("Paid Services") and Your license to use Paid Services is conditional upon payment of the applicable license fees. If You are acquiring the Services, or any portion thereof, on a subscription basis or as part of a free trial, then the license set out above applies only for the time period for which You have paid the requisite subscription fees or for the time period authorised by us or our authorised distributor, as the case may be. Service charges may be charged by Your Service Provider in connection with Your use of the Services, and You agree that as between You and us, You are responsible for all service charges incurred through such use. Your Service Provider may limit which Services are made available to You. If You wish to obtain

information about Your Service Provider's service charges or limitations on Services, please contact Your Service Provider.

- (c) Updates and Upgrades. Upgrades or updates of the Services, including software, may be made available at our discretion from time to time, and are subject to the terms and conditions of this Agreement. The software or the software application store that makes the software available for download may include functionality to automatically check for updates or upgrades to the software, and unless Your device or computer software permits You to preclude the transmission or use of upgrades or updates and You apply such settings, You hereby agree that we, or the applicable software application store, may (but are not obligated to) provide notice to You of the availability of such upgrades or updates and automatically push such upgrade or update to Your device or computer from time-to-time. You may be required to install certain upgrades or updates to the software in order to continue to access or use the Services, or portions thereof (including upgrades or updates designed to correct issues with the Services). Any updates or upgrades provided to You by us under this Agreement shall be considered part of the Services.
- (d) Additional Terms. You may be required to agree to additional terms or conditions prior to using certain portions of the Services or when acquiring Content from within the Services (e.g. digital goods). In addition, to the extent that any third party component of the software provided by us is covered by additional terms and conditions that provide You with rights to use, copy, distribute or modify all or a part of such third party component that are broader than the rights granted to You under this Agreement for software (e.g. "open source" software), then, solely to the extent that You can exercise such broader rights without breaching the terms or conditions of this Agreement for the remainder of the software, You will obtain the benefit of such broader rights.

## **6. THIRD PARTY PRODUCTS AND SERVICES**

The Services may contain links to or otherwise make available third party products and services, including websites. The availability of such third party products and services does not imply any endorsement by us and You are solely responsible for and assume all risk arising from Your use of any such third party products and services. You are also responsible for understanding and complying with any agreement You enter into with a third party with respect to third party products or services accessed through or used in connection with the Services, including its privacy policy. **WE ARE NOT RESPONSIBLE FOR OR LIABLE IN ANY WAY FOR ANY LOSS OR DAMAGE OF ANY SORT INCURRED AS A RESULT OF YOUR DEALINGS WITH SUCH THIRD PARTIES, AND WITHOUT LIMITING THE FOREGOING, EXCEPT TO THE EXTENT SPECIFICALLY PROHIBITED BY APPLICABLE LAW, YOU SPECIFICALLY AGREE THAT WE ARE NOT RESPONSIBLE OR LIABLE FOR, ANY VIRUSES, OR ANY THREATENING, DEFAMATORY, OBSCENE, TORTIOUS, OFFENSIVE OR ILLEGAL THIRD PARTY products or services, INCLUDING THIRD PARTY CONTENT, OR ANY THIRD PARTY PRODUCT OR SERVICE THAT INFRINGES OR MISAPPROPRIATES THE INTELLECTUAL PROPERTY OR THE PROPRIETARY RIGHTS OF, OR VIOLATES THE PRIVACY OR PUBLICITY RIGHTS OF, You or ANOTHER PERSON OR ENTITY.** Your recourse in the event of any such claim with respect to any third party products or services, including third party content, is solely against the relevant third party. In no event will any agreement between You and any third party be binding on us or impose upon us any additional obligations, or any obligations inconsistent with the terms and conditions of this Agreement.

## **7. MODIFICATION OR DISCONTINUANCE OF THE SERVICES**

- (a) Modification or Discontinuance of the Services. You agree that we may, without liability to You, modify, suspend, discontinue, remove, place limits on, or disable the Services, or

any portion thereof, at any time, temporarily or permanently, with or without notice to You; provided that, if we permanently discontinue a Service for which You have paid a fee to be able to use the Service for a specific portion of time and are not in breach of this Agreement, You may be entitled to a refund of all or a portion of the amount You paid for the right to use the Service, as set forth in the then current refund policy for the Service, or for the merchant of record ("MoR") or payment processor to whom You paid the fees. Such refund, if any, will be Your exclusive entitlement and our, and the MoR's and payment processor's, sole liability to You in the event we permanently discontinue the Services, or a portion thereof.

- (b) Maintenance. Without limiting the foregoing, we reserve the right to, and You agree that we may in our sole discretion, periodically suspend access to the Services, or any portion thereof, or otherwise take the Services, or any portion thereof, out of operation, in order to fix software bugs, install updates and do diagnosis and other maintenance of the Services.

## **8. EMERGENCY SERVICES**

The Services are not interconnected with a public switched telephone network (PSTN), do not use telephone numbers to make voice communications with other devices, and are not designed or intended to be a replacement for Your ordinary mobile or fixed line telephone, and You acknowledge that they are not able to be used to place calls to "911", "112", "999", "000" or other designated numbers intended to connect a user to public safety answering points or similar emergency services pursuant to local telecommunications laws ("Emergency Services"). Calls to Emergency Services are not processed through the Services. You understand and agree that additional arrangements, separate from the Services, must be made to access Emergency Services, and that the BlackBerry Group of Companies, and their respective officers, directors, and employees shall have no responsibility or liability whatsoever for any personal injury, death or damages arising out of or in connection with the inability to access Emergency Services through the Services.

## **9. INTELLECTUAL PROPERTY**

Under this Agreement You do not acquire any ownership right, title or interest in or to any intellectual property or other proprietary rights, including patents, designs, trademarks, copyright, database rights or rights in any confidential information or trade-secrets, in or relating to the Services or any part thereof, including Content that is made available by the BlackBerry Group of Companies and their respective suppliers as part of the Services. Any rights not expressly granted herein are expressly reserved. The Services are protected by Canadian, U.S. and international copyright and patent laws and international treaty provisions. There are severe penalties, both civil and criminal, for intellectual property infringement. You agree that nothing in this Agreement shall adversely affect any rights and recourse to any remedies, including to injunctive relief or such equivalent remedy in Your jurisdiction, that we and any providers of Content for a Service may have under any applicable laws relating to the protection of our or the Content providers' intellectual property or other proprietary rights. If You breach, misappropriate or otherwise infringe BlackBerry's confidential information, intellectual property or other proprietary rights (collectively, "IP Breach") and Your primary address is in a jurisdiction that does not recognise or grant interim or injunctive remedies (or equivalent such remedy in Your jurisdiction) or is unable or unwilling to grant interim or injunctive remedies (or equivalent such remedy in Your jurisdiction) to stop such IP Breach, You acknowledge that BlackBerry will have the right to receive liquidated damages from You in the amount of US\$500 per day during the period of such IP Breach.

## **10. EXPORT, IMPORT AND USE RESTRICTIONS AND U.S. GOVERNMENT LICENSES**

The software provided by us as part of the Services may include cryptographic technology and You agree that it may not be exported, imported, used, transferred, or re-exported except in compliance with the

applicable laws and regulations of the relevant government authorities. You hereby represent that you will not use the software in the development, production, handling, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or their missile delivery systems, or of materials or equipment that could be used in such weapons or their missile delivery systems, or resell or export to anyone or any entity involved in such activity. Notwithstanding any agreement with a third-party or any provision of law, regulation or policy, if You are any agency of the government of the United States of America, then Your rights in respect of the software shall not exceed the rights provided under this Agreement, unless expressly agreed upon by us in a written agreement between You and us and signed by our Chief Operating Officer or Chief Executive Officer.

## **11. TERM**

This Agreement shall be effective upon Your agreeing to be bound by the terms and conditions of this Agreement (as described in the preamble above) and shall continue in effect until terminated in accordance with Section 12.

## **12. TERMINATION**

- (a) Termination by You. You are free to stop using the Services at any time and are not required to notify us if You do so.
- (b) Suspension or Termination by Us. In addition to any other rights or remedies we have under this Agreement, we may suspend or terminate Your accounts, cease providing You with access to any or all of the Services and terminate the licenses granted to You hereunder if:
  - (i) we reasonably believe You have violated this Agreement, or any addendum or additional terms that govern the use of the Services; or
  - (ii) You have failed to pay any amounts owing when due. Except as expressly provided herein, we shall not have any liability to You arising from or related to the termination of this Agreement, or any rights or licenses granted herein, in accordance with this Agreement. If Your primary address is in Indonesia, You hereby waive the provisions of Article 1266 of the Indonesian Civil Code to the extent that a court order or judgment shall not be required for the termination of this Agreement in accordance with its terms.

## **13. EFFECT OF TERMINATION OR EXPIRATION**

Upon termination of this Agreement, however caused, or if Your subscription for Services, or portion thereof, expires or is terminated: (a) You will immediately discontinue all use of the Services, or in the case where this Agreement is not terminated but Your license to use specific Services expires or is terminated, immediately discontinue all use of the applicable Services; and (b) we will have the right to block any transmission of data to and from the affected Services, without notice to You. Upon termination or expiration of Your license to use the Services or any portion thereof, You authorise us to delete any files, programs, data and messages associated with Your account for the Services, or applicable portion thereof, without notice to You. You will remain liable for all amounts due up to and including the effective date of termination or expiration in relation to the affected portion of the Services, including amounts charged to Your authorized mode of payment. In the event of the termination of this Agreement by us pursuant to provisions of this Agreement, You will pay to us all fees (including reasonable lawyers' fees and costs) and related expenses expended or incurred by us in the enforcement of our rights hereunder.

## **14. RESPONSIBILITY FOR YOUR USE OF THE SERVICES**

You are responsible for Your use of the Services and You agree to be responsible for, and to compensate us, the BlackBerry Group of Companies, and our respective suppliers, successors, agents, authorised distributors (including Service Providers) and assigns, and each of their directors, officers, employees and

independent contractors, for any damages, losses, costs or expenses (including reasonable lawyers' fees and costs) suffered or incurred by them in relation to or arising from Your use of the Services, including any breach by You of this Agreement or any addendum to this Agreement ("Losses"), including any Losses arising from claims or proceedings brought by a third party. No remedy provided under this Section is intended to be, nor shall it be construed to be, exclusive of any other remedy provided under this Agreement or as allowed by law or in equity, and all such remedies shall be cumulative.

## **15. WARRANTY; DISCLAIMER**

THE LAWS OF SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY OR THE EXCLUSION OF WARRANTIES, CONDITIONS, ENDORSEMENTS, GUARANTEES, ASSURANCES OR REPRESENTATIONS IN CONTRACTS WITH CONSUMERS AND TO THE EXTENT YOU ARE A CONSUMER IN YOUR JURISDICTION THESE EXCLUSIONS MAY NOT APPLY TO YOU. FURTHER IF YOUR PRIMARY ADDRESS IS IN GERMANY OR AUSTRIA THEN SECTIONS 15(A) AND (B) ARE SUBJECT TO SECTION 24 (D) FOR THE PURPOSE OF INTERPRETATION.

- (a) Services.
  - (i) We will provide the Services with reasonable care and skill. We do not make any other promises or warranties about the Services and in particular do not warrant or provide any other similar assurance that:
    - (A) Your use of the Services will be uninterrupted or error-free or continually be made available; or
    - (B) the Services, including messages and other Content, sent by You or to You or stored by or on behalf of You, will be free from loss, corruption, attack, viruses, interference, hacking, or other security intrusion, or will be accurate, transmitted in uncorrupted form, or transmitted within a reasonable period of time.
- (b) General Warranties
  - (i) TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT, ALL CONDITIONS, ENDORSEMENTS, GUARANTEES, ASSURANCES, REPRESENTATIONS, OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY CONDITIONS, ENDORSEMENTS, GUARANTEES, REPRESENTATIONS OR WARRANTIES OF DURABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, MERCHANTABILITY, MERCHANTABLE QUALITY, NON-INFRINGEMENT, SATISFACTORY QUALITY, TITLE, OR "MATERIAL DEFECTS" (TO THE EXTENT DEFINED IN APPLICABLE LAW IN YOUR JURISDICTION). OR ARISING FROM A STATUTE OR CUSTOM OR A COURSE OF DEALING OR USAGE OF TRADE, AND ALL OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS, ENDORSEMENTS OR GUARANTEES OF ANY KIND, EITHER EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED AND EXCLUDED.
  - (ii) To the maximum extent permitted under applicable law, any implied warranties, endorsements, guarantees, assurances, representations, or conditions relating to the software that is provided by us as part of the Services, to the extent they cannot be excluded as set out above, but can be limited, are hereby limited to ninety (90) days from the date You first installed the software on Your device or computer, as

applicable, or, if Your primary address is in South Africa, such longer period of time that may apply under the South African Consumer Protection Act, 2008.

- (iii) If Your primary address is in Indonesia, You hereby expressly waive any other applicable remedies that You may have under Indonesian law.
- (c) **Mission Critical Applications.** THE SERVICES AND ANY PART THEREOF, ARE NOT SUITABLE FOR USE IN MISSION CRITICAL APPLICATIONS OR IN HAZARDOUS ENVIRONMENTS OR ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS OR PERFORMANCE. WITHOUT LIMITING THE GENERAL DISCLAIMER OF DAMAGES IN SECTION 16(b), IN NO EVENT SHALL WE BE LIABLE FOR ANY DAMAGES RESULTING FROM YOUR USE OF THE SERVICES, OR ANY PART THEREOF, FOR MISSION CRITICAL APPLICATIONS OR IN HAZARDOUS ENVIRONMENTS OR ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS OR PERFORMANCE, WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN, AND EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (d) **Software Acquired from iTunes Store.** With respect to any software provided as part of the Services and acquired from the Apple iTunes Store (for example, the BBM software application), in the event of any failure of the software to conform to any applicable warranty, You may notify Apple and, in accordance with Your agreement with Apple, Apple will refund the purchase price, if any, that You paid for Your copy of the software, and Apple will have no other responsibility for any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any applicable warranty.

## **16. LIMITATIONS OF LIABILITY**

SOME COUNTRIES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF CONSEQUENTIAL, INDIRECT, OR OTHER DAMAGES IN CONTRACTS WITH CONSUMERS AND TO THE EXTENT YOU ARE A CONSUMER IN YOUR JURISDICTION THE LIMITATIONS OR EXCLUSIONS IN THIS SECTION MAY NOT APPLY TO YOU. FURTHER IF YOUR PRIMARY ADDRESS IS IN GERMANY OR AUSTRIA THEN THIS SECTIONS 16 IS SUBJECT TO SECTION 24 (D) FOR THE PURPOSE OF INTERPRETATION.

- (a) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SUBJECT TO THE SPECIFIC REMEDIES SET OUT IN THIS AGREEMENT, IN NO EVENT SHALL WE BE LIABLE FOR ANY OF THE FOLLOWING TYPES OF DAMAGES: CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT (IF YOUR PRIMARY ADDRESS IS IN JAPAN, THIS IS KNOWN AS "KANSETSU SONGAI"), SPECIAL (IF YOUR PRIMARY ADDRESS IS IN JAPAN, THIS IS KNOWN AS "TOKUBETSU SONGAI"), PUNITIVE, MORAL OR AGGRAVATED DAMAGES, DAMAGES FOR LOSS OF BUSINESS PROFITS OR REVENUES, FAILURE TO REALIZE ANY EXPECTED SAVINGS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF BUSINESS OPPORTUNITY, OR CORRUPTION OR LOSS OF DATA OR BREACHES OF DATA SECURITY, FAILURES TO TRANSMIT OR RECEIVE ANY DATA, PROBLEMS ASSOCIATED WITH ANY APPLICATIONS USED IN CONJUNCTION WITH THE SERVICES OR RESULTING FROM ANY ALTERATIONS OR ATTEMPTED ALTERATIONS TO THE SERVICES, OR ANY PORTION THEREOF, BY ANYONE OTHER THAN US, DOWNTIME COSTS, LOSS OF THE USE OF THE SERVICES OR ANY PORTION THEREOF OR OF ANY THIRD PARTY SERVICES OR THIRD PARTY ITEMS, COST OF SUBSTITUTE GOODS, COSTS OF COVER, FACILITIES, OR SERVICES, COST OF CAPITAL, OR OTHER

SIMILAR PECUNIARY LOSSES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES, INCLUDING THE USE, INABILITY TO USE, THE PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES, WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN, AND EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- (b) To the maximum extent permitted by applicable law, in no event shall our liability to You for a single incident arising under this Agreement exceed the greater of: (i) the amount paid by You for the relevant Service(s) in the 3 months preceding the incident; and (ii) 5 United States dollars. In no event shall our aggregate liability to You under this Agreement exceed the greater of: (i) the amount paid by You for the relevant Service(s) provided hereunder in the 12 months preceding the applicable incident; and (ii) 5 United States dollars.
- (c) To the maximum extent permitted by applicable law, to the extent we are liable to You hereunder, we shall only be liable for damages incurred during the period of such failure, delay, or non-performance of the Services.
- (d) Nothing in this Section limits our liability to You in the event of death or bodily injury to the extent resulting directly from our negligence; provided that any damages payable by us shall be reduced to the extent of Your or another's contribution.
- (e) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY SHALL BE LIABLE TO THE OTHER ONLY AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND SHALL HAVE NO OTHER OBLIGATION, DUTY, OR LIABILITY WHATSOEVER WHETHER IN CONTRACT OR TORT OR UNDER STATUTE OR OTHERWISE.
- (f) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS IN THIS AGREEMENT SHALL: (i) APPLY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION, DEMAND OR ACTION BY YOU INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, TORT, STRICT LIABILITY, STATUTE, BREACH OF CONTRACT, OR ANY OTHER LEGAL THEORY; (ii) SURVIVE A FUNDAMENTAL BREACH OR BREACHES OR THE FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT OR OF ANY REMEDY CONTAINED HEREIN; (iii) NOT APPLY TO THE OBLIGATIONS SET OUT IN SECTION 15 OR MISAPPROPRIATION OR INFRINGEMENT BY EITHER PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY OR A BREACH OF THE SECTIONS OF THIS AGREEMENT ENTITLED: "RULES FOR USING THE SERVICES" (SECTION 2), "LICENSE TO Use THE SERVICES" (SECTION 5), "Intellectual Property" (Section 9), AND "EXPORT, IMPORT AND USE RESTRICTIONS AND U.S. GOVERNMENT LICENSES" (SECTION 10) AND (iv) APPLY IN THE AGGREGATE, TO BLACKBERRY AND THE BLACKBERRY GROUP OF COMPANIES, AND THEIR SUCCESSORS, ASSIGNS, AND AUTHORISED DISTRIBUTORS (INCLUDING SERVICE PROVIDERS ACTING AS AUTHORISED DISTRIBUTORS OF THE SOFTWARE ).
- (g) IN NO EVENT SHALL ANY OFFICER, DIRECTOR, EMPLOYEE, AGENT, DISTRIBUTOR, SUPPLIER, OR INDEPENDENT CONTRACTOR (EXCEPT AS SET OUT ABOVE) OF ANY OF THE BLACKBERRY GROUP OF COMPANIES, OR ANY SERVICE PROVIDER, HAVE ANY LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT.
- (h) YOU ACKNOWLEDGE AND AGREE THAT THE DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS SET FORTH IN THIS AGREEMENT CONSTITUTE AN ESSENTIAL ELEMENT OF THE AGREEMENT BETWEEN THE PARTIES AND

THAT IN THE ABSENCE OF SUCH DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS: (i) THE FEES AND OTHER TERMS IN THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT; AND (ii) OUR ABILITY TO OFFER AND YOUR ABILITY TO USE THE SERVICES UNDER THIS AGREEMENT AND/OR OUR ABILITY TO MAKE THIRD PARTY SERVICES AND CONTENT ACCESSIBLE THROUGH THE SERVICES WOULD BE IMPACTED.

**17. CONSENT TO COLLECTION, USE, PROCESSING, TRANSFER, STORAGE AND DISCLOSURE (COLLECTIVELY, "PROCESS" OR "PROCESSING") OF INFORMATION**

Personal information that is Processed by BlackBerry Group of Companies and its service providers will be treated in accordance with our Privacy Policy (which is hereby incorporated by reference into this Agreement and to which You agree, and can be viewed at [www.blackberry.com/legal/privacy.shtml](http://www.blackberry.com/legal/privacy.shtml)). If You are in the European Union or in a European Economic Area country, where applicable, the data controller in respect of Your personal data is the BlackBerry entity with whom You have entered into this Agreement.

- (a) Processing of Personal Information. Your use of the Services (or any portion thereof), including the installation and/or use of software, or associated Internet or mobile wireless services, or the creation of a BlackBerry ID or other user account, may result in the Processing of personal information as defined under applicable law about You, or if You are a corporation or other form of legal entity, Your employees and other individuals that You authorize to use the Services on Your behalf (collectively, "Users") by the BlackBerry Group of Companies and its service providers (collectively "BBM Providers"), Your Service Providers, and third parties whose products or services are used with the Services. You consent that the BBM Providers may collect personal information from You directly, or obtain it from Your Service Providers or other third parties whose products or services are used with the Services. Where You are a corporation or other legal entity, You represent and warrant that You have obtained all necessary consents and authority to agree to, and give the consents required under this Section as they relate to personal information of Your Users that is collected through their use of the Services. Please see below for additional information and examples about types of personal information that may be Processed, the purposes for which it may be used, and how it may be shared. More information may also be provided within the applicable Services.
- (b) Purposes. Consistent with our Privacy Policy, personal information may be Processed by the BBM Providers for purposes related to: (i) understanding and meeting Your needs and preferences and to provide You with the Services, including the account credentials service; (ii) developing new and enhancing existing products and services, including to communicate with You about them; (iii) managing and developing the BlackBerry Group of Companies' business and operations; and (iv) meeting legal and regulatory requirements. Furthermore, we may make available to or send to Users upgrades or updates, or notices of upgrades or updates, of software, or other BlackBerry products and services, or third party services or Content and related products or services. To help You better understand these purposes, please see below for additional information.
- (c) Personal Information. Depending on the portion of the Services used, personal information Processed may include information such as name, display picture, status and personal messages, email address, telephone number, BBM contact list, language preference, BlackBerry ID or other account credentials, settings, country and time zone, Service Provider information and IP address, information about the use of the Services' functionality and the software and hardware utilized in conjunction with the Services,

including device or computer information (for example, device PIN, IMEI, IMSI, UDID, MAC address or similar identifiers, and device model), or other information that may be required by law to be collected. In some cases, address book information, device location data (including real-time location information), calendar and reminder entries, and photos may be accessed by the Services and Processed by us to provide functionality that uses this information as part of or in conjunction with the Services. For example, to allow You to send an invitation email or SMS to contact(s) in Your address book, or to discover contacts in Your address book who also use the Services, Your device address book may be accessed by the Services. As mentioned below, applicable device or application software settings options may allow You to adjust what personal information is shared with the Services.

- (d) "Cloud-based" Services. You acknowledge that the Services make available "cloud based" messaging and other services, which may include remote access, storage, or back-up functionality provided by the BBM Providers, and You agree that by using the Services, information You enter, provide to, or integrate with such services may be Processed by the BBM Providers to facilitate the Services, and You represent and warrant that You have all necessary consents to provide such data to us.
- (e) BBM-Connected Apps and Services. The Services include "social functionality" that allows You to make Yourself discoverable and connect with other individuals, and to improve or enhance Your experience with services, software or other Content that are integrated with the Services (for example, BBM-connected applications). In order to provide such functionality, You agree that Your availability to interact or connect with others may be indicated to others, and Your profile, display names, display pictures, status messages, membership status, and other identifiers or information may be viewed and, in some cases, commented on by such individuals. For example, if You elect to connect a BBM-enabled service to Your BBM account, You agree that, where such functionality exists: (i) Your BBM contacts may see whether You are using such service; (ii) Your contacts may see Your profile and the software and Content (such as games, music or other media files, depending on the service or software) that You have downloaded, are consuming, or that is available for sharing as part of Your use of the service, as well as comments You or others make about them; (iii) when You submit comments about Your contacts or the software or Content they have downloaded or are consuming as part of their use of the service, information about You (such as Your comments, user profile name, and display picture) may be displayed to other contacts of that individual, and (iv) the service may include automated functionality that performs analysis to develop recommendations based on Your preferences and utilization of the service or software. Please check the applicable settings options for the applicable services or software for available options to connect to or disconnect from BBM and adjust any other available privacy settings for such services or software.
- (f) Location data. The Services may provide functionality that relies upon location information using GPS or similar satellite services or crowd-sourced Wi-Fi/WILAN access points and cell tower locations (where available). Please review the options or settings menu of the applicable device or application software to determine how You may be able to turn off or adjust location features.
- (g) Integration with Third Party Services. Portions of the Services may require or utilize third party services to function. If You choose to integrate or link the Services with third party services (for example, services that facilitate Your use of the Services in association with social networking or other services offered by third parties), You authorize us to use Your credentials and Process Your personal information relating to such third party services in order to facilitate Your access to such third party services for Your personal and/or

domestic purposes. The information Processed may include: (i) Your account ID, password(s), authentication tokens, or other credentials for each such third party service or other account(s) You integrate with the Services; (ii) Your account profile information (for example, account ID, display picture, display name, personal message, availability status, country, time zone, unique device identifiers, etc.); (iii) on-device contacts information; (iv) an indication of which third party applications or services You have connected to Your account; and (v) session data resulting from Your use of the third party applications or services You have connected to Your account (for example, high scores You have achieved in a connected third party game or application for display in Your account profile box, instant messaging data resulting from instant messaging chats You have undertaken within a connected third party application or service and which have been facilitated by the Services' instant messaging functionality, etc.). You also authorize us to obtain personal information from and disclose personal information to the applicable third party service providers (including Service Providers) for activation, billing, provision, service, maintenance, and deactivation purposes. Such third party services that are accessed are not under our control. If Your personal information is disclosed to Your Service Provider, or third parties with products or services used with the Services, it is subject to applicable agreement(s) and privacy policies of such third parties, and You should review such terms before using third party services and third party software. You should review the settings options or help menu of Your device software or the third party service or software to learn more about, and where applicable, adjust permissions granted and available controls on such third party services and third party software.

- (h) **Profile Management.** We may use Your user account information (which may include Your BlackBerry ID) and information about products and services that are accessible with Your user account to better understand, analyze and predict Your preferences and interests, and may combine it with other information to customize Your experience, suggest other products and services, and provide You with more relevant promotional content based on Your profile.
- (i) **Advertising.** When we display ads and other promotional or sponsored content within the Service, our goal is to provide content that is of interest to You. To do so, we may provide advertisers and third party ad serving providers (including ad networks and exchanges) with information, such as general demographic information, real-time location (e.g. GPS location, if you have opted to share Your GPS location with us) and IP addresses (e.g. for use in detecting click-fraud and identifying Your general location – e.g. city or country). This information is used to help provide You with more relevant content and to know how ad campaigns have performed (for example, how many people clicked on or viewed an ad, or installed an app after viewing an ad). We do not share information that personally identifies You (such as Your name or contact information) with advertisers or third party ad serving providers unless You give us permission to do so. Some platforms, such as iOS and Android, use specific advertising IDs that can be used by us, advertisers and third party ad serving providers to provide You with interest-based advertising both within BBM and across other apps and services You may use. If You do not want such advertising IDs to be used for interest-based advertising, You should review the applicable platform settings that are available to adjust interest-based advertising settings. Electing not to receive interest-based advertising does not mean that You will not receive ads and other promotional or sponsored content. It means that the content You receive will not necessarily be tailored to Your known or inferred interests.
- (j) **Cookies and Similar Technologies.** The BBM Providers may use "cookies" (small pieces of data stored on Your device or computer) or similar tools to enable You to sign in to certain services to protect both You and us, to help make the Services easier to use or tailor

Your experience, or for analytics to help us understand how users engage with the Services and to improve their features. Similarly, advertisers and our ad serving providers (including ad networks) may use cookies or similar tools to serve and detect user interaction with ads and to make their ads more effective.

- (k) **Support and Quality Assurance.** If You contact us for support, or send diagnostics or other technical information to us through email or logging tools provided by us for such purposes, You agree that the BBM Providers may collect technical information like device identifiers, hardware ID and model number, memory status, operating system and environment information, battery status, Wi-Fi/WLAN information, radio or wireless strength and connections, list of installed applications, application usage information, data regarding processes running and device configuration, system events information, and other information regarding the condition of Your device or computer and the software on Your device or computer that may be helpful for diagnostic purposes. Such information will be used for the purposes of troubleshooting, customer support, software updates, and improvement of our products and services in accordance with our Privacy Policy. If analysis indicates that a third-party product or service is involved, we may send certain diagnostic or technical information to the third party vendor of the product or service as part of the troubleshooting process. You acknowledge and agree that calls with us and our service providers may be recorded for training, quality assurance, customer service and reference purposes.
- (l) **Storing of Messages.** The contents of messages that have been delivered by the Services are not maintained or archived by us in the normal course of business. BBM messages are sent via data services to servers operated by or on behalf of us, and routed to the recipient(s), if the recipient(s) are online. Once a message has been delivered, it no longer resides on our servers. If the recipient(s) are not online, the undelivered message is held in servers operated by or on behalf of us until it can be delivered for up to thirty (30) days, after which the undelivered message will be deleted from our servers. The contents of any delivered messages reside directly on the sender's and recipient's devices unless deleted by those users, or by auto-delete features of the software used by such users. Notwithstanding the above, we may retain transactional details associated with the messages and devices (for example, date and time stamp information associated with successfully delivered messages and the devices involved in the messages), as well as any other information that we are legally compelled to collect.
- (m) **International Transfers.** You consent and agree that to provide the Services (including "cloud based" and remote access, storage, or back-up functionality), the BBM Providers may Process data, which may in some cases include personal information and the content of communications, on servers operated by or on behalf of the BBM Providers inside or outside the jurisdiction in which You or Your Users are situated. Contact information for the BlackBerry Group of Companies can be found at [www.blackberry.com](http://www.blackberry.com). If Users are residents of the European Economic Area or any jurisdiction for which consent is required to transfer personal information outside of that jurisdiction or region, You consent to such Processing and warrant that You have obtained all consents necessary under applicable law from Your Users to do so.
- (n) If Your primary address is in Hungary, you may have additional remedies under Hungarian law in connection with the Processing of Your personal information.
- (o) If Your primary address is in Romania, you have certain rights by Romanian Law No. 677/2001 regarding the processing and movement of personal data, as published in the Official Gazette of Romania No. 790 as of December 12, 2001.

## **18. USER DATA**

In addition to any disclosures authorized by Section 17, You and Your Users consent and agree that the BlackBerry Group of Companies may access, preserve, and disclose Your or Your Users' data, including personal information, contents of Your communication, or information about the use of the Services functionality and the services or software and hardware utilized in conjunction with the Services where available to us ("User Data"), to third parties, including foreign or domestic government entities, without providing notice to You in order to: (i) comply with legal process or enforceable governmental request, or as otherwise required by law; (ii) cooperate with third parties in investigating acts in violation of this Agreement; or (iii) cooperate with system administrators at Service providers, networks or computing facilities in order to enforce this Agreement. You warrant that You have obtained all consents necessary under applicable law from Your Users to disclose User Data to the BlackBerry Group of Companies and for the BlackBerry Group of Companies to Process such User Data as described above.

## **19. ASSIGNMENT AND DELEGATION**

We may assign this Agreement without prior notice to You. You shall not assign this Agreement in whole or in part without our prior written consent (such consent may be withheld or conditioned at our discretion) and any assignment without our prior written consent shall be null and void and of no effect. We may perform all obligations to be performed under this Agreement directly or may have some or all obligations performed by our contractors or subcontractors.

## **20. 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 or by courier or deposited in the mail, postage prepaid, registered mail or its equivalent, return receipt requested, and addressed to You at the address supplied to us by You, and addressed to BlackBerry at: 2200 University Avenue East, Waterloo, Ontario, Canada N2K 0A7, Attention: Legal Department. In addition to the foregoing, we may, at our 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 email address furnished by You to us, when prominently posted on <http://www.blackberry.com/legal/>, or when transmitted through the Service.

## **21. FORCE MAJEURE**

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

## **22. BLACKBERRY ENTITY, APPLICABLE LAW AND DISPUTE RESOLUTION**

- (a) BlackBerry Entity. "BlackBerry", "we" and "us" means:
  - (1) Where Your primary address is in Canada, South America or anywhere not mentioned in (2) to (4) below, BlackBerry Limited, with its registered office at 2200 University Avenue East, Waterloo, Ontario, Canada N2K 0A7.
  - (2) Where Your primary address is in the United States of America, BlackBerry Corporation, with its registered office at 3001 Bishop Drive, Suite 400, San Ramon, California, United States of America 94583.
  - (3) Where Your primary address is in Europe (including Greenland), Middle East or Africa, BlackBerry UK Limited, with its registered office at Ground Floor, The Pearce Building, West Street, Maidenhead, Berkshire, SL6 1RL.

- (4) Where Your primary address is in Asia Pacific (including Pakistan, Sri Lanka, Kazakhstan, Kyrgyzstan, the Russian Federation, Tajikistan, Turkmenistan and Uzbekistan), BlackBerry Singapore Pte. Limited, with its registered office at 47 Scotts Road, Goldbell Towers, #09-00, Singapore 228233.
- (b) Applicable Law and Dispute Resolution. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED UNDER THE LAWS SPECIFIED BELOW, EXCLUDING ANY BODY OF LAW GOVERNING CONFLICTS OF LAWS, AND DISPUTES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT ARE TO BE RESOLVED IN ACCORDANCE WITH THE FOLLOWING:
- (1) Where Your primary address is in Canada, the laws of the Province of Ontario, Canada, with disputes being resolved in accordance with paragraph 22(c).
- (2) Where Your primary address is in South America (except for Brazil) or anywhere not mentioned in paragraphs (1), or (3) to (6) below, the laws of the Province of Ontario, Canada. Subject to paragraph (8) below, the courts of the Province of Ontario will have exclusive jurisdiction to settle any dispute which arises out of or in connection with this Agreement and the Parties hereby agree to submit to the jurisdiction of the courts of Province of Ontario.
- (3) Where Your primary address is in the United States of America (including its territories, protectorates or overseas regions), the laws of the State of New York, United States, with disputes being resolved in accordance with paragraph 22(c).
- (4) Where Your primary address is in Europe (excluding the United Kingdom but including Greenland and territories, protectorates or overseas regions of European countries), Middle East or Africa, the laws of England and Wales. Subject to paragraph (8) below, the courts of England will have exclusive jurisdiction to settle any dispute which arises out of or in connection with this Agreement and the Parties hereby agree to submit to the jurisdiction of the courts of England.
- The Parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contract (Rights of Third Parties) Act (UK) 1999 by any person not a Party to it, except as provided for in Section 23(a).
- (5) Where Your primary address is in Asia Pacific (including Pakistan, Sri Lanka, Kazakhstan, Kyrgyzstan, the Russian Federation, Turkmenistan, Uzbekistan), the laws of the Republic of Singapore. Subject to paragraph (8) below, the courts of the Republic of Singapore will have exclusive jurisdiction to settle any dispute which arises out of or in connection with this Agreement and the Parties hereby agree to submit to the jurisdiction of the courts of the Republic of Singapore. The Parties to this Agreement do not intend that any of its terms shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act (Cap. 53B) (Singapore) by any person not a Party to it, except as provided for in Section 23(a).
- (6) Where Your primary address is in Brazil, the laws of Brazil. Subject to paragraph (8) below, the courts of Brazil will have exclusive jurisdiction to settle any dispute which arises out of or in connection with this Agreement and the Parties hereby agree to submit to the jurisdiction of the courts of Brazil.
- (7) To the extent that any of paragraphs (2), (4), (5) or (6) above applies to You, 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 named territory, and the Parties consent to the personal jurisdiction in those courts.

- (8) If the courts in Your jurisdiction will not permit You to consent to the jurisdiction and venue of the above referenced courts, then Your local jurisdiction and venue will apply to any disputes arising out of or related to this Agreement.
  - (9) The Parties specifically agree that disputes shall not be resolved by jury trial and hereby waive all rights to a trial by jury in any matter related to or arising from this Agreement. No dispute between the Parties, or involving any person but You, may be joined or combined together, without our prior written consent.
- (c) Arbitration. Where Your primary address is in Canada, the United States of America, the United Kingdom, China (including Hong Kong), then any disagreement or dispute arising out of or relating to this Agreement, or the breach thereof, except to the extent specifically prohibited by applicable law in Your jurisdiction, shall be settled by final and binding arbitration which will be held as follows:
- (1) Canada. Where Your primary address is in Canada (except Québec), in accordance with the rules of arbitration of the Arbitration Act, 1991 (Ontario) and conducted in Toronto, Ontario.
  - (2) Québec. If Your primary address is in the Province of Québec and except to the extent prohibited by law, settled by arbitration in accordance with the Québec Civil Code), and conducted in Toronto, Ontario.
  - (3) United States, United Kingdom, China (including Hong Kong). Where Your primary address is in the United States of America, settled by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures except for claims of five million United States Dollars (\$5,000,000) or less, in which case it shall be pursuant to JAMS' Streamlined Arbitration Rules and Procedures; and where Your address is in the United Kingdom, or China (including Hong Kong) settled by arbitration in accordance with the International Chamber of Commerce. Arbitrations will be conducted in the county of San Francisco, California, U.S.A. (United States), London, England (United Kingdom) and Singapore (China, including Hong Kong), respectively.
  - (4) The arbitration under any of paragraphs (1) to (3) shall be heard by one arbitrator appointment in accordance with the applicable rules and to 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. The language of the arbitration shall be English. Each Party shall bear one half of the costs associated with the arbitration proceedings. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

## **23. GENERAL**

- (a) Third Party Beneficiaries. Our affiliates, and our and our affiliates' respective directors, officers and employees are intended third party beneficiaries for the purpose of the Sections of this Agreement entitled, "Emergency Services" (Section 8), "Responsibility for Your Use of The Services" (Section 14), "Warranty; Disclaimer" (Section 15), "Limitations of Liability" (Section 16), and "Jurisdiction Specific Terms" (Section 24) as if each was a party to this Agreement, in accordance with this Section and any applicable laws or regulations in Your jurisdiction. The Content suppliers for Services are third party beneficiaries of the protections and restrictions on use of their Content set out in "Rules for Using the Services" (Section 2) and "Intellectual Property" (Section 9) as if each was a

Party to this Agreement, in accordance with this Section. Except as otherwise specifically stated in this Agreement, any person who is not a Party to this Agreement has no rights under this Agreement. If You acquired software provided by us through Apple's iTunes Store, You acknowledge and agree that Apple and its subsidiaries are third party beneficiaries of this Agreement, and that upon Your acceptance of this Agreement, Apple and its subsidiaries will have the right (and will be deemed to have accepted such right) to enforce this Agreement against You as a third party beneficiary with respect to Your use of the Services on the iOS platform. You also acknowledge and agree that Apple and its subsidiaries are not responsible for the Services, for addressing any claims by You or a third party regarding the Services, or for providing any maintenance and support with respect to the Services.

- (b) **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 authorised 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.
- (c) **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, including, Section 14.
- (d) **Injunctive Relief.** Nothing in this Agreement shall prevent either Party from seeking injunctive or other equitable relief in any court of competent jurisdiction.
- (e) **Severability.** To the extent any section, clause, provision or sentence or part thereof ("Part") of this Agreement is determined to be illegal, invalid or unenforceable by a competent authority in any jurisdiction, then such determination of that Part will not affect: (i) the legality, validity or enforceability of the remaining Parts of this Agreement; or (ii) the legality, validity or enforceability of that Part in any other jurisdiction, and that Part will be limited if possible and only thereafter severed, if necessary, to the extent required to render the Agreement valid and enforceable.
- (f) **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. Where Your primary address is in Québec, then it is the express will of the Parties that this Agreement and all related documents be drawn up in English. C'est la volonté expresse des parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais. 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 any correspondence, discovery, submissions, filings, pleadings, oral pleadings, arguments, oral arguments and orders or judgments.
- (g) **Entire Agreement.** This Agreement (which for the purposes of any addenda hereto, shall in relation to the subject matter of that addenda, include the terms of the addenda), constitutes the entire agreement between 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 Services other than as set out in this Agreement. Notwithstanding the foregoing, other agreements between the Parties may govern the use of certain portions of the Services. 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.

- (h) **Modifications to Agreement.** Except to the extent that we are expressly precluded by applicable law or by a written agreement between You and BlackBerry, we reserve the right to, within our sole discretion, make changes to this Agreement on a prospective basis, including to reflect changes in or required by law, new features, or changes in business practices. The most current version of this Agreement will be posted at [www.blackberry.com/legal](http://www.blackberry.com/legal) and You should regularly review that site for the most current version of this Agreement. If the changes include material changes to this Agreement that affect Your rights or obligations, we will provide You with notice of the changes by providing You with notice as contemplated by the Notice provision above. If You continue to use the Services after the changes become effective (as noted on [www.blackberry.com/legal](http://www.blackberry.com/legal) or in any other notice provided to You), then You shall be deemed to have accepted those changes. Additionally, when we update or upgrade the Services, You may be required to agree to the most current version of this Agreement in the course of accessing the updated or upgraded Services.
- (i) **Extended Meanings.** The term "includes" or "such as" shall be construed as meaning "includes without limitation" and "such as without limitation", as the case may be.

## **24. JURISDICTION SPECIFIC TERMS**

- (a) **Australia.** Where Your primary address is in Australia, then:
  - (i) **Consumer Guarantees.** Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
  - (ii) **Consumer Guarantees cannot be excluded, restricted or modified by agreement.** This Agreement does not exclude, restrict or modify the application of any condition, warranty, guarantee, right or remedy conferred by or implied under any provision of any statute where to do so would: (A) contravene that statute; or (B) cause any part of this clause to be void. In particular, the following Sections are subject to this Section 24(a): Section 15(a) and (b) (Warranty; Disclaimers) and Section 16 (Limitation of Liability).
- (b) **France.** Where Your primary address is in France or its overseas regions, then:
  - (i) **IF YOU ARE A CONSUMER AS USED IN THE FRENCH CONSUMER CODE, THEN: (A) CERTAIN PROVISIONS IN THIS AGREEMENT DO NOT APPLY TO YOU AND TO THE EXTENT THAT YOU MAY BE ENTITLED TO SUCH MANDATORY STATUTORY RIGHTS, IN NO EVENT DOES THIS AGREEMENT AFFECT YOUR MANDATORY STATUTORY RIGHTS; (B) THE APPLICATION OF FOREIGN LAW IN CONTRACTS MAY NOT APPLY TO YOU; AND (C) ANY DEROGATION FROM JURISDICTION AND DISPUTE RESOLUTION PROCEDURES IN CONTRACTS MAY NOT APPLY TO YOU.**
  - (ii) **THE LIMITED WARRANTY GRANTED IN THIS AGREEMENT IS WITHOUT PREJUDICE TO ANY STATUTORY OR MANDATORY RIGHTS**

YOU MAY HAVE UNDER FRENCH LAW FOR ANY WARRANTY IN RESPECT OF LEGAL HIDDEN DEFECTS.

- (iii) You may terminate this Agreement on thirty (30) days' notice if we materially breach the Agreement and fail to correct such breach within a reasonable period of time after notice of such breach.
- (iv) You may exercise Your rights of opposition, access, and/or rectification of your personal data by sending an email to [legal@blackberry.com](mailto:legal@blackberry.com).
- (c) Germany and Austria. If Your primary address is in Germany or Austria then for the purposes of interpreting Sections 15(a) and (b) and 16 (a) through (f) (inclusive), the following phrased are deleted: (i) "to the maximum extent permitted under applicable law"; and (ii) "except to the extent specifically prohibited by applicable law".
- (d) Hong Kong. Where Your primary address is in Hong Kong, then You agree that BlackBerry may process, transmit and disclose any "personal data" (as defined in the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong)), including transmission of such information to the United States of America, Canada or any other country or countries nominated by BlackBerry from time to time.
- (e) Italy. Where Your primary address is in Italy, then:
  - (i) IF YOU ARE A "CONSUMER" AS THAT TERM IS USED IN THE ITALIAN LEGISLATIVE DECREE NO. 206 DATED SEPTEMBER 6TH 2005 (WHICH MEANS YOU ARE A NATURAL PERSON WHO IS ACTING FOR PURPOSES WHICH ARE OUTSIDE YOUR TRADE, BUSINESS OR PROFESSION) YOU ARE ENTITLED TO THE RIGHTS STATED IN THE ITALIAN LEGISLATIVE DECREE NO. 206 DATED SEPTEMBER 6TH 2005 AS AMENDED FROM TIME TO TIME, AND NOTHING IN THIS AGREEMENT RESTRICTS OR REMOVES THOSE RIGHTS, NOR THE CHOICE OF THE GOVERNING LAW IN ACCORDANCE WITH SECTION 22(3)(b) IN THIS AGREEMENT.
  - (ii) If you are resident of Italy, nothing in Section 16 limits our liability to You to the extent directly resulting from malice or gross negligence by us; provided that any damages payable by us shall be reduced to the extent of Your or another's contribution.
- (f) Netherlands. Where Your primary address is in Netherlands, then:
  - (i) Nothing in Section 16 limits our liability to You in the event of death or bodily injury to the extent resulting from our intentional acts, intentional omissions, or gross negligence; provided that any damages payable by us shall be reduced to the extent of Your or another's contribution.
- (g) New Zealand. Where Your primary address is in New Zealand, then IN THE EVENT THE NEW ZEALAND CONSUMER GUARANTEES ACT 1993 (THE "CONSUMER ACT") OR SIMILAR LEGISLATION IMPLIED INTO THIS AGREEMENT TERMS, CONDITIONS, GUARANTEES, OR WARRANTIES THAT CANNOT BE LAWFULLY EXCLUDED, SUCH TERMS, CONDITIONS, GUARANTEES, OR WARRANTIES WILL APPLY TO THIS AGREEMENT, PROVIDED THAT OUR LIABILITY FOR A BREACH OF ANY SUCH TERM, CONDITION, GUARANTEE, OR WARRANTY SHALL BE LIMITED TO THOSE REMEDIES AVAILABLE TO YOU UNDER THE RELEVANT LEGISLATION. IF YOU ARE ACQUIRING OR HAVE INDICATED TO US THAT YOU ARE ACQUIRING ANY GOOD OR SERVICE TO WHICH THIS AGREEMENT APPLIES FOR THE PURPOSE OF A BUSINESS (AS

DEFINED IN THE CONSUMER ACT), YOU AGREE THAT THE PROVISIONS OF THE CONSUMER ACT WILL NOT APPLY.

- (h) Philippines. Where Your primary address is in Philippines, then:
- (i) The right to use the Services, and the Content is separate and apart from the purchase of any physical product(s) and the airtime that You purchased from Your airtime service provider. This Agreement between You and BlackBerry deals with the intellectual property in the Services, and the Content and is deemed to have been entered into in Singapore.
  - (ii) The Parties acknowledge that it is in their belief in good faith that the transactions and activities of BlackBerry contemplated by this Agreement will not result in BlackBerry being considered as doing business in the Philippines for the purposes of, among others, Sections 123, 133 and 144 of the Philippine Corporation Code and Republic Act No. 7042, as amended, so as to require BlackBerry to secure a license to do business in the Philippines. In the unlikely event that BlackBerry, by virtue of such transactions and activities is considered as doing business in the Philippines, the Parties hereby acknowledge that they expect to receive substantial benefits by virtue of this Agreement and the other Party's compliance with its obligations hereunder. You agree and acknowledge that You will be estopped to, and will not raise against BlackBerry, or plead as a ground in a motion to dismiss, in any action brought by BlackBerry in the Philippines, the defense that BlackBerry has no cause of action or lacks the legal capacity to sue, or any other defense arising from any failure of BlackBerry to obtain a license to do business in the Philippines or because BlackBerry is doing business in the Philippines without a license.
- (i) Poland. WHERE YOUR PRIMARY ADDRESS IS IN POLAND, WE EXPRESSLY EXCLUDE THE STATUTORY WARRANTY (REKOJMIA) IN RESPECT OF THE GOODS AND/OR SERVICES PROVIDED UNDER THIS AGREEMENT.
- (j) Portugal. Where Your primary address is in Portugal, then: nothing in Section 16(a), 16(b) and 16(c) limits our liability to You: (i) in the event of death or bodily injury to the extent resulting directly from our negligence; provided that any damages payable by us shall be reduced to the extent of Your or another's contribution; or (ii) to the extent arising out of a fundamental breach by us of this Agreement.
- (k) United States. Where Your primary address is in the United States, Section 15(a)(i) is replaced with the following:

EXCEPT TO THE EXTENT SPECIFICALLY PROHIBITED BY APPLICABLE LAW, THE SERVICES ARE OTHERWISE PROVIDED OR MADE AVAILABLE "AS IS" AND "AS AVAILABLE", WITHOUT CONDITION, ENDORSEMENT, GUARANTEE, ASSURANCE, REPRESENTATION OR WARRANTY OF ANY KIND BY BLACKBERRY AND, SUBJECT TO SECTION 16(b), BLACKBERRY SHALL HAVE NO LIABILITY WHATSOEVER TO YOU, OR ANY THIRD PARTY CLAIMING BY OR THROUGH YOU, FOR ANY ISSUE RELATING TO THE SOFTWARE OR ANY SERVICE. EXCEPT TO THE EXTENT SPECIFICALLY PROHIBITED BY APPLICABLE LAW, BLACKBERRY DOES NOT WARRANT OR PROVIDE ANY OTHER SIMILAR ASSURANCE WHATSOEVER THAT UNINTERRUPTED USE OR OPERATION OF THE SERVICES, CONTINUED AVAILABILITY OF THE SERVICES, OR THAT ANY MESSAGES, AND OTHER CONTENT OR INFORMATION SENT BY OR TO YOU OR STORED BY OR ON BEHALF OF YOU, WILL BE FREE FROM LOSS, CORRUPTION, ATTACK, VIRUSES, INTERFERENCE, HACKING, OR OTHER

SECURITY INTRUSION, OR WILL BE ACCURATE, TRANSMITTED IN UNCORRUPTED FORM,  
OR TRANSMITTED WITHIN A REASONABLE PERIOD OF TIME.