

## BLACKBERRY RADAR ASSET TRACKING SUBSCRIPTION AGREEMENT

1. **SCOPE.** These BlackBerry Radar Asset Tracking Subscription Terms and Conditions, along with the terms and conditions applicable to the use and provision of the Device (as defined in the BlackBerry Radar Device Terms and Conditions of Sale) and any Order Form applicable to the Service, shall apply to all orders accepted by BlackBerry for the Service unless expressly modified by BlackBerry and the purchaser (the "**Customer**") in a written agreement signed by BlackBerry and the Customer (each a "**Party**" and together the "**Parties**"). BlackBerry is defined as the specific BlackBerry entity with which your order is placed.

2. **DEFINITIONS**

"**Activation**" means the initial connection of a Device to the Service.

"**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"**Agreement**" means this BlackBerry Radar Asset Tracking Subscription Agreement.

"**BBR**" means BlackBerry Radar, the asset tracking service by BlackBerry.

"**Beta Services**" means Services or functionality of Services that may be made available to You to try at Our option at no additional charge and that is clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.

"**Enabled Device**" means a Device, which is at any time activated with Connectivity Services, such that it is able to collect and transmit data.

"**Connectivity Services**" means cellular service, as part of the Services, which allows the Device to transmit and receive information over a cellular network.

"**Content**" means information such as Maps obtained from publicly available sources or third party content providers and made available to You through the Services and Beta Services, or as more fully described in the Documentation.

"**Data Protection Legislation**" means the EU Directive 95/46/EC of 24 October 1995 or any applicable similar legislation on the protection of personal data and "**Data Controller**", "**Data Processor**", "**Processing**", and "**Personal Data**" will have the meaning set out in the relevant Data Protection Legislation.

"**Device**" means a self-powered BBR Device, which is physically attached to an asset, which may be Your asset or Your customer's asset, and is equipped with a multi-sensor array and a cellular modem which provides connectivity between the Device and the Service. Devices are sold separately and may be installed by an Authorized BlackBerry Radar installer or You or Your approved installer.

"**Documentation**" means the applicable documentation of Services, and its usage guides and policies, as updated from time-to-time, accessible online via Your BBR connection.

"**Malicious Code**" means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

"**Marketplace**" means an online directory or catalog of applications that interoperate with the Services.

"**Non-BBR Application**" means a Web-based, mobile, offline or other software application functionality or service that is provided or made available by a third party, or is provided by or on behalf of You, and interoperates with a Service, even if the Non-BBR Application is approved and hosted by BlackBerry.

"**Order Form**" means a BlackBerry ordering document (which may be online) specifying the Services to be provided hereunder that is entered into between You and Us or any of Our Affiliates, including any addenda and supplements thereto. By executing an Order Form, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

"**Personal Data**" means any information relating to an identified or identifiable natural person ("**data subject**").

"**Processing**" means any operation or set of operations which is performed upon personal data, whether by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

**“Service(s)”** means the BlackBerry Radar Device asset tracking services that are ordered by You under an Order Form, and made available online by Us, as described in the Documentation. Services excludes Non-BBR Applications, but includes Connectivity Services for the Device and Content as described in this Agreement, except if specifically excluded in an exclusion addendum to this Agreement.

**“Standard Support”** means on line or phone based technical support; contact information for Standard Support will be provided in Your portal.

**“Subscription”** means an agreement to access the Services for a specified period of time.

**“Subscription Fees”** means the amounts payable to BlackBerry for periods of times during which Devices have been activated on the Services.

**“Subscription Period”** means the period of time during which BlackBerry will make available Services to You via your activation of a Device on the Service.

**“Upgraded Support”** means all support provided by BlackBerry or its authorized sub-contractors beyond Standard Support.

**“User”** means an individual who is authorized by You to use a Service or Services. Users may include, for example, Your employees, consultants, contractors and agents.

**“Reseller”** means a reseller who is able to sell Devices and get a data feed from BBR to provide Non-BBR Applications. The Reseller may also secure Connectivity Services and Content independently from Us.

**“We,” “Us” or “Our”** means the BlackBerry company on the front page of this Agreement.

**“You” or “Your”** means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity that have signed Order Forms.

**“Your Data”** means electronic data and information collected and submitted by a Device purchased by You and installed on Your customer’s asset, or by You, to the Services, excluding Content, Personal Data, and Non-BBR Applications.

### 3. OUR RESPONSIBILITIES

**3.1 Provision of Services.** We will: (a) make the Services available to You pursuant to this Agreement and the applicable Order Forms on a per Device basis; (b) provide applicable BBR Standard Support for the Services to You at no additional charge, and/or Upgraded Support if purchased; (c) use commercially reasonable efforts to make the online Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which We shall give advance electronic notice as provided in the Documentation); and (ii) any unavailability caused by circumstances beyond Our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Internet service provider failure or delay or other third party action or inaction, Non-BBR Applications, or any denial of service attack. To access Standard Support, You can call our support number at 1-844-RADAR-BB (1-844-723-2722). The Services may be accessed from any number of devices with the appropriate browser and any number of persons whom You authorize to have access.

**3.2 Beta Services.** From time-to-time, We may make Beta Services available to You at no charge. You may choose to try such Beta Services or not in Your sole discretion. Beta Services are intended for evaluation purposes and not for production use, are not supported, and may be subject to additional terms. Beta Services are not considered “Services” under this Agreement; however, all restrictions, Our reservation of rights and Your obligations concerning the Services, and use of any related Non-BBR Applications and Content, shall apply equally to Your use of Beta Services. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of three (3) months from the trial start date or the date that a version of the Beta Services becomes generally available without the applicable Beta Services designation. We may discontinue Beta Services at any time in Our sole discretion and may never make them generally available. We will have no liability for any harm or damage arising out of or in connection with a Beta Service.

### 4. USE OF SERVICES AND CONTENT

**4.1 Your Responsibilities.** You will (a) be responsible for Users’ compliance with this Agreement, Documentation and Order Forms, (b) be responsible for the accuracy, quality and legality of Your Data and the means by which You acquired Your Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content, and notify Us promptly of any such unauthorized access or use, and (d) use Services

and Content only in accordance with this Agreement, Documentation, Order Forms and applicable laws and government regulations.

**4.2 Non-BBR Services and Third Party Items.** We or a third party may make available third-party products or services, including, for example, Non-BBR Applications and implementation and other consulting services. Any acquisition or use by You of such products or services (or any other third party product or service utilized by You) ("**Third Party Item**") and any exchange of data between You and any Non-BBR provider, product or service is solely between You and the applicable Non-BBR provider and are subject to such terms and conditions to which You agree in relation thereto. We do not warrant or support any Third Party Items or other Non-BBR products or services, whether or not they are designated by Us as "certified" or otherwise. If You choose to use a Third Party Item, then you agree to do so in accordance with and subject to the limitations, exclusions and other the terms of this Agreement. Further, as between the Parties, You: (i) assume sole responsibility and liability for Your selection, use, access, cost or implementation of any Third Party Item, regardless of how You acquire or obtain access to the Third Party Item, whether independently of or through Us; and (ii) acknowledge and agree that We have no control over the functionality or performance of any Third Party Item and may not be able to provide a fix or workaround for a problem related to a Third Party Item.

**4.3 Restrictions on Use.** You will not (a) make any Service or Content available to, or use any Service or Content for the benefit of, anyone other than You or Users, unless expressly stated otherwise in an Order Form or the Documentation, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Service, or include any Service in a service bureau or outsourcing offering, (c) use a Service or Non-BBR Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service or Non-BBR Application to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or Content or its related systems or networks, (g) permit direct or indirect access to or use of any Service or Content in a way that circumvents a contractual usage limit, or use any of Our Services to access or use any of Our intellectual property or the information or data of others, except as permitted under this Agreement, an Order Form, or the Documentation, (h) copy a Service or any part, feature, function or user interface thereof, (i) copy Content except as permitted herein or in an Order Form or the Documentation, (j) frame or mirror any part of any Service or Content, other than framing on Your own intranets or otherwise for Your own internal business purposes or as permitted in the Documentation, (k) access any Service or Content in order to build a competitive product or service or to benchmark with a Non-BBR product or service, or (l) reverse engineer any Service (to the extent such restriction is permitted by law). Any use of the Services in breach of this Agreement, Documentation or Order Forms, by You or Users that in Our judgment threatens the security, integrity or availability of Our services, may result in Our immediate suspension of the Service; however, We will use commercially reasonable efforts under the circumstances to provide You with notice and an opportunity to remedy such violation or threat prior to such suspension. You agree to comply with all restrictions on use of the Connectivity Services set forth in these BlackBerry Radar Asset Tracking Subscription Terms and Conditions.

**4.4 Removal of Content.** If We are required by a licensor to remove Content, or receive information that Content provided to You may violate applicable law or third-party rights, We may, at our sole discretion, either (1) replace such Content, to enable you to continue you to use the Services subscribed by You, or (2) notify You must promptly remove such Content from Your systems. If You do not take required action in accordance with the above, We may disable the applicable Content and/or Service until the potential violation is resolved.

## **5. PRIVACY AND DATA USE**

**5.1** In accordance with the BlackBerry Privacy Policy, BlackBerry is committed to maintaining the privacy and security of Personal Data; however, you remain solely responsible for determining whether BBR security meets Your requirements. BlackBerry will maintain appropriate technical safeguards for the protection, security, confidentiality and integrity of Personal Data. You are further responsible for compliance with any privacy and data protection laws, sector-specific security obligations and other laws and regulations applicable to the provision, transfer or use of Personal Data, or Your deployment and use of the Services, as contemplated under this Agreement. This includes obtaining and complying with any required filings, registrations, licenses, approvals or consents. If You have not complied with the requirements set forth in this subsection then You are not authorized to use the Services. You agree that We will act as a conduit for Your Data, including Personal Data, pursuant to this Agreement, and that We may process such data as necessary for the purposes of this Agreement and/or the performance of the Services, as required by law or as You may otherwise consent.

**5.2** We own the aggregated and statistical data derived from the operation of the Service, including without limitation, the number of records in the Service, the number and types of transactions, configurations,

anonymized data depicting trends and analytics and reports processed in the Service and the performance results for the Service (the “**Aggregated Data**”). Nothing herein shall be construed as prohibiting Us from utilizing the Aggregated Data for purposes of operating Our business, provided that Our use of the Aggregated Data will not reveal the identity, whether directly or indirectly, of any individual or specific data entered by any individual into the Service. Due to the nature of the Service, You acknowledge and agree that We may store credentials and encryption keys associated with You and the Devices.

**5.3** BlackBerry may collect, copy, use, index, store, process, transmit, transfer, disclose, display (collectively processing) Personal Data, including without limitation: (i) Your user and organization names, internal IDs and BBR usage roles; (ii) Serial numbers or similar such IDs of assets to pair with Devices (iii) IT policies applicable to Your Devices, (iv) information about Your usage of BBR and Devices, (v) message logs, statistics, programming logic and other information to facilitate the provision of Services.

**5.4 Data Storage and Ownership.** The Service collects data to allow for analytics and reporting to be performed over a historical period. Your data is retained for a rolling 24 (twenty-four) month period; additional storage periods are available for an additional fee. We provide industry standard methods that allow You to export Service data from BBR for the purpose of long term storage or integration into other systems.

## **6. CONNECTIVITY SERVICES**

**6.1 Connectivity Services for Standard Reporting Included at No Charge.** Connectivity Services at a fixed data rate per Device, are included in the Services provided to You under this Agreement, at no additional cost to You. You should not exceed this data usage based on the standard configuration of data reporting frequency. In addition all over the air software updates We make to the Device is at no charge to You. In the event you need reporting with an enhanced frequency that causes larger data consumption, We will work with You to assess the additional data You need, suggest options and work in good faith with You on an appropriate add on to your monthly Subscription Fee.

**6.2 Cellular Connection Not Guaranteed.** The transfer of data from a Device to the Service is dependent on a cellular connection. The cellular coverage is dependent on the wireless carrier. We offer no guarantee that coverage will always be available. When it is not available, certain Services may be impaired. The Device will store data locally when unable to connect to cellular subject to the Device's provisioned available memory.

**6.3 Limitations and Restrictions on Cellular Connectivity.** Your access to and use of the Services may be subject to your acceptance of certain third party terms and conditions. In particular, in relation to Your access to and use of Connectivity Services, You understand and agree that You: (i) have no contractual relationship with the underlying wireless service carrier, (ii) are not a third party beneficiary of any agreement between Us and the underlying carrier, (iii) that the underlying carrier has no liability of any kind to You, whether for breach of contract, warranty, negligence, strict liability in tort or otherwise relating to Your utilization of, damage to, or loss or theft of the Connectivity Services or to any component thereof (e.g. SIM card or device), (iv) that You acknowledge that you may experience a disruption in service and that messages may be delayed, deleted or not delivered for reasons such as (a) mobile network facilities maintenance, improvement, or extension work, (b) the actions of a third party, technical incompatibility between Mobile Networks and an intranet access security solution contracted for by You, the improper use or malfunctioning of internet infrastructure, or caused by reasons outside the control of BlackBerry (e.g. disruption to radio-telephone transmissions as a result of atmospheric conditions, fluctuations in electromagnetic wave propagation, or a Device being outside the mobile network coverage areas or subject to any network access restrictions (excluding services provided by BlackBerry) that affect the access or transmission) and that neither BlackBerry nor the Connectivity Services carrier will be liable for disruptions or interruptions to the Services as a result, and (v) the underlying carrier cannot guarantee the security of wireless transmissions and will not be liable for any lack of security relating to the use of the Connectivity Services.

## **7. ORDERS AND SUBSCRIPTION FEES**

**7.1 Orders.** Upon execution by both parties of this Agreement, You may submit an Order Form specifying the number of Subscriptions You wish to activate.

**7.2 Subscription Fees.** Subscription Fees begin to accrue as to each Subscription upon the date of the first Activation of such Subscription and continue to accrue until the earlier of: (a) the end of the applicable Subscription Period; or (b) the date such Subscription is terminated in accordance with Section 13 (Termination) of this Agreement, unless otherwise set out in an Order Form.

**7.3 Invoicing and Payment.** We will send you an invoice within five (5) days of the end of each month for Service Subscriptions for the prior month. You agree to pay the invoices in full, in U.S. dollars, without deduction or

set-off, within thirty (30) days of the invoice date. We may provide invoices electronically via email to You. You represent and warrant that You: (a) can make the payments to Us in the currency set out in this Agreement; and (b) You are not restricted or impeded in any way from making, and do not require any approvals (including from any government authority) to make, foreign payment transactions to Us as contemplated by and in compliance with this Agreement.

- 7.4 Overdue Charges.** Any sum not paid by Customer when due will bear interest from the due date until paid at a rate of: (i) fifteen percent (15%) per annum; or (ii) the maximum rate permitted by law, whichever is less.
- 7.5 Suspension of Service and Acceleration.** If any amount owing by You under this or any other agreement for Our Services is thirty (30) or more days overdue, We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our Services to You until such amounts are paid in full. We will not exercise Our rights under Section 7.4 (Overdue Charges) or this Section 7.5 (Suspension of Service and Acceleration) above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.
- 7.6 Taxes.** Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this Section, We will invoice You and You will pay that amount unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

## **8. PROPRIETARY RIGHTS AND LICENSES**

- 8.1 Reservation of Rights.** Subject to the limited rights expressly granted hereunder, We and Our licensors and Content Providers reserve all of Our/their right, title and interest in and to the Services and applicable Content, including all of Our/their related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.
- 8.2 Access to and Use of Content.** You have the right to access and use applicable Content subject to the terms of applicable Order Forms, this Agreement and the Documentation.
- 8.3 License to Host Your Data and Applications.** You grant Us, Our Affiliates and applicable contractors a worldwide, limited-term license to (a) collect, copy, use, stores, process, transmit, transfer, host, display and perform any operation on Your Data and program code created by or for You using a Service or for use by You with the Services), as reasonably necessary for Us to provide the Services in accordance with this Agreement which includes, without limitation, Your Data created: (i) by Enabled Devices, and/or associated network/cloud infrastructure/cloud platform and/or Application platform, that is used to collect, transmit, index, store, secure or retrieve Data, or to track and bill for Services; or, (ii) that is used by applications provided by Us or on behalf of Us by third parties (iii) that is generated by or on behalf of BBR to maintain, support and update the Services; and (b) copy, configure, modify (only if provided in source code), store, use, transmit, execute and perform any operation on any Software You make available to Us; in each case solely for the purpose of: (A) delivering, operating, maintaining, improving or updating the Services; (B) providing any technical support (i.e., troubleshooting aimed at preventing, detecting and repairing problems affecting the operation of the Services) that BBR in its sole discretion elects to make available; (C) Creating new Applications wherein Your Data is rendered anonymous; and (D) any other purpose permitted or required by any applicable law or regulation (each, an "Authorized Use"). Subject to the limited licenses granted herein, We acquire no right, title or interest from You under this Agreement in or to any of Your Data, Non-BBR Applications or such program code.
- 8.4 License to Use Feedback.** You grant to Us and Our Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into Our and/or Our Affiliates' services any suggestion, enhancement request, recommendation, correction or other feedback provided by You or Users relating to the operation of Our or Our Affiliates' services.
- 8.5 License to SIM Cards.** SIM Cards included in the Device are provided under a single, non-transferable license, are not sold, and You may not transfer the SIM Cards and may only use it strictly for using the Connectivity Services as part of the BlackBerry Radar Services. You may not damage or destroy the SIM card and You may not, in any manner whatsoever reverse engineer, decompile, or disassemble the SIM Cards. You may not copy the SIM Card or its documentation or cause them to be copied.

## 9. CONFIDENTIALITY

- 9.1 Definition of Confidential Information.** “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your Data; Our Confidential Information includes the Services and Content; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.
- 9.2 Obligations of Confidentiality.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate’s, legal counsel’s or accountant’s compliance with this “Confidentiality” section. Notwithstanding the foregoing, We may disclose the terms of this Agreement and any applicable Order Form to a subcontractor or Non-BBR Application Provider to the extent necessary to perform Our obligations to You under this Agreement, under terms of confidentiality materially as protective as set forth herein.
- 9.3 Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## 10. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

- 10.1 Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- 10.2 Our Warranties.** We warrant that during an applicable subscription term (a) this Agreement, the Order Forms and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, (b) We will not materially decrease the overall security of the Services, (c) the Services will perform materially in accordance with the applicable Documentation, and (d) subject to the “Integration with Non-BBR Applications” section above, We will not materially decrease the overall functionality of the Services. For any breach of a warranty above, Your exclusive remedies are those described in the “Termination” and “Refund or Payment upon Termination” sections below.
- 10.3 Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, BLACKBERRY MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THAT SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS WILL BE CORRECTED, OR THAT DATA WILL BE RETAINED, OR WILL NOT BE DELETED, LOST OR MODIFIED, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT AND BETA SERVICES ARE PROVIDED “AS IS,” EXCLUSIVE OF ANY WARRANTY WHATSOEVER. BLACKBERRY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

## 11. MUTUAL INDEMNIFICATION

- 11.1 Indemnification by Us.** We will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that any Service, alone and not in combination with any other non-BBR Application infringes or misappropriates such third party's intellectual property rights (a "**Claim Against You**"), and will indemnify You from any damages, attorney fees and costs finally awarded against You as a result of, or for amounts paid by You under a settlement approved by Us in writing of, a Claim Against You, provided You: (a) promptly give Us written notice of the Claim Against You; (b) give Us sole control of the defense and settlement of the Claim Against You; (c) give Us all reasonable assistance, at Our expense; (d) have not cancelled your subscription to Services; (e) are not delinquent on payments due to Us; (f) are not asserting any intellectual property claim against us; and (g) are not in material breach of this Agreement. If We receive information about an infringement or misappropriation claim related to a Service, We may in Our discretion and at no cost to You: (i) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching Our warranties under "Our Warranties" above; (ii) obtain a license for Your continued use of that Service in accordance with this Agreement; or (iii) terminate Your subscriptions for that Service upon 30 days' written notice; or (iv) cancel or amend the Agreement such that We are not obligated to continue to provide infringing Services if all the above options are not commercially reasonable. The above defense and indemnity obligations do not apply if the infringement is caused by integrating our unmodified Service with any other device, application or service including Non-BBR Applications. We will indemnify You only to the extent our Service infringes by itself, for its intended use, as provided by us (unmodified by You or your customers as the case may be) and without being combined with non-BlackBerry devices, non-BBR Applications and/or non-BBR services. Furthermore, the above indemnity obligations for Services do not apply for infringement of third party intellectual property as it pertains to Standards (such as by way of example but not limited to ITU, ETSI, IEEE, IETF, W3C, MPEG, MIPI, OMA), Open Source software and embedded software (industry specific or task specific). THE AGGREGATE LIABILITY OF BLACKBERRY INCLUDING ITS AFFILIATES, FOR ANY AND ALL CLAIMS UNDER THIS SECTION 11.1, WILL NOT EXCEED TWENTY-FIVE PERCENT (25%) OF THE TOTAL SUBSCRIPTION FEES PAID BY CUSTOMER IN THE LAST TWELVE MONTHS, WHETHER A CLAIM IS BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY.
- 11.2 Indemnification by You.** You will defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party (i) alleging that any of Your Data or a Non-BBR Application infringes or misappropriates such third party's intellectual property rights, or (ii) arising from Your use of the Device, Services or Content, (each a "**Claim Against Us**"), and You will indemnify Us from any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a settlement approved by You in writing of, a Claim Against Us, provided We: (a) promptly give You written notice of the Claim Against Us; (b) give You sole control of the defense and settlement of the Claim Against Us (except that You may not settle any Claim Against Us unless it unconditionally releases Us of all liability); and (c) give You all reasonable assistance, at Your expense.
- 11.3 Exclusive Remedy.** This Section 11 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 11 (Mutual Indemnification).

## 12. LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES

- 12.1 Limitation of Liability.** EXCEPT FOR THE LIABILITY IN 11.1 WE AND OUR AFFILIATES SHALL HAVE NO LIABILITY, ARISING OUT OF OR RELATED TO THE PROVISION OF SERVICES HEREUNDER, AND/OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.
- 12.2 Exclusion of Consequential and Related Damages.** IN NO EVENT WILL BLACKBERRY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF BLACKBERRY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF YOUR REMEDY OTHERWISE FAILS ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

## 13. TERM AND TERMINATION

- 13.1 Term of Agreement.** This Agreement commences on the date You first accept it and continues until the all Subscriptions hereunder have expired or have been terminated; provided, however, We may terminate this

Agreement on at least ninety (90) days written notice, in which case all Subscriptions will terminate as of the date of termination set forth in such notice.

- 13.2 Subscription Periods.** The Subscription Period shall be specified in the Order Form and Subscriptions will automatically renew for additional one (1) year periods unless either party gives the other notice of non-renewal at least thirty (30) days before the end of the relevant Subscription Period. The per-unit pricing for any renewal term will be provided to You at least sixty (60) days prior to the applicable renewal term. You may terminate any Subscription by giving ninety (90) days written notice to BlackBerry specifying the Subscription to be terminated and identifying the Device(s) used in conjunction with such Subscription. Any such termination is subject to Your payment of all Subscription Fees outstanding for the remainder of the Subscription Period within thirty (30) days of the invoice date.
- 13.3 Termination.** A party may terminate this Agreement for cause (i) upon thirty (30) days written notice to the other party of a material breach if such breach remains uncured at the expiration of such thirty (30) day written notice period), or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. A termination of this Agreement shall terminate all Subscriptions as of the effective date of the Termination of the Agreement.
- 13.4 Refund or Payment upon Termination.** If this Agreement is terminated by You in accordance with Section 13.3 (Termination), We will refund You any prepaid fees applicable for the remainder of the Subscription Period of all relevant Order Forms after the effective date of termination. If this Agreement is terminated by Us in accordance with Section 13.3 (Termination), You will pay any unpaid fees covering the remainder of the term of all Order Forms. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.
- 13.5 Your Data Portability and Deletion Upon Termination of Your Subscriptions.** We will make Your Data available to You for export or download after the termination of Your Subscriptions for a period of ninety (90) days. After such ninety (90) day period, We will have no obligation to maintain or provide to You any of Your Data, and may thereafter delete or destroy all copies of Your Data in Our systems or otherwise in Our possession or control, unless legally prohibited.

#### **14. APPLICABLE LAW AND JURISDICTION**

- 14.1** This Agreement will be governed and construed by the applicable laws described below and each party irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and consents to the jurisdiction of the courts as follows: (a) where You are in Canada, or any other destinations not described in the following sub-parts (b), (c) and (d), the laws of the Province of Ontario, Canada and the courts of Toronto, Ontario, Canada; (b) where You are in the United States or U.S. territories, the laws of the State of New York, United States and the courts of New York City; (c) where You are in the UK, European Union, Middle East or Africa region, the laws of England and Wales and the courts of England and Wales; and, (d) where You are in the Asia-Pacific region, the laws of the Republic of Singapore and the courts of Singapore.

IN ADDITION, THE PARTIES FURTHER WAIVE ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LAWSUIT OR JUDICIAL PROCEEDING ARISING OR RELATING TO THIS AGREEMENT. THE PARTIES DISCLAIM THE APPLICATION OF THE UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS WITH REGARD TO THE INTERPRETATION OR ENFORCEMENT OF THIS AGREEMENT.

- 14.2 Notices.** Any notice, request, demand or other communication required or permitted under this Agreement ("**Notices**") will be in writing and shall be sufficiently given if delivered by hand or sent by registered or recorded mail, courier or email addressed to the other Party at the address on the Order Form, or as the Parties may from time-to-time designate in writing, delivered pursuant to this notice provision. In addition to the above, Notices to Us are to be sent to the BlackBerry entity that is a Party to the affected Order with a copy to Attention: Legal Department either at BlackBerry Limited at 2200 University Avenue East, Waterloo, Ontario, Canada, N2K 0A7 or by email to legal@blackberry.com. Any such notices, requests, demands or other communications shall be deemed received and effective: (i) upon delivery, if delivered personally; or (ii) on the date of receipt of facsimile, mail, email or courier, where a confirmation of receipt is provided for such facsimile, mail, email or courier. Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon: (a) personal delivery; (b) the second business day after mailing; or (c), except for notices of termination or an indemnifiable claim ("**Legal Notices**"), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to You will be addressed to the relevant billing



contact designated by You. All other notices to You will be addressed to the relevant Services system administrator designated by You.

## 15. GENERAL PROVISIONS AND LEGAL AND REGULATORY COMPLIANCE

- 15.1 Regulatory, Export Control, Anti-Corruption and Sanctions.** You will comply with any and all local, national, and international laws and regulations applicable in the countries where the Connectivity Services are provided and you will not, and ensure that your Affiliates will not, use the Connectivity Services for transmitting or receiving data that contains software viruses, Trojan horses, or any computer code, files, or programs designed to disrupt, destroy, invade, gain unauthorized access to, corrupt, observe, or modify without authorization, data, software, computing or network devices, or telecommunications equipment. You are responsible for satisfying any import or export restrictions or requirements related to Your deployment and use of the Services, and You understand that you have an independent duty to comply with anti-corruption and anti-bribery laws. The Services, Content, other technology We make available, and derivatives thereof may also be subject to export laws and regulations of the United States, Canada and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use any Service or Content in a U.S. embargoed country or in violation of any U.S., Canadian or any other applicable export law or regulation.
- 15.2 Lawful Access Requirements.** You agree to provide the necessary assistance and information when required for BlackBerry or the carrier providing the Connectivity Services, or their Affiliates, to comply with their legal and regulatory obligations in respect of the Connectivity Services provided to You. You agree that BlackBerry may provide to the Connectivity Service carrier in a timely manner all information with regard to the You which is legally required for the Connectivity Services carrier or their Affiliates to respond to an official judicial request within the deadlines imposed by the law or by the judicial authorities. BlackBerry reserves the right at its sole discretion to amend these Connectivity Services Requirements to comply with any legal or regulatory requirements imposed from time-to-time by any competent authority in relation to the provision or use of Connectivity Services.
- 15.3 Entire Agreement, Order of Precedence and Severability.** This Agreement is the entire agreement between You and Us regarding Your use of Services and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Except as otherwise provided herein, no modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in Your purchase order or in any other of Your order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form; (2) this Agreement; and (3) the Documentation. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.
- 15.4 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (together with all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 15.5 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 15.6 Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 15.7 Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.