

RESELLER AGREEMENT

This Reseller Agreement (the “**Agreement**”) is a legal agreement between you on behalf of a company or other entity as its representative (“**You**” or “**Reseller**”) and BlackBerry Limited or its Affiliate (as set forth in Section 13.1 below) (“**BlackBerry**”) regarding the promotion, marketing and resale of certain products and services made available by BlackBerry, either directly or through its Authorized Distributors, to Customers. Together You and BlackBerry are the “**Parties**” and individually a “**Party**”.

BY CLICKING ON THE APPROPRIATE BUTTON CONFIRMING YOUR REGISTRATION UNDER THE BLACKBERRY PARTNER PROGRAM, YOU ARE AGREEING TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT AS AMENDED BY BLACKBERRY FROM TO TIME IN ACCORDANCE WITH SECTION 14.15. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR IF YOU ARE NOT AUTHORIZED TO ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT ON BEHALF OF RESELLER, DO NOT PLACE ORDERS FOR ANY OF THE PRODUCTS OR SERVICES CONTEMPLATED UNDER THIS AGREEMENT.

1. DEFINITIONS.

“ Affiliate ”	means any entity controlling, controlled by, or under common control with BlackBerry or Reseller, as applicable, on the Effective Date.
“ Authorized Distributor ”	means the BlackBerry approved distributor from whom Reseller may purchase the BlackBerry Solution and/or Third Party Offerings for resale to Customers in the Territory(ies).
“ BlackBerry Branding Guidelines ”	means BlackBerry’s then-current branding guidelines applicable to this Agreement (which may be located at www.blackberry.com/partnerguidelines or another website notified by BlackBerry) as they may be modified by BlackBerry from time-to-time.
“ BlackBerry Marks ”	means the trademarks, trade names, service marks or logos of BlackBerry.
“ BlackBerry Partner Program ”	means BlackBerry’s program(s) for channel partners (including carriers, distributors and resellers) that mandates such channel partner’s ability to become an authorized, accredited provider of certain BlackBerry products and services.
“ BlackBerry Professional Services ”	means the BlackBerry Services provided by BlackBerry or its authorized agents to, among other things, assist Customers with the installation and deployment of software, including on-site and/or remote training, and consulting services as set out at www.blackberry.com/supportprogramdescriptions (or in a particular Order or statement of work).
“ BlackBerry Services ”	means any service, including BlackBerry Professional Services, made available to Reseller by or on behalf of BlackBerry under an Order, and excludes third party services.
“ BlackBerry Solution ”	means a solution or service which includes any components or portions of BlackBerry Software and/or BlackBerry Services, and applicable documentation.
“ BlackBerry Software ”	means any software in object code form only provided by or on behalf of BlackBerry to Customer under an Order or otherwise supplied with or as part of a BlackBerry Solution, including without limitation, firmware and interfaces. “BlackBerry Software” does not include any third party items whether or not they are made available by BlackBerry or on behalf of BlackBerry, or purchased through any other BlackBerry channels even if they are provided with, or operate in conjunction with, the BlackBerry Software and/or any other part of the BlackBerry Solution.
“ Customer ”	means any entity that enters into a license to use a product or service for purposes other than redistributing and reselling it.
“ Customer Terms ”	means, individually and collectively, any: (i) standard form electronic (e.g. “click-wrap”) or hard copy software license agreement(s) (including the BlackBerry Solution License Agreement, available: www.blackberry.com/us/en/legal), (ii) professional service agreement(s) (including the Professional Services Agreement), (iii) applicable product/service terms, and/or (iv) other terms and conditions to which Customer must explicitly agree prior to and as a continuing condition of use of any software and/or services made available under this Agreement.
“ Order ”	means an electronic or written order from Reseller for the products and/or services made available under this Agreement on the form of order provided by the Authorized Distributor or BlackBerry, as applicable.
“ Partner Hub ”	means the BlackBerry Partner Program portal located at https://partnerhub.blackberry.com/s/ (or such other URL communicated by BlackBerry from time to time) that contains up-to-date information about the BlackBerry Partner Program.
“ Partner Program Description ”	means the BlackBerry Partner Program terms and conditions made available on the Partner Hub, which description may be updated by BlackBerry from time to time pursuant to Section 3.2 below.



- “Professional Services Agreement”** means the terms and conditions applicable to the provision of BlackBerry Professional Services, including as set out at www.blackberry.com/us/en/legal and to which a Customer must agree to in order to receive such BlackBerry Professional Services.
- “Territory(ies)”** means only the territory or territories specified to Reseller by BlackBerry.
- “Third Party Offerings”** means any third party branded software applications and/or third party branded services proprietary to a Third Party Supplier, including any related content such as electronic versions of manuals and documentation, and any updates, modifications, new versions, releases or upgrades. For clarity, Third Party Offerings shall not form part of, be deemed as, or otherwise constitute a BlackBerry Solution.
- “Third Party Supplier”** means the third party (i.e. not BlackBerry or any of its Affiliates) owner or licensor of a Third Party Offering.

2. RIGHTS GRANTED.

- 2.1 **Reseller License.** Reseller is hereby granted the personal, revocable, non-transferable, non-exclusive right to order the products and/or services set out below, either directly from BlackBerry or from an Authorized Distributor, and to promote, market and resell such products and/or services directly to Customers located in the Territory(ies) provided that such right may only be exercised: (i) in accordance with the terms and conditions of this Agreement; and (ii) while the Reseller is authorized to purchase products and/or services pursuant to this Agreement.
- (a) BlackBerry Software
 - (b) BlackBerry Services
 - (c) Third Party Offerings
- 2.2 **Reseller Affiliates.** Reseller may permit its Affiliates to exercise all or a portion of the rights granted in Section 2.1 above, provided: (i) Reseller is jointly and severally liable with each such Affiliate for its compliance with the terms of this Agreement; and (ii) Reseller is authorized to enter into this Agreement for and on behalf of each such Affiliate and bind such Affiliate to the terms of this Agreement. BlackBerry, acting reasonably and on thirty (30) days' notice to Reseller, reserves the right to request that a Reseller Affiliate may no longer benefit from the terms of this Agreement.
- 2.3 **Trademarks.** During the term of this Agreement and within the Territory(ies), BlackBerry grants to Reseller a personal, non-exclusive, royalty-free and non-transferable license to use, reproduce, distribute and display publicly the BlackBerry Marks on or in connection with the BlackBerry Solution and any packaging, labelling, promotional, advertising or other materials, including websites, relating to the BlackBerry Solution in accordance with and subject to Reseller ensuring its compliance with: (i) the terms of this Agreement; (ii) receiving express written authorization from BlackBerry each time Reseller or anyone else acting on behalf of Reseller uses BlackBerry Marks; and (iii) the BlackBerry Branding Guidelines. Reseller acknowledges that its use of the BlackBerry Marks is limited to the use licensed in this Agreement, that each and every use of the BlackBerry Marks requires express written authorization from BlackBerry and that Reseller has not acquired, and will not acquire, any ownership rights therein. Reseller agrees that it will not use any BlackBerry Marks in a manner likely to cause confusion with, dilute or damage the goodwill, reputation or image of BlackBerry or BlackBerry's BlackBerry Solution. Reseller agrees not to use any BlackBerry Marks as a feature or design element of another logo or trademark. Upon request by BlackBerry, Reseller shall supply BlackBerry with specimens of its use of any BlackBerry Marks and execute or obtain execution of, the instruments that may be appropriate to register, maintain or renew the registration of any BlackBerry Marks in the Territory(ies). The use of any BlackBerry Mark by Reseller does not transfer to Reseller any further right, title, or interest in or to the BlackBerry Mark and all such use and associated goodwill will inure to the benefit of BlackBerry. Reseller shall not register, attempt to register or lay common law claim to any BlackBerry Mark or any mark confusingly similar with a BlackBerry Mark. Reseller hereby acknowledges that the maintenance of the reputation and quality associated with the BlackBerry Marks requires the highest quality and utmost uniformity with respect to the BlackBerry Solution associated with the BlackBerry Marks. BlackBerry reserves the right to inspect Reseller's use or display of the BlackBerry Marks from time-to-time to ensure that such use or display is in accordance with the terms of this Agreement. Reseller shall permit BlackBerry or its authorized agent to inspect and monitor Reseller's goods and/or services, at BlackBerry's cost, to determine and verify that the BlackBerry Marks are being used in accordance with the terms of this Agreement. Should Reseller fail to comply with this provision and fails to cure such non-compliance after written notice by BlackBerry, in addition to any other remedies that BlackBerry may have, BlackBerry may terminate Reseller's license to use the BlackBerry Marks with immediate effect and Reseller shall immediately cease using all BlackBerry Marks.

3. BLACKBERRY PARTNER PROGRAM.

- 3.1 **General.** Reseller acknowledges that resale of certain BlackBerry Software and/or BlackBerry Services may be conditional on, amongst other things, Reseller becoming an authorized member of a BlackBerry Partner Program. Where BlackBerry has communicated such requirement to Reseller, then prior to promoting, marketing and/or reselling the applicable product/services, Reseller agrees to: (i) undertake and fulfil the requirements of such BlackBerry Partner Program; (ii) work with BlackBerry in good faith to execute any additional legal agreements to effect such authorization; (iii) comply with any terms and conditions communicated by BlackBerry in respect of such BlackBerry Partner Program, including as set out in the Partner Program Description; and (iv) maintain such authorization and compliance for so long as Reseller is entitled to promote, market and resell such products/services.
- 3.2 **Program Changes.** Reseller agrees that BlackBerry may in its sole discretion expand, reduce, and/or change the scope or contents of any aspect of the BlackBerry Partner Program, in whole or in part including but not limited to program tiers, program benefits, fees, or anything



described in the Partner Program Description (“**Program Term Change**”). Notice of such changes shall be provided to Reseller: (a) by delivering a standard newsletter or notification to Reseller (using the contact information made available by Reseller); and (b) by posting the changes on the Partner Hub. If Reseller has a reasonable objection to the Program Term Change, Reseller shall deliver written notice of the same to BlackBerry within thirty (30) days following notice of the Program Term Change and outline its specific concerns with respect to the change. The Parties will then mutually discuss and agree next steps to address Reseller’s concerns, which may include (without limitation) additional modifications to the Partner Program Description or termination of Reseller’s membership under the BlackBerry Partner Program. If Reseller does not deliver a notice to BlackBerry pursuant to the foregoing, then Reseller shall be deemed to have accepted the change. Reseller acknowledges that BlackBerry shall bear no responsibility or liability whatsoever for any claims, actions, damages, losses or expenses of any kind whatsoever asserted caused directly or indirectly as a result of BlackBerry’s actions under this Section.

4. ORDERS

4.1 Orders via Authorized Distributors. Where Reseller is purchasing indirectly through an Authorized Distributor, then Reseller shall place Orders for the products and/or services through an Authorized Distributor assigned to the Territory. Each such purchase by Reseller shall be upon the terms and conditions agreed to directly between the Reseller and Authorized Distributor.

4.2 Direct Orders. Where Reseller is authorized to purchase products and/or services directly from BlackBerry, the following terms shall apply:

(a) *Order Process*.

- (i) Reseller shall place Orders online through BlackBerry’s ordering tool. Upon request, Reseller shall provide documentation to BlackBerry that Reseller has received valid purchase orders from its Customers. The number of licenses indicated on the purchase order issued by Reseller cannot exceed the number of licenses ordered by the Customer. All Order(s) are subject to approval by BlackBerry including credit approval and are governed by the terms and conditions of this Agreement. In the event of any conflict between this Agreement and the Order, the terms of this Agreement govern, except to the extent expressly agreed otherwise by BlackBerry in the Order. Each Order (including by electronic transmission) to BlackBerry must include the specific products and/or services being ordered, the Customer’s company name, contact name, address, phone number and email address, fees, bill-to and ship-to addresses (if applicable), any tax exempt certifications and tax registration numbers (if applicable), a reference to this Agreement, and any other special instructions. Once accepted by BlackBerry all Orders are non-cancellable and non-refundable.
- (ii) For so long as this Agreement remains in effect, Reseller may be required by BlackBerry to maintain an annual order minimum as set out in the BlackBerry Partner Program. In the event Reseller does not maintain the minimum annual order requirement, at BlackBerry’s sole discretion BlackBerry may terminate this Agreement, including any amendments and addendums thereto, in accordance with Section 7 (Term and Termination) herein.

(b) *Fees*.

- (i) Fees for the BlackBerry Solution and Third Party Offerings will be specified in the pricing letter(s) provided by BlackBerry to Reseller from time-to-time.
- (ii) All fees are exclusive of any taxes, charges, duties or other applicable amounts. Reseller will pay the taxes related to its purchases under this Agreement, or Reseller will present an exemption certificate acceptable to the taxation authorities. Applicable taxes, charges and duties (if any), will be billed as a separate item on the invoice. Notwithstanding anything to the contrary contained in this Agreement (including the remainder of this Section 4.2(b)), if any amounts (including any taxes, charges, duties or other applicable amounts) are required to be withheld by Reseller from any amount payable to or for the benefit of BlackBerry under this Agreement, Reseller will: (i) pay an additional amount to BlackBerry such that the net amount received by BlackBerry, after all required withholdings (including any withholdings applicable to amounts payable pursuant to this sentence), equals the full amount of the payment then due; (ii) pay, or cause to be paid, the full amount withheld to the relevant tax authority in accordance with law; and (iii) deliver to BlackBerry as soon as practicable an official receipt (or certified copy thereof) or such other documentation as is reasonably acceptable to BlackBerry evidencing such payment to the relevant tax authority.
- (iii) If Reseller’s payment of fees is subject to foreign exchange or other monetary controls, BlackBerry is not obligated to provide the BlackBerry Solution and/or Third Party Offerings until Reseller obtains all required approvals. Reseller represents and warrants that it: (i) can make the payments to BlackBerry in the currency set out in the applicable Order; and (ii) is not restricted from making, and does not require any approvals (including from a government authority) to make, foreign payment transactions from the Territory(ies) to BlackBerry as required in this Agreement. Notwithstanding the foregoing and in addition to the terms and conditions set out in this Agreement, Reseller acknowledges and accepts that Reseller, and not BlackBerry, shall be responsible for any foreign exchange controls in force in the Territory(ies), including without limitation foreign exchange regulations, approval, licenses and orders.

(c) *Invoicing and Payment*.

- (i) BlackBerry will invoice in accordance with the Order and invoicing terms may vary depending on the type of product and/or service being purchased. For clarity, unless otherwise agreed to in an amendment to the Agreement or an Order signed by both Parties, purchases for BlackBerry Professional Services shall be invoiced as of the date BlackBerry accepts Reseller’s Order and shall be paid in accordance with Section 4.2(c)(ii) below, regardless of when such services are delivered and/or accepted.

- (ii) Unless otherwise agreed by BlackBerry, all payments must be made in the currency used by the BlackBerry entity with which Reseller has placed its Order and, subject to credit approval, payment terms are net thirty (30) days from the date of the invoice. Any sum not paid by Reseller when due will bear interest from the due date until paid at a rate of: (i) ten (10) per cent per annum; or (ii) the maximum rate permitted by law, whichever is less.

4.3 **No Reseller Order Terms.** Notwithstanding any other provision of this Agreement or any Order, even if BlackBerry acknowledges or otherwise accepts Reseller orders directly or indirectly through a distributor authorized by BlackBerry, any standard printed terms included on the orders Reseller issues shall be void and unenforceable and not be deemed to be a part of the terms and conditions under which BlackBerry is providing the BlackBerry Solution, or modify or supplement the terms and conditions of this Agreement or otherwise govern the relationship between Reseller and BlackBerry in any way.

5. PRODUCTS AND SERVICES.

5.1 BlackBerry Solution.

- (a) Any and all use of the BlackBerry Solution by Customers shall be subject to the terms and conditions of the applicable Customer Terms located at www.blackberry.com/legal (or such other location communicated by BlackBerry from time to time). BlackBerry may revise its Customer Terms, including the location of where such terms are made available, without notice to Reseller. Reseller shall be responsible for ensuring that Customers agree to the applicable Customer Terms, including those terms that may be set out in an Order, prior to reselling the applicable product and/or service to the Customer. All applicable Customer Terms shall be directly between BlackBerry and the Customer, and nothing in this Agreement shall limit any Customer Terms separately provided by BlackBerry to the Customer.
- (b) For clarity, all BlackBerry Professional Services are subject to the Professional Services Agreement and Reseller shall be responsible for ensuring Customers agree to such agreement prior to reselling the BlackBerry Professional Services to the Customer.
- (c) BlackBerry may update, change or discontinue any BlackBerry Solution, at any time, in its discretion; provided, however, any express warranties set forth in the applicable Customer Terms shall continue to apply with respect to any BlackBerry Solution previously sold to a Customer.

5.2 Third Party Offerings.

- (a) Reseller acknowledges and agrees that: (i) Third Party Suppliers are solely responsible and liable for Third Party Offerings; (ii) Third Party Offerings are licensed by Third Party Suppliers to the Customer pursuant to the applicable Customer Terms identified by the Third Party Supplier and that BlackBerry is not the licensor or sub-licensor of any Third Party Offerings; (iii) Third Party Suppliers provide support to the Customer directly or in some cases, authorize BlackBerry to do so; and (iv) any warranties relating to the Third Party Offerings are provided by the Third Party Suppliers (and not BlackBerry) to the Customer.
- (b) Reseller will use commercially reasonable efforts to comply with any Third Party Supplier's branding guidelines.
- (c) Except as expressly agreed to in writing by BlackBerry, Reseller is limited to reselling Third Party Offerings to those Customers who have accepted the unmodified terms of the applicable Customer Terms.
- (d) Upon written notice from BlackBerry, Reseller will cease promoting, marketing and electronically reselling those Third Party Offerings identified by BlackBerry, in accordance with BlackBerry's instructions.

6. RESTRICTIONS.

Reseller is limited to distributing products and/or services to those Customers who have accepted the unmodified terms and conditions referenced in Section 5 (Products and Services) above. Reseller shall ensure that it and its personnel shall:

- (a) not promote, market or distribute the BlackBerry Solution and/or Third Party Offerings to anyone other than Customers in the Territory(ies);
- (b) not knowingly sell or otherwise provide the BlackBerry Solution to any Customer that produces or sells any product, or similar product that could compete with the BlackBerry Solution;
- (c) not white label or rebrand the BlackBerry Solution and/or Third Party Offerings;
- (d) not market solutions that are competitive to the BlackBerry Solution to existing BlackBerry Customers;
- (e) conduct their business and activities in such a manner so as to promote a positive image and good public relations for BlackBerry;
- (f) not engage in deceptive, tortious, offensive, misleading, illegal, or unethical practices that may be detrimental to BlackBerry or to the BlackBerry Solution and any representations Reseller makes about BlackBerry and its BlackBerry Solution shall be fair and accurate;
- (g) not make any representations, warranties, or guarantees to Customers that are not in accordance with the documents and specifications provided by BlackBerry for the BlackBerry Solution or by Third Party Suppliers for the Third Party Offerings;
- (h) comply at Reseller's sole expense with all applicable federal, national, state, provincial, and local laws and regulations in relation to the BlackBerry Solution and in performing its duties with respect to this Agreement, including, without limitation, those tax, foreign exchange, transfer of money, marketing, consumer protection, anti-mafia or anti-terrorist laws specific to the Territory(ies), as well as any applicable laws regarding export, import and use of the BlackBerry Solution and/or Third Party Offerings, data protection and privacy;
- (i) in the conduct of its operations comply with BlackBerry's Code of Business Standards and Principles, as set out at www.blackberry.com/codeofconduct;
- (j) not represent that the BlackBerry Solution and/or Third Party Offerings are designed or licensed for use in circumstances where the failure of any part of the BlackBerry Solution (including, without limitation, the BlackBerry Software) and/or Third Party Offerings are likely to result in significant risks to health or safety, where fail-proof delivery of time-specific information is required, or in otherwise



hazardous environments requiring fail-safe controls, including without limitation operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, and life support or weapons systems;

- (k) not engage in business practices, promotions or advertising which may be injurious to the reputation or business goodwill of BlackBerry and comply with the current BlackBerry Branding Guidelines;
- (l) not sell the BlackBerry Solution and/or Third Party Offerings directly or indirectly to any USA government agency or any third party entity on behalf of any USA government entity, except in compliance with all applicable laws, orders, codes, and regulations and Reseller is not authorized to sell and/or make available any BlackBerry Solution to the USA government except under a commercial item contract executed by a contracting officer duly authorized to execute the contract on behalf of the USA government and containing or incorporating by reference no provisions regarding data rights, intellectual property or rights in computer software/documentation except for the applicable BlackBerry license or such standard commercial licensing terms as BlackBerry has supplied or may supply to Reseller;
- (m) ensure that its knowledge relating to the BlackBerry Solution and/or the Third Party Offerings is current, which may include undergoing training as may be reasonably required by BlackBerry from time-to-time); and
- (n) ensure that each Customer who purchases BlackBerry Software and, if applicable, Third Party Offerings is warned that the software may include encryption software that is subject to domestic and foreign legal restrictions that restrict export, import and use of the software.

7. TERM AND TERMINATION.

- 7.1 The term of this Agreement will commence on the date Reseller accepts the terms of this Agreement (“**Effective Date**”) and, unless terminated in accordance with this Section, will: (i) continue for an initial term of one (1) year; and (ii) thereafter automatically renew for successive one (1) year terms, unless terminated by either Party in accordance with this Agreement.
- 7.2 This Agreement may be terminated by either Party: (i) upon thirty (30) days written Notice (as defined in Section 14.10 (Notices)) to the other Party of a breach of a material provision of this Agreement, including but not limited to the payment of any fees payable in relation to this Agreement when due, if such breach remains uncured at the end of such thirty (30) days; or (ii) immediately if the other Party ceases to carry on business as a going concern or becomes the subject of voluntary or involuntary bankruptcy or liquidation proceedings or if a receiver or similar officer is appointed with respect to the whole or substantial part of its assets or any insolvency event similar to the foregoing occurs under applicable law.
- 7.3 This Agreement may be terminated by BlackBerry upon a sale of all or substantially all the assets of Reseller, any merger, consolidation or acquisition of Reseller with, by or into another corporation, entity or person, or any change in the ownership of more than fifty percent (50%) of the voting capital stock of Reseller in one or more related transactions;
- 7.4 This Agreement may be terminated for convenience by either Party upon thirty (30) days written Notice.

8. TERMINATION REMEDIES.

- 8.1 If Reseller breaches this Agreement, BlackBerry or its agent may take certain actions they deem appropriate, which may include but is not limited to temporary or permanent immediate suspension or termination of Reseller's rights hereunder.
- 8.2 Unless expressly agreed by BlackBerry in writing, if all or a portion of an Order is terminated for any reason, Reseller shall not be entitled to any refund either directly or indirectly from BlackBerry.
- 8.3 Except as expressly provided herein, BlackBerry shall not have any liability to Reseller arising from or related to the termination of this Agreement, or any rights or licenses granted herein, in accordance with this Agreement.

9. EFFECT OF EXPIRATION OR TERMINATION.

- 9.1 Upon termination of this Agreement, Reseller shall: (a) return to BlackBerry any and all BlackBerry marketing collateral supplied to Reseller by BlackBerry or anyone else in support of this Agreement; (b) remain liable for payment of any and all fees incurred by Reseller, whether invoiced directly or indirectly by BlackBerry, pursuant to this Agreement, whether invoiced or not, at the time of termination; and (c) provide BlackBerry with a list of Customers that have purchased the BlackBerry Solution from Reseller within the last two (2) years prior to termination.
- 9.2 BlackBerry may take such additional measures as it deems reasonable, in its sole discretion, to protect the availability and continuity of services for Customers after termination of this Agreement, and Reseller shall reasonably cooperate with BlackBerry to facilitate such continued availability and continuity of service for the benefit of Customers.
- 9.3 Except as expressly provided herein, the termination of this Agreement shall not limit either Party from pursuing any other remedies available to it, including injunctive relief. Any termination of this Agreement for cause shall be without prejudice to any other rights or remedies BlackBerry may be entitled to under this Agreement, or at law (subject to any restrictions contained in this Agreement).

10. CONFIDENTIALITY.

- 10.1 If the Parties have entered into a Non-Disclosure Agreement (“**NDA**”) with BlackBerry, the Parties agree that the NDA is incorporated by reference and the terms of the NDA will continue to apply to this Agreement except that: (i) the terms of the NDA will continue to apply to this Agreement with respect to Confidential Information (as defined in the NDA) disclosed pursuant to this Agreement even if the NDA expires; and (ii) the Confidential Information (as defined in the NDA) revealed or otherwise disclosed through Reseller's performance of its obligations under this Agreement may be used or reproduced solely to the extent necessary to further and fulfil the purposes of this



Agreement (which will be deemed to be included in the definition of "Purpose" under the NDA); and (iii) termination or expiry of this Agreement will not affect the validity of and effect of the NDA.

10.2 If the Parties have not entered into a non-disclosure agreement, this Section 10.2 shall apply to this Agreement. Except as specifically permitted in this Agreement or with the prior express written permission, the Parties shall not disclose, allow access to, transmit, transfer or otherwise make available any Confidential Information, as defined below, to any third party. Notwithstanding the foregoing, the Parties may disclose Confidential Information either if and only to the extent it is required to do so by law provided that the Party gives the other Party sufficient notice to enable the other Party to seek an order limiting or precluding such disclosure, or to the extent necessary to further and fulfill the purposes of this Agreement. Neither Party shall use or reproduce the Confidential Information for any reason other than as reasonably necessary to provide, resell or use the BlackBerry Solution, in whole or in part, as provided under this Agreement subject to and limited by the terms and conditions in this Agreement. "**Confidential Information**" is hereby defined as: (i) any information in whatever form or medium that is proprietary or confidential to the disclosing Party; (ii) which the recipient Party is given access, directly or indirectly, by the disclosing Party; and, (iii) is related to the sale or potential sale of the BlackBerry Solution, in whole or in part. Confidential Information that a Party can establish was lawfully in that Party's possession before receipt from the disclosing Party; or is a matter of public knowledge through no fault of the recipient Party shall not be considered Confidential Information under this Agreement.

11. OWNERSHIP AND INTELLECTUAL PROPERTY.

Except for the limited use rights expressly provided in this Agreement, Reseller acknowledges and agrees that it does not acquire any intellectual property or other proprietary rights, including without limitation patents, industrial, intangible, designs, trademarks, copyright, moral, trade secret, confidential information or other rights in or relating to the BlackBerry Solution or other BlackBerry intellectual property ("**Intellectual Property Rights**"), BlackBerry Confidential Information or any translation or other derivative work thereof. Reseller agrees it will not refute or otherwise challenge BlackBerry's ownership of the Intellectual Property Rights. All comments, ideas, changes or other feedback provided by Reseller to BlackBerry regarding the BlackBerry Solution will be owned by BlackBerry.

12. WARRANTY, LIMITATION OF WARRANTY, INDEMNITY AND LIMITATION OF LIABILITY.

12.1 Warranty. BlackBerry will grant Customers the warranty on the BlackBerry Solution set out in the applicable Customer Terms under which the BlackBerry Solution has been licensed and/or the applicable product terms, and such warranty will be Customers sole warranty in relation to the BlackBerry Solution. BlackBerry disclaims any and all representations or warranties with respect to third party products, including Third Party Offerings, ordered by Reseller under this Agreement.

12.2 Limitation of Warranty. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 12.1 (WARRANTY), AND SUBJECT TO APPLICABLE LAW, BLACKBERRY MAKES NO REPRESENTATIONS, WARRANTIES, CONDITIONS OR COVENANTS EITHER EXPRESS OR IMPLIED TO RESELLER, CUSTOMER OR ANY THIRD PARTY, AND BLACKBERRY EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED REPRESENTATION, CONDITIONS OR WARRANTIES, RELATING TO OR ARISING FROM THE SUPPLY OF THE BLACKBERRY SOLUTION, PERFORMANCE OR NON-PERFORMANCE OF ANY BLACKBERRY SERVICES, OR THIS AGREEMENT GENERALLY, INCLUDING ANY IMPLIED, REPRESENTATIONS, CONDITIONS OR WARRANTIES OF MERCHANTABILITY OR SATISFACTORY QUALITY, TITLE, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THAT THE BLACKBERRY SOLUTION WILL WORK UNINTERRUPTED OR ERROR-FREE. IN ADDITION, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BLACKBERRY SPECIFICALLY DISCLAIMS: (A) THE SUITABILITY OF THE BLACKBERRY SOLUTION FOR USE IN MISSION-CRITICAL APPLICATIONS OR IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS; (B) ANY WARRANTIES OR CONDITIONS RELATED TO THE BLACKBERRY SOLUTION (EXCEPT AS EXPRESSLY PROVIDED FOR IN THE APPLICABLE CUSTOMER TERMS); (C) ANY WARRANTY OR CONDITION RELATED TO AIRTIME SERVICES; AND (D) ANY OBLIGATION WITH RESPECT TO ANY DATA STORED IN THE BLACKBERRY SOLUTION INCLUDING WITHOUT LIMITATION, WHEN SUCH PRODUCTS (IF APPLICABLE) ARE RETURNED FOR REPAIR OR REPLACEMENT. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

12.3 Reseller Indemnity. Reseller agrees to indemnify BlackBerry and its Affiliates, and their officers, directors, employees and subcontractors against any claims, judgments, damages, costs, (including reasonable lawyers' fees and disbursements) and settlements agreed to by Reseller and/or Reseller's Affiliates in relation to: (i) any advertising, distribution, sale or marketing of the BlackBerry Solution under this Agreement, in a manner not expressly and in writing permitted by BlackBerry under this Agreement (including without limitation making available the BlackBerry Solution and/or the Third Party Offerings pursuant to the terms of an agreement other than the applicable Customer Terms); (ii) any infringement claim arising from or in connection with: (1) modifications to the BlackBerry Solution or any portion thereof where such modification is made by Reseller, or on behalf of Reseller, or authorized by Reseller; (2) any materials provided by or on behalf of Reseller to BlackBerry regarding any modification to the BlackBerry Solution where such claim would not arise but for such materials; or (3) an Customer's combined use of the BlackBerry Solution or portion thereof with other software and/or hardware products or applications not supplied by BlackBerry where such combined use is recommended by Reseller and the software and/or hardware products or applications are supplied to Customer by Reseller; provided however, that in relation to any of (i) or (ii): (A) Reseller is promptly notified in writing of such claim, (B) Reseller shall have the sole control of the defense and/or settlement thereof, (C) BlackBerry furnishes to Reseller on any reasonable request any information in BlackBerry's possession or control for such defense, (D) BlackBerry will not admit any such claim and/or make any payments with respect to such claim without the prior written consent of Reseller, and (E) BlackBerry shall, at Reseller's expense, cooperate with, and provide such assistance to Reseller in the defense of such claims as reasonably requested by Reseller.

12.4 Limitation of Liability. To the maximum extent permitted by applicable law:

- (a) In no event shall BlackBerry be liable to Reseller, its Affiliates or to any third party claiming through Reseller for, and Reseller hereby waives: (i) any loss of profits business revenue or earnings, anticipated savings, goodwill, contracts or business opportunities or data (whether such loss shall be considered direct or indirect); (ii) any loss or damage caused by delays (whether such loss shall be considered direct or indirect); and (iii) any indirect, economic, special, commercial, incidental, exemplary, punitive or consequential damages directly or indirectly arising out of or in connection with the transactions contemplated by this Agreement; the limitations, exclusions and disclaimers set out in this Agreement shall apply regardless of whether or not such damages could reasonably be foreseen or their likelihood or the possibility of greater loss has been disclosed to BlackBerry.
- (b) Subject always to the preceding paragraph, in no event shall BlackBerry be liable to Reseller, its Affiliates, or any third party claiming through Reseller, for any damages of any kind in excess of the fees paid by Reseller for purchases made pursuant to this Agreement in the twelve (12) months immediately preceding the incident giving rise to the liability.
- (c) The limitations, exclusions and disclaimers set out in this Agreement shall apply: (i) whether an action, claim or demand arises from a breach of warranty or condition, breach of contract, tort (including negligence), strict liability or any other kind of civil or statutory liability connected with or arising out of this Agreement; and (ii) to BlackBerry and its affiliated companies as well as BlackBerry's and such affiliated companies' directors, officers, employees, and independent contractors.

12.5 Reseller acknowledges and agrees that: (a) it is not entitled to any payments from BlackBerry as a result of Reseller's appointment as Reseller or termination or expiration thereof (whether by law, contract, operation of law, statute, regulation, or otherwise); and (b) BlackBerry shall have no responsibility or liability whatsoever to Reseller or any Customer or any party claiming through Reseller for any issues relating to third party products or services.

13. APPLICABLE LAW AND JURISDICTION.

13.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws as specified below ("**Governing Law**"), excluding conflicts of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods. Except as expressly provided herein, each Party irrevocably consents and submits to the exclusive jurisdiction of the courts as specified below and waives any objection thereto 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. As set out below, the Reseller's primary address shall determine the Governing Law of this Agreement and, unless the BlackBerry entity is indicated on the Order, the BlackBerry contracting entity. Where Reseller's primary address is located in:

- (a) Canada, Caribbean, South America, or any other region or country not listed in subsections (b) - (d) inclusive below: "**BlackBerry**" means BlackBerry Limited and the Governing Law of this Agreement is the laws of the Province of Ontario, Canada and the courts of the city of Toronto, Ontario, Canada shall have exclusive jurisdiction;
- (b) United States of America and Japan: "**BlackBerry**" means BlackBerry Corporation and the Governing Law of this Agreement is the laws of the State of California and the courts of the county of Santa Clara, California, U.S.A. shall have exclusive jurisdiction;
- (c) Europe, the Russian Federation, Middle East or Africa: "**BlackBerry**" means BlackBerry UK Limited and the Governing Law of this Agreement is the laws of England and Wales and the courts of the city of London, England shall have exclusive jurisdiction; and
- (d) Asia-Pacific (excluding Japan): "BlackBerry" means BlackBerry Singapore Pte. Limited and the Governing Law of this Agreement is the laws of the Republic of Singapore and the courts of the Republic of Singapore shall have exclusive jurisdiction.

13.2 Dispute Resolution.

- (a) Any dispute, claim or controversy (collectively "**Claims**") arising out of or relating to this Agreement involving BlackBerry Corporation (or other BlackBerry entity where Customer's primary address is in the United States of America), including the determination of the scope, applicability or adjudicative process associated with this Agreement, shall be submitted to and determined by arbitration in the county of Santa Clara, California, U.S.A. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. For Claims of five million United States dollars (\$5,000,000), or less, the arbitration shall be administered pursuant to JAMS' Streamlined Arbitration Rules and Procedures. Any judgment awarded by JAMS may be entered in any court having jurisdiction.
- (b) With respect to any dispute, claim or controversy arising out of or relating to this Agreement involving BlackBerry Limited, BlackBerry UK Limited and BlackBerry Singapore Pte. Limited or any other BlackBerry entity not covered by Section 13.2(a) above, the Parties waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement.

14. GENERAL

14.1 Delivery and Risk of Loss. All delivery dates communicated by BlackBerry are best estimates only and in no event will BlackBerry be liable for increased cost, loss of profits or good will or any other special, incidental or consequential damages due to late delivery or non-delivery of the BlackBerry Solution and/or Third Party Offerings.

14.2 Insurance. For the term of the Agreement, Reseller shall maintain adequate insurance for its activities under and in relation to this Agreement, including (without limitation): (a) any compulsory insurances as mandated by law within jurisdictions that Reseller is providing services; (b) insurance to protect BlackBerry property (if applicable); (c) insurance to provide coverage to Reseller's employees if injured while at work; and (d) insurance to protect Reseller against third parties or BlackBerry for loss, injury, damage or death. Upon BlackBerry's request, Reseller will provide to BlackBerry evidence confirming the insurance it has in place.

- 14.3 Audit. Reseller shall maintain accurate books and records related to its activities under this Agreement. No more often than once in any twelve (12) month period, BlackBerry may, at its expense, upon written notice and during business hours, audit Reseller's books and records to ensure compliance with this Agreement. The auditors shall protect the confidentiality of Reseller's information and abide by Reseller's reasonable security policies. Reseller's refusal to permit an audit within a period of thirty (30) calendar days following receipt of notice shall be a material breach of this Agreement.
- 14.4 Force Majeure. BlackBerry shall not be liable for its failure or delay in the performance of its obligations under the Agreement if such failure results from circumstances beyond its reasonable control, including but not limited to supplier strikes, lock-outs, labor disputes or availability, third party acts, war, riot, civil disorder, acts of terrorism, curtailment of transportation, work stoppages, epidemic, compliance with any law or governmental order, prohibition, rule, regulation or direction not in force on the date the Agreement commences ("**Event of Force Majeure**"). If an Event of Force Majeure continues for more than thirty (30) working days, BlackBerry shall have the right to terminate, without liability, to Reseller.
- 14.5 No Agency Relationship. Reseller acknowledges that this Agreement does not create an agency, joint venture, partnership, employment relationship, or franchise with BlackBerry. Neither Reseller nor its Affiliates shall have the authority to bind BlackBerry in any manner.
- 14.6 Compliance with Laws and Export Control. Reseller will comply with all applicable laws, ordinances, codes, regulations or policies, including without limitation any applicable privacy and data protection laws. Reseller agrees that the BlackBerry Solution may include cryptographic technology, data or information and will not be received, exported, imported, used, transferred, accessed or re-exported except in compliance with the applicable laws and regulations of the relevant government authorities, including without limitation any U.S. and Canadian export control and economic sanctions laws and regulations. Reseller represents that: (a) Reseller is eligible to resell the BlackBerry Solution under applicable law; and (b) Reseller will not resell the BlackBerry Solution for 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.
- 14.7 Legal and/or Regulatory. Reseller acknowledges and agrees that notwithstanding anything to the contrary contained in the Agreement, BlackBerry in its discretion may choose to not ship or make available any product and/or service which, in BlackBerry's determination, fails to comply with legal and/or regulatory and/or contractual requirements or restrictions, and/or which BlackBerry is otherwise prohibited from shipping or making available (either temporarily or permanently). Reseller irrevocably authorizes BlackBerry to register or file or disclose on its own behalf or on behalf of Reseller a copy of the Agreement or any portion thereof, as BlackBerry may determine in its sole discretion, with any government authority or agency or other administrative body or as BlackBerry determines may be necessary. Unless Reseller is expressly authorized by BlackBerry in writing or required by law, Reseller will ensure that the Agreement is not registered or filed anywhere or otherwise disclosed to any third parties. Where Reseller is required by a law of the Territory(ies) to disclose the Agreement, Reseller agrees to: (i) provide BlackBerry with sufficient notice to enable BlackBerry to seek an order to limit or preclude such disclosure; (ii) redact from the Agreement being disclosed, any commercial or other information that is not mandatory to disclose or legally permitted to be redacted; and (iii) ensure that the recipient is made aware of the confidential nature of the Agreement being disclosed. Unless otherwise expressly agreed to in writing by BlackBerry, Reseller acknowledges and agrees that BlackBerry is providing only English documentation. Any translation or localization obligations relating to the BlackBerry Solution, products and/or the English documentation, to comply with local legal, regulatory or other requirements shall be Reseller's responsibility and shall be performed by Reseller at Reseller's cost and only in accordance with BlackBerry's instructions and then current translation guidelines in effect from time-to-time.
- 14.8 Data Privacy and Protection.
- (a) Reseller expressly consents to BlackBerry's collection and use of certain Reseller personal information (including contact names, business addresses and email addresses), which information will be used to distribute communications and updates regarding this Agreement and any applicable BlackBerry Partner Program. All such personal information will be collected, processed and/or maintained by BlackBerry in accordance with BlackBerry's Privacy Notice (as may be amended from time-to-time by BlackBerry and which is incorporated by reference herein, the current version of which can be viewed at www.blackberry.com/us/en/legal/privacy-notice). Reseller may withdraw its consent at any time through links available in BlackBerry's Privacy Notice, or by writing to BlackBerry at: Privacy Office c/o BlackBerry Legal Department, 2200 University Avenue East, Waterloo, Ontario, Canada, N2K 0A7.
 - (b) Where BlackBerry has provided Reseller with contact information for BlackBerry's Authorized Distributors, which in certain jurisdictions may be deemed to be that distributor's personal information, Reseller will comply with all applicable laws related to the use and disclosure of such information.
- 14.9 Assignment and Successor. BlackBerry may assign this Agreement with Notice to Reseller. Reseller will not assign this Agreement in whole or in part, by operation of law or otherwise, without the prior written consent of BlackBerry and any assignment without BlackBerry's prior written consent shall be null and void and of no effect. BlackBerry may perform all obligations to be performed under this Agreement directly or may have some or all obligations performed by its Affiliates, contractors or subcontractors or may outsource the performance of some or all obligations to a third party.
- 14.10 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, email or facsimile addressed to the other Party at the address as the parties may from time-to-time designate in writing delivered pursuant to this notice provision. In addition to the above, Notices to BlackBerry are to be sent 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.

- 14.11 **Third Party Beneficiaries.** BlackBerry's in-bound suppliers and licensors are third party beneficiaries of the protections and restrictions set out in this Agreement. Except as otherwise specifically stated in this Section, the provisions of this Agreement are for the benefit of Reseller and BlackBerry and not for any other person or entity.
- 14.12 **Marketing and Promotion.** From time-to-time, BlackBerry lists and/or mentions its customers and channel partners in its marketing and communications initiatives. Reseller agrees that BlackBerry may use Reseller's name and logo worldwide, free of charge for such purpose for the duration of this Agreement. In addition, subject to applicable privacy law and BlackBerry's Privacy Policy, Reseller expressly consents to BlackBerry contacting Reseller for marketing or promotional purposes.
- 14.13 **Non-Exclusivity.** Reseller acknowledges that BlackBerry and/or BlackBerry affiliates may have appointed and may, from time-to-time, appoint other distributors, resellers and agents to distribute BlackBerry products and/or services in the Territory(ies), and that BlackBerry and/or BlackBerry affiliates may have distributed and may, from time-to-time, distribute directly or indirectly BlackBerry products and/or services in the Territory(ies) and that nothing in the Agreement precludes BlackBerry from doing any of the foregoing.
- 14.14 **Entire Agreement.** Unless otherwise specified in an addendum, this Agreement and the NDA, if one has been executed, is the complete agreement between the Parties concerning the subject matter of this Agreement and supersedes any prior agreement, whether oral or written between the Parties. There are no conditions, understandings, collateral agreements, representations, or warranties expressed or implied, that are not specified in this Agreement.
- 14.15 **Amendments.** Except to the extent expressly precluded by applicable law, this Agreement may be amended and/or supplemented by the Parties from time to time, pursuant to the following process:
- (a) where the Parties have agreed additional terms, conditions and/or restrictions in respect of a particular Order, by incorporating such terms in that Order;
 - (b) for new product and/or service introductions, or modifications to the way Reseller promotes, markets or resells a particular product and/or service, by BlackBerry issuing a notice to Reseller and providing Reseller with thirty (30) days to either accept or reject such change. If Reseller wishes to reject a change, Reseller agrees to provide BlackBerry with written notice of the same, outlining its specific concerns. The Parties will then mutually discuss and agree next steps, which may include a modification to this Agreement or termination of Reseller's rights hereunder. In the event BlackBerry does not receive such notice from Reseller at the end of the thirty (30) day notice period, then Reseller will be deemed to have accepted the change; and
 - (c) for all other modifications, by BlackBerry providing Reseller with a notice of amendment and requesting Reseller's express acceptance through the process prescribed by BlackBerry in its communication to Reseller. In the event BlackBerry does not receive express acceptance from Reseller pursuant to the prescribed process, then BlackBerry may terminate this Agreement in accordance with Section 7 (Term and Termination).
- 14.16 **No Waiver.** The waiver by either Party of any right provided under this Agreement must be in writing and signed by such Party and any waiver will not constitute a subsequent or continuing waiver of such right or of any other right under this Agreement.
- 14.17 **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 this Agreement valid and enforceable.
- 14.18 **Survival.** Sections 4.2(b) (Fees), 4.2(c) (Invoicing and Payment), 6 (Restrictions), 7 (Term and Termination), 8 (Termination Remedies), 9 (Effect of Expiration or Termination), 10 (Confidentiality), 11 (Ownership and Intellectual Property), 12 (Warranty, Limitation of Warranty, Indemnity and Limitation of Liability), 13 (Applicable Law and Jurisdiction), 14.6 (Compliance with Laws and Export Control), 14.7 (Legal and/or Regulatory), 14.18 (Survival), and 14.19 (Order of Precedence) will survive termination of this Agreement.
- 14.19 **Order of Precedence.** To the extent of a conflict between this Agreement and any Orders: (a) in respect of Sections 10 (Confidentiality), 11 (Ownership and Intellectual Property) and 14.6 (Compliance with Laws and Export Control), this Agreement will prevail; and (b) for all other Sections, unless the Order expressly states that it modifies or varies this Agreement, this Agreement will prevail.