



Research In Motion Australia Pty Limited  
Level 6, 100 Pacific Highway  
North Sydney NSW 2060

Committee Secretary  
Senate Legal and Constitutional Committees  
PO Box 6100  
Parliament House

May 10, 2011

Dear Committee Secretary,

In response to your request for additional information following my appearance before the Senate Legal and Constitutional References Committee, please note the following information.

First, I can provide some additional information on the process for mobile games and applications to be submitted to RIM. RIM requires vendors who submit applications to be listed on BlackBerry App World to comply with the terms of the legal agreements between the vendor and RIM, including the BlackBerry App World Vendor Guidelines, which are available on RIM's website. Please find attached those Guidelines and the App World Vendor Agreement.

Second, I can provide some additional details on how mobile games classification has been addressed internationally. Both Europe and North America have moved towards a self-regulatory approach in this area. As discussed in our submission, wireless carriers and mobile device manufacturers have worked together to establish voluntary industry guidelines and best practices for classification.

The international self-regulatory approach has allowed flexibility for new technologies while creating industry mechanisms to help consumers make informed decisions about mobile games content. Information on the industry's Carrier Content Guidelines developed in the US, and the European Framework for Safer Mobile Use by Younger Teenagers and Children, are attached for your reference.

It follows that RIM believes that an international approach to these issues is important given the global marketplace that has emerged for mobile games. To address this, RIM considers that the criteria developed by organizations such as the Entertainment Software Rating Board (ESRB) or the Motion Picture Distributors Association of Australia would provide a practical starting point for developing criteria for classifying mobile games.

We trust that this additional information is helpful to the Committee and would be pleased to be of further assistance if required.

Sincerely,

Adele Beachley  
Managing Director, Australia/New Zealand



Attachments:

1. BlackBerry App World Vendor Guidelines:  
<https://appworld.blackberry.com/isvportal/home/guidelines.seam>
2. BlackBerry App World Vendor Agreement:  
[http://us.blackberry.com/legal/BlackBerry App World Vendor Agreement 120210cl.pdf](http://us.blackberry.com/legal/BlackBerry_App_World_Vendor_Agreement_120210cl.pdf)
3. Carrier Content Guidelines:  
[http://files.ctia.org/pdf/CTIA Content Classification Guidelines.pdf](http://files.ctia.org/pdf/CTIA_Content_Classification_Guidelines.pdf)
4. European Framework for Safer Mobile Use by Younger Teenagers and Children:  
[http://www.gsmworld.com/documents/Safer Mobile Flyer.pdf](http://www.gsmworld.com/documents/Safer_Mobile_Flyer.pdf)

## BlackBerry App World™ Vendor Guidelines

RIM recognizes that the contributions of application developers are fundamental to the success of the BlackBerry App World™. The BlackBerry App World™ will strive to deliver the best application discovery experience of high quality offerings for BlackBerry users while simultaneously providing application developers with significant exposure and placement. RIM shall use the following guidelines when determining whether or not to accept an application submitted by a developer:

- Applications must be the property of and/or validly licensed to the vendor and must not violate intellectual property rights and the inclusion of your applications in the BlackBerry App World must not violate any agreements to which you are a party or of which you are otherwise aware;
- Any information shall be true, accurate, current and complete and updated as required. Any information and intellectual property (excluding the applications) that is provided to RIM or its agents as part of or along with an application, including, without limitation, user documentation and marketing materials and trademarks, designs and copyright therein ("Information"), must be the property of and/or validly licensed to the vendor and must not violate intellectual property rights. The inclusion of Information in the BlackBerry App World or elsewhere must not violate any agreements to which you are a party or of which you are otherwise aware;
- Applications must be functionally stable in all material respects on the designated target devices and must not interfere with, degrade or adversely affect any software (including, without limitation, other third party applications), service, system, network or data used by any person including RIM or an Airtime Service Provider or otherwise have a detrimental effect upon RIM and/or its brand, an Airtime Service Provider or any of their respective customers or products or services;
- The application must alert users to any potential airtime usage charges, if applicable;
- Applications must not contain or link to any content, or perform any function, that is illegal (e.g. against any criminal, civil or statutory law or regulation), including, without limitation, any libel, obscenity, breach of privacy, infringement or misappropriation of any intellectual property rights and/or other proprietary rights of any third party (including, without limitation, unlawfully circumventing any digital rights management protections), and must not contain or link to any content, or perform any function, that is abusive, belittling, harassing, deceptive, malicious or otherwise inappropriate, or provides for any portion of the suggested retail price to be made available to the end user to risk for possible monetary gain within such application;
- Applications must be: (i) commercially available; (ii) designed for installation by end users without further substantial support; (iii) provided to RIM in object code format only; and (iv) designed for general end user usage and not designed, developed, customized or modified for a specific customer or end user. Cryptographic functionality in Applications must be limited to the following: authentication, digital signature, or copyright protection. Authentication is defined as access control where there is no encryption of files or text except as directly related to the protection of passwords, Personal Identification Numbers (PINs) or similar data to prevent unauthorized access. If any cryptographic functionality is contained in any application, such cryptographic functionality cannot be easily changed by the end user;
- Vendor must: (i) have obtained all necessary permits, licenses, registrations, authorizations, approvals and declarations (including all necessary export permits) for the distribution of the applications and Information to RIM and on or through the BlackBerry App World; and (ii) provide RIM with any and all information requested by RIM so that RIM may obtain any necessary permits, licenses, registrations, authorizations, approvals and declarations (including all necessary export permits) to distribute the applications through BlackBerry App World;
- Applications must be submitted in COD/BAR file format generated using RIM's BlackBerry Java Development Environment (JDE) and/or RIM's JDE Plug-in for Eclipse, and be subject to an agreement relating to the use of those development tools ("BlackBerry SDK Agreement") between RIM and the vendor (or where the vendor is not the original developer of the application, between RIM and the developer);
- Applications and Information must not violate any terms or conditions of the BlackBerry SDK Agreement or any other agreements applicable to the applications or Information. The current version of the BlackBerry SDK Agreement can be found here: <http://www.blackberry.com/legal>;
- The foregoing points are guidelines only, and RIM reserves the right to accept, deny or remove any application from the BlackBerry App World at any time.

Please note that notwithstanding preliminary or final acceptance of an application by RIM for inclusion within the BlackBerry App World, such application may not be made available in all territories and/or to customers of all airtime service providers due to applicable laws in a specific territory and/or restrictions, including, without limitation, service terms, imposed by the applicable airtime service provider on availability of applications on its network.

Please check back often as updated guidelines may be posted by RIM from time to time.

Questions? Visit BlackBerry App World Vendor Support.

Version 2.1.4.3

## BLACKBERRY APP WORLD™ VENDOR AGREEMENT

THIS BLACKBERRY APP WORLD VENDOR AGREEMENT (“**AGREEMENT**”) IS ENTERED INTO BY AND BETWEEN YOU INDIVIDUALLY, IF YOU ARE AGREEING TO IT IN YOUR OWN CAPACITY, OR IF YOU ARE AUTHORIZED TO ENTER INTO THIS AGREEMENT ON BEHALF OF YOUR COMPANY OR OTHER ORGANIZATION, BETWEEN THE ENTITY FOR WHOSE BENEFIT YOU ACT (IN EITHER CASE, “**VENDOR**”) AND RESEARCH IN MOTION LIMITED (“**RIM**”), (RIM AND VENDOR ARE COLLECTIVELY THE “**PARTIES**” AND INDIVIDUALLY A “**PARTY**”). BY CLICKING ON THE APPROPRIATE BUTTON BELOW YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT. PLEASE NOTE THAT YOU MUST BE OVER THE AGE OF MAJORITY UNDER THE LAWS OF YOUR JURISDICTION TO ENTER INTO THIS AGREEMENT.

If Vendor has previously entered into the BlackBerry Application Storefront Developer Evaluation Agreement and/or the Developer Application Evaluation Agreement with RIM, this Agreement replaces and supersedes such agreements.

### 1. Definitions

1.1 “**Administration Service Fee**” means the fee specified on the Vendor Portal from time to time which Vendor is required to pay to RIM in order to: (a) apply to become a BlackBerry App World vendor; and (b) submit for evaluation and testing the Applications it wishes to have made available through the BlackBerry App World.

1.2 “**Application**” means a commercially released object code version (including without limitation any third party software contained therein) of a software application (or other downloadable content, identified in the Vendor Portal as types of products which may be made available through the BlackBerry App World) that Vendor submits, and includes both Free Applications and Paid Applications.

1.3 “**Application Revenue**” means all revenue received by Vendor with respect to an Application distributed to an End User through the BlackBerry App World by RIM, and any updates and upgrades thereto whether distributed through the BlackBerry App World or otherwise, including without limitation revenue derived directly or indirectly, through the use of the Application by an End User, with respect to any content made available within or by an Application, subscription fees, transactions and microtransactions, but excluding: (a) taxes, refunds and chargebacks; (b) any fees paid by an End User to an MoR to obtain a copy of the Application through an MoR Kiosk; and (c) any advertising revenue derived from an Application.

1.4 “**BlackBerry App World**” means the RIM owned and constructed storefront portal through which Applications, the My World repository, and certain services are made available to End Users.

1.5 “**BlackBerry App World Branding Guidelines**” means the BlackBerry App World branding guidelines, as amended from time to time and made available on the Vendor Portal.

1.6 “**BlackBerry App World Guidelines**” means the criteria used to evaluate Applications, as amended from time to time and made available on the Vendor Portal.

1.7 “**Carrier Networks**” means a carrier’s wireless telecommunications networks in a specified country, which Vendor designates through the Vendor Portal as carrier networks on which wireless handhelds, to which Applications are downloaded, may be activated (and includes any telecommunications networks owned or operated by any other telecommunications carriers in other regions or countries with whom such telecommunications carrier has a roaming agreement).

1.8 “**Dynamic License Key**” means a License Key generated based on a dynamic license key process and data supplied by RIM to Vendor.

1.9 “**End User**” means any person, organization or entity which acquires or attempts to acquire an Application through the BlackBerry App World for their own personal use on a RIM proprietary software platform and not for the purposes of resale.

1.10 “**End User Data**” means personally identifiable information about an End User, and information that can be used, together with other information or data, to personally identify an End User.

1.11 “**Free Applications**” means an Application for which no fee is charged the End User for the distribution of the Application through the BlackBerry App World.

1.12 “**Kiosk**” means a store or other business operated within the BlackBerry App World.

1.13 “**License Key**” means a digital key required to enable the use of a Paid Application by an End User.

1.14 “**MoR**” means any entity, other than RIM, that operates or otherwise controls a Kiosk, and in the case of Paid Applications made available through such Kiosk, acts as the merchant and/or seller of record for sales of such Paid Applications and may provide associated ecommerce functionality to support the sale of such Paid Applications.

1.15 “**MoR Kiosk**” means a Kiosk operated or otherwise controlled by an MoR.

1.16 “**My World**” has the meaning defined in Section 2.1.

1.17 “**Paid Applications**” means Applications for which a fee is charged in relation to the distribution or sale of the Application through an MoR Kiosk on the BlackBerry App World.

1.18 “**RIM Marks**” means the RIM product iconography (including without limitation smartphone imagery), the trademarks BlackBerry and BlackBerry App World, the Get It At BlackBerry App World logo and any other marks set out in the BlackBerry App World Branding Guidelines or otherwise provided to Vendor by or on behalf of RIM.

1.19 “**Taxes**” means all taxes, levies, imposts, customs, duties, fees or similar charges of any nature, including sales or use tax, excise tax, stamp tax or duty, any withholding tax or value added tax, imposed by any jurisdiction or governmental authority, except solely for those based on RIM’s net income.

1.20 “**Vendor Content**” means any information provided by Vendor to RIM, by means of the Vendor Portal or otherwise, including without limitation indirectly through an MoR.

1.21 “**Vendor Marks**” means the trademarks, logos, icons, screenshots, Application name, Vendor name and any other marks as provided by Vendor to RIM by means of the Vendor Portal or otherwise.

1.22 “**Vendor Portal**” means the portal provided by RIM through which Vendor applies for registration as a BlackBerry App World vendor and submits Applications it desires to have made available through the BlackBerry App World.

1.23 “**BlackBerry Tablet OS**” means RIM proprietary software designed and licensed for use on solely the BlackBerry PlayBook.

## **2. BlackBerry App World Requirements**

### **2.1 Description of the BlackBerry App World**

The BlackBerry App World is a RIM proprietary storefront comprised of various Kiosks established to serve as a channel for vendors to have applications and other downloadable content (identified on the Vendor Portal from time to time as the type of products that may be made available through the BlackBerry App World) resold and/or distributed to End Users. RIM also offers the My World repository to End Users, at no charge, to enable them to reinstall Paid Applications purchased and Free Applications obtained through the BlackBerry App World on their wireless handheld devices in accordance with the My World rules, and requires Vendors to grant to RIM and End Users the rights necessary to facilitate this repository. RIM also enables End Users to provide feedback on Applications available through the BlackBerry App World, and Vendor acknowledges and agrees that RIM shall have no liability for such End User feedback or the manner in which such End User feedback is used and/or displayed.

### **2.2 Additional Agreements for Paid Applications**

RIM does not act as the merchant and/or seller of record for Paid Applications, and if Vendor wishes to make Paid Applications available through the BlackBerry App World then: (a) these must be made available through an MoR Kiosk; and (b) Vendor will be required to enter into an agreement with one or more MoRs, including the MoR operating that Kiosk. For the avoidance of doubt, nothing in any such agreement shall amend, supersede or otherwise affect the provisions of this Agreement. The payment methods for Vendor in relation to Paid Applications will be determined by the MoR. As of March 2009, Vendor must have an account in good standing with PayPal Inc. in order to be paid the amounts it is due in relation to the resale or distribution of Paid Applications on MoR Kiosks.

### **2.3 Vendor Registration and Application Submission**

If Vendor wishes to use the BlackBerry App World as a channel for an Application, Vendor must apply through the Vendor Portal for registration as a BlackBerry App World vendor. In order to register, Vendor must pay the Administration Service Fee as set forth in the Vendor Portal from time to time, and unless another payment method is expressly authorized by RIM either on the Vendor Portal or otherwise, Vendor must make this payment(s) through their account with PayPal Inc. RIM shall notify Vendor whether Vendor has been accepted by RIM as a BlackBerry App World vendor, as determined in RIM’s sole discretion. If Vendor’s registration is rejected, the Administration Service Fee will be refunded to Vendor by RIM. If RIM notifies Vendor of RIM’s acceptance of Vendor as a BlackBerry App World vendor then: (a) that notice shall constitute RIM’s acceptance of this Agreement, which shall thereupon become a binding

agreement between RIM and Vendor; and (b) Vendor may then submit Applications through the Vendor Portal. Vendor shall submit only the latest production release version of Applications that comply with the BlackBerry App World Guidelines. Vendor must provide all information about each Application reasonably requested by RIM and any applicable MoRs through the Vendor Portal or otherwise, including without limitation any requested Vendor Content, Vendor's suggested Application category and the hardware, software and system requirements for each Application. The categorization of an Application shall be in RIM's sole discretion. RIM may from time to time request additional information and/or Vendor Content, and may require Vendor to supply this additional information and/or Vendor Content for Applications that have already been submitted by Vendor.

#### **2.4 Application Evaluation and Acceptance**

RIM may test, or have tested, and will evaluate Applications for their suitability as applications made available by RIM through the BlackBerry App World. RIM may also perform similar testing and evaluation services as a service provider for the MoRs. Such testing is for RIM's and/or an MoR's internal use only, and shall not be used as a representation by Vendor or any third party as to the performance or quality of an Application. RIM's testing and evaluation of Applications shall include without limitation assessing whether Applications comply with the BlackBerry App World Guidelines, and RIM reserves the right to test and evaluate each update, upgrade and version of an Application. Upon receiving notification from RIM that its Application has been accepted, Vendor may initiate the publication of that Application on the applicable Kiosk on the BlackBerry App World at the time it wishes, by indicating its intention to do so on the Vendor Portal. Subject to the terms of this Agreement, RIM will make the Application available to End Users within a commercially reasonable period of time after such initiation by Vendor.

#### **2.5 Application Availability**

Vendor may suspend the availability of an Application at any time by indicating its decision to do so on the Vendor Portal, and RIM shall arrange for the removal of the Application from the BlackBerry App World within a commercially reasonable period of time from RIM's receipt of notification from Vendor (as set out above) of its decision. However, Vendor acknowledges and agrees that RIM shall not have any obligation to remove a suspended Application from the My World repository of Applications for any End User and that nothing herein will affect an End User's right to continue to use an Application it has rightfully acquired through the BlackBerry App World. RIM and/or an MoR may, at any time, in their sole discretion and for any reason whatsoever, including without limitation a breach of the BlackBerry App World Guidelines, excessive returns or chargebacks associated with an Application, a payment processor's refusal to provide services in relation to an Application, Vendor's failure to meet the support obligations set out in this Agreement, or a third party claim made in relation to an Application, with or without advance notice to Vendor, cease to make available any Applications through the BlackBerry App World or a specific Kiosk, at all, or in part, including only in specified jurisdictions, and nothing in this Agreement shall constitute RIM's or any MoR's commitment to make available, or to continue to make available, Vendor's Applications. If RIM does not provide Vendor with notice of the removal prior to it taking place, RIM shall do so, by means of the Vendor Portal or otherwise, within a commercially reasonable period following the removal. Vendor further acknowledges and agrees that RIM reserves the right, but has no obligation, to remove an Application from an End User wireless handheld device and/or disable (in whole or in part) the operation of an Application, and the End User's access to such Application through My World, if the End User's payment for that Application has been refunded by or charged back to the



applicable MoR, or if the End User has engaged in fraud, or as provided in the BlackBerry App World Guidelines (including without limitation a breach thereof). Notwithstanding the foregoing, Vendor further acknowledges and agrees that RIM may, at any time, in RIM's sole discretion and for any reason whatsoever, remove an Application from an End User's wireless handheld device and/or remove such Application from the End User's My World repository.

### **3. Licenses**

#### **3.1 Application License**

Vendor hereby grants to RIM a non-exclusive, worldwide royalty-free license to: (a) use, reproduce, have reproduced, make and have made Applications submitted to the Vendor Portal, for the purposes of evaluating and testing Applications on RIM's own behalf or on behalf of MoRs, and to permit third parties to do so; and (b) use, reproduce, have reproduced, make, have made, import, distribute, sell and offer to sell (*i.e.* in the case of Free Applications to distribute, market and otherwise promote) through the BlackBerry App World Free Applications to End Users with wireless handhelds activated on Carrier Networks and to End Users with any other RIM proprietary wireless handhelds that are distributed by RIM without the capability of operating on a wireless cellular network; (c) use, reproduce, have reproduced, make, have made, import, offer to sell and distribute Applications for the purposes of providing delivery, fulfillment and/or other services to MoRs that are making Applications available through their MoR Kiosk; and (d) use, reproduce, have reproduced, make, have made, import, and distribute Applications to the extent necessary to enable the My World digital repository (as defined from time to time) for Applications made available through the BlackBerry App World, and to permit third parties to perform the activities listed above on behalf of RIM. The rights (including the license rights) and obligations under this Agreement shall extend to RIM's affiliates. RIM shall be liable for any breach of this Agreement by any of its affiliates.

#### **3.2 License Key Generation**

For Paid Applications Vendor shall be required to indicate to RIM through the Vendor Portal whether, and what type of, License Keys are required for an Application, and shall provide the appropriate mechanisms as described in the Vendor Portal to provide RIM the appropriate License Keys. In order to enable the generation of a Dynamic License Key RIM shall supply to Vendor data, which may include End User Data, which Vendor shall only use for the purpose of generating a Dynamic License Key. For each Paid Application, Vendor shall generate a License Key for each wireless handheld device on which an End User is authorized to use such Paid Application, including wireless handheld devices on which End Users are authorized to download and install Applications by means of the My World repository.

#### **3.3 License Restrictions**

Vendor acknowledges and agrees that Applications may be downloaded by End Users with wireless handhelds operating on Carrier Networks and that Carrier Networks includes not only the wireless networks selected by the Vendor, but also on the wireless networks operated by the roaming partners of these carriers. If Vendor does not have the rights necessary to distribute an Application (and any portion thereof) either globally, or at least to End Users with wireless handhelds activated on both the selected and roaming wireless networks, and to permit others to do so, or Vendor is otherwise unable to control the jurisdictions in which End Users may download and/or use that Application, then Vendor must not make, or seek to make, that Application available through the BlackBerry App World.

### **3.4 Application EULA**

Vendor shall include the end user license agreement (“Application EULA”) under which Vendor wishes to license its Applications within such Applications for the particular jurisdictions in which the Application is to be made available. The Application EULA shall at a minimum include provisions excluding RIM, airtime service providers (which for clarity includes telecommunications carriers), and any MoR making the Application available through its Kiosk, from any liability whatsoever in relation to Applications made available through the BlackBerry App World (not necessarily by name, but at least by role, *e.g.* channel partners and associated service providers) including without limitation in relation to the sale, distribution or use thereof, or the performance or non-performance of Application, and shall make RIM, airtime service providers, and any such MoR third party beneficiaries to the Application EULA in respect of these provisions. The Vendor must also provide End Users with at minimum notice of any limitations on the countries and/or Carrier Networks in or on which the Application may be installed and/or used.

Vendor acknowledges and agrees that neither RIM nor any MoR is under any obligation to enforce in any manner the provisions of the Application EULA, neither RIM nor any MoR shall be responsible for any breach of the Application EULA or any other agreement between Vendor and an End User. Any provision of the Application EULA inconsistent with the provisions of this Agreement shall not have any force or effect in respect of Applications made available to End Users through the BlackBerry App World.

Vendor hereby acknowledges and agrees that notwithstanding any terms or conditions in the Application EULA: (a) RIM and/or MoRs may make it a condition of their agreements with End Users, that an Application made available through the BlackBerry App World, be downloaded, installed and used only on a RIM proprietary handheld software platform operating on a wireless handheld device; and (b) that End Users may reinstall copies of Applications on to their wireless handheld devices from their My World repository in accordance with the then current rules, features and functionality of the My World repository.

### **3.5 Vendor Marks License**

Vendor hereby grants to RIM a non-exclusive, royalty-free license during the Term to use, reproduce and display the Vendor Marks and Vendor Content for the purposes of: (a) operating the BlackBerry App World, including without limitation providing delivery, fulfillment and/or other services as fulfillment agent of any applicable MoR; (b) RIM’s marketing and promotion of the BlackBerry App World and Applications, including without limitation promotional offers, gift cards and the like; and (c) RIM’s distribution, directly and indirectly through third parties, of marketing and promotional materials displaying Vendor Marks and/or Vendor Content. RIM’s uses of the Vendor Marks as set out in subparagraphs (b) and (c) in this Section must be approved by Vendor in writing in advance of each use that is materially different from RIM’s use of the Vendor Marks for the purposes of operating the BlackBerry App World, including without limitation providing delivery, fulfillment and/or other services as fulfillment agent of any applicable MoR. Any such required Vendor consent shall not be unreasonably withheld or delayed and such consent shall be deemed given if Vendor does not provide notice to RIM of approval or non-approval within five (5) business days of Vendor’s receipt of RIM’s written request. RIM agrees that all of RIM’s uses of the Vendor Marks shall inure to the benefit of Vendor. Without limiting the foregoing, RIM will not: (i) modify the Vendor Marks, except as expressly approved in writing by Vendor in advance; (ii) combine the Vendor Marks with any

other marks or create any composite marks; or (iii) do anything that would compromise Vendor's rights in and to the Vendor Marks.

### **3.6 RIM Marks License**

RIM hereby grants to Vendor a non-exclusive, non-transferable, royalty-free license within the regions and countries in which RIM has commercially launched the BlackBerry App World and during the Term to use, reproduce and display the RIM Marks solely in accordance with the BlackBerry App World Branding Guidelines and solely for the purposes of Vendor's marketing and promotion of the BlackBerry App World and Applications for use on a RIM proprietary software platform, including without limitation promotional offers, gift cards and the like. Vendor's uses of the RIM Marks must be approved by RIM in writing in advance of each use that is materially different from a previously approved use. Vendor agrees that all of Vendor's uses of the RIM Marks shall inure to the benefit of RIM. At RIM's request, Vendor shall supply RIM with specimens displaying Vendor's uses and/or intended uses of the RIM Marks. Without limiting the foregoing, Vendor will not: (i) modify the RIM Marks, except as expressly approved in writing by RIM in advance; (ii) combine the RIM Marks with any other marks or create any composite marks; or (iii) do anything that would compromise RIM's rights in and to the RIM Marks.

### **3.7 Web Linking License**

RIM hereby grants to Vendor a non-exclusive, non-transferable, royalty-free license during the Term to establish within Vendor's website a hypertext link to the URL for the BlackBerry App World. Such hypertext link shall be either a text link or a logo link solely in accordance with the BlackBerry App World Branding Guidelines. Vendor shall regularly maintain its website such that its content remains current, accessible and in good taste.

## **4. Intellectual Property**

### **4.1 Intellectual Property Rights**

Vendor does not acquire any right, title or interest in or to any RIM intellectual property. Other than as expressly set forth herein, RIM does not acquire any right, title or interest in or to any Vendor intellectual property.

### **4.2 Feedback**

RIM wishes to ensure the BlackBerry App World is a premier channel for vendors. In order to enable RIM to do so Vendor hereby grants to RIM (with respect to any Vendor Content that identifies any ideas, suggestions, changes, concepts, comments and other feedback relating to the Vendor Portal, BlackBerry App World and related products, processes and programs (collectively "Feedback")) a non-exclusive, worldwide, royalty-free, sub-licensable and non-revocable license to develop, make, have made, reproduce, have reproduced, import, modify, make derivative works of, sell, and offer to sell Feedback as part of RIM's technology, products or services. Vendor shall not knowingly provide RIM with any Feedback that is subject to third party intellectual property rights or that includes or reveals any confidential information of Vendor or of any third party.

### **4.3 No Reverse Engineering**

Except to the extent that this prohibition is precluded by law, RIM may not modify any Application without the Vendor's express written permission, and may not reverse engineer, disassemble or decompile any Application.

#### **4.4 Independent Development**

Notwithstanding any other provision of this Agreement, Vendor acknowledges and agrees that RIM is also a software developer and licensee of applications that operate on RIM proprietary software platforms, and that RIM may currently or in the future develop, use, market, promote, distribute and/or license products and/or services that are similar to and/or competitive with any Applications, and that no provision of this Agreement prohibits RIM from doing so.

### **5. Application Revenue Fee**

#### **5.1 Application Revenue Fee**

Vendor shall pay to RIM thirty percent (30%) of Application Revenue (which as defined in this Agreement excludes any fees paid by an End User to an MoR to obtain a copy of an Application through an MoR Kiosk) ("**Application Revenue Fee**") on a calendar quarterly basis in arrears, payable within thirty (30) days of the end of each calendar quarter. Vendor shall provide to RIM a monthly report outlining calculation of the Application Revenue Fee for the applicable month in accordance with United States generally accepted accounting principles. Vendor shall pay the Application Revenue Fee in United States dollars by electronic funds transfer as directed by RIM to Vendor in writing.

#### **5.2 Audit**

During the Term of this Agreement Vendor agrees to keep records, in accordance with United States generally accepted accounting principles, relating to the calculation of the Application Revenue Fee. To verify such calculations RIM may, during the Term and no more than one (1) time per calendar year, at its sole cost and expense, request such records and Vendor shall provide such records to RIM. If any such audit demonstrates that Vendor has underpaid the Application Revenue Fee by at least five percent (5%) and at least two-thousand and five-hundred dollars (\$2,500) in a given quarter, Vendor shall immediately pay to RIM the reasonable costs of such audit (but not to exceed ten thousand dollars (\$10,000)) and the amount of such underpayment, and RIM shall be entitled to perform such audit two (2) times per calendar year. Further, RIM may appoint a third party, selected at RIM's sole discretion, to perform such audit.

#### **5.3 Taxes**

Vendor shall be responsible for and shall pay all Taxes due under or in relation to this Agreement. All amounts payable by Vendor to RIM under or in relation to this Agreement are exclusive of any Taxes that may be assessed by any jurisdiction or governmental authority, whether based on gross revenue, the delivery, possession, use or commercial distribution of Applications or any service, or otherwise. If Vendor is required to withhold any Taxes from payments owing to RIM under this Agreement: (a) the amount of the payment due will be automatically increased to totally offset such Taxes, so that the amount actually remitted to RIM, net of all Taxes required to be withheld, equals the amounts invoiced or otherwise due; and (b) Vendor shall notify RIM within thirty (30) days in the event such payments have been assessed and/or paid. Vendor agrees to indemnify and hold harmless RIM from and against any liability (either directly or by way of deduction, withholding or otherwise) for any present or future taxes.

## **6. Reporting**

RIM will, from time to time, provide Vendor with aggregated data on downloads of Applications made available through the BlackBerry App World. Notwithstanding the obligations set out in Section 9, Vendor acknowledges and agrees that RIM can obtain and publicly disclose aggregate data relating to the distribution of Applications through the BlackBerry App World.

## **7. Support**

Vendor is solely responsible for, and agrees to provide, reasonable technical and product support to End Users with respect to the product features, installation and use of Applications made available through BlackBerry App World, which shall include at minimum a warranty for each Application consistent with the laws in the jurisdiction of the End User. RIM shall provide End Users with support in downloading Applications made available through the BlackBerry App World, but shall not be responsible for any support obligations with respect to these Applications. Vendors will provide all reasonable support to RIM to allow RIM to provide this support, including notification of any Application issues which may result in the failure of a download or any changes to compatibility requirements. Vendor must provide RIM and End Users, by means of the Vendor Portal or otherwise, with a support contact email address and may also provide a support URL, to enable End Users to obtain support for Applications. Vendors must provide RIM with at least thirty (30) days' notice of any change to the Vendor's support contact information. RIM may provide Vendor support contact information directly to End Users and/or service providers and may publish this information within the BlackBerry App World, and through RIM training and support tools including self service web forums.

Vendor acknowledges and agrees that for Paid Applications the applicable MoR is responsible for and shall have sole discretion in setting and applying the returns policy for Paid Applications made available through that MoR's Kiosk.

## **8. Privacy**

### **8.1 Consent to Collection of Information**

By Vendor submitting personal information relating to Vendor and/or its employees and/or independent contractors (which may or may not, depending on applicable law, include, without limitation, a name, address, email address, authorized payment method account details, verification of identification as specified by RIM, and/or telephone number), to RIM, its affiliates, agents and/or independent contractors, and/or any applicable MoRs, Vendor consents to the collection, use, processing, transmission, and/or disclosure of such information by RIM, its affiliates, agents and/or independent contractors, and/or any applicable MoRs, and Vendor represents, warrants and covenants to RIM that it has obtained all consents necessary under applicable law from individuals to disclose their personal information to RIM, its affiliates, agents and/or independent contractors, and/or any applicable MoRs and for RIM, its affiliates, agents and/or independent contractors, and/or any applicable MoRs, to collect, use, process, transmit, and/or disclose such personal information, for: (a) the internal use of RIM and its affiliates, including, without limitation: (i) understanding and meeting Vendor's needs and preferences; and (ii) managing and developing RIM's business and operations; (b) any purpose related to the provision and/or Vendor's use of the BlackBerry App World, Vendor Portal and/or related processes, programs, products and/or services; (c) any purposes permitted or required by any applicable law; and/or (d) any of the other purposes which are set out in RIM's then current

privacy policy, which may be viewed at <http://www.blackberry.com/legal/privacy.shtml>. The collection, use, processing, transmission, and/or disclosure of the personal information described above for the purposes noted above are in strict accordance with RIM's privacy policy and applicable privacy laws. RIM reserves the right to modify its privacy policy from time-to-time in its sole discretion and Vendor agrees to regularly review RIM's privacy policy for any updated information. Vendor agrees to inform all individuals whose personal information Vendor provides to RIM that they may have rights to access and correct their personal information under applicable laws and regulations.

## **8.2 Privacy and Data Protection**

To the extent RIM, its affiliates, agents and/or independent contractors, and/or any applicable MoR, provide Vendor with any End User Data or personal information, Vendor shall only use such End User Data or personal information in accordance with the purpose for which it was provided to Vendor under this Agreement, including without limitation to enable Dynamic License Key generation. Further, Vendor agrees to: (a) comply with all applicable privacy legislation and, to the extent it does not violate any applicable legislation, Vendor's privacy policy (including without limitation with respect to any End User Data, including any End User Data made accessible to Vendor by RIM, its affiliates, agents and/or independent contractors, and/or any applicable MoR or airtime service provider), which privacy policy shall be consistent with the privacy obligations set forth in the BlackBerry App World Guidelines; (b) use best efforts to ensure the confidentiality of End User Data via encryption or similar means; and (c) not use End User Data to offer any of Vendor products or services to End Users or any other party in violation of the CAN-SPAM Act of 2003 (Controlling the Assault of Non-Solicited Pornography and Marketing Act) or other applicable laws, rules or regulations. If Vendor provides End User Data to RIM, its affiliates, agents and/or independent contractors, and/or any applicable MoR, Vendor represents and warrants that Vendor will have obtained any necessary consent from the End User to disclose the End User Data to RIM, its affiliates, agents and/or independent contractors, and/or any applicable MoR. Nothing in this Agreement shall restrict Vendor from using for Vendor's lawful business purposes (in compliance with Vendor's privacy policy, which privacy policy shall be consistent with the privacy obligations set forth in the BlackBerry App World Guidelines) any data provided to Vendor directly by an End User in connection with that End User's registration or use of an Application, provided that in all events Vendor complies with all applicable privacy legislation and Vendor's privacy policy, which privacy policy shall be consistent with the privacy obligations set forth in the BlackBerry App World Guidelines.

## **9. Confidentiality**

Except for Application Revenue information there is no need for Vendor to provide to RIM any confidential information under this Agreement, and accordingly Vendor acknowledges and agrees that except as expressly set out in this Section 9, despite any confidentiality agreements between Vendor and RIM, RIM has no confidentiality obligations with respect to any information provided by Vendor to RIM under or in relation to this Agreement or the BlackBerry App World. Subject to RIM's obligations as expressly set out in this Agreement, including those in Section 4.3, RIM shall have no confidentiality obligations with respect to the object code form of an Application or any Vendor Content. Other than as part of aggregated data or as required to enforce its rights under this Agreement, or as required by law, RIM will not disclose Application Revenue information to any third party other than Vendor, RIM's affiliates and their respective professional advisors.

## **10. Vendor Representations, Warranties and Covenants**

Vendor hereby represents, warrants and covenants to RIM that: (a) the Vendor Content, including without limitation any information contained in any user documentation or marketing materials, is true, accurate, current and complete; (b) Vendor has the right and authority to enter into this Agreement and to grant to RIM the rights contemplated by this Agreement, and that doing so will not breach the terms of any other agreement to which Vendor is a party, or of which Vendor is otherwise aware; (c) Vendor is over the age of majority in his or her jurisdiction, as applicable; (d) all Applications that Vendor submits to RIM shall be submitted only in COD file format, except in the case of Applications for the BlackBerry Tablet OS in which case all such Applications that Vendor submits to RIM shall be submitted only in BAR file format; (e) each Application is developed and distributed under an agreement : (i) between RIM and the Vendor, or between RIM and the licensor of the Application, as applicable, that provides for the use of RIM's BlackBerry Java Development Environment (JDE), BlackBerry Java SDK (formerly BlackBerry Java Development Environment (JDE) Component Package), BlackBerry Java Plug-in (formerly BlackBerry Java Development Environment (JDE) Plug-in for Eclipse), BlackBerry WebWorks Plug-ins (formerly BlackBerry Plug-in for Microsoft Visual Studio and BlackBerry Web Development Plug-in for Eclipse), BlackBerry WebWorks Packager, BlackBerry WebWorks SDK, BlackBerry Theme Studio, BlackBerry Tablet OS SDK for Adobe AIR, and/or BlackBerry Tablet OS Native SDK; and (ii) if applicable, in the case of themes, between Plazmic Inc. (Plazmic) and the Vendor, or between Plazmic and the licensor of the themes, as applicable, for the use of Plazmic's Content Developer's Kit (CDK); (in either case an "SDK Agreement"), that SDK Agreement remains in effect, and Vendor has not breached, and is not aware that the licensor of the Application, as applicable, has breached, any provision of that SDK Agreement; (f) all Applications are designed for installation by end users without further substantial support by the Vendor; (g) all Applications are generally available to the public by being sold, without restriction, from stock at retail selling points by electronic transactions; (h) if applicable, such cryptographic functionality cannot be easily changed by the end user (for clarification, if any Application contains code signing or code obfuscation to prevent the cryptographic functionality from being changed, the cryptographic functionality shall not be considered to be easily changeable by the end user); (i) all Applications are designed for general end user usage and are not designed, developed, customized or modified for specific customers such as military or government end users; (j) Applications shall not be capable of use in the development, production, handling, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or their missile delivery systems, or of materials or equipment that could be used in such weapons or their missile delivery systems; and (k) Applications shall not contain, or be derived in any manner (in whole or in part), from any software, including without limitation open source software, that requires the disclosure or distribution of the source code of the Applications, or any portion thereof, by RIM, its agents or independent contractors, including without limitation by means of the BlackBerry App World, or that requires that any third party proprietary software contained within an Application be: (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making modifications or derivative works; (iii) reproduced and/or redistributed at no or minimal charge; (iv) permitted to be reverse engineered; or (v) otherwise distributed on terms that impede the ability to distribute and license such third party software as the licensor of such third party software sees fit; (l) each Application complies with all applicable laws, and without limiting the foregoing, no content within and/or made available directly or indirectly by means of that Application, is libelous, slanders or defames any person or individual, contains obscene or pornographic material, is illegal to use or otherwise violates the BlackBerry App World Guidelines in effect at the time of submitting each Application, as applicable, through the Vendor Portal, and Vendor shall comply with (and Vendor has not breached) the BlackBerry App World Guidelines; (m) Vendor has identified to RIM all restrictions, including without limitation restrictions related to the Carrier

Networks in or on which Applications may be distributed and/or used; (n) to the best of Vendor's knowledge the Vendor Content, Vendor Marks and Applications do not infringe the rights, including without limitation the intellectual property rights, of any third parties; (o) Vendor shall comply with all applicable consumer and marketing laws and regulations; (p) Vendor shall supply to End Users warranties for Applications and associated services in accordance with all applicable laws and regulations; (q) Vendor shall not submit any Applications through the Vendor Portal in respect of which RIM and/or its service providers would be required to obtain any government related export, import, use, supply and/or transfer permits; (r) Vendor has complied with all applicable laws and regulations (including obtaining all necessary classifications, permits, licenses, authorizations, approvals, and declarations (including all necessary export permits)) in relation to the development of the Applications and their distribution to and by RIM and/or a third party RIM designates; (s) the Applications are provided to RIM in object code format only; (t) Vendor is the owner or distributor of the Applications and has all rights necessary to make the Applications available through the BlackBerry App World with respect to the Carrier Networks and countries identified by Vendor in the Vendor Portal; (u) the Applications are designed for operation and use on a RIM proprietary software platform operating on wireless handheld devices.

#### **11. Warranty Exclusions**

RIM IS PROVIDING ACCESS TO THE BLACKBERRY APP WORLD, THE VENDOR PORTAL AND ASSOCIATED PROGRAMS, PROCESSES, PRODUCTS, SERVICES AND RIM MARKS ON AN "AS IS" AND "AS AVAILABLE" BASIS. RIM MAKES NO REPRESENTATIONS OR WARRANTIES, AND THERE ARE NO CONDITIONS, ENDORSEMENTS, GUARANTEES, REPRESENTATIONS OR WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED, (INCLUDING WITHOUT LIMITATION ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF QUALITY, PERFORMANCE, RESULTS, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, MERCHANTABLE QUALITY, DURABILITY, TITLE, NON-INFRINGEMENT OR ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF THE TRADE) ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ARISING OUT OF OR RELATED TO THE BLACKBERRY APP WORLD, THE VENDOR PORTAL OR ANY ASSOCIATED PROGRAMS, PROCESSES, PRODUCTS OR SERVICES OR THEIR PERFORMANCE OR THEIR FAILURE TO PERFORM.

#### **12. Indemnification**

Vendor shall indemnify, hold harmless, and if requested by RIM defend, RIM, airtime service providers, RIM's affiliates, agents, successors and assigns and their respective directors, officers, employees and independent contractors (each a "**RIM Indemnified Party**") from any costs, damages, losses, settlement fees, and expenses (including without limitation attorney fees and disbursements) incurred directly or indirectly by a RIM Indemnified Party as a result of Vendor's breach of this Agreement and/or as a result of any third party claim, suit, proceeding, judgment, settlement, or cause of action: (a) alleging the infringement, violation or misappropriation of any intellectual property right, including a patent, design, industrial design, copyright, trade secret or trademark or other proprietary right, by any Applications, Vendor Marks or Vendor Content or the use or distribution thereof, or the combination of any Applications with any other hardware, software, system, or service; (b) alleging libel, slander, or defamation related to any Applications or the use or distribution thereof; (c) alleging any injury, death or property or other damage arising from or related to the performance or non-performance of any Applications or the use or



distribution thereof; (d) based on any representations or misrepresentations made by Vendor, including without limitation representations or misrepresentations made by Vendor relating to any Applications; or (e) otherwise related to or arising from any Applications or the use or distribution thereof. In the event of becoming aware of any such claim a Party shall: (i) notify the other Party promptly of such claim; (ii) provide to the other Party all information and assistance reasonably requested in relation to such claim, at Vendor's expense; and, (iii) not admit any liability or agree to any settlements by or on behalf of the other Party with respect to such claims without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. If RIM has requested Vendor to defend a claim, and RIM, at any time, has a reasonable basis to believe that Vendor cannot or may not be able to fulfill Vendor's obligations under this Section 12, then, without limiting Vendor's obligations under this Section 12, RIM shall be entitled to provide notice to Vendor that it has decided to become the defending Party, and thereafter to assume control of the defense and/or settlement of any such claim. If a RIM Indemnified Party is required to indemnify any third party (including without limitation, an MoR or airtime service provider) in respect of a claim made against that third party in relation to any of Vendor's Applications, any claim covered by that indemnity shall be deemed to be a third party claim made against RIM and covered by this provision. Once RIM notifies Vendor that it will be seeking an indemnity, unless otherwise expressly agreed in writing, all communications (including the notice) will be deemed confidential information of RIM, which may not be disclosed by Vendor to any third party, other than Vendor's legal advisors, without the prior express written permission of RIM, and in addition, all communications in respect of any such claim shall be subject to common interest privilege. If a claim hereunder brought against an airtime service provider is also a claim with respect to which RIM or any RIM affiliate is required to indemnify such airtime service provider, then RIM shall, in its sole discretion elect to have such claim treated as a claim against RIM or against the airtime service provider or both under this provision, and shall notify Vendor of same.

### **13. Exclusion of Liability**

IN NO EVENT SHALL ANY AIRTIME SERVICE PROVIDER, OR EXCEPT WITH RESPECT TO RIM'S BREACH OF SECTION 4.3 OR SECTION 9, RIM, BE LIABLE FOR ANY DAMAGES WHATSOEVER DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE BLACKBERRY APP WORLD, THE VENDOR PORTAL OR IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT (INCLUDING WITHOUT LIMITATION ANY DAMAGES INCURRED BY VENDOR AS A RESULT OF DEVELOPING OR LICENSING APPLICATIONS, VENDOR'S USE OF THE VENDOR PORTAL OR BLACKBERRY APP WORLD, THE REJECTION, REMOVAL OR UNAVAILABILITY OF AN APPLICATION OR IF RIM DISCONTINUES THE BLACKBERRY APP WORLD), WHETHER OR NOT SUCH DAMAGES COULD REASONABLY BE FORESEEN OR THEIR LIKELIHOOD HAS BEEN DISCLOSED TO RIM OR AN AIRTIME SERVICE PROVIDER. IN NO EVENT SHALL RIM HAVE ANY LIABILITY WHATSOEVER WITH RESPECT TO PAYMENTS DUE TO VENDOR BY AN MOR. Airtime service providers shall be third party beneficiaries solely for the purposes of this Section 13 and Sections 3.4, 10(l), 10(n), 10(o), 10(r), 12, and 14-16.

### **14. Limitation of Liability**

IN NO EVENT SHALL ANY AIRTIME SERVICE PROVIDER, OR EXCEPT WITH RESPECT TO RIM'S BREACH OF SECTION 4.3 OR SECTION 9, RIM, BE LIABLE FOR ANY DAMAGES THAT EXCEED, IN THE AGGREGATE, FOR ALL CLAIMS ARISING FROM OR RELATED TO THIS AGREEMENT, THE BLACKBERRY APP WORLD OR THE

VENDOR PORTAL, THE SUM OF TWO HUNDRED AND FIFTY UNITED STATES DOLLARS (\$250.00).

**15. Application**

The limitations, exclusions and disclaimers set out in this Agreement shall apply: (a) 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 (b) to RIM and its affiliates and to airtime service providers as well as RIM's and such affiliate's directors, officers, employees, and independent contractors.

IN NO EVENT WILL RIM'S OR ITS AFFILIATES' OFFICERS, DIRECTORS OR EMPLOYEES HAVE ANY PERSONAL LIABILITY UNDER OR IN RELATION TO THIS AGREEMENT. IN NO EVENT SHALL RIM'S SUPPLIERS OR SERVICE PROVIDERS, OR THE MORS, HAVE ANY LIABILITY WHATSOEVER ARISING FROM OR RELATING TO THIS AGREEMENT. FURTHER, THE EXCLUSIONS AND LIMITATIONS OF LIABILITY IN THIS AGREEMENT SHALL APPLY TO RIM'S AFFILIATES. THE PERSONS MENTIONED IN THIS PROVISION SHALL BE THIRD PARTY BENEFICIARIES OF THIS AGREEMENT SOLELY FOR THE PURPOSES OF OBTAINING THE BENEFIT OF THIS PROVISION.

**16. Exceptions**

SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS OR EXCLUSIONS OF CERTAIN TYPES OF DAMAGES AND/OR WARRANTIES AND CONDITIONS. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET FORTH IN THIS AGREEMENT SHALL NOT APPLY IF AND ONLY IF AND TO THE EXTENT THAT THE LAWS OF A COMPETENT JURISDICTION REQUIRE LIABILITIES BEYOND AND DESPITE THESE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS.

**17. Termination**

**17.1 Term**

This Agreement shall become effective as provided herein and shall continue in full force and effect until the termination of this Agreement in accordance with the provisions herein ("Term").

**17.2 Termination**

Vendor may terminate this Agreement for convenience at any time upon delivering to RIM at least thirty (30) days' notice of its decision to do so. RIM may terminate this Agreement for convenience by providing to Vendor at least ninety (90) days written notice of its decision to do so. If Vendor is in breach of this Agreement, RIM may terminate this Agreement by delivering notice of its decision to do so, if Vendor has not cured the breach (or the breach is not capable of being cured) within thirty (30) days of RIM delivering notice to Vendor of its breach. In addition, RIM may terminate this Agreement immediately: (a) if Vendor, or if Vendor has licensed the distribution rights for the Applications, the licensor(s) for those Applications, entered into an SDK Agreement with RIM or Plazmic to develop the Application, as applicable, that is no longer in good standing; (b) if RIM is prevented by law or regulation from operating the BlackBerry App World and/or the Vendor Portal or any component thereof or in RIM's opinion

RIM is or may become subject to liability as a result of operating BlackBerry App World, the Vendor Portal, using Vendor Marks or Vendor Content, or this Agreement being in place; or (c) with respect to any Paid Applications Vendor makes available through the BlackBerry App World, if for any reason and at any time, RIM does not have an agreement in place with an MoR to provide this channel. Where termination is effective immediately on the occurrence of an event, if RIM does not provide Vendor with notice of such termination prior to the effective date of such termination, RIM shall do so, by means of the Vendor Portal or otherwise, within a commercially reasonable period following the effective date of such termination.

### **17.3 Effect of Termination**

In the event of any termination of this Agreement: (a) RIM and all applicable third parties may continue to exercise the rights granted herein with respect to Applications for a period not to exceed thirty (30) days from any termination of this Agreement; (b) notwithstanding the foregoing, RIM and all applicable third parties may continue to exercise the rights granted herein with respect to Applications for the purposes of the My World component of the BlackBerry App World; (c) RIM and all applicable third parties may continue to exercise the rights granted herein with respect to Vendor Marks for a period not to exceed ninety (90) days from any termination of this Agreement; (d) RIM shall not be responsible for removing from the BlackBerry App World or Vendor Portal any Vendor Marks or Vendor Content Vendor has submitted to RIM, by means of the Vendor Portal or otherwise; and (e) subject to the foregoing, Vendor shall immediately remove from the BlackBerry App World, by means of the Vendor Portal, all Applications, Vendor Marks and Vendor Content Vendor has submitted by means of the Vendor Portal. Vendor's rights granted under this Agreement, including without limitation with respect to RIM Marks, shall immediately terminate on any termination of this Agreement.

### **17.4 Survival**

The terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the performance hereof shall so survive the completion of performance or termination of this Agreement. Without limiting the generality of the foregoing, the provisions of Sections 1, 2.1, 2.4, 2.5, 3.1, 3.2, 3.4, 3.5, 4, 5, 8, 10-16, 17.3, 18 and this Section 17.4 shall survive any termination of this Agreement.

## **18. General**

### **18.1 Amendments**

As this Agreement has no specified term, RIM reserves the right to make changes to the provisions of this Agreement from time to time. In the event of any such revisions that are material in nature, RIM will provide Vendor with written notice to the most recent address or email address provided by Vendor to RIM by means of the Vendor Portal, and RIM may provide notice of other revisions by posting the revised version of the Agreement on the Vendor Portal. Changes to this Agreement to reflect business practices or legal requirements, or changes in legal requirements, shall become effective as of the date RIM provides notice of such changes to Vendor. All other changes to this Agreement shall become effective ninety (90) days after the date RIM provides notice of such changes to Vendor.

## **18.2 Assignment**

This Agreement may not be assigned by Vendor without RIM's express prior written authorization, and any such assignment without RIM's express prior written authorization shall be null and void and of no effect. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the Parties and their successors and assigns. RIM may, without notice to Vendor, assign this Agreement. Further, RIM may perform all obligations, if any, to be performed by RIM under this Agreement directly or may have some or all obligations performed by its affiliates, agents and/or independent contractors.

## **18.3 Entire Agreement**

This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and cancels and supersedes any prior discussions, correspondence, understandings, agreements, or communication of any nature relating to the subject matter of this Agreement. Subject to Section 18.1, all changes to this Agreement must be made in writing and must be signed by both Parties.

## **18.4 Governing Law**

This Agreement is governed by and construed under the laws of the State of New York, excluding any body of law governing conflicts of law. Vendor 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 irrevocably consents and attorns to the non-exclusive jurisdiction of the courts located in the State of New York for any claims arising from or related to this Agreement. The Parties hereby waive all rights to a trial by jury in any matter arising out of or relating to this Agreement. No dispute between the Parties, or involving any person but Vendor, may be joined or combined together, without the prior written consent of RIM.

## **18.5 Notice**

If RIM wishes to deliver notice to You, except as expressly set out in this Agreement, it must do so in writing by using any of the addresses (postal or email) You provide through the Vendor Portal, and must deliver the notice by courier or email to Vendor. Notice shall be effective and deemed delivered upon receipt provided that if any such notice fails to reach Vendor because the information provided on the Vendor Portal is not accurate or up to date, notice shall be deemed sufficiently delivered on the date it was sent. If You wish to give RIM notice of any kind, You must do so in writing and deliver it by courier which provides a written proof of delivery to RIM, addressed to RIM's legal department at 295 Phillip Street, Waterloo, Ontario, N2L 3W8, and notice shall be effective upon RIM's receipt of same.

## **18.6 Relationship**

This Agreement does not create any agency or partnership relationship between the Parties.

### **18.7 Severability**

If a court of competent jurisdiction declares any provision in this Agreement invalid or unenforceable, such invalidity or unenforceability shall have no effect on the remainder of the Agreement which shall remain in full force.

### **18.8 Waiver**

Neither Party is to be deemed to have waived or forfeited any right under this Agreement, whether on the basis of failure, delay or any other legal or equitable doctrine, unless such waiver is made in writing signed by an authorized signatory of the party against whom the waiver is sought to be enforced. Waiver of any provision, or any breach of any provision, of this Agreement in one instance shall not constitute a waiver as to any other instance.

### **18.9 Export**

Vendor agrees to provide to RIM through the Vendor Portal and other means, including but not limited to email, all requested export information applicable to any Application. The BlackBerry App World is designed only to accept Applications that meet, among others, the following criteria: (1) generally available to the public by being sold, without restriction, from stock at retail selling points by electronic transactions; (2) designed for installation by the End User without further substantial support by the Vendor; and if applicable (3) the cryptographic functionality cannot be easily changed by the End User. Vendor agrees not to submit Applications that do not meet the above criteria. Applications with incomplete or inaccurate export information will not be made available through the BlackBerry App World. Regardless of terminology in applicable laws, rules and regulations specifying the party responsible for obtaining any government related export, import, use, supply and/or transfer permits ("Export Permits") required for any Application, Vendor is solely responsible for obtaining and shall obtain all such Export Permits prior to submitting any such Applications through the Vendor Portal. Vendor shall make any Export Permit available to an MoR, RIM and/or its service providers upon request. In no event shall MoR, RIM and/or its service providers obtain or be required to obtain any Export Permit needed to receive or enable the download of any Application. Vendor agrees not to submit Applications which require a US government review prior to availability without also submitting at the same time a valid Commodity Classification Tracking System (CCATS) number. Vendor acknowledges and agrees that government regulations and laws may further restrict the availability of Applications regardless of the Carrier Networks and/or countries indicated by Vendor in the Vendor Portal, and that RIM is in no way required to make any Application available contrary to RIM's interpretation of these regulations and laws.

### **18.10 Remedies**

No remedy herein conferred upon RIM is intended to be, nor shall it be construed to be, exclusive of any other remedy provided herein or available at law or in equity, but all such remedies shall be cumulative.



To provide consumers with the information and tools they need to make informed choices when accessing content using a wireless handset, CTIA and the participating wireless carriers have voluntarily adopted the following Guidelines for Carrier Content Classification and Internet Access ("Guidelines").

THE WIRELESS CARRIERS THAT ARE SIGNATORIES TO THESE GUIDELINES WILL:

**1. Develop voluntary content classification standards for Carrier Content and an implementation policy.**

The participating wireless carriers agree to classify Carrier Content in a minimum of two classifications: (1) Generally Accessible Carrier Content that is available to consumers of all ages; and (2) Restricted Carrier Content accessible only to consumers age 18 years and older or to a consumer less than 18 years of age when specifically authorized by a parent or guardian.

"Carrier Content" shall mean any content made available to consumers by the participating carriers in the following content categories: video and images, music and audio, games, adult-oriented text-based entertainment services, and lotteries and gambling. "Carrier Content" does not include content that is: 1) generated, owned, or provided by the end users, including message boards, chat rooms, blogs, etc., or 2) accessed by the user via the public Internet (or other public data networks). "Carrier Content" shall be designated as either generally accessible or restricted to consumers age 18 years and older.

"Restricted Carrier Content" shall mean Carrier Content that is generally recognized as appropriate only for, or that is legally restricted to, persons at least 18 years of age, *e.g.*, lotteries, gambling, or material that is excessively violent or sexually explicit.

The content classification standards will be applied to Carrier Content, and will be based on, or use, existing classification criteria established and maintained by third party entities not affiliated with the carriers.

**2. Not provide Restricted Carrier Content until access controls are deployed.**

A participating wireless carrier will not provide Restricted Carrier Content until the carrier has deployed controls that can restrict access to such content.

**3. Provide controls that restrict access to Carrier Content based on content classifications.**

If a participating wireless carrier offers Restricted Carrier Content, the carrier will restrict, or provide controls that restrict the consumer's access to such content based on the content classification standard.

Implementations of access controls shall be at the sole discretion of the individual carriers.

**4. Provide Internet access controls.**

Participating wireless carriers will make available to consumers filters or other tools that are designed to restrict access to content on the public Internet or other public data networks upon the development of reasonably effective, commercially available tools for wireless handsets. Implementation of Internet content access controls will vary according to each carrier's unique business plans and technological capabilities.

**5. Comply with applicable laws.**

The participating wireless carriers will comply with applicable laws regarding the protection of minors and cooperate with appropriate law enforcement agencies as required by law on reported and known illegal content.

**6. Educate consumers about our commitment to give our customers information and tools to manage wireless content.**

CTIA and the participating wireless carriers will launch a communication and education effort regarding consumer management of wireless content.

**7. Define content rating standards.**

The participating wireless carriers will define content rating standards to more fully inform consumers as to the characteristics of Carrier Content and its suitability for particular audiences. The content rating standards may be created, maintained and updated by third party entities not affiliated with the carriers and, to the furthest extent reasonably practicable, will leverage existing rating systems familiar to consumers.

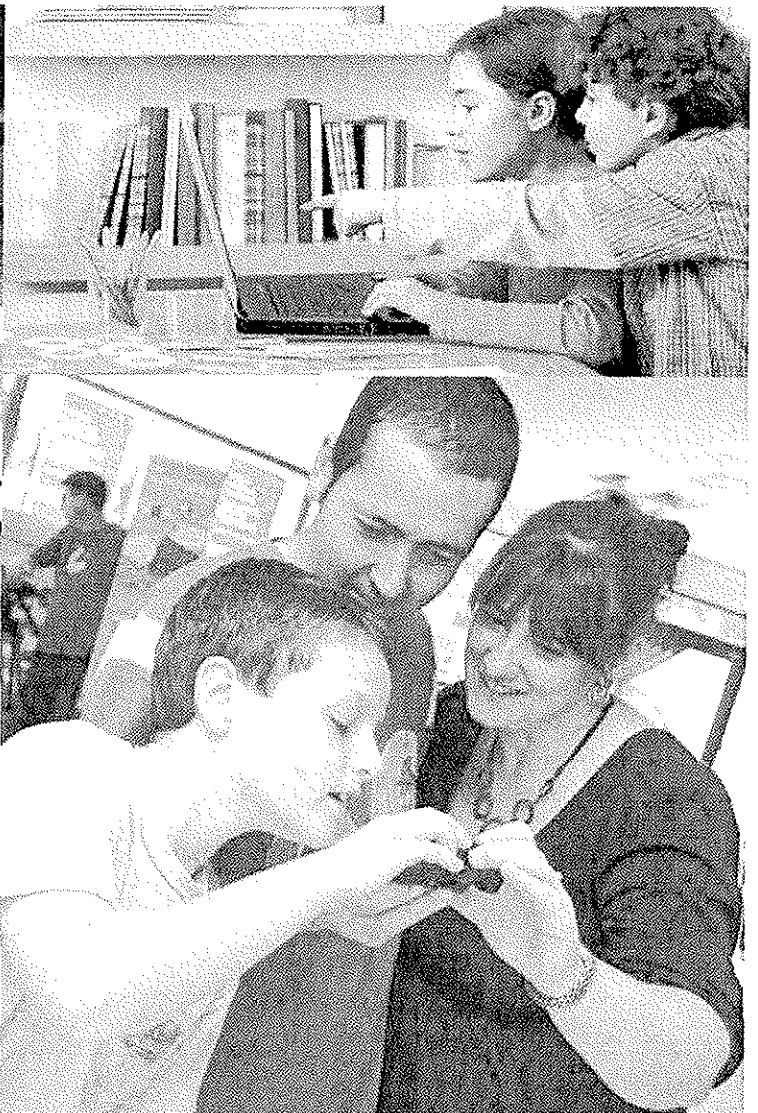
Implementation of content rating standards shall be at the sole discretion of the individual carriers.



Europe

# European Framework for Safer Mobile Use by Younger Teenagers and Children

The European Framework for Safer Mobile Use by Younger Teenagers and Children was developed by the European mobile industry to ensure that children can safely access content on their mobile phones. Endorsed by Viviane Reding, European Commissioner for Information Society and Media, the agreement has led to the roll-out of codes of conduct on safer mobile use in 23 EU Member States to the benefit of 96% of European mobile customers.







As growing numbers of mobile operators offer their customers access to a rich and compelling range of content services, they are faced with the challenge of how to manage content which would have been subject to age restrictions if accessed through different channels.

To address the issue directly and to create a framework within which a wide range of content services can be offered to customers, the European mobile industry developed the European Framework for Safer Mobile Use by Younger Teenagers and Children. The Framework lays down a number of recommendations designed to ensure that children and younger teenagers can safely access content on their mobile phones.

- Classification of commercial content – mobile operators’ own and third-party commercial content should be classified in line with existing national standards of decency and appropriateness so as to identify content unsuitable for viewing by children and younger teenagers;
- Access control mechanisms – appropriate means for parents for controlling children’s access to this content should be provided;
- Education and awareness-raising – mobile operators should work to raise awareness and provide advice to parents on safer use of mobile services, and ensure customers have ready access to mechanisms for reporting safety concerns;
- Fighting illegal content on mobile community products and the Internet – mobile operators should work with law enforcement agencies, national authorities and INHOPE or equivalent bodies to combat illegal content on the Internet.

The Framework was drawn up by GSMA Europe members in consultation with the European Commission and other child protection stakeholders, and launched in Brussels on Safer Internet Day, 6 February 2007, in the presence of Viviane Reding, European Commissioner for Information Society and Media.

The signatories to the Framework are:

- AS FMT
- Alands Mobiltelefon
- Belgacom
- Bouygues Telecom
- Cosmote
- CYTA
- Deutsche Telekom Group
- Elisa Eesti AS
- Hutchison 3G Europe
- Go Mobile
- KPN
- Mobilkom Austria
- Mobitel EAD
- Mobitel
- Orange France Telecom Group
- P&F Luxembourg
- SER
- Tele2
- Telecom Italia
- Telefonica
- Telenor
- TeliaSonera
- TDC Mobil Norden
- Vivotel
- Vodafone
- Wind Hellas

To date, the Framework’s recommendations have been transposed by the participating mobile operators into self-regulatory codes of conduct in 23 EU Member States. As a result, 580 million mobile subscribers, representing 96% of the EU mobile customer base, currently benefit from the initiative.

“As mobile broadband networks proliferate enabling Europeans to easily access a rich selection of content via their handsets, our industry is moving in a timely fashion to ensure the necessary safeguards are in place to enable parents to have confidence in their children using these mobile services safely.”

Kaisu Karvala, Chair of GSMA Europe

“This agreement is an important step forward for child safety. I congratulate the mobile phone industry for moving towards protecting minors. It shows that responsible self-regulation can work at European level.”

Viviane Reding, European Commissioner for Information Society and Media

For further information about the European Framework for Safer Mobile Use by Younger Teenagers and Children, visit [http://www.gsmeurope.org/safer\\_mobile/](http://www.gsmeurope.org/safer_mobile/) or contact Alice Valvodova at GSMA Europe (avalvodova@gsm.org).