

# End User License Agreement



## END USER LICENSE AND WARRANTY AGREEMENT

For all M86 Products and Services, including but not limited to: M86 Secure Web Gateway, M86 WebMarshal, M86 Web Filtering and Reporting Suite, M86 Mail Marshal, M86 Security Reporter and M86 Secure Messaging Service

**Last Updated:** [customized for State of Washington]

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2.3 **Restrictions.** Except as provided for herein, You agree not to: (i) rent, lease, sublicense, loan, sell, distribute, market or commercialize any portion of any Product or its components; (ii) install, store or execute the Software or M86 service on any server, desktop, or other computer or environment operated by any parent, subsidiary, and/or affiliated company of You or by any other party; (iii) permit any third parties to benefit from the use or functionality of the Product(s), either directly or via a facility management, timesharing, service bureau or any other arrangement; (iv) assign or otherwise transfer (either voluntarily or by operation of law) any or all of the rights granted to You under this Agreement without M86's prior written consent unless such transfer/assignment occurs by operation of law; (v) rename files of, modify, translate, localize, port, decompile, disassemble, decrypt, reverse engineer, attempt to derive source code

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2.5 United States Government Legend. If the Software is being acquired directly or indirectly on behalf of the U.S. Government, the following will apply. For civilian agencies and departments: the Software was developed at private expense and is "restricted computer software" submitted with restricted rights in accordance with subparagraphs (a) through (d) of the Commercial Computer Software-Restricted Rights clause of FAR 52.227-19 and its successors, and it is unpublished and all rights are reserved under the copyright laws of the U.S. For units of the Department of Defense, the Software is "commercial computer software" and "commercial computer software documentation" under the Rights in Computer Software and Computer Software Documentation clause of DEAR 227.7202-3(a) and its successors, and all use, duplication or disclosure is subject to the license and restrictions set forth in this Agreement.

2.6 Term and Termination. This Agreement is effective as of the date the Product is first installed or accessed, and, unless Software is licensed under a perpetual License Key, will terminate when the support and subscription services for the Product are not renewed (the "Term"). This Agreement will also terminate automatically and immediately if You fail to comply with any term or condition of this Agreement or fail to pay any amounts due and payable to M86 or its authorized reseller, and such termination shall be in addition to and not in lieu of any criminal, civil or other remedies available to M86. Upon such termination, You agree to immediately stop using the Software, purge the Software from the Hardware / environment, destroy any copies of the Software and related documentation in any form, stop using the M86 service, and provide M86 written certification of the same. The preceding sentence, Sections 2.2, 2.3, 2.4, 3.3, 3.4, 3.5, 4.4, Sections 5 through 12, and any other provisions that explicitly state they shall survive, shall survive any termination of this Agreement.

2.7 Root Access Materials. If M86 determines in its sole discretion that Your use of Your licensed Product's software requires root access materials, M86 will provide You with an M86 User Name, Password(s) and Authentication Information (the "Access Materials") for internal use by You to act as a system administrator to access such applicable licensed Product's software. Such Access Materials may only be used by You in connection with Your license of

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### 3. WARRANTY AND DISCLAIMERS; TECHNICAL SUPPORT.

3.1 Product Warranty and Remedies. M86 warrants to You that the Product will be free from defects in workmanship and materials and will perform in substantial conformance to its specifications published by M86 for a period of one (1) year from the date of original purchase from M86 or an M86 authorized reseller; provided that if the Software is offered together with the Hardware or for a specified environment, then the most current version of the Software must be installed on the Hardware and /or operated in the specified environment, as applicable, for this warranty to apply. M86's entire liability and Your exclusive remedy shall be, at M86's sole option and expense, to replace the Product with a comparable Product, repair the Product, or if neither repair nor replacement is reasonably available, M86 may, in its discretion, refund to You the purchase price paid for the Product on a twelve (12) month pro-rated basis. Replacement Hardware Product may be new or reconditioned. M86 warrants any replaced or repaired Product for a period of ninety (90) days from shipment or through the end of the original warranty, whichever is longer. All Product replaced becomes the property of M86. M86 will not be responsible for Your software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to M86 for repair, whether under warranty or not.

3.2 Obtaining Warranty Service. You must first contact during normal business hours the technical support department of the authorized reseller who sold You the Product (or M86 if M86 sold You the Product directly) within the applicable warranty period to obtain a warranty service authorization. If appropriate, Your reseller will provide You with instructions regarding M86's Return Merchandise Authorization process. If M86 determines that the Product is covered by warranty and requires a Return Merchandise Authorization, M86 will

issue You a Return Merchandise Authorization letter for replacement or repair (which repair may be through M86's remote Technical Service option for warranty repairs, if such remote warranty service is available for the particular Product and You authorize remote access in accordance with Section 3.5 below). M86 is not responsible for Product received without a Return Merchandise Authorization number if one is required. M86 may in its discretion ship a replacement Product before receiving the original Product ("**Advance Exchange**"). If Advance Exchange is not available, then the repaired Product will be shipped (or for replacement Software, may be made available for download) as soon as commercially reasonable. Repaired or replacement Product will be shipped to You at M86's expense. Product shipped by You to M86 must be sent prepaid and packaged appropriately for safe shipment, and it is recommended that the package be insured or sent by a method that provides for tracking of the package. When Advance Exchange is provided and You fail to return the original Product to M86 within thirty (30) days from the date the Return Merchandise Authorization is issued, M86 will charge You, and You agree to pay M86, the then-current published catalogue price of such Product.

3.3 DISCLAIMER. EXCEPT AS SET FORTH IN SECTION 3.1 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PRODUCT AND SUPPORT AND SUBSCRIPTION SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND M86 AND ITS SUPPLIERS AND RESELLERS MAKE NO WARRANTIES, GUARANTEES, OR REPRESENTATIONS OF ANY KIND WHATSOEVER, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, NO WARRANTY OR REPRESENTATION THAT THE PRODUCT OR THE SUPPORT AND SUBSCRIPTION SERVICES WILL MEET YOUR REQUIREMENTS OR WILL WORK IN COMBINATION WITH ANY HARDWARE, SOFTWARE APPLICATIONS OR ENVIRONMENTS PROVIDED BY THIRD PARTIES, THAT THE OPERATION OF THE PRODUCT OR THE SUPPORT AND SUBSCRIPTIONS SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL DEFECTS IN THE PRODUCT OR SUPPORT AND SUBSCRIPTION SERVICES WILL BE CORRECTED. IF THE PRODUCT DOES NOT OPERATE AS WARRANTED IN SECTION 3.1, YOUR SOLE REMEDY FOR BREACH OF THAT WARRANTY WILL BE REPLACEMENT OR REPAIR OF THE PRODUCT OR REFUND OF THE PURCHASE PRICE PAID ON A TWELVE MONTH PRO-RATED BASIS, AT M86'S OPTION. TO THE MAXIMUM EXTENT ALLOWED BY LAW, THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, TERMS, OR CONDITIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, CORRESPONDENCE WITH DESCRIPTION, AND NON-INFRINGEMENT, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. YOU ACKNOWLEDGE THAT YOU HAVE RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTY IN SECTION 3.1 AND THAT NO WARRANTIES ARE MADE BY ANY OF M86'S SUPPLIERS OR RESELLERS. M86 NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE, INSTALLATION, MAINTENANCE OR USE OF THE PRODUCT. WITHOUT LIMITING THE FOREGOING PROVISIONS, YOU ASSUME SOLE RESPONSIBILITY FOR EVALUATING THE ACCURACY, COMPLETENESS, AND USEFULNESS OF ALL SERVICES, PRODUCTS, AND OTHER INFORMATION, AND SOLE RESPONSIBILITY FOR THE INSTALLATION OF, USE OF, AND RESULTS OBTAINED FROM THE PRODUCTS. SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. THE FOREGOING PROVISIONS SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

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YOU ACKNOWLEDGE THAT ANY DATA TRANSMISSION OR STORAGE IS SUBJECT TO THE LIKELIHOOD OF HUMAN AND MACHINE ERRORS, MALICIOUS MANIPULATION, OMISSIONS, DELAYS, AND LOSSES, INCLUDING, BUT NOT LIMITED TO, INADVERTENT LOSS OF DATA OR DAMAGE TO MEDIA THAT MAY RESULT IN LOSS OR DAMAGE TO YOU AND/OR YOUR PROPERTY, AND/OR YOUR DETRIMENTAL RELIANCE ON MALICIOUSLY MANIPULATED DATA. M86 SHALL NOT BE LIABLE FOR ANY SUCH ERRORS, OMISSIONS, DELAYS, OR LOSSES. YOU ARE RESPONSIBLE FOR ADOPTING REASONABLE MEASURES TO LIMIT THE IMPACT OF SUCH PROBLEMS, INCLUDING BACKING UP DATA, EXAMINING AND CONFIRMING RESULTS PRIOR TO USE, ADOPTING PROCEDURES TO IDENTIFY AND CORRECT ERRORS AND OMISSIONS, REPLACING LOST OR DAMAGED MEDIA, AND RECONSTRUCTING DATA. YOU ARE ALSO RESPONSIBLE FOR COMPLYING WITH ALL LOCAL, STATE, FEDERAL AND PROVINCIAL LAWS PERTAINING TO THE USE AND DISCLOSURE OF ANY DATA.

3.4 Exclusions. M86 will not be liable under the warranty set forth in Section 3.1 if its testing and examination disclose that the alleged defect or malfunction in the Product does not exist or was caused by You or any third person's misuse, neglect, improper installation, configuration or testing, unauthorized attempts to open, repair, or modify the Product, or any other cause beyond the range of its intended use, or by accident, fire, lightning, other hazards, circumstances beyond M86's control, or acts of God. The warranty set forth in Section 3.1 does not apply when the malfunction results from the use of Product in conjunction with accessories, other products, or ancillary or peripheral hardware or unauthorized environments and M86 determines that there is no fault with the Product itself. This warranty does not apply to any malfunction or failure of the Product due to any communication service or Internet service provider You may subscribe to or use with the Product. Any work performed by M86 that is not covered by warranty may be charged at M86's then current time and materials rates.

3.5 Obtaining Technical Support. You may contact the technical support department of the authorized reseller who sold You the Product (or M86 if M86 sold You the Product directly) for technical support issues as may be applicable to your support plan for the Product. For Hardware based or virtualized Products, You may elect to provide M86 remote access by configuring the Hardware or environment and opening the appropriate access on Your firewall or other network control device. Doing so would enable M86 to remotely diagnose, remediate and verify the remediation of issues with the Product, confirm information about the Product, assist with installation

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#### 4. INDEMNIFICATION.

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~~4.2 Continued Use. To avoid infringement, even if not alleged, M86 may, at its sole option and at no charge to You, obtain a non-exclusive license, modify, substitute an equivalent of, or remove the Product from You. If the Product is removed by M86 for this reason, M86 will refund the unamortized portion of the purchase price received by M86 for the infringing portion of the Product, based on a pro-rated basis over the applicable license term or, if the Product is under a perpetual license, on a three (3) year straight line amortization commencing on the date of first delivery of the Product to You under this Agreement.~~

~~4.3 M86 Liability. M86's total liability to You for any and all infringement claims related to the Product or the support and subscription services will be strictly limited to the obligations set out in Sections 4.1 and 4.2 and will be subject to all of the limitation of liability provisions set out in Article 5. M86 MAKES NO OTHER EXPRESS OR IMPLIED WARRANTY OF NON-INFRINGEMENT OR LIABILITY FOR INFRINGEMENT OR ANY DAMAGES THEREFROM, AND THE FOREGOING WILL BE YOUR EXCLUSIVE REMEDY.~~

~~4.4 Indemnification. You agree to defend, indemnify and hold harmless M86 and its directors, officers, employees, affiliates, agents and suppliers from and against all claims, defense costs (including reasonable expert and attorneys' fees), judgments and other expenses arising out of or on account of any negligent act, omission, or willful misconduct by You or on Your behalf in (i) the installation or use of the Product or (ii) Your compliance or failure to comply with this Agreement.~~

#### 5. LIMITATIONS OF LIABILITY.

5.1 LIMITATIONS OF LIABILITY. TO THE FULLEST EXTENT ALLOWED BY LAW, YOU ACKNOWLEDGE AND AGREE THAT M86, ITS SUPPLIERS AND ITS AUTHORIZED RESELLERS WILL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION, DAMAGES ARISING FROM: LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, LOSS OF GOODWILL, LOSS OR DISCLOSURE OF CONFIDENTIAL INFORMATION OR OTHER INFORMATION OR DATA, UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA, ANY INFORMATION OR DATA SENT OR RECEIVED OR NOT SENT OR RECEIVED, BUSINESS INTERRUPTION, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, PERSONAL INJURY, LOSS OF PRIVACY, FAILURE TO MEET ANY DUTY INCLUDING A DUTY OF GOOD FAITH OR OF REASONABLE CARE, NEGLIGENCE (WHETHER ACTIVE OR PASSIVE), AND ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE SALE, INSTALLATION, MAINTENANCE, USE, PERFORMANCE, FAILURE, OR INTERRUPTION OF THE PRODUCT OR THE SUPPORT AND SUBSCRIPTION SERVICES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE, GROSS NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE AND EVEN IF M86, ITS SUPPLIERS OR ITS AUTHORIZED RESELLERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ADDITIONALLY, YOU ACKNOWLEDGE AND AGREE THAT THE TOTAL LIABILITY TO YOU OR ANY THIRD PARTY OF M86 AND ITS SUPPLIERS AND AUTHORIZED RESELLERS UNDER THIS AGREEMENT OR WITH RESPECT TO THE SUPPORT AND SUBSCRIPTION SERVICES IS LIMITED TO REPLACEMENT, REPAIR OR REFUND OF THE PURCHASE PRICE OR LICENSE FEE PAID FOR THE PRODUCT ON A PRO-RATED BASIS OVER THE APPLICABLE LICENSE TERM OR, IF THE PRODUCT IS UNDER PERPETUAL LICENSE, ON A THREE (3) YEAR STRAIGHT LINE AMORTIZATION COMMENCING ON THE DATE OF FIRST DELIVERY OF THE PRODUCT TO YOU UNDER THIS AGREEMENT, AT M86'S OPTION.

5.2 DISCLAIMER. THE LAWS OF SOME COUNTRIES, STATES, OR PROVINCES REGULATE OR DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED CONDITIONS, TERMS OR WARRANTIES OR THE LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR CERTAIN PRODUCTS, OR THE LIMITATION OF LIABILITY FOR DEATH, PERSONAL INJURY OR FRAUD, OR THE EXCLUSION OR RESTRICTION OF LIABILITY FOR BREACH OF CONTRACT, NEGLIGENCE OR MISREPRESENTATION, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY BE LIMITED IN THEIR APPLICATION TO YOU. IF THE LAWS OF ANY JURISDICTION HAVING APPLICABILITY TO THIS AGREEMENT REGULATES OR DOES NOT PERMIT ANY SUCH LIMITATIONS, RESTRICTIONS AND/OR EXCLUSIONS, THEN (I) EACH WARRANTY, TERM OR CONDITION THAT CANNOT BE EXCLUDED WILL BE LIMITED IN TIME TO THE DURATION OF THE APPLICABLE WRITTEN WARRANTY CONTAINED IN SECTION 3.1; (II) SUCH LIMITATIONS, RESTRICTIONS AND/OR EXCLUSIONS SHALL BE CONSTRUED AND MODIFIED TO THE EXTENT NECESSARY TO COMPLY WITH SUCH LAWS; AND (III) M86'S TOTAL LIABILITY TO YOU FOR BREACH UNDER THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT STATED IN SECTION 5.1.

~~5.3 TIMING; JURY TRIAL WAIVER. YOU ACKNOWLEDGE AND AGREE THAT NO ACTION, REGARDLESS OF FORM, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS AGREEMENT OR THE SUPPORT AND SUBSCRIPTION SERVICES MAY BE BROUGHT BY YOU MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED, AND YOU HEREBY KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY WAIVE YOUR RIGHT TO A JURY TRIAL WITH RESPECT TO ANY SUCH ACTION.~~

5.4 **Basis of the Bargain; Failure of Essential Purpose.** You acknowledge and agree that M86 has entered into this Agreement and determined the fees charged for the Product in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth in this Agreement and that the same form an essential basis of the bargain between the parties. You also acknowledge and agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive and apply even if found to have failed of their essential purpose.

6. **SPECIAL PROVISIONS REGARDING OPEN SOURCE AND THIRD PARTY SOFTWARE.** The Products may contain or be distributed with third party software covered by an open source software license ("Open Source Software") or other third party software ("Third Party Software") covered by a different license. If Open Source Software is included, the terms and conditions of this Agreement do not apply to the Open Source Software. If Third Party Software is included, the terms and conditions of this Agreement may not apply to Third Party Software. Information concerning the inclusion of Open Source Software and Third Party Software not covered by this Agreement, if any, and the notices, license terms and disclaimers applicable to such software are contained in the "About Box" accessible when running the Software, the "ThirdPartySoftware.txt" file accompanying the Software, and/or in such other Open Source Software or Third Party Software documentation provided by M86.

7. **HIGH RISK ACTIVITIES.** The Products are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the Products could lead directly to death, personal injury, or severe physical or property damage (collectively, "**High Risk Activities**"). M86 expressly disclaims any express or implied warranty of fitness for High Risk Activities.

8. **CONFIDENTIALITY.** You agree that the Products, including, but not limited to, all source and object code components, screen shots and displays, graphical user interfaces, algorithms, formulae, data structures, scripts, application programming interfaces and protocols, benchmark and comparative test results, and the documentation (collectively the "**Confidential Information**") are trade secrets of M86 and are owned by M86 or, where applicable, its third-party licensors. To the extent allowed by law, you agree to retain all Confidential Information in strict confidence at least with the same amount of diligence that You exercise in preserving the secrecy of Your most-valuable information, but in no event less than reasonable diligence. You agree to: (i) only disclose Confidential Information to Your employees and agents to the extent required to use the Products under the terms of this Agreement and not to disclose or disseminate the Confidential Information to any third party without the prior written consent of M86, (ii) use the Confidential Information solely for Your benefit as provided for herein and not to allow any third party to benefit from the Confidential Information; and (iii) bind Your employees and agents, by terms no less restrictive than those set forth herein, to maintain the confidentiality of such Confidential Information, and not use or disclose such information except as permitted under this Agreement. Notwithstanding the disclosure of any Confidential Information for any reason, such Confidential Information shall continue to be owned by M86 or its licensors. Nothing contained herein shall be deemed to prevent You from disclosing or disseminating Your data, in any format or any report, to whomever You so choose. M86 reserves the right to disclose any personal information about You or Your use of the Product, including its contents, without Your consent, if M86 has a good faith belief that such action is necessary to: (i) comply with legal requirements or process; (ii) protect and/or defend the rights or property of M86, its affiliates or suppliers; or (iii) enforce the terms of this Agreement.

9. **CUSTOMER FEEDBACK MODULE.** Customer Feedback Module ("**CFM**") shall mean the function installed on the Product and used to transmit selective Web request data or Internet usage information (e.g., Internet URLs and IP addresses the Software comes in contact with), and Software configuration and filter results ("**Feedback Information**") to M86's server for: enhancement of the URL library(ies) and related categories used by M86 for the purpose of filtering and reporting; statistical analysis; product testing, development and management; and protocols for activities such as back-up, archiving and disaster recovery. For example, M86 may gather information relating to the sites requested by Your end users and may be able to obtain the 'most viewed' uncategorized URLs captured by the Product. M86 will not intentionally collect any personal information as part of this process. However, it is possible that some of Your end users' personal information may be contained in the URLs collected by the CFM and sent to M86. At no time will any personally identifiable Feedback Information collected be released publicly, nor will the Web request data be used for any purpose other than as limited above. If You decide You do not want Feedback Information sent to M86 via the CFM, You should manually disable the CFM. Except as provided in Section 8 above, M86 will only disclose the Feedback Information to M86's employees or agents who have a need to know and who have been informed of the confidential nature of the information and of their obligation not to disclose or use such Feedback Information.

10. **GOVERNING LAWS; VENUE.** Subject to Section 10.1, this Agreement is made under and will be governed by and construed in accordance with the laws of the State of Washington, USA, except that body of law controlling conflicts of law or international law and excluding the Convention on Contracts for the International Sale of Goods. The parties agree that the Uniform Computer Information Transactions Act, or any version thereof, adopted by any state located in the United States, in any form (the "**UCITA**"), will not apply to this Agreement. To the extent that the UCITA is applicable, the parties agree to opt out of the applicability of the UCITA pursuant to the opt-out provisions contained therein. In the event of any controversy, claim, or dispute arising under or relating to this Agreement or the support and subscription services, including the existence, validity, interpretation, performance, termination or breach thereof, the parties to this Agreement hereby expressly and irrevocably consent to the personal jurisdiction and venue of the federal courts sitting within the Western District of Washington State, unless no federal subject matter jurisdiction exists, in which case the parties consent to jurisdiction and venue in the Superior Court of Thurston County, Washington. ~~The parties expressly waive all defenses of lack of personal jurisdiction and forum nonconveniens with respect to such federal and state courts.~~ The prevailing party in any such action, at law or equity, shall be entitled to reimbursement of its reasonable attorneys' fees, expenses and costs incurred to pursue or defend such action from the non-prevailing party.

10.1 **LICENSEES OUTSIDE THE U.S.** If You are a licensee based outside of the United States, notwithstanding anything else to the contrary in this Agreement, the following terms apply to You:

10.1.1 M86 makes available at reasonable charges a range of information that could assist You in the creation of independent computer programs to operate with the Software. In view of this ready availability, You undertake to respect the confidentiality of the Software and the trade secrets therein and not to use any disassembly, decompilation or reverse compilation techniques or any other similar or like method to gain access to the source code to the Software and/or to determine any design, structure, concepts and/or methodology employed in the Software; whether to incorporate within any product or computer program of Your own creation or for any other purpose whatsoever

10.1.2 If the laws of the country in which You are located require that contracts be in the local language in order to be enforceable, the version of this Agreement that shall govern is the

translated version of this Agreement in the local language that is produced by M86 within a reasonable time following Your written request to M86.

10.1.3 The limitations of liability in this Agreement shall not exclude or limit M86's liability for death or personal injury caused by its negligence.

10.1.4 This Agreement and all matters arising out of or relating to this Agreement (whether such matter is based on or gives rise to a cause of action in contract, negligence, strict liability, or any other tort, breach of any statutory duty, indemnity or contribution, or otherwise), shall be governed by the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English Courts of Law.

11. [INTENTIONALLY LEFT BLANK]

12. **GENERAL.** M86 may occasionally update its End User License and Warranty Agreement (e.g., in connection with the creation and/or delivery of an update to a Product or a new Product) and such updated version shall supersede this version upon Your acceptance of such updated version. Please note the "Last Updated" date of the version of this Agreement at the top of this Agreement. The foregoing terms comprise the entire and exhaustive statement of the agreement between M86 and You relating to or arising out of Your use of the Product and expressly supersede and replace any and all prior agreements or understandings relating thereto (including, but not limited to, any prior versions of this Agreement). No implied term or variation, addition or deletion may arise by usage, custom or trade, course of dealing or course of performance in relation hereto. No modification, whether oral or written, to any of the above terms and conditions by You will be binding unless specifically agreed to in writing and signed by a duly authorized officer of M86. The above terms shall prevail notwithstanding any different or inconsistent terms in any ordering or other document issued by You. Failure or delay in enforcing any right or term or condition of this Agreement shall not be deemed a waiver of such right or term or condition with respect to any subsequent breach or continuance of any existing breach after demand for strict performance. If any term or condition shall be held by a court of competent jurisdiction to be unenforceable, that term or condition shall be interpreted as broadly as possible to give effect to the intent of the parties, and the remaining terms and conditions of this Agreement will remain in full force and effect. You hereby acknowledge a breach of this Agreement would cause irreparable harm and significant injury to M86 that may be difficult to ascertain and that a remedy at law would be inadequate. You agree that, notwithstanding anything to the contrary, M86 shall have the right to seek and obtain immediate injunctive relief in any court of competent jurisdiction, without the posting of a bond, to enforce the obligations under this Agreement in addition to any other rights and remedies it may have. Nothing in this Agreement shall constitute the parties as being partners or agents for one another and neither party shall have any authority to bind the other party. Nothing in this Agreement is intended to create any third party beneficiaries, to grant or create any right enforceable by any person who is not a party to this Agreement (whether such right being created in the United Kingdom by the Contracts (Rights of Third Parties) Act 1999 or any other law, statute, doctrine or applicable theory of law), or to create any right enforceable against any person who is not a party to this Agreement (whether such right being created by any law, statute, doctrine or applicable theory of law). Notwithstanding anything to the contrary in this Agreement, M86 will not be in default or liable under this Agreement for any costs, damages, expenses, losses, delays in deliveries or failure to perform due to any cause beyond M86's reasonable control, including, without limitation: any act or omission of M86; any act of God; any accident, earthquake, explosion, flood, fire, storm, or other catastrophe; any embargo, insurrection, national emergency, terrorist act, or war; any slowdown, strike, or other labor difficulty; any law or order, direction, or request of any federal, state, local, foreign, or other government or of any civil or military authority; power blackout; internet failure; or any

inability to obtain necessary Hardware, supplies, services, labor, or facilities. A printed version of this Agreement and of any notice given by M86 in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. The controlling language of this Agreement and all communications hereunder shall be English.

