

Instant Alert® for Schools - Service Agreement

No. _____

This Agreement is made and entered into this 01 day of February 2013 between Honeywell International Inc., by and through its Automation and Control Solutions (ACS) business located in Minneapolis, Minnesota ("Honeywell"), and Brick Township School District ("Customer").

1. Service

Honeywell agrees to provide the Honeywell Instant Alert® for Schools Service during the term of this Agreement, for members (students and staff) of Customer located at: Brick Township School District, 101 Hendrickson Ave. Brick, NJ 08724

Coverage to include: up to 10,000 students at \$2.00 per student. Faculty and Staff are included at no cost.

2. Term

This Agreement shall remain in force for an initial term of 36 months from the date the system first becomes operative (defined as issuance of administrative user names and passwords), and will automatically renew for consecutive one year terms, unless either party provides written notice at least sixty (60) days prior to the end of the original or any renewal term of intent to terminate the Agreement at the end of the current term, or is terminated as provided in this Agreement.

3. Payment and Scope (prices do not include applicable state and local sales or use tax):

A. Payment – Customer agrees to pay Honeywell:

- i. \$ 1500 For setup fees (fifteen percent (15%) of 1st year service) upon signing this Agreement. (Set up fees waived if payment made annually in advance.)
Per year, payable annually, semi-annually, quarterly, in advance commencing on the first (1st) day of the month following the date the system becomes operative. Honeywell will review system usage and number of members quarterly and reserves the right to increase or decrease fees based on usage and/or number of members. Honeywell will notify Customer via written correspondence thirty (30) days prior to any billing changes.
- ii. \$ 0 Customer agrees to pay an interim charge in the amount of 1/30th of the monthly charge for each day from and including the date the system becomes operative until the first (1st) of the following month.
- iii. Notwithstanding 3.A.ii. at any time following the expiration of the first twelve (12) months of this Agreement, Honeywell may increase the annual charges once per year. If Honeywell increases the annual per student or per staff member charge by more than five percent (5%), Customer may terminate the Agreement by providing written notice to Honeywell within fifteen (15) days of notification of the increase.

MULTI-YEAR PRICING

YEAR 1 \$20,000
YEAR 2 \$20,000
YEAR 3 \$20,000

B. Services (see attached Schedule of Services)

C. Ownership of Equipment and Data. Honeywell or its assignee will own the equipment and database architecture. Ownership of the underlying data and its integrity remains the responsibility of Customer.

The service Honeywell provides subject to these terms and conditions improves the existing method of communication used by school administrations to notify the school community at large in the event of an emergency as well as for more routine announcements. Use of this service does not alter the level of responsibility currently assumed by the Customer if notification efforts fail.

4. Limits of Liability

- A. It is agreed by the parties that Honeywell is providing a notification service designed to facilitate the Customer's communications with its members; that the payments provided are based solely on the value of the services described and are unrelated to the value of anything else; that Honeywell is not liable for losses, damages, or emotional distress which may occur in cases of malfunction or non function of service provided by Honeywell; that Honeywell is not liable for losses which may occur in the repairing, signal handling or any other aspect of the service, even if due to Honeywell's negligence or failure of performance; that Honeywell is not liable for losses, damages, or emotional distress resulting from failures of telecommunication systems, network providers, or power providers to either the Customer Site or Honeywell's service sites.
- B. IT IS AGREED THAT IT IS IMPRACTICAL AND EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES WHICH MAY ARISE IN SITUATIONS WHERE THERE MAY BE A FAILURE OF THE SERVICE PROVIDED, DUE TO THE UNCERTAIN VALUE OF CUSTOMER'S SITUATION WHICH MAY BE AFFECTED BY OCCURRENCES WHICH THE SYSTEM OR SERVICE IS DESIGNED TO DO, INABILITY OF HONEYWELL TO GUARANTEE ALERT RESPONSE TIME, AND ESTABLISHING A CAUSAL CONNECTION BETWEEN THE SYSTEM OR SERVICE PROBLEMS AND CUSTOMER'S POSSIBLE OUTCOMES. THEREFORE IF ARTICLE 4A IS JUDICIALLY DETERMINED TO BE INVALID OR UNENFORCEABLE AND ANY LIABILITY IS JUDICIALLY IMPOSED ON HONEYWELL, ITS EMPLOYEES, AGENTS OR REPRESENTATIVES, FOR PROPERTY DAMAGE OR PERSONAL INJURY, SUCH LIABILITY SHALL BE LIMITED TO AN AMOUNT EQUAL TO ONE MONTH SERVICE CHARGE. THIS SUM SHALL BE PAID AND RECEIVED EITHER (i) AS LIQUIDATED DAMAGES AND NOT AS A PENALTY, OR (ii) AS A LIMITATION OF LIABILITY APPROVED AND AGREED UPON BY THE PARTIES. THE PAYMENT OF THIS AMOUNT SHALL BE HONEYWELL'S SOLE AND EXCLUSIVE LIABILITY REGARDLESS OF WHETHER LOSS OR DAMAGE IS CAUSED BY THE PERFORMANCE OR NONPERFORMANCE OF OBLIGATIONS UNDER THIS AGREEMENT OR BY NEGLIGENCE, ACTIVE OR OTHERWISE, OF HONEYWELL, ITS EMPLOYEES, AGENTS OR REPRESENTATIVES. NO SUIT OR ACTION SHALL BE BROUGHT AGAINST HONEYWELL MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF THE CAUSE OF ACTION THEREOF.
- C. Customer will be responsible for the consequences of any instructions to Honeywell, for Customer's failure to use the Services in the manner prescribed by Honeywell, and any failure by Customer to supply accurate input information. Honeywell's sole liability to Customer or any third party for claims of any type or character arising from errors or omissions in the service that Honeywell may have caused is to correct the affected Customer data.
- D. SINCE THE PARTIES AGREE THAT CUSTOMER RETAINS SOLE RESPONSIBILITY FOR COMMUNICATING WITH ITS MEMBERS, CUSTOMER AGREES TO INDEMNIFY AND SAVE HARMLESS HONEYWELL, ITS EMPLOYEES, ASSIGNS AND AGENTS, FROM AND AGAINST ALL CLAIMS, LAWSUITS AND LOSSES, BY PERSONS NOT A PARTY TO THIS AGREEMENT, ALLEGED TO BE CAUSED BY THE IMPROPER OPERATION OF THE SYSTEM, WHETHER DUE TO MALFUNCTIONING OR NONFUNCTIONING OF THE SYSTEM OR THE NEGLIGENT PERFORMANCE OR NONPERFORMANCE BY HONEYWELL OF THE INSTALLATION, MAINTENANCE, OR ANY ASPECTS OF THE SERVICE.

Initials _____ Date 12/30/12

E. IN NO EVENT WILL HONEYWELL, ITS EMPLOYEES, AGENTS, OR REPRESENTATIVES BE RESPONSIBLE FOR CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES OF ANY NATURE WHATSOEVER. HONEYWELL MAKES NO WARRANTIES CONCERNING ANY EQUIPMENT OR DEVICES ATTACHED TO CUSTOMER'S SYSTEM.

F. Paragraphs A through E of the Article 4 shall apply to any other company or entity which, in addition to Honeywell, promotes, markets or endorses the installation or maintenance provided hereunder.

5. Entire Agreement

The parties agree that this Agreement, including the attached Schedule of Services and Supplier Terms and Conditions, constitutes the entire Agreement between them, and supersedes and replaces all prior understandings or agreements, whether oral or written, relating to this service. This Agreement may not be changed or modified except in writing, signed by an authorized representative of Honeywell. The parties agree that the terms and conditions of this Agreement will govern notwithstanding any additional or inconsistent terms or conditions contained in any purchase order or other Customer document. Neither party will be bound by this Agreement until an authorized representative of each approves it. Customer acknowledges that it has read this entire Agreement and agrees to be bound by all its terms and conditions.

6. Taxes and Changes to Service

- A. Customer will pay all City, State or Federal taxes, fees or charges imposed upon the performance of the service, including all increases in charges to contractor for facilities required for transmission of signals under this Agreement.
- B. Charges in Article 3 assume system setup and training will be performed during Honeywell's normal working hours using its own personnel. If Customer requests setup or training outside ordinary business hours, set-up fees are subject to revision.
- C. Customer agrees to pay for any changes to the service required by any government agency. Customer shall obtain all necessary permits required.
- D. Charges in Article 3 are based on service specified in the Schedule of Services. Customer will pay for all additional work, equipment or service requested or required.
- E. Honeywell is entitled to charge the legal rate of interest or, at Honeywell's option, an amount equal to 7.5% on any delinquent balance. A balance becomes delinquent 30 days after payment is due under Article 3. Honeywell is entitled to stop service if Customer is delinquent on any payment.

7. Obligations of Customer

- A. Customer, at its own expense, shall supply appropriate and in good working order electrical, telecommunication and network infrastructure, including Personal Computers to access the service, according to Honeywell's requirements.
- B. Customer shall furnish Honeywell a database of member information in electronic form on either CD-Rom, IBM PC readable disk, or via FTP upload. Customer shall verify the accuracy of the information in the converted database and update it as necessary via a web page provided by Honeywell.
- C. Customer is responsible for entering all data required to establish Groups and maintaining Groups via a web page provided by Honeywell.
- D. Customer must permit Honeywell access to the premises for any reason arising out of or in connection with Honeywell's rights or obligations under this Agreement.
- E. Customer represents and warrants that it is the owner of the data provided to Honeywell, and it agrees and consents to the conversion of the data. Customer shall indemnify and hold Honeywell harmless from any losses or damages, including attorney fees, resulting from breach of such representation and warranty. It is mutually agreed that the Customer assumes full responsibility for the data entered into the system and any errors that result. Honeywell is not responsible for obtaining written consent from each family whose data is included in the database.
- F. Customer permits Honeywell to communicate directly with members of the service to a) notify of system changes, enhancements and performance; and b) perform routine market research in order to validate system changes, enhancements and performance.

8. Obligations of Honeywell; Limitations

- A. In the event Honeywell's service sites, telephone lines or wires are, by any cause beyond the control of Honeywell, destroyed or so substantially damaged that it is commercially impractical to continue service to Customer, Honeywell will not be required to provide service while any such cause continues.
- B. Customer understands that service is dependent on the public Internet, which is outside Honeywell's control. There will be times when any radio frequency method, such as cellular, public, or private radio systems, cannot transmit a signal due to lack of signal strength or availability of a communication channel. Similarly, any other type of communication method utilized under this Agreement also can experience an inability to communicate alerts signals. Customer agrees that it is solely responsible for selecting of the type of communication method to be used and determining whether the utilization of multiple communication methods is required. It is understood that the communication method provider is not an agent of Honeywell and Honeywell will not be liable for the communication method provider's negligent performance or delay in performance.
- C. The member information will be used for the sole purpose of Instant Alert® communications. No information will be shared with or sold to any party external to Honeywell.
- D. With respect to the portion of the service involving or affected by the translations provided by Bing, the applicable services, warranties, and liabilities are subject to and limited by the Bing Supplier Terms and Conditions, as such terms and conditions may change from time to time. The current version of the applicable Supplier Terms and Conditions is attached. Customer acknowledges that Honeywell is under no obligation to provide Customer with updates to or new versions of such Supplier Terms and Conditions.

9. Termination

- A. Honeywell may terminate this Agreement immediately upon written notice:
 - i. In the event Customer defaults in the performance of any of the terms and conditions of this Agreement, including the failure to make any payment as agreed herein, in which case the balance of the monies due and for the unexpired term of the Agreement will become immediately due and payable, together with interest at the maximum legally allowable rate. Customer agrees to pay attorney and/or collection fees, defined as an additional thirty-five percent (35%) of the outstanding balance owed, incurred in collecting Customer's account; or
 - ii. In the event Honeywell's Customer Service Center, the telephone lines, wires or Honeywell's equipment within Customer premises are, by any cause beyond the control of Honeywell, destroyed or so substantially damaged that it is commercially impractical to continue service to Customer's premises; or
 - iii. As provided in Article 2 relating to expiration and Article 10 relating to assignment.
- B. Customer may terminate the Agreement provided the following:
 - i. Upon 90 days written notice and agreement to pay a termination fee equal to 50% of the value of the remaining payments due under the Agreement through the end of the current term. Customer will pay the termination fee within 30 days of termination. If termination is due to non-appropriation of funds for communication service, the termination fee will comply with applicable legislation provided Customer does not procure replacement service. If Customer procures replacement service, Customer will pay the termination fee as described.
 - ii. As provided in Article 2 relating to expiration; Article 3(A) relating to price increases; and Article 10 relating to assignment.
 - iii. Upon 10 days written notice in the event Honeywell defaults in the performance of any of the terms and conditions of this Agreement.
- C. In the event this Agreement is terminated, Honeywell is entitled to disable all Customer accounts and remove all Customer data from any servers. Upon written request within 30 days of termination, Honeywell will return Customer data in print form at Customer expense. Honeywell will have no obligation to retain or maintain Customer data after the 30-day period or after its return to Customer.

Initials _____ Date 12/20/12

10. Assignment

Honeywell may assign its right to payment, along with all terms and conditions related to that right, or any interest in the Agreement without notice to or consent of Customer. Customer may assign this Agreement with Honeywell's prior written consent, which shall not be unreasonably withheld provided that the assignee is determined to be creditworthy by Honeywell in its sole discretion. If Honeywell does not consent to Customer's assignment, Customer may terminate the Agreement; provided that if Customer is using Honeywell-owned equipment, Customer must pay Honeywell all payments remaining to be made under this Agreement through its scheduled expiration

11. No Subrogation

Customer does hereby for itself and other parties claiming under it, release and discharge Honeywell from and against all claims arising from hazards covered by Customer's insurance, it being expressly agreed and understood that no insurance company or insurer will have any right of subrogation against Honeywell.

12. Governing Law and Dispute Resolution

This Agreement shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of Minnesota

HONEYWELL INTERNATIONAL INC.		CUSTOMER By	
Sales Representative		(Signature)	
Approved and accepted by Honeywell International Inc.		Name (Print or Type) <u>James W. Edwards</u>	
By		Title <u>B.A.</u>	
Title		Date <u>12/21/12</u>	
Date		Bank	
		Account Number	
		Telephone	
NOT BINDING ON HONEYWELL WITHOUT AUTHORIZED MANAGEMENT APPROVAL SIGNATURE			

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Instant Alert – Schedule of Services

No. _____

Customer to receive the following Services – referred to as “Service” in the preceding Service Agreement:

Installation Services

- i. Importing all information from the existing database and loading into Honeywell Instant Alert® service
- ii. Software loading and setup onto server for installation off site
- iii. System testing
- iv. Training to be completed with School Administrators on system functionality
 - a. Customer will be trained during the installation and customization of the software in order to learn all aspects of the Honeywell Instant Alert® service
 - b. Training to be scheduled upon mutually agreeable schedule that coincides with the installation of the Honeywell Instant Alert® service
 - c. Customer will be given access to an online training module that is available to the customer at any time without charge
 - d. Customer will be charged \$125 per hour plus travel and expenses for training requested after the initial service installation
- v. Honeywell to provide Customer with an electronic copy of the user manual for school administrators to be used as a reference guide in using the system

Ongoing Features and Support Services

- i. Ability to send unlimited text messages to all members for who database information is accurate and up to date. Text messages can be sent to e-mail addresses, Personal Digital Assistants (PDAs) with e-mail capability and cell phones with text-messaging capabilities
- ii. Ability to send unlimited voice messages to all members for who database information is accurate and up to date. Voice messages can be sent to any designated telephone number (e.g. office phone, home phone, cell phone).
- iii. Ability to create subgroups to communicate more tailored messages to families and guardians of groups of students.
- iv. Administrative access to the service from any Internet-enabled Personal Computer (PC)
- v. Guardian Access to the service from any Internet-enabled PC (non-integration Customers only)
- vi. Parent control over specific contact methods to be used for different types of communication – emergency or non-emergency messages (non-integration Customers only)
- vii. Administrative capability to pre-create messages to streamline communications during an emergency
- viii. 24 hour toll-free help desk support for administrators
- ix. Instant Alert application support
- x. If school administrator is not able to access service via an Internet-enabled PC, school administrator can call toll-free help desk to create and distribute message.
- xi. School administrators are assigned an Account Manager who will work with school on any issues experienced with the service or support, and will identify appropriate, effective and efficient issue resolution
- xii. Virus protection and intrusion detection are performed routinely on the service network
- xiii. Annual Customer database maintenance

Availability of Services

The Services shall be generally available for use approximately twenty-four (24) hours per day, seven (7) days a week, three hundred sixty five (365) days a year. The Services are monitored and managed to a committed level of availability of at least 99% of the time based on a one month period, excluding scheduled maintenance periods. Services may not be available during scheduled maintenance periods, which will occur when needed between midnight Saturday through 4:00AM Sunday Central Time. The Services shall be considered available if all of its features are operational, and its connection to the Internet is functioning correctly such that users with working Internet access may log in and use the Service. An excluded, special scheduled maintenance period of up to 24 hours may also be performed no more than twice per year in order to affect major Service expansion and maintenance. In the event that a special scheduled maintenance period is required, a minimum 48 hours notice will be given via email, mail and/or telephone.

Resolution of Service Issues

Definitions:

1. **Product Software Defects** - Those defects attributable to Honeywell software products accessed through or downloaded from the Instant Alert website, excepting defects directly or indirectly resulting from any software resident on Customer's computer, any non-Honeywell software resident on the Internet, or any Customer or Internet service provider hardware failure that may negatively impact use of the messaging service.
2. **Service Issue** - Any Product Software Defect or inability to use the service as the result of a Product Software Defect shall be referred to as a Service Issue. There are three categories of Service Issues:
 - a. **Category 1 Service Issue**-- Service Issue that prevents the school or parents from performing critical administrative tasks. Critical administrative tasks for school administrators are: the adding, deleting, or editing groups; adding, deleting, or editing alert messages; and sending alerts. Critical administrative tasks for parents are: None.
 - b. **Category 2 Service Issue**-- Service Issue that prevents the school or parents from performing urgent administrative tasks. Urgent administrative tasks for parents are: adding, deleting, or editing phone numbers, email addresses, child pickup and or custody information. Urgent administrative tasks for school administrators are: adding, deleting, or editing parent information.
 - c. **Category 3 Service Issue**-- Any Service Issue not defined as a category 1 or 2 Service Issue.
3. **School day**-- A calendar day in which school is in either regular or summer session.

Service issue Resolution Process

Parents encountering Service Issues should first contact the school administration. The training Honeywell provides will equip the school staff to deal with the most common issues parents might encounter. If the school's administrative staff cannot resolve the identified issue, it should be escalated to the Instant Alert (IA) champion designated during the Honeywell training. Any Service Issue that cannot be resolved by a school administrator should be directed to the IA champion designated during the Honeywell training. In the event the IA champion cannot be reached, additional Honeywell resources can be contacted to assist in resolving the issue using the toll free number provided during training.

Service Response

Honeywell will attempt to resolve all Category 1 issues within 24 hours. In the event a Category 1 issue requires more than 24 hours the Customer will be notified with an expected resolution time. Any Category 1 issue, which requires more than 5 school days to resolve, will result in a no-fee contract extension equivalent to the period for which service was unavailable.

Honeywell will attempt to resolve all Category 2 issues within 72 hours. In the event a Category 2 issue requires more than 72 hours the Customer will be notified with an expected resolution time. Any Category 2 issue, which requires more than 10 school days to resolve, will result in a no-fee contract extension equivalent to the period for which service was unavailable.

Honeywell will attempt to resolve all Category 3 issues within 120 hours. In the event a Category 3 issue requires more than 120 hours the Customer will be notified with an expected resolution time. Some Category 3 problems may not be resolved until the next product release. All customers are eligible for new releases, at no charge, during their contract term.

Service Issue Escalation

The IA champion identified during the Honeywell training is the primary contact for all Service Issues and is responsible for all Customer communications. If the IA champion's resolution of a Service Issue does not completely resolve it to the Customer's satisfaction, please go to <https://instantalert.honeywell.com/support/SAdbase/sadmin.html> to report your issue.

Attachment – Supplier Terms and Conditions

No. _____

The following terms and conditions apply to the language translations of the service.

BING WEB SERVICE API TERMS OF USE

Last Updated: June 2009

THANK YOU FOR CHOOSING MICROSOFT!

1. What does this Contract cover? This is a contract between you and Microsoft Corporation ("Microsoft"). Sometimes Microsoft is referred to as "we," "us" or "our". This contract applies to the pre-release or "beta" version of the Microsoft Bing Web Service API (the "API"). The API is intended to deliver relevant results (collectively, "Bing results") for queries submitted to Microsoft's Bing service and other related Microsoft services (collectively, "Bing services") for rendering within a customer-facing or end-user-facing website ("Website") or application. Through use of JSON and XML (in addition to SOAP), developers can customize the look and feel of the results window and reflect the content type, format, and detail desired. The Bing service(s) may enable access to multiple content types including Answers, News, Images, Spelling Suggestions, Related Queries, and Phonebook. In addition to Bing results, the Bing services now enable Microsoft search ads ("Microsoft Ads"). You may sign up by clicking here (<https://beta.pubcenter.microsoft.com/CustomerManagement/Customer/TC.html>) and agreeing to the separate terms applicable to Microsoft Ads to have Microsoft Ads delivered with the algorithmic Bing results that are provided under this contract. As used in this contract, "services" means, collectively and as applicable, the API, the Bing results, the Bing services, and any related application ids ("AppIDs"). Please note that we do not provide warranties for the services. The contract also limits our liability. These terms are in §§13 and 14 and we ask you to read them carefully. We provide the services solely on an "as is" and "as available" basis, in accordance with §13, and you acknowledge that latency with regard to delivery of Bing results is a function of network bandwidth, server capacity, and other factors. Subject to the immediately prior sentence, and subject further to your acknowledgement that we will not be liable to you or to any third party if we fail to achieve the following goals, our service level goals are as follows:

Service Level Goals

Uptime*	99.5%
Query Response Time**	1.5 seconds

* "Uptime" means the percentage of time that Microsoft's Bing services are operational to receive, process, and respond to queries, excluding scheduled downtime (if any).

** "Query Response Time" means the time between when you completed transmission of a query request to Microsoft (i.e., the query leaves your network border) and when you received the completed Bing results from Microsoft (i.e., the Bing results enter your network border).

In addition, if you use images or data from the Virtual Earth Maps service, you are also bound by the terms located here (<http://www.microsoft.com/virtualearth/product/terms.html>); as applied to the Virtual Earth Maps service and these images or data). We do not provide warranties for the API or other services.

2. WHAT RIGHTS DO I HAVE? Solely to the extent that you are in compliance with all terms of this Agreement, we grant you a non-exclusive, non-transferable, non-sublicenseable license to use the services to: enable your Website or application to obtain Bing results; make limited intermediate copies of the Bing results, solely as necessary to display them on your Website or application; and host and display Bing results on your Website or application. Your license to use the services is limited, however, to solely your Websites and applications. You are responsible for your own conduct and content while using the services and for any consequences of this use. All queries to the Bing services that you provide must be user initiated and refineable by the user.

3. CODE OF CONDUCT / RESTRICTIONS ON USE. Your Website, your application, and your access to and use of the services, or any of them, must comply all applicable policies and guidelines (including any API call volume limitations, security policies, and privacy policies), applicable technical requirements and documentation, and all applicable laws (including the applicable laws of your jurisdiction relating to online conduct, acceptable content, data collection, privacy, and the export of data to the United States or your country of residence). This contract does not grant you any rights related to any services, materials, content, or data other than the services. You will not, and will not permit your users or other third parties to:

- modify, reverse engineer, decompile, or otherwise alter the services (except to the extent this is authorized by applicable law notwithstanding this limitation);
- distribute, publish, facilitate, enable, or allow access or linking to the services from any location or source other than your Website or application;
- modify, filter, obscure, or replace the text, images, or other content of Bing results, including by changing the order in which Bing results appear (but this limitation will not apply to Bing results of type "Web"), intermixing Bing results with search results from other sources, or intermixing with Bing results any other content so that the other content appears to be part of Bing results;
- frame, minimize, remove, redirect, delay, or otherwise inhibit or modify the display of any web page accessed by the links provided in or associated with Bing results;
- display business listings search results from the Virtual Earth Maps service on any website which has a primary purpose of making available residential or business address listings or telephone directory listings;
- hide or mask from us your identity, or the identity of your service, as it uses the services, including by failing to follow the identification conventions listed in the API documentation;
- defame, abuse, harass, stalk, threaten, or otherwise violate the legal rights (such as rights of privacy and publicity) of others or otherwise violate Microsoft's then-current editorial policies (currently found at http://help.live.com/help.aspx?project=adCenter_pub_rtw_ss&mkt=en-us&querytype=keyword&query=yek058);
- impersonate another person or entity, or falsify or delete any author attributions, legal or other proper notices or proprietary designations (e.g., copyright or trademark symbols), or labels of the origin or source of services, software, or other materials;

- (i) use the services to violate the law or for any unauthorized purpose;
- (j) use the services to infringe upon the copyright, trademark or other intellectual property rights of anyone;
- (k) interfere with or disrupt the services, or servers or networks related to the services, or disobey any requirements, procedures, policies, or regulations of networks related to the services;
- (l) create user accounts by automated means or under false or fraudulent pretenses;
- (m) promote or provide instructional information about illegal activities or promote physical harm or injury against any group or individual;
- (n) copy, store, or cache any Bing results, except for the intermediate purpose allowed in §2(b);
- (o) commercialize (i.e., sell, rent, or lease) Bing results;
- (p) transmit any virus, worm, defect, Trojan horse, or any other item intended to destroy, surreptitiously interfere with, expropriate, or exert unauthorized control over any system or data or to defraud any person; or
- (q) directly or indirectly generate impressions or clicks on Bing results, or authorize or encourage others to do so, though any automated, deceptive, fraudulent, or other invalid means.

4. **LIMITATIONS AND CONDITIONS OF THE SERVICE.** We may use technology or other means to protect the services, protect our customers, or stop you from breaching this contract. These means may include, for example, filtering to stop spam or increase security. These means may hinder or break your use of the services, and you may not work around or attempt to thwart or disable any of these technical or other means. We also may, in our sole discretion, limit the: (a) rate at which the services, or any subset of them, may be called; (b) the amount of storage made available to each services account; or (c) the length of individual content segments that may be uploaded to, or served from, the services (all of the foregoing being forms of "Throttling"). We may perform this Throttling globally across all services, per end user, or on any other basis. You will not take steps to circumvent any technical measures we may put in place to enforce Throttling. We may include our trademark(s) or logo(s) in Bing results provided through the services and, if we do so, you will not remove, modify, or interfere with the display or viewing of these trademarks or logos. Whether we include trademarks or logos or not, you will attribute us as the source of the Bing results (in the manner that we may specify from time to time in applicable services documentation) and display the "attribution" data field (if a non-blank field is returned as part of the Bing results). In any display of trademarks, logos, or attribution, you will comply with the current version of our usage guidelines (which are currently located at <http://www.microsoft.com/about/legal/intellectualproperty/trademarks/usage/general.mspx> and <http://www.bing.com/toolbox/posts/archive/2009/10/15/bing-product-guidelines-and-brand-assets.aspx>). We may also include advertising in Bing results provided through the services and, if we do so, you will not remove, modify, or interfere with the display or viewing of this advertising. On any page in which you display Bing results, you will only display advertising that we serve or provide.

5. **Certain Additional Limitations for Image and Video Results.** Without limiting any other portion of this Agreement, the following additional terms apply to your use of any image search or video search results obtained through the Bing services. You may not display advertising on the same page with any Bing image search or video search results. You will display, and you will not remove, alter or obscure, any attribution information provided by Microsoft in connection with any Bing image or video search results. You will not display any image or video search results obtained through the Bing services except in response to a valid end user search request. Image or video search results obtained through the Bing services will not constitute the sole or primary content of your Website.

6. **END USER TERMS.** The Terms of Use located at <http://help.live.com/help.aspx?project=searchtou&market=en-us> (the "Bing TOU") or such other locations as Microsoft may specify apply to end users' use of and access to Bing results through your Website or application. You must provide a hypertext link at the bottom of each page in your Website or application where the services can be viewed or accessed, or within the terms of use of your Website or application, to the Bing TOU.

7. **PRIVACY.** All access to and use of the services is subject to the data practices set forth in the Microsoft Privacy Statement, which is currently available at <http://privacy.microsoft.com/>. Nothing in this contract or the services provide for the collection or transfer of any personally identifiable information of internet users between the parties. You must maintain a prominent online privacy policy for your Websites and applications that access the services. This privacy policy, at a minimum, must include: (a) a full, accurate, and clear disclosure regarding the placement, use, and reading of cookies and related technologies, and your collection and use of data in relation to activity by users of your Websites and applications; (b) your use of Microsoft for advertising services for your Websites and applications; and (c) a disclosure that users may choose to not participate in Microsoft's personalized advertising services, along with a link to a Microsoft-specified web address where the user may "opt out" of such personalized advertising services.

8. **HOW WE MAY CHANGE THE CONTRACT.** If we change this contract, then we will provide notice as provided in §21 below. If you do not agree to these changes, then you must stop using the services. If you do not stop using the services, then your use of the services will continue under the changed contract. We may choose in the future to charge for all use of the services, or change the requirements for use that is free of charge. If we choose to change the fee requirements for the services, Microsoft will provide notice of such terms as provided in §15 below, and you may elect to stop using the services rather than incurring fees.

9. **YOUR RESPONSIBILITY.** You will indemnify and hold Microsoft (and its directors, officers, affiliates, and agents) parties harmless from and against any and all loss, liability, and expense (including reasonable attorneys' fees and costs) suffered or incurred by reason of any claims, proceedings, or suits based on or arising out of any breach (or alleged breach) by you of this contract, or any part of it, or that otherwise relates to your Website(s), your application(s), or your use of the services. You will be solely responsible for defending any claim using mutually-agreed counsel, subject to Microsoft's right to participate with counsel it selects, and you will not publicize any claim or agree to any settlement that imposes any obligation or liability on Microsoft (or its directors, officers, affiliates, and agents) without Microsoft's prior written consent, in Microsoft's sole discretion.

10. **RESERVATION OF RIGHTS.** Microsoft and its suppliers retain all right, title, and interest in and to the services (including the API and Bing results) and all intellectual property rights in any of these. This contract does not grant you any rights in any Microsoft logo, trademark, or service mark, and you will not use any logo, trademark, or service mark of Microsoft for any purpose without Microsoft's prior written approval. You will not claim or imply any sponsorship or endorsement of your Website or application by Microsoft.

11. **TERM.** This contract will become effective on your first use of the services. This contract may be terminated immediately for any reason or no reason and without notice by Microsoft. If this contract terminates, all rights granted to you by this contract will automatically terminate and you will cease to have any rights to use the services (including the API). We will not be liable to you for damages resulting solely from terminating this contract according to its terms. All terms of this contract that, by their nature, are intended to survive termination will survive (including §§13 and 14).

12. **PRE-RELEASE.** The API (and related services) are pre-release versions. They may not work the way a final version of the API (and such related services) would. We may change the API (or these services) for a final, commercial version. We also may not release a commercial version, in our sole discretion.

13. **WE MAKE NO WARRANTY.** Microsoft makes no warranties (express, implied, or otherwise), including implied warranties of merchantability, non-infringement, fitness for a particular purpose, or title, related to the services, its performance, or anything provided in relation to this contract. Without limiting the foregoing, Microsoft makes no guarantees with respect to the availability or uptime of the services or any other technologies. Microsoft may conduct maintenance on any of the services at any time, with or without notice.

14. **LIABILITY LIMITATION.** You can recover from Microsoft and its affiliates and suppliers only direct damages up to US\$5. You cannot recover any other damages, including consequential, lost profits, special, indirect, incidental, or punitive damages. This limitation applies to anything related to the services; content (including code) on third party Internet sites, third party programs or third party conduct; viruses or other disabling features that affect your access to or use of the services; incompatibility between the services and other services, software, and hardware; delays or failures you may have in initiating, conducting, or completing any transmissions or transactions in connection with the services in an accurate or timely manner; and claims for breach of contract, breach of warranty, guarantee, or condition, strict liability, negligence, or other tort. It also applies even if this remedy does not fully compensate you for any losses or fails of its essential purpose or if Microsoft knew or should have known about the possibility of the damages. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you. They also may not apply to you because your province or country may not allow the exclusion or limitation of incidental, consequential, or other damages.

Initials _____ Date 12/20/12

15. CHANGES TO THE SERVICES; CANCELLATION OF THE SERVICES. We may change (including by removing features or charging fees for features previously provided free), update, or enhance (collectively, "modify") the services at any time and may require you to obtain and use the most recent versions. Modifications may affect your ability to use the services and may require you to change (at your sole cost) the way you previously used them. We will not be liable for any costs that you incur, or for lost profits or damages of any kind, related to any modification. We may cancel or suspend your use of the services at any time. Our cancellation or suspension may be without cause, without notice, or both. Upon cancellation, your right to use the services (including the API) stops right away. Once the services are cancelled or suspended, any data you have stored on the services may not be retrieved later.

16. INTERPRETING THE CONTRACT. All parts of this contract apply to the maximum extent permitted by law. If any term of this contract is unenforceable, the remainder will be fully enforced to effect the parties' intent. Unless stated or context requires otherwise: (a) all internal references are to this contract and its parties; (b) "days" means "calendar days"; (c) "partner" is not used as a legal term of art and does not describe or imply a partnership; (d) "may" means that the applicable party has a right, but not a concomitant duty; (e) and a party's choices under this contract are in its sole discretion, subject to any applicable duties of good faith. Lists of examples following "including" or "e.g." are not exhaustive (i.e., are interpreted to include "without limitation"), unless qualified by words such as "only" or "solely." This contract will be interpreted according to the plain meaning of its terms without any presumption that it should be construed to favor either party. The section titles in the contract do not limit the other terms of this contract.

17. ASSIGNMENT. We may assign this contract, in whole or in part, at any time with or without notice to you. You may not assign this contract, or any part of it, to any other person without our prior written consent, which will not be unreasonably withheld. Any attempt by you to do so is void. You may not transfer to anyone else, either temporarily or permanently, any rights to use the services or any part of the services.

18. NO THIRD PARTY BENEFICIARIES. This contract is solely for your and our benefit. It is not for the benefit of any other person, except for permitted successors and assigns under this contract.

19. CLAIM MUST BE FILED WITHIN ONE YEAR. Any claim related to this contract or the services may not be brought unless brought within one year. The one-year period begins on the date when the claim first could be filed. If it is not filed, then that claim is permanently barred. This applies to you and your successors. It also applies to us and our successors and assigns.

20. EXPORT. The services (including the API) are subject to United States export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the services. These laws include restrictions on destinations, end users, and end use. Additional information is provided at <http://www.microsoft.com/exporting>.

21. NOTICES. You may notify Microsoft by postal mail (Microsoft does not accept email notices) addressed as follows: Microsoft Corporation, Attention: LCA - Online Services Business, One Microsoft Way, Redmond, Washington 98052-6399, USA. This contract is in electronic form, and you consent to Microsoft sending you any information related to this contract in electronic form (by email, by access to a Microsoft website designated in an email notice to you, or by posting notice on the Microsoft website located at <http://www.bing.com/developers/tou.aspx> (or any successor website that Microsoft notifies you of by email)). You may withdraw this consent, but if you do, Microsoft may terminate this contract and your right to access and use the services. Notices provided to you by email will be deemed given and received on the email transmission date. You acknowledge that, as long as you access or use the services, you must have, or have access to, the necessary software and hardware to receive these notices.

22. MISCELLANEOUS. The parties are independent contractors under this contract and do not intend to form any other relationship. Only written waivers will be effective. Each party will pay its own costs to perform (except where expressly stated otherwise). You will maintain commercially reasonable levels of insurance with commercially reasonable insurers to enable you to comply with your obligations under this contract. In relation to this contract, you will comply with all applicable laws and other requirements of governments having jurisdiction. All rights and remedies under this contract are cumulative. Except as otherwise expressly stated in this contract, this contract is the parties' entire agreement on this subject and merges and supersedes all related prior and contemporaneous communications and agreements. Except as otherwise expressly provided, this contract may only be modified in a writing that is manually signed by both parties after the Effective Date.

23. CHOICE OF LAW AND LOCATION FOR RESOLVING DISPUTES. Washington state law governs the interpretation of this contract and applies to claims for breach of it, regardless of conflict of laws principles. All other claims, including claims regarding consumer protection laws, unfair competition laws, and in tort, will be subject to the laws of your state of residence in the United States, or if you live outside the United States, the laws of the country to which we direct your services. You and we irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts in King County, Washington, USA for all disputes arising out of or relating to this contract.