

Wavecrest Computing, Inc.

End User Sales Agreement

Preface

This **End User Sales Agreement** stipulates the terms and conditions, software license and limited warranties that apply to end users' purchase and use of Wavecrest Computing's Internet usage monitoring products. Listed below, the first four of these products are software-only applications, and the fifth is a combination hardware/software appliance.

1. *CyBlock Proxy*: A Web-use filtering and reporting proxy.
2. *CyBlock ISA*: A Web filtering and reporting solution for the MS ISA product.
3. *Cyfin Reporter*: A Web log analyzer and Web usage reporting product.
4. *Cyfin Proxy*: A Web usage reporting proxy.
5. *CyBlock Appliance*: A combination hardware/software product used for Internet usage management.

The Sales Agreement includes four sections:

- A. **Terms and Conditions** ----- Applicable to all products
- B. **Software License** ----- Applicable to all products
- C. **Limited Warranty (Software)** ---- Applicable to all products
- D. **Limited Warranty (Hardware)** --- Applicable to CyBlock Appliance only.

A. Terms and Conditions

A.1 Applicability and Acceptance

This document contains and stipulates the terms and conditions that apply to Customer's purchase and use of a subscription-based, licensed Wavecrest Computing product or service. By accepting delivery of the Wavecrest Computing product and/or services and support described on Wavecrest Computing's invoice, Customer agrees to be bound by and accepts these Terms and Conditions and the provisions of the accompanying Software license and warranty (or warranties). These Terms and Conditions apply unless:

(i) THE CUSTOMER HAS SIGNED A SEPARATE PURCHASE AGREEMENT WITH WAVECREST COMPUTING, IN WHICH CASE THE SEPARATE AGREEMENT SHALL GOVERN; OR

(ii) UNLESS OTHER WAVECREST COMPUTING STANDARD TERMS APPLY TO THE TRANSACTION.

These terms and conditions are subject to change without prior written notice at any time, at Wavecrest Computing's sole discretion.

A.2 Terminology

The following terminology applies to these Terms and Conditions and accompanying licenses, guarantees and warranties:

- "Customer", "Buyer", "You", "Your", and "End User" refer to the person or organization purchasing this product and accepting Wavecrest Computing's terms and conditions.
- "Wavecrest Computing", "The Company", "Seller", "Licensor", "Ourselves", "Wavecrest", "We" and "Us" refer to Wavecrest Computing, Inc.
- "Parties" refers to the Customer and Ourselves
- "Software" refers to the computer programs and updatable URL and/or other control lists that constitute the entirety of Wavecrest Computing's software-only products or the software component of Wavecrest Computing's appliance product.
- "Documentation" refers to specifications, data sheets, user manuals, update notes, and other information published by Wavecrest Computing in various media to describe its products or provide instructions for their use.

All such terms refer to the offer, acceptance and consideration of payment necessary to undertake the process of meeting the Customer's needs with respect to provision of the Company's stated services/products, in accordance with and subject to, prevailing United States Law. Any use of the above terminology or other words in the singular, plural, capitalization and/or he/she or they, are taken as interchangeable and therefore as referring to same.

A.3 Purchasing Arrangements

A.3.1 Free Trial – Software-Only Products. Prospective customers may evaluate any or all of Wavecrest Computing's four software-only products (# 1-4) at no charge for thirty days before making a subscription purchase decision. Trial versions of the Software are automatically deactivated after 30 days unless purchase is made.

A.3.2 Purchase Terms – Software-only Products. Software-only products (# 1-4) are subscription-based computer programs governed by single-or-multi-year licenses. All prices are based on the:

- (a) total number of Customers' users to be monitored by the product (on a non-concurrent basis) --- See paragraph A.3.5 for schools and libraries.
- (b) term (duration) of the license
- (c) number of licenses purchased.

The first year of the subscription includes use of software, use of the Wavecrest URL list (control list), a 90-day software warranty and technical support that includes software maintenance, upgrades and updates. Second and subsequent years include the same services as the first year except for software warranty coverage.

A.3.3 Purchase Terms (CyBlock Appliance). CyBlock Appliance (product # 5) is a subscription-based, licensed, hardware/software product. Customer takes title to the hardware upon first subscription payment, and Wavecrest Computing retains title to the Software. Subscriptions are available for one or more years. Price is determined by the:

- (a) total number of Customers' users to be monitored by the product (on a non-concurrent basis) – --- See paragraph A.3.5 for schools and libraries.
- (b) term (duration) of the license.
- (c) number of licenses purchased.

First-year price includes:

- Software Services: same as for software-only products (discussed above).
- Hardware Services: 12-month hardware warranty that provides for replacement of hardware with a new or refurbished unit if necessary (Wavecrest discretion).

Price for second and subsequent years, without a hardware warranty, includes use of software without warranty, use of URL list (control list), and software maintenance and upgrades. After the first year, Customers may purchase the hardware warranty separately. **Note.** In the absence of a hardware warranty, free hardware repair is not available from Wavecrest.

A.3.4 Money-Back Guarantee – Appliance Product. CyBlock Appliance (product # 5) is sold with a 30-day, 100 percent *money-back guarantee*. Exercise of this option is at the sole discretion of the customer.

A.3.5 Pricing for Schools and Libraries. Pricing for schools and libraries is based on the number of computers (IP addresses) to be monitored, not the number of students or staff to be monitored.

A.4 Shipping and Delivery

A.4.1 Software Delivery. Seller's software-only products covered by this Agreement require no shipping. Software can be downloaded directly from Seller's (Wavecrest Computing) Web site at www.wavecrest.net.

A.4.2 Hardware Shipments. Hardware shipments are applicable to CyBlock Appliance only. Except as noted in A.4.3 below, Customers are responsible for all shipping costs, including shipping costs associated with original purchase and/or subsequent returns (see Limited Hardware Warranty for Returns policy).

A.4.3 Damage During Shipping. Loss or damage that occurs during shipping by a carrier selected by Wavecrest Computing is Wavecrest Computing's responsibility.

A.5 Return Policy

To be eligible for return, CyBlock Appliance hardware must be under warranty. See paragraph D.5 of Limited Hardware Warranty for policy and processes.

A.6. Payment Terms; Orders; Quotes; Interest; Taxes

A.6.1 General. Terms of payment are within Wavecrest Computing's sole discretion. Orders are not binding upon Wavecrest Computing until accepted by Wavecrest Computing. Wavecrest Computing will not accept an order and activate the Software (or ship the product if hardware is involved) until receipt of a valid purchase order or credit card payment information. Payment for the products and services must be made by credit card, wire transfer, bank check or some other prearranged payment method unless credit terms have been agreed to by Wavecrest Computing. Payments are due net 30 days, measured from the date of the invoice. All goods remain the property of the Company until paid for in full. Any quotations given by Wavecrest Computing will be valid for the period stated on the quotation.

A.6.2 Shipping and Handling. Customer shall pay the total purchase price plus shipping and handling, if any, as specified on the online or emailed invoice. Separate charges for shipping and handling will be shown on Wavecrest Computing's invoices.

A.6.3 Taxes. Unless Customer provides Wavecrest Computing with a valid and correct tax exemption certificate applicable to the product ship-to location prior to Wavecrest Computing's acceptance of the order, Customer shall be responsible for all sales taxes, use taxes, withholding taxes, value added taxes, import and taxes and any other similar taxes imposed by any federal, state, provincial or local governmental entity or any other governmental entity on the purchase of Wavecrest Computing's products and services, excluding taxes based on Wavecrest Computing's net income.

A.6.4 Overdue Payments. Monies that remain outstanding by the due date will incur late payment interest at the rate of 2% above the prevailing Federal Reserve base rate on the outstanding balance until such time as the balance is paid in full and final settlement. We reserve the right to seek recovery of any monies remaining unpaid sixty days from the date of invoice via collection Agencies and/or through Small Claims Court. In such circumstances, you shall be liable for any additional administrative and/or court costs.

A.6.5 Returned Checks. Returned checks will incur a \$50.00 charge to cover banking fees and administrative costs. In an instance of a second Returned Check, we reserve the right to terminate the arrangement and deactivate the Software. In such instance, all bookings and/or transactions and agreements entered into will cease with immediate effect until such time as all outstanding monies are recovered in full. If agreed to, we shall insist on future credit card transactions only.

A.7 Title to Property

A.7.1 Software Title. Title, ownership rights, and intellectual property rights in the Software shall remain in Wavecrest Computing. The Software is protected by copyright and other intellectual property laws and by international treaties. Title and related rights in the content accessed through the Software is the property of the applicable content owner and is protected by applicable law.

A.7.2 Hardware Title. Title to the hardware components of the CyBlock Application product passes from Wavecrest Computing to Customer upon original shipment from Wavecrest Computing's facility. Title remains with Customer even if this Agreement terminates or expires.

A.8 Resale Prohibition

Customer agrees and represents that it is buying the product for its own internal use only and not for resale unless Customer is a legal and authorized reseller of Wavecrest Computing products as demonstrable by a contract executed by both parties stating Customer is a Reseller or Partner. Customer agrees and understands that the License for the software included in the Products is non-transferable and may not be sold or transferred in any way except by an authorized reseller or partner.

A.9 Permission to Use Logo and Trademarks.

Customer grants permission to Wavecrest Computing to use Customer's logo and trademarks on the Wavecrest Computing Web Site or any other marketing material when referring to Customer. Customer will retain all title and rights to such logos.

A.10 Export Controls

Wavecrest Computing products and technical data may be subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import Wavecrest Computing products.

None of the product's Software or underlying information or technology may be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) Cuba, Iraq, Libya, Sudan, North Korea, Iran, Syria or any other country to which the United States has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders. By downloading or using the Software, you are agreeing to the foregoing and you are representing and warranting that you are not located in, under the control of, or a national or resident of any such country or on any such list. In addition, you are responsible for complying with any local laws in your jurisdiction which may impact your right to import, export or use the Software.

A.11 Exchanges by Wavecrest

From time to time, Wavecrest Computing may, in its sole discretion, exchange products or portions of a product. Any exchanges will be made in accordance with Wavecrest Computing's exchange policies in effect on the date of the exchange. Customer-initiated exchanges are not available.

A.12 On-going Product Update and Revision

Wavecrest Computing's policy is one of on-going product update and revision. As a result, the Company may revise and discontinue products at any time. Wavecrest Computing will ship products that have the functionality and performance of the products ordered, but changes between what is shipped and what is described in a specification sheet are possible. Parts may be new or refurbished. Spare and repair parts may also be new or refurbished.

A.13 Service and Support

A.13.1 Service and Support Policy. For the term of the Agreement, Wavecrest Computing will provide general service and support to Customer in accordance with the Company's then-current service and support policies, terms and conditions. For end-user Customers, Wavecrest Computing will attempt to handle any problem involving Wavecrest Computing products over the telephone or email. However, Wavecrest Computing's support personnel/providers may not be able to understand or resolve any given problem. Service offerings may vary from product to product. If Customer purchased optional services and support (e.g., training, installation support, etc.), Wavecrest Computing will provide the optional service and support to Customer in accordance with the then-current terms and conditions. Wavecrest Computing may, at its discretion, revise its general and optional service and support programs and the terms and conditions that govern them. The services and support programs and their terms and conditions in place at the time of purchase will apply to Customer's purchase, however, these may be amended at any time at Wavecrest Computing's sole discretion. Wavecrest Computing has no obligation to provide service or support until Wavecrest Computing has received full payment for the products that Customer purchased.

A.13.2 General. Seller provides technical support for all of its products from its facility in Melbourne, Florida. Support is conducted primarily via telephone, email and remote electronic troubleshooting conducted from the Wavecrest Computing support center. Telephonic support is available Monday through Friday, 8:00 AM to 6:00 PM Eastern Time, except holidays. Telephonic, email and remote troubleshooting support are provided at no charge. (Costs are included in the subscription, but see note below.)

Note: On-site maintenance is almost never needed. In the unlikely event that on-site maintenance becomes necessary, customer will be charged on a "labor hour plus travel expense" basis.

A.13.3 General Maintenance ("Tech Support") Services: Technical support includes remote trouble-shooting and, as required, remote assistance with product integration, installation, setup, configuration, and operation. (See above note and paragraph A.13.6 for on-site support.) Technical support personnel also provide answers regarding compatibility with customer's IT infrastructure, e.g., operating systems, firewalls, proxy servers, etc.

A.13.4 Software Maintenance and Enhancement. Seller provides software maintenance at no extra charge (above the subscription price). Software maintenance includes improvements, upgrades, and problem correction to enhance product capabilities, functionality, and ease-of-use. New product versions are released periodically, and individual "fixes" are communicated to existing customers via the "Update" screen in the product and Web page notice (<http://www.wavecrest.net>).

A.13.5 Hardware Maintenance and Repairs. During the 12-month hardware warranty period, Seller provides hardware repairs (for CyBlock Appliance) at no extra charge. Repairs normally consist of entire unit replacement. Replacement units may be new or refurbished. The 12-month hardware warranty may be extended in yearly increments.

A.13.6 Charges for Technical Support. Except for on-site support, which is almost never needed, there is no direct charge for technical support. The cost of these services is included in the purchase price. If on-site support is needed, it is charged on a "time and expenses" basis. Hourly rates for labor will be at the then Wavecrest rates charged under the Company's GSA contract. Expenses (travel, lodging, meals, etc.) are charged on "actual and reasonable" basis.

A.13.7 How to Contact. Contact with Wavecrest Computing can be made via:

Tel: 1-877-442-9346 (Toll free, for sales and technical support – United States and Canada only)

Tel: 1-321-953-5351 (Toll call, general purpose)

Fax: 1-321-953-5350

Email: sales@wavecrest.net (for sales support)

Email: support@wavecrest.net (for technical support)

A.13.8 Web Site. Considerable product and technical information is available on our Web site at <http://www.wavecrest.net>.

A.14 Dispute Resolution

The parties will attempt to resolve any claim, dispute or controversy (whether in contract, tort or otherwise) against Wavecrest Computing, its agents, employees, successors, assigns or affiliates (collectively for purposes of this paragraph, "Wavecrest Computing") arising out of or relating to this Agreement, Wavecrest Computing advertising, or any related purchase (a "Dispute") through face to face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator, rather than through litigation. If the parties are unable to resolve the Dispute through negotiation or mediation within a reasonable time after written notice from one party to the other that a Dispute exists, the Dispute will be settled by binding arbitration in accordance with the then current CPR Rules for Non-Administered Arbitration. The Arbitration will be conducted before three (3) independent and impartial arbitrators. Wavecrest Computing will appoint one (1) arbitrator and the other party or parties will appoint one (1) arbitrator. The two (2) appointed arbitrators will then select a third arbitrator, who shall be the presiding arbitrator. The arbitration hearing shall take place in Tampa, Florida and will be governed by the United States Federal Arbitration Act to the exclusion of any inconsistent state laws. The arbitrators shall base their award on the terms of this Agreement, and will follow the law and judicial precedents that a United States District Judge sitting in the county of Brevard (Florida) would apply to the Dispute. The arbitrators shall render their award in writing and will include the findings of fact and conclusion of law upon which their award is based. Judgment upon the arbitration award may be entered by any court of competent jurisdiction. The existence or results of any negotiation, mediation or arbitration will be treated as confidential. Notwithstanding the foregoing, either party will have the right to obtain from a court of competent jurisdiction a temporary restraining order, preliminary injunction or other equitable relief to preserve the status quo or prevent irreparable harm, although the merits of the underlying Dispute will be resolved in accordance with this paragraph.

A.15 Privacy and Confidentiality

Only authorized Company employees with a *need to know* use or handle information collected from individual customers. Client records are regarded as confidential and will not be divulged to any third party unless legally required to do so by the appropriate authorities. The Company retains no client records produced by the product; the only records retained are those pertaining to the sale itself and contact information. Wavecrest Computing will not sell, share, or rent your personal information to any third party or use your e-mail address for unsolicited mail. Any emails sent by this Company to Customer will only be in connection with the provision of agreed services and products. We constantly review our systems and data handling processes to ensure the privacy and confidentiality of Customers' information.

A.16 Miscellaneous Terms and conditions

A.16.1 Other Documents. These terms and conditions may NOT be altered, supplemented, or amended by the use of any other document(s), except as otherwise noted. Any attempt to alter, supplement or amend this document or to enter an order for product(s) or services and support that are subject to additional or altered terms and conditions will be null and void, unless otherwise agreed to in a written agreement signed by both Customer and Wavecrest Computing.

A.16.2 Governing Law. THIS AGREEMENT AND ANY SALES THEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF FLORIDA, USA WITHOUT REGARD TO CONFLICTS OF LAWS RULES.

A.17 Documentation Disclaimer

The Documentation pertaining to this product is provided on an "as is" basis. To the fullest extent permitted by law, the Company:

- excludes all representations and warranties relating to its products, website, publications (and their contents) which is or may be provided by any affiliates or any other third party, including in relation to any inaccuracies or omissions in the Company's website and/or literature; and
- excludes all liability for damages arising out of or in connection with your use of Wavecrest products and/or website. This includes, without limitation, direct loss, loss of business or profits (whether or not the loss of such profits was foreseeable, arose in the normal course of things or you have advised this Company of the possibility of such potential loss), damage caused to your computer, computer software, systems and programs and the data thereon or any other direct or indirect, consequential and incidental damages.
- excludes all liability for issues related to system capacity specifications, recognizing that system performance may vary based on customer configuration options or Internet usage conditions. Such specifications are subject to change without notice.

This Company does not however exclude liability for death or personal injury caused by its negligence in the manufacture or repair of its products. The above exclusions and limitations apply only to the extent permitted by law. None of your statutory rights as a consumer are affected.

A.18 Termination

This Agreement and the license granted hereunder will terminate automatically if Customer fails to comply with the provisions and limitations described herein, e.g., failure to make payment, unauthorized copying or usage, etc. Upon termination, Customer must destroy all copies of the Software and Documentation.

B. Wavecrest Computing Software License

End User License Agreement -- Redistribution or Rental Not Permitted.

B.1 Preamble

This LICENSE AGREEMENT ("Agreement") is made by and between Wavecrest Computing ("LICENSOR"), a Florida corporation having an address of 2006 Vernon Place, Melbourne, Florida 32901, and Customer ("LICENSEE"), i.e., person or organization acquiring the Software.

WAVECREST COMPUTING SOFTWARE (THE "SOFTWARE") IS LICENSED, NOT SOLD. BY INSTALLING THE SOFTWARE YOU HEREBY CONSENT TO BE AND ARE HEREBY BOUND BY AND ARE BECOMING A PARTY TO THIS LICENSE AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, DO NOT ACCEPT THE TERMS AND DO NOT INSTALL THE SOFTWARE. (IF APPLICABLE, YOU MAY RETURN THE PRODUCT TO THE PLACE OF PURCHASE FOR A FULL REFUND.) IF THE COPY OF THE SOFTWARE YOU RECEIVED WAS ACCOMPANIED BY A PRINTED OR OTHER FORM OF "HARD-COPY" END USER LICENSE AGREEMENT WHOSE TERMS VARY FROM THIS AGREEMENT, THEN THE HARD-COPY END USER LICENSE AGREEMENT GOVERNS YOUR USE OF THE SOFTWARE.

THIS LICENSE IS INTENDED TO BE USED AND APPLIED IN CONJUNCTION WITH THE ACCOMPANYING TERMS AND CONDITIONS, ITS COMPANION SOFTWARE WARRANTY AND ANY APPLICABLE HARDWARE WARRANTY.

If you initially acquired a copy of the Software free of charge and you wish to purchase a license, contact Wavecrest Computing via email at sales@wavecrest.net, the Internet at www.wavecrest.net or toll-free telephone number 1-877-442-9346.

This License Agreement has 4 parts:

- Part I applies if you have a free-of-charge (evaluation) license to the Software.
- Part II applies if you have purchased a license to the Software.
- Part III applies if you have a beta version of license to the Software
- Part IV applies to all license grants, including those under Part I, II and III.

B.1 Part I - Terms Applicable When License Fees Not (Yet) Paid (Limited to Evaluation Use)

LICENSE GRANT.

Licensor grants you a non-exclusive license to use the Software free of charge if your use of the Software is for the purpose of evaluating whether or not to purchase an ongoing license to the Software. The evaluation period is limited to thirty (30) days. If you are using the Software free of charge, you are not entitled to hard-copy documentation, support or telephone assistance. If you fit within the description above, you may use the Software in the manner described in Part IV below under "Scope of Grant."

DISCLAIMER OF WARRANTY FOR "AS IS" SOFTWARE.

Free-of-charge Software is provided on an "AS IS" basis, without warranty of any kind, including without limitation the warranties that the Software is free of defects, merchantable, fit for a particular purpose or non-infringing. The entire risk as to the quality and performance of the Software is borne by you. Should the Software prove defective in any respect, you and not Licensor or its suppliers assume the entire cost of any service and repair. In addition, the security mechanisms implemented by the Software have inherent limitations, and you must determine that the Software sufficiently meets your requirements. This disclaimer of warranty constitutes an essential part of this Agreement. No use of the Software without payment of license fees to Licensor is authorized hereunder except under this Disclaimer.

B.2 Part II - Terms Applicable When License Fees Paid

LICENSE GRANT.

Subject to payment of applicable license fees, Licensor grants to you a non-exclusive license to use the Software and accompanying documentation ("Documentation") in the manner described in Part IV below under "Scope of Grant." Unless you have purchased a subscription for the Software, the license granted under this Agreement does not grant you any right to any enhancement or update to the Software.

Licensor hereby represents and warrants that (i) it has title to the Software and has the right to grant this license to you; (ii) the granting of this license will not infringe any patent, copyright, trade-mark, trade secret or other proprietary right of any person; (iii) all maintenance, repair and support services provided by Licensor shall be performed in a diligent and professional manner by duly trained employees of Licensor that have the requisite experience to provide the required services; (iv) the Software does not and will not contain any backdoor, time bomb, drop dead device or other software routine designed to disable the Program automatically with the passage of time or under the positive control of any person other than you; and (v) the Software does not and will not contain any virus, Trojan horse worm or other software routines designed to disable, erase or otherwise harm the Software, your hardware or data, or permit unauthorized access or to perform any similar actions.

Licensor shall defend, indemnify and save you, your partners, employees, authorized representatives and associated entities, harmless from and against any liability, costs, loss, or expense of any kind arising out of or based on any claim, demand or action against you alleging that the Software Product or any portion thereof as furnished under this Agreement and used within the scope of this license infringes the copyright, patent, trade-mark, trade secret or other proprietary right of a third party. Without limitation, Licensor shall pay any costs, damages or award of settlement, including legal fees and court costs, arising out any such claim, demand or action, provided that you shall promptly give notice of any such claim, demand or action to Licensor and accord to Licensor the direction of the defense thereof and reasonably consent to any settlement of such claim, demand or action.

B.3 Part III - Terms Applicable to Beta Versions of the Software

YOUR USE OF ANY BETA VERSION OF A WAVECREST COMPUTING PROPRIETARY SOFTWARE PRODUCT (THE "SOFTWARE") IS GOVERNED BY THE TERMS OF THE ABOVE END USER LICENSE AGREEMENT (SPECIFICALLY PARTS I, II AND IV) AS MODIFIED BY THE TERMS OF THIS PART. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THE WAVECREST COMPUTING SOFTWARE END USER LICENSE AGREEMENT AND THIS BETA ADDENDUM, THE TERMS OF THIS BETA ADDENDUM SHALL GOVERN.

LICENSE GRANT.

Wavecrest Computing grants you a non-exclusive license to use the Software free of charge, on an AS IS basis, for evaluation and trial purposes only for a limited time. THIS SOFTWARE CONTAINS CODE THAT DISABLES MOST OF ITS FEATURES AFTER A TIMEOUT DATE (USUALLY 30 DAYS). This License does not entitle you to hard-copy documentation, support or telephone assistance. While Wavecrest Computing intends to distribute a commercial release of the Software, Wavecrest Computing reserves the right at any time not to produce a commercial release of the Software or, if released, to alter prices, features, licensing terms, or other characteristics of the commercial release.

TERMINATION.

The license granted under this Beta Addendum will terminate thirty (30) days following Wavecrest Computing's release of a commercial version of the Software. The license will terminate automatically if you fail to comply with the limitations described herein. You must destroy all copies of the Software upon termination.

B.4 Part IV - Terms Applicable to All License Grants

B.4.1 SCOPE OF LICENSE GRANT.

License Definition and Applicability

Wavecrest Computing's software licenses (the *Software*) are defined in terms of "organization" and "site."

- An *organization* is a business, government, educational or not-for-profit entity that purchases one or more Software licenses.
- A *site* is an organizational location, i.e., a subdivision, facility or office at which the Software is installed and centrally administered and for which it was originally purchased.
- For single-location organizations, "location" and "site" may be one and the same.

For licensing purposes, an organization can consist of one or more sites (as defined above), but each site must have its own license.

A site's licensed Software can be used *functionally* by other organization locations—without additional charge—if those other locations:

- are able to access the Software remotely
- do not have the Software installed.
- are not administering the product.

Copies of Software

A particular site may make additional copies of the Software for backup and/or configuration purposes so long as the use of those copies is within the scope of the license, as stipulated above.

Multiple-Copy Licenses

If you have purchased a license for multiple copies of the Software, you may make the total number of copies of Software (but not the Documentation) stated on the packing slip(s), invoice(s), or Certificate(s) of Authenticity, provided any copy must contain all of the original Software's proprietary notices. The number of copies on the packing slip(s), invoice(s), or Certificate(s) of Authenticity is the total number of copies that may be made for all platforms (except as noted above for backup or array configuration purposes). Additional copies of Documentation may be purchased from Licensor.

You may not:

- permit other individuals or locations to install or use the Software except under the terms listed above
- modify, translate, reverse engineer, decompile, disassemble (except and solely to the extent an applicable statute expressly and specifically prohibits such restrictions), or create derivative works based on the Software
- copy the Software other than as specified above
- rent, lease, grant a security interest in, or otherwise transfer rights to the Software
- remove any proprietary notices or labels on the Software.

B.4.2 SECURITY.

You are responsible for maintaining the security of the environment in which the Software is used and the integrity of the Software.

B.4.3 TITLE.

Title, ownership rights, and intellectual property rights in the Software shall remain in Wavecrest Computing and/or its suppliers. The Software is protected by copyright and other intellectual property laws and by international treaties. Title and related rights in the content accessed through the Software is the property of the applicable content owner and is protected by applicable law.

B.4.4 LICENSE TERM. This license is effective and legally binding as of the date that Wavecrest Computing provides the software activation key to the Customer. The license expires at the end of the number of months for which the license was purchased.

B.4.5 LICENSE RENEWAL. Customer can renew license without interruption of service by providing a purchase order or credit card payment before license expiration. Early payment does not change license term or expiration dates.

B.4.6 TERMINATION.

This Agreement and the license granted hereunder will terminate automatically if you fail to comply with the limitations described herein. Upon termination, you must destroy all copies of the Software and Documentation.

B.4.8 MISCELLANEOUS.

This License Agreement represents the complete agreement concerning the license granted hereunder and may be amended only by a writing executed by both parties. THE ACCEPTANCE OF ANY PURCHASE PLACED BY YOU VIA PURCHASE ORDER OR OTHER COMMITMENT INSTRUMENT (E.G., CREDIT CARD INFORMATION) IS EXPRESSLY MADE CONDITIONAL ON YOUR ASSENT TO THE TERMS SET FORTH HEREIN, AND NOT THOSE IN YOUR PURCHASE ORDER. If any provision of this Agreement is held to be unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable. This Agreement shall be governed by Florida law, excluding conflict of law provisions (except to the extent applicable law, if any, provides otherwise). The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

C. Limited Warranty - Software

C.1 Introduction

C.1.1 General Information. This warranty and the Wavecrest Computing Software that it warrants are provided subject to the License Agreement that accompanies this Warranty. The License Agreement is available in hard copy and on the Wavecrest Computing website and included in the Product. Customer agrees that it will be bound by the License Agreement as well as this Warranty.

C.1.2 Basic Warranty. Wavecrest Computing (the "Licensor") warrants that for a period of ninety (90) days from the date of acquisition, the Software, if operated as directed and in accordance with the accompanying Software License, will substantially achieve the functionality described in the Documentation. Licensor does not warrant, however, that your use of the Software will be uninterrupted or that the operation of the Software will be error-free or secure. In addition, the security mechanisms implemented by the Software have inherent limitations, and you must determine that the Software sufficiently meets your requirements. Licensor also warrants that the media containing the Software, if provided by Licensor, is free from defects in material and workmanship and will so remain for ninety (90) days from the date you acquired the Software.

C.2 Exclusive Remedy

Licensor will use reasonable commercial efforts to repair, replace, advise or, for individual customers, refund pursuant to the foregoing warranty within thirty (30) days of being so notified. Licensor's sole liability for any breach of this limited Software warranty shall be, in Licensor's sole discretion:

1. to replace your defective media or Software; or
2. to advise you how to achieve substantially the same functionality with the Software as described in the Documentation through a procedure different from that set forth in the Documentation; or
3. if the above remedies are impracticable, to refund the license fee you paid for the Software.

Repaired, corrected, or replaced Software and Documentation shall be covered by this limited warranty for the period remaining under the warranty that covered the original Software, or if longer, for ninety (90) days after the date (a) of delivery to you of the repaired or replaced Software, or (b) Licensor advised you how to operate the Software so as to achieve substantially the same functionality described in the Documentation.

C.3 Dispute Resolution

If the remedial effort described above is not satisfactory, as judged by Customer, and the Parties are not otherwise able to resolve the issue to mutual satisfaction, the issue will be subject to the provisions of the Disputes Resolution clause (A.14) of the Terms and Conditions that accompany this Warranty.

C.4 Warranty Proviso

Only if you inform Licensor of your problem with the Software during the applicable warranty period and provide evidence of the date you purchased a license to the Software will Licensor be obligated to honor this warranty.

C.5 Warranty Nullification

If any modifications are made to the Software by you during the Software warranty period; if the media is subjected to accident, abuse, or improper use; or if you violate the terms of this Agreement, then this warranty shall immediately terminate. Moreover, this warranty shall not apply if the Software is used on or in conjunction with hardware or software other than the unmodified version of hardware and software with which the Software was designed to be used as described in the Documentation.

C.6 WARRANTY LIMITATIONS

THIS IS A LIMITED SOFTWARE WARRANTY, AND IT IS THE ONLY WARRANTY MADE BY LICENSOR OR ITS SUPPLIERS. LICENSOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THIRD PARTIES' RIGHTS. YOU MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE ABOVE LIMITED WARRANTY PERIOD. MOREOVER, IN NO EVENT WILL WARRANTIES PROVIDED BY LAW, IF ANY, APPLY UNLESS THEY ARE REQUIRED TO APPLY BY STATUTE NOTWITHSTANDING THEIR EXCLUSION BY CONTRACT. NO DEALER, AGENT, OR EMPLOYEE OF LICENSOR IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS, OR ADDITIONS TO THIS LIMITED WARRANTY.

C.7 LICENSOR LIABILITY LIMITATIONS

C.7.1 GENERAL LIABILITY LIMITATIONS. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL LICENSOR OR ITS SUPPLIERS OR RESELLERS BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES. IN NO EVENT WILL LICENSOR BE LIABLE FOR ANY DAMAGES IN EXCESS OF THE AMOUNT LICENSOR RECEIVED FROM YOU FOR A LICENSE TO THE SOFTWARE, EVEN IF LICENSOR SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY FOR AN INTELLECTUAL PROPERTY INFRINGEMENT CLAIM, DEATH OR PERSONAL INJURY RESULTING FROM LICENSOR'S NEGLIGENCE TO THE EXTENT APPLICABLE LAW PROHIBITS SUCH LIMITATION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS EXCLUSION AND LIMITATION MAY NOT APPLY TO YOU.

C.7.2 PRODUCT USAGE LIABILITY LIMITATIONS. YOU UNDERSTAND, ACKNOWLEDGE AND AGREE THAT THE SOFTWARE IS ONLY A TOOL FOR ACQUIRING, PROCESSING, FILTERING AND, OR REPORTING DATA RELATED TO INTERNET AND COMPUTER ACTIVITY AND THAT LICENSOR AND ITS SUPPLIERS AND RESELLERS, INDIVIDUALLY AND COLLECTIVELY, ARE NOT AND SHALL NOT, UNDER ANY CIRCUMSTANCES, BE RESPONSIBLE OR LIABLE FOR ANY DAMAGES, LIABILITY OR COSTS ARISING FROM YOUR RELIANCE ON AND/OR ANY DECISIONS YOU MAKE BASED ON THE DATA, ACCURACY OR INACCURACY OF THE DATA, REPORTS GENERATED AND/OR INFORMATION PROVIDED BY OR OBTAINED FROM USE OF THE SOFTWARE, INCLUDING WITHOUT LIMITATION DECISIONS RELATED TO EMPLOYMENT AND/OR EMPLOYMENT TERMINATION OF EMPLOYEES AND/OR OFFICERS. YOU AGREE TO INDEMNIFY AND HOLD HARMLESS LICENSOR, LICENSOR'S SUPPLIERS AND RESELLERS AND THEIR OFFICERS, DIRECTORS, AFFILIATES, PARTNERS, EMPLOYEES, INDEPENDENT CONTRACTORS, AGENTS AND REPRESENTATIVES OF ANY KIND FROM ANY AND ALL DAMAGES, LIABILITY AND COSTS, INCLUDING REASONABLE ATTORNEY FEES AND COSTS OF DEFENSE, ARISING FROM YOUR USE OF AND/OR RELIANCE ON THE SOFTWARE AND/OR ANY DATA, INFORMATION AND/OR REPORTS RESULTING FROM USE OF THE SOFTWARE.

C.8 DISCLAIMER OF WARRANTY FOR FREE TRIAL (EVALUATION) SOFTWARE.

Software provided by Wavecrest Computing for trial or evaluation purposes is free of charge. Free-of-charge Software is provided on an "AS IS" basis, without warranty of any kind, including without limitation the warranties that the Software is free of defects, merchantable, fit for a particular purpose or non-infringing. The entire risk as to the quality and performance of the Software is borne by you. Should the Software prove defective in any respect, you and not Seller or its suppliers assume the entire cost of any service and repair. In addition, the security mechanisms implemented by the Software have inherent limitations, and you must determine that the Software sufficiently meets your requirements. This disclaimer of warranty constitutes an essential part of this Agreement. No use of the Software without payment of license fees to Seller is authorized hereunder except under this Disclaimer.

C.9 HIGH RISK ACTIVITIES

The Software is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). Accordingly, Licensor and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities.

C.10 DISCLAIMER OF WARRANTY FOR BETA SOFTWARE

Beta Software is provided on an "AS IS" basis, without warranty of any kind, including without limitation the warranties that the Software is free of defects, merchantable, fit for a particular purpose or non-infringing.

C.11 Termination

If any modifications are made to the Software by you during the License period; if the product is subjected to accident, abuse, or improper use; or if you violate the terms of this Agreement, then this warranty shall immediately terminate. Moreover, this warranty shall not apply if the Software is used on or in conjunction with hardware or software other than the unmodified version of hardware and software with which the Software was designed to be used as described in the Documentation.

D. Limited Warranty - Hardware

D.1 Basic Hardware Warranty

Wavecrest Computing (the 'Seller') warrants that for a period of 12 months from the date of acquisition, the hardware component of the Product, if operated as directed and in accordance with the accompanying Software License, will substantially achieve the functionality described in the Documentation. Seller does not warrant, however, that use of the Product will be uninterrupted or that the operation of the Product will be error-free or secure. In addition, the security mechanisms implemented by the Product have inherent limitations, and Customer must determine that the Product sufficiently meets your requirements.

D.2 Hardware Warranty Coverage

This limited hardware warranty covers defects in materials and workmanship in the hardware components of products sold by Wavecrest Computing. It does not cover:

- Software, including the operating system and software added to the hardware products through our factory-integration system, third-party software, or the reloading of software (**Note.** Wavecrest Software is covered by separate warranty)
- Products and accessories sold by other vendors.
- Problems that result from:
 - External causes such as accident, abuse, misuse, or problems with electrical power
 - Servicing not authorized by Wavecrest Computing
 - Usage that is not in accordance with product instructions
 - Failure to follow the product instructions or failure to perform preventive maintenance
 - Problems caused by using accessories, parts, or components not supplied by Wavecrest Computing
 - High Risk Activities (see D.10, High Risk Activities)
- Products with missing or altered Service Tags or serial numbers
- Products for which Wavecrest Computing has not received payment

D.3 Exclusive Remedy

Customer's sole and exclusive remedy and the entire liability of Wavecrest Computing under this limited hardware warranty shall be, at Wavecrest Computing or its service center's option and expense (except for S & H; see D.5 of Terms and Conditions), the repair, replacement or refund of the purchase price of any products sold which do not comply with this warranty. Hardware replaced under the terms of this limited warranty may be refurbished or new equipment, at Wavecrest Computing's option. Wavecrest Computing's obligations hereunder are conditioned upon the return of affected articles in accordance with Wavecrest Computing's then-current Return Material Authorization ("RMA") procedures; see Return Policy under Terms and Conditions . All parts will be new or refurbished, at Wavecrest Computing's discretion, and shall be furnished on an exchange basis. All parts removed for replacement will become the property of the Wavecrest Computing. In connection with warranty services hereunder, Wavecrest Computing may at its discretion modify the hardware of the product at no cost to you to improve its reliability or performance. The warranty period is not extended if Wavecrest Computing repairs or replaces a warranted product or any parts. Wavecrest Computing may change the availability of limited warranties, at its discretion, but any changes will not be retroactive. IN NO EVENT SHALL WAVECREST COMPUTING LIABILITY EXCEED THE PRICE PAID FOR THE PRODUCT FROM DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES RESULTING FROM THE USE OF THE PRODUCT, ITS ACCOMPANYING SOFTWARE, OR ITS DOCUMENTATION.

D.4 Dispute Resolution

If the remedial effort described above is not satisfactory as judged by Customer, the issue will be subject to the provisions of the Disputes Resolution clause (A.14) of the Terms and Conditions that accompany this Warranty.

D.5 Returns Policy

To be eligible for return, CyBlock Appliance hardware must be under warranty. Returns are governed by the policies stated in paragraphs D.5.1 through D.5.4 below.

D.5.1 Permissible Returns. At Wavecrest Computing discretion, a CyBlock Appliance that is under hardware warranty may be returned to the Company for one of three reasons:

1. **Repair.** Product is under warranty, is malfunctioning for hardware reasons, and Wavecrest determines it should be replaced with a new or refurbished unit. (This category includes return because of damage in shipment.)
2. **Refund (30 day money-back guarantee).** Customer chooses not to keep product before thirty-day money-back guarantee expires.
3. **Refund (90 day software warranty).** Product is under 90-day software warranty, is apparently failing to perform properly, and Wavecrest determines refund is warranted.

D.5.2 Return Merchandise Authorization (RMA). Before returning a product for any of these reasons, Customer must first contact Wavecrest Computing customer service and obtain a Return Merchandise Authorization (RMA) number. (For refunds, this must be accomplished before the end of the applicable return period.) Wavecrest Computing will not accept returns without a Return Merchandise Authorization (RMA) number. To request a RMA number, see the "Contacting Wavecrest Computing" or "Getting Help" section of product Documentation for proper telephone number and/or email address.

D.5.3 Return for Repair. You must ship the under-warranty product to Wavecrest Computing within 5 days of the date that Wavecrest Computing issues the RMA number. Return the under-warranty hardware unit in its original or equivalent packaging. Except as noted below, Customer is responsible for shipping and handling costs both ways.

Note. Loss or damage that occurs during shipping by a carrier selected by Wavecrest Computing is Wavecrest Computing's responsibility.

D.5.4 Shipment of Replacement Unit. Immediately upon issuance of the RMA, Wavecrest will ship a new or refurbished unit to Customer.

D.5.5 Return for Refund (30-day guarantee or 90-day software warranty). Return the CyBlock Appliance product in its original or equivalent packaging, in as-new condition, along with any media, documentation, and any other items that were included in your original shipment. Ship the products at your expense, and insure the shipment or accept the risk of loss or damage during shipment.

Upon receipt of your return, Wavecrest Computing will issue a credit or a refund of the purchase price paid, less any applicable restocking fees.

D.6 CUSTOMER RIGHTS

THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE (OR JURISDICTION TO JURISDICTION). WAVECREST COMPUTING'S RESPONSIBILITY FOR MALFUNCTIONS AND DEFECTS IN HARDWARE IS LIMITED TO REPAIR AND REPLACEMENT AS SET FORTH IN THIS WARRANTY STATEMENT. ALL EXPRESS AND IMPLIED WARRANTIES FOR THE PRODUCT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE LIMITED IN TIME TO THE TERM OF THE LIMITED WARRANTY PERIOD REFLECTED ON YOUR PACKING SLIP OR INVOICE. NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, WILL APPLY AFTER THE LIMITED WARRANTY PERIOD HAS EXPIRED. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THIS LIMITATION MAY NOT APPLY TO YOU.

D.7 LIMITATION OF SELLER LIABILITY

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL LICENSOR OR ITS SUPPLIERS OR RESELLERS BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES. IN NO EVENT WILL LICENSOR BE LIABLE FOR ANY DAMAGES IN EXCESS OF THE AMOUNT LICENSOR RECEIVED FROM YOU FOR A LICENSE TO THE SOFTWARE, EVEN IF LICENSOR SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY FOR AN INTELLECTUAL PROPERTY INFRINGEMENT CLAIM, DEATH OR PERSONAL INJURY RESULTING FROM LICENSOR'S NEGLIGENCE TO THE EXTENT APPLICABLE LAW PROHIBITS SUCH LIMITATION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS EXCLUSION AND LIMITATION MAY NOT APPLY TO YOU.

D.8 SOLE WARRANTY

THIS IS A LIMITED COMPUTER HARDWARE WARRANTY, AND IT IS THE ONLY WARRANTY MADE BY WAVECREST COMPUTING OR ITS SUPPLIERS FOR WAVECREST HARDWARE PRODUCTS. WAVECREST COMPUTING MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THIRD PARTIES' RIGHTS. YOU MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE ABOVE LIMITED WARRANTY PERIOD. MOREOVER, IN NO EVENT WILL WARRANTIES PROVIDED BY LAW, IF ANY, APPLY UNLESS THEY ARE REQUIRED TO APPLY BY STATUTE NOTWITHSTANDING THEIR EXCLUSION BY CONTRACT. NO DEALER, AGENT, OR EMPLOYEE OF LICENSOR IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS, OR ADDITIONS TO THIS LIMITED WARRANTY.

D.9 DURATION OF WARRANTY

This limited hardware warranty lasts for the time period (normally 12 months) indicated on your packing slip, invoice, or receipt. The warranty period begins the day Wavecrest Computing sends the Customer a product activation key. The warranty period is not extended if Wavecrest replaces a warranted hardware unit. At its discretion, Wavecrest Computing may change the availability or provisions of limited hardware warranties, but any changes will not be retroactive. Additional (follow-on) warranties may be purchased by Customer in conjunction with its Product subscription.

D.10 HIGH RISK ACTIVITIES

The CyBlock Appliance hardware is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). Accordingly, Licensor and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities.

D.11 Exclusions

This limited warranty does not apply to Wavecrest Computing products that are or have been (a) marked or identified as "sample" or "beta," (b) loaned or provided to you at no cost, (c) sold "as is," (d) repaired, altered or modified except by Wavecrest Computing, (e) not installed, operated or maintained in accordance with instructions supplied by Wavecrest Computing, or (f) subjected to abnormal physical or electrical stress, misuse, negligence or to an accident.

D.12 Termination

If any modifications are made to the product by you during the warranty period; if the product is subjected to accident, abuse, or improper use; or if you violate the terms of this Agreement, then this warranty shall immediately terminate. Moreover, this warranty shall not apply if the Software is used on or in conjunction with hardware or software other than the unmodified version of hardware and software with which the Software was designed to be used as described in the Documentation.