

# MASTER SERVICE AGREEMENT

## Shared Exchange Hosting

CAREFULLY READ THESE TERMS AND CONDITIONS, AS THEY FORM A BINDING LEGAL AGREEMENT BETWEEN YOU AND COMPANY. ONLY AN AUTHORIZED REPRESENTATIVE OF YOUR COMPANY MAY EXECUTE THIS AGREEMENT. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, CLOSE YOUR BROWSER AND DO NOT PROCEED WITH USING THE SERVICES.

By accepting this Agreement between You and Company – by clicking “I Accept and Continue” – You agree to be bound by all of the terms and conditions of (i) this Master Service Agreement with Company and (ii) the following:

- The attached Appendix A: Microsoft Software Use – Terms and Conditions and Appendix B: Research in Motion Use – Terms and Conditions,
- Company’s Privacy Policy (the “Privacy Policy”);
- Company’s Service Level Agreement (the “SLA” or “Service Level Agreement”), and
- Company’s Acceptable Use Policy (the “AUP”), (collectively, this “Agreement”).

Each of the foregoing are expressly incorporated herein by reference and may be updated from time-to-time by Company. Current copies of the Privacy Policy, SLA and AUP are located at <http://serverdata.net/legal>.

If You do not agree to any of the terms of this Agreement, then You (i) must click “I Decline” or close Your browser and (ii) do not have Company’s permission to use the Services.

You acknowledge and agree that Company is not providing You SIP trunk (VOIP) or audio bridge services under this Agreement and that any use of telephony or other voice communications used in connection with the Services are provided by a third party and at Your sole risk.

*If you are an individual entering into this Agreement on behalf of an Entity (defined below), you represent and warrant that you have the authority to bind such Entity to this Agreement. If you do not have such authority, neither you nor such Entity may accept this Agreement or use the Services.*

**Definitions.** For the purposes of this Master Service Agreement, the following definitions apply:

“Access Information” means information that alone or together with other information, can provide access to any portion of Your Account, including but not limited to Your Account number, login names, passwords, credit card or other financial information, security questions and their respective answers, and any other similar information. For the avoidance of doubt, Your Access Information will include any similar information for each of Your Users.

“Account” means the account created with Company in connection with this Agreement that relates to Your purchase or subscription to and use of Services by You and Your Users.

“Applicable Law” means any applicable foreign, federal, state or other laws, rules, regulations or interpretations of relevant Governmental Authorities.

“Beta Offerings” means any portion of the Services offered on a “beta” basis, as designated by Company, including but not limited to products, plans, services and platforms.

“Data” means all data submitted by Your Users to Company in connection with the Services, including all content, material, IP and similar addresses, recordings, messages, software, Account Information and Account-related settings.

“Entity” means a company, corporation, partnership, association, trust, unincorporated organization, government or political subdivision or any other legal entity.

“Governmental Authority” means a government, regulatory organization, self-regulatory organization, court of competent jurisdiction or similar body.

“Company” means the entity with whom you are entering this Agreement to provide you Services.

“Company Parties” means Company’s affiliates (including parents and subsidiaries), vendors, licensors and partners, and it and their officers, employees, agents and representatives.

“Services” means Company’s hosting and/or other services, software and products, as such services, software and products are offered by Company from time-to-time in its discretion and subscribed to or purchased by You through Company’s website or otherwise, or as otherwise used by You.

“Third-Party Service” means any service or product offered by a party that is not Company.

“User” means any of Your employees, consultants or independent contractors to whom You grant permission to access the Services in accordance with Company’s entitlements procedures and this Agreement.

“You” and “Your” means the individual or Entity on whose behalf this Agreement is accepted.

### 1. SCOPE; ACCESS; SECURITY.

1.1. Access to Services. Subject to and in accordance with the terms of this Agreement, Company grants You a non-exclusive, non-sublicensable, nontransferable, non-assignable, revocable license for the term of this Agreement to access and use the Services only by Your Users for internal business purposes only. You agree to comply with the terms and conditions of this Agreement and with all applicable Company procedures and policies that further define use of the Services. You acknowledge and agree that the actions of any of Your Users with respect to the Services will be deemed to be actions by You and that any breach by any of Your Users of the terms of this Agreement will be deemed to be a breach by You.

1.2. Account Information and Ownership. You agree to maintain accurate Account information by providing updates to Company promptly, but no later than three (3) business days, when any of Your Account information requires change, including any relevant Account contact information. Failure by You, for any reason, to respond within three (3) business days to any inquiries made by Company to determine the validity of information provided by You will

constitute a material breach of this Agreement. You acknowledge and agree, and expressly consent, that in the event of any dispute regarding access to or legal ownership of any Company account or any portion thereof, including Your Account, Company will resolve such dispute in its sole discretion. In addition, in the event of such a dispute, Company may immediately suspend, alter or terminate any relevant account, including Your Account, or any portion thereof. You will reimburse Company for any legal and other fees incurred with respect to any dispute regarding control or ownership of Your Account or Your Data or the same of another Company customer. You acknowledge and agree that (i) the legal owner of all Data on the Account is You, the counterparty to this Agreement, and not any individual User, including any Account contact registered with Company, regardless of any administrative designation (e.g., "Administrator," "Billing Contact," "Owner," etc.) and (ii) Company may request any documentation it requires to establish ownership and rights to Your Account and any related Data; provided that any User with an administrative designation has the authority to bind You to any amendments, modifications or acknowledgements regarding this Agreement or otherwise relating to the Services.

1.3. Account Security and Activity. You acknowledge and agree that You are solely responsible for (i) maintaining the confidentiality and security of Your Access Information, and (ii) all activities that occur in connection with Your Account, whether initiated by You, by others on Your behalf or by any other means. You will notify Company immediately of any unauthorized use of Your Account, Access Information or any other actual or potential breach of security. You acknowledge and agree that Company will not be liable for any loss that You may incur as a result of any party using Your Access Information, either with or without Your knowledge and/or authorization. You further agree that You may be held liable for losses incurred by Company, any Company Party or another party due to any party using Your Access Information. Company strongly recommends that You keep Your Access Information in a secure location, take precautions to prevent others from accessing it and change it when necessary to maintain its confidentiality and security. **Company specifically disclaims all liability for any activity in Your Account, whether authorized by You or not.**

**2. TERM AND TERMINATION.**

2.1. Term. The Agreement term is either the Initial Term or Renewal Term (each, a "Term") as defined herein.

(a) Monthly Plan Agreement Term. For a Monthly Plan with Company, the Initial Term is the period from the date of Your initial payment or acceptance of this Agreement, whichever occurs earlier, through the remainder of that calendar month. A Renewal Term for a Monthly Plan is defined as one calendar month beginning at the end of the Initial Term and each subsequent calendar month thereafter.

(b) Extended Plan Agreement Term. For an Extended Plan with Company, the Initial Term is the period from the date of Your initial payment or acceptance of this Agreement, whichever occurs earlier, through the remainder of that calendar month and continuing through the next six (6) calendar months (for example, an Extended Plan that begins April 14 will continue until October 31), unless the parties have agreed in writing to a longer term. A Renewal Term for an Extended Plan is defined as the six-month period

beginning at the end of the Initial Term and each subsequent six-month period thereafter.

(c) Automatic Renewal. This Agreement will renew automatically at the end of the then-current Term for a Renewal Term unless terminated in accordance with this Agreement by either You or Company.

2.2. Termination by You.

(a) Monthly Plan. For a Monthly Plan, You may terminate this Agreement for any reason by following the termination procedure located within the "Account" section of the administrative control panel prior to the beginning of any Renewal Term. If You terminate a Monthly Plan prior to the end of the then-current Term, Company will not be required to refund to You any fees already paid.

(b) Extended Plan. For an Extended Plan, You may terminate this Agreement for any reason by following the termination procedure located within the Account section of the administrative control panel at any time for Company to terminate Your Account. If such a termination is effective prior to the end of the then-current Term, You will incur a fee that is the lesser of (a) one month of the Minimum Package Fee from the end of the calendar month following the requested termination date, as defined on Your then-current plan; and (b) the Minimum Package Fee for the remainder of the then-current Term. The "Minimum Package Fee" is the monthly charge for Your base package excluding any additional items that You have purchased along with such base package.

(c) Refunds/Fees for Termination by You. Fees for non-recurring Services and set up fees will not be refunded. Any fees previously waived or discounts applied may be reinstated if You terminate the account during the Term or if You breach this Agreement.

2.3. Termination by Company.

(a) 15-Day Termination. Company may terminate this Agreement for any reason by providing fifteen (15) calendar days notice. If Company terminates this Agreement pursuant to this Section 2.3(a), (i) for a Monthly Plan, if the effective termination date occurs prior to the end of the then-current Term, Company will refund (or refrain from charging You) the pro rata monthly fees for the month in which Services terminate and (ii) for an Extended Plan, Company will refund (or refrain from charging You) the monthly fees for the month in which Services terminate. For either a Monthly Plan or an Extended Plan, if Company terminates this Agreement pursuant to this Section 2.3(a), Company will not charge You monthly fees for any month following the month in which Company terminates this Agreement.

(b) Immediate Termination. Company may terminate this Agreement (or suspend Your Account) immediately and without prior notice for any of the following reasons:

(i) Any material breach of this Agreement by You, as determined by Company in its sole discretion, including, but not limited to, failure to make any payment when due, violation of the AUP or any other Company policy or procedure applicable to the Services as notified to You from time to time;

(ii) If Your use of the Services results in, or is the subject of, actual or potential legal action or

threatened legal action, against Company or any of its affiliates, vendors, partners, representatives or customers, without consideration for whether such actual or potential legal action or threatened legal action is eventually determined to be with or without merit; and

(iii) Any non-material breach of this Agreement by You which remains uncured beyond ten (10) calendar days from notice by Company.

(c) Termination or Suspension of Users. In lieu of terminating or suspending Your entire Account, Company may suspend Your Account or terminate or suspend individual Users.

(d) No Refunds; Further Payment Due. If Company terminates this Agreement pursuant to Section 2.3(b), (i) Company will not refund to You any paid fees and (ii) You will be liable for any payment that would have been due had You terminated pursuant to section 2.2.

2.4. Following Termination. Termination will not cancel or waive any fees owed to Company or incurred prior to or upon termination. You agree that Company may charge such unpaid balance to Your Account on file or otherwise bill You for such unpaid balance. Upon termination, You must promptly uninstall all software provided by Company in connection with the Services. All of Your Data may be irrevocably deleted within fourteen (14) calendar days of termination, including but not limited to, databases, contacts, calendars, e-mail, website content, Exchange Data and any other Data hosted by Company. It will be solely Your responsibility to secure all necessary Data from Your Account prior to termination. Company will not be responsible or otherwise liable for any loss of Your Data or any damages arising from the deletion of Your Data following termination of the Services.

### 3. FEES, BILLING, TAXES, CHARGES.

3.1. Fees. The fees initially charged upon ordering any Service will be effective for the Initial Term and each Renewal Term of this Agreement, provided, that Company will have the right to increase these fees at any time upon thirty (30) calendar days notice to You. If You do not agree with such fee increase, You will have the right to terminate this Agreement immediately upon notice, provided, that such notice of termination must be received within thirty (30) calendar days of date of notice of the fee increase. All payments made to Company shall be in US Dollars.

3.2. Billing and Payment Arrangements. Company will bill You monthly for all established and recurring fees, and any applicable one-time fees in that month, including but not limited to interest, check paying program fees and returned check fees. Pro rata billing may occur throughout the course of a billing cycle for feature add-ons that You enable on your Account during any given month.

#### 3.3. Payment by Automated Means.

(a) You may view and print an invoice for Your Account using the administrative control panel made available to You. On or about the first day of each month, Company will apply the current monthly charges to Your automated payment method, the relevant information of which You entered on the billing information page in the administrative control panel. Payment by automated means includes any form of automated payment accepted by Company from time-to-time, including credit card, debit card, direct debit or other means.

(b) You must provide Company with valid automated payment information as a condition to receive or use the Services. You are responsible for and agree to update Company with any changes to Your billing and/or automated payment information (e.g. new or updated credit card, credit card expiration date or other payment account information). **By providing Company with the automated payment information, You authorize Company to charge Your automated payment account for any amounts arising from or relating to the Services without further authorization from You.** It is Your responsibility to keep Your automated payment information up-to-date. If charges to Your automated payment account fail, Company will email a warning to Your Account billing contacts.

(c) If Company is unable to successfully process Your payment by automated means by the seventh (7th) calendar day of the month for which the payment is due, Your payment will be considered late and not paid in full. Company may suspend or terminate Your Account in accordance with Section 2.3(b)(i) for failure to timely pay in full. Late payments are subject to a late-payment charge of the greater of (i) interest calculated at the lesser of (x) 18% (eighteen percent) and (y) the maximum amount permitted by law and (ii) \$25 (twenty-five dollars). Such interest will accrue daily from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You will pay the interest immediately on demand. You will pay all collection costs incurred by Company (including, without limitation, reasonable attorney's fees).

#### 3.4. Payment by Check.

(a) If You apply for and are accepted into Company's check paying program, Company will issue You an invoice within the first five (5) calendar days of each calendar month. Each invoice will include an invoice processing fee of \$25 (twenty-five dollars). Payment by check must be received by the fifteenth (15<sup>th</sup>) calendar day of each month. Acceptance into and continued participation in Company's check paying program will be at Company's sole discretion.

(b) Should Your check not be honored, a check fee of the lesser of (i) \$50 (fifty dollars) and (ii) the maximum amount permitted by law, will be charged to Your Account. In addition, Company may require You to pay by cashier's check or money order.

(c) If Company does not receive payment by the fifteen (15th) calendar day of the month for which the payment is due, Your payment will be considered late and not paid in full. Company may suspend or terminate Your Account in accordance with Section 2.3(b)(i) for failure to timely pay in full. Late payments are subject to a late-payment charge of the greater of (i) interest calculated at the lesser of (x) 18% (eighteen percent) and (y) the maximum amount permitted by law and (ii) \$25 (twenty-five dollars). Such interest will accrue daily from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You will pay the interest immediately on demand. You will pay all collection costs incurred by Company (including, without limitation, reasonable attorney's fees).

3.5. Fees for Excess Use. You will monitor and maintain Your Accounts within all Company-specified limits and in a manner that does not disrupt the activities of Company and

other Company customers and users. If Your usage exceeds the limits for Your Account or may disrupt the activities of other Company customers, You agree that Company may immediately, in its sole discretion, (i) charge You for such excess usage via Your automated payment account, or by invoice if You have been accepted into Company's check paying program, (ii) upgrade You to a plan or increase the limits on Your Account to address this excess usage, and/or (iii) suspend Your Account or terminate Your Account upon notice To You. Usage and associated charges for excess usage will be determined based solely upon Company's collected usage information. Unused monthly allotments will not accrue or carry over from one month to any other month. Upon any upgrade or increase on the limits of Your Account, You will be responsible for the new costs and fees.

3.6. Taxes. In addition to Company's charges, You will be liable for all taxes, governmental fees and assessments related to fees and charges charged to You under this Agreement or otherwise in respect of Your use of the Services.

3.7. Fees for Additional Services. You agree to pay Company's then-current rates and expenses, including the cost of Company's vendors, for any requests related to information retrieval, subpoenas, consulting and advisory services or similar work.

3.8. Bill Disputes. You will notify Company of any dispute relating to charges billed to Your Account by submitting written notice to Company within sixty (60) days of the date the disputed charges appeared on Your Account. The existence of a dispute will not relieve You from paying any and all amounts billed hereunder. You waive all rights to dispute any charges not disputed by written notice as required above.

3.9. Electronic Billing and Documentation. All billing and other documentation regarding the Services may be provided electronically ("Electronic Documentation"). You acknowledge and agree that You are able to view all Electronic Documentation and consent to receiving Electronic Documentation and decline to receive hard copies of any such materials.

**4. USE OF THE SERVICES.**

4.1. Internal Use. You will use the Services for Your own internal business, non-residential and non-personal use. You acknowledge and agree that You will not allow any third party, including Your vendors and service providers, to access or use the Services.

4.2. Restricted Activities. You will not (A) use any Service for any purpose outside the Service's intended scope, features, and function set, (B) use any Service for third-party training, (C) use any Service as an application service provider or service bureau, (D) use any Service for timesharing or rental, (E) use any Service to design software or other materials or services with similar or competitive functionality for any purpose, including distribution to third parties, (F) except with respect to Your Data, duplicate any portion of the Services or display, distribute, publish, or otherwise disclose any Service; (G) use any of the Services to interface with any other service or application that is outside the scope of intended use; (H) decompile, disassemble, or otherwise reverse engineer any portion of the Services; (I) without prior written consent of Company, make any modification or interface to any Service that is not

specifically authorized by Company; and (J) resell or sublicense any portion of the Services, and any purported resale or sublicense will be void. You may not access the Services for purposes of monitoring their performance, availability, or functionality, or for any other benchmarking or competitive purposes, without Company's prior written consent. You may not, without Company's prior written consent, access the Services if You are a direct competitor of Company.

4.3. Applicable Law. You acknowledge and agree that access and use of the Services may be restricted or limited as a result of Applicable Laws and that You will not use, or allow the use of the Services in contravention of, and will comply with, any Applicable Law. You represent that You and Your Users are not named on any Government Authority list of persons or entities prohibited from receiving exports, and (ii) You will not permit Users to access or use Services in violation of any export embargo, prohibition or restriction. You acknowledge and agree that that it is Your sole responsibility to use the Services in a lawful manner.

**5. YOUR DATA.**

5.1. Submission of Your Data. Any Data You provide to Company in connection with the Services must comply with the AUP. Attempting to place or transmit, or requesting placement or transmission, of Data that does not comply with the AUP will be a material breach of this Agreement. Company may, in its sole discretion, reject or remove Data that You have used or attempted to use with respect to the Services. Any Data used with respect to the Services by or through You will be free of any and all malicious code, including without limitation, disabling devices, drop dead devices, time bombs, trap doors, trojan horses, worms, computer viruses and mechanisms that may disable or negatively impact the Services or Company's servers. You hereby represent and warrant to Company that You have the right to use any patented, copyrighted, trademarked, proprietary or other material in connection with Data that You use, post, or otherwise transfer or transmit with respect to the Services.

5.2. Public Disclosure of Data. You are solely responsible for ensuring that You do not accidentally make any private Data publicly available. Any Data made public may be publicly accessible through the internet and may be crawled and indexed by search engines or other third parties. By making any Data publicly available on any of the Services You affirm that You have the consent, authorization or permission, as the case may be from every person who may claim any rights in such Data to make such Data available in such manner.

5.3. Data Takedown. By making any Data publicly available in the manner aforementioned, You expressly agree that Company will have the right to block access to or remove such Data made available by You, if Company receives complaints, inquiries or notices concerning any illegality or infringement of rights in such Data. You expressly consent to determination of questions of illegality or infringement of rights in such Data by the agent designated by Company for this purpose.

5.4. Filtering. Company may employ various filtering methods to reduce unwanted content, such as SPAM e-mail, from reaching Your Company Account. You acknowledge and agree that such methods may prevent legitimate content

from reaching Your Account and that Company will not be liable therefor.

5.5. Control. Company is not obligated to exercise control over the content of information, including Your Data, passing through Company's network except any controls expressly provided in this Agreement.

**6. CONFIDENTIALITY AND PRIVACY.**

6.1. Confidential Information. "Confidential Information" is all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information will include Your Data. Company's Confidential Information will include the Services (and any portion thereof), the terms and conditions of this Agreement and all related Service order forms, as well as Company's business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by Company. Confidential Information will not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

6.2. Protection of Confidential Information. Except as otherwise permitted by this Agreement or in writing by the Disclosing Party, (i) the Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party will limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement.

6.3. Use and Disclosure by Company. Notwithstanding the foregoing, Company may use or disclose Your Data (a) as expressly permitted in writing by You, (b) as expressly provided in this Agreement, including (i) in accordance with the Privacy Policy (as if such Data were "Information" as defined under the Privacy Policy), and (ii) to access Your Data to provide the Services or prevent or address service or technical problems, or at Your request in connection with customer support matters. **You expressly consent to the foregoing use and disclosure.**

**7. BETA OFFERINGS.**

**The SLA does not apply to any Beta Offerings. Notwithstanding anything else set forth in this agreement, Company does not make any representations or warranties regarding any Beta Offering or the integrity of any data stored in connection with any Beta Offering. You are strongly discouraged from using any Beta Offering in connection with sensitive data.** Company may change or terminate any Beta Offering in its sole discretion without notice and does not represent or warrant the result of any such action. Company may convert any Beta Offering to a paid service upon notice

to You in Company's sole discretion. To avoid incurring increased charges following such a conversion, You must terminate (i) the individual converted service (if possible) by contacting Company as directed in the conversion notice, or (ii) if You subscribe to no other services under Your Account, the entire Account, pursuant to section 2 of this Agreement.

**8. LIMITED WARRANTY; LIMITATION ON LIABILITY; THIRD-PARTY SERVICES.**

8.1. Limited Warranty; Limitation on Liability. **Company provides the Services and any related products on an "as is" basis. You expressly agree that use of the Services is at Your sole risk. Company and the Company Parties expressly disclaim all warranties of any kind, whether express or implied, oral or written, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement. You hereby agree that the terms of this Agreement will not be altered due to custom or usage or due to the parties' course of dealing or course of performance under this Agreement. Company and the Company Parties will not be liable for any direct, indirect, incidental, special, punitive or consequential damages (including but not limited to damages for lost profits, business interruption, loss of programs or information, and the like) that result from the use or inability to use the Services or from mistakes, the Services not meeting Your requirements or expectations, omissions, hardware failures, translations and system wordings, functionality of filters, migration issues, interruptions, deletion of files or directories, unavailability of backups, errors, defects, delays in operation, or transmission, regardless of whether Company or any Company Party has been advised of such damages or their possibility. Company will not be liable for any harm that may be caused by the execution or transmission of malicious code or similar occurrences, including without limitation, disabling devices, drop dead devices, time bombs, trap doors, trojan horses, worms, viruses and similar mechanisms. You agree that the total liability of Company and any Company Party and Your sole remedy for any claims regarding the Services under this Agreement or otherwise is limited to any applicable credits set forth in the Service Level Agreement.**

8.2. Other Liability. None of the Company Parties is responsible to You for any warranty provided by Company.

8.3. Third-Party Services. Company may link to or offer Third-Party Services on Company's website or otherwise through the Services. **Any purchase, enabling or engagement of Third-Party Services, including but not limited to implementation, customization, consulting services, and any exchange of Data between You and any Third-Party Service, is solely between You and the applicable Third-Party Service provider and is subject to the terms and conditions of such Third-Party Provider. Company does not warrant, endorse or support Third-Party Services and is not responsible or liable for such Services or any losses or issues that result as Your use of such services.** If You purchase, enable or engage any Third-Party Service for use in connection with the Services, You acknowledge that Company may allow providers of

those Third-Party Services to access Your Data used in connection with the Services as required for the interoperation of such Third-Party Services with the Services. You represent and warrant that Your use of any Third-Party Service signifies Your independent consent to the access and use of Your Data by the Third-Party Service provider, and that such consent, use and access is outside of Company's control. Company will not be responsible or liable for any disclosure, modification or deletion of Data resulting from any such access by Third-Party Service providers.

**9. OWNERSHIP AND CONTROL.**

9.1. No Transfer. Except for rights expressly granted herein, this Agreement does not transfer any intellectual or other property or proprietary right to You. All right, title, and interest in any Service provided to You, including without limitation any copyright, trade secret and vested or potential trademark and patent rights, is solely the property of Company and its vendors and licensors. As between You and Company, all materials distributed by Company in connection with the Services will at all times remain the property of Company, and upon the request of Company or upon termination of this Agreement, You will promptly return any and all such materials.

9.2. Control. Company will have sole and complete control over, and reserves the right at any time to make changes to, the configuration, appearance, content and functionality of the Services. In addition, Company reserves the right, at any time, without prior notice, to the exercise of its sole discretion to suspend or terminate any Service for the protection of the security and integrity of the Services or other business, technical or financial considerations as determined by Company.

9.3. Feedback License. Company will have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You and Your Users to Company or any Company Party.

9.4. Porting. You acknowledge and agree that, as between You and Company, any telephone or other access numbers or destination or origination points provided by Company in connection with the Services (such as fax service) are the property of Company and may not be ported out or otherwise transferred or modified ("Company Numbers"). Further, You acknowledge and agree that You will promptly compensate Company for any expenses relating to your attempted port of any Company Number.

**10. HARDWARE, EQUIPMENT, AND SOFTWARE.**

You are responsible for and must provide all hardware, software, services and other components necessary to access and use the Services. Company makes no representations, warranties, or assurances that Your hardware, software, services and other components will be compatible with any Service. Company reserves the right to change or upgrade any equipment or software that it uses to provide the Services without notice to You. Company will install security patches, updates, upgrades and service packs ("Updates") as it determines in its sole discretion, and reserves the right, but not the obligation, to roll back any Updates. Updates may change system behavior and functionality and as such may negatively affect the Services

used by You. Company cannot foresee nor can it be responsible or liable for service disruption or changes in functionality or performance due to Updates. Company is not responsible or liable for issues that may arise from incompatibilities between Your Data and use of the Services and any Update or hardware or software change or configuration, regardless of whether discretionary or requested.

**11. INDEMNIFICATION.**

You will defend, indemnify, save, and hold Company and the Company Parties harmless from any and all demands, liabilities, losses, costs, and claims, including reasonable attorneys' fees, asserted against them that may arise or result from Your use of the Services, Your breach of this Agreement, Your negligence or willful misconduct, or any of Your own services or products.

**12. MODIFICATION OF TERMS.**

12.1. Company may update, amend, modify or supplement the terms and conditions of this Agreement, including the SLA, AUP and Privacy Policy, from time to time by giving You notice. Such changes will take effect immediately. Any such modification may be made without the consent of any third party beneficiaries of this Agreement. You can review the most current version of this Agreement at any time at: [serverdata.net/legal](http://serverdata.net/legal). **Your continued use of Your Account and/or the Services after Company posts a new version of the Agreement will be conclusively deemed to be acceptance by You of any such new version.**

**13. MISCELLANEOUS.**

13.1. Governing Law; Jurisdiction; Forum; Attorneys' Fees. This Agreement will be governed by and construed in accordance with the laws of the State of New York without regard to its conflicts of laws or its principles. Any claim or suit arising out of or relating to this Agreement will be brought in any court of competent jurisdiction located in the County and State of New York. In any action to enforce this Agreement, including, without limitation, any action by Company for the recovery of fees due hereunder, You will pay Company reasonable attorneys' fees and costs in connection with such action if Company prevails in such action. You agree to waive the right to trial by jury with respect to any proceeding related to or arising out of this Agreement.

13.2. Written Communications and Notice. You accept that communication from Company may be electronic. Company may contact You by e-mail or provide You with information by posting notices on Company's website or to Your Account. You agree to this electronic means of communication and You acknowledge that all contracts, notices, information and other communications that Company provides to You electronically are acceptable and effective as notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder will be in writing and will be deemed to have been given (i) immediately upon personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email or, if from Company to You, online posting. Notices to You may be addressed by Company to any e-mail address, postal address or facsimile number registered with Company, or through means of online posting through the

Services. Notices to Company that are not expressly authorized by administrative control panel under this Agreement shall be mailed to the address designated on Company's website from time to time.

13.3. Age and Capacity. You hereby represent and warrant that each User has reached the older of (i) the age of eighteen and (ii) the age of majority in the User's jurisdiction, and that You are not subject to a limitation on Your ability to enter into this Agreement.

13.4. Severability. If any one or more of the provisions contained herein will, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any of the other provisions of this Agreement, and this Agreement will be construed as if such provision(s) had never been contained herein, provided that such provision(s) will be curtailed, limited, or eliminated only to the extent necessary to remove the invalidity, illegality, or unenforceability.

13.5. Waiver. No waiver by Company of any breach by You of any of the provisions of this Agreement will be deemed a waiver of any preceding or succeeding breach of this Agreement. No such waiver will be effective unless it is in writing signed by the parties hereto, and then only to the extent expressly set forth in such writing.

13.6. No Assignment. No benefit or duty of You under this Agreement will, without the consent of Company, be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to do so will be void. Company may assign this Agreement without Your consent and without notice.

13.7. Force Majeure. Except for monetary obligations, this Agreement and Your obligations hereunder will not be affected or impaired because Company is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of Force Majeure Event and Company's obligations under this Agreement will be suspended by any such Force Majeure Event. "Force Majeure Event" is any cause beyond Company's reasonable control or anticipation, including, without limitation, acts of war, acts of god, terrorism, earthquake, hurricanes, flood, fire or other casualty, embargo, riot, sabotage, labor shortage or dispute, governmental act, insurrections, epidemics, quarantines, inability to procure materials or transportation facilities, failure of power, restrictive governmental laws or regulations, condemnation, acts of third parties, failure of the Internet or other reason that is beyond Company's reasonable control or anticipation.

13.8. Survival. The preamble and Sections 2, 3, 4, 5, 6, 8, 9, 11, 12, 13 and 14 of this Agreement will survive termination.

13.9. Entire Agreement; Third Party Beneficiaries. This Agreement constitutes the entire agreement for provision of the Services to You and supersedes all other prior agreements and understandings, both written and oral, between You and Company with respect to the Services. You understand and agree that (a) Company and You intend to include, as the sole third party beneficiaries of this Agreement, the Company Parties, including Research in Motion Limited, and (b) such Company Parties shall have all rights and remedies available to them as if they were parties to this Agreement, including claiming the benefit of Section 8.

**APPENDIX A. MICROSOFT SOFTWARE USE – TERMS AND CONDITIONS**

This document (hereinafter, “Appendix A”) concerns Your use of Microsoft software, which includes computer software provided to You by Company as described below, and may include associated media, printed materials, and “online” or electronic documentation (individually or collectively “Licensed Products”). Company does not own the Licensed Products and the use thereof is subject to certain rights and limitations of which Company needs to inform You. Your right to use the Licensed Products is subject to Your agreement with Company, and to Your understanding of, compliance with and consent to the following terms and conditions, which Company does not have authority to vary, alter or amend.

**1. DEFINITIONS.**

For purposes of this Appendix, the following definitions will apply:

“**Client Software**” means software that allows a Device to access or utilize the services or functionality provided by the Server Software.

“**Device**” means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, “smart phone”, or other electronic device.

“**Server Software**” means software that provides services or functionality on a computer acting as a server.

“**Redistribution Software**” means software described in Paragraph 6 (“Use of Redistribution Software”) below.

**2. OWNERSHIP OF LICENSED PRODUCTS.** The Licensed Products are licensed to Company from an affiliate of the Microsoft Corporation (“Microsoft”). All title and intellectual property rights in and to the Licensed Products (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text, and “applets” incorporated into the Licensed Products) are owned by Microsoft or its suppliers. The Licensed Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the Licensed Products does not transfer any ownership of Licensed Products or any intellectual property rights to You.

**3. COPYRIGHT, TRADEMARK AND PATENT NOTICES.** You must not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Licensed Products. You must include Microsoft’s copyright notice on any labels or documentation (including online documentation) for Company’s products that include the Licensed Products. You have no right under this Agreement to use any Microsoft logos in any manner whatsoever. Whenever a Licensed Product is first referenced in any written or visual communication, You must use the appropriate trademark, Licensed Product descriptor and trademark symbol (either ™ or ®), and clearly indicate Microsoft’s (or Microsoft’s suppliers’) ownership of such marks. For information on Microsoft trademarks, including a listing of current trademarks, see <http://www.microsoft.com/trademarks>. You must not undertake any action that will interfere with or diminish Microsoft’s (or Microsoft’s suppliers’) right, title and/or interest in the trademark(s) or trade name(s). At Microsoft’s or Company’s request, You must provide Microsoft with

samples of all of Your written or visual materials that use a Licensed Product name.

**4. ANTI-PIRACY.** You must not engage in the manufacture, use, distribution or transfer of counterfeit, pirated or illegal software. You may not distribute or transfer Licensed Products to any party that You know is engaged in these activities. You must report to Microsoft any suspected counterfeiting, piracy or other intellectual property infringement in computer programs, manuals, marketing materials or other materials owned by Microsoft, its Affiliates and/or its licensors as soon as You become aware of it. You will cooperate with Microsoft in the investigation of any party suspected of these activities.

**5. USE OF CLIENT SOFTWARE.** You may use the Client Software installed on Your Devices by Company only in accordance with the instructions, and only in connection with the services, provided to You by Company. The terms of this Appendix A permanently and irrevocably supersede the terms of any Microsoft End User License Agreement that may be presented in electronic form during Your use of the Client Software.

**6. USE OF REDISTRIBUTION SOFTWARE.** In connection with the services provided to You by Company, You may have access to certain “sample,” “redistributable” and/or software development (“SDK”) software code and tools (individually and collectively “Redistribution Software”). **YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS (“SPUR”) APPLICABLE TO COMPANY, WHICH TERMS MUST BE PROVIDED TO YOU BY COMPANY.** Microsoft does not permit You to use any Redistribution Software unless You expressly agree to and comply with such additional terms, as provided to You by Company.

**7. COPIES.** You may not make any copies of the Licensed Products; provided, however, that You may (a) make one (1) copy of Client Software on Your Device as expressly authorized by Company; and (b) You may make copies of certain Redistribution Software in accordance with Paragraph 6 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of Your agreement with Company, upon notice from Company or upon transfer of Your Device to another person or entity, whichever first occurs. You may not copy any printed materials accompanying the Licensed Products.



8. **LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION AND DISASSEMBLY.** You may not reverse engineer, decompile, or disassemble the Licensed Products, except and only to the extent that applicable law, notwithstanding this limitation expressly permits such activity.
  9. **NO RENTAL.** You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute Licensed Products to any third party, and You may not permit any third party to have access to and/or use the functionality of the Licensed Products.
  10. **TERMINATION.** Without prejudice to any other rights, Company may terminate Your rights to use the Licensed Products if You fail to comply with these terms and conditions. In the event of termination or cancellation, You must stop using and/or accessing the Licensed Products, and destroy all copies of the Licensed Products and all of their component parts.
  11. **NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT.** ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY COMPANY AND NOT BY MICROSOFT OR ITS AFFILIATES OR SUBSIDIARIES.
  12. **PRODUCT SUPPORT.** Any product support for the Licensed Products is provided to You by Company and is not provided by Microsoft or its affiliates or subsidiaries.
  13. **NOT FAULT TOLERANT.** THE LICENSED PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE Licensed Products COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.
  14. **EXPORT RESTRICTIONS.** The Licensed Products are of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and national laws that apply to the Licensed Products, including U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issue by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.
- DISCLOSURE OF INFORMATION.** You hereby consent to Company providing information regarding Your Account to Microsoft to the extent it is required to do so under the terms of its license agreement with Microsoft.
15. **LIABILITY FOR BREACH.** In addition to any liability You may have to Company, You agree that You will also be legally responsible directly to Microsoft for any breach of these terms and conditions.
  16. **OWA ACCESS RESTRICTIONS.** You acknowledge and agree that if You have an Outlook Web Access-only (OWA-only) Account (Basic SAL license), You are restricted from and will not use shared folders, shared calendars, shared contacts, shared tasks and public folders with respect to such access.

**APPENDIX B. RESEARCH IN MOTION USE –TERMS AND CONDITIONS**

This Appendix is required as a result of Your use of Research in Motion Limited (“RIM”) software, hardware and services as well as any printed or electronic documentation or associated media provided by Company (the “RIM Products”) and is in addition to the terms and conditions of the Master Service Agreement. Company does not own the RIM Products and the use thereof is subject to certain rights and limitations of which Company needs to inform You. Your right to use the RIM Products is subject to Your agreement with Company, and to Your understanding of, compliance with and consent to the following terms and conditions. Company in no way represents or acts as an agent of RIM in the provision of the Hosted BES Software or any other RIM Product.

1. **DEFINITIONS.** Capitalized terms used herein but not otherwise defined will have their respective meanings set forth in the Master Service Agreement. For purposes of this Appendix, the following definition will apply:

“**BBSLA**” means the BlackBerry Software License Agreement that relates to a copy of BlackBerry Server Software, a RIM Product.

“**End User**” solely for the purpose of this Appendix will mean any of Your employees, consultants or independent contractors to whom You grant permission to access the Hosted BES Software.

“**End User Data**” means any information or data of any kind that personally identifies (or that can be used, together with other information or data, to personally identify) an End User.

2. **Use.** Each End User is prohibited from using the RIM Products for any purpose other than the internal business or personal purposes of the End User. You will be responsible for each End User’s compliance with this Appendix.
3. **BBSLA.** You agree to RIM’s current BBSLA (<http://na.blackberry.com/eng/legal/bbsla.jsp> or request a copy from Company), which is incorporated by reference herein, with respect to Your and End Users’ access to the RIM Products. You acknowledge and agree that to the extent that You or Your End Users access the Hosted BES Software, the Hosted BES Software is part of the Customer’s BlackBerry Solution, defined as “Your BlackBerry Solution” under the BBSLA.
4. **Exclusion of Liability.** IN NO EVENT WILL RIM AND RIM’S AGENTS BE LIABLE TO ANY END USER FOR, ANY INDIRECT, ECONOMIC, SPECIAL, PUNITIVE, COMMERCIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OF BUSINESS REVENUE OR EARNINGS, LOST DATA, DAMAGES CAUSED BY DELAYS, OR A FAILURE TO REALIZE EXPECTED SAVINGS) DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH THIS APPENDIX OR THE END USER’S USE OF THE RIM PRODUCTS, WHETHER OR NOT SUCH DAMAGES COULD REASONABLY BE FORESEEN OR THEIR LIKELIHOOD WAS DISCLOSED TO THE PARTIES.
5. **Application of Limitations, Exclusions and Disclaimers.** The limitations, exclusions and disclaimers set out in the Master Service Agreement and this Appendix will apply: (a) whether an action, claim or demand arises from a breach

of warranty or condition, breach of contract, tort (including negligence), strict liability or any other kind of civil or statutory liability connected with or arising out of the Master Service Agreement, this Appendix or the RIM Products; and (b) to RIM and to RIM’s affiliated companies as well as to RIM and to RIM’s affiliated companies’ directors, officers, employees, and independent contractors. Some jurisdictions do not allow limitation or exclusions of certain types of damages and/or of implied conditions or warranties. **NOTWITHSTANDING ANYTHING IN THE MASTER SERVICE AGREEMENT OR THIS APPENDIX, THE LIABILITY OF COMPANY AND ITS LICENSORS TO YOU WILL BE LIMITED AND EXCLUDED AT LEAST TO THE SAME EXTENT AS THE LIMITATIONS AND EXCLUSIONS OF LIABILITY PROVISIONS CONTAINED IN THE BBSLA.**

6. **Termination for Breach.** In the event that You or any End User breaches the Master Service Agreement, including without limitation, any provision of this Appendix, Company will have the right, in its sole discretion, to immediately terminate the Master Service Agreement or to terminate the portion of the Services to which such breach pertains.
7. **Automatic Termination.** Upon termination of Company’s Master Alliance Agreement with RIM and any portion of the applicable license terms (including the BBSLA), this Appendix will automatically terminate.
8. **Liability.** As a condition of Company’s ability to provide access to the RIM Products to End Users, End User will be liable to Company for any and all damages caused as a result of any breach of the Agreement by such End User without limitation or exception.
9. **End User Data.** You hereby consent, and consent on behalf of Your End Users, to Company providing End User Data to RIM solely for the purpose of Company providing Services to You and RIM providing Services to Company.