

# Product Schedule – Hosted Exchange

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This Product Schedule (the “**Schedule**”), between Xband Enterprises, Inc. (“**Xband Enterprises**”) and \_\_\_\_\_ (“**You**”) is effective immediately and is issued pursuant to and incorporates by reference the terms and conditions of the Master Service Agreement (the “**MSA**”) by and between Xband Enterprises and You.

All capitalized terms in this Schedule shall have the same meaning as set forth in the MSA, unless defined herein. In the event of a conflict or inconsistency between the terms of the MSA and the terms of this Schedule, the latter shall supersede and govern.

## 1. Xband Enterprises Services

Includes all services provided by Xband Enterprises to You as per mutually agreed upon details.

## 2. Restrictions

You shall not, for yourself or through any affiliate, agent, or other third party, extract images, software, or commercial licenses of Xband Enterprises provided server machine instances outside of the server system when those images have commercial software add-ons containing licenses provided by Xband Enterprises for the software to operate properly.

Xband Enterprises will have the right during the term of the MSA, at its own expense and not more than once each calendar year, to audit Your processes, procedures, records, and other documentation relevant to establish Your compliance with the restrictions in this Section 2; provided, however, that: (a) any such inspection and audit will be conducted at Your place of business during regular business hours with reasonable notice of the audit, in such a manner as not to interfere with Your normal business activities, and (b) if any audit should disclose a noncompliance by You, then You shall promptly take such actions as necessary to comply with this Section 2 and Xband Enterprises reserves the right to terminate the MSA or this Schedule immediately due to Your material breach.

## 3. McAfee

You (i) acknowledge that Xband Enterprises’s ability to provide Services is contingent upon your continued compliance with certain McAfee terms and conditions and (ii) agree to McAfee’s “Software as Service Agreement,” which is posted on McAfee’s website at: <http://www.mcafee.com/us/about/legal/saasterms.aspx>.

## 4. Customer Pricing

Details of service specific pricing as negotiated between You and Xband Enterprises can be accessed via the Host Pilot or other Xband Enterprises provided web portal.

**5. License Mobility:** If email client software (including Microsoft Outlook or Microsoft Entourage) (“**Clients**”) is not purchased with this account; You acknowledge and agree that (i) You will provide your own fully licensed Clients for use with this account; and (ii) if You wish to change to an Xband Enterprises account under which Xband Enterprises does provide licensed Clients, the pricing and other terms may change.

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## **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 Xband Enterprises as described below, and may include associated media, printed materials, and “online” or electronic documentation (individually or collectively “Licensed Products”). Xband Enterprises does not own the Licensed Products and the use thereof is subject to certain rights and limitations of which Xband Enterprises needs to inform You. Your right to use the Licensed Products is subject to Your agreement with Xband Enterprises, and to Your understanding of, compliance with and consent to the following terms and conditions, which Xband Enterprises 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 Xband Enterprises 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 Xband Enterprises’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

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and/or interest in the trademark(s) or trade name(s). At Microsoft's or Xband Enterprises'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 Xband Enterprises only in accordance with the instructions, and only in connection with the services, provided to You by Xband Enterprises. 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 Xband Enterprises, 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 XBAND ENTERPRISES, WHICH TERMS MUST BE PROVIDED TO YOU BY XBAND ENTERPRISES.** 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 Xband Enterprises.

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 Xband Enterprises; 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 Xband Enterprises, upon notice from Xband Enterprises 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, DECOMPIATION 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, Xband Enterprises may terminate Your rights to use the Licensed Products if You fail to comply with these terms and conditions. In the event of

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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 XBAND ENTERPRISES AND NOT BY MICROSOFT OR ITS AFFILIATES OR SUBSIDIARIES.

12. **PRODUCT SUPPORT.** Any product support for the Licensed Products is provided to You by Xband Enterprises 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/>.

15. **DISCLOSURE OF INFORMATION.** You hereby consent to Xband Enterprises 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.

16. **LIABILITY FOR BREACH.** In addition to any liability You may have to Xband Enterprises, You agree that You will also be legally responsible directly to Microsoft for any breach of these terms and conditions.

17. **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.

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## **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 Xband Enterprises (the “RIM Products”) and is in addition to the terms and conditions of the Master Service Agreement. Xband Enterprises does not own the RIM Products and the use thereof is subject to certain rights and limitations of which Xband Enterprises needs to inform You. Your right to use the RIM Products is subject to Your agreement with Xband Enterprises, and to Your understanding of, compliance with and consent to the following terms and conditions. Xband Enterprises 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 Xband Enterprises), 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

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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 XBAND ENTERPRISES 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, Xband Enterprises 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 Xband Enterprises'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 Xband Enterprises's ability to provide access to the RIM Products to End Users, End User will be liable to Xband Enterprises 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 Xband Enterprises providing End User Data to RIM solely for the purpose of Xband Enterprises providing Services to You and RIM providing Services to Xband Enterprises.