

## COLIBRI SOFTWARE LICENSE AGREEMENT

PLEASE READ THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT CAREFULLY BEFORE PROCEEDING.

THIS IS A SOFTWARE LICENSE AGREEMENT TO BE ENTERED INTO BY YOU, THE END-USER ("YOU") AND GPXS NETHERLANDS BV, WHOSE REGISTERED OFFICE IS AT STEPHENSONSTRAAT 19, 1097 BA AMSTERDAM, THE NETHERLANDS (COMPANY NO. 34190228) ("GPXS").

### 1 Acceptance Procedure

1.1 BY CLICKING ON THE ACCEPTANCE BUTTON (IF PRESENTED TO YOU ELECTRONICALLY) AND/OR BY DOWNLOADING, AND/OR INSTALLING, AND/OR USING, THE SOFTWARE, YOU AGREE TO BE BOUND BY AND BECOME A PARTY TO THIS AGREEMENT AND YOU AGREE THAT ALL THE TERMS AND CONDITIONS AND THE LIMITATIONS OF WARRANTY AND LIABILITY SET OUT IN THIS AGREEMENT SHALL APPLY. THIS LICENSE AGREEMENT REPRESENTS THE SOLE AND ENTIRE AGREEMENT BETWEEN YOU AND GPXS. UNLESS OTHERWISE AMENDED, THIS LICENSE SHALL APPLY TO ANY MODIFIED VERSION OR UPGRADE DELIVERED BY GPXS TO YOU.

### 2 Definitions

2.1 Colibri solution: an end-to-end hosted service connecting your mobile BlackBerry enabled device to your existing email environment with a push-based technology. Functionality depends on the chosen Software Product formula and is specified in your Colibri Service Agreement.

Services: means the hosting services and support services provided by GPXS in connection with the Software. You must have a current subscription for wireless airtime with an airtime service provider that supports the Colibri solutions.

Software / Software Product: means the Colibri software enabling you to use the Colibri solutions and provided to You under this license agreement for your use in conjunction with the BlackBerry handheld devices or other BlackBerry enabled handhelds of Research in Motion ("RIM").

Third Party Software: means software applications proprietary to a third party, excluding software licensed by GPXS from a third party for incorporation into a GPXS software product and distributed as an integrated part of a GPXS software product.

### 3 Scope of Software License Grant

3.1 Subject to the terms and conditions of this Agreement, GPXS hereby grants to You, and You accept, a personal, revocable, non-exclusive, non-transferable license to use the Colibri solution you subscribed to.

The supply of the Software and Services herein are at all times subject to your payment of the license fees due hereunder.

You may not use or allow the use of the Services other than for Your internal or personal purposes or permit more than the number of users for whom license fees have been paid.

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### 4. Proper Use

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### 6 Term

6.1 This License Agreement is effective upon your installing this program and shall continue for a minimum period of twelve months and thereafter until duly terminated.

GPXS may terminate this License Agreement upon the breach by you of any term hereof. The termination of this Agreement by GPXS shall not adversely affect any of GPXS' other rights in respect of your use or possession of the Software or your failure to comply with this Agreement.

### 7 Limited Warranty

7.1 GPXS warrants, for your benefit alone, that the Software shall operate substantially in accordance with the functional specifications in the GPXS documentation. If a defect in the Software appears, GPXS will at its sole option and discretion, make available corrections or provide you with a workaround for such problem (which may be provided at GPXS' discretion via telephonic customer support, a generally available software fix release, made available by downloading or automatically, etc.). You agree that the foregoing constitutes your sole and exclusive remedy for breach by GPXS of any warranties made under this Agreement. The foregoing is GPXS' sole obligation and is your sole and exclusive remedy for any defects, errors or problems you may experience related to the Software.

GPXS provides the use of the Software only on best-efforts basis and while GPXS makes every effort to ensure the high quality, adequate data protection measures and security of the communications, it does not warrant that your use of the Software will be uninterrupted or that the operation of the Software will be always error-free or entirely secure.

### 8 Limitation of Liability

8.1 GPXS SHALL NOT BE LIABLE FOR POOR PERFORMANCE, INTERRUPTIONS OR LOSS OF DATA DUE TO (i) LIMITED WIRELESS NETWORK COVERAGE OR OTHER PROBLEMS DUE TO PROBLEMS WITHIN THE WIRELESS OPERATORS' INFRASTRUCTURE; (ii) PROBLEMS WITHIN THE RESEARCH IN MOTION INFRASTRUCTURE; (iii) NETWORK PROBLEMS BETWEEN GPXS' HOSTING CENTRE AND THE RESEARCH IN MOTION ("RIM") DATA RELAY.

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GPXS' CUMULATIVE LIABILITY TO YOU OR ANY OTHER PARTY SHALL ONLY PERTAIN TO DIRECT LOSS OR DIRECT DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF THIS AGREEMENT AND SHALL (TO THE EXTENT PERMITTED BY APPLICABLE LAW) BE LIMITED AT MAXIMUM 3 MONTHS SUBSCRIPTION FEES PAID BY YOU TO GPXS. THIS WARRANTY SHALL IMMEDIATELY TERMINATE IF YOU VIOLATE THIS AGREEMENT. IN NO EVENT SHALL GPXS OR ANY OF ITS THIRD PARTY PROVIDERS BE LIABLE FOR INDIRECT DAMAGES RESULTING FROM LOSS OF DATA, PROFITS OR USE OF SOFTWARE OR FOR ANY SPECIAL, DIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE, PROMOTION, DISTRIBUTION, OR PERFORMANCE OF THE SOFTWARE OR ANY ENHANCEMENTS OR MODIFICATIONS THERETO, EVEN IF GPXS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT DEROGATING FROM THE AFORESAID, GPXS SHALL HAVE NO LIABILITY FOR DAMAGES OR LOSSES THAT MAY RESULT FROM (i) FAILURE OF THE SOFTWARE OR ANY SYSTEMS ON WHICH IT MAY OPERATE TO ENABLE VIEWING, PRINTING OR FAXING EMAIL AND THEIR ATTACHMENTS ON OR FROM A MOBILE OR ANY OTHER DEVICE; (ii) FAILURE OF THE SOFTWARE OR ANY SYSTEMS ON WHICH IT MAY OPERATE TO DIRECT FAXES, DOCUMENTS OR OTHER DATA TO THEIR INTENDED RECIPIENTS OR (iii) RECEIPT OF FAXES, DOCUMENTS OR OTHER DATA DELIVERED BY THE SOFTWARE OR ANY SYSTEMS ON WHICH IT MAY OPERATE TO PARTIES OTHER THAN THE INTENDED RECIPIENTS.

## 9 Consent to Collect Information

- 9.1 By submitting personal information to GPXS pursuant to this Agreement (including without limitation Your name, address, telephone, email) You consent to the collection, processing, transmission and disclosure by GPXS for the purpose of GPXS' internal use, such as billing requirements. GPXS reserves the right to modify its privacy policy from time to time.

## 10 Assignment and Delegation

- 10.1 GPXS may assign this Agreement without notice to You. You may not assign this Agreement without prior written consent of GPXS (such consent may be withheld or conditioned at GPXS' discretion). GPXS may perform all obligations under this Agreement directly or may have some or all obligations performed by its contractors or subcontractors.

## 11 Notices

- 11.1 All notices or communications under this Agreement shall deemed to have been duly given when made in writing and delivered in person, by courier, deposited in the mail, certified mail (return receipt requested) and addressed to You at your billing address or to GPXS at the address in this Agreement (with a copy to the GPXS Customer Care department at the same address). In addition, GPXS may at its option give You any notice via email and You may give GPXS notice at the email address furnished to You by GPXS.

## 12 Modifications

- 12.1 GPXS may change the terms and condition of this Agreement from time to time in its sole discretion. Your continued use of the Software after notices of changes have been communicated to you or posted on the GPXS website constitutes your full acceptance of any and all modifications.

## 13 Governing Law

- 13.1 This License Agreement shall be construed and governed in accordance with the internal laws of The Netherlands, excluding conflict of law provisions and excluding its choice of law provisions and also excluding the United Nations Convention on Contracts for the International Sale of Goods. The courts of Amsterdam are exclusively competent.

## 14 Miscellaneous

- 14.1 Waiver of Default. Waiver by either party of any default by the other party shall not constitute a continued waiver of such default or a waiver of another default.
- 14.2 Survival. The terms, conditions and warranties contained in this Agreement that by their context are to survive the performance hereof by either party shall so survive the completion, cancellation or termination of this Agreement.
- 14.3 Severability. If a provision of this Agreement is held to be invalid and / or unenforceable shall not invalidate or render unenforceable this remainder of this Agreement, which shall be construed as if not containing the invalid or unenforceable provision.