

## TECHNICAL SUPPORT TERMS

THESE TERMS AND CONDITIONS, TOGETHER WITH RIM'S CURRENT BLACKBERRY TECHNICAL SUPPORT SERVICES PROGRAM DESCRIPTION ("TSSPD") AND THE QUOTE (IF ONE IS PROVIDED TO YOU) FORM A LEGAL AGREEMENT BETWEEN YOU AND RESEARCH IN MOTION UK LIMITED ("RIM") FOR THE SUPPLY AND PURCHASE OF TECHNICAL SUPPORT (THIS "AGREEMENT" AND/OR THE "TECHNICAL SUPPORT TERMS").

BY CLICKING ON THE "I AGREE" BUTTON YOU INDICATE THAT YOU HAVE READ AND UNDERSTOOD THE TERMS OF THIS AGREEMENT AND AGREE TO AND ACCEPT THE TERMS OF THIS AGREEMENT ON YOUR OWN BEHALF AND ON BEHALF OF EACH ENTITY FOR WHOSE BENEFIT YOU ACT (TOGETHER "YOU" AND/OR "YOUR" AS APPLICABLE). YOU FURTHER ACKNOWLEDGE THAT YOU MAY NOT USE THE SERVICES (AS HEREINAFTER DEFINED) WITHOUT AGREEING TO THE TERMS OF THIS AGREEMENT FIRST. IF YOU HAVE ANY QUESTIONS OR CONCERNS ABOUT THIS AGREEMENT, PLEASE CONTACT RIM AT [WWW.BLACKBERRY.COM](http://WWW.BLACKBERRY.COM). RIM AND YOU ARE EACH A "PARTY" AND COLLECTIVELY THE "PARTIES" TO THIS AGREEMENT.

### SERVICES AND SCOPE

1. Thank You for Your interest in RIM's BlackBerry Technical Support Services ("Technical Support"). RIM will perform the tier of Technical Support services specified in Your purchase order, subject to the terms of this Agreement, for the number of copies of the BlackBerry Enterprise Server software and for the software for the handhelds identified in Your purchase order (the "Services"). You should be aware that Technical Support covers only RIM Software as defined herein. If You want support for any other RIM product contact RIM. "Software" means and includes, but is not limited to, any of the BlackBerry Handheld Software, BlackBerry PC Software or BlackBerry Server Software licensed to You under a RIM software license agreement, in whatever form, medium or manner provided or subsequently installed or used. The term "Software" shall not include any software applications proprietary to a third party ("Third Party Software"), whether or not the Third Party Software accompanies, is provided with, or operates in conjunction with, the Software and/or any other software or third party handheld devices, other than software, interfaces, and firmware, licensed by RIM from a third party for incorporation into a RIM product and distribution as an integral part of that RIM product under a RIM brand. If You want support for any other RIM product contact RIM using the contact details provided in the TSSPD.
2. RIM will provide You with the Services using reasonable skill and care in accordance with the terms of this Agreement. The terms and conditions of this Agreement shall apply to all Services ordered by You to the exclusion of any contrary terms and conditions contained in or referred to in any other documentation or correspondence or implied by trade, custom or course of dealing and they shall supersede any and all prior communications and documents both written and oral related to Technical Support including without limitation in RIM's TSSPD. The Technical Support Terms may only be amended as agreed in writing and signed by both You and RIM. Services will be provided by RIM in English only except where specifically noted otherwise in the TSSPD.
3. Unless otherwise indicated to You in writing, upgrades to Software provided to You under Technical Support will be deemed licensed to You on the same terms as the underlying Software.

## **TERM**

4. The Technical Support Terms have a twelve (12) month term (the “Term”) commencing on the date the Services are to be made available (the “Commencement Date”). If You wish to obtain Services from RIM after expiry of the Technical Support Terms, You should notify RIM or an authorized reseller of Technical Support, as applicable, by way of issuing a purchase order for another twelve (12) months of Services, no less than thirty (30) days prior to the end of the Term, and, subject to RIM’s acceptance of such purchase order, these Technical Support Terms, together with any modifications mutually agreed upon by You and RIM in writing, will continue in effect for an additional twelve (12) months. The Commencement Date of any renewal term will be the day following the expiry date of the previous Term.

## **PAYMENT**

5. All purchase orders that You issue for Services must referentially incorporate the Technical Support Terms and must specify the serial numbers for any BlackBerry Enterprise Server for which You require Technical Support (a “Valid Purchase Order”). Even if RIM acknowledges or otherwise accepts Your purchase orders, any standard printed terms included on the purchase orders You issue shall be void. Any other terms on Your purchase order shall apply only to the extent that they are expressly agreed upon in writing by RIM.
6. In consideration of the Services, You shall pay the annual fee as detailed in the quote provided for Services (and any additional services) as invoiced, net thirty (30) days from the date of the invoice or in advance to RIM or an authorized reseller of Technical Support, as applicable. RIM will not charge You any additional fees to provide Services for additional copies of the Software You license during the Term. However, RIM reserves the right to invoice for any additional devices or BlackBerry Enterprise Servers, identified by any audit and not notified to RIM at the commencement of the term or any renewal thereof. Upon any renewal You shall notify RIM of any adjustment in the number of BlackBerry Enterprise Servers or devices. You agree to comply with and shall be responsible for any filings, registrations, licenses, approvals and consents required in Your country or jurisdiction regarding remitting money out of Your country or jurisdiction including remitting such funds in a foreign denomination such as U.S. dollars.
7. RIM reserves the right to vary the charges and prices for support services, any such variation shall be notified to You in writing and shall not affect Services provided under an existing Agreement entered into prior to the date of such notification.
8. Should You fail to pay any amount payable under these Technical Support Terms to RIM or an authorized reseller of Technical Support, as applicable, RIM shall be entitled at its option to: (a) suspend the Services and be released of its obligations under these Technical Support Terms for as long as the amounts remain outstanding; and/or (b) if You fail to pay any amount payable under these Technical Support Terms to RIM, to charge interest on the outstanding amount, payable on demand, at two percent (2%) per annum above the base rate for the time being of The Bank of England base rate. Such interest shall accrue on a daily basis and be compounded quarterly. RIM reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 of England.
9. You shall be responsible for and shall pay all taxes due under or in relation to the Technical Support Terms. Unless otherwise indicated all amounts payable by You to RIM or an authorized reseller of Technical Support, as applicable, under the Technical Support Terms are exclusive of any tax, duty, levy, or similar government charge that may be assessed by any jurisdiction, whether based on gross revenue, the delivery, performance or use of Services or the results thereof, the execution of this

Agreement or otherwise, except for those based on RIM's net income (collectively the "Taxes"). If You are required to withhold any taxes from payments owed under this Agreement then the amount of the payment due will automatically be increased to totally offset such tax, so that the amount actually remitted to RIM or an authorized reseller of Technical Support, as applicable, net of all taxes required to be withheld, equals the amount invoiced or otherwise due. You shall promptly furnish RIM with all official receipts evidencing payments of taxes due under or in relation to this Agreement to the appropriate taxing authority.

## **ADDITIONAL SERVICES**

10. RIM shall not be responsible or liable or obliged to provide support for problems that: (a) do not preclude the Software from operating substantially in accordance with documentation supplied by RIM; (b) result from use of the Software in a manner other than that expressly contemplated by the documentation provided by RIM; or (c) result from factors external to RIM products and services such as from: (i) any third party software or hardware (including wireline and wireless networks whether the problem results from their performance, non-performance or lack of availability); or (ii) the interoperability of the Software with third party software or hardware (including wireline and wireless networks).
11. If additional services are required from RIM they shall be provided, subject to availability and only upon acceptance of a new purchase order which shall be made under and incorporate the terms of this Agreement. Notwithstanding the foregoing, RIM shall invoice You additional fees for any service provided to You by RIM that is not included in the Services, at RIM's then current hourly rate for performing the particular service (plus its expenses related to the performance of the service, including any pre-approved traveling expenses if applicable). You will pay all such invoices net thirty (30) days from date of invoice.

## **YOUR OBLIGATIONS**

12. You agree to provide RIM with any and all information and/or assistance that RIM reasonably requires to diagnose problems with the Software and to otherwise fulfill its obligations under Technical Support Terms. Without limiting the generality of the foregoing, upon request by RIM, You shall, within two (2) working days of the request, make available to RIM: (i) Your logs for any BlackBerry proprietary software as may be required; (ii) any other materials necessary for RIM to perform the Services; (iii) qualified personnel with experience on Your existing hardware and software; and (iv) reasonable access to Your facilities.
13. You agree to comply with and be responsible for any laws, regulations, filings, registrations, licenses, approvals and consents required in Your country or jurisdiction including without limitation import, export or data privacy laws and regulations applicable to You, the execution of this Agreement by You, and the receipt or use of the Services by You including without limitation the transfer or provision of information, technology, data or personal information to RIM.
14. RIM shall not be liable for any loss suffered or damage caused as a result of Your failure or delay in complying with the above clauses 12 and 13.

## **TERMINATION**

15. The price paid for the Services is non-refundable/RIM will not refund any monies to You if during the Term, the Technical Support Terms are terminated by You for any reason including but not limited to if the volume of Software for which Services are provided decreases.

16. Either Party may terminate this Agreement upon written notice, without resort to summons or initiating court proceedings, with immediate effect if;
- (a) The other Party is in continuing or material breach of its obligations under this Agreement and, if the breach is capable of remedy, such breach is not remedied within thirty (30) days from written notification, specifying the breach and requiring the breach to be remedied;
  - (b) The other Party ceases to do business, becomes unable to pay its debts as they fall due, becomes or is deemed insolvent, has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business (or is the subject of a filing order with any court of the appointment of such officer), makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or any equivalent or similar action or proceeding is taken or suffered in any jurisdiction;
  - (c) If You fail to make any payment due to RIM or an authorized reseller or Technical Support, as applicable, under this Agreement within five (5) business days' notice to You of such failure to pay.

## **LIABILITIES**

17. EXCEPT AS EXPRESSLY SET OUT IN THE TECHNICAL SUPPORT TERMS RIM MAKES NO REPRESENTATIONS, WARRANTIES OR CONDITIONS WHATSOEVER, EITHER EXPRESS OR IMPLIED ABOUT THE PRODUCTS OR SERVICES. SAVE FOR: (I) FRAUD; OR (II) DEATH OR PERSONAL INJURY CAUSED AS A RESULT OF RIM'S NEGLIGENCE; (III) BREACH OF OBLIGATIONS UNDER CLAUSE 12 SALE OF GOODS ACT 1979 OF ENGLAND OR CLAUSE 2 SUPPLY OF GOODS AND SERVICES ACT 1982 OF ENGLAND; OR (IV) ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED BY LAW IN THE RELEVANT JURISDICTION, IN NO EVENT SHALL RIM BE LIABLE TO YOU FOR: (I) LOSS OF OR DAMAGE TO PROFITS, BUSINESS, REVENUE OR EARNINGS, CONTRACTS, OPPORTUNITIES, ANTICIPATED SAVINGS, GOODWILL OR DATA OR; (II) FOR ANY INDIRECT, ECONOMIC, SPECIAL, COMMERCIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH THE SERVICES, WHETHER OR NOT SUCH DAMAGES COULD REASONABLY BE FORESEEN OR THEIR LIKELIHOOD HAS BEEN DISCLOSED TO RIM.

SUBJECT TO THE AFORESAID, EXCEPT TO THE EXTENT SPECIFICALLY PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL RIM BE LIABLE TO YOU OR TO ANY THIRD PARTY CLAIMING THROUGH YOU, FOR ANY DAMAGES OF ANY KIND IN EXCESS OF THE AMOUNTS PAID BY YOU IN RELATION TO TECHNICAL SUPPORT SERVICES DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE UPON WHICH THE INCIDENT GIVING RISE TO THE LIABILITY OCCURS.

EXCEPT TO THE EXTENT SPECIFICALLY PROHIBITED BY APPLICABLE LAW, THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET OUT IN THIS AGREEMENT SHALL APPLY WHETHER AN ACTION, CLAIM OR DEMAND ARISES FROM A BREACH OF WARRANTY OR CONDITION OR BREACH OF CONTRACT AND SHALL INCLUDE RIM AND ITS AFFILIATED COMPANIES AS WELL AS RIM'S AND SUCH AFFILIATED COMPANIES' DIRECTORS, OFFICERS, EMPLOYEES, AND INDEPENDENT CONTRACTORS (EXCEPT AS SET OUT BELOW).

EXCEPT TO THE EXTENT SPECIFICALLY PROHIBITED BY APPLICABLE LAW, THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET OUT IN THIS AGREEMENT SHALL APPLY WHETHER AN ACTION, CLAIM OR DEMAND ARISES FROM TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER KIND OF CIVIL OR STATUTORY LIABILITY CONNECTED WITH OR ARISING OUT OF THIS AGREEMENT AND SHALL INCLUDE (i) RIM AND ITS AFFILIATED COMPANIES AS WELL AS (ii) WITH THE EXCEPTION OF LIABILITY FOR GROSS NEGLIGENCE AND FRAUD, RIM'S AND SUCH 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. THE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SET FORTH IN THIS AGREEMENT SHALL NOT APPLY ONLY IF AND TO THE EXTENT THAT THE LAWS OF A COMPETENT JURISDICTION REQUIRES LIABILITIES BEYOND AND DESPITE THESE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS.

### **SEVERABILITY**

18. If a court determines that any section, clause, provision or sentence or part thereof ("Part") of the Technical Support Terms is wholly or partially invalid or unenforceable, such invalid or unenforceable Part will be regarded as excluded from this Agreement and the other Parts of this Agreement will remain in force and not be affected thereby.

### **FORCE MAJEURE**

19. Save for the payment obligations in clauses 5 and 6 above, neither Party shall be liable for its failure to perform or the delayed performance of its obligation under this Agreement if such failure results from circumstances beyond the affected Party's reasonable control, including but not limited to supplier strikes, lock-outs and labour disputes, acts of God, war, riot, civil commotion, acts of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction not in force on the Commencement Date, accident, fire, flood or severe weather conditions ("Event of Force Majeure"). Each Party agrees to give the other Party prompt notice of any Event of Force Majeure (containing sufficient details). If an Event of Force Majeure continues for more than thirty (30) working days, either Party shall have the right to terminate, without resort to summons or initiating court proceedings, and without further liability to the other.

### **WAIVER**

20. The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the (or any other) right or remedy.

### **ASSIGNMENT**

21. You shall not assign, transfer or subcontract any rights or obligations under this Agreement without the prior written consent of RIM, such consent shall not be unreasonably withheld or delayed.

## PROPRIETARY RIGHTS

22. You do not acquire any intellectual property or other proprietary rights, including without limitation, patents, designs, trademarks, copyrights, or rights in any Confidential Information (as defined in clause 25 below) or trade-secrets in or related to the Services. You agree that nothing in this Agreement shall adversely affect any rights or recourse to any remedies that RIM may have under any laws in Your country or jurisdiction relating to the protection of RIM's intellectual property or other proprietary rights. If You receive or use the Services or are resident in a country or jurisdiction that does not have copyright legislation in force or which copyright legislation does not apply to software, then in addition to any other obligations You may have under the applicable laws in Your country or jurisdiction You expressly agree that the *Copyright Act* of Canada shall be deemed to apply to You and Your receipt and use of the Services.

## AUDIT

23. During the Term of this Agreement (and for a period of twelve (12) months thereafter), if in RIM'S reasonable opinion it is necessary to do so, RIM shall be entitled, at its own expense, to conduct audits to assess Your compliance with the terms of this Agreement. You will give RIM such reasonable access and assistance as is required in order to complete such audits. Any such audit shall be carried out, during regular business hours, by auditors reasonably acceptable to You. If, in RIM's reasonable opinion, an audit reveals significant non-compliance, You shall pay RIM's reasonable costs of conducting the audit.

## NOTICES

24. Any notice, request, demand or other communication required or permitted hereunder will be in writing and shall be sufficiently given if: (i) delivered by hand or sent by recorded delivery or courier to the address of the Party set out in the purchase order; or (ii) by e-mail or facsimile addressed to the other Party at the addresses indicated by the parties from time-to-time or normally used for business communications in connection with the Services; or (iii) sent to any other person/address subsequently notified by one Party to the other. In the absence of sufficient evidence of earlier receipt, any such notices, requests, demands or other communications shall be deemed to have been duly delivered:
- a. if delivered personally when left at the address referred to in this clause 24; or
  - b. if sent by recorded delivery forty-eight (48) hours after posting it;
  - c. if sent by email or facsimile, when received or transmitted.

## CONFIDENTIAL INFORMATION

25. (a) If You have entered into a non-disclosure agreement with RIM (the "NDA"), the NDA shall apply to this Agreement and to Your receipt of the Services and is hereby incorporated by this reference except that: (i) the terms of the NDA shall continue to apply to this Agreement for so long as this Agreement remains in effect, and the term of the NDA shall be extended automatically to the extent necessary to make it coextensive with the Term, provided that this extension applies solely in relation to this Agreement; and (ii) the Confidential Information (as defined in the NDA) revealed or otherwise disclosed through Your receipt of the Services may be used or reproduced solely to the extent necessary to further and fulfill the purposes of Your receipt of the Services (which shall be deemed to be included in the definition of "**Purpose**" under the NDA).

(b) If You have not entered into an NDA with RIM, this clause 25(b) shall apply to this Agreement and to Your receipt of the Services. Except as specifically permitted in this Agreement or with the prior express written permission of RIM, the Parties shall not disclose, allow access to, transmit, transfer or otherwise make available any Confidential Information, as defined below, to any third party. Notwithstanding the foregoing, the Parties may disclose Confidential Information if and only to the extent it is: (i) required to do so by law provided that the Party gives the other Party sufficient notice to enable the other Party to seek an order limiting or precluding such disclosure; or (ii) necessary to further and fulfill the purposes of Your receipt of the Services (“**Permitted Purpose**”). Neither Party shall use or reproduce the Confidential Information for any reason other than as reasonably necessary to fulfill the Permitted Purpose.

“**Confidential Information**” is hereby defined as any information in whatever form or medium (and includes any copies of such information that the Parties are authorized to make hereunder) that is: proprietary or confidential to the Parties including, without limitation, information that is embedded in, or related to any website, software or other materials to which the Parties are given access through Your receipt of the Services; and directly or indirectly disclosed or to which the Parties are otherwise provided access.

Confidential Information that a Party can establish: was lawfully in that Party’s possession before receipt from the other Party; or is or becomes a matter of public knowledge through no fault of a Party; shall not be considered Confidential Information under this Agreement.

The Parties’ duties with respect to Confidential Information under this Agreement shall continue to apply to the receipt of the Services for so long as this Agreement remains in effect.

## **GOVERNING LAW/COMPLIANCE WITH LAWS**

26. This Agreement shall be governed by the laws of England and Wales excluding rules of private international law that lead to the application of the laws of any other jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in London, England in accordance with the Rules of Arbitration of the International Chamber of Commerce (“ICC Rules”) and shall be heard by one arbitrator appointed in accordance with the said ICC Rules and to be mutually agreed to by the Parties within thirty (30) days of the appointment of the arbitrator, failing which the arbitrator shall be nominated by the President of the British Computer Society (or by a person duly appointed by the President to act on his or her behalf) on the application of either Party for the time being in force, which rules are deemed to be incorporated by reference in this clause. Each Party shall bear one half of the costs associated with the arbitration proceedings. No dispute between the Parties, or involving any person but You, may be joined or combined together, without the prior written consent of RIM. Judgment upon the award rendered by the arbitrator may be entered in any Court having jurisdiction thereof.

27. Notwithstanding anything else in this Agreement and without prejudice to the right of the Parties to submit the matter to arbitration in accordance with this Agreement, RIM (in its sole discretion) shall have the right to seek injunctive relief or equitable relief against You, and the Parties agree that if RIM seeks injunctive or equitable relief in the courts of England and Wales then the courts in England and Wales shall have exclusive jurisdiction to resolve such injunctive or equitable proceedings.

28. You acknowledge that the Services which may include technology, data or information, are of Canadian origin and may be subject to restrictions on export or re-export to countries subject to Canadian embargoes or to persons or entities prohibited from receiving Canadian exports (including, but not limited to, those involved with missile technology or nuclear, chemical or biological weapons) (“Export Controls”). You represent that: (a) to the best of Your knowledge Your receipt and use of the Services does not violate the Export Controls; (b) You will not import, export, or re-export the Services to any country or person in violation of the Export Controls; and (c) You will ensure that Your authorized users receive and use the Services in accordance with Export Controls.
29. You agree and understand that it may be necessary for RIM to collect, use, process, transmit and disclose personal information in order to perform the Services. By submitting personal information, which may include without limitation, name, email address, telephone number, BlackBerry handheld product information, and information about the use of Your BlackBerry solution functionality, software and hardware, You consent to the collection, use, processing, transmission, and/or disclosure of such information by RIM, RIM’s affiliated companies, and service providers retained by RIM for: (a) the provision and Your use of the Services and related products and services, and to communicate with You (including for follow up surveys regarding the Services and other RIM products and services); (b) the internal use of RIM and RIM’s affiliated companies for problem resolution and troubleshooting, to maintain and improve the Services, and for the purposes which are set out in RIM’s privacy policy, which may be viewed at <http://www.blackberry.com/legal/privacy.shtml> and is incorporated into and forms part of this Agreement; and (c) any purpose permitted or required by any applicable law or to which You consent. Calls with RIM, RIM’s affiliated companies, and service providers retained by RIM may be recorded for training, quality assurance, customer service and reference purposes. You further understand and agree that personal information may be collected, used, processed, transmitted, and stored in Canada, the United States, and any country in which RIM, RIM’s affiliated companies and service providers retained by RIM maintain facilities (which may include countries outside of the European Economic Area).

#### **ENTIRE AGREEMENT**

30. This Agreement and the documents expressly referred to herein comprise the entire agreement between the Parties relating to the subject matter covered and supersedes any previous agreements, arrangements, undertakings or proposals, whether written or oral between the Parties in relation to that subject matter. You acknowledge that in entering into this Agreement You have not relied on and shall have no remedy in respect of any prior statement, representation or warranty that is not expressly set out in the terms of this Agreement and the only remedy available for breach of any such statement that is expressly included within the terms of this Agreement shall be for breach of contract. Nothing in this clause shall, however, operate to limit or exclude RIM’s liability for fraudulent misrepresentation.