

Solution Terms for Managed BlackBerry® Server Support from EE (formerly known as Managed BlackBerry® Server Support from Orange) (Employees Transferring)



1. Interpretation

- 1.1 The Managed BlackBerry® Server Support from EE (Employees Transferring) Solution (referred to in these Solution Terms as "**Managed BlackBerry® Server Support**" or the "**Solution**") is provided in accordance with the Customer's Agreement with EE.

1.2	Solution Description	The Managed BlackBerry® Server Support Solution Description forms part of these Solution Terms.
1.3	Statement of Requirements	The parties must agree the Managed BlackBerry® Server Support Statement of Requirements prior to provision of this Solution by EE. This forms part of these Solution Terms.

2. Definitions

Application	The software applications that the Customer is able to access via the mobile data server element of the BlackBerry Software and those that a user may load directly onto a BlackBerry device.
BES Server	For purposes of charging, one instance of the server components required to run a BlackBerry® Enterprise Server. Components physically distributed over hardware (e.g. messaging agent on LAN, BlackBerry router in DMZ etc.) is charged as one server but an active standby configuration is charged as two BES servers.
BlackBerry® Software	The BlackBerry server software (which is subject to RIMs End User Licence Agreement) installed on the Customer's server that enables Users to access the Solution.
CALs	Client Access Licences.
Change Control Process	The Customer's requirements for advance or retrospective notice of planned or unplanned changes by EE or the Customer to the BlackBerry® Software or associated Customer Systems, including notice period, approval process, change detail, justification, access requirements and contacts to whom EE can raise change requests.
Customer Applications	The Customer's own compatible software applications that it installs on its IT network, server and Customer Equipment.
Customer Systems	The Customer Equipment, databases, messaging environment, IT network and servers.
EE Personnel	All those employees of EE who are engaged in the provision of the Solution (or relevant part of the Solution) from time to time.
Effective Date	The Service Commencement Date as defined in the General Terms and Conditions for Business Customers.
Employee Liability Information	Such information as is specified in regulation 11(2) of TUPE.
Existing Supplier	Any company providing services to the Customer the same or similar to the Solution on or prior to the Effective Date.
Healthcheck	A site visit or remote session to inspect and analyse the state of the BES Server.
Incoming Employees	Those employees, listed as incoming employees in the Statement of Requirements, whose contracts of employment will transfer to EE from the Customer or Existing Provider as at the Effective Date.
Losses	Actions, proceedings, losses, damages, awards, orders, liabilities (including any liability to taxation), claims, costs, demands and expenses, including fines, penalties, reasonable legal and other professional fees and expenses.
Replacement Services	Any services which are identical or substantially similar to any of the Solution and which the Customer receives in substitution for any of the Solution whether those services are provided by the Customer internally or by any Replacement Supplier.
Replacement Supplier	Any third party supplier of Replacement Services appointed by the Customer from time to time.
RIM	Research In Motion UK Limited with its registered office at 20 Bath Road, Slough, Berkshire SL1 3XE (company number 040224220) or any of its subsidiaries or affiliates (as relevant).
Service Transfer Date	The date on which the Solution (or any part of the Solution), for whatever reason transfer from EE to the Customer or any Replacement Supplier.
TUPE	The Transfer of Undertakings (Protection of Employment) Regulations 2006.

3. Managed BlackBerry® Server Support - the Solution

3.1	Services	EE shall provide the Managed BlackBerry® Server Support Services in accordance with the Solution Terms in all material respects. EE shall use reasonable endeavours to meet any performance dates agreed in writing by the parties but any such dates shall be estimates only.
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3.2	Solution Requirements	The Customer shall supply and maintain the following at its own cost:	
		CALs	A Client Access Licence for each user of BES.
		BES	A service which is compliant with the requirements listed in the Solution Description for the relevant BlackBerry Software which is available on request from EE.
	Internet access	The Customer must have appropriate internet access with appropriate security precautions in place to allow EE to access the Solution.	
3.3	Changing scope of Services	EE may charge for the time it spends assessing any request for change to the scope of the Managed BlackBerry® Server Support Services from the Customer on a time and materials basis at the List Price.	

4. Customer Obligations

4.1	Customer obligations	<p>The Customer shall (and shall procure that its Users shall):</p> <ol style="list-style-type: none"> provide support for and maintain all Customer Applications and Customer Systems; provide and maintain for the duration of the Minimum Connection Period internet connectivity at the Customer's premises to enable EE to access the Solution; inform EE of any planned network or server changes that may impact EE's provision and supply of the Solution; provide EE with a minimum of 4 user accounts and passwords with the appropriate privileges and administrator user rights necessary to access and administer the Solution; offer EE the method to reset or block any user account or password issued to EE during the Minimum Connection Period to enable EE to remove EE representatives when no longer authorised to access the Solution by EE; allow EE access to the Customer's network and server through one of the technologies set out in the Statement of Requirements. For the avoidance of doubt, the Customer remains responsible for providing and maintaining secure access and EE will not be responsible or liable for any security breach of the Customer Systems; during implementation, detail and notify EE in writing of the Customer's Change Control Process and provide EE with a means of raising non BES related IT issues with the Customer; provide the BlackBerry monitoring service on a physically separate server and grant EE appropriate access to such server or notifications to enable EE to reliably monitor the Solution; grant EE access to on-site servers on Customer premises for scheduled Healthchecks in line with the Customer's Change Control Process; be responsible for the cost of any and all CALs or software fees payable to RIM in order to maintain the Customer's server to the minimum requirements as defined by EE to support the Solution; perform specific tests on the Customer Systems and messaging environments as required by EE to troubleshoot BlackBerry Server issues; provide EE with remote access method(s) to access the BES at all times as defined in the Statement of Requirements. A secondary access method may be provided in the event of a failure of the primary access method; and maintain a minimum of 70 EE BlackBerry Connections on its BlackBerry Server(s) for the duration of the Solution. 	
4.2	Health and safety rules	The Customer shall notify EE in writing of any health and safety and security policies of the Customer and EE shall use reasonable endeavours to observe all such reasonable policies notified in advance to EE provided that EE shall not be liable if, as a result of such observation, it is in breach of any of its obligations under the Agreement.	

5. Term and Termination

5.1	Termination Charges	<p>Customer shall pay EE the following Termination Charges in accordance with the Agreement upon early termination of this Solution:</p> <p>Total monthly Subscription Charges x number of months remaining in the Minimum Connection Period for the Solution.</p>	
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6. Technical Support

6.1	Training	<p>EE will provide basic training and documentation to the Customer during the initial implementation or Healthcheck visit to assist the Customer with first line qualification and logging of BlackBerry faults, EE will provide the Customer with material allowing the:</p> <ol style="list-style-type: none"> training of Customer's IT helpdesk as first line of BES Server support to improve fault qualification and 	
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		<p>quality of information on faults raised to EE, plus to improve the first time fix rate on Device related issues;</p> <p>b. fault qualification questions for first line support; and</p> <p>c. fault logging template development for first line support.</p>
6.2	Support	In order for EE to support the Solution autonomously the Customer may provide EE with read-only access to the active directory, BES Server database systems and messaging systems to enable EE to carry out advanced troubleshooting without the need for further support from the Customer's IT team. Where read-only access is granted, EE agrees not to make changes to any Customer Equipment not managed by the Solution. For the avoidance of doubt, the Customer shall remain responsible for the support of all Customer Equipment.
6.3	Disaster recovery	EE will restore the BES Server subject to the Customer providing to EE the back-ups of the BES Software, server, databases and messaging environment where a serious failure of the Customer's BES Server is identified. The Customer agrees to assist EE in the restoration of a failed BES Server in the event that the failure relates to more than just the BlackBerry® Software.
6.4	On-site visits	The Managed BlackBerry® Server Support Service includes an initial one Working Day (9.00 – 17:00) onsite Healthcheck (if a BES Server is already installed) or an initial one Working Day (9.00 – 17:00) BES Server installation. The Service also includes up to 2 further onsite Healthchecks of one Working Day (9.00 – 17:00) and up to 2 further remote Healthchecks per year of the Solution. Onsite visits are available in the UK only. Such visits may be used for standard scheduled Healthchecks or scheduled as required by the Customer, BlackBerry Software release or if an emergency visit is required to address a fault that cannot be resolved remotely. Onsite visits will also perform any server upgrades and testing that cannot be done remotely. If the initial onsite Healthcheck or installation takes longer than one Working Day or if the Customer wants to purchase additional onsite consultancy, this will be charged at the standard consultancy day rate List Price.
6.5	Logs	The Customer shall grant EE direct access to logs from BES Servers and associated Customer Systems as to enable EE to resolve faults in a timely manner. In the event that the Customer cannot or fails to grant EE read access to logs, the Customer shall be responsible for providing the logs to EE and the time taken to deliver the logs to EE will not counts toward any service levels set out in the Solution Description.
6.6	Recommendations	EE may during implementation of the Solution or during the Minimum Connection Period make recommendations around changes to the Customer Systems. These recommendations may be a condition precedent for provision of the Solution or the on-going management of the Solution by EE. The Customer shall be solely responsible for all costs associated with implementing these recommendations.
6.7	Installation & Healthchecks	EE will conduct all (on-site and remote) installations and Healthchecks on UK based servers only (the "Work"). All Work will be scheduled in accordance with EE's availability and EE shall give the Customer reasonable notice of all Works pursuant to the Customer's Change Control Process. Following a Healthcheck visit, a Healthcheck report will be produced advising recommendations on Customer network architecture, server configuration, capacity, business continuity, security and identifying issues and remedial actions.
6.8	IT helpdesk	The Customer shall establish and maintain at its own cost an internal IT helpdesk to interface between EE and the end users on technical aspects of the Solution. The IT helpdesk is solely responsible for providing first line support, including issues relating to basic Device and Customer network configuration, connectivity and Device provisioning to end users.
6.9	Escalation	The Customer's IT helpdesk personnel are solely responsible for escalating issues to EE's Managed BlackBerry® Server Support Team (BlackBerry Support Team). EE will not accept support requests from end users direct. The Customer must notify EE of the names of its IT Helpdesk personnel before emails or calls are placed to EE's BlackBerry Support Team.
6.10	IT Helpdesk hours	The Customer shall make available its IT helpdesk on Working Days between the hours of 8am to 6pm (or outside these times if EE requests) to assist with the installation, implementation, maintenance, management and support of the Solution and with anything else reasonably required by EE under this Solution.
6.11	Minimum connected Users	All EE managed BES Servers must maintain a minimum of 75% of connected Users receiving Blackberry Services through EE in the UK. EE will manage a BES serving a minority of other mobile network's BES users to accommodate a Customer's international or mixed network BlackBerry fleet, but EE will not provide support to those non-EE BES devices.
6.12	Contact details	The Customer shall appoint a Customer Representative in relation to the Solution and shall notify such Customer Representative to EE in writing on or before the Service Commencement Date. Changes shall be promptly notified to EE in writing. Contact details for EE's BlackBerry Support Team are set out in the Solution Description.

7. Solution Restrictions

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7.1	Insurance	Insurance propositions sold by or provided on behalf of EE, as described at www.ee.co.uk/business/terms , do not apply to this Solution.
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8. Employment

8.1	EE Personnel	At all times throughout the provision of the Solution EE shall ensure that: <ul style="list-style-type: none"> a. each of the EE Personnel is suitably trained and capable of providing the applicable aspect of the Solution in respect of which they are engaged; and b. there is an adequate number of EE Personnel to provide the Solution properly.
8.2	Contracts of employment for Incoming Employees	The parties intend that the commencement of the Services by EE pursuant to these Solution Terms shall be a Relevant Transfer and that, save where any Incoming Employee shall object pursuant to regulation 4(7) of TUPE or shall be redeployed prior to the Effective Date in accordance with clause 8.3(l), the employment contracts of the Incoming Employees shall have effect on and from the Effective Date as if originally made between the Incoming Employees and EE except to the extent provided by TUPE.
8.3	Representation and warranty	<p>The Customer warrants that:</p> <ul style="list-style-type: none"> a. no persons are engaged or employed in the provision of the Solution or shall be so engaged or employed immediately prior to the Effective Date other than the Incoming Employees; b. none of the Incoming Employees has given or received notice terminating their employment; or will be entitled to give notice as a result of the provisions of the Solution Terms; c. full particulars of the terms of employment of all the Incoming Employees (including all remuneration, profit sharing arrangements, incentives, bonuses, expenses and other payments and benefits whatsoever) have been disclosed to EE; d. in relation to each of the Incoming Employees the Customer has: <ul style="list-style-type: none"> i. complied with all legal obligations; ii. maintained adequate and suitable employment records; and iii. complied with all relevant orders and awards made under any statute; e. the Customer has not been involved in any industrial or trade disputes in the last 3 years and to the best of the Customer's knowledge, information and belief there are no circumstances (including the provisions of these Solution Terms) which may result in any such dispute involving any of the Incoming Employees; f. the Customer has not entered into any recognition agreement with a trade union in relation to the Incoming Employees nor has it done any act which may be construed as recognition; g. there is no agreement, arrangement, scheme or obligation (whether legal or moral) for the payment of any pensions, allowances, lump sums or other like benefits on redundancy, on retirement or on death or during periods of sickness or disablement for the benefit of any of the Incoming Employees; h. no amounts due to or in respect of any of the Incoming Employees (including PAYE and National Insurance and pension contributions) are in arrears or unpaid; i. no monies or benefits other than Employee Emoluments are payable to any of the Incoming Employees; j. there are no current claims or proceedings in relation to the employment of any Incoming Employee and the Customer is not aware of any circumstances which may give rise to any such claim of proceeding; k. the Customer has or shall provide Employee Liability Information to EE regarding each of the Incoming Employees in accordance with regulation 11(2) of TUPE; and l. the Customer shall and shall procure that any Existing Provider shall use all reasonable endeavours to redeploy any Incoming Employees prior to the Effective Date so that they are not assigned to the Solution and do not transfer to EE. <p>It is agreed that the limitations on the liability of the Customer set out in clause 22.2 of the Agreement will, in the event of any breach of the warranties set out in this clause 8.3, be deemed to be a limitation on the liability of the Customer per each and every Incoming Employee in respect of whom EE shall suffer or incur any Losses as a result of such breach.</p>
8.4	Discharge of obligations in relation to Incoming Employees	The Customer shall discharge and shall procure that any Existing Provider shall discharge the Employee Emoluments in respect of the Incoming Employees up to the Effective Date and shall indemnify EE against all Losses arising from its failure to comply with its obligations under this clause.
8.5	Indemnities	The Customer will indemnify EE and keep it indemnified from and against any Losses which it suffers or incurs arising from the transfer to EE of the contract of employment of any Incoming Employee to EE as a result of any Relevant Transfer including, without limitation, any Losses suffered or incurred in connection with:

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- a. any Employee Emoluments due to any such person; and / or
- b. the employment or termination of employment of any such person prior to, on or after the Effective Date.