



# Total Resource (No Employees Transferring) Solution Terms Annex to the EE Mobile Schedule

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## A note on 'you'

'You' and 'your' mean the Customer.

## Words defined in the General Terms

Words that are capitalised but have not been defined in these Solution Terms have the meanings given to them in the General Terms, EE Mobile Schedule, Orders and EE Price Guide.

## Part A – This Solution

### 1 Statement of Requirements

This Solution requires a Statement of Requirements.

### 2 The Total Resource Solution

- 2.1 BT will use reasonable endeavours to meet any performance dates it agrees with you in writing. Any dates agreed between both of us will be estimates only.
- 2.2 BT will appoint the Solution Co-ordinator and will use reasonable endeavours to ensure that the same person acts as the Solution Co-ordinator for the duration of this Solution. However, BT may replace the BT manager from time to time where reasonably necessary in the interests of BT's business.
- 2.3 BT may charge you for the time it spends assessing any request for a change to the scope of this Solution. BT will calculate any additional Charges on a time and materials basis, based on the applicable List Price.
- 2.4 Where you request that BT manages part of your mobile fleet which is Connected to a Third Party Network, you will obtain free access to your account on the Third Party Network for BT. If you do not obtain adequate access for BT, BT will be unable to provide this Solution in relation to the Third Party Network Connections.
- 2.5 If BT provides this Solution in relation to Third Party Network Connections, this Solution will be subject to a bespoke level of management. BT will determine the applicable level of management based on:
  - 2.5.1 the level of access to the relevant account(s) that you have obtained for BT (as further described in Paragraph 2.4); and
  - 2.5.2 the management tools supported by the Third Party Network provider.
- 2.6 Any Third Party Network Connections are exempt from any Service Performance agreed for this Solution.
- 2.7 You will ensure that the total number of Third Party Network Connections managed by BT will not exceed 20 per cent of the total number of your Connections on the Mobile Network.
- 2.8 BT will include all BT managed Third Party Connections in the calculation of the Charges.
- 2.9 BT will not:
  - 2.9.1 negotiate any commercial terms in your account(s) with any Third Party Network provider; or
  - 2.9.2 be responsible for any service performance or contract breaches, or other escalations relating to your Third Party Network account(s).

### 3 Charges

- 3.1 EE will invoice you for the Subscription Charge.
- 3.2 EE will include any Third Party Network Connections in calculating the total number of Connections for the Subscription Charge.

### 4 Your Obligations

- 4.1 You will (and will ensure that your Users will):
  - 4.1.1 provide BT with access to your Sites and systems as required by BT to perform its obligations under these Solution Terms. You will provide such access in a timely manner and at no charge to BT; and
  - 4.1.2 obtain and maintain all licences and consents required in respect of BT's use of all information, data and other materials you provide to BT in connection with this Solution.
- 4.2 BT will use reasonable endeavours to comply with any reasonable health and safety and security policies you notify to BT in writing.
- 4.3 BT will not be liable for any breach of its obligations set out in the Contract if the breach occurs as a result of BT complying with its obligations set out in Paragraph 3.2.

### 5 The End of this Solution



- 5.1 This Solution is subject to a Minimum Term.
- 5.2 If you terminate this Solution before the end of the Minimum Period of Service, in addition to any other payments due to BT or EE under the Contract, you will pay EE Termination Charges, which will be calculated as follows:
- Subscription Charges x number of months remaining in the Minimum Term for this Solution.*

### 6 Support

BT will provide the support set out in the Total Resource Solution Description.

### 7 Employment

- 7.1 You warrant that there is no person whose employment contract will, as a result of BT providing the Total Resource Services in accordance with the Contract, have effect as if originally made between such person and BT in accordance with TUPE or otherwise.
- 7.2 You will indemnify BT and any subcontractor and keep BT and any subcontractor indemnified from and against any Losses which BT suffers or incurs arising from the transfer to BT of the employment contracts (or contracts to perform work or services) of any person in breach of the warranty given at Paragraph 7.1, including any Losses suffered or incurred in connection with:
- 7.2.1 any Employee Emoluments due to any such person; or
  - 7.2.2 the employment or termination of employment (including any redundancy costs) of any such person prior to, on or after the Service Start Date; and/or
  - 7.2.3 any failure to inform and consult under TUPE
- 7.3 BT will ensure that:
- 7.3.1 each of the BT Personnel are suitably qualified, trained and capable of providing the applicable Total Resource Services; and
  - 7.3.2 there are an adequate number of BT Personnel to provide the Total Resource Services.
- 7.4 Paragraph 7.3.1 will not apply to any new BT Personnel, including any Incoming Employees, for one calendar month following their commencement of employment with BT.
- 7.5 The full or partial transfer of the Total Resource Services from BT to you or any Replacement Supplier may be a Relevant Transfer.
- 7.6 If a Relevant Transfer occurs, then the Outgoing Employees' employment contracts will have effect on and from the Service Transfer Date as if originally made between the Outgoing Employees and you (or where appropriate the Replacement Supplier) except where any Outgoing Employee objects in accordance with regulation 4(7) of TUPE.
- 7.7 For each Outgoing Employee, BT will:
- 7.7.1 provide Employee Liability Information in accordance with regulation 11 of TUPE; and
  - 7.7.2 discharge the Employee Emoluments up to the Service Transfer Date.
- 7.8 You will (or, where appropriate, you will ensure that any Replacement Supplier will) discharge the Employee Emoluments in respect of the Outgoing Employees from the Service Transfer Date.
- 7.9 Each of us will make all necessary apportionments.
- 7.10 Each of us will indemnify the other (or where appropriate the Replacement Supplier) against all Losses arising as a result of each of our respective failures to comply with each of our obligations under this Paragraph 7.
- 7.11 BT will indemnify you (or where appropriate any Replacement Supplier) from and against all Losses arising in connection with or as a result of any act or omission of BT relating to any Outgoing Employee's employment prior to the Service Transfer Date.
- 7.12 You will indemnify BT and any subcontractor from and against all Losses arising in connection with or as a result of your act or omission (or where appropriate, the act or omission of any Replacement Supplier) relating to any Outgoing Employee's employment on or after the Service Transfer Date.
- 7.13 Despite Clause 27 of the General Terms, the Contracts (Rights of Third Parties) Act 1999 will apply to the extent necessary to ensure that any Replacement Supplier will have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by BT under Paragraph 7.11.
- 7.14 You will not, nor will you attempt to, solicit, entice away, employ, or engage any person who is, or has been, engaged as BT Personnel for the provision of the Total Resource Services, unless BT provides you with prior written consent. BT will provide consent if you pay BT a sum equivalent to:
- 7.14.1 20 per cent of the then annual remuneration of BT Personnel; or
  - 7.14.2 if higher, 20 per cent of the current annual remuneration to be paid by you to BT Personnel.



7.15 Paragraph 7.14 will only apply for the period from the date of acceptance of these Solution Terms until the expiry of 12 months after the last date of supply of the Total Resource Services.



## Part B – Defined Terms

### 8 Defined Terms

In addition to the defined terms in the General Terms, EE Mobile Schedule, Orders and EE Price Guide, capitalised terms in these Solution Terms will have the following meanings (and in the case of conflict between these defined terms in the General Terms, EE Mobile Schedule, Orders or EE Price Guide, these defined terms will take precedence for the purposes of these Solution Terms):

“**BT Personnel**” means BT’s or its Affiliates’ employees, agents or subcontractors.

“**Employee Emoluments**” means all salaries, wages, commissions, incentive payments, bonuses, all statutory contributions, holiday pay (including payment for accrued but untaken holiday), national insurance contributions, pension and employer insurance contributions made to or on behalf of an employee, taxation (including all income tax deductible under PAYE), expenses and all other emoluments, benefits and outgoings.

“**Employee Liability Information**” means such information as is specified in regulation 11(2) of TUPE.

“**Existing Supplier**” means any organisation providing services to you which are the same as or similar to the Total Resource Services on or before to the Service Start Date.

“**Incoming Employees**” means those employees, listed as incoming employees in the Order, whose contracts of employment will transfer to BT from you or any Existing Supplier as at the Service Start Date.

“**Losses**” means 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.

“**Outgoing Employees**” means those BT Personnel assigned to the provision of the Total Resource Services (or relevant part of the Total Resource Services) as at any Service Transfer Date.

“**Relevant Transfer**” means a relevant transfer for the purposes of TUPE.

“**Replacement Services**” means any services which are identical or substantially similar to the Total Resource Services and which you receive in substitution for any part of the Total Resource Services, whether you provide those services internally or by any Replacement Supplier. Any reference in the Contract to the “**transfer**” of the Total Resource Services is a reference to the termination or expiry of the Total Resource Services (or any part of it) under the Contract and the commencement of Replacement Services in their place.

“**Replacement Supplier**” means any third party supplier of Replacement Services appointed by you from time to time.

“**Service Performance**” has the meaning given in Appendix 1 of the Total Resource Solution Description.

“**Service Transfer Date**” means the date on which the Total Resource Services (or any part of the Total Resource Services), for whatever reason transfers from BT to you or any Replacement Supplier.

“**Solution Co-ordinator**” means a named BT Solution co-ordinator allocated by BT to you backed up by the Total Resource Team.

“**Third Party Network**” means a network other than the Mobile Network.

“**Third Party Network Connections**” means a connection by which a third party gives you access to a Third Party Network.

“**Total Resource Services**” means the supply of services to you and your Users under this Solution.

“**TUPE**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as may be amended from time to time).