



# Total Resource (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 EE may invoice 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 a 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 not be able 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 in accordance with 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 BT will include all BT managed Third Party Network Connections in the calculation of the Charges.
- 2.8 BT will not:
  - 2.8.1 negotiate any commercial terms in your account(s) with any Third Party Network provider; or
  - 2.8.2 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 the access to your Sites and systems that BT needs to perform its obligations under these Total Resource (Employees Transferring) 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 for 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 4.2.
- 4.4 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.



### 5 The End of the Solution

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 Period of Service for this Solution.*

### 6 Support

This Solution includes the support set out in the Total Resource Solution Description.

### 7 Employment

#### 7.1 Application of TUPE on commencement

7.1.1 The commencement of the Total Resource Services by BT in accordance with these Total Resource (Employees Transferring) Solution Terms will be a Relevant Transfer.

7.1.2 The employment contracts (or contracts to perform work or services) of the Incoming Employees will have effect on and from the Service Start Date as if they were originally made between the Incoming Employees and BT, except where any Incoming Employee objects in accordance with regulation 4(7) of TUPE.

#### 7.2 Warranties

You warrant that:

7.2.1 no persons are engaged or employed in the provision of services being replaced by the Total Resource Services or will be so engaged or employed immediately prior to the Service Start Date other than the Incoming Employees;

7.2.2 none of the Incoming Employees has given or received notice terminating their employment (or contracts to perform work or services) or will be entitled to give notice as a result of the provisions of these Total Resource (Employees Transferring) Solution Terms;

7.2.3 you have disclosed to BT details of the terms of employment (or contracts to perform work or services) of all the Incoming Employees (including all remuneration, profit sharing arrangements, incentives, bonuses, expenses and other payments and benefits);

7.2.4 in relation to each of the Incoming Employees you have:

(a) complied with all legal obligations;

(b) maintained adequate and suitable employment records; and

(c) complied with all relevant orders and awards made under any statute;

7.2.5 you have not been involved in any industrial or trade disputes in the last three years and to the best of your knowledge and belief there are no circumstances which may result in such dispute involving any of the Incoming Employees;

7.2.6 you have not entered into any recognition agreement with a trade union in relation to the Incoming Employees, nor have you done anything which may be considered to be recognition;

7.2.7 there is no agreement, arrangement, scheme or obligation (whether legal or moral) for the payment of any pensions, allowances, lump sums or other similar benefits on redundancy, on retirement or on death, or during periods of sickness or disablement, for the benefit of any of the Incoming Employees;

7.2.8 no amounts due to or relating to any of the Incoming Employees (including PAYE and National Insurance and pension contributions) are in arrears or unpaid;

7.2.9 no monies or benefits other than Employee Emoluments are payable to any of the Incoming Employees;

7.2.10 there are no current claims or proceedings in relation to the employment of any Incoming Employee and you are not aware of any circumstances that may give rise to any claim or proceeding; and

7.2.11 you have or will provide Employee Liability Information to BT regarding each of the Incoming Employees in accordance with regulation 11(2) of TUPE.

7.3 If you breach the warranties in Paragraph 7.2, the limitations on your liability set out in Clause 22.4 of the General Terms is deemed to apply in respect of the Losses BT suffers in relation to each Incoming Employee [and not in relation to the Solution as a whole].

#### 7.4 Discharge of obligations in relation to Incoming Employees

7.4.1 You will pay the Employee Emoluments for the Incoming Employees up to the Service Start Date.

7.4.2 BT will pay the Employee Emoluments for the Incoming Employees on and from Service Start Date and we will make all necessary apportionments.

#### 7.5 Indemnities in relation to Incoming Employees



- 7.5.1 Each of us will indemnify the other for all Losses suffered or incurred by the other as a result of each of our respective failures to comply with each of our obligations under this Paragraph 7.
- 7.5.2 You will indemnify BT and any subcontractor for all Losses arising in connection with your act or omission relating to any Incoming Employee's employment prior to the Service Start Date.
- 7.5.3 If any person, other than an Incoming Employee, employed or engaged by you transfers or alleges that their employment or engagement (or any liability related to it) transfers to BT or any subcontractor under TUPE or otherwise as a result of BT or any subcontractor providing the Total Resources Services, the parties will discuss how to address the situation. In the absence of any agreement, BT, or any subcontractor (as applicable) may dismiss any such person and you will indemnify and will keep indemnified BT (for its and the benefit of any relevant subcontractor) from all Losses which BT or any relevant subcontractor may incur as a result of TUPE applying or being alleged to apply (including the cost of employment until the date of dismissal).
- 7.5.4 BT will indemnify you for all Losses you suffer or incur arising in connection with BT's act or omission relating to:
- (a) any Incoming Employee's employment on or after the Service Start Date; and
  - (b) any Incoming Employee who becomes an Outgoing Employee, prior to the relevant Service Transfer Date.
- 7.5.5 BT will ensure that:
- (a) each of the BT Personnel are suitably qualified, trained and capable of providing the applicable Total Resource Services; and
  - (b) there are an adequate number of BT Personnel to provide the Total Resource Services.
- 7.5.6 Paragraph 7.5.5(a) will not apply to any new BT Personnel, including Incoming Employees, for one calendar month following their commencement of employment with BT.
- 7.6 Application of TUPE on termination**
- 7.6.1 The full or partial transfer of the Total Resource Services from BT to you or any Replacement Supplier may be a Relevant Transfer.
- 7.6.2 If a Relevant Transfer occurs, then the Outgoing Employees' employment contracts (or contracts to perform work or services) 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 an Outgoing Employee objects in accordance with Regulation 4(7) of TUPE.
- 7.6.3 For each Outgoing Employee, BT will:
- (a) provide Employee Liability Information in respect of the Outgoing Employee in accordance with regulation 11 of TUPE;
  - (b) discharge the Employee Emoluments up to the Service Transfer Date. You will (or, where appropriate, you will ensure that any Replacement Supplier will) discharge the Employee Emoluments in respect of the Outgoing Employees on and after the Service Transfer Date and will make all necessary apportionments; and
  - (c) indemnify you (or where appropriate, any Replacement Supplier) for all Losses you suffer or incur arising in connection with BT's act or omission relating to any Outgoing Employee's employment prior to the Service Transfer Date.
- 7.6.4 Each of us will indemnify the other (or where appropriate, the Replacement Supplier) for all Losses suffered or incurred by the other as a result of each of our respective failures to comply with each of our obligations under this Paragraph 7.
- 7.6.5 You will indemnify BT and any subcontractor for all Losses suffered or incurred by BT arising in connection with your act or omission of (or where appropriate, any Replacement Supplier) relating to any Outgoing Employee's employment on or after the Service Transfer Date.
- 7.6.6 Regardless of what it may say elsewhere in the Contract, 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 Paragraphs 7.6.3(c), 7.6.4 and 7.6.5 of these Total Resource (Employees Transferring) Solution Terms.
- 7.7 Non-solicitation**
- 7.7.1 You will not, nor will you attempt to, solicit, entice away, employ, or engage any person who is, or has been, engaged as an employee, consultant or subcontractor of BT for the provision of the Total Resource Services, unless BT provides you with prior written consent.
- 7.7.2 BT will provide consent if you pay BT a sum equivalent to:
- (a) 20 per cent of the then annual remuneration of BT's employee, consultant or subcontractor; or



- (b) if higher, 20 per cent of the current annual remuneration to be paid by you to that employee, consultant or subcontractor.
- 7.7.3 This Paragraph 7.7 will only apply for the period from the date of acceptance of these Total Resource (Employees Transferring) 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 the information 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 prior to the Service Start Date.

“**Incoming Employees**” means those employees, listed as incoming employees in the Order, whose contracts of employment will transfer by virtue of TUPE 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 any of the Total Resource Services and which you receive in substitution for any of the Total Resource Services whether those services are provided by you internally or by any Replacement Supplier. Any reference in this Agreement to the “**transfer**” of Total Resource Services is a reference to the termination of expiry of the Total Resource Services (or any part of them) under this Agreement 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 transfer 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).