



On-Site Support (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

1.1 This Solution requires a Statement of Requirements.

2 Charges

2.1 EE will invoice you for the Subscription Charge.

3 Your obligations

- 3.1 You will (and will ensure that your Users will) meet your obligations set out in the On-Site Support Solution Description.
- 3.2 If you request BT to manage a part of your mobile fleet that is connected to a Third Party Network, you will ensure that BT has free and adequate access to your Third Party Network account. If you do not, BT will not be able to provide the On-Site Support Services in relation to the relevant Third Party Network Connections.
- 3.3 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 Connections on the Mobile Network.

4 BT's obligations

- 4.1 If BT provides On-Site Support Services in relation to Third Party Network Connections, the On-Site Support Services will be subject to a bespoke level of management. BT will determine the applicable level of management based on:
- 4.1.1 the level of access to the relevant account(s) that you have obtained for BT (as set out in Paragraph 3.2); and
- 4.1.2 the management tools supported by the Third Party Network provider.
- 4.2 BT will not:
- 4.2.1 negotiate any commercial terms in your account(s) with any Third Party Network provider; or
- 4.2.2 be responsible for any service performance or contract breaches, or other escalations relating to your Third Party Network account(s).

5 The end of the Solution

- 5.1 A Minimum Term applies to this Solution as set out in the Initial Order or applicable Contract Change Note.
- 5.2 If you terminate this Solution before the end of the Minimum Term, in addition to any other payments due to 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) – 5 per cent

6 Employment

6.1 Application of TUPE

- 6.1.1 Each of us intends that the commencement of the On-Site Support Services will result in a Relevant Transfer.
- 6.1.2 The Incoming Employees' employment contract with BT will have effect on the Service Start Date, except:
- (a) where an Incoming Employee objects to the transfer in accordance with Regulation 4(7) of TUPE; and
- (b) to the extent that TUPE provides otherwise.

6.2 Warranty

- 6.2.1 You warrant that:



- (a) only the Incoming Employees are engaged or employed in the provision of the services that are being replaced by the On-Site Support Services, or will be engaged or employed, immediately before the Service Start Date;
- (b) none of the Incoming Employees have:
 - (i) given or received notice terminating their employment; or
 - (ii) will be entitled to give notice as a result of you entering into an Order for the Solution;
- (c) you have disclosed to BT all of the Incoming Employees' terms of employment (including all remuneration, profit sharing arrangements, incentives, bonuses, expenses and other payments and benefits whatsoever);
- (d) in relation to each of the Incoming Employees you have:
 - (i) complied with your legal obligations;
 - (ii) maintained adequate and suitable employment records; and
 - (iii) complied with all relevant orders and awards;
- (e) you have not been involved in any industrial or trade disputes in the last three years;
- (f) to the best of your knowledge and belief there are no circumstances which may result in any industrial or trade disputes involving any of the Incoming Employees;
- (g) you have neither entered into any recognition agreement with a trade union in relation to the Incoming Employees nor acted in a way which may be construed as recognition;
- (h) no Incoming Employee has an agreement, arrangement, scheme or obligation for the payment of any financial benefits on redundancy, retirement, periods of sickness or disablement or death;
- (i) 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;
- (j) no monies or benefits other than Employee Emoluments are payable to any of the Incoming Employees;
- (k) there are no current claims or proceedings relating to the employment of any Incoming Employee and you are not aware of any circumstances that may give rise to any such claim or proceeding; and
- (l) you have or will provide Employee Liability Information to BT for each of the Incoming Employees.

6.2.2 If you breach any of the warranties in Paragraph 6.2.1, your liability, as set out in Clause 22 of the General Terms, is deemed to apply to each and every Incoming Employee for whom BT suffers or incurs any Losses, as a result of such breach.

6.3 Discharge of obligations in relation to Incoming Employees

- 6.3.1 You will pay all the Incoming Employee's Employee Emoluments up to the Service Start Date.
- 6.3.2 BT will pay the Incoming Employee's Employee Emoluments on and after the Service Start Date.
- 6.3.3 BT will indemnify you for any Losses you suffer as a result of BT's failure to comply with its obligations under this Paragraph 6.3.
- 6.3.4 You will indemnify BT for any Losses BT suffers as a result of your failure to comply with your obligations under this Paragraph 6.3.

6.4 Indemnities in relation to Incoming Employees

- 6.4.1 You will indemnify BT for all Losses arising in connection with your acts or omissions relating to any Incoming Employee's employment prior to the Service Start Date.
- 6.4.2 BT will indemnify you for all Losses arising in connection with BT's acts or omissions relating to any Incoming Employee's employment on or after the Service Start Date and, for any Incoming Employee who becomes an Outgoing Employee, prior to the relevant Service Transfer Date.

6.5 BT Personnel

- 6.5.1 BT will ensure that:
 - (a) the BT Personnel are qualified, trained and capable of providing the applicable On-Site Support Services; and
 - (b) an adequate number of BT Personnel provide the On-Site Support Services.
- 6.5.2 Paragraph 6.5.1 will not apply to any new BT Personnel, including Incoming Employees, for one calendar month following their commencement of employment with BT.

6.6 Application of TUPE on termination

- 6.6.1 If a Relevant Transfer occurs when transferring the On-Site Support Services from BT to you or any Replacement Supplier, then the Outgoing Employee's employment contract will have effect on and from the Service Transfer Date as if originally made between the Outgoing Employees and the Customer, except:



- (a) where an Outgoing Employee objects in accordance with Regulation 4(7) of TUPE; and
- (b) to the extent that TUPE provides otherwise.

6.6.2 For each Outgoing Employee, BT will:

- (a) provide you with Employee Liability Information;
- (b) pay the Employee Emoluments up to the Service Transfer Date. You will (or will ensure that any Replacement Supplier will) pay the Employee Emoluments and make all apportionments on or after the Service Transfer Date; and
- (c) indemnify you (or where appropriate the Replacement Supplier), for all Losses arising from its failure to comply with its obligations under Paragraph 6.6.2(b).

6.6.3 You will indemnify BT for all Losses arising from your failure to comply with your obligations under Paragraph 6.6.2(b).

6.6.4 BT will indemnify you (or the Replacement Supplier) for all Losses arising in connection with BT's acts or omissions to any Outgoing Employee's employment before the Service Transfer Date.

6.6.5 You will indemnify BT for all Losses arising in connection with your (or the Replacement Supplier's) acts or omissions relating to any Outgoing Employee's employment on or after the Service Transfer Date.

6.7 **Contracts (Rights of Third Parties) Act 1999**

The Contracts (Rights of Third Parties) Act 1999 only applies 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 under Paragraphs 6.6.2 and 6.6.4 of these On-Site Support (Employees Transferring) Solution Terms.

6.8 **Non-solicitation**

6.8.1 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 On-Site Support Services, unless BT provides you with prior written consent.

6.8.2 If BT provides consent in accordance with Paragraph 6.8.1, you will 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.

6.8.3 This Paragraph 6.8 will only apply for the period from the date of acceptance of these On-Site Support (Employees Transferring) Solution Terms until the expiry of 12 months after the last date of supply of the On-Site Support Services.



Part B – Defined Terms

7 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 and the 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 employment related outgoings including salaries, wages, bonus or commission, holiday pay, expenses, national insurance and pension contributions and any liability to taxation.

"Employee Liability Information" means the information required to be provided by Regulation 11(2) of TUPE.

"Existing Supplier" means any organisation providing services to you which are the same as or similar to the On-Site Support 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.

"On-Site Support Services" means the services described in the On-Site Support Solution Description.

"Outgoing Employees" means those BT Personnel who are assigned to the provision of the On-Site Support Services (or any part of the On-Site Support 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 On-Site Support Services and which you receive in substitution to the On-Site Support Services whether those services are provided by you internally or by any Replacement Supplier.

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

"Service Transfer Date" means the date on which the On-Site Support Services (or any part of the On-Site Support Services), for whatever reason transfer from BT to you or any Replacement Supplier.

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

"Third Party Network" means a network other than the Mobile Network.

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006.