

# Solution Terms for Total Resource (formerly known as Total Resource from Orange) (Employees Transferring)



## 1. Interpretation

1.1 The Total Resource (Employees Transferring) Solution (referred to in these Solution Terms as "**Total Resource**" or the "**Solution**") is provided in accordance with the Customer's Agreement with EE.

1.2	Solution Description	The Total Resource Solution Description forms part of these Solution Terms.
1.3	Statement of Requirements	The parties must agree the Total Resource Statement of Requirements prior to provision of this Solution by EE. This forms part of these Solution Terms.

## 2. Definitions

EE Personnel	All those employees of EE or any Sub-contractor who are engaged in the provision of the Total Resource Services (or relevant part of the Total Resource Services) from time to time.
Effective Date	The Service Commencement Date as defined in the General Terms and Conditions for Business Customers.
Employee Emoluments	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	Such information as is specified in regulation 11(2) of TUPE.
Existing Supplier	Any organisation providing services which are the same as or similar to the Total Resource Services to the Customer on or prior to the Service Commencement Date.
Incoming Employees	Those employees, listed as incoming employees in the Commercial Terms or applicable Contract Change Note, whose contracts of employment will transfer by virtue of TUPE to EE from the Customer or any Existing Supplier 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.
Outgoing Employees	Those EE Personnel who are 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	A relevant transfer for the purposes of TUPE.
Replacement Services	Any services which are identical or substantially similar to any of the Total Resource Services and which the Customer receives in substitution for any of the Total Resource Services whether those services are provided by the Customer 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 stead.
Replacement Supplier	Any third party supplier of Replacement Services appointed by the Customer from time to time.
Service Transfer Date	The date on which the Total Resource Services (or any part of the Total Resource Services), for whatever reason transfer from EE to the Customer or any Replacement Supplier.
Total Resource Services	The supply of services to the Customer and its Users in accordance with these Solution Terms.
TUPE	The Transfer of Undertakings (Protection of Employment) Regulations 2006 (as may be amended from time to time)

## 3. Total Resource - the Solution

3.1	Total Resource Services	EE shall provide the Total Resource Services in respect of the Connected Devices 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.
3.2	EE Manager	EE shall appoint the EE Manager and shall use reasonable endeavours to ensure that the same person acts as the EE Manager throughout the term of the Total Resource Services, but may replace him from time to time where reasonably necessary in the interests of EE's business.
3.3	Changing scope of Services	EE may charge for the time it spends assessing any request for change to the scope of the Total Resource Services from the Customer on a time and materials basis at the List Price.
3.4	Third Party Network	Where the Customer requests EE to manage a part of the Customer's mobile fleet which is Connected to a network other than the EE Network (a "Third Party Network"), the Customer shall procure free

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		access for EE to the Customer's account on the Third Party Network. If adequate access is not obtained, the Total Resource Services cannot be provided with respect to any Connections on a Third Party Network. Connections on a Third Party Network will be subject to a bespoke level of management, to be defined by EE depending on the level of access to the relevant account(s) the Customer procures for EE, and management tools supported by the Third Party Network provider.
3.5	Third Party Network Connections	Third Party Network Connections will be exempt from any service levels agreed in relation to the Total Resource Service. The total number of Connections on a Third Party Network managed by EE must not exceed 20% of the total number of the Customer's Connections on the EE Network. The calculation of the number of Connections managed to determine the price band payable for the Total Resource Service will include any Connections on a Third Party Network, which are managed by EE.
3.6	Exclusions	EE shall not: (i) enter into negotiations with any Third Party Network provider regarding any commercial aspects of the Customer's account; or (ii) be responsible for any SLA or contract breaches, or other escalations relating to the Customer's account(s) with a Third Party Network provider.

## 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"> <li>provide, for EE in a timely manner and at no charge, access to the Customer's premises and systems as required by EE for the sole purpose of reasonably performing the Total Resource Services; and</li> <li>obtain and maintain all necessary licences and consents in respect of all information, data and other materials provided to EE for use in connection with the provision of the Total Resource Services.</li> </ol> <p>The Customer shall appoint a Customer Representative in relation to the Total Resource Services and shall notify such Customer Representative to EE in writing on or before the Effective Date. Changes shall be promptly notified to EE in writing.</p>
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><b>Customer shall pay EE the following Termination Charges in accordance with the Agreement upon early termination of the Total Resource Services:</b></p> <p>Subscription Charges x number of months remaining in the Minimum Connection Period for this Solution.</p>
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## 6. Technical Support

6.1	Technical Support	Technical Support is provided with this Solution as described in the Solution Description.
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## 7. Confidentiality and Data Protection

7.1	Confidentiality and Data Protection	Clauses 25 and 26 of the General Terms and Conditions apply to the provision of this Solution.
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## 8. Employment

8.1	Contracts of employment for Incoming Employees	The parties acknowledge and agree that the commencement of the Total Resource Services by EE pursuant to these Solution Terms constitutes a Relevant Transfer and that, save where any Incoming Employee shall object pursuant to regulation 4(7) of TUPE, the employment contracts (or contracts to perform work or services) of the Incoming Employees shall have effect on and from the Effective Date as if originally made between the Incoming Employees and EE.
8.2	Representation and warranty	<p>The Customer warrants that:</p> <ol style="list-style-type: none"> <li>no persons are engaged or employed in the provision of the Total Resource Services or shall be so engaged or employed immediately prior to the Effective Date other than the Incoming Employees;</li> <li>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 the Solution Terms;</li> <li>full particulars of the terms of employment (or contracts to perform work or services) of all the</li> </ol>

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		<p>Incoming Employees (including all remuneration, profit sharing arrangements, incentives, bonuses, expenses and other payments and benefits whatsoever) have been disclosed to EE;</p> <p>d. in relation to each of the Incoming Employees the Customer has:</p> <ol style="list-style-type: none"> <li>i. complied with all legal obligations;</li> <li>ii. maintained adequate and suitable employment records; and</li> <li>iii. complied with all relevant orders and awards made under any statute;</li> </ol> <p>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 such dispute involving any of the Incoming Employees;</p> <p>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;</p> <p>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;</p> <p>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;</p> <p>i. no monies or benefits other than Employee Emoluments are payable to any of the Incoming Employees 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 or proceeding; and</p> <p>j. 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.</p> <p>It is agreed that the limitations on the liability of the Customer set out in clause 22.2 of the General Terms and Conditions for Business Customers will, in the event of any breach of the warranties set out in this clause 8.2, 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>
8.3	Discharge of obligations in relation to Incoming Employees	The Customer shall discharge the Employee Emoluments in respect of the Incoming Employees up to the Effective Date. EE shall discharge the Employee Emoluments in respect of the Incoming Employees thereafter all necessary apportionments shall be made. Each party shall indemnify the other against all Losses arising from such party's failure to comply with its obligations under this clause.
8.4	Indemnities	<p>The Customer shall indemnify EE and any Sub-contractor from and against all Losses arising in connection with or as a result of any act or omission of the Customer relating to any Incoming Employee's employment prior to the Effective Date.</p> <p>If any person, other than an Incoming Employee, employed or engaged by the Customer transfers or alleges that their employment or engagement (or any liability related to it) transfers to EE or any Sub-contractor under TUPE or otherwise as a result of EE or any Sub-contractor providing the Total Resources Services, the parties will discuss how to address the situation. In the absence of any agreement, EE, or any Sub-contractor (as applicable) may dismiss any such person and the Customer will indemnify and will keep indemnified EE (for its and the benefit of any relevant Sub-contractor) from all Losses which EE or any relevant Sub-contractor may incur as a result of TUPE applying or being alleged to apply (including the cost of employment until the date of dismissal).</p> <p>EE shall indemnify the Customer from and against all Losses arising in connection with or as a result of any act or omission of EE relating to any Incoming Employee's employment on or after the Effective Date and, in respect of any Incoming Employee who shall become an Outgoing Employee, prior to the relevant Service Transfer Date.</p>
8.5	EE Personnel	<p>At all times throughout the provision of the Total Resource Services EE shall ensure that:</p> <ol style="list-style-type: none"> <li>a. each of the EE Personnel is suitably qualified, adequately trained and capable of providing the applicable Total Resource Services in respect of which they are engaged; and</li> <li>b. there is an adequate number of EE Personnel to provide the Total Resource Services properly, provided that EE shall have a grace period of one calendar month in which to ensure that any new EE Personnel, including any Incoming Employees, are so trained and capable.</li> </ol>
8.6	Contracts of employment for Outgoing Employees	<p>The parties acknowledge and agree that the full or partial transfer of the Total Resource Services from EE to the Customer or any Replacement Supplier may be a Relevant Transfer. Where a Relevant Transfer occurs, save where any Outgoing Employee has objected pursuant to regulation 4(7) of TUPE, the employment contracts (or contracts to work or perform services) of the Outgoing Employees shall have effect on and from the Service Transfer Date as if originally made between the Outgoing Employees and the Customer (or where appropriate the Replacement Supplier). Accordingly:</p> <ol style="list-style-type: none"> <li>a. EE shall provide Employee Liability Information in respect of the Outgoing Employees in accordance with regulation 11 of TUPE.</li> </ol>

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		<p>b. EE shall discharge the Employee Emoluments in respect of the Outgoing Employees up to the Service Transfer Date, the Customer shall (or, where appropriate, shall procure that any Replacement Supplier shall) discharge the Employee Emoluments in respect of the Outgoing Employees thereafter and all necessary apportionments shall be made. Each party shall indemnify the other (or where appropriate the Replacement Supplier) against all Losses arising from such party's failure to comply with its obligations under this clause.</p> <p>c. EE shall indemnify the Customer (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 EE relating to any Outgoing Employee's employment prior to the Service Transfer Date.</p> <p>d. The Customer shall indemnify EE and any Sub-contractor from and against all Losses arising in connection with or as a result of any act or omission of the Customer (or where appropriate any Replacement Supplier) relating to any Outgoing Employee's employment on or after the Service Transfer Date.</p>
8.7	Contracts (Rights of Third Parties) Act 1999	The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by EE under clause 8.6 of these Solution Terms in its own right pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
8.8	Non-solicitation	The Customer shall not, without the prior written consent of EE, at any time 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, solicit or entice away from EE or employ or engage or attempt to employ or engage any person who is, or has been, engaged as an employee, consultant or Sub-contractor of EE in the provision of the Total Resource Services. Any consent given by EE shall be subject to the Customer paying to EE a sum equivalent to 20% of the then current annual remuneration of EE's employee, consultant or Sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant or Sub-contractor.