

Solution Service Plan Terms for Service Management Solution



1. Interpretation

1.1 This Solution is provided in accordance with the Customer's Agreement with EE.

1.2	Solution Description	The 'Service Management Solution Description' forms part of these Solution Terms.
1.3	Statement of Requirements	A Statement of Requirements is not required for this Solution.

2. Definitions

EE Personnel	All those employees of EE who are engaged in the provision of the Service Management Services (or relevant part of the Service Management 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 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	Such information as is specified in regulation 11(2) of TUPE.
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 Service Management Services (or any relevant part of the Service Management 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 Service Management Services and which the Customer receives in substitution for any of the Service Management Services, whether those services are provided by the Customer internally or by any Replacement Supplier. Any reference in this Agreement to the "transfer" of Service Management Services is a reference to the termination or expiry of the Service Management 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 Service Management Services (or any part of the Service Management Services), for whatever reason transfer from EE to the Customer or any Replacement Supplier.
Service Management Service	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.

3. Service Management – the Solution

3.1	Key Customer Sites	Any sites identified for network updates as per the Solution Description must be agreed between the parties and will be limited to 10 (ten) locations per Customer unless otherwise agreed.
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4. Charges

4.1	The Charge for Service Management	The Charge is levied on the Customer on a per month basis.
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5. Customer Obligations

5.1	Customer obligations	The Customer shall (and shall procure that its Users shall) meet the obligations set out in the Solution Description.
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6. Term and Termination

6.1	Term for Service Management	The Minimum Connection Period for Service Management is 24 months or longer as detailed in the Commercial Terms.
6.2	Termination Charges for Service Management	Customer shall pay EE the following Termination Charges in accordance with the Agreement upon early termination of the Service Management: Subscription Charge x number of months remaining in the Minimum Connection Period for the Solution

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	Representation and warranty	The Customer warrants that there is no person whose contract of employment will, as a result of the provision of the Service Management Services by EE pursuant to the Agreement, have effect as if originally made between such person and EE pursuant to TUPE or otherwise.
8.2	Indemnity	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 person in breach of the warranty given at clause 8.1 above including, without limitation, any Losses suffered or incurred in connection with: 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.
8.3	EE Personnel	At all times throughout the provision of the Service Management Services EE shall ensure that: a. each of the EE Personnel is suitably qualified, adequately trained and capable of providing the applicable Service Management Services in respect of which they are engaged; b. there is an adequate number of EE Personnel to provide the Service Management 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.
8.4	Contracts of employment	The parties acknowledge that the full or partial transfer of the Service Management 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 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) except to the extent provided by TUPE. Accordingly: a. EE shall provide Employee Liability Information in respect of the Outgoing Employee in accordance with regulation 11 of TUPE. b. EE shall discharge the Employee Emoluments in respect of the Outgoing Employees up to the Service Transfer Date. The Customer (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. 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. d. The Customer shall indemnify EE 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.
8.5	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 8.4 of these Solution Terms in its own right pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

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8.6	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 Service Management 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 Service Management 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.
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