

Solution Terms for Customised Apps

("Customised Apps")



1. Interpretation

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

1.2	Solution Description	The Customised Apps Solution Description forms part of these Solution Terms.
1.3	Statement of Requirements	Three (3) Statement of Requirements will be created during the development of this Solution by EE. The Solution Architecture Statement of Requirements will be developed during Solution Architecture and will need to be agreed by the parties in writing prior to User Interface Design commencing. The User Interface Design Statement of Requirements must be agreed by the parties in writing prior to Development commencing. A third Statement of Requirements will be issued by EE on completion of the Development of the Customised App. This will record the final versions of the documentation listed in previous Statement of Requirements and must be agreed in writing by the Customer before the Customised App is Released. These three (3) Statements of Requirements and the attached documentation shall form part of these Solution Terms. In the event of inconsistency, the Documentation dated last in time shall prevail.

2. Definitions

The definitions set out in the General Terms and Conditions for Business Customers ("**General Terms**") apply to this Solution except where amended below or in the Solution Description.

Acceptance Tests	means the tests of Customised App Software at the end of an Iteration or the Development Phase (as appropriate) to be agreed between the Customer and the Developer.
Additional Resource Day	means a total of 7.5 hours of the services of one or a combination of a software developer of the Developer, Quality Assurance Manager and Project Manager (as such terms are defined in the Solution Description) as deemed appropriate by EE.
App	means mobile application software.
Charges	means, for the purposes of this Solution, all monies payable by the Customer to EE under this Solution as set out in the Initial Order, Contract Change Note and Statement of Requirements or otherwise varied pursuant to the Solution Change Control process set out in the Solution Description and Expenses and references to "Charges" in the General Terms shall be interpreted accordingly.
Customer Materials	means any materials, data, information, content, images, resources or third party software owned by or licensed to Customer and made available to EE pursuant to this Solution.
Customised App	means the App developed for the Customer comprising the Customised App Software.
Customised App Software	means the Existing Software, Generic Software, New Software and Third Party Software.
Defect	means an error in the Customised App that causes it to fail to operate materially in accordance with the Documentation.
Development	means as described at section 2.2.3 of the Solution Description as amended by the Customer's Development Statement of Requirements and any agreed supporting documents.
Developer	means EE's Sub-contractor for the Solution as defined in the Solution Description.
Documentation	means the final approved Statement(s) of Requirements and their attachments.
End User Licence Agreement	means the licence of the Customised App attached to the Solution Description.
Existing Software	means any software which is pre-existing as at the Service Commencement Date (which includes but is not limited to the software programs owned by the Developer and existing prior to the Service Commencement Date, Open Source Software and Third Party Software).
Expenses	means expenses incurred by EE or the Developer in connection with the Solution (including but not limited to venue hire, hotel expenses, subsistence, train fares and parking) which are invoiced to the Customer as described at clause 6.7 of these Solution Terms.
Force Majeure Event	means an event beyond the reasonable control of a party including but not limited to a strike, lock out or other form of industrial action except in relation to a party's own workforce, outbreak of hostilities, riot, civil disturbance or acts of terrorism; fire, explosion or flood; or theft and malicious damage. No event shall be treated as a Force Majeure Event if it is attributable to a wilful act or omission or any failure to take reasonable precautions by a party or any failure to take reasonable steps to overcome the event.

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Generic Software	means any software developed by EE or the Developer during the term of the Solution which is of generic functionality including modifications and enhancements made to the Existing Software.
Iteration	means a stage within the Development Phase with a defined set of deliverables.
Licensed User	means anyone who downloads the Customised App from an App Store (as defined in the Solution Description) or is permitted by the Customer to use the Customised App.
New Software	means software which is developed or customised specifically for the Customer under this Solution (which may include the appearance and behaviour of the Customised App), details of which are set out in the relevant Statement of Requirements for this Solution but excluding the Existing Software, Open Source Software and Third Party Software.
Open Source Software	means software for which the underlying programming code is publicly available to users so that they may read it, make changes to it and/or build new versions of the software incorporating their changes in accordance with the licences applicable to such software.
Optional Services	means any of the services listed in section 5 of the Solution Description and any other services that the Customer and EE may from time to time agree shall be supplied to the Customer by EE under the terms of this Solution.
Phase	means a phase of the Solution as described in section 2.1.b. of the Solution Description.
Project Plan	means the time schedule and sequence of events for the performance of the Solution which may be varied by agreement of the parties in each new Statement of Requirements or through Change Control described in section 3.2 of the Solution Description.
Release and Released	means release of the Customised App as described in section 2.2.3.g. of the Solution Description;
Solution Architecture	means as described at section 2.2.1 of the Solution Description as amended by the Customer's Solution Architecture Statement of Requirements and supporting documents.
Support and Maintenance	means the support and maintenance services described in paragraph 2. of Annex 2 of the Solution Description.
Support Period	means a period of twelve (12) months commencing on the date of the signed Initial Order or Contract Change Note for Support and Maintenance Services.
Test Plan	means the document setting out the timetable and scope of the Acceptance Tests prepared during Solution Architecture and referred to in section 2.2.1.a.iii of the Solution Description.
Third Party Software	any software programs proprietary to third parties which are provided to the Customer as part of the Services.
Source Code	means the source code and the software to which it relates, in the language in which the software was written, together with all related flow charts and technical documentation.
User Interface Design	means as described at section 2.2.2 of the Solution Description as amended by the Customer's Statement of Requirements and supporting documents.

3. Development and Release

3.1	Customised App development	EE shall engage the Developer to develop the Customised App which shall be developed with reasonable diligence, skill and expertise in accordance with the Statements of Requirements. The Customer acknowledges and agrees EE's obligations under these Solution Terms may be sub-contracted to the Developer. For the purposes of these Solution Terms references to EE may include the Developer as the context requires.
3.2	Phases of Customised App development	There are three (3) Phases of development of the Customised App (Solution Architecture, User Interface Design and Development) which may be purchased by the Customer in the Initial Order or Contract Change Note.
3.3	Acceptance Tests	At the end of any Iterations, and/or on completion of the Development Phase (as appropriate), EE will carry out acceptance testing to confirm that the Customised App operates materially in accordance with the draft Development Documentation. The Acceptance Tests and a Test Plan shall normally be agreed by the parties during Solution Architecture. The parties shall in any event use reasonable endeavours to agree the Acceptance Tests in advance of the test date(s) agreed. If the Customised App or any part of the Customised App materially fails to pass the relevant tests, EE shall remedy at its cost, the defects and/or deficiencies and the relevant test(s) shall be repeated within a reasonable time, agreed by EE and the Customer and signed-off following the procedure set out in clause 3.4 below.
3.4	Acceptance	Acceptance of the Customised App shall be deemed to have occurred on whichever is the earliest of: a. written confirmation by the Customer of the successful completion of the testing of the Customised

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		<p>App;</p> <p>b. Customer sign-off of the Statement of Requirements covering the Development Phase; or</p> <p>c. the use of the Customised App by the Customer in the normal course of its business.</p> <p>Following acceptance of the Customised App, EE will not be responsible for carrying out further Development works, maintenance and/or upgrades to the Customised App and if any such services are required, the Customer shall purchase Additional Resource Days or Support and Maintenance Services in accordance with these Solution Terms.</p>
3.5	Release of the Customised App and Risk	<p>The Customised App shall be Released to the Customer on signature of the Development Statement of Requirements and full payment of all Charges for the Customised App incurred up to that date. The Charges recorded in the Development Statement of Requirements shall be invoiced in accordance with clause 6.2 below.</p> <p>Risk in the New Software passes to the Customer on Release of the Customised App to the Customer.</p>
3.6	Delay	<p>EE shall use reasonable endeavours to deliver the Customised App in accordance with the Project Plan. EE shall be given a reasonable extension of the timetable set out in the Project Plan of any one or more of the Phases if one of more of the following events occurs:</p> <p>a. variation to the Customised App and/or the timelines in the relevant Statement or Requirements is agreed with, or made at the Customer's written request; or</p> <p>b. Force Majeure Event occurs; or</p> <p>c. delay is caused in whole or in part by an action or omission of the Customer or its sub-contractor or agents.</p> <p>If EE can demonstrate that the delay has resulted in an increase in cost to EE caused by (a) or (c) above, EE may notify the Customer that it wishes to increase the Charges for the Customised App by an amount not exceeding any such demonstrable cost.</p>
3.7	Change Control	<p>Subject to clause 3.6 (Delay), any changes to the Statement of Requirements and any increase in the fees must be agreed by the parties in accordance with the Change Control process set out in the Solution Description. Any other changes to the Solution shall be agreed in accordance with clause 8 of the General Terms.</p>

4. Customised App Software

4.1	Licence	<p>The Customised App Software shall be supplied under the terms of the End User Licence Agreement, the current terms for which are set out in the Solution Description.</p> <p>Except as provided in clause 4.2 (New Software) and 9.2 (Customer Materials) below:</p> <p>a. the Solution Terms do not transfer ownership of, nor create any licences (implied or otherwise), in any Intellectual Property Rights (of any nature) in the Customised App Software; and</p> <p>b. the Customer shall not attempt to acquire, or assert that it has acquired, any Intellectual Property Rights in the Customised App Software.</p>
4.2	New Software	<p>The Intellectual Property Rights in the New Software (other than the Generic Software) shall, upon payment in full by the Customer of the Charges relating to the Customised App and signature by the Customer of the Development Statement of Requirements, vest in the Customer. Subject to the foregoing, EE hereby assigns (by way of present, and where appropriate, future assignment) all such Intellectual Property Rights to the Customer.</p>
4.3	Defects	<p>EE shall provide the thirty (30) days Defects warranty detailed in the Solution Description. Clause 16.4 of the General Terms shall not apply to this Solution.</p>
4.4	Limitations	<p>Nothing in this Agreement shall be construed so as to prevent EE or the Developer from using techniques, ideas and other know-how gained during the performance of this Agreement in the furtherance of its own business to the extent that such use does not result in a disclosure of Confidential Information or any infringement of any Intellectual Property Rights of the Customer (or its licensors), and provided that neither EE nor the Developer shall use any know-how which is specific to the business of the Customer or has been developed specifically for use in or for the business of the Customer</p>

5. Use of the Customised App

5.1	Use	<p>a. Subject to clause 5.1(b), Customer may use the Customised App for its own internal business purposes and may make the Customised App available to its own customer's via an App Store but the Customised App may not otherwise be resold, sub-licensed, rented, lent, assigned or transferred in any other way without the prior written consent of EE.</p> <p>b. The Customer shall use reasonable endeavours to prevent any infringement of the Intellectual Property Rights in the Customised App and shall promptly report to EE any such infringement that comes to its attention. In particular the Customer shall:</p> <p>i. ensure that before starting to use the Customised App, each Licensed User is made aware that the Customised App Software (other than the New Software) is proprietary to the Developer (and</p>
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		its licensors and/or other third parties) and that it may only be used in accordance with the End User Licence Agreement; and
		ii. ensure that the terms and conditions of use of any App Store or mobile device do not conflict with any of the terms of ownership detailed in clause 4 of these Solution Terms.
5.2	Group Companies	Clause 11 of the General Terms shall not apply to this Solution.

6. Charges

6.1	Charges for Solution Architecture and User Interface Design Phases	The Charges for the Solution Architecture Phase of the Customised App development will be set out in the Contract Change Note for the Customised App Solution. Charges for the User Interface Design Phase of the Customised App development will be agreed in the Solution Architecture Statement of Requirements. Charges for Solution Architecture and User Interface Design, together with any Change Control Charges and Expenses will be invoiced at the end of the relevant Phase.
6.2	Charges for the Development Phase	Charges for the Development Phase of the Customised App will be set out in the User Interface Design Phase Statement of Requirements. Where Development takes place in Iterations, Charges for Development will be invoiced in stages on completion of each Iteration, such Charges will reflect the work undertaken during the Iteration. On the completion of Development a final balancing invoice will be raised to cover any outstanding Charges, Change Control Charges agreed during Development, and Expenses incurred. Otherwise Charges for Development will be invoiced at the end of Development.
6.3	Adjustment to the Charges.	Adjustments to the Charges will be recorded at the end of each Phase in the relevant Statement of Requirements.
6.4	Optional Services	Unless otherwise agreed and subject to clauses 6.5 and 6.6 of these Solution Terms, Charges for Optional Services will be invoiced following provision of the Optional Service.
6.5	Support and Maintenance Services	Charges for the initial Support Period shall be invoiced annually in advance. Charges for Support and Maintenance after the initial Support Period shall be invoiced in advance.
6.6	Additional Resource Days	Charges for Additional Resource Days will be invoiced in advance.
6.7	Expenses	Expenses will be charged at cost. Mileage is charged at HMRC recommended rates. Expenses will be invoiced at the end of a Phase or Iteration or with the relevant Optional Services invoice.

7. Support and Maintenance

7.1	Commencement and Term	Support and Maintenance Services will commence on the date specified in the relevant Contract Change Note and continue for the Support Period unless extended in accordance with clause 7.2.
7.2	Termination	Support and Maintenance Services will automatically terminate at the end of the Support Period. The Support Period may be extended by agreement in writing of the parties.
7.3	Development of New Software during Support and Maintenance	All Intellectual Property Rights in developments to the New Software (other than the Generic Software) by EE during Support and Maintenance shall, upon payment in full by the Customer of the Support and Maintenance Charges, vest in the Customer and subject to the foregoing EE hereby assigns by way of future assignment all such Intellectual Property Rights to the Customer.
7.4	Standard Support Services	EE Standard Support Service for Large Business Customers (the terms and conditions for which are set out in the EE Large Business Price Guide available at www.ee.co.uk/business/terms) does not apply to this Solution.

8. Optional Services

8.1	Source Code Reviews	If the Customer orders a Source Code review from EE, the Customer warrants that it has obtained all necessary authorisations from the owner of the Source Code to its disclosure to EE and a licence for EE to use the Source Code for any of the purposes set out in section 5.3 of the Solution Description.
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9. Customer's Obligations

9.1	Obligations	Customer will comply with the responsibilities assigned to it as set out in the Solution Description.
9.2	Customer Materials	All Intellectual Property Rights in the Customer Materials shall be owned by and remain with the Customer or its licensors. The Customer hereby grants (or shall procure that the owner of the Intellectual

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		Property Rights therein shall grant) to EE and the Developer an irrevocable, non-exclusive, non-transferable (except to Sub-contractors and Developer sub-contractors), worldwide and royalty-free licence to use all Intellectual Property Rights in the Customer Materials free of charge for the purpose of EE and the Developer performing its obligations under this Agreement.
9.3	Warranty	<p>Customer warrants that:</p> <ol style="list-style-type: none"> the Customer Materials are accurate, do not infringe any Intellectual Property Rights of any third party and do not breach any applicable law or regulation or any term of the Agreement; it shall comply with the licences terms for all Open Source Software and Third Party Software used in the Customised App which are made available to it by EE or the Developer; and it is not a party to any contracts or other arrangements, where the performance or non-performance of its obligations could reasonably be expected to hinder or prevent the performance of its obligations under these Solution Terms.
9.4	Indemnity	The Customer shall indemnify and hold EE harmless against any loss or damage that it may suffer or incur as a result of the Customer's breach of clauses 9.3 or 8.1 of these Solution Terms. Subject to clause 22.3 of the General Terms, clause 22.2 of the General Terms shall not apply to this indemnity.
9.5	Further assurance	The Customer shall execute such documents and take such steps as EE may reasonably require to fulfil the provisions of and to give to each party the full benefit of this Solution.

10. Data Protection and Confidentiality

10.1	Data Protection	<p>The Customer acknowledges and agrees that:</p> <ol style="list-style-type: none"> it is a Data Controller (whether acting by itself or through any of its end users, administrators or Customer Representative) of any Personal Data processed by the Customised App and that EE will only process such Personal Data in accordance with the Customer's written instructions; Customer shall ensure that EE, the Developer and/or their third party supplier(s) are authorised (and have sufficient end user consent) to enable them to process such Personal Data in order to provide Support and Maintenance Services (if ordered by the Customer) in accordance with the obligations hereunder; and it has primary responsibility for meeting the obligations under Data Protection Legislation in respect of such Personal Data.
10.2	Third Party Suppliers	<p>In providing Support and Maintenance Services, EE, the Developer and/or their third party suppliers may have access to Customer's and/or its end users Personal Data for which the Customer is the Data Controller and EE will take reasonable measures to ensure that it, the Developer and any other third party supplier shall:</p> <ol style="list-style-type: none"> observe the confidential nature of such information on terms that are no less onerous than those that apply to EE under the Agreement as amended by these Solution Terms; process such Personal Data only for the purposes of providing any Support and Maintenance Services to the Customer. <p>The Customer acknowledges and accepts that the Developer may contact the Customer Representative and other Customer staff and subcontractors directly in connection with the Solution.</p>
10.3	Security	<p>Clause 26.5 of the General Terms shall only apply to EE, the Developer and any other third party supplier to the extent that EE holds Personal Data processed by the Customised App in the course of providing Support and Maintenance Services.</p> <p>The Customer shall:</p> <ol style="list-style-type: none"> take reasonable precautions to preserve the integrity of any data which is processed by the Customised App and to prevent any corruption or loss of such data; make a backup copy of such data every week and record the copy on media from which the data can be reloaded if there is any corruption or loss of the data; and in such event, promptly restore the data at its own expense.
10.4	Compliance	The Customer warrants that it will at all times comply with all Data Protection Legislation.

11. Solution Restrictions and Limitation of Liability

11.1	Security of Customised App	EE shall use its reasonable endeavours to incorporate the security measures set out in the Solution Description, and which are agreed with the Customer, into the Customised App but the Customer shall be responsible for security of the Customised App. The security of the Customised App cannot be guaranteed by EE.
11.2	Internet access	The Customised App requires access to the internet, use of which is solely at the Customer's risk. EE has no control over and is not responsible or liable in any way for any content offered by third parties on or through the Customised App. The Customer agrees that it retains responsibility for, and control of,

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		content which it sends or passes through the Customised App and over the Network.
11.3	Connection with Third Party Systems	The Customer acknowledges and agrees that EE is not responsible for: <ul style="list-style-type: none"> a. the security of any Customer Equipment (including without limitation any software applications); or b. the introduction of any virus, Trojan horse, time bomb or other malicious code, which is connected to, introduced to or used in connection with the Customised App or after issue of the Development Statement of Requirements.
11.4	Customer Materials	The Customer agrees that it retains responsibility for, and control of all Customer Materials (including without limitation Intellectual Property Rights in such materials) which its sends or holds in the Customised App.
11.5	Marketing	Subject to the Customer's prior approval including approval of artwork and placement Customer agrees that the Customised App may include the logos of EE and Developer and may include the words "Built by Developer and EE in the "about section" of the Customised App. Subject to the Customer's prior approval EE may utilise the Customised App project for the Customer as a case study.

12. Amendments to the General Terms

12.1	Clause 5.3, 5.4 and 5.5	Clauses 5.3, 5.4 and 5.5 of the General Terms shall be replaced by clause 12.2 of these Solution Terms in respect of the Customised Apps Solution.
12.2	Agreement of the Statement(s) of Requirements	<ul style="list-style-type: none"> a. EE and the Customer shall agree the final contents of each Statement of Requirements in writing, in accordance with the process set out in clause 12.2(b), before EE provides the next applicable Phase of this Solution. b. Upon either party completing a Statement of Requirements, the other party may agree to the proposed Statement of Requirements or revise it with suggested amendments for approval or revision by the original party. Any revised Statement of Requirements will then follow the same approval or revision process. Each Statement of Requirements shall only be incorporated into the Customer's Agreement when Customer Representative, the Developer representative and the EE Representative sign the relevant Statement of Requirements. EE will not allocate resources for the next Phase of the Customised App until the Customer signs the Statement of Requirements applicable to the earlier Phase. Delay in signature may result in a delay in the commencement of the next Phase of the Customised App development and EE shall not be liable for any cost or expenses incurred by the Customer as a result of such delay.

13. Termination

13.1	Termination of Solution development	The Customer may terminate the provision of the Customised App development on completion of a Phase by rejecting the Statement of Requirement Charges for the next Phase but on termination shall be responsible for payment of all Charges incurred up to the end of the Phase in which the Solution is terminated.
13.2	Termination of Support and Maintenance Services	The Customer may terminate the provision of Support and Maintenance Services at any time during the term but on termination shall be responsible for payment of all Charges incurred up to the end of the Support Period (or any extended period). No refund shall be given of any Charges for Support and Maintenance which have been paid in advance by the Customer.