



# Solution Terms for Customised Apps

## 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 INTRODUCTION

- 1.1 This Solution requires a Statement of Requirements.
- 1.2 We each may amend the Statement of Requirements. Multiple Statements of Requirements may be required to cover all project phases. We will agree each Statement of Requirements before the work package covered by it commences.

### 2 SUBCONTRACTING

- 2.1 BT may subcontract its obligations under these Solution Terms to the Developer. If BT chooses to do so, BT will engage the Developer to provide the Solution agreed in any one or more Statements of Requirements with reasonable diligence, skill and expertise.
- 2.2 For the purposes of these Solution Terms references to BT may include the Developer as the context requires.

### 3 CUSTOMER DEVELOPMENT TEAM CONTACT

- 3.1 You will appoint a Customer Development Team Contact to participate in the Development Team.
- 3.2 The Customer Development Team Contact will:
  - 3.2.1 support the development of the Customised App by the Development Team;
  - 3.2.2 be responsible for:
    - (a) prioritising Features to be developed;
    - (b) updating the list of Features at the end of each Iteration; and
  - 3.2.3 participate in all relevant Development Team meetings as the Customer Contact.
- 3.3 The Customer Development Team Contact will have appropriate knowledge and experience of your business requirements to participate in the development of the Customised App. If BT (acting reasonably) deems that the Customer Development Team Contact does not have appropriate knowledge and experience, BT may:
  - 3.3.1 require you to appoint a replacement representative who has the requisite knowledge and experience; and
  - 3.3.2 pass on to you any additional costs reasonably incurred by BT as a result of an unsuitable individual being appointed by you.
- 3.4 You will make other personnel available to participate in the Development Team as BT may reasonably require to ensure the smooth development of the Customised App.

### 4 DEVELOPMENT AND RELEASE

- 4.1 BT will make suitably qualified personnel available to resource the Development Team.
- 4.2 The Development Team will:
  - (a) deliver of the agreed Features;
  - (b) advise the Customer Development Team Contact on appropriate build order for the Customised App;
  - (c) select the most suitable technical solution to achieve the Features;
  - (d) produce any relevant documentation related to the Features developed; and
  - (e) be responsible for the quality of the Customised App; and
  - (f) identify the number of Features that can be delivered in each Iteration, or the amount of effort required to complete a piece of work.
- 4.3 BT will perform Acceptance Tests on each Iteration in accordance with the process set out in the relevant Statement of Requirements.

- 4.4 If the Acceptance Tests identify that a Feature fails to meet any relevant Acceptance Criteria for any reason then BT will work with you to amend the relevant Feature(s) for the next Iteration .
- 4.5 We will, if applicable, agree a release plan as part of the Statement of Requirements (the “**Release Plan**”).
- 4.6 We will revise the Release Plan as reasonably required to identify:
- 4.6.1 the Release(s) that BT will deliver within the next period, including:
- (a) the Features to be delivered;
  - (b) an estimate of the effort required to deliver the Release (s);
  - (c) any limitations or dependencies relating to the Release;
  - (d) relevant Acceptance Criteria for the Features to be developed;
  - (e) the Features that the parties intend to include in the next committed Release; and
  - (f) the impact that changes to the current Release Plan will have on the sequencing of Features for future Releases.
- 4.7 Any Features not completed as part of an Iteration deemed completed pursuant to Paragraph 4.6.1 will move to the next Iteration in the development cycle.
- 4.8 BT will make each Release of the Customised App available to you upon full payment of all Charges incurred up to that date. EE will invoice the Charges recorded in the Statement of Requirements in accordance with Paragraph 7 below.
- 4.9 Risk in the Customised App passes to you on the delivery to you of the Customised App.
- 4.10 The services for each Iteration are dynamic and will be updated periodically in accordance with this Paragraph 4, provided that neither one of us may unilaterally change any element required to deliver a Feature.
- 4.11 You may request a Scope Change at any time:
- 4.11.1 to add, remove or replace any Features; or
- 4.11.2 to reduce or increase the scope of the Statement of Requirements.
- 4.12 If BT notifies you in accordance with Paragraph 4.13 below, you may:
- 4.12.1 authorise the Scope Change;
- 4.12.2 request further information relating to the variation in Charges;
- 4.12.3 withdraw the requirement for a Scope Change.
- 4.13 BT will notify you of any change to the Charges as a result of any proposed Scope Change.

## 5 CUSTOMISED APP SOFTWARE

- 5.1 Subject to payment of the Charges in full, BT grants you (and to those of your Affiliates who are considered to have agreed to these Solution Terms) a non-exclusive right to use the Software.
- 5.2 Paragraph 5.1 will only apply where you comply with any relevant terms as more specifically detailed in the relevant Statement(s) of Requirements. There are no additional terms applicable to any of the Developer’s relevant proprietary technology.
- 5.3 You or your licensors will retain ownership of all Intellectual Property Rights in the Customer Materials. You grant (or ensure that the owner of the Intellectual Property Rights will grant) to BT and the Developer an appropriate licence to use all Intellectual Property Rights in the Customer Materials free of charge for the purpose of BT and the Developer performing their obligations under these Solution Terms.
- 5.4 The Intellectual Property Rights in the Software (including the source and object code) remain vested in the Developer or the relevant third party or licensor.
- 5.5 The Features in each Release of the Customised App will perform substantially in accordance with any specification set out in the relevant Statement(s) of Requirements, as amended by any Scope Change, for a period of 30 days (“**Warranty Period**”) from the day on which the Customised App is:
- 5.5.1 first made available to Licensed Users; or
- 5.5.2 if agreed by each of us first, the day that it is first used in the ordinary course of business by you.
- 5.6 If the Features in a Release of the Customised App within the Warranty Period fail to meet the specification in the relevant Statement(s) of Requirements relating to them, your sole remedy will be rectification of any such defects.

## 6 USE OF THE CUSTOMISED APP

- 6.1 Subject to Paragraph 6.3, you may use the Customised App for your own internal business purposes and may make the Customised App available to your customers via an app store.
- 6.2 With the exception of your rights in Paragraph 6.1, you will not resell, sub-license, rent, lend, assign or transfer the Customised App in any other way without BT's prior written consent.
- 6.3 You will use reasonable endeavours to prevent any infringement of the Intellectual Property Rights in the Customised App and will promptly report to BT any such infringement that comes to your attention. In particular, you will pass (or ensure the passing of) any relevant terms for the use of any Software to any Licensed User.

## 7 CHARGES

- 7.1 You will pay EE the Charges in accordance with the schedule set out in the relevant Statement(s) of Requirements. You and BT may agree variations to the Charges in writing (including by email) from time to time.
- 7.2 BT will charge you Expenses at cost and in the case of mileage at HMRC recommended rates. BT will invoice the Expenses at the end of a Phase or Iteration or with the relevant invoice.

## 8 YOUR OBLIGATIONS

- 8.1 You warrant that:
  - 8.1.1 the Customer Materials are accurate, do not infringe any Intellectual Property Rights of any third party and do not breach any Applicable Law or any term of the Contract;
  - 8.1.2 you will comply with the licence terms for all Software used in the Customised App which are made available to you by BT or the Developer;
  - 8.1.3 any data passed to BT or the Developer by you or on your behalf will not contain any information which may be used to identify a living individual in accordance with the relevant applicable Data Privacy Laws;
  - 8.1.4 you will at all times comply with all Data Privacy Laws; and
  - 8.1.5 you are not a party to any contracts or other arrangements, where the performance or non-performance of your obligations could reasonably be expected to hinder or prevent the performance of your obligations under these Solution Terms.
- 8.2 You will indemnify and hold BT harmless against any loss or damage that BT may suffer or incur as a result of your breach of Paragraph 8.1.
- 8.3 You will execute such documents and take such steps as BT may reasonably require to fulfil the provisions of this Paragraph and to give either one of us the full benefit of this Solution.

## 9 ANALYTICS

- 9.1 BT may integrate a mobile analytics tracking system into the Customised App, which will feed information back to BT once the Customised App has gone live. This information will consist of:
  - 9.1.1 the number of Licensed User downloads;
  - 9.1.2 general app usage; and
  - 9.1.3 statistics on Customised App performance.
- 9.2 BT will treat all information gathered under this Paragraph 9 as Confidential Information.

## 10 SOLUTION RESTRICTIONS AND LIMITATION OF LIABILITY

- 10.1 BT will use its reasonable endeavours to incorporate the security measures set out in the Solution Description, and which are agreed with you, into the Customised App but you will be responsible for the security of the Customised App. BT cannot guarantee the security of the Customised App.
- 10.2 The Customised App requires access to the Internet, which access is solely at your risk. BT 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. You retain responsibility for, and control of, content which you send or pass through the Customised App and over the Mobile Network.
- 10.3 BT is not responsible for:
  - 10.3.1 the security of any Customer Equipment (including any software applications); or
  - 10.3.2 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.

- 10.4 You retain responsibility for, and control of all Customer Materials (including Intellectual Property Rights in such materials) which you send or hold in the Customised App.
- 10.5 Subject to your prior approval (including approval of artwork and placement) you agree that the Customised App may include the logos of BT and Developer and may include the words "Built by Developer and BT" in the "about section" of the Customised App. Subject to your prior approval, BT may use the Customised App project as a case study.
- 10.6 Nothing in this Contract will be construed so as to prevent BT or the Developer from using techniques, ideas and other know-how gained during the performance of this Contract 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 of your Intellectual Property Rights or of your licensors.

### 11 AMENDMENTS TO THE GENERAL TERMS

- 11.1 For these Solution terms, Paragraph 11.3 replaces Paragraphs 6.5.4, 6.5.5 and 6.5.6 of the EE Mobile Schedule.
- 11.2 We will agree the final contents of each Statement of Requirements in writing, in accordance with the process set out in Paragraph 11.3, before BT provides the next applicable Phase of this Solution.
- 11.3 Upon either one of us completing a Statement of Requirements:
  - 11.3.1 the other party may agree to the proposed Statement of Requirements, reject it, or revise it with suggested amendments for approval or revision by the original party;
  - 11.3.2 any revised Statement of Requirements will then follow the same approval or revision process;
  - 11.3.3 the Customer Contact, the Developer representative and the BT Representative will sign each Statement of Requirements before that Statement of Requirements is incorporated into the Contract;
  - 11.3.4 BT will not allocate resources for the next Phase of the Customised App until you sign the Statement of Requirements applicable to the earlier Phase; and
  - 11.3.5 delay in signature may result in a delay in the commencement of the next Phase of the Customised App development and BT will not be liable for any cost or expenses incurred by you as a result of such delay.

### 12 THE END OF THE SOLUTION

- 12.1 You may terminate the provision of the Customised App development by Notice expiring on completion of a Release. On termination you will be responsible for payment of all Charges incurred up to the end of the development cycle in which termination occurred.

## Part B – Defined Terms

### 13 DEFINED TERMS

In addition to the defined terms in the General Terms, EE Mobile Schedule, Orders and EE Price Guide, capitalised terms in this Customised Apps 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 this Customised App Solution Terms):

**“Acceptance Criteria”** means (in respect of an Iteration) criteria formulated by the Development Team that determine whether the Software developed in respect of that Iteration is of satisfactory quality and, in respect of a Release, whether the Features are of satisfactory quality, in each case as approved by the Customer Development Team Contact in accordance with the relevant Statement(s) of Requirements.

**“Acceptance Tests”** means the testing of any Customised App for conformance with the relevant Acceptance Criteria.

**“App”** means a mobile application.

**“Charges”** means, for the purposes of this Solution, all monies payable by you to EE under this Solution as set out in the Initial Order, Contract Change Note and Statement of Requirements (as applicable) or otherwise varied in accordance with the Solution Change Control process set out in the Solution Description and Expenses and references to “Charges” in the General Terms will be interpreted accordingly.

**“Customer Materials”** means any materials, content, images, resources or third party software owned by or licensed to you that you make available to BT in accordance with this Solution.

**“Customer Development Team Contact”** means the individual representing you in the Development Team, appointed in accordance with Paragraph 3.

**“Customised App”** means the App developed for you in accordance with the relevant Statement(s) of Requirements.

**“Developer”** means BT's subcontractor for the Solution, Mubaloo Limited.

**“Development Team”** means a cross-functional team of developers, architects, testers, systems analysts and software engineers, which may include your specialists and Stakeholders, formed as a self-managing team to develop, test, and deliver Features.

**“Expenses”** means expenses incurred by BT or the Developer in connection with the Solution (including venue hire, hotel expenses, subsistence, train fares and parking) which are invoiced to you in accordance with Paragraph 7.2 of these Solution Terms.

**“Features”** means specific features of the Customised App as set out in a Statement of Requirements that fulfil one or more of your requirements, including Licensed User stories and use cases.

**“Iteration”** means a stage of the development cycle, having a duration agreed between the parties in a Statement of Requirements.

**“Licensed User”** means anyone permitted by you to use the Customised App.

**“Release”** means a collection of Features that provide an iterative benefit to you and a working component of the Customised App.

**“Scope Change”** means a change to a Statement of Requirements or the Solution made in accordance with Paragraph 4.9 of these Solution Terms.

**“Software”** means any software (whether proprietary to Developer or other third parties and whether created as part of the Solution or otherwise) which is included within the Customised App.

**“Stakeholders”** means your personnel whose position or role gives them a particular vested interest in the outcome of the Solution.

**“Warranty Period”** has the meaning given in Paragraph 5.5 of these Solution Terms.