



## **SPECIFIC CONDITIONS FOR ORANGE CLOUD SERVICES**

1. **DEFINITIONS.** The following capitalized words and phrases will have the meanings given below in this Clause 1 (*Definitions*). All capitalized terms used but not defined in these Specific Conditions will have the meanings set out in the General Conditions.

"**Administrator**" means an individual who is authorized by Customer to manage the Solution.

"**CPE**" means the equipment (including hardware, cables, connectors, and related software) that is supplied by Orange as part of the Services and managed by Orange for use with such Services at the Locations. For the avoidance of doubt, CPE is never owned by Customer.

"**Customer Technology**" means any software owned by Customer or its third party licensors and any other Customer proprietary technology used in Customer's web site, including the web site design, content, software tools, hardware designs, algorithms, user interface designs, architecture, class libraries, objects and documentation in whatever format, know-how, trade secrets and any related intellectual property rights throughout the world, including derivatives, improvements, enhancements or extensions thereof, conceived, reduced to practice or developed by Customer or its third party contractors.

"**Data Protection Legislation**" means the EU Directive 95/46/EC of 24 October 1995 (or any applicable similar legislation on the protection of personal data) as may be amended or substituted (in whole or in part) by any successor European or local legislation (including Regulation (EU) 2016/679 known as the 'General Data Protection Regulation').

"**Data**" means all Customer's or Users' data hosted by Orange, including Personal Data.

"**Date of Acceptance**" means the date on which all Acceptance Tests for the Solution are successfully completed.

"**Orange Technology**" means any software or hardware owned by Orange or its third party licensors and any other Orange proprietary technology used in providing the Cloud Services, including software tools, hardware designs, algorithms, user interface designs, architecture, class libraries, objects and documentation in whatever format, network designs, know-how, trade secrets and any related intellectual property rights throughout the world, including derivatives, improvements, enhancements or extensions thereof, conceived, reduced to practice or developed by Orange, its Affiliates or its third party contractors.

"**Solution**" means any Cloud Services solution which Orange will provide to Customer under the Agreement pursuant to one or several Orders, as described in the relevant Service Description or otherwise agreed with Customer.

"**Virtual Machine**" or "**VM**" means an operating system (OS) or application environment that is installed on any hardware or software to emulate dedicated hardware.

## **2. ORANGE OBLIGATIONS.**

- 2.1 **Changes to the Cloud Services.** If any change to the Cloud Services made by Orange requires modification or update of the Customer Technology, Orange will give Customer sufficient prior notice thereof to allow Customer to perform such modification or update, at Customer's cost. Customer is responsible for Service malfunction or loss of quality if Customer fails to perform the requested modification or update.

- 2.2 **Acceptance.** Unless otherwise provided in the Service Description, Orange will use reasonable efforts to have each Date of Acceptance occur no later than the Target Date. Orange will notify Customer of the successful completion of the Acceptance Tests ("Service Commencement Notice"). Customer will be deemed to have accepted each Solution on the date on which Orange issues a Service Commencement Notice for such Solution (the "Acceptance"), unless Customer notifies Orange in writing of a material fault in the Solution within 5 Business Days of receipt by Customer of the Service Commencement Notice (or such other period defined in the applicable the Service Description). In such event, the above acceptance process will be repeated.

### **2.3 Scope of Orange Responsibility.**

- 2.3.1 Customer understands and acknowledges that Orange's provision of the Cloud Services is dependent upon factors outside of Orange's control (e.g., the uncertain nature of the Internet as well as third party hardware and software, etc.). Accordingly, Orange is not responsible for the Cloud Services beyond the elements under Orange's direct control. Orange does not guarantee the performance of any application or software, whether server or client.

Orange will take reasonable precautions to ensure the physical protection of the media on which the data and programs associated with the Cloud Services reside. Specific provisions relating to the backup and recovery of such stored data will apply depending on the type of Cloud Service ordered by Customer.

Notwithstanding anything to the contrary contained in the General Conditions, Orange cannot ensure uninterrupted service on any network or access element provided by a third party or the Tail Circuits providing Internet connectivity, and therefore Orange is not responsible for any downtime resulting therefrom.

Customer acknowledges that Orange has supplied Customer all information necessary for Customer to evaluate the Cloud Services with respect to its requirements and that it has verified the suitability of the Cloud Service with its needs before entering into the Order(s) for the Cloud Services.

Customer agrees that Orange will not be responsible for any third party software support or software development policies and that Orange reserves the right to update or replace any software with any other functionally equivalent software.

- 2.3.2 Orange will not be liable for:

- (a) any software virus that may affect the Cloud Services;
- (b) any defect or failures in Customer's equipment or applications;

- (c) any alteration or fraudulent use of the Data, malicious or fraudulent access to the Customer equipment or systems;
- (d) the reliability of data transmission, access times, and any access restriction to or interruption of the networks or servers connected to the Internet;
- (e) any misuse of passwords, access codes, logins, or any other Customer information;
- (f) the nature or content of the Data transmitted, distributed, or collected, their use and update, as well as any file, audio, text, images, layout elements, or data accessible on the Customer website;
- (g) the incorrect programming or configuration of the hosted Customer application;
- (h) any damage caused by any technology, equipment, or software that is not used by Orange for the provision of the Cloud Services;
- (i) any software anomalies or defaults;
- (j) insufficient network capacity if contrary to Orange's recommendations;
- (k) any act or omission of Customer or a user or a third party not under Orange's control, including non compliance with Orange's recommendations or the conditions of use of the Cloud Services;
- (l) any service interruption caused by scheduled maintenance.

### **3. CUSTOMER OBLIGATIONS.**

#### **3.1 Use of the Cloud Services.**

- 3.1.1 Customer is responsible for: (a) the protection of its computer systems against viruses; and (b) the use and protection of logins, passwords, access codes or other credentials communicated by Orange.
- 3.1.2 Customer will comply with all recommendations made by Orange in relation to the Cloud Services and will ensure that all Users comply with such instructions.
- 3.1.3 Customer will not engage in any load testing, intrusion testing, or any other vulnerability testing without the prior written consent of Orange.
- 3.1.4 Customer represents and warrants that it will: (a) comply with all applicable laws and regulations, including those applicable to online services, e-commerce, copyright, moral standards and public order as well as deontology rules relative to the Internet; and (b) include all necessary legal mentions on its web site, including in relation to data protection.
- 3.1.5 Customer will not connect to the Cloud Services any equipment not expressly approved by Orange. Orange reserves the right to immediately disconnect or request the immediate disconnection of any such equipment.

**4. USE OF INFORMATION/INTERNET.** Orange does not assume any responsibility for the operation or management of the Internet or any public network (e.g., Public Wi-Fi) or for Customer's activities or those of third parties connected to the Internet or any public network (e.g., Public Wi-Fi). Customer is solely responsible for the use it makes of the information supplied by Orange (including statistics, reports, logs, etc.) and regarding the use of Customer's LAN by Customer's employees, Users, and third parties. Customer is solely responsible for preventing the loss of data, the unauthorized access to its network, or other damage caused by its use of the Internet or any public network (e.g., Public Wi-Fi). Customer is responsible for providing proper notices and disclosure information to its end users, as required by applicable laws and regulations, including notices and disclosures relating to the provision of e-mail services by applicable country privacy and data protection laws and regulations.

**5. SECURITY.** Customer will comply with all security rules and procedures implemented by Orange for accessing the Cloud Services.

**6. INTELLECTUAL PROPERTY OWNERSHIP.** All title to, and ownership of, Orange Technology will remain the property of Orange or its licensors. Orange, however, grants to Customer for the Service Term of the applicable Cloud Services, a non-exclusive, royalty-free, and non-transferable licence to use the Orange Technology for the sole purpose of, and to the extent necessary for, the use of the Cloud Services. Customer agrees that it will not (a) directly or indirectly, reverse engineer, de-compile, disassemble, or otherwise attempt to derive the source code or other trade secret included in the Orange Technology, or (b) copy the software included in such Orange Technology.

### **7. MISUSE.**

- 7.1 In addition to the suspension and termination rights set forth in the General Conditions, Orange may suspend or terminate any or all Cloud Services immediately, without prior notice to Customer and without prejudice to other rights or remedy available to Orange, if: (a) Orange believes in good faith that Customer or a User, person or entity is utilizing the Cloud Services for any illegal or disruptive purpose or in breach of these Specific Conditions or the applicable Service Description; (b) Customer fails to comply with Orange's recommendations; or (c) Orange is entitled to do so in the applicable Service Description.
- 7.2 Customer will indemnify and hold harmless Orange and its Affiliates against and from all Losses arising out of or relating to any and all claims by any person or entity relating to use of the Cloud Services or the Content, including use of the Services without consent of Customer or claims in relation to the Content, Personal Data, the Customer Technology or viruses. Notwithstanding anything to the contrary contained in the General Conditions, Clause 6.5 (*Waiver of Consequential and Indirect Damages*) and Clause 6.4 (*Limitations of Liability*) of the General Conditions will not apply to this Clause 7.2.

**8. INVOICING.** Unless otherwise provided in the applicable Service Description, all Charges for each Solution will commence from the Date of Acceptance of such Solution.

### **9. DATA PROTECTION**

- 9.1 References in this Clause 9 to "Data Controller" (including "controller"), "Data Processor" (including "processor"), "Processing" and "Personal Data" shall have the meanings as set out in the Data Protection Legislation.
- 9.2 Customer will comply with its obligations as Data Controller under the Data Protection Legislation.

- 9.3 To the extent that Orange is processing Personal Data (which is controlled by Customer) in its performance of the Cloud Services, Orange will comply with the Data Protection Legislation, to the extent applicable as a Data Processor.
- 9.4 As Data Controller, Customer undertakes and warrants that it will fulfil all obligations pertaining to a Data Controller as set out in the Data Protection Legislation. Customer further warrants that all relevant individuals have been or will be informed of the intended or actual use of their Personal Data and that it has obtained or will obtain all appropriate consents from such individuals.
- 9.5 Orange will be allowed to transfer the Personal Data to its subcontractors and Affiliates, if required for the provision and management of the Cloud Services and Customer agrees to such transfer.
- 9.6 Customer expressly agrees that Orange may transfer the Personal Data outside the European Union and will obtain proper authorization from the appropriate authority. Orange will inform Customer of the localization of the Personal Data and will provide Customer with all relevant information necessary to make the declarations. For the Personal Data transferred outside the European Union, the Parties agree to use the standard clauses published by the European Commission. The Parties will sign these standard clauses prior to the transfer of any Personal Data outside the European Union.

## **10. DISCONTINUITY**

- 10.1 Notwithstanding anything to the contrary contained in the General Conditions, Orange reserves the right to change at any time the contractual or technical conditions of a Cloud Service. In such case, Orange will notify Customer at least 30 days prior to the expected date of the change. If the change is substantial or adversely affects Customer, Customer will be entitled to terminate the affected Cloud Service without liability for either Party. The termination will be effective on the date this change becomes effective.
- 10.2 Notwithstanding anything to the contrary contained in the General Conditions, Orange reserves the right to discontinue the provision of a Cloud Service in its entirety. In such case, Orange will notify Customer at least 6 months prior to the expected date of termination of the Cloud Service. All corresponding Orders will terminate at the date of termination of the Cloud Service. Customer will not be entitled to any damage or remedy for such termination. Orange will use reasonable efforts to propose an alternative service if feasible.

## **11. CPE.**

- 11.1 The CPE will remain the sole and exclusive property of Orange or its suppliers, and no User will obtain any property rights or interest in the CPE.
- 11.2 The Parties will agree to the dates for the installation and connection of CPE, and Customer will provide all necessary assistance to enable Orange to complete the installation, connection, and disconnection of CPE.
- 11.3 Customer will not sell, assign, sub-let, pledge or part with possession or control of CPE or any interest therein, and Customer will keep CPE free from distress, liens or claims of lien.
- 11.4 Customer will not change, remove, or obscure any labels, plates, insignia, lettering, or other markings that Orange or the manufacturer has placed on CPE. Customer will not modify or move the CPE or allow anyone other than Orange to modify or move the CPE without Orange's express written permission.
- 11.5 Customer will maintain proper environmental conditions (e.g., air conditioning, ventilation, electrical power supply, etc.), as specified by Orange or CPE manufacturers.
- 11.6 Customer will provide a secure and safe environment for the CPE with adequate access to data communications circuits and a back-up power supply, including protecting the CPE from tampering and any usage outside of the provision of the applicable Service.
- 11.7 Prior to commencement of installation of any CPE, Customer will advise Orange of potential health hazards to Orange personnel providing Services at the relevant Location, including any hidden power, gas or water lines, and the existence of any material constituting a health risk (e.g. asbestos).
- 11.8 Upon termination or expiration of the relevant Order, Customer will surrender possession of CPE to Orange in good order, repair, and condition, reasonable wear and tear excepted.
- 11.9 Orange will maintain the CPE in good working order for the duration of the Service Term. If a lapse in the Service is caused by a failure in the CPE, then Orange will repair the fault following notification of the failure by Customer or detection of the failure by Orange, whichever occurs first. Orange may be required to dispatch a field engineer to the Location to repair the CPE, and Customer will promptly provide access to the Location where the CPE is installed.
- 11.10 Orange may charge Customer the Hourly Labor Rate for time attributable to, and for Expenses and the costs of materials it incurs as a result of, visits to a Location or repairs to CPE that are required due to: (a) damage to the CPE not caused by Orange; (b) repairs carried out by non-Orange personnel that have not been approved by Orange; (c) modifications to the CPE that have not been approved by Orange or have been carried out by personnel not approved by Orange; (d) improper treatment of the CPE by Customer; (e) failure by Customer to meet Orange's or the CPE manufacturer's specifications on environmental conditions; or (f) User's negligence or intentional misconduct.
- 11.11 Customer will be liable for any loss or damage to the CPE beyond reasonable wear and tear and for all costs (including cost of labor and material), incurred by Orange to repair or replace the lost or damaged CPE, unless such CPE loss or damage was caused by, or the repair or replacement was necessary due to, the fault of Orange, its Subcontractors, or agents. If the CPE is damaged or destroyed by any User, Customer will notify Orange within 2 days of such damage.

## **12. TERMINATION OF SERVICES.**

- 12.1 **Cancellation of Orders.** Prior to the commencement of the Service Term, Customer may cancel an Order upon written notice to Orange and reimbursement of all amounts incurred by Orange in connection with the preparation of the Service or cancellation (including any amounts payable to any third party suppliers or TOs for which Orange is liable on behalf of Customer).

- 12.2 **Termination of Orders and Termination Liability.** If Customer terminates an Order or Service for any reason during the applicable Service Term, then Customer will provide Orange with at least 90 days prior written notice ("**Minimum Notice Period**") using the Orange-prescribed termination or cancellation form (unless Customer terminates pursuant to a remedy set forth in an SLA, then the period of prior notice will be as specified in the SLA). If Customer requests termination of the Order or Service earlier than the last day of the Minimum Notice Period, Orange may terminate the relevant Service on the Customer-requested date and invoice Customer for the remainder of the Minimum Notice Period.

Except as otherwise expressly provided in the General Conditions or in the Publication, if during the applicable Service Term (1) Customer terminates an Order other than pursuant to Clause 7.3 (*Termination for Cause*) or Clause 7.4 (a) of the General Conditions, or (2) Orange terminates an Order pursuant to Clause 7.3 or Clause 7.4 (*Termination as SLA Remedy or Occurrence of Force Majeure*) of the General Conditions, then Customer will pay: (a) all accrued but unpaid charges incurred through the date of termination, plus (b) the following termination charges: (i) Customer will reimburse Orange for all third party charges, including an amount equal to the aggregate of the Charges for Tail Circuits that would have been applicable for the remaining unexpired portion of the Service Term as of the date of termination and any cancellation fees payable to third parties associated with the termination; (ii) Customer will pay Orange \$1,500 for each Location with CPE and \$250 for each Location without CPE; (iii) if Orange has provided CPE, Customer will pay Orange a lump sum amount equal to the undepreciated value of the CPE as of the date of disconnection, based on the original price paid by Orange for the CPE plus 15% of such original price as a fee for administration and disconnection; and (iv) Customer will reimburse Orange for any charges waived or credits provided by Orange during the Service Term (e.g., installation waiver credit) on a prorated basis.

The termination liability set forth in this Clause 12.2 is in addition to any other remedies available to Orange.

- 12.3 **Termination Information.** Upon the cancellation or termination of any Order or Service, Customer will provide all information reasonably requested by Orange regarding the Service as of the date of termination, including the Location address, contact name, telephone number, and Location ID.

### 13. LIMITATIONS OF USE

- 13.1 Customer will not perform or attempt to perform: (a) any intervention on third-party Virtual Machines hosted as part of any feature of the Cloud Service that is not Customer's Virtual Machine, or (b) any intrusion or attempted intrusion into Orange information systems. Any such action will be considered a material breach of the Agreement.
- 13.2 Customer agrees that all software used as part of any feature of the Cloud Service and on the Virtual Machines is technically complex and cannot be tested in such a way as to cover every possible use. Customer agrees that the Cloud Service and the Virtual Machines will not be error free and may not be available at all times.
- 13.3 Orange reserves the right to substitute the Virtual Machine(s) allocated to Customer if Orange deems it necessary in its reasonable opinion. Orange will endeavor to provide Customer as much notice as is reasonably possible and will, in cooperation with Customer, organize the transfer of the Solution onto the new Virtual Machine.
- 13.4 Orange reserves the right to interrupt access to any feature of the Cloud Service or the Virtual Machines to perform repairs, maintenance or improvement interventions in order to ensure the proper operation of the Cloud Service. Orange will use reasonable efforts to inform Customer (to the extent possible) about such intervention and its duration. Orange will perform maintenance activities at times when Virtual Machines are least used by Customer, except in the event of emergency maintenance.
- 13.5 Customer will take all necessary technical precautions for the use of the Cloud Service and will ensure the compatibility of its website or applications with any feature of the Cloud Service, the Virtual Machines, the system resources, the software, and the technical restrictions of the Cloud Service.
- 13.6 Customer remains solely responsible for its network's security policy and for its response procedures to security violations.
- 13.7 Orange will not be responsible if the configuration of the Cloud Service as selected by Customer is not sufficient to address its needs.

## END OF SPECIFIC CONDITIONS FOR ORANGE CLOUD SERVICES