



## SPECIFIC CONDITIONS FOR ORANGE MANAGED MESSAGING 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.

**"Business Hours"** means the normal Orange working hours for each Business Day.

**"Component"** means each component or series of components of a Solution for a Managed Messaging Service that is to be installed or made available to Customer separately according to the installation schedule agreed with Customer.

**"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.

**"Date of Acceptance"** means the date Orange successfully completes all Acceptance Tests for a Component. If no Acceptance Tests are applicable to a Component, then the Date of Acceptance will be the Committed Delivery Date or the date on which Customer has affirmatively indicated its acceptance of the Component, whichever occurs first.

**"Final Acceptance"** means, for each Solution, the Date of Acceptance of the last Component to be installed or made available to Customer.

**"Solution"** means any Managed Messaging Services solution that Orange provides to Customer under the Agreement pursuant to one or several Orders, as set out in the relevant Service Description or otherwise agreed with Customer in writing.

**"Target Date"** means for each Component, the expected date for delivery and acceptance of such Component, as set forth in each Order or in the installation schedule agreed to by the Parties in writing.
2. **Use of Information and 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 its LAN by its 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 Users and web-site 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.
3. **Orange's Obligations.** Customer acknowledges that Orange's provision of Messaging Services is dependent upon factors outside of Orange's control (e.g., the optimization of Customer-developed applications, the uncertain nature of the Internet, end-users' hardware and software, etc.). Accordingly, Orange is not responsible, and the Messaging Services do not apply, beyond the hosting of the equipment under Orange's direct control. Orange does not guarantee the performance of any mail applications, whether server or client. 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 is solely responsible for assessing its own computer, transmission, and security network needs and the results to be obtained therefrom. Orange will not be liable for any software virus that may affect the Managed Messaging Services, the delivery of any User message, or any data stored within any public or private folder or other database. Orange also will have no liability for delays in deliveries from the manufacturers of hardware or Software, for the installation of circuits, or the writing of new software.
4. **Customer Obligations.**
  - (i) Customer will troubleshoot Internet access service and the access router if Orange is not the provider of managed Internet access or access router management.
  - (ii) When Customer is responsible for software licensing, Customer will ensure, at its sole cost, that the software is correctly licensed, in accordance with the service access licensing requirements of the software licensor(s), and that the operation of the software has been assigned to Orange.
5. **Export.** Each System is authorized for installation in the country listed in the pertinent Order. Customer will not under any circumstances resell, divert, transfer, transship, or otherwise dispose of the System, or any part thereof, in or to any other country, either in its original form or after being incorporated through an intermediate service into another form.
6. **Intellectual Property.** All title to and ownership of the System and all components thereto, excluding any hardware or software provided by Customer, will remain the property of Orange. Orange, however, grants to Customer for the Service Term of the applicable Managed Messaging Services a non-exclusive, royalty free and non-transferable license to use the System solely for the purpose of, and to the extent necessary for, the use of the Managed Messaging Services. Customer will not and, will ensure that Users will not, (i) directly or indirectly, reverse engineer, de-compile, disassemble or otherwise attempt to derive source code or other trade secret included in the System; (ii) copy the Software included in the System, except as necessary for the provision or for the use of the Managed Messaging Services as set forth in the Service Description; or (iii) add users to the Managed Messaging Services in any manner that is designed to circumvent the obligation to pay incremental fees to either Orange or any software licensor. Subparts (i), (ii) and (iii) in the preceding sentence are collectively and individually referred to as the **"Unauthorized Use"** of the Managed Messaging Services. Customer will defend, indemnify and hold harmless Orange and its Affiliates from and against any Losses arising out of or relating to any action brought against Orange based on a claim of Unauthorized Use by Customer or any

User. 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 any claim arising out of or related to this Clause 6.

**7. Service Term and Acceptance.**

7.1 Notwithstanding anything to the contrary contained in the General Conditions or in an Order, each Order for a Messaging Service will have a minimum 36-month Order Term from Final Acceptance.

7.2 Orange will use reasonable efforts to have each Date of Acceptance occur no later than the Committed Delivery Date. Orange will notify Customer of the successful completion of the Acceptance Tests ("**Service Commencement Notice**" or "**Ready for Service Notice**"). Customer will be deemed to have accepted each Component on the date on which Orange issues a Service Commencement Notice for that Component, unless Customer notifies Orange in writing of a material fault in the Component within 5 Business Days of Customer's receipt of the Service Commencement Notice. In such event, the acceptance process described in this Clause 7.2 will be repeated.

8. **Charges and Invoicing.** Notwithstanding anything to the contrary contained in the General Conditions, in the event that third party supplier costs to Orange increase, then Orange may adjust the Charges for the Messaging Services accordingly, and Customer agrees to pay such adjusted Charges. Orange will use reasonable efforts to notify Customer at least 30 days in advance of any such adjustment. Charges for each Component will commence from the Date of Acceptance of such Component, except that the System Charges will commence from the date of delivery of the System to Customer.

9. **Migration of Service.** If Customer disconnects the Managed Messaging Services, on Customer's request and at an additional charge, Orange may propose to Customer a messaging migration plan.

10. **CPE.** For the avoidance of doubt, this Clause 10 applies to the System.

10.1 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.

10.2 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.

10.3 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.

10.4 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.

10.5 Customer will maintain proper environmental conditions (e.g., air conditioning, ventilation, electrical power supply, etc.), as specified by Orange or CPE manufacturers.

10.6 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.

10.7 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).

10.8 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.

10.9 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.

10.10 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.

10.11 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.

**11. TERMINATION OF SERVICES.**

11.1 **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).

11.2 **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 11.2 is in addition to any other remedies available to Orange.

- 11.3 **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.

#### END OF SPECIFIC CONDITIONS FOR ORANGE MANAGED MESSAGING SERVICES