

PUBLICATION 1 SPECIFIC CONDITIONS FOR ORANGE MANAGED MESSAGING SERVICES

1.1 Definitions

All capitalized terms used but not defined in these Specific Conditions will have the meanings set out in the General Conditions.

"Acceptance Test" means, for each Managed Messaging Service, the acceptance test or tests described in the relevant Service Descriptions or, if not described therein, the Orange then standard acceptance tests for the Managed Messaging Service.

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

"Date of Acceptance" means, for each Component, the date all Acceptance Tests for such Component are successfully completed.

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

"Managed Messaging Services" means all Services designated by Orange as Managed Messaging Services.

"Site" means the physical location where the System will be installed.

"Solution" means any Managed Messaging Service solution which Orange will provide to Customer under the Agreement pursuant to one or several Orders, as set out in the relevant Service Annex or otherwise agreed with Customer.

"System" means the hardware and software that is provided by Orange as part of the Managed Messaging Services.

"Target Date" means, for each Component, the expected date for delivery and acceptance of such Component, as set out in each Order or in the installation schedule agreed with the Customer.

1.2 Managed Messaging Services Obligations

1.2.1 Orange Obligations

1.2.1.1 Provision of the Managed Messaging Services. Orange will provide all Managed Messaging Services ordered by Customer or Users as specified in each Order.

- (a) Orange will provide the Managed Messaging Services in accordance with the applicable Service Descriptions and will make reasonable endeavors to comply with the applicable Service Levels.
- (b) Orange will use good quality materials, techniques, and standards to provide the Managed Messaging Services and will perform all Managed Messaging Services in a workmanlike and timely manner.
- (c) Depending on the type of Managed Messaging Services selected by Customer, Orange will make its resources reasonably available in terms of hardware, software, and personnel.
- (d) Orange will take reasonable precautions to ensure the physical protection of the media on which the data and programs reside, which Customer has entrusted to Orange. Specific provisions relating to the backup and recovery of such stored data will vary depending on the type of Managed Messaging Service that Customer orders from Orange.

1.2.1.2 Provision of the System. The Service includes the provision by Orange of the System. Orange will ensure that it has the right to provide or procure the System for Customer, and Customer will ensure that it has the right to install the System at the Site for the duration of the Agreement.

1.2.1.3 Title. The System will at all times remain the sole and exclusive property of Orange, and Customer will have no property rights or interest in the System but will have the right to quiet possession and the right to use the System subject to and in accordance with the terms and conditions of this Agreement.

1.2.1.4 Acceptance. Orange will use reasonable endeavors 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 Component on the date on which Orange issues a Service Commencement Notice for such Component, unless Customer notifies Orange in writing of a material fault in the Component within 5 Business Days of receipt by Customer of the Service Commencement Notice. In such event, the above acceptance process will be repeated.

1.2.1.5 Scope of Orange Responsibility

- (a) Customer understands and acknowledges that the provision of the Managed Messaging Service is dependent upon independent factors outside of the control of Orange (e.g. the uncertain nature of the Internet as well as User hardware and software). Accordingly, Orange is not responsible for the Messaging Services beyond the elements under the direct control of Orange. Orange does not guarantee the performance of any mail application, whether server or client.
- (b) 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 resulting downtime.
- (c) Orange will have no liability 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.

- (d) Orange will have no liability for delays in the deliveries from the manufacturers of hardware or Software, for the installation of circuits or the writing of new software.

1.2.2 Customer Obligations

1.2.2.1 Responsibility for the System

- (a) Customer will not make any modifications to the System.
- (b) Customer will not sell, assign, sub-let, pledge or part with possession or control of the System or any interest therein, and Customer will keep the System free from distress, liens, or claims of lien.
- (c) Customer will not change, remove, or obscure any labels, plates, insignia, lettering, or other markings which are on the System at the time of its connection or which may afterwards be placed on the System by Orange or by any person authorized by Orange.
- (d) Customer will not move the System from the Site where it was installed without the prior written consent from Orange.
- (e) Customer will not permit any third party' access to the System without prior written consent from Orange.
- (f) Customer will insure the System for its full replacement value for the duration of the Agreement, and will provide written proof of such insurance promptly upon request.
- (g) Upon termination of a Managed Messaging Service Order, Customer will promptly surrender possession of the System in good order, repair, and conditions, reasonable wear and tear excepted, to Orange.
- (h) Customer will be liable for any loss or damage to the System beyond reasonable wear and tear, excluding any loss or damage to System that was the fault of Orange, its subcontractors or agents. In the event that the System is damaged or destroyed by Customer or any User, Customer will inform Orange within 2 days of such damage. If the System is not capable of repair, Customer agrees to pay Orange for the replacement value of such System as new at then current prices. If the System is capable of repair, Orange will repair the System and Customer agrees to pay for the cost of such repair within 30 days from the date of invoice.

1.2.2.2 **Access.** Customer will provide Orange with all reasonable access to the Site, necessary assistance, and co-operation, to allow Orange to perform its obligations under the Agreement. Orange will not be held liable for any delays or non-compliance with its obligations due to Customer's failure to meet such obligations.

1.2.2.3 **Usage policy.** If Customer does not accept the Orange usage policy for the Managed Messaging Services, Customer will formulate an acceptable usage policy for the Managed Messaging Services which will be subject to approval from Orange.

1.2.2.4 **Internet access/access router management.** Customer will troubleshoot Internet access service and the access router, if Orange is not the provider of managed Internet access or access router management.

1.2.2.5 **Software licensing.** When the Customer is responsible for software licensing, Customer will ensure that the software is correctly licensed, in accordance with the service access licensing requirements of the software vendor(s), and that the operation of the software has been assigned to Orange.

1.2.2.6 **Acceptance.** Customer will use all reasonable endeavors to accept each Component on the Target Date. Orange reserves the right to commence the Charges for any Component that is delayed due to Customer's breach of this obligation, from the Target Date, subject to Clause 1.4.2 regarding the System Charges.

1.2.3 Export

Systems are authorized for installation in the country listed in the relevant Orders. The System will not, under any circumstances, be resold, diverted, transferred, or otherwise be disposed of in any other country, either in its original form or after being incorporated through an intermediate service into another form.

1.2.4 Network Security

Customer is solely responsible for assessing its own computer, transmission, and security network needs and for its own network security policy and security violation response procedures. Customer acknowledges that the Managed Messaging Service does not by itself guarantee network security or prevent security incidents.

1.2.5 Use of Information/Internet

1.2.5.1 Orange does not assume any responsibility for the operation or management of the Internet or for Customer's activities or those of third parties connected to the Internet. The Customer is solely responsible for the use it makes of the information supplied by Orange (including but not limited to statistics, reports, logs, etc.) and regarding the use of its LAN by its employees 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.

1.2.5.2 Customer will be responsible for complying with all notices and disclosure provisions relating to the provision of email services to its Users, as required by applicable country privacy laws and regulations.

1.3 Misuse

1.3.1 Customer agrees that it will not:

- (a) directly or indirectly, reverse engineer, de-compile, disassemble or otherwise attempt to derive source code or other trade secrets included in the System;
- (b) copy the software included in the System except as necessary for the provision or for the use of the Managed Messaging Service as set forth in the Service Description; or

- (c) add users to the Service in any manner which is designed to circumvent the obligation to pay incremental fees to either Orange or any software licensor.

1.3.2 Customer acknowledges that it is solely responsible for the content of any postings, data, or transmissions using the Managed Messaging Service ("**Content**"), or any other use of the Managed Messaging Service by Customer or User. Customer represents and warrants that neither it nor any User will use the Managed Messaging Service, directly or indirectly, for unlawful purposes (including, without limitation, infringement of copyright or trademark, misappropriation of trade secrets, wire fraud, invasion of privacy, pornography, obscenity, defamation, illegal chat lines and illegal use), or to interfere with, or disrupt, other network users, network services, or network equipment. Disruptions include, without limitation, distribution of unsolicited advertising or chain letters, repeated harassment of other network users, wrongly impersonating another user, falsifying one's network identity for improper or illegal purposes, sending unsolicited mass emailings, propagation of computer viruses, and using the network to make unauthorized entry to any other machines accessible location, via the network. Orange may suspend or terminate any or all Managed Messaging Services immediately, without prior notice to Customer, if Orange believes, in good faith, that Customer or a User is utilizing the Managed Messaging for any such illegal or disruptive purposes.

1.3.3 Customer will defend, indemnify, and hold harmless Orange from and against all Losses arising out of or relating to any and all claims by any person or entity relating to use of the Managed Messaging Services, including use of the Managed Messaging Services without consent of Customer or in breach of Clause 1.3.1 and Clause 1.3.2 above.

1.4 Charges and Invoicing

1.4.1 In the event that third party supplier costs to Orange increase, Orange reserves the right to adjust the Charges for the Managed Messaging Services. Orange will notify Customer of such adjustment at least 30 days in advance. This Clause 1.4.1 applies notwithstanding any provision to the contrary in the General Conditions or anywhere else in the Agreement.

1.4.2 All Charges for each Component will commence from the Date of Acceptance of such Component, subject to Clause 1.2.2.6, except that the System Charges will commence from the date of delivery of the System to Customer.

1.5 Term and Termination

1.5.1 Term

Each Order for a Managed Messaging Service will have a Service Term commencing on the date of written acceptance of the Order by Orange and ending at the end of the 36th month or of any longer term specified in the Order following the Final Acceptance, regardless of any other provision to the contrary in the General Conditions or elsewhere in the Agreement.

1.5.2 Termination

If a Managed Messaging Service is disconnected during the Service Term or any Extended Term as authorized by this Agreement, (a) by Orange, other than pursuant to the following Clauses of the General Conditions: 4.2 (IPR Infringement), 12.16 (Force Majeure) if the Force Majeure Event affects Orange or 12.11(a) (Reservation of Rights); or (b) by Customer, other than pursuant to the following Clauses of the General Conditions: 7.3 (Termination of Agreement), 7.4 (Payment Default), 7.5(b) (SLA) or 12.16 (Force Majeure) if the Force Majeure Event affects Orange; then: (i) Customer will provide at least 90 days prior notice using the Orange prescribed disconnection form; (ii) for the decommissioning of the System at the Orange then current hourly labor rate; (iii) Customer will remain liable to reimburse Orange for all contingent third party supplier charges including any cancellation penalties (Orange agrees to mitigate any such charges by terminating any third party supplier agreement as soon as practicable following notification of termination by the Customer); and (iv) Customer will be liable to pay a lump sum equal to the undepreciated value of the System as of the date of termination, based on the original price paid by Orange for the System plus 15% of such original price as a fee for administration and termination, except that no such sum will be payable by Customer if Orange is able (as reasonably determined by Orange) to re-deploy the System. This Clause 1.5.2 is without prejudice to the Orange rights and remedies if a Managed Messaging Service is disconnected: (a) by Customer, other than as authorized under this Agreement or (b) by Orange, pursuant to Clauses 7.3 (Termination of Agreement) or 7.4 (Payment Default) of the General Conditions.

END OF SPECIFIC CONDITIONS FOR ORANGE MANAGED MESSAGING SERVICES