

## **PUBLICATION 1 SERVICE DESCRIPTION FOR DEPLOYMENT SERVICES**

### **1.1 Definitions**

All capitalized terms used but not defined herein will have the meanings given to such terms elsewhere in the Agreement. In the event of any conflict between the definitions provided in this Service Description and those provided elsewhere in the Agreement, the definitions in this Service Description will control for purposes of this Service Description.

**"Documentation"** means user guides, education materials, product descriptions, and specifications, technical manuals, and other information relating to the Products, as provided by the Vendor.

**"Equipment"** means the computer or telecommunications hardware for which Orange will provide Deployment Services.

**"Hardware"** means computer or telecommunications hardware provided by Orange pursuant to this Service Description, including any hardware purchased by Orange from a third party.

**"License"** means the authorization required by a Software licensor for Customer's or User's use of the Software.

### **1.2 Site Surveys**

If ordered by Customer, Orange will perform a site survey to determine if the Location meets the necessary requirements for the proper installation and functioning of the Equipment to be installed at such Location ("**Site Survey**"). Customer will issue all Orders for Standard Site Surveys at least 5 Business Days in advance and Orders for Premier Site Surveys at least 2 Business Days in advance.

If a Site Survey requires more than 4 hours to complete (including travel time of the field engineer), then Customer will pay the additional Charges for such Site Survey at the relevant Hourly Labor Rate. Orange will commence Site Surveys during Business Hours, but may be required to complete a Site Survey outside of Business Hours, which time will be chargeable at the relevant Hourly Labor Rate. Upon Customer's request, Orange may perform Site Surveys outside of Business Hours, and such Site Surveys will be provided at the relevant Hourly Labor Rate. A Customer representative must accompany the Orange field engineer at all times during the Site Survey.

Customer will provide all information reasonably requested by Orange to enable Orange to perform the Site Survey. If the results of a Site Survey indicate that further preparation to the Location is needed, Customer will ensure that all such preparations are completed prior to Orange providing any further services. If Customer fails to complete all required preparations to the Location, Orange will be relieved of its responsibilities to provide any Deployment or Operational Support Services for such Equipment at that Location until it has been properly and fully prepared. In addition, Customer will pay the Hourly Labor Rate, plus the cost of materials, for additional on-site visits resulting from non-performance of Customer's obligations. If Customer requests Orange to arrange and complete the necessary preparations to the Location, Orange will provide a price quote to Customer for such services, and Orange will perform the necessary preparations subject to Customer's approval and payment of the additional charges set forth in the Orange price quote.

### **1.3 International Procurement**

#### **1.3.1 Software Licensing**

- (a) **Procurement of Licenses.** Customer authorizes Orange to act on Customer's behalf to obtain in Customer's name from the Software licensors the required number of personal, nontransferable, and nonexclusive Licenses to use, in object code form, the Software and related Documentation furnished to Customer under this Service Description. These Licenses will be limited to use of the Software with the Hardware for which the Software was obtained or, on a temporary basis, on back-up Hardware when the original Hardware is inoperable. Use of Software on multiple processors is prohibited unless otherwise agreed to in writing by the Software licensor.
- (b) **Compliance with License Terms.** Customer will comply with the terms and conditions of the Licenses. If the terms of this Agreement as it relates to the Software conflict with the Licenses, then the terms of the Licenses will control. Customer acknowledges that the Software is copyrighted by the Software licensors, and Customer agrees to comply with the Orange pass-through rights under all relevant copyright laws.
- (c) **License Documentation.** Customer agrees to execute all documents, instruments, and agreements, including the Licenses, that may be required by the Software licensor. If Customer fails or refuses to execute such documents upon delivery, the Software will be promptly returned to Orange in its original condition for a refund, as reasonably determined by Orange.
- (d) **Software Disclaimer.** Orange will not be responsible for Software defects or failures resulting from misuse, neglect, accident, abuse, improper installation, unauthorized modification or alteration, improper handling, failure to follow the licensor's operating and maintenance instructions or failure to maintain environmental conditions as recommended by the licensor.

#### **1.3.2 Logistics**

- (a) **Shipment and Delivery.** Orange will instruct the Vendor to ship all Products contained in an Order in one shipment. Orange will notify Customer if a partial shipment is necessary.
- (b) **Importation by Customer to Locations.** Products will be shipped from the Orange facility or directly from the Vendor and will be addressed directly to the Location under the User name, unless otherwise agreed to by the Parties.

- (c) **Selection of Carrier.** Orange will arrange for and will prepay all freight charges, including transportation, insurance (if confirmed in an Order) and handling charges, duties and all brokerage fees for delivery of the Products to the Locations, which will be re-invoiced to Customer at cost to Orange plus a 5% handling fee, or at the rate otherwise agreed to by the Parties. Unless Customer provides Orange with specific shipping instructions, Orange will select the carrier(s) and arrange for shipment. Orange will not thereby assume any liability in connection with the shipment, nor will the carrier be construed to be an agent of Orange.
- (d) **Taxes.** For international shipments, the Products will be shipped Delivered at Place (DAP), unless otherwise agreed to by the Parties.

1.3.3 **Acceptance of Products.** Customer will notify Orange in writing within 5 days of the delivery of the Products to the Location if the Products do not conform to the corresponding Order. If Customer does not provide the notice within such time, the Products will be deemed accepted as of the date on which the Products were delivered to the Location.

1.3.4 **Exercise of Warranty Rights Against the Vendor.** When Products are purchased from Orange without Operational Support Services and Customer has warranty rights against the Vendor that it wishes to execute, Customer will request a Return Materials Authorization ("RMA") number from Orange if one is required from the Vendor. In all such cases, Customer must provide the correct Product information (e.g. serial numbers, purchase date and physical address) required by the Vendor as part of the RMA process. All charges incurred by Orange in connection with this process will be invoiced to and paid by Customer.

1.3.5 **Cancellation.** If Customer cancels an Order for Equipment, then Customer will pay any and all charges for which Orange is or becomes liable in connection with such cancellation (including any cancellation or re-stocking charges for which Orange may be liable to the Vendor, shipping costs, etc.), plus an administration fee of 5% to Orange. If the Equipment has been delivered to Orange at the time of Customer's cancellation, Customer will promptly advise Orange if the Equipment should be redeployed for installation at a different Location or if the Equipment should be returned to the Vendor.

#### 1.4 Staging

If ordered by Customer, Orange will stage the Equipment, which may include hardware assembly, software loading, configuration, and testing of the Equipment in accordance with each specific Location's configuration. When required, Customer will provide a "gold disk", containing a complete image of all software applications and data, including configuration tables, needed to bring the Equipment into service. If such information is not available on a gold disk, then any additional work required to make the Equipment operational (e.g. the manual building of routing tables for a router) will be provided at the relevant Hourly Labor Rate, plus the cost of materials.

Orange will action Equipment into staging and will notify shipping/export personnel of the shipping schedule. Upon notification, warehouse personnel will physically move the Equipment into the staging facility, and the shipping clerks will initiate the shipping or exportation paperwork. If Orange determines a staging to be complex, Orange will notify Customer of, and the Parties will agree in writing on, any additional services that may be required to stage the Equipment and the charges applicable thereto.

#### 1.5 Installation

1.5.1 **Orange Responsibilities.** Orange will:

- (a) Provide its field engineers with appropriate installation documentation for each Equipment installation, including testing procedures and an installation checklist for the Equipment (the "**Installation Documentation**");
- (b) Confirm that the Location has been properly prepared and that the Equipment has been delivered to the Location;
- (c) Determine if wiring is in place between the cabinet for the Equipment and the demarcation prior to beginning the installation;
- (d) Unpack, inventory, and install the Equipment;
- (e) Interconnect the Equipment to the demarcation, test the Equipment and provide Customer with the test results, and initiate turn-up using the Installation Documentation;
- (f) If Orange has procured, staged, and shipped the Equipment, provide replacement parts/units to remedy OBF situations or any Equipment found inoperable during installation ("**Defective Equipment**"). If the Defective Equipment cannot be repaired or Spares are not available, Orange will arrange for the repair or replacement of the Defective Equipment at no charge. Upon completion of repair or replacement of Defective Equipment, Orange will complete the installation; and
- (g) Notify Customer promptly if any problems occur during installation that adversely affect the installation process.

For Standard Installations, a field engineer will commence on-site Installation Services within 5 Business Days of Orange receiving and accepting a signed contract or Order from Customer requesting the installation service; provided that (i) the Equipment has been delivered to the Location and Orange has been notified of such, or (ii) staging has been completed, as applicable. For Premier Installations, a field engineer will commence an on-site installation within 2 Business Days of Orange receiving and accepting a signed contract or Order from Customer requesting the installation service; provided that (i) the Equipment has been delivered to the Location and Orange has been notified of such, or (ii) staging has been completed, as applicable. Also, the Equipment to be installed and all information needed for such installation must be made readily available by Customer to Orange.

Orange will not be responsible for any failure to complete an installation within 5 Business Days for Standard Installations and within 2 Business Days for Premier Installations if such failure is due to any cause beyond the reasonable control of Orange, including the inability by Orange to gain access to the Location as scheduled, failure by the local telecommunications authority to complete installation of data circuits, or Customer's or User's failure to prepare the Location as required.

1.5.2 **Customer Responsibilities**

- (a) Customer will submit Orders for Standard Installation Services at least 5 Business Days prior to the date that the Installation Services are required and for Premier Installation Services at least 2 Business Days prior to the date that the Installation Services are required;
- (b) Customer will notify Orange if any User timeframes for installation and support have changed from the information contained in the Order; and
- (c) If the User cancels an installation Order after the Equipment has been delivered to Orange, Customer will promptly advise Orange of the redeployment of the Equipment for installation at a different Location or if the Equipment should otherwise be returned to the Vendor. If the Equipment is to be returned to the Vendor, then Customer will be deemed to have cancelled the Order for Equipment, and Clause 1.3.5 of this Service Description will apply.
- (d) Customer will pay the Hourly Labor Rate, plus the cost of materials, for any additional on-site visits resulting from non-performance of Customer's obligations.
- (e) Customer will provide a local contact name and telephone number for each Location.

1.5.3 **Installation Failures.** Successful installation of the Equipment assumes that Customer's network to which the Equipment is connected has been correctly installed and is operational. If Orange is unable to complete installation of the Equipment due to a network failure, Orange will, upon Customer's request, work with Customer to diagnose and resolve the problem at the relevant Hourly Labor Rate, plus the cost of materials.

**END OF SERVICE DESCRIPTION FOR DEPLOYMENT SERVICES**