

PUBLICATION 1 DATA PROTECTION CLAUSES

1.1 Definitions

In this Agreement, references to “**Controller**”, “**Processor**”, “**Data Subject**”, “**Processing**”, and “**Personal Data**” and “**Personal Data Breach**” will have the meanings as set out in (or to the nearest equivalent term in) the Data Protection Legislation.

“**Data Protection Legislation**” means the EU Regulation 2016/679 of April 27 2016 (the “**General Data Protection Regulation**” or “**GDPR**”), and any other applicable legislation relating to privacy or the protection of Personal Data in force, and as amended, from time to time.

1.2 The Parties agree:

- (a) Subject to paragraph (c) below, Customer is the Controller and Orange is the Processor in respect of the Personal Data which is made available to, collected, or generated by Orange to provide the Products and Services (“**Customer Personal Data**”).
- (b) The subject matter and duration of the Processing, the nature and purpose of the Processing, the type of Customer Personal Data and the categories of Data Subjects are set out in the relevant description of the processing activities (“**Description of Processing**”).
- (c) When Orange or its subcontractors process Customer Personal Data for their own purposes, independently of Customer’s instructions, Orange or its subcontractors act as Controller, but not joint Controllers, of the Customer Personal Data and will process such Personal Data as described in the Orange Privacy Policy for Customers and Prospects available at <https://www.orange-business.com/en/personal-data>, as may be updated from time to time (the “**Orange Privacy Policy**”).

1.3 Customer will ensure that it has provided adequate notices (including by reference to the “**Orange Privacy Policy**”) and has obtained, where required, all necessary and valid consents to enable lawful transfer of the Customer Personal Data to Orange for the purposes set out in these Data Protection Clauses. Customer will not by act or omission cause Orange to be in breach of Data Protection Legislation.

1.4 When acting as Processor:

1.4.1 Orange will only process Customer Personal Data in accordance with the reasonable written instructions of Customer, unless required otherwise by applicable law, lawful government authority, or applicable court, and in such case Orange will notify Customer in advance (unless Orange is prohibited by law from doing so).

1.4.2 In accordance with then-current good industry practice, Orange will implement appropriate technical and organizational security measures to protect Customer Personal Data against unauthorized or unlawful Processing and against accidental loss or destruction of, or damage, appropriate to the harm that might result from the foregoing and the nature of the Customer Personal Data to be protected, considering the state of technological development and the cost of implementing any such measures.

1.4.3 Orange will assist Customer in responding to reasonable requests from Data Subjects for the exercise of their rights under the Data Protection Legislation in respect of Customer Personal Data. The persons authorized by Customer to request Orange’s assistance in respect of Data Subjects’ requests are Customer’s authorized user(s) of My Service Space.

1.4.4 Orange will assist Customer, at Customer’s cost, with Customer’s compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments, and consultations with supervisory authorities or regulators, upon Customer’s written request, insofar as is possible, reasonable, and proportionate.

1.4.5 Sub-Processing

1.4.5.1 Customer hereby grants its consent to the Processing of Customer Personal Data by Affiliates and/or subcontractors of Orange engaged in the performance of the Agreement, some of whom may be based outside the European Economic Area (EEA) or in a country without an adequacy decision from the EU Commission (the “**Sub-processors**”). Orange is responsible for the sub-processing and performance of its Sub-processors in accordance with the requirements of the Data Protection Legislation and will ensure that such sub-processing will be on terms substantially equivalent to this Clause 1.4.5.

1.4.5.2 The initial list of approved Sub-processors is made available as set out in the Description of Processing provided by Orange. Orange will inform Customer of any additional, removed or replacement Sub-processor, which will be deemed approved by Customer unless Customer objects to such change within fifteen (15) days of having been informed thereof. Any objection must be made in writing to Orange with detailed reasons. Orange will consider Customer’s objection in its sole discretion and will inform Customer of its decision. If Orange still requires a change to the approved Sub-processors, Orange will provide at least one alternative proposal, including any additional costs, to Customer for its implementation. If Customer fails to accept either option within fifteen (15) days from the date of Orange’s alternative proposal, the change to the Sub-processor proposed by Orange with the least cost to Customer will be deemed approved.

- 1.4.5.3 Orange will require that its employees, Sub-processors, and each of their employees will keep Customer Personal Data confidential.
- 1.4.5.4 Where Orange transfers Customer Personal Data outside the EEA or to a country without an adequacy decision from the EU Commission, Orange will provide appropriate safeguards by using the standard contractual clauses for transfer of Personal Data to Processors established in third countries approved by the European Commission (the “**SCC**”) or another appropriate safeguard. Customer authorizes Orange or its Affiliates to enter into the SCC on behalf of Customer and its Affiliates.
- 1.4.6 During the Term of this Agreement, Orange will:
- (a) on thirty (30) days prior written notice from Customer, provide to Customer reasonably and readily available information to demonstrate its compliance with these Data Protection Clauses; and
 - (b) on sixty (60) days prior written notice from Customer, agree to schedule audits that Customer may conduct at Customer’s cost, provided that: (i) audits are subject to Orange’s data protection and security policies and any other measures needed to protect the confidentiality of Orange or its customers’ data; (ii) the audit is subject to a mutually agreed audit plan, detailing the conditions of the audit; (iii) the audit does not exceed two days and does not disrupt Orange’s operations; and (iv) there is no more than one audit in any rolling twelve month period.
- 1.4.7 Orange will notify Customer without undue delay when it becomes aware of a Personal Data Breach of Customer Personal Data.
- 1.4.8 At Customer’s request upon the expiration or termination of the Agreement, Orange will delete or return to Customer all the documents and files containing Customer Personal Data after the end of the provision of Services relating to Processing, and will not retain any copy of the Customer Personal Data, unless required to do so by applicable law.

END OF DATA PROTECTION CLAUSES