



PUBLICATION 1 OPERATIONAL CONDITIONS

1.1 Definitions

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

"Change Order" means an Order agreed by the Parties that reflects a change to an existing Order.

"Expenses" means all travel, accommodation, and other related expenses that Orange incurs in connection with a Service during the applicable Service Term of the Order or SOW, whether at Customer's premises or elsewhere.

"Hourly Labor Rate" means the charges for Services provided by Orange on an hourly basis. Hourly Labor Rates are in addition to any Expenses and the charges for any materials supplied by Orange.

"Location" or **"Site"** will have the meaning ascribed to such term in the Specific Conditions applicable to the Service.

"Out of Scope Work" means any work that is necessary to provision a Service or that Customer requests Orange to perform, and that is not included as part of the Service (e.g. extension of demarcations, provision of adequate power and ventilation, and provisioning of repeaters, work identified as out of scope and detailed in an SOW, etc.).

1.2 Services, Ordering

1.2.1 Services, Orders. Orange will prepare Orders and submit them to Customer for review and signature. Customer will provide a signed copy of such Orders to Orange. Alternatively, the Parties may use the quoting and ordering tools provided by Orange (e.g. a portal made available as part of "My Service Space" or via an API, mobile app, URL, etc. ("**Online Tools**"). The Services ordered or changes made to the Services via the Online Tools will be deemed accepted by Customer at the time the User approves or accepts them in accordance with the process and procedures of the Online Tools. If Customer requests a quote for Integration Services, then any quote provided by Orange for such Services through the Online Tools will be considered the Order prepared by Orange, and Customer's acceptance of such quote in the Online Tools will be deemed Customer's acceptance of an Order for the Integration Services identified in the quote. Any additional changes made or required (e.g. because of incorrect or incomplete information provided by a User) may be subject to a Change Order and additional charges. Customer will be responsible and liable for any cancellation or early termination fees that apply if a User cancels or terminates a Service using the Online Tools.

Customer also may elect to confirm its acceptance of such Orders to Orange via e-mail according to Orange's standard e-mail ordering process.

Orange's provision of the Products and Services to Users is contingent upon Orange's acceptance of the relevant Order or SOW. Any Customer pre-printed terms and conditions attached to the Order or Change Order or included on any Customer purchase order are null and void. Notwithstanding anything to the contrary otherwise contained in this Agreement, if Customer requests Orange to provide any services or assistance (including service or assistance provided during an emergency or unexpected situation, such as security threats or incidents) that are not set forth in this Agreement and that are in addition to the Services (the "**Additional Services**"), whether or not an Order or SOW for such Additional Services has been entered into between the Parties, then Orange will invoice Customer for such Additional Services at either: (a) the charges agreed to by the Parties, or (b) if charges were not agreed to, Orange's standard rates and charges therefor (which Orange will provide to Customer upon request). The Additional Services will be subject to the terms of this Agreement. The Services set forth in a mutually agreed upon Order or SOW and any Additional Services provided under the terms of this Clause 1.2.1 will be provided directly by Orange, an Orange Affiliate, a subcontractor of Orange or Orange Affiliate, or an authorized provider in the country or region where the Service is provided, subject to and in accordance with the terms of this Agreement. Except as otherwise expressly provided in this Agreement, Orange is solely responsible for the provision of the Services hereunder, and Customer will have no right, claim or cause of action against Orange's subcontractors for the Services.

1.2.2 Change Orders. Orange will prepare Change Orders and submit them to Customer for review and signature. Orange will identify in the Change Order, and Customer is responsible for, any costs in implementing and changing the original Order and all new Charges.

1.3 Unauthorized Access to And Destruction of Customer's Property

Except to the extent caused by Orange's willful misconduct or gross negligence, Orange will have no liability in contract, tort, or otherwise for any claim of unauthorized access to any User's network or transmission facilities or equipment, or for unauthorized access to, or alteration, theft, or destruction of any Users' data files, programs, procedures, or information through accident, fraudulent means or devices, or any other method. Except to the extent expressly stated in this Agreement, Customer is solely responsible for (a) the content of any of the Users' data files, postings, or transmissions; (b) the selection and implementation of controls on access and use of those data files, posting or transmissions; and (c) assessing its own computer, transmission, and security network needs and the results to be obtained therefrom; (d) the security of data stored in its networks, systems or facilities and its security violation response procedures. Customer is responsible for implementing all safeguards to protect the Users' networks, systems, facilities, equipment, data files, programs, procedures, or information against any unauthorized or accidental use, access or destruction (e.g. viruses), including the installation of any software updates or upgrades used in connection with the Services (including, for example, Customer's operating system software), but expressly excluding Software provided by Orange. Orange is not responsible for any Losses arising out of or related to Customer's failure to implement such safeguards. For clarity, this Clause 1.3 does not limit or modify the confidentiality obligations of the Parties set forth in the Agreement.

1.4 Customer's Acceptance of the Services

Customer will use all reasonable efforts to accept the Services on each Date of Acceptance. Customer acknowledges that Orange has supplied Customer all information necessary for Customer to evaluate the Services with respect to its requirements and that it has verified the suitability of the Services with its needs before entering into the Order(s) or SOW(s) for the Services.

1.5 Customer Responsibilities

- 1.5.1 For Orange to provide the Products and Services in accordance with this Agreement, Customer must cooperate with, and provide all reasonable assistance to, Orange. Customer will ensure that Orange has access to all necessary Customer information as Orange may reasonably require to provide the Products and Services and satisfy its obligations under this Agreement, and Customer will notify Orange of all material developments or events in relation to its business or operations that may have an effect upon the Products or Services. The Products and Services provided by Orange are dependent upon the accuracy and timely provision of the information and approvals provided by Customer. Customer understands that to the extent that such information is inaccurate or not timely provided, the delivery schedule for the Products or Services, the performance of the Services and Orange's costs may be affected, and Orange will be entitled to invoice Customer for any resulting costs and expenses (e.g. the cost of conducting site surveys to complete, and to obtain accurate, information needed to provide the Services, third party charges, etc.).
- 1.5.2 At all times during the Term, Customer will ensure that: (a) all easements, rights-of-way, and other permits necessary to permit the performance of the Services at the Locations are in effect, (b) the Locations are safe and free from actual or potential hazards and equipped with reasonable heat, light, working space, electricity, ventilation and adequate fire prevention equipment and systems, (c) sufficient on-site space for Orange equipment and materials is provided, and (d) Orange personnel and subcontractors have access to the Locations (including access to associated equipment) and to Customer materials during the times necessary to perform the Services.
- 1.5.3 It is Customer's and Orange's understanding that there will be no automatic transfer of the employment of any employee of Customer or any of its Affiliates or any third party (including third party service providers and subcontractors) by reason of the commencement of the provision of the Services (whether in whole or in part) under the Agreement pursuant to the provisions of the ARD-TUPE Laws (as defined below) or otherwise. Nonetheless, (i) if any individual employed by Customer or its Affiliates, or its or their respective third-party providers or subcontractors (such individual a "**Customer Employee**") is alleged or deemed to transfer to Orange, or any Orange Affiliate, or its or their respective third party service providers or subcontractors (collectively, "**Orange Entity**") under the provisions of the ARD-TUPE Laws upon or at any time after the commencement of the provision of the Services (whether in whole or in part) by Orange or (ii) if any contract of employment relating to a Customer Employee is alleged to have effect as if originally made against or concluded with an Orange Entity as a result of the provisions of ARD-TUPE Laws, then Customer shall defend, indemnify and hold harmless Orange and keep Orange indemnified for itself and on behalf of any other Orange Entity against all losses, liabilities, damages, claims, and expenses (including, without limitation, reasonable legal expenses) ("**Employment Losses**") that any Orange Entity may suffer or incur in connection with or arising from such allegations referred to above including (but not limited to) any Employment Losses incurred in connection with the alleged employment by an Orange Entity of a Customer Employee or the termination of a Customer Employee. For the purposes of this Clause 1.5.3, "**ARD-TUPE Laws**" means collectively: (a) the Acquired Rights Directive 2001/23/EC (as it may be further amended, re-enacted or extended or consolidated from time to time) and any legislation in any jurisdiction (whether in the European Union or not) which implements or incorporates the Acquired Rights Directive 2001/23/EC into local law, (b) the United Kingdom's Transfer of Undertakings (Protection of Employment) Regulations 2006 (as it may be further amended, re-enacted or extended or consolidated from time to time), and (c) any other legislation in any jurisdiction dealing with the transfer by operation of law of the employment of employees from one employer to another. Notwithstanding anything to the contrary otherwise contained in the Agreement, Clause 6.4 (Exclusion of Consequential and Indirect Damages) and Clause 6.3 (Limitations of Liability) of the General Conditions will not apply to Customer's obligations or liability as set forth in this Clause 1.5.3.
- 1.5.4 Customer will use the Service, and ensure that all Users use such Service, in accordance with the Acceptable Use Policy for Orange Products and Services (the "**Policy**") set forth in the Publication. Customer will defend, indemnify, and hold harmless Orange and its Affiliates, and their respective directors, officers, employees, agents, and representatives from and against any and all Losses arising out of or related to any breach or alleged breach of the Policy by Users, or Customer's permitted users. Notwithstanding anything to the contrary otherwise contained in the Agreement, Clause 6.4 (Exclusion of Consequential and Indirect Damages) and Clause 6.3 (Limitations of Liability) of the General Conditions will not apply to Customer's obligations or liability set forth in this Clause 1.5.4.
- 1.5.5 If Customer requests Orange to perform Out of Scope Work or if Orange notifies Customer that Out of Scope Work is required due to missing or incomplete Customer-provided information or due to Customer's failure to prepare a Location adequately for Service delivery, then Orange will provide a good faith cost estimate to Customer for such Out of Scope Work, and Orange's performance of any such work will be subject to the written acceptance of the cost estimate (which may be via email) by Customer. However, Orange may agree to perform Out of Scope Work without a cost estimate subject to Customer's prior written approval thereof (which may be via email), and Orange will invoice Customer for such Out of Scope Work performed at the then-current Hourly Labor Rate, plus any Expenses and the cost of any materials provided to Customer by Orange. In addition, if Orange, its subcontractors, or their respective employees or agents attempt to make a scheduled visit to a Location to provision Service or perform related work but are unable to do so due to any act or omission by a User, Customer will pay Orange for such visit at Orange's then-current Hourly Labor Rate and for any Expenses.

1.5.6 If any Order is terminated or if either Party elects to not renew an Order as provided in the General Conditions, Customer will submit to Orange a completed and accurate Orange disconnect form (or such other form mutually agreed upon by the Parties) to acknowledge and confirm the termination or nonrenewal of the Service.

1.5.7 Orange reserves the right to control, direct, and establish procedures for the use of the Services, and Customer agrees to follow such procedures.

1.6 Online Systems

Customer will ensure that all Users, (a) protect the logins, passwords, access codes, or other credentials provided by Orange in connection with the Online Tools, Electronic Invoicing system, or any other online system to which Customer or Users are given access to by Orange (collectively, the "**Online Systems**"); and (b) comply with Orange's instructions and security rules and procedures in connection with the use of the Online Systems.

1.7 Taxes and Local Invoicing

1.7.1 **Taxes.** Orange and Customer shall provide each other with all information and documents required to determine applicable Taxes under the Agreement. In case their situation might change during the Term, they commit to inform each other accordingly. For the provision of the Products and Services, Customer (a) warrants to Orange that it is not part in any scheme that could be considered as circumventing applicable tax laws (e.g. missing trader fraud schemes) and, (b) undertakes to take any reasonable due diligence measures to control that any parties with whom it conducts any business are not part of any such scheme. Customer will indemnify Orange for any and all Losses arising out of or relating to Customer's breach of this obligation, including the financial consequences of any tax reassessment relating to the Agreement by the competent tax authorities. Notwithstanding anything to the contrary otherwise contained in the Agreement, Clause 6.4 (Exclusion of Consequential and Indirect Damages) and Clause 6.3 (Limitations of Liability) of the General Conditions will not apply to Customer's obligations or liability as set forth in this Clause 1.7.1.

1.7.2 **Local Invoicing.** If Orange agrees to invoice a Customer Affiliate in local currency, Orange will convert the relevant currency amounts into local billing currency using the average of the exchange rates for the relevant currency-to-local currency published by the European Central Bank and prevailing each business day of the month preceding the month in which the invoice is issued. In the case of a local currency for which the European Central Bank does not publish an exchange rate, Orange will apply the exchange rate published by an internationally recognized financial information services company or such other rate as mandated by applicable local law and will identify for Customer the source used. Notwithstanding the foregoing, for one-time charges for Customer's purchase of hardware, software, or maintenance and/or associated services where Orange agrees to invoice Customer or a Customer Affiliate in local currency, Orange will invoice Customer or its Affiliate the local currency amount specified in the Order (or if the Order specifies a relevant currency amount, such amount will be converted to local currency as provided above). Prior to accepting an Order, Orange reserves the right to requote the local currency amount to take into account fluctuation in foreign exchange rates between the date of the price quote and the date of Customer's actual issuance of its Order. Orange's agreement to invoice Customer in local currency in any country does not modify Customer's obligation to pay such invoice in accordance with Clause 3.3 (Payment Term) of the General Conditions. However, should Orange or its Affiliate expressly agree in a writing (separately from an invoice) to receive payment from a Customer Affiliate in local currency, the following conditions will apply:

- (a) The in-country Customer Affiliate will pay all applicable Taxes as well as any additional amounts required to be paid as a result of any local withholding tax, all as described in Clause 3.4 (Taxes) of the General Conditions;
- (b) This Clause 1.7.2 (Local Invoicing) will not require Orange to invoice Customer cross-border for any Services provided in-country. The Parties will use their reasonable efforts to arrange for invoicing of such Services only between their respective Affiliates within the same country, either locally or regionally;
- (c) Payment by an in-country Customer Affiliate shall be by bank transfer, where available;
- (d) Payment shall be made pursuant to the terms of this Clause 1.7.2 (Local Invoicing), except that in the event the in-country Customer Affiliate or Customer has not paid Orange any undisputed amounts within 30 days after the date of the invoice, such amounts (together with all other amounts payable by that in-country Customer Affiliate) will be considered a Customer non-payment, provided that Orange has provided Customer with the same notice an opportunity to cure as applicable to Customer's payment default under Clause 3.5 (Payment Default) of the General Conditions;
- (e) Notwithstanding the foregoing, Orange reserves the right to refuse to invoice the in-country Customer Affiliate due to regulatory or tax restrictions, in which case the Charges will appear on Customer's invoice; and
- (f) If required by law or by Orange, each Party will cause its applicable in-country Affiliate to execute and deliver a mutually agreeable local billing agreement.

1.8 Publicity

Orange may publicize the fact that Customer is a customer of Orange for the Services without the need to obtain Customer's prior consent.

1.9 Cross-references

The references to Clauses of the General Conditions set forth in these Operational Conditions are to Clauses in Orange's standard form Master Services Agreement. To the extent that any such cross-references in these Operational Conditions do not accurately refer to provisions that address the indicated subject matter in the Agreement, the cross-references herein will be deemed to instead refer to the most closely corresponding provision(s) in the Agreement.

END OF OPERATIONAL CONDITIONS