



1 SPECIFIC CONDITIONS FOR ORANGE FLEXIBLE COMPUTING GLOBAL SERVICE

1.1 Definitions

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

"**Administrator**" means an individual who is authorized by Customer to manage the Solution.

"**Cloud Services**" means the Flexible Computing Global Service provided to Customer by Orange.

"**Customer Technology**" means any software owned by Customer or its third party licensors and any other Customer proprietary technology used in Customer's web site, including the web site design, content, software tools, hardware designs, algorithms, user interface designs, architecture, class libraries, objects and documentation in whatever format, know-how, trade secrets and any related intellectual property rights throughout the world, including derivatives, improvements, enhancements or extensions thereof, conceived, reduced to practice or developed by Customer or its third party contractors.

"**Data Protection Legislation**" means the EU Directive 95/46/EC of 24 October 1995 or any applicable similar legislation on the protection of personal data.

"**Data**" means all Customer's or Users' data hosted by Orange, including Personal Data.

"**Date of Acceptance**" means the date on which the setup the Cloud Services by Orange is completed and that it is ready to be used by Customer.

"**Losses**" means all claims, liabilities, demands, proceedings, losses, costs (including reasonable legal and other professional costs), and reasonable expenses of whatever nature.

"**Orange Technology**" means any software or hardware owned by Orange or its third party licensors and any other Orange proprietary technology used in providing the Cloud Service, including software tools, hardware designs, algorithms, user interface designs, architecture, class libraries, objects and documentation in whatever format, network designs, know-how, trade secrets and any related intellectual property rights throughout the world, including derivatives, improvements, enhancements or extensions thereof, conceived, reduced to practice or developed by Orange, its Affiliates or its third party contractors.

"**Solution**" means any Cloud Services solution which Orange will provide to Customer under the Agreement pursuant to one or several Orders, as described in the relevant Service Description or otherwise agreed with Customer.

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

1.2 Orange Obligations

1.2.1 Provision of the Cloud Service.

1.2.1.1 Orange will provide all Cloud Services ordered by Customer as specified in each Order.

1.2.1.2 Orange will use reasonable endeavors to provide the Cloud Services in accordance with the applicable Service Description and to comply with the applicable Service Levels.

1.2.1.3 Orange will use good quality materials, techniques, and standards to provide the Cloud Services and will perform all Cloud Services in a workmanlike manner.

1.2.1.4 Orange will make its resources reasonably available in terms of hardware, software, and personnel.

1.2.1.5 Orange will take reasonable precautions to ensure the physical protection of the media on which the data and programs reside. Specific provisions relating to the backup and recovery of such stored data will apply depending on the type of Cloud Services ordered by Customer.

1.2.2 Changes to the Cloud Services.

1.2.2.1 If any change to the Cloud Services made by Orange requires modification or update of the Customer Technology, Orange will give Customer sufficient prior notice thereof to allow Customer to perform such modification or update, at Customer's cost. Customer is responsible for Service malfunction or loss of quality if Customer fails to perform the requested modification or update.

1.2.3 Acceptance

1.2.3.1 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 setup of the Cloud Services ("**Service Commencement Notice**"). Customer will be deemed to have accepted each Solution on the date on which Orange issues a Service Commencement Notice for such Solution (the "**Acceptance**"), unless Customer notifies Orange in writing of a material fault in the Solution within 24 hours of receipt by Customer of the Service Commencement Notice (or such other period defined in the applicable Service Description). In such event, the above acceptance process will be repeated.

1.2.4 Scope of Orange Responsibility

- 1.2.4.1 Customer understands and acknowledges that the provision of the Cloud Services is dependent upon independent factors outside of the control of Orange (e.g. the uncertain nature of the Internet as well as third party hardware and software). Accordingly, Orange is not responsible for the Cloud Services beyond the elements under Orange direct control. Orange does not guarantee the performance of any application or software, whether server or client.
- 1.2.4.2 Customer acknowledges that Orange has supplied Customer all information necessary for Customer to evaluate the Cloud Services with respect to its requirements and that it has verified the suitability of the Cloud Services with its needs before entering into the Order(s) for the Cloud Services.
- 1.2.4.3 Customer acknowledges and agrees that Orange will not be responsible for the third party software editor's support or software development policies.
- 1.2.4.4 Orange reserves the right to update or replace any software with any other functionally equivalent software. Orange will take commercially reasonable steps to notify Customer of any change that may have a material impact on Customer's use of the Cloud Service.
- 1.2.4.5 Orange will not be liable for:
- (a) any software virus that may affect the Cloud Services;
 - (b) any defect or failures in Customer's equipment or applications;
 - (c) any alteration or fraudulent use of the Data, malicious or fraudulent access to the Customer equipment or systems;
 - (d) the reliability of data transmission, access times, any access restriction to, or interruption of the networks and/or servers connected to the Internet;
 - (e) any misuse of passwords, access codes, logins, or any other Customer information;
 - (f) the nature or content of the Data transmitted, distributed or collected, their use and update, as well as any file, audio, text, images, layout elements or data accessible on the Customer website;
 - (g) any breach of or violation of the Acceptable Use Policy for Orange IP Products and Services;
 - (h) the incorrect programming or configuration of the hosted Customer application;
 - (i) the incorrect configuration of network appliances (e.g. firewall) by Customer;
 - (j) any damage caused by any technology, equipment or software which is not used by Orange for the provision of the Cloud Services or approved by Orange for use with the Cloud Service;
 - (k) any act or omission of Customer or a user or a third party not under Orange control, including non-compliance with the Orange recommendations or the conditions of use of the Cloud Services;
 - (l) any service interruption caused by scheduled maintenance.

1.3 Customer Obligations

1.3.1 Acceptance

- 1.3.1.1 Customer will use all reasonable endeavors to accept the Solution upon issuance of the Service Commencement Notice.

1.3.2 Use of the Cloud Services.

- 1.3.2.1 Customer is responsible for:
- (a) the protection of its computer systems against viruses;
 - (b) the use and protection of logins, passwords, access codes or other credentials communicated by Orange.
- 1.3.2.2 Customer and Users will comply with the Orange Flexible Global Computing Terms & Conditions for Orange Customer Portal ("FCG Portal Terms") and Acceptable Use Policy for Orange IP Products and Services ("AUP"), which may be updated from time to time, and shall confirm such compliance by accepting the FCG Portal Terms and AUP upon entry into the Customer portal.
- 1.3.2.3 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 caused by or arising from any breach or alleged breach by Customer or Users of the AUP.
- 1.3.2.4 Customer will comply with all recommendations made by Orange in relation to the Cloud Services and will ensure that all Users comply with such instructions.
- 1.3.2.5 Customer will not engage in any load testing on shared infrastructure elements without the prior consent and coordination with Orange.
- 1.3.2.6 Customer will not engage in any intrusion testing or any other vulnerability testing without the prior consent of Orange.

- 1.3.2.7 Customer represents and warrants that it will:
- (a) comply with all applicable laws and regulations, including those applicable to online services, e-commerce, copyright, moral standards and public order as well as deontology rules relative to the Internet; and
 - (b) include all necessary legal mentions on its web site, including in relation to data protection.
- 1.4 Security**
- 1.4.1 Orange will maintain security safeguards at least equivalent to those generally prevailing in the telecommunications industry against the destruction, loss, or alteration of Data of the Customer while such data is held on the Orange Technology or being transmitted through the Orange Network.
- 1.4.2 Customer undertakes to comply with all security rules and procedures implemented by Orange for accessing the Cloud Service.
- 1.5 Intellectual Property Ownership**
- 1.5.1 All title to, and ownership of, Orange Technology will remain the property of Orange. Orange, however, grants to Customer for the Service Term of the applicable Cloud Service, a non-exclusive, royalty-free and non-transferable license to use the Orange Technology for the sole purpose of, and to the extent necessary for, the use of the Cloud Service.
- 1.5.2 Customer agrees that it will not,
- (a) directly or indirectly, reverse engineer, de-compile, disassemble or otherwise attempt to derive the source code or other trade secret included in the other Orange Technology, or
 - (b) copy the other Orange software included in such Orange Technology.
- 1.6 Misuse**
- 1.6.1 Customer is solely responsible:
- (a) for the content of its website,
 - (b) for all online applications services,
 - (c) for any information transmitted, broadcast and/or collected and
 - (d) for hyperlinks, postings, data, or transmissions using the Cloud Services (collectively, the "Content"), or any other use of the Cloud Services by Customer or any User, person or entity that Customer permits to access Customer's Technology or the Cloud Service.
- 1.6.2 Customer represents and warrants that neither it nor any User, person or entity will use the Customer's Technology or the Cloud Service, whether directly or indirectly, for unlawful purposes (including, 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 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.
- 1.6.3 Orange may suspend or terminate any or all Cloud Services immediately, without prior notice to Customer and without prejudice to other rights or remedy available to Orange, if:
- (a) Orange believes in good faith, that Customer or a User, person or entity is utilizing the Cloud Services for any illegal or disruptive purpose or in breach of these Specific Conditions or the applicable Service Description; or
 - (b) Orange is entitled to do in the applicable Service Description.
- 1.6.4 Customer will indemnify and hold harmless Orange and its Affiliates against and from all Losses arising out of or relating to any and all claims by any person or entity relating to use of the Cloud Services or the Content, including use of the Services without consent of Customer or claims in relation to the Content, Personal Data, the Customer Technology or viruses. Clause 6 (Exclusions and Limitations of Liability) of the Master Services Agreement will not apply to this Clause 1.6.4.
- 1.7 Data Protection**
- 1.7.1 References below to "Data Controller", "Data Processor", "Processing", and "Personal Data" shall have the meanings as set out in the Data Protection Legislation.
- 1.7.2 Customer will comply with its obligations as Data Controller under the Data Protection Legislation.
- 1.7.3 To the extent that Orange is processing Personal Data (which is controlled by Customer) in its performance of the Cloud Service, Orange will comply with the Data Protection Legislation, to the extent applicable as a Data Processor.

- 1.7.4 As Data Controller, Customer undertakes and warrants that it will fulfill all obligations pertaining to a Data Controller as set out in the Data Protection Legislation. Customer further warrants that all relevant individuals have been or will be informed of the intended or actual use of their Personal Data and that it has obtained or will obtain all appropriate consents from such individuals.
- 1.7.5 Orange will be allowed to transfer the Personal Data to its subcontractors and Affiliates, if required for the provision and management of the Cloud Services and Customer agrees to such transfer.
- 1.7.6 Customer expressly agrees that Orange may transfer the Personal Data outside the European Union and will obtain proper authorization from the appropriate authority. Orange will inform Customer of the localization of the Personal Data and will provide Customer with all relevant information necessary to make the declarations. For the Personal Data transferred outside the European Union, the Parties agree to use the standard clauses published by the European Commission. The Parties will sign these standard clauses prior to the transfer of any Personal Data outside the European Union.
- 1.8 Discontinuity**
- 1.8.1 Orange reserves the right to change at any time to the features or technical conditions of a Cloud Service. In such case, Orange will notify Customer at least 15 days prior to the expected date of the change.
- 1.8.2 If the change is substantial or adversely affects Customer, Customer will be entitled to terminate the affected Cloud Services without liability for either Party if Customer has given Orange ninety (90) days' written notice of its intent to terminate, citing the reasons for such termination, and Orange has failed to remedy the cited reasons for such intent to terminate within the ninety (90) day period. The termination will be effective on the date this change becomes effective.
- 1.8.3 Orange reserves the right to discontinue the provision of a Cloud Services in its entirety. In such case, Orange will notify Customer at least 6 months prior to the expected date of termination of the Cloud Service. All corresponding Orders will terminate at the date of termination of the Cloud Service. Customer will not be entitled to any damage or remedy for such termination.
- 1.8.4 Orange will use reasonable endeavors to propose an alternative service if feasible.
- 1.9 Order Term and Termination**
- 1.9.1 Term and Termination**
- 1.9.1.1 Each Order for a Cloud Services will have a Service Term commencing on the date of written acceptance of the Order by Orange as defined in the Order, and ending at the end of its Service Term or Extended Term as set out in this Agreement, regardless of any other provision to the contrary in the General Conditions or elsewhere in the Agreement.
- 1.9.1.2 Each Order will have a Service Term of 12 months following the Date of Acceptance of the Service, unless further specified in the Order.
- 1.9.1.3 The successive terms will be renewed for a period corresponding to the initial Service Term (the "**Extended Term**"). Each Order will be automatically renewed for successive Extended Terms, unless terminated earlier pursuant to Clause 7.4 of the Master Services Agreement.
- 1.9.1.4 Each Party may terminate an Order by giving the other Party at least 90 day notice for a Service Term or Extended Term of 12 prior to the end of the Service Term or Extended Term as applicable (the "**Termination Notice Period**").
- 1.9.1.5 All Charges for the FCG Service will commence from the Date of Acceptance of the FCG Service.
- 1.9.2 Termination for Convenience**
- 1.9.2.1 Termination of the Order**
- 1.9.2.1.1 Customer will be entitled to terminate an Order at any time for convenience, subject to the payment of early termination fees of \$1,000 USD or the minimum FCG monthly charge based on the minimum configuration defined in the Charges Schedule (the "**Minimum FCG Monthly Charge**"), whichever is greater, for each month of the remaining period of the then current Service Term or Extended Term.
- 1.9.3 Conditions of Termination**
- 1.9.3.1 Upon receipt of the notice of termination, Orange will acknowledge the termination by mail to Customer main administrator. A follow up mail will be sent 28 days before the anticipated date of termination to notify the suspension of the FCG Service with limited rights on the Customer Portal. A last mail will be sent 14 days later to notify the actual termination of the FCG Service. Customer may cancel the termination or request a 14 days extension of the FCG Service at any time prior to this last email, by contacting the Service Desk.
- 1.9.3.2 The FCG Service will be charged until the day of its actual termination.

1.10 Termination Assistance Services

- 1.10.1 Upon expiry or termination of an Order (other than as a result of Customer's breach), Customer may request by written notice Orange to provide termination assistance services for the FCG Service for a period not to exceed the end of the applicable Termination Notice Period, as set forth in Clause 1.9.1.
- 1.10.2 The standard termination assistance services will consist of:
- (a) the supply of technical information about the FCG Service architecture, except any information considered by Orange as know-how owned by Orange; and
 - (b) the participation in meetings to determine and prepare for the migration of the FCG Service, subject to a maximum of one (1) meeting per month.
- 1.10.3 If Customer wishes to receive additional termination assistance services from Orange, Orange will provide a quote for such additional termination assistance services, specifying the charges and conditions for such assistance and any necessary material and physical installations.
- 1.10.4 Customer will remain solely responsible for the replacement third party service provider.
- 1.10.5 Customer will supply all of technical, human and, if applicable, financial assistance required for the migration of the FCG Service.
- 1.10.6 If Customer requests the assignment of any Software license at the end of the FCG Service, such assignment will be subject to written approval from licensor of such Software, in such licensor's sole discretion.

END OF SPECIFIC CONDITIONS FOR ORANGE FLEXIBLE COMPUTING GLOBAL SERVICE