

PUBLICATION 1 SPECIFIC CONDITIONS FOR ORANGE CLOUD 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 Tests**" means, for each Cloud Service, the acceptance test or tests described in the relevant Service Description or, if not so described, the then Orange standard acceptance tests for the Cloud Service.

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

"**Cloud Services**" means all Services designated by Orange as Cloud Services.

"**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) as may be amended and/or substituted (in whole or in part) by any successor European or local legislation (including Regulation (EU) 2016/679 known as the 'General Data Protection Regulation').

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

"**Date of Acceptance**" means the date all Acceptance Tests for the Solution are successfully completed.

"**Losses**" means all claims, liabilities, demands, proceedings, losses, costs (including legal and other professional costs), and 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 Services, 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.

"**Orange Equipment**" means hardware (including cables, connectors, and software) at Locations, as may be supplied by Orange as part of the Cloud Services.

"**Solution**" means any Cloud Service 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.

"**Virtual Machine**" or "**VM**" means an operating system (OS) or application environment that is installed on any hardware and/or software to emulate dedicated hardware.

1.2 Orange Obligations

1.2.1 Provision of the Cloud Services

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

1.2.2 Changes to the Cloud Services

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 Unless provided to the contrary in a Service Description, 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 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 5 Business Days of receipt by Customer of the Service Commencement Notice (or such other period defined in the applicable the 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 the direct control by Orange. Orange does not guarantee the performance of any application or software, whether server or client.

- 1.2.4.2 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.
- 1.2.4.3 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 Service with its business needs before entering into the Order(s) for the Cloud Services.
- 1.2.4.4 Customer agrees that Orange will not be responsible for any third party software support or software development policies, and that Orange reserves the right to update or replace any software with any other functionally equivalent software.
- 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, and 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) the incorrect programming or configuration of the hosted Customer application;
 - (h) any damage caused by any technology, equipment, or software which is not used by Orange for the provision of the Cloud Services;
 - (i) any software anomalies or defaults;
 - (j) insufficient network capacity if contrary to the Orange recommendations;
 - (k) any act or omission of Customer or a user or a third party not under the control of Orange, 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

Unless provided to the contrary in a Service Description, 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 will comply with all recommendations made by Orange in relation to the Cloud Services and will ensure that all Users comply with such instructions.
- 1.3.2.3 Customer will not engage in any load testing, intrusion testing, or any other vulnerability testing without the prior consent of Orange.
- 1.3.2.4 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.
- 1.3.2.5 Customer will not connect to the Cloud Services any equipment not expressly approved by Orange. Orange reserves the right to immediately disconnect or request the immediate disconnection of any such equipment.

1.4 Use of Information/Internet

- 1.4.1 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. 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.
- 1.4.2 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.

1.5 Security

- 1.5.1 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.
- 1.5.2 Customer undertakes to comply with all security rules and procedures implemented by Orange for accessing the Cloud Services.

1.6 Intellectual Property

- 1.6.1 All title to, and ownership of, Orange Technology will remain the property of Orange or its licensors. Orange, however, grants to Customer for the Service Term of the applicable Cloud Services, 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 Services.
- 1.6.2 Customer agrees that it will not, (a) directly or indirectly, reverse engineer, de-compile, or disassemble (or otherwise attempt to derive the source code or other trade secret included in) the Orange Technology, or (b) copy the software included in such Orange Technology.

1.7 Misuse

- 1.7.1 Customer is solely responsible for the content of its website, for all online applications services, for any information transmitted, broadcast and/or collected and 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 Services.
- 1.7.2 Customer represents and warrants that neither it nor any User, person or entity will use the Customer's Technology or the Cloud Services, 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 emails, propagation of computer viruses, and using the network to make unauthorized entry to any other machines.
- 1.7.3 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; (b) Customer fails to comply with the Orange recommendations; or (c) Orange is entitled to do so in the applicable Service Description.
- 1.7.4 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. The exclusions and limitations of liability of the General Conditions will not apply to this Clause 1.7.4.

1.8 Invoicing

Unless provided to the contrary in a Service Description, all Charges for each Solution will commence from the Date of Acceptance of such Solution.

1.9 Orange Equipment

- 1.9.1 Orange Equipment will remain the sole and exclusive property of Orange or its suppliers, and neither Customer nor any User will obtain any property rights or interest in Orange Equipment.
- 1.9.2 Customer will provide all necessary assistance to enable Orange to complete the installation and connection of Orange Equipment.
- 1.9.3 Customer will ensure that proper environmental conditions (including electrical power), as recommended by Orange or the manufacturers of Orange Equipment, are maintained and that the exterior surfaces are kept clean and in good condition.
- 1.9.4 Upon termination of Cloud Services, Customer will promptly surrender possession of Orange Equipment in good order, repair, and condition (reasonable wear and tear excepted) to Orange.
- 1.9.5 Customer will allow Orange reasonable access to the Locations where Orange Equipment is to be installed for work related to the installation, inspection, maintenance, and de-installation of Orange Equipment.
- 1.9.6 Customer will be liable for any loss or damage to the Orange Equipment beyond wear and tear, excluding any loss or damage to Orange Equipment that was the fault of Orange, its subcontractors or agents. In the event that the Orange Equipment is damaged or destroyed by Customer or any User, Customer will inform Orange within two days of becoming aware of such damage. If the Orange Equipment is not capable of repair, Customer agrees to pay Orange for the replacement value of such Orange Equipment as new at then current prices. If the Orange Equipment is capable of repair, Orange will repair the Orange Equipment and Customer agrees to pay for the cost of such repair within 30 days from the date of invoice.

1.10 Data Protection

1.10.1 References in this Clause 1.10 to:

- (a) **"Data Controller"** includes "controller";
- (b) **"Data Processor"** includes "processor"; and
- (c) Data Controller, Data Processor, **"Processing"**, and **"Personal Data"** shall have the meanings as set out in the Data Protection Legislation.

1.10.2 Customer will comply with its obligations as Data Controller under the Data Protection Legislation.

1.10.3 To the extent that Orange is processing Personal Data (which is controlled by Customer) in its performance of the Cloud Services, Orange will comply with the Data Protection Legislation, to the extent applicable as a Data Processor.

1.10.4 As Data Controller, Customer undertakes and warrants that it will fulfil 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.

1.10.5 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.

1.10.6 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.

1.11 Discontinuity

1.11.1 Orange reserves the right to change at any time the contractual or technical conditions of a Cloud Service. In such case, Orange will notify Customer at least 30 days prior to the expected date of the change.

1.11.2 If the change is substantial or adversely affects Customer, Customer will be entitled to terminate the affected Cloud Service without liability for either Party. The termination will be effective on the date this change becomes effective.

1.11.3 Orange reserves the right to discontinue the provision of a Cloud Service 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.

1.11.4 Orange will use reasonable endeavors to propose an alternative service if feasible.

1.12 Limitations of Use

1.12.1 Customer will not perform or attempt to perform: (a) any intervention on third-party Virtual Machines hosted as part of any feature of the Cloud Service that is not Customer's Virtual Machine, and/or (b) any intrusion or attempted intrusion into Orange information systems. Any such action will be considered a material breach of the Agreement.

1.12.2 Customer agrees that all software used as part of any feature of the Cloud Service and on the Virtual Machines is technically complex and cannot be tested in such a way as to cover every possible use. Customer agrees that the Cloud Service and the Virtual Machines will not be error free and may not be available at all times.

1.12.3 Orange reserves the right to substitute the Virtual Machine(s) allocated to Customer if Orange deems it necessary in its reasonable opinion. Orange will endeavor to provide Customer as much notice as is reasonably possible and will, in cooperation with Customer, organize the transfer of the Solution onto the new Virtual Machine.

1.12.4 Orange reserves the right to interrupt access to any feature of the Cloud Service or the Virtual Machines to perform repairs, maintenance and/or improvement interventions in order to ensure the proper operation of the Cloud Service. Orange will use reasonable endeavors to inform Customer (to the extent possible) about such intervention and its duration. Orange will perform maintenance activities at times when Virtual Machines are least used by Customer, except in the event of emergency maintenance.

1.12.5 Customer will take all necessary technical precautions for the use of the Cloud Service and will ensure the compatibility of its website and/or applications with any feature of the Cloud Service, the Virtual Machines, the system resources, the software, and the technical restrictions of the Cloud Service.

1.12.6 Customer remains solely responsible for its network's security policy and for its response procedures to security violations.

1.12.7 Orange will not be responsible if the configuration of the Cloud Service as selected by Customer is not sufficient to address its business needs.

END OF SPECIFIC CONDITIONS FOR ORANGE CLOUD SERVICES