

## **PUBLICATION 1 SPECIFIC CONDITIONS FOR INSTALLATION, MAINTENANCE, EQUIPMENT RESALE, AND OTHER ORANGE INTEGRATION 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 or Operational Conditions, as applicable.

**"Business Hours"** means the normal Orange working hours applicable to the relevant Location.

**"Equipment"** means the hardware and related software for which Orange provides Integration Services.

**"License"** means a Vendor's authorization for a User's use of its Vendor Software and the terms and conditions applicable thereto, which Orange shall provide to Customer upon request.

**"Location"** or **"Site"** means the site or location where Orange will provide the Integration Services.

**"Operational Support Services"** means the Orange maintenance services described in the Service Description for Operational Support Services.

**"Products"** means, individually and collectively, the equipment (including hardware, peripherals, and related software) or software and the related documentation that Orange purchases from a third party for resale to Customer, notwithstanding anything to the contrary otherwise contained in the Agreement.

**"Vendor"** means the manufacturer or supplier of a Product or Equipment or the licensor of Software, including its subcontractors and agents.

**"Vendor Software"** means computer programs in object code licensed or sublicensed by a Vendor to Customer pursuant to the terms of the applicable License.

### **1.2 Provision of Integration Services**

- (a) **Orders.** Orange will provide the type and quantity of Products, installation services, maintenance services (including Operational Support Services and Vendor-branded maintenance services), and other Integration Service as set out in the Order(s).
- (b) **Installation Services.** Orange will provide a description of its installation services upon Customer's request. Orange will install Equipment during Business Hours. If Customer requests installation services outside of Business Hours, then Customer will pay for the installation services at the Hourly Labor Rate plus the cost of materials and a 4-hour minimum will apply. For installation services, a Force Majeure Event expressly includes any network failure or failure by the local telecommunications authority to complete the installation of data circuits, notwithstanding anything to the contrary otherwise contained in the Agreement.
- (c) **Vendor-Branded Maintenance Services.** Vendor-branded maintenance services ordered by Customer will be provided by the Vendor directly to Customer and will be governed by the terms of that Vendor's service description and terms and conditions, a copy of which will be provided upon Customer's written request.

### **1.3 Product and Service Pricing**

If third party supplier costs to Orange increase (e.g. shipping costs, warehousing costs, prices quoted for Products and Integration Services, etc.), then Orange may adjust the Charges accordingly, and Customer agrees to pay such adjusted Charges. However, Orange will not increase any Charges: (a) applicable to Integration Services for which Customer has pre-paid for a set term (e.g. 1 year, 3 years, etc.) during such term, or (b) for Products or Vendor-branded or other maintenance services set forth in an accepted Order. Notwithstanding the foregoing, if Orange is billed by a Vendor in a currency different from the currency invoiced to Customer, Orange may charge Customer for any losses associated with fluctuations in currency exchange rates and timing of payment.

### **1.4 Change Orders**

If Customer requests to postpone the delivery date for Products, Orange may require Customer to pay 75% of the Charges for such Products in advance. This prepayment will be due on the delivery date originally indicated on the relevant Order. Customer also will reimburse Orange for any additional costs (e.g. warehousing, etc.) incurred by Orange due to the postponement of the delivery of any Products. Customer may change shipment instructions for Products in a previously accepted Order at any time prior to shipment from the Vendor; however, Customer will pay all fees incurred by Orange for such revision (including restocking charges from the Vendor and freight charges for returning the Products to the Vendor) and any increase or decrease in the price will be passed through to Customer.

### **1.5 Cancellation or Early Termination of Integration Services Orders**

- (a) **Products.** Customer may cancel an Order for Products until the date the Vendor does not accept cancellations, and Customer will be responsible for all costs incurred by Orange as a result of such cancellation, including all restocking, refurbishment or cancellation charges, plus an administration fee equal to 15% of such restocking, refurbishment or cancellation charges. Any such cancellation must be made in writing and will be effective only upon Orange's acceptance, which will not be unreasonably withheld.
- (b) **MAC Services.** Customer may cancel moves, adds, changes, and deletions of Integration Services (collectively, **"MAC Services"**) in advance of Orange's performance thereof upon no less than 3 days' prior written notice to Orange, and Customer will pay any costs incurred by Orange with respect to its preparations for such MAC Services. MAC Services do not include any similar services that Orange provides pursuant to a Professional Services SOW.

- (c) **Other Integration Services.** Except as provided otherwise in this Clause 1.5 and notwithstanding anything to the contrary otherwise contained in the Agreement, if during the applicable Service Term: (1) Customer terminates the Agreement other than pursuant to Clause 7.3.1 (Termination of Agreement) of the General Conditions or terminates an Order for Integration Services other than pursuant to Clause 7.3.2 (Termination of an Order) of the General Conditions, or (2) Orange terminates the Agreement pursuant to Clause 7.3.1 (Termination of Agreement) or Clause 7.3.3 (Termination for Non-Payment) of the General Conditions or terminates an Order for Integration Services pursuant to Clause 7.3.2 (Termination of an Order) or Clause 7.3.3 (Termination for Non-Payment) of the General Conditions, then Customer shall not receive a refund of any prepaid Charges for the Integration Services and will be responsible to pay: (i) all accrued but unpaid charges incurred up to and including the date of termination, plus (ii) the following termination charges: (1) Customer will reimburse Orange for all Vendor and other third party charges that would have been applicable for the remaining unexpired portion of the applicable Service Term as of the date of termination and any cancellation fees payable to Vendors or other third parties associated with the termination; (2) if Orange has provided CPE, Customer will pay Orange \$1,500 for each affected Location with CPE and \$250 for each affected Location without CPE; (3) if Orange has provided CPE, Customer will pay Orange a lump sum amount equal to the undepreciated value of the CPE as of the date of termination, based on the original price paid by Orange for the CPE (as evidenced by a written certification from Orange upon Customer's request) plus 15% of such original price as a fee for administration and disconnection; and (4) Customer will reimburse Orange for any charges waived or credits provided by Orange during the Service Term (e.g. installation waiver credit) on a prorated basis.

#### 1.6 Trade Controls Clauses

The Trade Controls Clauses set forth in the Publication apply to all Integration Services. The term "**Customer Equipment**" as used in the Trade Controls Clauses includes Products.

#### 1.7 Risk of Loss, Acceptance, and Title

Unless otherwise agreed by the Parties in a writing that expresses an intent to vary the terms of this Clause 1.7: (a) If the governing law of the Agreement is other than in the United States or Canada, risk of loss for the Products transfers to Customer in accordance with the applicable Incoterm (2010) per the Trade Control Clauses; (b) If the governing law of the Agreement is in the United States or Canada (irrespective of the governing law of any applicable local service agreement), risk of loss for the Products transfers to Customer upon delivery by the Vendor to the first carrier.

Products will be deemed accepted by Customer on the date that the risk of loss transfers to Customer, unless Customer gives Orange written notice within 5 days of delivery of the Products that the Products do not conform to the corresponding Order. Upon Orange's receipt of such notice of non-conformance, Orange will facilitate the replacement of Products by the Vendor. Title to Products (other than Software) passes to Customer on the date that the risk of loss transfers to Customer. Where permitted by law, Customer grants and conveys to Orange with respect to each Product a purchase money security interest or lien (or its equivalent under applicable local law) until Orange receives full payment therefor. Customer's right to possession and interest in Products will cease immediately upon Customer's failure to make payment in full on the due date or if Customer is declared bankrupt or a receiver or administrator is appointed in respect of Customer. In such cases, without prejudice to any other rights of Orange, Orange will be entitled to enter Customer's or the end user's premises for the purpose of recovering Products.

#### 1.8 Invoicing and Payments

- (a) **Maintenance Services.** Orange will invoice Customer for any maintenance services provided as part of Integration Services (including Vendor-branded maintenance services) on a per unit basis (i) for Products beginning on the date the Product is shipped from the Vendor (unless otherwise agreed by the Parties in writing), and (ii) for existing Equipment, beginning on the date mutually agreed to by the Parties. Charges for such maintenance services are due and payable in full and in advance for the entire Service Term of the Order unless expressly stated otherwise in the Charges Schedule or the applicable Order, and are non-refundable.
- (b) **Installation Services.** Charges for installation services (i) will be invoiced with the Operational Support Services Charges if Customer orders installation services for Products also covered by the Operational Support Services, (ii) for Products will be invoiced upon shipment of the Product, and (iii) for all other Equipment, upon completion of the installation services.
- (c) **Deployment and MAC Services.** Except as otherwise provided in these Specific Conditions, Customer will be invoiced for Deployment and MAC Services upon their completion.
- (d) **Purchase of Products.** Orange will invoice for Products upon shipment from the Vendor, except as otherwise agreed by the Parties in writing. If Products are shipped in installments, Orange may issue a partial invoice upon shipment of each installment. Customer's obligation to pay for Products is not contingent upon acceptance of the Products by Customer. Where required by Customer and agreed by Orange in writing, Orange will arrange for and prepay all freight charges, including transportation, insurance, handling charges, and all brokerage fees for delivery of the Product to the Customer's sites, which will be re-invoiced to Customer at cost to Orange plus a 15% handling fee, or at the rate otherwise agreed to by the Parties. These charges will be invoiced separately, either in advance or after the shipment, and will be immediately due and payable by Customer.
- (e) **Charges.** Any Out of Scope Work provided by Orange will be charged at the applicable Hourly Labor Rate plus an administrative charge of 15%.

## 1.9 Limitation of Shipment

Products will be shipped from an 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. 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.

## 1.10 Limitation of Liability for Integration Services

NOTWITHSTANDING ANYTHING TO THE CONTRARY OTHERWISE CONTAINED IN THE AGREEMENT: (A) WITHOUT LIMITING CLAUSE 6.3 (LIMITATIONS OF LIABILITY), CLAUSE 6.4 (EXCLUSION OF CONSEQUENTIAL AND INDIRECT DAMAGES), CLAUSE 6.5 (EXCEPTIONS TO LIMITATIONS OF LIABILITY) AND CLAUSE 6.6 (EXCEPTIONS TO CUSTOMER'S LIMITATION OF LIABILITY) OF THE GENERAL CONDITIONS, EACH PARTY'S TOTAL AGGREGATE LIABILITY FOR DIRECT DAMAGES UNDER OR IN CONNECTION WITH THIS AGREEMENT FOR ALL CLAIMS RELATING TO INTEGRATION SERVICES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WILL BE LIMITED TO \$10,000; AND (B) UNLESS OTHERWISE EXPRESSLY AGREED BY ORANGE OR A VENDOR IN WRITING WITH CUSTOMER, NEITHER ORANGE NOR ANY VENDOR SHALL BE RESPONSIBLE FOR THE COST OF RECONSTRUCTING DATA STORED ON DISK FILES, TAPES, MEMORIES, ETC. THAT ARE LOST DURING PERFORMANCE OF INTEGRATION SERVICES.

## 1.11 Warranties

1.11.1 The following paragraph supplements the warranty disclaimers set forth otherwise in the Agreement:

**All Products, Spares (as defined in the applicable Service Description), and Vendor-branded maintenance services are supplied "AS-IS", and Customer will have only such warranties, express or implied, if any, as provided by the applicable Vendor or third party licensor. Orange does not warrant, guarantee, or make any representations concerning the use or the results of use of, or the correctness, accuracy, reliability, capacity, or limitations related to the Products. Orange does not warrant that the functions contained in the Products will meet Customer's requirements or expectation or that the operation of the Products will be uninterrupted or error free. Customer understands that such limitations may restrict or limit the capabilities or performance characteristics of the Products. Customer acknowledges that it has selected the Products and Vendor-branded maintenance services on the basis of its own judgment and expressly disclaims any reliance upon any statements made by Orange. In no event will Orange 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.**

1.11.2 When Products are purchased from Orange without Operational Support Services or Vendor-branded maintenance 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.

## 1.12 Vendor Software Licenses

For Licenses purchased by Customer through Orange, Customer authorizes Orange to act on Customer's behalf to obtain from the applicable Vendor and in Customer's name the required number of personal, non-transferable, and nonexclusive Licenses to use the Vendor Software and related documentation. These Licenses will be limited to use of the Vendor Software with the Products or Equipment for which the Vendor Software was obtained or, on a temporary basis, on back-up hardware when the original Product or Equipment is inoperable. Customer will comply with all terms and conditions of the Licenses, which are granted directly by the Vendor to Customer. Use of Vendor Software on multiple processors is prohibited unless otherwise expressly permitted by the License. Notwithstanding anything to the contrary otherwise contained in the Agreement, if the terms of the Agreement conflict with the Licenses, then the terms of the Licenses will control. Customer acknowledges that the Vendor Software is copyrighted by the Vendor, and Customer agrees to comply with the Orange pass-through rights under all relevant copyright laws. Customer agrees to execute or electronically accept all documents, including the Licenses that may be required by the Vendor. If Customer fails or refuses to execute or electronically accept the terms of the License as may be required by the Vendor, Customer shall not use or retain in any form the Vendor Software, and will advise Orange thereof promptly. Orange will not be responsible for Vendor Software defects nor 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 Vendor.

## 1.13 Cross-References

The references to Clauses of the General Conditions set forth in these Specific Conditions are to Clauses in Orange's standard form Master Services Agreement. To the extent that any such cross-references in these Specific 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 SPECIFIC CONDITIONS FOR INSTALLATION, MAINTENANCE, EQUIPMENT RESALE, AND OTHER ORANGE INTEGRATION SERVICES