

PUBLICATION 1 SPECIFIC CONDITIONS FOR ORANGE PROFESSIONAL SERVICES

1.1 Definitions

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

"Assumptions" means the assumptions specified in the SOW or in the Service Description that Orange has relied upon in agreeing to provide the Professional Services.

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

"Change Control Forms" means individually and collectively, the standard Orange Change Request, Impact Analysis and Change Approval forms (which will be attached to the SOW or the Service Description or provided otherwise by Orange upon Customer's request) that document(s) changes requested by either Party to the Professional Services, the impact of the changes, and the final approval by both Parties of the mutually agreed changes in accordance with Clause 1.4 below.

"Change Control Process" means the process described in Clause 1.4 below for implementing changes to the Professional Services provided pursuant to a Statement of Work or Order.

"Change Request" means a request by either Party made in accordance with the Change Control Process for a change to the Professional Services.

"CPE" means the equipment (including hardware, peripherals, and related software) supplied by Orange as part of the Professional Services and managed by Orange for use with Professional Services at the Locations. CPE is never owned by Customer.

"Customer Responsibilities" means the specific actions and obligations that Customer must fulfill in order for Orange to provide the Deliverables and meet the Delivery Schedule, as identified in Clause 1.3 below and in a SOW or Service Description.

"Deliverables" means any measurable, tangible, verifiable outcome, result or item to be completed or provided to Customer, as specified in a SOW.

"Delivery Schedule" means the specific deadlines mutually agreed by the Parties for Orange to provide the Deliverables, as specified in the SOW.

"Location" or **"Site"** means the site or location receiving the Professional Services.

"Program" means a portfolio of Customer projects and activities (which may include Project(s)) that are managed or coordinated by Orange, as identified in a SOW, for which Orange is providing the Professional Services and Deliverables.

"Project" means the Customer activity, need, or task, as identified in an SOW, for which Orange is providing the Professional Services and Deliverables.

"Required Consent" means any consent or approval required to give Orange the right or license to access, use or modify (including creating derivative works of) the hardware, software, firmware, and other products that Customer uses in order for Orange to provide the Deliverables, without infringing the ownership or licensing rights (including Intellectual Property Rights) of the providers or owners of that hardware, software, firmware or other products.

1.2 Provision of Services

Orange will have no obligation to provide the Professional Services to Customer except as specified in an Order accepted by Orange and subject to the applicable Service Description(s), or in a SOW executed by both Parties. For any Professional Services that are not provided pursuant to a Service Description, the Parties will mutually agree on and execute a SOW setting forth the scope and description of the Project or Program and the applicable Charges. Orange's performance of the Professional Services will be excused to the extent attributable to the non-performance of the Customer Responsibilities, or if the Assumptions upon which the Professional Services are based are in Orange's opinion inaccurate or misleading.

1.3 Customer Responsibilities

- (a) Customer will designate a point of contact who will be Customer's primary contact with Orange for the Project or Program and who will have the authority to make decisions and provide approvals to Orange as necessary for Orange to provide the Deliverables in accordance with the Delivery Schedule.
- (b) Customer will provide Orange with timely access to Customer personnel, equipment, and networks as reasonably required for Orange to provide the Deliverables in accordance with the Delivery Schedule.
- (c) Customer is responsible for the actual content of any of its data files, the selection, and implementation of controls on access and use of those data files, and the security of its stored data.
- (d) Customer will obtain and provide all Required Consent necessary for Orange to perform the Professional Services and provide the Deliverables. Orange will have no obligation to perform the Professional Services if Customer fails to promptly obtain and provide any Required Consent.
- (e) Customer will not withhold or conceal from, or misrepresent to, Orange any information that is material to the performance of the Professional Services and provision of the Deliverables.
- (f) Customer will not provide to Orange any information, documentation or software that infringes any third party Intellectual Property Right.

- (g) Customer will comply with any Intellectual Property Right or license concerning the use, distribution, duplication, or transfer of any Deliverables.
- (h) Notwithstanding anything to the contrary contained in the Agreement, Clause 6.3 (Limitations of Liability) and Clause 6.4 (Exclusion of Consequential and Indirect Damages) of the General Conditions will not apply to any claim arising out of or relating to subsections (d), (e), (f), or (g) above.

1.4 Change Control Process

- (a) Except as otherwise agreed by the Parties in the relevant SOW, either Party may initiate a Change Request by completing the Change Request Form with sufficient detail to enable the other Party to evaluate it. The receiving Party will acknowledge receipt of the Change Request to the other Party.
- (b) If Customer initiates the Change Request, then Orange will: (i) include in the Change Request Form received from Customer Orange's analysis of the Change Request, including the impact to the terms of the SOW, (e.g. the Assumptions, Charges, Expenses, Deliverables, etc.), and (ii) return the form to Customer. If Orange initiates the request, then Orange will complete the Change Request Form, including its analysis of the Change Request, before submitting it to Customer for review.
- (c) Customer will: (i) evaluate Orange's analysis and (ii) sign and return the Change Request Form to Orange if it wants to proceed with the Change Request. If Customer: (1) fails to provide the signed Change Request Form to Orange within the timeframe specified on the Change Request Form (or within 14 days following receipt of the Change Request Form from Orange if no timeframe is specified), or, (2) notifies Orange in writing not to proceed, then the Change Request shall be deemed withdrawn, and Orange shall take no further action in respect of it.
- (d) If Customer notifies Orange not to proceed with a Change Request, or a Change Request is deemed withdrawn because Customer fails to return the signed Change Request Form within the applicable timeframe, then Orange may charge Customer on a time and materials basis at the Hourly Labor Rate for Orange's analysis associated with that Change Request.
- (e) Upon execution of the Change Request Form by both Parties, the provisions of the applicable SOW affected by the Change Request shall be deemed automatically amended to incorporate the terms of the Change Request Form. If the Parties agree that a separate amendment is required to implement the terms of the Change Request, then Orange will prepare the amendment and the related Change Request will not become effective until both Parties have duly executed the amendment.
- (f) If Customer fails to comply with the Customer Responsibilities, Orange may deem that failure a Change Request made and accepted by Customer.

1.5 Invoices, Payment and Taxes

- (a) Orange will invoice Customer as specified in the SOW.
- (b) Except as stated otherwise in a SOW, all Charges for Professional Services exclude Expenses, and Orange will invoice Customer for Expenses in addition to the Charges.
- (c) Except as agreed by the Parties in a SOW but notwithstanding anything to the contrary contained in the Agreement, upon any early termination of a SOW, Customer will pay Orange for all work performed and for all costs, including Expenses and third party charges, incurred up to and including the date of termination.

1.6 CPE

If the Professional Services provided to Customer include CPE, then the following terms and conditions apply.

- (a) CPE will remain the sole and exclusive property of Orange or its suppliers, and no User will obtain any property rights or interest in CPE. Customer will not sell, assign, sub-let, pledge or part with possession or control of CPE or any interest therein, and Customer will keep CPE free from distress, liens, or claims of lien.
- (b) The Parties will agree to the dates for the installation and connection of CPE, and Customer will provide all necessary assistance to enable Orange to complete the installation, connection, and disconnection of CPE.
- (c) Customer will not interconnect or allow the connection of CPE to any other equipment, network, or service without Orange's prior written approval. Any breach of this Clause 1.6(c) is a material breach of the Agreement.
- (d) Customer will not change, remove, or obscure any labels, plates, insignia, lettering, or other markings that Orange or the manufacturer has placed on CPE. Customer will not modify or move CPE or allow anyone other than Orange to modify or move CPE without Orange's express written permission.
- (e) Customer will maintain proper environmental conditions (e.g. air conditioning, ventilation, electrical power supply, etc.), as specified by Orange or CPE manufacturers.
- (f) Customer will provide a secure and safe environment for CPE with adequate access to data communications circuits and a back-up power supply, including protecting CPE from tampering and any usage outside of the provision of the applicable Professional Service.
- (g) Prior to commencement of installation of any CPE, Customer will advise Orange of potential health hazards to Orange personnel providing Professional Services at the relevant Location, including any hidden power, gas or water lines, and the existence of any material constituting a health risk (e.g. asbestos).
- (h) Upon termination or expiration of the relevant Order, Customer will surrender possession of CPE to Orange in good order, repair, and condition, reasonable wear and tear excepted.

- (i) Orange will maintain CPE in good working order for the Service Term. If a lapse in the Professional Service is caused by a failure in CPE, then Orange will repair the fault following notification of the failure by Customer or detection of the failure by Orange, whichever occurs first. Orange may be required to dispatch a field engineer to the Location to repair CPE, and Customer will promptly provide access to the Location where CPE is installed.
- (j) Orange may charge Customer for visits to a Location or repairs to CPE that are required due to: (i) damage to CPE not caused by Orange; (ii) repairs carried out by non-Orange personnel that have not been approved by Orange; (iii) modifications to CPE that have not been approved by Orange or have been carried out by personnel not approved by Orange; (iv) improper treatment of CPE by Customer; (v) failure by Customer to meet Orange's or CPE's manufacturer's specifications on environmental conditions; or (vi) User's negligence or intentional misconduct.
- (k) Customer will be liable for: (i) any loss or damage to CPE beyond reasonable wear and tear and (ii) all costs (including cost of labor and material) incurred by Orange to repair or replace lost or damaged CPE; provided that Customer will not be liable for CPE loss or damage caused by, or the repair or replacement of CPE that is necessary due to, the fault of Orange, Orange's subcontractors or agents. If CPE is damaged or destroyed by any User, Customer will notify Orange within 2 days of such damage.

1.7 Deliverables and License Rights

- (a) All Deliverables and other advice provided by Orange will constitute Confidential Information.
- (b) Unless otherwise agreed to in writing, Deliverables will become Customer's property upon full payment, provided that Orange will retain copies of the Deliverables for its quality assurance purposes only.
- (c) Customer agrees that it has no rights, title or interest in the products, software, internal systems and methodologies, specifications, documentation (other than that provided to Customer as a Deliverable), materials and consulting methods that are proprietary to Orange or a third party or that may be used by Orange in the provision of the Professional Services or that Orange may use or produce in its creation and delivery of the Deliverables that are not part of the Deliverables.
- (d) Orange will be free to use all concepts, techniques, research and know-how employed or developed by Orange in the provision of the Deliverables. In any event, Orange will continue to be free to perform similar services for its other clients using general knowledge, skills and experience, and all pre-existing methodologies and techniques developed by Orange prior to and during the Service Term.
- (e) Deliverables may require the provision by either Party of certain software, specifications, documentation, or other materials that are proprietary to it or to a third party. The relevant Party shall grant to the other Party, for the duration of the applicable Service Term, royalty-free, non-exclusive, and non-transferable licenses to use such proprietary materials strictly for the purposes of the Professional Services. The licensed Party agrees not to produce, copy (except for the purpose of retaining a back-up copy), alter, modify, or add to the whole or any part of the licensing Party's owned or licensed software, nor to attempt or to allow a third party to attempt to reverse engineer, translate or convert the licensing Party's -owned or licensed software from machine readable to human readable form, except as permitted by applicable law.

1.8 Warranty and Warranty Disclaimer

Orange will exercise due skill and care in the performance of the Professional Services in accordance with applicable professional standards. Orange will re-perform or correct any Deliverable that is not in compliance with this undertaking in accordance with the Agreement and without further liability for that non-compliance, if Customer notifies Orange of the non-compliance within 30 days after the Deliverable is performed or provided. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT, ORANGE DOES NOT WARRANT, NOR WILL ORANGE BE RESPONSIBLE FOR, THE PERFORMANCE OF ANY THIRD PARTY BRANDED PRODUCTS OR SERVICES USED IN THE CREATION OF OR PROVIDED AS PART OF THE DELIVERABLE. In the event Orange is asked to re-perform any work and it is determined that Orange has already met its obligations under this Clause 1.8, Customer will pay Orange on a time and materials basis at the applicable Hourly Labor Rate for time spent on that additional work.

1.9 Customer Indemnity

- (a) Customer agrees to indemnify and hold harmless Orange and its officers, directors, employees, agents, successors and permitted assigns from and against any and all Losses arising out of or relating to:
 - (i) information that is withheld or concealed from Orange, or misrepresented to Orange, by the directors, employees or agents of Customer that is material to the performance of the Services and provision of the Deliverables; and
 - (ii) any claim by a third party that information, documentation, or software provided to Orange by Customer infringed upon the proprietary rights of such third party; or
 - (iii) any violation or failure to comply with any copyright, license, or other third party proprietary right concerning the use, distribution, duplication, or transfer of any Deliverables.
- (b) The foregoing indemnity shall not apply to the extent such Losses resulted primarily from the knowing disregard by Orange of matters of which Orange had actual knowledge, or from any bad faith or willful misconduct by Orange, as finally determined by a court of law.

- (c) Orange must notify Customer promptly that a claim has been made and must provide reasonable cooperation (at Customer's expense) in defending or settling the claim. Customer will not be required to indemnify Orange under any settlement made without its consent. This Clause 1.9 will survive termination of the Agreement or any other agreement between Orange and Customer for the Professional Services.

1.10 Personnel

Orange may re-assign its employees providing the Professional Services under a SOW. If Orange does re-assign personnel, Orange shall use reasonable efforts to effect an orderly transition, including cooperation between the replaced and the newly-assigned personnel or, where appropriate, an overlap in the assignment of those personnel.

1.11 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 cross-references in these Specific Conditions do not accurately refer to provisions that address the indicated subject matter in the Agreement, the cross-references in these Service Conditions will be deemed to instead refer to the most closely corresponding provision(s) in the Agreement.

END OF SPECIFIC CONDITIONS FOR ORANGE PROFESSIONAL SERVICES