



1 SERVICE DESCRIPTION FOR ENTERPRISE APPLICATION MANAGEMENT - RIVERBED® SERVICES

1.1 Definitions

All capitalized terms used but not defined herein will have the meanings given to such terms elsewhere in the Agreement. In the event of any conflict between the definitions provided in this Service Description and those provided elsewhere in the Agreement, the definitions in this Service Description will control for purposes of this Service Description.

"Customer Network" means Customer's telecommunications network, including all Riverbed Equipment, monitored by the EAM Riverbed Services, such as routers, switches, and servers.

"Deliverables" means all items and information, whether tangible or intangible and in whatever form, including all documentation, presentations, reports, inventions, improvements or discoveries, whether or not copyrightable or patentable, that are written, created, conceived, made or discovered by Orange in connection with the Consulting Services.

"Documentation" means user guides, education materials, product descriptions and specifications, technical manuals, and other information relating to the Products, as provided by the Vendor.

"EAM Riverbed Services" means the Orange Enterprise Application Management - Riverbed Services described in this Service Description.

"Riverbed Equipment" means the Riverbed Steelhead® or other appliance or hardware that provides streamlining and network optimization functionality and for which Orange will provide the EAM Riverbed Services.

"Installation Date" means the date on which the installation of the Riverbed Equipment at the Location is completed.

"Hardware" means the Riverbed Equipment hardware provided by Orange pursuant to this Service Description, including any hardware purchased by Orange from a third party.

"License" means the authorization required by a Software licensor for Customer's or User's use of the Software.

"Project" means the tasks, performance, services, and Deliverables to be provided by Orange in connection with the Consulting Services.

1.2 EAM Riverbed Service Overview

Orange will provide the EAM Riverbed Services for the Riverbed Equipment, and Customer will purchase the Riverbed Equipment from Orange or Orange will provide the Riverbed Equipment to Customer as CPE, as mutually agreed upon by the Parties in writing. Depending on the EAM Riverbed Services to be provided to Customer, Orange may require that the Riverbed Equipment include a Central Management Console (CMC). If Customer purchases the Riverbed Equipment from Orange, then Customer must also purchase from Orange the Maintenance Services (as described in a separate Service Description to be attached to this Agreement) for such Riverbed Equipment.

Customer will receive either the EAM Riverbed Assessment or EAM Riverbed Managed Services, as reflected in Customer's Order. EAM Riverbed Assessment includes Consulting and Deployment Services, and Customer may choose to order the Project Management Services. EAM Riverbed Managed includes Consulting, Deployment and Project Management Services as well as the Service Select – Service Delivery and Service Select – Service Support Services.

To order the EAM Riverbed Services, Customer must receive the Orange IP VPN Service, as described in a separate Service Description attached to this Agreement.

1.3 EAM Riverbed Assessment

EAM Riverbed Assessment includes the Consulting and Deployment Services described herein. Customer also may elect to receive the Project Management Services.

1.3.1 Consulting Services

The Parties will mutually agree on and execute a statement or scope of work setting forth the scope and description of the Project (e.g. where Orange will install the Riverbed Equipment on the Customer Network, the applications to be monitored by the Riverbed Equipment, the type of recommendations the Orange consultant will provide based on the data collected from the Riverbed Equipment, etc.) and the charges applicable thereto; the statement or scope of work will be deemed incorporated herein by reference. As part of the Consulting Services, the Orange consultant will provide Customer the following Deliverables:

- (a) High Level and Low Level Design documents, identifying the Customer Network and topology to be examined by the Riverbed Equipment;

- (b) Configuration Preparation and Configuration Deployment documents, identifying how the Riverbed Equipment will be configured and what technical features will be implemented on the Riverbed Equipment;
- (c) Application Reporting, identifying the first set of statistics and reports produced by the Riverbed Equipment; and
- (d) Consulting Recommendations for optimization of the Customer Network and Customer's infrastructure.

1.3.1.1 Customer Responsibilities

Customer will ensure that Orange has full access to all necessary Customer personnel, including directors and senior managers, as required. Orange also will have full access to data and information as it may reasonably require. Customer will keep Orange informed of all material developments or proposals in relation to Customer's business or operations that may have an effect on the Consulting Services. Customer understands that the Orange performance is dependent upon the prompt completion or satisfaction of Customer's responsibilities, as set forth in the statement or scope of work. Additionally, from time to time, Customer's prompt decisions and approvals will be required, and Orange will be entitled to rely on all decisions and approvals provided in connection with the Consulting Services.

1.3.1.2 Confidential Information

All Deliverables and other advice provided by Orange will constitute Confidential Information.

1.3.1.3 Work Product

Orange grants to Customer a perpetual, royalty free, non-transferable license to the Deliverables of the Project. However, Orange will retain copies of the Deliverables, and Orange will be free to use all concepts, techniques, research and know-how employed or developed by Orange in the delivery of the Project. Orange will be free to perform similar services for its other customers using general knowledge, skills and experience, as well as all pre-existing methodologies and techniques developed by Orange prior to and during the Project.

Customer acknowledges that in the performance of the Project, Orange may use Orange Technology, products, materials or methodologies proprietary to Orange or a third party, or Orange may produce proprietary materials or methodologies that are not part of the Deliverables provided to Customer. Customer agrees that it will not have or obtain any rights in such proprietary products, materials and methodologies, except as otherwise agreed upon in the statement or scope of work.

1.3.1.4 Fees and Expenses

Orange will invoice Customer at the end of the Project or, if the term of the Project is for more than a month, then in monthly installments. If Customer fails to pay an invoice, Orange may suspend the Consulting Services until payment in full is received. All traveling, subsistence, accommodation and any other expenses incurred by Orange while engaged on the Project, whether at Customer's premises or elsewhere, will be invoiced to and paid by Customer.

If, during the course of the Project, Orange requires a third party specialist who has not been previously identified or documented, Customer will provide written agreement for the retention and charges of such third party prior to the Orange engagement thereof.

1.3.1.5 Limitation of Liability

Orange will not be responsible or liable for any Losses whatsoever and howsoever caused, incurred, sustained or arising if information relevant to the Consulting Services is withheld or concealed from, or misrepresented to, Orange, except and only to the extent that such Losses were incurred due to the knowing disregard by Orange of matters of which Orange had actual knowledge or from willful misconduct by Orange.

1.3.1.6 Indemnification

Customer agrees to defend, indemnify, and hold harmless Orange and its officers, directors, employees, agents, successors and assigns from and against any and all Losses arising out of or relating to:

- (a) Information relevant to the performance of the Consulting Services Customer withholds or conceals from, or misrepresents to, Orange;
- (b) Any claim by a third party that information, documentation, or software provided to Orange by Customer infringes upon the proprietary rights of such third party; or
- (c) 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 Deliverable;

Except and only to the extent to have resulted primarily from knowing disregard by Orange of matters of which Orange had actual knowledge or from willful misconduct by Orange.

1.3.1.7 Termination

Orange may terminate the Consulting Services at any time upon written notice to Customer if Customer does not perform its responsibilities, as set forth in the statement or scope of work, or if the assumptions upon which the Consulting Services are based are, in the opinion of Orange, inaccurate or misleading. If Orange so terminates the Consulting Services or otherwise terminates the Consulting Services as permitted under the Agreement, or if Customer terminates the Consulting Services for any reason other than as provided in the Agreement for a material breach committed by Orange, then Customer agrees to pay to Orange any accrued but unpaid Charges as well as an amount (which Customer agrees is reasonable) equal to the aggregate of the Charges applicable for the remainder of the Consulting Services per the relevant statement or scope of work as of the date of termination.

1.3.2 Deployment

Orange will provide to Customer any Hardware ordered by Customer as well as Site Surveys, and Orange will stage and install the Riverbed Equipment, as described herein.

1.3.2.1 Site Surveys

Orange will perform a site survey to determine if the Location meets the necessary requirements for the proper installation and functioning of the Riverbed Equipment to be installed at such Location ("**Site Survey**"). Customer will issue all Orders for Standard Site Surveys at least 5 Business Days in advance and Orders for Premier Site Surveys at least 2 Business Days in advance.

If a Site Survey requires more than 4 hours to complete (including travel time of the field engineer), then Customer will pay the additional Charges for such Site Survey at the relevant Hourly Labor Rate. Orange will commence Site Surveys during Business Hours, but may be required to complete a Site Survey outside of Business Hours, which time will be chargeable at the relevant Hourly Labor Rate. Upon Customer's request, Orange may perform Site Surveys outside of Business Hours, and such Site Surveys will be provided at the relevant Hourly Labor Rate. A Customer representative must accompany the Orange field engineer at all times during the Site Survey.

Customer will provide all information reasonably requested by Orange to enable Orange to perform the Site Survey. If the results of a Site Survey indicate that further preparation to the Location is needed, Customer will ensure that all such preparations are completed prior to Orange providing any further services. If Customer fails to complete all required preparations to the Location, Orange will be relieved of its responsibilities to provide any Deployment Services for such Riverbed Equipment at that Location until it has been properly and fully prepared. In addition, Customer will pay the Hourly Labor Rate, plus the cost of materials, for additional on-site visits resulting from non-performance of Customer's obligations. If Customer requests Orange to arrange and complete the necessary preparations to the Location, Orange will provide a price quote to Customer for such services, and Orange will perform the necessary preparations subject to Customer's approval and payment of the additional charges set forth in the Orange price quote.

1.3.2.2 International Procurement for Hardware Purchased by and Software Licensed to Customer**1.3.2.2.1 Software Licensing**

- (a) **Procurement of Licenses.** Customer authorizes Orange to act on Customer's behalf to obtain in Customer's name from the Software licensors the required number of personal, nontransferable, and nonexclusive Licenses to use, in object code form, the Software and related Documentation furnished to Customer under this Service Description. These Licenses will be limited to use of the Software with the Hardware for which the Software was obtained or, on a temporary basis, on back-up Hardware when the original Hardware is inoperable. Use of Software on multiple processors is prohibited unless otherwise agreed to in writing by the Software licensor.
- (b) **Compliance with License Terms.** Customer will comply with the terms and conditions of the Licenses. If the terms of this Agreement as it relates to the Software conflict with the Licenses, then the terms of the Licenses will control. Customer acknowledges that the Software is copyrighted by the Software licensors, and Customer agrees to comply with the Orange pass-through rights under all relevant copyright laws.
- (c) **License Documentation.** Customer agrees to execute all documents, instruments, and agreements, including the Licenses that may be required by the Software licensor. If Customer fails or refuses to execute such documents upon delivery, the Software will be promptly returned to Orange in its original condition for a refund, as reasonably determined by Orange.
- (d) **Software Disclaimer.** Orange will not 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.

1.3.2.2.2 Logistics

- (a) **Shipment and Delivery.** Orange will instruct the Vendor to ship all Products contained in an Order in one shipment. Orange will notify Customer if a partial shipment is necessary.

- (b) **Importation by Customer to Locations.** Products will be shipped from the 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.
- (c) **Selection of Carrier.** Orange will arrange for and will prepay all freight charges, including transportation, insurance (if confirmed in an Order) and handling charges, duties and all brokerage fees for delivery of the Products to the Locations, which will be reinvoiced to Customer at cost to Orange plus a 10% percent handling fee or at the rate 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.
- (d) **Taxes.** For international shipments, the Products will be shipped Delivery Duty Unpaid, unless otherwise agreed to by the Parties.

1.3.2.2.3 Acceptance of Products

Customer will notify Orange in writing within 5 days of the delivery of the Products to the Location if the Products do not conform to the corresponding Order or if the Products as delivered by the carrier are damaged. If Customer does not provide the notice within such time, the Products will be deemed accepted as of the date on which the Products were delivered to the Location.

1.3.2.2.4 Cancellation

If Customer cancels an Order for the purchase of Riverbed Equipment, then Customer will pay any and all charges for which Orange is or becomes liable in connection with such cancellation (including any cancellation or re-stocking charges for which Orange may be liable to the Vendor, shipping costs, etc.), plus an administration fee of 10% to Orange. If the Riverbed Equipment has been delivered to Orange at the time of Customer's cancellation, Customer will promptly advise Orange if the Riverbed Equipment should be redeployed for installation at a different Location or if the Riverbed Equipment should be returned to the Vendor.

1.3.2.2.5 Staging

Orange will stage the Riverbed Equipment, which may include hardware assembly, software loading, configuration, and testing of the Riverbed Equipment in accordance with each specific Location's configuration. When required, Customer will provide a "gold disk", containing a complete image of all software applications and data, including configuration tables, needed to bring the Riverbed Equipment into service. If such information is not available on a gold disk, then any additional work required to make the Riverbed Equipment operational (e.g. the manual building of routing tables for a router) will be provided at the relevant Hourly Labor Rate, plus the cost of materials.

Orange will action the Riverbed Equipment into staging and will notify shipping/export personnel of the shipping schedule. Upon notification, warehouse personnel will physically move the Riverbed Equipment into the staging facility, and the shipping clerks will initiate the shipping or exportation paperwork. If Orange determines a staging to be complex, Orange will notify Customer of, and the Parties will agree in writing on, any additional services that may be required to stage the Riverbed Equipment and the charges applicable thereto.

1.3.2.2.6 Installation

- (a) **Orange Responsibilities.** Orange will:
 - (i) Provide its field engineers with appropriate installation documentation for each Riverbed Equipment installation, including testing procedures and an installation checklist for the Riverbed Equipment (the "**Installation Documentation**");
 - (ii) Confirm that the Location has been properly prepared and that the Riverbed Equipment has been delivered to the Location;
 - (iii) Determine if wiring is in place between the cabinet for the Riverbed Equipment and the demarcation prior to beginning the installation;
 - (iv) Unpack, inventory, and install the Riverbed Equipment;
 - (v) Interconnect the Riverbed Equipment to the demarcation, test the Riverbed Equipment and provide Customer with the test results, and initiate turn-up using the Installation Documentation;
 - (vi) If Orange has procured, staged, and shipped the Riverbed Equipment, provide replacement parts/units to remedy OBF (out-of-box-failure) situations or any Riverbed Equipment found inoperable during installation ("**Defective Equipment**"). If the Defective Equipment cannot be repaired or Spares are not available, Orange will arrange for the repair or replacement of the Defective Equipment at no charge. Upon completion of repair or replacement of Defective Equipment, Orange will complete the installation; and
 - (vii) Notify Customer promptly if any problems occur during installation that adversely affect the installation process.

Installations will be either Standard or Premier, as reflected in the applicable Order or otherwise agreed upon by the Parties. For Standard Installations, a field engineer will commence on-site Installation Services within 5 Business Days of Orange receiving and accepting a signed contract or Order from Customer requesting the installation service; provided that:

- (viii) the Riverbed Equipment has been delivered to the Location and Orange has been notified of such, or
- (ix) staging has been completed, as applicable.

For Premier Installations, a field engineer will commence an on-site installation within 2 Business Days of Orange receiving and accepting a signed contract or Order from Customer requesting the installation service; provided that:

- (x) the Riverbed Equipment has been delivered to the Location and Orange has been notified of such, or
- (xi) staging has been completed, as applicable. Also, the Riverbed Equipment to be installed and all information needed for such installation must be made readily available by Customer to Orange.

Orange will not be responsible for any failure to complete an installation within 5 Business Days for Standard Installations and within 2 Business Days for Premier Installations if such failure is due to any cause beyond reasonable control by Orange, including the inability by Orange to gain access to the Location as scheduled, failure by the local telecommunications authority to complete installation of data circuits, or Customer's or User's failure to prepare the Location as required.

(b) **Customer Responsibilities**

- (i) Customer will submit Orders for Standard Installation Services at least 5 Business Days prior to the date that the Installation Services are required and for Premier Installation Services at least 2 Business Days prior to the date that the Installation Services are required;
- (ii) Customer will notify Orange if any User timeframes for installation and support have changed from the information contained in the Order; and
- (iii) If the User cancels an installation Order after the Riverbed Equipment has been delivered to Orange, Customer will promptly advise Orange of the redeployment of the Riverbed Equipment for installation at a different Location or if the Riverbed Equipment should otherwise be returned to the Vendor. If the Riverbed Equipment is to be returned to the Vendor, then Customer will be deemed to have cancelled the Order for Riverbed Equipment, and Clause 1.3.2.2.4 (Cancellation) of this Service Description will apply.
- (iv) Customer will pay the Hourly Labor Rate, plus the cost of materials, for any additional on-site visits resulting from non-performance of Customer's obligations.

- (c) **Installation Failures:** Successful installation of the Riverbed Equipment assumes that Customer's network to which the Riverbed Equipment is connected has been correctly installed and is operational. If Orange is unable to complete installation of the Riverbed Equipment due to a network failure, Orange will, upon Customer's request, work with Customer to diagnose and resolve the problem; provided that Orange may charge for such at the relevant Hourly Labor Rate, plus the cost of materials, if any Customer Network elements are managed by a third party.

1.3.3 **Project Management Services**

If Project Management Services are ordered by Customer, Orange will provide a Project Manager to work with Customer to define, plan, guide, and monitor the Deployment Services provided as part of the EAM Riverbed Services. Customer will identify personnel who have authority to commit resources to the Deployment Service project(s) within Customer's organization.

The Project Manager will be the Orange single point of contact for such Deployment Services and will assume the following responsibilities:

- (a) Define the roles and responsibilities of all involved parties;
- (b) Define, develop and agree to the Deployment Service parameters and associated documentation;
- (c) Ensure that procedures are defined;
- (d) Verify that milestones are met by the Parties;
- (e) Coordinate and conduct regular meetings with Customer to review service and account activity;
- (f) Provide problem management and escalation procedures; and
- (g) Schedule, track and report on Orders.

1.4 EAM Riverbed Managed Service

With EAM Riverbed Managed, Customer will receive the Consulting, Deployment and Project Management Services described above as part of EAM Riverbed Assessment, as well as the following additional Deliverables:

- (a) Management Service Installation Guidelines;
- (b) Management Software Installation and Configuration Details;
- (c) Handover to Operations Document; and
- (d) Baseline Tuning Document.

Customer also will receive the Service Select – Service Delivery and Service Select – Service Support Services (as described in separate Service Descriptions attached to this Agreement) as part of the EAM Riverbed Services; provided that no Financial Management or Release Management otherwise included in the Service Select Services will be provided for the EAM Riverbed Services. If Customer receives the Standard option of the Service Select Services, then Orange will provide the Service Performance Analysis Reporting and any other reporting mutually agreed upon by the Parties in writing on a quarterly basis. If Customer receives the Extended option of the Service Select Services, then Orange will provide the Service Performance Analysis Reporting and any other reporting mutually agreed upon by the Parties in writing on a monthly basis, and the VPN Owner will be responsible for the Changes as part of the Change Management described in the Service Description for Service Select – Service Support.

1.5 Charges

Charges for the EAM Riverbed Services are subject to adjustment in the sole discretion of Orange on January 1 of each year to reflect or account for any changes in the applicable pricing index(es); provided that the charges may not increase by more than 10% from year to year.

END OF SERVICE DESCRIPTION FOR ENTERPRISE APPLICATION MANAGEMENT - RIVERBED® SERVICES