Business Services

PUBLICATION 1 TRADE CONTROLS, SUPPLIES AND CUSTOMS FORMALITIES CLAUSES

1.1 **Definitions.** Solely with respect to these Trade Controls, Supplies and Customs Formalities Clauses ("**Trade Control Clauses**"), the following capitalized words and phrases will have the meaning given below in this Clause 1.1 (*Definitions*). Capitalized terms used but not defined herein will have the meanings set forth in the Agreement. In the event of any conflict between the definitions set forth below and any other capitalized terms used herein, the definitions set forth below shall control for purposes of these Trade Control Clauses.

"**Agreement**" means Customer's agreement with Orange.

"**CPE**" means the equipment (including hardware, cables, connectors, and related software) that is supplied by Orange as part of the Services and managed by Orange for use with such Services at a Location. CPE is never owned by Customer.

"**Customer Equipment**" means any equipment (including hardware, cables, connectors, and related software) that is supplied and sold by Orange for use with a Service at a Location. Customer Equipment is always owned by Customer.

"**Delivery Location**" means any Customer's or End User's place or site where an Orange Deliverable or Service is delivered by Orange.

"**End User**" means the ultimate recipient and end user of an Orange Deliverable or Service, being either Customer or a Customer Affiliate. Subject to the terms of the Agreement, the End User may include Customer's or its Affiliate's third party suppliers and contractors.

"**Equipment**" means any CPE or Customer Equipment.

"**Importer of Record**" or "**IOR**" means the customs term for the entity named as importer on an import customs declaration and responsible for (a) ensuring the imported Customer Equipment complies with local laws and regulations, (b) filing a completed duty entry and associated documents, and, (c) paying the assessed import duties and other taxes on such Customer Equipment.

"**Incoterms**" means the rules for the use of domestic and international trade terms version 2010 "**Incoterms® 2010**" as published by the International Chamber of Commerce (ICC) on January 1, 2011.

"**Orange**" means the Orange Business Services entity, along with its applicable providing Affiliates, that is a party to the Agreement with Customer.

"**Orange Deliverable**" means, individually or collectively, as appropriate, any Equipment, hardware, software, corresponding documentation, technology and data that Orange sells or leases to Customer (or in the case of software, sells a license right to use such Software) under the Agreement.

"**Permit**" means any declaration, approval, certification, authorization or license required prior to the export, import, supply, use, re-export, or transfer of an Orange Deliverable or Service.

"**Trade Control Rule**" means any customs, export, re-export, import, or transfer formality, control, restriction, prohibition or Permit requirement under applicable laws and regulations.

1.2 **Trade Controls.** The Parties acknowledge and agree that export, import, supply, use, re-export or transfer of Orange Deliverables or Services are or may be subject to Trade Control Rules, and in particular to prior Permits from the relevant authorities. Each Party agrees to comply with all applicable Trade Control Rules

Customer will provide Orange with the information and documentation related to the end use, countries of destination, and End Users of the Orange Deliverables and Services required for conformity with applicable Trade Control Rules. Customer also will ensure that End Users of Orange Deliverables and Services provide Orange with all required information, certificates, reports, and undertakings.

When Customer is responsible for obtaining a Permit from the relevant authorities (including a Permit for import, use, re-export or transfer of an Orange Deliverables or Service), Customer will obtain and maintain such Permit in its own name and at its own expense. The provision and maintenance by Customer of all required Permits is a condition precedent to the supply by Orange of the corresponding Orange Deliverables or Services.

Customer will ensure that the use and disposal of the Orange Deliverables and Services are in accordance with the conditions of the applicable End User statements or the existing conditions under applicable Permits and Trade Control Rules.

Customer agrees not to export, re-export, import, or transfer, directly or indirectly, any Orange Deliverable or Service to any country or third party to which such export, re-export, import, or transfer is controlled, restricted or prohibited without first obtaining the Permits required by the Trade Control Rules. Customer agrees to comply with any applicable reporting requirements of the relevant authorities.

Orange may suspend or terminate the supply of any Orange Deliverable or Service upon reasonable notice and without liability to Customer if, in Orange's reasonable judgment, Customer's or an End User's use, re-export or transfer of the Orange Deliverable or Service violates any applicable Trade Control Rules or the terms and conditions of this Clause 1.2 (*Trade Controls*).

The obligations of this Clause 1.2 (*Trade Controls*) shall survive the expiration or termination of the Term of the Agreement.

Orange and Orange Business Services are trading names of the Orange Group and are trademarks of Orange Brand Services Limited.

1.3 Supplies and Customs Formalities

In the absence of any written agreement to the contrary, Orange does not warrant that the Orange Deliverables will qualify for any preferential tariff, free trade agreement, or special program which may be in force between the exporting and importing countries. Customer warrants that all information provided to Orange is true and correct for purposes of customs formalities.

1.3.1 **CPE**

For CPE, Orange will be responsible for making CPE available in the Delivery Locations agreed with Customer.

For Delivery Locations where Orange is not capable of making any CPE available to Customer, an alternative solution (e.g. equipment resale) should be considered by both Parties. In such case, Customs formalities will be those described in Clause 1.3.2 (*Customer Equipment*) below.

1.3.2 **Customer Equipment**

1.3.2.1 **Domestic Supply.** Domestic supply covers the sale of Customer Equipment by an Orange local Affiliate with supply of such Customer Equipment in the same country where this Orange local Affiliate is incorporated.

This Orange local Affiliate will bill all applicable local taxes for such domestic supply.

1.3.2.2 **International Supply.** Orange will be responsible for shipping and exporting the Customer Equipment to the Delivery Locations according to Incoterms agreed between the Parties, as described in Clause 1.3.2.3 (*Incoterms*).

Customer will appoint the entity acting as IOR (either Customer, its local Affiliate, or the third-party consignee named by Customer in the importing country), and such entity will be responsible for performing the importation of the Customer Equipment in accordance with local Trade Control Rules. As importer of Customer Equipment, such IOR will be liable for all administrative and import customs formalities as required by the Trade Control Rules in the importing countries, including (a) paying all applicable import duties and taxes, and (b) obtaining any Permits required for import.

1.3.2.3 **Incoterms.** Unless otherwise agreed between the Parties and excluding domestic supply covered in Clause 1.3.2.1 (*Domestic Supply*); shipping and exporting to the Delivery Locations of Customer Equipment by Orange will be made under the Incoterm DAP named place designated by Customer in each Order.

The use of or reference to "Incoterms" or similar sales terms applicable to the shipment and export of Customer Equipment by Orange in any quote, Order, or other related document shall not modify the provisions of the Agreement relative to the transfer of risk of loss and title with respect to the subject Customer Equipment.

END OF TRADE CONTROLS, SUPPLIES AND CUSTOMS FORMALITIES CLAUSES

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