



SPECIFIC CONDITIONS FOR ORANGE FLEXIBLE COMPUTING GLOBAL SERVICE

1. DEFINITIONS. The following capitalized words and phrases will have the meanings given below in this Clause 1 (*Definitions*). All capitalized terms used but not defined in these specific conditions will have the meanings set out in the General Conditions.

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

"**Cloud Services**" means the Flexible Computing Global Service provided to Customer by 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 the Locations. For the avoidance of doubt, CPE is never owned by Customer.

"**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 on which the setup the Cloud Services by Orange is completed and that it is ready to be used by Customer.

"**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 Service, 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.

"**Solution**" means any Cloud Services solution 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.

2. ORANGE OBLIGATIONS.

2.1 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.

2.2 Acceptance. Orange will use reasonable efforts to have each Date of Acceptance occur no later than the Target Date. Orange will notify Customer of the successful completion of the setup of the Cloud Services ("**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 24 hours of receipt by Customer of the Service Commencement Notice (or such other period defined in the applicable Service Description). In such event, the above acceptance process will be repeated.

2.3 Scope of Orange Responsibility

2.3.1 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 Orange direct control. Orange does not guarantee the performance of any application or software, whether server or client.

Orange will make its resources reasonably available in terms of hardware, software, and personnel.

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

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 Services with its needs before entering into the Order(s) for the Cloud Services.

Customer acknowledges and agrees that Orange will not be responsible for the third party software editor's support or software development policies.

Orange reserves the right to update or replace any software with any other functionally equivalent software. Orange will take commercially reasonable steps to notify Customer of any change that may have a material impact on Customer's use of the Cloud Service.

2.3.2 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, any access restriction to, or interruption of the networks, 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) any breach of or violation of the Policy;
- (h) the incorrect programming or configuration of the hosted Customer application;
- (i) the incorrect configuration of network appliances (e.g. firewall) by Customer;
- (j) any damage caused by any technology, equipment or software which is not used by Orange for the provision of the Cloud Services or approved by Orange for use with the Cloud Service;
- (k) any act or omission of Customer or a user or a third party not under Orange control, including non-compliance with the Orange recommendations or the conditions of use of the Cloud Services;
- (l) any service interruption caused by scheduled maintenance.

3. CUSTOMER OBLIGATIONS

3.1 Acceptance. Customer will use all reasonable efforts to accept the Solution upon issuance of the Service Commencement Notice.

3.2 Use of the Cloud Services.

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.

3.2.2 Customer and Users will comply with the Orange Flexible Global Computing Terms & Conditions for Orange Customer Portal ("FCG Portal Terms") and the Policy, which may be updated from time to time, and shall confirm such compliance by accepting the FCG Portal Terms and Policy upon entry into the Customer portal.

3.2.3 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.

3.2.4 Customer will not engage in any load testing on shared infrastructure elements without the prior consent and coordination with Orange.

3.2.5 Customer will not engage in any intrusion testing or any other vulnerability testing without the prior consent of Orange.

3.2.6 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.

4. SECURITY. Customer undertakes to comply with all security rules and procedures implemented by Orange for accessing the Cloud Service.

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

6. MISUSE

6.1 Customer is solely responsible:

- (a) for the content of its website,
- (b) for all online applications services,
- (c) for any information transmitted, broadcast and/or collected and
- (d) 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 Service.

6.2 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; or
- (b) Orange is entitled to do in the applicable Service Description.

6.3 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. Notwithstanding anything to the contrary contained in the General Conditions, Clause 6.5 (*Waiver of Consequential and Indirect Damages*) and Clause 6.4 (*Limitations of Liability*) of the General Conditions will not apply to this Clause 3.4.3.

7. DATA PROTECTION

7.1 References below to "Data Controller", "Data Processor", "Processing", and "Personal Data" shall have the meanings as set out in the Data Protection Legislation.

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

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

- 7.4 As Data Controller, Customer undertakes and warrants that it will fulfill 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.
- 7.5 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.
- 7.6 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.

8. DISCONTINUITY

- 8.1 Notwithstanding anything to the contrary contained in the General Conditions, Orange reserves the right to change at any time to the features or technical conditions of a Cloud Service. In such case, Orange will notify Customer at least 15 days prior to the expected date of the change. If the change is substantial or adversely affects Customer, Customer will be entitled to terminate the affected Cloud Services without liability for either Party if Customer has given Orange ninety (90) days' prior written notice of its intent to terminate, citing the reasons for such termination, and Orange has failed to remedy the cited reasons for such intent to terminate within the ninety (90) day period. The termination will be effective on the date this change becomes effective.
- 8.2 Notwithstanding anything to the contrary contained in the General Conditions, Orange reserves the right to discontinue the provision of a Cloud Services 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 Orders will terminate at the date of termination of the Cloud Service. Notwithstanding anything to the contrary in the General Conditions, Customer will not be entitled to any damage or remedy for such termination. Orange will use reasonable endeavors to propose an alternative service if feasible.

9. ORDER TERM AND TERMINATION

- 9.1 **Order Term.** Notwithstanding anything to the contrary contained in the General Conditions, each Order will have an Order Term of 12 months following the Date of Acceptance of the Service, unless further specified in the Order, and upon expiration of the Order Term and only during the Term of this Agreement, the Order will automatically renew for successive 12-month periods (each an "**Extended Term**"), unless either Party notifies the other of its intent not to renew such Order at least 90 days prior to the end of the then-current Order Term or Extended Term, as applicable.
- 9.2 **Termination for Convenience.** Notwithstanding anything to the contrary contained in the General Conditions, Customer will be entitled to terminate an Order at any time for convenience upon 90 days written notice to Orange, subject to the payment of early termination fees of \$1,000 USD or the minimum FCG monthly charge based on the minimum configuration defined in the Charges Schedule (the "**Minimum FCG Monthly Charge**"), whichever is greater, for each month of the remaining period of the then current Order Term or Extended Term.
- 9.3 **Conditions of Termination.** Upon receipt of the notice of termination from Customer in accordance with Clause 9.2 above, Orange will acknowledge the termination by mail to Customer's main administrator. A follow up mail will be sent 28 days before the anticipated date of termination to notify the suspension of the Cloud Service with limited rights on the Customer Portal. A last mail will be sent 14 days later to notify the actual termination of the Cloud Service. Customer may cancel the termination or request a 14 days extension of the Cloud Service at any time prior to this last email, by contacting the Service Desk.

10. TERMINATION ASSISTANCE SERVICES

- 10.1 Upon expiration or termination of an Order (other than as a result of Customer's breach), Customer may request by written notice Orange to provide termination assistance services for the Cloud Service for a period not to exceed the end of the Minimum Notice Period, as set forth in Clause 13.2 (*Termination of Orders and Termination Liability*) of the General Conditions.
- 10.2 The standard termination assistance services will consist of:
- (a) the supply of technical information about the Cloud Service architecture, except any information considered by Orange as know-how owned by Orange; and
 - (b) the participation in meetings to determine and prepare for the migration of the Cloud Service, subject to a maximum of one (1) meeting per month.
- 10.3 If Customer wishes to receive additional termination assistance services from Orange, Orange will provide a quote for such additional termination assistance services, specifying the charges and conditions for such assistance and any necessary material and physical installations.
- 10.4 Customer will remain solely responsible for the replacement third party service provider.
- 10.5 Customer will supply all of technical, human and, if applicable, financial assistance required for the migration of the Cloud Service.
- 10.6 If Customer requests the assignment of any Software license at the end of the Cloud Service, such assignment will be subject to written approval from licensor of such Software, in such licensor's sole discretion.
11. **CHARGES.** All Charges for the Cloud Service will commence from the Date of Acceptance of the Cloud Service and will be charged until the day of its actual termination.

12. CPE.

- 12.1 The CPE will remain the sole and exclusive property of Orange or its suppliers, and no User will obtain any property rights or interest in the CPE.
- 12.2 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.
- 12.3 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.

- 12.4 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 the CPE or allow anyone other than Orange to modify or move the CPE without Orange's express written permission.
- 12.5 Customer will maintain proper environmental conditions (e.g., air conditioning, ventilation, electrical power supply, etc.), as specified by Orange or CPE manufacturers.
- 12.6 Customer will provide a secure and safe environment for the CPE with adequate access to data communications circuits and a back-up power supply, including protecting the CPE from tampering and any usage outside of the provision of the applicable Service.
- 12.7 Prior to commencement of installation of any CPE, Customer will advise Orange of potential health hazards to Orange personnel providing 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).
- 12.8 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.
- 12.9 Orange will maintain the CPE in good working order for the duration of the Service Term. If a lapse in the Service is caused by a failure in the 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 the CPE, and Customer will promptly provide access to the Location where the CPE is installed.
- 12.10 Orange may charge Customer the Hourly Labor Rate for time attributable to, and for Expenses and the costs of materials it incurs as a result of, visits to a Location or repairs to CPE that are required due to: (a) damage to the CPE not caused by Orange; (b) repairs carried out by non-Orange personnel that have not been approved by Orange; (c) modifications to the CPE that have not been approved by Orange or have been carried out by personnel not approved by Orange; (d) improper treatment of the CPE by Customer; (e) failure by Customer to meet Orange's or the CPE manufacturer's specifications on environmental conditions; or (f) User's negligence or intentional misconduct.
- 12.11 Customer will be liable for any loss or damage to the CPE beyond reasonable wear and tear and for all costs (including cost of labor and material), incurred by Orange to repair or replace the lost or damaged CPE, unless such CPE loss or damage was caused by, or the repair or replacement was necessary due to, the fault of Orange, its Subcontractors, or agents. If the CPE is damaged or destroyed by any User, Customer will notify Orange within 2 days of such damage.

END OF ERROR! NO TEXT OF SPECIFIED STYLE IN DOCUMENT.