

## PUBLICATION 1 SPECIFIC CONDITIONS FOR ORANGE CLOUD 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.

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

**"Content"** means hyperlinks, postings, data, or transmissions using the Cloud Services.

**"CPE"** means the equipment (including hardware, peripherals, and related software) supplied by Orange as part of the Cloud Services and managed by Orange for use with such Cloud Services at the Locations. 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 website, including the website 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"** means all Users' data hosted by Orange; including Personal Data (as defined in the Data Protection Clauses set forth in the Publication).

**"Date of Acceptance"** means the date on which Orange successfully completes its acceptance testing for the Solution.

**"Location"** or **"Site"** means the site or location at which the Solution will be installed.

**"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 Services, 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 the Cloud Services solution that Orange provides to Customer under the Agreement pursuant to one or several Orders, as described in the relevant Service Description.

**"Virtual Machine"** or **"VM"** means an operating system (OS) or application environment that is installed on any hardware or software to emulate dedicated hardware.

**"Target Date"** means the expected date for delivery of a Cloud Service to Customer as specified in the relevant Order.

### 1.2 Orange Obligations

1.2.1 **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 prior notice thereof to allow Customer to perform such modification or update, at Customer's cost. Customer is responsible for Cloud Service malfunction or loss of quality if Customer fails to perform the requested modification or update.

1.2.2 **Acceptance.** Unless otherwise provided in the Service Description, 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 Orange's acceptance tests ("**Service Commencement Notice**" or "**Ready for Service Notice**"). Customer will be deemed to have accepted each Solution on the date on which Orange issues a Service Commencement Notice for such Solution, unless Customer notifies Orange in writing of a material fault in the Solution within 10 days of Customer's receipt 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.

#### 1.2.3 Scope of Orange Responsibility

1.2.3.1 The provision of the Cloud Services is dependent upon factors outside of Orange's control (e.g. the uncertain nature of the Internet as well as third party hardware and software, etc.). Unless otherwise agreed by the Parties in writing, Orange is not responsible for the Cloud Services beyond the elements under its direct control. Orange does not guarantee the performance of any application or software, whether server or client.

Orange will take reasonable precautions to ensure the physical protection of the media on which the data and programs associated with the Cloud Services reside.

Orange cannot ensure uninterrupted service on any network or access element providing Internet connectivity, and therefore Orange is not responsible for any resulting downtime unless otherwise agreed by the Parties in writing.

Customer agrees that Orange will not be responsible for any third party software support or software development policies and that Orange may update or replace any software with any other functionally equivalent software.

1.2.3.2 Notwithstanding anything to the contrary otherwise contained in the Agreement, Orange will not be liable for:

- (a) any software virus, anomalies, or defaults that may affect the Cloud Services;
- (b) any defect or failures in Customer's equipment or applications;

- (c) the reliability of data transmission, access times, any access restriction to, or interruption of the networks, or servers connected to the Internet;
- (d) the nature or content of the Data transmitted, distributed, or collected, their use (whether or not fraudulent), alteration or update, as well as any file, audio, text, images, layout elements, or data accessible on the Customer website;
- (e) the incorrect programming or configuration of the hosted Customer application;
- (f) any damage caused by any technology, equipment, or software that is not used by Orange for the provision of the Cloud Services;
- (g) insufficient network capacity if contrary to Orange's recommendations; or
- (h) any act or omission of a third party not under Orange's control, including non-compliance with Orange's recommendations for the Cloud Services.

### **1.3 Customer Obligations**

#### **1.3.1 Use of the Cloud Services**

- 1.3.1.1 Customer is responsible for the protection of its computer systems against viruses.
- 1.3.1.2 Customer will ensure that all Users comply with all recommendations made and instructions provided by Orange for the Cloud Services.
- 1.3.1.3 Customer will ensure that Users do not engage in any load testing, intrusion testing, or any other vulnerability testing without Orange's prior written consent.
- 1.3.1.4 If applicable to the Cloud Services provided to Customer, Customer will include all necessary legal provisions on its website, including in relation to data protection.
- 1.3.1.5 Customer will not connect the Cloud Services to any equipment not expressly approved by Orange. Orange reserves the right to immediately disconnect or request the immediate disconnection of any such equipment.

#### **1.4 Use of Information/Internet**

Orange will have no responsibility (a) for the operation or management of the Internet or any public network (e.g. Public Wi-Fi), or (b) for the activities of Users or third parties connected to the Internet or any public network (e.g. Public Wi-Fi). Customer is solely responsible for its Users use of the information supplied by Orange (including statistics, reports, logs, etc.) as well as the use of Customer's LAN by Customer's employees, Users, and third parties. Customer is solely responsible for any damage caused by the Users' use of the Internet or any public network (e.g. Public Wi-Fi).

#### **1.5 Security**

Customer will comply with all security rules and procedures implemented by Orange for accessing the Cloud Services.

#### **1.6 Orange Technology**

All title to and ownership of Orange Technology will remain the property of Orange or its licensors. Orange, however, grants to Customer for the Service Term of the applicable Cloud Services 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 Services. Customer will ensure that Users will not directly or indirectly, attempt or allow a third party to attempt to reverse engineer, de-compile, disassemble, or otherwise derive source code, or other trade secrets included in the Orange Technology.

#### **1.7 Misuse**

- 1.7.1 In addition to the suspension and termination rights otherwise set forth in the Agreement (including a Service Description), 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 a User, person, or entity is using the Cloud Services in breach of the Policy, these Specific Conditions or the applicable Service Description; or (b) Customer fails to comply with Orange's recommendations for the Cloud Services.
- 1.7.2 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, Data, the Customer Technology, or viruses. Notwithstanding anything to the contrary otherwise contained in the Agreement, Clause 6.4 (Exclusion of Consequential and Indirect Damages) and Clause 6.3 (Limitations of Liability) of the General Conditions will not apply to this Clause 1.7.2.

#### **1.8 Invoicing**

Unless otherwise provided in the applicable Service Description, Orange will invoice Charges for each Solution from the Date of Acceptance of such Solution.

#### **1.9 Discontinuity**

- 1.9.1 Notwithstanding anything to the contrary otherwise contained in the Agreement, Orange reserves the right to change at any time the contractual or technical conditions of a Cloud Service. In such case, Orange will notify Customer at

least 30 days prior to the expected date of the change. If the change is materially adverse to Customer, Customer will be entitled to terminate the affected Cloud Services without liability for either Party other than for Charges incurred up to the date of termination. The termination will be effective on the date this change becomes effective.

- 1.9.2 Notwithstanding anything to the contrary otherwise contained in the Agreement, Orange reserves the right to discontinue the provision of a Cloud Service in its entirety without liability to Customer. In such case, Orange will notify Customer at least 6 months prior to the expected date of termination of the Cloud Service. All corresponding Orders will terminate at the date of termination of the Cloud Service. Orange will use reasonable efforts to propose an alternative service.

## 1.10 CPE

- 1.10.1 For the avoidance of doubt, this Clause 1.10 applies to the Solution.
- 1.10.2 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.
- 1.10.3 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.
- 1.10.4 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 1.10.4 is a material breach of the Agreement.
- 1.10.5 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 CPE without Orange's express written permission.
- 1.10.6 Customer will maintain proper environmental conditions (e.g. air conditioning, ventilation, electrical power supply, etc.), as specified by Orange or CPE manufacturers.
- 1.10.7 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 Service.
- 1.10.8 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).
- 1.10.9 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.
- 1.10.10 Orange will maintain CPE in good working order for the Service Term. If a lapse in the Cloud 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.
- 1.10.11 Orange may charge Customer for visits to a Location or repairs to CPE that are required due to: (a) damage to CPE not caused by Orange; (b) repairs carried out by non-Orange personnel that have not been approved by Orange; (c) modifications to CPE that have not been approved by Orange or have been carried out by personnel not approved by Orange; (d) improper treatment of 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.
- 1.10.12 Customer will be liable for: (a) any loss or damage to CPE beyond reasonable wear and tear and (b) 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.

## 1.11 Termination of Services

- 1.11.1 **Cancellation of Orders.** Prior to the commencement of the Service Term, Customer may cancel an Order upon written notice to Orange and reimbursement of all amounts incurred by Orange in connection with the preparation of the Service or cancellation (including any amounts payable to any third party suppliers for which Orange is liable).
- 1.11.2 **Termination of Orders and Termination Liability.** If Customer terminates an Order or Service for any reason during the applicable Service Term, then no less than 90 days prior to the date of termination ("**Minimum Notice Period**") Customer will submit to Orange a completed and accurate Orange disconnect form (or such other form mutually agreed upon by the Parties) to acknowledge and confirm the termination of the Service (unless Customer terminates pursuant to a remedy set forth in an SLA, then the period of prior notice will be as specified in the SLA). If Customer requests termination of the Order or Service earlier than the last day of the Minimum Notice Period, Orange may terminate the relevant Service on the Customer-requested date and invoice Customer for the remainder of the Minimum Notice Period.

Except as otherwise expressly provided in the General Conditions or in the Publication, if during the applicable Service Term (a) Customer terminates the Agreement other than pursuant to Clause 7.3.1 (Termination of Agreement) of the General Conditions or terminates an Order other than pursuant to Clause 7.3.2 (Termination of an Order) of the General Conditions, or (b) 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

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 will 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 third party charges that would have been applicable for the remaining unexpired portion of the Service Term as of the date of termination and any cancellation fees payable to third parties associated with the termination; (2) Customer will pay Orange \$1,500 for each Location with CPE and \$250 for each 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.

The termination liability set forth in this Clause 1.11.2 is in addition to any other remedies available to Orange.

- 1.11.3 The Parties acknowledge and agree that, as of the Effective Date, the Parties cannot estimate with certainty the actual damages that Orange would suffer in the event of a cancellation or termination and that the cancellation and termination liability set forth in this Clause 1.11 (a) represents an attempt by the Parties to approximate Orange's anticipated probable and proportionate loss, and (b) is part of the consideration for this Agreement, is a material and inseparable pricing term for this Agreement, and is reasonable.

## **1.12 Limitations of Use**

- 1.12.1 Customer will ensure that Users do not perform or attempt to perform: (a) any intervention on third-party Virtual Machines hosted as part of any feature of the Cloud Service that is not Customer's Virtual Machine, or (b) any intrusion or attempted intrusion into Orange information systems. Any such action will be considered a material breach of the Agreement.
- 1.12.2 Customer agrees that all software used as part of any feature of the Cloud Service and on the Virtual Machines is technically complex and cannot be tested in such a way as to cover every possible use. Customer agrees that the Cloud Service and the Virtual Machines will not be error free and may not be available at all times.
- 1.12.3 Orange reserves the right to substitute the Virtual Machine(s) allocated to Users if Orange deems it necessary in its reasonable opinion. Orange will endeavor to provide Customer as much notice as is reasonably possible and will cooperate with Customer, to organize the transfer of the Solution onto the new Virtual Machine(s).
- 1.12.4 Orange reserves the right to interrupt access to any feature of the Cloud Service or the Virtual Machines to perform repairs, maintenance or improvement interventions to ensure the proper operation of the Cloud Service. Orange will use reasonable efforts to inform Customer (to the extent possible) about such intervention and its duration. Orange will perform maintenance activities at times when Virtual Machines are least used by Users, except in the event of emergency maintenance.
- 1.12.5 Customer will take all necessary technical precautions for the use of the Cloud Service and will ensure the compatibility of its website or applications with any feature of the Cloud Service, the Virtual Machines, the system resources, the software, and the technical restrictions of the Cloud Service.
- 1.12.6 Orange will not be responsible if the configuration of the Cloud Service as selected by Customer is not sufficient to address Customer's needs.

## **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 ORANGE CLOUD SERVICES**