



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

## Wholesale Roaming Resale Access Agreement :

### Main terms & conditions

**Between**

**Orange Communications Luxembourg S.A.,**

Having its registered address at 8, rue des Mérovingiens - Bertrange, L-8070  
Luxembourg

.....  
(Hereinafter referred to as "Orange")

And

<< [ ] >> ,

having its registered address:

.....  
(Hereinafter referred to as "Access Seeker")

Both **Orange** and **Access Seeker** being jointly referred to as the **Parties**.



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

## 1. Introduction and scope

1.1. The Parties have expressed their wish to enter into this Wholesale Roaming Resale Access Agreement (“Agreement”) for the provision by Orange of Wholesale Roaming Resale Access Services, in order to enable Access Seeker to offer Regulated Roaming Services to its Roaming Customers.

1.2. The Access Seeker is a Roaming Provider. In addition, Access Seeker may also purchase mobile access services from Orange, based on Orange’s mobile network, allowing Access Seeker to provide domestic mobile services to its customers pursuant to an agreement concluded between Orange and Access Seeker (hereinafter referred to as “National MVNO or Mobile Resale Agreement”).

1.3. This Agreement contains the basic principles applicable to the Services provided by Orange to Access Seeker.

1.4. To the extent that Access Seeker has entered into a National MVNO or Mobile Resale Agreement with Orange, such agreement will unless otherwise explicitly agreed also set out the terms of the Wholesale Roaming Resale Access offered by Orange to Access Seeker, which will be in accordance with the terms of the present Agreement. For the sake of clarity, in such case, Parties do not have to enter into the present Agreement and the terms of the National MVNO or Mobile Resale Agreement will prevail.

1.5. The Services offered by Orange to Access Seeker shall not differ substantially from those provided by Orange to other Access Seekers who request a similar service upon similar technical, qualitative, quantitative and pricing conditions, however subject to technical availability. Without prejudice to the foregoing, the Parties may decide to complete or amend the terms and conditions of this Agreement, or otherwise include deviations in the Agreement.

1.6. The conclusion of the Agreement is subject to the respect of the procedure for access requests, as described on Orange website.

## 2. Definitions

For the purpose of the Agreement the following terms shall have the meanings set forth in their respective definitions below, unless a different meaning is called for in the context of another provision in the Agreement:

2.1. "Affiliated Company" of a Party means any other legal entity:

1. directly or indirectly owning or controlling the Party, or
2. under the direct or indirect ownership or control of the same legal entity directly or indirectly owning or controlling the Party, or
3. directly or indirectly owned or controlled by the Party,

for so long as such ownership or control lasts.

*This reference offer is made pursuant to article 3(5) of Regulation EU/531/2012; it is subject to updates & completions by Orange. This document sets out the main principles; it needs to be completed and if relevant amended on a case by case basis.*



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

Ownership or control shall exist through the direct or indirect ownership of more than 50 % of the nominal value of the issued equity share capital or of more than 50 % of the shares entitling the holders to vote for the election of directors or persons performing similar functions

2.2. "Agreement" shall mean this Wholesale Roaming Resale Access Agreement together with the Annexes attached hereto.

2.3. "Date of the Agreement" shall mean the date as of which both Parties have signed the Agreement by their duly authorized representatives.

2.4. "Wholesale Roaming Resale Access" shall have the meaning as defined in in Article 2 (2) q) of the Roaming Regulation.

2.5. "Regulated Roaming Services" shall mean either or more of the following services : regulated roaming calls as defined in Article 2 (2) h) of the Roaming Regulation, regulated roaming SMS messages as defined in Article 2 (2) k) of the Roaming Regulation, and regulated data roaming services as defined in Article 2 (2) m) of the Roaming Regulation.

2.6. "Roaming Customer" shall mean an end-user, either a person or legal entity, with a valid legal relationship with Access Seeker using a GSM SIM (Subscriber Identity Module) and/or a GSM USIM (Universal Subscriber Identity Module), and identified by an EU MSISDN.

2.7. "Roaming Provider" shall have the meaning as defined in Article 2 (2) a) of the Roaming Regulation.

2.8. "Roaming Regulation" shall mean the Regulation (EU) No. 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union, O.J., L 17210 of 30 June 2012.

2.9. "PMN" shall mean a network that complies with the definition of a GSM network as set out in the Articles of Association of the GSM Association (AA.16).1

2.10. "Services" shall mean the Basic Services and the Additional Services, as specified in Annex 2.

### **3. Annexes**

3.1. The Annexes are divided as set out in the Overview of the Annex Structure.

3.2. The Annexes constitute an integral part of the Agreement. In case of discrepancy between different parts of the Agreement the following order of interpretation shall be applied:

1. the main body of this Agreement;
2. the Annexes



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

## 4. Starting Date

4.1. The actual commercial starting date for the Services shall be agreed between the Parties in writing.

4.2. In the absence of such agreement, the actual commercial starting date for the Services will be 3 months from the Date of the Agreement, however subject to delays on the part of the Access Seeker.

## 5. Duration of the Agreement

5.1. The Agreement comes into force on the Date of the Agreement and subject to the conditions of Articles 6, 18.2 and 19.1 shall remain in force for the duration agreed between the Parties.

## 6. Termination of the Agreement

6.1. In addition to the conditions of Articles 5.1, 16, 18.2, 19.1, the Agreement may be terminated as follows:

1. by mutual agreement of the Parties in writing subject to a prior notice of six (6) months;  
or
2. by one of the Parties, with immediate effect, when the other Party is in material breach of the Agreement and does not or is not capable of remedying such breach within sixty (60) days of receipt of a written notice to such effect;
3. by one of the Parties, with immediate effect, if the other Party becomes bankrupt or insolvent or if that other Party enters into any composition or arrangement with its creditors and that other Party is not able to ensure performance of its obligations under the Agreement by a guarantee from a first class bank, payable on first written demand;
4. immediately in the event a final order by the relevant governmental authority revoking or denying renewal of the license(s) or permission to operate a Public Mobile Network(s) or any other license necessary to operate the Service(s) granted to the other Party, takes effect;
5. by Orange, with immediate effect, in the event that Access Seeker fails to pay any outstanding invoice for any amount due under this Agreement or fails to constitute or re-constitute a required financial guarantee, for a period of one (1) month as of the due date of the relevant invoice or as of the obligation to constitute or re-constitute a financial guarantee, and such default of payment is not cured within two (2) weeks after the date of the first written notice of default of payment or the notice inviting to constitute or re-constitute the adequate financial guarantee by Orange, subject to sending a notice termination with immediate effect to Access Seeker; and
6. by either Party, with immediate effect, if the other Party ceases to carry out a substantial part of its business which is relevant to the performance of this Agreement.

*This reference offer is made pursuant to article 3(5) of Regulation EU/531/2012; it is subject to updates & completions by Orange.  
This document sets out the main principles; it needs to be completed and if relevant amended on a case by case basis.*



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

6.2. The provisions in Article 6.1 are without prejudice to any other right or claim for compensation to which one of the Parties may be entitled to in the event of termination of this Agreement.

6.3. In the case of termination of this Agreement for any reason, either Party shall be entitled to payment for all services provided prior to such termination provided that a Party is entitled to recover such expenses under the provisions of this Agreement.

6.4. The provisions of this Agreement which by their nature are determined to survive the termination of this Agreement (including in particular but without limitation, Articles 16, 17, 23 and 24), shall remain in full force and effect after the termination.

6.5. In the event of termination of this Agreement, Access Seeker will be responsible to inform its Roaming Customers of the consequences of the termination of the Agreement on the Regulated Roaming Services that it provides to its Roaming Customers.

## 7. General obligations of Orange

7.1. Orange shall provide to Access Seeker the Basic Services as described in Annex 2.1. Parties can agree that Orange will provide Additional Services to be described in Annex 22.

7.2. Orange will use all reasonable endeavors to provide to Access Seeker an equivalent level of service as that of Regulated Roaming Services offered to Orange Roaming Customers.

7.3. Due to its dependency on the network quality of its roaming partners, and to the nature of mobile communications the quality of which depends on several factors such as network coverage, interoperability with mobile devices, geographic conditions etc., the obligation set out in Article 7.1 is merely a best effort obligation. In the same vein, Orange bears no responsibility for the quality and coverage of the mobile networks of its roaming partners.

7.4. Orange will at its own discretion conclude or terminate international roaming agreements with other mobile network operators. In case of relevant changes to Orange's roaming coverage, Orange will inform the Access Seeker without delay.

7.5. Orange agrees to provide Access Seeker with all relevant information on faults or planned maintenances of the network supporting the Services, obviously subject to the availability thereof with respect to its roaming partners.

## 8. General obligations of Access Seeker

Under the Agreement, Access Seeker will have the following general obligations:

8.1 A request received from an Access Seeker should be considered as reasonable if it contains the following data :

i. evidence that the requestor is authorized under its national legislation to provide Regulated Roaming Services;



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

ii. traffic forecast for all roaming services applicable to the first 12 (twelve) months from the commercial launch;

In addition to the data enclosed to the reasonable request the Requestor shall enclose the following documents :

- i. written documents evidencing the capacity of the requestor to act as a personal data administrator;
- ii. declaration by the legal representatives of the requestor for the readiness of the requestor to establish a bank guarantee;
- iii. a reference from the servicing bank of the Requestor confirming the Requestor's reputable bank record;
- iv. written documents evidencing the absence of pending tax payments to the state;
- v. written documents evidencing the absence of pending payments to the insurance funds;
- vi. description of the current business of the Requestor

8.2 Access Seeker will only use equipment, be it hardware, software, or other, which complies with:

- i. Orange's specifications,
- ii. technical prerequisites for connecting with Orange's systems;
- iii. recognized industry standards including but not limited to user's manuals and instructions provided by the relevant mobile device manufacturers, security standards allowing to prevent, inter alia, unauthorized access, etc.

8.3 Access Seeker will at any time hold the necessary regulatory authorizations and/or licenses allowing it to provide Regulated Roaming Services to its Roaming Customers, or any other services provided in addition thereto, in the relevant countries of its activities.

8.4 When Access Seeker provides Regulated Roaming Services based on the Services, or any other services provided in addition thereto, it will do so at its own expense, on its own behalf, and under its own trademarks, logos and brands. Unless explicitly agreed otherwise, Access Seeker will at all times refrain from referring in its relation with its Roaming Customers to Orange.

8.5 Access Seeker will only provide Regulated Roaming Services to Roaming Customers which are end-users. Access Seeker will at all times refrain from reselling on a wholesale basis the Services offered by Orange under this Agreement to a third party.

8.6 Access Seeker shall be responsible for the billing, invoicing and payment collection of all charges due to it by its Roaming Customers.

8.7 Notwithstanding Article 8.5, Access Seeker shall ensure that the contracts with its Roaming Customers allow for compliance with this Agreement, and particularly with the obligations and instructions imposed on the Access Seeker in the context of this Agreement, including but not limited to Article 9.2

*This reference offer is made pursuant to article 3(5) of Regulation EU/531/2012; it is subject to updates & completions by Orange. This document sets out the main principles; it needs to be completed and if relevant amended on a case by case basis.*



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

Access Seeker agrees that unused SIM-cards will be deactivated according to the rules set out in Annex 11.

Access Seeker will also ensure compliance with reasonable guidelines from Orange as regards to restriction of access to Access Seeker's Roaming Customers who are in default of payment, and Access Seeker will also ensure that the contracts with its Roaming Customers allow for compliance with such guidelines.

8.8 Access Seeker will pay the fees for the Services, as set out in Annex 8.

## 9. Financial Conditions

### 9.1 Fees

The Tariffs for the Basic Services are set out in Annex 8.

Additional Services provided by Orange on request of Access Seeker will be charged following a pricing to be agreed between Parties.

### 9.2 Financial guarantee

In order to guarantee payment by Access Seekers according to Article 9.2, Orange will require an irrevocable and unconditional bank guarantee issued by a reputable bank or financial institution established in the EU. That bank guarantee will be issued for an amount equal to an estimate of three months of net amount due by Access Seeker. If traffic volumes change, Orange is entitled to request the bank guarantee to be changed accordingly.

Further details about the bank guarantee are included in Annex 3.

### 9.3 Billing and Accounting

The billing, invoicing and payments for the Offer provided under this Agreement shall be made in accordance with the procedures and the conditions set forth in Annex 3.

In order to ensure the proper performance and integrity of the billing process, the Parties will comply with the rules set forth in Annex 3 and will, in particular, record, store and exchange all relevant data and information as provided in these rules.

## 10. Fraud

10.1 Parties agree to co-operate in order to avoid fraudulent behavior, and particularly to monitor Access Seeker's Roaming Customers' usage on fraud potential.

10.2 Fraudulent usage is agreed to exist particularly (but not exclusively):

10.2.1 In case SIM-Cards of Access Seeker's Roaming Customers are used for offering telecommunication services, switching or interconnection services to 3<sup>rd</sup> parties,



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

10.2.2 In case SIM-Cards of Access Seeker's Roaming Customers are used in GSM-gateways or in SIM-boxes used for routing mobile traffic; and/or

10.2.3 In case SIM-Cards of Access Seeker's Roaming Customers are used not for purposes of personal communications but for commercial reasons (e.g. to generate interconnection fees).

10.3 If a Party identifies fraudulent usage on SIM-Cards of Access Seeker's Roaming Customers, it shall immediately inform the other Party. Access Seeker is obliged to immediately deactivate the relevant SIM-Cards following Orange's instructions and guidance as will be defined in Annex 11.

10.4 In addition to Article 10.3, Orange reserves the right to deactivate SIMCards of Access Seeker's Roaming Customers on which fraudulent usage is identified or reasonably suspected, in order to minimize commercial losses and/or adverse effects for Orange's network availability/capacity.

10.5 Any other applicable conditions and/or obligations relating to fraud will be defined in Annex 6.

## 11. Customer Care

11.1. Access Seeker shall be responsible for establishing and managing the relationships with its Roaming Customers. Except as expressly stated otherwise in writing in this Agreement, Orange shall not have any direct contact with Access Seeker's Roaming Customer.

11.2. Access Seeker shall provide full First Tier Support to its Roaming Customers, as will be described in Annex 10.

11.3. Orange will provide Second Tier Support to Access Seeker, against fair and reasonable tariffs, as will be defined in Annex 10.

## 12. Legal intercept & emergency

12.1 Access Seeker will be responsible to handle requests from competent authorities concerning its Roaming Customers in the area of emergency & legal intercept, according to applicable legislation and regulation. However, Orange will support Access Seeker to handle such requests if due to the nature of the wholesale relationship, Access Seeker is technically not able to provide the requested information by itself.

## 13. Data Privacy

13.1. Each Party's obligations hereunder to transfer information to the other Party shall not apply to the extent that a Party is prohibited from doing so by the regulations and laws of its own country applicable to IR and/or data protection.

13.2. Each Party shall inform its customers that during roaming, the storage, treatment and transfer of their personal data may be subject to regulation different from the regulation in their own country.





Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

13.3. The Parties confirm that they shall comply with the Data Privacy Regulations/Laws applicable in the respective countries in which they act as data controller or data processor, and each Party shall indemnify and hold harmless the other party from and against all costs or expenses of any kind arising out of any claim or demand brought by any person, entity or authority as a result of any breach or alleged breach of such applicable the Data Privacy Regulations/Laws.

## 14. SLA

14.1 Without prejudice to Article 7.4, specific service levels are to be agreed between Orange and Access Seeker and will be set out in Annex 7.

## 15. Forecasts

15.1 The Access Seeker shall comply with its obligations to give forecasts in the formats & frequencies set out in Annex 9.

## 16. Confidentiality

16.1 Confidential Information:

For the purpose of the Agreement, Confidential Information shall mean any information, either in writing or oral, communicated by one Party (or from any of its Associated Companies) (the “Disclosing Party”) to the other Party (or to its employees and advisors) (the “Receiving Party”), or obtained by the Receiving Party in connection with the performance of this Agreement, including the content of this Agreement, except for information which is:

- in or passed into the public domain other than by breach of this Article or any other obligation of confidence; or
- known to a receiving Party prior to the disclosure by a disclosing Party; or – disclosed to a receiving Party without restriction by a third party having the full right to disclose; or
- independently developed by a receiving Party to whom no disclosure of confidential Information relevant to such Information has been made.

16.2 Non-disclosure :

– The Receiving Party shall refrain from disclosing the Confidential Information to any third party and shall use the Confidential Information only for the performance of this Agreement. In addition, the Receiving Party shall take any reasonable measures to ensure the confidentiality of this information. In any event, the Receiving Party shall use efforts at least commensurate with those that such Party uses for protecting the confidentiality of its own Confidential Information.

– Either Party shall be only allowed to disclose Confidential Information to third parties provided it has obtained the prior written consent of the other Party. Any such written consent will be given case-by-case upon a discretionary basis. Such written consent shall only be valid and enforceable for the specific information listed therein. The written consent to disclose Confidential Information

*This reference offer is made pursuant to article 3(5) of Regulation EU/531/2012; it is subject to updates & completions by Orange.  
This document sets out the main principles; it needs to be completed and if relevant amended on a case by case basis.*



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

shall identify the third party or parties to which the information can be disclosed and shall set forth the terms and conditions to which such disclosure is subject.

– The Disclosing Party shall remain free to disclose to any third party Confidential Information disclosed to the Receiving Party.

#### 16.3 Disclosure to Personnel, Advisors or Suppliers:

– A Receiving Party shall disclose the Confidential Information received from the other only to its directors, employees, suppliers, agents, advisors or contractors who have a need to know such information. Such Party shall ensure that such directors, employees, suppliers, agents, advisors or contractors are bound by the obligations of confidentiality in respect of the Confidential Information that are set forth in this Agreement.

– Notwithstanding anything to the contrary in the foregoing provisions, the Receiving Party shall not disclose or use the Confidential Information, with the aim of providing commercial advantage to business divisions of the Receiving Party, or business divisions of the Receiving Party's Associated Companies, which are engaged in activities competing with the other Party.

– Either Party may disclose Confidential Information that they received from the other Party, to their suppliers or contractors provided and to the extent that such suppliers or contractors effectively require to have access to such information in order to supply the relevant goods and services. The Parties shall do whatever is necessary in order to impose on the suppliers or contractors which have obtained access to Confidential Information obligations to keep this information confidential, which are at least equivalent to the obligations imposed under this Agreement.

– Each Party shall be liable under the limitations provided in Article 17 for any unauthorized disclosure or use of the Confidential Information by its directors, employees, suppliers, agents, advisors or contractors. The Party responsible for an unauthorized disclosure or use of the Confidential Information shall, in any event, take any reasonable measures (including but not limited to court proceedings) to mitigate the damage resulting there from.

#### 16.4 Disclosure required by law

In cases where the communication of Confidential Information is required by law, or by a court or any competent authority (including, in particular, a national regulatory or competition authority), acting within the limits of its competence. In such cases, the Party intending to make the communication must inform the other Party of the relevant communication that it intends to make prior to making such communication in order to allow the other Party to submit its observations in that respect and to take all reasonable measures for protecting its interests. If such disclosure is made, the disclosing party will ensure that the attention of the authority is drawn to the fact that the existence and the content of this Settlement Agreement are confidential

#### 16.5 Survival

Article 16 shall survive the termination of the Agreement for a period of ten (10) years but shall not in any way limit or restrict a disclosing Party's use of its own confidential Information.

*This reference offer is made pursuant to article 3(5) of Regulation EU/531/2012; it is subject to updates & completions by Orange. This document sets out the main principles; it needs to be completed and if relevant amended on a case by case basis.*



## 17. Liability

17.1 If either Party is held liable to the other Party (including such other Party's employee(s) and contractor(s)) under this Agreement, that liability shall be limited to the following:

- i. if such liability results from any personal injury or death incurred as a direct result of the non-performance of the relevant Party's obligations under this Agreement, then such liability shall be only subject to the limitation provided in article 17.2;
- ii. if such liability results from any conduct attributable to the relevant Party, which is, under Luxembourgish law, characterized as being gross negligence (faute lourde – zware fout) or intentional negligence (dol – bedrog), then such liability shall be subject to no limitation, except as provided by law;
- iii. if such liability results from any material damage, other than those referred to above, arising out of or in any way connected with the performance by the relevant Party of this Agreement or the breach of such Party's obligations under this Agreement, then the total amount which can be recovered from such Party for all acts or omissions shall, in no event, exceed an aggregate amount equal to EUR 250.000, subject to the limitation provided in article 17.2.

17.2 Neither Party shall be liable for indirect damages (pure and consequential), including without limitation loss of profit, loss of revenue, loss of data, loss of use, loss of savings, loss of goodwill, interruption of business or claim by third parties

17.3 Access Seeker will be responsible for and will indemnify any claim for damages issued by its Roaming Customer(s) in connection with the performance of this Agreement.

17.4 Access Seeker will indemnify Orange against any claim and/or for any loss related to any illegal use, or any use for illegal purpose(s), or any use which is non-compliant with this Agreement, of the Services or the Regulated Roaming Services based thereon, by its Roaming Customers.

## 18. Suspension of Services

18.1. In addition to Article 10.4, Orange may without liability suspend all or any of its Services in circumstances where it would suspend equivalent services to its own customers, including but not limited to:

1. in the event of emergency;
2. if Orange has the right to terminate the Agreement;
3. when Access Seeker is in material breach of the Agreement and does not or is not capable of remedying such breach within fifteen (15) days of receipt of a written notice to such effect;
4. if Access Seeker's Roaming Customers use the Regulated Roaming Services offered by Access Seeker in a manner which is contrary to applicable laws or regulations and if Access

*This reference offer is made pursuant to article 3(5) of Regulation EU/531/2012; it is subject to updates & completions by Orange.  
This document sets out the main principles; it needs to be completed and if relevant amended on a case by case basis.*



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

Seekers fails to take appropriate measures in order to remedy to the situation within a period of five (5) working days from the sending of notice by Orange or shorter if the circumstances of the case justify this;

5. if Access Seeker fails to pay any outstanding invoice due under this Agreement alternatively fails to constitute or re-constitute a required financial guarantee, for a period of one (1) month as of the due date of the relevant invoice respectively obligation to constitute or reconstitute a financial guarantee, subject to sending a notice to Access Seeker;

6. in the event that traffic volumes differ significantly from predicted volumes and the Access Seeker fails to provide an update of the Bank guarantee according to Article 9.2; or

7. in cases of maintenance or enhancement of the Orange network without prejudice to Article 7.4;

18.2. In case of a proposed suspension of the Services, Orange shall use commercially reasonable efforts to give 5-days written notice to Access Seeker prior to the suspension taking effect. If the suspension continues for more than three (3) months, Access Seeker shall have the right to terminate the Agreement with immediate effect subject to written notice.

18.3. Access Seeker has the right at any time, for technical reasons, without liability but upon detailed written notice to Orange, to suspend access to the Services to its Roaming Customers. Alternatively, if it is technically more practicable, Access Seeker may require Orange to suspend all of its Services to Roaming Customers of Access Seeker. Orange shall use commercially reasonable efforts to comply with such requirement within seven (7) calendar days after receipt of the said notice.

18.4. The Parties agree that the suspension described in Article 18.3 shall be removed as soon as the technical reason for the suspension has been overcome by Orange or Access Seeker as the case may be.

## 19. Force Majeure

19.1. Non-performance of either Party's obligations pursuant to the Agreement or delay in performing same (except with respect to the payment of charges applicable hereunder) shall not constitute a breach of the Agreement if, and for as long as, it is due to a force majeure event, including, but not being limited to, governmental action, or requirement of regulatory authority, lockouts, strikes, shortage of transportation, war, rebellion or other military action, fire, flood, natural catastrophes, or any other unforeseeable obstacles that a Party is not able to overcome with reasonable efforts, or non-performance of obligations by a sub-contractor to a Party pursuant to any of the aforementioned reasons.

The Party prevented from fulfilling its obligations shall once becoming aware of such event inform the other Party in writing of such force majeure event as soon as possible. If the force majeure event continues for more than six (6) months, either Party shall have the right to terminate the Agreement with immediate effect by written notice.

*This reference offer is made pursuant to article 3(5) of Regulation EU/531/2012; it is subject to updates & completions by Orange. This document sets out the main principles; it needs to be completed and if relevant amended on a case by case basis.*



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

19.2. If the affected Party fails to inform the other Party of the occurrence of a force majeure event as set forth in Article 19.1 above, then such Party thereafter shall not be entitled to refer such events to force majeure as a reason for non-fulfillment.

This obligation does not apply if the force majeure event is known by both Parties or the affected Party is unable to inform the other Party due to the force majeure event.

## 20. Assignment and Sub-Contracting

20.1. Each of the Party may sub-contract or delegate any or all obligations under this Agreement to an appointed supplier or subcontractor. In such a case the Party appointing a delegate or a subcontractor will remain responsible of the execution of the present Agreement.

20.2. Except as provided in article 20.1, each Party may not assign its rights & obligations under the Framework Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

## 21. Miscellaneous

21.1. This agreement including the attached Annexes and Appendixes represents the entire agreement between the Parties on the subject matters covered by this Agreement and shall be deemed to supersede and exclude all other agreements, arrangements, representations, understandings or other communications, whether written or oral, between the Parties, other than a variation or modification entered into in accordance with the relevant provisions of this Agreement.

21.2. The Parties acknowledge that this Agreement is to be executed in the English language. If considered necessary by one of the Parties, that Party shall at its own costs prepare a translation in Dutch/French and/or English of this Agreement for its convenience. In case of inconsistencies or difference in interpretation of any provisions of this Agreement the English executed version shall prevail. In case of litigation, the parties renounce to request a French or Dutch translation of the agreement from each other

21.3. The headings of the Agreement are for the convenience of reference only and shall in no way limit or affect the meaning or interpretation of the provisions of the Agreement

21.4. Failure by any Party at any time or times to require performance of any provisions of the Agreement shall in no manner affect its rights to enforce the same, and the waiver by any Party of any breach of any provisions of the Agreement shall not be construed to be a waiver by such Party of any succeeding breach of such provision or waiver by such Party of any breach of any other provision hereof. No waiver shall be valid unless it is in writing and signed on behalf of the Party making the waiver.

21.5. If any part of the Agreement or any Annex hereto is held to be invalid or unenforceable, such determination shall not invalidate any other provision of the Agreement or Annexes hereto; and the Parties shall attempt, through negotiations in good faith, to replace any part of the Agreement or Annexes hereto so held to be invalid or unenforceable. The failure of the Parties to agree on such replacement shall not affect the validity of the remaining parts of the Agreement

*This reference offer is made pursuant to article 3(5) of Regulation EU/531/2012; it is subject to updates & completions by Orange.  
This document sets out the main principles; it needs to be completed and if relevant amended on a case by case basis.*



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

21.6. All notices, information and communications required under the Agreement shall be given as described in Annex 1.

21.7. Except as expressly provided otherwise in this Agreement, software or Intellectual Property Rights shall remain the property of the Party holding the same and nothing in this Agreement shall be deemed to confer any assignment of the Intellectual Property Rights of one Party to the other Party.

21.8. Any amendments or modifications to this Agreement, including an inclusion or suppression of a Service Description, shall only be valid if duly agreed upon in writing by the respective representatives of the Parties.

## **22. Compliance with Laws and Regulatory requirements**

22.1 The commitment of the Parties hereto shall be subject to all applicable laws and/or regulatory requirements, present and future, of any governmental or regulatory authority having jurisdiction over the Parties hereto, as well as any valid order of a court of competent jurisdiction.

22.2 Access Seeker shall comply with all applicable laws and regulations in the execution of this Agreement and the provision of the Regulated Roaming Services to its Roaming Customers, and of any services offered in addition to these same Roaming Customers. Access Seeker shall also impose in its contracts with its Roaming Customers, compliance with applicable laws and regulations by the Roaming Customers who purchase its Regulated Roaming Services and other services offered in addition thereto.

22.3 The Parties acknowledge the importance of combating and preventing bribery and to that end both Parties agree to comply fully with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption.

## **23. Choice of Law**

23.1. The Agreement and any matters relating hereto shall be governed by and construed in accordance with Swiss law.

## **24. Dispute Resolution & Jurisdiction**

### **24.1. Dispute resolution procedure**

The Parties agree to seek to resolve any dispute arising out of the Agreement in accordance with the following escalation procedures before commencing the arbitration procedures described below.

The Contact Persons of both Parties shall work in good faith to try to resolve the dispute within thirty days from the date that a Party first gives notice that a dispute has occurred.

If the Contact Persons fail to reach an agreement on the dispute within thirty days, the dispute shall be referred to more senior persons within the respective companies who shall try to resolve the

*This reference offer is made pursuant to article 3(5) of Regulation EU/531/2012; it is subject to updates & completions by Orange. This document sets out the main principles; it needs to be completed and if relevant amended on a case by case basis.*



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

dispute within a further thirty-day period. If no resolution is found each Party is entitled to commence the proceedings described in article 24.2.

#### 24.2. Jurisdiction

24.2.1 Without prejudice to Article 24.1., any dispute concerning the validity, the interpretation, or the performance of this Agreement or of subsequent contracts derived here from shall be submitted exclusively to the courts of Geneva in Switzerland.

24.2.2 The Parties may however decide in joint agreement to submit any specific Dispute to arbitration. In such event, the relevant Dispute shall be finally settled under the Rules of CEPANI, by one or more arbitrators appointed in accordance with the said Rules. The above is without prejudice to the right of each of the Parties to bring issues pursuant to the relevant regulatory framework to the competent NRA.



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

## 25. Signatures

Place .....

Place .....

Date .....

Date .....

.....  
For Orange

.....  
For Access Seeker





Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

## **26. Annexes Structure**

- Annex 1 AGREEMENT MANAGEMENT PRINCIPLES
- Annex 2 SERVICES
- Annex 3 BILLING AND ACCOUNTING
- Annex 4 CUSTOMER CARE PRINCIPLES
- Annex 5 TECHNICAL ASPECTS – NETWORK ARCHITECTURE
- Annex 6 FRAUD
- Annex 7 SLA
- Annex 8 TARRIFS AND OTHER INFORMATION
- Annex 9 TRAFFIC FORECASTS
- Annex 10 POINTS OF CONTACT AND EXCALATION PROCEDURE
- Annex 11 SIM CARDS MANAGEMENT
- Annex 12 COVERAGE MAP
- Annex 13 TESTING PLAN



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

## **Annex 1 AGREEMENT MANAGEMENT PRINCIPLES**

### **1. Notices**

All notices, information and communications required under this Agreement shall be given in writing and be in the English language and shall be sent either by mail, or preferably secure email to the addresses indicated here:

#### **Orange Communications Luxembourg S.A.**

8, rue des Mérovingiens  
Bertrange, L-8070  
Luxembourg

#### **Access Seeker**

[]



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

## Annex 2 SERVICES

### 1. Basic Services

The Basic Services offered by Orange under this Agreement are basic wholesale roaming services within the EU/EEA as they are available on the networks of Orange's roaming partners (VPMN), supporting following retail services :

- mobile originated roaming calls generated by the Access Seeker's Roaming Customer(s) from a EU/EEA roaming network (VPMN) to EU/EEA destinations excluding premium numbers;
- mobile originated roaming SMS messages generated by the Access Seeker's Roaming Customer(s) from a EU/EEA roaming network (VPMN) to EU/EEA destinations excluding premium numbers;
- mobile roaming data traffic messages generated by the Access Seeker's Roaming Customer(s) from a EU/EEA roaming network to a packet data network either via a GGSN of Orange or upon Orange's decision via a GGSN of VPMN.

The table below sets out the features of these Basic Services:

- Voice services (outgoing and incoming calls)
- calls to emergency numbers (112, ambulance, fire, police)
- CAMEL services, or callback depending on the availability of technology in Orange's Roaming Partners
- Send and receive SMS messages
- Send and receive MMS messages
- video telephony calls
- providing billing information in TAP files
- sending antifraud reports (HUR / NRTRDE)
- Data transmission

### 2. Additional Services

The parties can agree on the provision of additional services such as (but not limited to) NRTRDE reporting analysis, VHE (WSMS, VMCC,...), dedicated steering.



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

## **Annex 3 BILLING AND ACCOUNTING**

### Charging Principles.

Unless expressly stated otherwise, all charges specified in the present Agreement and its annexes are exclusive of VAT and other taxes.

All prices specified in this Agreement and its Annexes are expressed in Euro.

The following rounding principles are applied:

- the number of Calls is not rounded;
- the Chargeable Call/Session Duration is not rounded;
- Euros are rounded to the nearest eurocent.

The use of decimals is set as follows:

- The rates use 4 decimals in Euro;
- The revenues and the totals use 2 decimals in Euro.

### Financial Settlement – Invoice production

Single invoice will be issued by Orange for all traffic generated by the Access Seekers roamers in the various Visited Networks based on the applicable IOT's.

The Service Management elements will be invoiced in a dedicated invoice where clear amounts will appear (Setup, Monthly, Testing,... fees).

Each invoice shall relate to a period commencing on the first day of a certain month and ending on the last day of that same month (the "Billing Period").

Orange shall use all reasonable endeavors to issue invoices within 30 calendar days after the end of the applicable Billing Period. In any event, Orange shall not issue any invoice more than 4 months after the end of the relevant Billing Period, unless it has specifically requested extension based on reasonable circumstances. Except as stated elsewhere, this extension shall in no circumstance exceed a 6 months period starting after the end of the relevant Billing Period.

All charges due by Access Seeker under the present Agreement shall be paid within 15 calendar days after issuance of the invoice (the "Due Date").

Any credit notes will be set off against any payments due of the next invoice and are refundable when there are no outstanding invoices.

If payment is not received on or before the Due Date, Orange will be entitled to an interest calculated on the basis of the legal interest rate under Belgian law on the unpaid balance for late payment interests, administrative and recovery costs. This interest shall accrue from the Due Date until the date of payment in full of the amount to be paid. Such interest shall accrue day by day and shall not be compounded.

*This reference offer is made pursuant to article 3(5) of Regulation EU/531/2012; it is subject to updates & completions by Orange.  
This document sets out the main principles; it needs to be completed and if relevant amended on a case by case basis.*



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

Value Added Tax as well as any other applicable taxes, if any, shall be added to all or any part of the charges due under this Agreement and shall be paid by the MVNO.

Any payments under this Agreement will be made in Euro or in another currency if required by law and will be made by bank transfer on the below bank account. Payment costs are borne by the Access Seeker.

#### Bank Account Information:

Deutsche Bank AG Brussels  
Avenue Marnix 17, B-1000 Brussels, Belgium  
Bank Code: DEUTBEBE  
Bank Account Name: MACH SOLUTIONS LTD REF LUXVM EURO  
Main Bank Account: BE87826000900194 (IBAN)  
Currency: EUR

#### Disputes

If Access Seeker disagrees with the invoice sent by Orange, Access Seeker shall inform Orange of such dispute within two (2) months from the receipt of the invoice concerned by sending a Notice of Dispute. Such Notice of Dispute will indicate the disputed amounts, as well as a summary of the grounds for the Dispute and the position of the disputing Party.

If Access Seeker has not sent such Notice of Dispute within such 2-months period, Access Seeker shall be deemed to have accepted Orange's invoice. The sending of a Notice of Dispute does not release Access Seeker from its payment obligations as set under section 3.2 of this Annex and under Article 8.7 of the main body of the Agreement.

Upon receipt of the Notice of Dispute, the Parties shall exchange by ordinary mail any information necessary or useful for solving the Dispute.

Within 15 working days from the date of the Notice of Dispute, unless otherwise agreed between the Parties, Orange will provide, by registered mail, an answer ("Notice of reply") to Access Seeker. If Orange does not accept some or all the arguments of Access Seeker, the Notice of Reply will contain a justified reply to the arguments of Access Seeker.

If Orange accepts all or some arguments of Access Seeker, Orange will, together with the Notice of Reply, issue a credit note for the relevant amount.

If, within 15 working days from the receipt of the Notice of reply, unless otherwise agreed between the Parties, Access Seeker confirms its position in writing by registered letter, the Parties will escalate the Dispute within their respective organization as provided under the main body of the Agreement. If Access Seeker fails to confirm its position within 15 working days, from the date of the Notice of Reply, unless otherwise agreed between the Parties, any outstanding amounts will be paid promptly and without delay and the Dispute will be deemed settled.

If the Parties have been unable to settle the Dispute as provided under the foregoing provisions, and if deemed necessary by either Party, a meeting will be organized for this specific purpose. If after such meeting, the Dispute remains, the Parties will follow such additional steps in the escalation procedure as provided in the main body of the Agreement.

Upon final settlement of the Dispute, any necessary credit note will be issued and any outstanding amount will be paid promptly and without delay.



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

## **Annex 4 CUSTOMER CARE PRINCIPLES**

An Access seeker's customer roaming abroad should contact his own HPMN Customer Care Services while roaming in the VPMN Operator. This Customer Care Services will be the first point of contact but may refer the Access seeker's customer roaming abroad to the Orange Customer Care Services if appropriate.

The Access seeker's customer roaming abroad is free to contact the VPMN Operator's Customer Care Services directly. However, the primary responsibility for customer care remains with his own HPMN customer care.

### Roaming Information

Roaming information (including changes of such information), like coverage maps, service levels and Services (including their date of implementation and tariffs), shall be exchanged between the contact points defined in Annexes.

Changes in Emergency Service, Customer Service, Directory Enquiry numbers, and Tariffs shall be exchanged in accordance with the provisions of the Agreement.

### Lost/stolen SIM and/or USIM cards

In the event that a SIM and/or USIM-card is lost or stolen, the Access seeker's customer roaming abroad shall be asked to contact his HPMN Customer Care Services. If the Access seeker's customer contacts the VPMN Operator's Customer Care Services, the VPMN Operator's Customer Care Services will provide the Access seeker's customer with the contact number of Orange Customer Care Services.

### Lost/Stolen or Faulty Mobile Equipment

In the event that mobile equipment is lost, stolen, or faulty, the Access seeker's customer shall be asked to contact his own HPMN Customer Care Services. If the Access seeker's customer contacts the VPMN Operator's Customer Care Services he will be referred to the Orange Customer Care Services.

### Billing Enquiries

In the event that a Roaming Customer has an enquiry relating to the amount billed during roaming, the Access seeker's customer shall resolve this query with his own HPMN Customer Care Services. Any contact with the VPMN Operator will be achieved through Orange Customer Care Services.



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

## **Annex 5 TECHNICAL ASPECTS**

Orange should provide here the architecture, international signalling links, points of connection to the Access Seeker.



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

## **Annex 6 FRAUD**

*This reference offer is made pursuant to article 3(5) of Regulation EU/531/2012; it is subject to updates & completions by Orange.  
This document sets out the main principles; it needs to be completed and if relevant amended on a case by case basis.*





Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

## **Annex 7 SLA**

*This reference offer is made pursuant to article 3(5) of Regulation EU/531/2012; it is subject to updates & completions by Orange.  
This document sets out the main principles; it needs to be completed and if relevant amended on a case by case basis.*



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

## Annex 8 TARRIFS AND OTHER INFORMATION

### 1. Basic services

Charges for regulated roaming Basic services :

	<b>01.07.2012</b>	<b>01.07.2013</b>	<b>01.07.2014</b>
Voice Mobile Originated call	0.14€/min	0.10€/min	0.05€/min
SMS Mobile Originated	0.03€/sms	0.02€/sms	0.02€/sms
Data charge	0.25€/MB	0.15€/MB	0.05€/MB

All tariffs are in Euros and exclusive of applicable VAT. The charges are subject (where appropriate) to the currency rules in the Article 1 of the regulation.

### 2. Additional Services

The tariffs of the additional services will be set up by both parties taking into account fair and reasonable prices.



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

## **Annex 9 TRAFFIC FORECASTS**

*This reference offer is made pursuant to article 3(5) of Regulation EU/531/2012; it is subject to updates & completions by Orange.  
This document sets out the main principles; it needs to be completed and if relevant amended on a case by case basis.*



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

## **Annex 10 POINTS OF CONTACT AND ESCALATION PROCEDURES**

The Parties will agree upon the best format & procedure to exchange this information but it must contain the following :

### **MANAGEMENT TEAM (escalation line):**

Orange Team will be composed of:

.....

Client Operator Team will be composed of

.....

### **SINGLE POINTS OF CONTACT (Commercial):**

Orange Team will be composed of:

.....

Client Operator Team will be composed of

.....

### **SINGLE POINTS OF CONTACT (Operational):**

Orange Team will be composed of:

.....

Client Operator Team will be composed of

.....



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

**SINGLE POINTS OF CONTACT (Technical):**

Orange Team will be composed of:

.....

Client Operator Team will be composed of

.....

**SINGLE POINTS OF CONTACT (Fraud):**

Orange Team will be composed of:

.....

Client Operator Team will be composed of

.....

**SINGLE POINTS OF CONTACT (billing):**

Orange Team will be composed of:

.....

Client Operator Team will be composed of

.....



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

## **Annex 11 SIM CARDS MANAGEMENT**

*This reference offer is made pursuant to article 3(5) of Regulation EU/531/2012; it is subject to updates & completions by Orange.  
This document sets out the main principles; it needs to be completed and if relevant amended on a case by case basis.*



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

## **Annex 12 COVERAGE MAP**

Orange and Access Seeker will agree on the frequency of exchange of such information.

Will be done via a web link or the exchange of an xls file



Orange Communications Luxembourg S.A. reference offer of 01/01/2013.  
Wholesale Roaming Resale Access Agreement : Main terms & Conditions

### **Annex 13 TESTING PLAN**

To be defined and agreed between Orange and Access Seeker.