

Data processing agreement



Pursuant to the European General Data Protection Regulation (2016/679), this Data Processing Agreement will be added to any agreement in force between Orange Belgium and the Customer (hereinafter 'the Contract') for provision of telecommunication services (hereinafter 'the Services'). Except any other written agreement between the Parties regarding the compliance with GDPR, this Data Processing Agreement replaces any other article of the existing Contracts relating to privacy and protection of personal data.

Article 1. General provisions

The performance of the Contract and the delivery and invoicing of the Service(s) by Orange Belgium imply that the Parties process personal data relating to the Customer and, where applicable, to the end-users of the Services (hereinafter referred to as the "Users").

In this framework, both Parties undertake to comply with the applicable data protection legislations and regulations, including, (i) the General Data Protection Regulation (2016/679) as of 25 May 2018, (ii) the national laws implementing the Directive on Privacy and Electronic Communications and (iii) any other regulations effective that may apply to Personal Data processed in the course of the performance of the Contract (herein jointly referred to as the "Applicable Data Protection Legislation").

For the purposes of this Data Processing Agreement, all terms and expressions related to data protection shall have the meaning assigned to them in the Applicable Data Protection Legislation.

Article 2. Role of the parties

The Customer shall act as a Data Controller with respect to the personal data (i) that it provides to Orange Belgium in the framework of the Contract and (ii) which it requests Orange Belgium to process on its behalf for the purpose of providing the Customer with the Orange Service(s). The personal data made available by the Customer might include the following types of data:

- identification information and contact details,
- preferences with regard to direct marketing,
- any other type of personal data identified in the Contract.

Those personal data may include personal data relating to Users. Orange Belgium acts as Data processor for the personal identification data directly provided by the Customer to Orange Belgium for the delivery of the Services and the use of these personal identification data for invoicing the Services to the Customer and to give support to the Customer via the fleet manager or any other representative at Customer in charge of the Contract.

Orange Belgium acts as the Data Controller for all the electronic communication data, as defined in the Applicable Data Protection Legislation, generated and stored at Orange Belgium to deliver the Services to the Customer.

The Customer acts as Data Controller of the invoice data and the electronic communication metadata delivered to the Customer by Orange Belgium at its request or instruction.

The Customer acts as Data Controller with respect to the performance of transparency duties towards the Users, unless if the User has its own invoice split contract with Orange Belgium.

Article 3. Obligations of Orange Belgium

3.1. General provisions

3.1.1 When acting either in its capacity as Data Controller or in its capacity of Data Processor, Orange Belgium shall:

- treat the personal data as strictly confidential and refrain from disclosing personal data to a third party except as otherwise agreed between the Parties or as otherwise required to do so by law or by any relevant judicial or supervisory authority,
- ensure that any natural person acting under its authority (including but not limited to employees, consultants, agents, sub-contractors, sub-processors, ...) who has access to the personal data is subject to statutory or contractual confidentiality obligations and complies with all the obligations provided in this Data Processing Agreement,
- implement, taking into account the state of the art, the costs of implementation, the nature of the personal data and the potential risks, appropriate technical and organizational security measures in order to protect the personal data against accidental or unlawful destruction, loss or alteration and against unauthorized disclosure, abuse or other processing in violation of the Applicable Data Protection Legislation,
- without undue delay, notify the Customer in case of:
 - personal data breach relating to the personal data provided or made available – directly or indirectly – by the Customer,
 - any legally binding request for disclosure of the personal data to a third party (unless such notification is prohibited by law),
- insofar as possible and upon the request of the Customer, provide reasonable assistance to the Customer in order to enable the later to comply with its legal obligations relating to:
 - the requests made by the data subjects exercising their rights under the Applicable Data Protection Legislation,
 - the security of the personal data processing (implementation of technical and organizational security measures),
 - the notification of personal data breaches to the supervisory authority and to the data subject, and
 - the data protection impact assessments and the consultation of the supervisory authority in this respect.

Orange Belgium will be entitled to claim a reasonable compensation for the assistance provided to the Customer.

- at the request of the Customer, make available all information necessary to demonstrate compliance with its obligations under the Applicable Data Protection Legislation and this Data Processing Agreement.

3.1.2. Orange Belgium delegates some of its obligations under the Applicable Data Protection Legislation to the Customer. More particularly, the Customer accepts that it shall:

- ensure that all personal data provided by the Customer to Orange Belgium are and remain at all times accurate and complete,
- ensure that the data subjects concerned by the data processing are properly informed of the fact that personal data relating to them may be processed by Orange Belgium under the Contract,
- ensure that the data subject concerned by the data processing have been duly informed of their rights under the Applicable Data Protection Legislation,
- ensure that the data subjects concerned are properly informed of the fact that Customer processes invoice data and the electronic communication metadata delivered by Orange Belgium to the Customer.

The Customer accepts that it is solely responsible for complying with the above mentioned obligations. The Customer shall be able to demonstrate, upon the request of Orange Belgium, its compliance with those obligations.

3.1.3. Within the range of applicable legal provisions, a natural person that can provide proof of his/her identity, can exercise his/

her data subjects rights concerning his/her personal information that is being processed by Orange Belgium, by sending a dated and signed letter to legal@orange.be.

3.1.4. Orange Belgium shall allow for and shall contribute to audits and inspections conducted by the Customer or by an auditor mandated by the Customer and accepted by Orange Belgium. In such case, prior notice of at least 45 calendar days must be made by the Customer to Orange Belgium, unless an earlier audit/inspection is required by the Applicable Data Protection Legislation.

With respect to the audits, the Parties agree that (i) the Customer will bear all costs required to conduct the audit, (ii) the audit will be limited to data privacy aspects, (iii) the audit will be limited to a maximum of 2 business days, (iv) the audit will only be allowed during the business hours and (v) the audit will have no impact on the Orange Belgium business.

The Customer shall limit the audits to a strict minimum and will not conduct more than one audit every 3 years, unless an earlier audit would be required by data protection authority or would be needed for serious reasons. Where possible, the Parties will rely on certifications and existing audit reports to avoid the conduct of audits.

The Customer shall share the audit report with Orange Belgium and if required, the Parties will discuss on any corrective actions to be implemented.

The Parties will treat any information exchanged during the audit confidentially.

3.2. Orange Belgium acting as a data controller

3.2.1. Orange Belgium processes personal data relating to the Customer (and, where applicable, to Users) exclusively for the following purposes: providing and invoicing Orange Service(s), which includes the management of customer information, handling relations with the fleet manager of the Customer and the requests carried out by the Customer, combat against fraud, improve the Orange Belgium network and services, for customer profiling and in order to propose other Orange Belgium services to the fleet manager or procurement department of the Customer and for the provision of reporting services to third parties based on anonymized data, and this for a duration as long as necessary. The personal data will not be used for marketing purposes or market studies without the prior agreement of the Customer or of the concerned User, unless they have been aggregated and/or anonymized.

In its capacity of Data Controller, Orange Belgium processes the traffic data of the Customer and of Users, more precisely:

- identification of the calling line,
- the total number of units to be entered for the period of calculation,
- identification of the line called,
- the type, starting moment and duration of a call or the quantity of data sent,
- the date of the service or connection,
- other data relating to payments, such as prepayments, payments by installment, cuts in service and notifications,

this within the framework of invoicing for the Service(s) and until the end of the period during which the payment of an invoice can be legally demanded.

Orange Belgium also processes the invoice data and the electronic communication metadata, such as the IMEI number of the Mobile Device or location data of the Customer and the Users, within the framework of:

- the execution of the Services,
- monitoring the quality and performance of the Services,
- conducting proactive and reactive customer support,
- combating against fraud,

- control of the reasonable use of roaming services.

Orange Belgium may transmit the personal traffic and location data of the Customer and

Users to the authorized government services, judicial authorities and the emergency services in order to answer requests made by them.

The abovementioned data of the Customer and Users are integrated into Orange Belgium databases.

Upon request of the Customer and/or Users, Orange Belgium shall return this personal data and/or delete them, at the latest on the moment of termination of the Contract, unless and for as long as there is a legal obligation for Orange Belgium and/or the Customer to keep the data.

For more information on the personal data processing by Orange Belgium, Customer can consult Orange Belgium's data privacy policy available on the Orange Belgium website.

3.2.2. Orange Belgium contracts out invoicing services to third parties, and it entrusts some of the Services, which are provided to the Customer or to the Users, to third parties within the framework of subcontractor- or cooperation contracts. Orange Belgium uses third party companies for preparing market studies, and for carrying out marketing and direct marketing actions. Third parties are only and solely informed of the personal data of Customers or Users, when this is necessary for the execution of the Services.

Moreover Orange Belgium appeals to agents for the management of and advice to the Customers. In this context Orange Belgium can make personal data of its Customers or Users in relation to their identification, communication services supplied or subscriptions concluded with the Customers known to these agents or obtain these data from them.

Personal data may also be provided by Orange Belgium to third parties, whenever applicable ordinances, legislation or regulations of a government body or a judicial authority makes it necessary. The Customer and Users shall be immediately notified thereof.

3.2.3. Orange Belgium processes the personal information of Customers who do not fulfil their obligations to Orange Belgium for the purpose of fight against fraud and payment default. For every Contract signed by a (prospective) Customer, Orange Belgium will request information from certain providers of trading and financial information to determine whether the (prospective) Customer will be able to fulfil his obligations.

3.2.4. Only to the extent that the Contract specifies that the Customer wishes to be listed in the telephone directory, the Customer is also listed in the universal and non-universal telephone directories. In this case, Orange Belgium sends the data provided by the Customer to the suppliers of the telephone directories and information services, such as the official name of the legal entity, the address and the telephone number. The objectives of the universal telephone directory and the information service are: find a telephone number on the basis of the name and the address and/or find a name and an address on the basis of a telephone number.

If the contract request specifies that the Customer wishes to be listed in the information service, the Customer is also listed in universal and non-universal information services. Orange Belgium transmits to the information services the information provided by the Customer only when it is explicitly mentioned that the Customer wishes to be listed in the information service.

The Customer may contact Orange Customer Service at no charge if he or she wishes to modify the data he or she has submitted, or if he or she no longer wishes to be listed in the telephone directory or the information service. The Customer must take into account that the implementation of the modifications

and/or deletions depends on the timing adopted by the suppliers of the directories or information services.

The Customer is solely liable for the accuracy and completeness of the information he or she provides. The responsibility of Orange Belgium is limited to the accurate transmission to the suppliers of telephone directories and information services of the data provided by the Customer.

3.2.5. The Customer can register their subscriber phone numbers on the “Do not call” list for free, at the web address www.bel-me-niet-meer.be (NL) or www.ne-m-appellez-plus.be (FR), so that their numbers won't be used for direct marketing calls. After registration, the Customer (and the Users) may still receive direct marketing calls for up to one month.

3.3. Orange Belgium acting as a data processor

3.3.1. When acting as a Data Processor, Orange Belgium shall:

- a) not process or transfer personal data for purposes other than those which are necessary for the performance of its obligations under the Contract,
- b) only process or transfer the personal data in accordance with the Customer's documented instructions - such as but not limited to the Contract - unless Orange Belgium is required to otherwise process or transfer the personal data under a mandatory provision resulting from European law or from Belgian law and which is applicable to the processing operations herein. Where such a requirement is placed on Orange Belgium, Orange Belgium shall provide prior notice to the Customer, unless such notification is prohibited by law.

3.3.2. Customer hereby grants a general written authorization to Orange Belgium to engage sub-contractors/sub-processors for the processing of the personal data under the Contract, provided that:

- such sub-contracting/sub-processing is required in order to enable Orange Belgium to fulfil its contractual obligations under the Contract,
- Orange Belgium concludes a written agreement with its sub-contractors/sub-processors whereby the latter undertake to comply with the obligations set out in the Applicable Data Protection Legislation and this Data Processing Agreement, and
- as long as Orange Belgium remains liable to the Customer for the performance of the sub-processors' obligations.

In case Orange Belgium intends to add or replace one of its sub-contractors/sub-processors, it shall inform the Customer and give the latter the opportunity to refuse the intended changes. The Customer's refusal shall be based on reasonable and objective reasons. The Customer is informed that such refusal may imply that Orange Belgium would not be able to continue to provide the Orange Service(s) to the Customer and Orange Belgium shall in such case be entitled to terminate the Contract without owing any costs or compensation for damages.

3.3.3. The Customer hereby grants a general written authorization to Orange Belgium to transfer the personal data to a country located outside the European Economic Area or to a country which has not been recognized by the European Commission as ensuring an adequate level of data protection, provided that (i) Orange Belgium has provided appropriate safeguards in accordance with the Applicable Data Protection Legislation or (ii) a derogation provided in the Applicable Data Protection Legislation enables such transfer. Where reasonably required by Orange Belgium, the Customer shall execute the documents and perform the acts which are necessary to implement any such appropriate safeguards.

3.3.4. The Parties agree that in case of breach of the Applicable Data Protection Legislation by Orange Belgium, Orange Belgium may only be held liable in case it has not acted in accordance with the Customer's lawful instructions.

Article 4. Term

This Data Processing Agreement shall enter into force on the 25 May 2018 and shall automatically terminate upon termination of the Contract.