

SPECIAL CONDITIONS OF SERVICE FILE STORAGE

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The below translation is provided for informational purposes only. The parties accept that in the event of a conflict or discrepancy, the French version prevails over the translated version.

1. DEFINITIONS

Terms beginning with a capital letter are defined below, or in the General Terms and Conditions of Service, or in the Glossary available on the OVHcloud website.

“High-Risk Activities”: activities for which the use or failure of the Service would reasonably be expected to result in death, serious bodily injury or serious environmental or material damage (such as the use of the Service for the operation of a nuclear facility or similar hazardous environment).

“Content(s)”: information, data, files, systems, applications, websites and other elements reproduced, hosted, collected, stored, transmitted, disseminated, published and more generally used and/or operated by the Client as part of the Service.

“Storage Space”: is defined in **article 3.1 (Overview) of these Special Conditions**.

“Anti-Corruption Laws” refers to all applicable anti-corruption laws, including the U.S. Foreign Corrupt Practices ACT, the U.K. Bribery Act, and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

“Export Laws and Regulations”: all applicable laws and regulations on export and re-export controls, such as (a) the Export Administration Regulation (EAR), (b) the International Traffic in Arms Regulations (ITAR), (c) Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (d) the European restrictive measures (sanctions) in force (Regulations based on Article 215 TFEU and decisions adopted in the framework of the foreign and security policy), (e) Act No 2004-575 of 21 June 2004 on the supply, import and export of means of cryptology in France and from France.

“Infrastructure”: All of the physical and virtual elements set up by OVHcloud as part of the Service, which may include physical resources, such as network equipment, and logical resources, such as bandwidth, and software and/or applications.

“Snapshot(s)”: the status of the Storage Space data at any given moment.

2. PURPOSE

The purpose of these special terms and conditions (hereinafter referred to as the **“Special Conditions”**) is to define the technical and financial conditions applicable to the File Storage service developed by OVHcloud that uses various Third-Party Products (hereinafter referred to as the **“Service”**).

These Special Conditions supplement OVHcloud’s General Terms and Conditions of Service. If there is a contradiction between the two, the Special Conditions prevail over the General Terms and Conditions of Service.

3. SERVICE DESCRIPTION

3.1. Overview

The Service consists of providing the Client with a volume file-type storage space (the **“Storage Space”**) on an Infrastructure managed by OVHcloud. The Storage Space is compatible with industry-standard protocols in terms of file transfer (as listed on the OVHcloud website) and is based on various Third-Party Products depending on the offer.

The Service may include several Storage Space offers for each Third-Party Product. The solution chosen by the Client determines the configurations, hardware characteristics and features of the Service, which may vary from one solution to another. The description of each solution is available on the OVHcloud website.

Before selecting and using the Service, it is the Client's responsibility to carefully review each available solution in order to select the one(s) best suited to their needs.

Throughout the duration of the Service subscription, OVHcloud provides the Client with a Management Interface that allows them to configure and administer their Service, including their Storage Space.

Apart from the service level commitments set out in **Article 6 (Service Level Agreements (SLA) of these Special Conditions**, OVHcloud is only subject to a "best endeavours" obligation.

3.2. Order and Delivery

OVHcloud shall email the Client to inform them of the Service being delivered. This operation takes place within a maximum of fifteen (15) working days after the Client successfully pays for the Order. After this period, subject to the provisions set out in the General Terms and Conditions of Service applicable to Clients with consumer status as defined by the French Consumer Code, if the Service is not made available by OVHcloud, the Client is entitled to request the cancellation of the Order and a refund of any amounts already paid (if applicable).

In the event of an Order that may impact the stability of OVHcloud infrastructures or the performance of the Services provided to other OVHcloud clients (such as saturation of the available space within a Datacentre, etc.), OVHcloud reserves the right to consult the Client before delivering the Service in order to agree on an alternative solution that meets the Parties' needs and constraints, and/or cancel the Order.

Once the Service is activated by OVHcloud, the Client may at any time manage their Service (increase or reduce the volume of data stored within the storage capacity limit of the selected solution, etc). These changes take place asynchronously following the Client's request, made directly from their Management Interface or using the APIs provided by OVHcloud.

3.3. Third-Party Products

3.3.1. General principles

Each offer is based on a Third-Party Product. Where applicable, the conditions specific to each Third-Party Product are set out in **Article 3.3 (Third-Party Products)**.

OVHcloud does not participate in the creation, development, update or maintenance of the Third-Party Products as such made available to the Client as part of the Service. Therefore, and subject to OVHcloud's SLAs, OVHcloud is not responsible for the Third-Party Products and does not give any guarantees regarding these products, including technical errors, security vulnerabilities, incompatibilities or instability.

The Client is authorised to use the Third-Party Products only as part of the Service and in accordance with the terms of the Contract.

The Client is forbidden from contacting the publisher of the Third-Party Product included in their offer for any support request.

OVHcloud reserves the right to modify, replace or discontinue the Third-Party Products at any time and will endeavour to inform the Client thirty (30) days in advance. In this case, OVHcloud may be required to terminate the Service or offer an alternative.

3.3.2. Specific Conditions - Enterprise File Storage

Enterprise File Storage solutions are based on a third-party product developed by NetApp®.

The Client shall not provide, access or use the Service for High-Risk Activities, either for themselves, their Users and/or any third parties under their control.

3.3.3. Specific Conditions - HA-NAS

The HA-NAS offers are based on the Third-Party Product OpenZFS. OpenZFS is distributed under the Common Development and Distribution Licence (CDDL).

4. TERMS AND CONDITIONS OF USE

4.1. Requirements

The Client must inform themselves about the hardware requirements and the services and/or elements needed to use the Service in advance of any Order. Where applicable, these requirements are set out in the documentation for the Service listed on the OVHcloud website.

The Client confirms that they have the necessary technical knowledge to ensure the correct administration of the Service, in particular the Storage Space, and to ensure the longevity of the Content stored as part of the Service, in particular by carrying out backup operations on separate physical media in a separate location.

The Client also agrees to familiarise themselves with the documentation relating to the Service on the OVHcloud website.

4.2. Client's obligations and commitments

4.2.1. General information

The Client is solely responsible for their administration and use of the Service, including the Storage Space. It is therefore the Client's responsibility to check that they are using the Service without saturating the bandwidth or volume that they have ordered for their use case.

OVHcloud is responsible for managing and maintaining the Infrastructure on which the Service is configured.

The Client is solely responsible for the Content they transfer and store as part of the Service, including its use, operation and update. OVHcloud does not have knowledge of the Content stored by the Client as part of the Service, particularly in the Storage Space.

The Client shall ensure that it uses the Service exclusively for storage purposes.

The Client agrees to comply with the Anti-Corruption Laws and Export Laws and Regulations.

4.2.2. Restrictions

The Client agrees to use the Service in a reasonable manner and acknowledges that OVHcloud may immediately suspend the Service and/or terminate the Contract in the event of:

- a) manifestly abusive use of the Service (particularly with regard to the frequency of reads/writes),
- b) illegal Content (e.g. distribution, publication, storage or transmission of Content depicting child pornography, Content defaming or inciting the committing of crimes against humanity, acts of terrorism, anti-Semitism, racism, cryptocurrency, etc.),
- c) the unlawful or abusive use of Content in violation of a third party's intellectual property rights (copyrights, patents, trademarks and other intellectual property rights),
- d) use of the Service by the Client and/or any third party under their control that violates the special conditions linked to the Third-Party Products included in the offer they have chosen (e.g. for High-Risk Activities as part of the Enterprise File Storage solutions),
- e) use for any litigious activity or behaviour, or behaviour prohibited by OVHcloud, such as traffic exchanges, Black Hat SEO (download/reupload of videos on online video platforms, etc.), cryptocurrency mining, video game bots or sending unsolicited emails (spam),
- f) non-compliance with the provisions of these Special Conditions, the General Terms and Conditions of Service, the laws and regulations in force and/or in the event of a violation of third-party rights and/or a request made to OVHcloud by a competent authority.

The Client acknowledges that the right to suspend the Service and/or terminate the Contract is without prejudice to any damages that may be claimable by OVHcloud.

If applicable, the Client shall not use the Third-Party Product in violation or in excess of the types, quantities and other usage attributes related to the Third-Party Product licence and the related documentation.

4.2.3. Content

OVHcloud cannot be held responsible in any capacity whatsoever, including in solidarity, for the Client's Content or for the way it is used as part of the Service, including its transmission, distribution, collection, operation and update.

The Service, and in particular the Cloud Computing technologies that allow the storage capacities of host servers to be operated via the internet and are used by OVHcloud for infrastructure management, does not include a guarantee of Service continuity, nor a guarantee of protection and preservation of the Client's Content. The Client remains solely responsible, in particular in the event of hosting the Content needed to continue their activities, for backing up their Content on separate physical media in a separate location, for setting up and managing a business continuity and/or disaster recovery plan, and more generally, for any technical and organisational measures likely to enable the Client to continue their activity in the event of a major malfunction of the Service, which may affect the availability and integrity of its Content and consequently the continuity of its activity.

4.3. Applications, tools and software

The applications, tools and software provided by OVHcloud as part of the Service (particularly the Management Interface and API applications) must be used in compliance with the applicable Conditions of Service, including Third-Party Product Conditions if applicable. The Client agrees to also use the latest available versions of the applications, tools and software provided by OVHcloud.

The Service can be used and interconnected with elements not provided by OVHcloud (software, systems, applications, connected devices, etc.). The Client is responsible for acquiring all of the rights needed to use these elements, and shall pay the corresponding charges directly to the third party rights holders. The installation of these elements is carried out entirely under the Client's responsibility. OVHcloud cannot be held responsible for malfunctions in the Client's Service following such installations. Please note that OVHcloud does not guarantee that the Service will be compatible with these elements.

4.4. Changes and updates to the service

OVHcloud reserves the right to upgrade the Service, in particular by carrying out any update or version upgrade, in order to maintain the security level of the Service and the Infrastructures. In the event of changes requiring an update or upgrade, the Client shall be informed with reasonable notice, unless an emergency such as a security risk requires its immediate implementation.

OVHcloud may also be required to suspend the Service or interrupt the Client's Service connection to the network in the event of a proven risk to the stability and/or security of OVHcloud systems and environments and/or the Service and Infrastructures. In this case, OVHcloud shall inform the Client within a reasonable period of notice, unless there is an emergency requiring immediate implementation.

4.5. Location

The Datacentres available for providing the Service are mentioned on the OVHcloud Website or during the Order.

When several locations are available, the Client can select the location(s) of their choice when ordering.

The Client acknowledges and accepts that they are also subject to the applicable legislation of the territory in which the Service is installed and its Content stored, in addition to the applicable legislation of the territory in which they use and/or access the Service. They also acknowledge that OVHcloud has the ability to suspend their Service when it is being used for an activity that is prohibited in the physical location of the equipment provided by OVHcloud.

4.6. Backups

OVHcloud regularly takes one or more snapshots to ensure that the Service works properly. These Snapshots are stored outside of the Service on separate media. These Snapshots, taken by and for OVHcloud, are not part of the Service and cannot be considered as any obligation on OVHcloud's part to back up and/or restore Content. In principle, Snapshots are not available to the Client. However, on an exceptional basis, OVHcloud may allow the Client access to their Snapshots, subject to conditions. Notwithstanding the above, OVHcloud makes no commitment to back up or restore the Content on the Service.

OVHcloud does not carry out any backups of the Content stored on the Service, and the data replication mechanisms implemented by OVHcloud as part of the Service do not under any circumstances constitute a safeguard for the Client against the loss or alteration of their Content. It is therefore the Client's responsibility to take all necessary measures to back up their Content as part of the Service, in order to be able to restore it in the event of its loss or deterioration.

5. MITIGATION (PROTECTION AGAINST DOS AND DDOS ATTACKS)

OVHcloud implements protection against DOS and DDOS-type (Distributed Denial of Service) attacks, provided that these are conducted on a massive scale. This function ensures that the operation of the Client's Service is maintained throughout the duration of the attack.

This function involves checking traffic being sent to the Client's Service from outside of the OVHcloud network. Traffic identified as illegitimate is then rejected prior to reaching the Client's infrastructure, allowing legitimate users to access the applications offered by the Client in spite of the attack.

These protection measures cannot apply in attacks such as SQL injection, brute force, exploitation of security flaws, etc.

Due to the great complexity of the protection service, OVHcloud is only subject to a "best endeavours" obligation. It is possible for an attack to not be detected by the tools in place, or that the tools in place do not allow the Service to remain in operation.

Depending on the nature and complexity of the attack, OVHcloud will implement different levels of traffic protection in order to preserve its infrastructure and the Client's Service.

Mitigation is only activated following the detection of an attack by OVHcloud's tools. As a result, until activation of the mitigation, the Service bears the attack directly, which may lead to its unavailability.

The mitigation is activated for an indefinite period and is automatically deactivated when OVHcloud no longer identifies malicious activity or illegitimate traffic to the Client's Service.

Throughout the duration of the activated mitigation, OVHcloud cannot guarantee accessibility to the Client's applications, but shall endeavour to limit the impact of this attack on the Client's Service and on the OVHcloud Infrastructure.

If, in spite of the mitigation activation, the attack is of a nature as to adversely affect the integrity of the Infrastructure of OVHcloud or the infrastructure of OVHcloud's other clients, OVHcloud shall strengthen its protection measures, which may lead to the deterioration of the Client's Service or impact its availability.

Finally, it is possible that part of the traffic generated by the attack is not detected by OVHcloud's equipment and reaches the Client's Service. The effectiveness of the mitigation also depends on the configuration of the Client's Service. For this reason, it is the Client's responsibility to ensure that they have the necessary skills to administer the Service properly.

As a reminder, the mitigation does not absolve the Client from protecting their Service, implementing security tools (firewalls, etc.), regularly updating their system, backing up their data, or ensuring the security of their programs (scripts, codes, etc.).

6. SERVICE LEVEL AGREEMENTS (SLA)

6.1. Contact

When the Service is unavailable or experiencing faults for which OVHcloud may be held responsible, it is the Client's responsibility to contact the OVHcloud teams and open an Incident Ticket from their Management Interface.

6.2. SLA

OVHcloud agrees to ensure the Service's availability levels as described below (the "**SLA(s)**").

6.3. Penalties

In the event of non-compliance with these SLA(s) (except for the exclusions listed in **Article 6.5 (Exclusions) of these Special Conditions** below), the following penalties will be applied, subject to the opening of an Incident Ticket by the Client from their Management Interface in accordance with the procedure set out in **Article 6.4 (Procedure) of these Special Conditions**:

SLA	Fixed penalties
Monthly Service availability rate: 99.99% (Corresponding to five (5) minutes of Unavailability)	Penalty amounting to 5% of the monthly cost of the unavailable Service per one (1) hour period of unavailability beyond the SLA, limited up to 100% of the monthly cost of the Service.

“**Monthly Availability Rate**” shall be understood to mean: the total number of minutes in the month in question deducted from the number of minutes of unavailability over the month in question. The total is divided by the total number of minutes in the month.

“**Unavailability**” refers to the loss of access and/or connectivity to the Service. The loss of access and/or connectivity to the Service is detected by OVHcloud.

The downtime is calculated by OVHcloud from the moment the Incident Ticket is opened.

It is expressly agreed that for the Client, the aforementioned penalties represent a flat-rate compensation for any damage resulting from OVHcloud’s non-compliance with the relevant service commitments. As a result, the Client renounces the right to submit any other request, demand and/or action.

6.4. Procedure

When the Incident is reported and an Incident Ticket is created, the Client shall provide OVHcloud with any useful information for OVHcloud’s diagnosis and intervention. The Client agrees to always remain available in order to be able to collaborate with OVHcloud at their first request, in particular by providing it with any additional information, as well as carrying out any necessary tests and checks. If required, the Client shall give OVHcloud access to its Management Interface.

If the Client’s intervention is necessary for the diagnosis to be established or for the Incident to be resolved, and the Client is not available or does not collaborate with OVHcloud, the corresponding period is not counted as downtime.

OVHcloud shall issue a credit note equal to the penalty amount, deductible from the invoice for the month following OVHcloud’s receipt of the Client’s claim, provided that (a) all due invoices issued by OVHcloud have been paid by the Client and (b) the Client has opened a penalty claim ticket from its Management Interface within a maximum of one (1) month after the Incident Ticket is closed. After this period, compensation can no longer be requested by the Client.

6.5. Exclusions

Under no circumstances can the Client claim the aforementioned compensation under **Article 6 (Service Level Agreements (SLAs))** in the event that non-compliance with the SLA results in:

- (i) events or factors outside of the control of OVHcloud, such as but not limited to: cases of force majeure, third party acts, problems connecting to the internet network, malfunction of the Internet network, malfunction or misuse of hardware or software under the Client’s control;
- (ii) failure on the Client’s part to fulfil the obligations listed as part of this Contract (including a lack of cooperation towards resolving the incident);
- (iii) incorrect or inappropriate use of the Service by the Client (including misuse of instances or the Management Interface, etc.) or configurations made by the Client on the Service that do not allow OVHcloud to verify the Service’s availability;
- (iv) scheduled maintenance;

- (v) an interruption occurring under the conditions set out in this document; or
- (vi) hacking.

In the scenarios listed above, and subject to point (iv), OVHcloud reserves the right to bill the Client for the intervention carried out to reestablish availability, if any. This will be listed as a cost estimate sent to the Client for validation.

The causes of unavailability, particularly the detection of the excluded cases defined above, are determined by OVHcloud by any means. This is mainly done on the basis of elements from OVHcloud's system information (e.g. connection data), which can be sent to the Client upon request.

7. SERVICE DURATION

7.1. Duration

During Ordering, the Client selects the initial duration of their Service subscription ("**Initial Duration**"). The Initial Duration begins on the day that the Service is made available.

At the end of the Initial Duration, the Service automatically renews for successive periods of the same duration ("**Renewal Period(s)**"), unless the Service is renewed for a different duration or the Service is terminated under the conditions set out in the Contract.

The Client may modify the duration of future Renewal Periods for their Services using their Management Interface, at least 24 hours before the end of the Initial Duration or the current Renewal Period.

When the Initial Duration does not begin on the first day of the calendar month (start-up during the month), the Service's renewal cycle is realigned to a calendar cycle during the first renewal so that the following Renewal Periods begin on the 1st of the calendar month.

For example: for a Service initially subscribed to for one (1) year on 24 October 2021, the automatic renewal at the end of its Initial Duration results in the Service being extended from 24 October 2022 up to 31 October 2022.

If the Client does not wish for a Service to be renewed at the end of its Initial Duration or current Renewal Period, they must deactivate the automatic payment function in their Management Interface at least twenty-four (24) hours before the end of the Initial Duration or current Renewal Period.

If automatic payment is deactivated under the conditions set out above, the Service is automatically terminated and deleted at the end of the Initial Duration or current Renewal Period.

However, the Client retains the ability to renew the Service up to twenty-four (24) hours before its Expiry Date, either by reactivating the automatic payment function, or by paying for the next Renewal Period in advance.

7.2. Service termination

Upon the Service expiry date or cancellation date, all Content stored on the Storage Space is automatically and irreversibly deleted after a seven (7) calendar day period. The Client is solely responsible for any operations (such as backups, transfers, snapshots) that they deem necessary to carry out in order to protect against the loss of their Content before the Service is stopped for whatever reason.

8. PRICES, PAYMENT METHODS AND BILLING

8.1. Pricing

The applicable prices are available on the OVHcloud website.

The price shall vary depending on the Service solution and Initial Duration selected by the Client upon Ordering.

8.2. Payment methods and Billing

During Ordering, as well as when the Service is renewed, a bill is issued and paid automatically using the payment method registered by the Client. The Client agrees to register and maintain a valid payment method on their Client Account from the available methods authorised by OVHcloud.

The Service is billed each month in advance and paid immediately via the payment method registered by the Client in their Client Account. Any non-payment within the due time, including a partial payment, will result in an interruption to the Service, which may be permanent in the event of non-payment after OVHcloud sends a reminder via email.

The duration of certain options or functions that may be associated with the Service, along with their renewal and termination conditions, may differ to those applicable to the Service. It is the Client's responsibility to be aware of these.

9. LIFECYCLE MANAGEMENT

Throughout the duration of the Service subscription, OVHcloud implements the following lifecycle:

- **“General Availability”**: refers to the date on which the Service, a new version or a new range of the Service, is made available to the entire market (excluding the test phase).
- **“End of Sales”**: this is the date on which the marketing of the Service, or of a version or range of the Service, is halted. End of Sales usually occurs three (3) years after General Availability. After this date, the Client will no longer be able to order a new Service or this version or range of the Service.
- **“End of Growth”**: this is the date on which the growth of the Service, or of a version or range of the Service no longer included in the catalogue, ends. This stage usually occurs two (2) years after the End of Sales. After this date, the Client will no longer be able to order additional options or services from this Service or this version or this range of Service.
- **“End of Support”**: This is the date on which the Service, or a version or range of the Service, no longer receives support from OVHcloud. End of Support usually occurs five (5) years after General Availability. The Client shall be notified of the End of Support by receiving at least thirty (30) days' notice. After the End of Support date, the SLAs and associated penalties will no longer apply and updates and version upgrades will no longer be provided.
- **“End of Life”**: This is the date on which the Service, or a version or range of the Service, is stopped. End of Life is announced with a minimum notice period of thirty (30) days. After this date, the Service, or the version or range of the Service affected by the End of Life, is permanently shut down. OVHcloud may, at its discretion, on an exceptional basis and for a limited time, allow the Client to maintain the Service, or the version or range of the Service concerned, to allow the Client to perform a Service migration. However, it is strongly recommended that you upgrade to the latest available version or range.

The dates relating to the different stages of the lifecycle are communicated or provided to the Client throughout the Service's lifetime, either directly by email or via the OVHcloud website.