

SPECIFIC CONDITIONS FOR DEDICATED SERVERS BARE METAL

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CLAUSE 1: PURPOSE

The purpose of this document is to define the terms and conditions, including the terms of use and financial terms, applicable to the OVHcloud Dedicated Server Bare Metal leasing service (hereafter the “Service(s)”). They supplement the OVHcloud General Terms and Conditions of Service currently in force, which are applicable to the Service. In the event of contradiction, these Specific Conditions take precedence over the OVHcloud General Terms and Conditions of Service.

Terms starting with a capital letter are defined in the terms and conditions below, or otherwise in the OVHcloud General Terms and Conditions of Service.

CLAUSE 2: DESCRIPTION OF THE SERVICE

As part of the Service, OVHcloud makes available to the Client various categories of server, of which the fees, features and basic hardware and software configurations are described and accessible online on the OVHcloud website. The Client also has the use by default of a public bandwidth the capacity of which varies according to the offer and is specified on the OVHcloud website. These configurations and features may change from time to time.

In the context of each order, before choosing and using its Dedicated Server, the Client undertakes to examine carefully each available configuration in order to select the one(s) whose features meet its needs. The Service’s capacities may be limited as specified on the OVHcloud’s website.

Servers leased from OVHcloud have a public, fixed, non-transferable IPv4 address attached to them. These addresses remain the property of OVHcloud.

Due to the highly technical nature of the Service, OVHcloud is subject to an obligation of means, except for the Service levels detailed in Clause 7, for which OVHcloud has an obligation of result.

CLAUSE 3: ORDERS AND DELIVERY

OVHcloud informs the Client by e-mail of the provision of its Dedicated Server. The Dedicated Server Bare Metal is provided within a maximum period of fifteen (15) working days from the date of effective payment of the order by the Client. Beyond this time period, in the event where the Dedicated Server Bare Metal is not provided by OVHcloud, the Client is entitled to request cancellation of the transaction and a refund of the amounts already paid.

The effective online availability of the Dedicated Server Bare Metal determines the initial date on which billing takes effect.

In the event where a Client order has an impact on the stability of OVHcloud’s infrastructures or on the performance of the Services provided to other Clients of OVHcloud (such as saturation of the space available within a Data Centre, etc.), OVHcloud reserves the right to consult the Client before delivering the Service for the purpose of agreeing to an alternative solution that suits the needs and constraints of the Parties.

CLAUSE 4: CONDITIONS OF USE OF THE SERVICE

4.1 General matters

Before using the Service, it is the Client's responsibility to consult the features of the Service, including those described on the OVHcloud website, as well as the applicable Service Terms and Conditions, including these terms and conditions of use, and to check that these terms and conditions of use meet its needs, considering in particular of its activities and its risk analysis.

Given that the network resources provided to the Client are shared, the Client undertakes not to use the Service in a manner detrimental to other Clients of OVHcloud. It undertakes, in particular, not to use the outgoing public bandwidth at its disposal in an intensive manner. In such a case, OVHcloud reserves the right to apply limitations to this bandwidth, as indicated on the OVHcloud website. The Client may subscribe to additional bandwidth options to have a guaranteed public bandwidth.

The Client has the option of installing itself software packages on its Dedicated Server Bare Metal. These installations are carried out entirely at the Client's own risk, and OVHcloud cannot be held responsible for any malfunction of the Client's Dedicated Server following the said installations or adjustments to their settings.

The Client is the administrator of the Dedicated Server Bare Metal provided to it. In this capacity, the Client confirms it possesses all the technical knowledge necessary to ensure correct administration of the resources provided by OVHcloud, and to carry out the backup of data stored on the said resources. OVHcloud does not carry out any backup of the Client's data and Contents. It is the Client's responsibility to carry out, entirely at its own risk, every operation (such as backup, transfer to a third-party solution, Snapshot, etc.) necessary to preserve its Contents taking into account the nature the said Contents and its risk analysis, including in the event of interruption of the Services or in the event of maintenance operations, version upgrade or update. In this capacity the Client is reminded that interruption of the Services, regardless of the cause (including Contract cancellation, non-renewal, non-payment, interruption of Services by the Client, non-compliance with the Terms and Conditions of Service currently in force, etc.), as well as some operations to reinstall the Services operated by the Client, entail the automatic and irreversible deletion of all Contents (including information, data, files, systems, applications, websites and other elements) reproduced, stored, hosted, collected, transmitted, distributed, published, and more generally used and/or exploited by the Client in the context of the Services, including their backups, if any.

OVHcloud has no control over the Contents stored and used by the Client in the context of the Service. OVHcloud cannot be held liable, for any reason whatsoever, including in a joint capacity, for the Client's Contents, and for the use made of the Contents in the context of the Service, including passing on, distribution to internet users, collection, exploitation, updating, etc. OVHcloud can only warn the Client of the legal consequences that may ensue from illegal activities carried out either on or from the Service.

The Client refrains, as part of or through the Service, from making any activity or behaviour that is contentious such as traffic exchanges (Hitleap, Jingling, etc.), Black Hat SEO (Download, Reupload of videos on online video platforms, etc.), cryptocurrency mining, video game bots, etc.

In the context of maintenance operations, OVHcloud may replace an item of equipment in order to keep the Service in an operational condition. In such cases, OVHcloud carries out the replacement using an item of equipment that is identical or has equivalent features. When the equipment is no longer available (obsolescence, end of production and/or market availability, etc.), and it is necessary to replace it with an item of equipment that is more recent or that has a superior configuration, OVHcloud cannot guarantee the substitute item's compatibility with the Contents (including distributions, systems, software and applications) installed by the Client in the context of the Service.

4.2 Distribution

The Dedicated Servers provided to the Client by OVH do not have any pre-installed distribution (or operating system). It is the Client's responsibility to acquire from a publisher, from any authorised third party or by the intermediary of OVHcloud the necessary rights to use the selected distribution on its Dedicated Server Bare Metal, and to pay the related fees. In this capacity, OVHcloud offers the Client several choices of distribution on its website.

The versions of the various distributions compatible with the Service are mentioned on the OVHcloud website, as well as on the Client Management Interface, and are likely to change, as can the list of compatible versions provided by OVHcloud according to the Service ranges available.

The Client is solely responsible for installing the selected distribution on its Dedicated Server Bare Metal. OVHcloud ensures the interoperability of the Service with the compatible versions of the distribution. OVHcloud is nevertheless not responsible for the effective operation of the said distributions, which may among other things have errors or flaws, or result in Service malfunctions.

The Client is also responsible for carrying out maintenance operations and updating the distribution installed on its Dedicated Server Bare Metal. The Client is solely responsible for these operations and OVHcloud cannot be held liable in this regard for any reason whatsoever, including as a result of operations (maintenance, updates, etc.) carried out in violation of the relevant terms and conditions of use and/or licence, or an operating fault of the Dedicated Server Bare Metal following operations thus carried out by the Client.

Before carrying out updates or upgrades of the distribution installed on its Dedicated Server Bare Metal, the Client must verify the compatibility of the modification or of the new version with the Service and take the necessary measures to ensure continuity of its data.

OVHcloud reserves the right to make modifications to the Service and in particular to require distribution updates or upgrades in order to maintain the security of the Service and its Infrastructures. In the event of a development necessitating such an update or upgrade, the Client is given reasonable advance warning, except in urgent cases such as security risks that may necessitate immediate implementation. If the distribution update or upgrade is not carried out following OVHcloud's requests, OVHcloud reserves the right to interrupt the connection of the Client's Service to the network.

OVHcloud also reserves the right to carry out any updates and/or upgrades it considers required in order to maintain the security of its Infrastructures.

4.3 API applications, tools and software

The API Applications, tools and software provided by OVHcloud as part of the Service must be used in accordance with the relevant Service Terms and Conditions, including, where applicable, Third-Party Product Terms and Conditions communicated by OVHcloud.

The Client undertakes always to use the latest available versions of the API Applications, tools and software provided by OVHcloud.

The Services may be used and interconnected with elements (software, systems, connected objects, etc.) not provided by OVHcloud. The Client is responsible for acquiring all the necessary rights of use for the said elements and pays the corresponding fees directly to the third-party beneficiaries.

4.4 Location

The available Datacenter for the provision of Dedicated Servers Bare Metal are named on the OVHcloud website or at the time of placing the Order.

When several locations are available, the Client selects the one(s) of its choice when placing the Order.

The Client undertakes to comply with the legislation applicable to the jurisdiction in which its Dedicated Server Bare Metal is located and its data is stored.

OVHcloud reserves the right to suspend the Client's Service should it be used for an activity that is prohibited at the physical location of the equipment provided by OVHcloud.

With regard to geolocated IP addresses, the Client undertakes not to use the Service in contravention of the legislation applicable in the country where the IP address is declared. In the event of a breach, OVHcloud may be forced to suspend any geolocated address associated with the Client.

ARTICLE 5: MEASURES FOR THE PREVENTION OF SPAMMING FROM OVHcloud'S NETWORK

OVHcloud shall implement a system of technical measures intended to prevent the dispatch of fraudulent emails and spam from its Infrastructure.

Further to Article 5.1, OVHcloud shall monitor outgoing traffic from the Service towards port 25 (SMTP server) on the internet, which shall involve monitoring traffic by means of automatic tools.

The outgoing traffic referred to in Article 5.2 shall be monitored by OVHcloud with a delay of a few seconds, rather than being filtered or intercepted. These operations shall be conducted by OVHcloud concurrently and not, under any circumstances, directly between the Services and the internet.

OVHcloud reserves the right in certain circumstances to block the sending of emails.

OVHcloud shall not conduct any tagging of e-mails, and shall not modify emails sent by the Client in anyway whatsoever. No information shall be stored by the Supplier during these operations aside from statistical data.

The operation in Article 5.2 shall be conducted regularly and in a fully-automated manner by OVHcloud and the Client acknowledges that no human intervention is involved during the monitoring of traffic to port 25 (SMTP port).

In the case of outgoing traffic from the Client's server, including e-mails, being identified as spam or fraudulent e-mails, OVHcloud shall inform the Client by e-mail and block the Server's SMTP port.

OVHcloud shall not keep a copy of e-mails sent from the Service's SMTP port, even when they are identified as Spam.

The Client may request unblocking of the SMTP port through their Management Interface.

Any new e-mail identified as Spam will entail a new blocking of the SMTP port by OVHcloud for a longer period to be determined at OVHcloud's reasonable discretion.

On the occurrence of OVHcloud blocking the SMTP port for a third time, OVHcloud reserves the right to deny any new request for the unblocking of the SMTP port.

ARTICLE 6: MITIGATION (protection against DOS and DDoS attacks)

OVHcloud shall implement protection against DOS and DDoS-type (Distributed Denial of Service) hacking attempts provided that these attacks are conducted in a manner reasonably considered to be serious enough by OVHcloud to justify such protection. In implementing such protection, OVHcloud shall use

reasonable endeavors to ensure that the operation of the Client's Services is maintained throughout the duration of a DOS or DDoS attack.

The function in Article 6.1 involves monitoring the traffic sent to the Client's Services from outside the Supplier's network. The traffic identified as illegitimate shall then be rejected by OVHcloud prior to reaching the Client's Infrastructure, thus allowing legitimate users to access the applications offered by the Client in spite of the attack.

As a result of the high technicality of the Service, certain attacks may not be detected by the protection measures implemented by OVHcloud. The protection measures outlined in Articles 6.1 and 6.2 shall not apply in the case of attacks such as SQL injection, brute-force, abuse of security vulnerabilities, or attacks of a similar nature to the latter. In such cases, the Infrastructure and the Service may be temporarily suspended and unavailable.

Given the nature of a potential DOS or DDoS attack and their complexity, OVHcloud shall implement different levels of traffic protection in order to preserve the Infrastructure and the Services.

The mitigation of a DOS or DDoS attack is activated only at the time of the detection of the attack by the OVHcloud's tools and for a non-fixed period, and deactivated only once the attack and illegitimate traffic are no longer present. Thus, until the mitigation is activated, the Service shall handle the attack directly, which may lead to the temporary unavailability of the Service.

While mitigation is activated, OVHcloud shall not guarantee the accessibility of the Client's applications but it shall endeavor to limit the impact of a DOS or DDOS attack on the Client's Services and on OVHcloud's Infrastructure.

If, in spite of the activation of mitigation, a DOS or DDOS attack is of such a nature as to adversely affect the integrity of the OVHcloud's Infrastructure or the infrastructure of the other Clients of OVHcloud, OVHcloud shall strengthen its protection measures which may lead to the deterioration of the Client's Services or impact its availability for which OVHcloud shall not be liable.

Where part of the traffic generated by a DOS or DDOS attack is not detected by OVHcloud's equipment and reaches the Client's Services, the effectiveness of the mitigation shall also depend on the appropriate configuration of the Client's Services. In this regard, the Client must ensure that it has the adequate resources to administer the configuration of the Client's Services properly.

The Client shall be solely responsible for ensuring it secures its Services, implementing security tools (firewall, etc.), periodically updating their system, backing up their data and for ensuring the security of their software (scripts, codes etc.).

CLAUSE 7: SERVICE LEVEL AGREEMENTS (SLAs)

When the Service is unavailable or is experiencing malfunctions for which OVHcloud may be held responsible, it is the Client's responsibility to contact OVHcloud and to open a support ticket from its management Interface.

SLAs. OVHcloud undertakes to ensure Service levels relating to availability of the Dedicated Server Bare Metal and to the response and resolution times as detailed below.

Service Credits. In the event of non-compliance with these SLAs, (except in the case of the exclusions listed), the following penalties will apply, subject to the opening of an incident ticket by the Client from its Management Interface (except in the case of a general failure qualified by OVHcloud):

Service	Service Credits
Availability of the Dedicated Server Bare Metal: <ul style="list-style-type: none"> - Range HG : 99,99% - Range SCALE : 99,99% - Range HIGHGRADE : 99,99% - Range INFRA/ADVANCE : 99,95% - Range RISE : 99,9% 	Credit of 5% of the monthly cost of the unavailable Dedicated Servers Bare Metal, for every thirty (30) minutes of unavailability begun in excess of the SLA, limited to 50% of the said monthly cost.
Guaranteed response time of one (1) hour*, Level 1 Incident (Dedicated Hardware Server)	Credit of 5% of the monthly cost of the unavailable Dedicated Server Bare Metal, for every thirty (30) minutes of unavailability begun in excess of the SLA, limited to 50% of the said monthly cost.
Guaranteed resolution time of one (1) hour**, Level 1 Incident (Dedicated Hardware Server)	Credit of 5% of the monthly cost of the unavailable Dedicated Server Bare Metal, for every thirty (30) minutes of unavailability begun in excess of the SLA, limited to 50% of the said monthly cost.
Guaranteed response time of one (1) hour*, Level 2 Incident (Performance of Dedicated Server)	Credit of 5% of the monthly cost of the affected Dedicated Server Bare Metal, for every thirty (30) minutes of unavailability begun in excess of the SLA, limited to 50% of the said monthly cost.

(*) The response time is calculated from the creation of the support ticket. "Response" means the initial response to the support ticket by OVHcloud technical staff and not resolution of the Incident.

(**) The resolution time is calculated from the start of the response. "Resolution" means solely the restored availability of the unavailable Dedicated Server Bare Metal or replacement of the said Dedicated Bare Metal Server in the event of a fault, excluding restoration of data, systems and applications that were stored and/or installed by the Client on the unavailable Dedicated Server Bare Metal.

"Level 1 Incident" is to be understood as meaning any Incident resulting in total non-availability of the Dedicated Servers Bare Metal, such as hardware problems (Power Outage, Disk fault, etc.)

"Level 2 Incident" is to be understood as meaning any Incident resulting in substantial deterioration in the performance of the Dedicated Servers Bare Metal such as latency problems, delayed access times, performance problems, slowed-down applications, etc.

"Monthly availability rate" is to be understood as meaning: the total number of minutes in the month concerned less the number of minutes of non-availability in the month in question, the total being divided by the total number of minutes in the month in question. For the purpose of calculating compensation, non-availability is calculated from the opening of the support ticket, until resolution of the malfunction.

"Unavailability" is to be understood as meaning the impossibility of accessing the public IPv4 address of one or more Dedicated Servers owing to a fault or malfunction of an item of OVH equipment (network or other). Faults and malfunctions of OVHcloud equipment that do not prevent access to the Dedicated Servers Bare Metal are not considered as non-availability.

The above Service Level Agreements are undertaken subject to the exclusions set out above, and on condition that the Client cooperates with OVHcloud to restore the Service in the event of non-availability. If a single event results in failure to fulfil more than one of the Service Level Agreements described above, multiple compensation payments will not apply. In such a case, the service credit most favourable to the Client will apply. In the same way, the total amount of service credits made during a single month, for all events combined, cannot exceed 50% of the total monthly cost of the affected Service.

When declaring the Incident and creating the ticket, the Client gives OVHcloud all the relevant information needed for OVHcloud's diagnosis and response. The Client undertakes to remain available at all times for the purpose of cooperating with OVHcloud immediately upon request, including supplying it with any additional information, and carrying out all necessary tests and checks. If necessary, the Client gives OVHcloud access to its Management Interface.

It is expressly agreed that the service credits set out above constitute, for the Client, an all-inclusive payment for all loss or damage resulting from OVHcloud's failure to meet the service agreements in question; and as such the Client waives any right to any other request, complaint or action.

Service credits are issued if and when Client has paid all its overdue invoices, and are deducted from the invoice for the month following receipt by OVHcloud of the Client's claim provided that all previous and overdue invoices have been paid by the Client.

Exclusions. The Client cannot in any circumstances rely on this Clause to claim the services credits set out above in the event of non-availability resulting wholly or in part from (i) events or factors beyond the control of OVHcloud such as but not limited to instances of force majeure, act of a third party, malfunction or misuse of equipment or software within the Client's control, (ii) the Client's failure to fulfil its obligations as set out in this Contract (including lack of cooperation to resolve the Incident), (iii) misuse or inappropriate use of the Service by the Client (including incorrect or inappropriate network configuration), (iv) planned maintenance, (v) suspension occurring within the terms and conditions set out in the General Terms and Conditions of Service or (vi) hacking or software piracy. In such cases, and subject to point (iv), OVHcloud reserves the right to invoice the Client for any support provided to restore availability. A quotation for this support will be submitted to the Client for authorisation.

The causes of unavailability, including instances of the exclusions defined above, are established by OVHcloud by whatever means it sees fit, including on the basis of elements of OVHcloud's information system (such as connection data) which, by express agreement, will be admissible.

For the ranges SCALE and HIGHGRADE of the Dedicated Server Bare Metal, the guarantee of availability of 99.99% is subject to the configuration, by the Client, of the functionality OLA, in order to prevent a cut in service if a link server network comes to be cut. If that condition is not met, the guarantee of availability is 99.95%.

CLAUSE 8: SERVICE FEE, DURATION, RENEWAL AND CANCELLATION

The fee varies according to the range of server and the lease period (the "Initial Period") selected by the Client when placing the Order. Only the fee shown on the order form issued by OVHcloud corresponds to the total amount payable by the Client.

At the time the Order is placed, as well as each time the Service is renewed, an invoice is issued and is settled by automatic payment via the means of payment registered by the Client. The Client undertakes to register a valid means of payment on its OVHcloud Client Account from among the available means of payment.

It is the Client's responsibility to determine precisely which offer best meets its needs, and the offer cannot subsequently be altered during the term of performance of the Contract.

The Initial Period starts on the day the Dedicated Server Bare Metal is effectively provided. At the end of the Initial Period, the lease period renews automatically for successive periods of the same duration (the "Renewal Period(s)"), under the same contractual and pricing conditions as the previous period, except where the duration of the Renewal Period is altered or the Service is cancelled in accordance with the above terms and conditions or the General Terms and Conditions of Service in force at that time.

The Client can alter the duration of future Renewal Periods of its Services via its Management Interface, at least 24 hours before the end of the Initial Period or the current Renewal Period.

When the Initial Period does not start on the first day of a calendar month (mid-month start), the Service renewal cycle is realigned with a calendar cycle upon the first renewal so that subsequent Renewal Periods start on the first day of a calendar month. (For example: The automatic renewal at the end of the Initial Period of a Service initially subscribed to for one (1) year on 24 May 2020 entails the extension of the said service for the period from 24 May 2021 to 31 May 2021).

In the event of deactivation of the automatic payment under the above terms and conditions, the Service concerned is automatically cancelled and withdrawn at the end of the Initial Period or current Renewal Period ("Expiry Date"). All the Contents and data stored by the Client while using the Service are deleted within a maximum period of seven (7) days starting from the Expiry Date of the said Service. The same applies whether cancellation is immediate or made in advance. It is the Client's responsibility to take all necessary measures to ensure the preservation of the said Contents and data before cancellation of the Service.

The Client nevertheless still has the opportunity to renew the Service concerned by reactivating the automatic payment function up to 24 hours before its Expiry Date, or by paying in advance for the next Renewal Period.

The duration as well as the terms and conditions of renewal and cancellation of some options or functionalities that can be combined with the Service may differ from those applicable to the Service. It is the Client's responsibility to take note such differences.