

## SPECIAL TERMS AND CONDITIONS FOR THE RENTAL OF VIRTUAL PRIVATE SERVER(S)

Version dated 15 April 2020

*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.*

### **ARTICLE 1: OBJECT**

The aim of this document is to set out the Special Terms and Conditions, particularly the conditions of use and financial conditions, applicable to the OVHcloud Virtual Private Server rental service (hereinafter referred to as the "Service(s)").

These supplement the current OVHcloud General Terms and Conditions of Service, which are applicable to the Virtual Private Server rental service. If there is a contradiction between the two, these Special Conditions prevail over the OVHcloud General Terms and Conditions of Service.

Terms beginning with a capital letter are either defined in this document, or in the OVHcloud Glossary which is accessible from the OVHcloud website.

### **ARTICLE 2: DESCRIPTION OF SERVICES**

As part of the Service, OVHcloud provides the customers with a Virtual Private Server (VPS) with the network resources and Host Server resources being dedicated (hard disk partition) or shared by different VPSs installed on it (RAM, processor, etc.), as well as a geolocated IP address according to the physical location of the VPS (hereinafter referred to as the "Resources").

A description of the different configurations and features of the VPS (disk partition, RAM, processor, operating system, etc.) is available online on the OVHcloud website. These configurations and features change regularly. It is the customer's responsibility to be aware of these changes, particularly when it comes to any new Orders.

The Resources provided to the customer, particularly the Host Server and VPS, remain the exclusive property of OVHcloud.

The Server capacity may be limited. These capacity limits are specified on the OVHcloud website.

As part of the Service, the outgoing bandwidth traffic recorded on the switch port is unlimited. However, OVHcloud reserves the right to restrict the Service bandwidth to 1 Mbps (1 Megabit per second) until the end of the current billing period in cases of excessive use by the Customer.

Throughout the duration of the subscription, OVHcloud provides the Customer with a Management Interface which allows them to configure and manage their VPS (creation, deletion, Switching, etc.) and view their usage statements.

The Customer is the sole administrator of their VPS; OVHcloud does not intervene in its administration under any circumstances.

Meanwhile, OVHcloud is responsible for the administration of the hardware and network infrastructure, more specifically the administration of the Host Server on which the Customer's VPS is installed. Before selecting and using their VPS, the Customer agrees to carefully review each available configuration in order to select the one best suited to their needs.

Due to the highly technical nature of the Service, OVHcloud is only subject to a "best endeavours" obligation.

### **ARTICLE 3: ORDER AND DELIVERY**

Once the Customer's order has been confirmed by OVHcloud, OVHcloud sends the access codes that will enable the Customer to connect to the VPS. These generic access codes are not intended to be used indefinitely. It is the Customer's responsibility to change the codes as soon as possible after they have received them, while respecting best practices in terms of secure and confidential authentication methods.

As part of the Service, the Customer has the ability to modify the configuration of their VPS according to the models offered by OVHcloud. To do this, they can Order the configuration to which they wish to switch their VPS from their Management Interface. This modification takes place within a few hours after the Order. Please note that it is only possible to Switch to a higher configuration.

As the Service is based on virtualisation technologies, the Customer acknowledges that OVHcloud cannot guarantee the feasibility of Switching requests.

The billing methods applicable to the configuration change are set out in the Article below entitled "Duration, Prices and Billing".

### **ARTICLE 4: TERMS AND CONDITIONS OF USE**

#### **4.1 Requirements**

The Customer must have an internet connection to log in to the Management Interface and access the Service, and remains solely responsible for the availability, reliability and security of their Internet connection.

The Customer confirms that they have the technical knowledge needed to ensure the proper administration of virtual servers such as the VPS offered by OVHcloud, as well as to carry out ongoing backups of the data stored on the Service.

The Customer also agrees to familiarise themselves with the documentation provided by OVHcloud relating to the VPS Service.

Before using the Service, it is the Customer's responsibility to familiarise themselves with all of its features, specifically those set out in the "Description of Services" article above, as well as the applicable Conditions of Service, particularly these Conditions of Use. The Customer confirms that these conditions meet their needs, in view of their activities and risk analysis.

#### **4.2 General information**

The Customer is solely responsible for their use of the Service, particularly services and websites hosted on their VPS, the Content and information transmitted, distributed or collected, its operation, and its update.

The Customer shall act as the hosting provider within the meaning of the provisions of Article 6-I-2 of the Law for Confidence in the Digital Economy (*Loi pour la Confiance dans l'Economie Numérique*) of 21 June 2004, in the sense that they “undertake, even free of charge, in order to render accessible to the public via online public communication services, the hosting of signals, writings, images, sounds or messages of any kind, supplied by the recipients of those services”.

In this sense, OVHcloud only ensures the Customer’s access to the Service, allowing the Customer to store their or their customers’ data.

OVHcloud reiterates that it is the Customer’s responsibility to take all the technical provisions allowing for the holding and retention of connection logs or any data that allows the identification of anyone who contributed to the creation of content or the content of services for which the Customer is a provider. This is in accordance with the legislation in force, and particularly Decree No. 2011-219 of 25 February 2011 relating to the storage and communication of data that allows the identification of any person having contributed to the creation of content put online, providing for a retention period of 12 months.

The Customer is forbidden from using the Service to implement jailbreaking services for the purposes of downloading large quantities of files onto hosting platforms.

The Customer acknowledges that for security reasons, certain features, uses and protocols (such as IRC or P2P file sharing) are likely to be limited by the Service. Anonymisation services (Proxy) and cardsharing (CCCam or similar) are not permitted on the Service.

For the preservation of the Infrastructure, OVHcloud reserves the right to filter certain ports deemed to be sensitive. Likewise, the Customer acknowledges that limitations on UDP/ICMP flows are in place.

OVHcloud also reserves the right to limit or restrict certain VPS functions in order to ensure the security of its Infrastructure. OVHcloud will inform the Customer of blockages being put in place wherever possible.

As part of the Service, OVHcloud manages the usage of resources made available to the Customer through an agent, installed by default, that monitors and gives alerts on resource usage rates. The Customer may deactivate this function if they wish, by uninstalling the agent.

As some of the Host Server Resources on which the VPS provided to the Customer is installed are shared with other VPSs installed on said Host Server, the Customer agrees to not use the Service in a way that is detrimental to other OVHcloud customers or that harms the reputation of the Host Server’s IP address.

OVHcloud does not carry out any specific backups on the Content and the data stored on the Customer’s VPS. It is the Customer’s responsibility to take every measure necessary to protect against the loss of their Content and their data.

### **4.3 Tools, software and API applications**

The APIs, tools and software provided by OVHcloud as part of the Service must be used in compliance with the applicable Conditions of Service, including Third-Party Product Conditions communicated by OVHcloud, if applicable. The Customer agrees to also use the latest available versions of the APIs, tools and software provided by OVHcloud.

The Customer also agrees to respect the licence and operating system use conditions with which their VPS is configured by OVHcloud.

The aforementioned licence conditions and conditions of use for operating systems and applications are either communicated to the Customer at the time of the first order of the, configured with the systems and/or software preinstalled, or are made available to the Customer on the OVHcloud website or the software publisher's website.

The Services can be used and interconnected with elements not provided by OVHcloud (software, systems, connected devices, etc.). The Customer 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 Customer's responsibility. OVHcloud cannot be held responsible for malfunctions in the Customer's VPS following such an installation.

#### **4.4 Changes and Updates to the Service**

OVH reserves the right to upgrade its operating systems and pre-installed applications, in particular by carrying out any updates and/or version upgrades it deems necessary. OVHcloud shall notify the Customer in the event that an update is required for an operating system or an application being used by the Customer.

The Customer can also carry out maintenance and update operations on the aforementioned operating systems and applications preinstalled on their VPS. In this case, the Customer assumes full responsibility and OVHcloud cannot be held liable for operations (maintenance, update, etc.) carried out that violate the applicable conditions of use and/or the licence conditions, or for the malfunction of the VPS following such operations carried out by the Customer.

Before undertaking updates or version upgrades on operating systems and applications, the Customer must take any measures necessary to ensure the continuity of their data, such as backup operations, and to ensure the compatibility of the upgrade or new version with the Service. To this end, the Customer shall consult the OVHcloud website, or if they are unable to find available information, contact OVHcloud Support.

In order to maintain the security level of the Customer's VPS and of all of the servers in its infrastructure, OVHcloud agrees to notify the Customer via email of available updates for applications maintained by OVHcloud for which a security flaw has been identified. If these applications are not updated following the request from OVHcloud, OVHcloud reserves the right to interrupt the VPS connection to the internet. Likewise, in the event that OVHcloud detects that the Customer's VPS has a security issue, an email may be sent to the Customer notifying them that a reinstallation is required in order to maintain the integrity of the VPS and the Infrastructure as a whole. OVHcloud reserves the right to interrupt the VPS connection to the Internet while the Customer reinstalls it. The Customer must carry out operations relating to transferring compromised system data to the new system themselves. OVHcloud's commitment and involvement is limited to the installation of the new system.

#### **4.5 Location**

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

When several locations are available, the Customer can select the location(s) of their choice when ordering. Their selection is final and cannot be changed later.

The Customer acknowledges and accepts that they are also subject to the applicable legislation for the country in which the Infrastructures are installed and in which their data is stored. They also acknowledge that OVHcloud has the ability to suspend its service when it is being used for an activity that is prohibited in the physical location of the equipment provided by OVHcloud.

Likewise, in the case of geolocated IP addresses, the Customer agrees to ensure that they do not use the service in contravention of the applicable legislation in the country in which the IP address is declared. In the event of such use, OVHcloud may be forced to suspend any geolocated address associated with the Customer.

#### **ARTICLE 5: MEASURES FOR THE PREVENTION OF SPAMMING FROM THE OVHCLOUD NETWORK**

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

To this end, OVHcloud shall monitor outgoing traffic from the Service used by the Customer towards port 25 (SMTP server) on the internet. This operation shall consist of monitoring traffic using automatic tools.

The outgoing traffic shall be verified by the Supplier with a delay of a few seconds, rather than being filtered or intercepted. These operations shall be conducted in parallel between the server and the internet, and never via the front-end.

OVHcloud reserves the right to block the transmission of emails in certain cases.

Furthermore, no operations are carried out on sent emails: OVHcloud shall not tag emails, or modify emails sent by the Customer in any way. No information is stored by OVHcloud during these operations, aside from statistical data.

This operation is carried out regularly and is fully automated. No human intervention is involved during the verification of traffic to port 25 (SMTP port).

In the event that outgoing emails from the Customer's server are identified as spam or fraudulent e-mails, OVHcloud shall inform the Customer by e-mail and proceed to block the Server's SMTP port.

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

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

Any new e-mail identified as spam will result in the SMTP port being blocked again for a longer period.

If it is blocked for a third time, OVHcloud reserves the right to deny any new request to unblock the SMTP port.

## **ARTICLE 6: 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 Customer's Service is maintained throughout the duration of the attack.

This function involves checking traffic being sent to the Customer's Service from outside of the OVHcloud network. Traffic identified as illegitimate is then rejected prior to reaching the Customer's infrastructure, allowing legitimate users to access the applications offered by the Customer 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 vast 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 are insufficient to maintain the operation of the Service.

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 Customer'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 Customer's Service.

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

If in spite of the mitigation activation, the attack of a nature as to adversely affect the integrity of the Infrastructure of OVHcloud or the infrastructure of OVHcloud's other customers, OVHcloud shall strengthen its protection measures which may lead to the deterioration of the Customer'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 Customer's Service. The effectiveness of the mitigation also depends on the configuration of the Customer's Service. For this reason, it is the Customer's responsibility to ensure that they have the necessary skills to administer the Service properly.

As a reminder, the mitigation does not absolve the Customer from securing 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.)

## **ARTICLE 7: SERVICE LEVEL AGREEMENTS (SLA)**

OVH is committed to ensuring the following Service levels:

(a) VPS STARTER Range:

Monthly availability rate: 99.5%

(b) VPS VALUE/ESSENTIAL/COMFORT/ELITE Ranges:

Monthly availability rate: 99.9%

*“Monthly availability rate” should be understood as: the total number of minutes in the month considered as a deduction made from the number of minutes of unavailability over the month concerned. The total is divided by the total number of minutes in the month.*

*“Unavailability” should be understood to mean: the loss of access to and inability to reboot the VPS, for more than three (3) consecutive minutes from the moment an Incident ticket has been opened by the Customer.*

The Service level agreements made above are subject to the exclusions below, and on the conditions that in the event of unavailability the Customer shall collaborate with OVHcloud to reestablish the Service as set out in the “Incident Management” article in the General Terms and Conditions of Service.

This agreement does not in any way concern the availability of elements that are under the Customer’s control, such as software or applications installed on the VPS and used by the Customer.

OVHcloud implements technical tools for monitoring VPSs, in particular via “PING” requests. This service level agreement is not applicable in the event that OVHcloud is unable to perform the technical operations required for VPS monitoring due to the Customer’s configuration of their VPS.

If OVHcloud confirms that a VPS is available and in good working order, OVHcloud is released from its obligations under this SLA. However, in this case, upon the Customer’s request, OVHcloud agrees to assist them in identifying the cause of the issues found by the Customer. If OVHcloud identifies an Unavailability, OVHcloud completes the diagnostic and works in collaboration with the Customer to reestablish availability.

If the service level set out above is not reached, the Customer can request the following credits (subject to the exclusions below):

- Unfulfilled availability rate:

(a) VPS STARTER Range:

i. Credit equal to 10% of the monthly amount paid by the Customer for the month during which the components were affected by the Unavailability, if the availability rate identified is equal to or higher than 99.0% and lower than 99.5%.

ii. Credit equal to 50% of the monthly amount paid by the Customer for the month during which the components were affected by the Unavailability, if the availability rate identified is lower than 99.0%.

(b) VPS VALUE/ESSENTIAL/COMFORT/ELITE Ranges:

i. Credit equal to 10% of the monthly amount paid by the Customer for the month during which the components were affected by the Unavailability, if the availability rate identified is equal to or higher than 99.5% and lower than 99.9%.

- ii. Credit equal to 50% of the monthly amount paid by the Customer for the month during which the components were affected by the Unavailability, if the availability rate identified is lower than 99.5%.

The credits cannot under any circumstances be refunded to the Customer as cash.

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

If an incident results in OVHcloud failing to comply with several commitments in the Service Level Agreement, the credits cannot be accumulated. When credit compensation is applied, it is provided as generously as possible to the Customer. Furthermore, the total accumulated compensation able to be attributed over the course of a month for all incidents combined cannot exceed 100% of the total monthly amount billed to the Customer.

The compensation operates by deduction from the Customer's next bill following OVHcloud's receipt of their claim for compensation. The Customer cannot request that the service level agreement be applied more than 1 month after closing the Incident ticket relating to the fault found and for which they would request the compensation set out in the terms of this article.

The Customer cannot under any circumstances use this article and request the aforementioned credit compensation in the event of unavailability resulting in full or in part from: (i) events or factors outside of the control of OVHcloud, including but not limited to cases of force majeure, third parties, internet connection issues, internet network downtime, downtime or incorrect usage of hardware or software under the Customer's management (particularly the applications run on the VPS); (ii) failure on the Customer's part to fulfil the obligations listed as part of this Contract (in particular, failure to collaborate in resolving the incident); (iii) incorrect or inappropriate usage of the Service by the Customer (particularly incorrect usage of the VPS or Management Interface, etc.); (iv) scheduled maintenance; (v) an interruption that falls under the conditions listed in the "Terms and Conditions of Use" article in this document; or (vi) hacking or piracy. In the scenarios listed above, and subject to point (iv), OVHcloud reserves the right to bill the Customer for the intervention carried out to reestablish availability, if any. This will be listed as a cost estimate sent to the Customer 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 the OVHcloud's system information (e.g. connection data), which can be sent to the Customer on request.

## **ARTICLE 9: DURATION, PRICES AND BILLING**

The applicable prices and payment methods are available on <https://www.ovhcloud.com>.

During Ordering, the Customer selects the initial duration of their Service subscription ("Initial Duration"). The Initial Duration begins on the day that the Service is activated. At the end of the Initial Duration, the Service automatically renews in successive periods of the same duration ("Renewal Period(s)"), unless the Service is renewed with a modified duration or terminated in accordance with the conditions set out above or in the General Terms and Conditions of Service in force.



During Ordering, as well as when the Service is renewed, a bill is issued and paid automatically using the payment method registered by the Customer. The Customer agrees to register a valid payment method from the methods available.

The Customer 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 May 2017, the automatic renewal at the end of its Initial Duration results in the Service being extended from 24 May 2018 up to 31 May 2019.)*

If the Customer does not wish for a Service to be renewed at the end of its Initial Duration or current Renewal Period ("Renewal Date"), they must deactivate the automatic payment function in their Management Interface.

In order to be effective and result in the termination of the Service at the end of the Initial Duration or current Renewal Period, the automatic payment function must be deactivated under the following conditions:

- a. For Services with a monthly renewal cycle, before the 19th day of the calendar month at 11:00 PM (Paris time) at the latest,
- b. For Services with a non-monthly renewal cycle (quarterly, six-monthly, annually, etc.) before the 19th day of the calendar month preceding its Renewal Date at 11:00 PM Paris time at the latest *(For example: to terminate a Service subscribed to for one (1) year in June 2018, at the end of its Initial Duration, the automatic payment must be deactivated before 19 May 2019, at 11:00 PM Paris time).*

If the automatic payment is deactivated under the conditions set out above, the related Service is automatically terminated and deleted at the end of the Initial Duration or current Renewal Period ("Expiry Date") including all of the content and data stored by the Customer as part of the Service. It is the Customer's responsibility to take all the necessary measures to ensure that their content and data is preserved before the Service is terminated.

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

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 Customer's responsibility to be aware of these.

The Customer may carry out a change of configuration on the VPS being billed. In this case, the Switch to a higher configuration is billed to the Customer at the time of request according to the price applicable to the new configuration, which can be checked on <https://www.ovhcloud.com>.

The delivery time is established by OVHcloud based on the available data in its information system, which is authentic and is fully binding on the Customer.

The Customer agrees to always have sufficient funds in their bank account and the payment method that they are using, so that their bills can be paid within the specified deadlines.

If OVHcloud is unable to collect money via the associated payment method, an email will be sent to the Customer inviting them to pay the amount of their outstanding bill as soon as possible. Failure to pay the amount will result in OVHcloud suspending the Service by right.

The Switch operates from the date of operation up to the Service Expiry Date. The difference between the monthly price applicable to the current VPS model and the price applicable to the new VPS model is billed on a pro-rata basis.