OVHcloud

SPECIFIC CONDITIONS – SMS MESSAGING SERVICES
Version dated 04/05/2022

ARTICLE 1. PURPOSE

1.1. The purpose of these Specific Conditions, which supplement OVHcloud's General Terms of Service, is to define the technical and financial conditions subject to which OVHcloud agrees to provide SMS sending and receiving services (hereinafter referred to as the "Service(s)").

1.2. If there is a contradiction between these two documents, these Specific Conditions prevail over the General Terms of Service.

1.3. Terms beginning with a capital letter are defined below, in "Article 17: Definitions" in the General Terms of Service, or in the Glossary available on the OVHcloud website.

1.4. Any use of the Service is subject to the Client's compliance with these contractual conditions.

ARTICLE 2.   SERVICE DESCRIPTION

2.1. The Service consists of the delivery of SMS messages from the OVHcloud SMS network to the MSISDN of the Client's or Sponsor's service users. If available, the Service may include the collection of SMS messages.

2.2. The use of the Service is subject to the prior creation of a Client ID.

2.3. The Service may be used via the Client's Management Interface or the OVHcloud API (available under the API tab on the SMS page on the OVHcloud website).

2.4. The Client's creation of SMS senders is subject to moderation of the terms chosen by the Client. This may take up to 48 working hours. OVHcloud reserves the right to request official documents that prove the validity of the request.

2.5. The Service allows the Client to send SMS messages to countries listed on the OVHcloud website, available under the "Prices" tab on the SMS page. It is the Client's responsibility to ensure that the recipients of these SMS messages are using telephone lines that belong to one of the countries listed on the OVHcloud website.

2.6. OVHcloud cannot guarantee the successful delivery of SMS messages sent by the Client to a recipient in a country that does not appear on this list.

2.7. OVHcloud reserves the right to modify all or part of this list to add new countries. In the event that a country is removed, OVHcloud will inform the Client through a message on the OVHcloud website and/or by sending an email to the address listed by the Client when the Client ID was created.

2.8. When the Client sends an SMS, it can set the validity period. This duration refers to the timeframe during which the user's operator will attempt to send the SMS to the device. This duration cannot exceed the maximum period set for the recipient's operator; it is the Client's responsibility to find out the applicable period, which, in any case, cannot exceed 72 hours.

2.9. The Service does not support the sending of MMS messages.

2.10. The Client acknowledges and accepts that different operators (within the meaning of "Article 2: Definitions" of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code) such as SMS aggregators, internet service provider or fixed network operators, are involved in the execution of the Services as telecommunications operators, in particular for the successful routing of SMS messages. OVHcloud cannot be held liable in the event that one of these operators partially or totally fails to execute its Services. The Parties are reminded that operators, in particular, may request the payment of penalties or even suspend their services with OVHcloud in the event of the Client's non-compliance with the laws and regulations, with provisions set out by the competent authorities and/or with the sectoral ethical rules in force (collectively known as "the Applicable Rules"). Therefore, the Client acknowledges and accepts that OVHcloud is entitled to charge them with the payment of penalties, or to suspend the Service without warning in the event of a breach of the Applicable Rules.

3.1 The Client agrees that it has the power, authority and capacity required for the completion and execution of the obligations set out in this document.

3.2 It is the Client's responsibility to submit valid information pertaining to its identity. As such, the Client agrees to communicate and provide evidence of its contact details, place of residence and accurate bank account information to OVHcloud, as well as keep this information regularly updated. OVHcloud reserves the right to ask the Client to send a list of documents proving its identity, place of residence and bank account information before opening the line. If these documents are not received within seven days after the request, OVHcloud shall reserve the right to restrict the Service until the requested items are received.

3.3 The Client agrees to send any updated documents as soon as possible (change of address, change of bank details, etc).

3.4 The Client shall not act in any way that has the purpose or effect of creating public confusion between itself and OVHcloud. As such, the Client agrees to display its trading name for any SMS-MT messages sent to users, or, when it is working on behalf of a third party, the name of the sponsor for which the message is sent.

3.5 The Client shall ensure that it has all the intellectual property rights necessary to distribute any content or application that is subject to specific protection.

3.6 The Client agrees to not send SMS messages containing:

- messages which are violent, pornographic, racist, anti-Semitic, discriminatory, liable to undermine respect for the human person and his dignity, which contravene child protection, etc.,
- messages that incite the committing of crimes or offences, encourage the use of illicit substances, or that encourage suicide, etc.,
- messages that promote sectarian movements, such as those reported in the French Parliamentary report on Cults in France, or are considered to be a sectarian risk to State services, or are recognised as such by a court decision with authority of res judicata, etc,
- messages with the purpose of directly or indirectly promoting products that are subject to a legislative ban, alcoholic drinks, etc.

3.7 The Client agrees to follow all requirements of the Information Commissioner's Office (ICO) and the European Data Protection Board. The Client is forbidden from sending SMS messages to users that have not expressly agreed to receive such messages. The Client agrees to ensure that it follows all legal and regulatory provisions relating to the protection of personal data as well as the protection of the right to a private life, particularly in terms of electronic communications.

3.8 It is the Client's sole responsibility to ensure that requests submitted by users are processed, particularly relating to refusals to receive the Client's SMS messages. This also applies to requests to identify the Sponsor.

3.9 The Client agrees to inform OVHcloud of any mass sending of SMS messages that may result in an overload on the OVH network up to 7 days before the scheduled sending date. This prior warning allows OVHcloud to plan for any sudden increase in the number of SMS messages sent from its platform. If prior warning is not given, OVHcloud cannot be held responsible for any SMS delivery failures experienced by the Client.

OVHcloud 3.10 The Client acknowledges that OVHcloud may be required to send technical recommendations aiming to improve the quality and/or security of the Service, and as such agrees to regularly log in to its management interface as well as its electronic messaging service.

3.11 The Client acknowledges that in order to improve the quality of the Service, OVHcloud may be required to perform technical interventions on its infrastructures, which are likely to affect the operation of the Service or suspend the Service for a limited time. OVHcloud is required to communicate the way in which the Service will be interrupted and the estimated duration of the Service outage in advance, through all of its available communication methods.

3.12 The Client agrees to use the Service in accordance with the legal and regulatory provisions in force and with the provisions of this Contract. The Client agrees to use telecommunications equipment that complies with the regulations in force.

3.13 The Client especially agrees to not use the Service for attempts at telephone scams, harassment, threats, unfair methods of prospecting without consent, or for any use detrimental to public order or morality, and agrees to check the compliance and legality of its use of the Service in the country receiving the Service.

3.14 The Client agrees to use the service reasonably. Any clear misuse of the service will result in OVHcloud reserving the right to restrict or suspend all or part of the Service.

3.15 In the event of use that OVHcloud or its partners consider to be abusive, or in the event that the Service is not used in compliance with these Specific Conditions, OVHcloud reserves the right to suspend the Client's Service or to terminate the Contract under the conditions set out in Article 11 of this document.

3.16 The Client agrees to take any measures necessary, in compliance with best practices, to prevent the disclosure or wrongful use of the password confidentially issued to them by OVHcloud, which allows access to its management interface. As such, the Client agrees to use a two-factor authentication method (2FA) to secure access to their Management Interface..

ARTICLE 4. CLIENT LIABILITY

4.1 The Client remains solely responsible for the contents of SMS messages sent from the OVHcloud platform, but also for promotions and communications carried out through the Service. The Client, who is solely responsible for using the Service in compliance with these Special Terms and Conditions and the legal and regulatory provisions in force, agrees to assume the costs of defending OVHcloud in the event that it becomes subject to any requests, complaints and/or actions from third parties, including judicial and administrative authorities, involving data, information and messages sent via the OVH platform, and to compensate OVHcloud for any damage resulting from it (including a conviction, reasonable defence costs, etc.). OVHcloud reserves the right to pass on to the Client the fees and penalties billed to OVHcloud due to the Client's non-compliant use of the Service.

4.2 The Client shall solely bear the consequences in the event of a malfunction of the Service following any use by its members of staff or by any person to which the Client has given access to the Service. The Client shall also solely bear the consequences in the event of the loss, theft, or fraudulent or illicit use of passwords sent by OVHcloud as part of the Service; a presumption of use bears on the Client in this regard. Notwithstanding the above, in the event of non-compliance with Article 3.16 above, and in particular if the Client does not use a two-factor authentication method, the Client shall in any event assume any responsibility that may result from the

disclosure, or the fraudulent or illicit use of their authentication methods, and OVHcloud cannot under any circumstances be held liable in this regard

4.3 The Client is responsible for any changes to the configuration set by OVHcloud as well as any potential consequences.

4.4 It is the Client's responsibility to notify OVHcloud as soon as possible of any technical incidents found while using the Service.

ARTICLE 5.   OVHCLOUD OBLIGATIONS

5.1. The obligations undertaken by OVHcloud are subject to a best endeavours obligation.

5.2 OVHcloud is committed to employing the technical resources necessary for the correct functioning of the Service, but cannot be held liable for services that are dependent on other operators. The Client acknowledges that other operators are involved in the delivery of SMS messages.

5.3. OVHcloud agrees to make its best-efforts to ensure the delivery and integrity of the SMS-MT messages sent by the Client.

ARTICLE 6.   OVHCLOUD LIABILITY

6.1. OVHcloud reserves the right to refuse the Service subscription to a Client who has subscribed to an SMS offer that terminated less than six months ago, following a serious breach in its contractual responsibilities as set out in this document.

6.2. OVHcloud cannot ensure the delivery of SMS messages sent to Roaming users.

6.3. OVHcloud cannot be held liable in the event of:

- fault, negligence, omission or fault of the Client, or failure to comply with the advice given,
- unforeseeable and insurmountable actions by a third-party,
- events or incidents beyond the control of OVH,
- deterioration of the application,
- misuse of the terminals by the Client or its staff,
- intervention of a third party not authorised by the Client,
- issues caused by the Client's internet service provider or by contractual relations between the Client and said provider,
- delivery of communication related to other telecommunications operators,
- weather disturbances,
- failure to comply with the sufficient notice period in the event of a potential overload of the network.

6.4. OVHcloud cannot be held liable for the nature or content of messages or information delivered by the network, or any third-party intervention, or for any event relating to the non-compliance of the Client's electrical installation, wiring or Wi-Fi network.

6.5.   OVHcloud does not guarantee that the Service will operate without interruption. In the event of a Service failure, OVH will notify the Client about the incident in question, informing the Client of its nature and making its best effort to remedy the failure.

6.6. The compensation to be paid by OVHcloud in the event of a Service failure that resulted from a fault on its part shall correspond to direct, personal and certain damage linked to the incident in question, to the express exclusion of any indirect damage.

6.7. OVHcloud cannot be held liable under any circumstances by a professional Client (to the exclusion of those likely to be considered as consumers under the meaning of the applicable consumer protection legislation) for indirect damages, i.e. any damages that do not result directly and exclusively from the partial or total failure of the Service provided by OVHcloud; such as commercial harm, loss of orders, damage to brand image, commercial difficulty of any kind, loss of income or Clients (for example, improper disclosure of confidential information due to a fault or hacking of the system), for which the Client has its own insurance or could take out the appropriate insurance.

6.8. Any action brought against the Client by a third party constitutes indirect damage, and as a result, does not give entitlement to compensation. In any event, the amount of damages that could be charged to OVHcloud, if it is held liable, shall be limited to the amount effectively paid by the Client to OVHcloud for the period considered or billed by OVHcloud to the Client, or the sum corresponding to the price of the Service for the part of the Service for which OVHcloud has been held liable; whichever amount is lower.

6.9. For reasons relating to network security and service quality, the Client is informed that OVHcloud may be required to monitor the Service. Where applicable, it agrees to respect the right to a private life of the people concerned in any event.

ARTICLE 7.   INSURANCE

Each Party declares that they have taken out an insurance policy that guarantees their professional indemnity. The Client ensures that its insurance policy covers SMS sending activity.

ARTICLE 8.   ORDER PROCESSING

8.1 Confirmation of the order
  8.1.1. The Client shall determine which Package is best suited to its needs when ordering.

  8.1.2. OVHcloud immediately sends an email to confirm receipt of the Client's order and payment and informs it of the Service order process under the conditions set out below.

8.2. Order processing
  8.2.1. The Service is provided after OVHcloud activates the Client account, up to 7 days after the Client successfully completes the payment of the purchase order.
  8.2.2. The payment is successful once the sums corresponding to the Service are credited to OVHcloud's account.
  8.2.3. If, after this period, the Service has not been provided by OVHcloud, the Client is entitled to request the cancellation of the transaction and a refund of the amounts paid.
  8.2.4. Each SMS sent by the Client from its service shall be automatically deducted from the remaining Credits in its Package as soon as the SMS is sent, with no guarantee that the SMS will be successfully

delivered to the user. The SMS is deducted from the Credit balance upon sending confirmation, and not upon receipt of the SMS on the user's device.

8.2.5. If the content sent by the Client cannot fit into one SMS, it will be divided and concatenated into the number of SMS messages needed to send the content under the conditions set out in this document. The Client accepts that the number of SMS messages needed to send the desired content shall be deducted from the Credit balance.

8.2.6. The credits must be used by the Client within twenty-four (24) months following the date that they are credited to the Client's OVHcloud account. After this period, the Credits will be expired and cannot be used. Under no circumstances will the Credits be refunded as cash.

8.3 Additional Options

The Client may choose to subscribe to additional options that can be linked with its current subscription. These may be billed upon installation or on a monthly basis as appropriate.

ARTICLE 9. **FINANCIAL CONDITIONS**

9.1 Prices and payment time

9.1.1. The applicable prices can be consulted on the OVHcloud Website under the "Prices" tab of the SMS page.

9.1.2. The Services offered are mentioned in the purchase order; unless otherwise stated, the prices include all taxes and are payable in GBP, either in advance when the purchase order is created or after receipt of the email containing the URL to the Client's pro-forma invoice.

9.1.3. OVHcloud reserves the right to modify the Conversion Rate at any time, subject to notifying the Client via email or via an online notification on the OVHcloud website one month in advance if the new Conversion Rate is less favourable to the Client. Following this notification, the Client is free to terminate the Contract, under the conditions set out in Article 11 of these Specific Conditions. In the absence of a termination, the Client shall be deemed to have accepted the new Conversion Rate. The amendments to the Conversion Rate shall be applicable to all Contracts, particularly those that are currently in force.

9.1.4. OVHcloud reserves the right to immediately apply any new regulatory, administrative or legal tax, or any increase in existing taxes.

9.1.5. OVHcloud recommends that the Client regularly consult the "Prices" page on the OVHcloud website to find out the latest applicable Conversion Rates.

9.6. Limitation period

The limitation period for reimbursement is twelve (12) months. This period is interrupted when a complaint letter is sent to OVHcloud.

9.7. Information on communication logs

OVH shall make a record available to the Client of communications and information on the Services invoiced for a period of twelve (12) months from the invoice date.

OVHcloud **ARTICLE 10.**   **DURATION OF CONTRACT**

The Contract takes effect from the date that OVHcloud confirms the Client's order, for an indefinite period. The Contract shall end on the date that the Client has used all of its Credits.

ARTICLE 11.   **TERMINATION, RESTRICTION AND SUSPENSION OF SERVICE**

11.1. The Client is free to terminate the Contract by recorded letter with acknowledgement of receipt, in accordance with the General Terms of Service. Where Client is a consumer, any request by the Client to terminate the contract shall take effect within the 10 days following the date that OVHcloud receives the termination request via recorded letter with acknowledgement of receipt, provided that the Client has provided all of the identification information required. The Client may also request for the termination to take effect more than ten days after OVHcloud receives the termination request.

11.2. In the event of early termination, the unused Credits will not be reimbursed to the Client.

11.3. In the event that one of the Parties fails to comply with one or more of the obligations in this Contract, without remedy within fifteen (15) calendar days from either a recorded letter sent by the complaining party notifying of the breach in question, or through any other form of valid notification sent by the party, the Contract shall be terminated by right, without prejudice to the potential damages that may be claimable by the complaining party.

11.4. Notwithstanding the above, the Client's failure to respect all or part of Article 3 above shall entitle OVHcloud to immediately suspend the Client's service without prior warning, and to immediately terminate the Contract by right, without prejudice to the right to any damages that OVHcloud may claim.

11.5. If OVHcloud terminates the Contract under the conditions set out above, the Client cannot claim reimbursement from OVHcloud of sums corresponding to the services already provided by OVHcloud, and OVHcloud will not be liable to pay any compensation to the Client. On the other hand, if the Client's breach of obligations results in damage for OVHcloud, OVHcloud reserves the right to take legal action against the Client to obtain full compensation for the damage, penalties, fees and expenses incurred by OVHcloud.

11.6. The notification date of the letter containing the violations in question shall correspond to the postmark date upon the first presentation of the letter.

11.7. The Client may request the termination of its Contract in the event of removal of a destination covered by the SMS Service, the list for which can be accessed on the OVHcloud website.

11.8. The SMS Service may be restricted, limited, suspended or terminated by right if full payment is not cleared.

11.9. OVHcloud reserves the right to immediately suspend the Service to comply with any judicial or administrative decision, or to comply with the law, or to prevent any potential damage to the network.

11.10. In any event, the restriction, limitation or suspension shall be exercised according to the severity and recurrence of the breach(es), and are determined according to the nature of the breaches noted. The Client accepts in advance that OVHcloud shall restrict, limit or suspend the Service if OVHcloud receives a notification to do so by a competent administrative, arbitration or legal authority, in accordance with the appropriate applicable laws.

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11.1.0. Any notification by the Client in respect of this article must be sent to OVHcloud by recorded letter with acknowledgement of receipt.

ARTICLE 12.   RIGHT OF WITHDRAWAL (CONDITIONS SPECIFIC TO CONSUMERS)

12.1. Notwithstanding the provisions set out in the General Terms of Service, the Client (being a consumer) has the right to immediately execute the Contract. The immediate execution of the Service by using the Credits implies that the Client waives the right of withdrawal for any use of the Credits during the legal withdrawal period.

12.2. In the event that the right of withdrawal is exercised following a request for the immediate execution of the Contract, the Client shall be reimbursed on a pro rata basis for the number of SMS credits not used before the withdrawal request.

ARTICLE 13.   PERSONAL DATA

The purpose of this article is to (i) define the personal data processing carried out by OVHcloud upon instruction from the Client as part of its provision of the SMS Service, and (ii) to specify the conditions for the personal data processing carried out by OVHcloud and by the different technical service providers involved in the proper routing of SMS messages in their role as telecommunications operators. This article supplements the annex 'Processing of personal data', which remains fully applicable to the Service.

13.1 Description of the processing carried out upon instruction from the Client

13.1.1 Purpose and duration: The purpose of the processing is to route SMS-MT messages.

13.1.2 Nature and aim: The aim of the processing is to provide a telecommunication service. It allows OVHcloud to route SMS messages sent (i) by a Service editor or sponsor to a compatible mobile terminal (SMS-MT) or (ii) from a compatible mobile terminal (SMS-MO).

13.1.3 Types of personal data: As part of this processing, OVHcloud processes different categories of communication data:
- MSISDN
- SMS Content
- Originator Address Code ("OADC")
- Address Code ("ADC")
- SMS send date ("timestamp")

13.2 Data processing carried out as telecommunications operators

As part of the execution of the Service, OVHcloud, as well as third-party technical service providers participating in the routing of outgoing SMS messages (such as SMS aggregators, internet service providers or fixed network operators), shall process personal data.

13.2.1 Processing and data involved
The processing carried out is essentially the collection and storage of data relating to SMS communications (particularly sender and recipient of the SMS, sending date and receipt date, data relating to the devices used and SMS routing data, and message content).

13.2.2 Purposes

OVHcloud and its third-party technical service providers carry out processing audits in order to comply with their legal obligations as telecommunications operators, particularly in order to identify users or for purposes of the search, identification and tracking of criminal offences.

13.2.3 Processing conditions

OVHcloud and its technical service providers are data controllers for the data that they process respectively in accordance with the regulations in force. Further details on the processing conditions performed by OVHcloud are available on the OVHcloud website and in part 2 of OVHcloud's Annex "Processing of personal data".

ARTICLE 14.   DEFINITIONS

Sponsor: *Natural person listed on the Commercial Register and the Trade Register; legal entity or public body that provides a service through the Client to users and to users registered to the service.*

General Terms of Service: *OVHcloud's General Terms of Service, accepted by the Client before any Services are executed. The Client may consult the General Terms of Service at any time via the Management Interface.*

Contract: *The contract is made up of an electronic purchase order filled out by the Client via the Client Interface, these Specific Conditions and the General Terms of Service, as well as any other conditions to which these General Terms of Service and Specific Conditions refer.*

Credit: *Unit sold by the Package to the Client on the OVHcloud website allowing the use of Services from the Management Interface. The Credits will be debited as and when the Services are used. Depending on the nature of the SMS and the destination country, the number of Credits debited and therefore the price of the SMS may differ.*

Activation fee: *Fees billed to the Client by OVHcloud upon the activation of the Service or of an additional offer linked to the Service.*

Client ID: *Client account name for any service signed up to with OVHcloud, allowing access to the management interface.*

Management Interface: *"Manager" space that the Client can access after entering its Client ID and password.*

MSISDN: *Telephone number enabling the identification of a telecommunication network user, and for which the format is determined in accordance with numbering plan E.164.*

MMS: *"Multimedia Messaging Service": the service that sends multimedia content through mobile devices.*

Package: *Bundle containing a predetermined number of Credits so that the Client can send SMS messages through the Service.*

Roaming: *Situation in which a mobile Client is connected to a different network from the operator with which they signed up their mobile contract.*

OVHcloud Website: *Website of OVHcloud, for which the URL is: http://www.ovhcloud.com, or any other website extension belonging to one of its Subsidiaries.*

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SMS: *Stands for "Short Message Service". An alphanumeric message of up to 160 characters that can be sent and received on a mobile device or compatible fixed line, without exceeding a size of 140 bytes, in line with standard GSM 03.38.*

SMS-MT: *SMS sent by a Service editor or sponsor to a user's compatible device.*

SMS-MO: *SMS sent by a user to a Service editor or sponsor.*

Conversion Rate: *Number of Credits needed to send an SMS. This number may vary according to the nature of the SMS and the destination country.*

User: *Final recipient of the SMS, from which the Client has obtained prior consent to receive SMS-MT messages.*