

## SPECIFIC CONDITIONS - NUTANIX® ON OVHcloud – “BYOL” OFFER

*Version: 22 September 2022*

### DEFINITIONS

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

**“Third Party Virtualization Interface”** means the interface accessible by the Client through its Management Interface and designed by the editor of the Third Party Product which allows the Client to administer the Third Party Product.

**“Third Party Product”** means the product(s) developed and owned by a third party compatible with the Service, the list of which is available on the OVHcloud website.

**“Dedicated Servers”** means the servers approved by Nutanix® provided to the Client by OVHcloud as part of the Service, as identified on the OVHcloud website.

**“Service”** has the meaning given to it in article 1 herein.

### ARTICLE 1: PURPOSE

The purpose of these Specific Conditions is to define the terms and conditions applicable to the service Nutanix® on OVHcloud – “BYOL” Offer provided to the Client by OVHcloud (hereafter, the “Service”).

### ARTICLE 2: DESCRIPTION OF THE SERVICE

As part of the Service, OVHcloud provides the Client with a cluster of Dedicated Servers approved by Nutanix®, 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.

The Service is made up of several Dedicated Servers approved by Nutanix® and equipped with a preinstalled “Previews” version (which includes a trial license) of the Third Party product developed by Nutanix® as well as a Load Balancer, and if applicable, additional options.

At the time of the Order, the Client selects the type of cluster of its choice, which determines the functionalities available as part of the Service, in particular the number of Dedicated Server(s) provided, the material configuration options, replication options, etc. The description of the cluster and the detail of the specifications are available on the website of OVHcloud.

The Service allows the Client to use its Third Party Product licenses acquired directly or indirectly from the software vendor, on the Dedicated Servers approved by Nutanix®. The list of Third Party Products compatible with the Service is available on OVHcloud website.

### ARTICLE 3: CONDITIONS OF USE OF THE SERVICE

#### 3.1 Prerequisite

The subscription of the “Business Support” or “Enterprise Support” of OVHcloud is mandatory for the entire duration of the Service.

The Client is solely responsible to check that the terms of use for Third Party Products it acquired are compatible with the Service.

### **3.2 Applicable Contractual Terms**

The Service is subject to the following conditions presented in descending order of importance:

- These Specific Conditions,
- The Third Party Product Terms of Use referred to in article 3.5 hereof,
- The Specific Conditions “Dedicated Servers”,
- The Specific Conditions “Load Balancer”,
- The Specific Conditions of Support,
- The Appendix “Data Processing Agreement”,
- The General Terms of Service,

(Hereinafter, the “Conditions of Service” or the “Contract”).

In the event of any contradiction, the document of greater importance prevails.

The Client shall use the Service in compliance with the Conditions of Service. If the Client uses the Service on behalf of third parties or allows third parties to use the Service, the Client warrants that any User and/or any of its end-customers will comply therewith.

### **3.3 Functionalities**

The Service is managed by the Client through its Management Interface.

Login details which allow to connect for the first time to the Third Party Virtualization Interface are provided to the Client by sending an email to the contact details listed on its Management Interface. The password linked to these login details is available for seven (7) days starting from the date of dispatch of the email. The Client is invited to modify this password upon its first connection to the Third Party Virtualization Interface.

The Service allows the Client to create and manage resources in accordance with capacities associated to the Third Party Product license category that it has acquired from the software vendor and uses as part of the Service. As a result, the Client is responsible to check that its license category of Third Party Product is compatible with the Service.

The Service may include limitations (e.g., number of Dedicated Servers that may be used in a cluster, number of virtual machines, bandwidth, etc.). These limitations are described in the documentation and/or the specifications available on the website of OVHcloud.

### **3.4 Use of the Service**

#### **3.4.1 Generalities**

Before using the Service, the Client takes note of all the characteristics and specifications of the Service, including those described on the website of OVHcloud, as well as the applicable Conditions of Service, and checks that these conditions meet its needs, in particular according to its Third Party Product license(s), and considering in particular its activities and its risk analysis.

The Client is solely responsible for using the Service, including for the protection and the preservation of its credentials to access the Management Interface, for using the Third Party Product and the other tools provided

by OVHcloud as part of the Service, as well as the Content and any other data used by the Client as part of or through the Service. The Client is also responsible for carrying out any backups it deems necessary.

The Client is the sole administrator of the Service. As such, the Client manages the resources that it allocates in its cluster within the scope of the Service (partitioning of its virtual machines, resources, etc.) and performs the configuration of the network.

Consequently, the Client confirms it possesses all the technical knowledge necessary to ensure correct administration of the resources of the Service.

The Client is solely responsible to carry out the evolutions, version upgrades and updates of the operating systems and applications provided as part of the Service (e.g. updates, security patch, etc.). The Client is solely responsible to carry out the activation and, as required, the renewal of its Third Party Product license, as well as the evolutions, version upgrades and updates of the Third Party Product in accordance with the license and support terms in place between itself and the software vendor.

OVHcloud is responsible for maintaining in operational condition (a) the Dedicated Servers (maintenance, SLAs, etc.) under the conditions provided for in the Specific Conditions “Dedicated Servers” attached in Appendix 1, and (b) the Load Balancer under the conditions provided for in the Specific Conditions “Load Balancer” attached in Appendix 2.

### **3.4.2 Backups**

OVHcloud does not perform any backups as part of the Service.

The Client is therefore responsible for taking all necessary measures to back up its Content in the event of loss, alteration, or deterioration of the Content, for any reason whatsoever, as well as any other type of data. As such, it is recalled that the end of the Service, for any reason (in particular, termination, non-renewal, non-payment, expiry of the Service, non-compliance with the Conditions of Service in force), as well as some operations to reinstall the Service operated by the Client, entail the automatic and irreversible deletion of all the Content.

The Service does not include a business continuity plan or a disaster recovery plan. Consequently, the Client is responsible for setting up and managing a business continuity plan and/or a disaster recovery plan. The Client must therefore take the technical and organizational measures necessary to ensure the continuity of its activity in the event of a malfunction of the Service, which may affect the availability and integrity of its Content and consequently, the continuity of its activity.

### **3.5 Third Party Products**

The Service includes a trial license for the “Previews” version of Third Party Product developed by Nutanix®. The Client is authorized to use the Third Party Product solely within the scope of the Service in accordance with the Third Party Product Terms of Use below.

The Client is solely responsible for the subscription with the software vendor of the license of its choice for the Third Party Product and its activation in its Third Party Virtualization Interface, and its renewal as the case may be. The Client is also solely responsible to check that its license category of Third Party Product is compatible with the Service.

OVHcloud does not participate in the creation and development of the Third Party Product made available to the Client as part of the Service. Consequently, OVHcloud is not responsible for the Third Party Product that may include technical errors, vulnerabilities and incompatibilities.

Prior to using the Service, the Client undertakes to read and to comply, for the duration of the Preview license, with the Third Party Product Terms of Use available here: <https://www.nutanix.com/legal/eula>

The acceptance of these Specific Conditions and/or the use of the Service means the acceptance of the above Third Party Product Terms of Use by the Client for the trial license.

Upon activation of its own license for the Third Party Product, the Client commits to abide by the license terms subscribed with the software vendor for the entire term of its license,

In the event of non-compliance with the Third Party Product Terms of Use for the Preview license or with the Third Party Product terms of use subscribed with the software vendor, the Client will indemnify and hold harmless OVHcloud from and against any liability in the event of a request, claim and/or action by a third party in this regard.

### **3.6 Service Level Agreements (SLA)**

As part of the Service, OVHcloud undertakes to:

- (i) Ensure the Service levels relating to the availability of the Dedicated Server(s) and to the response and resolution times as detailed in Article 7 of the Specific Conditions “Dedicated Servers” in Appendix 1,
- (ii) Ensure the Service levels relating to the Load Balancer, under the conditions provided for in Article 5 of the Specific Conditions “Load Balancer” in Appendix 2.

Apart from the Service levels referred to above, OVHcloud is subject to an obligation of means.

## **ARTICLE 4: FEES, DURATION, BILLING AND PAYMENT**

The fee varies according to the type of cluster, the additional options (e.g., configuration, number of nodes, etc.) 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 Service 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 March 2022 entails the extension of the said service for the period from 24 March 2023 to 31 March 2023).

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.

For sake of clarity, payment for the Service is due by the Client under the conditions defined above independently from the subscription of a Third Party Product license with the software vendor, its activation on the scope of the Service, and its expiration.

OVHcloud also points out that the Initial Period subscribed by the Client and any Renewal Period is independent from the duration of the Third Party Product license subscribed by the Client with the software vendor. As a result, the Client is not authorized to early terminate the Service because of the expiration of its Third Party Product license.

## **ARTICLE 5: SUPPORT**

Depending on the offer subscribed by the Client, the Service is subject to the Business Support or the Enterprise Support of OVHcloud. The conditions of use of the support are defined in the Specific Conditions of the Support related thereto.

As part of the Service, the Client must not contact the editor of the Third Party Product for questions, issues or incidents, whatever their nature, related to the Third Party Product, the Service or any of its components. The Client must always address its questions, issues, or incidents to OVHcloud through the tools made available to the Client by OVHcloud.

### **Appendix 1:** Specific Conditions « Dedicated Servers »

[https://contract.eu.ovhapis.com/1.0/pdf/contrat\\_partDedie-ca.pdf](https://contract.eu.ovhapis.com/1.0/pdf/contrat_partDedie-ca.pdf)

### **Appendix 2:** Specific Conditions « Load Balancer »

[https://contract.eu.ovhapis.com/1.0/pdf/contrat\\_part\\_loadbalancer-ca.pdf](https://contract.eu.ovhapis.com/1.0/pdf/contrat_part_loadbalancer-ca.pdf)