

DEFINITIONS

Any capitalized terms referred to in these Specific Terms of Service will have the meaning set forth below, or elsewhere in the Agreement.

The definitions used below supplement definitions set forth in other contractual documents forming the Agreement. If a term is defined both in these Specific Terms of Service and in another contractual document, the definition used for interpretation purpose of a contractual document will be the one contained in the contractual document (e.g. definitions contained in the Specific Terms of Service applies to the Specific Terms of Service and definitions contained in the General Terms of Service applies to General Terms of Service).

“Acceptable Use Policy” or **“AUP”** means Google’s then-current acceptable use policy which fully applies to the Service as the Service integrates Google’s product; the then-current acceptable use policy is available at <https://cloud.google.com/cloud/terms/aup>, and is an integral part of this Agreement. “Customer” in the AUP shall have the same meaning as in these Specific terms of Service.

“Affiliate(s)” means any legal entity which controls a Party, is controlled by a Party or is under common control with a Party. As used herein, **“control”** shall be interpreted within the meaning of Article L. 233-3 of the French Commercial Code. The control can be either direct or indirect.

“Agreement” shall have the meaning set forth in article 3.3 (Applicable Terms – Change to Terms).

“Anthos Management Center” means the online console(s) and/or tool(s) provided within the Control Plane to administer the Service.

“Anthos Product(s)” means the “Anthos on bare metal operating in private mode” product developed by Google, including the Anthos Software and all functionalities and features described in the OVHcloud documentation (Docs.ovh.com).

“Anthos SLA” means the then-current service level agreements at: <https://cloud.google.com/terms/sla/>

“Anthos Software” means any software provided by Google specifically to enable the use of the Anthos Products, including the Google Cloud Platform Premium Software for Google Anthos described at <https://cloud.google.com/terms/services> or such other URL as OVHcloud or Google may provide.

“Anthos Terms” means the “General Software Terms” and “Premium Software Terms” sections (or similar) of the Google Service Specific Terms, and any other sections of the Google Service Specific Terms that pertain to the Anthos Products.

“Anti-Bribery Laws” means all applicable commercial and public anti-bribery laws, including the U.S. Foreign Corrupt Practices Act of 1977 and French act, that prohibit corrupt offers of anything of value, either directly or indirectly, to anyone, including government officials, to obtain or keep business or to secure any other improper commercial advantage. Government officials include: any government employees, candidates for public office, members of royal families, and employees of government-owned or government-controlled companies, public international organizations, and political parties.

“Client” means the entity signing (in an electronic form or otherwise) these Specific Terms of Service, and which may be a Customer or, as the case may be, a Reseller.

“Client Network” means resources external to the Infrastructure used by the Client, the Customers and/or the Users in order to communicate with resources provided by OVHcloud. These may be the Client’s, the Customers’, or the Users’ own resources, and/or resources provided and/or hosted by third parties to the Client, the Customers and/or the Users.

“Commitment Period” means the Initial Commitment Period or a Renewed Commitment Period, as these terms are defined in article 7.1 (Term) and 7.2 (Renewal).

“Control Plane” is one of the Anthos Product components used for the management of Kubernetes clusters and other components, and which is managed either via the Anthos Management Center or via an API Application.

“Customer” means a legal entity having a principal place of business within the Territory, duly authorized (either by OVHcloud directly or by a Reseller) to use the Service for its internal business purposes.

“Export Laws” means all applicable export and re-export control laws and regulations, including (i) the Export Administration Regulations (**“EAR”**) maintained by the U.S. Department of Commerce, (ii) trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control, (iii) the International Traffic in Arms Regulations (**“ITAR”**) maintained by the Department of State, (iv) the European Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (as amended), (v) the European restrictive measures (sanctions) in force (Regulations based on Article 215 TFEU and Decisions adopted in the framework of the Common Foreign and Security Policy), (vi) the French regulation applicable to the export of military materials and similar equipment (French Defense Code) and (vii) French Law No 2004-575 dated 21 June 2004 regarding the supply, import and export of cryptology means in and from France.

“Feedback” means feedback or suggestions about the Service or any part thereof provided by the Client, or Reseller's customer and/or User(s) to OVHcloud.

“Google” means Google Ireland Limited, a company incorporated under the laws of Ireland with offices at Gordon House, Barrow Street, Dublin 4, Ireland, and its Affiliates.

“Google Cloud Platform” means Google's cloud computing platform.

“Google Service Specific Terms” means the terms available at the following URL: <https://cloud.google.com/cloud/terms/service-terms>.

“Google URL Terms” means the following URL terms (as updated by Google from time to time):

- **AUP:** <https://cloud.google.com/terms/aup>
- **Data Processing and Security Terms:** <https://cloud.google.com/terms/data-processing-terms/partner/>
- **TSSG for the Google Cloud Platform Product:** <https://cloud.google.com/terms/tssg>

“High Risk Activities” means activities where the use or failure of the Service would reasonably be expected to result in death, serious personal injury, or severe environmental or property damage (such as creation or operation of weaponry).

“Host Server” means a dedicated server (or node) deployed in the Service and administered via the Control Plane.

“Infrastructure” means the structure established by OVHcloud to host the Service, including notably physical resources, such as network equipment, and logical resources, such as allocated bandwidth (the amount of which is specified in the Order and/or the OVHcloud Website).

“Management Interface” means the “manager” space made available by OVHcloud to the Client, accessible remotely after authentication using its credentials, and which allows the Client to administer and manage the OVHcloud services (including the Service).

“Pack” means the initial deployment of the managed Control Plane and a set of minimal physical resources (Host Servers, Storage Resources and network), as described in the “Pricing Page” on the OVHcloud Website and/or in the order tunnel. The available Service Packs are the “Discovery Pack”, the “Stateless Production Pack”, the “Stateful Production Pack”, and/or any other Pack or variation thereof.

“Reseller” means a third party which meets the Selection Criteria and who has been authorized by OVHcloud to resell the Service to Customers, subject to the terms and conditions of the Agreement.

“Selection Criteria” shall have the meaning set forth in article 9 (Reseller specific terms).

“Service” or **“Hosted Private Cloud powered by Anthos Service”** means the service provided under these Specific Terms of Service, and which is a platform as-a-service containing the hardware and software components included in the Pack and, as the case may be, additional resources and/or options selected by the Client and hosted on the OVHcloud Infrastructure.

“Service Level Agreement(s)” or **“SLA(s)”** means the service levels against which OVHcloud’s performance of the Service are measured and which are defined in these Specific Terms of Service.

“Specific Terms of Service” means this document, including Annexes (if any) and any other document which is incorporated herein by reference (by URL or any other means).

“Storage Resources” means the virtual storage space allocated to the Client, enabling it to store data and Content in a persistent manner.

“Territory” means the countries listed in the following document, which may be updated from time to time, less any country where either Party is prohibited from providing, reselling or obtaining, as applicable, the Service due to applicable laws: <https://cloud.google.com/gcp-territory-list?hl=en>.

“Testing Phase” means any phase of the development process (POC, MVPP, Alpha, Beta or Gamma) of a new or upgraded service or feature during which the Client is allowed to use such new or upgraded service or feature before it is generally made available to the public in order to test it, provide Feedback, participate in its improvement, and identify potential defects, dysfunctions or incompatibilities.

“TSS” means the then-current Google Cloud Platform technical support service provided by Google to OVHcloud under the TSSG.

“User(s)” means the end user who has been granted, through the Management Interface or through the Anthos Software user and right management system, an access to and/or a right to use the Service subject to the terms and conditions set forth in the Agreement.

“vRack” means one or a set of virtual local area networks (**“vLAN(s)”**) provided to the Client by OVHcloud, set up on OVHcloud's internal private network and made up of resources (physical and logical), allowing resources physically located in different and geographically remote Datacenters to be connected together. Some OVHcloud resources and services are not suitable for use with the vRack; Information regarding the suitability of OVHcloud resources and services for use with the vRack is available online on the OVHcloud Website.

1. PURPOSE

These Specific Terms of Service set out the specific terms and conditions, including, but not limited to, the terms of use and financial conditions, applicable to the Service. They supplement the General Terms of Service currently in effect.

Where a discrepancy arises, these Specific Terms of Service (including its Annexes) shall take precedence over the General Terms of Service.

2. DESCRIPTION OF SERVICES

2.1 Overview

The Service is intended for professional users only.

Under the Service, OVHcloud provides the Client with the dedicated physical resources listed in the Pack subscribed by the Client, one or several Third-Party Product(s) (including the Anthos Product), and the additional optional resources or options selected by the Client.

The type of Pack and Host Server(s) chosen by the Client determine the functionalities available under the Service as well as the performance levels applicable to the Service. The Pack description and specification details are available, before ordering, online on the OVHcloud Website and summarized, after ordering, in the Order confirmation received by the Client after the subscription of the Service.

In addition to any other contractual restrictions as stated therein, the Service may come with technical restrictions (e.g. number of Host Servers or pods that can be used in an instance of the Service, bandwidth allocation, persistent storage SVM maximum number, etc.) which are set out in the documentation/specification available on the OVHcloud Website, for which the Client undertakes to comply with.

The use, sub-licensing and reselling of the Service is subject, notably, to the following rules:

- When the Client is acting as a “Customer”:

The Client must use the Service for its own business needs and always subject to the terms and conditions of the Agreement with OVHcloud.

The Client (a) undertakes that it will not resell the Service, whether or not bundled with another product or service of any kind, and (b) fully understands that it is not allowed to grant a sublicense of the Anthos Software to any other third party.

The Client further acknowledges and accepts that it is prohibited from adapting, altering, modifying, decompiling, translating, disassembling, or reverse engineering the Anthos Product or any part thereof, including the source code and any other underlying ideas or algorithms of the Anthos Software or any part thereof (except to the extent that such act cannot be limited by law).

The Client shall (a) ensure that it and any Users’ use of the Service fully complies with the Agreement, (b) prevent and terminate any unauthorized access to, or use of, the Service, and (c) promptly notify OVHcloud of any unauthorized use of, or access to, the Service of which the Client becomes aware.

The Client is responsible for any violations of this Agreement, including the AUP, caused by itself, its Users, Content, Applications or any product or service used on or in conjunction with the Service.

- When the Client is acting as a “Reseller”:

The Client must meet the Selection Criteria, comply with the provisions of the Agreement and more specifically the “Reseller specific terms” referred to in Article 9 (Reseller specific terms) and ensure that Customers and Users will be bound by the same terms of this Agreement which apply to Clients which are acting as “Customers”.

Each instance of the Service has its own secure private network.

2.2 Service Functionalities

The Service allows the Client to create and operate Kubernetes clusters from a dedicated, highly available Control Plane, isolated from the Google Cloud Platform.

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

Host Servers and Storage Resources provided to the Client as part of the Service are dedicated to the Client.

Federation

This functionality allows the Client to connect their own Open ID Connect (OIDC) servers to their instance of the Service in order to handle authentication and identification on its existing user accounts within the Anthos Product. The Client alone is responsible for ensuring that its OIDC server has proper connectivity and security.

vRack

vRack allows the Client to connect together some or all resources (Host Servers and, if applicable, Storage Resources) provided by OVHcloud, including resources located in multiple environments and/or in geographically remote Datacenters. It is used to allow containerized workloads to run on dedicated vLANs and allow those vLANs to be propagated to other OVHcloud services.

The Client's vRack is isolated from other components of OVHcloud’s internal network in a logical manner (no physical isolation).

The Client is solely responsible for the administration of its vRack and resources deployed thereon. The Client shall determine the vRack's composition (connected resources) and logical configuration (logical network and sub-network architecture) and administer its vRack directly via the Management Interface.

Third Party Products

The Service integrates third-party products and/or solutions developed by third-parties (the “**Third Party Products**”), in particular Google and the Anthos Product. The Client is only authorized to use the Third Party Products within the frame of the Service.

OVHcloud does not participate in the creation and development of the Third Party Products made available to the Client as part of the Service. Consequently, OVHcloud is not responsible for Third Party Products made available as part of the Service, which may include technical errors, security vulnerabilities, incompatibilities or instability, and does not give other guarantee on the Anthos Product made available as part of the Service than those provided in these Specific Terms of Service.

The Anthos Product is an application management platform developed by Google that enables the management of application containers / clusters from the Control Plane. This feature is fully integrated into the Service and the Anthos Product license fee is included by default in the price of the Pack subscribed by the Client.

Anthos features include Anthos UI/dashboards; Google Kubernetes Engine; Google Anthos Service Mesh; Google Anthos Config Management; and Cloud logging/monitoring with a dedicated and local Prometheus/Grafana service.

The Client is only allowed to use the Anthos Product made available by OVHcloud on the Infrastructure and on the Host Servers provided by OVHcloud as an integrated part of the Service, in strict compliance with the Agreement.

The Anthos Product (including any update or upgrades thereof) is provided in such a way that the Anthos Product can be deployed, by default, without enabling any network connection to anyone, including Google or Google's Affiliates, and/or any transfer of data to anyone, including Google or Google's Affiliates, except to those parties authorized by the Client, the Resellers' customers or the Users during the configuration and usage of the Anthos Product.

2.3 Additional resources and options

As part of the Service, the Client may subscribe to other additional resources or options as presented in the Management Interface and/or on the [OVHcloud Website](#), and which may be subject to additional specific terms.

2.4 Evolutions – Service modifications from OVHcloud

OVHcloud may modify or update the Service and/or the Agreement in accordance with the General Terms of Service, provided that the modifications or updates do not expand the scope of, or remove any restrictions on, Google's processing of the Client's data.

OVHcloud will make commercially reasonable efforts to inform the Client of any modification made by Google to the Anthos Product or the terms applicable to it promptly after OVHcloud is informed of the same by Google.

Nothing contained herein shall limit OVHcloud's ability to make changes required to comply with applicable law or address a security risk.

3. SERVICE TERMS AND CONDITIONS OF USE

3.1 Eligibility

Professionals only

Subscriptions to the Hosted Private Cloud powered by Anthos Service are only available to professionals, who shall not be covered by applicable Consumer laws. By way of derogation from the provisions in the

General Conditions of Service, all conditions which are specific to consumers, including arrangements for cancellation, do not apply to this Service.

Territory Limitation

The Service can only be used in, and accessed from, the Territory. The Client therefore acknowledges and agrees that it, and any User, shall not use, access, or solicit use of or access to, the Service, or allow any third party to do so, from outside of the Territory.

High Risk activities

The Client will not, and will not allow any User, or any third parties under its control, to supply, access or use the Service for High Risk Activities.

3.2 Subscription – Modifications

Pack upgrades

During the subscription period, the Client is entitled to upgrade its Service Pack (i.e. select a more expensive Pack containing specific or enhanced features and/or resources). In such case, the subscription period for the new upgraded Pack will be equivalent to the initial subscription period selected by the Client, starting from the date of the change. Once the Client has chosen a Pack, it is not authorized to downgrade its Pack (i.e. to modify the Pack and select a less expensive Pack).

Additional resources

In addition to the chosen Pack, the Client may also select additional resources or options to meet occasional or long-term requirements, such as additional Host Servers, Storage Resources, or other options as further described in the Management Interface and/or on the [OVHcloud Website](#).

The Client is authorized to add or remove additional resources or options from a month to another, subject to the terms and conditions applicable to those resources or options (such as a minimum commitment period for instance, which may be different from the Commitment Period).

3.3 Applicable contractual Terms (Agreement)

The Hosted Private Cloud powered by Anthos Service is subject to these Specific Terms of Service, the General Terms of Services, the Data Processing Agreement, the Glossary, and any applicable Third Party Product Terms of Use currently in effect and referred to herein (the **“Agreement”**). The Service must always be used in accordance with the latest version of the aforementioned documents.

3.4 Client’s obligations and undertakings

The Client shall not:

- (i) adapt, alter, modify, decompile, disassemble, translate, perform any reverse engineering operation or other attempt to access and/or determine sources and/or source code and any other underlying ideas and algorithms, from the Third Party Products or any part thereof;
- (ii) reinstall Third Party Products made available to it on other infrastructures;
- (iii) use the Third Party Products in any way other than as a part of the Service;
- (iv) download the Third Party Products from servers other than OVHcloud’s servers;
- (v) circumvent or infringe, directly or indirectly, the technical restrictions of the Third Party Products;
- (vi) remove any identification, ownership, copyright, notes or other proprietary notices from the Third Party Products or its documentation; and
- (vii) modify or create a work derived from all or part of the Third Party Products.

Installation

The Client shall install, operate and maintain the Service (including the Anthos Product) in accordance with any instructions provided by OVHcloud and/or Google from time to time (and, for clarity, such instructions may be set out in the documentation), and procure the same from the Users.

Use of the Service – Credentials

The Client is solely responsible for the use of the Service, including the administration of keys used to manage credentials and access to the Management Interface, the use of APIs, software and tools provided by OVHcloud as part of the Service, the administration of subscriptions and of the Content that it uses in connection with the Service. The Client must possess the necessary technical knowledge and competence and confirms that it has the range of technical knowledge required to properly administer and use the Service.

The Client shall be the sole administrator of the Host Servers, the Storage Resources, and the Content in its possession.

The Client undertakes to make responsible use of the Service and to verify, as a professional, that the characteristics of the Pack selected is adequate in view of its intended use, and shall notably verify that it has enough resources, including network resources (including public and private bandwidth), and storage and compute capacities, to ensure that the Service will operate correctly.

Data

OVHcloud makes no specific safeguard of any data stored on the Service. It is therefore the duty of the Client to take all necessary measures to protect their said data if loss or damage should occur to data entrusted, whatever the cause, including those not specifically mentioned herein.

Other licenses

Except for the licenses which are included in the Service and for which the Client is granted “usage rights” pursuant to the terms and conditions set forth in the Agreement, the Client is responsible for subscribing any license necessary for the use of the Service (such as database licenses...), and undertakes to (a) comply with any applicable terms and conditions of use stated in these licenses, and (b) pay for any fee due to third-party licensor in consideration of the license or right to use granted. The Client shall indemnify and hold OVHcloud harmless in case of any third-party demand, claim, request and/or action in this respect.

It is specified that for the persistent storage feature included in the Stateful Production Pack, OVHcloud uses a Third Party Product for which no license of any kind is granted to the Client. The Client only beneficiates from a right to use the feature in accordance with and for the duration of the Agreement.

IP Addresses

As part of the Service, the Client is the resource administrator for IP addresses resources that may be provided by OVHcloud. The Client is responsible for managing these IP addresses appropriately to ensure that the Service operates properly, and for using those IP addresses in a reasonable manner. The Client should ensure that it has sufficient IP addresses to allocate or, where applicable, for the Control Plane to allocate, an IP address for each of its workloads. The Client is therefore solely responsible for the use of the IP address resources allocated, provided, or leased as part of the Service.

Feedback

The Client may be asked to provide Feedback to enable OVHcloud and/or Third Party Products editors and/or vendors to improve the Service and/or Third Party Products. The Feedback will be made by various means which OVHcloud will put in place as it deems necessary and relevant (which may include private mailing lists). OVHcloud and its Affiliates, and/or Google (and its Affiliates), and/or other Third Party Products editors and/or vendors, as the case may be, may use the Feedback without restriction and without compensation or obligation toward the Client, the Customers and/or the Users.

The data and Feedback will not be forwarded by OVHcloud to third parties, except that it may be forwarded to (a) its own Affiliates, and (b) to Third Party Products editors and/or vendors to the extent the Feedback

relates to their Third Party Products; in any case, the name of the Client will not be disclosed to Google, to the Third Party Products editors and/or vendors, or to the public without the Client's prior written approval.

Benchmarking

The Client is prohibited from doing either of the following, without the Third Party Products editor and/or vendor's prior written consent:

- (i) conducting, directly or through a third party, any comparative or compatibility testing, benchmarking, or evaluation (each, a **"Test"**) of the Service or any part thereof,
- (ii) disclosing the results of any such Test.

Rights of third parties

The Client undertakes to respect the rights of third parties, including personal rights, and rights of intellectual property such as copyrights, patent rights or trademarks. Accordingly, OVHcloud will not be held liable for the Content or any information stored, created, transmitted, distributed or collected through the Service, their operation and their updating, and regarding all files in any capacity whatsoever.

The Client may not use the Service to make any content publicly available for which it does not hold the rights to, and thus violate the provisions on copyright or intellectual property laws. The Client agrees not to use the Service for illicit or illegal purposes, such as, in particular, spamming, intrusion or intrusion attempt from the Service (not limited to port scanning, sniffing, spoofing, etc.). With these assumptions, OVHcloud reserves the right to suspend and/or terminate immediately the Agreement of the Client, without prejudice to any damages which could be claimed from OVHcloud.

Deceptive practices

The Client shall not knowingly (and shall not do or fail to do anything that would reasonably be expected to result in the Client having to) engage in illegal or deceptive trade practices or any other acts or omissions prohibited by this Agreement. If OVHcloud becomes aware that the Client or a User engages in any behavior or practice prohibited by this section, OVHcloud shall have the right to (i) suspend the Service and notify the Client or User accordingly, and (ii) terminate this Agreement if the Client or User fails to meet its obligations set out in this paragraph and/or remedy the breach, without notice.

3.5 Client representations and warranties

The Client represents and warrants to OVHcloud that the following statements are true, complete and correct, and will remain as such during the term of the Agreement:

- i. it is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation;
- ii. this Agreement has been duly executed and delivered and constitutes a valid and binding obligation, enforceable against it in accordance with its terms. The execution, delivery and performance of this Agreement has been duly authorized by all necessary action, and does not require any additional consent of any person, government entity or organization;
- iii. the execution and delivery of this Agreement, the performance of its obligations under this Agreement and the consummation of the transfer detailed herein will not violate any agreement to which it is a party or otherwise bound;
- iv. it will not use or supply, or permit anyone to use or supply, the Services for High Risk Activities;
- v. it will not knowingly (and will not do or fail to do anything that would reasonably be expected to result in the Client having to) engage in, and will not solicit, accept, or maintain any User who engages in illegal or deceptive trade practices, or any other acts or omissions prohibited by this Agreement;
- vi. it has a principal place of business within the Territory;
- vii. is it solely responsible for the use of the Service, the Content, the content of information transmitted, distributed or collected, any operation(s) and updating, and all files, including mailing lists;

- viii. it will not make or give any unauthorized, false, misleading, or illegal statements in connection with this Agreement or any agreement with a customer, or concerning the Service, the Anthos Software, OVHcloud, OVHcloud's Affiliates, Google or Google's Affiliates;
- ix. it will not make or give any representations, conditions, or warranties concerning the Service, or any part thereof, including the Anthos Software, on behalf of OVHcloud and/or Google;
- x. it will comply with all applicable laws; and
- xi. it will not, and will not permit anyone to, directly or indirectly, adapt, alter, modify, decompile, translate, disassemble, or reverse engineer the Anthos Product or any part thereof, including the source code and any other underlying ideas or algorithms of the Anthos Software, except to the extent that such act cannot be limited by law.

3.6 Client acknowledgements

Client acknowledges that:

- (i) OVHcloud and Google are independent contractors and OVHcloud is not Google's agent or partner or in a joint venture with Google;
- (ii) if and when the Client, a Reseller's customer or a User authorizes Google to process personal data, Google will act as a processor, and the Client, Reseller's customer or User will remain the controller of its personal data, where the terms "controller", "processed", "processor" and "personal data" have the meaning given to it in the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ("**General Data Protection Regulation**" or "**GDPR**");
- (iii) to the extent permitted by applicable law, Google shall not be liable under or in connection with this Agreement or in connection with the supply of the Service and/or the Anthos Product (whether in contract, tort (including negligence) or otherwise), (a) for any damages (whether direct or indirect or otherwise), and (b) for any warranties, including warranties of satisfactory quality, fitness for a particular purpose, and non-infringement, as the case may be.

3.7 Disclaimer

The Client is reminded that, although OVHcloud has put in place internal measures to limit potential consequences of a failure of the Service, the Hosted Private Cloud powered by Anthos Service does not include a Business Continuity Plan ("**BCP**") nor a Disaster Recovery Plan ("**DRP**").

OVHcloud makes no commitment to back up the Client's data hosted on the Hosted Private Cloud powered by Anthos Service, nor as to the effectiveness of such internal measures and shall not be held liable if those measures are not efficient.

It is therefore the Client's responsibility to take all necessary measures to back up its data in the event of loss, damage to shared data, for any reason, including data not expressly mentioned in this Agreement. As such, the Client is responsible for implementing its own BCP and/or DRP. The Client must then take the necessary technical and organisational measures to ensure continuity in its business activity in the event of a major malfunction that might impact the availability, integrity or privacy of its Service.

3.8 Breach

In addition to all other rights and remedies available to OVHcloud in case of a breach by the Client of this Agreement, OVHcloud reserves the right to remove the Client Content, data and/or application(s) from the Service should this Client Content, data and/or application(s) be the cause, or one of the causes, of such breach.

OVHcloud reserves the right to exercise controls over the compliance of the use by the Client of the Service, and more generally of the compliance with this Agreement

3.9 Indemnification

The Client will defend and hold harmless OVHcloud and its Affiliates and indemnify them against any (a) settlement amounts approved by the Client (being specified that any settlement may not include the recognition of any wrongdoing from OVHcloud or its Affiliates) and (b) damages and costs finally awarded against OVHcloud and its Affiliates by a court of competent jurisdiction, in any third-party formal legal proceeding filed by an unaffiliated third party before a court or government tribunal (including any appellate proceeding) to the extent arising from the Client's, its Reseller's customers or any Users' use of the Service in violation of this Agreement and/or any applicable law and/or Third Party Products Terms of Use, and/or breach of this Agreement, including for formal legal proceeding brought against OVHcloud and/or its Affiliates by Google.

4. MAINTENANCE & SUPPORT

To deliver the Service, OVHcloud carries out maintenance operations. The Client will be notified of any planned maintenance operations on at least one of the following methods:

- by email at the address given by the Client,
- by email at the address given on its NIC admin/tech,
- by notification on the Client Management Interface,
- by publication on the part of the OVHcloud Website dedicated to maintenance operations and incident follow-up,
- by contacting the Client directly by phone, or
- by any other means.

These communications will state the type of maintenance to be performed.

4.1 Types of Maintenance

There are three (3) types of maintenance operations that can be performed by OVHcloud:

- a) **Emergency changes for critical occurrences:** This type of maintenance is defined by high severity and critical updates, patches and/or modifications to the infrastructure, hardware, firmware, software or any other component. The consequence of not performing this maintenance could be (including but not limited to):
 - a. loss of compliance for security certifications,
 - b. put security and stability of the system at risk,
 - c. expose critical vulnerabilities,
 - d. loss of service to a wider customer base.

Once OVHcloud becomes or has been made aware of an issue requiring an emergency change with a clear understanding of the impact, the information that OVHcloud is working on fixing the issue will be shared with the Client. Where possible, the Client will be informed within 24h prior to the emergency maintenance about the process that will be followed, when and how the emergency maintenance will be performed and applied to the environment, actions to be taken, and the level of impact for the Client (ranging from a minor impact on a given component of the Service all the way up to a major impact bringing down any or all of the components).

Given the impossibility to predict how many critical vulnerabilities will be unveiled at any given point in time during any calendar month, there is not limit on the number of emergency maintenance to be performed. Due to the criticality of the maintenance to be performed, these can be undertaken at any point in time during the calendar month and during any hour of the day. For the issues for which we rely on the Third Party Products vendor to provide part of the fix to the issue, OVHcloud will need to extend this period of time to provide the complete fix by including the lead time needed by such Third Party Products vendor.

- b) **Major:** These maintenance tasks are not critical and urgent in nature. These are of medium criticality and can concern the Client only or a wider client base, but it does not pose a security risk nor loss of compliance. These major maintenances will be communicated to the Client at least seventy-two (72) hours in advance. These major maintenances may or may not trigger a downtime, but the Client is advised to plan ahead to mitigate the effect of any possible downtime, with the aim of minimizing the impact for itself and the Users. The change advisory board must sign off on these maintenance tasks. These major maintenances are generally limited to two (2) occurrences per calendar month, without any guarantee.
- c) **Minor:** These tasks are of low or no material impact, and mostly will not result in a downtime of service for the Client. These may have a level of criticality that can range from low to high. The Client will be notified at least seventy-two (72) hours in advance. These tasks will have undergone the proper change advisory board process to get approved. There is not limit on the number of minor maintenances to be performed.

4.2 Anthos Product support

OVHcloud will provide technical support to the Client and Users in respect of the Anthos Product, including Anthos Product updates. Updates provided are those generally released by Google in accordance with Google technical support terms in effect and then provided by OVHcloud to the Client or User through the Control Plane.

The Client shall regularly update the Anthos Software to the latest version or release in accordance with Google's Anthos Version Support Policy. Google's Anthos version support policy is set out at the following URL, or any successor URL that may be communicated from time to time: https://cloud.google.com/anthos/docs/support/getting-support#version_support_policy (“Google's Anthos Version Support Policy”).

Except in case of emergency changes as described above, the Client will be able to update the Anthos Software at a date and time of its choosing, provided that the Client respects Google's Anthos Version Support Policy.

Correction of Incidents related to Anthos Product

In case an Incident cannot be resolved by OVHcloud, OVHcloud will contact Google and the Client may authorize OVHcloud to disclose certain Client information in respect of the support services requested.

OVHcloud will not disclose any Client information to Google in respect of the support services except where the applicable support issue cannot be resolved by Google without such information. Where OVHcloud discloses any Client information to Google containing personal data, OVHcloud will, before disclosing any of such Client information to Google for technical support purposes, obtain a specific and express written permission from the Client for (i) such disclosure to and access by Google, and (ii) the hosting and processing of such Client information within a Google cloud storage bucket.

Contact

The Client shall not, under any circumstances, contact directly Google for questions or issues, whether technical or not, relating to the Anthos Product, the Service or any part thereof. The Client shall always address its questions and issues to OVHcloud, through any mean or channel that OVHcloud makes available to the Client for that purpose.

Google has no technical support obligations relating to: (a) the Client own services or products; (b) Third Party Products or services provided by OVHcloud to the Client in conjunction with the Anthos Product; or (c) customizations to the Anthos Product.

4.3 Evolutions

Where the Client refuses an upgrade provided by OVHcloud, it shall not receive new functionalities. OVHcloud reserves the right not to maintain or make improvements to older versions of the Service. OVHcloud supported versions are listed in the Service documentation on the OVHcloud Website.

Furthermore, where failure on the part of the Client to apply an update poses a security risk (to the Client, OVHcloud and/or third parties), OVHcloud reserves the right to restrict or suspend the Service to the Client. In such cases, OVHcloud shall notify the Client as promptly as possible.

The Client alone is responsible for the maintenance and updates to systems and applications which are outside of OVHcloud's scope of operations.

The Client acknowledges that the Hosted Private Cloud powered by Anthos Service is developed solely at the discretion of OVHcloud, its partners and Third Party Products publishers who provide solutions used as part of the Service on their own schedule. The Client may be required to move to a more recent version of the Service to ensure continuity of service and support.

4.4 Infrastructure

As part of the lifecycle management referred to in article 5 (Lifecycle policy), OVHcloud updates the Infrastructure through planned (major and minor) maintenances. During that process, the Host Servers will be updated and rebooted. The Client and its Users shall take any appropriate actions prior to such updates to ensure it does not lose any data or Content.

4.5 Limits and restrictions

OVHcloud's role is limited to performing the Infrastructure maintenance operations and providing the energy supply and the network connection to the Client's Hosted Private Cloud powered by Anthos Service. Except to the extent expressly set out in article 6 (Service Level Agreement (SLA)), OVHcloud does not guarantee any stability, reliability, or availability of the Service, and does not warrant that operation of the Service will be error-free or uninterrupted.

The Client acknowledges that, for security reasons, some functionalities, and protocols (such as IRC or peer-to-peer file sharing) may be subject to restrictions under the Agreement. The use of proxies and anonymisation services are strongly discouraged under the Service. Applicable restrictions are set out in the documentation available on the OVHcloud Website.

The Client is responsible for using the Service in accordance with the user licenses of integrated solutions, including the Third Party Product Terms of Use. OVHcloud reserves the right to perform verifications and audits to ensure compliance with the Agreement by the Client and/or the Users, and to suspend the Service under the conditions set out in the Agreement where the Client or Users do not comply with it, with applicable laws and regulations, and/or with third-party rights.

5. LIFECYCLE POLICY

OVHcloud will announce within six (6) months after the launch of a new generation of the Service the specific dates for the new and previous generations of the Service, for the following terms:

- **“End of Sales”**: This refers to the date when the sales for the previous generation is discontinued. After the End of Sales for a specific Service generation, the Client will still be able to use and grow existing instances of the Service and add additional individual Host Servers. The Packs from that previous generation or any other generation before it will not be available anymore for ordering new instances of the Service. The Packs will be sold for the new Service generation launched on the market only.
- **“End of Support”**: This refers to the date when the previous generation of the Service ceases to have support from OVHcloud, including but not limited to, the absence of automatic spares, the availability of spares limited to a commercially reasonable effort basis due to limited stock, the delivery of such Host Servers without any guaranteed specific timeframe, and the SLA being limited to 99%.
- **“End of Life”**: This refers to the date when the generation being shut down is discontinued. Following the End of Life, no additional sales for individual Host Servers will be allowed, and OVHcloud will not provide any SLA anymore, nor any OVHcloud Support service for the Service generation that has reached this stage. OVHcloud may allow the Client to keep this hardware

generation temporarily until the definitive cessation of the generation, with a maximum grace period of three (3) months after this date. OVHcloud reserves the right to not grant a grace period. It is strongly recommended to move to the newest generation available.

Other terms that pertain to the lifecycle of the Service or some specific components of the Service are as follows:

- **“Testing Phase”:** This type of phase for a new or upgraded service or feature is subject to specific conditions that are set out in article 10 (Testing Phase) below. Following a Testing Phase, the new service or feature may or may not go into general availability.
- **“General Availability”:** This is the date when the service or product is launched and becomes generally available for the whole of the market.
- **Support for middleware or Third Party Products:** Third Party Products software support will be offered by OVHcloud for the major versions supported by the Third Party Product editor and/or vendor. OVHcloud encourages the Client to upgrade all Third Party Products to the most recent version available on the OVHcloud Website. OVHcloud will provide support on Third Party Product software as long as the version of such Third Party Product software is maintained by the Third Party Product editor and/or vendor, and under the same support terms and conditions than those made available by such Third Party Product editor and/or vendor to OVHcloud. OVHcloud reserves the right to discontinue offering any Third Party Product at any given point in time. OVHcloud will inform the Client of such change at least three (3) months in advance.

6. SERVICE LEVEL AGREEMENT (SLA)

In order to benefit from the Service Level Agreements defined below, the Client must comply with the conditions and limits stated in the OVHcloud documentation and the Anthos Product documentation, as well as the conditions and limits stated in the specification and/or configuration applicable to the Pack subscribed by the Client.

SLA related to the Control Plane:

Monthly Availability Rate target is 99,95% for the Stateless Production Pack and the Stateful Production Pack, and 99,5% for the Discovery Pack.

- If the Monthly Availability Rate is lower than the above-mentioned target but equivalent to or above 99%, the Client is entitled to a Service credit equivalent to 10 % of the monthly price of the Pack;
- If the Monthly Availability Rate is lower than 99%, the Client is entitled to a Service credit equivalent to 30 % of the monthly price of the Pack.

SLA related to Host Servers:

Monthly Availability Rate target is 99,95%.

- If the Monthly Availability Rate is lower than the target but equal to or above 99%, the Client is entitled to a Service credit equivalent to 10 % of the monthly price of the impacted Host Server(s);
- If the Monthly Availability Rate is lower than 99% but equal to or above 95%, the Client is entitled to a Service credit equivalent to 30 % of the monthly price of the impacted Host Server(s);
- If the Monthly Availability Rate is lower than 95%, the Client is entitled to a Service credit equivalent to 100 % of the monthly price of the impacted Host Server(s).

SLA related to the persistent storage feature contained in the Stateful Production Pack:

Monthly Availability Rate target is 99,95%.

- If the Monthly Availability Rate is lower than the target but equal to or above 99%, the Client is entitled to a Service credit equivalent to 10 % of the monthly price of the persistent storage component;

- If the Monthly Availability Rate is lower than 99% but equal to or above 95%, the Client is entitled to a Service credit equivalent to 30 % of the monthly price of the persistent storage component;
- If the Monthly Availability Rate is lower than 95%, the Client is entitled to a Service credit equal to 100 % of the monthly price of the persistent storage component.

The monthly price of the persistent storage component represents 54% of the monthly price of the Stateful Production Pack (options or additional resources excluded).

“Monthly Availability Rate” refers to the total number of minutes in the month in question, minus the number of minutes of unavailability in the month in question, divided by the total number of minutes in the month in question. To calculate the Service credit, the periods of unavailability are calculated from the detection of the Incident by OVHcloud or the notification of the Incident by the Client (whichever is the earliest), until the Incident is resolved and confirmation of the resolution is communicated by OVHcloud.

“Unavailability” refers to the following:

- **For Host Servers:** Access is not possible to one or more Host Server(s) provided to the Client due to a fault with, or downtime of, such Host Server(s). Downtime and Incident that do not prevent access to the Host Server(s) shall not be considered unavailability, even in cases where a reduction in Infrastructure performance levels is observed. If a Host Server is rebooted by the Client or due to scheduled and communicated maintenance, the availability of the Host Server(s) will resume monitoring thirty (30) minutes after the reboot, and this timeframe is excluded from Unavailability.
- **For Storage Resources (persistent storage feature):** Access is not possible to the Storage Resources, due to a fault with, or downtime of, the Storage Resources. Downtime and Incidents that do not prevent access to Storage Resources shall not be considered as “Unavailability”.
- **For network and connectivity:** Access is not possible to one or more Host Server(s) and/or Storage Resources due to a fault with, or downtime of, network or connectivity equipment. Downtime of and/or faults with network or connectivity equipment that do not prevent access to Host Server(s) or Storage Resources shall not be considered as “Unavailability”, even where there is a noticeable reduction in performance levels.
- **For the Control Plane:** Impossibility to list, modify or create clusters, whether via the Anthos Management Center or through the API (excluding Incidents related to, or bugs within, the Anthos Product and configuration issues or faults linked to poor maintenance or updates that are under the Client’s responsibility).

Exclusive and sole remedy

The Service credits due to breaches of the SLAs are a fixed lump sum for all harm or loss resulting from the breach. As such, the Client waives all other claims and/or action against OVHcloud or the Third Party Product editor and/or vendor.

The Service credits shall not accrue where a single event results in a breach of multiple SLAs for the same Service. In such cases, the Service credit most favorable to the Client will apply.

The total cumulative monthly amount (for all incidents and SLAs combined) of Service credit payable by OVHcloud to the Client is capped at 100% of the monthly cost of the impacted Pack.

The Service credit must be claimed by the Client by opening a request ticket no longer than 30 days after the end of the month during which the relevant breach of SLA occurred.

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

Limitations – Exclusions

- Where the Client's action is required to establish a diagnostic or resolve an Incident, and where the Client is unavailable or does not cooperate with OVHcloud, the corresponding length of time shall not be counted as a period of Unavailability, action or restoration.
- Maintenance operations are excluded from the calculation of SLA.
- The Service credit shall not be due where breaches of the SLA are the result of:
 - (i) events or factors beyond the control of OVHcloud, including, but not limited to, instances of force majeure, third-party actions, pandemic, faults or improper use of equipment or software under the Client's supervision,
 - (ii) failure on the part of the Client to meet its obligations under this Agreement (e.g. failure to cooperate in resolving an incident or validating a token when requested by OVHcloud),
 - (iii) improper or inappropriate use of the Service by the Client (e.g. poor network configuration, overloading Storage Resources, inappropriate use of systems, software or other elements used by the Client in connection with the Services),
 - (iv) planned maintenance,
 - (v) suspension of Service under the conditions set forth in the Agreement, or
 - (vi) hacking or software piracy.

In such cases, and without prejudice to point (iv), OVHcloud reserves the right to charge the Client, where applicable, for actions to restore availability. Such actions shall be included on an invoice, presented for approval by the Client.

Evidence

Reasons for Unavailability, in particular in cases of SLA exclusion described above, may be established by any means, based on evidence taken from OVHcloud's information system (such as connection data) which, by express agreement, shall be admissible.

7. TERM, RENEWAL, TERMINATION AND END OF SERVICE

7.1 Term

During the Service ordering process, the Client selects the initial duration of the Service Pack subscription (the **“Initial Commitment Period”**). The Initial Commitment Period begins on the day that the Service is activated or delivered.

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

Subject to article 3.2 (Subscription – Modification), the Client agrees to use the Service (including any additional resources or options, as the case may be) for the full Initial Commitment Period selected when placing the Order for the Service or additional resources and options, and any Renewed Commitment Period(s) (if any).

7.2 Renewal

At the end of the Initial Commitment Period, the Service automatically renews for successive periods of the same duration (the **“Renewed Commitment Period(s)”**), unless the Service is renewed with a modified duration or terminated under the terms of this Agreement.

The Client may modify the duration of future Renewed Commitment Periods for the Service, using the Management Interface, at least 24 hours before the end of the Initial Commitment Period or the current Renewed Commitment Period.

When the Initial Commitment Period 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 Renewed Commitment Periods begin on the 1st of the calendar month. For example: for a Service initially subscribed for one (1) year on 24 May 2021, the automatic renewal at the end of its Initial Commitment Period results in the Service being extended from 24 May 2022 up to 31 May 2023.

If the Client chooses the automatic renewal option, the Agreement on the price for the Renewed Commitment Period will be equivalent to the discounted price in effect at the time of renewal.

If the Client does not wish for a Service to be renewed at the end of the ongoing Commitment Period (the last day of such period being the **"Renewal Date"**), it must deactivate the automatic payment function in their Management Interface, in which case the price of the Service will be adjusted based on the public price in effect at the time it decides to renew its subscription. The applicable prices and payment methods are further described on the OVHcloud Website.

In order to be effective and result in the termination of the Service at the end of the ongoing Commitment 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; and
- b. For Services with a non-monthly renewal cycle (quarterly, semiannually, 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 Commitment Period, 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 ongoing Commitment Period (the last day of such period being the **"Expiry Date"**), including all of the Content and data stored by the Client as part of the Service. It is the Client's responsibility to take all the necessary measures to save its Content and data on its own devices or infrastructure (i.e. outside the Service) before the Expiry Date.

Notwithstanding the foregoing, the Client 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 Commitment Period in advance.

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

7.3 Termination

In addition to any other specific termination or suspension rights stated in the General Terms of Services or elsewhere in the Agreement, either Party may suspend performance of or terminate this Agreement immediately on written notice if:

- (i) the other Party is in material breach of this Agreement and that breach is incapable of cure;
- (ii) the other Party cannot pay its debts as they become due; enters into an arrangement or composition with or for the benefit of its creditors; goes into administration, receivership, administrative receivership or liquidation; is declared bankrupt or insolvent; or is dissolved or otherwise ceases its business operations, to the extent permitted by applicable law; or
- (iii) if such Party:
 - (a) establishes that applicable law(s) make it impracticable or unlawful for OVHcloud to continue providing the Service to the Client; or

(b) establishes that the other Party has materially violated or caused the terminating Party to materially violate any Anti-Bribery Laws or Export Laws.

7.4 Effect of Termination

On any expiration or termination of the Agreement:

- (a) all rights and licenses granted by OVHcloud to the Client under this Agreement will immediately cease;
- (b) each Party will use reasonable endeavors to return or destroy all confidential information of the other Party;
- (c) subject to the article “contestation” of the General Terms of Service, all payments owed by one Party to the other Party (including all amounts owed under this Agreement, even if the termination date is earlier than the end of the ongoing Commitment Period or any other subscription period associated with additional services and options) become immediately due and payable; and
- (d) the Client shall ensure that it, and all Users, immediately cease using the Service. Termination of this Agreement, in part or in whole, will not limit either Party from pursuing other remedies available to it.

7.5 End of Service

In the event of non-renewal or termination of the Service, for any reason, all Content will be automatically and irreversibly deleted (including back-ups and duplications made by OVHcloud, if any) within thirty (30) days from the end of the Service.

Before the Service expires, or before terminating or removing a Service, the Client is responsible for making the back-ups and data transfers necessary for continued storage.

OVHcloud deletes and destroys disks at the end of the Service in accordance with established, documented procedures:

- Deletion of data on hard drive disk or array is carried out by overwriting data (overwrite sanitize, one pass).
- Deletion of data on SSD disk or array is carried out using the logical erase procedure (block erase one pass) or by removing the encryption key (PSID revert).
- Where the storage device is removed from its bay, data are in all cases deleted before removal from the bay. The device is destroyed in the event that an error occurs during the deletion process.
- In case of destruction (as set forth above), the storage devices are destroyed using dedicated machines in a secure space in each Datacenter.

8. FINANCIAL TERMS AND CONDITIONS

8.1 Billing

OVHcloud may propose different types of pricing for the same product or Service, as disclosed on the OVHcloud Website. It is the Client responsibility to manage and ensure that the pricing offer chosen match with its needs and configuration.

8.2 Additional resources or options

The Client can, upon request, temporarily increase the Storage Resource and/or add Host Server(s). These additional Infrastructures are invoiced to the Client according to the prices applicable available on the OVHcloud Website and/or the Management Interface at the time of subscription and paid immediately using the payment method registered by the Client.

8.3 Payment term and payment default

During the ordering process, as well as when the Service is renewed, an invoice is issued by OVHcloud and paid by the Client automatically using the payment method registered by the Client. The Client agrees to register, at any time, a valid method of payment among those authorized by OVHcloud.

Save as agreed otherwise, the Services are invoiced on a monthly basis, in advance and paid immediately using the payment method registered by the Client.

The Client 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 Client inviting it to pay the amount of their outstanding invoice as soon as possible. Failure to pay the amount due four (4) days after the receipt by the Client of a payment reminder served by email will result in OVHcloud suspending the Service as of right. In addition, the Client will not be able to add any OVHcloud services, and, after seven (7) days of Service interruption, OVHcloud may terminate the Agreement and delete all the Content stored on the Infrastructure.

9. RESELLER SPECIFIC TERMS

Selection Criteria

OVHcloud authorized Reseller must satisfy the following mandatory and cumulative criteria (the “**Selection Criteria**”) (as updated by OVHcloud from time to time), namely:

- be a registered company that can offer products and propositions directly to customers;
- not be located in a country subject to Export Laws restrictions;
- be able to deliver varying product propositions directly to enterprise customers;
- have a substantial customer base and therefore be able to deliver promotions in volume with a significant level of uptake; and
- have suitable premises (e.g., bricks and mortar) in multiple locations and/or a high traffic web site.

Authorisation to resell

Reseller is allowed to resell, as an independent and non-exclusive reseller, the Service to Customers, provided that:

- a) The Reseller represents and warrants that it meets the Selection Criteria;
- b) the Service can only be resold as an integrated part of the Service;
- c) the Reseller shall not solicit business from, or actively sell or provide the Service or any part thereof to any entity that:
 - (i) does not have a principal place of business within the Territory, or
 - (ii) is in violation of applicable Export Laws;
- d) the Reseller imposes upon its Customers the same obligations and limitations, obtain the same representations and warranties, limitations of liability and indemnification guarantees, waiving of rights, and reserve the same rights, as defined in this Agreement, exception made for article 9 (Reseller specific terms) of the body of the Specific Terms of Service, as Customers are strictly prohibited from reselling the Service;
- e) the Reseller undertakes to never resell or provide the Service before having executed a proper agreement with its Customer, which shall be subject to French law;
- f) the Service and/or any documentation provided by OVHcloud and/or Google shall not be used for any purpose other than reselling the Service;

- g) upon termination of this Agreement, the Reseller shall:
 - (i) cease reselling or providing the Service,
 - (ii) terminate all subsequent agreements that it has with Customers, and
 - (iii) return or destroy all confidential information; and
- h) the Reseller may not grant Customers the right to further sublicense the Service and the Anthos Software.

Commitments

The Reseller shall (and shall procure that any Customer shall) abide by this Agreement and, more specifically (a) the AUP, and (b) the Third Party Product Terms of Use, notably the Google Service Specific Terms, being noted that before Google makes the Anthos Software generally available, as defined in the service terms, the section entitled “Pre-GA Offerings Terms” of the service terms of the Google Cloud Platform product schedule shall apply to the Anthos Products and to any resale, supply, or use thereof (during such time, in the event of any conflict between such Pre-GA Offerings Terms and any other terms of the Agreement, the Pre-GA Offerings Terms shall prevail). The AUP and the Anthos Terms referred to herein are hereby integrated in the Agreement and forms an integral part of it.

The Reseller shall refrain from offering any commitments regarding the Service to its Customers; if the Reseller offers any commitments to any Customer beyond the commitments that OVHcloud has made under this Agreement, OVHcloud will not be liable for such commitments.

More generally, the Reseller will not make or give any (a) unauthorized, false, misleading, or illegal statements in connection with the Agreement or any Customer agreement, or concerning the Anthos Product, or Google or its Affiliates; or (b) representations, conditions, or warranties concerning the Anthos Product on behalf of Google or OVHcloud. Neither OVHcloud nor Google will be responsible for any representations, conditions, or warranties made or given by Reseller concerning the Anthos Product and more generally the Service.

Support

The Reseller will first use commercially reasonable efforts to resolve, without escalation to OVHcloud, any technical support, sales, or Customer support matters raised by Customers regarding the Service. In no event shall the Reseller or any Customer or Customer’s User contact Google directly.

Reseller Tools

If the Reseller is specifically authorized in writing by OVHcloud to access Google’s Reseller tools, the Reseller will (a) use the Reseller tools in compliance with all applicable policies and terms governing access to such Reseller tools and (b) cease all use of Reseller tools upon the termination or expiration of this Agreement.

Compliance

The Reseller is responsible for any violations of this Agreement, including the AUP, caused by the Reseller, it’s Customers, the Customers’ Users, the Content, Applications or any product or service used on or in conjunction with the Service.

Google’s Brand

Except as otherwise provided for in this Agreement, the reseller does not benefit from any license to use or display Google’s trademarks, brands, and any other intellectual property belonging to Google.

Liability

In addition to the general liabilities provided in this Agreement, the Reseller will be responsible for any failure by any Customer to comply with the provisions provided for in this Agreement and shall use its best endeavors to compel that Customer’s compliance, including by instituting legal proceedings and stopping the sale or supply of the Service to the Customer in accordance with the terms of this Agreement.

Any act or omission by a Customer that would have been a breach of the Agreement if such act or omission had been carried out by the Client will be deemed to be a breach by the Reseller of the applicable provision of the Agreement.

Indemnification

In addition to the general indemnification obligations provided in the Agreement, the Reseller's indemnification obligations will also include the obligation to defend and hold harmless OVHcloud and its Affiliates and indemnify them against any (i) settlement amounts approved by the Reseller (being specified that any settlement may not include the recognition of any wrongdoing from OVHcloud or its Affiliates), and (ii) damages and costs awarded in a final judgment against OVHcloud and its Affiliates, to the extent arising from any acts or omissions in relation to the marketing, resale or supply of the Service.

Information – Cooperation

The Reseller hereby acknowledges and agrees that OVHcloud will disclose to Google its corporate name, and information about whether OVHcloud has entered into a Reseller agreement with the Reseller and undertakes to fully support OVHcloud's in the performance of its obligations under the Agreement.

Testing Phase

Except as otherwise agreed between the Parties, if OVHcloud provides a service or feature in a Testing Phase for free, the Reseller is not allowed to charge its customers for such service or feature in a Testing Phase for a fee.

10. TESTING PHASE

10.1 Specific conditions for Testing Phases

OVHcloud may offer the Client to participate in a Testing Phase for new service or feature.

When the Client accepts to participate in a Testing Phase, for example by enabling a new feature that is designated, tagged or marked as in "Testing Phase", "Beta" or otherwise, the Client acknowledges that the specific conditions included in this article will apply, as well as any other conditions displayed on the OVHcloud Website and/or the Management Interface relating to a specific new service or feature.

With regard to any service or feature in a Testing Phase related to the Anthos Product, the Client shall, and shall procure that any User will, abide by the terms included in the section entitled "Pre-GA Offerings Terms" of the Google Service Specific Terms for such service or feature in a Testing Phase (during such time, in the event of any conflict between such Pre-GA Offerings Terms and any other terms of the Agreement, the Pre-GA Offerings Terms shall prevail).

10.2 Access

During any Testing Phase, OVHcloud will determine in its sole discretion any specific restriction or limitation, including limitations regarding the number of Users who may test the new service or feature, and the methods to access the new service or feature. OVHcloud reserves the right to deny access to the new service or feature without notice and without having to provide the Client with a reason.

10.3 Communication and Feedback

Communication

Unless expressly agreed in writing by OVHcloud prior to any communication, the Client shall not communicate publicly or privately about the new service or feature, including about its existence and the existence and content of this Testing Phase, other than with its Users and with OVHcloud, and shall procure that its Users will do the same.

Feedback

The Client acknowledges that a Testing Phase's purpose is notably to gather Feedback. Therefore, the Client commits to providing Feedback if so requested by OVHcloud on any new or upgraded service or feature if the

Client has agreed or requested to participate in the Testing Phase for such service or feature, within a reasonable timeframe.

10.4 Support and modifications

Limited support

The Client acknowledges and agrees that, due to the nature of the Testing Phase, OVHcloud does not guarantee any support of the new or upgraded service or feature and/or any part thereof, including but not limited to the Anthos Product. The Client shall contact OVHcloud for any support request relating to the service or feature in a Testing Phase through the dedicated channels put in place by OVHcloud, as the case may be.

Modifications

OVHcloud may update or modify the new or upgraded service or feature in a Testing Phase as it sees fit, without any restriction.

10.5 Suspension and termination

Suspension and termination

OVHcloud reserves the right to suspend, interrupt or terminate any service or feature in a Testing Phase, or the access to such service or feature in a Testing Phase, at any time, without notice, without having to provide a reason, and without incurring any liability for such suspension or interruption.

Wherever possible, OVHcloud will provide advance notice to the Client, which can be made through a message on the mailing list created for the Testing Phase, and/or on the OVHcloud Website and/or OVHcloud forum, or by any means that OVHcloud deems relevant.

Effect of termination

Upon termination of the Testing Phase for a new or upgraded service or feature, for whatever reason:

- (a) all rights and licenses granted under this Agreement for this new or upgraded service or feature will immediately cease;
- (b) the Client shall ensure that it, and all Users, promptly cease using the new or upgraded service or feature and, if applicable, promptly uninstall and delete all installations and copies of such service or feature or any part thereof; and
- (c) If all or part of the Content is processed by or stored in the new or upgraded service or feature in a Testing Phase, OVHcloud will erase such Content (or any part thereof).

The Client agrees thereby to carry out the repatriation of, or back up, its data, including the Content, before the end of the Testing Phase, and is warned that the termination of a service or feature in a Testing Phase may have repercussions on the service on which it is associated, even if such service is not in a Testing Phase.

10.6 Data and Personal Data

When using a service or feature in a Testing Phase, the Client shall not:

- (a) process any personal data; and
- (b) store real files or information, especially files or information that are vital or essential to its business.

Considering the nature of a Testing Phase, the Client must have a backup copy of the files and information that it uses and/or stores within the service or feature in a Testing Phase if such files and information are necessary for its business. In order to test the Service, the Client is strongly encouraged to use a test data set.

The Client is reminded that, for any reason, without notice and at any time, OVHcloud may proceed to delete any and all the files on the Client's service or feature in a Testing Phase.

10.7 Complementary representations and warranties

For any service or feature in a Testing Phase for which the Client agrees or requests to participate in, the Client represents and warrants that (a) it fully understands the consequences and specificities that a Testing Phase involves, and (b) it will bear all risks (such as instability, dysfunction, loss of data, etc.) related to this phase.

10.8 SLA exclusion

The SLA indicated in these Specific Terms of Service are not applicable to any service or feature in a Testing Phase.

In addition, if the Client uses a feature in a Testing Phase associated with a service which is not in a Testing Phase, the Client is warned that if the use or activation of the feature in a Testing Phase results in a breach of the SLA for the associated service, the Service credit shall not be due.

10.9 General availability

The commercialization and continuity of the service or feature after the Testing Phase are not guaranteed by OVHcloud. Should OVHcloud commercialize the service or feature after the Testing Phase, and the Client wishes to obtain such service or feature, (a) OVHcloud does not guarantee that a migration between the Testing Phase environments and the production environments will be possible, and (b) the Client's participation in the Testing Phase will not entitle the Client in receiving any kind of benefit, discount or otherwise, for such service or feature.

10.10 Disclaimer and specific limitation of liability

Disclaimer

Any service or feature in a Testing Phase is provided "as is" without any express or implied warranties or representations of any kind.

OVHcloud provides no security for the consequences of the use of the Service by the Client, particularly as regards accessibility, storage, security and the preservation of its data.

Specific limitation of liability

To the maximum extent permitted by applicable law, OVHcloud's and/or Google shall not be liable under or in connection with this Agreement (whether in contract, tort (including negligence) or otherwise), for any damages (whether direct or indirect or otherwise), and for any and all causes of action, to the extent arising from the use or testing of a service or feature in a Testing Phase, including if the use or testing of such service or feature in a Testing Phase causes damages to an associated service which is not itself in a Testing Phase.

11. MITIGATION (PROTECTIONS AGAINST DoS (Denial of Service) AND DDoS (Dynamic Denial of Service) ATTACKS)

OVHcloud has implemented protective measures against DoS and DDoS cyberattacks (Denial-of-service attacks) where these are massive in scale. This functionality is used to help ensure continuity of service to the Client for the full duration of the attack.

This functionality involves verifying incoming traffic intended for the Client's Service from outside the OVHcloud network. Traffic considered illegitimate is then rejected before it can reach the Client's infrastructure, thereby allowing legitimate users access to applications provided by the Client despite the cyberattack.

These protection measures are not effective against cyberattacks such as SQL injections, Bruteforce or exploiting security vulnerabilities.

Due to the high complexity of the protection Service, OVHcloud is only subject to best-efforts obligation. It is possible that an attack is not detected by the systems in place, and that those systems cannot ensure continuity of Service operation.

Due to the nature and complexity of the attack, OVHcloud shall provide multiple levels of traffic protection in order to protect its infrastructure and the Service of the Client.

Mitigation is only activated once an attack has been detected by OVHcloud tools. Therefore, until mitigation is activated, the Service will sustain the attack directly, which may result in unavailability of service.

Once the attack is identified and mitigation is activated automatically, mitigation may not be deactivated until the attack has ended.

While mitigation is activated, OVHcloud cannot guarantee accessibility of Client applications, but will make every effort to minimise the impact of the attack on the Service and OVHcloud Infrastructure.

If, despite activating mitigation measures, the cyberattack affects the integrity of OVHcloud and OVHcloud Client infrastructures, OVHcloud shall apply more robust protective measures which may result in a reduction in quality or unavailability of the Service.

Lastly, it is possible that a portion of traffic generated by the cyberattack may not be detected by OVHcloud systems and thus adversely affect the Service to the Client. The effectiveness of mitigation measures also depends on the Service configuration. As such, the Client is responsible for ensuring that it has the necessary competence to provide effective administration.

It is important to note that mitigation does not exempt the Client from ensuring the security of its Service, installing security tools (e.g. firewalls), carrying out regular updates of its systems, backing up its data, or monitoring the security of its computer programmes (e.g. scripts, codes).

12. MEASURES TO PREVENT SPAMMING USING THE OVHcloud NETWORK

OVHcloud has implemented a system of technical measures aimed at preventing fraudulent emails as well as spamming from its infrastructures.

For this purpose, OVHcloud shall verify outbound traffic from the Service used by the Client for port 25 (SMTP server). This operation shall involve monitoring traffic using automated systems.

Mail is not filtered or intercepted, but instead monitored with a time lag of a few seconds. These operations are carried out in parallel, but are not frontal, between the server and the web-based network.

Moreover, no operations are performed on outgoing emails: OVHcloud does not tag emails, nor does it modify emails sent by the Client in any way. OVHcloud does not store any information regarding these operations, aside from statistical data.

This operation is routine and entirely automated. There is no human input to monitoring traffic to port 25 (SMTP port).

Where multiple emails identified as spam or fraudulent are sent from the Client's server, OVHcloud shall notify the Client by email and block the SMTP port for the IP in question.

OVHcloud does not retain copies of emails sent from the Service's SMTP port where these are identified as spam.

The Client may request to unblock the SMTP port using its Management Interface.

All additional emails identified as spam shall result in a further blockage of the SMTP port for a longer period.

After the third blockage, OVHcloud reserves the right to refuse any further requests to unblock the SMTP port.

13. MISCELLANEOUS

Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of France, without giving effect to principles of conflict of laws that would require the application of any other law.

Dispute Resolution

The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement through discussions between themselves within thirty (30) days. If these discussions are unsuccessful, the Parties irrevocably agree that the Courts of Paris shall have exclusive jurisdiction to settle any dispute or claim arising out of or relating to this Agreement, notwithstanding the plurality of defendants, claim against guarantor, summary or conservatory proceedings.

Remedies

It is specifically understood and agreed that certain breaches of this Agreement may result in irreparable injury to OVHcloud, that the remedies available to OVHcloud at law alone may be an inadequate remedy for such breach, and that, in addition to any other legal or equitable remedies which OVHcloud may have, OVHcloud may elect to enforce its rights by an action seeking specific performance.

APPENDIX 1

DIVISION OF TASKS AND RESPONSIBILITIES BETWEEN THE CLIENT AND OVHcloud

	OVHcloud	CLIENT
Maintenance		
Private cloud Infrastructure hardware	X	
Control Plane	X	X
Software installed by the Client		X
Software provided by OVHcloud	X	
Back-up		
Client's containers' and Storage Resources' content		X
Configurations provided by OVHcloud	X	
Service Operation		
Administration		X
Infrastructure availability	X	
Reversibility		
Data retrieval		X
Deletion of data upon the termination date	X	
Security		
Service Infrastructure	X	
Containerized architecture hosted in the Service		X
Content security protection, back up & recovery plan		X