

SPECIAL CONDITIONS FOR WEBSITE HOSTING SERVICES ON A VIRTUAL PRIVATE SERVER

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1. Definitions

In these Special Conditions, the terms defined in this clause shall have the following meaning unless the context otherwise requires and any references to terms defined in the General Conditions shall have the same meanings as are given to them in the General Conditions:

Charges: the total fees payable by the Customer as set out in the Order, based on the Customer's selected configuration, the fee for which is set out in the OVH price list, the current version of which is available online at www.ovh.co.uk.

Confidential Information: all information, whether technical or commercial (including all specifications, data, drawings and designs, disclosed in writing, on disk, orally or by inspection of documents or pursuant to discussions between the parties), where the information is:

- (a) identified as confidential at the time of disclosure; or
- (b) reasonably considered confidential given the nature of the information or the circumstances of disclosure.

Content: the text, information, images, audio or video material and any other data or information placed on the VPS by or on behalf of the Customer, including for the avoidance of doubt, data which the Customer permits third parties to place on the VPS.

FTP Backup Service: a backup storage area to which the Customer can transfer data stored on the VPS and related services as set out in Appendix 1.

General Conditions: OVH's General Terms and Conditions of Service which apply to this contract between OVH and the Customer.

Host Server: the physical server, configured and administered by OVH, located in OVH's datacentre, of which the Customer's VPS forms part.

Infrastructure: the elements that together make up the VPS Hosting Service provided by OVH, including the Host Server, the network, the bandwidth and the virtualisation.

Management Interface: the “Manager Space” which is made available to the Customer on the Website following entry by the Customer of the relevant Customer ID and password.

OVH account: an invoicing account that can be used by OVH to invoice OVH services including VPS Hosting Services, Snapshot and FTP Backup Services to the Customer. The OVH account contains all the information and functionality relating to OVH invoices. The OVH account can be credited by the Customer and can act as a cash reserve that can be used as a means of payment for invoices issued for new OVH services or renewal of subscribed OVH services. Alternatively, the Customer can nominate a payment method (such as Paypal®) that will enable its invoices to be paid automatically.

Resources quantity: the minimum number of benchmark resources (CPU, RAM, storage) for the VPS allocated for a given invoicing period. This number will be amended by OVH if there is a Change in Base Power.

Snapshot: a service, set out in Appendix 2, which allows the Customer to capture an instance of a VPS server. This service can be activated by the Customer via their Management Interface, subject to the Conditions set out in Appendix 2.

Switching: operation on a Virtual Private Server to move from one configuration to a higher configuration of the same range. Switching to a lower range configuration (with a lower monthly price than the existing configuration) is not authorised.

VPS (or Virtual Private Server): the virtual sub-part of the Host Server, with a fixed IP address, provided to the Customer as part of the VPS Hosting Services. (The memory and processor of the Virtual Private Server are shared with other virtual private servers, but they are all independent from each other.)

VPS Hosting Services: the hosting and related services of a Virtual Private Server on the Host Server for the Customer’s exclusive use, subject to and in accordance with the provisions of these Conditions.

VPS Models/Offers: The amount of resources (CPU, RAM, storage) of the VPS. This is the minimum number of resources allocated for a given billing period.

vRAM: The amount of available RAM. Within the VPS Classic and Low Latency ranges, the vRAM is equal to the amount of guaranteed RAM chosen by the Customer. For a VPS from the VPS Cloud range, the amount of guaranteed RAM is composed from the amount of RAM selected by the Customer and then the SSD.

2. Application of Conditions

OVH Limited (“OVH”) shall provide the VPS Hosting Services to the Customer and the Customer shall pay for the VPS Hosting Services in accordance with these Conditions and the General Conditions which shall govern the contract between the parties to the exclusion of any other terms or conditions whether proposed by the Customer, implied by law, trade custom, practice or course of dealing or otherwise. In the event of conflict between these Conditions and the General Conditions, these Conditions shall prevail.

3. Virtual Private Server

3.1 There are a number of different configurations of Virtual Private Servers as set out online at <http://www.ovh.co.uk/vps/>. It is the Customer’s responsibility to define in the Order the configuration and the operating system that will best suit their needs and expectations.

3.2 If the Customer has chosen the VPS Cloud configuration (as defined online), the Customer shall, at its discretion, notify OVH that they wish to subscribe to the FTP Backup Service for an additional monthly cost, in addition to the Charges, subject to the Conditions set out in Appendix 1. For the avoidance of doubt, this is only available to Customers who have chosen the VPS Cloud configuration.

3.3 The Customer may at its discretion adopt the Snapshot service, for an additional monthly charge, such services to be provided by OVH subject to the Conditions set out in Appendix 2.

3.4 In consideration for the payment of the Charges by the Customer, OVH shall provide the Customer with a Virtual Private Server on the Host Server, equipped with the dedicated resources (hard disk partitions, RAM and processor) specified in the Order.

3.5 Upon acceptance of the Order, OVH shall e-mail the Customer their access codes required to connect to the VPS. The VPS provided by OVH has a fixed IP V4 address, localised in accordance with the physical location of the VPS.

3.6 OVH is responsible for the administration of the Infrastructure, and for the administration of the Host Servers on which the Customer's VPS is installed, but OVH has no responsibility for the administration of its Customer's Virtual Private Servers and the Customer is solely responsible for administration of their VPS. The Customer may install software on the VPS at their own risk and OVH accepts no responsibility for any subsequent malfunction of the VPS which results from any such installation by the Customer.

3.7 OVH reserves the right, with or without notice to the Customer, to limit, filter, suspend or restrict features and protocols (such as IRC or peer to peer file sharing) of the VPS to ensure the security of its infrastructure. OVH will use reasonable endeavours to inform the Customer of any such limitations or restrictions wherever possible.

3.8 OVH will guarantee the bandwidth of the VPS up to 100 Mbps as long as the traffic of the bandwidth does not exceed the pre-defined set monthly volume. This monthly volume includes both intra-OVH traffic and traffic outside of the OVH network.

3.9 When the monthly traffic volume exceeds the set monthly volume but does not exceed 20% above the set monthly volume, the bandwidth of the VPS will be limited to 10 Mbps. Once the monthly traffic volume exceeds 20% above the set monthly volume, the bandwidth will be automatically suspended until the next monthly renewal date.

3.10 The Host Server and the VPS shall remain the property of OVH at all times. The Customer shall not be entitled to sell, transfer, lease, charge, assign by way of security or otherwise deal in or encumber the VPS except as provided for under these Conditions.

3.11 The Customer may modify the configuration of its Virtual Private Server. The customer may order its Future Base in its Management interface. This modification may start immediately or at the next billing period.

3.12 The Customer acknowledges that OVH cannot guarantee Switching requests, as the service is based on virtual technologies.

3.13 When Switching occurs, OVH will perform an immediate reboot of the VPS which may cause the VPS Hosting Services to be suspended until after the Switching has taken place. OVH has no liability to the Customer for any losses suffered as a result of such suspension.

4. Localisation

4.1 The choice of data centre or of the location of the Host Server is final and cannot be subsequently amended by the Customer.

4.2 The Customer is subject to the laws applicable in the country where the equipment is installed and the Customer will not use the VPS for any purpose or activity except as permitted by such law. If the Customer breaches any of its obligations under this Condition, OVH may at its discretion, suspend the VPS Hosting Service until such time as that prohibited activity or use ceases.

4.3 With regard to localised IP addresses, the Customer undertakes to not use the VPS in any way that breaches the laws applicable in the country for which the IP address is declared. In the event of such use; OVH may, at its discretion suspend any localised address associated with the Customer.

5. Level of Service

5.1 OVH will use its reasonable endeavours to ensure 99.98% availability of a VPS Low Latency and Classic ranges.

5.2 OVH will use its reasonable endeavours to ensure 99.99 % availability of the VPS Cloud range.

6. Prices, Methods of payment and billing

6.1 The Charges payable by the Customer for the VPS Hosting Service depend on the configuration of VPS that the Customer has requested as set out in its Order. The prices for each configuration are as set out on <http://www.ovh.co.uk> from time to time. The prices expressed are inclusive of VAT and are payable in Pounds Sterling.

6.2 The Customer shall pay OVH the Charges in advance, upon placing the Order, and at the interval(s) specified therein and upon renewal of the VPS Hosting Service, by credit or debit card, cheque issued by a bank addressed to OVH Limited and sent to 3 Southwark Street 3rd Floor London SE1 1RQ, postal order, Paypal® or via the OVH account.

6.3 The Customer may carry out a Change of Base Power during the billing period which results in the Customer Switching to a higher configuration. In such a case, the Customer will be invoiced in accordance with the price applicable to the new configuration as set out on <http://www.ovh.co.uk> from time to time. This invoice will include the additional Charges due for the remainder of the billing period in which the Switching occurred and will set out the Charges payable by the Customer thereafter from the date the Switching occurred until the date of expiry of this contract.

6.4 If the Customer's OVH account is in credit for an amount higher or equal to the amount invoiced for the Switching under Condition 6.3 above, then the amount will automatically be debited from the Customer's OVH account.

6.5 If the OVH account is not in credit under Condition 6.4 above, OVH will debit the Customer by one of the methods of payment registered and associated to their OVH account.

6.6 If OVH is not able to debit the amount from the associated method of payment under Condition 6.5 above, OVH shall send an e-mail to the Customer requesting that payment for the unpaid invoice be paid immediately. If the Customer does not make

this payment, the VPS Hosting Service will be suspended by OVH and then removed without any possibility of data retrieval by the customer.

7. Supplier's obligations

7.1 OVH shall provide the VPS Hosting Services with reasonable care and skill and in accordance with best industry practice.

7.2 OVH shall provide the Infrastructure necessary for the provision of the VPS Hosting Services.

7.3 OVH shall use its reasonable endeavours to ensure that:

(a) the Host Server is administered and maintained in good working order and in accordance with best industry practice;

(b) any defect, error or malfunction of the Host Server is remedied as soon as is reasonably practicable, and the Customer is informed immediately if such repair or replacement requires the VPS Hosting Services to be suspended for any period;

(c) any disruption to the VPS Hosting Services which does not result from any breach of this contract by the Customer or any factor outside of OVH's control shall be rectified as soon as is reasonably practicable following a request from the Customer;

7.4 OVH shall use reasonable endeavours to inform the Customer by email as soon as reasonably practicable if due to any maintenance, repair or upgrade requirements the VPS Hosting Services are to be suspended, such notice to include information about the likely duration of such suspension.

8. Supplier's liability

8.1 OVH provides the Customer with access to VPS to allow the Customer to store data, materials and other information belonging to the Customer or their customers, and the Customer accepts full responsibility for such data, materials and other information. The Customer is solely responsible for the services, information and websites hosted on their VPS, the Content of information transmitted, distributed or collected, its operations and updates, and all files, including address files and OVH has no responsibility or liability for the same.

8.2 Save for Personal Injury or death caused by OVH's negligence, fraud or fraudulent misrepresentation or breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 OVH shall have no liability to the Customer under the Contract for any losses or liabilities resulting from any act, omission, fault or negligence of the Customer or the Customer's agents, sub-contractors or employees, whatsoever, in particular due to:

- (a) breach by the Customer of their obligations under the Contract, including (without limitation) any partial or total destruction of information transmitted or stored following errors attributable directly or indirectly to the Customer and any suspension or termination of access to the VPS by reason of any breach by the Customer of their obligations under Condition 9;
- (b) malfunction of the VPS or any relating losses resulting from any use of the VPS by any employee or agent of the Customer or any other person to whom the Customer has provided the confidential password(s) provided to the Customer by OVH;
- (c) loss of or failure by the Customer to maintain the security of the confidential password(s) provided to the Customer by OVH, or any improper use of any such password(s);
- (d) failure by the Customer to take all necessary measures to backup their data in case of loss or damage for any reason whatsoever, whether via the FTP Backup Service mentioned in these Conditions or otherwise;
- (e) use of Content which is made available by the Customer to users;
- (f) other negligent act or omission of the Customer, including any failure by the Customer to follow the advice or recommendations of OVH, including (without limitation) any improper use of terminals by the Customer or the Customer's customers;
- (g) breach, infringement or negligent act or omission of a third party of which OVH has no monitoring control;
- (h) general deterioration of the application;
- (i) access to the VPS by a third party without the authority of the Customer or other actual or suspected security breaches in connection with the VPS Hosting Services which are outside the control of OVH;
- (j) act of piracy, viruses, worms, trojan horses or other harmful codes that affect or may affect the VPS and/or the provision of the VPS Hosting Services;
- (k) modification (or attempted modification) of the Infrastructure by the Customer or a third party not authorised by OVH;
- (l) downtime caused by routine or emergency maintenance, repair or upgrade to the VPS Hosting Service which has been reasonably notified to the Customer in accordance with Condition 7.4;

(m) failure of any network operators, and the Customer's service providers, to comply in whole or in part with any obligations relating to the operation of the Internet;

(n) a force majeure act, event, omissions, non-events or incident outside OVH's reasonable control including but not limited to acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster.

8.3 OVH accepts no responsibility for any Content transmitted, distributed, collected or posted on or through the Customer's VPS, or for the operation or updating of any files (including address files) containing such Content and, gives no guarantee regarding the security or preservation of such Content.

8.4 OVH reserves the right to suspend the Customer's access to the VPS if the Customer's VPS constitutes a danger to the maintenance of the security of the Infrastructure, particularly in cases of piracy of the Customer's VPS, where a flaw is detected in the security system.

9. Customer's obligations

9.1 The Customer warrants that it has the power, authority and capacity necessary to enter into this Contract and to observe and perform its obligations under this Contract, including (without limitation) all necessary technical knowledge required to ensure correct administration of the VPS and to back up the data stored on the VPS.

9.2 The Customer shall read and comply with the documentation made available to the Customer by OVH relating to the VPS.

9.3 The Customer shall provide valid contact information (first name, surname, organisation if applicable, mailing address, telephone number, and email address) for any site or sites hosted by the Customer within 72 hours of any request from OVH for such information.

9.4 The Customer shall take all reasonable care when using the VPS, and shall be responsible for:

(a) managing the VPS. The Customer may not claim any reimbursement, replacement, or compensation from OVH if the VPS is lost or damaged following a misconfiguration of the VPS by the Customer;

(b) any Content uploaded onto the Virtual Private Server and checking that it functions satisfactorily. OVH shall not be responsible for any failure of the Customer to upload the Content correctly, and shall not be responsible for providing support in relation to the control and operation of the Content;

(c) the Customer's equipment, systems or software necessary for the management of the VPS.

(d) complying with all applicable laws and regulations concerning the Content, including (without limitation) its obligations under the **Electronic Commerce (EC Directive) Regulations 2002 and the Privacy and Electronic Communications (EC Directive) Regulations 2003;**

(e) ensuring that the Content, hypertext links and any activity hosted on or conducted via the VPS do not infringe any applicable laws, regulations or the rights of any third parties, including (without limitation) material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights such as personality rights, copyrights, patent rights, trademarks and other intellectual property right ("Inappropriate Content");

(f) making regular backups of the Content from time to time.

9.5 The Customer shall not use, or attempt to use, the VPS, or permit the VPS to be used for port scanning, sniffing, spoofing or any similar activities and shall not send unsolicited emails, or spam, from the VPS. Proxy services are not permitted on the VPS.

9.6 The Customer shall use their best endeavours to ensure that all Content on the VPS does not contain any viruses and/or other harmful code.

9.7 The Customer may not use the VPS for the establishment of unlocking services with the purpose of allowing the downloading of files in large quantities onto the file hosting platforms.

9.8 The Customer shall arrange and pay for any licence that is required when using third party software on their VPS.

9.9 OVH reserves the right to inspect the Customer's usage of the VPS in order to verify compliance with the provisions of this Condition.

10. Term and Termination

10.1 The Contract shall commence when OVH e-mails the Customer their access codes to connect to the VPS in accordance with Condition 3 and, subject to the following provisions of this Condition 10 will terminate automatically on the Expiry Date. Please note that, even if the Customer is entering into this agreement as a consumer, since OVH provide the service immediately from the point the Customer receives the access codes, the Customer will not be entitled to cancel the contract after that date and will not be entitled to a "cooling-off" period (as in many consumer

contracts). It is therefore essential that, when entering into this agreement the Customer is prepared to be bound by it. The Customer is requested to please ask any questions about the service before it enters into this agreement.

10.2 Without prejudice to any other rights or remedies which may be available to it, OVH shall be entitled without prior notice to the Customer to terminate this contract and suspend the VPS Hosting Services with immediate effect without incurring any liability if the Customer fails to pay the Charges by the due date under Condition 6 of these Conditions or if there is any activity on the Host Server by the Customer which is expressly prohibited under the Contract and/or which may reasonably be expected to give rise to civil and/or criminal liability and/or to prejudice the rights of third parties and, for the purpose of Condition 11.5(a) of the General Conditions, any breach of Condition 9 of these Conditions shall be deemed to be a material breach of the Contract.

10.3 Either party shall be entitled to terminate this contract for its own convenience at any time by giving 30 days' written notice to the other party.

10.4 OVH may restrict, limit or suspend the VPS Hosting Service if required to do so by any court or competent authority in accordance with applicable law.

10.5 OVH may delete data, materials, software, Content or any other information on the Customer's VPS following termination of the Contract, without incurring any liability towards the Customer.

11. Confidentiality

11.1 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

11.2 The obligations set out in this Condition shall not apply to Confidential Information that the receiving party can demonstrate:

- (a) is or has become publicly known other than through breach of this condition 11; or
- (b) was in the possession of the receiving party prior to disclosure by the other party; or
- (c) was received by the receiving party from an independent third party who has full right of disclosure; or
- (d) was independently developed by the receiving party; or

(e) was required to be disclosed by a governmental authority, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.

11.3 The obligations of confidentiality in this condition shall not be affected by the expiry or termination of this agreement and shall remain in full force and effect until such information has become generally known in the public domain other than by a violation of this contract. Each party shall return to the other party all documents and tangible items in its possession and destroy any and all computer files or other electronically stored data or media which contain any part of the Confidential Information received from the other party under this contract upon the written demand of the disclosing party.

12. Data Protection

12.1 In this condition, Personal Data has the meaning given in the Data Protection Act 1998.

12.2 OVH warrants that, to the extent it processes any Personal Data on behalf of the Customer:

(a) it shall act only on instructions from the Customer; and

(b) it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

13. Technical Support

For any malfunction of the VPS Hosting Service, the Customer can contact the incident team established by OVH, and whose contact details are available at <http://www.ovh.co.uk>. Similarly, for any technical advice related to the use of the VPS, OVH invites users to go to the forum available at <http://forum.ovh.co.uk/> or to communicate with users through the mailing list dedicated to the VPS: vps@ml.ovh.net.

BY PLACING AN ORDER ONLINE, THE CUSTOMER SIGNIFIES THEIR UNCONDITIONAL ACCEPTANCE OF THESE CONDITIONS. If, after reading these Conditions, the Customer has any questions, they should please contact OVH at 3 Southwark Street London SE1 1RQ.

APPENDIX 1: FTP BACKUP SERVICE

PURPOSE

The FTP Backup service is a storage space that enables the Customer to transfer data to it, including for the purpose of backing up the data on its Virtual Private Server.

The FTP Backup Service is only available for the VPS CLOUD range. This option is invoiced on a monthly basis, in addition to the Charges payable for the Virtual Private Server.

The Customer expressly acknowledges that OVH will only be responsible for the administration of the FTP service but not for the transfer of the Customer's files under any circumstances.

CONDITIONS FOR PERFORMING THE SERVICES

The FTP Backup Service is a storage space accessible via the FTP file transfer protocol, which is protected by a user name and a password, and is only accessible from the Customer's Virtual Private Server, for the sole purpose of storing the back-ups for the data on its Virtual Private Server.

The Customer will be responsible for setting up the tool which enables the back-up or transfer of data to the storage space.

OVH'S OBLIGATIONS

OVH has no responsibility for the data and materials backed-up on the FTP Backup service.

The Customer is responsible for ensuring that it has the appropriate rights to this data, and that the content of the data is not Inappropriate Content and does not infringe any applicable laws, regulations or the rights of any third parties.

OVH may not be held responsible for the content of the information, sound, text, images, form and data on the Customer's backed-up directories.

OVH shall provide the FTP Backup Service with reasonable care and skill and in accordance with good industry practice.

OVH reserves the right to suspend the FTP Backup Service in order to maintain, repair or upgrade the FTP Backup Service and improve its operation. OVH shall give the Customer reasonable prior notice if the FTP Backup Service is to be suspended for any reason, such notice to include details about the nature of and the estimated duration of such suspension. It will be the responsibility of the Customer to arrange to backup their own data for any time that the FTP Backup Service is suspended for.

In the event that a backup server fails and/or if data on the server is corrupt or inaccessible, OVH shall ask the Customer to perform a new backup.

THE CUSTOMER'S OBLIGATIONS AND RESPONSIBILITIES

The Customer is responsible for ensuring that its directories, data and information have been backed up successfully. If a problem occurs, the Customer shall take all measures necessary to restart the backup of the directories.

The Customer shall act as an independent entity and therefore solely assume the risks and responsibilities of its activities. The Customer has sole responsibility for the files and data available in its directories. It shall be responsible for the content of the information transferred, disseminated or collected, for its use and update, and for any files, including address files.

SECURITY OF INFORMATION

All the Customer's data used in the FTP Backup Service shall remain confidential. They shall be protected by a password and shall only be accessible via the IP of the server that subscribed to the FTP Backup Service.

In the event that an intrusion into a data batch processed on OVH's facilities is suspected, OVH reserves the right to access the Customer's information and to suspend its account immediately.

LENGTH OF THE SERVICE AND TERMINATION

The term of the FTP Backup Service will be for a period selected by the Customer in its Order, and accepted by OVH or until the Customer's corresponding VPS Hosting Service expires. The service commences from the date when it is made available to the Customer by OVH.

On the expiry of the period specified above for the FTP Backup Service the Customer may renew the service, in accordance with OVH's tariffs, agreements and terms in effect at its renewal date, unless either party terminates the service in accordance with the terms and time frames set out in these Conditions.

DELETION OF THE BACKUP FTP DATA

The data held by the FTP Backup Service will be deleted on termination of this agreement at the same time as the data on the Customer's Virtual Private Server to which it relates.

APPENDIX 2: SNAPSHOT OPTION

The Snapshot option enables local VPS server images to be taken.

The Customer can activate the Snapshot option through their Management Interface.

If the Customer chooses to activate this Snapshot option then they will be invoiced monthly for this Service in addition to the Charges of the VPS Hosting Service.

The Customer acknowledges that a Snapshot does not amount to a permanent backup of the VPS data, but only a local image. As a result, a Snapshot cannot relieve the Customer of the responsibility of backing up its data in accordance with these Conditions under any circumstances.

The service only allows one Snapshot to be stored. As a result, any request for a new Snapshot will result in the immediate deletion of the previous Snapshot that was stored.

The Customer can ask for its VPS to be restored based on the last Snapshot stored. In such a case, the current VPS data will be deleted, and the data on the VPS at the time of the last Snapshot will be restored.

If the Customer deactivates the Snapshot option, the last Snapshot stored will only be maintained and available to the Customer for a period of seven (7) days. OVH does not guarantee any ability to restore the data stored in this way beyond that time frame.