



## GENERAL CONDITIONS OF SERVICE

Last version updated 03 April 2009

In this document:

- The company OVH, SAS, is a French company with address 2 rue Kellermann 59100 Roubaix, registered with the RCS Roubaix number B424 761 419, represented by Mr. KLABA, named below for OVH,

- And between any person or entity, individual or professional, private law or public, wishing to engage in one or more of the services provided by OVH, hereinafter will be called the Client.

### ARTICLE 1: PURPOSE

The Client acknowledges that having verified the suitability of the service's needed and OVH have received all required information and advice to subscribe to this commitment knowingly.

This contract aims to define the technical and financial conditions which OVH enters into with the Client.

These Terms of Service may be supplemented if necessary by any special conditions and/or schedules proposed by OVH which will apply to the exclusion of all other conditions including those of the Client with regards to any order by the Client of benefit to OVH.

The services offered by OVH for free are also governed by these Terms of Service.

### ARTICLE 2: OBLIGATIONS OF OVH

OVH is committed to providing the care and diligence necessary to provide a quality service in accordance with the practice of the profession and the state of the art. OVH does as an obligation of means

### SECTION 3: RESPONSIBILITIES OF OVH

OVH's responsibilities will be void if:

If the contract or any obligation to OVH hereunder is prevented, restricted or disturbed as a result of fire, explosion, failure of transmission networks, facilities collapse, epidemic, earthquake, flood, power failure, war, embargo, law, order, demand or requirement of any government, strike, boycott withdrawal of authorisation from a telecommunications operator, or other circumstances beyond the reasonable control of OVH ( "Force Majeure " ), then OVH, subject to prompt notification of the Client, shall be excused from performing their obligations to the extent that such a prevention, restriction or disturbance, and the Client will equally be exempt from execution of their obligations to the extent that the obligations of this part are 'on the run' and prevented, restricted or impaired, provided that the affected party makes their best efforts to avoid or alleviate such causes of nonperformance by both parties and shall act promptly to ensure such causes have ceased or been removed. The party affected by Force Majeure shall keep the other party properly informed by email regarding removal or reinstatement in the case of Force Majeure.

If the effects of an event resulting in Force Majeure have a duration exceeding 30 days from the notification of cases of force majeure to the other party, the contract may be terminated automatically at the request of either party, without right to indemnity by both sides.

Duties of the Client, including the following cases:

- deterioration of the application,
- misuse of the terminals by the Client or their customers, fault, negligence, omission or failure on his part, non-compliance with advice,
- disclosure or misuse of the password provided confidentially to the Client
- negligence or omission of third party to OVH of which there is no control or supervision,
- application for temporary or permanent interruption of service from a competent administrative or judicial authority, or notification of a third party regarding Article 6 of the LCEN,
- partial or total destruction of information transmitted or stored following errors attributable directly or indirectly to Customer.

Reparations due by OVH in case of failure of service resulting from a mistake made by their efforts against direct harm, and certain personnel associated with the failure in question, expressly excluding any consequential damage, as such, commercial loss, loss of control, affect of image(s), any commercial problems, loss of profits or customers (eg inappropriate disclosure of confidential information concerning the result of a malfunction or hacking the system, third action against the Client, etc..).

In any event, the amount of damages that may be charged to OVH, if the liability penalty is incurred, will be limited to the amount of money actually paid by the Client to OVH for the period invoiced to the Client by OVH or the amount of money equal to the price of delivery for the part of the service for which OVH has chosen to accept responsibility. The lesser of these amounts will be taken into account.

OVH does not backup any specific data. It is therefore the duty of the Client to take all measures necessary to protect their data in case of loss or damage to the entrusted data, whatever the cause, including those not specifically covered by these terms and conditions.

The client acknowledges that no provision herein shall relieve them from the obligation to pay all amounts due to OVH for accrued benefits.

#### ARTICLE 4: DUTIES AND RESPONSIBILITY OF CUSTOMER

The Client shall have the power, authority and capacity necessary for the conclusion and implementation of the obligations set forth herein.

OVH recommends the client reads the contract at the following address:

[http://www.ovh.com/fr/espaceclients/documents\\_legaux/deontologique.pdf](http://www.ovh.com/fr/espaceclients/documents_legaux/deontologique.pdf)

and respect these rules for all Internet communication.

The Client undertakes to provide, in creating the client's account and each amendment thereof, contact information and billing information accurate and updated at OVH.

The Client is responsible for the entire and exclusivity of passwords needed to use their service. OVH disclaims any responsibility for any misuse or fraudulent use of passwords available to the Client. The provision of passwords is considered confidential. Any suspicion of a disclosure, whether intentional or not, of passwords provided, is the sole responsibility of the Client to the complete exclusion of OVH. In the case of an application to change the password by the Customer, OVH may apply a service charge for time spent on this operation.

The client will bear any and all consequences of malfunction of the service resulting from any use by their staff or any person whom the client has provided his (or hers) username and password. Similarly, the client will bear the consequences of loss of password(s) above.

The client undertakes to comply with all legal requirements and regulations, particularly those relating to computers, files, freedoms and intellectual property and the rights of third parties, and agrees to include in making any statement of treatment with the Commission Nationale de l'Informatique et des Libertés (C.N.I.L). The Customer undertakes to take all necessary assurances from a known entity solvent to cover all damages which may be due under this contract or its enforcement.

The client declares to fully accept all legal obligations arising from ownership of their services, OVH can not be researched or molested in this respect for any reason whatsoever, including for violation of laws or regulations applicable to the clients service. Failure by the Customer of the points mentioned above and the points referred to specific conditions, including any activities that might lead to civil and/or criminal law will lead to the OVH disabling and/or without interruption and without prior notice of the clients Services and terminate immediately and automatically the contract, without prejudice to the right or any damages which could be claimed from OVH.

The client agrees to pay directly to the claimant any sum that OVH requires. In addition, the client agrees to intervene at the request of OVH any proceedings against them and OVH ensure all the sentences would be pronounced against them on that occasion. Accordingly, the client agrees to be aware of their personal affairs and of any claim or proceeding of whatever form, scope or nature to be brought against OVH and which related to obligations imposed load client under this contract.

The client undertakes to inform OVH within 48 hours of any change in their situation, and within 24 hours of any loss of passwords.

The client for any contact with OVH, undertakes to articulate his request, according to the rules of use.

## SECTION 5: TECHNICAL SUPPORT

### 5.1 Tools and documentation provided by the Supplier:

The Supplier provides the Customer with a set of tools and documentation available on the Website at the following address: <http://www.ovh.co.uk/support/>.

This page also contains contact information which the Customer can use to contact the Supplier's staff.

The Supplier provides the Customer with the following on the Website:

- Documentation and technical guides for better understanding and use of the Service;
- Communication tools that show the condition of the Supplier's facilities;
- Interfaces to show the Supplier's real-time network status;
- A forum available at <http://forum.ovh.co.uk>;
- Contact details for technical assistance;
- An Incident report form;
- Details of the paid intervention services which are available to carry out additional operations subject to additional charges.

### Diligence:

- In the event of an Incident, the Customer shall, in the first instance, consult the documentation and perform the technical tests suggested by the Supplier at <https://www.ovh.co.uk/support/>.

•In the event that the technical tests suggested above fail to resolve the Incident encountered, the Customer may report the Incident to the Supplier by following the Incident reporting procedures set out below.

## 5.2 Incident Reporting Procedures

To report an incident, the Customer shall complete the specific form available on the Website and in the Management Interface where the Customer will be able to find any previous electronic exchanges between the Customer and the Supplier.

It is the Customer's responsibility to complete the Incident reporting form provided at <https://www.ovh.co.uk/support/> and to provide sufficient information in relation to the incident to enable the Supplier to successfully complete the Diagnostics.

To this end, the Customer authorizes the Supplier to connect to the Service and perform any act necessary to enable the Diagnostics to be performed on both the Hardware and the Software.

The Supplier reserves the right to refuse any work if it finds during the research that the Customer uses the Service in violation of these Conditions and any Special Conditions, or of any relevant laws or regulations.

## 5.3 Incident Support and Diagnostics

Under the above procedure of Incident reporting, the Supplier will perform Diagnostics in order to investigate the origin and cause the Incident. If in the Diagnostics reveal that the Incident is caused directly by the Supplier, the cost of the Diagnostics shall be borne by Supplier in accordance with the terms applicable to the Service Contract.

In the event that the Diagnostics illustrate that the Incident is not directly caused by the Supplier, then the costs associated with performing the Diagnostics (including the time spent by the Supplier performing the Diagnostics) will be paid by the Customer at a flat rate tariff which is available on the Website at <https://www.ovh.co.uk/support/> and as mentioned in the declaration Incident.

In the event that the Supplier is unable to identify the origin or cause the Incident following performance of the Diagnostics, the cost of the Diagnostics will not be charged to the Customer.

The Customer undertakes not to improperly use the Technical Assistance. The Supplier reserves the right to refuse provision of Technical Assistance or Diagnostics in circumstances where, in the Supplier's absolute discretion, the Customer's request is unjustified or is likely to disrupt the normal functioning of the Technical Assistance offered by the Supplier or where it relates to an Incident for which the Supplier is not liable under these Conditions.

## 5.4 Resolution of Incidents

Following the performance of Diagnostics, and assuming that the Supplier is able to ascertain the cause of the Incident, the Supplier shall communicate technical solutions for resolving the Incident to the Customer.

In circumstances where the Incident is not caused directly by the Supplier, the Supplier will send the Customer a Quotation including estimated costs for resolving the Incident, and the Customer may choose whether or not to accept the Quotation and pay the Supplier to resolve the Incident.

## 5.5 Settlement Terms

Pricing estimates for the above Services are available at the following address <https://www.ovh.co.uk/support/>. Unless otherwise agreed in writing, all sums due will be billed in the month following the month in which the Services were provided.

## ARTICLE 6: EXECUTION, FEES AND PAYMENT

### 6.1 Client Account Creation

When ordering a service from OVH, the Client must create an account with all contact information and billing information accurate and updated. This client account is activated by OVH by sending an SMS or by postal mail contact information provided in the client account.

### 6.2 Order Confirmation

OVH immediately acknowledges receipt to the client, email, purchase order and payment, and inform them of the implementation of the Service ordered under the conditions described below.

### 6.3 Execution of the Order

The availability of the service comes after the account activation by the client of OVH under the conditions described in Section 6.1 and within a maximum of 7 days from the date of actual payment of the purchase order by the Customer.

The actual payment is made when the amounts corresponding to the Service are credited to the account of OVH.

If there is a delay and/or lack of provision of service by OVH, the Customer is entitled to request cancellation of the transaction and repayment of amounts already paid.

### 6.4 Tariff

The current rates for the various services offered by OVH are available on-line by consulting the site <http://www.ovh.com>

and application to OVH at the following address: OVH SAS 2 rue Keller - BP 80157 59053 Roubaix Cedex 1.

The services or outstanding orders are listed in the order they include all taxes unless otherwise stated and are payable in euros.

OVH reserves the right to change prices at any time, subject to notification of the Customer by email or by a notice posted on the site <http://www.ovh.com> one month in advance if new duty rates are less favorable to the client. In this case, the client will have to rely on this information for a period of one month to terminate this contract without penalty. Otherwise, the client shall be deemed to have accepted the new price. Tariff changes will apply to all contracts including those running.

OVH reserves the right to pass without delay of any new tax or rate increases of existing taxes.

The services provided by OVH are payable by order. The Client is solely responsible for paying all amounts due under the contract for services by OVH. By express agreement, unless requested to report at a time and granted by OVH in a special way and writing, or lack of payment when due of any sum due under the contract will automatically and without prior notice:

-the immediate repayment of all sums due from the Customer under the contract, irrespective of the mode of regulation provided

-suspension of all current benefits, whatever their nature, without prejudice to OVH to use the power of termination;

-unable to write new benefits or renew them;

-application of interest at a rate equal to 12% without it can not be less than one and a half times the rate of current legal interest rate in France

Any disagreement concerning the nature and billing of services will be handled by e-mailing into [support@ovh.com](mailto:support@ovh.com) within one month after issuing the order.

Assuming that costs will be incurred by OVH, the latter shall inform the client and transmit the documents and the invoice. Customer will then adjust the sum payable in euros.

## 6.5 Payment

Payment is made online by credit card at the conclusion of each contract or contract month in the case of subscription.

The client can make a payment by cheque if it comes from a banking institution in the French Territories (due to high costs at our expense), by Money Order, or by administrative mandate by Mandat International .

It is up to the Customer to select the payment method in the service ordered and its execution time

## 6.6 Duration

The service is provided from the time of order. All data will be erased at the end of the service.

OVH is committed to making at least three reminders via e-mail before the expiration of service.

## 6.7 Renewal Of Service

OVH will notify the Client via e-mail, sent to the billing contact (e-mail to maintain, under the responsibility of the client) before the deadline, with the obligation to pay the price for the renewal of the service where it is possible.

Any default in payment or improper payment, ie, including an incorrect amount, or incomplete, or not including references required, or made by any means or a procedure not accepted by OVH, will simply be ignored and cause a rejection by OVH of the application for registration or renewal.

For a renewal paid by cheque, it is up to the client to seek the renewal in sufficient time so that the cheque will be received by OVH before expiration of the service.

The automatic renewal Service is enabled for all services subscribed to by the client with OVH, but this function can be disabled by the client through the management interface, not later than 15 days before the expiration Service subscribed.

The purchase of certain services may also be subject to an obligation to purchase a subscription to the service.

These two formulas are executed under the following conditions:

Notwithstanding the provisions of Article 6.4, the amounts due under the automatic renewal of the Service are taken by OVH five (5) days before the expiration of the Service subscribed.

The amounts owed by a client under the automatic renewal are automatically withdrawn from their account or their credit card.

In the absence of payment registered with OVH, payment of the renewal of the service or failure of payment, OVH will inform the Client, to whatever extent possible, the need to update or disclose their payment information by mail and by any other means it considers necessary ten (10) days before the expiration of the service subscribed to charge for the Customer to provide necessary information within five (5) days before the date of expiry of the Service subscribed.

OVH can not be held liable for failure to renew a service after a payment is not honored or not corrected by the Client.

The system for payment by electronic bank card is characterised by generating a unique card number for each banking transaction conducted on the Internet and can be used to pay by automatic renewal.

The Customer is informed and must expressly accept that in this case of non compliance with the foregoing, the service will immediately be suspended at its expiration date and within 48 hours a period will be granted to the client to recover the data hosted on their service for a

shared hosting or a dedicated server. At the expiration of that period, all data will be erased by OVH and recycling of the service will begin. OVH will not retain any data beyond this period. It is therefore up to the client to undertake all necessary safeguards.

In case of automatic renewal of the Service, a new contract period will begin in the same fashion.

Assuming there is a subscription, the Service subscribed for an initial duration is automatically renewed for the same period.

## **ARTICLE 7: TERMINATION, RESTRICTION AND SUSPENSION OF SERVICE**

7.1 The contract is automatically terminated on expiration. It may be renewed from the site <http://www.ovh.com>, upon payment by the client of the applicable fee, as provided in Article 6.

7.2 Either party may automatically terminate and without compensation the contract in case of force majeure lasting more than thirty days.

7.3 For termination before expiration of the contract, the client may cancel the contract by sending to the following postal address OVH -2 rue Keller - BP 80157 59053 Roubaix Cedex 1, the application which is available at: <http://www.ovh.com/fr/espaceclient/procedures/> and the client shall be entitled to reimbursement by OVH sums already paid.

7.4 In all other cases of a breach by one party to another of their obligations under the contract, which is not remedied within 7 days after either an email is sent by the complainant notifying of the deficiencies in question, or any other form of authenticated notification addressed by such party, the contract will be automatically terminated, without prejudice to any potential damages that may be claimed from the defaulting party.

The date of the notification letter containing the violations at issue will be the date of the postmark from the first reception of the letter.

7.5 OVH reserves the right to discontinue service if the customer service is a danger to the maintenance of security or stability of the platform hosting OVH. Wherever possible, OVH previously inform the Customer.

If necessary, OVH reserves the right to interrupt service to perform a technical intervention to improve its operation or for any maintenance.

As part of a subscription contract, the client may terminate the contract at any time, subject to the sending of a mail with acknowledgment of receipt of the form for termination edited in the management interface, to the address in Article 14.4 hereof.

Pursuant to Article L121-84-2 of the client Code, any request for termination by the Client will be effective from the day after the date of receipt by OVH, provided that the Client has specified all information required for the identification.

The Client may also request that the termination takes effect more than ten days after receipt by OVH, its termination claim.

## **ARTICLE 8: CONDITIONS OF OPERATION**

The client hereby acknowledges that changes in bandwidth and the vagaries of the ISP are factors which may cause a discontinuity in the benefits offered by OVH and are outside its technical means.

Furthermore, the service can be restricted, limited or suspended automatically by OVH:

-if it appears that the client uses the services they were provided for any activity, whatsoever, that does not comply with the Agreement on the Ethics web site:

[http://www.ovh.com/fr/espaceclients/documents\\_legaux/deontologique.pdf](http://www.ovh.com/fr/espaceclients/documents_legaux/deontologique.pdf)

or these general conditions;

-under special conditions;

-If notice is given to OVH to that effect that it has been notified by a competent authority, administrative, judicial or arbitration in accordance with applicable laws where appropriate, or a third, and in particular according to the law of confidence for the Digital Economy of 21 June 2004 when that is manifestly illegal is brought to the attention of OVH;

-if the details given in the client account appear false, inaccurate or outdated.

## **ARTICLE 9: INFORMATION OF CUSTOMER SERVICE AND COMPLIANCE**

The Customer acknowledges that having verified the adequacy of the equipment and the service needed and that OVH has received all information and advice that were required to subscribe to this commitment knowingly.

OVH reserves the right to monitor compliance with the terms and conditions of service.

## **ARTICLE 10: TOLERANCE**

The fact that OVH does not prevail at any given moment in any of these terms and conditions and/or tolerate a breach by the other party to any of the obligations contained in these terms can be interpreted as a waiver by OVH to take advantage at a later date of any of those conditions.

## **ARTICLE 11: PERSONAL DATA**

OVH informs the client that its data is recorded, and are the subject of a declaration to the Commission Nationale Informatique et Liberté, registered under number 634,232 in accordance with the law n ° 78-17 of January 6, 1978, for management of customer relationships

Accordingly, the client has a right to access, modify, correct or delete any data collected by contacting simply OVH, at 2 rue Kellermann - - BP 80157 59053 Roubaix Cedex 1.

The data transmitted by the client is legally kept for a time necessary for the administration of proof. OVH forbids any disclosure, any resale of personal data relating to the client, subject to contrary provisions in the Special Conditions. Only OVH subsidiaries also have access.

## **ARTICLE 12: RIGHT OF RETURN**

Notwithstanding Article L.121-20-1, 1 of the French Code of Consumer and to any new contract signed, OVH grants the Customer a right of withdrawal of 7 (seven) days from the date of provision of services, even if enforcement of the provision has already begun on the Customer's request and gives the right for Customer to repayment by any means of payment of sums already paid as soon as time and no later than thirty (30) days after the date on which the client has exercised his right of withdrawal.

This right of withdrawal is carried out preferably by e-mail service on the using the following address:<http://ovh.com/fr/contact/support/>, Billing category or by telephone at the telephone numbers listed on the site of OVH, or by mail to the address indicated in Article 14.4 hereof. Any request for withdrawal that would not meet the legal deadline or the formalities of the preceding paragraph shall be disregarded.

## **ARTICLE 13: AMENDMENTS**

The general conditions and special online conditions supersede the general conditions and special conditions printed. The parties agree that OVH may, by right, amend its service without any formality other than to inform the Client by a warning line and/or cause changes in its general conditions online. Any modification or introduction of new subscription options will be information posted on the site located at URL <http://www.ovh.com/> or sending an email to Customer. In this case, Customer may, in derogation from Article 7, terminate the contract within thirty days from the entry of these amendments by force.

## **ARTICLE 14: GENERAL PROVISIONS**

### 14.1 Severability

The invalidity of any provision of contract services of a contract with OVH, under such a law, regulation or following a decision of a competent jurisdiction having the force of res judicata n 'will not invalidate other provisions of the contract services that retain their full effect and scope.

In this case, the parties shall as far as possible replace the annulled provision by a valid match the spirit and intent of the contract conditions.

#### 14.2 Headings

The titles of the articles in the contract of conditions are intended only to facilitate a reference and are not by themselves a contract of value or significance.

#### 14.3 Special Conditions and Annexes

The special conditions and any annexes are incorporated by a reference to the OVH Terms of Service and are inseparable from these Terms. All of these documents are referred to in this document "General Conditions".

All documents incorporated in this contract by reference may be accessed by the Customer at the addresses listed on the site [http://www.ovh.com/fr/espaceclients/documents\\_legaux/](http://www.ovh.com/fr/espaceclients/documents_legaux/). These documents are also subject to changes or development.

#### 14.4 Communications

For any exchange of information by electronic mail, the date and time of the OVH server will be taken into account between the Parties. This information will be retained by OVH throughout the period of contractual relations.

All notices, communications, formal notices under the Terms will be deemed to have been validly delivered if sent by registered mail with return receipt to:

-For OVH : 2 rue Kellermann – BP 80157 59053 ROUBAIX CEDEX 1

-For the Customer: the address and / or e-mail that was provided to OVH

#### 14.5 Advertising and Promotion

OVH may occasionally advertise, events, conferences and in professional publications for professional markets, rely on the services provided to Customer and its business records and/or its plate.

### **ARTICLE 15: ASSIGNING OF POWERS**

In case of dispute with a client who is not considered a consumer under the Code of Consumption, jurisdiction is expressly given to the Tribunal of Commerce of Roubaix (France), despite multiple defendant or guarantee calls, including emergency measures , interim or interlocutory application.

**ARTICLE 16: APPLICABLE LAW**

This contract is governed by French law. It is well for the substantive rules as to the formal rules, excluding on the one hand, conflict rules under French law, and secondly, the provisions of French law which would contrary to this Agreement.