



## GENERAL TERMS AND CONDITIONS OF SERVICE

*Latest Version on May 22nd 2014*

This Agreement is entered into between:

- the HEBERGEMENT OVH INC Corporation, 800-625 Av. President Kennedy Avenue, Montreal (QC), Canada H3A 1K2, a corporation incorporated under the laws of Canada, hereinafter called "OVH,"
- and any person or corporation, individual or professional, private or public, wishing to receive one or more services from OVH, and hereinafter called the "Customer".

### DEFINITIONS:

**Customer:** *Person or corporation, signing on to OVH's general and specific Agreement terms and conditions in connection with any Service purchased from OVH.*

**Customer ID:** *Customer Account for any Service purchased from OVH and giving access to the management interface.*

**Diagnostic:** *Research undertaken by OVH at the Customer's request to identify a malfunction problem of the Service.*

**Documentation:** *OVH makes available to its Customer a set of tools and documentation accessible on OVH's website.*

**Facilities Management:** *Specific service performed by OVH at the request of the Customer and billed to the Customer.*

**Incident:** *Problem or malfunction encountered with the Service and under the responsibility of OVH. The following are considered problems which OVH is liable for: material, network, electrical problems ...*

**Management Interface:** *"Manager" space accessible to the Customer on OVH's website upon identification by entering Customer ID and corresponding password.*

**OVH Site:** *OVH Corporation's website accessible at <http://www.ovh.com/ca/>*

**Personal Data:** *Last name, first name, phone number, address, e-mail address, and all other information disclosed by the Customer in the course of its relationship with OVH as well as any information which may be transmitted by OVH to the judicial authorities.*





**Service:** Means all the services provided by OVH in compliance with the Service agreements entered into by the Customer.

**Technical Support:** Department in charge of advising the Customer regarding the installation and use of the Service by supplying the required documentation.

## SECTION 1: PURPOSE

The Customer acknowledges that he/it has checked the suitability of the Service to his/its needs and that he/it has received from OVH all the information and advice needed to enter into this agreement knowledgeably and willingly.

The purpose of this Agreement is to define the legal, technical and financial conditions of OVH's agreement with the Customer.

These General Terms and Conditions of Service, to which will be added, as applicable, specific terms and conditions and/or schedules proposed by OVH, shall be applicable, at the exclusion of all other terms and conditions, including the terms and conditions of the Customer, to all the Customer's orders of Service from the OVH Corporation.

The OVH services offered gratuitously are also governed by these General Terms and Conditions of Service.

## SECTION 2: OVH'S OBLIGATIONS

OVH agrees to use all due care and due dispatch to provide a quality Service in compliance with professional standards and the state of the art. OVH only has an obligation of means.

## SECTION 3: OVH'S LIABILITY

OVH shall not be liable in the circumstances described below.:

If the performance of this Agreement, or of any of OVH's obligations under such Agreement, is barred, limited or disrupted due to a fire, an explosion, a failure in the transmission networks, the collapse of the facilities, an epidemic, an earthquake, a flood, a power failure, a war, an embargo, a statute, an injunction, a request or demand from a government, a strike, a boycott, a withdrawal of authorization from the telecommunications operator, or any other circumstances beyond OVH's reasonable control ("Force Majeure event"), then OVH, subject to a prompt notice to the Customer, shall be relieved from performing his/its obligations within the limits of this inability to act, limitation or disruption, and the Customer shall be likewise relieved from performing his/its obligations to the extent that his/its obligations pertain to the performance of the obligations thus barred, limited or





disrupted, subject to such Party thus affected using its best efforts to avoid or mitigate such failure to perform and to both Parties acting promptly once such causes cease to exist or are eliminated. The Party affected by a Force Majeure event shall keep the other Party informed on a regular basis via electronic mail regarding the prognosis of eliminating such Force Majeure event or of recovering from it.

Should the effects of this Force Majeure last more than thirty (30) days, as of the date of notice regarding such event from one Party to the other, the Agreement may be terminated as a matter of right, at the request of one of the Parties, without any right to compensation for either of them.

Or OVH shall not be liable the Customer causes, for example:

- a deterioration of the application;
- the misuse of the terminals by the Customer or his/its clientele, a fault, negligence, omission or failure on his/its part, or non-compliance with the advice given;
- the disclosure or illegal use of the password confidentially given to the Customer ;
- fault, negligence or omission of a third party over whom OVH has no control or supervision power;
- a request for a temporary or permanent interruption of the Service from a competent administrative or judicial authority, or upon notice from a third party; or
- the total or partial destruction of information transmitted or stored resulting from errors directly or indirectly attributable to the Customer.

The Customer acknowledges that OVH authorizes other Service users to install their websites and servers in his/its facilities. OVH shall not be liable in any way whatsoever for damages, costs or losses incurred by the Customer (or by his/its own customers) and caused by another Service user's act, material or failure to act, OVH's liability in contract, in tort (including negligence) or by statute, or otherwise, to the Customer (or his/its own customers), concerning performance or non-performance, as applicable, of any obligation created under this Agreement, with regard to any claim, shall be limited and shall not, in the aggregate, exceed the total fees paid by the Customer to OVH under this Agreement in the three- (3-) month period immediately preceding the date on which the claim arose. In no event shall OVH be liable for any lost profits, or any special, indirect, consequential, incidental or punitive damages.

OVH does not offer any backup for the hosted data. It is therefore the Customer's responsibility to take all required steps in order to back up his/its data in the event of a loss or deterioration of such data for any reason whatsoever, including reasons not explicitly mentioned hereunder.

#### **SECTION 4: CUSTOMER'S OBLIGATIONS AND LIABILITIES**

The Customer agrees to use his/its power, authority and capabilities to enter into this Agreement and perform his/its obligations as provided hereunder.

The Customer agrees to communicate to OVH his/its accurate and updated contact information upon the creation





of the Customer Account and each time such information is modified.

OVH reserves the right to request supporting documentation from the Customer to ensure the accuracy of their information.

The Customer is solely and exclusively responsible for the passwords that are required in order to use the Service. OVH is not responsible for the illegal or fraudulent use of passwords made available to the Customer. The passwords provided are considered confidential. The Customer shall be solely liable, at the exclusion of OVH, in the event of any suspicion that the passwords provided have been disclosed, whether intentionally or not.

The Customer alone shall bear all the consequences of a malfunction of the Service resulting from the use by his/its staff or by any other person to whom the Customer has provided his/its password(s). The Customer shall also bear all the consequences resulting from the loss of such password(s).

The Customer hereby agrees to comply with all legal and regulatory requirements in force, and, more specifically, with those pertaining to software, files, freedom and intellectual property, as well as the rights of third parties. The Customer also agrees to take out all required insurance policies from a well known solvent insurer, in order to cover all damages attributable to the Customer in connection with this Agreement or the performance thereof.

The Customer hereby fully accepts all legal obligations arising from the administration of their Services. OVH cannot be held liable or investigated in this respect for any reason, especially in the event of a violation of the laws or regulations applicable to the Customer's Services. Non-compliance by the Customer with the aforementioned points detailed in OVH's Special Conditions, and especially with any activity likely to generate a civil and/or penal liability will give OVH the right to immediately disconnect and/or stop the Customer's Services without prior notice, and to immediately and lawfully terminate this Agreement, without prejudice to the right to all damages and interest that OVH may claim.

The Customer undertakes to settle directly with a claimant, any sum demanded from OVH by such claimant. Moreover, the Customer undertakes to intervene at the request of OVH in any proceedings brought against OVH and shall indemnify and hold harmless OVH from any and all such third party claims. Consequently, the Customer undertakes to address any third party complaint and/or procedure, regardless of form, object or nature, that is brought against OVH and is related to the Customer's obligations under this Agreement.

The Customer hereby agrees to inform OVH within 48 hours of any changes in his/its situation, and within 24 hours, of any lost passwords.

Whenever contacting OVH, the Customer agrees to clearly describe his/its request in compliance with the terms of use.

When suspicious activity (SPAM violation of copyright, Attack, Phishing, illegal content, DoS PortScan ...) is detected by OVH or reported by a third party, OVH may contact the Client by email (and optionally attach a copy of the complaint received). It is expected that the Client respond to the notification within the time limit (24, 48 or 72 hours depending on the nature of the case) to provide its comments and intentions. Failure to respond could





result in the suspension / termination of service.

## SECTION 5: TECHNICAL SUPPORT

### 5-1 Tools and Documentation provided by OVH

OVH makes available to the Customer a set of tools and documentations which are accessible on the OVH Site.

This page also includes contact information to reach the OVH staff.

On the same page, OVH makes available to its Customer:

- a set of documentation and technical guides, designed to provide a better understanding and an easier use of the Service (“Documentation”);
- communication tools to find out about the condition of OVH’s facilities;
- interfaces to view in real time OVH’s network;
- contact information to reach OVH’s Technical Support;
- an Incident Reporting Form; and
- the Facilities Management’s contact information to obtain complementary services (facilities management, specific intervention ...) which will be billed separately.

Preliminary checks:

In the event of Service malfunction, it is the Customer’s responsibility to consult the Documentation and perform the technical tests suggested by OVH on the OVH Site in the contact tools. If the malfunction problem encountered persists, the Customer shall have the responsibility of reporting the Incident to OVH.

### 5-2 Incident Reporting Procedure:

In order to report an Incident, the Customer shall complete the form designed for such purpose on the website, then go to the Customer’s Management Interface where earlier tickets of electronic exchanges between the Customer and OVH may be found.

The Customer shall complete the form on the OVH Site and attempt to provide as much information as possible on the problem encountered to help with the Diagnostic.

To this end, the Customer explicitly authorizes OVH and its staff to connect to the Customer’s Service and to perform any operation required in connection with the Diagnostic, with respect to both the hardware and the software. OVH reserves the right to reject any intervention in this regard if OVH notices in its research work that the Customer uses the Service in breach of OVH’s General and Specific Terms and Conditions or of laws and regulations in force.

All the exchanges between the parties, and more particularly the electronic exchanges and telephone





conversations, shall reflect Customer's assent to OVH's intervention.

### **5-3 Incident Takeover and Development of Diagnostic**

OVH shall, in connection with the Incident reporting procedure, carry out a Diagnostic in order to determine the origin and cause of the malfunction problem. If, during the Diagnostic process, OVH concludes that the malfunction is an Incident, namely that it is a problem under the responsibility of OVH, the costs related to the Diagnostic process shall be entirely borne by OVH, in compliance with the Agreement terms and conditions applicable to the Service.

Alternatively, if the Diagnostic reveals that OVH does not bear responsibility for the Incident encountered by the Customer or that its existence cannot be confirmed the time spent by OVH on carrying out the Diagnostic will be invoiced to the Customer at a flat rate available for consultation noted on OVH's Website.

In the event of OVH being unable to identify the origin or the cause of the incident, the investigations relating to production of the Diagnostic will not be invoiced to the Customer if OVH is unable to identify the cause of the dysfunction, or if OVH is unable to provide the customer with a quotation for the correction of the malfunction.

Likewise, the Diagnostic will not be invoiced to the Customer if OVH is unable to provide a quotation for the correction of the incident.

The Customer undertakes not to improperly make use of the Technical Assistance. OVH reserves the right to refuse to handle a Customer request if their conduct or the frequency of their requests is likely to adversely affect the normal operation of the Technical Assistance Service.

The Customer agrees to avoid using the Technical Support service in an abusive manner. OVH reserves the right to refuse to respond to a Customer's claim if the Customer's behaviour or the frequency of claims is likely to disrupt the normal operations of the Technical Support service.

### **5-4 Resolution of Malfunction**

At the end of the Diagnostic, OVH shall inform the Customer on the cause of the malfunction and indicate which technical solutions will be used to resolve the problem encountered.

At the end of the Diagnostic, OVH will convey the cause of the malfunction and will direct the Customer to the technical solutions for resolving the problem encountered.

In the event of OVH not bearing the responsibility for the Malfunction, OVH will forward a quotation to the Customer corresponding to the cost of the resolution operations, if the Customer wants OVH to take charge of resolving its problem.

As previously stated, OVH only has an obligation of means.





## 5.5 Conditions of payment

The base price of the quotation is set out on the OVH Site. The sums due will be invoiced monthly on the anniversary date of technical support being received for the Service. In the event of monthly renewal of the Service, all sums due relating to this Service, including technical support, will be invoiced.

No new interventions will be carried out if the payment of the preceding intervention has not been honoured.

## SECTION 6: TERM AND RENEWAL OF SERVICE, TARIFF

### 6.1. Term

The Service agreement shall be signed for an indefinite term. OVH reserves the right to suspend the Service at any time. OVH shall, to the extent possible, notify in advance the Service users, through a message on the mailing list created in connection with the beta-test, on OVH's website or forum, or by any other means OVH deems necessary.

### 6.2. Service Renewal

OVH may possibly not renew its Service at the end of the term. OVH shall make every effort to inform the Customer beforehand regarding this and shall delete all the data stored by the Customer on the Service. The Customer hereby agrees to recover all his/its data prior to the end of the Service term.

Any non-payment or irregular payment, meaning incorrect or incomplete amounts in particular, or lacking the required references, or made by any method or procedure not accepted by OVH are not acceptable and will result in rejection by OVH of the registration or renewal request.

Concerning renewals paid by cheque, it is up to the Customer to request the renewal with sufficient time for the cheque to be received and processed by OVH prior to expiration of the Service. OVH reminds the Customer that the processing of a payment by cheque may take more than 5 working days in some cases.

### 6.3 Tariff

OVH will invoice the Customer for the setup fees of any SoYouStart dedicated server order. These fees correspond particularly to setting up and configuring the server, according to the operating system chosen by the Customer.

After each payment, OVH will send an invoice by email and/or will make it available to the Customer via their management interface. The Customer expressly accepts that the invoice will be sent to them electronically.

OVH reserves the right to modify their prices at any time, subject to informing the Customer by email and/or to





making an online announcement on the OVH Site one month in advance, if the new prices excluding tax are less favourable to the Customer. In this event, the Customer will have one month from receipt of this information to cancel their contract without penalty. Failing any such action by the Customer, the Customer will be deemed to have accepted the new tariffs. Price changes will apply to all Agreements, and especially ongoing Agreements.

OVH reserves the right to pass on any new tax or any increase in existing taxes without delay.

The Services provided by OVH are payable at the time of ordering. The Customer is solely responsible for payment of all sums due under the Agreement for OVH Services. By express agreement and unless deferment is requested in good time and specifically granted by OVH in writing, the total or partial non-payment of any sum due under the Agreement by the due date will automatically result in the following, without prior notification:

- immediate payment of any outstanding amounts owed by the Customer under the Agreement, regardless of the planned method of payment;
- suspension of all ongoing services, regardless of their nature, without prejudice to the ability of OVH to terminate the contract;
- removal of the possibility to subscribe to new services or to renew them;
- application of interest at a rate equal to 1.5 times the legal rate of interest in force in the Republic of Ireland.

Any disagreement concerning invoicing or the nature of the Services must be forwarded to OVH's Customer Service via the Customer's management Interface, within one month of the order confirmation being issued.

## **SECTION 7: TERMINATION, LIMITATION AND SUSPENSION OF SERVICE**

Breach by the Customer of his/its obligations as defined hereunder, including all activities specifically barred while using OVH services and/or any content specifically barred when using OVH services, and/or likely to result in civil and/or criminal liability and/or likely to prejudice a third party's rights, shall give rise to OVH's right to immediately cut off the cable and/or interrupt the Customer's services, without any prior demand, and to immediately terminate the Service, as of right, without prejudice to any other damages OVH may have a right to claim.

At the end of the term of this Service, for any reason whatsoever, OVH shall entirely delete all the files on the Customer's Service.

OVH reserves the right to restrict, limit or suspend its services without prior notice nor indemnity if it appears that the Customer uses the services provided for any activity which violates the terms and conditions of the Agreement with OVH or the Service objectives.

The Service may also be restricted, limited or suspended when the specific terms and conditions applicable to a type of Service offered by OVH provide for such sanctions in the event of a breach.

The restriction, limitation or suspension measures shall always be taken in accordance with the seriousness or







recurrence of the breach(es), and shall be based on the nature of such breach(es).

The Customer agrees in advance that OVH may restrict, limit or suspend the Service offered if OVH receives a notice in that regard from a competent administrative, arbitral or judicial authority, in compliance with the laws and regulations in force.

Either Party may terminate the Agreement, as of right and without indemnity, in the case of a Force Majeure event lasting more than thirty (30) days.

OVH reserves the right to interrupt the Customer's Service if such Service endangers the maintenance of security or stability on OVH's hosting platform. OVH shall, to the extent possible, give the Customer prior notice regarding such interruption.

OVH reserves the right to interrupt the Service, as needed, for technical interventions designed to improve its operations, or for maintenance procedures.

#### **SECTION 8: OPERATING CONDITIONS**

The Customer hereby acknowledges that bandwidth fluctuations and problems with the access provider could cause a gap in the services provided by the OVH Corporation, which it would be unable to resolve.

However, the Service shall be restricted, limited or suspended, as of right, by OVH:

- if it seems that the Customer is using the services provided for any activity whatsoever which is not in compliance with these General Terms and Conditions;
- in compliance with the applicable Specific Terms and Conditions;
- if OVH receives a notice in that regard from a competent administrative, arbitral or judicial authority, in compliance with the appropriate applicable laws, or from a third party;
- if the contact information in the Customer's account seems to be false, inaccurate or out of date.

#### **SECTION 9: CUSTOMER INFORMATION AND COMPLIANCE WITH SERVICE**

The Customer acknowledges that he/it has checked the suitability of the material and the Service to his/its needs and has received from OVH all the information and advice needed to knowingly enter into this agreement.

OVH reserves the right to monitor compliance with the Service's terms of use.





## SECTION 10: TOLERANCE

The fact that OVH fails to invoke one of the General Terms and Conditions of Service and/or tolerates the violation by the other Party of any of the obligations hereunder shall not be construed as a waiver to invoke in the future any of these Terms and Conditions.

## SECTION 11: PERSONAL DATA

OVH reminds the Customer that, while providing the Service to the Customer, OVH may keep some of the Customer's personal data in compliance with its regulatory and judicial obligations.

Information such as "last name, first name, mailing address, e-mail address, phone numbers, and IP connection addresses" shall be kept by OVH during the entire term of the Agreement and up to twelve (12) months after the expiration of the Service.

The data transmitted by the Customer shall be kept as long as deemed necessary for evidence purposes. Except as otherwise provided in the Specific Terms and Conditions, OVH shall not disclose nor sell the Customer's personal data.

The Customer agrees that his/its personal data may be stored, handled and transferred by OVH to its affiliates, who shall only have access to such data in order to perform essential functions in the provision of the Service, all in strict compliance with the Customer's privacy rights.

The Customer also acknowledges that OVH may communicate the Customer's information at the request of administrative, regulatory or judicial authorities.

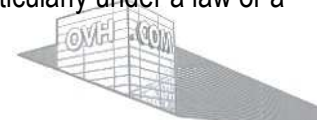
## SECTION 12: AMENDMENTS

The General and Specific Terms and Conditions online take precedence over the printed General and Specific Terms and Conditions. The parties agree that OVH may, as of right, bring changes to its Service simply by informing the Customer through an online notice and/or by amending its General Terms and Conditions online. Any amendment or introduction of new options offered shall be posted online on the OVH Site or sent via e-mail to the Customer. Notwithstanding the provisions of section 7, the Customer shall then have the right to terminate the Agreement within thirty (30) days of the effective date of such amendments.

## SECTION 13: GENERAL PROVISIONS

### 13.1 Severability

The invalidity of one of the provision of the Service Agreement entered into with OVH, particularly under a law or a





regulation or as a result of the final judgment of a court of competent jurisdiction, shall not invalidate the other provisions of such Service Agreement, which will remain in full force and effect.

The Parties shall, in such cases, to the extent possible, replace the invalid provision with a valid provision consistent with the spirit and object of the Agreement's terms and conditions.

### 13.2 Headings

The Agreement section headings are inserted solely for reference purposes and do not have any contractual value nor any specific meaning.

### 13.3 Specific Conditions and Schedules

The Specific Conditions and prospective schedules are incorporated by reference into the General Terms and Conditions of Service and are necessarily incidental thereto. The combination of all these documents is hereunder referred to as the "General Terms and Conditions."

The Customer may consult on OVH's website all the documents incorporated by reference into this Agreement. Such documents are subject to amendments or updates.

### 13.4 Communications

The OVH server's date and time shall be relied upon as evidence of the exchange of information by e-mail between the Parties. Such information shall be kept by OVH during the entire term of the contractual relationship between the Parties.

All notices, communications, and demands provided under the General Terms and Conditions shall be deemed to have been validly delivered if they are sent by registered mail, return receipt requested, to:

- in the case of OVH: HEBERBEMENT OVH INC., 800-625 Av. President Kennedy Avenue, Montreal (Quebec) Canada H3A 1K2;
- in the case of the Customer: at the mailing and/or e-mail address provided to OVH.

### 13.5 Advertising and Promotion

OVH may from time to time, in connection with advertisements, events, seminars, and specialized publications within the professional markets, indicate the services provided to the Customer, on its commercial documents and/or in its annual report.





#### SECTION 14: APPLICABLE LAWS AND JURISDICTION

This Agreement, its interpretation, performance, application, validity, and effects shall be subject to the applicable laws in force in the Province of Quebec and in Canada, which will govern its provisions, in whole or in part.

The Parties hereby agree that all judicial proceedings instituted shall be filed with and heard by the courts having jurisdiction in the judicial district of Montreal, Province of Quebec, where the Parties elect their current domicile.

