



# SPECIAL CONDITIONS FOR BETA TESTING PHASE

*Version dated on September 5<sup>th</sup> 2017*

OVH is opening a betatest to its subsidiaries customers, under the following terms and conditions:

## **ARTICLE 1:** OBJECTIVE(s)

These special conditions will supplement the general conditions and terms of service from OVH and are intended to define the technical and financial conditions by which OVH is developing a beta-test for the Service purchased by a Customer.

The beta test will hereafter be defined as the portion of the development process of the Service which will allow the Customer to use it before it is marketed effectively in order to participate in its improvement and to find any and all possible residual dysfunction.

These special conditions shall take precedence over the general conditions should any conflict arise between these two documents.

## **ARTICLE 2:** MEANS

As part of the provision of the Service, OVH provides the Customer a Service in the beta-test (hereinafter referred to as "the Service ") to allow for the implementation of large-scale testing and verification of the proper functionalities of Service ahead of its effective marketing.

## **ARTICLE 3:** CONDITIONS FOR THE REALISATION OF BENEFITS

The Customer will acknowledge the specificities of the Service (including its price and terms of service) from the Website of OVH.

OVH reserves the right to bill or deny access to the Service. Similarly, the number of users of the Service, methods to access the features of the Service will be determined by the sole discretion of OVH and may be modified as OVH see fit.

When the service is being billed, by default, it will be done under the provisions described in the Terms of Service. OVH reserves the right to restrict any billing arrangements (particularly relating to means of payment available). Only information contained on the OVH site or in the OVH management interface of the Client shall prevail in the case of any challenge.

The Customer will confirm they have the technical knowledge necessary to ensure proper administration of the Service, particularly regarding the safeguarding of its data.

The Customer is responsible to ensure the full use of the Service. OVH's responsibility can be incurred due to a malfunction of the Service resulting from the misuse of the Service by the Customer.

The Customer agrees to use this service fairly and safely. In the case of any abnormal use of the Service, OVH reserves the right to interrupt as provided by Article 7 hereafter.

Customer may be asked to provide feedback on OVH to enable OVH to improve the Service. The feedback will be made by various means which will be put in place by OVH (including private mailing lists). OVH provides Customers with all the data and feedback will not be forwarded by OVH to third parties outside of its own subsidiaries.

#### **ARTICLE 4: OBLIGATIONS AND LIABILITIES OF OVH**

OVH does not guarantee any stability, reliability, or availability of the service.

The responsibility of OVH may be incurred in the event of damage and/or loss of data stored, recorded, posted online by the Customer via the Service.

OVH reserves the right to terminate a Customer's Service if it constitutes a danger to the continued safety of OVH's hosting platform, particularly in cases of piracy of Customer Service, the detection of a flaw in the security system, or use of the Service in a means which does not comply with general or specific conditions of OVH.

OVH can not be held responsible for the content of information, sound, text, images, form elements, data available on the Customers Service, transmitted or uploaded through the Customers Service in any capacity whatsoever.

OVH can not be held responsible for not respecting all or part of any obligation and/or failure of the operators of the worldwide transport networks to the Internet, especially for the customer and, his or her providers.

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

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

OVH refers to this in order to point out to the customer that it is not advisable to store data on the Service during the beta testing phase, especially files of vital or essential to the customers activity.

The Marketing and continuity of the service after the beta test are not guaranteed by OVH.

## **ARTICLE 5: OBLIGATIONS AND LIABILITY OF THE CUSTOMER**

5.1. Therefore, the Customer agrees to bear all risks (such as including instability, dysfunction, loss of data ...) related to this phase.

5.2. Customer may be asked to provide feedback during the regular use of the service during the beta-testing phase via different channels previously established and made available by OVH.

5.3. The Customer acts as an independent entity and therefore assumes all risks and perils of their activity. The Customer is solely responsible for the use of the Service, the content of information transmitted, distributed or collected, any operation(s) and updating, and all files, including mailing lists.

5.4. The Customer shall undertake to respect the rights of third parties, personal rights, rights of intellectual property such as copyrights, patent rights or trademarks. Accordingly, OVH will not be held responsible for the content of any information transmitted, distributed or collected, their operation and their updating, regarding all files, including files and addresses in any capacity whatsoever.

The customer 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 law.

OVH can only warn the client about the legal consequences arising from illicit activities during the use of the Service, and identify any joint liability on the use of the data made publicly available by the Customer.

The Customer agrees not to use the Service for illicit or illegal purposes such as, in particular: spamming, intrusion or intrusion attempt from Service (not limited to : port scanning, sniffing, spoofing...).

With these assumptions, OVH reserves the right to terminate immediately the contract of any customer, without prejudice to any damages which could be claimed from OVH.

5.5. The Customer alone shall bear any consequences relating to malfunction of the Service which are resulting from any use by its staff or any person whom the Customer has provided his (or her) username(s) and password to. Similarly, the Customer alone bears the consequences of the loss of the passwords mentioned above.

5.6. The Customer is responsible for fulfilling any license or right to use contracted with OVH or any third party. Otherwise, OVH reserves the right to suspend the Service without notice.

5.7. OVH reserves the right to exercise controls over the compliance of the use by the Customers Service to ensure these provisions are met.

OVH reserves the right to suspend the Service without notice, for non-compliance by the Customer in relation to the special and general conditions of OVH and, in general, of all laws and regulations, as well as rights others.

## **ARTICLE 6: DURATION OF THE CONTRACT**

6.1. The beta test is not intended to be permanent, the contract will be conducted for an indefinite period. OVH reserves the right to suspend at any time the beta-testing phase. Wherever possible, OVH will provide advance notice to users of the Service through a message on the mailing list created for the beta test phase, and again on the website or OVH forum, or by any means that OVH considers necessary.

6.2. OVH can be allowed to not renew the service at the end. In this case OVH will endeavour to give prior notice to the Client and proceed to erase all data stored by the Customer on the Service. The Customer agrees thereby to carry out the repatriation of its data before the end of the beta-test phase.

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

7.1. Non-compliance by the Customer relating to the provisions detailed in Article 5 of these special conditions of service for the beta test phase, including any activity specifically prohibited by OVH and/or any content specifically prohibited OVH services which are likely to rise to civil liability and/or criminal and/or likely to prejudice the rights of a third party lead to the right of OVH to disconnect the terminal and/or suspend without delay and without prior notice of the Customer Services and to terminate immediately the contract, without prejudice to any damages which could be claimed by OVH.

7.2. Under this contract, for any reason, OVH may proceed to delete any and all the files on the Customer's Service.

7.3. OVH reserves the right to restrict, limit or suspend services without notice or compensation if it appears that the Customer is using the services provided to them for any activity, whatsoever, that does not comply with the contractual terms of 'OVH' or does not match the purposes of a test being conducted as part of the beta-test phase.

7.4. The Service may still be restricted, limited or suspended when the special conditions applicable to each type of service provided by OVH provide this sanction as a result of a breach

7.5. In any event, the measures for restriction, limitation or suspension of the service shall be exercised according to the seriousness and recurrence of a failure. They are determined according to the nature of the deficiencies found. Not by default.

7.6. The Customer agrees in advance that OVH may perform a restriction, limitation or suspension of the Service offered should OVH receive a notice to that effect notified by a competent authority, administrative, arbitration or judicial settlement in accordance with laws and regulations.