



SPECIAL CONDITIONS DEDICATED CLOUD

Latest Version on May 5th 2014

DEFINITIONS :

Cloud: Technology that uses remote resources and storage.

General Condition: The General Terms and Conditions of Service available online at www.ovh.us.

Host Server: Physical Server with a memory load and a processor load. Configured and administered by OVH within the Dedicated Cloud, it is designed to accommodate one or more virtual machines administered by the Customer.

Infrastructure: The structure established by OVH to accommodate the Customer's Dedicated Cloud, including in particular the network, the bandwidth, the hardware and the Virtualisation.

Management Interface: The Customer can access the "Manager" space after identification by inputting their customer identifier and corresponding password.

Pack: Host Servers and Storage Spaces configured in a Virtual Datacentre and any Possible additional options.

Dedicated Cloud: All of the Virtual Datacentres hosted on the OVH Infrastructure. The Dedicated Cloud is managed by the Customer through their management interface and the Virtualisation interface.

Storage Space: Disk space allocated to the Customer which allows them to store data on Virtual Machines in the Virtual Datacentre in a centralised and secure manner.

Virtual Datacentre: A dematerialised Datacentre composed of a Pack of additional resources subscribed by the Customer for Virtual Machines and / or private networks.

Virtual Machine: A non-physical server that uses Virtual Datacentre resources and is installed on the Dedicated Cloud network. Each virtual machine is independently managed from any other within the Customer's Virtual Datacentre but subject to the same virtualisation license.

Virtualisation: Technology that allows multiple virtual servers to operate on a real infrastructure.

Virtualisation Interface: Third party software provided by OVH that allows the Customer to manage their Dedicated Cloud, and in particular to establish and manage their Virtual Machines.





SECTION 1: PURPOSE

- 1.1 These Special Conditions supplement OVH's General Terms and Conditions and are intended to define the technical and financial conditions under which OVH agrees to rent and store the Customer's Dedicated Cloud on its Infrastructure.
- 1.2 The Customer expressly acknowledges that OVH has no involvement as defined herein in the administration of the Customer's Service.
- 1.3 These Special Conditions shall prevail over OVH's General Terms and Conditions should any conflict arise between these two documents.
- 1.4 Headings shall not affect the interpretation of clauses. The singular shall include the plural, the masculine shall include the feminine, and vice versa.

SECTION 2: MEANS

- 2.1 As part of providing the Service, OVH provides the Customer a Dedicated Cloud composed of Virtual Datacentres that are connected to a private and secure network. Due to the highly technical nature of the Service, OVH shall not be liable for downtime caused by routine or emergency maintenance by OVH or occasioned by third parties.
- 2.2 The Customer confirms that they have all the necessary technical knowledge to ensure the correct administration of a virtualisation service such as OVH's Dedicated Cloud.
- 2.3 The Customer is the sole administrator of the Virtual Datacentres that compose their Dedicated Cloud. OVH is limited to maintenance actions on the Infrastructure and is responsible for energy supply and the network connection to the Customer's Dedicated Cloud.
- 2.4 The Customer undertakes to use the Service, including the network resources allocated to it, in good faith. In case of abnormal use of Infrastructure resources generated by the Service, OVH reserves the right to terminate the Customer's Dedicated Cloud according to the provisions of SECTION 7 hereof.

SECTION 3: TECHNICAL SUPPORT

Technical assistance is made available to the Customer by OVH pursuant to the terms and conditions provided under the General Terms and Conditions of Service.





SECTION 4: CONDITIONS OF USE OF SERVICES

4.1 OVH provides Customers different Pack configurations, which are described online at www.ovh.us

4.2 The Customer orders the Pack of their choice, each comprised of at least one Host server and two Storage spaces. The Customer also has the opportunity to complete their Pack with additional resources, such as Host servers or storage space. Any modification made to the Pack by the Customer may affect the amount charged for the Service. The Customer will be informed via email of their modification.

4.3 The range from which the Host Server hails and the choice of the Pack determine the features available in the Virtual Datacentre as well as the performances.

The activation of certain features may require a minimum number of Host Servers.

From the start of the Service, the Customer may access their Virtualisation Interface.

4.4 From the moment they subscribe, the Customer can connect to their Virtualisation Interface. The Customer is responsible for connecting to it for any administration operation related to their Virtual Machines. From there, they can then create, delete or modify Virtual Machine settings at their sole discretion.

4.5 The Customer may connect to their management or Virtualisation Interface to monitor their data usage and to manage their Packs and resources. The Customer may view their Virtual Datacentres, their billing status, and can order additional Service resources or options.

SECTION 5: DESCRIPTION OF SERVICE

5.1 The Dedicated Cloud Service is a service provided solely to businesses, and by entering into the Contract the Customer warrants that it is entering into the Contract for the purposes of business or trade.

5.2 The Service is based on features of integrated virtualisation solutions (“Hypervisors”) developed by the Supplier partners (Vmware®, Microsoft) or by other third party licensors.

The Customer acknowledges that each Virtualisation Interface has its own features. The Customer acknowledges that its choice of Hypervisor is final, and that total compatibility of the features and interoperability between the different Virtualisation Interfaces cannot be guaranteed and is the responsibility of the Customer.

The Dedicated Cloud Service is a Service provided solely to businesses, and by taking part into this agreement the Customer warrants that they are doing so for the purposes of business or trade.

5.3 The Customer shall manage all IP address resources related to its Dedicated Cloud to ensure the proper functioning of the Service.





The Customer shall be responsible for ensuring that it has sufficient IP addresses to assign, or as the case may be, to enable the Hypervisor to assign an IP address to each of its Virtual Machines. The Customer is solely responsible for the utilisation of all IPs rented from the Supplier.

5.4 Each Dedicated Cloud has its own private network. The output bandwidth of the Dedicated Cloud is limited to a maximum volume of data. The Customer may subscribe to an option allowing them to increase the bandwidth. The Customer may view the history of their Dedicated Cloud's traffic consumption recorded for the current month in the management interface.

5.5 The Customer may subscribe to an option which increases this output. OVH reminds the Customer that they can see the bandwidth consumption history of their Dedicated Cloud and the average output directly in their Management Interface.

5.6 For each Virtual Datacentre, the Customer is the sole administrator of its resources and has the option to purchase additional resources (Increase resources, Host Servers, Storage space) for either a limited or sustained amount of time at their sole discretion. The Customer can choose to be billed for the month or only for the hours of use of these resources.

5.7 The Customer is the sole administrator of the Host Servers and Storage spaces and is solely responsible for ensuring it has the adequate resources to ensure the smooth functioning of its Virtual Machines.

SECTION 6: OBLIGATIONS OF OVH

6.1 OVH will engage in reasonable endeavors to provide and deliver a quality service in accordance with good industry practices.

6.2 OVH shall engage in reasonable endeavors to maintain the Infrastructure in an operational state. OVH will engage in reasonable endeavors to repair or replace the defective part as soon as is reasonably possible unless that failure is not of its making, or any other procedure that would require an interruption of service exceeding the usual time of replacement. In the latter case, OVH will notify the Customer.

6.3 The Supplier shall inform the Customer at least 24 hours in advance of each maintenance operation planned for the Infrastructure, via the Supplier's website and/or by email.

SECTION 7: LIABILITY OF OVH

7.1 OVH shall not be liable for any information, sound, text, images, items, data accessible on websites hosted on the Customer's Dedicated Cloud which is transmitted or uploaded by the Customer.

7.2 OVH does not backup specific Customer data hosted on the Dedicated Cloud. The Customer warrants that





they shall regularly perform a full data backup. The Customer shall take all measures necessary to protect their data from any loss or damage.

7.3 OVH's liability is set out in clause 4 of the General Conditions.

7.4 Without prejudice to any other rights it may have, OVH may at its discretion and without notice limit or suspend the Customer's rights and/or access to any Service if:

- (a) the Customer is in breach of the Contract;
- (b) it is entitled to terminate the Contract in accordance with clause 11 of the General Conditions; or
- (c) it determines that the Customer's use of a Service poses a security risk to the Infrastructure, to OVH, or to any third party, may adversely affect the systems or content of OVH or any third party, or may subject OVH, its affiliates or any third party to liability.

7.5 The Supplier shall not be liable for any malfunction of the Service resulting from an update of the Hypervisor carried out by the Customer.

7.6 OVH reminds the Customer that unless otherwise specified, the offer does not include a Disaster Recovery Plan (DRP) not Business Continuity Plan (BCP). In this sense, it is the Client's responsibility to implement its DRP/BCP. It may be achieved by ordering Dedicated Clouds in separate data centers which will bring resources in different risks environments. The Customer shall then take appropriate technical and organizational measures necessary to maintain its business in the event of a major malfunction that may have an impact in terms of availability, integrity and confidentiality of its service.

SECTION 8: OBLIGATIONS AND LIABILITY OF THE CUSTOMER

8.1 The Customer warrants that it has the power, authority and capacity necessary for the conclusion and implementation of the obligations set forth herein.

8.2 The Customer undertakes to provide and keep up to date valid contact information: including a Surname, First name, organisation name if applicable, mailing address, telephone number and email address.

8.3 The Customer is reminded that the Supplier's obligations under these Dedicated Cloud Special Conditions are limited to providing the material and network resources needed for the Dedicated Cloud. As such, the Supplier has no obligation in relation to the content of sites stored on the Service, the contractual relationship between of the publishers of those sites and their host, or the administration of the Virtual Machines established on the Customer's Service.

8.4 The Customer is the sole administrator of the Dedicated Cloud and is solely responsible for the management of the data stored on the Service. The Customer is responsible for making the required backups to ensure the





continuity of its Service and activities.

8.5 The Customer shall establish an easily accessible and visible system that allows any person to notify the Customer of any content provided by the Customer by this Service which glorifies crime against humanity, incites racial hatred, is pornographic, is an incitement to violence and injury to human dignity, or is in any other way illegal or immoral. The Customer must take action on such information as soon as possible once notified.

8.6 The Customer undertakes to respect the rights of third parties, including but not limited to intellectual property rights such as copyrights, licensing, design rights, rights to patents or trademarks. The Customer shall not make available to the public through sites hosted on the Dedicated Cloud any files, content, hypertext links, or proxy newsgroup that infringes the intellectual property or other rights of third parties.

8.7 The Supplier shall not be liable for any Service malfunction resulting from any use by the Customer or its staff or any person to whom the Customer has provided a password or passwords for the Service. Similarly, the Supplier accept no liability for the loss of the above passwords.

8.8 The Customer is solely responsible for managing access to its Virtualisation Interface and assumes full responsibility for its actions, modifications or configuration carried out by it in relation to its Service. The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Virtualisation Interface and/or the Service.

8.9 The Customer shall be responsible for any connection, Service change or orders made through the Management Interface or Virtualisation Interface.

8.10 To maintain the level of security for the Customer's Service and all the services present on its infrastructure, the Supplier may from time to time announce updates by email via the mailing list pcc@ml.ovh.net, the availability of updates corresponding to the Customer's Service.

8.11 At the same time, the Customer shall regularly check its Management Interface for updates that will be required on its Service. If the Customer fails to update the Service, the Supplier reserves the right to limit the Customer's Service and to inform the Customer.

8.12 The Customer undertakes not to send unsolicited email, or SPAM, from their Service. Failure to comply with this code may result in the suspension of the Dedicated Cloud and / or termination of the Contract.

8.13 The Customer acknowledges that for security reasons, some features and protocols (such are IRC or peer to peer file sharing) may be subject to limitations from the Service. Proxies and anonymisation services are strongly discouraged from the Service. The Customer shall not use any of the Services to create or host a proxy server or any other form of anonymisation service.

8.14 The Customer shall use the Service in accordance with the applicable licences of the different virtualisation solutions. The Supplier reserves the right to suspend the Service without notice if the Customer breaches the





terms of these licences.

8.15 The Supplier reserves the right to exercise compliance controls in relation to the Customer's use of Service.

8.16 The Customer shall defend, indemnify and hold harmless the Supplier against any liability, cost (including without limitation court costs and reasonable legal fees), expense or damage suffered or incurred by the Supplier which arises out of or in connection with any third party claim concerning any content provided by the Customer.

8.17 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in or related to the provision of the Service, the Virtualisation Interface, and in any other software made available to the Customer in connection with these Dedicated Cloud Special Conditions. Except as expressly stated herein, these Dedicated Cloud Special Conditions does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Service, the Virtualisation Interface, or any related software or documentation. The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's:

- (α) use of the Service, the Virtualisation Interface, or in any related software or documentation other than in accordance with these Dedicated Cloud Special Conditions; or
- (β) breach of the Supplier, its partners or the third party licensor's intellectual property rights.

8.18 The Customer acknowledges that the development of the Virtualisation Interface and its updates are carried out at the sole discretion of the Supplier, its partners and third party licensors in accordance with their own timetable. The Customer may therefore be required to upgrade to any updated version of the Virtualisation Interface to ensure the continued proper functioning of the Service.

SECTION 9: SERVICE LEVEL AGREEMENT

In the event that any of the components of the Service set out in the table below are unavailable or malfunctioning, the Customer may contact OVH services and open an incident ticket from the Management Interface.

To benefit from the Service Level Agreement, the Customer must have at least two Server hosts and the High Availability optional (HA) enabled in the Virtualisation Interface.

Customers with only one host Server are not eligible for the Service Level Agreement option. So it can not benefit from a host server replacement in case the service is unavailable or defective.

The application of a Service Level Agreement is triggered by the creation of an incident ticket in accordance with the terms and conditions set out in the table below:





Component	Service Level Agreement	Service Credits
Hosted Server	99.99%	Replacement of the defective host server within 15 minutes. In the case where the host server can not be replaced, 100% refund of the host server.
Storage Space	100%	Rebate of 5% of the storage space for each 10 minutes of downtime limited to 100% of the storage amount.
Network	100%	Reimbursement of 5% of the total bill for every 10 minutes of downtime and maximum of 100% of the total amount of the invoice
Connectivity	99.95%	Reimbursement of 5% of the total amount of the next bill for every hour of downtime limited to 100% of the total amount of the invoice
Virtualisation Interface	99.9%	Reimbursement of 10% of the price of the infrastructure management pack per hour of unavailability, up to 100% of the price paid by the Customer for the infrastructure management pack.

The calculation of the service credits payable by OVH to the Customer for unavailability and malfunctions of the relevant component of the Service starts when the Customer creates an incident ticket and ends when the malfunction, as confirmed by OVH, is repaired.

Reimbursements made in respect of compensation under the Service Level Agreement shall be paid on the first day of the month following the occurrence of the unavailability or service malfunctions for which OVH may be held liable.

The Customer confirms that the payment of Service Credits as set out above shall be the Customers exclusive remedy in relation to any malfunction or non-availability of the Service.

The total service credits paid by OVH to the Customer in any given month shall in no circumstances exceed the price paid by the Customer for the Service during that month.

The Customer may not submit a claim under the SLA beyond one month after the closing of the trouble ticket corresponding to a malfunction and for which he could seek compensation as per this article.

SECTION 10: ADDITIONAL IP-ADDRESSES





OVH can offer a number of additional IPv4s, which may or may not be charged for. Since the growing scarcity of IPv4s in different countries across the world means growing purchase costs, OVH may apply charges to IPv4s that have previously been offered free of charge.

In the case where an IPv4 that had previously been free of charge becomes billable, the client will be offered the choice to either accept the charge, or release the concerned IPv4.

SECTION 11: MEASURES AGAINST SPAM SENDING FROM OVH NETWORK

OVH is implementing a set of technical measures to fight against the sending for fraudulent e-mails as well of SPAM from its infrastructures.

To this end, OVH performs some verification on the traffic sent from the server used by the client to port 25 (SMTP) on the Internet. The traffic is analyzed by automatic tools .

Emails sending are neither filtered nor intercepted but checked with a time lag of a few seconds. These operations are performed in parallel and in sequentially before the emails are sent to the Internet.

Similarly, no operation is performed on the emails sent: OVH does not tag emails, and does not alter in any way the emails sent by the Client. No information is stored by OVH during these operations outside of statistics.

This operation is done regularly and is fully automatic. No human intervention is performed when checking traffic to port 25 (SMTP port).

In the case of the emails sent from a Client's server identified as spam or fraudulent, OVH will inform the Client by email and will block the SMTP server port.

OVH does not retain any copies of emails sent from the SMTP Server even when identified as spam.

The Customer may request the unblocking of the SMTP port through the management interface.

Any new email identified as spam will result in a new blocking of the SMTP port for a longer time.

From the third blocking, OVH reserves the right to refuse any request to unblock the SMTP port.

SECTION 12: MITIGATION (PROTECTION FROM DOS AND DDOS ATTACKS)

OVH is implementing a protection against Denial Of Service (DOS) and Distributed Denial Of Service (DDOS) computer attacks and provided when made in a massive way. This feature is intended to prevent the Customer's operations to be inaccessible during the attack.





This object of this feature is to check the traffic to the Customer's Service and from outside of the OVH network. The illegitimate qualified traffic is then rejected upstream in the Client's infrastructure, allowing legitimate users to access the Service despite the undergoing cyberattack.

These safeguards do not prevent other computer attacks such as SQL injection, bruteforce, security vulnerabilities' exploitation etc.

Due to the great complexity of this Protection Service, OVH is not subject to an obligation of means; it is possible that the attack is not detected by the tools in place, and that the tools developed do not prevent the operation of the Service to be interrupted.

Depending on the nature of the attack and its complexity, OVH deploy a protection at different levels of traffic to preserve its infrastructure and the Customer Service.

Mitigation is activated only after the attack is detected by OVH tools, and a minimum of 26 hours. Therefore until the activation of mitigation, the Service is frontally affected by the attack, which can lead to its unavailability.

As soon as the cyber attack is identified and mitigation is automatically activated, mitigation can not be disabled until the end of a 26 hours period.

Throughout the duration of the activation of mitigation, OVH can not guarantee the availability and accessibility of the Client's applications but will try to limit the impact of this attack on Customer's Service and on OVH's Infrastructure.

If, despite the activation of mitigation, the cyber attack is likely to jeopardize the integrity of the OVH's or of other OVH customers, OVH will strengthen its protective measures which may cause a degradation of the Customer Service or impact its availability.

Finally, it is possible that some of the data generated by the attack can not be detected by the OVH equipment and reach the Customer Service. The effectiveness of mitigation also depends on the configuration of the Customer's Service; as such, it is up to them to verify that they have the necessary skills to ensure proper administration.

The mitigation does not exempt the Client to secure its Service, to implement security tools (firewalls ...), to regularly update its system, backup its data or to ensure the security of its computer programs (scripts, codes ...).

SECTION 13: CONTRACT DURATION AND RENEWAL OF SERVICE

This Contract shall commence on the earliest of the date this Contract is confirmed by OVH and the date the Customer commences using any Service. The term of the agreement shall automatically be extended for a month (Extended Term) at the end of the Initial Term and at the end of each Extended Term, unless either party gives one month's written notice to the other to terminate this Contract. Customer shall send such written notice to OVH at the following address:





HEBERGEMENT OVH INC. 800-625 av. du President Kennedy- Montréal (Québec) – H3A1K2–Canada

SECTION 14: PRICES, PAYMENT METHODS AND BILLING

12.1 Pricing for the Dedicated Cloud is available at www.ovh.us

12.2 These prices are quoted before tax and the Service is intended exclusively for professionals. The rate indicated on the order published by OVH does not include charges for additional services or excess volume usage.

12.3 All payments should be processed via the services of paypal.com. Any month started is due and payable in advance by the Customer. The renewal is made in accordance with the provisions of SECTION 7.3 of OVH's General Terms and Conditions of Service and will be drawn automatically via paypal.com as well.

12.4 Any default in payment or improper payment, i.e.: including an incorrect or incomplete amount, or which does not contain the required references, or by a means or a procedure not accepted by OVH, will simply be ignored and the request to subscribe or renew the Service will be rejected by OVH.

12.5 During the initial subscription step, the Customer must pay the cost of installing the service in addition to the monthly rate applicable for the Pack of their choice, plus the cost for any additional resources or options which may have also been subscribed to.

12.6 On the last day of the calendar month, OVH will check the Packs, resources, current billing options and will proceed to renew the Service based on the current configuration of the Service.

12.7 The outgoing bandwidth of the Dedicated Cloud is limited to a maximum output of data. The Customer can subscribe to the option of allowing an increase in output.

12.8 Prior to the end of any month, OVH may require the Customer to pay the amount of consumed resources and/or options subscribed to during such a month, when the price payable for said resources and/or subscriptions exceeds any credit limit extended by OVH to the Customer.

12.9 In certain circumstances, OVH may require the Customer to pay a deposit in respect of the Services.

12.10 Without prejudice to any other rights the Customer may have, OVH may at its discretion, refuse to accept any order placed by the Customer if the Customer defaults in respect of any payment due to OVH.

12.11 OVH may offer the Customer the option to temporarily increase the storage space of its Virtual Datacentre and /or add Host Servers to its Virtual Datacentre. These features are billed according to the Customer's base rate applicable to the new configuration and available on the site www.ovh.us. Each started hour is charged. The Customer is billed at the end of the current month for all the temporary changes associated with its Virtual





Datacentre during the month.

12.12 Additional resources (including but not limited to additional Host Servers or Storage Space), additional bandwidth or additional options may also be billed per hour of use. In this case, OVH may, at the end of the month during which such services were subscribed to and used, bill the Customer for an amount corresponding to the price of all paid by-the-hour services, in addition to that of bandwidth,

12.13 All invoices awaiting payment and unpaid on the tenth day of the following calendar month, gives OVH the right to suspend the Service.

12.14 Without prejudice to any other rights it may have under this Contract, if any sum owed by the Customer to OVH remains unpaid for more than 20 days, OVH may terminate this Contract and delete the Customer's data.

SECTION 15: TERMINATION, LIMITATION AND SUSPENSION OF SERVICE

On termination of this Contract (for whatever reason), OVH may delete any data belonging or related to the Customer which is within its control (including but not limited to data located in the infrastructure).

The Customer may also request the closure of their services through their management interface.

SECTION 16: OVH'S LIABILITIES

LIMITED LIABILITY THE CUSTOMER ACKNOWLEDGES THAT OVH AUTHORIZES OTHER SERVICE USERS TO INSTALL THEIR WEBSITES AND SERVERS IN ITS FACILITIES. OVH SHALL NOT BE LIABLE IN ANY WAY WHATSOEVER FOR DAMAGES, COSTS OR LOSSES INCURRED BY THE CUSTOMER (OR BY THE LATTER'S OWN CUSTOMERS) AND CAUSED BY ANOTHER SERVICE USER'S ACT, MATERIAL OR FAILURE TO ACT. OVH'S LIABILITY IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE) BY STATUTE, OR OTHERWISE, TO THE CUSTOMER (OR THE LATTER'S 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.

SECTION 17: APPLICABLE LAW AND ASSIGNING OF POWERS

This Contract, its interpretation, performance, its application, validity and effects are subject to applicable laws in force in the province of Quebec and Canada, governing in part or in full all the provisions it contains. The Parties agree that any legal proceedings to be instituted will be heard before





the courts having jurisdiction in the judicial district of Montreal, Quebec where the parties elect residence.

