

## GENERAL TERMS AND CONDITIONS OF SERVICE

Latest Version on 22/10/20

This Agreement is entered into between:

- the HEBERGEMENT OVH INC Corporation, 800-180,1 Avenue McGill College, Montréal (Québec) QC, Canada H3A 2N4, a corporation incorporated under the laws of Canada, hereinafter called "OVHcloud,"
- and any person or corporation, individual or professional, private or public, wishing to receive one or more services from OVHcloud, and hereinafter called the "Customer."

### DEFINITIONS:

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

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

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

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

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

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

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

**OVH Site or OVHcloud Site:** OVHcloud's website accessible at <http://www.ovhcloud.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 OVHcloud. Also included is information which may be transmitted by OVHcloud to the judicial authorities.

**Service:** Means all the services provided by OVHcloud 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 OVHcloud 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 OVHcloud'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 OVHcloud, 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 OVHcloud Corporation.

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

## **SECTION 2: OVHcloud'S OBLIGATIONS**

OVHcloud 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. OVHcloud only has an obligation of means.

## **SECTION 3: OVHcloud'S LIABILITY**

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

If the performance of this Agreement, or of any of OVHcloud'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 OVHcloud's reasonable control ("Force Majeure event"), then OVHcloud, 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 OVHcloud 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 OVHcloud 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 OVHcloud authorizes other Service users to install their websites and servers in his/its facilities. OVHcloud 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, OVHcloud'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 OVHcloud under this Agreement in the three- (3-) month period immediately preceding the date on which the claim arose. In no event shall OVHcloud be liable for any lost profits, or any special, indirect, consequential, incidental or punitive damages.

OVHcloud 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 OVHcloud his/its accurate and updated contact information upon the creation of the Customer Account and each time such information is modified.

The Customer is solely and exclusively responsible for the passwords that are required in order to use the Service. OVHcloud 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 OVHcloud, 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. OVHcloud 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 OVHcloud's Special Conditions, and especially with any activity likely to generate a civil and/or penaliability will give OVHcloud 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 OVHcloud may claim.

The Customer undertakes to settle directly with a claimant, any sum demanded from OVHcloud by such claimant. Moreover, the Customer undertakes to intervene at the request of OVHcloud in any proceedings brought against OVHcloud and shall indemnify and hold harmless OVHcloud 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 OVHcloud and is related to the Customer's obligations under this Agreement.

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

Whenever contacting OVHcloud, 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 OVHcloud or reported by a third party, OVHcloud may contact the Customer by email (and optionally attach a copy of the complaint received). It is expected that the Customer 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 OVHcloud

OVHcloud makes available to the Customer a set of tools and documentation which is accessible at the following addresses: <http://ca.ovhcloud.com/support>.

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

On the same page, OVHcloud 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 OVHcloud's facilities;
- interfaces to view in real time OVHcloud's network;
- contact information to reach OVHcloud'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 OVHcloud on <http://ca.ovh.com/support> on [the](#) site OVHcloud. If the malfunction problem encountered persists, the Customer shall have the responsibility of reporting the Incident to OVHcloud.

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 OVHcloud may be found.

The Customer shall complete the form [on](#) OVHcloud 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 OVHcloud 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. OVHcloud reserves the right to reject any intervention in this regard if OVHcloud notices in its research work that the Customer uses the Service in breach of OVHcloud'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 OVHcloud's intervention.

5-3 Incident Takeover and Development of Diagnostic

OVHcloud 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, OVHcloud concludes that the malfunction is an Incident, namely that it is a problem under the responsibility of OVHcloud, the costs related to the Diagnostic process shall be entirely borne by OVHcloud, in compliance with the Agreement terms and conditions applicable to the Service.

The Customer agrees to avoid using the Technical Support service in an abusive manner. OVHcloud 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, OVHcloud shall inform the Customer on the cause of the malfunction and indicate which technical solutions will be used to resolve the problem encountered.

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

## SECTION 6: TERM AND RENEWAL OF SERVICE

### 6.1. Term

The agreement has for duration the term chosen when the was Service ordered.

### 6.2. Service Renewal

OVHcloud may possibly not renew its Service at the end of the term. OVHcloud 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.

## SECTION 7: FINANCIAL CONDITIONS

7.1. Price of Services. The prices of the Services invoiced to the Customer are those in effect at the time of invoicing, as published on the OVHcloud Website. The prices may also be communicated upon request sent to OVHcloud Support. Unless stipulated otherwise, all prices are in US Dollars (US\$). OVHcloud offers different types of rates depending on the type of Service (monthly flat-rate, yearly flat-rate, per use pricing, etc.). These rates may be linked to a commitment to a particular period of use and/or a specific method of invoicing. Should several types of rates be available for the same Service, the Customer may select the one of its choosing when submitting its Order. When prices are listed excluding taxes (in particular, prices for Services designed for businesses), the VAT as well as all other taxes applicable to the Services (excluding taxes on OVHcloud revenue) shall be added to the price of the Services and due by the Customer without this being deemed a change in the price as envisaged by article 6.2 of this Contract. In the absence of a special pricing scheme, the prices of the Services shall include the cost of acquisition of the licenses and rights to use the tools, software and Operating Systems used by OVHcloud and/or which are made available to the Customer by OVHcloud within the scope of the Services. The Customer is responsible for acquiring and fulfilling its obligations in respect of all licenses and usage rights that are necessary to operate or make use of the Content within the scope of the Services. The methods for calculating the price of the Services, as well as the billing units, are defined on the OVHcloud Website and in the applicable Specific Terms of Service. The Customer is responsible for taking note of this before submitting its order. Each billing unit begun shall be invoiced and due in full, even when it is not totally used. Some Services shall incur additional installation or commissioning costs.

7.2. Changes to prices. OVHcloud reserves the right to change its prices at any time. Pricing changes are immediately applicable to any new Orders. For Services in use at the time of an increase in their price, the Customer shall be informed of the change by email at least thirty (30) calendar days in advance. In such a case, the Customer has the right to terminate without penalty the impacted Services within thirty (30) calendar days upon the notification of the said price increase. Such termination shall be notified by registered letter with acknowledgement of receipt or through a specific form provided in the Management Interface. In the absence of said termination, the Customer shall be deemed to have accepted the new prices.

7.3. Invoicing. The Services shall be invoiced on the basis of Customer Orders and consumption of Services as established by OVHcloud in its information system, which shall be deemed as admissible and fully enforceable to the Customer. The periodicity (monthly, yearly, or other) of invoices and the timing of their issuance (upon ordering or in arrears) varies from one Service to another. The terms of invoicing of the prices of the Services are defined on the OVHcloud Website and in the applicable Specific Terms of Service. The Customer is responsible for taking note of these before submitting its Order. After each payment, OVHcloud shall send the Customer an

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invoice. The Customer expressly agrees that this invoice shall be sent to it electronically. The invoice is sent to the Customer by email and/or made available to the Customer through the Management Interface. The Customer is responsible for keeping a copy of the invoice in accordance with regulations in effect. Invoices made available to the Customer in the Management Interface shall remain available for a period of twelve (12) months following the date made available.

7.4. Payment. Invoices are payable on receipt, it being understood that invoices are issued either at the time of the Order, or in arrears, depending on the Service. The Customer is responsible for selecting its desired payment method from among the available payment methods in the Management Interface. The available payment methods may vary from one Service to another. The Customer is responsible for taking note of this before submitting its Order. In relation to Services payable in arrears, OVHcloud reserves the right to invoice the Customer for said Services before the end of a calendar month in the event that the total Services consumed by the Customer during the month in question reach a significant amount. The Customer is fully responsible for payment of Services in accordance with the article “Financial Conditions”. The Customer undertakes to select a valid payment method in its Customer Account, and to dispose of the necessary funds to render payment for the Services. Subject to mandatory applicable laws, the Customer remains liable to settle the price in its entirety and shall have no claim to any reimbursement resulting from the non-use, the partial-use, suspension or cessation of the use of Services before the end of the Period of Use which is without prejudice to the Customer’s right to engage OVHcloud’s liability in accordance with article “Liability” hereafter in case such situation results from OVHcloud’s failure to fulfil its obligations.

7.5. Default or late payment. In case of default or late payment, including partial payment, the Customer shall be liable to pay late payment penalties due the day following the payment due date and OVHcloud shall have the right to charge interest on the overdue amount at three times the statutory interest rate. Furthermore, any default or delay of payment (including partial) of the sums due by the Customer under the Contract which persists for more than four (4) days after notification of default or delay of payment sent to the Customer by email, shall result by right, and without requiring any additional notification or formal notice, in (a) the immediate demand of all of the sums remaining due by the Customer under the Contract regardless of their payment terms, and (b) the right of OVHcloud to decide to immediately suspend and without prior notice all or part of the Customer Services (including those which have been paid for), to refuse any new Order or renewal of Services to the Customer and to terminate all or part of the Contract. In case of default or late payment, business Customers shall be liable to pay a fixed recovery fee of sixty (60) US Dollars (US\$), without prejudice to OVHcloud’s right to demand, upon supporting documents, additional compensation in cases where the recovery fees are greater than the amount of said fixed recovery fee.

6.6. Contestation. In the event of any disagreement regarding invoicing or the nature of the Services, the Customer must notify OVHcloud Support through its Management Interface within one (1) month of the date the invoice was issued. In the absence of said notification, and without prejudice to the Customer’s right to contest the invoice later on, the Customer shall be liable to settle all unpaid invoices according to the terms of the Contract. In case of failure to invoice the Services correctly or in the appropriate timeframe, OVHcloud reserves the right to invoice or correct the invoicing at any time, subject to any mandatory applicable limitation.

## **SECTION 8: TERMINATION, LIMITATION AND SUSPENSION OF SERVICE**

Breach by the Customer of his/its obligations as defined hereunder, including all activities specifically barred while using OVHcloud services and/or any content specifically barred when using OVHcloud services, and/or likely to

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result in civil and/or criminal liability and/or likely to prejudice a third party's rights, shall give rise to OVHcloud'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 OVHcloud may have a right to claim.

At after the expiration of the Service, for any reason whatsoever, OVHcloud shall entirely delete all the files on the Customer's Service.

OVHcloud 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 OVHcloud 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 OVHcloud 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 OVHcloud may restrict, limit or suspend the Service offered if OVHcloud 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.

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

OVHcloud reserves the right to interrupt the Service, as needed, for technical interventions designed to improve its operations, or for maintenance procedures within the confines accepted industry best practices whenever possible.

## **SECTION 9: 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 OVHcloud Corporation, which it would be unable to resolve.

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

- 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 OVHcloud 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 10: 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 OVHcloud all the information and advice needed to knowingly enter into this agreement.

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

#### **SECTION 11: TOLERANCE**

The fact that OVHcloud 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 12: PERSONAL DATA**

OVHcloud reminds the Customer that, while providing the Service to the Customer, OVHcloud 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 OVHcloud during the entire Term (As defined in section 6.1) 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, OVHcloud 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 OVHcloud 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 OVHcloud may communicate the Customer's information at the request of administrative, regulatory or judicial authorities.

## **SECTION 13: AMENDMENTS**

The General and Specific Terms and Conditions online take precedence over the printed General and Specific Terms and Conditions. The parties agree that OVHcloud 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 OVHcloud's 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 14: GENERAL PROVISIONS**

### 14.1 Severability

The invalidity of one of the provision of the Service Agreement entered into with OVHcloud, 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.

### 14.2 Headings

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

### 14.3 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 OVHcloud's website all the documents incorporated by reference into this Agreement. Such documents are subject to amendments or updates.

### 14.4 Communications

The OVHcloud server's date and time shall be relied upon as evidence of the exchange of information by email between the Parties. Such information shall be kept by OVHcloud during the entire Term (As defined in section 6.1) 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 OVHcloud: HÉBERBEMENT OVH INC., 800-180,1 Avenue McGill College, Montréal (Québec) QC, H3A 2N4, Canada;
- in the case of the Customer: at the mailing and/or e-mail address provided to OVHcloud.

#### 14.5 Advertising and Promotion

OVHcloud 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 15: 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.