

# SPECIAL CONDITIONS FOR WEBSITE HOSTING SERVICES ON A VIRTUAL PRIVATE SERVER

Version date 03-11-11

## 1. Definitions

In these Special Conditions, the terms defined in the General Conditions shall have the same meanings and the following terms shall have the following meaning unless the context otherwise requires:

**Base Power:** The amount of resources (CPU and RAM) of the VPS. Except in the case of a base Power change, this is the minimum number of resources allocated for a given billing period.

**Boost:** Resources unit allocated in addition to the Base Power in order to meet demands. Each allocated Boost is charged hourly in accordance with the tariffs published on the OVH's website at [www.ovh.co.uk](http://www.ovh.co.uk).

**Boosted Power:** All resources allocated at a given moment to a VPS, comprising the Base Power and allocated Boost units.

**Changing Base Power:** The chargeable operation by which the Customer switches the Base Power to a new Base Power.

**Content:** the text, information, image, audio or video material and other data placed on the VPS by or on behalf of the Customer, including data which the Customer permits third parties to place on its VPS.

**Host Server:** The physical server, configured and administered by OVH, located in OVH's datacentre, of which the Customer's VPS forms part.

**Infrastructure:** A set of elements set up by OVH within the framework of its VPS service, including the Host Server, the network, the bandwidth and the virtualisation.

**Management Interface:** The "Manager" space accessible by the Customer at <https://www.ovh.co.uk/managerv5/> after identification by entering its Customer ID and a correct password.

**Switching:** Operation on a Virtual Private Server to move from one configuration A to another configuration B (which operation causes an immediate reboot of the Virtual Private Server).

**VPS (or Virtual Private Server):** The virtual sub-part of the Host Server provided to the Customer with a fixed IP address as part of the VPS Hosting Services on which the Website shall be hosted for the purpose of the VPS Hosting Services, whose memory and processor are shared with other virtual private servers, but which are independent from each other.

**VPS Hosting Services:** the provision on the Host Server of a Virtual Private Server for the Customer's exclusive use, subject to and in accordance with the provisions of the Contract.

## **2. Application of Conditions**

These Conditions (together with the General Conditions) shall apply to any Contract between OVH and the Customer for the provision of VPS Hosting Services and shall prevail over any inconsistent terms or conditions submitted by the Customer or implied by law, trade custom, practice or course of dealing. In the event of conflict between these Conditions and the General Conditions, these Conditions shall prevail.

## **3. Virtual Private Server**

- 3.1 OVH provides the Customer with different configurations of Virtual Private Servers. Descriptions are available online at <http://www.ovh.co.uk/>. It is the Customer's responsibility to define in the Order Form the configuration and the operating system that will best suit their needs and expectations.
- 3.2 OVH shall use its best endeavours to provide the Customer with a Virtual Private Server on the Host Server, equipped with the dedicated resources (hard disk partitions, RAM and processor) specified in the Order Form.
- 3.3 Upon acceptance of the Order and receipt of the initial set up fees, OVH will e-mail the Customer their access codes to connect to the VPS.
- 3.4 OVH is responsible for the administration of the Infrastructure, and for the administration of the Host Servers on which the Customer's VPS is installed, but OVH does not intervene in the administration of the Virtual Private Servers of its customers and the Customer is solely responsible for such administration of their VPS. The Customer may install software on their VPS at their own risk and OVH accepts no responsibility for any subsequent malfunction of the VPS which results from any such installation by the Customer.
- 3.5 OVH reserves the right, with or without notice to the Customer, to limit or restrict some features and protocols (such as IRC or peer to peer file sharing) of the VPS to ensure the security of its infrastructure, but OVH will use reasonable endeavours to inform the Customer of any such limitations or restrictions wherever possible. In instances of repeated failure or for particular serious cases, OVH reserves the right not to reopen the VPS of the Customer. Proxy services are not permitted on the VPS.
- 3.6 The Host Server and the VPS shall remain the property of OVH at all times. The Customer shall not be entitled to sell, transfer, lease, charge, assign by way of security or otherwise deal in or encumber the VPS.

## **4 Changing Base Power or Boosted Power**

- 4.1 Provided the Customer has sufficient credit in their prepaid account for any upgrade, the Customer may upgrade or downgrade the configuration of their VPS at any time, either with immediate effect or with effect from the commencement of the next billing period, by ordering from their management interface the Base Power to which he wishes to switch their VPS. If the Customer does not have enough credit in their prepaid account, he cannot increase the Base Power.
- 4.2 Whilst OVH will use commercially reasonable endeavours to comply with the Customer's requests to change the Base Power or the Boosted Power, the Customer acknowledges that this may not be possible due to the technicalities of the virtualisation technologie.
- 4.3 Where the Base Power is upgraded to a higher configuration, the Customer will be charged at the base rate of the new configuration applicable at the date of the change as published at <http://www.ovh.co.uk> on a pro rata basis from the effective date of the change to the end of the billing period then current.
- 4.4 Where the Base Power is downgraded to a lower configuration, no refund will be made for the period from the effective date of the change to the end of the billing period then current, and any such change is irrevocable for the duration of such billing period.

By way of illustration, if a VPS with a Base Power 5 is downgraded to a base Power 2 and then upgraded to a Base Power 4 during the same billing period, there is no change in the billing following the downgrade but the upgrade from Base Power 2 to Base Power 4 is chargeable as provided in Article 4.3.

- 4.5 Boost consumption is invoiced by the hour by Prepaid Points at the price for each Boost unit used which is applicable at the date of the change as published at <http://www.ovh.co.uk>, and is not refundable.
- 4.6 When the Customer no longer has any Prepaid Points, or when the maximum consumption threshold specified by the Customer is reached, the VPS is automatically switched to the Base Power.
- 4.7 Any change of Base Power resets the Boosts assigned to the VPS.
- 4.8 At the end of each month, OVH will invoice the Customer for the hourly usage during such month and for the use of the Service during the following month. If OVH does not receive payment of the full amount of the invoice within five (5) days of its date, OVH will suspend the Customer's access to the VPS.

## **5. Supplier's obligations**

- 5.1 OVH shall provide the VPS Hosting Services with reasonable care and

---

OVH LTD 3 Southwark street 3rd Floor LONDON SE1 1RQ  
Registration number: 5519821 – VAT number GB 918 7594 74  
Hotline: 0207 357 6616 Fax: 0207 378 7703  
[www.ovh.co.uk](http://www.ovh.co.uk) [customersupport@ovh.co.uk](mailto:customersupport@ovh.co.uk)

skill and in accordance with best industry practice.

5.2 OVH shall provide the Infrastructure necessary for the provision of the VPS Hosting Services.

5.3 OVH shall use its reasonable endeavours to ensure that:

- (a) the Host Server is administered and maintained in good working order and in accordance with best industry practice;
- (b) any defect, error or malfunction of the Host Server is remedied as soon as is reasonably practicable, and the Customer is informed immediately if such repair or replacement requires the VPS Hosting Services to be suspended;
- (c) any disruption to the VPS Hosting Services which does not result from any breach by the Customer shall be rectified as soon as is reasonably practicable following a request from the Customer;
- (d) subject to Conditions 4.5 and 5, the Customer shall have access to the VPS via the Internet 24 hours a day, 365 days a year.

5.4 OVH shall use reasonable endeavours to inform the Client by email as soon as reasonably practicable if any maintenance, repair or upgrade requires the VPS Hosting Services to be suspended and of the likely duration of such suspension.

## 6. **Supplier's liability**

6.1 OVH provides the Customer with access to a VPS to allow the Customer to store data belonging to the Customer or their customers, but the Customer is acting as an independent self-employed person and accepts full responsibility for all risks and liabilities of their activity. The Customer is solely responsible for the services and websites hosted on their VPS, the content of information transmitted, distributed or collected, its operations and updates, and all files, including address files.

6.2 OVH shall have no liability to the Customer under the Contract in the event of any:

- (a) breach by the Customer of their obligations under the Contract, including (without limitation) any partial or total destruction of information transmitted or stored following errors attributable directly or indirectly to the Customer and any suspension or termination of access to the VPS by reason of any breach by the Customer of their obligations under Condition 7;
- (b) malfunction of the VPS resulting from any use of the VPS by any employee or agent of the Customer or any other person to whom the

Customer has provided the confidential password(s) provided to the Customer by OVH;

- (c) loss of or failure by the Customer to maintain the security of the confidential password(s) provided to the Customer by OVH, or any improper use of any such password(s);
- (d) failure by the Customer to take all necessary measures to backup their data in case of loss or damage for any reason whatsoever, whether or not specifically mentioned in these Conditions;
- (e) use of Content which is made available by the Customer to users;
- (f) other negligent act or omission of the Customer, including any failure by the Customer to follow the advice or recommendations of OVH, including (without limitation) any improper use of terminals by the Customer or the Customer's customers;
- (g) breach or negligent act or omission of a third party on which OVH has no monitoring control;
- (h) deterioration of the application;
- (i) access to the VPS by a third party without the authority of the Customer or other actual or suspected security breaches in connection with the VPS Hosting Services;
- (j) act of piracy, viruses, worms, trojan horses or other harmful codes that affect or may affect the VPS and/or the provision of the VPS Hosting Services;
- (k) modification (or attempted modification) of the Infrastructure by the Customer or a third party not authorised by OVH;
- (l) downtime caused by routine or emergency maintenance, repair or upgrade to the VPS Hosting;
- (m) failure of any transport network operators, and in particular the Customer's service providers, to comply in whole or in part with any obligation relating to the operation of the Internet;
- (n) force majeure, event or incident outside OVH's reasonable control.

6.3 OVH accepts no responsibility for any Content transmitted, distributed, collected or posted on or through the Customer's VPS, or for the operation or updating of any files (including address files) containing such Content and, in particular, gives no guarantee regarding the security or preservation thereof.

6.4 OVH reserves the right to discontinue access to the VPS if the Customer's VPS constitutes a danger to the maintenance of the security of the Infrastructure, particularly in cases of piracy of the Customer's VPS, where a flaw is detected in the security system.

## **7. Customer's obligations**

7.1 The Customer warrants that he has the power, authority and capacity necessary to enter into the Contract and to observe and perform their obligations under the Contract, including (without limitation) all necessary technical knowledge to ensure correct administration of a computer server such as the VPS and to back up the data stored on the VPS.

7.2 The Customer shall read and comply with the documentation made available by the Customer relating to the VPS.

7.3 The Customer shall provide valid contact information (first name, surname, organisation if applicable, mailing address, telephone number, and email address) for any site or sites hosted by the Customer within 72 hours of any request from OVH for such information.

7.4 The Customer shall take all reasonable care when using the VPS, and shall be solely responsible for:

- (a) managing the VPS, and for any loss or damage to the VPS, and shall put in place appropriate insurance cover to cover the risk of any such loss or damage. The Customer may not claim any reimbursement, replacement, or compensation from OVH in any circumstances;
- (c) any Content uploaded onto the Virtual Private Server and checking that it functions satisfactorily. OVH shall not be responsible for any failure of the Customer to upload the Content correctly, and shall not be responsible for providing support in relation to the control and operation of the Content;
- (d) the Customer's equipment, systems or software necessary for the management of the VPS. OVH shall have no obligation to validate or veto the Content for usability, legality, content or correctness and shall not, in any event, be liable towards the Customer or any third party for any loss arising from or in connection with the Content;
- (e) complying with all applicable laws and regulations concerning the Content, including (without limitation) its obligations under the Electronic Commerce (EC Directive) Regulations 2002 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 as a provider of Information Society services;
- (f) ensuring that the Content and any activity conducted via the VPS do not breach the rights of any third parties, including (without limitation)

personality rights, copyrights, patent rights, trademarks and other intellectual property right and that no Content or hypertext links made available to the public through sites hosted on their VPS infringe any such rights of any other person;

(g) making regular backups of the Content from time to time.

7.5 The Customer shall not use, or attempt to use, the VPS, or permit the VPS to be used for port scanning, sniffing, spoofing or any similar activities and shall not send unsolicited emails, or spam, from the VPS.

7.6 The Customer shall use their best endeavours to ensure that all Content on the VPS does not contain any viruses and/or other harmful code.

7.7 The Customer may not use the VPS for the establishment of unlocking services with the purpose of allowing the downloading of files in large quantities onto the file hosting platforms.

7.8 The Customer shall pay for any licence that is required when using third party software on their VPS.

7.9 OVH reserves the right to inspect the Customer's usage of the VPS in order to verify compliance with the provisions of this Clause.

## **8. Term and Termination**

8.1 The Contract shall commence when OVH e-mails the Customer their access codes to connect to the VPS in accordance with Condition 3.3 and, subject to the following provisions of this Condition 7, continues until the Expiry Date.

8.2 Without prejudice to any other rights or remedies which may be available to it, OVH shall be entitled without prior notice to the Customer to disconnect the terminal and/or suspend the VPS Hosting Services with immediate effect without incurring any liability if the Customer commits a breach of Condition 6 of these Conditions, including any activity on the Host Server by the Customer which is expressly prohibited under the Contract and/or which may reasonably be expected to give rise to civil and/or criminal liability and/or to prejudice the rights of third parties and, for the purpose of Condition 11.5(a) of the General Conditions, any breach of Condition 6 of these Conditions shall be deemed to be a material breach of the Contract.

8.3 OVH shall be entitled to terminate the VPS Hosting Services for its own convenience at any time and without incurring any liability by giving 30 days' written notice to the Customer.

8.4 OVH shall be entitled to terminate the Customer's access to the VPS upon notice to the Customer on the Expiry Date of the Contract and

five days after the Expiry Date (or forthwith upon the termination of the Contract for any other reason whatsoever) OVH may delete the Content and any material uploaded on the VPS without incurring any liability towards the Customer.

- 8.5 OVH may restrict, limit or suspend the VPS Hosting Service if required to do so by any court or competent authority in accordance with applicable law.

## **9. Right to cancel**

If the Customer is a consumer, as defined by the Consumer Protection (Distance Selling) Regulations 2000 (“**the Regulations**”), the Customer acknowledges that, notwithstanding the provisions of Condition 10 of the General Terms and Conditions of Service, he has no right to cancel the Contract (or any request to change the base Power) pursuant to the Regulations if he has requested the provision of the VPS Hosting Services in accordance with Condition 3.3 of these Special Conditions, or to a change in the base Power pursuant to Special Condition 4.1, with immediate effect.

## **10. Technical Support**

For any malfunction of the Service, under the responsibility of OVH, the customer can contact the Incident team established by OVH, and whose contact details are available at <http://www.ovh.co.uk/>. Similarly, for any technical advice related to the use of the Service, OVH invites users to go to the forum available at <http://forum.ovh.co.uk/> or to communicate with users through the mailing list dedicated to the Service: [vps@ml.ovh.net](mailto:vps@ml.ovh.net)

**BY PLACING AN ORDER ONLINE, THE CUSTOMER SIGNIFIES THEIR UNCONDITIONAL ACCEPTANCE OF THESE CONDITIONS.** If, after reading these Conditions, the Customer has any questions, he should please contact OVH at 3 Southwark Street London SE1 1RQ.