OVH PUBLIC CLOUD INSTANCE – SPECIAL CONDITIONS

GAMMA VERSION

Definitions:

API: *the application programming interface that can be used by the Customer to interact with its services.*

Cloud: *technology that uses remote execution resources and storage.*

Cloud Manager: *a management interface that allows the Customer to request the attribution or stopping of Cloud servers, the management of its Cloud services and to access a record of its consumption.*

Customer: *the person or firm who purchases services from the Supplier pursuant to the General Conditions as amended by these Special Conditions.*

General Conditions: *the Supplier's General Terms and Conditions for the supply of services, as amended from time to time, and available at*
http://www.ovh.co.uk/support/termsofservice/GENERAL_TERMS_AND_CONDITIONS_OF_SERVICES.pd*f*

Instance: *a virtual server hosted on the Supplier's Cloud platform that allows for the development and use of applicative solutions. It is composed of processing resources, RAM and a Non Persistent Local Disk.*

Loyalty Scheme: *dedicated space in the Customer's management interface that allows the activation of a retribution mode in the form of points.*

Non Persistent Local Disk: *storage space attached directly to the Instance to guarantee correct functioning of the operating system. Data is deleted and the disk is entirely reinstalled each time the Instance is turned off or rebooted.*

Persistent Local Disk: *persistent storage space associated with an Instance, on which data is stored and kept, whatever its status. The Persistent Local Disk is erased when the Instance is deleted.*

Project: *a group of Instances and Persistent Local Disks for which the Customer is billed.*

Public Cloud Solutions: *a group of solutions provided by the Supplier using Cloud technology.*

Service: the service provided by the Supplier to the Customer under these Special Conditions, including the Public Cloud Solutions.

Special Conditions: these special conditions for the provision by the Supplier of Public Cloud Solutions.

Supplier: OVH Limited, a private company incorporated and registered in England and Wales under No 05519821, whose registered office is at Lincoln House, 300 High Holborn London WC1V 7JH, VAT No GB 918759474.

ARTICLE 1: PURPOSE

1.1   These Special Conditions supplement the General Conditions and, together with the General Conditions, shall govern the provision by the Supplier of Public Cloud Solutions to the Customer. They define the technical and financial conditions under which the Supplier shall provide the Customer with an access to the Cloud Manager and Public Cloud Solutions developed by the Supplier, in particular the request of Cloud servers, a unique interface allowing for the administration and use of the Customer's Cloud server.

1.2   The Customer expressly acknowledges that the Supplier has no involvement in the design, development, implementation and set-up of the Customer's Instance as well as its management and administration tools.

1.3   These Special Conditions prevail over the General Conditions if a conflict should arise between these two documents.

1.4   The singular shall include the plural, the masculine shall include the feminine, and vice versa.

ARTICLE 2: RESOURCES

2.1   The Supplier's Cloud platform through which the Public Cloud Solutions will be made available to the Customer via the Internet. The Supplier provides the Customer with Public Cloud Solutions developed by the Supplier. Due to the highly technical nature of the Public Cloud Solutions, the Supplier's only obligation in respect of the Public Cloud Solutions will be to make them available to the Customer in accordance with these Special Conditions.

ARTICLE 3: TECHNICAL SUPPORT

3.1   In addition to the Incident service set up by the Supplier (contact details available at: http://www.ovh.co.uk), for any technical advice regarding the use of the Service, the Supplier

gives the users of the Cloud services to explain their problem on the forum available at: http://forum.ovh.co.uk/.

ARTICLE 4: SERVICE CONDITIONS

4.1   Service subscription requires a simultaneous order of prepaid points that will be used to credit the Customer's Loyalty Scheme. This operation is aimed at registering the Customer's method of payment. The Customer will then be billed on that method of payment at the end of each month when the monthly bill for this Service is updated to reflect consumption.

4.2   Once a Cloud order is activated, the Customer's Cloud Manager is also activated and all of the Public Cloud Solutions developed and offered by the Supplier can be used via the Cloud Manager.

4.3   The Supplier assigns an IPv4 address and an IPv6 block to the Customer's Instance after it is turned on. Until then it is turned off or rebooted. These assigned IP resources are automatically reassigned to another Instance of the Cloud platform if the Customer's Instance is turned off.

4.4   The equipment and infrastructure on which the Service is configured remains the property of the Supplier.

4.5   The Supplier provides the Customer with different Instance configurations. Their description is available online at: http://www.ovh.co.uk/.

4.6   The Customer can also take a Persistent Local Disk that it will associate to an Instance. This persistent storage will be able to be associated to only one Instance. It is the Customer's responsibility to choose the storage capacity that meets its requirements best. In the same way, storage is accessible only from the Instance to which it is associated.

4.7   The applicable rates are available online on the Supplier's website (http://www.ovh.co.uk/).

4.8   The Customer is the administrator of the Instance provided by the Supplier. It has the possibility to install software applications on the server. These installations take place under its entire responsibility and the Supplier will not be held responsible for any Service malfunction resulting from these installations.

ARTICLE 5: SUPPLIER REQUIREMENTS

The Supplier will:

5.1 Maintain equipment required to deliver the Service in working condition. If a failure occurs in the Customer's affected infrastructure, the Supplier shall intervene as soon as is reasonably practicable, except in cases of failures that do not result directly from its own actions, or any other intervention that would require Service interruption exceeding the usual time frame for replacement. In the latter case, the Supplier shall inform the Customer as soon as is reasonably practicable.

5.2 Provide access to the Service via the Internet 24 hours a day, every day of the year. The Supplier reserves the right to interrupt the server to perform a technical intervention that would improve operational functioning.

5.3 Respond quickly to a Customer's request for intervention to incidents that do not result from server misuse by the Customer.

5.4 Maintain the highest level of tool quality in accordance with industry practices.

ARTICLE 6: LIABILITIES OF THE SUPPLIER

6.1 The Supplier reserves the right to interrupt network connection to the Instance used by the Customer if it represents a risk to the Supplier's platform, whether this risk comes from the hacking of the server, a flaw detection in the system's security, or during the updating of a server. The Supplier will try to contact and inform the Customer beforehand.

6.2 The Supplier will not be held responsible in any capacity whatsoever for the content, information, sounds, texts, images, or other data accessible on the Customer's Instance, transmitted or updated by the Customer.

6.3 The Supplier will not be held responsible for total or partial non-compliance and/or failure from network operators, in particular its own service provider.

ARTICLE 7: CUSTOMER OBLIGATIONS AND RESPONSIBILITIES

7.1 The Customer acts as an independent entity and therefore alone assumes the risk of its activity. The Customer is solely responsible for services, applications, software and web sites hosted on the Service and all content transmitted, broadcasted and collected, plus any content used, displayed and any file updates, in particular mailing lists. The Customer commits in particular, to respect third party rights, including personality rights, third party intellectual property rights such as: copyrights, patents and trademarks. In consequence, the Supplier will not be held responsible for the information content sent, broadcasted or collected, its exploitation and updating, and for all files such as mailing lists, in any capacity whatsoever.

The Supplier shall not be liable for any illegal activities conducted by the Customer on or via the Service.

The same applies if the Customer uses the Service for illegal purposes. Such use will result in Service interruption without prior notice and termination of the present contract.

The Customer shall not use the Service for activities of intrusion, or intrusion attempts (this includes but is not limited to: port scanning, sniffing and spoofing).

In these cases, the Customer remains liable for all amounts billed or payable in respect of its use of the Service up until termination.

7.2   The Customer shall be liable for all losses incurred as consequence of Service malfunctions caused by the use of the Service by its employees or anyone to whom it has given its password(s). The Customer shall be liable for all losses caused as a consequence of its failure to keep it's password(s) confidential and/or secure.

7.3   In order to guarantee server security to the Customer and all servers present on its hosting platforms, the Supplier shall notify the Customer via the http://forum.ovh.co.uk/ forum, of update availabilities for the applications maintained by the Supplier and on which a security flaw has been identified. If the update of these applications does not occur after this notification, the Supplier reserves the right to interrupt the server's network connection and suspend access to the Service.

Similarly, if the Supplier detects that a Customer's machine is hacked, an email will be sent to the Customer, indicating that a re-installation procedure is necessary to maintain server integrity and that of the entire hosting platform. The Customer can then order such a procedure with the Supplier, after having saved all of its data. The Supplier reserves the right to interrupt network connection and suspend access to the Service, pending the machine's re-installation. The Supplier is not required to operate the data transfer from the hacked system onto the new system, this manipulation must be done by the Customer. The Supplier's responsibility is limited to the installation of a new system.

7.4   For security reasons, the emailing feature is blocked on the Service, as a result port 25 is blocked by the Supplier.

7.5   For security reasons, all IRC services (including but not limited to: bots, proxy, bouncer, etc.), anonymous navigation services (usually called proxy), video chat software such as Camfrog are subject to prior registration. The Supplier reserves the right to refuse registration and suspend any server on which these elements would be used.

7.6   It is the Customer's responsibility to take all the necessary measures to save its data on both the non Persistent Local Disk and the eventual Persistent Local Disk.

The Customer acknowledges having been informed by the Supplier that data stored on the Non Persistent Local Disk will automatically be erased when the Instance is switched off or deleted. When an Instance is restarted, the operating system is reinstalled on the Non Persistent Local Disk.

In addition, the Persistent Local Disk is automatically deleted if the Instance with which it is associated is deleted.

The Customer is responsible for taking all the measures necessary to save its data before changing the status of one of its Instances.

7.7 It remains the Customer's responsibility to pay for any license or rights of use contracted with the Supplier or a third party. If the Customer fails to do so, the Supplier reserves the right to suspend the Service without any notice.

7.8 As the Supplier is likely to receive notifications regarding unlawful use of the IP address given to the Customer, these notifications will be arbitrated according to the law applicable in the Customer's country. The Supplier reserves the right to offer the Customer an IP address that matches the country in which it is located and on which it will have to transfer its service.

The Customer is therefore required, when it uses the IP address of a specific country, to respect the laws and regulations applicable in that jurisdiction. If the Supplier receives notification of an alleged violation by the Customer of the law applicable in the jurisdiction of its IP address, the Customer will have to take all the necessary measures to end this violation. If such measures aren't taken, the Supplier reserves the right to suspend the Service.

7.9 The Supplier may take all steps within its control to ensure the Customer's compliance with these provisions, but shall be under no obligation to do so.

The Supplier reserves the right to suspend the Service without any notice, if the Customer does not comply with these Special Conditions, the General Conditions, and all applicable laws and regulations as well as third party rights.

7.10 The Supplier's obligations under these Special Conditions are limited to making the Public Cloud Solution available to the Customer. As such the Supplier shall not be liable in relation to the content of sites stored on the Service, or the relationship between the publishers of those sites and their host. The Customer is therefore considered as a web hosting company. It is therefore up to it to keep all the data that could allow the identification of anyone who contributed to the content of the Services that it provides, for a period of 12 months. In this matter, the Supplier's responsibility will not be engaged.

It is also the Customer's responsibility to create an easily accessible and visible system that will allow any person to report any type of offence: apology of crimes against

humanity, racism, child pornography, incitement to violence, infringement of human dignity, illegal money activities. Finally, the Customer's attention is drawn to the fact that it must appear as a web hosting company in the legal notice indicated by its co-contractors who edit a website.

ARTICLE 8: BILLING

8.1   The fees for the Service shall be the Supplier's standard pricing available at http://www.ovh.co.uk.

8.2   These prices are quoted exclusive of VAT. The rate indicated on the order published by the Supplier does not include charges for additional services or excess volume usage.

8.3   The Service requires that the Customer's account with the Supplier ("OVH Account") has sufficient funds. This account corresponds to a reserve credit available to make use of the Service. It is possible to credit the account in the ManagerV5 by a debit or credit card.

8.4   The Customer must ensure that they have enough credit on their OVH Account to use the Service.

8.5   If the Supplier isn't able to collect the amount due using the specified payment method, an email will be sent to the Customer, requesting payment of the bill as soon as possible. If no payment takes place, the Service will be automatically suspended by the Supplier.

8.6   The Supplier reserves the right to bill the Customer before the end of the current calendar month, as soon as the outstanding amount of the Customer's Project reaches a significant amount.

8.7   The Customer can request the activation of an Instance via its Cloud Manager or via the API. This operation represents billing of the Instance as soon as its status will be turned on.

8.8   For each active Instance, the Customer is billed at an hourly rate matching the corresponding configuration. Billing ends as soon as the Instances are turned off. In the same way, Instances that are already inactive are not billed.

8.9   Every active hour is billed to the Customer. If an Instance is switched on and off several times in the same hour, the Customer will be billed for every started hour during which the Instance was actually started.

8.10   As soon as a Customer's Instance is started, the Persistent Local Disk is billed at the applicable rate for every GB allocated to the Customer.

8.11   Data stored on the Persistent Local Disk are kept by the Supplier up until the Instance to which it is associated is deleted.

ARTICLE 9: CONFIDENTIALITY

9.1 The Supplier is committed to protection the Customer's data confidentiality. In order to do that, The Supplier recommends that the Customer customises the administrator (ROOT) password of its Instance as soon as it is started.

9.2 The Customer is the sole administrator of the Instance and it is the Customer's responsibility to take all the necessary technical measures to ensure proper security of its system (in particular the installation of a firewall) just like it would do for any server.

ARTICLE 10: RIGHT TO CANCEL

10.1 Notwithstanding any conflicting provision in the General Conditions, the Customer expressly agrees to the immediate execution of its order once it has made payment. Once payment has been made, the Customer will have access to the Service and the ability to activate its choice of Cloud servers. The Customer shall have no right to cancel the contract once payment has been made in respect of the Service.

ARTICLE 11: LIABILITY AND INDEMNITY

11.1 The Customer shall keep the Supplier fully indemnified against all costs, claims, actions, expenses, losses or liabilities (including without limitation, economic loss and loss of profit (direct or indirect), indirect loss or consequential loss) resulting directly or indirectly from the Customer's failure to comply with these Special Conditions and the General Conditions.

11.2 For the avoidance of doubt, the exclusions and limitations on the Supplier's liability set out in clause 4 of the General Conditions shall apply in respect of the provision of the Service by the Supplier under these Special Conditions.

ARTICLE 12: GOVERNING LAW AND JURISDICTION

12.1 These Special Conditions and any disputes or claims arising out of or in connection with these Special Conditions are governed by and construed in accordance with the laws of England.

12.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Special Conditions.