

## SPECIFIC CONDITIONS FOR PUBLIC CLOUD SERVICE

*Version date January 29<sup>th</sup> 2020*

### DEFINITIONS:

**Infrastructure:** *set of components provided by OVH which permit to host the Client's Public Cloud including in particular (depending on the circumstance) the Host Server, the Storage Space, the network, the bandwidth and/or virtualisation or cloud computing technology.*

**Instance:** *Virtual server created on the OVH Public Cloud infrastructure and which enables the development and/or use of application solutions. The Instance, created using cloud computing technologies, includes a Storage Space and a quantity of processor and RAM resources. It is possible to add Object Storage to an Instance.*

**Object Storage:** *Distributed Storage Space based on the Object Storage architecture (management of data as objects). In the OVH Public Cloud, it may be added to an Instance, particularly when it is used as a Snapshot and/or subscribed to separately.*

**Object Storage Container:** *Head unit of the Object Storage Space that shares the same access right policy, created by the Customer.*

**Storage Space:** *Disk space attached to an Instance that can be either a 'local' Storage Space or a 'distributed' Storage Space, depending on the characteristics of the Instance. The 'local' Storage Space is directly attached to the Instance for the proper functioning of the operating system. Data is deleted and the disk is reinstalled to its original state every time the Instance is rebooted or stopped. Data in the 'distributed' Storage Space is stored whatever the state of the Instance. 'Distributed' Storage Space is deleted when the Instance is deleted.*

### ARTICLE 1: OBJECT

1.1 The Supplier, ("OVH") shall provide the OVH Public Cloud Service ("Services") to the Customer and the Customer shall pay for the Services in accordance with these Conditions and the General Conditions which shall govern the contract between the parties to the exclusion of any other terms or conditions whether proposed by the Customer, implied by law, trade custom, practice or course of dealing or otherwise (the "Contract").

1.2 These special terms and conditions supplement OVH's General Terms and Conditions of Service, and are intended to set out the conditions, in particular the technical and financial conditions, being part of the Services to which OVH is committed.



In the event of conflict between these Conditions and the General Conditions, these Special Conditions shall prevail.

## **ARTICLE 2: MEANS**

2.1 In the context of the provision of Services, OVH shall provide the Customer with one or several Instance(s) and/or one or several Object Storage Containers.

2.2 Instances are provided with dedicated Storage Space and a portion of RAM and Host Server processor resources. Depending on the configuration and type of Instance selected by the Customer, the volume of allocated RAM and processor resources are either guaranteed to the Customer (RAM Instances and CPU Instances), or shared by the Customer with other users that have one or several Instance(s) installed on the same Host Server. Where resources are shared, performance cannot be guaranteed.

2.3 Given the high technicity of the Services, OVH could only be submitted to an obligation of means.

2.4 For the entire duration of the subscription, OVH provides the Customer with a Management Interface that enables them to manage the Services, configure their Instances and Object Storage Containers (creation, deletion, etc.) and retrieve their usage statements.

2.5 The Customer and the general public may access OVH's Infrastructure via the internet where Instances and Object Storage Containers are made available. The Customer must have an internet connection in order to log in to the Management Interface and access the Service, and is solely responsible for the aforementioned internet connection, in particular its availability, reliability and security.

## **ARTICLE 3: TECHNICAL SUPPORT**

OVH is responsible for any disruption to the Service. The Customer has the right to contact the support service via the Management Interface, or by using the contact details available on OVH's website.

## **ARTICLE 4: CONDITIONS OF USE**

4.1 The Customer subscribes to the Services on OVH's website and, as such, must register a payment method from which payments shall be executed for invoices issued for the Services, under the conditions provided in Article 14 below.



4.2 From the time of activation of the Services by OVH, the Customer has the ability to create Instances in the Management Interface.

4.3 OVH shall provide the Customer with various Instance configurations, which are described on OVH's website.

4.4 The Customer undertakes to carefully consider every available Instance configuration prior to choosing an Instance. As such, the Customer is responsible for defining the configuration and the operating system that can best meet their expectations and needs.

4.5 Any Instance rented from OVH shall have an IPv4 address geolocated at the physical location of the Instance.

4.6 Hardware resources (Host Server, Storage Space, etc.) and the Instance rented by the Customer will remain the exclusive property of OVH.

4.7 In the hereby contract, the Customer shall be the sole administrator of their Instance. OVH shall under no circumstances be involved in the administration of the Customer's Instances. Similarly, the Customer bears sole responsibility for their usage of the Object Storage Container provided to them.

4.8 OVH is responsible for the administration of the Infrastructure (hardware, network, Host Servers, disks) on which the Instances and Object Storage Containers made available to the Customer are configured.

4.9 The Customer confirms they have all the necessary technical knowledge to ensure the correct administration of resources (Instances and Object Storage Containers) provided by OVH, and to back up the data stored on these resources. The Customer also undertakes to acquaint themselves with the documentation related to the Services, provided by OVH.

4.10 The Customer has the right to install software on the Instance. The Customer bears sole responsibility for these installations, and OVH shall not be liable for any failure of the proper operation of the Instance resulting from such installations.

4.11 The Customer undertakes to comply with the license conditions and conditions of use of the operation system on which the Instance is configured by OVH, and the license conditions and conditions of use of the applications, in some cases pre-installed on the Instance by OVH.

4.12 OVH reserves the right to modify the operating systems and applications pre-installed by OVH on the Instance, in particular by way of any updates and/or version upgrades that it deems necessary in its sole discretion.



4.13 The Customer may also perform maintenance operations and updates on the aforementioned operating systems and applications pre-installed on the Instance. In such a case, the Customer assumes full responsibility and OVH shall not under any circumstances be held responsible, including without limitation where said operations (maintenance, updates, etc.) are performed in violation of the applicable conditions of use/license conditions, or where there the Instance fails to perform and/or operate correctly following maintenance operations and/or updates performed by the Customer.

4.14 The applicable license conditions and conditions of use of the aforementioned applications and operating systems are either provided to the Customer at the time of the first order of the Instance configured with these pre-installed systems and/or software, or made available to the Customer via OVH's website or the Website of the software company.

4.15 OVH reserves the right to restrict access to certain ports which it deems to be sensitive in order to protect the Infrastructure. Similarly, the Customer acknowledges that UDP/ICMP flows are limited.

4.16 As part of his Services, the Customer has the option, via the Management Interface, to increase and decrease its number of Instances and the volume of data stored in their Object Storage Container(s). It may also change the Instance(s) provided by OVH in order to change configuration. These changes are made asynchronously upon the request of the Customer. The Customer creates the request in the Management Interface or OVH's API.

4.17 OVH reserves the right to limit or restrict certain functionality of the Instance in order to guarantee the security of the Infrastructure. OVH shall inform the Customer of the implementation of these restrictions whenever possible.

OVH also reserves the right to interrupt Customer's Service if it presents a risk to (i) the stability and/or security of OVH systems, infrastructures and/or environments, or (ii) the Services and/or Customer's Content.

4.18 When Customer has an OVH private network (vRack), OVH reserves the right to suspend Customer's Instance if it uses the private network link of its Instance over 75% of its capacity for more than 72 minutes per 24 hours period.

4.19 The Customer undertakes to use the Service with good mutual understanding.

## **ARTICLE 5: OVH'S OBLIGATIONS**

5.1 OVH shall provide the Services with reasonable care and skill and in accordance with good industry practice.

5.2 OVH undertakes to:

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- a) Ensure the administration of OVH Infrastructure and Host Servers.
- b) Maintain the Host Server in an operational state. OVH shall use reasonable endeavours to replace any defective part of the Host Server as soon as reasonably possible except where OVH is not directly responsible for the failure or in situations where the repair or replacement procedure requires an interruption of Service which exceeds the usual replacement time. In the latter case, OVH will notify the Customer as soon as reasonably practicable.
- c) Make the Instances and Object Storage Containers available to the Customer in accordance with the provisions of Article 12 of this Contract. OVH reserves the right to interrupt the Services in order to perform a technical intervention to improve the operation of the Services.
- d) Upon notification by the Customer of an incident, intervene as soon as possible, provided the incident is not caused by the Customer's misuse of the Instance or Object Storage Containers.
- e) Ensure the quality of its tools is maintained in accordance with good industry practice and in accordance with the rules and customs of the profession.

## **ARTICLE 6: OVH'S LIABILITY**

6.1 OVH shall not be liable for any information, sound, text, images, items, data or other content accessible on websites hosted by the Customer in its use of the Services, transmitted or uploaded by the Customer or any user of such websites and for any purposes.

6.2 OVH shall not be liable for any partial or -total non-compliance with an obligation by and/or a failure by operators of internet traffic networks and in particular by the Customer's internet service provider(s).

6.3 OVH does not backup specific data on the Instances or Object Storage Containers of the Customer. It is therefore the responsibility of the Customer to take all the necessary measures to back up their data in the event of data loss or deterioration of entrusted data, whatever the cause, including causes not expressly mentioned in this Contract. OVH does not provide any guarantees related to the Customer's use of the Services, in particular guarantees related to the security and preservation of this data.

## **ARTICLE 7: OBLIGATIONS AND RESPONSIBILITY OF THE CUSTOMER**

7.1 The Customer acts as an independent entity and shall solely bear all risk associated with its activity when using the Services. The Customer is solely responsible for the services and websites that they host

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on the Instance and Object Storage Container provided, as well as the content of transmitted, broadcast or collected data, the processing and updating of data, and all files, especially address files.

7.2 The Customer is reminded that OVH's intervention in connection with the contract on a Public Cloud is limited to installing the service. OVH only insures in that regard the rental of a specialized infrastructure, without any control whatsoever over the content of the hosted websites or the contractual relationship between the sites' editor and their Web host, an OVH Customer under a Public Cloud rental contract. The Customer shall therefore be considered a Web host. As such, the Customer shall comply at all times with the applicable regulations regarding electronic communications and webhosting services.

7.3 OVH only ensures access to the Services to enable the Customer to store their data and their customers' data.

7.4 OVH reminds that the Customer shall take all technical steps available to ensure that it holds and retains connection logs or any data which can allow anyone to identify any person who contributes to the creation of content for the services for which the Customer is the provider, according to the legislation in force, and especially the Copyright Act (R.S.C., 1985, c. C-42).

7.5 The Customer undertakes to respect the rights of third parties, rights of the individual, intellectual property rights such as copyrights, patent rights or trademark rights. Consequently, OVH shall not be held liable for the content of any transmitted, disseminated or collected data, data processing or updating, or any files, namely address files of any kind.

7.6 The Customer is prohibited from making any files or links that breach third party intellectual property rights publicly available via websites hosted on their Instance.

7.7 The Customer shall not use the Services to deploy services which are intended to enable users to download files in large quantities to and from file hosting platforms.

7.8 The Customer undertakes to pay for any licences required if they use any third-party software when using the Services.

7.9 The Customer is put on notice that serious legal consequences can arise from illicit activities performed on all or part of the Instance and/or Object Storage Container provided to the Customer. OVH accepts no liability, whether sole or joint liability, especially for the use of data made available to internet users by the Customer.

7.10 Where the Customer uses proven spamming techniques on the internet, this shall result in the cessation of the Services and termination of this Contract without prior notice. The Customer is also prohibited from any intrusive activity or any intrusion attempt from the Instance (including, but not limited to: port scans, sniffing, spoofing), and any activity or contentious behaviour such as traffic



exchanging (Hitleap, Jingling), Black Hat SEO (downloading and uploading videos from and to online gaming platforms), crypto-currency mining, video game bots, etc.

In such events, OVH reserves the right to suspend the Service and immediately terminate the Contract, without prejudice to the right to all damages that OVH may claim.

7.11 The Customer is solely liable for the consequences of any malfunction of their Instances and Object Storage Container as a result of any usage, by their staff or any personnel to which the Customer may have provided their password(s) and any other means of access (such as SSH access keys, OpenStack Tokens). Similarly, the Customer is solely liable for the consequences of the loss of passwords and any other means of access.

7.12 In order to maintain the service level of the Customer's Instance and all the servers on the Infrastructure, OVH reserves the right to request that the Customer update the operating system running on the Instance and any applications pre-installed by OVH, where a security vulnerability is identified. If the Customer does not act upon such requests, OVH reserves the right to disconnect the Instance, Object Storage Container and Infrastructure from the internet.

7.13 Similarly, in the event that OVH finds that the Instance or Object Storage represents a security risk, OVH may send an email to the Customer to inform the latter that the Instance or Object Storage Container will be reinstalled or deleted to maintain the integrity of the Instance or Object Storage

Container and the entire Infrastructure. OVH reserves the right to disconnect the Instance and the Object Storage Container from the internet pending the Customer's re-installation of their Instance. The Customer is responsible for transferring data from the pirated or failing system to the new system. The sole responsibility of OVH is the installation of the new system.

7.14 The Customer shall not send from their Instance unsolicited emails, or SPAM, and shall at all times comply with Canada's anti-spam law on the sending of unsolicited electronic communications. If Customer fails to comply with this clause, OVH reserves the right to suspend Services in respect of the Instance from where these unsolicited emails were sent and/or to terminate the Contract.

7.15 The Customer acknowledges that, for security reasons, some features and protocols (such as IRC or pair by pair file exchanges) are likely to be restricted under the Services. Anonymisation services (Proxy) and cardsharing (CCCam or equivalent) are prohibited under the Services.

7.16 In no circumstances is OVH under any obligation, in respect of the cloud computing technologies it uses for the management of the Customer's Instances and the Object Storage Containers, to ensure the retention of Customer data. All measures to ensure the backup of data is exclusively the responsibility of the Customer.





7.17 It is the Customer's responsibility to pay for any licenses or usage rights contracted with OVH. Should the Customer fail to do so, OVH reserves the right to suspend the Services without prior notification.

7.18 OVH reserves the right to undertake checks to ensure that the Services are being used by the Customer in accordance with this Contract.

7.19 OVH reserves the right to suspend the Services without prior notification in accordance with the provisions set out in the OVH's General Terms and Conditions, and if the Customer is in breach of any of OVH's special and general terms and conditions, any applicable laws and regulations in force, or any applicable third party rights whatsoever.

## **ARTICLE 8: MEASURES FOR THE PREVENTION OF SPAMMING FROM OVH'S NETWORK**

8.1 OVH shall implement a system of technical measures intended to prevent the dispatch of fraudulent emails and spam from its Infrastructure.

8.2 Further to Article 8.1, OVH shall monitor outgoing traffic from the Service towards port 25 (SMTP server) on the internet, which shall involve monitoring traffic by means of automatic tools.

8.3 The outgoing traffic referred to in Article 8.2 shall be monitored by OVH with a delay of a few seconds, rather than being filtered or intercepted. These operations shall be conducted by OVH concurrently and not, under any circumstances directly between the Services and the internet.

8.4 OVH shall not conduct any tagging of e-mails, and shall not modify e-mails sent by the Customer in anyway whatsoever. No information shall be stored by OVH during these operations aside from statistical data.

8.5 The operation in Article 8.2 shall be conducted regularly and in a fully-automated manner by OVH and the Customer acknowledges that no human intervention is involved during the monitoring of traffic to port 25 (SMTP port).

8.6 In the case of outgoing traffic from the Customer's server, including e-mails, being identified as spam or fraudulent e-mails, OVH shall inform the Customer by e-mail and block the Server's SMTP port.

8.7 OVH shall not keep any copy of e-mails sent from the Service's SMTP port, even when they are identified as spam.

8.8 The Customer may request unblocking of the SMTP port through their Management Interface.





8.9 Any new e-mail identified as spam will entail a new blocking of the SMTP port by OVH for a longer period to be determined at OVH's reasonable discretion.

8.10 On the occurrence of OVH's blocking the SMTP port for a third time, OVH reserves the right to deny any new request for the unblocking of the SMTP port.

## **ARTICLE 9: MITIGATION (protection against DOS and DDoS attacks)**

9.1 OVH shall implement protection against DOS and DDoS-type (Distributed Denial of Service) hacking attempts provided that these attacks are conducted in a manner reasonably considered to be serious enough by OVH to warrant such protection. In implementing such protection, OVH shall use reasonable endeavours to ensure that the operation of the Customer's Services is maintained throughout the duration of a DOS or DDoS attack.

9.2 The function in Article 9.1 involves monitoring the traffic sent to the Customer's Services from outside OVH's network. The traffic identified as illegitimate shall then be rejected by OVH prior to reaching the Customer's Infrastructure, thus allowing legitimate users to access the applications offered by the Customer in spite of the attack.

9.3 As a result of the high technicality of the Service, certain attacks may not be detected by the protection measures implemented by OVH. The protection measures outlined in Articles 9.1 and 9.2 shall not apply in the case of attacks such as SQL injection, brute-force, abuse of security vulnerabilities, or attacks of a similar nature to the latter. In such cases, the Infrastructures and the Service may be temporarily suspended and unavailable.

9.4 Given the nature of a potential DOS or DDoS attack and their complexity, OVH shall implement different levels of traffic protection in order to preserve their Infrastructure and the Services.

9.5 The mitigation of a DOS or DDoS attack is activated only at the time of the detection of the attack by the OVH's tools and for a non-fixed period, and deactivated only once the attack and illegitimate traffic are no longer present. Thus, until the mitigation is activated, the Service shall handle the attack directly, which may lead to the temporary unavailability of the Service.

9.6 While mitigation is activated, OVH shall not guarantee the accessibility of the Customer's applications but it shall endeavour to limit the impact of a DOS or DDOS attack on the Customer's Services and on OVH's Infrastructure.

9.7 If, in spite of the activation of mitigation, a DOS or DDOS attack is of such a nature as to adversely affect the integrity of OVH's Infrastructure or the infrastructure of the other customers of OVH, OVH shall strengthen its protection measures which may lead to the deterioration of the Customer's Services or impact its availability for which OVH shall not be liable.



9.8 Where part of the traffic generated by a DOS or DDOS attack is not detected by the OVH's equipment and reaches the Customer's Services, the effectiveness of the mitigation shall also depend on the appropriate configuration of the Customer's Services. In this regard, the Customer must ensure that it has the adequate resources to administer the configuration of the Customer's Services properly.

9.9 The Customer shall be solely responsible for ensuring it secures its Services, implementing security tools (firewall, etc.), periodically updating their system, backing up their data and for ensuring the security of their software (scripts, codes etc.).

## **ARTICLE 10: GEOLOCATION**

10.1 At the time of the creation of the Instance or of an Object Storage Container, the Customer chooses where they wish to locate their Service, from the available datacentres.

10.2 The Customer acknowledges and accepts that they are also subject to the legislation applicable on the territory where their hardware is installed and data is stored.

10.3 The Customer therefore acknowledges the ability of OVH to suspend the Service should it be used for a prohibited activity in the physical location of the hardware provided by OVH.

10.4 Similarly, regarding geolocated IP addresses, the Customer undertakes to ensure that they do not use the Service to breach legislation applicable in the country for which the IP address is declared. If the Customer uses the Service in this way, OVH may be forced to suspend every one of the Customer's geolocated IP addresses.

10.5 Each of the Datacenters where the Instances composing a Public Cloud Project are located benefits from a monthly amount of free public traffic to be consumed by those Instances. For the majority of the Datacenters, this amount is unlimited. When limited, any extra traffic consumption shall give rise to additional invoicing. The list of the Datacenters concerned by those limitations, as well as the amount of free public traffic and the applicable rates for extra public traffic are available on OVH website.

## **ARTICLE 11: SNAPSHOTS**

11.1 OVH provides a feature enabling the Customer to make "instantaneous" copies (or "Snapshots") of the Instance.

11.2 Please pay attention that OVH reminds the Customer that a Snapshot is not a perennial backup of the data of the Instance. It is rather an "instantaneous" copy of the Instance. As a result, a Snapshot



does not, under any circumstances, exempt the Customer from its obligation to back up their data in accordance with Article 7 in this contract.

11.3 By default, Snapshots are of unlimited duration and invoiced under the conditions set out below in Article 14.

11.4 The Customer may restore their Instance from any Snapshot. In this case, any data on the Instance will be deleted and the data on the selected Snapshot will be restored.

## **ARTICLE 12: SERVICE LEVEL AGREEMENT (SLA)**

12.1 OVH shall use its reasonable endeavours to meet the following service level targets:

- (a) General Purpose Instance: Monthly availability rate: 99.999%
- (b) CPU Instance: Monthly availability rate: 99.999%
- (c) RAM Instance: Monthly availability rate: 99.999%
- (d) GPU Instance: Monthly availability rate: 99.999%
- (e) IOps Instance: Monthly availability rate: 99.999%
- (f) Sandbox Instance: Monthly availability rate: 99.95%
- (g) I1 Instance: Monthly availability rate: 99.90%
- (h) Object Storage:
  - Monthly availability rate: 99.90%
  - Monthly availability rate of data stored in Object Storage Container: 99.999%.

**“Monthly availability rate”** means that: the total number of minutes in the month minus the number of minutes of unavailability in the month in question, divided by the total number of minutes in the month in question.

**“Unavailability”** means that : the loss of access to and inability to reboot the Object Storage Container of the Customer, for more than three (3) consecutive minutes from the moment an incident ticket has been opened by the Customer.

**“Durability”** means that: the capacity of OVH to provide the Customer access again to the data that was stored in the Object Storage Container prior to an incident of unavailability which has been duly notified (see the following conditions).

The service level targets described in Article 12.1 above are in place, subject to the exclusions listed below at Article 12.4, and provided that the Customer works with OVH to restore the Service in the event of unavailability.



When reporting the incident and creating the ticket, the Customer shall provide OVH with all relevant information useful for the diagnosis and intervention by OVH. The Customer undertakes to remain constantly available in order to collaborate with OVH including by providing further information and carrying out all the necessary tests and checks. If necessary, the Customer agrees to give access to its management interface. If the Customer is not available or does not cooperate with OVH, it cannot benefit from the service level targets defined above in Article 12.1.

The above commitment does not under any circumstances apply to the availability of components that are under the responsibility of the Customer, in particular the software or applications installed and used by the Customer on the Instance. In the event of a change of Instance, the Customer is responsible for reinstalling or reinitialising their software and application, and restoring the data and information that were stored on it.

OVH employs technical tools that enable the Customer to monitor Instances, in particular via PING requests. The service level targets defined in Article 12.1 do not apply where OVH is unable to perform the technical operations necessary to monitor Instances as a result of the Customer's configuration of the Instance.

12.2 If OVH ascertains that the Instance or Object Storage Container is available and fully operational, OVH shall be absolved of its obligations under the service levels defined in Article 12.1 above. However, under these circumstances, OVH, at the request of the Customer, undertakes to assist the Customer in identifying the source of any difficulties found by the Customer.

If OVH ascertains an Unavailability, it will complete the diagnostic and work in collaboration with the Customer to re-establish availability.

12.3 If the service level targets defined above in Article 12.1 are not achieved, the Customer may, apart from the cases of exclusion numbered below, request the following service credits:

- Failure to respect the availability rate:

Where the monthly availability rate in Article 12.1 is not achieved, reimbursement equal to 0.5% of the monthly fee paid by the Customer for the unavailable components per consecutive sequences of one (1) minute (beyond the first three (3) consecutive minutes of lost access or connectivity), up to a maximum of 100% of the monthly amount invoiced with respect to the said unavailable components.

- Failure to comply with the durability rate of data stored in Object Storage:

Where the monthly durability rate in Article 12.1 is not achieved, reimbursement equal to 100% of the monthly fee paid by the Customer for the affected Object Storage Container.



It is expressly agreed that the aforementioned service credits are the Customer's sole remedy for all damages, losses, liabilities, costs and expenses resulting from OVH's failure to comply with its obligations under Article 12.1. As such, the Customer will renounce any further requests, claims and/or action.

Following the receipt of the Customer's claim for service credits, OVH shall subtract Service Credits from the Customer's next monthly invoice the amount to be credited. Any request by the Customer for service credits under Article 12.1 must be sent to OVH within one month of the closure of the incident ticket to which the service credit relates

12.4 The Customer may not claim for service credits under Article 12.3 above where the unavailability results, in whole or in part, from

- (i) events or factors beyond control of OVH, including but not limited to events of force majeure, actions of a third-party, internet connection issues, the malfunction of the internet, the malfunction or misuse of hardware or software under the control of the Customer (in particular applications running on the Instance),
- (ii) a breach of the obligations of the Customer pursuant to this Contract (in particular failure to collaborate with OVH to resolve the incident),
- (iii) the misuse or inappropriate use of the Service by the Customer (in particular the misuse of the Instance or OVH Management Interface),
- (iv) (iv) scheduled maintenance,
- (v) an interruption caused by OVH's intervention under the Conditions set out in Article 6 of this document, or
- (vi) computer hacking or piracy.

In such cases, excluding point (iv), OVH reserves the right to invoice the Customer for the cost of the work done to re-establish the availability of the Services. OVH shall provide a quotation for such work which shall be sent to the Customer for approval.

OVH shall use all reasonable endeavours to establish the cause of the unavailability, and confirm which exclusion set out above applies. OVH shall be permitted to use components in its information system (such as connection data) for this purpose.

### **ARTICLE 13: DURATION OF CONTRACT AND SERVICE**

13.1 The Contract shall commence from the date it is subscribed to by the Customer, and shall remain in force for an indefinite period. It may be terminated in accordance with OVH's general terms and conditions.

13.2 The Customer may choose, based on their requirements, to create and delete all or part of the Service (in particular Instances and Object Storage Containers) via their Management Interface.

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13.3 There is no minimum duration of use. However, any hour or month started shall be invoiced by OVH and paid in full by the Customer, in accordance with the conditions set out in Article 14 below.

13.4 Instances and Object Storage Containers on which the data of the Customer is stored shall remain available from month to month, unless the Customer requests the deletion of the Service via the Management Interface.

## **ARTICLE 14: PRICES, PAYMENT METHODS AND BILLING**

The prices are available on OVH website.

### **14.1 Instances and associated components**

The price of Instances and, where necessary, associated components (such as the operating system), depends on the pricing model chosen by the Customer and the period during which the Instances and associated components are provided to the Customer.

The Customer may choose from two pricing models:

- An hourly payment plan
- A fixed-rate monthly payment plan

The fixed-rate monthly payment plan allows the Customer to use an Instance (and where necessary the associated components) during the full calendar month during which the Instance was created.

If the Customer creates an Instance during the month, the aforementioned fixed-rate monthly payment plan shall be invoiced on a pro-rata basis for the number of hours that remain in the month, starting from the date of creation of the Instance to the end of the month in question (the hour of creation of the Instance is counted as a full hour).

The fixed-rate monthly payment plan (in full or on a pro-rata basis under the conditions detailed above) shall be paid in full by the Customer. This also applies where the Instance is deleted before the end of the calendar month in question. Any component (Instance and associated components) that is invoiced at the fixed-rate monthly payment plan and not deleted shall continue to be invoiced from month to month by OVH to the Customer at the fixed-rate monthly rate that applies in the above conditions.

With regards to the hourly payment plan, any hour started shall be invoiced by OVH and paid in full by the Customer. This also applies where the Instance is created and/or deleted during the same hour.

Any created Instance (including any associated components) is invoiced to the Customer in accordance with the conditions set out in this Article, even if the Instance is not used. An Instance, including any

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associated components, is deemed to be created as soon as the Customer validates it in the Management Interface or the API. Once it is created, it will appear in the Management Interface. The provision of the Instance will come to an end once it is deleted. It shall be stated that any Instance that has been deactivated but not deleted shall continue to be invoiced by OVH. The status of the Instance may be seen in the Customer's Management Interface.

## 14.2 Storage Spaces

The price of using distributed Storage Spaces (Object Storage Containers and SNAPSHOT Storage Space) varies depending on the quantity of Storage Space used, duration of use of the Storage Space and the volume of outgoing traffic.

With regards to the provision of the Storage Space:

Storage Space shall be charged on hourly rate basis, charged per gigabyte.

The gigabyte of Storage Space is always charged as a whole, even if it is not fully used (rounded to the superior gigabyte).

Any hour during which a gigabyte of Storage Space is used, is charged and due in full by the Customer, even if the use of a gigabyte of Storage Space starts and/or is deleted during the hourly time slot.

With regards to the outgoing traffic of the Storage Space:

OVH shall charge for this on a pay-per-use rate, charged per gigabyte of outgoing data. "*Gigabyte of outgoing data*" means gigabyte of data sent from the Storage Space, whatever its destination (towards the internet and/or the network of OVH and/or a third-party private network).

The provision of the "local" Storage Space (directly attached to the Instance) and the outgoing traffic sent from the "local" Storage Space is included in the price of the Instance.

## 14.3 General Information

The Customer may create and delete Instances via the Management Interface.

Where several payment plans exist, the applicable rate is determined by the Customer in the Management Interface at the moment of creation of the component concerned (for example the creation of an Instance).

Where the fixed-rate monthly payment plan is applied, the Service shall be invoiced for the remainder of the calendar month a few moments after the creation by the Customer of the component (Instance and associated components).





Where the hourly payment plan or pay-per-use is applied, the Services shall be invoiced on a monthly basis in arrears at the start of the calendar month that follows the month of use, based on the consumption evaluated by OVH. OVH reserves the right to invoice the cost of these Services to the Customer before the end of the said calendar month of use in the event that any outstanding amounts of the Customer reach a significant total amount.

The provisioning time is evaluated by OVH based on the data available on its operating system. The data is considered binding and fully enforceable on the Customer.

The payments shall be made by the Customer three (3) days from the invoice date, by automatic transfer from the Customer's credit/debit card, Paypal® account or Customer's OVH Account.

The Customer undertakes to always retain a sufficient amount, in the bank account and their chosen payment method, to pay for their invoices within the agreed deadlines.

If OVH is unable to take payment from the payment method, an email shall be sent to the Customer requesting settlement of the outstanding amount as soon as possible. In the absence of prompt payment, the Service will be suspended by OVH for non-payment.

## **ARTICLE 15: TERM, LIMITATION AND TERMINATION OF SERVICES**

15.1 Each party may terminate the Contract without liability to the other party in an Event of force majeure under the conditions fixed by the General Conditions of Services.

15.2 In other cases, the Customer is free to terminate the Contract by sending a termination request in writing to the address in the footer of this contract.

15.3 In all cases where the Customer breaches the provisions of Article 7 in these special terms and conditions, particularly by carrying out any expressly prohibited activity using the OVH's servers and/or publishing expressly prohibited content on the OVH's servers and/or any activity that could potentially give rise to civil and/or criminal liability and/or affect the rights of third parties, OVH has the right to disconnect and/or interrupt the Customer's services immediately and without prior notification and to terminate the Contract with immediate effect and without notice to the Customer, without prejudice to the right to damages that OVH may claim.

15.4 At the end of this Contract, regardless of the reason for termination, the Customer's Instances, Object Storage Containers and any associated components and stored data shall be deleted.

15.5 In the event of any Customer breach and where OVH elects not to terminate for breach, Services will be either restricted, limited or suspended depending on the gravity and the frequency of the breach. The measures will be determined based on the nature of the breach(es) established.



15.6 The Customer accepts in advance that OVH shall implement restriction, limitation or suspension measures of the Service where OVH receives a notification accordingly from a competent administrative, arbitration or judicial authority, pursuant to the appropriate applicable laws.

By placing an order online, the Customer signifies their unconditional acceptance of this CONTRACT.

#### **ARTICLE 16: 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.

#### **ARTICLE 17: 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.



**ARTICLE 1: SERVICE DESCRIPTION**

As part of the Service, OVH provides the Customer with a solution based on the Kubernetes open-source system hosted by the Cloud Native Computing Foundation®, allowing the Customer's containerised applications and underlying resources (including computing instances and additional disks) to be orchestrated via an API within the OVH Public Cloud.

As such, the Customer benefits from a Kubernetes cluster (hereinafter "Cluster") associated with a Public Cloud project. Once this Cluster is associated with a project, the Customer can configure the said Cluster and add/remove resources such as nodes (Instances), persistent volumes (additional disks) or load balancers via the API developed and provided by OVH, and orchestrate its resources through the standard Kubernetes API.

Resources orchestrated as part of the OVH Managed Kubernetes Service (such as Public Cloud Instances, etc.) remain subject to the Terms and Conditions of Service, and in particular to the Special Conditions applicable to them.

**ARTICLE 2: TERMS AND CONDITIONS OF USE**

**2.1. Requirements**

To be able to use the Service, it must be associated with a Customer's OVH Public Cloud Project.

**2.2. Cluster management and updates**

The main infrastructure in charge of management of the Cluster (hereinafter "Master Infrastructure") is dedicated to the Customer, hosted, managed and maintained in operational condition by OVH. As such, the configuration of the Cluster performed by the Customer is backed up by OVH on its own infrastructure, located in the same availability zone as the Cluster, as part of the Service. However, this does not constitute a permanent backup of the Customer's configuration. It is the sole responsibility of the Customer to carry out any operation necessary to preserve their configuration, taking into account the level of criticality of the Service to the Customer's activity and their risk analysis, in particular in the event of a Service shutdown or maintenance, version upgrade or update operations.

As part of the Service, OVH is responsible for installing and updating the components of the Master Infrastructure as well as software components, such as operating systems, present on the Cluster's nodes or "worker machines". The Customer is in charge of managing the resources orchestrated within their Cluster, with the exception of the Master Infrastructure.

OVH strongly recommends that the Customer does not interact directly, in particular through their Management Interface or via the OpenStack API, with the resources managed as part of the Managed Kubernetes Service.

OVH reserves the right to upgrade its operating systems and pre-installed applications, in particular by carrying out any updates and/or version upgrades it deems necessary. In the event that it is necessary to update an



operating system or application being used by the Customer, this update is carried out in accordance with the update strategy chosen by the Customer in the Service configuration. OVH shall not be held liable in this respect if the Customer has refused updates or blocked OVH from accessing the nodes.

In order for the Managed Kubernetes Service to orchestrate the resources constituting the Customer's Cluster according to the rules defined by the Customer via the API, the Customer expressly accepts that the said Service may automatically add, delete and/or modify resources, and acknowledges that they are liable for all costs related to the use of these resources.

### **2.3. Location**

The location of the Cluster is selected by the Customer at the time of its creation from among the available Datacentres.

### **ARTICLE 3: SERVICE LEVEL OBJECTIVES**

In order to provide a quality Service, OVH strives to maintain high availability of the Master Infrastructure in order to achieve a monthly availability rate of the Kubernetes API server greater than or equal to 99.5%.

However, since the Managed Kubernetes Service is provided by OVH to the Customer free of charge, this monthly availability rate is not guaranteed and no compensation can be granted to the Customer in the event of non-compliance with this.

The resources orchestrated by the Managed Kubernetes Service (and in particular the Instances constituting the nodes hosting the Customer's containers) are subject to the service level commitments defined in the Special Terms and Conditions of Service applicable to them.



## **ARTICLE 1: SERVICE DESCRIPTION**

The Managed Private Registry Service enables the Customer to manage containerised software image data banks (Images), and store the aforementioned software images in an organised and secure manner.

By default, the Customer has a Storage Space delivered as part of the Service. The Customer is also provided with a Management Interface, as well as API applications, tools and software programs (the “Components”), all of which enable Customer Data (Docker Registry API, Harbor Core, Notary, etc.) to be processed.

A range of models are offered for the Services (S, M or L), with varying features that are described on the OVH Website.

The Data stored by the Customer as part of the Service is replicated by default in our Storage Spaces located in the same region as the one selected by the Customer when they create their Managed Private Registry within their OVH “Public Cloud Project”.

## **ARTICLE 2: TERMS AND CONDITIONS OF USE**

### **2.1 Requirements**

To be able to use the Service, it must be associated with a Customer's OVH Public Cloud Project.

### **2.2 General information**

The Service is subject to the Conditions of Service in effect, more specifically these Specific Conditions and the OVH General Terms and Conditions of Service. The Service must be used in accordance with the conditions described.

***The Managed Private Registry Service is aimed at business Customers.*** As a result, the Service must be used by the Customer solely for the purpose of their organisation and its requirements. Using the Service within the context of public registries, which can be publicly read via the internet, is prohibited. OVH reserves the right to suspend or cancel the Service on these grounds. If the Customer uses an excessive amount of outgoing traffic, OVH reserves the right to suspend the Service.

As part of the Service, OVH ensures that the hardware and network Infrastructures on which the aforementioned Service is based are maintained in an operational condition. OVH also manages the updates of Components made available to the Customer. For the rest, the Customer is responsible for managing the Service, particularly for the rights linked to using it, as well as the implementation of any required measures to ensure the longevity of their data and other Content.



The Management Interface is designed for the Customer to use the Service, and namely manage their Data, use the available tools and software programs, track their resource usage, and view historical resource usage.

For each category of models, a limited number of parallel outgoing connections is defined depending on the model, as detailed on the OVH Website.

### **2.3 Components**

As part of the Service, OVH provides the Customer with a range of different Components that may be open-source or proprietary. All of the Components provided to the Customer by OVH as part of the Services remain the exclusive property of OVH, or third parties who have granted them the right to use them. OVH grants the Customer the right to use the aforementioned Components provided to them for the requirements of their business. Some components can only be accessed via certain Managed Private Registry models, as described on the OVH Website.

The Customer has a Component that can be used to detect security vulnerabilities (via the use of a security vulnerability list). OVH does not provide any guarantees on the usage of the Component. OVH cannot be held responsible in the event of this Component failing to detect a security vulnerability. The role of OVH is limited to alerting the Customer in the event of security vulnerabilities being detected, as well as listing the corrective actions that the Customer is responsible for carrying out. The Component is pre-configured with a selection of lists, subject to the licence, as specified within the OVH documentation.

The Components provided by OVH as part of the Services must be used in compliance with the applicable Conditions of Service, including third-party product conditions, if applicable.

### **2.4 Data Management and Conservation**

The Customer is solely responsible for managing and supervising their Data. Under no circumstances can OVH be held responsible in the event of Customer Data loss or alteration.

OVH reserves the right to collect metadata linked to the use of the Service, such as Data related to CPU usage, RAM, errors in the logs, etc.

### **2.5 Maintenance, update and upgrade operations**

OVH is responsible for carrying out maintenance operations on the hardware on which the Service is based. OVH is also responsible for updating and upgrading the operating systems and software programs offered as part of the Service, as well as configuring the aforementioned service.

### **2.6 Service closure**

At the end of the Service, whatever the cause (expiry, cancellation, non-renewal, etc.), as well as at the end of retention duration applicable to Customer Data, all of the Data associated with the Service is automatically and permanently deleted. It is the Customer's responsibility to back up or transfer the aforementioned Data onto another system before Service closure, or before the retention period for their Data elapses.



**ARTICLE 3: DURATION OF SERVICES AND FINANCIAL CONDITIONS**

The Service is billed on a Pay-As-You-Go basis, under the conditions listed.

Any hour (i.e. clock hour) within which the Service is used is billed and due in full.

Outgoing traffic used by the Customer is not billed as part of the Service.

**ARTICLE 4: SERVICE LEVELS**

**4.1 Service level agreements**

OVH is committed to the following Service levels:

Elements	Service Level Agreements (SLA)	Compensation
Accessibility to essential Components (Docker Registry API, Harbor Core & Notary)	Monthly availability rate: Plan S: 99.90% Plan M: 99.95% Plan L: 99.95%	Credit amounting to 5% of the monthly cost of the Service per one (1) hour period of unavailability beyond the SLA, with the limit of 100% of the aforementioned monthly cost.
Accessibility to other Harbor Components (Job Service, Clair, Harbor UI and Harbor API)	Monthly availability rate: Plan M: 99.90% Plan L: 99.90%	Credit amounting to 5% of the monthly cost of the Service per one (1) hour period of unavailability beyond the SLA, with the limit of 100% of the aforementioned monthly cost.
Data resilience	Monthly data resilience rate: Plan S: 100% Plan M: 100% Plan L: 100%	Credit amounting to 100% of the monthly total paid by the Customer during the month, for the portion of the Docker registry affected by the malfunction.

**“Monthly availability rate”** should be understood as: the total number of minutes in the month considered as a deduction made from the number of minutes of unavailability over the month concerned. The total is divided by the total number of minutes in the month.

**“Unavailability”** should be understood as a response to a HTTP 200 call in less than thirty (30) seconds (excluding push/pull transfer) for an Image where the time depends on the size of the Image concerned, as measured by OVH probes.





*“Resilience” should be understood as OVH’s ability to make the data stored on the Customer’s Docker registry available to the Customer again after a duly declared period of unavailability (see conditions below). OVH’s guarantee of resilience does not under any circumstances constitute a guarantee against loss of the Customer’s content and Data. The Customer remains responsible for backing up their Data and managing their business continuity.*

Once the Customer has submitted a request to the support team, the credits are added directly to their OVH account. The Customer’s compensation request must be submitted by the Customer via their Management Interface, and the request must be sent, at the very latest, during the calendar month following the month that the unavailability has been detected by OVH. If the Customer does not submit a request within this period, they will no longer receive the compensation due. The credits must be used by the Customer on the calendar month following the month that they are credited to the Customer’s OVH account. If they are not used within this period, the credit is lost and can no longer be used. The credits cannot under any circumstances be refunded to the Customer as cash.

It is expressly agreed that for the Customer, the aforementioned credits represent a flat-rate compensation for any damage resulting from OVH’s non-compliance with the service commitments. As a result, the Customer renounces the right to submit any other request, demand and/or action.

If an incident results in OVH failing to comply with several commitments in the Service Level Agreement, the credits cannot be accumulated. When credit compensation is applied, it is provided as generously as possible to the Customer.

The Customer cannot under any circumstances use this article and request the aforementioned credit compensation in the event of unavailability or resilience failure resulting in full or in part (i) from events or factors out of the control of OVH, such as but not limited to cases of force majeure, third-parties, internet connection issues, internet network downtime, downtime or incorrect usage of hardware or software under the Customer’s management (particularly the applications run on the Instance), (ii) failure on the Customer’s part to fulfil the obligations listed as part of this Contract, (iii) incorrect or inappropriate usage of the service by the Customer (particularly incorrect usage of the instances or Management Interface, etc.), (iv) scheduled maintenance, (v) an interruption that falls under the conditions listed in the General Terms and Conditions of Service, or (vi) hacking. In the scenarios listed above, and subject to point (iv), OVH reserves the right to bill the Customer for the intervention where appropriate, to establish availability. This will be listed as a cost estimate sent to the Customer for validation.

The causes of unavailability, particularly the detection of cases of exclusion defined above, are established by OVH by any means. This is namely done on the basis of elements from the OVH’s system information (e.g. connection data), which can be sent to the Customer on request.

#### **4.2 Service level objectives**

OVH makes every effort to manage Incidents within the following time periods:



Elements	Objectives
Average response time of APIs	4 seconds
Average status code of registries one hour after a Service is deployed	1% server error
Average status code of Harbor one hour after a Service is deployed	1% server error

*(\*) OVH cannot provide any guarantee that OVH can meet the Service levels defined above.*

