

## **SPECIFIC TERMS AND CONDITIONS ON THE RENTAL OF A DEDICATED SERVER**

*Latest version on 8/15/2012*

### **SECTION 1: PURPOSE**

The purpose of these Specific Terms and Conditions, which are complementary to OVH's General Terms and Conditions of Service, is to define the technical and financial terms and conditions pursuant to which OVH agrees to rent and host on its platform the Customer's dedicated internet server.

The Customer hereby recognizes expressly that OVH shall not participate in any way in the design, development, realization and set-up of the Customer's website and/or services and of its management and administrative computer tools within the meaning of this agreement.

In the event of a conflict between the General Terms and Conditions and these Specific Terms and Conditions, the latter shall prevail.

### **SECTION 2: MEANS**

The OVH platform server, where the Customer's dedicated server will be installed shall be accessible to the public on the internet network via stations connected to the network.

### **SECTION 3: TECHNICAL SUPPORT**

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

### **SECTION 4: DELIVERY OF SERVICE TERMS AND CONDITIONS**

OVH shall inform the Customer by e-mail when the dedicated server becomes available. Invoicing shall begin on the effective date of the online launching of the dedicated server.

The server shall become available within a maximum of 7 days of the effective payment date by the Customer of the purchase order.

After such deadline has expired and if OVH fails to make available the server to the Customer, said Customer shall be entitled to request the cancellation of the transaction and the reimbursement of amounts already paid.

The server rented to the Customer shall remain the property of OVH. Any server rented or hosted by OVH has a static IP address. The server shall be hosted on OVH's server platform.

The Customer is the administrator of the server rented from OVH. He/It may install on his/its own the software applications on the server. He/It is fully responsible for the software installation, and OVH may not be held liable for any server malfunction following such installation.

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

OVH agrees to use all due care and due dispatch to provide a quality service in compliance with professional standards and the state of the art. OVH agrees to:

**5.1.** Keep the material in good working condition. In the event of failure of the material rented out to the Customer, OVH agrees to replace any defective parts at its earliest convenience, except in cases where it is not liable for the failure, or of any other intervention which would require an interruption of service beyond the usual replacement wait times. In the latter case, OVH shall immediately notify the Customer.

**5.2.** Ensure access to the server via internet 24 hours a day, every day of the year. OVH reserves the right to interrupt the server for a technical intervention designed to improve its operation.

**5.3.** At the customer's request, intervene quickly in the event of a malfunction not resulting from a misuse of the server by the Customer.

**5.4.** Ensure that its tools are maintained at the highest quality level in compliance with professional rules and standards.

## **SECTION 6: OVH'S LIABILITIES**

OVH reserves the right to interrupt the rented server's internet connection if such server constitutes a danger regarding the maintenance of security on OVH's hosting platform, whether this is as a result of the piracy of such server, the detection of a flaw in the security system, or the need to update the server.

OVH shall, to the extent possible, notify the Customer in advance and within a reasonable deadline, by informing him/it of the nature and the length of the intervention, in order to enable such Customer to make arrangements in that regard. OVH shall restore the connection as soon as the corrective measures have been completed.

OVH shall not be liable for the content of information, sound, text, images, elements of form, or data accessible on the websites hosted on the Customer's server, which are transmitted or placed online by the Customer for any reason whatsoever.

OVH shall not be liable in case of a violation, in whole or in part, of an obligation or of a network operators' flaw in transmission to the internet, especially if it involves its access provider(s).

### **LIMITED LIABILITY**

THE CUSTOMER ACKNOWLEDGES THAT OVH AUTHORIZES OTHER SERVICE USERS TO INSTALL THEIR WEBSITES AND SERVERS IN ITS FACILITIES. OVH SHALL NOT BE LIABLE IN ANY WAY WHATSOEVER FOR DAMAGES, COSTS OR LOSSES INCURRED BY THE CUSTOMER (OR BY THE LATTER'S OWN CUSTOMERS) AND CAUSED BY ANOTHER SERVICE USER'S ACT, MATERIAL OR FAILURE TO ACT. OVH'S LIABILITY IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE) BY STATUTE, OR OTHERWISE, TO THE CUSTOMER (OR THE LATTER'S OWN CUSTOMERS), CONCERNING PERFORMANCE OR NON-PERFORMANCE, AS APPLICABLE, OF ANY OBLIGATION CREATED UNDER THIS AGREEMENT, WITH REGARD TO ANY CLAIM, SHALL BE LIMITED AND SHALL NOT, IN THE AGGREGATE, EXCEED THE TOTAL FEES PAID BY THE CUSTOMER TO OVH UNDER THIS AGREEMENT IN THE THREE- (3-) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM AROSE. IN NO EVENT SHALL OVH BE LIABLE FOR ANY LOST PROFITS, OR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

## **SECTION 7: CUSTOMER'S OBLIGATIONS AND LIABILITIES**

**7.1** With respect to hosting, the Customer shall remain solely and exclusively responsible the server. It is therefore the Customer's responsibility to take all the required measures to insure the server. The Customer may either elect to become his/its own insurer or to purchase appropriate insurance. In such cases, the Customer shall not be entitled to request any reimbursement, replacement or compensation whatsoever from OVH for damages or failures to the server.

**7.2** The Customer acts as an independent entity and therefore assumes all the risks related to his/its activities. The Customer is solely liable with regard to the use of the services and websites hosted on his/its dedicated server, the content of the information transmitted, posted or collected, including operations and updates, as well as with regard to all files, including address files. The Customer agrees, more specifically, to comply with the rights of third parties, human rights, and intellectual property rights, such as copyrights, patent rights or trademarks. OVH shall therefore not be liable, in any way whatsoever, for the content of information transmitted, posted or collected, used, and updated, as well as for any files, including address files.

OVH alerts the Customer as to the legal consequences which could result from unlawful activities on the server, and disclaims any joint and several liability regarding the use of the data made available by the Customer to internet users.

Similarly, if the Customer is clearly using spamming techniques on the internet network, such conduct shall result in the interruption of service, without prior notice, and the termination of this agreement.

The Customer shall also refrain from any breach or attempted breach activities (such as port scanning, sniffing, spoofing, etc.) while using the server.

In such cases, the Customer shall not be entitled to the reimbursement by OVH of amounts already paid in.

**7.3** The Customer alone shall bear the consequences of a server malfunction resulting from the use by his/its staff or by any other person to whom the Customer has provided his/its password(s). The Customer shall also bear alone the consequences resulting from the loss of such password(s).

**7.4** In order to maintain the security level of the Customer's server, and of all its servers on its hosting platform, OVH agrees to notify the Customer of the availability of updates for its applications where security flaws have been reported. If these application updates are not carried out at OVH's request, OVH reserves the right to interrupt the server's connection to the internet network.

Similarly, in the event OVH detects that a Customer's computer is subject to piracy, an e-mail shall be sent to such Customer, advising him/it that he/it should use a reinstallation procedure in order to ensure the integrity of his/its server and of the entire hosting platform. The Customer may order such procedure from OVH after backing up all his/its data. While awaiting the computer's reinstallation, OVH reserves the right to interrupt the server's connection to the internet network. OVH is not required to transfer the data from the pirated system to the new system; such operation is the Customer's responsibility. OVH hereby agrees to limit its intervention to the installation of the new system.

**7.5** The use of SPAM is strictly forbidden.

**7.6** Because of security concerns, all IRC services (including bots, proxy, bouncer, etc.) shall be first registered. OVH reserves the right to reject certain registrations.

**7.7** The Customer shall take all required measures to ensure the backup of his/its data.

**7.8** If the Customer's infrastructure generates a total bandwidth of more than 101Mbps, OVH shall use its best efforts to maintain the Customer's service.

**7.9** The Customer shall pay for any license or right to use he/it has agreed to with OVH, or with a third party, failing which, OVH reserves the right to suspend the service without prior notice.

**7.10** OVH reserves the right to check the Customer's compliance with the provisions regarding use of the service.

OVH reserves the right to suspend the service without prior notice, as provided under section 7 of OVH's general service terms and conditions, in the event the Customer fails to comply with OVH's specific and general terms and conditions of service and, generally, with all laws and regulations in force, as well as with rights of third parties.

**7.11** The Customer is reminded that OVH's intervention in connection with the contract on a dedicated server is limited to installing the server. 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 dedicated server rental contract. The Customer shall therefore be considered a Web host.

**7.12** The Customer acknowledges and agrees to be subject to the laws of the country where its equipment is located. Thus, it recognizes the right to OVH to suspend its service if it is used for a prohibited activity in the location where the equipment supplied by OVH is physically situated. In the same way, the Customer agrees to make sure that the geolocated IP addresses will not be used in violation of the laws of the country where the IP addresses are declared. If such use should occur, OVH may be forced to suspend all geolocated addresses associated to the Customer.

## **SECTION 8: RATES AND INVOICING**

The rates indicated on OVH's website do not include applicable taxes.

The rates vary, based on the range of services and the rent term selected by the Customer when ordering. The rate indicated on the purchase order edited by OVH shall represent the total amount to be paid by the Customer.

Because the offer may not be modified once the contract is in effect, the Customer shall be required to determine which offer best suits his/its needs