



SPECIAL CONDITIONS FOR VIRTUAL PRIVATE SERVERS

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DEFINITIONS:

Based power: The amount of resources (CPU and RAM) of the Virtual Private Server. This is the minimum number of resources allocated for a given billing period except in the case of a Based power change.

Boost: Resources unit allocated in addition to the based power and allowing to meet a specific need for power. Each allocated boost is charged per hour depending on the tariffs available at www.ovh.nl

Boosted power: All resources allocated at a given moment to a Virtual Private Server and corresponding to the Based power and Boost units eventually allocated.

Changing based power: Operation charged by which the Customer switches his based power to a new based power.

Host server: Physical server configured and administered by OVH, located in an OVH datacentre, and designed to allow a Customer's Virtual Private Server.

Infrastructure: A set of elements set up by OVH in the frame of Virtual Private Server, including the host server, the network, the bandwidth and the virtualisation.

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

Prepaid points: Points purchased by the Customer at OVH and with which the Customer can order and pay for its services purchased from OVH.

Switching: Operation on a Virtual Private Server to move from a configuration A to a configuration B. This operation causes an immediate reboot of the Virtual Private Server.

Virtual Private Server: Also called VPS, virtual sub-part of the host server whose memory and processor are shared with other virtual private servers, independent from each other.

ARTICLE 1: PURPOSE

These special conditions which supplement the OVH general terms and conditions of service, are intended to define the technical and financial conditions in which OVH is committed to leasing and hosting on its platform, the Customer's Virtual Private Server.

These special conditions shall prevail over the general conditions if any conflicts arise between these two documents.

ARTICLE 2: MEANS

As part of providing the Service, OVH provides the Customer with a Virtual Private Server equipped with dedicated resources (hard disk partitions) and resources (RAM and processor) corresponding to the host server and shared by different virtual private servers installed on it. Because of the high-tech nature of the Service, OVH is not subject to this as an obligation of means.

The OVH server platform where the Virtual Private Server is installed is available for the Customer and the general public through the Internet. Throughout the duration of the lease of the Virtual Private Server, OVH gives the Customer access to communication methods which allow access to the Service.

SECTION 3: 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.nl> 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.nl/> or to communicate with users through the mailing list dedicated to the Service: vps@ml.ovh.net

ARTICLE 4: CONDITIONS FOR THE EXECUTION OF SERVICES

OVH provides the Customer with different Virtual Private Servers configurations. Descriptions are available online at <http://www.ovh.nl>.

OVH invites the Customer to check each configuration before confirming the order. It is up to the Customer to define the configuration and the operating system that will best suit its needs and expectations.

Any order for a Virtual Private Server is subject to payment of set up fees.

As soon as OVH validates the order, OVH will e-mail the Customer its access codes to connect to the Virtual Private Server. OVH also states that any Virtual Private Server leased from OVH has a fixed IP address.

The host server as well as the Virtual Private Server leased by the Customer remain the property of OVH.

Under this contract, the Customer is the sole administrator of its Virtual Private Server. OVH does not intervene in the administration of the Customer's Virtual Private Server.

At the same time, OVH is responsible for the administration of the hardware and network infrastructure as well as the administration of the host servers on which it is comprised and on which the Customer's Virtual Private Servers are installed.

The Customer confirms they have all the necessary technical knowledge to ensure correct administration of a computer server such as a Virtual Private Server offered by OVH, but also the knowledge on how to back up the data stored on the Service. The Customer also agrees to read the documentation made available by OVH and that related to the VPS service.

The Customer can install software itself on the Virtual Private Server. These installations are under the Customer's full responsibility, and OVH cannot be held responsible for any subsequent malfunction on the Virtual Private Server relating to these.

As part of the Service, the Customer has the right to change the configuration of its Virtual Private Server. For this, the Customer must order from its management interface, the future base onto which it wishes to switch the Virtual Private Server. This modification may occur immediately or at

the next billing cycle. This may correspond to a downgrade or upgrade of the original configuration.

Billing terms applicable to the Change of based power are defined in Article 9 hereof.

The Service is based on virtualisation technologies, therefore, the Customer acknowledges that OVH cannot guarantee requests for Change of Based or Boosted power.

OVH reserves the right to limit or restrict some features of the Virtual Private Server to ensure the security of its infrastructure. OVH will inform the Customer to the possible extent of establishing such blockages.

The Customer undertakes to use the Service in good intelligence.

ARTICLE 5: OVH'S DUTIES

OVH is committed to providing the due care and diligence required to deliver a quality service in accordance with industry and state of the art practices.

OVH will:

5.1. Ensure the administration of the OVH Infrastructure and host servers.

5.2. Maintain the host server in an operational state. In case of failure thereof, OVH will replace the faulty part as soon as possible, unless that failure is not of its making, or any other intervention that would require an interruption of service exceeding the usual time of replacement. In the latter case, OVH will immediately notify the Customer.

5.3. Ensure access to the Virtual Private Server of the Customer via the Internet 24/7 every day of the year. OVH reserves the right to terminate the Service to do a technical intervention in order to improve its operation.

5.4. Respond promptly to incidents not resulting from improper use of the Virtual Private Server by the Customer on the Customer's request for intervention.

5.5. Maintain the highest quality standard of tools in accordance with the rules and usage of its profession.

ARTICLE 6: OVH'S LIABILITY

OVH's liability cannot be sought through any:

- Fault, negligence, omission or failure of the Customer and/or failure to comply with advice given;
- Failure, neglect or omission of a third party on which OVH has no monitoring control;
- Force majeure, event or incident beyond OVH's will;
- Stoppage in Service for any reason referred to in Article 7;
- Disclosure or illegal misuse of the password given confidentially to the Customer;
- Deterioration of the application;
- Improper use of terminals by the Customer or the Customer's customers;
- Partial or total destruction of information transmitted or stored following errors attributable directly or indirectly to the Customer;
- Intervention on the Service by a third party that was not authorised by the Customer;

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

OVH will inform the Customer beforehand, within as reasonable time as possible, specifying the nature and duration of the intervention, to enable the Customer to make arrangements. OVH is committed to restoring the connection, provided the Customer makes the appropriate interventions and required corrections. In instances of repeated failure or for particular serious cases, OVH reserves the right not to reopen the Virtual Private Server of the Customer.

OVH cannot be held responsible for information, sound, text, images, form elements and / or any available data content on the websites hosted on the Customer's Virtual Private Server, transmitted or posted online by the Customer for whatever reason.

OVH cannot be held responsible for all or part non-compliance of an obligation and/or failure of transport network operators to the Internet world and in particular the Customer's service providers.

OVH does not make any specific backup of data stored on the Virtual Private Server of the Customer.

It is therefore up to the Customer to take all necessary measures to back up its data in case of loss or damage of the data entrusted to it, whatever the cause, including those not specifically mentioned herein.

OVH provides no guarantee for the consequences of the use of the Service by the Customer,

particularly regarding the security and preservation of the data therein.

ARTICLE 7: OBLIGATIONS AND LIABILITY OF THE CUSTOMER

7.1 The Customer agrees to have the power, authority and capacity necessary for the conclusion and implementation of the obligations set forth herein.

7.2 The Customer undertakes to provide valid contact information for its identification: Surname, Firstname, organisation if applicable, mailing address, telephone number, email address. OVH reserves the right to request documents, which the Customer must send within 72 hours after the request by OVH. Absence of requested evidence, gives OVH the right to suspend the Customer's services. The request by OVH may concern different sites hosted by the Customer.

7.3 The Customer is acting as an independent entity and therefore assumes all risks and perils of its activity. The Customer is solely responsible for the services and websites hosted on its Virtual Private Server, the content of information transmitted, distributed or collected, its operations and updates, and all files, including address files. The Customer, defined as host that ensures, even for free, to make available to the public by online communication services, the storage of signals, text, images, sounds or messages of any nature supplied by the recipients of these services.

In this sense only, OVH ensures access for the Customer to its Virtual Private Server to allow the Customer to store its data and that of its customers. OVH reminds the Customer to make all available technical arrangements for the detention and preservation of connection logs or any data which would enable the identification of anyone who has contributed to the creation of content of services wherein the Customer is the service provider allowing the data identification of any person involved with the creation of online content for a retention period of 12 months.

7.4 The Customer shall undertake to respect the rights of third parties, personality rights, rights of intellectual property such as copyrights, patent rights or trademarks. Accordingly, OVH will not be held responsible for the content of information transmitted, distributed or collected or its operation and updates as well as any files, including address files and this in any capacity whatsoever.

The Customer shall not make available to the public, through sites hosted on its Virtual Private Server, files or hypertext links that are in violation of copyright and / or intellectual property law.

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

The Customer undertakes to pay for any license that is required when using third party software

as part of the Service.

OVH can only warn the customer about the legal consequences arising from illicit activities on the Virtual Private Server, and releases itself from any joint liability of the use of data which is made available to users by the Customer.

It is the same whether the Customer is proven to be using the technique of spamming on the Internet, which behaviour results in discontinuance and termination of the Service without notice. The customer also may not intrude or attempt to intrude from a Virtual Private Server (including but not limited to: port scanning, sniffing, spoofing ...).

Under these assumptions, OVH reserves the right to immediately and rightfully terminate the contract, without prejudice to any damages which OVH could claim.

7.5 The Customer alone bears the consequences of any malfunction to the Virtual Private Server due to any use by its staff or any person whom the Customer has provided its password(s). Similarly, the Customer alone bears the consequences of the loss of the above passwords. To maintain the security of the Customer's Virtual Private Server and all servers on its infrastructure, OVH is committed to informing the Customer by electronic mail via the mailing list vps@ml.ovh.net, of the availability of updated applications maintained by OVH, for which a security flaw has been identified. If the update of these applications is not done following the request made by OVH, OVH reserves the right to terminate the connection of the Virtual Private Server to the Internet. Similarly, if OVH has detected that the Customer's Virtual Private Server has a security problem that would require an immediate intervention from the Customer an email will be sent to the Customer, stating that a reinstallation is needed to maintain the integrity of the Virtual Private Server and the Infrastructure. OVH reserves the right to terminate the connection of the Virtual Private Server to the Internet, pending reinstallation by the Customer of its Virtual Private Server. Operations consisting of transferring data from the hacked system to a new system must be made by the Customer themselves. OVH is committed and only limits its intervention to installing the new system.

7.6 The Customer undertakes not to send unsolicited emails, or spam, from its Virtual Private Server. Failure to comply with this requirement may result in suspension of the Virtual Private Server from where the unsolicited emails originated and / or termination of the Contract.

7.7 The customer acknowledges that for security reasons, some features and protocols (such as IRC or peer to peer file sharing) may be subject to Service limitations. Proxy services are banned from the Service.

7.8 Virtualisation technologies used by OVH for managing Customer's Virtual Private Server do not

in any way amount to an obligation that results in expenses against OVH regarding the conservation of Customer's data. All measures related to the backup are exclusively the responsibility of the Customer.

7.9 It is the Customer's responsibility to pay for any license or usage rights contracted with OVH. Otherwise, OVH reserves the right to suspend the Service without notice.

7.10 OVH reserves the right to inspect the accordance of usage by the Customer of the Service with these provisions.

OVH reserves the right to suspend the Service without notice, in accordance with Article 7 of OVH's General Terms and Conditions, in the case of non-compliance by the Customer to OVH's Special and General Terms and Conditions and generally to all laws and regulations in force, as well as the rights of third parties.

ARTICLE 8: DURATION OF CONTRACT AND RENEWAL OF SERVICE

By default, the service duration is shown on the order and listed on the invoice sent by OVH for the Customer's Service.

The customer also has the option of subscribing to the Service through a subscription in accordance with the terms and conditions of service. In this case, the Service is made for an initial period of one month automatically renewable for the same period.

Through its Management Interface, The Customer may switch their service at any time to subscription billing. In this case, the Service is renewed by tacit agreement for a renewable period of one month after the date of expiry of the Service.

ARTICLE 9: PRICES, PAYMENT METHODS AND BILLING

The rates for Virtual Private Server are available at <http://www.ovh.nl>

These rates have all taxes included. Only the rate indicated on the order published by OVH is the total amount payable by the Customer. Any amount due is payable in advance.

The payment methods accepted by OVH in the first order of the Service are: Credit/Debit cards, Ideal and transfers issued by a banking institution established in the Netherlands and Belgium and payment by Prepaid Points.

As part of a subscription contract, the only authorized payment methods are debit and credit card. The Customer undertakes to supply OVH with a debit authorisation or a valid credit card number.

The system of electronic payment by credit/debit card which is characterized by generating a unique card number for each bank transaction conducted on the Internet can only be used for automatic renewal payments.

The customer may change the Based Power of a current billing. In this case, upgrading the configuration is charged to the Customer at the applicable base rate of the new configuration and available at <http://www.ovh.nl>

Changing the Based Power can occur anytime from the transaction date until the expiry date of the Service. The Customer is charged for the difference between the monthly applicable rate of the Based Power and the current rate for the new based power on a pro rata basis.

Changing the Based Power can be paid by Prepaid points.

The customer has the option of ordering Prepaid Points at the same time directly from the Management Interface or at <http://www.ovh.nl>

Any Change of Based Power to a lower configuration is not charged and is effective for the duration from the downgrade to the expiry date of the Service. In this case, OVH states that the request for a Based Power downgrade can never be canceled or be subject to any refund.

As an illustration, a Virtual Private Server with a Based Power 5 moves down to a Based Power 2 and then increases to a Based Power 4 during the same billing period is not subject to billing for the first switch but the second (base 2 to base 4) is charged.

If the Customer does not have enough credit in its prepaid account they cannot Change the Based Power.

When you subscribe, the Customer is charged by direct debit or credit card for the price corresponding to his Based Power as it is 10 (ten) days before the expiry date of his service.

For all Boost consumption, the Customer is billed by the hour by Prepaid Points at the applicable price for each Boost unit used, and cannot be refunded.

The Virtual Private Server is automatically switched to the Based Power when the Customer no longer has any Prepaid Points or after the maximum consumption threshold specified by the customer is reached.

Any Change of Based Power resets the Boosts assigned to the Virtual Private Server.

ARTICLE 10: RIGHT TO CANCEL

Notwithstanding the provisions of Article 12 of the General Terms and Conditions of Service, the customer (which is retained as a consumer under the provisions of the Consumer Code) expressly agrees to the immediate delivery from the validation of its order. From the validation of payment, the Customer will have access to its Virtual Private Server. The Customer will not have the right to exercise its right to cancel for any order or renewal of the Service.

It is the same case when changing the Based Power.

ARTICLE 11: TERMINATION, LIMITATION AND SUSPENSION OF SERVICE

- 11.1 Either party may automatically terminate and without compensation the contract in case of force majeure as provided in Article 6 hereof.
- 11.2 In other cases, the Customer may cancel the contract by simply mailing the request to the following address: **OVH BV, Bomkade 23, 3311 JD Dordrecht.**
- 11.3 Non-compliance by the Customer of the provisions of Article 6 of these special conditions for renting a Virtual Private Server, including any activity specifically prohibited from OVH servers and / or any content specifically prohibited on OVH servers and / or expected to give rise to civil and / or criminal liability and / or likely to prejudice the rights of third parties, give OVH the right to disconnect the terminal and / or suspend without delay and without prior notice the Customer's Services and immediately and rightfully terminate the contract, without prejudice to any damages which could be claimed by OVH.
- 11.4 Under this contract, for whatever reason, the Virtual Private Server of the Customer will be deleted and all susceptible data may be stored.
- 11.5 In any event, the restriction, limitation or suspension measures shall be exercised according to the seriousness and the recurrence of the breach. They are determined according to the nature of the breaches found.

11.6. The Customer agrees in advance that OVH may restrict, limit or suspend the Service offered if OVH receives a notice by a competent authority, administration, arbitration or judicial settlement of the notified effect in accordance with the applicable and appropriate laws.