

# GENERAL CONDITIONS OF SERVICE FOR KIMSUFI SERVERS

Latest version dated 07/11/2013

Preamble:

The terms starting with a capital letter are defined in the OVH Glossary which can be accessed on the OVH Website.

This Agreement is made between:

- The company OVH SAS, a French-law company, electing domicile 2 rue Kellermann 59100 Roubaix residence, listed on the Trade and Commerce Register of Lille at number B424 761 419, represented by Mr. KLABA, hereinafter OVH,
- and any natural or legal person, individual or professional, of a private or public entity wishing to commit to one or more of the Services provided by the company OVH, hereinafter the Customer.

This Agreement has been construed in the French version but for the **CUSTOMER** convenience, it has been translated into and shall be executed in the English language. In case of any conflict between the French version and its translated version into English, the French language version shall govern.

## ARTICLE 1: PURPOSE

The Customer confirms having verified the compatibility of the Service against their requirements, and having received from OVH all the information and advice necessary to making an informed decision to sign this Agreement.

The purpose of this Agreement is to define the legal, technical and financial conditions under which the Customer is obligated to OVH.

These General Conditions of Service, supplemented if necessary by Special Conditions and/or Appendices proposed by OVH shall prevail over all other conditions, and especially those of the Customer, for any order placed by the Customer for the Services of OVH.

The Services offered by OVH free of charge are also governed by these General Conditions of Service.

## ARTICLE 2: OBLIGATIONS OF OVH

OVH is committed to taking all the care and diligence necessary to providing a quality Service, conforming to the customary professional practices and the state of the art. OVH is only subject to an obligation of means.

## ARTICLE 3: LIABILITY OF OVH

OVH will not be held liable:

If the execution of this Agreement, or the obligations of OVH hereunder, is prevented, limited or disrupted as a result of fire, explosion, the failure of transmission networks, the collapse of installations, epidemics, earthquakes, floods, power failure, war, embargoes, laws, injunctions, government orders, strikes, boycotts, the withdrawal of the telecommunication operator's licence, or any other circumstance beyond the reasonable control of OVH ("Event of Force Majeure"), then subject to providing the Customer with prompt notification, OVH will be exempted from execution of its obligations within the limits of any such impediment, limitation or disruption. Likewise, the Customer will also be exempted from the execution of their obligations insofar as the obligations are affected by the impediment, limitation or disruption, provided that the affected party

uses its best endeavours to prevent or mitigate the cause, and that both parties act promptly as soon as the cause has ceased or been terminated. The party affected by an Event of Force Majeure shall keep the other party duly informed by email of the expected duration of this Event of Force Majeure.

Where the effects of an Event of Force Majeure continue for more than 30 days after the date of the other party being informed of the said Event, this Agreement may be lawfully terminated by either party, without either being entitled to any indemnity.

It may also be terminated due to misconduct on the part of the Customer, particularly in the following cases:

- degradation of the application,
- misuse of the terminals by the Customer or his Customers, fault, negligence, omission or failure on his part, failure to respect the advice given,
- disclosure or unlawful use of the password issued confidentially to the Customer,
- fault, negligence or omission by a third party over whom OVH has no monitoring or supervisory powers,
- a request for temporary or definitive interruption of the Service, made by a competent administrative or legal authority, or notification by a third party bearer of rights under the provisions of Article 6 of the LCEN,
- partial or total destruction of the data transmitted or stored, resulting from errors directly or indirectly attributable to the Customer.

The compensation due from OVH in the event of any Service failure resulting from a fault attributable to OVH will correspond to the direct, personal and certain loss linked to the failure in question, with the express exclusion of any consequential damages, including in particular commercial loss, loss of orders, damage to the brand image, any other commercial issue, loss of profits or customers (for example, inappropriate disclosure of confidential information due to defects or piracy of the system, third party actions against the Customer etc).

In any event, the amount of the damages which may be charged to OVH, if it were liable, will be limited to the amount of the sums actually paid by the Customer to OVH for the period considered or invoiced to the Customer by OVH, or the amount of the sums corresponding to the price of the Service, for the part of the Service for which the responsibility of OVH was incurred. The lesser of the aforementioned sums will be considered.

OVH does not carry out any specific backups of the data stored on its servers. Therefore, the Customer is responsible for taking all the necessary steps to back up his data in case of loss or degradation of the data entrusted, irrespective of the cause thereof, including data not expressly mentioned herein.

The Customer recognises that no stipulation of this Agreement will release them from the obligation to pay all amounts due to OVH for the Services rendered.

#### **ARTICLE 4: OBLIGATIONS AND LIABILITY OF THE CUSTOMER**

The Customer undertakes to obtain the powers, authorities and capabilities necessary for the conclusion and execution of the obligations stipulated herein.

OVH recommends that the Customer reads the Code of Ethics available on the OVH Website and complies with these rules for all communications on the internet.

The Customer undertakes to provide OVH with his accurate and up-to-date personal information and bank details. OVH reserves the right to request supporting documentation from the Customer to ensure the accuracy of his information.

The Customer is solely and wholly responsible for the passwords needed to use the Service. OVH is released from all liability for any illicit or fraudulent use of the passwords provided to the Customer or generated by the Customer himself. The provision of passwords is regarded as confidential. The Customer will solely be liable for any suspected disclosure of the passwords provided, whether intentional or not, whereas OVH will be exempt of all liability.

The Customer will be solely liable for the consequences of any malfunctioning of the Service resulting from use by the Customer himself, his personnel, or any person to whom the Customer has supplied his password/s. Likewise, the Customer shall be solely liable for the consequences of losing the aforementioned password/s.

The Customer undertakes to respect all laws and regulations in force, especially those relating to information technology, files, freedoms and intellectual property, as well as third party rights. The Customer also undertakes to take out all the necessary insurance policies from a firm of reputable standing, in order to cover any losses for which he may be held liable in connection with this Agreement or its execution.

The Customer hereby fully accepts all legal obligations arising from the administration of his Services, OVH cannot be sought nor investigated in this respect for any reason, especially in the event of a violation of the laws or regulations applicable to the Customer's Services. Non-compliance by the Customer with the aforementioned points and points detailed in the Special Conditions, and especially with any activity likely to generate a civil and/or penal liability will give OVH the right to immediately disconnect and/or stop the Customer's Services without prior notice, and to immediately and lawfully terminate the contract, without prejudice to the right to all damages and interest that OVH may claim.

The Customer undertakes to pay any sums claimed from OVH directly to the third party making the complaint. The Customer also agrees to intervene, at the request of OVH, in any claim made against the latter and will indemnify OVH in respect of any orders made against it in connection with such a claim. Consequently, the Customer undertakes to make it his personal business to deal with any claim and/or proceedings, of any form or nature, brought against OVH and connected to the Customer's obligations under this Agreement.

The Customer undertakes to inform OVH of any change to his situation within 48 hours, and within 24 hours of any potential loss of passwords.

The Customer agrees to formulate any requests clearly in all communications with OVH, according to the rules of usage.

## **ARTICLE 5: EXECUTION, TARIFF AND PAYMENT**

### **5.1 Creation of the customer account**

For any order for the Services of OVH, the Customer must create an account, including his accurate and up-to-date personal information and bank details. This Customer account may be subject to OVH verification procedures in order to ensure that the information provided by the Customer is accurate.

### **5.2 Order confirmation**

OVH shall confirm receipt of the purchase order and payment to the Customer by email without delay, and shall inform them when the Service ordered has been implemented under the conditions described hereinafter.

### **5.3 Execution of the order**

The Service will be made available after OVH has validated the payment and within a maximum period of 7 days from the date that the purchase order is paid by the Customer.

The actual payment is made when the sums corresponding to the Service are definitively credited to the OVH account. After this period and in the absence of provision of the Service by OVH, the Customer reserves the right to request cancellation of the transaction and a refund of the sums already paid.

### **5.4 Tariff**

The tariffs in force for the various Services offered by OVH are available online on the OVH Website and upon request from OVH, at the following address: OVH, SAS: 2 rue Kellermann – BP 80157 59053 ROUBAIX CEDEX 1.

The Services ordered will be described in the purchase order; they are inclusive of all taxes unless otherwise stated and are payable in euros.

OVH will invoice the Customer for the setup fees of any Kimsufi dedicated server order. These fees correspond particularly to setting up and configuring the server, according to the operating system chosen by the Customer.

After each payment, OVH will send an invoice by email and/or will make it available to the Customer via his Management Interface. The Customer expressly accepts that the invoice will be sent to him electronically.

OVH reserves the right to vary the prices at any time, provided that the Customer is notified by email or an online announcement made on the OVH Website one month in advance, if the new prices excluding tax are less favourable to the Customer. In this instance, the Customer will have a period of one month from the date of notification to terminate this Agreement without penalty. If the Agreement is not terminated, the Customer will be deemed to have accepted the new tariffs. Price changes will apply to all contracts, and especially ongoing contracts.

OVH reserves the right to pass on the cost of any new tax or increase of an existing tax rate, without delay.

The Services provided by OVH will be due and payable at the time of ordering. The Customer is solely responsible for payment of all sums due under the contract for OVH Services. It is hereby expressly agreed that unless deferment is requested in good time and specifically granted by OVH in writing, the partial or total non-payment of any sum due under this Agreement by the due date will immediately result in the following, without prior notification:

- all of the other sums due from the Customer under the Agreement will become immediately payable, regardless of the stipulated payment terms;
- all ongoing Services will be suspended, regardless of their nature may be without prejudice to OVH's right to terminate the Agreement;
- it will not be possible to renew or subscribe to new Services;
- application of interest at a rate equal to 1.5 times the legal rate of interest in force in France.

Any disagreement concerning invoicing or the nature of the Services must be forwarded to the OVH Customer Service via the Customer's Management Interface, within one month of the order confirmation being issued.

In the event of costs being incurred by OVH, OVH will inform the Customer and will pass on the relevant supporting evidence and invoice. The Customer must then pay the amount due in euros.

In the event of delayed payment, as a professional, the Customer shall automatically owe OVH a lump sum payment of €40, pursuant to Law 2012-387 of March 22nd 2012.

## **5.5 Payment**

The payment can be made by bank card, cheque, via a Paypal® account, by cash, postal order or international money order.

The Customer bears the responsibility for choosing the method of payment suitable for the Service ordered and the payment term.

## **5.6 Duration**

The Service duration will be indicated at the time of placing the order. The data will be deleted on expiration of the Service.

OVH undertakes to provide a minimum of two email reminders prior to the expiration of the Service.

## **5.7 Service renewal**

OVH will notify the Customer by email (the Customer is responsible for keeping the email address up-to-date), prior to the imminent expiration and subsequent suspension of his Service.

Any non-payment or irregular payment, meaning incorrect or incomplete amounts in particular, or lacking the required references, or made by any method or procedure not accepted by OVH will be purely and simply ignored, and will result in rejection by OVH of the registration or renewal request.

Concerning renewals paid by cheque, it is up to the Customer to request the renewal with sufficient time for the cheque to effectively be received and processed by OVH prior to expiration of the Service. OVH reminds the Customer that the processing of a payment by cheque may take more than 5 working days in some cases.

## **ARTICLE 6: TERMINATION, LIMITATION AND SUSPENSION OF THE SERVICE**

**6.1** The Agreement will be lawfully terminated on expiry. It may be renewed via the OVH Website, on payment of the corresponding price being made by the Customer, under the conditions specified in Article 5.

In accordance with Article L121-84-2 of the French Consumer Code, any request by the Customer to cancel the contract will be effective from the day following the date of reception by OVH, provided that the Customer has provided all the information required to verify his identity.

The Customer may also request that the cancellation take effect ten days after OVH has received his cancellation request.

**6.2** Either party may terminate this Agreement without indemnity where an Event of Force Majeure continues for more than 30 days.

**6.3** For a cancellation prior to expiration of the contract, the Customer is free to terminate the contract simply by writing to OVH at the postal address – 2 rue Kellermann - BP 80157 59053 ROUBAIX CEDEX 1. In this situation, the Customer will not be able to claim any reimbursement from OVH for amounts already paid.

**6.4** In all other cases of failure by either party to meet his obligations to the other under the contract, not rectified within 7 days of either an email being forwarded by the plaintiff giving notification of the failures in question, or any other form of valid notification by the said party, the contract will be automatically terminated by law, without prejudice to any eventual damages claimed from the party in breach.

The date of notification of the letter comprising the infringements in question will be the date of the postmark, at the time of the first presentation of the letter.

**6.5** OVH reserves the right to interrupt the Customer's Service if it poses a threat to the security maintenance or the stability of the OVH infrastructure. As far as possible, OVH will inform the Customer of this in advance.

In case of need, OVH reserves the right to interrupt the Service to carry out a technical intervention, so as to improve its operation or to carry out any maintenance works.

OVH reserves the right to terminate the Customer's Service in the event of non-compliance with the OVH General or Special Conditions applicable to the Customer's Service.

## **ARTICLE 7: CONDITIONS OF OPERATION**

The Customer hereby recognises that fluctuations in bandwidth and contingencies affecting the access provider are elements that could lead to discontinuity of the Services offered by the company OVH, and which lie outside its technical means.

Furthermore, the Service will be automatically restricted, limited or suspended by OVH:

- if the Customer appears to be using the Services provided to him for any activity that does not comply with the Code of Ethics on the OVH Website or in these General Conditions;
- pursuant to the applicable Special Conditions;
- if OVH is notified by any interested third party of an administrative, arbitration or legal decision, in accordance with the applicable laws, ordering such a restriction, limitation or suspension, without it being necessary for OVH to be involved in the case.
- if OVH receives a notification in accordance with the French law "Loi pour Confiance dans l'Economie numérique" (Law for Confidence in the Digital Economy) bringing the existence of manifestly unlawful content to its attention.
- if the contact details listed in the Customer's account appear to be false, inaccurate or not up-to-date.

## **ARTICLE 8: CUSTOMER INFORMATION AND CONFORMITY OF THE SERVICE**

The Customer confirms having verified the compatibility of the hardware and Service against his requirements, and having received from OVH all the information and advice necessary to making an informed decision to subscribe to this undertaking.

OVH reserves the right to monitor compliance with the conditions of use of the Service.

## ARTICLE 9: TOLERANCE

The fact that OVH does not invoke any of these General Conditions and/or tolerates a failure by the other party to meet any of the obligations under these General Conditions, at any given time, may not be interpreted as OVH waiving the right to subsequently insist on any of the said conditions.

## ARTICLE 10: PERSONAL DATA

Within the framework of the Service, the Customer is informed that OVH gathers personal data concerning him, which is subject to automated processing under the provisions of the French data protection law "Loi Informatique et Libertés" of January 6th 1978, for the purposes of customer relationship management and complying with legal obligations and regulations.

In order to enable the OVH subsidiaries to provide the Service support and maintenance, the Customer recognises and accepts that his personal data is passed on by OVH to its subsidiary companies, including those outside of the European Union. However, they will only access this data in order to carry out certain functions which are essential to providing the Service, while strictly respecting the rights of the Customer in terms of personal data protection.

In order to guarantee adequate protection of the Customer's personal data, the company OVH has adopted internal guidelines ("Binding Corporate Rules BCR") which are binding on OVH and all of its subsidiary companies, from which the company OVH shall procure compliance. These rules are based on the European directives 95/46/CE and 2002/58/CE relating to personal data protection, and which aim to render the OVH group practices compliant with the aforementioned directives, in terms of personal data protection. These Binding Corporate Rules can be accessed on the OVH Website.

The Customer's personal data will not be passed on to any third parties other than for the Services where data communication is necessary to the correct implementation of the Service (e.g. relaying the domain name owner to the registration authorities).

OVH may also pass on the Customer's personal data to the judicial and/or administrative authorities as part of a judicial request issued by a competent authority.

In accordance with the French data protection law "Informatique et Libertés" of January 6th 1978, the Customer has the right to access and to correct the information held on him. He may exercise this right and obtain communication of the information concerning him by sending an email to: [cil@ovh.net](mailto:cil@ovh.net) or by writing to the postal address:

OVH SAS, Correspondant Informatiques et Libertés, 2 rue Kellermann, 59100 Roubaix, France.

The Customer remains solely and wholly responsible for the processing of personal information that he carries out of his own accord, and concerning the aforementioned data, undertakes to comply with all legal obligations and regulations relating to information technology, files, freedoms and intellectual property, and in particular, undertakes to file all declarations to the Commission nationale de l'informatique et des libertés (CNIL; The National Commission for Information Technology and Civil Liberties).

Pursuant to the provisions of Article 34 bis of the French data protection act "Informatique et Libertés" of January 6th 1978, the Customer providing electronic communication Services to the public, over the electronic communication networks open to the public, and processing personal data as defined by the aforementioned law, shall notify the CNIL without delay, of any security violation leading to accidental or unlawful destruction, loss, deterioration, disclosure or unauthorised access to the personal data.

Furthermore, in the event of this violation being likely to harm the personal data or the private life of one of his Customers or another individual, the Customer bears the responsibility for informing the interested party, under the provisions of Article 34bis of the Law of January 6th 1978.

Finally, any Customer providing electronic communications Services is responsible for keeping an up-to-date inventory of personal data violations, especially their forms, their effect, and the remedial measures taken, and to make it available to the CNIL.

In all cases where the Customer's data is processed by OVH as a subcontractor under the Law of January 6th 1978, it is recalled that OVH acts only on the Customer's instructions and under the responsibility of the latter. In this event, OVH guarantees the security and confidentiality of the relevant data under the conditions defined in Article 12 of this Agreement.

## **ARTICLE 11: APPLICABLE REGULATION TO THE HOSTING OF HEALTH DATA**

Under French Law n° 2002-303 dated March 4th 2002, those engaging in hosting activity involving personal health data are required to have authorisation in conformance with Article L1111-8 of the French Code of Public Health. OVH reminds the Customer that he bears the responsibility of referring to the list of the approved hosting providers (<http://esante.gouv.fr/Services/referentiels/secureite/hebergeurs-agrees>) for any hosting of personal health data.

## **ARTICLE 12: CONFIDENTIALITY, LOCATION AND PHYSICAL SAFETY OF OVH INFRASTRUCTURES**

OVH, and all personnel and subsidiaries of the OVH group, are bound by professional secrecy and the obligation for discretion in everything concerning the facts, information and decisions that they have been informed of within the scope of these General Conditions and implementation of the associated services.

OVH is especially prohibited from communicating to any person other than itself, the subsidiaries of the OVH group, its entire personnel or a third party on request of a competent authority (administrative, arbitration or legal, in accordance with the appropriate applicable laws), directly or indirectly, all or part of the data, of any nature (commercial, technical, financial, personal, etc.) communicated to OVH, or of which it is informed of during the execution of the Service.

- **Location of the Infrastructures:**

The infrastructures on which the OVH Services are developed are located on French territory. However, some Services may be physically located abroad, and such an event, the physical location of the installations will be clearly declared to the Customer prior to subscription to the said Service.

- **Physical security of the buildings:**

OVH shall take all physical security measures aimed at preventing unauthorised access to the Infrastructures on which the Customer's data is stored.

## **ARTICLE 13: RIGHT TO CANCEL**

In compliance with Articles L. 121-20 and the subsequent of the French Consumer Code, the Customer (being recognised as a consumer under the provisions of the Consumer Code) benefits from a right to withdraw. He may exercise his right to withdraw, without having to provide justifications or incurring penalties, other than return costs, if required, within seven (7) clear days of receipt of the goods, or of subscription to the Service contract, by post or via a message sent to the OVH Customer Support via his Management Interface. When the seven day deadline expires on a Saturday, Sunday or a public holiday or non-working day, it will be extended until the next working day.

The right to withdraw, if legitimately exercised, enables the Customer be reimbursed for the goods and Services relating to exercising this right.

In accordance with the Article L121-20-2, 3° of the French Consumer Code "the right of withdrawal cannot be exercised (...) for the supply contracts of goods made to the consumer's specifications or substantially personalised (...)".

The Customer recognises that registering a domain name with OVH constitutes the supply of such personalised goods under the provisions of the aforementioned article, due to the Customer's choosing of the root domain name and extension held.

Therefore, the Customer is expressly informed that, pursuant to these provisions, he may not exercise his right to withdraw for the registration of the domain name ordered.

Nor can this right be exercised by the Customer on renewal of the registration.

In accordance with the Article L121-20-2, 1° of the French Consumer Code, the Customer may not exert his right to withdraw for Services implemented, with his consent, before the end of the time limit of seven clear days. The Customer thus formally recognises and accepts that, in all situations where he accepts the implementation of the Service or uses the Service before the expiry of the withdrawal period, he may not legitimately claim this right.

## **ARTICLE 14: AMENDMENTS**

The online General and Special Conditions shall prevail over the printed General and Special Conditions. The parties agree that OVH can lawfully modify its Service with no other formality than to inform the Customer via an online notice and/or to display its modifications in the online General Conditions. Any modification or introduction of new subscription options will be published online on the OVH Website or by sending an email to the Customer. In such instance, the Customer can, in exemption from Article 7, terminate the contract within thirty days of these modifications entering into the force.

## **ARTICLE 15: GENERAL PROVISIONS**

### **15.1 Divisibility**

If any clause of the Service contract entered into with OVH should be held to be null and void in application of a statute, regulation or decision with res judicata effect by a competent court, the other clauses hereof shall remain in full force and effect.

In such event, the parties shall replace the invalid provision, to the extent permitted, with a valid provision that is in keeping with the spirit and purpose hereof.

### **15.2 Headings**

The article headings set out herein are provided solely for ease of reference, on the understanding that they do not have any binding force or specific meaning per se.

### **15.3 Special Conditions and Appendices**

The Special Conditions and, if applicable, their Appendices are incorporated by reference into the OVH General Conditions of Service and are inseparable from the said General Conditions. All these documents are herein referred to as the "General Conditions".

All documents incorporated herein by reference can be consulted by the Customer on the OVH Website. In addition, these documents are subject to modifications and updates.

### **15.4 Communications**

For any exchange of information by email between the parties, the date and time of the OVH server will be applied. This information will be retained by OVH for the entire duration of the contractual relations.

All notifications, communications and formal notices envisaged by the General Conditions will be considered to have been delivered with legal effect if they are sent by registered post with request for proof of receipt to:

- For OVH: 2 rue Kellermann – BP 80157 59053 ROUBAIX CEDEX 1
- For the Customer: to the postal address and/or email address that he supplied to OVH



## 15.5 Advertising and promotions

Within the scope of specialist advertising campaigns, events, seminars and publications on professional markets, OVH may refer to the Services provided to the Customer and to its commercial documentation and/or brochure.

## ARTICLE 16: ALLOCATION OF JURISDICTION

In the event of a dispute with a Customer who is not deemed to be a consumer under the French Consumer Code, the Tribunal de Commerce de Lille Métropole (Commercial Court of Lille, France), shall have jurisdiction, notwithstanding the plurality of defendants or in the event of a third party notice, including urgent and protective measures, by summary application or by petition.

## ARTICLE 17: GOVERNING LAW

This Agreement is governed by French law. This applies to both substantive and procedural laws, at the exclusion of conflict-of-law rules under French law on the one hand, and the provisions of French law that are contrary to this Agreement, on the other.