# SPECIAL CONDITIONS FOR KIMSUFI DEDICATED SERVER RENTAL

***Latest version dated 07/11/2013***

## ARTICLE 1: PURPOSE

The purpose of these Special Conditions, which supplement the Kimsufi General Conditions, is to define the technical and financial conditions subject to which OVH will rent the Customer's Kimsufi dedicated server on its platform.

The Customer expressly recognises that under this Agreement, OVH does not participate, in any way whatsoever, in designing, developing, creating or setting up the Customer's website and his IT management and administration tools.

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 2: RESOURCES

The Kimsufi server platform on which the Customer's dedicated server will be installed is accessible to the general public by means of stations connected to the internet.

Throughout the period of renting the dedicated server to the Customer, OVH shall provide the Customer with access to a forum, which the Customer may use to obtain technical advice.

## ARTICLE 3: TECHNICAL SUPPORT

Technical assistance is provided exclusively from the forum accessible at this address: http://forum.kimsufi.com/

The Customer thus bears the responsibility for reporting his problems and malfunctions encountered with the Service on the Kimsufi forum.

When it appears that the malfunction encountered by the Customer falls within the remit of the Incident Service, then the KIMSUFI technical adviser may proceed to create an incident ticket in order to carry out the necessary checks on the Service.

## ARTICLE 4: CONDITIONS OF SERVICE IMPLEMENTATION

OVH will inform the Customer by email when his dedicated server has been made available. The point at which the dedicated server is put online shall determines the initial date on which invoicing will take effect.



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The server 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.

After this period and in the absence of provision of the server by OVH, the Customer reserves the right to request cancellation of the transaction and a refund of the sums already paid.

The server rented to the Customer shall remain the property of OVH. Any server rented from OVH will have a fixed IP address.

The technical specifications of the Service are detailed on the https://www.kimsufi.com website.

The Customer is the administrator of the server rented from OVH. He may install software applications on the server himself. In this instance, he shall assume full responsibility for carrying out these installations, and OVH shall not be held liable for any malfunctioning of the server in relation to these installations.

## ARTICLE 5: OBLIGATIONS OF OVH

OVH shall take all reasonable care and diligence necessary to provide a quality Service, conforming to the customary professional practices and the state of the art. OVH undertakes to:

**5.1** Maintain the Service in good working order. In the event of failure of the hardware rented to the Customer after creation of an incident ticket, OVH undertakes to replace the defective part as soon as possible, excluding any failure for which OVH does not bear the responsibility, or any other intervention requiring an interruption of the Service exceeding the usual replacement times. In the latter case, OVH shall inform the Customer immediately.

**5.2** To guarantee the server's connection to the network via the internet 24/7 every day of the year. OVH reserves the right to stop the server's connection to the network in order to carry out a technical intervention on the devices of the OVH network.

**5.3** Intervene quickly in the event of an incident not involving misuse of the server by the Customer, on the Customer's intervention request.

**5.4** Ensure that its resources comply with best quality standards at all times, in accordance with industry rules and practices.

## ARTICLE 6: LIABILITY OF OVH

OVH reserves the right to stop the internet connection of the server rented to the Customer, if this server poses a threat to the security maintenance of the OVH platform, whether resulting from hacking of the server, the detection of a security system loophole, or the need to update the server.


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OVH shall inform the Customer as soon as reasonably possible of the nature and the likely duration of the intervention, so that the Customer may take appropriate measures. OVH undertakes to restore the connection as soon as the corrective interventions have been carried out by the Customer.

In addition, OVH shall not be held liable for the content of the information, sound, text, images, shapes and forms and data accessible via the websites hosted on the Customer's server, transmitted or uploaded by the Customer, in any respect whatsoever.

OVH shall have no liability to the Customer in the event of any interruption, partial or total failure due to any variation of the bandwidth or any failure of its ISP/Access Provider.

## ARTICLE 7: OBLIGATIONS AND LIABILITY OF THE CUSTOMER

**7.1** The Customer is acting as an independent entity and, as such, accepts full responsibility for all risks and liabilities of his activity. The Customer is solely responsible for the services and internet websites hosted on his dedicated server, the content, use and updating of information transmitted, distributed or collected, and of all files, especially address files. The Customer specifically undertakes to respect the rights of any third parties, especially personality rights, and intellectual property rights such as copyrights, patent rights or trademarks. Therefore, OVH shall not be held liable for the content, use and updating of any information transmitted, distributed or collected and of all files, especially address files, in any respect whatsoever.

OVH can only warn the Customer of the legal consequences that may arise from illicit activities on the server, and does not accept any responsibility regarding the use of the data made available to internet users by the Customer.

The Customer shall not engage in or attempt to engage in any intrusive web activities using the server (including without limitation: Port Scanning, Sniffing and Spoofing).

In such situations, the Customer will not be able to claim any reimbursement from OVH for amounts already paid.

**7.2** The Customer shall be solely liable for the consequences of any malfunctioning of the server resulting from any use by 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.

**7.3** In order to maintain the security level of the Customer's server and all servers present on its platform, OVH undertakes to inform the Customer, by email or via the forum http://forum.Kimsufi.com/, of the availability of updates of the operating systems maintained by OVH, for which a security fault has been raised. If the update of these applications is not carried out according to the OVH requests, OVH reserves the right to stop the server's connection to the internet.

Likewise, in the event of OVH detecting that the Customer's machine has been hacked, an email will be sent to the Customer, indicating that a reinstallation procedure is essential to maintaining the integrity of the server and the entire platform. The Customer may then carry out such a procedure via his Management


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Interface, after having made a backup of all of his data. OVH reserves the right to stop the server's connection to the internet, pending reinstallation of the new machine. OVH is not obliged to carry out the transfer of the data from the hacked system to the new system as this procedure is to be performed by the Customer himself. OVH undertakes and limits its intervention to installation of the new system only.

**7.4** For security reasons, OVH reserves the right to proceed with the immediate suspension without notice, of any server on which there is a public service Proxy, IRC, VPN or TOR which is available free of charge or for a fee, and for which OVH has knowledge of its fraudulent or illegal misuse.

**7.5** The Customer is responsible for taking all the necessary measures to back up his data.

**7.6** In the event that the Customer does not pay any licence or subscription fees when due to the OVH or any third party, OVH reserves the right to suspend the Services without prior notice.

**7.7** OVH reserves the right to carry out controls to ensure that the Customer's use of the Service is in compliance with these Special Conditions.

OVH reserves the right to suspend the Services without prior notice, and to terminate the server rental agreement: i) where the Customer's server poses a significant risk to the OVH infrastructure; and ii) in the event of any non-compliance by the Customer with OVH's Special and General Conditions; and in accordance with any applicable statutory and regulatory provisions, and pursuant to any contract it has with any third party.

**7.8** The Customer is reminded that the intervention of OVH under the subscription of a contract for a dedicated server is limited to the installation of the server. For this reason, OVH only provides rental of the specialised infrastructure, without any control on the contents of the websites hosted nor the contractual relationship of the editors of these sites and their hosting provider, the OVH Customer under the dedicated server rental contract. The Customer must thus be regarded as a hosting provider under the provisions of Article 6.I.2 of the French law "Loi pour Confiance dans l'Economie numérique" (Law for Confidence in the Digital Economy) of June 21st 2004, regarding the provision of public services by public communication online, storage signals, writing, images, sounds or messages of any kind provided by recipients of those services. Pursuant to Article 6.II of the aforementioned law, the Customer is therefore liable to retain and preserve any data that will enable the identification of whoever has contributed to the content creation or to one of the contents of the services that he provides, for a period of 12 months, without engaging the liability of OVH in this respect.

The Customer shall implement an easily accessible and visible structure that enables any person to notify it of any offence or potential offence whatsoever that may have occurred on any website or contained in any data transmitted across the server network, including, but not limited to, data which constitutes incitement to racial hatred, child pornography, incitement to violence, as well as violation of human dignity, or illicit gambling activities. The Customer shall ensure that all required notices are set out on the website and that it is clear that the Customer is the hosting service provider in any legal notices presented by his contracting parties on his KIMSUFI server.

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

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

OVH shall thus monitor outgoing traffic from the server towards port 25 (SMTP server) on the internet, which shall involve monitoring traffic by means of automatic tools.

The outgoing traffic shall not be filtered or intercepted, but rather monitored with a delay of a few seconds, These operations shall be conducted simultaneously in the background between the server and the internet.

Likewise, no operation is performed on the emails sent: OVH shall not conduct any tagging of emails, and shall not modify emails sent by the Customer in anyway whatsoever. No information shall be stored by OVH during these operations aside from statistical data.

The operation shall be conducted regularly and in a fully-automated manner. No human intervention is involved in the monitoring of traffic to port 25 (SMTP port).

In the case of outgoing traffic from the Customer's server, including emails, being identified as spam or fraudulent emails, OVH shall inform the Customer by email and block the server's SMTP port.

OVH shall not keep any copy of emails sent from the server's SMTP port, even when they are identified as spam.

In the event of the SMTP port being blocked, the Customer must request unblocking via the Kimsufi forum.

Any new email identified as spam will entail a new blocking of the SMTP port for a longer period.

If the SMTP port is blocked for a third time, OVH reserves the right to deny any new request for unblocking of the SMTP port.

## ARTICLE 9: MITIGATION (PROTECTION AGAINST DOS AND DDOS ATTACKS)

OVH shall implement protection against DoS (Denial of Service attacks) and DDoS hacking attempts, provided that these attacks are conducted in a manner reasonably considered to be serious enough by OVH to warrant such protection. This protection is intended to ensure that the operation of the Customer's Service is maintained for the duration of the attack.

This function involves monitoring the traffic sent to the Customer's Service from outside the OVH 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.

The protection measures shall not apply in the case of attacks such as SQL injection, brute-force, abuse of security flaws, or similar attacks.



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Due to the great complexity of the protection service, OVH is only subject to an obligation of means, and it is possible that the tools installed do not detect the attack and do not enable Service operations to be maintained.

Given the nature of potential DoS or DDoS attacks and their complexity, OVH shall implement different levels of traffic protection in order to preserve its infrastructure and the Customer's Service.

Once the attack is identified and mitigation is automatically activated, mitigation shall not be deactivated prior to the end of the 26-hour period. Therefore until the activation of the mitigation, the Service having to directly sustain the attack may lead to its unavailability.

Once the computer attack has been identified and the mitigation has been automatically enabled, the mitigation cannot be disabled until the end of the 26 hour period.

While mitigation is activated, OVH cannot 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 the OVH infrastructure.

If, in spite of the mitigation being activated, a DoS or DDoS attack is of such a nature as to adversely affect the integrity of the OVH infrastructure or the infrastructure of other OVH customers, OVH shall strengthen its protection measures which may lead to the deterioration of the Customer's Services or impact its availability.

Where part of the traffic generated by a DoS or DDoS attack is not detected by the OVH 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 he has the adequate resources to administer the configuration of the Customer's Services properly.

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


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