SPECIAL CONDITIONS FOR WEBSITE HOSTING SERVICES ON A REAL PRIVATE SERVER

Version Date 22 June 2009

The Supplier provides different categories of Real Private Server. The hardware and software configurations, and the different tariffs applicable, are specified on the Supplier's website at www.ovh.ie.

1.   Interpretation

In these Special Conditions, the terms defined in the General Conditions shall have the same meanings as in the General Conditions and the following terms shall have the following meanings unless the context otherwise requires:

Content: the text, information, image, audio or video material and other data placed on the Real Private Server and on the Remote Disk Space by or on behalf of the Customer, including data which the Customer permits third parties to place on the Real Private Server and on the Remote Disk Space.

Domain Name: the unique URL which designates the location of a particular website, as specified in the Order.

Real Private Server (or RPS): the Supplier's server at ovh.ie provided to the Customer as part of the RPS Hosting Services on which the Website shall be hosted for the purpose of the RPS Hosting Services, and which shall have a fixed IP address assigned to it.

Remote Disk Space: the Customer's allocated disk space on the hardware platform, in RAID mode, on which the Customer can store data and which is accessible through the Real Private Server using the Keywords provided by the Supplier.

RPS Hosting Services: the hosting of the Website on a Real Private Server for the Customer's exclusive use and the provision of Remote Disk Space.

Website: the Customer's website(s) to be hosted on the Real Private Server (including all data on such website(s) which is necessary for the publication and exchange of information via the Internet).

2.   Application of Conditions

These Conditions (together with the General Conditions) shall apply to any Contract between the Supplier and the Customer for the provision of RPS Hosting Services and shall prevail over any inconsistent terms or conditions submitted by the Customer or implied by law, trade custom, practice or course of dealing. In the event of conflict between these Conditions and the General Conditions, these Conditions shall prevail.

3.   Real Private Server

3.1   The Real Private Server shall remain the property of the Supplier at all times. The Customer shall not be entitled to sell, transfer, lease, charge, assign by way of security or otherwise deal in or encumber the Real Private Server.

3.2   In order to maintain adequate security levels of the Real Private Server and of all the servers hosted by the Supplier, the Supplier shall inform the Customer by email of the availability of Software upgrades for which a high level security failure has been noticed. The Supplier shall be entitled to disconnect the Real Private Server if such upgrades are not carried out by the Customer within the timeframe specified in the Supplier's notification.

4.   Supplier's obligations

4.1   The Supplier shall provide the RPS Hosting Services with reasonable care and skill and in accordance with best industry practice.

4.2   The Supplier shall provide the Hardware and Software necessary for the provision of the RPS Hosting Services.

4.3   The Supplier warrants that the Hardware, Software and the Real Private Server shall perform substantially in accordance with the specifications set out in the Order.

4.4   The Supplier shall use its reasonable endeavours to ensure that:

(a)   the Hardware and Software is maintained in good working order and in accordance with best industry practice;

(b)   any defect, error or malfunction of the Hardware or Software is remedied as soon as is reasonably practicable, and the Client is informed immediately if such repair or replacement requires the RPS Hosting Services to be suspended;

(c)   any disruption to the RPS Hosting Services which does not result from any breach by the Customer shall be rectified as soon as is reasonably practicable following a request from the Customer;

(d)   subject to Conditions 4.5 and 5 of these Special Conditions, the Customer shall have access to the Real Private Server via the Internet 24 hours a day, 365 days a year on the basis of the level of activity on the Website specified in the Order. If the level of activity on the Website exceeds that specified in the Order, the parties shall seek to agree an increased bandwidth usage and the corresponding additional fees. In default of agreement, the Supplier may suspend Shared Hosting Services;

(e)   subject to Conditions 4.5 and 5, the Customer shall have access to the Remote Disk Space via the Internet 24 hours a day, 365 days a year using the Real Private Server. For the avoidance of doubt, only the Customer shall have access to the Remote Disk Space via the Real Private Server.

4.5   The Supplier shall inform the Client by email as soon as reasonably practicable if any maintenance, repair or upgrade requires the RPS Hosting Services to be suspended and shall inform the Customer of the likely duration of such suspension.

5. Supplier's liability

5.1 The Customer acknowledges that the Supplier shall not be responsible for any failure or malfunction of the Real Private Server.

5.2 The Supplier shall have no liability to the Customer under the Contract in the event of:

   (a) any act, omission, fault or negligence of any third party, and in particular any unauthorised access to the Website or the Content;

   (b) any act of piracy, viruses, worms, trojan horses or other harmful codes that affect or may affect the Real Private Server, the Remote Disk Space, the Website and/or the provision of the RPS Hosting Services;

   (c) any actual or suspected security breaches in connection with the RPS Hosting Services;

   (d) any loss following the uploading of the Website to another server or IT system;

   (e) any modification (or attempted modification) of the Software by the Customer or a third party not authorised by the Supplier;

   (f) any loss caused by the operation or non-operation, use or non-use of the Website or the Content;

   (g) downtime caused by routine or emergency maintenance, repair or upgrade to the RPS Hosting Services provided that, if such maintenance, repair or upgrade requires the RPS Hosting Services to be restricted or suspended, the Supplier shall use reasonable endeavours to notify the Customer by email as soon as reasonably practicable in advance of the likely duration of such restriction or suspension and shall endeavour to resume the RPS Hosting Services as soon as reasonably practicable;

   (h) any interruption, partial or total failure of the RPS Hosting Services due to any variation of the bandwidth or any failure of the Supplier's ISP/Access Provider.

5.3 If the Supplier becomes aware that the security or integrity of the Website or the Real Private Server has been compromised, the Supplier shall inform the Customer by email and, at its sole discretion, the Supplier may require that the Content be re-installed. The Supplier shall be entitled to protect the integrity of the Real Private Server by disconnecting it from the Internet until the Website has been reinstated. The Customer shall be responsible for reinstalling the Content. The Supplier's sole responsibility shall be to reconnect the Website to the Internet once it has been reinstated.

5.4 For security reasons, the operation of Internet Relay Chat services from the Website (including without limitation bots, proxy, bouncer, etc.) requires the prior written approval of the Supplier, which may be refused in the Supplier's absolute discretion.

5.5   The Supplier cannot guarantee that the RPS Hosting Services will be maintained in the event the Customer's usage of the bandwidth exceeds 101Mbps, although the Supplier shall use its reasonable endeavours to do so.

6.   Customer's obligations

6.1   The Customer shall be solely responsible for:

(a)   managing the Real Private Server, and for any loss or damage to the Real Private Server, and shall put in place appropriate insurance cover to cover the risk of any such loss or damage. The Customer may not claim any reimbursement, replacement, or compensation from the Supplier in any circumstances;

(b)   any loss or damage to the Website, and shall put in place appropriate insurance cover to cover the risk of any such loss or damage. The Customer may not claim any reimbursement, replacement, or compensation from the Supplier in any circumstances;

(c)   uploading the Content onto the Real Private Server and checking that it functions satisfactorily. The Supplier shall not be responsible for any failure of the Customer to upload the Content correctly, and shall not be responsible for providing support in relation to the control and operation of the Content;

(d)   the Content, for the conception or development of the Website, and for the Customer's equipment, systems or software necessary for the management of the Website. The Supplier shall have no obligation to validate or vet the Content for usability, legality, content or correctness and shall not, in any event, be liable towards the Customer or any third party for any loss arising from or in connection with the Content;

(e)   complying with all applicable laws and regulations concerning the Content, including (without limitation) for ensuring that the Website contains all information concerning the Customer, its products and the conduct of its business which are required or desirable under applicable law;

(f)   ensuring that the Content, any material linked to the Website and any activity conducted via the Website do not breach the rights of any third parties including without limitation any intellectual property rights.

(g)   making regular back ups of the Content on any website from time to time.

6.2   The Customer shall use its best endeavours to ensure that all Content on the Website and on the Remote Disk Space does not contain any viruses and/or other harmful code.

7.   Term and Termination

7.1   Notwithstanding Condition 11.1 of the General Conditions, the Supplier shall send the Customer at least 6 reminders on the following dates:

(a)   1st reminder 60 days before Expiry Date;

OVH Hosting LTD 5 Fitzwilliam Place, Dublin 2   4/5
Registration number: 468585 – VAT number 9520632R
Hotline: 01 6390037 Fax: 01 6394091
Website: www.ovh.ie – email: support@ovh.ie

(b)   2nd reminder 30 days before Expiry Date;

(c)   3rd reminder 15 days before Expiry Date;

(d)   4th reminder 7 days before Expiry Date;

(e)   5th reminder 3 days before Expiry Date.

7.2   The Supplier shall be entitled to terminate the RPS Hosting Services without cause at any time and without incurring any liability by giving 30 days' written notice to the Customer.

7.3   The Supplier shall be entitled to suspend the RPS Hosting Services without incurring any liability if the Customer commits a breach of Condition 6 of these Conditions and, for the purpose of Condition 11.5(a) of the General Conditions, any breach of Condition 6 of these Conditions shall be deemed to be a material breach of the Contract.

7.4   The Supplier shall be entitled to disconnect the Real Private Server upon notice to the Customer on the Expiry Date of the Contract and to erase the Content and any material uploaded on the Real Private Server 5 days after the Expiry Date or forthwith upon the termination of the Contract for any other reason whatsoever without incurring any liability towards the Customer.

If, after reading these specific conditions of hosting, the Customer has any questions, please contact OVH Hosting Limited at: 5 Fitzwilliam Place, Dublin 2

By placing an order online, the Customer signifies his/her unconditional acceptance of these conditions.

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