



## SPECIAL CONDITIONS FOR MINICLOUD™ SOLUTIONS

*Version dated 31th May 2010*

### **Definitions:**

**Cloud:** *Technology aimed for the remote use of executing resources and storage.*

**Loyalty scheme:** *A section in the Customer's management interface that enables payment using prepaid points.*

**MiniCloud Manager:** *Management interface that allows the customer to request the allocation and the closure of miniCloud servers, manage their Cloud services and find their consumption statistics.*

**MiniCloud:** *Virtualised server, hosted on the OVH Cloud platform that allows the development or use of application solutions.*

**Cloud Solutions:** *All solutions that make use of Cloud technology.*

**Started Status:** *a miniCloud server that is created and activated and whose virtual processor has started. The status of the miniCloud server is available in the Customer's Cloud Manager..*

### **ARTICLE 1: PURPOSE**

These special conditions complete OVH's General Terms and Conditions. They are intended to define the technical and financial conditions in which OVH is committed to in providing the Customer access to the Cloud management interface and Cloud solutions developed by OVH and to permit the provision for the miniCloud servers, a single interface that permits the Customer administration and use of miniCloud servers.

According to these terms and conditions the Customer expressly recognises that OVH does not take part by any means in the design, development or implementation of the Customer's website nor in its management and administration tools.

These Special Conditions will prevail over the general terms and conditions should any conflict arise between these two documents.

### **ARTICLE 2: MEANS**

The OVH Cloud platform, which is where the customer's miniCloud server will be installed, is available via the Internet through an internet access point. OVH provides Customers self-developed Cloud solutions and

- 1 -

recalls that due to the technical nature of these solutions; it can only be subjected through due care and diligence.

### **ARTICLE 3: TECHNICAL SUPPORT**

Besides the incident service created by OVH, whose contact details are available on the website <http://www.kemeda.pt/>, for any technical advice relating to the use of the miniCloud service, OVH provides users of the Cloud service the possibility to explain their problems on the forum available at <http://forum.kemeda.pt/> or on the mailing list dedicated to the Cloud Service: [cloud@ml.ovh.net](mailto:cloud@ml.ovh.net).

### **ARTICLE 4: CONDITIONS OF SERVICE**

The subscription of a miniCloud service requires the simultaneous ordering of pre-paid points that will be used to credit the Customer's prepaid account. These points correspond to the credit available for the use of the miniCloud service.

Once the order is validated the Customer's cloud manager is active and the set cloud solutions, developed and offered by OVH can be used directly through the management interface.

The miniCloud server has a fixed IP address assigned when the miniCloud server is switched to the started status. The IP address will be reassigned to another server if the customer's Cloud Server is stopped or cancelled or if the server is no longer on started status.

The server hosted on the OVH Cloud platform is OVH's property.

OVH provides customers with different miniCloud server configurations, whose description is available online at <http://www.kemeda.pt/>.

The different prices are available online on the OVH website (<http://www.kemeda.pt/>).

The Client is the administrator of the miniCloud server, leased from OVH. They have the ability to install the software applications themselves on the server. These installations are under their full responsibility and OVH cannot be held responsible for any malfunction of the server following these installations.

### **ARTICLE 5: SUPPLIER'S OBLIGATIONS**

- 5.1 The Supplier shall provide the Cloud Services with reasonable care and skill and in accordance with best industry practice.
- 5.2 The Supplier shall provide the Hardware and Software necessary for the provision of the Cloud Services.
- 5.3 The Supplier warrants that the Hardware, Software and the Dedicated Server shall perform in accordance with the specifications set out in the Order.

- 2 -

5.4 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 Dedicated Hosting Services to be suspended;
- (c) any disruption to the Dedicated Hosting Services which does not result from any breach by the Customer shall be rectified as soon and as reasonably practicable following a request from the Customer;
- (d) subject to Conditions 4.5 and 5, the Customer shall have access to the Cloud Services 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 meet and agree an increased bandwidth usage and the corresponding additional fees.

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

## **ARTICLE 6: SUPPLIER'S LIABILITY**

6.1 The Customer acknowledges that the Supplier shall not be responsible for any failure or malfunction of the Cloud Platform.

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

- (a) any act, omission, fault or negligence of a third party not connected to the Supplier, 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 miniCloud Server, the Website and/or the provision of the Dedicated Hosting Services;
- (c) any actual or suspected security breaches in connection with the Dedicated 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 Cloud Platform provided that, if such maintenance, repair or upgrade requires the Cloud platform 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 Cloud Platform as soon as reasonably practicable;
- (h) any interruption, partial or total failure of the Cloud Platform due to any variation of the bandwidth or any failure of the Supplier's ISP/Access Provider.

6.3 If the Supplier detects that the security or integrity of the Website has been compromised, the Supplier shall inform the Customer by email that the Content must be re-installed and the Supplier shall be entitled to protect the integrity of the miniCloud 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.

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

6.5 The Supplier cannot guarantee that the Cloud 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.

## **ARTICLE 7: CUSTOMER'S OBLIGATIONS**

4.1 The Customer shall be solely responsible for:

- (a) managing the miniCloud Server, and for any loss or damage to the miniCloud 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 miniCloud 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;

- 4 -

(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;

(f) ensuring that the Content, any material linked to the Website and any activity conducted via the Website does 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.

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

4.3 Due to technical reasons, emails can just be received by a miniCloud Server, the sending function is not possible on such server.

## **ARTICLE 8: PRICES AND BILLING**

The prices applicable to the miniCloud offer are available on the website <http://www.kemeda.pt>.

The miniCloud Service requires the customer to activate their prepaid account by previously ordering prepaid points by credit card. This operation is required in order to subscribe to Cloud services provided by OVH

The Customer has to ensure at all time that they have enough prepaid points to use the Cloud services.

The Customer can activate, through their prepaid account the automatic crediting of their prepaid balance. The Customer can determine when to allow OVH to charge them so their balance is automatically credited. The minimum amount for the activation of the automatic credit is 100 points, OVH expressly reserves the right to change or modify this amount at any time after a prior notice on their website. Once the option is enabled, if the Customer's prepaid balance is below than the determined amount, OVH will automatically charge the amount determined by the Customer in their Cloud control panel to the credit card used by the Customer when the Service was activated.

If OVH is unable to charge the Customer's credit or debit card for any reason, an email is sent to the Customer to inform them that they have to immediately credit their prepaid balance to keep on using the Service. Otherwise, the Service will be suspended automatically by OVH as the Customer's prepaid balance does not have enough credit to allow the renewal of the Service.

The Customer can activate a miniCloud server through their Cloud control panel; this operation will only be charged once the status of the server is on "Running" and according to the applicable fare for the chosen configuration.

- 5 -

The Client may, if they wish, change the configuration of their miniCloud server. Changing their servers to a higher configuration will be charged to the customer at a base rate applicable to the new configuration and available on the website, kameda.pt. The Client is invoiced for the difference between the price applicable to their initial configuration and the price of the new higher configuration.

Switching to a lower configuration is not charged to the Client. In this case the amounts already paid for the initial configuration of the server are not reimbursed by OVH.

Every hour on the hour, OVH will verify the active miniCloud servers and corresponding to the client, each miniCloud server in "start" status will be charged to the Customer, according to the hourly rate which corresponds to the configuration. Meanwhile, the servers in "stopped" status will not be charged.

Thus to illustrate, OVH check at 12:00 all the started miniCloud servers and charge the amount corresponding to the applicable price for each server in the Customer Loyalty space.

This amount will correspond to the use of the Service for the next hour or for the next sixty (60) minutes.

Every hour started is charged to the Client and is non refundable.

#### **ARTICLE 9: CANCELLATIONS**

Notwithstanding the provisions of Article 12 of the Terms of Service, the Client (which retains the capacity of consumer under the provisions of the Consumer Code) expressly agrees to the immediate execution of any services from the validation of their order. As validation of payment, the Customer will have access to the Cloud Services and the ability to activate the miniCloud servers of their choice.