

## GENERAL CONDITIONS SMS SERVICE

*Version date 02/12/2009*

**Please note that the following terms and conditions govern your use of the SMS Service. Please read them carefully as, by using the SMS Service, you will be taken to have accepted the following conditions. Please note in particular Clause 4 (Customer's obligations) and Clause 7 (OVH's responsibilities)**

**If you are a consumer using the SMS Service you may have additional rights to those set out in these conditions– please visit the Competition Authority's website for more information. Nothing in these terms and conditions overrides any rights you may have as a consumer. Certain of these rights are expressed to apply to Business Customers only and therefore do not apply to consumers.**

### **DEFINITIONS:**

*Customer: the person, firm or company, living in Republic of Ireland, wishing to use the SMS Services (whether on its own behalf or on behalf of a Sponsor).*

*Sponsor: the legal entity registered at the Companies House, corporation or public body who provides, through the Customer, a SMS Service to users and to users registered on its service.*

*Contract: The contract consists of the electronic order form completed by the Customer through the OVH interface, with the general and specific terms and conditions.*

*Costs of commissioning: Fees charged to the Customer by OVH when activating his SMS Service or an additional offer attached to it.*

*Customer ID: Customer account for any SMS Service ordered at OVH thus allowing access to the management interface.*

*Management Interface: "Manager" accessible from OVH website by the Customer after identification by the entry of his customer ID and correct password.*

*MOM: Software developed by OVH allowing the management of the Customer Services directly from their personal computer without connecting to the OVH site.*

*MSISDN: Telephone number enabling the identification of a user of a telecommunications network whose size is determined in accordance with E.164 numbering plan.*

*MMS: Means "Multimedia Messaging Service" multimedia messaging transmitted over mobile devices.*

*OVH: OVH Hosting Limited, registered number 468585, whose registered office is at 5 Fitzwilliam Place Dublin 2, VAT number 9520632R*

*Pack: Package containing a predetermined number of SMS that can be sent by the Customer through the SMS Service.*

*Roaming: Situation in which a mobile subscriber is connected to a network different from the network operator with which they have subscribed for its mobile package.*

*Services: Means all services provided by OVH in accordance with contracts that the Customer has subscribed to.*

*SMS Service has the meaning set out in condition 2.1 below*

*OVH website: OVH's website accessible on the Internet at <http://www.ovh.ie> from an internet access.*

*SMS: Means "Short Message Service". 160 alphanumeric characters messages that can be sent and received on a mobile or fixed terminal.*

*SMS-MT: SMS sent by a publisher or sponsor of SMS Services to the terminal of a compatible user.*

*User: Final recipient of an SMS and for which Customer has obtained prior consent to receiving SMS-MT.*

*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 SMS Service) 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.*

## 1: OBJECT

These terms are intended to define the technical and financial terms of the OVH SMS Service. Any use of the Service is subject to compliance with, and will indicate acceptance of these contract terms by the Customer.

## 2: PROVISION OF SERVICE

### Description of Service

- 2.1 The SMS Service consists of the delivery of SMS from the OVH SMS network to the MSISDN of the Customer user or the Sponsor.
- 2.2 The use of the SMS Service will require the creation of a customer ID.
- 2.3 The SMS Service can be used through the management interface of the Customer, through APIs application, or from the MOM software.
- 2.4 The SMS Service will enable the Customer (on its own behalf or on behalf of a sponsor) to send SMS to a predetermined list of countries listed on the site <http://www.ovh.ie>. It is up to the Customer to ensure that recipients of the SMS messages have telephone lines belonging to one of the operators shown on the list available on the OVH website.
- 2.5 OVH does not guarantee the delivery of SMS messages sent by the Customer to operators that do not appear on this list.
- 2.6 OVH reserves the possibility to modify all or part of this list to add new destinations. In the event of suspension of a destination, OVH will inform its customers through a notice on the <http://www.ovh.ie> site and/or by sending an email to the address provided by the customer during the creation of its Customer ID.
- 2.7 Sending an SMS is subject to a single bill regardless of the country and the operator of the final recipient MSISDN.
- 2.8 The customer can determine, when sending an SMS, the validity of it. This period corresponds to the time during which the operator of the user attempts to send the SMS to the terminal thereof. The Customer is charged upon issuance of the SMS with no guarantee that the SMS is actually sent to the user.
- 2.9 The Customer can also send a deferred SMS of 48 hours, meaning that the Customer may choose to send the SMS on the user terminal within 48 hours following the validation of the delivery. OVH reminds the customer that it cannot cancel a deferred SMS once the sending has been validated.

2.10 The SMS Service does not allow sending MMS.

Telephone Number

2.11 For an SMS sent from the OVH platform, it belongs to the Customer before proceeding to the validation of his number(s) corresponding to phone to the phone line physically located in the Republic of Ireland. This number will be displayed as sender number on SMS issued by the Customer through the SMS Service.

2.12 The Customer may request activation of his SMS Service from a mobile phone number via an SMS issued by OVH and containing an activation code. This delivery will be deducted from his SMS pack.

2.13 The Customer can also request for the activation of the SMS Service on a mobile number only, a call will be made on the number chosen by the Customer and a voice message will be sent. An SMS will be deducted from the package for the activation of the number by phone.

2.14 The Customer may request the activation of the number of his choice via post. Eight SMS will then be deducted from the SMS package.

2.15 The Customer can choose the phone number it wishes to indicate as sender, provided that the number has previously been activated in accordance with the provisions hereof.

### **3: TERMS OF SUBSCRIPTION**

3.1 To subscribe to the SMS Service, the Customer should connect to <http://www.ovh.ie>.

3.2 It is up to the Customer to create a customer account when placing his order or from his existing account. The Customer must ensure that the information filled in is accurate.

3.3 OVH reserves the right to ask the Customer to provide documents to prove his identity, place of residence and his bank details to open his line. If OVH does not receive these documents within seven days after the request, OVH will reserve the right to limit the SMS Service until reception of the documents required.

### **4: OBLIGATIONS OF CUSTOMER**

4.1 The Customer warrants that it has the necessary authority and capacity to agree to these conditions.

4.2 The Customer undertakes to notify OVH of its contact details, place of residence and bank details and to update these as required.

- 4.3 It is up to the Customer to provide valid information to identify themselves and to agree to provide updated documents whenever necessary (Change of address or bank details ...).
- 4.4 The Customer agrees to use the SMS Service in accordance with all applicable legislation, including without limitation the Data Protection Acts 1988 and 2003, the Privacy and Electronic Commerce (EC Directive) Regulations 2003 and Electronic Commerce Act 2000 and all applicable consumer legislation.
- 4.5 The Customer shall not act in any way that has the purpose or effect of creating in the minds of the public confusion between him and OVH.
- 4.6 The Customer agrees to display for any SMS-MT sent to users, its legal and trading name, or when it intervenes on behalf of third, the name of the sponsor for which the message is sent.
- 4.7 The Customer warrants and represents that it has all intellectual property rights necessary to use the SMS Services and that its use of the SMS Services shall not infringe the intellectual property rights of any third party.
- 4.8 The Customer undertakes not to send SMS containing any of the following:
- messages which are violent, pornographic, racist, anti-Semitic, discriminatory, liable to undermine respect for the human person and his dignity, or which contravene legislation relating to the protection of children,
  - messages inciting the commission of crimes or offences, encouraging the use of illicit substances, suicide
  - messages for the promotion of sectarian movements, or regarded as representing a terrorist threat or recognized as such by a court or government body
- 4.9 The Customer also agrees not to issue any SMS to the direct or indirect promotion of products subject to a statutory prohibition, or alcoholic beverages.
- 4.10 The Customer undertakes to comply with all applicable data protection legislation and any related guidance or requirements produced by the Office of the Data Protection Commissioner, the Customer agrees not to send any SMS messages destined for users who have not expressly consented to receiving such messages. The Customer undertakes to ensure compliance by itself and any Sponsor with all laws and regulations concerning the treatment of personal data and protection of privacy, including electronic communications.
- 4.11 It is the Customer's sole responsibility to ensure that
- (a) the sponsor is identified, together with the word "Contact",
  - (b) to ensure the processing of requests from users and,

- (c) in particular to ensure that any requests by users to stop sending SMS messages (e.g. by returning the word “Stop” are processed and those users removed from any relevant databases.
- 4.12 The Customer undertakes to inform OVH of any mass mailing of SMS that may cause an overload on the OVH network at least seven days before the date of delivery specified. This warning is aimed at enabling OVH to anticipate any sudden increase in the number of SMS issued from its platform. Without prior warning, OVH can not be held liable for non delivery of SMS messages issued by the Customer.
- 4.13 The Customer acknowledges that OVH may be required to submit technical recommendations to improve the quality of service and / or safety and as such is committed to regularly connect to its management interface and its e-mail service.
- 4.14 The Customer acknowledges that OVH may be required in order to improve the quality of service, to conduct operations on its technical infrastructure that could affect the proper functioning of the SMS Service or suspend it for a limited time. OVH will limit itself to advance through all communication means at its disposal, the procedures for the discontinuance of the SMS Service and the estimated duration of the interruption of SMS Service.
- 4.15 The Customer undertakes to use telecommunications equipment in accordance with all existing regulations and to use the SMS Service in accordance with the provisions of this Agreement.
- 4.16 Customer specifically agrees not to use the SMS Service for attempts at telephone scams, harassment, threats, unfair methods of prospecting without consent or for any use detrimental to public order or morality and check compliance and legality of the use of the SMS Service in the country receiving the SMS Service.
- 4.17 OVH reserves its right to limit or suspend all or part of the SMS Service in the event of improper use of the SMS Services, where use is regarded by OVH or its partners, or in the event of any use inconsistent with the provisions of these conditions.
- 4.18 The Customer undertakes to take all necessary measures to non-disclosure or misuse of the password provided confidentially by OVH and allowing access to its management interface.

## **5: CUSTOMER'S RESPONSIBILITIES**

- 5.1 The Customer shall be solely responsible for the content of the SMS issued from the OVH platform and also for any promotion and communication made through the SMS Service.

- 5.2 The Customer shall indemnify OVH in full and on demand against any liability (direct and indirect), claims, actions or losses suffered as a result of a claim of any kind brought by a third party, sponsor or user.
- 5.3 In addition, Customer agrees to intervene at the request of OVH in any proceedings brought against it and to hold OVH harmless against all losses suffered by OVH. .
- 5.4 The Customer is solely responsible for the content of the message, undertakes to provide at its expense defend OVH where the latter would be an action founded on data, information, messages, for violation of privacy, infringement of the right of personal data, etc., disseminated through the platform OVH, and to bear the compensation due for damages possibly incurred, provided you have the freedom to transact and conduct the proceedings.
- 5.5 Customer alone bears the consequences of malfunction of the SMS Service resulting from any use by its staff or any person whom the Customer has provided access to the SMS Service. Similarly, the Customer alone bears the consequences of the loss or theft of or passwords by OVH transmitted through the SMS Service. .
- 5.6 Customer is responsible for any changes to the configuration defined by OVH and any consequences thereof.
- 5.7 It is the Customer's obligation to notify OVH of any technical hitches encountered when using the SMS Service.

## **6: OVH'S OBLIGATIONS**

- 6.1 OVH is committed to implement the technical means necessary for the proper functioning of the SMS Service, but can not be responsible for any part of the SMS Services that are dependent on other operators.
- 6.2 Customer acknowledges that other operators are involved in the routing of SMS and that OVH accepts no liability for any failure by any third party operators.
- 6.3 Subject to the limitations set out in this Agreement OVH shall use reasonable endeavours to ensure the delivery and integrity of SMS-MT issued by the Customer.

## **7: OVH'S RESPONSIBILITIES**

- 7.1 OVH reserves the right to refuse the subscription to a SMS Service to a customer who has purchased to an SMS package terminated less than six months following a serious breach of its contractual obligations as defined herein.
- 7.2 OVH does not guarantee the delivery of SMS to the users in roaming.

7.3 OVH shall not be liable for:

- ✓ fault, negligence, omission by the Customer or Customer's failure to comply with advice given,
- ✓ actions of third parties,
- ✓ event or incident beyond the control of OVH,
- ✓ deterioration of the application,
- ✓ misuse of the terminals by the Customer or its employees,
- ✓ intervention of a third party not authorized by the Customer,
- ✓ difficulty falling to ISP or Customer relations, contract between the customer and the supplier,
- ✓ delivery of communication related to other telecommunications operators, weather disturbances,
- ✓ Non-compliance with a deadline of kindness sufficient potential overload of the network.

7.4 OVH's shall not be responsible for the nature or content of messages or information sent by the network, or any third party intervention, or any event related to non-compliance of electrical installation Customer, any wire or wireless network.

7.5 OVH does not warrant that the SMS Service will operate without interruption. In case of failure of the SMS Service, OVH notify the Customer about default in question, informing him of its kind and will make its best efforts to remedy the failure.

7.6 OVH shall not be responsible for unforeseeable losses or for losses outside its reasonable control; howsoever such losses might have arisen.

7.7 In respect of Business Customers (i.e. those acting in the course of their business or on behalf of a business or who are not considered a "Consumer" for the purpose of the European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995 and 2000, OVH, shall not be liable for any of the following howsoever arising:

- (a) indirect, special or consequential losses for consequential damages,
- (b) commercial loss, loss of control, loss of reputation, economic loss, loss of profits or customers (e.g., inappropriate disclosure of confidential information concerning the result of defective or hacking the system),
- (c) any losses suffered by a third party, or actions brought against the Customer by any third party; or
- (d) any losses for which Customer has or could have its own insurance. .

7.8 Subject to 7.9 below, in no event shall the total aggregate liability of OVH exceed the total amount paid by the Customer to OVH for the SMS Services.

7.9 Nothing in this agreement excludes either party's liability for personal injury or death arising from that party's negligence, fraud or fraudulent misrepresentation or any other liability that cannot legally be limited.

7.10 For reasons related to network security and service quality, OVH inform the Customer that may be required to monitor the Services. The Customer consents to procure, if necessary, the consent of such individuals affected in the event that such monitoring affects right to privacy of those involved.

## **8: FORCE MAJEURE**

OVH shall not be liable for the consequences of any event of Force Majeure (as recognised by the courts), including without limitation as a result of fire, explosion, failure of transmission networks, facilities collapse, epidemic, earthquake, flood, power failure, war, embargo, law, order, demand or requirement of any government, strike, boycott, pandemics, or other circumstances beyond the reasonable control of OVH.

In the event of any of the above events, OVH, subject to prompt notification to the Customer will be excused from performance of its obligations to the extent of such prevention, restriction or interference, and the Customer will be equally exempt from the performance of its obligations to the extent that the obligations of this part relate to the enforcement and prevented, restricted or impaired, provided that the affected party and make its best efforts to avoid or alleviate such causes of non-performance and both parties shall promptly whenever such causes have ceased or been removed.

The party affected by Force Majeure shall hold the other party properly informed by email forecasts removal or reinstatement of the Force Majeure.

If the effects of a Force Majeure Event must have a duration exceeding 30 days, the contract may be terminated automatically at the request of either party, without right to compensation or other liability.

## **9: INSURANCE**

Each party warrants that it has purchased product liability insurance cover sufficient to cover its obligations under these conditions. The Customer warrants that his insurance covers the business of sending SMS.

## **10: SUPPORT**

The OVH technical support is available for the Customer:

- on our website: <http://www.ovh.ie/customerspace/>
- or by telephone at the telephone numbers listed on <http://www.ovh.ie>

Customer can report any technical incident through the procedure for reporting incidents from its management interface or through technical support.

## 11: BILLING

### Billing

- 11.1 The Customer shall be responsible for determining when ordering the package, which one best meets their needs.
- 11.2 Each SMS delivered by the customer from its SMS Service will be deducted automatically from their remaining SMS package.
- 11.3 SMS is deducted upon validation of transmission by the Customer, and not after receiving the SMS on the user's terminal.
- 11.4 To send an SMS containing more than 160 characters, the Customer will be charged an additional SMS every 160 characters.

### Additional Options

- 11.5 Customer may choose to purchase additional options that may be associated with underwritten offers. These may be charged at the time of the installation or on a monthly basis as appropriate.

## 12: PERFORMANCE, PRICE, PAYMENT AND TIME OF PAYMENT

### Order Confirmation

- 12.1 OVH shall immediately acknowledge receipt (by email to the Customer) of the order placed and the payments received, and inform the implementation of the SMS Service ordered under the conditions described below.

### Execution of orders

- 12.2 The SMS Service shall not be available until after the activation of the Customer account by OVH within a maximum of 7 days from the date of actual payment of the purchase order by the Customer.
- 12.3 The actual payment is made when the amounts corresponding to the SMS Service are credited to the account of OVH in cleared funds. If, after this period, the SMS Service has not been provided by OVH is entitled to request cancellation of the transaction and repayment of amounts already paid.

## Tariff

- 12.4 Prices for Services provided by OVH under contract to provide services to OVH depend on the nature of services provided. The current rates are available for consultation online at [www.ovh.ie](http://www.ovh.ie) and application to OVH, at OVH HOSTING LTD 5 Fitzwilliam Place Dublin 2.
- 12.5 Prices for the Services include all taxes and are payable in Euro, in advance of registration of order or receipt via e-mail the URL to the bill pro-forma type.
- 12.6 OVH reserves the right to change prices at any time, subject to notifying the Customer by email or by a notice posted on the site [www.ovh.ie](http://www.ovh.ie) one month in advance if the new rates are less.
- 12.7 Customer support

Following this information the customer will be free to terminate the contract under the conditions specified in Article 14 hereof. Otherwise, the Customer shall be deemed to have accepted the new price. Tariff changes will apply to all contracts including those running.

- 12.8 OVH reserves the right to pass on without delay any new tax regulatory, administrative or legal or any increase in rates of existing taxes from the date that they apply.

## Terms of Payment

- 12.9 Payment is to be made online by credit card in pounds sterling at the conclusion of the contract or each month in case of subscription. The Customer has the possibility to pay by cheque from an English bank. It is up to the Customer to choose the method of payment suitable for the service ordered and its execution time.

## Consequences of late payment

- 12.10 If we do not receive any payment or if a card payment is cancelled, failed due to lack of provision and / or rejected by our bank following a payment made by standing order or by cheque...) will be considered as a late payment.
- 12.11 Any disagreement concerning the billing and the nature of the SMS Service must be expressed by email to OVH destination within one month after issuing the order.

## Limitation period

- 12.12 Neither party shall make any claims under this agreement later than one year after the date that those claims arise.

Information on bills

- 12.13 OVH shall make available to the Customer, at the Customer's request for a period of 12 months from the date of invoicing, a record of communications and information on the SMS Services invoiced.

### 13: CONTRACT DURATION

- 13.1 The contract takes effect when OVH validates the customer order. The contract is concluded for an indefinite period until all SMS ordered by the Customer are sent.

### 14: TERMINATION, RESTRICTION AND SUSPENSION OF SMS SERVICE

- 14.1 Each party may terminate the contract automatically and without compensation in case of force majeure as provided above.
- 14.2 In other cases, the Customer may cancel the contract by registered mail to OVH HOSTING LTD 5 Fitzwilliam Place Dublin 2. Any request for termination of Contract by the Customer will be effective from the day after the reception by OVH, provided that the Customer has specified all the information required to identify him. The Customer may request that the termination takes effect more than ten days after OVH receives his termination claim. In the event of early termination, the unused SMS will not be refunded to the Customer.
- 14.3 Breach of these conditions by the Customer will result in OVH having the right to suspend the SMS Service immediately and without prior notice to the Customer terminate immediately the contract, without prejudice to any right to damages which OVH may claim. If OVH terminates the contract as provided above, Customer shall not be entitled to reimbursement by OVH amounts corresponding to the services already provided by OVH, and OVH not be liable for any compensation in respect of the Customer. However, if non-compliance of the Customer causes injury to OVH, OVH reserves the right to sue the Customer for the full repair of the injury including the payment of damages, penalties, costs, fees incurred by OVH.
- 14.4 In case of breach by either party of any of its obligations under the contract, which breach is not remedied within 7 days after either a registered letter with return receipt addressed by the complainant notifying the failure in question, or any other form of notification authentic addressed by such party, the contract will be automatically terminated, without prejudice to any potential damages that may be claimed from the defaulting party.

- 14.5 The date of the notification letter containing the violations at issue will be the date of postmark at the first presentation of the letter.
- 14.6 Customer may request termination of his contract in case of cancellation of a destination covered by the SMS Service and whose list is available on the website of OVH.
- 14.7 The SMS Service may be restricted, limited, suspended or terminated by OVH if full payment is not effective.
- 14.8 In any event, the restriction, limitation or suspension of the SMS Service shall be exercised according to the severity and recurrence of or failures. They are determined according to the nature of the deficiencies noted.
- 14.9 Customer agrees in advance that OVH may restrict, limit or suspend the SMS Service if OVH receives a notice to that effect notified by a competent authority, administrative, arbitration or judicial, in accordance with applicable relevant laws.
- 14.10 Any type of notification under this section shall be sent by recorded delivery to OVH.
- 14.11 OVH reserves the right to immediately suspend the SMS Service to comply with any court or administrative order to comply with the law or to avoid damage on the network.

## 15: **RIGHT OF RETURN**

- 15.1 The Customer, where acting as a Consumer, shall have the right to cancel the contract at any point up to seven days after placing an order by notifying OVH in writing. Please note however that if the customer uses the SMS Service before the expiry of the seven days, it shall no longer be able to exercise this right of withdrawal.

## 16: **PERSONAL DATA**

- 16.1 Customer consents to any personal data that is provided to OVH being stored, processed and transferred by OVH to its subsidiaries, including outside the EU, provided that such use is limited to the performance of functions necessary to providing the SMS Services. Accordingly, the Customer has a right to access, modify, correct or delete any data collected by contacting OVH at the address set out above.
- 16.2 Where Customer provides to OVH the personal data of third parties, the customer shall represent that it has obtained consent to pass that data to OVH for OVH to use in accordance with 16.1 above and shall indemnify OVH in full and on demand in respect of any liability suffered by OVH as a result of a breach of this representation.

16.3 The data transmitted by the Customer shall be kept for the duration of the contract and the legal time necessary for the administration of proof. OVH forbids any disclosure, any resale of personal data relating to the Customer.

## 17: GENERAL PROVISIONS

### 17.1. Severability

The invalidity of any provision of these Conditions will not invalidate other provisions of these conditions that retain their full effect and scope, but rather, the parties shall as far as possible replace the annulled provision by a provision that reproduces the spirit and intent of the contract conditions.

### 17.2. Titles

The titles of articles in the contract conditions are intended only to facilitate reference and have not by themselves a contract value or significance.

### 17.3. Special Conditions and Annexes

The special conditions and any annexes are incorporated into these Conditions as if repeated in full herein. All the documents incorporated in this contract by reference may be accessed by the Customer at the addresses listed on the page: <http://www.ovh.ie/customerspace/termservice/>.

These documents are also subject to changes or developments made by OVH from time to time.

### 17.4. Communications

For any exchange of information by electronic mail, the date and time the server will be conclusively recorded by OVH. This information will be retained by OVH throughout the period of contractual relations. All notices, communications, formal notices under the Terms will be deemed to have been validly delivered if sent by registered mail with return receipt to:

- OVH HOSTING LTD: 5 Fitzwilliam Place, Dublin 2
- For the Customer: the address and / or e-mail that provided OVH

### 17.5. Advertising and Promotion

OVH may occasionally advertise events, conferences and in publications in professional markets, and in order to do so may make reference to the SMS Services provided to Customer and its business records.

## **18: ALLOCATION OF JURISDICTION**

In case of dispute with a Customer acting in the course of its business (and not considered a consumer for the purposes of Irish Law) both parties hereby submit to the exclusive jurisdiction of the Irish courts.

Customers acting as a Consumer when entering into this agreement will be able to bring an action in the court of the relevant Irish jurisdiction of their choosing.

## **19: GOVERNING LAW AND JURISDICTION**

The Contract and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the laws of the Republic of Ireland.