

General Terms and Conditions of Sale Outscale

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Preamble

Outscale SASU company, registered at the Nanterre Registry of Trade and Companies under number 527 594 493, with a capital of 1 849 930 euros, having its registered office located at 1 rue Royale, 92210, Saint-Cloud, France, is a Cloud Computing operator whose principal activity consists in the provision of Infrastructure as a Service (IaaS). As such, it provides its clients, with the Services contained in its Catalogue as well as related Professional Services.

By asking to be provided with the Services offered by Outscale, the Client accepts without restriction or reservation these General Terms and Conditions as well as any Special or Specific Terms and Conditions which the Parties may have agreed on and which constitute the undertaking of the Parties, who declare that the negotiations leading up to this agreement were conducted without any restriction or limitation or under the influence of any economic reason of one Party to the other Party, resulting in that the agreement constitutes a mutual agreement in accordance with article 1110 of the French civil code. They declare that they have each had the time to consult their advisors and that the Client has had the opportunity to ask Outscale any question(s) which it considered decisive for its consent, to analyze the response to such question(s) and to apprehend the scope of their commitments.

It is recalled here that the Client, having never committed to using Outscale's Services, may decide to cease using these services at any time if it considers that the performance, price or quality conditions with respect to the Services do not live up to its expectations.

Furthermore, if the Client does not accept the modifications made by Outscale to its General Terms and Conditions or modifications to the Services, it may inform Outscale of its intention to cease using the Services and to implement the reversibility procedure stipulated in article 7 "Reversibility". Concerning prepaid Services such as the Reservation of Instances, if the Client wishes to terminate these Services, it will be entitled, in the case of non-acceptance of the new General Terms and Conditions only, to a reimbursement in proportion with the actual use of the Services in accordance with the conditions fixed In article 6 "Suspension, cessation of use and termination of the Services".

The Client also expressly declares that it has the requisite technical skills, or that it is assisted by an IT professional, to implement and make use of the Services supplied by Outscale and to ensure that throughout the duration of their contractual relations the Services and their Specifications remain, even in the event of modification of these Services, in line with its needs and objectives, in particular In terms of security.

Lastly, the Client declares that it is perfectly familiar with the laws, regulations and requirements applicable to its activity both in its country of establishment and in the country in which it carries out its activity. It irrevocably undertakes to comply with these, and with future changes to these laws and regulations and to ensure compliance with these obligations by all its contractors, assignees and beneficiaries. In particular, the Client is responsible for all actions, declarations or applications for authorization under the laws and regulations applicable to it.

ARTICLE 1. Definitions

For the interpretation of these General Terms and Conditions (GTC), the terms and expressions hereunder shall be interpreted according to the definitions of this article and have contractual value when they begin with a capital letter; they are completed by the definitions contained In the technical glossary which can be found in Outscale's Public Documentation.

Catalogue of Services (or Catalogue): catalogue describing Outscale Services and their Specifications, and in particular those of the different Virtual Machines that Outscale may place at the disposal of the Client. The applicable Catalogue is available on the Outscale website <https://en.outscale.com/iaas-services-catalog/>. The withdrawal of a Service from its Catalogue by Outscale is carried out in accordance with the "Product end-of-life Policy" in the Public Documentation except, where applicable, if the Special or Specific Terms and Conditions applicable differ from " Product end-of-life Policy".

Client: any entity making use of Outscale Services in application of these GTC.

Client Data (or Data): all data, whether personal or not, whatever their nature, software as well as Data according to this definition, which the Client stores or processes thanks to Outscale's Virtual Machines.

Data Recovery Service: Paying Services whose purpose is to recover Client Data and transfer them to the Client if it is unable to access its Data, in particular in the event where Outscale has suspended the Services in accordance with article 6 "Suspension, cessation of use and termination of the Services".

Effective Termination Date: date from which these GTC cease to be binding between Outscale and the Client.

General Terms and Conditions of Sale or General Terms and Conditions (GTC): this document, including its preamble, definitions Appendices and all the documents it incorporates by reference.

On Demand: refers to the Virtual Machines supplied by Outscale when the Client (i) only pays for the Virtual Machines effectively used, (ii) does not take out any subscription or commitment over time or for minimum Virtual Machines, and (iii) can therefore cease to use the Virtual Machines at its convenience and without Indemnity, in particular If they no longer correspond to its needs. Outscale cannot guarantee the availability of On Demand Virtual Machines at all times.

Order: any request to purchase a Service made by the Client and accepted by Outscale. This also takes the form of an order form which indicates the nature of the Services ordered and constitutes the Special Terms and Conditions which complete these General Terms and Conditions.

Outscale Infrastructure (Infrastructure as a Service or Outscale IaaS): designates all the hardware and software (TINA in particular) operated by Outscale and necessary for the supply of the Services.

Professional Services: any service provided by Outscale subject to a special order by the Client. These services are governed by special agreements..

Reserved Instances: refer to the Virtual Machines ordered for a fixed period.

Resources (or Virtual Machines): refer to all cloud Resources, such as Virtual Machines, Object Storage Service, etc. that Outscale places at the disposal of the Client. They may be "On Demand" or fixed period. This provision of Resources/Virtual Machines is one of the Outscale Services. These Resources/Virtual Machines are described in the Catalogue of Services.

Service(s): refer to all the Outscale Services in the framework of these GTC, i.e. the provision of Cloud Resources (On Demand and for a fixed period) with the exception of the Professional services.

Service Level Agreement (or SLA): Outscale's quality of service commitments in the framework of the Services, such as defined in Appendix. 3

Special Terms and Conditions: contractual document which may complete the GTC with which they form an inseparable whole, which reflects the commitment of the Parties.

Specifications: characteristics of the different Services, such as defined in the Catalogue of Services, if necessary completed by the Public Documentation and the Responsibility Assignment Matrix.

Specific Terms and Conditions: contractual document relating specifically to a Service with an accreditation or certification, such as Health Data Hosting (HDS) and the SecNumCloud (SNC) label.

Technical Account (or Account): the account which records the Virtual Machines used by the Client and which is used for the establishment of invoices by Outscale. If necessary, a Client may ask Outscale to open several Technical Accounts. If the Virtual Machines used by the Client are spread over several Regions, a Technical Account may be opened for each Region.

ARTICLE 2. Application of these General Terms and Conditions

The purpose of these General Terms and Conditions, potentially completed by the Special or Specific Terms and Conditions, is to define the respective roles and responsibilities of Outscale and the Client in

the context of the supply of Services by Outscale to the Client, as well as the invoicing conditions for said Services. As recalled in the preamble, these General Terms and Conditions apply to all and any use of Outscale Services. The Client therefore declares that it accepts these GTC without reservation.

These GTC apply for the full duration of the use of the Services by the Client.

Consumers are not eligible for these Services.

These GTC only concern the Services provided by Outscale SASU.

1. Labels

Outscale has several accreditations and certifications, the list of which is given on its website <https://en.outscale.com/certificate/>.

Outscale operates an information security management system that complies with the standard requirements of ISO 27001 for infrastructure hosting services including health data hosting (HDS) and the hosting of its SecNumCloud (SNC) label service.

Outscale complies with the CISPE (Cloud Infrastructure Service Providers Europe) code of conduct for the protection of personal data.

Outscale has TISAX (Trusted Information Security Assessment Exchange) certification which guarantees the security of data in the automobile sector.

These activities are audited regularly to guarantee compliance of practices with applicable security and quality requirements.

Outscale has also adhered to the SWIPO (Switching Cloud Providers and Porting Data) code of conduct for data portability.

2. Hierarchy of contractual documents

The acceptance of these conditions irrevocably implies for the Client:

- the waiver of its own general terms and conditions of purchase,
- the waiver of the result of all discussions, advertising, e-mails, offers, proposals etc. with the same object as this agreement.

In any case, these conditions, together with any Special or Specific Terms and Conditions and completed by the documents listed hereafter, form the entire agreement between the Parties.

Whatever the particular contractual hierarchy agreed between the Parties, these General Terms and Conditions constitute the sole reference for interpretation according to the meaning of article 1189 of the French civil code.

The undertaking of the Parties is made up of the following documents, ranked by descending order of importance:

1. any Specific Terms and Conditions agreed between the Parties,
2. any Special Terms and Conditions agreed between the Parties,
3. the General Terms and Conditions (<https://en.outscale.com/terms-of-service/#terms-of-sale>), including their Appendices:
 - Appendix 1. The financial and payment conditions,
 - Appendix 2. The conditions linked to personal data/Data Processing Agreement,
 - Appendix 3. The Quality of Service Commitments/ Service Level Agreements (SLA),
 - Appendix 4. The SEPA direct debit order.

The following documents included by reference have the same hierarchic ranking as the document in which they are referenced:

- the Responsibility Assignment matrix (<https://en.outscale.com/terms-of-service/#matrix>)
- the Outscale Catalogue of Services (<https://en.outscale.com/iaas-services-catalog/>)

- the public prices for Services (<https://en.outscale.com/pricing/>) defined as the "Public Prices".
- the public documentation associated with the Services (docs.outscale.com), defined as the "Public Documentation".

ARTICLE 3. Modification of the General Terms and Conditions, Public Prices and offers

In order to improve the quality of its Services, Outscale will regularly modify these GTC as well as the offers included in the Catalogue of Services and the Public Prices

1. Modification of the General Terms and Conditions

In the event of changes to the GTC, the Client is always free to refuse them. In this case, it must cease to use the Outscale Services prior to the date on which the new GTC come into force. If it wishes to benefit from the provisions of article 6 "Suspension, cessation of use and termination of the Services" it must send formal notice to Outscale of its intention to terminate before the new GTC come into force.

Any use of the Services after the new GTC have come into force constitutes acceptance of the GTC without reservation.

New versions of the GTC will be brought to the Client's attention by any means considered useful and pertinent by Outscale, in particular through publication on the Outscale website and via the management interface of its Technical Accounts.

New versions must be published at least fifteen (15) days before they come into force.

Outscale shall pay no indemnity to the Client following the modification of the contractual conditions (GTC, offers and Public Prices), the possibility of modifying them at its convenience being the counterpart for the Client's freedom to terminate the Services at its convenience and without Indemnification.

2. Modification of the Specific Terms and Conditions

The Specific Terms and Conditions inherent to the labels applicable to Outscale may be modified in line with the evolution of the labels or related elements which oblige Outscale to revise them.

3. Modification of the Services, offers and Public Prices

With the aim of ensuring continuous improvement, the Services may evolve in terms of performance, Specifications or price. As these modifications are contingent to the nature of Cloud Computing services, the Client declares that it accepts said modifications without limitation or reservation as well as the modification of the offers contained in the Catalogue of Services and the Public Prices.

Outscale may also decide, at any time, to discontinue a Service in accordance with the product end-of-life policy described in its Public Documentation.

Concerning the Services ordered and paid for by the Client (including Reserved Instances), Outscale may, at its discretion alone, (i) terminate the Service without any cost or indemnity due and proceed with a reimbursement for the remaining term or (ii) replace the Service by another Service that is at least equivalent in terms of performance for the remaining term.

ARTICLE 4. Subscription of the Services

1. Initial order

The Client can order the Services by contacting Outscale's sales department at the following address sales-eu@outscale.com. Once Outscale has accepted the Client's order, the Client may have a Technical Account opened by Outscale.

For the opening of its Technical Account, the Client fixes:

- The e-mail associated with the Technical Account;
- The Region in which the Technical Account must be created;
- The identification data (name, intercommunity VAT number or equivalent in the Client country, address, telephone number, etc.).

The information indicated above will be processed by Outscale with the aim of supplying the Service to the Client. The Client must also provide invoicing information as well as bank details to ensure the payment of the Service.

The Client guarantees the accuracy of the above mentioned information and undertakes to maintain permanent access to the e-mail address declared which, unless another means of communication is agreed in the Special Terms and Conditions, will be used for all official communication sent to the Client at the initiative of Outscale. In particular, this e-mail address will be used for indispensable communications such as the modification of the GTC, modification of the Specific Terms and Conditions, the Catalogue of Services and the Public Prices, planned interruptions of Service, notice of termination of a Technical Account due to inactivity.

2. Automatic extension of the Scope of the Services

The extension of the scope of Services corresponds, when the offer subscribed allows, to the Client purchasing use of additional Virtual Machines. The Client may extend the scope of the Services in the same conditions as for their Initial Order via automatic extension tools (API Outscale) as described below.

Thanks to the tools provided by Outscale, the Client can develop computer programs that allow it to order Outscale Resources automatically (hereafter the " API Outscale ") such as new Virtual Machines or additional storage volumes.

It is understood that when the Client uses the API Outscale, it cannot be released from its obligations with respect to the Virtual Machines subscribed automatically, even if the Order results from an error due to the API Outscale. It is the Client's responsibility to use the API Outscale with discernment and to implement all the necessary control procedures.

ARTICLE 5. Obligations of the Parties

The obligations of the Parties are defined in these GTC, in the Responsibility Assignment Matrix and in the SLA.

Anything that is not mentioned as being the responsibility of Outscale in these GTC is reputed to be the responsibility of the Client. Consequently, before accepting these GTC and beginning to use Virtual Machines, the Client, which declares that it has the necessary skills or that it is being assisted by an advisor who is competent in this field, must analyze the Responsibility Assignment Matrix and check that the Outscale Services correspond to its needs.

Outscale may supply, on demand and in the framework of its Professional Services, assistance in this matter.

Furthermore, the Client also undertakes to comply with the obligations below:

1. Duty of diligence obligation

The resilience of the Services induced by the use of Snapshots makes it possible to reconstruct a system, but relies on factors that are dependent on the architecture set up by the Client.

The Client is informed that Persistent Storage may be corrupted for various reasons (mishandling, misuse, etc.). Consequently, the Client's backup or recovery plans cannot be based solely on the natural resilience of the Outscale Infrastructure, but must implement a structured backup policy. Therefore it is not only

the responsibility of the Client to make Snapshots but also to make backups of its volumes in order to be able to return to a known state.

More generally, the Client must implement the measures necessary for the recovery of its Data or the limitation of the loss of its Data. Therefore by express agreement, the Client defines and implements a security and Data backup policy in accordance with standards of professional practice and the sensitivity of the Data, including making backups of its volumes thanks to the tools supplied by Outscale. In the case of absence or failure by the Client to implement a security and Data backup policy in accordance with standards of professional practice, Outscale assumes no responsibility for the loss of Client Data.

In order to ensure maximum security, the Client's policy must provide for the Data to be available in several availability zones, it being established that each availability zone for a Region is at a different datacenter.

The Client undertakes in particular not to use the Services supplied by Outscale as part of an activity requiring authorization without having obtained such authorization beforehand. The Client declares that it shall take personal responsibility for these formalities and authorizations. The necessary proof of these authorizations must be provided to Outscale upon first demand.

If the Client Intends to launch a marketing, communication operation or audit on the systems hosted at Outscale, etc. that might potentially cause a significant increase in the use of Virtual Machines (bandwidth, memory or calculation) it shall be responsible - as part of its duty to cooperate- for notifying Outscale prior to the launching of said operation within a reasonable period of time, to avoid this sudden increase in activity being analyzed as a security breach and resulting in a possible temporary suspension of the Services.

The transfer of its Data by the Client in the context of its right to reversibility as stipulated in article 7 "Reversibility" takes place under the full responsibility of the Client.

2. Obligation of reasonable use

The CLIENT undertakes to make reasonable and good faith use of the services provided by Outscale. Such use must remain in all circumstances consistent with applicable regulations and with the Client's activity and corporate purpose (hereafter "Reasonable Use").

The CLIENT shall therefore refrain from any activity that would result in an unreasonable use of the equipment and hardware underlying the services provided. This includes any activity that would result in premature wear of storage media (including hard disks) made directly or indirectly available to it, including cryptomining activities of virtual currencies (such as CHIA, BitCoin, Ethereum, etc.) without this list being exhaustive.

More generally, any use of the Virtual Machines made available by Outscale that could disturb the smooth running of the Services and the Outscale Infrastructure as well as the Virtual Machines of other Clients will be deemed to be an unreasonable use.

The Penetration Testing expressly authorized by Outscale such as defined in the article "Audits, by exception fall within the scope of reasonable use.

By express agreement, there will be a presumption of liability on the part of the Client, in particular if Outscale notices:

- the premature wear of its equipment because of an abnormal use by the Client,
- abusive operations originating from one or several of the Client's Virtual Machines (such as "flood", "scan", "spam", "denial of service", etc.).

In accordance with article 6 "Suspension, cessation of use and termination of the Services", in the event of unreasonable use by the Client, Outscale may immediately block the incriminated Virtual Machines or even all the Services and launch the termination procedure, without prejudice to Outscale (i) of the right to obtain indemnification from the Client for the materials that are worn prematurely as a result, which the Client irrevocably undertakes to reimburse upon presentation of the supplier invoice and (ii) the right to claim reparation for the damages.

Furthermore, the Client must implement adequate procedures in the context of its use of the Services to ensure that its users and end clients make Reasonable Use of the Outscale Virtual Machines and in particular a use that is consistent with legal, regulatory and contractual requirements.

3. Cooperation obligation

The Parties undertake to cooperate in good faith in view of the proper performance of the Services, and in particular to proactively communicate the information that they have in their possession which could be useful (in particular concerning any dysfunctions encountered).

The Client undertakes to appoint a manager with the technical skills and the legal capacity necessary to:

- Authorize / manage the extensions to the scope of the Services,
- Work on the Virtual Machines made available by Outscale,
- Manage the Technical Account, and in particular ensure that the payment information is always valid, in order to prevent any delay in payment.
- Receive and process notices sent by Outscale.

Outscale shall send notices relating to these GTC to the e-mail address of the contact person indicated by the Client. The Client undertakes to inform Outscale immediately of any change in contact persons.

4. Acceptance obligation

As a result of the continuous nature of the Services provided, an acceptance system shall be set up ("réception" within the meaning of the French Civil Code) for the Services, called "as you go". All the Services provided by Outscale are therefore provisionally accepted by the Client in line with its use of these Services.

Final acceptance is pronounced automatically forty-eight (48) hours after the provisional acceptance by the Client unless the Client notifies Outscale by e-mail, within forty-eight (48) hours of the provisional receipt, of the existence of a substantiated reservation regarding the Service. This notification must document the reservation formulated: date, time of the start and finish of the unavailability period justified by using the tools available. No reservation may be formulated beyond the period mentioned above. The lack of documentation to back up the formulated reservation shall be considered as a lifting of the reservation.

5. Duty to seek advice

When subscribing Professional Services, the Client may ask Outscale for advice to help it migrate to the cloud and, in particular, to define the Specifications of the Outscale Virtual Machines which are suitable for its needs.

Outside of this specific case, Outscale has no duty to advise as to whether the Services offered match the Client's needs. It is therefore up to the Client, if necessary helped by a cloud computing specialist when the Client does not have the internal expertise, to analyze the Outscale offering, as well as these GTC, and to check that they correspond to its needs, in particular in terms of security.

ARTICLE 6. Suspension, cessation of use and termination of the Services

1. Suspension of the Services

Outscale reserves the right to suspend the Services supplied to the Client and block the Virtual Machines provided:

- a. At the request of a legal authority;
- b. In the event of a substantiated request by an administrative authority
- c. In the event of a risk for the security of the Services and the Data of the Clients or a non-reasonable Use (according to the meaning of article 5 "Obligations of the Parties") of the Virtual Machines;
- d. In the event of the Client's failure to pay one or more invoices on the due date.

In the cases mentioned in points a), b) and c) Outscale may immediately suspend or limit access to the Services, having informed the Client beforehand by any means, unless otherwise ordered by the legal or administrative authority..

In the case mentioned in point d) Outscale may suspend the Services after formal notice has been sent to the Client but produced no effect after a period of seven (7) clear days.

Outscale's liability cannot be sought for any negative consequences suffered by the Client's business as a result of the suspension or blocking of the Services.

In the cases mentioned in points c) and d) the suspension of the Services does not prolong the duration of the fixed period Services, in particular the Reserved Instances.

2. Cessation of use of the Services by the Client

As indicated in the preamble, the Client may, at its convenience, cease using the Outscale Services at any time. These GTC shall nonetheless remain in force until the Client has:

- a. initiated the reversibility procedure set forth in article 7 "Reversibility"; and
- b. initiated the termination under point 3 hereafter according to the procedures described therein.

In any case, even in the event that the Client ceases to use the Services, except in the case of the Termination procedure for non-acceptance of the new general terms and conditions provided hereafter, the last version of the GTC shall be applicable to relations between the Client and Outscale up until the date of Effective Termination.

3. Termination of the Services

a. Termination for breach

In the event of breach of the obligations hereunder, and in particular in the event of payment default by the Client, the victim of the breach shall send notice to the defaulting Party by e-mail inviting it to remedy the breach within seven (7) clear days. If this formal notice fails to produce an effect within this period, the victim of the breach may notify the defaulting Party, by e-mail, of the termination of all or part of the Orders. In this case, the termination comes into effect automatically ten (10) clear days after the sending of the termination e-mail. As of this Effective Termination Date, the Client Data shall no longer be accessible in accordance with article 7 "Reversibility" hereafter.

This termination is without prejudice to any damages which may be claimed from the defaulting Party by the other Party.

b. Termination in the case of non-acceptance of the new GTC

If the Client wishes to terminate all the Services due to refusal to accept the new General Terms and Conditions, it must notify Outscale of its decision in writing before the new conditions come into force. This notification will mark the start of the period of reversibility provided in article 7 "Reversibility".

If the Client has Reserved Instances, it will receive a proportional reimbursement corresponding to the period between the Effective Termination Date and the expiration date for the Order on the basis of the amount invoiced.

c. Inactive Client Account

In the event that the Client ceases to use the Virtual Machines for a period of more than twelve (12) consecutive months, Outscale may, at its discretion alone, delete the Client Account and consequently delete all the data relating to this Account.

In this case, Outscale will notify the Client of the application of this provision by e-mail sent to the e-mail address connected to the Account. As of this notification, the Client has a period of three (3) months (Effective Termination Date) after the sending of this notification in which to implement the Reversibility process mentioned in Article 7 "Reversibility" hereafter.

If this procedure is not implemented before the Effective Termination Date, these GTC will be terminated automatically and Outscale will proceed with the deletion of the Client Account and consequently the deletion of all the data relating to this Account.

ARTICLE 7. Reversibility

1. Recovery of Data

When one or more Services are terminated, for whatever reason, whether at the initiative of the Client or Outscale, the Client must imperatively recover all the Data present in its Technical Account(s) impacted by the termination before the Effective Termination Date.

If the Termination of all the Services takes place at the initiative of the Client, it is the Client's responsibility to recover all its Data before requesting the termination and closure of the Accounts. The Data that have not been deleted by the Client will be kept by Outscale for a maximum period of three (3) months. The Client may ask Outscale for a Data Recovery Service. By express agreement, the Effective Termination Date is fixed at three (3) months after the date of the sending of the termination notice by the Client or by Outscale, depending on the case.

If the Client wishes its Data to be deleted before the three-month period, the Client may ask Outscale to delete the Data in advance.

If it is impossible for the Client to access and recover its Data, in particular if Outscale has suspended the Services in accordance with article 6 "Suspension, cessation of use and termination of the Services" above, it must imperatively ask Outscale to perform the Data Recover Service prior to the Effective Termination Date.

The Data Recovery Service can be ordered from the Outscale support team which provides a quote. If the Client accepts the quote, the Client Data will be recovered by Outscale, then transmitted to the Client upon payment of the price of the Data Recovery Service. This order postpones the Effective Termination Date until the date of receipt by the Client of the Data transmitted by Outscale.

Further detail is provided on the Reversibility mechanisms adapted to the Services in the Public Documentation.

2. Deletion of Data

Outscale undertakes to destroy the Client Data in accordance with instructions, such as described in this article.

As of the Effective Termination Date (at midnight, Paris time) and unless otherwise indicated by the Client, Outscale will close the Technical Account(s) and all the Data will be immediately inaccessible to the Client and irrevocably destroyed by Outscale within a period of three (3) months, except for certain Data expressly mentioned below.

The fact that the Effective Termination Date is not a working day does not postpone the termination.

The identification data mentioned in decree n°2021-1362 of October 20, 2021 will be kept in the conditions and for the period provided by the decree in the event of the destruction of the Data according to the above procedure. In addition, the Client is informed that certain Data cannot be deleted, in the cases of the sharing of Data with third parties at the initiative of the Client, such as OMI sharing.

ARTICLE 8. Quality of Service Commitments

Outscale supplies the Services in accordance with the Service Level Agreements described in Appendix 3.

The application of the SLA entails compliance by the Client with certain conditions, and in particular with the obligations defined In the Responsibility Assignment Matrix.

Scheduled maintenance tasks must be taken into consideration for the availability time, subject to Outscale having informed the Client at least 2 (two) clear days in advance.

Any task whose purpose is to protect the Client Data or Infrastructure against an exceptional major risk such as an acute security vulnerability, a massive cyberattack or any other force majeure event such as stipulated in article 11 "Force Majeure" of the GTC shall also be taken into consideration for the availability time.

The downtime counted is only the time that has been subject to notification of reservations in accordance with article 5 "Obligations of the Parties/Acceptance obligation" of these GTC.

The Client shall have a period of 5 (five) clear days as from the end of the given period to notify Outscale of the application of penalties.

The Client must attach to its notification:

- The calculation showing that Outscale failed to comply with its Quality of Service commitments over the period in question, for the Services not definitively accepted.
- Reference to the reservations notified (within the meaning of the Article 5 "Obligations of the Parties/Acceptance obligation" of the GTCs) in support of its calculation.

If the Client has correctly documented and proven Outscale's noncompliance, it shall be granted credit to offset against the price of the Services, valid for a period of one (1) year, for which the amounts and calculation methods are defined in Appendix 3.

If the Client has more than one Technical Account, the credits mentioned above that it acquires due to a breach by Outscale relating to an Order associated with a Technical Account cannot be used to consume Services under another Order associated with another account.

The fact that the Client does not claim the above penalties beyond the abovementioned period shall be considered as a final waiver by the latter for the reservations notified, which will be deemed to have never existed.

In any case, all the penalties cannot exceed 30% (thirty percent) of the amount of the invoice for the month during which the incidents which generated the penalties occurred.

Furthermore, any penalties imposed correspond to a lump-sum, final amount of damages for the incidents at the origin of the penalties, which constitute full discharge.

In addition, should the Client be late with payment, without Outscale having suspended the Services, the penalty system would be automatically suspended until the Client is up-to-date with payments. Any penalties that could have been demanded by the Client during the suspension period will be forfeited.

ARTICLE 9. Intellectual property

1. Ownership of the technologies used to provide the Services

These GTC shall not include any assignment or transfer of intellectual and/or industrial property rights (patent) used for the provision of the Services (TINA OS software in particular) which belong to Outscale or to the holder of the intellectual property rights to these elements.

Furthermore, it is stipulated that the Client is strictly prohibited from:

- Reproducing any of the elements used to supply the Services: computer code, texts, images, design, graphics chart, ergonomics, documentation, etc.
- Seeking to reconstitute the technologies belonging to Outscale, in particular by means of reverse engineering.

Notwithstanding the above, Outscale assigns to the Client, on a personal and non-exclusive basis, the rights to the above elements as is strictly necessary to use each Service and solely for the duration of said Service, this assignment ending automatically at the same time as the Service, i.e.:

- for fixed term Services, the Order expiry date,
- for On Demand Services, the rights are assigned each time the Client uses a Service... and last until it ceases to use the Service.

2. Data and other elements transmitted to Outscale by the Client

These GTCs shall not include any assignment or transfer of the Data that the Client transfers to Outscale in the framework of the Services, for example the Data that the Client stores and processes on the Virtual Machines provided by Outscale.

Notwithstanding the above, the Client assigns to Outscale, on a personal and non-exclusive basis, the rights to the above elements as is strictly necessary for Outscale to be able to provide the Service and solely for the duration of said Service, this assignment ending automatically at the same time as the Services.

3. Distinctive signs belonging to the Parties

Each Party undertakes not to act in any way that might be damaging either directly or indirectly to the other Party's distinctive signs, without prejudice to Outscale citing the Client as a reference and the Client mentioning that it uses Outscale Services. However, each Party may, without having to give a reason, ask the other Party not to make reference to it.

4. Third-party licenses

When a license is required for the use of third-party software, the Client agrees to abide by the terms of the license of the third-party software provided as part of the Service or accessible at the following address: <https://docs.outscale.com/en/userguide/Software-Licenses.html>

5. Warranty of Infringement

Outscale undertakes to defend the Client against any claim by a third party alleging that a Service supplied in application of these GTC infringes a protected copyright in any country or a patent issued in a member state of the European Patent Organization, and to pay all expenses and damages and costs (including lawyers' fees for a reasonable amount) that the Client is ordered to pay by any competent court or which result from a written settlement agreement signed by Outscale stemming from such a claim, on condition that:

- (i) the Client warns Outscale of the claim in writing as rapidly as possible, and
- (ii) the Client authorizes Outscale to take charge of its defense alone as well as any negotiations with a view to a settlement and provides Outscale with reasonable cooperation for this purpose.

If such a claim is made or if, according to Outscale, it could be made, Outscale may, at its expense, either obtain the right for the Client to continue using the Outscale service applicable, modify the Service to stop the infringement, or replace it with an equivalent Service. If none of the above options is possible in conditions considered reasonable by Outscale and the Client, the Client may terminate the Services in question. Outscale undertakes to reimburse all amounts paid in advance for a Service that is not used, without prejudice to any other right or claims by the Client.

Outscale has no obligation to defend or indemnify the Client if the infringement claim is caused by an unauthorized modification or violation by the Client of the copyright in connection with the Services.

Outscale provides the following address for any person with a legitimate Interest intellectual-property-rights@outscale.com, to submit claims concerning Intellectual property rights.

ARTICLE 10. Liability

1. Liability

In any case, Outscale's civil liability (for any losses which the Client must prove), all causes combined, excluding any bodily injury and gross misconduct, is limited as set out below.

This limitation of liability is linked to the price paid for the Services supplied, to the technical and financial advantages that the Services procure for the Client and to the absence of Outscale's control on the value of the Client Data.

By express agreement, Outscale declines any liability for indirect and/or consequential damages such as: operating loss, loss of turnover, loss of data or corruption of the application, disorganization, violation of the other Party's image rights, etc.

There are different liability caps, i.e. the maximum amount (including suppliers and subcontractors) that Outscale will have to pay in the event of breach of its contractual obligations, which will apply in accordance with the rules stipulated in the table below:

Cause of liability	Are there contractual penalties which cover the cause of liability?	Limit applicable
Any cause except gross misconduct or bodily injury	If yes	Limit of penalties associated with the SLA
	If no	General limit
Gross misconduct or bodily injury	Non applicable	No limit applicable

a. General limit

This is the limit capped at the lower of the following amounts:

- 1) half the pre-tax amount received by Outscale during the twelve (12) month period preceding the date of the last damaging event,
- 2) twelve times the amount of the invoice for the last month of the Service which is the initial cause of the damaging event, to the exclusion of any other Service provided to the Client,
- 3) any direct loss incurred by the Client as a result of the damaging event.

The trigger threshold is fixed as of five thousand (5,000) euros of losses. If the threshold is reached, the full amount of the loss must be paid, up to the limit fixed.

b. Limit for penalties associated with the SLA

When applicable, the penalties associated with the SLA are, by express agreement, considered as a final discharge of liabilities for Outscale, and as such constitute fixed indemnification for all losses resulting from Outscale's noncompliance with the SLA concerned, the Client expressly waiving any other claim in this respect.

c. Absence of limit

For all intents and purposes, it is specified that these limitations of liability do not apply, in accordance with the law and jurisprudence, in the event of gross misconduct.

2. Other stipulations linked to liability

In the framework of these GTC, in order to be held liability, the Party claiming to be the victim of damages must provide proof that the obligation under which it is exercised has not been performed by the fault of the other Party.

By exception to this principle, in the event of an obligation not to do something, the fault will be presumed only if the victim Party demonstrates that the obligation not to violate current and future laws, regulations and administrative requirements applicable to the activity of a Party has not been respected.

If Outscale is held responsible for any breach of regulations by the Client, including tax regulations, the Client undertakes to indemnify Outscale in full.

3. Warranty

In the event of a possible conviction of Outscale due to the illegality of any part of the Client Data (particularly in relation to violation of the Personal Data Legislation, incitement to racial hatred, counterfeiting, health data, pedocriminality, etc.), the Client shall, without limitation, guarantee Outscale against any convictions, costs and fees incurred, and more generally, any consequential damages that it may have suffered due to the fault committed by the Client.

ARTICLE 11. Force Majeure

In the event of total or partial noncompliance with any of its obligations, neither of the Parties' liability shall be incurred when this non-performance results from a force majeure event such as defined in article 1218 of the French civil code. By express agreement, the following are also considered as force majeure events: attacks on automated data processing systems (subject to the defaulting Party having implemented a reasonable security policy), major dysfunctions in the Internet network and electrical malfunctions, material consequences of measures restricting freedom of movement or supply intended in particular to prevent pandemics, fire, staff strikes and wars or the threat of war, international economic sanctions or blockades.

If, as a result of such force majeure events, Outscale is unable to provide the Client with the fixed term Virtual Machines ordered, the duration of the Order will be automatically extended for the period of unavailability of the Virtual Machines.

ARTICLE 12. Insurance

If the Client intends to operate critical or strategic Data (for example data for invoicing, salary payments, R&D elements, etc.) on the Outscale Services, it is the Client's responsibility to take out insurance to cover loss of data.

Outscale certifies that it is insured by a notoriously solvent insurance company and has a policy covering its professional civil liability and operational liability and undertakes to maintain this policy for the duration of the contractual commitments.

Outscale may, at the Client's request, provide a copy of its insurance certificate, in return for the payment of a management fee.

ARTICLE 13. Waiver of third-party claims

If the Client uses the Outscale Services to provide a service to third parties who do not know Outscale and are not familiar with these GTC, said third parties cannot invoke them in the framework of any action against Outscale.

The Client undertakes to include a waiver of claims against Outscale in its own agreements with its clients.

In any case, if the Client fails to include a waiver of action clause or if this clause were to be invalid or inapplicable for any reason, the Client undertakes to hold Outscale harmless against all third party claims.

ARTICLE 14. Client Data

1. General principles

Outscale advises the Client to encrypt its Data and to keep the encryption keys. Outscale has no knowledge of the Client Data and undertakes not to access said Data.

The Client is responsible for its Data. The Client undertakes to back up its Data. This backup process is the Client's responsibility. The Client is also responsible for the system and Data redundancy, whether with services supplied by Outscale or by other service providers.

It is up to the Client, depending on its Data backup needs, to use the snapshot and object storage services provided by Outscale in accordance with the SLA provided in Appendix 3.

2. Personal Data

The Parties agree to respect the regulations applicable to the processing of Personal Data and in particular law n°78-17 of January 6, 1978 relating to data, files and freedoms, modified and Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 applicable from May 25, 2018.

Aspects relating to the protection of personal data are handled in accordance with Appendix 2.

ARTICLE 15. Confidentiality

In the framework of the Services and more generally their contractual relations, the Parties will be exchanging confidential information belonging to them, i.e. information:

- (i) that one Party discloses to the other Party with "Confidential", "Secret" or with other marks or signs that indicate the confidential nature of the Information, or
- (ii) which, regarding their nature or the circumstances of their disclosure, would be considered confidential by a reasonable person in a similar position and circumstances; or lastly
- (iii) all information contained in Outscale's Declaration of Applicability or concerning Outscale's proprietary orchestrator TINA OS.

All information meeting the above criteria, hereinafter called "Confidential Information", will be confidential regardless of its form and nature - including technical, commercial, financial information, etc. - the media on which they are contained and their method of transmission, including, information exchanged electronically.

OUTSCALE and the CLIENT shall undertake:

- not to communicate such Confidential Information to anyone whomsoever without the written authorization of the disclosing Party,
- not to use of this Confidential Information directly or indirectly for any purpose other than the processing carried out in the context of the Services,
- to limit the communication of this Confidential Information to the sole members of its personnel who must be informed in the context of the Services and to guarantee the respect of these commitments as necessary,
- upon the term of the Services or their early termination, as applicable, to promptly return all the elements and documents constituting this Confidential Information in their possession and not to keep any copy, extract or reproduction in any form whatsoever.

The above-mentioned commitments shall remain in force for five (5) years after the termination of the Services, whatever the reason for said termination.

The confidentiality obligations set out above are not applicable to information:

- (i) that was, at the time of disclosure, in the public domain, or which has fallen into the public domain without any fault by the Party that received it;
- (ii) that was already known by the receiving Party at the time of disclosure, provided that the receiving Party can prove this;
- (iii) has been communicated to the Party receiving it by a third party who was not subject to a confidentiality undertaking vis-à-vis the Party that issued it.

ARTICLE 16. Export control, data controlled and sanctions

The supply of the Services and the exchange of information in application of these GTC is subject to the applicable Export Control Regulations.

"Export Control Regulations" refer to any laws and regulations applicable in terms of export control and sanction programs at global level, in particular but not limited to: American Export Administration Regulations (EAR), Office of Foreign Assets Control (OFAC) sanction programs for Specially Designated Nationals (SDN), as well as Regulation (EU) n° 2021/821 of the Council and the European Union.

"Controlled Data" refers to any information (i) necessary for the development, production, assembly, functioning, repair, testing, maintenance or modification of a product, in any tangible or intangible form (including but not limited to written or verbal communications, drawings, computer aided design files, plans, models, photographs, instructions, technical design and specifications) from any category of the list of controlled articles of any applicable regulations in terms of export; or (ii) for which cybersecurity requirements are imposed on IT systems used for its storage or transfer. Unless a separate agreement or Special Conditions so provide, the Parties must refrain from disclosing Controlled Data.

The Client guarantees Outscale that the Services ordered in the framework of these GTC will not be used in violation of the Export Control Regulations, including for the purpose of the proliferation of weapons or nuclear, chemical or biological missile launching systems, and that they will not be diverted towards any country, company or individual if this is prohibited by the Export Control Regulations.

The Client undertakes to refrain and ensure that all its users refrain from processing, storing or downloading any Controlled Data.

Outscale's obligations hereunder are subject to and dependent on compliance with the Export Control Regulations. Outscale may terminate or suspend these GTC at any time and all the Virtual Machines provided, or more generally cease or suspend the performance of its obligations under these GTC if the Client violates these Controlled Data export control provisions or if the performance of these GTC could result in Outscale violating the Export Control Regulations or potentially expose it to sanctions or penalties imposed by a government authority. The suspension or termination in this case will take effect following written notice sent to the Client with effect on the date indicated in this notice.

ARTICLE 17. Audits

1. Audit of compliance with the obligations of the General Terms and Conditions

The Client may, once a year at most and at its expense, following a duly reasoned request concerning a matter that is outside the scope of the different labels and certifications, have an audit of the compliance with the obligations of these General Terms and Conditions carried out by a third-party auditor validated by Outscale. The list of these auditors is made available to the Client upon request.

The Client recognizes that Outscale may refuse the third-party auditor if it is a direct or indirect competitor or if it has reasons to suspect a conflict of interests or for any other legitimate reason.

The Parties fix the date of the audit jointly and as rapidly as possible.

The results of the audit, as applicable, will be used by the two Parties with the aim of finding solutions for any non-conformities identified.

Outscale also undertakes to supply or provide for consultation purposes the documents attesting to compliance with its obligations under article 28 of the General Data Protection Regulation (RGPD) (EU)

2016/679 and with the requirements imposed by its labels, with which Outscale guarantees compliance in the context of these GTC. The communication and confidentiality conditions will be determined by Outscale depending on the level of sensitivity of the information concerned.

2. Penetration testing

The Client is only authorized to carry out assessments of the level of security and search for vulnerabilities of its Data and the Virtual Machines it uses exclusively within the strict limits and in the conditions defined in this article (hereafter "Penetration testing").

Penetration testing is authorized subject to informing Outscale one (1) month before the tests start and creating a ticket with the Outscale support service.

The Client ensures and declares that it has obtained all the authorizations necessary, in particular from third parties, in order to carry out Penetration testing on the Data.

The Client is authorized to have the Penetration testing carried out by an independent third-party auditor duly authorized for this purpose, on condition that the latter:

- is not a competitor of Outscale,
- does not have any legal or partnership link to one of Outscale's competitors, and;
- does not present any other form of conflict of interests.

Outscale may, if it has objective reasons concerning the guarantees of independence and impartiality of the chosen third-party auditor, refuse that the audit be carried out by this third party.

The Client declares that it will comply with all conditions set forth herein for Penetration testing and ensure that they are respected by the third-party auditor.

The Client must ensure that the Penetration testing is carried out in strict compliance with the laws and regulations applicable. The Client alone is responsible for the consequences of conducting the Penetration testing itself or having it performed by the third-party auditor.

On no account can Penetration testing target Virtual Machines shared with other Clients. The Penetration testing must not have any negative effect on the Services (no negative effect on the integrity, availability, security or confidentiality of the Services and Virtual Machines).

The following actions are expressly excluded from Penetration testing:

- denial of service in the network or Virtual Machines,
- brute force attack on shared environments,
- IP address spoofing,
- penetration testing on Outscale services APIs,
- penetration testing on metadata services,
- penetration testing on firewall service instances (public and VPCs),
- penetration testing on load balancer service instances,
- penetration testing on VPN service instances,
- penetration testing on license servers,
- penetration testing on Cockpit,
- penetration testing or audit on public IPs which are not or no longer associated with the Client Instances,
- denial of service attacks on the network (protocol or volumetric attacks), storage or console,
- brute force on Outscale's API services.

The Client shall notify Outscale immediately in the event of the discovery of vulnerabilities with an impact on security, confidentiality, availability or the integrity of the Services. The conducting of Penetration testing is carried out under the sole responsibility of the Client. In the event of failure to comply with the conditions for Penetration testing, Outscale reserves the right to take any measures that it considers necessary to put an end to any disturbance caused, in particular by suspending the Client's Virtual Machines in the conditions defined in article 6 "Suspension, cessation of use and termination of the Services", without prejudice to any damages which Outscale may claim.

ARTICLE 18. Miscellaneous clauses

1. Validity of electronic means of notification

All notifications issued within the scope of these GTC, and in particular formal notices and reminders sent to the Client, shall be sent by Outscale by simple e-mail, unless expressly stipulated otherwise.

The time and date of the sending of the e-mail by Outscale shall constitute proof between the Client and Outscale.

It is understood that the Client, whatever its status, agrees to use e-mail as well as any other electronic method as a means of notification.

Notifications are sent to the e-mail address indicated by the Client at the time of the creation of its Technical Account and which is used as the Account identifier.

The Parties agree to consider e-mails and more generally the electronic documents, information or requests exchanged between them as original documents in electronic format according to the meaning of article 1367 of the French civil code.

Each Party undertakes not to modify the content of the electronic messages that it receives or emits for the interpretation or execution of these GTC.

The Parties agree to keep the elements they exchange in reliable and durable format in accordance with the provisions of article 1379 of the French civil code.

2. Convention of proof

In the event of a dispute over any of the Services performed by Outscale in the context of these GTC, the Parties agree that Outscale's production of data recorded on its systems is valid between the Client and Outscale.

3. Limits and constraints related to Beta Services

The stipulations of this article, when they contradict one or more other stipulations of the GTC, always prevail over them concerning the Beta Services. Beta Services are likely to be modified, suspended or permanently interrupted by Outscale, without notice or compensation. It is therefore incumbent upon the Client to make frequent backups of its Data.

Beta Services are provided "AS IS", therefore:

- 1) Outscale never guarantees any level of Quality of Service on a Beta Service and therefore cannot pay any penalty or grant credits of services or assets in case of malfunction of such Service.
- 2) Outscale, to the extent permitted by applicable law, excludes the application of any warranties, including the implied warranties of peaceful enjoyment, merchantability and fitness for a particular purpose.
- 3) Outscale assumes no responsibility of any kind whatsoever in case of any loss incurred by the Client related to the use of a Beta Service. If, despite this clause, Outscale's liability should be incurred in respect of a Beta Service, it would be limited, except in the event of bodily injury, to a final lump sum, the amount of which cannot exceed three hundred and fifty (350) euros per Client.
- 4) Outscale (i) advises the Client not to use the Beta Service in a production environment and (ii) prohibits any use of a Beta Service that would make it interact with control systems of industrial installations and all systems that might cause bodily injury.

The fact that feedback from the Client allows Outscale to improve a Beta Service never confers any intellectual or industrial property rights or any right of any other nature whatsoever to the Client.

The Beta Services, unless otherwise specified in any Special Terms and Conditions, do not give rise to Invoicing.

4. Corporate social responsibility (CSR) and anti-bribery

Each Party acknowledges and accepts that the other Party will not tolerate any form of corruption in the conduct of its business. In particular, each Party shall:

- (i) comply with all applicable laws, statutes, regulations, codes and guidance relating to the fight against corruption (“Anti-bribery laws”), including, without limitation, applicable anti-bribery laws in France,
- (ii) not engage in any activity, practice or conduct that would constitute an offence under the Anti-bribery Laws,
- (iii) not do, or omit to do, any act that will cause the other Party to be in breach of the Anti-bribery Laws, and
- (iv) promptly report to the other Party any request or demand for any undue financial or other advantage of any kind received by a Party in connection with the performance of these GTC.

Each Party shall promptly notify the other Party of any fact or circumstances that would invalidate any of the warranties and assurances given in this section. Each Party agrees to encourage its own clients, suppliers and subcontractors to adhere to the principles mentioned above. If a Party fails to adhere to any of these principles, the other Party shall be entitled to immediately terminate the contractual relationship and the offending Party undertakes to indemnify the other Party against any loss (including any consequential loss, damage to image, immaterial and/or indirect damage, etc.), damages, costs, fees and expenses incurred as a result of such breach.

The Client is required to inform Outscale immediately of any risk of conflict of interest, before any execution of these GTC, as soon as it becomes aware of it, at the following address: legal-fr@outscale.com.

The Parties undertake to develop within their organization and their ecosystems the fundamental aspects of ISO 26000 relating to Corporate Social Responsibility.

The Parties recognize and respect the laws applicable, in particular in terms of fundamental rights and the values of the European Union on respect for human dignity, freedom, equality, democracy, the rule of law and labor laws and the protection of the environment such as the Universal Declaration of Human Rights, the Fundamental Principles and Rights at Work of the International Labor Organization, the OECD guidelines for multinational enterprises and the United Nations Convention on the rights of the Child. The Parties are committed to combatting child labor, forced labor and discrimination. They undertake to ensure trade union freedom, the right to collective negotiation, sufficient compensation and working conditions that are safe and hygienic for their employees within the limits of applicable law.

The Parties commit to respecting the applicable legislation on the protection of the environment and to reducing greenhouse gas emissions by falling in line with the objectives defined by the Paris Agreement.

5. Language

These GTC exist in French and in English. In the event of any contradiction between the two versions, the French version shall prevail.

6. Outsourcing

Outscale may outsource subject to complying with its obligations in particular in terms of any Special or Specific Terms and Conditions.

7. Independence of the Parties

On no account can these GTC be interpreted as creating any corporate relationship between the Parties or management lease contract or subcontracting contract for the Client's business. They exclude any notion of the provision of personnel in the framework of regulations governing temporary employment.

8. Invalidity of a clause

If one of the clauses of these GTC were to be judged to be contrary to the law, the Parties must replace it by another legally valid clause that is as similar as possible in terms to the invalid clause.

9. Competent jurisdiction and governing law

These GTC are governed by French law.

The Parties shall seek to find an amicable solution to any dispute which may arise between them in connection with the existence, validity, interpretation or execution of these GTC.

If an amicable solution cannot be reached, any dispute arising in connection with the formation, interpretation or execution of these GTC will be submitted to the competent courts of the jurisdiction of the Court of Appeal of Versailles, exclusively competent, including interim measures and notwithstanding the introduction of third parties or plurality of defendants.

Appendix 1 - Financial and payment conditions

1. Price

The price of the Services is defined in the Special Conditions or in the Public Prices.

Prices are in euros and are expressed before tax, with VAT and any other applicable taxes applied on top.

Invoices are issued monthly in arrears for On Demand Services and in advance for fixed term Services (in particular Reserved Instances). Any Reserved Instance resource that has not been used by the expiry date will not be reimbursed.

Outscale reserves the right to issue intermediary invoices in cases where consumption has exceeded normal use.

Except when Special Conditions stipulate otherwise, invoices are payable end of month from the invoice issue date.

2. Trigger for On Demand invoicing

For all On Demand Services, as soon as the Client uses a Service on one of its Technical Accounts, the price of these Virtual Machines is due by the Client and invoiced by Outscale.

3. Payment of Invoices

The Client is the guarantor of correct payment of Outscale invoices on their due date; for this purpose, it must keep its banking and invoicing details up-to-date and have sufficient funds in its bank account to avoid risking the suspension of the Services and potentially the termination of this agreement.

The standard payment method is direct debit. The Client must send the completed direct debit order (see Appendix 4) as well as bank details for the corresponding account upon signature of these GTC. The Client will be informed fourteen (14) days before the date of the debit and may contact the accounting department in the event of any problems at the following e-mail address: comptabilite@outscale.com.

If payment is late, a fixed penalty will be applied corresponding to the legal collection fee of forty (40) euros provided by article D.441-5 of the French commercial code, due as of the first day after the due date, as the Client is a professional.

Late payment penalties will also be due as of the first day after the due date at the Central European Bank's base rate plus 10 percentage points. No discount is offered for early payment.

In addition to the fixed collection fee and late payment penalties above, any late payment by the Client may lead to the termination of the Agreement in accordance with the procedure provided in article 6 "Suspension, cessation of use and termination of the Services".

If the Client has not contested an invoice within 15 (fifteen) days of its issue date, it is deemed to have accepted this invoice irrevocably.

4. Invoicing contacts

The Client agrees to have Outscale send invoices by e-mail. For the purposes of Outscale's invoice management, it is necessary for the Client to provide Outscale with contact details for people from its accounting department.

Appendix 2 - Data processing Agreement

The Parties agree to a framework for the "Personal Data" processing carried out in the context of the Services supplied by Outscale to the Client.

I. Definitions

The terms "Personal Data", "Data Controller", "Data Subjects", "Personal Data Breach", "Processing", "Processor", and "Supervisory Authorities" have the same meaning as In the applicable data protection laws.

II. Object of the agreement

In the framework of their contractual relations, the Parties undertake to comply with the regulations in force applicable to the processing of Personal Data and, in particular French law n°78-17 of January 6, 1978 relating to data, files and freedoms, modified and Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, applicable from May 25, 2018.

III. Processing carried out by the Parties as independent Data Controllers

Each Party acknowledges that, for the processing of the business details required hereunder, the Client and Outscale each act as independent Data Processors in accordance with their respective personal data protection policies.

In the context of their contractual relationship, the Parties undertake to comply with the regulations in force applicable to the processing of Personal Data and, in particular, Law no. 78-17 of 6 January 1978 on data processing, data files and individual liberties, as amended, and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 applicable as of 25 May 2018.

Furthermore, to enable the Services it provides to be carried out, Outscale also processes certain of the Client's Personal Data in its capacity as Data Controller.

The purpose of this processing is as follows:

- Customer Relationship Management: the Personal Data processed by Outscale in order to manage the customer relationship (in particular security, improvement of services, assistance, support, sales management, etc.) are kept by Outscale for the duration of these GTC which bind the Client and Outscale, in addition to the applicable limitation periods. These data are processed on the basis of the execution of these GTC concluded with the Client.
- Compliance with specific legal obligations: the Personal Data processed by Outscale in order to comply with certain legal obligations (accounting, invoicing, dispute management, etc.) are kept In accordance with applicable law.

In these specific cases, Outscale may need to transfer Data to third-party service providers. If these service providers are situated outside the European Union, transfer mechanisms based on standard contractual clauses of the European Commission will be implemented.

Outscale, in accordance with applicable regulations, may carry out further processing that is compatible with the initial purpose of the processing.

Outscale may use certain information at its disposal to produce statistics, to improve its Services or to guide research and innovation in the field of Cloud Computing. With this purpose, certain of this information may be processed, which the Client recognizes and accepts.

IV. Processing carried out by Outscale as Processor or Further Processor

In carrying out its Cloud Computing Services involving the storage of Client Personal Data on the Outscale Infrastructure, Outscale either acts as:

- a Processor, when the Client acts as the Data Controller, or
- a further Processor in the case where the Client itself is the Processor of a third party.

The Client acknowledges and accepts that it is and will remain at all times the Controller of all Personal Data processed on its behalf in the context of its access to and use of the Services.

When the Client acts as Processor on behalf of a third party, the Parties expressly agree that the following conditions apply:

The Client guarantees that it has ensured that the Services are in line with the instructions of the Data Controller.

The object of these clauses is to define the conditions in which Outscale undertakes to carry out, on behalf of the Client, the personal data processing operations defined hereafter.

Outscale is authorized to process the Personal Data necessary to supply its Services on behalf of the Client.

Description of the processing:

- The nature and purpose of the processing is the storage of Clients' Data on the Outscale Infrastructure.
- The type of Personal Data processed are all personal data stored on the Outscale Infrastructure by the Client.
- The categories of Data Subjects are determined by the Client.
- The duration of the processing is the duration of the Services under these GTC.

The technical security and organizational measures that Outscale undertakes to comply with are those described in these GTC and stem in particular from ISO 27001 and 27018 norms as well as Outscale's compliance with the CISPE code of conduct.

V. Obligations of the Parties when Outscale acts as Processor or Further Processor

A. Obligations of the processor (or further processor)

1. Purpose

The Processor undertakes to process the Personal Data solely for the purpose or purposes which are the object of the outsourcing.

2. Client Instructions

As Processor, Outscale undertakes to process the Personal Data according to the Client's instructions. The Agreement between the Client and Outscale as well as the use that the client makes of the Services supplied by Outscale shall constitute the complete and definitive instructions by the Client in terms of Data Processing. If the Processor considers that any given instruction is a breach of the Personal Data Legislation, it will inform the Client thereof.

3. Confidentiality

Outscale undertakes to guarantee the confidentiality of the Personal Data processed in the framework of these GTC. Outscale undertakes to ensure that the persons authorized hereunder to process the Personal Data receive the necessary training on the protection of Personal Data and undertake to respect confidentiality or are subject to an appropriate legal non-disclosure obligation.

4. Protection of Personal Data by design and by default

Outscale undertakes to take into account in relation to its Services the principles of protection of Personal Data by design and by default.

5. Further processing

In the event of recourse to further processors, the Processor informs the Data Controller of any change planned concerning the addition or replacement of other processors.

6. Data Subjects' right to be Informed

It is up to the Data Controller to provide information on processing to the Data Subjects upon collection of their Personal Data.

7. Exercising the rights of the Data Subjects

Wherever possible, Outscale helps the Client comply with its obligation to satisfy requests by Data Subjects wishing to exercise their rights: right of access to and rectification or erasure, the right to object, the right to restriction of processing, the right to data portability of Personal Data, the right to object to automated individual decision-making (including profiling). If the Data Subjects contact Outscale to exercise their rights, Outscale will send the requests to the Client as rapidly as possible by e-mail.

8. Cooperation of the Processor

In fulfilling its obligations as a Data Controller and wherever possible, Outscale will help the Client with impact assessments relating to the protection of Personal Data as well as for the prior consultation of the supervisory authority.

9. Security measures

The Data Controller and the Processor must implement appropriate technical and organizational measures to guarantee a level of security that is adapted to inherent risks.

Outscale undertakes to implement the security measures provided by ISO 27001.

Outscale has *Code de conduite des Fournisseurs d'Infrastructures Cloud* certification for Data Protection (or CISPE code) approved by CNIL, in accordance with articles 32 and 42 of the GDPR.

The Client alone is responsible for the security of the systems that it implements in the framework of its use of the Services (firewall, upgrades, management of access rights...). In the framework of these GTC, Outscale provides the Client with the information necessary (in particular Declaration of Applicability) so that it can assess the compliance of the Outscale Services with these security requirements.

The Processor undertakes to implement the following security measures under the conditions described in these GTC:

- the means enabling it to guarantee the constant confidentiality, integrity, availability and resilience of the processing systems and services;
- the means enabling it to restore the availability of personal data and access to them in appropriate time in the event of a physical or technical incident;
- a procedure to test, analyze and assess regularly the efficiency of the technical and organizational measures set in place to ensure the security of the processing.

10. Transfer of Personal Data to third-party countries

The Outscale Services give the Client the possibility of storing and processing its Data exclusively within the EEA. On no account will Outscale transfer Client Personal Data out of their Region, unless specifically instructed to do so by the Client.

Prior to any transfer of its Personal Data, the Client undertakes to check that (i) the Specifications of the Outscale Services applicable to the Regions to which it intends to transfer its Data and (ii) the Personal Data Legislation applicable in this Region are in line with its needs and requirements, in particular in terms of security.

11. Notification of Personal Data breaches

Outscale implements a security incident management policy that defines procedures for the identification of and response to the security incidents brought to its knowledge. If Outscale is aware of any access, destruction, loss, disclosure or any unauthorized or accidental alteration of the Data within its Infrastructure, and if this generates any risks for the rights and freedoms of the Data Subjects, Outscale will notify the Client as rapidly as possible and as soon as the incident is brought to its attention (at the

latest within FORTY-EIGHT (48) HOURS) via e-mail. This notification is accompanied by any useful documentation enabling the Client, if necessary, to notify the competent supervisory authorities of this Personal Data Breach. The notification must describe the nature of the breach, its consequences, the measures taken by Outscale in response to this incident and give the name of a contact person at Outscale. If it is not possible to communicate all this information at the same time, it may be transmitted little by little but without undue delay.

12. Conservation of Personal Data

At the end of the Services, unless the Client indicates otherwise, Outscale undertakes to delete all the Client Data. Once destroyed, Outscale may provide written proof of destruction at the request of the Client. The Data cannot be recovered thereafter.

13. Data Protection Officer

The DPO appointed by Outscale can be reached at the following address: donnees-personnelles@outscale.com.

14. Records of processing activity categories

Outscale declares that it keeps a written record of all the categories of processing activities carried out on behalf of the Client.

15. Documentation and audit

Outscale places at the disposal of the Client the documentation necessary to prove that it complies with all of its obligations and to allow audits to be carried out in the conditions set by article 17 "Audits", including inspections by the Client or any other auditor appointed by the Client.

The Client undertakes to document in writing any instruction concerning the processing of Personal Data by Outscale. It must ensure beforehand and throughout the duration of the processing that the obligations stipulated by the applicable regulations are fulfilled by Outscale. It supervises the processing, including as part of audits and inspections concerning Outscale.

B. Obligations of the Data Controller

The Data Controller undertakes to:

- provide the Processor with the data concerned,
- document in writing any instruction concerning the processing of data by the Processor,
- ensure beforehand and throughout the duration of the processing that the obligations stipulated by the regulations applicable to Personal Data are fulfilled by the Processor,
- supervise the processing, including as part of audits and inspections concerning the Processor

VI. Supervision

The Parties agree that the supervisory authority in charge of ensuring that they comply with Personal Data regulations in the framework of these GTC is the French Data Protection Authority (CNIL).

Appendix 3 – Service Level Agreement (SLA)

The SLAs are sometimes only applicable upon the condition that the CLIENT deploys its Services in all the Availability Zones that exist in the Region. In the event whereby, albeit possible, the CLIENT decides not to deploy in all the Availability Zones in the Region, it may not request the application of the SLA. These SLAs are marked with an asterisk (*).

This limitation shall not concern either the APIs provided by OUTSCALE, or the Infrastructure set up and managed by OUTSCALE and therefore OUTSCALE's liability. For the latter, the SLAs generally apply regardless of the type of deployment chosen by the CLIENT.

These guarantees enable OUTSCALE to commit to the following SLAs on a 24/7 basis:

SLA1 – Availability Area

- Individual Availability of a Region is 99.9% per year,
- Individual Availability of an Availability Zone is 99.7% per year.

SLA2 – Service Provision “Intra-Cloud network supply service”

The Intra Cloud network is secured in the same manner as the Internet network via the security groups. The CLIENT is apprised that if it should decide to override the security groups via the API control for its internal resources, the configuration of the security groups SHALL NOT be applied.

The latency in the internal network depends on a number of parameters, in particular the proximity of the Availability Zones. The redundancy of a Region is balanced between the geographical discrepancy of the Availability Zones and the maximal latency that may be assumed by the Service provided.

- Availability of the internal network: 99.99 % per year,
- Inter-resource maximal latency (outside of Object Storage): 10 ms.

SLA3 – Service Provision “Internet Provision Services (DNS, NTP) and the Cloud Computing metadata Service”

The CLIENT is informed by OUTSCALE that its Systems are protected against their intensive use that could result in service denial. Any automatic activation of countermeasures due to abusive use by the CLIENT which results in the unavailability of the Service for CLIENT may not be recorded as downtime.

- Availability of the DNS, NTP, DHCP Services: 99.8% per month
- Availability of the metadata Services: 99.8% per month

SLA4 – Service “Secured network provision to the Internet”

OUTSCALE is up-to-date concerning its Internet connections. In particular, it uses several access providers and the BGP4 protocol to ensure redundancy. This protocol may give rise to untimely route alterations that are beyond OUTSCALE's control, but in general enable access availability to be guaranteed.

In the event of an incident, the first 2 (two) minutes are never taken into account as the convergence time for the BGP4 protocol is 90 (ninety) seconds. The availability calculation will therefore deduct 2 (two) minutes per incident.

- Internet access availability: 99.9999%* per year

In the event of a cyberattack, in particular in the event of a distributed denial-of-service attack (DDoS), OUTSCALE may modify its Internet routing configuration to mitigate this attack as far as possible and protect its Infrastructure. If it is the CLIENT's IP which is targeted by the attack, OUTSCALE may use the “Black hole” BGP community to prohibit, upstream from its suppliers, any flows to an IP that has been attacked in order to protect the CLIENT's other resources but also to protect other OUTSCALE CLIENTS as well as its Infrastructure.

OUTSCALE shall encourage the CLIENT to do the same, in particular, by using the market software of WAF, but also via the configuration of the security groups via the API control. OUTSCALE, by default, shall filter any inflows to the CLIENT's public IPs and it is for the CLIENT to open the flows that it needs. OUTSCALE insists that the CLIENT opens its flows at a minimum and in particular does not open the SSH (port TCP 22) and RDP (port TCP 3389) administration flows to the entire Internet (subnet 0.0.0.0/0) as well as internal protocols such as SMB (port TCP/UDP 445) or NFS (port TCP/UDP 2049).

- Availability of virtual Logical Firewalls in charge of the security groups: 99.8%* per month.
- Availability of the API control Service: 99.9% per month.

SLA5 – Service Provision “On-demand load sharing service”

- Availability of virtual load balancers: 99.78% per month.
- Availability of API control service: 99.9% per month.

SLA6 – Service: “Object Storage Service”

- The Sustainability of storage of an object in a given Region is guaranteed at the rate of 99.9999999999% per year.
- The Availability of the API provided by OUTSCALE and enabling the publication and use of the CLIENT's objects by the latter is 99.97% per year.
- The availability of the APIs provided by OUTSCALE and enabling Users to access the stored objects is 99.97% per year for objects deployed in one Region.

For information purposes, it is specified that a latency to or from the Object Storage of less than 200 ms is a criterion of Availability of the Object Storage Service.

Regarding specifically Object Storage, Sustainability shall be understood in relation to a state-of-the-art use of the Services and outside of any alteration of data, whether voluntarily or not, originating from an action on the part of the CLIENT.

The Object Storage Service, as its name suggests, shall not be used in block mode (for example, for an active database). The use of Object Storage in block mode via technical circumvention means (for example, FUSE under Linux), is not a use within the rules of practice applicable to Object Storage and any incident related to this use shall not be covered by these SLAs.

SLA7 – Service: “Persistent Storage service”

Persistent storage is a Service subscribed to by the Client in its management interface or API.

- The availability of a volume is guaranteed at 99.7% per month. By default, a volume shall only be available in its original Availability Zone.
- The availability of a Snapshot is 99.7% per month. A Snapshot is available throughout the Region.
- The Sustainability of a Snapshot is 99.9%, nonetheless, this guarantee shall only be acquired 24 (twenty four) hours after the creation of the Snapshot.
- For the Virtual Machines having disks if persistent storage with guaranteed IOPS attached, OUTSCALE undertake to provide the number of IOPS subscribed within the technical limit by disk and by Virtual Machines, for blocks of 4 ko, at least 90% of the time in a month.

The Sustainability of a volume shall not be guaranteed as it is active storage in block mode which may be impacted by any unexpected stoppage of the service. For example, the crash of a physical element of OUTSCALE's Infrastructure may give rise to the cessation of a resource such as a Virtual Machine and the

continuous corruption of a storage volume which was suddenly ceased in an inconsistent manner. Furthermore, an order "terminated" or "force-stopped" may cause the sudden stoppage of the Virtual Machine resource and thereby corrupt the related volume resources.

OUTSCALE's liability may never be incurred in relation to volume consistency problems; it is the CLIENT's responsibility to ensure that it has duly carried out all the necessary safeguards in order to protect its data and that it has set up architectures according to the rules of practice in order to be able to ensure a consistent level of volumes.

SLA8 – Service Provision "Non-persistent Storage Service"

The Non-Persistent Storage Service is a storage space used by the Virtual Machine, whose data will be deleted when the machine is restarted.

The Non-Persistent Storage service shall not offer ANY guarantee. OUTSCALE shall inform the CLIENT that the Service may stop or dysfunction at any time, and that it shall be the CLIENT's responsibility to relaunch its Virtual Machine resource in the event whereby the absence of this Service has an impact on its availability.

This Service must be used only for specific reasons such as for temporary and noncritical storage and above all not for data such as production data to be conserved, which must be stored on other types of more sustainable storage.

SLA9 – Service "Customized Service for the provision of Virtual Machines"

- The individual Availability of a substantive element (bare metal) of the Infrastructure is 99.7% per month.
- The Availability of a Virtual Machine, etc. is 99.7% per month.
- The Availability of an API control Service is 99.9% per month.

In the event whereby a substantive element of OUTSCALE's Infrastructure were to cause the cessation of a CLIENT's Virtual Machine, for example, the stoppage of a physical server at OUTSCALE causing the stoppage of a CLIENT's Virtual Machine, by default the CLIENT's Virtual Machine is in a "blocked" state in order to prevent its relaunching from causing additional damage (loss of data, corruption, etc.). It shall be the CLIENT's responsibility to supervise its Virtual Machines and relaunch them if required. The time necessary for the CLIENT to do this shall not be counted for the calculation of a Virtual Machine downtime.

The downtime for a resource is the time following the cessation of the resource during which the CLIENT is unable to relaunch it.

OUTSCALE shall inform the CLIENT that in the event of any abnormal use of its Infrastructure and, in particular, in the event of an API control overload (hammering), counter security measures could automatically be activated and block access to the API controls or to some of OUTSCALE's Services. In this case, it is not a question of unavailability but a safeguard procedure for the OUTSCALE Infrastructure, and the CLIENT may not account for this as downtime.

Lastly, OUTSCALE shall inform the CLIENT that duplicate requests towards its API are limited to one per second (throttling). If the CLIENT sees duplicate requests presented to the API at a higher frequency that are refused as a result, this cannot be counted as downtime.

SLA10 – Support

Each need or incident must be reported through the creation of a ticket to OUTSCALE support. Opening this ticket with all mandatory information is the necessary prerequisite and the starting point for measuring compliance with OUTSCALE's commitments.

The calculation of the Guaranteed Response Time delay is the difference between the CLIENT's ticket opening time and the first response from OUTSCALE support.

The calculation of the Guaranteed Repair Time delay is measured between the opening of the ticket with all mandatory information to be provided by the CLIENT and the resolution of the incident by OUTSCALE

support. The CLIENT's response time to answer a question from OUTSCALE support is deducted from the calculation of the Guaranteed Repair Time deadline.

An incident that is not detected by OUTSCALE support team can only be measured if the CLIENT provides the necessary information to trace a service interruption or degradation.

The Guaranteed Response Time and Guaranteed Repair Time are detailed below by incident severity:

Guaranteed Response Time	Guaranteed Repair Time	Incident Severity	Description
15 minutes	2 hours	1 (Major)	Total and permanent unavailability of a service: <ul style="list-style-type: none"> - Object Storage - FCU - API - Network - EIM Excluding scheduled maintenance.
30 minutes	4 hours	2 (High)	Deterioration of a service or service performance: <ul style="list-style-type: none"> - Object Storage - FCU - API - Network - EIM - Client gateway - Tools for which a workaround solution exists (example: Cockpit)
1 hour	48 working hours	3 (Minor)	Isolated incident, bug or regression, request for analysis on a CLIENT incident.

In case of a request which is not an incident, OUTSCALE Support will process the ticket as soon as possible compatible with the opening hours of the Support, from 8 am to 8 pm (Paris hours) from Monday to Friday.

Penalties associated with the SLAs

Penalties are calculated according to the following formula:

$$P_s = (S_c - S_g) * 10 * CA_{cm}$$

P_s : Penalty for the Service in question

S_c : Reported availability of the Service in question during the calculation period

S_g : Availability promised by the SLAs for the given Service during the calculation period

CA_{cm} : Average monthly turnover generated by the CLIENT over a sliding year

If there are several SLA infractions, the Penalties may be cumulated.

The total Penalty may never exceed the CA_{cm} value.

Example of a calculation:

A CLIENT uses 3 OUTSCALE Services. The Object Storage Service, the Service for the supply of customized Virtual Machines and the on-demand load sharing Service. The following shall be defined:

S1: The Availability of the APIs provided by OUTSCALE and enabling users to access to the stored objects

S2: The Availability of the API control Service for the Customized Virtual Machines

S3: The Availability of virtual load balancers

Let us take, for example:

- $S1_c = 97.9\%$ whereas $S1_g = 99.99\%$
- $S2_c = 99.95\%$ whereas $S2_g = 99.9\%$
- $S3_c = 98.5\%$ whereas $S3_g = 99.8\%$

$S2_c > S2_g$, so the Service is well rendered in the context of the SLAs. Only $S1_c$ & $S3_c$ are lower than the SLAs.

i.e., a monthly invoicing calculated over a sliding year of 10,000 euros, excluding taxes. The credit calculated shall therefore be as follows:

$$P = (99.99\% - 97.9\%) * 10 * 10000 + (99.8\% - 98.5\%) * 10 * 10000$$
$$P = 3390 \text{ Euro}$$

