

## **General Terms and Conditions of Sale OUTSCALE 2018-12**

### **Preamble**

#### **Presentation of OUTSCALE**

OUTSCALE is a cloud computing operator whose principal activities consist in the development and operating of its own cloud operating system (TINA OS), the provision of infrastructure as a Service (IaaS) and Platform as a Service (PaaS) as well as the supply of related services.

The OUTSCALE services are accessible throughout the world by subscribing to offers proposed by entities linked to OUTSCALE established in different countries. These General Terms and Conditions of Sale (GTCs) only concern offers issued by OUTSCALE SAS (according to the meaning given under "[Definitions](#)").

#### **OUTSCALE and its CLIENTS' data**

OUTSCALE asks its CLIENTS to choose the geographical area in which their data will be stored and processed – the CLIENT data will be processed according to CISPE® Code of conduct recommendations solely if the CLIENT chooses to locate the data in the European Economic Area – and OUTSCALE formally undertakes not to transfer their data to any other geographical area.

Nonetheless, OUTSCALE places internationally recognized tools and frameworks at the disposal of its CLIENTS to enable them to transfer their data themselves.

OUTSCALE believes that the protection and confidentiality of its CLIENTS' data is of great importance, which is why (i) it sets in place, wherever this is technically possible, procedures for encryption by default at all levels of its infrastructure, (ii) it undertakes not to access the data belonging to its CLIENTS either directly or indirectly, (iii) it advises its CLIENTS to encrypt their data (without OUTSCALE having the encryption key), and (iv) it undertakes not to carry out operations such as data mining, profiling or direct marketing in connection with these data.

As regards personal data, OUTSCALE ensures that it complies with the applicable legislation in France and in the countries where it is established, to the extent that it is concerned since it does not have access to its CLIENTS' data, whatever the type of data – which OUTSCALE does not know.

Lastly, OUTSCALE is a member of the CISPE® association - Cloud Infrastructure Services Providers (<https://cispe.cloud/>) – and these General Terms and Conditions of Sale have been designed to comply with the recommendations of the CISPE® Code of conduct and apply to all services within the framework of these GTCs.

OUTSCALE operates an information security management system that complies with the requirements of norm ISO 27001:2013 for the following activities; IaaS, SaaS, Sales, Marketing and Communications and Software Development, for France. These activities are audited on a regular basis to ensure conformity of our practices to security and quality certifications requirements applicable at OUTSCALE.

#### **These General Terms and Conditions of Sale**

These General Terms and Conditions of Sale contain the essential conditions which apply to contractual relations between OUTSCALE and its co-contractors, unless the conclusion of an agreement that

derogates from these GTCs is necessary due to the specificity of the operation planned and/or is requested by the co-contractor and accepted by OUTSCALE.

These GTCs are completed by Special Terms and Conditions.

In any event, OUTSCALE is responsible for the infrastructure supporting the resources (virtual machines, storage, etc.) that it makes available to the CLIENT, but OUTSCALE is on no account either legally or technically responsible for the use thereof by the CLIENT.

## 1 – Definitions

For the interpretation of these General Terms and Conditions of Sale, the terms and expressions below shall be interpreted according to the definitions of this article and are of a contractual nature when they begin with a capital letter.

**API Order:** Programming interface placed at the disposal of the CLIENT by OUTSCALE, enabling the CLIENT to steer and configure the Services (automation of creations, deletions, start-ups and shut-downs of the Virtual Machines, Temporary Extension of the Scope of the Services in the event that the Infrastructure detects a lack of resources, etc.)

**Agreement:** The agreement entered into between OUTSCALE and its CLIENT, to govern the Services. It is comprised of these GTCs and completed by the Special Terms and Conditions, which must refer explicitly to these “OUTSCALE GTCs version 2018-12”, to the exclusion of any other document. The Agreement shall be concluded as stated in the Article “[Formation of the Agreement/ Entire Agreement / Hierarchy](#)”.

**API:** Shall mean a program applications interface, whatever the type or version.

**Availability Zones:** Shall mean a place located in a Region where OUTSCALE has deployed the equipment enabling it to supply the CLIENT with all the Services specified in the Agreement. The OUTSCALE Infrastructure is designed so that the failure of one Availability zone shall not affect all the other Zones in the Region. By launching its System in all the Availability Zones proposed within a given Region by OUTSCALE, the CLIENT protects itself against breakdown in one Availability Zone, which is always a possibility.

**CLIENT:** Any entity that has entered into an Agreement – in accordance with the Article “[Formation of the agreement / Entire Agreement / Hierarchy](#)” – with OUTSCALE. The offers by OUTSCALE are not intended for the general public, who are not eligible, but target professionals. The CLIENT, when it subscribes to these GTCs, must be advised by an IT or network professional, if the CLIENT is not a professional itself.

**CLIENT Account:** An account which enables the CLIENT, once it has accepted the Agreement associated with this Account (by accepting these GTCs and the Special Terms and Conditions) to benefit from the Services in a given Region and/or other Regions of its choice. The same CLIENT may have several Accounts, in which case the opening of a new Account gives rise to a new Agreement. OUTSCALE only opens a CLIENT Account once the CLIENT has provided it with (i) the e-mail address which will be used as an identifier for this Account (to which OUTSCALE will send notifications relating to the Agreement associated with this Account), and (ii) its identification details (name, intracommunity VAT number or equivalent in the CLIENT country, address, etc.), and lastly (iii) accurate, up-to-date bank details necessary for invoicing purposes.

**CLIENT Data (or Data):** All Data of any nature, including Personal Data, that the CLIENT stores and processes using the Infrastructure provided by OUTSCALE. By express agreement, OUTSCALE (i)

undertakes not to access the CLIENT Data, and (ii) advises the CLIENT to encrypt them without providing it with the encryption key; it being specified that, lastly, (iii) OUTSCALE cannot distinguish which CLIENT Data constitute Personal Data.

**CLIENT Manager(s):** The person(s) duly appointed by the CLIENT to work on the CLIENT's Virtual Machine(s); for example, to install, set the parameters, administer and maintain the software and applications on the CLIENT's Virtual Machine(s). The latter shall also be in charge of the management and/or verification of the Extension of the Scope of the Services, as well as management of the CLIENT Account. OUTSCALE notifications to the CLIENT Manager are sent to the e-mail address associated with the CLIENT Account which was supplied by the CLIENT upon the opening of its Account.

**CLIENT System:** The applications, developments, data, databases, software, etc. placed on a Virtual Machine or a Storage Service Facility by a CLIENT, in order to render them accessible to users via Internet or a direct link. OUTSCALE shall not be responsible for the CLIENT System neither from a legal nor a technical standpoint.

**CISPE® Code of Conduct:** the CISPE® (Cloud Infrastructure Service Providers) Code of Conduct, accessible on its website (<https://cispe.cloud/>). The Agreement is conceived to comply with the recommendations of this Code.

**Cloud Computing:** Technique for providing CLIENTS with calculations, memory, storage and network resources supplied by servers that are linked up by networks. These servers and the underlying Infrastructure are operated and maintained by OUTSCALE in a way that is transparent for the CLIENT.

**Continuous Storage:** Service subscribed by the CLIENT in its management interface or API. The continuous Storage may be corrupted for various reasons (improper manipulation, ill-will, etc.) and it shall be the CLIENT's responsibility to take Snapshots and/or make back-ups as often as necessary to be able to return to a known position.

**Data Controller / Processor:** Have the meaning assigned by the Legislation on Personal Data.

**Extension of the Scope of the Services (or Extension):** When the offer subscribed so enables, this shall involve the CLIENT purchasing supplementary resources from OUTSCALE, over a given period, for example, to meet new needs.

**EEE/EEA (European Economic Area):** Economic union grouping together the members of the European Union and other European States in accordance with the treaties which formed and govern this area.

**GDPR:** General Data Protection Regulation (EU) 2016/679 dated April 27, 2016 relating to the protection of individuals in relation to the processing of their personal data and the free circulation of these data.

**General Terms and Conditions of Sale (or GTCs):** This document, including the preamble, its definitions and all the documents it incorporates by reference, such as the Statement of Applicability and the Specifications for the Services.

**Indirect Clients:** All the entities which purchase OUTSCALE Services via a Reseller. OUTSCALE never grants any exclusivity to its Resellers, which means that Indirect Clients are always free to change Reseller and/or obtain all or part of the Services directly from OUTSCALE. Lastly, as Indirect Clients must accept these GTCs before being able to make use of the Services, it is up to the Reseller to obtain their acceptance.

**Legislation on Personal Data:** For France (i) the amended law of January 6, 1978 on data privacy and the GDPR entered into force on May 25, 2018 and (ii) for other countries, the regulations with the same purpose applicable in their territory.

**Non-continuous Storage:** Storage space, used by the Virtual Machine, where the data is eliminated with the re-start of the Machine. By default, the CLIENT's Virtual Machine shall only have storage for its boot disk which must not be used for storing data. It is highly recommended for the CLIENT to subscribe to a Continuous Storage solution with OUTSCALE, and this is essential even if the Client wishes to save its data in the event of a shutdown of the Virtual Machine.

**Official OMI:** OMI maintained by OUTSCALE and made available to its CLIENTS. After the first use of an Official OMI by the CLIENT on the launch of a Virtual Machine, the responsibility for updating all the components of this OMI lies exclusively with the CLIENT and is on no account the responsibility of OUTSCALE which cannot be held liable for the consequences of the failure of one the components of this OMI affecting the functioning of this Virtual Machine or the data which it contains due to faults or bugs brought to light after this first use.

**OMI (OUTSCALE Image Machine):** to a ready-for-use Image available on OUTSCALE platforms allowing to have a standardized Virtual Machine . We may also use the term Image Machine.

**On Demand:** Refers to Services supplied in the context of the Agreement when (i) the CLIENT only pays for the resources effectively used, and (ii) does not take out any subscription or commitment over time or for minimum resources, and (iii) can therefore cease to use the Services at its convenience and without indemnity, in particular if they no longer correspond to its needs. Within the framework of On Demand Services, OUTSCALE cannot guarantee the availability of resources at all times as explained in "[OUTSCALE's general obligations](#)".

**Order Form:** Designates the document which may be dematerialized, signed or validated when it is in dematerialized form, by the CLIENT under the terms of which the latter accepts a Proposal for Services, a quote or orders a product; it describes the Special Terms and Conditions applicable, if any. OUTSCALE bears no obligation of any sort for the performance of Professional Services or the provision of Services requiring a quote without an Order Form signed by the CLIENT and accepted thereafter by OUTSCALE.

**OUTSCALE:** The company OUTSCALE SAS, registered at Nanterre Registry of Trade and Companies under number B 527.594.493, with a capital of 1 849 930 euros, with its registered office located at 1 rue Royale, 319 Les Bureaux de la Colline, 92210 Saint-Cloud - France.

**OUTSCALE Infrastructure:** All of OUTSCALE's equipment (servers, routers, etc.) and software (TINA OS in particular) necessary for the provision of the Services, as well as for all of OUTSCALE's other activities.

**OUTSCALE Wiki :** OUTSCALE public documentation available for the CLIENT at [wiki.outscale.net](http://wiki.outscale.net)

**Personal data:** CLIENT Data which correspond to the definition of personal data provided by the French Legislation on Personal Data. For any questions relating to Personal Data (except for those related to the CLIENT's Systems, which are under its sole responsibility) please contact [donnees-personnelles@outscale.com](mailto:donnees-personnelles@outscale.com).

**POP:** Point of Presence of the Cloud Operator. This is a place, in general in a Datacenter, where OUTSCALE operates one or several of its Services.

**To Process/Processing:** Shall have the meaning given to it by the Legislation on Personal Data.

**Professional Services:** Any Services supplied by OUTSCALE following a specific request by the CLIENT, in particular with the aim of enabling the CLIENT to acquire specific skills to enable it to migrate its information system to Cloud Computing or use it for Cloud Computing. These services are not subject to SLAs and the liability commitments for OUTSCALE are limited. These Services are governed by specific agreements.

**Reseller:** Any entity which has concluded a Reseller agreement with OUTSCALE.

**Reseller Agreement:** Agreement between OUTSCALE and a Reseller which defines (i) the special financial conditions for the price of the Services that a Reseller purchases from OUTSCALE to sell on to Indirect Clients, and (ii) the rights and obligations of the Reseller (in terms of training of its personnel, certification, etc.) on the basis of the Reseller program which it signs up for. Reseller agreements are automatically integrated in these GTCs with which they form an indivisible whole. Reseller agreements are never exclusive.

**Region:** Shall mean a geographical area situated in the Territory covering one or several Availability Zones.

**Reversibility:** Paying service whose purpose is to help the migration of the CLIENT's production on the OUTSCALE Infrastructure to an iso-functional platform which is compatible but not the property of OUTSCALE.

**Service Access Key:** This concerns a set of digital identifiers (login, password, API key, etc.) enabling the CLIENT to make its authentication on its Infrastructure, for example on the API, in order to control its resources and subscribe to the Service. The access Keys are used for a specific account and must not be shared by the CLIENT.

**Services:** The provision of resources by OUTSCALE to the CLIENT (Virtual Machines, Object Storage, etc.), within OUTSCALE's Infrastructure as well as related Services, if applicable.

**Service Level Agreement SLA/Quality of Service:** Shall mean OUTSCALE's quality of service commitments in the context of the Services and are defined in Appendix A to this Agreement.

**Snapshot:** Shall mean the point-in-time image of a volume taken at the initiative of and under the CLIENT's sole responsibility. The CLIENT (i) must not take Snapshots during maintenance periods, and (ii) must follow OUTSCALE's technical recommendations, summarized on its Wiki ([wiki.outscale.net](http://wiki.outscale.net)), in relation to Snapshots, and in particular, ensure the consistency of its volume prior to taking a Snapshot.

**Sovereignty:** Designates the management policy for the Data but also for all the personnel and Infrastructure of OUTSCALE. Sovereignty applies to a Territory. OUTSCALE guarantees its CLIENTS that by using one or more Regions in the same Territory, no Data will leave this territory at the initiative of OUTSCALE. Furthermore, the OUTSCALE personnel in any given Territory are contractually bound to this Territory and no-one from another Territory may access the equipment of a Territory without the authorization of personnel from said Territory.

**Specifications:** Designate the characteristics of the different Services proposed within the framework of these GTCs, i.e. in particular the description of the Services, how they function, their performances and a breakdown of responsibilities between OUTSCALE and the CLIENT with a view to ensuring the security of the Services and of the Data. The Specifications are described in (i) the 'Specifications of

the Services“ accessible at [wiki.outscale.net](http://wiki.outscale.net), (iii) the Statement of Applicability, (iii) the documents to which points i and ii above refer, and (iv) the other documents, whatever their form, mentioned in the GTCs or the Special Terms and Conditions.

**Special Terms and Conditions:** Contractual document (in the form of an Order Form, conditions posted on the website or an application agreement) completing these GTCs and specifying the terms of the offer (Virtual Machine specifications, Storage Services, specific Quality of Service commitments overriding these GTCs, duration of the Services for Services which are not On Demand, special performance conditions, etc.) subscribed by the CLIENT, by any means, including on-line via its management API. They shall form an integral part of these GTCs.

**Statement of Applicability for the OUTSCALE Information Security Management System (Statement of Applicability):** Document describing all the security measures applicable at OUTSCALE, both for its Infrastructures and its Services, it was made in accordance with ISO 27001. This Statement enables the CLIENT, which has had access to it, to know its obligations as well as the obligations incumbent on OUTSCALE, with a view to ensuring the security of the Services and the Data. This Statement is one of the elements of the Specifications.

**Storage Service Facility (Object Storage Unit):** A storage environment that enables data to be sent and received from an IT platform via the Internet, with a copy of the data on three separate physical types of equipment in order to guarantee the Sustainability of the data in the event of a simultaneous breakdown of one or two of the physical facilities used. Complementary options (archiving, double site, etc.) may complete this offer.

**Sustainability:** Probability of non-deletion of data inadvertently (the deletion could be caused by a physical phenomenon such as “bit flips”, the dysfunction of a specific technology, the aging of the storage media, etc.), for example: a sustainability of 99.9999999 % per year shall mean that 0.0000001 % of the data, at the most, could be altered during the year.

**Technical Support (or Support):** shall mean the technical support provided by OUTSCALE in accordance with the Specifications for the Services and with the “[Technical Support](#)” article contained in these GTCs.

**Territory:** Designates a country or set of States which share the same legal rules concerning data, in particular Personal Data. There may be several regions in the same Territory.

**Virtual Machine(s) or Instance(s) :** Virtual Servers which set up the CLIENT systems and are located within the OUTSCALE Infrastructure. They shall include: (i) memory resources (RAM and hard drive and/or other means of storage), (ii) calculation resources, (iii) continuous storage with or without guarantee of performance, (iv) an operating system (Windows®, distribution LINUX or other), (v) third-party applications that may be subject to licenses, (vi) the standard security system, (vii) bandwidth allocation. All the characteristics from (i) to (viii) above, are defined by the CLIENT, on the basis of the options proposed by OUTSCALE, and form part of the Special Terms and Conditions. **As OUTSCALE is unaware of the type of System that the CLIENT plans to set up on the Virtual Machines, it is unable to offer advice with these choices.** The CLIENT, if it is not an IT professional, must be assisted by a professional to make its choices.

## 2 – Purpose of these GTCs

The purpose of these General Terms and Conditions of Sale – which may be completed by Special Terms and Conditions – is to define the scope and terms of the Services supplied by OUTSCALE to the CLIENT, as well as the related financial conditions.

All the Services covered by these GTCs comply with CISPE Code of Conduct recommendations and certified ISO 27001:2013 processes.

### **3 – Formation of the Agreement / Entire Agreement / Hierarchy**

#### **3.1 – Formation of the Agreement**

The Agreement is irrevocably formed as of the acceptance by the CLIENT (i) of these GTCs, on the one hand and, (ii) of the Special Terms and Conditions, on the other hand

The acceptance of the Agreement by the CLIENT entails acceptance of these GTCs, which the CLIENT acknowledges it has read and understood. Although the CLIENT is always a professional, before accepting these GTCs, it must seek advice from an IT and networks professional in order to make the technical choices which are part of the Agreement, in particular concerning the characteristics of the Virtual Machines, their operating system, the resources necessary to satisfy its needs, etc.

As explained in the article "[Validity of electronic means for notifications issued within the scope of the Agreement](#)", **the CLIENT must refuse these GTCs and not enter into an Agreement with OUTSCALE if it does not accept e-mail as method of notification in the context of the Agreement.**

The CLIENT subscribes to Special Terms and Conditions online (3.1.1) with an Order Form accepted by OUTSCALE (3.1.2) or by negotiating a derogatory agreement with OUTSCALE (3.1.3).

##### **3.1.1 – Online Subscription**

From one of the OUTSCALE websites, the CLIENT may subscribe an Agreement for a given Territory by following the registration process.

At the time of registration, the CLIENT defines:

- The e-mail associated with the Account (which will be used for all notifications and any formal notice required within the framework of the Agreement),
- Its identification data (name, intercommunity VAT number or equivalent registration number in the CLIENT's country, address, telephone number, etc.)
- The password.

The CLIENT must also provide bank details to OUTSCALE for invoicing purposes.

The Agreement shall be irrevocably deemed to be formed after validation of the CLIENT Account and the sending by the CLIENT of its bank details to OUTSCALE.

The CLIENT undertakes to provide up-to-date, genuine and accurate information, failing which OUTSCALE's obligations herein shall be suspended until the information provided by the CLIENT has been corrected and verified.

If OUTSCALE detects anomalies in the information provided suggesting that the information provided is incorrect or erroneous (if any reasonable person who was placed in the same situation as OUTSCALE would consider such information as erroneous), it shall initiate the VERIFICATION PROCEDURE described below (hereinafter the Verification Procedure):

- OUTSCALE shall send an e-mail to the CLIENT to inform it of the anomalies detected,
- The CLIENT shall have a period of TWO HOURS to acknowledge receipt of this e-mail and provide corrections or provide the supporting documents requested by OUTSCALE with a view to verifying the information provided,
- If the CLIENT fails to act within this deadline, OUTSCALE may take any measures that it considers necessary to ensure the security of its Infrastructure, and in this regard, it may carry out or have carried out any investigations to identify the CLIENT, verify the use made of the resources made

available to the CLIENT and more generally it may do whatever is necessary to ensure that the CLIENT's use of OUTSCALE's resources and Infrastructure is not against the law.

During the verification procedure, if it considers it necessary, OUTSCALE may suspend the CLIENT's account or limit its activity. If the CLIENT fails to respond or to provide the information requested or conclusive supporting documents, OUTSCALE may terminate the Agreement formed, without notice, by sending an e-mail or SMS to the mobile telephone number provided upon registration.

As the case may be, at the end of the registration process, the CLIENT receives confirmation of the opening of its Account.

The Opening of the Account entails acceptance by OUTSCALE of the associated Agreement and enables the CLIENT to use the OUTSCALE Services exclusively in the Regions situated in the Territory that it has chosen.

### **3.1.2 – Subscription by Order Form**

The CLIENT may order the Services by contacting the sales department at [sales-eu@outscale.com](mailto:sales-eu@outscale.com).

Once OUTSCALE has accepted the CLIENT's Order Form, the Agreement is formed, and the Account opened.

Some Regions and/or some Services may not be ordered by Order Form.

### **3.1.3 – Subscription by negotiating a derogatory agreement**

When the CLIENT asks for the negotiation of an overriding Application Agreement, OUTSCALE is never obliged to accept.

### **3.1.4 – Creation of CLIENT Account**

The CLIENT determines at the request for Account creation :

- The email associated with the Account (which will be used for all notifications and any formal notice required within the framework of the Agreement),
- Its identification data (name, intercommunity VAT number or equivalent registration number in the CLIENT's country, address, telephone number, etc. )

The CLIENT agrees on the processing of those data by OUTSCALE in order to provide the Service to the CLIENT.

The CLIENT must also provide invoicing and bank details to OUTSCALE to ensure payment.

At the end of the registration process, the CLIENT receives confirmation of the opening of its Account.

The Opening of the Account entails acceptance by OUTSCALE of the associated Agreement and enables the CLIENT to use the OUTSCALE Services exclusively in the Regions situated in the Territory that it has chosen.

## **3.2 – Entire Agreement**

All the discussions, advertisements, e-mails, offers, proposals, etc. with the same purpose as the Agreement (i.e., on the one hand, these GTCs and, on the other hand, the Special Terms and Conditions), shall be cancelled by the latter, which constitute the entire agreement between the CLIENT and OUTSCALE in relation to the subject matter addressed.

### **3.3 – Hierarchy of contractual documents/interpretation**

In the event of contradiction between the Special Terms and Conditions and these General Terms and Conditions, these GTCs will always prevail, except in the case whereby the Special Terms and Conditions take the form of an accepted Order Form, and the clause(s) in contradiction with these GTCs begin with the mention “*By way of derogation from OUTSCALE’s General Terms and Conditions of Sale Version 2018-12*”; and also in the cases whereby these GTCs expressly provide for a possibility of derogation in the Special Terms and Conditions or in the event of an application agreement.

Furthermore, if one of the clauses of the Agreement were to be deemed contrary to the law (including the GDPR starting from its entry into force), it must be replaced by another valid clause which is as close as possible to the clause that is declared invalid.

Lastly, if a stipulation in an Agreement governed by these GTCs could be interpreted in more than one way, the interpretation which is closest to the CISPE Code of Conduct recommendations must be given priority.

### **3.4 – Automatic extension of the Scope of the Services**

Thanks to the OUTSCALE APIs, the CLIENT can develop programs which automatically subscribe to OUTSCALE Services (new Virtual Machines, additional storage volume, etc.)

It is understood that, if the CLIENT uses these APIs, it cannot be released from its obligations, in particular its payment obligations, on the grounds that its System ordered the Services erroneously (for example, if the CLIENT machines, following a dysfunction, ordered Services that were contrary to CLIENT forecasts).

It is therefore the CLIENT’s responsibility to use the automatic subscription functions with care and to set in place the necessary control procedures.

## **4 – Term/Termination of the Agreement**

The Agreements governed by these GTCs are concluded for an unlimited period of time, except if the Agreement does not correspond to an On Demand Service and its Special Terms and Conditions fix a specific term (for example, in case of the reservation of a Virtual Machine for a fixed period).

Each of the Parties may terminate Agreements for On Demand Services at any time, without indemnities, including for the sake of convenience.

For Services which are not On Demand, the Agreement can only be terminated in accordance with the conditions agreed upon in the Special Terms and Conditions and if there are no conditions specified, the Agreement can be terminated like On Demand Agreements, except for Virtual Machine reservations which are still firmly and irrevocably ordered without the possibility of early termination.

The termination of an On Demand Agreement takes place as follows:

- The CLIENT: by sending an e-mail from the e-mail address associated with its Account to [support@outscale.com](mailto:support@outscale.com) in which it expresses its intention to terminate and indicates the Agreements to be terminated, if there are several Agreements associated with the e-mail address. OUTSCALE must acknowledge receipt of this termination letter, by return e-mail
- OUSTCALE: by sending an e-mail to the e-mail address of the CLIENT Account.

The termination comes into effect fifteen (15) clear days after (i) the acknowledgement of receipt from OUTSCALE if the termination takes place at the initiative of the CLIENT or (ii) the date on which the termination e-mail was sent by OUTSCALE if the termination decision is made by OUTSCALE.

Before the effective termination date, the CLIENT must imperatively have recovered all its Data hosted within the framework of the Agreement(s) terminated, as specified in the article "[Recovery or deletion of Data](#)".

The termination of the Agreement, whether at the initiative of OUTSCALE or the CLIENT, does not release the CLIENT from its obligation to pay for those Services already used.

## **5 – Modification of the General Terms and Conditions of Sale, offers, prices and Agreements**

Particularly for the purposes of improving the Quality of Service, OUTSCALE may modify these GTCs regularly as well as its offers (Service Specifications, prices, etc.).

The new versions of the GTCs, offers and prices will be published on OUTSCALE's website ([en.outscale.com](http://en.outscale.com)). OUTSCALE may also send an e-mail to the CLIENT Account e-mail address and/or warn the CLIENT of a modification of the contractual conditions via the management interface of its Account. In the event of a substantial modification relating to the obligations incumbent upon each of the Parties, this modification must be notified to the CLIENT by email or via the management interface of its Account.

The new contractual conditions come into force as soon as they have been published and apply (i) to future contractual relations between OUTSCALE and its CLIENTS, whether On Demand CLIENTS or otherwise, and (ii) automatically modify the Agreements in progress with the consequences described in sections 5.1 and 5.2 depending on whether they are On Demand Services or not.

In the event of a modification made by OUTSCALE to the Specifications for the Services and in particular to the Statement of Applicability, **it is up to the CLIENT, assisted if necessary, by an IT professional, to ensure that the Services continue to be in line with its needs and objectives, in particular in terms of security.**

### **5.1 – Consequences of modifications to On Demand Agreements**

If the CLIENT does not accept the modifications made by OUTSCALE to its On Demand conditions – either at the time of the modification or at any subsequent moment – it must cease to use the Services and notify OUTSCALE of the termination of the Agreement in the conditions set forth in the article "[Term/Termination of the Agreement](#)".

If the CLIENT continues to use the On Demand Services despite the modification of the contractual conditions, it will be deemed to have accepted the modified conditions.

In no circumstances will OUTSCALE pay any indemnity to the CLIENT following the modification of the contractual conditions (GTCs, offers and prices) of its On Demand Services, the possibility of modifying them at its convenience being the counterpart for the CLIENT's freedom to terminate the On Demand Services at its convenience and without indemnification.

### **5.2 – Consequences of modifications to Agreements that are not On Demand**

The conditions for the revision of the Services which are not On Demand are defined in their Special Terms and Conditions.

## **6 – Suspension of the Services at the request of an authority or when the CLIENT makes an illicit use thereof or use which threatens the security of the resources supplied by OUTSCALE**

OUTSCALE, if it has identified malicious operations or operations which threaten the security of its Infrastructure or that of third parties (such as ‘flood’, ‘scan’, ‘denial of service’, etc.) originating in the resources it supplies to the CLIENT (such as Virtual Machines, Object Storage Service, etc.), or at the first demand of an authority (in particular judicial) involving the resources of the CLIENT, or each time the law obliges it, may block said resources and suspend the Services.

Once they have been blocked, the CLIENT will no longer have access to these resources (or to the related Data) and, from a network point of view, they will be isolated from the rest of the Infrastructure.

If the authority which requested the block and the law oblige OUTSCALE to keep the resources blocked for a certain time and/or until a decision is reached and/or any other event, OUTSCALE will comply.

Otherwise, OUTSCALE may:

- keep the resources blocked until the reasons for the blockage have disappeared,
- at any time, and without unblocking the resources, notify the CLIENT by e-mail of the termination of the Agreement within 10 (ten) clear days, the CLIENT then being required imperatively to ask the OUTSCALE “Customer Service” to return the Data to it in the conditions set forth in the article [“Recovery or deletion of Data”](#) if it wishes to keep the Data, failing which said Data will be irrevocably destroyed.

The CLIENT may also serve notice of immediate termination to OUTSCALE by sending an e-mail to [support@outscale.com](mailto:support@outscale.com).

The termination of the Agreement is without prejudice to any damages which OUTSCALE may claim from the CLIENT in the event of the breach of its commitments.

The Services shall be invoiced notwithstanding the suspension of the Services, except in the case whereby OUTSCALE was clearly wrong to suspend the Services.

## **7 - Termination of the Agreement in the event of breach**

In the event that one of the Parties breaches its obligations under the Agreement – and in particular as far as the CLIENT is concerned, if it breaches its financial obligations: late payment, refusal to pay by its bank, bank details that are not up-to-date, etc. – the other Party shall serve formal notice by e-mail to remedy said breach within 7 (seven) clear days.

After this formal notice, and if the defaulting party is the CLIENT, OUTSCALE may block the CLIENT’s access to the resources supplied as part of the Services (including the related Data) and suspend the Services.

If this formal notice has produced no effect within the given timeframe, the wronged Party may send notice of termination of the Agreement to the defaulting Party by e-mail. In this case, the termination comes into effect automatically and without the need for a judge, ten (10) clear days following the notice of termination.

Before the effective termination date, the CLIENT must imperatively recover all its Data hosted at OUTSCALE, as indicated in the article [“Recovery or deletion of Data”](#).

The termination of the Agreement does not prevent the wronged Party from demanding reparation from the defaulting Party before the courts. In addition, on no account does the termination release the CLIENT from its obligation to pay for the Services already used.

## **8 – OUTSCALE’s general obligations**

OUTSCALE shall carry out its Services in accordance with the rules of professional practice.

In particular, OUTSCALE shall:

- Operate, maintain, manage, etc. the OUTSCALE Infrastructure which supports the CLIENT’s Virtual Machines and/or the Object Storage Services and other Services;
- Make the Virtual Machines that it ordered available to the CLIENT with the operating system provided for in the Special Terms and Conditions, along with the security tools chosen by the CLIENT/provide the Object Storage Services ordered;
- Supply the resources subscribed On Demand on condition that they are available at the time of the request (if the CLIENT wants a guarantee of availability, it must contact the OUTSCALE sales department which will propose adapted offers such as the reservation of Virtual Machines);
- Ensure that the Virtual Machines/Object Storage Facilities have the resources provided in the Special Terms and Conditions;
- Provide the CLIENT with an administration interface (Cockpit) for its Virtual Machines so that it may install and administer its System there (the CLIENT shall be responsible, assisted by an IT professional if necessary, for ensuring that its System may be administered via said interface, which implies that the CLIENT has asked OUTSCALE all the appropriate questions in this regard prior to accepting the Agreement);
- Ensure Support and assistance Services in accordance with the Specifications for the Services and, in any case, by supplying free access to the knowledge bases available on OUTSCALE’s Wiki ([wiki.outscale.net](http://wiki.outscale.net));
- Provide an API control enabling the CLIENT to automate the management and administration of the Services;
- Provide, as the case may be, the other Services provided in the Special Terms and Conditions;
- Supply the statements and reports provided in the Special Terms and Conditions.

OUTSCALE is bound by the Quality of Service commitments defined in the article “[Quality of Service/SLA](#)” as well as in Appendix A, which may give rise to penalties. The Special Terms and Conditions may derogate from Appendix A with the exception of the limit defined in the paragraph below.

In any event, the penalties due in connection with these GTCs may not exceed 30 % (thirty percent) of the amount of the invoice for the month during which the incidents that triggered the penalties occurred. Furthermore, said penalties shall constitute a flat-rate final settlement of damages for the incidents that gave rise to the penalties, with these penalties being considered as a final discharge of liabilities.

Moreover, if the CLIENT is behind with payments without OUTSCALE having suspended the Services, the penalty system is automatically suspended until the CLIENT has made full payment

Furthermore, any penalties that could have been demanded by the CLIENT during the period of suspension of the penalties shall be lost.

The fact that OUTSCALE continues to provide Services to a debtor CLIENT does not grant the CLIENT any right, and (i) OUTSCALE may cease the Services at any time (ii) furthermore, under no circumstances can the CLIENT invoke fact that the Services were maintained despite its debt balance in order to demand the renewal of this tolerance in the future.

## 9 – The CLIENT’s Obligations

### 9.1 – Duty of care obligation

The CLIENT must operate the Virtual Machines and/or Object Storage Facilities made available by OUTSCALE in a prudent and responsible fashion and it undertakes in particular to:

- **Ensure compliance with the laws applicable to the Services**, in particular, the French law on “*Confidence in the Digital Economy*” and different laws on internal security, as well as equivalent laws abroad;
- Provide identification information and bank details during the creation of its CLIENT account and to keep them updated;
- Ensure that the payment terms provided by the Agreement are respected;
- By express agreement, **the CLIENT alone is liable from a legal and technical standpoint for its System** (including the data, regardless of their origin); it is also responsible for its domain names, SSL certificates, and for the log management of its System in accordance with the law, etc.
- Protect its Service access keys;
- Not to propose a System that is in violation of the different norms, laws, decrees, etc., both national and international (incitement of racial hatred, pedophilia, acts that are contrary to public order, defamation, media and audio-visual communication freedoms, public economic policy, spam, computer crime, etc.);
- Not to host personal health related data (OUTSCALE has a specific offer for this purpose which requires an agreement that derogates from these GTCs);
- Not to commit or facilitate – directly or indirectly – infringing acts or acts of unfair competition with the aid of its System;
- **Ensure that the Legislation on Personal Data is respected**, as indicated in the article “[CLIENT Data](#)” and in particular the GDPR;
- Generally, and in particular if it has a website that is open to the public, to respect all the legal obligations in this regard;
- Not to do anything with its Virtual Machines/Object Storage Service that may technically endanger the OUTSCALE Infrastructure, as well as the Virtual Machines/Object Storage Facilities of other CLIENTS. By express agreement, if OUTSCALE identifies operations that are technically malevolent originating from one or several of the CLIENT’s Virtual Machines (such as “flood”, “scan”, “spam”, “denial of service”, etc.), OUTSCALE may immediately block the incriminated Virtual Machines, or even all the Services; without prejudice to OUTSCALE’s right to initiate the termination procedure and claim damages.

The CLIENT cannot be released from the above-mentioned obligations by arguing that it did not commit the offence itself, but that it was committed by one of its System’s users. Therefore, the CLIENT must take all the necessary measures to prevent such offences from being committed, and to limit the consequences, if they were to occur, despite the precautions taken.

The CLIENT shall indemnify OUTSCALE in full for any legal sanction imposed following a violation by the CLIENT of one of the above-mentioned obligations.

### 9.2 – Co-operation obligation

The CLIENT shall undertake to cooperate with OUTSCALE in good faith in view of the proper performance of the Services, and in particular to pro-actively communicate the information that it has in its possession which could be useful (in particular, 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,

- Manage the CLIENT Account and in particular, ensure that the payment information is still valid, in order to prevent any delay in payment.

The CLIENT shall ensure the sustainability of this Manager.

Furthermore, if the CLIENT is intending to launch a marketing or communication operation, an audit of its Systems, etc. likely to cause a significant increase in the use of its resources (bandwidth, memory or calculation), it shall be responsible – as part of its duty to cooperate – for informing OUTSCALE prior to the launching of said operation, and within a reasonable period, in order to avoid this sudden increase in activity being analyzed as a security fault resulting in the possible temporary suspension of its System.

### **9.3 – Acceptance obligation**

As a result of the continuous nature of the Services provided and the existence of continuous monitoring made available to the CLIENT, 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 48 (forty-eight) hours after the provisional acceptance by the CLIENT unless the CLIENT notifies OUTSCALE, by an e-mail within 48 (forty-eight) 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 the tools available.

No reservation may be formulated beyond the period mentioned above. The lack of documentation to back up the reservation formulated shall be considered as a lifting of the reservation.

## **10 – Services**

### **10.1 – Specifications for the Services**

The CLIENT may subscribe one or more Services resumed below.

We recall that the CLIENT had access to detailed Specifications on [wiki.outscale.net](http://wiki.outscale.net) before signing the Agreement and was able to ensure that the Services matched its needs, if necessary, with the help of an IT and networks professional if the CLIENT is not an IT professional itself.

In addition to the documentation above, in the event of any doubt, the CLIENT can ask the OUTSCALE teams for any technical precisions required.

Lastly, during the course of the Agreement, the CLIENT can always ask for precisions on the Specifications from OUTSCALE.

#### **10.1.1 – Flexible Computer Unit (FCU): the Virtual Machines**

The virtual machines, or instances, are launched by the CLIENT in the public Cloud or in a Virtual Private Cloud (VPC) which is the mode recommended by OUTSCALE.

Each Virtual Machine is made up of calculation, storage and memory elements which support an Operating System (OS) which can host the CLIENT’s professional applications.

The CLIENT can choose between different hardware configurations called types of Virtual Machine and between different machine images used as a template for the Virtual Machine to be launched.

#### **10.1.2 – OUTSCALE Machine Image (OMI)**

An OMI is a Virtual Machine template or instance which contains at least an operating system (OS) and possibly other software applications and configurations such as block device mappings referencing the BSU. The OMIs make it possible to launch the Virtual Machine with predefined configuration and software applications, without having to install them on all the Virtual Machines.

An OMI is an Image Machine used as a template to launch Virtual Machine based on a BSU volume like system volume. An OMI provides, at the least, an operating system (UNIX or Windows) and may provide software applications or copies of other BSU volumes.

OUTSCALE deals with the vulnerabilities of its OMI in real time via its Security Operation Centre and will communicate availability of new OMI to the CLIENT.

In any case, OUTSCALE is not responsible for the vulnerabilities of the operating systems and other software applications and configurations contained in its Official OMIs, the security of these elements being the responsibility of their respective publishers, distributors and/or authors.

Furthermore, OUTSCALE advises the CLIENT not to prevent the automatic update process for the software contained in the OMI, in particular the operating systems. In the case of the use by the CLIENT of an OMI edited by a third party, the CLIENT will be responsible of contacting the concerned third party which edited the OMI, OUTSCALE will not be held responsible in such situation.

#### **10.1.3 – Block Storage Unit (BSU)**

Block Storage Unit (BSU) volumes are virtual hard discs that the CLIENT can add to a Virtual Machine FCU created in the same Availability Zone.

A volume is defined by its size and its IOPS capacity.

#### **10.1.4 – Security Groups**

Security groups make it possible to manage and control inflows and outflows from Virtual Machines thanks to a set of rules depending on the CLIENT needs and architecture.

Each Virtual Machine, whether in a public Cloud or Virtual Private Cloud (VPC) is launched behind at least one security group to/from which the CLIENT may add or withdraw rules.

#### **10.1.5 – Virtual Private Cloud (VPC)**

A VPC is a virtual network defined by the CLIENT, which is isolated within the OUTSCALE Cloud and which is dedicated to the CLIENT's account. The CLIENT can launch Virtual Machines and create resources in its VPC. VPCs are created for a Region.

The VPCs also make it possible to create a peering connection with another VPC, to use several network interfaces for its Virtual Machines and to create DirectLink or VPN connections.

#### **10.1.6 – External IP**

An EIP is a V4 IP address designed to be dynamically transferable from one Virtual Machine to another and accessed by the CLIENT from the Internet.

Each EIP is linked with your OUTSCALE account. An EIP decommissioned from an account cannot be reassigned by OUTSCALE support.

### **10.1.7 – Load Balancing Unit (LBU)**

A load balancer distributes the incoming network traffic between several Flexible Computer Unit (FCU) Virtual Machines of the public Cloud or a Virtual Private Cloud (VPC) to avoid overloading and increase the availability and reliability of the CLIENT's services.

### **10.1.8 – Object Storage Unit (OSU)**

Object Storage Unit (OSU) is a storage system in object mode. Each object has its own specific URL for access purposes.

OSUs make it possible:

- To create buckets in which to store objects
- To manage Access Control Lists (ACL)
- To remove objects and buckets
- Etc.

The Object storage facility provided by OUTSCALE uses the CEPH open source application. OUTSCALE sponsors the developers on this project but is not the owner of the project which is run by the open source community.

### **10.1.9 – Data Platform as a Service**

Le Data Platform as a Service (PaaS) consists in hosting on hardware infrastructures ready-to-use platforms that the CLIENT may deploy very rapidly. Then, the CLIENT can manage these infrastructures as any object created through the classic IaaS service.

This service enables:

- The optimization of deployment time for services
- The guarantee of an operation platform that is configured and secure
- The provision of a complete platform including infrastructures and user licenses

Data PaaS therefore allows the CLIENT to have access to a deployment of a set of Virtual Machines supporting pre-configured software infrastructures required by the CLIENTS project.

### **10.1.10 – Elastic Identity Management (EIM)**

This service allows the CLIENT to create and manage security policies per user attached to its account. It is the CLIENT's responsibility to control the dissemination of security policies and access keys attached to users.

It is also recommended to implement a policy for managing the life cycle of users and associated access keys.

### **10.1.11 – DirectLink**

The CLIENT may subscribe through a separate contract, to an OUTSCALE cloud internal network port service. This service is subscribed for a period fixed in advance and specifies the geographic access point and the debit subscribed.

The CLIENT will then have access to a virtual access point, which can be manipulated through OUTSCALE's public APIs in order to link it to a Virtual Private Cloud (VPC).

## **10.2 – Security of the Services**

### **10.2.1 – In the EEA Region**

The CLIENT, on condition of confidentiality, has access to the information in OUTSCALE's Statement of Applicability within the framework of its ISO27001:2013 certification before the conclusion of the Agreement; and after its conclusion it may access this information at its convenience upon demand.

This Statement describes the entire Information Security Management System in place at OUTSCALE for its Services within the EEA, and at all levels: physical security, security processes, security environments, network security etc.

It allows the CLIENT to have an inventory of the security measures in place and to know the level of security applied by OUTSCALE.

In addition, the CLIENT may ask the OUTSCALE teams any questions relating to security (in particular the security of Personal Data), and OUTSCALE undertakes to use its best endeavors to answer as rapidly as possible, (i) either free of charge, (ii) or in exchange for fair remuneration (following a quote accepted by the CLIENT) when the complexity of the question and/or work load necessary to reply exceed what can be reasonably expected of a supplier such as OUTSCALE in a similar context.

The options which the CLIENT may order to reinforce the security of the Services are described in the Specifications for the Services.

**All the OUTSCALE Services are delivered in accordance with ISO 27001:2013 requirements,** which is subject to an audit inspection carried out by an independent third party at least once a year.

### **10.2.2 – Outside the EEA Region**

The CLIENT, by transferring its Data to OUTSCALE Infrastructures situated outside the EEA Region, must be aware that it is no longer covered by the OUTSCALE EEA security guarantees described in point (a) above.

The non-EEA Region security guarantees are defined in the Specifications for the Services applicable to the Region and vary from one Region to another. The CLIENT must ensure, assisted by a specialist adviser if it does not have the skills, that the guarantees provided by OUTSCALE in the Region are in line with its security requirements.

OUTSCALE does not guarantee that its Services outside the EEA Region comply with CISPE Code of Conduct recommendations.

### **10.3 – Synchronization of Accounts between Territories and Regions**

OUTSCALE automatically supplies a set of different Access Keys to the Service for each Region.

The CLIENT may ask OUTSCALE to synchronize its Accounts in all the Territories and Regions. OUTSCALE will agree to this request, subject to a request being submitted to [support@outscale.com](mailto:support@outscale.com) or an Order Form signed by the CLIENT, but invites the CLIENT to weigh up, with the help of specialist advisers, all the consequences of such a synchronization, **which it strongly advises against.**

In particular, the local legislation may enable a State to obtain the CLIENT Keys and therefore access its Data in all the Regions, including in France. This is why OUTSCALE advises its CLIENT not to synchronize its Accounts and to keep a set of Access Keys to the Service for each Territory or for each Region if it prefers.

## **11 – Quality of Service / Service Level Agreement**

In addition to the proven technology at OUTSCALE, the Services rely on equipment which is guaranteed by its suppliers (via their MTBF and RTO indicators, etc.), which are globally renowned.

The SLAs shall depend on the Services in question and are presented individually in [Appendix A](#) attached hereto. **The SLA in Appendix A are those of OUTSCALE for the EEA Region, they also**

**apply by default in the other Regions, given that the SLA applicable to the Services in the other regions may derogate from Appendix A.**

Scheduled maintenance tasks must be taken into consideration for the availability time, subject to OUTSCALE having informed the CLIENT at least two full days in advance.

Any task, the aim of which shall be to protect the CLIENT Data or Infrastructure against an exceptional major risk such as acute security vulnerability or a massive cyberattack, shall be taken into consideration for the availability time.

The CLIENT may not invoke the above-mentioned commitments if it has not followed OUTSCALE's recommendations such as summarized on the OUTSCALE Wiki ([wiki.outscale.net](http://wiki.outscale.net)), concerning the use of the Services, as the failure to comply with the recommendations shall be considered as a fault on the part of the CLIENT.

In the event whereby OUTSCALE were to fail to comply with its availability commitments, without any fault on the part of the CLIENT, the latter would be entitled to terminate the Services and obtain credit as indicated in [Appendix B](#). OUTSCALE fails to comply with its commitments if:

- the Quality of Service commitments defined in [Appendix A](#) have not been respected;
- this non-compliance is not linked to any fault by the CLIENT;
- the CLIENT is directly concerned by this non-compliance as a CLIENT of OUTSCALE and not, for example, as a user of a service based on OUTSCALE but provided by a third party.

Whether or not OUTSCALE has failed to comply with its Quality of Service commitments shall be assessed over a sliding period defined in the SLAs.

The down time counted is only the time that has been subject to notification of reservations in accordance with the Article "[The CLIENT's obligations/Acceptance obligation](#)" of these GTCs.

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 which, by express agreement, constitute full discharge.

The CLIENT must attach to its notification:

- The CLIENT calculation showing that OUTSCALE had 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 "[The CLIENT's obligations/Acceptance obligation](#)" of the GTCs) in support of its calculation.

If the CLIENT has correctly documented and proven OUTSCALE's non-compliances, it shall be granted credit to offset against the price of the Services, valid for a period of 1 (one) year, for which the amounts and calculation methods are defined in [Appendix B](#).

If the CLIENT has more than one Account, the credits mentioned above that he acquires due to a breach of OUTSCALE to an Agreement associated with an Account cannot be used to consume Services under another Agreement associated to another account.

The fact that the CLIENT does not claim the above penalties option shall be considered as a final waiver of the latter for the reservations notified, which will be deemed to have never existed.

## **12 – Intellectual Property**

### **12.1 – Ownership of the technologies used to provide the Services**

The Agreement 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.

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 the Services and solely for the duration of said Services, this assignment ending automatically at the same time as the Services.

### **12.2 – Ownership of the CLIENT Systems and Data**

All the elements making up the CLIENT Systems and Data shall remain the property of the CLIENT in all circumstances, the Agreement entailing no assignment of intellectual and/or industrial (patent) property rights.

### **12.3 – 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, in particular its trademarks.

And this, without prejudice to OUTSCALE citing the CLIENT as a reference and to the CLIENT mentioning that it uses the OUTSCALE Services. However, each Party, without having to give its reasons, may ask the other Party not to make reference to it any longer.

### **12.4 – Contact**

For requests regarding your intellectual property rights, you can contact: [intellectual-property-rights@outscale.com](mailto:intellectual-property-rights@outscale.com).

## **13 – Liability – Force majeure – Insurance**

### **13.1 – OUTSCALE's liability**

For all intents and purposes, it is stipulated that this article shall not apply to the CLIENT's liability, in particular for any sanction imposed upon OUTSCALE, following the illegality of all or part of the CLIENT System (in particular, for pedophilia, violation of the Legislation on Personal Data, incitement to racial hatred, infringement, etc.)

OUTSCALE shall indemnify the CLIENT – for the loss for which the latter must provide the proof – in the event of non-compliance by OUTSCALE with its obligations under the Agreement, and within the limit (liability threshold) of 2 (twice) the monthly amount invoiced to the CLIENT for the Services at the origin of OUTSCALE's responsibility, if OUTSCALE's non-compliance lasted for more than 15 (fifteen) days; if the non-compliance lasted for 16 (sixteen) days or more, the threshold shall be increased to 3 (three) times the monthly amount invoiced for the defective Service.

By express agreement, OUTSCALE shall decline 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 CLIENT's image rights, etc.

None of the limits mentioned above shall apply in the event of bodily injury.

### **13.2 – Force Majeure**

OUTSCALE's liability, in the event of non-compliance with any of its obligations under the Agreement, shall not be incurred when this non-performance results from a force majeure event.

Shall be deemed as force majeure events those that the law or case law qualifies as such, but also all acts of IT criminality (subject to OUTSCALE having set up a reasonable security policy), major dysfunctions in the Internet network and electrical malfunctions.

### **13.3 – 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 Virtual Machines/Object Storage Facilities, it shall be the CLIENT's responsibility to subscribe to a specific insurance policy for loss of data.

## **14 – CLIENT Data**

### **14.1 – General principles in regard to the CLIENT Data**

In order to provide the Services, OUTSCALE undertakes not to access the CLIENT Data : OUTSCALE manages the physical storage of Data but undertakes not to look at their logical storage, whatever the nature of the Data, personal or not.

OUTSCALE advises the CLIENT to encrypt its Data and not to give OUTSCALE the key.

It is specified that OUTSCALE will never carry out operations such as direct marketing, profiling or datamining with the CLIENT Data.

However, if an official decision, order or request issued (i) by the courts or (ii) a government authority was to order OUTSCALE to disclose the CLIENT Data, OUTSCALE would comply within the strict limit of what is necessary in view of the terms of said decision, order or request. OUTSCALE would immediately inform the CLIENT.

In addition, it is underlined that OUTSCALE does not transfer the CLIENT's Data outside the area previously chosen by the CLIENT.

### **14.2 – Personal Data**

The CLIENT agrees to respect, within the framework of these GTCs, OUTSCALE data protection policy available at <https://en.outscale.com/data-protection/>, which he certifies to have read.

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

#### **14.2.1 When OUTSCALE acts as a Data Processor**

OUTSCALE acts as a Data Processor when carrying out its Cloud Computing Services regarding the storage of CLIENT Data on the OUTSCALE cloud infrastructure. The CLIENT then has the status of Data Controller.

The CLIENT guarantees OUTSCALE that it will make use of the OUTSCALE Infrastructures and Services in accordance with Personal Data Legislation and that it will respect its obligations as Data Controller.

### **a) Description of the processing of Personal Data**

The Data Processor is authorized to process on behalf of the Data Controller the Personal Data necessary to provide its Services.

The nature of the transactions performed on the Personal Data is the storage of this Data on the Cloud infrastructure of OUTSCALE.

The purpose of the processing is the realization of the contract concluded between the CLIENT and OUTSCALE.

The Personal Data processed is all Personal Data stored on the OUTSCALE Cloud infrastructure by the CLIENT.

The categories of people concerned are determined by the CLIENT.

### **b) Obligations of the Data Processor and the Data Controller**

**1. Purposes.** The Data Processor undertakes to process the Personal Data only for the purpose or purposes that are the subject to these Terms and Conditions.

**2. Instructions from the Data Controller.** As a Data Processor, OUTSCALE undertakes to process the Personal Data in accordance with the instructions of the Data Controller. The Agreement between the CLIENT and OUTSCALE and the use made by the CLIENT of the Services provided by OUTSCALE shall constitute the CLIENT's exhaustive and definitive instructions regarding Data Processing. If the Data Processor considers that an instruction constitutes a violation of the Legislation on Personal Data, he will inform the Data Controller.

**3. Confidentiality.** OUTSCALE undertakes to guarantee the confidentiality of the Personal Data processed in the context of these Terms and Conditions. OUTSCALE undertakes to ensure that persons authorized to process Personal Data under these GTCs receive the necessary training regarding the protection of Personal Data and undertake to respect confidentiality or be subject to an appropriate legal obligation to confidentiality.

**4. Protection of Personal Data by design and by default.** The Data Processor undertakes to take into account with respect to its Services the principles of protection of Personal Data by design and by default.

**5. Third parties.** OUTSCALE may use third parties to deliver its Services. These third parties are listed in OUTSCALE data protection policy which can be accessed from <https://en.outscale.com/data-protection/>. OUTSCALE undertakes not to modify the list of these third parties without prior information of the CLIENT. Third parties are required to comply with the obligations of these Terms and Conditions for the account and according to the instructions of the Data Controller. If the third party does not fulfill its obligations regarding the protection of Personal Data, OUTSCALE remains fully responsible to the CLIENT for the execution by the third party of its obligations.

**6. Right of information of the Data subject.** It is the responsibility of the Data Controller to provide the information to the persons concerned by the processing operations at the time of collection of the Personal Data.

**7. Exercise of the rights of Data subjects.** To the extent possible, the Data Processor assists the Data Controller in fulfilling its obligation to respond to requests for the exercise of the data subject's rights: right of access, right of rectification, erasure and opposition, right to limitation of processing, right to portability of Personal Data, right not to be the subject of an individual automated decision (including profiling). If the data subjects apply to the Data Processor for the exercise of their rights, the Data Processor will send these requests as soon as possible by e-mail to the Data Controller.

**8. Data Processor's assistance in the context of the compliance by the Data Controller of its obligations.** To the extent possible, the Data Processor assists the Data Controller in carrying out impact assessments relating to the protection of Personal Data as well as in carrying out the prior consultation of the supervisory authority.

**9. Security measures.** The Data Controller and the Data Processor must implement appropriate technical and organizational measures to ensure a level of security appropriated to the potential risks. The security measures put in place are detailed in the OUTSCALE data protection policy. OUTSCALE undertakes to implement the security measures provided by the ISO 27001 certification. The CLIENT remains responsible for the security of the systems he sets up in the context of the use of the Services (firewall up to date, management of access rights, etc.). In the context of these General Terms and Conditions, OUTSCALE provides the CLIENT with the necessary information (in particular the Declaration of Applicability) so that the latter can assess the conformity of the OUTSCALE Services with its security requirements.

**10. Transfer of Personal Data to third countries.** OUTSCALE's services give the CLIENT the possibility of storing and processing its Data exclusively within the EEA Region. OUTSCALE will not transfer the CLIENT Data outside of their Territory. Nevertheless, OUTSCALE can provide the CLIENT with internationally recognized tools and frameworks to transfer its data on its own.

Before any transfer of its Personal Data, the CLIENT, assisted by specialized advice if he does not have in-house expertise, undertakes to verify that (i) the OUTSCALE Services Specifications applicable to the Territory where he intends to transfer its Data and (ii) the Legislation on Personal Data applicable in this Territory, are consistent with its needs and constraints, particularly in terms of security.

**11. Notification of violations.** OUTSCALE implements a security incident management policy providing procedures for identification and response to security incidents known to OUTSCALE. If OUTSCALE becomes aware of unauthorized access to Data within its Infrastructure, and if such unauthorized access results in loss, disclosure or modification of Data, implying a risk for the Data Controller, OUTSCALE notifies the Data Controller as soon as possible after he became aware of it, by e-mail. This notification shall be accompanied by all relevant documentation to enable the Controller to report the violation to the appropriate supervisory authority, if necessary. The notification will describe, among other things, the nature of the breach, its consequences, the actions taken by OUTSCALE in response to this incident and will indicate a point of contact at OUTSCALE. If, and to the extent that it is not possible to provide all this information at the same time, the information may be communicated in a staggered manner without undue delay.

**12. Retention of Personal Data.** Upon completion of the services relating to the processing of such Personal Data, OUTSCALE undertakes to delete all the CLIENT Data. Once destroyed, OUTSCALE will be able to justify in writing the destruction at the CLIENT demand. Data cannot be recovered later.

It is specified that the Data that the CLIENT will have shared, in particular by sharing OMI's or disk images, with other CLIENTS, Cloud users, cannot be deleted by OUTSCALE, as long as another CLIENT will use the shared Data, which the CLIENT acknowledges and accepts. It is the CLIENT's responsibility not to share confidential information, personal Data, sensitive Data or Data belonging to third parties.

OUTSCALE, in accordance with the regulations, may carry out subsequent treatments that are compatible with the initial purpose of the treatment. OUTSCALE may use the Data at its disposal to perform statistics, to improve its Services or to guide research and innovation in the field of Cloud Computing. Thus, for this purpose, certain Data concerning the CLIENT may be processed, which he recognizes and accepts.

**13. Data Protection Officer.** The Data Protection Officer appointed by OUTSCALE can be reached at the following address: [personal-data@outscale.com](mailto:personal-data@outscale.com).

**14. Record of processing activities.** The Data Processor declares to keep in writing a register of all categories of processing activities performed on behalf of the Data Controller.

**15. Documentation and audit.** The Data Processor shall provide the Data Controller with the necessary documentation to demonstrate compliance with all of its obligations and to enable audits, including inspections, to be conducted by the Controller or another auditor mandated to these audits.

The Data Controller agrees to document in writing any instructions regarding the processing of Personal Data by the Data Processor. He ensures beforehand and throughout the duration of the processing to the respect of the obligations described by the GDPR on the part of the Data Processor. He oversees the processing, including conducting audits and inspections of the Data Processor.

#### **14.2.2 - When OUTSCALE acts as the Data Controller**

In order to allow the realization of the Services it provides, OUTSCALE also processes certain Personal Data of the CLIENT as Data Controller.

The purposes of these treatments are:

- CLIENT relationship management (including billing, archiving, telephony, security, service improvement, recovery, support, sales management, etc.). Personal Data processed by OUTSCALE to manage CLIENT relationship are kept by OUTSCALE for the duration of the Agreement between the CLIENT and OUTSCALE. After termination of this Agreement, those Data will be retained for an additional period of 1 (one) year before being deleted.
- Compliance with certain legal obligations (accounting, management of possible litigation, etc.). Personal Data processed by OUTSCALE to comply with these legal obligations are retained in accordance with applicable law.

OUTSCALE undertakes not to use the Personal Data processed for purposes other than those mentioned in these GTCs. However, in accordance with the regulations, subsequent treatments compatible with the initial purpose of the treatment may be carried out by OUTSCALE (notably for statistical purposes or scientific research), which the CLIENT acknowledges.

In accordance with the amended French Data Protection Law of 1978, the CLIENT has the right to access, rectify, oppose or delete any of its Personal Data. The CLIENT may exercise its rights with the OUTSCALE Data Protection Officer by e-mail at the following e-mail address: [personal-data@outscale.com](mailto:personal-data@outscale.com); or by post mail signed and with a copy of an identity document send to the following address: OUTSCALE, Attn: Data Protection Officer, 1 rue Royale, 92210 Saint-Cloud. A response will be provided to the CLIENT within a maximum of 30 (thirty) days after reception of the request.

## **15 – Financial Conditions**

### **15.1 – General Principles**

- The price of the Services is defined in the Special Terms and Conditions or, failing this, the OUTSCALE public prices shown on its website shall apply;
- Invoices are issued monthly in arrears for Services On Demand and in advance for certain Services (reserved Virtual Machine, etc.). Nevertheless, intermediary invoices may be issued if consumption exceeds usual practices;

- Invoices are payable in cash;
- The minimum monthly invoicing corresponds to one hour per type of Virtual Machine or resource used, even if the accounting for the use is on a billing-per-second basis;
- Invoices may be debited from the CLIENT's bank account or bankers' card;
- The prices shall be listed, excluding taxes, with VAT and any other taxes applicable added thereafter;
- The price of all the Services may be revised at any time;
- The CLIENT agrees to receive invoices by e-mail;
- When the CLIENT has declared several bank accounts attached to one or several Accounts, the Invoices for any Account may be debited from any bank account.

### **15.2 – Event that triggers invoicing**

For On Demand Services, the CLIENT only has to use a Service on one of its Accounts for the price of said Service to be due by the CLIENT and invoiced by OUTSCALE at the applicable rate (which is indicated on the OUTSCALE website: <https://en.outscale.com/pricing>).

The trigger for the invoicing of other Services is defined in their Special Terms and Conditions or indicated with the price applicable.

### **15.3 – Payment of invoices**

The CLIENT guarantees payment of the OUTSCALE invoices when due; for this purpose, it must ensure that its banking and invoicing details are always kept up-to-date and that it has sufficient funds in its bank account (or each of its accounts if the CLIENT has declared several), failing which the Services may be suspended and, if applicable, the Agreement terminated. The default payment method is the direct bank debit. The CLIENT must return the duly completed debit mandate as well as the RIB of the corresponding account at the same time as the purchase order (see article "[Formation of the Agreement](#)").

In the event of late payment, a €40 flat-rate indemnity for recovery costs, as provided by Articles L.441-3, L.441-6, 12<sup>th</sup> paragraph and D.441-5 of the French Commercial Code, shall be due as from the first day of late payment, if the CLIENT is a professional.

Late payment penalties shall also be due as from the first day of late payment prorata temporis at an annual rate equal to 3 times the legal interest rate. No discount shall be granted in the event of early settlement.

In addition to the indemnity and the penalties above, any late payment by the CLIENT may lead to the termination of the Agreement in accordance with the procedure set forth in the article "[Termination of the Agreement in the event of breach](#)".

Unless the CLIENT contests an invoice within a period of 30 (thirty) days after its issue, the CLIENT will be deemed to have irrevocably accepted the said invoice.

#### **15.4 – Invoicing unit**

There are three units for invoicing, (1) indivisible second, (2) Gibibyte (GiB) and (3) Gibibyte (GiB) per month, as explained below.

(1) Unless provided otherwise in the Special Terms and Conditions, the basic invoicing unit – particularly for licenses, CPU, RAM, VPN - is the indivisible second. The consumption of Services is invoiced on the basis of consumption rounded up to the second above. Therefore, when a CLIENT's monthly consumption amounts to 4203.25 seconds, it is invoiced 4204 seconds. Nevertheless, if a CLIENT's monthly consumption is less than 1 hour on a given type of resource, the CLIENT will be invoiced a full hour.

However, (2) it is specified that the network is invoiced in GiB unit and (3) that the Storage is invoiced in GiB per month.

#### **16 – Confidentiality**

OUTSCALE and the CLIENT acknowledge that all the data, calculations, specifications, software and other knowledge or information of a technical, industrial, financial or commercial nature, which they shall exchange in the context of the Services, are of a strictly confidential nature.

Consequently, OUTSCALE and the CLIENT shall undertake:

- not to communicate such information to anyone whomsoever, without written authorization,
- as well as to take all the appropriate measures with regard to such information, to avoid and prevent its disclosure,
- not to directly or indirectly make any other use of this information than the processing carried out in the context of the Services,
- to limit the communication of this 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 as the case may be, the early termination, to promptly return all the elements and documents constituting this 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 as long as this information has not fallen into the public domain, and in any event, for at least 5 (five) years after the end of the Services.

Nevertheless, these confidentiality obligations shall not apply to information which was already known to the public or to the receiving Party at the time of its communication or which subsequently became known, without any fault on the part of the receiving party.

Furthermore, this confidentiality clause shall not prohibit OUTSCALE from quoting the CLIENT in reference, nor the CLIENT from mentioning that it uses the OUTSCALE Services in the conditions of the article "[Intellectual Property](#)".

#### **17 – Export Control**

The CLIENT undertakes not to process, store or download on its sharing environment any information or Data whose export is controlled, regulated or subject to a permit or a license. The CLIENT is deemed to be the exporter of the Data. In addition, the CLIENT ensures that all its users also respect the previous commitment.

## **18 – Recovery or deletion of Data**

### **18.1 – Recovery of its Data by the CLIENT if it has access to its resources**

When the Agreement is terminated, for whatever reason and irrespective of whether the initiative for termination lies with the CLIENT or with OUTSCALE, **the CLIENT must imperatively recover all its Data hosted at OUTSCALE and store them elsewhere before the effective termination date.**

Indeed, as of the effective termination date (at midnight, Paris time): (i) the CLIENT will no longer have access to its Data, and (ii) said Data may be irrevocably destroyed by OUTSCALE (except for data mentioned in point 3 of this article).

For example, if the effective termination date is May 3, the CLIENT must imperatively have recovered all its Data before midnight on the 3rd of May, failing which they will be deleted, and the CLIENT will never be able to recover them.

The fact that the termination date is not a working day does not postpone the termination.

### **18.2 – Recovery of its Data by the CLIENT if it does not have access to its resources**

When the Agreement is terminated, for whatever reason and irrespective of whether the initiative for termination lies with the CLIENT or with OUTSCALE, **if the CLIENT wishes to recover its Data and cannot retrieve them itself since it no longer has access to its resources (Such as Virtual Machines, Object Storage Service, etc.) it must imperatively order a Data retrieval Service from OUTSCALE before the effective termination date.**

The CLIENT cannot order this Data retrieval Service if it is not up-to-date with its OUTSCALE invoices. The CLIENT must therefore pay all amounts owed to OUTSCALE before the effective termination date. The Data retrieval Service order is sent by e-mail to the OUTSCALE “Customer Service” which issues a quote. If the CLIENT accepts the quote, the CLIENT’s Data are retrieved by OUTSCALE and then sent to it upon payment of the price of the Data Recovery Service.

As of the effective termination date (at midnight, Paris time) the CLIENT’s Data may be irrevocably destroyed by OUTSCALE (except for data mentioned in point 3 of this article), whether or not the CLIENT has ordered a Data retrieval Service.

For example, if the effective termination date is May 3, the CLIENT must imperatively have ordered the Data retrieval Service before midnight on the 3rd of May, failing which the Data will be deleted and the CLIENT will never be able to recover them.

The fact that the termination date is not a working day does not postpone the termination.

### **18.3 – Deletion of data**

In the event of the termination of the Agreement, for whatever the reason, the CLIENT Data will be deleted as indicated in point 1 and 2 of this article, except for certain identification information mentioned in decree n°2011-219 dated February 25, 2011 which will be kept as specified in this decree.

The deactivation of a CLIENT account is done manually by OUTSCALE, but the deletion of the CLIENT Data is managed by TINA OS software automatically. As soon as the account is deactivated, the data remains accessible for 30 days. Deactivation is temporary. Without any intervention, all inactive accounts will be terminated within 30 days. The attestation of the good deletion of the Data may be communicated to the CLIENT if requested to OUTSCALE.

However, the CLIENT is informed and recognizes that OUTSCALE is not able to proceed with the complete deletion of all the Data that the CLIENT may have shared with other clients, in particular by

means of OMI sharing or disk images, as long as another CLIENT is using the shared data and that it is up to the CLIENT not to share confidential or sensitive information or information belonging to third parties, **or Personal Data on any account.**

The CLIENT guarantees OUTSCALE and shall hold it harmless against any sanction, on whatever grounds, following any violation by the CLIENT of this ban on sharing Personal Data.

In addition, it is specified that certain CLIENT Data and in particular the Invoicing data and associated identifications will be retained because of legal obligations that OUTSCALE must undergo for a period of up to 10 (ten) years.

## 19 – Technical Support

The CLIENT may ask for Support via:

- OUTSCALE's web support interface: <https://support.outscale.com> (prior registration required)
- The e-mail address: [support@outscale.com](mailto:support@outscale.com)
- Phone: 0825 206 307 from France, +33 153275270 from any other country

Support is available 24 hours a day, 7 days a week by phone and email.

Once the request has been made, the CLIENT receives a ticket number. The CLIENT must use this ticket number in its exchanges with customer support and indicate the object of its request in all e-mail exchanges in order to allow for an efficient follow-up of its request and its resolution.

The detailed procedure associated with the support is described on the OUTSCALE Wiki ([wiki.outscale.net](http://wiki.outscale.net)).

SLAs associated with the support are described in [Appendix A SLA9](#) of this document.

## 20 – Maintenance

In order to maintain the Cloud Infrastructure and guarantee the good quality of the Services, hardware maintenance operations on hypervisors are regularly planned by OUTSCALE in the different Regions.

Two weeks before the maintenance, an e-mail is automatically sent to the CLIENTS concerned with the list of their Virtual Machines impacted. If the CLIENT has not turned off its Virtual Machines at the time of the maintenance operations, they will be stopped in forced mode, which can endanger the CLIENT applications.

OUTSCALE may also need to carry out urgent maintenance work, in which case it will do its best to inform the CLIENT as early as possible.

## 21 – Security

### 21.1 – Secure Log on

OUTSCALE provides the CLIENT with documented information about the management of users or groups of users, allowing the CLIENT to grant permissions to its users or its groups.

The CLIENT undertakes to secure the access of its users using the means provided by OUTSCALE. The CLIENT is responsible for the security of its user access.

### 21.2 – Cryptographic controls

OUTSCALE's APIs and interfaces are maintained in conformity with the state of the art in cryptography. OUTSCALE uses the following controls: IPSEC, TLS, SSH.

In addition, OUTSCALE undertakes to take into consideration the recommendations made in the guides published by the National Agency for Security Information Systems (ANSSI).

### **21.3 – Security breach**

OUTSCALE provides the CLIENT with a procedure to report any security incidents, known or suspected and any security breaches available here <https://en.outscale.com/reporting-vulnerabilities/>.

### **21.4 – Organization**

The job descriptions of those in charge of information security and the use of OUTSCALE cloud computing services may, at the CLIENT's request, be sent to the CLIENT after signing a confidentiality agreement.

## **22 – Reversibility of the Services**

By express agreement, the Services shall not include a reversibility obligation (i.e., assistance to the CLIENT so that it can migrate its System to another provider).

The CLIENT – solely in charge of its System – must do its utmost to facilitate this operation as necessary (which implies, in particular, setting in place rigorous documentation for this purpose) and the preparation of reversibility plans.

Nevertheless, OUTSCALE may offer its Professional Services in this regard, in the context of a specific agreement, to be negotiated.

## **23 – Validity of electronic means for notifications issued within the scope of the Agreement**

All notifications issued within the scope of this Agreement, and in particular formal notice and reminders sent to the CLIENT, shall be sent by OUTSCALE by simple e-mail.

The time and the date indicated on the OUTSCALE server from which the e-mail was issued shall be considered as proof between the CLIENT and OUTSCALE.

It is understood that the CLIENT, whatever its status – it being recalled that individuals must not use the OUTSCALE Services – agrees to use email as a mean of notification.

If the CLIENT does not accept e-mail as a mean of notification within the scope of the Agreement, it must refuse these GTCs and not enter into an Agreement with OUTSCALE.

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

## **24 – Interpretation of the SLAs**

If a contractual Quality of Service commitment is high/low (for example: a 99.99999% availability commitment), any discrepancy between this contractual commitment and the maximum/minimum commitment theoretically possible (in the example 100 %) must be minimal.

Nonetheless, under no circumstances may the contractual commitment be rounded up, and the value such as literally mentioned in the Agreement must be adhered to (in the example: 99.99999 %), as this corresponds to OUTSCALE's and the CLIENT's common intent.

It is specified that all modern systems (spreadsheets, calculators, etc.) have a sufficiently accurate calculation for the application of this interpretation rule.

## **25 – Convention of proof**

In the event of a dispute over any of the Services performed by OUTSCALE in the context of these General Terms and Conditions, the Parties agree that OUTSCALE's production of data recorded on OUTSCALE systems is valid between the CLIENT and OUTSCALE.

## **26 – Language of the Agreement**

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

## **27 – Competent Jurisdiction / Applicable law**

Notwithstanding plurality of defendants, the introduction of third parties, etc. any disputes in connection with the formation, construction or performance of these general terms and conditions shall be submitted to the competent courts of the jurisdiction of the Court of Appeal of Versailles, exclusively competent including interim measures, notwithstanding appeal in warranty or plurality of defendants and shall be governed by French law.

## APPENDIX A: Service Level Agreements (SLAs)

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 – Service: “Storage Service Facility”

- The Sustainability of storage of an Object in a given Region is guaranteed at the rate of **99.999999999999%\*** per year if the objects are distributed across all the Availability Zones that exist in the given Region,
- 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 Web portal (http/https) provided by OUTSCALE and enabling various users to access the stored objects is **99.99%\*** per year for objects deployed in all the Availability Zones in the Region and **99.98%** for other objects.

This Sustainability shall be understood subject to use that is in accordance with the rules of practice applicable to the Services and outside of any alteration of data, whether voluntarily or not, originating from an action on the part of the CLIENT. It is applicable in particular only in the event whereby the CLIENT uses all the Availability Zones that exist in the region.

The Object storage, 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.

### SLA2 – Service: “Continuous storage service”

- 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 shall be equal to that of an object under Object storage,
- For the Virtual Machines of IOPS guarantee, OUTSCALE shall undertake to provide the number of IOPS subscribed, for blocks of 4 ko, at least **90%** of the time over 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.

### **SLA3 – Service Provision “Non-continuous storage service”**

The non-continuous 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 non-critical 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.

### **SLA4 – Service “Customized Service for the provision of Virtual Machines”**

- The individual Availability of an Availability Zone is **99.7%** per month,
- The individual Availability of a substantive element of the Infrastructure is **99.8%** per month,
- The Availability of a resource (Virtual Machine, etc.) is **99.8%\*** 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 resource, for example, the stoppage of a physical server at OUTSCALE causing the stoppage of a CLIENT’s Virtual Machine, by default the CLIENT’s resource 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 resources and relaunch them if required. The time necessary for the CLIENT to do this shall not be counted for the calculation of a resource’s downtime.

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

Furthermore, for the SLA to apply, it shall be necessary for the CLIENT to prove that resources equivalent to the defaulting resource were deployed in all the Region’s Availability Zones and that despite everything it was the fault of OUTSCALE that the Service could not be rendered.

OUTSCALE also informs 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 informs 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.

### **SLA5 – 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** minutes are never taken into account as the convergence time for the BGP4 protocol is **90** seconds. The availability calculation will therefore deduct **2** minutes per incident.

- Internet access availability: **99.999%\*** 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 “Blackhole” 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 protect its infrastructures via several layers of high-performance Firewall and its applications, including its APIs via the WAF (Applicative Firewalls).

OUTSCALE shall encourage the CLIENT to do the same, in particular, by using OMI’s WAF, available from OUTSCALE 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 firewalls in charge of the security groups: 99.8% per month,
- Availability of the API control Service: 99.9% per month.

### **SLA6 – 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 multi-zone applications.

- Availability of the internal network: **99.99 %** per year,
- Inter-resource maximal latency (outside of Object storage): **10 ms**,
- Maximal latency towards or from the Object storage: **200 ms**.

### **SLA7 – Service Provision “Internet Provision Services (DNS, NTP) and the Cloud 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 counter-measures 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

### **SLA8 – Service Provision “On-demand load sharing service”**

- Availability of virtual load balancers: **99.8%** per month,
- Availability of API control service: **99.9%** per month.

### **SLA9 – Technical Support**

The free basic support has a 12 hours SLA (during French working hours, which excludes French holidays). The SLA is measured between the opening of the ticket with all mandatory information and the response of the support. The time taken by the CLIENT to answer a technical support question is not counted in the SLA's response time.

It is specified that a more complete support can be subscribed by the CLIENT through a specific contract.

## APPENDIX B: Penalties associated with the SLAs of APPENDIX A

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 Web portal (http/https) provided by OUTSCALE and enabling the various users 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:

$$P = (99.99\% - 97.9\%) * 10 * 10000 + (99.8\% - 98.5\%) * 10 * 10000$$

$$P = 3390 \text{ Euro}$$

## **Other contractual OUTSCALE conditions (outside the scope of CISPE®)**

The different conditions of use or supply below are applicable to specific OUTSCALE Services which do not fall within the scope of CISPE®.

These Services are subject to the conditions below as well as to the OUTSCALE General Terms and Conditions of Sale 2018-11. In the event of contradiction between the GTCs and the conditions below, the latter shall prevail.

### **Conditions for the supply of Professional Services**

The Professional Services supplied by OUTSCALE shall give rise to remuneration according to the prices expressly indicated in the Proposal for Professional Services and its Order Form.

In the event of an intervention based on time spent, the monthly invoicing will depend on the statement of Services signed by the Parties.

Unless otherwise specified in the Proposal, the Professional Services are payable by means of a down payment of thirty per cent (30%) at the time of the CLIENT order. Thereafter payment is made on the basis of completion (50% of their price) with the remaining 20% upon acceptance of the Project. The deployment of the results of the Project by the CLIENT entails acceptance of the Project.

Upon signature of the Order Form, the CLIENT provides OUTSCALE with bank details and signs the direct debit authorization so that OUTSCALE can debit the amounts due in respect of the Professional Services according to the conditions provided by the Proposal for Professional Services and its Order Form.

### **Conditions for the supply of Beta Services**

If the CLIENT decides to participate in a test of one of the OUTSCALE Services proposed in beta mode (referred to hereafter as the "Beta Service"), its use of the Beta Service shall be subject to these GTCs, and in particular the stipulations below, for all the issues not settled in the special conditions of use of the "Beta Service":

- The user, CLIENT, individual or legal entity, may only participate once in a specific Beta Service, for a limited period of twelve months as from the subscription to the Beta Service, without possible renewal, under penalty of having its CLIENT Account and/or its participation in the Beta Service suspended;
- The user acknowledges that it has been informed by OUTSCALE and accepts the fact that the account related to the Beta Service may not subsequently be transformed into an account related to a commercial production offer;
- Furthermore, the user acknowledges that its Data and configuration may be lost in the context of the use of a Beta Service and that its Data may also be erased at the end of the Beta Service test period; it is therefore up to the CLIENT to import its Data to reinsert them into a commercial production offer when the opportunity arises;
- The user acknowledges that the Beta Service is in beta version and that it is unable to function properly;

- The user is informed that the use of a Beta Service requires a maturity and specific technical skills; in particular the graphic interfaces are often missing with a Beta Service, such that it shall often be necessary to use the APIs of the Beta Service without the latter necessarily being documented;
- The user acknowledges that the use of the Beta Service could expose it to specific risks of Service interruption (for example, via maintenance or increase in batch mode codes) and operational defects;
- The user accepts that the resources granted or attributable in the context of the Beta Service are limited, or even very limited;
- The user must not use the Beta Service in a production environment, nor with any medical device, dangerous environment or weaponry system;
- OUTSCALE may put an end to the Beta Service at any time, at its convenience;
- The commercial version which could be published following a Beta Service may be substantially different to the version of the Beta Service and the programs using or functioning with the version of the Beta Service may not work with the initial commercial version or the following commercial versions;
- The user may not receive credits for the Services provided, if applicable, by the Service level guarantee subscribed in the event of an interruption of Services or any other problem encountered during the use of the Beta Service, and more generally no SLA shall apply to the Beta Services;
- The user of the Beta Service may only benefit from a limited Support Service in the context of the use of the Beta Service;
- The user of the Beta Service undertakes to respond rapidly to any request for feed-back on its use of the Beta Service formulated by OUTSCALE, by attaching all the information necessary to enable OUTSCALE to recreate the errors and problems encountered by the user;
- The user of the Beta Service accepts that its feed-back may be freely reused by OUTSCALE without charge, for any purpose, including the development and improvement of the Beta Service;
- The user of the Beta Service shall undertake to provide comments upon OUTSCALE's request which could be used for advertising and marketing purposes;
- The user of the Beta Service shall undertake to transfer to OUTSCALE any intellectual property right inherent to feed-back and opinions given to the broadest extent permitted by the law, with the consideration of this transfer being the right to use the Beta Service;
- The user of the Beta Service acknowledges that any information relating to the use of the Beta Service, including feed-back and opinions, is "confidential information" for OUTSCALE, as defined herein, and may not be either disclosed to a third party or used for a purpose other than to provide feed-back to OUTSCALE;
- The Beta Service is provided "AS SUCH" and without any guarantee of any kind;
- OUTSCALE shall exclude the application of any guarantee, including the implicit guarantees of peaceful enjoyment, merchantable quality and suitability for a particular purpose, within the limits authorized by the applicable law;

- OUTSCALE's liability in the context of its Beta Service shall be limited to the payment of damages, the amount of which shall not exceed 350 (three hundred and fifty) euros per CLIENT of the Beta Service;
- Given all the above-mentioned constraints, OUTSCALE shall not invoice the use of the Beta Service to its CLIENT.