

## GENERAL TERMS OF SERVICE

### version of 03/09/2021

#### ARTICLE 1. DEFINITIONS

In the Contract, the following words or expressions shall have the meaning ascribed to them below, regardless of whether they are used in the singular or in the plural:

- **API:** means an Application Programming Interface.
- **Client:** means the legal or natural person who holds the Contract and who opened a SCALEWAY client account, at which time the Client will have chosen its identifiers for accessing the Services and its Account Management Console.
- **General Terms of Service:** means these general terms of service that apply to SCALEWAY and the Client.
- **Specific Terms:** means a Contractual Document issued by SCALEWAY that is specific to a Service provided by SCALEWAY, for which it defines the conditions of provision and use that are applicable to said Service.
- **Account Management Console:** means the online interface made available to the Client after the creation of its SCALEWAY client account, so that the Client can subscribe to Services and perform operations to manage said Services autonomously. Access to the Account Management Console first requires the Client to log in using its Identifiers.
- **Content:** means all data, information, images, sounds, videos, objects, files, tools, systems, applications, software, infrastructures, websites and all other items that are saved, hosted, stored, operated, used, disclosed or distributed by the Client via the Services.
- **Documentation:** means all the media and documents (descriptions of the Services, tutorials, API documentation, change logs, FAQ, etc.) provided by SCALEWAY on the SCALEWAY Website, the purpose of which is to document and detail the Services, their characteristics, configurations, options, ranges and functionalities, as well as the ways in which they can be used.
- **Personal Data:** means all information pertaining to the Client (or, when the Client is a legal person, its representative(s)), either directly or indirectly, in particular via reference to an identifier, such as a name, an identification number, location data, an online identifier, or to one or more characteristics that are specific to the person's physical, physiological, genetic, mental, economic, cultural or social identity and that may be disclosed or made available in connection with the formation and performance of the Contract.
- **Identifiers:** means the identifiers that enable the Client to access its Account Management Console, which are made up of the email address provided by the Client at the time of registration and the password chosen by the Client.
- **Technical Incidents:** means any technical event that is SCALEWAY's responsibility, other than Cases of Force Majeure, which causes an interruption of the Services, with the exception of cases of maintenance.
- **Party(ies):** means the Client or SCALEWAY, as applicable, or both the Client and SCALEWAY, a company with capital of €214,410.50, the registered office of which is

located at 8 rue de la Ville l'Evêque, 75008 Paris and that is registered with the Paris Trade and Companies Register under the number 433 115 904.

- **SCALEWAY**: means SCALEWAY S.A.S., a company with capital of €214,410.50 - Registered office: 8 rue de la Ville l'Evêque, 75008 Paris - Registered with the Paris Trade and Companies Register under the number 433 115 904, acting through any one of its brands.
- **Service**: means any SCALEWAY Elements or SCALEWAY Dedibox service that is provided under the Contract and that may be described in the applicable Specific Terms.
- **SCALEWAY Website**: means the SCALEWAY website that can be accessed at the address [www.scaleway.com](http://www.scaleway.com), as well as all derivative versions thereof.

Unless the context clearly implies otherwise, words that are written in the singular include the plural and vice versa, reference to one gender includes the other genders, reference to a natural person includes legal persons, associations, etc. and vice versa, and the parent terms have the corresponding meanings.

The titles of the articles in the Contract are provided solely for ease of review and must not in any way affect how the provisions of the Contract are construed.

## ARTICLE 2. PURPOSE

The purpose of these General Terms of Service is to define the respective rights and obligations of SCALEWAY and the Client in connection with the use by the Client of the Services provided by SCALEWAY.

## ARTICLE 3. CONTRACTUAL DOCUMENTS

The Services are provided by SCALEWAY in accordance with the provisions of the following documents, including any appendices and amendments thereto (the "**Contractual Documents**"), which are listed in order of precedence:

- The Personal Data Processing Agreement, where SCALEWAY acts as the data processor for the Client within the meaning of the European regulations on the protection of Personal Data,
- The Purchase Orders, if any,
- The Specific Terms,
- The General Terms of Service.

All of these documents make up the entirety of the contract ("**Contract**"). In subscribing to the Service(s), the Client acknowledges having received all the information needed to reach a decision to enter into the Contract and that it was in a position to assess said information, and declares that the Service(s) concerned meet(s) the Client's requirements. The Contract takes precedence over all the Client's other documents (in particular, general and/or specific terms of

purchase, business proposals, etc.). It cancels and supersedes all prior agreements with the same purpose.

These General Terms are applicable to all Services to which the Client subscribes and that are provided by SCALEWAY, including any Services provided by SCALEWAY free of charge or on a trial basis.

## ARTICLE 4. SERVICE SUBSCRIPTION CONDITIONS

### 4.1 Creation of an account

To subscribe to the Services, the Client must first have registered on the SCALEWAY Website. To that end, the Client must have a valid email address and Internet access over the entire duration of the Services. SCALEWAY cannot be held liable for any partial or total unavailability of the Services due to said Internet connection.

The subscription will only be finalised after the Client accepts the Contractual Documents and provides all the required information, and after SCALEWAY grants approval.

Once its subscription has been confirmed by SCALEWAY, the Client may sign up for and manage its Services via:

- Its Account Management Console, for Services that are available online;
- APIs made available by SCALEWAY.

Any subscription to the Services made via the above means will be deemed to have been done by the Client and will bind the Client.

The Services that require a purchase order are reserved for Clients that have a trade and companies register number, a trades register number or a membership number of the governing body for a profession. The purchase order will be issued by SCALEWAY at the Client's request (the "**Purchase Order**"), together with a proposal drawn up according to the needs expressed by the Client.

In order to subscribe to these Services, the Client must return the signed Purchase Order to SCALEWAY within the stipulated time-limit.

For business clients and/or legal persons, the Services must be subscribed by the Client's legal representative or by any duly authorised natural person. Unless SCALEWAY grants express authorisation to the contrary, the Client is only authorised to use the Services for its specific business activity that is mentioned in the documentary proof referred to below, with which the Client undertakes to comply.

For business clients and/or legal persons, the Client undertakes to provide documentary proof when first requested by SCALEWAY, such as, in particular:

- A summary of the information held by the Trade and Companies Register (good standing sheet) or the Trades Register or proof of the Client's membership of the governing body for a profession that was issued less than three months previously;

- A currently valid ID document for the legal representative or, if the requesting party is not the legal representative, a currently valid ID document for the requesting party and a document printed on the company's or trader's letterhead, which is duly signed by its legal representative and bears its commercial stamp, which confirms the power of the requesting party to commit the company.

For all Clients:

- Bank account details;
- A Single European Payments Area (SEPA) direct debit authorisation that is completed and signed by the Client.

SCALEWAY reserves the right to carry out a compliance and creditworthiness study of the Client when an order is placed for a Service, and to refuse the order.

The information provided by the Client for Purchase Orders is in the form of a declaration and is provided under the Client's sole responsibility.

## 4.2 Withdrawal

The Client has a period of fourteen (14) days from its subscription to a Service to exercise its right of withdrawal, without having to provide a reason for its decision. In order to exercise its right of withdrawal, the Client must inform SCALEWAY via the Client's Account Management Console or by registered letter with proof of receipt sent to "SCALEWAY - BP 438 - 75366 Paris Cedex 08" before the expiration of the aforementioned time-limit, by means of a wholly unambiguous statement. To that end, the Client may use the withdrawal form that is provided to it by SCALEWAY.

Services that require the provision of a tangible or intangible good that is made to the Client's specifications or clearly customised and Services that require the provision of digital content that is not delivered on a tangible medium do not benefit, in particular, from the right of withdrawal.

When the Client validly exercises the right of withdrawal, SCALEWAY will reimburse the Client for the entirety of the monies paid, with the exception of the amount that corresponds to the Services provided by SCALEWAY until receipt of the Client's withdrawal request, which shall inure to the benefit of SCALEWAY.

## 4.3 Choice of the Services

The Client acknowledges having checked that the Services it subscribed to correspond to its requirements and having received from SCALEWAY all the information the Client needed in order to enter into this Contract in an informed manner. The Client acknowledges, in particular, having consulted all the Documentation made available to it by SCALEWAY, including all the Contractual Documents, which may differ according to the country in which the Services are offered, and all the available documentation, configurations, options and ranges of services. SCALEWAY cannot be held liable if the Services do not correspond to the Client's requirements.

The Client warrants that it has sufficient capacity and the knowledge required to enter into the Contract and use the Services.

The Client is informed that, due to the nature thereof, the Services are not designed to be used for sensitive or high-risk activities, and in particular are not intended for:

- Facilities associated with nuclear activities,
- Activities that are classified as being of critical importance,
- Facilities that are regulated for the protection of the environment,
- Air navigation,
- Individual health and safety,
- The storage and/or processing of classified military data, within the meaning of the applicable regulations.

The Client alone will remain responsible for the compatibility of the subscribed Services with the activities it carries on by means of said Services and with the regulations that are applicable to said activities.

#### **4.4 Export control**

Subject to compliance by the Client with the restrictions on use that are provided for under the Contract or that are applicable to the Client's activities, SCALEWAY shall ensure that the Services that it provides can be used by the Client within the European Union and in the countries in which its infrastructures that are used for the supply of the Services are located.

The Client undertakes to comply with all the legislation and regulations that are applicable to import and export controls and, in particular, Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, as well as with the US regulations, in particular the EAR (Export Administration Regulations) and ITAR (International Traffic In Arms Regulations), as the Services sold by SCALEWAY may contain third-party solutions that are subject to regulations in the USA. In this regard, if the Client uses the Services or authorises third parties to use the Services from a geographical area that is located outside of the country(ies) in which SCALEWAY's infrastructures are located, it is the Client's responsibility to ensure that such use is not restricted in any way.

The Client warrants to SCALEWAY that the Client itself and, as the case may be, any third party that owns or controls the Client within the meaning of Article L.233-3 of the French Commercial Code, are not subject to any sanctions, prohibitions or restrictions, in particular those established by France, the European Union or its Member States, the United Nations Security Council, the USA or any other relevant government body. SCALEWAY reserves the right to refuse Purchase Orders and subscriptions of Services from countries that are subject to trade restrictions or other sanctions, or by citizens of said countries or persons who are subject to sanctions.

The Client warrants that it has obtained all the authorisations that may be necessary for the export of all items, regardless of their nature, that may be subject to export control, prior to any exports. In this regard, the Client shall hold SCALEWAY harmless from all damage that results, directly or indirectly, from non-compliance by the Client with the regulations on export control and, more generally, with the Contract. SCALEWAY also reserves the right to terminate the Contract and/or cancel all or part of the Services without delay, in the event that the Client is blacklisted by a US, European or French administrative authority for the export of the Services.

## ARTICLE 5. TERM

The Contract shall enter into force when SCALEWAY approves the order, subject to the Client's compliance and creditworthiness or, at the latest, when SCALEWAY starts to provide a Service.

The Contract is entered into for an indefinite term. Each of the Parties may terminate the Contract by cancelling all of the Services in accordance with Article 12 of these General Terms, by serving notice via registered letter with proof of receipt and observing a minimum notice period of one (1) month.

Services that are subscribed via Purchase Orders are entered into for the fixed duration stipulated on the Purchase Order. Upon expiration of said duration, the Purchase Orders will be automatically renewed for successive durations of one (1) year, unless notice of cancellation is served at the latest one (1) month before the anniversary date of the Purchase Order, by registered letter with proof of receipt sent by the Client or SCALEWAY.

## ARTICLE 6. PRICES OF THE SERVICES

The prices of the Services, the complementary and/or optional services, as well as the associated fees, are those stated on the SCALEWAY Website, the APIs and the Account Management Console when they are subscribed by the Client, or in the Purchase Order for Services that can be subscribed via Purchase Order. Subject to any indication to the contrary by SCALEWAY, the promotions, discount offers and other commercial benefits that are granted by SCALEWAY cannot be combined together for a given Service.

Unless specific pricing applies, the price of the Services includes the acquisition cost of the licences and rights of use for the tools, software and operating systems used by SCALEWAY and/or that may be made available to the Client in connection with the Services. It is the Client's responsibility to acquire and pay for all licences, rights or copyrights that are necessary for the exploitation of the Content that it uses in connection with the Services. The terms of calculation of the prices of the Services and the work units are defined on the SCALEWAY Website and, as the case may be, in the applicable Specific Terms. Each work unit started will be invoiced and due in full. It is the Client's responsibility to familiarise itself with the work unit concerned before placing an order. Certain Services give rise to additional installation or roll-out fees, which are stated on the SCALEWAY Website.

The prices are expressed in euros exclusive of taxes and are net of all duties, taxes or charges, which will remain the Client's exclusive responsibility. SCALEWAY reserves the right to pass on, without delay, all new applicable taxes or charges, as well as all increases in the rates of the taxes that already exist.

The prices stated on the SCALEWAY Website may be modified at any time, without notice, and are immediately applicable to all new Service subscriptions.

The prices that are applicable to the Services subscribed by the Client can be modified by SCALEWAY at any time and as of right, provided that the Client is informed thereof by email at least thirty (30) calendar days before the entry into force of the price modification, in accordance

with Article 13 of these Terms. If the Client does not cancel the Services concerned by the price modification within said time-limit of thirty (30) calendar days, the Client will be deemed to have accepted the new prices of the Services.

## **ARTICLE 7. INVOICING AND PAYMENT**

### **7.1 Invoicing**

Except as otherwise provided for in the Specific Terms, the amounts owed by the Client under the Contract will be billed through monthly invoices that are notified to the Client by email and that can be accessed in electronic form in the Account Management Console, which the Client expressly accepts. Each invoice can also be consulted in the Client's Account Management Console, for a period of twelve (12) months as from the date of issue, except in the event that the Contract is terminated. The Services are invoiced on the basis of the information identified by the SCALEWAY information system, which is authoritative and fully binding on the Client.

All invoice disputes by the Client must be notified within a maximum time-limit of two (2) months as from the invoice date of issue. Thereafter, the principle and the amount of the invoice will be deemed to have been accepted, and SCALEWAY will not accept any dispute for the invoice at issue.

### **7.2 Payment**

#### ***7.2.1 Means and conditions of payment***

If the Services were subscribed via a Purchase Order, the means and terms of payment of the invoices will be stated on said Purchase Order.

If the Services were subscribed online, the invoices are payable upon receipt and in euros by direct debit or by a bank, debit or credit card that was issued by a banking institution (which excludes the use of all virtual payment or prepaid cards).

If the Client chooses payment by direct debit, the Client must fill out the direct debit authorisation provided for this purpose by SCALEWAY in the Client's Account Management Console, and undertakes to return the completed, dated and signed authorisation, together with its bank account details, to the address stated on the authorisation form. Moreover, the Client must first have entered a valid means of payment in its SCALEWAY client account in order to be eligible for payment of its Services via direct debit.

If the Client has entered several valid means of payment on its Account Management Console, the Client expressly agrees that SCALEWAY may debit the amounts that are invoiced and owed using any one of these means of payment, if the initial means of payment selected by the Client for the Service concerned is refused.

There is no cash discount for the early payment of invoices.

Provided that it notifies the Client, SCALEWAY may obtain payment by offsetting amounts that the Client and SCALEWAY owe each other, which the Client expressly accepts.

The ending or the termination of the Contract, for any reason whatsoever, will cause all the amounts owed to SCALEWAY by the Client to fall due immediately.

### **7.2.2 Late payment or failure to pay**

In the event that an invoice is not paid or only partially paid within the time-limit stipulated in this Article, SCALEWAY reserves the right to suspend all or part of the Services immediately, without prejudice to the exercise of any other right that SCALEWAY may have and without the Client being able to claim any form of indemnity.

All invoices that are not paid in full within the time-limit stipulated in this article shall also automatically, and with no prior service of formal notice, trigger the application of interest on late payments that is equal to the interest rate applied by the ECB to its most recent refinancing operation, increased by ten (10) percentage points; said rate will be applied to the entirety of the outstanding amounts until payment in full of the principal and interest. This penalty will be combined with a flat-rate indemnity to cover collection costs, of an amount of forty (40) euros per unpaid or partially paid invoice, without prejudice to all the additional collection fees that may be claimed, on the basis of documentary proof.

### **7.2.3 Security deposit**

SCALEWAY reserves the right to demand, when the Contract is entered into, or at any time during the performance thereof, the payment of a security deposit of an amount equal to the average consumption of Services by the Client during the last sixty (60) days, in the event of (i) an incomplete file, (ii) a payment incident, refusal or delay, (iii) payment by any means other than the direct debiting of a bank or postal account or bank card, without prejudice to the other means of action at its disposal. The security deposit will not accrue interest.

In the event of failure to pay all or part of any invoice when due, SCALEWAY may deduct the unpaid amount from the security deposit. The Client must then replenish the security deposit at the latest fifteen (15) days after being requested to do so by SCALEWAY. In the event that the Client has not replenished the security deposit by the date stipulated by SCALEWAY, the provision of the Services may be suspended until such time as the security deposit is replenished.

The remaining amount of the security deposit will be returned to the Client within a maximum time-limit of ten (10) days as from the date of effective termination of the Services, subject to complete fulfilment of its obligations by the Client.

## **ARTICLE 8. OBLIGATIONS OF THE CLIENT**

The Client is responsible for the proper fulfilment of its contractual and legal obligations, and undertakes not to use the Services in a manner or for purposes that are unlawful, wrongful or prohibited by the Contract or the applicable regulations.



Fulfilment by the Client of the obligations set forth below is essential and is necessary in order for SCALEWAY to fulfil its own obligations compliantly. Consequently, SCALEWAY may not be held liable for the consequences that directly or indirectly result from failure to comply with these obligations by the Client.

### 8.1 Compliance with the legislation in force

The Client undertakes to comply with all the regulations in force that are applicable to the Services and to the use thereof by the Client, without infringing upon third-party rights and without harming SCALEWAY's reputation. The Client also undertakes to implement the appropriate procedures, in connection with the use of the Services, in order to comply with the statutory, regulatory and contractual requirements that are applicable to its activity.

Pursuant to the legislation in force, SCALEWAY is not under a general monitoring obligation, or a general obligation to investigate events or circumstances that are indicative of unlawful activities. Consequently, and under penalty of the immediate suspension of the Services and/or the termination of the Contract by SCALEWAY, at its discretion and without prejudice to all other rights and actions that SCALEWAY reserves the right to exercise or take, the Client undertakes to comply with, and ensure compliance with by all persons who use the Services, the regulations in force and in particular the following rules:

- Content that is circulated and/or made available on electronic communications networks and/or hosted using the Services must not breach the laws, regulations, practices or ethics charters, whether national or international, that are in force. In particular, all Content that constitutes incitement to commit felonies, crimes, hatred, discrimination or violence, especially on the basis of ethnicity, nationality, race or religion, gender, sexual orientation or identity or a disability, incitement to defend crimes against humanity publicly, incitement to commit and/or the commission of acts terrorism and the public defence thereof, or that contains elements of child pornography, is strictly prohibited;
- All Content that is violent in nature, that constitutes incitement to terrorism, that could seriously infringe upon human dignity or incite minors to participate in games that are a threat to their physical safety or that is pornographic is strictly prohibited, if it can potentially be seen or observed by a minor;
- The Client undertakes not to infringe third-party rights, whether through its conduct or the Content it makes available or obtains using the Services, in particular by means of:
  - Dissemination of Content that may constitute defamation, abuse, disparagement or violate privacy, right of privacy, accepted standards of behaviour or public order, or that contains abusive, violent or hateful statements;
  - The distribution of tangible or intangible goods that are protected by an intellectual property right.
- The Client undertakes not to hack or attempt to hack third-party computer systems, not to defeat or attempt to defeat the measures implemented by SCALEWAY to restrict access to certain Services, not to use the Service improperly or fraudulently in such a way, in particular, as to threaten the stability and the security of SCALEWAY's systems or that could cause degraded performance of the Services provided to other clients, not to host aggressive botnet-type services, not to spread or attempt to spread viruses or any programmes that are designed to cause harm and not to send emails under unlawful circumstances (e.g. by spamming or email bombing).

## 8.2 Cooperation

The Client undertakes to cooperate with SCALEWAY in good faith with a view to the proper performance of the Services and, in particular, to disclose proactively the information in its possession that may be useful for SCALEWAY (in particular, any malfunctions that are encountered).

The Client undertakes to provide accurate contact details, means of identification and banking information to SCALEWAY and to keep said information and data up-to-date throughout the term of the Contract. If incomplete, incorrect or misleading information is provided, SCALEWAY reserves the right, at any time and without delay (i) not to activate a new Service that is subscribed by the Client, (ii) to suspend the Services that are currently being used by the Client and/or (iii) to deactivate the possibility for the Client to subscribe to new Services.

The Client undertakes to use the Services in accordance with the Contract and without endangering SCALEWAY's services and facilities, or those of SCALEWAY's other clients. In particular, if the Client plans to launch a specific operation on its Services that could cause a significant increase in its consumption of resources (bandwidth, memory or computing), it is the Client's responsibility to inform SCALEWAY of this before the start of said operation, with reasonable advance notice, in order to avoid, in particular, said sudden increase in activity being perceived as a security anomaly and triggering a temporary suspension of the Services.

## 8.3 Security and updates

The Client is responsible for managing the risks that are inherent in the Services and must, in particular, ensure that the persons authorised to use the Services receive training, audit at regular intervals the backups, the integrity of the data and the accesses to the active Services, deploy the requisite resources in accordance with best business practices in order to restrict accesses to the established functional requirements alone, and use encrypted and/or dedicated links that the Client has determined are required for the communications.

The Client alone will assume the risks and liability in connection with all the software and services that are present, used and/or hosted by the Client or the third parties acting on its behalf and/or in its name for the Services and will be solely responsible for the Content. SCALEWAY does not access or consult said Content and does not make any backups thereof. It is the Client's responsibility to make all backups of the Content (or implement any other means intended to ensure the permanence thereof) that it deems necessary, in order to protect against possible deletion, alteration or modification of said Content.

The Client alone is responsible for managing its Content, as well as the environments and systems it implements on the infrastructures provided as part of the Services, as SCALEWAY does not carry out any operations for this purpose (such as, in particular but not limited to, a business continuity plan for the Client, a business recovery plan for the Client, or firewalls for the Client's environments).

The Client must take all necessary precautions to protect its own Content, data and/or software, in particular against infection by any viruses that circulate on the internet and hijacked use by third parties of the access provided to the Client. In order to maintain the level of security of the Services, the Client must update the software without undue delay, in particular the software for which a security flaw was identified by the Client, the publisher of said software or SCALEWAY.

In the event that the Services provided to the Client:

- Are hacked or attacked,
- Contain software for which the Client did not install the security updates,
- Host, disseminate or use unlawful or prohibited Content or, more generally, are used for unlawful purposes, or
- Have been the subject of a subpoena issued by the administrative and/or judicial authorities,

SCALEWAY reserves the possibility of suspending the Services immediately, without prior notice and without the Client being able to claim any indemnity whatsoever, including but not limited to, in respect of possible loss of data, loss of sales and/or service interruptions that result therefrom.

The Client represents that it is aware of the lack of complete reliability of the internet and undertakes to implement the requisite measures in order to preserve the integrity, authenticity and confidentiality of the data that is sent over the internet. SCALEWAY cannot be held liable for any damage that may befall the Client as a result of use of the internet.

#### **8.4 Insurance**

The Client undertakes to purchase, from a reputedly solvent insurance company and to maintain in force, at its expense, the appropriate insurance policies and those that the law imposes on it, to enable the Client to cover the financial consequences of all the forms of liability that it may incur in connection with the Contract. The Client and its insurance company shall waive all recourse against SCALEWAY and its insurance company.

#### **8.5 Identifiers**

In all its communications with SCALEWAY, the Client must identify itself and state the Service concerned. For security reasons, SCALEWAY cannot process any incomplete requests.

The Client's means of authentication, including its Identifiers, are personal and confidential with regard to the Client. The Client alone is responsible for their safekeeping and use, including by the third parties and the members of its personnel to whom it disclosed them, unless the disclosure is attributable to SCALEWAY.

SCALEWAY reminds the Client that the passwords that are provided to it for the Services must be changed by the Client upon receipt, in accordance with the best practices in the field, in particular in terms of password strength.

The Client undertakes, in particular:

- To maintain the secrecy of its means of authentication and not to disclose them to any third parties, in any way whatsoever, including to the SCALEWAY Business Assistance.
- To use passwords of sufficient length and complexity,
- To apply, as a minimum, the same security rules, to its email address.

In the event of loss or theft or, more generally, of hijacking of its Identifiers, the Client undertakes to inform SCALEWAY without delay, via the means made available to it by SCALEWAY, in particular by contacting Technical Support, to change the Identifiers concerned using the Account Management Console, and also to revoke any API Tokens and encryption keys that are potentially compromised. SCALEWAY cannot under any circumstances be held liable for the harmful

consequences that may arise due to the loss, theft and/or misappropriation of said Identifiers or for the consequences of any other form of hacking.

## ARTICLE 9. SECURITY OF THE SERVICES

SCALEWAY shall use its best efforts:

- To ensure the physical protection of the Servers that are hosted on its technical premises;
- To use the technical and organisational resources that are needed to ensure continuity of the Services provided by SCALEWAY (in particular, the Client will remain responsible for managing its information system and for the continuity of the environments it deploys by means of the Services);
- To maintain its infrastructures that are used in the performance of the Services.

## ARTICLE 10. SUPPORT

SCALEWAY will provide free access to the Documentation for the Services. Such Documentation is available on the SCALEWAY Website.

SCALEWAY will provide the Client with standard technical support, which the Client can contact via its Management Console in order to obtain assistance in the management of the technical incidents it may encounter in connection with the SCALEWAY Services (“**Technical Support**”). The role of Technical Support is not to intervene in connection with problems associated with non-SCALEWAY services.

SCALEWAY also offers other levels of technical support, which the Client may select, in order to benefit from additional characteristics, functionalities and service levels, as described on the SCALEWAY Website and/or in the Specific Terms that are applicable to the Services for which these additional levels of assistance are offered.

The Client undertakes to act appropriately and respectfully during its correspondence with Technical Support.

The Client alone is responsible for the configuration, management and use of the Services provided to it.

With regard to said Technical Support, SCALEWAY is only under a best-efforts obligation.

## ARTICLE 11. SUSPENSION

Without prejudice to the other cases of suspension stipulated in the Contract, SCALEWAY reserves the right to suspend all or part of the Services immediately and without prior notice,

without prejudice to the exercise of any other right that SCALEWAY may have and without the Client being able to claim any form of indemnity, in the following cases:

- Failure by the Client to comply with the provisions of Articles 8.1 and 8.3 of these General Terms;
- In the event of an attack or risk of an attack on the infrastructures or services of SCALEWAY and/or of its other clients;
- In the event of a request made by the relevant judicial and/or administrative authorities.

SCALEWAY may also have to suspend all or part of the Services for maintenance purposes, without the Client being able to claim any form of indemnity. The dates of the maintenance operations will be published on the SCALEWAY Website (a) with a minimum of forty-eight (48) hours' notice for scheduled maintenance, or (b) in a timely manner in the event of maintenance that requires urgent work (in particular if there is a risk of the Services and/or Content being compromised).

In the event of the suspension and/or limitation and/or restriction of the subscribed Services, regardless of the cause thereof, the Client will remain bound by its obligations, in the knowledge that the suspension of the Services will not result in the invoicing thereof being stopped.

## ARTICLE 12. TERMINATION

### 12.1 Termination for reasons of convenience

Without prejudice to the Specific Terms that are applicable to certain Services, the Services that are subscribed online can be cancelled at any time and without an indemnity (i) by the Client, via the Account Management Console, by means of the APIs or by means of a request by the Client to the Business Assistance, and (ii) by SCALEWAY, thirty (30) days after sending the Client a registered letter, as well as an email, to the postal and email addresses provided by the Client.

Services that are subscribed by means of a Purchase Order can be cancelled by the Parties on each contractual renewal date, subject to observing a notice period of one (1) month per full year of performance of the Service, limited to twelve (12) months. The Client must send its request by registered letter with proof of receipt to: "SCALEWAY – Résiliation - BP 438 - 75366 Paris Cedex 08". The Services to be cancelled must be clearly identified and proof provided of the capacity and/or power of the signatory party at the origin of the request. SCALEWAY shall notify its termination to the Client to the address declared by the Client.

Notwithstanding the above, SCALEWAY may cancel the Services at any time, without the Client being able to claim any form of indemnity and without prejudice to the exercise of all other rights that SCALEWAY may have and in particular its rights to compensation, in the following cases:

- Implementation of a request by a relevant judicial and/or administrative authority;
- In order to respect the rights of third parties;
- In order to comply with the applicable legislation and regulations.

## 12.2 Termination due to breach

In the event of a substantiated serious breach by SCALEWAY, the Client may cancel the Services subscribed by means of a Purchase Order at no cost, upon expiration of a time-limit of thirty (30) days following receipt by SCALEWAY of a formal notice sent by registered letter with proof of receipt, which has remained without effect.

SCALEWAY may cancel the Services at any time, without the Client being able to claim any form of indemnity and without prejudice to the exercise of all other rights that SCALEWAY may have and in particular its rights to compensation, in the following cases:

- After the suspension of the Service(s) in the cases provided for in the Contract, for which the event that triggered the suspension continues beyond the time-limit stated by SCALEWAY to remedy the problem or is not remedied definitively by the Client, other than in instances of suspension for maintenance purposes;
- Serious and/or repeated breach by the Client of its legal and/or contractual obligations.

## 12.3 Consequences of termination

The Client shall manage all recovery and/or migration operations for all the Content that is stored on the Services provided to it; SCALEWAY will not intervene in any way in the implementation and/or scheduling of said operations. It will therefore remain the Client's responsibility to ensure that it has recovered and/or migrated all of its Content on the date on which the Services end.

SCALEWAY undertakes to keep the Content available for the Client (or any third parties authorised by the Client) until the date on which the Services end, so that the Client can carry out the aforementioned recovery and migration operations, and undertakes not to impede access thereto in any way (such as, in particular, via the encryption of the information hosted on the Services).

On the date on which the Services end, regardless of the reason for them ending, the Client's Content that is still stored by means of the cancelled Services will be automatically and definitively deleted. SCALEWAY undertakes not to retain any copies of said Content.

All the clauses and conditions which, by their very nature, are intended to remain in effect after the Contract ends, shall remain in effect.

## ARTICLE 13. CHANGES TO THE SERVICES

The Services, and the applicable pricing and conditions are liable to be modified over the course of the performance of the Contract, which the Client acknowledges and accepts.

Where such modifications are substantive and could be detrimental to the Client, the Client (i) will be informed thereof, by any means, one (1) month before the entry into effect of the planned modification and (ii) can cancel the affected Service, without the right to compensation, under the conditions provided for in Article 12.1 of these General Terms, at the latest within one (1) month of the modification being notified. Where there is a lock-in period, the monthly subscription

payments that remain due until the expiration of the lock-in period will not be demanded by SCALEWAY.

Should the Client not terminate within a period of one (1) month of the notification of the modification, the Client shall be deemed to have accepted the modification.

In all cases, the Client acknowledges that it accepts, without compensation or the right to termination, the modifications and/or amendments to the provisions of the Contract and the Services, where they are the result of a requirement imposed by a legal, regulatory, judicial or administrative authority.

## ARTICLE 14. LIABILITY

SCALEWAY undertakes to implement all means necessary to ensure, under the best possible conditions, the availability, the continuity and the quality of the Services. Nevertheless, in view of the state of the art, the network's reliance on hardware and software components belonging to third parties and the Client, and the nature of the network, the Services may from time to time be restricted, run in degraded mode and/or be suspended. Moreover, the Client is informed of the characteristics and uncertainties that are intrinsic to the internet and to remote communications, in particular in terms of continuity, performance, reliability, integrity, confidentiality and security. Consequently, SCALEWAY is under a best-efforts obligation.

SCALEWAY's liability can only be triggered in the event of a fault on its part, which is proved by the Client. SCALEWAY's liability is limited to direct damage to property, to the exclusion of all consequential and/or non-physical damage and, in particular, all loss of turnover, revenue and profit, loss caused by business interruption, loss of clientele, data and opportunity, commercial detriment, financial loss and other forms of loss of income, the consequences of third-party action, any form of disturbance to business activities, and harm to reputation, repute or brand image.

SCALEWAY's liability moreover cannot be triggered in the event of the following, in particular:

- An Order refusal by SCALEWAY for the reasons provided for in the Contract and, in particular, in the event of a study of the Client's compliance or creditworthiness, the findings of which are unfavourable,
- Accidental transmission of viruses or of any other malware against which the Client is required to protect its hardware and software,
- Unauthorised third-party access to the internet and/or to the Account Management Console,
- Hijacking of the Identifiers and, more generally, of all information that is sensitive for the Client and that is used fraudulently by a third party, for example,
- Damage that results from failure by the Client to fulfil its obligations with regard to SCALEWAY,
- Use of the Services following a disclosure, loss or theft of Identifiers and, more generally, use of the Services by an unauthorised person,
- Damage that results from an action or omission by a third party,
- Improper use of the Services by the Client,

- Failure by the Client to meet the pre-requisites and comply with the technical specifications for the Services,
- Occurrence of a Case of Force Majeure, as defined in Article 18 of these General Terms.

By express agreement between the Parties, no judicial actions or claims by the Client may be initiated or filed against SCALEWAY more than one (1) year after the occurrence of the triggering event.

In light of the characteristics and uncertainties that are intrinsic to the internet, the Client undertakes to use all the technical means that it deems to be the most appropriate in order to preserve the integrity, authenticity and confidentiality of data when it is sent over the internet. Along the same lines, the Client acknowledges that SCALEWAY cannot be held liable for the damage of all types associated with use of the Services by the Client in connection with, in particular, the nature and the content of the messages and data that are stored, sent or received by means of the Services. The Client undertakes to handle all associated claims directly and to hold SCALEWAY harmless from all claims, actions and proceedings of all types that originate from all third parties.

SCALEWAY's liability, along with the contractual commitments made by SCALEWAY, concerning the IT infrastructures and other technical facilities on which the Services provided to the Client are based, apply solely within the limits of normal and reasonable use by the Client of said Services. The Client is liable for the endangerment, destruction, alteration of or damage to said technical facilities and IT infrastructures (such as, in particular, but not limited to, overclocking, software replacement of the BIOS version or deletion of the BIOS), that are caused by the Client itself or by any third party under its responsibility, deliberately or as a result of negligence, and shall hold SCALEWAY harmless therefrom. The Client shall also be liable for all loss and harm that results therefrom.

The Client is liable for the activities it performs itself and that are performed by all third parties under its responsibility, which make direct or indirect use of the Services provided by SCALEWAY, and for compliance with the legislation and regulations that are applicable to said activities. The Client shall hold SCALEWAY harmless from all action or recourse by a third party as a result of its actions, the use it makes of the Services and all unfavourable decisions and verdicts that may result therefrom. The Client shall also hold SCALEWAY harmless from the damage that the Client or the persons for whom it is responsible or who act on its behalf cause to SCALEWAY. The Client undertakes to intervene at SCALEWAY's request in connection with all applications, claims and/or actions by third parties, including the judicial and administrative authorities, which call into question the Services, and to indemnify SCALEWAY for all losses that result therefrom.

As the Parties have already agreed on the terms and conditions of termination of the Contract and on the penalties for the breach of their contractual obligations, they hereby agree that the provisions of Articles 1219 to 1223 of the French Civil Code are neither applicable nor binding with regard to them.

In all cases, SCALEWAY's duly proven aggregate annual liability cannot be triggered, for all claims and loss combined, in excess of the monies paid by the Client in consideration for the Services performed in respect of the six (6) months prior to the harmful event.



## ARTICLE 15. INTELLECTUAL PROPERTY

Each of the Parties shall remain the proprietor of all the elements in its possession that are protected by intellectual property rights, as well as of the rights pertaining thereto. The Contract does not transfer any proprietary rights or grant any assignment or licensing of intellectual property rights. The Parties are therefore not authorised to exploit, display publicly or reproduce said elements, in whole or in part, without the prior written authorisation of the Party concerned, at the sole discretion of said Party.

Notwithstanding the above, SCALEWAY is authorised by the Client, unless the Client specifically notifies an objection to the Business Assistance, to use the Client's company name, logos, trademarks and any of the Client's other symbols for all advertising and press releases, and on all other material that is distributed to the public throughout the world, for the purposes of commercial referencing and promoting its activities.

The Client shall remain the proprietor or holder of all the Content that it imports in connection with the Services and shall alone be responsible for obtaining the authorisations and rights of use for the elements, software applications and Content that it uses in connection with the Services. The Client shall hold SCALEWAY harmless from all infringement actions, claims to title and other claims against SCALEWAY that are made by any third parties who cite the infringement of an intellectual property right, the origin of which is the unlawful use, distribution, storage or possession by the Client of a software application, Content, or of any other element that benefits from intellectual property protection.

The Contract does not confer on the Client any proprietary right to all or part of the elements of the Services provided to it, as well as, more generally, to the IT infrastructure that is implemented or developed in connection with the Contract. The Contract merely confers on the Client the right to use the elements provided to it in connection with the Services, in accordance with the Contract and with SCALEWAY's recommendations, throughout the period for which the Services concerned are subscribed. The Client shall strictly refrain from reproducing, distributing or altering any aspect of the services proposed by SCALEWAY and/or of the Services, and all documentation concerning them, by any means whatsoever, in any form whatsoever and on any medium whatsoever, and from decompiling, disassembling, reverse engineering or altering them in any way.

SCALEWAY shall hold the Client harmless from all actions on the grounds of infringement, claims to title or other claims against the Client made by any third parties who cite the infringement of an intellectual property right that occurs due to the use of the Services by the Client, provided that such use complies with the applicable regulations and the Contract.

In this respect, SCALEWAY undertakes to pay the Client's reasonable, substantiated defence costs, as well as the damages that are awarded to a third party as a result of an enforceable court decision, provided that (i) the Client informs SCALEWAY as soon as it becomes aware of the existence of the such actions or claims, (ii) the origin of said actions or claims is not attributable to the Client or to any third party under the Client's responsibility (such as, including but not limited to, all members of its personnel, final customers, service providers, sub-contractors or other users, that the Client may have authorised to access and/or use the Services), (iii) SCALEWAY

retains control of the proceedings and defence, and (iv) the Client cooperates with the defence in good faith.

In the event that, following such actions or claims, the Client is deprived of the right to use the Services, SCALEWAY shall endeavour:

- To amend the infringing element of the Services in order to put an end to said infringement; or
- To replace the infringing element of the Services with an element that has similar characteristics, functionalities and performance levels; or
- To obtain the right for the Client to continue to use the Services in accordance with this Contract.

If, despite its efforts, it is impossible for SCALEWAY to implement one of the measures mentioned above within a reasonable time-limit, each of the Parties may cancel the affected Services as of right.

## **ARTICLE 16. PERSONAL DATA**

Under the Contract, the Parties may obtain, collect and/or have access to personal data ("Personal Data") within the meaning of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 ("GDPR"), concerning natural persons and, in particular, the employees and clients of the other Party and the employees of the other Party's sub-contractors and/or partners.

The Parties undertake to process said Personal Data in compliance with the GDPR and each of the Parties warrants to the other that it will comply with its statutory and regulatory obligations in this regard.

The processing that is the subject of this clause shall be carried out by the Parties in the capacity of controller, within the meaning of the GDPR. The exclusive purpose of this processing of the Personal Data is the formation, management and/or performance of the Contract. The Parties thus cannot in any way be regarded as being jointly liable for their processing or as each other's processor.

Said Personal Data is intended for the in-house departments of the Party that will carry out the processing in accordance with the Contract, which need said Personal Data for the formation, management and/or performance of said Contract. In this connection, said Personal Data may be transferred and disclosed to its sub-contractors, partners and service providers. Said Personal Data may also be handed over to the relevant authorities, at their request, for the purposes of judicial proceedings, judicial investigations and fulfilling requests for information by the authorities, or in order to comply with other legal obligations. If the Personal Data is transferred outside of the European Union, the Parties undertake to sign the European Commission's Standard Contractual Clauses.

The Personal Data that is collected will be retained for the time needed to fulfil these purposes, or in accordance with the requirements of the applicable regulations.

In accordance with the French Data Protection Act of 6 January 1978, the successive amendments thereto and the GDPR, the holders of Personal Data benefit from a right of access, rectification and erasure for the data that concerns them. They can also request the portability of said data, object to the processing of their data or request that the processing of their data be restricted. Moreover, the holders of said data may issue directives concerning the storage, erasure or disclosure of their personal data after their death. Each of the Parties that transfers Personal Data to the other Party warrants that the holders of the Personal Data have been informed of said rights prior to the collection of the Personal Data.

The holders of the Personal Data may exercise these rights by sending their requests to the persons who are listed as contact persons in the Contract.

The adverse party is informed that the Iliad Group has appointed a Personal Data Protection Officer who can be contacted at [dpo@iliad.fr](mailto:dpo@iliad.fr) for matters concerning the Personal Data.

For all requests for information concerning the protection of personal data, as well as for all notifications of security breaches, said party can also:

- Contact the SCALEWAY Privacy department at the address [privacy@scaleway.com](mailto:privacy@scaleway.com);
- Consult the SCALEWAY Privacy Policy, which is available at the URL <https://www.scaleway.com/en/privacy-policy/>.

## ARTICLE 17. CONFIDENTIALITY

The Parties undertake to maintain the strict confidentiality of all information that is identified as confidential or that is confidential as a result of the circumstances under which it was provided, transferred or received, irrespective of the information storage and transfer medium, from one Party to the other Party, or by the advisors or service providers of one of the Parties, or by one of the companies or shareholders of the group to which one of the Parties belongs, or the persons or entities with which one of the Parties is in contact with regard to the fulfilment of its contractual obligations (“**Confidential Information**”).

Each Party undertakes (i) to maintain and preserve the strictly confidential nature of the Confidential Information, (ii) not to disclose the Confidential Information to any third parties without the prior written authorisation of the other Party and (iii) to use the Confidential Information only for the sole purposes of the fulfilment of its contractual obligations and not to use the Confidential Information for any other purpose, including but not limited to competitive or commercial purposes, or in a manner that is detrimental to the other Party.

This confidentiality undertaking will not apply, however, where:

- The Confidential Information is in the public domain at the time of the disclosure thereof or falls into the public domain other than through a breach of said undertaking,
- The Party concerned can prove that the Confidential Information was in its possession prior to the date of entry into force of the Contract,
- The Confidential Information results from in-house developments implemented by one of the Parties without using the Confidential Information, which it undertakes to prove,

- The Confidential Information is released to one of the Parties or to its personnel by third parties who are not bound by a confidentiality obligation, or
- One of the Parties is under a legal or regulatory obligation or compelled by a judicial or administrative authority to provide all or part of the Confidential Information. To the extent that it is legally authorised, the Party concerned shall notify the other Party without delay of said request, prior to the disclosure of the Confidential Information, such that said other Party can take precautionary steps or all other types of action. Moreover, the Party concerned shall provide solely the Confidential Information that it may be legally necessary to disclose.

The Confidential Information, as well as any and all copies or reproductions thereof shall be destroyed by the Party that received them within thirty (30) days of the Contract ending. Upon request, the receiving Party shall certify, in writing, to the issuing Party, within the time-limit mentioned above, that all the provisions of this article have been applied.

## ARTICLE 18. FORCE MAJEURE

The Parties shall not be liable for any loss, damage, delay, non-performance or partial performance that results, directly or indirectly, from a case of force majeure within the meaning of Article 1218 of the French Civil Code and/or as interpreted as such by the case law of the French courts (a “**Case of Force Majeure**”). Moreover, the Parties agree that a Case of Force Majeure consists of, inter alia, the following events: exceptional adverse weather conditions and natural disasters, attacks, epidemics, pandemics, states of emergency for health reasons, action or inaction by a public authority (including changes to all regulations that are applicable to the Services), failures or restrictions concerning a means of telecommunication managed by an operator to which the network is connected or by a supplier, access restriction by a property owner or manager, unrest, uprisings, insurrections, riots, wars, whether declared or otherwise, acts of a similar nature, strikes, sabotage, theft, acts of vandalism, computer hacking, explosions, fires, lightning, floods and other natural disasters, third-party operator failures and third-party actions.

Each Party shall inform the other in a timely manner, in writing, of the occurrence of all Cases of Force Majeure.

The obligations of the Party that is a victim of the Case of Force Majeure shall be suspended without that Party being held liable in any way.

The Parties shall endeavour, to the extent possible, to mitigate the effects of Cases of Force Majeure.

If a Case of Force Majeure prevents one of the Parties from fulfilling an essential obligation under the Contract for a period of more than three (3) consecutive months, the Parties shall consult with each other with a view to identifying a satisfactory solution. Absent an agreement on such a solution within a time-limit of one (1) month following the expiration of the aforementioned period of three (3) months, each of the Parties may cancel the affected Service, by registered letter with proof of receipt, without any indemnity being owed by either Party. The cancellation shall then take effect on the date of receipt of the registered letter.

## **ARTICLE 19. OTHER PROVISIONS**

### **19.1 Assignment**

The Contract is entered into in consideration of the person of the Client.

The Client cannot assign or transfer the Contract or the Services without SCALEWAY's prior, express, written agreement. SCALEWAY reserves the right to demand that the Client disclose all information that could justify the assignment of the Contract by the Client.

SCALEWAY may, without restriction, assign, transfer, change obligor with respect to or dispose of all or part of its obligations, rights, titles or interests under the Contract to all third parties and, in particular, to all companies in the group to which it belongs.

### **19.2 Sub-contracting**

SCALEWAY may, without restriction, use the services of service providers and/or sub-contractors for all or part of the services required of it and to collect monies owed by the Client.

### **19.3 Independence of the Parties**

The Parties agree that nothing in the Contract designates or can be construed as designating one of the Parties or any one of its employees or associates who are assigned to the performance of this Contract as being the attorney-in-fact, agent, legal representative or other representative of the other Party, for any purpose whatsoever; neither can it be deemed to establish a joint venture or be regarded as constituting articles of association between the Parties.

The Parties shall act at all times in complete independence with regard to each other, in their own right and under their own responsibility, without the Contract being able to create any relationship of subordination, representation, association or *de facto* partnership between them. Neither of the Parties may be regarded as being the representative of the other and cannot make any commitments on behalf of the other Party.

### **19.4 Severability**

If one or more provisions of the Contract are found to be invalid or declared as such pursuant to a law, a regulation or following a definitive decision by a relevant court, the other provisions shall retain their full force and scope.

### **19.5 Absence of waiver**

The fact that one of the Parties does not act on a breach by the other Party of any one of the provisions of the Contract or does not require the application of one of the provisions thereof cannot be construed as a waiver of the obligation or the provision concerned.

### 19.6 Election of address for service

Each Party to the Contract elects its respective registered office as the address for service.

### 19.7 Agreement on proof

By express agreement, the Parties acknowledge that the following shall have evidentiary value, in addition to the items referred to in Article 4.1 of these General Terms, which have the value of a written instrument between the Parties:

- Recordings of telephone conversations with the Client that may be made by SCALEWAY in connection with the ordering and performance of the Services,
- Data that is recorded and timestamped in SCALEWAY's systems,
- The digital commands and logs for the operations carried out on the Account Management Console.

## ARTICLE 20. GOVERNING LAW – SETTLEMENT OF DISPUTES

The Parties agree that the language of the Contract is French. However, for the proper understanding of the Client, an English-language translation is available on the SCALEWAY Website. In all cases, solely the French-language version of the Contract is authentic and authoritative with regard to the Parties.

The Contract is governed by French law. Said law applies to both the substantive and formal aspects of the Contract.

In the event of a dispute that arises at the time of or in connection with this Contract, including those that arise after the Contract has expired, the Parties may meet to resolve the dispute amicably.

**ALL DISAGREEMENTS THAT ARE NOT RESOLVED AMICABLY WILL BE SUBMITTED TO THE EXCLUSIVE JURISDICTION OF THE PARIS COMMERCIAL COURT, NOTWITHSTANDING MULTIPLE DEFENDANTS OR THIRD-PARTY NOTICES, INCLUDING FOR URGENT PROCEEDINGS OR INTERLOCUTORY OR *EX PARTE* PRECAUTIONARY PROCEEDINGS.**