

SPECIFIC CONDITIONS APPLICABLE TO INSTANCE SERVICES

version of 22/03/2024

These specific service conditions (hereinafter the "Specific Conditions") are entered into between Scaleway, a French simplified joint stock company (*société par actions simplifiée*) with a share capital of EUR 214,410.50, having its registered office at 8, rue de la Ville l'Evêque, 75008 Paris, France, and registered in the Paris Trade and Companies Register under number B 433 115 904 (hereinafter "Scaleway") and any natural or legal person subscribing to any Instance Services provided by Scaleway (hereinafter the "Client").

The purpose of the Specific Conditions herein is to set forth the terms and conditions applicable to the Client's subscription and use of the Instance Services.

The Specific Conditions herein supplement the provisions of the General Terms of Service. The provisions of the Specific Conditions shall take precedence over those of the General Terms of Service, in the event of any conflict between the two.

ARTICLE 1. DEFINITIONS

For the purposes of these Specific Conditions, the following words and expressions shall have the meanings set forth:

- **CPU:** means a central processing unit responsible for executing computer programmes;
- **GPU:** means a graphics processing unit responsible for image processing;
- **Instance:** means a virtual computer server with a specific IP address;
- **Option:** means an add-on service that the Client may opt for in addition to an Instance as part of the Instance Services;
- **RAID:** means a storage space virtualisation technology enabling data to be distributed across multiple hard drives;
- **Instance Services:** means any Services that provide Instances to the Client (such as virtual Instances and GPU Instances from the "Compute" service category, as well as Instances from the "IA" service category) including, where applicable, any additional Options;
- **Snapshot:** means an instantaneous duplication of an Instance at a given time.

Unless the context expressly implies otherwise, words in the singular include the plural and vice versa, references to one gender include all other genders, references to a natural person include

legal persons, associations, etc. and vice versa, and base words have the corresponding meanings.

Article headings in these Specific Conditions are given for information purposes only and shall not in any way influence the interpretation of the provisions contained therein.

If words or expressions in title case are not defined under this article, they shall have the meaning assigned to them in the General Terms of Service.

ARTICLE 2. DESCRIPTION OF SERVICES

2.1 General information

Under the Instance Services, the Client may subscribe to one or more Instances from among the various ranges and categories available, either via the Scaleway Website, by API or through its Account Management Console.

The features of the various Instances on offer, such as CPU and/or GPU computing resources, associated storage and bandwidth, additional Options, geographical areas covered, plus applicable tariffs, are detailed in the Documentation available on the Scaleway Website and in the Account Management Console.

Options may be subscribed to either simultaneously to the Instances or on a stand-alone basis. Consequently, the Client acknowledges that certain Options may have their own specific expiry date, renewal terms and invoicing and cancellation procedures.

The resources allocated may either be dedicated to the Client or part of a server shared with other customers, depending on the type of Instance chosen by the Client.

The Client acknowledges that under the Instance Services, the network resources provided to it are shared.

2.2 Third-party solutions

Scaleway may be required to provide third party solution licences at the request of the Client. The Client thus undertakes to comply with the general and/or specific conditions of use specific to the said solutions.

The Client bears liability at all times for installation of the selected third-party solutions on its Instances, for compliance with any applicable third-party terms of use, and for any necessary maintenance and updating operations.

Unless otherwise specified on the Scaleway Website or on the Account Management Console, the Client acknowledges that provision of the Instance Services is exclusive of royalties, subscriptions, taxes, third-party software licences, or any other means of remuneration that may potentially be claimed by rights holders, through the Client's use of the Instance Services, all of which are exclusively borne by the Client.

2.3 Maintenance

In the scope of the Instance Services, Scaleway may be required to perform maintenance operations on the various infrastructures used to provide the Instance Services, to ensure said services remain fully operational.

Without prejudice to the foregoing, the Client remains responsible for notifying the Technical Support of any Technical Incident affecting the use of the Instances Services. Moreover, the Client remains responsible for the maintenance of all environments (applications, software, operating systems, etc.) and any third-party solutions running on its Instances.

Furthermore, it is up to the Client to take all necessary measures to protect itself against the risks inherent in maintenance operations, irrespective of their source.

ARTICLE 3. SUBSCRIPTION CONDITIONS OF INSTANCE SERVICES

Prior to subscribing to the Instance Services, the Client undertakes to study all the information provided to it by Scaleway, including the Documentation, to ensure that the Instance Services, and in particular the technical specifications of the Instances chosen are appropriate to its needs and use cases.

It is therefore incumbent on the Client, when subscribing to the Instance Services, to select the technical specifications of its Instances, any Options required, and their geographical location.

Scaleway undertakes to deliver the Instance Services in accordance with the Client's order and the technical specificities of the Instances chosen.

ARTICLE 4. TERMS OF USE OF THE INSTANCE SERVICES

The Client is solely responsible for the installation, operation, configuration and maintenance of third-party solutions and environments (applications, software, operating systems, etc.) running on the Instances. The Client is likewise solely responsible for all Content installed and/or stored on the said Instances.

The Client acknowledges having all the technical knowledge necessary to ensure correct use of the Instance Services.

Without prejudice to the foregoing, the Client acknowledges that the Instances provided to it under the Services are wholly and exclusively owned by Scaleway or by third parties who have granted the latter a usage right. Under the Specific Conditions herein, Scaleway grants solely a remote use right to the said Instances. As such, the Client shall not under any circumstances undermine the integrity of the Instances or the Scaleway IT infrastructure on which the Instance Services are built. The Client acknowledges that liability for any risk of deterioration (whether deliberate, careless or negligent) of the resources and components composing the Instances passes to the Client upon its receipt of the Instances.

4.1 Compliance with regulations

The Client undertakes to comply with all regulations pertaining to the use of the Instances and any possible Options and agrees not to use them in a manner that is harmful or for purposes that are unlawful or which breach existing regulations.

More generally, the Client warrants Scaleway, and undertakes to hold it harmless at first request, against any claims by third parties relating to the Content that it hosts on the Instances and any activity carried out using the said Instances, under any applicable legislation.

4.2 Prohibited use of the Services

The Client shall bear all consequences resulting from non-compliant use of the Instance Services and from malfunctions of the Instances due to the installation of software or a configuration carried out by the Client.

The Client undertakes not to resell the subscribed Instances to third parties.

Scaleway points out that the Instance Services use physical and software resources, which have been assembled and/or pre-configured by Scaleway. Consequently, the Client is not authorised to:

- Update firmware or modify configuration of CPU and/or GPU resources attached to Instances, including but not limited to BIOS, BMC, RAID card, storage media (hard disk, SSD...), network card, processor microcode;
- Carry out low-level configuration modifications, including (but not limited to): VRAM ECC configuration, CPU and/or GPU processor frequency (overclocking), fan speed, activation or deactivation of processor instructions;
- Make changes to RAID or BMC configurations outside of the Account Management Console or API.

The Client shall bear liability for any deterioration of the physical or software resources composing the Instance Services, whether intentional or unintentional, and which is not due to normal wear and tear under proper use of the said Instance Services.

Scaleway reserves the right to suspend the Instance Services without notice should the Client fail to comply with these stipulations.

In any event, any measures to restrict, limit or suspend the Instance Services shall be applied according to the severity and recurrence of the breach(es). Scaleway alone reserves the right to determine such measures according to the nature of the breach(es)

4.3 Content Backup

The Client is reminded that, pursuant to the General Terms of Service, it is solely responsible for the management of Content hosted under the Instance Services, and that it is the Client's responsibility to implement any measures necessary to guarantee the continuity of said Content, such as by performing any necessary remote, secure and duplicated backup operations. Scaleway cannot be held liable, on any grounds whatsoever, for the loss, deterioration, or accidental destruction of this Content, howsoever caused.

4.3.1 Warning on the use of Snapshots

Scaleway offers an Option that enables snapshots to be created. Given the major risk factor that this feature represents for Client's Content, Scaleway warns users that:

- In certain cases data may be corrupted in the contents of a Snapshot, especially the latest transactions of relational databases;
- A Snapshot is by no means a permanent backup of Client's Content and an Instance, but merely an "instant" copy of the said Instance;
- This feature in no way exempts the Client from regularly backing up its Content in accordance with standard IT rules and practices;
- A request to restore an Instance from a Snapshot entails the permanent loss of the Content contained on the Instance prior to such restoration, which is then replaced by the Snapshot Content.

4.3.2 Warning on the use of local storage spaces

For certain Instances, Scaleway offers an Option that provides a local data storage space, where the Client's data can be stored and processed. In view of the major risk this feature poses to the Client's data, Scaleway points out that:

- This storage space is transitory and is only maintained for the duration of use of the Instance. It does not therefore constitute a permanent and reliable storage space to ensure the sustainability of the Client's Content, even when this storage space has RAID technology;
- Local storage space is not backed up by Scaleway. It is up to the Client to perform any backup operations necessary to ensure the sustainability of its Content, in accordance with fundamental IT rules and practices;
- If an Instance is cancelled, all Content stored on local storage spaces is permanently deleted.

ARTICLE 5. TERM AND TERMINATION

5.1 Term

The Specific Conditions herein enter into force on the date the Client subscribes to the Instance Services and remain applicable for the entire duration of their use by the Client.

The Instance Services take effect at the time of their subscription by the Client in the Account Management Console, via the APIs or automatically through the "Kubernetes Kapsule" and "Kubernetes Kosmos" services (assuming the Client has subscribed to the said services) and remain in force indefinitely until their effective cancellation under the conditions set out below.

5.2 Cancellation

Subject to any applicable minimum term of usage or commitment, an Instance may be cancelled by the Client in the Account Management Console, the APIs or automatically through the "Kubernetes Kapsule" and "Kubernetes Kosmos" services (assuming the Client has subscribed to the said services), under the conditions set forth in the General Terms of Service.

Upon cancellation, invoicing is discontinued under the conditions specific to each Instance, as described in the Client's Account Management Console.

The Client acknowledges that the cancellation of an Instance results in the deletion of all Content stored on such Instance. Unless stipulated otherwise, the cancellation of an Instance also results in the cancellation of the Options attached to it.

Prior to cancelling an Instance, it is the Client's responsibility to perform any necessary reversibility of all stored Content.

5.2.1 Warning regarding specific cancellation conditions applicable to GPU H100 PCIe Instances

Subject to any minimum commitment period by the Client, Scaleway reserves the right to terminate at any time one or more GPU H100 PCIe Instances to which the Client has subscribed.

In such a case, Scaleway undertakes to notify the Client by email providing a minimum notice period of ten (10) minutes. At the end of this notice period, the said GPU H100 PCIe Instances will be automatically terminated and all Content stored on them deleted.

Given the risk a termination of this category of Instances poses to the Client's Content, Scaleway reminds the Client that it bears sole responsibility for safeguarding its Content against any loss, by performing any necessary back-up or reversibility operations before the termination takes effect.

ARTICLE 6. FINANCIAL TERMS AND CONDITIONS

The Client acknowledges that, depending on the category of Instances and the technical specifications selected for the Instance Services, the tariff as well as the payment and invoicing terms differ and are detailed on the Scaleway Website and in the Account Management Console.

When the Client subscribes to Instances by a means other than through its Account Management Console, and especially in the context of any automatic provisioning via API or, where applicable, through the "Kubernetes Kapsule" and "Kubernetes Kosmos" services, it is up to the Client to enquire in advance about the applicable payment and invoicing terms.

Instances and their associated Options are invoiced from the date of their provision to the Client until their cancellation date. The Instances and Options are invoiced on an hourly basis, with any hour begun due in full until cancellation of said Instances. Any Instances that are deactivated but not deleted will continue to be invoiced. The Client can view the status of an Instance at any time in the Client's Account Management Console.

An invoice is issued at the end of the subscription month, and thereafter at the end of each month in which an Instance has been used by the Client, and such invoice shall be paid by direct debit using the payment method indicated by the Client; the default payment method is that registered by the Client when the account was set up.