

DATA PROCESSING AGREEMENT

Version of June 1st, 2024

This Data Processing Agreement (hereinafter “DPA”) forms an integral part of the contract relating to the provision of Scaleway Services concluded between Scaleway and the Client (hereinafter “the Contract”).

The purpose of this Data Processing Agreement is to define the conditions under which Scaleway undertakes to carry out, on behalf of the Client and for the sole purpose of the strict execution of the Contract, Personal Data Processing operations. The Parties undertake henceforth to comply with the Data Protection Regulations.

This DPA shall apply to the Services covered by the Contract for which the Client acts as Data Controller or Data Processor and Scaleway acts as Data Processor or Sub-processor, within the meaning of the GDPR. The Data Processing carried out by Scaleway as Controller is managed within the framework of its Privacy Policy.

The Client has assured itself, based on the information provided by Scaleway and on other information at its disposal, that Scaleway offers sufficient guarantees, particularly in terms of experience, resources, capacities and reliability, to implement the necessary technical and organisational measures for the Processing of Personal Data specified in the Contract to be carried out in accordance with the Data Protection Regulations.

ARTICLE 1. DEFINITIONS

In addition to the terms and expressions defined in this DPA, the following terms and expressions shall have the same meaning as the one that is given to them in the GDPR:

- « **Personal Data** »,
- « **Data Processing** »,
- « **Data Controller** »,
- « **Data Processor** »,
- « **International Organization** »,
- « **Data Protection Officer** »,
- « **Supervisory Authority** »,
- « **Data Subject** » and
- « **Personal Data Breach** ».

Moreover, the following terms and expressions shall have the meaning indicated below, whether used in the singular or plural:

- « **Data Protection Regulation** » means any worldwide legislation relating to data protection and privacy applicable to the processing of Personal Data under the Contract, including without limitation and where applicable European Data Protection Laws, the CCPA and other applicable U.S. federal and state privacy laws, the data protection and privacy laws of Australia, Singapore, Japan, Brazil and Canada, in each case as amended, repealed, consolidated or replaced from time to time;
- « **Employees** » means all persons authorized to carry out Processing operations of Personal Data communicated or made available by Scaleway and/or its possible Sub-processors;
- « **GDPR** » means the (EU) Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data;
- « **Impact Assessment** » means the analysis which must be carried out when a processing of Personal Data is likely to create a high risk for the rights and freedoms of the persons concerned;
- « **Security Measures** » means the security measures provided for by the Data Protection Regulations as well as any other obligations provided for by said regulations in order to guarantee the security and confidentiality of Personal Data, including the activities to be carried out in the event of a Personal Data Breach, in particular in order to avoid or reduce the harmful effects on the Data Subjects;
- « **Standard Contractual Clauses** » means the model of contractual clauses adopted by the European Commission to regulate transfers of Personal Data carried out by Data Controllers or by Data Processors to recipients located outside the European Union (Implementing Decision (EU) 2021/914 of the Commission of 4 June 2021);

- « **Third Country** » means any country outside the European Economic Area (EEA) and not recognized as guaranteeing a level of protection of Personal Data adequate to that of the European Union by the European Commission;
- « **Sub-processor** » means, depending on the situation, Scaleway or any sub-processor engaged by Scaleway or any other sub-processor thereof, and processing the Customer's data as part of the Services provided in the context of the Contract;

If a definition is not mentioned within this Data Processing Agreement, words or expressions beginning with a capital letter will have the meaning given to them in the Contract.

ARTICLE 2. DESCRIPTION OF THE DATA PROCESSING

2.1 The Data Processing carried out by Scaleway for the purposes of this Data Processing Agreement relates only to the types of Personal Data and the categories of Data Subjects defined by the Client and under its sole responsibility.

2.2 The Customer is also responsible for the choice of Services used and in particular for their compatibility with the data processing it implements. When Scaleway offers Services adapted to particular types of processing, the Client must use the Services concerned, in particular when these processing operations are subject to specific regulations or standards (and more particularly, but not limited to, in the context of processing of health data or banking data).

2.3 The Client undertakes to provide Scaleway with the data referred to in this Data Processing Agreement for the purposes of the execution of the Contract and, if the Client is Data Controller, to document in writing any instructions concerning the Data Processing operated by Scaleway. Furthermore, the Client remains solely responsible for selecting Services that are adapted to its needs and to implement sufficient technical and organizational measures to protect its Personal Data, particularly in the event of Data Processing likely to result in a high risk for the rights and freedoms of the Data Subjects.

2.4 Scaleway undertakes to (i) guarantee the confidentiality of Personal Data and (ii) to ensure that all Employees and Sub-processors authorized to process Personal Data under this Data Processing Agreement respect the confidentiality of Personal Data. The

obligation of confidentiality of Personal Data will remain in force for five (5) years following the expiration of the Contract.

2.5 Description of Data Processing

- **Subject** : Client data;
- **Duration** : the duration of data retention depends on the Customer's choice except in the event of a legitimate request in particular from a judicial or administrative authority, in which case the duration of data retention will depend on the legal limitation period;
- **Nature and purpose of the processing**: the Service provided may include storage operations, data calculation or any other service defined within the Contract;
- **Categories of data**: any categories of data uploaded in the context of the use of a Service subscribed through Client's Scaleway account;
- **Categories of Data Subjects**: Customers, end users, Employees or Sub-processors of Scaleway, depending on the situation.

ARTICLE 3. OBLIGATIONS OF THE DATA PROCESSOR

3.1. As a Data Processor or Data Sub-Processor, Scaleway undertakes to:

- 3.1.1. process Personal Data for the purpose of performing the Contract within the limits and according to the terms and conditions stipulated in this DPA and according to the Data Protection Regulations;
- 3.1.2. process Personal Data exclusively according to the Client's documented instructions and inform the Client if it considers that an instruction infringes the Data Protection Regulations or, more generally, the applicable legislation;
- 3.1.3. process Personal Data that is strictly necessary to perform the Contract or to comply with legal obligations;
- 3.1.4. not to process Personal Data for purposes other than those necessary for the performance of the Services provided by Scaleway;
- 3.1.5. assist the Client in developing a Data Protection Impact Assessment, if one of the Services provided by Scaleway falls within the scope of the assessment;

- 3.1.6. assist the Client and collaborate with it in the event of a request made by competent authorities or a Data Subject and in order to comply with the obligations arising from the Data Protection Regulations;
- 3.1.7. in the event of a request from an authority located in a Third Country regarding Client's Personal Data, Scaleway undertakes not to disclose any information unless the data is located outside the European Union, if this request complies with an international agreement or if it is one of the exceptions provided for in Article 49 of the GDPR;
- 3.1.8. maintain technical and organizational measures in order to secure the Data Processing carried out as part of the Services provided (for more details, refer to article 8 "Security of Data Processing");
- 3.1.9. make available to the Client all the information in its possession which is reasonably needed to demonstrate, as part of the performance of the Contract, that said performance complies with the obligations stated in the Data Protection Regulations.

ARTICLE 4. REGISTER OF DATA PROCESSING

- 4.1. Scaleway undertakes to keep a generic register (Data Processor register) concerning all categories of activities relating to the Data Processing of Personal Data carried out on behalf of the Client. This will notably include:
 - 4.1.1. the name and contact details of Scaleway and its Sub-processors, those of the Client and Scaleway's Data Protection Officers;
 - 4.1.2. the categories of Processing carried out on Client's behalf;
 - 4.1.3. where applicable, the transfers of Personal Data to a Third Country or to an International Organisation and, in the cases of transfers mentioned in Article 49, sub-section 1, second paragraph of the GDPR, the documents vouching for the existence of the appropriate safeguards required by Article 49 of the GDPR; and

- 4.1.4. a general description of the technical and organizational Security Measures (TOM) referred to in Article 32(1) of the GDPR. These Security Measures also appear in the Information Systems Security Policy (ISSP) and/or Scaleway's Documentation, made available to the Client on the Scaleway Website.
- 4.2. Scaleway undertakes to provide the Client, without undue delay, with a copy of the register mentioned in clause 4.1, at the Client's and/or the competent authorities' request.
- 4.3. Scaleway undertakes to provide the Client with all information relating to the Data Processing of Personal Data related to the Client, as part of the performance of the Contract, which it reasonably needs in order to be able to draw up its own register of processing relating to the Data Processing mentioned in Article 30, sub-section 1 of the GDPR.

ARTICLE 5. OBLIGATIONS OF THE CLIENT

- 5.1. The Client is solely responsible for the Personal Data that are processed via Scaleway's Services. The Client expressly acknowledges that Scaleway doesn't carry out any check of the content of such data and cannot be held liable for their possible illegal or illicit nature.
- 5.2. Whether as Data Controller or Data Processor, the Client shall be solely and entirely responsible for any collection, processing, transferring, dissemination or representation of information or data it performs via the Services and such activities shall be done in strict compliance with the applicable Data Protection Regulations.
- 5.3. The Client undertakes in particular:
 - 5.3.1. to provide the necessary information to the Data Subjects involved in the processing operations at the time of data collection and allow them to exercise their rights;
 - 5.3.2. to provide Scaleway with the instructions for processing the Personal Data and keep the account data up to date;

- 5.3.3. to keep a register of the Data Processing activities identifying Scaleway as a Data Processor or Sub-processor for the relevant processing activities;
- 5.3.4. to carry out, or have carried out under its responsibility, Impact Analyses and, where applicable, to consult the competent Supervisory Authority when the proposed processing will be likely to generate a high risk for the rights and liberties of the Data Subjects;
- 5.3.5. to define the retention period and the terms and conditions for storing and deleting the Personal Data processed;
- 5.3.6. to implement technical and organizational measures relating to the protection, security and confidentiality of Personal Data processed which do not fall within the scope of the Services provided by Scaleway or which depend on the Client's choice;
- 5.3.7. to put in place an internal procedure for the identification and handling of Personal Data breaches that require to be notified to the competent Supervisory Authority and/or the Data Subjects;

ARTICLE 6. OBLIGATIONS RELATING TO THE EMPLOYEES

- 6.1. Scaleway undertakes to ensure that its Employees have only access to the Personal Data which is strictly necessary for the performance of the Contract or in order to fulfill its legal obligations and that they exclusively process such Personal Data within the limits and in accordance with the terms of this Data Processing Agreement, the Contract and the Data Protection Regulations.
- 6.2. Scaleway also undertakes to authorize the Data Processing of Personal Data only by Employees who:
 - 6.2.1. because of their experience, their abilities and their training, are capable of guaranteeing compliance with the Data Protection Regulations and have to access such Personal Data in order to perform the Contract;

- 6.2.2. have to comply with strict obligations of confidentiality during the processing of Personal Data, it being specified that Scaleway will ensure such Employees comply with their obligations and the instructions received.
- 6.3. Within the scope of the Services, Scaleway undertakes to establish technical and organizational measures intended to ensure that:
- 6.3.1. each Employee can have only access to the Personal Data that might be subject to Data Processing depending on the level of authorisation which has been granted to such Employee;
 - 6.3.2. any Data Processing of Personal Data which is constituting a breach of this DPA, the Contract and/or the Data Protection Regulations is promptly identified and reported to the Client, including in accordance with the procedure and within the time frames mentioned in Article 8 in the event of a Personal Data Breach; and
 - 6.3.3. Upon termination of the Contract or of the assignment entrusted to the Employee, the Employee shall immediately cease the Data Processing of Personal Data, in accordance with applicable legal constraints.

ARTICLE 7. SUB-PROCESSORS

- 7.1. The Client grants to Scaleway a general authorization to sub-process part of its obligations under this DPA to another processor ("**Sub-processor**"). As such, Sub-processors are required to take part in the Data Processing carried out by Scaleway on the instructions of the Client.
- 7.2. Should Scaleway use a Sub-processor, Scaleway shall ensure that each Sub-processor provides appropriate levels of guarantees in accordance with the Data Protection Regulations with regard to the technical and organizational measures adopted for the Data Processing of Personal Data and shall ensure that each Sub-processor ceases the Data Processing of Personal Data immediately if such guarantees should be lacking. If a Sub-processor does not meet its obligations regarding

Personal Data protection, Scaleway remains fully responsible towards the Client for the fulfillment by the Sub-processor of its obligations.

- 7.3. The list of Sub-processors used by Scaleway in connection with the services provided to the Client is available on [Scaleway's website](#).
- 7.4. In the event of a change or modification to such a list, Scaleway undertakes to notify the Client thirty (30) days in advance, providing that it has previously subscribed to updates notifications using the feature available on the dedicated page. The Client then has the right to raise objections by justifying to which extent the contested addition or modification is contrary to Data Protection Regulations. The parties then undertake to find an amicable solution that meets the regulations. If it is impossible to find a solution satisfactory to both parties, the Customer may then: (i) terminate the Contract in accordance with the general or specific conditions, (ii) cease using the service concerned by this Sub-processor or (iii) if this exists, choose a similar offer which is not concerned by this Subcontractor.

ARTICLE 8. SECURITY OF DATA PROCESSING

- 8.1. Scaleway undertakes to implement appropriate technical and organizational measures to guarantee the security of Personal Data, notably to protect them from a security breach leading, accidentally or unlawfully, to destruction, loss, alteration, disclosure or unauthorized access (hereinafter the “**Personal Data Breach**”), in particular by implementing the following measures (more details available on Scaleway's Website):
- 8.1.1. Secured critical data storage;
 - 8.1.2. measures to guarantee the confidentiality, integrity, availability and resilience of processing systems and services;
 - 8.1.3. procedure for regular testing, analysis and evaluation of the effectiveness of the technical and organizational measures;
 - 8.1.4. measures to ensure the physical security of places where Personal Data is processed;

- 8.1.5. measures to ensure event logging;
 - 8.1.6. information systems security management measures;
 - 8.1.7. certification measures;
 - 8.1.8. user authentication;
 - 8.1.9. measures enabling data to be updated by the Client;
 - 8.1.10. measures ensuring data minimization;
 - 8.1.11. measures to ensure compliance with the principle of data protection by design and by default;
 - 8.1.12. measures ensuring limited data retention;
 - 8.1.13. measures to raise staff awareness regarding security and data protection;
 - 8.1.14. measures allowing the Client to exercise its rights (in particular its right of access, rectification, deletion or even data portability).
- 8.2. These technical and organizational measures (TOM) are detailed on the [dedicated page of the Scaleway website](#).
- 8.3. In accordance with article 8.3 of the General Terms and Conditions, the Client is responsible for the risks inherent to the Services and software and must ensure it has implemented adequate Security Measures with regard to such risks (in particular backup measures, retention period, access control policy, encryption of data).
- 8.4. The Client remains solely responsible for the adequacy of the subscribed Services with the activities it carries out through said Services and with the regulations applicable to these activities. This also includes its Content, to which Scaleway doesn't access.

ARTICLE 9. PERSONAL DATA BREACH

- 9.1. In the event of a Personal Data Breach, incidents likely to compromise the security of Personal Data (for example: loss, damage or destruction of Personal Data, regardless of the medium or format (hard copy, electronic or other), unauthorized third party access to Personal Data or any other Personal Data Breaches), including Personal Data Breaches arising from the conduct of any Sub-processors and/or Scaleway Employees , Scaleway:
- 9.1.1. shall inform the Client as soon as possible after having become aware of it, by means of a written notification to the Client and will provide it with the useful information in order to enable the Client, who is responsible for this notification obligation, to notify said breach to the competent Supervisory Authority or Data Subjects in accordance with Articles 33 and 34 of the GDPR; And
 - 9.1.2. in collaboration with the Client, shall implement without undue delay any measure that may be necessary in order to minimize risks of any kind weighing on Personal Data, to mitigate the possible harmful effects and to contribute, within the scope of the Services, to the identification of the cause thereof.
- 9.2. In the event that it is not possible to gather all the information at the same time, Scaleway shall provide an initial notification containing the information available on the date it becomes aware of the Personal Data Breach and one or more additional notifications containing the additional information, as soon as available.
- 9.3. Scaleway undertakes to keep a register listing Personal Data Violations relating to the Personal Data subject to this Data Processing Agreement, the associated circumstances, their consequences, the remedial measures implemented as well as any breach committed under this Data Processing Agreement.

ARTICLE 10. RIGHTS OF THE DATA SUBJECTS

- 10.1. Scaleway undertakes to reasonably cooperate with the Client in order to guarantee the handling of requests from Data Subjects to exercise the rights stipulated by the Data Protection Regulations within the time frames and in accordance with the terms set by those Data Protection Regulations. In this regard, Scaleway undertakes to inform the Client of any requests submitted by a Data Subject to exercise such rights.

- 10.2. Client's rights requests are managed via the dedicated feature available in the management Console. For any privacy issue related to a third-party or topics not supported by the Console, requests can be sent to privacy@scaleway.com

ARTICLE 11. COMMUNICATION AND TRANSFER OF PERSONAL DATA

- 11.1. Scaleway Services are located within the European Union by default. When the Services are offered in several regions or availability zones, it is up to the Client to select the location of its choice during the order.
- 11.2. While processing data in the context of this DPA, Scaleway undertakes:
- 11.2.1. not to disseminate or communicate Personal Data to third parties, unless the Data Protection Regulations or the Contract expressly provide for it or the Client authorizes it in writing; And
 - 11.2.2. not to transmit, disseminate or store Personal Data in a country outside the European Union, without having expressly informed the Client in advance; unless European Union law or the law of the Member State to which Scaleway is subject prohibits such information for important reasons of public interest.
 - 11.2.3. in the event of transfer of Personal Data outside the European Union or to a country not benefiting from an adequacy decision, to:
 - i. apply the Standard Contractual Clauses (SCC) in accordance with the Data Protection Regulations;
 - ii. take all technical and organizational measures necessary to guarantee the protection and confidentiality of the information transmitted in accordance with the Data Protection Regulations.
- 11.3. In the event that the transfer concerns the data from the Client which is subject to the GDPR to a Third Country:
- 11.3.1. If the Client is the Data Controller, the Standard Contractual Clauses "[Controller to Processor Transfers](#)" apply.

11.3.2. If the Client is a Data Processor, the Standard Contractual Clauses [“Processor to Processor Transfers”](#) apply.

ARTICLE 12. AUDIT

- 12.1. Scaleway undertakes to provide the Client, upon request, with any document reasonably required to certify that Scaleway is complying with the obligations arising from this DPA.
- 12.2. Subject to notifying Scaleway in writing thirty (30) days in advance, the Client may audit at its own expense and at most once a year the organizational, technical and Security Measures adopted by Scaleway within the framework of the Data Processing of Personal Data for the execution of the Services only. This audit may be carried out by the Client itself or, by a trusted third party recognized as an independent auditor of the Parties and presenting no conflict of interest. The audit must be carried out in compliance with the conditions and standards which will be commonly defined by Scaleway and the Client and within the limits of maintaining the continuity, the confidentiality and the security of the services provided to other Scaleway customers.
- 12.3. The information and results of the audit shall be considered confidential and shall be subject to a prior non-disclosure agreement. This information may be transmitted to any Supervisory Authority which requests it, after consulting Scaleway, within the limits of the applicable regulations.

ARTICLE 13. END OF THE CONTRACT

- 13.1. At the end of the Contract for any reason whatsoever, Scaleway shall ensure that it ceases all Data Processing of Personal Data and deletes the Personal Data as well as any copies thereof, unless the retention of the Personal Data is required by applicable legislation or by the legitimate interests of Scaleway. In this case, this conservation must only be within the limits strictly provided for by the latter.
- 13.2. It is therefore the responsibility of the Client, within the scope of the Services, to ensure the conservation of its Personal Data prior to the end of the Contract.

ARTICLE 14. MISCELLANEOUS PROVISIONS

- 14.1. This Data Processing Agreement is governed by French law. The courts under the aegis of the Paris Court of Appeal have exclusive jurisdiction to hear any dispute arising out or relating to this DPA.
- 14.2. This Agreement supersedes all prior written and oral agreements relating to Personal Data. Any amendment of this DPA shall only be valid if it is in writing and signed by authorized representatives of the Client and Scaleway.
- 14.3. In the event of any contradiction between this DPA and the other provisions of the Contract, this DPA shall take precedence with respect to issues affecting the Data Processing of Personal Data.

ARTICLE 15. CONTACT

- Scaleway's DPO: dpo@iliad.fr
- Scaleway's Privacy Team: privacy@scaleway.com
- Notification of Data Breach: security@scaleway.com
- Scaleway's Privacy Policy: <https://www.scaleway.com/en/privacy-policy/>