

AGREEMENT TO SUBCONTRACT THE PROCESSING OF PERSONAL DATA

This Agreement to Subcontract the Processing of Personal Data ("**Subcontracting Agreement**") forms an integral part of the agreement for the provision of SCALEWAY's Services concluded between the User and SCALEWAY ("**Agreement**"), when SCALEWAY carries out the Processing of Personal Data on behalf of the User as a Subcontractor within the meaning of the GDPR.

For the purposes of the fulfilment and performance of the Agreement, Personal Data (as defined in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ("**GDPR**")) may be disclosed to and/or accessed by SCALEWAY.

The purpose of this Subcontracting Agreement is to define the conditions under which SCALEWAY undertakes to carry out Personal Data Processing operations for the duration of the Agreement, exclusively on behalf of the Customer. The Parties hereby undertake to comply with the Data Protection Regulations.

The Subcontracting Agreement is only applicable to Personal Data communicated by the User acting as data controller within the meaning of the GDPR and processed by SCALEWAY acting as a subcontractor within the meaning of the GDPR, within the framework of the Services as defined in the Agreement and subscribed to by the User.

The User has ascertained, on the basis of the information provided by SCALEWAY and the other information at its disposal, that SCALEWAY presents sufficient guarantees, in particular in terms of experience, resources, capacities and reliability, for the purpose of implementing the technical and organisational measures necessary to ensure that the Personal Data Processing provided for in the Agreement is carried out in compliance with the Data Protection Regulations.

SCALEWAY has implemented all the necessary technical and organisational measures to ensure that the Personal Data Processing is carried out in accordance with the Data Protection Regulations, including the GDPR.

Article 1 - Definitions

In addition to the terms and expressions defined in this Subcontracting Agreement and the Agreement, the terms and expressions "**International Organisation**", "**Data Protection Officer**" and "**Personal Data Breach**" shall have the same meaning as assigned to them in the GDPR. The following terms and expressions have the meanings given below, regardless of whether they are used in the singular or plural:

"**Personal Data**" means any information relating to any natural person who is directly or indirectly identified or identifiable, in particular through the use of identifying information such as a name, an identification number, location data, an SCALEWAY username, or one or more elements specific to the person's physical, physiological, genetic, mental, economic, cultural or social identity that may be disclosed or made available in the context of the fulfilment and performance of the Services;

"**Security Measures**" means the security measures provided for by the Data Protection Regulations and any other obligation provided for by the said Regulation 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 of the Personal Data Breach on the Data Subjects;

"**Agent**" means the employees, authorised persons or any other natural person empowered to carry out Processing Operations for any Personal Data transmitted or made available by SCALEWAY and/or its possible Sub-processors;

"**Data Subject**" means the identified or identifiable natural persons to whom the Personal Data refers;

"**Data Protection Regulations**" means the GDPR, the French Data Protection Act no. 78-17 of 6 January 1978 and its successive amendments ("**French Data Protection Act**"), Directive 2002/58/EC of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the electronic communications sector of 12 July 2002, as well as all legislative provisions, regulations, guidelines, opinions, certifications, approvals, recommendations or final judicial decisions relating to the protection of personal data applicable to the Processing of Personal Data, already in force or which will enter into force during the term of this Subcontracting Agreement, including the measures, guidelines and opinions of the Working Party referred to in Article 29 of Directive 95/46/EC of the European Committee on Data Protection referred to in Articles 63 and seq. of the GDPR and of any other competent authority. In the event of a conflict between the French Data Protection Act, the GDPR and/or the measures adopted by the competent authorities to implement them, the provisions of the GDPR and the measures adopted to implement it shall take precedence.

"**Processing**" means the processing of Personal Data as defined in the GDPR entrusted to SCALEWAY under the Agreement and described in this Subcontracting Agreement.

Article 2 - Nature, aims and methods of the Processing

2.1 SCALEWAY, in its capacity as Data Processor for the Data Processing, undertakes, at its own expense:

- a) to process the Personal Data for the exclusive purpose of performing the Services within the limits and according to the terms stipulated in the Agreement, this Subcontracting Agreement and the Data Protection Regulations;
- b) not to independently define the methods for the Processing of Personal Data and not to act as an independent data controller in relation to said data;
- c) to comply with the written instructions issued by the User and notify the User if it considers that any instruction is in violation of the Data Protection Regulations or more generally of any applicable legislation;
- d) to process only such Personal Data as is strictly necessary for the performance of the Services or to comply with legal obligations;
- e) to process the Personal Data in a lawful manner and in accordance with the Agreement and this Subcontracting Agreement and with the requirements laid down by the Data Protection Regulations;

- f) to assist the User and cooperate with it in the event of a request made by the competent authorities, the Data Subjects and in order to comply with the obligations arising from the Data Protection Regulations; and
- g) to provide the User with all the information in its possession that is necessary to demonstrate that it is in compliance with the obligations set out in the Data Protection Regulations.

2.2 SCALEWAY is expressly prohibited from using all or part of the Personal Data, for any purpose whatsoever, on its own account or on behalf of a third party, whether during the term of the Agreement or after the end thereof.

Article 3 - Processing Activity Record

- 3.1** In accordance with Article 30 of the GDPR, SCALEWAY undertakes to keep a record concerning all categories of activities relating to the Processing of Personal Data carried out on behalf of the Customer.
- 3.2** SCALEWAY undertakes to promptly provide the User with a copy of the record referred to in clause 3.1 at the request of the User and/or the competent authorities.
- 3.3** SCALEWAY undertakes to provide the User with all the information relating to the Processing of Personal Data that it reasonably needs in order to be able to establish its own record of processing operations referred to in Article 30(1) of the GDPR.

Article 4 - Obligations relating to Agents

- 4.1** SCALEWAY undertakes to ensure that Agents have access only to the Personal Data that is necessary for the performance of the Contract or in order to fulfil the legal obligations and that Agents Process such Personal Data within the limits and under the terms of this Subcontracting Agreement, the Agreement and the Data Protection Regulations.
- 4.2** SCALEWAY also undertakes to allow Personal Data Processing to be carried out only by Employees who:
 - a) through their experience, skills and training, have proven that they are able to comply with the Data Protection Regulations and who must have access to such Personal Data in order to perform the Agreement;
 - b) have attended training course on the obligations laid down by the Data Protection Regulations at least once a year;
 - c) have been designated in writing as Agents authorised to carry out Processing Operations;
 - d) have committed in writing to strictly observe the confidentiality obligations during the Processing of Personal Data;

and to ensure that the Agents properly carry out the instructions received and fulfil the obligations incumbent upon them.

4.3 The Contractor agrees to establish physical, technical and organisational measures to ensure that:

- a) each Agent may only access Personal Data that may be Processed pursuant to the Agent's authorisation, taking into account the activity that the Agent must perform within the framework of the Agreement;
- b) any Processing of Personal Data constituting a breach of this Subcontracting Agreement, the Agreement and/or the Data Protection Regulations is immediately identified and reported to the User in accordance with the procedure and within the time limits set out in Article 7 in the event of a Personal Data Breach.

Article 5 - Sub-processors

5.1 SCALEWAY may only use another subcontractor ("**Sub-processor**") to carry out specific Processing activities.

5.2 SCALEWAY ensure that each Sub-processor offers adequate guarantees with regard to the Data Protection Regulations in terms of the technical and organisational measures adopted for the Processing of the Personal Data and ensure that each Sub-processor immediately discontinues any Processing of the Personal Data in the absence of such guarantees. If a Sub-processor fails to fulfil its obligations regarding the protection of the Personal Data, SCALEWAY shall remain fully liable vis-a-vis the User with regard to the Sub-processor's performance of its obligations.

5.3 SCALEWAY ensure that each Sub-processor is bound by adequate confidentiality obligations and that it undertakes to comply with the obligations of this Subcontracting Agreement on behalf of and according to the instructions of the Customer, through a written agreement similar in content to that of the Subcontracting Agreement.

Article 6 - Security Measures

6.1 SCALEWAY undertakes to adopt Security Measures in accordance with the provisions of the Data Protection Regulations and this Subcontracting Agreement.

6.2 More specifically, SCALEWAY, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the Processing of the Personal Data, as well as the risk that the Processing poses to the rights and freedoms of natural persons and the probability and gravity of said risk, undertakes to take appropriate technical and operational measures to guarantee a level of security commensurate with the risk associated with the Processing of the Personal Data, including, where appropriate, the measures provided for in Article 32, paragraph 1, of the GDPR. In any event, SCALEWAY undertakes to:

- a) adopt, as a minimum requirement, all the technical and organisational measures required by the Data Protection Regulations;

- b) keep Personal Data separate from other data processed on its behalf or on behalf of third parties, only in the locations indicated by the Customer; and
- c) send, at the request of the User informations relating to the physical, organisational and technical measures adopted for SCALEWAY's Processing of the Personal Data and its own Sub-processors, if any, as well as any other additional information that may be requested by the User in relation to the physical, technical and organisational measures implemented in connection with the Processing of the Personal Data.

Article 7 - Personal Data Breaches

7.1 In the event of any Personal Data Breaches or incidents which may compromise the security of the Personal Data (e.g. loss, damage or destruction of the Personal Data, regardless of the medium or format [paper, electronic or other], unauthorised access by third parties to the Personal Data or any other Personal Data Breaches), including Personal Data Breaches resulting from the conduct of any Sub-processors and/or SCALEWAY's Agents, SCALEWAY shall:

- a) immediately notify the User upon becoming aware of such Breach by notifying the User by e-mail at the Customer's contact addresses and providing the User with the relevant information in order to enable the Customer, if necessary, to notify this breach to the competent supervisory authority. If it is not possible to provide such relevant information at the same time as the notice of the Personal Data Breach, the documentation may be provided in a staggered manner; and
- b) in collaboration with the Customer, immediately and, in any event, without undue delay, take all necessary measures to minimise the risks of any kind to the Personal Data arising from the Breach thereof and implement any operation that may be necessary to remedy the Breach of Personal Data in order to mitigate its possible harmful effects and investigate its cause.

7.2 For the purposes of this Subcontracting Agreement, the Contractor represents and warrants that it and any of its Sub-processors have adopted technical and organisational measures making it unlikely that a possible Personal Data Breach could jeopardise the rights and freedoms of the relevant Data Subjects, including through the use of technologies such as encryption which render the Personal Data incomprehensible to any person not authorised to access it.

7.3 SCALEWAY undertakes to keep a record listing the Personal Data Breaches relating to the Personal Data covered by this Subcontracting Agreement, the circumstances surrounding them, the consequences of such Breaches, the measures adopted to remedy them and any failures committed in respect of this Subcontracting Agreement.

Article 8 - Rights of the Data Subjects

SCALEWAY undertakes to reasonably cooperate with the User to a reasonable extent in order to guarantee that requests from Data Subjects provided for under Data Protection Regulations to exercise their rights are met within the time limits and in accordance with the procedures laid down by law and, more generally, in order to ensure full compliance with the Data Protection Regulations. In this respect,

SCALEWAY undertakes to notify the User of any request by a Data Subject it received.

Article 9 - Disclosure and transfer of Personal Data

SCALEWAY undertakes, in the context of the Processing covered by this Subcontracting Agreement, to:

- a) refrain from disseminating or disclosing the Personal Data to third parties, including possible Sub-processors, unless the applicable Regulations or the Agreement expressly provide for said dissemination or disclosure or unless the User authorises it to do so in writing; and
- b) refrain from transmitting, disseminating or storing Personal Data to or in a non-EU country without the Customer's prior and express consent. In the event that SCALEWAY is required to transfer Personal Data to a third country or international organisation under EU law or the law of the Member State to which it is subject, it must notify the User of this prior to processing and provide proof of the mandatory nature of this obligation, unless the applicable law prohibits such notification for important reasons in the public interest.

Article 10 - Audits

SCALEWAY acknowledges and accepts that the User may, at its expense, have a trusted third party, recognised as an independent auditor of the Parties and appointed by SCALEWAY, evaluate the organisational, technical and security measures adopted by SCALEWAY in the context of the Processing of Personal Data under conditions to be defined by SCALEWAY and the User and within the limits of maintaining the services and the confidentiality and the safety of the other customers.

Article 11 - End of the Agreement

At the end of the Agreement for any reason whatsoever, SCALEWAY shall immediately discontinue all Processing of the Personal Data and delete the Personal Data and any copies thereof, whether in electronic or paper format, from the computer systems, archives or any other place or device where they are stored, within ten days, except in cases where the storage of the Personal Data is required by applicable legislation, in which case such storage shall only be subject to the limits strictly laid down by such legislation. It is therefore the responsibility of the User to ensure the retention of Personal Data prior the termination of the Contract.