NumSpot's General Terms and Conditions

Préamble

NumSpot, a société par actions simplifiée (simplified joint stock company) with share capital of €50,000,000, having its registered office at 110 Esplanade Charles de Gaulle CS 80371 92931 PARIS LA DEFENSE, registered with the Nanterre Trade and Companies Registry under number 948 608 948, is a company that provides and markets a sovereign and trusted cloud offering, with the ambition of becoming a leader in the trusted cloud in France and Europe in the public and healthcare markets, for private sector players with sensitive data management requirements, and for PaaS/SaaS vendors targeting these markets.

The Customer who wishes to have the Services offered by NumSpot consequently acknowledges accepting, without limitation or reservation, these General Terms and Conditions and any Special or Specific Terms and Conditions that the Parties may have agreed to, which constitute the commitment of the Parties, who declare that the negotiations leading to this commitment were conducted without any restriction or limitation, nor under the influence of any economic constraint of one Party on the other, such that these Terms and Conditions constitute a private contract within the meaning of Article 1110 of the Civil Code. In particular, they declare that each party has had the time to consult its advisors and that the Customer has had the time to ask NumSpot all questions allowing it to determine its consent, to analyse the answers and to assess for itself the scope of its commitments.

Customers are reminded that since they are never committed to consuming NumSpot Services, they may stop using these services at any time if they feel that the performance, price or quality of the Services fall short of their expectations.

In addition, if the Customer does not accept changes made by NumSpot to its General Terms and Conditions or changes to the Services, they may notify NumSpot of their intention to stop using the Services and thus implement the reversibility procedure set out in Article 7 "Reversibility". In the case of prepaid Services such as Instance Reserves, if the Customer intends to terminate these Services, only in the event of non-acceptance of the new General Terms and Conditions will the Customer be entitled to a pro rata refund for actual use in accordance with the terms and conditions set out in Article 6 "Suspension, Termination of Use and Termination of Services".

The Customer also expressly declares that it has all the technical skills, or that it is assisted by an IT professional, to implement and operate the Services provided by NumSpot and to ensure throughout the duration of their contractual relationship that the Services and their Specifications will remain, even in the event of changes to these Services, in line with its needs and objectives, particularly in terms of security.

Finally, the Customer declares that he has full knowledge of the laws, regulations and prescriptions applicable to his activity both in his country of establishment and in the countries in which he carries out his activity. It irrevocably undertakes to comply with them, including any future changes, and, where applicable, to ensure compliance with these obligations by all its contractors, successors or assigns. In particular, it is the Customer's responsibility to carry out the formalities, declarations and requests for authorisation required by the applicable laws and regulations.

ARTICLE 1.   Definitions

For the purposes of interpreting these Terms and Conditions, the terms and expressions below shall be interpreted in relation to their definitions, which have contractual value when said terms begin with a capital letter; they are supplemented by the definitions in the technical glossary in NumSpot's Public Documentation.

Services Catalogue (or Catalogue): catalogue describing NumSpot's Services and their Specifications, and in particular those of the various Resources that NumSpot may make available to the Customer. The current Catalogue is the one appearing on the catalogue.numspot.com site. NumSpot's removal of a Service from its Catalogue is done in accordance with the "Product End-of-Life Policy" found in the Public Documentation unless, where applicable, the Particular Conditions or the Specific Conditions derogate from the "Product End-of-Life Policy".

Customer: any entity benefiting from NumSpot Services under these Terms and Conditions.

Order: any Service purchase request issued by the Customer and accepted by NumSpot. It generally takes the form of an order form which specifies the nature of the Services ordered and constitutes the Special Conditions supplementing these General Conditions.

Technical Account (or Account): the account to which the Resources consumed by the Customer will be charged and which will be used to prepare NumSpot invoices. If necessary, a Customer may ask NumSpot to open several Technical Accounts. If the Resources consumed by the Customer are spread over several Regions, a Technical Account must be opened for each Region.

General Terms and Conditions (or General Conditions): This document, including its preamble, definitions, appendices, and any documents it incorporates by reference.

Special Conditions: a contractual document that may supplement the General Conditions, with which they form an indissociable whole that constitutes the commitment of the Parties.

Specific Conditions: contractual document relating specifically to a Service benefiting from a qualification or certification, in particular, Health Data Hosting (HDS) and SecNumCloud (SNC).

Effective Termination Date: the date from which these General Terms and Conditions cease to have effect between NumSpot and the Customer.

Customer Data (or Data): all data, personal or otherwise, regardless of its nature, software also being Data within the meaning of this definition, that the Customer stores, processes or executes using NumSpot Resources.

NumSpot Infrastructure (Infrastructure as a Service or NumSpot IaaS): refers to all equipment and software (TINA in particular) operated by NumSpot and required to provide the Services.

On Demand (or OD): refers to the Resources provided by NumSpot where the Customer (i) only pays for the Resources they consume, (ii) is not subject to any subscription or time commitment or minimum consumption, and (iii) can therefore stop using the Resources at their convenience and without compensation, in particular if they no longer meet their needs. NumSpot cannot always guarantee the availability of On Demand Resources.

Data Recovery Service: A fee-based service whose purpose is to retrieve the Customer's Data and transmit it to the Customer if the Customer is unable to access its Data, in particular if NumSpot has suspended the Services in accordance with Section 6 "Suspension, Termination of Use and Termination of the Services" herein.

Instance Reserve (or IR): refers to Resources ordered for a specific period.

Resources (or Virtual Machines): refers to all cloud resources, such as Virtual Machines (VMs), object storage services, etc. that NumSpot makes available to the Customer. They may be "On Demand" or for a fixed period. This provision is one of NumSpot's Services. These Resources are described in the Services Catalogue.

Service(s): refers to all NumSpot services within the scope of the General Terms and Conditions, namely the provision of Cloud Resources (On Demand and fixed term) except for Professional Services.

Service Level Agreement (or SLA or Quality of Service): NumSpot's service quality commitments as part of the Services, as defined in Appendix 3.

Professional Services: any services provided by NumSpot to the Customer's specific order. These services are the subject of specific contracts.

Specifications: characteristics of the various Services, as defined in the Services Catalogue, supplemented, where applicable, by the Public Documentation and the Responsibility Matrix.

ARTICLE 2.   Application of these General Terms and Conditions

The purpose of these General Terms and Conditions, which may be supplemented by Special or Specific Terms and Conditions, is to define the respective roles and responsibilities of NumSpot and the Customer with respect to the provision of Services by NumSpot to the Customer, as well as the billing terms and conditions. As stated in the preamble, these General Terms and Conditions apply to all use of NumSpot Services. The Customer therefore declares that he accepts them without reservation.

These General Terms and Conditions apply for the entire duration of the Customer's use of the Services.

Consumers are not eligible for these Services.

These General Conditions only apply to Services provided by NumSpot.

1. Applicables standards

NumSpot's services rely on a partner certified to ISO 27001, SecNumCloud and HDS. These activities are audited at regular intervals to ensure that they comply with the requirements of NumSpot's security and quality standards. In addition, NumSpot obtains and maintains a contractual commitment from its partner to maintain, for the duration of the contract, a level of certification that complies with the state of the art and with the aforementioned certifications.

NumSpot has several certifications or qualifications, the current list of which is detailed on its http://certificate.numspot.com website.

NumSpot has an information security management system that complies with the requirements of the ISO 27001 standard for infrastructure hosting services, including health data hosting (HDS) and hosting of its SecNumCloud (SNC) qualified service.

NumSpot complies with the CISPE (Cloud Infrastructure Service Providers Europe) code of conduct for the protection of personal data.

NumSpot is TISAX (Trusted Information Security Assessment Exchange) certified to guarantee data security in the automotive sector.

These activities are audited at regular intervals to ensure that its practices comply with current security and quality requirements.

NumSpot has also signed up to the SWIPO (Switching Cloud Providers and Porting Data) code of conduct on data portability.

2. Order of precedence

Acceptance of these conditions irrevocably implies that the Customer:

-   waives the application of its own general terms and conditions of purchase,
-   waives the effect of all talks, advertisements, e-mails, offers, proposals, etc. having the same object as the present agreement.

In any event, these conditions, which may be combined with any Special or Specific Conditions and supplemented by the documents listed below, constitute the entire commitment of the Parties.

Whatever the particular contractual hierarchy agreed by the Parties, these General Conditions constitute the sole reference for interpretation within the meaning of article 1189 of the French Civil Code.

The commitment of the Parties consists of the following documents in descending hierarchical order:

1. any Specific Conditions agreed between the Parties,
2. any Special Terms and Conditions agreed between the Parties,
3. these General Conditions, including their appendices:
   Appendix 1. Financial and payment terms and conditions,
   Appendix 2. Conditions relating to personal data / Data Processing Agreement,
   Appendix 3. Service Level Agreement (SLA),
   Appendix 4. SEPA Direct Debit Mandate.

The following documents, incorporated by reference, have the same hierarchical rank as the document in which they are referenced:

- the responsibilities matrix, hereinafter the "Responsibility Matrix", (http://matrice.numspot.com),
- the Services Catalogue (http://catalogue.numspot.com),
- the public prices for the Services (http://tarifs.numspot.com) defined as the "Public Prices",
- the public documentation associated with the Services (http://docs.numspot.com), defined as the "Public Documentation" and in particular the product end-of-life policy (http://pfv.numspot.com).

ARTICLE 3.   Modifications to the General Conditions, to the Public Prices and to the offers

In order to improve the quality of its Services, NumSpot will regularly update these General Conditions as well as the offers in the Service Catalogue, and the Public Pricing.

1. Changes to the General Conditions

In the event of changes to the General Conditions, the Customer is always free to refuse them. In this case, they must stop using NumSpot Services before the new General Conditions come into force. If the Customer wishes to benefit from the provisions of Article 6 "Suspension, Termination of Use and Termination of Services", the Customer must formally notify NumSpot of their intention to terminate before the new General Conditions come into force.

Any use of the Services subsequent to the entry into force of the new General Conditions shall constitute unconditional acceptance thereof.

New versions of the General Conditions will be brought to the Customer's attention by any means NumSpot deems useful and relevant, in particular by publication on the NumSpot website and on the Technical Account management interface.

New versions must be published at least fifteen (15) days before they come into effect.

NumSpot does not pay any compensation to the Customer following the modification of its contractual conditions (General Conditions, offers and Public Pricing), the possibility for NumSpot to modify them as it sees fit being the counterpart of the Customer's freedom to terminate the Services at its convenience and without compensation.

2. Changes to the Specific Conditions

The Specific Conditions inherent in the reference systems applicable to NumSpot are likely to evolve as a result of changes in the reference systems or the related perimeters, and NumSpot shall therefore be obligated to change them.

3. Evolution of Services, Offers and Public Pricing

In the interest of continuous improvement, the performance, specifications and prices of the Services may change. As these changes are contingent on the very nature of Cloud Computing services, the Customer declares that he accepts them without restriction or reservation, as well as changes to the Service Catalogue offers and the Public Pricing.

NumSpot may also at any time decide to cease marketing a Service in accordance with the end-of-life policy described in its Public Documentation.

With respect to Services ordered and paid for by the Customer (including Instance Reserves), NumSpot may at its sole discretion (i) terminate the Service without charge or compensation and reimburse the Customer pro rata temporis for Services in progress or (ii) replace the Service with a Service that is at least equivalent in terms of performance for the remainder of the term.

ARTICLE 4.   Subscription to Services

1. Initial order

The Customer may order Services by contacting NumSpot's sales department at numspot-sales@numspot.com

Once the Order has been accepted by NumSpot, the Customer may open a Technical Account with NumSpot.

When opening a Technical Account, the Customer defines:

- The email address associated with the Technical Account;
- The Region in which the Technical Account is to be created;
- Identification data (name, VAT number or equivalent in the Customer's country, address, telephone number, etc.).

The above information will be processed by NumSpot for the purpose of providing the Service. The Customer must also provide billing and banking information to ensure payment of the Service.

The Customer guarantees the accuracy of the above information and undertakes to maintain permanent access to the declared email address which, in the absence of any other means agreed upon in the Special Conditions, will be used for any official communication to the Customer's address at NumSpot's initiative. In particular, this email address will be used for essential communications such as changes to the General Terms and Conditions, changes to the Specific Conditions, changes to the Service Catalogue and Public Pricing, plans to discontinue the Service, notifications of termination of Technical Accounts for non-use.

2. Automatic extension of the scope of Services

The extension of the scope of Services corresponds, when the subscribed offer allows it, to the fact that the Customer acquires additional Resources. The Customer may extend the scope of the Services under the same terms as their initial Order or by means of automatic extension tools (NumSpot API) as described below.

Using the tools made available by NumSpot, the Customer can develop computer programs that allow it to automatically order NumSpot Resources (hereinafter the "Automatic Ordering") such as new Virtual Machines or additional storage volume.

It is understood that, when the Customer uses such Automated Ordering Systems, it may not exempt itself from its obligations under the Resources subscribed automatically, even if the Order resulted from an error attributable to the Automated Ordering System. It is the Customer's responsibility to use the Automated Ordering Machines with discernment and to implement all the necessary controls.

ARTICLE 5.   Obligations of the Parties

The obligations of the Parties are defined in these General Terms and Conditions, in the Responsibility Matrix and in the Quality of Service commitments.

Anything that is not mentioned as being NumSpot's responsibility in these General Terms and Conditions is deemed to be the Customer's responsibility. Consequently, before accepting these Terms and Conditions and beginning to consume Resources, the Customer, who declares that he has all the necessary skills or that he has

been assisted by competent counsel in the field, must analyze the Responsibility Matrix and verify that NumSpot's Services correspond to his needs.

NumSpot may provide, upon request and as part of Professional Services, a training service.

The Customer also agrees to comply with the following obligations.

1. Duty of care

The resilience of the Services induced by the use of Snapshots enables a system to be rebuilt, but remains dependent on factors that depend on the architecture implemented by the Customer.

The Customer is advised that persistent storage can be corrupted for various reasons (mishandling, malicious intent, etc.). Consequently, the Customer's backup or disaster recovery plans cannot be based solely on the natural resilience of the NumSpot Infrastructure, but must implement a structured backup policy. It is therefore not only the Customer's responsibility to make Snapshots, but also its responsibility to make backups of its volumes in order to be able to return to a known state.

More generally, the Customer must implement the necessary measures to recover its Data or limit the loss of its Data. Thus, and by express agreement, the Customer defines and implements a security and backup policy for its Data that complies with best practices and the sensitivity of the Data, including in particular the backup of volumes using tools provided by NumSpot. In the event that the Customer fails to implement a data security and backup policy that complies with the state of the art and the sensitivity of the data, NumSpot declines all responsibility for the loss of Customer Data.

In order to ensure maximum security, the Customer's policy must provide for this Data to be available on several availability zones, it being established that each availability zone in a Region is on different data centres.

In particular, the Customer undertakes not to use the Services made available by NumSpot for any activity subject to authorisation without first obtaining such authorisation. The Customer declares that it is personally responsible for these formalities and authorisations. Proof of the necessary authorisations will be provided to NumSpot upon request.

If the Customer is planning to launch a marketing or communication operation, an audit of its systems hosted by NumSpot, etc., which is likely to cause a significant increase in its consumption of Resources (bandwidth, memory or calculation), it is the Customer's responsibility, as part of its duty to cooperate, to inform NumSpot prior to the launch of said operation, and within a reasonable period of time, in order to prevent this sudden increase in activity from being analysed as a security anomaly leading to a possible temporary suspension of Services.

The transfer of its Data by the Customer as part of the exercise of reversibility as specified in article 7 "Reversibility" is entirely the Customer's responsibility.

2. Obligation of reasonable use

The Customer agrees to make reasonable use in good faith of the Resources made available by NumSpot. Such use must in all circumstances comply with the regulations in force and with the Customer's business and corporate purpose (hereinafter "Reasonable Use").

The Customer therefore refrains from any activity that would result in unreasonable use of the equipment and materials underlying the Services provided. This includes, but is not limited to, any activity that would result in premature wear and tear of the storage media (in particular hard disks) made directly or indirectly available to the Customer and activities involving the cryptomining of virtual currencies (such as CHIA, BitCoin, Ethereum, etc.).

More generally, any use of the Resources made available by NumSpot that may disrupt the proper functioning of the NumSpot Services and Infrastructure as well as the Resources of other customers is deemed to be unreasonable use.

Intrusion Tests expressly authorized by NumSpot as defined in Article 17 "Audits" are, by exception, part of reasonable use.

By express agreement, the Customer's liability will be presumed, particularly if NumSpot observes:

- premature wear and tear of its equipment because the Customer has not made Reasonable Use of the Resources made available to it,
- abusive operations originating from one or more of the Customer's Resources (such as "flood", "scan", "spam", "denial of service", etc.).

In accordance with Article 6 "Suspension, Termination of Use and Termination of Services", in the event of unreasonable use by the Customer, NumSpot may immediately block the offending Resources, or even all Services, and initiate the procedure for termination of these Terms and Conditions, without prejudice to NumSpot's (i) right to obtain compensation from the Customer for the equipment thus prematurely used, which the Customer irrevocably undertakes to reimburse upon presentation of the supplier's invoice, and (ii) right to claim damages.

In addition, the Customer must implement appropriate procedures, as part of the use of the Services, so that its end users and customers make Reasonable Use of NumSpot Resources and in particular comply with legal, regulatory and contractual requirements.

3. Obligation to cooperate

The Parties undertake to co-operate in good faith with a view to the proper performance of the Services, and in particular to communicate proactively any information in their possession which may be useful to the other Party (in particular, any malfunctions encountered).

The Customer undertakes to appoint a technical manager, whose email address is associated with the Technical Account, with the technical skills and legal capacity necessary to:

- Authorise and manage extensions to the scope of the Services,
- Work on the Resources made available by NumSpot,
- Manage the Technical Account, and in particular ensure that payment details are always valid, in order to avoid any delays in payment,
- Receive and process notifications sent by NumSpot.

NumSpot sends notifications relating to these Terms and Conditions to the email address of the contact provided by the Customer. The Customer agrees to notify NumSpot without delay of any change in the contacts to be notified under these Terms and Conditions.

4. Acceptance obligation

Due to the continuous nature of the Services provided, an acceptance process, "*reception*" within the meaning of the French Civil Code, of the Services, known as "*with the flow*", has been put in place. All Services provided by NumSpot are therefore provisionally accepted by the Customer as and when they are used.

Final acceptance is fully pronounced forty-eight (48) hours after provisional acceptance unless the Customer notifies NumSpot, by e-mail within forty-eight (48) hours of provisional acceptance of the existence of a motivated reservation affecting the Service. This notification must document the reservation made: date, start time and end time of the period of unavailability justified using the tools at its disposal. No reservation may be made beyond the period mentioned above. If a reservation is not properly documented, it will be deemed to have been withdrawn.

5. Obligation to seek advice

When subscribing to Professional Services, the Customer may order consulting services from NumSpot to help them migrate to the cloud and, in particular, define the NumSpot Resource Specifications that are appropriate for their needs.

Except in this case, NumSpot does not assume any duty to advise on the suitability of the Services it offers to the Customer's needs. It is therefore the Customer's responsibility, if necessary assisted by a cloud computing professional when the Customer does not have in-house expertise, to analyse the offers proposed by NumSpot, as well as these General Terms and Conditions, and to verify that they correspond to the Customer's needs, particularly in terms of security.

ARTICLE 6.   Suspension, stopping of use and termination of the Services

1. Suspension of the Services

NumSpot reserves the right to suspend the Customer's Services and block the Resources it provides:
   a)   At the request of a judicial authority;
   b)   In the event of a motivated request from an administrative authority;
   c)   In the event of a risk to the security of the Services and Customer Data or in the event of unreasonable Use (within the meaning of article 5 "Obligations of the Parties") of the Resources;
   d)   If the Customer fails to pay one or more invoices when due.

For the cases mentioned in points a), b) and c) NumSpot may immediately suspend or limit access to the Services after giving prior notice to the Customer by any means, unless otherwise ordered by a judicial or administrative authority.

In the case mentioned in point d), NumSpot may suspend the Services after sending a formal notice to the Customer that has not been complied with within 7 (seven) calendar days.

NumSpot shall not be held liable for any harmful consequences of the suspension or blocking of Services on the Customer's activities.

For the cases mentioned in points c) and d), the suspension of Services does not extend the duration of fixed-term Services, in particular Instance Reservations.

2. Termination of use of Services by the Customer

As indicated in the preamble, the Customer may, at his sole discretion, stop using NumSpot Services at any time. These General Terms and Conditions will nevertheless remain in force until the Customer has:

   a)   implemented, at its own initiative, the reversibility procedure set out in Article 7 "Reversibility" of these General Terms and Conditions, and;
   b)   been terminated under point 3 below in accordance with the procedures described therein.

In any event, even if the Customer ceases to use the Services, except in the case of the Termination for Non-Acceptance of New Terms and Conditions procedure set out below, the latest version of the Terms and Conditions will apply to the relationship between the Customer and NumSpot until the Effective Termination Date.

3. Termination of the Services

a.   Termination for breach

In the event of a breach of the obligations of these General Terms and Conditions, and in particular in the event of non-payment by the Customer, the Party suffering the breach shall send formal notice by e-mail to the defaulting Party to remedy the breach within a period of 7 (seven) calendar days. If this formal notice remains unfruitful at the end of this period, the Party suffering the breach may notify the defaulting Party by e-mail of the termination of all or part of the Orders. In this case, the termination will be fully effective 10 (ten) calendar days after the termination email is sent. As of this Effective Termination Date, the Customer Data will no longer be accessible in accordance with article 7 "Reversibility" below.

Such termination is without prejudice to any damages that may be claimed from the defaulting Party by the other Party.

b.   Termination in the event of non-acceptance of new terms and conditions

If the Customer wishes to terminate all the Services because he does not accept the new general terms and conditions, he must notify this decision in writing before the new terms and conditions come into force. This notification will open the reversibility period provided for in article 7 "Reversibility".

If the Customer has Instance Reserves, they will be reimbursed pro rata temporis for the period between the date of Effective Termination and the date of expiry of the Order based on the amount invoiced.

c.   Inactivity of the Customer's Account

If the Customer ceases to use resources for more than 12 (twelve) consecutive months, NumSpot may, at its sole discretion, delete the Customer's Account and, consequently, all data related to this Account.

In this case, NumSpot will notify the Customer of the application of this provision by electronic mail sent to the Account email address. As of this notification, the Customer will have a period of 90 (ninety) consecutive days (the Effective Termination Date) following the sending of this notification to implement the reversibility procedure mentioned in Article 7 "Reversibility" below.

If this procedure is not implemented before the Effective Termination Date, these General Terms and Conditions will be fully terminated and NumSpot will delete the Customer's Account and consequently all data related to this Account.

ARTICLE 7.   Reversibility

1. Data Recovery

When one or more Services are terminated, for any reason whatsoever, and whether the termination is initiated by the Customer or NumSpot, the Customer must recover and delete all Data present on his Technical Account(s) affected by the termination before the Effective Termination Date.

If all Services are terminated at the Customer's initiative, it is the Customer's responsibility to recover all Data prior to the termination request and account closure. Data not deleted by the Customer will be retained by NumSpot for a maximum of 90 (ninety) days.

The Customer may request a Data Recovery Service from NumSpot. By express agreement, the Effective Termination Date is set at 90 (ninety) days after the day the Customer or NumSpot, as the case may be, sends notice of termination.

If the Customer wishes to have their Data deleted prior to the 90 (ninety) day period, the Customer may request early deletion of the Data from NumSpot.

If the Customer is unable to access their Data in order to recover it, particularly in the event that NumSpot has suspended the Services in accordance with Section 6 "Suspension", Termination of Use and Termination of the

Services above, the Customer must order a Data Recovery Service from NumSpot prior to the Effective Termination Date.

The Data Recovery Service must be ordered from NumSpot support, which will issue a quote. If the Customer accepts the quote, the Customer's Data will be retrieved by NumSpot and transmitted to the Customer upon payment of the Data Recovery Service fee. This order defers the Effective Termination Date to the day the Customer receives the Data transmitted by NumSpot.

Details of the reversibility mechanisms adapted to the Services are provided in the Public Documentation.

2. Deletion of Data

NumSpot undertakes to delete the Customer's Data in accordance with its instructions, as described in this section.

As of the Effective Termination Date (at midnight Paris time) and in the absence of instructions to the contrary from the Customer, NumSpot will close the Technical Account(s). All Data will then be immediately inaccessible to the Customer and will be irrevocably deleted by NumSpot within 90 (ninety) calendar days, except for certain Data expressly mentioned below.

The fact that the Effective Termination Date does not fall on a working day does not have the effect of postponing it.

The identification data referred to in decree no. 2021-1362 of 20 October 2021 will be kept under the conditions and for the periods specified in the decree if the Data is deleted in accordance with the above procedure. In addition, the Customer is informed that certain Data may not be deleted in the event of Data being shared with third parties at the Customer's initiative, such as the sharing of Machine Images.

ARTICLE 8.   Quality of Service Commitments

NumSpot provides the Services in accordance with the Service Levels as described in Appendix 3.

Application of the SLAs presupposes compliance by the Customer with certain conditions, and in particular compliance by the Customer with the obligations defined in the Responsibility Matrix.

It is understood that planned maintenance operations will be deducted from downtime, provided that NumSpot has given the Customer at least 2 (two) calendar days' notice.

Also excluded from downtime will be any intervention whose purpose is to protect Customer Data or the Infrastructure against a major exceptional risk such as a critical security vulnerability, a massive cyber-attack or any other event with the characteristics of force majeure as specified in Article 11 "Force Majeure of the General Terms and Conditions".

The breaches of the SLA to be taken into account are only those which have been the subject of a notification of reserve in accordance with article 5 "Obligations of the Parties" "Obligation to receive" of the General Terms and Conditions.

The Customer shall have a period of 5 (five) calendar days from the end of the period in question to notify NumSpot of the application of penalties.

The Customer shall attach to its notification:

-   The calculation showing that NumSpot has failed to meet its Quality of Service commitments over the period in question for Services not definitively received,
-   The references of the reservations notified (within the meaning of Article 5 "Obligations of the Parties" "Acceptance Obligation" of the General Terms and Conditions) in support of its calculation.

If the Customer has correctly documented and demonstrated NumSpot's failings, the Customer will receive a credit against the price of the Services, valid for a period of 1 (one) year, the amounts and calculation methods of which are defined in Appendix 3.

If the Customer has more than one Technical Account, the aforementioned credits acquired as a result of a breach by NumSpot of an Order associated with a Technical Account may not be used to consume Services under another Order associated with another Technical Account.

The fact that the Customer does not claim the penalties beyond the aforementioned period shall constitute a definitive waiver by the Customer of the benefit of its notified reservations, which shall be deemed never to have existed.

In any event, all penalties may not exceed 30% (thirty per cent) of the invoice amount for the month during which the incidents giving rise to the penalties occurred.

In addition, the penalties always constitute a flat-rate and definitive indemnity for damages in respect of the incidents that gave rise to the penalties, as these penalties are in full discharge of any liability.

Furthermore, should the Customer fall into arrears without NumSpot having interrupted the Services, the penalty system will be automatically suspended for as long as the Customer remains in arrears. In addition, any penalties that may have been demanded by the Customer during the penalty suspension period will be forfeited.

ARTICLE 9.   Intellectual property

1. Ownership of technologies used to deliver the Services

These General Terms and Conditions do not imply any transfer or assignment of intellectual and industrial property rights on the elements used to provide the Services (in particular NumSpot's TINA orchestrator) which belong to NumSpot or to the holder of the intellectual property rights on these elements.

In addition, the Customer is strictly prohibited from:

- Reproducing any of the elements used to provide the Services: computer code, texts, images, design, graphic charter, ergonomics, documentation, etc.
- Seeking to reconstitute the technologies belonging to NumSpot, in particular, by reverse engineering methods.

Notwithstanding the foregoing, NumSpot grants the Customer, on a personal, revocable and non-exclusive basis, the rights to the above elements to the strict extent necessary to use each Service, said grant automatically terminating at the same time as said Service, namely:

- in the case of fixed-term Services, on the expiry date of the Order,
- as regards On Demand Services, the rights are granted each time the Customer uses a Service and last until the Customer ceases to use it.

2. Data and other elements transmitted to NumSpot by the Customer

Nothing herein shall be construed as a transfer or assignment of any Data that the Customer transmits to NumSpot in connection with the Services, such as Data that the Customer stores and processes on Resources made available by NumSpot.

Notwithstanding the foregoing, the Customer grants NumSpot, on a personal and non-exclusive basis, the rights to the above items to the extent strictly necessary for NumSpot to provide the Services and only for the duration of the Services, such grant automatically terminating at the same time as the Services.

3. Distinctive signs of the Parties

Each Party agrees to refrain from any action likely to directly or indirectly infringe upon the distinctive signs of the other Party, without prejudice to NumSpot's right to cite the Customer as a reference and to the Customer's right to mention that it uses NumSpot Services. However, each Party, without having to give reasons, may notify the other Party that it no longer wishes to be cited.

4. Third-party licenses

Where a license is required for the use of third-party software, the Customer undertakes to comply with the terms of the license for the third-party software supplied as part of the Services in the Public Documentation http://licences.numspot.com.

5. Infringement warranty

NumSpot agrees to defend the Customer against any claim by a third party that a Service provided hereunder infringes a copyright protected in any country or a patent issued in a member state of the European Patent Organization, and to pay all expenses, damages and costs (including reasonable attorneys' fees) which the Customer may be ordered to pay by any competent court or which may be the subject of a written settlement agreement signed by NumSpot in respect of such claim, provided that:

I.   the Customer promptly notifies NumSpot in writing of the claim and,
II. the Customer authorizes NumSpot to conduct the defense and any settlement negotiations on its own, and provides NumSpot with reasonable cooperation in this regard.

If such a claim is made or, in NumSpot's opinion, is likely to be made, NumSpot may, at its expense, either obtain for the Customer the right to continue to use the applicable NumSpot Service, modify the Service to make it non-infringing, or replace it with another Service having equivalent functions. If none of the foregoing options is possible under conditions deemed reasonable by NumSpot and the Customer, the Customer may terminate the Services concerned. NumSpot agrees to refund all sums paid in advance hereunder but not used with respect to the Service concerned, without prejudice to any other rights and remedies of the Customer.

NumSpot is under no obligation to defend or indemnify the Customer if the infringement claim is caused by the Customer's unauthorized modification or infringement of the copyrights in the Services.

ARTICLE 10.   Liability

1. Liability

In any event, NumSpot's civil liability (for losses for which the Customer must provide proof), for all causes combined, except for personal injury and gross negligence, is limited to the ceilings defined below.

This limitation of liability is related to the amount of the Services provided, the technical and financial advantages that the Services provide to the Customer and NumSpot's lack of control over the value of the Customer's Data.

By express agreement, NumSpot declines all liability for indirect or consequential damages, such as, but not limited to: operating loss, loss of sales, loss of data or application corruption, disorganization, damage to the other Party's image, etc. NumSpot shall not be liable for any loss or damage resulting from the use of the Services.

There are various liability ceilings, i.e. the maximum amount (including suppliers and subcontractors) that NumSpot must pay in the event of a breach of its contractual obligations, which apply in accordance with the rules set out in the table below.

Cause of liability	Are there contractual penalties covering the cause of liability?	Applicable ceiling

Any cause except gross negligence or personal injury	In the affirmative	SLA penalty caps
	In the negative	General cap
Gross negligence of personal injury	Non applicable	No cap is applicable

a. General cap

This is the sum capped at the lowest of the following amounts:

1) half of the amount received by NumSpot, exclusive of tax, during the 12 (twelve) month period preceding the date of occurrence of the last harmful event,

2) twelve times the amount of the last month's consumption of the Service whose failure is the initial cause of the harmful event, to the exclusion of any other Service provided to the Customer,

3) the direct loss suffered by the Customer as a result of the occurrence of the harmful event.

The triggering threshold is set at 5,000 (five thousand) euros of loss. If the threshold is reached, the entire loss up to the ceiling must be compensated.

b. SLA penalties ceilings

Where applicable, the penalties associated with the SLA are expressly agreed to be in full discharge of NumSpot's obligations. Consequently, they constitute lump-sum compensation for all damages resulting from NumSpot's failure to comply with the SLA in question, with the Customer expressly waiving any other claim or demand in this regard.

c. No cap

For the sake of clarity, it should be noted that these limitations of liability do not apply, in accordance with the law and case law, in the event of gross negligence.

2. Other liability stipulations

In the context of the present General Conditions, cases of liability require the Party claiming to be the victim of damage to provide proof that the obligation it is invoking has not been performed through the fault of the other Party.

In the case of an obligation not to do something, fault will be presumed if the injured Party demonstrates only that the obligation not to violate current or future laws, regulations and administrative requirements applicable to the activity of a Party has not been performed.

If NumSpot is held liable for the Customer's failure to comply with regulations, including tax regulations, the Customer agrees to indemnify NumSpot in full.

3. Warranty

In the event that NumSpot is condemned for the illegality of all or part of the Customer's Data (in particular for violation of Personal Data legislation, incitement to racial hatred, counterfeiting, health data, child pornography, etc.), the Customer shall, without limitation, indemnify NumSpot for any condemnation, costs and fees incurred, and more generally for any consequential damages that NumSpot may suffer as a result of the Customer's misconduct.

ARTICLE 11.   Force Majeure

Neither Party may be held liable for total or partial non-performance of its commitments in the event of an event presenting the characteristics of force majeure as defined in article 1218 of the French Civil Code. By express agreement, the following are also deemed to be events of force majeure: all attacks on automated information systems (provided that the defaulting Party has implemented a reasonable security policy), major Internet network and electrical malfunctions, the material consequences of measures restricting freedom of movement or supply intended to combat, in particular, pandemics, fires, staff strikes and wars or threats of war, embargoes or international economic sanctions.

If NumSpot is unable to provide the Customer with the fixed-term Resources it has ordered due to events of force majeure, the duration of the Customer's Order will be automatically extended by the duration of the period during which the Resources are unavailable.

ARTICLE 12.   Insurance

When the Customer intends to operate critical or strategic Data (for example, billing data, payroll data, R&D data, etc.) on NumSpot Services, it is the Customer's responsibility to take out insurance covering data loss.

NumSpot certifies that it holds an insurance policy with a reputable and solvent insurance company, covering its Professional Civil Liability and Operating Civil Liability, and undertakes to remain so for the entire duration of the Parties' commitment.

NumSpot may provide a copy of the insurance certificate at the Customer's request, subject to payment of an administration fee.

ARTICLE 13.   Waiver of recourse by third parties

In the event that the Customer uses NumSpot Services to provide a service to third parties who are not familiar with NumSpot or the General Terms and Conditions, such third parties may not invoke the General Terms and Conditions in a claim against NumSpot.

The Customer undertakes to include a waiver of claims against NumSpot in its agreements with its own customers.

In all cases, if the Customer fails to stipulate such a waiver of recourse clause or if such clause should be invalidated or set aside for any reason whatsoever, the Customer shall hold NumSpot harmless from any and all condemnations resulting from recourse by a third party against NumSpot.

ARTICLE 14.   Customer Data

1. General principles

NumSpot recommends that the Customer encrypts its Data and retains the encryption keys. NumSpot has no knowledge of the Customer's Data and undertakes not to access it.

The Customer is responsible for its Data. In particular, the Customer undertakes to make backups of its Data. This backup is the responsibility of the Customer. The Customer is also responsible for the redundancy of its systems and Data, whether with services provided by NumSpot or by providers other than NumSpot.

It is the Customer's responsibility to use the snapshot and object storage services provided by NumSpot in accordance with the service level agreements detailed in Appendix 3.

2. Personal data

The Parties undertake to comply with the regulations in force applicable to the processing of Personal Data and, in particular, Law no. 78-17 of January 6, 1978 relating to information technology, files and freedoms, as amended and Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 applicable as of May 25, 2018.

Aspects relating to the protection of personal data are dealt with in accordance with Appendix 2.

ARTICLE 15.   Confidentiality

In the context of the Services and, more generally, of their contractual relationship, the Parties will exchange confidential information belonging to them, i.e. all information:

I.   which one Party discloses to the other Party with the words "Confidential", "Secret" or with other marks or signs indicating the confidential nature of the information; or,

II.   which, by reason of its nature or the circumstances of its disclosure, would be considered confidential by a reasonable person in a similar position and circumstance; or

III.   information contained in the NumSpot applicability statement and all information relating to TINA, NumSpot's proprietary orchestrator.

All information meeting the above conditions, hereinafter referred to as "Confidential Information", will be confidential regardless of its form and nature - and in particular technical, commercial and financial information, etc., its medium and method of transmission, including information exchanged electronically.

NumSpot and the Customer agree:

- not to communicate Confidential Information to anyone without the written authorization of the party having disclosed it,
- to take all appropriate measures to prevent disclosure of the Confidential Information,
- not to make any direct or indirect use of such Confidential Information other than for use in connection with the Services,
- to limit communication of such Confidential Information to those members of staff who need to know it in the context of the Services, and to act as guarantor on their behalf for compliance with these undertakings as necessary,
- to return or destroy promptly all elements and documents constituting such Confidential Information in their possession and not to retain any copy, extract or reproduction in any form whatsoever.

The above undertakings shall survive 5 (five) years after termination of the Services, for whatever reason.

The confidentiality obligations set forth above do not apply to information:
I.   which was, at the time of disclosure, in the public domain, or which has since fallen into the public domain through no fault of the Party which received it;

II.   which was already known to the Party which received it at the time of disclosure, provided that it can prove this;

III.   which were communicated to the Party which received them by a third party who was not bound by an undertaking of confidentiality towards the Party which issued them.

ARTICLE 16.   Export control, controlled data and sanctions

The provision of the Services and the exchange of information hereunder are subject to all Export Control Regulations.

"Export Control Regulations" means all applicable export control laws and regulations and sanction programs worldwide, including, without limitation, European Union Council Regulation (EU) No. 2021/821 and U.S. Export Administration Regulations (EAR), Office of Foreign Assets Control (OFAC) sanctions for Specially Designated Nationals (SDNs).

"Controlled Data" means any information (i) necessary for the development, production, assembly, operation, repair, testing, maintenance or modification of a product, in any tangible or intangible form (including, but not limited to, written or oral communications, drawings, computer-aided design files, plans, models, photographs, instructions, engineering design and specifications) falling within any category of the controlled items list of any applicable export regulation; or (ii) for which cybersecurity requirements are imposed on the information technology systems used for its storage or transfer. Unless provided for in a separate agreement or in the Special Conditions, the Parties shall refrain from disclosing Controlled Data.

The Customer warrants to NumSpot that the Services ordered hereunder will not be used in violation of Export Control Regulations, including for purposes of proliferation of nuclear, chemical or biological weapons or missile delivery systems, and will not be diverted to any country, corporation or natural person if prohibited by Export Control Regulations.

The Customer agrees to refrain from, and to ensure that all users of the Customer refrain from, processing, storing or downloading any Controlled Data.

NumSpot's obligations hereunder shall be subject to and conditioned upon compliance with Export Control Regulations. NumSpot may terminate or suspend this Agreement and all resources provided hereunder at any time, or more generally cease or suspend performance of its obligations hereunder if Customer violates the export control provisions of this Agreement with respect to Controlled Data or if performance hereunder would cause NumSpot to violate the Export Control Regulations or potentially expose NumSpot to sanctions or penalties from any governmental authority through continued performance hereunder. Any such suspension or termination shall be effective upon written notice to the Customer with effect from the date stipulated in such notice.

ARTICLE 17.   Audits

1. Audit of compliance with the General Terms and Conditions

The Customer may, up to once a year and at his own expense, when this request is duly justified and concerns a subject outside the scope of the various qualification or certification standards, have an audit of compliance with the obligations of the General Terms and Conditions carried out by a third-party auditor validated by NumSpot. The list of such auditors is made available to the Customer upon request.

The Customer acknowledges that NumSpot may refuse the third-party auditor if it proves to be a direct or indirect competitor or if it has reason to suspect a conflict of interest or for any other legitimate reason.

 The Parties shall jointly determine the date of the audit as soon as possible.

The results of the audit will, where appropriate, be used by both parties to provide solutions to any non-conformities identified.

NumSpot also undertakes to provide or make available documents demonstrating compliance with its obligations under Article 28 of the General Data Protection Regulation (GDPR) (EU) 2016/679 and under the requirements of the standards with which NumSpot guarantees to comply within the framework of the General Terms and Conditions. The terms of communication and confidentiality are determined by NumSpot according to the level of sensitivity of the information concerned.

2. Intrusion testing

The Customer is only authorized to carry out operations to assess the level of security and to search for vulnerabilities of its Data and the Resources it uses exclusively within the strict limits and terms defined in this article (hereinafter "Intrusion Tests").

Intrusion Tests are authorized subject to prior notification to NumSpot 1 (one) month prior to their commencement by creating a ticket with NumSpot support.

The Customer shall ensure and declare that it has received all necessary authorizations, in particular from third parties, to perform Intrusion Tests on the Data.

The Customer is authorized to have Intrusion Tests carried out by an independent third-party auditor duly appointed for this purpose, provided the latter:

- does not operate in competition with NumSpot,
- has no legal or partnership ties with any of NumSpot's competitors, and;
- does not present any other form of conflict of interest.

NumSpot may refuse to have the audit performed by the selected third-party auditor if it can provide objective reasons concerning the guarantees of independence and impartiality of the third-party auditor.

The Customer assures that it will abide by the present conditions for the performance of Intrusion Tests by the third-party auditor, as well as deferring and ensuring compliance with them.

The Customer shall ensure that Intrusion Tests are carried out in strict compliance with the laws and regulations in force. The Customer is solely responsible for the consequences of the performance of Intrusion Tests by itself or the third-party auditor.

Under no circumstances may Intrusion Tests be carried out on Resources shared with other Customers. Intrusion Tests must not under any circumstances damage the Services (undermining the integrity, availability, security or confidentiality of the Services and Resources).

In particular, the following are expressly excluded from Intrusion Tests:

- denial of service on the network and Resources,
- brute force attacks on shared environments,
- IP address usurpation,
- Intrusion tests on NumSpot service APIs,
- penetration tests on metadata services,
- penetration tests on firewall service instances (public and VPCs),
- penetration testing of load balancing services,
- penetration testing of VPN service instances,
- penetration testing of license servers,
- intrusion tests on Cockpit,
- intrusion tests or audits on public IPs that are not or no longer associated with customer instances,
- denial-of-service attacks on network (volumetric or protocol attacks), storage or console,
- brute-force attacks on NumSpot API services.

The Customer shall notify NumSpot immediately in the event of the discovery of any vulnerability having an impact on the security, confidentiality, availability or integrity of the Services. The performance of Intrusion Tests remains the sole responsibility of the Customer. In the event of non-compliance with these Intrusion Test conditions, NumSpot reserves the right to take any action it deems necessary to stop the disruption, including suspending the Customer's Resources in accordance with Article 6 "Suspension, Termination of Use and Termination of Services", without prejudice to any compensation NumSpot may be entitled to.

ARTICLE 18.   Miscellaneous

1. Validity of electronic means

All notifications issued hereunder, and in particular formal notices and reminders to the Customer, shall be made by NumSpot by simple email, unless otherwise expressly provided.

The time and date of NumSpot's e-mail server shall be decisive between the Customer and NumSpot.

It is understood that the Customer, regardless of its status, accepts the use of email, as well as other electronic means, as a means of notification.

Notifications will be sent to the email address provided by the Customer when creating his Technical Account, which serves as the identifier for this Technical Account.

The Parties agree to consider electronic messages and, more generally, electronic documents, information or requests exchanged between them, as original writings in electronic form within the meaning of article 1367 of the French Civil Code.

Each Party shall refrain from modifying the content of electronic messages it has received or sent for the purposes of interpreting or executing the present contract.

The Parties thus agree to keep the elements they exchange in such a way as to constitute faithful and durable copies within the meaning of article 1379 of the French Civil Code.

2. Agreement of proof

In the event of a dispute regarding any of the Services provided by NumSpot hereunder, the Parties agree that the production by NumSpot of the data recorded on its systems shall be conclusive evidence of the dispute between the Customer and NumSpot.

3. Limitations and Constraints Related to Beta Services

The stipulations of this article, when they contradict one or more other stipulations of the General Terms and Conditions, always prevail over them concerning the Beta Services. The Beta Services may be modified, suspended or permanently discontinued by NumSpot without notice or compensation. It is therefore the Customer's responsibility to make frequent backups of his or her Data.

Beta Services are provided "AS IS", therefore:

1) NumSpot does not guarantee any level of Quality of Service on a Beta Service and therefore shall not pay any penalties or provide any service credits or assets in the event of malfunction of such Service,
2) NumSpot, to the fullest extent permitted by applicable law, disclaims all warranties, including implied warranties of quiet enjoyment, merchantability and fitness for a particular purpose,
3) NumSpot assumes no liability whatsoever for any loss suffered by the Customer in connection with the use of a Beta Service. If, despite this clause, NumSpot were to be held liable for a Beta Service, its liability would be limited, except in the case of personal injury, to a lump-sum, fixed and final amount not to exceed 350 (three hundred and fifty) euros per Customer,
4) NumSpot (i) advises the Customer not to use the Beta Service in a production environment and (ii) prohibits any use of the Beta Service that would cause it to interact with industrial installation control systems and any systems likely to cause physical harm to persons.

The fact that customer feedback enables NumSpot to improve a Beta Service never confers any intellectual or industrial property rights or any other rights whatsoever on the customer.

Beta Services do not give rise to invoicing, unless otherwise stipulated in any Special Conditions.

4. 4. Corporate social responsibility and anti-corruption

The Parties acknowledge and agree that they will not tolerate any form of corruption in the conduct of their business. In particular, the Parties shall:

I. comply with all applicable anti-corruption laws, regulations, codes and guidelines ("Anti-Corruption Laws"), including, without limitation, anti-corruption legislation applicable in France,

II.   not to engage in any activity, practice or conduct that would constitute a breach of the Anti-Bribery Laws,

III.   not to commit, directly or by omission, any act that would cause the Parties to violate the Anti-Bribery Laws; and,

IV.   promptly report any request for a financial benefit or benefit of any kind received in connection with the performance hereof.

The Parties shall inform each other as soon as possible of any event or fact of which they are aware which would invalidate the representations and warranties given in this article. The Parties undertake to encourage their own customers, suppliers and subcontractors to adhere to the above principles. In the event of non-compliance by either Party with any of these principles, the other Party will be entitled to terminate the contractual relationship with immediate effect and the Party at fault undertakes to indemnify the other Party against any loss (including any operating loss, damage to image, indirect or intangible damage, etc.), damages, costs, fees and expenses incurred by the Party as a result of such breach.

The Parties undertake to implement the main pillars of the ISO 26000 standard on Corporate Social Responsibility within their organization and ecosystem.

The Parties recognize and respect applicable laws, in particular those relating to fundamental rights, and the values of the European Union concerning respect for human dignity, freedom, equality, democracy, the rule of law, social rights and environmental protection, such as the Universal Declaration of Human Rights, the Fundamental Principles and Rights at Work of the International Labour Organization, the OECD Guidelines for Multinational Enterprises and the United Nations Convention on the Rights of the Child. The Parties undertake to combat child labor, forced labor and discrimination. They undertake to guarantee freedom of association, the right to collective bargaining, adequate remuneration and working conditions that ensure the health and safety of their employees within the limits of applicable law.

The Parties undertake to comply with applicable environmental protection legislation and to reduce their greenhouse gas emissions in line with the objectives defined by the Paris Agreements.

5. Language

These terms and conditions are available in English and French. In the event of contradiction, the French version shall prevail in all cases.

6. Subcontracting

NumSpot may subcontract the present contract subject to compliance with its obligations, in particular under any Particular or Specific Conditions.

7. Independence of the Parties

The present contract may in no way be interpreted as creating a corporate relationship between the Parties or as a management lease or even as a subcontracting of the Customer's business. They exclude any notion of provision of personnel falling within the scope of temporary employment regulations.

8. Nullity of a clause

Should any of the clauses herein be deemed to be contrary to the law, the Parties shall replace it with another clause which complies with the law, and the spirit of which is as close as possible to the invalid clause.

9. Jurisdiction and applicable law

The present contract is governed by French law.

The Parties shall seek to resolve amicably any dispute which may arise between them concerning the existence, validity, interpretation or performance of the present contract.

In the absence of amicable agreement, any dispute which may arise concerning the formation, interpretation or performance of the present terms and conditions shall be submitted to the competent courts of the Versailles Court of Appeal, which shall have exclusive jurisdiction, including in summary proceedings, notwithstanding third-party appeals or multiple defendants.

Annex 1 – payment and financial conditions

1. Price

The price of the Services is defined in the Special Conditions or, failing this, in the Public Pricing.
Prices are in euros and are exclusive of VAT and any other applicable taxes.
Invoices are issued monthly in arrears for Services consumed on demand, and in arrears for fixed-term Services (notably Instance Reserves). Any resources not consumed by the end of the Instance Reserve period will not be reimbursed.
NumSpot reserves the right to issue interim invoices in the event of consumption exceeding normal usage.
In the absence of Special Conditions, invoices are payable at the end of the month in which the invoice is issued.

2. On Demand billing event

For all On Demand Services, it is sufficient for the Customer to consume a Service on one of his Technical Accounts for the price of these Resources to be due by the Customer and billed by NumSpot.

3. Payment of invoices

The Customer is responsible for the proper payment of NumSpot invoices when due. To this end, the Customer must keep his bank and billing details up to date and ensure that there are sufficient funds in his bank account.
The default method of payment is direct debit. The Customer must return the duly completed direct debit mandate (see Appendix 4) and the bank details of the corresponding account when signing these General Terms and Conditions. The Customer will be informed fourteen (14) days before the date of the direct debit.
In the event of late payment, a fixed indemnity for collection costs of the legal amount of 40 (forty) euros, in accordance with article D.441-5 of the French Commercial Code, will be due from the first day of late payment, the Customer being a professional.
Late payment penalties will also be due from the first day of late payment on a prorata temporis basis at the prime rate of the European Central Bank (ECB) plus 10 percentage points. No discount will be granted for early payment.
In addition to the above indemnity and penalties, any delay in payment by the Customer may result in termination of the Contract in accordance with the procedure set out in article 6 "Suspension, cessation of use and termination of Services".
If the Customer fails to contest an invoice within 15 (fifteen) days of its issue, the Customer will be deemed to have irrevocably accepted it.

4. Billing communications

The Customer agrees to allow NumSpot to send invoices electronically. In order for NumSpot to follow up on invoices, the Customer must provide NumSpot with the contact information for its accounting department.

<p style="text-align:center;">Annex 2 - Conditions related to personal data (DPA)</p>

The Parties agree to contractually govern the processing of "Personal Data" carried out as part of the Services provided by NumSpot to the Customer.

I. Definitions

The terms "Personal Data", "Data Controller", "Data Subject", "Personal Data Breach", "Processing", "Subcontractor", and "Supervisory Authority" have the same meaning as in applicable data protection laws.

II. Purpose of the agreement

In the context of their contractual relationship, the Parties undertake to comply with the regulations in force applicable to the processing of Personal Data and, in particular, the French Data Protection Act no. 78-17 of January 6, 1978, as amended, and Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, applicable as of May 25, 2018.

III. Processing carried out by the Parties as independent Data Processors

Each Party acknowledges that, for the processing of business contact information required hereunder, the Customer and NumSpot each act as independent Data Processors in accordance with their respective personal data protection policies.

In the context of their contractual relationship, the Parties undertake to comply with the regulations in force applicable to the processing of Personal Data and, in particular, Act no. 78-17 of January 6, 1978 on Data Processing, Data Files and Individual Liberties, as amended, and Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 applicable as of May 25, 2018.

In addition, in order to enable the Services it provides to be carried out, NumSpot also processes certain Customer Personal Data in its capacity as Data Controller.

The purposes of this processing are as follows:

- Customer relationship management: Personal Data processed by NumSpot to manage the customer relationship (in particular security, service improvement, assistance, support, sales management, etc.) is kept by NumSpot for the duration of the present agreement between the Customer and NumSpot, plus any applicable statute of limitations. This data is processed on the basis of the performance of the present contract between NumSpot and the Customer.

- Compliance with specific legal obligations: Personal Data processed by NumSpot to comply with certain legal obligations (accounting, invoicing, management of possible litigation, etc.) is retained in accordance with applicable law.

In these specific cases, NumSpot may transfer Data to third-party service providers. If these service providers are located outside the European Union, transfer mechanisms based on the European Commission's standard contractual clauses will be put in place.

NumSpot, in accordance with applicable regulations, may carry out further processing compatible with the initial purpose of the processing.

NumSpot may use certain information at its disposal for statistical purposes, to improve its Services or to direct research and innovation in the field of Cloud Computing. To this end, some of this information may be processed, which the Customer acknowledges and accepts.

IV. Processing performed by NumSpot as Subcontractor or Subsequent Subcontractor

In performing its Cloud Computing Services with respect to the storage of the Customer's Personal Data on the NumSpot Infrastructure, NumSpot acts either:
- as a Sub-Contractor, when the Customer acts as a Data Controller, or;
- as a subsequent Sub-Contractor in cases where the Customer is itself a Sub-Contractor of a third party.

The Customer acknowledges and accepts that it is and will always remain the Controller of all Personal Data processed on its behalf in connection with its access to and use of the Services.

Where the Customer acts as a Subcontractor on behalf of a third party, the Parties expressly agree that the following conditions shall apply:

The Customer warrants that it has ensured that the Services are in accordance with the instructions of the Data Controller.

The purpose of these clauses is to define the conditions under which NumSpot undertakes to carry out the Personal Data processing operations defined below on behalf of the Customer.

NumSpot is authorized to process on behalf of the Customer the Personal Data necessary to provide its Services.

Description of processing:
- The nature and purpose of the processing is the storage of Customer Data on the NumSpot Infrastructure.
- The type of Personal Data processed is all Personal Data stored on the NumSpot Infrastructure by the Customer.
- The categories of Data Subjects are determined by the Customer.
- The duration of processing is the duration of the Services under the conditions described herein.

The technical and organizational security measures that NumSpot undertakes to respect are those described herein and result in particular from compliance with ISO 27001 and 27018 standards as well as NumSpot's compliance with the CISPE code of conduct.

V. Obligations of the Parties when NumSpot acts as Subcontractor or Subsequent Subcontractor

A.   Obligations of the Subcontractor (or subsequent Subcontractor)

1. Purposes

The Subcontractor undertakes to process Personal Data solely for the purpose(s) for which it is subcontracted.

2. Customer instructions

As a Subcontractor, NumSpot undertakes to process Personal Data in accordance with the Customer's instructions. The Agreement between the Customer and NumSpot and the Customer's use of the Services provided by NumSpot shall constitute the Customer's complete and final instructions regarding Data Processing. If the Subcontractor considers that an instruction constitutes a violation of Personal Data Legislation, it will inform the Customer.

3. Confidentiality

NumSpot undertakes to guarantee the confidentiality of the Personal Data processed hereunder. NumSpot undertakes to ensure that persons authorized to process Personal Data hereunder receive the necessary training in the protection of Personal Data and undertake to respect confidentiality or are subject to an appropriate legal obligation of confidentiality.

4. Protection of Personal Data by design and by default

NumSpot undertakes to take into account, with respect to its Services, the principles of protection of Personal Data by design and protection of Personal Data by default.

5. Subsequent subcontracting

In the event of recourse to subsequent subcontractors, the Subcontractor shall inform the Data Controller of any planned changes concerning the addition or replacement of other subcontractors and shall provide the Data Controller with the list of said subcontractors.

6. Data Subjects' right to information

The Data Controller is responsible for providing information to Data Subjects at the time of collection of Personal Data.

7. Exercise of personal rights

Insofar as possible, NumSpot assists the Customer in fulfilling its obligation to comply with requests to exercise the rights of Data Subjects: right of access, right of rectification, erasure and objection, right to limitation of processing, right to portability of Personal Data, right not to be subject to an automated individual decision (including profiling). If Data Subjects request NumSpot to exercise their rights, NumSpot will send these requests as soon as possible by e-mail to the Customer.

8. Subcontractor cooperation

As part of the Data Controller's compliance with its obligations and to the extent possible, NumSpot assists the Customer in carrying out impact analyses relating to the protection of Personal Data as well as in carrying out prior consultation with the supervisory authority.

9. Security measures - Technical and organizational measures

The Data Controller and the Subcontractor must implement appropriate technical and organizational measures to guarantee a level of security appropriate to any risks.

NumSpot undertakes to implement the security measures set out in ISO 27001 certification.

NumSpot is certified as compliant with the Code of Conduct for Cloud Infrastructure Providers relating to Data Protection (or CISPE code) approved by the CNIL, in accordance with articles 32 and 42 of the GDPR.

The Customer remains solely responsible for the security of the systems it implements when using the Services (firewalls, updates, access rights management...). NumSpot hereby provides the Customer with the necessary information (in particular the Declaration of Applicability) to enable the Customer to assess the compliance of NumSpot Services with its security requirements.

The Subcontractor undertakes to implement the following security measures under the conditions described herein:
- the means used to guarantee the confidentiality, integrity, availability and resilience of processing systems and services;
- the means to restore the availability of personal data and access to it within an appropriate timeframe in the event of a physical or technical incident;
- a procedure for regularly testing, analyzing and evaluating the effectiveness of technical and organizational measures to ensure the security of processing.

10. Transfer of Personal Data to third countries

NumSpot Services allow the Customer to store and process Data exclusively within the EEA region. NumSpot will under no circumstances transfer the Customer's Personal Data outside their Region, unless specifically instructed to do so by the Customer.

Prior to any transfer of Personal Data, the Customer undertakes to verify that (i) the NumSpot Service Specifications applicable to the Regions to which it intends to transfer its Data and (ii) the Personal Data Legislation applicable in that Region, comply with its needs and constraints, particularly in terms of security.

11. Notification of Personal Data Breaches

NumSpot implements a security incident management policy that includes procedures for identifying and responding to security incidents of which NumSpot becomes aware. If NumSpot becomes aware of an unauthorized or accidental access, destruction, loss, disclosure or alteration of Data within its Infrastructure, and if this creates risks for the rights and freedoms of the Persons Concerned, NumSpot notifies the Customer as soon as possible after becoming aware of it (and at the most within FORTY-EIGHT (48) HOURS after becoming aware of it), by means of an e-mail. This notification shall be accompanied by any useful documentation to enable the Customer, if necessary, to notify the relevant supervisory authority of the Personal Data Breach. In particular, the notification will describe the nature of the breach, its consequences, the measures taken by NumSpot in response to this incident and will indicate a point of contact at NumSpot. If and insofar as it is not possible to provide all this information at the same time, the information may be communicated in instalments without undue delay.

12. Retention of Personal Data

Upon termination of the Services, and unless otherwise instructed by the Customer, NumSpot agrees to delete all Customer Data. Once destroyed, NumSpot may justify the destruction in writing at the Customer's request. The Data may not be recovered thereafter.

13. Data Protection Officer

The Data Protection Officer appointed by NumSpot can be reached at the following address: dpo@numspot.com

14. Register of categories of processing activities

NumSpot declares that it keeps a written record of all categories of processing activities carried out on behalf of the Customer.

15. Documentation and audit

NumSpot shall make available to the Customer the documentation necessary to demonstrate compliance with all of its obligations and to allow audits to be conducted under the terms of Article 17 "Audits", including inspections, by the Customer or another auditor appointed by the Customer.

The Customer undertakes to document in writing all instructions concerning the processing of Personal Data by NumSpot. The Customer shall ensure that NumSpot complies with its obligations under applicable regulations prior to and throughout the processing. He/she supervises the processing, including conducting audits and inspections of NumSpot.

B.   Obligations of the Data Controller

The Data Controller undertakes to:

- provide the Data Processor with the data concerned,
- document in writing any instructions concerning the processing of data by the Sub-processor,

- ensure, beforehand and for the duration of the processing, that the Sub-processor complies with the obligations set out in the regulations applicable to Personal Data,
- supervise the processing, including carrying out audits and inspections of the Sub-processor.

VI. Supervision

The Parties agree that the supervisory authority responsible for ensuring that they comply with the regulations on Personal Data regarding the performance of this agreement is the Commission Nationale Informatique et Libertés (CNIL).

Annexe 3 – Service Level Agreement (SLA)

The SLAs are sometimes only applicable on condition that the Customer deploys its Systems in all the Availability Zones that exist in the Region. If, when possible, the Customer decides not to deploy in all the Availability Zones in the Region, it will not be able to request application of the SLA. These SLAs are marked with a star (*).

This limitation does not apply to the APIs provided by NumSpot, nor to the infrastructure set up and managed by NumSpot and therefore NumSpot's responsibility. For the latter, the SLAs generally apply regardless of the type of deployment chosen by the Customer.

These guarantees allow NumSpot to commit to the following SLAs on a 24/7 basis:

SLA1 – Domain availability

- The individual Availability of a Region is 99.9% per year,
- The individual Availability of an Availability Zone is 99.7% per year.

SLA2 - "Intra-cloud network provisioning service"

The intra-cloud network is secured in the same way as the network coming from the Internet via the security groups. The Customer is advised that if it decides to override the security groups via the command API for its internal resources, the configuration of the security groups will NOT be applied.

Latency in the internal network depends on many parameters, including the proximity of Availability Zones. The redundancy of a Region is a balance between the geographical spacing of the Availability Zones and the maximum latency bearable by the Service.

- Internal network availability: 99.99% per year,
- Maximum inter-resource latency (excluding Object Storage): 10 ms,

SLA3 - "Internet Services (DNS, NTP) and Cloud Computing Metadata Service"

The Customer is informed by NumSpot that its Systems are protected against intensive use that could lead to denial of service. Any automatic activation of countermeasures due to misuse by the Customer and resulting in Service unavailability for the Customer shall not be counted as such.

- Availability of DNS, NTP and DHCP Services: 99.8% per month.
- Availability of Metadata Services: 99.8% per month

SLA4 - "Secure network provisioning service to the Internet"

NumSpot is state-of-the-art when it comes to its connections via the Internet. In particular, it uses several access providers and the BGP4 protocol to ensure redundancy. This protocol may lead to untimely route changes that are beyond NumSpot's control, but in general it ensures access availability.

In the event of an incident, the first 2 minutes are never considered, as the convergence time of the BGP4 protocol is 90 seconds. The availability calculation will therefore subtract 2 minutes per incident.

- Internet access availability: 99.999%* per year

In the event of a cyber attack, particularly a Distributed Denial of Service (DDoS) attack, NumSpot may modify its Internet routing configuration to mitigate the attack as much as possible and protect its Infrastructure. If it is a Customer IP that is targeted by the attack, NumSpot may use the BGP "blackhole" community to prohibit upstream

from its suppliers all traffic to the IP under attack in order to protect the Customer's other resources, as well as NumSpot's other customers and its Infrastructure.

NumSpot encourages the Customer to do the same, in particular by using WAF software on the market, but also by configuring security groups via the command API. By default, NumSpot filters all incoming traffic to the Customer's public IPs and it is up to the Customer to open the flows it requires. NumSpot insists that the Customer opens its flows at a minimum and in particular does not open SSH (TCP port 22) and RDP (TCP port 3389) administration flows to the entire Internet (subnet 0.0.0.0/0), as well as internal protocols such as SMB (TCP/UDP port 445) or NFS (TCP/UDP port 2049).

-   Availability of Logical Firewalls in charge of security groups: 99.8%* per month,
-   Command API Service availability: 99.9% per month.

SLA5 - "On-demand load balancing service"

-   Availability of virtual load balancers: 99.78% per month,
-   Command API Service availability: 99.9% per month.

SLA6 - "Object Storage Service"

-   Storage Durability of an Object on a considered Region is guaranteed at 99.9999999999% per year,

-   The Availability of the API provided by NumSpot and enabling the publication and manipulation of Customer Objects by the latter is 99.97% per year,

-   The Availability of APIs provided by NumSpot and allowing Users to access stored objects is 99.97% per year for objects deployed on a Region.

For information purposes, it is specified that a latency to or from Object Storage of less than 200 ms is a criterion for Object Storage Service Availability.

Regarding the Object Storage Service, Durability is understood to be subject to use in accordance with the state of the art of the Services and excluding any alteration of data, whether voluntary or involuntary, caused by an action on the part of the Customer.

The Object Storage Service, as its name indicates, must not be used in block mode (for example for an active database). The use of Object Storage in block mode via technical means of circumvention (e.g. FUSE under Linux) is not a state-of-the-art use of Object Storage and any incident linked to this use will not be covered by this SLA.

SLA7 - "Persistent Storage Service"

Persistent storage is a Service subscribed to by the Customer in its management interface or API.

-   The availability of a volume is guaranteed at 99.7% per month. By default a volume is only available on its original Availability Zone,

-   The availability of a Snapshot is 99.7% per month. A Snapshot is available over the entire Region,

-   The Durability of a Snapshot is 99.9999999999%. This Durability is only acquired 24 hours after its creation.

- For Virtual Machines with guaranteed IOPS persistent storage disks attached, NumSpot agrees to provide the subscribed number of IOPS within the technical limit per disk and per Virtual Machines, for 4 KB blocks, at least 90% of the time over a month.

The Durability of a volume is not guaranteed, as it is an active block mode storage that can be impacted by any impromptu downtime problem. For example, the crash of a physical element of the NumSpot Infrastructure can lead to the shutdown of a Virtual Machine resource and the corruption of a Persistent Storage volume that has been abruptly shut down in an inconsistent state. Similarly, a "terminate" or "force-stop" command can cause a Virtual Machine resource to be abruptly shut down, thereby corrupting attached volume resources.

NumSpot can never be held responsible for volume consistency problems; it is the Customer's responsibility to ensure that all necessary backups have been made to preserve data and that state-of-the-art architectures have been implemented to restore volumes to a consistent state.

SLA8 - "Non-Persistent Storage Service"

The Non-Persistent Storage Service is a storage space used by the Virtual Machine, whose data will be deleted when the machine is restarted.

The Non-Persistent Storage Service has absolutely NO guarantee. NumSpot informs the Customer that the Service may stop or malfunction at any time, and that it is the Customer's responsibility to restart their Virtual Machine resource if the failure of this Service has an impact on its availability.

This Service must only be used for specific cases as a temporary and non-critical storage location and especially not for data such as production data that must be stored on other types of more durable storage.

SLA9 - "A la carte Virtual Machine Provisioning Service"

- The individual Availability of a bare-metal Infrastructure resource is 99.7% per month,
- The Availability of a Virtual Machine is 99.7% per month,
- The Availability of the Command API Service is 99.9% per month.

If a hardware resource in NumSpot's Infrastructure causes a Customer's Virtual Machine to shut down, for example the shutdown of a physical NumSpot server causing a Customer's Virtual Machine to shut down, by default the Customer's Virtual Machine is in a "stopped" state to prevent its restart from causing additional damage (including data loss, corruption). It is the Customer's responsibility to monitor their Virtual Machines and restart them if necessary. The time required by the Customer to do this is not included in the calculation of the unavailability of a Virtual Machine.

The time to be counted as the unavailability of a resource is the time during which, following the shutdown of the resource, the Customer is unable to restart it.

NumSpot informs the Customer that any abnormal use of its Infrastructure and in particular in the event of an overload of its command APIs (hammering), security countermeasures may be automatically activated and block access to the command APIs or certain NumSpot Services. In this case, it is not an unavailability, but a backup procedure for the NumSpot Infrastructure, and the Customer will not be able to count this as an unavailability.

Finally, NumSpot informs the Customer that duplicate requests to its APIs are limited to one per second (throttling). The fact that the Customer sees identical requests presented to the API at a higher frequency and refused on this basis cannot be counted as unavailability.

SLA10 – Support

A NumSpot support ticket must be created for each need or incident. Opening this ticket with all the required information is the necessary prerequisite and the starting point for assessing NumSpot's compliance with its commitments.

The calculation of the Response Time Guarantee (RTTG) is the difference between the time the Customer opens the ticket and the first response from NumSpot support.

The calculation of the Recovery Time Guarantee (RTG) is measured between the opening of the ticket with all the mandatory information to be provided by the Customer and the resolution of the incident by NumSpot support. The Customer's response time to answer a NumSpot support question is deducted from the calculation of the Recovery Time Guarantee (RTTG).

An incident that is not observed by the NumSpot support team can only be measured if the Customer provides the elements required to trace an interruption or degradation of service.

The Guaranteed Response Times (GRT) and Guaranteed Restoration Times (GRT) are detailed below by incident severity:

GTI	GTR	Incident Severity	Description
15 minutes	2 hours	1 (Major)	Total and lasting unavailability of a service: - Storage Object - FCU - API - Network - EIM Excluding scheduled maintenance.
30 minutes	4 hours	2 (High)	Degradation of a service or the performance of a service: - Storage Object - FCU - API - Network - EIM - Customer portal - Tools for which a workaround solution exists (e.g. Cockpit)
1 hour	48 business hours ouvrées (ie 6 days)	3 (Minor)	Isolated incident, bug or regression, request for analysis of a customer incident.

In the event of a request that is not an incident, NumSpot support will process the ticket as quickly as possible in line with support opening hours, i.e. from 8am to 8pm, Monday to Friday.

Penalties associated with SLAs

Penalties are calculated according to the following formula:

$P_s = (S_g - S_c) * 10 * CA_{cm}$

P_s : Penalty for the Service in question

S_c : Observed availability of the Service in question over the calculation period

S_g : Availability promised by SLA for the Service in question over the calculation period

CA_{cm} : Average monthly turnover generated by the Customer over a sliding year on the Customer's Technical Account.

If there are several breaches of the SLAs, the Penalties are cumulative.
The total Penalty may never exceed the value of CA_{cm}.

Calculation example:

Assume a Customer using 3 NumSpot Services. The Object Storage Service, the On-Demand Virtual Machine Provisioning Service and the On-Demand Load Balancing Service. We define:

S1: Availability of APIs provided by NumSpot and allowing users to access stored objects.
S2: The availability of the API service for controlling the On-Demand Virtual Machines
S3: Availability of virtual load balancers

For example:

- $S1_c$ = 97,9% when $S1_g$ = 99,99%
- $S2_c$ = 99,95% when $S2_g$ = 99,9%
- $S3_c$ = 98,5% when $S3_g$ = 99,8%

$S2_c > S2_g$, therefore the Service is properly furnished in the frame of the SLA. Only $S1_c$ & $S3_c$ are inferior to the SLAs.

For an average monthly bill calculated over the year of 10,000 euros excluding VAT. The credit calculated will therefore be:

$$P = (99,99\%-97,9\%)*10*10000+(99,8\%-98,5\%)*10*10000$$
$$P = 3390 \text{ Euros.}$$

NumSpot

Annexe 4 – SEPA Direct Debit Mandate

NAME AND ADDRESS OF THE DEBTOR	
Corporate name (*)	
Address (*)	
ZIP code (*)	
City (*)	
Country (*)	

(*) mandatory information

DESIGNATION OF THE INSTITUTION HOLDING THE ACCOUNT TO BE DEBITED (Name and address of your bank)	
Bank name (*)	
Address (*)	
ZIP code (*)	
City (*)	
Country (*)	

(*) mandatory information

DEBTOR INTERNATIONAL BANK CODE (BIC) – Mandatory

ACCOUNT TO BE DEBITED (International Bank Account Number - IBAN) - Mandatory

NAME AND ADDRESS OF COUNTERPARTY (if different from debtor)	
Corporate name (*)	
Address (*)	
ZIP code (*)	
City (*)	
Country (*)	

(*) mandatory information

SEPA Creditor information (ICS)
FR15ZZZ588627

Type of payment: recurring

Unique Mandate Reference (RUM) - (reserved exclusively for the creditor)																		

This request is valid until cancelled by me, to be notified to the creditor in good time.

By the present mandate, NUMSPOT is authorised to give instructions to debit the above-mentioned account for all sums which you or the contractor may owe to NUMSPOT, in respect of the billing account(s) designated above, whatever the date and provided that these have not been the subject of a direct debit authorisation or a SEPA direct debit mandate on another bank account, in compliance with the applicable regulations. You are entitled to a refund from your bank in accordance with the conditions described in the agreement you have signed with it. Any request for reimbursement must be made within 8 weeks of the date on which your account was debited.

If you wish to terminate your agreement, you must revoke the "SEPA Direct Debit Mandate" with the creditor, giving one month's notice. We recommend that you inform your bank.

Made on:
Name of signatory:
Position of signatory:
Signature and company official stamp:

Your rights regarding SEPA direct debits are explained in a document that you can obtain from your bank. The information contained in this mandate, which must be completed, is intended to be used by the creditor solely for managing its relationship with its customer. It may give rise to the exercise, by the latter, of his rights of access, rectification and opposition as provided for in the "Data Protection Act" of 6 January 1978 as amended.