

## Article 1 - Scope of application

1.1 Terms beginning with a capital letter have the meaning defined in this Contract, or, failing that, by the definition given in the Infomaniak Lexicon available on the Infomaniak Site.

1.2 The Special Conditions apply without restriction or reservation to the Jelastic Cloud Service (hereinafter "Jelastic") offered by Infomaniak. They complete but will prevail over the Terms and Conditions of Use (hereinafter referred to as "TCU") if a contradiction should appear between these documents.

1.3 In accordance with Infomaniak's TCU and according to the terms and conditions set out therein, these Special Conditions may be modified to take into account any legal, jurisprudential or technical evolution.

## Article 2 - Description and scope of the Service

2.1 As part of the Jelastic Service, Infomaniak provides the Customer with storage and virtual server services on an infrastructure connected to the Internet, as well as a Customer interface allowing the creation/management of selected applications (Java, PHP, Ruby, .Net, Node.JS, Python, etc.) in a Cloud environment.

2.2 Use of the Service begins with a free trial period. During this period, the Customer has the possibility of testing a version of the Service with limited functionalities and without guarantee, and the Customer can, at any time, choose to switch to the paid version in order to use the full version of the Service. The trial period will end automatically after the period mentioned on the Infomaniak Site. The Customer will not be able to start a trial after registering as a User of the full version of the Service and any attempt to circumvent the time limit during this trial period will be considered as a violation of these conditions.

2.3 Infomaniak is constantly developing the Service and may introduce changes to the Service and the operating environment at its discretion. Infomaniak will inform the Customer in advance of any changes that may affect the Service. If such changes require hardware or software modifications by the Customer, the Customer will have to make these changes at his own expense.

## Article 3 - Invoicing

3.1 The Service is invoiced according to the use of the resources and the rates are indicated on the Infomaniak Site.

## Article 4 - Infomaniak's obligations and responsibilities

4.1 Infomaniak undertakes to carry out all the tasks incumbent upon it in accordance with these special conditions, with all due care and with the required degree of competence.

4.2 The Customer is informed that Infomaniak's intervention within the framework of the subscription of a contract relating to the Service is limited to the provision of the material and network resources necessary for the correct operation of the Service.

4.3 Infomaniak undertakes to: • Maintain the Infrastructure in working order; • To replace, in the event of failure, the defective equipment as soon as possible, except for failures that are not of its own making, or any other interventions that would require an interruption of the service that exceeds the usual replacement times; • To intervene as soon as possible in the event of an incident not resulting from misuse of the Service by the Customer;

4.4 Infomaniak's liability in the event of loss or corruption of data will be limited to that resulting from its failure to comply with its contractual commitments.

4.5 Infomaniak reserves the right to interrupt or limit its services to the Customer, in order to carry out a technical intervention to improve its operation.

4.6 Infomaniak does not give any guarantee related to the consequences of the use of the Service by the Customer.

## **Article 5 - Customer's obligations and responsibilities**

5.1 The Customer is responsible for ensuring that its operating environment is consistent with the configuration chosen in the Service Specification.

5.2 Customer is solely responsible for the files transmitted to the Jelastic and assumes all risks associated with them, including those relating to intellectual property or other legal claims.

5.3 In respect of any standard software and any other software developed or provided by third parties, the Customer agrees to accept and abide by the terms and conditions applied by third parties to the rights of use, licence and service associated with such software.

5.4 The Customer furthermore undertakes to keep its scripts, applications (CMS, software and others) and their dependencies up to date.

5.5 The Customer understands and agrees that Infomaniak will not be liable to the Customer for any loss, including indirect, incidental, special or consequential damages, incurred by either party as a result of the loss, theft, unauthorized disclosure, unauthorized manipulation, alteration, deprivation of use or any other compromise of the identifiers or passwords used by the Customer.

5.6 The resources provided (including storage, traffic, CPU usage, memory usage and public IP addresses) may only be used for the ordinary operations of the Service. With regard to intensive use of resources by the Customer or by users of the Service (e.g., downloading of data going

beyond ordinary operations such as videos, streaming, games, file sharing, high number of simultaneous accesses, excessive storage of data files, caching of files, excessive access to the SSD (reading and/or writing, etc.) Infomaniak is entitled to set thresholds at any time and at its discretion for the consumption of resources and to limit the provision of the Service to the Customer accordingly.

5.7 The installation of applications/scripts that could compromise the normal function or security of the network is not permitted. In particular, the execution of the following processes is prohibited: a) file sharing services (Peer-to-Peer software); b) bruteforce Programs/Scripts/Applications; c) mail Bombs/Spam Scripts; d) bots, Bouncer, IRC Services ; e) port scanning (sniffing, spoofing...); f) any activity related to cryptocurrencies; g) contentious behaviour such as peering (Hitleap, Jingling); h) black Hat SEO (downloading and re-uploading videos on online video platforms, among others); i) the provision of unboxing services aimed at enabling large-scale downloading on file hosting platforms. This list is not exhaustive and in case of doubt, it is the responsibility of the Customer, before installing an application/script, to check whether the activation is authorized by Infomaniak.

5.8 The Customer accepts that his data involves transmission over the Internet and other networks that are not exclusively under the control of Infomaniak. The Customer is responsible for the protection and the level of encryption of his data and accepts the risks associated with electronic communications and the possibility that unauthorized third parties may have access to it, and he accepts that Infomaniak is not responsible for any loss, theft or damage.

5.9 The Customer is furthermore informed that he/she will not have physical access to the servers at any time.

## Article 6 - Safety guidelines

6.1 A violation of the security of Infomaniak's systems and network constitutes a contractual violation for which the Customer is liable under civil law. In addition, if the necessary preconditions are met, the Customer will also be held criminally liable. In particular, the following actions constitute such violations of system and network security: a) Unauthorized access to or use of data, systems and network elements, checking the vulnerability of the system or network without prior agreement (analysis) or attempting to penetrate security and authorisation measures without prior written agreement from Infomaniak; b) Unauthorized monitoring of data traffic without the prior written consent of the competent authorities or Infomaniak (sniffing); c) Damage to Infomaniak's systems and its customers, through attempts to overload the system (flooding); d) Hacking of management information in TCP/IP packets (packet headers).

## Article 7 - Sending emails

7.1 Customer is responsible for the content of messages that may be sent through the Jelastic Cloud service.

7.2 The sending of e-mails to a large number of recipients is prohibited without the prior consent of all recipients (double opt-in), without a clear and correct indication of the identity of the sender or without offering the possibility of a free opt-out.

7.3 The use of a mail server as a distribution (relay) station for processing unsolicited messages to a large number of recipients is prohibited.

## Article 8 - Backup and location of data

8.1 All data transmitted by the Customer to Infomaniak is stored and hosted exclusively in data centres located in Switzerland which are the property of Infomaniak.

8.2 The Customer is responsible for the proper configuration and use of the Server. It is responsible for implementing its own measures to maintain appropriate security, protection, backup, and availability of its data, which may include the use of encryption technology to protect its data from unauthorized access and the archiving of such content.

8.3 The Customer acknowledges that any termination, whether as a result of non-payment or voluntary or involuntary action on the part of the Customer, will result in the immediate, definitive and irrecoverable deletion of all data contained on the Server. The Customer shall take care to proceed to the prior repatriation of all his data in the event of early and voluntary termination.

## Article 9 - Privacy Policy

9.1 Full details of the Privacy Policy can be found on the website <https://www.infomaniak.com/en/legal/confidentiality-policy>.

## Article 10 - Service Level Agreements (SLAs)

### 10.1 Service level commitments

10.1.1 Availability rate The availability rate is calculated based on the total number of minutes in the selected month minus the total minutes of unavailability in the selected month, divided by the total number of minutes in the selected month. More specifically, Infomaniak undertakes to ensure the following rate of availability for the product: 99.9%.

10.1.2 Unavailability rate The maximum unavailability shall not exceed 5 minutes per month. Exceeding the unavailability or recurring unavailability will give rise to a penalty system set out below.

10.1.3 Error classes and response times The table below summarises the maximum allowable times per failure against the identified error classes. An occurrence is open until a failure is reported as being resolved by Infomaniak. Error class Effects Interruption time A Unavailability of

the service 5 minutes A2 Additional minutes of unavailability of A 1 minute B Slowdown of the internet network 60 minutes C Service security problem 60 minutes D Problem related to a service update 120 minutes E Failure of one of the customer's virtual servers 120 minutes

10.1.4 Penalties Except in the case of force majeure (see below), the customer can claim the application of penalties in the case of disruptions to the resources due to a failure by Infomaniak or one of its subcontractors. In all cases, the amount of the penalty may not exceed 50% of the amount of the current contract. The penalty rates are set out in the table below and the corresponding amount, calculated on the invoice for the period during which the unavailability occurred, will be deposited into the prepaid account. Error class Occurrence(s) per year Percentage of current contract amount A 1 10% A2 Not applicable 1% A 2 20% A 3 30% A 4 50% with possible breach of contract B to E 2 5% B to E 4 10% B to E 6 20% B to E 8 30% The Customer can only claim the application of penalties if the notification of the unavailability of resources is made at the latest two months after the occurrence of the latter, and on the condition that he sends Infomaniak a request including: • The date(s) and time(s) of the start and end of the unavailability; Infomaniak will analyse the cause of the unavailability and will reserve the right to request additional information in order to carry out its analysis. If this analysis shows that the unavailability is due to Infomaniak (except in cases of force majeure, see end of document), then it will apply the penalties provided for in the table above in accordance with the rate of unavailability identified.

10.1.5 Exclusion factors The application of penalties in the event of unavailability of the Service is not envisaged when the latter occurs as a result of: • factors over which Infomaniak has no control; • inappropriate use of the Service by the Customer; • planned maintenance; • a blocking applied by Infomaniak and resulting from a decision in accordance with our TCU;

## 10.2 Resolving system errors and failures

10.2.1 Error reports Failures are analysed in detail in order to understand their origin and to enable the implementation of measures to prevent their recurrence. The Customer will be warned of any failure detected by Infomaniak.

10.2.2 Complaints handling (escalation process) Complaints must be submitted electronically to Infomaniak via the contact form (<https://support.infomaniak.com>) or directly from the assistant available in the Administration Console.

10.2.3 System failures and errors Principle Infomaniak does everything possible to guarantee availability as indicated above. In the event of a breakdown of one of the elements, Infomaniak undertakes to restore the faulty service as soon as possible. Infrastructure failures that involve interruption of the availability of the customer's applications are communicated as soon as possible to the Contact Persons (see below) and may result in penalties being incurred. However, Infomaniak cannot be held responsible for failures linked to the technologies installed by the Customer, insofar as these are not linked to negligence on the part of Infomaniak. In the event that the Customer suspects or notices a malfunction and/or unavailability on the Infomaniak installations, it is up to the Customer to contact the Infomaniak support services via

<https://support.infomaniak.com> or directly from the wizard available in the Administration Console by notifying the problem as urgent. The Customer must detail and transmit all useful information to Infomaniak so that the latter can intervene as efficiently and quickly as possible on the problem. Infomaniak will do everything possible to respond to the customer as quickly as possible.

10.2.4 Measurement indicators and monitoring Infomaniak constantly monitors the availability of its services, enabling it to monitor its entire system and network infrastructure. Basically, Infomaniak implements and proactively maintains adequate measures in order to:

- Monitor the system availability of the Service;
- Detect potential infrastructure-related disturbances.

10.2.5 Maintenance Principle Infomaniak undertakes to maintain its installations (hardware and software) in order to guarantee a reliable service. This service includes:

- the correction of problems that lead to an interruption of services under the responsibility of Infomaniak, in particular hardware (servers, switches, routers, etc.);
- replacement or upgrade of equipment if necessary;

The Customer will be informed at the latest 48 working hours before any maintenance that may affect the proper functioning of its applications. Maintenance has a suspensive effect on penalties. No compensation can be claimed during planned or urgent maintenance procedures.

## 10.3 Communication

10.3.1 Customer contact persons The contact persons are the people who are authorized to communicate officially with Infomaniak. These people must be included in the user accounts of the Infomaniak Administration Console and have management rights for the Service concerned by this document. The contact persons assess the priorities on open tickets. Infomaniak may require an authentication process for security reasons.

10.3.2 Contact person at Infomaniak The Customer can contact support during Business Hours.

10.3.3 Communications from the customer Tickets must be created from the Infomaniak support page ([support.infomaniak.com](https://support.infomaniak.com)) or the dedicated wizard in the Administration Console. The creation of a ticket must leave a "trace" and must be kept for the duration of the contract. The telephone can be used for quick requests that do not require investigation. If necessary, Infomaniak can ask for, or will proceed with, the creation of a ticket.

10.3.4 Communications from Infomaniak Outgoing communications from Infomaniak will be sent from the address [support@infomaniak.com](mailto:support@infomaniak.com) to the contact persons. Infomaniak can also make requests that require rapid responses by telephone.

## 10.4 Security

10.4.1 Safety measures Strict control of access to Infomaniak's physical sites and equipment;

- N+1 redundancy of network, power and cooling at all production sites;
- For each type of server and on each site, one or more servers are always available quickly in case of need (failures, etc.).

Infomaniak cannot be held responsible in the event of unavailability due to force majeure (see

below) as well as in the event of a shortage of raw materials or stock shortages at suppliers; • Insurance to cover the services and any risks inherent in Infomaniak's activity as well as its legal obligations;

10.4.2 Traceability and logs • Application level change traceability system; • Traceability of access to the system by Infomaniak employees; • Server logs are kept for at least one week.

## 10.5 Force majeure

Force majeure is defined as an unforeseeable and/or unavoidable event beyond the control of Infomaniak. Infomaniak will not be held responsible if the execution of the Contract, or of any obligations incumbent on Infomaniak under this Contract, is prevented, limited or disturbed due to, but not limited to, a fire, an explosion, a failure of the transmission networks, a breakdown of public services or telecommunications, a collapse of the installations epidemic, pandemic, natural disaster, earthquake, flood, power failure, war, embargo, law, injunction, request or demand of any government, strike, boycott, withdrawal of authorization of the telecommunication operator, or any other circumstance beyond the reasonable control of Infomaniak. In the event of Force Majeure, the party that cannot perform its obligations under the contract shall inform the other party by registered letter as soon as it becomes aware of the event. This does not commit the other party to accepting or contesting the allegations of force majeure. In cases of force majeure, the Customer may immediately terminate the contract at any time.

Review of 25/04/2023