

## 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 Housing Service (hereinafter referred to as "Housing") offered by Infomaniak. They complete but shall 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 Infomaniak provides the Customer with a server colocation service which allows the allocation of space to the Customer in one or more physically accessible Racks connected to the Internet (hereinafter referred to as the "Production Environment") where Infomaniak will be responsible for:

- to ensure the continuity and electrical redundancy of the infrastructure necessary for the operation of the Customer's computer equipment;
- ensure the continuity and redundancy of the infrastructure that allows the evacuation of hot air from the Customer's IT equipment;
- to provide a high-speed, uninterrupted Internet connection for the Customer;
- ensure security and control of access to the datacenter.

2.2 Infomaniak grants the Customer a limited and non-exclusive right of use so that the Customer can install, manage, administer, and repair its servers, computer systems, connection lines and cables (collectively the "Equipment") in a delimited area in one or several Racks in the DIII datacenter owned by Infomaniak. The right of use granted is exclusively reserved for the space allocated by Infomaniak to the Customer.

2.3 The Customer has the possibility of subscribing to additional resources from Infomaniak (IP, kWh, bandwidth, etc.).

## Article 3 - Housing arrangements

### 3.1 24-hour access to the DIII data centre

3.1.1 When subscribing to the contract, the Customer is required to provide the identity of the persons authorized to intervene 24 hours a day on behalf of the Customer.

3.1.2 A maximum of 3 people can be authorized to access the Customer's equipment, unless Infomaniak gives its written consent to the registration of additional people.

3.1.3 The Customer may at any time during the term of the Contract change the list of persons authorized to act on its behalf.

3.1.4 For security purposes, authorized persons shall agree to provide a photograph of themselves for recognition purposes and agree to the use of such photograph solely for the purposes of the proper performance of the Contract.

3.1.5 ANY OTHER UNREGISTERED PERSON IS STRICTLY FORBIDDEN TO ACCESS, EXCEPT WITH PRIOR WRITTEN AUTHORISATION FROM INFOMANIAK. FAILURE TO COMPLY WITH THIS OBLIGATION WILL RESULT IN THE PERMANENT SUSPENSION OF ACCESS TO THE INFRASTRUCTURE AND THE UNILATERAL AND DEFINITIVE TERMINATION OF THE CONTRACT.

3.2 The use of Infomaniak's DIII datacenter is framed as follows:

- The Customer may only circulate in the common areas (assembly room, corridor, lift) and in the area allocated to the location of your servers;
- No packaging of any kind is allowed in Infomaniak's DIII data centre;
- Do not act in a way that violates any health, safety, security or other regulations;
- Not to act in a way that is harmful or even dangerous for other Infomaniak customers who benefit from a similar service;
- The consumption of food and liquids is totally forbidden inside the datacenter;
- Smoking is strictly prohibited inside the data centre;
- Traffic in the aisles must not be obstructed at any time;
- The maintenance of the computer equipment must be carried out in the space belonging to the Customer or in the workshop area made available to the Customer by Infomaniak;
- The Customer must not interact in any way with any equipment that does not belong to him;
- The Customer must not take part in any activity that could generate electrical interference or create any inconvenience that could affect the integrity of the infrastructure made available to other Customers;
- Any behaviour on the part of the Customer and/or authorized persons that may cause damage to the equipment of other Customers and/or Infomaniak, present on the general infrastructure, is prohibited;
- It is strictly forbidden to carry out any illegal activity on the datacenter site;
- It is strictly forbidden to bring a firearm, ammunition or any other type of offensive weapon of any kind into the data centre.

3.3 Rules for using the space allocated to the Customer:

- All cables installed by the Customer must be confined exclusively to the Customer's space;
- All devices (servers, routers, switches) must be designed to operate in a 19" rack. The installation must be done by means of fasteners on the left and right side of the rack;
- No equipment (servers, routers, switches, transformers, remote reboot devices, etc.) installed by the Customer in the allocated space may be placed between the rack walls. Only electrical and network cables may be run in the rack and they must be secured with clamps or pass through the cable glands provided;
- The Customer shall ensure that the maximum electrical current is not exceeded in relation to the circuit breakers supplied with its locations. Any malfunction or incident related to this point will be the sole responsibility of the Customer;
- Ventilation of all Customer equipment must follow the direction of air flow in the data centre. Cold air should be drawn from the cold aisle and extracted into the warm aisle;
- All of the

Customer's equipment shall be designed for prolonged operation at temperatures between 15°C and 40°C with humidity levels between 5 and 90%; • The Customer's equipment must be maintained to a standard that ensures that it is safe and complies with all applicable health and safety standards at all times; • During the performance of this Agreement, the Customer undertakes to keep the space allocated to its installations in good condition and, at the end of the Agreement, to return it in its original condition, excluding normal wear and tear.

3.4 Privacy: • The Customer and his personnel duly authorized to access Infomaniak's datacenter undertake not to divulge or communicate to anyone the address or GPS position of Infomaniak's DIII datacenter, information which they agree to consider as strictly confidential; • In addition, the Customer and its duly authorized personnel undertake not to photograph or film the interior or exterior of the datacenter; • The parties recognise that information of any nature whatsoever, exchanged on any medium whatsoever and in any manner whatsoever, on the occasion of meetings or discussions belonging to the other party relating in particular to technical aspects, know-how or methodology, shall remain strictly confidential. Any behaviour by the Customer and/or its duly authorized personnel that does not comply with any of the points in this article may be subject to legal proceedings and may result in the termination of the Contract without notice.

## Article 4 - Invoicing

4.1 The prices of the Services provided by Infomaniak under the present Special Conditions are subject to several tariffs established according to the nature of the services provided. The rates in force are those available for consultation online on the Infomaniak Site and on request. The invoicing periods may be one, three, six or twelve months depending on the invoicing option chosen by the Customer. In the case of a full rack rental, electricity consumption will be invoiced in addition monthly at the rate in force at Services Industriels de Genève for the Vitale Vert offer.

4.2 Any incident and/or delay in payment on the due date will result in the suspension of the Service following automatic reminders. Infomaniak will notify the Customer by means of successive reminder emails of the obligation to pay the price of the services concerned. If the Customer fails to pay in full and after the last reminder, the Customer will receive a registered letter with acknowledgement of receipt to inform them that their installations will be stopped due to non-payment. Infomaniak will proceed to stop and disconnect the Customer's installations within 15 days after the last reminder by registered letter. The Customer will be denied access to all his equipment in the datacenter until the totality of the sums owed to Infomaniak have been paid. Infomaniak cannot be held responsible for the withdrawal of the Customer's equipment from the reserved location following a default in payment.

4.3 Infomaniak endeavours to warn the Customer in good time before the end of the service. However, it is the responsibility of the Customer to respect the deadlines. If the price of the renewal fixed in the tariff is not paid in full, Infomaniak will not be able to carry out the renewal requested by the customer and the devices that try to send files will stop being saved. In this case, Infomaniak will suspend the Service seven (7) days after the end of the contract and will delete it

after a further seven (7) days, i.e., fourteen (14) days after the end of the contract. The deletion of the Service will imply a definitive and non-recoverable deletion of the data saved until then.

## Article 5 - Duration and expiry of the service

5.1 The Contract is concluded for a minimum period of 6 months from the date on which the Customer's reserved space is made available.

5.2 Either party may terminate this Agreement as of right, without formalities and without compensation, by registered letter with a notice period of three (3) months for the end of a month.

5.3 Without prejudice to any damages that may be claimed from the defaulting party, either party to the Contract is entitled to unilaterally terminate this Contract by operation of law in the event of a breach that has been the subject of a formal notice by registered letter, or any other authentic form of notification, setting out the reason for the breach and remaining without effect for a period of thirty (30) days after notification.

5.4 Upon termination of the Agreement, the provision of the Services shall cease immediately with the obligation for the Customer to pay all outstanding amounts for the contracted period. The Customer must also remove its equipment within thirty (30) days of termination. If the equipment is not removed, Infomaniak reserves the right to proceed, at the Customer's expense, with the removal of the equipment not recovered. The Customer will be able to recover his equipment from Infomaniak's services, subject to the payment of any amount due.

5.5 Termination by Infomaniak as a result of the Customer's failure to comply with this Agreement will not result in any right to reimbursement or credit. If Infomaniak has suffered damages as a result of the termination or the circumstances that led to the termination, these damages may be claimed from the Customer. All amounts unpaid by the Customer will remain due in full and will be immediately payable.

## Article 6 - Infomaniak's obligations and responsibilities

6.1 Infomaniak undertakes to carry out all the tasks incumbent upon it in accordance with the present special conditions, with all due care and with the required degree of competence, as well as with the practices of the profession and the state of the art.

6.2 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 and, given the high degree of technology implemented for the execution of the Service which is the subject of the present contract, Infomaniak is bound by an obligation of means.

6.3 Infomaniak undertakes to: • Maintain the Production Environment; • 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; • Not to interfere with the flow of Customer information over the Ethernet fibres and cables that carry Internet traffic directly into the Customer's Production Environment; • To ensure the confidentiality, integrity and authenticity of Customer data passing through the Ethernet and fibre network managed by Infomaniak.

6.4 Infomaniak will be fully liable to the Customer for proven direct damage or damage caused by deliberate intent or gross negligence on its part. However, Infomaniak cannot be held responsible in the event of: • Fault, negligence, omission or default of the Customer; • Fault, negligence or omission of a third party over which Infomaniak has no control; • Force majeure, event or incident beyond the control of Infomaniak; • Discontinuation of the Service for any reason referred to by Infomaniak for failure to comply with this Contract and/or the TCU; • Partial or total destruction of the information transmitted or stored as a result of errors attributable directly or indirectly to the Customer; • Misuse of the services by the Customer or its Customers; • Total or partial non-compliance with an obligation and/or failure of the operators of the transport networks to the Internet world and in particular the Internet Service Providers (ISPs);

6.5 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.

6.6 In the event that Infomaniak notices or becomes aware of a use that affects its infrastructure and other customers, Infomaniak reserves the right to immediately suspend or remove the Service and/or to immediately and automatically terminate the Contract, without prejudice to the right to any damages that Infomaniak may claim.

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

## **Article 7 - Customer's obligations and responsibilities**

7.1 The Customer is the sole administrator of its resources and equipment in the datacenter.

7.2 The Customer is responsible for any failure of authorized persons having access to the data centre.

7.3 The Customer undertakes to take out an insurance policy covering all the provisions set out in the Insurance section of these Conditions.

7.4 The Customer undertakes to install its equipment at its own expense and by its own staff or by authorized persons.

7.5 The Customer undertakes to comply with the technical conditions and installation standards set by Infomaniak concerning the datacenter, as well as the rules and recommendations issued by Infomaniak, particularly in terms of cabling and the type of server used. The Customer also

undertakes to ensure that his installations comply with all of these operating rules in the event of any modification made by Infomaniak.

7.6 Any intervention on the space allocated by Infomaniak for the Customer is the sole responsibility of the latter. For any dysfunction that may occur, whatever its nature, the Customer will not be able to call on Infomaniak's guarantee under any circumstances. Furthermore, Infomaniak does not ensure the maintenance of the Service.

7.7 The Customer is solely responsible for the files transmitted and assumes all risks associated with them, including those related to intellectual property or any other legal claims. By using and storing files on the Swiss Backup service, you understand and declare that you have the necessary rights to this data.

7.8 With respect to 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, license and service associated with such software.

7.9 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.

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

7.11 The Customer may not claim reimbursement or replacement or any compensation from Infomaniak for any damage or breakdowns that may occur to their equipment and which are their fault.

## **Article 8 - Limitation of liability**

8.1 The Customer accepts that under no circumstances will Infomaniak be held responsible to the Customer for any loss incurred by the latter as a result of use outside the scope of use as specified in these special conditions and Infomaniak's TCU.

8.2 The Customer acknowledges that Infomaniak shall not be liable to the Customer for any loss, including indirect, incidental, special, or consequential damages, incurred by either party as a result of loss, theft, unauthorized disclosure, unauthorized handling, alteration, deprivation of use or any other compromise.

## **Article 9 - Scheduled maintenance**

9.1 The infrastructures of the colocation spaces are designed in such a way that the maintenance of the infrastructures does not imply any planned stop of the Colocation Service.

9.2 In the event of planned maintenance operations on the technical infrastructures that could weaken the conditions of the Service (e.g.: switching to a secondary electrical distribution chain with a lower level of redundancy than the primary chain), Infomaniak will give the Customer advance notice.

## **Article 10 - Agents**

10.1 The Customer, if he obtains the prior written agreement of Infomaniak, may entrust all or part of the work on his space to an agent authorized to carry out said work.

10.2 The Agent must be able to prove that it has taken out an insurance policy with equivalent cover to that of the Customer.

10.3 Under no circumstances will a mandate given by the Customer to a third party release the Customer from its obligations or its responsibility as set by Infomaniak.

## **Article 11 - Compliance of the Service**

11.1 The Customer acknowledges that he has checked the suitability of the Service for his needs and that he has received from Infomaniak all the advice and information necessary for him to subscribe to the present commitment with full knowledge of the facts.

## **Article 12 - Insurance**

12.1 The Customer is responsible for insuring the equipment belonging to it hosted within the framework of the Colocation Service, including during the move-in and move-out phases.

12.2 In this respect, it is the responsibility of the Customer to take out an insurance policy against all the usual risks and damage that it may suffer (risk of fire, theft, deterioration, loss of operation and profit, immaterial damage, etc.).

12.3 Infomaniak undertakes to insure the entire datacenter (other than the Customer's installations and fittings) and to take out civil liability insurance.

## **Article 13 - Assignment of the contract**

13.1 It is expressly agreed that the Customer cannot transfer, free of charge or for a fee, the rights and obligations mentioned in the present document, without the prior and express written agreement of Infomaniak. The Customer who signs the present contract will be considered as the sole cocontractor of Infomaniak.

## **Article 14 - Support**

14.1 The Colocation Service provides services 24 hours a day, 7 days a week and other services on working days only. Infomaniak does not provide any technical support for the Customer's equipment, regardless of the infrastructure chosen. The Customer who has access to the platform is fully responsible for its maintenance. Except in the case of an exceptional event or agreement between the parties, Infomaniak will never intervene directly on the Customer's equipment, even for a request to restart the system.

14.2 The following services are provided 24 hours a day, 7 days a week: • Monitoring and managing the continuity of the Production Environment; • Incident management; • Access management; • Data centre monitoring and security.

14.3 The following services are provided in working days: • Study of changes; • Change management; • Project management and contract management.

## Article 15 - Service Level Agreements (SLAs)

### 15.1 General

15.1.1 Infomaniak is able to offer the Customer a standby service 365 days a year, 24 hours a day to ensure the availability of the necessary IT resources in the event of an unusual event or software and/or technical problem linked to the Customer's Production Environment. The latter will then be bound by a specific contract.

15.1.2 Infomaniak must respond within 12 working hours to any request for configuration changes requested by the Customer in the context of the Production Environment made available to the Customer.

15.1.3 Infomaniak guarantees access to the contact person (or his or her duly informed deputy) from the Service's administration console ([manager.infomaniak.com](https://manager.infomaniak.com)).

### 15.2 Service Level Agreements

15.2.1 Availability rate The availability rate is calculated on the basis of 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 on the Service: 99.97%.

15.2.2 Unavailability rate The maximum unavailability of the Production Environment must not exceed one hour for each case of breakdown that occurs. Infomaniak will be responsible for restoring the service(s) and, if necessary, for replacing the defective equipment. The Customer will be informed immediately of any failure.

15.2.3 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 maximum amount of the penalties will be equal to the annual amount of the Service. 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.

15.2.4 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;

## 15. 3 Resolving system errors and failures

15.3.1 Error reports Failures are analysed in detail in order to understand their origin and to enable the implementation of measures to prevent their recurrence.

15.3.2 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.

15.3.3 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 result in the interruption of the Service 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 that are 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.

15.3.4 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.

15.3.5 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.

## 1 5.4 Communication

15.4.1 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 to the Service concerned by this document. The contact persons assess the priorities on open tickets. Infomaniak may require an authentication process for security reasons.

15.4.2 Contact persons at Infomaniak The Customer can contact support during Business Hours.

15.4.3 Communications from the Customer Tickets must be created from the Infomaniak support page ([support.infomaniak.com](https://support.infomaniak.com)) or from 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.

15.4.4 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.

## 15.5 Safety

15.5.1 Safety measures • Daily preventive backup in a second datacenter managed by Infomaniak • 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;

15.6 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

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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 must 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