Terms and Conditions of Use

These Terms and Conditions of Use (hereinafter referred to as the "TCU") are intended to govern the framework of contractual relations as well as the conditions for the provision and use of the Services offered by Infomaniak.

The TCU are concluded between Infomaniak Network SA (hereinafter referred to as "Infomaniak"), a company governed by Swiss law based in Geneva, and any natural or legal person under private or public law with a Customer Account with Infomaniak (hereinafter referred to as the "Customer").

1. Conclusion of contract

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

1.2 This contract aims to define the terms and conditions under which Infomaniak provides the Customer with the Services referenced on Infomaniak's website and/or available from the Administration Console (manager.infomaniak.com).

1.3 To use Infomaniak services, you first have to accept the GTC and any specific terms and conditions associated with every service. We invite you to read them through carefully. If you do not understand or accept them, even in part, you are not permitted to use the services offered by Infomaniak.

1.4 Use of the Services may imply the acceptance by the Customer of the Special Terms and Conditions that apply cumulatively with the TCU. They will prevail if a contradiction should appear between these documents and form a contract along with the TCU (hereinafter referred to as the "Contract").

1.5 Infomaniak provides links to other websites, for example through its help pages or blog. You acknowledge that Infomaniak has no control over the content of these sites and that these TCU do not govern these sites.

1.6 "The appendix concerning Infomaniak's data processing" available at infomaniak.com forms an integral part of the Contract.

1.7 "Infomaniak's API Usage Policy" available at infomaniak.com forms an integral part of the Contract.

1.8 Infomaniak reserves the right to amend these TCU, the Special Terms and Conditions and the appendices of this Contract without notice, at any time and by right. These amendments are immediately applicable to all new Services orders.

For Services that are currently in use, the Customer will be notified by email or via their management interface of any amendment to the Service Conditions in force. Amendments to the Service
Conditions will only enter into force thirty (30) calendar days after the above-mentioned notification is sent. However, amendments to Third-Party Product Conditions and legal or regulatory compliance may take effect immediately since Infomaniak does not control them.

If the Customer does not accept the amendments made to the Contract, they must cease to use the Services offered by Infomaniak.

1.9 If the Customer does not comply with this Contract and Infomaniak does not take immediate action in this regard, this does not mean that Infomaniak waives its rights (e.g. to take action at a later date).

1.10 The Contract remains applicable regardless of any removal or addition of Services resulting from the expiry or termination of the Special Terms and Conditions, or the entry into force of any new Special Terms and Conditions. The new Special Terms and Conditions will not affect the Special Terms and Conditions applicable to other Services. The definitive termination of the Customer Account terminates the Contract in its entirety.

1.11 It is the Customer's responsibility to obtain any computer or telecommunication equipment that may be necessary for the use of a Service. The costs relating to the acquisition, provision, use and maintenance of this equipment will be borne by the Customer and no guarantee is given by Infomaniak as to the compatibility of this equipment with the Services ordered by the Customer.

1.12 Only the French version of this Contract has probative force between Infomaniak and the Customer. The translations found on the Infomaniak Website are simply guidelines, only the interpretation of the French version will prevail in case of dispute.

2. Customer Account

2.1 By submitting an online order for a Service, the Customer acknowledges having previously verified the compatibility of the Service with their needs and having obtained from Infomaniak all the information and advice needed to make an informed decision about whether to subscribe to this Contract.

2.2 When placing their first order, the Customer must create a Customer Account on the Infomaniak Website and provide certain information to enable their identification, namely at least: their first name and surname, email address, postal address and a valid phone number on which they can be reached ("Contact Details"). In this respect, the Customer undertakes to provide true, accurate and complete information and to keep it up to date in the event of a change. The Customer declares and warrants to Infomaniak that they have capacity and the necessary power to represent and commit the Customer under the conditions provided for in the Contract.

2.3 The Customer is advised, in this regard, that before being able to use their Customer Account
and at any time during the Contract, all or some of their Contact Details may be validated by Infomaniak to check the accuracy of the information communicated by the Customer or on their behalf. Infomaniak will carry out this validation of Contact Details by whatever means and whenever Infomaniak deems it appropriate (the "Validation"). Infomaniak reserves the right to activate or deactivate the Customer Account in the event of incomplete or incorrect information or to terminate the contract immediately if Infomaniak decides that this information is fraudulent.

2.4 The Customer understands and accepts that Infomaniak sends important notifications by email using the email address available in the Contact Details provided by the Customer and that within the context of their use of the Services, even if this is passive, regular communication with Infomaniak is essential for the proper execution of the Services. Any message disseminated through the Customer Account to which the Customer fails to respond within one month of its posting will be considered tacitly read and accepted by the Customer as regards any subsequent consequences.

3. Communications between the Parties

By agreeing to these terms and conditions, the Customer acknowledges that any exchange of information between the parties must be done exclusively by email.

Any other means of notification, notice and other communications provided for in the Contract will be deemed to have been validly delivered if it is sent:

- To the Customer: by registered mail with acknowledgement of receipt using the Contact Details.
- To Infomaniak: by registered mail with acknowledgement of receipt to the following address, Infomaniak, 25 Rue Eugène Marziano, 1227 Carouge - Switzerland.

4. Money-back satisfaction guarantee

4.1 Infomaniak offers a 30-day satisfaction guarantee on all its products, with the exception of domain names and chargeable SSL certificates. To benefit from this guarantee, you must put your request in writing (https://contact.infomaniak.com/) within 30 days of the date on which the product was made available (with the activation email serving as proof). You will then receive a refund of the purchase amount within 2 to 4 weeks via the payment method used when placing the order.

5. Payment methods

5.1 Payment can be made by credit card, PostCard, Twint, Apple Pay, Google Pay, bank transfer and PayPal. Infomaniak reserves the right to restrict the payment methods available on a case by case basis.

5.2 For chargeable Services, tasks will only be executed once the amount has been paid into Infomaniak's bank account. All transaction costs will be borne by the Customer. The Customer has
no right to the execution until the payment has been received in full.

5.3 The prices of Services billed to the Customer are those in force at the time of billing, as published on the Infomaniak Website. Depending on the Services, Infomaniak may propose different pricing options (fixed monthly, quarterly or annual price, consumption price, credit purchase). A commitment period and/or specific billing arrangement may be associated with these, depending on the case.

5.4 Services that are provided free of charge may be suspended at any time by Infomaniak and/or may be terminated by the Customer at any time from the Administration Console.

5.5 The prices proposed by Infomaniak include VAT for persons with a Swiss billing address. Persons without a Swiss billing address are not charged VAT, except for Services not requiring info management (e.g. Housing).

5.6 Infomaniak may change its prices at any time without notice by publishing a new pricing structure on its website and/or by notifying the Customer by email. Price changes apply immediately to new orders or when renewing Services for a new period.

5.7 If you are using a chargeable add-on module or option, this additional amount will be charged for each billing cycle as long as the module is active. The billing cycle for an add-on module may differ from the billing cycle for the Service concerned, and some add-one modules may require payment upfront for their entire billing cycle.

5.8 In the case of payment by credit card, the Customer declares and warrants that they are authorised to use the credit card(s) that may be debited for the payment of the Infomaniak Services linked to the Customer.

If the Customer's credit card is replaced by a payment processor (e.g. PayPal) which is itself linked to a credit card, the Customer acknowledges and agrees that Infomaniak is authorised to debit the credit card linked to the payment processor to pay for the Infomaniak Services related to the Customer.

5.9 In the case of payment by bank transfer, transfer fees are dependent on the issuing bank. These fees cannot be charged to Infomaniak and must not be offset against the payment of the invoice amount.

5.10 Credit Purchase

You can purchase Credits for use with some Services. This is explained in the description of the Services concerned at infomaniak.com. Unused Credits are carried forward each month and do not expire. If you terminate a Service concerned by Credits, the Credits will also be permanently deleted and not refunded.
5.11 Prepaid account

Infomaniak provides the Customer with a credit account which can be accessed through the Customer Account (the "Prepaid account").

Funds can be paid into the Credit Account:

- Either by the Customer via one of the payments methods accepted by Infomaniak;
- Or by Infomaniak, when an invoice paid by the Customer is refunded because Infomaniak is unable to fulfil the request.

The Customer acknowledges that the Credit Account is not a bank account and that the credit balance of this does not generate management fees or credit interest for the Customer.

It is agreed that the balance of the Prepaid Account may be used by the Customer to order or renew Services, but also by Infomaniak to offset any payment defaults by the Customer in relation to previous orders.

The Customer can ask Infomaniak to pay the balance of the prepaid account in cash after the settlement of all unpaid Infomaniak invoices.

5.12 Payment defaults and delays

If the Customer fails to pay for the renewal of a Service before the expiry of a Service despite reminders, Infomaniak will be entitled to suspend immediately or without notice all or some of the Services concerned on their expiry date. Infomaniak will be entitled to refuse any new order or renewal of Services, without prejudice to Infomaniak.

5.13 Any disagreement regarding billing and the nature of the Services must be communicated to Infomaniak's Customer Services Department via the Administration Console or the specific form available at infomaniak.com, within a one month of the invoice date. Failing this, and notwithstanding the possibility for the Customer to contest the billing at a later date, the Customer is obliged to pay the unpaid invoices under the conditions provided for in the Contract. In the event of billing error, Infomaniak is authorised to regularise the aforementioned invoices within the limitation rules in force.

5.14 Refund

If the Customer has not received the ordered Service or would like to benefit from the Infomaniak money-back guarantee, Infomaniak will credit the Customer's prepaid account or refund the Customer to the same payment method used when placing the order.

5.15 Payments for Services are non-refundable in the event of Service disruption due to force majeure or other external causes for which Infomaniak is not exclusively liable.
6. Term, renewal and end of the Contract

6.1 The Contract is concluded for an indefinite term and remains in force until terminated by either Party. The Customer may end the Contract at any time by terminating its Services and then the Customer Account in its entirety via the Infomaniak Administration Console, or by written notice sent by registered mail to Infomaniak which will be executed if the Customer is in good standing with this Contract and provided that Infomaniak has been able to establish the Customer's identity unequivocally.

6.2 Infomaniak will provide the Services for the period chosen by the Customer when placing the order.

6.3 To prevent unintentional termination, Infomaniak allows the Customer to activate or deactivate an automatic renewal option for each Customer Service through the Administration Console.

If automatic renewal is activated in the Customer’s Account or if the Customer is currently benefiting from a trial and they have already provided Infomaniak with a payment method for the Services, Infomaniak will be authorised to automatically debit the Customer’s payment method at the end of the trial period or renew the Services concerned.

However, this automatic renewal can only be executed if a valid payment method is linked to the Customer Account on the day of the renewal attempt.

The Customer understands and accepts that the fees applicable to the Service at the time of the automatic renewal may differ to those paid at the time of the initial order. Therefore, it is the Customer's responsibility to regularly visit the Infomaniak website and take note of any potential price changes applicable to each of the Services for which this option is activated and to deactivate this if necessary. The Customer will be deemed to have accepted the price changes if the automatic renewal option has not been deactivated on the day of the renewal attempt.

In the event that the payment method linked to the Customer Account means that the automatic renewal cannot be processed, Infomaniak will inform the Customer, by email sent using the Customer's Contact Details entered in their Customer Account, that they must proceed with a manual renewal.

The Customer understands and accepts that they are solely responsible for linking a valid Payment Method to their Customer Account and that Infomaniak will not be held liable if the automatic renewal is not possible because there is no valid Payment Method linked to the Customer Account.

It is the Customer's responsibility to anticipate the termination of a Service linked to the automatic renewal option. In the opposite case, the Customer cannot claim any refund.
6.4 After the expiry of the Contract, Infomaniak is authorised to delete the Customer's data. The Customer is personally responsible for backing up their data in good time.

7. Suspension of Services

7.1 In the event of the Customer's non-performance of one or more of their contractual obligations provided for herein and/or any legal or regulatory provision in force, or at the request of a competent judicial or administrative authority, Infomaniak reserves the right to suspend, immediately and without notice, all or some of the Services, the Customer Account and consequently the Customer's access to the Services, without this suspension giving rise to any entitlement to compensation.

7.2 Infomaniak also reserves the right to suspend the Customer Account and or Services in the event of a notice, complaint, action, suit or other legal proceeding against Infomaniak by the Customer, relating to the use of the Services provided by Infomaniak.

7.3 The Administration Console may also be temporarily suspended due to Infomaniak maintenance.

7.4 The suspension will continue until its cause has ceased.

7.5 The suspension of Services will not result in the suspension of the Customer's payment obligations and will not give rise to the payment of any compensation by Infomaniak, including compensation due to the direct or indirect consequences that may arise (such as loss of opportunity, contracts, business, income or profits) or engage Infomaniak's liability under the conditions laid down in the "Liability" section.

7.6 Suspensions of services do not give rise to the deletion of the Customer's data unless they result exclusively from a breach by Infomaniak. In the event that they result from a breach of the Customer's obligations, the aforementioned suspensions will occur without prejudice to Infomaniak's right to terminate the Contract under the conditions laid down in the “Termination for breach” section.

8. Infomaniak's obligations and responsibilities

8.1 For all Infomaniak Services, Infomaniak undertakes to provide all the care and diligence necessary for the provision and maintenance of the Services in accordance with industry practices and state of the art. Due to the high technicality of the Services provided, Infomaniak is only subject, in this regard, to an obligation of means.

8.2 Infomaniak's liability will be limited to intent and gross negligence if and insofar as the law permits. In the case of the provision of chargeable Services, Infomaniak's liability is limited to the amount paid for the Service impacted by the Customer for the current billing period.

For free Services, Infomaniak's liability is limited to cases of minor negligence and an amount of CHF
25 for each individual case or CHF 100 for all cases.

8.3 Infomaniak may restrict access to the Service if such action is required to ensure operational stability and security or to maintain the integrity of the network, in particular to prevent serious disruption to the network, software or stored data. Infomaniak is not required to control or monitor the use of the Service by the Customer to ensure its legality.

8.4 Any Third-Party Product Software offered to the Customer within the framework of the Services and provided by Infomaniak will be based on the standard license terms of the third party concerned. Infomaniak cannot be held liable for Third-Party Products, including security breaches, incompatibilities, technical errors or instabilities. Infomaniak offers no warranty for Third-Party Products and Customers who use a Third-Party Product do so under their sole responsibility. In particular, they must ensure that they are suited to their needs and the purposes for which they are used.

9. Customer's obligations and responsibilities

9.1 The Customer will have the power, authority and capacity necessary to conclude and perform the obligations provided for in this Contract.

9.2 When the Customer uses the Services on behalf of a third party, they declare and warrant to Infomaniak that they have the power and capacity to represent and bind the third party under the conditions provided for in the Contract.

The Customer is responsible for all claims resulting from a violation of the contractual terms by the third party and must indemnify Infomaniak in full for all claims resulting from the use of the Service by third parties.

9.3 The Customer will not attempt to gain unauthorised access to any Service, content, its systems or associated networks; they also agree not to obtain or attempt to obtain any documents or information by any means unintentionally made available by Infomaniak.

9.4 The Customer undertakes to keep all their passwords, digital keys and sensitive data enabling use of or access to the Services secret. The Customer must notify Infomaniak if they receive information about an unauthorised person having access to this information. If unauthorised third parties use Infomaniak's Services through the Customer Account, the Customer shall be solely liable. Infomaniak can block access to an account if there is sufficient reason to suggest that it is being used by unauthorised persons. Infomaniak will immediately notify the Customer of all measures taken.

9.5 The Customer is responsible for the conduct of all users with access to the admin console. Furthermore, the Customer is solely responsible for managing access codes to his/her admin
console and assumes full responsibility for his/her actions, modifications or settings realised while using the Services.

9.6 In the event that a Customer adds one or more users with the status of "legal manager" via the Administration Console, these new users will become co-holders of the Customer Account and will be jointly and severally liable to Infomaniak for any obligation within the framework of this Contract.

Infomaniak informs the Customer that a second user with the "legal manager" status may, if they so wish, be made the sole legal manager of this contract from the Administration Console after termination of the other users with the "legal manager" status with all the consequences that might result.

9.7 The Customer must maintain the security and confidentiality of all their passwords. The Customer is required to inform Infomaniak immediately if they have reason to suspect unauthorised use by one or more of their users.

9.8 Any use of the Services in violation of the Contract by the Customer which, in Infomaniak's opinion, threatens the security, integrity or availability of Infomaniak's Services, may lead to the immediate suspension of the Customer's Services.

9.9 The Customer undertakes to comply with laws on copyright, third-party rights, personality rights and intellectual property rights such as copyright, licences, patent or trademark rights and to surrender any potential distribution rights.

In the event of a complaint or if Infomaniak believes that a crime has be committed in relation to the Content, such as, but not limited to:

"Fraud, computer crime, money laundering, violation of trade secrets, falsification of documents, violence and threats against authorities and officials, unauthorised gambling, participation in a criminal act (collaboration, incitement, help and complicity), or dissemination or provision of Content contrary to criminal or civil law, representations of violence, so-called soft and hard pornography (pornography may be made accessible if the Customer installs effective controls that allow those over 18 to access corresponding content), incitement to disturb public peace, infringement of freedom of religion and culture, racial discrimination, defamation, acts of terrorism, pedophilia, anti-Semitism, or even Content inciting hatred towards persons on the grounds of their sex, religion, sexual orientation or identity, or disability, invasion of privacy, etc. or the unlawful or abusive use of Content (e.g. fraudulent use of Content or use of Content that infringes rights owned by a third party such as personality rights, copyrights, patent or trademark rights or other intellectual property rights)" by the Customer may result in the immediate suspension of ALL or some of the Services provided under the Contract, the deactivation of the Customer's Account and/or the termination of the Contract with the consequences of which to be borne by the Customer, without prejudice to the right to all damages and INTERESTS WHICH INFOMANIAK MAY CLAIM.
Infomaniak cannot be held liable for the Content of transmitted, disseminated or collected information, its use and updates, as well as any files, including address files, for any reason whatsoever. Infomaniak can only warn the Customer of the legal consequences that may result from illegal activities on the Service and is released of its joint and several liability for the use of data made available to Internet users by the Customer. This same applies if the Customer is proven to voluntarily or involuntarily practice spamming or any intrusive activity or attempted intrusion from the Service (including but not limited to port scanning, sniffing, spoofing, etc.).

9.10 The use of SPAM is totally prohibited. It is also prohibited to send mass emails through Infomaniak’s Services:

- To people who have not requested them;
- Using email lists that have been created, purchased or rented from the Internet or by any other means;
- On a different topic to that proposed when creating the subscription list which generates a significant rejection rate (bouncebacks, invalid email addresses, unsubscriptions, etc.).

This also applies when the Customer uses an external service provider/service to send emails mentioning a domain name hosted by Infomaniak.

The double opt-in is the only recognised method of creating a valid email list: the addition of an email address to a list only becomes effective if the holder of the email address clicks on the link sent in a subscription confirmation email. Thus proving that the recipient was behind the subscription request.

Anyone on a list used by a mailing or newsletter tool must receive the information necessary to unsubscribe with every email or be able to unsubscribe easily at any time.

A spamming complaint may result in the blocking and termination of the relevant Service if the sender of the email cannot provide proof of the voluntary and confirmed electronic subscription of each registrant (subscription date/email address/ IPaddress).

9.11 The Customer undertakes to defend, indemnify and hold harmless Infomaniak, as well as all those involved in the provision of the Services concerned in respect of all claims, requests, liabilities, costs and/or expenses resulting from the illegal use of the Service or its content.

9.12 The Customer is fully aware that they must, at all times, have an up-to-date copy of the Content sent to Infomaniak. Infomaniak is not liable in the event of loss or damage to Data belonging to the Customer. Infomaniak recommends that the Customer regularly backs up their content.

10. Infomaniak support

10.1 Infomaniak provides the Customer with access to a technical support service available in
French, English, German, Italian and Spanish. This standard rate service can be accessed by telephone, email or chat via the specific form available at Infomaniak.com or through the Administration Console; the opening hours can be found at Infomaniak.com.

10.2 Technical support is only provided to those who have previously registered as Customers or named as authorised technical contacts. The technical information provided is based on the information given and requests made by the Customer and cannot engage the liability of Infomaniak in the event of damage suffered by the Customer. Infomaniak will not refund any fees relating to communications with its technical support service.

10.3 In addition to basic Support, infomaniak also offers other levels of Support enabling the Customer to benefit from extra services and commitment levels. These Support levels are described in the Special Terms and Conditions and the corresponding documents available on the Infomaniak Website.

10.4 The customer undertakes to behave appropriately, cordially and respectfully towards the Infomaniak support team. Infomaniak reserves the right not to reply to customers’ requests and/or to terminate the contract without notice in the event of abusive, insulting or humiliating behaviour. Infomaniak also reserves the right to take legal action against the customer and will be entitled as part of this process to disclose any form of evidence that it deems expedient (extracts from correspondence with the customer, screenshots, e-mails, recordings of telephone calls, etc.).

11. Termination

11.1 A Service may be terminated automatically at expiry in the event of non-renewal or at the request of the Customer who can terminate at any time without notice through the Administration Panel. The Customer will be responsible, before the imparted deadline, for personally recovering all data belonging to them, otherwise this will be permanently deleted by Infomaniak.

Any suspension, termination or removal of a Service under the conditions laid down in this article will not lead to any compensation for the benefit of the Customer, and this, whether they use the Services or not. Infomaniak will retain all amounts paid by the Customer.

11.2 In the event of a payment default by the Customer by the due date, including cancellation or repudiation of their online payment, or payment of an amount that is incorrect, incomplete or lacking the required references in the event of a bank transfer by the Customer when ordering or renewing a Service,

Infomaniak reserves the right to suspend the Service until the price has been paid in full within a reasonable time, then at the end of said period, to block and/or terminate automatically the Services concerned by this breach, and without any compensation or damages being sought from Infomaniak.
11.3 Termination due to a breach: In the event of a breach by either Party of any of its obligations under the Contract not being resolved within 7 Business Days of an email sent by the complaining party giving notice of the breaches in question, or any other form of communication provided for in the legally binding Contract sent by said party, the Contract will be terminated automatically, without prejudice to any damages or potential interest that may be claimed from the defaulting party. The date on which the email giving notice of the breaches in question is sent will serve as proof. Infomaniak may also notify any competent public authorities (government, police or supervisory authorities) of any violation, if it deems it necessary.

11.4 Infomaniak may also terminate the Contract with the Customer with immediate effect if proceedings have been started against the Customer in the event of bankruptcy or insolvency.

11.5 Infomaniak is not required to save the Customer's data or return it to the Customer before any deletion or following the termination of the Contract.

11.6 In the event of premature termination of a Service, no prorated refund of the consideration will be made for the remainder of the period unless the termination has been wrongfully attributed to Infomaniak or as a result of gross negligence without legal grounds. This also applies to related add-ons.

12. Confidentiality policy

12.1 Infomaniak will take all necessary measures to prevent access to the Customer's personal information as well as its alteration or disclosure. In particular, Audit systems are in place for all sensitive information. This information is treated with utmost confidentiality and is not sold or distributed. It is in no way communicated to anyone on request, except by court order or if Infomaniak receives a complaint from a third party.

12.2 Infomaniak's employees are bound by professional secrecy and maintain the utmost confidentiality regarding the information that may be communicated to them.

12.3 The Customer acknowledges that because of its relationship with Infomaniak, both the latter and the Customer may have access to Content, information or elements related to the activities of the other party, which may concern Customer files, software technologies or any other element that is potentially confidential and of substantial value to each respective party, and which could be impaired if disclosed to a third party. As such, Infomaniak agrees not to use for its own account, or disclose to any third party, any information that it may become aware of as a result of this contractual relationship, except in the case of a legal obligation (a court injunction for example) or a complaint received by Infomaniak from a third party. In addition, Infomaniak confirms that it will take appropriate measures to protect the confidentiality of this information.

12.4 Infomaniak will never email its Customer database for the benefit of a third party.
12.5 Infomaniak reserves the right to use the content of its databases for its own communications (technical incidents, new services, etc.) sent to its Customers.

12.6 Infomaniak will never ask the Customer for their password over the phone or by email.

12.7 The Customer is informed that all telephone communications with Infomaniak are recorded in order to improve the quality of our Services.

13. Severability

13.1 If any of the provisions of the Contract were to be declared unlawful, void or unenforceable, such invalidity would in no way affect other clauses which shall remain in full force and effect. In this case, Infomaniak undertakes to replace the void or unenforceable clause with a valid clause that best corresponds to the object and purpose, so that the common intention of the parties would be preserved.

14. Rights

14.1 You will respect our proprietary rights to the Website and the software used to provide the Service (proprietary rights include, but are not limited to, patents, trademarks, service marks, trade secrets, copyright and other intellectual property rights). You may only use our brand assets in accordance with this Contract.

14.2 You declare and warrant that you own or are authorised to use all equipment, Content, data and information (including your personal information and the personal information of third parties) that you submit to Infomaniak as part of the use of the Services. You retain ownership of the content that you download on the Service. We may use or disclose your Content (including any personal information) only as described in this Contract.

15. Agreement on proof

15.1 For the purposes of this Contract, the parties agree that electronic writing is admissible as an evidentiary medium in the same way as writing in paper form. It is agreed that Infomaniak's information system data or that of its processors, such as connection logs, usage data, order and payment summaries, incident management reports or other, are fully enforceable against the Customer and admissible even within the context of legal proceedings.

Email exchanges will be deemed received or sent by Infomaniak's SMTP servers. The date and time of Infomaniak's mail servers will be binding between the Parties.

16. Third-party complaints to Infomaniak
16.1 If a third party complains to Infomaniak about a Service that has been ordered and/or used by the Customer, Infomaniak will send a warning email to the Customer as soon as possible. Infomaniak will gladly send a copy of the complaint sent by the third party to the Customer.

16.2 Infomaniak will be entitled to forward the Customer's Details to the third party, insofar as the requested information is intended to facilitate legal action in order to assert their legal rights.

16.3 Infomaniak will be entitled to demand from the Customer supporting documents proving the good faith of the Customer in relation to the complaint within 7 Business Days. In the absence of proof, Infomaniak may be able to apply the "Termination for breach" section of these TCU.

16.4 Infomaniak reserves the right to charge an intervention fee to the Customer if they do not acknowledge receipt of Infomaniak's warning message or if Infomaniak is obliged to intervene by sending a registered letter, making a phone call, etc. on behalf of the Customer and the third-party applicant.

17. Claims and disputes

17.1 Infomaniak and the Customer will endeavour to settle any dispute concerning the interpretation or execution of these conditions amicably. Any claim must be made in accordance with the "Communications between the Parties" section. After exhausting amicable remedies, the Customer is entitled to bring its claim against Infomaniak before the courts.

17.2 In accordance with the provisions of this Contract, in the event of a legal or pre-legal conflict concerning a Service between the Customer and a third party, it is expressly agreed between Infomaniak and the Customer that the latter will remain solely responsible for the settlement of this dispute.

17.3 No stipulation of the Contract shall be interpreted as having the effect of limiting Infomaniak's liability in the case of fraud or gross misconduct.

18. Liability

18.1 Infomaniak will not be held liable for the incompatibility of the Services that it provides with the specific objectives that the Customer is hoping to achieve.

18.2 Under no circumstances can Infomaniak be held liable for indirect damage, that is to say that which does not result directly and exclusively from the partial or total failure of the Service provided by Infomaniak, such as commercial damage, loss of orders, deterioration of the brand's image, any commercial disturbances, loss of profits or Customers (for example, inappropriate disclosure of confidential information about them as a result of a system malfunction or hacking), for which the Customer will be its own insurer or will be able to take out the appropriate insurance.
18.3 Any action against the Customer by a third party constitutes indirect damage and therefore does not give rise to compensation. In any case, the amount of damages and interest that could be charged to Infomaniak, if its liability is engaged, would be limited to the amount of the sums paid by the Customer to Infomaniak, invoiced to the Customer by Infomaniak and/or the amounts corresponding to the price of the provision, for the part of the Service for which Infomaniak's liability has been engaged. The lowest of these amounts will be taken into account.

18.4 The Customer acknowledges that no stipulation herein will release them from the obligations to pay all amounts due to Infomaniak hereunder.

18.5 The Customer expressly accept that Infomaniak's liability shall in no case be higher than the amount paid by the Customer in the year preceding that of the compensation claim and which concerns the same Services as those subject to the compensation claim. This amount is defined as the reported damage, with several damages related to a single case being considered as a single instance of recoverable damage.

19. Children

19.1 Infomaniak offers restricted products to minors. If we learn that a minor has created an account, we will be entitled to close it.

20. Advertising and promotions

20.1 Unless the Customer decides otherwise and communicates this decision to Infomaniak, Infomaniak may avail itself of the commercial relationship between the Customer and Infomaniak on infomaniak.com, news.infomaniak.com or during events, at conferences and in specialised market publications. Any other medium is subject to the Customer's prior agreement.

21. Force majeure

Force majeure is defined as an unforeseeable and/or unavoidable event beyond the control of Infomaniak.

21.1 Infomaniak's liability shall not be engaged if the performance of the Contract, or any of Infomaniak's obligations under this Contract, is prevented, limited or disrupted by fire, explosion, transmission network failure, collapse of facilities, epidemic, earthquake, flood, power failure, war, embargo, law, injunction, government demand or requirement, strike, boycott, withdrawal of authorisation from a telecommunications operator or other circumstance outside of the reasonable control of Infomaniak ("force majeure").

21.2 Subject to prompt notification to the Customer, Infomaniak shall be exempted from the performance of its obligations within the limits of this impediment, limitation or disruption, and the
Customer will likewise be exempted from the performance of their obligations to the extent that the obligations of this Party relate to the performance thus impeded, limited or disrupted, provided that the Party thus affected does its utmost to prevent or remedy such causes of non-performance and that both Parties proceed promptly once such causes have ceased or been eradicated.

21.3 The Party affected by a case of force majeure shall keep the other party regularly informed of the prognosis of the removal or restoration of this case of force majeure.

21.4 If the effects of a case of force majeure should have a duration greater than 30 days, from the notification of force majeure to the other party, the contract may be terminated automatically at the request of either party, without entitlement to compensation on either side.

21.5 For all intents and purposes, it is stated that the Customer's inability to pay the fees associated with Infomaniak's Services can never be considered as a case of force majeure.

22. Jurisdiction and applicable law

22.1 The Customer undertakes to comply with Swiss and international laws in force during the full term of the contract.

22.2 In addition, Infomaniak will endeavour to respect the judgements of the authorities of the member countries of the OECD.

22.3 Any dispute in connection with this contract, its conclusion, its execution and its interpretation, in the absence of an amicable solution, is subject to Swiss law exclusively, the exclusive place of jurisdiction being in Geneva subject to appeal to the Federal Supreme Court in Lausanne.

Amendment dated 12/04/2019