INFOMANIAK DATA PROCESSING AGREEMENT

The Data Processing Agreement (hereinafter "DPA") forms an integral part of the terms and conditions of use (hereinafter "TCU") drawn up between Infomaniak Network SA (hereinafter "Infomaniak") and any natural or legal person, private or public, having a client account with Infomaniak (hereinafter "Client").

The aim of the present agreement between Infomaniak and the Client, in accordance with article 28 of the (EU) Regulation 2016/679 of the European Parliament and the Council of 27 April 2016 relating to the protection of natural persons with regard to the processing of personal data and the free circulation of these data ("General Data Protection Regulation", hereinafter "GDPR"), is to define the conditions under which Infomaniak has the right, as a processor and within the framework of the services defined in the contract, to process, on instruction from the Client, personal data such as are defined in the GDPR.

The processing of personal data by Informaniak as the controller does not enter into the framework of the present contract.

1. Processing

The nature of the operations carried out by Infomaniak with regard to the personal data may for example be the calculation of data, the storage and/or any other service relevant to the service provision offered by Infomaniak.

The Client assigns Infomaniak as processor to process the Client's personal data. Infomaniak is authorised, as processor acting in accordance with the Client's instructions, to process the controller's personal data where necessary in the provision of the services.

The type of personal data and the categories of persons concerned are determined and controlled by the Client, at its sole discretion.
The duration of the data processing corresponds to the duration of the service. The purpose and the object of the data processing are the provision of the service such as is described in our general and specific terms and conditions.

The Client is solely responsible for the legality of the processing of personal data. It shall not use accompanying services with personal data if such a use should have the effect of violating the applicable data protection Laws.

The Client must ensure that the services chosen have the characteristics and conditions required to comply with the processing activities and objectives of the data processing controller. It also ensures the type of personal data to be processed within the framework of the services, including, but not restricted to, when the services are used to process personal data subject to regulations or specific standards (for example, linked to a country’s legislation, data regulations related to health or bank data regulation).

If the data processing performed by the controller is likely to cause a high risk to the rights and freedoms of natural persons, the Client must choose its services carefully.

In the event where the Client acts as processor on behalf of a third party controller, the Client commits to:

- ensure that all authorisations required to conclude the present DPA, including the appointment by the client of Infomaniak as processor, have been obtained from the controller before providing their personal data.
- establish a contract in accordance with the terms and conditions including the present DPA, between the Controller and the Client pursuant to article 28 of the GDPR.

2. Compliance with applicable regulations

Each party complies with the applicable regulations governing data protection, including the General Data Protection Regulation (GDPR).

3. Obligations of Infomaniak

Infomaniak commits to put in place the following organisational and technical security measures:

a) Never transfer your data outside of our own infrastructures.
b) Implement high-security standards and maintain continuous improvement processes to provide you with a high level of security in our services.

c) Maintain and develop our physical security measures to prevent access to the infrastructures on which your data are stored by unauthorised persons.

d) Have physical and/or logical isolation systems (depending on the services) to isolate customer hosting services from each other, and carry out intrusion tests once a year in order to ensure total data isolation between customers.

e) Be exemplary in terms of reactivity for security updates on the systems we manage.

f) Ensure physical security measures aimed at preventing unauthorised persons from accessing the infrastructures in which client data is stored.

g) Proceed with identity and access controls through an authentication system and a password policy.

h) Access management system which limits access to the premises to people who need to access them to carry out their jobs and within the framework of their responsibilities.

i) Protect access to administration functions by authentication processes for users and administrators.

j) Apply an access management system for support and maintenance operations which works according to the principles of least privilege (PoLP) and on a need-to-know basis.

Infomaniak also commits to:

a) process personal data which has been downloaded, stored and used by the Client solely to provide those services defined in the Contract.

b) Not access or use personal data for purposes other than those necessary for the execution of the services (particularly in the framework of managing incidents).

c) Put in place technical and organisational measures, in order to ensure the security of personal data in the framework of these services.

d) Ensure that Infomaniak employees who are authorised to process personal data within the framework of the Contract are subject to an obligation of confidentiality and receive appropriate training in the protection of personal data.
e) Inform the Client if, in its opinion and considering the information it has available to it, Infomaniak were to observe that one of the Client's instructions infringed the provisions of the GDPR or other European Union or a European Union member state provisions concerning personal data protection.

f) In the event of requests received from a competent authority relating to personal data processed in accordance with the present contract, to inform the Client (unless applicable laws or the injunction of a competent authority prohibit it), and to limit the communication of the data to what the authority expressly requested.

4. Personal data breach

Infomaniak commits to notifying the Client of any personal data breach within the framework of the services as soon as possible after becoming aware of it. Infomaniak commits to quickly investigate any such personal data breach of the Client if it has been observed on Infomaniak's infrastructure or in an area for which Infomaniak has responsibility, and to assist the Client as indicated in article 5.

5. Assistance

Infomaniak commits to help the Client, where possible, by technical and organisational measures, so that the Client meets its obligations regarding the rights of the persons concerned, and so that it ensures its compliance with the security of the data processing, its obligation to give notice of a personal data breach and its obligation to proceed to an impact analysis relating to data protection, taking into consideration the information available to Infomaniak.

The Client shall submit a written request for any help mentioned herein. Infomaniak shall charge the Client a reasonable price for said help or for additional instructions, this price either leading to a quote approved by both parties, or being processed within the framework of the management of changes defined in the Contract.

6. External processors

The Client authorises Infomaniak to call on processors to process its personal data ("external processors"). The external processors may only be engaged within the framework of the execution of the services if they appear in the special terms and conditions of the services which may be involved.

In the event of change or addition of an external processor, Infomaniak shall inform the Client in advance of the changes of processors. The Client has a deadline of 30 days as of this information to issue an objection against these changes which would put it in violation of its applicable legal obligations. The objection by the Client must be formulated in writing and include its specific reasons.
Infomaniak data processing agreement

and alternatives offered, where applicable. If the Client does not issue any objection before the deadline, the external processor concerned may be assigned processing of the Client's personal data.

Infomaniak ensures that the external processor is, at least, able to meet the obligations given to Infomaniak herein concerning the processing of personal data. To this end, Infomaniak enters into an agreement with the external processor. With regard to the Client, Infomaniak remains entirely responsible for the execution of any obligation that the processor does not meet.

7. Obligations of the Client and of the controller

The Client may provide additional instructions which are legally required. If Infomaniak thinks that an additional instruction has the effect of violating the GDPR or other applicable data protection regulations, it shall notify the Client as soon as possible and may suspend the service provision until the Client has changed the additional instruction or confirmed its legality in writing. If Infomaniak notifies the Client that an additional instruction can not be implemented, or if the Client notifies Infomaniak that it does not accept the proposed price for the additional instruction, the Client may cancel the service in question by providing Infomaniak with written notice in the month following the receipt of Infomaniak's notice. If necessary, Infomaniak shall reimburse pro rata the prepaid fees for the period following the date of cancelling the services. The Client remains the sole controller of information and instructions given to Infomaniak.

8. Restoring or deleting the Client's personal data

At the end of the service (particularly in the event of non-renewal or cancellation), Infomaniak commits to delete, under the terms of the Contract and in the conditions provided, all content (including information, data, files, systems, applications, websites and other elements) which is reproduced, stored, hosted or otherwise used by the Client within the framework of the services, unless requested by a legal authority or competent court, or if the applicable European Union legislation or that of a European Union member state demands otherwise.

The Client is solely responsible for ensuring that the operations (such as backups, transferring to a third party solution, snapshots, etc.) necessary for storing personal data are carried out, particularly before services being cancelled or expiring, and before proceeding with any deletion, update or service reinstallation operations.

In this regard, the Client is informed that the cancellation and expiry of a service for whatever reason (including, but not restricted to, non-renewal), as well as certain updating operations may automatically cause the irreversible deletion of all content (including information, data, files, systems,
applications, websites and other elements) which is reproduced, stored, hosted or otherwise used by the Client within the framework of the services, including any potential backup.

9. Liability

Infomaniak may only be held liable for damage caused by a data processing for which (i) it did not meet the GDPR obligations specifically regarding the data processors, or for which (ii) it acted against the written legal instructions of the Client. In such cases, the provision of the Contract relating to liability applies.

When Infomaniak and the Client are involved in processing data within the framework of the present Contract which caused damage to the person concerned, the Client takes over, in the first instance, the full compensation (or any other compensation) due to the person concerned and, secondly, claims from Infomaniak the part of the compensation of the person concerned corresponding to the part of Infomaniak's liability in the damage, although on condition that the restrictive clauses provided by the Contract are applied.

10. Audits

Infomaniak has the right to respond to the requests of the competent supervisory authority on condition that any disclosure of information is strictly limited to what is requested by said supervisory authority. In this case, and unless there is a legal prohibition, Infomaniak must first consult the Client about any required disclosure.

Infomaniak provides the Client with all information necessary for allowing the Client or other auditors to perform audits to prove compliance with GDPR requirements.

This information is available in the standard documentation on the Infomaniak website. Additional information may be given to the Client on request to the Infomaniak support team.

If a service is agreed and it follows a specific code of conduct or is the object of certifications or specific monitoring procedures, Infomaniak makes available, on written request by the Client, the corresponding monitoring certificates and reports.

If the information, the report and the certificate mentioned above are insufficient to allow the Client to demonstrate that the obligations provided by the GDPR are met, Infomaniak and the Client shall meet to agree the operational, security and financial conditions of a technical on-site inspection. In
any event, the conditions of this inspection must not affect the security of Infomaniak's other clients.

The aforementioned on-site inspection, as well as the provision of monitoring certificates and reports, may lead to reasonable additional fees. Any information communicated to the Client pursuant to this clause which is not available on the Infomaniak site is considered confidential Infomaniak information within the framework of the Contract. Before sending this information, Infomaniak may require the signature of a specific confidentiality agreement.

Amendment dated 20/06/2018