1. Field of application

1.1. The Jelastic Special Terms and Conditions apply without restriction or reservation to all Jelastic Cloud services offered by Infomaniak Network SA (hereinafter "Infomaniak") to all natural or legal persons existing under private or public law, holding an Infomaniak customer account (hereinafter referred to as the "Customer").

1.2. Jelastic Cloud services can only be used in compliance with Infomaniak's General Terms and Conditions of Use (GCU).

1.3. The Special Terms and Conditions prevail over the GCU if a contradiction arises between these documents.

2. Description and Scope of Service

2.1. Under the terms of Jelastic Cloud services, Infomaniak will provide the Customer with storage services and virtual servers on an infrastructure connected to the Internet, as well as a Client interface for creating / managing 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. During the trial period, the Customer can test a version of the service with limited features and without warranty. The trial period will automatically terminate after the time period mentioned on the infomaniak.com website. During this time, the Customer can pay, at any time, to start using the complete version of the service. The Customer will no longer be able to start a trial period after being registered as a user of the complete version of the service.

Any attempt to circumvent the specified deadline during this trial period will be considered a violation of these conditions.

2.3. Infomaniak develops the service continuously and may introduce modifications related to the service and its operating environment at its discretion. Infomaniak will inform the Customer in advance of any change that may affect the service. If such changes require hardware or software changes for the Customer, the Customer is responsible for making these changes at their own expense.

2.4. Services are invoiced based on the average use of resources. The resources provided (including storage, traffic, use of the processor, memory and public IP addresses) can only be used for ordinary operations of the service. Infomaniak is authorized, with regard to intensive resource use by the Customer or by users of the service, (for example, downloading data exceeding ordinary operations such as videos, streaming, games, file sharing, a high number of concurrent logons, excessive storage of data files, caching files, excessive access to the SSD disk (reading and/or writing), etc.) to set thresholds at any time and at its sole discretion for the consumption of resources, and to limit accordingly the provision of service to the Customer.
3. Data Location

3.1. Infomaniak guarantees the data is located in Switzerland. All data transmitted by the Customer to Infomaniak is stored and exclusively hosted in datacenters that are owned by Infomaniak and based in Switzerland.

4. Infomaniak’s obligations and responsibilities

4.1. Infomaniak undertakes to fulfill all the tasks assigned to it pursuant to these Special Terms and Conditions, with all due attention and with the required degree of skill.

4.2. Infomaniak undertakes to:

a) Maintain a functioning infrastructure (in the event of an outage, Infomaniak commits to replacing the defective equipment as promptly as possible except for failure that is not its fault, or any other interventions that would require a service interruption exceeding typical replacement time periods).

b) Intervene as soon as possible in the event of an incident that is not the result of misuse of the service by the Customer.

4.3. Infomaniak will be fully liable to the Customer for proven direct damage or damage caused by intent or gross negligence on its part.

4.4. Infomaniak can not be held liable for:

a) Fault, negligence, omission or failure of the Customer or failure to comply with advice and recommendations that may have been transmitted by Infomaniak to the Customer.

b) Fault, negligence or omission of a third party over which Infomaniak has no control.

c) Force majeure, event or incident beyond Infomaniak’s control.

d) Cessation of service for any cause related to non-compliance by the Customer with these terms and conditions.

e) Improper use of the service by the Customer or by their customers.

f) Partial or total destruction of information transmitted or stored as a result of errors directly or indirectly attributable to the Customer.

g) Total or partial non-compliance with an obligation and/or failure of Internet transport network operators and in particular access providers.

5. Customer’s obligations and responsibilities

5.1. The Customer undertakes to keep their scripts, applications (CMS, software and others), as well
as their dependencies, updated.

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

5.3. The Customer is responsible for the consistency of their operating environment with the configuration selected in the service specification.

5.4. The Customer assumes sole responsibility for all consequences related to data content and its management. The user is responsible for copying all data transmitted via Infomaniak services. The Customer must be able to ensure the integrity and availability of this copy at any time.

5.5. The Customer must have the power, authority and ability required for the conclusion and execution of its obligations set forth in the Infomaniak GCU and the Special Terms and Conditions of the Infomaniak Jelastic Cloud Service.

5.6. The Customer must ensure that their data does not cause disruption or damage to the Internet networks, hardware and technical infrastructure that may affect Infomaniak or the interests of any third party (including other Customers).

5.7. Installation of applications/scripts which could compromise the normal functioning or security of the network is not authorised except by prior written permission from Infomaniak. Carrying out the following processes is specifically prohibited without written authorisation from Infomaniak:

   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, etc.);
   f) Cryptocurrency mining;
   g) contentious behaviour such as traffic exchanges (Hitleap, Jingling);
   h) black Hat SEO (downloading and re-uploading videos in online video platforms, amongst others);
i) making unlocking services available for the purpose of enabling high-volume downloads on file-hosting platforms.

This list is not exhaustive; when in doubt it is the Customer's responsibility to confirm if activation is authorised by Infomaniak prior to installing an application/script.

In these cases, Infomaniak reserves the right to immediately suspend or cancel the service and/or to terminate the Contract, without jeopardising the right to all damages and interests Infomaniak could claim.

6. Customer Data

6.1. The Customer holds all rights, titles and interests in all data that they transmit on their virtual servers connected to Infomaniak's Jelastic Cloud service. The Customer is solely responsible for the legality, reliability, integrity, accuracy and quality of their data.

6.2. In the event of loss or deterioration of Customer data, the Customer's sole recourse will be for Infomaniak to make reasonable commercial efforts to restore the lost or damaged data from the last data backup held by Infomaniak if that is technically feasible.

6.3. Infomaniak cannot be held liable for any loss, destruction, alteration or disclosure of Customer data caused by a third party or by the Customer themselves. The Customer acknowledges and accepts that regular backups of its data can be carried out by performing their own backups at any time.

6.4. Infomaniak's responsibility in the event of a loss or corruption of data will be limited to that resulting from its non-compliance with these contractual commitments.

6.5. The Customer accepts that their data involves a transmission on the Internet and on other networks which are not exclusively under the control of Infomaniak. The Customer is responsible for the protection and encryption level of their data and accepts the risks associated with electronic communications and the possibility of unauthorised third parties having access to it, and it accepts that Infomaniak is not responsible for any loss, theft or damage.

7. Data backups

7.1. Infomaniak preventively backs up the contents of its servers once a day in a second Datacenter, also exclusively managed by Infomaniak and based in Switzerland. Up to seven successive backups are retained and can be used for the sole purpose of restoring a malfunction related to a physical server managed in its entirety by Infomaniak.
7.2. The Customer recognizes that all of the backed up data will be erased by Infomaniak 100 days after non-renewal of the agreement (Jelastic credit exhausted) or upon early termination. The Customer will proceed to retrieve all their data before the agreement expiration date.

8. Invoicing

8.1. The fees for this service are detailed on the www.infomaniak.com website.

8.2. If, at any time during the use of the Services, the Customer exceeds the resource limits specified in the Jelastic Cloud product interface or notified by Infomaniak, Infomaniak may suspend the service. Any other use of services will be subject to payment by the Customer of the resource usage fees in effect.

8.3. Infomaniak will be entitled to increase its rates at any time to reflect the corresponding increase in the retail price index, subject to a 30 days notice to the Customer.

9. Security guidelines

9.1. A violation of the security of the Infomaniak systems and network constitutes a breach of contract for which the Customer is liable under civil law. If the necessary prerequisites are met, the Customer will also be liable under criminal law. The following actions specifically constitute such violation of the network security system:

a) Unauthorized access or use of data, systems and network elements, testing the vulnerability of the system or the network without prior agreement (analysis) or attempted penetration of security and authorization measures without obtaining the prior written consent of Infomaniak.

b) Unauthorized monitoring of data traffic without the prior written agreement of the competent authorities or of Infomaniak (sniffing).

c) Harm to Infomaniak systems and its customers through attempts to overload the system (flooding).

d) Piracy of management information in TCP / IP packets (packet headers).

10. Sending email

10.1. The Customer is responsible for the content of messages they may send via the Jelastic Cloud service.

10.2. The sending of emails to a large number of recipients is prohibited to the extent that this is done without the prior consent of the recipients (double-opt-in) or without proper indication of the identity of the sender or without reference to a simple and free opt-out (spamming). Exceptionally,
the sending of information concerning goods and services without prior consent of the recipient is allowed if the recipient concerned is already a customer of the sender and the message contains information on goods and services similar to those already received by the recipient as well as a reference to a simple and free opt-out.

10.3. The use of a mail server as a distribution station (relay) for the processing of unsolicited identical messages to a large number of recipients with domain names registered with Infomaniak is prohibited.

11. Suspension

11.1. Without prejudice to any other right, power or remedy and without responsibility, Infomaniak reserves the right to limit or suspend the Jelastic Cloud service:

a) If that is reasonably necessary to protect the interests of the Customer or of Infomaniak, or the interests of a third party (including other Customers) and/or to protect the security or functioning of the Infomaniak systems or networks, or the interests of a third party (including other Customers).

b) If the Customer does not comply with one of the conditions of this agreement or if Infomaniak reasonably suspects that the Customer has breached or is at the point of breaching this agreement.

c) If the Customer does not pay the expenses at maturity or exceeds the resource limits;

d) If the Customer fails to cooperate with respect to any alleged or actual violation of the terms of the agreement.

e) If it is required by law as the result of a request from a regulatory or governmental authority.

f) If the Customer service constitutes a danger for the maintenance of Infomaniak's infrastructure security (piracy of the server, detection of a flaw in the security of the system, abnormal use of resources, etc.)

11.2. Infomaniak also reserves the right to block the Customer user account if its behaviour or the behaviour of the users of the service affects the way in which the service is running, or affects other services used by other Infomaniak customers (for example, a high number of concurrent logon attempts by repeated DDoS attacks or for which Infomaniak counter-measures would not be sufficient). Infomaniak will inform the Customer in advance or immediately following blockage.

11.3. Infomaniak can also temporarily suspend all or part of the services related to the Jelastic Cloud product for the purpose of repair, maintenance or improvement of the systems. Infomaniak must use all reasonable efforts to keep such suspensions to a minimum and avoid performing this work during local business hours.

11.4. Infomaniak cannot be held liable for any suspension of services in the above circumstances and the Customer may not be entitled to any compensation, discount, refund or credit as a result of this suspension. The Customer agrees that all downtime is exempt from the Service Level Agreement.
12. Termination

12.1. If the Customer breaches the contractual provisions, uses the services for illegal purposes, renders prohibited content accessible or threatens to harm the Infomaniak reputation, Infomaniak is authorized to immediately disable the service and/or terminate the agreement without prior notice. The Customer is obliged to pay the costs due up to the ordinary termination of the agreement, as well as the compensation of any additional costs incurred in connection with the agreement termination.

13. Service Level Agreement (SLA) for the Jelastic Cloud Service

The Service Level Agreement refers to:

- Issue processing times

- Penalties in the event of overrun

- Communication modalities

- Maintenance terms

- Production and monitoring procedures

It represents the sole and exclusive remedy in the event of default by the Jelastic Cloud Service and is an integral part of this agreement.

Amendment dated 03/09/2018