

# Personal Data Processing Agreement

## Preamble

This Data Processing Agreement (“Agreement”) forms an integral part of the General Terms and Conditions of Use (hereinafter referred to as “T&Cs”) between the “Company” or the “Client” using the services of **INFOMANIAK NETWORK SA**, Rue Eugène-Marziano 25, 1227 Acacias, SWITZERLAND (the “Subcontractor” or Infomaniak) collectively referred to as “the Parties”.

Considering that:

1. The Company acts as the Data Controller;
2. The Company wishes to subcontract certain Services, involving the Processing of personal data, to the Subcontractor;
3. The Parties seek to establish a Data Processing Agreement. The purpose of this agreement between the Subcontractor and the Company, pursuant to Art. 9 of the Swiss Federal Act on Data Protection (hereinafter the “FADP”) and Article 28 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (“General Data Protection Regulation” or hereinafter referred to as “GDPR”), is to define the conditions under which Infomaniak has the right, as a Subcontractor and within the framework of the Services defined in the contract, to process personal data as defined in the GDPR at the instruction of the Client;
4. The Parties wish to define their rights and obligations;
5. The Processing of personal data by Infomaniak in its capacity as Data Controller does not fall within the scope of this Agreement;

It is agreed as follows:

## Article 1 – Definitions and interpretation

1.1 Except as otherwise defined herein, capitalised terms and expressions used in this Agreement shall have the following meanings:

1.1.1 “Agreement” means this Data Processing Agreement and its Appendices;

1.1.2 “Company’s Personal Data” means personal data processed by the Subcontractor on behalf of the Company in accordance with or in connection with the T&Cs;

1.1.3 “Data Protection Laws” means Swiss and European data protection laws and, to the extent applicable, the data protection laws of any other country;

1.1.4 “EEA” means European Economic Area;

1.1.5 “European Data Protection Laws” means EU Directive 95/46/EC, as transposed into the national law of each Member State and as amended, replaced or repealed from time to time, including by the GDPR and laws implementing or supplementing the GDPR;

1.1.6 “GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;

1.1.7 “Data transfer” means: a transfer of Personal Data from the Company to the Subcontractor or a further transfer of Personal Data from the Company to a Sub-subcontractor;

1.1.8 “Services” means the services used by the Company.

1.1.9 “Sub-subcontractor” means any person appointed by or on behalf of the Subcontractor to process Company’s Personal Data under the Agreement;

1.1.10 “FADP” refers to the Federal Act on Data Protection (RS 235.1) and its implementing ordinances, namely the “DPO” (Data Protection Ordinance – SR 235.11) and the “DPCO” (Data Protection Certification Ordinance – SR 235.12);

1.2 The terms “Commission,” “Controller,” “Data Subject,” “Member State,” “Personal Data,” “Personal Data Breach” and “Processing” shall be used in this Agreement with the same meaning as in the FADP or GDPR and shall be interpreted accordingly.

## **Article 2 – Processing of the Company’s Personal Data**

2.1 Infomaniak undertakes:

2.1.1 to comply with all applicable data protection laws in relation to the Processing of the Company’s Personal Data;

2.1.2 not to process the Company’s Personal Data other than as instructed by the Company;

2.1.3 to process the Company’s Personal Data downloaded, stored and used by the Company only for the provision of the Services as defined in this Agreement;

2.1.4 not to access or use the Company’s Personal Data for purposes other than those necessary for the performance of the Services (in particular for incident management);

2.1.5 to implement technical and organisational measures to ensure the security of the Company’s Personal Data in the context of these Services;

2.1.6 to implement high security standards and maintain continuous improvement processes in order to provide the Company with a high level of security as part of the Services provided;

2.1.7 to maintain and develop physical security measures to prevent unauthorised persons from accessing the infrastructure on which the Company’s Personal Data is stored;

2.1.8 to have physical and/or logical isolation systems (depending on the Services) in order to isolate the clients’ hostings from each other, and to perform intrusion tests once a year to ensure there is no leakage of data between clients;

2.1.9 to implement an access management system that restricts access to the premises to persons who require access in the course of their duties and responsibilities;

2.1.10 to protect access to administrative functions through user and administrator authentication processes;

2.1.11 to implement an access management system for support and maintenance operations that operates on a “least privilege” and need to know basis;

2.1.12 to inform the Client if, in its opinion and taking into account the information available to it, Infomaniak discovers that one of the Client’s instructions infringes the provisions of the GDPR or the FADP or other provisions of the European Union or a Member State of the European Union on the protection of personal data;

2.1.13 to inform the Client (unless prohibited by applicable laws or by order of a competent authority) in the event of requests received from a competent authority relating to the Company’s Personal Data processed under this Agreement, and limit the disclosure of data to what the authority has specifically requested.

2.2 By means of this Agreement, the Company instructs the Subcontractor to process the Company’s Personal Data in order to enable the execution of the main contract governed by the T&Cs.

## **Article 3 – Subcontractor’s staff**

3.1 Infomaniak must take reasonable measures to ensure the reliability of any person, employee, agent or Subcontractor of any Sub-subcontractor who may have access to the Company’s Personal Data, ensuring in each case that access is strictly limited to persons who need to know/access the Company’s Personal Data and to comply with the laws applicable in the context of this person’s duties within Infomaniak, ensuring that all such persons are subject to confidentiality.

## **Article 4 – Infomaniak’s obligations as Data Controller**

4.1 Taking into account the state of the art, the implementation costs and the nature, scope, context and purposes of the processing as well as the risk of varying probability and severity for the rights and freedoms of natural persons, Infomaniak must, with regard to the Company’s Personal Data, implement appropriate technical and organisational measures to guarantee a level of security appropriate to this risk, including, where applicable, the measures referred to in Article 3 of the DPO and Article 32(1) of the GDPR.

4.2 When assessing the appropriate level of security, Infomaniak must take particular account of the risks presented by the Processing, in particular in the event of a breach of the Company’s Personal Data.

## **Article 5 – Sub-subcontractors**

5.1 The Client authorises Infomaniak to use Subcontractors to process the Company’s Personal Data (“Sub-subcontractors”). Sub-subcontractors may only be engaged for the performance of the Services and shall feature in the specific terms and conditions of the Services that may be affected or in the confidentiality policy.

5.2 In the event of a change to or addition of a Sub-subcontractor, Infomaniak shall inform the Client in advance of any changes of Sub-subcontractor. The Client shall have 30 days from the date of this notification to raise an objection to these changes. The Client's objection must be made in writing (an email is sufficient) and must include its specific reasons and proposed alternatives, if any. If the Client does not object within this period, the relevant Sub-subcontractor may be tasked with processing the Company's Personal Data.

5.3 Infomaniak shall ensure that the Sub-subcontractor is, as a minimum, able to fulfil the obligations imposed on Infomaniak in this Agreement concerning the Processing of the Company's Personal Data. To this end, Infomaniak shall conclude an agreement with the Sub-subcontractor. Infomaniak remains fully liable vis-à-vis the Client for the fulfilment of any obligation that the Sub-subcontractor does not fulfil.

## **Article 6 – Rights of the data subject**

6.1 Considering the nature of the Processing, Infomaniak must assist the Company by implementing appropriate technical and organisational measures, insofar as this is possible, in order to fulfil the Company's obligations and to respond to requests to exercise the rights of Data Subjects under data protection laws.

6.2 Infomaniak must:

6.2.1 promptly notify the Company if Infomaniak receives a request from a data subject under any Data Protection Act with regard to the rights of the Data Subject; and

6.2.2 not respond to such a request, except on documented instructions from the Company or as required by applicable laws, in which case Infomaniak must, to the extent permitted by law, respond to such request.

6.3 At the end of the service (in particular in the event of the non-renewal or termination of the contract between Infomaniak and the Company), Infomaniak undertakes to delete, under the terms of the contract and under the conditions provided, any content (including information, data, files, systems, applications, websites and other items) that is reproduced, stored, hosted or otherwise used by the Client within the framework of the Services, unless requested by a competent legal or judicial authority, or if the applicable law does not require otherwise.

6.4 The Client shall ensure, with the assistance of Infomaniak, that the operations required (such as backup, transfer to a third-party solution, snapshots, etc.) to store the Company's Personal Data are carried out before the Services are terminated or expire, and before any operation to delete, update or reinstall the Services is carried out.

## **Article 7 – Deletion or return of the Company's Personal Data**

7.1 Upon instruction from the Company and in any event within ten working days of the date of cessation of any service involving the Processing of the Company's Personal Data, Infomaniak must delete and cause to be deleted all copies of the Company's Personal Data.

7.2 Infomaniak must provide the Company with a written certification attesting that it has fully complied with this section within 10 working days of the date of termination or instruction by the Company.

## **Article 8 – Breach of the Company’s Personal Data**

8.1 Infomaniak must notify the Company without undue delay as soon as Infomaniak becomes aware of a breach affecting the Company’s Personal Data and provide the Company with sufficient information to enable it to notify the Data Subjects of the personal data breach under data protection laws.

8.2 Infomaniak must cooperate with the Company and take reasonable measures, in accordance with the Company’s instructions, to help investigate, mitigate and remedy each personal data breach.

8.3 In the event of loss, destruction or alteration of the Company’s Personal Data due to Infomaniak’s failure to fulfil its obligations under data protection laws, this Agreement or the contract entered into between Infomaniak and the Company, Infomaniak shall, at its own expense, carry out all operations necessary to restore or rebuild the Company’s Personal Data. If, during the contract term, Infomaniak is unable, for whatever reason, to comply with its obligations, it undertakes to notify the Client as soon as possible and to implement any necessary palliative or corrective measures.

## **Article 9 – Liability**

9.1 In terms of data protection, Infomaniak may only be held liable for damage caused by Processing for which (i) it has not complied with its obligations under data protection laws, (ii) it has not complied with its obligations under data protection laws concerning the Sub-subcontractors in charge of data, or for which (iii) it has acted contrary to the Client’s legal instructions or in violation of their agreements (contract, this Agreement, etc.). In such cases, the liability provision of the contract applies.

## **Article 10 – Assistance**

10.1 Infomaniak undertakes to assist the Company, to the extent possible, by means of technical and organisational measures, so that the Company complies with its obligations with regard to the rights of the Data Subjects, and so that it ensures compliance with the security of Processing, its obligation to notify the Company of a breach of its Personal Data and its obligation to carry out a data protection impact assessment, taking into account the information available to Infomaniak.

## **Article 11 – Data protection impact assessment and prior consultation**

11.1 Infomaniak must provide the Company with reasonable assistance for any data protection impact assessment and any prior consultation with the supervisory authorities or other competent data protection authorities, which the Company reasonably considers to be required

by Articles 35 and/or 36 GDPR or the equivalent provisions of any other data protection law, in each case, only in relation to the Processing of the Company's Personal Data, and taking into account the nature of the Processing and the information available to Infomaniak.

## **Article 12 – Audits**

12.1 Infomaniak has the right to respond to requests from the competent supervisory authority, provided that any disclosure of information is strictly limited to what is requested by the said supervisory authority. In this case, and unless prohibited by law, Infomaniak must first consult the Company regarding any required disclosure.

12.2 Infomaniak shall provide the Client with all the information necessary to enable other auditors to perform audits in order to demonstrate compliance with the requirements of the FADP and GDPR and compliance with this Agreement with regard to the Processing of the Company's Personal Data.

12.3 This information is available in the standard documentation on Infomaniak's website. Additional information may be provided to the Client upon request addressed to the Infomaniak support team.

12.4 If a service is approved and complies with a specific code of conduct or is subject to specific certifications or control procedures, Infomaniak shall provide, at the Client's written request, the corresponding control certificates and reports.

12.4.1 If the aforementioned information, report and certificate prove insufficient to enable the Client to demonstrate that the obligations stipulated by the FADP or GDPR have been met, Infomaniak and the Client shall meet to agree on the operational, security and financial conditions of an on-site technical inspection. In any case, the conditions of this inspection must not affect the security of other Infomaniak customers.

12.5 The aforementioned on-site inspection and the provision of inspection certificates and reports may incur a reasonable additional fee.

12.6 Any information communicated to the Client under this clause and which is not available on the Infomaniak website is considered confidential information of Infomaniak within the framework of the contract. Before communicating this information, Infomaniak may require the signing of a specific confidentiality agreement.

12.7 The Company's rights to information and audit exist only under this Article (Audits) to the extent that the Agreement does not otherwise provide the Company with information and verification that meets the relevant requirements of data protection law.

## **Article 13 – Transfer of data**

13.1 Infomaniak may not transfer or authorise the transfer of the Company's Personal Data to countries outside the EU and/or the European Economic Area (EEA) without the Company's prior written consent. If Personal Data processed under this Agreement is transferred from a country in the European Economic Area to a country outside the European Economic Area, the Parties shall ensure that the personal data is adequately protected. For this purpose, the parties rely, unless otherwise agreed, on the EU-approved standard contractual clauses for the transfer of the Company's Personal Data.

## **Article 14 – Applicable law and jurisdiction**

14.1 This Agreement is governed by Swiss law.

14.2 Any dispute relating to this Agreement, which the Parties fail to resolve amicably, shall be submitted to the exclusive jurisdiction of the courts of Geneva, subject to the possibility of recourse to the Swiss Federal Supreme Court.

Infomaniak Network SA