General Terms and Conditions of Infopark Cloud Services

Last updated May 1, 2018

1. Subject matter

1.1. These present terms and conditions of Infopark AG, Berlin (Infopark), are effective for all contracts and contractual agreements between Infopark and its customer and refer to the services to be performed by Infopark (Infopark Cloud Services) and to be paid for by said customer.

1.2. In addition to these present terms and conditions, the respective price list shall be effective.

1.3. The customer's terms and conditions shall not be regarded as a matter of this contract even if such are attached to calls for bids, orders, or order confirmations, and even if Infopark Cloud Services performs without contradicting the customer's conditions.

2. Infopark Cloud Services – Continuous development as a service

Infopark continuously develops Infopark Cloud Services. The customer can demand Infopark to constantly optimize its services, adapt them to technical progress, and offer solutions for any current operative requirement.

In order to allow such continuous development, the following regulations shall apply:

2.1. In case Infopark plans changes of their services (e.g. changes of the programming interfaces (APIs)) or of these terms and conditions, Infopark will inform the customer at least six (6) weeks before these changes become effective (notification of changes). Such notifications of changes will be published on the Internet, accessible by a URL specified by the particular service. The customer must subscribe to the respective RSS feed.

2.2. In case of changes to the services or these present terms and conditions, the customer has a special right of termination effective at the point of time at which such changes become effective.

2.3. If the customer does not terminate the contract in writing (e.g. by email) within six (6) weeks from the date of the notification of changes, the changes will become part of this contract as soon as they become effective, if and insofar as the changes are reasonable considering Infopark's interest in optimizing its services, adapting to technical progress and to the solutions of current operative requirements. The changes are not reasonable for the customer if Infopark Cloud Services become unusable for the customer due to the changes made or if the services are strongly restricted in their functionality for the purpose sought for by the customer. The changes are particularly reasonable for the customer if basically equivalent functionality is ensured or if a termination of Infopark Cloud Services as stipulated in 2.2 is reasonable. Infopark will explicitly point out the consequences of customer's action in its notification of changes.

2.4. In case of changes of APIs, Infopark will continue to provide previous versions to the customer for as long as six (6) months after the changes become effective, unless further provision is impossible due to actual or legal reasons, or such provision requires an unreasonable effort for Infopark.

Infopark explicitly points out that in exceptional cases short-notice changes of its services might become necessary due to reasons of security or other highly important reasons. In such a case, Infopark will immediately inform the customer about the change by publishing the notification on the internet, accessible by a URL specified by the particular service. The customer must subscribe to the respective RSS feed.

3. Infopark as a Service – the services in detail

At customer's order, Infopark performs

- API Services
  in the form of Platform as a service (PaaS) and

- Infopark Cloud Hosting Services
  in the form of Infrastructure as a Service (IaaS); or

- Infopark Customer Support Services
  in the form of further services.

The following services are not included into Infopark Cloud Services:

- services for creating a website;
- provision of a development environment for Ruby on Rails or JavaScript, including the necessary RubyGems and other Gems;
- Gems published and/or developed by Infopark publicly and free of charge which can be used with LGPL (Lesser General Public License);
- the customer's IT infrastructure and the connection of the customer to the internet; as well as
- services related to (internet and other) connections.

3.1. API Services
API Services are services to support the customer in developing and providing websites (API Services). To be precise, a developer can, in the scope of the API Services, use, develop and test any Ruby on Rails and JavaScript application, website or product using the Infopark Application Programming Interface (API) developed by Infopark (and to be continuously developed) in order to create websites based on Ruby on Rails and JavaScript. Insofar, Infopark owes the customer the attempt to connect the API – as a platform for Ruby on Rails and JavaScript web applications – to the internet in such a way that the customer can use the API via the internet. The customer does not receive any rights to the API. The internet connection used by Infopark in order to allow the customer to use the API is the place of performance.

Via the API, the customer can use the Infopark Cloud Services as a Service. With the Infopark Cloud Services as a service, the customer can create his web projects and manage them centrally. In the framework of the web projects, the customer can

- use Infopark's Content Management Systems such as Scrivito or Fiona for the management of his contents; and
- use Infopark's web-based Customer Relationship Management System such as JustRelate / WebCRM for managing and editing user activities of the website.

In order to enable the customer to use the API Services, Infopark provides a technical documentation, data and information in English regarding the use of Infopark Cloud Services through a URL specified by the particular service.

3.2. Optional: Infopark Cloud Hosting Services
Using the Infopark Cloud Services, Infopark Cloud Hosting servers can be set up for the operation of customized websites. Infopark operates these servers on Amazon Elastic Compute Cloud (EC2) at Amazon Web Services (AWS). The customer can order Infopark Cloud Hosting Services in addition to the API Services.

In case this is ordered, Infopark owes the customer the attempt to make the customer's server available on the internet in such a way that the customized websites can be made publicly available on the internet. The internet connection used by Infopark in order to allow the customer to use the API is the place of performance.

The customer is aware of the fact that

- Infopark only operates servers within the European Union;
- the best availability is provided from three (3) servers upward, as the servers are then divided onto independent Availability Zones within the respective AWS region,

and that

- upon separate request through the customer, Infopark can also operate servers for the customer in AWS regions outside of the European Union or in specific AWS regions within the European Union.

3.3. Optional: Support Services
The customer can mandate Infopark for optional Support Services. In case this is ordered, Infopark performs the Support Services ordered as a service. To be precise, Infopark owes the customer the attempt to support both the expert and the technical staff of the customer in using the API Services and, if ordered, in using the Infopark Cloud Hosting Services.

3.4. Infopark is entitled to perform Infopark Cloud Services entirely or partially through third parties as sub-contractors without the approval of the customer.

3.5. Services within the EU, and data protection
In principal, Infopark performs the Infopark Cloud Services within the European Union (EU) and has implemented all technical and organizational means required according to the stipulations of

the GDPR (General Data Protection Regulation) in order to warrant the execution of the regulations stipulated in the GDPR.

Data protection
The customer is aware of the fact that Infopark only operates servers within the European Union and that the best availability is provided from three (3) servers upward, as the servers are then divided onto independent Availability Zones within the respective AWS region.

Only provided the customer
- explicitly requests (e.g. for reasons of data protection); and
- meets a separate agreement with Infopark;

will Infopark operate servers also in AWS regions outside of the EU for the customer.

3.6. The services to be performed by Infopark within the scope of the Infopark Cloud Services are partially described in the respective Service Level Agreements.

4. Customer's responsibility

4.1. The decision to order Infopark and use the Infopark Services is the customer's own responsibility. The customer will particularly check in due time if
- Infopark Cloud Services meet his requirements and the customer shall consider expert-advice for this; he shall also ensure that
- the IT infrastructure he implements meets the necessary (technical) minimum requirements for using Infopark Services and is protected against viruses, trojans or other malware; and
- he holds the necessary rights for using the implemented IT infrastructure, especially the implemented software including the Gems, and that he complies with and observes the terms of use (e.g. the GNU Lesser General Public License (GNU LPGL) in the context of RubyGems).

4.2. The customer performs the obligatory cooperation services. In particular, he shall
- observe the security advice given by Infopark about the protection of his implemented IT infrastructure;
- immediately inform Infopark about disturbances of Infopark Cloud Services using the respective systems provided for this purpose by Infopark, and he shall adequately support Infopark in resolving such disturbances, particularly by providing the information needed;
- use Infopark Cloud Services appropriately and only in the intended use; and
- list expert contact people for Infopark.

The customer is aware of the fact that his data are in principal at risk through viruses, trojans and other malware, as well as access and attacks through third parties in connection to the use of the internet.

4.3. The customer must not hand over his personal access data (access data) such as passwords to third parties. Access data must be stored under security so that no third party can access them; saving

the data on a PC or other storage devices (CD-ROM, flash drive, etc.) without encryption or not encrypted properly does not count as secure storage. Access data must be changed immediately if a third party is suspected to have gained knowledge of them.

4.4. The customer carries the sole responsibility for the contents he uses Infopark Cloud Services for, or which he collects, processes or otherwise uses with Infopark Cloud Services, particularly when it comes to websites. This also applies when it comes to third parties using customer's website.

The customer must observe the national and international data protection rights, copyrights, trademark and patent laws, naming and labeling laws, as well as all other industrial property rights and the personal rights of any third party; he must adhere to the respective laws and regulations. Operation of download-, video- and file sharing-portals as well as Peer2Peer-sites, video chat systems and streaming servers require previous written approval by Infopark.

The customer exempts Infopark from any claim third parties might bring up against Infopark in relation to the use of Infopark Cloud Services by the client. This exemption includes adequate costs for legal defense (fees for attorneys and court proceedings).

5. Pricing

5.1. The customer pays Infopark the agreed prices (plus the respective VAT if applicable) for Infopark Cloud Services. The negotiated prices are charged on a monthly basis after any given month and are payable upon invoicing.

5.2. The minimum booking period, the amount of the negotiated prices and further conditions for payments are described in the respective price list. If nothing is explicitly stated differently the prices listed are to be seen as net-value in Euro (EUR) plus the respective VAT.

5.3. In case of delayed payment, Infopark can
   • demand delay charges in the amount of 5% above the respective base interest rate. Enforcement of further damages is unaffected;
   • threaten the customer with blocking the API Services and/or Infopark Cloud Hosting Services in writing (e.g. via email) and – any time after the threat – block the Infopark Services completely or partially, yet not before 14 days of delay have passed.

5.4. The customer can only invoice against legally confirmed or undisputed counterclaims. The customer can only claim a retention right for counterclaims based on this contract.

6. Infopark as a Service – Infopark's responsibility

6.1. Infopark performs its Infopark Cloud Services as a service in the form of as a service performance. Thus, Infopark does not owe success, but the performance of Infopark Cloud Services.

6.2. Infopark does not guarantee that
   • Infopark Cloud Services are usable or available constantly during the term of this agreement;

- websites created using the API Services are constantly usable or available without any errors, or that they have specific functions or other properties.

6.3. Service Commitment

In case Infopark Cloud Services are not available or not available as fit for the agreed upon Service Levels, Infopark will try to make the use possible for the customer immediately, or to meet the agreed upon Service Levels again immediately.

Infopark will use commercially reasonable efforts to reach an availability of the percentage defined in the respective Service Level Agreement per month. The API Services and Infopark Cloud Hosting Services are "available" if they are connected to the internet in such a way that the customer can use them over the internet. The availability is calculated by taking the minutes of a month (100%) and subtracting the respective percentage of the minutes during which the service was not connected to the internet (minutes are only subtracted if the service was not available for more than five (5) consecutive uninterrupted minutes); minutes during which a connection was not available due to a service exclusion are not subtracted.

A service exclusion is given if a service is unavailable due to
- blocking as described in 7;
- an occurrence of an event which is beyond the control of Infopark, including (I) all cases of force majeure according to 9.5, and (II) all events related to the internet connection beyond the place of performance;
- the behavior of the customer or a third party; or
- disturbances that originate from the IT infrastructure or another area of responsibility of the customer.

If the Service Level Agreement related to a specific service does not apply or is not defined, by default the service levels apply as follows.

In case Infopark cannot achieve the below-mentioned availabilities, the customer can claim a credit note of Service Credits for the API Services and/or the Infopark Cloud Hosting Services. A Service Credit is a money credit calculated as given by the following prerequisites and conditions:

Availability per month (in percent)	Service Credits (in percent of the price payable for the service concerned in the respective month)
Less than 99.95% but not less than 99%	2.5 %

Availability per month (in percent)	Service Credits (in percent of the price payable for the service concerned in the respective month)
Less than 99% but not less than 98.5%	5.0 %
Less than 98.5% but not less than 98%	7.5 %
Less than 98%	10.0 %

If

- the customer informs Infopark in the course of a month that the API Services and/or Infopark Cloud Hosting Services were available less than 99.95% in the previous month (naming the precise time-periods of non-availability sorted by date and time as well as the percentage of availability);
- the customer explicitly claims Service Credits for the availability mentioned in his message; and
- Infopark's check shows that the respective service was indeed unavailable in the time-periods mentioned and if this results in the customer's entitlement to Service Credits;

Infopark will credit the customer the Service Credits in the month following the month in which Infopark completed its check.

Service Credits are credit notes only. They cannot be transferred or cashed in and they do not result in any case in a reimbursement of previously made payments.

If Service Credits are not claimed as described (e.g. if Service Credits are not claimed within the month following the month during which the respective service was unavailable) the entitlement is forfeited without substitution.

6.4. Further claims of the customer due to non-performance or low performance of Infopark are excluded.

Claims due to non-performance or low performance become time-barred after twelve (12) months, unless the respective defect was fraudulently concealed. The legal and contractual regulations regarding Infopark's liability for damages remain unaffected.

7. Blocking Infopark Cloud Services

7.1. Infopark has the right to partially or completely block the use of the API Services and the Infopark Cloud Hosting Services and to partially or completely stop performing the Support Services, if an important reason is given for such blocking or stopping. An important reason for blocking or stopping is particularly given, if

- the customer violates an obligation of this contract, particularly if payment is delayed (blocking of Infopark Cloud Hosting Services and stopping the Support Services can happen without previous announcement; for blocking the API Services, see 5.3);
- it is not reasonable for Infopark to further use Infopark Cloud Services;
- the customer breaks or circumvents any of Infopark Cloud Services technical, administrative, process or security measures;
- the customer disrupts or degrades the performance of Infopark Cloud Services;
- the customer tests the vulnerability of Infopark Cloud Services systems or networks;
- the customer replicates or competes with core products or services offered by Infopark;
- the customer exceeds or circumvents limitations on access, calls and use of Infopark Cloud Services, or otherwise use Infopark Cloud Services in a manner that exceeds reasonable request volume, constitutes excessive or abusive usage, or otherwise fails to comply or is inconsistent with any part of the documentation;
- a security risk is given for the Infopark Cloud Services or the IT infrastructure needed by Infopark in order to perform Infopark Services; or
- the customer uses Infopark Cloud Services to conduct fraudulent or otherwise illegal actions, or to participate in such actions.

7.2. In case Infopark notices an unusual increase in the scope of use of the Infopark Cloud Services, Infopark can preemptively partially or completely block the use of API servers and the Infopark Cloud Hosting Services; however, there is no obligation to do this.

7.3. In case the API Services and the Infopark Cloud Hosting Services are blocked, or if the Support Services are stopped, Infopark will immediately inform the customer about the reason for such blocking or stopping. As soon as the customer proves to Infopark that this reason does not or does no longer exist, or that the preemptive blocking can be reversed, Infopark will reverse the blocking, or resume performance of Support Services.

7.4. Neither the blocking nor the stopping of Infopark Cloud Services as described in 7.1 or 7.2 frees the customer from his obligation to pay for the blocked or stopped Infopark Cloud Services. Any claim for damages due to such blocking or stopping of the Infopark Cloud Services as described in 7.1 or 7.2 is excluded.

8. Data protection and Order data processing

8.1. Insofar as the customer uses Infopark Services to collect, process or use personal data, Infopark only performs the Infopark Services explicitly on customer's order as order data processing according to Article 28 GDPR (General Data Protection Regulation).

8.2. Infopark has established all technical and organizational means required by the regulations of the GDPR in order to warrant the execution of the GDPR regulations. As a principal, Infopark performs the Infopark Cloud Services within the European Union (EU) and, in principal, only uses servers operated there.

Only provided the customer explicitly requests this (e.g. for data protection reasons) and meets a separate agreement with Infopark; will Infopark also operate servers outside the EU for the customer.

The separate signing of a contract about the processing of personal data on behalf according to Art. 28 GDPR with Infopark is necessary and becomes part of this contract.

8.3. The customer is aware of the fact that Infopark and its sub-contractors can be obliged through authoritative or legal order to publish or hand over customer data.

9. Liability and limitation of liability

9.1. Infopark carries unlimited liability for any injury to life, body, or health as well as for malicious intent and gross negligence.

9.2. In cases of slight negligence and if a case of 9.1 is not given, Infopark is only liable for the violation of a crucial contractual duty (so-called cardinal duty) the execution of which is vital to the conduct of this contract and in the observance of which the customer can trust. In such cases, Infopark's liability is limited to the foreseeable damages typical to the contract. Any liability for other damages that originate from defects is excluded. Additionally, Infopark's liability is limited to an amount of 250,000 EUR per event of damage.

9.3. Based on the previous sections, Infopark is only liable for the loss of data if and insofar as such loss could not have been prevented by appropriate security mechanisms on the customer's side.

9.4. Infopark owes the diligence customary in the trade. When stating whether or not Infopark is at fault, it must be considered that software as a fact cannot be created entirely without mistakes.

9.5. Infopark is not liable for force majeure events which make the performance of the contractual services impossible, or only crucially impede or temporarily complicate the proper execution of this contract. Force majeure contains all events independent of the will and influence of the contractual parties, such as war and other military conflicts, natural disasters, illegal strikes and riots, governmental means, authoritative decisions, or other critical and unforeseeable circumstances which were not caused by the contractual parties. Any circumstance only counts as force majeure if it occurs after the contract formation.

9.6. The liability based on constraining law, particularly according to the product liability law, remains unaffected.

10. Term and termination

10.1. This contract is not limited to a specific time-period. Depending on which Infopark Cloud Services are the subject matter of a contract, this contract can be terminated at any time unless otherwise agreed with a term of one (1) day, earliest to the following termination periods.

A termination of the API Services is automatically regarded as a termination of the Cloud Hosting Services and the Support.

10.2. The right of extraordinary termination for important reasons remains unaffected.

10.3. In case of the termination of the API Services, Infopark will

- immediately delete the customer's data, except such data that is needed to execute the contract, particularly for invoicing; the customer is aware of the fact that it can take some time to entirely delete the data which have been saved for the purpose of backups from all backup systems;

- perform additional services which might be necessary to transfer the customer's data to the customer against appropriate remuneration, provided the customer explicitly requests such services and meets a separate agreement with Infopark.

11. Contact

Infopark can be contacted by email to info@infopark.de or by postal mail to: Infopark AG, Kitzingstr. 15, D-12277 Berlin, Germany

12. Final provisions

12.1. This contract is exclusively governed by the substantive law of the Federal Republic of Germany. The application of the Viennese United Nations Contract for the Sale of International Goods from April 11th, 1980, is excluded.

12.2. Exclusive legal venue for all legal procedures based on or resulting from this contract is Berlin, if the customer is a company, a legal person under public law, or a special fund under public law; however, Infopark has the right to sue the customer at his own venue.

12.3. In case individual provisions of this contract should be or become partially or entirely ineffective, the effectiveness of the remaining provisions remains unaffected. The contractual parties agree now that in such a case the ineffective provision shall be replaced by a provision most similar to the economic purpose of the ineffective provision. The same holds true for potential gaps in the contract.