

## GENERAL TERMS & CONDITIONS INFURA

### 1. General

#### 1.1. Definitions:

- **INFURA**, a company incorporated and existing under the laws of Belgium, with its registered office at Koolmijnenkaai 68 bus 13, 1080 Brussel and registered under enterprise number BTW BE-0540.609.704.
- **Agreement**: These General Terms and Conditions, any Quotation, any Schedules thereto and any documents explicitly incorporated therein by reference, and any amendments and addenda that may subsequently be agreed upon in writing by the parties.
- **Client** means any natural or legal person (B2B and B2C) that enters into a contractual relationship of any kind with INFURA.
- **Confidential Information**: any documents, data and information, in any format and medium disclosed or made available by either party to the other party, whether orally or in writing, including the existence and content of the Agreement, except for information which is (a) already in the public domain other than by a breach of this Agreement, (b) rightfully received from a third party not in breach of any obligations of confidentiality, (c) independently developed by the receiving party without access to the confidential information of the disclosing party, (d) proven to be already known to the receiving party at the time of disclosure, (e) publicly disclosed in compliance with applicable law or a court order provided that the receiving party first gives the disclosing party reasonable notice of such law or court order and an opportunity to object to and/or attempt to limit such disclosure, or (f) supplied to Client as part of a Deliverable or Service.
- **Consumer** means any natural person who is acting for purposes which can be regarded as acting outside his trade or profession.
- INFURA and Client are also individually referred to as a “**Party**” and collectively as the “**Parties**”.
- **Quotation**: a detailed description of the Services to be delivered by INFURA, agreed upon and accepted by Client.
- **Services** means the set of obligations which INFURA has engaged to deliver to the Client.

- 1.2. These Terms & Conditions apply to any Agreement, regardless its nature, arising between INFURA and the Client unless special terms and conditions are agreed in writing between the Parties. In the event of a conflict between these Terms and Conditions and a Quotation, the Quotation will have precedence.

### 2. Offers, price quotations

An offer or Quotation is only valid in respect of the person to whom the offer or price quotation is addressed. The price quotation is only valid during a period of 30 calendar days from date of issue. INFURA's price quotations have a mere indicative character, unless expressly stated otherwise. INFURA reserves the right to withdraw its offer at any time.

### 3. Acceptance

- 3.1. Acceptance of INFURA's offer is deemed as soon as INFURA receives an order confirmation. The order confirmation can be derived both explicitly and implicitly from the mutual communications with the Client by email or otherwise.

- 3.2. Changes to the original agreement are only valid if INFURA and the Client decide so jointly. The Client understands and agrees that these changes could have a possible impact on the price and timeframe.

#### **4. Right of cancellation**

- 4.1. Every agreement between a Consumer and INFURA relating to Services offered online and which have been agreed upon at a distance (i.e. by any means which do not require the simultaneous physical presence of the Parties to the Agreement) may be cancelled by the Consumer without motive or penalty within fourteen (14) calendar days from the day the agreement was closed when it concerns Services or (14) fourteen calendar days from the day following the delivery of the physical Product by INFURA.

The consumer who wishes to invoke the right of cancellation must communicate his decision explicitly and unambiguously, in writing, including the order date, the date of receipt and the date on which the right of cancellation is exercised; the Services and/or Products for which cancellation is exercised, the name and address of the Consumer including his signature.

- 4.2. If the Consumer uses his right of cancellation in conformity with the above mentioned conditions, INFURA will reimburse the amount actually paid for the product and/or Service. Reimbursement will take place no later than fourteen (14) calendar days following reception by INFURA of the notification of the cancellation. The *reimbursement* will be carried out through the *same payment method* as used for the initial transaction, unless expressly agreed otherwise.
- 4.3. The Client accepts that his right of cancellation will expire as soon as INFURA has completed delivery of Services, even if the 14 days cancellation period has not expired yet.

#### **5. Delivery**

- 5.1. The delivery of the Services will be carried out as soon as possible after the Agreement starter's date or at a later point in time, to be agreed upon between Parties. Delivery terms are indicative and not binding.

#### **6. Invoices and Payment**

- 6.1. All prices mentioned on INFURA's offers, quotations and invoices are presented exclusive of VAT and/or other taxes and charges. All prices are presented in EURO and are due to be paid in EURO.
- 6.2. Unless agreed otherwise in writing, all invoices issued by INFURA are to be paid within fourteen (14) calendar days after the invoice date. In case of non-payment at due date an interest of 12% per year is charged in combination with a compensation for damages set at 10% of the invoiced amount, with an absolute minimum of €80. INFURA reserves the right to claim compensation for further damages incurred due to late payment.
- 6.3. In case of registration of domain names, the registration fee is always payable to the official authority in charge of the registration or renewal. The refusal by the authorities, or the subsequent loss of a domain name does not affect the payment obligations of the Client to INFURA.

#### **7. Term and termination**

- 7.1. The Agreement, closed between Parties, is effective from the date of acceptance of the offer if an offer is made by INFURA or if no offer was made, from date of signature of the Agreement by both Parties. The Agreement is valid for an indefinite period of time or for the definite term agreed upon between the Parties. In case of indefinite term, each Party has the right to terminate the Agreement at all times. The Party who wishes to terminate the Agreement must

notify the other Party at least one month prior to the expiration, by means of a registered letter.

- 7.2. Either Party may at any time, temporarily or immediately, suspend or terminate the execution of the Agreement if that Party is faced with a serious breach of one or more essential obligations of the Agreement that is attributable to the other Party. Prior notification via registered letter, thereby granting the other Party a reasonable timeframe to comply with its obligations is required, if such timeframe is still useful. The termination shall be without prejudice to the other rights of the Party that terminates the Agreement, including the right to claim compensation for the damages suffered as a result of breach of or shortcoming to the Agreement.
- 7.3. Either party may terminate these Terms and Conditions and/or any Service rendered thereunder immediately by registered mail and without recourse to a court if the other Party (i) files for bankruptcy, is declared bankrupt, is being wound up or has become insolvent, or (ii) fails to perform any of its obligations set forth in the Agreement and if this failure is not fully remedied within 10 working days upon having been notified, or if remediation is practically impossible within said term, there is no action plan which ensures remediation as soon as possible and ultimately within 20 working days upon having been notified.
- 7.4. The termination of the agreement implies that the Client no longer has access to the server infrastructure and its content. The termination shall involve the immediate removal of all stored data.
- 7.5. Any termination of the Agreement will not affect any accrued rights or liabilities of either party, nor will it affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.

## **8. Force majeure**

- 8.1. Neither party will be liable for the non-performance or untimely performance of any of its obligations caused by a Force Majeure event. A Force Majeure Event may be defined as any circumstance beyond the reasonable control of a party preventing that party to perform any of its obligations under the Agreement, including fire, flood, earthquake, acts of war, terror, riots, orders issued by the authorities, government intervention.
- 8.2. In case of a Force Majeure on the part of INFURA, INFURA will undertake its best efforts to eliminate or at least minimize the effects of a Force Majeure event as soon as possible.

## **9. Confidential information**

- 9.1 Each party will treat Confidential Information of the other as strictly confidential, will not disclose or make it in any way available to any third parties without the other party's prior, written and explicit consent and will use it only for the performance of the Agreement. Each party will use Confidential Information of the other party that relates to a Service only for the performance of that Service. This does not prevent either party to submit Confidential Information of the other party in any legal proceedings against the other party.
- 9.2 Each party will only on a strict "need-to-know" basis disclose and make available Confidential Information of the other party to those of its employees and contractors who are directly involved in the performance of the Service concerned and provided that they are subject in writing to the same obligation of confidentiality as that set forth in the Agreement.
- 9.3 This Article will survive any termination of the Agreement for a period of 10 years.

## **10. Warranties and liabilities**

- 10.1. INFURA acts in accordance with the generally accepted norms and customs of the industry, and makes use of recent insights and technologies. Despite INFURA's efforts, INFURA cannot provide absolute guarantees with regard to accidental or unlawful destruction or accidental loss, modification, unauthorized disclosure and accessibility. INFURA's services are regarded as an obligation of means only.
  - 10.2. INFURA is only liable for her attributable major or repeated minor contractual and/or non-contractual breach, including any obligation of warranty, caused in the performance of its obligations under the Agreement. Any claims must be notified to INFURA within two (2) weeks after occurrence of the damage. Liability of INFURA is limited to direct damages resulting from the breach. The liability of INFURA can never exceed the total amount of what is actually invoiced under the Agreement, and is in any case limited to an absolute maximum of 40.000 €.
  - 10.3. INFURA assumes no responsibility for the content placed by the Client on INFURA server infrastructure. The Client is fully and solely responsible for all content, and the resulting rights and/or claims. The Client will indemnify INFURA for all claims of third parties and any damage and/or expenses thereto related, including, without limitation, attorneys' fees, arising from deficiencies.
  - 10.4. INFURA is not liable for damages in connection with, or arising out of:
    - Failure due to improper use or negligence and/or failure by the Client to follow the guidelines of INFURA;
    - Any breach of the Client obligations under these Terms and Conditions;
    - The presence of viruses downloaded through the Internet or through external data or software used by the Client.
  - 10.5. INFURA is not liable for any indirect damages. Indirect damages must be understood as any form of consequential damages, such as, but not limited to, lost profits, financial or commercial loss, increased overall costs, increased personnel costs, damages due to loss of clients and suchlike damages. Abovementioned restrictions are not applicable in case of fraud or wilful misconduct.
  - 10.6. Both parties must preserve each other from any third party-claims that occur on the occasion of the execution of the Agreement, if these breaches cannot be attributed to the other Party. This duty of preservation includes the duty to inform and provide all necessary measures to rebut claims, but also indemnify any incurred damages due to the claim.
- 11. Specific clauses for hosting services and domain name registrations**
- 11.1. INFURA may use the services and infrastructure of specialized third parties for the execution of its obligations under this agreement.
  - 11.2. INFURA ensures all technical and non-technical, organizational and legal measures necessary to guarantee an undisturbed hosting in terms of accessibility, integrity and quality of the data. Any hosting service will be regarded as full and undisturbed if this service is not available for maximum one (1) hour, as a result of an error of INFURA or its suppliers.

The time needed for planned or emergency maintenance operations shall remain outside the calculation of guaranteed availability.
  - 11.3. INFURA shall only provide advice regarding the optimal hosting infrastructure in function of expected use at the express request of the Client. The Client is expected to provide all reasonably necessary information. The Client is required to always verify the obtained advice with regard to the suitability of the hosting infrastructure in terms of expectations. The Client bears the final responsibility for the actual chosen hosting service.

INFURA's hosting services are limited in terms of amount of storage or traffic per month. INFURA will charge the Client proportionately if the agreed limit is reached. INFURA cannot be responsible for damages resulting from reaching the maximum.

- 11.4. In case of registration of a domain name, INFURA can never be held responsible for any incorrect or ambiguous assignment, including a lack of timely payments, leading to loss of the domain name. It is the Clients responsibility to give INFURA a correct domain name to be registered. INFURA is not liable for any mistake, including spelling mistakes made by the Client.
- 11.5. The Client is solely responsible for all changes of data relative to the domain name holder, such as change of address and to verify if the domain name violates any rights of third parties, including intellectual property rights. INFURA is not responsible for claims made by third parties concerning the registration of the domain name.
- 11.6. INFURA is not responsible for the content of the website that will be linked with the registered domain name.

## **12. Support & Complaints**

- 12.1. INFURA provides a help desk that is accessible for any question and the reporting of dysfunctions and incidents regarding INFURA's Services. A dysfunction exists if INFURA's provided Services or products do not meet the agreed functionalities, thereby having an effect on the proper operation and / or accessibility of the Clients server or website. An incident is a temporary dysfunction of which the effects no longer exist at the time of notification. The Client must provide a clear description of the dysfunction, including information on the inducement and preferably with a print-screen.

- 12.2. INFURA's helpdesk is accessible via;

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Telephone: +32 16370016

Email: [info@infura.be](mailto:info@infura.be)

INFURA's support services are available and active on weekdays, i.e.: Monday to Friday: from 8:00 AM to 17:00 (PM).

INFURA's support services are not available during weekends, public holidays and pre-announced holidays. The messages received shall be treated as soon as possible. Each notified dysfunction is processed within a reasonable timeframe as soon as the Client receives confirmation of his registration.

- 12.3. INFURA is committed to take all actions within its power to remedy a temporary or permanent dysfunction. On average, INFURA is faced with a manageable dysfunction in 80% of cases. INFURA cannot guarantee that the situation is finally restored like "as before the dysfunction" if the dysfunction is due to a technical/software defect. Such non-substantial shortcomings do not give rise to a form of compensation.

## **13. Specific responsibilities of the Client**

- 13.1. The Client is fully and exclusively responsible for any use made of and any data stored on the server space.
- 13.2. The Client must take care of the personal and confidential handling of any given login information, such as username and password. The Client must inform INFURA as soon as he has a suspicion or evidence of a breach of confidentiality.
- 13.3. *Reseller Hosting*

The Client is not allowed to make its allocated server space, in any way, available to third parties ("Reseller Hosting"), unless with the prior written consent of INFURA and under the present terms and conditions. The Client will in case of Reseller Hosting enter into agreements with the end-user in its own name and for its own account. INFURA is not a party to these agreements. The Client is solely and exclusively responsible for the proper execution of his obligations under such Reseller Hosting agreement. The Client is solely and exclusively liable for any failure in fulfilling its Reseller Hosting activities. The Client will indemnify INFURA for all

claims of third parties and any damage and/or expenses thereto related, including, without limitation, attorneys' fees, arising therefrom.

**13.4. *Restrictions with regard to hosted content.***

The Client enjoys the freedom to store data and use the server space at its discretion, to the extent acting in good faith and not committing a breach of applicable law and/or third party rights, including violations of public order and good morals. The Client is absolutely not allowed to use the server space with the objective of:

- Harming or impeding INFURA or other parties through using processes, programs, spamming techniques or other practices, regardless the actual effect on the hosting services of INFURA.
- Promoting and/or inciting the facilitation and/or carrying out illegal or criminal activities, including promoting or distributing prohibited products or services. This should be interpreted in the broadest manner, and includes the provision of deception and the distribution and promotion of (child) pornographic material and ideas.
- Unsolicited invasion of other computers and networks via the Internet (hacking) whereby the Client breaches any security and/or gains access by a technical intervention with the aid of false signals or a false key, or by assuming a false identity.
- Violating the intellectual property rights of a third party right holder.
- Providing any possible reference to unreliable or harmful third party websites.

INFURA has the right to monitor and inspect the activities of the Client upon a justified suspicion of infringement. INFURA may gain access to the (web) server and may inspect files (e.g. exploits or malicious code). The establishment of such an infringement gives automatically rise to legally appropriate measures, such as the removal or disabling of access to the problematic data. INFURA may immediately inform the competent authorities and provide all necessary assistance in case of a criminal conduct. An imposed sanction does not affect the obligations of the Client arising out of the Agreement and does not give rise to any form of refund or compensation.

**13.5. *Client Commitments with regard to infrastructure***

In case of “*Unmanaged hosting*”, INFURA is solely held to provide access and to guarantee the proper functioning of server-hardware. Solely the Client is responsible for the software aspects of the server, in particular the maintenance, repair and updating software. Hardware damage caused by the lack of software-maintenance is fully borne by the Client.

INFURA hosting services are limited in terms of amount of storage or traffic per month. INFURA will charge the Client proportionately if the set limit is reached. INFURA will not be responsible for damages resulting from reaching the maximum.

The Client is not allowed to use the server space for the mere data storage if the hosting services are provided with the objective of provision of websites and web applications.

The Client shall refrain from any use that is significantly higher than the use of an average user of our services, a so-called “excessive use”. INFURA will inform the Client about the excessive use and discuss the measures to limit this use. The Client is expected to switch to an appropriate level of service if the excessive use is of structural nature. INFURA has the right to suspend its obligations under the Agreement as long as no solution to the structural overload is agreed.

**14. *Personal data***

**14.1. Client data may concern “personal data”, in accordance with the Belgian Privacy Act.**

If, in the performance of the Agreement, INFURA processes any personal data related to Client or Client’s personnel, customers, suppliers or business, then Client is the controller of the



processing of the personal data and INFURA is the processor thereof within the meaning of the applicable data protection legislation. In such case, INFURA will act only on behalf of Client and will process the personal data in accordance with the Agreement and any applicable data protection legislation, only on the instructions of Client, and only for the purpose of performing its obligations under the Agreement.

- 14.2. As data controller, the Client shall determine the purposes and the (legal and technical) means of the processing of personal data. The Client is, consequently, responsible for the lawfulness of processing of this personal data.

## **15. Intellectual Property**

- 15.1. All Materials which are developed or made available by INFURA in the execution of the Agreement, are protected as intellectual property. The concept “Materials” should be interpreted in the broadest sense, and includes software, concepts, techniques, specific skills, pre-programmed routines or procedures, technical know-how, manuals, reports, notes and annotations. These intellectual property rights belong to INFURA, its employees and licensors. The Client only receives a limited right to access, use and display, which is in line with the objectives of the agreement. These rights are characterised as non-exclusive and non-transferable.
- 15.2. By uploading content, the Client grants INFURA a non-exclusive, transferable, royalty-free and worldwide license to use, reproduce, process, and communicate this content to third parties in so far this is necessary for the Services. This license is not restricted in time. This license applies to all types of intellectual property rights involved. The license is required to guarantee the Services, and the use of that license is limited to that aim.

## **16. Miscellaneous provisions**

- 16.1. In making and performing the Agreement, INFURA and Client act and will at all times act as independent contractors and nothing contained in the Agreement will be construed or implied to create an agency or employer-employee relationship between the parties. Client’s employees and contractors involved in the performance of the Agreement will at all times remain under the sole responsibility, guidance, authority and supervision of Client. Except as provided in the Agreement, at no time will either party make commitments or incur any charges or expenses for or in the name of the other party.
- 16.2. No amendment, addendum, modification or attempt to supersede or cancel any provision in the Agreement will be effective unless agreed upon in writing, dated and duly signed by INFURA and Client.
- 16.3. Any delay or failure by either party in exercising any right under the Agreement will not be deemed a waiver of that right.
- 16.4. INFURA may assign or subcontract whole or parts of the rights and obligations under the Agreement to a third party, at any time. This third party will be the solely and fully responsible for the further implementation of the Agreement. This can be done without the consent of the Client, and without giving rise to any compensation.
- 16.5. The Agreement, including these terms & conditions shall be exclusively governed and interpreted according to Belgian law. The applicability of the Vienna Convention on Contracts for the International Sale of Goods is expressly excluded. Unless provided otherwise by applicable legislation, all disputes arising from the agreement and the related agreements and/or these Terms & Conditions will be submitted to the competent court in the judicial district where INFURA has its registered office. Parties are committed to resolve disputes as much as possible in mutual consent.



- 16.6. If any provision of the Agreement is deemed invalid by a court of competent jurisdiction, the validity of such provision shall not affect the validity and enforceability of the remaining provisions thereof which shall remain in full force and effect. Such illegal, invalid or unenforceable provision will then, to the extent permissible by law, be replaced in good faith by such a provision which reflects best the purpose and contents of the illegal, invalid or unenforceable provision.