

Gaia Service Ts&Cs

GC10 - Terms and Conditions

Definitions

- 1.1 When they start with a capital letter, the following words and phrases have the meanings shown:
- (a) *Agreement*: (i) a document accepted by Gaia under clause 2, which confirms the Customer's request for the Services and the prices and delivery schedule set out in a Gaia quotation or as otherwise agreed by the Parties. This document may be a Customer purchase order, a completed Gaia order form or a contract document; and (ii) these Business Terms and (iii) any third-party terms and conditions for proprietary services or software used to deliver the Services that Gaia notifies the Customer of before the Agreement Acceptance Date and (iv) changes to any of the above made in accordance with clause 7.9 and (v) attachments to any of the above and documents or information expressly incorporated in any of them.
 - (b) *Agreement Acceptance Date*: the date Gaia accepts the Agreement under clause 2.1.
 - (c) *Best Industry Practice*: the degree of skill, care and diligence consistent with the standards, practices, methods and procedures that would, in each case, be expected in the circumstances from a person or body reasonably skilled, experienced and successful in the particular undertaking;
 - (d) *Content*: all software, data, information, documents, text, video, graphics, images, sound and any other material used by the Customer in connection with, but not forming part of the Services.
 - (e) *Customer*: the company or organisation who requests the Services.
 - (f) *Gaia*: a company limited by guarantee, registered in England and Wales (3141826), whose registered office and principal place of business is Woodlands House, Parc Britannia, Bangor, Gwynedd, LL57 4FA, UK.
 - (g) *Intellectual Property*: patents, trade and service marks, trade names, design rights, topography rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and applications for the grant of any of the foregoing and all rights or forms of protection with similar effect anywhere in the world.
 - (h) *Party*: Gaia or the Customer and Parties means both of them.
 - (i) *Professional Services*: consultancy, design, development or customisation services.
 - (j) *Service Description*: the definitions of the Services and SLAs referred to in the Agreement or Gaia's quotation.
 - (k) *Services*: the particular services to be supplied by Gaia which may include Professional Services, co-location services, IaaS, PaaS, SaaS, 3D Interactive Realities, or other cloud services, web hosting services, managed services and any other services set out in the Agreement together with any associated deliverables and support services.

Commencement and term

- 2.1 Gaia will confirm its acceptance of each proposed Agreement within seven days of receipt.
- 2.2 When Gaia accepts an Agreement, it will confirm with the Customer's nominated technical contact, each Party's responsibilities and the timetable for setup of the Services. A seven-day mobilisation period applies to Professional Services unless otherwise agreed.
- 2.3 Although Gaia will endeavour to minimise it, the Customer accepts that temporary disruption to its systems and operations may occur during setup of the Services.
- 2.4 Professional Services continue until accepted under clause 4. All other Services continue for successive periods of one year after the initial term shown on the Agreement except that additions or variations to the existing Services shall be coterminous with the original Agreement. After the initial term either Party

may terminate the Agreement on any anniversary of the Agreement Acceptance Date by giving the other at least sixty days' notice.

The Services

- 3.1 Gaia warrants that it will:
- (a) supply the Services consistent with Best Industry Practice and in all material respects in accordance with the Agreement and the Service Description. If the Service Description specifies service outputs to be achieved by Gaia, then any descriptions in the Agreement or Service Description of infrastructure, equipment, software, networks, installations or configurations are provided for information only;
 - (b) apply Best Industry Practice to meet all agreed date(s) and timescales;
 - (c) secure and retain all authority and Intellectual Property necessary to supply the Services;
 - (d) adhere to its privacy policy published at www.gaia-tech.com and maintain, for the Agreement's duration, its ISO27001 certification and any Government Security Classification Policy accreditation certification specified in the relevant Service Description;
 - (e) apply Best Industry Practice to prevent the Services and any Customer equipment or Content within its control from unauthorised access and use, physical damage and damage from the most common viruses, spyware, malware, Trojan horses and other damaging code or devices;
 - (f) only transfer Customer personal data outside the European Economic Area if instructed by the Customer to do so.
- 3.2 To the extent permitted by law, the warranties in clause 3.1 replace all others relating to the Services, either express or implied, including but not limited to any implied warranties of satisfactory quality or fitness for any particular purpose.
- 3.3 In order to measure and improve performance, Gaia may install systems to monitor use of the Services and to collect and analyse anonymised and/or aggregated information which will only be disclosed to third parties with relevant statutory authority.
- 3.4 Gaia will handle and resolve reported problems as set out in the Service Description and may resolve any problem by providing avoidance instructions or a workaround.
- 3.5 Any target resolution time will not apply and Gaia may charge at its standard rates for any significant effort in fixing any problem caused by the Customer's acts or omissions.
- 3.6 Where a problem resides in any third-party system or software used to deliver the Services, Gaia is only responsible for managing the problem through the relevant third party support organisation and any target resolution times do not apply.
- 3.7 Gaia aims to achieve the availability targets set out in the Service Description. Any availability targets exclude the planned maintenance window that Gaia shall from time to time give the Customer notice of and any time lost because of the Customer's acts or omissions or because of any force majeure incident as defined in clause 19. Any liquidated damages or service credits set out in the Service Description or otherwise agreed by the Parties are in full and final settlement of the relevant deficiency in the Services. Service credits are used to purchase Services, monetary refunds do not apply. Any service credit balance at the end of the Agreement becomes null and void.
- 3.8 Gaia will promptly and at its own cost, correct deficiencies in Professional Services that the Customer notifies it of within thirty days of acceptance.

- 3.9 Clauses 3.4, 3.6, 3.7, 3.8, 8.3 and 8.4 set out Gaia's entire obligations for any breach of any warranty in clauses 3.1 (a) to (d).
- 3.10 The support Services provided by Gaia do not include consultancy, user familiarisation or training or support for other Customer software, services or systems that interact with the Services.
- 3.11 Gaia may choose to assist the Customer with any problems which are excluded or not covered by the Agreement and will advise the Customer in advance if it needs to charge for this assistance. This assistance will be provided on a reasonable endeavours basis only and any resolution targets will not apply. Alternatively, the Customer can purchase Professional Services to cover excluded activities.
- 3.12 Gaia will comply with the Customer's reasonable procedures concerning access to and conduct whilst on Customer sites. Customer will give Gaia adequate notice of these procedures.

Acceptance of Professional Services

- 4.1 Unless otherwise agreed, Professional Services are deemed to be accepted upon completion.
- 4.2 Where formal acceptance has been agreed, the following applies unless otherwise agreed:
 - (a) Gaia will notify the Customer when any item is ready for acceptance;
 - (b) within five days of Gaia's notice, the Customer will confirm its acceptance in writing, or, if the Customer reasonably believes that the item does not substantially conform with the acceptance criteria agreed by the Parties, the Customer will confirm this in writing with sufficient details for Gaia to be able to understand the deficiency;
 - (c) as soon as reasonably possible, Gaia will correct rejected items and re-submit them for testing and acceptance as above;
 - (d) any item will be deemed to be accepted if the Customer does not issue confirmation of acceptance or non-acceptance within the timescale in clause 4.2(b);
 - (e) commercial usage of any item constitutes acceptance of the item. Commercial usage means use for any business purpose other than testing.

Customer obligations

- 5.1 The Customer will pay Gaia the fees in clause 6 in return for the proper performance of the Services.
- 5.2 The Customer may not sell, re-sell, sub-license, lease, rent, supply or make the Services as such, available to any third party but may use the Services to provide its own services to its own customers.
- 5.3 The Customer will provide all decisions, instructions, information, access and assistance reasonably requested by Gaia in order for Gaia to meet its obligations under the Agreement.
- 5.4 The Customer will use the Services in accordance with the Agreement and any documentation or reasonable instructions of Gaia. The Customer will give Gaia reasonable prior notice of any activity likely to use abnormal compute, bandwidth or storage resource. Abnormal means usage likely to adversely affect Gaia or its other customers.
- 5.5 The Customer will not use the Services to access, store, distribute or transmit any Objectionable material or for any Objectionable purpose. "Objectionable" means unlawful, false, fraudulent, misleading, offensive, pornographic, obscene, derogatory, discriminatory, racist, defamatory, inflammatory, malicious, threatening, causing nuisance or anxiety, unsolicited mass mailing, flooding,

mail-bombing, spamming, or infringing the rights of Gaia or others or likely to expose Gaia to prosecution or third party claims or actions.

- 5.6 The Customer will make all of its users aware of Gaia's privacy policy referred to in clause 3.1 (d). The Customer accepts that Gaia may be required by law to monitor the Content and use of the Services and to provide details, which may include identification of logon credentials and their usage, to any party with relevant statutory authority.
- 5.7 The Service Description may stipulate the way in which the Customer can manage some of its own cloud services but otherwise the Customer may not attempt to repair, adjust, modify or interfere with any Gaia systems, software or equipment; nor attempt to circumvent any security measures put in place by Gaia except where penetration tests have been agreed in advance. The Customer will co-operate with any reasonable requests from Gaia concerning security measures and monitoring systems.
- 5.8 The Customer will not remove, modify or obscure any copyright, trade mark, or other proprietary rights notices that appear on any software supplied by Gaia. Except as permitted by law, the Customer may not copy, reverse engineer, decompile or disassemble such software. The Customer may copy and use documentation supplied by Gaia only in connection with the proper use of the Services.
- 5.9 The Customer will comply with Gaia's reasonable procedures concerning access to Gaia sites and conduct whilst on site. Gaia will give the Customer adequate notice of these procedures.
- 5.10 The Customer will only use the call reporting and handling processes agreed with Gaia to notify any problems with the Services and to raise service requests. The Customer will provide the information, resources and access that Gaia may reasonably require to analyse reported problems and will ensure that its nominated technical contact has the ability to undertake routine diagnostics and assist with maintenance and systems administration of the Services
- 5.11 The Customer accepts that communications and computer systems in general cannot be free of errors or interruptions and agrees that their existence does not constitute a breach of the Agreement.
- 5.12 The Customer will ensure that administrative and similar privileges are only assigned to suitably experienced persons who are sufficiently familiar with the Services and that all users protect their passwords and generally apply Best Industry Practice to security.
- 5.13 The Customer must retain the accreditations appropriate to the Services and will provide evidence of the same to Gaia upon request.
- 5.14 The Customer is solely responsible for the legality, accuracy, completeness, development, operation, maintenance, security and insurance of the Content and the Customer's own equipment and for compliance with any third party AUP or other policies. The Customer will ensure that Gaia is aware of all relevant restrictions and requirements before using the Content with the Services. Gaia has no responsibility for restoring Content or for disaster recovery except to the extent expressly set out in the Service Description.
- 5.15 The Customer is solely responsible for the compatibility, legality, accuracy, completeness, operation, maintenance, security, backup and use of applications, software, systems and network connectivity that it uses in connection with the Services unless these items are expressly included as part of the Services. The Customer will ensure that the terms and conditions for all such items allow use with the Services.
- 5.16 The Customer will use Best Industry Practice to prevent its use of the Services, the Content, the Customer's own equipment and the applications, software, systems and network connectivity that it uses with the Services from:

- (a) unauthorised access and use;
- (b) causing physical damage to Gaia's equipment, facilities or premises;
- (c) causing damage to Gaia's systems, services or customers through the introduction of the most common viruses, spyware, malware, trojan horses or other damaging code or devices.

Prices and payment

- 6.1 The Customer will pay for the Services at the price shown in the Agreement or calculated at the rates/unit prices that are shown. Unless stated otherwise, any price breakdown or spend profile shown in Gaia's quotation or the Agreement is for information only. Gaia may only charge for delays caused by the Customer if Gaia notifies the Customer as soon as the delay becomes apparent.
- 6.2 By giving the Customer at least sixty days' prior notice and unless the Agreement states otherwise, Gaia may adjust its rates and prices with effect from any anniversary of the Agreement Acceptance Date by either:
 - (a) the annual movement in the latest available All Items Retail Prices Index excluding Mortgage Interest Payments published by the UK Office for National Statistics (RPIX); or
 - (b) the price change generally applicable to Gaia's customers. If the Customer does not accept this new price it may terminate the Agreement as set out in clause 7.2.
- 6.3 Prices exclude UK VAT and any sales or purchase taxes, duties, levies or similar relating to the Agreement or the Services; which the Customer will pay at the prevailing rate.
- 6.4 Gaia will invoice for Professional Services upon acceptance or against milestones as set out in the Agreement and will invoice monthly in arrears for all other Services and travel, subsistence and other agreed expenses.
- 6.5 Payments are due within thirty days of invoice receipt. Gaia may charge interest on any late payments as allowed under the Late Payment of Commercial Debts (Interest) Act 1998 and/or may suspend the Services by giving the Customer at least ten days' notice.

Changes

- 7.1 In order to improve its operations or the Services, Gaia may revise the Services by giving the Customer at least sixty days' notice. By giving the Customer at least sixty days' notice, Gaia may also revise these Business Terms with effect from the end of the initial term shown in the Agreement or with effect from any anniversary of the Agreement Acceptance Date after the initial term.
- 7.2 If the Customer reasonably believes that any revision reduces its rights or benefits it may terminate the Services by giving Gaia at least thirty days' notice prior to the date when the revision would become effective. Gaia will repay the Customer fees already received for Services that would have been supplied after the date of termination, less any third-party termination fees agreed between the Parties during the thirty-day notice period.
- 7.3 The Customer may at any time request reasonable changes to the Services by using Gaia's standard forms and processes or any other forms and processes as the Parties have agreed.
- 7.4 Gaia may not unreasonably withhold its agreement to any change request that is consistent with the scope of the existing Services and Agreement.
- 7.5 Gaia will promptly advise the Customer if any change request is likely to affect price or timescales.

- 7.6 Until any change is agreed in writing by both Parties, Gaia will continue to perform and to be paid for the Services as if the change had not been requested.
- 7.7 Gaia reserves the right to charge for any significant activity undertaken in response to any Customer change request where the Customer does not proceed with the change.
- 7.8 The Customer will not seek to introduce changes except as described in this clause 7 and will avoid issuing oral or informal instructions to Gaia's personnel.
- 7.9 The Agreement may only be changed as set out in clause 6 or 7 or by any other written agreement of the Parties which is stated to be a change made under this clause 7.9.

Intellectual Property

- 8.1 Gaia or its licensors exclusively own all Intellectual Property in the Services and their derivative works whether arising out of the Agreement or otherwise, except for the Intellectual Property in the visual appearance of any Customer website. Gaia grants the Customer a non-exclusive right to use Gaia's Intellectual Property for the duration and purpose of the Agreement. Gaia also grants the Customer, for Customer's own internal business purposes, a non-exclusive, perpetual right to use the Intellectual Property owned by Gaia, in any deliverables supplied as part of the Services and paid for by the Customer. The Customer acquires no other rights to Gaia's Intellectual Property.
- 8.2 The Customer or its licensors exclusively own all Intellectual Property in the Content and the visual appearance of its websites. The Customer grants Gaia a royalty-free right to use such Intellectual Property for the duration and purpose of the Agreement. Gaia acquires no other rights to the Customer's Intellectual Property.
- 8.3 Each Party will indemnify the other from any claim that its Intellectual Property infringes any third-party rights provided that the Party relying on this indemnity:
 - (a) has used the Intellectual Property in accordance with the Agreement;
 - (b) does not knowingly make or intimate any admission, settlement, opinion or undertaking that may be detrimental to the other Party's defence;
 - (c) promptly notifies the other Party of any claim and allows the other Party the right to defend and settle it in whatever way the other Party considers to be appropriate;
 - (d) reasonably assists with the defence of the claim at the other Party's request and cost; (e) uses all reasonable endeavours to mitigate the other Party's liability.
- 8.4 If a claim is made against Gaia's Intellectual Property, Gaia may at its own expense:
 - (a) obtain the right for the Customer to continue to use the Services; or
 - (b) modify the Services to avoid the infringement without any material reduction in performance or functionality; or
 - (c) withdraw the affected Services and repay the Customer 110% of the aggregate sum paid for those Services in the twelve months prior to the infringement claim.
- 8.5 If any claim is made against the Customer's Intellectual Property, the Customer may at its sole option and expense obtain the right for Gaia to continue using the Content or modify it so as to avoid the infringement or withdraw the Content in question.

Suspension and termination

- 9.1 Gaia may suspend the Services:
- (a) for any reason that would give Gaia the right to terminate the Agreement subject to giving the Customer at least ten days' notice; or
 - (b) if required to do so by any third party with relevant statutory authority. Gaia will give the Customer as much notice as practicable in the circumstances; or
 - (c) for delayed payment as set out in clause 6.5; or
 - (d) in order to deal with any DDOS attack or any other malicious attempts to disrupt Gaia's normal operations. Gaia will give the Customer as much notice as practicable in the circumstances; or
 - (e) in order to carry out emergency maintenance. Gaia will give the Customer as much notice as practicable in the circumstances.
- 9.2 Gaia will re-instate the Services as soon as the event causing the suspension has ceased.
- 9.3 Except for suspension under clause 9.1 (e), the Customer remains liable to pay Gaia as if Services had been continuously supplied throughout any period of suspension. Gaia will not be liable for any resolve, restore or availability obligations that are affected by suspension.
- 9.4 The Customer will not be entitled to access the Content during any period of suspension.
- 9.5 Gaia's rights to suspend the Services do not affect its termination rights.
- 9.6 Either Party may terminate the Agreement by notice if the other:
- (a) breaches any material term, condition or provision of the Agreement or of any material provision required by law or persistently breaches any lesser term, condition or provision, and fails to remedy the breach within thirty days of notice; or
 - (b) ceases to carry on the business relevant to the Agreement, or receives a court order or passes a resolution for winding-up (other than for the purpose of solvent amalgamation or reconstruction), or is declared insolvent; or initiates any arrangement or composition with its creditors; or has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets (a "Bankruptcy Agent"); or is deemed by any relevant statutory provisions to be unable to pay its debts.
- 9.7 The Customer is solely responsible for arranging any replacement of the Services and for backing up all of its affected systems and Content prior to termination. Within five days of termination, the Customer shall return any software and documentation received from Gaia and remove all Customer equipment from the Gaia premises. Five days after the date of termination, Gaia may disable the Services at any time and delete any Content in Gaia's control or possession without notice to the Customer and the Customer will be liable for all reasonable charges from Gaia for the disconnection, removal and storage of any the Customer equipment that has not been removed.
- 9.8 If Gaia becomes affected by the circumstances in clause 9.6 (b) the Agreement will immediately incorporate a perpetual, non-exclusive, royalty-free licence to the source code to all Gaia proprietary software used to deliver the Services together with all available Gaia documentation necessary for the Customer to maintain and develop such software for its own internal business purposes. The source code and documentation are licensed "as-is" without warranty. This licence will not apply where the Bankruptcy Agent or any successor or assignee to the Gaia business agrees to continue to supply the Services in accordance with the Agreement. This clause shall be binding on any Bankruptcy Agent and any successor or assignee to the Gaia business.

- 9.9 All rights and obligations of the Parties will automatically cease upon termination except for any rights or obligations under the Agreement or at law, which expressly or by implication come into or continue in force upon termination.

Liability

- 10.1 Except as set out in clauses 10.2 and 10.3, Gaia's aggregate liability to the Customer in any twelve-month period for direct loss or damage arising under contract, law or tort shall not exceed 110% of the sum paid by the Customer under the affected Agreement in the twelve months prior to the event giving rise to the liability.
- 10.2 Gaia has no liability to the Customer for any indirect, special or consequential loss or damage, anticipated savings, loss of profits, business, revenue or goodwill arising under contract, law or tort.
- 10.3 Gaia does not exclude or limit liability for death or personal injury caused by its negligence or for liability resulting from its wilful misconduct or fraud.
- 10.4 The Customer will indemnify Gaia from any costs and claims arising under TUPE regulations relating to the employment or termination of employment of any of the Customer's personnel and any associated "fair deal", pension or Beckman obligations and from any failure by the Customer to comply with its legal obligations in respect of such employees or TUPE regulations. TUPE regulations mean the Transfer of Undertakings (Protection of Employment) Regulations 2006 or similar.

Data protection and confidentiality

- 11.1 Each Party warrants that it will comply with the Data Protection Act. Where the Services require Gaia to process the Customer's personal data, the Parties acknowledge that Gaia is the data processor and the Customer is the data controller and Gaia will only process the Customer's personal data in accordance with the Customer's instructions.
- 11.2 Confidential Information is information which the disclosing Party identifies as being confidential or which is usually considered to be confidential in the industry. Confidential Information excludes information already legitimately known by the receiving Party before the start of discussions leading to the Agreement or which is or becomes independently known to it or becomes public knowledge without any breach of this clause. Each Party will only disclose the other Party's Confidential Information to those of its own personnel who need to know for purposes connected with the Agreement and to those third parties who have relevant statutory authority. Each Party will apply Best Industry Practice measures to protect the other Party's Confidential Information from unauthorised disclosure. The obligations in this clause survive termination of the Agreement.

Anti-bribery

- 12.1 Each Party will:
- (a) comply with all laws and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
 - (b) ensure that all of its personnel comply with the Relevant Requirements;
 - (c) maintain its own policies to ensure compliance with the Relevant Requirements.

Non-solicitation

- 13.1 For the duration of the Agreement and for nine months thereafter, neither Party may solicit the services or employment of any of the other Party's personnel who have been involved with the Services or the Agreement. This provision does not apply to unsolicited approaches initiated by such personnel or responses to any public recruitment campaign.

Dispute resolution

- 14.1 Except for interim injunctive measures for breach of confidentiality or infringement of Intellectual Property, the chief executive of each Party or their nominees will have thirty days to resolve any dispute before either Party may resort to any other course of action.

Assignment

- 15.1 Gaia may subcontract any part of the Services but will be responsible for the acts and omissions of its subcontractors, but otherwise neither Party may assign or transfer all or part of the Agreement, or any of its rights or obligations or appoint any agent to perform the same without the other's prior written agreement. Neither Party may unreasonably delay or withhold agreement if the other wishes to transfer all of its rights and obligations to a wholly owned subsidiary, or to a wholly owned subsidiary of its parent company, or to its parent company.

Waiver

- 16.1 If either Party does not enforce any of its rights under the Agreement, it will not mean that those rights are waived and the validity of the Agreement will be unaffected.

Severability

- 17.1 If any part of the Agreement is found to be invalid or unenforceable, it will be deemed to be amended to the minimum extent necessary to remove the invalidity or unenforceability so that the Agreement remains valid and unaffected to the fullest possible extent.

Notices

- 18.1 Any notice or agreement under the Agreement shall be made:
- (a) by recorded mail or courier to the other Party's authorised representative at any address shown in the Agreement, or to any other address as one Party has notified the other of, and will be valid on the date of recorded receipt, or
 - (b) by fax to the other Party's authorised representative to any fax number shown in the Agreement, or to any other fax number as one Party has notified the other of, and will be valid at the time shown on a successful transmission report, or
 - (c) by email to the email address of the other Party's authorised representative or to any other email address as one Party has notified the other of, and will be valid at the time of sending unless the email system generates an unsuccessful transmission or unsuccessful delivery report.

Force majeure

- 19.1 Except for the obligation to make payments properly due, neither Party is liable for delays or failures caused by circumstances beyond its reasonable control. DDOS attacks and other malicious attempt to disrupt its normal operations are beyond Gaia's reasonable control. The affected Party must promptly notify the other of any delay or failure and reasonably endeavour to mitigate the impact.

Legal construction of the Agreement

- 20.1 Except as set out in clause 3.13, no part of the Agreement may be enforced by any person who is not a party to it whether relating to the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 20.2 The Agreement is governed by English law and subject to the exclusive jurisdiction of the English courts. The United Nations' Convention on Contracts for the International Sale of Goods does not apply.
- 20.3 The Agreement represents the entire agreement and understanding between the Parties in respect of its subject matter. The terms and conditions of any purchase orders, acknowledgements or similar put forward by the Customer have no effect even if Gaia supplies the Services without expressly rejecting such terms and conditions.
- 20.4 The Customer accepts these Business Terms by submitting an Agreement to Gaia. Gaia accepts these Business Terms by accepting the Agreement.