

Conditions for Cloud Services

YOUR AGREEMENT WITH US ("AGREEMENT") IS MADE UP OF THE FOLLOWING:

- (i) THESE CONDITIONS FOR CLOUD SERVICES;
- (ii) THE GAMMA CONDITIONS FOR COMMUNICATION SERVICES;
- (iii) THE GAMMA SERVICE AGREEMENT(S);
- (iv) THE RELEVANT GAMMA TARIFF(S) FOR THE SERVICES WE AGREE TO PROVIDE TO YOU; AND
- (v) ANY FURTHER GAMMA CONDITIONS RELATING TO SPECIFIC SERVICES.

In the event of any conflict or inconsistency between these Conditions for Cloud Services and the Conditions for Communication Services, these Conditions for Cloud Services will prevail.

1. THE SERVICES

We will supply you with the Services in accordance with these conditions, the Service Agreement and a completed customer requirement form.

You acknowledge that your use of the Services is subject to the AWS Customer License Terms, a separate agreement between you and Amazon Web Services, Inc., a current version of which is located here: <https://s3-us-west-2.amazonaws.com/legal-reseller/AWS+Reseller+Customer+License+Terms.pdf>.

1.3 All details specified in the Service Agreement are based on information supplied by you and/or collected by us during an audit and may be subject to amendment in accordance with paragraphs 1.4 to 1.6 below.

1.4 We and/or our subcontractors may conduct an audit at a reasonable time to clarify whether the Services, Service Commencement Date, Installation Fees, or Service Fees require amendment.

1.5 When an audit has been completed we will submit to you a replacement Service Agreement and quotation, reflecting any such proposed changes. If the replacement Service Agreement and quotation is agreed by you, that replacement Service Agreement and quotation will immediately supersede the original Service Agreement and quotation. If you do not agree to the replacement Service Agreement and quotation, the original Service Agreement and quotation will be cancelled by us fourteen (14) days after the date of notification by us of the replacement Service Agreement and quotation to you. In some cases, we may not provide a replacement Service Agreement or quotation in which cases any amendments to the Services or the Services Fees may be agreed instead by email.

1.6 Following the completion of an audit and, if required, the agreement of a replacement Service Agreement and quotation, or email confirmation thereof, we will confirm the Contractual Delivery Date to you. The Contractual Delivery Date may be later than your Required Date if the Required Date falls before the minimum order lead times.

1.7 We will use reasonable endeavours to meet any agreed times or dates, but time is not of the essence in respect of those times or dates and you acknowledge that all such times and dates are estimates only and that service levels are target service levels only.

1.8 Throughout the provisioning process, we will need to communicate with named member(s) of your staff. Any delays in responding to these requests by you will delay the Services Commencement Date and we will not be liable for any such delay.

1.9 To enable us to provide the Services, you will:

1.9.1 Promptly furnish us with such information and documents as we may reasonably require for the proper performance of the Services,

1.9.2 obtain all third party consents, licences (including the licence referred to in paragraph 1.2) and rights reasonably required in order to allow us or our subcontractor to provide the Services and be responsible for complying with any applicable laws, statutes, regulations and codes of practice, in relation to the

Services, and

1.9.3 put in place adequate security and virus checking procedures in relation to any computer facilities to which we or the Services access.

1.10 We reserve the right not to provide the Services and to withdraw our provisional acceptance of an order for reasons including, but not limited to:

1.10.1 if, after completion of an audit, a Site is not suitable for the provision of the Services,

1.10.2 if you do not pay any Services Fees, Installation Fees or any other fees or charges reasonably levied by us in addition to the fees or charges initially proposed.

1.11 Data Out is a monthly allowance of data transferred out, subject to a fair usage, which is included within the Data Out Services Fee. If such allowance is exceeded, we reserve the right to charge for excess usage on a per GB basis.

2. ACCEPTANCE

2.1 We will notify you when the Installation Service has been completed. Within five (5) Working Days of the date of such notification, you will inspect and test the Services for the purpose of Acceptance ("Acceptance Testing").

During Acceptance Testing, you may notify us by email, telephone or fax of any material non-conformity of the Services.

2.2 To the extent that such non-conformities will have, in our reasonable opinion, a material detrimental effect on the Services, we will use reasonable endeavours to remedy such non-conformities.

2.3 Acceptance shall take place on the earlier of:

a) your written confirmation to us or our subcontractor that the Acceptance Testing has been completed,

b) where you have not notified us in accordance with paragraph 2.1 within five (5) Working Days from the date of our notification to you that the Installation Service has been completed, or

c) where you have notified us in accordance with paragraph 2.1 of material non-conformities within five (5) Working Days from the date on which the notified non-conformities were remedied, or immediately upon our demonstration that the notified non-conformities will not, in our reasonable opinion, have a material detrimental effect on the Services.

2.4 Any additional time incurred by us remedying non-conformities notified by you in accordance with paragraph 2.1 above may, at our sole discretion, be reflected in corresponding extensions to the Service Commencement Date and the affected timescales in the project plan (if any). Any additional time incurred by us investigating any notified non-conformities which later are found not to exist, will be charged to you as a professional service on a time and materials basis in accordance with our then current standard rates.

3. YOUR OBLIGATIONS

3.1 You will be responsible to ensure that your access type is suitable and has appropriate bandwidth and resilience for your business requirements and for your use of the Services.

3.2 You will be responsible for providing named contacts (and any replacement contact(s)) and ensuring that they have the appropriate level of authority to make decisions relating to the Services.

3.3 You are solely responsible for the security of the Services.

3.4 You are solely responsible for the provision of appropriate technical expertise, knowledge and resources in order to request the appropriate configuration of any firewall services required.

3.4.1 We shall use reasonable endeavours to provide as secure a protection as possible, but you hereby acknowledge that no firewall is completely secure or proof against all external threats such as viruses, malware and other unauthorised intrusions.

3.4.2 You are responsible for providing correct firewall rules

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and we are not responsible or liable for any issues that may occur if the firewall rules provided are incorrect.

3.4.3 You shall be responsible for the security of:

- (i) the operating system;
- (ii) applications;
- (iii) data in transit;
- (iv) data at rest;
- (v) data stores.

3.5 We will have no visibility of usernames and passwords for the Services after the initial logins have been provided. It is your responsibility to ensure that the original passwords have been changed to appropriately secure passwords. We are unable to reset user credentials for the portals associated with the Services.

3.6 You will be responsible for creating and managing your own file systems across the deployed volumes and you will:

3.6.1 keep full and up-to-date secure backup copies of the data on the Network in accordance with good industry practice;

3.6.2 comply with and maintain compliance with all such laws and regulations that relate to the provision of the Services.

3.7 You will not allow any unauthorised user or any third party to access or use the Services, and shall take all reasonable security precautions to avoid such unauthorised access or use, nor to modify or interfere in any way with the Services.

3.8 You are responsible for confirming that your applications are suitable for migrating to a virtualised environment and it is your responsibility to ensure:

3.8.1 you have the appropriate licences to host your applications on a Cloud platform; and

3.8.2 you are able to host data outside of the UK and within the EU.

3.9 You are responsible for managing your own applications as well as maintaining the operating system and/or providing any updates or patches to the operating system.

4. YOUR USE OF THE SERVICES

You will not use the Services in any way that would constitute or contribute to the commission of a crime, tort, fraud, or other unlawful activity (including activities deemed unlawful under a complainant's legal jurisdiction) ("Laws"). You will indemnify, and keep us fully indemnified, against all costs, claims, demands, expenses, and liabilities arising out of, or in connection with, any claim that the Services (or their use) infringes any Laws.

4.2 You warrant that any data or material and / or communication transmitted, hosted, or otherwise processed using the Service will not be menacing, of a junk mail or spam like nature, illegal, obscene, threatening, defamatory, discriminatory, promote illegal or unlawful activity, or be otherwise actionable or in violation of any rules, regulations, or laws to which the Services are subject, and will not infringe the intellectual property rights of ourselves, our Associated Companies or any third party. You will indemnify and keep us fully indemnified against all costs, claims, demands, expenses and liabilities arising out of or in connection with any breach or reasonably suspected breach of this paragraph 4.2.

5. MONITORING

5.1 We shall provide you with the facility to monitor the Services via a separate Cloud View platform.

5.2 We shall use reasonable endeavours to maintain (but do not guarantee) access to Cloud View twenty-four (24) hours in every day on every day of the year, except where planned changes and/or maintenance is performed, or emergency maintenance is required.

5.3 We shall not be liable for any losses caused by any restriction in such access.

5.4 You shall ensure that the correct monitoring contacts are applied to the Services and that these are kept up to date.

6. BACKUPS

6.1 It is your responsibility to ensure that backups are periodically downloaded to ensure continuity of data.

6.2 We will hold backup information for a maximum of twelve (12) months but will not hold any backup data after the Services have been terminated.

6.3 Where Backup as a Service is chosen as a standalone service the minimum capacity that can be live per customer is 200GB.

7. FEES AND PAYMENT

7.1 All pricing will be indicative only and is not binding until confirmed by us. The pricing given is valid at the date of quotation but can only be confirmed when an audit has been completed. All prices quoted are exclusive of VAT and are valid for thirty (30) days only. It is possible in certain circumstances that changes may arise during the provisioning process if, following an attempt to deliver the Services, additional infrastructure work is required to provide the Services.

7.2 Unless otherwise specified in the Service Agreement, starting from the Service Commencement Date, you must pay the Services Fee monthly in advance, the Installation Fee upfront and any usage fees, if applicable, monthly in arrears.

7.3 Unless otherwise agreed by us in writing, any discount specified in the Service Agreement shall only apply during the initial Minimum Term and shall not apply thereafter.

7.4 After the initial Minimum Term, we shall may revise the Services Fee with effect from each anniversary of the Service Commencement Date to reflect our then current standard rates by giving you not less than thirty (30) days' written notice thereof.

7.5 We shall be entitled to increase the Services Fee at any time with immediate effect where we can reasonably demonstrate that such an increase is due to an increased cost of providing the Services caused by a third party supplier or by a legal or regulatory change. Any such increase in the Services Fee will not exceed the increased cost incurred by us in providing the Services.

7.6 We may require you to pay a deposit and / or require you to procure that your parent company or related company guarantees the payment of any fees hereunder. You agree to enter into (and / or procure the execution of) any agreement or deed reasonably required by us for any such purpose.

8. SERVICES SUSPENSION

8.1 By giving reasonable notice to you, or if this is not practicable, such notice as is reasonably practicable in the circumstances, we may suspend the Services (or any part of the Services) for reasons which may include but are not limited to:

8.1.1 operational reasons in accordance with the service levels, or

8.1.2 a regulatory or legal change, or

8.1.3 if we are obliged to comply with the order, instruction, or request of a court, government, agency, emergency service organisation, or other competent administrative or regulatory authority, requiring suspension of the Service, or

8.1.4 if your use of the Services may damage or disrupt the proper functioning of the infrastructure and / or equipment used to provide services to our other customers, or

8.1.5 if we have reasonable grounds to believe that you are in breach of your obligations, and you either fail to remedy such breach or fail to demonstrate to our reasonable satisfaction that no breach took place within two (2) Working Days of written notice of the suspected breach for a serious breach (serious breach to include, but not limited to, a breach likely to cause serious damage to us or our brand, or that of our contractors, or result in legal action by a third party) or within ten (10) Working Days of written notice of the suspected breach for other breach, or

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8.1.6 If an undisputed invoice (or an undisputed part of an invoice) is not paid in full by the due date, provided that we have given you at least five (5) Working Days' notice of such non-payment.

8.2 Suspension of the Services shall also cause our service level obligations to be suspended for the period of the suspension. Such suspension of the Services shall continue for as long as any of the circumstances set out in paragraph 8 continue.

9. TERM AND TERMINATION

The Minimum Term as indicated in the Service Agreement will commence on the Service Commencement Date but you agree that you will be charged from the Installation Date. For the avoidance of doubt, if not specified in the Service Agreement the initial Minimum Term

9.1.1 shall be three (3) months for Cloud Compute. At the end of the initial Minimum Term, the term shall automatically continue for further periods of thirty (30) days unless we give you at least thirty (30) days' notice to terminate or receive from you at least sixty (60) days' notice to terminate.

9.1.2 shall be twelve (12) months for Cloud Backup as a Service. At the end of the initial Minimum Term, the term shall automatically continue for further periods of thirty (30) days unless we give you at least thirty (30) days' notice to terminate or receive from you at least sixty (60) days' notice to terminate.

9.2 We shall have the right, by giving written notice to you, to terminate the Agreement immediately if you:

9.2.1 commit any material breach of your obligations, and fail to remedy such breach, providing it is capable of remedy, within twenty-eight (28) days of such notice; if such a breach is incapable of remedy, the Agreement may be terminated by us by written notice immediately), or

9.2.2 have a winding up petition presented, or enter into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of amalgamation or reconstruction without insolvency), or make an arrangement with your creditors or petition for an administration order, or have a receiver or manager appointed over any of your assets, or generally become unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986.

9.3 We may terminate the Services or part thereof on thirty (30) days' notice to you provided that such notice does not extend the termination date beyond the end of the Minimum Term as set out in the Service Agreement.

9.4 Where the Agreement is terminated or otherwise brought to an end, all Service Fees for the remainder of the initial Minimum Term or any subsequent term (as applicable) shall become payable immediately.

9.5 If you cancel ordered Services or any part thereof, notwithstanding that such order has only been provisionally accepted by us, you agree to reimburse us for any costs we have incurred in preparing to deliver the Services in addition to the standard cancellation charge as may be applicable at the time. We will take all reasonable steps to mitigate any such costs. If you have had an audit you will pay the full audit charges for each server. If the Services include any additional charges such charges will be payable in full by you on cancellation of ordered Services.

9.6 If you request a change to the Required Date and/or the Contractual Delivery Date (and this has been accepted by us) and you subsequently cancel the order, any cancellation charge will be calculated on the later of the revised Required Date or Contractual Delivery Date, as the case may be.

9.7 If the cancellation of the order is due to our failure to provide the Services within a reasonable time after the agreed Required Date or Contractual Delivery Date, if later, no cancellation charge will be levied.

9.8 We shall have the right to terminate the Agreement immediately if required because of a regulatory or legal change or are required to do so by a direction of Ofcom.

10. LIABILITY

10.1 We shall not be liable for any delay or failure in performing our obligations or failure to meet any dates under the Agreement caused by any circumstances beyond our reasonable control (such circumstances including, without limitation, any regulatory or legal change).

10.2 All warranties, conditions, obligations, or implied terms which are implied into the Agreement by statute, custom, or law are hereby excluded to the maximum extent permissible in law.

10.3 We do not exclude or limit our liability for death or personal injury caused by our negligence, and/or

10.3.1 breach of the obligations arising from section 12 of the Sale of Goods Act 1979 (seller's implied undertaking as to title, etc.), and / or

10.3.2 breach of the obligations arising from section 2 of the Supply of Goods and Service Act 1982 (implied terms about title, etc. in certain contracts for the transfer of property in goods), and / or

10.3.3 fraudulent misrepresentation.

10.4 We shall not be liable to you for any loss of profit, loss of revenue, loss of anticipated savings, loss of goodwill, loss of data and / or perceived damage to reputation.

10.5 We have no liability for any failure to meet the Contractual Delivery Date or for any failure to meet any service levels or to repair a fault within any given timeframe.

11. DEFINITIONS

"**Acceptance**" – acceptance by you that the Services have been installed successfully, in accordance with paragraph 2.3.

"**Contractual Delivery Date**" means the date each cloud server goes live or completes the migration process.

"**Data Out**" – the total volume of data transferred out of the AWS cloud per month.

"**Network(s)**" – the local area network, network equipment, computer systems, and local cable infrastructure, at the Sites, to which the Services will be connected.

"**Installation Fee**" – the charge for the Installation Service, including additional charges, as specified in the Service Agreement.

"**Installation Service**" – the work (if any) carried out by us or our subcontractor to enable you to receive the Services, normally carried out between 0900 and 1730 on a Working Day.

"**Installation Service Commencement Date**" – the date on which the Installation Service will start, as may be specified in the Service Agreement and / or customer requirement form.

"**Required Date**" – the date you wish the Services to commence.

"**Service Agreement**" – the completed and signed order form for the Services incorporating the product order form(s) and customer requirements form(s).

"**Services**" – cloud services, as specified in the Service Agreement, and as may be further specified in an order form and / or the customer requirement form detailing the Installation Service, migration, and Services, the related configuration, solution design, and setup of these, and any project documentation for the Installation Service.

"**Services Commencement Date**" – the date on which the Services will start, provisionally set as the target service commencement date and confirmed by us during the Installation Service.

"**Services Fee**" – the fee for the provision of the Services, as specified in the Service Agreement.

"**Site**" – each of your sites where the Installation Service and the Services will be provided, as may be specified in the customer requirement form.

"**Working Day**" – any day falling on or between Monday to Friday, but excluding all English public and bank holidays.

"**You**" – the entity which contracts with us.

"**We**" or "**Us**" – Gamma Business Communications Ltd,



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incorporating Gamma Network Solutions, Gamma Telecom Ltd
and / or our chosen subcontractor(s).