



TERMS AND CONDITIONS

These Terms and Conditions form part of the Agreement between Gossamer Threads Inc. and the party named as the “**Customer**” in the Hosting Service Order Form (**HSOF**) to which this is attached.

1. Interpretation

1.1 Definitions. In these Terms and Conditions, in addition to the terms used on the HSOF:

- a) “**Agreement**” means the HSOF, these Terms and Conditions, any addendum to the HSOF agreed to by the parties, the SLA, the AUP and GTI’s privacy policy, as posted on GTI’s website at www.gossamer-threads.com from time to time.
- b) “**AUP**” means GTI’s acceptable use policy, as posted on GTI’s website at www.gossamer-threads.com from time to time.
- c) “**Business Day**” means a day other than Saturday, Sunday or a statutory holiday in British Columbia.
- d) “**Commencement Payment**” means the amount shown as such on the HSOF.
- e) “**Confidential Information**” means all information disclosed by one party to the other, at any time, that would reasonably be considered to be confidential including (i) with respect to GTI, its unpublished terms of service, prices, audit and security reports, server configuration designs, data center designs and other proprietary technology, (ii) with respect to the Customer, any files transmitted to or from, or stored by the Customer on, GTI’s servers, and (iii) with respect to both, other information that is marked as “confidential” or, if disclosed in non-tangible form, is verbally designated as “confidential” at the time of disclosure and confirmed as confidential in a written notice given within 30 days of disclosure; but excluding any information that is independently developed by a non-disclosing party as shown by such party’s written business records, or is or becomes generally available to the non-disclosing party or the public other than in breach of this Agreement.
- f) “**Fees**” means Monthly Fees and any additional fees payable by the Customer pursuant to this Agreement including for supplemental services, excess data transfer, re-instatement of service, switching and upgrade fees and other non-recurring amounts.
- g) “**HSOF**” means the hosting service order form between GTI and the Customer, as amended from time to time by agreement between GTI and the Customer.
- h) “**Service Commencement Date**” means the date of GTI’s e-mail to the Customer confirming that the Customer may access the Services.
- i) “**Services**” means the managed hosting services and any supplemental services to be provided by GTI to the Customer pursuant to this Agreement.
- j) “**SLA**” means, as applicable, the service level agreement attached to the HSOF or the service level agreement posted on GTI’s website at www.gossamer-threads.com from time to time, provided that if at any time there is no service level agreement in force between GTI and the Customer then references herein to the SLA are to be ignored.

- k) “**Term**” means the period of time from the Service Commencement Date until the end of the period set out opposite “Term” on the HSOF, and any extensions thereof.

1.2 Currency. All dollar amounts in this Agreement are in the currency stipulated on the HSOF. Should the Customer need to pay in a different currency as on the HSOF, the prevailing rate on the date of payment, as obtained from the Bank of Canada website, will be used to make the conversion.

1.3 Entire Agreement. The Agreement is the entire agreement between the parties, and there are no other representations, warranties or covenants except as specifically set out in this Agreement.

1.4 Governing Law. This Agreement shall be governed by the laws of the Province of British Columbia, exclusive of its choice of law principles, and the laws of Canada applicable therein. The Agreement shall not be governed by the United Nations Convention on the International Sale of Goods. The courts of the Province of British Columbia shall be the exclusive venue for all disputes arising out of or relating to this Agreement, and each party hereby irrevocably attorns to the exclusive jurisdiction of such courts. The Customer covenants that it shall not bring or participate in any class action lawsuit against GTI, its affiliates or any of their respective shareholders, directors, officers, employees or agents.

2. Term, Fees and Termination

2.1 Commencement of Services. Subject to satisfaction of GTI’s credit approval requirements, on the written notice to Customer of completion by GTI of the hardware and software configuration necessary to implement the Services, GTI will commence to provide the Services in accordance with the terms of this Agreement.

2.2 Term. This Agreement will continue for the Term, which will be automatically extended for successive periods of one month each commencing on the day after the last day of the Initial Term and continuing until GTI or the Customer gives at least 30 days notice in writing to the other that it intends to terminate this Agreement.

2.3 Supplemental Services. GTI may perform services for the Customer in addition to those set out on the HSOF on an hourly or fixed fee basis, and the terms of this Agreement will apply to such additional services. GTI may take actions to remediate violations of the AUP by the Customer without the requirement for the Customer’s consent, and such actions will be deemed to be Services for purposes of this Agreement and for which the Customer will pay GTI’s published rates.

2.4 Fees. The Customer agrees to pay the Setup Fee and the Monthly Fees specified in the HSOF and any fees for any supplemental services. GTI’s first invoice will be for the Commencement Payment, which will include Setup Fees and the Monthly Fee. GTI may require payment in full of the Commencement Payment before commencing the Service. Thereafter, GTI will invoice the Customer monthly for Fees in advance, and payment will be due on receipt. Interest will accrue at the rate of 1.5% per month on all overdue accounts, payable on demand. Following the Initial Term, GTI may change the Monthly Fee on 30 days advance written notice to the Customer. Fees not disputed within 180 days of their due date may not be contested by the Customer.

2.5 Credit Card Payment. If the Customer pays any Fees by credit card, the Customer expressly authorizes GTI or its agents to charge all Fees and charges incurred by under this Agreement to such card, and such authorization will survive termination of this Agreement until there are no charges owing by the Customer under this Agreement. If the Customer uses a credit card and GTI does not receive payment from the card issuer, the Customer will pay all amounts due, upon demand by GTI. The Customer must notify GTI of any changes to the card account including, without limitation, applicable account number or cancellation or expiration of the account, billing address or any other information that may prevent GTI from charging the account.

2.6 Taxes. The Customer will be responsible for all applicable sales, goods and services and other like taxes payable in respect of any Fees.

2.7 Remedies for Non-Payment. GTI may suspend any or all Services on notice to the Customer if payment of any Fees is overdue, in which case the Customer will be required to pay GTI's then current reinstatement fee to resume access to the Services, in which case this Agreement will be deemed to have continued without termination. The Customer agrees to pay GTI's reasonable costs of collection of any overdue amounts, including collection agency fees, legal fees and court costs.

2.8 Early Termination. The Customer acknowledges that GTI has agreed to provide the Services during the Initial Term for the amount of the Monthly Fee based on the Customer's agreement to pay the Monthly Fee for the entire Initial Term. If GTI terminates this Agreement as a result of any breach by the Customer or if the Customer terminates this Agreement except in accordance with paragraph 2.9 then the amount of the Monthly Fee multiplied by the number of months remaining from the date of termination until the end of the Initial Term will be due on demand by GTI.

2.9 Termination by the Customer. The Customer may terminate this Agreement before the end of the Term (including the Initial Term) without liability (except for amounts due for Services provided up to the effective date of the termination) if GTI:

- a) fails to provide the Services in accordance with the terms of this Agreement, such failure causes material harm to the Customer and GTI does not cure the failure within 10 days of receipt of notice in writing from the Customer describing the failure in reasonable detail;
- b) makes any amendment to the SLA, the AUP or GTI's privacy policy that would materially and adversely affect the Customer, the Customer provides GTI with a written notice stating its objection to the amendment in reasonable detail within 10 days of the effective date of the amendment, and GTI does not agree to waive the application of the amendment to the Customer within five days of receipt of the Customer's notice; or
- c) materially violates any other provision of this Agreement and fails to cure the violation within 30 days of receipt of notice in writing from the Customer describing the violation in reasonable detail.

2.10 Termination by GTI. GTI may terminate this Agreement before the end of the Term (including the Initial Term) without liability:

- a) on four Business Days notice to the Customer if the Customer is overdue on the payment of any amount due under this Agreement;
- b) if the Customer materially violates any other provision of this Agreement (including the AUP) and fails to cure the violation within 10 days of notice in writing from GTI describing the violation in reasonable detail;
- c) on one Business Days notice to the Customer if the Customer uses the Service in violation of a material term of the AUP more than once; or
- d) upon at least 90 days notice if GTI is threatened with a legal claim for copyright or patent infringement related to the provision of the Service and is unable to modify the Service in a way that avoids an ongoing risk of liability.

2.11 Suspension of Service. GTI will be entitled to suspend the Services without liability if:

- a) GTI, acting reasonably, believes that the Services are being used in violation of this Agreement or any applicable law;

- b) the Customer is in breach of any material term of this Agreement;
- c) there is a denial of service attack on the Customer's servers or any other event which GTI, acting reasonably, believes justifies the suspension of Services in order to protect GTI's network or other customers; or
- d) GTI is requested to do so by any law enforcement or governmental agency.

The Customer will not be able to access any files on GTI's servers during a suspension of Services. GTI will use its best reasonable efforts to give the Customer advance notice in writing of a suspension of Services unless a law enforcement or governmental agency directs otherwise or suspension without notice is necessary to protect GTI or its other customers.

3. Warranties, Obligations and Indemnities

3.1 Customer Warranties. The Customer represents and warrants to GTI that (a) if the Customer is an individual, that he or she is at least 18 years of age and has the legal capacity to enter into this Agreement, (b) the information the Customer has provided for the purpose of establishing an account with GTI is accurate, and (c) the Customer has the right to use any trademarks, trade names, logos and other identifying marks and any materials that are subject to copyright used by the Customer on any website hosted by GTI.

3.2 Customer Obligations. The Customer agrees that it will:

- a) abide by all the provisions of this Agreement including the AUP;
- b) use industry standard security precautions in connection with its use of the Services including, where prudent, encrypting any confidential information transmitted to or from, or stored by the Customer on, the servers or storage devices used by the Customer;
- c) be financially responsible for use of the Services
- d) have acquired or will acquire all authorizations necessary for hypertext links to third-party websites;
- e) not copy, duplicate, transmit, compile or mirror any proprietary server software installed on leased servers provided by GTI including without limitation any custom scripting, security robots, log utilities, virtual installation robots, account maintenance software or other utilities; and
- f) cooperate with any investigation by GTI of suspected violations of the AUP.

3.3 No GTI Warranties. Subject to the SLA and GTI's privacy policy, GTI makes no warranty or representation that the Services will be uninterrupted, error-free or completely secure. The Customer acknowledges that there are risks inherent in use of the Internet that could result in the loss of privacy, confidential information and property, including any data or information transmitted by any server designated as "secure". To the greatest extent permitted by applicable law, GTI disclaims any and all warranties not expressly stated in this Agreement including implied warranties of merchantability, fitness for a particular purpose and non—infringement. The Customer is solely responsible for the suitability of the Services chosen, and acknowledges that the Services are provided on an "as is" basis except as expressly stated in the SLA or other part of this Agreement. GTI recommends that the Customer make its own arrangements to regularly backup all files and has no liability if any precautionary backups made by GTI fail in whole or in part. GTI offers backup services as additional services.

3.4 Confidential Information. With respect to Confidential Information:

- a) each party agrees that it will not use any Confidential Information of the other except in connection with the performance or use of the Services or the exercise of its rights under this Agreement, and will not disclose the other's Confidential Information to any third party except as provided in clause (b) below and to its service providers, agents and representatives who need to know the information to represent or advise it with respect to the subject matter of this Agreement;
- b) GTI may, without notice, (i) report to the appropriate authorities any conduct by the Customer (or the Customer's customers or end users) that GTI reasonably believes violates any applicable law, and (ii) provide any information, including Confidential Information, required by law or regulation to be disclosed, or in response to a formal or informal request from a law enforcement or government agency; and
- c) GTI may publicly disclose that GTI is providing the Services to the Customer and may include the Customer's name in promotional materials including press releases and on GTI's website.

If there is any inconsistency between any terms of this Agreement and the terms of GTI's privacy policy, this Agreement will prevail.

3.5 Customer Indemnity. The Customer will indemnify and hold harmless GTI, its affiliates, and their respective shareholders, directors, officers, agents and employees from and against any and all claims, demands, liabilities, obligations, losses, damages, expenses, penalties, fines, punitive damages, requests for injunctive relief, amounts in interest and other amounts of any kind or nature whatsoever (including reasonable lawyers' fees) brought by any third party under any theory of legal liability (collectively, "**Claims**") arising out of or related to (a) actual or alleged use of the Services in violation of this Agreement (including the AUP) or any applicable law, including without limitation infringement of third party intellectual property rights, by any person regardless of whether such person has been authorized to use the Services by the Customer, except for unauthorized use that is a direct result of GTI's negligence or failure to perform its obligations under this Agreement, (b) actual or alleged breach by the Customer of any of its obligations, whether contractual, statutory or implied, to its customers or end users; and (c) any dispute between persons who claim to have authority to act for the Customer in connection with the control of the Customer's account with GTI.

3.6 Reciprocal Indemnity. GTI and the Customer will each indemnify and hold harmless the other party, the other party's affiliates, and each of their respective shareholders, directors, officers, agents and employees from and against any and all Claims arising out of or related to the indemnifying party's actual or alleged gross negligence, willful misconduct or infringement or misappropriation of a third party's trademark, copyright, trade secret, patent or other proprietary right.

3.7 Indemnity Claim Procedures. A party seeking indemnification must provide prompt notice of its claim to the other party, provided that failure to give prompt notice will not affect the other party's indemnity obligations unless and to the extent that the delay materially prejudices the defense of the matter. The indemnified party will have the right to select counsel to defend it in respect of any indemnified matter as long as that the counsel is qualified to defend the indemnified matter in the reasonable judgment of the indemnified party. The indemnifying party will reimburse the indemnified party for actual fees and expenses incurred by the indemnified party to defend an indemnified matter, including the reasonable fees and expenses of outside counsel retained by the indemnified party. The indemnified party will keep the indemnifying party informed of the status of any litigation or dispute resolution procedure, will give reasonable consideration to the suggestions and requests of the indemnifying party with respect to the conduct of the litigation or dispute resolution procedure, and will not settle any matter without the prior consent of the indemnifying party, which shall not be unreasonably withheld. If GTI is indemnifying multiple customers related to the subject matter of the indemnification, GTI may seek consolidation of all such actions and select counsel to defend the actions. Amounts due under this paragraph shall be paid as incurred and may be offset against other amounts due under this Agreement.

3.8 Limitation of Damages. The Customer agrees agree that the allocations of risk herein made are reasonable and that GTI would not enter into this Agreement without such allocations. GTI will not be liable to the Customer for any Claims caused by or related to the Customer's use of the Services or inability to use the Services unless such failure is due to GTI's intentional breach of this Agreement or willful misconduct. This provision does not limit the Customer's right to terminate this Agreement if such failure constitutes a material breach of this Agreement. GTI will not in any circumstances be liable to the Customer or any person claiming under the Customer for any lost profits or any indirect, special, incidental or consequential loss or damage of any kind, or for damages that could have been avoided by the use of reasonable diligence, arising in connection with this Agreement, even if GTI has been advised or should be aware of the possibility of such damages. In no event shall GTI be liable to the Customer or any person claiming under the Customer for any punitive damages. Notwithstanding any provision of this Agreement, except for claims based on GTI's willful misconduct, the maximum aggregate monetary liability of GTI and any of its affiliates, shareholders, directors, officers, employees or agents under any theory of law shall not exceed the amount of the Monthly Fee in effect at the time of the occurrence of the event giving rise to the claim. No claim may be asserted against GTI with respect to any event, act or omission that occurred more than two years prior to such claim being asserted.

3.9 Customer Hardware, Equipment and Software. The Customer is responsible for and must provide all telephone, computer, hardware and software equipment and services necessary to access GTI's servers. GTI makes no representation, warranty or assurance that the Customer's equipment and software will be compatible with the Services.

3.10 GTI Software. The Customer will not modify, alter, remove or obscure any copyright, trademark or other proprietary rights notices that appears on any software provided by GTI. The Customer will not reverse engineer, decompile or disassemble any software provided by GTI except as expressly permitted by or is permitted by the terms of any "open source" license that governs the use of such software or applicable law notwithstanding this limitation, and then only following at least 10 days advance written notice to GTI.

3.11 Third Party Products. GTI may arrange for the Customer's purchase or license of and may provide support for third party software, services and other products not included as part of the Services. GTI makes no representation or warranty whatsoever regarding such third party software, services, products and related support services and, as between GTI and the Customer, such services are provided "as is." The Customer's use of third party software, services and other products is governed by the terms of any license or other agreement between the Customer and the third party.

3.12 Customer Content. GTI has no ownership in any information, materials, software or other content (collectively, "**Content**") posted, uploaded, input, provided, submitted or otherwise transmitted to GTI or any third party, using the Services. The Customer agrees that, by posting, uploading, inputting, providing, submitting or otherwise transmitting Content to GTI or any third party, using the Services, the Customer has granted to GTI a royalty-free, non-exclusive license to use, copy, distribute, transmit, display, edit, delete, publish and translate such Content to the extent reasonably required by GTI for the purposes of rendering and operating the Services under this Agreement or to ensure adherence to or enforce the terms of this Agreement. The Customer expressly (a) grants to GTI a license to cache Content and (b) agrees that such caching is not an infringement of any intellectual property rights of the Customer's or any third party.

4. IP Infringement Claims

4.1 Third Party Claims Procedure. GTI reserves the right and has absolute discretion to restrict or remove from its servers any content that violates this Agreement or is otherwise objectionable or potentially infringing or in violation of any third party's rights or any laws. If GTI becomes aware of such circumstances, GTI may immediately take corrective action including, but not limited to, (a) issuing warnings, (b) suspending or terminating the Services, (c) restricting or prohibiting any and all uses of content hosted on GTI's systems, or (d) disabling or removing any hypertext links to third-party websites, any content distributed or made available for distribution using the Services, or other content not supplied

by GTI which, in GTI's sole discretion, may violate or infringe any third-party rights or laws or which may expose or potentially expose GTI to civil or criminal liability or public ridicule. It is GTI's policy to terminate Services to repeated infringers. Nothing in this Agreement, however, obligates GTI to monitor or exert any editorial control whatsoever over any material distributed using the Services and GTI has no obligation to censor or monitor any person's use of the Services or any obligation to censor or monitor any content, material or other information sent, received or accessible through the Services. If GTI takes corrective action due to such possible violation, GTI shall not be obligated to refund any Fees paid in advance of such corrective action.

5. Miscellaneous Provisions

5.1. Force Majeure. GTI will have no liability resulting from any interruption, disruption or failure of any Service caused by circumstances beyond its reasonable control including, without limitation, acts of any governmental body, war, insurrection, sabotage, terrorism, armed conflict, embargo, fire, flood, strike, other labor disturbance, earthquake or other seismic disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third-party services, virus attacks, denial of service attacks, failure of third-party software (including without limitation e-commerce software, payment gateways, statistics for free scripts) or inability to obtain supplies, power or equipment needed for provision of the Services, scheduled maintenance including upgrades, emergency maintenance, domain name server issues outside the direct control of GTI, including DNS propagation or any delays in the registration or transfer of a domain name, domain registrar or registry issues, browser or DNS caching that may make the Customers site appear inaccessible when others can still access it, or any act or omission by the Customer or its agents such as custom scripting, willful misconduct, exceeding allowable monthly site traffic allocation or any use of the Services in violation all these Terms and Conditions.

5.2. Notices. Any notices to GTI required or permitted under this Agreement must be given in writing by mail or hand delivered to:

Gossamer Threads Inc.
9th Floor, 100 Pender Street
Vancouver, B.C.
Canada V6B 1R8

Notices to the Customer may be sent by e-mail to the individual designated as the Contact on the HSOF or by means reasonable under the circumstances, including an e-mail to a known contact. Notices of amendments to the SLA, the AUP and GTI's privacy policy may be given by posting a notice of the amendment on GTI's website at www.gossamer-threads.com. Notices are deemed received on the day delivered or, if that day is not a Business Day, as of the beginning of the first Business Day following the day delivered. Notices must be given in the English language.

5.3. IP Ownership. Each party acknowledges that nothing in this Agreement entitles it to any rights in the copyrights, inventions, trade secrets or other intellectual property of the other party, who retains exclusive ownership and rights in such intellectual property, and that GTI shall own any intellectual property that it may develop in the course of performing the Services. The Customer does not acquire any ownership interest or rights to possess GTI's servers or other hardware and has no right of physical access thereto. On termination of this Agreement, the Customer will promptly release any Internet protocol numbers, addresses or address blocks assigned to the Customer in connection with the Service and agrees that GTI may take steps to change or remove any such IP addresses.

5.4. Modifications. This Agreement may be amended only in writing signed by both parties with the exception of: (a) amendments to the SLA, the AUP and GTI's privacy policy, which may be amended by GTI in accordance with the respective terms of those documents, and (b) changes to the "Term and Conditions" of an existing HSOF, which may be made by an exchange of correspondence (including e-mail) that reflects both parties' consent to the change. The terms on either party's purchase order or other

business forms are not binding on the other party unless such terms are expressly incorporated into a written agreement signed by both parties.

5.5. Non-Waiver. No failure or delay in enforcing any provision of this Agreement will be deemed a waiver of a party's rights with respect to that provision or any other provision of this Agreement.

5.6. Execution and Delivery. This Agreement will be deemed to have been executed and adopted by the Customer and delivered to GTI if the Customer replies to an e-mail from GTI to which GTI has attached the HSOF and these Terms and Conditions and the Customer's reply confirms the Customer's execution and delivery. Alternatively, this Agreement may be executed and adopted by the Customer and delivered to GTI by sending the HSOF, duly executed by the Customer, by conventional mail, facsimile or electronic transmission, and facsimile signatures or signatures on an electronic image, such as .pdf or .jpg format, shall be deemed to be original signatures.

5.7. Survival. The following terms in this Agreement will survive termination: terms that provide for payment of Fees, indemnity obligations, any term that is made the basis of a claim for indemnification, limitations of liabilities, warranty disclaimers, provisions regarding ownership of intellectual property, this paragraph and all other terms that by their nature are intended to survive termination of this Agreement.

5.8. Severability. If any covenant, obligation or provision contained in this Agreement or the application thereof to any person or circumstance is to any extent held to be invalid or unenforceable, the remainder of this Agreement or the application of that covenant, obligation or provision to persons or circumstances other than those concerning which it is held invalid or unenforceable will not be affected thereby and each covenant, obligation and provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

5.9. No Assignment. The Customer may not transfer its interest in this Agreement without GTI's prior written consent, which consent may be withheld if the proposed assignee does not meet GTI's credit approval criteria or if GTI has other bona fide reasons for refusing to consent. GTI may assign this Agreement in whole or in part.

5.10. Cumulative Rights. The rights, powers and remedies of GTI in this Agreement, including without limitation the right to suspend, restrict or terminate the Services, are cumulative and in addition to and not in substitution for any right, power or remedy that may be available to GTI at law or in equity.