Terms and Conditions
GT.net Hosting

Address
GT.net
500 – 455 Granville Street
Vancouver, BC Canada, V6C 1T1

Version
3.0

Last Modified
December 29, 2017
The Services are governed by the following terms and conditions, and form part of the Agreement between GT and the Customer referenced in the Hosting Service Order Form (the “HSOF”) to which this is attached.

1. **Interpretation**

1.1. **Definitions**

In this Agreement, in addition to the terms used elsewhere in this Agreement:

a) “Administrative Contact” means the Customer’s authorized and designated representative shown on the HSOF;

b) “Agreement” means the HSOF, these terms and conditions, any addendum to the HSOF agreed to by the parties, the SLA, the AUP and GT’s privacy policy, as posted on GT’s website at gt.net from time to time.

c) “AUP” means GT’s acceptable use policy, posted on GT’s website at gt.net and as amended from time to time.

d) “Business Day” means a day other than Saturday, Sunday or a statutory holiday in British Columbia.

e) “Commencement Payment” means the first payment due to GT by the Customer for the Services as shown on the HSOF.

f) “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the other, at any time, that would reasonably be considered to be confidential, including (i) with respect to GT, its unpublished terms of service, prices, audit and security reports, server configuration designs, data center designs and other proprietary technology; (ii) with respect to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 GT’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.

g) “Data Service Provider” is defined as a third party listed in Schedule A who GT engages for the specific purposes outlined, and who has access to the Customer’s data in order to assist GT with business management or quality assurance.
h) “Data Subcontractor” is defined as a third party listed in Schedule A who Customer authorizes GT to engage for the specific projects outlined, and who has access to the Customer’s data in order to assist GT in delivering Services to the Customer.

i) “Currency” is defined in Section 1.2.

j) “ETF” is defined in Section 2.8.

k) “Fees” means the amounts payable by the Customer pursuant to this Agreement, including the Commencement Payment, Setup Fee, Recurring Fee and any additional fees for supplemental services, excess data transfer, re-instatement of service, switching and upgrade fees, and other non-recurring amounts.

l) “Initial Term” means the minimum period that the Customer agrees to pay for the Services as shown on the HSOF.

m) “Payment Cycle” means interval between each recurring payment for the Services, as shown on the HSOF.

n) “Recurring Fee” means the amount payable for each Payment Cycle, as shown on the HSOF.

o) “Renewal Term” means the minimum period that the Customer agrees to pay for the Services after the Initial Term, as shown on the HSOF.

p) “Service Commencement Date” means the date the Customer is provided access to the Services by GT, being the date shown on GT’s service confirmation e-mail to the Customer.

q) “Services” means the services described on the HSOF, and any supplemental services to be provided by GT to the Customer from time to time pursuant to Section 2.3.

r) “Setup Fee” means the amount charged for the initial setup of the Services by GT, as shown on the HSOF.

s) “SLA” means, as applicable, the service level agreement attached to the HSOF or the service level agreement posted on GT’s website at gt.net from time to time, provided that if at any time there is no service level agreement in force between GT and the Customer then any references herein to the SLA are to be ignored.
1.2 Currency

All Fees are charged in the currency shown on the HSOF (“Currency”). Should the Customer need to pay in a different Currency, the prevailing foreign exchange rate to Canadian dollars on the date of payment, as obtained from the Royal 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 supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of 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. As permitted by law, the Customer covenants that it shall not bring or participate in any class action lawsuit against GT, its affiliates or any of their respective shareholders, directors, officers, employees or agents.

2. Term, Fees, and Termination

2.1 Commencement of Services

On the written notice to Customer of completion by GT of the hardware and/or software configuration necessary to implement the Services, GT will commence to provide the Services in accordance with the terms of this Agreement.

2.2 Term

This Agreement begins on the Service Commencement Date and continues until the end of the Initial Term. After the end of the Initial Term, this Agreement will automatically be renewed for successive periods in accordance with the Renewal Term, commencing on the day after the last day of the Initial Term. If the Customer does not wish for the Agreement to automatically renew at the end of the Initial Term or subsequent Renewal Term, it may provide 30 days’ notice to GT prior to the end of the current term.
2.3 Supplemental Services

GT may perform supplemental services for the Customer in addition to those set out on the HSOF on an hourly or fixed fee basis as agreed to in advance in writing by the parties, and the terms of this Agreement will apply to such additional services. GT 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 GT’s published rates.

2.4 Fees

The Customer agrees to pay the Commencement Payment within 10 Business Days’ of the Service Commencement Date. The Customer agrees to pay the Recurring Fee, which is billed in advance for each Payment Cycle, in accordance with the due date shown on the invoice issued by GT to the Customer. Interest on all overdue accounts will accrue at the rate of 1.5% per month, payable on demand. 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 GT or its agents to charge all Fees incurred 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 GT does not receive payment from the card issuer, the Customer will pay all amounts due, upon demand by GT. The Customer must notify GT of any changes to the credit card account including, without limitation, applicable account number or cancellation or expiration of the account, billing address or any other information that may prevent GT from charging the account.

2.6 Taxes

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

2.7 Remedies for Non-Payment

GT may suspend any or all Services on notice to the Customer if payment of any Fees is overdue, in which case the Customer is still responsible for all Fees accrued before and during the suspension of such Services. Upon suspension of the Services, the Customer will be required to pay GT’s applicable reinstatement fee to resume access to the Services, in which case this Agreement will be deemed to have continued without termination. The Customer further agrees to pay GT’s reasonable costs of collection of any overdue Fees, including collection agency fees, legal fees and court costs.
2.8 Early Termination

The Customer acknowledges that GT has agreed to provide the Services during the Initial Term and any subsequent Renewal Term for the amount of the Recurring Fee based on the Customer’s commitment to pay for the entire Initial Term and entire Renewal Term, as applicable. If GT terminates this Agreement as a result of any breach by the Customer, or if the Customer terminates this Agreement before the end of the Initial Term or Renewal Term, then an early termination fee (the “ETF”) applies. The ETF is equal to the amount of the Recurring Fee (for any Payment Cycle other than monthly, the Recurring Fee is converted to a monthly rate) multiplied by the number of months remaining until the end of the Initial Term or Renewal Term, as applicable. If less than one (1) month remains until the end of the Initial Term or the Renewal Term, then the ETF is equal to the amount of the Recurring Fee calculated on a one (1) month basis. The ETF is due on demand by GT.

2.9 Termination by the Customer

The Customer may terminate the Agreement immediately at any time:

a) for any reason, subject to the ETF in Section 2.8 above; or,

b) without any liability other than any Fees due up to the effective date of the termination, if GT:

(1) fails to provide the Services in accordance with the terms of this Agreement, such failure causes material harm to the Customer and GT does not cure the failure within 10 Business Days of receipt of notice in writing from the Customer describing the failure in reasonable detail;

(2) makes any amendment to the SLA, the AUP, Schedule A (Data Subcontractors and Data Service Providers) or GT’s privacy policy that would materially and adversely affect the Customer, the Customer provides GT with a written notice stating its objection to the amendment in reasonable detail within 10 Business Days of the effective date of the amendment, and GT does not agree to waive the application of the amendment to the Customer within 5 Business Days of receipt of the Customer’s notice; or

(3) materially violates any other provision of this Agreement and fails to cure the violation within 30 Business Days of receipt of notice in writing from the Customer describing the violation in reasonable detail.

2.10 Termination by GT

GT may terminate this Agreement before the end of the Initial Term or the Renewal Term without liability:
2.11 Suspension of Service

GT will be entitled to suspend the Services without liability if:

a) GT, 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 GT, acting reasonably, believes justifies the suspension of Services in order to protect GT’s network or other customers; or

d) GT is requested to do so by any law enforcement or governmental agency.

The Customer will not be able to access any files on GT’s servers during a suspension of Services. GT 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 GT or its other customers.

3. Warranties, Obligations, and Indemnities

3.1 Customer Warranties

The Customer represents and warrants to GT that (a) if the Customer is an individual, 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 GT 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 GT.

3.2 Customer Obligations

The Customer agrees that it will:

a) abide by all the provisions of this Agreement;

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 necessary authorizations for the use and display of any third-party content not owned by or licensed to the Customer;

e) not copy, duplicate, transmit, compile or mirror any proprietary server software installed on leased servers provided by GT, 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 GT of suspected violations of the AUP.

3.3 No GT Warranties

Subject to the SLA and GT’s privacy policy, GT 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, GT 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. GT recommends that the Customer make its own arrangements to regularly backup all files and has no liability if any precautionary backups made by GT fail in whole or in part.
3.4 Confidential Information

With respect to Confidential Information:

a) Subject to section 3.4(b), each party agrees that, without the prior written consent of the other party, 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, excluding its service providers, agents or legal representatives who need to know the information to represent or advise it with respect to the subject matter of this Agreement; and

b) GT may without notice, (i) report to the appropriate authorities any conduct by the Customer (or the Customer’s customers or end-users) that GT 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. Where feasible and permitted by law, GT will provide the Customer advance notice and the ability for the Customer to respond to any requests of information from a law enforcement or government agency.

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

3.5 Customer Data

GT is not aware of and does not monitor the type, nature or value of Customer data either passing over GT’s network or being stored on GT’s servers, nor does GT audit, view or manipulate Customer data in the ordinary course of business. Thus, the Customer is responsible for understanding its data holdings and the regulatory requirements applicable to such data.

GT has taken the necessary steps to address its regulatory requirements (such as those imposed by the General Data Protection Regulation (EU 2016/679), Article 28 where Customer data includes the personal data of residents of the European Union). GT is committed to:

a) Only providing the Services documented and agreed to under this HSOF, and any other Supplemental Services agreed to in writing by the parties;

b) Ensuring all GT personnel, Data Service Providers/Data Subcontractors commit to respecting confidentiality through written agreements;

c) Implementing appropriate technical and organizational security safeguards to protect Customer data from accidental loss, theft, destruction or damage in respect of its own internal systems and processes used to provide the Services. User access controls, including password practices, to Customer data remain at all times the Customer’s responsibility;
d) Requiring that its Data Service Providers/Data Subcontractors implement appropriate technical and organizational security safeguards to protect Customer data. GT shall notify Customer of any changes to Schedule A in accordance with section 5.2;

e) Insofar as possible, assisting the Customer in meeting any legal obligations to respond to a request of an individual who is exercising their rights when personal data of the individual is under the Customer’s control;

f) Inform the Customer of a security incident if known to GT that may affect Customer data within 24 hours of discovery the incident, if the incident could result in a data breach that may pose a real risk of harm to individuals. GT shall also provide any other reasonable support to the Customer, insofar as possible, in order to assist the Customer with its compliance obligations, such as communicating with regulatory authorities;

g) Remove and permanently delete any data stored on its systems or servers upon termination of this Agreement, with the exception of residual copies of Customer data that may temporarily remain in back-ups of GT’s servers. Where the Customer requests a copy of such data prior to termination, and where the Services provided permit recovery of such data, GT will use reasonable efforts to provide the Customer with a copy of such data, subject to the Customer’s payment of any reasonable fees quoted by GT in association with the Customer’s request; and

h) If known and available, provide to the Customer any information requested in order for the Customer to demonstrate compliance with any regulatory obligations, as well as cooperate and contribute to any audits or inspections conducted by the Customer or mandated upon the Customer by a regulatory authority.

3.6 Customer Indemnity

The Customer will indemnify and hold harmless GT, 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 GT’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 GT.
3.7 GT Indemnity

GT agrees to defend, indemnify and hold the Customer harmless from and against any and all third party claims, damages, losses, liability, causes of action, judgments, costs or expenses (including reasonable legal fees) directly or indirectly arising from, connected with or relating to any claim alleging gross negligence, willful misconduct or infringement or misappropriation of a third party’s trademark, copyright, trade secret, patent or other proprietary right by GT.

3.8 Limitation of Damages

The Customer agrees that the allocations of risk herein made are reasonable and that GT would not enter into this Agreement without such allocations. GT 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 GT’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. GT 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 GT has been advised or should be aware of the possibility of such damages. In no event shall GT 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 GT’s willful misconduct, the maximum aggregate monetary liability of GT and any of its affiliates, shareholders, directors, officers, employees or agents under any theory of law shall not exceed: (a) during the Initial Term, the total Recurring Fees paid by the Customer until the occurrence of the event giving rise to the claim; or (b) after the Initial Term, the Recurring Fee in effect at the time of the occurrence of the event giving rise to the claim. No claim may be asserted against GT with respect to any event, act or omission that occurred more than two years prior to such claim being asserted.

3.9 GT Software

The Customer will not modify, alter, remove or obscure any copyright, trademark or other proprietary rights notices that appear on any software provided by GT. The Customer will not reverse engineer, decompile or disassemble any software provided by GT, 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 Business Days’ advance written notice to GT.

3.10 Third Party Products

GT 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. GT makes no representation
or warranty whatsoever regarding such third party software, services, products and related support services and, as between GT 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.

4. IP Infringement Claims

4.1 Third Party Claims Procedure

GT 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 GT becomes aware of such circumstances, GT 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 GT’s systems; or (d) disabling or removing any third party content, any content distributed or made available for distribution using the Services, or other content not supplied by GT which, in GT’s sole discretion, may violate or infringe any third party rights or laws or which may expose or potentially expose GT to civil or criminal liability or public ridicule. It is GT’s policy to terminate Services to repeat infringers. Nothing in this Agreement, however, obligates GT to monitor or exert any editorial control whatsoever over any material distributed using the Services, and GT 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 GT takes corrective action due to such possible violation, GT shall not be obligated to refund any Fees paid in advance of such corrective action.


5.1 Force Majeure

GT 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 GT, 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 Customer’s 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 of this Agreement.

5.2 Notices

Any notices to GT required or permitted under this Agreement must be given in writing by mail or hand delivered to:

Gossamer Threads Inc.
5th Floor, 455 Granville Street
Vancouver, B.C.
Canada V6C 1T1

Any notices to the Customer may be sent by e-mail to the Administrative Contact or by means reasonable under the circumstances, including an e-mail to a known contact. Notices of amendments to the SLA, the AUP and GT’s privacy policy may be given by posting a notice of the amendment on GT’s website at gt.net. 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 GT 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 GT'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 (“IP”) numbers, addresses or address blocks assigned to the Customer in connection with the Service and agrees that GT 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 AUP and GT’s privacy policy, which may be amended without the Customer’s consent by GT in accordance with the respective terms of those documents; and (b) changes to the these Terms and Conditions attached to an existing HSOF, which may be made by an exchange of correspondence (including e-mail) that reflects both parties’ consent to the change, without any signature. Any amendments pursuant to Section 5.4(a) shall take effect upon 30 days of the Customer receiving notice of such amendments. 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 GT when the Customer: (a) orders a product from GT’s website and electronically indicates the acceptance of these Terms and Conditions; or (b) replies to an e-mail from GT which contains 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 GT 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 sections in this Agreement will survive termination: 1, 2.4, 3.3, 3.5, 3.6, 3.8, 5.3, 5.7, and any other sections that by their nature are intended to survive termination of this Agreement.

5.8 Severability

Each Section of this Agreement is distinct and severable. If any section of this Agreement, in whole or in part, is or becomes illegal, invalid, void, voidable or unenforceable in any jurisdiction by any court of competent jurisdiction, the illegality, invalidity or unenforceability of that section, in whole or in part, will not affect the legality, validity or enforceability of the remaining sections of this Agreement, in whole or in part.

5.9 Assignment and Enurement

Neither this Agreement nor any right or obligation under this Agreement may be assigned by the Customer without the prior written consent of GT. This Agreement enures to the benefit of, and is binding upon, the parties and their respective heirs, executors, administrators, estate trustees, trustees, personal or legal representatives, successors and permitted assigns. GT may assign this Agreement, in whole or in part, without obtaining any consent from the Customer.
5.10 Cumulative Rights

The rights, powers and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights, powers and remedies available at law or in equity or otherwise.

Schedule A – Data Subcontractors and Service Providers

The following Data Subcontractors have access to Customer Data:
None.

The following Data Service Providers have access to Customer Data:
None.