

# GAMS Development Corporation

## Cloud License Agreement

Please read the terms and conditions of this agreement carefully. This license agreement (**Agreement**) is made between GAMS Development Corporation (**GAMS** or **Licensor**) and you, its customer (**You, Your, Customer, Licensee or End-User**), for the use of the "GAMS Engine SaaS" cloud service (**the Service** or **the Product**), which is hosted on Amazon Web Services and made available to our customers around the world. By accessing or using the Service, you agree to be bound by the terms and conditions of this Agreement. If you do not agree to the terms and conditions of this Agreement, do not access or use the Service.

### 1. License Grant

Subject to the terms and conditions of this Agreement, GAMS hereby grants you a limited, non-exclusive, non-transferable, revocable license to use the Service solely for your own business purposes.

The Service may only be used by you and your employees. You are not allowed to make the Product available to others over the internet or through a similar networking technology (known as **Hosting**). However, if you have purchased a license for the Service and the Hosting meets the usage limitations of that license, it is allowed as long as the Product is embedded in and only accessible through a user-developed application that provides significant additional functionality and does not allow the end user to create and solve arbitrary models.

GAMS represents and warrants that GAMS has the right to grant all the rights and licenses granted herein. GAMS represents and warrants that the Service does not comprise any (third party) open-source software, free software or the like, which according to applicable license conditions, will require You:

- a) to disclose or (re)distribute source code versions or object code versions of any software developed by You, or
- b) to grant third parties licenses for such derived or developed software.

### Intellectual Property

- a) All trademarks, service marks, patents, copyrights, trade secrets, and other proprietary rights in or related to the Service are and will remain the exclusive property of GAMS or its licensors, whether or not specifically recognized or perfected under applicable local law.

- b) All of your rights to your Intellectual Property (model code and data submitted to the Service) shall at all times remain your property, and GAMS shall not have any right to use such intellectual property for any reason other than providing the Service. If you wish to terminate this Agreement and your user account is removed from the Service, all your model code and data will be removed as well.

### **Open-Source Solvers**

- a) As a convenience to the Licensee and authorized users, the Licensor may make available access to additional open-source mathematical solvers that are freely available in source form separately from the Service. Such open-source mathematical solvers are referred to herein as "OS Solvers".
- b) Any use of any OS Solvers is subject to the terms referenced in or accompanying such OS Solvers.
- c) In addition to the foregoing, the following terms and conditions apply to the OS Solvers and any use thereof and are accepted and approved by the Licensee:
  - i) No assurances, express or implied, are provided by the Licensor or by the originator of or any contributor to any of the OS Solvers regarding whether any of the OS Solvers does or does not infringe the patent or intellectual property rights of any other person or entity.
  - ii) Any liability for claims brought by any person or entity alleging infringement of intellectual property rights or otherwise relating to or arising from the use or presence of any of the OS Solvers is expressly and specifically disclaimed both by the Licensor and by the originator thereof.
  - iii) The OS solvers are provided strictly on an "as is" basis, without warranties or conditions of any kind, either express or implied, including, without limitation, any warranties or conditions of title, non-infringement, merchantability, or fitness for a particular purpose.

## **2. Access to the Service and User Management**

Upon placing an order, login credentials will be provided to the designated admin user within Your organization. This will grant access to the system and allow the admin to invite additional users within Your organization as necessary. It is the responsibility of the admin to manage these invited users and ensure they are kept informed of any planned service interruptions. Please note that GAMS does not have the capability to directly contact invited users.

## **3. Maintenance and Support**

Maintenance and support are set forth in our "Engine SaaS Service Level Agreement", attached as exhibit A.

## 4. Confidentiality

All confidential information relating to the Service, the Licensee's computers or Maintenance and Support, which one of the parties discloses to the other party, shall be treated confidentially by the receiving party as long as the information is still confidential, provided the disclosing party at the time of disclosure in a durable way has designated the information to be confidential.

## 5. Warranties

For the duration of Your License for the Service (the **Warranty Period**), GAMS warrants that the Service will perform substantially in accordance with the documentation. GAMS does not warrant that the Service will be error-free in all circumstances. As Your exclusive remedy for any defect or material error in the Service that occurs during the Warranty Period, and as GAMS's entire liability in contract, tort, or otherwise for a breach of warranty, GAMS agrees to correct such material error or defect at GAMS's facility by issuing corrected instructions, a restriction, or a work around. If GAMS is unable to correct such defect, GAMS may, at its sole discretion, terminate the license and provide a pro-rata refund of the license fee paid.

## 6. Limitation of Liability

In no event - except in case of gross negligence - shall any of the parties be liable for any indirect, incidental, special or consequential damages, including loss of profits, revenue, data or use incurred by the other party or any third party whether in action of contract or tort even if the party or any other person has been advised of the possibility of such damages. The cumulative liability of GAMS to You for any and all claims relating to the Product and any services rendered under this Agreement shall not exceed the total amount of all Cloud service subscription and Usage Fees (as applicable) paid to GAMS for the Service within the prior year. This limitation shall not apply to the indemnification provided in Section "Indemnification". In no event shall GAMS be liable to You for any consequential, indirect, special, or incidental damages, including but not limited to damages for Indemnification claims, even if GAMS has been advised of the possibility of such potential loss or damage. The foregoing limitation of liability and exclusion of certain damages, where permitted, shall apply regardless of the success or effectiveness of other remedies, but may not apply in some jurisdictions.

## 7. Indemnification

- a) GAMS shall indemnify the Licensee against all claims, demands, suits, liabilities, costs, expenses (including reasonably incurred legal fees), damages and losses suffered or incurred by the Licensee arising out of a third-party claim against the

Licensee in respect of infringement of a third party's intellectual property rights arising out of the Licensee's use of the software provided by GAMS.

- b) The Licensee will promptly notify GAMS in writing of the claim, allow GAMS to control the defense of such claim, and cooperate with GAMS in the defense or any related settlement negotiations.
- c) GAMS shall have sole discretion with regard to matters of settlement of any infringement claim so long as the settlement does not adversely affect the Licensee, or require the Licensee to affirmatively take or to refrain from taking some action.
- d) If such a claim is made or appears possible, GAMS may, at its option, secure for the Licensee the right to continue to use the Product, or modify or replace the Product so that it is non-infringing, or, if neither of the foregoing options is available in GAMS's judgment, require the Licensee to return the Product for a credit equal to the portion of previously paid License fees allocable to the remaining term of the Licensee's Product License.
- e) GAMS has no obligation for any claim based on a modified version of the Product, or its combination, operation, or use with any product, or data not provided by GAMS, or for the data provided by the Licensee.
- f) This indemnity shall not apply to the extent that a claim under it results from the Licensee's negligence or wilful misconduct.
- g) This paragraph states GAMS's entire obligation to the Licensee with respect to any claim of infringement.

## **8. Termination of the Service**

We reserve the right to terminate this Agreement and the rights granted hereunder, if you breach any of the terms or conditions of this Agreement.

## **9. Export Controls**

The Service may not be made available to any country or entity that is the subject of any prohibition imposed by the U.S. Export Administration Act of 1979, U.S. Executive Orders, the U.S. Department of Commerce, or the North Atlantic Treaty Organization (NATO), or any other applicable export control laws and regulations of the U.S.

## **10. Choice of Law and Dispute Resolutions**

These terms are governed by US law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the state of Virginia as they apply to a contract made and performed in this state. Venue for any dispute shall be Fairfax, VA, USA

## **11. Miscellaneous**

### **Force Majeure**

Neither party shall be responsible for any failure to perform due to unforeseen circumstances or to causes beyond the parties' reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation, facilities, fuel, energy, labor, or materials. In the event of any such delay, either party may defer any delivery dates for a period equal to the time of such delay. Notwithstanding the foregoing, if either party has suspended performance for more than forty-five (45) days, the non-defaulting party may terminate this Agreement.

## **12. Payment Terms**

### **Subscription Fees**

A subscription to the Service is required and is subject to a periodic fee, the amount of which varies depending on the specific Service plan chosen. Additionally, an additional per-hour usage fee (the "Usage Fee") may apply. In such cases, GAMS will establish a billing account for you, which can be pre-paid through deposit of funds or post-paid through invoice, credit card or debit card. When using the Service, the cost of the cloud hardware on which the Product runs is included in the stated price. Your account will be charged from the time a GAMS Engine instance is initiated until it is stopped or terminated, regardless of whether the instance is active or idle. GAMS reserves the right to disable access to the Service in the event of negative account balance, delinquent invoice, or inability to bill through credit card or debit card, until funds have been added to the GAMS Cloud account or payment has been made in full. A detailed statement of usage will be made available to You. License for the product is granted for a limited period of time until payment is received in full. Upon receipt of full payment, a license for the term of the applicable Product License is granted.

## **13. Your Obligations when using the service**

- a) It shall be Your responsibility to keep Your login credentials secure and confidential and not to disclose them to any third party.
- b) You acknowledge that the service provided is not intended as a long-term storage solution, therefore You shall be solely responsible for regularly and adequately backing up any data which You consider important.

## **14. Modifications and Waivers**

This Agreement may not be modified except in writing signed by authorized representatives of both parties. A waiver by either party of its rights hereunder shall not

be binding unless in writing signed by an authorized representative of the party waiving its rights. The non-enforcement or waiver of any provision on one (1) occasion shall not constitute a waiver of such provision on any other occasion unless expressly so agreed in writing. It is agreed that no use of trade or other regular practice or method of dealing between the parties hereto shall be used to modify, interpret, supplement, or alter in any manner the terms of this Agreement.

## **15. Entire Agreement**

This Agreement constitutes the entire agreement between you and GAMS and supersedes all prior or contemporaneous communications and proposals, whether oral or written. If any part of this Agreement is found to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

# Exhibit A

## GAMS Engine SaaS Service Level Agreement

### 1. GAMS Engine SaaS Service Description

GAMS Engine SaaS is a cloud service operated by GAMS ("THE SERVICE"), which allows customers to solve their GAMS optimization models in the cloud. THE SERVICE is operated by GAMS on the Amazon Web Services (AWS) infrastructure. The foundation of THE SERVICE is a managed AKS Kubernetes cluster. Users can authenticate with THE SERVICE using credentials supplied by GAMS and then submit models and data to THE SERVICE via a REST API. Compute resources required to compute solutions to the submitted model are automatically provisioned, the model is solved, and results are available for download via the REST API. Results are stored in a staging database until the user has downloaded them. The database is not meant to be used for long term data storage.

THE SERVICE operates within the limits of the AWS infrastructure, i.e., we offer horizontal autoscaling on the same infrastructure that runs many well-known large internet services.

### 2. Customer Intellectual Property

All of our customer's rights to its Intellectual Property (model code and data submitted to THE SERVICE) shall at all times remain the customer's property, and GAMS shall not have any right to use such intellectual property for any reason other than providing THE SERVICE.

When a customer wishes to leave and the user account is removed from THE SERVICE, all customer model code and data will be removed from the staging database as well.

### 3. Service Agreement

#### General System Specifications and Availability Targets

Uptime target	99.9% per month, calculated over 24h / 7 days per week.
Maintenance notifications	Scheduled maintenance will be announced via email 7 days in advance
Time to start a fresh compute pod	3 minutes
Uptime of compute pod after the last job terminates	2 minutes
Cluster backup frequency (i.e., the maximum amount of data lost in the event of a complete loss of the cluster)	1 / day
Recovery time after complete loss of cluster	48 hours
Number of nodes for horizontal autoscaling	limited only by the availability of hardware in the AWS datacenter

#### Our security promise

We treat our customers' data with the same level of care as we treat our own data. With each new feature we develop for THE SERVICE, we think security first. Our team performs an extensive review process before putting code into production.

Data encryption in transport	TLSv1.2
Encryption of data at rest	AES256
Testing of code for known vulnerabilities	esLint, GitLab semgrep
Testing of third party dependencies for vulnerabilities	npm audit, trivy, pip audit
Dynamic application security testing	ZAP automated API scan
Pen testing	Testing is performed by internal staff whenever new features are added to THE SERVICE.
Logging	All access to the API and UI of THE SERVICE is logged by the application load balancer. Logs are currently stored indefinitely for forensic purposes.



## Our Support Response Times

We will generally acknowledge new support tickets within 8 business hours.

Time to resolution of support tickets will depend on the severity of the incident:

1. **High Severity**, e.g., unavailability of THE SERVICE REST API, compute jobs not starting: ASAP, i.e., all required personnel will work on the restoration of THE SERVICE with the highest priority until THE SERVICE is restored
2. **Medium Severity**, e.g., slower than expected calculations, slow API response time: 15 days.
3. **Low Severity**, e.g., cosmetic issues in the user interface: 30 days.

## Exclusions

We shall not be in breach of this agreement in the event of internet disruptions occurring between the customer and the AWS infrastructure or in the event of rightful suspension or termination of the customer's GAMS Engine SaaS user account.

We operate THE SERVICE within the limits of the AWS infrastructure in the US-East1 region. In the case of an outage of AWS service components, we will have to rely on AWS to rectify the issue before we can start restoring our service.

## Service Credits

If the service availability drops below 99.5% in a calendar month, we will apply the following credits to the user account. The credit is calculated as a percentage of the monthly bill, or in the case of an annual package, as the 12th of the annual price.

<b>Service Availability (SA)</b>	<b>Credit</b>
$99.0\% \leq SA < 99.5\%$	10%
$95.0\% \leq SA < 99.0\%$	30%
$SA < 95.0\%$	100 %

## Support Contact

The central point of contact for GAMS support is at [support@gams.com](mailto:support@gams.com). When deemed necessary by GAMS support staff, other means of communication will be offered.