

# Geomant Cloud Terms of Service



Geomant delivers advanced customer interaction solutions from the cloud. Use of these services is subject to the following terms.

**Updated:** December 2020.

This agreement "Agreement" is between Geomant UK Limited "Geomant" and the "Customer" or "Reseller".

## Definitions

**Authorised User:** an employee or other authorised representative, working on behalf of Customer, using the Geomant Cloud Service

**Bot:** the Geomant Cloud Service that interacts with End Users autonomously to answer questions, provide self-service transactions and manage the customer engagement process

**Buzzeasy** or the **Geomant Cloud Service(s):** the cloud service provided by Geomant to orchestrate the customer interaction process using various channels, including Voice, Bots, Messaging (webchat, social media and other digital channels), SMS, IVR and Callback.

**Callback Request:** a request from an End User to the Service to initiate contact.

**Callback:** a call made by the Geomant Cloud Service to an End User in response to a Callback Request.

**Charging Month:** a charging period, usually Calendar Month, for the purposes of calculating charges for the Service

**Consumable Services:** Geomant Cloud Services or components that are charged for on a usage basis, including telephone call minutes, SMS messages and Bot transactions

**Contact Centre:** the contact centre operated by, or on behalf of Customer, where calls are directed

**Contact Request:** a request made by an End User wanting to contact or be contacted by Customer

**Customer Data:** proprietary information and data that Customer processes through the Geomant Cloud Service, including without limitation, names, phone numbers and other End User details.

**Customer:** the entity registering with Geomant to use the Geomant Cloud Service.

**Documentation:** Geomant user guides, training materials and Interface Specifications provided to Customer electronically or physically

**End User Data:** the personal data of the individual End Users, including, but not limited to their name and telephone number

**End User:** the person wanting to contact the Customer, or the person Customer wishes to contact

**Interface Specifications:** the document describing the Interface

**Interface:** the means for communicating requests to the Service and obtaining information from the Service

# Geomant Cloud Terms of Service

**Presented Number:** the telephone number to be presented by Geomant on Callbacks to End User

**Reseller:** the intermediate organization purchasing Geomant Cloud Services and reselling to Customer.

**Service Definition:** a document provided by Geomant that specifies the parties to the Agreement, the Geomant Cloud Service(s) provided, the term of the Agreement, and the notice period for termination

**Service Fees:** the fee due for use of the service, as defined in the relevant quotation or proposal

**SMS Opt-Out:** an SMS received from an End User by Geomant enabling the End User to opt out of receiving further texts

**SMS:** a text message (or short messaging service) used on most mobile telephone devices to enable the exchange of short text messages.

## Term of Agreement

This Agreement commences on the date that Customer or Customer signs a Service Definition document. The Service Definition document defines the Parties to the Agreement, the purchased Geomant Cloud Service(s), the term of the Agreement, and the notice period for termination. The Data Processing Agreement is the written contract between Geomant as the Data Processor and Customer as Data Controller relating to Customer Data.

The Agreement will automatically renew for the same term, unless notice of termination is provided by either the Customer, Reseller or Geomant to the other party within the notice period specified on the Service Definition document.

Renewal may be subject to price increases.

## Termination

Either party may terminate rights granted under a particular Service Definition document if the other breaches any material term of the Service Definition document (including a material term of this Agreement insofar as it applies to the Service Definition document) and the breach is not cured within 30 days of written notice. Customer or Reseller's non-payment of valid invoice shall be considered a material breach.

Confidentiality, Data Protection terms of this Agreement and the Data Processing Agreement continue after its termination.

If Geomant terminates a Service Definition document under this Agreement because of non-payment by Customer or Reseller, all unpaid fees for the remainder of the Subscription Term immediately fall due for payment.

Geomant may terminate the agreement at its sole discretion if the Customer or Reseller enters into any bankruptcy, insolvency, receivership or winding up proceeding is commenced. Should this apply to Reseller, Geomant may at its discretion offer a direct agreement to Customer.

## General

### Use of the Services

The Service provided to Customer is non-exclusive, non-transferable and for Geomant Cloud Services used by the Customer only.

## Geomant Cloud Terms of Service

Where the Service is provided through a Reseller, Geomant will not have a direct commercial relationship with Customer and it is the Reseller's responsibility to ensure Customer adheres to its obligations as defined in the Service Definition document and this Agreement.

### Access to Service

Geomant provides security and call blocking services to allow the Customer to control some Geomant Cloud Services, however it is the Customer's responsibility to ensure that only legitimate Contact Requests are received from End Users that the Customer wishes to call.

Customer will be responsible for custody and use of all assigned Geomant Cloud Service login credentials. Customer will use reasonable efforts to prevent unauthorised access to or use of the Geomant Cloud Service and notify Geomant immediately by telephone and confirm by email any unauthorised access, and use reasonable efforts to immediately stop any such unauthorised access.

### Ownership

Geomant solely owns the intellectual property in the Service (except for third party components) and the service Documentation. While a valid, current Agreement to use the Service is maintained, Customer shall have a non-exclusive, non-transferable right to use the Service for Customer's lawful business purposes.

The Service is wholly or partly located on servers that are controlled by Geomant. Customer may access the Service, but has no right to receive a copy of the source code, database definitions, or any other information propriety to Geomant in the provision of the Service.

The Service may partly be located on servers that are controlled by Customer or Reseller, Customer may access the Service, but has no right to receive a copy of the source code, database definitions, or any other information propriety to Geomant in the provision of the Service.

Working patterns of the Geomant Cloud Service are Geomant's intellectual property and no Interface Specification or Documentation are to be communicated to any third party without the written permission of Geomant.

### Service Specification

Geomant regularly upgrades and updates the Service. This means that the Service is continually evolving. Some of these changes will occur automatically, while others may require Customer or Reseller to schedule and implement changes.

### Service Availability

Geomant has a maintenance schedule daily at 05:45 GMT / 23:45 CST for 15 minutes. During this time, Contact Requests can be made to the service however they may not be actioned until after the 15 minute window.

There is also a longer monthly maintenance schedule on the first Sunday of the month for up to one hour. Normally Contact Requests can be made during this time, however again they may not be actioned until after the window.

There will be times that maintenance windows require the pausing of the taking of Contact Requests. Geomant will minimise this period of time, and with the exceptions of emergency maintenance (see below), will provide at least one week's notice of such an event, to the notification email provided on the Service Definition document.

## Geomant Cloud Terms of Service

There are times when emergency maintenance is required to resolve an operational issue. Geomant's cloud services deliver solutions to multiple customers. If there is an emergency maintenance required, Geomant will at their discretion, determine the timing of the window taking into account the varied needs of the customer community.

### Exclusions

Customer or Reseller may not:

- transfer to any other person any of its rights to use the Service
- rent or lease the Service (apart from any Reseller to Customer arrangement detailed in the Service Definition document)
- make the Service direct calls or SMS to anyone who is not an Authorised User
- offer a service or solution that is competitive with Buzzeasy
- access the Service in order to build a competitive solution or to assist someone else to build a competitive solution to the Geomant Cloud Service
- use the Service in a way that violates any criminal or civil law, including the content of the voice and digital interactions held
- load test the Service in order to test scalability
- exceed any usage limits listed in the Service Definition document.

### Fees & Taxes

Customer or Reseller agrees to pay the following for the use of the service:

#### Service Fees

Service Fees are defined in the relevant quote or proposal, and are based on specified volumes (e.g. number of users, number of concurrent callbacks etc.)

#### Consumable Services

Consumable Services are charged at the amount defined in the relevant quote or proposal, and calculated within each Charging Month.

#### Consumable Service Costs

Where applicable, the costs for all Consumable Services are calculated within each Charging Month, and are separately chargeable.

#### Taxes

Where applicable, billing will be subject to Sales Tax or VAT at the prevailing rate, and other local taxes as may apply.

#### Invoicing & Payment

All invoicing provided by Geomant to the Customer or Reseller shall be produced in accordance with the relevant quote or proposal. The invoice shall be deemed to be correct and properly due unless, acting reasonably and in good faith, the Customer or Reseller disputes the invoice or parts thereof within 14 days of the invoice date. If the Customer or Reseller does not dispute any aspect of the invoice within the 14 day period, the invoice shall be deemed due for payment 30 days from submission, or as otherwise stated on the relevant quote or proposal.

# Geomant Cloud Terms of Service

## Data Protection

Geomant only processes data that is provided by the Customer, or that is collected by Geomant at Customer's request, and in compliance with the Data Processing Agreement. Customer warrants that any supplied Customer Data will not violate any third party's rights or any law.

Customer and/or Reseller are responsible for ensuring adherence to local and federal data protection laws and regulations.

The Customer represents that it has the lawful right to store End User Data and agrees not to submit any information unless legally entitled to do so. All End User Data and other confidential information submitted to Geomant must be done so securely and at a minimum be password protected.

Additionally, in the case of Callback services, by providing Customer Data to Geomant, Customer or Reseller warrants that it has permission to contact the End User using the Customer Data (not applicable to an end user Contact Request as the End User gives permission by requesting the contact).

By using the Service, Customer consents to the data transferred to the Service to be stored in secure databases in UK data centre(s) and accept the following terms and conditions, without limitation or qualification.

## Data Protection Act

In UK the Data Protection Act 2018 (the DPA) draws a distinction between a 'data controller' and a 'data processor'. In the case of Geomant's cloud services, Customer is the 'data controller' and maintains all responsibilities of a 'data controller' as defined in the DPA, whilst Geomant is 'data processor' and maintains all responsibilities of a 'data processor'.

## Information Geomant Collects

In the case of Callback requests, when a Contact Request is made to the Service, Geomant is provided with information about the End Users (End User Data). All End User Data must be transferred securely between the parties.

Geomant will securely process and store the End User Data provided and only use it to initiate and record contact between the Customer and the End User and to identify any issues with the Service and provide rectification to that Service.

In the case of outbound calls, the Service will be configured to present a number provided by the Customer on calls to End Users. Customer warrants to Geomant that it owns the Presented Number and permits it to be presented on outbound calls.

## Disclosure of information

The information, including End User Data provided to Geomant will be held on computers for the purposes set out in this Agreement, Data Processing Agreement or for other purposes approved by you. Geomant will securely delete the End User Data within the retention period specified in the Data Processing Agreement.

Geomant may pass aggregate usage information to third parties but this will not include information that can be used to identify Customer or End Users.

Geomant will cooperate with any request from a law enforcement organisation requesting legitimate legal access to Customer Data.

## Geomant Cloud Terms of Service

Geomant will not sell or share the information of Customer's use of the system nor that of the End Users.

### Security and Data Protection

Geomant will keep Customer Data in a secure data centre, operated by a specialist third party data centre provider.

Any changes to Geomant's privacy policy in the future will be posted to the website and, where appropriate, through email notification.

### Warranty

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND THE DATA PROCESSING AGREEMENT, THE SERVICE IS PROVIDED WITH NO OTHER WARRANTIES OF ANY KIND, AND GEOMANT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. GEOMANT DOES NOT WARRANT THAT THE USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE.

EXCEPT AS REQUIRED TO PROVIDE THE SERVICE OR AS REQUIRED BY LAW, GEOMANT DOES NOT MONITOR THE CONTENT OF CUSTOMER DATA. TO THIS EXTENT ALL RESPONSIBILITY AND LIABILITY IN RELATION TO THE CONTENT TRANSMITTED, RETAINED OR USED IN CONJUNCTION WITH OR ON THE SERVICE RESIDES SOLELY WITH THE CUSTOMER.

### Limitation of Liability

Subject to the previous clauses, but notwithstanding anything else in this Agreement and the Data Processing Agreement, the Customer or Reseller's sole and exclusive remedy and Geomant's sole liability for unavailability, delay in provision or unsatisfactory performance of the Service shall be Service Credits as defined within Annex A of this agreement.

THE DATA PROCESSING AGREEMENT WITHSTANDING, NEITHER PARTY SHALL BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST OR CORRUPTED DATA, LOST PROFITS, LOST BUSINESS OR LOST OPPORTUNITY), OR ANY OTHER SIMILAR DAMAGES UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY), EVEN IF THE OTHER PARTY HAS BEEN INFORMED OF THIS POSSIBILITY. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR THE SELECTION OF THE SERVICE, SETUP AND TESTING NECESSARY TO ACHIEVE CUSTOMER'S INTENDED RESULTS, AND FOR THE USE AND RESULTS OF THE SERVICES. EACH PARTY'S TOTAL LIABILITY FOR ANY DIRECT LOSS, COST, CLAIM OR DAMAGES OF ANY KIND SHALL NOT EXCEED THE AMOUNT OF THE FEES PAID OR PAYABLE BY CUSTOMER OR RESELLER TO GEOMANT UNDER SUCH RELEVANT SERVICE DEFINITION DOCUMENT DURING THE 24 MONTHS BEFORE THE EVENT GIVING RISE TO SUCH LOSS, COST, CLAIM OR DAMAGES. THIS LIMITATION ON LIABILITY WAS AND IS AN EXPRESS PART OF THE BARGAIN BETWEEN GEOMANT AND CUSTOMER OR RESELLER AND WAS A CONTROLLING FACTOR IN THE SETTING OF THE FEES PAYABLE TO GEOMANT. HOWEVER, THERE IS NO LIMITATION ON DIRECT LOSS, CLAIM OR DAMAGES ARISING AS A RESULT OF AN INFRINGEMENT OF GEOMANT'S INTELLECTUAL PROPERTY RIGHTS.

### Force Majeure

Notwithstanding anything herein to the contrary, neither Party shall be liable for any delay or failure in performance of any of its obligations under this Agreement (other than payment obligations for

## Geomant Cloud Terms of Service

Services) to the extent that such delay or failure is attributable to a Force Majeure Event, and the Service Term of any Service rendered unavailable by the Force Majeure Event shall be extended by the time that the Service is rendered unavailable.

### Law

These Terms and Conditions and any disputes arising from or in connection with them shall be governed by the laws of England & Wales and the parties submit to the exclusive jurisdiction of the English Courts. You hereby undertake, as a condition of use of the Geomant Cloud Service, to indemnify us against any loss or damage suffered by Geomant as a result of any breach by Customer or End Users of any of these Terms of Conditions.

This Agreement together with the Data Processing Agreement and Service Definition document represent the entire agreement of the parties, and supersede any prior or current understandings, whether written or oral. If there is a conflict between the Agreement and a Service Definition document, the Service Definition document and Data Processing Agreement will prevail.

### Severability

If any provision of this Agreement is held by a court or any governmental agency or authority to be invalid, void or unenforceable, the remainder of the Agreement shall, to the extent possible, remain legal, valid and enforceable.

### Assignment

Geomant may assign this Agreement in whole or in part at any time without notice. In such an instance, all obligations in this Agreement and the Data Processing Agreement will be assigned.

Customer or Reseller must not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of Geomant. Geomant may not unreasonably withhold such consent in the case of an assignment by Customer or Reseller of its rights and obligations to an entity that has acquired all, or substantially all of Customer or Reseller's assets, or to an assignment that is part of a genuine corporate restructure.

Any assignment in breach of this Section is void.

### Indemnification

Customer or Reseller must indemnify and hold harmless Geomant, its affiliates, directors, and employees from any damages finally awarded against Geomant (including, without limitation, reasonable costs and legal fees incurred by Customer) arising out of any third party suit, claim or other legal action (including but not limited to any DPA or FTC or other governmental investigations, complaints and actions) resulting from Customer's non-adherence or alleged non-adherence to its obligations as a Data Controller.

### Registered office

Geomant UK Limited  
Turnpike Gate House  
Alcester Heath  
Alcester  
Warwickshire  
B49 5JG  
United Kingdom

# Geomant Cloud Terms of Service

## Notices

All notices provided under this Agreement, by the Customer or Reseller to Geomant, shall be in writing and shall be delivered by hand or by prepaid recorded or registered post or by electronic transmission if immediately confirmed by prepaid recorded or registered post. Notice shall be deemed to have been served immediately if delivered by hand or 48 hours after such posting or such transmission.

Posted communications are to be sent to the registered address above, marked 'FAO: Company Director'.

All notices provided under this Agreement, by Geomant to the Customer or Reseller, shall be in writing and shall be delivered by hand or by prepaid recorded or registered post or by electronic transmission if immediately confirmed by prepaid recorded or registered post. Notice shall be deemed to have been served immediately if delivered by hand or 48 hours after such posting or such transmission.

Posted and email communications are to be sent to the Customer or Reseller address on the Service Definition document.

## Publicity.

Unless otherwise agreed, Geomant may list Customer as a customer and use Customer's name and logo on its websites, on publicly available customer lists, and in media releases.