

1 INTERPRETATION

The following definitions and rules of interpretation apply in this Contract.

1.1 Definitions:

Broadband Based Back-up Service	means the broadband based back-up service which is subject to availability, as more particularly described in the Service Literature.
Business Day	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Cancellation Cost	Gamma's standard cancellation cost.
Commencement Date	the date specified in the Purchase Order.
Conditions	these terms and conditions as amended from time to time in accordance with clause 13.5.
Confidential Information	all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party or that party's Representatives which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.
Contract	the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions and the Purchase Order.
Control	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.
Converged Ethernet Service	a layer 3 service whereby Gamma provides both access and overlay services as more particularly detailed in the Converged Ethernet Service Literature.
Converged Ethernet Service Literature	means Gamma's service guide that sets out specific terms relating to the Converged Ethernet Services.
Customer	the person or firm who purchases the Gamma Services from the Supplier.
Data Protection Legislation	all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications). The terms controller, personal data and processing shall be as defined in the Data Protection Legislation.
Designated Representative	has the meaning given to it in clause 12.
Direct Costs	any costs incurred by Gamma in preparing to deliver the Gamma Services.
Dispute Equipment	has the meaning given to it in clause 12.
Excess Construction Charges	equipment provided by Gamma or by its sub-contractors for the delivery of the Gamma Services. an additional charge which will vary the Fees where the provision of the Gamma Services, or part thereof, requires the provision of resources that exceed the level of resource which would normally be required to supply the Gamma Services.
Fees	the fees payable by the Customer for the Gamma Services, as described in the Purchase Order and as may be adjusted from time to time in accordance with the terms of this Contract.
FTTC Ethernet Service	a line service that may be provided as part of the Gamma Services, as more particularly described in the Wholesale Ethernet (Layer 2) Service Literature.
Gamma	Gamma Business Communications Limited, registered in England and Wales with company number 2998021 and whose registered office is at The Scalpel, 18th Floor, 52 Lime Street, London, United Kingdom, EC3M 7AF.
Gamma Services	either the Converged Ethernet Service or the Wholesale Ethernet (Layer 2) Service purchased by the Customer, as further detailed in this Contract and in the Purchase Order.
Initial Term Intellectual Property Rights	shall be the initial term set out in the Purchase Order. patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Ofcom Purchase Order	means The Office of Communications. the Purchase Order to which these Conditions are attached.

Service Literature means the Converged Ethernet Service Literature or the Wholesale Ethernet (Layer 2) Service Literature. shall have the meaning given to it in clause 3.1.

Supplier KASCADE is a trading name of ComputerWorld (Systems) Limited, registered in England and Wales with company number 04625112 and whose registered office is at Apex House, Turner Drive, Westerleigh Business Park, Yate, Bristol, England, BS37 5YX.

Throughout this agreement, references to Kascade shall also include Computerworld (Systems) Limited. Computerworld (Systems) Limited and Kascade are used interchangeably to represent our business and services. the agreement between Gamma and the Supplier.

Supply Agreement Term the duration of the Contract, as specified in clause 3.

Wholesale Ethernet (Layer 2) Service a layer 2 service whereby Gamma provides only the underlying access as more particularly detailed in the Wholesale Ethernet (Layer 2) Service Literature.

Wholesale Ethernet (Layer 2) Service Literature means Gamma's service guide that sets out specific terms relating to the Wholesale Ethernet (Layer 2) Service.

1.2 Interpretation:

- 1.2.1 A reference to legislation or a legislative provision:
- 1.2.1.1 is a reference to it as amended, extended or re-enacted from time to time; and
- 1.2.1.2 shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.3 A reference to **writing** or **written** includes email.

2 BASIS OF CONTRACT

- 2.1 The Purchase Order constitutes an irrevocable offer by the Customer to purchase the Gamma Services from the Supplier in accordance with this Contract.
- 2.2 In the event that the Gamma Services are consumed alongside the Broadband Based Back-up Service then the terms and conditions relating to those services shall also apply and the supply of the Broadband Based Back-up Service is subject to availability.
- 2.3 The Supplier may impose special terms which are not included in the Order Proposal and will be advised to the Customer in writing. Any such special terms shall be deemed to be a variation of the Contract. In the event that the Supplier imposes such special terms the Customer may cancel its order without penalty within 5 days of notification thereof by the Customer.
- 2.4 The Purchase Order shall only be deemed to be provisionally accepted when the Supplier issues written acceptance of the Purchase Order at which point and on which date the Contract shall come into existence. Final acceptance of the Purchase Order is provisional on any necessary site and installation surveys as specified in this Contract.
- 2.5 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Gamma Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 These Conditions shall apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.7 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 7 Business Days from its date of issue.
- 2.8 Any terms defined in the Service Literature or the Supply Agreement shall apply to this Contract.

3 TERM

- 3.1 This Contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with its terms, for the Initial Term. Thereafter, it shall renew automatically for successive terms equal to the duration of the Initial Term (each a **Successive Term**) commencing on the day after the expiry of the Initial Term or relevant Successive Term (as the case may be) unless:
- 3.1.1 the Customer gives to the Supplier 90 days' advance written notice to terminate the Converged Ethernet Service;
- 3.1.2 the Customer gives to the Supplier 60 days' advance written notice to terminate the Wholesale Ethernet (Layer 2) Service; or
- 3.1.3 the Supplier gives to the Customer 15 days' advance notice to terminate the Contract.
- 3.2 This Contract will terminate immediately by notice if required by a direction of Ofcom.

4 SUPPLY OF GAMMA SERVICES

- 4.1 Subject to the payment by the Customer of all Fees and the Customer's compliance with the terms of this Contract, the Supplier shall procure the provision of the Gamma Services to the Customer.
- 4.2 The Customer acknowledges that provision of the Gamma Services is subject to a satisfactory site survey by Gamma or its sub-contractor and Customer provides its consent for Gamma or its sub-contractor to visit the Customer's site or sites to conduct such survey and for the purposes of installation. If the site visit or survey is not possible due to any reason where Gamma or its sub-contractors is not at fault, the Customer will be liable for Gamma's standard aborted visit charge.
- 4.3 Gamma and/or its sub-contractor will conduct any required site visits during normal working hours, that is to say between 08:00 and 17:00 Mondays to Fridays (excluding UK public and bank holidays). In the event that the Customer requests a site visit outside such hours this will be the

- subject of an additional charge payable by the Customer and this charge will not apply to visits to repair faults.
- 4.4 Site visits are subject to the Customer's site being within the United Kingdom (including Northern Ireland with the exception of Kingston upon Hull, Isle of Man, Isles of Scilly and the Channel Islands - the Customer is responsible to pay any reasonable additional charges for site visits and installations where this is not the case.
- 4.5 Where an appointment is made for Gamma or its sub-contractor to visit a Customer's site, including for the purposes of a site survey or for installation, and the visit cannot be successfully completed due to:
- 4.5.1 the inability of Gamma or its sub-contractor, through no fault of their own, to complete the work;
- 4.5.2 the inability of Gamma or its sub-contractor to gain access to the site or sites or any part thereof which is necessary for the work;
- 4.5.3 the appointment is broken by the Customer; or
- 4.5.4 any other reason where Gamma or its sub-contractor is not at fault
- the Customer will be responsible to pay Gamma's standard aborted visit charge.
- 4.6 The Supplier may be unable to procure the Gamma Services to any Customer site for reasons including, but not limited to:
- 4.6.1 the distance between Customer's site and the point of presence of Gamma or its underlying service provider;
- 4.6.2 if a site survey finds that Customer's site is not suitable for the provision of the Gamma Services or Broadband Based Back-up Service; or
- 4.6.3 if the Customer does not agree to pay any charges reasonably levied by Gamma or generated in the initial pricing.
- 4.7 Subject to clause 4.3 above Gamma will issue a final acceptance of the order which will include the agreed date that installation of the Gamma Services can be completed by Gamma (the "**Contractual Delivery Date**"). The Customer acknowledges that the Contractual Delivery Date may be later than any date specified on the Order Form or any date required by the Customer if the alternative date falls before minimum order lead times or if Gamma encounters any delays which were not reasonably foreseeable.
- 4.8 The Customer must request cancellation of any appointment with Gamma providing at least (72) seventy-two hours' written notice to the Supplier prior to the appointment. In the event that the Customer does not agree such an appointment, the appointment will be deemed to have been fixed for Gamma's preferred installation date unless a revised customer required date is subsequently agreed.
- 4.9 On a date which will be advised by the Supplier on receiving information from Gamma, Gamma or its nominated sub-contractor will visit the Customer site to install the network terminating equipment ("**NTE**"). Standard installation time of NTE is 3.75 hours. In the event that installation is extended beyond such time through no fault of Gamma (including, but not limited to, unreadiness on the part of the Customer, difficulty in accessing the site, non-availability of the named Customer contact, necessity of decommissioning redundant hardware or lack of availability of the required power circuits) the Customer will be liable for any additional charges that arise.
- 4.10 Within two working days of completion of the installation of the NTE, the Gamma Services will be connected to the Gamma network and, following the successful conclusion of a series of commissioning tests performed by Gamma or its nominated sub-contractor, the Gamma Services will be deemed to be ready for use and Customer will be invoiced from this date ("**the Installation Date**").
- 4.11 The Installation Date is subject to the installation of the required router supplied by Gamma and the completion of successful testing of the final installation with Gamma and may be subsequent to the date when the Gamma Services is deemed ready for use as set out above in this clause 4. Where the Gamma Services is being used to provide connectivity to an IP telephony service, the Customer shall be responsible for the delivery of such telephony service over the Gamma Service.
- 4.12 The Customer shall not acquire any property in any Equipment provided by Gamma or its sub-contractors, as the case may be. Gamma will ensure its sub-contractor provides the NTE and, in the case of the Converged Ethernet Service, Gamma may provide the Customer premises router where such has been ordered from Gamma by the Customer.
- 4.13 The party that supplies the Equipment will be responsible for its maintenance.
- 4.14 In cases where the Supplier or the Customer supplies such router, the Supplier does not guarantee that any such router will be compatible with and/or suitable for use with the Gamma Services. The Customer will be required to pay for any configuration or other work performed by Gamma or any of its sub-contractors which is required to bring any router into a state where it is compatible with the Gamma Services.
- 4.15 In respect of Converged Ethernet Services only, it is the Customer's responsibility to install a router at the Customer site or sites where this is required and the Supplier shall not bear any liability for any delays in the provision of the Gamma Services due to delay in the installation of such router.
- 4.16 In respect of the Converged Ethernet Service only, the Customer will be responsible for the costs incurred for configuring, testing and despatching replacement routers in the event that no fault is subsequently found in the original router or its configuration (where provided by Gamma) or where a fault has been incorrectly diagnosed by the Customer.
- 4.17 The Supplier shall use reasonable endeavours to:
- 4.17.1 procure the delivery of the Gamma Services (and, where applicable, the Broadband Based Back-up Service) as set out in the Purchase Order by the Contractual Delivery Date to the Service Demarcation Point (as defined in the Service Literature);
- 4.17.2 procure that the commissioning tests carried out by Gamma will be completed within two working days after the Contractual Delivery Date;
- 4.17.3 procure that the Gamma Services are maintained for twenty-four (24) hours in every day on every day of the year (subject to the restrictions in this Contract); and
- 4.17.4 provide first line support to Customers for including, but not limited to, order tracking, billing enquiries, initial fault diagnosis (including carrying out first line fault diagnostic checks and resolving faults) and payment queries.
- 4.17.5 The Customer acknowledges that all timeframes are estimates only and that any service levels are target service levels only.
- 4.18 Where the Supplier has agreed to procure the supply of the Gamma Services, the Customer acknowledges and accepts that there may be certain technical limitations to the Gamma Services which are set out in the following clauses:
- 4.18.1 There may be technical or geographical limitations which do not enable the Gamma Services to be installed. Provision of the Gamma Services is conditional on a site survey when such limitations will normally become apparent. In the event that a site survey reveals that the required Gamma Services cannot be installed, Gamma will cancel the order without charge to the Customer.
- 4.18.2 If during the commissioning of the Gamma Services it is found that, despite the reasonable endeavours of Gamma and/or its sub-contractor, the bandwidth performance as set out in the order cannot be achieved, Gamma will cancel the order without charge to the Customer.
- 4.18.3 Certain technical limitations may not become apparent until after the Gamma Services have been installed and have been working for some time. In such cases where no alternative solution can be found, the Gamma Services may be withdrawn and the Supplier will issue a service credit or credits to the Customer for any payments which have already been invoiced in relation to the Gamma Services (save for any charges for abortive visits). For the avoidance of doubt it should be noted that the available IP throughput of a circuit will be lower than the standard port speeds advertised owing to management and encapsulation overheads. Successful conclusion of the commissioning tests performed by Gamma or its nominated subcontractor shall be prima facie evidence that such management and encapsulation overheads are within normal parameters for the type of circuit concerned and no cancellation will be permitted under the provisions of clauses 4.18.2 and 4.18.3 unless expressly agreed by the Supplier.
- 4.18.4 Service Credits as set out in the Service Literature shall be the Customer's only remedy in the event of any failure by the Supplier to meet the Contractual Delivery Date or for any failure to meet any service levels or to repair a fault within any given timeframe (save as specified elsewhere in this Contract).
- 4.18.5 In the circumstances referred to in clauses 4.18.1, 4.18.2 and 4.18.3 above, and notwithstanding anything to the contrary in the Order Form, the Supplier has no liability to the Customer for procuring the Gamma Services, the performance of the Gamma Services, its effect on any other services or equipment or the withdrawal of the Gamma Services, save as set out above.
- 4.18.6 Where the Customer is taking the FTTC Ethernet Service as part of the Gamma Services, the terms set out in Schedule 1 of this Agreement will apply alongside any other terms in Schedule 2 and 3 which relate to the FTTC Ethernet Service.
- 4.18.7 Where the Customer is taking the Wholesale Ethernet (Layer 2) Service, the service level provisions at Schedule 2 will apply.
- 4.18.8 Where the Customer is taking the Converged Ethernet Service, the service level provisions at Schedule 3 will apply.

5 CUSTOMER'S OBLIGATIONS

- 5.1 The Customer shall:
- 5.1.1 ensure that the terms of the Purchase Order and the information given to the Supplier for initial pricing of the Gamma Services are complete and accurate;
- 5.1.2 co-operate with the Supplier in all matters relating to the Gamma Services;
- 5.1.3 provide the Supplier, Gamma, and/or their Representatives, in a timely manner and at no charge, access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier or Gamma in connection with the provision of the Gamma Services;
- 5.1.4 provide a suitable and safe working environment for Gamma's employees and authorised sub-contractors at the site;
- 5.1.5 provide, in a timely manner, such information as the Supplier may reasonably require in connection with the Gamma Services, and ensure that such information is complete and accurate in all material respects;
- 5.1.6 where necessary, prepare the Customer's premises for the supply of the Gamma Services;
- 5.1.7 obtain and maintain all necessary licences, permissions and consents which may be required for the Gamma Services before the date on which the Gamma Services are to start;
- 5.1.8 notify the Supplier promptly of any problems regarding technical and operational issues and/or faults of the Gamma Services;
- 5.1.9 pay any charges reasonably levied by Gamma or generated in the initial pricing;
- 5.1.10 provide a suitable place, conditions, connection points and electricity supply for the Equipment according to Gamma's reasonable instructions, or those of Gamma's sub-contractors, and carry out any site preparation work reasonably required by Gamma or its sub-contractors.
- 5.1.11 obtain all necessary third party consents required in relation to building alterations or additions, access to land or other permission required to install the Equipment or, where this is carried out by Gamma or its sub-contractor, shall render all reasonable assistance required by Gamma;
- 5.1.12 be liable to Gamma for any loss or damage to it, save where such loss or damage is caused by fair wear and tear, is caused by Gamma, its sub-contractor or anyone authorised to act on their behalf;

- 5.1.13 take all reasonable steps to prevent any damage to the Equipment and to prevent anyone (except anyone acting on Gamma's or Gamma's sub-contractor's behalf) from adding to it, modifying it or interfering with it in any way;
- 5.1.14 where there is Equipment connected to the Gamma Services, it must be technically compatible with the Gamma Services and connected and used in compliance with any applicable instructions, standards or laws;
- 5.1.15 not connect Equipment that would cause any damage to the Gamma network, the Gamma Services, the Equipment, any other customer's network or the network of any underlying service provider;
- 5.1.16 only connect Equipment to the Converged Ethernet Service by using the Customer Premises Equipment provided by Gamma;
- 5.1.17 where any Equipment does not comply with relevant instructions, standards or laws, immediately disconnect the Equipment or ensure its immediate compliance and failure to disconnect non-compliant Equipment will result in Gamma disconnecting it at the Customer's expense;
- 5.1.18 make good or re-decorate any areas of the site affected by the installation of the Gamma Services, save where any damage is caused by Gamma's negligence in which case Gamma will be liable subject to any limitation of liability provisions that exist in the agreement between the Supplier and Gamma;
- 5.1.19 not use Gamma's or Gamma's sub-contractors' name or any registered or unregistered trademarks or service marks of Gamma or its sub-contractors without the prior written consent of the Supplier or Gamma;
- 5.1.20 report all faults to the Supplier (and not directly to Gamma);
- 5.1.21 not use any Gamma Service:
- 5.1.21.1 in a way that does not comply with the terms of any legislation or any codes of practice, regulations or any licence or authorisation applicable to the Customer, or that is in any way unlawful or fraudulent or to the knowledge of the Customer has any unlawful or fraudulent purpose or effect;
- 5.1.21.2 in connection with (without prejudice to the generality of clause 5.1.21.1 above) the carrying out of fraud or a criminal offence against any other public telecommunications operator;
- 5.1.21.3 in a way that in our reasonable opinion could materially affect the quality of any telecommunications service or other service provided by Gamma or any third party;
- 5.1.21.4 to threaten, harass, stalk, abuse, disrupt or otherwise violate or infringe the rights (including but not limited to copyright, rights of privacy and publicity) of others;
- 5.1.21.5 to obtain access, through whatever means, to notified restricted areas of the underlying network;
- 5.1.21.6 to send and receive data in such a way or in such amount so as to adversely affect the network (or any part of it) which underpins any Gamma Services or to adversely affect other customers of Gamma or of its suppliers;
- 5.1.21.7 to engage in conduct which amounts to improper or persistent misuse of a public telecommunications network or service within the meaning of sections 127 to 128 of the Communications Act 2003;
- 5.1.21.8 in a way which (in the reasonable opinion of Gamma) brings the name of Gamma into disrepute, or which places Gamma in breach of the Communications Act 2003; or
- 5.1.21.9 when in breach of the Use of Services provisions contained in the Supply Agreement;
- 5.1.22 comply with all applicable laws including, without limitation, Data Protection Legislation and all codes of conduct, decisions, directions or recommendations issued by Ofcom and/or any other competent regulatory body when using the Gamma Services; and
- 5.1.23 indemnify the Supplier for death or personal injury claims or actions threatened or brought against them resulting from the Customer's breach of this Clause 5, save where such claim or action results from Gamma's negligence or that of its Representatives acting in the course of their employment or agency.
- 6 WARRANTIES**
- 6.1 The Customer warrants and undertakes that:
- 6.1.1 it has full capacity and authority to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the Customer;
- 6.1.2 it has the authority to grant any rights to be granted to the Supplier under this Contract;
- 6.1.3 it shall use the Gamma Services in accordance with the terms of this Contract, all applicable laws and shall not do any act that shall infringe the rights of any third party;
- 6.1.4 all valid licences, authorisations, approvals and consents as are necessary to enable the Customer to legally receive the Gamma Services as envisaged under this Contract have been obtained and will be maintained and kept up to date and it has the unimpaired right to receive the Gamma Services.
- 6.2 The Supplier warrants and undertakes that:
- 6.2.1 it has the full capacity and authority to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the Supplier;
- 6.2.2 it owns, or has obtained valid licences, consents, permissions and rights to enable the Supplier to comply with this Contract and to use any of the Intellectual Property Rights necessary for the fulfilment of all its obligations under this Contract including for the Customer's use and receipt of the Gamma Services, and the Supplier shall not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached; and
- 6.2.3 it shall comply with all applicable laws and regulations in performing its obligations under this Contract.
- 6.3 The Supplier gives no warranty in relation to the Gamma Services and any warranty which may otherwise be implied to have been given by the Supplier by law, trade custom, practice or course of dealing is hereby expressly excluded.
- 7 FEES AND PAYMENT**
- 7.1 The Customer shall pay the Fees in accordance with the terms set out in the Purchase Order. The Supplier will invoice the Customer monthly for the Fees.
- 7.2 The Fees shall be calculated based on the Customer's actual usage of the Gamma Services in the preceding month and shall be payable monthly in arrears. However, any one-off Fees shall be payable in advance.
- 7.3 The Customer acknowledges and agrees that:
- 7.3.1 the Customer will pay the Fees directly to the Supplier; and
- 7.3.2 the Supplier and/or Gamma may apply backdated Fees for amounts outstanding from a previous billing period which were not previously invoiced for technical or other reasons. Any backdated Fees will be made within six months of the date that the Gamma Services were rendered.
- 7.4 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Gamma Services including for the cost of services provided by third parties and required by the Supplier for the supply of the Gamma Services, and for the cost of any materials.
- 7.5 The Supplier reserves the right to increase the Fees at any time during the Term to reflect any increase in the fees, costs or charges payable by the Supplier to Gamma in respect of the Gamma Services.
- 7.6 Unless otherwise set out in the Purchase Order, the Customer shall pay each invoice submitted by the Supplier (or Gamma on behalf of the Supplier):
- 7.6.1 within 14 days of the date of the invoice; and
- 7.6.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 7.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Gamma Services at the same time as payment is due for the supply of the Gamma Services.
- 7.8 If the Customer fails to make a payment due to the Supplier (or Gamma, on behalf of the Supplier) under the Contract by the due date, then, without limiting the Supplier's remedies under clause 10, the Customer shall pay:
- 7.8.1 interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.8 will accrue each day at 4% a year above National Westminster Bank's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and
- 7.8.2 the Supplier for its reasonable and necessary costs of collection incurred, including, without limitation, reasonable legal fees and the Supplier's costs of disconnecting and reconnecting Customers for non-payment.
- 7.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8 CHANGE CONTROL**
- 8.1 Subject to clause 8.9.1 below, if either party wishes to change the scope of the Gamma Services (including Customer requests for additional services or quantities), it shall submit details of the requested change to the other in writing.
- 8.2 The Customer may request a change to the bandwidth of the installed Gamma Services as follows:
- 8.2.1 once a month in respect of an upgrade in the overall bandwidth;
- 8.2.2 once in any 12 month period in respect of a downgrade in the overall bandwidth; or
- 8.2.3 once a month in respect of a change to the capacity allocated to either the IP telephony service or the internet service where a Converged Ethernet Service is being provided.
- 8.3 Where more than one downgrade occurs in any one 12 month period, the monthly rental shall not be reduced for the second and any subsequent downgrades.
- 8.4 All such changes under clause 8.2 shall be made in accordance with the lead times set by Gamma.
- 8.5 In the case of Converged Ethernet Services, the Customer is liable for any charges that arise from pertaining a secondary IP address range.
- 8.6 If either party requests a change to the scope or execution of the Gamma Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
- 8.6.1 the likely time required to implement the change;
- 8.6.2 any variations to the Fees arising from the change;
- 8.6.3 the likely effect of the change on the Gamma Services; and
- 8.6.4 any other impact of the change on this Contract.
- 8.7 If either party wishes the other party to proceed with the relevant change referred to in clause 8, the Supplier has no obligation to do so unless and until the parties have agreed in writing the necessary variations to the Fees, the Gamma Services and any other relevant terms of this Contract to take account of the change.
- 8.8 Once changes have been agreed by the parties, the parties shall sign a written agreement confirming their agreement to any changes agreed pursuant to this clause.
- 8.9 Notwithstanding the foregoing provisions of this clause 8:

- 8.9.1 the Supplier shall be entitled to change the Gamma Services from time to time provided that such changes do not have a material adverse effect on the Gamma Services (as those Gamma Services were provided immediately prior to the change);
- 8.9.2 any request by the Customer to change the Gamma Services will be subject to the Supplier's consent in writing and where such consent has been given, the parties having entered into a written agreement (in the form determined by the Supplier) setting out the terms and conditions which apply to such change; and
- 8.9.3 in the event that the Supplier and the Customer agree any changes to the Gamma Services during the Term, unless otherwise agreed by the Supplier the Gamma Services as amended by such change:
- 8.9.3.1 shall continue until the expiry of the Term; or
- 8.9.3.2 if agreed, by the Supplier the then current Initial Term or Successive Term.
- 8.10 For the avoidance of doubt, the Supplier shall be under no obligation to accept or agree to any changes to the scope or execution of the Gamma Services requested by the Customer pursuant to this clause 8 and any such decision shall be entirely at the Supplier's discretion.
- 9 LIMITATION OF LIABILITY**
- 9.1 Subject to clause 6.3, this clause 9 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its Representatives) to the Customer in respect of any and all claims which relate to or which may arise in relation to a contract, including without limitation, any claim for:
- 9.1.1 any breach of Contract;
- 9.1.2 any use made by the Customer of the Gamma Services; and
- 9.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Contract.
- 9.2 Except as expressly provided in this Contract, all warranties, conditions and other terms implied by statute, common law or otherwise are, to the fullest extent permitted by law, excluded from this Contract.
- 9.3 Nothing in this Contract excludes or limits the liability of the Supplier for:
- 9.3.1 death or personal injury caused by the Supplier's negligence;
- 9.3.2 fraud or fraudulent misrepresentation; or
- 9.3.3 any other liability which cannot lawfully be excluded or limited.
- 9.4 Subject to clause 9.3:
- 9.4.1 the Supplier shall not be liable whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, depletion of goodwill, loss of use or loss of data, loss of time, loss of opportunity, loss of anticipated savings, interruption of business, loss of revenue or similar losses, or for any indirect or consequential loss, costs, damages, charges or expenses however arising; and
- 9.4.2 the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the Contract shall be limited to the lower of:
- 9.4.2.1 the amounts paid by the Customer to the Supplier under this Contract;
- 9.4.2.2 the aggregate of the Fees paid by the Customer to the Supplier over the Term; and
- 9.4.2.3 the Fees payable by the Customer to the Supplier in the first year of the Term.
- 10 TERMINATION**
- 10.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 10.1.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
- 10.1.2 the other party fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 15 days after being notified to make such payment;
- 10.1.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986 (being a partnership) has any partner to whom any of the foregoing apply;
- 10.1.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 10.1.5 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- 10.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 10.1.7 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- 10.1.8 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- 10.1.9 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- 10.1.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 10.1.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.1.3 to clause 10.1.10 (inclusive);
- 10.1.12 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 10.1.13 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 10.2.1 the agreement between the Supplier and Gamma granting the Supplier the right to resell the Gamma Services to the Customer, expires or is terminated for any reason; or
- 10.2.2 there is a change of control of the Customer.
- 10.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Gamma Services under the Contract or any other contract between the Customer and the Supplier if:
- 10.3.1 the Customer fails to pay any amount due under the Contract on the due date for payment;
- 10.3.2 the Customer commits a material breach of any term of the Contract;
- 10.3.3 the Supplier is notified by the Customer, or becomes aware by any other means, or has reasonable suspicions that a fraud or serious illegal misuse may have taken place, or will take place; the Customer becomes subject to any of the events listed in clause 10.1.12 or clause 10.1.13, or the Supplier reasonably believes that the Customer is about to become subject to any of them; and
- 10.3.5 the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 10.1.3 to clause 10.1.10 (inclusive).
- 11 CONSEQUENCES OF TERMINATION**
- 11.1 On termination or expiry of the Contract:
- 11.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Gamma Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt; and the Customer shall immediately discontinue all use of the Gamma Services.
- 11.1.2
- 11.2 Unless otherwise agreed, on termination of the Contract by the Customer otherwise than as a result of the Supplier's breach of this Contract and/or the expiry of the Term, (if and to the extent not already paid) the Customer shall pay to the Supplier an amount equal to Fees that would have been payable over the period commencing on the date that the Contract is terminated and ending on the date that the Term would have expired if it were not for such termination.
- 11.3 If the Customer cancels the Gamma Services or any part thereof, notwithstanding that the order such service has only been provisionally accepted by Gamma, the Customer shall pay for any direct costs Gamma has incurred in preparing to deliver the Gamma Services in addition to Gamma's Standard Cancellation Charge. If the order includes any Excess Construction Charges such charges will be payable in full by the Customer on cancellation of a Gamma Service.
- 11.4 If the Customer cancels a planned installation after 12:00 p.m. midday on the Business Day immediately prior to the installation date, the Customer will be charged with the full amount which it would otherwise have charged for the aborted installation or, in the case of planned out of hours installations, 1.5 times its standard installation charge for planned installations after 17:30 on Business Days and Saturdays and 2 times its standard installation charge for planned installations on Sundays.
- 11.5 If the Customer requests a change to the delivery date of the Gamma Services (where this has been accepted by Gamma) and subsequently cancels the order, Gamma's Standard Cancellation Charge will be calculated using the later of the dates agreed between the Parties.
- 11.6 Gamma's Standard Cancellation Charge will not be levied in the event that the cancellation is as a direct result of Gamma's failure to deliver the Gamma Services within a reasonable timeframe.
- 11.7 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 11.8 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 12 DISPUTE RESOLUTION**
- 12.1 If a dispute arises under or in connection with this Contract (**Dispute**), including any Dispute arising out of any amount due to a party, then before bringing any legal proceedings or commencing any other alternative dispute resolution procedure in connection with such Dispute, a party must first give written notice (**Dispute Notice**) of the Dispute to the other party describing the Dispute and requesting that it is resolved under the dispute resolution procedure described in this clause 12.

- 12.2 If the parties are unable to resolve the Dispute within 30 days of delivery of the Dispute Notice, each party shall promptly (and in any event within five Business Days):
- 12.2.1 appoint a representative who has authority to settle the Dispute and is at a higher management level than the person with direct responsibility for the administration of this Contract (**Designated Representative**); and
- 12.2.2 notify the other party of the name and contact information of its Designated Representative.
- 12.3 Acting reasonably and in good faith, the Designated Representatives shall discuss and negotiate to resolve the Dispute, including agreeing the format and frequency for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one party to the other party shall be complied with as soon as reasonably practicable).
- 12.4 If the parties are unable to resolve the Dispute within 30 days after the appointment of both Designated Representatives, either party may proceed with any other available remedy.
- 12.5 Notwithstanding any other provision of this Contract a party may seek interim or other equitable relief necessary (including an injunction) where damages would be an inadequate remedy.
- 13 GENERAL**
- 13.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 13.2 Assignment and other dealings.
- 13.2.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 13.2.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.
- 13.3 Confidentiality
- 13.3.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.3.2.
- 13.3.2 Each party may disclose the other party's Confidential Information:
- 13.3.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 13.3 (**Representatives**); and
- 13.3.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3.3 The provisions of this clause shall not apply to any Confidential Information that:
- 13.3.3.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
- 13.3.3.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- 13.3.3.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
- 13.3.3.4 the parties agree in writing is not confidential or may be disclosed; or
- 13.3.3.5 is developed by or for the receiving party independently of the information disclosed by the disclosing party.
- 13.3.4 Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract.
- 13.4 Entire agreement.
- 13.4.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 13.4.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 13.4.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 13.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 13.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Contract deleted under this clause 13.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 13.8 Notices.
- 13.8.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case), or sent by email to the address specified in the Purchase Order.
- 13.8.2 Any notice shall be deemed to have been received:
- 13.8.2.1 if delivered by hand, at the time the notice is left at the proper address;
- 13.8.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- 13.8.2.3 if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 13.8.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 13.8.3 This clause 13.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 13.9 **No Partnership or Agency.** Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, or constitute any party the agent of another party nor authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 13.10 Third party rights. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 13.11 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the laws of England and Wales.
- 13.12 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

Schedule 1 – FTTC Ethernet Service Terms

- 1.1 The FTTC Ethernet Service requires a BT WLR3 line for service delivery. The Supplier will not accept an order for the FTTC Ethernet Service if no such line is present. An order can be placed through the Supplier to request to Gamma for the requisite line. This will be subject to a separate charge.
- 1.2 The PSTN directory number is required to place an order for the FTTC Ethernet Service and the line must be installed at the service point before an FTTC Ethernet order is placed.
- 1.3 FTTC Ethernet Service is not currently available as a backup to either Fibre Ethernet or EFM.
- 1.4 Notwithstanding the termination rights contained in this Agreement for the Supplier, the Supplier will terminate the FTTC Ethernet Service in the event that the underlying WLR3 Service is terminated. The Customer will remain liable for any recurring fixed Charges for the remainder of the fixed term of the affected FTTC Ethernet Service (as set out in the order).
- 1.5 Any FTTC Ethernet Service is provided on a minimum 12 month term. Where a service is added to a live Ethernet primary connection that has a remaining contract period of less than 12 months, the FTTC Ethernet Service minimum 12 month term will still apply and the Supplier shall have the right to invoice the Customer for any unexpired part of such minimum term should the FTTC Ethernet Service be terminated within this period.
- 1.6 Any FTTC/ADSL service terminated after the Service has been activated will be subject to Gamma's standard termination charges (as set out in the Service Literature).
- 1.7 Internal shifts are not part of the FTTC Ethernet Service or Broadband backup Service and must be ordered as part of the WLR3 service. Any shifts may impact on the FTTC Ethernet Service speed (in the form of either a slower or faster speed).
- 1.8 The Customer is liable for any charges incurred as part of the Supplier resolving faults for the underlying WLR element which the FTTC Ethernet Service operates.
- 1.9 The fault resolution time for the FTTC Ethernet Service as set out in the Service Literature does not include any time taken to first resolve any WLR faults affecting the availability or performance of the FTTC Ethernet Service. The target fault resolution time will commence from the time that it is established that the WLR line is in working order and is not affecting the FTTC Ethernet Service. It is recommended that the underlying WLR3 line be ordered with Service Maintenance Level 4 (6 hour fix) to allow for quick resolution of any faults relating to the WLR3 Service which affect the FTTC Ethernet Service.
- 1.10 Orders for the FTTC Ethernet Service will only be accepted where the predicted line speed is greater than 2Mbps in the downstream direction. Any orders with a predicted line speed below this will be cancelled and any Charges invoiced to the Customer will be credited.
- 1.11 Actual available FTTC Ethernet Service line speed will be confirmed during the provisioning process. If the maximum upstream line speed is lower than originally ordered, the Supplier will process the order to allow the confirmed highest available downstream speed. For example, if a 20Mbps service is ordered but the maximum available upstream line speed is 18Mbps, the order will be processed as a 20Mbps service however the actual usable line speeds will be 20Mbps in the downstream direction and 18Mbps in the upstream direction.
- 1.12 The FTTC Ethernet Service provides guaranteed symmetrical bandwidth of up to 20Mbps. The Supplier will use reasonable endeavours to provide a downstream bandwidth of greater speed where such is ordered but no fault report or cancellation will be accepted by the Supplier for any failure to achieve a downstream bandwidth greater than this speed.
- 1.13 The Customer acknowledges that bandwidth speeds may vary over time on an FTTC Ethernet Service circuit, especially immediately after first installation due to a number of technical considerations including, but not limited to, the distance between the Customer site and the connection cabinet or natural degradation of the underlying copper.
- 3.1.3 Notify the Customer within 25 working days after the acceptance of an order of the results of the site survey, if service can be delivered and advise of any Excess Construction Charges;
- 3.1.4 Notify the Customer within 40 working days after the acceptance of an order of the amount of Excess Construction Charges payable (if any), the Contractual Delivery Date and the preferred installation date for the circuit
- 3.2 To make service live:
- 3.2.1 For FTTC Ethernet, within 20 working days after the acceptance of an order;
- 3.2.2 For copper Ethernet, within 40 working days after the acceptance of an order; and
- 3.2.3 For Fibre Ethernet, within 90+ working days after the acceptance of an order.
- 4 SERVICE LEVEL GUARANTEE**
- 4.1 Provisioning
- 4.1.1 The Wholesale Ethernet (Layer 2) Service will be available by 23:59 on the Installation Date.
- 4.1.2 If the Wholesale Ethernet (Layer 2) Service is not activated by 23:59 on the Installation Date, then the Customer may be eligible to claim compensation (subject to the exclusions outlined in Exclusions from Service Level and Service Agreement section below) however this is at the Supplier's discretion and decided on a case by case basis.
- 4.1.3 Connection charges for any other Gamma product associated with the service are excluded from the calculation of the compensation entitlement.
- 5 FAULT HANDLING**
- 5.1 The fault handling service is made available 24 hours a day and 7 days a week including Public and Bank Holidays for Wholesale Ethernet circuits.
- 5.2 All faults will be validated when reported and subsequently classified as below:
- 5.2.1 Priority 1: Total loss of service (hard down or no transmission in one or both directions);
- 5.2.2 Priority 2: Service is available, but either reduced functionality or degradation is creating a significant business impact for the End User; or
- 5.2.3 Priority 3: Service is available, but either reduced functionality or degradation is being experienced by the End User without any significant business impact for the End User.
- 5.3 For Priority 1: faults will be resolved within 5 Clock Hours (as defined below) from a validated fault, or, for Copper Ethernet and FTTC Ethernet, 7 Clock Hours from a validated fault.
- 5.4 For Priority 2: faults will be resolved within 1 working day from a validated fault.
- 5.5 For Priority 3: faults will be resolved within 3 working days from a validated fault.
- 5.6 Clock Hours are defined as the time between the Start Time and Stop Time, excluding Parked Time (as defined below) where:
- 5.6.1 Start Time means the time a fault has been validated as a Priority 1 fault by Gamma or Supplier;
- 5.6.2 Stop Time means the time that a fault has been resolved;
- 5.6.3 Parked Time means the time during which the resolution of a fault is outside of the Supplier's or Gamma's control;
- 5.7 For Priority 1 faults only, if a fault on a circuit is not resolved within the relevant timeframe set out above, then the Customer may be eligible to claim compensation (subject to the exclusions outlined in Exclusions from Service Level and Service Agreement section below) however this is at the Supplier's discretion and decided on a case by case basis.
- 6 CLAIMING COMPENSATION**
- 6.1 Compensation queries can be raised directly with the Supplier via the following email: customerexcellence@Kascade.co.uk.
- 7 EXCLUSIONS FROM SERVICE LEVELS AND THE SERVICE LEVEL GUARANTEE**
- 7.1 The Customer shall not be entitled to claim compensation under this Service Level Agreement or Service Level Guarantee if:
- 7.1.1 the failure is due to the Customer's or its End User's own network or equipment or any other third-party network or equipment (including but not limited to the internet);
- 7.1.2 the Customer is in breach of any part of its Agreement with the Supplier and such breach affects the Supplier's ability to comply with the service level and/or service level guarantee or if Gamma's underlying service provider suspends the service or any part of it because of any such breach;
- 7.1.3 through no fault of its own or because of circumstances beyond its reasonable control, Gamma is unable to carry out any necessary work at, or gain access to the Customer's or End User's site or the Customer fails to agree an appointment date or planned work is aborted (save at Gamma's request);
- 7.1.4 reasonable assistance is required or information is reasonably requested from the Customer or End User or a third party and such assistance or information is not provided or is not provided in a timely fashion;
- 7.1.5 through no fault of its own, Gamma is unable to obtain any necessary permissions or consents required relating to the performance of a service level or service level guarantee;
- 7.1.6 the failure is due to Force Majeure or some other event outside the Supplier's or Gamma's reasonable control;
- 7.1.7 the failure is due to a planned or emergency service interruption;
- 7.1.8 the failure is due to an inaccurate Order Form having been submitted;
- 7.1.9 a fault is not reported immediately and in accordance with the Supplier's fault reporting procedures; or
- 7.1.10 the Customer or End User has failed to implement any reasonable and explicit instructions issued by Gamma or the Supplier in relation to the service.
- 7.2 The fault handling resolution times for FTTC Ethernet do not include any time taken to first resolve any WLR3 faults affecting the availability

Schedule 2 – Wholesale Ethernet (Layer 2) Service Level Agreement terms

- 1 The Supplier will use reasonable endeavours to procure that the Wholesale Ethernet (Layer 2) Service Level Agreement terms set out in this Schedule are complied with. The Supplier shall not be liable for any failure by Gamma to achieve this Service Level Agreement save for the scenarios explicitly referred to herein.
- 2 AVAILABILITY**
- 2.1 Wholesale Ethernet circuit will be available for 99.9% of any given calendar month.
- 2.2 The following shall not be included when calculating the above service level(s):
- 2.2.1 Outages or delays which are deemed by Gamma, in its sole opinion acting reasonably, to be the result of matters outside its direct control;
- 2.2.2 Planned or notified maintenance whether in response to an emergency or otherwise.
- 2.3 Availability is calculated as:
- 2.3.1
$$\frac{\text{Total number of minutes in the measurement period} - \text{Unplanned Downtime}}{\text{Total number of minutes in the measurement period}} \times 100$$
- 3 PROVISIONING**
- 3.1 The Supplier will use reasonable endeavours to procure that Gamma does the following:
- 3.1.1 Notify the Customer within 5 working days after the receipt of an order as to the acceptance or rejection of the order;
- 3.1.2 Notify the Customer within 12 working days after the acceptance of an order that the Supplier has accepted the order;
- 7.2 The fault handling resolution times for FTTC Ethernet do not include any time taken to first resolve any WLR3 faults affecting the availability

- or performance of the FTTC Ethernet service. The Start Time will commence from the time that it is established by Gamma that the WLR3 line is in working order and is not affecting the FTTC Ethernet service.
- 7.3 FTTC Ethernet downstream speed related claims will only be accepted for speeds performing slower than the purchased speed where the purchased speed is 20Mbps or less. Upstream claims will only be accepted for speeds performing lower than the purchased speed up to a maximum of 20Mbps.
- 8 CANCELLATION CHARGES**
- 8.1 Cancelling a circuit prior to installation will incur charges which will be due to be paid by the Customer. These vary depending on the access type, underlying carrier and stage of the installation process excluding any terminated due to Excess Construction Charges.

- Delivery Date (24 working days) and the preferred installation date for the circuit.
- 5.2 To make services (Ethernet and chosen backup option) live:
- 5.2.1 For 4G Access Fast Start, within 10 working days after the acceptance of a CRF and Order Form;
- 5.2.2 For FTTC Ethernet, within 30 working days after the acceptance of a CRF and Order Form;
- 5.2.3 For copper Ethernet, within 40 working days after the acceptance of a CRF and Order Form;
- 5.2.4 For Fibre Ethernet, within 80 working days after the acceptance of a CRF and Order Form; and
- 5.2.5 Terminate a service on the date requested by the Customer provided that the Customer has given the Supplier no less than 90 days written notice.

Schedule 3 – Converged Ethernet Service Level Agreement terms

- 1 The Supplier will use reasonable endeavours to procure that the Converged Ethernet Service Level Agreement terms set out in this Schedule are complied with. The Supplier shall not be liable for any failure to achieve this Service Level Agreement save for the scenarios explicitly referred to herein.
- 2 For all services, except for wires-only internet access, the service demarcation point is the LAN-side port/ports of the Gamma customer premises router. For wires-only, the service demarcation point is the customer port of the NTE.
- 3 AVAILABILITY**
- 3.1 The Converged Ethernet Service can be used to deliver internet access and/or IP telephony services.
- 3.2 Different network architectures are used to deliver each of these services.
- 3.3 When provisioned as or regraded as internet access only each Converged Ethernet Service circuit will be available for 99.9% of any given calendar month.
- 3.4 When any Converged Ethernet Service circuit is provisioned as or regraded with an Ethernet backup circuit, the Converged Ethernet Service will be available for 99.99% of any given calendar month.
- 3.5 When any Ethernet circuit is provisioned as or regraded with an xDSL, 4G Backup or FTTC Broadband backup, the service will be available for 99.93% of any given calendar month.
- 3.6 When any Converged Ethernet Service circuit is provisioned as or regraded for IP telephony services only or Converged internet and IP telephony each Converged Ethernet Service circuit will be available for 99.94% of any given calendar month as standard or 99.97% (with Broadband Backup).
- 3.7 When any Converged Ethernet Service circuit is provisioned as or regraded for Cloud Exchange each Converged Ethernet Service circuit will be available for 99.94% of any given calendar month as standard or 99.9%.
- 3.8 The following shall not be included when calculating the above service level(s):
- 3.8.1 Outages or delays which are deemed by Gamma or the Supplier, in its sole opinion acting reasonably, to be the result of matters outside its direct control;
- 3.8.2 Outages or delays which are a result of a WLR3 fault that affects the availability of the FTTC Ethernet/Broadband service;
- 3.8.3 Planned or notified maintenance whether in response to an emergency or otherwise; and
- 3.8.4 Support of any AWS and Azure services are provided directly by the vendor and as part of their existing relationship with the Customer. Service availability levels and response times must be requested from the vendors.
- 3.9 Availability is calculated as:
- 3.9.1
$$\frac{\text{Total number of minutes in the measurement period} - \text{Unplanned Downtime}}{\text{Total number of minutes in the measurement period}} \times 100$$

6 SERVICE LEVEL GUARANTEE

- 6.1 Provisioning
- 6.1.1 The Converged Ethernet Service will be activated by 23:59 on the Installation Date.
- 6.1.2 For managed internet access and services supporting Gamma IP telephony, the installation of a Gamma router is required for the full connectivity to the Gamma network. This installation occurs on or after the Installation Date.
- 6.1.3 If the Converged Ethernet Service is not activated by 23:59 on the Installation Date, then the Customer may be eligible to claim compensation (subject to the exclusions outlined in Exclusions from Service Level and Service Agreement section below) however this is at the Supplier's discretion and decided on a case by case basis.
- 6.1.4 Connection charges for any other Gamma product associated with the service are to be excluded from the calculation of the compensation entitlement.
- 6.2 Fault Handling
- 6.2.1 The fault handling service will be available 24 hours a day and 7 days a week including Public and Bank Holidays for Converged Ethernet Services (excluding any Wires Only Services which shall have the service outlined in Wires-Only Service section below).
- 6.2.2 All faults will be validated when reported and subsequently classified as:
- 6.2.2.1 Priority 1 - Total loss of service (hard down or no transmission in one or both directions);
- 6.2.2.2 Priority 2 - Service is available, but either reduced functionality or degradation is creating a significant business impact for the End User; and
- 6.2.2.3 Priority 3 - Service is available, but either reduced functionality or degradation is being experienced by the End User without any significant business impact for the End User.
- 6.3 For Priority 1, faults will be resolved within 6 Clock Hours (as defined below) from a validated fault for Fibre Ethernet and 4G access, or, for Copper Ethernet and FTTC Ethernet, 8 Clock Hours from a validated fault.
- 6.4 For Priority 2, faults will be resolved within 1 working day from a validated fault.
- 6.5 For Priority 3, faults will be resolved within 3 working days from a validated fault.
- 6.6 Clock Hours are defined as the time between the Start Time and Stop Time, excluding Parked Time, where:
- 6.6.1 Start Time means the time a fault has been validated and categorised as a Priority 1 fault by Gamma or the Supplier;
- 6.6.2 Stop Time means the time Gamma or the Supplier deems that a fault has been resolved;
- 6.6.3 Parked Time means the time during which the resolution of a fault is outside of Gamma's or the Supplier's control.
- 6.7 For Priority 1 faults only, if Gamma does not resolve a fault on a circuit within the relevant timeframe set out above, then the Customer may be eligible to claim compensation (subject to the exclusions outlined in Exclusions from Service Level and Service Agreement section below) however this is at the Supplier's discretion and decided on a case by case basis.
- 6.8 Where a backup service is taken and in the unlikely event that both the primary and secondary services are not working, the focus of the support team will be to get the primary link back in to service.
- 6.9 Effort will therefore be applied to this and not to fixing the secondary service. The ADSL/FTTC backup circuit comes with a Standard Care level of support. For the avoidance of doubt, this means that Gamma will deem the Stop Time in accordance with the above definition to be calculated with reference to the availability of the Primary Circuit only.
- 6.10 Bandwidth utilisation graphs are not available for the secondary Broadband connections.

4 PERFORMANCE

- 4.1 The performance measures below are for the end-to-end primary Converged Ethernet Service, from the Gamma core network (source) to the service demarcation point. The performance is specific to the Ethernet Carrier.

	BT Wholesale/Gamma	Virgin Media
Latency (Source to Destination)	<15ms	<30ms
Packet Loss	<0.2%	<0.1%
Jitter (Source to Destination)	<5ms	<8ms

5 PROVISIONING

- 5.1 The Supplier will use reasonable endeavours to procure that Gamma does the following:
- 5.1.1 Notify the Customer within 5 working days after the receipt of a CRF and Order Form as to the acceptance or rejection of the CRF and Order Form.
- 5.1.2 Notify the Customer within 25 working days after the acceptance of a CRF and Order Form of the results of the site survey, whether service can be delivered and advise of any Excess Construction Charges.
- 5.1.3 Notify the Customer within 30 working days after the acceptance of a CRF and Order Form of the amount of Excess Construction Charges payable (if any), the Contractual

7 CLAIMING COMPENSATION

- 7.1 Compensation queries can be raised directly with the Supplier via the following email: customerexcellence@Kascade.co.uk.

8 EXCLUSIONS FROM SERVICE LEVELS AND THE SERVICE LEVEL GUARANTEE

- 8.1 The Customer shall not be entitled to claim compensation under this Service Level Agreement or Service Level Guarantee if:
- 8.1.1 the failure by Gamma is due to the Customer's or its End User's own network or equipment or any other third-party network or equipment (including but not limited to the internet);
- 8.1.2 the Customer is in breach of any part of its Agreement with the Supplier and such breach affects the Supplier's ability to comply with the service level and/or service level guarantee or if Gamma's underlying service provider suspends the service or any part of it because of any such breach;
- 8.1.3 through no fault of its own or because of circumstances beyond its reasonable control, Gamma is unable to carry out any necessary work at, or gain access to the Customer's or End User's site or the Customer fails to agree an appointment date or planned work is aborted (save at Gamma's request);

- 8.1.4 reasonable assistance is required, or information is reasonably requested by Gamma or the Supplier from the Customer or End User or a third party and such assistance or information is not provided or is not provided in a timely fashion;
 - 8.1.5 through no fault of its own, Gamma is unable to obtain any necessary permissions or consents required in connection with the performance of a service level or service level guarantee;
 - 8.1.6 the failure is due to Force Majeure or some other event outside Gamma's or the Supplier's reasonable control;
 - 8.1.7 the failure is due to a planned or emergency service interruption;
 - 8.1.8 the failure is due to an inaccurate Order Form having been submitted;
 - 8.1.9 a fault is not reported in accordance with the fault reporting procedures contained in the prevailing Gamma Customer Service Plan; or
 - 8.1.10 The Customer or End User has failed to implement any reasonable and explicit instructions issued by Gamma in relation to the service.
- 8.2 The fault handling resolution times for FTTC Ethernet do not include any time taken to first resolve any WLR3 faults affecting the availability or performance of the FTTC Ethernet service. The Start Time will commence from the time that it is established by Gamma that the WLR3 line is in working order and is not affecting the FTTC Ethernet service.
 - 8.3 The fault handling resolution times for FTTC Ethernet do not include any time taken to first resolve any WLR3 faults affecting the availability or performance of the FTTC Ethernet service. The Start Time will commence from the time that it is established by Gamma that the WLR3 line is in working order and is not affecting the FTTC Ethernet service.
 - 8.4 FTTC Ethernet downstream speed related claims will only be accepted for speeds performing slower than the purchased speed where the purchased speed is 20Mbps or less. Upstream claims will only be accepted for speeds performing lower than the purchased speed up to a maximum of 20Mbps.
- 9 WIRES-ONLY SERVICE**
- 9.1 Services provided without a Gamma-supplied and managed customer premise router are known as 'wires-only' services. These services are subject to the exclusions set out in Exclusions from Service Levels and the Service Level Guarantee section and in addition to this, as they are not provided as managed services and therefore have a reduced Service Level Agreement, as set out below:
 - 9.1.1 For a wires-only service, the service demarcation point is the customer port of the NTE.
 - 9.1.2 The service levels set out in Availability section above apply to the Gamma core network only.
 - 9.1.3 In the event of a fault it is incumbent on the Customer to demonstrate that the fault lies with the Converged Ethernet Service and not externally.
 - 9.1.4 If both Gamma and the Customer agree this to be the case and the fault is deemed to be validated; Gamma will resolve the fault within the timescales set out in the Fault Handling section above.
 - 9.1.5 If the Customer is eligible to claim for compensation (which is at the Supplier's discretion and assessed on a case by case basis) the compensation entitlement set out in that section (subject to any exclusion in **Error! Reference source not found.** section) will apply to any failure by Gamma to resolve the fault within such timescales.
- 10 CANCELLATION CHARGES**
- 10.1 Cancelling a circuit prior to installation will incur charges which will be due to be paid by the Customer. These vary depending on the access type, underlying carrier and stage of the installation process excluding any terminated due to Excess Construction Charges.