

## Ethernet Services Terms and Conditions

### 1. Definitions

"TSI" means Telephone Systems Installations Limited whose registered office is at 151 Business Design Centre, Upper Street, London, N1 0QH. Registered in England and Wales with Company Registration Number: 3406791 and VAT Number: GB701 9866 25. TSI and TSI Voice & Data are trading names of Telephone Systems Installations Ltd.

"Customer" means the person who places the Order and uses the Services.

"Agreement" means the service agreement which comprises the Order Form and these Terms & Conditions in conjunction with the general terms and conditions laid out with the Sales Quotation.

"BT" means British Telecommunications Plc.

"Gamma" means Gamma Telecom Limited.

"Agreement date" means the date which the order form and documentation was raised.

"Activation date" means the date by which the services become live and are first made available for use by the customer or the end user of the services as specified in the service agreement.

"Order form" means the TSI Sales Quotation, written customer order or e-mailed customer order and Customer Requirement Form.

"Committed Delivery Date (CDD)" means the date by which TSI anticipate the activation of the services to begin.

"Customer Premises Equipment (CPE)" means equipment such as modems, routers and microfilters necessary to use any access

connection, supplied by TSI or their third parties where their provision is for the express use of provisioning the customer services, or end user services as described in the order form.

"Customer Requirement Form (CRF)" is a document detailing contact details, building details and position of equipment etc, which needs to be completed prior to TSI placing the circuit order with their base carrier suppliers. This ensures that we have the correct information from the outset of the agreement.

"Customer Equipment" means apparatus belonging to the customer not forming part of the TSI equipment but which may be connected to TSI equipment.

"Data Centre" is a dedicated building providing space, power and secure facilities for storing data equipment and services. Often called a carrier hotel (where a telecommunications 'carrier' will rent space or 'rooms' within a data centre).

"Ethernet First Mile (EFM)" is a term of reference given to the delivery of an Ethernet circuit, where the tail circuit is copper rather than the traditional fibre. New technology makes this possible and more affordable in locations where fibre delivery is either impossible or prohibitively expensive.

"Ethernet Circuit" is similar to a leased line, but is generally a fibre based product to the point of entry into a building (except where the 'tail circuit' is provided as copper on an EFM technology). However, Ethernet circuits differ in that they are always presented as either an RJ45 connection (copper twisted pair Cat5e patch cable) or as a fibre patch cable presentation (termination type to be specified). Ethernet circuits operate at the International standard IEEE 802.3. Ethernet circuits are available usually at incremental speeds of 1Mb or 2Mb, where the minimum circuit speed is 1Mb, and the maximum will be multi gigabit circuits.

"Excess Construction Charges/Fee (ECCs)" means when TSI or Gamma or another third party decree that the installation costs originally quoted (or which were included over the term if these costs are amortised) are not enough to cover the actual cost of the installation works. Such costs are known as excess construction fees or charges (ECCs), and these fees (where applicable) will be notified to the customer post site survey. Failure to accept or reject ECCs within 14 working days will result in a cancelled order. The full process is detailed in section 3.



“TSI equipment” means any apparatus or equipment provided by TSI or any third party to the customer to enable provision of the service under this agreement.

“Handover” refers to the process whereby the circuit is handed over from TSI to the customer. Once this process is completed the circuit is deemed live.

“Initial term” means the term of the agreement as specified in the Sales Quotation or customer order form e.g. 36 months. The minimum initial term is always a minimum of 36 (thirty six) months unless otherwise stated in the customer order form.

“Leased Line” means a symmetric telecommunications line connecting two locations. It is sometimes known as a 'private circuit' or 'data line'. Unlike a traditional PSTN line it does not have a telephone number, each side of the line being permanently connected to the other. Leased lines can be used for telephone, data or Internet services. In this instance, we refer to leased lines as either a point to point (P2P) connection between two customer locations, or between a customer location and a data centre, or between a customer location and a Gamma PoP. In the latter instance, this will be typically for Internet provision. In the U.K. leased lines are available at speeds from 64Kb/s increasing in 64Kb/s increments to 2Mb/s over a channelised E1 tail circuit, and can be purchased in higher bandwidths.

“Logical Fault” means a non-hardware related fault. For instance, performance related issues where a 'physical' equipment fault has been eliminated as a possible cause.

“Monthly Recurring Charge (MRC)” means the monthly recurring charge for service.

“Multi-Tenanted Building” refers to TSI operating a specific Internet service for MTBs, and customers within an MTB already connected to the Gamma network can typically expect their service to be delivered within 10 - 15 working days. MTB Internet services are delivered to the same service level agreements as any leased line or Ethernet circuit. It is only the connectivity methods within the building infrastructure which change.

“Network Termination Equipment (NTE)” refers to typically third party equipment supplied by TSI or their third parties where their provision is for the express use of provisioning the customer services, or end user services as described in the customer order. This equipment may reside within the customer's premises, the end user's premises, or TSI and or their third parties' premises.

“Physical Fault” means a fault arising from the discovery of faulty hardware. Physical faults are usually those where no data rates can be achieved.

“Point of Presence (PoP)” is a node within the Gamma network, sited within a data centre. It is the local point within the network, to where Internet circuits are terminated.

“Public Switched Telecoms Network (PSTN)” – in the UK this is generally assumed to be a BT product, referring to a copper wire, analogue telephone line, or ISDN circuit.

“Service Contract” means the complete document which includes the order form and the appropriate terms and conditions as noted on the order form.

“Service” means the services described in the details within the order form, and forming part of this agreement.

“Service levels” means the service levels relating to the services, which is contained in the SLA.

“Service Level Agreement (SLA) means the service level agreement as in clause 4.0 of this document or such other service level agreement which is agreed in writing between the parties from time to time.

“Target Ready For Service” means the initial date which is supplied by the TSI provisioning team as the estimation for an activation date. This is not a binding date, nor is it a CDD, and should be used as a guide only as to the likely activation date. The TRFS is based on standard lead times and may vary post survey.

“Third Party Services” means any part of the services which TSI procures from a third party, any third party telecommunications services and/or equipment which TSI uses in order to provide the services.

“Third Party Service Provider” means the provider of any third party services, which includes Gamma.

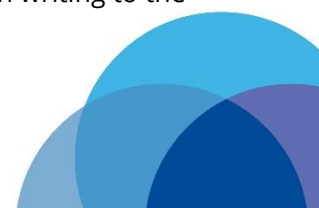


## 2. Introduction

The terms of this agreement form part of TSI's standard Terms and Conditions.

## 3. Order Process

- 3.1. TSI will supply the customer with the services in accordance with these terms; the general terms and the accompanying signed order form and fully completed CRF. The combination of which, will form a service contract between the customer and TSI.
- 3.2. TSI reserves the right to make any changes to these terms or to the service contract, including changes to the service and the SLA as is required from time to time, to reflect:
  - 3.2.1. Technical and operational changes to the core TSI network or that of one of our third party providers provided such changes do not materially affect the applicable service provided to the customer
  - 3.2.2. Changes enforced by law, regulation or codes of conduct which may be altered or issued from time to time
- 3.3. TSI will notify provisional acceptance of an order form by email within a target of 2 working days. TSI shall either provisionally accept or reject the order. TSI shall not be obliged to give any reason for the rejection of an order; the provision of services is strictly subject to availability. Orders will normally be provisionally accepted on the basis that the customer has provided a fully completed CRF detailing contact names, site addresses, and termination details as requested on the current CRF.
- 3.4. TSI will endeavour to issue a TRFS at the same time at which they acknowledge receipt and provisionally confirm the customer order. The TRFS is the day on which we expect (based on standard lead times) the service activation date commences, and therefore the date which the service contract may start. Provisional acceptance shall not be binding on TSI as regards any desired installation of commencement dates which shall be indicative in nature only.
- 3.5. Throughout the provisioning process, TSI or Gamma may need to communicate with named member(s) of the customer's staff (or their nominated representatives) to arrange access to the customer or the end user's premises, for Gamma and/or BT Openreach and/or their third party suppliers. Any delays to these requests either by the customer, their representatives, the end user, or the Landlord of the termination premises will delay TSI from meeting the TRFS and from issuing a CDD. The CDD is the date by which TSI agree to have service ready for use (the activation date).
- 3.6. Typically within 12 working days of provisional acceptance of an order, Gamma and/or BT Openreach or their third party representative will perform a premises survey at the termination location, also known as a 'site survey'. It is typical that within a further 6 working days of the site survey, that TSI will be able to issue the CDD and the preferred installation date for the circuit.
- 3.7. TSI will use reasonable endeavours to make services live:
  - 3.7.1. For copper Ethernet, within 30 working days after the acceptance of an Order Form;
  - 3.7.2. For fibre Ethernet, within 60 working days after the acceptance of an Order Form.
- 3.8. During this time, TSI will notify you of any ECCs raised by the supplier. The issuance of a CDD will be delayed where a decision regarding ECCs is outstanding. ECCs arise when Gamma or their third party decree that the installation costs originally quoted (or which were included over the term if these costs are amortised) are not enough to cover the actual cost of the installation works. Such costs are known as excess construction fees or charges (ECCs), and these fees (where applicable) will be notified to the customer post site survey. At this point, the order will be placed on automatic 'hold' until the customer agrees (or not) to pay the excess construction fees. The customer has 14 working days to decide, and to notify TSI in writing to the



relevant member of staff of their decision. Please note that each elapsed day during this 14 day period will be automatically added to the CDD. If the customer agrees to pay, the provisioning service will resume and a CDD issued in due course. Should the customer decline they have the right to cancel their order with no further charges. Should the customer fail to notify TSI of their decision within 14 working days we may consider the order cancelled and the standard cancellation fees in table 1.0 below will apply.

#### 4. **Service Provision**

- 4.1. TSI reserves the right not to provide the Ethernet Service to any site and to withdraw its provisional acceptance of an order for reasons including, but not limited to:
  - 4.1.1. The distance between a site and the point of presence of Gamma or its underlying service provider;
  - 4.1.2. If a site survey finds that a site is not suitable for the provision of the Ethernet Service; or
  - 4.1.3. If the Company does not agree to pay the Excess Construction Charges or any other Charges reasonably levied by TSI in addition to the Charges initially quoted.
- 4.2. Subject to clause 4.1 above TSI will issue a final acceptance of the order to the Company. Such final acceptance will include the agreed date that installation of the Ethernet Service can be completed (the CDD).
- 4.3. On a date during the order fulfilment process which will be advised by TSI to the Company, TSI, Gamma or its nominated sub contractor will visit the customer site to install the network terminating equipment ("NTE").
- 4.4. Within two working days of completion of the installation of the NTE the Service will be connected to the Gamma network and, following the successful conclusion of a series of commissioning tests performed by TSI or its nominated sub contractor, the Service will be deemed to be ready for use and TSI shall be entitled to invoice the Company for such Service from this date ("the Activation Date").
- 4.5. The "Service Commencement Date" is subject to the installation by the Company of the required router (whether such is supplied by TSI or not) and the completion of successful testing of the final installation with TSI and may be subsequent to the date when the Service is deemed ready for use as set out above. Where the Ethernet Service is being used to provide connectivity to an IP telephony service the Service Commencement Date will be further contingent on the Company having successfully completed all necessary work on the provision of such IP telephony service.
- 4.6. TSI shall be responsible for the provision of the Service up to the Service Demarcation Boundary Point; the Service Boundary is the customer-side port of the TSI supplied Customer premises router. The customer's local area network, its configuration and management is the responsibility of the customer. For the wires-only service, the Service Demarcation Boundary is the customer-side port of the Network Terminating Equipment.
- 4.7. TSI will use reasonable efforts to install the Ethernet Service by the CDD and perform the commissioning tests within two working days thereafter, all in accordance with the service levels set out in Appendix 1 to the Terms and Conditions. The Customer acknowledges that all timeframes are estimates only and that service levels are target service levels only. Except as set out in Appendix 1, TSI has no liability for any failure to meet the CDD or for any failure to meet any service levels or to repair a fault within any given timeframe.



## 5. Term of Service Contract and Termination

- 5.1. The term of each service contract shall start from the date on which, either the individual circuit (for single circuits and/or those with ADSL back up), or the final circuit (for a solution with leased line or Ethernet backup) is installed and made available for service (the Activation Date). The contract will then continue for the term stipulated within the customer order form. For the avoidance of doubt, the minimum initial term of contract for Leased Line/Ethernet services is 36 (thirty six) months unless specified as otherwise in the order form. At the end of the term, the contract will automatically renew on a rolling monthly basis, unless TSI receive prior notice from the customer under the termination conditions stated below.
- 5.2. The Service Contract may be terminated by the Customer on ninety (90) days' written notice to TSI provided that the initial term (as set out in the Order Form) has expired. In the case of termination by the customer, any such written notice shall not be effective unless
  - 5.2.1. Given by 1<sup>st</sup> class recorded post, or an email to a relevant, named member of staff within TSI, and by an authorised member of the customer's staff. Such notice must also outline full details of the service contract including all circuit details and addresses to be terminated, and that;
  - 5.2.2. TSI has confirmed receipt of such termination notice by email or letter within five working days of its receipt
- 5.3. TSI may terminate the Ethernet Service or part thereof on ninety (90) days written notice to the Company provided that such notice extends the termination date beyond the end of the initial term as set out in the Order Form for that circuit.
- 5.4. In addition to TSI's other rights, TSI may end any service contract and/or suspend the provision of any service under a service contract in the following circumstances:
  - 5.4.1. Immediately following the expiry of 5 working days written notice from TSI to the customer for non- payment of any charges and payment has not been made following such notice; or
  - 5.4.2. Immediately in writing if the customer materially breaches these terms; or
  - 5.4.3. Immediately if bankruptcy or insolvency proceedings are brought against the customer (or its parent company), a receiver or administrator is appointed over any of the customer's (or its parent company's) assets or the customer (or its parent company) goes into liquidation or enters into a voluntary arrangement with its creditors other than for the purposes of reorganisation (or any similar event in its country of incorporation takes place); or
  - 5.4.4. As soon as required if TSI is obliged to, by a decision or direction of any governmental body or regulatory authority
- 5.5. Upon termination of a service contract, all charges incurred by the customer for the use of the services up to the date of termination shall be due and payable in full and on demand and the customer shall have no right to withhold, deduct or set off any such amounts.
- 5.6. Upon termination of a service contract for whatever reason the customer shall immediately stop using the services prescribed in such service contract and the customer's right to use such services shall immediately terminate.
- 5.7. Where TSI suspends service for customer breach and subsequently reconnects services, the customer may be liable for a reasonable reconnection fee which shall be notified to the customer in advance.
- 5.8. If the customer cancels an order, or requests that an order already placed is significantly modified (e.g. changes in address; service type; point of presence or presentation), prior to the service Handover, as defined in the relevant service contract, then notwithstanding TSI's other rights pursuant to the service contract, the customer shall pay all costs incurred by TSI as a result of such cancellation or modification. In addition to any other direct 3<sup>rd</sup> Party costs



incurred by TSI during the delivery of the order, customer's will also incur the charges outlined below in Table 1.0.

5.9. If the Customer requests a change to the Required Date and/or the CDD Date (and this has been accepted by TSI) and subsequently cancels the order any cancellation charge will be calculated on the later of the revised Required Date or CDD, as the case may be.

5.10. If the cancellation of the order is due to TSI's failure to provide the Ethernet Service within a reasonable time after the agreed CDD, if later, no cancellation charge will be levied.

**Table 1.0**

<b>Reason for cancellation</b>	<b>Cancellation charge payable by customer (percentage of installation charge)</b>	<b>Cancellation charge payable by the customer (percentage of rental charges for the term of the contract)</b>
Customer cancels for any reason before TRFS is issued and order accepted by tail provider	0	0
Customer cancels for any reason post TRFS issued and order accepted and before site survey carried out	30% *	0
Customer cancels for any reason post site survey but before a CDD is issued	60% *	0
Customer cancels for any reason post issue of a CDD and within 15 working days of the actual CDD	100%	0
Customer cancels for any reason post issue of a CDD and within 5 working days of the CDD	100% *	10%
Customer cancels for any reason post CDD and prior to service Handover	100% *	0
Customer cancels for any reason post CDD and delivery of service before term of contract expires	100% *	100%

\*Exceptions: Where ECCs have been accepted, the total amount of ECCs will be payable in full upon cancellation in addition to those specified within section 5.8.

5.11. For the avoidance of doubt, where installation charges are not payable because they are spread over the term or are discounted for a particular service contract, TSI will base cancellation fees on the supplier installation cost and the remaining contractual months, applying the same percentage fees as in table 1.0. Additionally, TSI may charge the customer for all costs which it has incurred in relation to provision of the services (e.g. costs associated with network or infrastructure builds or obtaining way leaves, etc) up to and prior to the date upon which it receives the early cancellation request from the customer.





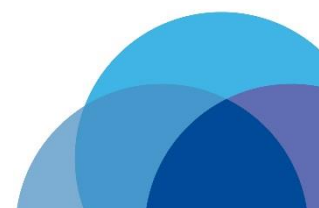
5.12. If the customer cancels a service without cause after the Handover and prior to the end of the initial term, then all charges that would have been payable until the end of the initial term (together with the notice period of 90 days) shall immediately become due and payable.

## 6. **Service Constraints**

- 6.1. The Customer acknowledges and accepts that there may be certain technical limitations to the Service as set out in clauses 6.2 to 6.4 below.
- 6.2. There may be technical or geographical limitations which do not enable the Service to be installed. Provision of the Service is conditional on a site survey when such limitations will normally become apparent. In the event that a site survey reveals that the required Service cannot be installed TSI will cancel the order without charge to the Customer.
- 6.3. If during the commissioning of the Service it is found that, despite the reasonable endeavours of TSI and/or its sub contractor, the agreed bandwidth performance cannot be achieved, TSI will cancel the order without charge to the Customer.
- 6.4. Certain technical limitations may not become apparent until after the Service has been installed and has been working for some time. In such cases where no alternative solution can be found, TSI shall be entitled to withdraw the Service and will issue a credit or credits to the Customer for any Charges which have already been invoiced to the Customer in relation to the Service (save for any charges for abortive visits).
- 6.5. In the circumstances referred to in clauses 6.2 to 6.4 above, and notwithstanding anything to the contrary in this Order Form or in the Supply Agreement, TSI shall have no liability to the Customer for any failure to provide the Service, the performance of the Service, its effect on any other services or equipment or the withdrawal of the Service, save as set out above.

## 7. **Equipment**

- 7.1. Equipment provided by TSI or by its sub-contractors for the delivery of the Service ("TSI Equipment") remains the property of TSI or its sub contractors, as the case may be, and the Customer shall not acquire any property in it. TSI will provide the network terminating equipment and may provide the end user premises router where such has been ordered from TSI by the Customer. In cases where the Customer supplies such router TSI does not guarantee that any such router will be compatible with and/or suitable for use with the Service provided by TSI. TSI shall be entitled to charge (at its then current standard rates) for any configuration or other work performed by itself or any of its sub contractors which is required to bring any router supplied by the Customer into a state where it is compatible with the Service.
- 7.2. The Customer shall provide a suitable place, conditions, connection points and electricity supply for the TSI Equipment according to TSI's reasonable instructions and carry out any site preparation work reasonably required by TSI.
- 7.3. The Customer shall obtain all necessary third party consents required in relation to building alterations or additions, access to land or other permission required to install the TSI Equipment or, where this is carried out by TSI or its sub contractor, shall render all reasonable assistance required by TSI.
- 7.4. The Customer is responsible for the TSI Equipment and shall be liable to TSI for any loss or damage to it save where such loss or damage is caused by fair wear and tear, is caused by TSI, its sub contractor or anyone authorised to act on their behalf. The Customer shall take all reasonable steps to prevent any damage to the TSI Equipment and to prevent anyone (except anyone acting on TSI's or TSI's sub contractor's behalf) from adding to it, modifying it or interfering with it in any way.



## 8. Internet Access

- 8.1. All internet connections are unlimited, uncontended and are subject to acceptable use.
- 8.2. Services can be provided either as wires-only or as a managed service. For the latter, TSI provides a managed Cisco Customer Premises Router which serves as an access and routing device (not a security device) and is owned and fully managed by TSI for the duration of the service. Where a customer chooses to use a wires-only service the Customer must supply a layer 3 router capable of supporting BGO. TSI does not provide any guarantees that the non-TSI supplied router will work with the service. TSI reserves the right to raise a charge of £900 a day for any work it does in assisting with third party router configuration.
- 8.3. TSI will monitor all managed internet access circuits and will alert the Customer in the event that circuit becomes unavailable/unreachable (only). Monitoring and alerting for wires-only services is the Customer's responsibility. SNMP access to TSI routers (read-only or otherwise) is not provided to the Customer.
- 8.4. TSI will provide a subnet for the Customers use – a /30 will be allocated as standard. Larger allocations can be made upon request and justification. A charge will be made for non-standard subnets.
- 8.5. Connections to the internet (which are, by design, public-facing) are not provided with any security or security features; the Customer is responsible for all security (for example, firewall services) and to ensure the connection feed is 'cleaned'. This is also the case where TSI provides a managed service and router.

## 9. Connection

- 9.1. Any equipment connected to the Service must be technically compatible with the Service and connected and used in compliance with any applicable instructions, standards or laws. Any such equipment should not cause any damage to the TSI or Gamma network, the Service, the Equipment, any other customer's network or the network of any underlying service provider.
- 9.2. The Customer agrees to only connect equipment to the Service by using the CPE provided by TSI.
- 9.3. If the Customer becomes aware that any equipment connected to the Service does not comply with the relevant instructions, standards or laws they should immediately disconnect the equipment or ensure its immediate compliance. Failure to disconnect non-compliant equipment will result in TSI disconnecting it at the Customers expense.
- 9.4. TSI will not be liable for any failure to meet any service levels or any failure of the Service or any other obligations if such failure has been found to be caused by the connection of any equipment other than in compliance with this clause 8.

## 10. Premises Access

- 10.1. TSI 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. Such charge will not apply to visits to repair faults.
- 10.2. The Customer will provide access to the site to TSI, BT Openreach, Gamma and/or its sub contractor for the purposes of site surveys, installation or otherwise as required for the provision of the Service. The Customer shall provide a suitable and safe working environment for TSI's employees and authorised sub contractors at the site. The Customer shall indemnify TSI, Gamma and its sub contractors for death or personal injury claims or actions threatened or brought against them resulting from the Customer's breach of this clause 9.2,





save where such claim or action results from TSI or BT Openreach or Gamma's negligence or that of its employees, sub contractors or agents acting in the course of their employment or agency.

- 10.3. TSI and Gamma agrees to observe and ensure that its employees observe the Customer's reasonable security and safety requirements insofar as these are communicated to TSI, BT Openreach, Gamma or its employees.
- 10.4. It is the responsibility of the Customer to make good or re-decorate any areas of the site affected by the installation of the Service save where any damage is caused by TSI or BT Openreach or Gamma's negligence in which case the limitation of liability provisions in clause 10 shall apply.

## 11. **Limitation of Liability**

- 11.1. Nothing in this Agreement shall exclude or limit liability for death or personal injury resulting from the negligence of either party or their servants, agents or employees.
- 11.2. Neither party shall be liable in contract, tort, precontract or other representations (other than fraudulent or negligent misrepresentations) arising out of or in connection with this Agreement for;
  - 11.2.1. any economic losses (including, without limitation, loss of revenues, profits, contracts, or business); or
  - 11.2.2. any special, indirect or consequential losses or any destruction of data, arising out of or in connection with the provisions of this Agreement.
- 11.3. Subject to Clauses 11.1 and 11.2 TSI's liability to the Customer in contract, tort, negligence, precontract or other representations arising out of or in connection with this Agreement or the performance or observation of its obligations under this Agreement shall be limited in aggregate to the charges paid, by the Customer under this Agreement.
- 11.4. Each provision of this Agreement, excluding or limiting liability, operates separately. If any part is held by a court to be unreasonable or inapplicable, the other parts shall continue to apply.
- 11.5. The customer indemnifies TSI and its suppliers including Gamma against any claims or damages arising from the Customer's access to the use of the Service and any information, data or material produced, transmitted or downloaded on the Service.

## 12. **Force Majeure**

- 12.1. If either party is unable to perform any obligation under this Agreement because of a matter beyond that party's reasonable control such as lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes (whether or not involving the party's employees), or acts of local or central Government or other Competent authorities or events beyond the reasonable control of that party's suppliers, the party will have no liability to the other for that failure to perform.
- 12.2. If any of the events detailed in paragraph 12.1 continue for more than 3 months either party may serve notice on the other terminating this Contract.

## 13. **Confidentiality**

- 13.1. The parties will keep in confidence any information (whether written or oral) of a confidential nature (including software and manuals) obtained under or in connection with this Agreement or the Service and will not without the written consent of the other party disclose that information to any person (other than their employees or professional advisors, or in the



case of TSI the employees of a TSI Group Company or their suppliers, who need to know the information).

13.2. This Clause 13.1 will not apply to:

13.2.1. any information, which has been, published other than through a breach of this Agreement;

13.2.2. information lawfully in the possession of the recipient before the disclosure under this Agreement took place;

13.2.3. information obtained from a third party who is free to disclose it; and

13.2.4. information, which a party is, requested to disclose and, if it did not, would be required by law to do so.

13.3. This Clause 13.1 will remain in effect for 2 years after the termination of this Agreement.

#### **14. Data Protection**

14.1. TSI and the Customer each agree to comply with their respective obligations under applicable data protection legislation and maintain all relevant registrations, including (in relation to the Customer) such registrations and consents as the Customer should obtain and maintain to enable TSI to process personal data in connection with the performance by TSI of its obligations under this Contract.

14.2. The Customer agrees that TSI may put their name and other details obtained from the Order Form into a computerised directory for internal use and to enable TSI to provide the Service.

14.3. Rights of subject access will be in accordance with the Data Protection Act 1998 and upon request in writing and payment of the appropriate fee.

#### **15. Notices**

15.1. Notices given under this Agreement must be in writing and may be delivered by hand, or by courier or first class post to the following addresses:

15.1.1. To TSI at the address of the TSI office shown on the Order Form or any alternative address which TSI notifies to the Customer;

15.1.2. To the Customer at the address to which the Customer asks TSI to send invoices, the address of the Customer's premises, or, if the Customer is a limited company, its registered office.

#### **16. General Provisions**

16.1. The Agreement will constitute the entire agreement between the parties and will supersede all prior and contemporaneous agreements, communications and representations (except for fraudulent or negligent misrepresentations) whether oral or written, between the parties.

16.2. A person who is not party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

16.3. In the event of a dispute between the parties, the parties will attempt in good faith to resolve the dispute or claim arising out of or relating to the Agreement promptly through negotiations between the respective representatives of the parties who have authority to settle the same.

16.4. If any provision of the Agreement (whether in part or in whole) is held by a court of competent jurisdiction to be illegal, invalid or unenforceable the remaining provisions of the Agreement shall remain in full force and effect.

16.5. Any waiver of any breach of any provision of the Agreement will not constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions of the Agreement.



16.6. The Customer may not assign or otherwise transfer, by operation of law or otherwise, the Agreement or any rights or obligations therein without the prior express written consent of TSI.

16.7. The headings to the sections of this Agreement are for convenience only.

**17. Law**

The Agreement shall be governed by the laws of England and the parties submit to the non-exclusive jurisdiction of the Courts of England.



## APPENDIX 1 - SERVICE LEVEL AGREEMENT

TSI will use reasonable endeavours to comply with the service levels set out in this Appendix, but these levels are target service levels only and TSI has no liability for any failure to meet them except as set out in this Appendix.

### 18. Service Levels

#### 18.1. Availability

The Service can be used to deliver internet access or IP telephony services. Different network architectures are used to deliver each of these services.

- When used for internet access each Ethernet circuit will be available for 99.9% of any given calendar month;
- When used for IP telephony services each Ethernet circuit will be available for 99.94% of any given calendar month.

The following shall not be included when calculating the above service level(s):

- Outages or delays which are deemed by TSI to be the result of matters outside its direct control
- Planned or notified maintenance whether in response to an emergency or otherwise.

#### 18.2. Performance

The performance measures below are for the end-to-end service, from the Gamma core network (source) to the service demarcation point (destination):

- Latency (Source to Destination) - <15ms
- Packet Loss - <0.2%
- Jitter (Source to Destination) - <5ms

These performance measures are only applicable to VoIP traffic destined for either TSI's Sip Trunking Platform or Horizon Platform and to any other traffic where overall traffic levels on a customer circuit do not exceed the purchased Committed Data Rate (CDR). Where traffic exceeds the CDR, or in the case of VoIP traffic, exceeds the bandwidth purchased to service the VoIP traffic, this traffic will be shaped which may result in increased latency, jitter or packet loss.

### 19. Service Level Guarantee

#### 19.1. Provisioning

TSI will activate the service by midnight on the CDD.

For managed internet access and services supporting TSI IP telephony, the installation of a TSI router is required for the full connectivity to the TSI network. This installation occurs on or after the Activation Date.

If TSI does not activate the service by midnight on the Activation Date, then TSI will credit the Customer with a compensation entitlement in accordance with the following table:

Number of working days activation is beyond the Activation Date	Compensation Entitlement - reduction in the connection charge for the circuit
1-10	5%
11-15	10%
16-20	15%
More than 20	20%

Connection charges for any other TSI product associated with the service are to be excluded from the calculation of the compensation entitlement.

## 19.2. Fault Handling

TSI will make available the fault handling service 24 hours a day and 7 days a week including Public and Bank Holidays.

All faults will be validated when reported and subsequently classified as below:

1. **Priority 1** - Total loss of service (hard down or no transmission of signal in one or both directions)
2. **Priority 2** – Service is available, but either reduced functionality or degradation is creating significant business impact for the End User
3. **Priority 3** - Service is available, but either reduced functionality or degradation is being experienced by the Customer without any significant business impact for the Customer

**For Priority 1** faults TSI will resolve the fault within 6 Clock Hours (as defined below) from a validated fault, or, for Copper Ethernet, 8 Clock Hours from a validated fault.

Clock Hours are defined as the time between the Start Time and Stop Time, excluding Parked Time, where:

1. Start Time means the time a fault has been validated and categorised as a Priority 1 fault
2. Stop Time means the time a fault has been resolved
3. Parked Time means the time during which the resolution of a fault is outside of Gamma's control

**For Priority 2** faults TSI will resolve the fault within 1 working day from a validated fault.

**For Priority 3** faults TSI will resolve the fault within 3 working days from a validated fault.

For Priority 1 faults only, if TSI does not resolve a fault on a circuit within the relevant timeframe set out above, then TSI will credit the Customer with a compensation entitlement in accordance with the following table:

Measurement	Compensation Entitlement - reduction in monthly circuit rental
Each hour or part hour beyond the target fault clearance time	10% of the monthly rental

Credits will be applied on a per fault basis and will be capped at 100% of the monthly circuit rental. Monthly rental charges for any other TSI product associated with the service are excluded from the calculation of the compensation entitlement.

## 20. Exclusions from Service Levels and the Service Level Guarantee

A service level, service level guarantee and any compensation entitlement will not apply if:

- 20.1. the failure by TSI is due to the Customer's own network or equipment or any other network (including but not limited to the internet) or equipment outside the TSI network;
- 20.2. the Customer is in breach of any part of these terms and conditions and such breach affects TSI's ability to comply with the service level and/or service level guarantee or if TSI's underlying service provider suspends the service or any part of it as a result of any such breach;
- 20.3. through no fault of its own or because of circumstances beyond its reasonable control, TSI is unable to carry out any necessary work at, or gain access to the Customer's site or the Customer fails to agree an appointment date or planned work is aborted (save at TSI's request);



- 20.4. reasonable assistance is required or information is reasonably requested by TSI from the Customer and such assistance or information is not provided or is not provided in a timely fashion;
- 20.5. through no fault of its own, TSI is unable to obtain any necessary permissions or consents required in connection with the performance of a particular service level or service level guarantee;
- 20.6. the failure is due to Force Majeure or some other event outside TSI's reasonable control;
- 20.7. the failure is due to a planned or emergency service interruption;
- 20.8. the failure is due to an inaccurate Order Form having been submitted;
- 20.9. the Customer has failed to implement any reasonable and explicit instructions issued by TSI in relation to the service.

## **21. Wires-Only Service**

Services provided to the reseller without a TSI-supplied and managed customer premises router are known as 'wires-only' services. These services are not provided as managed services and therefore have a reduced Service Level Agreement, as set out below:

- 21.1. For a wires-only service, the service demarcation boundary is the customer port of the Network Terminating Equipment ("NTE");
- 21.2. The service levels set out in paragraphs 18.1 and 18.2 above apply to the TSI core network only;
- 21.3. In the event of a fault it is incumbent on the Customer to demonstrate that the fault lies with the TSI Service and not externally. If both parties agree this to be the case the fault is deemed to be validated and TSI will resolve the fault within the timescales set out in clause 19.2 above. The compensation entitlement set out in that paragraph will apply to any failure by TSI to resolve the fault within such timescales.

