

# Conditions for Data Services



Your agreement with us (this "agreement") is made up of the following documents:

- i. The Service Agreement;
- ii. The relevant Gamma tariff(s) for the services we agree to provide to you;
- iii. Any further Gamma conditions relating to specific Services;
- iv. These Conditions for Data services; and
- v. The Conditions for Communication Services.

In the event of any discrepancy between documents listed above, the document listed first will take precedence.

## 1. The Services

- 1.1. These terms cover all fixed and mobile Data Services including but not limited to Broadband, Ethernet and WAN Services.
  - 1.1.1. To enable us to provide the Service, you will prepare the Sites and your networks and connect any tail circuits to your network in accordance with our instructions.
- 1.2. We reserve the right not to provide the Service to any Site and to withdraw our provisional acceptance of an order for reasons including, but not limited to:
  - 1.2.1. the distance between a site and the point of presence of Gamma or its underlying service provider,
  - 1.2.2. if a site survey finds that a site is not suitable for the provision of the Service,
  - 1.2.3. if you do not agree to pay the excess construction charges or any other charges reasonably levied by us in addition to the charges initially proposed.
- 1.3. Unless you have ordered an installation of the router, it is your responsibility to install a router at the Site or Sites where this is required and we will not be liable for failure to meet any dates due to delay in the installation of such router.
- 1.4. We will maintain your Service to the Service Demarcation Point.
- 1.5. Where we agree you may use/supply your own router for the Service then you agree that all responsibility and liability for such equipment remains with you. Should we visit your Site due to a fault which is later found to be caused by equipment not provided by us then we will charge you for such site visit and any additional costs incurred as a direct result.
- 1.6. Your use of the Service is entirely at your own risk. We will not be liable for any loss or damage arising from any virus, Trojan horse, spam or other malicious content that you may receive while using the Service notwithstanding that there may be a firewall contained in equipment supplied in connection with the Service.

## 2. Broadband Service

- 2.1. If we consider that your bandwidth usage profile is abnormal or out of the ordinary (including without limitation extremely high levels of bandwidth use in a given period), we have the right to take such action as we deem appropriate which may include, without limitation, restricting or suspending your use of the broadband service, or increasing the Service Charges.
- 2.2. We will make reasonable endeavours to inform you in advance if we impose any restrictions on your use of the Service.
- 2.3. To ensure the quality of our Broadband Service we have a traffic prioritisation process to prioritise business critical applications in the event of exceptional demand, and normally only during business hours 08.00 to 18.00 Monday to Friday. However, it is unlikely that this will impact the quality of your broadband service.
- 2.4. Where any Data Service requires a Gamma PSTN line for service delivery that line should have no other

services or features attached to the line. The line should have a minimum Level 4 maintenance care.

- 2.5. Any Service will cease automatically if the underlying PSTN line is ceased, but you will remain liable for any Service Charges for the remainder of the current Minimum Term.
- 2.6. Any internal line shift carried out on the underlying PSTN line supporting the Service may impact on the speed (either slower or faster speed).
- 2.7. Where applicable, actual available line speed will be confirmed during the provisioning process. If the maximum upstream line speed is lower than originally ordered, we will process the order to allow the confirmed highest available downstream speed.

## 3. Backup Services

- 3.1. The Broadband backup service requires a PSTN line provided by us and clear of any other Broadband services for service delivery. This line must also be located within 2 metres of the Ethernet termination point and router location.
- 3.2. Unless otherwise specified in writing, the backup option does not carry the same guaranteed service levels as the primary Service.
- 3.3. For a Fibre Ethernet with Fibre Ethernet backup Service, the actual resilient path of both fibre connections will only be confirmed following a site survey. If, following site survey, it is found that the two connections would have a shared route (or partial shared route) you have the option of cancelling the Order.
- 3.4. For a Fibre Ethernet with an EFM backup Service, both services will terminate in the same exchange as it is not possible to route to different exchanges.
- 3.5. In the event of a fault on the primary service, the backup service will automatically become effective. Use of the secondary backup service is not permitted other than in the event of a primary Service failure. In the event of a failure of both the primary and secondary Services, we will initially resolve the fault on the primary Service in accordance with our SLA.
- 3.6. If you fail to connect both the primary and secondary services to the router, the SLA will not come in to effect until such failure has been remedied.

## 4. WAN Services

- 4.1. We shall design, setup, install, manage and maintain a Network providing Managed WAN and/or LAN Services having the relevant features and specifications stated in the High Level Design upon and subject to the provisions of this Agreement. In respect of each Service, we shall:
  - 4.2. procure the installation of the Equipment at the Sites; and
  - 4.3. connect the Sites by means of the access circuits to the Network to provide the Services; and
  - 4.4. continue to deliver the WAN and/or LAN Services in accordance with the SLA.
  - 4.5. You acknowledge that during the installation of the Equipment for the provision of the Services you may suffer temporary interference to other telecommunications services received at the Sites (although we shall use every effort to avoid this), which shall be reinstated following installation. we shall not be liable for any loss, interruption or interference so caused during installation.
  - 4.6. we will deliver the Services in accordance with our valid certifications for Security (ISO27001), Business Continuity (ISO22301) and Cyber Essentials as defined

- in the Gamma Security Policy Document which may be made available to you upon request.
- 4.7. We will use reasonable endeavours to comply you're your reasonable requests in respect of installation but the final decision on the routing of cables and wires and the positioning of outlets and other apparatus constituting the Equipment shall be mutually agreed.
  - 4.8. Installation of the Services may be subject to a site survey and the Services may not be provided where the survey carried out is incomplete or unsatisfactory.
  - 4.9. To allow the installation and use of the Equipment at each of the Sites, you will, prior to any installation work for the Services, at your own expense:
  - 4.10. obtain all necessary consents, including consents for any necessary alterations to buildings and access wayleaves;
  - 4.11. take up or remove, any fitted or fixed floor coverings, ceiling tiles, suspended ceiling and partition covers as Gamma or the Carrier advises are necessary and carry out afterwards any making good or decorator's work required; and
  - 4.12. provide reasonable electricity and connection points required by Gamma or the Carrier.
  - 4.13. We may appoint sub-contractors to supply the Services provided that the Services shall be supplied in accordance with the provisions of this Agreement and we shall remain solely responsible for all such Services.
  - 4.14. We will use reasonable endeavours to deliver the Equipment to the Sites by any agreed delivery date or installation date and thereafter shall install and commission such Equipment as soon as reasonably practicable. For the avoidance of doubt, any agreed delivery, installation and completion dates shall be estimates only and we will not be liable for any loss or damage (including without limitation loss of use, loss of contract or loss of profit) incurred by you by any failure by us to meet any such dates.
  - 4.15. You shall:
    - 4.15.1. ensure that the Equipment is used in a proper manner by competent trained employees only or by persons under their supervision;
    - 4.15.2. notify us promptly if the Equipment is not operating correctly;
    - 4.15.3. not alter, adapt or modify the in any way without our prior written approval;
    - 4.15.4. not request or permit any person other than us to provide any maintenance services in respect of the Equipment;
    - 4.15.5. co-operate to a reasonable extent with our personnel in diagnosis investigation and correction of any fault in the Equipment.
- 5. Cloud Exchange Services**
- 5.1. Cloud Exchange Service is only available in conjunction with the Managed WAN Service.
  - 5.2. Both parties will agree a timetable for the implementation of the Cloud Exchange Service for each Sites taking into account the lead times required for the WAN elements of the Cloud Exchange Service. We will be entitled to revise such a timetable, if we encounter delays which could not reasonably have previously been foreseen.
  - 5.3. We will provide the Cloud Exchange Service including configuration of the Network, any internet access, the provision of a firewall where applicable and the agreed access services. You will be responsible for the security of the network unless agreed otherwise as part of the Cloud Exchange Service.
  - 5.4. You shall be solely responsible for the provision of appropriate technical expertise, knowledge and resources sufficient to integrate and configure the LAN systems, applications and interfaces with the Cloud Exchange Service. We do not provide LAN integration as part of the Cloud Exchange Service. You shall ensure that the LAN is capable of integration with the Cloud Exchange Service (including, without limitation, any hardware or software required for such integration). The Cloud Exchange Service does not include the provision of advice on LAN integration, configuration or specification, or in relation to third party transactions carried out by way of the Cloud Exchange Service.
  - 5.5. We will use reasonable efforts to install the Cloud Exchange Service (including access services) in accordance with the agreed timetable. You acknowledge that all dates in the agreed timetable are estimates only. We will have no liability for any failure to meet any of the dates in the agreed timetable.
  - 5.6. Where you use transactional features of the Cloud Exchange Service, you shall be solely responsible for any transactions entered into between yourself and any third party and for any data, information or other materials (in whatever form) comprised in such features ("Data").
  - 5.7. You shall indemnify us in respect of any losses incurred or claims made against us arising from your use of transactional features of the Cloud Exchange Service.
  - 5.8. You acknowledge that all Intellectual Property in the Cloud Exchange Service shall remain vested in Gamma or in its underlying service provider. We grant you a non-exclusive non-transferable licence for the Minimum Term to use such Intellectual Property only to the extent necessary for you to receive the Cloud Exchange Service.
  - 5.9. We acknowledge that all Intellectual Property in Data shall remain vested in you. You grant us a non-exclusive non-transferable licence for the Minimum Term to use such Intellectual Property only to the extent necessary to provide the Cloud Exchange Service.
- 6. All Services**
- 6.1. You are required to provide the following notice periods should you wish to terminate any of the Data Services, to take effect no earlier than the expiry of the current Minimum Term:
    - 6.2. Fixed and Mobile Broadband – thirty (30) days written notice.
    - 6.3. Ethernet, WAN and HSCN Services – sixty (60) days written notice.
    - 6.4. Cloud Exchange Services - sixty (60) days written notice.
- 7. HCSN Connectivity Services**
- 7.1. The HSCN Authority recommends the HSCN Customer read the guidance published at <https://digital.nhs.uk/health-social-care-network> before entering into any HSCN Contract. The key obligations are:
    - 7.2. We shall ensure that any HSCN Connectivity Services that we supply shall have been awarded HSCN Compliance and shall retain at all times HSCN Compliance.
    - 7.3. We shall ensure that any HSCN Connectivity Services that we supply are delivered in accordance with the HSCN Obligations Framework.
    - 7.4. You shall ensure that any HSCN service consumer environment used to consume HSCN Connectivity Services supplied pursuant to this agreement, shall be

provided and maintained in accordance with the Connection Agreement;

- 7.5. Both parties warrant and undertake that they shall throughout the Minimum Term, immediately disconnect their HSCN Connectivity Services, or consumer environment (as the case may be) from all other HSCN Connectivity Services and consumer environments where specifically requested in writing by the NHS Digital CareCERT (or the HSCN Authority acting on behalf of NHS Digital CareCERT) where there is an event affecting national security, or the security of the HSCN.
- 7.6. Both parties acknowledge and agree that the HSCN Authority shall not be liable to them or any other party for any claims, proceedings, actions, damages, costs, expenses and any other liabilities of any kind which may arise out of, or in consequence of any notification pursuant to paragraph 2.4.
- 7.7. Both parties acknowledge and agree that paragraphs 2.4 and 2.5 are for the benefit of and may be enforced by the HSCN Authority, notwithstanding the fact that the HSCN Authority is not a party to this agreement, pursuant to the Contracts (Rights of Third Parties) Act 1999. For the avoidance of doubt such appointment shall not increase any liability of the Supplier beyond the scope of their existing liabilities under this agreement, the CN-SP Deed or the HSCN Obligations Framework.
- 7.8. We shall procure that any Material Sub-contractor shall comply with the terms of this agreement in relation to the provision of HSCN Connectivity Services.
- 7.9. Where any level of standard, practice or requirement associated with any Gamma obligation referenced in these terms and conditions, the HSCN Obligations Framework, the HSCN CN-SP Service Management Requirement Addendum or the HSCN Consumer Contract conflicts with another level of standard, practice or requirement associated with any Gamma obligation or with Good Industry Practice, then the higher standard or requirement or best practice shall be adopted by Gamma. In the event that Gamma cannot determine which represents the higher standard or requirement or best practice, Gamma shall seek guidance from the HSCN Authority which shall reasonably determine which is the level of standard, practice or requirement that is the most favourable from a HSCN Consumer perspective, and thus with which standard or best practice to comply.
- 7.10. If we fail to provide any part of the HSCN Connectivity Services as required under this HSCN Consumer Contract, we shall, in accordance with the guidance documentation published at [<https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers>], be directly liable to the HSCN Consumer in respect of such HSCN Connectivity Services.
- 7.11. You shall share all records and information with the HSCN Authority as are reasonably requested by the HSCN Authority in connection with the monitoring and operation of the HSCN network described in the HSCN Solution Overview Document.

### Definitions

**"CN-SP Deed"** means the deed required by the HSCN Authority to be signed by any CN-SP in order for it or its subcontractor to deliver HSCN Connectivity Services;

**"Connection Agreement"** means the agreement setting out the obligations and requirements for organisations wanting to connect to the HSCN, together with all documents annexed to it and referenced within it;

**"Consumer Network Service Providers or CN-SP"** means an organisation that is supplying or is approved

to supply HSCN Connectivity Services having achieved the appropriate HSCN Compliance;

**"Good Industry Practice"** means the standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;

**"Health and Social Care Network or HSCN"** means the government's network for health and social care, which helps all organisations involved in health and social care delivery to work together and interoperate;

**"HSCN Authority"** means NHS Digital (the Health and Social Care Information Centre);

**"HSCN Compliance or HSCN Compliant"** means a status as detailed in the document "HSCN Compliance Operating Model", as set out at [<https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers>], and as updated by the HSCN Authority from time to time;

**"HSCN Connectivity Services"** means any service which is offered by a CN-SP to provide access to and routing over the HSCN;

**"HSCN Consumer"** means you as a recipient of HSCN Connectivity Services;

**"HSCN Consumer Contract"** means any agreement pursuant to which a CN-SP (or Sub-contractor of a CN-SP) agrees to supply HSCN Connectivity Services to a HSCN Consumer;

**"HSCN Obligations Framework"** means the obligations as available at [<https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers>] which may be updated from time-to-time by the HSCN Authority;

**"HSCN Solution Overview"** means the document containing the architecture and technical solution for HSCN (the latest version can be accessed at [<https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers>]);

**"Material Sub-contractor"** means a sub-contractor (including any affiliate or group company) of a CN-SP in relation to HSCN Connectivity Services which, in the reasonable opinion of the HSCN Authority, performs (or would perform if appointed) a substantive role in the provision of all or any part of the HSCN Connectivity Services;

**"Network(s)"** – the Local Area Network, network equipment, computer systems, and local cable infrastructure, at the Sites, to which the Service will be connected.

**"NHS Digital CareCERT"** means the NHS Digital Care Computing Emergency Response Team, that provide cyber security intelligence and advice to the Health and Care System using links across the public sector and with partners in industry.

**"Installation Charges"** – the combined charge for the survey, equipment and the Installation Service, including excess construction charges, as specified on the Service Agreement or other amended documentation following site survey.

**"Installation Service"** – the work (if any) carried out by us or our subcontractor at each Site to enable you to receive the Service, normally carried out between 0900 and 1730 on a Business Day.

**"Service Demarcation Point"** - is the customer port of the Gamma-supplied router. Your local area network, its configuration and management is your responsibility.