



# EFM Service Terms & Conditions

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## EFM Service Terms & Conditions

### 1. Preamble

- 1.1. These EFM Service Terms & Conditions provide the agreed conditions of the Customer utilising the EFM Service. These EFM Service Terms & Conditions apply solely to the EFM Service and are governed by the Hosts-Un Limited MSA. Upon an SOF being agreed between the Parties, these EFM Service Terms & Conditions shall be incorporated into the Agreement.

### 2. Definitions

- 2.1. In these Service Terms & Conditions the following terms and phrases shall have the following meanings:

|                                 |   |
|---------------------------------|---|
| <b>“Agreement”</b>              | means the agreed terms and conditions of business between the Customer and Hosts Unlimited as set out in the MSA, Hosts Unlimited Addendum (if applicable), Partner Agreement (if applicable), the SOF, the applicable Service Terms & Conditions for the Service that is provided and defined under the SOF (for example “Colocation Service Terms & Conditions”) and all Schedules and Annexes contained therein. |
| <b>“A End”</b>                  | means the first of the Termination Site locations for the EFM Service.  |
| <b>“B End”</b>                  | means the second of the Termination Site locations for the EFM Service.   |
| <b>“Best Industry Practice”</b> | means in relation to any undertakings or circumstances, the exercise of all the skill, care and performance that would be expected in those circumstances from a person skilled, trained and experienced in that undertaking.   |
| <b>“Hosts Unlimited”</b>        | means HOSTS-UN LIMITED whose principle place of business is Unit 12, Beech Court, Wokingham Road, Hurst, Reading, RG10 0RQ, whose company Registered Number is 7044445.   |
| <b>“CDR”</b>                    | means Committed Data Rate which is the minimum amount of IP Transit that the Customer is committed to during the Initial Term or any Subsequent Term as defined in the SOF.   |
| <b>“Colocation”</b>             | means the act of situating multiple related items, with multiple owners, in a single location.  |
| <b>“Connection Notice”</b>      | means the formal notice of a Service being ready for Customer use and the beginning of the Service Commencement Date.   |
| <b>“Customer”</b>               | means the person or business partner as defined in the SOF.   |
| <b>“Customer Equipment”</b>     | means any equipment used in conjunction with the Service as provided by the Customer.   |
| <b>“EFM”</b>                    | means Ethernet First Mile which is a symmetric telecommunication link provided on a copper connection between two or more points for the purpose of delivering Connectivity.  |
| <b>“EFM AUP”</b>                | means the Acceptable Usage Policy for the EFM Service as defined in Annex B of these EFM Service Terms & Conditions.  |
| <b>“ETF”</b>                    | means Early Termination Fees which are billed to the Customer for the premature termination of Services prior to the end of the Initial Term or any Subsequent Term as further detailed in Clause 7.6 of the MSA.   |
| <b>“Excess Transit”</b>         | means any IP Transit use above the CDR.   |
| <b>“Excess Survey Fees”</b>     | means any additional Fees above that which has been quoted by Hosts Unlimited (as advised to Hosts Unlimited by the Provider upon completion of the Site Survey) that the Customer shall automatically incur sub of £100 per copper connection) or need to authorise above £100 per copper connection for the order to proceed.   |
| <b>“Excess Usage”</b>           | means any usage of Services that exceeds the agreed amount stated within the SOF.   |
| <b>“Excused Outage”</b>         | means a period of time during the Service Term where Hosts Unlimited is not liable to provide Service Credits in lieu of the Customer’s inability receive access to or gain use of the Service.   |
| <b>“Fees”</b>                   | means any amount billed to the Customer for the provision of a Service, Support Service or Excess Usage.  |

|   |   |
|---|---|
| <b>“Force Majeure Event”</b>            | means any cause beyond a Party’s reasonable control affecting the performance of its obligations hereunder, including but not limited to fire, flood, explosion, accident, act of terrorism, war or warlike operations, strike, embargo, acts of any governmental authority (including refusal or revocation of any licence or consent), Act of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, inability to secure materials and industrial disputes (excluding disputes involving the employees of either Party). |
| <b>“Handover Document”</b>              | means the document provided to the Customer upon handover of the active Service to the Customer.  |
| <b>“Initial Term”</b>                   | means the minimum contracted period of a Service, as defined within the SOF as measured from the Service Commencement Date.   |
| <b>“IP Transit”</b>                     | means the act of passing IP traffic from one location to another via a layer 2 or layer 3 connection as measured in Mbps.   |
| <b>“Master AUP”</b>                     | means the Master Acceptable Usage Policy as defined within Schedule 3 of the MSA.   |
| <b>“MSA”</b>                            | means the Hosts Unlimited Master Service Agreement.   |
| <b>“Office Hours”</b>                   | means Monday – Friday during the hours of 9am – 5:30pm  |
| <b>“OCP”</b>                            | means the Order Confirmation Period of 10 days which shall only take effect and commence upon Hosts Unlimited confirming to the Customer a requirement for Excess Survey Fees   |
| <b>“Parties”</b>                        | means Hosts Unlimited and the Customer.   |
| <b>“Provider”</b>                       | means a third party Service provider (these may include but are not limited to BT, Virgin Media or TALKTALK).   |
| <b>“Service”</b>                        | means the provision of a product or communication/data Services as described in the Service Details section of the SOF.   |
| <b>“Service Commencement Date”</b>      | means the date from when the beginning of the Initial Term is measured, as defined under Term and Termination in the MSA.   |
| <b>“Service Credit”</b>                 | means a credit applied to the Customer’s account in respect of an event of an unexcused failure by Hosts Unlimited to achieve the SLA’s, as defined in Annex A of the applicable Service Terms & Conditions.  |
| <b>“Service Equipment”</b>              | means any equipment provided to the Customer for the purpose of delivering a Service to the Customer.   |
| <b>“Service Outage”</b>                 | means a period of time in which an active Service, provided by Hosts Unlimited to the Customer, is unavailable in such a manner as defined in the applicable Service Terms & Conditions.  |
| <b>“Service Term”</b>                   | means the Initial Term and any active Subsequent Term in which Hosts Unlimited provides a Service to the Customer.  |
| <b>“Service Terms &amp; Conditions”</b> | means the terms and conditions that form part of this Agreement that apply solely to the uptake of the applicable Service as defined by the SOF.  |
| <b>“Site Survey”</b>                    | means the act of Hosts Unlimited attending the Termination Site and performing a survey to ensure that the Termination Site is viable for the provision of Wireless Services.   |
| <b>“SLA”</b>                            | means Service Level Agreement as defined within Annex A of the applicable Service Terms & Conditions.   |
| <b>“SOF”</b>                            | means the Hosts Unlimited Service Order Form.   |
| <b>“Subsequent Term”</b>                | means the extension of the Service Term by a period as defined in the SOF which shall commence in conjunction with the conclusion of the Initial Term or any other Subsequent Term.   |
| <b>“Support Portal”</b>                 | means the Hosts Unlimited online web portal that is found at <a href="http://support.hosts-unlimited.com">support.hosts-unlimited.com</a> .   |
| <b>“Support Services”</b>               | means Services that are provided by Hosts Unlimited or its representatives in support to a Service that is being delivered.   |
| <b>“Termination Notice Period”</b>      | means the minimum period of time that Hosts Unlimited or the Customer must provide to the other Party prior to the end of the Initial Term or any active Subsequent Term in order to conclude the Services at the end of the Service Term, as defined in the applicable Service Terms & Conditions.   |

- “Wayleave Application”** means the Provider’s wayleave authorisation form as advised to the Customer from time to time.
- “Wireless”** means the act of providing Connectivity over a wireless medium.

### 3. Service Provision

- 3.1. EFM Service provision is subject to quotation by Hosts Unlimited and Site Survey by the Provider.
- 3.2. Hosts Unlimited cannot guarantee the specific speeds of service however shall provide confirmation of the final delivery of the connection upon completion of the network synchronisation.

### 4. Service Fees

- 4.1. All Support Services shall be charged at the Fees stated in Annex C, unless stated otherwise in the SOF.
- 4.2. All Fees quoted and provided in the SOF relating to EFM Service are subject to amendment upon completion of the Site Survey as advised to the Customer by Hosts Unlimited.

### 5. Site Surveys and Excess Survey Fees

- 5.1. Upon Hosts Unlimited accepting an SOF for a EFM Service, Hosts Unlimited shall engage the Provider who will subsequently perform a Site Survey.
- 5.2. Upon receipt of the Site Survey, Hosts Unlimited shall advise the Customer as to whether the Provider has provided any Excess Survey Fees.
- 5.3. **IN THE EVENT THAT THE SITE SURVEY RESULTS IN EXCESS SURVEY FEES THAT ARE UNDER THE VALUE OF £100 PER COPPER PAIR (I.E. £200 FOR 2 PAIRS AND £400 FOR 4 PAIRS) THEN THE ORDER WILL PROGRESS AS NORMAL AND THE CUSTOMER SHALL BE LIABLE TO PAY SUCH EXCESS SURVEY FEES INVOICING BY HOSTS UNLIMITED.**
- 5.4. If, upon completion of the Site Survey, the Provider confirms to Hosts Unlimited that there is no requirement to apply Excess Survey Fees in relation to the EFM, the order shall continue to be processed. For the avoidance doubt, if Hosts Unlimited has not advised the Customer of Excess Survey Fees, the customer may not terminate the EFM order without incurring ETF’s.
- 5.5. In the event that Hosts Unlimited confirms a requirement to apply Excess Survey Fees to the Customer’s EFM order above the value of £100 per copper connection, the Customer will be required to provide written notification of their acceptance of the Excess Survey Fees during the OCP. Until such point where the Customer provides written notification, the EFM order shall be suspended for the OCP. Should no confirmation of the Customer’s intent to accept the Excess Survey Fees be received within the OCP, Hosts Unlimited shall accept such tacit response as the Customer’s intent to cancel the EFM order. Should the Customer cancel the EFM order during the OCP no ETF’s shall be incurred. **FOR THE AVOIDANCE OF DOUBT, CANCELLATION OF THE EFM SERVICE DOES NOT INCLUDE CANCELLATION OF ANY OTHER ITEMS INCLUDED WITHIN THE APPLICABLE SOF.** Should the Customer wish to proceed with the EFM Service after the OCP, the order will be subject to a new quotation and Site Survey.

### 6. Estimated Delivery Dates

- 6.1. EFM Service delivery dates are subject to that of the Provider. Hosts Unlimited shall use all reasonable efforts to advise the Customer as to any amendments to the estimated delivery date but accepts no liability for any delay or postponement for the provision of EFM Services.
- 6.2. Any estimated delivery dates provided by Hosts Unlimited in relation to the EFM Service shall commence upon completion of the Site Survey, where applicable acceptance by the Customer of the Excess Survey Fees and completion of wayleave authorisation.

## 7. Wayleave

- 7.1. The Customer hereby irrevocably gives permission to Hosts Unlimited and its employees, agents or contractors with reasonable notice at such times to:
  - 7.1.1. Execute any works on the Termination Site(s) for, or in connection with, the installation, maintenance, adjustment, repair, alteration, moving, replacement, renewal or removal of the Service Equipment; and
  - 7.1.2. keep and operate the Service Equipment installed on, under or over the Property; and
  - 7.1.3. enter the Property to inspect any of the Service Equipment kept on, under or over the Property or elsewhere for the purpose of the EFM Service delivery.
- 7.2. Hosts Unlimited agrees with the Customer to cause as little disturbance, damage and inconvenience as reasonably possible when exercising any of its rights under this permission
- 7.3. The Customer agrees not to do or allow anything to be done to the Property that may cause damage to, or interfere with, the Service Equipment or prevent reasonable access to it.
- 7.4. The Customer warrants that:
  - 7.3.1 it is the current occupier of the Termination Site; and
  - 7.3.2 that its occupancy of the Termination Site does not expire prior to the end of the Initial Term (and if a SOF is renewed, any Subsequent Term); and
  - 7.3.3 the Customer shall procure and/or continue, throughout the term of this Agreement, all site related permissions and approvals necessary for Hosts Unlimited to deliver, install and maintain the Equipment for the provision of the Ethernet Services and Connection(s).

## 8 Service Suspension

- 8.1 Pursuant of Clauses 12 and 12.2 the Customer shall have 7 days to comply with any reasonable request provided by Hosts Unlimited in writing to the Customer. Failure to adhere to this Clause 8.1 shall result in a suspension of Service.
- 8.2 The Customer shall strictly adhere to both the Master AUP and the EFM AUP. Failure to adhere to this Clause 8.2 shall result in a suspension of Service.

## 9 Maintenance

- 9.1 If the Customer detects any defect or impairment in the operation or performance of the EFM Service delivery, it shall notify Hosts Unlimited of the nature of such defect or impairment. Hosts Unlimited shall respond in accordance to the SLA after such notification and shall make the necessary corrections to the Service or Service Equipment in accordance with the SLA.
- 9.2 If Hosts Unlimited detects any defect or impairment in the operation or performance of the Customer Equipment, it shall notify the Customer of the nature of such defect or impairment. The Customer shall follow Hosts Unlimited's reasonable instructions to amend the defect or impairment.
- 9.3 Hosts Unlimited will be entitled to charge the Customer and the Customer will pay Fees at Hosts Unlimited's then current reasonable charging rates to the extent that the need for any maintenance results from any one or more of the following:
  - 9.3.1 misuse or neglect of, or accidental or willful damage to the Service Equipment or facility where such misuse, neglect or damage occurs as a result of Customer action in inaction; or
  - 9.3.2 failure by the Customer to comply with any of the provisions of this Agreement;
  - 9.3.3 PROVIDED THAT, in the case of any event referred to in Clause 9.2, Hosts Unlimited shall have given the Customer reasonable written notice of its intention to charge such Fee.

- 9.4 If a Customer prevents or delays the performance of maintenance due to the Customer's action or inaction, Hosts Unlimited shall have the right to charge to the Customer all reasonable costs incurred by such delay or prevention.
- 9.5 Hosts Unlimited may suspend the Service from time to time for necessary technical reasons and (including without limitation, Service Equipment upgrades or Service degradation mitigation) without invalidating its SLA provided that 3 days' notice is provided and the period of suspension does not exceed more than 1 hour.
- 9.6 Hosts Unlimited may suspend the Service from time to time for necessary technical reasons and (including without limitation, Service Equipment upgrades or Service degradation mitigation) without invalidating its SLA provided that 5 days' notice is provided and the period of suspension, although potentially greater than 1 hour, does not become unreasonable.
- 9.7 Hosts Unlimited may suspend the Service with immediate effect and without prior notification in the unlikely event of an emergency. Any emergency maintenance shall only be performed if Hosts Unlimited, acting in good faith and using Best Industry Practice, establishes an immediate danger to any of the following:
- 9.7.1 the Customer or its employees, any Hosts Unlimited employee or any third party; or
  - 9.7.2 Customer Equipment or Service Equipment; or
  - 9.7.3 a Colocation facility (inclusive of any related facility equipment); or
  - 9.7.4 a Force Majeure Event.

## 10 Service Outages and Excused Outages

- 10.1 In the event that Hosts Unlimited is required to suspend a Service for the reasons described under Clause 8 and Clause 10.4, such period shall be deemed as an Excused Outage.
- 10.2 In the event that Hosts Unlimited is required to suspend the Service for the reasons described under Clauses 9.5, 9.6 or 9.7, such period shall be deemed as an Excused Outage under the proviso that Hosts Unlimited shall endeavor to use all reasonable opportunities to mitigate any downtime that the Customer may experience.
- 10.3 Should the Customer suffer a failure of Service delivery which is attributable in part or solely due to the actions or inactions of the Customer, the period shall be deemed as an Excused Outage.
- 10.4 Hosts Unlimited shall not be liable for any Service Outages outside of its reasonable control (including without limitation, fibre cuts, acts or omissions of the Provider, unless specifically included within the Provider's SLA to Hosts Unlimited).

## 11 Termination of Services

- 11.1 The Termination Notice Period for any EFM Service is no less than 90 days prior to the end of the Initial Term or any Subsequent Term.
- 11.2 Should either Party wish to terminate a EFM Service it must provide written notification of its intent to the other Party. Such notification must be provided in accordance with Clause 11.1.
- 11.3 If neither Party provides notice to the other of its intent to terminate the EFM Service in accordance with Clause 11.1, it shall be accepted as a tacit response on behalf of both Parties of their intent to extend the Service Term by a minimum of the Subsequent Term.
- 11.4 Upon notice of termination of the EFM Service, Hosts Unlimited shall issue to the Customer a final invoice for all outstanding amounts. The Customer shall make immediate payment of the invoice.

## 12 Miscellaneous

- 12.1 The Customer warrants that it shall ensure that any Customer Equipment connected to the Service Equipment or the Hosts Unlimited network shall comply with all relevant legislation, standards and license requirements and shall be in good working order and suitable for the purposes for which it will be used in relation to Hosts Unlimited Services. Hosts Unlimited reserves the right to disconnect any Customer Equipment which is not compliant with any legal or regulatory requirements or is liable to cause death or personal injury or to cause damage to or to

impair the Service Equipment. The Customer shall indemnify, defend and hold Hosts Unlimited harmless from any liability incurred as a result of its failure to comply with this Clause 12.

12.2 The Customer warrants and undertakes that it:

12.2.1 Shall locate any Service Equipment in accordance with Hosts Unlimited's reasonable instructions as may be given from time to time;

12.2.2 shall not move, modify, relocate or in any way interfere with the Service Equipment;

12.2.3 shall not cause the Service Equipment to be repaired, serviced or otherwise attended to except by an authorised representative of Hosts Unlimited;

12.2.4 shall not remove, tamper with or obliterate any words or labels on the Service Equipment;

12.2.5 shall not create or allow any charges, liens, pledges or other encumbrances whatsoever to be placed on the Service Equipment. Title to the Service Equipment shall at all times belong and remain with Hosts Unlimited or the relevant Hosts Unlimited Affiliate;

12.2.6 shall not use the Service Equipment except in accordance with such reasonable written instructions, as Hosts Unlimited may from time to time give;

12.2.7 shall not dispose of the Service Equipment other than in accordance with Hosts Unlimited's written instructions or authorisation;

12.2.8 shall not use Service Equipment beyond the capacity that it has been provided under the SOF or supporting documentation.

12.3 The Customer shall ensure that it provides all relevant contact details requested under the Customer Information Form.

12.4 The Customer shall grant or shall procure the grant to Hosts Unlimited of all licenses, waivers or consents necessary to permit Hosts Unlimited to install or setup the Customer's EFM Service which may require access to the Customer Equipment.

12.5 The Customer shall provide to Hosts Unlimited all reasonable information required for Hosts Unlimited to perform its obligations under this Agreement. The Customer shall ensure that any information that is given to Hosts Unlimited is accurate in all material respects.

### 13 IP Addresses

13.1 Hosts Unlimited may assign to the Customer IP addresses as part of the provision of Services. Such IP addresses shall (upon Hosts Unlimited's request and to the extent permitted by law) revert to Hosts Unlimited after termination of the Customer's Service, whereupon the Customer shall cease using such addresses. At any time after such termination, Hosts Unlimited may re-assign such addresses to another user or Customer.

13.2 All IP addresses requested by the Customer shall be accompanied with a Ripe IP Justification Form as provided by Hosts Unlimited from time to time.

13.3 In the event that the Customer wishes to use their own PI space, the Customer shall advise the Hosts Unlimited in writing and Hosts Unlimited shall route accordingly. If the Customer utilises its own PI space, it shall retain ownership of the PI space until such point where it is surrendered by the Customer.

13.4 Should the Customer require an advance routing facility, Hosts Unlimited reserves the right to charge for such facility and advise the customer accordingly.

## Annex A – EFM SLA

### 1 Overview

- 1.1 This Service applicable SLA provides details of Hosts Unlimited’s estimated response times and Service Credits in relation to Service Outages.

### 2 Responses Times

- 2.1 Hosts Unlimited shall use all reasonable endeavours to respond to Customer reported issues according to the SLA set out below:

|     | Priority | Problem   | Response Time (Office Hours) | Response Times (Outside office Hours) |
|-----|----------|---|------------------------------|---------------------------------------|
| EFM | 1        | Complete loss of connectivity - unable to send and/or receive traffic | 30 Mins                      | 3 Hours                               |
|     | 2        | Irregular/high packet loss or increased latency                       | 1 Hour                       | N/A                                   |
|     | 3        | Limited, destination-specific packet loss or Irregular/high latency   | 12 hours                     | N/A                                   |
|     | 4        | IP-related configuration change request                               | 24 Hours                     | N/A                                   |

\* A response shall be deemed as an appropriate person with the relevant skills and tools to evaluate the problem and commence the process of taking remedial action.

- 2.2 In the event that a Customer raises a ticket erroneously Hosts Unlimited reserves the right to charge the Customer in accordance to remote hand charges.

### 3 Service Outages

- 3.1 Where reasonably practicable, Hosts Unlimited shall endeavor to place a notification of a Service Outage on their website within 30 minutes of a Service Outage occurring.
- 3.2 In the event of a Service Outage, Hosts Unlimited shall use all reasonable endeavors to resume Service with the minimum delay.
- 3.3 In the event of a Service Outage, subject to Clause 10 of these EFM Services Terms & Conditions which forms part of the Agreement, the Customer shall be entitled to the Service Credits should Hosts Unlimited fail to adhere to the applicable SLA, as outlined within Clause 4 of this Annex A.

### 4 EFM SLA Service Credits

- 4.1 Hosts Unlimited provides transparent ‘like for like’ SLA’s as provided by the EFM Provider to Hosts Unlimited.
- 4.2 For the avoidance of doubt, Hosts Unlimited does not provide any further Service Credits in relation to EFM Services beyond that which is passed to Hosts Unlimited by the Provider of the EFM Service.



## **Annex B – EFM AUP**

- 1 The Customer shall, within a reasonable amount of time, comply with any reasonable request as requested by the Provider to Hosts Unlimited and in turn to the Customer by Hosts Unlimited. Any such request shall only be issued to the Customer if the request applies to the Customer, its end users use or management of the EFM Service. The request shall be of a reasonable nature and reflective of standard practice within the industry of similar EFM Services.

**Further information of the applicable EFM Service Provider's AUP can be provided upon request.**