

# DATASHARP HOSTED SERVICES

## Terms and Conditions for the Provision of Internet, Data Connectivity, MPLS & VPLS

This agreement, together with any order confirmation issued by Datasharp Hosted Services, represents the entire agreement between Datasharp Hosted Services and the Subscriber named on the order form for the provision of Data Connectivity, Managed CPE, Hosted Services and SIP Calls, unless otherwise agreed by both parties in writing. The subscriber hereby agrees that the agreement cannot be modified by its own terms and conditions of business. The agreement can be modified from time to time by the Service Provider via its On-line Billing Service at [www.datasharp.co.uk](http://www.datasharp.co.uk)

Datasharp Hosted Services is a trading style of Datasharp UK Ltd whose registered office is at Woodlands Court, Truro Business Park, Truro, Cornwall TR4 9NH, company number 1807741.

### 1. Definitions

- a) The meanings of various terms set out in the agreement are:
- b) **"Agreement"** shall mean this agreement and any other schedules or order forms used in the processing of a customer order.
- c) **"Allowances"** refers to any bundled (either limited or unlimited) services included as part of the monthly service charge.
- d) **"Billing Period"** shall be three (3) months;
- e) **"Broadband"** the provision of a Digital Subscriber Line (ADSL, SDSL, MPLS VPN Leased Line services, Ethernet)
- f) **"Calls"** the provision of IP capacity required for telephone calls
- g) **"Connection Date"** the date when the Service Provider agrees to commence the supply of the Service
- h) **"Subscriber Equipment"** any communications apparatus owned, hired or housed by the Subscriber
- i) **"Effective Delivery Date"** shall mean the date upon which the respective Service has been installed and delivered to the End User according to the conditions set forth in the respective Service Schedule in Schedule 3 of this agreement.
- j) **"End User"** The company, business or person specified on the order form
- k) **"EFM"** Datasharp Hosted Services Ethernet First Mile Service
- l) **"Fee(s)"** shall mean the fees payable by Reseller to Datasharp Hosted Services, as may be varied from time to time, calculated and payable in accordance with the terms of this Agreement which may include all or any of the following, the service fees, the onetime fees and support fees and as more particularly set out in the Order Form;
- m) **"Fibre"** Datasharp Hosted Services Fibre/Ethernet Service
- n) **"Hosted Services"** the provision of a centrally Hosted Services telephony service
- o) **"Initial Term"** shall be the term commitment stipulated on the Order Form;
- p) **"Internet"** shall mean the global network connecting a variety of information databases;
- q) **"IP"** Internet Protocol
- r) **"LAN"** Local Area Network
- s) **"Lines"** the telephone lines required to carry the Broadband service
- t) **"Minimum Period"** the period set out on the order form which must be at least 12 months
- u) **"MRC"** Monthly Rental Charge
- v) **"Network"** shall mean the Datasharp Hosted Services managed telecommunications network providing global Internet connectivity
- w) **"Order Form"** the subscriber order form setting out details of services required
- x) **"Service"** the provision of Internet, Data Connectivity, MPLS & VPLS, as set out on the order form
- y) **"Service Charge"** the monthly/quarterly charge for Service Rental
- z) **"Service Equipment"** the equipment relating to the service including routers and any other equipment supplied by the service provider for the service.
- aa) **"Service Level Requirements"** shall mean certain requirements in relation to the service level provided to Subscriber as specified in the Service Schedule (SLA);
- bb) **"Service Provider"** Datasharp Hosted Services, together with its employees and agents
- cc) **"SIP Trunking"** the connection and termination of calls through an IP infrastructure
- dd) **"Subscriber"** The company, business or person specified on the order form
- ee) **"VoIP"** Voice over Internet Protocol

"Datasharp Hosted Services Terms and Conditions" shall mean the Datasharp Hosted Services End User standard terms and conditions for the provision of the Service(s) as set out in the Order Form.

### 2. Provision of Data Connectivity

Datasharp Hosted Services shall provide Data Connectivity as set out on the Order Form from the connection date, subject to and on the terms of this agreement. Datasharp Hosted Services shall have the right to refuse to connect any customer.

### 3. Duration

The agreement shall come into force from the connection date, the minimum term of the agreement is set out on the order form. The agreement shall continue beyond the minimum period until either party to the agreement terminates the agreement as set out in Clause 15(a).

### 4. Conditions for the Use of Data Connectivity Services

The subscriber agrees to the following conditions of use:

- a) To allow access for a site survey appropriate to the services sold. To ensure that there is a line suitable for the Broadband service at each site, normally a single analogue line.
- b) The service is subject to a sufficient existing LAN infrastructure to support the services sold. Datasharp Hosted Services will not accept any responsibility for loss of service due to any fault as a result of LAN issues. It is the customer's responsibility to ensure Quality of Service mechanisms are in place within the LAN to ensure there is reduced impact on the voice quality.
- c) It is the responsibility of the customer to ensure that any passwords that may be used for accessing the Datasharp Hosted Services are kept secure at all times.
- d) Datasharp can only provide support on products and services that are supplied by Datasharp Hosted Services.
- e) To use the Datasharp Hosted Services in accordance with any terms and conditions notified by the Service Provider from time to time.
- f) Not to use the Data Services to communicate any material that is offensive, abusive, obscene, pornographic, menacing, or for hoax calls to the emergency services, nor to use the Connectivity Services for any fraudulent or otherwise criminal activity.
- g) To comply with all relevant legislation.
- h) To maintain all Service Equipment in good working order; which conforms to any standards for equipment set out by the Service Provider and/or by legislation.
- i) The Service Provider has the right to disconnect any Subscriber equipment that it has not approved, in particular where it may cause personal injury or death, or where it may damage or impair the operation of the Service.
- j) The Service Provider has the right to reasonable access to the Subscriber's premises where required for the performance of its duties.
- k) It is highly recommended that voice and data be separated as much as possible within the LAN environment, should this not be achieved support for quality issues will be reduced.
- l) Transmission performance of some metallic local loops will mean it is technically impracticable to provide service to all Subscribers within the Service Availability Area. Any usage allowance provided as part of a bundle must be used in month; any unused allowance does not roll over into next month or billing period and any unused allowance shall be forfeit.

### 5. Insurance

The End User shall be responsible for insuring any (if any) Reseller and/or supplier Equipment on the End User site against loss or damage from all risks, such insurance to be for an amount equal to the full replacement value of the Equipment. The End User shall be responsible for insuring themselves against all loss or damage to data. In no event will the Reseller or its suppliers be liable for loss or damage to the data stored/transmitted on/using the Service.

### 6. Support Cover

- a) Datasharp Hosted Services shall provide support at the installation address for the equipment and services shown on this agreement.
- b) Datasharp Hosted Services will use its reasonable endeavours to respond to fault reports received in normal working hours (9.00 am to 5.00pm), Monday to Friday, except Bank Holidays.
- c) Where out of normal office hours cover is applicable, technical support is available 24/7
- d) Datasharp Hosted Services will arrange for technical support to contact the customer and institute remedial action, where necessary, through remote interrogation, subject to connectivity.
- e) Technical support for the service is available by telephoning 01872 266644 or by sending email to [hosted.services@datasharp.co.uk](mailto:hosted.services@datasharp.co.uk).
- f) The following are not covered within this Agreement:
  - i. Cabling, wiring, or any other equipment not supplied under this agreement
  - ii. Maintenance required as a result of the customers' failure to follow instructions or recommendations issued by Datasharp Hosted Services, neglect or other misuse
  - iii. Support required as a result of repairs or modifications to the equipment not carried out by Datasharp Hosted Services

- iv. Support required as a result of damage caused by an Act of God, failures of electrical power, power surges, computer viruses or other reasons beyond Datasharp Hosted Services' control
- g) Where it is found that support is required as a result of i to iv in clause 6f above, Datasharp Hosted Services will charge the customer for any such work at Datasharp Hosted Services' normal published rates.
- h) Any degradation of service, both voice or user management that is likely to be caused by issues associated with the customer's supplied hardware and software will not be supported.

#### 7. Subscriber Obligations

- a) To allow the installation and use of the Service equipment at the Site, the subscriber will at the subscriber's own expense:
- b) Obtain all necessary consents, including consents for any necessary alterations to buildings;
  - i. take up or remove, any fitted or fixed floor coverings, ceiling tiles, suspended ceiling and partition covers, as Datasharp or BT advises are necessary, and carry out afterwards any making good or decorator's work required; and
  - ii. provide any electricity and connection points required by Datasharp;
  - iii. The criteria above must be completed in advance of any installation work.
- c) The Service equipment shall remain the property of Datasharp or the supplier of such equipment and the subscriber shall at all times make clear to third parties that the same is the property of Datasharp or a third-party supplier of such equipment. Datasharp may modify, substitute, renew or add to the Service equipment from time to time at its absolute discretion.
- d) Datasharp shall supply the subscriber with the relevant information to enable the subscriber suitably to prepare the Site for delivery and installation of the Service equipment. The subscriber shall at their own expense provide suitable accommodation, assistance, facilities and environmental conditions for the Service equipment and all necessary electrical and other installations and fittings.
- e) A secure electricity supply is required at the premises for the installation, operation and maintenance of the Service equipment at such points and with such connections as specified by Datasharp. Unless otherwise agreed, this power supply is to be provided by the subscriber. Datasharp shall not be responsible for interruption or failure of the Services caused by a failure of such power supply.
- f) The subscriber is responsible for the Service equipment and must not add to, modify or in any way interfere with it nor allow anyone else (other than someone authorised by Datasharp) to do so. The subscriber will be liable to Datasharp for any loss of or damage to the Service equipment, except where such loss or damage is due to fair wear and tear or is caused by Datasharp, or anyone acting on Datasharp's behalf.
- g) Any Subscriber Equipment connected to or used with the Service must be connected and used in accordance with any instructions, safety and security procedures applicable to the use of that equipment. Any equipment which is attached (directly or indirectly) to the Service must be technically compatible with the Service and approved for that purpose under any relevant legislation or telecommunications industry standards.
- h) To enable Datasharp to carry out its obligations under this Agreement, the subscriber will at all reasonable times provide Datasharp employees, and anyone acting on Datasharp's behalf, who produces a valid identity card, with access to any Site and any other premises outside of Datasharp's control. Datasharp will normally only require access during its usual working hours but may, on reasonable notice, require the subscriber to provide access at other times. Datasharp may agree to work outside its usual working hours, but the subscriber must pay Datasharp's additional charges for doing so as detailed in relevant terms and conditions and the Datasharp Price List.
- i) If through no fault of Datasharp, Datasharp is unable to carry out an installation at, or gain access to the Site or the installation is aborted, Datasharp will notify the subscriber Nominated Contact and may raise an abortive visit charge.
- j) Where this Agreement or the Service is terminated for any reason Datasharp will be entitled to enter the Site to remove Service equipment installed there.
- k) The subscriber undertakes:
  - i. to comply with all instructions Datasharp may notify to the subscriber for use of the Service equipment;
  - ii. not to allow the Service equipment to be repaired or maintained other than by an authorised representative of Datasharp;
  - iii. not to damage the Service equipment and not to add, modify or in any way interfere with the performance of the Service equipment;
  - iv. not to attempt to sell the Service equipment;
  - v. not to remove any identification mark affixed to the Service equipment showing that it is the property of Datasharp or other third-party supplier of such equipment.
- l) The subscriber shall be responsible for the repair and maintenance of any Subscriber Equipment used in order to obtain or use the Service.
- m) Service equipment must be returned to Datasharp or to Datasharp's Network Partners when the service has been cancelled. Datasharp will confirm the return or collection details during the cease process. If Service equipment is not returned, or if collection is not made possible, then charges may be applied to cover the cost of the Service equipment.

#### 8. Suspension of Services

The Service Provider has the right to suspend the provision of Datasharp Hosted Services and associated support cover, without notice and without compensation in the event of the following:

- a) The Subscriber is in serious breach of the terms of this agreement. Failure to pay the Service Provider by the due date is considered to be a serious breach of this agreement.
- b) The Service Provider believes that the Datasharp Hosted Services are being used fraudulently.
- c) The Service Provider believes that the Datasharp Hosted Services are being used for the purposes set out in section 4f above.
- d) The Service Provider is required to comply with an order, instruction or request from Central or Local Government, the emergency services or other relevant administrative body.

#### 9. Invoicing, Pricing and Payment

- a) The prices of Datasharp Hosted Services will be set out in the Service Provider's price list where a standard price is applicable. The price for MPLS IP VPN Leased Line and Ethernet Services will be quoted on the order form, but these prices are not guaranteed and will subject to amendment before the service is installed.
- b) The Service Provider has the right to amend the service charges from time to time, by giving no less than 30 days' notice. In particular, the Service Provider may at any time amend the charges where its own suppliers have increased their charges. Any change will be published on the online billing platform at <http://www.datasharp.co.uk/billing> or notified in writing by email or letter.
- c) The Service Provider has the right to amend any and all call rates in the price list including minimum call charge or call connection charge from time to time, by giving no less than 30 days' notice. Any changes will be published on the Service Providers Standard Call Price List at [www.datasharp.co.uk/billing](http://www.datasharp.co.uk/billing) or notified in writing by email or letter.
- d) The Service Provider may increase the monthly service charge each fiscal year based on the previous December rate of Inflation Measure RPI Published by Office of National Statistics.
- e) The Subscriber must access its invoices via Datasharp's online billing platform at [www.datasharp.co.uk/billing](http://www.datasharp.co.uk/billing) under special circumstances Datasharp Hosted Services can provide a printed bill at a cost of £5, as per our commitment to reducing paper usage and protecting our environment.
- f) Invoices must be paid within 14 days of the date of the invoice.
- g) At any time during this agreement, should the subscriber fail to settle an invoice by the date due, then the service provider reserves the right to restrict any and all services it provides to the subscriber. Should services be restricted in this way, the service provider will require the subscriber to immediately settle all outstanding invoices and to pay a bond equivalent of up to three months service charges and estimated call charges (including VAT) in order to remove any said restrictions. The call charges element of the bond will be calculated as an average of the last three months call charges invoiced to the subscriber's account. The service provider must be able to confirm receipt of payment for outstanding invoices and any applicable bond before service restrictions can be removed. Without payment of outstanding invoices as well as the bond, any restriction will not be removed.
- h) The Subscriber is advised to pay the invoices by Direct Debit, the Direct Debit will usually be taken between the 14th day and 30th day of each month.
- i) The Service Provider will charge a £30 administration charge each calendar month in which there is a late payment of an invoice. This is in addition to any late payment that attracts commercial debt interest or charges levied on any balances.
- j) The Service Provider shall be entitled to add debt collection charges and interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- k) The Subscriber agrees to pay the invoices in full without the set off of any amounts.
- l) Any promotional price agreed at the start for the provision of the service shall revert to the standard price as stipulated on the contract or as advertised once the promotional period has ended unless otherwise specified.

#### 10. Fair Use Policy

Datasharp Hosted Services shall enforce the Fair Use Policy, against its End Users and to act immediately to remedy any violation of the policy by an End User. Datasharp Hosted Services shall defend, and indemnify against any third-party claims arising out of or relating to any use of Datasharp Hosted Services' Services, including but not limited to claims resulting from use of the Services by End Users.

#### 11. Liability

- a) Datasharp Hosted Services liability in contract, tort or otherwise is limited to £5,000 in any one incident and £5,000 in total. This liability relates solely to the performance of Datasharp Hosted Services' obligations in the agreement.
- b) Datasharp Hosted Services shall not be liable to the Subscriber for any breach of any provision of this agreement caused by any reason outside of the control or responsibility of the Service Provider, including the failure of the Network Carrier to provide Network capacity, or the failure of any equipment supplied by any third party communications equipment operator to the Service Provider, on which it was reliant for the purpose of this agreement. The following are examples of reasons outside of the control of Datasharp Hosted Services; Act of God, failure or shortage of power supplies, internet failure, computer viruses, flood, drought, inclement weather, lightning strike, fire, strike or other labour dispute, any Act or omission of Central or Local Government.
- c) Datasharp Hosted Services shall not in any event be liable to the Subscriber or any third party for any indirect, consequential or incidental loss or other damages howsoever arising, or for any loss of revenue, cost savings or profit. The Subscriber shall indemnify Datasharp Hosted Services against any claims and expenses arising out of any situation.
- d) Datasharp Hosted Services shall not be liable to the Subscriber for any delay in either providing a Connection Date to the Subscriber or any other reason for delay in connection.
- e) Nothing in this agreement shall restrict Datasharp Hosted Services' liability for death or personal injury resulting from the negligence of the service provider or of its employees while performing their duties on behalf of Datasharp Hosted Services.
- f) The Subscriber shall indemnify Datasharp Hosted Services against all liabilities, claims, damages, losses and expenses arising from the use by the Subscriber of the Internet, Data Connectivity, MPLS & VPLS, in breach of this agreement.

- g) In the event of loss of service, due to issues beyond the control of Datasharp Hosted Services, such as LAN issues, Datasharp Hosted Services, Datasharp UK or other third-party partners shall not be liable.

#### 12. Hacking

It is the Subscribers responsibility to ensure the security of their telephone system and/or equipment.

#### 13. Warranties

The service will be provided without warranty or representation of any kind, whether express or implied, Datasharp Hosted Services disclaims and excludes all such warranties and representations including without limitation any warranty or representation that the service is free of defects, of satisfactory quality, fit for a particular purpose or non-infringing of third party rights. The Subscriber accepts all risks and liabilities associated with the use of the service.

#### 14. Assignment

- a) Datasharp Hosted Services may assign or delegate any rights under this agreement
- b) The Subscriber may only assign or delegate its rights or obligations under this agreement with the prior written consent of Datasharp Hosted Services.

#### 15. Termination

- a) Either party may terminate the agreement at the end of the initial term, by providing at least 90 days written notice to the other party. Where such notice is given the notice must be sent to the Service Provider either in writing or via email.
- b) This agreement may be terminated immediately by Datasharp Hosted Services either orally (followed by confirmation in writing) or in writing if there is a material or persistent breach of the terms of this agreement by the Subscriber. In cases where the Service Provider believes that the breach is capable of remedy then a period of 7 days may be given to remedy the breach.
- c) Datasharp Hosted Services may terminate the agreement immediately in the event that a receiver, liquidator or trustee in bankruptcy is appointed in respect of the Subscriber for the whole or part of the business, or where the Subscriber enters into an arrangement with its creditors, or where any proceedings to wind up the Subscriber have commenced.
- d) Datasharp Hosted Services may terminate this agreement immediately in the event that any licence required to operate is revoked, significantly amended or ceases to be valid.
- e) The Subscriber may cancel this agreement prior to the connection date by giving written notice, but will be required to pay any reasonable charges that the Service Provider has incurred to date, including any equipment and services purchased by the Service Provider before the cancellation date. This will include any cancellation penalty incurred by Datasharp from its own suppliers.
- f) Where the subscriber terminates this agreement before the end of the minimum contract period, the subscriber agrees to pay the Service Provider compensation equivalent to the whole of the Service Charge to the end of the minimum contract period.
- g) Upon termination or cancellation of this agreement by either party, the Service Provider will invoice all services to the termination date including any notice period. As per clause 9(f), invoices must be settled within 14 days from the date of the invoice to ensure continuity of service.

#### 16. Confidentiality

- a) 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 third party, except as required for the provision of the service or as required by Government bodies.
- b) This Clause 16a will not apply to:
  - i. any information, which has been, published other than through a breach in this Agreement;
  - ii. information lawfully in the possession of the recipient before the disclosure under this Agreement took place;
  - iii. information obtained from a third party who is free to disclose it; and
- c) This Clause 16a will remain in effect for 2 years after the termination of this Agreement.

#### 17. Data Protection

- a) Datasharp Hosted Services and the Subscriber each agree to comply with the respective obligations under applicable data protection legislation and maintain all relevant registrations, including (in relation to the Subscriber) such registrations and consents as the Subscriber should obtain and maintain to enable Datasharp Hosted Services to process personal data in connection with the performance by Datasharp Hosted Services of its obligations under this contract.
- b) The Subscriber agrees that Datasharp Hosted Services may put their name and other details obtained from the Order Form into a computerized directory for internal use and to enable Datasharp Hosted Services to provide the service.
- c) 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.
- d) Any and all data supplied by Subscribers is held in accordance with Datasharp Hosted Services' current Privacy Policy available at [www.datasharp.co.uk](http://www.datasharp.co.uk)

#### 18. Call Recording

- a) The parties acknowledge that Datasharp Hosted Services is acting as a 'data processor' (as defined in the Data Protection Act 1998) in respect of and in connection with any call recordings made and stored by the Service Provider, and/or the Subscriber using these services.
- b) Datasharp Hosted Services is the 'data controller' as defined in the Data Protection Act 1998 and warrants for personal data that Datasharp Hosted Services has in place now and will on a continuing basis take all appropriate technical and organizational measures against unauthorized and unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

#### 19. Legal

- a) This agreement shall be governed by and interpreted in accordance with English Law and the parties hereby submit to the jurisdiction of the English Courts.
- b) Implied Terms shall be excluded to the fullest extent permitted by law.
- c) Any Director or representative of the Subscriber will be deemed to be an authorised signatory and thereby guarantee the Subscriber's acceptance of its obligations under this agreement.
- d) Failure of either party to exercise or enforce any right within this agreement shall not be deemed to be a waiver of such right.
- e) The contract will not become binding until the Subscriber becomes connected.



#### The Direct Debit Guarantee

This guarantee is offered by all banks and building societies that accept instructions to pay Direct Debits.

If there are any changes to the amount, date or frequency of your Direct Debit, Datasharp Network Services will notify you ten working days in advance of your account being debited or as otherwise agreed. If you request Datasharp Network Services to collect a payment, confirmation of the amount and date will be given to you at the time of the request.

If an error is made in the payment of your Direct Debit, by Datasharp Network Services or your bank or building society, you are entitled to a full and immediate refund from your bank or building society.

-if you receive a refund you are not entitled to, you must pay it back when Datasharp Network Services asks you to.

You can cancel a Direct Debit at any time by simply contacting your bank or building society. Written confirmation maybe required. Please also notify us.

## DATASHARP HOSTED SERVICES

### Service Credits Document

Total Service Unavailability per Month	Credit
Less than 1 clock hour	0% of MRC
1-6 Clock Hours	5% of MRC
7-24 Clock Hours	10% of MRC
25 Clock Hours and above	20% of MRC

#### 1. SLA Credits

- In no event will SLA credits in any calendar month exceed 100% of the total MRCs payable by client for the service.
- As a condition of entitlement to SLA credits, the customer shall cooperate with Datasharp Hosted Services in addressing any reported service problems.
- SLA credits are applied only upon customer's written request, which must be submitted within 15 working days of a valid support call reporting the incident, and backed up by a reference number to support that claim. This can be submitted to the relevant Datasharp Hosted Services Department by 1st class recorded mail, or by email.
- All approved SLA credits claimed by a customer for a given month will be totalled and applied to the customers next invoice for the service, or as promptly thereafter as is practical in the event of a dispute.
- No SLAs apply to newly installed services or to service reconfigurations requested by customer, until 5 business days after:
  - The Service activation date
  - Completion of the service reconfiguration, as applicable
- The SLAs above apply only in respect of service that is provisioned on Datasharp Hosted Services' network and where applicable, to local access circuits provided by Datasharp Hosted Services (via third party providers). Service Credits will not be approved for network faults or Fibre issues outside of our control. See Section 2 for further detail.
- SLA Credits provided for in these terms and conditions are customer's exclusive remedy with respect to items covered in these terms and conditions.

#### 2. Exclusions

No SLA shall apply to the failure of the service to comply with an SLA, or to any period of service unavailability, caused, in whole or part, by any of the following:

- A Failure of customer's own premises equipment or equipment of a customer's vendor.
- A Failure in Local access facilities connecting the customer to Datasharp Hosted Services' network which are not provided by Datasharp Hosted Services.
- Force Majeure events as defined under the MSA
- Any act or omission of customer or any third party (including but not limited to, Customer's agents, contractors or vendors), including, but not limited to:
  - Failing to provide Datasharp Hosted Services adequate access to facilities testing
  - Failing to provide access to customer premises as reasonably required by Datasharp Hosted Services (or its agents) to enable Datasharp Hosted Services to comply with its obligations regarding service
  - Failing to take any remedial action in relation to a service as recommended by Datasharp Hosted Services, or otherwise preventing Datasharp Hosted Services from doing so, or
  - Any act or omission which causes Datasharp Hosted Services to be unable to meet any of the SLAs
- Customer's negligence or willful misconduct, which may include customer's failure to follow agreed upon procedures.
- Any scheduled maintenance periods when customer has been informed of such maintenance, and emergency maintenance.
- Disconnection or suspension of the service by Datasharp Hosted Services pursuant to a right to do so under the general terms and conditions or these terms and conditions
- Outage attributable to 'off-net circuits', that is:
  - Long haul domestic local access circuits in the USA, between a Datasharp Hosted Services POP and a customer premises which is in a different local access transport area (LATA) and/or
  - Long haul international local access circuits provided in countries in which Datasharp Hosted Services does not operate its own network and provides the service using the services of third-party providers

## DATASHARP HOSTED SERVICES ETHERNET SERVICES

### SERVICE LEVEL AGREEMENT

#### 1. Overview

Datasharp Hosted Services utilises Griffin and Virtual 1 infrastructures and services to provide the Service detailed on the Agreement and in the Service Level Agreement.

Griffin and Virtual 1 will hereby be known as 'the Network' for the purpose of the SLA (Service Level Agreement.)

The Network National Ethernet (NNE) is a national reach service.

National Ethernet Circuits provide data connectivity between sites, so organisations can experience the same network performance speed between remote UK locations as over a LAN infrastructure.

The product enables organisations to share enterprise-wide applications and provide access to corporate information consolidated at secure central locations.

Such distributed connectivity has traditionally been achieved through permanently connected Wide Area Networks. National Ethernet now presents a simpler and more cost-efficient alternative, which effectively connects geographically separated Local Area Networks with the same speed, convenience, reliability and low cost as if they were located at the same site.

The Access Circuit will always be specified as 10, 100 or 1000 Mbps dependent on the requested trunk bandwidth (CDR) data speed across the Network. Capacity across the Network will be between 2 and 1000 Mbps. The Service comprises one NTU at each Customer Site providing connection to the Network. The NTUs will be located on the Customer Sites (at the end locations specified in the Order) and the Customer will be presented with either RJ45 Copper interface for 10/100Mbps service or fibre SC/PC for 1000Mbps.

This Service Definition covers National Ethernet Circuits at the following speeds:

Access Circuit speeds at 10, to 100, to 1000Mbps, via fibre or Short Haul Data Service.

Trunk Bandwidth capacity options at 2, 4, 6, 8, 10, 20, 30, 40, 50, 60, 70, 80, 90, 100, 200, 300, 400, 500, 600, 700, 800, 900 and 1000 Mbps increments (to the limit of the tail capacity and connection speed).

Datasharp Hosted Services' Target Ready for Service Date is 65 Working Days following order acceptance, subject to the ordering provisions in the Agreement.

#### 2. Datasharp Hosted Services Fibre Ethernet (National Ethernet) features:

- Symmetrical, uncontended service delivery at RJ45 or standard fibre optic connections to familiar Ethernet technology
- Carrier class reliability and Quality of Service to MEF (Metro Ethernet Forum) guidelines
- SLA-assured service levels and response times
- Multi-Protocol Label Switching (MPLS) segregates customer data from other traffic passing across the Network Core

The key technical characteristics of the National Ethernet Circuit are shown below for each circuit capacity.

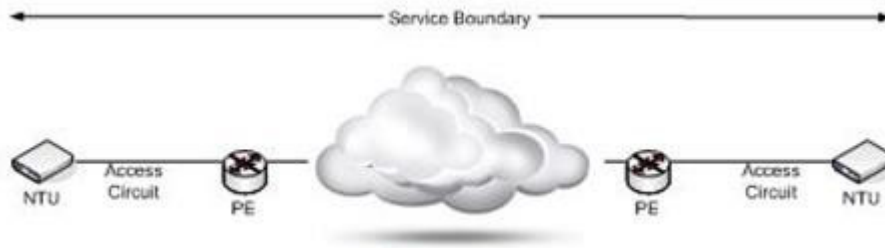
#### 3. Fibre Ethernet Speeds

- Speed – Access Circuits will always be specified as 10, 100 or 1000Mbps
- Delivery media – Fibre or Short Haul Data Service
- User Interface – Ethernet port on the NTU; Customer will be presented with either RJ45 Copper interface for 10/100Mbps service or fibre SC/ PC for 1000Mbps connections

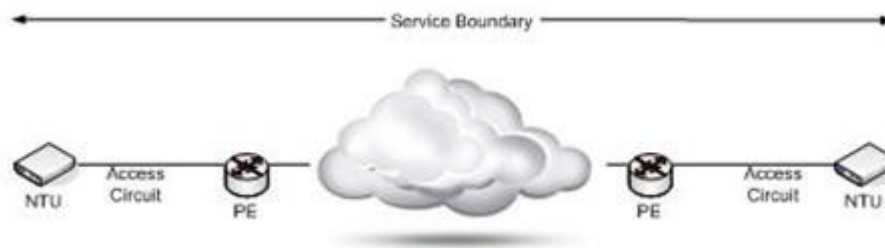
- d) Topology – Ethernet over Multiple Protocol Layer Switching (MPLS)
- e) Resilience – Single access to customer site; full resilience of LSP's (Label Switch Path) through the MPLS core

The diagrams below provide a high-level overview of point to point connection or, where multiple Sites require constant access to a central location, Multiple Point to Point (Hub and Spoke) connectivity.

**Point to Point Topology**



**Multiple Point to Point Topology**



**Fibre Ethernet Service Performance: Latency**

For National Ethernet Circuits, Latency means the time taken for an Ethernet frame to travel across the Network between the points of presence. The target for the Service is set at less than 15ms. Measurement of Latency is taken from a sample value from the Network and may be the average of more than one test result. No more than 1 in 1000 samples should exceed the target Latency under normal conditions, excluding periods of planned maintenance and outages however caused.

**Fibre Ethernet Service Performance: Jitter**

For National Ethernet Circuits, Jitter is measured by sending four test packets of 80 bytes (with 20ms spacing), every minute, 24 hours a day between points of presence with appropriate averaging. The target Jitter for the Service is set at less than 8ms. Any traffic exceeding the Customer's CDR will be discarded and not included in the Jitter measurement. Jitter is taken from a sample value from the Network and may be the average of more than one test result. No more than 1 in 1000 samples should exceed the target Jitter under normal conditions, excluding periods of planned maintenance and outages however caused.

**Fibre Ethernet Service Performance: Packet Delivery**

For National Ethernet Circuits, Packet Delivery is measured by sending four test packets of 80 bytes (with 20ms spacing), every minute, 24 hours a day between each of the Networks Routers with appropriate averaging. The target Packet Delivery for the Service is set at better than 99.9%. Any traffic exceeding the Customer's CDR will be discarded and not included in the Packet Delivery measurement.

**4. Fibre Ethernet Restrictions on Service**

National Ethernet Circuits are only available in areas where the Network has existing local access infrastructure, or the Network can use a Short Haul Data Service access

connection. The National Ethernet Service is a transparent LAN Extension Service and therefore the Network imposes no restrictions on applications or protocols run across the service.

All offers for the provision of National Ethernet are made subject to survey. On receipt of an Order Datasharp Hosted Services will carry out surveys and network capacity checks in order to validate its budgetary quotation and delivery timescale. In exceptional circumstances this may result in Datasharp Hosted Services' offer being modified or withdrawn.

**5. Fibre Ethernet Service Management and Reporting**

Datasharp Hosted Services provides service management tailored to each product including:

- a) Investigating unplanned Service outages
- b) Producing Major Incident Reports (MIR) and Reason for Outage Report
- c) Identifying fault trends and initiating corrective action
- d) Managing Planned Works
- e) Managing Service queries and requests from Customer
- f) Managing provision of Service reports

**6. Fibre Ethernet Fault Management**

When reporting a fault to Datasharp Hosted Services, the End User must provide:

- a) The Circuit ID (detailed in the handover documentation)
- b) Full end user details including organisation name, site contact person and site location
- c) Confirmation that the service has been used since service delivery and handover
- d) Has the equipment on site been checked
- e) A comprehensive description of the problem, when it occurred, and actions taken to resolve it
- f) Provide any error messages or diagnostic information including ping and trace route results where applicable

**7. Fibre Ethernet Service Level Targets**

Datasharp Hosted Services shall use reasonable endeavours to provide the Services throughout the term of the Agreement in a manner which meets or exceeds the service levels set out in this section.

For the purpose of these Service Levels, the Services shall be deemed to be Available in respect of any period where the Networks failure to meet the Service Levels results directly or indirectly from:

- a) a Force Majeure Event;
- b) any actions or inactions of End User (including, without limitation, requests for testing of the Service by End User although no Fault has been detected, requests for modifications, failure of End User Provided Apparatus, failure by End User to provide access to Service Equipment, failure by End User to operate the Services in accordance with this Agreement);
- c) Service misuse contrary to this Agreement;
- d) any planned outage;
- e) any Fault that is not reported to Datasharp Hosted Services;
- f) any reported period of non-Availability where Datasharp Hosted Services can find no Fault;
- g) any Fault that is due to User error; and
- h) Customer's failure to provide accurate forecasts if required in accordance with the Agreement.

#### 8. Fibre Ethernet Target Service Availability

For National Ethernet Circuits, the Network guarantees the end to end Availability for each Service to be at least 99.9%, in each 12-month period following the Ready for Service Date. For the purpose of calculating Availability, "Unavailable Time" means a period of time when there is a total break in transmission or where the bit error rate (BER) in each of ten consecutive seconds is worse than 1 x 10<sup>-3</sup>.

#### 9. Fibre Ethernet Service Restoration Time

The Target Repair Time for National Ethernet Circuits is 6 to 8 hours dependent on the carrier. Where the National Ethernet Circuit utilises a BT Short Haul Data Service and where the Fault is caused by a fibre break, the Target Repair Time is 50 hours.

### Datasharp Hosted Services EFM (Ethernet in the First Mile)

#### 1. Overview

Datasharp Hosted Services utilises Griffin and Virtual 1 infrastructures and services to provide the Service detailed on the Agreement and in the Service Level Agreement. Griffin and Virtual 1 will hereby be known as 'the Network' for the purpose of the SLA (Service Level Agreement.)

##### a) Service Description

Datasharp Hosted Services' EFM service is provided for End Users looking for an alternative solution to Leased Lines or SDSL. It is delivered over Ethernet in the First Mile (EFM) technology, is uncontended and offers a lead time of just 25 working days.

EFM is delivered over copper rather than fibre, and delivers a cost-effective alternative to fibre-based solutions (such as National Ethernet connections) for customers who need a quick installation or who may have problems with fibre access to their premises.

EFM can also provide an excellent backup to the National Ethernet product, delivering both copper and fibre access.

As EFM runs over copper the maximum distance from the exchange is about 4.5 kilometres after which degradation in the quality of service occurs. As the speed of the line is also distance dependent, the speed of two different EFM circuits (where a customer requires more bandwidth and/or resilience) to the same customer site may also differ, if the routes taken by the two circuits are geographically different.

#### 2. EFM Features

- Dedicated bandwidth: Uncontended copper access is provided at speeds of 2 Mb/s, 4 Mb/s, 6 Mb/s, 8 Mb/s, 10 Mb/s and then up to 45Mb in London and 20Mb nationwide.
- Fibre Ethernet technology: uses Ethernet in the First Mile (EFM) technology, which offers all the advantages of Ethernet without the disadvantages of fibre - such as Excess Construction Charges and longer lead times.
- Credible back-up service: The service can be used as a back-up to Fibre Ethernet
- Choice of access technologies: Customers can choose to have a pre-configured router or Wires Only.

#### 3. Fibre Ethernet Equipment

The End User must procure suitable secure accommodation, facilities, assistance and environmental conditions for any Network Terminating Equipment and the End User shall ensure that all necessary power supply, electrical and other fittings are in place and in working order. Datasharp Hosted Services will not be held responsible for any interruption or failure of the Fibre Ethernet Services caused by a power supply failure to the Network Terminating Equipment.

### Fibre Ethernet Service Level Agreement (SLA)

#### 4. Fibre Ethernet Performance Targets

Performance Targets (the following performance targets apply*: EFM Targets)			
Services	SLA Component		
	Latency (milliseconds)	Jitter (milliseconds)	Packet Loss (%)
Voice	50	20	0.05
Video	50	20	0.1
Mission Critical Data			0.2
Standard Class Data			0.4

\*UK Only

**Note 1:** Latency is defined as the average transmission time between one Customer Edge (CE) Router and another CE Router. Latency is calculated by averaging sample measurements taken during a calendar month between CE Routers.

**Note 2:** Jitter is defined as the variation or difference in the end-to-end delay between received packets of an IP or packet stream. Jitter is usually caused by imperfections in hardware or software optimization and varying traffic conditions and loading. Excessive delay variation in packet streams usually results in additional packet loss, which affects quality.

**Note 3:** Packet Loss (%) occurs when one or more packets of data travelling across a computer network fail to reach their destination. Packet loss is distinguished as one of the three main error types encountered in digital communications; the other two being bit error and spurious packets caused due to noise.

#### 5. Demarcation Points

Ethernet Access Connection

For Customer Premises without MCPE (Managed Customer Premises Equipment), the demarcation point is the WAN (Wide Area Network) or X21 interface of the NTE (Network Termination Equipment). For Customer Premises with MCPE the demarcation point is the Ethernet or X21 interface on the MCPE.

#### 6. EFM Network Availability

##### a) EFM Backbone Network Availability

The Network backbone has a 100% availability guarantee.

##### b) EFM Circuit Availability

Where the circuit from the customer premises to the point of presence was ordered by the Network, we will offer a 100% availability guarantee from the Network to the customer connection point on the Network provided CPE regardless of the provision by a third-party (e.g. BT). This guarantee excludes problems caused by power disruption at the customer premises or any customer device and associated cabling. This clause does NOT apply to transit customers, customers with circuit backup services such as ISDN/ADSL or alternate/bonded leased lines or where customer premises hardware has not been provided by the Network.

##### c) EFM Incident/Fault Resolution Targets

The Network shall use all reasonable endeavours to resolve incidents within the following timescales, measured from the time the Reseller incident report is received by the Network:

- In the event of an EFM (copper) circuit failure, and where the circuit from the customer premises to the Network point of presence was ordered by the Network, we will offer a 7 Business Hours return to service guarantee, regardless of the provision by a third-party, except where the underlying EFM circuits are provided by BT for which the Network offers a 24 hour return to service guarantee. This guarantee excludes problems caused by power disruption at the customer premises or the customer router and associated cabling. This clause does NOT apply to transit customers.

**Important Note 1:** It may be necessary to extend the above timescales due to the complexity of the incident or where the Network is dependent on a third party for resolution of the incident. In such circumstances, Datasharp Hosted Services shall use reasonable endeavours to eliminate or reduce the impact of the incident by provision of a workaround, with permanent correction to follow.

**Important Note 2:** This SLA does not cover faults which have been associated with physical cable breaks or vandalism within the Copper Local Loop Network. Estimated restoration of service will be communicated to the customer via the Datasharp Hosted Services Helpdesk. Approximate restoration of service will be 5-10 working days.

## Hosted Services Acceptable Use Policy

### 1. Introduction

This policy sets out the rules that apply when you use services provided by Datasharp Hosted Services

### 2. General

You must not use Hosted Services' services:

- a) for any unlawful purpose;
- b) to send, receive or store any material which is offensive, indecent, defamatory or menacing (as reasonably determined by Hosted Services); or
- c) to send, receive or store any material which infringes copyright, trademark or any other intellectual property law.

### 3. Email and Usenet News

You may not use any Hosted Services service to:

- a) send duplicative, unsolicited e-mail messages (commercial or otherwise), or to collect the responses from unsolicited email;
- b) send an offensive, indecent or harassing message to another user of the Internet, including any message which is offensive to people on the grounds of gender, race, colour or religion; or
- c) send messages for the purpose of fraud and/or with the intention of committing a criminal offence.

You must ensure that your use of mailboxes does not adversely affect the proper functioning of Hosted Services' systems, including where mailboxes:

- a) receive large volumes of undeliverable mail;
- b) have forwarders set to other mailboxes where mail cannot be delivered, or have forwarders or auto-responders that generate circular loops.

If you run a mailing list using our services, you should comply with Linx Current Best Practice. You are responsible for keeping records to show that each subscriber has given their consent to their inclusion on the mailing list.

You must not breach any guidelines or restrictions of any news group. The following are expressly prohibited:

- a) excessive cross-posting, posting of irrelevant material or advertisements;
- b) posting binaries to non-binary news groups.
- c) Web Hosting

If you have purchased Hosted Services hosting services which include unlimited web-space, this web-space may be used for any legitimate website content but must not be used to store backups, downloads, archives or other non-web based content. Streamed multimedia content such as audio and video is acceptable, but links to HTTP download of this content is prohibited. You must only use scripts to produce web-based content.

### 4. Internet Access

You must not use your Internet connection, or allow or enable another person to use your Internet connection, to:

- a) attempt network scan, denial of service attack or any other possible hacking activities;
- b) send any email that breaches section 2 of this policy.

You must not use our services to send data which has forged addresses, or which is deliberately constructed to adversely affect remote machines. You must not configure your PC as an open relay system. You must ensure that any system you connect to the Internet conforms to all applicable Internet Engineering Task Force (IETF) standards.

### 5. Servers

Where Hosted Services provides you with dedicated access to a server, you are responsible for the activities and security of the server. Where you have purchased security service from Hosted Services, Hosted Services shall only be responsible for the security measures described in your contract.

- a) Hosted Services may disconnect your server where:
- b) It is used to interfere or attempt to interfere with the service of others (including such use is result of virus infection);
- c) Hosted Services reasonably believes that the server has been compromised; or

Where there is a sudden increase in the server's use of network capacity which impacts other servers on the network.

### 6. Suspension and Termination

Your contract with Hosted Services requires you to comply with this Acceptable Use Policy. If you do not do so, Hosted Services may suspend or terminate your service. Hosted Services may run manual or automatic system tests (including scanning for open mail relays or unsecured proxy servers) to assess compliance.

Although Hosted Services reserves its right to immediately suspend or terminate services which have been used in breach of this policy, provided that the breach does not require immediate remedy, Hosted Services will usually contact you during business hours to inform you of the actions needed to resolve the issue before it suspends service. Otherwise, if urgent action is required, Hosted Services will contact you after suspension to advise what actions you need to take to rectify the situation. Restoration of any and all services suspended as a result of breach of this policy will be considered on a case-by-case basis. Hosted Services will not restore a service where there is history of similar misuse:

You are responsible for keeping your contact details with Hosted Services up to date. Where Hosted Services is unable to contact you at an address you have given, it will address any email correspondence to 'postmaster' at your domain address/es.

### 7. Internet Watch Foundation

Hosted Services abides by any 'notice and take down' recommendations communicated to Hosted Services by the Internet Watch Foundation.

### 8. Reports

Please send reports of any suspected breach of this Acceptable Use Policy to [hosted.services@datasharp.co.uk](mailto:hosted.services@datasharp.co.uk)