

DATE 1.11.14

**Magnet Business agrees to make available to the Customer the Facility described below on the following Terms and Conditions:**

**1. Definitions**

In this Agreement:

The Order Form, these Terms and Conditions and the Acceptable Use Policies constitute and set out the entire agreement (" the Agreement ") between the Customer and Magnet Business relating to the provision and where applicable the installation of the Facility. If there is any inconsistency between these documents they shall take precedence in that priority order.

**"ADSL Line"** means an asymmetric digital subscriber line.

**"Agreement"** means this agreement between Magnet Business and the Customer for the provision and where applicable for the installation of the Facility.

**"Call Recording"** means the recording of inbound and outbound telephone calls with the knowledge and consent of the caller.

**"Call Reporting"** means a downloadable CSV file outlining details of calls made and received on the Magnet Voice service and via the Magnet Total Portal..

**"Connection Charge"** means the once off non-recurring charge payable by the Customer for initial provision and where applicable installation of the Facility.

**"Content"** means data, information, video, graphics, sound, music, pictures, text, code, scripts, photographs, software and any other material (in whatever form) which may be made available as part of the Facility.

**"Copyright"** means any material or performance or recording as defined under the Copyright Act 1963, as amended;

**"Charges"** means rental, connection charge and any other charge payable by the Customer to Magnet Business hereunder.

**"Credit/Debit Card Machines"** means machines used to connect to the Customers' bank using a telephone line to facilitate debiting a credit or debit card of a customer.

**"Customer"** shall include any individual, partnership, firm, trust, body corporate or incorporate, government or government body, Licensor or agency and a reference to a person includes a reference to that person's successors and assigns with whom Magnet Business makes has made or is deemed to have made an agreement for the provision to such person of the facility and also means a person to whom such facility has been or is being provided.

**"Facility"** means the provision of any of the following services: broadband communications facilities, including whatever additional voice or other services which are provided by means of such facilities including a hosted telephone system (PBX) depending on the service contracted.

**"Initial Period of Service"** means twelve (12) or twenty-four (24) calendar months from the Ready for Service (RFS) date, dependent on duration of the contract. Magnet Business may from time to time make its services available on a promotional basis. These promotions will be subject to special conditions which amend these conditions and will be notified to the Customer with details of the promotion. Promotions may also be subject to qualifying conditions which the Customer will need to meet.

**"Kit"** means equipment comprising of, inter alia, hardware and software.

**"Magnet Business"** means Magnet Networks t/a Magnet Business of International Exchange Centre, Clonshaugh, Dublin 17, Ireland.

**"Magnet Business Broadband"** means the Facility.

**"Magnet Business Voice"** means the Facility.

**"NGA"** means next generation access broadband

**"Operator"** means any person authorised to provide an electronic communications network or electronic communications service pursuant to the European Communities (Electronic Communications Network and Services) (Authorisation) Regulations 2011 as amended;

**"Order Form"** means the relevant form of order or other such appropriate form for the facility issued by Magnet Business which the customer completes and communicates to Magnet Business.

**"PBX"** means private branch exchange which is a telephone exchange private and individual to each company.

**"Pack"** means the type of Facility chosen by the Customer comprising, inter alia, the phone system, minutes and broadband.

**"Premises"** means the location where the Facility is provided.

**"Ready for Service date"** otherwise "RFS date" means the date on which Magnet Business establishes the Facility for the Customer.

**"Rental"** is the recurring charge payable by the Customer to Magnet Business in respect of the Facility.

**"Welcome Letter"** means any letter supplied to the Customer with the Kit.

**"VoIP"** refers to Voice over IP (Internet Protocol) the protocol on which voice calls are carried on an IP network, including the Internet.

This Agreement supersedes and replaces all prior communications, drafts, contracts, representations, warranties, undertakings and agreements of whatever nature whether oral or written, between the parties to the Contract.

This Agreement shall be governed by and construed in accordance with Irish law.

The headings in this Agreement are for convenience only and shall not affect its interpretation.

The parties agree that the fact that this Agreement may be stored or exchanged in electronic form shall not affect its validity.

## **2. Facility**

2.1 The Customer hereby agrees to avail of the Facility subject to the provisions of the Telecommunications Scheme and Data Protection Acts 1988 – 2003 (DPA) (as amended) in force for the time being and the provisions of any legislation applicable thereto (all together hereinafter referred to as “the Regulations”).

2.2 The Customer acknowledges that they are a Data controller as defined under the DPA on purchasing the Facility and Magnet will process Data as directed by the Customer.

2.3 Magnet will delete all recorded calls within 7 days of the call first being recorded. The Customer is liable to download and retain a copy of that call in compliance with their obligations under the DPA.

## **3. Installation**

The Facility shall be provided either by way of Full-Install (the installation of the Facility at the Premises by a Magnet Business technician) or, by way of Self-Install (the provision of a Kit by Magnet Business to the Customer to enable the Customer to carry-out the installation itself).

## **4. Bundle Offers**

The Facility is or will be available in different levels of bundles. Each bundle has a particular level of content (e.g. minutes to national and international calls, minutes to mobile phones etc) and is governed by the Magnet Business Acceptable Usage Policy: The Customer shall select the bundle level it wishes to avail of and shall inform Magnet Business of its selection. The Customer agrees to be bound by the Acceptable Usage Policy. In the event that Customer usage represents excessive use of the Facility, Magnet Business may, without prejudice restrict usage or, request the Customer to select a bundle level more appropriate to its usage. In the event of the Customer refusing or neglecting to select an alternative bundle level of the Facility, Magnet Business may, upon due notice; terminate the provision of the Facility to the Customer.

## **5. Upgrade/Downgrade**

The Customer may upgrade during the Initial Period of Service or any subsequent contract periods. The Charges for the upgrade will be charged at the difference between current contract and upgrade pricing.

A Customer may downgrade the Facility once the first 6 months of their Initial Term has expired. The Customer shall be entitled to one downgrade in any three month period and Magnet Business requires 30 days notice of such downgrade.

## **6. Emergency Calls**

**Emergency calls to 112, 911 and 999 will be directed to the emergency services but no guarantee can be made about the reliability of these calls. Customers should especially be aware that power outages are likely to render computer equipment and internet connectivity non-functional and therefore preclude use of the service for emergency calls.**

## **7. Ancillary Services**

Ancillary Services means services such as credit/debit card machines and fax machines and monitored alarms. The Customer must inform Magnet Business that the Customer has such ancillary services. Magnet Business cannot guarantee that these services will continue to work if Magnet Business has not been informed that the Customer is utilizing these ancillary services at ordering.

## **8. Contract Period**

8.1 This Agreement shall commence on the Ready for Service date and shall be for the Initial Period and shall continue thereafter on the same terms and conditions for successive periods (each, an "**Extended Period**") of twelve (12) months (the Initial Period and the total number of Extended Periods together comprising the "**Term**"). This Agreement may be terminated after the Initial Period of Service or any Extended periods by giving Magnet Business not less than thirty (30) days written notice. If a Customer wishes to end this Agreement before the end of the Initial Period of Service, Magnet Business shall be entitled to charge the Customer fees which would have been payable by the Customer for the balance of the Initial Period of Service.

8.2 Once the Facility is activated irrespective of whether the Customer has implemented internal structures to utilise the Facility, the Customer shall be invoiced within 30 days of Ready for Service date.

8.3 If Magnet Business fails to begin invoicing as outlined in 8.2, nothing precludes Magnet Business from back invoicing from the RFS date.

## **9. Pre- Ready for Service.**

9.1 The Customer may cancel the order for the Facility within 5 days of the order being accepted by Magnet Business. In the event of such cancellation by the Customer it shall be obliged to pay a cancellation cost which reflects the costs incurred by Magnet Business in the provision of the Facility to meet the RFS date. The Customer shall also be obliged to return any loan equipment which may have been provided to it by Magnet Business. Any equipment shall be returned to Magnet Business at International Exchange Centre, Clonsaugh, Dublin 17, Ireland. In the event of any equipment not being returned to Magnet Business within ten (10) days of the cancellation of the Order for the Facility, the Customer shall be charged by Magnet Business and shall pay to Magnet Business such sum as agreed as being the charge payable in respect of the non-return of any Kit.

9.2 If the Customer cancels scheduled porting or scheduled engineer visits the Customer shall be obliged to pay €100 during the installation period (prior to the RFS date).

## **10. Cancellation**

10.1 Once the Initial Period of Service and any subsequent contract periods is over, The Facility may be cancelled by providing Magnet Business with one (1) month's notice in writing at any time. Please email [cancellations@magnetbusiness.ie](mailto:cancellations@magnetbusiness.ie). Termination requests over the telephone, by fax, or letter are not accepted, only email is accepted.

10.2 If the contract is terminated during the Initial Period of Service or any subsequent contract term Magnet Business will invoice the Customer the rental charge for the remaining months in the contract.

10.3 If a porting request is received from another operator this shall be treated as a terminating event and the Customer shall be liable for any outstanding charges for the contract term.

## **11. Faults**

If a fault or degradation of the service occurs Magnet Business must be contacted immediately. A credit shall not be given until Magnet Business is satisfied that there is a fault on their network. A credit will only be given from the date the fault is logged until the date that it is resolved. All credits are outlined in our Service Level Agreement on our website.

## **12. Ordering**

12.1 The Customer agrees to provide Magnet Business and its agents with all such information and cooperation including, inter alia, suitable Premises, equipment and services as Magnet Business may reasonably require from time to time enabling it to provide the Facility. Magnet Business may, in its absolute discretion, refuse to provide the Facility where such information or co-operation is not furnished by the Customer.

12.2 On the placing of the order for the Facility, the Customer shall be provided with:

(a) the RFS Date by Magnet Business;

(b) where the Customer so requests Magnet Business shall provide it with the use of an ADSL/NGA or other modem for the duration of this Agreement to facilitate connection to the Facility.

(c) where the Customer requests the Facility by way of Self-Install Magnet Business shall provide a Kit to enable the Customer to carry-out the installation itself;

## **13. Usage Policy**

The customer has read and understands the Fair Usage Policy (FUP) and understands that the FUP may be revised from time to time. The Facility may only be used by Customers in accordance with Magnet Business's FUP available at <https://www.magnetnetworks.com/downloads/Fair-Acceptable-Usage-Policy.pdf>

## **14. Charges/Pre-Billing Report**

14.1 If a customer does not respond within 10 days on receipt of the pre-billing report silence is deemed to have accepted such report.

14.2 The Customer agrees that without prejudice to the Customer's right to terminate this Agreement under due notice, to pay on demand such Charges as may be fixed from time to time by or by agreement in respect of the Facility.

14.3 Should the Customer disagree with any Charges shown on their bill the Customer is requested to write or phone Magnet Business before the date that payment is due highlighting the Charges that the Customer is querying; all other Charges will remain due at the payment date. If the Charges that the Customer has highlighted are incorrect then we will apply a credit to the Customer's account in respect of any incorrect Charges; if an amount remains outstanding we will advise the Customer of the amount and the new payment date. Unless a credit is issued the full amount remains due.

14.4 Magnet Business reserves the right to increase or decrease our fixed charges and/ or introduce new fixed charges from time to time. If we increase any of our fixed charges or introduce new fixed charges, we will give the Customer twenty one (21) days prior notice.

14.5 Magnet Business will invoice all monthly recurring Charges monthly in advance and all nonrecurring and usage based Charges monthly in arrears, payable within twenty one (21) days of the invoice date by direct debit or electronic funds transfer;

14.6 If a Customer has an enquiry in relation to the Charges they must contact Magnet Business within 21 days of the date of invoice. Magnet Business will not credit a customer who does not notify Magnet Business within 15 days of their issue arising.

14.7 Magnet Business will send all bills and notices for Services to the billing address supplied and the Customer should send any notice to the Magnet Business address indicated on our invoice. The Customer must inform Magnet Business immediately of any change in their billing address. Magnet Business allow 48 hours for all bills and notices to arrive through the post. The customer agrees that after 48 hours Magnet Business can assume that the Customer has received the bill or notice. With the Customer's consent, Magnet Business may be able to send bills and notices by e-mail.

14.8 Magnet Business reserve the right to assign all payments received or credits against the oldest invoice on the Customer's account.

14.9 The Customer must settle their account by the payment due date. Failure to pay within these terms may result in a charge being levied against your account.

## **15. Termination/Suspension**

15.1 This Agreement may be suspended or terminated by Magnet Business for breach of its terms, payments overdue by 15 days or greater or, otherwise in accordance with the Regulations.

15.2 Subject to the provisions of clause 15.3, this Agreement may be terminated by either party on one month's written notice to the other.

15.3 If the Customer terminates this Agreement during the Initial Period, Magnet Business may, without prejudice to its rights treat the termination as a breach or repudiation of this Agreement, agree to accept such termination provided notice of such termination is addressed to Magnet Business and the Customer agrees to pay to Magnet Business as a termination charge, such sum as represents the remaining Rental due for the Initial Period plus the disconnection charges as per clause 10.

15.4 On termination of this Agreement for whatever reason, the Customer shall return to Magnet Business within fourteen (14) days of such termination any loan equipment, the use of which may have been supplied to it pursuant to clause 8.2 by Magnet Business as part of the Facility. In the event of failure by the Customer to return such loan equipment it shall become liable to pay to Magnet Business the total cost of the equipment which the Customer has failed to return.

15.5 If the Customer is suspended no activity may take place on their account such as porting number to other networks, upgrading of services. The suspension will be revoked once all invoices are paid.

## **16. Porting**

16.1 Where this Agreement is terminated by the Customer for the purposes of availing of Bitstream Port Transfer or any number port transfer, the transfer to another authorised operator shall not come into effect until such time as the Customer has paid to Magnet Business all Charges due and owing, up to the date of termination together with all Charges arising from such termination as set out in this clause 15.

16.2 Transferring to another authorised operator can only be facilitated where Magnet Business have a Number Porting Agreement in place with the relevant service provider.

Provision of the Facility may result in temporary loss of telephone Service to the Customer during the period in which initial installation of the Facility is taking place.

16.3 Subject to Clause 19.1 Magnet Business warrants that the Facility will be provided with due care skill and diligence and any materials used will be sound and reasonably fit for the purpose for which they are required.

16.4 Magnet Business does not warrant that the Facility will meet the Customer's requirements or that the operation of the Facility will be uninterrupted or error-free.

16.5 If another authorized operator requests a port out for a Magnet Business customer under EU Directive 2009/136/EC in one day, Magnet Business has no liability if the numbers ported fail or do not work once ported out of the Magnet Business network, otherwise a delayed port will take place.

## **17. Network Maintenance**

17.1 The Customer agrees that from time to time it may be necessary for Magnet Business to temporarily suspend the Facility during periods of repair, essential maintenance or alteration or improvement to Magnet Business's telecommunications network or otherwise in accordance with the law. Where possible Magnet Business will give the Customer notice prior to such suspension of the Facility and Magnet Business shall restore the Facility as soon as possible after such suspension.

## **18. Broadband Speeds**

Broadband speed is subject to availability and line quality. If the line cannot support the download speed requested, Magnet Business will offer the Customer the best available speed that the line supports and downgrade the contract to reflect the speed the Customer is able to achieve. Magnet Business will not actively monitor lines and The Customer must inform Magnet Business of the degradation of the speed once noticed. Once the degradation is reported and confirmed by Magnet Business, the Customer's speed will be amended to the best available speed that the line supports from the date the degradation was reported.

## **19. Liability**

19.1 If Magnet Business is in breach of any express or implied obligation its liability shall be limited to:

- a) Correcting the relevant fault, at its own expense; or
- b) At the option of Magnet Business, reimbursement of the price of the Facility in question;

19.2 Magnet Business shall have no further liability to the Customer in contract, tort or otherwise including any liability for negligence or breach of duty whether occasioned by the negligence of Magnet Business, its employees, agents or otherwise, in respect of the following:

- (i) any loss of revenue, business, contracts, Anticipated Savings, or profits; or
- (ii) any loss or corruption of data or software configuration; or
- (iii) any indirect, consequential, special, incidental or punitive loss, including loss of profit or cost of provision of substitute facility howsoever arising.

"Anticipated Savings" means any expense, which the Customer expects to avoid incurring or to incur in a lesser amount than would otherwise have been the case by reason of using the Facility.

19.3 In so far as the same is permissible by law, Magnet Business shall not be liable in contract, tort or otherwise for any loss, injury or damage, arising directly from:

- a) any act, omission, error, default, failure or delay in respect of the provision, installation, operation, maintenance or termination of the Facility;
- (b) any failure of the Facility;
- (c) any failure of, or defect in, anything provided as a part of or in association with the Facility.

19.4 Nothing in these conditions of service shall exclude or limit the liability of Magnet Business for death or personal injury resulting from the negligence of Magnet Business or any of its employees or agents, nor shall they operate to exclude or limit any statutory rights which cannot be legally excluded or limited, including the statutory rights of a consumer.

19.5 In no event shall Magnet Business be liable to the Customer for damage suffered by the Customer as a consequence of acts or omissions of third parties. The Customer acknowledges that it accesses the Internet at its own risk and that Magnet Business has no responsibility for any goods, services, information, software or other materials accessed by the Customer whilst using the Facility

19.6 In no event shall Magnet Business be liable if the Customer fails to inform Magnet Business of a up-to-date VAT13B details or not informing Magnet Business of change of business formation to customer limited by shares.

## **20. Indemnity**

The Customer shall indemnify Magnet Business against all claims made against Magnet Business, for loss, damage or injury to any person or property occasioned by or arising from the use of the Facility by the Customer, or the failure by the Customer to acquire appropriate licenses or agreements to use Copyright material, including copyright existing within on-call services.

## **21. Defects/Faults**

The Customer shall notify Magnet Business as soon as possible after a defect, fault or impairment in the operation of the Facility is detected and Magnet Business shall endeavour to attend as soon as practicable during normal business hours to the fault at the Premises or at whichever location Magnet Business considers the reported fault to be located.

## **22. Security**

21.1 Magnet Business may provide the Customer with PIN numbers, passwords or other security measures in connection with access to the Facilities. These must be changed immediately on receipt to ensure security of the Facility. These passwords should be changed regularly to ensure continued security of the Facility. Magnet Business is not responsible or liable for the Customer's PBX and it is the responsibility of the Customer to ensure that it is secure. The Customer will be liable for all call charges during any un-lawful access.

21.2 If the Customer suspects that any security access codes / passwords have become known to an un-authorised person, the Customer must inform Magnet Business immediately

## **22. Force Majeure**

22.1 Magnet Business reserves the right to charge the Customer reasonable costs and expenses incurred by Magnet Business in providing maintenance services where the need for maintenance services results from any one of or a combination of the following:

- (i) acts of God, lightning, electric voltages and currents impressed on the telecommunications line by lightning or otherwise, fires, floods, storms or other catastrophes; or
- (ii) government control, restrictions or prohibitions; or
- (iii) any other act or omission of any public authority (including Government) whether local, national or international; or associated with any telecommunications systems other than that of Magnet Business ; or
- (iv) the wilful or negligent act or default of the Customer or of any supplier, agent of the Customer; or
- (v) failure of the Customer to comply with any of the provisions of this Agreement; or
- (vi) fault in or other problem; or
- (vii) any other cause whatsoever which is beyond the reasonable control of Magnet Business;

## **23. Miscellaneous**

23.1 Magnet Business reserves the right to alter these terms and conditions without notice being given to the Customer except where the alteration is a material change to the terms. The Customer shall be free to dissolve the contract upon receipt of altered terms and conditions by giving Magnet Business 30 days notice within the 30 days notice period of Terms and Conditions altering.

23.2 The Customer may not transfer or try to transfer the Service or any of their rights and responsibilities under these Conditions. Magnet Business may transfer any of their rights and responsibilities without the Customer's permission, except where this would result in a lesser Service to the Customer.

23.3 Magnet Business can record any conversations between The Customer and Magnet Business staff for training or validation purposes.

23.4 Magnet Business rights, remedies and powers under these Conditions are cumulative and will not exclude us from any other right, remedy or power at any time.

23.5 If a clause or condition of these Conditions is not legally effective, the remainder of these Conditions shall be effective. Magnet Business can replace any Condition that is not legally effective with a Condition of similar meaning that is.

23.6 Magnet Business may use credit reference agencies to help make credit decisions or for fraud protection. The Customer agrees that Magnet Business may register information about the Customer and the conduct of their Account with any credit

reference agency and that any such credit reference agency may make decisions solely by automated means. For the purpose of fraud prevention, debt collection and credit management, information about the Customer and the conduct of their Account may be disclosed to debt collection agencies, security agencies, financial institutions or other phone companies. The Customer also agrees that we can do those things that are permitted from time to time under our registration under current data protection legislation.

23.7 The Facility is provided in accordance with the relevant product description in the Regulations. The Customer acknowledges that the relevant product description may contain limitations and constraints on the use of the Facility. The customer agrees and undertakes to adhere to these constraints and restrictions.

23.8 The Facility is provided solely for the Customer's own use and the Customer shall not resell the Facility (or any part of the Facility) to any third party.

23.9 Where additional terms and conditions or sections of the AUP and FUP govern any access to any Content or to any Internet service, the Customer acknowledges that it is obliged to comply with such terms and conditions.

23.10 Unless expressly provided in these Conditions, no Condition is enforceable by any person who is not the purchaser of the Services.

23.11 These Conditions and all associated order forms represent the entire agreement between Magnet Business and the Customer in relation to the Services.

Neither Magnet Business, nor the Customer has entered into this agreement in reliance upon (and, to the extent permissible under applicable law, we do not have any liability in relation) any representations, term or condition not expressly set out in these Conditions.

23.12 Any dispute arising between the parties shall be referred by the Customer initially to the Customer Relations Manager for the purposes of the Conditions in order that any such dispute may be resolved in good faith and any such dispute shall be conducted in accordance with our Dispute Resolution Procedure. For the avoidance of doubt and in the event of such a dispute, Magnet Business shall continue to provide the Services in accordance with the Conditions unless otherwise requested by the Customer.

23.13 Laws of Ireland will apply to these Conditions and any disputes will be settled exclusively in the courts of Ireland.