

## Terms and Conditions

The following terms and conditions apply to all Services, including Voice and Collocation services, Fiber, Wireless and/or any data services, Cabling services, IT Services, and any other Services ("Service(s)") provided by RJ Telecommunications, Inc. ("RJTI"). These terms and conditions are incorporated by reference in Your Contract ("Contract"). As used herein, ("You") or ("Your") refers to the customer.

1. **Services.** RJTI shall provide the Services to You as described in the applicable Contract in accordance with the terms and conditions of this Agreement.

**1.1 Equipment and Support.** Necessary Equipment for Services shall be leased to You by RJTI according to the terms of Your Contract. RJTI shall provide Support for Equipment and Services. RJTI does not charge for Support with regard to Services that RJTI has installed or manages, according to Your Contract. If RJTI provides Support outside of RJTI's scope of work as defined in the Contract, RJTI shall assess whether there shall be a surcharge for a visit. If any RJTI Equipment included in the Contract is faulty or becomes unusable, RJTI shall replace the Equipment at no cost to You. In the event RJTI's Equipment at Your location is lost, destroyed or damaged due to neglect or abuse by You or any other person associated with You, RJTI may invoice You for the cost of replacing the Equipment.

**1.2 Long-Distance Calling.** International calling shall be activated upon Your written request to RJTI, and the cost shall be forwarded to You on Your next invoice.

**1.3 Toll-Free Minutes.** You shall be charged for any Toll-Free Minutes that surpass the number of Your monthly allotment of Minutes for Toll-Free numbers based on the Terms of Your Contract. Any charge for Toll-Free Minutes shall be added to the next month's invoice.

**1.4 Advanced Phone System Features.** Advanced features include the ability for site-to-site calling and call routing, the setup of calling queues, customization of phone features and the ability to add Microsoft Teams Direct Routing. Included with advanced features are all standard phone system features, including call detail records, call transfer, call park, call pickup, voicemail, music on hold, do not disturb, call blocking, call conference, administrator web portal, auto attendant menus, and the ability to use the Groundwire app for simultaneous ring.

**1.5 Fiber.** For installation of all types of Fiber, including Dark Fiber, Shared Fiber, Symmetrical Fiber, Dedicated Fiber, and Small Business Fiber, RJTI must charge the entire amount for the fiber optic installation for the entire Term, even if You move or downsize in any way. You may be held responsible for any demarcation extension or inside wiring charges needed in order for RJTI to provide the Fiber to You. In the event of a total closing of any single location with a fiber connection, a minimum charge of 100% of the fees per month per location for the entire Term of the corresponding Contract shall be charged.

**1.6 Network Management.** Network Management includes configuring and monitoring of networking equipment including switches, routers, wireless access points, WiFi controllers, or any other equipment relating to Your network and the Services provided to You by RJTI. In the case that You do not elect to have RJTI provide Network Management, RJTI may still monitor Your networking equipment, in as far as doing so pertains to the Services that RJTI is providing to You, and without any obligation to make changes to Your network or alert You of any changes to Your network that RJTI may observe.

**1.7 Collocation.** Collocation occurs in the data centers of the 123.Net headquarters located at 24700 Northwestern Hwy, Southfield, MI 48075, unless otherwise specified in Your Contract. If You rent one half-rack of collocation space or more, You may submit a written request to RJTI for an access card for the purpose of accessing Your equipment. If You rent less than one half-rack, You must contact RJTI to request a time and escort when you wish to access Your equipment. In the case that You rent one half-rack or more, You agree to avoid tampering with any equipment that You are not renting from RJTI and is not included in the Services outlined in Your Contract. If for any reason You find a problem with another's collocation equipment that is interfering with Your own, You must submit a written request to RJTI and wait for RJTI to resolve the problem. RJTI shall respond in a timely manner and work to have the problem resolved.

**1.8 Cabling.** Cabling refers to low voltage cabling for access control, alarms, phones, data services, and computer networking. All cabling performed by RJTI shall be installed to RJTI's best ability, in accordance with local codes and the current version of the National Electrical Code. To the maximum extent permitted by applicable law, in no event shall RJTI or its suppliers or sub-contractors be liable for any damages whatsoever (including, without limitation, incidental, direct, indirect, special, and consequential damages, damages for loss of business profits, business interruption, loss of business information, or other pecuniary loss) arising from cabling work being completed.

**2. RJTI's Responsibilities.** RJTI agrees to:

- (a) subject to Your approval, appoint RJTI Personnel, who shall be suitably skilled and qualified to perform the Services, and
- (b) comply with and ensure that all RJTI Personnel comply with Your regulations and policies that are communicated to RJTI in writing, including security procedures concerning systems and data and remote access thereto, building security procedures and general health and safety practices.
- (c) perform all such obligations in a prompt and timely manner.
- (d) notify You of any changes to RJTI's Terms and Conditions and always make an updated copy available to You at <https://now.rj10.com/termsandconditions>.

**3. Your Responsibilities.**

**3.1 Your Responsibilities.** You must:

- (a) have Your phone/data vendor on site during the actual Service conversion/porting;
- (b) assume responsibility for connecting internet service to Your data network if RJTI is not providing IT Support and Network Management;
- (c) provide a grounded electrical outlet for the installation of equipment.
- (d) authorize RJTI to install the necessary devices to provide the Service to You and cooperate with RJTI to coordinate and gain whatever approvals and rights of access may be necessary for RJTI to provide the Service;
- (e) agree to cooperate with RJTI in all matters relating to the Services and appoint in Your reasonable discretion an employee of Your company to serve as the primary contact with respect to this Agreement, who shall have the authority to act on Your behalf with respect to matters pertaining to this Agreement (the "**Customer Contract Manager**");
- (f) agree to provide such access to Your premises and other facilities as RJTI may reasonably require for the purposes of performing the Services;
- (g) provide such information as RJTI may reasonably request in order to carry out the Services;
- (h) ensure that all of Your equipment is in good working order and suitable for the purpose for which it

is used in relation to the Services, and that it conforms to all relevant legal or industry standards or requirements;

- (i) obtain and maintain all necessary licenses and consents and comply with all applicable Law in relation to the Services, the installation of RJTI Equipment, use of Your materials, and use of Your equipment in relation to the RJTI equipment;
- (j) keep and maintain RJTI Equipment in good condition, and agree not to dispose of or use RJTI Equipment other than in accordance with RJTI's authorization;
- (k) be solely responsible for paying local and state property taxes associated with Your equipment stored in a collocation facility rented or owned by RJTI and in the event that RJTI is required by a governmental authority to pay property taxes on Your behalf, You agree to reimburse RJTI for such amount within thirty (30) days of written notice that a tax has been paid by RJTI on Your behalf; and
- (l) agree to not hold RJTI in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by You due to RJTI's performance of its obligations under this Agreement being delayed or prevented as a result of any act or omission of You or Your agents, subcontractors, consultants, or employees.

**3.2 Installation and Move.** By entering into this Agreement, You affirm that RJTI is authorized by the property owner of the installation site to install the necessary devices to provide the Service to You and that You shall cooperate with RJTI to coordinate and gain whatever approvals and rights of access may be necessary to provide the Service to You. In the event You move Your Voice Service to a new location, You shall not incur early termination charges, provided termination of the old circuit and installation of the new circuit are ordered to occur concurrently, but non-recurring charges may apply, and Your monthly invoiced amount may be adjusted based upon the new location. In the event You move Your Fiber Service to a new location, You may incur early termination fees and the rates of charges shall be subject to change based on the new location.

#### **4. Term, Termination and Renewal.**

**4.1 Term.** Your Term shall begin at the time Service is activated. Service activation occurs once the Service is available for use by You. Upon expiration of the initial Service Term (the "**Initial Term**"), Contract shall automatically renew in 12-month terms unless either Party provides written notice of nonrenewal at least sixty (60) days prior to the end of the then-current term.

**4.2 Termination for Convenience.** Either Party, in its sole discretion, may terminate this Agreement or any Contract, in whole or in part, at any time without any cause, by providing sixty (60) days' prior written notice to the other Party, subject to an early termination fee equal to the Contract amount multiplied by the remaining months in the Term (the "**Early Termination Fee**").

**4.3 Termination for Cause.** Either Party may terminate this Agreement or any Contract, effective upon written notice to the other Party (the "**Defaulting Party**"), if the Defaulting Party:

- (a) materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within fifteen (15) days after receipt of written notice of such breach; or
- (b) becomes insolvent or admits its inability to pay its debts generally as they become due; becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; is dissolved or liquidated or takes any corporate action for such purpose; makes a general assignment for the benefit of creditors; or has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

**4.4 Effects of Termination or Expiration.** Upon expiration or termination of this Agreement for any reason, RJTI shall promptly return to You all materials belonging to You in RJTI's possession, remove any Equipment belonging to RJTI located at Your premises, provide reasonable cooperation and assistance to You upon Your written request and at Your expense in transitioning the Services to a different provider, and repay all fees and expenses paid in advance for any Services not performed. Each Party also agrees to return or permanently delete any physical or electronic documents and materials containing or reflecting any of the other Party's Confidential Information.

**4.5 Term Plan Change and Change Orders.** Prior to the completion of Your Service term, You may renew Your Service term or change to a different Service term without incurring early termination charges, provided the new Service term is for an equal or greater number of circuits than the number ordered on the Contract in question, the new Service MRC is higher, and You receive written approval from an authorized RJTI representative authorizing the term plan change. If You wish to change the scope or performance of the Services, You shall submit details of the requested change to RJTI. RJTI shall make You aware of any necessary variations to the fees and other charges for the Services arising from the change and any other information reasonably requested by You.

## **5. Fees, Expenses, and Payment Terms.**

**5.1 Fees.** In consideration of the provision of Services by RJTI and the rights granted to You under this Agreement, You shall pay the fees set forth in the applicable Contract ("**Fees**"). Payment to RJTI of such fees and the reimbursement of expenses shall constitute full payment for the Services and You shall not be responsible for paying any other fees, costs, or expenses. Fees shall be paid to RJTI at the end of each month, by the due date indicated on Your monthly invoice.

**5.2 Reimbursement.** You agree to reimburse RJTI for all actual, documented, out-of-pocket expenses incurred by RJTI in connection with the performance of the Services that You have approved in advance in writing.

**5.3 Billing.** The total fees for the Services shall be the amount set forth in the applicable Contract. You shall be billed one month in advance. Billing for Services shall begin as of the initial scheduled port and/or installation date and accrues through and includes the day that the Service is discontinued. For collocation services, billing shall occur as soon as electricity is installed and available for use in Your cabinet. If You pay for Toll-Free Minutes exceeding a certain amount, this amount shall be calculated based upon the number of minutes used and shall be added to the invoice that You received in the month following when the Toll-Free Minutes were used. Any non-recurring charges you obtained within a service period shall be assessed to the next month's invoice.

**5.4 Payment.** Payments are to be made in US dollars by the due date each month. If an invoice remains unpaid past its due date and has not been disputed, RJTI may apply a late fee of 1.5% of the total outstanding amount each month. If You have an open balance that has not been disputed, which is past due for a period of 90 days or more, RJTI may cancel Your service and continue to collect on the amount then owing. For collocation customers, if Service is canceled by RJTI for non-payment, RJTI may withhold all equipment located in Your cabinet(s) until payment is made in full. This remedy shall be in addition to any remedy contained herein or implied by law and shall not constitute an election of remedies.

**5.5 Billing Disputes.** If You dispute a term or amount on an invoice, You must do so in writing within thirty (30) days from the invoice date. Disputes must be sent in writing to (email) [accounting@rj10.com](mailto:accounting@rj10.com), or (mail) PO Box 866, Farmington, MI 48332. Disputes must be reasonable and made in good faith. You must pay the portion of Your bill that is not in dispute. If You pay the amount of the invoice that is not in dispute, this shall not be deemed to constitute acceptance of the portion of the invoice that is in dispute.

**5.6 Regulatory and Legal Changes.** In the event of any change in applicable law, regulation, decision, service guide, tariff, rule, or order that materially increases the costs or other terms of delivery of Service, the Parties agree to renegotiate the rates to be charged herein to reflect such increase in cost and, in the event that the Parties are unable to reach an agreement respecting the new rates within thirty (30) days of RJTI's written notice requesting renegotiation, then

- (a) RJTI may pass such increased costs through to You, and
- (b) if RJTI elects to pass such increased costs through to You, You may terminate the affected Service without termination penalty by delivering notice of termination no later than thirty (30) days after the effective date of the rate increase.

**5.7 Fraudulent Activity.** You agree that RJTI is not responsible for the security of Your company's network equipment, unless otherwise outlined in Your Contract, and You agree to pay for all bandwidth consumption charges and expenses that are a result of fraudulent activity or a compromise of Your network or equipment not provided by RJTI that results in increased consumption of Services.

**5.8 Acceptable Use.** All RJTI Services, including unlimited callings plans, are for business voice and data usage only. RJTI reserves the right to increase Your monthly fee for unlimited rate plans and/or immediately terminate Your Services if You are telemarketing, using auto-dialer equipment, fax blasting, operating a call center, internet dialing, using party lines, reselling RJTI's Services, sharing RJTI's Services with other parties or service addresses without the written approval of RJTI, or otherwise abusing the Services. You acknowledge that if Your Services are terminated under this provision, You are subject to all applicable fees and taxes stated here. For flat rate telephone services, You agree to terminate at least eighty percent (80%) of Your total domestic usage in a billing month to the local exchange areas serviced by a Regional Bell Operating Company ("RBOC"). If Your traffic in a billing month exceeds twenty percent (20%) terminating to a non-RBOC local exchange service area, or in other words, if more than 20% of your Phone Service are not calls made and terminating within the United States, RJTI shall apply a surcharge of \$0.03 per minute for the number of minutes that exceed twenty percent (20%).

## **6. Intellectual Property Rights and Ownership.**

**6.1** You and Your licensors are and shall remain the sole and exclusive owner of all right, title and interest in and to Your Materials, including all Intellectual Property Rights therein. RJTI shall have no right or license to use any of Your Materials except solely during the Term of this Agreement to the extent necessary to provide the Services to Customer. You expressly reserve all other rights in and to Your Materials.

**6.2** RJTI and its licensors are and shall remain the sole and exclusive owner of all rights, title, and interest in and to RJTI's Materials, including all Intellectual Property Rights therein and all Intellectual Property Rights necessary to provide the individual Service elements of which they consist. You shall have no right or license to use any RJTI Materials except solely during the Term of the Agreement to the extent necessary to implement the Services outlined in the Contract. RJTI does not convey or transfer, nor do You obtain, any right or interest in any of the software programs, systems, tools, data or materials or process utilized or provided by RJTI in connection with the performance of this Agreement. All other rights in and to RJTI Materials are expressly reserved by RJTI.

## **7. Confidential Information.**

**7.1** The Receiving Party agrees:

- (a) not to disclose or make available Confidential Information of the Disclosing Party to any third party without the prior written consent of the Disclosing Party; provided that the Receiving Party may disclose the Confidential Information of the Disclosing Party to its officers, employees, consultants, and legal advisors

who have a “need to know,” who have been apprised of this restriction and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this section;

(b) to use the Confidential Information of the Disclosing Party only for the purpose of performing its obligations under the Agreement or, in Your case, to make use of the Services; and

(c) to promptly notify the Disclosing Party in the event it becomes aware of any loss or disclosure of any of the Confidential Information of Disclosing Party.

**7.2** Nothing in this Agreement shall prevent either Party from using any general methodologies or know-how contained in the unaided memory of such Party’s personnel developed or disclosed under this Agreement, provided that in doing so it is not in breach of its obligations of confidentiality under this Section or using any Intellectual Property Rights of the other Party.

## **8. Representations and Warranties.**

**8.1** Each Party represents and warrants to the other Party that:

(a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;

(b) it has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted hereafter, and to perform its obligations hereafter;

(c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the Party; and

(d) when executed and delivered by such Party, this Agreement shall constitute the legal, valid, and binding obligation on such Party, enforceable against such Party in accordance with its terms.

**8.2** EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT,

(A) EACH PARTY HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT, AND

(B) RJTI SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

**9. Indemnification.** You agree to defend, indemnify, and hold harmless RJTI and RJTI’s officers, directors, employees, agents, successors, and permitted assignees from and against all Losses arising out of or resulting from:

(a) bodily injury, death of any person, or damage to real or tangible personal property, resulting from any negligent or willful acts or omission by You, and

(b) any material breach of any representation, warranty, or obligation for which You may be responsible.

## **10. Limitation of Liability.**

**10.1** RJTI SHALL NOT BE LIABLE FOR ANY AND ALL: INDIRECT, INCIDENTAL, GENERAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR LOSS OF BUSINESS.

**10.2** IN NO EVENT SHALL RJTI'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE AGGREGATE AMOUNTS PAID TO RJTI PURSUANT TO THIS AGREEMENT.

**11. Non-Exclusivity.** RJTI retains the right to perform the same or similar type of services for third parties

during the Term of this Agreement.

- 12. Risk of Loss.** At all times, You shall bear the risk of any loss, damage, or destruction, whether by fire, water damage, theft or other casualty for:
- (a) Your assets, equipment, or property,
  - (b) property of RJTI which is located on Your property (whether leased or owned) or within Your care, custody, or control, or
  - (c) Your property that is located within a space rented by You in a RJTI data cabinet. You shall be solely responsible for insuring Your property and filing insurance claims for losses associated therewith, If RJTI is aware of loss or casualty to Your property, RJTI shall immediately notify You, stating the extent of loss or damage incurred and the cause, if known. RJTI shall bear the responsibility for insuring and shall bear the risk of any loss, damage, or destruction of RJTI's assets, equipment or property that is not within Your care, custody or control.

- 13. Partial Invalidity and Waiver.** If any provision of this Agreement is found to be invalid by a court of competent jurisdiction, the remaining provisions of this Agreement shall nevertheless remain in full force and effect. RJTI agrees to renegotiate in good faith any term that is held to be invalid. One or more waivers of a breach of the terms and conditions of this Agreement shall not constitute a waiver of any future breach thereof.

- 14. Statute of Limitations.** You agree that any claim against RJTI, whether arising in tort, contract or otherwise, but be brought within six (6) months of the date giving rise to the claim.

**15. Miscellaneous.**

**15.1 Terms and Conditions.** The terms and conditions of this Agreement, together with the pricing and related materials set forth in the applicable Contract signed by the Parties, are in lieu of and replace any and all other terms and conditions set forth in any documents, including, without limitation, purchase orders and specifications. No waiver, amendment or addendum to this Agreement shall be binding on RJTI unless made in writing expressly stating that is such a waiver and signed by both Parties.

**15.2 Notices.** All notices, requests, claims, demands, waivers, and other communications hereafter shall be in writing and sent to RJTI at [support@rj10.com](mailto:support@rj10.com) for Services-related matters, and to [accounting@rj10.com](mailto:accounting@rj10.com) for billing and accounting matters. All such communications to You by RJTI shall be sent in writing to You at such email address as specified by You in writing.

**15.3 Entire Agreement.** This Agreement, together with Contracts, addenda, and all other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties to this Agreement and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms and provisions of this Agreement and those of any other applicable document, the following order of precedence shall govern: (a) first this Agreement; (b) second, the applicable Contract; (c) third, any other applicable documents.

**15.4 Transfers and Assignments.** You may not assign or transfer Your rights or duties in connection with the Services and facilities provided by RJTI without the prior written consent of RJTI. All transfers of rights or duties herein, without the advanced permission in writing of RJTI, shall be void and unenforceable as a matter of law.

**15.5 Headings.** The headings in this Agreement are for reference only and shall not affect the

interpretation of this Agreement.

**15.6 Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, it shall not affect any other term or provision of this Agreement. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement to affect the original intent of the Parties as closely as possible in a mutually acceptable manner, in order that the transactions contained herein be consummated as originally contemplated to the greatest extent possible.

**15.7 Governing Law and Legal Action.** This Agreement shall be subject to and governed by the laws of the State of Michigan. Any legal action arising out of this Agreement shall be exclusively initiated within the State of Michigan Oakland County Circuit Court of the Federal District Court for the Eastern District of Michigan. Each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement. If any legal action is instituted or commenced by either Party against the other Party arising out of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing Party.

**15.8 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

**15.9 Tariffs.** In the event of conflict or discrepancy between provisions of this Agreement and provisions of the applicable tariff, the provisions of the tariff shall prevail.

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