



123.Net, Inc. 24700 Northwestern Hwy. Ste. 700 Southfield, MI 48075

Terms and Conditions:

This Agreement sets forth the terms of Your agreement to purchase voice, collocation, and/or data services (“Service”) provided by 123.Net, Inc. (“123.Net”) under a term plan according to prices, quantities, terms and conditions set forth herein and in Your Order Form (“Order”). As used herein, (“You”) or (“Your”) refers to the customer.

Rates. Monthly Recurring Charges (“MRCs”), usage charges and Non-Recurring Charges (“NRCs”) are based on term plan rates and fees in effect at the time Service is ordered, as set forth on the Order, plus any applicable taxes and fees imposed by law.

Term and Expiration. The terms of this Agreement become effective upon execution. Your Service term begins 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, this Agreement will automatically renew for a term equal to that stated in the Order, unless properly terminated pursuant to the terms stated herein.

Term Plan Change. 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: (i) is for an equal or greater number of circuits than the number ordered herein, (ii) the new Service MRC is higher, and (iii) You receive written approval from an authorized 123.Net representative authorizing the term plan change.

Installation and Move. You must have Your phone/data vendor on site during the actual service conversion/porting. If the porting date is rescheduled by You or Your vendor, a fee may apply. You are responsible for connecting 123.Net internet service to Your data network. Router equipment provided by 123.Net is unmanaged and will remain the property of 123.Net. You must provide a grounded electrical outlet for installation of equipment. Integrated and analog circuits are loop start. By entering into this Agreement, You affirm that 123.Net is authorized by the property owner of the installation site to install the necessary devices to provide the Service to You and that You will cooperate with 123.Net to coordinate and gain whatever approvals and rights of access may be necessary to provide the Service to You. 123.Net will not be responsible for demarc extension or inside wiring charges. In the event that You move Your Service to a new location, You will not incur early termination charges provided that: (i) termination of the old circuit and installation of the new circuit are ordered to occur concurrently; (ii) the Service at the new location is for an equal or greater Service term; (iii) the new MRC is equal to or greater than the MRC at the former location; (iv) You receive written approval from an authorized 123.Net representative; and (v) You may be charged NRCs for the new location and for any NRCs or installation charges at the former location that were previously waived..

Credit Approval, Billing & Payment. You agree to allow 123.Net to conduct a credit check and Service installation is contingent upon You having a satisfactory credit history. Billing for services will begin as of the initial scheduled port/install date and billing accrues through and includes the day that the Service is discontinued. For collocation services, billing will occur as soon as electricity is installed and available for use in Your cabinet. If service is disconnected by 123.Net in accordance with these policies and is later restored, restoration of service will be subject to all applicable restoration and installation charges. If You have an open balance that is owing past the due date and which has not been disputed 123.Net may apply late charges each month equal to 1.5% of the total outstanding amount “not including current activity”. If You have an open balance that has not been disputed which is past due for a period of 60 days or more, 123.Net may cancel Your service and continue to collect on the amount then owing. For collocation customers, if service is cancelled by 123.Net for non-payment, 123.Net 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. 123.Net charges a fee of \$5 per month for the delivery of paper invoices. For Paperless Billing, E-mail: Ebilling@123.net and include Your name and account number.

Billing Disputes. If You dispute a term or amount on an invoice, You must do so in writing within 30 days from the invoice date. Disputes must be sent in writing to: E-mail: DisputeDepartment@123.net, Fax: 586-349-8005, Address: 24700 Northwestern Hwy. Ste. 700 Southfield, MI 48075. 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 will not be deemed to constitute acceptance of the portion of the invoice that is in dispute.

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

Fraudulent Activity. You agree to pay for all charges for international, local, and long distance calls, including but not limited to those placed by You or Your customers, and those that are a result of fraudulent activity, fraudulent international calling, or a compromise of Your system’s security resulting in increased consumption of Services. In addition, You agree that 123.Net is not responsible for the security of Your company’s network equipment 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 that is not provided by 123.Net, that result in increased consumption of Services.

Acceptable Use Policy. 123.Net will impose an Acceptable Use Policy (the “AUP”) regarding Your use of the Service. For all other terms and conditions relating to the Service, the AUP will control. You agree to fully abide by the AUP and impose its policies on Your customers to the extent necessary to ensure compliance. If there is a conflict between the Terms and Conditions and the AUP, the Terms and Conditions shall control. A copy of the AUP can be found at: <http://www.123.net/docs/aup.pdf>.

SLA. 123.Net will provide the Service to you in accordance with its standard Service Level Agreement (the “SLA”). The parties agree to incorporate 123.Net’s SLA into this agreement. A copy of the SLA can be found at: <http://www.123.net/docs/sla.pdf>.

Early Termination. – Termination After Service Activation. In the event that You terminate the Service in whole or in part after Service activation but prior to the expiration of the term plan (except as otherwise permitted in this Agreement), You will be liable for an early termination charge calculated as: the MRC times the remaining months of the Service term times seventy five (75%) percent. In addition, upon early termination, if installation or NRCs were waived, those charges may be charged back to You. If Service is provided via Fiber Optic Facilities, Wireless Facilities, or Frontier Communications Network Access, Your liability for early termination will be equal to one hundred percent of Your MRC for the Service

times the remaining months of Your Service term plus, if any NRCs or installation charges were waived, those charges may be charged back to You.

Early Termination. – Termination Prior To Service Activation. In the event that You terminate the Service in whole or in part prior to Service activation (except as otherwise permitted in this Agreement), You will be liable for an early termination charge calculated as: All costs incurred by 123.Net in processing the Service, and all provisioning-related and/or installation-related costs incurred for the required equipment and facilities up to the date of termination (including but not limited to any termination/cancellation charges 123.Net may be required to pay third parties due to the Service termination).

Notice of Termination. Written notice of Your intent to terminate or not renew the Service must be received by 123.Net a minimum of 30 days prior to the expiration or renewal of Your Service Term.

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 days of 123.Net's written notice requesting renegotiation, then (a) 123.Net may pass such increased costs through to You, and (b) if 123.Net 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 days after the effective date of the rate increase.

Property Rights. 123.Net owns all rights, title and interest in 123.Net trade names, Service marks, inventions, copyrights, trade secrets, patents, and know-how relating to the design, function, or operation of plans and of the hardware and software systems and resources necessary to provide the individual Service elements of which they consist. This Agreement does not constitute a license to You to use 123's trade names or Service marks.

Unlimited Calling Plans. Non-RBOC Surcharge. UNLIMITED CALLING PLANS ARE SUBJECT TO VARIOUS LIMITATIONS AS SET FORTH BELOW. 123.NET RESERVES THE RIGHT TO INCREASE YOUR MONTHLY FEE FOR UNLIMITED RATE PLANS AND/OR IMMEDIATELY TERMINATE YOUR SERVICE IF YOU ARE: TELEMARKETING, USING AUTO-DIALER EQUIPMENT, FAX BLASTING, OPERATING A CALL CENTER, INTERNET DIALING, USING PARTY LINES, RESELLING THE SERVICE, SHARING THE SERVICE WITH OTHER PARTIES OR SERVICE ADDRESSES WITHOUT THE EXPRESS WRITTEN APPROVAL OF 123.NET, OR OTHERWISE ABUSING THE SERVICE. 123.NET EVALUATES CUSTOMER USAGE IN COMPARISON TO OTHER SIMILARLY SITUATED CUSTOMERS. FOR EXAMPLE, OVER NINETY FIVE PER CENT (95%) OF 123.NET'S UNLIMITED MICHIGAN CALLING PLAN CUSTOMERS USE LESS THAN TWENTY THOUSAND (20,000) MINUTES PER MONTH AND DO NOT HAVE ANY UNUSUAL CALLING PATTERNS. THEREFORE YOU AGREE THAT 123.NET MAY CONCLUDE THAT YOUR UTILIZATION OF UNLIMITED MICHIGAN CALLING PLAN IS ABUSIVE IF IT EXCEEDS 20,000 MINUTES PER MONTH IN COMBINATION WITH ONE OR MORE OF THE FOLLOWING, INCLUDING, BUT NOT LIMITED TO, EXCESSIVE: (A) NUMBERS OF UNIQUE NUMBERS CALLED, (B) CALL LENGTHS, (C) FREQUENCY OF CALLS, (D) CALL FORWARDING/TRANSFERRING, (E) CONFERENCE CALLING, (F) SHORT DURATION CALLS, (G) CALLS MADE DURING BUSINESS HOURS, (H) NUMBERS OF CALLS TERMINATED AND RE-INITIATED CONSECUTIVELY, WHICH, IN AGGREGATE, RESULT IN EXCESSIVE CALL LENGTHS DURING A SPECIFIC TIME FRAME, OR (I) OTHER ABNORMAL CALLING PATTERNS INDICATIVE OF AN ATTEMPT TO EVADE ENFORCEMENT OF THESE TERMS OR OTHERWISE ABUSE THE SERVICE. YOU ACKNOWLEDGE THAT IF YOUR SERVICE IS TERMINATED UNDER THIS PROVISION, YOU ARE SUBJECT TO ALL APPLICABLE FEES AND TAXES STATED HEREUNDER. 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 Companies ("RBOC"). If Your traffic in a billing month exceeds twenty percent (20%) terminating to a non-RBOC local exchange service area, 123.Net will apply a surcharge of \$0.030 per minute for the number of minutes that exceed twenty percent (20%).

Personal Property Taxes. You will be solely responsible, where applicable, for paying local and state personal property taxes associated with Your equipment stored in a collocation facility rented or owned by 123.Net. In the event that 123.Net is required by a governmental authority to pay property taxes on Your behalf, 123.Net will have the right to be reimbursed by You for such amount. You must reimburse 123.Net within 30 days of written notice that a tax has been paid on Your behalf by 123.Net.

For Intrastate Service: Except when Service is used solely as transport for 123.Net switched local or access service(s), You acknowledge and certify that the interstate traffic (including Internet and international traffic) constitutes ten percent (10%) or less of the total traffic on any Ethernet, dedicated, or special access Service.

For Interstate Service: You acknowledge and certify that more than ten (10) percent of the traffic to be transmitted over the subject Service is and will be interstate in nature.

Partial Invalidity, Waiver. If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, the remaining provisions will nevertheless remain in full force and effect. 123.Net 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.

Applicable Law. Venue and Jurisdiction. Dispute Resolution. 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 or the Federal District Court for the Eastern District of Michigan.

Entire Agreement. Modifications. Authority. This Agreement sets forth the entire Agreement and understanding between the parties and merges all prior discussion between them. This Agreement may not be modified except by the written consent of both parties. By entering into this Agreement You affirm that You are a duly organized, legally existing entity or duly authorized individual with authority to enter into this Agreement.

Risk of Loss. At all times, You will bear the risk of any loss, damage or destruction, whether by fire, water damage, theft or other casualty for: (i) Your assets, equipment or property, (ii) property of 123.Net which is located on Your property (whether leased or owned) or within Your care, custody or control, or (iii) Your property that is located within a space rented by You in a 123.Net data center. You will be solely responsible for insuring Your property and filing insurance claims for losses associated therewith. If 123.Net is aware of loss or casualty to Your property, 123.Net will immediately notify You, stating the extent of loss or damage incurred and the cause, if known. 123.Net shall bear the responsibility for insuring and shall bear the risk of any loss, damage or destruction of 123's assets, equipment or property that is not within Your care, custody or control.

Indemnification. You agree to indemnify, defend, and hold 123.Net harmless, as well as its subsidiaries, affiliates, officers, directors, employees, agents, licensors, consultants, suppliers, and any third-party Web site provider, from and against all claims, demands, actions, liabilities, losses, expenses, damages, judgments and costs, including attorneys' fees, resulting from Your violation of this Agreement, misuse or abuse of the Service, or infringement thereof by You or Users of Your account. 123.Net reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by You. You must not in any event accept a settlement of any dispute relating to this contract without prior written consent of 123.Net

Telecommunications Service Priority. (Where Applicable) 123.Net may provide Telecommunications Service Priority ("TSP") to You for a fee. TSP is a program that authorizes national security and emergency preparedness (NS/EP) organizations to receive priority treatment for vital voice and data circuits or other telecommunications services. In the event of an emergency circumstance, if You have TSP Service, 123.Net may not be able to notify You in advance prior to undertaking additional expense on Your behalf to restore Your affected Service on a priority basis as a result of Your TSP enrollment. If You elect TSP Service, You agree in advance to pay for all charges reasonably incurred by 123.Net to restore Your Service on a priority basis during an emergency circumstance as a result of Your TSP enrollment.

Transfers and Assignments. You may not assign or transfer your rights or duties in connection with the Services and facilities provided by 123.Net without the prior written consent of 123.Net. All transfers of rights or duties herein, without the advanced permission in writing of 123, shall be void and unenforceable as a matter of law.

Statute of Limitations. YOU AGREE THAT ANY CLAIM AGAINST 123, WHETHER ARISING IN TORT, CONTRACT OR OTHERWISE, MUST BE BROUGHT WITHIN 6 MONTHS OF THE DATE GIVING RISE TO THE CLAIM.

Limitation of Liability. 123.NET SHALL NOT BE LIABLE FOR ANY AND ALL: INDIRECT, INCIDENTAL, GENERAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF BUSINESS OR BUSINESS OPPORTUNITY OR LOSS OF USE, EVEN IF YOU ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AS A RESULT OF A BREACH OF THIS AGREEMENT, OR AN ORDER FORM OR TERM AND CONDITION OF 123.NET. IN THE EVENT OF A BREACH OF AN OBLIGATION BY 123.NET, YOUR DAMAGES SHALL BE LIMITED TO THE AMOUNT YOU PAID FOR THE SERVICE FOR THE PRECEDING 3 MONTHS. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, YOU AGREE TO ACCEPT THE SERVICE ON AN "AS-IS" NON-WARRANTABLE BASIS. 123.NET EXPRESSLY DISCLAIMS THE WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE REGARDING THE PROVIDING OF GOODS AND SERVICES TO YOU.