

## Branded PIN Wholesale Terms and Conditions

These Branded PIN Wholesale Terms and Conditions shall be referred to herein as the "Agreement."

### 1. Responsibilities of RETAILER

- 1.1 RETAILER agrees to use its best efforts to promote the sale of the SERVICES to its Customers. RETAILER will market or advertise SERVICES, e.g., third-party or mass media advertisement, if any, at its own expense and risk, except that RNK will provide marketing materials as agreed upon by the Parties (e.g. clip strips with headers, door stickers and signs up to 22 x 28 inches in size). RNK may provide limited merchandising assistance and training at RNK's sole discretion. RETAILER is responsible for all retail or distribution administrative and account collection expenses and obligations, refunds or rebates to Customers or financial institutions, and shall not be entitled to reimbursement or offset by RNK unless agreed in writing prior to the incurrence of such expenses.
- 1.2 RETAILER will not present itself as a division or agent of RNK, and will adhere to all laws, and refrain from any action or inaction that might disparage or harm the reputation or Services of RNK. Notwithstanding the foregoing, RETAILER may present itself as a RETAILER for RNK and/or a representative of RNK SERVICES.
- 1.3 Upon RETAILER's Point of Sale ("POS") activation of any SERVICES, RETAILER assumes all risk of loss, use or misuse of such SERVICES.
- 1.4 EXCEPT, RETAILER warrants that any applicable sales, use or other tax due at the retail level or "Point of Sale" shall be the responsibility, not of RNK but, of RETAILER and/or its agents. RETAILER warrants that it is authorized to do business and/or licensed as a vendor as may be required to carry on the business contemplated by this Agreement; **RETAILER will provide to RNK the necessary Resale Exemption Certificate(s) that is (are) required to avoid charging RETAILER and/or customers retail sales tax or other POS taxes.** RETAILER shall not be held liable for the collection or remittance of applicable usage-based telecommunications sales or use taxes or surcharges arising from its sale of SERVICES.
- 1.5 RETAILER shall not sell any SERVICES at prices in excess of their respective face values.
- 1.6 RETAILER will be solely responsible for processing RETAILER's sales of SERVICES, and for each Terminal for processing the Product, servicing the Terminal, and except as stated otherwise in this Agreement, training of each Employee regarding the procedures applicable to the operation of the Terminals and the use of the Terminal for the sale, inventory, activations and deactivations of the Product. RNK will provide reasonable support for such activities.
- 1.7 Any delay or failure of RETAILER to collect any amounts payable to RETAILER by Customers or entities to which RETAILER has sold, advanced, or otherwise conferred possession or knowledge of PINs will not affect RETAILER's obligation to pay RNK under this Agreement for SERVICES or PINs activated by or on request of, or transferred to, RETAILER.
- 1.8 RETAILER may not assign any right, obligation or duty hereunder without the written consent of RNK.

### 2. RNK's Responsibilities

- 2.1 RNK shall provide SERVICES or PINs, and contribute to the design and printing of physical cards representing such SERVICES ("Cards") as determined by the Parties, at the Prices or Rates specified in service order. RETAILER and RNK shall cooperate to supply appropriate material (e.g., designs or logos) for the production of such cards. Cards will be delivered, with **UNACTIVATED** PINs, in quantities and at intervals determined by the parties, and on reasonable request of RETAILER, e.g., properly supported special promotions. The parties will cooperate to develop, modify as indicated, and maintain accurate forecasts of RETAILER's inventory needs, and to maintain adequate inventory to meet Customer demand, and to set and meet benchmark sales targets for roll-out and expansion of SERVICE offerings to Customers.
- 2.2 RNK shall use reasonable efforts to provide the SERVICES ordered or activated by RETAILER on behalf of Customers. RNK shall have no liability for any failure or delay in the delivery of SERVICES,

except as otherwise provided herein, e.g., refund purchase price. RNK will also, at RETAILER's request, receive and assist with copy for custom prompt messages for PIN activation not to exceed ten (10) seconds in length. Any custom prompt submitted to RNK must be in writing, and will take effect for any designated subsequent activations ten (10) business days after the custom prompt request is received. RNK will make best efforts to record and provide such custom prompt as RETAILER may so specify, but reserves the right to reject content that it deems in its sole discretion offensive.

- 2.3 RNK shall allow Customers with valid PINs access to RNK's network to place calls. When the usage of a particular PIN equals the pre-set limit for such PIN, no further call attempts on such PIN will be completed.
- 2.4 RNK shall not credit or reimburse any Customer or PIN for any calls such Customer denies having made. RNK shall have no liability to RETAILER or any third party for any claims that PINs have been lost, stolen, or used fraudulently or without Customer's authorization.
- 2.5 In the event Customers cannot access the SERVICES platform or complete calls, RETAILER is entitled to refer them to RNK Customer Service to allow Customers to use SERVICES.
- 2.6 Upon reasonable request, the Parties shall provide to one another, at no additional charge, periodic sales and usage reports in a format of providing Party's choosing.

### 3. **Payments for SERVICES**

- 3.1 The Purchase Price for PINs shall be the pre-set Face Value, less any Discount provided.
- 3.2 Notwithstanding any delay or failure of RETAILER to collect payment from its Customers, **Payment for each invoice is due in U.S. funds by 4:00 p.m., Eastern Time, on the due date.** All Payments will be made by electronic funds transfer, or as otherwise agreed between the parties.
- 3.3 In addition to other remedies, if Payment is not received or cannot be credited by RNK on the due date, RNK shall have the right to withhold delivery, block use, cancel, and/or deactivate unremunerated PINs until RNK receives full Payment.
- 3.4 All Payments that are not received or cannot be credited by RNK on the due date shall accrue interest on a daily basis at the lower of eighteen (18%) percent per annum or the maximum allowed by law, until paid.
- 3.5 RNK may, upon written notice to RETAILER, prospectively increase any Customer rate or charge associated with PINs under this Agreement. Upon any such rate increase, RETAILER may suspend ordering, purchasing or selling additional PINs and/or, upon written notice to RNK, terminate this Agreement

### 4. **Relationship of Parties**

- 4.1 Nothing in this Agreement shall create the relationship of principal and agent between RNK and RETAILER. RETAILER has no authority to act or warrant on behalf of RNK except as expressly provided in this Agreement.
- 4.2 Customers using Services shall be Customers of RETAILER and not of RNK, and, except as provided above regarding Customer Service for RNK network access and PIN use, RETAILER shall be solely responsible for dealing with Customers, e.g., regarding refunds and deactivations. Nothing in this section shall affect RETAILER's payment obligations under sections 1 or 3 above or under this Agreement.
- 4.3 In the event RETAILER sees fit to refund any monies to any Customers, for any reason, it undertakes promptly to deactivate any associated PIN(s), but in any case, RETAILER provides any such refunds at its own risk (*inter alia*, that Customer has depleted usage on the card for which RETAILER remains liable to RNK) and all obligations to RNK remain. At RETAILER's option, it may contact RNK Customer Service prior to such refund or deactivation to determine the status of the associated PIN(s) or SERVICES and, without diminishing RETAILER's respective responsibilities to Customers and to RNK,

RNK will make best efforts to cooperate with RETAILER to make accurate status determinations and take appropriate actions regarding such PINs.

4.4 RETAILER shall be responsible for promptly referring Customer inquiries regarding SERVICES, service outages or troubles that come to RETAILER's attention to RNK, and for using commercially reasonable efforts to ensure that Customers use Services only for lawful purposes.

4.5 The Parties agree that all intellectual property such as trademarks, inventions, patents, copyrights, designs, service marks, logos, and trade names (collectively, "marks") shall be owned by the proprietor. RETAILER shall submit to RNK for prior approval any materials that make reference to RNK, its marks, or SERVICES, including without limitation web content and promotional displays or literature. RNK's approval shall not be unreasonably withheld or delayed. RETAILER shall also supply to RNK any of its own trademarks, copyrights, designs, service marks, logos, and trade names for use by RNK in providing PRODUCTS and SERVICES under this Agreement. These limited, non-exclusive uses or licenses of marks shall not create any right, title or interest in one party of the marks of the other.

**5. Limitation of Liability**

RNK's sole liability for SERVICES which, in RNK's sole judgment, cannot be used to access RNK's network shall be the costs of replacing such SERVICES or refunding the purchase price of any unused portion of purchased SERVICES. This obligation of RNK is exclusive and in lieu of any other warranties, express or implied, including but not limited to, any warranty of merchantability or fitness for a particular purpose. RNK shall not be liable for any claim for special, incidental or consequential damages that may arise from the relationship or conduct under this Agreement.

**6. Indemnification**

RETAILER shall indemnify, defend, and hold harmless RNK from and against any and all liabilities, costs, damages, and expenses (including attorney's fees) resulting from, without limitation, (i) the actions, or unauthorized or illegal acts of RETAILER, its employees, agents or independent contractors or (ii) claims by third parties that any SERVICES or PINs have been lost, stolen, or fraudulently or illegally issued or misused.

**7. Contract Term and Termination; Survival**

This Agreement is effective on the date it is entered into and shall continue for one (1) year, renewable automatically on a month-to-month basis, unless terminated upon thirty (30) days' written notice by either party. Termination will be effected automatically in the event that either party submits to voluntary or involuntary bankruptcy, receivership, insolvency, or like proceedings, or becomes unable to pay its debts in the ordinary course of business. Any termination remains subject to Payment, Confidentiality, Service (for which full payment has been received), and any other provisions that, by their nature, are intended to survive.

**8. Entire Agreement**

This Agreement constitutes the entire agreement of the parties with respect to the subject matter and supersedes all other prior agreements whether written or oral regarding such subject matter. No Amendment to this Agreement will be binding on the parties, unless it: (a) is in writing, signed by an authorized representative of both parties, and (b) incorporates this Agreement by reference.

8.1 **Amendments** "This Agreement" shall include any future written Amendments.

8.2 **Captions** The captions and headings in this Agreement are a matter of convenience only, and shall not be a material part hereof, and shall in no way affect the construction hereof.

8.3 **Severability** In the event any clause or provision of this Agreement is held invalid, unenforceable, or illegal, the remainder of this Agreement shall not be affected.

**9. Breach; Enforcement**

9.1 **Waiver**

The failure of either party to this Agreement to object to or to take any action with respect to conduct of the other which is in breach or default hereof, shall not be a waiver thereof nor of any further or subsequent breach or default.

9.2 **Force Majeure**

Each party will be excused from the performance of this Agreement during any Force Majeure condition.

9.3 **Governing Law**

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts without reference to principles of choice or conflict of laws.

9.4 **Breach, Enforcement, Termination, Costs**

If either party is required to take action, administrative, formal, legal or otherwise, to (a) enforce this Agreement, or (b) enjoin any action prohibited hereunder, or (c) to gain other relief, including but not limited to terminating this Agreement for material breach of this Agreement by the other party and/or addressing any outstanding liabilities upon such breach of the other party, the prevailing party shall be entitled to recover from the other party reasonable attorney's fees and costs incurred in such action.

10. **Confidentiality, Trade Secrets**

Without affecting any separate agreement by the parties regarding Confidential Information, each party agrees that all Confidential Information shall remain the exclusive property of the proprietor, and only to use Confidential Information for the purposes of this Agreement.

11. **Notices**

Notices hereunder shall be to the Retailer's address provided on the Service Order unless or until written notice of a change of address is provided. Notice to RNK shall be to:

RNK Communications  
333 Elm Street, Suite 310  
Dedham, MA 02026  
Attn: General Counsel