

## **FORM WHOLESALE TERMINATION AGREEMENT**

(VT\_INC\_TAX\_SHORT\_V1.1)

THIS AGREEMENT relates to the Project ("Project") formed between two customers of Vertecto Services, LLC ("Vertecto") on the Transaction Protection System ("TPS") operated by Vertecto Services, LLC ("Vertecto"). This Agreement is effective as of the date (the "Effective Date") that the Invitation related to the Project was accepted. This Agreement is by and between the SELLER designated in the Project ("SELLER") and the BUYER designated in the Project ("BUYER").

Whereas, BUYER has agreed to purchase and SELLER has agreed to sell certain telecommunication services or products (the "Services") at those prices and on those terms as are more particularly set forth in the Project and BUYER and SELLER have each agreed amongst themselves and with Vertecto that this Agreement shall control the Project and the relationship between the Parties.

NOW THEREFORE, in consideration of the mutual promises made in the Project Terms, this Agreement and the Vertecto Documents, and for other good and valuable consideration, the parties are hereby deemed to agree as follows:

### **1 DEFINITIONS.**

All capitalized terms which are not otherwise defined in this Agreement shall have the meanings contained in Appendix A. Capitalized terms which are not defined in this Agreement shall have the meanings contained in the TPS and the Vertecto Documents.

### **2 SERVICES.**

BUYER agrees to purchase and SELLER agrees to provide the Services in accordance with the Project Terms and this Agreement. BUYER shall be responsible for connecting to SELLER's facilities at BUYER's expense.

### **3 TERM.**

This Agreement shall be effective as of the Effective Date and shall continue for twelve (12) months (the "Initial Term").

### **4 REVENUE, PROVISION AND UTILIZATION REQUIREMENTS.**

BUYER is not obligated to meet any minimum use requirements and SELLER is not obligated to provide Services in excess of the quantity or scope contemplated by the Project Terms and the initial amount of any escrow or prepayment.

### **5 RATES/BILLING INCREMENTS; RATE CHANGES.**

SELLER shall charge and BUYER shall pay for the Services in accordance with this Agreement and the Project Terms, as amended from time to time. SELLER has the right to modify the rates in the Project Terms upon prior notice to BUYER of at least ten (10) business days in the case of USA domestic traffic and at least five (5) business days for international traffic. If BUYER continues to use Services after the effective date of the notice, BUYER is deemed to have accepted SELLER's modifications.

### **6 TAXES, FEES, AND OTHER GOVERNMENTAL IMPOSITIONS.**

The rates and charges for the Services provided hereunder include all Taxes which are. Imposed or imposable on SELLER.

### **7 CHARGES, SECURITY, AND PAYMENT TERMS.**

- (a) During the term of this agreement, SELLER will provide an invoice and call detail records ("CDRs") in electronic comma-delimited text. Each invoice and related call detail records shall be delivered using the TPS invoicing system.
- (b) SELLER can cease providing Services when the amount of any prepayments or deposits maintained in the TPS, less any Vertecto Obligations is equal to or less than zero.

- (c) If the BUYER incurs fees or other obligations to the SELLER which are greater than the funds held by Vertecto for the Project (after deduction of Vertecto Obligations), BUYER shall immediately deposit the full amount of the shortfall into its V-Account (in the currency designated in the Project Terms and without regard to the existence of any Dispute).
- (d) All late amounts will be subject to an interest charge at the lesser rate of one and one-half percent (1.5%) per month or the maximum rate allowable by the laws of the State of Delaware and the United States of America.
- (e) SELLER and BUYER each acknowledge Vertecto's prior lien and right of setoff against escrowed funds to the extent of Vertecto Obligations.

## **8 BILLING DISPUTES.**

All Bona Fide Disputes shall be initiated on the TPS within five (5) business days following the delivery of the disputed invoice. Each invoice not disputed within five business days of the deemed delivery of the invoice shall be deemed to be accepted. All invoices are deemed final upon delivery subject to: (i) all taxes, (ii) obligations which this Agreement contemplates may be retroactively applied and (iii) manifest error. BUYER shall provide Seller with Complete Documentation relating to each dispute within fifteen (15) business days of the disputed. If the Parties resolve any outstanding disputes, they shall each notify Vertecto by email at support@vertecto.com. A claim of fraudulent usage shall not constitute a Bona Fide Dispute.

## **9 TERMINATION AND MODIFICATION RIGHTS.**

- (a) Either party may terminate this Agreement after five (5) business days notice if the other Party is or becomes Insolvent; or immediately for Cause. If SELLER terminates this Agreement for Cause or BUYER terminates this Agreement without Cause, BUYER shall pay the following: (i) any and all early termination fees due under the Project Terms; (ii) any and all charges accrued but unpaid as of the termination date; and (iii) all unpaid minimum payment commitments (which will be accelerated). If BUYER terminates the Agreement for Cause, BUYER may terminate this Agreement without liability to SELLER, except to pay for any and all unpaid charges and outstanding charges due to and including the date of termination.
- (b) Termination of this Agreement by BUYER or SELLER for any reason shall not relieve either party from its respective Vertecto Obligations. Upon any material breach of any provision of this Agreement by either Party ("Breaching Party"), at the sole option of the non-Breaching Party and in addition to any other actions or remedies the non-Breaching Party may have under this Agreement, upon one (1) calendar days notice, the the non-Breaching Party may cease providing any or all of the Services.

## **10 LIMITATION OF LIABILITY; DISCLAIMER OF WARRANTIES.**

- (a) NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, RELIANCE, COVER-TYPE, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES HEREUNDER (INCLUDING ANY SERVICE IMPLEMENTATION DELAYS/FAILURES), UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE PROVISIONED HEREUNDER. SELLER SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. NOTWITHSTANDING THE FOREGOING, SELLER'S TOTAL LIABILITY HEREUNDER SHALL IN NO EVENT EXCEED THE LESSER OF: BUYER'S PROVEN DIRECT DAMAGES OR AMOUNTS PAID TO SELLER IN CONNECTION WITH THE PROJECT. THE FOREGOING LIMITATION APPLIES TO ALL CAUSES OF ACTIONS AND CLAIMS, INCLUDING WITHOUT

LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS. No cause of action under any theory which accrued more than one (1) year prior to the institution of a legal proceeding alleging such cause of action may be asserted by either Party against the other.

#### **11 NOTICES.**

All required or permitted notices under this Agreement shall be delivered using the email messaging system which forms a part of the TPS. Delivery by way of the TPS is effective not later than the third business day following transmission. Either party may change its notice address information by both giving prior written notice according to the terms herein and by amending its Profile on the TPS.

#### **12 CONFIDENTIALITY.**

Each party agrees that all pricing, inter-connection, customer identifiable and volume information furnished by the other party is confidential or proprietary information or trade secrets and all information subject to any Confidentiality or Non-Disclosure Agreement to which Seller and Buyer are parties (collectively referred to as "Proprietary Information"), is and continuously remains the sole and exclusive property of the party furnishing the same (the "Disclosing Party"). Each party shall treat Proprietary Information as confidential and, except to the extent necessary for the performance of each party's obligations under this Agreement, neither party may directly or indirectly disclose the same to any third party without the prior written consent of the Disclosing Party.

#### **13 BUYER'S RESALE AND END USER RESPONSIBILITIES.**

BUYER is solely responsible for billing and collecting all sums from its End Users

#### **14 ARBITRATION**

- (a) All unresolved disputes, controversies or claims arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, will be finally settled by binding arbitration. The cost of the arbitration, including arbitrator's fees, shall be shared equally by the Parties unless the arbitration award provides otherwise. The tribunal shall consist of three arbitrators, one chosen by SELLER, one chosen by BUYER and one chosen by the arbitrators appointed by the SELLER and the BUYER. The arbitrator shall designate the time and for the hearing within thirty (30) calendar days of his or her appointment. The arbitrators shall not be able to award, nor shall any Party be entitled to receive punitive, incidental, consequential, exemplary, reliance or special damages, including damages for lost profits or any other damages not otherwise recoverable under this Agreement. The arbitrators' decision shall follow the plain meaning of the Agreement and shall be final, binding, and enforceable in a court of competent jurisdiction.
- (b) In the event the primary business address of the SELLER or the BUYER as originally set forth in the original profile on the TPS is located in the United States of America or any territory or protectorate thereof, the parties acknowledge that this Agreement is made pursuant to a transaction in interstate commerce, and that any arbitration will be governed by the Federal Arbitration Act, 9 U.S.C. sec. 1, et seq. Arbitration at the offices of the AAA located in the City of New York, New York, United States in accordance with the AAA Rules, as amended by this Agreement. In the event neither the primary business address of the SELLER nor the BUYER as originally set forth in the original profile on the TPS is located in the United States of America or any territory or protectorate thereof, the arbitration will be held in the capital city of the nation that the SELLER first listed in its address in its original Profile on the TPS or such other location as the parties shall agree (the "Arbitration City"). The arbitration will be held in accordance with the rules of the International Court of Arbitration of the International Chamber of Commerce (the "ICC Rules"), as amended by this Agreement.
- (c) Either Party may initiate arbitration by providing written demand for arbitration (with a copy to the other Party), a copy of this Agreement and the administrative fee required by the AAA or ICC Rules to the AAA or ICC in New York or the Arbitration City, as the case may be.

- (d) The arbitrators and any court rendering a decision shall deliver a copy of their decision to Vertecto in writing contemporaneously with delivering the same to any Party or their counsel.

## **15 MISCELLANEOUS.**

- (a) Regardless of the primary business address of the SELLER or the BUYER or the location or nationality of any judicial or arbitration court, hearing or tribunal, this Agreement will be governed by, and enforced and construed in accordance with the laws of the State of Delaware of the United States of America, without regard to its choice of law principles.
- (b) The terms of this Agreement and the Project Terms control the relationship between the Parties, provided that in the event one or more specific Project Terms or the Vertecto Documents conflict with the terms of this Agreement, the Vertecto Documents and then the Project Terms shall control.
- (c) This Agreement shall be binding upon the parties and their respective Affiliates, successors, and assigns. This Agreement, together with the preamble to this Agreement, the Project Agreements and all Schedules, Appendices, Exhibits, and Addenda and each other document which is specifically referenced and incorporated herein, constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all prior offers, contracts, agreements, representations and understandings between the Parties, whether oral or written, relating to the subject matter hereof.
- (d) Paragraph headings are for convenience only and are not intended to expand or restrict the scope or substance of the provisions of this Agreement. All amendments to this Agreement shall be in writing and signed by the Parties.
- (e) If any provision or part of any provision of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain in full force and effect, and such provision or part thereof will be deemed to be amended to the minimum extent necessary to render it enforceable.
- (f) The relationship between the parties is that of independent contractors and neither party shall have the right to bind the other party.
- (g) Neither party shall assign, sell or transfer this Agreement or any of its rights or obligations hereunder
- (h) The expiration or termination of this Agreement shall not relieve either Party of those obligations that by their nature are intended to survive the expiration or termination.
- (i) This Agreement is not for the benefit of or enforceable by, any third party, but Vertecto shall have the right, but not the obligation, to enforce the terms of this Agreement for the purpose of protecting the interests or integrity of Vertecto and the TPS, including the interests of the Parties and other customers of Vertecto.
- (j) Each Party represents and warrants that: (i) the full legal name of the legal entity intended to receive the benefits and Services under this Agreement is accurately set forth in its Profile; (ii) the performance of this Agreement is not in conflict with any law, the terms of any charter, bylaw, articles of association, or any agreement to which it or its assets is subject, bound or affected. Each Party may act in reliance upon any instruction, instrument, or signature reasonably believed by it to be genuine. Each Party may assume that any employee of the other Party who gives any instruction in connection with this Agreement has the authority to do so.

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### **APPENDIX A- DEFINITIONS**

When used in the Agreement to which this Appendix is appended, the following terms shall have the meanings set forth in this Section unless specifically defined elsewhere in said Agreement.

- (a) "AAA" means the American Arbitration Association and "AAA Rules" means the commercial Arbitration Rules of the American Arbitration Association, as amended by this Agreement.
- (b) "Bona Fide Dispute" means a good faith assertion of a right, claim, billing adjustment or credit to which an Entity reasonably believes it is entitled to under the Agreement. A Bona Fide Dispute shall not include, and Customer may not withhold any amounts invoiced for, actual calls made by Customer, Customer's End Users or unauthorized third parties (e.g., fraudulent calls).
- (c) "Business Day" means the hours of 08:30 to 17:00 on each day on which banks are open for business in the applicable state, region or nation, Saturday and Sunday excluded.
- (d) "Cause" means the failure of a Party to perform a material obligation and shall be effective:
  - (i) Immediately in the event of a payment default;
  - (ii) Immediately if the defaulting Party, directly or as a result of any end user or carrier, (1) fails to comply with any applicable law or regulation applicable to its sale or resale of the Services, or (2) commits any illegal acts relating to the subject matter of this Agreement or (3) engages in any act or fails to perform any act, which, in each case, the non-defaulting Party reasonably believes will result in personal injury or damage to the equipment, network, other assets or reputation of the non-defaulting Party;
  - (iii) Upon ten (10) Business Days notice in the event of any other general default, including without limitation the failure of the BUYER to fund a prepayment or deposit required pursuant to the Project Terms within five (5) days of the formation of the Project on the TPS.
- (e) "Complete Documentation" means documentation and other detailed written support, which shall include CDRs where appropriate, and shall identify the basis for, and the charges which are subject to, a dispute, as well as the amount of the dispute. The documentation must contain sufficient specificity as will reasonably permit the non-disputing Party to conduct an accurate investigation of the dispute without reference to other records maintained by the disputing party.
- (f) "Insolvent" means the occurrence of any of the following events whereby a party (i) becomes or is declared insolvent or bankrupt; (ii) is the subject of any proceedings related to its liquidation, insolvency or for the appointment of a receiver or similar officer for it or its assets; (iii) makes an assignment for the benefit of all or substantially all of its creditors; or (iv) enters into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations.
- (g) "Parties" means SELLER and BUYER, collectively.
- (h) "Party" means either SELLER or BUYER.
- (i) "Project Agreements" means and includes the Project Terms and conditions and the Vertecto Documents.
- (j) "Project Terms" mean the Project terms, conditions and prices agreed by the parties on the TPS, including any terms, conditions and prices contained in any documents uploaded to the TPS in connection with an accepted Invitation, as amended from time to time in accordance with this Agreement or the original Invitation terms.
- (k) "Tax" or "Taxes" mean(s) any and all applicable national, federal, state and local taxes, including, without limitation, all use, sales, value-added, goods and Services, surcharges, excise, franchise,

commercial, gross receipts, license, privilege or other similar taxes, assessments, levies, surcharges, duties, fees, or other tax-related.

- (l) "Vertecto Documents" means the TPS Master Agreement between each party and Vertecto and the agreements and other documentation, regardless of form, incorporated into the TPS Agreement.
- (m) "Vertecto Obligations" means any current or contingent fee, expense, charge, debt, right of withhold or setoff and each other obligation of a Party to Vertecto arising out of the Vertecto Documents or otherwise.