

## **FORM WHOLESALE TERMINATION AGREEMENT**

(VT\_NETTAX\_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

- a) SELLER or BUYER has delivered an offer to the other in the form of an Invitation on the TPS and the other party has accepted the Invitation (as the Invitation may have been amended);
- b) BUYER has thereby 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;
- c) BUYER and SELLER have each agreed with Vertecto to certain terms and conditions relating to the use of the TPS, which terms provide, in part, that the terms and conditions set forth in this Agreement shall control the Project and the relationship between the Parties if and to the extent that the Parties (i) have specifically agreed to use this form of Agreement, or (ii) have failed to specifically and jointly provide or designate another form of agreement and this Agreement is the default agreement on the TPS, or (iii) have failed to include one or more terms or conditions necessary for the completion of the Project or the resolution of issues relating to the Project.

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.**

- (a) BUYER agrees to purchase and SELLER agrees to provide or cause the Services to be provided in accordance with the Project Terms and this Agreement.
- (b) BUYER shall be responsible for connecting to SELLER's facilities at BUYER's expense.
- (c) All Services not used directly by BUYER are provided for resale to end users, customers and subscribers under BUYER'S own tariff and or rate and service schedules and shall be branded in BUYER'S name.
- (d) BUYER acknowledges and agrees that the Services shall be offered by SELLER pursuant to this Agreement subject to (i) any applicable tariffs; (ii) compliance with all applicable laws and regulations; (iii) obtaining any domestic or foreign approvals and authorizations required or advisable; (iv) continued availability of each Service in all applicable jurisdictions, countries and locations; and (v) continued availability and quality of access lines and routes in all applicable jurisdictions, countries and locations. BUYER acknowledges and agrees that SELLER may elect not to offer the Services in or to any particular jurisdiction, location or country, or may block Services to or from any particular jurisdiction, location or country if SELLER determines, in its sole discretion, that the continuation of such Service is not permitted or advisable. Further, SELLER's provision of the Services to BUYER and the availability of the associated pricing as set forth herein is subject to availability of required BUYER facilities.

### **3 TERM.**

- (a) Except as otherwise provided in the Project Terms, this Agreement shall be effective as of the Effective Date and shall continue for twelve (12) months (the "Initial Term"). After the expiration of the Initial Term, this Agreement will continue on successive one (1) month terms (each a "Renewal Term") unless terminated by either Party by written notice no less than thirty (30) calendar days prior to the beginning of such Renewal Term (the Initial Term and all Renewal Terms shall be collectively referred to as the "Term").

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

Unless specifically set forth in the Project Terms, (a) BUYER is not obligated to meet any minimum use requirements and (b) SELLER is not obligated to provide Services in excess of the quantity or scope contemplated by the Project Terms and the amount of any escrow or prepayment.

### **5 RATES/BILLING INCREMENTS.**

- (a) During the term of this Agreement, 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. Unless the Project Terms provide otherwise, the rates and charges do not include Taxes, installation charges, governmental surcharges, access related charges, CPE or any other incidental or other charges, which are the responsibility of BUYER.
- (b) SELLER shall have the right to modify the rates contained in the Project Terms upon prior written 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. Notices under this section shall be delivered using the email message system which forms a part of the TPS. In the event BUYER continues to use or consume the modified Services after the effective date of the notice, BUYER will be deemed to have accepted SELLER's modifications.
- (c) BUYER shall promptly assure that the Net Free Funds in its V-Account are sufficient to meet any prepayment or deposit requirements in the Project Terms.
- (d) Unless otherwise set forth in the Project Terms, all call traffic terminating in the USA and Canada shall be billed with an initial 6-seconds minimum increment, followed by 6-second additional increments (i.e. a minimum call length 6 seconds with all additional usage rounded up to the nearest 6-seconds increment). Call traffic which terminates outside of the USA or Canada shall be billed with an initial 1-second minimum increment, followed by 1-second additional increments (i.e. a minimum call length of 1 second with all additional usage rounded up to the nearest 1-second increment). The sole exception to this billing arrangement shall be traffic terminating in Mexico, which shall be billed in full-minute increments (i.e. minimum call length of 60 seconds with additional usage rounded up to the nearest full minute).

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

- (a) Each Party acknowledges and agrees that the rates and charges for the Services provided hereunder do not include Taxes which are additional and the sole obligation of the BUYER (whether Taxes are assessed by a governmental authority directly upon SELLER or the BUYER). Taxes shall be separately set forth on each invoice and shall be paid by the BUYER at the same time as all other charges set forth in the invoice. If the BUYER believes that it should be exempt from the application and collection of certain Taxes, it shall provide SELLER with an appropriately completed and valid Tax exemption certificate or other evidence reasonably acceptable to SELLER that neither SELLER nor the BUYER is subject to such Taxes. SELLER shall not be required to issue any exemption, credit or refund of any Tax payment for usage prior to the BUYER's submission of such acceptable Tax exemption evidence. BUYER shall protect, indemnify and hold SELLER harmless from and against any Taxes imposed by any governmental authority with respect to the Services furnished pursuant to this Agreement, including any interest and/or penalties related thereto.

- (b) All payments due hereunder shall be made free and clear without deduction or withholding for any and all present and future Taxes.
- (c) Each Party shall be solely responsible for all taxes on its own business, the measure of which is its own net income or net worth and shall be responsible for any related tax filings, payment, protest, audit and litigation. Each Party shall be solely responsible for the billing, collection and proper remittance of all applicable Taxes relating to its own Services provided to its own customers.
- (d) In the event a Tax is assessed against SELLER that is solely the responsibility of BUYER and BUYER desires to protest assessment, BUYER shall submit to SELLER a statement of the issues and arguments requesting that SELLER grant BUYER the authority to prosecute the protest in SELLER's name at BUYER's expense.
- (e) In the event a Tax which is the responsibility of BUYER pursuant to this Agreement is assessed against SELLER as part of a larger assessment against SELLER (a "Common Imposition"), SELLER shall give BUYER written notice of the assessment. BUYER shall timely respond to SELLER as to whether it desires to protest such assessment. All joint protests shall be financed in proportion to each Party's respective share of the protested amount, and any reduction in the Common Imposition shall be shared in the same ratio. All protests of Common Impositions shall be controlled and managed by SELLER .

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

- (a) During the term of this agreement, SELLER will furnish BUYER with an invoice and call detail records ("CDRs") in electronic format for any Service provided for the previous billing cycle, as defined in the Project Terms. Each invoice and related call detail records shall be delivered using the TPS invoicing system. The CDRs will be in comma-delimited text format or another mutually agreed upon format. The SELLER may also send a copy of the invoice to the BUYER via additional means. In each case, the invoice shall be delivered within that number of days after the close of the Billing Cycle as is provided in the Project Terms
- (b) SELLER reserves the right to cease providing Services when the amount of any prepayments or deposits maintained in the TPS, less any fees, expenses, charges and other obligations imposed or imposed by Vertecto by Seller, is equal to or less than zero. SELLER may thereafter, at its option, impose greater or lesser prepayment, escrow or deposit obligations on BUYER.
- (c) In the event the BUYER incurs fees or other obligations to the SELLER in excess of the amounts payable from the funds held by Vertecto in respect of the Project (after deduction of Vertecto Obligations), BUYER shall promptly deposit an amount of funds equal to 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) and shall designate the funds to the Project. In no event shall the deposit of the shortfall occur later than the Business Day immediately following the effective delivery of the Invoice.
- (d) All amounts which are not disputed in accordance with the terms of this Agreement and Vertecto's then current agreements and rules and which are not paid in full before the close of business on the Business Day immediately following the delivery of the Invoice will be considered past due and subject to an interest charge commencing from the date of the Invoice 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. If BUYER disputes all or any portion of any invoice and the dispute is determined not to be a Bona Fide Dispute as defined herein, the disputed amount shall likewise be considered past due and subject to an interest charge commencing from the date of the Invoice 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.**

- (a) All Bona Fide Disputes shall be initiated by BUYER 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 absent manifest error. 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. Unless otherwise provided in the Project Terms, the undisputed portion of each Invoice shall be immediately released to the BUYER in accordance with the terms of the TPS. BUYER shall provide Seller with Complete Documentation relating to each dispute within fifteen (15) business days of the disputed invoice being sent by SELLER. All notices and Complete Documentation of a Bona Fide Dispute under this Section must be sent to SELLER by BUYER using the TPS email message system. An amount will not be considered "in dispute" if BUYER fails to provide Complete Documentation in the manner and within the time period provided in this section. The Parties will promptly address and attempt to resolve each dispute. SELLER, in its discretion exercised in good faith, may request additional supporting documentation. SELLER shall accept or reject Customer's claim within fifteen days of receipt of the Complete Documentation. If the Parties resolve the dispute, they shall each notify Vertecto by email at support@vertecto.com. If SELLER rejects a Bona Fide Dispute, SELLER will so notify BUYER and Vertecto using the TPS email messaging system. BUYER may accept SELLER's determination or may seek arbitration in accordance with the terms of this Agreement. In the event call detail records in respect of the Project have been recorded on switching equipment maintained or otherwise provided by Vertecto or another third party agreed upon by the parties, the Vertecto or third party call detail records, as the case may be, shall, subject solely to adjustment for the billing increments and pricing contained in the Project Terms, be the definitive call records for all purposes, including without limitation all dispute resolutions, mediations, arbitrations and legal proceedings.
- (b) A claim of fraudulent usage shall not constitute a Bona Fide Dispute. BUYER is solely responsible for paying for all actual service use, allegedly fraudulent or otherwise, and for all other charges, which may be associated with such usage.

## **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 be obligated to 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) any and all revenue shortfall charges equal to any periodic revenue or usage commitment contained in the Project Terms multiplied by the number of periods remaining in the minimum term set forth in the Project Terms on the date of such termination. 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 SELLER 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.
- (c) 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) Business Days notice, the the non-Breaching Party may:
- (i) Cease providing any or all of the Services.
  - (ii) Cease providing all electronically and manually generated reports, other than CDRs;
  - (iii) Pursue such other remedy or relief as may be appropriate at law or equity.

## **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. 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.
- (b) Each Party acknowledges and accepts the reasonableness of the foregoing disclaimer and limitations of liability. 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. For purposes of this Section, all references to BUYER include its respective Affiliates, End Users, agents, officers, directors, shareholders and employees.

## **11 ASSIGNMENT.**

Neither Party shall assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld. Either party may freely assign this Agreement, upon notice to the other party, to an Affiliate or, in the event of a sale of all, or substantially all of its assets, to the purchaser of those assets, or in the event of a merger, acquisition or recapitalization of the assigning party to the surviving entity (the sale of assets, merger, acquisition or recapitalization to be referred to as a "Change of Control"). In the event of a Change of Control of Customer or assignment to an affiliate, the acquiring or surviving entity or assignee (as applicable) must be at least as creditworthy as Customer.

## **12 FORCE MAJEURE.**

Neither Party shall be liable to the other for any delay or failure in performance of any part of this Agreement if such delay or failure is caused by a Force Majeure Event. The Party claiming relief under this Section shall notify the other in writing of the existence of the Force Majeure Event. If either party's performance of this agreement is prevented, restricted, or interfered by a Force Majeure Event, then that party shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, change, or interference until the cessation of such Force Majeure Event. Notwithstanding this provision, BUYER shall in no way be relieved of any of its payment obligations as provided herein.

## **13 NOTICES.**

All required or permitted notices under this Agreement shall be in writing and 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. In addition to, and not in lieu of delivery of notice using the TPS, any party may also deliver notice by overnight courier, hand delivery or facsimile. Notice by overnight courier or hand delivery prior to the effectiveness of notice through the TPS will be effective upon delivery subject to confirmation by TPS. Notice given by facsimile shall be deemed given when transmitted, provided that the sender shall have received a transmission report indicating successful transmission of all pages of the notice to the correct facsimile number and has sent a confirmation copy of the notice by the TPS email message system, except that if the transmission of a facsimile does not occur

on a Business Day at the place to which it is addressed, the notice shall be deemed to be given on the following Business Day. 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.

#### **14 WAIVER.**

No term or provision of this Agreement shall be deemed waived and no breach or default shall be deemed excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. No consent by any party to, or waiver of, a breach or default by the other party, whether express or implied, shall constitute consent to, waiver of, or excuse for any different or subsequent breach or default or shall be construed as a continuing waiver of such right or a waiver of any other provision hereunder.

#### **15 CONFIDENTIALITY.**

- (a) 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.
- (b) Proprietary Information is to be used by the party receiving it (the "Receiving Party") only for the purposes contemplated by this Agreement, and the Receiving Party may not disclose the same to anyone other than the Receiving Party's employees, accountants, attorneys, consultants, or other representatives on a need to know basis and who agree to be bound by the terms of this Section. Proprietary Information shall not be retained by the Receiving Party and all originals and any copies or summaries shall be returned to the Disclosing Party no later than upon termination of this agreement.
- (c) Each party acknowledges that a breach or threatened breach of this Section may cause the Disclosing Party irreparable harm which cannot be adequately compensated by monetary damages. Accordingly, in the event of any such breach or threatened breach, the Receiving Party consents to equitable relief, including temporary restraining orders or preliminary or permanent injunctions, in addition to any other remedies to which the Disclosing Party may be entitled.
- (d) Neither party may use the name, logo, trade name, brand name, service marks, trade marks, copyright, patent, printed materials, or any other intellectual property of the other party or its respective affiliates, in any promotional or advertising material, statement, document, press release, broadcast or otherwise without the prior written consent of the other party, which consent may be granted or withheld at the other party's sole discretion. SELLER's name and the names of its Affiliates are proprietary and nothing herein constitutes a license authorizing their use, and in no event shall BUYER attempt to sell service to its End Users using the name of SELLER or its Affiliates. In addition, BUYER shall not state to End Users or prospective End Users: (i) that they will be SELLER customers or that they may obtain SELLER service from BUYER; or (ii) that BUYER has any relationship with SELLER other than an agreement to purchase Services on a wholesale basis.

#### **16 REGULATIONS, MODIFICATION AND INDEMNIFICATION.**

- (a) This Agreement is made expressly subject to all present and future valid orders and regulations of any authority having jurisdiction of the subject matter hereof, and to the laws of the United States, and each of its states, and any foreign governmental agency having jurisdiction over one or more Parties or their respective assets. In the event this Agreement, or any of its provisions, shall be found contrary to, or in conflict with, any such order, rule, regulation, or law, this

Agreement shall be deemed modified to the extent necessary to comply with any such order, rule, regulation, of law and shall be modified in such a way as is consistent with the form, intent, and purpose of this Agreement. In the event this Agreement or any of its provisions shall be found contrary to, or in conflict with, any tariff of either party, then the party with the conflict will allow the other party the opportunity to amend its tariff to conform to the provision of Services.

- (b) If (i) in the case of Services provided from or to the United States, the Federal Communications Commission or a state Public Utilities Commission or (ii) in the case of Services provided in whole or part from or to a nation other than the United States, any national, regional or other organization having similar purpose and jurisdiction as the Federal Communications Commission or a state Public Utilities Commission, or (iii) a court of competent jurisdiction issues a rule, regulation, law, or order which has the effect of canceling, changing, or suspending any material term or provision of this Agreement (collectively, "Regulatory Requirement"), then this Agreement shall be deemed modified in such a way as the parties mutually agree is consistent with the form, intent and purpose of this Agreement, to the extent necessary to comply with such Regulatory Requirement. Should the Parties not be able to agree on the modifications necessary to comply with a Regulatory Requirement within fifteen (15) days after the Regulatory Requirement is effective, then either party may terminate this Agreement on five days written notice, which notice shall be delivered using the TPS email messaging function.
- (c) If reporting obligations or requirements are imposed upon a Party by any judicial or regulatory agency in connection with either this Agreement or the Services, the other Party agrees to assist in complying with such obligations and requirements, in a commercially reasonable manner at the expense of the Party subject to the judicial or regulatory requirements.
- (d) SELLER reserves the right to suspend, modify or terminate any Service without liability where: (i) a Regulatory Requirement prohibits, restricts or otherwise prevents SELLER from furnishing such Service; or (ii) any material rate, charge or term of such Service is substantially changed by a legitimate regulatory body, governmental authority, or by order of the highest court of competent jurisdiction to which the matter is appealed.

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

- (a) BUYER is solely responsible for obtaining all licenses, approvals, and regulatory authority for its use and operation of the Services and the provision of Services to its End Users. In connection with its resale of the Services, BUYER is solely responsible for all billing, billing adjustments/credits, customer service, creditworthiness and other service-related requirements of its End Users, and SELLER shall have no liability to BUYER's End Users under this Agreement. BUYER's payment obligations hereunder are not contingent upon BUYER's ability to collect payments or charges from its End Users, Affiliates, agents, brokers or re-sellers.
- (b) If BUYER or its End Users commit any illegal acts relating to the subject matter of this Agreement. BUYER shall: (i) be liable to SELLER for any damages caused by any intentional or illegal acts of BUYER, (e.g., slamming) in connection with its use or resale of the Services; and (ii) indemnify, defend and hold harmless SELLER from and against any third party (including End Users') claims, actions, damages, liabilities, costs, judgments or expenses (including reasonable attorney fees) arising out of or relating to BUYER's or End User's use, resale or modification of the Services.
- (c) In the event BUYER resells the Services to its own customers or end-users, BUYER agrees to indemnify and hold SELLER, as well as any third-party provider or operator of facilities employed in provision of the Service, harmless from and against any and all claims, demands, suits, actions, losses, damages, assessments or payments which may be asserted by said customers or end users arising out of or relating to any defect in the Service not based on the acts or omissions of SELLER .
- (d) The Parties acknowledge and agree that both (i) certain equipment, software and technical data which may be provided or utilized in connection with the furnishing of the Services hereunder;

and (ii) the use of such Services may be subject to export, re-export or import controls under the United States Export Administration Regulations or similar regulations of the United States or of any other country.

- (e) Notwithstanding anything to the contrary herein, the Parties each hereby acknowledge and agree that certain laws of the United States, including the Foreign Corrupt Practices Act, 15 U.S.C. Sections 78dd-1 et seq., prohibit any person subject to the jurisdiction of the United States from making or promising to make any payment of money or anything of value, directly or indirectly, to any government official, political party, or candidate for political office for the purpose of obtaining or retaining business. Each of the Parties which is subject to the FCPA hereby represents and warrants that in the performance of its obligations hereunder it has not made, and will not make, any such proscribed payment.
- (f) Unless otherwise specified by applicable law or regulation, the Services provided by SELLER herein are not offered by SELLER as a common carrier, public utility or in an equivalent capacity.

## **18 ARBITRATION**

- (a) 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:
  - (i) 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.
  - (ii) Any unresolved disputes, controversy 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 at the offices of the AAA located in the City of New York, New York, United States or such other location as the parties shall agree.
  - (iii) The arbitration will be held in accordance with the AAA Rules, as amended by this Agreement, which rules are hereby incorporated by reference into this Section. 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 Rules to the AAA in the City of New York, New York, United States.
  - (iv) The cost of the arbitration, including arbitrator's fees, shall be shared equally by the Parties unless the arbitration award provides otherwise. Each Party shall bear the cost of preparing and presenting its case.
  - (v) The tribunal shall consist of three arbitrators. One arbitrator will be appointed in accordance with the AAA Rules within thirty (30) calendar days of the submission of the demand for arbitration. The Parties agree to undertake all reasonable steps to expedite the arbitration process. All negotiations connected with the arbitration shall be conducted in complete confidence, and the Parties undertake not to divulge details of such negotiations except to their professional advisors who shall also be subject to such confidentiality and shall be without prejudice to the rights of the Parties in any future proceedings.
  - (vi) The arbitrator shall designate the time and place in the City of New York, New York, USA for the hearing within thirty (30) calendar days of his or her appointment. SELLER and the BUYER agree that the arbitrator's authority to grant relief shall be subject to the provisions of this Agreement, the USAA, the ABA-AAA Code of Ethics for Arbitrators in Commercial Disputes, the Communications Act of 1934, as amended, and any other applicable law. The arbitrator 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 arbitrator's decision shall follow the plain meaning of the Agreement and shall be final, binding, and enforceable in a court of competent jurisdiction.



- (vii) 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.
- (b) In the event the primary business address of neither the SELLER nor the BUYER is located in the United States of America:
- (i) All unresolved disputes, controversy 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 an institutional arbitration in the capital of the nation that the Seller first listed in its original Profile on the TPS or such other location as the parties shall agree (the "Arbitration City").
  - (ii) 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, which rules are hereby incorporated by reference into this Section. 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 ICC Rules to the ICC in the Arbitration City.
  - (iii) The cost of the arbitration, including arbitrator's fees, shall be shared equally by the Parties unless the arbitration award provides otherwise. Each Party shall bear the cost of preparing and presenting its case.
  - (iv) The tribunal shall consist of three arbitrators. One arbitrator shall be appointed by the SELLER, one by the Buyer, and the third arbitrator shall be selected by the two party-appointed arbitrators, or failing agreement, by the ICC in accordance with its rules. The Parties agree to undertake all reasonable steps to expedite the arbitration process. All negotiations connected with the arbitration shall be conducted in complete confidence, and the Parties undertake not to divulge details of such negotiations except to their professional advisors who shall also be subject to such confidentiality and shall be without prejudice to the rights of the Parties in any future proceedings.
  - (v) The arbitrator 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 arbitrator's decision shall follow the plain meaning of the Agreement and shall be final, binding, and enforceable in a court of competent jurisdiction.
  - (vi) The language of the arbitration shall be agreed by the Parties and, in the absence of an agreement, shall be conducted in English. The arbitrators shall issue their awards reasoned and in writing. Any decision or award resulting from such arbitration shall be final and binding on the parties and the expenses of the arbitration shall be borne by the parties in such proportion and manner as may be provided in the arbitration award. The parties agree that any monetary award will be made and paid exclusively in the currency in which the Project was conducted.
  - (vii) 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.

## **19 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) Neither party shall be considered the drafter of this Agreement for purposes of construction of its terms or drawing inferences in favor of or against either party.

- (c) 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 conflict with the terms of this Agreement, the Project Terms shall control.
- (d) 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.
- (e) 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.
- (f) Wherever used herein, the singular shall include the plural, the plural shall include the singular, and pronouns shall be read as masculine, feminine or neuter as the context requires.
- (g) 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.
- (h) The relationship between the parties is that of independent contractors and shall not be that of partners, and nothing herein shall be deemed to constitute a partnership, agency, joint venture, employee relationship or franchise between them or a merger of their assets or their fiscal or other liabilities or undertakings. Neither party shall have the right to bind the other party, or otherwise or make any representations or guarantees on behalf of the other, except as expressly provided for in this Agreement.
- (i) This Agreement shall be binding upon the parties and their respective Affiliates, successors, and assigns.
- (j) 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.
- (k) The terms, representations, warranties and agreements of the Parties set forth in this Agreement are not intended for, nor shall they be for the benefit of or enforceable by, any third party (including, without limitation, BUYER's Affiliates and End Users) other than Vertecto. 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.
- (l) 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 written notice, or other instruction in connection with this Agreement has the authority to do so.

## **FORM WHOLESALE TERMINATION AGREEMENT**

(VT\_NETTAX\_V1.1)

### **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) "Affiliate(s)" means: (i) any individual, corporation, partnership, limited liability company, limited liability partnership, private limited, association, joint stock company, trust, unincorporated organization or other venture or business vehicle (each an "Entity") in which a Party owns a twenty percent (20%) or greater equity interest; or (ii) any Entity which, directly or indirectly, is in Control of, is Controlled by or is under common Control with a Party, as applicable.
- (c) "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).
- (d) "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.
- (e) "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.
- (f) "Change of Control" shall be deemed to have occurred with respect to a Party if: (a) any entity having previously Controlled (as hereinafter defined) Customer, ceases to do so; (b) any entity acquires Control of Customer (whether by reason of acquisition, merger, reorganization, operation of law or otherwise); or (c) all, or substantially all, of the assets of Customer or an entity that Controls Customer are acquired (whether by reason of acquisition, merger, reorganization, operation of law or otherwise) by, or combined by merger with, any other entity. A Change of Control shall not include any assignment specifically permitted elsewhere in this Agreement.
- (g) "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.
- (h) "Contributory Services" means all of LD Services purchased by the Customer:
- (i) "Control" (and "Controls," "Controlling," "Controlled by" and "under common Control with" shall be construed accordingly) as applied to any Party means the possession directly or indirectly of the power to direct or cause the direction or the management and policies of that Party, whether through

the ownership of voting securities, partnership or equity, by contract or otherwise. Where any two parties acting together as one pursuant to any agreement satisfy any of this definition, they shall be deemed to have Control

- (j) "CPE" means Customer premise equipment, software and/or other materials associated with the Service.
- (k) "FCC" means the Federal Communications Commission.
- (l) "Force Majeure Event" means an event (other than a failure to comply with payment obligations) beyond the reasonable control of a Party, including without limitation: natural disaster; act of God; fire; labor strike; sabotage; war or civil disorder; vandalism; storm or other similar occurrence or by national emergency or insurrection.
- (m) "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.
- (n) "Parties" means SELLER and BUYER, collectively.
- (o) "Party" means either SELLER or BUYER.
- (p) "Project Agreements" means and includes the Project Terms and conditions and the Vertecto Documents.
- (q) "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.
- (r) "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 surcharges whether charged to or against a Party, with respect to the supply of the Services or underlying facilities provided by a Party under this Agreement, as well as any other imposition by any governmental authority which has the effect of increasing SELLER's cost of providing the Services or the underlying facilities.
- (s) "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.
- (t) "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.