

Akabis, Inc.

Wholesale Partner
Agreement

Wholesale Partner Agreement

THIS AGREEMENT is made effective this ___ day of _____, __, between _____ to be referred to as "WHOLESALE PARTNER", a _____ Corporation with its principal address at: _____ and Akabis LLC to be referred to as "COMPANY" a Florida Corporation with its principal address at 395 East Dr, Melbourne, FL 32904. WHOLESALE PARTNER and COMPANY are collectively referred to herein as "PARTIES".

WHEREAS, COMPANY provides IP telecommunication products and services; and

WHEREAS WHOLESALE PARTNER desires to utilize COMPANY's Wholesale Services for its prospective customers, and

WHEREAS each PARTY hereto represents that it can fully perform its respective obligations under this AGREEMENT and knows of no reason that may interfere with such performance.

NOW THEREFORE, in consideration of the mutual covenants contained in this AGREEMENT, COMPANY and WHOLESALE PARTNER agree as follows:

- APPOINTMENT:** COMPANY hereby appoints WHOLESALE PARTNER, and WHOLESALE PARTNER hereby accepts the appointment by COMPANY, **as an independent sales WHOLESALE PARTNER** for COMPANY to market COMPANY's products and services, subject to the terms of this AGREEMENT.
- TERM AND TERMINATION:** This AGREEMENT shall continue in effect for one (1) year from the above date and shall automatically renew itself for successive terms of one (1) year each thereafter unless either WHOLESALE PARTNER or COMPANY notifies the other of its intent to terminate the AGREEMENT no later than (30) days prior to the end of the particular term. This AGREEMENT shall automatically terminate upon the dissolution or bankruptcy of either PARTY. If for any reason, COMPANY's agreement with any company to market their products and services is terminated, then either PARTY may terminate this AGREEMENT without liability for any costs, losses, damages or expenses incurred by either PARTY hereto. This Agreement and any related addendums may not be terminated for any reason other than for the COMPANY's inability to deliver a product or service that is the result of a discontinuance of such service outside of the COMPANY's control as long as the WHOLESALE PARTNER has any services with the COMPANY and is in compliance with this agreement and any other addendums. In the event COMPANY terminates this AGREEMENT for any reason except dissolution, bankruptcy, non-payment, or misuse of services, COMPANY will provide a reasonable transition period for the orderly movement of services to another provider.
- OBLIGATIONS OF WHOLESALE PARTNER:** WHOLESALE PARTNER shall use its best efforts to promote the sale and use of the products and services of COMPANY provided, however, WHOLESALE PARTNER shall not execute any document on behalf of COMPANY when soliciting a contract from a customer for COMPANY's products and services. WHOLESALE PARTNER shall market COMPANY's products and services at prices, terms and conditions reasonable to COMPANY and submit marketing material for COMPANY Approval. WHOLESALE PARTNER shall pay fees for services provided per Addendum's to this Agreement. Usage fees may be billed to WHOLESALE PARTNER on a weekly basis. Fees may be added to WHOLESALE PARTNER's bill for late payment of invoices. In the event the WHOLESALE PARTNER becomes more than 60 days late in payments to COMPANY, COMPANY may discontinue part or all services or support at their sole discretion. WHOLESALE PARTNER shall be responsible for collection of end-customer taxes and fees, and payment of such taxes to the appropriate governmental entities. When using the COMPANY'S billing system, WHOLESALE PARTNER shall have the responsibility of posting payment information in a timely manner. WHOLESALE PARTNER is responsible for providing customer network design, bandwidth, Customer Premise Equipment (CPE), configuration, or feature requirements and use, and troubleshooting any issues that fall within these areas.
- OBLIGATIONS OF COMPANY:** COMPANY shall make available to WHOLESALE PARTNER an initial quantity of informational material concerning COMPANY products and services, all of which shall remain the property of COMPANY. WHOLESALE PARTNER may purchase at cost literature if desired. When COMPANY is responsible for billing the WHOLESALE PARTNER'S end customer, COMPANY will be responsible for adding the appropriate taxes and fees to the bill, under the specific direction of WHOLESALE PARTNER. COMPANY will use available public information to determine

appropriate sales tax rates. COMPANY provides switching, features, and connection from and to the Public Switched Telephone Network (PSTN) and has the responsibility to troubleshoot, deal with and take charge of any problems residing within those areas.

5. **ACCEPTANCE OF CUSTOMERS:** COMPANY, at its own discretion and without incurring any liability of any type to WHOLESALEPARTNER, may refuse or reject any customer, whether solicited by WHOLESALEPARTNER or otherwise.
6. **USAGE OF SERVICES:** (a) COMPANY services are designed and priced for typical business and/or residential voice applications, with usage in conformance with telecommunications industry averages for similar applications.
(b) COMPANY, at its own discretion and without incurring any liability of any type to WHOLESALEPARTNER, may terminate any customer found to be misusing services or using services for different applications than the original designs, such as private line or call center applications.
(c) COMPANY offers Enhanced 911 (E911) services via third party providers. Any movement of equipment to new physical locations or addresses by WHOLESALEPARTNER or customer of WHOLESALEPARTNER should be immediately reported to COMPANY. Due to the nature of Voice-Over-IP networks, COMPANY makes no guarantee of E911 call completion. WHOLESALEPARTNER should consider making alternative arrangements for critical E911 services.
7. **RELATIONSHIP OF WHOLESALEPARTNER AND COMPANY:** (a) WHOLESALEPARTNER is an independent contractor and is not an employee or Partner of, or in a joint venture with, COMPANY for any purpose. WHOLESALEPARTNER has no authority to bind COMPANY; specifically WHOLESALEPARTNER may not enter into contracts or any agreements on behalf of COMPANY.
(b) As an independent contractor, WHOLESALEPARTNER is solely responsible for all of its expenses, including but not limited to, supplies, telephone calls, travel, lodging and such further expenses which might arise during the conduct of any marketing efforts by WHOLESALEPARTNER, its employees, or Partners. WHOLESALEPARTNER and its employees and Partners will comply with all federal, state and local laws, ordinances, regulations and rules now or hereafter in effect that relate to their collective and individual efforts under this AGREEMENT.
8. **NONSOLICITATION:** During the term of this agreement and for a period of six months after WHOLESALEPARTNER terminates services with customer, whichever is later, COMPANY will not solicit or attempt to solicit any customer of WHOLESALEPARTNER in an effort to cause or induce such person or entity to purchase or otherwise obtain the benefit or use of any products or services provided by WHOLESALEPARTNER, except in the case that the AGREEMENT is terminated due to non-payment by WHOLESALEPARTNER.
9. **BRANDING:** WHOLESALEPARTNER will not use COMPANY or any company that COMPANY represents or their respective names or logos on any printed visual materials without express written permission of COMPANY. WHOLESALEPARTNER shall make no factual misrepresentation to any customer or potential customer.
10. **PROPRIETARY INFORMATION:** Any and all contracts, customer lists, printed material or information that either PARTY obtains from the other PARTY shall be considered confidential and proprietary information of the providing PARTY. In the event of any disclosure or threatened disclosure of such information by the receiving PARTY, the providing PARTY shall have a right to obtain appropriate equitable relief or pursue a legal action for financial losses against the receiving PARTY.
11. **INDEMNIFICATION:** WHOLESALEPARTNER shall indemnify and hold COMPANY harmless from any claim, loss, demand, litigation or judgment arising out of the actions or omissions of WHOLESALEPARTNER'S employees, agents, or Partners in carrying out its responsibilities under this AGREEMENT, including, without limitation, any representations made concerning the COMPANY'S Products or Services that were not authorized in writing by COMPANY.
12. **CALL ABUSE POLICY:** Any call originated on the Akabis, LLC network is subject to inspection and investigation if the call is suspected of being fraudulent, abusive, or illegal. Calls meeting any of these criteria will be blocked. If these conditions are repeated, becoming excessive, the subscriber may be disconnected from Akabis, LLC network, may be subject to further investigation by the FCC for enforcement of the TRACED Act and the subscriber may be subject to fines and penalties imposed by the FCC or the jurisdictional court.
13. **NONDISCLOSURE:** (a) WHOLESALEPARTNER agrees to hold in strict confidence and not to disclose or use either before or after termination of this AGREEMENT any technical or business information, customer lists, customer analysis, marketing techniques and practices, trade secret or other confidential or proprietary matter relating to the services, customers, sales research or business of COMPANY unless approved by COMPANY in writing in advance of any such disclosure or use.
(b) WHOLESALEPARTNER agrees it shall not circumvent COMPANY by attempting to enter into its own agreement directly or indirectly through its employees, Agents or Agents with any company in order to provide the services covered by this Agreement. Both PARTIES shall enforce the requirements of this section with each of its employees and Agents/Partners and agrees that failure to fulfill this requirement shall constitute a breach of this AGREEMENT.
14. **TERMINATION FOR CAUSE:** (a) In the event either PARTY shall breach any of the terms, conditions or obligations of this AGREEMENT, the other PARTY, in addition to any other remedy it may have, may terminate this AGREEMENT by giving written notice of such termination to the breaching PARTY. However, the breaching PARTY shall have thirty (30) days after receipt of such notice to cure any such

breach. In the event that said breach is not cured to the satisfaction of the other PARTY within said thirty (30) day period, then the other PARTY shall have the right to terminate this AGREEMENT immediately.

(b) In the event the WHOLESALE PARTNER fails to make payment for services provided by the COMPANY and after notification by written notice if payment is not received within (45) days the COMPANY has the right to terminate agreement.

15. **ASSIGNMENT:** This AGREEMENT shall be binding upon and shall operate to the benefit of the PARTIES, and their respective legal Partners, heirs, successors and/or permitted assigns. However, no interest of WHOLESALE PARTNER may be assigned, sub-contracted or otherwise transferred, either voluntarily or involuntarily, without the prior written consent of COMPANY, which shall not be unreasonably withheld.
16. **NOTICES:** Any notices required by this AGREEMENT or desired to be given by one PARTY to the other shall be by certified mail (return receipt requested) with postage prepaid and addressed to the PARTIES at the addressees specified below or at such other address as either PARTY may designate to the other by appropriate notice:

COMPANY:

Akabis LLC
395 East Dr.
Melbourne, FL 32904

WHOLESALE PARTNER:

17. **ENTIRE AGREEMENT:** This AGREEMENT contains the entire AGREEMENT between the PARTIES with respect to the subject matter hereof. Any other representations, promises or terms not incorporated herein shall not be binding on either PARTY. This AGREEMENT supersedes all prior understandings, representations, negotiations, promises and agreements relative to the subject matter hereof. No modification, ratification, revision, renewal, abandonment or waiver of this AGREEMENT or any of its provisions shall be binding unless made in writing and signed by an officer of COMPANY and WHOLESALE PARTNER.
15. **PARTIAL INVALIDITY:** If any provisions or any portion of any provision in this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions or portions of provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.
16. **WAIVER:** The failure of either PARTY to enforce at any time or for any period of time the provisions hereof

shall not be construed to be a waiver of such provisions or the right of such PARTY to enforce each and every such provision. Waiver of any breach shall not be deemed a waiver of any other breach even if of similar nature.

17. **GOVERNING LAW AND INTERPRETATION:** All legal questions pertaining to this AGREEMENT shall be determined in accordance with the laws of the State of Florida. The paragraph headings are for convenient reference only and shall not be deemed to be part of the substance of this AGREEMENT or in any way to enlarge or limit the contents of any paragraph. Unless the context clearly indicates otherwise, the singular shall include the plural and the plural the singular.
18. **FORCE MAJEURE:** If the performance of the respective obligations of COMPANY and WHOLESALE PARTNER under this AGREEMENT shall be prevented or interfered with by any reason which is beyond the reasonable control of such PARTY, including, but not limited to, acts of God, strikes, riots, government regulations or actions, or the inability of suppliers to provide the necessary equipment or services, then the PARTY so affected shall not be obligated to the other PARTY for its failure to perform such obligations.
19. **LIMITATION OF LIABILITY:** IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY LOSS OF REVENUE OR LOST PROFITS, FRAUDULANT CHARGES INCURRED BY WHOLESALE PARTNER AND/OR WHOLESALE PARTNER'S CLIENTS, OR FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, UNDER THIS AGREEMENT OR RELATED IN ANY WAY TO COMPANY'S PRODUCTS OR SERVICES. COMPANY MAKES NO WARRANTIES OF ANY KIND REGARDING ITS PRODUCTS OR SERVICES AND WHOLESALE PARTNER SHALL MAKE NO SUCH WARRANTIES TO ANY THIRD PARTIES. COMPANY SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OF NON-INFRINGEMENT OR TITLE.
20. **COUNTERPARTS:** This AGREEMENT may be executed in any number of identical counterparts each of which shall be deemed a complete original in itself and may be introduced in evidence or used for any other purpose without the production of any other counterparts.
21. **ARBITRATION:** In the event of any claims or disputes between the PARTIES hereto, the PARTIES for resolution shall submit such claims or disputes by final and binding arbitration within the State of North Carolina in accordance with the rules of the American Arbitration Association as in effect under North Carolina law. In the event such arbitration is instituted, the prevailing PARTY shall be entitled to recover, in addition to costs, such sums, as the Arbitrators may adjudge reasonable as attorney's fees, including fees on appeal or review

WITNESS WHEREOF, the PARTIES have executed this AGREEMENT on the day and year first written above.

COMPANY

By: _____

Print Name: _____

Title: _____

Date: _____

WHOLESALE PARTNER

By: _____

Print Name: _____

Title: _____

Date: _____