

VTEX - MASTER SERVICES AGREEMENT



This Agreement is entered into between VTEX COMMERCE CLOUD SOLUTIONS LLC (“VTEX”), a Florida limited liability company located at: 501 E Las Olas Blvd, 3rd floor - Fort Lauderdale, FL 33301, and _____ (“CUSTOMER”) (each a Party, together, the “Parties”).



1. Services

1.1. VTEX shall provide the services described in the ORDER FORM (“Services”) on a non-exclusive basis and provide support of VTEX Software. The support includes maintaining the platform in accordance with the Service Level Agreement of the Software as a Service (“SLA”) and providing new functionalities and developments of existing standard functionalities, in VTEX’s discretion.

1.2. VTEX shall make available online documentation containing descriptions of the Application Programming Interfaces (“APIs”), to enable the integration of VTEX Software with other software.



2. Price and Payment Conditions

2.1. CUSTOMER will pay VTEX for the SERVICES including all fees indicated in the ORDER FORM, upon receipt of an invoice from VTEX. Any invoice not paid within thirty (30) days after receipt of invoice will accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum amount permitted by law, whichever is lower. If CUSTOMER fails to make any payment for more than sixty (60) days after receipt, VTEX may immediately suspend the rendering of the SERVICES, and at its sole discretion, terminate the AGREEMENT.

2.2. CUSTOMER shall remain obliged to pay the overdue and unpaid amounts, as long as the SERVICES have been provided by VTEX.

2.3. The fees for the SERVICES are exclusive of taxes. If VTEX is required to withhold taxes imposed upon CUSTOMER for any payment under this Agreement by virtue of the laws of a country in which VTEX Services are licensed, sold or delivered, then such payments will be made by VTEX on behalf of CUSTOMER and VTEX shall remit such taxes to the proper authorities on a timely basis, and the payments provided for under this Agreement will be adjusted appropriately so that VTEX actually receives the full amount of the fees from CUSTOMER. CUSTOMER agrees to supply VTEX with official documentation or tax receipts on such withholdings supporting such taxes and such payments as may be required by VTEX for its tax records.



3. Customer's Obligations

3.1. To make the payments due under this AGREEMENT in accordance with the terms indicated in the ORDER FORM.

3.2. CUSTOMER shall inform VTEX as expeditiously as possible of any changes in Client’s business registration and contact information including but not limited to: business name, address, primary contact name and contact details. Unless informed of such changes, VTEX will continue to use information previously provided with no liability for using the information with respect to the terms of the Agreement (e.g., for providing notice of price changes).

3.3. To manage the operation of **CUSTOMER's** website (including payment methods and to manage it through the administrative module made available by **VTEX**).

3.4. CUSTOMER shall be fully liable for the acts and omissions of its users.

3.5. Customer may not add any customization, features or functionality to the VTEX Platform without **VTEX** approval.

3.6. Customer shall not use the Software or Services to: (i) display or transmit pornographic material of any kind; (ii) transmit material that is unlawful, misleading, harassing, libelous, abusive, fraudulent, threatening, harmful, grossly offensive or otherwise objectionable; (iii) transmit material that contains viruses or any other harmful programs or code; (iv) collect, post or distribute personal information about others without their consent; (v) transmit chain letters or any unsolicited e-mail or other electronic messages ("SPAM"); (vi) post or transmit any material that may infringe the copyright, trademark, trade dress or other intellectual property rights or any other personal or property rights of a third party; (viii) store files not related to **CUSTOMER's** web site; (ix) attempt to hack or penetrate security measures; or (x) offer or conduct activities related to gambling, sweepstakes, raffles, lotteries, pyramid or similar schemes; (xi) create an anonymous gateway; (xii) violate any federal, state or local law or regulation of a governing body; (xiii) in the location where the violating content is received.

3.7. CUSTOMER shall not attempt to, (i) gain unauthorized access to **VTEX's** network, System or Services; (ii) interfere with **VTEX's** Software or Services; (iii) interfere with another **VTEX Client's** use of **VTEX's** Software or Services; or (iv) impair the functioning or operation of **VTEX's** Software or Services; or (v) decipher, decompile, disassemble or reverse engineer the Software or the Services.

3.8. CUSTOMER shall not sublicense or resell any of the Services to any third party without the prior written consent of **VTEX**.

3.9. CUSTOMER is solely liable for the products and/or services offered by it via its website and shall indemnify **VTEX** against any claim, action, loss, liability or demand by a third party in connection with **CUSTOMER's** products and/or services.



4. VTEX's Obligations

4.1. VTEX shall:

4.1.1. render the SERVICES properly, subject to the provisions stated in clause 7 below.

4.1.2. provide monthly support of VTEX Software, according to Section 1.

4.1.3. make available online documentation containing description of the main Application Programming Interfaces ("APIs"), to enable the integration of VTEX Software with other software.

4.1.4. provide and update knowledge basis for support and guidance on the operation of the platform.

4.1.5. maintain the hosting infrastructure updated and secure in relation to protection programs against third parties' criminal or irregular activities.

4.1.6. make available to the **CUSTOMER** online information for guidance relating to the procedures, use and operation of the platform.



5. Service Level

As long as **CUSTOMER's** obligations provided for herein are complied with, **VTEX** shall perform the Services at the levels set forth in the SLA OF THE SAAS, VTEX COMMERCE – SERVICE LEVEL AGREEMENT (<http://www.vtex.com/agreements/>).



6. Limitation of Liability

VTEX ASSUMES NO RESPONSIBILITY WITH RESPECT TO THE USE OF THE SYSTEM OR SERVICES BY CLIENT OR ITS END USERS. VTEX SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, REVENUE OR PROFIT, LOSS OR CORRUPTION OF DATA, DOWNTIME COSTS, COSTS OF ANY SUBSTITUTE SERVICES OR CLAIMS OF ANY THIRD PARTY, INCLUDING CLIENT'S OR END USERS FOR SUCH DAMAGES, ARISING FROM THE USE OR INABILITY TO USE THE SYSTEM OR SERVICES, OR BY THE UNAUTHORIZED USE OF, OR ACCESS TO, THE SYSTEM OR SERVICES, EVEN IF VTEX KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. VTEX'S MAXIMUM LIABILITY FOR ANY DAMAGES OR WARRANTY OBLIGATIONS ARISING UNDER THIS AGREEMENT SHALL BE LIMITED TO ACTUAL DIRECT DAMAGES RESULTING FROM VTEX'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AND WILL NOT EXCEED AN AMOUNT EQUAL TO THE AGGREGATE OF THE AMOUNTS PAID BY CUSTOMER FOR THE SERVICES DURING THE 12-MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION AROSE. CUSTOMER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT ANY CAUSE OF ACTION ARISING OUT OF THIS AGREEMENT OR RELATING TO THE SERVICES MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE SUCH CAUSE OF ACTION SHALL BE PERMANENTLY BARRED. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMISSIBLE UNDER LAW AND SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT OR THE PERFORMANCE OF ANY SERVICES TO BE RENDERED HEREUNDER.



7. Intellectual Property

7.1. VTEX Software is owned and shall remain owned exclusively by VTEX, being hereby authorized only the use of VTEX Software by CUSTOMER. CUSTOMER may only reproduce or copy eventual reference manuals of VTEX software and any written materials furnished by VTEX for internal use.

7.2. CUSTOMER cannot modify or remove any sign identifying VTEX trademark as well as its trade name from the places where it appears on VTEX Software. Unless otherwise provided for in this clause, no provision contained herein may grant or will be considered as having granted to CUSTOMER any right, title or any other equity on VTEX trademark and its trade name. CUSTOMER may not, at any time whatsoever, object to or assist or cooperate with third parties to object to the trademark or the trade name of VTEX or its register, nor may it seek to register any trademark or trade name that can cause confusion by virtue of its similarity, with the trademark or the trade name of VTEX. Any and all goodwill, rights and benefits deriving from or resulting from the use of VTEX trademark and of its trade name will exclusively benefit VTEX.

7.3. All data stored by the use of VTEX Software belongs to the CUSTOMER ("CUSTOMER DATA") provided VTEX may aggregate and anonymize such data in accordance with applicable laws and use such resulting de-identified data set for its purposes including to help the improvement of its products and services, market comparisons, as well as to assist VTEX to measure and evaluate its infrastructure. VTEX will not any Sell any CUSTOMER Data (as such term is defined in the California Consumer Privacy Act ("CCPA")).

7.4. The Parties agree that in the event of any breach of VTEX's intellectual property rights relating to the Software or the Services, VTEX may not have an adequate remedy at law and VTEX shall be entitled to equitable relief without the necessity of proving actual damages or posting of a bond.

8. Term and Termination

8.1. The AGREEMENT is effective as of the date of execution of the ORDER FORM, ("TERM"). If not otherwise agreed in the ORDER FORM, the AGREEMENT will be considered automatically extended for successive additional periods equivalent to the TERM, unless one of the PARTIES notifies the other PARTY, in writing, ninety (90) days before the end of the TERM, stating its intention not to renew the AGREEMENT. The fees for any annual renewal period may increase in the greater of (a) three percent (3%) and (b) rate of the Consumer Price Index-All Urban applicable to such year.

8.2. Either PARTY may terminate the AGREEMENT by virtue of an uncured contract breach, by notifying the other PARTY, in writing, about such breach, requesting the cure of such breach within fifteen (15) days as of the notification date. If the breaching PARTY is not able to cure the breach within such term, the aggrieved PARTY may terminate this AGREEMENT. **VTEX** may, at its sole discretion and at any time, terminate this AGREEMENT without liability if **CUSTOMER** is using the SERVICES in a fraudulent manner.



9. Confidentiality

9.1. "Confidential Information" shall mean all documents and information supplied by the DISCLOSING PARTY to the RECEIVING PARTY in any form or manner, including, but not limited to any and all proprietary information relating to technology from any of the Parties or their affiliates, business plans, agreements, promotional, marketing, financing activities and economic matters, as well as all third party information that any of the Parties or their affiliates are obliged to keep confidential.

9.2. Confidential Information shall not include information that: (i) is recognized by the RECEIVING PARTY at the moment of its receipt from the other Party, as demonstrated by written evidence by the RECEIVING PARTY, produced at the moment without breach of confidentiality; (ii) is commonly recognized or available to public, regardless of breach or omission by the RECEIVING PARTY; (iii) can be evidenced by documents that has been developed or created by, or to the employees of, the RECEIVING PARTY or any third party (that did not obtain such information in an illegal or obscure manner) and that did not have access, direct or indirectly, to the Confidential Information; or (iv) provided to the RECEIVING PARTY by third parties, having right to it, without restrictions to disclosure and without breach any contractual, legal or fiduciary obligations of such third parties.

9.3. The PARTIES shall:

9.3.1. take reasonable measures to prevent the use, disclosure, dissemination or copy of any Confidential Information, including the development, implementation, maintenance and application of the proceedings and proper policies for protection of any Confidential Information;

9.3.2. use the same measures that it uses to prevent the use, disclosure, dissemination or copy of its own confidential information or information of similar nature to prevent the disclosure of Confidential Information to third parties, but in any way secure measures below the reasonable level;

9.3.4. use the Confidential Information only when necessary and appropriate for the accomplishment of obligations under this AGREEMENT. Each PARTY shall require that all its agents, employees and contracting parties (including, in case of **VTEX**, any subcontractors) agree to be bound by confidentiality obligations substantially similar to those contained herein. Notwithstanding any provision in contrary in this clause, **VTEX** is authorized to disclose Confidential Information to its employees, agents, affiliates and subcontracting parties that need to have such information in order to execute the obligations under this AGREEMENT. Each Party assumes total responsibility for acts and omissions of its contracting parties and employees regarding all Confidential Information. The RECEIVING PARTY shall notify as soon as possible the DISCLOSING PARTY in case of any suspicion, disclosure or loss of Confidential Information beyond what is allowed under this AGREEMENT.

9.4. Mandatory Disclosure. Subject to the remaining part of this clause, the RECEIVING PARTY may disclose Confidential Information as long as they are requested by law, tribunal order or governmental body. The RECEIVING PARTY shall use its reasonable commercial efforts for: (a) maintaining the confidentiality of the Confidential Information by notifying (as long as not prohibited by law) to the DISCLOSING PARTY that shall have the right to intervene in the process for contesting such disclosure; and (b) cooperate with the DISCLOSING PARTY, under DISCLOSING PARTY's costs, to protect the confidentiality of such Confidential Information.

9.5. Return of Confidential Information. Subject to the ordinary practice of maintaining backup of information for purposes of archive of each Party, in case of termination or end of this AGREEMENT, or upon the DISCLOSING PARTY's request at any time, the RECEIVING PARTY shall promptly return or destroy, according to the DISCLOSING PARTY's instructions, all and any Confidential Information and its respective copies.

● ● ● 10. General Provisions

10.1. The AGREEMENT does not constitute a company, an association, a joint venture, a partnership or another formal business relationship or an entity of any nature, nor does it constitute an obligation to create any of such relationships or entities. Each PARTY will act in the capacity of independent contractor, and not as representative of another PARTY for any purpose.

10.2. If either PARTY fails to exercise any right provided for herein, this will not be considered novation or waiver of such provisions, rights or entitlements, and will not affect by any means whatsoever the validity of the AGREEMENT.

10.3. The rights related to the AGREEMENT cannot be transferred or assigned, in the whole or in part, to third parties, except under the hypotheses provided for in this instrument, pursuant to written authorization from the PARTIES. This AGREEMENT is binding on the PARTIES, heirs and successors at any title.

10.4. If any provision of this AGREEMENT is determined to be void, null or ineffective, such invalidity will not affect the other provisions of the AGREEMENT, which will remain valid and in force with respect to all the other provisions.

10.5. All notices under the Agreement must be in writing and personally delivered, or sent by registered or by certified mail to the address listed on the associated ORDER FORM. Notices will be deemed delivered: i) at the time of personal delivery to a representative of the Parties; ii) at the end of the third (3rd) business day when sent by delivery services; or ii) if mailed by registered or certified mail, notices will be effective when received. Either party may change the address to which notices to it are to be sent by giving notice of such change to the other party.

10.6. CUSTOMER shall include VTEX's logo and hyperlink to its website, in all items accessible to the users of VTEX Software during the term of the AGREEMENT.

10.7. This AGREEMENT and the ORDER FORM contain the entire understanding of the PARTIES on the subject matter hereof and prevail over all and any previous understandings about the same object. In the event of a conflict between this AGREEMENT and the ORDER FORM, the ORDER FORM shall prevail.

10.8. The obligations of a party will be temporarily suspended in the event of any act of God or other event not reasonably within the control of the party ("Force Majeure Event") and will remain suspended for the duration of the Force Majeure Event. If a party's performance is suspended by a Force Majeure Event for a period exceeding 90 days, the other party may, at its option, terminate this Agreement. Except for payments of outstanding balances when due, neither party will be liable for any damages or penalties for delay in performance when such delay is due to a Force Majeure Event.

10.9. This Agreement will be governed by the laws of the State of New York without regard to its conflicts of laws principles. The parties submit to the exclusive personal jurisdiction of, and waive any objection to the jurisdiction of, the state and federal courts in New York, New York.