



## **Conferencing Services and Solutions Agreement**

This VinTalk Conferencing Services and Solutions Agreement (this "Agreement") sets forth the terms agreed to by and between Vinculum Communications, Inc ("Vincomm"), a Delaware corporation with offices at 9707 Waples Street, Suite 201, San Diego, CA 92121 and Customer Whereas, Vincomm owns and operates a communications network and is in the business of providing communications services to other entities; and Whereas, Customer desires to purchase from Vincomm certain services available through the Vincomm network; Whereas, Vincomm is willing to sell such services to Customer according to the terms and conditions set forth in this Agreement (the "Services"); Now, therefore, in consideration of the foregoing recitals and the covenants contained herein and other good and valuable consideration, the two parties agree as follows:

### **1. Services and Pricing**

(a) **Charges and Payment Terms.** Customer agrees to pay Vinculum Communications, Inc. ("Vinculum") for conferencing services and solutions ("Services") according to the terms of service and at the listed rates as set forth in the Services and Pricing Schedule attached to and hereby incorporated into this Agreement. Charges for use of Services are invoiced at the end of each month, and payments are due upon receipt of invoice. Past-due balances shall be subject to an interest charge of 1.5% per month computed from the due date of each invoice previously issued, or the maximum rate legally permitted, whichever is less. Customer shall pay any collection costs, including reasonable attorneys' fees, and other expenses incurred by VINCULUM to collect any sums due under this Agreement. Customer must notify VINCULUM of any charge disputed in good faith, with supporting documentation, within 30 days from the date of invoice, or Customer will be deemed to agree to such charges and no adjustments to charges or invoices will be made. Customer remains responsible to pay undisputed charges by the due date.

(b) **Credit Checks; Taxes and Other Charges.** The provision of Services under this Agreement is subject to credit verification and acceptance by VINCULUM. VINCULUM reserves the right, in its sole discretion, to change or institute new or additional charges and/or fees for access to or use of Services (including for ancillary services) at any time. Further, VINCULUM may, in its sole discretion, request advanced payment, in whole or in part, from Customer or change its payment terms at any time. VINCULUM may cancel or re-schedule orders if VINCULUM determines, in its sole discretion, that Customer's financial condition or previous payment record so warrants such change. Customer shall pay, and VINCULUM reserves the right to collect in arrears, all sales,

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use, excise or other taxes, fees or charges of any nature whatsoever, now or hereafter imposed or assessed on VINCULUM, by any federal, state, county or local government authority upon or with respect to the Services provided.

## 2. Term and Termination.

(a) **Term.** Services shall commence upon the Service Commencement Date as agreed upon by the parties, in writing, and shall continue for a minimum term of twelve (12) months, unless a different term is specified by the parties on the Services and Pricing Schedule (“Initial Term”), with one year renewal terms continuing indefinitely thereafter (each a “Renewal Term”). Either party may terminate this Agreement at the end of a term by providing written notice to the other party of such termination at least 60 days prior to the end of such term. At the commencement of any Renewal Term, the rates for Services provided pursuant to this Agreement shall automatically adjust to VINCULUM’ then-standard rates.

(b) **Termination for Cause.** Either party may terminate this Agreement at any time in the event that the other party breaches any provision of this Agreement in any material respect and fails to cure such breach within 30 days after receipt of written notice of such breach. Notwithstanding the foregoing, VINCULUM may terminate this Agreement and/or suspend the provision of Services immediately for: illegal, fraudulent or improper use of the Services (including without limitation Customer’s use of the Services in contravention of Section 6) or if deemed reasonably necessary by VINCULUM to prevent interruption or disruption to VINCULUM’ network, its business or other customers; if any portion of an invoice remains unpaid when due; or for breach, not subject to cure. VINCULUM shall not be liable to Customer or any third party should VINCULUM exercise its right to discontinue Services, in whole or in part, or terminate this Agreement pursuant to this Section 2(b).

(c) **Early Termination by Customer.** In the event that Customer terminates this Agreement (not due to breach by VINCULUM) or if VINCULUM terminates on account of Customer’s breach, Customer shall pay to VINCULUM as liquidated damages, but not as a penalty and representing a reasonable estimate of the probable loss to VINCULUM, a termination charge equal to the Minimum Monthly Charge multiplied by the number of months in the term less any payments for actual usage made by Customer during the term of this Agreement; provided, however, no payments over and above the Minimum Monthly Charge for any one month shall apply to or in any way be credited against any other, past or present, Minimum Monthly Charge or the overall shortfall amount for the term of the Agreement.



3. **Customer Compliance and Indemnification.** Customer acknowledges that VINCULUM has no control over the content of information transmitted by Customer through the Services (whether visual, written or audible) and that VINCULUM does not examine the use to which Customer puts the Services or the nature of the information Customer or Customer's users send or receive. Customer shall comply with all applicable foreign, federal, state and local laws relating to its use of the Services under this Agreement (including without limitation, export and control laws and regulations). Customer agrees not to transmit content through use of the Services that infringes any third party's intellectual property rights or that is unlawful, threatening, abusive, harassing, libelous, deceptive, fraudulent, invasive of another's privacy, vulgar, obscene or otherwise contains objectionable material of any kind or nature. Customer is responsible: (i) for any and all activities that may occur under your account and (ii) to maintain the confidentiality and security of its Services' access numbers, keys and passcodes. Customer agrees to notify VINCULUM immediately if there has been an unauthorized use of any access numbers, keys and passcodes or any other breach of security and Customer shall be liable for fraudulent charges until such time as Customer has notified VINCULUM to suspend any compromised access numbers, keys and/or passcodes. Customer acknowledges that VINCULUM may from time to time monitor the Services for quality assurance and fraud detection. Further, and notwithstanding confidentiality provisions herein, VINCULUM may disclose information about Customer's use of Services to satisfy any law, regulation, government agency request, court order, subpoena or other legal process.

Customer shall indemnify, defend and hold VINCULUM, its officers, directors, employees, affiliates and its suppliers harmless from any claims, losses, damages, penalties or costs (including without limitation reasonable attorneys' or expert witness fees) arising out of: (i) Customer's use of the Services; (ii) Customer's violation or alleged violation of any applicable laws or regulations with respect to the Services; or (iii) infringement of any intellectual property rights of any third party. The obligations contained in this paragraph shall survive any termination or suspension of the Services contemplated herein, the expiration or termination of this Agreement, and shall also survive final payment.

4. **Warranty and Limitation of Liability.** All Services provided under this Agreement are provided on an "as is" And "AS AVAILABLE" basis, and VINCULUM shall not have any liability to any party, including but not limited to Customer, for the content of information transmitted by Customer through the services or any loss, delay, interruption or inaccuracy of such communications. VINCULUM DISCLAIMS any AND ALL representations, warranties or covenants, either express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, or non-infringement regarding the Services. VINCULUM MAKES NO WARRANTY OR REPRESENTATION REGARDING THE RESULTS THAT MAY BE OBTAINED FROM

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THE USE OF THE SERVICES, AND ANY MATERIAL, AND/OR DATA DOWNLOADED, UPLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS AT YOUR OWN DISCRETION AND RISK. VINCULUM, nor its suppliers, shall in any event be liable for any special, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT OR OTHER MONETARY LOSS; LOSS OR INTERRUPTION OF DATA, COMPUTER TIME OR VOICE TRANSMISSIONS; ALTERATION OR ERRONEOUS TRANSMISSION OF DATA; ACCURACY OF DATA; UNAUTHORIZED ACCESS TO OR USE OF VOICE OR DATA PROCESSED OR TRANSMITTED BY, TO OR THROUGH THE SERVICE; OR PROGRAM ERRORS) EVEN IF VINCULUM IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. VINCULUM shall not be liable for any failure to perform, or delay in performance of, its obligations under this Agreement caused by reasons beyond VINCULUM' control. In no event shall VINCULUM' total liability to Customer arising under this Agreement, whether such theory of liability is based in contract, tort or otherwise, exceed an amount equal to the charges by Vinculum to customer for the particular service performed by Vinculum during the one month period immediately prior to the date of event, act or omission giving rise to the liability.

5. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original but all of which together will constitute one and the same document.

6. Captions and Section Headings. Captions and section headings are for convenience only, are not a part of this Agreement and may not be used in construing it.

7. Severability. Should any provision of this Agreement be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining terms of this Agreement shall not be affected or impaired thereby, and the illegal, invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the allocation of risk.

8. Waivers. Any failure by any of the parties to comply with any of the obligations, agreements or conditions set forth in this Agreement may be waived by the other party, but any such waiver must be in writing signed by the waiving party and will not be deemed a waiver of any subsequent failures or of any other obligations, agreements or conditions contained herein.

9. No Agency. The parties' relationship to each other shall be that of independent contractors. Neither party shall or shall be deemed to be an agent, employee, partner of, or joint venture with the other party.

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10. No Third Party Beneficiaries. Each party enters into this Agreement solely for its own benefit and purpose. Except for VINCULUM' suppliers as expressly provided herein, this Agreement in no way confers any rights upon, or imposes obligations on either of the parties toward, any third party, including but not limited to any recipient of content transmitted through the Services.

11. Successors and Assigns; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties' successors, legal representatives and authorized assigns. VINCULUM may assign its rights and obligations under this Agreement to an entity that either now or in the future controls, is controlled by or is under common control with VINCULUM or as a consequence of merger, acquisition, change of control or asset sale. Customer may not assign its rights and obligations under this Agreement without the written consent of VINCULUM, which shall not be unreasonably withheld.

12. Notices. Customer notices will be addressed to the address first set forth on this Agreement. Notifications to VINCULUM shall be addressed to: Vinculum Communications, Inc., 9707 Waples Street, Suite 201, San Diego, CA 92121. Notices may also be faxed to 858-357-8697 or emailed to [notices@vincomm.net](mailto:notices@vincomm.net).

13. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California applicable to agreements made and to be performed therein, without regard to any conflicts or choice of law rules. The parties agree to submit to the exclusive jurisdiction of the state or federal courts located in or with responsibility for San Diego, California to resolve any disputes arising hereunder.

14. Entire Agreement. This Agreement, including all Schedules attached hereto, constitutes the final, complete and entire agreement between the parties with respect to the subject matter hereof, and supersedes any previous proposals, negotiations, agreements or arrangements, whether verbal or written made between the parties with respect to such subject matter. There are no other verbal agreements, representations, warranties, undertakings or other agreements between the parties. If Customer uses or requires a purchase order in connection with any of the Services to be performed hereunder, Customer hereby acknowledges and agrees that to the extent such purchase order contains any pre-printed or other terms and conditions, such terms and conditions, whether in addition to or in conflict with this Agreement, shall have no effect whatsoever and this Agreement shall govern the relationship between VINCULUM and Customer. VINCULUM may amend at any time the provisions of this Agreement by, at VINCULUM' election: (i) posting revised terms and conditions ("Amended Terms") on [www.vincomm.net](http://www.vincomm.net) (the "VINCULUM Web Site") or (ii) delivering the Amended Terms to Customer at the address, fax or e-mail address provided herein (such delivery may be

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included in invoices for the Services delivered to Customer). All Amended Terms shall automatically be effective 30 days after such amendment is posted on the VINCULUM Web Site or delivery to Customer as provided above. Customer agrees to BE responsible for regularly reviewing the VINCULUM Web Site to obtain timely notice of ANY SUCH AMENDED TERMS AND VINCULUM's then CURRENT TERMS AND CONDITIONS. By using the Services after POSTING OR DELIVERY OF Amended Terms, Customer will be deemed to have accepted AND BE BOUND BY such Amended Terms. No such amendment by VINCULUM shall serve to constitute a default or termination by VINCULUM of this Agreement, nor shall such amendment serve to be a basis for Customer's termination of this Agreement. Except as otherwise provided in this Section 14, this Agreement may only be amended or modified, in whole or in part, by a written instrument signed by the parties to this Agreement.