



VinTalk Basic Services Agreement

This VinTalk Basic Services Agreement (this "**Agreement**") sets forth the terms agreed to by and between Vinculum Communications, Inc ("**Vincomm**"), a Delaware corporation with offices at 9255 Towne Centre Drive, Suite 925, 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. TERM - The term of this Agreement ("**Term**") begins on the Effective Date of the signed COS (Customer Order Schedule) and continues for the length identified in COS, unless terminated earlier as provided in Section 9 of this Agreement. At the end of the current Term, the Term is automatically renewed for an additional one year period unless Customer provides Vincomm with written notification of intention to cancel the service within sixty (60) days prior to the end of the current Term. Customer agrees to pay for Services for the duration of the Term. Expiration of the Term does not alleviate Customer of responsibility for paying all unpaid, accrued charges due hereunder. If Customer chooses to cancel the Service or any portion of the Service prior to the end of the current Term, disconnection fees may apply as set forth in Section 9 of this Agreement.

2. 911 & SERVICE LIMITATIONS - The Federal Communications Commission ("**FCC**") requires that Vincomm provide E911 Service to all customers who use Vincomm services within the United States.

2.1. CUSTOMER ACKNOWLEDGES THAT VINCOMM'S EQUIPMENT AND SERVICES DO NOT SUPPORT 911 EMERGENCY DIALING OR OTHER EMERGENCY FUNCTIONS IN THE SAME WAY THAT TRADITIONAL LAND LINE 911 SERVICES WORK. THE DIFFERENCES ARE DETAILED IN THIS SECTION 2 AND CUSTOMER HEREBY AGREES TO NOTIFY ANY POTENTIAL USER OF THE SERVICES, WHO MAY PLACE CALLS USING CUSTOMER'S SERVICES, OF THE 911 LIMITATIONS DESCRIBED HEREIN. VINCOMM WILL PROVIDE CUSTOMER WITH WARNING LABELS REGARDING THE LIMITATIONS OR UNAVAILABILITY OF 911 EMERGENCY DIALING. CUSTOMER AGREES TO PLACE A LABEL ON AND/OR NEAR EACH TELEPHONE OR OTHER CUSTOMER PREMISE EQUIPMENT ON WHICH THE SERVICES MAY BE UTILIZED. IF ADDITIONAL LABELS ARE REQUIRED, CUSTOMER MAY REQUEST THEM FROM VINCOMM. VINCOMM WILL PROVIDE CUSTOMER WITH ADVISORY NOTICES REGARDING 911 EMERGENCY



DIALING AND REQUEST ACKNOWLEDGMENTS FROM CUSTOMER. CUSTOMER AGREES TO RESPOND AND AFFIRMATIVELY ACKNOWLEDGE THAT VINCOMM HAS ADVISED CUSTOMER OF THE CIRCUMSTANCES UNDER WHICH VINCOMM E911 SERVICE MAY NOT BE AVAILABLE OR MAY BE LIMITED IN COMPARISON TO TRADITIONAL 911 EMERGENCY DIALING. VINCOMM ADVISES CUSTOMER TO MAINTAIN AN ALTERNATIVE MEANS OF ACCESSING TRADITIONAL 911 SERVICES.

2.2. CUSTOMER ACKNOWLEDGES THAT THE SERVICES WILL NOT FUNCTION IN THE ABSENCE OF ELECTRICAL POWER.

2.3. CUSTOMER ACKNOWLEDGES THAT THE SERVICES WILL NOT FUNCTION PROPERLY IF THERE IS AN INTERRUPTION OR A LACK OF BANDWIDTH OF CUSTOMER'S BROADBAND OR HIGH-SPEED INTERNET ACCESS SERVICE.

2.4. CUSTOMER ACKNOWLEDGES THAT THE SERVICES ARE NOT SET UP TO FUNCTION WITH OUTDIALING SYSTEMS INCLUDING HOME SECURITY SYSTEMS, MEDICAL MONITORING EQUIPMENT, TTY EQUIPMENT, AND ENTERTAINMENT OR SATELLITE TELEVISION SYSTEMS. CUSTOMER HEREBY WAIVES ALL CLAIMS AGAINST VINCOMM FOR INTERRUPTION OR DISRUPTION OF SUCH SYSTEMS BY THE SERVICES.

2.5. VINCOMM E911 SERVICE IS A MANDATORY COMPONENT OF ALL INBOUND/OUTBOUND FAX AND VOICE SERVICE PLANS. E911 SERVICE IS NOT OFFERED ON VIRTUAL NUMBERS, TOLL FREE NUMBERS OR SIMILAR SERVICE ACCESSORIES OR ADD-ON PLANS. E911 SERVICE IS ONLY AVAILABLE IN SELECTED AREAS. CUSTOMERS WHO SUBSCRIBE TO VINCOMM E911 SERVICE WILL BE REQUIRED TO REGISTER THE PHYSICAL LOCATION OF THEIR EQUIPMENT (ATA or IP PHONE) WITH VINCOMM, EITHER ON THE MYVINTALK.COM USER PORTAL, INITIAL ORDER FORMS OR BY CALLING CUSTOMER SERVICE, AND AGREE TO UPDATE THE LOCATION WHENEVER THE PHYSICAL LOCATION OF SERVICE CHANGES. CUSTOMER ACKNOWLEDGES THAT VINCOMM'S ONLY MECHANISM FOR ROUTING 911 CALLS TO THE CORRECT EMERGENCY CALL TAKER IS THE PHYSICAL LOCATION CURRENTLY REGISTERED FOR THE ACCOUNT. CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THAT ANY ENHANCED LOCATION INFORMATION PASSED TO AN EMERGENCY OPERATOR BY VINCOMM WILL BE BASED UPON THE PHYSICAL LOCATION PROVIDED TO VINCOMM BY CUSTOMER. IN THE EVENT THAT THE PHYSICAL LOCATION HAS NOT BEEN UPDATED OR IS NOT COMPLETE, VINCOMM MAY ATTEMPT TO ROUTE A 911 CALL BASED UPON THE BILL-TO OR SHIP-TO ADDRESSES ASSOCIATED WITH THE CUSTOMER'S ACCOUNT OR INITIAL ORDER.

2.6. CUSTOMER ALSO ACKNOWLEDGES THAT VINCOMM E911 SERVICE HAS CERTAIN CHARACTERISTICS THAT DISTINGUISH IT FROM TRADITIONAL, LEGACY, CIRCUIT-SWITCHED 911 SERVICE. THESE CHARACTERISTICS MAY MAKE VINCOMM'S E911 SERVICES UNSUITABLE FOR SOME CUSTOMERS.

BECAUSE EACH CUSTOMER'S CIRCUMSTANCES MAY VARY WIDELY, CUSTOMERS SHOULD CAREFULLY EVALUATE THEIR OWN CIRCUMSTANCES



WHEN DECIDING WHETHER TO RELY SOLELY UPON VINCOMM E911 SERVICE, CUSTOMER ACKNOWLEDGES THAT IT IS CUSTOMER'S RESPONSIBILITY TO DETERMINE THE TECHNOLOGY OR COMBINATION OF TECHNOLOGIES BEST SUITED TO MEET CUSTOMER'S EMERGENCY CALLING NEEDS, AND TO MAKE THE NECESSARY PROVISIONS FOR ACCESS TO EMERGENCY CALLING SERVICES (SUCH AS MAINTAINING A CONVENTIONAL LANDLINE PHONE OR WIRELESS PHONE AS A BACKUP MEANS OF COMPLETING EMERGENCY CALLS). THE FOLLOWING CHARACTERISTICS DISTINGUISH VINCOMM E911 SERVICE FROM TRADITIONAL, LEGACY, CIRCUIT-SWITCHED 911 SERVICE:

- ** VINCOMM E911 SERVICE WILL NOT FUNCTION IF CUSTOMER'S ATA or IP PHONE FAILS OR IS NOT CONFIGURED CORRECTLY OR IF CUSTOMER'S VINCOMM SERVICE IS NOT FUNCTIONING FOR ANY REASON, INCLUDING, BUT NOT LIMITED TO, ELECTRICAL POWER OUTAGE, BROADBAND SERVICE OUTAGE, OR SUSPENSION OR DISCONNECTION OF SERVICE BECAUSE OF BILLING OR OTHER ISSUES. IF THERE IS A POWER OUTAGE, CUSTOMER MAY BE REQUIRED TO RESET OR RECONFIGURE THE EQUIPMENT BEFORE BEING ABLE TO USE THE VINCOMM SERVICE, INCLUDING FOR E911 PURPOSES.
- ** AFTER INITIAL ACTIVATION OF THE E911 SERVICE, AND FOLLOWING ANY CHANGE OF AND UPDATE TO CUSTOMER'S PHYSICAL LOCATION, THERE MAY BE SOME DELAY BEFORE THE AUTOMATIC NUMBER AND LOCATION INFORMATION IS PASSED TO THE LOCAL EMERGENCY SERVICE OPERATOR. THIS INFORMATION IS TYPICALLY POPULATED INTO VINCOMM'S NOMADIC E911 DATABASES PRIOR TO SERVICE ACTIVATION, BUT NO GUARANTEE CAN BE MADE THAT THE AUTOMATIC NUMBER AND LOCATION INFORMATION WILL BE ACTIVATED WITHIN THIS SCHEDULE.
- ** THE LOCAL EMERGENCY SERVICE OPERATOR RECEIVING VINCOMM E911 EMERGENCY SERVICE CALLS MAY NOT HAVE A SYSTEM CONFIGURED FOR E911 SERVICES OR BE ABLE TO CAPTURE AND/OR RETAIN AUTOMATIC NUMBER OR LOCATION INFORMATION. THIS MEANS THAT THE OPERATOR MAY NOT KNOW THE PHONE NUMBER OR PHYSICAL LOCATION OF THE PERSON WHO IS MAKING THE VINCOMM E911 CALL. DUE TO TECHNICAL FACTORS IN NETWORK DESIGN, AND IN THE EVENT OF NETWORK CONGESTION ON THE VINCOMM NETWORK, THERE IS A POSSIBILITY THAT A VINCOMM E911 CALL WILL PRODUCE A BUSY SIGNAL OR WILL EXPERIENCE UNEXPECTED ANSWERING WAIT TIMES AND/OR TAKE LONGER TO ANSWER THAN 911 CALLS PLACED VIA TRADITIONAL, LEGACY, CIRCUIT-SWITCHED TELEPHONE NETWORKS.
- ** IF A CUSTOMER DOES NOT CORRECTLY IDENTIFY THE ACTUAL LOCATION WHERE THE VINCOMM EQUIPMENT WILL BE LOCATED AT THE TIME OF ACTIVATION OF THE SERVICE, VINCOMM E911 COMMUNICATIONS MAY NOT BE DIRECTED TO THE CORRECT LOCAL EMERGENCY OPERATOR.

2.7 CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THAT VINCOMM WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE AND/OR INABILITY TO DIAL 911 OR ANY OTHER EMERGENCY TELEPHONE NUMBER USING VINCOMM OR TO ACCESS AN EMERGENCY SERVICE OPERATOR DUE TO THE 911 DIALING CHARACTERISTICS AND LIMITATIONS SET FORTH IN THIS AGREEMENT.



CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS VINCOMM, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES AND AGENTS AND ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO CUSTOMER IN CONNECTION WITH THE SERVICES, FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY FEES) BY, OR ON BEHALF OF, CUSTOMER OR ANY THIRD PARTY OR USER OF THE SERVICE RELATING TO THE FAILURE OR OUTAGE OF THE SERVICE, INCLUDING THOSE RELATED TO 911 DIALING.

3. EQUIPMENT - To provide the Services, Vincomm may provide certain equipment to Customer, including Provider Equipment (as defined below) and Customer Premise Equipment (as defined below). All equipment shipments are F.O.B. Vincomm's facility. Vincomm's liability for delivery shall cease, and title (if applicable) and all risk of loss or damage shall pass to Customer upon delivery to Customer. Customer will be provided a twelve (12) month warranty from the date of purchase of equipment. Customer shall be required to obtain an authorization from Vincomm to return any equipment. Vincomm will provide replacement equipment only if the equipment is deemed to be defective and covered under the warranty. Vincomm will not cover replacement for lost, stolen or modified equipment. Equipment returned by Customer that is not covered under warranty may be refused by Vincomm and Customer will be responsible for all return shipping charges. To the extent that this Agreement includes the installation, management and maintenance of Vincomm owned equipment, as described on the Customer Order Schedule, at each location shown thereon (the "**Provider Equipment**") and certain customer premise equipment, including IP phones (the "**Customer Premise Equipment**", together with Provider Equipment, the "**Equipment**"), the parties agree as follows:

3.1. As part of the Services, to the extent Vincomm may furnish telecommunication and digital transmission connections and links, switches, routers, telephones, and other hardware, they shall be considered Provider Equipment hereunder.

3.2. As part of the Services, to the extent Customer purchases Certain Premise Equipment pursuant to the purchase agreement attached hereto as Attachment A, they shall be considered Certain Premise Equipment hereunder.

3.3. Customer shall take such actions as are directed by Vincomm to protect the Equipment and shall keep such Equipment free and clear from all liens, claims and encumbrances. Customer acknowledges that Vincomm may take whatever steps deemed necessary to perfect and protect its interest in the Equipment, including, but not limited to the filing of a Uniform Commercial Code financing statement, with respect to which Customer hereby grants to Vincomm a limited power of attorney to execute any such document on Customer's behalf.

3.4. Customer bears the entire risk of loss, theft, destruction or damage to the Equipment, and Customer shall maintain insurance covering each piece of Equipment in an amount equal to the replacement value thereof with an insurer acceptable in the sole discretion of Vincomm.

3.5. Customer shall not move, configure, reconfigure, program or otherwise affect the Equipment in any manner without the prior written consent of Vincomm.



3.6. VINCOMM MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, ITS MERCHANTABILITY, OR ITS FITNESS FOR A PARTICULAR PURPOSE.

3.7. Vincomm shall not be liable to Customer or any other person for direct, indirect, special, incidental or consequential damages arising from Customer's use of the Equipment or for damages based on strict or absolute tort liability or Vincomm's negligence.

3.8. Customer hereby acknowledges that any manufacturer's or supplier's warranties with respect to the Equipment are passed on to Customer by Vincomm in good operating condition to the extent assignable; and that Vincomm shall be responsible for maintaining the Equipment.

3.9. At the end of the Term, Customer shall return any Vincomm owned Equipment or leased Equipment to Vincomm, at Customer's expense.

3.10. Customer shall provide appropriate equipment space, environment, ducting and electrical power to enable the Equipment to be installed and maintained and Vincomm to provide the Services.

3.11. Customer hereby agrees to comply with the conditions of any license and/or warranty of any Equipment supplied by Vincomm.

4. BILLING, CHARGES AND PAYMENTS

4.1. PAYMENT - Upon purchase of the Service, Customer may be asked to provide Vincomm with ACH Debit information or a valid credit card number from an issuer that is accepted by Vincomm. Customer authorizes Vincomm to charge the ACH account and/or credit card number provided by Customer for all charges arising from Customer's use of the Services as well as fees related to any disconnection of the Service if payment is not made on time. Customer agrees to notify Vincomm of any change to the ACH Debit or credit card information including, but not limited to, changes in account number, expiration date or billing address. Vincomm shall not be responsible for any charges made by the bank or credit card issuer to Customer's account for exceeding credit limit, insufficient funds or other reasons. Customer's account will not be billed until product or equipment has shipped. Estimated ship dates are approximate and are not guaranteed.

4.2 LATE/NON-PAYMENT - If any charges for the Services are due but unpaid for any reason including, but not limited to, non-payment or declined credit card charges, Vincomm may suspend or terminate the Services and all accrued charges shall be immediately due, plus a late fee of the lesser of 1.5% per month or the maximum allowed by law accrued from the date of invoice until payment in full is received by Vincomm. If charges cannot be processed to the credit card and the Customer's account is suspended, Customer's will be charged a fee of ten dollars (\$10.00) to reactivate the account. No suspension or termination of the Services or of this Agreement shall relieve Customer's from paying any amounts due hereunder.



4.3. CREDIT TERMS - All Services provided to Customer and covered by this Agreement shall at all times be subject to credit approval or review by Vincomm. Customer will provide such credit information or assurance as is requested by Vincomm at any time. Vincomm, in its sole discretion and judgment, may discontinue credit at any time without notice and/or require a deposit or prepayment or automated payment by credit card or ACH Debit.

4.4. BILLING - Vincomm will provide Customer with a monthly billing statement sent by electronic mail for all Services provided. Such charges shall include activation fees, monthly service fees, shipping charges, disconnection fees, equipment charges, toll charges, taxes and any other applicable charges. All rates and charges will be as provided in the Customer Order Schedule attached to this agreement. Monthly service fees are billed in advance of each month's service; toll charges and any other applicable charges are billed subsequent to the end of each month's service. Billing for monthly service fees commences upon purchase of the Services, and the first month's monthly service fee shall be prorated to take into account any partial month that may occur as the result of the date monthly service fees are initiated. Vincomm and Customer also agree that additional services may be ordered from time to time after the initial installation and commencement of Services. Therefore, additional customer order schedules may be executed and will contain pricing and a full description of the additional services to be provided by Vincomm. Regardless of the date of execution of the additional customer order schedules, any and all customer order schedules executed between Vincomm and Customer shall incorporate all of the terms and conditions of this Agreement unless specifically stated otherwise in writing.

4.5. RATE CHANGES - Vincomm may change the prices for the Services and toll charges from time to time. Vincomm may change prices, plans, taxes or fees without any advance notice. In the event of a change in prices or toll charges, Vincomm will post such changed rates to the web site currently located at <http://www.vincomm.net>. International toll calling rates are updated monthly on the web site on the first of each month and no other notice shall be provided for changes to international toll calling rates.

4.6. CREDITS - Customer acknowledges and agrees that the Services are provided "as is, where is." Credit allowances for interruption of the Services shall not be provided.

4.7. BILLING DISPUTES - Customer must provide Vincomm with written notice of any disputed charge(s) within thirty (30) days after the invoice dates listed on the bill or shall be deemed to have waived its right to dispute the charges. The dispute notice shall be sent to disputes@vincomm.net and shall set forth in reasonable detail with the information concerning the disputed charges and the reason for the dispute. Vincomm and Customer will both act in good faith to promptly resolve any dispute.

4.8. TAXES - Prices for the Services do not include any customs, duties, sales, use, value added, excise, federal, state, local, public utility, universal service or other similar taxes. All such taxes shall be paid by Customer and will be added to any amounts otherwise charged to Customer unless Customer provides Vincomm with an appropriate exemption certificate. If any amounts paid for the Services are refunded by Vincomm, applicable taxes may not be refundable.



5. TELEPHONE NUMBER - Any telephone number provided by Vincomm ("**Number**") to the Customer shall be considered leased and not sold. Customer shall not use the Number with any device other than the Equipment without the express written permission of Vincomm. Vincomm reserves the right to change, cancel or move the Number at its sole discretion. At Vincomm's discretion, Vincomm may release the Number to Customer at the end of the Term.

6. PROHIBITED USES - Any use of the Services or any other action that causes a disruption in the network integrity of Vincomm or its vendors, whether directly or indirectly, is strictly prohibited and could result in termination of the Services at the sole discretion of Vincomm. Customer understands that neither Vincomm nor its vendors are responsible for the content of the transmissions that may pass through the Internet and/or the Services. Customer agrees that it will NOT use the Services in ways that violate laws (including but not limited to laws prohibiting transmission of unsolicited fax advertisements), infringe the rights of others, or interfere with the users, services, or equipment of the network. Customer agrees and represents that it is purchasing the Services and/or the Equipment for its own internal use only, and shall not resell, transfer or make a charge for the Services or the Equipment without the advance express written permission of Vincomm. Vincomm's Service Plans for business Customers that offer unlimited minutes of PSTN calls ("**Unlimited PSTN Plans**") are for reasonable business use of Customer only. Vincomm defines the reasonable business use by Customer as 2,000 minutes per month per trunk. Such use shall not include certain activities including, but not limited to, any autodialing, continuous or extensive call forwarding, continuous connectivity, fax broadcast, fax blasting, telemarketing (including without limitation charitable or political solicitation or polling), call center operations, junk faxing, fax spamming, calling/faxing any person (through the use of distribution lists or otherwise) who has not given specific permission to be included in such a process or any other activity that would be inconsistent with reasonable business usage. Customer shall not transmit through the Service any unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind or nature. Customer further agrees not to transmit any material that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law or regulation. Any use found to be inconsistent with this restriction will result in termination of the Service. Vincomm reserves the right to immediately terminate or modify the pricing of Services of any Customer using Unlimited PSTN Plans if Vincomm determines, in its sole discretion, that Customer is not using the Unlimited PSTN Plans for Customer's reasonable business use.

7. CHANGES TO THE AGREEMENT, SERVICES OR PLAN - Vincomm reserves the right to make changes to the terms and conditions of this Agreement. In the event of a change of such terms and conditions, Vincomm will post the change to the web site currently located at www.Vincomm.net. Customer reserves the right to cancel this Agreement if it finds the change in terms and conditions to be unacceptable. However, a change in international toll rates does not represent a change in terms to the Agreement. Any cancellation must be in writing and presented to Vincomm within fifteen (15) days of Vincomm's notice of the change. Customer may request a Plan change at anytime, subject to any applicable change of service fee and additional terms and conditions. The Plan change will take effect in the first month after the Plan is changed.



8. NOTICE - Notice will be considered received by Customers and such changes will become binding to Customers, on the effective date of changes are posted to the web site ("**Change Date**"), and no additional notice will be required. If Customer does not send Vincomm notification of their desire to terminate this Agreement or uses the Service after the Change Date, Customer is deemed to have accepted and consented to the change of terms and conditions of the Service. If Customer does not consent to the change of Service and terminates this Agreement, Customer will be responsible for any sums due hereunder in addition to any applicable disconnection fee pursuant to Section 9. Customer may request a Plan change at anytime, subject to any applicable change of service fee and additional terms and conditions. All notices to Vincomm must be in writing and may be mailed to:

VinTalk
c/o Vinculum Communications, Inc.
9255 Towne Centre Drive
Suite 925
San Diego, CA 92121

or sent by electronic mail to notices@vincomm.net.

9. TERMINATION - Customer agrees to provide Vincomm with thirty (30) days written notice of termination. Customer shall be responsible for the full monthly service fee for the month after which the notice of termination of Service is provided to Vincomm. Vincomm reserves the right, at its sole discretion, to suspend, terminate or change the Services without advance notice for any reason, including without limitation, misuse of the Services in any way, Customer's breach of this Agreement, Customer's failure to pay any sum due hereunder, suspected fraud or other activity by Customer that adversely affects the Services, Vincomm, Vincomm's network or other Customers' use of the Services. Vincomm reserves the right to determine, at its sole discretion, what constitutes misuse of the Services and Customer agrees that Vincomm's determination is final and binding on Customer. Vincomm may require an activation fee to change or resume a terminated or suspended account. All current and past due balances for Services must be paid in full upon termination. If Customer chooses to cancel the Service or any portion of the Service prior to the end of the current Term, a disconnection fee of \$150 per extension/trunk will be charged. Certain third-party products and service included in the Service, which may include broadband services, managed routers and customer leased telephones may not be eligible for early termination. In such an event, Customer shall be liable for payment of all such third-party products and services until the end of the Term of the Agreement.

10. PRIVACY - Vincomm utilizes the public Internet and third-party networks to provide fax, voice and video communication services. Accordingly, Vincomm cannot guarantee the security of fax, voice and video communications of Customer. Vincomm is committed to respecting a Customer's privacy. Once the Customer chooses to provide personally identifiable information, it will only be used in the context of the Customer's relationship with Vincomm. Vincomm will not sell, rent, or lease Customer's personally identifiable information to others. Unless required by law or subpoena or if Customer's prior permission is obtained, Vincomm will only share the personal data Customer provides with other Vincomm entities and/or business partners that are acting on Vincomm's behalf to complete the activities described herein. Such Vincomm entities and/or national or international business partners are governed by Vincomm's privacy policies with respect to the use of this data. Vincomm is required to file numerous reports with different administrative bodies. As such, Vincomm may provide aggregate statistics about customers,



sales and traffic patterns. None of these reports or statistics will include personally identifiable information. However, Vincomm reserves the right to use personally identifiable information to investigate and help prevent potentially unlawful activity that threatens either Vincomm or any company affiliated with Vincomm. Moreover, upon the appropriate request of a government agency, law enforcement agency, court or as otherwise required by law, Vincomm may disclose personally identifiable information.

11. RETURNS AND ADJUSTMENTS - No Equipment may be returned by Customer for any reason without prior approval of Vincomm. All returns shall be in original packaging or equivalent. Customer shall be responsible for all costs related to shipping to Vincomm any Equipment that is being returned. Any Equipment returned to Vincomm without prior authorization for its return or proper packaging may be refused. In order to obtain an appropriate refund, upon cancellation Customer must immediately obtain a return material authorization number from Vincomm, return to Vincomm any Equipment provided or leased hereunder, undamaged and in good working condition, in its original packaging and with its original content or otherwise will be immediately responsible for paying to Vincomm an amount equal to the fair retail price of the Equipment minus any payments Customer had previously paid specifically for such Equipment.

12. TRAINING AND TECHNICAL SUPPORT - Vincomm will provide online or telephone training and system operation instruction immediately after installation and commencement of Services. Training will be provided by Vincomm customer support staff and will be customized for the Customer's business requirements. Vincomm will also provide Customer with ongoing, prescheduled online training sessions through webinars as offered weekly by the Vincomm Customer Support department. Additional personalized onsite training is available at an extra cost.

13. CUTOVER DATE AND ACCEPTANCE - For the purposes of this Agreement, "cutover date" is defined as the date upon which the first Equipment is installed at the premises and is capable of providing substantially all of the basic services for which such Equipment is intended. The "estimated in service date" is only an approximate date of when the Equipment will be installed and ready for service. Provider shall not be liable for special consequential or punitive damages for causes beyond its reasonable control or unforeseen circumstances causing delays in delivery or installation of the Equipment. Customer agrees not to withhold any scheduled payments due to such problems. Customer agrees to pay any remaining payment that is due and shall confirm the cutover date by executing a Delivery and Acceptance certificate. It shall be conclusively presumed that Customer's execution of the Delivery and Acceptance certificate confirms Customer's inspection, satisfaction and unqualified acceptance of the Equipment.

14. BREACH - In the event of Customer's breach of the terms of this Agreement, including without limitation, failure to pay any sum due hereunder, Customer shall reimburse Vincomm for all attorney, court, collection and other costs incurred by Vincomm in the enforcement of Vincomm's rights hereunder and Vincomm may keep any deposits or other payments made by Customer.

15. INDEMNIFICATION - Customer shall indemnify Vincomm, its affiliates, officers, directors, licensees and licensors from any and all claims and expenses, including, without limitation, reasonable attorney's fees arising from Customer's breach of any provision of this Agreement or asserted by third parties against Vincomm arising from Customer's use of the Equipment or the Services or from any other action or inaction by Customer.



16. DISCLAIMER OF CONSEQUENTIAL DAMAGES - IN NO EVENT SHALL VINCOMM OR ITS VENDORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, LOSS OF REVENUE OR PROFITS, OR ARISING OUT OF OR IN CONNECTION WITH THE USE OR INABILITY TO USE SERVICES OR PRODUCTS PROVIDED HEREUNDER WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, THE NEGLIGENCE OF VINCOMM OR ITS VENDORS OR OTHERWISE.

17. WARRANTY AND LIABILITY LIMITATIONS - VINCOMM MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER VINCOMM NOR ITS VENDORS WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO VINCOMM'S OR CUSTOMER'S TRANSMISSION FACILITIES OR PREMISE EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF VINCOMM'S OR ITS VENDORS' NEGLIGENCE. ANY CLAIM AGAINST VINCOMM MUST BE MADE WITHIN 30 DAYS OF THE EVENT OF THE CLAIM OR 30 DAYS FROM THE TERMINATION OF SERVICE, WHICHEVER IS EARLIER AND VINCOMM HAS NO LIABILITY THEREAFTER. VINCOMM'S LIABILITY IS LIMITED TO REPAIR, REPLACEMENT, CREDIT OR REFUND. VINCOMM MAY ELECT TO PROVIDE A REFUND IN LIEU OF CREDIT, REPLACEMENT OR REPAIR. ALL WARRANTIES COVER ONLY DEFECTS ARISING UNDER NORMAL USE AND DO NOT INCLUDE MALFUNCTIONS OR FAILURES RESULTING FROM MISUSE, ABUSE, NEGLIGENCE, ALTERATION, MODIFICATION, IMPROPER INSTALLATION, OR REPAIRS BY ANYONE OTHER THAN VINCOMM. IN NO EVENT SHALL VINCOMM'S TOTAL LIABILITY HEREUNDER EXCEED THE AMOUNTS PAID BY CUSTOMER TO VINCOMM IN THE PRIOR TWELVE (12) MONTHS FROM DATE OF CLAIM.

18. CUSTOMER SATISFACTION GUARANTEE – If Customer is unsatisfied with Vincomm's Services and if for any reason Customer wishes to cancel all or part of Customer's Service bundle within 30 days of activation, the customer may obtain a refund of service and equipment fees. To cancel and obtain a refund, Customer must cancel their Service within 30 days of the activation of their account by completing a Vintalk cancellation form. Returns require a return authorization number and Customer is responsible for return shipping charges. Customer must contact Vincomm Customer Care to cancel Service and obtain a return authorization number. Customer will be refunded a service fee, leasing fee (if applicable) and a disconnect fee in a timely manner after Vincomm receives Customer's Equipment, cancellation notice and any leased equipment. Equipment returned without a valid return authorization number will not be eligible for the Customer Satisfaction Guarantee. Customer is responsible for all long distance and directory assistance call charges. Equipment must be returned in the original packaging in good working condition, with the UPC or bar code intact. All components, manuals and registration card(s) must be included. All returned equipment may incur a 15% restocking fee of the purchase price. Equipment must be returned at Customer's expense to a local dealer or through a commercial carrier. Customer must return equipment within seven (7) days of cancellation. The Customer Satisfaction Guarantee will not be issued if all of the above requirements are not met.



19. EXPORT COMPLIANCE - Customer agrees to comply with U.S. export laws concerning the transmission of technical data and other regulated materials via the Services. Customer agrees to comply with applicable local, state and federal regulations governing the locality in which the Equipment and Services are used.

20. PHONE NUMBERS AND WEB PORTAL DISCONTINUANCE - Upon expiration, cancellation or termination of the Services, Customer shall relinquish and discontinue use of any telephone numbers, voice mail or conference bridge access numbers and/or web portals assigned to Customer by Vincomm or its vendors.

21. SURVIVAL - The provisions of section 2, 3, 4, 12, 14, 15, 16, 17, 20, 22 and 24 shall survive any termination of this Agreement.

22. FORCE MAJEURE (EVENTS BEYOND OUR CONTROL) - Vincomm shall not be liable for any delay in performance directly or indirectly caused by or resulting from acts of God, fire, flood, accident, riot, war, government intervention, embargoes, strikes, labor difficulties, equipment failure, late delivery by suppliers or other difficulties of Vincomm as may occur in spite of Vincomm's reasonable efforts.

23. GOVERNING LAW / RESOLUTION OF DISPUTES.

23.1. MANDATORY ARBITRATION - EXCEPT AS NOTED BELOW, CUSTOMER AND VINCOMM WILL ARBITRATE ANY DISPUTES OR CLAIMS IN ANY WAY RELATED TO OR CONCERNING THE AGREEMENT, OR THE PROVISION OF SERVICES OR PRODUCTS TO CUSTOMER, INCLUDING ANY BILLING DISPUTES ("CLAIMS"). CLAIMS SHALL BE SUBMITTED TO FINAL, BINDING ARBITRATION BEFORE THE AMERICAN ARBITRATION ASSOCIATION ("AAA"). THIS AGREEMENT TO ARBITRATE ALSO REQUIRES CUSTOMER TO ARBITRATE CLAIMS AGAINST OTHER PARTIES RELATING TO SERVICES OR PRODUCTS PROVIDED, INCLUDING THE EQUIPMENT, OR BILLED TO CUSTOMER IF CLAIMS ARE ASSERTED AGAINST VINCOMM IN THE SAME PROCEEDING. ARBITRATION WILL BE CONDUCTED UNDER THE AAA'S PUBLISHED COMMERCIAL ARBITRATION RULES AND SUPPLEMENTAL PROCEDURES FOR CONSUMER-RELATED DISPUTES, WHICH ARE AVAILABLE BY CALLING THE AAA AT 800-778-7879 OR VISITING ITS WEB SITE AT www.adr.org.

23.2 DISPUTES - Customer and Vincomm agree to bear their own fees, costs, and expenses, including those for any attorneys, experts, and witnesses. The AAA Supplemental Procedures for Consumer-Related Disputes provide that unless a hearing is requested, disputes will be resolved based on written submissions and no personal appearance is required. If Customer requests an arbitration hearing, that hearing will take place either telephonically or in San Diego, California. As a limited exception to the agreement to arbitrate, Customer and Vincomm agree that: (a) Customer may file Claims in small claims court in San Diego County, California, if the Claims qualify for hearing by such court; (b) if Customer fails to timely pay amounts due, Vincomm may assign the account for collection, and the collection agency may pursue in court claims limited strictly to the collection of the past due debt and any interest or cost of collection permitted by law or this Agreement; and (c) any Claim filed as a class action is not



subject to arbitration but instead must be filed in the California Superior Court, County of San Diego or in the United States District Court for the Southern District of California.

23.3. PREFILING NOTICE OF CLAIM - BEFORE INSTITUTING ARBITRATION OR SUIT, CUSTOMER AGREES TO PROVIDE VINCOMM WITH AN OPPORTUNITY TO RESOLVE THE CLAIM BY SENDING A WRITTEN DESCRIPTION OF THE CLAIM TO VINCOMM AT disputes@vincomm.net. IF VINCOMM IS NOT ABLE TO RESOLVE THE CLAIM WITHIN 30 DAYS OF RECEIPT OF NOTICE, THEN CUSTOMER OR VINCOMM MAY INITIATE ARBITRATION OR SUIT AS DESCRIBED IN SECTIONS 24.1 AND 24.2. All claim notices should be sent to: Director of Customer Service, Vinculum Communications, Inc., 9255 Towne Centre Drive, Suite 925, San Diego, CA 92121 – or - claims@Vincomm.net.

23.4. GOVERNING LAW - The Agreement and the relationship between Customer and Vincomm shall be governed by the laws of the State of California without regard to its conflict of law provisions. To the extent court action is initiated to enforce an arbitration award or for any other reason, Customer and Vincomm agree to submit to the personal and exclusive jurisdiction of the courts within the state of California, to the extent possible in San Diego County, and waive any objection as to venue or inconvenient forum. The failure of Vincomm to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Agreement remain in full force and effect. Customer agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or the Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

24. BROADBAND ACCESS SERVICE - If Vincomm supplies broadband access services to Customer in conjunction with other communications services offered, Customer will be responsible to Vincomm for all charges from the underlying broadband access service supplier including any setup charges incurred prior to activation and termination charges incurred after this Agreement has ended. In the event that Vincomm is supplying broadband access services, Customer hereby authorizes Vincomm to begin the process of activating service including providing the broadband access circuit to Customer's location(s). Customer confirms that Customer will be responsible for broadband access service charges even if: a) Customer delays activation of Customer's services; b) Customer terminates this Agreement; c) Customer is unable to lease or obtain Customer Premise Equipment; or d) if Customer takes any other action that would cause Vincomm to incur broadband access service charges as a result of this order. Any and all network hardware installed for operation of the broadband circuit, excluding all Customer Premise Equipments purchased by the Customer, shall remain the property of Vincomm during the term of this Agreement and after termination of Services.

25. SOFTWARE COPYRIGHT - Any software used by Vincomm to provide the Services and any software provided to Customer in conjunction with providing the Services are protected by copyright law and international treaty provisions. Customer may not copy the software or any portion of it.



26. ASSIGNMENT - Vincomm may assign this Agreement without Customer's prior consent and all of Vincomm's rights, title and interest herein shall inure to the benefit of such assignee, its successors and assigns. Customer shall not assign, without the prior written consent of Vincomm, which shall not be unreasonably withheld, its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise, and any attempt to do so shall be deemed a material breach of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

27. ENTIRE AGREEMENT - The terms and conditions of this Agreement, along with the rates posted to the web site currently located at www.Vincomm.net, constitute the entire agreement with regard to this sale and expressly supersede and replace any prior or contemporaneous agreements, written or oral, relating to the Services. This Agreement shall be binding upon the heirs, successors, and assigns of Vincomm and Customer.