



## VINCULUM COMMUNICATIONS, INC. CUSTOMER PREMISE EQUIPMENT LEASE AGREEMENT

THIS CUSTOMER PREMISE EQUIPMENT LEASE AGREEMENT (the "**Lease**") is entered into by and between Vinculum Communications, Inc., a Delaware corporation ("**Vincomm**"), and **Customer**.

1. **Lease.** Vincomm leases to Customer, and Customer rents from Vincomm, certain customer premise equipment (hereinafter referred to as the "**Customer Premise CPE**" or "**CPE**"), more specifically set forth in Customer Order Schedule ("COS") attached hereto and made a part hereof.

2. **Term.** The term of this lease shall be for the amount listed on the mutually signed COS (Customer Order Schedule) , commencing on the date of installation, which is the date upon which Vincomm shall ship the CPE to Customer, and continuing thereafter on a month to month basis. After the first 36 months, either party may terminate this Lease at any time and for any reason upon 30 days notice, delivered in the manner set forth in paragraph 20.

3. **Rental.** Rent commences on the date of shipment specified in paragraph 2 and is payable thereafter on the corresponding date of each and every month of the next succeeding months until such time as this Lease is terminated in accordance with the provisions set forth herein. Each of the monthly rental installments shall be as provided in the COS. Rent not paid on the date upon which it becomes due shall bear interest at the rate of the lower of 1.5% per month and the highest rate allowed by applicable law. In the event that the lease is terminated before the final month of the term is complete, rent shall be assessed pro rata based on the number of days that have elapsed in the final month.

4. **Net Lease.** This Lease is a net lease, and Customer shall pay all costs, expenses, taxes, fees, and charges incurred with the delivery, use, operation, and return of the CPE, as set forth hereunder.

5. **Situs.** The CPE shall be located at the customer premise and shall not be removed by Customer from that location without the prior written consent of Vincomm. If the CPE is removed from the address herein specified, Customer shall, whenever requested, advise Vincomm of its exact location. Vincomm may at all reasonable times enter upon any job, building, or place where the CPE is located for the purpose of making an inventory or an inspection of the CPE.

6. **Deposit.** A security deposit equal to one (1) month of lease payments shall be due and payable by Customer upon execution of this agreement.

7. **Delivery; Inspection; Return.** Vincomm shall arrange for shipment of the CPE to Customer at Customer's address specified on the signature page hereof, or to such other address as may be agreed upon by both parties. All costs of shipment shall be paid by Customer in addition to and at the same time as the first monthly rental installment. Customer shall inspect the CPE upon delivery to Customer. If the Customer does not report any visible defects to the CPE to Vincomm within 10 days from the date of delivery of the CPE, the



Customer's right to any remedy pursuant to this Agreement or pursuant to any applicable law for such visible defects shall have been waived. No CPE may be returned by Customer for any reason without the 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 CPE that is being returned. Upon termination of the Lease, Customer shall arrange for the return of the CPE to Vincomm or may purchase the CPE at a cost of \$1.00 per unit. All costs of returning the CPE to Vincomm shall be paid by Customer in addition to and at the same time as the final monthly rental installment. Any CPE returned to Vincomm without prior authorization for its return or proper packaging may be refused. In order to obtain an appropriate refund, upon termination of the Lease Customer must immediately obtain a return material authorization number from Vincomm, return to Vincomm any CPE 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 CPE minus any payments Customer had previously paid specifically for such CPE. If Customer terminates the Lease prior to the end of the Lease, the Customer may be charged a 15% restocking fee of the purchase price of the CPE along with other termination charges.

8. **Assignment.** Customer shall not part with possession of nor enter into any sale, transfer, or sublease with respect to the CPE or any part thereof nor assign this Lease or its rights hereunder nor delegate the performance of its duties under the this Lease without the prior written consent of Vincomm.

9. **Conforming Use.** Customer shall use the CPE only for the purposes and in the manner set forth in the operators manual, directions for use, or any other applicable manuals or written instructions from Vincomm (collectively, the "**Manuals**"). Customer shall allow the CPE to be operated by competent and duly qualified personnel only.

10. **Care, Repair and Storage of CPE.** Customer, at its own cost and expense, shall keep the CPE in good repair, condition, and working order, and shall furnish any and all parts and labor required for that purpose. Customer shall store the CPE in the manner prescribed in the Manuals, or in any other manner prescribed or approved by Vincomm. Customer shall not make any material alterations to or replacements of the CPE without Vincomm's prior consent. All equipment, accessories, parts, and replacements which are added to or become attached to the CPE shall immediately become Vincomm's property and shall be deemed incorporated in the CPE and subject to the terms of this Lease as if originally leased hereunder.

11. **Warranty.** VINCOMM MAKES NO REPRESENTATIONS OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE CUSTOMER PREMISE EQUIPMENT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. VINCOMM SHALL HAVE NO LIABILITY FOR STRICT LIABILITY, PRODUCTS LIABILITY OR NEGLIGENCE, WHETHER ACTIVE OR PASSIVE.



(a) **Manufacturer's Warranty.** Customer acknowledges that any manufacturer's or supplier's warranties with respect to the CPE are passed on to Customer by Vincomm, to the extent assignable.

(b) **Limitation of Remedies.** Customer's exclusive remedy for any defective CPE for which Vincomm is responsible is limited to the repair or replacement of the defective CPE, if Customer notifies Vincomm within 10 days of receipt of the CPE. If Vincomm does not repair or replace a defective CPE for which Vincomm is responsible, Vincomm will refund the purchase price of the defective CPE.

(c) **Limitation of Liability.** Even if Vincomm cannot or does not repair or replace any defective CPE for which Vincomm is responsible and Customer's exclusive remedy fails of its essential purpose, Vincomm's entire liability shall in no event exceed the purchase price for the defective CPE. Vincomm shall have no liability for general, consequential, incidental or special damages arising from a defect in any CPE. This warranty shall not cover damage to the CPE caused by unauthorized maintenance or by use of the CPE for a purpose or in a manner contrary to the terms of this Lease.

12. **Taxes.** Customer shall comply with all laws and regulations relating to, and shall promptly pay when due, all license fees, registration fees, assessments, charges, and taxes, municipal, state, and federal (excluding, however, any taxes payable in respect to Vincomm's income), which may now or hereafter be imposed upon the ownership, possession, leasing, renting, operation, control, use, maintenance, delivery, or return of the CPE, and shall indemnify and hold Vincomm harmless against actual or asserted violations, and pay all costs and expenses of every character in connection therewith or arising there from.

13. **Title.** Title to the CPE shall at all times remain in Vincomm, and Customer, at its own cost and expense, shall protect and defend the title of Vincomm. Customer shall at all times keep the CPE free and clear from all levies, attachments, liens, security interests, encumbrances, and charges or other judicial process of every kind whatsoever, shall give Vincomm immediate notice thereof, and shall indemnify and hold Vincomm harmless from any loss or damage caused thereby. Customer will cooperate with Vincomm, and take whatever action may be necessary, to enable Vincomm to file, register or record, and refile, re-register or re-record, this lease or a financing statement in such offices as Vincomm may determine and wherever required or permitted by law, for the proper protection of Vincomm's title to the CPE.

14. **Insurance.** Customer bears the entire risk of loss, theft, destruction or damage to the CPE and shall maintain insurance covering each piece of CPE in an amount equal to the replacement value thereof with an insurer acceptable in the sole discretion of Vincomm. All insurance for loss, liability, or damage to or resulting from the CPE shall provide that Vincomm's interest shall be fully protected. Customer shall pay the premiums therefore and deliver to Vincomm the policies of insurance or duplicates or certificates thereof, and other evidences satisfactory to Vincomm of such insurance coverage. Each insurer shall agree, by endorsement upon the policy or policies issued by it or by independent instrument furnished to Vincomm, that it will give Vincomm 30 days' prior written notice of the effective date of any alteration or cancellation of any policy. Customer hereby irrevocably appoints Vincomm as Customer's attorney-in-fact to make claim for, receive payment of, and execute and endorse all documents, checks, or drafts received in payment for loss or damage under any such insurance policy, if Customer does not diligently make such claim. Any claim that is not made for 30 days after loss or damage shall be deemed to be not diligently made. In case of the failure of Customer to procure or maintain such insurance or to comply with any other provision of this lease, Vincomm shall have the right, but shall not be obligated, to effect such insurance or compliance on behalf of Customer. In that event, all moneys spent by and expenses of Vincomm in effecting such insurance or compliance shall be deemed to be additional rent, and shall be paid by Customer to Vincomm with the next monthly payment of rent.

15. **Loss or Damage.** Customer assumes and shall bear all risk of loss of and damage to the CPE from any and every cause whatsoever, unless otherwise noted under this Lease. In the event of loss or damage to the CPE, Customer at its option shall either:

(a) Pay Vincomm to repair the CPE at Vincomm's standard repair rates, and continue with the lease under the terms of this Lease; or

(b) Turn over or cause the proceeds from any insurance policies covering the CPE to be turned over to Vincomm.

16. **Default.** If Customer shall default in the payment of any rent or in the performance of any other covenant herein contained for a period of 10 days after notice in writing specifying such default, then, if and to the extent permitted by applicable law, Vincomm shall have the right to require Customer to return the CPE to Vincomm at Customer's expense, and to pay all rent due on the CPE up to the date on which the CPE is returned. Vincomm shall retain the right to pursue any other remedy available to Vincomm at law or in equity. Customer agrees to pay any and all reasonable attorney fees incurred by Vincomm in connection with curing a default of or enforcing any remedy to this Lease. Termination fees as provided in Section 9 of the agreement will also apply.

17. **No Passage of Title.** This agreement is a lease, and Customer does not acquire hereby any right, title, or amount whatsoever, legal or equitable, in the CPE or to the proceeds of any sale or future lease of the CPE, except its interest as Customer under this Lease.



18. **Remedies.** All remedies of Vincomm are cumulative, and may, to the extent permitted by law, be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. No failure on the part of Vincomm to exercise, and no delay in exercising, any right or remedy shall operate as a waiver thereof unless specifically waived by Vincomm in writing; nor shall any single or partial exercise by Vincomm of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy.

19. **Indemnity.** Customer shall indemnify and hold harmless Vincomm against any other loss whatsoever which may be occasioned by the installation, operation, or use of the CPE. Such indemnification shall include the cost of any defense which Vincomm may be put to by virtue of such claim. Vincomm shall have the right to select counsel and Customer shall pay the reasonable fees of such counsel.

20. **Partial Invalidity; Severability.** If any provision of this Lease is in conflict with any statute or rule of law of any state or district in which it may be sought to be enforced, then such provision shall be deemed null and void to the extent that it may conflict therewith, but without invalidating the remaining provisions hereof.

21. **Entire Agreement.** This Lease contains the entire agreement between the parties. There are no other understandings or agreements between them.

22. **Governing Law.** This Lease shall be construed in accordance with and governed by the laws of the State of California without regard to its conflict of law provisions.

23. **Headings.** Headings in this Lease are for convenience only and shall not be used to interpret or construe its provisions.

24. **Counterparts.** This agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document.

25. **Binding Effect.** This Lease shall be binding upon Vincomm and Customer and their respective legal representatives, successors, and assigns.