



VINCULUM COMMUNICATIONS, INC. CUSTOMER PREMISE EQUIPMENT SALE AGREEMENT

THIS CUSTOMER PREMISE EQUIPMENT SALE AGREEMENT (this “**Agreement**”) is entered into by and between Vinculum Communications, Inc., a Delaware corporation (“**Vincomm**”), and **Customer**.

1. **Sale of Equipment.** Vincomm hereby sells to the Customer, and the Customer hereby purchases from Vincomm, certain customer premise equipment (hereinafter referred to as the “**Customer Premise Equipment**” or “**CPE**”) more specifically described on Customer Order Schedule (“COS”) attached hereto and made a part hereof.

2. **Purchase Price.** The Customer will pay the full purchase price of as provided on the COS by check delivered to Vincomm or by wire transfer to Vincomm’s account at the time the COS is signed.

3. **Delivery; Inspection.** Vincomm shall arrange for shipment of the CPE to the Customer at the 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 the Customer. The Customer shall inspect the CPE upon delivery to the 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. Any CPE returned without prior authorization for its return or proper packaging may be refused.

4. **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. Vincomm is not responsible for damage to the CPE incurred in shipping or due to misuse or neglect of the 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 Agreement.

5. **Taxes.** The 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, operation, control, use, maintenance, or delivery 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 therefrom.

6. **Title.** Title to the CPE shall vest with the Customer after delivery of the CPE has been accepted pursuant to Section 3. Vincomm will cooperate with the Customer, and take whatever action may reasonably be necessary, to vest full title to the CPE with the Customer.

7. **Indemnity.** The liability of Vincomm shall be limited to the applicable state or federal requirements for insuring the safety and efficacy of the CPE. The 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 the Customer shall pay the reasonable fees of such counsel.

8. **Partial Invalidity; Severability.** If any provision of this Agreement 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.

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

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

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

12. **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.

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