



VINTALK IPITOMY PARTNER AGREEMENT

This Partner Agreement ("Agreement") is entered into and effective as of _____ (the "Effective Date"), by and between **Vinculum Communications, Inc.** ("Vinculum") whose principal place of business is located at **9707 Waples Street, Suite 201, San Diego, CA 92121** and _____ ("PARTNER"), whose principal place of business is located at _____ with reference to the following facts:

WHEREAS, VINCULUM operates as a communications provider and offers services to retail customers (the "Services"); and

WHEREAS, VINCULUM desires to recruit persons and companies to assist VINCULUM in selling services to customers who can utilize our IP communications services;

WHEREAS, PARTNER is desirous of assisting VINCULUM in selling services to customers who utilize our Services;

NOW, THEREFORE, for good and valuable consideration, the receipt of which hereby is acknowledged by all parties, it is agreed by and between VINCULUM and PARTNER as follows:

1. DEFINITIONS

The terms set forth below shall have the following meaning in this Agreement:

1.1. "Commissions" shall be amounts payable by VINCULUM to PARTNER for its services under this Agreement.

1.2. "Customer(s)" shall consist of retail customers who contract with VINCULUM to utilize the Services, who are not current customers with VINCULUM and have been referred to VINCULUM by PARTNER and accepted in writing by VINCULUM.

1.3. "Qualified Revenues" shall mean all revenues for services listed in Schedules A and B that are generated from VINCULUM Customers procured by PARTNER, excluding taxes, tax-like charges, regulatory assessments, charges for enhanced or other services, minimum usage charges and recurring charges.

1.4. "Services" shall consist of hosted IP services, SIP trunking, local and long distance calling, DID services, conference calling, DIA ("Dedicated Internet Access") and hardware.

2. REPRESENTATION OF SERVICES

2.1 Description of Representation. This is a non-exclusive agreement between VINCULUM and PARTNER whereby VINCULUM appoints PARTNER as an independent contractor to generate sales of Services in accordance with the tariffs of VINCULUM and the terms and conditions set forth herein.

2.2 Term. The term of this Agreement and PARTNER's representation will commence on the Effective Date and, except as provided below and in Paragraph 2.6 hereof, will continue thereafter. At any time after the Effective Date, VINCULUM may terminate the referral of future business by PARTNER, without cause, by giving ninety (90) days advance notice to PARTNER.

2.3 Commissions. As the full and complete compensation for services rendered hereunder, VINCULUM shall pay to PARTNER commissions ("Commissions") at the rates and on the terms set forth in the Commission Schedule(s) to this Agreement. VINCULUM may modify commissions upon thirty (30) days written notice. It is a condition precedent to VINCULUM'S obligation to pay Commissions to PARTNER on any Customer's telecommunications traffic that such Commissions are based on "qualified revenue. In the event VINCULUM makes a refund to any Customer or cannot collect monies due from any CUSTOMER, PARTNER shall not be entitled to any Commission on account of the Services to which such refund or nonpayment applies. All Commissions are due by the 30th of each month for qualified revenues billed from the previous calendar month.

2.4 Reports. VINCULUM will supply PARTNER with monthly management reports based on usage information. PARTNERS will also have access to VINCULUMS billing and reporting system for real time reporting.

2.5 Commission Payments After Termination of This Agreement. Except for Termination for Cause, as provided in Paragraph 2.6 below, and in Paragraph 5.4 hereof, VINCULUM shall be required to pay Commissions to PARTNER after termination of this Agreement on Qualified Revenues generated at any time from Customers accepted by VINCULUM prior to the termination of this Agreement up to a maximum of twelve (12) months. PARTNER shall not, however, be entitled to any further Commissions or other compensation from VINCULUM if PARTNER violates or fails to fully comply with any of the terms or conditions set forth in Paragraphs 3.1, 3.2 or 3.3 of this Agreement

2.6 Termination For Cause. This Agreement may be terminated by VINCULUM, upon notice to PARTNER, in the event PARTNER violates or fails to fully comply with any of the conditions or covenants required to be performed by PARTNER hereunder, including but not limited to engagement of any activity of fraud against VINCULUM or any of its customers or accounts, provision of information to customers or prospective customers in connection with the service or this Agreement which is false or misleading; or the insolvency, bankruptcy, receivership or dissolution of PARTNER, or assignment of the Agreement without VINCULUM' prior written consent.

2.7 This Agreement may be terminated by PARTNER, upon notice to VINCULUM, only in the event VINCULUM fails to make any Commission payment to PARTNER when due and fails to cure such non-payment within ten (10) days after notice by PARTNER to VINCULUM of such default.

2.8 Acceptance of Orders and Business. VINCULUM shall at all times have absolute discretion to reject any order for Services or to terminate further Services to any Customer without liability to PARTNER. VINCULUM shall also have absolute discretion with respect to rates charged to end-users of the Services and the terms and conditions of providing such Services to any Customer.

3. COMPETITIVE AGREEMENTS

3.1 Records to Remain Property of VINCULUM. All records of VINCULUM, all records pertaining or relating to clients of VINCULUM, and all records and documents prepared or generated by PARTNER, VINCULUM or any other person or entity in connection with the performance of PARTNER under this Agreement, including but not limited to account cards, invoice copies, promotional materials, manuals, business plans, sales aids, customer lists, leads and all documents containing the names or addresses of or information relating to clients who have done business with VINCULUM, or who have been referred to VINCULUM by PARTNER and accepted by VINCULUM, are and shall remain the property of VINCULUM at all times during the term of this Agreement, and after termination of this Agreement for any reason. None of such records, nor any part of them may be used by PARTNER either in original form or in computerized, duplicated, or copied form except for the purpose of conducting business pursuant to this Agreement and the names, addresses, any other information and data in such records are not to be transmitted verbally, in writing, or in computerized form by PARTNER except in the ordinary course of conducting business pursuant to this Agreement. All of said records or any part of them are the sole proprietary information of VINCULUM and shall be treated by PARTNER as confidential information of VINCULUM. In the event of the termination of this Agreement for any reason, PARTNER shall return to VINCULUM all such records and any copies or summaries thereof in computerized, duplicated, copies or any other form.

3.2 Limitations on PARTNER's Use of Proprietary Information. PARTNER shall not at any time, or in any manner, directly or indirectly divulge, disclose or communicate to any other person, firm or corporation, nor shall PARTNER use for its own benefit other than in connection with the performance of PARTNER's duties under this Agreement; (i) any of the names, addresses, telephone numbers of or other data relating to clients of VINCULUM, prospective customers of VINCULUM, customers referred to VINCULUM by PARTNER or persons, firms or corporations to whom PARTNER may have provided services in his capacity as a contractor for VINCULUM; (ii) any of the records or documents referred to in Paragraph 3.1 of this Agreement; or (iii) any other information acquired by PARTNER as a consequence of its relationship with VINCULUM.

3.3 Reasonableness of Restrictions. PARTNER acknowledges and agrees that sales and services are of the essence of this Agreement, along with the relationships created thereby, and therefore, the restrictions placed upon PARTNER herein have been determined by the careful thought and final agreement between and among the parties who confirm the reasonableness of said restrictions and subsequent requirements.

3.4 PARTNER Participants Also Bound. The owners, directors, principals, shareholders, PARTNER's, servants, employees, contractors, subcontractors, advisors, and/or consultants of PARTNER (hereinafter the "PARTNER Participants") shall be personally bound by and required to fully comply with each of the provisions contained in paragraphs 3.1, 3.2 and 3.3 hereof (the "competitive provisions").

4. NATURE OF RELATIONSHIP AND CONFIDENTIALITY

4.1 Independent Contractor Relationship. It is agreed that by virtue of this Agreement, a relationship has been created which is one of independent parties furnishing services to one another for mutual benefit. The parties hereto are not partners, participants in a joint venture, or employer-employee; rather the parties are independent contractors doing business under the terms and conditions of this Agreement. PARTNER expressly recognizes that all VINCULUM accounts and customers remain in privity of contract with VINCULUM. PARTNER shall not have authority to enter into any contract or incur any liability on behalf of VINCULUM. Additionally, PARTNER shall not be entitled to any benefits provided to employees of VINCULUM, and shall be solely responsible for all costs incurred in connection with its performance under this Agreement. VINCULUM shall not be obligated or entitled to make any deductions, withholdings or contributions with respect to PARTNER or its personnel with respect to Social Security, Worker's Compensation, Unemployment Compensation, Income Tax or otherwise under any Federal, State or Local law. PARTNER is solely responsible for all expenses and obligations it incurs as a result of its efforts to solicit and serve customers and accounts for VINCULUM.

4.2 Non-Disclosure of Agreement. The parties agree that this Agreement, and its terms and conditions, shall remain confidential and shall not be disclosed by either party to any person or entity except by order of a court of competent jurisdiction or with the written consent of the other party.

5. REPRESENTATIONS, WARRANTIES AND RELATED PROVISIONS

5.1 Representation and Warranties of VINCULUM. VINCULUM represents and warrants that, except as otherwise specifically provided herein, VINCULUM has the power and authority to enter into this Agreement and to grant to PARTNER the rights conveyed herein.

5.2 Representations, Warranties and Obligations of PARTNER:

(a) PARTNER shall solicit, market and sell the Services to prospective customers in accordance with the terms of this Agreement and all applicable laws and regulations. PARTNER shall at all times conduct its efforts in a commercially reasonable manner and shall at all times identify VINCULUM as the provider of the Service.

(b) PARTNER shall solicit and obtain from prospective Customers service orders on forms supplied or approved by VINCULUM for acceptance or rejection at VINCULUM' sole discretion.

(c) PARTNER shall not use any promotional, marketing, or other form of solicitation or advertising material, in any fashion whatsoever, concerning the Services without the prior written approval of VINCULUM.

(d) No rights are granted PARTNER to use the logos, marks, designs and other intellectual property of VINCULUM and its affiliates (the "Marks") except the limited permission for PARTNER to use the Marks solely to identify VINCULUM Service. Notwithstanding the foregoing, PARTNER shall not use the name, trade name, service mark, printed materials, art work or other Marks of VINCULUM in any promotional or advertising material, statement, document, press release or broadcast, without the written consent of VINCULUM.

6. MISCELLANEOUS PROVISIONS

6.1 Assignment. Neither this Agreement nor any other benefits to accrue hereunder shall be assigned or transferred by either party, either in whole or in part, without the written consent of the other party, and any purported assignment in violation hereof shall be void.

6.2 Partial Invalidity. If any term, provision, covenant, or condition of this Agreement is held by a court or agency of competent jurisdiction to be indefinite, invalid, void or otherwise unenforceable, the rest of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. In the event any provision contained in Paragraphs 3.1, 3.2 or 3.3 of this Agreement should ever be deemed to exceed the law in any respect, then the parties hereto agree that such provision shall be amended automatically to provide the party seeking to enforce such provisions with the maximum protection permitted by law.

6.3 Entire Agreement. This Agreement (together with the Commission Schedule(s) and any rider hereto) contains the entire agreement between the parties and is intended as a complete and exclusive statement of the terms of their agreement. It supersedes all negotiations, statements, promises, or understandings, if any, made prior to the execution of this Agreement. Any such negotiations, promises, or understandings shall not be used to interpret or constitute this Agreement.

6.4 Gender and Number. As used in this Agreement, the masculine feminine or

neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

6.5 Notices. Any notice required or given under this Agreement shall be in writing and be deemed effectively given when presented personally or on the third (3rd) day after mailing by certified or registered mail, return receipt requested, with proper postage prepaid to a party at the addresses specified below or at such other address as either party may hereafter designate by notice in the same manner or immediately when sent by electronic mail or facsimile.

ADDRESSES FOR NOTICES

PARTNER: _____
Contact: _____
Address: _____
City, State, Zip: _____
Tel. No: _____
Fax No: _____
Email Address: _____

VINCULUM: VINCULUM COMMUNICATIONS, INC.
Contact: Jim Comeaux
Address: 9707 Waples Street, Suite 201
City, State, Zip: San Diego, CA 92121
Tel. No.: 858-357-8750
Fax No.: 858-225-1892
Email Address: Jim@vintalk.com

6.6 Attorney's Fees. Should any civil action or legal proceeding be commenced between the parties to this Agreement, the party prevailing in such action or proceeding shall be entitled to, in addition to such other relief as may be granted, reasonable sum as and for attorneys' fees and costs.

6.7 Amendment and Waiver. The terms of this Agreement may be amended, modified or eliminated, or the observance or performance of any term, covenant or provision herein may be omitted or waived (either generally or in a particular instance, and either prospectively or retroactively) only by a writing signed by VINCULUM and

PARTNER. The waiver by either party of any breach by the other party of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.

6.8 Inurement. This Agreement shall be binding on and inure to the benefit of all heirs, assigns (to the extent permitted) and successors in interest of the parties thereto.

6.9 Headlines. The titles and headlines herein are for convenience only and shall not be used to interpret this Agreement.

6.10 Interpretation. In matters regarding the construction of this Agreement, any interpretation of this Agreement shall not be construed against either party.

6.11 Governing Law. This Agreement is entered into in accordance with and shall be governed by California law; provided that if any California law shall dictate that the laws of another jurisdiction be applied in any proceeding, such California law shall be superseded by this paragraph and the remaining laws of California shall nevertheless be applied in such proceeding.

6.12 Non-Exclusivity of Appointment. PARTNER acknowledges that VINCULUM shall at all times have the right to appoint other contractors to perform similar services. Additionally, PARTNER shall have the right to perform similar services for other Vinculums.

6.13 Authority to Bind. Each person executing this Agreement on behalf of VINCULUM and PARTNER hereby warrants that he or she has full and legal authority to execute this Agreement for and on behalf of that entity so as to bind it.

6.14 Survival of Provisions. The provisions contained in Paragraphs 3.1, 3.2, and 3.3 of this Agreement, and the other provisions hereof to the extent applicable, shall survive any termination of this Agreement.

6.15 Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures were upon the same instrument.

6.16 Taxpayer I.D. Number. PARTNER certifies under penalties of perjury that the taxpayer I.D. number shown below is PARTNER's correct taxpayer identification number and PARTNER is not subject to backup withholding because: (a) PARTNER is exempt from backup withholding, or (b) PARTNER has not been notified by the Internal Revenue Service ("IRS") that PARTNER is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified PARTNER that PARTNER is no longer subject to backup withholding.

TAXPAYER I.D. NUMBER/Social Security#: _____

6.17 Location of Legal Proceedings. Any civil action or other legal proceeding

arising out of or relating to this Agreement or any dealings between PARTNER, on one hand, and VINCULUM and/or VINCULUM' officers, directors, employees, or PARTNER's, on the other hand, whether brought before or after any termination of this Agreement, shall be brought and heard only in a state or federal court located in San Diego County, California and the parties hereto expressly waive any rights under any law or rule to cause any such proceeding to be brought or heard in any other location. PARTNER consents to jurisdiction in any state or federal court located in San Diego County, California in any civil action or other legal proceeding arising out of or relating to this Agreement.

6.18 Warranties and Liability of VINCULUM. VINCULUM warrants that it will use reasonable effort to perform its obligations under this Agreement. **THE FOREGOING WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTIES. VINCULUM DISCLAIMS AND PARTNER HEREBY WAIVES ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE. VINCULUM SHALL NOT BE LIABLE TO CONTRACTOR, ANY CUSTOMER OF VINCULUM OR ANY PERSON OR ENTITY UTILIZING ANY SERVICE PROVIDED BY VINCULUM, FOR LOSS OF TIME, INCONVENIENCE, LOSS OR INTERRUPTION OF SERVICE, LOST REVENUES OR PROFITS, OR FOR ANY OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE ARISING OUT OF THIS AGREEMENT, ANY OBLIGATION RESULTING THEREFROM, OR ANY OTHER ACT OR OMISSION OF VINCULUM, WHETHER ARISING OUT OF AN ALLEGED BREACH OF WARRANTY, ALLEGED BREACH OF CONTRACT, DELAY, NEGLIGENCE, STRICT TORT LIABILITY OR OTHERWISE.**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the Effective Date.

VINCULUM COMMUNICATIONS, INC. **PARTNER:** _____

By: _____ By: _____

Print Name: Jim Comeaux Print Name: _____

Title: President Of VinTalk Services Title: _____

Date: _____ Date: _____



COMMISSION SCHEDULE "A"

Qualified Revenues generated by all approved Customers procured by PARTNER are subject to the corresponding commissions to be paid by VINCULUM to PARTNER:

A. Monthly Recurring Revenues – Hosted, SIP Trunking, Conference, & Usage

	Monthly MRC Revenues	MRC Commission Percentage
	\$0 to \$7,500	18%
	\$7,501 to \$25,000	20%
	\$25,001 to \$50,000	22%
	Over \$50,001	25%

B. Non-Recurring Revenues

- Partner will receive one-time commissions of 25% of all **"Setup Fees"** -non-recurring revenues (NRC)
- Partner will receive one-time commissions of 5% on **"Hardware Sales"** non-recurring revenues (NRC)

"PARTNER": _____

By: _____

Print Name: _____

Title: _____

Date: _____

"VINCULUM": **VINCULUM COMMUNICATIONS, INC.**

By: _____

Print Name: Jim Comeaux

Title: President Vintalk Services

Date: _____

COMMISSION SCHEDULE "B"

Qualified Revenues generated by all approved Customers procured by PARTNER are subject to the corresponding commissions to be paid by VINCULUM to PARTNER:

A. Monthly Recurring Revenues – DIA and any other non-qualifying* services

	Monthly MRC Revenues	MRC Commission Percentage
	\$0 to \$7,500	8%
	\$7,501 to \$25,000	9%
	Over \$25,001	10%

B. Non-Recurring Revenues

- Partner will receive one-time commissions of 25% of all **"Setup Fees"** -non-recurring revenues (NRC), no commissions will be paid on carrier/DIA install fees.
- Partner will receive one-time commissions of 5% on **"Hardware Sales"** non-recurring revenues (NRC)

"PARTNER": _____

By: _____

Print Name: _____

Title: _____

Date: _____

"VINCULUM": **VINCULUM COMMUNICATIONS, INC.**

By: _____

Print Name: Jim Comeaux

Title: President Vintalk Services

Date: _____



Partner Profile

Business Name: _____

Address: _____

Phone Number(s): _____

Fax: _____ Website: _____

Main Contact: _____ Phone Number: _____

Email: _____

Number of Employees: _____ Number of Customers: _____

Sales Staff (Name, Phone Number(s) & Email):

✓ _____

✓ _____

Technical Contact(s):

✓ _____

✓ _____

Admin Contact(s):

✓ _____

✓ _____

Types/Brand/Model Systems Sold:

✓ _____

What area codes (NPA-NXX) are your clients/customers primarily located in?

✓ _____

Notes:

✓ _____
