

CUSTOMER PREMISES EQUIPMENT RENTAL ANNEX

This Customer Premises Equipment Rental Annex, together with the applicable Sprint cover agreement (e.g. Sprint Master Services Agreement or Sprint Custom Service Agreement) and the Sprint Standard Terms and Conditions for Communications Services ("Standard Terms and Conditions"), governs Sprint's rental of customer premises equipment to Customer. The terms and conditions in this Annex do not apply to any telecommunications services purchased by Customer.

1. **CPE.** The term Customer Premises Equipment ("CPE") refers to those items of equipment listed in a Sprint-approved order form ("Order") and obtained by Customer under this Agreement. CPE includes appropriate licenses to use related software provided in connection with CPE and all parts, cables, repairs, additions and accessories to CPE.
2. **Delivery and Installation.**
 - 2.1 **General.** Sprint will use commercially reasonable efforts to deliver and install CPE according to a mutually-agreed schedule. All delivery dates provided by Sprint are approximate and are based on the then current lead-times and available inventory. Sprint will not be liable for failure to meet delivery or installation completion dates due to force majeure conditions as defined in the Standard Terms and Conditions.
 - 2.2 **Delivery.** Sprint will pay for the shipment of CPE to Customer's installation site(s) in the continental United States set forth in the Order (the "Installation Site"). If Customer is not ready to accept delivery, Customer must notify Sprint at least 30 days before the delivery date to avoid special handling charges.
 - 2.3 **Installation.** Sprint will furnish all necessary cable, wire, hardware, labor and other items for installation of CPE at the Installation Site. Sprint will install CPE to the local telephone company's point of demarcation in accordance with Sprint's standard practices and procedures. Sprint will perform the installation in a workmanlike manner, but will not be responsible for unavoidable damages to the Installation Site resulting from Sprint's installation.
3. **Order Cancellation.** In addition to any other remedies available under the Agreement, Customer will pay Sprint the following amount as liquidated damages and not as a penalty for canceling an Order prior to installation:
 - 3.1 If Sprint has not completed its materials requisition process, Customer will pay Sprint 2% of the CPE manufacturer's list price for each item of CPE canceled by Customer.
 - 3.2 If Sprint has completed its materials requisition process, Customer will pay Sprint 5% of the CPE manufacturer's list price for each item of CPE canceled by Customer.
4. **Term.** The Term of each Order begins on the first day of the first billing month after CPE is installed and made available to Customer ("Commencement Date"). The Term will automatically renew for successive 30 day terms until either party provides 30 days written notice of its desire not to renew the Term. An Order may be terminated prior to the end of the Term in accordance with an Early Termination under Section 11 of this Annex or an Event of Default under Section 12 of this Annex.
5. **Title, Personal Property and UCCs.**
 - 5.1 **Title and Personal Property.** Sprint or its Assignee (as defined in Section 14 of this Annex) will have title to CPE. Customer acquires only the opportunity to use CPE for the Term. CPE will at all times remain personal property regardless of its manner of attachment. Sprint may, at its own expense, affix plates or markings to CPE indicating Sprint's ownership interest. Customer may not remove such plates or markings. Customer, at its expense, will at all times
 - A. keep CPE free and clear of all liens and encumbrances except for those arising through Sprint, and
 - B. otherwise cooperate to defend Sprint's interest in CPE and to maintain the status of CPE as personal property.

- 5.2 UCC Filings.** At Sprint's request, Customer will execute and deliver, at its expense, any documents reasonably necessary to protect Sprint's interest in CPE. Sprint, its Assignee, and their agent(s) may sign UCC financing statements on behalf of Customer and file financing statements without Customer's signature. Customer will pay the out-of-pocket costs of filing and/or recording such documentation. Filed financing statements are evidence of an attempt to protect Sprint's rights and title to CPE and not of any contrary intent. Customer must notify Sprint at least 30 days before any change in its name, state of organization or other legal organizational status that may affect any filed financing statements. Customer must send requests for identification of CPE or for an accounting to Sprint's Law Department at the address in the Notice section of the Standard Terms and Conditions.
- 6. Maintenance.** Sprint provides maintenance services ("Maintenance") to Customer on all CPE on a 24 hour per day, 7 days per week basis, under the terms and conditions of the Sprint Data and Internetworking Equipment Maintenance Service Product Annex, posted at <<http://www.sprint.com/ratesandconditions/>> and incorporated by this reference.
- 7. Rental and Other Charges.** The installation charges are specified in the Order. The recurring charges listed in the Order reflect the monthly charges for CPE rental. Customer will pay Sprint the Total Monthly Charge set forth in the Order according to Sprint's invoices and the Standard Terms and Conditions. **EXCEPT AS SET FORTH IN SECTION 11 OF THIS ANNEX, CUSTOMER'S OBLIGATIONS UNDER AN ORDER, INCLUDING PAYMENT OBLIGATIONS, ARE ABSOLUTE, UNCONDITIONAL AND NON-CANCELABLE AND NOT SUBJECT TO ANY DELAY, REDUCTION, SETOFF, DEFENSE, COUNTERCLAIM OR RECOUPMENT FOR ANY REASON WHATSOEVER INCLUDING, WITHOUT LIMITATION, WARRANTY, MAINTENANCE OR OTHER PERFORMANCE ISSUES.**
- 8. Insurance.** At its expense, Customer must keep CPE insured against all risks of loss and damage, from the date CPE is delivered to the Installation Site, for an amount equal to the installed replacement cost of CPE. Customer must also maintain comprehensive general liability insurance with Sprint or its Assignee named as additional insured. All insurance policies must be with an insurer having a "Best Policy Holders" rating of "B+" or better, and be in such form, amount and deductible as are satisfactory to Sprint. Each policy must name Sprint or its Assignee as a loss payee and state by endorsement that the insurer must give Sprint or its Assignee not less than 30 days prior written notice of any amendment, renewal, or cancellation. Customer will, upon request, furnish satisfactory evidence that such insurance coverage is in effect. Customer may self-insure with prior written consent of Sprint and any Assignee, which consent will not be unreasonably withheld. Nothing within this Annex will limit Customer's liability to Sprint to the amounts of insurance carried.
- 9. Casualty.** If any CPE, in whole or in part, is lost, stolen, damaged, or destroyed, or is taken in any condemnation or similar proceeding (an "Event of Loss"), Customer will immediately notify Sprint. Customer must immediately
- 9.1 Restore the affected CPE to good condition and working order,
 - 9.2 Replace the affected item with like CPE or software in good condition and transfer clear title and any sublicense to Sprint, or
 - 9.3 Pay to Sprint, within 30 days of the Event of Loss, an amount equal to Sprint's replacement cost.

10. Warranty and Disclaimers.

10.1 SPRINT PROVIDES CPE "AS IS." SPRINT DOES NOT WARRANT THAT THE OPERATION OF CPE WILL BE UNINTERRUPTED OR ERROR FREE. SPRINT MAKES NO EXPRESS OR IMPLIED WARRANTIES FOR CPE INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR OTHERWISE.

10.2 TO THE EXTENT THAT ARTICLE 2A OF THE UCC APPLIES TO AN ORDER AND CUSTOMER HAS CERTAIN RIGHTS THEREUNDER AND TO THE EXTENT PERMITTED BY LAW, CUSTOMER WAIVES ANY RIGHTS OR REMEDIES IT MAY HAVE UNDER UCC ARTICLE 2A-508 THROUGH 5-222 INCLUDING, WITHOUT LIMITATION, RIGHTS OF REJECTION, REVOCATION, CANCELLATION, RETENTION OF SECURITY INTERESTS, AND RECOVERY FOR BREACH OF WARRANTY (EXCEPT TO THE EXTENT CUSTOMER IS SPECIFICALLY GRANTED ANY RIGHTS IN AN ORDER).

11. Early Termination. After Customer has paid the first 12 monthly payments due under an Order with a two or three-year Term, Customer may terminate the Order as to all, but not less than all, CPE prior to the expiration of the Term. Customer must give Sprint 30 days' written notice prior to the payment date upon which Customer wishes to terminate the Order. Customer must also pay an early termination charge equal to 50% of all future Total Monthly Charges from the last payment date for which the Total Monthly Charge has been paid to the end of the Term. Sprint will promptly invoice Customer for any early termination charge. On the date that an early termination becomes effective, Customer must immediately return CPE to Sprint or its Assignee as detailed in Section 13 of this Annex.

12. Default.

12.1 Any of the following will constitute an Event of Default:

- A.** Customer fails to pay when due any charges or other amounts payable under an Order within 10 days of Customer's receipt of written notice of nonpayment;
- B.** Customer fails to perform any other material term or other agreement in any Order or given in connection with an Order that continues uncured for twenty 20 days after Customer's receipt of written notice thereof;
- C.** the inaccuracy of any material representation or warranty made by Customer or any guarantor in connection with an Order and the continuation thereof for 30 days or more;
- D.** Customer attempts to make a Transfer (as defined in Section 14.3 of this Annex) without the prior written consent of Sprint or Assignee (as applicable) which consent will not be unreasonably withheld;
- E.** Customer dissolves or ceases to do business as a going concern;
- F.** Customer sells all or substantially all of its assets, merges or consolidates with or into, or reorganizes with any entity;
- G.** Customer becomes insolvent, makes an assignment for the benefit of creditors, files a voluntary petition or has an involuntary petition filed or action commenced against it under the United States Bankruptcy Code or any similar federal or state law; or
- H.** Any partner of Customer or any guarantor takes any actions described in subsections (E), (F), or (G) above.

12.2 Remedies. If an Event of Default has occurred, Sprint will have the right to exercise one or more of the following remedies, in addition to any other remedies available under this Agreement:

- A.** terminate and/or declare an Event of Default under any and all Orders;
- B.** recover from Customer all payments and any and all amounts then due and unpaid; and
- C.** recover from Customer all payments, if any, and other amounts to become due, by

acceleration or otherwise (plus, if CPE is not returned in accordance with Section 13, an amount equal to Sprint's reasonable estimate of the fair market value of CPE at the end of the applicable Term.) The amounts described in this subsection (C) will be present valued at the lowest permitted rate;

- D. charge Customer interest on Sprint's Loss from the date of the Event of Default at the lesser of 1.5% per month or the maximum rate permitted by law;
- E. demand that Customer return any CPE to Sprint in the manner provided in Section 13 of this Annex; and
- F. take possession of, render unusable, or disable any CPE wherever located, with or without demand or notice or any court order or any process by law.

12.3 Upon repossession or return of CPE, Sprint will have the right to sell, lease or otherwise dispose of CPE, with or without notice and by public or private bid, and will apply the net proceeds thereof, if any, toward Sprint's Loss but only after deducting from such proceeds:

- A. in the case of any reletting of CPE, the rent due for any period beyond the scheduled expiration of an Order;
- B. in the case of sale, the estimated fair market value of CPE as of the scheduled expiration of the Term of an Order, and
- C. all expenses including, without limitation, reasonable attorneys' fees incurred in enforcement of any remedy.

12.4 Customer will be liable for any deficiency if the net proceeds available after the permitted deductions are less than Sprint's Loss. No right or remedy is exclusive of any other provided herein or permitted by law or equity. All rights and remedies will be cumulative and may be enforced concurrently or individually from time to time.

13. Return of CPE. At Sprint's request upon an Event of Default or an Early Termination, Customer will, at its own risk and sole expense, immediately return CPE to Sprint, or as otherwise directed by Sprint in writing. Customer will properly remove, disassemble and pack CPE for shipment, load CPE on board a carrier acceptable to Sprint and ship CPE to a destination in the continental United States specified by Sprint, with freight and insurance prepaid. At the expiration of the Term, Customer will make CPE available for removal by Sprint. CPE will be in the same condition and operating order as existed when received ordinary wear and tear excepted. If Customer does not immediately return CPE to Sprint or make CPE available to Sprint, Customer will pay an amount equal to the CPE monthly charge prorated on a daily basis for each day from and including the termination or expiration date of the Term through and including the day Customer ships CPE or makes CPE available. Customer will pay any amount necessary to place CPE in good repair, condition and working order, ordinary wear and tear excepted.

14. Assignment.

14.1 Sprint may, without notice to or the consent of Customer, sell, assign, grant a security interest in, or pledge its interest in all or a portion of CPE and/or an Order and any amounts payable hereunder to one or more third parties ("Assignee"). Assignee may transfer and reassign all or a portion of CPE to another third party assignee without notice to or consent of Customer. Customer will, if directed, pay the charges and other amounts payable under the Order to an Assignee or third party assignee even if less than the Total Monthly Charges have been assigned.

14.2 **ASSIGNEE WILL NOT BE RESPONSIBLE FOR SPRINT'S PERFORMANCE OF ANY ORDER INCLUDING, WITHOUT LIMITATION, THE DELIVERY AND INSTALLATION OF CPE, OR THE PERFORMANCE OF ANY MAINTENANCE OR OTHER OBLIGATIONS. ASSIGNEE WILL NOT BE RESPONSIBLE FOR ANY DAMAGES RELATIVE THERETO. CUSTOMER WILL NOT ASSERT AGAINST ANY SUCH ASSIGNEE ANY CLAIM OR COUNTERCLAIM, DEFENSE, SETOFF, RECOUPMENT OR OTHER RIGHT, WHICH CUSTOMER MAY HAVE AGAINST SPRINT OR ANY OTHER PERSON.**

14.3 **WITHOUT SPRINT'S OR ASSIGNEE'S PRIOR WRITTEN CONSENT, CUSTOMER WILL NOT ASSIGN, SUBLEASE, TRANSFER, PLEDGE, MORTGAGE OR OTHERWISE ENCUMBER**

("TRANSFER") CPE OR AN ORDER OR ANY OF ITS RIGHTS HEREIN OR PERMIT ANY LEVY, LIEN OR ENCUMBRANCE THEREON.

- 14.4** Any attempted non-consensual Transfer by Customer will not be valid. No transfer will relieve Customer of any of its obligations under this Annex.
- 15. Attorney's Fees.** Customer will pay all costs and expenses, including reasonable attorneys' and collection fees incurred by Sprint or its Assignee in enforcing the terms and conditions of an Order or in protecting Sprint's rights in CPE.