

## LEASE AND LICENSE AGREEMENT

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 2012 by and between the City of Durham (hereinafter referred to as the “Licensor” or “the City”) and SprintCom, Inc., a Missouri corporation (hereinafter referred to as the “Licensee”).

### 1. USE:

Licensor, subject to the terms and conditions hereof grants to Licensee the non-exclusive license to install, maintain and operate the radio communications equipment described in Exhibit 1 attached hereto (hereinafter referred to as the “Equipment”) on the Communication Tower (hereinafter referred to as the “Tower”) and the right to construct and use an equipment storage area (hereinafter referred to as the “Storage”) located at Licensor’s facility described in Exhibit 2 attached hereto (hereinafter referred to as the “Site”). Licensee shall have an exclusive license to locate its equipment on the specific location on the Tower and on the specific location for the Storage shown in the construction plans approved by the Licensor prior to beginning construction. Exhibits 1, 2, and 3 are hereby made part of this Agreement

Licensor and Licensee agree that the primary function of the Communication Tower is to provide communication service to various City of Durham departments. Should the Licensor determine, in its sole discretion, that the performance of this agreement interferes with the primary function of the Tower, the Licensor may terminate this agreement with ninety (90) days written notice to Licensee. Licensee shall have the right during said ninety (90) day period to cure the interference problem to the satisfaction of the Licensor, provided, however, that if said cure is not achieved in the sole judgment of the Licensor, Licensee must have completely vacated the Tower within twenty (20) days after the expiration of said ninety (90) day period. If Licensee determines, of its sole judgment, that the operation of the Tower by the Licensor is creating interference with Licensee’s use and operation of its facility at the Tower, or Licensee determines, for any reason whatsoever, that the radio frequency propagation from the Tower does not meet the needs of its system, Licensee may terminate this Agreement by giving the Licensor ninety (90) days’ written notice. Licensee’s right to terminate this Agreement is subject to all of the terms hereof regarding Licensee’s obligation to remove the Equipment and Storage at the expiration or termination of this Agreement. Licensor shall also have the right to terminate this Agreement for health and safety concerns upon three hundred sixty five (365) days written notice to Licensee.

### 2. TERM:

This Agreement shall commence on the date first written above and shall be for a period of ten (10) years.

### 3. FEE AND RENTAL:

- (a) Licensee shall pay to Licensor a non-cancelable fee and rental in the sum of thirty-five thousand five hundred and 00 dollars (\$35,500.00) dollars per year for year one (1) of this License. The rent payment amount will escalate 3% each year on the anniversary date of this Lease for year two (2) through ten (10) of the License. The first annual payment shall be made on execution of this Agreement (“Commencement Date”) and payments for subsequent years shall be due prior to the anniversary date of this Agreement. All payments shall be made directly to the City of Durham General Services Department-Real Estate Division and these payments shall be exclusive of charges for the furnishing of any utilities such as, but not limited to, electricity, gas, water, sewer or telephone.

- (b) Licensee shall have a separate electric meter to measure Licensee's electric consumption and Licensee shall pay directly to the public utility company for the installation of the meter and for any electricity used by Licensee's Equipment.
- (c) Licensor acknowledges that, if Licensee terminates this Agreement under the provisions of paragraph 1, Licensee shall be entitled to a refund of 90% of any prepaid rent, prorated to the date of termination. Licensee agrees to return the Site to its original, or better, condition upon vacating the premises. Should the Licensor, in its sole discretion, decide to accept the Site with any equipment or property of Licensee's remaining on the Site or in the Storage area, such equipment shall become the property of Licensor upon the Lease's termination.

4. OPERATION OF EQUIPMENT:

- (a) Licensee shall operate its Equipment during the term hereof in compliance with all present and future rules and regulations imposed by any local, state, or Federal authority having jurisdiction with respect thereto including, without limitation, the rules and regulations of the Federal Communication Commission (hereinafter referred to as the "FCC"), and the Federal Aviation Administration (hereinafter referred to as the "FAA"). Prior to installation of its equipment or making any modifications or changes to its Equipment, if any, Licensee shall comply with the following:
  - (i) Licensee shall submit all plans for Licensor's approval; and
  - (ii) Prior to commencement of any work, Licensee shall obtain Licensor's written approval and required approvals of all Federal, state, and local agencies. Licensee shall promptly deliver to Licensor written proof of compliance with all applicable Federal, state and local laws, rules and regulations in connection with any installations, changes or modifications of Equipment; and
  - (iii) All of the installations, modifications or changes to Licensee's Equipment shall conform with Licensor's design specifications and Licensor's requirements, including weight and wind load requirements, and shall not interfere with any other radio communications system and equipment located in and upon the Site, and shall be in compliance with all applicable local, state, and Federal government requirements including but not limited to zoning, FAA, and FCC specifications; and
  - (iv) All of Licensee's Equipment shall be clearly marked to show Licensee's name, address, telephone number and the name of the person to contact in case of emergency, and shall also display Licensee's FCC call sign, frequency(s) and location. All coaxial cable shall be identified in the same manner at the bottom and at the top of each transmission line
- (b) In all matters where Licensor's approval is required and Licensor should determine in its reasonable discretion that a possibility of a threat of interference or other disruption with the business of the Licensor or other existing licensees exists, Licensor shall have the absolute right to withhold consent.
- (c) Licensee shall, at its sole cost and expense, obtain its electrical power supply directly from the public utility company. Licensee hereby agrees that all power lines installed by Licensee shall be located as directed by Licensor.
- (d) In the event that Licensee requires telephone service, Licensee, at its sole cost and expense, shall obtain such telephone service. Any work performed in connection with the telephone service shall comply with the provisions of subparagraph (a) hereof. Licensee

hereby agrees that any telephone lines installed by Licensee shall be located as directed by Licensor.

- (e) In the event a zoning variance, special use permit or other similar governmental approval is required in connection with the installation or any proposed modification of Licensee's Equipment, Licensee shall be solely responsible for obtaining the appropriate approval.
- (f) In order to assure Licensee's compliance with the provisions of this Agreement, the plans and specifications for Licensee's Equipment and any modifications thereto shall be submitted to the Licensor for review and approval by the Licensor, or engineers and/or consultants selected by Licensor. Licensee shall reimburse Licensor for Licensor's reasonable expenses incurred in connection with such review and approval. All work performed at this Site in connection with the installation and modification of Licensee's Equipment shall be performed by contractors selected by Licensee, at Licensee's expense.
- (g) Licensee represents that, upon the execution of this Agreement, Licensee shall apply for all approvals, consents or access rights necessary for the initial installation of its Equipment or Storage.
- (h) If, after execution of this Agreement, Licensee is unable to satisfy any of the conditions set forth in this Section 4, or is unable to obtain any of the approvals required under this Section 4, including, but not limited to, approvals from the Licensor, Licensee shall have the right, upon thirty (30) days prior written notice to Licensor to terminate this Agreement, whereupon ninety percent (90%) of any prepaid rent, prorated to the date of termination shall be refunded to Licensee and neither party shall have any further liabilities or obligations hereunder. Licensee agrees to return the Site to its original, or better, condition upon vacating the premises. Should the City, in its sole discretion, decide to accept the Site with any equipment or property of Licensee's remaining on the Site or in the Storage area, such equipment shall become the property of the City of Durham upon the Lease's termination.

## 5. EQUIPMENT

- (a) The installation and operation of Licensee's Equipment shall not interfere electrically or in any other manner whatsoever, with Licensor or any other party or Licensee presently operating and maintaining radio communications systems and other equipment at the Site, or with any City systems or equipment, whenever installed. All repeater systems at the Site shall be equipped with, at a minimum, a single stage isolator and a bandpass/reject type duplexer. No notch type duplexers will be allowed. Except as otherwise provided in subparagraph (b) below, it is expressly understood and agreed that if the installation or operation of Licensee's Equipment shall interfere with other radio communications systems and equipment at any time, Licensee shall upon request (verbal or otherwise), immediately suspend its operations and do whatever Licensor deems necessary to eliminate or remedy such interference. If the interference cannot be rectified, then Licensor may at its option immediately and with notice terminate this Agreement and Licensee shall remove all of Licensee's Equipment or Licensor may remove any and all of Licensee's Equipment at Licensee's cost and expense. The Licensee will be responsible for notifying Licensor of interference created by future Licensees at the Tower and Licensor agrees that all future Licensees will execute License Agreements requiring them to terminate their occupancy of the facility if they cause interference and such interference cannot be resolved.

Licensor acknowledges and agrees that the foregoing obligation of Licensee to correct interference problems or remove its Equipment shall apply only to interference with the City's equipment or the equipment of any Licensee occupying the Site prior to the date hereof. It shall be the obligation of said subsequent Licensee to adjust its equipment or

operations to remedy the interference or remove its equipment. Licensee shall not be required to modify its Equipment or adjust its operations to correct interference problems resulting from a subsequent Licensee at the Site.

(b) The installation and operation of Licensee's equipment shall not interfere in any manner whatsoever with Licensor's use of the premises for its primary function as a Communications Tower. During the term of this Agreement and subject to the terms hereof, Licensor agrees that Licensee or its agents shall have free access to the Tower and the remainder of the Site at all times for purposes of operating, inspecting, maintaining, removing, repairing and replacing Licensee's Equipment.

(c) Licensee understands and agrees that Licensor will perform corrective maintenance and preventive maintenance when required as determined by Licensor. If maintenance by the Licensor is likely to cause interruption to the operation of Licensee's equipment, Licensor will give Licensee thirty (30) days written notice, and Licensee shall make adjustments as needed including removal of Licensee's equipment from the Tower on a temporary basis. In the event of emergency repairs by the Licensor to the Site or Tower, Licensee's operations may be interrupted without prior notice from Licensor. Licensor agrees that, to the extent feasible, Licensee shall have the right to utilize a mobile facility that does not interfere with the maintenance process and complies with all City Ordinances, including Zoning Ordinances.

#### 6. MAINTENANCE AND REMOVAL OF EQUIPMENT:

(a) Licensee shall be solely responsible for all costs associated with maintenance of its Equipment and storage, if any, on the Site, in accordance with all applicable laws, rules and regulations and this Agreement. All maintenance work shall be performed by contractors licensed by the State of North Carolina. If the structural safety of the Tower is impaired as a result of the installation of Licensee's equipment, Licensee shall be solely responsible for all necessary alterations, modifications and repairs. Notwithstanding the foregoing, Licensor shall have the right to replace the Tower at any time during the term of this Agreement. The Licensor will give the Licensee as much advance notice as possible of the replacement, but in no case less than ninety (90) days written notice. Licensee will be allowed to occupy the replacement Tower under the terms of this Agreement, unless such use of the replacement Tower would substantially interfere with the primary function of the Tower, as determined by the Licensor at its sole discretion. Further, Licensor will consider allowing Licensee to use mobile facilities at the Site until the replacement is completed, provided it does not interfere with the construction process and all City ordinances, such as the Zoning Ordinance, are complied with fully. The foregoing notwithstanding, if Licensor terminates this Agreement as a result of replacement of the Tower, or Licensee terminates this Agreement because the replacement tower is not suitable for Licensee's purposes, Licensee shall be entitled to a refund of all prepaid rent attributable to future occupancy, and neither party shall have any further liability or obligation hereunder.

(b) Upon the expiration or earlier termination of this Agreement and upon the payment of the Fee and all other sums due Licensor on such expiration or termination date, Licensee shall remove all its Equipment. Any and all removal of Licensee's equipment shall be performed by a contractor licensed by the State of North Carolina, performed in a workmanlike manner, without any interference, damage or destruction to any other equipment, structures or operations at the Site or any other equipment of other Licensees thereon. Any and all interference or damage caused to the Site or equipment of other licensees by such removal shall be immediately repaired or eliminated by Licensee.

#### 7. MISCELLANEOUS REQUIREMENTS:

- (a) All improvements made to the Site by Licensee will be subject to the City's usual regulatory requirements.
- (b) Immediately upon completion of the improvements, Licensee shall restore any area disturbed by construction of the improvements to a condition equal to or better than the original condition.
- (c) All Equipment of the Licensor must operate so as to comply fully with the Noise Control Ordinance of the City of Durham.

8. LIABILITY AND INDEMNIFICATION:

- (a) Licensee hereby assumes the risk of the inability to operate as a result of any power failure at the Site or any failure of Licensee or Licensee's Equipment for any reason whatsoever and agrees to indemnify and hold Licensor harmless from all damages and costs of defending any claim or suit for damages of any kind asserted against Licensor by reason of such failure, including, but not limited to, business interruption, damage to other Licensee's equipment, or attorney's fees.
  - (i) To the maximum extent allowed by law, Licensee shall defend, indemnify, and save harmless Licensor and its officers, officials, independent contractors, agents and employees (hereinafter referred to as "Indemnitees") from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of Licensee or any one directly or indirectly employed by Licensee or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a", Licensee shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to Licensor.
  - (ii) As used in this Section 8, "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines, penalties, royalties, settlements, and expenses. Included without limitation within "Charges" are also interest and reasonable attorneys' fees assessed as part of any such item, and amounts for alleged violations of sedimentation, pollution or other environmental or pollution laws and regulations, including but not limited to any such alleged violation that arises out of the handling, transpiration, deposit, or delivery of the items or materials that are the subject of this contract.
  - (iii) Limitations of Licensee's Obligation: this Section 8 shall not require the Licensee to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.
  - (iv) Nothing in this Section 8 shall affect any warranties in favor of the Licensor that are otherwise provided in this contract. This Section 8 is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract.

9. DAMAGE TO OR DESTRUCTION OF THE SITE:

In the event the Site or any part thereof is damaged or destroyed by the elements or by any other cause, Licensor may elect to repair, rebuild, or restore the Site, or any part thereof, to the same condition as it was immediately prior to the casualty. In such event, the payments required herein

shall cease as of the date of casualty until the Site, in Licensee's opinion, is restored to a usable condition for Licensee's operation. If the site is unusable for more than thirty (30) days in any calendar year, the rent payment for the year in which such damage or destruction occurs shall be rebated by 1/365 for each day the Site is unusable. If Licensor chooses not to repair, restore or rebuild the Site, Licensor shall terminate this Agreement by giving written notice thereof to Licensee within thirty (30) days of the casualty. If Licensor fails to give Licensee notice of its intention to repair the Site within such thirty (30) day period, or in the event that Licensor fails to repair the Site in full within ninety (90) days after the date of the casualty, Licensee may terminate this Agreement by giving written notice thereof to Licensor within five (5) days of the expiration of such thirty (30) day or ninety (90) day period, as the case may be. If this Agreement is terminated under the provisions of this paragraph, the payments required herein shall terminate as of the date of casualty. Licensor shall not be responsible or liable to Licensee in any amount beyond the already paid rental fee for any loss, damage or expense that may be occasioned by, through, or in connection with, any acts or omissions of other licensees or tenants occupying the Site, for any structural or power failure at or of the Site, or for the destruction of, or any damage to, the Site. The foregoing notwithstanding, Licensee shall have the right to terminate this Agreement upon any destruction or substantial damage to the Tower by giving Licensor written notice thereof within thirty (30) days after the date the damage or destruction occurs. If Licensee terminates this Agreement as a result of damage or destruction to the Tower, Licensee shall be entitled to a refund of all rent prepaid for any period beyond the termination date, and neither party shall have any further liability or obligation hereunder except for Licensee's obligation to remove its equipment from the Tower and return the Site to its original, or better, condition upon vacating the Site.

#### 10. INSURANCE:

- (a) Licensee shall keep in full force and effect during the Term of this Agreement a commercial general liability insurance policy, including blanket contractual and completed operations coverage with limits of liability of at least two million dollars (\$2,000,000.00) in respect to bodily injury, including death, arising from any one occurrence, and two million dollars (\$2,000,000.00) in respect of damages to property arising from any one occurrence. Said insurance policy shall be endorsed to include Licensor as an additional insured and shall provide that Licensor will receive at least thirty (30) days prior written notice of any cancellation or reduction in coverage required herein in such insurance policy. Licensee shall, prior to the installation of the Equipment, furnish to Licensor a certificate of insurance confirming that the insurance coverage as specified herein is in full force and effect. Licensee shall indemnify and save Licensor harmless from and against any and all losses, costs, liabilities, damages, judgments, and expenses (including attorney fees) in connection with claims resulting from bodily injury or death of any person, or from damage to any property sustained by any person, including Licensee, caused by or arising from any operations at the Site by Licensee or Licensee's contractors, agents, invitees, visitors, servants or employees, including but not limited to, the installation, removal and maintenance of the Equipment and other improvements.
- (b) Notwithstanding the foregoing insurance requirements, the insolvency, bankruptcy, or failure of any insurance company carrying insurance for Licensee, or the failure of any such insurance company to pay claims accruing, shall not be held to waive any of the provisions of this Agreement or relieve Licensee from any obligations under this Agreement.

11. TAXES: Licensee shall pay annually an amount equal to any increase in real estate taxes, if any, directly attributable to any improvement on the Site. If such tax is paid by Licensor, Licensee shall reimburse Licensor for the amount of any such tax payment within sixty (60) days of receipt of sufficient documentation indicating the amount paid and the calculation of Licensee's pro rata share; such documentation shall be deemed sufficient only if it definitively evidences that portion of the tax increase arising directly out of the improvement such as, by way of example, the relevant tax

assessor's designation of the value of such improvement. Upon written request by Licensee, Licensor shall furnish evidence of payment of all taxes.

12. END OF AGREEMENT - EQUIPMENT:

Licensor agrees that no part of the Equipment or improvements constructed, erected or placed by Licensee on the Tower shall be considered as being affixed to or a part of the Tower and further agrees that all Equipment and improvements of every kind and nature constructed, erected or placed by Licensee on the Tower shall be and remain the property of Licensee.

13. STORAGE:

The Licensee may locate one (1) equipment building on the Site. The equipment building dimensions shall not exceed 210 square feet, which will remain the property of the Licensee at expiration of this Agreement and must promptly be removed, unless the building is given to and accepted by the Licensor by written agreement. Any equipment building, cabinets or other storage left at the Site shall be enclosed within a fence, with plans for such fence and facilities approved by the Licensor prior to construction.

14. NOTICES:

All notices required to be given hereunder shall be given in writing, sent by certified or registered mail to the respective addresses of the parties as set forth herein, or at such other address as may be subsequently designated in writing by either party. Notice given by mail shall be deemed given three days after the date of mailing.

Licensee's address for notice purposes is:

1357 Hembree Road, Suite 100  
Roswell, Georgia 30076  
Attn: Lease Management

With a copy to:

Sprint Law Department  
6391 Sprint Parkway  
Mailstop KSOPHT0101-Z2020  
Overland Park, Kansas 66251-2020  
Attn: Sprint PCS Real Estate Attorney

Licensor's address for notice purposes is:

City of Durham  
General Services Department, Real Estate Division  
101 City Hall Plaza  
Durham, NC 27701

15. DEFAULT AND REMEDIES:

In the event of Licensee's default hereunder, including but not limited to (i) the failure to pay fees, additional fees or other payments set forth herein when due, and Licensee's failure to cure same within ten (10) days after receipt of notice of such failure from Licensor; (ii) abandonment of either the Equipment or that portion of the Site upon which the Equipment was installed for a period exceeding sixty (60) days after early termination or expiration of this License; (iii) the filing of any case, proceeding or other action under any existing or future law of any jurisdiction, domestic or

foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to Licensee; or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to Licensee or its debts; or (iv) the making by Licensee of an assignment or any other arrangement for the general benefit of creditors under any state statute, Licensor shall be entitled at Licensor's option to terminate this Agreement and remove all of its Equipment, improvements to personal property located at the Site or Licensor may remove all Licensee's Equipment, improvements or personal property located at the Site at Licensee's cost and expense. In the event that Licensor should, as a result of Licensee's default, incur any costs or expenses on behalf of Licensee or in connection with Licensee's obligations hereunder such sums shall, upon rendering of an invoice, be immediately due from Licensee to Licensor as an additional fee hereunder

16. REGULATIONS AND ASSIGNMENT BY LICENSEE:

This Agreement is made subject to all local, State of North Carolina and Federal laws, rules and regulations now or hereafter in force, and shall not be modified, extended or terminated (other than as set forth herein) except by an instrument duly signed by Licensor and Licensee. Waiver of a breach of any provision hereof shall not constitute a waiver of any subsequent breach of such provision, or of a breach of any other provision of this Agreement. Licensee will not assign or transfer this Agreement or sublet all or any portion of the Site without the prior written consent of Licensor, which consent shall not be unreasonably withheld, delayed or conditioned, provided, however, Licensee may assign or sublet without Licensor's prior written consent to any party controlling, controlled by or under common control with Licensee or to any party which acquires substantially all of the assets of Licensee. As a condition of any assignment, the assignee must agree in writing in a document satisfactory to Licensor to assume all of Licensee's obligations under this Agreement.

17. BINDING ON SUCCESSORS:

The covenants and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.

18. GOVERNING LAW:

The parties intend that this Agreement and the relationship of the parties shall be governed by the laws of the State of North Carolina.

19. ENTIRE AGREEMENT:

All of the representatives and obligations of the parties are contained herein, and no modification, waiver or amendment of this Agreement or of any of its conditions or provisions shall be binding upon a party, unless it is a subsequent modification agreed to in writing by both parties.

20. HEADINGS:

The headings of sections and subsections are for convenient reference only and shall not be deemed to limit, construe, affect, modify or alter the meaning of such sections or subsections.

21. SEVERABILITY:

If any section, subsection, term or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of said section, subsection, term or provision of the Agreement or the application of same to parties or circumstances other than those to which it was held invalid or unenforceable, shall not be affected thereby and each remaining section, subsection, term or provision of this Agreement shall be valid or enforceable to the fullest extent permitted by law.

22. FURTHER ASSURANCES:

Each of the parties agree to do such further acts and things and to execute and deliver such additional agreements and instruments as the other may reasonably require to consummate, evidence or confirm this Agreement in the manner contemplated hereby.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

ATTEST:

CITY OF DURHAM

\_\_\_\_\_ By: \_\_\_\_\_

preaudit certificate, if applicable \_\_\_\_\_

SPRINTCOM, INC.

By: \_\_\_\_\_ (SEAL)  
Title of officer: \_\_\_\_\_

State of \_\_\_\_\_

ACKNOWLEDGMENT BY CORPORATION

County of \_\_\_\_\_

I, a notary public in and for the aforesaid county and state, certify that

\_\_\_\_\_ personally appeared before me this day and stated that he or she is (~~*strike through the inapplicable:*~~) chairperson/ president/ chief executive officer/ vice-president/ assistant vice-president/ treasurer/ chief financial officer of SprintCom, Inc., a corporation, and that by authority duly given and as the act of the corporation, he or she signed, under seal, the foregoing agreement with the City of Durham. This the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

My commission expires:

\_\_\_\_\_

\_\_\_\_\_

Notary Public