

## WINDSTREAM SERVICE TERMS AND CONDITIONS

Together with the Service Agreement and any document incorporated by reference, these terms and conditions (collectively, the "Agreement") apply to all telecommunications and related services ("Services") provided to Customer by the Windstream affiliate billing Customer ("WIN").

- 1. Term and Renewal.** This Agreement is effective on the date identified on the Service Agreement ("Effective Date") and will continue for the term set forth in the Service Agreement from the last date that Services are installed (the "Term"). Upon expiration of the Term, this Agreement will automatically renew for successive one-month terms (each, a "Renewal Term") and WIN reserves the right to increase rates to its then-current rates. If this Agreement is a renewal, it may take one to two billing periods for the rates herein to become effective.
- 2. Charges for Services.** Charges are set forth on the Service Agreement or assessed as Services are used by Customer (i.e., features, installation/repair, including after-hours installation, long distance (rounded up to next cent), etc.). Customer is responsible for all permissible taxes, surcharges, fees, and assessments that apply to Services, including how those may change in the future, and regardless of whether such charges are identified in the Agreement. Customer shall pay all charges if WIN or a third party provider is required to extend the demarcation point, delay installation due to Customer, or undertake special construction. **WIN RESERVES THE RIGHT TO INCREASE OR DECREASE MONTHLY RECURRING CHARGES ("MRCS") ON AT LEAST THIRTY (30) DAYS' NOTICE AND OTHER RATES AT ANY TIME.**
- 3. Installation.** Customer must comply with the responsibilities outlined in the Customer Responsibilities for Service Installation Guide and provide an environment that is suitable for the Services, including equipment that is compatible with WIN's network. Unless otherwise agreed in writing by WIN, Customer is responsible for obtaining access to Customer's premises for WIN to install Services/perform maintenance and WIN will not enter into any agreements with Customer's landlord or other third parties to obtain same. Customer is solely responsible for disconnecting Services with its current service provider to avoid duplicated charges after Service installation. For fixed wireless Services, unless otherwise agreed in writing by WIN, Customer has the additional material obligations to: (a) obtain "roof rights" and make available all evidence of same to WIN; (b) provide space for WIN equipment at the Service locations, no further than three hundred (300) feet from Customer's router or switch interface; and, (c) provide internal building conduit to allow WIN the ability to rod/rope to the point of demarcation. WIN shall not be liable for any reasonable alterations or necessary work to the Service locations that are required for installation and removal of WIN equipment. For Right of Way, unless otherwise agreed in writing by WIN, Customer is responsible for acquiring and maintaining the right-of-way necessary to allow installation and maintenance of Services. Failure to acquire and maintain necessary right-of-way may result in delay of installation or termination of Services by WIN. Upon notice, WIN may make tests and inspections to determine whether Customer is in compliance with the requirements of this Agreement, or for routine and emergency maintenance of the equipment and facilities. WIN may: (i) take action to protect facilities and equipment; (ii) substitute, change, or rearrange any equipment or facility at any time; or (iii) limit or allocate use of existing facilities, as necessary, due to a lack of facilities or causes beyond WIN's reasonable control. By requesting Services from WIN, Customer authorizes WIN to penetrate the external or internal walls of the structure where the Services will be delivered. If Customer rents the structure where Services will be delivered, Customer must obtain, in writing, any approvals necessary from the owner of the structure for penetration of external or internal walls of the structure. If WIN determines that the costs of bringing facilities from the public right-of-way into the structure where the Services will be delivered are excessive, WIN reserves the right to either pass along all or a portion of the expenses to Customer or terminate this Agreement.
- 4. Billing and Payment; Disputes.** Installation occurs and billing at a location begins on the earlier of (i) the date WIN makes Services available to Customer for its use (which may be the date administrative access to certain software-based Services is granted to Customer); or (ii) the date that Service would have been available for use by Customer if Customer had fulfilled its obligations required to provision and install the Service. Bills are issued monthly and are late if not paid by the due date reflected on the invoice. Customer is responsible for paying all costs and fees WIN incurs as a result of collecting Customer's unpaid and resolved disputed charges. WIN may choose to bill in full monthly increments with no proration for partial service periods when Service either starts or ends in the middle of a billing cycle. WIN may accept payments marked "payment in full" or being in settlement of any dispute without waiving any rights it has to collect in full. If full payment is not received for undisputed charges in immediately available funds, WIN will add collection and late fees. In certain service areas, paper bills are available only upon request and for a monthly charge. WIN reserves the right to charge a fee for payments made by credit card. To dispute charges, Customer must do so in good faith and deliver to WIN in writing the specific basis for such dispute within sixty (60) days after the date on the invoice or the dispute shall be deemed waived.
- 5. Credit and Deposits.** Customer authorizes WIN to ask credit-reporting agencies for Customer's credit information. WIN may either refuse to serve Customer based on such credit information or require Customer to submit an initial security deposit and/or advance payment or if Customer increases Services, is late on payment, or its credit rating changes. Any deposit will be refunded if not applied by WIN to any unpaid amount.
- 6. Moves.** If Customer moves, it must provide at least ninety (90) days' advance written notice and pay applicable installation charges and increased monthly service charges for the new location. If WIN cannot serve the new location, cannot install Service at the new location due to Customer's failure to provide enough notice, or Customer terminates due to the move, cancellation charges or liquidated damages pursuant to Sec. 11 shall apply.
- 7. WIN-Provided and Owned Equipment; Customer Equipment Compatibility.** Any equipment owned and installed by WIN on Customer's premises remains the property of WIN. Equipment shall remain in good condition and be reasonably protected by Customer from theft and damage, less normal wear and tear. WIN shall be responsible for the maintenance and repair of the equipment unless it is damaged as a result of the action or inaction of Customer or its employees or agents, in which case Customer shall reimburse WIN for the cost of any necessary repairs. WIN reserves the right to charge Customer for interior or exterior cable or wiring to complete the installation or repairs at WIN's then current hourly rates. Customer shall provide WIN reasonable access to the equipment for purposes of repair, maintenance, removal or otherwise. If WIN does not have access to Customer's premises within thirty (30) days after Customer terminates this Agreement, or if WIN requires Customer to return the equipment and Customer does not return the equipment to WIN within thirty (30) days of termination or it is returned damaged (during shipping or otherwise), Customer shall reimburse WIN for the replacement cost of the equipment plus processing and shipping fees, as well as any attorney's fees and costs to collect. Customer's equipment, software, cables or hardware attached to WIN equipment or WIN's network is solely the responsibility of Customer and must be compatible with and not cause any interference on WIN's network.

- 8. WIN-Provided Software and Identifiers.** Software and its documentation provided as part of Services and Equipment or otherwise provided by WIN to Customer shall be used by Customer solely as part of the Services and for no other purpose and Customer acknowledges and agrees that the Software is the exclusive property of WIN or a third-party licensor. Customer may be required to provide WIN with evidence that its use of the software is in compliance with this Agreement and/or third-party software licensor's terms. Customer agrees it will not: (i) use or make any copies of the software, or install the software on more than one computer at a time; (ii) reverse engineer, decompile, or disassemble the software; (iii) sell, resell, transfer, license, sublicense, distribute the software or otherwise allow third parties to access to use the software; or (iv) create, write, or develop any derivative software or other software program that is based on such software. Further, WIN may assign Customer certain identifiers, such as telephone numbers and IP addresses, in connection with the Services. Customer acknowledges and agrees that such identifiers are the exclusive property of WIN, Customer has no proprietary right to any such identifiers and WIN reserves the right to change identifiers that may be assigned to Customer at any time upon prior written notice.
- 9. Use of Services; Restricted Calling Services.** Customer and/or anyone acting through it may not resell Services or use Services for: (a) traffic aggregation; (b) its own end users and/or customers as a telecommunications or any other kind of provider; (c) sending WIN calls that originate from a location other than the local calling area associated with the Customer's service location; or (d) sending WIN large volumes of calls from or to areas that are high-cost (areas with access costs greater than regional Bell operating company access costs) or to a toll-free number. Additionally, no more than ten percent (10%) of Customer's calls may be six (6) seconds or less and/or no more than forty percent (40%) of call attempts may be uncompleted per trunk group and/or DS0/DS0 equivalent. For violations of this Section, WIN may: (w) immediately terminate Services; (x) charge Customer long-distance charges and an additional price per minute; (y) charge Customer any additional amounts necessary to recoup WIN's administrative costs and charges from other carriers; and/or, (z) require Customer to pay for the excessive use immediately and make a deposit.
- a. **Restricted Calling Services.** WIN will restrict international long distance and 900/976 calling functionality ("Restricted Calling Services") from Customer's account originating on the WIN-provided Service and will only restore such functionality upon request by an authorized representative of Customer. In the event Customer requests restoration of such functionality, Customer agrees and acknowledges that it is liable for all charges associated with the Restricted Calling Services dialed from Customer's premises or through the use of Customer's WIN account access and/or calling card codes, regardless of whether such use is: (i) authorized by Customer management, (ii) initiated by Customer employees or third parties, or (iii) constitutes or involves frequent activity of any nature. Customer agrees that WIN assumes no liability of any kind with respect to its providing access to Restricted Calling Services via connections from Customer premises and locations where Customer uses WIN Services. Customer shall indemnify, defend and hold harmless WIN against any and all claims made by the third party provider of Restricted Calling Services. Customer acknowledges that, pursuant to government regulation, failure to make proper payment to third party vendors of Restricted Calling Services could result in suspension or interruption of long distance and/or local services provided by WIN, and WIN assumes no liability of any kind with respect to such potential service suspensions or interruptions.
- 10. Termination/Disconnects.** Either party may terminate this Agreement, or cancel/disconnect any individual product(s) and/or Service(s), by providing at least forty-five (45) days' notice prior to the end of the initial Term or a Renewal Term, or if the other party is in breach of any material provision of this Agreement and fails to cure within forty-five (45) days after written notice (or after ten (10) days' notice for nonpayment). Customer's right to terminate for breach applies to the affected location and/or Services only. WIN may limit, interrupt, suspend or terminate Services IMMEDIATELY if Customer or others acting through Customer: (a) use the Services in violation of Sec. 9; (b) use the Services in a manner that is harmful to or interferes with WIN's network or other customers, (c) use the Services fraudulently or unlawfully, including to engage in any actions prohibited under the Telemarketing Sales Rule (16 CFR. § 310), the CAN-SPAM Act of 2003 (16 CFR § 316), the Telephone Consumer Protection Act (TCPA), the TRACED Act (47 USC § 227), and any other civil, criminal, or administrative regulation or law; (d) use the Services in an excessive, abusive, or unreasonable manner that is not customary for the type of Services; or, (e) use the Services in a manner that may cause or is causing an imminent and significant operational, financial, or security risk; or, (f) impersonates another person, uses obscene or profane language or is abusive to or harassing WIN representatives and fails to stop such behavior after receiving a written or verbal warning. After termination due to breach, WIN may restore Service if Customer corrects any breach and pays all outstanding amounts owed, including restoration charges. In addition to these termination rights, if WIN determines that providing Services is not economically or technically feasible or because underlying facilities leased from third parties are no longer available to WIN due to legal/regulatory changes, WIN has the right to terminate this Agreement either prior to installation or on sixty (60) days' notice after installation.
- 11. Effect of Termination.**
- a. **Pre-Installation-** If Customer terminates this Agreement due to any reason other than WIN's material breach or if WIN terminates this Agreement due to Customer's material breach after the Effective Date but prior to the installation of Service(s), Customer will pay WIN a Pre-Installation Cancellation Charge ("Cancellation Charge") equal to six (6) months of MRCs or if WIN's costs to other providers are greater than this amount, Customer shall be charged this amount. Customer agrees that the Cancellation Charge is a reasonable measure of the administrative costs and other fees incurred by WIN to prepare for installation. The Cancellation Charge set forth in this Section is in lieu of the charges set forth in 11(b).
- b. **Post-Installation-** **IF CUSTOMER TERMINATES THIS AGREEMENT OR PART OR ALL SERVICES PROVIDED HEREUNDER AFTER INSTALLATION DURING THE INITIAL OR RENEWAL TERM FOR ANY REASON OTHER THAN FOR WIN'S MATERIAL BREACH OR IF WIN TERMINATES THIS AGREEMENT DUE TO CUSTOMER'S MATERIAL BREACH, CUSTOMER SHALL PAY TO WIN AS LIQUIDATED DAMAGES, AND NOT AS A PENALTY, AN AMOUNT EQUAL TO ONE HUNDRED PERCENT (100%) OF THE MRCS APPLICABLE TO THE SERVICES THAT WERE TERMINATED MULTIPLIED BY THE NUMBER OF MONTHS REMAINING IN THE THEN-CURRENT TERM OR RENEWAL TERM. IF WIN'S COSTS TO OTHER PROVIDERS ARE GREATER THAN THIS AMOUNT, CUSTOMER SHALL ALSO REIMBURSE WIN FOR SUCH ADDITIONAL COSTS. IF THE CUSTOMER PARTIALLY CANCELS AND HAS A MINIMUM MONTHLY FEE ("MMF"), THEN THE CUSTOMER SHALL CONTINUE TO BE BILLED THE MMF ("LIQUIDATED DAMAGES"). CUSTOMER ACKNOWLEDGES THAT ACTUAL DAMAGES WOULD BE DIFFICULT TO DETERMINE AND SUCH LIQUIDATED DAMAGES REPRESENT A FAIR AND REASONABLE ESTIMATE OF THE DAMAGES WHICH MAY BE INCURRED BY WIN.**

12. **Limitation of Liability; Indemnity.** FOR PURPOSES OF SECTIONS 12 AND 13, “WIN” INCLUDES ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, VENDORS, AND ANY ENTITY ON WHICH BEHALF WIN RESELLS SERVICES. EXCEPT FOR WILLFUL MISCONDUCT, WIN’S LIABILITY FOR SERVICES AND INSTALLATION WILL NOT EXCEED CUSTOMER’S MRCS DURING THE PERIOD IN WHICH THE DAMAGE OCCURS. IN THE EVENT OF A SERVICE INTERRUPTION OR OUTAGE, WIN’S LIABILITY IS LIMITED TO ANY CREDITS OFFERED PURSUANT TO AN APPLICABLE WIN SERVICE LEVEL AGREEMENT. IN NO EVENT WILL WIN BE LIABLE FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (SUCH AS LOST PROFITS, LOST BUSINESS OPPORTUNITIES, BUSINESS INTERRUPTION, LOSS OF BUSINESS DATA), ANY PUNITIVE OR EXEMPLARY DAMAGES, THE COST OF ALTERNATIVE SERVICE, OR ATTORNEY’S FEES. CUSTOMER IS RESPONSIBLE FOR ALL USAGE, CHARGES, AND LIABILITY INCURRED DUE TO THEFT OR FRAUD OVER THE SERVICES WHILE IN CUSTOMER’S CONTROL, REGARDLESS OF WHETHER/WHEN WIN NOTIFIES CUSTOMER OF INCREASED USAGE. PRICING OF SERVICES REFLECTS THE INTENT OF THE PARTIES TO LIMIT WIN’S LIABILITY AS PROVIDED HEREIN. **CUSTOMER INDEMNITY:** CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD WIN HARMLESS IF CUSTOMER’S USE OF THE SERVICES CAUSES A THIRD PARTY TO MAKE A CLAIM AGAINST WIN.
13. **Disclaimer of Warranties.** EXCEPT AS OTHERWISE PROVIDED HEREIN OR IN AN APPLICABLE SERVICE LEVEL AGREEMENT, SERVICES, EQUIPMENT, AND THE DESIGNATED CUSTOMER AREA ON WIN’S PREMISES, IF APPLICABLE, ARE PROVIDED ON AN “AS IS” AND “AS-AVAILABLE” BASIS WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR NON-INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY ARISING BY COURSE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE INCLUDING, BUT NOT LIMITED TO, BROADBAND SPEEDS, UNINTERRUPTED OR ERROR-FREE SERVICE, TRANSMISSION QUALITY, AND WIN’S ABILITY TO PROVIDE, AND ACCURACY OF ANY DIRECTORY LISTINGS. EXCEPT AS EXPRESSLY PROVIDED IN WIN’S PRIVACY POLICY AND BY LAW, WIN HAS NO OBLIGATION TO PROVIDE SECURITY OR PROTECTION FOR CUSTOMER’S PRIVACY, CONFIDENTIAL INFORMATION OR DATA. NO ORAL OR WRITTEN ADVICE OR INFORMATION BY WIN’S EMPLOYEES, AGENTS OR CONTRACTORS SHALL CREATE A WARRANTY, AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION.
14. **Force Majeure.** WIN shall have no liability, including service credits, for any delay or failure to perform caused by any event beyond its reasonable control or during any maintenance periods necessary on WIN’s network or equipment, including but not limited to delays or failures caused by third parties’ or Customer’s actions or failure to act or permit WIN access.
15. **Documents Incorporated by Reference; Entire Agreement; Counterparts; Execution.** THIS AGREEMENT IS SUBJECT TO AND INCORPORATES THE FOLLOWING BY REFERENCE, AS THEY MAY CHANGE FROM TIME TO TIME: (I) THE TERMS AND CONDITIONS OF THE TARIFFS FILED WITH STATE PUBLIC SERVICE COMMISSIONS; (II) THE FCC OR STATE SERVICE PUBLICATIONS POSTED AT <https://www.windstreamenterprise.com/legal/> (III) THE CUSTOMER RESPONSIBILITIES FOR SERVICE INSTALLATION GUIDE POSTED AT <https://www.windstreamenterprise.com/wp-content/uploads/2022/07/we-customer-responsibilities.pdf> (IV) FOR INTERNET, THE “ACCEPTABLE USE POLICY” POSTED AT <https://www.windstreamenterprise.com/legal/use-policy/> AND THE “PRIVACY POLICY” POSTED AT <https://www.windstreamenterprise.com/legal/privacy-policy/>; (V) FOR CERTAIN VALUE-ADDED SERVICES (I.E., ONLINE BACK UP SERVICES, TECH HELP, ETC), THE CLICK-THROUGH AGREEMENTS RELATED TO THOSE SERVICES REQUIRED PRIOR TO ACCESSING THEM; (VI) THIRD PARTY SOFTWARE TERMS, IF APPLICABLE; (VII) APPLICABLE SERVICE LEVEL AGREEMENT(S) AND (VIII) ANY PRODUCT-SPECIFIC TERMS AND CONDITIONS SCHEDULES POSTED AT <https://www.windstreamenterprise.com/service-terms-and-conditions>. This Agreement constitutes the parties’ entire agreement. In the event of any conflict between the terms of this document and any of the documents incorporated by reference, the terms of this document control followed (in order) by any product-specific terms and conditions schedules, click-through agreements for applicable Services, any applicable Service Level Agreement(s), the Tariffs and the FCC or state Service Publications, the Customer Responsibilities for Service Installation Guide and then the Acceptable Use and Privacy Policies. WIN reserves the right to modify these terms and conditions and/or any of these documents incorporated by reference from time to time.
16. **Miscellaneous.** (a) **Signatures and Amendments:** This Agreement may be signed in counterparts, and facsimile or electronic scanned copies may be treated as original signatures. The parties may also execute this Agreement via a verifiable electronic signature. This Agreement may be amended only in a writing signed by authorized representatives of each party. This Agreement and its incorporated documents supersede any and all statements or promises made to Customer by any WIN employee or agent; (b) **Notices and Electronic Communications:** Any notice pursuant to this Agreement must be in writing and will be deemed properly given if hand delivered or mailed to Customer at the address populated on Customer’s Service Agreement or to WIN, Attn: Windstream Enterprise Services, P.O. Box 25310, Little Rock, AR 72212, or at such other address provided to the other party. Customer disconnection requests must be initiated by accessing the WIN online portal at [www.we.windstreamonline.com](http://www.we.windstreamonline.com), or by calling 1-800-600-5050. Any other means of providing notice of disconnection is void and has no effect, even if actually received by WIN. CUSTOMER AGREES THAT WIN MAY SEND ELECTRONIC MESSAGES TO CUSTOMER CONCERNING WIN’S SERVICES; (c) **Compliance with Laws; Applicable Law:** Each party shall comply with all laws and regulations applicable to this Agreement. This Agreement is subject to applicable federal law and the laws of the state in which the Services are provided or, if provided in multiple states, then Delaware law, both of which shall be without regard to that state’s conflict of laws principles; (d) **Waiver of Jury Trial: EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT;** (e) **Statute of Limitations:** Other than billing disputes subject to shorter time periods in Sec. 4, no claim may be asserted by either party more than two (2) years after the occurrence that is the basis of the claim; (f) **Assignment:** On written notice, either party may assign this Agreement (for WIN, such assignment may be in whole or in part), to an affiliate or acquirer of all or substantially all of its assets without any advance consent from the other party, but Customer must complete all paperwork necessary to effectuate such assignment or any change in ownership; (g) **Third Party Beneficiaries:** No third party shall be deemed a beneficiary of this Agreement; (h)

**Waiver:** Either party's failure to enforce any right or remedy available under this Agreement is not a waiver; (i) **Severability:** If any part of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect; (j) **Survival:** Sections 7, 12 and 13 survive after this Agreement ends; (k) **Handwritten Changes:** Handwritten changes are not binding on either party; (l) **Use of Products in U.S.:** Customer acknowledges that the transfer and use of products, services and technical information outside the United States are subject to U.S. export laws and regulations. Customer shall not use, distribute, transfer, or transmit the products, services or technical information (even if incorporated into other products) except in compliance with U.S. export laws and regulations. At WIN's request, Customer shall sign written assurances and other export-related documents as may be required for WIN to comply with U.S. export regulations; (m) **Publicity and Confidentiality:** Customer agrees that WIN may publicly disclose that WIN is providing Services to Customer and may include Customer's name in promotional materials and press releases. Except when this Agreement is required to be filed with a governmental authority, this Agreement is confidential and shall not be disclosed publicly to any third party except the such dealer(s) or agent(s) of WIN.

**17. Service Specific Terms and Conditions.**

**HIPAA Compliance.** Customer is responsible for informing WIN in writing if: (i) Customer is a Covered Entity or Business Associate (both as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA")); and (ii) Customer Content includes Protected Health Information ("PHI") (as defined in HIPAA). If Customer notifies WIN that it is a Covered Entity or Business Associate and that Customer Content includes PHI, and WIN determines that, based on such notification, it is rendered a Business Associate, then the parties will execute WIN's Business Associate Agreement. If Customer does not so notify WIN, then WIN will have no obligation to provide the Services in compliance with HIPAA.

**Security Compliance Audits.** Unless stated otherwise in writing by WIN via an addendum to this Agreement, any Services or equipment provided by WIN are outside the scope of any security audits performed by Customer or its agents. While WIN Sales representatives can help Customer with incorporating our Services and equipment as component parts of a compliant overall security strategy, WIN makes no representations that its Services or equipment are compliant with industry-specific guidelines, regulations, or laws including, but not limited to, Payment Card Industry Standards, the Health Insurance Portability and Accountability Act, and/or Sarbanes-Oxley.

**Cellular Broadband and Overages.** Windstream Cellular Broadband service is not considered a dedicated account and is subject to the terms and conditions of WIN's Acceptable Use Policy. In the event Customer that selects cellular wireless service as a secondary access method, unless otherwise agreed: (i) for pooled capacity, Customer will be charged for usage in excess of such pooled capacity at \$0.02 per MB, or (ii) for non-pooled capacity, Customer will not be charged overage fees, but may have data transmission speeds reduced as defined by the applicable service plan. Overage fees will be billed in arrears and may be charged up to twelve (12) months after the overage occurs.