



DATA SERVICES TERMS AND CONDITIONS

DATA SERVICES TERMS AND CONDITIONS Together with any document incorporated by reference, these data services terms and conditions (collectively, the “Agreement”) apply to Service Order(s) for telecommunications and related services as defined herein, provided by **Windstream Enterprise Holdings, LLC**, a Delaware Limited Liability Company, and its Affiliate(s) that may provision and bill the Service to the Customer, with offices at 4005 North Rodney Parham Road, Little Rock, AR 72212 (“WIN”). WIN or Customer may be referred to herein as “Party” or together “Parties”.

ARTICLE I DEFINITIONS

1.1 **“Carrier Ethernet Service”** means those Services defined and provided pursuant to the Carrier Ethernet Service Schedule attached herein.

1.2 **“Customer”** means that entity that executes a signed Service Order with WIN for Services.

1.3 **“Demarc”** means the demarcation point between WIN’s network and Customer’s network, which may be the minimum point of entry for connection between the facilities of an incumbent local exchange carrier (“ILEC”) and the terminal equipment, protective apparatus or wiring at Customer’s premises.

1.4 **“DIA Service”** means those Services defined and provided pursuant to the DIA Service Schedule attached herein.

1.5 **“Linear”** is a transmission system that does not provide route diversity or path protection.

1.6 **“MRC”** are the monthly recurring charges billed in advance that Customer pays for Services or a Circuit. These may be designated as monthly lease fees, monthly recurring charges or other, depending on the WIN billing system.

1.7 **“Network Ready”** is defined as WIN having facilities and equipment in place to provide a requested Service.

1.8 **“NRC”** are the initial charge(s) assessed on a one-time basis, to initiate and establish a Service or feature of a Service.

1.9 **“Off-Net Service”** is a Service provided through WIN on a network other than that owned by WIN.

1.10 **“On-Net Service”** is a Service provided solely on WIN-owned or controlled facilities.

1.11 **“Point of Presence” or “(POP)”** is a physical location where a Party maintains a telecommunications facility for the purpose of accessing its network or for providing access to Customer’s facilities or other carrier’s networks or facilities.

1.12 **“Regulatory Requirement”** is any rule, regulation, law, or order issued by the FCC, a state Public Utility or Service Commission, a court of competent jurisdiction or other governmental entity affecting the Agreement, pricing or Services provided by WIN or the underlying provider of Services to WIN, including changes to pricing based on jurisdiction or definition of what is compensable and how much.

1.13 **“Service(s)”** shall mean the telecommunications and related services provided to Customer pursuant to Service Order, the attached Services Schedules and this Agreement.

1.14 **“Service Order”** or **“(“SO”)** shall mean the written executed or on-line request by Customer for Service using the WIN SO in effect at the time of the order. A SO issued for a Service pursuant to this Agreement shall be deemed incorporated herein at the time it is executed and approved and accepted by WIN. A SO will delineate the type of Service requested, location served, Demarcs, protocols, Term, requested start date and other information specific to the applicable order.

1.15 **“Third Party Service(s)”** are any Services to be provided by a third party (a **“Third Party Provider”**) that are not carried on WIN’s network and/or other related equipment or facilities that are not owned and/or controlled by WIN, including, without limitation, any telecommunications facilities or services provided by Third Party Providers connecting a Customer-designated termination point to a WIN POP.



ARTICLE II PROVISION OF SERVICES AND TERM

2.1 Provision of Services. Subject to the terms of this Agreement, WIN shall use commercially reasonable efforts to provide to Customer, and Customer shall accept and pay for, the Services as requested by Customer in any SO, subject to acceptance by WIN. Service is subject to on-going availability and WIN may choose at any time to discontinue offering a Service on ninety (90) days' written notice to Customer, provided however, such discontinuance by WIN will not affect other existing Services during the SO Term as reflected in existing SOs.

2.2 Individual Service Periods. The term for each Service shall be set forth in the applicable SO or, if not set forth in a SO, then a one (1) year term ("SO Term"). The SO Term shall commence on the date Services are installed and shall continue for the SO Term ("Commencement Date") and thereafter shall renew for one-month terms, unless either Party serves the other Party with written notice of such Party's intent not to renew the Services at least thirty (30) days prior to expiration of the then current SO Term. The Commencement Date shall not be affected if facilities, equipment, services, or applications not ordered from WIN have not been installed or are not functional.

ARTICLE III RATES AND CHARGES

3.1 Rates and Charges. The rates and charges for the Services shall be those set forth in the applicable SO for the SO Term stated in the SO. If not stated in the SO, the rates and charges for the Service shall be as stated in WIN's Carrier Pricing Tools. Unless due to a Regulatory Requirement, rates shall remain unchanged for the Term stated in the SO. Out of term rates are subject to change on thirty (30) days' written notice prior to the effective date of the change.

3.2 Third Party Charges. Customer may request in writing that WIN arrange for Services with a Third Party Provider. While this Agreement governs the terms of WIN's arrangement of the Third Party Provider Service, the service level parameters, and related warranties (if any), pricing, surcharges, outage credits, required commitments, termination liability, and other service-specific or circuit-specific terms shall be those of the Third Party Provider. Such Third Party Provider terms shall be passed through to the Customer. Any contracts entered into by WIN for any such Third Party Provider Service for which Customer may become obligated hereunder shall (i) be for a term as ordered by Customer for the relevant Service, pursuant to the Service Order and (ii) obligate Customer to pay to WIN an Early Termination Fee(s) assessed by the Third Party Provider, if any, if a Service is terminated prior to the completion of the relevant Service Order Term as ordered by Customer.

3.3 Special Construction. In order to provision and/or provide Services to Customer, WIN may be required to engage in special construction ("Special Construction"), in which case both Parties will negotiate and agree to a statement of work ("SOW"). Notwithstanding any earlier termination of Service, once Special Construction has commenced with Customer's consent, Customer shall be liable for all Special Construction costs incurred and invoiced by WIN. If Customer does not agree to such Special Construction, Customer shall have the right to terminate its order for the affected Service(s) with no early termination liability on and neither Party shall owe the other Party any further obligations or liability relative to the affected Service Order. For purposes of this Agreement, Special Construction may include those construction efforts undertaken: (i) where facilities are not presently available; (ii) of a type, or over a route, other than that which WIN would normally utilize in the furnishing of Services; (iii) where Services or facilities requested are in a quantity greater than that which WIN would normally construct; (iv) for Services required by Customer on an expedited basis; (v) on a temporary basis until permanent facilities are available; or (vi) involving abnormal costs.



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3.4 Extraordinary Charges. Customer shall pay extraordinary costs and expenses generated by Customer and reasonably incurred by WIN beyond those normally associated with WIN's Services including, but not limited to: (i) Customer's request to expedite Service installation; (ii) Service redesign or other activity occasioned by receipt of inaccurate information from Customer; (iii) reinstallation charges following any suspension of Service by WIN for cause under this Agreement; or (iv) Customer's request for WIN's on-site assistance with respect to Customer Equipment problems or a Service interruption or outage if not a result of WIN network or facilities.

3.5 Taxes, Surcharges and Fees. Rates and charges are exclusive of, and Customer agrees to pay, all current and future applicable sales, use, gross receipts, excise and other applicable local, state, and federal taxes, fees, charges, and surcharges (which may include without limitation any universal service fund or other similar surcharges), excluding taxes based on WIN's net income. Such charges are not eligible for term and volume discounts. Any taxes to be paid by Customer shall be separately stated on the invoice. If applicable and Customer has furnished WIN with a valid exemption certificate, invoices prospectively will not include the applicable taxes for which Customer has furnished the exemption certificate. Customer shall keep on file with WIN copies of its current tax exemption certificates as proof of exemption. Failure to provide said resale tax exemption certificate upon execution of this Agreement will result in no exemption being available to Customer for any period that the Customer doesn't present the valid certificate(s). If the tax authorities subsequently opine WIN should have charged such taxes, Customer shall pay same (including any interest, levies, and penalties). Customer and WIN acknowledge and agree to work mutually and cooperate with each other involving any case, assessment, or matter that involves a tax, surcharge, or fee.

ARTICLE IV PAYMENT FOR SERVICE/DISPUTES/ SECURITY

4.1 Payment Terms. Upon testing and installation of Service, WIN will provide Customer with a written notice that the Service has been installed and is ready for Customer ("Installation Notice"). Such Service shall be deemed accepted and billing shall commence on the date of the Installation Notice, regardless of whether Customer is prepared to accept delivery and begin use of the Service. WIN shall invoice Customer in US dollars for the MRCs one month in advance and the pro-rated charges for the month Services were delivered or installed. For invoicing purposes, a month is assumed to be thirty (30) days. Payments on all invoices shall be paid in US dollars and are due thirty (30) days after invoice date ("Due Date"). In addition to the remedies set forth in Article IX, if Customer fails to pay all charges when due and not disputed pursuant to Section 4.2, Customer also shall pay WIN a late charge in an amount equal to 1.5% per month of the unpaid balance due (or the maximum amount permitted by law, whichever is less). The amounts due to WIN hereunder are due and payable without set off. If WIN substantially prevails in any collection, Customer shall pay WIN's reasonable attorneys' fees and costs, including appeals.

4.2 Valid Billing Disputes. A Valid Billing Dispute ("Dispute") consists of written documentation specifically listing the total dollar amount and supporting calculations of the dispute, specific Service being disputed, and the reason for the Dispute (e.g., incorrect rate, incorrect quantity, Service disconnected, incorrect invoice, etc.) along with specific supporting documentation for each disputed invoice. The date of WIN's receipt of a Dispute shall be the date WIN receives this complete information. Any dispute submitted by Customer that does not contain this complete information is an invalid billing dispute. Invalid billing disputes are denied without investigation and invoiced amounts are owed to WIN regardless of whether the Service was correctly billed or not. Customer shall pay the undisputed amount by the Due Date. Withholding payment for undisputed invoiced amounts to off-set previously paid invoiced amounts is not permitted. Customer must provide WIN with written notice of a Dispute within one hundred eighty (180) days after the invoice date listed on the bill or such Dispute is waived. WIN and Customer shall attempt in good faith to promptly resolve any Dispute. If a Dispute is resolved in favor of WIN, Customer shall pay the disputed amount previously withheld, including late charges set forth in Sec. 4.1 from the original due date, no later than the due date of the next invoice for that same account.



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If a Dispute is subsequently resolved in favor of Customer and Customer has paid the disputed amount, WIN shall issue a credit on Customer's invoice for the disputed amount on the next invoice for that same account.

4.3 Credit Approval/Deposits. Customer shall provide WIN with credit information reasonably requested including, but not limited to, any audited and unaudited financial statements and a credit application. Delivery of Services is subject to credit approval. WIN may request Customer to make an advance payment and/or a deposit as a condition both prior to and during the provision of Services if, in WIN's reasonable discretion, Customer's credit condition or payment history justifies same.

4.4 WIN shall have the right to offset any undisputed amount for which Customer or any Customer Affiliate has been invoiced by WIN or any Affiliate of WIN, due and outstanding for more than ten (10) days, against any undisputed balance of any invoice from Customer or any Customer Affiliate to WIN or any WIN Affiliate (including any commission or credit amounts due hereunder). WIN shall receive credit toward that invoice upon notification to Customer that WIN is exercising its right to offset, and Customer shall not re-invoice the offset amount. WIN shall also be entitled to back bill Customer for unbilled charges up to two (2) years after the charges were incurred.

ARTICLE V ORDERING SERVICE/INSTALLATION

5.1 Prior to Ordering. Customer is responsible for validation of service location, and pre-qualifying the Service location prior to submitting a SO. WIN shall not provision Services that WIN's prequalification indicates does not have acceptable facilities.

5.2 Ordering. Customer is responsible for both ordering appropriate quantities of Services for its needs and for monitoring usage to determine when it is appropriate to order additional quantities.

5.3 Moves, Adds and Changes. Moves, adds and changes ("MAC") shall be provisioned upon receipt of a new SO. An NRC for MAC requests may apply. If a MAC involves suspension of an individual Service, Customer shall remain responsible for payment of any applicable underlying line charges during such suspension.

5.4 Installation. Provided WIN facilities are Network Ready, WIN shall provide Customer with a date of planned installation, referred to as the Firm Order Commitment ("FOC"). WIN shall provide the FOC to Customer within ten (10) business days of WIN's acceptance of the respective SO unless facilities are required. If facilities are required, the FOC will be provided to Customer upon completion of WIN's engineering review or when WIN's facilities are Network Ready. For the purposes of this section, Network Ready is defined as WIN having facilities and equipment in place to provide a requested Service. No request shall be binding until and unless accepted by WIN, all requests are subject to availability. WIN shall use commercially reasonable efforts to install Services by the date agreed upon by the parties ("Requested Due Date"). Should WIN not be able to complete installation by the Requested Due Date, then WIN and Customer will agree upon a revised due date ("Revised Due Date"). If WIN is unable to complete installation by the Revised Due Date, Customer may terminate the affected SO. All requests for any changes to a SO or for cancellation of a SO must be submitted in writing to WIN's designated point of contact. A non-recurring charge may apply in the event that Customer requests, and WIN permits Customer, to change its Requested Due Date.

5.5 Cooperation and Access. Customer shall provide a single point of contact for reporting trouble tickets, repair issues and other questions related to Service. Customer shall cooperate with WIN to activate Service by providing access to Customer's premises for Service delivery and testing. Additionally, Customer shall provide reasonable access to necessary information, including system and platform designs, network architecture, IP addresses, hardware, and software specifications to provide Service. Customer acknowledges that degradation in the performance of the Service may result if Customer fails to provide such information.





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5.6 Third Party Services. In the event that Customer arranges for Third Party Services, WIN agrees to provide Customer with an appropriate letter of agency (“**LOA**”) within five (5) business days of receipt of a signed Service Order. Customer shall provide WIN with all information reasonably deemed necessary by WIN to enable WIN to make the necessary cross-connection between the Third Party for Service and WIN’s Service or any telecommunications equipment or facilities of Customer, including, without limitation, circuit facility assignment information, FOC information and the design layout records (“**DLR(s)**”). Without limiting the foregoing, Customer will provide WIN with a DLR no later than five (5) business days prior to WIN’s scheduled test date. If any required cross-connects are located in a facility where WIN is charged a cross-connect fee, WIN may charge Customer non-recurring and recurring cross-connect fees to make any required cross-connection. When Customer arranges for third party cross-connect services pursuant to this section, the Customer is responsible for initiating the disconnect process with the third party providing the cross-connect and for providing to WIN the date that the third party cross-connect service is disconnected. WIN will continue to invoice Customer for the applicable Services until written confirmation is received that the third party cross-connect services are disconnected. If any Customer-ordered third party service is not ready as of the WIN Commencement Date, Customer shall nonetheless be obligated to pay for WIN’s Services as of the Commencement Date.

ARTICLE VI: MAINTENANCE/NETWORK AUDITS

6.1 Maintenance. WIN periodically performs maintenance and repairs on its network at its cost, unless the maintenance or repair is caused by the acts or failures to act of Customer, or is due to equipment or facilities provided by Customer. In some cases, routine maintenance may result in temporary Service interruption to WIN’s customers, however, WIN manages maintenance activity to minimize the expected Service disruptions and will use all reasonable efforts to provide advance notification of network maintenance. Customer will have the option to receive email notification of Service impacting, planned network maintenance by email subscription along with its preferences that can be managed via WIN’s customer portal. WIN will make reasonable efforts to coordinate maintenance schedules but cannot guarantee all activities can comply within the customer defined window. WIN is not liable for Service interruptions that may occur due to maintenance activity. Maintenance notifications are notified following the standards defined below.

- The standard maintenance window is between midnight and 6:00 AM local time zone at the affected site. Occasionally, work may be planned outside of this window for particularly complex events or to ensure the safety of workforces involved.
- Maintenance notifications include a description of the maintenance and the duration of the maintenance window. The planned Service impacts for each maintenance are included in the notification and may not span across the entire maintenance window. For example, maintenance may be planned from 1 AM to 5 AM for the planned activity by WIN’s maintenance teams; however the actual impact to Customer’ Service may only be a 20 minute time-frame. Both time-frames will be noted in the maintenance notification sent to Customer.
- Customer agrees to cooperate with all reasonable requests of WIN in connection with its system maintenance by, among other things, responding to WIN’s request for the release of a circuit at such times as requested by WIN. The following are the types of notice that will be provided for each maintenance:
 - Normal/Planned Maintenance: Normal/Planned Scheduled Maintenance is that which will enhance the reliability of the network. This includes, but is not limited to, upgrading code, reloading routers, and adding new equipment. Notification for this type of maintenance will be provided fourteen (14) calendar or ten (10) business days prior to the start of a Normal/Planned Scheduled Maintenance window.



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- Demand Maintenance: Demand Scheduled Maintenance is that which is performed when the potential for router or network failure exists without the maintenance. This includes, but is not limited to hardware and software upgrades, and router debugging. Notification for this type of maintenance will be provided three to ten (3-10) calendar days prior to the start of a Demand Scheduled Maintenance window.
- Emergency Maintenance: Emergency Maintenance is a subset of Demand Scheduled Maintenance in which maintenance is required on an urgent basis because the potential for router or network failure exists without the maintenance. These are generally done within three (3) calendar days and can be same day activity depending on risk and spare/part availability. Notification for this type of maintenance will be provided one to three (1-3) calendar days prior to the start of an Emergency Maintenance window.

6.2 Network Audits. WIN regularly conducts network audits to assess commercial viability of Services provided from its Central Offices (“CO”). If WIN determines that it cannot provide Services to Customer in an economically viable manner at specific CO(s), then WIN reserves the right to decommission COs and turn down any associated Services provided from these COs, in which it shall; (i) provide Customer with sixty (60) days’ advance notice of such decommissioning; (ii) reject any non-installed SO(s); and (iii) work with Customer to coordinate the migration and reverse cut of Services (from WIN provided Service back to the ILEC or other Customer alternative).

ARTICLE VII: FACILITIES AND EQUIPMENT

7.1. WIN Equipment and Collocation.

7.1.1 Use and Subsequent Changes. Customer shall not use any WIN equipment or facilities for any purpose other than that for which WIN provided it. WIN may choose the equipment or facilities to be used in providing Service and may substitute, change, or rearrange any such equipment or facilities at any time, or from time to time, as long as the quality of Service or type of Service is not materially impaired or changed.

7.1.2 Ownership. Title to any transmission facilities or equipment used or furnished by WIN to provide the Service does not transfer to Customer and remains the personal property of WIN. At WIN’s request, for shipped equipment to Customer, Customer shall prominently affix identifying plates, tags, or labels on any such equipment showing the ownership interest of WIN. Customer shall not tamper with, remove, or conceal identifying plates, tags or labels showing WIN ownership interest of any equipment or facilities. In addition, Customer shall, from time to time, take additional actions and execute and deliver such further documents as WIN may reasonably request in order to confirm and protect WIN’s title to and ownership of any such equipment or facilities.

7.1.3 Third Party Rights. Some Third Party Provider components may be embedded in the equipment used by WIN or accessed by Customer to provide Service under this Agreement. Customer’s use of these components is limited to the provision of Services by WIN and is governed by the Third Party licensor’s terms.

7.1.4 Maintenance and Customer Tampering. WIN shall be solely responsible for the maintenance of equipment and facilities owned or otherwise controlled by it and shall use reasonable efforts to maintain facilities and equipment that it provides to Customer. Customer shall not, nor permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise interfere with any of the facilities or equipment installed by WIN, except upon the written consent of WIN.

7.1.5 Removal/Return. Upon termination or expiration of this Agreement and/or related or SO, WIN will remove all WIN equipment and facilities from Customer's premises. At the time of such removal, such equipment and facilities shall be in the same condition as when installed, reasonable wear and tear excepted. Customer shall reimburse WIN for any loss of, or damage to, WIN's facilities or equipment on Customer's premises, except loss or damage caused by WIN's own employees, agents, or contractors.

7.1.6 Collocation. Customer shall furnish or arrange to have furnished to WIN at Customer's premises, at no charge, any space and/or electrical power required by WIN to provide any Service under this Agreement and any related SO. Customer shall make all necessary arrangements in order that WIN will have timely access to such space at all reasonable times and to the extent reasonably required by WIN for installing, inspecting, repairing and/or removing equipment and facilities of WIN. WIN shall have no right to place equipment or facilities in space owned or controlled by Customer without the prior consent of Customer, which consent shall not be unreasonably withheld, conditioned, or delayed.

7.1.7 Damages. Customer shall reimburse WIN for any damages to WIN's equipment or facilities, reasonable wear and tear excepted, caused by: (i) any improper use of, or breach of this Agreement with respect to, any such equipment or facilities by Customer, its employees, agents; (ii) improper use of Service by Customer, its employees, agents; (iii) malfunction of any equipment or facilities not provided by WIN and used by Customer or Customer's employees, agents, in connection with any Service provided hereunder; or (iv) fire, theft or other casualty on the premise of Customer (or of its agents). In the event Customer causes damage to facilities or equipment other than that owned by WIN, and such facilities or equipment are physically, optically and/or electrically associated with those of WIN, Customer shall reimburse the owner for, and indemnify and hold WIN harmless from any and all claims arising from, damage to any such facilities or equipment.

7.2 Customer Equipment/Software/Applications, Encryption, and Collocation.

7.2.1 Equipment/Software/Applications. Customer is responsible, at its sole cost and expense, for connecting to the Demarcation Point specified in the Service Order. Components, equipment, and operations beyond the Demarcation Point and/or interconnection between WIN's facilities and terminal components and the wiring at the Demarcation Point shall be the responsibility of Customer ("Customer Equipment"). Customer must procure and maintain, at its sole cost and expense, Customer Equipment which is technically compatible with the Service ordered and WIN's network. WIN shall have no obligation to install, maintain or repair any non-WIN components or equipment, including any Customer Equipment. If, on responding to a Customer-initiated service call, WIN reasonably determines that the cause of the deficiency was a failure, malfunction or the inadequacy of components or equipment other than the WIN Components, Customer shall compensate WIN for time pursuant to Section 7.1.6 and materials expended during the service call.

7.2.2 Customer shall use commercially reasonable efforts to ensure that its equipment does not: (i) interfere with or impair Service over any such facilities and equipment of WIN; (ii) impair the privacy of any communications carried over WIN's facilities; or (iii) create hazards to the employees of WIN or the public. Within three (3) hours upon notice from WIN, Customer shall eliminate any hazard, interference, or Service obstruction that any such Customer Equipment is causing or reasonably may cause.

WIN further reserves the right, at its option, to suspend Service on notice, if notice is practicable, if any such Customer Equipment does not comply with, after notice and corresponding cure period, the foregoing provisions of this Section. During any such suspension, no Service Interruption or outage shall be deemed to have occurred. Additional charges may also apply for any necessary reconnection or other work occasioned by violation of this Section by Customer.



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ARTICLE VIII RELATIONSHIP

8.1 Customer Responsibilities. This Agreement applies only to those Services provided by WIN to Customer. Customer is solely responsible for all dealings with Customer use of Services including, but not limited to sales, contracts, orders, activations, customer care, customer premises equipment installation, configuration and support and IP assignments, associated functions, and routing. Customer will be responsible for all troubleshooting beyond the minimum point of entry at location. Prior to opening a trouble ticket with WIN, Customer shall test and isolate the trouble to the WIN network.

8.3 Indemnity. Customer shall indemnify and hold harmless WIN from any and all claims by Customer use, third parties, or governmental entities related to such use of the Services (including without limitation any claim with respect to any of the Services provided by Customer which may incorporate any of the WIN Services provided hereunder).

ARTICLE IX SUSPENSION/TERMINATION

9.1 In the event either Party breaches the Agreement, any Service Schedule, or any or all SOs, the non-breaching Party may terminate the affected SO(s) on thirty (30) days' written notice if the breaching Party fails to cure the breach within thirty (30) days after the written notice is served; or if notice is for a breach of Customer's payment obligations under this Agreement, the notice period shall be five (5) days ("Cause"). Additionally, this Agreement and any Services may be immediately suspended if, in its reasonable business judgment, WIN determines that:

- a) its network integrity is in jeopardy,
- b) use of the Services is fraudulent;
- c) Customer's actions or failure to act could cause or are causing material financial losses to WIN;
- d) any insolvency, bankruptcy, assignment for the benefit of creditors, appointment of a trustee or receiver, or similar event with respect to Customer; or
- e) there is any governmental prohibition or required alteration of the Services to be provided hereunder or any violation of an applicable law, rule, or regulation.

Any termination, suspension, or disconnection as provided in this Section shall not relieve Customer of its obligation to pay any charges incurred hereunder prior to such event. A Service reinstatement charge may be assessed in the event that WIN reactivates Customer's Service after termination, suspension, or disconnection.

9.2 Customer acknowledges that WIN will commence provisioning in reliance upon Customer's commitment for the Service through order submission. If Customer cancels, in whole or in part, a Service Order within seventy-two (72) hours following WIN's Order Acceptance Notification of the Service Order, there is no charge to Customer. If Customer cancels, in whole or in part, a Service Order after seventy-two (72) hours following WIN's Order Acceptance Notification of the Service Order but before the Start of Service Date for such Service, Customer shall pay (as liquidated damages and not as a penalty) a charge equal to: (a) one month's MRC for the Service Order Service; plus (b) the aggregate fees, charges, expenses, and taxes payable by WIN (including, but not limited to, liquidated damages, disconnection, early cancellation, or termination charges payable to third parties) in connection with the cancellation or termination of the Service Order.

9.3 If a SO is terminated after the Commencement Date by WIN for Cause, or by Customer for any reason other than for Cause, Customer shall immediately pay to WIN all undisputed sums then due and unpaid for Services provided in accordance with this Agreement as of the termination date, and shall be liable for all sums equaling 100% monthly recurring charges (MRC) times the number of months remaining under the SO term, plus actual expenses incurred by WIN to initiate or terminate the Services, any installation charges waived, and any discounts or credits granted ("Early Termination Fees"). The Termination Fees set forth herein are a reasonable measure of the damages WIN will incur as a result of early termination of this Agreement or SO and are not penalties.



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9.4 Notwithstanding anything herein to the contrary, WIN may, with as much notice as is reasonably practicable under the circumstances, suspend Service to Customer to the extent reasonably necessary to protect WIN's network from imminent harm and/or to protect the technical integrity of WIN network. Any suspension pursuant to this section shall be limited in scope and duration to the extent reasonably practicable under the circumstances and any Services suspended shall be reinstated promptly after cessation of the event giving rise to the suspension.

9.5 The Parties' rights and obligations pursuant to Article X (Disclaimer of Warranty, Limitations of Liability, and Indemnification) and Article XIII (Confidentiality and Intellectual Property) and any other rights and obligations that by their nature would extend beyond the termination or expiration of this Agreement, shall survive the termination or expiration of this Agreement.

ARTICLE X DISCLAIMER OF WARRANTY, LIMITATIONS OF LIABILITY AND INDEMNIFICATION

10.1 EXCEPT FOR ANY DUTY TO INDEMNIFY SPECIFICALLY SET FORTH HEREIN, IN NO EVENT SHALL WIN BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE, LOSS OF PROFITS, OR LOSS OF CUSTOMER'S CLIENTS OR GOODWILL, ARISING IN ANY MANNER FROM THIS AGREEMENT AND/OR THE PERFORMANCE OR NONPERFORMANCE HEREUNDER. WIN SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR THE CONTENT OF ANY COMMUNICATIONS TRANSMITTED VIA THE SERVICE BY CUSTOMER OR ANY OTHER PARTY. WIN'S ENTIRE LIABILITY FOR ANY CLAIM, LOSS, DAMAGE OR EXPENSE FROM ANY CAUSE WHATSOEVER, SHALL IN NO EVENT EXCEED SUMS ACTUALLY PAID TO WIN BY CUSTOMER FOR THE SPECIFIC SERVICES IN THE YEAR PRIOR TO THE EVENT GIVING RISE TO THE CLAIM.

10.2 THE LIABILITY OF WIN WITH RESPECT TO THE INTERRUPTION OF SERVICES PROVIDED UNDER THIS AGREEMENT SHALL BE LIMITED TO CIRCUMSTANCES IN WHICH THERE HAS BEEN A SERVICE INTERRUPTION OR OUTAGE. FOR SUCH SERVICE INTERRUPTIONS OR OUTAGES WIN'S LIABILITY IS LIMITED TO SERVICE INTERRUPTION CREDITS PURSUANT TO ANY APPLICABLE SERVICE LEVEL AGREEMENT. REMEDIES FOR SERVICE INTERRUPTION UNDER THIS AGREEMENT ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY STATED IN THE AGREEMENT.

Customer shall be liable for any damage to WIN's equipment, facilities, or systems which is caused by: (a) the acts or omissions of Customer; (b) malfunction or failure of any equipment or facilities provided by Customer or its agents, employees or suppliers; or (c) Customer refusing to grant WIN access to the Customer's facilities.

10.3 Force Majeure. Neither Party shall be liable for any delay or failure in performance pursuant to this Agreement (except for any payment obligation), to the extent such delay or failure is caused by fire, flood, explosion, accident, third party cable cut, acts or omission of common carriers, war, strike, embargo, governmental requirement, civil or military authority, act of God, declared Pandemic by World Health Organization, the US National Institute or Center for Disease Control or similar United States federal or state governmental entity, inability to secure materials not in such Parties possession or labor or any other causes beyond its reasonable control ("Force Majeure"). Any such delay or failure shall suspend this Agreement until the Force Majeure ceases and the term shall be extended by the length of the suspension. Nothing herein shall relieve Customer from making payments owed to WIN for Services rendered.



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10.4 No Warranties. WIN MAKES NO WARRANTIES ABOUT THE SERVICE PROVIDED HEREUNDER, EXPRESSED, OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WIN makes no representations concerning and does not guarantee that Customer's domain name does not infringe upon any trademarks, trade names, service marks or other proprietary rights owned by a third party.

10.5 INDEMNIFICATION. Subject to the other terms and conditions set forth herein, each Party shall defend and indemnify the other Party and its directors, officers, employees, representatives, agents and shareholders (collectively, "Indemnified Parties") from any and all third party claims, forfeitures, fines, penalties, expenses, damages, interest, lawsuits or other liabilities (including without limitation, reasonable attorney fees and court costs) (collectively "Liabilities") relating to or arising out of (i) its negligent acts or omissions in the operation of its business, including any damage to tangible property or bodily injury or wrongful death, and (ii) its breach of this Agreement; provided, however, that WIN shall not be liable and shall not be obligated to indemnify Customer, and Customer shall defend, indemnify and hold harmless WIN and its Indemnified Parties, for any third party claims, to the extent directly or indirectly arising from Customer's use of the Services provided by WIN under this Agreement and with respect to Services provided by Customer which may incorporate any of the Services.

ARTICLE XI COMPLIANCE WITH LAWS

11.1 Compliance with Laws. Each Party shall comply with all applicable laws, regulations, court decisions or administrative rulings regarding the provision or use of the Services. Failure to do so shall constitute a material breach of the Agreement.

11.4 Requests Customer Information and Communications Assistance Law Enforcement Act (CALEA) Of 1994. In the event WIN is in receipt of a request for information regarding Customer or a CALEA request, from law enforcement, a governmental entity or other authorized entity or person ("Requesting Entity"), WIN will inform Customer of such request (if not prohibited from doing so). WIN will also gather the information or facilitate the request if the ability to do so is uniquely within WIN's power (i.e., Customer obtains a Service and law enforcement submits a CALEA request). WIN will then either respond to the Requesting Entity or provide the information to Customer to submit to the Requesting Entity, at WIN's option. Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party by a third party for noncompliance with CALEA and shall, at the noncompliant Party's sole cost and expense, modify or replace any equipment, facilities, or Services provided to the other Party under this Agreement to ensure that such equipment, facilities, and Services fully comply with CALEA.

ARTICLE XII UNAUTHORIZED USE AND NETWORK/ EQUIPMENT SECURITY

12.1 Unauthorized/Fraudulent Use. Customer, and not WIN, shall bear the risk of loss arising from any unauthorized or fraudulent use of Services provided under this Agreement to Customer, unless caused by WIN. WIN reserves the right, but is not required, to take any and all action it deems appropriate to prevent or terminate any fraud or abuse in connection with the Services. Claims of fraudulent usage shall not constitute a valid basis for dispute of an invoice.

12.2 Network Security. Customer is responsible for the security of their own networks and equipment. WIN assumes no responsibility or liability for failures or breach of protective measures on Customer's network, whether implied or actual, even in the event that the security measures have been installed or configured by WIN. Customer shall solely be responsible for addressing problems on Customer's network escalated to WIN for resolution that involves compromise of Customer's security.



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12.3 Acceptable Use Policy. Customer agrees to adhere and to require and enforce its adherence to the WIN Acceptable Use Policy (“AUP”) at <https://www.windstream.com/about/legal/Acceptable-Use-Policy> (or such other location as WIN may designate), as this policy may be modified from time to time. In the event that Customer utilizes the Services provided hereunder in a manner which generates a complaint to WIN, WIN may provide Customer’s name and contact information to the complaining Party. In the event WIN receives repeated complaints regarding Customer’s use of the Services, WIN may in its reasonable discretion deem this to be a material breach of this Agreement.

ARTICLE XIII CONFIDENTIALITY AND INTELLECTUAL PROPERTY

13.1 Confidentiality. During the term of this Agreement and for a period of one (1) year thereafter, neither Party shall disclose any terms of this Agreement, including pricing or any other Confidential Information of the other Party. For purposes of this Agreement, the term “Confidential Information” shall mean information in written or other tangible form that a Party should reasonably understand is confidential. Any Confidential Information transmitted orally shall be identified as such at the time of its disclosure. All Confidential Information shall remain the property of the disclosing Party. A Party receiving Confidential Information shall: (i) use or reproduce such information only when necessary to perform this Agreement or enforce its rights hereunder; (ii) provide at least substantially the same care to avoid disclosure or unauthorized use of such information as it provides to protect its own Confidential Information; (iii) limit access to such information to its employees or agents who need such information to perform this Agreement or enforce its rights hereunder; and (iv) return or destroy all such information, including copies, after the need for it has expired, upon request of the disclosing Party, or upon termination of this Agreement. The Party to whom Confidential Information is disclosed shall have none of the obligations above for Confidential Information which: (i) was previously known to such Party free of any obligation to keep it confidential; (ii) is or becomes publicly available by other than unauthorized disclosure; (iii) is developed by or on behalf of such Party independent of any Confidential Information furnished by the other Party under this Agreement; (iv) is received from a third party whose disclosure does not violate any confidentiality obligation; or (v) is disclosed pursuant to the requirement or request of a governmental agency or court of competent jurisdiction to the extent such disclosure is required by a valid law, regulation or court order.

13.2 Intellectual Property and Digital Millennium Copyright Act (“DMCA”). This Agreement confers no right to use the name, service marks, trademarks, copyrights, or patents of either Party except as expressly provided herein. Neither Party shall take any action, which would compromise the registered copyrights or service marks of the other. In the event WIN creates any custom software enhancements in providing Services to Customer under this Agreement, such software enhancements shall be deemed solely the intellectual property of WIN unless otherwise provided in a Customer hereby disclaims all right, title, and interest in such custom software enhancements, including United States and foreign patent, copyright, and other intellectual property rights. Customer shall indemnify WIN if its domain name or combination of the Services provided by WIN with Services or equipment not provided by WIN infringes or is alleged to infringe on any third party’s intellectual property rights. Customer shall comply with all provisions of the DMCA Title II with respect to limiting liability for copyright infringement. Customer shall: (a) adopt and implement a policy of terminating accounts or subscriptions of repeat infringers; (b) inform subscribers and/or account holders of such policy; (c) accommodate and not interfere with standard technical measures as defined by the DMCA; (d) designate an agent to receive notification of alleged acts of infringement, file information related to such designated agent with the Copyright Office, and notify subscribers or account holders of the designated agent and such designated agent’s contact information; and (e) comply with the DMCA’s rules governing notification and counter-notification and procedures for removing or blocking access to (or restoring access to) content alleged to be infringing.



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ARTICLE XIV: MISCELLANEOUS

14.1 Entire Agreement/Modifications/Waivers. This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof and supersedes all other agreements, written or oral, between the Parties relating to the Services. As of the Effective Date hereof, any and all Service provided pursuant to any prior agreements shall be provided pursuant to the terms of this Agreement. No term herein shall be deemed waived or breach or default excused unless in writing and signed by the Party against which it is to be enforced. Additionally, no consent by a Party to, or waiver of, a breach or default by the other, whether express or implied, shall constitute a consent to or waiver of, any subsequent breach or default.

14.2 Contractual Relationships with Third Parties. Services provided by WIN through Third Party Providers shall be subject to, and governed by, the terms and conditions of WIN's agreements with those Third Party Providers. WIN shall not be liable for any failure to perform to the extent such failure is due to an act or omission of the Third Party Provider.

14.3 Assignment. Neither this Agreement, nor any rights or obligations under it may be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld. A Party may assign this Agreement to an Affiliate without consent of the other Party; provided, however, that the assigning Party shall notify the other Party in writing of such assignment thirty (30) days prior to the effective date thereof. For purposes of this Section, Affiliate is defined as a person that directly, or indirectly, owns (meaning to own) an equity interest of more than (50%) or controls, is owned or controlled by, or is under common ownership or control with, another person.

14.4 Partial Invalidity. If any provision of this Agreement shall be held to be invalid or unenforceable (either under current law or in the future), such invalidity or unenforceability shall not invalidate or render this Agreement unenforceable, but rather the remaining provisions of this Agreement shall remain in effect and be binding on the Parties and this Agreement shall be construed as if not containing the invalid or unenforceable provision. However, if such provision is an essential element of this Agreement, the Parties shall promptly attempt to negotiate a substitute therefore.

14.5 Regulatory Requirements. If any Regulatory Requirement has the effect of canceling, changing or superseding any material term or provision of this Agreement, then this Agreement will be deemed modified in such a way as the Parties mutually agree is consistent with the form, intent and purpose of this Agreement and is necessary to comply with the Regulatory Requirement. If the Parties cannot agree to modifications necessary to comply with a Regulatory Requirement within thirty (30) days after the Regulatory Requirement is effective, then either Party may terminate this Agreement and/or Attachment impacted by the Regulatory Requirement effective as of the date of notice by providing written notice to the other Party.

14.6 Relationship of Parties. Neither this Agreement nor the provision of Service hereunder shall be deemed to create any joint venture, partnership or agency between WIN and Customer. The Parties are independent contractors and shall not be deemed to have any other relationship. Neither Party shall have, or hold itself out as having, the power or authority to bind or create liability for the other by its intentional or negligent act.

14.7 Governing Law. This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of Arkansas, without regard to choice of law provisions.



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14.8 Limitations of Actions; Waiver of Jury Trial. Any claims arising out of or related to this Agreement shall be made within one (1) year from the date the claim arises or is discovered by WIN. EACH PARTY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW HEREBY IRREVOCABLY WAIVES ALL RIGHTS IT MAY HAVE TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF EITHER PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

14.9 Insurance. During the term of this Agreement, as may be extended, WIN and Customer shall each maintain the following insurance coverages: (i) commercial general liability insurance in an aggregate amount of \$2,000,000, (ii) worker's compensation in the applicable statutory amount, (iii) employers liability and occupational disease (each accident and each employee) with limits of \$1,000,000, (iv) automobile liability for owned and non-owned autos, combined single limit of \$1,000,000, and (v) all risk insurance with standard extended coverage, replacement value, without coinsurance factor for full replacement value for such Party's personal property located on the Owner's Property. (WIN shall have the right to self-insure personal property). Each Party shall name the other Party as an additional insured with respect to the insurance listed in items (i), (iii) and (iv) above. Additionally, each Party shall obtain a waiver of subrogation from its insurer with respect to the insurance listed in item (v) above. Within ten (10) days of this Agreement being executed by WIN and Customer, each Party shall provide to the other Party written evidence that the insurance required herein is in full force and effect.

14.10 Non- Exclusive Agreement. This Agreement is non-exclusive. Nothing in this Agreement shall prevent WIN from entering into similar arrangements with, providing Services to any other person or entity. Nothing in this Agreement shall prevent Customer from entering into similar arrangements with or purchasing services from any other person or entity.

14.11 Titles. The titles and headings contained in this Agreement are for reference purposes only and shall not in any manner limit the construction of this Agreement.

14.12 Counterparts. This Agreement shall constitute the Parties' entire agreement. In the event of any conflict any of the documents incorporated by reference, the terms of this Agreement control followed (in order) by any product-specific Service Schedules, click-through agreements for applicable Services, any applicable Service Level Agreement(s), the Tariffs and the FCC or state Service Publications, 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. Delivery of an executed counterpart of a signature page to the Service Order by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart.



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14.13 Notices. All notices and communications under this Agreement shall be written in English and shall be given via email notification addressed to the respective Party as set forth below, or to such other address as may be designated in writing by such Party. Notice shall be deemed given upon receipt.

To Windstream
Attn: Wholesale Carrier Contracts
Email: wci.carrier.contracts@windstream.com

For Legal Notifications Only:
Email: Windstream.Legal.Notices@windstream.com

For Customer Tax Exemptions Only:
Email: corp.sales.tax.inquiries@windstream.com



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Carrier Ethernet Service Schedule

In addition to the terms and conditions in the Agreement, the following terms and conditions shall apply. Except to the extent set forth herein, or in any other agreement mutually agreed to between the Parties, all of the terms and conditions set forth in the Agreement shall remain in full force and effect. Capitalized terms used herein but not otherwise defined shall have the same meaning assigned to such terms in the Agreement. In the event of any conflict between the terms set forth in this Carrier Ethernet Service Schedule and the Agreement, and any other agreement executed between the Parties, the terms of this Carrier Ethernet Service Schedule shall prevail.

WIN shall provide Customer with Carrier Ethernet Services which provides access to the WIN network through strategically placed interconnect points.

1. Description of Services.

WIN's Carrier Ethernet (E-Line) Service leverages WIN's Ethernet infrastructure to provide Ethernet EVC (Ethernet Virtual Connection) circuits to Wholesale customers. The E-Line Service type can be used to create point-to-point EVCs.

- MEF defines (2) two service types. E-Line EVPL (Ethernet Virtual Private Line) is a VLAN-based solution that supports service multiplexing at the UNI, and E-Line EPL (Ethernet Private Line) which is a Port based Service that includes all-to-one bundling.

2. Service Types.

E-Access EPL A port-based Service with a high degree of transparency (Figure 1). As a transparent Service there is no need to coordinate a detailed CE-VLAN ID to OVC mapping. All service frames at the UNI will be mapped to a single OVC; however, the S-VLAN ID at the E-NNI is preserved and will need to be coordinated.

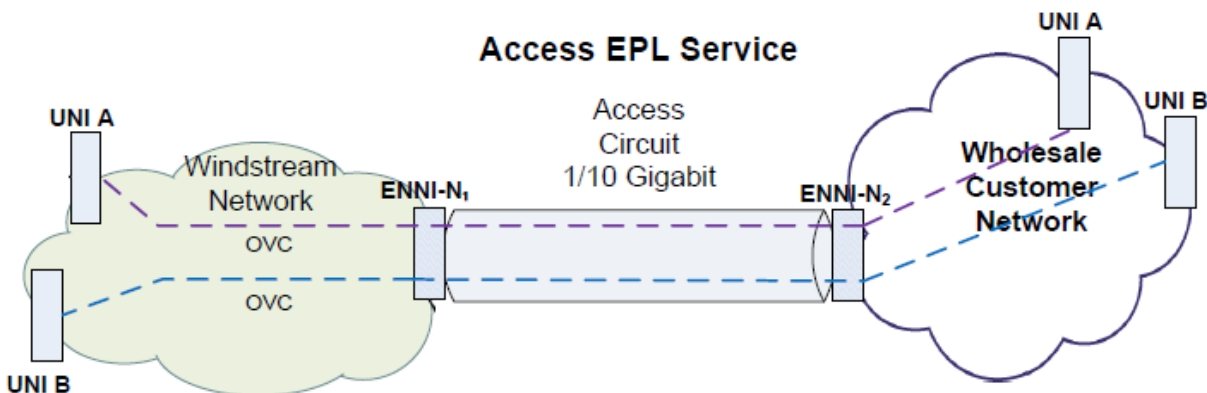


Figure 1

E-Access EVPL A VLAN based Service that allows multiple service instances to be configured at the UNI interface (Figure 2). This Service will require an OVC endpoint map for each OVC to specify how service frames are mapped at the UNI. In addition, the S-VLAN ID value will need to be coordinated between WIN and the Customer.

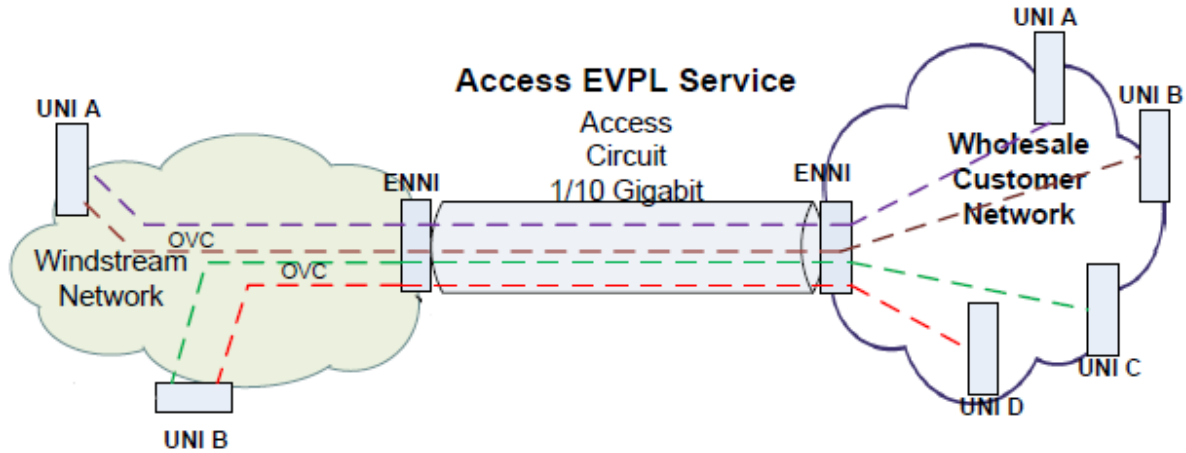


Figure 2

E-Line EPL A port-based Service with a high degree of transparency (Figure 3). As a transparent Service there is no need to coordinate a detailed CE-VLAN ID to EVC mapping. All service frames at the UNI will be mapped to a single EVC.

E-Line EPL Service

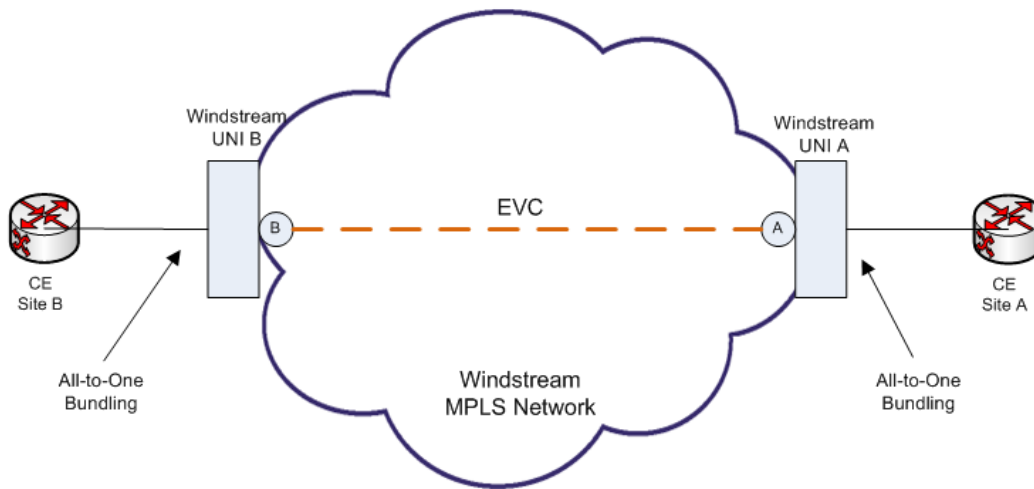


Figure 3

E-Line EVPL A VLAN based Service that allows multiple service instances to be configured at the UNI interface (Figure 4). This Service requires an EVC endpoint map for each EVC to specify how service frames are mapped at the UNI. In addition, VLANs need to be coordinated between WIN and the Customer.

E-Line EVPL Service

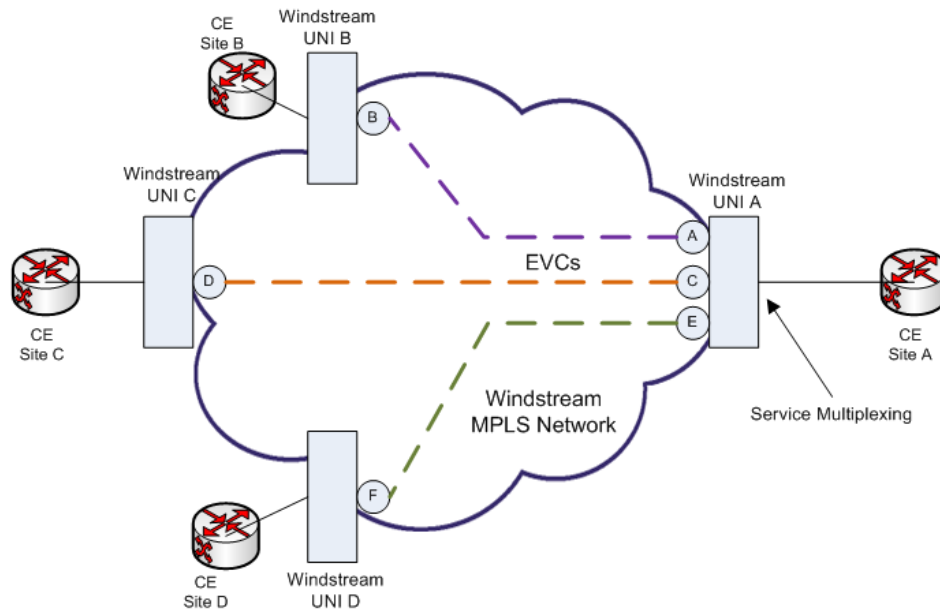


Figure 4

3. Customer Responsibilities.

- a. Customer agrees to the following conditions as part of the Service delivery:
 - Receive shipment of WIN Network Interface Device (“NID”) at the Service Location listed on the Service Order (“SO”).
 - Provide all cross-connects and extensions required to extend Service from NID into Customer space.
 - Obtain any licenses, approvals, and permissions required by landlord, building manager, or governmental authority for the installation, and meet any insurance requirements and building code requirements related to the installation.
 - Provide access to authorized WIN Installation technicians or Authorized Agent for site survey, if required.
 - Provide adequate backboard space to install equipment, when required and as notified by WIN.
 - Provide adequate power and grounding capabilities to service equipment including power conditioning.
 - Provide a standard 19” or 23” rack space, when required and as notified by WIN.
 - Provide proper cooling to meet environmental requirements of standard network equipment.
- b. Failure to comply with site requirements and site preparation for the installation of any Service may result in the following corrective actions taken by WIN:
 - WIN cancelling SO – Customer will be charged all applicable cancellation fees as outlined in the Agreement.
 - Customer Not Ready – WIN will bill an Idle Service Fee equal to the MRC of the Service Ordered by Customer until such time Customer is ready for WIN to complete Installation of Service.

4. Access Circuits.



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WIN delivers its Services over a variety of last mile/first mile access types. These access circuits may be on-net (Type 1) or off-net (Type 2). All access types described in this Section may be collectively referred to as the “Circuit(s)”. The table below outlines specific delivery information for these access types:

Access Type	Bandwidth	Hand-off	Demarc Location	Voice / Data
Ethernet over Fiber	3Mbps – 1Gbps	RJ45 / SMF	Site Survey/MPOE	Data

5. **Access Circuit Availability.**

WIN’s Service availability is determined through its customer portal tool. Access circuits may be rejected or require special construction to deliver. The following table outlines specific constraints for each access type.

Access Type	Delivery Notes
Ethernet over Fiber	Access Circuit orders are subject to operational limitations of systems, facilities, and equipment. If facilities and equipment are not available, special construction charges may apply. Upon notification of special construction charges, Customer may cancel the request for the Access Circuit within fifteen (15) days after notification date. If the Customer does not agree to the special construction charge within said fifteen (15) days, then the Customer shall be deemed to have cancelled the request for Service.



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DIA Service Schedule

In addition to the terms and conditions in the Agreement, the following terms and conditions shall apply. Except to the extent set forth herein, or in any other agreement mutually agreed to between the Parties, all of the terms and conditions set forth in the Agreement shall remain in full force and effect. Capitalized terms used herein but not otherwise defined shall have the same meaning assigned to such terms in the Agreement. In the event of any conflict between the terms set forth in this DIA Service Schedule and the Agreement, and any other agreement executed between the Parties, the terms of this DIA Service Schedule shall prevail.

1. Service Description.

Dedicated Internet Access (“DIA”). DIA is an industry standard Internet service that provides connectivity to the public Internet through WIN’s network at designated speeds over a variety of last mile/first mile access types. Both border gateway protocol (“BGP”) routing and static routing is available with each service. However, BGP is the only available option for third party prefixes. IP version 4 address space is available at an additional charge and will be presented to the customer on the DIA service quote. IP version 6 address space is available upon request. WIN offers nationwide DSL and cable Broadband Service as an offnet asymmetrical Internet service connection delivered by various Third Party Providers. The offering is a value-added Service featuring a single point of contact for account management, billing and support. The standard offering leverages an array of physical mediums including coaxial and fiber based connections and includes a modem for connectivity. The Internet service comes standard with a dynamic IP address. Static IP addresses may be purchased for an additional fee.

2. Definitions.

- **95th Percentile Calculation:** 95th Percentile calculation means the calculation method used to measure Bandwidth usage for Customer Orders which specify Burst Bandwidth. Samples of average Bandwidth utilization rates of both inbound and outbound traffic from the Customer port(s) are collected in five (5) minute intervals over a calendar month. The higher of such samples (Inbound or Outbound) are placed on a list and sorted from highest to lowest in amount of Mbps. The highest five percent (5%) of samples are discarded and the next highest sample is chosen to represent the 95th percentile calculation for that month.
- **Bandwidth Commitment:** Bandwidth Commitment means the Customer’s commitment to pay for a certain level of Bandwidth on a monthly basis. Customer agrees to pay the MRC specified on the Customer Order(s) as a minimum monthly charge regardless of actual usage. Any applicable Bandwidth Commitment will be specified on a Customer Order.
- **Burst Bandwidth:** Burst Bandwidth means the amount of bandwidth usage, based on the 95th Percentile Calculation, in excess of a Bandwidth Commitment. Any usage in excess of the Bandwidth Commitment will incur additional MRC based on the 95th Percentile Calculation. Burst Bandwidth must be specified on a Customer Order to be applicable.
- **WIN Point of Presence (“POP”):** Physical location of WIN router at the edge of WIN’s network that faces the Customer Edge and delivers private data and/or Internet Services to Customer’s network.
- **Customer Edge (“CE”):** CE refers to the device at Customer’s premises that is connected to the WIN POP.
- **Minimum Point of Entry (“MPOE”):** MPOE is defined by the party providing the Access Circuit (defined below) to the Customer Location. A Customer Location may have multiple MPOE locations. WIN will direct an Access Circuit provider to install a circuit to the MPOE closest to the requested Customer Service Location. WIN cannot guarantee that the Access Circuit will be delivered to the requested MPOE.

3. Customer Premise Equipment (“CPE”).

- a. WIN may provide a CPE at the Customer premise address that is specified on the Service Order (“SO”) as part of the delivery of the Service. A WIN provided CPE will at all times remain the property of WIN. WIN will repair/replace a CPE that breaks down under normal operating conditions throughout the term of the Circuit as long as the wear and tear on the CPE is reasonable. If WIN, at its sole discretion, determines that breakage has occurred due to misuse or abuse to a CPE, Customer will be responsible for its replacement.
- b. A WIN CPE may be shipped directly to the Customer premise location.



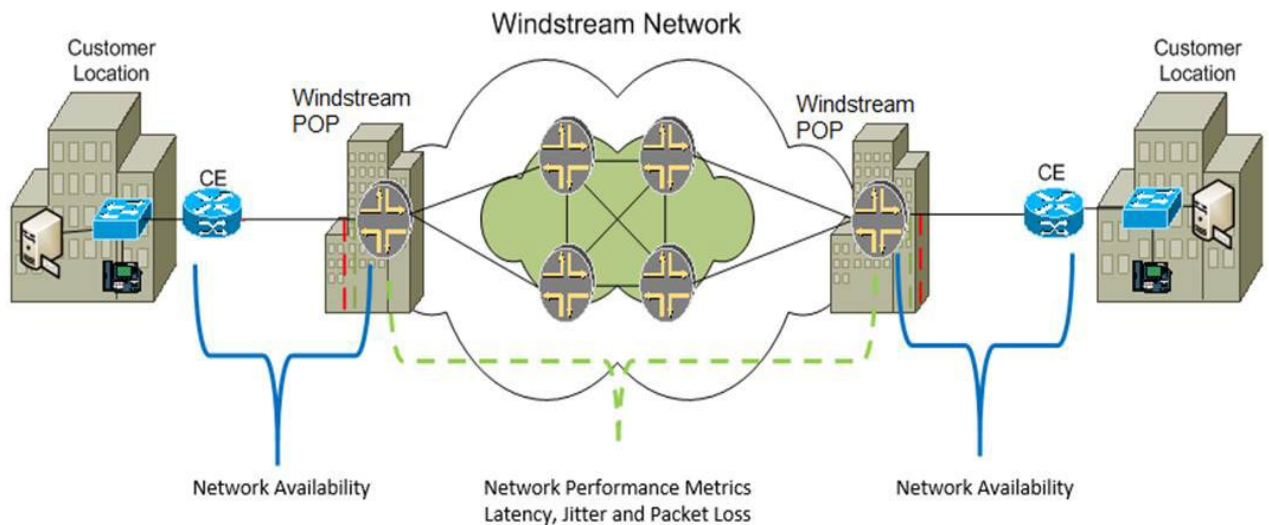
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- c. A WIN CPE will be installed at the entry location of the Circuit MPOE. Customer is responsible for any extension if Customer service is not at the MPOE. WIN does not provide Demarc extensions. Any extension may be arranged by Customer with a third party. Any Demarc extension remains the property of the Customer and WIN is not liable for any service interruption occurring due to a failure with the Demarc extension.
- d. Customer may be provided with an Ethernet interface (100/1000) handoff on the local area network side of the WIN provided CPE.
- e. WIN will provide LOA/CFA. Customer is responsible for all cross-connect ordering and fees.
- f. Upon disconnection of the Service(s) WIN will ship an empty CPE box to the Customer, which will have thirty (30) days to return the CPE to WIN. Customer will be charged the cost of the CPE for any CPE not received by WIN within such thirty (30) day period.
- g. Customer may request to provide its own CPE; however, a customer-provided CPE must be on WIN's approved list of CPEs.

4. Customer Obligations.

- a. **Configurations and Software.** Unless agreed to by WIN as part of a SO, Customer is responsible for all Customer Premise Equipment/router configurations and software and applications that utilize the Service (e.g., VoIP, e-mail service, database applications), including installation, configuration and support. In the event WIN provides assistance to Customer, at Customer's request regarding these applications, Customer agrees to pay WIN for such services for a time pursuant to Section 7.1.6 and materials expended.

5. Technical Example.



6. Access Circuits.

WIN delivers its services over a variety of last mile/first mile access types. These access circuits may be On-Net (Type 1), Off-Net (Type 2), or resold (Type 3). All access types described are collectively referred to as the "Access Circuit(s)". The table below outlines specific delivery information for these access types:

Access Type	Bandwidth	Hand-off	Demarc Location	Voice / Data
Ethernet over Fiber	3Mbps – 1Gbps	RJ45 / SMF	Site Survey/MPOE	Data



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7. Availability.

WIN's Service Availability is determined through its customer portal, Access circuits may be rejected or require special construction to deliver. The following table outlines specific constraints for each access type.

Access Type	Delivery Notes
Ethernet over Fiber	Access Circuit orders are subject to operational limitations of systems, facilities, and equipment. If facilities and equipment are not available, special construction charges may apply. Upon notification of special construction charges, Customer may cancel the request for the Access Circuit within fifteen (15) days after notification date. If the Customer does not agree to the special construction charge within said fifteen (15) days, then the Customer shall be deemed to have cancelled the request for service.
Broadband	Broadband includes hybrid fiber co-axial ("HFC") and xDSL circuits. Broadband Access Circuits are qualified by United States Postal Service Zip Code or by direct access to WIN's customer portal. WIN pre-qualifies all broadband orders during the pre-order process. During pre-qualification, Customer may be notified that no service or a lesser service may be delivered to the requested location. Upon notification, WIN will provide service options to Customer. Customer shall have fifteen (15) days to update request for service. If the Customer does not agree to the change in service within said fifteen (15) days then the Customer shall be deemed to have cancelled the request for service.

8. Site Surveys.

A WIN authorized engineer may conduct a site visit to determine what is required from the Customer to be able to complete its fiber cable and equipment installation. WIN or a Third Party Provider makes contact with the Customer Local Contact ("LCON"), as provided on the SO, to set up the site visit appointment. The LCON should be familiar with the site and the Service required and be able to provide all required access. During the site visit, an engineer reviews the site to determine what is required from the LCON for WIN to provide the Service.



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Schedule of Service Level Agreement for Data Services

This Service Level Agreement (“SLA”) sets forth the provisions and commitments relating to service quality between WIN and Customer. In addition to the terms and conditions in the Agreement, the following terms and conditions shall apply. Except to the extent set forth herein, or in any other agreement mutually agreed to between the Parties, all of the terms and conditions set forth in the Agreement shall remain in full force and effect. Capitalized terms used herein but not otherwise defined shall have the same meaning assigned to such terms in the Agreement. In the event of any conflict between the terms set forth in this SLA and the Agreement, and any other agreement executed between the Parties, the terms of this SLA shall prevail.

1. **Service Availability.** Availability is a measurement in seconds of the percent of total time that a Service is operative when measured over a Calendar Month. It is calculated based on an aggregate monthly measurement average between specific WIN PoPs on the WIN Network, and does not apply to Third Party Provider local access circuits. WIN’s network management system is the sole and conclusive measurement for purpose of this SLA.

WIN’s applicable Service will be provided to Customer in accordance with the table below.

Service	Service Type	Availability	Unavailability Credit
Carrier Ethernet*	Ethernet = Eline	99.99%	See section 5
	CoS	See section 6	See section 7
DIA *	DIA	99.99%	See section 5
	DIA QoS	See section 6	See section 7

* A Network Interface Device (“NID”) is required to monitor and measure traffic.

2. **Carrier Ethernet, DIA Service Credit.**

The following table outlines the Service Available Credits for any given Calendar Month for Carrier Ethernet and DIA Service.

Network Unavailability / Duration	Services Credit
>4.32 minutes and ≤ 1hour	1/30 th of the Monthly Recurring Charge
>1 hour and ≤ 2 hours	2/30 th of the Monthly Recurring Charge
>2 hours and ≤ 3 hours	3/30 th of the Monthly Recurring Charge
>3 hours and ≤ 4 hours	4/30 th of the Monthly Recurring Charge
>4 hours and ≤ 5 hours	5/30 th of the Monthly Recurring Charge
>5 hours and ≤ 6 hours	6/30 th of the Monthly Recurring Charge
>6 hours and ≤ 7 hours	7/30 th of the Monthly Recurring Charge
>7 hours and ≤ 8 hours	8/30 th of the Monthly Recurring Charge
>8 hours and ≤ 9 hours	9/30 th of the Monthly Recurring Charge
>9 hours and ≤ 10 hours	10/30 th of the Monthly Recurring Charge



>10 hours and ≤ 11 hours	11/30th of the Monthly Recurring Charge
>11 hours and ≤ 12 hours	12/30th of the Monthly Recurring Charge
>12 hours and ≤ 13 hours	13/30th of the Monthly Recurring Charge
>13 hours and ≤ 14 hours	14/30th of the Monthly Recurring Charge
> 14 hours	15/30th of the Monthly Recurring Charge

3. Carrier Ethernet Service CoS and DIA Service QoS.

- A. **DIA Service Quality of Service (“QoS”):** WIN's Standard QoS is the ability to offer a high level of performance for data flowing across the WIN data network. Standard Data QoS enables customers to take advantage of stringent network availability, latency, jitter, and packet loss objectives to ensure optimal performance of the applications that traverse across the data network.
- B. **Carrier Ethernet Service Class of Service (“CoS”):** WIN's Standard CoS is the ability to offer a high level of performance for data flowing across the WIN data network. Standard Data CoS enables customers to take advantage of stringent network availability, latency, jitter, and packet loss objectives to ensure optimal performance of the applications that traverse across the data network.

4. Carrier Ethernet CoS, DIA QoS Service Credits. The following table outlines the Service Credits in any given Calendar Month, depending on the Service Type selected by Customer.

Service	Service Type		Target Objective	Credit = a fraction of the MRC for the affected Services
DIA	Standard Data	Network Latency	≤ 50 ms (Roundtrip)	1/30 MRC if WIN fails to meet the Target for QoS during any Calendar Month
		Network Packet Loss	≤ .10%	
		Network Jitter	≤ 4.0 ms (Roundtrip)	
Carrier Ethernet CoS*	Standard Data	Network Latency	NA	NA
		Network Packet Loss	≤ .10%	1/30 MRC if WIN fails to meet the Target for QoS during any Calendar Month
		Network Jitter	NA	NA
	Mission Critical	Network Latency	≤ 55 ms (Roundtrip)	1/30 MRC if WIN fails to meet the Target for QoS during any Calendar Month
		Network Packet Loss	≤ .05%	
		Network Jitter	≤ 3.0 ms (Roundtrip)	
	Real-Time	Network Latency	≤ 50 ms (Roundtrip)	
		Network Packet Loss	≤ .01%	
		Network Jitter	≤ 2.5 ms (Roundtrip)	

*Ethernet Points of interconnect (E-NNIs) are strategically identified and listed in WIN's Ethernet E-Access ENNI technical guide along with each peering location's geographic Service boundaries (the technical guide is available upon request). Any E-NNI that is established outside of the Service boundaries listed in the technical guide is not governed by the above Carrier Ethernet Network Latency Service Credits. The Standard SLA applies only to Fixed Wireless access type, for clarity Real-Time and Mission Critical Fixed Wireless SLA's are not available at this time.



5. Mean Time to Repair. Mean Time To Repair Service objectives are according to the following table:

Service	Service Type	MTTR*	Credit
Carrier Ethernet	Ethernet	8 Hours	Up to 10% MRC
DIA	Ethernet Access	8 Hours	Up to 10% MRC
	Cable Broadband Service	24 Hours	Up to 10% MRC

*MTTR is calculated as Service Outage Time Hours - Excluded Outage Time Hours/Outage Count measured over a single calendar month. If applicable to the Service and for WIN provided equipment, replacement equipment will be shipped to Customer via next business day delivery for self-installation so long as (i) the trouble is isolated to WIN provided and managed equipment, and (ii) the root cause of the failure is determined by WIN by 1PM Pacific Time. For purposes of this section, "business day" means Monday through Friday, 8AM to 5PM, excluding Federal holidays.

6. Credit Requests and Payment Procedure.

- A. Each request for credit must be received, in writing, by WIN within thirty (30) days of Service Interruption, Issue or Service Outage and must be confirmed by WIN's measurements of the WIN Network. WIN must receive a request for credit within thirty (30) days after each month's Measurement Reports are available to the Customer through the WIN portal. Each request must indicate date, time, and the nature of credit request, submission date and the WIN Incident/Report number.
- B. Maximum Credit. The maximum Service Credit in any Calendar Month shall not exceed the total MRC for the affected Service.

7. Chronic Outages.

Service Interruptions or Service Outages become Chronic Outages if, for reasons other than as set forth in the Definitions Section (xiii) herein, a Circuit has three (3) or more Service Interruptions or Service Outages in any calendar month, five (5) or more Service Interruptions or Service Outages in a sixty (60) day period, or seven (7) Service Interruptions or Service Outages in a ninety (90) day period. If a Chronic Outage occurs, in addition to any credit allowance to which Customer is entitled, and upon written notice to WIN, Customer may terminate the affected Service or Circuit without any further liability. In the event that Customer elects to terminate a Service or Circuit pursuant to this Section, Customer agrees to reimburse WIN for actual, documented Third-Party cancellation/termination charges incurred by WIN to terminate the Off-Net Service.

8. Limitation of Liability.

WIN's total liability to Customer under this SLA is limited to 100% of the MRCs for the affected Service for the applicable Calendar Month in which WIN's failure to meet the applicable service level commitment occurs. The credits set forth herein shall be WIN's sole liability and Customer's sole remedy in the event of any Service Interruption, Issue or Service Outage. Except for the credits identified in this SLA, this SLA does not modify or amend the Agreement, including but not limited to any warranty disclaimers or limitation of liability provisions. Unless otherwise specifically provided for in this SLA, under no circumstances shall a Service Interruption, Issue or Service Outage be deemed a breach of the Agreement.

9. Definitions.

- (i) **Calendar Month.** For the purpose of this SLA a calendar month is based on a 60 Minute/Hour, 24 Hour/Day, 30 Day/Month = 43,200 average monthly minutes. In no event shall any obligation for a service credit arise under this SLA until such time as the Services are fully installed and operational.
- (ii) **Customer Edge ("CE").** CE refers to Customer's equipment that defines the UNI demarcation between Customer and the WIN PoP.



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- (iii) **Emergency Maintenance.** Refers to efforts to correct network conditions that are likely to lead to a material Service Outage and that require immediate action. Emergency Maintenance may temporarily degrade the quality of Customer's Service, including the possibility of causing short-duration interruptions. Such effects related to Emergency Maintenance shall not give rise to Service credits under this SLA and shall not be deemed a Service Outage. WIN may undertake Emergency Network Maintenance at any time deemed necessary to preserve network services.
- (iv) **Network Availability.** Network Availability is defined as the percentage of time in one Calendar Month during which PoPs on WIN's wholly owned data network can deliver traffic to/from other WIN PoP locations, and does not apply to Third Party Provider local access circuits.
- (v) **Network Interface Device ("NID").** Physical Interface Device that serves as the demarcation point for Carrier Ethernet Services.
- (vi) **Network Latency.** Network Latency is defined as the round-trip delay (in milliseconds) of packets transported between specific WIN POP locations across the WIN Data Network and does not apply to Third Party Provider local access circuits. Network Latency is calculated based on an aggregate monthly measurement average between specific WIN PoP endpoints.
- (vii) **Network Packet Loss.** Network Packet Loss is the percentage of packets in a Calendar Month that are dropped between specific WIN PoP locations across the WIN Data Network and does not apply to Third Party Provider local access circuits. Network Packet Loss shall be calculated based on an aggregate monthly measurement average between specific WIN POP endpoints.
- (viii) **Network Jitter.** Network Jitter is the variation in the delay of received packets transmitted between specific WIN POP locations across the WIN Data Network and does not apply to Third Party Provider local access circuits. Network Jitter is calculated based on an aggregate monthly measurement average between specific WIN PoP endpoints.
- (ix) **On-Net.** On-Net is defined as those Services which are provided by WIN and reside on WIN's wholly owned facilities.
- (x) **Off-Net.** Off-Net is defined as those Services/Circuits, which are provided by WIN but *do not reside* on WIN's wholly owned facilities. SLA's are unavailable for Off-Net Third Party Provider Services.
- (xi) **Scheduled Maintenance.** refers to upgrades or modifications to network equipment software, network equipment hardware, or network capacity. Scheduled Maintenance may temporarily degrade the quality of Customer's Services, including the possibility of causing short-duration interruptions. WIN takes every reasonable precaution to minimize the duration of any impact during the Scheduled Network Maintenance window. Such effects related to Scheduled Maintenance shall not give rise to Service credits under this SLA and shall not be deemed a Service Outage. Scheduled Network Maintenance shall be undertaken between the hours of 12:00AM and 6:00AM local time of the affected Service.
- (xii) **Service Outage.** A Service Outage is defined as the unavailability or degradation of Services during any unscheduled period of time in a Calendar Month of the Term, except that, WIN is not responsible for failure to meet performance objectives for any of the following reasons which shall not be deemed a Service Outage (collectively, "Service Credit Exclusions").
- (xiii) **Service Credit Exclusions.**
 - Any Service Outage for which Customer may have previously obtained credit or compensation outside the terms of this SLA;
 - Interruptions, Issues or outages arising from the acts or omissions of, or non-compliance with, the provisions of the Agreement by Customer, its agents, employees, or any interruptions due to any party other than WIN for events happening on any other party's network, including but not limited to internet service providers or other common carriers connected to, or providing service connected to, the Service of WIN or to WIN's facilities;



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- Failure of power, equipment, services, or systems not provided by WIN including, but not limited to, other providers' networks and interconnections to or from, and connectivity, with other Internet service providers' networks;
- Failure of Customer owned or leased equipment or facilities (e.g., Customer's router or local area network);
- Failure of Customer to allow WIN or its agents access to the premises where local access circuit lines associated with the Services are terminated;
- Election by Customer not to release the Services for testing and/or repair during which time Customer continues to use Services;
- Maintenance activities (including scheduled and emergency) as set forth in the Agreement;
- Implementation of a Customer order that requires Service interruption;
- Failure to report a Service Outage to WIN or report trouble where no trouble was found;
- Customer payment breach that results in suspension or disconnection of Services.
- Interruptions, Issues or Service Outages due to Force Majeure events.

- (xiv) **The WIN Data Network** is defined as the WIN owned and operated Data Protocol (IP) routing infrastructure consisting of WIN intra-Network to Network interfaces and selected WIN points of presence ("POPs") and the connections between them in the United States. The WIN Data Network does not include (i) Customer premise equipment; (ii) connections between WIN's network and third party Data service providers; or (iii) third party service provider networks that are not subcontractors of WIN.
- (xv) **Third Party Provider Service(s)** are any Services provided by a third party (a "Third Party Provider") that are not carried on WIN's network and/or other related equipment or facilities that are not owned and/or controlled by WIN, including, without limitation, any telecommunications facilities or services provided by Third Party Providers connecting a Customer-designated termination point to a WIN POP.
- (xvi) **WIN Point of Presence ("POP")**. Physical location of WIN router at the edge of WIN's network that faces the Customer Edge and delivers private data and/or Internet Services to Customer's network.